I wish to have the following added to the comment sections for the court rules submitted for comment in November 2015.

Re: Proposed Changes to Admission to Practice Rules (APR) 20-25.6

First of all, the Washington State Bar Association (WSBA) should be recognized for putting forth an attempt to codify certain, at times, challenging issues around the admission to practice rules and procedures. Of course, it also must also be recognized that the WSBA was made aware at least half-a-decade ago that there were serious legal issues surrounding its admission to practice rules and procedures. How many people have been victimized by the WSBA over the years is currently unknown, but the WSBA appears to not even make an attempt at a passing acknowledgment of this reality while, at the same time, outlining in its proposed rules the acceptance of responsibility expected of applicants.

It also must be recognized that it appears, at first glance, as though no parties who in the past were subject to the, at the least, facially arbitrary vagaries of the WSBA's admission procedures-at-issue were brought into the discussion as to how to improve the process. Thus, the public is left with rules drafted by parties with various agendas, but apparently no parties who can truly and accurately relate the impact and challenges of a process not only found in very similar circumstances by appellate courts to be unlawful, but also, as evidenced by the United States Department of Justice's recent settlement involving the Louisiana State Bar Association, at the minimum in need of change of varying degrees.

Ultimately, what the WSBA has proposed is still substantively lacking, does not comport with the law, and has not addressed many very important and integral aspects of the process.

With regard to proposed APR's 22.1(f)(4) and 24.1(g), the proposed rules attempt to wall off part of the process from the public and also allow the WSBA to place itself on a plane where it can not be challenged by the rules and expectations that accompany the proceedings of mere mortal people. Why should not the public have the right to know, specifically, what types of medical conditions, as well as manifestations of those medical conditions, have accompanied accepted or denied applications for admission to the bar? Names can be redacted if the drafters of these proposed rules wish to continue the stigmatizing of these conditions as conditions deserving of shame so high that the realities of the conditions should be hidden from the public. Regardless, the public, as well as other applicants, have the right to know, at least in some respects, what has passed muster medically and what has not, also under the particular circumstances at issue, with regard to admission. Otherwise, the legal community, chiefly the WSBA, and to a much lesser extent the, substantively WSBA rubber-stamping state Supreme Court, is left to play unchecked God with regard to these serious social issues. In fact, to demonstrate the rubber-stamp realities of the state Supreme Court as it applies to the WSBA, these rules will be accepted, verbatim, by the Court once submitted, even if someone raises the fact that the rules almost certainly clearly contradict federal law. This occurred recently with, essentially, these very same character and fitness APR rules.

What the Court seemed most interested in was deferring to the "hard and lengthy work" of the WSBA panel that had devised the rules. Now several years later, spurred on, apparently chiefly, by overt and impossible to ignore action by the United States Department of Justice, the APR procedure is being revisited. One silver lining that results from the state Supreme Court's acquiescence in the WSBA's rules and procedures is that a plaintiff should easily be able to go into Federal Court to challenge the procedures, using the legion of case law that addresses the due process that must be afforded in bar association procedures, and state that the state Supreme Court has already, effectively, ruled in support of the procedures by allowing the adoption of the rules.

With regard to 22.1(f)(3), it is commendable that the WSBA appears to have stepped down from the absolute arrogance of its previous approach, which was to have applicants sign releases stating that the WSBA had the right to absolutely any information about any conceivable thing.

With regard to proposed Rule 22.2(b), it is improper to operate under the guise that the Bar Counsel is purportedly a neutral party in these proceedings. The Bar Counsel, if in any way connected to the presentation of the WSBA's case to the Character and Fitness panel, should have no more right to communicate with the panel during the process than should the applicant. There should be a party separate from the WSBA who relays communications from the applicant and the bar counsel to the panel. Taking the problem to its extreme, it is an abomination to due process that the bar counsel, often times after interrogating an applicant harshly during a hearing, then sits and has lunch with the panel while the applicant is shown the door during that lunch break. Or for immediately after the hearing for the bar counsel, perhaps even after presenting the WSBA's position against admission, to continue to do whatever in the room with the panel after the applicant is shown the door. There must be a wall between the Bar Counsel and the panel, if just because, as touched on below, inherent conflict of interest issues.

