



Alternative Dispute Resolution Section

Washington State Bar Association

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

2015-2016 Executive Committee

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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.

Promoting Informed Use and Best Practices of ADR

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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.

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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