



WSBA Sections Policy Workgroup Feedback Forum

AGENDA

Thursday February 4, 2016, 9:30 a.m. – 2:30 p.m.

WSBA Offices (Conference Center)
1325 4th Ave, Suite 600, Seattle 98101

TIME	TOPIC	SPEAKER
9:30 – 9:45	Introduction and meeting overview	William Hyslop Anthony Gipe
9:45 – 10:30	Reasons for policy review, overview of proposals and summary of feedback to date	Anthony Gipe Ann Holmes
10:30 – 12:00	Section open feedback	Guests
12:00 – 12:15	<i>Break for Working lunch (provided by WSBA)</i>	
12:15 – 2:00	Section discussion about the draft proposals <ul style="list-style-type: none">• Standard Charter• Fiscal Policy	Anthony Gipe Guests
2:00-2:30	Summary, Next Steps	Anthony Gipe

SECTION FEEDBACK SUMMARY

JANUARY 27, 2016

SECTION LEADERS WRITTEN FEEDBACK IN RESPONSES TO SECTION POLICY WORKGROUP PROPOSALS

WSBA Staff reviewed all written feedback received from WSBA Section Leaders in response to the draft Section Policy Workgroup proposals disseminated on December 31, 2015.

To date, WSBA has received formal written responses from 24 out of the 28 sections; all generally in opposition to the proposals. WSBA has not received written formal feedback from the Animal Law Section, Civil Rights Law Section, Legal Assistance to Military Personnel Section and the World Peace Through Law Section.

All written feedback is available online, www.wsba.org/About-WSBA/Governance/Sections-Policy-Work-Group

AREAS OF CONCERN (PROCESS)

- Workgroup composition did not include section leaders.
 - “..it is incomprehensible that no actively serving Section Leaders were invited to serve on the workgroup.” (Elder Law Section).
 - “Had the section leaders had a meaningful voice in shaping the policy proposals, they would look nothing like those the workgroup proposed.” (Low Bono)

- The window of opportunity to provide written feedback was too short for sections to meaningfully consider and respond to the proposals and timing of materials dissemination were perceived by some as WSBA trying to “slip under the radar” to avoid Section feedback.
 - “We also object to the timing for release of the Sections Proposals. The Sections Proposals were emailed on New Year’s Eve, during the holiday season when many attorneys were on holiday and spending time with their families. The subsequent comment period of 14 business days is short, and occurs at a traditionally busy time of the year for attorneys.” (International Practice)
 - “...when virtually all members were on vacation, seems itself calculated to slip the Proposals by the Section leaders.” (Corporate Counsel)

- The Workgroup communications and process lacked transparency.
 - “The true scope of what was being proposed – a complete revamping of how the sections are structured and operate – was not known until just before the New Years Eve.” (Environmental & Land Use Law)
 - “...the Tax Section received no communication that would have hinted at the radical changes to the governance and financing of the sections.” (Taxation Section)

AREAS OF CONCERN (CHARTER)

- Loss of autonomy
 - "...the sweeping changes proposed by the Workgroup effectively re-write the relationship and role of the Sections within WSBA, essentially stripping them of their long-established autonomy and ability to provide practice-area specific benefits." (Indian Law)
 - "We do not believe that, under the Workgroup's policies, the Elder Law Section will have the autonomy or incentive to develop, support, and provide programs and member benefits our unique membership values." (Elder Law)
 - "Volunteer section leadership currently has some important autonomy in our budgeting and programming decisions. On the Workgroup's proposal, these decisions would be subject to approval or veto by the WSBA staff." (Labor and Employment Law)

- Ascendency model
 - "...and requiring that the Chair have been Secretary/Treasurer first. While the proposed succession path is certainly one option, there is no logical reason to impose it as a mandate across 28 sections." (Juvenile Law)
 - "...the Proposals illogically mandate that officers rotate into the Chair role (e.g. Secretary/Treasurer), stripping Section members of the choice to elect their own officers as they see fit." (Corporate Counsel)

- Combining Secretary/Treasurer position does not take into account the different aspects and requirements of the role that lend themselves to different volunteer interests.
 - "Charter proposals on membership and progression from secretary to chair to former chair, etc., would require essentially a substantial commitment well beyond a three-year (3) term. It difficult enough to recruit members for such positions." (Criminal Law)
 - "It has been our experience that it is far easier to find one individual to act as Secretary, and another individual to act as Treasurer, that it is to find a single individual to act as Secretary and Treasurer." (Alternative Dispute Resolution)

- Uniformity assumes that all sections should be treated as the same when, in fact, they are all unique and should be treated as such.
 - "One-size-fits-all model is not necessary to effective administration." (Criminal Law)
 - "...it is unrealistic to impose the same membership fee across all sections. Sections should continue to have the ability to set their own, BOG-approved fees, allowing that fee to reflect services offered by the sections." (Solo & Small Practice Section)
 - "...WSBA has been promoting diversity amongst Bar members, committees, Section, etc. and asserting to the members that in recognizing and celebrating the differences between us makes us all better and stronger. Yet when it comes to the Sections, the Workgroup's proposed policies promote just the opposite." (Family Law)

AREAS OF CONCERN (FISCAL POLICY)

- Forfeiture of current section fund balances does not respect the hard work and commitment from section leaders to build up a reserve, be financially responsible, and plan profitable section activities.
 - “Coupled with the proposal to separate section’s dues revenue from its programming, we believe that over time the proposed policies would dissuade people from volunteering for section leadership as these policies significantly devalue the volunteer efforts that have made this section successful since 1974.” (Environmental and Land Use Law)
 - “...we do not believe that, as a matter of fairness or logic, well-managed, successful and more popular Sections should be forced, through the collectivization or otherwise, to directly subsidize those that are struggling through less robust leadership or weak member interest.” (Corporate Counsel)
 - “...proposals demonstrates a complete failure of the workgroup to recognize the value that we, through thousands of volunteer hours each year, generate for the benefit of the WSBA, its members, and the public.” (Low Bono)
- The pooling of funds disregards the reasonable assumption that voluntary section membership dues are intended to support the activities of that particular section.
 - “To seize those funds and redistribute them to other sections is unjust to the Bar members who voted with their pocketbooks in *our* section activities.” (Solo and Small Practice)
 - “Each section member elects to pay dues over and above the annual Bar dues to specific Sections which reflect their interests and practice; to pool all Sections resources effectively negates an individual Section member’s choice in selecting which Sections to join and in which to participate.” (LGBT)
- Pooling of section funds would disincentivize section leaders from putting on quality programming.
 - “While it may not have been the intent, the Proposal will disincentivize sections that produce net revenue (profit) for both the WSBA and the revenue generating sections by allocating that profit to sections failing to produce because of size, member disinterest, lack of initiative or other factors. Some of our council members believe sections unable to financially support themselves should be disbanded rather than subsidized.” (Construction Law)
 - “The proposed Charter will remove financial autonomy for each Section and in turn remove the incentive for the Sections and their members to produce substantive continuing legal education program for members of the WSBA.” (Creditor Debtor Rights)
- Sections will be unable to continue to do the programming they currently do.
 - “...proposals effectively transfer all authority to the WSBA to unilaterally determine what Section activities should and should not be supported based on the profitability of

those activities and the 'best interests of the WSBA'. The proposal seriously threatens the viability of small Sections, whose events may not be as profitable as those of large Sections simply due to size." (Indian Law)

- "...the Elder Law Section will not be able to sustain its activities – activities that are the soul and purpose of the Section. Sections need to be able to rely on their own financial resources for planning future programming and insuring consistent quality and scheduling of such programming." (Elder Law)
- Uniform section membership dues will reduce section memberships.
 - "...uniform dues...would also be highly damaging to our Section. Our Executive Committee has set dues while taking into account that the vast majority of our members work in the public sector, or for public interest, small or solo firms. Most of our members pay their own dues. In exchange for Section membership, we provide high-quality CLEs, among other benefits. If we were required to charge a standardized amount for dues that did not consider the unique needs of our members, we would likely lose many of our members, thus degrading the Section as a whole." (Juvenile Law)
 - "RPPT opposes any change where WSBA would set section dues. RPPT has purposefully kept section dues low for members, even as WSBA has raised the per member charge. RPPT is highly motivated to offer our members benefits at a low cost to member. [...] Any increase to our dues will result in a loss of membership, especially if it is coupled with a decrease in the RPPT-specific member benefits so that benefits can be provided to other Sections that are not financially sound." (Real Property, Probate and Trust)

AREAS OF MISUNDERSTANDING

The below bullets are items that were purported by Sections, but are in fact, a misunderstanding of the Workgroup's goal, process, and policy recommendations.

- Section pooled fund balances will be allocated to the general fund.
- Charter does not allow for an executive committee with a dual nature/representation.
- WSBA will control programming and exercise veto power on activities.
- Workgroup proposal violates current WSBA Bylaws.
- Workgroup proposal process is complete.
- Proposals seek to reduce administrative cost in supporting sections.
- Section Executive Committee meetings are not open to the public.

QUESTIONS REGARDING IMPLEMENTATION

- Real Property, Probate & Trust (and common questions similarly posed by other sections):
 - How will the pool be allocated?
 - How much will members be asked to pay for every Section?
 - How will competition between the Sections for the pooled funds be managed?

- What happens if a Section budgets for items it then does not carry out and that ‘ties up’ funds for that entire year? Would that limit the programs other Sections are able to provide?
- How would Sections have confidence that offered programs will be funded year-to-year?
- If other Sections start wanting more money but they do not contribute much to the pooled funds will the WSBA tell them ‘no’ in order to allow financially productive sections like RPPT to continue to provide; the programs we want to provide?

AREAS OF AGREEMENT AND/OR ALTERNATIVE PROPOSALS

- Areas of Agreement:
 - “The Executive Committee believes it shares a common interest with the Sections Policy Workgroup in encouraging volunteerism, conferring important benefits to our related constituencies, and efficient administration.” (Business Law)
 - “RPPT does not disagree with the concept that the Sections are under the authority of the Washington State Bar Association (‘WSBA’) and do not have any independent existence without the WSBA.” (Real Property, Probate & Trust)
 - “We are not saying that the ‘term limits’ rule is inherently bad...” (Alternative Dispute Resolution)
 - “We support section accountability, and we’re not opposed to efforts to increase consistency. [...], for ELUL moving our election date and some other administrative changes might further that goal without compromising the benefits sections provide to members. We are also not opposed to the Bar Association setting the per-member-charge (and the CLE administrative fee) at full-cost-recovery-level.[...] It has never seemed unreasonable to us that sections, like other Bar Association functions, should benefit from overhead funded in part with general revenue.” (Environmental and Land Use Law)
 - “While we agree that greater consistency among Section bylaws might be administratively advantageous for the Staff...” (Corporate Counsel)
 - “The Workgroup has identified certain valid concerns related to streamlining administration of the Sections...” (Elder Law)
 - “While there may be some value in imposing a greater degree of consistency across the Sections’ bylaws to ensure uniformity in the timing of the date new Section officers take office and certain administrative matters...” (Indian Law)
 - “...the Tax Section is open to revisions to its by-laws to address problems or improve governance...” (Taxation)
 - “Aspects of the goals which the Criminal Law Section does support are simplifying administration of sections, finances, and minimizing administrative costs to assist the sections.” (Criminal Law)

- Alternative Proposals

- “The solution to this problem is to change whatever accounting procedures necessary in order to give the Sections and accurate picture of their actual costs, and to allow both the Sections and the WSBA to plan accordingly.” (Alternative Dispute Resolution)
- “CCS would consider supporting limited and highly specific proposals to make the timing of Section officer elections consistent,…” (Corporate Counsel)
- “We would propose that the WSBA not alter election dates, but instead alter the effective date for their new leadership to begin their terms.” (Indian Law)
- “...the more obvious solution is to require the heavily subsidized sections to bear the actual cost of their activities or adjust their activities.” (Taxation)
- “The Business Law Section proposes an increase in this limit to twenty with the allowance for co-chairs to count as one position.” (Business Law)
- “The Section proposes that new officers be elected in May, so that those officers can create the Annual Work Plan for the year that they will be in leadership.” (Business Law)
- “If underfunded or startup Sections are an issue, the ADR Section proposes increasing the ‘per member charge’ by a modest amount, and allowing the WSBA to use that as a fund to assist Sections in financial need.” (Alternative Dispute Resolution)

END OF SUMMARY

Compiled by Paris A. Eriksen, Sections Program Manager
January 27, 2016

ACPUBP
From: Danicanoble <danicanoble@gmail.com>
Sent: Friday, January 22, 2016 5:25 PM
To: Sections
Subject: Sections policy workgroup

Follow Up Flag: Follow up
Flag Status: Flagged

The Executive Committee of the Antitrust, Consumer Protection, & Unfair Business Practices Section unanimously opposes the proposal by the Sections Policy Workgroup Proposals put forward on January 1, 2016. We have explained our opposition to our members and have invited our section's members to offer comments or feedback directly.

Thank you for your consideration.

Sincerely,
Danica Noble

Sent from my iPhone

Dear WSBA Sections Policy Workgroup Members,

The board of the Administrative Law Section approved the following comments on behalf of the section.

We agree that it is appropriate to increase uniformity among the sections where such changes are necessary for the efficient and practical management of the sections, but some of the proposals threaten the diversity and collegiality that currently exists among the individual sections. Our primary concerns are summarized below.

- 1. Pooling of section resources.** Prohibiting sections from carrying over any funds is a drastic step that would stifle the enthusiasm of section leaders to put on events and write materials that ultimately result in section revenues. We have heard more negative feedback regarding this proposal, both from the Administrative Law Section leadership and from leaders of other sections, than regarding any other proposals.

Even if the sections are not legally distinct from the WSBA, they are cohesive and individual groups that are bound by common interests and practice areas. Part of what motivates our section leaders to spend hours organizing financially successful CLEs or revising chapters of a deskbook that results in profitable sales is that money earned from those efforts will contribute to a scholarship for a law student working in administrative law or to another CLE that, while beneficial to section members, may not turn a profit. One of the leaders of the Administrative Law Section responded to me that this proposal is disrespectful of section members—particularly those whose volunteer efforts result in section revenue. That member indicated that if this proposal passes, he would seriously consider dropping his section membership and ending the substantial and time-intensive efforts that he contributes. The loss of that member's volunteer hours would be a significant blow to our section and to the WSBA.

We strongly oppose the pooling of section funds.

If the funds are pooled, we would like to see more indication of how any pooled funds would be used. Would they be used exclusively for section expenses, or would the amount also be available for broader WSBA purposes?

- 2. Adopting a section charter to replace section bylaws.** Because section needs are different, a uniform section charter will not work for all. For example, a section member may be willing (and a great candidate) to serve as the secretary/treasurer, even if that person would not commit to serving as the chair in two years. Although the member could decline to take the next office when the first term ended, the possibility of having to relinquish a position after agreeing to fulfill it could be sufficient cause to discourage an otherwise exceptional candidate from contributing to section leadership. Within the Administrative Law Section, and we assume among most other sections, we have a wealth of active leaders who have contributed to the section for years, or even decades. While those members may not be free to commit to serving in a series of officer positions, their contribution in terms of volunteer hours and expertise is invaluable. This

is just one example of how our bylaws allow our board to reflect the variety of committed volunteers who contribute to the section's programming and publications.

- 3. Member dues.** At least in the case of the Administrative Law Section, the amount of our member dues is tied to our membership. We are aware—and proud—that many of our section members and leaders have dedicated their careers to the public service. We intentionally have decided in the past not to raise our dues so that no administrative law practitioner experiences a hardship in becoming and remaining a member of the section throughout his or her career. Other sections may not have the same concern, and it is appropriate that they adjust their section dues to the amount that is suitable for their membership.

Finally, if the WSBA has not yet reached out to section members directly, we recommend sending them a brief email regarding the most significant of the proposals. Although section leaders were notified of the workgroup's meetings, the full nature of the proposed changes was not revealed until New Year's Eve, which did not allow the sections sufficient time to organize board meetings on the issue or request detailed feedback from section members.

Sincerely,

WSBA Administrative Law Section Board



Alternative Dispute Resolution Section

Washington State Bar Association

1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

2015-2016 Executive Committee

Craig Beles, Chair
Courtney Kaylor, Chair-Elect
Alan Alhadeff, Past Chair
Courtland Shafer, Treasurer
Helen Ling, Secretary

Hon. Paris K. Kallas
Paul McVicker
Adrienne Keith Wills
Joanna Roth
Lish Whitson
Sasha Philip
Mel Simburg

January 22, 2016

Anthony Gipe
Chair
WSBA Sections Policy Workgroup

Re: Feedback of the Alternative Dispute Resolution Section concerning the Workgroup's December 30, 2015 memorandum

Dear Mr. Gipe:

On behalf of the members of the Alternative Dispute Resolution Section, we express our appreciation to the Sections Policy Workgroup, for the efforts that they have taken to move the Sections system forward. Having reviewed the Workgroup's December 30, 2015 memorandum, our Section leadership has some serious concerns. It appears that, while the Sections Policy Workgroup has identified some issues to address, their proposal to essentially eliminate most of the autonomy of the Sections is tantamount to using a sledgehammer when a scalpel would be more appropriate.

First, we have significant concerns with the process used to develop these recommendations. When the WSBA Board of Governors (BOG) formed the Workgroup to examine administrative improvements to the WSBA's Sections program, the leaders of many Sections asked for representation in that Workgroup since it would affect the Sections. Ultimately, the Workgroup did not include any active Section chairs, Section officers or other Section appointed representatives.

The Workgroup's recommendations were released during the holiday season, when many attorneys were spending time with their families, not focused on Bar activities. The comment period is extremely short, providing only three weeks to comment on sweeping changes, during a commonly busy time of the year. Many Sections did not even have meetings scheduled during this time. This is not a fair and open process.

From a process perspective, we think it is ridiculous that a proposal that cripples the Sections' ability to manage their own affairs is being undertaken without representation of the Sections, or even significant input. The Executive Committee believes that the combination of secrecy, lack of transparency in the process, and the release of the findings with a limited time for comment indicate a desire by some to get these devastating changes in "under the radar." In fact, the stakeholders and the people who actually make the Sections run, have been systematically excluded from this process.

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In addition, we would like to address the uniform Sections Charter. Our Section Bylaws has been revamped and amended over the years, precisely in order to tailor it to the specific needs of the Section. Keep in mind that these changes were made by Section leadership, in response to their real-world experience in running the Section. The Sections Policy Workgroup proposes a uniform leadership structure that does not accommodate the unique issues faced by each Section. It has been our Section's experience that it is far easier to find one individual to act as Secretary, and another individual to act as Treasurer, than it is to find a single individual to act as Secretary and Treasurer. Keep in mind that we are a volunteer organization; instead of having two people handle these roles, this proposal wants to force an unreasonable time burden on one. Moreover, there are plenty of people in the Section who would be willing to serve as Secretary *OR* Treasurer, but have no interest in the other position. We also fail to see the purpose in mandating that the Secretary/Treasurer become the Chair-Elect as a matter of procedure.

Furthermore, the ADR Section objects to a mandatory six-year term limit. The ADR Section actually used to have that provision in its Bylaws, using identical language. It was the experience of our Section that the "term limits" rule, while well-intentioned and there for a good purpose, caused difficulties with continuity in Section leadership. Accordingly, the Section amended its Bylaws to eliminate that provision. We are not saying that the "term limits" rule is inherently bad and that nobody should have it; however, we are saying that each Section should have the choice as to whether to have it or not, based on their own experiences in governing their Section.

The point of the uniform Charter seems to be based on a theory that it is difficult for the WSBA to work with Sections with different Bylaws. This is a difficulty of first impression for us. Perhaps, if the Workgroup could be more specific as to what difficulties are being created, a more narrow solution to WSBA concerns could be crafted. However, at this point, we do not understand what concern is so great as to mandate taking away the self-government of the Sections.

The current budgetary scheme encourages Sections to seek out opportunities for generating revenue, and allows the Section to receive rewards for its entrepreneurship. The new budget scheme might be fairly described as "from each according to its ability, to each according to its needs." One concern we have is how this will affect volunteer-intensive but revenue-generating programs. Volunteers now know that their hard work will be reflected in the financial well-being of the Section, and that they will have a voice in the eventual distribution of these funds. With the proposed changes, this will no longer be the case, creating a disincentive for Section volunteers to spend time on revenue generating efforts. Even worse, this proposal creates a situation where the respective Sections are competing for a fixed pool of funds, and creates incentives for expanding a Section's budget as much as possible, without regard to the actual revenue generation. While the Workgroup criticized the current Sections as "islands," at least those "islands" are concerned with their own financial responsibility and are not trying to enlarge their budgets at the expense of the other "islands."

We also feel these proposals, if enacted, will zap the initiative and energy from people on the Section leadership and many will just find alternative service channels. Once again: Sections are a nonprofit volunteer organization, and it really helps if the volunteers can see tangible results to their labor; we are not convinced that a marginal benefit to the overall Sections fund will have that result. We have worked hard to increase members and put in successful programs for what our members actually need, and the account balances we have built up reflect our Section's hard work and good management. We should be able to use it to keep building the section and providing programming that our section members actually need. That is why our members pay money to join our section.

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The ADR Section has built up a modest reserve fund. Part of our Section's requirements involves insuring continuity of services to our members, and to be able to respond to an opportunity when one is presented. The strategic reserve, of course, was made possible through the individual financial contributions of dues-paying members, and a lot of volunteer hours put into conferences. While we understand that the Section Policy Workgroup has concern over underfunded or startup Sections, seizing current Section funds in order to redistribute them runs counter to the principles that have encouraged so many to put their time and effort into the Sections. Underfunded or startup Sections are problems that should have a solution tailored to the problem; blowing up the entire Sections model and seizing all reserve funds is an extreme proposal not in keeping with the problem itself. If underfunded or startup Sections are an issue, the ADR Section proposes increasing the "per member charge" by a modest amount, and allowing the WSBA to use that as a fund to assist Sections in financial need.

The fact that sections lack distinct legal identities says nothing about whether they ought to operate with their own budgets. A closely analogous situation could be seen in Mountaineers Club, another nonprofit organization. In a lot of ways, the Sections here operate a lot like how the individual activities there (such as mountain climbing or skiing) operate. The activities committees are staffed entirely by volunteers, who have budgets that largely depend on the revenue they generate. They report to the (full-time) club staff on financial matters, and for approval of their budgets. Each activity committee drafts its own Charter, and the rules for the committee depend on the specific needs of the activity. Those activities committees are not separate legal entities of their own, and yet are given the autonomy to raise their own funds and dispose of those funds as they see fit, within reason and with guidance from the club staff. The Sections Policy Workgroup seems to be operating under the assumption that the Sections system, with its separate sub-budgets and relative autonomy, is some kind of unnatural outlier as far as organizations. In fact, for a volunteer-driven system which is trying to provide a wide variety of services to diverse constituencies, the current model is actually quite common.

This autonomy for the Sections is most crucial, in fact, when the sub-entity has institutional knowledge not available to the organization as a whole. The current structure allows sections the flexibility to respond to their mission. We also oppose a single Sections fee for that reason.

It is our understanding that part of the issue here is fiscal: specifically, due to the way the accounting has been done, the WSBA has been absorbing expenses for running the Sections. Please keep in mind that this difficulty was not known to the Sections themselves. As a result, the Sections thought, in good faith, that they were operating at a revenue-neutral or revenue-positive status, when in fact the WSBA was absorbing costs which changed the actual fiscal situation.

The solution to this problem is to change whatever accounting procedures necessary in order to give the Sections an accurate picture of their actual costs, and to allow both the Sections and the WSBA to plan accordingly. The ADR Section Executive Committee wants to work as a partner with the WSBA, in order to provide transparency for both revenue and expenses, and we are confident that other Sections feel the same way we do. However, what amounts to an accounting issue is not sufficient predicate to effectively destroy the existing Sections system.

We also respectfully point out that, if one of the driving issues here is fiscal and related to the WSBA inadvertently subsidizing the Sections, that issue was not mentioned anywhere in the recommendations. Instead, the Sections Policy Workgroup concentrated on gutting the autonomy of the

Sections. We fail to see how this proposal is reasonably related to the WSBA's entirely legitimate interest in a proper accounting of the costs of the Sections program.

We understand that the WSBA is an organization of mandatory membership and has responsibilities for administration of the bar membership as relates to admission, conformance to professional standards in the conduct of practice, disciplinary and complaint matters, and mandatory minimum continuing education, which might otherwise be administered by the court or a court commission. It is also a volunteer membership organization as relates to its sections, committees and the activities and educational offerings of the individual sections. Member participation in the volunteer activities of the Bar is maximized best when those activities can be supported as autonomous functions of the entire Bar.

All in all, the overarching theme to these proposals is that the WSBA needs to rein in the autonomy of the Sections and make Sections leadership dance to the WSBA's tune. In our Section, serving the ADR community, primarily Members but also non-members, has been our priority. We fail to see what the Sections have been doing so wrong, as to mandate a WSBA takeover. At the same time, we have made great efforts to work well with other Sections, and also with the WSBA. Up until this point, we were unaware that the autonomy level of the Sections was making the program unmanageable from a WSBA standpoint. If there are specific concerns that the WSBA and the Sections Policy Workgroup have as far as the *status quo*, we are sure that the Sections would be able to work with the WSBA to address those concerns. However, absent any indication that anything is sufficiently broken that needs fixing, this proposal looks like it creates far more, and far bigger, problems than the ones it is intending to solve.

Yours,



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Courtney Kaylor, Chair-Elect

Courtland Shafer, Treasurer



Helen Ling, Secretary

MEMORANDUM

January 22, 2016

To: WSBA Sections Policy Workgroup

From: Business Law Section Executive Committee

RE: December 30, 2015 Sections Policy Work Group Memo and Proposed Changes

For over thirty years, the Business Law Section of the Washington State Bar Association (the “WSBA”) has served the public and the members of the Bar, seeking to ensure the integrity of the legal profession and to champion justice. During that time, the Business Law Section has drafted, revised and monitored core chapters of the Revised Code of Washington important to the business community, such as the corporate statute under RCW 23B and the various entity acts under RCW 25, while also organizing yearly CLEs such as the annual mid-year meeting. The Executive Committee of the Business Law Section (the “Executive Committee”) appreciates the opportunity to comment on the proposal from the Sections Policy Workgroup, as the Executive Committee believes certain aspects of the proposal may have unintended adverse consequences on the Business Law Section.

