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Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, Washington 98504-0929

E: supreme@courts.wa.gov

Board Of Governors  
Washington State Bar Association  
1301 4<sup>th</sup> Avenue, Suite 600  
Seattle, Washington 98101

E: bhmtollefson@outlook.com

Re: WSBA Bar Structures Workgroup

To the Honorable Justices of the Washington State Supreme Court, and  
To the Board of Governors of the Washington State Bar Association:

Domestic Relations Attorneys of Washington (DRAW), a private bar association, submits the following response to the Supreme Court's request for comment.

The Supreme Court's Questions. The Washington State Supreme Court recently posed three questions regarding the structure of the WSBA. The first question related to the potential for a forced restructuring. The U.S. Supreme Court's denial of *certiorari* for the three relevant appeals appears to make that issue moot for now, but it is also addressed implicitly in DRAW's comments to the third question. The second question requested a discussion of hypotheticals that cannot be known until a decision in an actual case is rendered. The third question was the real issue, in our view, which we address here: "Litigation aside, what is the ideal structure for the WSBA to accomplish its mission?"

The WSBA's Mission. As currently constituted, the WSBA's mission will cause endless conflict because its mission is full of conflicts. The stated mission of WSBA is "to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice."<sup>1</sup> Such a broad and vague set of goals, which are subject to constant reinterpretation, raise concerns about whether they can be reconciled with each other and adequately served by one body, particularly an enforcement body.

"Serving the public" is undefined. It could cover anything. Its nexus to the legal profession is likewise

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<sup>1</sup> Mission Statement and Guiding Principles, from WSBA BOG Policies, updated 4-12-22, online at: [https://wsba.org/docs/default-source/about-wsba/governance/bog-policy-index/1303-mission-2016.pdf?sfvrsn=4fa311f1\\_2](https://wsba.org/docs/default-source/about-wsba/governance/bog-policy-index/1303-mission-2016.pdf?sfvrsn=4fa311f1_2)

undefined, but some aspects of it are obvious. For example, protecting the public from abuses of lawyers and the legal system falls within the scope of a regulatory bar. But who is the WSBA protecting the public *from*? Putting “protecting the public” into the mission statement would have made the conflict between serving the public and serving its members obvious.

While the social goals of equity, diversity, and broader access to legal services are also valuable and commendable, the question is to what degree it is fair for the members of WSBA to fund work on those goals in the event those goals conflict with the interests the membership. WSBA’s actions taken to further the public interest have at times placed it in conflict with its lawyer members and the elected Board of Governors (BOG). The same actions, if undertaken by a voluntary bar— as no doubt most would be—wouldn’t have that conflict. But if those actions are imposed by fiat from a second board that sits above the BOG, a board that is subject to direct lobbying without transparency and is not constrained by the input of WSBA members, there will be obvious resentment and serious legal questions about why lawyers are forced to fund them.

Promotion of the professional interests and public image of WSBA’s members is absent from WSBA’s mission statement. Such an omission would be understandable for a disciplinary bar, but doesn’t square with the concept of a “unified” bar. Lawyers find themselves funding commissions, task forces, and services outside their control, which sometimes conflict with what the lawyers who represent individuals think is in the public’s best interest.

It is a fallacy to imagine that lawyers place their own interests above their clients’ interests. It’s an assumption that serves only as a basis to ignore the experience and observations of thousands of attorneys who have represented countless individuals in the legal system that we are all trying to improve. Diversity of opinion is unwelcome in some of these workgroups. Their viewpoints, even if uncomfortable for other members of the workgroup who don’t share the same background, should be included from the inception. Yet we have found private practice attorneys, particularly those representing sections, are shut out of these workgroups until the work is done. Restricting them to after-the-fact comment opportunities means a lot of work is being done that may need to be scrapped because experienced attorneys were unable to provide feedback when it could have shaped the recommendations. This rigidity of thought has been increasing in the WSBA.

Public services should be funded by the public or by the voluntary consent of the members. If WSBA is compelled to do so, there are separation of powers issues. The Court also lacks internal structures for providing such services. The proper avenue for addressing public needs are the legislature and private organizations. WSBA does not operate as a private organization at this time. Nor does it operate as a government agency, subject to the obligations that come with that status. What it is is hard to say. The mere fact that this confusion exists speaks volumes about how confused the mission of the WSBA is.

Bifurcation. Bifurcation of the WSBA would reduce and clarify the mission statements for the resulting entities and permit them to maximize their goals without triage, conflict, or inappropriate financial support.

Who WSBA Serves. The issues and conflicts identified above were previously addressed by the 2014

WSBA Governance Task Force<sup>2</sup>. Its report and recommendations were met with considerable consternation and resistance by WSBA members and the BOG. Those issues are still very much with us.

The Task Force recognized the tension between WSBA members' belief that WSBA is their association, which promotes the interests of attorneys, as was the intention of the WSBA when it was formed in 1888, and its evolution into an arm of the Washington Supreme Court<sup>3</sup>. In an effort to square the circle without formally bifurcating WSBA, the Task Force was forced into an unavoidable but ultimately unacceptable recommendation.

Among its conclusions the Task Force wrote:

Although the organization is cast as an association of lawyers, its purpose is not that of a traditional "trade association" that operates for the primary or exclusive benefit of its members. In Washington, voluntary bar associations play that role. Rather, the WSBA is charged with the protection and enhancement of the legal system. Other permitted activities further that goal. For example, member services are permitted under GR 12.1(3), not because they serve the interests of the membership, but because they promote a more competent and skilled body of legal professionals *to the benefit of the public*. . . . (p. 7)

Another area of ongoing tension arises from the Supreme Court's creation of six boards that it has assigned to the WSBA for operations, staffing, and funding. These are the Disciplinary Board, the Mandatory Continuing Legal Education (MCLE) Board, the Limited Practice Board, the Access to Justice (ATJ) Board, the Practice of Law Board, and the Limited License Legal Technician (LLLT) Board. While the Court sets the mission of these boards, it provides no funding or staffing for them. Instead, the Court expects funding and staffing to be provided by the WSBA. . . . (p. 9)

Historically, there have been tensions between the Board of Governors and the six boards created by the Supreme Court and placed under the WSBA for purposes of funding and staffing. On these occasions, the WSBA staff has been caught between these two entities. While the WSBA staff is obligated to fulfill the Court's mandate, it creates tremendous conflict when those mandates are opposed by the BOG.

Examples of these tensions abound. Most recently, the Board of Governors threatened to refuse to allocate license fees to the Practice of Law Board. And while it opposed the creation of Limited License Legal Technicians (LLLTs), it now must provide funding and staffing to the LLLT Board. . . . (p. 11)

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<sup>2</sup> [https://www.wsba.org/docs/default-source/about-wsba/governance/governance-task-force/wsba-governance-task-force-report-and-recommendations---final.pdf?sfvrsn=23163ef1\\_8](https://www.wsba.org/docs/default-source/about-wsba/governance/governance-task-force/wsba-governance-task-force-report-and-recommendations---final.pdf?sfvrsn=23163ef1_8)

<sup>3</sup> The WSBA response to the Governance Task Force Report is in the Board of Governors 9/17/15 report "Leadership for Today and Tomorrow", at: [https://www.wsba.org/docs/default-source/legal-community/committees/bog-governance-task-force/bog-report-on-governance.pdf?sfvrsn=4ef3cf1\\_6](https://www.wsba.org/docs/default-source/legal-community/committees/bog-governance-task-force/bog-report-on-governance.pdf?sfvrsn=4ef3cf1_6)

The proper role of the Board of Governors vis à vis the WSBA is not clearly defined or well understood. First, as described in Section III above, GR 12.1 permits the WSBA to engage in various pursuits, all of which ultimately should accrue to the benefit of the public. This orientation should be reflected in the governance structure of the WSBA. It is not. Governors are elected by Congressional District. And the WSBA Bylaws note that “[e]ach Governor represents a constituency of the Bar.” WSBA Bylaws IV.A.2.b. They direct the Board of Governors to operate as a “representative body of all members.” *Id.* at IV.A.2.a. Taken together, these feed into the erroneous notion that Governors should represent the wishes and desires of their “constituents.” Indeed, when asked about their roles, both new and experienced Governors have spoken of representing their constituents and fulfilling their “fiduciary duty” to members within their districts. (p. 13)

*. . . the WSBA Bylaws should be amended to eliminate characterization of the Board as a representative body whose members represent a constituency of the WSBA.” (p. 14) [Emphasis added.]*

That recommendation is bifurcation in the worst way, forcing lawyers to pay for programs they don’t approve of simply because they are a convenient source of funding. It leaves WSBA with no representation of or duty to its members. WSBA should not be providing member services.

The problem cannot be solved without bifurcation and a corresponding reduction of the mission scope of the two resulting bar associations.

In response to the 2014 Governance Report, the WSBA BOG changed those sections of its Bylaws which described it as a “representative body whose members represent a constituency of the WSBA.” Section IV of the WSBA Bylaws now specifies:

. . .

c. Regardless of the method by which any person is selected to serve on the BOG, each Governor will act in the best interest of all members of the Bar and the public. Each Governor is primarily obligated to ensure that the Bar fulfills the mandate set forth in General Rule 12.1, carries out the mission of the Bar, and operates in accordance with the Bar’s Guiding Principles.

d. Each Governor is expected to engage with members about BOG actions and issues, and to convey member viewpoints to the Board. In representing a Congressional District, a Governor will at a minimum: (1) bring to the BOG the perspective, values and circumstances of her or his district to be applied in the best interests of all members, the public and the Bar; and (2) bring information to the members in the district that promotes appreciation of actions and issues affecting the membership as a whole, the public and the organization.

