Comments on Proposed Bylaws

Received by the Bylaws Work Group

September 2016

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WASHINGTON STATE BAR ASSOCIATION

Environmental and Land Use Law Section

To: WSBA Sections Policy Workgroup

Date: September 13, 2016

Re: Article XI Bylaw Amendments – ELUL Comments

The Environmental and Land Use Law Section ["ELUL"] appreciates the work of the Sections Policy Workgroup and all the work of the section representatives to represent the collective section point of view. The ELUL Section writes separately to address three point, two of which are specific to how the ELUL section operates. Please consider these as you make your comments to the Board of Governors on this topic.

1. Bylaw Article IX, Section F(2)(a) says that section membership must elect a chair to serve for one year. Currently, our chair position *is* only for one year, but our membership elects the chair for a term that would begin a year later, having a first year as a "chair-elect" and then after a year of being "chair" would serve as "past-chair" for a total of three years, which matches the terms generally on the Executive Committee. We believe this arrangement importantly provides for continuity and, in fact, is the same system employed by the BOG itself. The ELUL section writes to ensure that this provision is written and understood to still allow this to occur.

2. Bylaw Article IX, Section G(3) says the nominations and elections must occur between March and May every year. We understand one goal of making this was to ease section administration; however, this is slightly off from our current schedule and we ask that the May date be moved to June. The ELUL section annually holds its midyear conference in early May and it is at the annual meeting during this conference that nominations are finalized by a vote. Elections occur thereafter, but generally do not get done until June. We are concerned that requiring the election process to end in May would put more work on Section staff. Either our Section would have to hold electronic nominations (which we currently do not do) or following our conference in early May, the section liaison would have to scramble to get the election done by the end of May. If just one more month were considered, there would not be more work added.

3. Bylaw Article I generally changes the name of the WSBA to just the Washington State Bar. Our main concern with changing the name, at present, is that it will result in unnecessary expenditures for rebranding/marketing. We would much rather the Bar focus on maintaining or enhancing its current levels of service and the fiscal and policy changes to accomplish that goal.

From: Gardiner Law Firm Standard
To: WSBABylaws; Sections; karendenise@kdwilsonlaw.com
Subject: Change in reimbursement policy
Date: Tuesday, September 13, 2016 10:55:00 PM

I am the Treasurer for the Solo and Small Practice Section. One of the changes I understand that has been proposed is to disallow reimbursement for parking when attending section meetings, if less than 50 miles is driven. I am asking that the change be reconsidered.

Most of our section Executive Committee meetings are held at the WSBA headquarters. This saves the cost of renting a facility, and since one or more Bar staff attend, it saves on their cost to attend. Since more than half of the EC board members have to travel to the meeting, they incur the cost of parking in the building garage or other nearby garages when the building garage is full (which is often).This cost is considerable, usually starting at $15 or $20 per hour.

Our EC meetings can be attended by conference call as well as in person. Having to drive downtown and in addition pay the high parking costs discourages the members from attending in person and negatively encourages them to call in.

The reimbursement policy should allow the Sections to reimburse their members for parking when attending Section meetings.

Sincerely,
Bruce Gardiner....

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September 9, 2016

SENT VIA EMAIL

Bylaws Workgroup
c/o
Washington State Bar Association
1325 Fourth Avenue, Sixth Floor
Seattle, WA 98101

Re: Bylaws Workgroup/Article IX And Related Bylaw Issues

Dear Anthony and Other Bylaws Workgroup Members:

I would like to draw your attention to what I see as potential logical problems with draft Article IX, currently (and problematically) titled "COMMITTEES, TASK FORCES, AND COUNCILS," particularly as cross-referenced with Article IV C., "COMMITTEES AND OTHER BAR ENTITIES" (specifically relating to the Board of Governors (hereafter "BOG"). The statement was made, if I am recalling correctly, that because the Bar is one, all the rules apply across the board to all "entities" because they do not have separate existence. Unfortunately that principle seems to break down in application.

Because there are currently three separate versions of Article IV, to simplify this letter I will be referring only to the 8.15.2016 Version 1.

Threshold Problem: What Is The Interplay Between Article IX and Article IV C.?

My belief is that Article IX, "COMMITTEES, TASK FORCES, AND COUNCILS," was probably not *intended* to have any relationship to Article IV C., "BOARD OF GOVERNORS COMMITTEES." Unfortunately, however, when you look at the language of IX A., it says:

1. " * * * To facilitate the work of the Bar * * * the BOG may delegate such work to an appropriate Bar entity, such as committees, councils, task forces, or other Bar entity, however that may be designated by the BOG.
2. The work of *any Bar entity* established by the BOG must:
   [and then a list of requirements]

(emphasis added).

If you look at IV C.1. "BOARD OF GOVERNORS COMMITTEES", that section says:

> "The BOG may delegate work to BOG standing committees, special committees, work groups [sic—I think we are calling them workgroups, one word] or other subgroups however defined."

Looking at it from the outside, how does one know if a "subgroup" or "entity" has been established pursuant to Article IX or Article IV?

If you then look at the specifics of IX versus the specifics of IV C., you will find them to be somewhat in conflict, particularly as regards who may serve and who may vote. I really don't think this was intended, and if so, I think it should be changed, but I'm really not sure what you actually want to do.

I *think* that what you were trying to do in the bylaws was to allow BOG to establish entities within itself to do what I will call, for lack of a better term, "BOG-specific work," e.g., assembling the budget (thus, "Budget and Audit Committee"). Let's call them "BOG entities." You also want, I think, BOG to be able to establish entities not limited within itself to do broader work, for lack of a better term "Bar work," which would then be "Bar entities." It looks to me, however, like BOG really *doesn't* want the rules being set up for Article IX "Bar entities" to apply wholesale to Article IV "BOG entities," in the same way that it also doesn't make sense for some of the rules for Article IX "Bar entities" to apply to Article XI Sections across the board because they're different, in the same way that, say, an Article IX "Council" functions differently from an Article IV C. "standing committee" (or even an Article IX "committee"). Parenthetically, this is where the idea that all entities are completely the same really falls apart for me. They may be a part of the whole, but they function in different ways, so absolutely uniform rules don't make sense if "Councils" get a special rule.

As a matter of governance, if something called a "committee," a "workgroup," a special committee," or any other catchall designation, can be established under two different Articles of the bylaws providing for different memberships, different voting requirements, etc., it may cause substantial confusion if it is not made clear whether an entity is an Article IX entity or an Article IV C. entity. For example, I recall a discussion some time back in which Jean McElroy stated that the Sections Policy Workgroup was an Article IX workgroup. However, it seemed to operate conceptually, at least initially, as an Article IV C. workgroup.

One fix for the future might be for the charter or originating document to state under which Article it has been constituted, e.g.: "The BOG will designate under which Bylaw Article it establishes an entity."

Why Not Rename Article IX?

In keeping with the comments above, Article IX could be renamed "BAR ENTITIES" rather than enumerating three types of such entities. The text makes it clear that this Article is not limited to "committees, task forces, and councils," and "committees" could refer back to Article IV. C.

"The Work Of The Bar" And Other Wording In IX.A.

IX.A.1. should without question read:

"The work of the Bar is accomplished by the BOG, [the officers of the Bar*,] the staff of the Bar, and the Bar's volunteers.

*Something that is a little murky to me still about Article IV is that the Officers of the Bar appear to be, by definition, members of the Board of Governors, if not before becoming officers, then by virtue of their becoming officers of the Bar. If this is the case, it is redundant to call those officers out separately.

I think using the word "delegate" in Article IX as opposed to Article IV isn't quite right. When BOG establishes a "BOG entity," it's assigning different BOG-specific work to specific Governors within BOG who, by virtue of their election or appointment, have obligations to the organization. That seems to me like pure delegation. When BOG establishes a "Bar entity," however, it is reaching out more broadly to "incorporate[e] expertise and additional viewpoints from the broader community"—in other words, it is tapping volunteer resources. I think more expressive language might be: "To facilitate the work of the Bar * * * the BOG may establish Bar entities tasked with this work."

IX.A.3., in keeping with the theme of simplification, should say, "A list of the current Bar entities and their functions will be maintained by the Executive Director and posted on the Bar's website." Recurring and nonrecurring "committee" reference should be to "Bar entity." Might not be a bad idea to include in the list any entity termination dates.

The "General Duties and Responsibilities" section currently in IX.B.3. could in large part be merged into IX A. Some of the language in IX.B.3., for example, appears to be redundant to IX.A.2. I will leave it to the Workgroup's capable hands to work through these additional changes if it feels that this structural change has merit. It may be that you may not want some of these to apply to councils, but some of them clearly already do. I think it would the document easier to follow.

Structure of IX B. and IX C.

It doesn't make sense to put the catchall provision, IX.B, "Committees and Other Bar entities," immediately before the specific provision, IX.C, "Councils." You could change IX.C.

"Councils" to IX B. You then could break old IX.B. to two sections: IX.C. "Committees" and IX.D. "Other Bar Entities." This might eliminate a lot of repetitive language.

I have spent probably more time than I should pondering whether something is "created and authorized" by the BOG or whether the word order should be "authorized and created" (we don't want BOG creating entities before they are authorized!) and then whether it was necessary to say that a "committee" is "authorized" by the *BOG* when it is actually the *bylaws* that *authorize* BOG to *create (or establish)* a committee. My conclusion is that the word "authorized" is redundant here. Furthermore, to keep your language consistent with IX.A, only a page earlier in your document, it would be more elegant to say that Bar entities are "established" by the BOG (that, or change "established" to "created" in IX.A.2).

Other Comments

I don't see any requirement that each Article IX. Bar entity have a specific charter or originating document. I think it would be helpful in understanding each entity's scope of work.

I hope these comments are helpful to the Workgroup. I will try to provide other comments as my responsibilities permit.

Sincerely,
WECHSLER BECKER, LLP

DN: cn=Ruth Laura Edlund, o=Wechsler Becker, LLP, ou, email=rle@wechslerbecker.com, c=US
Reason: GR 30 digital signature
Location: Seattle, WA
Date: 2016.09.09 11:39:48 -07'00
Adobe Acrobat version: 11.0.17

Ruth Laura Edlund

RLE/dag

From: Sections
To: WSBABylaws
Subject: FW: proposed WSBA bylaw changes re sections
Date: Wednesday, September 14, 2016 9:55:34 AM

Paris

Paris A. Eriksen | Sections Program Manager
Washington State Bar Association | ☎ 206.239.2116 | parise@wsba.org | sections@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Richard Potter [mailto:potterre@frontier.com]
Sent: Friday, September 09, 2016 1:17 PM
To: Sections
Cc: potterre@frontier.com
Subject: proposed WSBA bylaw changes re sections

Proposed C.2. is inconsistent with proposed F. 1., and 2., and proposed F. 1., and 2. are inconsistent with proposed F.3. and proposed H.1.

C. MEMBERSHIP

2. If provided for in the section bylaws, any Emeritus/Pro Bono member pursuant to APR 8(e), House Counsel under APR 8(f), professor at a Washington law school (whether licensed in Washington or not), or any lawyer who is a full time lawyer in a branch of the military who is stationed in Washington but not licensed in Washington, may be a voting member of the section and *eligible for election to office in the Section*. (Emphasis added.)

Vs

F. SECTION EXECUTIVE COMMITTEE.

1. *** Voting members of a section executive committee must *be Active members of the Bar* and a member of the section for their entire term of office on the executive committee. ***
2. Officers. Officers of a section executive committee must be *Active members of the Bar* and elected by the section membership to complete the one-year term of office. ***
3. At-Large Members. At-large members of the section executive committee shall be voting members. ***

(Emphasis added.)

H. VACANCIES AND REMOVAL.

1. The section executive committee shall appoint, by a majority vote, voting members to fill vacancies on the section executive committee. ***

C.2. would allow several types of non-WSBA-active members to be "a voting member of the section and *eligible for election to office in the Section*." (Emphasis added.) But F. 1. and 2. would require section officers to be "be Active members of the Bar," while there is no such requirement in F.3. or H.1.

Proposed I. is unclear.

I. OTHER COMMITTEES.

The section executive committee may create other committees *pursuant to this provision*, as necessary to further the purposes of the section. Section committees, section committee chairs, and section committee members serve at the discretion of the section executive committee. *** (Emphasis added.)

What does "pursuant to this provision" mean. If it simply means that the "I. OTHER COMMITTEES" bylaw provision authorizes section executive committees to create section committees, "pursuant to this provision" is unnecessary and, therefore, confusing, in which case it should be deleted. If it is supposed to mean something else, further explanation is required.

Richard E. Potter

From: Sections
To: WSBABylaws
Subject: FW: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!
Date: Wednesday, September 14, 2016 9:55:42 AM
Attachments: Page from July2016PublicSession.doc.docx
Page from July2016PublicSession.doc.pdf

Paris

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From: Gray
Sent: Friday, September 09, 2016 4:15 PM
To: WSBA Section Leaders
Subject: RE: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!

Thank you for the graphic that you shared. I had not realized that I cannot become an Emeritus/Pro Bono member, after my 37 years of public service, because I have not actively practiced law for five of the last ten years, by the bar's definition.

I raised my desire to continue to be eligible to be a member of the Administrative Law Section Executive Committee with my Governor, Phil Brady, early on in this process, and another two times during the past year. Currently I cannot serve as an officer, but can participate on the Executive Committee. If these new proposals are adopted, I may not even be able to be an active member of the section.

I had the strong impression that Phil Brady heard my concerns, and that judicial members were going to be able to be members of Sections, Section executive boards, and to participate more completely in the Bar while working as administrative judges and after our judicial terms end.

I have to say that I don't see why these changes would be considered good for the Bar.

Regards, Marjorie

From: Ruth Edlund [mailto:rle@wechslerbecker.com]
Sent: Friday, September 09, 2016 3:51 PM
To: Gray, Marjorie (DSHS/PER)
Subject: RE: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!

Marjorie,

Under the current/proposed definition I believe "judicial" status is not "active" status.

(My cynical speculation is because the licensing fees for judicial members are only $50, so they

don't want to give them full benefits)

However, they *could* be were the definition drafted differently.

~*~*~*~*~*~*~

Ruth Laura Edlund (admitted NY, WA)
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206.624.4900

From: Gray, Marjorie (DSHS/PER) [mailto:GrayMR2@dshs.wa.gov]
Sent: Friday, September 9, 2016 3:24 PM
To: Ruth Edlund <rle@wechslerbecker.com>
Subject: RE: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!

Ruth, is it your understanding that "judicial members" of the bar, who pay dues and report CLE hours, are a subset of the set "active members?" I know at one point you were looking at this in some detail. Thanks,

Marjorie Gray, WSBA #9607

From: Ruth Laura Edlund [mailto:rle@wechslerbecker.com]
Sent: Friday, September 09, 2016 2:36 PM
To: WSBA Section Leaders
Subject: FW: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!

If I have misunderstood the timeline, and the actual opportunities that I will have, outside of my role as a workgroup member, to provide written materials to the Board of Governors on these critically important issues, please correct me.

Time is very short for me to make additional submissions. I am not a conspiracy theorist and consequently I know that the BOG wishes to hear what I have to say.

~*~*~*~*~*~*~

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From: Ruth Laura Edlund [mailto:rle@wechslerbecker.com]
Sent: Thursday, September 8, 2016 2:57 PM
To: WSBA Section Leaders <section-leaders@list.wsba.org>
Subject: RE: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!

Paris (I think you're just the messenger here):

Thank you for your response.

As I parse through the original email and your followup, it appears that the only way that I as an *individual* can be assured that any materials ("feedback") I submit will be included in the Board materials, is to send them by this coming Wednesday:

"If you would like your feedback included in the Board materials, please submit it by September 14."

AND

"Both ***workgroups*** will have the opportunity to submit or modify their materials as late materials." (emphasis added).

From the above two sentences read *in pari materia,* I conclude that ***individuals*** will not have the opportunity to submit or modify their materials sent to the BOG as late materials after Wednesday.

As an individual, therefore, it appears that I can only submit written materials to be included in the BOG book if I submit them before the last two workgroup meetings are even held (and if I want to participate in the Town Hall, I won't even have until the end of the day to submit my comments, because that meeting starts at 4 p.m. on 9/14). My written materials will therefore be out-of-date before they are ever considered by the BOG.

My other option, apparently, is to provide feedback in-person at the BOG meeting. Although I am grateful to be extended this opportunity: (1) there is no guarantee that I will be called on. I do not have a right to ***speak*** at those meetings, only attend them. (2) Some of the more technical comments I may wish to make will get lost in the shuffle, because they will require cross-referencing various sections of the Bylaws. This is tedious to do in oral remarks, and most people would like to be able to review such cross-referencing in advance, not minutes before a vote. Small changes in wording can create big changes in meaning. I can recall, and I believe that Mr. Gipe can confirm, that I raised four separate issues at the August 23 BOG meeting about language problems in the then-current Bylaw drafts that would need to be addressed, because I had made "valid points." Based on my review of the language that I *believe* to be the most current draft of the Bylaws, however, there are other issues that I believe need to be addressed *purely from a drafting perspective regardless of how one feels about the policy issues*. In other words, I have reason to believe that I have other points to make that others will acknowledge to be valid as well.

I understand that many people involved in these issues are volunteers. I remain puzzled why their work product, which will be the operating document of a multi-million dollar association, is being promulgated in a way which is minimizing the opportunity for actual constructive (although loyal!) critique. I have no illusions that I am the smartest bunny on the block and I am absolutely certain

that other pairs of sharp eyes can catch other problems. (For years I made people proofread important briefs of mine with a dollar-per-typo-found bounty. I'm not suggesting any payouts here, but I don't understand why the assistance of the membership, who are all grownups with some skill, is seemingly being discouraged rather than encouraged).

I believe I have pointed out before that the first drafts of any actual bylaw revisions were not circulated for discussion until December 2015. The scope of the revisions in some cases went considerably beyond the BOG's response to the Governance Task Force Report. The recent emphasis, therefore, of the Bylaw changes being the "culmination" of a "long process" is not entirely a propos. The actual wording being proposed to implement the process is quite recent; the precise wording is, in my mind, quite important; and the severely truncated schedule for review and comment is stifling adequate consideration of these important proposed changes and *a full understanding of their possible consequences, including the effect on the finances of the association.*

If I have misunderstood the timeline, and the actual opportunities that I will have, outside of my role as a workgroup member, to provide written materials to the Board of Governors on these critically important issues, please correct me.

Regards,

Ruth

~*~*~*~*~*~*~

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From: Paris Eriksen [mailto:parise@wsba.org]
Sent: Thursday, September 8, 2016 1:52 PM
To: Ruth Edlund <rle@wechslerbecker.com>; WSBA Section Leaders <section-leaders@list.wsba.org>
Subject: RE: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!

Ruth,

Thank you for your question.

This email was intended to remind section leaders of the different channels available to share feedback. Someone may choose to share their feedback directly with the Board by having a written response included in the BOG materials, or in-person at the Board meeting. Someone may choose to provide feedback to one or both of the workgroups for their consideration. Both workgroups

will have the opportunity to submit or modify their materials as late materials. Individual feedback provided to the workgroups *may* not be shared with the Board in its original format. It is also possible that someone may want to communicate both directly to the Board and to the most relevant workgroup.

Paris

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From: Ruth Edlund [mailto:rle@wechslerbecker.com]
Sent: Thursday, September 08, 2016 12:50 PM
To: Paris Eriksen; WSBA Section Leaders
Subject: RE: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!

If the deadline for feedback to the Board of Governors is 9/14, but the Sections Policy Workgroup and the Bylaws Workgroups are not meeting until 9/15, how are we going to be able to give feedback that will be relevant to the materials that will actually be considered by the Board of Governors on 9/29 to 9/30?

Respectfully,

Ruth Edlund

~*~*~*~*~*~*~

Ruth Laura Edlund (admitted NY, WA)
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From: Paris Eriksen [mailto:parise@wsba.org]
Sent: Thursday, September 8, 2016 12:34 PM
To: WSBA Section Leaders <section-leaders@list.wsba.org>
Subject: [section-leaders] WSBA Bylaws: Learn More and Share your Feedback!

Section Leaders,

There are many ways to learn about, provide feedback, and participate in a dialogue regarding the proposed changes to the WSBA Bylaws. Please review the below list of important dates and information regarding these proposals.

As a reminder, information about the BOG, the Sections Policy Workgroup and the Bylaws Workgroup can be found online.

Sections Policy Workgroup Feedback Deadline: September 13

Please provide any feedback, questions, or concerns you have regarding the proposed changes to *Article XI* of the WSBA Bylaws relating to sections attached. These are unchanged from the version we sent August 16. Share your feedback to any member of the Sections Policy Workgroup or to sections@wsba.org. All Workgroup members have been asked to share the written feedback with the rest of the Workgroup in advance of the Workgroup's meeting on Thursday, September 15. Please note: the September 15 Workgroup meeting (agenda attached) is the final meeting for this Workgroup as it is currently constituted.

Some of the proposed changes to Article XI of the WSBA Bylaws include:

- adding language regarding minimum standards for executive committee composition and governance,
- changing the number of active members required for forming or terminating a section, and
- providing a uniform nominations and elections process.

BOG Materials Deadline: September 14

Please provide any feedback, questions or concerns you have regarding the proposed changes to the entirety of the WSBA Bylaws, including *Article XI*. Send feedback to any member of the Board of Governors, sections@wsba.org, or WSBAbylaws@wsba.org. If you would like your feedback included in the Board materials, please submit it by September 14. The next Board of Governors meeting is scheduled for September 29 – 30 at WSBA. You are encouraged to attend the Board meeting in September to participate in the continued discussion.

Some of the proposed changes to the WSBA Bylaws include:

- expanding the definition of members of WSBA to be inclusive of LLLTs and LPOs,
- removing the term Association from the organization's name,
- adding seats on the Board to be held by a member of the public and a LLLT or LPO, and
- clarifying language regarding the Bar's open meeting policy.

Important Upcoming Dates:

September 13 – Feedback due regarding *Article XI* of the WSBA Bylaws – Sections Policy Workgroup
September 14 – WSBA Town Hall Discussion (with Chief Justice Madsen as a panelist)
September 14 – Feedback deadline for inclusion in the materials – September BOG Meeting
September 15 – Sections Policy Workgroup Meeting
September 29 – 30 – WSBA Board of Governors Meeting

Thank you in advance for taking the time to provide feedback regarding the proposed changes to the WSBA Bylaws.

Cheers,
Paris

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2016 WSBA License Fee Structure		
Requirements/Benefits	**WSBA Services/Functions That Apply**	**Fee**
1. ACTIVE		
ACTIVE LAWYER MEMBER •Full license fee • MCLE; annual Professional Liability Ins. and Trust account reporting • Annual LFCP assessment • License to practice law; WSBA voting member; access to all services	1. WSBA administration (including Finance, Administration, the Board of Governors, Communications, Human Resources, Office of General Counsel and Technology) 2. Services that benefit or protect the public (such as access to justice, outreach and education, the Practice of Law Board, and Regulatory Services) 3. Member benefits programs (such as CaseMaker, LAP, LOMAP, Sections, NWLawyer, Licensing and Membership records 4. Discipline , Audits and Professional Responsibility Program 5. Services supporting entry into practice, such as Admissions/Bar Exam, Young Lawyers, New Lawyer Education 6. Services supporting active WSBA members (including Bar Leaders, Sections Administration)	$385.00
New Attorneys have lower MCLE reporting requirements for first four years and reduced license fee for first two years after licensed to practice in any jurisdiction as per WSBA policy		$192.50
2. INACTIVE		
INACTIVE – LAWYER MEMBER • May not practice law; non-voting member • Not required to earn/report MCLE credits; no Professional Liability Ins. or Trust account reporting • Continued affiliation with WSBA facilitates membership change to Active • Eligible for certain member benefits (e.g. CaseMaker, LAP, LOMAP, Sections non-voting membership, *NWLawyer,* licensing/membership records assistance)	1-3 above and Discipline apply to Inactive lawyers Functions/services not applicable to Inactive Lawyers: 4. Audits and professional Responsibility Program 5. Services supporting entry into practice 6. Services supporting active WSBA members	$200.00
INACTIVE – HONORARY MEMBER: available to all 50 year members (Active/Judicial); may not engage in practice of law; remain member but no license fee, LFCP assessment, MCLE, Professional Liability Ins. or Trust account reporting		$0.00
INACTIVE – DISABILITY MEMBER: disabled; may not practice law; no license fee, MCLE or other reporting requirements; to return to Active, must demonstrate disability has been removed		$0.00
3. EMERITUS/PRO BONO		
• Retired lawyer who has actively practiced law (a) for at least 5 of last 10 years in WA; or (b) at least 10 of last 15 years outside jurisdiction. Must complete required training; may only practice on volunteer basis for Qualified Legal Services Provider. • Remain member who can engage in limited practice of law; not required to earn/report MCLE credit or complete professional liability or trust account reporting. May be voting member of some sections.	Same as for Inactive; may serve on Task Forces, Councils or Institutes; up to two may serve on pro bono legal aid committee, including service as Chair, Co-Chair, or Vice-Chair.	$200.00
4. JUDICIAL		
Option available to Judicial Officers not engaged in practice of law. Must provide annual registry information; may pay annual license fee to preserve eligibility to transfer to other membership class upon leaving judicial service. ALJs must meet Active Member MCLE requirements.	Same as for Inactive; may serve on WSBA Task Forces, Councils or Institutes .	$50.00

September 12, 2016

Board of Governors
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: Comments on Proposed Bylaw Amendments

Dear Members of the Board of Governors and other WBSA Leaders,

I provide these comments solely as a member of the WSBA, not in my capacity as Chair of the Corporate Counsel Section, as a member of the Securities Law Committee of the Business Law Section or as a Section Leader Representative of the Sections Policy Workgroup.

Increasing Centralization at the WSBA

Consistent with my remarks at the Board of Governors ("BOG") meeting in Walla Walla on July 22, and at the BOG meeting in Seattle on August 23, the proposed Bylaw amendments seem to be part of a larger trend in which the WSBA is becoming more centralized and more insulated from its members.

Among other concerns I have already pointed out:

- In addition to these significant Bylaw amendments under hurried and somewhat haphazard consideration now, the BOG *will* soon also consider whether and how to limit members' referendum rights. President Hyslop made it very clear to me at the August 23 meeting that the BOG intends to address this issue separately. That, in fact, is part of my concern, as explained more completely below.

- No specific reasons have been provided to justify or explain the proposed Rule 12 changes and it remains unclear to me whether or not the WSBA leadership seeks through these and/or other changes to place the WSBA under tighter control and supervision by the Washington State Supreme Court (the "Court"). If so, why, and what would that look like ultimately?

  At the August 23 meeting, with Chief Justice Madsen seated off to my right (invited I'm sure to facilitate the free flow of constructive feedback from members), I asked Executive Director Littlewood the same question. She replied simply that she envisions no changes.

  Other BOG members added in later discussions that no substantive changes are intended with the Rule 12 changes.

  These answers beg the question of why the Rule 12 changes are necessary or appropriate. They must be important to someone. Please explain. What is changing vis-à-vis the Court? Why is every aspect of WSBA activity increasingly considered to be "state action" by the WSBA leadership? This is becoming increasingly problematic from the perspective of many members, myself included. I hope to be able to ask Chief Justice Madsen for greater clarity at the Town Hall on September 14, but I am not optimistic about receiving a more expansive explanation.

- Just months ago the BOG debated relinquishing its right to terminate the WSBA Executive Director unless such termination is approved by the Court. This is presumably something that could come up again and I would like to understand why this would be good for the WSBA. And how would the Court go about making such a decision?

- The original proposals of the Sections Policy Workgroup would have taken all of the Sections' funds away, along with much of their ability to self-govern.

  The Sections Policy Workgroup's surprising initial proposals may or may not have been part of a larger, integrated plan to transform the Bar, but it would be illogical for members to ignore (i) the fact that the Sections Policy Workgroup and the Bylaws Workgroup are both simultaneously chaired by the same person, Anthony Gipe, (ii) the fact that Mr. Gipe also played a key role on the Governance Task Force from which the proposed Bylaw amendments have emanated, or (iii) the fact that Mr. Gipe was appointed and not elected by the members to both the BOG and to the Presidency.

  If nothing else, Mr. Gipe's rise to power without being elected and his subsequent role in bringing about rapid and substantial changes demonstrates the fact of and the relevance of both (i) centralization and (ii) the simultaneous reduction of the role of members in governing the WSBA.

Reducing Members' Governance Influence Insulates the WSBA Leadership

Many of the proposed changes coming from the current WSBA leadership tend to reduce the ability of the members to influence WSBA governance. I believe the justification for this is a desire to make the WSBA more like a government agency that is directly accountable to the public for delivering a more just and equitable legal system. From a governance perspective, however, I am very concerned that changes that reduce the members' say in governance actually insulate the WSBA leadership from constructive critique and also further alienate the members. These unintended consequences could substantially reduce the effectiveness of the WSBA in meeting the very objectives it might be hoping to pursue with a more free hand and a free purse.

As noted above, it is unclear to me how the BOG or the WSBA executive leadership want to change the WSBA's relationship with the Court, but I believe any increase in the Court's day-to-day control over WSBA administration will insulate the existing WSBA Executive staff from critique by the members, especially in the near term, given the close personal relationships that appear to exist between the Court and the WSBA's senior staff (according to persons who are more knowledgeable about such behind the scenes details than I am).

Where are These Changes Leading?

At the August 23 meeting I said that I wish the WSBA leadership's approach to the proposed Bylaw amendments more closely resembled what is required under the Williams Act when a person or company starts buying up the stock of a company. Specifically, Item 4 of Schedule 13D requires one to:

> *"... state the purpose or purposes of the acquisition of securities" and "describe any plans or proposals which the reporting persons may have which relate to or would result in certain"*

enumerated types of changes in the management, composition, operation and policies of the issuer."

As a former SEC lawyer, this strikes me as a perfect parallel for the disclosures I would like to see. Please tell us the big picture.

There are analogous concepts throughout the law that BOG members should be familiar with, including the requirement in an Environmental Impact Statement to disclose and analyze future anticipated activities and their "cumulative impacts" when combined with presently proposed activities, and also the "step transaction doctrine" in tax law, under which a series of formally separate steps is combined, resulting in tax treatment as a single integrated event.

The members simply do not understand how the proposed Bylaw amendments, Rule 12 changes, possible changes to the referendum rules, clamping down on routine Section budgeting and spending, changes to the Executive Director's terms of office, and other aspects of decision making authority that might be turned over to the Court all fit into the overall vision that the WSBA leadership has in mind.

Absent any other explanation, my hypothesis is that the Court, through Chief Justice Madsen, is consulting with the WSBA leadership, perhaps behind the scenes, to steer the WSBA in a more centralized direction, with less risk of member interference, in order to impose even more aggressive strategies toward the laudable goals of increasing access to justice and increasing diversity in the profession. Perhaps the Chief Justice will shed light on whether and how she would like to re-shape, re-direct or reinvent the WSBA at the September 14 Town Hall meeting.

As noted above and below, I not believe centralization and decreasing member influence in governance will actually enhance the WSBA's ability to pursue its goals and aspirations.

<u>Member Sentiment is Shifting Regarding Bifurcation</u>

Another observation I made at the August 23 meeting is the increasing number of members who tell me they have given up on the WSBA. Many have decided to take their professional activities and interests elsewhere - voting with their feet to commit their volunteer time and energy to other groups. They're gone. I also noted that a number of other very experienced and respected members are now actually committed to the goal of bifurcating the Bar. These members say, each in their own way, that they have lost interest in the increasingly futile struggle to meaningfully influence the WSBA. For these folks, the uncertainty, the difficulty and the potential benefits of bifurcation now look better than staying the course with a professional relationship that dates back some 133 years.

The WSBA leadership should consider asking members a simple question - "Dear Member, if the professional association side of the house was offered a clean, supportive break from the licensing and regulatory side, would you vote to stay or go?"

I believe the answer would be surprising to all – and much different today than just a couple years ago. The BOG's recent actions seem to be greatly increasing the popularity of bifurcation as a solution to a growing range of concerns and grievances.

At the August 23 meeting, I asked Executive Director Littlewood if bifurcation might not be the best solution for the professional association side of the house. I was pleased to hear her say that the WSBA

is much stronger as an integrated Bar. In responding, though, she added that bifurcation would require approval by the Court and she said, as I recall, that such approval was unlikely. In saying this, I believe she even gestured toward the Chief Justice.

As I responded then, and as I say here again, in slightly different words, I would not be so confident that a group of 30,000+ lawyers wouldn't be able to successfully devise a plan to take back their professional association, particularly if the benefits of doing so clearly and substantially outweigh the costs. Transaction lawyers and litigators frequently take on "impossible" causes with great success.

Many years ago at Plum Creek Timber, Inc. I worked on the successful I-90 Land Exchange. Many environmental groups initially opposed the transaction and it looked fairly impossible. But through ingenuity and persistence we succeeded and it yielded great benefits for the company and for the public. Not much after that we also converted Plum Creek into the first publicly traded timber-REIT. I remember splitting the company into 14 separate operating entities, paying $20 million for a single-purpose tax insurance policy, arguing with the SEC and fighting a major proxy battle. Again, complex, uncertain, expensive and heavily litigated for sure, but not impossible. And ultimately quite successful and worth the effort, as might be bifurcation at some point.

Proposed Bylaw Amendments

In my following comments on the proposed amendments I am focusing on just a few issues – the proposals that I believe will cause the most harm to the unity and functioning of the WSBA and that will be the most difficult to reverse in the future.

