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April 23, 2018

The Honorable Mary Fairhurst
Chief Justice
Washington State Supreme Court
Temple of Justice
P. O. Box 40929
Olympia, WA 98504-0929

Re: Request for Input re Bar Structure Work Group Effort

Dear Chief Justice Fairhurst:

I thank for your letter of April 16, 2019, in which you are soliciting input regarding the deliberations now underway by the Bar Structure Work Group (Work Group). To date I have attended via live webcast the two meetings of the Work Group that have taken place. Your letter requests input be provided to you by May 1, 2019. In order to meet that deadline, I must write in haste as I leave for an extended vacation on April 24, 2019, and will not return until mid-May. As a result of the limited time I have to submit input due to this fact, I offer my apology if this letter may not be as artfully worded or diligently researched as I might otherwise be able to provide.

With the above in mind, I offer one other thought before proceeding with this submittal. It is that I find myself in what may be a very unique position as one of a very small number of individuals who have attended the vast majority of Washington State Bar Association (WSBA) Board of Governors (BOG) meetings in the last fifteen years while having never been a WSBA employee, Governor, or officer. As such, my perspective on various issues may be somewhat different than those individuals who have either only recently become involved, have been absent for a number of years, or who have only attended BOG meetings when a specific issue has been on the BOG's agenda for consideration. Moreover, I am fully aware that my first hand observations will likely differ from time-to-time from the official record of such meetings as in recent years under Ms. Littlewood's influence the minutes have become more and more sanitized so as not to reflect the full extent of what occurred at these meetings.

While it is unquestionably within the purview of the Supreme Court to oversee and manage mandatory functions of the Bar such as licensure, discipline, and regulatory issues, I find that the vast majority of my colleagues do NOT believe it would be either desirable or appropriate for the Court to oversee or manage in any fashion the non-mandatory or permissive functions of the Bar such as, for example, continuing legal education, sections, legislation, and lawyer assistance programs. The two categories are fairly clearly laid out in the slide from the April 8th Work Group meeting entitled "Spectrum of WSBA Programs". Except for the client protection fund, the functions beneath the headings "Regulatory" and "Mandatory" fall within the first category and those beneath the heading "Permissive" within the latter. The client protection fund seems almost to be a unique category of its own that may require a separate, possibly joint, oversight structure.

All of the above notwithstanding, below is a current list of things that I hear most frequently from the members of my local Bar and from various other groups within the legal community with which I am or have been affiliated:

1. If, as I hope, the preference is to retain the existing Bar structure, then the Court should allow the current BOG the ability to move forward with its efforts to return the Bar to being an organization run by its democratically elected members. This would require that the Court lift its order staying the efforts by the current BOG to amend the WSBA Bylaws to reverse many of the changes made that removed the voice of the members from the operation of the organization. There may, however, be additional work required to more distinctly define the Court's role in the organization's bylaws as to the disciplinary, licensure, and regulatory functions as part of the reform efforts to assure protection from challenge due to the current case law concerns. I will say that at this time you have an incredibly hard working and diligent group of Governors that I believe are up to the task and worthy of your trust.
2. If an integrated Bar is retained but not in its current form, the next issue will be what changes, if any, to the governance of the Bar should be envisioned. It is imperative and it is the preference of the majority of my colleagues that a member elected governing body be in control of at least the non-mandatory functions of the organization and that representatives of that governing body be included in whatever governing body is in control of the mandatory functions of the organization.
3. If maintaining an integrated Bar is not the conclusion reached by the Work Group, then, at a minimum, a careful division of the mandatory and non-mandatory functions needs to occur which hopefully includes consideration of a structure that includes participation by the governing body of the non-mandatory functions in that portion moving solely under management by Court .
 - a. Bifurcation also raises the issue of what to do with the various Sections. Section funds are generated through payment of voluntary dues and should be segregated from the license fees/dues collected by WSBA which are mandatory in nature. If Sections cease to exist under the "new" structure, a decision needs to be made as to whether these funds should either be reimbursed to the individual Sections' members, donated to like private organizations not currently part of the WSBA, or some other alternative. In no event, however, should Section funds be rolled into a massive transfer to the State via the Court or utilized to settle WSBA obligations that are unrelated to the Sections.
4. Separate and distinct from the question of whether or not to bifurcate the mandatory and non-mandatory functions is the question of who should be overseeing and funding the various Supreme Court Boards now being staffed and financed by WSBA as well as the forms of non-lawyer limited practice of law that have been authorized by the court. These boards now include the Access to Justice Board, the Limited Practice Officers Board, the Practice of Law Board, and the Limited License Legal Technician Board. None of these boards should be funded with moneys associated with attorney license fees/dues nor staffed by Bar association personnel. Rather, they should be funded by the Court through either appropriations from the Legislature or by funds acquired through the license fees/dues of the members of each group and staffed by the Administrative Office of the Courts. Moreover, non-attorneys should not be members of the attorneys' Bar association.

It is my intent to continue to follow closely the efforts of the Work Group and to submit, if allowed, further questions and comments as this process moves forward.

Thank you once again for reaching out so early in this process for feedback and for considering input from the members. It is a refreshing change from the way in which efforts in the past were handled.

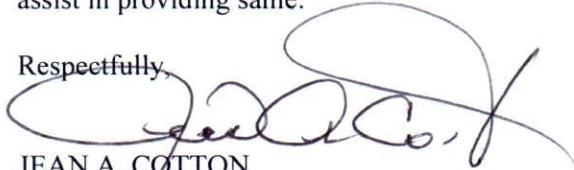
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Should there be anything further the Court desires from me, I stand ready to provide whatever I can to assist in providing same.

Respectfully,

A handwritten signature in black ink, appearing to read "Jean A. Cotton", written over the word "Respectfully,".

JEAN A. COTTON
Attorney at Law

cc: Bar Structure Work Group Members
Associate Justices of the Washington Supreme Court
WSBA Board of Governors