Hence, the WSBA BOG is supposed to act in the best interests of:

- 1) Members of the Bar,
- 2) The public, and

- 3) The WSBA,
- 4) While subject to the authority and supervision of the Washington Supreme Court to override the decisions of BOG about how to serve those conflicting interests, all while ensuring that the Bar
- 5) fulfills the mandate set forth in General Rule 12.1,
- 6) carries out the mission of the Bar, and
- 7) operates in accordance with the Bar's Guiding Principles.

It is Mission Impossible. No single organization can successfully fulfill such conflicting roles. It's tying the organization in knots.

Result of Conflicting Roles. Conflicts between WSBA's members and the Supreme Court's public service policies have increased in recent years. Examples include:

- Directing WSBA to establish and administer LLLTs despite strong opposition from the WSBA Board of Governors and WSBA membership
- Establishing and appointing members to workgroups without providing funding other than member dues
- Quashing without notice or hearing a member referendum to reduce Bar dues.

DRAW. The Domestic Relations Attorneys of Washington (DRAW) is a voluntary lawyer association formed in 2017 after several elected members of the WSBA Family Law Section's Executive Committee resigned due to frustration with WSBA policies toward its sections. DRAW now has around 600 members while the Family Law section has around 1,000 members, many of whom belong to both groups. Despite fewer members, DRAW's member listserv is four times (4x) as active as that of WSBA's Family Law Section. This only happened because so many members of the WSBA lost faith in WSBA's interest in serving their needs. They have ample reason to conclude that their interests are at the bottom of a long list of interests.

Member Input. All of DRAW's members are current or former licensed members of the WSBA.<sup>4</sup> Recognizing that we serve our members, DRAW's Board of Directors surveyed its membership to aid in drafting this letter. We have enclosed as Appendix A the survey results to aid this evaluation. Although the survey was not prepared by professional statisticians, we believe that it shows that the majority of Washington family law attorneys favor bifurcation: over 80%.<sup>5</sup> What should be avoided is the assumption that non-responding members are opposed to bifurcation. There is no evidence or logic to support that.

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<sup>4</sup> DRAW's Bylaws allow all active status licensed attorneys to be members, as well as those who are emeritus/pro bono, or retired while in good standing. DRAW does this because retired members have the institutional knowledge, wisdom, and willingness to help all its members. While the retired and emeritus members may also benefit from the social interaction with their peers, the vast majority of benefits flows to the active members.

<sup>5</sup> From Appendix A's Q #1: 77 answered. 56 said yes, they favor bifurcation. 7 opposed. 5 no opinion. 9 were Other. Of those 9 Other responses, numbers 1,3,5,6,7,8 & 9 favor bifurcation (though #1 might be arguable.) So that's 56 + 7 Others, out of 77: 81.8% favoring bifurcation. If Other #1 isn't counted it's still 80.5%.

What Would the Best Outcome Look Like? Washington needs two statewide bar associations. The justice system and the public are best served by a) a mandatory testing, licensing and disciplinary body run by the Supreme Court, with such advisory groups as the court chooses to operate and b) a separate, voluntary bar association focused on promoting and advancing lawyers' interests, including services to the public. Given the history of the WSBA Board of Governors, most of the current work of the WSBA would continue.

Conclusion. It would be easy to put window dressing on some of the issues that have plagued the WSBA for years. However, it is time to face the fact that the WSBA cannot adequately fulfill so many conflicting missions. Washington should join with the growing number of states with a bifurcated bar.

Having a regulatory bar that tests, licenses, and disciplines lawyers and protects legal clients serves the public's interest. How this is accomplished is within the Supreme Court's authority, as are the creation of groups to study the administration of law. Those were the tasks the court originally asked the WSBA to assume. For the Supreme Court to take those functions back to itself is the natural and easiest way to bifurcate, not to mention easier for the Supreme Court to administer than a unified WSBA having disputes between the BOG, staff and Supreme Court. After bifurcation the WSBA can continue to provide the programs and public services agreed to by its members through a representative BOG.

Respectfully,

DOMESTIC RELATIONS ATTORNEYS OF WASHINGTON



Douglas P. Becker  
President of DRAW

DPB/ajs

Cc:

CLARK, Daniel <DanClarkBOG@yahoo.com>  
ABELL, Hunter <habell@williamskastner.com>  
ANJILVEL, Sunitha <sunitha@amlawseattle.com>  
BOYD, Lauren <lauren.boyd.bog@gmail.com>  
COUCH, Jordan <jordan@palacelaw.com>  
DRESDEN, Matthew <matthew@dresdenlaw.com>  
PETRASEK, Kari <kari@petraseklaw.com>  
FAY, Kevin <kevinfaybog@yahoo.com>

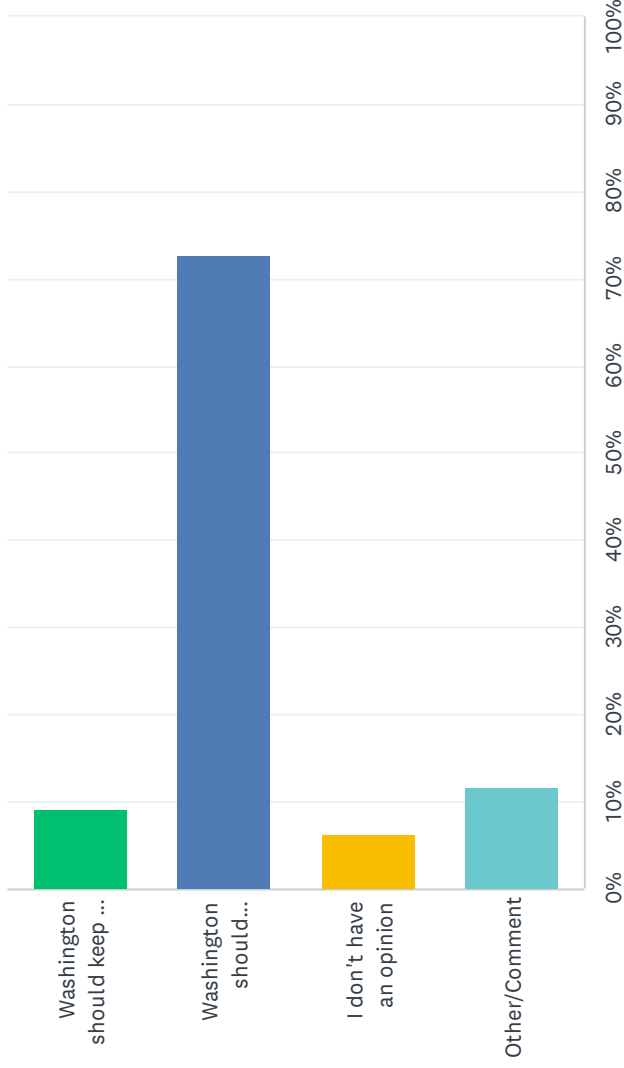
NGUYEN, Nam  
PURTZER, Brett <brett@hesterlawgroup.com>  
SAYANI, Serena <ssayaniBOG@gmail.com>  
STEPHENS, Alec <alecstephensjr@gmail.com>  
WILLIAMS-RUTH, Brent  
<BrentWR.BOG@gmail.com>  
PETERSON, Bryn  
<bryn.peterson@brynpetersonlaw.com>  
McBRIDE, Tom <tomamcbride@gmail.com>  
HIGGINSON, Carla <carla@higginsonbeyer.com>



# APPENDIX A

### Q1 Do you have an opinion on whether the WSBA should be bifurcated? (select one)

Answered: 77 Skipped: 0



ANSWER CHOICES	RESPONSES
Washington should keep a unified mandatory bar association [Washington currently has a "unified bar" where all activities are conducted under a single umbrella, including licensing, discipline, CLEs, ethics hotline, funding social justice programs, and practice sections.]	7 9.09%
Washington should transition to a bifurcated bar association [Where members would be members of the mandatory/regulatory bar association (admission, licensing, discipline) while choosing whether to join a voluntary bar association, which would be responsible for non-regulatory functions.]	56 72.73%
I don't have an opinion	5 6.49%
Other/Comment	9 11.69%
<b>TOTAL</b>	<b>77</b>