Executive Committee Composition

One concern is the maximum limit of fifteen people on the Executive Committee. The Business Law Section proposes an increase in this limit to twenty with the allowance for co-chairs to count as one position. Currently, the Executive Committee has twenty-three members. This includes five officers, two at large positions, twelve committees (four of which are represented by co-chairs) and a new lawyer representative. We believe that decreasing the number of voting members of the Executive Committee to fifteen will decrease participation potentially at the cost of valuable input from important constituencies. Additionally, by not allowing co-chairs to participate equally, there is a risk of discouraging volunteerism and participation because attorneys will not be able to share the work of chairing a committee.

The Business Law Section is also concerned about the six year maximum term limit for non-officers on the Executive Committee, although the Business Law Section supports that the officers should rotate. Currently, the officers, at large positions and new lawyer representative rotate and provide new leadership opportunities for Section members. However, historically, the committee heads have been long-serving members of the Executive Committee. The reason for this longevity is because of the nature of the work that the Business Law Section engages in and the expertise such work requires. For example, this year the new LLC Act became effective due in substantial part to the work of the Business Law Section Partnership Committee. This committee’s work on the new LLC Act began officially in 2007. A working group of experienced practitioners carefully reviewed each section of the act through dozens, perhaps even hundreds, of meetings and hours of research, interacted with important constituencies, and briefed the business law section and the state legislature on a comprehensive set of revisions – all on a volunteer basis – culminating in the legislation being passed in 2015. The committee is now hosting a series of CLEs and trainings on these important changes, as well as monitoring technical changes in this new statute (particularly in light of the simultaneously adopted HUB Bill), which it expects to continue

beyond 2016. We are concerned that inherently long-term projects like this may face unintended adverse consequences if there is disruption in the stewardship of these committees. While only the Executive Committee is limited to six year terms, in our experience the committee chair has served on the Executive Committee because the committee chair is the key spokesperson regarding the committee's activities.

Section Funds

The Executive Committee is also concerned about the change of the current policy allowing sections to use, accumulate and roll over funds from year to year for the section's purposes, to a new policy of pooling funds under common WSBA administration. As one of the larger sections, the Business Law Section has been careful in how it has spent the money generated through Business Law Section members dues and CLEs budgeting and saving funds for long-term projects. For example, the Section currently has over \$20,000 budgeted to update the Washington Business Corporation Act (RCW 23B) Sourcebook. The updates to this Sourcebook have been requested not just by attorneys, but also by judges and government administrators in Washington. To update the Sourcebook takes detailed expertise and a deep understanding of the statute and, most importantly, time. Because of numerous revisions to the statute (almost every year) as well as changes in committee leadership, it has taken time for this committee's volunteers to finalize the updates. The Executive Committee is concerned that pooled funds will result in the section losing control of funds raised from its members and projects for their benefit.

Timing of Work Plan Submissions and Elections

The Executive Committee is further concerned about the timing of the submission of an annual work plan and the election of the officers that will oversee that plan. Currently, the Business Law Section Executive Committee officers are elected in May and budgeting begins in June and July. In the proposal, Executive Committee members would be elected by August 31. However, the Executive Committee would be required to propose an Annual Work Plan on which the Section's budget would be based in May. Therefore, the out-going officers of the Executive Committee would create the Annual Work Plan and propose a budget which the newly elected Executive Committee would inherit. The Business Law Section proposes that new officers be elected in May, so that those officers can create the Annual Work Plan for the year that they will be in leadership.

Meeting Notice

The proposed five days notice provision under Article VI. Meetings and C. Notice of the proposed Sections Charter will create barriers to timely responses needed by WSBA. During the legislative session, the Executive Committee is provided forty-eight hours notice: (i) to review proposed legislation and (ii) to vote on whether or not the section recommends taking a position on the legislation. If five days notice is required before any vote, Sections will no longer be able to provide timely responses regarding legislation. Additionally, WSBA can need sections to respond faster than five days. For example, this past year after providing a budget, WSBA requested that the Executive Committee approve the changes from WSBA within less than five days to accommodate WSBA timelines. Finally, the logistics of how Executive Committee meetings and voting can be conducted in an open and public manner needs further explanation. While in principle the Section does not object to this, it is unclear what this would require in terms of implementation.

The Executive Committee very much appreciates the hard work of the Sections Policy Workgroup. The Executive Committee believes it shares a common interest with the Sections Policy Workgroup in encouraging volunteerism, conferring important benefits to our related constituencies, and efficient administration. The Executive Committee hopes you will carefully consider its comments on the proposal from the Sections Policy Workgroup, as the Executive Committee believes certain aspects of the proposal may have unintended adverse effects on these interests. Thank you, and please let us know if you have any questions.

**RESPONSE TO SECTIONS POLICY WORKGROUP PROPOSED CHANGES OF THE
WSBA CREDITOR-DEBTOR RIGHTS SECTION**

TO: sections@wsba.org

DATE: January 22, 2016

The Executive Committee of this Section opposes the changes proposed by the Sections Policy Workgroup.

It is alleged by the Workgroup that “many of the policies affecting WSBA Sections... have fostered inconsistent applications among Sections, and inconsistencies with the WSBA general policies.” It is also alleged that the inconsistent policies add unnecessary administrative burdens to both Section leadership and WSBA staff. These inconsistencies and burdens are never identified.

The actual proposal is to:

1. Replace the By-Laws of the 28 Sections with a single Charter;
2. Revise the WSBA By-Laws; and
3. Revise WSBA fiscal policies.

It is unclear as to what benefit there is to the WSBA members or to the Sections to replace their By-Laws with a Charter. All the existing By-Laws comply with the WSBA By-Laws and have been approved by the Board of Governors. The Charter will remove the diversity that currently exists between the Sections. All Sections and their leaders have been told over the past two years that diversity is a goal of the WSBA and that we all need to improve diversity within our Sections.

The proposed Charter will remove financial autonomy for each Section and in turn remove the incentive for the Sections and their members to produce substantive continuing legal education programs for members of the WSBA.

Membership in the WSBA is mandatory. Membership in a WSBA Section is voluntary. It appears that the various Sections have been good stewards of the revenues within their control.

The WSBA By-Law changes and WSBA Fiscal Policy changes the Workgroup proposes all relate to taking away the existing Section financial reserves and placing the financial decision-making for each Section outside of the control of their individual Executive Committees. Why is this necessary?

The WSBA staff recommended the formation of the Sections Policy Workgroup based on financial information submitted to the Board of Governors in July of 2015. The WSBA financial statements for 2014 and 2015, show that the Sections’ administrative expense charged by the Bar staff increased from \$299,889.00 to \$405,738.00 between 2014 and 2015. This is an increase of over 35%. Continuing legal education administration increased for the same period from \$512,786.00 to \$548,384.00, an increase of approximately 7%. CLE revenues for the same period increased from \$674,720.00 to \$762,463.00, for an increase of 13%. The sharp rise in the administrative costs charged by the WSBA staff is not explained in the financial information.

The Section Seminar Financials included in those materials all include a charge for “indirect and non-event specific direct expenses”. The calculation of these charges are not explained. However, this fee, and the

administrative fee charged by the WSBA often exceed the gross revenue generated by the event. Some might call this voodoo accounting.

The transparency provided by the Workgroup in the area of the financial considerations, is similar to the view provided through a clear window on a foggy day.

If there is a problem with the finances of the Sections, that problem needs to be addressed to the Sections directly. If the financial problem exists within the WSBA staff, that needs to be addressed also.

The Creditor-Debtor Rights Sections has a great deal of expertise in dealing with money problems. Solving those types of problems is what most of the Section members do in their practices on a daily basis. We are all volunteers and we are willing to help. Our help has never been asked for.

The Sections Policy Workgroup as currently comprised, excludes all Section leadership from the process. The problems the Workgroup is addressing do not seem to be the real problems faced by the WSBA.

The result of implementing the changes proposed by the Workgroup in the current form, will be a short term benefit in that the WSBA will be able to get the Sections' financial balances off their books. The long-term effect will be to diminish or to dissolve most, if not all, of the Sections. The membership of the Creditor-Debtor Rights Section will volunteer their efforts with other organizations.

We ask that the current proposals be rejected and the process be reset and include Section leadership. The real problem appears to be the shrinking of the assets of the WSBA. Get the Sections involved, take a broader look at the problems so that the interests of the WSBA as a whole and of the Section members are met in a rational and professional manner.

JAMES P. HURLEY
Chairperson of the Creditor-Debtor Rights Section



Civil Rights Law Section

WASHINGTON STATE BAR ASSOCIATION

February 4, 2016

To: WSBA Sections Policy Workgroup

From: WSBA Civil Rights Law Section

SUBJECT: Civil Rights Law Section's Comments Regarding Sections Policy Workgroup Draft Proposals

The Civil Rights Law Section (CRLS) offers the following comments regarding the Sections Policy Workgroup's Draft Proposals. Before speaking to the two parts of the proposals: Sections Charter and Sections Fiscal Policy, we have comments regarding what we consider to be a flawed process that we believe has contributed greatly to the generally negative reception from WSBA's 28 Sections of the draft proposals as that have been prepared.

Process Flaws

1. No representation on the Workgroup. From the start, the formation of this workgroup has been insulting to the Sections as we have not been afforded any representation of current Section leadership whatsoever. While we have heard platitudes regarding the importance of the Sections and how the Sections are "partners" in helping WSBA carry out its mission, the Sections are not in any way partners in a shared identification of issues and concerns, the development and discussion regarding proposals, nor voting on moving forward with draft proposals. The response has been to identify an extreme case where all of the sections would be represented, even though not all of the BOG nor all of the senior WSBA staff are represented. Input is not ever the same as being at the table when problems are identified, solutions are prepared, and votes are taken. This is a critical mistake and is inconsistent with any notion of meaningful inclusiveness. No effort was made to involve 2 to 4 representatives to serve on the workgroup. No ideas were explored on how that could be accomplished. We were not at the table, and we were on the menu.
2. Lack of effort to get consensus between the Workgroup and Sections on problem identification. While some Sections, including CRLS participated in providing information to the Workgroup by survey and in-person, before developing its proposals, the Workgroup should have sent a draft of its perspectives on the problems that it identified in need of solutions. This would have included an assessment of the magnitude of the problem identified. In addition, with that information, the Sections should have been accorded an opportunity, to not only react to the

identified problems, but encouraged to identify other problems not included. By striving to get consensus on what problems needed to be addressed, the Sections would be less likely to react to what appears to be “solutions in search of a problem”. This would have given an early indicator to the Workgroup that the Sections were or were not in alignment with the problems or concerns that would be addressed. The order of magnitude of the problem would also be placed in a shared perspective.

3. Involving the Sections in Developing Options for Solving Problems. The draft proposals were developed without any prior participation or feedback or input from Sections. The biggest flaw is that there is a general sense that only 1 approach could be used for solving the problems. There appears to be a notion that 1 size or approach will fit all 28 Sections. This again is suspect without knowing or agreeing that the problems identified are common to all sections and will work for all sections. Perhaps 2 or 3 optional approaches should or could have been offered.
4. Unanswered questions regarding BOG direction and WSBA Staff oversight and enforcement of existing policies. Some of the issues that have identified as problems beg questions regarding direction and enforcement of existing policies from the BOG through WSBA Staff. For example, it has always been the CLRS’ understanding that Section By-laws must be approved by the BOG. By implication, the status of by-laws along with any inconsistencies, is a matter of ad hoc decision-making by the BOG. What is unclear is what by-laws for what sections are inconsistent with WSBA’s policies & overall by-laws, why can’t those be corrected on a case-by-case basis? The same for fiscal policies, with the budget process as a logical process point to bring some issues that are contrary to WSBA policies into alignment and corrective actions.

With these comments regarding the process, here are CRLS concerns regarding the specific Proposals:

Sections Charter

1. Overall Comment: One size does not fit all, and the charter should allow for optional approaches to many of the operations of Sections.
2. Section III—Officers and Duties of Officers: Do not prescribe that the officers must be Chair, Chair-elect, and Secretary/Treasurer. Allow for there to be separate positions for Secretary and Treasurer. Not everyone will be interested in the dual function.
3. Section III—Officers and Duties of Officers: Do not prescribe succession plan for officers from Secretary/Treasurer to Chair-Elect to Chair. This requires a 3-year commitment to serve as an officer. That may not be workable for some, and may not be desirable by others. Not everyone who serves as Secretary or Treasurer is interested in becoming chair-elect and then chair.

Sections Fiscal Policy

1. A. WSBA Sections Fund: This approach is an overreach without justification. Taking the reserve funds that Sections have worked to establish will cause great harm in the relationship between the WSBA BOG and Staff, and the Sections. Here are other ways that Sections can be a part of helping fill financial holes without “zeroing-out” all section reserve funds:
 - a. Require that reserve funds be used by Sections to reduce any fiscal year deficits by the sections.
 - b. In addition to revenues from dues, make up the budget resources by applying a Section’s reserve funds.
 - c. Sections that have reserve funds annually contribute 5-10% of reserve funds to a WSBA Section Fund for use by Sections that are financially limited in monetary resources.
 - d. If a revenue sharing fund is established as identified in 1.c, above, Sections contributing to the fund should be a part of the award process for the use of the fund by other applying sections.

All of these approaches are ways in which Sections can contribute to WSBA finances without an approach that is a disincentive for Sections to make money from its efforts.

2. Sections Work Plans should not be a matter of WSBA Staff Approval. WSBA staff should not have the authority to approve or disapprove Section Work Plans. Staff may make comments or raise concerns to the BOG in the budget approval process, with Sections being accorded an opportunity to respond, but the approval should rest with the BOG, in the context of the Budget process.

These are the comments of the Civil Rights Law Section. These comments do not necessarily represent support or opposition to comments from other Sections. At this time, the Civil Rights Law Section does not support the proposals of the Sections Policy Workgroup as currently drafted.

Submitted on behalf of the Civil Rights Law Section by Alec Stephens, Section Chair.

Washington State Bar Association Construction Law Section Council

To: Anthony D. Gipe, Chair of the Sections Policy Workgroup

From: WSBA Construction Law Section Council

Date: January 22, 2016

Seventeen members of the WSBA Construction Law Council have reviewed the December 30, 2015 Section Policy Workgroup's memo (hereinafter "Proposal"). Those 17, including all current officers and four past section chairs oppose the Proposal. Their reasons are:

1. While it may not have been the intent, the Proposal will disincentivize sections that produce net revenue (profit) for both the WSBA and the revenue generating section by allocating that profit to sections failing to produce because of size, member disinterest, lack of initiative or other factors. Some of our council members believe sections unable to financially support themselves should be disbanded rather than subsidized. All of us believe that adopting the Proposal will substantially reduce the benefits we have provided to our members and to the public.

2. Many of the premises upon which the Proposal is founded appear flawed:

a. "The overall health and mission of the whole is greater than any individual section." We disagree and believe that our and other sections are the strongest attribute of the whole (WSBA) and provide the most member benefits at a very low cost. We further believe that strengthening sections (which the Proposal seeks to weaken) will necessarily benefit the whole.

b. "All sections should offer core member benefits (educational, networking and leadership opportunities; and direct communications to members)." Our section current provides each of these benefits and we believe we do it well. Hence, this is not a justification for changing the manner in which our section operates.

c. "Barriers to member participation in sections should be reduced." That sounds reasonable on the surface, but we are not aware of any

barriers to member participation in at least this section, hence this is not a justification for the Proposal. If in fact, some sections have unacceptable barriers, the WSBA should deal with those sections.

d. “Sections should have greater alignment with the WSBA and its mission.” Everything we do (publishing form construction contracts on the WSBA website, holding CLE’s, our newsletter and member fees) is subject to WSBA approval. Our WSBA liaison attends some of our monthly meetings, but is provided notice of all meetings. It is difficult to imagine how we have not operated with “WSBA alignment”. If this section is perceived as not being in alignment, no one, such as our BOG liaison or WSBA liaison, has provided notice to us.

e. “Greater consistency among sections will enable us to streamline support and advance the WSBA mission more effectively.” We have sought and obtained WSBA approval for all our activities. Further, we require little WSBA support **because we are in a much better position to judge what WSBA construction section members want from their section than the WSBA is.** If our operation differs from other sections, it is difficult if not impossible to determine how this harms the WSBA.

f. “Collaboration among and between sections and WSBA strategic partners should be promoted.” We fail to see how the Proposal will promote collaboration among sections. We do not know who the unidentified “WSBA strategic partners” might be.

g. “Transparency and participation throughout the process is critical.” Other sections have already written extensively regarding their perception that the Proposal’s Task Force has not been either transparent or promoted participation. We join those sections’ views.

3. The Proposal several times states that its adoption will “free up” section officers and WSBA staff to support substantive section activities. We cannot speak for other sections, but this section’s officers and council already spend all of their time on substantive section activities. As above noted, we do not believe that the Proposal will “free up” WSBA staff time because we use little of it.¹ Hence, we do not find this to be a valid justification for the Proposal.

¹ We will note that when we have a question, our WSBA staff liaison promptly provides a comprehensive answer.

4. The Proposal states that the WSBA is “uniquely situated to set dues,” strongly implying that the sections are not so situated. We disagree with this statement and believe our section leadership is more knowledgeable regarding the price that WSBA members are willing to pay to belong to our section. We also note that the ABA has varying charges for different sections.

5. Throughout the Proposal, references are made to the notion that sections do not consider themselves part of the WSBA or that they are somehow independent legal entities. The Proposal fails to provide any support or examples for this assertion and with all due respect, this appears to be yet another unsupported justification to strip sections of their ability to serve their members. The name of our section is the WSBA Construction Law Section and we have never considered ourselves independent of the WSBA.

6. While we sometimes feel that we cannot do anything without WSBA approval, we do recognize that we have some autonomy. The WSBA forbearers who came up with the current system deserve far more credit than the Proposal provides. The current system works well because elected section leadership, not WSBA staff and not the BOG, are in the best position to know what our members want from their section and are in the best position to provide it.

TO: Sections Policy Workgroup
FROM: WSBA Corporate Counsel Section – Executive Committee
DATE: January 22, 2016
SUBJECT: Feedback on the Section Policy Workgroup’s Memo and Policy Documents

I. Introduction

On behalf of the Executive Committee of the Washington State Bar Association’s (“WSBA”) Corporate Counsel Section (“CCS”), the following is our feedback concerning the Sections Policy Workgroup’s (“Workgroup”) proposals dated December 30, 2015 (the “Proposals”).

A. Executive Summary

First and foremost, we want to express our view that the Workgroup’s formation, goals and processes have been tainted by serious flaws, misconceptions and miscommunications, and that the CCS essentially rejects the Proposals in their entirety.

While there may be some value in imposing a greater degree of consistency across the Sections’ bylaws to ensure uniformity in the timing of the elections of officers and certain other administrative matters, the sweeping changes proposed by the Workgroup are clearly and wholly designed and intended to re-write the relationship and role of the Sections within the WSBA, essentially stripping them of the autonomy, jurisdiction and authority they enjoy under the WSBA Bylaws and under long-established practice. We believe the Workgroup’s Proposals would be very damaging to the long-term viability and success of the CCS and the other 27 Sections, and request that these efforts be halted or greatly scaled back.

1. Exclusion of Section Leaders. Among other flaws, the exclusion of any active Section chairs, officers or their appointees (“Section Leaders”) from the Workgroup was the first and most significant flaw in the process. This unusual and rushed decision immediately caused us and many other Section Leaders serious concerns. The Proposals unfortunately validate all of those concerns.
2. Lack of Transparency; Misleading Communications. Additionally, the formal and informal communications regarding the Workgroup and its goals have been disingenuous and misleading.
 - a) Workgroup participants have said, for example, that no Section Leaders were invited to participate because, with 28 Sections, it was just too hard to choose whom to invite. In fact, we believe it was a calculated decision to facilitate the Workgroup’s undisclosed agenda to diminish the role and autonomy of the Sections with the least interference possible.

- b) The oft-repeated notion heard from Workgroup participants that the proposed changes are not really changes at all, but merely codify existing policies, is completely false. The Proposals completely alter and contradict applicable WSBA Bylaws and dramatically reverse decades of WSBA policy and practice to the detriment of the Sections and their members.
- c) The Workgroup's transmission of the Proposals on Noon of December 31, when virtually all Members were on vacation, seems itself calculated to slip the Proposals by the Section Leaders. Many other Section Leaders have already informed us that that was in fact the result - the Proposals were buried and missed by them at a time when they were enjoying the holidays.
- d) Lastly, the Workgroup's denial of the substantial and autonomous status the Sections explicitly enjoy under the WSBA's Bylaws are false and misleading. In fact, Section XI of the WSBA's Bylaws is exclusively devoted to the Sections and says the following, among other things:
 - "The Sections shall carry on the work of the Bar, each within the jurisdiction defined in its bylaws...."
 - "Each section shall have bylaws consistent with these bylaws."
 - "Any funds remaining in the treasury of a section at the time of termination shall be transferred to the Bar's general operating fund unless otherwise designated by the Board of Governors."

Contrary to the Workgroup's communications, the Sections are recognized entities with their own "jurisdiction" and their own treasuries. And for a great many of the most active members of the Washington State Bar Association ("Members"), the 28 Sections of the WSBA serve as their primary source of, and opportunity for, participating in, educational programming, networking opportunities, outreach events, and opportunities for giving back to the community and the public. From the Members' perspective, the Sections are their professional connection to the WSBA and the true subject matter experts within their respective jurisdictions, not the WSBA Staff ("Staff") or the WSBA Board of Governors ("BOG").

The Proposals unacceptably and unwisely seek to reverse this longstanding and highly functioning paradigm.

Many other Section Leaders have expressed similar concerns to those above, casting an unfortunate shadow of suspicion and distrust over the workings and intentions of the Workgroup and the role of the Staff. Again, we urge that the Workgroup's activities be halted or greatly scaled back in consultation with the Section Leaders.

II. Discussion

The Proposals cover: (1) Adoption of a standard Sections Charter; (2) Revision of WSBA Bylaws; and (3) Revision of WSBA Fiscal Policies related to sections.

A. Standard Sections Charter/Revision of Bylaws

The CCS rejects the notion of a standard Sections Charter. A “Charter” is an entity formation document used solely to create an entity. The Sections have already been properly and lawfully created by the BOG under the WSBA Bylaws. While we agree that greater consistency among Section bylaws might be administratively advantageous for the Staff, the idea of a common Section Charter seems calculated solely toward re-casting and diminishing the role and autonomy of the Sections.

The CCS also notes that the WSBA Bylaws specifically contemplate that each Section will have its own bylaws and that they will be unique, subject to the single condition that they not be inconsistent with the WSBA Bylaws. The CCS is unaware of any provision in its bylaws or those of any other Section that is inconsistent with the WSBA Bylaws.

The CCS notes that the Proposals illogically mandate that officers rotate into the Chair role (e.g. Secretary/Treasurer), stripping Section members of the choice to elect their own officers as they see fit. While the proposed succession path is certainly one option, there is no logical reason to impose it as a mandate across 28 sections. Among other obvious concerns, in many cases, the Secretary/Treasurer may not want to be forced into the job of Chair, and their certainly might be better Chair candidates at the time.

The CCS would consider supporting limited and highly specific proposals to make the timing of Section officer elections consistent, but the CCS is not sure what other proposals would make sense to ease administrative burdens for the Staff, while not unduly impacting the ability of the Section Leaders to govern. Because of the problems and concerns noted in the Introduction, however, the CCS believes a review of Section bylaws should be undertaken under a new, more inclusive, and less controversial process.

B. Sections Fiscal Policy

1. Introduction and Background

We wish to take this opportunity to support and highlight the diversity, viability and strength of the WSBA Sections. Over the years, all Sections have advanced the WSBA’s mission in an admirable manner. The Sections have provided core member benefits, including educational, networking, and leadership opportunities. Section members volunteer thousands of hours to promote and carry out the Sections’ missions of providing excellent educational programs and scholarships.

The CCS is one of the WSBA’s largest Sections, with approximately 1,000 members. The CCS has enjoyed stable and robust leadership for decades and has developed, sponsored and hosted exceptionally popular and long-running educational and networking programs, such as its Quarterly Dinners, Corporate Counsel Institute, Corporate Counsel Ethics Institute, Eastern Washington 1/2 Day CLE and Networking Event and Eastern Washington Brown Bag Networking Events.

The CCS constantly seeks (i) to recruit new members and new leaders to remain dynamic and representative of its jurisdictional base, (ii) to stay abreast of the most pressing issues of interest to its members, and (iii) to re-invent and re-envision itself. In addition to its steady membership growth year-over-year, the CCS continues to grow and evolve in how it pursues its mission. In 2013, the CCS began an Eastern Washington outreach initiative that continues to grow in scope and popularity. In 2015 the CCS formally created a scholarship program to support and grow closer to minority bar associations, access to justice organizations and other organizations seeking to make the practice of law more inclusive and equitable. In 2016 the CCS has begun a new outreach initiative focused on the South Puget Sound region and beyond, including Olympia, Tacoma and Vancouver.

2. How the CCS Uses its Treasury Reserves in Support of its Mission

Because of its extremely careful fiscal management and profitable programming operations, the CCS has always been able to maintain substantial financial reserves, currently standing at approximately \$50,000. The CCS has accomplished this despite the fact that the WSBA takes \$18.75 of the \$20.00 annual membership dues charged by the CCS, and despite the fact that the WSBA takes half of all CLE revenues the CCS generates through its high caliber and always sold out CLE programs.

