

# WASHINGTON STATE BAR ASSOCIATION

To: The President, President-elect, Immediate Past President and  
The Board of Governors

From: Kim Risenmay, Work Group Chair

Date: January 15, 2018

Re: Preliminary Report -- Referendum Review and Revisions Work Group

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**Recommended Action:** Amend certain portions of Article III and Article VIII of the WSBA Bylaws that pertain to the referendum process in order to conform with Washington Supreme Court amendments to GR 12 and to utilize current communications technology.

## **1. Events Leading to the Creation of the Work Group.**

The Board of Governors (BOG) of the Washington State Bar Association (WSBA) completed a review and update of WSBA Bylaws at the September 2016 and January 2017 BOG meetings. On several occasions during that process the BOG discussed but intentionally did not attempt to revisit the referendum provisions in WSBA's Bylaws. This was due to concerns that such a review would fall outside the directions the BOG had given in its charter to the Bylaws Review Work Group.

During its May 18 & 9, 2017 meeting, the BOG formally approved creation of a Referendum Process Review Work Group (the "Work Group") and delegated nomination of Work Group members to the WSBA President. The Work Group's Charter is attached to this report as Attachment A. The final roster of work group members was published on page 439 of the Public Session Materials for the September 28 & 29, 2017 BOG meeting, and the membership of this Work Group complied with the BOG's stated intent to have all viewpoints present and actively participating in the referendum process review. A copy of the Work Group Roster is attached as Attachment B. For your reference, Attachment C contains the pertinent language of WSBA's current Bylaws that pertain to the referendum subject. A November 3, 2017, NWSideBar Blog invited member feedback. See Attachment D.

## **2. Work Group Actions to Date.**

During the months of October, November and December 2017, the Work Group held a total of seven (7) meetings, either in person or via telephone. At these meetings, the Work Group considered the following topics as they pertain to the WSBA referendum process:

- (1) Scope. The types of matters potentially subject to a referendum;
- (2) Petition Signing: In light of current technology, determining what constitutes the signature of a WSBA member and determining acceptable alternative methods for signing a referendum petition;

- (3) Signature Gathering & Verification Processes: In light of current technology, determining acceptable alternative processes that petition sponsors may use to gather the signatures of WSBA members on a referendum petition, together with the process whereby WSBA verifies those signatures;
- (4) Signature Threshold for Valid Petitions: In light of current technology and communication methods, what the threshold number of signatures necessary to make a referendum petition valid should be; and
- (5) Referendum Voting Methods & Thresholds: Alternative methods for (a) conducting a vote on a referendum, (b) validating the votes cast for and against the referendum, and (c) whether some required minimum number of total votes should be necessary before a referendum can take effect.

To date, the Work Group has formulated four proposed recommendations for the BOG to consider. Each of these proposals is discussed in more detail below; and in Attachment E, we have included both a Majority Report, explaining the reasons in favor of a particular recommendation, as well as a Minority Report, explaining the reasons why a particular recommendation might not be appropriate. We recommend that these proposals and their accompanying Majority and Minority Reports be published to the entire WSBA membership for its review, and to allow for and solicit additional membership comments and suggestions on these matters prior to any final BOG action.

### **3. Discussion of Individual Recommendations.**

**Recommendation 1, License Fees**: Majority of the Work Group recommends that license fees should no longer be subject to the referendum process. If the BOG were to agree with this recommendation, the Work Group recommends the following amendments to WSBA’s Bylaws:

#### III. MEMBERSHIP

##### I. ANNUAL LICENSE FEES AND ASSESSMENTS

###### 1. License Fees

Unless established otherwise pursuant to the APR or by order of the Washington Supreme Court, the following provisions apply to member license fees.

\* \* \*

###### 6. License Fee Referendum.

~~Once approved by the BOG, license fees shall be subject to the same referendum process as other BOG actions, but may not be modified or reduced as part of a referendum on the Bar’s budget. The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the Bar’s website, e-mail, and publication in the Bar’s official publication.~~

The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the Bar’s website, e-mail, and publication in the Bar’s official publication. Under GR 12, the amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that the fee is not reasonable. Therefore, license fees are

not subject to a referendum, nor may the license fees be modified or reduced as part of a referendum on the Bar's budget.

## VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

### A. MEMBER REFERENDA.

1. The Board of Governors sets policy for the Bar. Except for license fees, ~~the~~ membership, through a referendum, has the opportunity to effect policy set by the BOG. Membership referenda may accomplish the following:
  - a. Reverse a final action taken by the Board of Governors;
  - b. Modify a final action taken by the Board of Governors;
  - c. Enact a resolution; or
  - d. Amend these bylaws.

Potential reasons why the BOG might choose to **not** adopt these proposed changes are set forth in the Minority Report.