OTHER/COMMENT	DATE
#	8



## WSBA Structures Workgroup Survey

1	I also don't think the WA state Supreme Court should have ultimate authority over the Bar association or have the power to overrule decisions of the membership.	5/25/2022 9:48 AM
2	None	5/25/2022 7:17 AM
3	I particularly want to prohibit my dues from being spent on other than licensing and discipline. I have nothing in common with the far left leaning politics of the WSBA and am only a member because it is required. The mandatory WSBA should only involve licensing and discipline.	5/24/2022 1:36 PM
4	It depends on added costs.	5/24/2022 1:24 PM
5	The Washington State Bar Association should be bifurcated with licensing and discipline in one organization and everything else in a different organization that is wholly controlled by attorneys.	5/16/2022 3:45 PM
6	The WSBA is supposed to be a Trade Association by attorneys and for attorneys. It has strayed from that and now is an association for the public against attys. It has chosen to pursue a social engineering agenda not relevant to the practice of law and it has expanded its FTE and overhead exorbitantly and ridiculously. It has engaged in unlawful ex parte access to the Supreme Court re dues petitions, LLLTs, etc. The mandatory Bar should be licensing, discipline and CLE compliance. Everything else should be part of a voluntary Bar so those who feel, on balance, it represents them can pay the dues to support it.	5/11/2022 11:10 AM
7	WSBA should be bifurcated. Serving the members should be separate from licensing and disciplinary issues. How can the same entity discipline you and advocate for you simultaneously? There is an inherent conflict in that. Bar members should be able to opt out of the "fluff," which is what I consider a great majority of what the bar does.	5/11/2022 10:49 AM
8	I have been licensed in a state with a bifurcated bar and found it much more supportive. The bar license was a stand alone feature. Message from the licensing organization were treated more seriously than those from the membership organization. The CLE and other support services were voluntary, less politically driven, and their messages were not delivered with the gravitas of the licensing organization. It was overall a much better experience.	5/11/2022 9:10 AM
9	We should move to a bifurcated bar system. There are myriad reasons, including the specter of litigation, history of schisms within the organization over the issue, etc. I cut my lawyer teeth in Minnesota, where we have a bifurcated bar. The issues we are arguing about here never even came up in my 15 years there. The regulation side did there thing and the association side did their thing. It works, and without the drama. From what I can tell, the primary reason anybody wants to maintain the status quo is because change is hard. It is, but I think it is worth it. Thank you.	5/11/2022 8:28 AM

## Q2 What aspects of the current unified WSBA do you like?

Answered: 37 Skipped: 40

#	RESPONSES	DATE
1	Frankly, there is very little I like about the current unified bar association. The only portion that I am comfortable with, perhaps even appreciate, is the format of the CLE reporting.	5/25/2022 10:01 AM
2	Nothing	5/25/2022 9:48 AM
3	They organize CLEs. That's it. Literally like nothing else about it.	5/25/2022 8:05 AM
4	None.	5/25/2022 7:17 AM
5	CLE only	5/24/2022 5:39 PM
6	easy license renewal, cle offerings, bar journal, political lobbying	5/24/2022 2:35 PM
7	Very little.	5/24/2022 1:36 PM
8	It is all under one fee.	5/24/2022 1:24 PM
9	None	5/18/2022 2:28 PM
10	Discipline is too political now and not responsive to specific issues that arise is defined areas of law by not having specialist is that are of law review the investigations.	5/18/2022 12:07 PM
11	The discipline of attorneys who violate their duty to clients.	5/18/2022 9:34 AM
12	Not much of anything. Seems wasteful and attorneys are forced to participate in functions that have nothing to do with regulation of the practice of law.	5/17/2022 5:18 PM
13	lawyer directory and CLE credits available on line	5/17/2022 3:02 PM
14	CLE's, access to research, the management of CLE's, etc.	5/17/2022 8:41 AM
15	Not much.	5/16/2022 11:35 PM
16	Monthly Legal Lunchbox CLE's. In general, the WSBA CLE's are high quality and inexpensive and are appreciated. Also, a few of the sections are very worthwhile. The free legal research of Fast Case is also very worthwhile.	5/16/2022 6:31 PM
17	I only have to make one payment each year.	5/16/2022 5:30 PM
18	Not much.	5/16/2022 5:18 PM
19	Not much	5/16/2022 4:17 PM
20	Licensing.	5/16/2022 3:10 PM

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21	I appreciate all of the resources being made available.	5/16/2022 3:09 PM
22	I can't think of anything.	5/15/2022 3:09 PM
23	CLEs.	5/12/2022 3:39 PM
24	Established staff who help set up and run (audio/video) seminars.	5/12/2022 12:05 PM
25	None.	5/12/2022 8:38 AM
26	None.	5/11/2022 12:20 PM
27	Ethics holiness Legal Lunchbox seminars Legal research engines	5/11/2022 11:56 AM
28	basically none. It has gone off the rails with the POLB trying to allow non-lawyers to practice law. The licensing allowed an entire year of law school grads to become lawyers without taking a Bar Exam.	5/11/2022 11:10 AM
29	one stop shopping.	5/11/2022 10:23 AM
30	Ease of joining/renewing both at the same time, a larger community of attorneys that have access to/participation in the same resources	5/11/2022 10:11 AM
31	Single point of contact for licensing and practice issues	5/11/2022 9:10 AM
32	Paying dues to one place is nice.	5/11/2022 8:28 AM
33	An overall feeling of unity despite disconnection between the practice areas.	5/11/2022 7:14 AM
34	I have very little interaction. I pay my dues and hope I have enough CLE	5/11/2022 7:07 AM
35	likely cheaper than two	5/11/2022 6:31 AM
36	It provides a vehicle for maintaining bar licensing and CLE credits.	5/10/2022 11:47 PM
37	That all parts of the bar are in one single location, under a single authority.	5/10/2022 10:52 PM

### Q3 What aspects of the current unified WSBA do you dislike?

Answered: 51 Skipped: 26

#	RESPONSES	DATE
1	I dislike the lack of financial transparency and the bias towards downtown Seattle. We could purchase a building near the airport for the cost of a year's rent. I dislike the current approach of charging a LOT of money for some things to which I don't want to contribute. I am sure there are members who want the opposite, and that should be OK too.	5/25/2022 3:05 PM
2	Using bar dues/fees for political activities and to support the LLLT program.	5/25/2022 10:01 AM
3	The association is spread too thin. It's managed politically without a true vote of the members. Discipline and licensing should be separate from each other, not bifurcated into one unit.	5/25/2022 9:48 AM
4	Everything. Overreach. Politics. Taking my dues and using it for programs I don't want, don't support. Taking my dues and creating sub licenses that harm my practice. List goes on and on.	5/25/2022 8:05 AM
5	I do not like all of their social Justice and far far left activities.	5/25/2022 7:17 AM
6	As a 56 year member, I dislike virtually everything about WSBA. SELF AGGRANDIZING board members under big law control. Get rid of WSBA and let DOL regulate.	5/24/2022 5:39 PM
7	still seems dominated by white males to a large extent	5/24/2022 2:35 PM
8	* Supreme Court invalidation of properly passed referendum; * Unfunded mandates that require bar members to pay for social programs without their consent; Past concerns about financial transparency at the WSBA; Freedom to lobby for or against legislation without prior approval from the WSBA; * An organization that disregards member input; * An organization that restricts section input on commenting on pending legislation that affects our practice area; and especially * Commandeering of section funds and bylaws * = heightened concern	5/24/2022 2:01 PM
9	Most everything.	5/24/2022 1:36 PM
10	It is convoluted.	5/24/2022 1:24 PM
11	All of it.	5/18/2022 2:28 PM
12	Supreme Court has too much control over too many aspects of the business of the practice of law.	5/18/2022 12:07 PM
13	Too much time and money spent on areas that do not serve a valid purpose.	5/18/2022 9:34 AM
14	See above.	5/17/2022 5:18 PM
15	Membership fees to get spent on all manner of expenses mean nothing to do with licensing and disciplinary issues	5/17/2022 4:35 PM
16	do not like state agency control of the profession or the political influence in the programming requirements.	5/17/2022 3:56 PM
17	Lawyer disciplinary process - in my opinion they are too lenient in many cases	5/17/2022 3:02 PM

## WSBA Structures Workgroup Survey

18	The current unified WSBA does not represent the thoughts of many members of the bar. They seem to be more concerned about pushing political agendas than supporting members of the bar.	5/17/2022 11:22 AM
19	Dues are high, I don't like some of the WSBA positions on social issues, and those positions should not be forced on me.	5/17/2022 9:36 AM
20	I have no reason to dislike the current unified WSBA	5/17/2022 8:41 AM
21	Administrative control over sections and funding things that do no benefit attorneys.	5/16/2022 11:35 PM
22	I dislike the control over sections, it is cumbersome and ineffective. I think in general, the current structure inhibits the free flow of ideas.	5/16/2022 8:40 PM
23	Using dues for social programs that maybe not everyone supports. Very upsetting that the Supreme Court cancelled the referendum of the members on dues. The BOG was very out of control, though recent "reform" members have helped. It was very much a private clique.	5/16/2022 6:31 PM
24	I don't like that the regulatory functions and the advocacy functions for attorneys are co-located. The bar should be an organizations that advocates for attorneys, not one that conducts random checks to try to trip up attorneys doing their best to keep up with representing people (often too poor to keep up with their bill) and all the other obligations of life.	5/16/2022 5:30 PM
25	Bias, lack of transparency, lack of fairness, failure to support lawyers and this tough profession	5/16/2022 5:18 PM
26	No accountability to membership; Sup Ct. disregards the membership; WSBA advocates for positions without membership input.	5/16/2022 4:17 PM
27	BOG does not represent the majority of lawyers.	5/16/2022 3:45 PM
28	I am forced to be part of a social agenda that I do not agree with.	5/16/2022 3:18 PM
29	Paying for services that outside the licensing and discipline area.	5/16/2022 3:10 PM
30	Not everyone wants to participate or access the resources. Those who don't should be permitted to limit themselves to (and pay for) the regulatory minimum.	5/16/2022 3:09 PM
31	The amount of the dues.	5/16/2022 3:08 PM
32	I don't like our dues supporting programs that do not benefit me in any way and that supports and promotes the LLLT program, which does not support itself. I don't like our dues paying the salaries of WSBA bureaucrats.	5/15/2022 3:09 PM
33	The political action and bias to the "progressive" agenda with which I disagree, and has little to do with how Bar members should expect to be tested, monitored, and governed.	5/12/2022 3:39 PM
34	Not following members' positions. According to the WSBA Governance Report a few years ago, WSBA and its governors don't represent Washington's lawyers, but the Washington Supreme Court. I'm willing to volunteer my time and work to advance the practice of being a lawyer, but not to help the Supreme Court.	5/12/2022 12:05 PM
35	The unified bar exploits and levies de facto taxes on attorney members to fund projects and programs unrelated to mandatory/regulatory functions for attorney licensing, and projects such as the LLLT program. It's especially offensive that attorneys members are compelled (forced) to associate with non-lawyer "practitioners."	5/12/2022 8:38 AM
36	Basically the entire structure, from the Supremes being far too involved in the WSBA governance rather than restricting their involvement to admission to practice and disciplinary measures, to the fact that 75% of member dues go to WSBA	5/11/2022 12:20 PM