The CCS uses its financial reserves exactly how it should – to grow and evolve the CCS in its ability to fulfill its mission and to provide direct value and benefits to its Members. The CCS Executive Committee discusses its finances at every meeting, including when and how reserves should be tapped or drawn down to support new or existing member benefits. Specifically, over the last decade, the CCS Executive Committee has used its reserves to (i) subsidize the attendance of CCS members and non-members at all of its highly acclaimed and always well-attended Quarterly Dinner Mini-CLEs; (ii) maintain the lowest possible annual Section dues (\$20.00) and (iii) support new and highly creative mission-extending initiatives such as Eastern Washington CCS Outreach, Inclusion and Equity Scholarships and Awards, and our newest effort, South Sound CCS Outreach. All of this has been accomplished with very low administrative costs.

3. WSBA Bylaws Regarding Section Treasury Reserves

The WSBA Bylaws wisely establish and codify that each Section will, in fact, have its own treasury. Article XI plainly states that a Section's treasury is only to be taken away and transferred "to the Bar's general operating fund" when a Section is terminated.

4. Rejection of the Proposals to Convert Section Treasury Reserves, Interfere with Section Jurisdiction, Increase Member Dues, and Re-write WSBA Bylaws.

The CCS is thriving, highly profitable to WSBA, and has *never* misused a dime from its treasury. Thus, the Workgroup's attempts to convert the Section's funds for the benefit of the WSBA general operating fund are wholly improper.

As the Staff is aware, the CCS's CLE programs generate substantial profits year in and year out for the WSBA, generally amounting to more than \$10,000 per year, although somewhat reduced recently due to the loss of the former WSBA Conference Center. The Staff have never communicated to the CCS Executive Committee any concerns about any CCS CLEs, including any form of financial burden on the WSBA. As such, we also reject any Proposal that would give the Staff veto power or other subject matter control over the CCS's CLE programming or over any other initiatives or member services within the CCS's proper jurisdiction.

As noted above, the CCS prudently relies on its established reserves to keep annual member dues costs to the lowest number possible - \$20.00, of which the WSBA keeps 93.75%. The Proposal suggests having the Staff impose uniform Section dues across all of the Sections, which would invariably be much higher than the current \$20.00 the CCS has repeatedly elected to maintain. Obviously raising CCS dues would be detrimental to our members and to the CCS, as some members would certainly determine the increased fee (on top of mandatory WSBA dues) is more than they can afford. The Proposal is thus directly counter to the reasonable judgment exercised by the CCS Executive Committee, which seeks to be as inclusive as possible, and therefore we disagree with it. We see no need for, or value in, increasing our annual Section dues.

5. Alternate Proposal for Improving WSBA's Negative Financial Outlook.

On the issue of finances, the CCS notes that certain Workgroup members have conceded that the genesis for the Workgroup was, in fact, the WSBA's financial difficulties, and that a key driver has been the Staff's desire to convert the Sections' collective financial resources for use in the WSBA general operating fund. A primary argument raised to support this proposition is that *some Sections* cost the WSBA a lot more to administer and maintain than they generate in revenues.

From a cursory review of the WSBA's 2016 budget, however, it appears that the annual net cost to the WSBA of administering all 28 Sections is only \$107,038, after accounting for the substantial revenues they generate. We note from the WSBA's budget that there may be other areas to cut expenses without impairing key programs and member benefits and we would be happy to share our thoughts concerning those possibilities. And although the CCS has always been told that its CLEs are profitable to the WSBA, if there are minor modifications we can make to improve their profitability, the CCS Section Leaders would be happy to cooperate with the Staff toward that end.

Lastly, as one of the larger and more successful Sections, the CCS is very willing to work with other, smaller Sections and to share some of its practices and programs that have driven decades of financial and operation success. We firmly believe that all WSBA sections should have the opportunity to be financially strong and operationally successful. But we do not believe that, as a matter of fairness or logic, well-managed, successful and more popular Sections should be forced, through collectivization or otherwise, to directly subsidize those that are struggling through less robust leadership or weak member interest.

III. Conclusion

The Workgroup's Proposals directly contradict the WSBA Bylaws, as well as decades of successful practice and experience. The Proposals would be disastrous to all of the WSBA's successful Sections and a perverse disincentive and barrier to continued growth and success. The process leading up to the Proposals has been flawed, divisive and is now quite distracting and time consuming.

The entire Executive Committee of the Corporate Counsel Section, with the sole exception of James Doane, current BOG member and Workgroup member, (i) approve and endorse this letter, (ii) unanimously reject the Proposals in their entirety and (iii) unanimously request that the Workgroup's goals and activities substantially scaled back, if not terminated completely.

Sincerely,



Paul A. Swegle, Chair
Corporate Counsel Section

Corporate Counsel Section Executive Committee:

Paul Swegle (Chair), General Counsel, Observa, Inc. and Newyu, Inc.
Tina Boyd (Secretary), General Counsel & Compliance Officer at Navia Benefit Solutions, Inc.
Dan Menser (Treasurer), Vice President - Legal Affairs - Technology Transactions, T-Mobile
Brian Bean, Counsel, Ecova, Inc.
Bernel Goldberg, General Counsel, Seattle Symphony
Freya Brier, Former General Counsel of Eddie Bauer
Suzie Rao, Senior Counsel, BECU
Eric C. de los Santos, Assistant General Counsel, True Blue, Inc.
Scott Schrum, Senior Intellectual Property Counsel, Liberty Mutual Insurance
Lam Nguyen-Bull, VP, General Counsel & Chief Ethics Officer at Foss Maritime Company
Diankha Linear, Director, Corporate Compliance, Nordstrom
Sara Page, Corporate Counsel, Costco
Joel Daniel Emans, Counsel, Pokeman Company International, Inc.
Kristin Bosworth, Tax Senior Associate, PwC
Kevin Faye, Senior Corporate Counsel, VMWare, Inc.

January 22, 2016



Memo

To: WSBA Sections' Policy Workgroups

From: Criminal Law Section Executive Board (Unanimously)

Subject: Sections' Policy Proposed Reforms

The Criminal Law Section opposes the draft Section Policy proposals outlined in the memorandum dated December 30, 2015, from Anthony D. Gipe on behalf of the Sections' Policy Work Group to the section leaders. While the Criminal Law Section sympathizes with some of the goals of the proposed policy, aspects of the Work Group proposal would substantially interfere with the functioning of the Criminal Law Section as it is designed.

The Criminal Law Section recognizes that there are both economic and structural issues that the Board of Governors wishes to address. Aspects of the goals which the Criminal Law Section does support are simplifying administration of sections, finances, and minimizing administrative costs to assist the sections. Much of what the Work Group proposes is *not* necessary to accomplish those purposes and much of what the Work Group proposes is antithetical to the functioning of our Section and therefore we oppose the proposals.

The Criminal Law Section originally functioned largely as a criminal defense voice. By virtue of sheer numbers, the number of private counsel and public defenders exceeded the number of prosecuting attorneys by multiple factors. As a result, the Section was treated by prosecuting attorneys as irrelevant or an adversary. The Washington Association of Prosecuting Attorneys (WAPA) was an effective voice both on legislation and other matters for the prosecuting attorneys of Washington. With the advent of WACDL, the Washington Association of Criminal Defense Lawyers, a counterpart to WAPA was formed outside of the WSBA.

No institutional structure, let alone a WSBA structure, looked at the criminal justice system from the perspective of both prosecution and defense, even though there were often many areas where prosecution and defense could agree as well as many areas, of course, in which they could not. The Section rewrote its Bylaws to create an equally divided Board between prosecution and defense elected representatives and created staggered officer terms with an alternating chairmanship each year between prosecution and defense. That system has been in place for over thirty (30) years. It has allowed effective CLE's appealing to both prosecution and defense; a unified voice where a two-thirds (2/3rds) agreement by super majority vote of the Executive Board can be reached on legislative proposals where both prosecution or defense either support or oppose the proposal. As a result, when the Criminal Law Section has chosen to speak as the Section, we receive substantially more credibility from the Legislature than used to be the case. The primary function of the Criminal Law Section is to fill the unique requirements of a criminal justice voice

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Memo To: WSBA Sections' Policy Workgroups

From: Criminal Law Section

Subject: Sections' Policy Proposed Reforms

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where super majority agreement can be reached between prosecution and defense designated Board members. The Board speaks on behalf of the criminal justice system as opposed to either prosecutor or defense perspective. There is no other such organization in Washington.

The Criminal Law Section has never required subsidies from the Bar. Indeed, we have been an active participant in generating revenue for the Bar through our annual Criminal Justice Institute and other CLE's. We do maintain a fund balance from year to year which we have slowly been spending down, mainly by providing member benefits, low cost CLE's, and/or other member benefit activities. We are not part of the financial problem of the WSBA. The Work Group Memo and the proposed Charter imposed on all WSBA sections would make our current functioning and role in the criminal justice and legislative process in Washington impossible and significantly reduce benefits to our members.

Although our Section has been advised orally that the Charter as proposed in the Sections' Work Group Memo does not allow for staggered terms and mandates an officer structure that would not function for us, that "a work plan" can be worked out with Bar staff that might allow our current structure as modified by set election dates to continue. The Charter makes no such provision. It is unsatisfactory that the structure of the Criminal Law Section depends on the whim of WSBA staff outside of what is provided in the Charter itself. Our Bylaws were designed specifically to create the existing structure and a discretionary "work plan" is insufficient to replace them when the proposed Charter itself rejects them.

We have reviewed the objections of the Real Property and Trust (RP&T) Section to the proposed draft policy and, while not agreeing with all of them, substantially agree with their opposition. Among the issues we do agree with, the RP&T section objections are as follows:

The method and membership of the Sections' Work Policy Group was ill designed from the beginning and certain to generate hostility precisely among those who were supposed to benefit from the new sections' policy by excluding the sections themselves from participating in the Work Group and then imposing a set of standards which do not take into account the sections' concerns. The process lends itself to unnecessary conflict and resistance. The process itself was flawed from the beginning, and the late production of a finished project without substantial input from our Section, let alone the sections generally, was a serious procedural error. The Work Group should be expanded and told to go back to the drawing board.

It is insufficient and inaccurate to dismiss objections as "objection to change" for the product of unreasoned concern as has been stated by the Chair and other members of the Work Group.

The mandatory Charter might be acceptable if it included provisions for section variance, such as the Criminal Law Section, Real Property and Trust, Debtor/Creditor, etc. Although the Work Group is aware that the proposed Charter is inadequate to address those issues, it has not been responsive to providing a charter basis for variance necessary to the functioning of the type of section the Criminal Law Section represents.

The Board composition requirements of the Charter and the mandatory terms of office also create problems for the Criminal Law Section which are *not* necessary to impose to accomplish the legitimate purposes of restructuring administration and costs of the sections generally. We need to have designated prosecutor and defense alternating positions as chair (not allowed by the current Charter proposal). We need to have the chairmanship position switched on a year-by-year basis not a three (3) year term. The Charter proposals on membership and progression from secretary to chair to former chair, etc., would require essentially a substantial commitment well beyond a three-year (3) term. It is difficult enough to

Memo To: WSBA Sections' Policy Workgroups

From: Criminal Law Section

Subject: Sections' Policy Proposed Reforms

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recruit members for such positions. Making a substantially mandatory commitment for multiple three (3) year terms, unlike our current one (1) year requirement will make recruitment for executive committee positions substantially more difficult and unnecessarily so. The one-size-fits-all model is not necessary to effective administration. We generally agree with the Real Property and Trust concerns about permitting training and development of officers as well as the timing of officer and designation of officer positions for election.

The Criminal Law Section is concerned about the proposed taking of all section fund balances and expanding the scope of what that money may be spent upon outside of the Section activities. The Real Property and Trust Memo is accurate in describing the promises that were made in the 1990s when a similar event occurred causing substantial internal dispute within the WSBA and a lot of very hard feelings because of the unilateral actions of taking the section reserves to satisfy a financial problem not created by the sections. Part of the resolution of that dispute was a promise that the Bar would never do it again. The actual cost of section assistance from WSBA staff to the sections would be covered by the minimum dues from each section. Our Section has done so and complied with all requests including, sharing forty-five percent (45%) of our major CLE as overhead expense with the WSBA. It is difficult to understand why efficiency requires taking of the sections' money balances as proposed.

We note that the exclusion of the sections from participation in this process only exacerbates the appearance of a fund grab and unnecessary consolidation.

In conclusion, our concerns are largely focused on the executive board structure mandated by the Charter and the one-size-fits-all election requirements, and the taking of the Criminal Law Sections' continuing balance to be used for purposes other than the Criminal Law Section's members' benefits. We are also concerned with lack of transparency with the Sections' Work Group membership proposals issued as a *done deal* in the middle of the Christmas holidays with deadlines that close written comment today, January 22, 2016, and which appear largely designed to minimize section involvement and input. This is a flawed process and a flawed document. It needs to be restructured by a broader based work group. It is ironic that in an attempt to assert administrative efficiency and cost saving as reasons for centralized control over the sections, that the very process excludes the sections from a significant voice and participation in the development of that policy.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Strait". The signature is fluid and cursive, with a large loop at the end.

John A. Strait

On behalf of unanimous authorization from the Executive Committee of the Criminal Law Section

January 22, 2016

TO: WSBA Sections Policy Workgroup
FROM: Elder Law Section Executive Committee
RE: Sections Policy Workgroup Proposals

The Executive Committee of the Elder Law Section (ELS) opposes several of the policy proposals outlined in the Memorandum dated December 30, 2015, from Anthony D. Gipe, on behalf of the Sections Policy Workgroup (the “Workgroup”) to the Section Leaders (the “Memo”). We also have very serious concerns regarding the process of the Workgroup, and the very limited timeframe within which the Workgroup has required Section Leaders to respond to the proposed policies set forth in the Memo.

The Policy Workgroup Process Has Been Flawed to Date

First, it is incomprehensible that no actively serving Section Leaders were invited to serve on the Workgroup. Nor were Section Leaders permitted to join the Workgroup when requested subsequent to the formation of the Workgroup, for instance, at the October 14, 2015 Fall Leaders Meeting.

Then, after working for more than three months on the proposed policy changes, the Workgroup disseminated the Memo and accompanying Appendixes (totaling more than 33 pages of substantive material) to the Section Leaders list serve the afternoon of December 31st, 2015. Many if not most Section Leaders returned to busy law practices on January 4th after extended holiday absences (a number of ELS Executive Committee members did not even receive the email from WSBA, as WSBA had not yet added them to the list serve). The Workgroup provided less than three weeks for Sections Leaders to review and consider the Memo – requiring Sections to provide their written feedback by January 22nd.

Notably, beginning the week of December 28, 2015, ELS Executive Committee members began devoting numerous volunteer hours preparing for the 2016 Legislative Session by vetting bills, and communicating with legislators and stakeholders. Once the Session began on January 4th, the attention and engagement of Executive Committee members to time-sensitive legislative matters increased substantially, and included vetting of introduced bills, briefing each bill and providing a suggested position on each bill to the Executive Committee, drafting letters to legislators, and traveling to and providing testimony in Olympia regarding proposed legislation.

The Executive Committee of the Elder Law Section – comprised of 17 members – held its monthly hour-long meeting on January 19th. This was the first opportunity the Committee had to collectively discuss the Workgroup’s proposals, to vote on a preliminary response of the

Executive Committee to the proposals, and vote on the text of a communication to our membership regarding the proposals.

We have provided herein a preliminary response to the Memo, within the unreasonable timeframe set by the Workgroup. However, it is not possible to provide a comprehensive, deliberative and democratic consideration of and response to the proposals within the timeframe set by the Workgroup. Critically, we are concerned that not only has the Workgroup failed to provide a reasonable opportunity for Sections Leaders – all of whom serve in a volunteer capacity – to review Workgroup’s proposals, but it has failed to provide sufficient opportunity for individual Section members to consider the proposals and provide feedback to their Section Leaders, the Workgroup, and the Board of Governors.

The process has been substantially flawed to date.

While the Workgroup has identified certain valid concerns related to streamlining administration of the Sections, the Elder Law Section strongly opposes any changes in policy which will negatively impact its ability to offer Elder law specific programs and services to its members. Proposed changes that would have such an impact, thus are opposed, including the “pooling” of Section revenues and the revision of leadership roles and terms.

The Elder Law Section Objects to the Pooling of Section Revenues.

The Elder Law Section from its inception has fostered collegiality among its members through well-attended mentoring events, generous sharing of information via the email list serve group, continuing education seminars featuring national and local speakers, and its support of Columbia Legal Services, which provides educational materials that many Elder Law practitioners rely on in daily practice. To support these endeavors, Elder Law Section members willingly pay annual dues which they assume will be applied to Elder Law Section activities.

Elder Law is a multi-disciplinary field, and Elder Law Section members rely on quality CLE programming, which sometimes includes speakers from distant locations, as certain subsets of the substantive content of Elder Law involve national issues such as Veteran’s benefits, Social Security, Medicare, and Social Security Disability. The Elder Law Section needs to be able to manage its own finances, including its reserve fund, so that if a particular program costs more to produce, the program costs can be covered.

Contrary to the name adopted by the Section, many who practice in this area are actually disability lawyers with a focus on the unique needs of Elders. Members handle extremely complex special needs trusts for disabled persons, developmental disability matters, school issues involving inappropriate treatment and accommodation of disabled children, Social Security, Supplemental Security Income, Medicaid, Medicare and VA benefit issues for individuals of all age groups. This is largely a function of the reality that Section members are

highly skilled—often experts—in public benefit law. While our focus is on Elders, often the public benefit net includes children and people who are not yet in their older years, yet may be equally vulnerable.

In addition, many Elder Law Section members practice what is essentially family law for Elders. That includes estate planning, powers of attorney, guardianships, trusts, probate and trust administration, income and estate taxation, dissolution and dissolution or separation when one partner is disabled, pre-marital and post-marital agreements for Elders, issues present for disabled Elders related to marriage and all manner of legal need for Elders and their families.

These wide focus areas require highly specialized substantive training. Recent programs on special needs trusts involved bringing in experts from Maryland and Colorado to instruct on tax, Social Security changes and the handling of qualified funds in special needs trusts. These programs are not without substantial expense, but are an essential part of what we do for our members. We must be able to manage our needs to meet the needs of our members. WSBA CLE staff simply cannot accommodate our needs and historically have been unable to.

The Elder Law Section also financially sponsors The Peter Greenfield Internship in Elder Law through Columbia Legal Services, as well as the organization's other work on behalf of seniors. The internship furthers the Section's mission of outreach to younger lawyers and law students, as well as well as the provision of services and information to enhance the lives of our seniors and disabled. Our funding also supports Columbia Legal Services continued work to publish and regularly update numerous pamphlets and bulletins on legal issues and benefits. These are posted online and distributed statewide to social services agencies, practitioners and directly to underserved clients. To pool Elder Law Section revenues with those of other Sections would negatively impact the funding of the internship and Columbia Legal Services' work on behalf of low-income seniors, undermining an important part of the Section's mission. This is one of the benefits of being an Elder Law Section Member, knowing we can make a difference with our funds. Because we serve a disabled and elderly population, our members are attuned to the needs of our clientele. Thus, our desire to assist using our Section funds to help these populations. If the proposed change are implemented, the Elder Law Section will not be able to sustain its activities—activities that are the soul and purpose of the Section. Sections need to be able to rely on their own financial resources for planning future programming and insuring consistent quality and scheduling of such programming.

Further, financially productive Sections are successful for a number of important reasons that would be undermined by the pooling of section revenues. First, the revenues a section receives are a direct reflection of the importance of the section to the overall bar membership. The more members a section has, and the more revenue it generates from programing and other sources, the more it represents an indication of the importance it plays in the overall membership. As the purpose of the WSBA is to support its members, it would be counterproductive to reduce funding from those sections deemed most important by the bar membership.

Finally, pooling of revenues would substantially harm the Sections because of the volunteer efforts of their members, and volunteerism and Section membership are expected to plummet if the efforts of the participating volunteers would not benefit their Section or further their Section's purpose.

Overall, the proposal to pool Section revenues undermines the Sections' abilities to carry out programming and support programs that are relevant to Section members, and it threatens the continued existence of the Sections. The Elder Law Section opposes this proposal. The Workgroup's policy provides no assurance that fiscally responsible Sections like Elder Law Section will be able to continue the member benefits it now provides (and pays for with Section raised funds).

The Elder Law Section Objects to the Prescription of Leadership Roles and Terms.

The proposal to combine the roles of Secretary and Treasurer, and to institute minimum terms, maximum terms, and chain of succession, is not appropriate for Sections as diverse as those of our WSBA. Some Sections have many members, some have few. Some Sections are active in time-consuming activities such as legislation, while others have minimal activity. Most Sections have long serving members on their Executive Committees who remain willing to give of their time for the betterment of the Section and its members, and whose institutional memory of past events and activities are invaluable and often key to Section success, and Section success is what this seems to be about. To suggest that all Sections adhere to the same rules of succession and leadership fails to recognize the diverse nature of the Sections and the range of available volunteers to take on roles that impose variable demands. Enlarging that burden makes no sense. Lawyers are already busy juggling practice demands, and when they agree to take on a volunteer role in support of their Section, they should be able to rest assured that the boundaries they place on that volunteerism will be respected.

The Elder Law Section fails to see a compelling reason for every Section to have the same leadership succession rules. Increased workloads and lengthier terms would have a chilling effect on volunteerism, and such a proposal, again, threatens the existence of the Sections. The Elder Law Section opposes this proposal.

Elder Law Fulfills Vital Legislative Functions for WSBA Which Will End with These Proposals.

The Elder Law Section is extremely active in the creation of government policy and legislation. We have long term members of our Executive Committee who meet regularly with DSHS administrators to develop Medicaid regulations and to insure those we serve are appropriately considered in proposed changes. We are constantly involved in pending legislation, especially during legislative sessions. We have been actively engaged with WSBA lobbyists during and between sessions in respect of proposed legislation which will impact both

our members and the populations we serve. This requires what amounts to ‘hair trigger’ response time, and very well informed and dedicated volunteers from the Section and Executive Committee. Members of our Executive Committee serve on boards developing legislation and pool resources from Section membership to assist them in their work. The learning curve is long. Restrictions and prescriptions on service will negatively impact this work, which benefits both Section members, the populations we serve, and the WSBA.

We are not alone. The RPPT Section has been key to a number of needed reforms in the trusts and estate area, including passage of the Trust and Estates Dispute Resolution Act. RPPT caused living trusts to become transparent and regulated for the benefit of present and future beneficiaries. They are working with us on power of attorney reforms now, and have made probate far less complex and much more affordable here in Washington State. Sections perform vital roles for WSBA and the citizens of Washington State. As observed by RPPT, it literally takes members years to form relationships with legislators and policy makers. Changes to our governance structure make this impossible, to the ultimate detriment of all members of WSBA and the people we serve.

The Proposed Policies Fundamentally Devalue the Contributions of Section Volunteers, and the Unique Culture and Benefits of Each Section.

The proposed policies demonstrate a lack of appreciation for and understanding of the unique and indispensable value, as well as practical and institutional knowledge and skills that volunteer attorneys (Section Leaders and section membership) bring to their chosen Sections.

The Workgroup’s proposed policies assume that lawyers will continue to serve under the new structures and policies. Lawyers have multiple opportunities for service. For many WSBA members their only relationship with the organization is through Section membership. This strong relationship of Sections to its members is made possible through the work of its volunteer Section Leaders and individual members who contribute their time, money, collegiality, and knowledge to their chosen Sections. Undermining the culture and unique member benefits of individual Sections will not only deprive members of what they value most as a WSBA member, but will threaten the continued existence of WSBA as a volunteer-driven, member benefit organization.

Conclusion.

The Executive Committee of the Elder Law Section objects to the Workgroup’s process to date, as well as a number of the proposed policies, as set forth above. We do not believe that, under the Workgroup’s policies, the Elder Law Section will have the autonomy or incentive to develop, support, and provide programs and member benefits that reflect our unique membership values.



WASHINGTON STATE BAR ASSOCIATION

Environmental and Land Use Law Section

To: WSBA Sections Policy Workgroup

Date: January 22, 2016

Re: Draft Section Policy Changes

The Environmental and Land Use Law Section ["ELUL"] opposes the draft policy changes promulgated by the Sections Policy Workgroup in the Memorandum dated December 30, 2015. We have significant concerns with the process through which the new policies have been developed. We also oppose the bulk of the substantive policy recommendations, particularly given the limited ability we have had to review the new policies, understand their long-term ramifications, and discuss them with our membership.

Before turning to our concerns, we will provide an overview of ELUL and its functions. It is these long-standing, very core functions, and the ability to manage their operations, that lead us to oppose the overall proposal, which we feel is a radical change in decades of operation and exceeds what is necessary to fix the asserted problem.

ELUL Section Organization and Programs

As we described during the Workgroup meeting on November 5, 2015, ELUL provides a variety of educational and networking programs. These programs are directed at section members, but they are also available to other attorneys, non-attorney environmental professionals, law students, and other members of the public. These programs are all offered under the banner of the Washington State Bar Association, and we believe they reflect well on the Bar Association. For more than 35 years, we have organized an annual multi-day conference; each December we host a 2-credit ethics mini-CLE, which is free to our members; and we hold other mini-CLE's throughout the year. We collaborate with the ADR Section to develop and expand the use of mediation in the land use arena. We also have strong relationships with the environmental societies at each of the three law schools in the state. Each year we host multiple networking events that allow law students to connect with experienced attorneys, and we award \$3000 in annual grants that allow student recipients at each of the law schools to engage in substantively relevant, public interest summer work. Finally, we publish a newsletter with legal updates and extensive substantive articles, and we are in the early stages of developing a real-time method for quickly alerting our members to important and timely legal developments (proposed legislation or administrative rules, activities of legislative taskforces, new cases, etc.).

