

Attorney General

The office of the **Attorney General** is the largest law firm in the state of Washington. The office is headed by the Attorney General, the state's chief legal officer. The office is also staffed by attorneys, appointed as Assistant Attorneys General, administrative, investigative, paralegal, secretarial and other staff members.

The Attorney General has a broad array of responsibilities unique and necessary to the operations of state government. These responsibilities include: serving as legal counsel to the Governor, members of the Legislature, state officials, and the more than 230 state agencies, boards and commissions; defending the state officials and employees for actions performed in their official capacities; advising and representing the state agencies so they can fulfill their official duties; and issuing legal opinions. The Attorney General also enforces the Consumer Protection Act, and advises and assists local prosecuting attorneys when requested.

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Name: Bob Ferguson

Position Title: Attorney General

1. Position Objective

The Attorney General's role, under the state constitution, is to serve as legal advisor to state officials, including other elected officers, in all legal and quasi-legal matters. The Attorney General provides advice and representation to all state agencies, both directly and through assistant attorneys general. The Attorney General has statutory responsibilities to protect the public against unfair or deceptive acts, unfair competition, and crimes. Other statutory responsibilities are described in more detail below.

2. Financial Dimensions

- a. **Number of employees in your organization:** There are currently 1,507 employees and 1,700 positions
- b. **Your annual budget:** FY 23 \$256 million (This encompasses all fund sources: general fund state, federal, antitrust revolving, new motor vehicle arbitration, Medicaid fraud penalty, charitable asset protection, mobile home dispute, child rescue, legal services revolving, and tobacco prevention.)

3. Principal Responsibilities

The Washington State Constitution, Article III, Section 21, provides: "The attorney general shall be the legal advisor of the state officers, and shall perform such other duties as may be prescribed by law." To support and further the mission of the state and to protect its residents, revenue and public trust, the Office of the Attorney General:

- Defends and upholds all Washington State laws, whether adopted by the Legislature or by the people through the initiative process, in local, state, and federal courts up to and including the United States Supreme Court;
- Institutes and prosecutes all actions and proceedings for the state which may be necessary in the execution of the duties of any state officer;
- Advises over 230 state agencies, departments, boards, commissions, colleges and universities, as well as their officials in all matters involving legal or quasi-legal questions, and represents these state entities in all legal or quasi-legal matters, hearings, and proceedings in which the state is interested, including in trial and appellate courts and before administrative tribunals;
- Protects the public interest through enforcement of the state consumer protection act, antitrust laws, and other laws that ensure a fair and competitive marketplace;

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- Guards the interests of ratepayers of public utilities and represents the public in all matters before the Utilities and Transportation Commission;
- Enhances public safety through the prosecution of crimes, the civil commitment of sexually violent predators, and the direct and indirect support of state and local law enforcement;
- Consults with and advises the Governor and all statewide elected officials, members of the Legislature, and other state officers and, when requested, gives written opinions upon all constitutional or legal questions relating to the duties and powers of such officers;
- Enforces the proper application of funds appropriated for the public institutions of the state, and prosecutes corporations for failure or refusal to make the reports required by law;
- Directs prosecutions in the name of the state for all delinquencies in the assessment, collection, and payment of revenue against all debtors for the state;
- Protects the civil rights of the public through enforcement actions and other activities of the Wing Luke Civil Rights Division; and
- Safeguards the environment through the civil and criminal enforcement actions and other activities of the Environmental Protection Division.

4. Knowledge and Skills

This section should include a brief statement(s) indicating the knowledge and skills required of the position to perform the full scope of job responsibilities.

a. Education:

By statute, the Attorney General must be licensed to practice before the Washington State Supreme Court.

b. Experience, including management experience:

The position of Attorney General requires significant legal, policy, administrative and management experience. The Attorney General must have the experience and skills to lead the state's largest public law firm; employ and manage 1,507 employees (including 736 attorney positions); oversee an organizational structure covering 30 legal divisions, with supporting administrative divisions and units; responsibly administer a \$256 million annual budget; and ensure delivery of high quality legal services to the state.

c. Specialized (job content) knowledge and skills:

