
From: Board Feedback
Subject: FW: [External]Consideration should be given to deregulating the practice of law

From: Service Update <lippek@aol.com>
Sent: Friday, June 17, 2022 9:42 AM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Consideration should be given to deregulating the practice of law

Dear Colleagues:

Attached for your consideration is a Wall Street Journal column from 2011: *Time to Deregulate the Practice of Law* by Clifford Winston and Robert W. Crandall. Mr. Winston is a senior fellow at the Brookings Institution, where Mr. Crandall is a nonresident senior fellow in the Economic Studies Program. They are co-authors, along with Vikram Maheshri, of **First Thing We Do, Let's Deregulate All the Lawyers** (2011, Brookings Press).

Thank you,

Henry

Henry E. Lippek,

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Time to Deregulate the Practice of Law

By Clifford Winston and Robert W. Crandall

Mr. Winston is a senior fellow at the Brookings Institution, where Mr. Crandall is a nonresident senior fellow in the Economic Studies Program. They are co-authors, along with Vikram Maheshri, of FIRST THING WE DO, LET'S DEREGULATE ALL THE LAWYERS (2011, Brookings Press).

The job market is not looking bright for Americans of all walks of life, even Ivy League college graduates and those with advanced degrees. For example, a new wave of law school graduates has just taken state bar examinations, which they must pass to obtain a license to practice law. But after accumulating as much as \$150,000 in law school debt (likely on top of undergraduate debt), many of those test-takers are concerned that jobs in their field are vanishing.

Is there really an excess supply of lawyers? The Senate Judiciary Committee is investigating the subject while the New York Law School and the Thomas Cooley Law School in Michigan are being hit with class action suits claiming that they fraudulently inflated employment statistics to lure prospective students. But the solution proffered by many in the legal community—to put new limits on entry into the legal profession—is not the answer and will make the problem worse over the long term.

The reality is that many more people could offer various forms of legal services today at far lower prices if the American Bar Association (ABA) did not artificially restrict the number of lawyers through its accreditation of law schools—most states require individuals to graduate from such a school to take their bar exam—and by inducing states to bar legal services by non-lawyer-owned entities. It would be better to deregulate the provision of legal services. This would lower prices for clients and lead to more jobs.

Occupational licensing limits competition and raises the cost of legal services. But those higher costs are not justified when the services provided by lawyers do not require three years of law school and passing a particular test. One example is LegalZoom.com, an online company which sells simple legal documents—documents that should not require pricey lawyers to prepare—like do-it-yourself wills, uncontested divorce documents, patent applications and the like.

The competition supplied by new legal-service providers, who may or may not have some type of law degree and may even work for a non-lawyer-owned firm, will not only lead to aggressive price competition but also a search for more efficient methods to serve clients.

Every other U.S. industry that has been deregulated, from trucking to telephones, has lowered prices for consumers without sacrificing quality. For example, most regulated large airlines used to operate with large numbers of empty seats, particularly on longer routes. Once deregulation allowed Southwest Airlines, a smaller regional carrier, and other new carriers to offer service on any route, airline fares declined dramatically and the industry operated with far fewer empty seats and more employees. Deregulation of wireless, cellular telephone services and the entry of new carriers has led to the lowest wireless rates in the developed world and stimulated huge expenditures and associated employment in constructing new networks.

Entry by new firms—sometimes from other industries—spurs innovation. The legal industry will be no different. Ford, Honda and Toyota moved into motor vehicle production from bicycle, motorcycle and farm-equipment production, respectively. More recently, Apple moved from computers into mobile telephones (the iPhone), putting enormous competitive pressure on industry giants such as Nokia, Motorola and Research in Motion (Blackberry). The resulting innovations improved quality and lowered prices while also expanding employment.

Allowing accounting firms, management consulting firms, insurance agencies, investment banks and other entities to offer legal services would undoubtedly generate innovations in such services and would force existing law firms to change their way of doing business and to lower prices.

Entry deregulation would also expand individuals' options for preparing for a career in legal services, including attending vocational and online schools and taking apprenticeships without acquiring formal legal education. Established law schools would face pressure to reduce tuition and shorten the time to obtain a degree, which would substantially reduce the debt incurred by those who choose to go to those schools.

Supporters of occupational licensing to restrict the number of lawyers in the U.S. are wrong to assert that deregulation would unleash a wave of unscrupulous or incompetent new entrants into the profession. Large companies seeking advice in complex financial deals would still look to established lawyers, most of whom would probably be trained at traditional law schools but may work for a corporation instead of a law firm.