ELUL activities are organized by the section's executive board. The board is comprised of seven directors, as well as the chair-elect, chair and past chair. The board has worked hard to promote diversity among its members. Board positions are filled by a vote of section members, and as such, the board itself does not control who is elected. A nominating committee identifies and recruits highly qualified candidates, and any section member can also nominate a candidate to appear on the ballot. Our robust candidate recruitment efforts have resulted in a geographically diverse board, with members representing private law firms, government agencies, tribes and other nonprofit entities. The executive board meets regularly throughout the year, with members often participating by phone. For two meetings each year (at our midyear conference in the spring and an all-day meeting in the fall), all board members usually attend in person to have the face-to-face interaction that is necessary for a successful operation.

In addition to the executive committee, ELUL is supported by other committed volunteer attorneys. Our section newsletter is produced by two editors and fourteen editorial board members, who recruit attorneys to write substantive

articles. Each year, our annual conference and CLE is organized by two co-chairs, who are responsible for developing a high quality faculty. Finally, we solicit other experienced attorneys to network with and mentor law students and new attorneys.

ELUL is funded through voluntary membership. For many years, the dues have been \$35. Even with the increase to the per-member charge after the referendum, we have worked hard to keep our expenses within existing revenue. The section's largest expense is the per-member charge paid to WSBA; this amounts to just over half of our total dues revenue. The other significant expenses are the production of the section newsletter, mini-CLEs, law school outreach, and executive board expenses. Regarding the newsletter, we've saved our members a significant expense by moving from a print to an electronic newsletter, and we continue to find ways to reduce expenses. Regarding the executive board expense, the primary source is travel to the two annual board meetings usually attended in person by all members and reimbursement for the midyear conference. We pride ourselves in our geographic diversity, but this also means that travel is not insignificant. While board members frequently seek firm reimbursement, not everyone is able to do this, especially when the committee members are already volunteering their time and giving up valuable billable hours. WSBA staff and the Board of Governors review the ELUL budget each year, and we have never heard any concern about the section's spending priorities.

Section Workgroup Process

Turning now to the Section Policy Workgroup Memorandum, it states that "[t]he primary guiding principle for the workgroup has been to provide transparency in the process and to afford section members and the leaders consistent access to workgroup materials." We agree this should be a paramount objective, but it has not been achieved.

We first learned of what was to become the Section Policy Workgroup on a call with Megan McNally in the spring of 2015. The focus of this call was CLE financial policies, and Megan mentioned that a workgroup was being formed. Several sections expressed strong interest in participating in the workgroup, but disappointingly Megan indicated the workgroup would only be comprised of WSBA staff and BOG members.

We next heard about the Workgroup at the section leader's meeting in September. As described, the focus of the Workgroup seemed to be on administrative changes to improve efficiency. Again, the requests of section leaders to have representation on the Workgroup were rejected. Since the September meeting we have been attempting to follow the Workgroup's activities. We have also monitored the website, but the information presented was both dauntingly voluminous and largely unhelpful to uncovering the central activities of the Workgroup. Additionally, we have found much of the information on the website to be without use in the absence of a forum in which to discuss the context and supporting analysis.

It was not until December 30, 2015, that draft policies — already completed — were released for section comment.

Although opportunities for input may have been afforded to use, the true scope of what was being proposed — a complete revamping of how the sections are structured and operate — was not known until just before New Year's Eve. Given the holidays and other work load commitments that come up after the holidays, this did not give us any meaningful time to discuss this as a committee, much less be able to figure out and share the potential effect of these changes with our larger membership. This is unfortunate, and we ask that more time be given, and a more collaborative process offered, before the Workgroup makes its final recommendation.

Substantive Comments

Before turning to our concerns with the proposed policy, we want to state that we support the goal, as originally described, of looking for cost savings through administrative efficiencies. We support section accountability, and we're not opposed to efforts to increase consistency. While we are not familiar with unique issues of different sections, for ELUL moving our election date and some other administrative changes might further that goal without compromising the benefits sections provide to members. We are also not opposed to the Bar Association setting the per-member

charge (and the CLE administrative fee) at a full-cost-recovery level. We have never sought or received any sort of direct financial subsidy from the Bar Association, and instead we pay a significant per-member charge to the Bar Association. We do understand that sections benefit from Bar Association overhead expenditures. It has never seemed unreasonable to us that sections, like other Bar Association functions, should benefit from overhead funded in part with general revenue. However, if the Bar Association needs to recover additional indirect overhead expenses from the section, ELUL would not oppose that. The core problem with the fiscal changes proposed by the Workgroup is that they go far beyond this. The proposed policies would fundamentally change the role and operation of sections. We believe these changes are short sighted and would actually frustrate the stated goal.

Our primary concern with the proposed policies involves the treatment of dues that attorneys voluntarily pay to join sections. Traditionally the dues that attorneys have chosen to pay to join a particular section have been used by that section to develop specialized programs to benefit section members. It now appears the funds voluntarily paid by attorneys to join selected sections will be pooled and be used, at least in part, to subsidize other sections and promote other WSBA initiatives. This change would create a serious risk that over time attorneys will be less and less likely to continue their section memberships because it would compromise the value of paying dues to join a particular section.

We also believe that over time the proposed policies would compromise the section's volunteer base. As noted above, we seek out the most talented members of our practice area for section leadership. These people have substantial demands for their volunteer commitment. People volunteer largely because they believe they can use their talents to make a positive impact within their chosen area of practice. The proposed policies appear to make section leadership a substantially more ministerial job. Coupled with the proposal to separate a section's dues revenue from its programming, we believe that over time the proposed policies would dissuade people from volunteering for section leadership as these policies significantly devalue the volunteer efforts that have made this section successful since 1974.

One of the overarching themes of the Sections Policy Workgroup appears to be to achieve complete consistency among the sections. While this idea on its face might have some merit, particularly with regard to some administrative policies, it oversteps the key component of section identity. With respect to the ELUL, and we expect other sections, members join for the specific purpose of being associated with a section that is genuinely focused and dedicated to advancing their area of practice. The volunteers elected to the section's executive board are uniquely suited to analyze what member benefits will most likely reach the membership and best serve member interests. To assume that the WSBA staff will be able to meet adequately these unique needs without a palpable decline in quality of services is folly.

Beyond the impact to ELUL and other sections, we believe the Workgroup proposals would be detrimental to the broader interests of the Bar Association. As noted above, section programs are done under the banner of, and reflect well on, the Bar Association as a whole. The sections are also a significant touchpoint between the Bar Association and its member. We are curious what, if any, Bar Association programs reach more than the 10,000+ members served by the sections (excluding, of course, publication of the *NW Lawyer* disciplinary Notices, which seem to be read almost universally).

The ELUL Section strongly urges the Workgroup to take more time to listen to the significant and valuable concerns of all 38 sections. The current proposal has resulted in a shared concern and communication among the sections that has heretofore been unseen. We have not heard of a single section that supports the current draft. The bulk of the sections have instead indicated they believe the current proposal will not further the Bar's mission, and have indicated strong opposition to the proposal. As noted in the December 30, 2015, memo, the sections are intended to "help advance" the Bar's mission. We are in this together, and we strongly object to the wholesale stripping of the section's ability to do just that.

Family Law Section

Family Law Section of the Washington State Bar Association



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Olympia

Jonathan Lee
Spokane

Rhea Rolfe
Bellevue

Chuck Szurszewski
Olympia

Mike Vannier
Wenatchee

Jean Cotton
BOG Liaison - Elma

Date: January 25, 2016

To: WSBA Sections Policy Workgroup and WSBA Board of Governors

From: Executive Committee of the WSBA Family Law Section

Re: Sections Policy – Proposed Reforms Dated December 30, 2015

While our Section may differ in respect to the prioritization of certain programs or policies of WSBA, we have long appreciated and have the utmost respect for the time, effort, and dedication that many of our Governors – past and present – have expended to sustain and improve this profession of which we have always been proud to be a part of and committed to defend. Despite that, it is difficult to continue to remain positive and hopeful when a clear pattern of conduct to disfranchise the members of this mandated organization is taking place.

We write in opposition to the draft policy proposals set forth in the Memorandum dated December 30, 2015 (“Memo”), from Anthony D. Gipe on behalf of the Sections Policy Workgroup (“Workgroup”) to the Section Leaders. We urge that the proposals outlined in the Memo be withdrawn by the Workgroup and/or rejected by the Board of Governors (“BOG”).

Our Committee members have had the privilege of interacting with several other Sections’ leaders and liaisons, WSBA staff and BOG members, Sections’ members, and other legal organization representatives. The Section has sent one or more representatives to nearly every BOG meeting for the past two decades or more. We have observed first-hand the increasing level of frustration and diminishing relations being experienced by the members of the WSBA with the leadership of WSBA and WSBA staff. We have witnessed good faith, well-intended efforts by these same members and Section Leaders to repair this relationship and take a positive approach to solving problems only to be met with dismissive responses and rebukes from the leadership of WSBA.

This current effort by the Workgroup and the leadership at WSBA is simply another example of how WSBA has turned its back on its members or excluded them from processes that affect the very core of their profession and their professional endeavors.

It should come as no surprise to either the Workgroup or to BOG that there is grave concern and opposition being expressed by and among several Sections and practitioners with regard to the current set of proposals enunciated in the Memo. We have read a number of the letters now heading to the Workgroup and/or BOG on this issue and we join with their voices of concern and outrage that the proposed policies set forth in the Memo are misguided, inappropriate, and unwarranted and that they should be rejected.

Rather than simply repeat what our colleagues from other Sections have written, this letter highlights but a few of the more disconcerting issues raised by the Memo and should, in no way, be construed to be an exhaustive list of the Family Law Section’s concerns.

1. Lack of Transparency and Outreach in the Formation and Operation of the Workgroup.

A common thread (one of many) to some of the comments in opposition to the Memo is the lack of transparency and the lack of the record setting forth history, as to the formation of and structure of membership on the Workgroup or suppositions upon which portions of the Memo are based, as it is difficult if not impossible to locate any meaningful information within the official record of the activities of either BOG or WSBA leadership provided on the WSBA website. Perhaps part of the explanation as to why such information is so difficult to find is because it simply is not there. The policy of what is included in BOG minutes drastically changed beginning in September 2014. From that date forward, the only record of discussions in meeting minutes are those attributable to WSBA Staff or BOG members. All reference to the detail of any discussions raised or commented on by Section liaisons or members of the WSBA are no longer included in BOG minutes – as if the speakers had never spoken.

For example, in the memorandum dated January 20, 2016, from RPPT to the Workgroup, the author cites to the minutes of the July 2015 BOG meeting where, during discussion regarding the CLE business models under consideration, then-Director Megan McNally “requested that a joint Board/staff Work Group be formed at the September 17-18, 2015, Board meeting in order to draft revised Section policies, including a revised policy addressing cost-sharing of section-CLE programming...” Our Family Law Section BOG Liaison, was present at that meeting which took place at Skamania Lodge. She specifically requested during that meeting that if Section policies were going to be addressed by such a group that representatives of the various Sections be included in the composition of the Workgroup, but was told that this would not happen. She was assured, however, that Section Leaders would be intimately involved throughout via a rigorous process of on-going consultation and solicitation for input from Sections before there would be any policy change recommendations presented to BOG. This process, quite frankly, received little more than meaningless lip service from WSBA.

Telephonic meetings (designed only to distribute previously decided courses of action) that are scheduled on short-notice during the work day when most who need to attend cannot because of the demands of a legal practice and surveys (designed in such a way to obtain only limited and/or predetermined outcomes) are not examples of meaningful dialogue or vigorous methods of seeking input or participation from stakeholders.

These acts of WSBA and the Workgroup do not embody transparency or reflect an intent to achieve meaningful input and participation from the members. They are a practice of exclusion. Unfortunately, however, this is nothing more than a reflection of how WSBA has been doing things for the last few years. As such, the Workgroup and WSBA have failed to meet the needs of WSBA members.

2. Uniformity at the Expense of Section Diversity

For several years WSBA has been promoting diversity amongst Bar members, committees, Sections, etc. and asserting to the members that in recognizing and celebrating the differences between us makes us all better and stronger. Yet when it comes to the Sections, the Workgroup’s proposed policies promote just the opposite.

A recent indication of the uneven application of this philosophy occurred at the November 2015 BOG meeting, during the discussion of a proposed change to policy on Sections’ involvement in the legislative process. At that time, in response to a concern expressed on behalf of the Family Law Section regarding

the appearance that the then-proposed legislative policy changes were an attempt to further silence Sections, President –Elect Haynes indicated that there was no reason (and that it would be inappropriate) for Sections to take opposing positions on proposed legislation before the Legislature and that such conduct would not be allowed; i.e. that WSBA must speak with one voice only.

Perhaps President-Elect Haynes and the rest of BOG forgot that lawyers not only take differing (and often polar opposite) positions on laws every single day in their jobs as attorneys representing clients opposing other parties who are represented by their attorneys – that’s their job. If the laws were so cut and dry as to not require interpretation and application to the facts of the cases of individual clients, there would be no reason for appellate courts or even for lawyers!

There are often valid reasons why two Sections may take opposing positions regarding a piece of proposed legislation. In doing so, the problems with the legislation can be aired and resolved before bad laws are passed which harm the public. One obvious example is that the criminal defense bar and the prosecutors may have opposing views on, for example, proposed changes on testimonial privileges.

Under the current Workgroup’s proposed policy changes, however, this same erroneous presumption arises once again with the proposition that all Sections are to be treated as identical or synonymous with one another and that all distinctions between the Sections are to be eliminated whether it be in the composition of the various Executive Committees, the By-Laws, the use of revenues generated through Section activities, or the amount of dues paid to join a Section.

Each of our Sections represents a unique area of law or interests, as well as a unique set of members within that area. Some Sections are very active, whereas others are not. Some are comprised of a thousand or more members, whereas others have only a few members. Some have extensive experience in providing high-quality, complex educational programming or community outreach activities, whereas others have little or no such experience. Some have earned the respect of the appellate courts through years of hard work and demonstrated excellence resulting in being routinely asked to submit amicus briefs to the court, whereas others are never asked to brief issues. Some have long histories of working together with legislators to craft and opine on legislation, whereas others rarely, if ever, do so. Each of these differences (and more) demonstrates, celebrates, and justifies the great diversity that exists between the Sections. And yet the Workgroup proposals ask that all of this be ignored and eliminated.

As with the differences between each Section, there are also sound reasons for the differences among the compositions of the Sections’ executive committees and the methodologies for selecting the officers of the executive committees.

The Workgroup proposes a simple “rise through the chairs” process, by which a single executive committee member starts out as a secretary/treasurer, then rises to chair-elect, and then to chair in a period of three years. Were the talents and desires of every executive committee member of every section the same, this might make some sense. However, that is simply not the case. For example, some people are strong leaders with unique skill-sets and the time needed to enable them to lead others during turbulent years as a section chair. Other people, however, who have exceptional skills in accounting but who have neither the desire nor time to be a section chair or the note-taking skills for being a secretary make great treasurers. Moreover, by sharing the leadership roles, more executive committee members have an opportunity to serve in these important roles rather than limiting access to only a select few while the others are shut-out if they don’t have a desire to “rise through the chairs.” If the concept of rising

through the chairs is a best practice, one must ask why BOG or WSBA staff have not adopted this protocol?

The one-size-fits-all set of by-laws that the Workgroup would impose upon all of the Sections ignores not only the basic composition of the executive committees and election processes, but numerous other important distinctions between the Sections that make them valuable to their members. Even the determination of who can be a member of a section – whether voting or non-voting - would be removed from the hands of the Sections and imposed on them by WSBA. This undoubtedly would involve inclusion of non-lawyers in every section despite several Sections' specific decisions not to allow such persons as members. This is just wrong.

3. Pooling Sections Funds and Other Fiscal Inefficiencies

The volunteers – past and present - who are a part of active and successful Sections have worked hard and sacrificed greatly to build the coffers of their Sections for the benefit of their Sections' members. Those with a healthy fund balance have been and are able to participate in efforts that benefit their members as well as the members of the public that their members represent. In recent times Sections have been denied the ability to sponsor long-standing successful activities or use Section funds in ways that would be beneficial to the members of the Section. The justification for such denials has ranged from “we don't have the infrastructure” to “we don't have the staff” to simply “no” without explanation.

When Sections seek a more financially viable means of operating – a method that would not require as much WSBA participation and staff time – road blocks are put in place to deter such creative thinking and Sections are then reminded that they are not autonomous and cannot act on their own.

Implying that Sections are not fiscally responsible or that they are incapable of prudent management of their hard-earned funds is simply a red herring designed to distract from the real problem – that WSBA has significant deficiencies in how it operates and how it manages its accounting systems and finances.

Why is it that this highly professional organization cannot do what we as individual lawyers are required to do – identify and track the time of its employees to the discrete work task being performed? Can you even imagine what would happen if a lawyer, at the end of the month, simply totaled all of his or her time and then spread it across the client list by some percentage or allocation formula rather than charging only time incurred for a specific client to that client? Yet, WSBA does not (and claims it cannot) have its employees fill out time cards (paper or electronic) that report work to task codes associated with discrete work efforts. That's why they cannot tell you exactly how much time it takes to support this program or that program – it's not tracked.

Likewise, while Sections leaders are accused of being too ignorant or irresponsible to be able to manage their own funds, why is it that the highly professional staff at WSBA cannot produce monthly Section reports within two to four weeks of the close of each month – every month? Why do we get financial reports for September in January every year? Why are expenses and revenues routinely posted to the wrong budget item or account? Why are the same errors repeated over and over again and then often not corrected because too much time has passed or the budget year is closed before the Section can point out the error to WSBA? And yet this is the group that wants to merge all of the Sections' hard earned funds into one lumped pot and manage it!

January 25, 2016

Re: Sections Policy – Proposed Reforms Dated December 30, 2015.

Whether it be in CLE or Section Liaison staff or finance, WSBA's support of the Sections and of the members has continued to erode from year to year with constant turnover, restrictions in what can be requested or done, lack of institutional knowledge or history, and inefficiencies.

4. Conclusion.

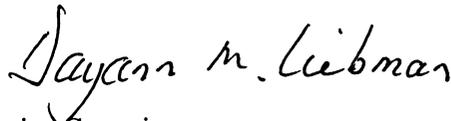
If approved, the policies proposed by the Workgroup will give the Sections little to no autonomy, will inhibit their ability to meet the needs of their members, significantly reduce or eliminate completely the ability to recruit future section members or persons interested in serving on the various executive committees, and deter sponsorship of programming or activities to generate funds to support section interests.

If adopted as proposed, it may be time for action to be taken by the members through some other means including, but not necessarily limited to, one or more of the following: (1) a member referendum (before that option is eliminated from the WSBA Bylaws) (2) formation of a voluntary Bar Association, separate from WSBA, to serve as the trade association to represent members of this proud profession or (3) voting to terminate their respective Sections, and refund the treasuries to their members or (4) simply ceasing to join any Sections in the future, and resigning from all current committees, task forces, workgroups, executive committees, etc. and just let WSBA get by without us.

We hope that leaders from all of the Sections and numerous members of the Bar will pack the house (and the webcast) for the February 4th Section Leaders Feedback Forum at the WSBA Conference Center and again on March 10th at the BOG meeting to be held at the Red Lion in Olympia and make their voices be heard!

Respectfully,

Dayann Liebman, Chair
Family Law Section Executive Committee
on behalf of :



Mark Alexander
Rick Bartholomew, Co-Legislative Liaison
Shelley Brandt
Lisa Brewer
Elizabeth Christy, Secretary
Larry Couture
Dennis Cronin
Ruth Edlund, Chair-Elect
Cameron Fleury
Nancy Koptur
Jonathan Lee
Patrick Rawnsley
Rhea Rolfe
Kevin Rundle, Treasurer and Co-Legislative Liaison
Charles Szurszewski
Mike Vannier
John Wickham, Immediate Past Chair

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January 25, 2016

Re: Sections Policy – Proposed Reforms Dated December 30, 2015

Doug Becker, Webmaster

Jean Cotton, BOG Liaison

cc: William Hyslop, WSBA President
Robin Haynes, WSBA President-Elect
Anthony Gipe, WSBA Immediate Past President and Workgroup Chair
G. Kim Risenmay, Governor, District 1
Bradford Furlong, Governor, District 2
Jill Karmy, Governor, District 3
William Pickett, Governor, District 4
Angela Hayes, Governor, District 5
Keith Black, Governor, District 6
Ann Danieli, Governor, District 7-N
James Doane, Governor, District 7-S
Andrea Jarmon, Governor, District 8
Elijah Forde, Governor, District 9
Philip Brady, Governor, District 10
Karen Denise Wilson, Governor At Large and Treasurer
Mario Cava, Governor At Large
Sean Davis, Governor at Large
James Lutes, YLD Liaison to FLEC

From: John R. Christiansen [<mailto:john@christiansenlaw.net>]

Sent: Tuesday, January 26, 2016 8:47 AM

To: greg@pugetsoundlegal.net; Julianne Unite

Cc: 'Luke Campbell'; 'Laura Cacek'; 'Tierney Edwards'; 'Gerald R. Tarutis'; 'Kathryn Kolan'; park.leanne@gmail.com; lkuo@omwlaw.com; 'Morgan Gabse'; 'Nabil Istafanous'

Subject: WSBA Health Law Section Position on Section Funds Proposal

As Chair of the WSBA Health Law Section, I would like to advise that the officers of the Section voted unanimously in favor of the following resolution:

The Washington State Bar Association's ("WSBA") Health Law Section ("HLS") provides the following as our feedback concerning the Sections Policy Workgroup's ("Workgroup") proposals dated December 30, 2015 (the "Proposals"). While the HLS may support some of the policy goals of the Proposals under different circumstances, the HLS objects to the Proposals for, among other reasons, (1) the failure of the Workgroup to include as members section leaders, (2) providing less than one month's notice between the Proposals and the comment deadline, particularly given the holidays and the infrequent meetings schedules of the leadership committees in many sections, (3) the taking of the reserves and revenue streams that the sections have carefully developed and managed, and (4) the undermining of the historical autonomous status of the sections. Further, the HLS urges that the Workgroup be reconstituted in a manner that provides greater direct representation for WSBA sections.



Chair
Lauren J. King

Chair-Elect
Claire Ross Newman

Secretary/Treasurer
Diana Bob

Immediate Past Chair
Aubrey Seffernick

Trustees
Ryan Dreveskracht
Rebecca Jackson
Connie Sue Martin
Robin McPherson
Lauren Rasmussen
Michael Rossotto
Rachel Saimons
Lauren Sancken
Jane Steadman

Newsletter Editor
Anthony Broadman

BOG Liaison
Kim Risenmay

Young Lawyer Liaison
Greg Touchton

TO: Sections Policy Workgroup
FROM: WSBA Indian Law Section – Executive Committee
DATE: January 22, 2016
SUBJECT: Feedback on Workgroup’s Section Memorandum and Policy Documents

I. Introduction

The Executive Committee of the Washington State Bar Association’s (“WSBA”) Indian Law Section (“ILS”) is pleased to provide feedback concerning the Sections Policy Workgroup’s (“Workgroup”) proposals dated December 30, 2015.

Like many (if not all) other Sections, ILS strongly opposes the Workgroup’s draft policy proposals.

While there may be some value in imposing a greater degree of consistency across the Sections’ bylaws to ensure uniformity in the timing of the date new Section officers take office and certain other administrative matters, the sweeping changes proposed by the Workgroup effectively re-write the relationship and role of the Sections within the WSBA, essentially stripping them of their long-established autonomy and ability to provide practice-area specific benefits. This autonomy is crucial to ensure (1) that dues paid voluntarily by members to a specific Section contribute to that Section’s activity, and not to a wholly unrelated Section which that member may not support; (2) that large Sections do not “crowd out” small Sections in competition for funds; and (3) that Sections retain the authority to provide benefits tailored to specific practice areas in accordance with the interests of their members.

The Workgroup’s proposals effectively transfer all authority to the WSBA to unilaterally determine what Section activities should and should not be supported based on the profitability of those activities and the “best interests of the WSBA.” This proposal seriously threatens the viability of small Sections, whose events may not be as profitable as those of large Sections simply due to Section size. Small Sections’ resources should not be seized to pay for the most

profitable activities of large Sections. This penalizes small Section members and deprives them of the tailored, practice-specific programming they have come to expect from their Sections.

A small Section like ILS should not be precluded from generating significant funding, if it so chooses, to provide a broad array of benefits to its members. ILS members pay for their membership and for ILS events entrusting that ILS will use those funds to continue providing Section-specific benefits to those members.

We believe the Workgroup's proposals would be very damaging to the long-term viability and success of ILS and other Sections. The proposed policies are misguided and should be rejected. The discussion that follows demonstrates the serious procedural and substantive failings with the Workgroup's process and proposals.

II. Discussion

A. Procedural Problems with the Workgroup's Proposals

Exclusion of Section Leaders. Section leadership was not invited to join the Workgroup. It is simply dumbfounding that Section leaders would be excluded from a Workgroup tasked with proposing changes to Section funding, leadership, and administration.

Lack of Transparency and Misleading Communications. Section leadership should have been notified directly and candidly regarding the Workgroup's intentions and activities. ILS leadership was informed that the Workgroup was tasked with "improving" WSBA relations with Sections, but none of the proposals we raised at a Workgroup session (largely directed to obtaining more autonomy, not less) were adopted. Through discussions with other Sections, it is apparent to ILS that the Workgroup also ignored other Sections' proposals. In fact, we are not aware of a single Section that supports the Workgroup's proposals.

Insufficient Notice of Proposals and Time to Respond. Communication with Sections has been abysmal throughout the Workgroup process. Certain Sections (like ILS) never received notification of the proposals, only discovering their existence through third parties. The timing of the release of the proposals on December 31, 2015, provided insufficient time for Sections to review and respond to the proposals. Many Sections, including ILS, had not scheduled Executive Committee meetings or calls in January until after the Section responses to the Workgroup's proposals were due.

These procedural failings have fractured the already fragile relationships between the Sections and the WSBA. We urge that the Workgroup reconsider its approach and remedy the above problems by (1) inviting Section leaders to join the Workgroup, to the extent the WSBA still intends to implement reforms to Section leadership, funding, and administration; (2) communicating its intentions and plans directly and candidly with Section leaders; and (3) giving Sections sufficient notice of, and time to respond to, any future proposals.