The Attorney General is required to have a working knowledge of the law and the ability to learn and apply developing areas of the law to effectively communicate with clients, jurists, the public, and policy makers on a wide array of legal issues. The Attorney General must possess and utilize a common core of legal knowledge that includes civil procedure, constitutional law, criminal law, contracts law, property law, tort law, ethics, and effective legal writing. The Attorney General must be capable of working with diverse and complex legal issues, such as tribal law, environmental law and regulation, workers' compensation, children's welfare, education law, state tax law, state constitutional law, tort law and appellate practice. The Attorney General must work with state agency clients and the legislature to identify and assess sources of potential risk and develop solutions to reduce and manage risk across state government.

5. Nature and Scope

This section should include a short and descriptive narrative that addresses the following requirements in the position:

a. Organization (an agency overview organizational chart, on one page please): Attached.

- **Size and role of this position and its importance to the state's mission and reputation.**
- **Diversity of job scope/responsibilities.**

The Attorney General is the state's top legal officer, and provides exclusive legal representation to over 230 state agencies, departments, boards, commissions, colleges and universities, as well as the Governor and the Legislature. The work of the Office advances the state's mission to provide effective service to the public by providing legal advice to state agencies, avoiding and reducing unnecessary and expensive litigation and providing representation in all judicial and quasi-judicial forums.

The Office is currently handling more than 20,000 active cases. The scope of these cases varies widely, from protecting workers and abused and neglected children to enforcing environmental laws and confining sexually violent predators. The Attorney General is responsible for the oversight of complex litigation that involves significant financial and legal exposure for the state. In addition, the Office enforces the state's consumer protection act, antitrust laws, campaign finance laws, and Medicaid fraud recovery laws, protecting

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Washingtonians from bad practices and obtaining millions of dollars in legal recoveries each year on behalf of the state.

The Office provides legal advice on important emerging issues through Attorney General Opinions. These opinions, provided at the request of state officials and county prosecutors, have received significant weight by the courts because of their fairness, sound legal arguments, and the high quality of legal research. The Attorney General ensures these opinions reflect independent legal reasoning and provide public officials with sound legal advice on emerging issues.

The Attorney General is responsible for the operation of discrete legislatively-created programs:

- The Consumer Protection and Antitrust programs protect consumers and businesses from fraud and unfair competition.
- The Public Counsel Unit advocates on behalf of ratepayers in cases before the Washington Utilities and Transportation Commission involving utility rates, mergers, energy efficiency programs, service quality, and other policy matters.
- The Medicaid Fraud Control Division (MFCD) is a federally mandated Division that conducts statewide criminal and civil investigations and prosecutes health care providers who defraud the Medicaid program. This includes prosecuting cases where there is abuse and neglect in connection with providing Medicaid services and cases where there is any resident abuse or neglect in long-term care settings, regardless of insurance/payment source.
- At the request of the Governor or county prosecutors, the Criminal Justice Division investigates and prosecutes crimes. The Criminal Justice Division also handles Sexually Violent Predator civil commitment cases in 38 of Washington's 39 counties.
- Counsel for the Environment advocates for the public and its interest in protecting the quality of the environment in energy facility siting proceedings.
- The Wing Luke Civil Rights Division implements Washington's Pregnancy Accommodation law and the Fair Chance Act.
- The Office of Military and Veteran Legal Assistance facilitates access to pro bono legal services for Washington's military community.

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- The Tipline Program will facilitate a program that receives and responds to tips from the public regarding risks or potential risks to the safety or well-being of youth.
- Convening the Washington State Missing and Murdered Indigenous Women and People Task Force.
- Convening the Sexual Assault Forensic Examination Best Practices Advisory Group and the Sexual Assault Coordinated Community Response Taskforce.
- Convening the Law Enforcement Data Collection Advisory Group and releasing an RFP for a statewide coordinated database of law enforcement use of force data elements.
- Convening the Joint Legislative Taskforce on Jail Standards.
- Convening the Commercially Sexually Exploited Children Statewide Coordinating Committee and administering the Child Rescue Fund.

b. Management environment.