**Recommendation 2, Propose a New Action to the Board of Governors:** Article VIII(A)(1)(c) of WSBA's current Bylaws states that the membership may "enact a resolution" through the referendum process. This language is confusing because it does not explain what the effect of such a resolution would be. The Work Group reviewed earlier versions of the WSBA Bylaws from 1987 and 1989 and learned that this phrase referred to action that WSBA members could take during the WSBA annual meeting, which was formerly held one time each year. Via resolutions, the members present during the annual meeting could propose actions for the BOG to consider. Any such resolution was first forwarded to a Resolutions Committee, which vetted the proposal to determine whether it had merit to warrant the full BOG's consideration; and if the Resolutions Committee felt the proposal had merit, the proposal was then placed on the BOG's agenda. In order to clear up this confusion, in a nearly unanimous vote the Work Group recommended amending this provision to read as follows:

## VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

### A. MEMBER REFERENDA.

1. The Board of Governors sets policy for the Bar. The membership, through a referendum, has the opportunity to effect policy set by the BOG. Membership referenda may accomplish the following:
  - a. Reverse a final action taken by the Board of Governors;
  - b. Modify a final action taken by the Board of Governors;
  - c. Propose a new action to the Board of Governors~~Enact a resolution~~; or
  - d. Amend these bylaws.

Reasons for adopting this proposal are set forth in the Majority Report. No Minority Report was prepared in opposition to this proposal.

**Recommendation 3, Amending Bylaws.** Article VIII(A)I1)(d) states that, through the referendum process, the membership may “Amend these bylaws.” The Work Group considered the fact that such an action would not be a true referendum but, instead, would be constitute action through an initiative. A motion was made to delete this subsection; but a majority of the Work Group rejected that proposal. The reasons for rejecting this motion are set forth in the Majority Report. The Minority Report provides the arguments in favor of eliminating the membership’s power to amend WSBA’s Bylaws.

**Recommendation 4, Petition Filing Deadline.** Currently, Article VIII(A)(2)(e) allows a referendum petition to be filed within 90 days following any action taken by the BOG. But previously, as evidenced by the Bylaws in effect in 1987 and 1989, the membership had been given a 45 day deadline to collect signatures and file referenda petitions. Given the state of modern technology, which allows (1) electronic dissemination of information, and (2) the gathering of electronic signatures for referendum petitions, a majority of the Work Group approved a motion to recommend the following amendment to the Bylaws:

VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

A. MEMBER REFERENDA.

\* \* \*

2. Any Active member may file a petition for a referendum. All petitions must meet the following requirements:
  - a. The petition must set forth the exact language of the proposed resolution, bylaw amendment, or modification/reversal of the BOG action.
  - b. The petition must be signed by at least five percent of the Active membership of the Bar at the time the petition is filed.
  - c. The petition must comply with GR 12. The BOG will determine within 30 days of the filing of a for a referendum if the subject of the petition falls within the requirements of GR 12.
  - d. If the subject of the petition seeks to reverse or modify final action taken by the Board of Governors, then the petition must be filed with the Executive Director within ~~30~~90 days of that final action.
  - e. All petitions for a referendum must be filed with the WSBA Executive Director.

Reasons for adopting this proposal are set forth in the Majority Report. Arguments opposing this proposal are set forth in the Minority Report.

**Other Matters for Consideration:** There are a number of issues that the Work Group has not proposed amending, which might warrant further consideration. These include the following topics:

1. Whether physical signatures are required on a referendum petition, or whether some electronic form of signature is sufficient.
2. Should the threshold number of signatures be changed from the current requirement for 5% of the Active WSBA membership?

3. Should there be some minimum number of Active member participate required for a vote on a referendum to take effect? Currently, there is no required minimum participation for the vote; but in earlier years the Bylaws had this requirement. For example, in the Bylaws in effect in 1989 at least 50% of the entire membership had to participate in the final vote for any referendum to be effective.

**REFEREUNDUM PROCESS REVIEW  
WORK GROUP REPORT  
ATTACHMENT A**



## **REFERENDUM PROCESS REVIEW WORK GROUP**

(Adopted by the WSBA Board of Governors on May 19, 2017)

### **CHARTER**

#### **Background**

The Washington State Bar Association (WSBA) Bylaws contain provisions permitting the membership to file petitions to have a vote of the membership on certain actions taken by the Board of Governors (BOG). Over the course of 2016, a Bylaws Review Work Group drafted amendments to many of the WSBA Bylaws, the last of which were adopted at the BOG meeting in January of 2017. The Bylaws Review Work Group, however, did not review the WSBA Bylaw provisions regarding membership referenda due to concern that the topic may have been outside the scope of the directions from the BOG to the Bylaws Review Work Group. Members of the BOG, however, requested that a separate work group be established to undertake this review, including the receipt of member input, and to suggest any amendments to the WSBA Bylaw provisions determined to be appropriate.

#### **Task Force Purpose**

1. Identify all WSBA Bylaws provisions regarding member referenda to determine the purpose of those provisions and whether the provisions continue to be appropriate for the WSBA.
2. Review materials from other mandatory/unified Bar Associations to determine whether other organizations similar to the WSBA have referendum provisions, and review the topics subject to member referenda and the processes used for member referenda in those Bar Associations that do provide for member referenda.
3. Review relevant materials from other sources regarding appropriate topics, uses and processes for referenda, and consider whether and how that information is relevant to the WSBA and its functions.
4. Consider oral presentations or written materials regarding good governance for organizations and agencies, and budgeting for organizations and agencies with similar-sized budgets and funding sources.
5. Draft suggested amendments to WSBA Bylaws regarding the WSBA referendum provisions, if considered appropriate.
6. Solicit and collect input from WSBA members and others regarding the use of member referenda, including appropriate topics and processes for referenda, both before and after drafts of any suggested amendments are prepared, and regarding any suggested amendments.
7. After considering relevant materials and input, draft and submit to the BOG any final recommendations for amendments to WSBA Bylaws regarding member referenda.