B. Substantive Problems with the Workgroup's Proposals

The Workgroup's Proposal to Control Section Treasury Reserves Will Decrease and Potentially Eliminate ILS Member Benefits. Under the WSBA Bylaws, each Section has its own treasury. Article XI plainly states that a Section's treasury is only to be taken away and transferred to the Bar's "general operating fund" when a Section is terminated. The Workgroup's proposal to seize Section reserves and unilaterally determine which Sections should receive funds from the collective treasury (or whether the funds should be used to fund WSBA expenses instead) threatens ILS's ability to maintain the current array of practice-specific benefits we offer our members. The proposal also frustrates our ability to plan for future years due to the uncertainty surrounding funding for such activities.

Indian law is a specialized practice area. We enjoy a small and close-knit bar with consistent attendance at our annual events. Through careful and responsible budgeting, ILS has been able to establish substantial reserves.

These reserves allow ILS to continue its established activities and expand the benefits we offer our members. ILS uses its financial reserves exactly how it should – to grow and evolve ILS in its ability to fulfill its mission and to provide direct value and benefits to its members. For example, in cooperation with law schools located in Washington State and with the Northwest Indian Bar Association, we have initiated scholarship and mentorship programs aimed at encouraging young lawyers and law students (with a special focus on Native students) to pursue a career in Indian Law. We have received overwhelming support from law schools and our membership for these programs. The Workgroup's proposal threatens to eliminate these programs and to frustrate the time and effort law schools and other partners have already put in to developing ILS's mentorship and scholarship programs for law students.

One of the main reasons the Sections exist is to create practice-specific benefits, including continuing legal education seminars, programs to foster growth of young attorneys in the practice area, networking events, and other practice-specific activities. The Workgroup's proposal to seize and redistribute ILS funds to other Sections and to the WSBA's own administrative expenses is unacceptable.

The Workgroup's Focus on Profitability Will Likely Put Small Sections Like ILS at a Competitive Disadvantage and Eliminate Scholarship Programs. The Workgroup's proposal to pool money means that the money ILS members pay to fund ILS activities could instead go to a completely unrelated Section, as the Workgroup explicitly acknowledges:

... all sections would be able to propose beneficial programs, as the financial outcome of the program is no longer directly linked to the individual section's financial resources.

It is inappropriate for funds paid by our members to support ILS activities to be instead used for other more “profitable” Sections or for “programs deemed to be in the best interest of WSBA”:

WSBA staff would work with Executive Committees to determine whether a proposed program is likely to result in profit or loss, or break even. While it is a goal for all programs to at least pay for themselves, programs deemed to be in best interest of WSBA and its members, the section, and the public could also be supported by the WSBA Sections Fund.

ILS highly doubts that anyone in the WSBA could enunciate a workable policy on what exactly constitutes “the best interests of the WSBA.” Furthermore, the consideration given to how “profitable” a program will likely prejudice smaller Sections and Sections that run scholarship programs, for which there is no fiscal “gain” except Section goodwill. Does this mean that the WSBA would disburse funds only to large Sections simply because of greater attendance at their CLEs or events? Does this mean that the WSBA would discontinue all scholarship and mentorship programs, or simply decide unilaterally which practice areas should be permitted to mentor and fund law students, based on how profitable or large the Section is?

The Workgroup’s proposals threaten the ability of fiscally responsible Sections like ILS to be able to continue the member benefits they now provide (and pay for with Section-raised funds). Simply put, the proposals appear to compel ILS to pay for CLEs and other member benefits requested by other Sections, resulting in diversion of funds from small Sections like ILS to large Sections that, due to their size, conduct more activities and generate more profits from those (more costly) activities than small Sections.

Section Dues Should be Set by Sections Familiar with their Membership, not by the WSBA. ILS opposes any change where WSBA would set Section dues. ILS has purposefully kept Section dues low for members, even as WSBA has raised the per member charge. We have also purposefully kept Section dues low to make membership in ILS affordable to new and young lawyers and those in smaller firms or working for tribes that do not pay for “extras” such as Section dues. Any increase in our dues will result in loss of membership, especially if it is coupled with a decrease in the ILS-specific member benefits.

The Proposed Policies Do Not Permit ILS to Maintain Continuity in its Leadership and do not Encourage Volunteering for an Executive Committee Position. ILS opposes any proposal mandating a specific number of officers or length of term. ILS officers have terms ranging from one year to three years. ILS does not require all officers to commit to three years on the Executive Committee because such extended terms would discourage busy attorneys from donating their time to serve on ILS.

Changes to ILS’s Election Date Is Unnecessary. ILS opposes any change to the ILS election date. ILS conducts its elections annually at the most well-attended Indian law seminar of the year. This timing means that (1) more members are present to vote and (2) individuals who

are interested in serving can do so efficiently, minimizing travel (especially for those members located outside Seattle) and potential scheduling conflicts that would arise if ILS held its elections at a different time.

However, while ILS opposes any change to its election date, we understand the administrative need to enact leadership changes across Sections at the same time each year. We would propose that the WSBA not alter election dates, but instead alter the effective date for the new leadership to begin their terms. Under this approach, Sections could retain their election dates, but the new leadership would not begin their terms until a specified later date that would be the same for all Sections (e.g., January 1 of each year).

III. ILS Members' Response to the Workgroup's Proposals

On Wednesday, January 20, ILS sent an email to its members notifying them of the Workgroup's proposals. We have pasted some of the many comments we received from ILS members in Appendix A to this response. The comments echo and add to the concerns outlined above.

IV. Conclusion

For a great many of the most active members of the WSBA, the 28 Sections serve as their primary source of, and opportunity for, participating in educational programming, networking opportunities, outreach events, and giving back to the community. From the members' perspective, the Sections are their professional connection to the WSBA.

Over the years, all Sections have advanced the WSBA's mission in an admirable manner. The Sections have provided core member benefits, including educational, networking, and leadership opportunities. Section members volunteer thousands of hours to promote and carry out the Sections' missions of providing excellent educational programs and scholarships.

The Workgroup's proposals threaten to undo the countless hours of work that Section volunteers have put in to establishing the broad array of practice area-specific benefits that their members have come to expect. ILS strongly opposes the Workgroup's draft policy proposals and recommends that the proposals be rejected, with the exception of the start dates for officer terms as discussed above.

In the event the Workgroup does not address the concerns we raise in this response, ILS intends to work quickly with the other Sections to submit a Member Referendum under the WSBA's Bylaws to reaffirm and clarify the Sections' roles and autonomy.

Sincerely,

The Executive Committee of the Indian Law Section

APPENDIX A: ILS Member Comments Regarding the Workgroup's Proposals

The following comments are a representative sample of the feedback ILS has received so far from its members:

- “I agree that funds in reserve held by a voluntary section membership should not be shunted to a totally different voluntary section membership for their use. Why would people who support an environmental section, as one example, want their funds shunted to corporate sections? This is inappropriate. As one example, Gov. Christine Gregoire set up a rainy day fund for the state of WA. It would not make sense if those funds had to go to Oregon. What is not clear is how we can stall such an implementation by the Bar at large. Are our voices enough? They should be, but are they? If not, that is a huge problem within the Bar itself.”
- “I agree completely with the recommended position. Our section functions very well. I'd be happy to be listed as endorsing your position.”
- “I join in your concern about this odd action. I join sections because of a particular interest and practice focus. Sections provide unique growth and professional connections. The proposed action simply blurs the intent of where I send my extra dollars to join a section.”
- “I am in total agreement with the section leadership's concerns here. I also don't like what this will incentivize sections to do each year, which is spend all the money they collect annually lest it be forfeited to the pool. And on the leadership structure, it does not make sense to me that you'd force people to either get in line to be chair or they can't serve as secretary or treasurer. Those are totally different skill sets, no reason to force the person that takes that on into the chair succession line. I am super happy to be NNABA's secretary right now, and I think I'm doing a good job. I could not be chair, at least not now, with what's going on in my practice. How silly would it be if NNABA couldn't have my service as secretary because I can't commit to being chair two years later? Similarly silly to have that problem at the WSBA.”
- “I am a member of the Washington State Bar. I currently am a member of two sections: the Criminal Law Section, and the Indian Law Section. I participate in these sections because they cover areas of my professional interest and expertise. I do not participate in other sections in which I do not have an interest, and I do not always support the initiatives of other sections, or those of the State Bar in general. I object to the idea of funds I provide voluntarily to participate in the Sections of which I am a member being used to support other initiatives or sections and therefore I object to the proposed changes to Section Fiscal Policy. Should the changes to section funding pass, I will cease to participate in any of the sections.”
- “I agree completely with the position laid out in your e-mail, and add these thoughts:
 - (1) A less obvious result of the Indian Law Section's coordination with the law schools and the sponsorship of scholarships is the good will within the schools and nascent

lawyers towards the WSBA. With too many lawyers asking ‘what’s in the WSBA for me?’ rather than seeing a formal organization that has non-monetary benefits for the profession and the bar as a whole, the Indian Law Section’s work is a good example of value-added membership.

- (2) An original purpose of the Indian Law Section, leading to the scholarship program, was to encourage tribal members, who were then and probably still are, underrepresented in the bar, to enter the Indian Law field, and consider working for Tribes, who usually cannot compete with private firms for top talent due to location and fiscal constraint. This is a goal that not many, if any other, Sections embrace within their specialization. Our stipends, modest as they are, relieve the law students of that much student debt, thus contributing to a wider horizon of law school clinical participation and post law school employment.”



IPS International Practice Section

Washington State Bar Association
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

WSBA International Practice Section

2015-2016 Executive Committee

Fraser Mendel, Chair
Bernard Shen, Chair-Elect
James Clack, Past Chair
Leonid Kisselev, Treasurer / Secretary

Eriko Baxter
Matthew Dresden
Holly Vance
Megan Fouty
Joaquin Hernandez
Linda Chu
Carly Chan
Monica Kim Sham

January 22, 2016

William Hyslop
President
Washington State Bar Association

Re: Objection by the International Practice Section to the Policy Proposals of the Workgroup's Memorandum distributed December 31, 2015

Dear Mr. Hyslop,

On behalf of the members of the International Practice Section we hereby request that the Board of Governors: (1) reject the report of the Workgroup's "Phase 1 Report: Draft Sections Charter and Fiscal Policy" dated December 30, 2015 and distributed on December 31, 2015 (the "Sections Proposals") and, (2) reconstitute a Workgroup that includes representatives of each of the Sections to address any concerns raised by WSBA staff or others.

We understand that there might be issues related to administration of the Sections that should be addressed. Once those issues are properly identified in a clear, transparent, inclusive and consensus-like manner, then adjustments to our current operations may or may not be in order. Until such a process has been undertaken, however, implementing the Sections Proposals is rash, and risks creating significant dissent within the membership of the Bar.

One of the fundamental objections we have to the Sections Proposals is the process by which the Workgroup was constituted and subsequently developed the proposals. When the WSBA Board of Governors (BOG) initially formed the Workgroup, many of us received the impression that it was to examine administrative improvements related to programming and CLEs. At that time, many Section leaders asked for representation on the Workgroup since any result would affect the Sections. This request was denied, and the end result was that the Workgroup did not include any active Section chairs, Section officers or other Section appointed representatives.

We also object to the timing for release of the Sections Proposals. The Sections Proposals were emailed on New Year's Eve, during the holiday season when many attorneys were on holiday and spending time with their families. The subsequent comment period of 14 business days is short, and occurs at a traditionally busy time of the year for attorneys. We understand that other Sections did not even have the opportunity to discuss the Sections Proposals at their regularly scheduled executive committee meetings. Considering the scope and

severity of the Sections Proposals, designating such an abbreviated comment period gives the appearance that the Workgroup is trying to sneak the Sections Proposals through without substantive comment.

From a process perspective, it is improper that the Sections Proposals, which fundamentally alter the administration, organization and financing of the Sections, should be undertaken without representation of the Sections. Our Executive Committee views the lack of representation, lack of transparency, and the release of the Sections Proposals with limited time for comment as reflecting an attempt to move the Sections Proposals forward under the radar.

Beyond our strong objections to the process, we have strong objections to the substance of the Sections Proposals.

With respect to the proposed uniform Sections Charter, the Sections Proposals indicate that there could be administrative inconvenience resulting from 28 separate sets of Bylaws (which we understand were all approved in consultation with WSBA staff and approved by the BOG). We have not heard this raised as an issue before. If specific problems are publicly disclosed by the Workgroup, then perhaps the many astute legal minds that constitute the state Bar could assist in crafting a tailored solution to those problems. Absent some concrete demonstration of harm caused by the current Sections structures, we are opposed to any proposal that would take away the Sections' self-governance.

With respect to fiscal policies, the Sections Proposals state vague generalities regarding fiscal imbalances, poor fiscal controls, and unequal distribution of funds among the Sections. This mentality apparently ignores the fact that attorneys voluntarily choose to join Sections based on their specific practice interests and how they wish to spend their time and money. This mentality also ignores the fact that individual Sections have been responsive to their members' demands and have created programming, networking, and public outreach programs. Most importantly, this misses the fact that the Sections are staffed by volunteer attorneys who are experts in their particular fields, and are therefore in the best position to understand what benefits their members actually want, what actions may be most useful for raising funds, and how those funds can be used most productively. Creating a "one size fits all" fiscal policy, programming policy, and events policy would destroy the vibrancy reflected in the Sections today. Each Section reflects a separate and distinct community of interests which has evolved in response to demands from its membership; for the BOG to dispense with the diversity reflected in the Sections would appear to be a contradiction of oft-espoused policy of encouraging diversity within the Bar.

If there are financial issues that arise from the administration of the Sections, then these need to be identified with transparent and verifiable evidence, and then should be addressed in an inclusive consensus manner. The Sections Proposals state in vague terms that the WSBA has been covering expenses for running the Sections. This information was not previously made available to the Sections, nor was it reflected in the WSBA budgets that have been generally available to the members. At this point, looking at the publicly available WSBA budget, it reflects that the Sections are revenue-positive; if this is not the case, then it means that the WSBA needs to adjust its accounting procedures to properly reflect the actual costs of the Sections *and then the WSBA needs to make that information available to the Sections*. Until now, we have not been aware of any administrative difficulties associated with the International Practice Section. We have also not had any indication that the WSBA-prepared financial reports were dramatically inaccurate. At this point, based on the information we have seen so far, there is no reason to adopt, and we oppose the adoption of, any of the fiscal policies contained in the Sections Proposals.

Ultimately, the WSBA is an organization with two mandates that are not always mutually compatible. One part of the WSBA is the mandatory organization under the Washington Supreme Court. As such, it is responsible for admission to practice, ongoing licensing, discipline, and mandatory minimum continuing education. The other part of the WSBA is the voluntary membership organization which is composed of the Sections, committees and voluntary boards. This part of the WSBA is composed of those members who make the choice to contribute their money and their time to specific communities of interest, which creates a healthy and

diverse environment for members to be practicing attorneys. The Sections Proposals would strip the Sections of their autonomy, which risks harming the vitality of the voluntary portion of the Bar and encourages members to take their scarce time (and dollars) to other organizations.

The International Practice Section views itself as consistently and effectively executing on its mission – providing benefits to its members, conducting continuous and ongoing outreach to foreign lawyers and foreign legal organizations, cooperating with other Sections, complying with requirements of the WSBA as a whole, and operating on a fiscally prudent basis. To the extent there are administrative problems or budgeting issues, we are open to cooperatively identifying them with the State Bar and other sections, and once identified resolving them as quickly as possible with appropriate, transparent, and tailored solutions. To this end, we recommend reconstituting a Workgroup that includes representatives of each of the Sections to address any concerns raised by WSBA staff or others. Solving problems is what we, as lawyers, do for a living. But unless there is any concrete evidence about such problems, we oppose in the strongest possible terms any change to “fix” what isn’t broken.

Sincerely,



Fraser Mendel, Chair

Bernard Shen, Chair-Elect

James Clack, Past Chair

Leonid Kisselev, Treasurer/Secretary

cc: Robin Lynn Haynes | President-elect
Anthony Gipe | Immediate Past President
G. Kim Risenmay | Governor, District 1
Bradford E. Furlong | Governor, District 2
Jill A. Karmy | Governor, District 3
William D. Pickett | Governor, District 4
Angela M. Hayes | Governor, District 5
Keith M. Black | Governor, District 6
Ann Danieli | Governor, District 7-North
James K. Doane | Governor, District 7-South
Andrea S. Jarmon | Governor, District 8
Elijah Forde | Governor, District 9
Philip Brady | Governor, District 10
Karen Denise Wilson | Governor, At-Large and Treasurer
Mario M. Cava | Governor, At-Large
Sean Davis | Governor, At-Large

TO: Washington State Bar Association, Sections Policy Workgroup

FROM: Washington State Bar Association, Intellectual Property Section, Executive Committee

DATE Feb. 3, 2016

RE: **Additional Comments - December 31, 2015 Policy Recommendations from the Sections Policy Workgroup**

INTRODUCTION

The Washington State Bar Association, Intellectual Property Section's Executive Committee opposes the package of draft policies promulgated by the Sections Policy Workgroup on December 31, 2015 for the reasons set forth herein. Additionally, the Workgroup's current efforts should be halted and the Workgroup reconstituted by a more inclusive group of stakeholders. Further, the first phase of any additional work should be to gather meaningful data by which to formulate policy proposals, including by gathering more information on how the Washington State Bar Association (Central Bar) allocates expenses for administration of its functions.

REFERENCES

- | | |
|----------------------------|--|
| April 2015 Memo | From unidentified Executive Management Team of the WSBA to the Board of Governors, April 23, 2015. |
| June 2015 Memo | From Ms. Tiffany Lynch, Finance Manager, to the Board of Governors, June 19, 2015. |
| July 2015 Memo | From Ken Master, Treasurer, et al. to Board of Governors, July 7, 2015. |
| September 2015 Memo | From Anthony D. Gipe, President, to Board of Governors, September 8, 2015. |
| December 2015 Memo | From Anthony D. Gipe, Immediate Past President, to Section Leaders, December 31, 2015. |

BACKGROUND

In April of 2015, an unidentified Executive Management Team of the Washington State Bar Association prepared a memorandum to the Board of Governors. The April 2015 Memo

drew stark conclusions about the viability of Sections operations, and in particular Sections-sponsored Continuing Legal Education (CLE) seminars. For example, the memorandum asserted that “44 staff across departments support WSBA sections at an annual cost of \$700,000,” and that only \$285,000 of these “are recovered through the Per Member Charge of \$17.75.” “The gap of \$410,000 is subsidized by all WSBA members through the general fund.”¹ These assertions appear to have been the basis for the since-adopted mandate to review and revise WSBA policies concerning the Sections and Section Sponsored CLEs.

The cost-related assertions are curious when the data is examined more closely. As a starting point, in a June 2015 memorandum from Controller Tiffany Lynch, Ms. Lynch estimated that the Bar expended \$311,718 in direct administrative costs to support the Sections. This estimate was based in part on an allocation of 3.1 full time equivalent administrative staff supporting the Sections. Based on this estimate, the Central Bar set an \$18.75 per member charge (against per member Section Dues) for FY 2016 to recover roughly all of these direct expenses.² From the June 2015 Memo then, it appears that the Central Bar recovers all of its direct administrative expenses. This is contrary to the assertion in the April 2015 Memo that there is a \$410,000 gap between direct administrative expenses and the per-member charge.

Further study of the recent data provided by the Central Bar—including materials provided on January 29, 2016—does not provide additional clarity.

- First, although the Central Bar set an \$18.75 per member charge for FY 2016 based on allocation of 3.1 full time equivalent administrative staff to support the Sections, a “Section Administration Financial Statement” provided on January 29, 2016 shows a salary expense of 4.04 full time equivalent staff members to support the Sections. The discrepancy between 3.1 FTE staff and 4.04 FTE staff is not insubstantial. Under the former, the Bar would appear to allocate \$232,612 in salaries and benefits to Sections’ support, while under the latter, the allocation would be \$291,578.95. Moreover, there is a nearly \$30,000 difference between the amount of estimated indirect expenses allocated to Sections’ support for FY 2016 (\$67,714) and the total indirect expenses allocated to Sections’ support in FY 2015 (\$95,682.54). Given these disparities, it is possible that the Central Bar is setting per member recoupment charges for allocated direct administration costs at a far lower level than what is actually being incurred.
- Second, in a report titled “Organization-Wide Staff Costs for Section Support,” also provided on January 29, 2016, the Central Bar reported that it incurred \$693,809 in costs to support the Sections. But the cost figures in this report are inconsistent with other data and are troubling for other reasons. For example, in

¹ The memorandum also provided that “the costs of [CLEs] are also not fully recovered under existing policy. From 2010 through 2014, the WSBA CLE Reserve Fund dropped below \$500,000 as the Sections Fund simultaneously climbed to over \$1,000,000.”

² As to the Intellectual Property Section: this meant that 75% of the \$25 per member Section Dues went to defray direct administrative expenses.

this report, “Administration” costs are allocated at .50 full time equivalent staff (or 1,041 staff hours) for a total cost of \$50,243. This total is far different from the amounts discussed above. As another example, the Central Bar appears to be allocating costs to the Sections for things like the *NW Lawyer* magazine, although no justification is provided for why the Sections should directly bear any portion of the magazine’s production cost.

Finally, and most importantly, the report asserts that the Central Bar incurred \$571,788 in costs related to “CLE Seminars, Sections Administration, New Lawyer Education, Foundation.” It is this expense that is the elephant in the room. No detailed accounting of this purported cost is provided.

While the overall cost total from this report (\$693,809) would seem to make it the basis for the statement in the April 2015 Memo that the WSBA incurs “an annual cost of \$700,000” to support the sections, the April 2015 Memo provides that “annual cost of \$700,000” *is not inclusive of costs for “CLE development, coordination, execution and oversight for WSBA sections.”* Because this report is not the basis for the annual cost statement in April 2015 Memo, it appears that the basis for that statement has not yet been provided.³

- Third, a recently provided report titled “Section Operations Financial Statement - September 2015,” shows that the Sections apparently operated at a profit in FY 2015 (\$802,103.18 in revenue and \$646,815.21 in direct expenses).
- Fourth, “Tab II (A1)” to the Sections Policy Workgroup Handbook purportedly shows that most Sections’ reserve funds increased in the last few years, while the WSBA’s CLE fund has dramatically decreased. One purported reason for the declining CLE fund balance is that Central Bar has a financial policy under which the Central Bar splits profits and losses from Section Sponsored CLEs, and that many Section Sponsored CLEs have operated at losses.⁴ The Central Bar lessens

³ The April 2015 Memo refers to an “Attachment 6” as detailing the amount of the annual cost, but the materials provided by the Sections Policy Workgroup do not appear to include this attachment.

⁴ See December 2015 Memorandum from Anthony D. Gipe to Section Leaders at 9 (“Section and WSBA split profits and losses 50-50 unless grandfathered (Plan A or B). WSBA charges a percentage of gross revenues from the seminar as an administrative fee, which is intended as a proxy to cover costs to support seminars and conferences. Under this system, WSBA—not the sections—has covered losses.”). It should be noted that the last sentence from the foregoing excerpt makes no sense, as losses under current fiscal policy, if they occur, are *split* between the Section and the Central Bar.

Moreover, the foregoing commentary on the current fiscal policies downplays the amount of fees or charges imposed on the Sections by the Central Bar. For example, per materials provided by the Workgroup, for the 20th Annual IP Institute put on by the Intellectual Property Section there was \$35,660 in revenues, and there were \$15,053 in direct expenses. The Central Bar then allocated \$18,958 dollars in Indirect & Non-Event Specific Direct Expenses, including \$17,425.98 in “salaries/benefits/overhead”. On top of this, the Central Bar imposed a \$12,481 administrative fee. The total charges and fees imposed by the Central Bar were therefore \$31,439.42. And the total of all costs, fees, and expenses were therefore \$46,492.42. This theoretically should have resulted in a loss of \$10,832.42 split between the Section and the Central Bar. But the Workgroup’s materials instead show that the

the impact of the losses by splitting them with the Section. Of course, whether and to what extent the Central Bar incurs losses from CLEs depends on how expenses and costs are accounted. Different methods of accounting can show dramatically different results.

These are only some of the inconsistencies from what appears to be cherry-picked data meant to support a conclusion that the Sections, and Section Sponsored CLEs, are too costly to be viable in their current format. Indeed, the April 2015 Memo implicitly assumes that the Sections are a burden and are “limiting our mutual success.”

From these questionable premises, the Treasurer for the WSBA, along with two other high-ranking WSBA administrative staff, provided a memorandum to Board of Governors in July 2015 urging the Board to form the Sections Policy Workgroup with a seemingly pre-formulated mandate: “we recommend that the BOG appoint a board and staff workgroup at its September meeting to work in an expeditious and inclusive manner to draft revised section policies, including a revised policy addressing cost sharing of section-CLE programming on the following timeline: Draft policies and circulate for comment by December 31, 2015; Present final draft policies to Board for first reading on March 10, 2016; and Present final draft policies ready for Board action on April 15-16.” *See* July 2015 Memo. The Board formed the Workgroup in September 2015, with vague objectives and no apparent requirement to gather additional data to validate the assumptions underlying the July 2015 request to form the Workgroup. *See* September 2015 Memo regarding “Appointment of Working Group of the Board: ‘Sections Policy Work Group’” (“The Primary Tasks for the Work Group shall be to: . . . Obtain any further input from sections and other stakeholders as needed.”).

On top of all of this, the April 2015 Memo also expressed consternation by WSBA Staff about unidentified interactions with the Sections: “Administration and management of WSBA Sections is at times smooth and efficient, and at other times, frustrating and concerning.” This was echoed in the December 2015 Memo unveiling the Workgroup’s policy recommendations. *See, e.g.*, December 2015 Memo at 3 (“Inconsistent understanding about the sections’ lack of independent legal status sometimes has led to mutually frustrating interactions between WSBA and some section executive committees.”).