The Attorney General and staff interact extensively with components of state government, local governments, the federal government, the private sector, stakeholder groups, and the public at large. The Attorney General frequently engages with the Governor, legislators, state agency directors and staff, other state elected officials, members of boards and commissions, the judiciary, local prosecutors, and Washington's congressional delegation. The Attorney General also works extensively with other state attorneys general on issues of common interest including multistate litigation. Outside government, this position has significant interaction with representatives of non-profit organizations, labor unions, small and large businesses, advocacy groups, community groups, urban Indian organizations and federally organized tribes, and individual residents.

This complex management environment creates unique challenges in implementing the attorney general's job responsibilities. The Attorney General is elected by the people of Washington to represent their interests and serve in a constitutional and independent role. Under state statute, the Attorney General also serves as the legal representative for state agency clients. These state clients have their own subject matter expertise and mandates, and develop and implement policies with legal implications. The dual duties of serving the broad public interest and representing state agency clients can sometimes create competing interests that must be considered and which may require

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separation of legal counsel and advice within the Office. It is a significant responsibility, with broad ranging potential policy and legal consequences, to exercise the independent role of an elected official, accountable to Washington's residents, while effectively representing the legal interests of our state clients and elected officials.

c. Problem solving/decision making requirements.

The state constitution and statutes place nearly all responsibility for legal advice to and representation of state government with the Attorney General. As a result, complex, high level problem solving is required. This office defends the public interest and represents clients in a growing volume of increasingly complex cases. These cases often have significant financial and social impacts for Washingtonians and Washington state government. For example:

- The Complex Litigation Division handles cases with significant issues at stake, including but not limited to leading the state's efforts to combat the opioid crisis through litigation, a constitutional challenge regarding state funding of school building construction for K-12 education, Administrative Procedure Act challenges to federal regulations to protect the rights of Washingtonians, disputes with the tobacco companies under the Master Settlement Agreement, campaign finance disputes, and the defense of class actions. The Division has recovered over \$750 million for Washington.
- The Ecology Division advises the Department of Ecology on the implementation of a number of new legislative initiatives to address climate change and environmental justice, including the Climate Commitment Act, the adoption of low carbon fuel standards, and the Healthy Environment for All Act. The Division negotiates court-entered settlements that translate to hundreds of millions of dollars in environmental cleanup work; represents the Department of Ecology in enforcing water quality, air quality, and other environmental standards; pursues legal means to enforce required cleanup of mixed radioactive and hazardous waste at Hanford, a responsibility of the U.S. Department of Energy; and in 2022, completed a 45-year adjudication of water rights in the Yakima River Basin.
- In calendar year 2021, our Social and Health Services divisions opened 2,309 new dependency cases, which represented 3,373 children. During the same timeframe, the Office opened 1,003 new termination of parental rights cases, which represented 1,356 children. With respect to total open cases, on December 31, 2021, there were more than 5,775 active dependency cases (representing more than 8,650 children); 894 termination

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of parental rights cases (representing more than 1,300 children); and 153 appeals of termination of parental rights and dependency cases.

- Our Public Counsel Unit negotiated strong protections for utility customers during the COVID-19 pandemic, including disconnection and fee moratoria, extended payment plans, and augmented customer assistance programs. Additionally, Public Counsel represented customers in a case involving a moving company, which was illegally operating in Washington without a license, resulting in \$20,000 in penalties levied against the company.
- Since January 2021, the Consumer Protection Division's litigation enforcement has recovered almost \$24 million for distribution to Washington consumers, won a \$14.5 million judgment, and obtained over \$35 million in debt relief for Washingtonians. In addition to litigation on behalf of the State, the Consumer Protection Division offers direct service programs to the public. These include the Lemon Law program, which aids new vehicle owners who have substantial problems with warranty repairs, and which returned \$7.5 million to consumers during 2021. Similarly, the Division's Consumer Resource Center received 21,627 consumer complaints and over 30,000 consumer calls in 2021, and helped Washington consumers recoup \$10.5 million through its informal complaint resolution programs.
- The Torts Division defends state employees and agencies in suits for monetary damages. Incoming claims for FY21 totaled 500; incoming cases totaled 320. Forty seven percent of cases in FY21 resolved for -0- payout. Payouts for remaining cases totaled \$96.4 million.
- The Bankruptcy and Collections Unit pursues monies owed to the state for delinquent sales and business and occupation taxes, industrial insurance premiums and unemployment fund contributions. In FY 21, the Unit recovered nearly \$4.2 million for the state.
- The Medicaid Fraud Control Division (MFCD) has recovered over \$93 million since the inception of the false claims act on behalf of Washington's Medicaid program.
- The Antitrust Division enforces the antitrust provisions of Washington's Consumer Protection Act and federal antitrust laws. The Division investigates and brings high-stakes litigation in a wide array of industries that affect the daily lives of all Washingtonians, including lawsuits against dozens of pharmaceutical manufacturers who colluded on prescription drug prices, and actions against tuna and broiler chicken producers and food companies for