### Timeline

The workgroup shall begin meeting no more than six weeks after appointments are completed, and shall complete its review and submit its report not later than the January 2018 BOG meeting, unless the BOG agrees to extend this timeline.

### Workgroup Membership

The workgroup shall consist of the following voting membership:

- Four current BOG members, one of whom shall be appointed to serve as Chair;
- Three former members or officers of the BOG;
- Four at-large members of the WSBA;
- If available and willing to serve, one member of the Washington Supreme Court;
- The Executive Director or General Counsel of the WSBA, or a designee from WSBA staff.

In accordance with WSBA Bylaws Art. IX.B.2.a. and b., the members and the Chair of the workgroup will be appointed by the WSBA President subject to being accepted or rejected by the BOG. Such appointment and approval shall be completed by no later than the BOG's July 2017 meeting.



**REFEREUNDUM PROCESS REVIEW  
WORK GROUP REPORT  
ATTACHMENT B**



## REFERENDUM PROCESS REVIEW WORK GROUP

### Current BOG Members:

Kim Risenmay (chair)  
Rajeev Mujumdar  
Bill Pickett  
Athanasios Papailiou

### Former BOG Members:

Michele Radosevich  
Marc Silverman  
Brian Kelley

### At large WSBA Members:

Jean Cotton  
Ed Van Hiskes  
Jennifer Hanson  
Krista Van Amerongen

### WSBA Staff:

Sean Davis

**REFEREUNDUM PROCESS REVIEW  
WORK GROUP REPORT  
ATTACHMENT C**

**Pertinent Language of WSBA's Current Bylaws that  
Pertain to the Referendum Process**

III. MEMBERSHIP

I. ANNUAL LICENSE FEES AND ASSESSMENTS

1. License Fees

Unless established otherwise pursuant to the APR or by order of the Washington Supreme Court, the following provisions apply to member license fees.

\* \* \*

6. License Fee Referendum.

Once approved by the BOG, license fees shall be subject to the same referendum process as other BOG actions, but may not be modified or reduced as part of a referendum on the Bar's budget. The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the Bar's website, e-mail, and publication in the Bar's official publication.

VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

A. MEMBER REFERENDA.

1. The Board of Governors sets policy for the Bar. The membership, through a referendum, has the opportunity to effect policy set by the BOG. Membership referenda may accomplish the following:

- a. Reverse a final action taken by the Board of Governors;
- b. Modify a final action taken by the Board of Governors;
- c. Enact a resolution; or
- d. Amend these bylaws.

2. Any Active member may file a petition for a referendum. All petitions must meet the following requirements:

- a. The petition must set forth the exact language of the proposed resolution, bylaw amendment, or modification/reversal of the BOG action.
- b. The petition must be signed by at least five percent of the Active membership of the Bar at the time the petition is filed.
- c. The petition must comply with CR 12. The BOG will determine within 30 days of the filing of a petition for a referendum, if the subject of the petition falls within the requirements of GR 12.

- d. If the subject of the petition seeks to reverse or modify final action taken by the Board of Governors, then the petition must be filed with the Executive Director within 90 days of that final action.
  - e. All petitions for a referendum must be filed with the WSBA Executive Director.
3. All qualifying petitions will be put to a vote of the active membership within 90 days of the date that the petition was filed.

#### B. BOG REFERRALS TO MEMBERSHIP

The Board of Governors may also refer a proposed resolution, bylaw amendment, or other proposal to a vote of the Active membership in accordance with the procedures set forth in these bylaws.

#### C. BALLOT PREPARATION

The Executive Director shall prepare ballots as directed by the BOG. The proponents of the action may submit, for inclusion with the ballot a "statement for" not to exceed 750 word and a "rebuttal of statement against" not to exceed 250 words. The opponents of the action may submit, for inclusion with the ballot, a "statement against" not to exceed 750 words and a "rebuttal of statement for" not to exceed 250 words. The Executive Director will determine the deadlines for filing all such statements with the Bar and provide notice of those deadlines. If more than one opponent statement is submitted, the WSBA President will determine which statement(s) will be submitted with the ballot.

#### D. VOTING PROCEDURES

The procedures set forth in the "Election of Governors from Congressional Districts" section of these bylaws shall be used as a procedural guideline. The ballot, petition, and accompanying statements shall be posted on the WSBA website, distributed electronically to Active members with e-mail addresses on records with the Bar, and mailed to all other Active members. The deadline for return of ballots shall be not less than 30 days from the date of distribution.

#### E. EFFECT OF VOTE

1. All member referenda and BOG referrals only require a majority of those Active members voting to pass. No unsuccessful member referenda may be resubmitted to the membership until two years have passed from the date of the voting results.
2. The BOG may not alter the effects of a member referenda that passed sooner than two years from the date of the voting results.

**REFERENDUM PROCESS REVIEW  
WORK GROUP REPORT  
ATTACHMENT D**



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November 3, 2017

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## Referendum Process Review Work Group Needs Your Input



The referendum provision in the WSBA Bylaws is an important one — It allows for a vote of the membership on certain actions taken by the Board of Governors. Currently, a member referendum may reverse a final Board action, modify a final Board action, enact a resolution, or amend the WSBA Bylaws.