In light of all of the foregoing, it appears that currently adopted accounting practices and unidentified frustrations experienced by Central Bar staff gave rise to a broad mandate to revise

Section took home \$8,125.98 in profits, while the bar incurred a \$6,477.42 loss. This accounting does not make sense.

Further, given the June 2015 Memo from Ms. Lynch, it appears that 1 FTE administrative staff costs \$75,036 in annual salaries and benefits. If there are 250 working days in a year (50 weeks * 5 days), then the per-day cost for 1 FTE administrative staff would theoretically be roughly \$300. With this in mind, the Central Bar’s allocation of \$17,425.98 in salaries/benefits/overhead for a one-day CLE seems questionable. If the allocation were to represent only salaries and benefits for administrative staff, this would then theoretically represent that the Central Bar allocated *58 full days of staff support* to a one-day CLE put on largely by IP Section Executive Committee and volunteer speakers.

policies concerning the Sections, without the need to gather additional input and regardless of whether the proposed revisions related to the primary reason for the genesis of the Workgroup, *i.e.*, the accounting short-fall purportedly attributed to the Sections.

Additionally, little to no recognition was given to the amount of time (or the value thereof) that the volunteer attorneys of the Sections expend to provide member benefits and how those volunteer efforts will be affected by the proposed sweeping policy changes.

SUMMARY - SECTIONS POLICY WORKGROUP PROPOSALS

Given the broad mandate, the Workgroup issued broad policy recommendations. The Workgroup, however, did not hint at the scope or substance of the recommendations prior to their promulgation on December 31, 2015.

In brief, the Policy recommendations include:

- Creation of a standard Sections charter
- Centralized oversight of Sections' Activities
- Pooling of Sections' Funds, resulting in substantial loss of Sections' autonomy
- Requiring Sections to spend their entire yearly budget or forfeit it to the Central Bar
- Explicit reference in WSBA Bylaws, Section Charters, and Sections Policies that the Sections are not legally separate from the Washington State Bar Association
- Mandates to prioritize diversity, inclusion, and access to justice in putting on Educational Programs.

Noticeably absent from this list are policies directly addressing the primary grievance from the Executive Management Team in the April 2015 Memo, *i.e.*, policies addressing cost overruns from CLEs and other administrative efforts. Indeed, somewhat quixotically, the Workgroup recommends policies that would seemingly increase—rather than reduce—Central Bar administrative expenses by having the Central Bar assume more direct oversight of Sections' activities and finances.

Additionally, the policy recommendations assume that the Sections are all fungible commodities, and give little respect or deference to the accumulated experience and knowledge of Sections' Executive Committee members and the value those Committees provide in arranging for Sections' activities.

While some of the Workgroup’s policy recommendations may make sense, the central recommendations put forward by the Workgroup are based on a potentially flawed premise (discussed above), are not well developed, and should be rejected.

Further, the Workgroup’s approach to this matter has, ultimately, been troubling. The Workgroup, for whatever reason, was not transparent about the scope of the proposed recommendations prior to their release, did not seek much input from the Sections, and did not provide a detailed accounting of, or investigation into, the cost overrun issue. Moreover, both the Executive Management Team (from the April 2015 Memo) and the Workgroup appear to assume special competence in these matters, such that the Sections and the general membership should not question them or their output. *See, e.g.*, December 2015 Memo at 8 (“WSBA is uniquely situated to set dues at a level that will support and sustain section activities as a whole.”); Jan. 25, 2016 Email from A. Gipe to Section Leaders (“Despite [the Workgroup’s] efforts to involve all the section leadership, some of the feedback has been critical of this process. . . . In hindsight, while there may have been other ways to communicate with and involve the section leadership in the process, I also believe that any failure in the communication process can be shared among all the participants. Likewise, any defects in our outreach efforts certainly do not call into question the validity of the process or the merits of the proposals.”).

This type of approach is not productive. The Bar is both a licensing organization and an organization that *serves* its members in the promotion of the practice of law. *See* Bylaws, Washington State Bar Association, Article I, Section A (“In general, the Washington State Bar Association Strives to . . . Provide services to its members.”). The Workgroup’s efforts, whether intentional or not, appear to have set up an “us-against-them” mentality vis-à-vis the more than ten thousand active Section members. Even the appearance of a conflict between the Central Bar and a substantial portion of its members is problematic. Recent feedback from members and Sections show that the Workgroup’s efforts have fostered hard-feelings and potentially compromised further efforts from the Workgroup.

Last, but certainly not least, enrolling in a Section is a voluntary choice. The Workgroup’s policy recommendations to pool resources and distribute them however the Central Bar sees fit would nullify this choice. This is analogous to a situation where an individual chooses to donate to a particular cause, but is later told that the donation is diverted elsewhere. The person is not likely to donate again, especially if there are alternatives. And there *are* alternatives. The WSBA Intellectual Property Section has worked hard to provide benefits to its members, members who remain engaged in the Section even though there are multiple alternatives.⁵ The Workgroup’s policy recommendations would potentially, if not likely, result

⁵ Other non-profit organizations that focus, at least in part, on intellectual property law include: the Washington State Patent Law Association; the American Intellectual Property Lawyers Association; the American Bar Association, Section of Intellectual Property Law; the Seattle Intellectual Property American Inns of Court; the Licensing Executives Society; the Association of Corporate Patent Counsel; the King County Bar Association, Intellectual Property Section; the Federal Circuit Bar Association; the Federal Bar Association of Western Washington; the International Property Law Association; the Association of Intellectual Property Firms; the Women’s Intellectual Property Law Association; and the Copyright Society of the U.S.A.

in a drastic reduction in membership, as those who were once members seek to choose organizations who will use their membership dues as expected.

In light of the foregoing, the Washington State Bar Association, Intellectual Property Section's Executive Committee respectfully opposes the policy recommendations put forward by the Sections Policy Workgroup on December 31, 2015. The Workgroup's efforts should be halted; a more inclusive workgroup formed, if at all; and a more thorough investigation the cost-overrun issue undertaken.

Moreover, it appears that the Workgroup could have proposed a few, targeted accounting changes that would have likely reduced or reversed cost-overruns (*e.g.*, undoing Section splits for CLE losses, which would have shifted more costs back on to the Sections), but did not. These changes would have required something akin to the policy-equivalent of a scalpel. Rather than perform surgery, however, the Workgroup appears to have decided that demolition was required instead. As a result, it grabbed the nearest sledgehammer and went to work.

THE EXECUTIVE COMMITTEE RESERVES THE RIGHT TO MAKE FURTHER COMMENTS REGARDING THE SPECIFIC POLICY PROPOSALS PUT FORWARD BY THE SECTIONS POLICY WORKGROUP. THE EXECUTIVE COMMITTEE ALSO ENCOURAGES ITS MEMBERS TO REVIEW THE PROPOSALS AND SUBMIT COMMENTS SHOULD THEY SO DESIRE.

On behalf of the Executive Committee of the Intellectual Property Section of the Washington State Bar Association,



Malabika "Reena" Ghosh
Chair, WSBA IP Section

cc: Membership of the Intellectual Property Section

TO: Washington State Bar Association, Sections Policy Workgroup

FROM: Washington State Bar Association, Intellectual Property Section, Executive Committee

DATE Jan. 22, 2016

RE: **December 31, 2015 Policy Recommendations from the Sections Policy Workgroup**

The Members of the Executive Committee of the Intellectual Property Section of the Washington State Bar Association write to express our deep concern with both the substance of the Sections Policy Workgroup's recommendations, as well as the timeline for taking action on those recommendations. Given that the Workgroup's recommendations were provided on New Year's Eve (Dec. 31, 2015), and given the demand for written comments to those recommendations a mere twenty-two days later (when the Workgroup took six months to formulate the recommendations), the IP Section's Executive Committee has not had adequate time to study the recommendations. But at a high level, the recommendations appear to contain a sweeping overhaul of Sections Policy, while failing to provide any persuasive need for the degree of overhaul recommended.

Indeed, the apparent reason for these recommendations is a perceived need to reduce administration costs concerning the Sections, but: (1) no detailed accounting of costs and/or losses associated with Sections administration is provided in the recommendations or associated appendices; (2) several members of the Executive Committee of the IP Section have expressed that, outside of Continuing Legal Education efforts, the perceived level of administrative support from the Bar has not been substantial, at least for the last several years, thus creating doubt about the actual justification for the creation of the Workgroup; (3) the Bar already takes a substantial portion of revenues from Section-sponsored Continuing Legal Education efforts for the very purpose of defraying administrative costs associated with CLEs; and (4) the Workgroup's recommendations, somewhat ironically, suggest increasing the Bar's role in administering Section activities. Indeed, the proposed increased role of the Bar in administering of Section activities—i.e., centralized oversight of Section finances and activities—is likely to result in the opposite of what the Workgroup was created to achieve: reduction of Bar-level costs for Section-administration.

The Executive Committee of the IP Section is in the process of studying these policy recommendations and formulating a larger, detailed set of comments that they intend to provide within a reasonable time. The Workgroup's expectation that a detailed study of these recommendations be completed, and written comments prepared, in the three weeks after the holidays, by the volunteer attorneys of executive committees of the Sections is not realistic.

On behalf of the Executive Committee of the Intellectual Property Section of the Washington State Bar Association,

A handwritten signature in blue ink that reads "M. Ghosh". The signature is written in a cursive style with a period at the end.

Malabika "Reena" Ghosh
Chair, WSBA IP Section

cc: Membership of the Intellectual Property Section

TO: Sections Policy Workgroup

FROM: Daewoo Kim, Caedmon Cahill, Carrie Wayno
WSBA Juvenile Law Section – Executive Committee Co-chairs and
Secretary/Treasurer

DATE: January 22, 2016

SUBJECT: Feedback on the Section Policy Workgroup’s Memo and Policy Documents

I. Introduction

On behalf of the Executive Committee of the Washington State Bar Association’s (“WSBA”) Juvenile Law Section (“JLS”), the following is our feedback concerning the Sections Policy Workgroup’s (“Workgroup”) proposals dated December 30, 2015 (the “Proposals”).

A. Executive Summary

First, we object to the procedure used to form the Workgroup’s recommendations. Our Section leadership was at a significant disadvantage in attempting to submit a coordinated response because while the Workgroup had months to draft its proposals, we were given only three weeks to respond in writing – despite the fact that our Executive Committee only meets monthly, and had already converted the January monthly meeting to a planning meeting to discuss our work over the next year. And, like other Sections, we strongly object to the formation of a Workgroup to resolve concerns about Section structure and policies that was not made up of a single Section representative, despite efforts from other Sections to participate. The Workgroup’s formation, goals and processes have been tainted by serious flaws which contributed to a flawed series of recommendations. We oppose those recommendations.

By way of background, ours is a relatively small section, made up of approximately 220 members, the vast majority of whom work in the public sector or in public interest, small or solo firms. Despite our relatively small size and our unique makeup, we have worked hard since our inception ten years ago to increase our membership, present high-quality low-cost CLEs for our members, weigh in on key pieces of legislation, and assist our members in networking efforts. We often hold our CLEs in partnership with co-sponsors, in order to avoid imposing any administrative burden on WSBA Staff, and to therefore avoid charging our members any more than the fee for Section membership. We have also managed to save a sizeable fund balance (for a Section of our size) of just over \$10,000 due to the hard work of our volunteer attorneys, the contributions of our members, and strong leadership within the Section. We have done this with very little administrative support from the WSBA and its Staff, and often *despite* significant barriers presented by the WSBA.

In our view, the Workgroup’s proposals would damage the long-term viability and success of our Section, and would render our hard work void. They re-write the relationship and role of the Sections within the WSBA, essentially stripping them of the autonomy, jurisdiction and authority

they enjoy under the WSBA Bylaws and under long-established practice. We write to request that these efforts be halted or greatly scaled back.

The vast majority of the Workgroup proposals seem to be a solution in search of a problem. To the extent certain administrative burdens created by the Sections require solutions, it would be more appropriate to identify those problems and in concert with representative Section leaders identify solutions that would, first, do no harm. We are happy to partner with the WSBA in attempting to move forward in this fashion.

We provide the additional comments below regarding two areas addressed by the Proposals: (1) Adoption of a standard Sections Charter; (2) Revision of WSBA Fiscal Policies related to sections.

B. Standard Sections Charter/Revision of Bylaws

The JLS rejects the notion of a standard Sections Charter. The WSBA Bylaws specifically contemplate that each Section will have its own bylaws and that they will be unique, subject to the single condition that they not be inconsistent with the WSBA Bylaws. The JLS is unaware of any provision in its bylaws or those of any other Section that is inconsistent with the WSBA Bylaws.

The JLS Bylaws call for two co-chairs elected to staggered two-year terms. The co-chairs must have been a member of the Executive Committee for two years, but need not have served in a particular position. Given that our Executive Committee, like our Section, is small, it is important to our viability that we have flexibility in this position. Also, our practice area is varied, and includes attorneys who represent opposing clients. Having two co-chairs ensures more diffuse leadership and therefore greater participation across our practice area. The Workgroup's proposals would eliminate this flexibility by requiring only one Chair, and requiring that the Chair have been Secretary/Treasurer first. While the proposed succession path is certainly one option, there is no logical reason to impose it as a mandate across 28 sections. Among other obvious concerns, in many cases, the Secretary/Treasurer may not want to or be able to become co-chair, and there might be other Chair candidates at the time.

The JLS would consider supporting limited and highly specific proposals to make the timing of Section officer elections consistent, but the JLS is not sure what other proposals would make sense to ease administrative burdens for the Staff, while not unduly impacting the ability of the Section leaders to govern. Because of the problems and concerns noted in the Introduction, however, the JLS believes a review of Section bylaws should be undertaken under a new, more inclusive, and less controversial process.

Further, uniform Section dues, as proposed by the Workgroup, would also be highly damaging to our Section. Our Executive Committee has set dues while taking into account that the vast majority of our members work in the public sector, or for public interest, small or solo firms. Most of our members pay their own dues. In exchange for Section membership, we provide high-quality CLEs, among other benefits. If we were required to charge a standardized amount

for dues that did not consider the unique needs of our members, we would likely lose many of our members, thus degrading the Section as a whole.

C. Sections Fiscal Policy

Ours is a smaller Section, with approximately 220 members. We were formed only 10 years ago. Despite our small size and recent formation, we have worked hard to establish a clear role for the Section among our colleagues by holding periodic CLEs, hosting networking events, and weighing in on key pieces of legislation. In a relatively short amount of time, we have grown our Section, delivered needed training to attorneys practicing in our field, and brought together attorneys from diverse backgrounds. Each of the last two years, with the co-sponsorship of the University of Washington School of Law, we have held annual CLEs highlighting key legal issues in our field, which are free to Section members. We have granted scholarships to allow attorneys to attend these CLEs. We have also given out bar study scholarships to law students committed to practicing in our field. And we have hosted networking events in more remote locations to increase our membership and member participation.

Despite our small size, we have saved a fund balance of over \$10,000, which we rely on each year to plan high-quality, low-cost CLEs. The administrative burden associated with our CLEs is not borne by the WSBA because doing so would require us to charge such a high fee that we would have few to no attendees. Instead, we partner with other organizations with which we have strong relationships, such as the University of Washington School of Law, that have co-sponsored our CLEs. In fact, we have often been able to present our CLEs *despite* the WSBA, rather than because of it.

As such, it is hard to understand how the administrative burden of JLS requires such whole-cloth changes to fiscal policy as those required by the Workgroup's proposals. These proposals would wipe out our fund balance, and presumably make it available to other sections, and even to the WSBA itself for its own operations. This is highly offensive, especially given that our fund balance results from the dues of our Section colleagues, the work of numerous volunteer attorneys and law students, and our own strong relationships with other organizations – often *despite* barriers presented by the WSBA.

However, if there are minor modifications we can make to further decrease the administrative burden of our Section on WSBA Staff, the JLS Executive Committee is willing to cooperate with WSBA Staff toward that end.

II. Conclusion

The Workgroup's Proposals would cause lasting damage to the Juvenile Law Section, and its members. The process leading up to the Proposals has been flawed and divisive. If the WSBA wishes to remedy a specific concern, it should clearly identify that concern and invite participation from the Sections in formulating a remedy.

This feedback is submitted by the JLS Executive Committee Co-chairs and the Secretary/Treasurer. The input of the remainder of our Executive Committee will be provided as soon as it can be obtained.

Sincerely,

Caedmon Cahill and Daewoo Kim, Co-chairs
Carrie Wayno, Secretary/Treasurer
WSBA Juvenile Law Section

Juvenile Law Section Executive Committee:

Caedmon Cahill, Co-chair
Daewoo Kim, Co-chair
Carrie Wayno, Secretary/Treasurer
D'Adre Cunningham, Dependency Committee co-director
Gwen Reider, Dependency Committee co-director
Shawn Sant, Juvenile Offender Committee co-director
Alexandra Narvaez, Juvenile Offender Committee co-director
Rebekah Fletcher, Civil Legal Needs Committee co-director
Brandon Stallings, At-large member
Lauren Roddy, At-large member
Hillary Madsen, Legislative Director
Daniel Ophardt, Legislative Director
Rachel Rappaport, CLE Coordinator

February 1, 2016

To: WSBA Sections Policy Workgroup

From: WSBA Legal Assistance to Military Personnel Section Executive Committee

RE: Response to Sections Policy Workgroup Memo and Proposed Changes (December 30, 2015)

1. The LAMP Section Executive Committee opposes the WSBA and WSBA Sections Policy Workgroup's proposed changes to section charters and bylaws. This memorandum outlines the bases of the LAMP Section's opposition and respectfully requests that these changes be rejected by WSBA's administrative leadership and the WSBA Board of Governors.

2. **Internal Section Management.** The proposed changes would infringe on and impair the ability of sections to manage their own affairs internally, especially those which are unique to each section. Each WSBA section was created by a group of lawyers sharing similar interests or practice areas, and each has its own unique manner of operations and how they serve section membership. While some of the proposals might potentially increase the efficiency of WSBA's assistance to the administration of sections, this modest potential benefit is significantly outweighed. These proposals overreach and directly interfere with the ability of sections to conduct business, advocate, and provide programming for the benefit of their members.

3. **LAMP section purpose.** The LAMP section differs substantially from other sections of the bar because its members represent many diverse practice areas and types of practice. For example, LAMP is comprised of attorneys from private and government sectors, in-house counsel, military members, non-profit attorneys – practicing in fields ranging from administrative law, to criminal law, to family law. What brings this diverse group together is our shared purpose of advocating, protecting and promoting legal assistance and representation to veterans, military members and their families. In addition to serving as the liaison to the ABA LAMP section and the local military bar, the Washington State Supreme Court has charged the LAMP section with managing its Admission to Practice Rule (APR) 8(g) program that offers military attorneys licensed in other states a limited license to practice in Washington State courts.

4. **Unique LAMP programming.** The LAMP section takes the Washington State Supreme Court directive to administer the APR 8(g) seriously. Indeed, LAMP conducts an annual fifteen (15) hour CLE credit program on Washington State law, practice and procedure that is required for active duty lawyers of the Army, Navy, Air Force, Marines, and Coast Guard to gain limited admission to practice under court rule APR 8(g). The purpose of the training is to enable active duty military lawyers to represent lower ranked enlisted military members and dependents in civilian court, and is vital to the protection of an otherwise vulnerable population that constantly faces exploitation by unscrupulous landlords, debt collectors, sales representatives, etc. This is an extremely vulnerable population, not just because they frequently fall under the poverty line (often qualifying for assistance programs like food stamps and WIC); they face many other challenges, such as deployments to war zones, having no family in the area, and rely solely on military attorneys to provide competent legal assistance and representation. With one of the largest military and retiree populations in the country, this is a statewide concern LAMP is addressing.

Notwithstanding the critical need for the APR 8(g) training, the LAMP section has faced a number of obstacles from the WSBA in providing this program, even though it has always been a revenue-positive event. Note that this is but one example of our section's unique programming, which always seeks to improve the quality of life for some of our state's most vulnerable members.

5. Response to Specific Proposals. After reviewing the policy proposals by the LAMP Executive Committee, the LAMP Section responds to the specific proposals as follows:

a. **Single Charter.** The LAMP Section opposes the creation of a single charter governing all sections. While not opposed to incorporating some functional charter changes that to align certain functions common to all sections, such as election periods and procedures, fiscal year consistency with WSBA, and executive committee composition, our section adamantly opposes charter consolidation or a single charter for all sections. Such a move would be disastrous and completely diminish section autonomy. Each section has its own unique mission and programming that is dissimilar and possibly in conflict with other sections, but still in line with its own mission. Any consistency gained by this proposal would eradicate the purpose for which individual sections exist in the first place.

b. **Section dues.** Sections membership dues vary greatly and are dependent on a variety of factors including the number and assortment of member benefits. It makes no sense to set one membership fee for all sections when benefits vary greatly because some sections' members may desire different or more substantial benefits than members in other sections. This change would likely result in some, if not most, sections having significant membership decline because members will not perceive that all sections provide the same value, which is what this change implies.

c. **Membership.** The LAMP section believes that imposing uniform membership criteria for all sections is detrimental to section autonomy, and inhibits the ability to seek out members who may provide a section with a unique perspective or be representative to a particular section but not eligible because of standardized eligibility for all sections.

d. **Term limits.** Imposing term limits is a complete anathema because it in no way relates to making the sections more efficient. It completely removes a section's ability to choose its own governance and allow qualified and trusted section members to continue serving, especially in situations where a qualified candidate is not available to fill the position.

e. **Meeting notification.** Imposing a five (5) working day meeting notification requirement will prevent a section from taking action on issues or legislation that arrive with little notice or time for action. This could greatly impede the LAMP section's ability to respond to legislation directly impacting the provision of legal services to veterans, military members and their families.

f. **Section fund.** Forfeiture of section funds to WSBA (and other sections) removes incentives for a section to conduct programming and events to raise funds for the benefit of section members and removes the ability for a section to pursue important long-term goals. Sections should retain control of their own finances and not have WSBA staff force sections to spend funds in ways they do not desire by threatening take away unused funds. The carryover and spending of section balances should be of no concern to WSBA unless such spending violates the section charter or other policies applicable to use of section funds for personal gain. Executive committees are aware of their fiduciary duties and realize the duty to maintain and use section funds for the benefit of the greater section membership.

Submitted by approval and on behalf of the LAMP Section Executive Committee.

Alex Straub

LAMP Section Chair

(206)349-1132

Militaryadvocate@outlook.com

January 21, 2016

Dear WSBA Sections Policy Workgroup Members:

I am writing as the Chair of the Labor & Employment Section, and on behalf of the Section's Executive Committee. We understand the Labor & Employment Section is one of the largest and fast-growing sections.

Respectfully and while we have no doubt the Workgroup and WSBA staff are well-intentioned, we oppose the Workgroup proposals, both in terms of process and substance.

Regarding process, only recently were we aware that before the holidays, in October 2015, a WSBA Workgroup was convened by the then-Board of Governors to review and propose potentially dramatic changes to how the WSBA Sections program operates or functions. On New Year's Eve (12/31/15), we understand the Workgroup issued draft policy proposals that would dramatically alter the Sections program. And now, there is a very short time being afforded to comment about the proposals.

In addition, there are no Section leaders on the Workgroup. There are 28 sections in the Bar representing various practice areas and fields of interests and, in general, the most active volunteers in the Bar. I understand at least 18 Sections oppose your recommendations. And I expect other Sections, who have not voiced their objections, are unaware of the proposals or unable to respond to them in the short time frame allotted for doing so.

As to the substance of your proposals, our objections include the following:

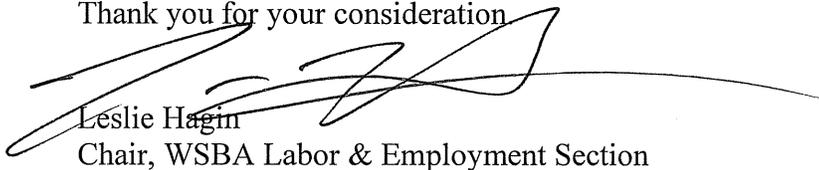
- Pooled financial resources. Currently each Section operates its own budget, and a portion of each Section member's section membership fee goes directly to this fund for programming specifically of interest and benefit to Labor & Employment practitioners. The Workgroup proposes to pool all section resources. On this approach, individuals' Labor & Employment membership fees and Section annual and mini-CLE dues would be used to fund activities of any and all other Bar section(s).
- Forfeiture of financial reserves. Through careful planning and a great deal of hard work over the years to increase our membership, make our annual CLE revenue-generating programs successful, and responsibly manage the money in our Section's accounts, our Section leadership has built up the Labor & Employment Section's accounts to ensure continued outreach and growth of membership, and continuity of excellent programming and other services to our Section members. This has allowed us, for example, to bring mini-CLE and networking opportunities to the membership state-wide – that is, including “East of the Mountains” (beyond merely Puget Sound) – at no additional cost to members; to sponsor labor-specific programs and networking opportunities at no additional cost to members, and to improve and expand our annual CLE programming. By way of further example, it has allowed us to provide grants for law school students each year, allowing them to serve in labor and employment summer internships. As we read the Workgroup's proposal, our Section's funds would be forfeited and placed in a one pooled fund for all sections.

- Lost autonomy. Volunteer Section leadership currently has some important autonomy in our budgeting and programming decisions. On the Workgroup’s proposal, these decisions would be subject to approval or veto by the WSBA staff. The proposals would also impose a “one-size-fits-all” governance matrix on all Sections – so, for instance, the Secretary and Treasurer roles on the Executive Committee would be combined into one person; and the executive committee members, already voted on by the Section membership, could not decide who should hold the officer positions in the most efficient manner, and based on who on the executive committee has actually shown themselves most willing and able to perform each officer role. Such proposed changes would overburden some members of the Section’s executive committee (in a large section like ours, we need a treasurer and a secretary, and it needs to be two people), and impair good succession planning specific to each Section.

