

**WASHINGTON STATE  
BAR ASSOCIATION**

**Board of Governors Meeting**

**Public Session  
Late Materials**

**November 16, 2018  
WSBA Conference Center  
Seattle, Washington**

**WASHINGTON STATE  
BAR ASSOCIATION**

Board of Governors

<b>BOARD OF GOVERNORS MEETING Public Session Materials November 16, 2018 Seattle, WA</b>		
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# WASHINGTON STATE BAR ASSOCIATION

**TO:** WSBA Board of Governors

**FROM:** Taudd Hume, WSBA Legislative Review Committee Chair; Sanjay Walvekar, WSBA Outreach and Legislative Affairs Manager

**DATE:** November 13, 2018

**RE:** 2019 WSBA Legislative Review Committee Recommendation

**ACTION:** Sponsor one proposal for 2019 Bar-request legislation as recommended by the WSBA Legislative Review Committee.

**Overview:**

The WSBA Legislative Review Committee (Committee) recommends the Board of Governors (BOG) sponsor the following proposal for Bar-request legislation during the 2019 session.

**Returning and new legislation - Action Requested**

- Proposed amendments to the Washington Business Corporation Act (WBCA) provisions regarding preemptive rights, cumulative voting, and approval of asset sales to align with Model Business Corporation Act. (Committee approved sponsorship unanimously)

**Miscellaneous - No Action Requested**

- Proposed amendment to RCW 51.52.120 updating the current statute to allow attorneys who represent injured workers before the Board of Industrial Insurance Appeals to be paid with alternative fee structures. (Committee voted unanimously to table proposal until further stakeholder feedback on the proposed amendment can be sought)

**Proposed amendments to the Washington Business Corporation Act (WBCA) provisions regarding preemptive rights, cumulative voting, and approval of asset sales to align with Model Business Corporation Act.**

**Section draft development:**

The proposed amendments to the WBCA were drafted by the Corporate Act Revision Committee (CARC). CARC is a committee of the WSBA's Business Law Section with approximately 15 members consisting of corporate attorneys practicing at large and smaller local law firms in the state, in-house counsel at Washington corporations, professors of law at both local law schools, and representatives of the Washington Secretary of State's office. CARC was instrumental in the development of the WBCA adopted in 1989. CARC is primarily responsible for ensuring that the WBCA remains up to date, and continuously considers the need for changes to the WBCA in light of developments in corporate and securities laws and practices, judicial decisions and regulatory actions.

The vote of CARC to approve the proposed amendments was unanimous. The vote of the Business Law Section's Executive Committee to approve CARC's proposed amendments and recommend that the WLRC approve the proposed amendments as WSBA-request legislation was also unanimous.

**Summary:**

The proposed amendments would revise relevant sections of the WBCA to change the default “opt out” rule relating to preemptive rights to an “opt in” rule; change the default “opt out” rule relating to cumulative voting to an “opt in” rule; and change to an objective test for determining whether a sale of assets requires shareholder approval.

These proposed changes are generally consistent with the approach taken in the ABA’s Model Business Corporation Act, upon which the WBCA is based. The adoption and enactment of the proposed amendments to the WBCA is not expected to impose any costs on business or individuals to comply with the provisions.

**Background from CARC:**

**Preemptive rights:** CARC believes Washington corporates, their shareholders, and the business law bar would benefit from changing the default rule applicable to preemptive rights in RCW 23B.06.300 from the current “opt out” approach, which is consistent with the approach taken in the MBCA and in the corporate statutes of more than 40 states, including Delaware. CARC believes that changing the default rule will better align with current corporate practices and will also remove a potential trap for companies that raise multiple rounds of capital, but inadvertently fail to offer the preemptive right to (or obtain a waiver thereof from) shareholders in connection with each related securities issuance, resulting in the expenditure of additional time, effort and money by the company to address the issue when discovered later.

**Cumulative voting:** CARC believes Washington corporations, their shareholders, and the business law bar would benefit from changing the default rule applicable to cumulative voting rights in RCW 23B.07.280 from the current “opt out” approach to an “opt in” approach, which is consistent with the approach taken in the MBCA and in the corporate statutes of over 30 states, including Delaware. As with the proposed change to the preemptive rights default rule, CARC believes that changing this cumulative voting default rule will better align with current corporate practices as well as expectations of business law practitioners and their clients.

**Shareholder approval requirement in asset sales:** CARC believes appropriate amendments to the sale of assets provision to include an objective test and safe harbor would provide much-needed clarity to Washington corporations and their advisors seeking to determine whether a transaction involving the disposition of less than all of a corporation’s assets must be submitted to shareholders for approval. CARC’s proposed amendments to RCW 23B.12 would be materially consistent with the MBCA approach. Under these proposed amendments, a sale, lease, exchange, or other disposition of a corporation’s property and assets, other than in the usual and regular course of its business, would require approval of the corporation’s shareholders if the disposition would leave the corporation without a significant continuing business activity.