With regard to proposed APR Rule 23(d), the state Supreme Court should be charged with appointing all members to the Character and Fitness Board. There is an inherent conflict of interest with Character and Fitness Board members being appointed by the WSBA, and thus being, inherently, beholden to the WSBA on certain levels. For example, at times the WSBA, in the form of the Bar Counsel, will be recommending against admission for an applicant. In addition, the Bar Counsel, who is obviously very close to the admissions and hearing process, is even closer to the Board of Governors in carrying out her duties. You almost can not separate the two, except formally, and members of the Character and Fitness Board are, of course, also aware of this.

With regard to proposed APR 24.1(c), the process is already as subjective and lacking in normal rules of due process as could possibly exist, except under circumstances in which the tribunal, as is the case here, has been allowed to devise its own rules, unchecked by any real public oversight. To then require an applicant to meet the very high burden of demonstrating clearly and convincingly character and fitness really seems to turn things completely on their head. If the WSBA has chosen, through its Bar Counsel, to subject an applicant to the arduous and unpleasant process of a character and fitness hearing, a process, as indicated above, also almost completely lacking in any resemblance to due process, the ONLY fair approach is to put the onus on the WSBA to demonstrate, through the same clear and convincing evidence, the lack of

character and fitness of an applicant. In fact, it also should be pointed out that under no law I am aware of is a process sanctioned under which those, essentially, "accused," at least prima facially, of having an impacting disability must prove that they do not have an impacting disability. Mind boggling.

As an aside, bar associations, as does the NFL, have gotten away for years with equating the practice of law with a "privilege," which really means, with both bar associations and the NFL, that both organizational structures should be allowed, according to them, unchecked discretion to do as they please to maintain the "club" as they wish. The NFL recently in Federal court got checked in the Tom Brady matter with regard to this self-serving philosophy of "privilege," especially as it relates to due process, and any attempt by the WSBA to justify the manifest lack of due process in the Character and Fitness Hearing process by simply invoking the same philosophy should be dealt with the same. The WSBA does make an attempt to formalize the, almost, complete lack of due process by invoking the, as always, manifestly self-serving term, sui generis (in other words, anything goes according to those who hold the power at the hearing), in proposed APR rule 24.1(d) to describe the hearing process, but obviously this should hardly be allowed to suffice, especially with regard to vetting those with disabilities.

In conclusion, it should be recognized, once again, that the WSBA, for whatever reasons, has attempted to codify part of the Character and Fitness process. However, as I hope I have demonstrated, there are substantive issues that are still problematic.

Furthermore, whether a simple facial change to certain rules can avoid, purely hypothetically speaking, whether a young attorney allowed on the Character and Fitness Board--let us call him, just to put a face on the hypothetical, the "traffic ticket king of East Wenatchee"--can be halted from, in many respects, unchecked browbeating in a Character and Fitness hearing an applicant whose fitness is in question because of legally recognized disabilities, with the browbeating also being based, in some respects, on things unrelated to matters at issue in the hearing, remains to be seen.

It also remains to be seen, once again simply using a hypothetical, whether a WSBA General Counsel can actually take the high ethical road in a hearing and truly remain impartial if that is what the General Counsel has stated is her position toward the applicant, or whether the process still allows for her, under the guise of neutrality, to stack the WSBA's narrative heavily against the applicant because of, among other things, promises to keep, and that, furthermore, because the process is so rife with potential conflicts of interest that it is arguable that when the General Counsel makes a point of not returning the handshake of an applicant in front of the panel at the end of the hearing that it then becomes, at least, arguable that the actions of the General Counsel helped, in small part, to sway panel members beholden to the WSBA for their appointment to the Character and Fitness Board against the applicant.

The Kafka-like *realities* of the WSBA's character and fitness hearing procedure, realities that obviously this insulated panel of even well-intentioned drafters could not even remotely fully contemplate, calls much into question. I am assuming, for example, that the WSBA has made no attempt to curtail its use of secret, surprise, or last minute witnesses in the character and fitness hearing process?

No where has the impact of the WSBA's lack of due process, or sue generis as the WSBA gets to call it, fallen more than on the disabled, some of those also whose disability-related actions reflect on "character."

I am traveling and have composed this under such circumstances. I hope I am not too unreadable.

Yours Very Truly,

Mike Kaiser

Michael Kaiser

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