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January 31, 2025

The Supreme Court of Washington
c/o: The Supreme Court Rules Committee
Washington Supreme Court
PO Box 40929
Olympia, WA 98504-0929

re: WSBA Proposed Rule Changes to GR 12.2(c)(2) – A Proposal to Harmonize GR 12.2(c)(2) with GR 12.1 and GR 12.2(a)

Dear Justices,

I am writing this comment on the proposed modification of GR 12(c)(2) as encouragement to adopt the rule as proposed.

I write to you in my individual capacity not on behalf of any organization, but as a member of the public and as a member of our Washington State Bar Association (“WSBA”). That being said, I am writing this comment in context of many years of service to the WSBA and to convey historical understanding of the policy origins of this specific proposal and its value from a volunteer perspective.

The Origins

On June 3, 2020, in the wake of the killing of George Floyd at the hands of Minneapolis Police, in my prior role as WSBA President I wrote an open letter to the membership, including the following paragraph:

There is no equity without access to the justice our legal system can provide, and there is no access to justice without our profession doing its part to solve problems. It is up to each one of us to stand up and speak for others who cannot

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so that we may substitute true dialogue and good policy for violence in our society. That is the very point of an effective legal system, and as officers of that system we bear a large share of the burden in its failures if each of us do not work to ever reform it.

On June 4, 2020, the Washington Supreme Court called on the legal profession in their own open letter:

...[T]he legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will. The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all.

On June 26, 2020, the WSBA's Board of Governors responded to the calls to action by taking several actions, the two most significant of them being: the adoption of a Resolution of the WSBA in Response to the National Dialogue on Racism and Unlawful Use of Force ("Resolution") and they chartered the WSBA's Equity and Disparity Work Group.

In the Resolution, in which the Board of Governors affirmed and joined in the two open letters mentioned above, they also highlighted two issues at the heart of this proposed rule change:

...the organization will redouble its efforts to support our members in their practices and the judiciary's independence such that both members and judges can have the freedom to stand up and speak.¹ The WSBA supports our members in striving to be paragons of ethics and professionalism in crafting lawful solutions to the problems our society is wrestling with.²

And:

...Since 2004, WSBA has followed an interpretation of General Rule 12.2(c)(2) that was adopted by the Board of that time. Throughout the years, this rule has been a challenging part of the debate on the WSBA's ability to weigh-in broadly on significant issues that may in fact relate to the practice of law and administration of justice, such as institutional racism. Much has changed since 2004 and it seems appropriate in light of the Court's statement to ask whether WSBA's engagement on these issues is done in the best way to serve its members and the public. Therefore, we direct the Task Force charged with beginning a collaborative discussion with Court regarding delegated administrated entities to also discuss the interpretation of GR 12.2(c)(2) with the Court.

¹ GR 12.2(a)(1, 3)

² GR 12.2 (a)(4, 9)



The WSBA's Equity and Disparity Work Group that I asked the Board of Governors to form was tasked to:

...[R]eview the rules, regulations, and laws related to the practice of law and the administration of justice, and identify the ones that facilitate injustice and propose remedies that the WSBA can advance pursuant to our mandate in GR 12.2. The goal is to list laws with recommended changes to reduce injustice. The reason for reviewing the laws and recommending changes is that we do not, as a legal community, fall into the trap of recommending that the courts simply ignore or not enforce laws which most people may no longer support. Rather, to move towards real reform it is necessary to identify rules, regulations, and laws creating injustice, and either ensure such laws are repealed by the correct body or rewritten to remove the injustice as it relates to the practice of law or the administration of justice.

By 2021, under former WSBA Governor Alec Stephens' leadership,³ the Work Group had identified two areas of needed reform and advocacy: a subcommittee on Experiences of Law, focusing on the obstacles that people of color or low-income have in interacting with the legal system, led by Kim Sandher; and a subcommittee whose sole focus was on the problem of GR 12.2 and developing a recommendation that would ultimately be bound for the Supreme Court via the Board of Governors, led by Laura Sierra.