An important change I'm not addressing is the addition of LLLTs and LPOs as full "Members" of the WSBA. I tend to favor an inclusive view of the Bar Association. I accept the overall logic of the limited licensee program and I believe integrating those persons fully into the WSBA is the best way to protect and best serve the public. That said, there are persons in other Sections who are much closer to these issues and they should take the lead in commenting on them.

Ruth Edlund, for example, has pointed out several important unaddressed concerns, including that the projected cost of member benefits by the 2018 dues cycle is well in excess of what the limited licensees will be contributing and yet there has apparently been no financial assessment of that imbalance by the BOG as the WSBA's fiduciaries.

Name Change

First, I continue to urge the BOG to vote against dropping the word "Association" from the WSBA's name – a name in continuous use since 1883. Frankly, in the present context, this proposal looks and feels like a symbolic slap in the face to the members.

The initial reason for the change, offered early on by the Governance Task Force, was "to correct the erroneous impression" that the WSBA is "something like a trade association." The WSBA may not be "something like a trade association," but to most members it *is* something like a professional association. And yes, I know the WSBA leadership now wants to give a different reason or two for the proposed change, but that's not how it works - no un-showing your cards, sorry. If the current leadership cares to show that it's not downgrading the relevance of the members it should ditch this wholly unnecessary and highly divisive proposal.

Creation of Three More Board of Governors Seats

The proposed Bylaw changes to create three more BOG seats beyond those provided in the Bar Act directly reduce member influence over WSBA governance.

As I and others have noted, giving limited license practitioners two seats on the BOG is vastly out of proportion to their numbers – are there even twenty registered limited license practitioners yet? Two seats for such a small group is facially unreasonable.

The third proposed seat on the BOG is for a member of the public. The most commonly offered reason for this recommendation is that both California and Oregon have members of the public on their Bar Boards of Governors and have found them helpful. I do not find this logic or any other explanations provided to date compelling. I have seen no evidence that either of those states' Bars are doing a better job in any respect than we are. I also have seen no outcry for public representation on the BOG anywhere in the media.

I urge that the BOG scale back these proposed amendments to eliminate the public BOG seat and to provide the LLLTs and LPOs with <u>one</u> BOG seat, elected by all of the members, not appointed, for the reasons described below.

<u>Appointing Versus Electing Board of Governors Members</u>

I and others have spoken out against creating more "appointed" BOG seat in violation of the Bar Act. There are already three appointed seats – seats which just as easily could have been elected seats. As I said at both the July 22 and August 23 meetings, appointments are clearly undemocratic and subject to more potential mischief from a governance perspective than free elections. As explained herein, the currently appointed seats are already having outsized impacts that the members seem powerless to question, understand or resist.

At the August 23 meeting, incoming WSBA President Robin Haynes gave a spirited defense of appointing the proposed seats, arguing that appointments are necessary to ensure diversity and adding that far too many of the elected seats *still* go to older white males.

I emphatically reject Ms. Haynes logic and the accuracy of her statement. Many of the elected seats are held by persons who are not older white males and the BOG is diverse by any measure. The suggestion that more "appointed" seats are necessary to make the BOG diverse is false. If there must be any new BOG seats, there is simply no compelling reason for those seats not to be elected by the members.

The appointed leadership model is the rule in China because the Chinese government believes it makes better decisions than the people. The Chinese people don't like it and nor do I.

On a final note, Ms. Haynes' position in support of appointing the members of the BOG is not surprising, as she too was appointed and not elected to her BOG seat and to her position as in-coming President of the WSBA. The power of her appointments and Mr. Gipe's, and the resulting changes those appointments are now rapidly producing, dramatically underscore that power in the WSBA is shifting substantially away from the members and that the members are largely powerless to object.

Thank you for considering my feedback.

Sincerely,

Paul Swegle, #18186
pswegle@gmail.com

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September 13, 2016

SENT VIA EMAIL
REVISED LETTER

Bylaws Workgroup
c/o Washington State Bar Association
1325 Fourth Avenue, Sixth Floor
Seattle, WA 98101

Re: Bylaws Workgroup/Article XIV Issues and Comments

Dear Anthony and Other Bylaws Workgroup Members:

I have had the opportunity to begin my review of proposed Bylaw Article XIV on the subject of Indemnification.

Review Of Available Materials

The Amended Memo to the Board of Governors (hereafter "BOG") dated August 17, 2016 (the "Amended Memo") transmitting the draft Bylaws for first reading provides the following summary regarding this provision:

> "Article XIV of the Bylaws relates to the Bar **indemnifying its volunteers** in relationship to the activities carried on by the Bar. Although the Task Force and the BOG Governance Report **made no direct recommendations** with regard to this provision, the issue of indemnification was discussed extensively in the last two years in regards to a number of issues in governance, including the Supreme Court created boards administered by the Bar and with regard to the scope of authority for various Bar entities. As a result, the Workgroup decided to propose the attached amended bylaw on indemnification."

(Emphasis added.) I have reviewed the minutes of the Bylaws Workgroup that are publicly available on the WSBA website. From those minutes I have been able to determine the following:

(1) The Workgroup formed five subcommittees (always referred to in later minutes as "subgroups") in November 2015 to work on the various Articles of the Bylaws (see minutes of 11/3/2015 meeting, page 2). The November 2015 minutes do not specify

which Articles were assigned to which subcommittee for revision, nor how the Workgroup members were distributed amongst the subcommittees.

(2) The Workgroup assigned the task of revising of Article XIV on Indemnification to Subgroup 5. That Subgroup did not have any report to make at the December 2015 meeting (minutes of 12/21/2015 meeting, page 2). The 12/21/2015 minutes do not indicate who was assigned to Subgroup 5.

(3) At the 2/11/2016 meeting, Subgroup 5 reported the following:

"Subgroup 5 researched the indemnification policies of other jurisdictions and will make adjustments to their draft to be presented at a later meeting They discussed the conforming edits to qualified action and expressed concern that it might be too broad. Other changes will be to clarify the meaning of indemnity, define who would be covered under the policy, and review costs that are not addressed. Members suggested the subgroup review the Bar's own insurance policy and see whether their draft tracks closely to language there" (minutes of 2/11/2016 meeting, page 2).

I did not see any followup in the minutes on WSBA's insurance policy, which is a shame because this would have been very interesting and useful information.

(4) At the 4/7/2016 meeting, I find the following in the minutes regarding Article XIV:

"Subgroup 5 (Art. XIV, Indemnification) is working on an internal draft."

By this point I was curious to find out which Workgroup members participated in this subgroup.

(5) There was actual (although still anonymous) discussion on 6/02/2016 about Article XIV:

"The work group discussed various qualified indemnitees, such as hearing officers, and suggested the bylaw maintain a full descriptive listing of indemnitees. **Discussion followed regarding the potential of multiple insurance coverage plans coming into play** (e.g., the volunteer's own professional liability insurance), which is an issue not covered under the bylaw. **The work group decided this issue should be highlighted for the BOG.** The work group also discussed the need for a broad policy to provide protection for all volunteers, including individual sections members, and concerns about the Board's fiduciary duty. The work group suggested getting input from the bar general counsel on the issue."

Emphasis added.

(6) Finally, on 7/14/2016, Article XIV was discussed:

"The draft was updated since the last work group meeting, but there were no new

changes. The **subgroup suggested getting feedback from the BOG regarding the issue of recourse to insurance held by an indemnified party.**"

Emphasis added.

Preliminary Questions

(1) Which Workgroup members were assigned to Subgroup 5? It is nothing to be ashamed of, but the minutes omit this information entirely. I would have liked to obtain input about matters such as the wording of the Bar's insurance policies.
(2) The minutes quoted above suggest that there were repeated concerns raised about subrogation, and this issue was going to be "highlighted" for the BOG. However, the Amended Memo does not identify this issue at all, and the proposed Bylaw does not address subrogation. Why was the subrogation issue abandoned if a comprehensive overview of this Article was intended?

Scope/Necessity Concerns

Article XIV As Written Not Limited To Volunteers. The Amended Memo informs the BOG that Article XIV "relates to the Bar indemnifying its volunteers," see above. This is not an accurate summary: the definition of "qualified indemnitees" includes "members of the staff of the Bar," who are most certainly not volunteers, and gives short shrift to the many service capacities filled by volunteers of the Bar (I have elsewhere mourned the Bar's failure to qualify, as far as I know, the dollar value of this tremendous resourse). The Board of Governors has a truly Herculean task, as I have commented before, to review the numerous changes to the Bylaws, and is very likely to be relying on the Workgroup's summaries. There is nothing in the Workgroup's minutes that I have seen indicating why this indemnification provision should include those on WSBA's payroll if WSBA has E&O coverage for paid staff. There is, of course, absolutely nothing wrong with WSBA providing defense costs or indemnifying its employees, but that's an administrative decision. The focus of this Article, as I understand it, and as was represented to the BOG, is the protection of WSBA's volunteers, from its officers on down to the lowliest volunteer in WSBA-sponsored legal clinics. Even if BOG does not care about the humble rank-and-file—I still have faith that it does—BOG certainly should be interested in making sure that its own protections are strong.

No Consideration of RCW 4.24.670 and other statutory immunity.

I'm going to quote RCW 4.24.670 in full because WSBA seems to fall within the definition of "nonprofit organization" under RCW 4.24.670(5)(d)(ii), but needs to have an insurance policy of $500,000 under RCW 4.24.670(e)(iii) to take full advantage of the statutory protection (which I'm sure it does, but wouldn't be nice to highlight this for a very busy BOG?). In addition, even if the BOG wants to persist in the fantasy that WSBA is a governmental entity across the board, which is obviously is not, see *Graham v. State Bar Association*, 86 Wn.2d 624, 548 P.2d 310 (1976), and *WSBA v. State of Washington*, 125 Wn.2d 901, 890 P.2d 1047 (1995), this statute applies to volunteers of governmental entities, and RCW 4.24.490 would shield WSBA staff from liability (even though they are not supposed to be the focus of this Article). See also

Benjamin v. WSBA, 138 Wn.2d 506, 980 P.2d 782 (1999)(qualified immunity to Dennis Harwick). The minutes of the Bylaws Workgroup give no indication that these statutes were considered. It may be that they are inapplicable, in which case the discussion would be illuminating.

RCW 4.24.670 provides:

> (1) Except as provided in subsection (2) of this section, **a volunteer of a nonprofit organization or governmental entity shall not be personally liable** for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:
> (a) The volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
> (b) If appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
> (c) The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer;
> (d) The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to either possess an operator's license or maintain insurance; and
> (e) **The nonprofit organization carries public liability insurance covering the organization's liability for harm caused to others for which it is directly or vicariously liable of not less than the following amounts:**
> (i) For organizations with gross revenues of less than twenty-five thousand dollars, at least fifty thousand dollars due to the bodily injury or death of one person or at least one hundred thousand dollars due to the bodily injury or death of two or more persons;
> (ii) For organizations with gross revenues of twenty-five thousand dollars or more but less than one hundred thousand dollars, at least one hundred thousand dollars due to the bodily injury or death of one person or at least two hundred thousand dollars due to the bodily injury or death of two or more persons;
> **(iii) For organizations with gross revenues of one hundred thousand dollars or more, at least five hundred thousand dollars due to bodily injury or death.**
> (2) Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of the organization or entity.
> (3) **Nothing in this section shall be construed to affect the liability, or vicarious liability, of any nonprofit organization or governmental entity with respect to harm caused to any person, including harm caused by the negligence of a volunteer.**
> (4) Nothing in this section shall be construed to apply to the emergency workers registered in accordance with chapter 38.52 RCW nor to the related volunteer organizations to which they may belong.
> (5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Economic loss" means any pecuniary loss resulting from harm, including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities.
(b) "Harm" includes physical, nonphysical, economic, and noneconomic losses.
(c) "Noneconomic loss" means loss for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium other than loss of domestic service, hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.
(d) **"Nonprofit organization"** means: (i) Any organization described in section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and exempt from tax under section 501(a) of the internal revenue code; (ii) **any not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes;** or (iii) any organization described in section 501(c)(14)(A) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(14)(A)) and exempt from tax under section 501(a) of the internal revenue code.
(e) **"Volunteer" means an individual performing services for a nonprofit organization or a governmental entity** who does not receive compensation, other than reasonable reimbursement or allowance for expenses actually incurred, or any other thing of value, in excess of five hundred dollars per year. **"Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer.**

Summary of Drafting Concerns

In reviewing the "REDLINE 8.15.2016," in addition to the inclusion of paid WSBA staff within the ambit of the provision, which was represented not to be the purpose of this Article, I have identified the following additional areas of concern/possible improvement.

A. Structure. The Article would read better if the definitions were pulled into a separate section, Section A. In addition to the terms called out, I would add a definition for "Prospective Indemnitee," because it makes the later sections cleaner, and a simple (perhaps too simple) definition of indemnity and defense costs.

It was not clear to me upon reading the draft Article XIV whether a Qualified Action could be performed by a volunteer with apparent authority, acting in good faith, but no actual authority. The "reasonable belief" and "good faith" language appears to be hint at the notion of apparent authority, but the "within the scope…expressly or impliedly delegated" takes it away. Implied authority is not the same thing as apparent authority.

I would make Section B "Duty to Defend and Obligation to Indemnify" because this part of the draft appears to be struggling to accomplish both, differing, tasks, without noting that these are differing obligations. I would make "Cumulative, Non-Exclusive Right" the new Section C.

B. Duty to Defend Versus Duty to Indemnify. I don't know what kinds of "expenses" this Article contemplates would be advanced to a Qualified Indemnitee, other than defense costs. The duty to defend is broader than the duty to indemnify, a point which some of the language towards the end of the Article is struggling to convey. If there was some other kind of expense being contemplated, perhaps it could be more clearly specified.

C. Selection Of Defense Counsel. I don't see any problems with a requirement that any Prospective Indemnitee put WSBA on notice of a "threatened or pending action" (perhaps we should call this a "claim" if time is granted for redrafting). However, such a requirement raises a potential subtle conflict of interest if, under this provision, WSBA has no obligation to put its own insurer on notice of the claim.[1] (If WSBA has notice of a "threatened or pending action," but does not put its own insurer(s) on notice, WSBA will have problems if it seeks defense costs or indemnification from its insurer(s) later on down the road, to the extent that the insurer was prejudiced by the failure to give notice. This could potentially leave the volunteer exposed when coverage might otherwise have been available. WSBA might prefer not to give notice to the insurer for fear that questions might be asked, or premiums raised, in subsequent years. As a policy matter, requiring a "pass-through" of notice resolves the potential conflict. The ultimate question raised by this section is, who is the "insured" entitled to a defense? Is it the volunteer performing the action giving rise to the claim? Or is it WSBA? WSBA might prefer that the volunteer not qualify as an indemnitee at all, but this Article is intended to protect the Association's loyal volunteers. Again, as a policy matter, this question can be resolved by a requirement that WSBA add volunteers as additional insureds to its policies (if they are not already included).

In addition, if a claim *is* tendered to WSBA's insurer(s), I am here to tell you that it is not the "Bar" who will be selecting counsel for the volunteer, not matter what precatory language is included in the Bylaws, but WSBA's insurer(s). *Johnson v. Continental Casualty Co.*, 57 Wn. App. 354, 788 P.2d 598 (1990)(noting "enhanced obligation of fairness"). I do not believe that, if the volunteer rejects the insurer's/WSBA's choice of counsel, WSBA would have the right to veto a volunteer's choice of independent counsel retained at his or her own expense. I am further not comfortable with the idea that BOG could approve a settlement of a claim over the objection of the volunteer, as the proposed language appears to provide, for example a settlement above policy limits.

I have time to note only in passing that RCW 4.22.040 may come into play in this section as well and I look to wiser minds than mine to tease out its implications.

Determining Whether Action Qualified Or Indemnitee Qualified. A determination whether an action, or an indemnitee, was "qualified" is uniquely the province of a court, not BOG. Because BOG members are a primary class of potential indemnitees themselves, there is certainly an appearance of a lack of impartiality in this provision. Would BOG ever decide that it had acted beyond the scope of its own authority?

[1] Considerations of strategic issues relating to tender of the defense of a claim, although truly fascinating, are beyond the scope of these comments.

In the interest of better bylaws for the Association, I have attached my own edit of Article XIV, prepared with some input from highly-experienced insurance broker. I used, as my point of departure, the 8.15.2016 redline, incorporating the changes described above which I think help implement what this Article appears to be trying to do. I deleted the "will not inure" provision because it would eliminate subrogation and contribution rights.

I hope my thoughts can provide some modest help to the Workgroup and to the Board of Governors as they consider these very far-reaching issues.

Best regards.

Sincerely,
WECHSLER BECKER, LLP

DN: cn=Ruth Laura Edlund, o=Wechsler Becker, LLP, ou, email=rle@wechslerbecker.com, c=US
Reason: GR 30 digital signature
Location: Seattle, WA
Date: 2016.09.13 10:06:47 -0700
Adobe Acrobat version: 11.0.17

Ruth Laura Edlund

RLE/dag

Encl.

From: Sections
To: WSBABylaws
Subject: FW: [section-leaders] "All of the information was made available ... on the WSBA website"
Date: Wednesday, September 14, 2016 9:55:48 AM

Paris

Paris A. Eriksen | Sections Program Manager
Washington State Bar Association | ☎ 206.239.2116 | parise@wsba.org | sections@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

From: Randall Winn [mailto:rewinn2003@yahoo.com]
Sent: Sunday, September 11, 2016 10:37 AM
To: WSBA Section Leaders
Cc: Keith Black; Anthony Gipe
Subject: [section-leaders] "All of the information was made available ... on the WSBA website"

Dear President Hyslop

It is puzzling to read the line "All of the information was made available to members and to the public on the WSBA website", on page 10 of the September 2016 issue of NWLawyers.

Evidence in support of that claim is difficult to obtain.

Review of the website reveals very little if any of the member input on this matter, and any that there may be is difficult to locate. Can you point to it?

There is now now a "Bylaws Work Group" page, but the evidence shows that this page was created too recently to have been a significant factor during the life of the workgroup. Furthermore, that page does not appear to have much, if any, of the "input from members" to which your quote alludes.

One example is that Section Leaders were told in writing that a member, expert in Antitrust Law, advised BOG about the antitrust implications of the word "Association" in WSBA's name. When I asked for that information, I was told in writing that this information would not be disclosed at all. This is a plain contradiction of the claim in NWLawyers, and that's just one example.

Many of the proposed changes appear to touch on Administrative Law, and yet there is no information about the Administrative Law Section's comments. The name change has been justified as a matter touching on Antitrust Law, and yet there is no information from the relevant WSBA Section. Many of the changes directly affected WSBA Sections, and yet there is little if any of the input provided by actual members of Section Leadership to the workgroups.

Recently a talking-points memo was provided purporting to link to a dozen or more NWLawyer articles on the workgroups. However, analysis of those links show half had no substantive content, and most of the rest were conclusory announcements, notably lacking in "member input".

This is not merely carping. The changes proposed may be wise or they may be unwise but there is no way for WSBA Members or the public to know because the information and arguments in favor of and opposed to them have not been provided in a form reasonably calculated to inform or to provide professional, expert commentary.

Without that commentary, there is no way for the BOG to know whether the proposals are good or not. The opinions of small Workgroups naturally support their work product and should be balanced by commentary from outside experts.

In the year 2016 openness requires more than it did when we all started practice. We now live in an environment in which openness goes far beyond public meetings controlled from the top down and bereft of actual dialogue. Rather, experience teaches us that active dialogue and co-development of products (such as bylaws changes) leads to substantively better work product, greater stakeholder buy-in, and increased legitimation of the organization.

Does not WSBA and the public and profession it serves, need and deserve that better product, buy-in, and legitimation?

If so, let us open up the whole thing to broad comment and co-development. We can all be proud of the result.

Sincerely,

Randy Winn, WSBA #25833

From: Sections
To: WSBABylaws
Subject: FW: [section-leaders] "All of the information was made available ... on the WSBA website"
Date: Wednesday, September 14, 2016 10:03:00 AM

Paris

Paris A. Eriksen | Sections Program Manager
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1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Schrum
Sent: Tuesday, September 13, 2016 5:28 PM
To: WSBA Section Leaders
Cc: Keith Black; Anthony Gipe
Subject: RE: [section-leaders] "All of the information was made available ... on the WSBA website"

Significant changes to the governance of the WSBA, as these are, require proportional efforts to notify the membership and educate them about the problems to be resolved and the proposed solutions. These are major changes, deserving of a cover article in NW Lawyer and sustained outreach to the members. Posting stuff on a website without any indication why members should read is useless. It gives disingenuousness a bad name.

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From: President Hyslop [mailto:whyslop@lukins.com]
Sent: Tuesday, September 13, 2016 1:07 PM
To: WSBA Section Leaders <section-leaders@list.wsba.org>
Cc: Keith Black <keithmblack.law@gmail.com>; Anthony Gipe <adgipewsba@gmail.com>; WSBA Section Leaders <section-leaders@list.wsba.org>
Subject: RE: [section-leaders] "All of the information was made available ... on the WSBA website"

Mr. Winn:
Thank you for your email and input.
You and all members are also certainly invited to attend or participate online in the September 14, 2016 WSBA Town Hall meeting. Here is the link for more information:
http://www.wsba.org/Events-Calendar/2016/September/Town-Hall-Discussion

Likewise, you are invited to attend or participate online in the September 29-30 meeting of the

Board of Governors. Here is the link for more information: http://www.wsba.org/About-WSBA/Governance/Board-Meeting-Schedule-Materials

Best regards,
Bill

William D. Hyslop
President
Washington State Bar Association

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| LUKINS&ANNIS | ATTORNEYS

From: Randall Winn [mailto:rewinn2003@yahoo.com]
Sent: Sunday, September 11, 2016 10:37 AM
To: WSBA Section Leaders
Cc: Keith Black; Anthony Gipe
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Sincerely,

Randy Winn, WSBA #25833

You are currently subscribed to section-leaders as: scott.schrum@libertymutual.com. If you wish to unsubscribe, please contact the WSBA List Administrator.

You are currently subscribed to section-leaders as: sections@wsba.org. If you wish to unsubscribe, please contact the WSBA List Administrator.

September 13, 2016
Board of Governors
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: Comments on Proposed Changes to WSBA Bylaws

Dear Members of the Board of Governors and other WBSA Leaders,

Summary

Bylaws are the operating code of an organization. The techniques of writing successful code have vastly improved in recent years, but the legal profession has not kept up. The current project to improve WSBA's Bylaws suffers from this.

In particular, the drafting of the Proposals has so far failed as an exercise in openness. Openness in writing code serves three purposes:

- **Quality:** The effectiveness of the code is maximized when all stakeholders can review drafts of the code, test them, and submit criticism and edits in an interactive process.
- **Education:** The process of open review and editing educates stakeholders as to the purpose and functionality of the code.
- **Legitimation:** Open processes support the feeling that the code was fairly created. One may not agree with the result, but when all are involved in the process, the results tend to be accepted as legitimate.

As to each of these three elements, the development of the Bylaws Proposals is lacking. The **quality** has not been tested by broad independent review. Stakeholders have not been **educated** as to the content. The process is widely seen as not **open and legitimate**.

As a result, whether the Proposals are wise or not, their implementation may cause the organization and its goals to suffer unnecessarily.

The responsible thing for BOG to do in such a case is to open the Proposals up for global review by all stakeholders (crowdsourcing, if you will), including all WSBA members and including such others as BOG sees fit. Only an open process of quality review, education and legitimation can have the best result for the goals of the organization in the long run.

What Is Openness?

Recently the Washington State Bar Association unintentionally ran an experiment with the concept of "openness". Its Board of Governors ("BOG") created Workgroups that held a series of meetings that produced Proposals for major revisions to its Bylaws (the "Proposals").

- The Workgroups maintain that the process was "open" because they held meetings to which all were invited[i].

- Critics of the Workgroups maintain that the process was not "open" because the vast majority of WSBA members have no idea of the content of the proposals, nor the reasons for or against.

The most intractable arguments are often those for which both sides have a point. Both the Workgroups and the Critics have their points.

Classic Openness: Top-Down Control

The Workgroups used a traditional version of "Openness" familiar to those of us who came of age before the internet. Small and dedicated Workgroups set hearings where they accepted oral and written messages that they may or may not have used to change the code. They invited every member of WSBA to the meetings, but few attended. Most WSBA members have day jobs that don't allow time off for Bar meetings. Even among that fraction of members who have scheduling autonomy, attending bar meetings is an expensive loss of billable time and, given skepticism that attendance would make a difference, difficult to justify in terms of results. Also, the meetings were poorly publicized and the reasons for attending not publicized effectively[ii].

Some of the arguments for and against the proposals are secret. For example, the entire argument about antitrust risk was given in WSBA BOG Executive Session and so concealed from the membership to this day. Most of the rest of the argumentation is inaccessible because it was given orally or provided in a format not reasonably calculated to educate. For example, the motion to create the Sections Workgroup was only vaguely alluded to in BOG minutes and stated explicitly only on page 357 of inaccessible Meeting Materials[iii]. It is unlikely that anyone outside BOG or the Workgroups even knew where to look.

A small number of writers drafted the Proposals. The Proposals were kept private, or distributed modestly. The final product was not available until the last possible moment, a few days before a BOG meeting called suddenly in August.

This is what "Open" meant in the old model.

21st Century Openness: The Wisdom Of Crowds

Coding in the current era uses a different model of "openness", empowering all parties to meaningfully contribute to debate, drafting, testing and bugfixing. Publication of interim products and written debate inviting large teams of stakeholders, using ubiquitous self-documenting media[iv] are the standard.

This model has advantages:
1. It enables and encourages debate from all interested parties, regardless of geographical or temporal limits. This collects the best ideas.
2. It lets everyone parse and ponder preliminary proposals, illuminating conflicts and defects.

No Workgroup, however intelligent, can match the brainpower of 30,000+ WSBA members, even if each member devotes but a single hour in review and contribution.
3. It develops neatly structured arguments for and against, which promotes education of the proposals that emerge.
4. It develops buy-in to the final product, by enabling access to the proposals and arguments from start to finish. No-one will agree to everything in the result, but everyone can feel they had a voice.

Whether the Workgroup proposals are good or bad can not be determined without a review of them that is "open" in the 21st-century sense:

- Were the proposals made available in a timely manner for the legal professionals of the WSBA to review?
- Was debate in fact enabled and encouraged among all stakeholders ?
- Were structured arguments for and against crafted to promote understanding?
- Was buy-in created?
- Does the process appear open and legitimate to most stakeholders?

To each question, the evidence suggests the answer is *"No. It's nobody's fault, but no"*.

Some Evidence

Debate, buy-in and legitimation depends on awareness. There is no evidence that the vast majority of WSBA members were aware of the need for or content of the Proposals during development, or even now that they have been presented to BOG.

Ask Any Lawyer: Recently hundreds of WSBA members have been asked for their opinion of the Proposals, through Section listserves. Few Members indicated awareness of the Proposals' existence, much less their content. Regardless of the **sincerity** of efforts to raise awareness of the Proposals, the **effect** of these efforts is failure.

NWLawyer: *NWLawyer* is WSBA's publication of record. It did not provide coverage reasonably calculated to inform the members. Its cover has never hinted that Bylaws changes are in the works and its interior coverage has been scanty at best.

Recently, proponents circulated a list of about a dozen *NWLawyer* references. Most of these are merely meeting announcements devoid of substance. Most of the other references are to a few vague paragraphs hidden within general purpose articles with uninformative titles, such as "President's Corner". The exceptions are a small number of substantive articles that presented summary statements, without the text of proposals or the arguments for or against, of limited parts of the proposals. None of them are cover stories or even mentioned on the cover.

WSBA.org: In the most recent issue of *NWLawyers*, there is a claim that "All" member comments were provided on the WSBA website[v]. This claim is puzzling. Searches of the website have not found the comments. The Bylaws Workgroup webpage on wsba.org was put up only in midsummer 2016, well past the bulk of the process. Few if any member comments are available

on the website or, if they are, locating them is difficult.

References on the website to meetings are too vague to inform members as to the subject matter or why anyone should attend[vi]. Nor does WSBA blog or Facebook presence say anything significant.

Incoming Board Members: Proponents have argued that the proposals *must* be voted on in September 2016 because one-third of the Board members will thereafter rotate off, taking with them knowledge of the proposals. This proves the lack of openness in the process.

Incoming Board members are among the best-informed and most highly-motivated WSBA members. If this core group is not fully aware of the content and reasons for and against the Bylaws changes, then the process itself is not open even to them.

Putative Laziness of WSBA Members: Some Workgroup or BOG members have complained that any lack of awareness is the fault of WSBA Members who failed to attend meetings or to read the documents.[vii] If true, that is evidence that the process is not open, but rather structured (undoubtedly unintentionally because no-one is motivated to do it on purpose) so that the average WSBA member cannot participate.

One method that the Workgroups could use to engage WSBA Members is to submit texts to relevant subject matter Sections, just as is done in considering whether to comment on legislation. Many of the proposed changes appear to touch on Administrative Law, and yet there was no effort to ask the Administrative Law Section for advice. Likewise, the WSBA name change has been justified as a matter touching on Antitrust Law, and yet there was no inquiry to the Antitrust, Consumer Protection and Unfair Business Practices Section[viii]. Many of the changes directly affected WSBA Sections, and yet for most of the process Section Leadership was excluded until late in the game. The problem is not the fault of the Membership, nor necessarily that of the Workgroups, but of the **structure of the work process itself.**

Sidebars

Sidebar – Urgency: It has been argued that the Proposals are good and necessary because they are in support of urgent needs, in particular, closing the well-known Justice Gap[ix]. This is a *non sequitur*. Quality does not arise from urgency. To the contrary: the more important the code's goal, the more important that it be written to the highest quality. Open review is essential to solving urgent, underfunded problems.

Sidebar - Court Power: Some appear to feel that openness doesn't matter, because the Supreme Court can do whatever it likes with WSBA as part of regulating the practice of law. This would prove too much: BOG has been tasked with presenting the Court with the best possible proposals, not merely with proposals that have passed through a process. Openness in developing these proposals is all the more important when the Court relies on WSBA's work.

The argument is also dangerous. Undoubtedly the Court can do just about whatever it wants to

"admit, enroll, disbar, and discipline" plus closely related administrative functions. Fees are legitimate to fund this minimum set of functions. To go beyond them and to tax lawyers to fund other projects somewhat related to the practice of law is open to question.

As a practical matter, there is on the order of 30,000 lawyers subject to Court jurisdiction, and not enough wealth among us to fund closing a Justice Gap of $30 million and growing. There is a substantial injustice in requiring lawyers, and lawyers alone, to bear this burden instead of taxpayers at large. If the Court wishes to tax parties on the basis of their prosperity and relation to the legal system, law school foundations and the student loan industry may be a more appropriate source of funds.

Ultimately, there is a limit to the Court's power to compel servitude of lawyers or to take their property even for the best of causes. Members of a professional association (whether authorized by the Legislature or simply an association protected by the First Amendment) are free to fund charitable causes through the democratic processes of its elected Board. To the extent that the WSBA molecule has elements of a First Amendment and/or Legislatively authorized professional association, it likewise has their powers to fund charity. In contrast, every element of government is limited, and as we are finding with great frustration in the realm of education, the Judiciary can not tax nor do things similar to taxing. Neither can WSBA to the extent that it is an element of the Court. To discover the dividing line between fees and taxes through a second *Keller* is probably not an effective way to close the Justice Gap.

Proposal: Crowdsource Open Review

BOG has an opportunity to use the present need for Bylaws revisions to create and to practice 21st century openness in WSBA governance.

The legal profession is conservative in its procedures. This is a virtue in its predictability, but in other ways a vice. In particular, it may have encouraged many of the problems in the current Workgroup experiment – again, not the fault of the Workgroups, but of the process.

Old habits die hard. Going from a traditional model of decision making to a 21st century model has challenged bigger enterprises than WSBA. However, history tells us that the outcome is **always** better when debate is real and encouraged, proposals are widely examined and criticized, the arguments for and against both presented, and buy-in is developed among the membership.

Grasping this opportunity depends on no particular opinion as to whether the Proposals are good or bad. Indeed, an informed opinion **is not possible** on this until the proposals have been openly reviewed and debated by WSBA's many expert members.

The Proposals have just recently been made public, and the debate has begun. The first round of open code review, started only last week, has predictably revealed defects[x], as is typical at this stage of the process. In the normal course of review, more issues will surface, but it takes time. BOG should provide this time.

Relating each code change to the strategic goals justifying them is in a much less advanced state. Neither the financial analysis of their impact nor analysis of their projected effect on access to justice appears complete. Also, there is seen little would-be attempt to seek buy-in from stakeholders[xi] by involving them in the review process. BOG should encourage this, perhaps through Section liaisons and outreach to member districts.

It is natural for the writers of code changes to advocate for them, and perhaps to feel disappointment at criticism. This commentary is not intended to disparage their efforts, but it may be a hard read for them, and for that I apologize.

However, it is not best practice to rely solely upon the advocacy of a code change's writers in deciding whether to adopt it. Until there is open and thorough review of the Proposals by WSBA's Membership and perhaps other experts, BOG is not in a position to vote on them. To publish the proposals, and the arguments for and against each, in a format permitting a debate, and then to let the debate proceed for an extended period, may appear to be a radical concept in democracy and openness, but it is also a prudent exercise in BOG's fiduciary duty to protect WSBA's assets and goals.

Such wide open discussion may not be easy, because WSBA has not done it before; we are stuck in the old model. But other enterprises have succeeded at this. If Bylaws revisions are worth doing, then they are worth doing well. Crowdsourcing the code review can ultimately reduce the overall workload of the BOG and WSBA Staff while maximizing quality.