Others, seeking simpler legal services such as a simple divorce or will, would have an expanded choice of legal-service providers, which they would choose only after consulting the Internet or some other modern channel of information about a provider's track record. Just as the medical field has created physician assistants to deal with less serious cases, the legal profession can delegate simple tasks.

The track record of deregulation naysayers is hardly impressive—after all, some predicted in 1977 that airline deregulation would lead to a United Airlines monopoly. And while we cannot predict all the effects of legal services deregulation, we are confident that those services would be more responsive to consumers and that there would be more jobs in the legal profession.

From: Board Feedback
Subject: FW: [External]Fwd: letter regarding bar structure for publication

From: ROGER LEY <rley@centurytel.net>
Sent: Tuesday, June 21, 2022 5:58 PM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Fwd: letter regarding bar structure for publication

Dear Board Members - This is a copy of a letter I wrote to the Washington State Bar News. I ask that you ponder the due process and impartiality issues as well as other issues I have raised. Roger Ley 1379

From: "rley@centurytel.net" <rley@centurytel.net>
To: "wabarnews" <wabarnews@wsba.org>
Sent: Monday, June 20, 2022 3:00:30 PM
Subject: letter regarding bar structure for publication

Dear Editor -

Nancy Hawkins in the bar News argues that democracy with all its faults is the best form of government. I agree. That means that regulation of lawyers should be governed by the people, with all their faults, just as most agencies are. Regulation of the law profession should be removed from the Supreme court, where the public has virtually no knowledge or input, and placed in an administrative agency, with administrative agency rules, subject to court review, of course. This sounds like heresy but it is not, should one think about how it would function.

Today, our Supreme court creates the disciplinary code for lawyers, it creates its own procedural code, it decides all cases itself, and, to an extent unknown to me, it controls the prosecution. Some provisions of the RPC are soaked in constitutional issues: freedom of speech in any situation involving any number of groups, self incrimination compelled of lawyers, incrimination of other lawyers required of their court opponents. The Supreme court cannot fairly interpret its rules or rule on challenges rules that it created itself.

This is a quasi criminal code. Lawyers can lose their livelihood, their money, their reputation and risk (probably) jail for contempt of court for failing to comply and for failing to pay fines.

The disciplinary process is the main function of the Bar. The code violates the due process clause.

The regulation of the bar suggested by the rebuttal letter remedies nothing because it simply adds a layer of administrative litigation to a process "overseen" by the Supreme court.

As to other functions of the court, supposed access to justice and "diversity" are hot political and economic issues properly within the purview of the legislature, not the courts. Courts must decide cases according to the law and the constitutions, and they are not to inject their views on law profession economics and "diversity" into their cases or hopefully, their thinking. As to the Keller deduction, it is a joke. It is usually about \$1.77 per annum. A good guess would place about half the material in the bar news as political, with almost everything favoring the Democratic and leftist parties, and none the Republican party.

Finally, it is said that lawyer regulation is an integral function of courts. Nothing in the Constitution says that, and the due process clause trumps colonial rules on lawyer licenses. Perhaps courts can require familiarity with their rules, as most government agencies can "borrow" functions of other branches to make their own function: military courts on aircraft carriers, territorial courts outside article 3, and so forth." These functions do not enable courts to vitiate their requirement of impartiality or their obligation to enforce due process of law. Roger B. Ley 1379 Portland, OR

From: Board Feedback
Subject: FW: [External]ETHOS secure

From: Severson, Deborah <Deborah.Severson@co.snohomish.wa.us>
Sent: Wednesday, June 22, 2022 9:43 AM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]ETHOS secure

I agree with the author of the Bar News article, "if it Ain't Broke Don't Change It". I fail to see how changing the integrated bar structure will better serve either the Bar membership or the public. I believe that regulation of the practice should be by Members themselves, subject of course to the statutory obligations of the Supreme Court. Lawyers as a group are viewed with distrust by the public in general. I do not believe that public perceptions of trustworthiness will be enhanced by shifting mandatory functions to the Supreme Court. Practicing lawyers/bar members have, or should have, an interest in lawyer licensing and discipline because those areas directly impact public perceptions of our profession.

Don't change the current structure.

Deborah A. Severson
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From: Board Feedback
Subject: FW: [External]Future Structure of the Bar

From: Mark Tipperman <mark@crlawyer.net>
Sent: Wednesday, July 13, 2022 4:17 PM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Future Structure of the Bar

Dear Members of the Board:

I am a WSBA member, who is admitted in two jurisdictions that have integrated Bars and two jurisdictions which do not.

I am not in favor of dividing the functions of the WSBA into a mandatory organization and a voluntary organization, unless there is a final non-appealable judgment or controlling precedent requiring the WSBA to do so. I do think it would be prudent to have a contingency plan in place - just in case.