Because of its critical and nuanced nature, the referendum provision was carved out of the scope of work given to a Bylaws Review Work Group in 2016; instead, the Board of Governors created a separate Referendum Process Review Work Group in May 2017 to specifically tackle this topic.

The group's work is just getting underway. Members — including four Board of Governor members, four at-large WSBA members, and three former Board of Governor members — are tasked with reviewing the current referendum process and drafting suggested amendments for Board consideration by January 2018. Appropriately enough, one of the work group's primary responsibilities is soliciting and collecting as much input as possible from WSBA members to provide input for their recommendation.

Toward that end, please email [sherryt@wsba.org](mailto:sherryt@wsba.org) with your thoughts, ideas, and concerns about the WSBA referendum provision and process.

### Learn more:

- [Referendum Process Review Work Group Charter](#)
- [Referendum Process Review Work Group Roster](#)

### About the Author



**Sara Niegowski.** Sara is Chief Communications and Outreach Officer at the WSBA, leading a team dedicated to connecting with and responding to YOU! She's worked in newspapers and K-12 education. She believes the legal profession is one of the most important foundations to our society, it's okay to eat pizza for breakfast, and the zipper-merge needs to be embraced by all drivers. Reach her at [saran@wsba.org](mailto:saran@wsba.org).

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Inez Petersen  
Nov 2, 2017

I ask readers to weigh the above post against this email I received from Brad Furlong. If Brad Furlong stated, "I HAVE NO PLANS TO REOPEN THE BUDGET OR THE LICENSING FEE," which are tied to the referendum process, then what will be the value-added result of this group? More rights or less rights? What is the WSBA afraid of by honoring the Bylaws by holding a vote on the dues increase?

From: Brad Furlong  
Date: Sat, Oct 14, 2017 at 7:41 AM  
Subject: Re: I hope you do not feel misled  
To: Inez Ine Petersen  
Cc: Paula Littlewood , "G. Kim Risenmay"

Ms. Peterson: We feel it is important that our communications are complete, accurate and uniform so as to not misinform our members. That's why we start with a base message. The governors then add their own thoughts. I did not add any due to lack of time as I was heading out on a family vacation. I encourage the governors to engage with attorneys frequently.

I have no plans to reopen the budget or the licensing fee. I do plan to see to it that our fees are spent efficiently on regulatory activities mandated by the Supreme Court and on services that benefit our members.

If you have concerns about the WSBA budget, please feel free to attend the meetings of our Budget and Audit Committee to learn how and why the WSBA budget is constructed as it is and to contribute your thoughts. If you wish, I can ask someone to let you know when the committee next meets so that you can attend.

Best wishes,

Brad Furlong  
Sent from Mobile Device

*reply*



Edward Hiskes  
Nov 4, 2017

I attended the first meeting of the Referendum Workgroup. At that meeting a WSBA officer suggested that the primary purpose of the group was to cut back on membership referendum rights, by making the procedural requirements for a referendum more burdensome, as by increasing signature requirements, etc. He said the Supreme Court, or at least one of the Justices, did not want to deal with another referendum.

To this end, one member of the Workgroup, a non-elected "at large" Governor, was pushing the idea that electronic signature gathering should be eliminated. He wants to require that signatures be gathered on paper. But if the goal is to harass and burden referendum proponents, why stop there? Requiring that signatures be engraved upon marine-grade stainless steel ingots would be even more effective.

*reply*

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**REFERENDUM PROCESS REVIEW  
WORK GROUP REPORT  
ATTACHMENT E**

**MAJORITY AND MINORITY  
REPORTS RELATED TO  
RECOMMENDATION 1**

## **Referendum Process Review Work Group Recommendation**

### **Article III(I)(1)(6) License Fee Referendum and Article VIII A(1) Member Referenda**

#### **Majority Report**

The Referendum Work Group considered whether the referendum power should allow members to directly set license fees. The majority felt the referendum power is not appropriate for this purpose in light of (1) the Supreme Court's power to review and modify license fees, (2) the disruption that fee reductions cause in the functioning of WSBA, and (3) the other avenues available to the membership for input on the budget and license fees.

A referendum on license fees may not adequately fund the activities that the Supreme Court has delegated to WSBA and thus conflict with the Court's authority. The Court regulates the practice of law in GR 12, which sets forth the goals of the Court's regulation and authorizes WSBA to carry out these goals. The rule further authorizes specific activities that WSBA is to perform on behalf of the court, such as administering the bar exam and discipline system, but also including such things as producing CLEs and supporting indigent legal services. One of the authorized activities is "establishing the amount of all license, application, investigation, and other related fees. . ." GR 12.2(22). That section further provides:

The amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that it is not reasonable.

Although it was added following the 2012 referendum, the provision merely codified the existing plenary authority of the Court. More recently the Court exercised this authority by determining the fee set by the BOG was reasonable and the resulting fee if the referendum were to pass was unreasonable. *See* Order No. 25700-B-57-1 (January 5, 2017).

In light of the Supreme Court's active supervision of license fees, the majority felt that the WSBA bylaw allowing referenda to set fees was inappropriate and could result in the Court determining that a reduction in license fees is not reasonable.