Let us therefore take this opportunity to move, stumblingly if necessary, into 21st century governance. BOG should execute a thoroughly open code review before making decisions on the Bylaws Proposals.

Respectfully,

Randy Winn
WSBA #25833
Rewinn2003@yahoo.com

Notes

[i] Gipe (by way of Erickson), "Bylaws Work Group - Materials for 8/8/2016 Meeting/Highlights", Section-Leaders listserve, Aug 16, 2016 11:36 AM.

[ii] *See* Bernheim, "RE: More on Openness in WSBA Governance", Section-Leaders listserve, Aug 31, 2016, 2:19 PM.

[iii] Oddly, BOG minutes do not include the exact text of motions voted on. Therefore, it can be hard for future Boards, as well as Members and the Public, to figure out precisely what BOG has authorized. WSBA's General Counsel stated in writing that it is not necessary to make a precise written record of motions passed. *See* McElroy, "Your March 5 2016 Email" *reply crossposted* Section-Leaders listserve Mar 11, 2016 6:22 AM. This may be a problem.

[iv] Typically the internet or an intranet, but sometimes a wiki and/or an email listserve with an accessible archive, or some newer technology.

[v] Hyslop, *NWLawyer*, September 2016, p 10.

[vi] Bernheim, *supra.*

[vii] Risenmay, "RE: Bylaw Changes", Aug 16, 2016 7:23 PM, *Crossposted to* Section-Leaders listserve Aug 16, 2016 10:14 PM.

[viii] Noble, "?AntiTrust Litigation and Renaming/Repurposing WSBA?", Section-Leaders listserve, August 11, 2016 3:16 pm.

[ix] Risenmay, *supra.*

[x] For example, *See* Simburg, "Definition of "Member" -- Technical Comments on Article III", Section-Leaders listserve, Aug 17, 2016 2:23 PM; Edlund, "Draft Bylaws Article IX Comments", Section-Leaders listserve, Sep 9, 2016 11:42AM.

[xi] Two front articles in September 2016 *NWLawyer* have just made their brief case for the Proposals as written. However, as we learned during the late Referendum debacle, *Bar News* articles, however sincerely intended, rarely create buy-in; that comes only from active engagement.

From: Sections
To: WSBABylaws
Subject: FW: A Modest Proposal
Date: Wednesday, September 14, 2016 10:05:42 AM

Paris

Paris A. Eriksen | Sections Program Manager
Washington State Bar Association | 206.239.2116 |parise@wsba.org | sections@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

-----Original Message-----
From: Ruth Laura Edlund [mailto:rle@wechslerbecker.com]
Sent: Tuesday, September 13, 2016 10:43 PM
To: WSBA Section Leaders
Subject: [section-leaders] A Modest Proposal

There seems to have been a lot of electronic ink spilled over making sure Article I of the Bylaws tracks proposed amended GR 12.

Why do the Bylaws not simply incorporate the provisions of GR 12 by reference? There is then no coordination/revision problem.

Ruth Edlund

~*~*~*~*~*~*~

Ruth Laura Edlund (admitted NY, WA)
Wechsler Becker, LLP
701 Fifth Avenue, Ste 4550
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206.624.4900

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September 14, 2016
Board of Governors
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: Comments on Proposed Changes to WSBA Bylaws – Email Meetings and Minutes

Dear Members of the Board of Governors and other WBSA Leaders,

Proposed changes to WSBA bylaws include a two items concerning meetings meriting comment.

A. Meeting By Email

The proposals ban meeting by email (presumably including cousins to email such as threaded forums.) The reason given is openness; there is an expressed desire to permit members of the public to observe, participate, record and/or subsequently learn about the conduct of meetings.

The ban should not be enacted, because it contradicts the reason.

When done properly, meeting by email gives the public greater opportunity for observation, participation and reading the record than does meeting by conventional oral means. Conventional meetings requires **simultaneity**; that is, you can attend a conventional meeting only if you happen to be available when it is held. This is a great barrier to the public and serves little purpose.

It may be objected that meetings by email can be abused. This is an issue with conventional meetings as well. The solution in both cases is to regulate, not ban.

For a real-world example: The World Peace Through Law Section has faced the fact that our Executive Committee could not find a time at which all of us could meet. Our members reside in various time zones, and requiring them all to be available when it is convenient to our Seattle majority was both impractical and discriminatory. Member of the Section or the public were also generally unavailable at any particular meeting time.

We experimented with meeting via email on the Section listserve, and the result was success. Instead of opening meetings by sitting by the phone hoping enough members called in to form a quorum, we opened meeting exactly on time by sending an agenda to the listserve, initiating discussions, offering motions and voting on them. This had the extra benefit of letting all members of the Section observe and participate, and of later having an exact record of what was said by whom.

Should any member of the public express the slightest desire to participate in meetings of the WPTL Executive Committee, they would included and welcomed by simply adding a CC. Alternatively, WSBA could relax its ban on members of the public participating in Section

listserves.

Meetings by email automatically record their proceedings. This serves the purpose of openness far better than meetings conducted orally because the records are exact, searchable and published. Furthermore they are more accommodating to members of the public with perceptual or linguistic situations outside the dominant paradigm. Compared to oral meetings, email meetings are far more accommodating to persons with non-majoritarian hearing capabilities or who do not speak English.

Therefore, I ask BOG not to approve bylaws change that would prevent meeting by email or the like. Suitable regulation laying out minimum standards would be helpful.

B. Motions In The Minutes

The proposed bylaws changes do not make clear that Minutes must include the exact text of any motion voted on.

One would think that this would not be necessary to state to any organization of professionals. One would be wrong. Inspection of BOG minutes reveals that exact texts of motions have often not been recorded. WSBA's General Council recently informed the Section-Leaders listserve that there is no requirement that BOG – and by extension, all WSBA entities - record the exact text on which it votes.

It feels odd to have to state to an organization of lawyers the significance of recording precisely what one is authorizing or declining to authorize. It may suffice to note that the **cost** of recording an exact text is small, and the **risk** of failure to do so is great.

Therefore, I urge BOG to amend the bylaws to require Minutes to include the exact text of any motion voted on.

Respectfully,

Randy Winn
WSBA #25833
Rewinn2003@yahoo.com

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September 14, 2016

Board of Governors
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Re: Proposed Amendments to WSBA By-Laws and Other Court Rules

Dear Governors:

I write these comments solely in my capacity as a private individual who is an attorney licensed to practice law in the State of Washington and who is a current member in good standing of the Washington State Bar Association. This letter is not intended to be nor should it be construed to be presented in my capacity as a long-time WSBA Section Leader, member of any particular WSBA Section or other entity. It should further be acknowledged that the comments presented herein are not intended as a personal criticism of any particular individual or individuals but rather as constructive feedback to facilitate an open dialog of controversial issues and a better work product reflecting the best practices of an organization I have long held in high esteem.

The issues presented by the proposed amendments to the WSBA By-Laws, GR 12, and the APRs now before the Board of Governors (BOG) for consideration are so vast and far-reaching that it is extremely difficult, if not impossible, to prepare a comprehensive, yet concise, presentation of what I and many of my colleagues perceive to be problematic about them. To that end, this letter is, sadly, quite lengthy and detailed but is, by no means, a complete analysis of all of the issues raised or presented by the proposed amendments. To facilitate a sense of organization, this letter is presented in sections and a set of exhibits to help the reader. These sections are as follows:

I. An overview of the concerns and questions for which I seek feedback from the BOG;
II. A general list of observations that apply to all of the proposed amendments;
III. A general list of observations/question as to each Article of the WSBA By-Laws supported by a detailed breakdown of comments, Article by Article, provided in a separate Exhibit which focuses primarily on the specific Article; and
IV. A summary and closing with requests presented to the BOG.

I. OVERVIEW

At the outset I would like to acknowledge the tremendous amount of time and effort that many individuals have put into the proposed amendments. Having personally served on committees and task forces that have tackled major projects that required years of work, I do appreciate – probably better than most – what a Herculean effort such a project requires. I also appreciate, however, that working for so long on a project can result in the creators of the work product becoming too close to the work thereby resulting in failure to catch important errors or details as well as the likelihood of becoming too invested in the product. For that reason alone, rather than trying to push for an expedited approval, it is always helpful to subject the product to 'fresh eyes' in order to gain a better quality product, to avoid unintended consequences, and to achieve user buy-in.

In addition, I have been regularly attending the BOG meetings on for the past ten years or more. During that time I have witnessed many issues of importance to the members come before the BOG and, when the members have expressed not only interest but concern about the proposals, the BOG has taken the necessary time to have multiple readings of the proposal and take questions and feedback from the members and other stakeholders often without regard to their own expiring terms. One such example was the effort expended prior to approving the guidelines for indigent representation a few years ago.

This brings me to my first observation/question.

What is the necessity of pushing the proposed amendments through after only one short-set first reading before the BOG?

The answers provided thus far have focused on assertions that:

(A) this process has been going on for about four years (since appointment by former President Crossland of the Governance Task Force (GTF) following passage of the dues referendum);
(B) this has been a transparent process that has been available to members of WSBA via the official website at www.wsba.org;
(C) action needs to be taken before the four governors whose terms are ending in September 2016 and a past president rotate off the BOG; and
(D) an ongoing reference to a need to approve and implement these amendments to avoid anti-trust litigation from the federal government based on the *North Carolina Dental* case and, more recently, a veiled reference to some illusive legislation that may be forthcoming to tax attorneys to fund a new program to provide legal services to middle income members of the public

As to **(A)**, while it may be true that this process started in 2012, many of the faces involved since that time have rotated off the BOG or off the task forces and work groups involved. The BOG itself demanded a full year to review the recommendations of the GTF , broken into discrete pieces to be reviewed one at a time at individual BOG meetings, in order to prepare its own responses and recommendations. Thereafter, BOG created a By-Laws Workgroup (BLW) to take that work product and turn it into proposed by-law and rule amendments for consideration by the BOG. That process took yet another year but the work product was not even made available to the members for review and comment until roughly five business days prior to a Special BOG Meeting on August 23, 2016, at which the notorious first reading occurred. Only then was it learned that the proposals included things that were not part of the prior two task forces' recommendations. Moreover, a portion of the proposals are still not complete including those associated with the Sections Policy Workgroup (SPW)- yet another topic for another time - that has not even submitted its final recommendations to the BOG (nor will it do so prior to the cutoff imposed on members to comment on the present proposals in order for those comments to appear in the September BOG Book . In addition, only at that August 23rd meeting was it disclosed that there were still unresolved questions about what result certain proposed amendments actually are intended to produce. Once such example identified was whether the BOG actually intended to approve the Article that, as currently proposed, would allow non-lawyers to run not only for specific new At-Large gubernatorial seats but also for Congressional BOG seats presently only available to lawyer members of the WSBA.

Why should the current members of the WSBA not be given the same extensive opportunity to digest and comment on the proposals that has been afforded to the BOG itself? What makes the members' input less valuable, appreciated, or important?

As to **(B)**, transparency, it is true that much of the information has been placed on the WSBA website; however, that does not mean that *all* of the information has been there nor that it has been there in a timely fashion nor that it has been made easy to locate. It also would be completely disingenuous to imply that the average member actually visits the website on a regular basis, knows how to navigate it, or had actual knowledge of what has been going on. If that means the BOG has an excuse to say 'shame on you' to the members, then so be it. I wholeheartedly agree. I have been begging the Sections and other stakeholders to assign and send representatives to every BOG meeting for years but most do not understand the value nor the importance of doing unless there is a specific topic on an agenda that is of interest to that particular stakeholder group. Likewise, it is extremely costly to miss a full day (or more) of work to attend a meeting that may or may not have any business about which the individual member holds interest. Unlike those who choose to run for WSBA leadership positions and knowingly commit by so doing to the extensive amount of time required to perform the duties of their office, most members simply do not share the ability to do so either in terms of time or financial expenditure. However, perhaps that has now begun to change with the level of interest that has been generated by the debacle over the SPW letter of December 31, 2015, that has awakened the Section Leaders!

Despite all of that, holding short-set *Special* BOG meetings during the middle of the work week when most of the members have commitments in court, to clients, or to their employers that cannot be ignored, is not providing members with a meaningful opportunity to participate. Allowing attendance by webcast without providing the ability for real-time, interaction by the online attendees with one another as well as with those attending in person is not transparency nor is it a good communications practice. Withholding stakeholder comments and questions expressed during BOG meetings from the minutes themselves is not transparency nor is that a good communications practice. Citing to non-existent surveys or pools as a defense to a work product is not transparency nor is it a good communications practice. BOG members not visiting the local bar associations in their district or not visiting the Sections to whom they are a liaison is not transparency nor is it a good communications practice. All of these things are real and all of these things destroy trust between the BOG and the members. But there is still time to repair this relationship and rebuild that trust if only the BOG will listen to the voices so desperately being raised now.

As to **(C)**, does not the BOG have an obligation (and do not the members have the right) to provide its members an equal amount of time to review these work products and provide important feedback to their elected representatives? If not, why not? Neither the BOG nor any member of WSBA is omnipotent and all can certainly benefit from listening to and considering the opinions and expertise of their learned colleagues. So again I ask, what is the urgency here?

The proposed amendments are not routine housekeeping updates that typically require little discussion or in depth research. These are major changes that require an exceptional effort to review and clearly express questions, concerns, suggestions, and comments.

The amount of hard work that has gone into the drafting of proposed By-Law and rule amendments is certainly appreciated. I, for one, understand that type of effort and sacrifice from personal experience. A good work product, however, will stand the test of time and new eyes – so why not allow the members a real opportunity to become educated and respond rather than only giving them lip service? Please do not get stuck on a polarizing position of "we did our job and gave you notice, you just ignored it" vs. "how did we know when it's so hard to find anything on the website and the stuff there is so vague or incomplete". Such a dialog produces no good result and certainly does not engender either trust or good will. Moreover, it doesn't address the real issue – the proposed changes to rules and By-Laws that may forever alter the future of this organization and the practice of law in the state of Washington.

While it is human nature to take pride in one's authorship of a document, such pride can be one's ruin and cause minds to close to fresh perspectives or cause the creators to become defensive rather than being open to dialog and change. Such closed mindedness creates an environment where things are overlooked, phrases are inartfully worded, and other work product flaws flourish. It, unfortunately, appears more and more that the latter is happening with regard to the proposed amendments.

As to **(D)**, if there has been any anti-trust suit brought or legislation dropped, then when and where has that occurred? While admittedly I may be wrong, I am unaware of any suit that has been brought against WSBA (or any other Bar Assn) to date by the feds asserting anti-trust – so why rush? This is the same argument that was raised to justify creating LLLTs and yet there has been no such suit filed, to my knowledge, in any state in the entire United States. Would it not be better to know the allegations actually involved in such a suit in order to respond appropriately or take appropriate corrective action rather than speculate by conducting such a wholesale, enormous change with only the hope it's what is needed/expected to avoid suit? Why be afraid? There are over thirty thousand lawyer-members of our Bar Association many of whom are extraordinarily gifted at their craft and most of whom take on cases every day and work them through in a logical order to successfully resolve the issues involved. As to any potential legislation that may be forthcoming, essentially the same observations apply. In either situation, acting in haste sends a message that our leadership has no faith in the skills of our members to successfully defend against any such suit or legislation. That certainly cannot be the intent of the WSBA leadership or so I would hope it is not.

In summary, all of the reasons presented to date to justify rushing this process rather than providing for a thorough vetting of the questions presented are nothing more than excuses to prevent member participation in this process when it has been so loudly requested by so many.

II. GENERAL OBSERVATIONS AS TO PROPOSED AMENDMENTS

Because of the short timeline provided, I have found it to be impossible to provide any comment specific to the proposed changes to the APRs or to GR 12. Having said that, however, it is my observation that those proposed rule changes and inextricably linked to the proposed amendments to the WSBA By-Laws such that neither can or should be submitted without a full vetting of all to assure consistency and avoid contradiction.

1. PROPOSED WSBA BY-LAW AMENDMENTS.

Throughout the proposed By-Law amendments are various substitutions of terms now in use with new words whose use appears to be suggested in order to encompass non-lawyers under the WSBA By-Laws as full members on equal footing with lawyers. The problem is that it becomes the situation of putting a square peg in a round hole. It just doesn't fit.

While many of the functions, purposes, and activities (both those authorized and those not authorized) set forth in the current WSBA By-Laws may be appropriate to set forth in the By-Laws or Charters of the Boards specifically applicable to LPOs and LLLTs, the merging of them into the document originally designed to apply only to lawyers is one of those square peg-round hole dilemmas in that it changes the meaning as originally applied and diminishes the value to the current (original) members of WSBA; i.e. the lawyers.

Many entities are accountable or report directly to the state Supreme Court but that does not make all of them (nor should they be) subject to becoming part of the WSBA; i.e. AOC, SCJA, BJA, etc. Each of these entities has their own structure, regulatory authority, and budget. The same should be true for the limited license non-lawyer regulatory boards and programs created for the benefit of these limited license non-lawyers. Although in 2012 the state Supreme Court *ordered* WSBA to provide administrative support to those Boards and handle the budgets and funds for those entities, it did not dictate that these limited license non-lawyers were to assume equal standing with lawyers as members of the WSBA. Moreover, in the dissenting opinion to that 2012 order, it was quite eloquently pointed out that requiring the lawyers of this state to fund those programs was equivalent to taxing those lawyers and that the authority of the Court to do so was questionable.

If limited license non-lawyers wish to form a professional association to represent their unique interests, they should be encouraged to do so. That, however, does not mean that they should be rolled into an association that was formed for the unique purpose of representing the interests of lawyers. The two are not one and the same and should not be treated as such.

It has been pointed out recently that there has been no apparent analysis performed by the WSBA as to the cost of extending full member benefits to non-lawyers and to reflecting those costs in the non-lawyer license fees in the same manner as the costs of membership are calculated and included in the license fees for this state's lawyers (and the proposed lawyer license fee increases to be voted on at the September 2016 BOG meeting). Due to the unknown fiscal impact of the issues associated with this question, the matter needs to be fully vetted and the membership made aware of the resulting research before the proposed By-Law amendments should be presented for final approval.

Along the same area of concern is the proposal to add non-lawyers to the governing body of the WSBA; i.e. the BOG. As has become the custom in the last couple of years, comments in opposition to this proposal and suggestions for less dramatic proposals have fallen on deaf ears. I, for one, strongly oppose such additions to the BOG. That being said, however, non-voting non-lawyer members on the BOG or non-lawyer members of an advisory committee to the BOG are more attractive alternatives if, in fact, the point is to obtain feedback from and consider the perspectives of these non-lawyer groups.

Most of the members of WSBA who have become even slightly informed about the proposed By-Law amendments are aware that there is a proposal to add three new at-large governor seats to the BOG to be filled by non-lawyers. What is of considerably greater importance, however, is the oft

overlooked proposed wording in Article VI, ELECTIONS, and the likely consequence of the proposed By-Law amendments that may result from the language presented. That consequence is that non-lawyers would be eligible and could run for the current BOG seats presently only available only to lawyers and voted on by members based on Congressional District. In addition, based on this same proposed language, these same non-lawyers would be eligible and could run for every officer position of the BOG except that filled by the Executive Director as *ex officio* Secretary. This would leave only the three at large seats reserved for lawyers (i.e. one for Young Lawyers and two for under-represented or diversity groups). Under this possibility, 14 of the 17 possible positions could ultimately be filled by non-lawyers! That is unacceptable.

Another significant area of concerns lies with the effort for force all WSBA Sections (currently 28 of them) to be cookie cutter, Stepford wives on one another; an outcome that would essentially destroy the very essence and value of the Sections. Each Section is a reflection of the unique areas of practice or interest with their only common denominator being that each Section serves the needs of the lawyers who are dedicated to improving that area of practice and to better protect the clients they represent along with the citizens of the State of Washington as a whole. The unique needs, goals, and composition of each Section demands something other than a cookie cutter approach. One size all does not fit them all. If that is the goal of the proposed amendments, then why not just abolish the Sections and refund all of the voluntary dues the members have paid to be a part of those special entities or allow the Sections to break away from the WSBA to form their own organizations akin to the Minority Bar Associations now present within our State.

What will the cost be to implement all of the proposed amendments within the operational infrastructure of the Bar? The cost to upgrade the various computer systems and redesign tools like the lawyer director alone will undoubtedly be substantial. So, where are the estimates for these costs? What was included in them? Were studies even performed to address this issue?

There has been a great deal of commentary and discussion regarding whether or not WSBA is a state agency. Some argue that it is while others argue the opposite. Some on both sides argue that it must be/or can't be in support of their interpretations of what such a designation (or lack thereof) means in terms of allowable activities and functions. Some argue that it is not a State Agency and therefore not subject to the Open Public Meetings Action while at the same time defending its status as a "pseudo" State Agency (or, the other terminology being "agency of the state") to justify things such as WSBA employees being the beneficiaries of falling under highly enviable state retirement programs. Either it is a state agency or it is not. If it is not, get out of the state retirement system and save a ton of money. If it is, then get rid of the open public meeting policy within the By-Laws and simply operate in accordance with the Open Public Meetings Act.

III. EXHIBITS WITH ARTICLE-BY-ARTICLE COMMENTS/QUESTIONS

Attached to this letter are individual Exhibits numbered A-I through A-XVI one to coincide with each Article within the By-Laws. It is within these exhibits that Article-specific questions and comments are presented so as to aid the reader in matching the questions and comments more easily with each Article.

IV. SUMMARY AND CLOSING

As with the observations presented in the preceding sections of this letter and the exhibits thereto, every effort has been made to be thorough but it must be emphasized that the information presented is NOT intended to be an exhaustive presentation of every possible question or comment. There is simply insufficient time to do so and the body of knowledge necessary to provide an exhaustive analysis requires minds and resources far more well-equipped than what I have to offer.

There are so many significant (as well as several very subtle) issues presented in the proposed By-Law amendments about which there is simply insufficient time for one person to provide a thoughtful and complete commentary by the deadline imposed.

Several of my colleagues have submitted their own effort for your consideration. Not all of us agree on every issue but we all respect one another's effort in bringing these varying perspectives to your attention. I also do not disagree with every proposed amendment being brought forth. And I will endeavor to identify and provide you with my comments/questions on new issues that are identified hereafter.

With all that has been discussed thus far, it should be crystal clear to any reader that this unique and vast set of proposed amendments demands a level of expertise and precision that does not presently exist in the documents that were put forth for first reading at the August 23, 2016, Special BOG Meeting.

For so many reasons, it is respectfully requested that the BOG decline to take a final vote on the proposed By-Law and rule amendments scheduled to be considered at the September 2016 BOG Meeting and to, instead, schedule a series of meetings over then next year to address a limited set of Articles at each such meeting in the same manner that it analyzed and vetted the GTF Recommendations in between June 2014 and September 2015.

Respectfully,

JEAN A. COTTON
Attorney at Law

cc: WSBA President Bill Hyslop
WSBA Section Leaders
Washington Supreme Court
Governor-Elect Christine Meserve
Governor-Elect Dan Bridges
Governor-Elect Rajeev Majumdar

EXHIBIT A -I

ARTICLE I. FUNCTIONS

Comments/Questions:

A. PURPOSES ON GENERAL

- removes "Association" from name of organization

See comment below re ¶10 and ¶11.

"Association" has been a part of the name of this organization since its inception in 1933. Even today, the Washington State Bar Association can be found on the Department of Revenue and Department of Licensing websites identified as "Entity type: Association" and with the NAICS (North American Industry Classification System) Code 813920 defined as a Professional Organization.

¶ 1 changes "Bar" to "legal profession"

What does this mean? There are a lot of people who are a part of the "legal profession" who are not included; i.e. secretaries, legal assistants, court clerks, court administrators, process servers, and so forth.

It also becomes confusing in that the term "Bar" has a well-established meaning, function, and purpose that has been developed over centuries. Think of places where it is part of our lingo; for example, Bench-Bar.

Black's Law Dictionary describes "bar association" to mean an organization that is composed of attorneys.

This history of the term "bar" is delightfully presented in the on the website of the Florida bar association as follows:

> "The history of the term "bar" as representing a legal organization dates from the early 13400s. The word originated when King Edward II established a system of courts throughout his kingdom to settle disputes among the people. Judges moved from village to village to hear and settle disagreements in the surrounding communities. The people of this early era derived most of their entertainment and education in public gathering places. Hearing the plights and disputes of fellow villagers was a great diversion for them. As the courts grew in number, more people began attending these sessions as a social gathering. Consequently, the court sessions had to be held in fields or commons to accommodate the crowds. It soon became necessary to set up boundaries to separate the spectators from the proceedings. This was accomplished by surrounding the court with a square of logs. Only those person who were part of the

court or party to the argument were allowed within the square of logs of "bars". Thus, the terminology, "admission to the bar," became synonymous with practicing law. The term "bar" since has come to mean an organized group practicing law in a given locality."

The proposed change is more than semantics, it would change the entire meaning and purpose of the sentence and should not be approved.

¶ 3 adds "and the public"

What "services" does this organization provide to the public? It does not represent them in litigation. It does not offer them treatment if they have problems that affect their work ethic. It does not require them to maintain continuing legal education credits. It does not discipline members of the public. It does not grant them a license of any kind. The only way this organization "serves" the public is through the regulatory functions of assuring that persons licensed and practicing law in this state are properly vetted prior to admission, maintain proper continuing legal education to assure competence, providing assistance to members who are experiencing a crisis or problem that affects their work (i.e. addiction, mental health, etc.), and disciplining those who fail to uphold the standards imposed upon them by rules, statutes, and case law. Co-mingling the term "and the public" in this sentence is not only highly misleading, it is also quite confusing and subject to misinterpretation.

A possible solution would be to add a separate item in the list that says something like "Serves the public by assuring that the standards imposed upon its members as set forth in the RPCs, APRs, and other applicable rules, statutes, and case law are fully enforced ." This, however, is already provided in subparagraph 7 which is addressed below and therefore would seem to be redundant and unnecessary.

¶6 Assuming that LLLTs and LPOs are to be elevated to full members of the WSBA, the statement seems to be benign; however, it would be more clear if a clause were added at the beginning of the statement such as "As delegated by the Washington Supreme Court, ..."

That being said, what if the ultimate decision is NOT to place LLLTs, LPOs, and Lawyers on equal membership footing within the WSBA? This begs the question of why non-lawyers should be included as full members of the WSBA. The only answer being expressed by some at WSBA is something to the effect that this is required because they have a limited license to practice law per Supreme Court Order and the Supreme Court has delegated the administrative function for these individuals to the WSBA. That's not good enough. The LLLTs have their own Board – the Limited License Legal Technician Board (APR 29(C))– and the LPOs have their own Board – the Limited Practice Board (APR 12(b)). Both Boards include representatives of that type of practitioner and all Board members are appointed by the Supreme Court. If they (the LLLTs and LPOs) wish to amend those rules so that they have a vote in selecting their Board members, that would seem the place to do so – not under the Board historically designed specifically for lawyers?

In addition, why remove the word "misconduct" from the statement? Is it not an allegation of misconduct that is being investigated? We are certainly not opening investigations based oon bad hairdos or bad breath are we?

¶10 and 11 changes "association" to "organization"

According to Black's Law Dictionary Free Online Legal Dictionary 2nd Edition, a "Bar Association" is an organization that is composed of attorneys. "Attorneys" are defined as a lawyer, counsel, a member of the bar and an officer of the courts who is engaged by a client to represent them and try a case. "Attorney at Law" is defined as an advocate, counsel, official agent employed in preparing, managing, and trying cases in the courts. An officer in a court of justice who is employed by a party in a cause to manage the same for him. When used with reference to the proceedings of courts, or the transaction of business in the courts, the term attorney always means "attorney at law". An "Association" is described as the act of a number of persons who unite or join together for some special purpose or business; the union of a company of persons for the transaction of designated affairs, or the attainment of some common object; an unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. An "Organization", on the other hand, is simply a group of people, structured in a specific way to achieve a series of shared goals.

Removing the word association from its companion word, Bar, is technically a misnomer and inaccurate.

B. SPECIFIC ACTIVITIES AUTHORIZED.

¶6. This paragraph assumes that the WSBA is the body responsible for receiving and investigating complaints and disciplining, etc. LPOs and LLLTs when, in fact, APR 12 and APR 28 provide that the Boards for each of those entities have those duties. WSBA has only been delegated the authority to handle the budgets and funds for those entities and provide administrative support to those Boards (see APR 12(b)(3) and APR 28(C)(4). Neither of the APRs provide for the WSBA to absorb all functions of the applicable limited practice boards nor that WSBA must absorb the members of those limited license professions into the WSBA as "members" of the WSBA.

In addition to the types of problems/concerns suggested above, there are also those that are more about substance than semantics. Specifically, see I.B.22 and 23.

¶22. This authorizes the WSBA to establish the amount of all license and other fees as well as the amount charged (presumably to members?) for services provided by the bar but then trumps that with a provision allowing the Supreme Court to modify the amounts established by WSBA if that body doesn't like it. There is no accountability here, for example, to require WSBA (or the Court) to distinguish and clearly publish what portion of a license fee is necessary for the regulatory functions such as admissions, discipline, or regulatory matters versus what portion is for non-mandatory, permissive or discretionary functions of WSBA ; i.e. the function of serving the professional association for lawyers.

I have taken the time to conduct a limited, yet enlightening, amount of research to ascertain factual or supporting information as to some statements made by some proponents of the proposed By-Law amendments. In that effort, I have attempted to look briefly at each of the 50 state bars' websites. I found it interesting that several actual publish the various parts of the license fees for their jurisdiction b segregating out the mandatory regulatory functions from the other functions of their respective associations. Why doesn't WSBA do so?

¶23 Why must this item be listed? There is great concern that if the Supreme Court wants the WSBA or some other entity to administer the boards the court has created, then the court should assure funding for those boards is provided by those benefitting or reliant upon them; i.e. the public, the Legislature, the Executive Branch, or the practice area (LPO or LLLT) - but not funds mandated on other practitioners who are not governed by nor and have any authority over those other entities' boards. It is a tax upon lawyers with no benefit to them; an unfunded mandate; a taking. Is that not the same type of conduct attempted by a cruel, mad English King over two hundred years ago that resulted in the infamous Boston Tea Party?

C. ACTIVITIES NOT AUTHORIZED

No comment.

EXHIBIT A -II

ARTICLE II. DEFINITIONS AND GENERAL PROVISIONS

COMMENTS/QUESTIONS:

A. HEADQUARTERS

- why change "shall" to "will" – what is the functional purpose of this?

B. SEAL

- why change "shall" to "will"
- note that the Seal will continue to use the word "Association"

C. FILING PAPERS WITH THE BAR

- no comment

D. COMPUTATION OF TIME

- why remove the word "shall" – is the intent simply to make the sentence a bit less cumbersome? What about legal holidays designated by the US Congress?

E. DEFINITIONS AND USE OF TERMS

- ¶2 – refers to "membership" without a definition for same later; also refers to "members" and therefore is subject to comments concerning what should constitute who is a member of the organization that appear throughout this correspondence.
- ¶4 – why are all other documents such as those handwritten, typed, and electronic writings excluded such as emails, scanned documents, etc.? May want to redraft to restate as "including but not necessarily limited to..."
- ¶5 – what about digital media (not just video which implies a different technology); again may be more appropriate to include a phrase "including but not necessarily limited to" in this definition to account for changing technology
- ¶6 – does "electronic form" mean digital? Based on the preceding definition for "electronic means", why not have a definition for "electronic form"?
- ¶7 - why remove the word "shall" – is the intent simply to make the sentence a bit less cumbersome? and same comments as to ¶2 re word "member"

- ¶10 - "member" – please see comments in letter as to this definition
- ¶11 – "may" is not a term to describe a RIGHT; it is discretionary and, at most, a privilege; suggest changing "has a right to" to "is allowed to" or removing the phrase completely
- Why no definition of either "shall" or "will"? Since these terms are either being used or replaced throughout the by-laws, there should be a clear, concise definition of each. They are no less important than the terms "may" and "must" which do have their own definitions!
- Why are there several other Articles with "Definitions" sections within them (and some with none whatsoever) rather than having ALL definitions located in one place for ease in reference AND to assure no term of art within these By Laws is overlooked? For example, Article VII, MEETINGS, uses the term "Bar entity" (or its plural) many times without a specific definition for this new term of art. That article has its own "Definitions" section as well. So why is that terms of art not defined anywhere?

F. PARLIAMENTARY PROCEDURE

Why is this subject being eliminated from this Article and moved to ARTICLE VII?

EXHIBIT A -III

ARTICLE VIII. MEMBERSHIP

The greatest dilemma with regard to this section of the by-laws appears to be an intermixing of the function of licensure and the function of membership without consideration of the differences between the two. The terms are not synonymous but the proposed amendments attempt to treat them as such.

The primary basis for this conundrum is the apparent attempt to pull under one umbrella three (or more) separate types of service providers when the core function of each type of service provider is substantially different as are their interests, needs, and financial realities.

To utilize the term "member", or its derivative "membership", when referring to a licensure function is extremely misleading and is causing substantial confusion when discussions ensue regarding the proposed amendments to the by-laws.

While I wholeheartedly oppose the attempt to include non-lawyers under the umbrella of the WSBA, if that is the reality that is going to happen despite the objections of lawyers for whom the WSBA was created to represent and serve, then perhaps a better method of handling the non-lawyer service provider categories would be to have separate Articles for each group; i.e. Article VIII. Lawyer Membership; Article XIV. Limited License Legal Technician Membership; and Article XV. Limited Practice Officer Membership.

Throughout this entire Article there is great inconsistency in the use of terminology which must be corrected for purposes of clarity and accuracy. Some examples of this are cited in the following comments but, as a time-saving measure, not all incidents are noted.