## WSBA Structures Workgroup Survey

staff salaries, to the poor governance practices of the Board and allowing the executive director to run the WSBA without any oversight from the Board, to the fact that sections are not allowed to comment on legislation without WSBA approval, must run their executive committee elections through the WSBA, and cannot spend their own funds without WSBA approval, to the gross overemphasis on "diversity" without an identification of the problems within the WSBA or with lawyers in general that need to be "corrected," to the fact that every article in the Bar News is reviewed by the Bar's general counsel, the executive director, and the Equity & Justice Department, to insure that it displays the correct "messaging." This is hardly the promotion of a free and open exchange of ideas in a professional association of attorneys who are sworn to uphold the Constitution, including the First Amendment.

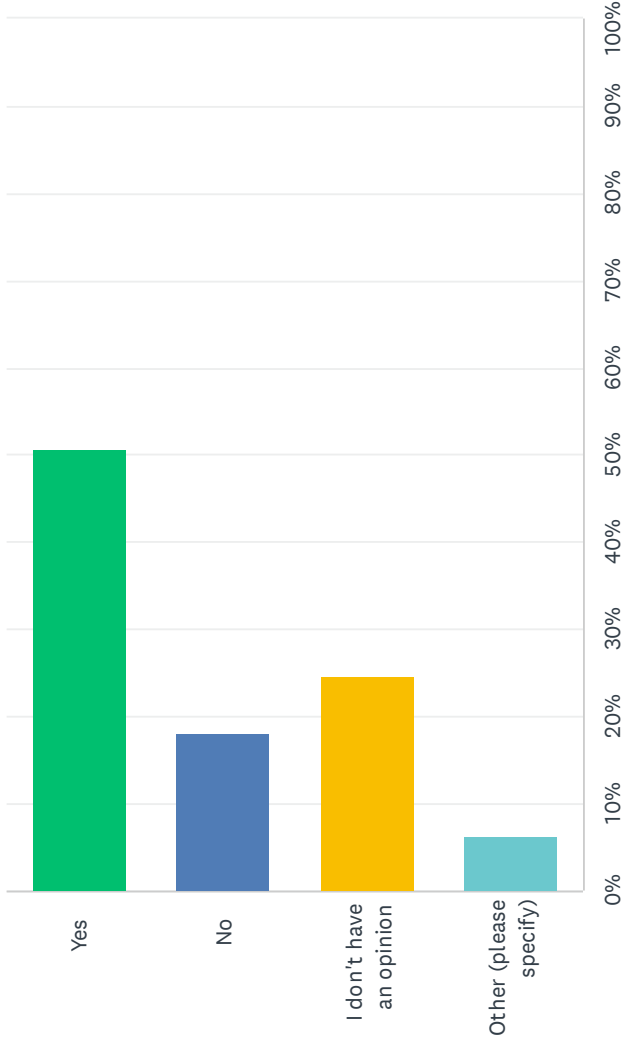
37	I am required to contribute to causes I do not support, in the form of bar dues Sections needing to seek approval before commenting on legislation, resulting on suppression of free speech	5/11/2022 11:56 AM
38	The social justice agenda (which I am not against, I just do not believe it is the mission of the Bar (a TRADE ASSOCIATION) to engage in this) and politics. The unlawful Ex Parte communications re licensing and LLLT's, and dues the ED engaged in, etc. etc.	5/11/2022 11:10 AM
39	It serves mostly as an entity for creating jobs for people who have no accountability to the membership. Attorneys who are not located on the west side are largely ignored.	5/11/2022 10:49 AM
40	Having to pay for services I am not receiving, for services for others, and having the Supreme Court overrule a mandate because they didn't like it.	5/11/2022 10:23 AM
41	None. I do not mind the higher cost of dues to maintain non-regulatory resources as I participate in many of them.	5/11/2022 10:11 AM
42	Honestly, my biggest issue has been the practice of law board and its desire to cram the LLLT down our throats. I understand the desire to expand access to justice, which I support, but there has been no evidence that I have seen that LLLTs actually accomplish that goal in any wholesale manner. I was pleased when the Supremes revoked the LLLT, but I feel like that will circle round again.	5/11/2022 10:04 AM
43	Extremely King county centric, very had to separate the politics from the practice of law.	5/11/2022 9:10 AM
44	Specter of litigation may force bifurcation. Drama about the issue. I don't see any particular benefit other than avoiding the hard work of change. The bifurcated bar structure just makes sense to me, and cuts out the problems.	5/11/2022 8:28 AM
45	Lack of input , government too big and unresponsive to members input; BAR is too susceptible to political and or social pressure; and paying for that and for ideological activities that I am not in agreement with and in my opinion are divisive and are not directly related to the practice of law.	5/11/2022 8:01 AM
46	HQ in inaccessible location where parking is nearly \$50. Ridiculous Keller deduction. Lack of financial transparency. A Bar that doesn't represent member interests.	5/11/2022 7:22 AM
47	Supreme Court going against the wishes of the members. A former executive director acting against the interests of the attorneys.	5/11/2022 7:14 AM
48	The way bar complaints are handled. It's up to individual to provide defense. We should have an organization that backs us or at least provides guidance. There is no innocence till proven guilty.	5/11/2022 7:07 AM
49	cost, liberal leaning, unwilling to ask about my concerns or needs. I get no meaningful benefit that i can articulate after i passed bar exam.	5/11/2022 6:31 AM
50	The dues are too high for the services provided. The practices sections should have autonomy to reflect the position of the	5/10/2022 11:47 PM

WSBA Structures Workgroup Survey

51	section. That there are certain parts of the bar, partly staff, partly on the elected or appointed BOG, who seem to use the members' dues to fund pet projects that do nothing to benefit the members of the bar, and act as social experiments on the public that often risk backfiring to the detriment of the members.	5/10/2022 10:52 PM
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Q4 Should the Keller Deduction be more broadly interpreted and increased? (The Keller deduction represents the portion of our dues that the Bar decides is used for non-law related activities and may be waived by “opting out, It is typically \$8-\$9) (select one)

Answered: 77 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	39 50.65%
No	14 18.18%
I don't have an opinion	19 24.68%
Other (please specify)	5 6.49%
<b>TOTAL</b>	<b>77</b>

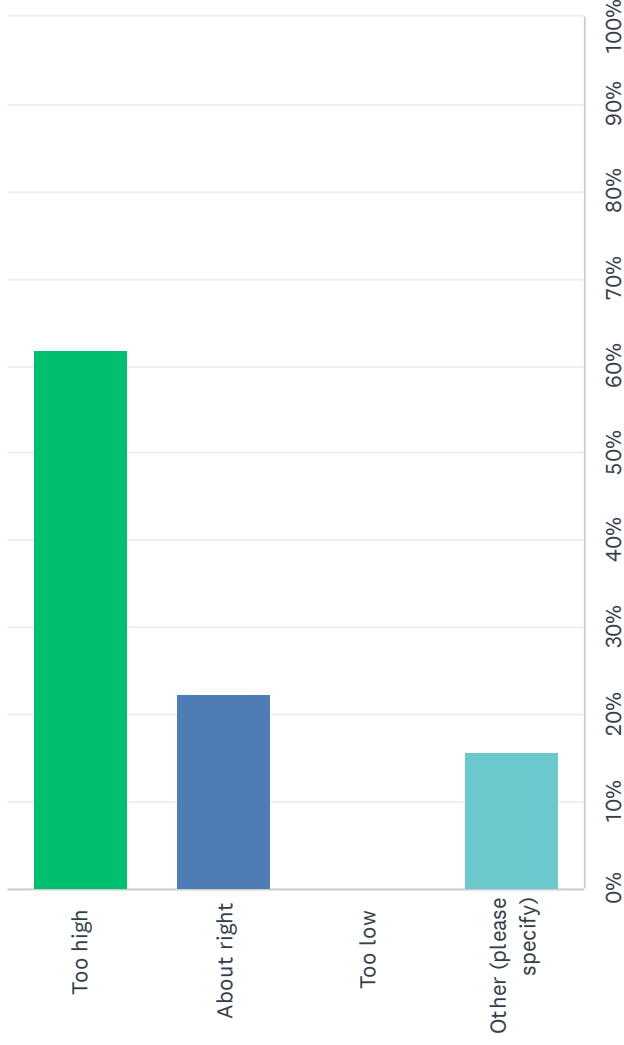


WSBA Structures Workgroup Survey

#	OTHER (PLEASE SPECIFY)	DATE
1	The mandatory membership requirement should be eliminated. The organization that I am forced to be a member of and subject to discipline from should not also be spending money on political decisions that I don't support.	5/25/2022 9:48 AM
2	Yes if the Bar stays unified.	5/16/2022 8:40 PM
3	No - should be done away with. This is like allocating \$3 on my tax return to the presidential election - this is a good example of why bifurcation should be supported	5/16/2022 5:18 PM
4	This should be vastly expanded. "Germane to the practice of Law" should not include most of what has been determined to be included.	5/11/2022 11:10 AM
5	I think this question is just a band-aid, when the focus should be on bifurcation.	5/11/2022 8:28 AM