A referendum to reduce the license fee also disrupts the functioning of the WSBA. One of the Court's directives to the WSBA is to "Operate a well-managed and financially sound association. . ." Good administrators plan for the future, minimizing the impacts of financial changes. After the 2012 referendum, however, the WSBA was forced to abruptly alter its own operations and partnerships with other entities in the legal community, creating a climate of extreme uncertainty for many. This kind of uncertainty negatively affects program delivery.

A referendum on license fees is also unnecessary. License fees are driven by the budget. Members can attend Budget and Audit Committee meetings as well as the Board of Governors meetings where the budget is discussed and adopted. Moreover, the budget itself may be modified by referendum. There are multiple avenues that members can utilize to suggest or mandate that certain programs be cut back. The license fee referendum is a blunt instrument that may or may not achieve the goals that members desire from a license fee rollback.

For all of the above reasons, the majority of the Referendum Work Group voted to eliminate the use of member referenda to modify the license fees set by the Board of Governors and reviewed by the Supreme Court.

REFERENDUM WORK GROUP  
PROPOSED CHANGES ON LICENSE FEES  
Proposed by Brian Kelly, Marc Silverman, and Michele Radosevich

I. ANNUAL LICENSE FEES AND ASSESSMENTS

6. Licensee Fee Referendum

The license fees are not subject to a referendum, nor may the license fees ~~Once approved by the BOG, license fees shall be subject to the same referendum process as other BOG actions, but may not~~ be modified or reduced as part of a referendum on the Bar's budget. Under GR 12.1(22), the amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that the fee is not reasonable. The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the Bar's website, e-mail, and publication in the Bar's official publication.

VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

A. MEMBER REFERENDA

1. The Board of Governors sets the policy for the Bar. Except for license fees, ~~the~~ membership, through a referendum, has the opportunity to affect policy set by the BOG. Membership referenda may accomplish the following:
  - a. Reverse a final action taken by the Board of Governors;
  - b. Modify a final action taken by the Board of Governors;
  - c. Enact a resolution; or
  - d. Amend these bylaws.

Referendum Workgroup Recommendation #1

**Article III.I.6 “License Fee Referendum”/Article VIII.A.1 “Member Referenda”**

Minority Report

Perhaps the most extensive discussion and debate undertaken by the work group concerned the specific bylaw provisions encompassing license fee referenda; specifically, Article III.I.6 and Article VIII.A.1.

Two proposals were presented and voted upon on 11/14/17<sup>1</sup>. The minority vote for each motion described below consisted of all of the At Large WSBA Members of the Work Group present at this meeting and one current BOG member. The proposals were as follows:

1. The first proposal retained the ability for members to bring a referendum concerning licensing fees and only minimally altered the language of Article III.I.6 as follows:

*Once approved by the BOG, referenda pertaining to license fees shall be subject to the same referendum process ~~as other BOG actions~~ set forth in Article VIII of these bylaws, but may not be modified or reduced as part of a referendum on the Bar's budget. The membership shall be timely notified of the BOG ~~resolutions~~ action setting license fees both prior to and after the decision, by posting on the Bar's website, e-mail, and publication in the Bar's official publication.*

This proposal included no changes to Article VIII.A.1 to exempt license fees from member referenda.

**By a vote of 4-3, this first proposal failed.**

2. The second proposal removed from Article III.I.6 the ability for members to bring a referendum concerning licensing fees and included a reference to GR 12.1 as follows:

*The license fees are not subject to a referendum, nor may the license fees ~~Once approved by the BOG, referenda pertaining to license fees shall be subject to the same referendum process as other BOG actions, but may not be modified or reduced as part of a referendum on the Bar's budget.~~ Under GR 12.1(2), the amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that the fee is not reasonable. The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the Bar's website, e-mail, and publication in the Bar's official publication.*

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<sup>1</sup> It should be noted that whenever a motion was presented throughout this process only those work group members present were able to cast a vote; i.e. no proxies were allowed.

When the motion to approve the above language was made, a friendly amendment passed to reorder the sentences to improve the flow of the language and is reflected in the recommended bylaw amendment now before the BOG.

This second proposal also included adding a new clause to Article VIII.A.1 that exempted license fees from referenda as follows:

*The Board of Governors sets the policy for the Bar. Except for license fees, the membership, through a referendum, has the opportunity to affect policy set by the BOG. Membership referenda may accomplish the following:*

**By a vote of 4-3, this second proposal, as amended, passed.**

**The minority argument for each of the proposals, as advanced by all of the At-Large Member representatives and the governor that joined them, is as follows:**

The membership's power to bring a referendum on licensing fees for more than a decade has existed with only the limitation being that such an issue may not be part of a referendum brought as to the Bar's budget. The 2016 referendum regarding license fees failed without the membership being given the opportunity to vote on the issue due to the *sua sponte* order issued by the Supreme Court which found that the fees approved by BOG were reasonable and the effect of the pending referendum, if successful, would be unreasonable. Prior to that, all such referenda were allowed to run their course in compliance with then-existing bylaw provisions. Some of these referenda failed and some passed. The last successful referendum brought as to license fees resulted in a rollback of license fees in 2012. Rather than reducing the footprint of the existing WSBA programming to remain within its budget under the resulting reduced license fee, the Bar instead utilized reserve funds to maintain the vast majority of programming regardless of whether mandatory or non-mandatory in nature.

The primary source of revenue for WSBA is the license fee imposed on its members. The license fee is not broken out for the members to determine which part of it funds the mandatory functions of the Bar such as regulatory and disciplinary functions and which part funds the non-mandatory functions such as CLE, various boards established by the Supreme Court, member benefits, and the like.

