

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.