A. CLASSES OF MEMBERSHIP

The section is completely new and replaces the existing[1] Section A of Article VIII that is now addressed under a new Section B in Article VIII that is entitled "Status Classifications". The existing version of this Section describes the various classifications available to attorneys (i.e. lawyers) based on their licensure status; i.e. active, inactive, etc.

In the existing version, there was no need to breakout the Section into two separate ones because only one type of service provider was being addressed and all persons who fell into that category had the same things in common; i.e. educational requirements, licensing fees, membership interests and benefits, financial obligations and needs, etc.

Perhaps the better method of rewriting this Article's Section would have been as indicated above, a separate Article for each type of service provider category with each new Article having its own Sections for the various classifications, etc. That would then allow for this particular Article to start by simply

[1] The use of "existing" refers to the By-Laws of the Washington State Bar Association last approved by BOG on September 18, 2015.

changing the heading of this Section to MEMBERSHIP STATUS under which the various status categories are/should be addressed as in the existing Article III.

That being said, if the decision is to maintain all categories of service providers under one Article, then, at the very least, the title of this Section should be changed from CLASSES OF MEMBERSHIP to TYPES OF LICENSURE to distinguish it from the next Section that discusses "classifications".

¶1 - The intermingling of the concept of membership and licensure is put to the forefront in the introductory sentence – this is problematic

a. For attorneys, the proposed language limits membership to those admitted to practice law pursuant to only APR 3 and APR 5 even though those qualified to practice pursuant to APR 8 and APR 14 are currently members of the WSBA and pay fees to WSBA pursuant to those two latter rules.

b. Why is not similar additional language such as "admitted and licensed to practice in a limited capacity pursuant to APR 28" included for the LLLT "members" as was for the attorney members?

c. Why is not similar additional language such as "admitted and licensed to practice in a limited capacity pursuant to APR 12" included for the LPO "members" as was for the attorney members?

The final, unnumbered paragraph of Section A.1 rambles and could be considerably more concise.

¶2 - Why are those licensed pursuant to APR 8 and APR 14 being excluded from membership in the Bar when they are required to pay fees to WSBA and the current APRs describe them as members? What's the benefit of excluding them? And, if excluded from membership status, why should they have to pay any fees?

The final sentence of the paragraph should, in its entirety, be a separate, numbered paragraph and should be redrafted to be considerably more concise. Would not a simple sentence such as "Membership in the Bar ends upon termination or revocation of a member's license, whether or not such act is voluntary."

B. STATUS CLASSIFICATIONS

This Section, now a new one, is the proposed rewriting of the existing Article's Section A.

Again, by attempting to combine descriptions for the status of a lawyer-member with those of non-lawyer service providers, the wording in this Section is often convoluted, difficult to read, and inartfully crafted.

The heading of this Section could be more accurately relayed by changing the heading to MEMBERSHIP STATUS TYPES. Then, if all such service provides *must* be addressed in this one Section, it would be much more appropriate to provide applicable titles to sub-sections for each type of service provider that are

appropriately titled; i.e. Active-Lawyer, Active-LLLT, Active-LPO, etc. rather than trying to address them all in the manner presented in the proposed amendments. This specific concern/comment is applicable when addressing Article IV.

These sub-categories of service provider types would be most beneficial when transferred to the WSBA member directory. Currently when looking up an attorney, the on-line directory displays a field entitled "Status". Right now, because only attorneys are in the directory, that status field simply reflects "Active" or some other status. If all service provider types are going to be lumped together, it would be difficult to distinguish between an Active lawyer versus an Active LPO or an Active LLLT. That would be EXTREMELY misleading to the public as well as to other WSBA members. This fact alone justifies breaking out the service providers into separate sections within the by-laws rather than lumping all into one.

To begin the Section, I would suggest a re-write of the introductory sentence. One suggestion could be: There are XXX types of membership status. The qualifications, privileges, and restrictions for each type of status are set forth in the sub-sections hereafter."

Why aren't the other classes of licensure included under this Section when they are clearly mentioned later in this Article without the same type of descriptive information; i.e. Disbarred, Resign in Lieu of Disbarment, Voluntary Resignation, Resignation in Lieu of Discipline, Revocation? Aren't all of these akin to subcategories within a "Revoked" status? What about Administrative Suspension?

¶1 – if changed to address the service provider type, the title of this sub-section should be "Active-Lawyer"; otherwise "Active Status" ; In addition, removal of the phrase "or disbarred..." and leaving only the disqualifying act of being suspended is misleading and incomplete. What about members who are not only disbarred but are inactive, have resigned, or are some other status other than fully active? This needs to be further fleshed out to be concise and comprehensive.

¶1.b.2 Considering the practice elsewhere in the by-laws, why list all of these "entities" and just simply say "other Bar Entity"?

¶1.b.4 This is not accurate if non-lawyers become Active bar members as is being proposed. Each Section currently has its own by-laws, some of which exclude certain types of practitioners such as non-lawyers. Sections should be allowed to make such a determination rather than being forced to take in a new class of members - *voting* or non-voting - without their consent – a topic yet to be fleshed out in that Article and a separate workgroup's efforts. Suggest adding clause at end of statement that states "if allowed under the Section's by-laws".

¶1.b.5 This is a debatable issue as the cost and funding to support such additional members' access to full member benefits now financed solely by attorney members of the Bar.

¶2 The introductory paragraph that is being deleted is informative and helpful. It is suggested that this remain in the updated by-laws and possibly expanded to include "Inactive-Nonlawyer". Are inactive members going to be allowed to serve on other "Bar entities"? Why list only committees and boards?

¶2.a.1 Again, this should remain the decision of each Section and be subject to the provisions set forth in their by-laws. One size does not fit all and should not.

¶2.a.5 What member benefits are being offered to inactive members and what are the costs of this as well as the source of funding? Has any analysis been performed? If so, where can this information be found?

¶2.b.2) Is the intent to call this status "disability inactive" or simply "inactive"? If the latter, then a simple statement under the preceding statement to indicate inclusion of such individuals would be more concise and sufficient. If the former, then clearly use the two-word term throughout whenever referring to that status classification would be more appropriate.

¶2.b.3) Why are "honorary" members included under this status classification? Why not a separate one or, as stated for 2.b.2) above, why not list them under the inactive class description? Reading the description in this paragraph begs for the class to be a separate, standalone one and not part of the inactive classification.

¶3 Throughout this section there is reference to "resign" and "voluntarily resigned" – the use should be made consistent to say one or the other but not use both. It is somewhat misleading and confusing otherwise.

¶3.d.2 Considering the practice elsewhere in the by-laws, why list all of these "entities" and just simply say "other Bar Entity"?

¶3.d.3 What member benefits are being offered to judicial members and what are the costs of this as well as the source of funding? Has any analysis been performed? If so, where can this information be found?

¶3.d.4 Again, this should remain the decision of each Section and be subject to the provisions set forth in their by-laws. One size does not fit all and should not.

¶3.d.5 What does this mean? If they can serve on Bar entities, why wouldn't they be eligible to vote or hold an officer/chair type of position within that entity? This seems to be contradicting 3.d.2 above.

¶4.a Considering the practice elsewhere in the by-laws, why list all of these "entities" and just simply say "other Bar Entity"?

¶4.b Again, this should remain the decision of each Section and be subject to the provisions set forth in their by-laws. One size does not fit all and should not.

¶4.d What member benefits are being offered to Emeritus Pro Bono members and what are the costs of this as well as the source of funding? Has any analysis been performed? If so, where can this information be found?

¶5 The statement that "Members of *any* type can..." [emphasis added] have their membership suspended is not only inaccurate but also grammatically incorrect. First, any type would arguably include disbarred members (recognizing that this status is not currently identified under this Section of the Article but arguably should be identified) and it appears the writer only intended "any" to include active and inactive status classes included by the statement. Second, "can" imparts that the member "is able to" and therefore has a choice or control over the decision when, in fact, that is not true. If I understand the intent of the writer, I believe the statement should be rewritten to indicate that the Supreme Court has authority to order any member to be suspended based on some criteria specified in the statement.

C. REGISTER OF MEMBERS

No comment.

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

¶1 What include the second sentence? Would it not be better to add a clause at the conclusion of the preceding sentence stating "and as set forth in applicable APRs"?

¶1.b What does the newly added last sentence mean?

¶2 Why is the reinstatement/readmission course only required for lawyer members?

E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE through H. VOLUNTARY RESIGNATION

Comments that may be applicable to these Sections are not provided in this document due to the time restrictions for submittal of position letters to the BOG. The writer reserves the right to provide additional feedback at a later date if necessary.

I. ANNUAL LICENSE FEES AND ASSESSMENTS

¶6 This provision DOES NOT belong in this Article and should be removed and placed under Article VIII.

J. SUSPENSION through O. EXAMINATION REQUIRED

Comments that may be applicable to these Sections are not provided in this document due to the time restrictions for submittal of position letters to the BOG. The writer reserves the right to provide additional feedback at a later date if necessary

EXHIBIT A -IV

ARTICLE IV. GOVERNANCE

COMMENTS/QUESTIONS:

There are 3 versions provided in the materials disseminated for the August 23rd meeting. Having insufficient time to address all three versions, only Version 1 is addressed below.

Why isn't the Executive Committee described in this Article instead of only being mentioned in Article VII????? Since by its very Charter the Executive Committee is clearly a function of governance, it should be fully addressed under this Article.

If removing "Board of Governors" essentially throughout the Article (and elsewhere in these By Laws) and replacing it with "BOG", then, for consistency, every reference to "BOG" should be prefaced with the word "the" or it shouldn't be – not both. The prefacing "the" is not consistently used in these proposed amendments.

Why replace "shall" with "will" or "must" here and in other Articles? What is the purpose/rationale to do so?

A. BOARD OF GOVERNORS

¶ 1. – changing three at large Governors to six at large Governors –

First, regardless of the Governance Task Force recommendations, I have found the most members of the Bar oppose this change as do I. Second, why call these "elected" Governors when they are really just appointed by the BOG? Say that. They are appointed. They have no representative capacity as to any group of the membership. The same is true of the President. See subparagraph 2b comments.

¶ 2. - a. It is true that the BOG elects the President, but why is that the case? Why isn't the President elected by the members? What would be wrong with that? With electronic voting now available, it would be simple to do and provide much greater support by the members than the current methods which often appear to simply provide an existing insider with the upper hand in the selection process over one not a current BOG member (look at the last two selections)!

b. The sentence is missing an "and" after the newly proposed clause and the existing clause that begins with "annually...."

c. Each Governor is elected to represent the interests of their district's members and in doing so, represents the interests of all members. Representing one's district does not mean that the Governor is absolutely bound by misinformed or uninformed members (which would occur less often with better communications from the Governors to their districts). Even more important is that the Governors DO NOT represent the public who are not members of the Bar! While the Bar may *serve* the public through the its obligation to assure competency in its members, it does NOT *represent* and is NOT *elected* by the general public. Use of the word "represent" in this paragraph is

a misapplication of the term itself as well as applied to the role of the governors and should not be used.

d. As written in the existing version of the bylaws, the statement is accurate. As proposed in the amended version, the statement is not only inaccurate but also dilutes the duties and responsibilities of the elected governors.

e. There should be some recourse against Governors who are appointed to serve as BOG liaisons but who do not attend the meetings nor communicate with those entities to which they are to be liaising. Moreover, there should be no special treatment that *requires* an entity to allow such a Governor to attend their executive sessions. This change from a permissive to a mandatory in the proposed amendment is inappropriate and not well received. Moreover, why is/should not the same courtesy be extended to entity liaisons to the BOG?

f. – Is the intent of the amended portion of this paragraph to excuse Governors from attending other functions that, prior to these proposed amendments, they have historically been expected to attend?

¶4 b 2) – Why not conduct a special election as described in section 4.b.3) under this circumstance and where the Governor in question is one elected based on Congressional District, rather than have the BOG select the successor Governor? It makes sense for BOG to appoint a successor when it was BOG who made the original appointment but not when the original Governor was elected by the members.

Based on the foregoing concerns/comments, the BOG is urged to NOT approve the proposed amendments as written at this time.

B. OFFICERS OF THE BAR

Considering the core, unresolved problem of who will be an "Active" member under the proposed bylaw amendments and whether there needs to be one or more subcategories of active members (i.e. Active-lawyer, Active-LLLT, Active-LPO, etc.) requires an answer before being able to accurately comment on parts of this Section of Article IV and other applicable Articles.

In this case, the clause indicating that "all officers must be Active members of the Bar" is highly misleading without that clarification being in place. Using only the term Active member in this situation without more clarification will mean <u>that one or more non-lawyer members of the BOG (assuming that provision is adopted) could be officers of the Bar</u>. That is completely unacceptable since not a single one of those individuals would be elected by the lawyer members of the Bar.

¶ 1 – Why list all of the potential bar entities here when elsewhere throughout these proposed by-law amendments the effort is being made to eliminate such lists other than in a definition? Why is the President only expected to provide one report to the members of the activities of the Bar? Why isn't it a *minimum* of one report with an expectation of multiple reports?

¶ 6 – Why change from the word "pleasure" to "direction"? Would it not be more accurate to say that the "Executive Director serves at the pleasure of the BOG as directed and is subject to

an annual performance review by the BOG." This implies that the position will not be subject to hiring/firing/disciplining by the employer as any other employee would be. Is that the desired intent?

¶ 7 a- Same question/comment as to why isn't the President elected by the members rather than by the BOG? This topic requires discussion involving <u>all</u> of the current members of the association.

¶7 b- Same comment as for paragraph 6 above. In addition, despite the Governance Task Force Report recommendation to the contrary, the Supreme Court should play no role in the selection or termination of the Executive Director of this organization. That individual is an employee of the organization mandated to follow the directives and serve at the pleasure of the BOG . If the Supreme Court has issue with those directives, they should be addressed directly to the BOG, not to its employee. Moreover, as illustrated in case law that has been cited by others in their presentations to BOG over the last few weeks, the Supreme Court only has authority over the regulatory/discipline/licensure side of the organization and not the professional side of it that should be representing the members' interests. This would undoubtedly cross that line and place too much authority in the hands of the Supreme Court over issues it should not be involved in.

C. BOARD OF GOVERNORS COMMITTEES

¶1 - Here is another example of why trying to make a one-size fits all set of By-Laws is cumbersome and confusing to the reader. Are BOG committees subject to the same rules and regulations (bylaws) as all other Bar entities that are supposedly being lumped into that one term, Bar entity? If not, why not? If BOG Committees are special, then what limitations are there on creating new ones or eliminating old ones on a whim or to silence dissenting members? What's the difference between a BOG Standing Committee, a BOG Special Committee, a BOG Work Group, any other BOG subgroup, and non-Bog committees, work groups, or other subgroups?

¶2 - Why, in subparagraph 2, aren't non-BOG or non-Bar staff persons listed as potential members of these "committees"? And, if there are such members, why are they not automatically voting members? Why shouldn't they be? [Also, the last sentence in the subparagraph needs a rewrite to make it more concise and clear.]

¶3 - Subparagraph 3 contradicts provisions elsewhere in these proposed by-laws as to who may attend and under what circumstances. There needs to be work done to make these various provisions consistent with one another.

¶4 - Why is this Committee segregated out and made a part of the By-Laws when the others listed in paragraph 1 are not?

Why is this committee only required to have a 2/3 (67%) majority for determining either that the legislation complies with GR 12.1 or for purposes of taking a legislative position **WHEN SECTIONS ARE REQUIRED TO HAVE A ¾ (75%) MAJORITY in order to do either???????**

D. POLITICAL ACTIVITY

no comments

E. REPRESENTATION OF THE BAR

This introductory paragraph is yet another example of missing what is being promoted elsewhere in these proposed by-law amendments - Why list all of the potential bar entities when elsewhere throughout these by-laws the effort is being made to eliminate such lists other than in a definition?

For all of the above concerns/comments, the BOG is urged NOT to approved the proposed amendments to Article IV.

EXHIBIT A -V

ARTICLE IV. APPROPRIATIONS AND EXPENSES

COMMENTS/QUESTIONS.

Generally, the verb tense in this Article is not consistent within the Article itself and also does not match that of other Articles and should be modified to be consistent throughout the By-Laws.

Same general comment as to substitutions such as the word "will" for "shall", etc.

A. APPROPRIATIONS

¶ 1.a. an example of the general comment above; i.e. "shall appoint" is more consistent than "appoints".

Also, the paragraph following subparagraph 1.c. appears to be part of the primary paragraph and, as such, the margin should be extended to the left to line up with the primary paragraph. Same general comment about verb tense. Also, is it the intent of the last sentence in this paragraph to allow/include non-BOG members on the BOG Budget and Audit Committee and, if so, what type of individuals are envisioned: i.e. staff, members of the public, lawyer members of the Bar, others? Please clarify.

B. EXPENSES; LIMITED LIABILITY

¶ 2 Typographical error resulting from substation of "is" for "shall" without removing word "be" needs to be corrected.

¶ 3 and ¶ 4 – Both of these statements appear to require cross referencing to Article XIV, INDEMNIFICATION, and should be consistent with that latter Article. Is it the intent of either or both of these provisions to impose personal liability on such individuals or entities when the liability has been incurred through no fault of their own? That is what is implied.

EXHIBIT A -VI

ARTICLE VI. ELECTIONS

COMMENTS/QUESTIONS:

There are 3 versions provided in the materials disseminated for the August 23rd meeting. Having insufficient time to address all three versions, only Version 1 is addressed below.

A substantial amount of comments have already been provided regarding the contents of this Article and therefore I will not spend a great deal of time on detail here. However, there are some quite substantial issues that the BOG was unable to answer during the August 23, 2016, Special BOG Meeting with respect to the intent of the use of certain terms within this Article. In fact, it was acknowledged during that meeting that the question posed as to the intent of the proposed changes in this Article had been previously discussed but not resolved as to what the intent will be.

The question posed surrounds the drafted language where the terms "Active member" and "Active lawyer member" are utilized . This is the primary issued below in each of the affected sections and paragraphs.

A. ELIGIBILITY FOR MEMBERSHIP ON BOARD OF GOVERNORS

¶ 1 The existing Congressional District Governors are now elected by the members and currently only lawyer members of the Bar are eligible to fill these positions; the term used to indicate this currently is "Active member". However, if the term "active" is amended (as suggested in Article III) to include non-lawyer limited licensed individuals, this changes completely who may be eligible to run for a Congressional District Gubernatorial seat and would potentially mean that non-lawyers would be allowed to fill any or all of these 11 seats in addition to the proposed new at-large seats reserved for non-lawyers. This brings the total potential seats a non-lawyer could fill to 14 of the total 17 seats on the BOG as well as being eligible to run for the Presidency of the Bar.

This is completely unacceptable and should not be allowed.

¶ 2 This section addresses the At Large Governor positions all of which are appointed by the 11 Congressional District Governors rather than by the members of the Bar. There are currently only three such positions on the BOG; a Young Lawyer position and two positions designed for members representative of traditionally underrepresented or otherwise diverse candidates. The proposed amendments would add three additional at large governor positions; two for limited license non-lawyers and one for a layperson.

¶ 2.a. addresses the two lawyer positions and ¶ 2.b. addresses the Young Lawyer position – all of which the proposal continues to identify as available only for active lawyer members.

B. NOMINATIONS AND APPLICATIONS

I have no particular comments or questions as to the procedural aspects of the nominations and applications processes as set forth in this Section of the Article.

My question/comments only has to do with why there should be any appointment process other than to fill a position vacated due to resignation, death, or similar disability.

It has never been clear why the at-large positions are appointed by the BOG rather than being elected by the members they are intended to represent; i.e. the Young Lawyer position by young lawyers and the other two positions by the members (lawyers) of the entire Bar. There have been several recent comments by others that have called this practice into question and I concur with their voices that the time has come for all members of the BOG to be elected by their intended constituents rather than appointed by the BOG.

C. ELECTION OF GOVERNORS

¶ 2.a. – see comment above as to Section A ¶ 1.

¶ 2.c.1 – why not base the deadline on the date postmarked instead of the date delivered to the Bar office. For many rural communities, the standard "3-day" delay for mail to be received is pure fiction. I, for one, live in a community where when I mail a letter to an adjacent community immediately west of my city using the US Postal Service, that piece of mail is first sent by my post office to the main sorting postal center 40-50 miles to the east of my town and then processed and sent to the address on the mailing label I prepared that is only 10 miles to my west. I have tracked this process and discovered that it is not unusual for my letter to be received at its intended recipient's address anywhere from the next day to 10 days later. However, if the postmark shows the date of mailing, there is proof of the timeliness of my act of mailing by any particular deadline. It would seem logical that this same method be used by the Bar for the mailing of ballots until such time as all ballots are cast only via electronic voting (then the problem of power and internet outages come into play).

¶ 2.e Please clarify what the place to which the ballots are delivered is intended to be; i.e. 10 days after the date the ballots are delivered to the voter or to the Bar.

¶2.f Please clarify what type of "active members" are being referred to in this paragraph.

D. ELECTIONS BY BOARD OF GOVERNORS

¶ 1 -¶ 3 - See comments above as to Section A ¶ 1. and as to Section B.

F. MEMBER RECALL OF GOVERNORS

Same question as to what constitutes an Active member for purposes of this Section. Would it be allowed for a non-lawyer "Active" member to generate a recall of a lawyer governor and vice-versa?

¶ 1 - Raising the threshold for a recall petition from 5% to 25% of the active members of the Governor's Congressional District would require, in many cases, more signatures than the

number of active members who actually vote for their governors. This is just WRONG! It also brings to mind a new question: If it is determined that the Congressional District Governors shall remain all lawyer governors, the when counting who may vote for a Governor in a Congressional District, will "Active" member non-lawyers be included in that headcount and balloting for the lawyer members?

¶ 2 At least in terms of a recall of a Young Lawyer Governor, only Young Lawyers would be allowed to participate in any vote and petition process. However, once again, raising the threshold for a recall petition from 5% to 25% of the active Young Lawyer members is just not right and should not be approved.

What about recall of one of the proposed new at large governor seats as well as the remaining current two at large governor seats? What is the process for each of these and why is it not included in this Article?

EXHIBIT A -VII

ARTICLE VII. MEETINGS

COMMENTS/QUESTIONS:

Although Sections A and B appear to be intended to apply to all "Bar entities" (including committees, Sections, task forces, etc.), they are really applicable only to BOG and do not reflect the reality of meetings of other entities.

A. GENERAL PROVISIONS; DEFINITIONS

See comment under Article II, Definitions.

¶ a. Why eliminate the description for "Regular meetings" yet include a special description for "Special Meetings"? Such drafting is inconsistent and potentially misleading. What was misleading or inconsistent about the existing sentence concerning regular meetings? What is the rationale behind this change?

¶ b. All the other terms that are defined in this section begin with the term being defined EXCEPT FOR "Bar entity" (or its plural). To be consistent in the formatting, this paragraph should be rewritten to follow the same layout. More appropriate would be to move all definitions, including this one to Article II.

In addition, under the proposed amendment, the individual entities delineated in the existing Article are stricken-through and replaced by the term "bar entity" (or its plural); however, the procedures and practices covered are, in actuality, more akin to the procedures and practices of the BOG rather than of many of the other bar entities involved. For example, where BOG may not allow proxies for purposes of voting, other entities through their approved By-Laws do.

¶ c. Since it is broken out into a separate paragraph, why not separately enumerate the definition for "final action" to maintain consistent formatting?

¶ d. This is a new definition for "minutes" that is not in the existing By-Laws. Why?

This addition to the By Laws is particularly interesting in that it will now codify the excuse for no longer listing liaison and guest attendees at BOG meetings that began earlier this year. When asked why these individuals were no longer included in the minutes of BOG meetings, the answer given by the Executive Director was that the By Laws did not require their identification!

A gradual sterilization of the minutes of BOG meetings has occurred over the last two years beginning with the elimination of any reference to questions/comments from liaisons and guests with the minutes produced in the September 2014 BOG Book and now the complete elimination of any record whatsoever that these individuals even attended the BOG meetings either on their own behalf or in a representative capacity for another organization. Despite the removal of any mention of member attendees, Bar staff (employees) are routinely listed in the minutes as attendees as is their input on issues/topics thus placing them in a what appears to be a priority position over the actual members. Such sterilizing of the minutes is not

representative of a transparent organization, does not promote the involvement nor interest of the members, nor promote good will and should be discouraged.

Based on the foregoing, the BOG is urged NOT to approve the proposed amendments to Section A of Article VII at this time.

B. OPEN MEETINGS POLICY

It is understood that the BOG is not satisfied with simply adopting the provision of the long standing statutory provision known as the Open Public Meetings Act. It is not understood why that Act is insufficient for use by WSBA nor why its scope is apparently considered to be too narrow for use by WSBA. Please explain.

¶ 1. Why eliminate the introductory paragraph 1 that is included in the existing By Laws? What purpose does eliminating it serve?

As to the second paragraph (the first in the proposed amendments), whether or not intended to be so, the second sentence can be viewed as a restrictive measure rather than a non-exhaustive, permissive list for meeting format. Some bar entities have authorized email meetings/discussions as an additional means of timely discussion. With the way this sentence is written, it could be viewed as prohibiting that. If this is the intent, why? What purpose does it serve? In addition, as technology advances, there may be other meaningful methods of conducting open meetings that would serve the purpose of transparency. Again, limiting language does not necessarily anticipate such future technological advances.

¶ 2. Why aren't matters regulated by the LLLT RPCs included in the list of entities set forth in this paragraph?

¶ 3. Here's another big change related to minutes. Presently the minutes of each BOG meeting are drafted and included in the BOG Book of the next BOG meeting for approval. Under this proposed amendment, only *approved* minutes would be made available to the public and the *promptness* requirement in generating those minutes is removed. In addition, the last sentence makes no sense. What entities are *not* required to record minutes or *not* allowed to take final action on a matter and why? Finally, once again the question arises of why substitute the words "will" or "must for the word "shall"?

¶ 4 Another instance of the question of why substitute the words "will" or "must for the word "shall"?

¶ 6 This is an example of an instance specific to BOG meetings that the proposed amendment appears to be making applicable to all bar entities; i.e. voting for At Large Governors, etc. There are no votes for at large governors by most if not all other bar entities. The entire paragraph is somewhat inartfully written and effort should be made to draft a better proposal. The existing paragraph 6 is straightforward and concise and should be retained.

¶ 7 The existing paragraphs 7 through 9 are now renumbered to 8 through 10 with this new paragraph 7 (and its new subparagraphs) being added by the proposed amendments to specifically address Executive Sessions.

¶ 7a. This new paragraph is an example of a provision that is specific to BOG meetings by its very language. As such, it should not be under Section B of this Article but rather under Section C. Moreover, the items delineated beneath it in subparts 1 through 6 are either overly wordy or expand the purpose of an executive session to processes normally prohibited to occur in an executive session based on the Open Public Meetings Act. Subparagraph 6 is specifically far too permissive and essentially provides limitless authority to the President to raise and discuss anything in secret rather than in a public meeting. This is NOT transparency. This is NOT good practice. This does NOT promote trust.

The ending paragraph to subparagraph 7a is unnumbered but, again, is not only overly broad but may directly contradict or be inconsistent with provisions in Article IV.

¶ 7b & 7c. These new paragraphs are examples of provisions that are specific to bar entities other than BOG. Why break out BOG Committees separate from other bar entities? This contradicts the basic premise being put forth that all bar entities other than BOG are to be treated the same. It that premise is true, then paragraphs 7b and 7c should be combined and applicable to all such other bar entities. If, on the other hand, the committee described is such a unique entity, then tell us which committee(s) is/are at issue.

As above, the ending paragraph to subparagraph 7b is essentially identical to that provided for BOG and should not be. It is also not consistent with the provision set forth in Article IV.

This paragraph supposedly is applicable to a committee not the BOG. In addition, as above, the items delineated beneath it in subparts 1 through 6 are either overly wordy or expand the purpose of an executive session to processes normally prohibited to occur in an executive session based on the Open Public Meetings Act. Subparagraph 6 is specifically far too permissive and essentially provides limitless authority to the Committee Chair to raise and discuss anything in secret rather than in a public meeting. This is NOT transparency. This is NOT good practice. This does NOT promote trust.

As to the content of paragraph 7c, it is far less expansive than either 7a or 7b and is more akin to that set forth in the Open Public Meetings Act. It is a better example of what would be more acceptable under both paragraphs 7a and 7b. Most important, it does not include the overly expansive subparagraph 6 of the other two paragraphs discussed above.

The ending paragraph to subparagraph 7c is unnumbered but, again, is not only overly broad but may directly contradict or be inconsistent with provisions in Article IV. Moreover, why should Bar staff and the BOG liaison have an absolute right of attendance to such an entity's executive sessions?

¶ 8 thru ¶ 10 – no changes of substance; more substituting "will" for "shall" without good cause.

Based on the foregoing comments, the BOG is urged to NOT approve the proposed amendments to Section B of Article VII at this time.

C. MEETINGS OF THE BOARD OF GOVERNORS

¶ 1 – No changes of substance. This does not, however, mean that there is not good cause for at least one minor change that may promote greater transparency, notices, and good will. That minor change would be to require the posting of the preliminary and the final BOG

agendas as well as the BOG book on the Bar website by dates certain. For example, the preliminary agenda should be posted at the same time as the meeting notice at least 45 days prior to the meeting. The final agenda and book should be posted at least 14 days prior to the meeting with the ability to post supplemental materials thereafter. As it is now, there is often considerably less time between the posting of the book and the actual meeting leaving little time for anyone to give due consideration or obtain feedback from liaison's or representative's constituents .

¶ 2a - Why expand the list of who can call for a special meeting to include 3 members of the "Executive Committee"? (See question under Section D as to membership on the Executive Committee)

¶ 2b - Since the ED is already an *ex officio* officer (secretary), is not listing the ED here redundant? (see Article IV Section B) Remove the "and" prior to "the general Counsel". Why not make the time for notice of a special meeting a minimum of five business days rather than five days? Does the last sentence mean that the notice of cancellation and all supporting documents must also be posted on the website?

¶ 5 - The new location for Parliamentary Procedure. Why not utilize the same language that is proposed for removal from existing Article 2F and copy it here rather than changing the language as is now proposed?

Based on the foregoing comments/questions, the BOG is urged NOT to approve the proposed amendments to Section C of Article VII at this time.

D. EXECUTIVE COMMITTEE OF THE BOG

Is the Chair of the BOG Personnel Committee a Governor or a Bar Staff member?

This Executive Committee is the result of a recommendation of the Governance Task Force. When this topic came before BOG for discussion, there was considerable debate over whether the ED or any other unelected individual serving on this EC should be allowed a vote on committee business when such persons have no vote on BOG. Despite that, the formation documents for the committee authorized that privilege, once again diluting the authority of the members over the governance of their association.

Where is the policy for whether or not these meetings are subject to the Open Meeting Policy? If they are not, why not?

Until this issue is resolved and addressed in the By Laws, the BOG is urged NOT to approve Section D of Article VII at this time.

E. FINAL APPROVAL OF ACTION BY THE BOARD OF GOVERNORS

no comment

EXHIBIT A -VIII

ARTICLE VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

COMMENTS/QUESTIONS:

There has been a great deal of reference made during recent BOG meetings of forthcoming proposed amendments to this Article that have yet to be provided for review and comment. This is a topic of great concern and interest. While the present stance of some By-Laws Workgroup members is that there will be no such forthcoming amendments, there is already a member referenda proposed amendment within these current proposed By-Law amendments but that item is not under this Article as it should be. Rather, that proposed change is inappropriately placed at Article III.I.6.

Pending release of any additional proposed amendments to this Article (or topic), the comments below are limited only to the existing document now under review and should not be construed later as comments on a future document released for consideration by the BOG.

A. MEMBER REFERENDA

¶ 2.c - Because proposed amendments to GR 12 are running parallel to these proposed by-law amendments, references within this Section to the "new" GR 12.1 may be premature. A simple reference to GR 12 and its subparts would cover everything applicable regardless of whether or not the new GR 12.1 is adopted.

¶ 2.d - With notification of final actions of the BOG normally coming only via the issuance of the BOG minutes and with a gap in BOG meetings periodically throughout the year, it is not only possible but probable that an action may not become known within 90 days of the action being taken. This would be particularly true if the draft minutes of a BOG meeting are no longer released prior to final approval as that process will add, at a minimum, an additional 30 day period between the final action occurring and the members being aware of it via the approved minutes being released. A solution to this problem is to start that 90 day clock upon release of the approved minutes via an eblast of those approved minutes to the members.

B. BOG REFERRALS TO MEMBERSHIP

Reference is made within this Section to procedures set forth in these By-Laws for the BOG to refer a proposed resolution, etc. to a vote of the members. Where is that procedure set forth?

This Section (as well as other references to Active Members elsewhere in this Article) refers to the "Active membership". As exists today, that would include only active lawyer members of the Bar. Is the intent to include non-lawyer members, if the a provision in Article III is adopted, in the future? Or, would the references to Active be amended to limit such matters only to Active Lawyer Members?

EXHIBIT A -IX

ARTICLE IX. COMMITTEES, TASK FORCES, AND COUNCILS

COMMENTS/QUESTIONS

Same overall question of why substituting the word "shall" with "will" or "must.

A. GENERALLY

¶ 1 - The rewrite would appear to limit the BOG's ability to delegate a work effort to more than one Bar entity when, in fact, it may be preferable to leave the option available to the BOG to delegate whole or only discrete portions of a work effort to multiple entities to ensure a comprehensive assessment of whatever the question is along with a comprehensive recommendation. This reference to a single entity can be found twice in the second sentence of this paragraph.