Because WSBA is an integrated, mandatory bar association, members currently have no choice but to pay the full license fee imposed upon them if they wish to practice law in this state.

The only real means the membership has to prevent its representatives (i.e. BOG) from increasing license fees to fund ever-expanding and/or *non-mandatory* WSBA functions or programs has been through the referendum process.

The minority position throughout this process has been that it is important in a democratic process for the membership to retain its right to act as a check on the governing body through a referendum process that holds the governing body accountable. This is particularly true when it comes to the mandatory license fee imposed on anyone wishing to practice law in this state.



## Referendum Workgroup Recommendation #1

### Article III.I.6 “License Fee Referendum”/Article VIII.A.1 “Member Referenda”

#### Minority Report

Perhaps the most extensive discussion and debate undertaken by the work group concerned the specific bylaw provisions encompassing license fee referenda; specifically, Article III.I.6 and Article VIII.A.1.

Two proposals were presented and voted upon on 11/14/17<sup>1</sup>. The minority vote for each motion

described below consisted of all of the At Large WSBA Members of the Work Group present at this meeting and one current BOG member. The proposals were as follows:

1. The first proposal retained the ability for members to bring a referendum concerning licensing fees and only minimally altered the language of Article III.I.6, and included no changes to Article

VIII.A.1 to exempt license fees from member referenda. **By a vote of 4-3, this first proposal failed.**

2. The second proposal removed from Article III.I.6 the ability for members to bring a referendum concerning licensing fees and included a reference to GR 12.1. **By a vote of 4-3, this second proposal, as amended, passed.**

#### **The minority argument for each of the two proposals, as advanced by all of the At-Large Member representatives and the governor that joined them, is as follows:**

The membership’s power to bring a referendum on licensing fees for more than a decade has existed with only the limitation being that such an issue may not be part of a referendum brought as to the Bar’s budget. The 2016 referendum regarding license fees failed without the membership being given the opportunity to vote on the issue due to the *sua sponte* order issued by the Supreme Court which found that the fees approved by BOG were reasonable and the effect of the pending referendum, if successful, would be unreasonable. Prior to that, all such

referenda were allowed to run their course in compliance with then-existing bylaw provisions. Some of these referenda failed and some passed. The last successful referendum brought as to license fees resulted in a rollback of license fees in 2012. Rather than reducing the footprint of the existing WSBA programming to remain within its budget under the resulting reduced license fee, the Bar instead utilized reserve funds to maintain the vast majority of programming regardless of whether mandatory or non-mandatory in nature.

The primary source of revenue for WSBA is the license fee imposed on its members. The license fee is not broken out for the members to determine which part of it funds the mandatory functions of the Bar such as regulatory and disciplinary functions and which part funds the non-mandatory functions such as CLE, various boards established by the Supreme Court, member benefits, and the like.

Because WSBA is an integrated, mandatory bar association, members currently have no choice but to pay the full license fee imposed upon them if they wish to practice law in this state.

The only real means the membership has to prevent its representatives (i.e. BOG) from increasing license fees to fund ever-expanding and/or *non-mandatory* WSBA functions or programs has been through the referendum process.

The minority position throughout this process has been that it is important in a democratic process for the membership to retain its right to act as a check on the governing body through a referendum process that holds the governing body accountable. This is particularly true when it comes to the mandatory license fee imposed on anyone wishing to practice law in this state.

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<sup>1</sup> It should be noted that whenever a motion was presented throughout this process only those work group members present were able to cast a vote; i.e. no proxies were allowed.

**REPORT RELATED TO  
RECOMMENDATION 2**

## Referendum Workgroup Recommendation #2

### **Article VIII.A.1.c “Member Referenda”**

Subpart c of Article VIII.A.1 currently includes a permissible referenda function to “Enact a resolution”. However, following extensive research and discussion regarding historic bylaw provisions, it was agreed that a referendum is no longer required for any member to bring forth to the Board of Governors a proposed resolution for consideration. While in days passed resolutions may have been used differently, today resolutions are normally just a statement of support for a proposition for which no further action is required.

The work group tried to discern the intent of the provision. One possible meaning may have been to provide a means to members for bringing what is now typically observed in state government as a citizen initiative that binds the legislature to a new law if passed by the voters.

Two proposals were discussed for replacement of this provision. The first, if approved, would have been akin to what we know as the citizen initiative process which binds the legislature (i.e. BOG) if enough votes are cast by the electorate (i.e. members). The second, if approved, would have been akin to simply a proposal by the citizens (i.e. the members) to the legislature (i.e. BOG) to be considered and voted upon by the legislature if they so choose to do so.

After some discussion and debate undertaken by the work group, the language agreed to by a 7-2 majority was a compromise version of the two proposals which is as follows:

#### **ARTICLE VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP**

##### **A. MEMBER REFERENDA**

1. *[see change proposed elsewhere];*
  - a. *[unchanged];*
  - b. *[unchanged];*
  - c. ~~Enact a resolution~~ *Propose a new action to the Board of Governors; or*
  - d. *[unchanged].*

Because of the small number voting against this proposal, no minority report was sought or required.

