



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

800 Fifth Avenue #2000 • Seattle WA 98104-3188

October 25, 2007

Violet A. Boyer
President and CEO
Independent Colleges of Washington
600 Stewart Street, Suite 600
Seattle, Washington 98101

RE: **HB 1114**

Dear Ms. Boyer:

Your letter of September 4, 2007, to Attorney General Rob McKenna has been referred to me. Your letter raises the issue of what, if any, impact ESHB 1114 (Chapter 67, Laws of 2007 Legislature, 2007 Regular Session) will have on the “ability of independent colleges to introduce new donors to the opportunities for charitable giving in financial and estate planning.” At the outset, I want to acknowledge the great benefits that your members afford to the state of Washington. Our intent in seeking enactment of ESHB 1114 was not directed at the legitimate practices of the educational or charitable fundraising community. Rather, we believe that the purpose of ESHB 1114 (and the way the office intends to enforce it) is to protect consumers from individuals and entities who gain their trust through unscrupulous marketing of estate planning documents in order to acquire access to the consumers’ sensitive personal and financial information for their financial gain. The intent of ESHB 1114 is to protect consumers from those individuals and entities who will breach the consumers’ trust by providing them with unsuitable estate distribution documents or, through a gross conflict of interest, use the consumers’ sensitive financial information to sell them investments or insurance products that generate high commissions but which may not be suitable for the individual consumer’s needs.

ESHB 1114 is intended to prohibit the harmful effects of persons engaged in the unauthorized practice of law in connection with the selling or providing estate planning documents for financial gain. The bill ensures that consumers are not lured into providing their sensitive financial and other confidential information to persons who are not authorized to practice law but who misrepresent, either expressly or impliedly, that they are acting solely in the consumer’s interest. The unauthorized practice of law is a crime prohibited by RCW 2.48. The state Supreme Court alone has the power to determine who is authorized to practice law and has enacted the Admission to Practice Rules, GR 24 and GR 25, to ensure clarity on that point. ESHB 1114 carefully defers to the Supreme Court the question of *who* is authorized to practice law.

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ESHB 1114 should not impact your members fundraising activities provided:

- That in the process of seeking donations, your members refrain from providing individualized legal advice to donors or prospective donors—and consistently refer such persons or entities to their own legal counsel to assist them in evaluating the legal significance of their actions and finalizing their individual estate planning or other legal documents.
- That your members provide suggested general language and format, or model agreements, for achieving your understanding of the intent of the gift or bequest to ensure that it is in a manner that achieves the intended purposes from the perspective of the donee.
 - Your members are free to do so because as representatives of the donee, they have their own strong legal interest in the structure and utility of the gift or bequest and are free to express their preferences to prospective donors. In our view, this will avoid the ESHB 1114's broad reach because the definition of "marketing" is limited to preparing or providing "individualized" advice about an estate distribution document.
 - Your members should accompany any general, suggested language for potential bequests with clear written disclosure and consistent oral direction that the language is being provided as a suggestion that would meet the donee's interests and that the prospective donor should, in all cases, consult with his or her attorney to obtain legal advice as to the consequences that attend any donation or estate planning action.

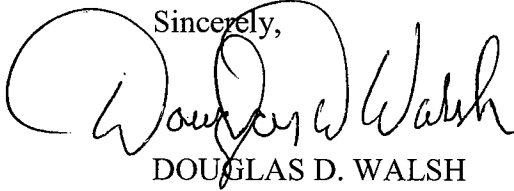
Irrespective of ESHB 1114, if your members provide any legal advice or representation to donors or prospective donors, they must comply with the Admission to Practice Rules (or in the context of a specific dispute, obtain authorization from the judge or judicial officer in front of whom they wish to appear) and the Rules of Professional Conduct. The definition of the practice of law is contained in GR 24. Again, the Supreme Court is the final arbiter of whether the practice of law is *authorized* or not. GR 25 established the Practice of Law Board. That board is authorized to render advisory opinions relating to the authority of non-lawyers to perform legal and law-related services. GR 25(c)(1)

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I hope you find this response of assistance as you review your activities in light of ESHB 1114. I would welcome direct communication with counsel for any of your members on this topic should that be deemed desirable. Thank you for your courteous inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas D. Walsh". The signature is written in a cursive style with a large, looping initial "D".

DOUGLAS D. WALSH
Division Chief
Consumer Protection Division
(206) 464-7745

DDW:mf
cc: Rob McKenna, Attorney General