

April 30, 2019

Chief Justice Mary Fairhurst
Washington Supreme Court
415 12th St W.
PO Box 40929
Olympia WA 98504

Re: WSBA Governance & Input for Work Group

To Chief Justice Fairhurst:

I am writing to provide my input on the WSBA structure for the workgroup constituted to review and propose such changes. Per your request on April 16, 2019, please accept the following thoughts on the subject.

1. Endorse, adopt, and expand on the recommendations from the Governance Task Force and the BOG Bylaw Review Workgroup, which was adopted by the Supreme Court in January 2018.

I have been involved in discussions and analysis of the WSBA and its governance organization for over 15 years. I was involved in the Governance Task Force as a WSBA board member and officer, and then I led the WSBA review of governance and bylaw implemented after the Governance Task Force made its recommendations. I am sure this current task force is reviewing all the data and findings of those efforts, and I will not restate those recommendations and positions herein.

I will, however, reiterate that both the Governance Task force and the BOG Bylaws Workgroup both predicated their ultimate recommendations, and the limits of recommendations, on the changes that could be made while maintaining the status of the State Bar Act and its strictures. My personal view is that to the extent the State Bar Act is not a barrier to change, I would endorse the broadest interpretations and implementation of the recommendations by both of those reviews.

2. Don't Bifurcate the Bar.

There is an urge among some reviewers on this issue to dispense with a unified bar, which combines regulatory and discretionary functions. In reviewing all the data on this issue, I believe that despite some of the frustrations that occur from a unified bar, the benefits to the organization both internally (for members), and externally (for the courts, legislature, and the public) are greater with a unified bar.

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The states that have bifurcated previously unified bar associations over the last few decades have never enjoyed the same level of effectiveness. They have uniformly experienced a reduction in their ability to effectively lobby for effective lawmaking because the various individual legal groups lobby independently and decrease overall clout and impact. These bifurcated bars have also seen a sharp reduction in the efforts to integrate and diversify leadership in the profession.

3. Dispense with an elected governance board and move to a board of trustees appointed by the Supreme Court.

The election turnout for board seats has hovered at record low percentages for decades, usually averaging less than 20%, with the winner of an election typically needing only 7-10% of the members in their district to secure a seat on the board. This has contributed to electoral problems and the inability to obtain the highest quality candidates for governance.

The elected system has also prevented traditionally underrepresented attorneys from successful election and representation on the board was poor until the at-large appointed seats were created. Even with at-large seats, the board has only succeeded in a majority of the board being underrepresented members on two or three years in its entire existence.

In addition, the concept of elective and representational board members is at times antithetical to the concepts of non-profit board management. Elective, representative board members are sometimes antagonistic to the best interests of the organization because they are responsive only to their members, sometimes individual members, and not the best interest of the organization. This becomes especially acute when a small fractional minority of members elects a class of governors.

Finally, the Court can maintain a better geographic, demographic, and experiential representation on a board with appointed trustees than any elective model. I do not favor any specific size or composition of regions, but having a board that is diverse in all ways and understands that their positions are fully as trustee-fiduciary oversight is essential to moving forward.

4. Non-Lawyers must be added to the governance board.

The legal profession is the last regulated profession in our state that does not have lay-person board members on the governing board. The Governance Task force made this a unanimous recommendation, and the BOG made that recommendation to the Supreme Court with an overwhelming majority of the Board. In fact the decision to add non-lawyer board members was unanimous, and the disagreement in the final vote was over how many and what rights the non-lawyer members had on the board.

Secondly, as the practice of law has changed, the governing board must also change. There must be an inclusion of the limited practice professionals in the board structure. This

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argument is strongest for LLLT inclusion, though it applies to LPO's to some extent as well.

Finally, I was an adult leader in another profession before becoming an attorney. I have noticed that having a board composed entirely of attorneys often misses the mark and makes decisions that could charitably be called myopic. Lawyers in the grips of legal thinking sometimes miss the real world solutions and they can lack perspective. While this mode of thinking is essential to rendering legal advice to clients, it is one of the least effective modes for a board of trustees. This has been commented on in numerous governance studies for best practices.

Having non-lawyer board members tempers this by having real time feedback from other professionals. In fact, the non-lawyer members could be individuals with even more experience in trustee boards than almost any of the lawyers on the board. The non-lawyers also can remind the lawyer members that they are there to act as trustees, not as counsel for the organization.

5. Implement changes that promote transparency, effective monitoring of the organization, and public confidence in the State Bar.

The Court has full power to implement whatever system it sees fit. It should not be bound by trying to conserve old forms and ways of working if it impairs the ability to bring the State Bar into the 21st century. Some of the current problems in the WSBA Board are found in the system set up in the founding of the Bar that are no longer workable with the size and composition of the bar, or with the needs of modern governance. While maintaining old forms may be attractive and inertia is difficult to overcome, that can also become the nexus for continuing the divisive governance we have recently witnessed in the BOG.

However this work group and ultimately the Supreme Court decide to proceed, the decisions made should emphasize transparency, accountability, and public confidence over almost any other criteria in making decisions about the WSBA structure.

Conclusion

I appreciate the opportunity to provide this input. I remain available to assist in anyway if requested.

Respectfully Submitted,



ANTHONY DAVID GIPE

WSBA President, 2014-15