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fixing prices of their food products, and reviewing proposed mergers and acquisitions in Washington's health care industry. The Division has also become a leader on labor competition and enforcement, benefiting millions of workers in Washington and across the United States. It led a nationwide effort to eliminate the use of no-poach clauses in franchise agreements among hundreds of nationwide franchise systems in industries ranging from fast food to tax preparation, brought first-of-its-kind litigation to eliminate no-poach clauses against a nationwide franchisor, and has brought numerous enforcement actions against employers, alleging that use of overbroad non-compete agreements is an unfair method of competition.

- The Wing Luke Civil Rights Division investigates discrimination in a range of areas, including employment, housing, education, credit and insurance transactions, and at government offices and businesses that are open to the public. The Division works closely with the Attorney General's Consumer Protection Division, the Washington State Human Rights Commission, federal agencies and civil rights stakeholders.
- The Environmental Protection Division is the AGO's home for affirmative environmental litigation, civil and criminal, arising from the Attorney General's independent authority under state or federal law, and serves as Counsel for the Environment for Energy Facility Site Evaluation Council (EFSEC) matters. In 2020, the Division secured a \$95 million settlement from Monsanto for statewide PCB contamination, which represents Washington's largest-ever environmental recovery from a single source. The Division leads multistate coalitions in major lawsuits challenging the rollback of regulations implementing the National Environmental Policy Act and plans to drill for oil and gas in the Arctic National Wildlife Refuge. In addition, the Division prosecutes environmental crimes, including those dealing with asbestos, trafficking in endangered animals, derelict vessels, shoreline violations, and illegal pesticide use. At this time, the environmental criminal program has secured 44 convictions, and restitution, fee, and fine orders totaling over \$5 million.
- The Campaign Finance Unit investigates alleged violations of the state campaign finance and disclosure laws, and handles civil enforcement cases against those persons and entities that violate laws. The team works closely with the state Public Disclosure Commission to protect the public's right to know and confidence in the electoral process. The Office successfully obtained one of the largest campaign finance penalties in U.S. history - \$18 million - against the Grocery Manufacturer's Association (GMA), a trade group representing major food, beverage, and consumer companies, for intentionally violating Washington's campaign finance laws in 2013. This decision was upheld by the State Supreme Court in April 2020 and in

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January 2022. (The case ultimately settled for \$9 million in exchange for GMA not seeking review by the U.S. Supreme Court.)

- The Office provided legal advice and representation on complex issues and litigation arising out of the COVID-19 pandemic. This included our Agriculture and Health Division providing extensive legal counsel to the Department of Health, the Governor's Office, and other agency partners on the whole-of-government response to the COVID-19 pandemic; our Labor and Personnel Division working closely with the Governor's Office, Office of Financial Management, and state agency clients regarding COVID-19 labor and employment issues; our Licensing and Administrative Law Division providing legal assistance to the Employment Security Department as it navigated unprecedented challenges resulting from an increase in unemployment benefit claims; our Labor and Industries Division protected public health and safety by working with the Governor and the Department of Labor and Industries to enact emergency rules related to COVID workplace safety and enforcing those rules through litigation focused on worker protection.