In addition, the last clause that begins with "however..." is redundant and should be deleted.

¶ 3 - Rather than repeatedly list the various types of entities, at this stage of the provision it should be sufficient to restate that particular clause with "A list of the current Bar entities ..." and continue the sentence thereafter as written.

The second and third sentences in this paragraph could be construed to contradict one another. A simple fix would be to add at the end of the third sentence language such as "...or by other act of the BOG".

B. COMMITTEES AND OTHER BAR ENTITIES

¶ 1 - What is the difference between a committee under this Article and a BOG Committee under Article IV?

¶ 1.a. - Here is a situation where the BOG's determination of whether the term "Active member" should be further expanded to provide whether the intent is for only lawyer-members to fill the role described or whether the intent to for non-lawyer members to do so. This should be discussed and clarified before passing on this provision.

¶ 1.b. – It appears that two paragraphs were scrunched together rather than being separate and distinct. As to the first paragraph, why substitute "are" for "shall be" – what is gained/lost by doing so? As to the second paragraph, the substitution of "is" for "shall" failed to remove the "be" following the word shall. It the substitution is to be allowed, that typographical error should be corrected. Again, however, why the substitution of terms in this paragraph – what is the benefit or consequence of doing so?

¶1.c. - Suggest eliminating the phrase "with the BOG having the authority to accept or reject that selection" and replacing it with "subject to BOG confirmation".

¶1.d. – Suggest adding "balance" immediately preceding the word "unexpired".

¶2.a. Same comment as stated above for ¶1.c. The addition of the word "committee" in the last sentence is inappropriate – this paragraph is addressing other Bar entities NOT committees. In addition, it is suggested that the ending phrase beginning with "or until such..." be replaced with something akin to "or, in the event of a vacancy, until the vacant position's successor is appointed."

¶2.b. Same comment as stated above for ¶1.c.

¶ 3.b. Was it intended that this subpart not apply to committees? If so, why?

¶ 3.c. Since there is reference in the title to this sub-section to two separate groups; i.e. committees and other bar entities, what is the term "These Bar entities" intended to mean – both or only one of the groups?

¶ 3.e. Is it really the intent of the writers to require distribution of minutes to each entity member rather than simply posting to the applicable website? If so, then way isn't the BOG required to distribute its minutes to every member of the WSBA? Why the disparate treatment? Further, if an entity has its own website, why should its minutes be posted to the WSBA website rather than its own? Also, please refer to the comments under Article VII as to the definition of "minutes".

¶ 3.f. Subparagraphs 1 and 2 again adds the word "committee" where the term should be eliminated as this subpart is supposed to be applicable to committees and other Bar entities.

C. COUNCILS

Generally this entire section of the Article should be eliminated as a council would fall under the definition of a Bar entity that is subject to only perform the work and duties set forth in its founding charter or other originating document. It is simply contradictory and redundant to maintain this section of the Article for the reasons stated.

EXHIBIT A -X

ARTICLE X. REGULATORY BOARDS

COMMENTS/QUESTIONS:

As with several other Articles, once again there appears to be a wholesale elimination of the word "shall" without explanation being provided. The original wording of the Article is preferable to this reader.

Although both the existing and the proposed Article provide that Governors and Staff are not voting members of Regulatory Boards, neither indicate how these two types of attendees may participate in executive sessions or confidential deliberations. Both versions clearly do not allow Liaisons (no definition of "Liaison" provided) to participate in such sessions/deliberations although Liaisons are supposed to be allowed to attend them. (From personal experience, I know that this has not always been the practice despite this Article's existence.) Therefore, please clarify the distinction between Governors, Staff, and Liaisons for purposes of either executive sessions or deliberations and provide some definition of the word "Liaison" so as to clarify to whom it refers.

As to the rewording of the final sentence, should it not say "Liaisons may not be excluded *from* ..." rather than the wording that is currently proposed?

EXHIBIT A -XI

ARTICLE XI. SECTIONS

COMMENTS/QUESTIONS:

With the final body of recommendations not yet forthcoming from the Section Policy Workgroup, it would be purely speculative to provide accurate, responsive comments or questions to this Article prior to having had an opportunity to fully read and digest those recommendations. Therefore, there will undoubtedly be a separate submittal as to this Article transmitted prior to the September 29th BOG meeting.

A. DESIGNATION AND CONTINUATION

B. ESTABLISHING SECTIONS

C. MEMBERSHIP

D. DUES

E. BYLAWS AND POLICIES

F. SECTION EXECUTIVE COMMITTEE

G. NOMINATIONS AND ELECTIONS

H. VACANCIES AND REMOVAL

I. OTHER COMMITTETES

J. BUDGET

K. SECTION REPORTS

L. TERMINATING SECTIONS

¶

EXHIBIT A -XII

ARTICLE XII. YOUNG LAWYERS

COMMENTS/QUESTIONS:

As a whole, the changes appear to be okay EXCEPT for, once again, the wholesale substitution of the word "will" for the word "shall". What is the reason for such a change and why is it considered appropriate?

Moreover, now that WSBA has eliminated the WYLD (Washington Young Lawyer Division) and, in essence, demoted Young Lawyers to a "committee" status, why is this Article necessary as a standalone one rather than simply becoming a subpart of Article IX, COMMITTEES, TASK FORCES, and COUNCILS"? That is, after all, the heading under which the Young Lawyers Committee is located on the WSBA website.

EXHIBIT A -XIII

ARTICLE XIII. RECORDS DISCLOSURE & PRESERVATION

COMMENTS/QUESTIONS:

¶ A. Why eliminate the entire first paragraph of the Article? The statement contained with the paragraph the proposal deletes appears to be meaningful and to relay an intention of being transparent. Is that not what the Bar is promoting? If there is some reason necessitating the deletion of the paragraph, it would be helpful to know what that reason is. Until such time as this issue is fully vetted with the members, it is recommended that the changes to this Article NOT be approved at this time.

EXHIBIT A -XIV

ARTICLE XIV. INDEMNIFICATION

COMMENTS/QUESTIONS:

This Article has been rewritten its entirety. Because it is impossible, in the limited time provided, to review and fully comprehend the essence and purpose of the changes, a thoughtful analysis could not be completed. It is therefore requested that this Article NOT be approved without a full and thorough vetting of the reasons for the complete rewrite and the contemplated improvements the rewrite provides, if any.

For additional thoughtful insight, please refer to the revised letter of September 13, 2016, submitted by Ruth Edlund to the Bylaws Workgroup.

EXHIBIT A -XV

ARTICLE XV. KELLER DEDUCTION

COMMENTS/QUESTIONS:

Throughout this Article, the drafters have substituted the words "will" or "must" for the word "shall" in a manner that appears to this reader to be inappropriate in many instances. It is recommended that these wholesale changes not be adopted but rather than each use of the word "shall" be considered carefully as to whether a substitution of terms is actually appropriate.

These wholesale proposed By-Law amendments raise a new question as to what is/is not now included in the Keller deduction calculation performed by WSBA and whether that process requires a fresh look to assure that all expenses other than those specifically limited to the regulation/discipline/admission of lawyers are included in the deduction.

EXHIBIT A -XVI

ARTICLE XVI. AMENDMENTS

This By-Law is generally without controversy as it normally would be applicable on those rare occasions when a minor adjustment to an outdated by-law required amendment to make it more accurate. However, whenever there is a major change to the By-Laws, the Article is simply lacking in appropriate severity to guarantee an honest and ethical effort is made to inform the members that something major is about to occur that requires their utmost attention. Such an occurrence should be preceded by an extremely well-advertised campaign to notify the members of the significant changes under consideration and to facilitate a meaningful series of opportunities to exchange ideas, ask questions, obtain answers, and build trust.

A significant rewriting of the entire By-Laws is one such event that mandates more than what this simple Article requires.

Major changes such as those now facing the Bar should be discussed in segments – Article-by-Article over several months to assure complete and exhaustive efforts are made to produce the best possible work product. The BOG asked for, and received, no less when it chose to consider, recommendation-by-recommendation, the report of the Governance Task Force. The members of the Bar should have nothing less offered to them when it is their By-Laws being completely rewritten.

This Article should be amended to address such major changes and the BOG is urged NOT to pass the proposed Article now before it until that occurs.

From: Sections
To: WSBABylaws
Subject: FW: [section-leaders] Feedback on Bylaws Changes
Date: Wednesday, September 14, 2016 12:53:35 PM

Older email, but relevant. Thanks!

Paris

Paris A. Eriksen | Sections Program Manager
Washington State Bar Association | ☎ 206.239.2116 |parise@wsba.org | sections@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

From: Wynnia Kerr [mailto:wynnia.kerr@gmail.com]
Sent: Thursday, August 25, 2016 2:51 PM
To: WSBA Section Leaders
Subject: [section-leaders] Feedback on Bylaws Changes

Dear Section Leaders,

A founding Animal Law Section Member and formerly active ALS Leader, Kim Thornton, recently returned to Washington State from a few years in Florida. We are fortunate to have Kim back!

Upon Kim's return to Washington, she jumped right into the fray and filed the following comments with Mr. Gipe.
At Kim's request, and to serve as a "virtual" introduction to Kim, I am sharing her communication with you.

Best regards,

Wynnia Kerr
ALS Chair Elect

----- Forwarded Message -----
From: KAT <macneil_98@yahoo.com>
To: "adgipe@shatzlaw.com" <adgipe@shatzlaw.com>
Sent: Wednesday, August 24, 2016 7:41 PM
Subject: Feedback on Bylaws Changes

Anthony,

It was a pleasure to meet you at yesterday's Special Meeting of the Board of Governors. I have been living in Florida for the last six years and have not followed the progress of either the Bylaws or Section Policy workgroups until my return to Washington last month. I want to provide you with some feedback based on my limited review of the work product of those groups and the discussion at yesterday's meeting. Please forgive me if I repeat comments made by other individuals or groups, as I have not likely seen most of them due to the large volume of information on the website. I have tried to focus on the most current versions of the proposed documents. Please also let me know if I have misread any of the provisions or if the

group has already discussed the same issues and is in process of resolving them.

Proposed WSBA Bylaw Amendments

1. I agree with comments made at yesterday's meeting that language regarding referenda on licensing fees needs to be clarified. There is an apparent disconnect between Section III.I.6 and Section VIII.A.1.a. In Section III.I.6, entitled License Fee Referendum, the phrase "shall be subject to the same referendum process as other BOG actions" has been deleted. This change suggests that the intention was to remove the referendum power over license fees from the membership, notwithstanding the qualifying language at the end of the sentence stating the license fees may not be modified as part of a referendum on the Bar's "budget." At yesterday's meeting, one board member commented that the referendum power over licensing fees is retained by Section VIII.A.1.a, which states that membership referenda may be initiated to reverse "a final action by the BOG." However, the vague phrase "a final action by the BOG" and the more specific language of III.I.6, which more specifically addresses license fee referenda should be harmonized.

2. I am also opposed to amending the Bylaws or the APR to allow the Washington Supreme Court to establish licensing fees without regard to the wishes of the WSBA membership. Members of the WSBA should always have the right to determine the cost of membership. While the WSBA is not technically a democracy in the true sense of that word, it is a professional organization whose purpose is partly to serve its members. It cannot properly serve them if they have no control over the cost of that service or what is included.

3. I agree with several speakers at yesterday's meeting that the three classes of members in Section III.A.1 should not receive comparable benefits if they pay disparate licensing fees. Some effort should be made to align the fees with the benefits.

4. I have no comment at this time about the composition of the BOG and provision for additional members. I see value in various opinions expressed in yesterday's meeting and need to give this issue further consideration.

Suggested Amendments to Bylaws Article XI (Sections)

First, as a former and future section leader, let me note that I have participated in at least one section, and at times more than one, since I began law school. Section membership constitutes the majority of my interaction with the WSBA. This history colors my comments regarding the

proposed amendments.

1. Section XI.B.1 increases the number of section members required to establish a new section. Likewise, XI.L.1 increases the number of voting members for determining continued "viability." What is the basis for these increases? I don't agree that small sections do not have value or provide service to members or the public. In fact, they often provide services that might not otherwise be available because of that group's more narrow area of practice.

2. Although I agree, in principle, that the sections are "entities of the bar," as section XI.A has been amended to read, with all the hierarchical connotations that accompany that phrase, I oppose replacing the word "jurisdiction" in section XI.B.1.a with the word "purpose." It clearly devalues the sections at the outset and does not comport with my understanding of the sections pivotal role in serving members and the public. As I noted above, the majority of my interaction with the WSBA has been through section activities. By denigrating the sections' importance in the WSBA's Bylaws, this wording change gives sections a minor role in the WSBA.

3. I have several issues related to Section XI.D. First, although it appears to be a completely new section, it directly conflicts with recommendations made by the Sections Policy Workgroup. Section XI.D states that the section executive committees are responsible for setting the amount of section dues each year. The December 30, 2015 Phase 1 Report of the Sections Policy Workgroup overtly contradicts this new Section XI.D of the Bylaws by recommending that the WSBA Budget & Audit Committee should set the same section member dues for all sections. If the dues are the same for all sections, why would the section executive committees need to set dues for their sections? The Workgroup further recommends that although the sections apparently retain the right to set their own budgets (in section XI.J), individual section funds should be pooled and administered centrally by the WSBA for the support of ALL sections (my emphasis). I fail to see why sections should set their own budgets if they do not retain the authority to control them. I am beginning to understand why the BOG specifically tabled discussion of fiscal policies at yesterday's meeting. There appears to be a lot of work left to do on fiscal policy. I also note that there was a lot of negative feedback from the sections about pooling and redistribution of section dues. I emphatically oppose the pooling of section funds, as well as the transfer of control over section budgets to the WSBA. Sections are the lifeblood of the WSBA. They are run by volunteers who provide quality education, networking and public outreach for their members. If their hands are tied by even more bureaucracy than

currently exists within the WSBA, they will not be nearly as effective.

4. Section XI.G.1.b states that the executive committee should reflect "diverse perspectives." I'm really struggling with what this phrase means. Does it mean diversity regarding the section's goals, views about the practice area that the section represents, or regional location? In other words, does this refer to diversity of opinion or representation? Are the sections, which provide "educational programming" and "networking forums" based on "practice areas or particular areas of focus" (quoting the Phase 1 Draft Report of the Sections Policy Workgroup), expected to include in their executive committees and membership individuals who have no interest in that "practice area" in order to achieve "diverse perspectives"? Is executive committee representation in the sections insufficiently diverse in some way now? I would like to understand better what is motivating this language.

Again, I'm sorry this feedback is coming to you so late in the process but I am interested in becoming more involved now that I am back in the state.

Kim Thornton

From: Paris Eriksen
To: WSBABylaws
Subject: FW: APR Cleanup: APR 13(a) and Possible Related Changes
Date: Wednesday, September 14, 2016 3:29:45 PM

Paris

Paris A. Eriksen | Sections Program Manager
Washington State Bar Association | 206.239.2116 |parise@wsba.org | sections@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

-----Original Message-----
From: Ruth Laura Edlund [mailto:rle@wechslerbecker.com]
Sent: Friday, September 09, 2016 8:37 AM
To: WSBA Section Leaders
Cc: WSBA Section Leaders
Subject: [section-leaders] APR Cleanup: APR 13(a) and Possible Related Changes

Jean, other friends:

I promised at the 8/23 BOG meeting to email you a technical comment about APR 13(a). As I look at the redline the problematic may predate the redline.

By its terms APR 13(a) governs "all pleadings and other papers signed by a lawyer, LLLT or LPO *and* filed with a court * * * ."

(1) The heading says it applies to the "signing" of "pleadings and other papers" but that is not what APR 13(a) actually addresses. APR 13(a), if you look at its language, *does not require* licensees to sign pleadings or other papers they prepare. What it DOES require is that IF the licensee signs the pleading or other paper, *then* the licensee must include his or her Bar number in the signature block.

(2) The language of APR 13(a) is both overinclusive and (possibly) underinclusive.

It is overinclusive because an LPO's scope of practice as understand it from APR 12 does not include the preparation of pleadings at all, let alone filing them with a court, or the filing of the "other papers" with an LPO's scope of practice with a court (since deeds would be filed with the county recorder's office.

It is underinclusive *if* (but only if) the intent of this language is to require LPOs to sign and include their Bar numbers on papers that they do prepare. APR 12(e)(2), however, contains a final sentence that is indented so that it appears to be a part of APR 12(e)(2)(v) but which I believe is intended to be a separate paragraph applicable to subsections (i) through (v) inclusive, and should therefore be both flush left and further spaced, stating that the LPO must identify in a *separate* signed disclosure statement signed and including his or her Bar number all the documents prepared, but there appears to be no current requirement that an LPO sign the documents prepared.

Possible Related Changes:

(1) APR 28G.(4) provides that "a document prepared by an LLLT shall include the LLLT's name, signature, and license number beneath the signature of the client." However, "document" is not a defined term in APR 28. It is not clear from looking at this rule if an LLLT who reviews a pleading for a client and advises the client about any changes, or hands the client a draft pleading that the client then prepares on his or her own computer, is considered to have "prepared" the document and should affix his or her name, signature and license number. Compare APR

28F.(6) to APR F.(9) A review of the plain language mandatory forms as they currently are constituted contains no place for a LLLT to sign anywhere. Does that mean they are not expected to sign?

[A side comment: as long as the rules are being revised, why not change the format of APR 28 so that it is consistent with earlier APRs? APR 13's top headings, to take one example, are (a), (b), (c) and so on. It is structurally jarring to switch to 28 A., B., C. and so on. This is a great opportunity to make a harmonizing change!]

(2) Civil Rule 11:

The current version of CR 11 specifies the effect of a "party" or an "attorney" signing a pleading and can allow the imposition of sanctions.

Is Civil Rule 11 going to be revised to provide the same or a similar effect to the signing of a pleading by an LLLT?

Regards,

Ruth "more than a proofreader" Edlund

~*~*~*~*~*~*~

Ruth Laura Edlund (admitted NY, WA)
Wechsler Becker, LLP
701 Fifth Avenue, Ste 4550
Seattle, WA 98104
206.624.4900
aan

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From: Paris Eriksen
To: WSBABylaws
Subject: FW: APR Cleanup: APR 13(a) and Possible Related Changes
Date: Wednesday, September 14, 2016 3:29:56 PM

Paris

Paris A. Eriksen | Sections Program Manager
Washington State Bar Association | 206.239.2116 |parise@wsba.org | sections@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

-----Original Message-----
From: Ruth Laura Edlund [mailto:rle@wechslerbecker.com]
Sent: Friday, September 09, 2016 8:54 AM
To: WSBA Section Leaders
Cc: Jean McElroy
Subject: RE:[section-leaders] APR Cleanup: APR 13(a) and Possible Related Changes

PS: It's a pretty straightforward fix for CR 11(b):

BEGIN LANGUAGE

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney or LLLT certifies that the attorney or LLLT has read the pleading, motion, or legal memorandum, and that to the best of the attorney's or LLLT's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is well grounded in fact;

(2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney or LLLT in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney or LLLT has reason to believe that such representations are false or materially insufficient, in which instance the attorney or LLLT shall make an independent reasonable inquiry into the facts.

END LANGUAGE

This assumes that LLLTs should sign pleadings they "help" prepare even if they do not "prepare" them per APR 28. It might be easier to jigger APR 28 more than to jigger CR 11 more.

~*~*~*~*~*~*~
Ruth Laura Edlund (admitted NY, WA)
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Seattle, WA 98104

206.624.4900

-----Original Message-----
From: Ruth Laura Edlund [mailto:rle@wechslerbecker.com]
Sent: Friday, September 9, 2016 8:37 AM
To: WSBA Section Leaders <section-leaders@list.wsba.org>
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Regards,

Ruth "more than a proofreader" Edlund

~*~*~*~*~*~*~

Ruth Laura Edlund (admitted NY, WA)
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PROPOSED ALTERNATIVE BYLAWS LANGUAGE

1. Modification of Committee version of IV.A.1, first sentence only.

   1. Composition of the Board of Governors

   The BOG will consist of (a) the President (b) one Governor elected from and representing each Congressional District…

2. ~~Modifeation~~Modification of IV.A.2.d.

   d. Each Governor ~~represents a constituency of the Bar as defined by these bylaws. As a representative, e~~Each Governor is expected to ~~communicate~~ engage with members about Board BOG actions and issues, and to convey member viewpoints to the Board, and to fulfill liaison duties as assigned. In representing a Congressional District, a Governor shall at a minimum: (1) bring to 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.

COMMENTS RECEIVED IN ADDITION

TO THOSE RECEIVED BY

THE BYLAWS WORK GROUP

Margaret Shane

From: Marjorie Simmons <lawyer@marjoriesimmonsesq.com>
Sent: Tuesday, August 23, 2016 12:40 AM
To: Margaret Shane
Cc: bef@furlongbutler.com; rajeev@northwhatcomlaw.com
Subject: Opposition to proposed amendments to the WSBA Bylaws and Aug 23rd reading

To the WSBA Board of Governors:

The WBSA President Bill Hyslop sent an email notice on Friday August 12 of the August 23 meeting, with no link to, nor an agenda, nor indication of a deadline for responses. A one-business-day deadline is per se unreasonable, and I therefore ask the Board grant a meeting day post-deadline response.

I oppose adoption of the proposed amendments to the WSBA Bylaws at this time, and as written, as damaging to the public, to the Association, and to the practice of law, regardless of the type of license involved, as well as needlessly adding to burdens carried by the judiciary.

Procedurally, the opaque process leading to the imminent adoption of these amendments, collectively having such a sweeping scope, has been without proper notice and opportunity for all stakeholders to weigh in, and it has not been transparent. For example, the handful of public workgroup meetings that some people could have attended were not followed up with bulletins to the general membership with even executive summaries of workgroup progress and decisions, and such bulletins should have been created and at the very least posted on the WSBA website and/or in NWLawyer for those who could not attend the public meetings. In order for any member to be fully informed, they would have had to attend all the meetings and read though over 1,500 pages of material, at minimum. For another example, for this August 23rd meeting, the email notice sent one week prior to the meeting did not address the response deadline, even though it was only one business day after the email, nor include a link to further information. Therefore, as proposed, adoption of the proposed amendments is premature and must be tabled for further consideration by the membership for at least the next six months, after the membership has been afforded full and complete disclosure.

Substantively, I oppose the proposals as follows.

First, the proposal to expand the number of the Board of Governors by three unelected non-lawyers is prohibited by the Bar Act, RCW 2.48.030. The fact that such additional Board members would be appointed by the Supreme Court adds to the burdens of the Court, and the current membership has not been afforded opportunity under RCW 2.48.50(7) to weigh in given such a fundamental change in its governance. The proposal also does not prevent some as yet unidentified subjectivity or cronyism, and by assigning the appointments to the Court's ever-growing list of duties, with due respect to the Court, there is no concomitant procedure proposed to ensure reasonability or guarantee that such appointments affecting the membership would result from a transparent or fair process.

Second, and possibly more importantly:

(A) LLLTs and LPOs are not lawyers, and yet, LLLTs and LPOs are proposed to have a seat at the table that governs the practice of law, and
(B) the proposals reduce the proportionality of democratically elected voting Board members by including Board representation for LLLTs and LPOs.

A better proposal is to create an ancillary association of LLLTs and LPOs with a suitable board of its own.

It is not news, but it is relevant, that the practice of law by non-lawyer LLLTs is strongly opposed not only by the Family Law Section whose business they will affect most,(n. 1) but by a large number of scholars and other Bar members for many reasons, chief among them reasonable concern that LLLTs will hurt the public, burden the judiciary, and will not by their existence achieve the goal of reducing the expense to the public for legal assistance.(n. 2) Connected to that (currently overruled) concern is that, at present, Bar members are represented on the Board at a ratio of one Board member for approximately 3,800 lawyers. With ten Board members total, one Board member to represent a tiny number of LLLTs and another for a small number of LPOs drastically dilutes representation of lawyers by the Board that exists to represent lawyers, in an association of lawyers, in favor of non-lawyers.

The obvious question presented is: is this Bar an association of lawyers or not? The proposal to seat one Board member each for LPOs and LLLTs answers that question decidedly in the negative, and I am opposed to it, as we must ensure fundamental fairness in this Association of members of a profession by proper representation of their interests, and protect the public's interest by keeping non-lawyers from governing the practice of law: LLLTs and LPOs have no business sitting on the Board of Governors for our Association, but they should have an ancillary association and board suited to their limited type of licenses.

Additionally, the proposed equal membership in WSBA of differing license classes is also problematic, because although all membership classes are proposed to have seats on the Board, those membership classes do not contribute similar fees to support the WSBA. For example, LPOs and LLLTs are assessed fees for licensure, but not fees for cost of programs or membership, as are lawyers, as far as one can tell from the materials presented thus far. Adoption of the proposal would result in lawyers paying for LPOs' and LLLTs' share of membership and program fees.

It is also unclear from the proposals whether LPOs and LLLTs must contribute to a fund for client protection, as lawyers do, or whether the fees assessed lawyers are intended to make up for LLLTs and LPOs not paying to a fund that protects LPOs' and LLLTs'
clients from harm. If so, what particular logic results in lawyers paying for LLLTs' and LPOs' mistakes and misdeeds? LPOs and LLLTs must be assessed fees to protect their clients, just as lawyers are, and lawyers should not be financially responsible for non-lawyers who are not under their supervision. If the actual intent of the uneven license classes is for lawyers to pay for the non-lawyers as part of an overall effort to reduce fees for the public, then the uneven license classes are simply assessing a tax on lawyers to support non-lawyers, and the Supreme Court might as well set a schedule of fees for all lawyers' services. How, exactly, is that reasonable?

Third, the proposal to strike the word "Association" from the WSBA via Bylaw, contrary to the terms of the State Bar Act, and to strike references to the WSBA serving its members and the membership, is nonsensical. The WBSA, like all other state bar associations, is an association of lawyers who serve the public as officers of the Court, and the Association serves its members, whether through continuing education, discipline, social events, or any of many different ways. Bar associations are also the nexus of collegiality among peers, serving the public interest by strengthening lawyers' sense of ethical duty, holding lawyers to account not only before the Court, but among their peers in the Association, 'peers' being the operative word and meaning colleagues with a similar level of education and knowledge. Collegiality and the sense of ethical duty among lawyers, and therefore before the courts, will be irreparably harmed by this and the other proposals' enactment, because their cumulative effect, if enacted, will be to gut the Association's identity, and the public perception of law practice in this state as a profession, already damaged by the promotion of LLLTs and LPOs as full Bar members rather than limited licensees. In its place will be left a shell covering disassociated people with no sense of duty to each other as members of a collegial association of professional people. How, in any way, does this serve the interest of the Bar, of the courts, or of the public? This and the other proposals mentioned here serve none of them and should not be enacted as proposed, instead, due to their sweeping nature and the fundamental changes they would make in our Association, must be fully reviewed, discussed, and voted on by the membership, and only after full disclosure.

Fourth, with the oversight of the Supreme Court, this Association's members exercise their duty to manage their own association through their Board, and the proposal to revoke the membership's ability to set Bar dues through the Board, (and axiomatically, Association budgets), cedes that duty to the Supreme Court in derogation of RCW 2.48.50, which

reserves the duty to the Bar's Board of Governors. No notice to or vote of the membership pursuant to RCW 2.48.50(7) has been taken to voluntarily cede that duty to the Court. When purse strings are pulled away, there is a reason, and generally not a pleasant one. There has been no showing of a pattern of financial mismanagement on the part of the Bar of its own resources, nor any suggestion of it, that would require the Court to intercede. What purpose then, has the proposal for the removal of that duty from the remit of the Board? The Court has its own business to do, and like all courts, its remit far exceeds its resources. How does this proposal to transfer the duty to set Bar dues to the Court serve the Court, the membership, or the public interest? Until some showing is made for the need of such a transfer, and without a vote of the general membership per RCW 2.48.50(7), I oppose it as needlessly adding to the duties of an already overburdened judiciary, and assuming a priori financial incompetence on the part of the Association, with no cause showing.

The proposals presented would weaken the Bar and contribute nothing to the practice of law, the administration of justice, or the public good. While I have been a WSBA member for close to only a year, I have been a member of the South Carolina Bar for 19 years, and I have seen efforts to weaken bar associations before. None of them turned out well for the Bars, the judiciary, or the public.

(n. 1) While I am a member of the Family Law Section, my business will be undiminished by LLLTs' activities given that I limit my focus to QDROs and data security, areas in which neither LLLTs or LPOs may work, and LLLTs' mistakes may actually increase my business, unfortunately for the public.

(n. 2) As enumerated in the Annual Report for 2015, Washington had a population of 31,126 lawyers with 74 disciplinary actions, and
768 LPOs and nine LLLTs with one disciplinary action, making the 2015 disciplinary occurrence rate 0.00237743365675 for lawyers and
0.0012870012870013 for LLLTs and LPOs, comparatively. However, LLLTs have only been in existence for a year and it is statistically likely that LLLTs' incidence of disciplinary actions will rise with the number of 'admitted' LLLTs. The revocations and suspensions for LPOs listed on the WSBA website
(http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Limited-Practice-Officers/LPO-Public-Notices) also do not match the statistics given in the Annual Report.

Sincerely,

Marjorie Simmons (admitted SC, WA)
Marjorie Simmons, Esq.
PO Box 688
Burlington WA 98233
(360) 299-1121

From: Randall Winn [mailto:rewinn2003@yahoo.com]
Sent: Tuesday, August 23, 2016 11:11 PM
To: potterre@frontier.com; robin@mcneicewheeler.com; wynnia.kerr@gmail.com; mghosh@ghoshlawfirm.com; koptun@dshs.wa.gov; WSBA Section Leaders; Keith Black; Anthony Gipe; Paula Littlewood; William D. Hyslop
Subject: GREAT Opportunity to Practice Openness in WSBA Governance

My friends on the WSBA Board of Governors and Section Leaders:

Recently the Washington State Bar Association unknowingly ran a multiyear experiment with the concept of "openness". Its staff and Board of Governors created Workgroups that held a series of meetings that produced proposals for major revisions to its Bylaws.

The content and worth of those proposals is not the present subject; rather, the subject is "openness" in 21st century governance.

The Workgroups maintain that the process was "open" because they held meetings to which all were invited.

The Critics of the Workgroups maintain that the process was not "open" because the vast majority of WSBA members have no idea of the content of the proposals, nor the reasons for or against.

The most intractable, and least productive, arguments are often those for which both sides have a point. Both the Workgroups and the Critics have their points.

19th Century Openness

The Workgroups used a traditional 19th century version of "Openness" familiar to all of us who came of age in the 1960s. A small and dedicated group set hearings and accepted written messages that may or may not have influenced the outcome. Every member of WSBA was invited; the fraction who attended is not known with precision but was on the order of 1%. After all, most WSBA members have day jobs and, even among that fraction of members who have scheduling autonomy, attending bar meetings is not billable.

Some of the argumentation for and against the proposals were kept secret (e.g. the entire argument about antitrust risk was given in WSBA BOG Executive Session and so concealed from the membership to this day). Most of the rest of the argumentation is inaccessible because it was given orally or provided in a format not reasonably calculated to educate (e.g. vaguely alluded to in BOG minutes and stated explicitly only on page 357 of Meeting Materials).

A small number of people drafted the Proposals. The proposals were kept private, or distributed modestly. The final product was not available until the last possible moment.

This is what "Open" means in the old model.

21st Century Openness

When developing complex projects, the current era uses a different model. A 21st Century model of Openness requires publication of interim products and written debate inviting large teams of stakeholders, using ubiquitous self-documenting media (typically the internet or an intranet, but sometimes a wiki and/or an email listserve with an accessible archive.)

This model has advantages:
1. It enables and encourages debate from all interested parties, regardless of geographical or temporal limits, resulting in the collection of the best ideas.
2. It lets everyone parse and ponder preliminary proposals, illuminating conflicts and defects. As any wikiuser has experienced, no Workgroup, however intelligent, can match the brainpower of 30,000+ WSBA members even if each member devotes but a single hour in contribution.
3. It develops neatly structured arguments for and against, which promotes understanding of the proposals that emerge.
4. It enables access to the proposals and arguments from start to finish, which encourages buy-in to the final product. No-one will agree to everything, but everyone can feel they had an equal voice.

Again, whether these Workgroup proposals were good or bad is *not the issue*; rather, the issue is whether the process is "open" in the sense of the 21st-century.

- Was debate in fact enabled and encouraged?
- Were the proposals available in a timely manner to be parsed and pondered by the 30,000+legal professionals of the WSBA?
- Were neatly structured arguments for and again crafted to promote understanding?
- Was buy-in created?

To each question, the evidence suggests the answer is *"No. It's nobody's fault, but no"*.

There is no evidence that the vast majority of WSBA members are aware of the content of the proposals. To the contrary, most of the references to them in *NWLawyer* are merely meeting announcements, and they always refer to the proposals being presented in September, not August. The WSBA blog doesn't say anything significant and the few webpages on wsba.org were put up only within the past month or two. Perhaps the best evidence is the argument by some that the proposals must be voted on in September because one-third of the Board members will rotate off, taking with them knowledge of the proposals. But Incipient Board members are among the best-informed members of the Bar; if they themselves are not fully aware of the content and reasons for and against the Bylaws changes, then the process itself is fatally flawed.

Some Workgroup or BOG members have complained that the problem is the fault of the members who failed to attend meetings or read hundreds of pages of documents. That is a strong argument that the process is not open in the modern sense; it is structured so that the average WSBA member cannot participate.

