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August 9, 2016

Via email to bef@furlongbutler.com

and via U.S. Mail to:

Gov. Brad Furlong

District 2 Representative

WSBA Board of Governors

825 Cleveland Avenue

Mount Vernon, WA 98273

Re: WSBA Bylaws

Dear Mr. Furlong:

First of all, thank you for serving as our District 2 Representative. I expect that it takes a lot of your time to serve in this capacity, and I appreciate your work on behalf of your District 2 colleagues.

In your recent message to District 2 attorneys, you invited us to provide comment and feedback on the proposed WSBA Bylaw changes. As I expect you know, many members of the Bar, including myself, are concerned and upset about the direction the WSBA seems to be heading. Changes to the Bylaws are just one component of the changes evidencing this new course.

In addition, some attorneys, including myself, are disturbed about the process by which the Bylaw changes are proposed. The most disturbing aspect is that a final version of the Bylaws are not planned for release until sometime in mid-August, with the Bylaws up for a final vote at the regular September Board of Governors meeting (to be held before the new Governors take office).

Specifically, below are the items in the Bylaws draft (6/2/16) that are most concerning to me:

1. Removing the word "Association" from WSBA and striking all references to the WSBA serving its members and the membership. This makes it very clear that the mandatory

Bar no longer serves its members and in fact, serves interests that can at times be contrary to its members' interests.

2. Expanding the number of the Board of Governors; allowing for three appointed non-lawyers. This is not democratic. We vote for our Governors. Why should there be three non-lawyers, appointed by the Supreme Court, who are Governors? This will give rise to more political intrigue and distrust between the Bar, its members, the Supreme Court, and even the public.

In addition, non-attorneys (LLTs and possibly also LPOs) are dramatically overrepresented in the proposed revised Board of Governors. This does not make sense.

3. Revoking the membership's ability to set bar dues, and giving the Supreme Court the authority to set dues. Again, we have a mandatory bar, and ceding away yet more authority to the Supreme Court is objectionable.

I hope you will consider these concerns and others that have been raised by attorneys in your district and elsewhere. I appreciate your time.

Very truly yours,



Mimi M. Wagner

cc/email and U.S. Mail:

Anthony Gipe, Work Group Chair, adgipeWSBA@gmail.com

Darlene Neumann, WSBA liaison, darlenen@wsba.org

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William Jay Weissinger
487 MacGinitie Road
Friday Harbor, WA 98250

August 11, 2016

Via email to bef@furlongbutler.com

Gov. Brad Furlong
District 2 Representative
WSBA Board of Governors
825 Cleveland Avenue
Mount Vernon, WA 98273

Re: WSBA Bylaws: Request for consideration as to whether implementation of the Bylaws changes would violate the Board's fiduciary duties.

Dear Mr. Furlong:

In your recent message to District 2 attorneys, you invited us to provide comment and feedback on the proposed WSBA Bylaw changes. I've set out below some comments and questions regarding the portions of the Bylaws draft (6/2/16) that are most concerning to me. When you were on San Juan Island to meet with the local bar a few months ago, I got to know you and your wife a little bit at the Yacht Club and I enjoyed that, so please understand: none of my comments are personal.

1. The proposal is to remove the word "Association" from the WSBA and to strike all references to the WSBA serving its members and the membership.
 - This change, if implemented would make it very clear that the mandatory Bar no longer serves its members and in fact, serves interests that can at times be contrary to its members' interests.
 - Aren't the members of the Board of Governors obligated by their fiduciary duties to act in the interests of the WSBA members?
 - It cannot be in the interests of WSBA members to have the WSBA no longer be required to act in its member's interests.
 - If this change is not be in the interest of the WSBA members, would the members of the Board of Governors be violating their fiduciary duties to the WSBA members by voting in favor of this Bylaws amendment?
 - If it is true that the Board of Governors, by voting for this amendment, would be violating its fiduciary duties to its members, then would such a vote be grounds for disciplinary action for violation of the Rules of Professional Responsibility? For criminal prosecution? For a civil suit? I've not reviewed the grounds for such actions, but the possibilities concern me.

