



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.