## Q5 Do you think that your dues are reasonable for the services provided by the Bar?

Answered: 76 Skipped: 1



ANSWER CHOICES	RESPONSES
Too high	47 61.84%
About right	17 22.37%
Too low	0 0.00%
Other (please specify)	12 15.79%
<b>TOTAL</b>	<b>76</b>

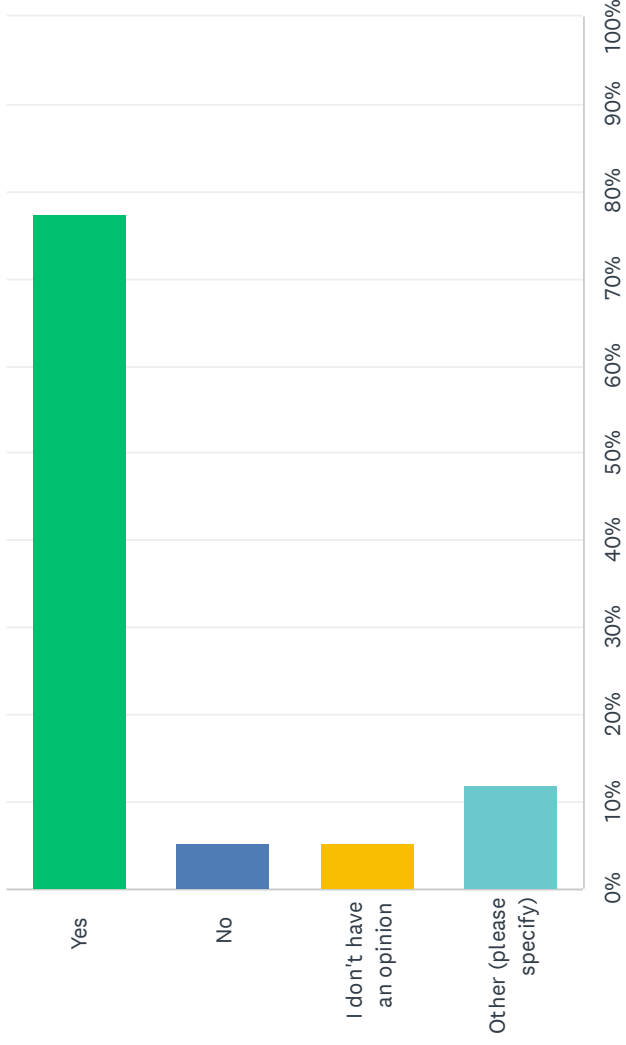
#	OTHER (PLEASE SPECIFY)	DATE
1	I think it is about right for the services the Bar offers, I just don't think the members all agree with the services offered.	5/25/2022 12:10 PM

WSBA Structures Workgroup Survey

2	The WSBA does very little that benefits my practice or protects the public from unscrupulous lawyers.	5/25/2022 9:48 AM
3	Dues should be lower for attorneys that practice in public interest or provide low bono/pro bono services. Aside from that, I have no opinion.	5/24/2022 1:38 PM
4	Cut the services provided as mandatory and the dues that pay for them. IE dues pay only for licensing related matters.	5/18/2022 12:07 PM
5	As a solo practitioner the fees are burdensome but they are probably about right.	5/17/2022 3:02 PM
6	Dues always seem high! The free monthly CLE's are the only consistent benefit that I receive from the bar.	5/17/2022 11:22 AM
7	Unsure	5/17/2022 8:35 AM
8	No: they are not reasonable with the Bar as is. However, I am happy to pay dues commensurate with the support by the Bar which is appropriate - which is not how things are currently.	5/16/2022 5:18 PM
9	The Bar services of which I partake could be much less expensive, if the Bar didn't use my dues for so many things I find offensive.	5/12/2022 3:39 PM
10	The Bar office should be in a rural area with lower rents and lower wages than down town Seattle commands. That would reduce operating costs and save members significant money.	5/11/2022 4:45 PM
11	Not at all. Licensing and discipline could be managed for a small percentage of our dues.	5/11/2022 11:10 AM
12	Honestly, I don't have an opinion on this. I haven't compared our dues to other dues. I do wonder though if our dues could be lower if the WSBA were not based out of Seattle but perhaps Olympia or Ellensburg.	5/11/2022 10:04 AM

Q6 Do you believe it is a “conflict of interest” if the Supreme Court directs the bar association to take/not take action bar members oppose, or have passed a referendum in opposition of? (select one)

Answered: 75 Skipped: 2



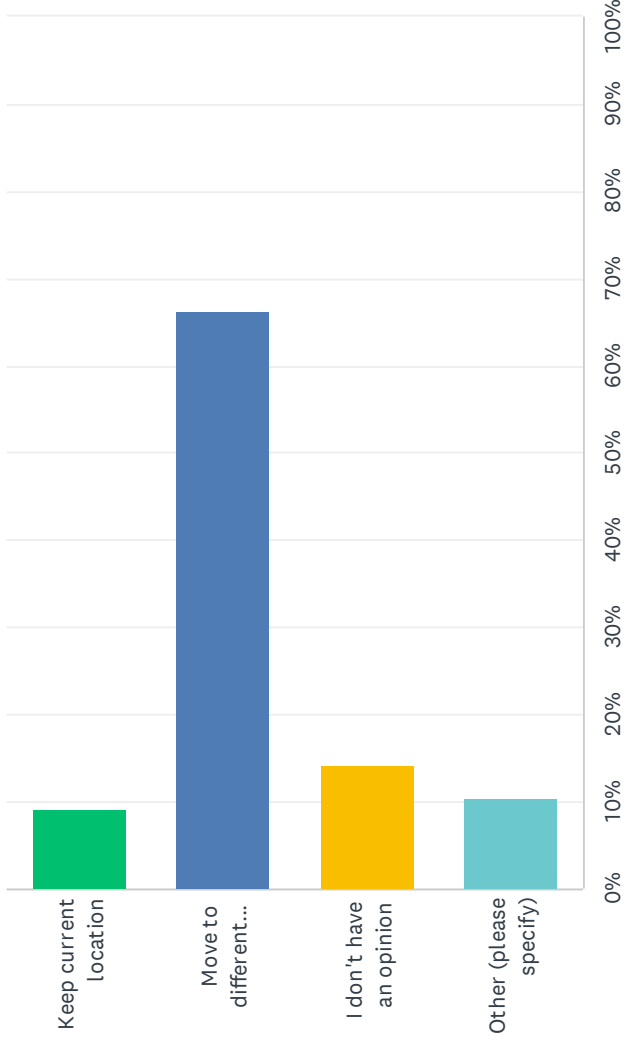
ANSWER CHOICES	RESPONSES
Yes	58 77.33%
No	4 5.33%
I don't have an opinion	4 5.33%
Other (please specify)	9 12.00%
<b>TOTAL</b>	<b>75</b>

WSBA Structures Workgroup Survey

#	OTHER (PLEASE SPECIFY)	DATE
1	if bifurcated, the SC would determine discipline/admission issues. The members of the bar would control the rest.	5/26/2022 10:32 AM
2	I'm not sure it is a conflict of interest, but it is aggravating when the membership says "please do X" and the Court, sua sponte, says "no you must do Y"	5/25/2022 3:05 PM
3	The Supreme Court cannot be allowed to force rule changes, oppose the lawful vote of the membership or convene secret meetings with the WSBA, which they have been doing. But for the "outing" of these meetings by concerned WSBA members, we would not know about it.	5/25/2022 9:48 AM
4	Stupid question poorly drafted.	5/24/2022 5:39 PM
5	My answer is generally yes, except for issues involving licensing and discipline, which should be in the purview of the Court.	5/24/2022 1:36 PM
6	I don't understand the question	5/24/2022 1:24 PM
7	Legally, I do not know if it a conflict of interest because I do not know what authority the Supreme Court has over the bar. It seems that the bar should be independent of the Supreme Court.	5/17/2022 11:22 AM
8	Perhaps. It sure feels like one if it is not a technical conflict of interest.	5/11/2022 10:04 AM
9	I can't say it is a conflict of interest, but it does contradict notions of democracy. Better is two organizations, and if the association makes a decision that is contrary to law, the courts can decide through normal litigation processes.	5/11/2022 8:28 AM

Q7 The current WSBA headquarters in downtown Seattle costs quite a bit. Do you believe the Bar should be located in Seattle or should the Bar be relocated to a different location with lower overhead and better access by members, such as SeaTac? (select one)

