

**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

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**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.