Finally, some have asserted that all this talk of openness doesn't matter, because the Supreme Court regulates the practice of law and can therefore do whatever it likes with WSBA. But this

proves too much: openness in developing these proposals is all the more important, so that the Court is not presented with proposals that have not been reviewed by ten thousand lawyers, instead of a few dozen. (And the argument is itself dangerous: undoubtedly the Court can do whatever it wants to "admit, enroll, disbar, and discipline" plus related administrative functions, but whether it can tax lawyers to fund other projects somewhat related to the practice of law is a subject that true friends of Access To Justice would prefer not put to the test. There is a limit; do we really want to find it the hard way?)

The Opportunity

The legal profession is conservative in its procedures. This is a virtue in its predictability, but in other ways a vice. In particular, it may have encouraged many of the problems in the current Workgroup experiment.

Old habits die hard. Going from a 19th century model of decision making to a 21st century model has challenged bigger enterprises than WSBA. However, history tells us that the outcome is **always** better when debate is real and encouraged, proposals are widely examined and criticized, the arguments for and against both presented, and buy-in is developed among the membership.

BOG has an opportunity to use the present need for Bylaws revisions to create and to practice 21st century openness in WSBA governance.

Grasping this opportunity depends on no particular opinion on whether the Proposals are good or bad. Indeed, an informed opinion is not possible until the proposals have been openly published to, and made available for debate by, WSBA's 30,000+ members.

I urge BOG to publish the proposals, and the arguments for and against each, in a format permitting a debate, and then to let the debate proceed for as long as it takes. This won't be easy, because we have not done it before. But if Bylaws revisions are worth doing, then they are worth doing well.

This can also be a model for further experiments in 21st century governance. Perhaps we can reduce the workload on BOG members by crowdsourcing some of the work. Why not try? What principled argument is there against trying?

Sincerely

Randy Winn
(Writing for myself, not as): 2016 Chair, WSBA World Peace Through Law Section

From: Mr.Larry R Schreiter [mailto:larry@schreiterlaw.com]
Sent: Wednesday, August 24, 2016 12:01 PM
To: Solo and Small Practice Section
Cc: solo-and-small-practice-section@list.wsba.org
Subject: [solo-and-small-practice-section] LPOs and LLLTs

As I recall, many members of the bar back in the 70s complained that title companies, whose people were closing escrow, were engaged in the "unauthorized practice of law", as arguably were real estate brokers and agents in completing real estate purchase and sale contracts. Rather than confront that, the Supreme Court and the Bar came up with the idea of licensing people to do specific, limited tasks involved in filling out pre-approved forms in the real estate and mortgage industry. Thus was born the Limited Practice Officer (LPO), and the rules around licensed real estate professionals to use pre-approved Multiple Listing forms, who no longer would be deemed to be practicing law without a license.

The LLLT (limited license legal technician?) is a much more recent creation, out of concern that we actual lawyers and Bar members are too expensive, plus we can still decline clients who cannot pay. I think this is an idea to give non-law school grads who do not have to pass the Bar exam the right legally to engage in some limited practice areas. Still experimental, but the Supreme Court and the Bar seem to be all gung-ho about it.

I personally do not view increasing encroachment by non-law grads as a good thing. But I guess it may be preferable to mandatory pro bono and free services, when many lawyers, especially small firms and solos, have a hard time making a sufficient income that covers their expenses and pays back their loans.

Time will tell whether the profession ends up splintered like the medical field with lawyers the analog to doctors, and all the permitted non-lawyers doing certain things the analog to the many kinds of specialized nurses. I do agree with Erin's feeling that the Bar is not transparent, and will do whatever the powers that be and the activists decide, no matter what the membership may feel.

Just my two cents.

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From: Ruth Laura Edlund [mailto:rle@wechslerbecker.com]
Sent: Wednesday, August 24, 2016 1:14 AM
To: WSBA Section Leaders
Subject: [section-leaders] Board of Governors Special Meeting August 23, 2016 - "Licensees" versus "Members"

Dear Friends of the Sections:

I would like to take the opportunity to thank all involved--Bar Staff, Governors and officers of the Washington State Bar Association ("Association"), the Association's rank-and-file, and others who contributed to today's meeting. I believe that the discussion that was begun has the potential--if encouraged to continue--to be productive for our common goals.

I personally appreciated the opportunity to ask questions about fundamental issues that I believe to be of great importance to the Association. I came away from the meeting, however, with more questions in my mind than I had when I arrived.

I think it is well past time for everyone to examine the proposed change in the definition of "membership" in the Association and make certain that we all understand: *what* is being proposed, *why* it is being proposed, what the *consequences* of that proposal will be, and whether there are *other* options to meet the stated objective, once we agree on what our objective is, that might have less drastic consequences than some that seem highly likely at this juncture. It is easy to fall into the trap of either reacting *against* the change, or reacting *in favor* of the change without suspending judgment while considering the pros and cons dispassionately.

Let me begin by noting (again) that there is a distinction between classes of licensure to practice law in Washington, and membership in the Association. Despite the fact that the Association styles itself a "mandatory" bar, you can actually be a member of the Association and be unable to practice law here in a number of circumstances, and you can actually practice law in Washington state and not be a member of the Association in a number of other circumstances [you can also, in certain other circumstances, legitimately practice law in Washington state in some contexts without being a member of the Association, having a license or being a lawyer at all--ask me for details if you want to know.]

I thought it was worthy of note that when I raised the classification of APR 9 Licensed Legal Interns as licensees, which they clearly are, and wondered whether they shouldn't be included as members, I received a response that seemed discordant. I was told that they are "law students," which is imprecise. A Licensed Legal Intern can hold a valid license under APR 9 for up to 18 months after graduation from law school or completion of the APR 6 program. I was also told that there were "very few" of them. I believe the number quoted was 400. This is, it is true, a small number of licensees compared to the 31,000 active lawyer licenses. It is, however, greater by many orders of magnitude than the fifteen LLLTs currently licensed in Washington for whom we are instituting massive structural changes.

It also seems odd, because our Bylaws have been undergoing an extensive examination, and Bylaws Section XII remained virtually untouched. That Section establishes a "member segment" (whatever that is--I have no idea what a "segment" is supposed to be) to encourage the interest and participation of young lawyers and law students in the activities of the Bar. Law students, whose status as students is limited in time in the much the same way as Licensed Legal Interns, can be non-voting members of Sections. It seems logical that if Section XII has any continued utility (and it must, or the Bylaws Work

Group would have recommended getting rid of this Section, rather than lightly editing it), one way to fulfill its purpose would be to create for Licensed Legal Interns a type of Bar membership to "encourage" the "interest and participation" of these limited licensees who may be expected to be full members someday. Without meaning to be unkind, LLLTs are the shiny new thing for the Association, and in (some of our) zeal to incorporate them into the membership structure, we overlook the old toy (APR 9s) and purposes of the Association stated in places that we just forget to look (like Section XII).

If Bylaws Section XII has no meaning, why don't we get rid of it? If it still has meaning, then why aren't we trying to implement it? And if we as an Association are trying to be consistent about making LLLTs and LPOs *full* members (a goal about which I continue to have reservations), why is Bylaws Section XII limited to young "lawyers," when that Section should by rights be encouraging the interest and participation of "young legal professionals" (unless you want to create parallel Sections of the Bylaws for them--not that I'm advocating that)? And, of course, rethinking Section XII, which I think we must, may require rethinking how the Young Lawyer's current slot on the Board of Governors is to be configured.

I also thought there was an odd answer given to the question raised about potential future annual assessments on LLLTs and LPOs for contribution to the [Lawyer's] Fund for Client Protection. First, I do not believe that the forecasting contained in the July 2016 BOG book used a specific estimated contribution from these licensees. I believe it was a BOG member who made the comment that because the scope of practices pursuant to these licenses is limited, the Fund's exposure to claims from these licensees would be limited, and therefore the assessments wouldn't need to be very big. If the license is limited, and the obligations are limited, why would it not follow that the memberships associated with those license classes could be limited as well?

I think it was obvious to everyone in the room, when this point was raised, that there hasn't been any forecasting/planning to determine the financial consequences of extending member benefits and services to these additional classes of licensees, and what adjustments should be made to their licensing fees, given the high estimate of the costs of these benefits and the very low license fees these licensees currently enjoy. If the argument is that the scope of practice for these licenses are limited, so their licensing fees should be lower, then we are providing full member benefits to these licensees at a cost of zero, and these benefits are being subsidized 100% by lawyer-members of the Association. I think many members will have a problem with such a subsidy. To those who would again point to the low current number of LLLTs, I point out the Association is committed to increasing the numbers of LLLTs, and there are substantially more LPOs at present.

I again have the impression that LLLTs are also the shiny new thing when compared to LPOs. LPOs have been around since the early 1980s, and we are just now getting around to thinking about making them "members" of the Association. Our sudden interest in them now appears to be a by-product of the promotion of the LLLT license class. What kind of outreach is being done to LPOs? What do they want from the Association? What role do they see themselves playing? I see that Governor Karmy is the BOG liaison to the Limited Practice Board. I would be particularly interested in her thoughts on effective outreach to these licensees given her existing role.

I would also like to see a discussion about whether the active/inactive/judicial etc. "status" of a licensee's membership could be subject to some variation, for example to allow a Section the discretion, for example, to allow ALJs whose membership is in judicial status to be voting members if it so desired.

I remain concerned that there are other important aspects to the current proposal to expand

membership that have yet to be identified given the lack of time which has been spent discussing this issue. I invite others' thoughts.

Ruth Edlund

~*~*~*~*~*~*~

Ruth Laura Edlund (admitted NY, WA)
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August 25, 2016

Dear President Hyslop, President-Elect Haynes, Past President Gipe, Governors, Ms. Littlewood, and Ms. McElroy,

I am so pleased to have been free to attend Tuesday's special meeting of the Board of Governors and to have heard, firsthand, all of the presentations and dialogue that went into your deliberations on the proposed changes to the WSBA bylaws and the Admission to Practice Rules. Having had some exposure to the public materials prepared for Tuesday's meeting, and having followed, a little, the reports of the Governance Task Force and the BOG's response to them, I can only say that I stand in awe of the tremendous amount of work you are all doing to chart the course of the legal profession in Washington for the years to come. As just one member of the bar, I want to thank you.

I've had the privilege also, during the last two Character and Fitness Board meetings, to hear related presentations about the proposed APR's for LPO's and LLLTs and their place in an overall scheme of possibilities as WSBA's staff contemplates ways to more efficiently administer our admissions and disciplinary systems. I'm grateful for the chance this has given me and others to glimpse this vision and to share our views about it.

Many well-considered comments were offered Tuesday by lawyers more senior and more prepared than me. I attended the meeting to hear what others had to say, and felt that my first duty then was to listen. I came in my own capacity, not representing anyone else, and wanted time to reflect on what I heard, to confront my own views, and to see whether anything I might add would be new. I'm writing for myself alone, but hope that what I say gives voice to lawyers whose first concern for clients' priorities demands their full attention.

If my comments seem random, or reflect basic misunderstandings, I apologize in advance.

Almost all of my legal career has been devoted to regulatory activities. I've been an assistant prosecuting attorney, a professional licensing administrator and disciplinary attorney, and a tax appeals ALJ. I sit on the Character and Fitness Board and the Commission on Judicial Conduct. So I speak from a regulatory perspective and am personally invested in protecting the public. But I've also spent years training for ministry, and have been steeped in teachings about how people feel, about how they react to change, about the symbolic impact of language, about how culture shapes thought and belief, and about community. I've also read a fair bit about Washington's history.

We lawyers don't speak openly about feelings, about symbolism, or about community, but we all experience and are influenced by them, whether we can admit it or not. We don't speak about culture, except in some diversity context, but we have a professional

culture and care about it tremendously. We've spoken about WSBA's history, but not so much about its relationship to Washington's history and what makes that history and spirIt unique. Feelings, symbolism, culture, community, and history are important. In my view, they lie at the heart of all of our discussions about the bylaws, the APR's, sections policy, licensing fees v dues, and WSBA's identity. They fuel the dissension that has been voiced, and the degree to which they can be embraced may determine how well Washington's lawyers can live with any changes made. Washington is one of 50 jurisdictions talented lawyers can choose from in deciding where to practice. I want to see it at the top of the list.

WSBA is a mandatory bar and the Supreme Court has the final say about how all legal professionals in Washington will conduct ourselves. But no regulatory body can succeed without voluntary compliance. No governing agency can enforce civility, collegiality, cultural competence, or any of the values WSBA works to instill. These values and the ethics lawyers live by depend on a sense of community and a shared consensus in their embrace. Only minimum standards of conduct can be enforced, and WSBA's mission and goals reach beyond these.

WSBA's great strength is that it is the one body that unites all of us. To me, that is why the word "Association" as part of WSBA's name has symbolic and aspirational significance. It represents the desire that there should be a partnership between the corporate instrumentality of the Court and among member lawyers and legal professionals to champion justice *together.* The reminder of that desired partnership can serve to strengthen and inform everything we do. To remove it suggests an adversarial tension between the corporate instrumentality and the lawyers it regulates. To remove it suggests that lawyers individually and collectively are not personally invested in protecting the public – that the Washington State Bar should define a regulatory office on Fourth Avenue in Seattle and not the statewide body of professionals it represents. When I think of the Washington bar, I want it to mean *me.*

I wonder whether some of the dissension around WSBA's identity doesn't reflect our state's unique history and culture. We are one of the youngest states in the nation. We still retain and cherish a pioneer spirit. Our culture is grounded in rugged individualism. We're not like California or Arizona or most other states, and don't want to be. To the extent it prevails, I wonder whether this consciousness doesn't lie beneath the surface of how Washington lawyers want to be governed.

The BOG has labored long over WSBA's identity, and all of Tuesday's discussions reflect that. To me, the questions of who we are and who we want to be drive all of the discussions about rules, bylaws, and policies. Whatever we call ourselves, I hope some way can be found to celebrate both the regulatory and the relational expressions of WSBA and to draw strength from that partnership.

Thank you very much.

Respectfully,

/s/

Elizabeth M René
Attorney at Law
WSBA #10710
KCBA #21824
rene0373@gmail.com

From: KAT [mailto:macneil_98@yahoo.com]
Sent: Friday, August 26, 2016 11:07 AM
To: William D. Hyslop; robin@mcneicewheeler.com
Subject: Fw: Feedback on Bylaws Changes

Bill and Robin,

I sent the following comments regarding Tuesday's Special Meeting of the Board of Governors to Anthony Gipe, as he is the chair of both the Bylaws Workgroup and the Sections Policy Workgroup. My email was forwarded to the Section Leaders mailing list and one of the members suggested that I also forward a copy of the email to at least some members of the Board of Governors. Since there is no centralized mailing list for the entire Board of Governors, I am sending a copy of my email to you for further dissemination to the BOG.

Thank you for providing this forum for comments.

Kim Thornton

----- Forwarded Message -----
From: KAT <macneil_98@yahoo.com>
To: "adgipe@shatzlaw.com" <adgipe@shatzlaw.com>
Sent: Wednesday, August 24, 2016 7:41 PM
Subject: Feedback on Bylaws Changes

Anthony,

It was a pleasure to meet you at yesterday's Special Meeting of the Board of Governors. I have been living in Florida for the last six years and have not followed the progress of either the Bylaws or Section Policy workgroups until my return to Washington last month. I want to provide you with some feedback based on my limited review of the work product of those groups and the discussion at yesterday's meeting. Please forgive me if I repeat comments made by other individuals or groups, as I have not likely seen most of them due to the large volume of information on the website. I have tried to focus on the most current versions of the proposed documents. Please also let me know if I have misread any of the provisions or if the group has already discussed the same issues and is in process of resolving them.

Proposed WSBA Bylaw Amendments

1. I agree with comments made at yesterday's meeting that language regarding referenda on licensing fees needs to be clarified. There is an apparent disconnect between Section III.I.6 and Section VIII.A.1.a. In Section III.I.6, entitled License Fee Referendum, the phrase "shall be subject to the same referendum process as other BOG actions" has been deleted. This change suggests that the intention was to remove the referendum power over license fees from the membership, notwithstanding the qualifying language at the end of the sentence stating the license fees may not be modified as part of a referendum on the Bar's "budget." At yesterday's meeting, one board member commented that the referendum power over licensing fees is retained by Section VIII.A.1.a, which states that membership referenda may be initiated to reverse "a final action by the BOG." However, the vague phrase "a final action by the BOG" and the more specific language of III.I.6, which more specifically addresses license fee referenda should be harmonized.

2. I am also opposed to amending the Bylaws or the APR to allow the Washington Supreme Court to establish licensing fees without regard to the wishes of the WSBA membership. Members of the WSBA should always have the right to determine the cost of membership. While the WSBA is not technically a democracy in the true sense of that word, it is a professional organization whose purpose is partly to serve its members. It cannot properly serve them if they have no control over the cost of that service or what is included.

3. I agree with several speakers at yesterday's meeting that the three classes of members in Section III.A.1 should not receive comparable benefits if they pay disparate licensing fees. Some effort should be made to align the fees with the benefits.

4. I have no comment at this time about the composition of the BOG and provision for additional members. I see value in various opinions expressed in yesterday's meeting and need to give this issue further consideration.

Suggested Amendments to Bylaws Article XI (Sections)

First, as a former and future section leader, let me note that I have participated in at least one section, and at times more than one, since I began law school. Section membership constitutes the majority of my interaction with the WSBA. This history colors my comments regarding the proposed amendments.

1. Section XI.B.1 increases the number of section members required to establish a new section. Likewise, XI.L.1 increases the number of voting members for determining continued "viability." What is the basis for these increases? I don't agree that small sections do not have value or provide service to members or the public. In fact, they often provide services that might not otherwise be available because of that group's more narrow area of practice.

2. Although I agree, in principle, that the sections are "entities of the bar," as section XI.A has been amended to read, with all the hierarchical connotations that accompany that phrase, I oppose replacing the word "jurisdiction" in section XI.B.1.a with the word "purpose." It clearly devalues the sections at the outset and does not comport with my understanding of the sections pivotal role in serving members and the public. As I noted above, the majority of my interaction with the WSBA has been through section activities. By denigrating the sections' importance in the WSBA's Bylaws, this wording change gives sections a minor role in the WSBA.

3. I have several issues related to Section XI.D. First, although it appears to be a completely new section, it directly conflicts with recommendations made by the Sections Policy Workgroup. Section XI.D states that the section executive committees are responsible for setting the amount of section dues each year. The December 30, 2015 Phase 1 Report of the Sections Policy Workgroup overtly contradicts this new Section XI.D of the Bylaws by recommending that the WSBA Budget & Audit Committee should set the same section member dues for all sections. If the dues are the same for all sections, why would the section executive committees need to set dues for their sections? The Workgroup further recommends that although the sections apparently retain the right to set their own budgets (in section XI.J), individual section funds should be pooled and administered centrally by the WSBA for the support of ALL sections (my emphasis). I fail to see why sections should set their own budgets if they do not retain the authority to control them. I am beginning to understand why the BOG specifically tabled discussion of fiscal policies at yesterday's meeting. There appears to be a lot of work left to do on fiscal policy. I also note that there was a lot of negative feedback from the sections about pooling and redistribution of section dues. I emphatically oppose the pooling of section funds, as well as the transfer of control over section budgets to the WSBA. Sections are the lifeblood of the WSBA. They are run by volunteers who provide quality education, networking and public outreach for their members. If their hands are tied by even more bureaucracy than currently exists within the WSBA, they will not be nearly as effective.

4. Section XI.G.1.b states that the executive committee should reflect "diverse perspectives." I'm really struggling with what this phrase means. Does it mean diversity regarding the section's goals, views about the practice area that the section represents, or regional location? In other words, does this refer to diversity of opinion or representation? Are the sections, which provide "educational programming" and "networking forums" based on "practice areas or particular areas of focus" (quoting the Phase 1 Draft Report of the Sections Policy Workgroup), expected to include in their executive committees and membership individuals who have no interest in that "practice area" in order to achieve "diverse perspectives"? Is executive committee representation in the sections insufficiently diverse in some way now? I would like to understand better what is motivating this language.

Again, I'm sorry this feedback is coming to you so late in the process but I am interested in becoming more involved now that I am back in the state.

Kim Thornton

September 12, 2016

Board of Governors
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: Comments on Proposed Bylaw Amendments

Dear Members of the Board of Governors and other WBSA Leaders,

I provide these comments solely as a member of the WSBA, not in my capacity as Chair of the Corporate Counsel Section, as a member of the Securities Law Committee of the Business Law Section or as a Section Leader Representative of the Sections Policy Workgroup.

Increasing Centralization at the WSBA

Consistent with my remarks at the Board of Governors ("BOG") meeting in Walla Walla on July 22, and at the BOG meeting in Seattle on August 23, the proposed Bylaw amendments seem to be part of a larger trend in which the WSBA is becoming more centralized and more insulated from its members.

Among other concerns I have already pointed out:

- In addition to these significant Bylaw amendments under hurried and somewhat haphazard consideration now, the BOG *will* soon also consider whether and how to limit members' referendum rights. President Hyslop made it very clear to me at the August 23 meeting that the BOG intends to address this issue separately. That, in fact, is part of my concern, as explained more completely below.

- No specific reasons have been provided to justify or explain the proposed Rule 12 changes and it remains unclear to me whether or not the WSBA leadership seeks through these and/or other changes to place the WSBA under tighter control and supervision by the Washington State Supreme Court (the "Court"). If so, why, and what would that look like ultimately?

  At the August 23 meeting, with Chief Justice Madsen seated off to my right (invited I'm sure to facilitate the free flow of constructive feedback from members), I asked Executive Director Littlewood the same question. She replied simply that she envisions no changes.

  Other BOG members added in later discussions that no substantive changes are intended with the Rule 12 changes.

  These answers beg the question of why the Rule 12 changes are necessary or appropriate. They must be important to someone. Please explain. What is changing vis-à-vis the Court? Why is every aspect of WSBA activity increasingly considered to be "state action" by the WSBA leadership? This is becoming increasingly problematic from the perspective of many members, myself included. I hope to be able to ask Chief Justice Madsen for greater clarity at the Town Hall on September 14, but I am not optimistic about receiving a more expansive explanation.

- Just months ago the BOG debated relinquishing its right to terminate the WSBA Executive Director unless such termination is approved by the Court. This is presumably something that could come up again and I would like to understand why this would be good for the WSBA. And how would the Court go about making such a decision?

- The original proposals of the Sections Policy Workgroup would have taken all of the Sections' funds away, along with much of their ability to self-govern.

  The Sections Policy Workgroup's surprising initial proposals may or may not have been part of a larger, integrated plan to transform the Bar, but it would be illogical for members to ignore (i) the fact that the Sections Policy Workgroup and the Bylaws Workgroup are both simultaneously chaired by the same person, Anthony Gipe, (ii) the fact that Mr. Gipe also played a key role on the Governance Task Force from which the proposed Bylaw amendments have emanated, or (iii) the fact that Mr. Gipe was appointed and not elected by the members to both the BOG and to the Presidency.

  If nothing else, Mr. Gipe's rise to power without being elected and his subsequent role in bringing about rapid and substantial changes demonstrates the fact of and the relevance of both (i) centralization and (ii) the simultaneous reduction of the role of members in governing the WSBA.

Reducing Members' Governance Influence Insulates the WSBA Leadership

Many of the proposed changes coming from the current WSBA leadership tend to reduce the ability of the members to influence WSBA governance. I believe the justification for this is a desire to make the WSBA more like a government agency that is directly accountable to the public for delivering a more just and equitable legal system. From a governance perspective, however, I am very concerned that changes that reduce the members' say in governance actually insulate the WSBA leadership from constructive critique and also further alienate the members. These unintended consequences could substantially reduce the effectiveness of the WSBA in meeting the very objectives it might be hoping to pursue with a more free hand and a free purse.

As noted above, it is unclear to me how the BOG or the WSBA executive leadership want to change the WSBA's relationship with the Court, but I believe any increase in the Court's day-to-day control over WSBA administration will insulate the existing WSBA Executive staff from critique by the members, especially in the near term, given the close personal relationships that appear to exist between the Court and the WSBA's senior staff (according to persons who are more knowledgeable about such behind the scenes details than I am).

Where are These Changes Leading?

At the August 23 meeting I said that I wish the WSBA leadership's approach to the proposed Bylaw amendments more closely resembled what is required under the Williams Act when a person or company starts buying up the stock of a company. Specifically, Item 4 of Schedule 13D requires one to:

> *"... state the purpose or purposes of the acquisition of securities" and "describe any plans or proposals which the reporting persons may have which relate to or would result in certain"*

enumerated types of changes in the management, composition, operation and policies of the issuer."

As a former SEC lawyer, this strikes me as a perfect parallel for the disclosures I would like to see. Please tell us the big picture.

There are analogous concepts throughout the law that BOG members should be familiar with, including the requirement in an Environmental Impact Statement to disclose and analyze future anticipated activities and their "cumulative impacts" when combined with presently proposed activities, and also the "step transaction doctrine" in tax law, under which a series of formally separate steps is combined, resulting in tax treatment as a single integrated event.

The members simply do not understand how the proposed Bylaw amendments, Rule 12 changes, possible changes to the referendum rules, clamping down on routine Section budgeting and spending, changes to the Executive Director's terms of office, and other aspects of decision making authority that might be turned over to the Court all fit into the overall vision that the WSBA leadership has in mind.

Absent any other explanation, my hypothesis is that the Court, through Chief Justice Madsen, is consulting with the WSBA leadership, perhaps behind the scenes, to steer the WSBA in a more centralized direction, with less risk of member interference, in order to impose even more aggressive strategies toward the laudable goals of increasing access to justice and increasing diversity in the profession. Perhaps the Chief Justice will shed light on whether and how she would like to re-shape, re-direct or reinvent the WSBA at the September 14 Town Hall meeting.

As noted above and below, I not believe centralization and decreasing member influence in governance will actually enhance the WSBA's ability to pursue its goals and aspirations.

<u>Member Sentiment is Shifting Regarding Bifurcation</u>

Another observation I made at the August 23 meeting is the increasing number of members who tell me they have given up on the WSBA. Many have decided to take their professional activities and interests elsewhere - voting with their feet to commit their volunteer time and energy to other groups. They're gone. I also noted that a number of other very experienced and respected members are now actually committed to the goal of bifurcating the Bar. These members say, each in their own way, that they have lost interest in the increasingly futile struggle to meaningfully influence the WSBA. For these folks, the uncertainty, the difficulty and the potential benefits of bifurcation now look better than staying the course with a professional relationship that dates back some 133 years.

The WSBA leadership should consider asking members a simple question - "Dear Member, if the professional association side of the house was offered a clean, supportive break from the licensing and regulatory side, would you vote to stay or go?"

I believe the answer would be surprising to all – and much different today than just a couple years ago. The BOG's recent actions seem to be greatly increasing the popularity of bifurcation as a solution to a growing range of concerns and grievances.

At the August 23 meeting, I asked Executive Director Littlewood if bifurcation might not be the best solution for the professional association side of the house. I was pleased to hear her say that the WSBA

is much stronger as an integrated Bar. In responding, though, she added that bifurcation would require approval by the Court and she said, as I recall, that such approval was unlikely. In saying this, I believe she even gestured toward the Chief Justice.

As I responded then, and as I say here again, in slightly different words, I would not be so confident that a group of 30,000+ lawyers wouldn't be able to successfully devise a plan to take back their professional association, particularly if the benefits of doing so clearly and substantially outweigh the costs. Transaction lawyers and litigators frequently take on "impossible" causes with great success.

Many years ago at Plum Creek Timber, Inc. I worked on the successful I-90 Land Exchange. Many environmental groups initially opposed the transaction and it looked fairly impossible. But through ingenuity and persistence we succeeded and it yielded great benefits for the company and for the public. Not much after that we also converted Plum Creek into the first publicly traded timber-REIT. I remember splitting the company into 14 separate operating entities, paying $20 million for a single-purpose tax insurance policy, arguing with the SEC and fighting a major proxy battle. Again, complex, uncertain, expensive and heavily litigated for sure, but not impossible. And ultimately quite successful and worth the effort, as might be bifurcation at some point.

Proposed Bylaw Amendments

In my following comments on the proposed amendments I am focusing on just a few issues – the proposals that I believe will cause the most harm to the unity and functioning of the WSBA and that will be the most difficult to reverse in the future.

An important change I'm not addressing is the addition of LLLTs and LPOs as full "Members" of the WSBA. I tend to favor an inclusive view of the Bar Association. I accept the overall logic of the limited licensee program and I believe integrating those persons fully into the WSBA is the best way to protect and best serve the public. That said, there are persons in other Sections who are much closer to these issues and they should take the lead in commenting on them.

Ruth Edlund, for example, has pointed out several important unaddressed concerns, including that the projected cost of member benefits by the 2018 dues cycle is well in excess of what the limited licensees will be contributing and yet there has apparently been no financial assessment of that imbalance by the BOG as the WSBA's fiduciaries.

Name Change

First, I continue to urge the BOG to vote against dropping the word "Association" from the WSBA's name – a name in continuous use since 1883. Frankly, in the present context, this proposal looks and feels like a symbolic slap in the face to the members.

The initial reason for the change, offered early on by the Governance Task Force, was "to correct the erroneous impression" that the WSBA is "something like a trade association." The WSBA may not be "something like a trade association," but to most members it *is* something like a professional association. And yes, I know the WSBA leadership now wants to give a different reason or two for the proposed change, but that's not how it works - no un-showing your cards, sorry. If the current leadership cares to show that it's not downgrading the relevance of the members it should ditch this wholly unnecessary and highly divisive proposal.

Creation of Three More Board of Governors Seats

The proposed Bylaw changes to create three more BOG seats beyond those provided in the Bar Act directly reduce member influence over WSBA governance.

As I and others have noted, giving limited license practitioners two seats on the BOG is vastly out of proportion to their numbers – are there even twenty registered limited license practitioners yet? Two seats for such a small group is facially unreasonable.

The third proposed seat on the BOG is for a member of the public. The most commonly offered reason for this recommendation is that both California and Oregon have members of the public on their Bar Boards of Governors and have found them helpful. I do not find this logic or any other explanations provided to date compelling. I have seen no evidence that either of those states' Bars are doing a better job in any respect than we are. I also have seen no outcry for public representation on the BOG anywhere in the media.

I urge that the BOG scale back these proposed amendments to eliminate the public BOG seat and to provide the LLLTs and LPOs with <u>one</u> BOG seat, elected by all of the members, not appointed, for the reasons described below.

<u>Appointing Versus Electing Board of Governors Members</u>

I and others have spoken out against creating more "appointed" BOG seat in violation of the Bar Act. There are already three appointed seats – seats which just as easily could have been elected seats. As I said at both the July 22 and August 23 meetings, appointments are clearly undemocratic and subject to more potential mischief from a governance perspective than free elections. As explained herein, the currently appointed seats are already having outsized impacts that the members seem powerless to question, understand or resist.

At the August 23 meeting, incoming WSBA President Robin Haynes gave a spirited defense of appointing the proposed seats, arguing that appointments are necessary to ensure diversity and adding that far too many of the elected seats *still* go to older white males.

I emphatically reject Ms. Haynes logic and the accuracy of her statement. Many of the elected seats are held by persons who are not older white males and the BOG is diverse by any measure. The suggestion that more "appointed" seats are necessary to make the BOG diverse is false. If there must be any new BOG seats, there is simply no compelling reason for those seats not to be elected by the members.

The appointed leadership model is the rule in China because the Chinese government believes it makes better decisions than the people. The Chinese people don't like it and nor do I.

On a final note, Ms. Haynes' position in support of appointing the members of the BOG is not surprising, as she too was appointed and not elected to her BOG seat and to her position as in-coming President of the WSBA. The power of her appointments and Mr. Gipe's, and the resulting changes those appointments are now rapidly producing, dramatically underscore that power in the WSBA is shifting substantially away from the members and that the members are largely powerless to object.

Thank you for considering my feedback.

Sincerely,

Paul Swegle, #18186
pswegle@gmail.com

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September 12, 2016

DELIVERED VIA EMAIL

William D. Hyslop, President, WSBA
shyslop@lukins.com

Robin L. Haynes, President-Elect, WSBA
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Anthony David Gipe, Immediate Past President, WSBA
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G. Kim Risenmay, Governor, District 1
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Brad E. Furlong, Governor, District 2
bef@furlongbutler.com

Karen D. Wilson, Treasurer and Governor, At Large
karendenise@kdwilsonlaw.com

Mario M. Cava, Governor, At Large
mario.cava@libertymutual.com

Greetings:

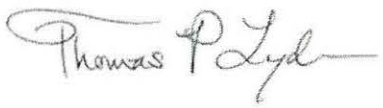
The Whatcom County Bar Association met September 7, 2016 for its monthly meeting. The WCBA passed a resolution instructing the President of WCBA to draft a letter to the Washington State Bar Association and appropriate officials expressing the feedback the WCBA President received regarding proposed changes to the WSBA by-laws. This letter follows the instruction.

The Whatcom County Bar Association respectfully requests the WSBA and its Board of Governors extend the time-frame for voting on the proposed by-law changes. A delay is necessary for more WSBA members, especially those in the Whatcom County Bar, to research, process and formally comment on the proposed changes. While this suggestion does not fit within the current Board of Governors' preference for timing, and their wish to have closure after several years of work on this project, it does ensure that all members of the WSBA, including my constituents, have ample time to reflect and comment on the proposed changes.

The WCBA is aware of the magnitude of time and effort that the WSBA officers and governors have put into this endeavor. The WCBA is also aware of the desire for the current slate of governors to finish this project after so many volunteer-hours have been expended in service of the WSBA. However, the need for expediency and closure is not overcome by the need of the WSBA's membership to feel it had adequate time to research, process and respond to its governing members regarding the proposed, sweeping and significant changes.

