Family Law Section

Family Law Section of the Washington State Bar Association

Date: January 25, 2016

To: WSBA Sections Policy Workgroup and WSBA Board of Governors

From: Executive Committee of the WSBA Family Law Section

Re: Sections Policy – Proposed Reforms Dated December 30, 2015

While our Section may differ in respect to the prioritization of certain programs or policies of WSBA, we have long appreciated and have the utmost respect for the time, effort, and dedication that many of our Governors – past and present – have expended to sustain and improve this profession of which we have always been proud to be a part of and committed to defend. Despite that, it is difficult to continue to remain positive and hopeful when a clear pattern of conduct to disfranchise the members of this mandated organization is taking place.

We write in opposition to the draft policy proposals set forth in the Memorandum dated December 30, 2015 ("Memo"), from Anthony D. Gipe on behalf of the Sections Policy Workgroup ("Workgroup) to the Section Leaders. We urge that the proposals outlined in the Memo be withdrawn by the Workgroup and/or rejected by the Board of Governors ("BOG").

Our Committee members have had the privilege of interacting with several other Sections' leaders and liaisons, WSBA staff and BOG members, Sections' members, and other legal organization representatives. The Section has sent one or more representatives to nearly every BOG meeting for the past two decades or more. We have observed first-hand the increasing level of frustration and diminishing relations being experienced by the members of the WSBA with the leadership of WSBA and WSBA staff. We have witnessed good faith, well-intended efforts by these same members and Section Leaders to repair this relationship and take a positive approach to solving problems only to be met with dismissive responses and rebukes from the leadership of WSBA.

This current effort by the Workgroup and the leadership at WSBA is simply another example of how WSBA has turned its back on its members or excluded them from processes that affect the very core of their profession and their professional endeavors.

It should come as no surprise to either the Workgroup or to BOG that there is grave concern and opposition being expressed by and among several Sections and practitioners with regard to the current set of proposals enunciated in the Memo. We have read a number of the letters now heading to the Workgroup and/or BOG on this issue and we join with their voices of concern and outrage that the proposed policies set forth in the Memo are misguided, inappropriate, and unwarranted and that they should be rejected.

Rather than simply repeat what our colleagues from other Sections have written, this letter highlights but a few of the more disconcerting issues raised by the Memo and should, in no way, be construed to be an exhaustive list of the Family Law Section's concerns.

1. Lack of Transparency and Outreach in the Formation and Operation of the Workgroup.

A common thread (one of many) to some of the comments in opposition to the Memo is the lack of transparency and the lack of the record setting forth history, as to the formation of and structure of membership on the Workgroup or suppositions upon which portions of the Memo are based, as it is difficult if not impossible to locate any meaningful information within the official record of the activities of either BOG or WSBA leadership provided on the WSBA website. Perhaps part of the explanation as to why such information is so difficult to find is because it simply is not there. The policy of what is included in BOG minutes drastically changed beginning in September 2014. From that date forward, the only record of discussions in meeting minutes are those attributable to WSBA Staff or BOG members. All reference to the detail of any discussions raised or commented on by Section liaisons or members of the WSBA are no longer included in BOG minutes – as if the speakers had never spoken.

For example, in the memorandum dated January 20, 2016, from RPPT to the Workgroup, the author cites to the minutes of the July 2015 BOG meeting where, during discussion regarding the CLE business models under consideration, then-Director Megan McNally "requested that a joint Board/staff Work Group be formed at the September 17-18, 2015, Board meeting in order to draft revised Section policies, including a revised policy addressing cost-sharing of section-CLE programming…" Our Family Law Section BOG Liaison, was present at that meeting which took place at Skamania Lodge. She specifically requested during that meeting that if Section policies were going to be addressed by such a group that representatives of the various Sections be included in the composition of the Workgroup, but was told that this would not happen. She was assured, however, that Section Leaders would be intimately involved throughout via a rigorous process of on-going consultation and solicitation for input from Sections before there would be any policy change recommendations presented to BOG. This process, quite frankly, received little more than meaningless lip service from WSBA.