These examples represent just a sampling of the complex issues and cases handled by the Attorney General's legal divisions.

Supreme Court Practice

The Attorney General is responsible for representing the state in cases before the Washington State Supreme Court. During the Washington State Supreme Court's 2020-21 term, the Office presented argument in 18 cases. These cases involved a variety of issues of importance to the state, including the scope of the Governor's veto power, the protection of workers, the constitutionality of Washington B&O tax on banks, the protection of vulnerable children, and the completion of a four-decade water rights adjudication. In 2021 through June 2022, the Office wrote six amicus (friend of the court) briefs in the Washington State Supreme Court.

The Attorney General's Office also represents the state in cases before the United States Supreme Court. In the 2021-2022 term, the Office wrote or joined 18 amicus briefs in the United States Supreme Court. The Office argued one case in the United States Supreme Court in 2020 and one in 2022.

Public Policy Leadership Initiatives

The Attorney General historically provides leadership in addressing important, emerging legal issues before Washington's state, local and federal policymakers. The Attorney General's policy priorities and initiatives seek to

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advance and protect the legal rights and interests of Washingtonians, including veterans, consumers, workers, businesses, communities and seniors. The initiatives are advanced through research, outreach, and legislative work. The Office coordinates with stakeholders across local, state and federal government, and other partners within the Office and in the community. Recent policy and legislative priorities have focused on the opioid epidemic, data breaches, worker protection, hate crimes, immigrant and refugee issues, criminal justice, sexual assault, and youth safety and well-being.

In recent years, under the leadership of the Attorney General, the Office has produced comprehensive Washington-specific white papers, with recommendations for policymakers. These white papers include Access to Firearms, Reducing the Supply of Illegal Opioids (authored with the Washington State Patrol and the Washington Association of Prosecuting Attorneys), Consolidating Traffic-based Financial Obligations and State Agency Audits, Inspections, and Enforcement Actions Affecting Small Businesses in Washington.

The Office has initiated its own reports like the I-940 Independent Investigation Inquiry Report and the annual Labor Day report. The Office has also issued a number of reports in response to legislative mandates and a series of model policies on the Keep Washington Working Act. The reports include an annual data breach report, the Washington Sexual Assault Forensic Examination Best Practices Advisory Group 2021 report, a report on Implementing Deadly Force Data Collection, the Report of the Hate Crimes Advisory Working Group, the Report of the Youth Safety and Well-being Statewide Reporting Tool Workgroup, and a Keep Washington Working Act FAQ for Law Enforcement.

The Office does significant outreach and education to help Washingtonians know their legal rights and responsibilities including: a Civil Rights Resource Guide, Immigration Guidance, landlord-tenant resources, a Student Loan Survival Guide, and a Military and Veterans Legal Resource Guide. The policy leadership expected from the Attorney General requires sophisticated legal reasoning, in-depth analysis of complicated legal and policy issues, creativity in problem solving, and the ability to anticipate and plan for long-term, statewide impacts.

d. Accountability.

The Attorney General is ultimately accountable for all of the legal decisions and actions of the Office. There is no shared accountability or consent to be obtained for decisions. As an elected official, the Attorney General ultimately reports to and is responsible to the people of the state. This position's authority

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to act is constrained by laws, precedents and legal systems, and the checks and balances of government.

The impact of the role of the Attorney General is three-fold. The first impact directly affects office staff, through the exercise of management over and application of policy to staff, as well as through management of the \$256 million annual budget. The second impact is upon state government through the delivery of high quality, professional legal services to state agency clients. The third impact is upon Washington's people, not only through the delivery of legal services to state agency clients who provide state services, but also to the public at large by virtue of criminal prosecution, sexually violent predator commitments, consumer protection, environmental protection, fraud and antitrust initiatives and recoveries, and recovery of funds owed to the public treasury.