**Stakeholder response (“Ongoing” indicates that CARC reached out to the listed stakeholder but did not receive a response as of November 13):**

Washington Associate for Justice (WSAJ) – trial lawyers – Ongoing  
Business Law Section LLC/Partnership Committee – Neutral  
Secretary of State’s office – Support  
Department of Financial Institutions (DFI) – Ongoing  
Association of Washington Business (AWB) – Ongoing  
WSBA Litigation Section – Neutral

**Prime sponsor Sen. Jamie Pedersen (D) 43rd District has been contacted regarding this bill.**

## No-Retaliation Policy

### Purpose

The Washington State Bar Association (“WSBA”) is firmly committed to maintaining a safe environment that encourages its employees, volunteers, and/or members of the Board of Governors (“BOG”) to speak up about sexual discrimination or other harassment without fear of retaliation. To that end, and to prevent victimization and other retaliatory behavior towards those who report such conduct to appropriate individuals, the WSBA adopts a No Retaliation Policy. This Policy is important for many reasons, including:

1. When reports of concerns of discriminatory, or harassing conduct or retaliatory action are made, the WSBA must consider them and take appropriate action. Retaliating against a BOG member, WSBA volunteer, or WSBA employee who brought attention to inappropriate behavior harms the WSBA’s trustworthiness and reliability. Retaliation harms the public interest by deterring others from reporting complaints.
2. Any kind of retaliatory action, whether intentional or unintentional, may expose the WSBA to a serious legal risk.

### Scope

This Policy applies to all WSBA employees and prospective, current or former BOG members or WSBA volunteers (BOG members and WSBA volunteers hereinafter collectively referred to as “volunteers”). Employees are subject to provisions under the employee handbook policy on Standards of Conduct and Discipline and Sexual and Other Harassment Policy as determined by the Executive Director.

## Policy

The WSBA prohibits any form of retaliation against or intimidation of WSBA employees or volunteers who report good-faith concerns of discriminatory, harassing, illegal or dishonest conduct or who participate in investigations or other proceedings related to such a report, even if the WSBA ultimately concludes that the report cannot be substantiated or that no violation of law, regulation or WSBA policy has occurred.

### Retaliation Definition

Retaliation includes any kind of negative action against a current or former volunteer or employee who has reported actual or potential violations of equal opportunity laws or regulations (protected activity). These adverse actions create a hostile, threatening or uncomfortable environment for a person who reported alleged inappropriate conduct or participated in an investigation. Examples of retaliatory actions can occur outside of an employment relationship and may include, but are not limited to:

- Disparaging the person to others or in the media.
- Taking actions not directly related to employment or volunteer role/status or by causing the individual harm.
- Termination or illegal retraction of compensation and benefits.
- Exclusion from events or meetings.
- Any other action that might well deter reasonable individuals from engaging in protected activity.

Activity protected by this Policy includes but is not limited to:

- Complaints about workplace harassment or discrimination;
- Notice of intent to file a lawsuit or charge, even if the filing is not ultimately made;
- Participation in a pending investigation of misconduct or violations; and
- Resisting sexual advances or intervening to protect others.

The WSBA will not interfere with the rights of employees or volunteers to speak out about or disclose conduct violating this policy. When possible, the WSBA encourages open communication in accordance with our Guiding Communication Principles and Conflict Resolution Practices Policy.

#### Reporting Complaints

Volunteers may file complaints with the President of the WSBA, the Chair of the BOG Personnel Committee or the Executive Director. WSBA employees may file complaints internally to their immediate supervisor, the Director of Human Resources, or the Executive Director. Reports from volunteers or employees of misconduct or suspected violations will be investigated thoroughly and those who report or participate in the investigation must be protected from retaliation.

Appropriate action will be taken against a volunteer who is found to have engaged in prohibited harassing or retaliatory conduct, up to and including removal from the volunteer position as determined in accordance with the bylaws and/or court rules.

#### Filing False Reports

False and malicious complaints of harassment, discrimination or retaliation (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate action.

All WSBA employees and volunteers are required to cooperate with investigations undertaken in response to a complaint under this policy. In particular, among other things, WSBA employees and volunteers are required to make themselves available to investigators immediately upon request, be forthcoming and truthful with investigators, and provide complete and accurate information. Failing to cooperate with an investigation may also be grounds for removal from a volunteer position. WSBA Employees are subject to the policies and procedures in the employee handbook.