**MAJORITY AND MINORITY  
REPORTS RELATED TO  
RECOMMENDATION 3**

Referendum Workgroup

**Majority Report on VIII.A.1.d.**

**“Amendment of the Bylaws by the Membership”**

Discussion and debate was had by the committee over the potential striking of the line:

*“d. Amend these bylaws.”*

from the Bylaws. By a majority vote of the committee it was determined that the Bylaws should *not* be altered in this regard.

The membership’s power to amend the bylaws has existed throughout the existence of the WSBA, and indeed the Bar Act describes it as a mandatory part of its chartered existence: *“Any such rule may be modified, or rescinded, or a new rule adopted, by a vote of the active members under rules to be prescribed by the board of governors.”* RCW 2.48.050 (7).

It is widely understood that the membership cherishes the concept of their democratic check of authority via referendum. The WSBA not only depends on the buy-in of its membership for countless volunteer hours and license fees to operate, but also upon the mandate of those certain unalienable Rights bestowed upon the membership by both the Bar Act and good policy. There is no more formal or clear direction that the membership can give to the BOG than by amending the bylaws.

In addition to it being bad policy to remove the members’ power to act as a check or direct the organization to better meet the needs of the membership, there are the optics to consider. At this time, when membership participation and goodwill is at an anecdotally low point, and where the WSBA is perceived as uninterested in member comment and feedback, removing further participation and governance rights from the membership will result in increased member disengagement.

## REFERENDUM WORK GROUP RECOMMENDATIONS

### Article VIII A(1)(d)

The work group, having voted to remove member fee modifications from the referendum process, then discussed other possible purposes that membership referenda might serve. The narrower question became whether the membership should retain the ability to amend the bylaws through use of referenda. A majority agreed that the membership should retain this opportunity. A minority disagreed, arguing that amendment of the bylaws is not an appropriate area for referenda by the membership at large.

Historically, although our bylaws have included this ability for amendment by referenda, they have never been amended this way; the reason is easy to understand. Amendment of the bylaws requires an enormous amount of thought and work. Bylaws operate as a unified whole in governing any organization, including the WSBA. Consequently, whenever bylaws require amendment, virtually without exception, it is a lengthy and involved process, usually spanning many months, if not a full governing year, to accomplish. Indeed, just as with the “referendum process” issues undertaken here, typically, an entire taskforce is assembled specifically for this purpose. The BOG, by virtue of its membership and its working relationship with staff, has unique expertise in such detailed analysis and drafting.

Amending the bylaws is different than, for example, the proposal of modifications to an existing program. Such a change can be made by the BOG alone, addressing the program and modifications thereto as a unit. Expertise in the particular program area is easily brought to bear so that substantive underpinnings for such changes can be readily developed. The same is not true of the process amending bylaws. Such action by the BOG requires deep deliberation and

close study over an extended period to ensure not only specific effectiveness of the proposed amendment, but overarching consistency with the entirety of the bylaws. The minority believes that this should not be undertaken based on the occasional idea of individual members, but instead should be the exclusive province of the deliberative, cohesive governing body.



## REFERENDUM WORK GROUP

### VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

#### A. MEMBER REFERENDA

1. The Board of Governors sets the policy for the Bar. The membership, through a referendum, has the opportunity to affect policy set by the BOG. Membership referenda may accomplish the following:
  - a. Reverse a final action taken by the Board of Governors;
  - b. Modify a final action taken by the Board of Governors;
  - c. Enact a resolution; or
  - d. ~~Amend these bylaws.~~

**MAJORITY AND MINORITY  
REPORTS RELATED TO  
RECOMMENDATION 4**

REFERENDUM WORK GROUP RECOMMENDATIONS:  
REDUCTION OF REFERENDUM PETITION FROM 90 TO 30 DAYS

Article VIII A(2)(d)

An important element of the Membership Referendum process concerns the amount of time members should have to file referendum petitions. Under the Bylaws, historically, members have had 90 days within which to petition for a referendum on actions by the Board of Governors (BOG). Technology, however, has dramatically enhanced members' ability to receive notice of the BOG's work. Only recently, for example, have broad based website and mass email capabilities been used by the WSBA leadership and staff to disseminate information to the membership. Traditionally, action by the BOG was disseminated via reports in "Northwest Lawyer", WSBA's monthly print publication. In light of these technical realities and limitations, tradition held that 90 days were needed to provide adequate opportunity for members to petition for referenda on BOG action.

Advances in technology have changed this picture radically. BOG meeting materials are no longer disseminated in "print" but instead are provided to the BOG and the WSBA membership electronically. Any member can now access all BOG materials online, not only during BOG meetings, in real time, but in advance of *and* following BOG meetings. Since most, if not all, BOG action typically occurs on the basis of at least an initial "first reading" of the item, with formal action taken in subsequent meeting(s), "work in progress" that leadership and staff are involved with get comprehensive review over an extended period. Combined with the fact that many BOG meetings (although not all) are available on "webinar" for membership

viewing/participation in “real time”, the majority of the referendum work group believes that the membership has unprecedented access to BOG information and action. Given these current realities and the elimination of many historic notice limitations, the up-dating of the referendum process included a shortening of the referendum petition window to a period which is considered more consistent with the current flow of BOG work and the greatly enhanced availability of information and notice to the membership at large. Finally, the majority of the referendum work group believes that shortening the referendum petition period is consistent with President-Elect Bill Pickett’s plea for greater member involvement and participation in the important work of the WSBA.

