


<p>WASHINGTON STATE BAR ASSOCIATION</p> 	<p>Examining the Historical Organization and Structure of the WSBA (ETHOS of the WSBA) Saturday, February 5, 2022, 9:00 a.m. – 4:00 p.m. 1325 Fourth Avenue, Suite 600 Seattle, Washington 98101-2539 Zoom Option: https://wsba.zoom.us/j/82045982412?pwd=c1FUZv8wMmdIbmZ3U1UxUS9CRmdqUT09</p>	
<p>Reading Materials: ETHOS Charter (attached, p. 3) Brief History of WSBA (attached, p. 4) List of Cases (attached, p. 5) 2018-19 Bar Structure Work Group Final Report & Minority Report 2018-19 Bar Structure Work Group Resources September 2019 Washington Supreme Court Response to Bar Structure Work Group Report Washington State Bar Act – January, 1933</p>		
<p>AGENDA</p>		
<p>9:00 a.m. – 10:00 a.m.</p>	<p>Welcome</p> <ul style="list-style-type: none"> • Opening Remarks • Meeting Decorum and Format • Charter Review and Objective <ul style="list-style-type: none"> • Information Gathering • Exploring Options • Recommendation(s) to the Supreme Court • Call for comments 	<p>Pres. Brian Tollefson</p>
<p>10:00 a.m. – 11:00 a.m.</p>	<p>Brief History of the WSBA</p> <ul style="list-style-type: none"> • Formation of Voluntary Bar • Regulation pre-1933 • State Bar Act of 1933/Formation of Integrated-Mandatory Bar • Separation of Powers • Regulatory Rulemaking • Revisiting the Structure of WSBA 	<p>Chief Disciplinary Counsel Doug Ende</p>
<p>11:00 a.m. – 11:15 a.m.</p>	<p>BREAK</p>	

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11:15 a.m. – 12:00 p.m.	Case Law Concerning Mandatory Bar Associations, 1961 to 2014	General Counsel Julie Shankland
12:00 p.m. – 1:00 p.m.	LUNCH	
1:00 p.m. – 2:00 p.m.	Case Law Concerning Mandatory Bar Associations, 2018 to Present	General Counsel Julie Shankland
2:00 p.m. – 2:30 p.m.	Supreme Court Workgroup on WSBA Structure/House Bill 1788	Gov. Hunter Abell Gov./Pres. Elect Dan Clark Past Pres. Kyle Sciuchetti
2:30 p.m. – 3:30 p.m.	Comments from the Membership and Public	
3:30 p.m. – 3:50 p.m.	Board of Governors Questions, Comments and Discussion	ALL
3:50 p.m. – 4:00 p.m.	Future Agenda Items and Action Item Review	Pres. Brian Tollefson
4:00 p.m.	Adjourn	Pres. Brian Tollefson

Next scheduled meeting: Saturday, March 5, 2022, 9:00 a.m. – 4:00 p.m.

Examining the Historical Organization and Structure of the WSBA (ETHOS of the WSBA)

Approved by the Board of Governors January 13, 2022

The Washington State Supreme Court has requested that the Washington State Bar Association convene a process to examine the structure of the WSBA. By motion, the Board of Governors has agreed to that request and will schedule eight meetings between January 2022 and August 2022, in which to educate itself on important issues impacting integrated and voluntary bar associations, collect public comment and provide an appropriate recommendation or recommendations to the high court.

CHARTER

The Board of Governors will review and assess the current structure of the WSBA in light of recent case law implicating rights under the First Amendment (Freedom of Speech and Freedom of Association). The process will collect information regarding the experiences of other states that have either recently changed their organizational structure, or are considering whether to do so. The process will also consider the cost of any structural change to its membership and what effect structural change, if any, will have on 1) diversity, equity and inclusion and any impact on marginalized communities, 2) the regulatory division of the bar; 2) WSBA Sections and 3) Washington State Supreme Court Boards, 4) the Access to Justice community, 5) the public, and 6) the membership of the WSBA.

The Board of Governors will invite presentations from those with subject matter expertise or have relevant experience with mandatory or voluntary bar associations in other parts of the country.

The Board of Governors will solicit input and active participation from stakeholders including but not limited to WSBA leadership and staff, WSBA sections, committees, councils, the Access to Justice Community, Supreme Court Boards, minority bar associations and interested members of the public.

The Board of Governors will receive and share knowledge and have open, collaborative, and respectful conversations. The eight meetings will generally be open to the public, except in the rare circumstance in which the Board of Governors must meet in executive session in order to consider legal advice from its attorney.

The Board Governors will make a recommendation or recommendations to the Washington State Supreme Court as to the current or future structure of the Washington State Bar Association.