We are concerned that these proposals, if enacted, will zap the initiative and energy of people on the Section leadership committees, hinder our ability to operate efficiently for the benefit of the members of the Section, and squelch the desire of people to volunteer their time and energy to serve in any Section leadership roles – all to the detriment of the Section’s memberships and the Bar.

In short, the Section of Labor & Employment opposes the process and the proposed policies advanced by the Workgroup. Membership in sections and section leadership is completely voluntary. And each section’s needs and interests are quite different. We believe it is common sense that individual’s membership dollars and energies should, in fact, go towards the sections they have elected to join. We are also very concerned about the lost autonomy over our programming and the finances we have worked so hard to develop and responsibly manage. The Labor & Employment Section is composed of and run by labor and employment lawyers. We do not believe the Bar’s staff understands the challenges we face better than we ourselves do.

Thank you for your consideration



Leslie Hagin
Chair, WSBA Labor & Employment Section

Anthony Gipe
Chair, WSBA Sections Policy Workgroup
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101 January 25, 2016

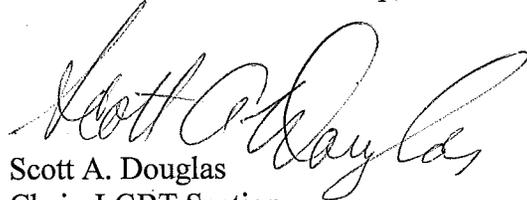
Dear Mr. Gipe:

On behalf of its members, the Executive Committee of the LGBT Section of the WSBA echoes the concerns raised by nearly every other Section of the WSBA regarding the changes to Section administration and financial control proposed by the Sections Policy Workgroup.

The Workgroup apparently comprised no representation from any of the WSBA Sections. This is inappropriate and unfair. The Sections who are directly affected by these changes should have been part of any review process from the start. This is no way to treat dedicated volunteers.

The LGBT Section is also alarmed by the Workgroup's proposals to usurp the autonomy of the Sections' leadership regarding benefits offered to Section members, programming, policies of the Sections, and control and expenditure of member dues and Section-generated income. The WSBA already charges each Section a per-member charge to cover the WSBA's expenses in supporting Sections and their membership. Each Section member elects to pay dues over and above the annual Bar dues to specific Sections which reflect their interests and practice; to pool all Section resources effectively negates an individual Section member's choice in selecting which Sections to join and in which to participate. The proposed changes also hobble the ability of Sections to plan for long-term goals and sustainability by absorbing any Section financial reserves into WSBA general coffers.

The Workgroup's proposed changes should be rejected. Any further proposed changes should be the product of new workgroup which includes significant participation from stakeholder Section leadership, and which performs its work openly and inclusively.



Scott A. Douglas
Chair, LGBT Section

MEMORANDUM

To: WSBA Sections Policy Workgroup

From: Low Bono Section

Date: January 22, 2016

Re: Opposition to Sections Policy Proposals

The Low Bono Section (LBS) strongly opposes the draft sections policy changes discussed in the WSBA memorandum to section leaders of December 30, 2015.

The LBS opposes the lack of opportunity for the volunteer leadership of the sections to participate meaningfully in preparing the policy proposals. In spite of the *appearance* of having provided opportunities for section leaders to provide input to the workgroup, it is apparent that the workgroup has proposed what are obviously preconceived changes to policy designed to deprive sections of our already limited autonomy, ignoring our input altogether. Had the section leaders had a meaningful voice in shaping the policy proposals, they would look nothing like those the workgroup proposed.

The fast-tracked process of pushing forward preconceived policy proposals demonstrates a complete failure of the workgroup to recognize the value that we, through thousands of volunteer hours each year, generate for the benefit of the WSBA, its members, and the public. The section leaders—as the most invested and dedicated of all section members—are the first stakeholders who should have been given a seat at the table and directly involved in the formation and drafting of proposed policy changes.

The LBS is a young section. The members of our executive committee do not have the long history of section-bar interactions that would inform a more thorough response to these proposals and this process. However, we join the opposition of the longer-standing sections. We share their interest in maintaining the existing autonomy of section leadership and having a seat at the table when discussing significant policy changes.

MEMORANDUM

January 20, 2016

TO: WSBA Sections Policy Workgroup
FROM: Real Property, Probate & Trust Section
RE: Sections Policy - Proposed Reforms

The Real Property, Probate and Trust Section (“RPPT”) strongly opposes the draft policy proposals outlined in the Memorandum dated December 30, 2015, from Anthony D. Gipe, on behalf of the Sections Policy Workgroup (the “Workgroup”) to the Section Leaders (the “Memo”). The proposed policies set forth in the Memo are misguided and should be rejected.

RPPT does not disagree with the concept that the Sections are under the authority of the Washington State Bar Association (“WSBA”) and do not have any independent existence without the WSBA. There seems to be a sense of frustration expressed in the Memo that at times the Sections do not follow WSBA policy. A couple of existing WSBA policies are cited that are thought to encourage this view of independence. If those policies are really the problem, then a targeted modification is certainly justified. However, the proposed changes proceed on the assumption that a wholesale revision is required to solve the problem. The exercise of effective and adequate supervision is a task of management. Changing bylaws, fiscal years, the way elections are held, and the way budgets are formulated is not going to solve what is essentially a management problem.

Some of the proposals, such as alteration of fiscal years, make administrative sense. The Sections should adhere to WSBA policies. We are not aware, however, that RPPT does not already adhere to such WSBA policies.

Ultimately, the Memo and its proposed policies are flawed for numerous reasons, including, without limitation, the following, which are discussed in more detail below:

- The Sections were not and are not part of the Workgroup. In fact, offers by Section leaders to participate as members of the Workgroup were rejected by the WSBA.
- They fail to properly value the work that the dedicated *volunteer* attorneys do for the Sections year in and year out with little assistance from the WSBA staff, who have been unable or unwilling to adequately provide Section support under the current system.
- The proposed Section charter would require that RPPT disband. It is the only Section with a dual discipline structure, which is not permitted by the “standard” charter.

- The proposed policies would harm RPPT members by reducing member benefits and, likely, increasing costs.
- The new policies interfere with RPPT's ability to attract and retain executive committee members.
- The fiscal policies outlined in the Memo are unclear and vague.
- The pooling of Section funds creates a disincentive for RPPT to continue to offer revenue positive programming to its members and devalues the volunteer efforts that have created RPPT's fund balance.

It is very clear from the Memo that the WSBA wants more control over the Sections. However, with more control comes more responsibility. The discussion of the various unique Section characteristics does not give any example as to how these variances have adversely impacted the WSBA, but, more importantly, there is no demonstration as to how a more standardized, cookie-cutter approach to the Section administration and pooling revenues, will reduce WSBA staff involvement and WSBA cost. One of the slides that is part of the Workgroup material is entitled "What Does It Take to Support 28 Unique Sections." There is not one description of WSBA staff involvement that will be reduced by standardization. If anything, because of the proposed enhanced activity of the WSBA in the financial aspects of the Sections and suggested staff management of the Sections, the staff time will increase, rather than decrease. Candidly, the WSBA does not have the staffing to offer the member benefits offered under the current system – how will it possibly provide the staffing necessary under a centralized system?

The Memo states that "[c]urrent WSBA Bylaws and section policies have also had an unintended consequence of impeding our effectiveness in working together for the good of all members." There are no examples given to support this statement. Even assuming the statement is true, there are no examples given as to how the proposed recommendations would address this issue.

RPPT's perception is that the unspoken objective of the new policy, despite representations to the contrary, is to: (a) discontinue providing continuing legal education; (b) preclude Section autonomy; and (c) seize Section-generated funds.

RPPT disagrees with most of the proposals outlined in the Memo. Adoption of these proposals will make it almost impossible for RPPT to run its section, which is to the detriment of its members, and ultimately, a detriment to the WSBA.

1. Formation of Workgroup.

The history of the formation of the Workgroup is not accurate or at least the written record suggests a narrower initial focus for the Workgroup. The July 2015, meeting minutes indicate that to the extent Section policies were discussed, it was solely in relationship to CLE cost recovery and the movement of the WSBA to the “C-1” business model for CLE activities:

Director McNally then advised that the third policy issue is related to cost sharing with Sections on CLE events. She explained that the current fiscal policy regarding *cost sharing for Section sponsored CLEs is not adequate to fully recover WSBA’s costs*; however, based on input from the Board and further conversations, the current policy and models will remain in place for FY 2016. She requested that a joint Board/staff Work Group be formed at the September 17-18, 2015, Board meeting *in order to draft revised Section policies, including a revised policy addressing cost-sharing of section-CLE programming*, on the following timeline: draft policies and circulate for comment by December 31, 2015; present final draft policies to Board for first reading at its March 10, 2016, meeting; and present final draft policies for Board action at its April 15-16, 2016, meeting. Governor Cava moved to approve the recommendation. It was suggested that a representative from one large section and one small section be included in the Work Group; however, it was explained that, since the policy will be addressed by the Board, it should be written at the Board and staff level, but that sections will continue to be included in the discussions. Motion passed unanimously.

Emphasis added.

It is worth noting that the minutes of the September Board of Governors (“BOG”) meeting are devoid of any mention of the Workgroup, so however the group was formed, it was either done in the absence of a public meeting or simply on the initiative of the WSBA administration with no BOG input. Again, there is no connection between the recommendations made in the memo and the original purpose of the Workgroup – how do standardized bylaws and pooling revenues have any impact on CLE cost sharing?

Further, one of the “Core Principles” for the Workgroup is “Transparency and participation throughout the process is critical.” Using this as a measure of success, the Workgroup is a failure. It requested “input” after the process was complete, which is the antithesis of transparency and participation. In fact, transparency was doomed at the outset when the BOG rejected the idea that representatives from the Sections be included in the Workgroup.

2. The Proposed Policies De-Value the Contributions of Section Volunteers.

The WSBA seems to have forgotten or disregarded that all members of the RPPT executive committee (and those of other Sections) invest a tremendous amount of *volunteer* time and energy in order to continue to run the Section, hold CLEs, review legislation, draft new legislation, recruit new members to the Section, provide mentoring, training, and networking opportunities for members, and recruit people to serve on the executive committee. There is no waiting list for this work. We have to recruit and convince people to *give* their time and energy. The Memo and the proposal contained therein seem to assume that lawyers will continue to serve under the new regime. Lawyers have multiple opportunities for service. The WSBA does not enjoy a strong relationship with its members. The Sections do. The restructure of the Sections contemplated by the Memo will compromise a volunteer base, which hurts the image and the revenue potential of the WSBA.

3. The Workgroup's Policies are Based on a Flawed Foundation.

The entire analysis by the Workgroup begins with a flawed foundation:

Unlike WSBA committees, councils, task forces, and boards (which have charters), Article XI of the WSBA Bylaws requires each section to have bylaws patterned after the WSBA Bylaws. Under current WSBA fiscal policies, Sections are unique in: (1) having their own fiscal policies, (2) having expectations of exclusive usage of revenues their activities generate, and (3) being allowed to build and carryover fund balances from year to year.

An analysis that begins with comparing sections to “committees, councils, task forces, and boards” is fundamentally flawed. None of those organizations are revenue-generating. They are each created to solve a problem identified by WSBA. Sections, however, are intended as a member benefit – a benefit for which members pay specifically. The current structure incentivizes Section leadership to provide member benefits that result in Section growth and thus, provide an increasing benefit to members.

RPPT is a thriving Section because we have had thoughtful, pro-active, and highly competent leadership over the years. Part of the reason RPPT can attract quality leadership is because of the benefits available to leadership.

The current policies reward Sections that are fiscally responsible. It is irresponsible to create a system that de-emphasizes fiscal responsibility. RPPT is very concerned with the suggested revised fiscal policy, which provides that “While it is a goal for all programs to at least pay for themselves, *programs deemed to be in best interest of WSBA and its members, the section, and the public could also be supported by the WSBA Sections Fund.*” (Emphasis added.) Each Section’s leadership should be able to determine, on a case-by-case basis, whether it is a benefit to its members to use revenues generated by member dues to subsidize programming offered by another Section, or to partner with another Section to offer programming that may otherwise not be economically viable. This mechanism already exists and

fosters cooperation among Sections. A policy requiring that Sections use member dues to subsidize programs that do not benefit its members could create resentment between the Sections and undermine the motivation of a Section to leverage its volunteers to create revenue positive programming. Pooling of section funds to support programs that run at a loss also seems like an illogical way to look at things – if no one is paying to attend the CLEs, then perhaps such CLEs are not in the best interest of the members.

4. Because RPPT is a Two Discipline Section our Executive Committee Must be Larger than the Workgroup Policy Permits.

RPPT **opposes** any change to the number of individuals serving on the RPPT executive committee. RPPT is a two discipline section: Real Property and Probate & Trust. As such, we have a large executive committee because we need to have the requisite number of people for each discipline serving on the executive committee. Including officers, our executive committee consists of nineteen total members as follows: chair, immediate past chair, chair-elect, real property council director, probate & trust council director, four members each on the real property council and probate & trust council (eight council members), a newsletter editor, an assistant newsletter editor (who takes the minutes off all meetings), a web editor, an assistant web editor, an emeritus member, and the YLC Liaison.

Because of the close nature of our two disciplines (i.e., real property and probate and trust), at the national level and within many states, the two practice areas are combined into one section. Many of our members also practice in both areas. We need to have a larger executive committee in order to effectively cover the two disciplines and it would not make sense for the Section to have to disband in order to meet the new requirements set forth in the Memo.

Further, the WSBA just approved a pilot program for RPPT, which would further increase the number of members of the RPPT executive committee. Specifically, RPPT created a fellows program for new and young lawyers, which is modeled on the American Bar Association RPTE Fellows Program. If the RPPT fellows program is successful, we would be adding four new *non-voting ex officio* executive committee members to the RPPT Executive Committee. This highlights the mixed message being sent by the WSBA. One arm of the WSBA is approving a program that will benefit the RPPT membership and new and young lawyers and develop the future leaders of the Section, while another arm is specifically working to limit the Section's ability to include these new members on our executive committee. This sends a mixed message.

All of the positions on the RPPT executive committee are imperative to running RPPT smoothly each year. RPPT would not be able to review and comment on the number of bills we do each legislative session (RPPT routinely reviews legislation and sponsors new legislation. Last year, RPPT reviewed approximately 40 bills. Prior years have seen RPPT reviewing upwards of 60 – 70 bills.), put on five high-quality CLEs each calendar year, produce four newsletters with high quality articles each year, have a website with timely, relevant and searchable data, or provide the other benefits we provide our members without the participation

of all of the members of our executive committee. Our large size provides a fertile training ground for younger lawyers who routinely serve on the newsletter editorial board, on legislative sub-committees, and as assistant newsletter and assistant web editors. We also benefit from the wisdom of an emeritus member who has served on our RPPT executive committee in the past.

If we are forced to reduce the size of our executive committee, member benefits will decrease and we will certainly not be able to participate in legislation to the extent we do now. Alternatively, RPPT may be required to divide into two sections – one for real property lawyers and one for probate and trust lawyers, which will increase the cost of operating two sections and will dilute the ability for collaboration and cooperation on mutually beneficial programs.

5. Uniformity Will Decrease RPPT Member Benefits.

The effort to homogenize every Section does not make sense. One of the reasons that RPPT is large, by every measure, is because there is a huge number (as a percentage) of lawyers in Washington State practicing real property law and probate and trust law. The same cannot be said for the number of attorneys in smaller Sections. To align all operations, as proposed, disregards the fact that RPPT has more attorneys to provide member benefits to in a year than any other Section.

RPPT has no confidence, given the effort to homogenize Sections, that we will be allowed to continue all of our CLEs and our Mid-Year Conference. RPPT has received consistently poor service from WSBA CLE staff (and the good staff members come and go too quickly). It is highly unlikely that WSBA CLE staff would be able to help us project the financial outcome of a CLE and has absolutely no ability to determine if a program is of value to Section members. This has been one of the main reasons the Sections exist.

In the name of consistency and fairness, Section benefits (such as our CLEs and our Mid-Year Conference) for our members may be eliminated because those benefits do not exist for the membership of all Sections. It is impossible to reach any other conclusion based on the effort expressed to make all sections identical:

... all sections would be able to propose beneficial programs, as the financial outcome of the program is no longer directly linked to the individual section's financial resources. WSBA staff would work with Executive Committees to determine whether a proposed program is likely to result in profit or loss, or break even. While it is a goal for all programs to at least pay for themselves, programs deemed to be in best interest of WSBA and its members, the section, and the public could also be supported by the WSBA Sections Fund.

The new policy provides no assurance that fiscally responsible Sections like RPPT will be able to continue the member benefits it now provides (and pays for with Section raised funds).

Simply put, the new policy appears to compel RPPT to pay for the CLEs and other member benefits offered by other Sections resulting in insufficient funds to support the number, type, and quality of member benefits currently offered by RPPT.

6. Dues Must be Kept Low.

RPPT **opposes** any change where WSBA would set section dues. RPPT has purposefully kept section dues low for members, even as WSBA has raised the per member charge. RPPT is highly motivated to offer our members benefits at a low cost to members. We have also purposefully kept section dues low to make membership in RPPT affordable to new and young lawyers and those in smaller firms that do not pay for extras such as section dues. Any increase to our dues will result in loss of membership, especially if it is coupled with a decrease in the RPPT-specific member benefits so that benefits can be provided to other Sections that are not financially sound.

The Memo states that the WSBA "... will set annual dues that will be the same for all sections, and defines broad criteria for Voting and Subscriber section memberships. These recommendations are expected to reduce barriers to section membership." The implication is that current practices inhibit membership and participation in the Sections, but no example is provided as to why that might be the case. The Memo also states that the "WSBA is uniquely situated to set dues at a level that will support and sustain section activities as a whole." There is no factual support for this statement. What data supports this position?

Further, there is reference in the Memo to covering administrative support costs from a portion of all dues and that as a result, members would no longer see "cost as a factor in joining one section rather than another." That statement is ambiguous. Would there be a flat administration fee for participating in a Section, which would be the same regardless of how many sections are joined, or would each Section charge an amount for "dues" and then an administrative fee added like a sales tax? Whatever the method, the risk is that the administrative fee will prove to be an irresistible source of supplementary budget revenue for the WSBA to supplement shortfalls in general revenue, thereby decreasing financial transparency.

7. The Proposed Policies Do Not Permit RPPT to Train and Develop its Officers.

RPPT **opposes** any change with respect to the number of officers. RPPT has five officers: Immediate Past Chair, Chair, Chair-Elect, Real Property Council Director, and Probate & Trust Council Director. Because RPPT is a two discipline section, we need the five officer structure that has been in place since inception in order to make sure both disciplines are covered by the officers, have effective coverage and leadership for CLEs and legislation, and to provide for training and development. The officers alternate by discipline. If the Immediate Past Chair is a real property lawyer, the Chair will be a probate and trust lawyer, and the Chair Elect a real property lawyer. The Chair Elect acts as the treasurer.

Part of the effort with respect to revising officer positions is: “Clear expectations of the Secretary/Treasurer with regard to minutes will promote more consistent and timely communication to section members than is currently the case.” RPPT is unaware of any concerns about its members receiving copies of meeting minutes. RPPT routinely and timely makes the executive committee minutes available to its members on its website. Further, it appears there is an attempt to combine the two positions of secretary and treasurer. This seems unnecessary. With respect to RPPT, the chair-elect acts as treasurer and secretarial duties are covered by the assistant newsletter editor, who takes minutes of all meetings.

8. Meetings – RPPT Seeks Clarification.

Is the WSBA suggesting that executive committee meetings be public? Having our meetings be public seems unnecessarily complicated as it would require additional logistics and expense. If our meetings are open to the public then we would need to have a location that would allow that access. At present, the law firms for which executive committee members work currently donate space for our executive committee meetings. Use of donated space keeps the cost of these meetings as low as possible. This would no longer be possible if we are required to have public meetings.

As stated above, minutes of our meetings are posted to the RPPT website and our votes are part of that record. We have not had section members request attendance at meetings or that meetings be public. We are concerned that public participation will not add any benefit and will in fact have a chilling effect on our discussions as members will feel less free to speak candidly.

9. Changes to RPPT’s Election Date Is Unnecessary.

The description of the new election process is somewhat confusing. RPPT has a self-perpetuating board and there are very good reasons for that. It is unclear whether the proposal is to alter that arrangement; if that is the proposal, then the Memo should explicitly state it so the merits can be openly discussed.

If the proposal is to alter the election process, then RPPT **opposes** any change to the RPPT election process. RPPT has a nomination process and holds a business meeting each year at the RPPT Mid-Year Conference in June where new officers of the executive committee are elected by a voice vote. Other positions on the executive committee, such as the assistant newsletter editor, assistant web editor, and emeritus member are appointed each year by the current chair. RPPT holds elections and makes appointments this way so that the chair-elect can then run his or her first meeting as chair at the executive committee meeting held during every RPPT Mid-Year Conference and all new executive committee members are in place and ready to begin their terms of service.

The timing suggested by the WSBA would not enable “sufficient time for orientation of new section leadership.” Orientation within the RPPT executive committee happens on the ground as everyone dives into his or her respective role each June. If the WSBA wants to hold orientation meetings in the fall for Section leadership (similar to the meetings held each fall to educate new section leadership about legislation), we would be open to that idea and all of our executive committee members would be in place well before any such meetings. Such orientation meetings, however, have nothing to do with our election process and how we run our Section year-to-year.

With respect to all of the recommendations concerning officers, duties of officers, executive committee members, and elections – the Memo ends with a statement that the revisions will “free up WSBA staff time to support substantive section activities.” Again, there are no concrete descriptions of what will change at the WSBA staff level. The description for these recommendations leads to the conclusion that actually more staff time will be required to monitor these activities as opposed to reducing staff time.

10. The Fiscal Policy is Unclear.

The information posted on the WSBA website concerning the Workgroup does not provide any significant information about the Sections (i.e. Section by Section membership and cumulative budget surplus, activity for each Section, FY 2015 surplus or deficit on a Section by Section basis, etc.). It does appear to show, however, that for FY 2016, total Section revenue will exceed section costs.

The fiscal policy set forth in the Memo raises more questions than it answers.

- How much will members be asked to pay for every Section?
- How will the pooled Section dues be allocated?
- How will competition between the Sections for the pooled funds be managed?
- What happens if a Section budgets for items it then does not carry out and that “ties up” funds for that entire fiscal year? Would that limit the programs other Sections are able to provide?
- How would Sections have confidence that offered programs will be funded year-to-year?
- If other Sections start wanting more money but they do not contribute much to the pooled funds will the WSBA tell them “no” in order to allow financially productive sections like RPPT to continue to provide the programs we want to provide?

- Are there any guarantees about the percentage of membership dues that will be available to the Sections in the pooled fund?
- We would like more information about the allocation of \$700,000 of expense to section operation. How was this number determined? What WSBA provided services to the Sections generate this expense? Is this separate from the allocation of expenses for section sponsored CLEs? How will this number change with these proposals? Is there really so much time consumed by “administration” in determining particular Section policies?

Several years ago WSBA membership voted to cut dues that previously helped fund general benefits. By pooling Section funds and setting membership dues, the WSBA will be taking revenue from dues that section members have voluntarily elected to pay specifically for the benefits that Section membership affords and will be redirecting this revenue to fund general benefits that WSBA members do not to fund and have already specifically voted against.

If Section funds are pooled, WSBA members will have no incentive to join a specific WSBA Section. It will be very difficult to entice people into paying RPPT section dues knowing that those dues will be utilized for a different Section’s benefits. As a result, Section membership will decline as the benefits to each Section decline. WSBA members are already paying bar dues to the WSBA to receive general benefits. The volunteer payment of Section dues relates directly to the benefit that an attorney receives from being a member of a *specific* section. Therefore, Section funds should remain committed solely to the Section that built the fund balance.

11. This Policy is a Repeat of a Sections Fund Grab in the 1990s.

One of the benefits of RPPT’s emeritus member is that we have a built-in institutional historian. The Memo and its proposed policies is largely a repeat of an “asset grab” that occurred in the 1990s. In the early 1990s, the Sections had large reserves. The WSBA simply swept the reserve accounts. To quiet criticism then, WSBA promised that it would segregate Section funds so that Sections could take comfort that such an asset grab would not occur in the future. The proposed policy represents the WSBA going back on a promise it made to the Sections nearly 30 years ago.

Our understanding is that in the early 1990s, RPPT had accumulated a budget surplus similar to the current level. Other Sections had surpluses, but some sections operated at a deficit – just like today. The WSBA was having some financial issues and the new Executive Director called all of the Section chairs to a meeting and told the Section chairs that surplus funds that the Sections believed they had did not actually exist. The WSBA had not separately accounted for those funds and, since the Sections might actually think the surpluses were available to spend and budget expenses in excess of current revenues (thereby causing an added expenditure to the

WSBA that would exacerbate current financial distress), the surpluses were being eliminated. Every Section started at a zero based budget. However, what was promised by the Executive Director and the BOG was that on a going forward basis, the Sections would have the benefit of any surplus funds and the WSBA would account for the surplus in a manner so that the funds would be available. Now, almost 30 years later, it is suggested that the BOG break its word and take the money for the same reason – finances are tight and the WSBA has spent its reserves. Perhaps current WSBA staff members are unaware of the prior events, but the current policy simply reflects the deal that was reached in the early 1990s and there is no reason to change that policy.

RPPT's healthy fund balance affords the Section the ability to participate in other WSBA activities and support requests that are of benefit to our members. Recently, RPPT has used its funds to enhance member benefits such as revamping the RPPT website (including making the content searchable), digitizing our newsletter including embedding hyperlinks to citations within the newsletter, and spending funds to make the newsletter available in a format that can be read on a tablet or phone. We routinely pay for outgoing members of the Executive Committee to attend the midyear meeting so they can overlap with the incoming members and provide institutional memory during a time of transition, facilitating continuity and efficiency on the committee. We have also hosted new and young lawyer events, offered scholarships to CLEs, and recently created a fellows program for new and young lawyers. RPPT's fund balance is a result of the hard work the executive committee puts into creating CLEs that are of interest to our membership and have dynamic speakers. Our fund has grown as a result of these efforts and we are in the fortunate position of making money to spend on our section faster than we can actually spend the money.