Occasionally, these impacts are realized through joint efforts or actions with other state attorneys general around the country. State attorneys general work together closely and cooperatively on many issues of mutual interest. Those connections occur through formal organizations such as the National Association of Attorneys General and the Conference of Western Attorneys General, and through other professional affiliations. The collaborative activities may involve multistate letters to federal agencies or Congress, independent litigation filed by a coalition of states, or briefs filed on behalf of several states to weigh in on litigation brought by others. This cooperative, multistate collaboration can have the benefit of reducing the resource investment required. Its success requires the Attorney General to have the skills and abilities to build strong, cooperative relationships with peers in other states.

For example, in the Navient multistate, the Consumer Protection Division played a significant leadership role, working collaboratively with the other states to achieve an outstanding settlement, even as our office pursued our own litigation against the company. In addition to broad conduct reform terms, the Navient settlement included \$142.5 million in cash and \$1.7 billion in debt relief, with \$44.5 million of the cash going to Washington, which included: \$35.13 million in private debt relief (1,433 Washington consumers), \$2.33 million in consumer restitution (8,942 Washington consumers), and \$7 million cash. Likewise, in the Purdue Pharma multistate, Washington, among the first states to sue, played a leadership role in driving Purdue into bankruptcy and in fighting the Sacklers' attempt to use Purdue's bankruptcy to shield their family from liability. Collectively, Washington and the other states were able to negotiate a \$6 billion dollar settlement, of which Washington will receive, pending court approval, up to \$194 million to distribute to local, state, and tribal programs designed to address the consequences of opioid addiction.

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Other multistates include the complex investigation into Wells Fargo's unfair and deceptive practices relating to its three main business lines: retail banking and insurance, auto lending, and mortgage lending. The Consumer Protection Division worked with other states to negotiate a \$575 million settlement, of which Washington received over \$16 million, and included a designated Redress Review Program which required Wells Fargo to respond to consumer inquiries or complaints stemming from consumers who, for whatever reason, failed to avail themselves of restitution and remediation opportunities provided for in the separate federal and private class action matters.

Finally, the Division worked aggressively with other states in the Midland Funding multistate to resolve this complex, multi-year investigation relating to improper debt collection practices. The multistate was able to obtain a monetary settlement of \$6 million, of which Washington received over \$300,000, and debt-write offs, including nearly \$270,000 in relief to Washington consumers. Importantly, the Division carved out and preserved for further investigation, a Washington-specific licensing claim involving debt accounts that Midland had purchased and sought to collect, despite not being licensed as a collection agency. To resolve the Division's follow-up investigation, Midland agreed to write off over \$2 million in additional outstanding debt from Washington consumers. In total, nearly 11,700 Washington consumers obtained debt relief through these efforts.

e. Planning (Technical and Strategic).

Timely and effective deployment of legal resources supports the ultimate success of the future initiatives, services and policies of state government. The legal services revolving fund is the mechanism by which state agencies pay for the delivery of legal services. This fund accounts for 79% of the Attorney General's Office budget. As a result, long-range planning for the Office is often driven substantially by the long-range plans of those state agencies. To ensure long-term success for the state, the Attorney General must take into account the economy, demographics, changes in the practice of law and in the legal market, increased demand for accountability, service trends in state government, the evolution of technology, evolving application of federalism, and changing risk management and tort liability. This position must plan for the impact of these factors on the delivery of legal services, in order to ensure the Office's success, both as a critical component within state government and as the principal driver behind various statutory responsibilities and public policy initiatives.

6. **Recent Change(s) in this Position**

What significant changes have occurred in the job since its last review in 2018? Use the format outline to organize your comments.

The major changes in job scope relate, like many other elected officials, to budget and vacancy management. We continue to experience turnover in our attorney and professional staff ranks due to factors such as salary and unprecedented recruitment challenges as a result of the pandemic. Turnover requires us to manage effects on workload, training, client satisfaction, risk prevention and morale. In addition, legislative actions have required increased resources from the Office to step up legal services. This has included supporting valuable, legislatively directed stakeholder work such as the ongoing convening of the Commercially Sexually Exploited Children Statewide Coordinating Committee. Finally, legislative actions have greatly increased the policy workload of the agency, by increasing the number of taskforces managed by the agency and reports generated by the agency. All of this has increased the scope and responsibility of the Office.

7. **General Comments**

Please discuss anything else that may contribute to the understanding of your job responsibilities.