Article VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

A. MEMBER REFERENDA

2. *[unchanged]*

d. If the subject of the petition seeks to reverse or modify final action taken by the Board of Governors, then the petition must be filed with the Executive Director within 30~~90~~-days of final action.

## REFERENDUM WORKGROUP RECOMMENDATION #4

### **Article VIII.A.2.d “Member Petition for Referendum – Time”**

#### Minority Report

The work group meeting on 11/21/17<sup>1</sup> began with a discussion on whether 90 days was a sufficient time-frame for WSBA members to file a petition for a referendum seeking to reverse or modify final action taken by the Board of Governors. The seven members of the work group present<sup>2</sup> determined the current ninety (90) day timeframe to be sufficient, but some complained - believing it too generous.

Proposed language was presented and voted upon on 12/1/17. The minority vote for this motion consisted of all of the present and participating At Large WSBA Members<sup>3</sup> of the Work Group and one current BOG member. The proposed language reduces by two-thirds the time frame during which WSBA Membership may file a petition seeking to reverse or modify a final action taken by the Board of Governors from ninety (90) days to thirty (30) days.

The minority argument for this proposal as advanced by all of the At-Large Member representatives and the governor that joined them is as follows:

A petition must be signed by at least five percent of the Active membership of the Bar at the time the petition is filed.<sup>4</sup> As of 11/1/2017, there were 32,517 Active WSBA members.

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<sup>1</sup> The author, Krista K. van Amerongen was not present for this discussion. She relied on her own notes from other meetings as well as Minutes.

<sup>2</sup> Members participating: Chair G. Kim Risenmay, Rajeev Mujumdar, William Pickett, Athan Papailliou, Michele Radosevich, Brian Kelly, and Edward Hiskes. Not present: Krista K. van Amerongen, Marc Silverman, Jean Cotton, and Jennifer Hanson.

<sup>3</sup> This included Krista K. van Amerongen, Edward Hiskes, and Jean Cotton. Jennifer Hanson did not attend the meeting

<sup>4</sup> Article VIII A(2)(b)

That means a petition would require a minimum of 1,626 signatures *at the time the petition is filed.* The petition must comply with GR 12.<sup>5</sup>

First, if this is all done with paper (i.e., a wood product) and not via electronic means, it is virtually impossible to comply with within 30 days. Even considering the most optimistic circumstances, at the very least, one must be present when the BOG votes, then immediately draft a petition, photocopy that petition over 32,000 times, comb the WSBA lawyer directory to manually obtain mailing information for each member (or submit a request for a mailing list of all members to WSBA via a public information request and await a response), address over 32,000 letters, pay for over 32,000 stamps (nearly \$13,500) to mail the proposed petition to members, wait about five business days for membership to receive the letters, then wait for members to respond in writing. Utilizing email or fax to disseminate the petition would consume about the same amount of time although save the cost of stamps!

Second, it is highly improbable for members unable to attend a BOG meeting, especially when not telecast, to even learn what occurred within 30 days. Often, minutes are published two months *after* the BOG meeting. Even were minutes published in thirty (30) days, the time frame in which a member may file a petition is expired. Right now, BOG members who have already scheduled time to be at the meetings only get materials a few business days before the meetings. It is unreasonable and impractical to believe or to require average members, located across the state, to: (1) become aware of issues that might affect them at the last moment, (2) cancel appointments and close shop for the day, (3) find coverage for court matters, and (4) travel (up to five hours one way) ... All in an effort just to be briefed about issues in the hopes there is not a vote upon which they would need to try to organize a referendum.

The sole outcome of a thirty (30) day limit is elimination of member referenda with regards to a final action by the BOG. Ultimately, the loss of due process for 32,000+ members who are subject to the will of fifteen (15) active members – approximately 0.0005% of the WSBA membership. Good ideas need not hide behind procedure. Timely publication of BOG meeting information, followed by sufficient time for the membership to respond, promotes collaboration and participation between the BOG and the membership. Reasonable minds may

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<sup>5</sup> Article VIII A(2)(c); the BOG “will determine, within 30 days of the filing of a petition for a referendum, if the subject of the petition falls within the requirements of GR 12.

disagree – the referendum process exists so that the membership has a clear, effective, transparent mechanism by which to express its perspective regarding final action of the BOG. Likewise, if the BOG is in fact representing the membership with regards to WSBA programming, goods, and services, reducing the time available to challenge or modify a final BOG action such that it eliminates due process for the membership only serves as an impediment.

Ninety (90) days is the current standard and has never presented prejudice to the BOG. Ninety (90) days is a reasonable time period for County Bars and Sections to gather and discuss merits and process final results. It is not an unusually lengthy time period and allows for proper dissemination and discussion of a referendum. Eliminating a reasonable time period would be an act of bad faith, resulting in the virtual elimination of the referendum.

It is widely understood that the membership cherishes the concept of their democratic check of authority via referendum. The WSBA not only depends on membership for countless volunteer hours and dues to operate, but also upon the mandate of those certain unalienable Rights bestowed upon the membership by both the Bar Act and good policy. In addition to it being bad policy to virtually remove the members' ability to act as a check or direct the organization to better meet the needs of the membership, there are the optics to consider. Removing further participation and governance rights from the membership will result in increased member disengagement and further antagonize an already disenchanting membership.