2. How would expanding the number of the Board of Governors to allow for three appointed non-lawyers be in the interests of the Bar members? I think it would not. In addition, non-attorneys (LLTs and possibly also LPOs) are dramatically

overrepresented in the proposed revised Board of Governors. This does not make sense, and again, voting for this amendment may violate the fiduciary duties of the members of the Board of Governors.

3. Revoking the membership's ability to set bar dues, and giving the Supreme Court the authority to set dues would not be in the interests of the members, and indeed, as you know, the members voted against a dues increase proposed by the WSBA. In my preliminary opinion, this may be a violation of the Board of Governors' fiduciary duty, when the members recently voted against the WSBA's proposed dues increase.
4. A final version of the Bylaws is not planned for release until sometime in mid-August, with the Bylaws up for a final vote at the regular September Board of Governors meeting, to be held before the new Governors take office.

In your e-mail of August 5th to District 2 members, you said that

A special board meeting will be held on Aug. 23 (10 a.m. – 3 p.m.) in Seattle at the WSBA Conference Center. You are welcome to attend in-person or join via webcast. Agenda items include:

- Proposed WSBA Bylaw Amendments (first reading)
- Proposed GR 12 Amendments (first reading)
- Sections Policy Work Group Recommendations (first reading)
- Suggested Amendments to APRs for Administrative Coordination (second reading)

The first two items listed above are the culmination of two years' work by the Board to review, accept and implement the report from the Governance Task Force. The Task Force report can be found [here](#) and the Board's final response, adopted in September 2015, can be found [here](#).

You failed to add that,

“by the way, the Bylaw Amendments will remove the obligation of the WSBA to act in your interests, and, because you unwisely voted down a WSBA dues increase, will take all dues-making decisions out of your hands and give dues-setting power to the Supreme Court. And further, the Amendments will be adding three appointive members to the Board of Governors, which will further dilute your power, and will result in a Board on which LLLT's (and possibly LPO's?) are overrepresented.”

In light of what appears to be, in my preliminary opinion, possible violations of the Board's fiduciary duties should it pass these amendments, proposing to do so in a rush, before the new Board members take office, is subject to the possible interpretation that the Board wants to keep the proposed Bylaws changes quiet until their adoption is a *fait accompli*. For this

reason, I ask that the Board withhold consideration of the new changes until the new Governors take office.

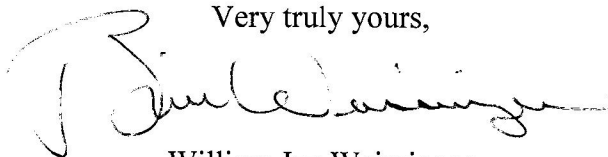
I've not reviewed all of the background materials. Perhaps, with more time, I'd change my mind on some of these points. That said, it would be wrong, and potentially a further violation of the Board's fiduciary duties, to take action on this Bylaws proposal without first publicizing to Bar members the substance of the proposed amendments and soliciting their opinion. What you've done so far (dismissing major amendments as merely implementing the work of a bylaws task force) doesn't count and indeed could be taken, by someone looking askance at the proposed action, as subterfuge.

I had a boss who used to say "the nose knows" – and if I were the counsel for the Board of Governors, I'd be warning you that a vote for the Bylaws changes could constitute a fiduciary violation of the Board of Governors responsibilities, and as such, might be actionable. I'm not threatening to take such actions myself, mind you – I'm happy in my retirement – but if the Board has not already retained counsel to consider these issues, I strongly suggest that it do so.

Although I remain licensed to practice, I am, as I said above, a retired attorney. It is only this status as being retired that allows me to be as frank as I have been. Others I know in the Bar feel as strongly as I do, but are wary of inflaming the Board's anger when the result might be an unexpected audit by the Bar's regulatory arm. For this reason, you should not assume that others agree with the BOG merely because they haven't thought it wise to be as frank as I've been.

I also am licensed to practice in Massachusetts, which has no mandatory Bar. The State regulates Bar members. While there is a Bar Association, members may join it or not – and many attorneys do join it, because it is in their interests to do so. I'd support that kind of change here in Washington – but such changes should be by statute.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William Jay Weissinger".