Answered: 77 Skipped: 0



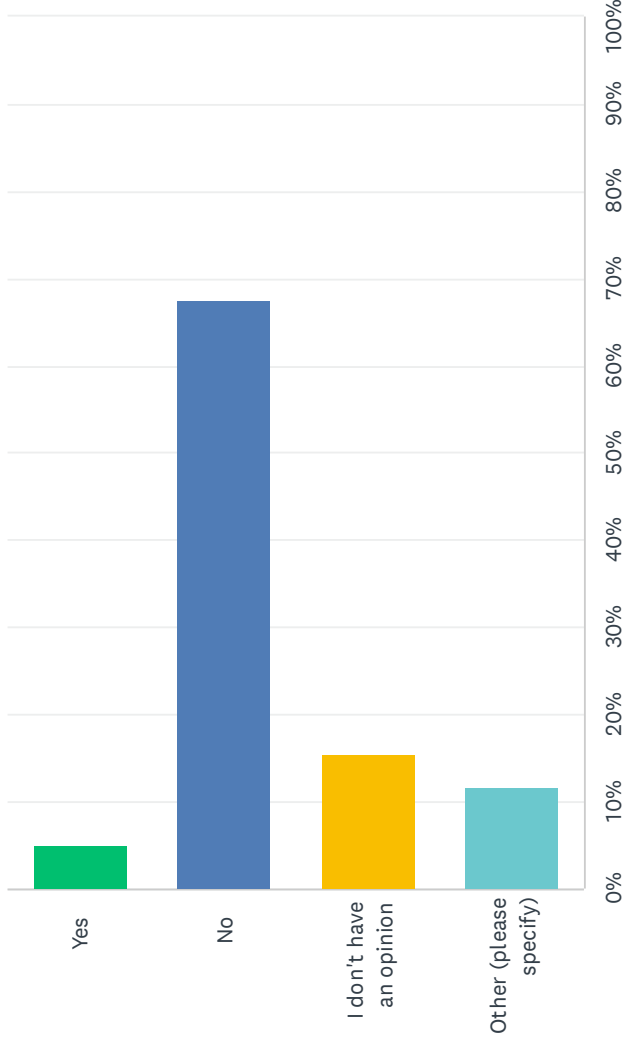
ANSWER CHOICES	RESPONSES
Keep current location	7
Move to different location	51
I don't have an opinion	11
Other (please specify)	8
<b>TOTAL</b>	<b>77</b>

WSBA Structures Workgroup Survey

#	OTHER (PLEASE SPECIFY)	DATE
1	For those of us a 6-hour drive from Olympia/Seattle, the current location is exorbitantly expensive. Given the increasing remote work trends and Court adoptions of video appearances, the Bar should follow that trend and be located in a far less expensive reasonably sized city such as Spokane or the Tri-Cities.	5/17/2022 8:35 AM
2	Some place with parking would be nice.	5/16/2022 8:40 PM
3	The bar office should be in a rural area like Ellensburg or between Vancouver and Olympia where rent and wages are lower.	5/11/2022 4:45 PM
4	There is no benefit to the majority of the State to have the Bar office in the most expensive real estate in the State. \$40 for a partial day of parking to go to the Bar office is ridiculous. Even if King County is the epicenter for the most attorneys, the offices could be in a location in King County that was not in Seattle. Frankly, it should be in/near Ellensburg (central for all of the State and less expensive).	5/11/2022 11:10 AM
5	I suspect there are multiple factors to consider. Cost is one factor, but so is access, convenience, institutional knowledge, etc.	5/11/2022 8:28 AM
6	Yes move- you see this in every governmental body - big offices close to the center of power and only for staff and administration and little money left to go to the reason for its existence	5/11/2022 8:01 AM
7	SeaTac is not better access. There might be lower costs in different location in downtown Seattle. With so much remote work, the office seems too large	5/11/2022 7:07 AM
8	The bar should be located in Olympia, near the Capitol Campus, like all other state agencies. That will also have the added benefit of cheaper rent, lower housing costs that will help retain current staff and attract new staff who are often priced out of the competitive Seattle real estate market and cannot afford to work for the bar given the housing costs.	5/10/2022 10:52 PM

### Q8 Do you believe that the financial aspects of separating the regulatory and non-regulatory functions of the Bar Association present unreasonable obstacles to bifurcation?

Answered: 77 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	4 5.19%
No	52 67.53%
I don't have an opinion	12 15.58%
Other (please specify)	9 11.69%
<b>TOTAL</b>	<b>77</b>

LLM #M-24	OTHER (PLEASE SPECIFY)	DATE
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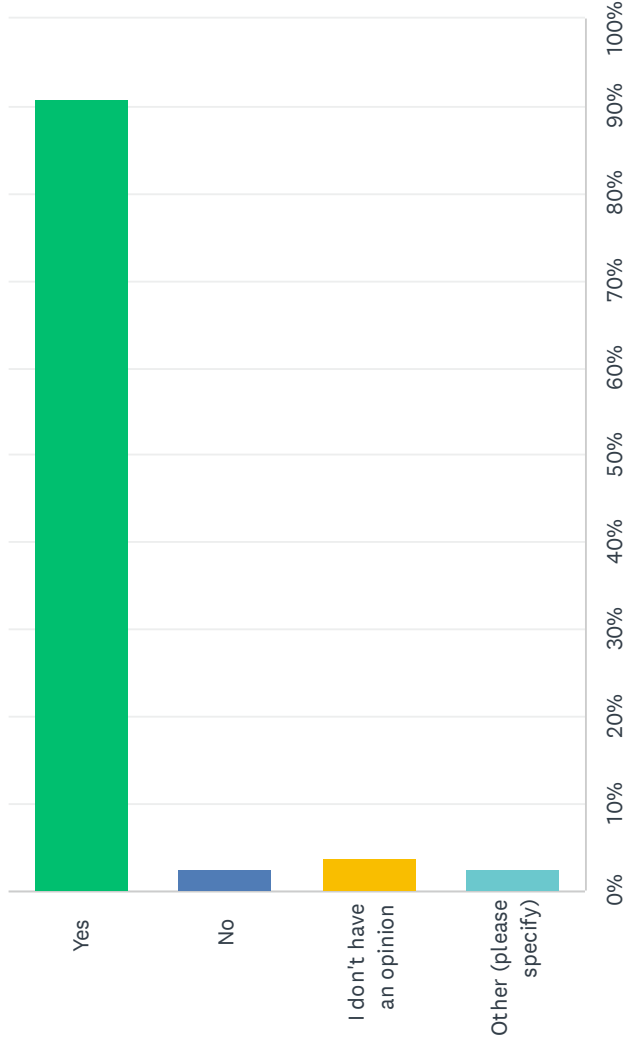


WSBA Structures Workgroup Survey

1	Don't know anything about "the financial aspects" described.	5/18/2022 11:16 PM
2	I don't have enough information to state a position.	5/17/2022 9:36 AM
3	Possibly. Information about that should be more widely available. I suspect if I wandered around the WSBA website, I would find it, but it would be nice to receive it by email.	5/16/2022 3:09 PM
4	I do not have information about the financial aspect of separating those functions.	5/11/2022 4:45 PM
5	No. Several states have had to undergo this transformation recently and it is doable. Getting into the weeds thinking about it makes it seem a huge task, but if forced to "just do it" it can easily be done.	5/11/2022 11:10 AM
6	Doesn't matter. WSBA has created an organization that serves WSBA employees more than the members.	5/11/2022 10:49 AM
7	I am not sure, but I do believe that any financial impact would likely be short lived.	5/11/2022 10:04 AM
8	No. Other bar associations are bifurcated. This can be done.	5/11/2022 8:28 AM
9	No, there are several successful bifurcated BARs in other states	5/11/2022 8:01 AM

Q9 Is it important to you that the various practice sections (i.e. the Family Law Section) should be free to lobby or take a legislative position without the currently required prior approval of the Bar Association?

Answered: 77 Skipped: 0



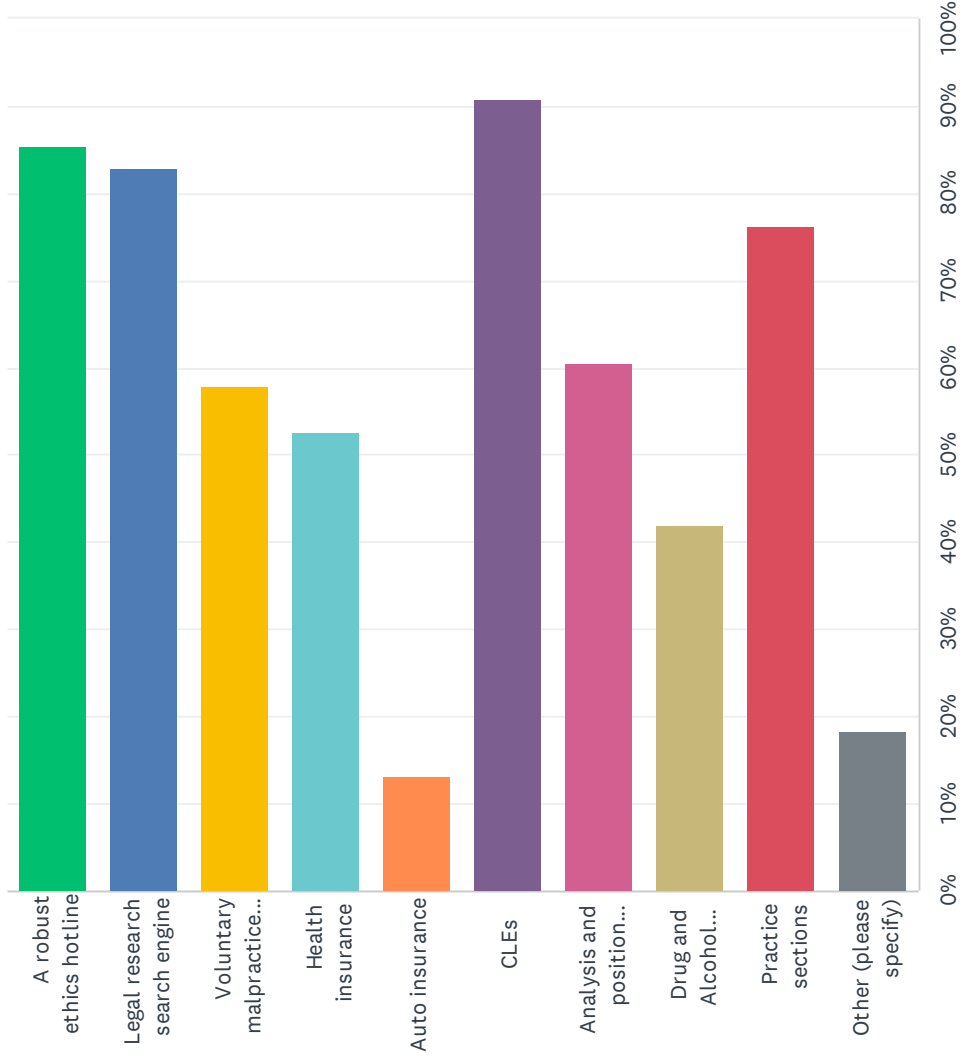
ANSWER CHOICES	RESPONSES
Yes	70 90.91%
No	2 2.60%
I don't have an opinion	3 3.90%
Other (please specify)	2 2.60%
<b>TOTAL</b>	<b>77</b>

