

a public hearing, and survey responses flag fee disparity as an “area of substantial concern” especially given the “broad discretion given to the trial judge regarding reduction and enhancement of the lodestar figure.”<sup>137</sup> There are no published Washington or national studies of gender bias in attorney fee awards nor Washington appellate cases that address the issue.

The attorney fee provision in the WLAD has not substantively changed since the 1989 Study except that it now allows remedies pursuant to the federal Fair Housing Act in addition to remedies under state law and the federal Civil Rights Act of 1964.<sup>138</sup>

## VI. Analysis of Gender Bias in Attorney Fee Awards

Today there is still a lack of data or research on attorney fee awards based on gender or other demographic variables. The need for data collection or research in this area should be informed by attorneys with experience in this area who can comment on if they have observed any issues with unequitable allocation of fee awards.

## VII. Recommendation

In order to eliminate discrimination based on gender, race, and ethnicity in the calculation of tort damages, stakeholders should study whether Washington courts should discontinue use of race- and gender-based life expectancy, work life expectancy, loss of household services, and historical earnings tables for the calculation of economic damages. If the conclusion of such further study is that the race- and gender-based tables should no longer be used, stakeholders should then determine whether to promote other means of calculating economic damages, instead.

<sup>137</sup> 1989 Study, *supra* note 1, at 106.

<sup>138</sup> See, e.g., *Johnson v. State Dept. of Transp.*, 177 Wn. App. 684, 313 P.3d 119 (2013) (attorney fees and costs awarded using lodestar method in sex discrimination and retaliation case with some reductions for time spent on unsuccessful administrative claim and for time spent and costs accrued after the date of defendant’s offer of judgment).