Although RPPT has recently been successful in spending funds on member benefits, we have attempted *many* times over the years to spend down our reserves via scholarships to CLEs, free tuition to new and young lawyers, paying from our fund balance to continue providing hard copies of CLE materials, and any number of other ideas that the executive committee has come up with to address diversity, new lawyer education, and other areas we see as critical to the health and growth of the Section and of importance to our members. Until this past year, however, RPPT has been repeatedly told “no” with respect to our ideas. Specifically, over the past several years, RPPT has been told it cannot use its funds to (among other ideas):

- Pay to produce hard copies of CLE materials for all individuals attending RPPT-sponsored CLEs;
- Offer free or reduced tuition to RPPT-sponsored CLEs;
- Create low cost, skills oriented CLEs for those practicing for less than 5 years;

- Offer scholarships to new and young lawyers to attend the RPPT Mid-Year Conference;
- Pay a small stipend to national caliber speakers to enhance the quality of offerings at RPPT CLEs; and
- Pay for judges and commissioners, who would otherwise have to use their sick time, to speak at RPPT-sponsored CLEs. (RPPT received significant pushback from the WSBA for the 2015 Spring Trust and Estate Litigation CLE when the co-chairs asked that the judge/commissioner speakers be reimbursed for their time. RPPT was finally able to get the matter resolved favorably, but not without significant argument and hassle.)

It is hypocritical (and frankly a bit unfair) for the WSBA to criticize RPPT for having a large fund balance when the WSBA has been a major roadblock in the spending of our fund balance on programs we see as critical to the growth of our Section. It is also disingenuous for the WSBA to cite the RPPT fund balance (or any section fund balance) as a financial risk when the WSBA already exercises veto power over the expenditure of those funds. Regardless of past history, and as a matter of equity, it is important that the resolution of the RPPT surplus be done in a manner that benefits RPPT members, who, after all, were responsible for creating the surplus in the first place.

Despite the areas in which we are told we cannot use RPPT funds, RPPT has been able to support other activities because of our RPPT fund balance:

a. The WSBA put together a New Lawyer Education program for February 2016 regarding residential real estate purchase and sale agreements. The CLE will be practical advice – nuts and bolts issues, with the goal that the lawyer emerges from class with the information necessary to sit down with a client. The CLE is to be webcast only and will be a three-part series consisting of two hours per day.

RPPT was asked to sponsor a networking event on February 16th, the last day of the three part series. Sponsorship would be \$800. The WSBA provided suggestions as to where the event would take place, the time, and that the event would be open to all section members. As we were just asked by the WSBA to sponsor this event, it had not been anticipated and was not in our budget for the 2016 fiscal year.

RPPT is always happy to participate in these types of requests because we recognize the importance of networking, education, and working with new and young lawyers. However, RPPT will no longer be able to support or participate in these types of events if we have no ability to manage our fund balance, budget for these types of opportunities, or even know what funds are available for RPPT's use.

b. Each year, RPPT is asked to fund a First Responders Will Clinic. This clinic works with first responders (such as firefighters) to prepare estate planning documents. This clinic does important work and many RPPT members volunteer for the clinics (which are held all over the State of Washington). RPPT is able to help with this important work because of our fund balance and because we budget for this year in and year out. As mentioned above, however, we would be very concerned that we would not be able to continue helping to support this work (which our members participate in) if we have no ability to manage our fund balance, budget for this clinic, or even know what funds are available for RPPT's use. Further, should the WSBA determine that this expenditure is not important, we will be faced with having to communicate to the clinic that we are no longer able to support its important work.

12. Conclusion.

These new policies will give RPPT little to no autonomy, will inhibit our ability to provide the kinds of programs we want, and will make it extremely difficult to recruit future members of the executive committee who are willing to do this type of work.

The Sections provide a vital interface between the WSBA and its members. The relationship should be mutually supportive. There is one observation in the materials that the Sections do not seem to be able to increase their membership from 30% of the total WSBA, and this fact is presented as a demonstration that the current policies toward the Sections are failures. What have the BOG and the WSBA staff done to promote Section membership? That should be the ultimate focus – will the implementation of these proposals enhance the attractiveness of participation in Section activities, enable the executive committees to better function, and enhance the delivery of benefits to Section members. For the most part, RPPT believes the answers to these questions is “no.”

In addition, the BOG should be open in its communications with the Sections. If the BOG wants to get out of the CLE business or change its delivery methods and does not see a role for the Sections in that environment, then it should simply say so. ***The people involved in Section leadership for RPPT are dedicated professionals who have excelled in their area of practice and have willingly contributed their time and skills to further the WSBA goals, provide assistance to the Section members, and enhance the profession.*** We deserve to receive direct and honest communications from the WSBA and the BOG rather than being drawn into a dance of bureaucratic process, hidden agendas, and proposals driven by pre-conceived outcomes.

RPPT can continue to grow and build under the current, existing system. RPPT has proven that, year after year. We do not believe that, under the proposed revisions, our Section will have the autonomy to institute the programs and member benefits that generate success for our Section. That will be a devastating blow to our members and to all Sections in general. The proposed policies set forth in the Memo are misguided and should be rejected.

cc: Anthony Gipe
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Robin Haynes
G. Kim Risenmay
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Michael Safren
Scott Osborne
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MEMORANDUM

TO: WSBA Sections Policy Workgroup

FROM: Senior Lawyers Section

RE: Sections Policy – Draft Proposal for Modifications

January 22, 2016

These comments are submitted on behalf of the Senior Lawyers Section ("SLS") to the draft recommendations of the Sections Workgroup ("Workgroup") contained in a memorandum dated as of December 31, 2015 (the "Memo"). Due to time constraints, SLS reviewed only a limited number of the Workgroup recommendations, but those that were reviewed do not further the mission of the SLS to serve its members. The issues identified in the Memo concerning governance and financial policies of the sections should be the subject of further study with greater and meaningful input from the sections.

As an initial matter, the process for section participation in the review was not designed to promote meaningful input from the sections. The SLS was advised at its executive committee meeting on January 19, 2016 of the Memo and requested to submit comments by **January 22nd**. Even assuming that the Memo was available for comment at the end of December, there still was insufficient time for the SLS executive committee to review it, exchange views and present detailed and thoughtful comments. There is also the inherent contradiction of providing "input" at the end of the process after the product has by in large already been produced.

The SLS has a modest membership and maintains a small surplus that has accumulated over the years. The section sponsors one full-day CLE each year that has been well-attended and, the executive committee believes, well received. The members of the executive committee are all volunteers who donate their time in order to provide a positive experience to the section members and other members of the Bar.

The Memo s emphasizes the personal liability of section executive committee members for losses incurred in section programs. At page 10:

Personal Liability. The Current and Suggested Revised Fiscal Policy both reference WSBA Bylaws, which state that personal liability will and would be incurred in the event expenses in excess of funds budgeted or approved outside of the annual budget process, or expenses incurred not in accordance with the

policies of the Board of Governors or in conflict with any part of the WSBA Bylaws.”

The Memo seems to indicate that the WSBA will interpret these policies to impose personal liability on executive committee members if there is an unanticipated loss associated with section-sponsored programs. This policy should be revisited, since it is doubtful that any member of the SLS will be willing to serve on the executive committee if it is policy of the WSBA is to make executive committee members guarantors of the financial success of section programs. This is particularly true if section's positive fund balance is appropriated by the Bar, thereby eliminating any financial cushion.

The governance procedures outlined are unclear as to how members of the executive committee will be selected in the future. There is a discussion of elections conducted under WSBA supervision, but the nominating process for executive committee members is unclear. It is unclear whether this new process will result in a group of volunteers that are willing to donate their time and energy to the section.

The Memo's suggestion of uniform dues is also confusing in its discussion of how the dues will be established. It is not clear from the Memo what will be gained from seeking uniform dues for all sections. The procedure would, however, create the perception that the higher amount will be a hidden subsidy for other administrative activity.

Given the nature of the SLS, its members have a longer-term perspective on the WSBA and section activities. Our members have learned that the practice of law is a privilege which should serve the public interest and the public interest is served best in disputes when the opposing attorneys know and respect one another. When many of SLS members began practicing law, a significant number of the lawyers in the state would gather at least annually to attend seminars and associate with one another in a social setting. As the Bar increased in size, the sections and their meetings took the place of annual meetings as a forum for lawyers practicing in similar areas to gather, become acquainted and create professional relationships. The sections provide a valuable opportunity for lawyers to meet, study, converse and become efficient in dealing with one another, all of which ultimately benefit the public by expediting resolution of client issues. The WSBA, the practice of law and the professional environment have moved on from the days when most of the SLS members began practicing, but part of the WSBA mission remains to encourage lawyers who work in common areas of practice to meet, educate one another and learn to solve problems together. The sections further these goals and the WSBA should adopt policies that encourage and promote section activities.

SLS is in favor of adjusting any section operations or governance to reduce expenses and make it easier for the sections to pursue their activities. The Workgroup seems to have concluded that wholesale governance and fiscal changes are necessary, but the changes do not relate to any specific operational goal. Frankly, it is not clear from the Memo what role is envisioned for the sections in the future. The Memo is the product of a flawed process and the limited number of recommendations that the SLS reviewed reflect those process deficiencies. SLS

suggests that the process be done again with real input from the sections and specific goals to be achieved established by the WSBA.



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Washington State
Bar Association

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We help solo and small practice attorneys to ethically conduct a profitable, satisfying business by acting as a clearinghouse for qualified law practice management and technology information.

January 22, 2016

Anthony Gipe
Chair
WSBA Sections Policy Workgroup
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Re: Feedback of the Solo and Small Practice Section concerning the Workgroup's December 30, 2015 memorandum

Dear Mr. Gipe:

On behalf of the over 1,000 members of the Solo and Small Practice Section, we extend our thanks to the Sections Policy Workgroup. Sections are the Bar's most valuable asset to provide direct engagement with its members and we applaud the effort to ensure they remain vibrant. Having reviewed the Workgroup's December 30, 2015 memorandum, our Section leadership offers the following feedback.

In a recent referendum vote, Bar members spoke in a loud and clear voice. We said that the Bar was failing to provide appropriate services to its members. The Workgroup's proposals, which would cripple sections, demonstrate that the Bar is failing to heed the warning delivered by its members.

The Workgroup proposes to pool the financial resources of all sections. It proposes that those monies be redistributed by the Bar's professional staff to support programming that Bar staff endorses. It proposes to seize the financial reserves of all sections and appropriate these to the Bar's general fund. Meanwhile, section leadership is stripped of autonomy. The Workgroup proposes to supplant the judgment of elected section leadership with the decisions of administrative staff. These proposals are the product of a frenzied three-month sprint by Workgroup, which proceeded with virtually no meaningful input from the sections.

This letter outlines our chief criticisms and voices our strong opposition to the Workgroup's proposed policies.

Sections lacked meaningful participation in the Workgroup

In its New Year's Eve memorandum¹ the Workgroup represents itself as having reached out early and often to section leadership for collaboration and input. Nothing could be further from the truth. By example, on October 21, 2015 the Workgroup circulated a brief, seven-item survey to section leadership. The survey contained no hint of the sweeping policy revisions the Workgroup now clearly had in mind *ab initio*. Quite to the contrary, survey questions suggested that the Workgroup would be working to support rather than undermine sections ("Q5: "What suggestions do you have about how the WSBA should support 28 sections, serving over 10,000 members?").

Indeed, the Workgroup's proposals should come as a shock to the Board of Governors (BOG). When the BOG voted to create the Workgroup in July 2015, the stated purpose was to examine cost sharing in section-sponsored CLEs. The July minutes indicate nothing about the sweeping role that the Workgroup has apparently designed for itself.

Our Section leadership was blindsided by the radical policy proposals advanced by the Workgroup's New Year's Eve memorandum. This was the first time the radical scope of the Workgroup's intentions came to light. Though the Workgroup has intimated that will entertain only alternate policy proposals, it is farcical to imagine that volunteer section leadership could meaningfully formulate such proposals in the scant 22 days permitted for response. Indeed, the Workgroup's January 19, 2016 meeting focused largely on discussions of implementation, suggesting our Section's feedback is already considered irrelevant.

While we do not concede that the Workgroup's procedures were adequate, nor that its proposals are within the scope of its BOG-authorized mandate, we offer the following critiques of its substantive proposals.

Budget autonomy is critical for member service

Currently the financial resources of each section directly mirror the interests of WSBA members. Since section resources come from section membership dues, WSBA members vote with their pocketbooks about the value of a section's activities. The Workgroup proposes to replace that approach with a top-down scheme where the Bar's professional staff make judgment calls about which section activities – and which sections – convey value to WSBA members. We feel the membership itself is better positioned to make those decisions for itself.

Furthermore, the fact that sections lack distinct legal identities says nothing about whether they ought to operate with some degree of financial freedom. In large organizations it is common to allow divisions to operate with their own budgets. This is most crucial, in fact, when the sub-entity serves interests that may be less attractive to the organization as a whole. The current

¹ Although dated December 30, 2015, the memorandum was not actually delivered to section leadership until the afternoon of the following day, New Year's Eve.

structure allows sections to prioritize the niche interests of its respective WSBA members, rather than hope such interests are consistently served by the Bar.

Finally, it is unrealistic to impose the same membership fee across all sections. Sections should continue to have the ability to set their own, BOG-approved fees, allowing that fee to reflect services offered by the sections.

Our members' hard-won savings should not be seized

Through years of responsible financial planning our Section has built up a substantial reserve fund. This strategic goal was long pursued to ensure we would have the ability to provide continuity of services to our members. The strategic reserve, of course, was made possible through the individual financial contributions of dues-paying members. To seize those funds and redistribute them to other sections is unjust to the Bar members who voted with their pocketbooks in *our* Section's activities. As we read the proposed charter, our Section's rainy day fund would be poured into the joint sections coffer and shared with others as unelected administrative staff deems fit.

The Workgroup maintains that section reserves are a fiction, since the Bar was not accurately accounting for the real cost of supporting sections. But the Bar should not be able to change the rules after the fact about what constitutes sound financial planning. Our Section has dutifully prepared a revenue-positive budget each year that has been approved by the Bar. We are exceedingly skeptical of the post hoc accounting epiphany that the Workgroup uses to justify taking our reserves.

Sections are uniquely positioned to provide excellent educational value

As with budgeting, the Workgroup proposes to let the Bar call the shots on what CLE opportunities are valuable to WSBA members. Currently, sections are able to autonomously direct their own programming, to ensure their membership is best served. The proposed revisions, however, give the Bar veto power on section programming, effectively putting the Bar in the driver's seat. The Bar already has vast educational opportunities outside the section programming. Allowing the Bar's professional staff to also control section programming is unwelcomed, unhelpful and a mistake. We believe that the volunteer attorney leadership of sections is better situated to make informed programming decisions for a section's membership.

The Bar should have no veto power over the election of Section leadership

The draft charter states that a section's executive committee "shall represent a balance of perspectives among the section's membership." Since executive committee members are elected by the membership they serve, this proviso suggests the Bar would attempt to exercise influence or veto power over the election of leadership. We believe section members are best suited to choose their own elected representatives. We note that in the case of our own leadership the

democratic approach has rendered an executive committee representing diversity of practice area, gender, geographic location, sexual orientation and ethnicity.

The Bar should not appropriate Section funds for generalized Bar expenses

In its draft financial policy the Workgroup proposes that “The WSBA Sections Fund [be] *prioritized* for the support of the sections.” The clear implication is that the Sections Fund could also be used for purposes other than supporting the sections. That is unacceptable. When WSBA members elect to join a section, they reasonably expect the associated cost to go towards Section activities. (Leave aside that the members assume the cost will go towards the Section they actually joined). It is difficult to imagine how the Bar could justify to its members taking their wholly voluntary section membership dues and using those monies to pay down general expenses of the organization.

Sections’ leadership structures are different for a reason

Workgroup proposes a one-size-fits-all leadership structure that is poorly suited to the larger sections. For small sections it may be perfectly feasible for a single individual to serve as a joint Secretary/Treasurer, as proposed. In larger sections this would be a crushing time burden. Time commitment aside, the Treasurer and Secretary positions attract individuals with different skill sets. In the Solo and Small Practice Section we have a numbers-smart Treasurer and a wordsmith for a Secretary. Neither would care to – nor agree to – perform the other’s job. Furthermore, neither our Treasurer nor our Secretary has any interest in taking over the role of section Chair, which they would be obliged to do under the proposed rules.

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Conclusion

Sections have had no meaningful participation in the Workgroup's activities to date, and we fear our input at this juncture will receive little serious consideration. For that reason we are considering all available advocacy options. I have already reached out personally to our membership and will continue to do so. At its January 19th meeting more than one of the Workgroup members made a comment that suggested such outreach was inappropriate and potentially even contrary to law. Such statements only underscore that the Workgroup believes it may operate with no accountability to the WSBA members its proposals impact.

If the Workgroup continues on its current trajectory it should expect opposition to escalate dramatically. Among the options available to every WSBA member is that of a referendum to challenge the Workgroup's policies in the unfortunate event they are adopted by the BOG.

Respectfully submitted,



Greg McLawsen
Chair

cc: William D. Hyslop
WSBA Solo and Small Practice Section members
sections@wsba.org



WASHINGTON STATE BAR ASSOCIATION

Taxation Section

Sent Via Electronic Mail

January 25, 2016

Anthony Gipe
Chair
WSNA Sections Policy Workgroup

RE: Feedback of the Taxation Section regarding the Workgroup's 12/30/15 Phase 1 Report & Memorandum

Dear Mr. Gipe:

On behalf of its members, the Executive Committee of the Washington State Bar Association's Taxation Section ("Tax Section") provides the following feedback regarding the Section Policy Workgroup's Phase 1 Report & Memorandum. Specifically, the Tax Section requests rejection of the proposed fiscal policy and governance revisions.

As an initial matter, the Tax Section is very concerned about the process by which the Workgroup's proposal was developed. First, the Workgroup appears to consist of governors and staff, but no representatives from the sections themselves. Second, while the Workgroup's meetings were public, the Tax Section received no communication that would have hinted at the radical changes to the governance and financing of the sections. While we welcome the opportunity to comment on the proposal, the Tax Section believes that the Workgroup should be reconstituted to include representatives of the sections or abandoned altogether.

In addition to concerns about process, the Tax Section opposes the Workgroup's proposal. Under the Workgroup's proposal, the financial resources of all sections will be pooled and redistributed to all sections as the Bar deems appropriate. Any fund balances remaining in a section would not carry over from year to year. The Bar, rather than sections, will determine what programming and member services are warranted or desirable. The Tax Section, the WSBA, and members are best served by preserving Section decision-making and financial/budget autonomy.

Section budgets/finances should be autonomous.

WSBA members voluntarily elect to join sections, paying dues over and above the standard bar fees because they have interest in that particular section's practice area/focus. When WSBA members join a section, they naturally understand and expect that the dues paid will go towards section activities. Under present policies, the financial resources of a section allow members to benefit from their elections to join sections because elected section members who are familiar with areas of concern and interest to the section make the programming and budgeting decisions.

With the proposed changes to fiscal policies, section members will no longer see their dues put to use in ways deemed valuable to section members. Instead, dues will go to programming deemed important by the WSBA to all WSBA members, not just section members, and perhaps even into a generalized fund for Bar overhead expenses. This approach fails to respond to member interests and is unacceptable.

Furthermore, we believe many of the Taxation Section's members (and likely other sections' members as well) may elect to forego membership altogether if there is no correlation between additional, useful tax programming and activities and the dues paid. In essence, the Workgroup's proposal turns members' section dues into additional generalized bar dues that

do not serve the specified purpose or interest. There would be no point in joining a section if this were to be the case, and such a policy may foretell the end of sections altogether.

To the extent that the WSBA's efforts to implement a pooled section fund derives from a concern that it is overly subsidizing sections' costs, we note that removing financial autonomy from sections is not the answer. Only with the release of the Memorandum did the WSBA release any (unconfirmed) figures regarding the apparent subsidization of certain sections. What this reveals is that: (1) sections have not been told they are being subsidized and therefore have never had the opportunity to adjust spending activities to reduce or eliminate the subsidies; and (2) it is the WSBA and the Board of Governors that have implemented policies that prevent sections from bearing the true cost of their activities. We also note that it was the WSBA that approved all of the sections' budgets, making it unclear why, if the WSBA was so concerned about the subsidization, those budgets were approved. In any event, to the extent a policy change is needed, the more obvious solution is to require the heavily subsidized sections to bear the actual cost of their activities or adjust their activities. The proposed policies do not do this, and instead encourage sections to ask for more and spend more, all the while reducing their financial autonomy and discouraging fiscal responsibility.

Fiscal responsibility should be rewarded, not extinguished. Taxation Section savings should not be forfeited to the Bar.

The Taxation Section, like many other sections, takes a fiscally conservative stand/approach to its funds and its budget. We have consciously chosen to budget to balance the dues we charge with the services, programs, and mentoring or networking opportunities our members expect. We have minimized or offset costs by soliciting generous member contributions of meeting and event space, food and beverages, scholarship funding, and extensive secretarial and administrative support for section lunches, meetings, and events. As described below, we have also diligently worked to increase and maintain membership. Through these efforts, the Taxation Section has built up a significant reserve fund. Under the Workgroup's proposal, the Taxation Section would forfeit that fund into a joint fund to be shared with all sections. This is unacceptable. Moreover, there would no longer be an incentive to ever create a reserve fund. As stated in the Workgroup's Memorandum, the reserve fund serves as "cushion for unexpected revenue shortfall, unexpected expense, future events that do not occur annually, and the ability to take advantage of unforeseen unique opportunities." These reasons continue to serve as a basis for the sections' reserved funds.

Section efforts to increase and maintain membership levels should be respected.

The Taxation Section has over 600 members. This did not come about through happenstance. Rather, we have expended significant time and resources over the years in an effort to both increase and maintain the Taxation Section's membership numbers. We have done so because we believe an increased membership will have a beneficial effect on the practice of tax law in Washington, and because the additional financial resources provided by a larger membership base mean the Taxation Section may offer more opportunities to its members. The Workgroup's proposal would undo all of the Taxation Section's efforts by decoupling the Taxation Section's funding from its membership numbers. The Taxation Section would have no incentive to increase its numbers, nor would tax practitioners have any reason to join when dues would go to a generalized pool benefiting all WSBA members, with no clear directive that section dues will be allocated to sections in proportion to their memberships or that the sections will have control over the spending of those funds.

Sections are best equipped to select valuable programming for their members.

Like with overall budgeting regarding the priority and value of various Taxation Section, the Taxation Section itself can best determine how its resources are spent on programming. The Workgroup's proposal appears to remove programming responsibility from sections and instead centralize it with the WSBA, or at minimum, to allow the WSBA to exercise veto power over section programming. We believe the elected leadership of the Taxation Section is best positioned to decide on programming for its membership. We also note that the WSBA already reviews and has significant input into which CLEs are offered, what events the Section sponsors, approval of the Taxation Section's budget, etc. To add further review

will simply impede the Taxation Section from implementing the networking events, training opportunities, CLEs, brown bags, and other events that the Taxation Section's members desire.

The Taxation Section scholarship will likely be eliminated if this fiscal policy is enacted.

We also note that, if funds are centralized and redistributed in the manner proposed, the Taxation Section would likely be unable to maintain the scholarship it has funded for over fifteen years. We understand the scholarship to be the longest-running in the WSBA history, but we do not believe it would be sustained under the new policy.

If the proposed fiscal policies were to be enacted, serious questions remain about how they will be implemented.

Strikingly absent from the Workgroup's Memorandum is any clear discussion or guidance about how the fiscal policy would be implemented. There are many unanswered questions, including the following. If the WSBA will set uniform bar dues for all sections, how much will the dues be? How will the pooled funds be allocated and/or distributed across sections? How will the WSBA decide which programs the pooled funds will be contributed towards? Will the WSBA veto programming in less financially conservative sections or insolvent sections if those sections are acting irresponsibly such that other sections are adversely impacted? The Workgroup needs to give much more thought and clarity on these types of issues before moving forward.

The proposed governance changes are unnecessary and counterproductive.

The Workgroup appears to have developed a solution in search of a problem. The Tax Section has periodically reviewed and revised its by-laws to address input from the WSBA and the needs of our section. The Section knows its own needs best, including the number and type of officers, the size the board, etc. The Workgroup has provided no reasons for proposing a cookie-cutter charter structure on sections that have unique needs and objectives. While the Tax Section is open to revisions to its by-laws to address problems or improve governance, the Workgroup's proposal is unnecessary and unacceptable.

Conclusion

The Taxation Section recommends rejection of the Workgroup's proposed policy changes. We believe that our members are best served by maintaining Section autonomy under the present system. This properly rewards the Taxation Section's voluntary members by allowing the Section to target valuable programming for Section members and to transfer the benefits of its fiscal conservatism and member recruitment efforts to its own members.

Sincerely,



Cory L. Johnson
President, WSBA Taxation Section

In a meeting conducted by email Jan 27-29, 2016, the Executive Board of the WSBA World Peace
Though Law Section passed the following motion:

That the Section Executive Committee:

**Commends the WSBA Sections Policy Workgroup for its hard work,
Fully supports the alignment of Section membership year with WSBA
membership year,**

**Generally supports the concept of common charters for sections
although not necessarily any particular charter,**

Opposes treating Inactive Members as inferior to Active Members,

Opposes the combination of the offices of Secretary and Treasurer,

Opposes mandatory term limits for Executive Board Members,

Otherwise expresses concern about the Sections Workgroup proposal,

**Asks that it not be presented to the WSBA Board of Governors at this
time, and**

**Urges a more open discussion process allowing participation by WSBA
members who can't take time off work to attend meetings.**

Randy Winn

2016 Chair, WSBA/WPRL