Brief History of the Washington State Bar Association

February 2, 2022

Douglas J. Ende, WSBA Chief Disciplinary Counsel

Timeline

- 1888: Washington Bar Association established
- 1890: Renamed Washington State Bar Association
- 1891: Supreme Court enacts Rules for Examination and Admission of Attorneys
- 1909: Board of Bar Examiners legislatively created for bar application and examination process
- 1917: Board of Bar Examiners regulatory role expanded – ABA code of ethics adopted
- 1921: State Bar Association of North Dakota becomes first legislatively created unified bar (nine states follow suit between 1921 and 1932)
- 1933: Legislature adopts State Bar Act (WSBA membership becomes mandatory; regulatory functions delegated to WSBA)
- 1976 -/+ : Separation-of-powers litigation addressing authority to regulate the practice of law and legal profession (*passim*)
- 1983: Limited practice officer (LPO) rule adopted (APR 12)
- 1987: Supreme Court adopts General Rule (GR) 12 (setting forth WSBA general purposes, as well as specific activities authorized and prohibited)
- 2001: Supreme Court adopts GR 24 defining the practice of law and GR 25 creating the Practice of Law Board, authorized, inter alia, to explore the provision of legal services by non-lawyers
- 2007: GR 12 amended – Administration of Supreme Court-Created Boards
- 2009: Board of Governors votes 7-6 not to recommend physically and administratively separating the lawyer discipline system from the WSBA
- 2012: Limited license legal technician (LLLT) rule adopted (APR 28) [sunset 2020]
- 2013: Nebraska State Bar Association ordered to transition from a mandatory bar to a voluntary bar (State Bar of California legislatively, partially de-unifies in 2017 with creation of California Lawyers Association)
- 2014: GR 12 amended – Access to WSBA Records
- 2017: GR 12 amended – Supreme Court has “inherent and plenary authority to regulate the practice of law” – adopts ABA Model Regulatory Objectives
- 2019: Supreme Court Bar Structure Work Group
- 2022: Board of Governors launches process for Examining the Historical Organization and Structure of the WSBA (ETHOS)



BIBLIOGRAPHY

1956-2014

Ry. Emps.' Dep't v. Hanson, 351 U.S. 225 (1956).

Int'l Ass'n of Machinists v. Street, 376 U.S. 740 (1961).

Lathrop v. Donohue, 367 U.S. 820 (1961).

Keller v. State Bar of California, 496 U.S. 1 (1990).

Morrow v. State Bar of California, 188 F.3d 1174 (9th Cir. 1999)

United States v. United Foods, Inc., 533 U.S. 405 (2001).

Knox v. Serv. Emps. Int'l Union, Local 1000, 567 U.S. 298 (2012).

Harris v. Quinn, 573 U.S. 616 (2014).

JANUS (2018)-PRESENT

Janus v. Am. Fed'n of State, Cnty., and Mun. Emps., Council 31, 138 S. Ct. 2448 (2018).

Fleck v. Wetch, 868 F.3d 652 (8th Cir. 2017), *cert. granted, judgment vacated*, 139 S. Ct. 590 (2018), *remanded to* 937 F.3d 1112 (8th Cir. 2019), *cert. denied*, 140 S. Ct 1294 (Mem.).

Case History

868 F.3d 652 (8th Cir. 2017) (original decision)

139 S. Ct. 590 (2018) (Cert. granted, judgment vacated and remanded)

937 F.3d 1112 (8th Cir. 2019) (on remand)

140 S. Ct 1294 (Mem.) (Cert. denied)



Jarchow v. State Bar of Wisconsin, No. 19-CV-266-BBC, 2019 WL 6728258 (W.D. Wis. Dec. 11, 2019), *aff'd*, No. 19-3444, 2019 WL 8953257 (7th Cir. Dec. 23, 2019), *cert. denied*, 140 S. Ct. 1720 (2020) (Thomas, J., dissenting).

Case History

No. 19-CV-266-BBC, 2019 WL 6728258 (W.D. Wis. Dec. 11, 2019) (not reported)

No. 19-3444, 2019 WL 8953257 (7th Cir. Dec. 23, 2019) (not reported)

140 S. Ct. 1720 (2020) (Cert. denied with written dissent)

Crowe v. Oregon State Bar, 989 F.3d 714 (9th Cir. 2021), *cert. denied sub nom. Gruber v. Oregon State Bar*, 142 S.Ct. 78 (2021), *and cert. denied*, 142 S. Ct. 79 (2021).

Gruber v. Oregon State Bar, *rev'd in part and remanded sub nom. Crowe v. Oregon State Bar*, 989 F.3d 714 (9th Cir. 2021), *cert. denied*, 142 S.Ct. 78 (2021).

Schell v. Chief Just. & Justs. of Oklahoma Sup. Ct., 11 F.4th 1178 (10th Cir.) (2021).

McDonald v. Longley, 4 F.4th 229 (5th Cir. 2021).

Boudreaux v. Louisiana State Bar Ass'n, 3 F.4th 748 (5th Cir. 2021).

Taylor v. Buchanan, 4 F.4th 406 (6th Cir. 2021).