WSBA Structures Workgroup Survey

#	OTHER (PLEASE SPECIFY)	DATE
1	It's a dangerous road and a slippery slope	5/24/2022 5:39 PM
2	No. In fact, I think a section of the bar association is still part of the bar association. Sections can make recommendations, but ultimately it should come from the association. Entities like DRAW can still have their own positions.	5/11/2022 8:28 AM

### Q10 What services should a private (non-disciplinary) WSBA provide?

Answered: 76 Skipped: 1



WSBA Structures Workgroup Survey

ANSWER CHOICES	RESPONSES
A robust ethics hotline	85.53%
Legal research search engine	82.89%
Voluntary malpractice insurance	57.89%
Health insurance	52.63%
Auto insurance	13.16%
CLEs	90.79%
Analysis and position statements regarding legislation & rule-making	60.53%
Drug and Alcohol counseling	42.11%
Practice sections	76.32%
Other (please specify)	18.42%
Total Respondents: 76	

#	OTHER (PLEASE SPECIFY)	DATE
1	Review of discipline process and admission requirements as determined by and practiced by the Supreme Court and the required bar.	5/18/2022 12:07 PM
2	These are minimums that are required to practice law. If other services are available at a reasonable cost, I have no objection to the bar providing them, but they are available already outside the bar.	5/17/2022 11:22 AM
3	I don't think the voluntary section of the bar needs to provide drug, alcohol or mental health counseling but it should have a resource line that would provide information on attorney friendly recovery groups, treatment options, recovery coaches etc. Maybe provide motivational interviewing services. Some part of the Bar still needs to evaluate, fund, encourage, access to justice services.	5/16/2022 8:40 PM
4	Other confidential services that attorneys may need as support. And it should be truly confidential. Attorneys too often do not seek help when they need for fear of licensing, etc. ramifications. the Bar says it provides it, but there are so measures or safeguards in place to protect the attorney.	5/16/2022 5:18 PM
5	Addiction and mental health counseling which is confidential; group 401k plan; dental insurance and eye care insurance;	5/16/2022 4:17 PM
6	Actually, all of it would be nice, but I realize there are limits.	5/16/2022 3:09 PM
7	Mental health counseling	5/16/2022 3:08 PM
8	Mental Health Counseling	5/15/2022 3:09 PM
9	Compelled (forced) association of attorney members and non-attorney "practitioners" needs to end. Non-attorney members	5/12/2022 8:38 AM

## WSBA Structures Workgroup Survey

	need to be bifurcated into a separate organization from non-attorney "practitioners."		
10	Mentoring for young lawyers Assistance for small practices regarding technology and accounting	5/11/2022 4:45 PM	
11	Let the market (attorneys) decide what they believe is relevant and that they support by seeing if they pay dues to the voluntary association.	5/11/2022 11:10 AM	
12	In MN, there is an ethics hotline, but it is part of regulation side. But regardless of where it goes, it is very helpful. Insurance stuff is only important to me. If it can do better than the private marketplace. Counseling services are a good idea. CLEs are great. There are myriad options for an association. The sky is the limit.	5/11/2022 8:28 AM	
13	A Listserve, Company discounts, young atty mentoring, advocacy for lawyer interests rather than forcing us to pay for social programs through non-legislative unfunded mandates.	5/11/2022 7:22 AM	
14	Pension	5/11/2022 6:31 AM	

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**Subject:** FW: [External]Integrated Bar Structure

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**From:** Mark de Regt <mark@de-regt.com>  
**Sent:** Wednesday, June 1, 2022 6:30 AM  
**To:** Board Feedback <BoardFeedback@wsba.org>  
**Subject:** [External]Integrated Bar Structure

Hi,

I am a member of WSBA. I also am admitted to practice law in Connecticut and New York, where I am not required (and have not chosen) to join either state bar association.

The annual cost of my license in Washington is many times the combined cost of my Connecticut and New York licenses.

That, of course, is because New York and Connecticut are not integrated bars.

I have never seen any particular benefit I get out of that much, much greater cost. I have long felt that the only purpose of an integrate bar is to make the associated bar association rich and powerful, which does not benefit lawyers in general.

When an institution cares more for its own existence than for the reason it was created, it's time for a change (consider, e.g., the NCAA, which does nothing for the benefit of students). It's way past time to stop forcing us be a member of the WSBA, and paying the huge cost of that membership. If WSBA wants me to be a member, it should have to make itself attractive to me to join. It hasn't done that.

Mark de Regt  
WSBA 26445

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**Subject:** FW: [External]Bar Structure

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**From:** Michele Earl-Hubbard <michele@alliedlawgroup.com>

**Sent:** Friday, June 10, 2022 12:51 PM

**To:** Board Feedback <BoardFeedback@wsba.org>

**Cc:** Michele Earl-Hubbard <michele@alliedlawgroup.com>

**Subject:** [External]Bar Structure

I have followed with interest all of the discussions about bar structure and just got the email inviting individual messages to this email to share our views. I mostly share the views expressed by the KCBA that the mandatory licensing and discipline and CLE compliance duties should fall to a governmental entity and be funded by license fees, and that all other aspects of the WSBA be performed by an entirely voluntary bar association.

I have been a dues-paying member of the WSBA for more than 25 years, at both one of the largest firms in the State, and now at my own smaller firm. All of my time has been in the Seattle area, although my media law and appellate practice have taken me to every corner, and nearly every county, in the State, and I have worked with and opposite lawyers throughout the State.

I was also a voluntary KCBA member and ABA member for many of those years. I chose to join the ABA and KCBA because I found they offered value for my membership and because I supported the work they were doing, such as the Community Legal Services Committee at KCBA which I co-chaired for several years providing pro bono legal services to low income and vulnerable people throughout King County.

By contrast, the “services” WSBA offered me, as a member, were, sadly, largely a joke.

--Many of the CLEs were no better than I could find elsewhere at the numerous professional offerings, and what made the good ones good was the work of the volunteer presenters, not the WSBA staff or WSBA’s involvement.

--The Desk Books, produced largely through Westlaw, cost the same to purchase whether a member or not, and some were great, and some were not, and again WSBA’s involvement – as opposed to the work of the numerous volunteer authors and editors – was not the reason for the quality. The lack of control exerted by WSBA staff over the content was the reason for the lack of quality, however. And I say this as a former Senior Editor and author of numerous chapters of a Desk Book I helped create (The Public Records Act Deskbook) that I finally



stopped working on because WSBA staff made little effort to try and keep the product neutral and objective and accurate, even rejecting my edits, in my own chapters, saying [this side] argues X and [that side] argues Y when there was a difference of views on the law.

--The membership "discounts" I have been offered, are, also a joke. None of the offerings have been better than I could achieve through other vendors on my own or through other memberships.

--Again while some of the CLEs and Deskbooks have been good, it was due to the work of the talented and hard working volunteers, not paid a dime for their time, and not due to the WSBA involvement.

I also have not consistently seen the WSBA acting in the interest of members in its rules and legislative proposals. I have appeared to testify before the BOG on more than one occasion, so this opinion is influenced by direct observation. I appeared before the BOG as a much younger lawyer to discuss matters related to open government concerns, and issues of transparency, and have watched other presentations, only to witness an obvious lack of interest in what presenters were saying. I also testified again years later against a proposed RAP amendment designed to cut down the time to file an amicus brief in an appeal, to talk about the harm this would cause to the judiciary by not being informed of the perspectives of organizations and individuals directly impacted by the law being evaluated due to the lack of notice to those groups, and the challenges they face securing counsel to jump into a case and appear as amici on short notice. Several other speakers also spoke against the rule change with compelling arguments. The BOG chair nonetheless moved to have the rule voted on, ignoring all of the concerns, and with no discussion, and a single BOG member objected and moved that it be tabled for more discussion because of all the concerns raised by the members. And he had to argue a lot to make that happen. It was. It passed at the next meeting when none of us were allowed to come back and with no further evaluation. WSBA presented this RAP to the Supreme Court and it became law. And it HAS resulted in appellate courts being deprived of broader perspectives in numerous appeals, leading seemingly frustrated appellate judges to actually issue orders asking interest groups to file such amicus briefs in cases where the court is not getting enough from just the two, sometimes cooperating, sides.