**WASHINGTON STATE**  
**BAR ASSOCIATION**

To: Board of Governors

From: Budget and Audit Committee

cc: Senior Lawyers Section Executive Committee

Re: Senior Lawyers Section Proposed FY 2019 Budget Amendment

Date: November 13, 2018

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**ACTION: Approve Senior Lawyers Section FY 2019 budget amendment.**

The Budget and Audit Committee unanimously recommends that the Board of Governors approve the Senior Lawyers Section proposed budget amendment for fiscal year 2019 (see attached documents). The proposed changes are mainly a result of timing differences between the Executive Committee's meeting schedule and the WSBA's deadlines for budget submission.

Attached are the section's approved FY 2019 budget and the proposed amended FY 2019 budget. The amendment includes various line item changes in both revenue and expense categories. Overall, the amendment increases total revenue, decreases total expenses, and reduces the budgeted net loss for FY 2019. The current budget reflects a loss of (\$3,837.50); the proposed amended budgeted reflects a loss of (\$575).

**Washington State Bar Association**  
**Budget Comparison Report**

For the Period from October 1, 2018 to September 30, 2019

**SENIOR LAWYERS**

	FISCAL 2018 BUDGET	FISCAL 2019 BUDGET	\$ CHANGE IN BUDGET	% CHANGE IN BUDGET
<b>REVENUE:</b>				
INTEREST - INVESTMENTS	26.00	50.00	24.00	92%
SECTION DUES REVENUE	7,500.00	6,450.00	(1,050.00)	-14%
SEMINAR SPLITS W/ CLE	(834.80)	-	834.80	-100%
<b>TOTAL REVENUE:</b>	<u>6,691.20</u>	<u>6,500.00</u>	<u>(191.20)</u>	<u>-3%</u>
<b>DIRECT EXPENSES:</b>				
PER MEMBER CHARGE	5,625.00	4,837.50	(787.50)	-14%
NEWSLETTER EXPENSES	4,500.00	4,500.00	-	0%
EXECUTIVE COMMITTEE EXPENSES	1,000.00	1,000.00	-	0%
<b>TOTAL DIRECT EXPENSES:</b>	<u>11,125.00</u>	<u>10,337.50</u>	<u>(787.50)</u>	<u>-7%</u>
<b>NET INCOME (LOSS):</b>	<u>(4,433.80)</u>	<u>(3,837.50)</u>	<u>596.30</u>	

**2019  
 SENIOR LAWYERS SECTION  
 WASHINGTON STATE BAR ASSOCIATION  
 FY 2018 BUDGET REQUEST  
 (amended 9-17-18)**

**REVENUES:**

**Operational Revenue**

40500 Interest income on Fund Balance	\$ 50.00
48200 Section Dues Revenue	<u>7500.00</u>
<b>TOTAL Operational Revenue:</b>	<b>\$ 7550.00</b>

**CLE Related Revenue**

41850 Seminar Splits with WSBA	\$ 0
<b>41850 Minie CLE</b>	<b><u>\$ 1500.00</u></b>
<b>Total CLE Related Revenue</b>	<b>\$ 1500.00</b>

<b>Total Revenue</b>	<b>\$ 9050.00</b>
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**EXPENSES:**

**Operational Expenses**

58400 Per Member Charge	\$ <u>5625.00</u>
<b>Total Operational Expenses</b>	<b>\$ 5625.00</b>

**Member Benefits**

58375 Newsletter/Publication (includes Printing and Postage)	\$ <u>3000.00</u>
<b>Total Member Benefits Expenses</b>	<b>\$ 3000.00</b>

**Executive Committee-Related Expenses**

58300 Meeting facilities, travel, lodging	\$ <u>1000.00</u>
<b>Total Executive Committee Expenses</b>	<b>\$ 1000.00</b>

<b>Total Expenses</b>	<b>\$ 9625.00</b>
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<b>Budgeted Net Income (Loss) for FY 2019</b>	<b>\$ ( 575.00)</b>
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Plus Fund Balance as of September 30, 2017	\$ 8598.32
Plus Estimated Net Income/Loss for Fiscal Year 2018	\$ (4433.80)
Plus Estimated Net Income/Loss for Fiscal Year 2019	<u>\$ ( 575.00)</u>
Projected Fund Balance at 9/30/2019	\$ 3589.52

## BUDGET NARRATIVE

Per member charge - Projected 300 members at \$25 per member. No increase in membership fees.

Seminar Splits with CLE Revenue - Based on Seminar Plan B submitted by WSBA. Project one mini CLE in Seattle with net to Section in sum of \$1500.00

Meeting charge for facilities at Broadmoor golf club for 9 meetings, per diem requests and for any other EC expense.