It was determined early on in the process that GR 12.2 in its current form was a substantive detriment to tackling the laws, policies, and procedures in place in the legal system that have historically led to disparate and inequitable results that disproportionately harm people of color. The subcommittee prior to finalizing their proposal conducted a feedback gathering process

³And joined by the following appointed work group members: **Annette Clark** representing SU School of Law, **Jefferson Coulter** representing WSBA Court Rules and Procedures Committee, **Angelica Gonzalez** representing Latina/o Bar Association of Washington, **Melissa Hall** representing QLaw Association, **Monte Jewell** representing WSBA Committee on Professional Ethics, **Joanne Kalas** representing Vietnamese Bar Association of Washington, **Judge David Keenan** representing the Access to Justice Board, **Jonathan Ko** representing Washington Attorneys with Disabilities Association, **Patrice Kreider-Hughes** an at-large member, **Dr. Susan Le** representing Gonzaga Law School, **Ailene Limric** an at-large member and also representing Filipino Lawyers of Washington, **Molly Matter** representing WSBA Civil Rights Section, **John Meyers** representing Vietnamese Bar Association of Washington, **Ron Park** representing Korean American Bar Association of Washington, **Rania Rampersad** representing South Asian Bar Association of Washington, **Kim Sandher** an at-large member, **Laura Sierra** an at-large member, **Chalia Stallings-Ala'ilima** representing the WSBA Civil Rights Section, **Rebecca Stith** representing WSBA Council on Public Defense, **Patricia Sully** representing University of Washington Tacoma Legal Pathways, **Mir Tariq** representing Practice of Law Board, **Aileen Tsao** representing the Asian Bar Association of Washington, **Bruce Turcott** representing the Board of Bar Examiners; and supported by WSBA Staff: Executive Director **Terra Nevitt**, **Kirsten Abel**, **P Hardy**, **Barbara Nahouraii**, and Sara Niegowski.



intended to reach five groups: members of minority bar associations (MBAs), Sections, and WSBA committees and boards; members of county bar associations; and members of the WSBA. Feedback came from individual WSBA members; individual members of the Civil Rights Law Section, the Low Bono Section, the World Peace Through Law Section, the Board of Bar Examiners, the Court Rules and Procedures Committee, and the Committee on Professional Ethics; and from groups such as MAMA Seattle, the DEI Council, the Practice of Law Board, and the Korean American Bar Association.

After feedback, the subcommittee, and subsequently the entire work group determined the proposal currently before you as the most straight forward and effective solution to the incongruities between GR 12.1, 12.2(a), and 12.2(c)(2). This result was ultimately submitted to the WSBA Board of Governors in March of 2023, and finally approved after robust analysis and three hearings by the Board of Governors in August of 2023, and was ultimately filed with the court in January of 2024.

This rule has been long in the making and its consideration; its need for adoption remains no less.

The Realities and Collective Duty of the Legal Profession Today

Lawyers are collectively the thread that holds the quilt of our society together, and at the moment the collective guidance and leadership of lawyers are needed more than ever. This is a good proposal and aligns GR 12.1 and GR 12.2, as well as follows the Court's directive to lawyers in their letter of June 4, 2020. Therefore, it is past time to act.

This rule change will empower the bar to identify concrete solutions to persistent structural inequities inside the scope of GR 12.1 and to propose changes to the rules, regulations, and laws as needed. The arguments I made in 2020, remain true today.

There is no equity without access to the justice our legal system can provide, and there is no access to justice without our profession doing its part to solve problems. It is up to each one of us to stand up and speak for others who cannot so that we may substitute true dialogue and good policy for violence in our society. That is the very point of an effective legal system, and as officers of that system we bear a large share of the burden in its failures if each of us do not work to ever reform it.



While I wrote about individual responsibility, we have collective strength for solving problems as a bar, and a collective duty as a profession to heal and hold the society around us together. We are the peace makers.

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person" is #8 in the oath we are sworn to when we become licensed to practice law by the WSBA. Our oath is carried out most effectively, like most actions, collectively. The natural mechanism of collective attorney action is to assist the WSBA in carrying out the regulatory goals set out for in GR 12.1 and the general purposes of the WSBA set out in GR 12.2(a).

For far too long has a minority of legal professionals used GR 12.2(c)(2) to prevent the WSBA from carrying out the regulatory objectives set to it by your august body. The objectives of GR 12.1 are all noble and worthy:

(a) protection of the public; **(b)** advancement of the administration of justice and the rule of law; **(c)** meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems; **(d)** transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections; **(e)** delivery of affordable and accessible legal services; **(f)** efficient, competent, and ethical delivery of legal services; **(g)** protection of privileged and confidential information; **(h)** independence of professional judgment; **(i)** accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs; **(j)** diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

These objectives should be fully pursued by way of reconciling GR 12.2(c)(2) with GR 12.1.

Thank you for your time and attention to this important matter. Your adoption of these rules would be a substantive step forward in enabling our profession to address the inequities and disparities in our society in an organized and powerful way.

As always, I remain at your service.

Sincerely,

Rajeev D. Majumdar
WSBA# 39753