Telephonic meetings (designed only to distribute previously decided courses of action) that are scheduled on short-notice during the work day when most who need to attend cannot because of the demands of a legal practice and surveys (designed in such a way to obtain only limited and/or predetermined outcomes) are not examples of meaningful dialogue or vigorous methods of seeking input or participation from stakeholders.

These acts of WSBA and the Workgroup do not embody transparency or reflect an intent to achieve meaningful input and participation from the members. They are a practice of exclusion. Unfortunately, however, this is nothing more than a reflection of how WSBA has been doing things for the last few years. As such, the Workgroup and WSBA have failed to meet the needs of WSBA members.

2. Uniformity at the Expense of Section Diversity

For several years WSBA has been promoting diversity amongst Bar members, committees, Sections, etc. and asserting to the members that in recognizing and celebrating the differences between us makes us all better and stronger. Yet when it comes to the Sections, the Workgroup's proposed policies promote just the opposite.

A recent indication of the uneven application of this philosophy occurred at the November 2015 BOG meeting, during the discussion of a proposed change to policy on Sections' involvement in the legislative process. At that time, in response to a concern expressed on behalf of the Family Law Section regarding

the appearance that the then-proposed legislative policy changes were an attempt to further silence Sections, President –Elect Haynes indicated that there was no reason (and that it would be inappropriate) for Sections to take opposing positions on proposed legislation before the Legislature and that such conduct would not be allowed; i.e. that WSBA must speak with one voice only.

Perhaps President-Elect Haynes and the rest of BOG forgot that lawyers not only take differing (and often polar opposite) positions on laws every single day in their jobs as attorneys representing clients opposing other parties who are represented by their attorneys – that's their job. If the laws were so cut and dry as to not require interpretation and application to the facts of the cases of individual clients, there would be no reason for appellate courts or even for lawyers!

There are often valid reasons why two Sections may take opposing positions regarding a piece of proposed legislation. In doing so, the problems with the legislation can be aired and resolved before bad laws are passed which harm the public. One obvious example is that the criminal defense bar and the prosecutors may have opposing views on, for example, proposed changes on testimonial privileges.

Under the current Workgroup's proposed policy changes, however, this same erroneous presumption arises once again with the proposition that all Sections are to be treated as identical or synonymous with one another and that all distinctions between the Sections are to be eliminated whether it be in the composition of the various Executive Committees, the By-Laws, the use of revenues generated through Section activities, or the amount of dues paid to join a Section.

Each of our Sections represents a unique area of law or interests, as well as a unique set of members within that area. Some Sections are very active, whereas others are not. Some are comprised of a thousand or more members, whereas others have only a few members. Some have extensive experience in providing high-quality, complex educational programming or community outreach activities, whereas others have little or no such experience. Some have earned the respect of the appellate courts through years of hard work and demonstrated excellence resulting in being routinely asked to submit amicus briefs to the court, whereas others are never asked to brief issues. Some have long histories of working together with legislators to craft and opine on legislation, whereas others rarely, if ever, do so. Each of these differences (and more) demonstrates, celebrates, and justifies the great diversity that exists between the Sections. And yet the Workgroup proposals ask that all of this be ignored and eliminated.

As with the differences between each Section, there are also sound reasons for the differences among the compositions of the Sections' executive committees and the methodologies for selecting the officers of the executive committees.

The Workgroup proposes a simple "rise through the chairs" process, by which a single executive committee member starts out as a secretary/treasurer, then rises to chair-elect, and then to chair in a period of three years. Were the talents and desires of every executive committee member of every section the same, this might make some sense. However, that is simply not the case. For example, some people are strong leaders with unique skill-sets and the time needed to enable them to lead others during turbulent years as a section chair. Other people, however, who have exceptional skills in accounting but who have neither the desire nor time to be a section chair or the note-taking skills for being a secretary make great treasurers. Moreover, by sharing the leadership roles, more executive committee members have an opportunity to serve in these important roles rather than limiting access to only a select few while the others are shut-out if they don't have a desire to "rise through the chairs." If the concept of rising

through the chairs is a best practice, one must ask why BOG or WSBA staff have not adopted this protocol?