Per member charge -at \$18.75 per member

Newsletter/Publication expense- based on two publications for the year.

**No change in Section Member Dues is recommended at this time.**

## Supreme Court Workgroup on the WSBA Structure

The Supreme Court is convening a Workgroup on the WSBA structure. The Chief Justice, as chair, with 10 members will serve on the Workgroup.

### Composition of Workgroup:

- 1 member from the Supreme Court -- Chief Justice, Mary Fairhurst, Chair
- 3 members from the WSBA Board of Governors (BOG)—can be either officers and/or BOG members (BOG selects)
- 3 members from the WSBA Sections—can be either chairs and/or members of the Sections (Supreme Court, in consultation with BOG, selects from applications)
- 3 members from the Supreme Court appointed boards that WSBA administers—can be either members and/or chairs (Supreme Court selects from applications)
- 1 public member (Supreme Court selects from applications)

### Charter:

To review and assess WSBA structure in light of (1) recent case law with First Amendment and antitrust implications; (2) recent reorganizations by other state Bar associations and/or groups and their reasoning; and (3) the additional responsibilities of the WSBA due to its administration of Supreme Court appointed boards.

The Workgroup, as desired or needed, will invite input (which could be information or opinions) from those with subject matter expertise on issues involved in review, assessment and potential recommendations.

Based on this review and assessment, the Workgroup will make a recommendation to the Supreme Court as to future structure, for example, whether to maintain the status quo; divide into 2 organizations—one mandatory and one voluntary; or do some sort of hybrid where still one organization but perhaps with 2 governing bodies—one for the mandatory and one for the voluntary responsibilities. There may be additional suggestions that the Workgroup suggests or considers.

Expectations: The Workgroup will receive and share knowledge and have open, collaborative, respectful conversations. Meetings will be open to the public.

Anticipated duration: 6 to 8 months. Meetings every 3 to 4 weeks once Workgroup members identified. First meeting of Workgroup will be in January 2019.

For members applying for positions the Supreme Court selects, applications should be sent to the Supreme Court, Attention: C.J. Mary Fairhurst, PO Box 40929, Olympia, WA 98504. In the application, indicate the reason for your interest, pertinent background and which category of Workgroup membership applies. Deadline for applications is December 7, 2018. In making its selections, the court will be looking for diversity in all its aspects.

Dated: November 9, 2018

# WASHINGTON STATE BAR ASSOCIATION

Office of the Executive Director  
Paula C. Littlewood, Executive Director

November 13, 2018

Hon. Mary E. Fairhurst  
Chief Justice  
Washington Supreme Court  
PO Box 40929  
Olympia, WA 98504

Hon. Charles W. Johnson  
Associate Chief Justice  
Washington Supreme Court  
PO Box 40929  
Olympia, WA 98504

Re: Military Spouse J.D. Network's Suggested Amendments to APR 3

Dear Chief Justice Fairhurst and Justice Johnson,

We have received the Court's letter and order regarding the Military Spouse J.D. Network's suggested amendments to APR 3. I am writing to provide a little background and history with respect to these suggested amendments.

The WSBA previously has been in communication with people connected to the Military Spouse J.D. Network regarding their suggested amendments. We initially had discussions with them about the fact that under Washington's current rules, there are very few military spouses who would not qualify for admission under one of Washington's existing rules. The only gap under Washington's current rules is for lawyers licensed in another state who have not taken the Uniform Bar Exam (so don't have a score to transfer), or who do not qualify for admission by motion because they do not have active legal experience for three of the last five years in any jurisdiction. Despite the fact that there would be very few military spouses who are lawyers who would fit into this gap, we clearly understood from them that they wanted resolution through a rule change.

After our initial discussions, we informed various people connected with the Military Spouse J.D. Network that we are working on suggested amendments that would accomplish essentially the same goals as the rule they are suggesting – i.e., closing the existing small admissions gap for military lawyers – in a simpler way. We note, and have informed them, that their suggested amendments propose a rule that is fairly complicated and would be relatively difficult to administer within Washington's admission and licensing scheme.

As stated, we are working on a rule that would accomplish similar goals but could be administered more easily. It is our intention to present a draft of suggested amendments to the WSBA Board of Governors in January 2019, and to have suggested amendments ready for the Court's consideration soon after that date.

Please feel free to contact me or Jean McElroy if you have any questions about this matter.

Sincerely,



Paula C. Littlewood

cc: William D. Pickett, WSBA President  
Jean McElroy, WSBA Chief Regulatory Counsel  
Shannon Hinchcliffe, Administrative Office of the Courts