William Jay Weissinger

cc/email: Anthony Gipe, Work Group Chair, adgipeWSBA@gmail.com
Darlene Neumann, WSBA liaison, darlenen@wsba.org

From: [Carla Higginson](#)
To: bef@furlongbutler.com
Cc: adgipeWSBA@gmail.com; [Darlene Neumann](#); rajeev@northwhatcomlaw.com; [Garrett Beyer](#)
Subject: Opposition to proposed by-law changes
Date: Friday, August 12, 2016 10:53:13 PM
Attachments: [image001.png](#)

Gov. Brad Furlong
District 2 Representative
WSBA Board of Governors

Re: WSBA proposed by-law changes

Dear Brad:

I am writing to urge you to reject the proposed changes to the WSBA By-laws. While I note that it has been reported about how many times the task force and BOG governance committee has met to discuss the proposed changes, it is disingenuous to suggest that such meetings, even if open to the public, were adequate to call to the attention of typically busy practicing attorneys the depth and breadth of the frankly shocking changes to the organization to which we are required to belong in order to make our livings in the learned profession of the law.

Over the past 36 years, I have noticed an increasing disdain by the Supreme Court for attorneys, and an increase in their interest in promoting the practice of law by non-attorneys. The proposed by-law changes move things further along that continuum by adding three non-attorneys to the BOG (to be appointed by the Supreme Court, who as already noted does not support or seem to understand the needs of practicing attorneys), not to mention the effect on our representative democracy in the WSBA by allowing three of the governing body to be appointed rather than elected, thus not being answerable to any constituency at all. Ask any practicing attorney if his or her non-lawyer friends or family members really understand the stresses and challenges of practicing law, and the answer is likely to be a resounding “no.” Yet the WSBA now proposes to have us regulated by three people who will have little knowledge of what is like to practice law, the practical and ethical dilemmas we face daily, or even the pace that a diligent attorney must keep up to provide ethical service to his or her clients. I am strongly opposed to this change and ask you to oppose it. Further, there is an inherent conflict between those of us who have chosen to attend four years of college and three more years of law school, and those such as limited liability legal technicians who are allowed to do many things that attorneys can do, only without the training and education. Placing non-attorneys in positions of power and authority over attorneys is accordingly unwise and will not be helpful to a proper oversight of the attorney members of the WSBA. If you doubt that this conflict exists, just see the short thread on NW Sidebar about the LLLT program in which several attorneys (including myself) expressed dismay about allowing non-attorneys to practice law; this comment was posted by a LLLT on December 6, 2015: *“Yes, we LLLTs are the new kids on the block and will do a good job if not better than attorneys, thank you!”*

I also urge you to oppose the removal of the word “Association” from the WSBA. The use of this word was likely an advised choice in the early days of the WSBA when collegiality and professional

interactions with each other were actually important and were presumably promoted by the WSBA. While there is much less of either any more, I do not think it wise for our professional organization to sound the death knell on them entirely. Likewise, removing the references to the WSBA serving its members is unwarranted. While I would have to agree that the WSBA has recently promoted an “us vs. them” mentality (even the WSBA website is a nightmare to navigate), this should not be the goal of our organization. Why should our own professional organization not want to assist its members? Such assistance could only improve the delivery of legal services to the public.

Finally, I urge you to oppose the proposed revocation of the membership’s ability to set our own bar dues. Continuing with the theme of “us vs. them” that we are seeing, it is amazing that the lingering resentment from the WSBA governance continues to drive such matters as trying to move the establishment of dues to the Supreme Court (who is surely busy enough with their case load already, and who has repeatedly demonstrated that they are uninterested in the comments or views of practicing attorneys, witness the creation of the LLLT program over strongly voiced objection by many attorneys).

In sum, there is no good reason to implement any of the proposed by-law changes, and there are many good reasons to decline to do so. And, just because a lot of time has been spent on these misguided proposed changes does not justify continuing to move forward with their passage. Please show practicing attorneys that you can stand up for our interests by voting against the proposed by-laws.

Thank you for your time in considering this information. I am happy to speak with you further should you wish to do so.

Very truly yours,

Carla J. Higginson & Garrett J. Beyer

Cc: Mr. Gipe
Ms. Neumann
Mr. Majumdar

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