I have found non-integrated Bar structures to be less effective than integrated Bar structures in a number of areas, including attorney discipline; and they result in the need for Bar members who wish to remain competent, to join a second voluntary jurisdiction-wide organization, with a resulting a duplication of administration and overhead, and increased expense for their members.

Thank you for considering my views.

Mark Tipperman
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Wolfville NS B4P 2R3

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From: Board Feedback
Subject: FW: [External]future of the structure of the bar survey?

From: Aline Carton-Listfjeld <aline@alinecarton.com>
Sent: Wednesday, July 13, 2022 4:19 PM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]future of the structure of the bar survey?

Hello,

Might there be an opportunity to respond to a well designed survey that can explore all the options, pros/cons, so that as members we can provide quantitative feedback/measurable data in lieu of or in addition to attending a meeting? I believe the bar will get significantly more member engagement on this question if provided the option to provide feedback in this manner.

Much appreciation,

Aline Carton-Listfjeld, J.D.
Coach. Consultant. Facilitator. Trainer. Strategist.
Aline Carton-Listfjeld Coaching & Organizational Consulting, LLC
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Providing leadership coaching and organizational development consulting to individuals and organizations that creates greater capacity, resiliency and equity in the workplace and our communities.

From: Board Feedback
Subject: FW: [External]Feedback Regarding Board Structure

From: Andrew Grimm
Sent: Wednesday, July 13, 2022 6:37 PM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Feedback Regarding Board Structure

To the Board,

I received an email today requesting that WSBA Members weigh in “the best structure for the state bar—whether that’s remaining integrated or separating out some functions to a non-mandatory organization.”

I don’t have strong views on the best structure for the state bar, but I will say that I genuinely think that WSBA is best administered bar that I’ve encountered. Nearly every interaction I’ve had with WSBA has been positive. From taking the bar exam to re-registration to emails, WSBA is administered excellently. At least from my perspective, WSBA runs like butter.

One key aspect of that is the website and how much of it we can do online. For example, online re-registration has been very easy and, as a nonprofit lawyer who helps some of the most vulnerable clients with the least access to law, WSBA has been truly helpful in not getting in the way with that vocation. It’s much appreciate.

One piece of advice I might give is that I don’t really feel that I knew coming in as a new layer much of what WSBA does. Perhaps, WSBA could maybe add some discussion of its structure and the specific programs and services it provides to a few questions in the Washingtons supplement that new lawyers take after passing the bar as a final part of WSBA admission.

Best regards,

Andrew Grimm
Attorney
DIGITAL JUSTICE FOUNDATION
(531) 210-2381

From: Board Feedback
Subject: FW: [External]Bar structure feedback

From: Lisa Keeler <LKeeler@carmichaelclark.com>
Sent: Thursday, July 14, 2022 7:48 AM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Bar structure feedback

After reading the June 2022 issue of the Bar News, specifically the King Co Bar Associations argument in favor of *de-unifying* the bar and placing all the regulatory functions within the sole (instead of ultimate) hand of our Judiciary, I was persuaded that in fact the appropriate course of action is the opposite: to *maintain* the mandatory, unified bar.

One benefit I see to lawyers self-regulating – and doing so actively, ethically, and fervently – is to ensure some level of independence from state agencies and actors, the same folks attorneys are often called to sue and challenge on behalf of clients. This should include the courts. I was delighted to read that in the same Bar News edition with arguments advocating towards placing attorney oversight in the hands of elected officials, there was a long overdue article about pushing to finally create more independence for public defenders throughout the state so judges/courts, legislators, and executives can't simply fire attorneys they don't like who are challenging them or their system. Maintaining a unified, mandatory bar serves this same principle. If lawyers don't fervently self-regulate someone else will do it for us, and unfortunately that would stifle active, necessary challenges to the same regulatory authorities on behalf of clients. (Recognizing that currently the Supreme Court is the ultimate arbiter, the unified, mandatory bar creates at least some separation.)

I certainly don't agree with the sentiment included in the opinion piece in favor of maintaining the current bar structure: if it ain't broke, don't fix it. That's a terrible moto for any organization to adopt. I'm glad we are taking the time to fully evaluate the structure of the bar, but I absolutely do not want to sacrifice what independence we still have which nourishes to our ability to challenge the overall legal system and ideally make it better.

All the best,

Lisa M .Keeler | Attorney
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From: Board Feedback
Subject: FW: [External]WSBA Stucture

-----Original Message-----

From: terry neal
Sent: Thursday, July 14, 2022 10:41 AM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]WSBA Stucture

WSBA membership should not be mandatory.