The proposed changes are significant in both function and appearance. The overwhelming vocal response from my Whatcom County colleagues makes clear that the proposed changes are too large, too substantive, and appear to be moving ahead too quickly for its members to feel comfortable with the changes. We respectfully ask that you heed our request to postpone action until a larger dialogue can occur, and afford concerned members of the WSBA the opportunity to further participate in the process of changing our institution.

Respectfully yours,



Thomas P. Lyden, President
Whatcom County Bar Association

SAN JUAN COUNTY BAR ASSOCIATION
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360.317.5951

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September 13, 2016

Brad E. Furlong, Gov. Dist. 2
Board of Governors
Washington State Bar Association
Seattle, Washington 98101
VIA EMAIL: bef@furlongbutler.com

RE: Board of Governors' Meeting, Sept. 29 & 30, 2016
Proposed WSBA bylaws amendments and revisions

Dear Governor Furlong:

With approval of more than half of the San Juan Co. Bar Association membership voting on short notice, I am writing to ask you to postpone the scheduled hearing on adoption of the proposed changes and amendments to the bylaws of the Washington State Bar Association, currently scheduled for hearing at the next Board of Governors' meeting on Sept. 29th & 30th, 2016, and to refer the proposed changes and amendments back to the WSBA membership at-large for further review and comment.

In the opinion of the SJCBA members responding, not enough time has been provided for a meaningful review and commentary on the proposed changes, deletions and additions. Only five days were provided for review and comment before the proposed changes went before the Board at its meeting on August 23, 2016. The text of the changes is voluminous; many provisions have been moved to other locations in the bylaws; it is proposed to take away WSBA members' referendum rights regarding licensing fees; and it is also proposed to place three non-attorneys on the Board by appointment – thus in positions of authority over attorney-members of the WSBA. The last two are certainly contentious and deserve to be reviewed and discussed *AT LENGTH* by the general membership of the WSBA. Further, adding three appointed positions to the Board would result in 9 appointed members, and only 11 directly elected by at-large members of the WSBA.

We appreciate the time and effort all concerned have contributed to these revisions, and your own desire to bring this large project to conclusion during your term on the Board. But with your election as President Elect, presumably followed in turn by a term as President and thereafter another term as Immediate Past President, you have an additional three years to directly address the revisions and amendments, and the serious concerns of your membership.

Please do not adopt the current version of the proposed WSBA bylaw revisions and amendments. Please vote to refer the proposed revisions and amendments back to the WSBA membership at large for further review and comments.

Sincerely,

John W. Chessell, President

JWC:cc
cc: file
DELIVERED VIA EMAIL:

William D. Hyslop, President, WSBA
shyslop@lukins.com

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Rajeev Majumdar, Governor-Elect, Dist. 2
rajeev@northwhatcomlaw.com

Washington local county bar associations via email address on file with WSBA

Margaret Shane

From: Rebecca Bernard <RBERNARD@wapa-sep.wa.gov>
Sent: Wednesday, September 14, 2016 5:01 PM
To: Margaret Shane
Subject: Proposed changes to WSBA bylaws

There are severe objections being raised by many attorneys about changed to the bylaws. Many attorneys object to new provisions which would take away from WSBA members the referendum right regarding licensing fees. Many attorneys object to provisions which would allow non-attorneys to be appointed to positions of authority over bar members who are attorneys. Many attorneys object to provisions which would allow the President or the Committee Chair to raise and discuss issues in secret instead of in a public meaning, thus frustrating the transparency of the BOG.

These types of provisions seriously diminish the trust which many WSBA members have in their Bar Association. In light of the fact that there is so much controversy over the new bylaws, wisdom requires that enactment of new bylaws be delayed until there is more consensus within the Bar Association about what changes should and should not be made to the bylaws.

Respectfully.

Rebecca Bernard
Deputy Prosecuting Attorney
Family Support Division
Grays Harbor County Prosecutor's Office
(360) 249-4075

From: Gerry Alexander [mailto:galexander@bgwp.net]
Sent: Thursday, September 15, 2016 1:57 PM
To: William D. Hyslop
Cc: 'ctm@olylaw.com'
Subject: WSBA Change of Name

Bill: I hope you don't mind me kibitzing on the proposal to change the name of the Washington State Bar Association to the Washington State Bar. I think the change of name is a bad idea and I am hopeful that you and the Governors of the WSBA still have an open mind on this subject. I think it is important to note in regard to this issue, that the State Bar Act of 1933, which is still on the books, identifies the bar of this State as the "Washington State Bar Association." Although I recognize that Washington's courts and the WSBA rarely refer to that act, it was the Bar Act that caused Washington to join the ranks of states with an integrated bar, Indeed, RCW 2.48.170 provides that "no person shall practice law in this state...unless he shall be an active member thereof." Jettisoning the name that is set forth in the bar act amounts to a serious untethering of the WSBA's fealty to the act and would likely encourage those who favor a bifurcated, rather than integrated, bar. Going back to the situation that was extant prior to 1933 would, in my judgment, be a huge mistake. Thank you for considering my views and for passing them on to the governors. Gerry

Gerry L. Alexander
Of Counsel

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GRAYS HARBOR COUNTY BAR ASSOCIATION

September 20, 2016

Board of Governors
Washington State Bar Association
Seattle, WA 98101

Re: Board of Governors' Meeting, September 29 & 30, 2016
Proposed WSBA bylaw amendments and revisions

Dear Governors:

The Grays Harbor County Bar Association (GHCBA) membership unanimously support and endorse the letters from the San Juan County Bar Association and the Whatcom County Bar Association requesting the scheduled hearing on the proposed changes and amendments to the bylaws of the Washington State Bar Association, scheduled for September 29 and 30, 2016, be postponed. The GHCBA requests that the proposed changes and amendments be referred back to the members at large and the individual county bar associations for further review and comment.

Given the massive number of changes, additions, and deletions to the bylaws, the short review and comment period, and the lack of outreach to county bar associations and current WSBA members gives the current members inadequate access to the process that governs their professional careers. At a recent bar meeting, a member of GHCBA brought up that she was directed to wsba.org when requesting information about the bylaw changes and that the WSBA had indicated it had posted the information on the website for everyone to review. Not only is posting information on a single website an ineffective form of disseminating it to a large membership, but a link to information regarding the proposed bylaws is not even on the home page. When I looked for information regarding the changes to the bylaws, I had to: (1) click the link for lawyers on the homepage; (2) scroll down to the bottom of the page in the your legal community section and click WSBA Committees, Boards, Panels, Councils, and Task Forces; and (3) click Bylaws Work group on the left hand side of the page to bring me to the WSBA's posted information regarding the changes. There may be a shorter route to this information, but the point is it is not obvious that there is an imminent vote on a voluminous change to the bylaws for an attorney that is coming to the WSBA website for another reason, like purchasing a CLE.

Grays Harbor County Bar Association membership respectfully requests that the WSBA not adopt the current version of the proposed WSBA bylaw revisions and amendments. Please vote to refer the revisions and amendments back to the members at large and the county bar associations for further review and comment.

Sincerely,

GRAYS HARBOR COUNTY BAR ASSOCIATION

Joy Moore

Joy Moore, President

cc: William D. Hyslop, President, shyslop@lukins.com
Robin L. Hayes, President-elect, robin@mcneicewheeler.com
Anthony David Gipe, Immediate Past President, adgipe@shatzlaw.com
Pacific County Bar Association
Mason County Bar Association
Thurston County Bar Association
Jefferson County Bar Association
Clallam County Bar Association
Lewis County Bar Association

Mr. Rajeev Majumdar, Governor-Elect, District 2
Mr. Dan Bridges, Governor-Elect, District 9
Ms. Chris Meserve, Governor-Elect, District 10

September 22, 2016

Board of Governors
Washington State Bar Association
1345 - Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Dear Board of Governors:

We have watched the debate concerning the proposed amendments to the Bylaws, GR 12, and APRs. We have reviewed many responses from members and Bar organizations. We write to share our perspective, reached independently of each other, coming to the same conclusions.

Here, we assume all the amendments have value. Our concern is process. We have heard the Board's explanation to members that holding a special meeting in August for a first reading followed in short order by a vote in September is standard. With the greatest of respect, that does not appear to be the case as shown by a variety of other matters brought before the Board in the last few months.

We appreciate the time you put into this work and know you view it as the capstone of a long process. We think, though, this is not "the end," but "the beginning of the end." These proposals deserve as much opportunity for input and consideration as others coming before the Board, including Escalating Costs of Civil Litigation, prayers at Indian Law seminars, etc. It is not enough to say there have been meetings and a time for input. Members do not consider proposals such as this until they are in a final form and these were not final until last month. Let the members consider them in a reasonable manner.

Our sense is this Board is not giving due weight to how this process is being viewed by the members. We have heard you acknowledge it but we fear you are underestimating it. The members will, rightly or wrongly, view this as rushed through before they could even figure out what was going on. They will view the entire process, including town hall meetings pushed in on the eve of the vote, as contrived. Again, we take no position whether that is true. However, insofar as the last few months the Bar News has had on its cover everything **except** these proposals, members might have basis to argue the Bylaw changes have been hidden in plain sight.

We agree members have a responsibility to be informed and participate. They are starting to now. Let them continue. The members are asking for, and we support, more time. We acknowledge President Hyslop's column in September discussed some (but not all) of the proposals. That is a good start but we submit more needs to be done. We urge the Board to present these to the members beginning with a cover story in the Bar News and a "pro and con" section within it. We encourage direct outreach at local bar meetings, in publications, and e-mails to reach the greatest numbers of members possible. <u>These amendments change the very nature of what the Bar is</u>. We submit they ought to be affirmatively published and discussed at all levels consistent with that gravity.

We do not ask you to reject the proposals. We urge this Board vote to table them and establish a timeframe for their meaningful consideration by the members before a final vote. We appreciate you have traveled a long road to get to where you are, but for the sake of the Board, the members, and the Bar as a whole, we urge you to act in a judicious manner. These bylaws, if passed, may last beyond our mutual lifetimes. If it requires a few months to obtain a meaningful consensus of the members or to create a better product, that is a small price to pay. The perception there was a rush to judgment could create a wound which will take a decade or more to heal, if ever. We ask that you proceed carefully and pause before this important final step.

Thank you for your consideration.

Very truly yours,

Rajeev Majumdar
Governor-Elect, District 2

Dan Bridges
Governor-Elect, District 9

Christina Meserve,
Governor-Elect, District 10

COMMENTS RECEIVED IN ADDITION

TO THOSE RECEIVED BY

THE BYLAWS WORK GROUP

Margaret Shane

From: Marjorie Simmons <lawyer@marjoriesimmonsesq.com>
Sent: Tuesday, August 23, 2016 12:40 AM
To: Margaret Shane
Cc: bef@furlongbutler.com; rajeev@northwhatcomlaw.com
Subject: Opposition to proposed amendments to the WSBA Bylaws and Aug 23rd reading

To the WSBA Board of Governors:

The WBSA President Bill Hyslop sent an email notice on Friday August 12 of the August 23 meeting, with no link to, nor an agenda, nor indication of a deadline for responses. A one-business-day deadline is per se unreasonable, and I therefore ask the Board grant a meeting day post-deadline response.

I oppose adoption of the proposed amendments to the WSBA Bylaws at this time, and as written, as damaging to the public, to the Association, and to the practice of law, regardless of the type of license involved, as well as needlessly adding to burdens carried by the judiciary.

Procedurally, the opaque process leading to the imminent adoption of these amendments, collectively having such a sweeping scope, has been without proper notice and opportunity for all stakeholders to weigh in, and it has not been transparent. For example, the handful of public workgroup meetings that some people could have attended were not followed up with bulletins to the general membership with even executive summaries of workgroup progress and decisions, and such bulletins should have been created and at the very least posted on the WSBA website and/or in NWLawyer for those who could not attend the public meetings. In order for any member to be fully informed, they would have had to attend all the meetings and read though over 1,500 pages of material, at minimum. For another example, for this August 23rd meeting, the email notice sent one week prior to the meeting did not address the response deadline, even though it was only one business day after the email, nor include a link to further information. Therefore, as proposed, adoption of the proposed amendments is premature and must be tabled for further consideration by the membership for at least the next six months, after the membership has been afforded full and complete disclosure.

Substantively, I oppose the proposals as follows.

First, the proposal to expand the number of the Board of Governors by three unelected non-lawyers is prohibited by the Bar Act, RCW 2.48.030. The fact that such additional Board members would be appointed by the Supreme Court adds to the burdens of the Court, and the current membership has not been afforded opportunity under RCW 2.48.50(7) to weigh in given such a fundamental change in its governance. The proposal also does not prevent some as yet unidentified subjectivity or cronyism, and by assigning the appointments to the Court's ever-growing list of duties, with due respect to the Court, there is no concomitant procedure proposed to ensure reasonability or guarantee that such appointments affecting the membership would result from a transparent or fair process.

Second, and possibly more importantly:

(A) LLLTs and LPOs are not lawyers, and yet, LLLTs and LPOs are proposed to have a seat at the table that governs the practice of law, and
(B) the proposals reduce the proportionality of democratically elected voting Board members by including Board representation for LLLTs and LPOs.

A better proposal is to create an ancillary association of LLLTs and LPOs with a suitable board of its own.

It is not news, but it is relevant, that the practice of law by non-lawyer LLLTs is strongly opposed not only by the Family Law Section whose business they will affect most,(n. 1) but by a large number of scholars and other Bar members for many reasons, chief among them reasonable concern that LLLTs will hurt the public, burden the judiciary, and will not by their existence achieve the goal of reducing the expense to the public for legal assistance.(n. 2) Connected to that (currently overruled) concern is that, at present, Bar members are represented on the Board at a ratio of one Board member for approximately 3,800 lawyers. With ten Board members total, one Board member to represent a tiny number of LLLTs and another for a small number of LPOs drastically dilutes representation of lawyers by the Board that exists to represent lawyers, in an association of lawyers, in favor of non-lawyers.

The obvious question presented is: is this Bar an association of lawyers or not? The proposal to seat one Board member each for LPOs and LLLTs answers that question decidedly in the negative, and I am opposed to it, as we must ensure fundamental fairness in this Association of members of a profession by proper representation of their interests, and protect the public's interest by keeping non-lawyers from governing the practice of law: LLLTs and LPOs have no business sitting on the Board of Governors for our Association, but they should have an ancillary association and board suited to their limited type of licenses.

Additionally, the proposed equal membership in WSBA of differing license classes is also problematic, because although all membership classes are proposed to have seats on the Board, those membership classes do not contribute similar fees to support the WSBA. For example, LPOs and LLLTs are assessed fees for licensure, but not fees for cost of programs or membership, as are lawyers, as far as one can tell from the materials presented thus far. Adoption of the proposal would result in lawyers paying for LPOs' and LLLTs' share of membership and program fees.

It is also unclear from the proposals whether LPOs and LLLTs must contribute to a fund for client protection, as lawyers do, or whether the fees assessed lawyers are intended to make up for LLLTs and LPOs not paying to a fund that protects LPOs' and LLLTs'
clients from harm. If so, what particular logic results in lawyers paying for LLLTs' and LPOs' mistakes and misdeeds? LPOs and LLLTs must be assessed fees to protect their clients, just as lawyers are, and lawyers should not be financially responsible for non-lawyers who are not under their supervision. If the actual intent of the uneven license classes is for lawyers to pay for the non-lawyers as part of an overall effort to reduce fees for the public, then the uneven license classes are simply assessing a tax on lawyers to support non-lawyers, and the Supreme Court might as well set a schedule of fees for all lawyers' services. How, exactly, is that reasonable?

Third, the proposal to strike the word "Association" from the WSBA via Bylaw, contrary to the terms of the State Bar Act, and to strike references to the WSBA serving its members and the membership, is nonsensical. The WBSA, like all other state bar associations, is an association of lawyers who serve the public as officers of the Court, and the Association serves its members, whether through continuing education, discipline, social events, or any of many different ways. Bar associations are also the nexus of collegiality among peers, serving the public interest by strengthening lawyers' sense of ethical duty, holding lawyers to account not only before the Court, but among their peers in the Association, 'peers' being the operative word and meaning colleagues with a similar level of education and knowledge. Collegiality and the sense of ethical duty among lawyers, and therefore before the courts, will be irreparably harmed by this and the other proposals' enactment, because their cumulative effect, if enacted, will be to gut the Association's identity, and the public perception of law practice in this state as a profession, already damaged by the promotion of LLLTs and LPOs as full Bar members rather than limited licensees. In its place will be left a shell covering disassociated people with no sense of duty to each other as members of a collegial association of professional people. How, in any way, does this serve the interest of the Bar, of the courts, or of the public? This and the other proposals mentioned here serve none of them and should not be enacted as proposed, instead, due to their sweeping nature and the fundamental changes they would make in our Association, must be fully reviewed, discussed, and voted on by the membership, and only after full disclosure.

Fourth, with the oversight of the Supreme Court, this Association's members exercise their duty to manage their own association through their Board, and the proposal to revoke the membership's ability to set Bar dues through the Board, (and axiomatically, Association budgets), cedes that duty to the Supreme Court in derogation of RCW 2.48.50, which

reserves the duty to the Bar's Board of Governors. No notice to or vote of the membership pursuant to RCW 2.48.50(7) has been taken to voluntarily cede that duty to the Court. When purse strings are pulled away, there is a reason, and generally not a pleasant one. There has been no showing of a pattern of financial mismanagement on the part of the Bar of its own resources, nor any suggestion of it, that would require the Court to intercede. What purpose then, has the proposal for the removal of that duty from the remit of the Board? The Court has its own business to do, and like all courts, its remit far exceeds its resources. How does this proposal to transfer the duty to set Bar dues to the Court serve the Court, the membership, or the public interest? Until some showing is made for the need of such a transfer, and without a vote of the general membership per RCW 2.48.50(7), I oppose it as needlessly adding to the duties of an already overburdened judiciary, and assuming a priori financial incompetence on the part of the Association, with no cause showing.

The proposals presented would weaken the Bar and contribute nothing to the practice of law, the administration of justice, or the public good. While I have been a WSBA member for close to only a year, I have been a member of the South Carolina Bar for 19 years, and I have seen efforts to weaken bar associations before. None of them turned out well for the Bars, the judiciary, or the public.

(n. 1) While I am a member of the Family Law Section, my business will be undiminished by LLLTs' activities given that I limit my focus to QDROs and data security, areas in which neither LLLTs or LPOs may work, and LLLTs' mistakes may actually increase my business, unfortunately for the public.

(n. 2) As enumerated in the Annual Report for 2015, Washington had a population of 31,126 lawyers with 74 disciplinary actions, and
768 LPOs and nine LLLTs with one disciplinary action, making the 2015 disciplinary occurrence rate 0.00237743365675 for lawyers and
0.0012870012870013 for LLLTs and LPOs, comparatively. However, LLLTs have only been in existence for a year and it is statistically likely that LLLTs' incidence of disciplinary actions will rise with the number of 'admitted' LLLTs. The revocations and suspensions for LPOs listed on the WSBA website
(http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Limited-Practice-Officers/LPO-Public-Notices) also do not match the statistics given in the Annual Report.

Sincerely,

Marjorie Simmons (admitted SC, WA)
Marjorie Simmons, Esq.
PO Box 688
Burlington WA 98233
(360) 299-1121

From: Randall Winn [mailto:rewinn2003@yahoo.com]
Sent: Tuesday, August 23, 2016 11:11 PM
To: potterre@frontier.com; robin@mcneicewheeler.com; wynnia.kerr@gmail.com; mghosh@ghoshlawfirm.com; koptun@dshs.wa.gov; WSBA Section Leaders; Keith Black; Anthony Gipe; Paula Littlewood; William D. Hyslop
Subject: GREAT Opportunity to Practice Openness in WSBA Governance

My friends on the WSBA Board of Governors and Section Leaders:

Recently the Washington State Bar Association unknowingly ran a multiyear experiment with the concept of "openness". Its staff and Board of Governors created Workgroups that held a series of meetings that produced proposals for major revisions to its Bylaws.

The content and worth of those proposals is not the present subject; rather, the subject is "openness" in 21st century governance.

The Workgroups maintain that the process was "open" because they held meetings to which all were invited.

The Critics of the Workgroups maintain that the process was not "open" because the vast majority of WSBA members have no idea of the content of the proposals, nor the reasons for or against.

The most intractable, and least productive, arguments are often those for which both sides have a point. Both the Workgroups and the Critics have their points.

19th Century Openness

The Workgroups used a traditional 19th century version of "Openness" familiar to all of us who came of age in the 1960s. A small and dedicated group set hearings and accepted written messages that may or may not have influenced the outcome. Every member of WSBA was invited; the fraction who attended is not known with precision but was on the order of 1%. After all, most WSBA members have day jobs and, even among that fraction of members who have scheduling autonomy, attending bar meetings is not billable.

Some of the argumentation for and against the proposals were kept secret (e.g. the entire argument about antitrust risk was given in WSBA BOG Executive Session and so concealed from the membership to this day). Most of the rest of the argumentation is inaccessible because it was given orally or provided in a format not reasonably calculated to educate (e.g. vaguely alluded to in BOG minutes and stated explicitly only on page 357 of Meeting Materials).

A small number of people drafted the Proposals. The proposals were kept private, or distributed modestly. The final product was not available until the last possible moment.

This is what "Open" means in the old model.

21st Century Openness

When developing complex projects, the current era uses a different model. A 21st Century model of Openness requires publication of interim products and written debate inviting large teams of stakeholders, using ubiquitous self-documenting media (typically the internet or an intranet, but sometimes a wiki and/or an email listserve with an accessible archive.)

This model has advantages:
1. It enables and encourages debate from all interested parties, regardless of geographical or temporal limits, resulting in the collection of the best ideas.
2. It lets everyone parse and ponder preliminary proposals, illuminating conflicts and defects. As any wikiuser has experienced, no Workgroup, however intelligent, can match the brainpower of 30,000+ WSBA members even if each member devotes but a single hour in contribution.
3. It develops neatly structured arguments for and against, which promotes understanding of the proposals that emerge.
4. It enables access to the proposals and arguments from start to finish, which encourages buy-in to the final product. No-one will agree to everything, but everyone can feel they had an equal voice.

Again, whether these Workgroup proposals were good or bad is *not the issue*; rather, the issue is whether the process is "open" in the sense of the 21st-century.

- Was debate in fact enabled and encouraged?
- Were the proposals available in a timely manner to be parsed and pondered by the 30,000+legal professionals of the WSBA?
- Were neatly structured arguments for and again crafted to promote understanding?
- Was buy-in created?

To each question, the evidence suggests the answer is *"No. It's nobody's fault, but no"*.

There is no evidence that the vast majority of WSBA members are aware of the content of the proposals. To the contrary, most of the references to them in *NWLawyer* are merely meeting announcements, and they always refer to the proposals being presented in September, not August. The WSBA blog doesn't say anything significant and the few webpages on wsba.org were put up only within the past month or two. Perhaps the best evidence is the argument by some that the proposals must be voted on in September because one-third of the Board members will rotate off, taking with them knowledge of the proposals. But Incipient Board members are among the best-informed members of the Bar; if they themselves are not fully aware of the content and reasons for and against the Bylaws changes, then the process itself is fatally flawed.

Some Workgroup or BOG members have complained that the problem is the fault of the members who failed to attend meetings or read hundreds of pages of documents. That is a strong argument that the process is not open in the modern sense; it is structured so that the average WSBA member cannot participate.

Finally, some have asserted that all this talk of openness doesn't matter, because the Supreme Court regulates the practice of law and can therefore do whatever it likes with WSBA. But this

proves too much: openness in developing these proposals is all the more important, so that the Court is not presented with proposals that have not been reviewed by ten thousand lawyers, instead of a few dozen. (And the argument is itself dangerous: undoubtedly the Court can do whatever it wants to "admit, enroll, disbar, and discipline" plus related administrative functions, but whether it can tax lawyers to fund other projects somewhat related to the practice of law is a subject that true friends of Access To Justice would prefer not put to the test. There is a limit; do we really want to find it the hard way?)

The Opportunity

The legal profession is conservative in its procedures. This is a virtue in its predictability, but in other ways a vice. In particular, it may have encouraged many of the problems in the current Workgroup experiment.

Old habits die hard. Going from a 19th century model of decision making to a 21st century model has challenged bigger enterprises than WSBA. However, history tells us that the outcome is **always** better when debate is real and encouraged, proposals are widely examined and criticized, the arguments for and against both presented, and buy-in is developed among the membership.

BOG has an opportunity to use the present need for Bylaws revisions to create and to practice 21st century openness in WSBA governance.

Grasping this opportunity depends on no particular opinion on whether the Proposals are good or bad. Indeed, an informed opinion is not possible until the proposals have been openly published to, and made available for debate by, WSBA's 30,000+ members.

I urge BOG to publish the proposals, and the arguments for and against each, in a format permitting a debate, and then to let the debate proceed for as long as it takes. This won't be easy, because we have not done it before. But if Bylaws revisions are worth doing, then they are worth doing well.

This can also be a model for further experiments in 21st century governance. Perhaps we can reduce the workload on BOG members by crowdsourcing some of the work. Why not try? What principled argument is there against trying?

Sincerely

Randy Winn
(Writing for myself, not as): 2016 Chair, WSBA World Peace Through Law Section

From: Mr.Larry R Schreiter [mailto:larry@schreiterlaw.com]
Sent: Wednesday, August 24, 2016 12:01 PM
To: Solo and Small Practice Section
Cc: solo-and-small-practice-section@list.wsba.org
Subject: [solo-and-small-practice-section] LPOs and LLLTs

As I recall, many members of the bar back in the 70s complained that title companies, whose people were closing escrow, were engaged in the "unauthorized practice of law", as arguably were real estate brokers and agents in completing real estate purchase and sale contracts. Rather than confront that, the Supreme Court and the Bar came up with the idea of licensing people to do specific, limited tasks involved in filling out pre-approved forms in the real estate and mortgage industry. Thus was born the Limited Practice Officer (LPO), and the rules around licensed real estate professionals to use pre-approved Multiple Listing forms, who no longer would be deemed to be practicing law without a license.

The LLLT (limited license legal technician?) is a much more recent creation, out of concern that we actual lawyers and Bar members are too expensive, plus we can still decline clients who cannot pay. I think this is an idea to give non-law school grads who do not have to pass the Bar exam the right legally to engage in some limited practice areas. Still experimental, but the Supreme Court and the Bar seem to be all gung-ho about it.

I personally do not view increasing encroachment by non-law grads as a good thing. But I guess it may be preferable to mandatory pro bono and free services, when many lawyers, especially small firms and solos, have a hard time making a sufficient income that covers their expenses and pays back their loans.

Time will tell whether the profession ends up splintered like the medical field with lawyers the analog to doctors, and all the permitted non-lawyers doing certain things the analog to the many kinds of specialized nurses. I do agree with Erin's feeling that the Bar is not transparent, and will do whatever the powers that be and the activists decide, no matter what the membership may feel.

Just my two cents.

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From: Ruth Laura Edlund [mailto:rle@wechslerbecker.com]
Sent: Wednesday, August 24, 2016 1:14 AM
To: WSBA Section Leaders
Subject: [section-leaders] Board of Governors Special Meeting August 23, 2016 - "Licensees" versus "Members"

Dear Friends of the Sections:

I would like to take the opportunity to thank all involved--Bar Staff, Governors and officers of the Washington State Bar Association ("Association"), the Association's rank-and-file, and others who contributed to today's meeting. I believe that the discussion that was begun has the potential--if encouraged to continue--to be productive for our common goals.

I personally appreciated the opportunity to ask questions about fundamental issues that I believe to be of great importance to the Association. I came away from the meeting, however, with more questions in my mind than I had when I arrived.

I think it is well past time for everyone to examine the proposed change in the definition of "membership" in the Association and make certain that we all understand: *what* is being proposed, *why* it is being proposed, what the *consequences* of that proposal will be, and whether there are *other* options to meet the stated objective, once we agree on what our objective is, that might have less drastic consequences than some that seem highly likely at this juncture. It is easy to fall into the trap of either reacting *against* the change, or reacting *in favor* of the change without suspending judgment while considering the pros and cons dispassionately.

Let me begin by noting (again) that there is a distinction between classes of licensure to practice law in Washington, and membership in the Association. Despite the fact that the Association styles itself a "mandatory" bar, you can actually be a member of the Association and be unable to practice law here in a number of circumstances, and you can actually practice law in Washington state and not be a member of the Association in a number of other circumstances [you can also, in certain other circumstances, legitimately practice law in Washington state in some contexts without being a member of the Association, having a license or being a lawyer at all--ask me for details if you want to know.]

I thought it was worthy of note that when I raised the classification of APR 9 Licensed Legal Interns as licensees, which they clearly are, and wondered whether they shouldn't be included as members, I received a response that seemed discordant. I was told that they are "law students," which is imprecise. A Licensed Legal Intern can hold a valid license under APR 9 for up to 18 months after graduation from law school or completion of the APR 6 program. I was also told that there were "very few" of them. I believe the number quoted was 400. This is, it is true, a small number of licensees compared to the 31,000 active lawyer licenses. It is, however, greater by many orders of magnitude than the fifteen LLLTs currently licensed in Washington for whom we are instituting massive structural changes.

It also seems odd, because our Bylaws have been undergoing an extensive examination, and Bylaws Section XII remained virtually untouched. That Section establishes a "member segment" (whatever that is--I have no idea what a "segment" is supposed to be) to encourage the interest and participation of young lawyers and law students in the activities of the Bar. Law students, whose status as students is limited in time in the much the same way as Licensed Legal Interns, can be non-voting members of Sections. It seems logical that if Section XII has any continued utility (and it must, or the Bylaws Work

Group would have recommended getting rid of this Section, rather than lightly editing it), one way to fulfill its purpose would be to create for Licensed Legal Interns a type of Bar membership to "encourage" the "interest and participation" of these limited licensees who may be expected to be full members someday. Without meaning to be unkind, LLLTs are the shiny new thing for the Association, and in (some of our) zeal to incorporate them into the membership structure, we overlook the old toy (APR 9s) and purposes of the Association stated in places that we just forget to look (like Section XII).

If Bylaws Section XII has no meaning, why don't we get rid of it? If it still has meaning, then why aren't we trying to implement it? And if we as an Association are trying to be consistent about making LLLTs and LPOs *full* members (a goal about which I continue to have reservations), why is Bylaws Section XII limited to young "lawyers," when that Section should by rights be encouraging the interest and participation of "young legal professionals" (unless you want to create parallel Sections of the Bylaws for them--not that I'm advocating that)? And, of course, rethinking Section XII, which I think we must, may require rethinking how the Young Lawyer's current slot on the Board of Governors is to be configured.

I also thought there was an odd answer given to the question raised about potential future annual assessments on LLLTs and LPOs for contribution to the [Lawyer's] Fund for Client Protection. First, I do not believe that the forecasting contained in the July 2016 BOG book used a specific estimated contribution from these licensees. I believe it was a BOG member who made the comment that because the scope of practices pursuant to these licenses is limited, the Fund's exposure to claims from these licensees would be limited, and therefore the assessments wouldn't need to be very big. If the license is limited, and the obligations are limited, why would it not follow that the memberships associated with those license classes could be limited as well?

I think it was obvious to everyone in the room, when this point was raised, that there hasn't been any forecasting/planning to determine the financial consequences of extending member benefits and services to these additional classes of licensees, and what adjustments should be made to their licensing fees, given the high estimate of the costs of these benefits and the very low license fees these licensees currently enjoy. If the argument is that the scope of practice for these licenses are limited, so their licensing fees should be lower, then we are providing full member benefits to these licensees at a cost of zero, and these benefits are being subsidized 100% by lawyer-members of the Association. I think many members will have a problem with such a subsidy. To those who would again point to the low current number of LLLTs, I point out the Association is committed to increasing the numbers of LLLTs, and there are substantially more LPOs at present.

I again have the impression that LLLTs are also the shiny new thing when compared to LPOs. LPOs have been around since the early 1980s, and we are just now getting around to thinking about making them "members" of the Association. Our sudden interest in them now appears to be a by-product of the promotion of the LLLT license class. What kind of outreach is being done to LPOs? What do they want from the Association? What role do they see themselves playing? I see that Governor Karmy is the BOG liaison to the Limited Practice Board. I would be particularly interested in her thoughts on effective outreach to these licensees given her existing role.

I would also like to see a discussion about whether the active/inactive/judicial etc. "status" of a licensee's membership could be subject to some variation, for example to allow a Section the discretion, for example, to allow ALJs whose membership is in judicial status to be voting members if it so desired.

I remain concerned that there are other important aspects to the current proposal to expand

membership that have yet to be identified given the lack of time which has been spent discussing this issue. I invite others' thoughts.

Ruth Edlund

~*~*~*~*~*~*~

Ruth Laura Edlund (admitted NY, WA)
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701 Fifth Avenue, Ste 4550
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August 25, 2016

Dear President Hyslop, President-Elect Haynes, Past President Gipe, Governors, Ms. Littlewood, and Ms. McElroy,

I am so pleased to have been free to attend Tuesday's special meeting of the Board of Governors and to have heard, firsthand, all of the presentations and dialogue that went into your deliberations on the proposed changes to the WSBA bylaws and the Admission to Practice Rules. Having had some exposure to the public materials prepared for Tuesday's meeting, and having followed, a little, the reports of the Governance Task Force and the BOG's response to them, I can only say that I stand in awe of the tremendous amount of work you are all doing to chart the course of the legal profession in Washington for the years to come. As just one member of the bar, I want to thank you.