The one-size-fits-all set of by-laws that the Workgroup would impose upon all of the Sections ignores not only the basic composition of the executive committees and election processes, but numerous other important distinctions between the Sections that make them valuable to their members. Even the determination of who can be a member of a section – whether voting or non-voting - would be removed from the hands of the Sections and imposed on them by WSBA. This undoubtedly would involve inclusion of non-lawyers in every section despite several Sections' specific decisions not to allow such persons as members. This is just wrong.

3. Pooling Sections Funds and Other Fiscal Inefficiencies

The volunteers – past and present - who are a part of active and successful Sections have worked hard and sacrificed greatly to build the coffers of their Sections for the benefit of their Sections' members. Those with a healthy fund balance have been and are able to participate in efforts that benefit their members as well as the members of the public that their members represent. In recent times Sections have been denied the ability to sponsor long-standing successful activities or use Section funds in ways that would be beneficial to the members of the Section. The justification for such denials has ranged from "we don't have the infrastructure" to "we don't have the staff" to simply "no" without explanation.

When Sections seek a more financially viable means of operating – a method that would not require as much WSBA participation and staff time – road blocks are put in place to deter such creative thinking and Sections are then reminded that they are not autonomous and cannot act on their own.

Implying that Sections are not fiscally responsible or that they are incapable of prudent management of their hard-earned funds is simply a red herring designed to distract from the real problem – that WSBA has significant deficiencies in how it operates and how it manages its accounting systems and finances.

Why is it that this highly professional organization cannot do what we as individual lawyers are required to do – identify and track the time of its employees to the discrete work task being performed? Can you even imagine what would happen if a lawyer, at the end of the month, simply totaled all of his or her time and then spread it across the client list by some percentage or allocation formula rather than charging only time incurred for a specific client to that client? Yet, WSBA does not (and claims it cannot) have its employees fill out time cards (paper or electronic) that report work to task codes associated with discrete work efforts. That's why they cannot tell you exactly how much time it takes to support this program or that program – it's not tracked.

Likewise, while Sections leaders are accused of being too ignorant or irresponsible to be able to manage their own funds, why is it that the highly professional staff at WSBA cannot produce monthly Section reports within two to four weeks of the close of each month – every month? Why do we get financial reports for September in January every year? Why are expenses and revenues routinely posted to the wrong budget item or account? Why are the same errors repeated over and over again and then often not corrected because too much time has passed or the budget year is closed before the Section can point out the error to WSBA? And yet this is the group that wants to merge all of the Sections' hard earned funds into one lumped pot and manage it!

Whether it be in CLE or Section Liaison staff or finance, WSBA's support of the Sections and of the members has continued to erode from year to year with constant turnover, restrictions in what can be requested or done, lack of institutional knowledge or history, and inefficiencies.

4. Conclusion.

If approved, the policies proposed by the Workgroup will give the Sections little to no autonomy, will inhibit their ability to meet the needs of their members, significantly reduce or eliminate completely the ability to recruit future section members or persons interested in serving on the various executive committees, and deter sponsorship of programming or activities to generate funds to support section interests.

If adopted as proposed, it may be time for action to be taken by the members through some other means including, but not necessarily limited to, one or more of the following: (1) a member referendum (before that option is eliminated from the WSBA Bylaws) (2) formation of a voluntary Bar Association, separate from WSBA, to serve as the trade association to represent members of this proud profession or (3) voting to terminate their respective Sections, and refund the treasuries to their members or (4) simply ceasing to join any Sections in the future, and resigning from all current committees, task forces, workgroups, executive committees, etc. and just let WSBA get by without us.

We hope that leaders from all of the Sections and numerous members of the Bar will pack the house (and the webcast) for the February 4th Section Leaders Feedback Forum at the WSBA Conference Center and again on March 10th at the BOG meeting to be held at the Red Lion in Olympia and make their voices be heard!

Respectfully,

Dayann M. Liebman

Dayann Liebman, Chair
Family Law Section Executive Committee
on behalf of :

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Shelley Brandt
Lisa Brewer
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cc: William Hyslop, WSBA President
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