Signature:

A handwritten signature in blue ink that reads "Bob Ferry". The signature is written in a cursive style with a long, sweeping underline.

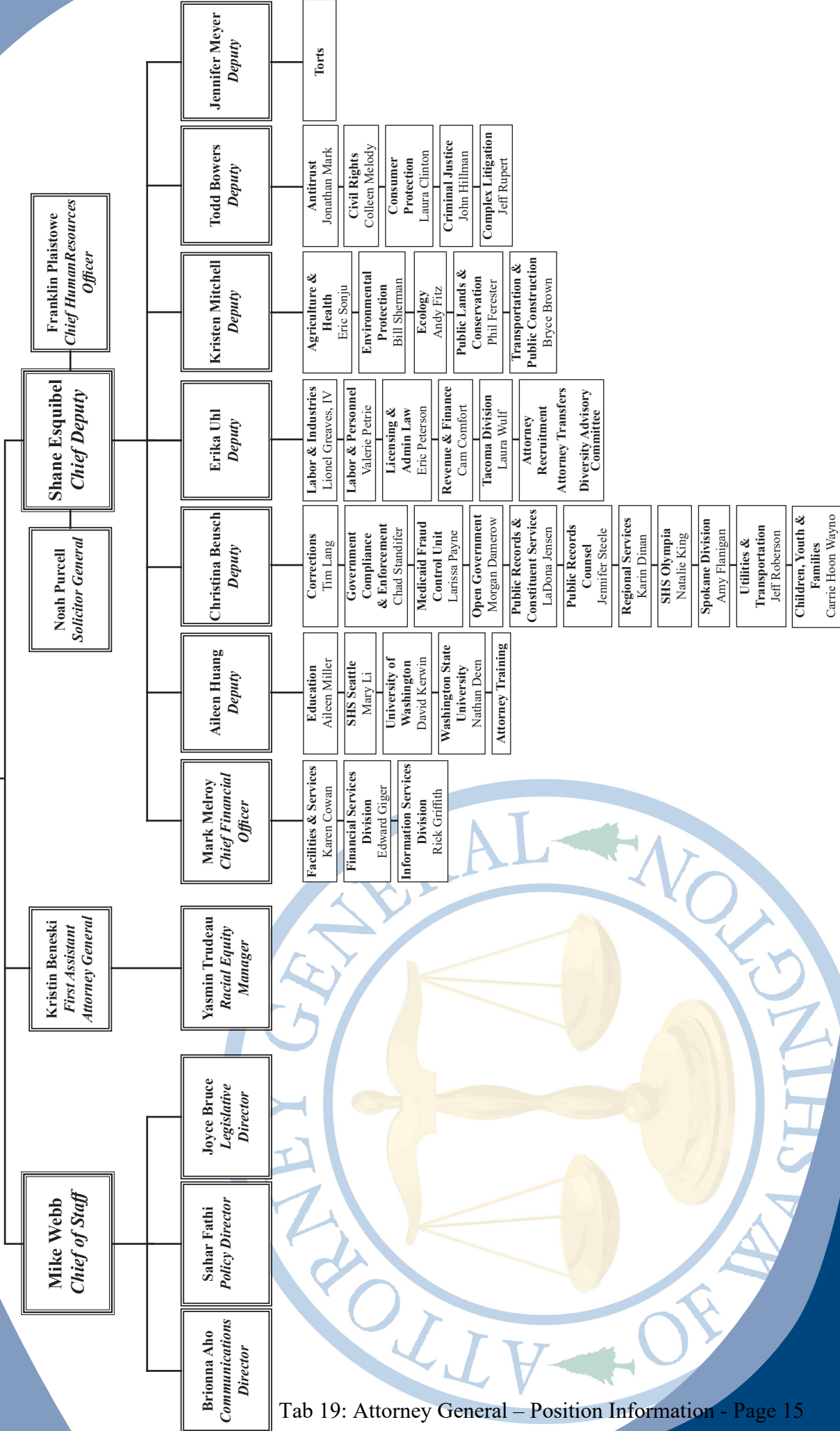
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