I've had the privilege also, during the last two Character and Fitness Board meetings, to hear related presentations about the proposed APR's for LPO's and LLLTs and their place in an overall scheme of possibilities as WSBA's staff contemplates ways to more efficiently administer our admissions and disciplinary systems. I'm grateful for the chance this has given me and others to glimpse this vision and to share our views about it.

Many well-considered comments were offered Tuesday by lawyers more senior and more prepared than me. I attended the meeting to hear what others had to say, and felt that my first duty then was to listen. I came in my own capacity, not representing anyone else, and wanted time to reflect on what I heard, to confront my own views, and to see whether anything I might add would be new. I'm writing for myself alone, but hope that what I say gives voice to lawyers whose first concern for clients' priorities demands their full attention.

If my comments seem random, or reflect basic misunderstandings, I apologize in advance.

Almost all of my legal career has been devoted to regulatory activities. I've been an assistant prosecuting attorney, a professional licensing administrator and disciplinary attorney, and a tax appeals ALJ. I sit on the Character and Fitness Board and the Commission on Judicial Conduct. So I speak from a regulatory perspective and am personally invested in protecting the public. But I've also spent years training for ministry, and have been steeped in teachings about how people feel, about how they react to change, about the symbolic impact of language, about how culture shapes thought and belief, and about community. I've also read a fair bit about Washington's history.

We lawyers don't speak openly about feelings, about symbolism, or about community, but we all experience and are influenced by them, whether we can admit it or not. We don't speak about culture, except in some diversity context, but we have a professional

culture and care about it tremendously. We've spoken about WSBA's history, but not so much about its relationship to Washington's history and what makes that history and spirIt unique. Feelings, symbolism, culture, community, and history are important. In my view, they lie at the heart of all of our discussions about the bylaws, the APR's, sections policy, licensing fees v dues, and WSBA's identity. They fuel the dissension that has been voiced, and the degree to which they can be embraced may determine how well Washington's lawyers can live with any changes made. Washington is one of 50 jurisdictions talented lawyers can choose from in deciding where to practice. I want to see it at the top of the list.

WSBA is a mandatory bar and the Supreme Court has the final say about how all legal professionals in Washington will conduct ourselves. But no regulatory body can succeed without voluntary compliance. No governing agency can enforce civility, collegiality, cultural competence, or any of the values WSBA works to instill. These values and the ethics lawyers live by depend on a sense of community and a shared consensus in their embrace. Only minimum standards of conduct can be enforced, and WSBA's mission and goals reach beyond these.

WSBA's great strength is that it is the one body that unites all of us. To me, that is why the word "Association" as part of WSBA's name has symbolic and aspirational significance. It represents the desire that there should be a partnership between the corporate instrumentality of the Court and among member lawyers and legal professionals to champion justice *together.* The reminder of that desired partnership can serve to strengthen and inform everything we do. To remove it suggests an adversarial tension between the corporate instrumentality and the lawyers it regulates. To remove it suggests that lawyers individually and collectively are not personally invested in protecting the public – that the Washington State Bar should define a regulatory office on Fourth Avenue in Seattle and not the statewide body of professionals it represents. When I think of the Washington bar, I want it to mean *me.*

I wonder whether some of the dissension around WSBA's identity doesn't reflect our state's unique history and culture. We are one of the youngest states in the nation. We still retain and cherish a pioneer spirit. Our culture is grounded in rugged individualism. We're not like California or Arizona or most other states, and don't want to be. To the extent it prevails, I wonder whether this consciousness doesn't lie beneath the surface of how Washington lawyers want to be governed.

The BOG has labored long over WSBA's identity, and all of Tuesday's discussions reflect that. To me, the questions of who we are and who we want to be drive all of the discussions about rules, bylaws, and policies. Whatever we call ourselves, I hope some way can be found to celebrate both the regulatory and the relational expressions of WSBA and to draw strength from that partnership.

Thank you very much.

Respectfully,

/s/

Elizabeth M René
Attorney at Law
WSBA #10710
KCBA #21824
rene0373@gmail.com

From: KAT [mailto:macneil_98@yahoo.com]
Sent: Friday, August 26, 2016 11:07 AM
To: William D. Hyslop; robin@mcneicewheeler.com
Subject: Fw: Feedback on Bylaws Changes

Bill and Robin,

I sent the following comments regarding Tuesday's Special Meeting of the Board of Governors to Anthony Gipe, as he is the chair of both the Bylaws Workgroup and the Sections Policy Workgroup. My email was forwarded to the Section Leaders mailing list and one of the members suggested that I also forward a copy of the email to at least some members of the Board of Governors. Since there is no centralized mailing list for the entire Board of Governors, I am sending a copy of my email to you for further dissemination to the BOG.

Thank you for providing this forum for comments.

Kim Thornton

----- Forwarded Message -----
From: KAT <macneil_98@yahoo.com>
To: "adgipe@shatzlaw.com" <adgipe@shatzlaw.com>
Sent: Wednesday, August 24, 2016 7:41 PM
Subject: Feedback on Bylaws Changes

Anthony,

It was a pleasure to meet you at yesterday's Special Meeting of the Board of Governors. I have been living in Florida for the last six years and have not followed the progress of either the Bylaws or Section Policy workgroups until my return to Washington last month. I want to provide you with some feedback based on my limited review of the work product of those groups and the discussion at yesterday's meeting. Please forgive me if I repeat comments made by other individuals or groups, as I have not likely seen most of them due to the large volume of information on the website. I have tried to focus on the most current versions of the proposed documents. Please also let me know if I have misread any of the provisions or if the group has already discussed the same issues and is in process of resolving them.

Proposed WSBA Bylaw Amendments

1. I agree with comments made at yesterday's meeting that language regarding referenda on licensing fees needs to be clarified. There is an apparent disconnect between Section III.I.6 and Section VIII.A.1.a. In Section III.I.6, entitled License Fee Referendum, the phrase "shall be subject to the same referendum process as other BOG actions" has been deleted. This change suggests that the intention was to remove the referendum power over license fees from the membership, notwithstanding the qualifying language at the end of the sentence stating the license fees may not be modified as part of a referendum on the Bar's "budget." At yesterday's meeting, one board member commented that the referendum power over licensing fees is retained by Section VIII.A.1.a, which states that membership referenda may be initiated to reverse "a final action by the BOG." However, the vague phrase "a final action by the BOG" and the more specific language of III.I.6, which more specifically addresses license fee referenda should be harmonized.

2. I am also opposed to amending the Bylaws or the APR to allow the Washington Supreme Court to establish licensing fees without regard to the wishes of the WSBA membership. Members of the WSBA should always have the right to determine the cost of membership. While the WSBA is not technically a democracy in the true sense of that word, it is a professional organization whose purpose is partly to serve its members. It cannot properly serve them if they have no control over the cost of that service or what is included.

3. I agree with several speakers at yesterday's meeting that the three classes of members in Section III.A.1 should not receive comparable benefits if they pay disparate licensing fees. Some effort should be made to align the fees with the benefits.

4. I have no comment at this time about the composition of the BOG and provision for additional members. I see value in various opinions expressed in yesterday's meeting and need to give this issue further consideration.

Suggested Amendments to Bylaws Article XI (Sections)

First, as a former and future section leader, let me note that I have participated in at least one section, and at times more than one, since I began law school. Section membership constitutes the majority of my interaction with the WSBA. This history colors my comments regarding the proposed amendments.

1. Section XI.B.1 increases the number of section members required to establish a new section. Likewise, XI.L.1 increases the number of voting members for determining continued "viability." What is the basis for these increases? I don't agree that small sections do not have value or provide service to members or the public. In fact, they often provide services that might not otherwise be available because of that group's more narrow area of practice.

2. Although I agree, in principle, that the sections are "entities of the bar," as section XI.A has been amended to read, with all the hierarchical connotations that accompany that phrase, I oppose replacing the word "jurisdiction" in section XI.B.1.a with the word "purpose." It clearly devalues the sections at the outset and does not comport with my understanding of the sections pivotal role in serving members and the public. As I noted above, the majority of my interaction with the WSBA has been through section activities. By denigrating the sections' importance in the WSBA's Bylaws, this wording change gives sections a minor role in the WSBA.

3. I have several issues related to Section XI.D. First, although it appears to be a completely new section, it directly conflicts with recommendations made by the Sections Policy Workgroup. Section XI.D states that the section executive committees are responsible for setting the amount of section dues each year. The December 30, 2015 Phase 1 Report of the Sections Policy Workgroup overtly contradicts this new Section XI.D of the Bylaws by recommending that the WSBA Budget & Audit Committee should set the same section member dues for all sections. If the dues are the same for all sections, why would the section executive committees need to set dues for their sections? The Workgroup further recommends that although the sections apparently retain the right to set their own budgets (in section XI.J), individual section funds should be pooled and administered centrally by the WSBA for the support of ALL sections (my emphasis). I fail to see why sections should set their own budgets if they do not retain the authority to control them. I am beginning to understand why the BOG specifically tabled discussion of fiscal policies at yesterday's meeting. There appears to be a lot of work left to do on fiscal policy. I also note that there was a lot of negative feedback from the sections about pooling and redistribution of section dues. I emphatically oppose the pooling of section funds, as well as the transfer of control over section budgets to the WSBA. Sections are the lifeblood of the WSBA. They are run by volunteers who provide quality education, networking and public outreach for their members. If their hands are tied by even more bureaucracy than currently exists within the WSBA, they will not be nearly as effective.

4. Section XI.G.1.b states that the executive committee should reflect "diverse perspectives." I'm really struggling with what this phrase means. Does it mean diversity regarding the section's goals, views about the practice area that the section represents, or regional location? In other words, does this refer to diversity of opinion or representation? Are the sections, which provide "educational programming" and "networking forums" based on "practice areas or particular areas of focus" (quoting the Phase 1 Draft Report of the Sections Policy Workgroup), expected to include in their executive committees and membership individuals who have no interest in that "practice area" in order to achieve "diverse perspectives"? Is executive committee representation in the sections insufficiently diverse in some way now? I would like to understand better what is motivating this language.

Again, I'm sorry this feedback is coming to you so late in the process but I am interested in becoming more involved now that I am back in the state.

Kim Thornton

September 12, 2016

Board of Governors
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: Comments on Proposed Bylaw Amendments

Dear Members of the Board of Governors and other WBSA Leaders,

I provide these comments solely as a member of the WSBA, not in my capacity as Chair of the Corporate Counsel Section, as a member of the Securities Law Committee of the Business Law Section or as a Section Leader Representative of the Sections Policy Workgroup.

Increasing Centralization at the WSBA

Consistent with my remarks at the Board of Governors ("BOG") meeting in Walla Walla on July 22, and at the BOG meeting in Seattle on August 23, the proposed Bylaw amendments seem to be part of a larger trend in which the WSBA is becoming more centralized and more insulated from its members.

Among other concerns I have already pointed out:

- In addition to these significant Bylaw amendments under hurried and somewhat haphazard consideration now, the BOG *will* soon also consider whether and how to limit members' referendum rights. President Hyslop made it very clear to me at the August 23 meeting that the BOG intends to address this issue separately. That, in fact, is part of my concern, as explained more completely below.

- No specific reasons have been provided to justify or explain the proposed Rule 12 changes and it remains unclear to me whether or not the WSBA leadership seeks through these and/or other changes to place the WSBA under tighter control and supervision by the Washington State Supreme Court (the "Court"). If so, why, and what would that look like ultimately?

  At the August 23 meeting, with Chief Justice Madsen seated off to my right (invited I'm sure to facilitate the free flow of constructive feedback from members), I asked Executive Director Littlewood the same question. She replied simply that she envisions no changes.

  Other BOG members added in later discussions that no substantive changes are intended with the Rule 12 changes.

  These answers beg the question of why the Rule 12 changes are necessary or appropriate. They must be important to someone. Please explain. What is changing vis-à-vis the Court? Why is every aspect of WSBA activity increasingly considered to be "state action" by the WSBA leadership? This is becoming increasingly problematic from the perspective of many members, myself included. I hope to be able to ask Chief Justice Madsen for greater clarity at the Town Hall on September 14, but I am not optimistic about receiving a more expansive explanation.

- Just months ago the BOG debated relinquishing its right to terminate the WSBA Executive Director unless such termination is approved by the Court. This is presumably something that could come up again and I would like to understand why this would be good for the WSBA. And how would the Court go about making such a decision?

- The original proposals of the Sections Policy Workgroup would have taken all of the Sections' funds away, along with much of their ability to self-govern.

  The Sections Policy Workgroup's surprising initial proposals may or may not have been part of a larger, integrated plan to transform the Bar, but it would be illogical for members to ignore (i) the fact that the Sections Policy Workgroup and the Bylaws Workgroup are both simultaneously chaired by the same person, Anthony Gipe, (ii) the fact that Mr. Gipe also played a key role on the Governance Task Force from which the proposed Bylaw amendments have emanated, or (iii) the fact that Mr. Gipe was appointed and not elected by the members to both the BOG and to the Presidency.

  If nothing else, Mr. Gipe's rise to power without being elected and his subsequent role in bringing about rapid and substantial changes demonstrates the fact of and the relevance of both (i) centralization and (ii) the simultaneous reduction of the role of members in governing the WSBA.

Reducing Members' Governance Influence Insulates the WSBA Leadership

Many of the proposed changes coming from the current WSBA leadership tend to reduce the ability of the members to influence WSBA governance. I believe the justification for this is a desire to make the WSBA more like a government agency that is directly accountable to the public for delivering a more just and equitable legal system. From a governance perspective, however, I am very concerned that changes that reduce the members' say in governance actually insulate the WSBA leadership from constructive critique and also further alienate the members. These unintended consequences could substantially reduce the effectiveness of the WSBA in meeting the very objectives it might be hoping to pursue with a more free hand and a free purse.

As noted above, it is unclear to me how the BOG or the WSBA executive leadership want to change the WSBA's relationship with the Court, but I believe any increase in the Court's day-to-day control over WSBA administration will insulate the existing WSBA Executive staff from critique by the members, especially in the near term, given the close personal relationships that appear to exist between the Court and the WSBA's senior staff (according to persons who are more knowledgeable about such behind the scenes details than I am).

Where are These Changes Leading?

At the August 23 meeting I said that I wish the WSBA leadership's approach to the proposed Bylaw amendments more closely resembled what is required under the Williams Act when a person or company starts buying up the stock of a company. Specifically, Item 4 of Schedule 13D requires one to:

> *"... state the purpose or purposes of the acquisition of securities" and "describe any plans or proposals which the reporting persons may have which relate to or would result in certain"*

enumerated types of changes in the management, composition, operation and policies of the issuer."

As a former SEC lawyer, this strikes me as a perfect parallel for the disclosures I would like to see. Please tell us the big picture.

There are analogous concepts throughout the law that BOG members should be familiar with, including the requirement in an Environmental Impact Statement to disclose and analyze future anticipated activities and their "cumulative impacts" when combined with presently proposed activities, and also the "step transaction doctrine" in tax law, under which a series of formally separate steps is combined, resulting in tax treatment as a single integrated event.

The members simply do not understand how the proposed Bylaw amendments, Rule 12 changes, possible changes to the referendum rules, clamping down on routine Section budgeting and spending, changes to the Executive Director's terms of office, and other aspects of decision making authority that might be turned over to the Court all fit into the overall vision that the WSBA leadership has in mind.

Absent any other explanation, my hypothesis is that the Court, through Chief Justice Madsen, is consulting with the WSBA leadership, perhaps behind the scenes, to steer the WSBA in a more centralized direction, with less risk of member interference, in order to impose even more aggressive strategies toward the laudable goals of increasing access to justice and increasing diversity in the profession. Perhaps the Chief Justice will shed light on whether and how she would like to re-shape, re-direct or reinvent the WSBA at the September 14 Town Hall meeting.

As noted above and below, I not believe centralization and decreasing member influence in governance will actually enhance the WSBA's ability to pursue its goals and aspirations.

<u>Member Sentiment is Shifting Regarding Bifurcation</u>

Another observation I made at the August 23 meeting is the increasing number of members who tell me they have given up on the WSBA. Many have decided to take their professional activities and interests elsewhere - voting with their feet to commit their volunteer time and energy to other groups. They're gone. I also noted that a number of other very experienced and respected members are now actually committed to the goal of bifurcating the Bar. These members say, each in their own way, that they have lost interest in the increasingly futile struggle to meaningfully influence the WSBA. For these folks, the uncertainty, the difficulty and the potential benefits of bifurcation now look better than staying the course with a professional relationship that dates back some 133 years.

The WSBA leadership should consider asking members a simple question - "Dear Member, if the professional association side of the house was offered a clean, supportive break from the licensing and regulatory side, would you vote to stay or go?"

I believe the answer would be surprising to all – and much different today than just a couple years ago. The BOG's recent actions seem to be greatly increasing the popularity of bifurcation as a solution to a growing range of concerns and grievances.

At the August 23 meeting, I asked Executive Director Littlewood if bifurcation might not be the best solution for the professional association side of the house. I was pleased to hear her say that the WSBA

is much stronger as an integrated Bar. In responding, though, she added that bifurcation would require approval by the Court and she said, as I recall, that such approval was unlikely. In saying this, I believe she even gestured toward the Chief Justice.

As I responded then, and as I say here again, in slightly different words, I would not be so confident that a group of 30,000+ lawyers wouldn't be able to successfully devise a plan to take back their professional association, particularly if the benefits of doing so clearly and substantially outweigh the costs. Transaction lawyers and litigators frequently take on "impossible" causes with great success.

Many years ago at Plum Creek Timber, Inc. I worked on the successful I-90 Land Exchange. Many environmental groups initially opposed the transaction and it looked fairly impossible. But through ingenuity and persistence we succeeded and it yielded great benefits for the company and for the public. Not much after that we also converted Plum Creek into the first publicly traded timber-REIT. I remember splitting the company into 14 separate operating entities, paying $20 million for a single-purpose tax insurance policy, arguing with the SEC and fighting a major proxy battle. Again, complex, uncertain, expensive and heavily litigated for sure, but not impossible. And ultimately quite successful and worth the effort, as might be bifurcation at some point.

Proposed Bylaw Amendments

In my following comments on the proposed amendments I am focusing on just a few issues – the proposals that I believe will cause the most harm to the unity and functioning of the WSBA and that will be the most difficult to reverse in the future.

An important change I'm not addressing is the addition of LLLTs and LPOs as full "Members" of the WSBA. I tend to favor an inclusive view of the Bar Association. I accept the overall logic of the limited licensee program and I believe integrating those persons fully into the WSBA is the best way to protect and best serve the public. That said, there are persons in other Sections who are much closer to these issues and they should take the lead in commenting on them.

Ruth Edlund, for example, has pointed out several important unaddressed concerns, including that the projected cost of member benefits by the 2018 dues cycle is well in excess of what the limited licensees will be contributing and yet there has apparently been no financial assessment of that imbalance by the BOG as the WSBA's fiduciaries.

Name Change

First, I continue to urge the BOG to vote against dropping the word "Association" from the WSBA's name – a name in continuous use since 1883. Frankly, in the present context, this proposal looks and feels like a symbolic slap in the face to the members.

The initial reason for the change, offered early on by the Governance Task Force, was "to correct the erroneous impression" that the WSBA is "something like a trade association." The WSBA may not be "something like a trade association," but to most members it *is* something like a professional association. And yes, I know the WSBA leadership now wants to give a different reason or two for the proposed change, but that's not how it works - no un-showing your cards, sorry. If the current leadership cares to show that it's not downgrading the relevance of the members it should ditch this wholly unnecessary and highly divisive proposal.

Creation of Three More Board of Governors Seats

The proposed Bylaw changes to create three more BOG seats beyond those provided in the Bar Act directly reduce member influence over WSBA governance.

As I and others have noted, giving limited license practitioners two seats on the BOG is vastly out of proportion to their numbers – are there even twenty registered limited license practitioners yet? Two seats for such a small group is facially unreasonable.

The third proposed seat on the BOG is for a member of the public. The most commonly offered reason for this recommendation is that both California and Oregon have members of the public on their Bar Boards of Governors and have found them helpful. I do not find this logic or any other explanations provided to date compelling. I have seen no evidence that either of those states' Bars are doing a better job in any respect than we are. I also have seen no outcry for public representation on the BOG anywhere in the media.

I urge that the BOG scale back these proposed amendments to eliminate the public BOG seat and to provide the LLLTs and LPOs with <u>one</u> BOG seat, elected by all of the members, not appointed, for the reasons described below.

<u>Appointing Versus Electing Board of Governors Members</u>

I and others have spoken out against creating more "appointed" BOG seat in violation of the Bar Act. There are already three appointed seats – seats which just as easily could have been elected seats. As I said at both the July 22 and August 23 meetings, appointments are clearly undemocratic and subject to more potential mischief from a governance perspective than free elections. As explained herein, the currently appointed seats are already having outsized impacts that the members seem powerless to question, understand or resist.

At the August 23 meeting, incoming WSBA President Robin Haynes gave a spirited defense of appointing the proposed seats, arguing that appointments are necessary to ensure diversity and adding that far too many of the elected seats *still* go to older white males.

I emphatically reject Ms. Haynes logic and the accuracy of her statement. Many of the elected seats are held by persons who are not older white males and the BOG is diverse by any measure. The suggestion that more "appointed" seats are necessary to make the BOG diverse is false. If there must be any new BOG seats, there is simply no compelling reason for those seats not to be elected by the members.

The appointed leadership model is the rule in China because the Chinese government believes it makes better decisions than the people. The Chinese people don't like it and nor do I.

On a final note, Ms. Haynes' position in support of appointing the members of the BOG is not surprising, as she too was appointed and not elected to her BOG seat and to her position as in-coming President of the WSBA. The power of her appointments and Mr. Gipe's, and the resulting changes those appointments are now rapidly producing, dramatically underscore that power in the WSBA is shifting substantially away from the members and that the members are largely powerless to object.

Thank you for considering my feedback.

Sincerely,

Paul Swegle, #18186
pswegle@gmail.com

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September 12, 2016

DELIVERED VIA EMAIL

William D. Hyslop, President, WSBA
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Mario M. Cava, Governor, At Large
mario.cava@libertymutual.com

Greetings:

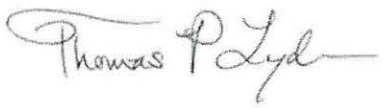
The Whatcom County Bar Association met September 7, 2016 for its monthly meeting. The WCBA passed a resolution instructing the President of WCBA to draft a letter to the Washington State Bar Association and appropriate officials expressing the feedback the WCBA President received regarding proposed changes to the WSBA by-laws. This letter follows the instruction.

The Whatcom County Bar Association respectfully requests the WSBA and its Board of Governors extend the time-frame for voting on the proposed by-law changes. A delay is necessary for more WSBA members, especially those in the Whatcom County Bar, to research, process and formally comment on the proposed changes. While this suggestion does not fit within the current Board of Governors' preference for timing, and their wish to have closure after several years of work on this project, it does ensure that all members of the WSBA, including my constituents, have ample time to reflect and comment on the proposed changes.

The WCBA is aware of the magnitude of time and effort that the WSBA officers and governors have put into this endeavor. The WCBA is also aware of the desire for the current slate of governors to finish this project after so many volunteer-hours have been expended in service of the WSBA. However, the need for expediency and closure is not overcome by the need of the WSBA's membership to feel it had adequate time to research, process and respond to its governing members regarding the proposed, sweeping and significant changes.

The proposed changes are significant in both function and appearance. The overwhelming vocal response from my Whatcom County colleagues makes clear that the proposed changes are too large, too substantive, and appear to be moving ahead too quickly for its members to feel comfortable with the changes. We respectfully ask that you heed our request to postpone action until a larger dialogue can occur, and afford concerned members of the WSBA the opportunity to further participate in the process of changing our institution.

Respectfully yours,



Thomas P. Lyden, President
Whatcom County Bar Association

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September 13, 2016

Brad E. Furlong, Gov. Dist. 2
Board of Governors
Washington State Bar Association
Seattle, Washington 98101
VIA EMAIL: bef@furlongbutler.com

RE: Board of Governors' Meeting, Sept. 29 & 30, 2016
Proposed WSBA bylaws amendments and revisions

Dear Governor Furlong:

With approval of more than half of the San Juan Co. Bar Association membership voting on short notice, I am writing to ask you to postpone the scheduled hearing on adoption of the proposed changes and amendments to the bylaws of the Washington State Bar Association, currently scheduled for hearing at the next Board of Governors' meeting on Sept. 29th & 30th, 2016, and to refer the proposed changes and amendments back to the WSBA membership at-large for further review and comment.

In the opinion of the SJCBA members responding, not enough time has been provided for a meaningful review and commentary on the proposed changes, deletions and additions. Only five days were provided for review and comment before the proposed changes went before the Board at its meeting on August 23, 2016. The text of the changes is voluminous; many provisions have been moved to other locations in the bylaws; it is proposed to take away WSBA members' referendum rights regarding licensing fees; and it is also proposed to place three non-attorneys on the Board by appointment – thus in positions of authority over attorney-members of the WSBA. The last two are certainly contentious and deserve to be reviewed and discussed *AT LENGTH* by the general membership of the WSBA. Further, adding three appointed positions to the Board would result in 9 appointed members, and only 11 directly elected by at-large members of the WSBA.

We appreciate the time and effort all concerned have contributed to these revisions, and your own desire to bring this large project to conclusion during your term on the Board. But with your election as President Elect, presumably followed in turn by a term as President and thereafter another term as Immediate Past President, you have an additional three years to directly address the revisions and amendments, and the serious concerns of your membership.

Please do not adopt the current version of the proposed WSBA bylaw revisions and amendments. Please vote to refer the proposed revisions and amendments back to the WSBA membership at large for further review and comments.

Sincerely,

John W. Chessell, President

JWC:cc
cc: file
DELIVERED VIA EMAIL:

William D. Hyslop, President, WSBA
shyslop@lukins.com

Robin L. Haynes, President-Elect, WSBA
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Rajeev Majumdar, Governor-Elect, Dist. 2
rajeev@northwhatcomlaw.com

Washington local county bar associations via email address on file with WSBA

Margaret Shane

From: Rebecca Bernard <RBERNARD@wapa-sep.wa.gov>
Sent: Wednesday, September 14, 2016 5:01 PM
To: Margaret Shane
Subject: Proposed changes to WSBA bylaws

There are severe objections being raised by many attorneys about changed to the bylaws. Many attorneys object to new provisions which would take away from WSBA members the referendum right regarding licensing fees. Many attorneys object to provisions which would allow non-attorneys to be appointed to positions of authority over bar members who are attorneys. Many attorneys object to provisions which would allow the President or the Committee Chair to raise and discuss issues in secret instead of in a public meaning, thus frustrating the transparency of the BOG.

These types of provisions seriously diminish the trust which many WSBA members have in their Bar Association. In light of the fact that there is so much controversy over the new bylaws, wisdom requires that enactment of new bylaws be delayed until there is more consensus within the Bar Association about what changes should and should not be made to the bylaws.

Respectfully.

Rebecca Bernard
Deputy Prosecuting Attorney
Family Support Division
Grays Harbor County Prosecutor's Office
(360) 249-4075

From: Gerry Alexander [mailto:galexander@bgwp.net]
Sent: Thursday, September 15, 2016 1:57 PM
To: William D. Hyslop
Cc: 'ctm@olylaw.com'
Subject: WSBA Change of Name

Bill: I hope you don't mind me kibitzing on the proposal to change the name of the Washington State Bar Association to the Washington State Bar. I think the change of name is a bad idea and I am hopeful that you and the Governors of the WSBA still have an open mind on this subject. I think it is important to note in regard to this issue, that the State Bar Act of 1933, which is still on the books, identifies the bar of this State as the "Washington State Bar Association." Although I recognize that Washington's courts and the WSBA rarely refer to that act, it was the Bar Act that caused Washington to join the ranks of states with an integrated bar, Indeed, RCW 2.48.170 provides that "no person shall practice law in this state...unless he shall be an active member thereof." Jettisoning the name that is set forth in the bar act amounts to a serious untethering of the WSBA's fealty to the act and would likely encourage those who favor a bifurcated, rather than integrated, bar. Going back to the situation that was extant prior to 1933 would, in my judgment, be a huge mistake. Thank you for considering my views and for passing them on to the governors. Gerry

Gerry L. Alexander
Of Counsel

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GRAYS HARBOR COUNTY BAR ASSOCIATION

September 20, 2016

Board of Governors
Washington State Bar Association
Seattle, WA 98101

Re: Board of Governors' Meeting, September 29 & 30, 2016
Proposed WSBA bylaw amendments and revisions

Dear Governors:

The Grays Harbor County Bar Association (GHCBA) membership unanimously support and endorse the letters from the San Juan County Bar Association and the Whatcom County Bar Association requesting the scheduled hearing on the proposed changes and amendments to the bylaws of the Washington State Bar Association, scheduled for September 29 and 30, 2016, be postponed. The GHCBA requests that the proposed changes and amendments be referred back to the members at large and the individual county bar associations for further review and comment.

Given the massive number of changes, additions, and deletions to the bylaws, the short review and comment period, and the lack of outreach to county bar associations and current WSBA members gives the current members inadequate access to the process that governs their professional careers. At a recent bar meeting, a member of GHCBA brought up that she was directed to wsba.org when requesting information about the bylaw changes and that the WSBA had indicated it had posted the information on the website for everyone to review. Not only is posting information on a single website an ineffective form of disseminating it to a large membership, but a link to information regarding the proposed bylaws is not even on the home page. When I looked for information regarding the changes to the bylaws, I had to: (1) click the link for lawyers on the homepage; (2) scroll down to the bottom of the page in the your legal community section and click WSBA Committees, Boards, Panels, Councils, and Task Forces; and (3) click Bylaws Work group on the left hand side of the page to bring me to the WSBA's posted information regarding the changes. There may be a shorter route to this information, but the point is it is not obvious that there is an imminent vote on a voluminous change to the bylaws for an attorney that is coming to the WSBA website for another reason, like purchasing a CLE.

Grays Harbor County Bar Association membership respectfully requests that the WSBA not adopt the current version of the proposed WSBA bylaw revisions and amendments. Please vote to refer the revisions and amendments back to the members at large and the county bar associations for further review and comment.

Sincerely,

GRAYS HARBOR COUNTY BAR ASSOCIATION

Joy Moore

Joy Moore, President

cc: William D. Hyslop, President, shyslop@lukins.com
Robin L. Hayes, President-elect, robin@mcneicewheeler.com
Anthony David Gipe, Immediate Past President, adgipe@shatzlaw.com
Pacific County Bar Association
Mason County Bar Association
Thurston County Bar Association
Jefferson County Bar Association
Clallam County Bar Association
Lewis County Bar Association

Mr. Rajeev Majumdar, Governor-Elect, District 2
Mr. Dan Bridges, Governor-Elect, District 9
Ms. Chris Meserve, Governor-Elect, District 10

September 22, 2016

Board of Governors
Washington State Bar Association
1345 - Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Dear Board of Governors:

We have watched the debate concerning the proposed amendments to the Bylaws, GR 12, and APRs. We have reviewed many responses from members and Bar organizations. We write to share our perspective, reached independently of each other, coming to the same conclusions.

Here, we assume all the amendments have value. Our concern is process. We have heard the Board's explanation to members that holding a special meeting in August for a first reading followed in short order by a vote in September is standard. With the greatest of respect, that does not appear to be the case as shown by a variety of other matters brought before the Board in the last few months.

We appreciate the time you put into this work and know you view it as the capstone of a long process. We think, though, this is not "the end," but "the beginning of the end." These proposals deserve as much opportunity for input and consideration as others coming before the Board, including Escalating Costs of Civil Litigation, prayers at Indian Law seminars, etc. It is not enough to say there have been meetings and a time for input. Members do not consider proposals such as this until they are in a final form and these were not final until last month. Let the members consider them in a reasonable manner.

Our sense is this Board is not giving due weight to how this process is being viewed by the members. We have heard you acknowledge it but we fear you are underestimating it. The members will, rightly or wrongly, view this as rushed through before they could even figure out what was going on. They will view the entire process, including town hall meetings pushed in on the eve of the vote, as contrived. Again, we take no position whether that is true. However, insofar as the last few months the Bar News has had on its cover everything **except** these proposals, members might have basis to argue the Bylaw changes have been hidden in plain sight.

We agree members have a responsibility to be informed and participate. They are starting to now. Let them continue. The members are asking for, and we support, more time. We acknowledge President Hyslop's column in September discussed some (but not all) of the proposals. That is a good start but we submit more needs to be done. We urge the Board to present these to the members beginning with a cover story in the Bar News and a "pro and con" section within it. We encourage direct outreach at local bar meetings, in publications, and e-mails to reach the greatest numbers of members possible. <u>These amendments change the very nature of what the Bar is</u>. We submit they ought to be affirmatively published and discussed at all levels consistent with that gravity.

We do not ask you to reject the proposals. We urge this Board vote to table them and establish a timeframe for their meaningful consideration by the members before a final vote. We appreciate you have traveled a long road to get to where you are, but for the sake of the Board, the members, and the Bar as a whole, we urge you to act in a judicious manner. These bylaws, if passed, may last beyond our mutual lifetimes. If it requires a few months to obtain a meaningful consensus of the members or to create a better product, that is a small price to pay. The perception there was a rush to judgment could create a wound which will take a decade or more to heal, if ever. We ask that you proceed carefully and pause before this important final step.

Thank you for your consideration.

Very truly yours,

Rajeev Majumdar
Governor-Elect, District 2

Dan Bridges
Governor-Elect, District 9

Christina Meserve,
Governor-Elect, District 10