I also at one time devoted a lot of time to the WSBA as a volunteer of various committees – including those devoted to public service and public education. I started a "Judge and Lawyer in Every School" program at KCBA, that we took to the WSBA, to try and provide lawyer and judge speakers in middle school and high schools to talk about the profession and advance basic civics education about the legal system in our country. I recruited lots of hard working volunteer judges and lawyers and lots of schools wanting them, but was constantly battling against bureaucracy and unnecessary process so that volunteers took their efforts on locally on their own or the programs just stopped happening. As a volunteer I gave presentations to big budget bloated WSBA committees that, despite lots of volunteer hours by members of the

profession, never really got anything done, although lots of member dues seemed to be spent on pricey lunches and catering bills and facilities costs. My experience with WSBA was largely to sit in large rooms with dozens sometimes hundreds of “important” guests who seemed to want to be seen on camera and listen to themselves talk. And months later to issue some report or article patting themselves on the back for whatever they allegedly had done, although the results were invisible.

So, while I have met many amazing lawyers and judges through my volunteer efforts for the WSBA, and I mean no criticism or disrespect to those many dedicated volunteers, I do not see the WSBA overall as spending member dues efficiently and with the understanding that it exists to serve the members. It pays high rent, and employs numerous staff, seems not to meaningfully listen to members, and seems not to realize that many of its members lack the luxuries WSBA takes for granted (nice offices, ample staff, hefty evergreen budgets) and that many of its members are pinching pennies to be able to help as many people as possible within their communities.

So, in short, if WSBA was a voluntary organization I could choose whether to join, I would decline. Maybe it if were voluntary – if it had to compete for paying customers like its members do – it would force a different perspective and a different efficiency and focus to take it back to an organization I would be glad to join.

I know it is likely viewed as heresy to say some of what I have said above. And I do not mean to diminish the hard work and dedication of the many member volunteers who give their time to the WSBA or the staff who actually have tried to serve the members. My issue is with the entire WSBA – not the BOG or select committees, etc. – the entire mandatory compulsory entity I feel has forgotten who it is to serve and needs to be made voluntary to prove its worthiness for voluntary membership. I have written what I have written because I am doubtful many lawyers will feel comfortable doing so. And the BOG needs to hear from members – all of us – to be truly informed.

The WSBA should become a voluntary association and the licensing and discipline and CLE compliance duties should fall to a governmental entity and be funded by license fees. The organization funded by mandatory fees/dues should not produce Desk Books or CLEs or lobby.

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**Michele Earl-Hubbard**



Mailing address:

P.O. Box 33744

Seattle, WA 98133

(206) 428-7169 fax

[michele@alliedlawgroup.com](mailto:michele@alliedlawgroup.com)

[www.alliedlawgroup.com](http://www.alliedlawgroup.com)

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**Subject:** FW: [External]Voluntary Bar Structure

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**From:** Nicole Li <nicole@lilawseattle.com>  
**Sent:** Friday, June 17, 2022 1:01 PM  
**To:** Board Feedback <BoardFeedback@wsba.org>  
**Subject:** [External]Voluntary Bar Structure

Hello,

I am writing to indicate my full endorsement of the views expressed by The King County Bar Association in the recent Bar News, regarding the structure of WSBA.

The Bar's function should be the licensing and disciplining of attorneys, period. WA Bar dues are outrageously high, and members get little value for money. The Bar is not a law firm, it ought not to have a fancy expensive downtown Seattle office. Its staff should be reduced. The WSBA wastes our dues money on its rent, its own events, its excessive staff, and self-aggrandizing projects like renaming the Bar News. No one wanted that and it was a useless, wasteful endeavor since everyone still called it the Bar News and the name was restored.

The WSBA does an appalling job -- frequently offensive and only sometimes so clueless as to be amusing -- of attempting to address issues of diversity, equity, and inclusion. It should just stop. It does more damage than good, when the discussion is almost invariably directed to white people by white people about how to work with nonwhite people.

I would be happy to share more thoughts on the wasteful and offensiveness of the WSBA as it currently operates.

Nicole Li  
The Li Law Firm, P.S.  
Phone: 206-450-3547  
[www.lilawseattle.com](http://www.lilawseattle.com)

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**Subject:** FW: [External]Bar structure feedback to Board

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**From:** Shannon Sperry <[sperry@lasher.com](mailto:sperry@lasher.com)>  
**Sent:** Friday, June 17, 2022 12:15 PM  
**To:** Questions <[Question@wsba.org](mailto:Question@wsba.org)>  
**Subject:** [External]Bar structure feedback to Board

The latest bar news asked for my feedback. Unfortunately, the 2 email addresses given to give feedback don't work. In any event, I vote to keep the bar structure the way it is. I works. The alternatives are too confusing and complicated. Keep it simple, stupid. It is not broke. I have been paying my dues for almost 50 years and I am happy to do so. Thanks for all of the hard work that everyone does.

**Shannon Sperry**

*Attorney*  
DIRECT 206-654-2405



601 UNION STREET ■ SUITE 2600 ■ SEATTLE WA 98101  
FAX 206-340-2563 ■ [WWW.LASHER.COM](http://WWW.LASHER.COM)

[Click here](#) to view my online bio

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# Real Property, Probate and Trust Section

June 17, 2022

On behalf of the WSBA Real Property Probate & Trust Section (RPPT) Section, we would like to give our comments to the Bar of Governors regarding the ETHOS committee and the constitutionality of an integrated bar. We have received briefing on this issue from Kevin Plachy at the WSBA, reviewed the various ETHOS scenarios, and reviewed the recent federal cases regarding integrated bar associations. As you know, the WSBA is an integrated bar, which requires that attorneys join and pay compulsory dues as a condition of practicing law in Washington State. In addition to the regulatory functions of a bar association, such as licensing and disciplining attorneys, the WSBA provides a number of other benefits and services, such as the ethics line, member wellness, and supports Sections in numerous areas of law. Further, the WSBA participates in legislative activities both in regard to germane activities and substantive legislation.

RPPT has a long history of service to its members through a variety of activities, including high-quality continuing legal education programs as well as legislative activities. As a member of the RPPT Executive Committee, each member serves a two-year term and is either responsible for CLE content and presentations or for legislative activities. The legislative activities are summarized as follows:

**Legislation:** legislative activities for each sub-section of the Committee include reviewing and commenting on legislation as it is proposed, drafting bills that further the interests of the members of the RPPT section and responding to comments/concerns related to legislation from members of the RPPT section. Each council has a legislative sub-committee that meets separate from the Committee. Those meetings vary depending on committee and whether it is an active legislative session or not. The council director, as well as the two Committee members working on legislation, attend these meetings along with other members of the legislative committee drawn from RPPT members. Typically, the real property legislative committee is busier than probate and trust committee because there are more bills proposed that affect the practice of law in real property related areas. Within each legislative committee the tasks related to legislative work are divided based on need and interest so some council members will spend more time reviewing and commenting on proposed legislation while others will spend more time drafting new legislation. Committee members may also participate in legislative work groups with members of the House or Senate, may testify to the WSBA legislative committee regarding



## Real Property, Probate and Trust Section

bills sponsored by WSBA and the RPPT section and may be asked by a member of the House or Senate to testify regarding bills in Olympia. The WSBA has a lobbyist that the RPPT section works with during legislative sessions to identify bills that need to be reviewed, to provide RPPT's comments on the bills and to otherwise assist with the Committee's legislative work.

One of the main benefits for the members of the RPPT Section is the work the executive committee does in reviewing, summarizing, commenting, and making our members aware of substantive changes in the law for their area of practice. It is often a great number of hours that is not readily apparent to the Section members or to non-Section members of the WSBA. Being able to rely on experts in the field of real property, trusts, and estates, to help with legislative fixes on issues in the law has had a beneficial impact on shaping recent legislation. Being a part of the WSBA and having subject-matter experts volunteering on behalf of the Section, the Section recognizes that its position on legislative matters holds a lot of influence with members of the legislature. Therefore, the Section is clear and deliberate when it takes on any legislative activity and works within the clear parameters of legislative activity permitted by the WSBA.

The work on legislative matters is important – but under *Keller*, this work is clearly substantive in nature and not “germane,” as defined as relating to functioning of the court system or the law governing lawyers’ activities. The RPPT Executive Committee believes this legislative work is of great benefit to our members. However, it appears that with the ongoing federal court cases, these activities could be ruled as unconstitutional. Even with the WSBA granting a *Keller* deduction on dues to make the WSBA “*Keller* pure,” the RPPT Section Executive Committee believes that the WSBA will continue to be a sitting duck for a lawsuit on its legislative work. Therefore, the RPPT Section Executive Committee urges this committee to not simply continue with the status quo. The RPPT Section Executive Committee encourages the removal of legislative activities from the purview of the WSBA, but keep the remaining functions of the WSBA intact and integrated. We strongly encourage the Board of Governors to adopt a plan to be proactive and thoughtfully remove the legislative functions of the WSBA and its Sections instead of a foreseeable hasty response to an expensive lawsuit on the issue.