From: Board Feedback
Subject: FW: [External]Structure of the Bar

From: Roger Lubovich
Sent: Thursday, July 14, 2022 2:03 PM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Structure of the Bar

To whom it may concern:

I'm not sure what changes to the structure are being considered but I would like to recommend adding a retirement membership. I have been a bar member for 43 years and am currently retired. I really don't want to resign from the bar as some of my colleagues have. I am also a member of the Alaska Bar Association. With the Alaska Bar I was able to go into retirement status without membership fees as long as I wasn't practicing law, which I am not. Even without practicing law I have a hard time considering turning in my license. I prefer to remain a member. This may not be a subject for your agenda, but it is something to consider.

Thank you.

Roger Lubovich
206-842-4626 mobile

From: Board Feedback
Subject: FW: [External]Bar Structure

From: Hugh Spitzer
Sent: Thursday, July 14, 2022 7:36 PM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Bar Structure

My understanding is that the BOG is considering recommendations to the State Supreme Court on Bar structure, including one proposal that would detach lobbying activities and move it to a separate entity.

In my view, moving lobbying activities would be a good idea, particularly if those activities are supported by voluntary contributions.

I continue to support the recommendations of a Bar structure committee that I served on several years ago, a committee that recommended separating all regulatory functions from trade group functions. I believe that a voluntary lawyers' organization, funded by members' dues, would strengthen rather than detract from the organization. Mandatory license fees would then be used only for regulatory functions.

The BOG seems to have been averse to splitting regulatory from trade group functions, in part (in my opinion) due to inertia and a commitment to an existing structure that people are used to. But moving the lobbying activities to a voluntary entity would be a positive step.

Thanks for your consideration.

--
Hugh D. Spitzer
Attorney at Law
WSBA # 5827 206-790-1996

From: Board Feedback
Subject: FW: [External]Bar Structure

From: Nancy Ivarinen <nancy@ncilegal.com>
Sent: Monday, July 18, 2022 12:40 PM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Bar Structure

I support the King County Bar's analysis and recommendations.

--

Nancy C. Ivarinen, Attorney

nancy@ncilegal.com

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Bellingham, WA 98225***

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From: Board Feedback
Subject: FW: [External]Bar association

From: Christine Zackula
Sent: Wednesday, July 20, 2022 10:10 AM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]Bar association

I do not think the State should have a mandatory bar at all. The requirement to associate freely is in the constitution. The State should have a regulatory body. This body would be responsible for administration of bar exams, licensing of attorneys and discipline proceedings. All attorneys should pay a minimal fee maybe \$50 to 100 per year for this part of the bar. Attorneys who are disciplined should pay a higher fee for the next 3 years if they are suspended or reprimanded. Bar complaints alone should not count, since those would be included in the minimal fee.

The Bar could continue to have a non-mandatory body for CLE's, committees, etc. Those wishing to join and participate in that part of the Bar should pay a separate fee for that part of the association.

And lastly any legislative or lobbying efforts of the Bar no one should be required to make payments for that part. That should be a totally voluntary fee, such as the fee I pay to DOL for the State parks every year.

Christine Carlile
WSBA#24653

From: Board Feedback
Subject: FW: [External]WSBA structure

From: Allen T Miller <atmiller@painehamblen.com>
Sent: Wednesday, July 20, 2022 11:01 AM
To: Board Feedback <BoardFeedback@wsba.org>
Subject: [External]WSBA structure

Dear Board of Governors,

I urge the WSBA to maintain its status as an integrated and mandatory bar association, and I urge you to support that structure.

The so-called “experts” on bar association structure have been predicting doom and gloom about our structure for years. Nothing that was predicted has come true. No court has struck down our structure. In fact, just this year, the U.S. Supreme Court denied certiorari on three cases that challenged bar association structures in Texas, Michigan, and Oklahoma. Significantly, the WSBA structure is better than the structures that were in place in each of those states. Our structure is sound because of our differences with those (and other) states.

We are and should continue to be a nationwide leader in giving members the option of a license fee deduction (Keller deduction) for any costs associated with a WSBA program or activity that is not “germane” to our mission. The vast majority of WSBA funds go toward the costs of licensing, regulation, and discipline of Bar members. The WSBA also funds and works on programs that benefit the state through activities such as studying court rules to identify needs for change to improve functionality and identify barriers to litigants within court systems (particularly around technology issues). In addition, the WSBA works on issues of diversity and inclusion to encourage and support a more diverse legal profession and meet the needs of diverse litigants. These programs are part of the state’s compelling interest to allow mandatory and integrated bar associations; they work to protect the public and uphold the integrity of the profession in a way that a voluntary bar cannot.

Thank you for your service to the legal community and the public.

Allen T. (AT) Miller
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