



S O L O &
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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
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