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TO: Sections Policy Workgroup
FROM: WSBA Indian Law Section – Executive Committee
DATE: January 22, 2016
SUBJECT: Feedback on Workgroup’s Section Memorandum and Policy Documents

I. Introduction

The Executive Committee of the Washington State Bar Association’s (“WSBA”) Indian Law Section (“ILS”) is pleased to provide feedback concerning the Sections Policy Workgroup’s (“Workgroup”) proposals dated December 30, 2015.

Like many (if not all) other Sections, ILS strongly opposes the Workgroup’s draft policy proposals.

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 date new Section officers take office and certain other administrative matters, the sweeping changes proposed by the Workgroup effectively re-write the relationship and role of the Sections within the WSBA, essentially stripping them of their long-established autonomy and ability to provide practice-area specific benefits. This autonomy is crucial to ensure (1) that dues paid voluntarily by members to a specific Section contribute to that Section’s activity, and not to a wholly unrelated Section which that member may not support; (2) that large Sections do not “crowd out” small Sections in competition for funds; and (3) that Sections retain the authority to provide benefits tailored to specific practice areas in accordance with the interests of their members.

The Workgroup’s proposals effectively transfer all authority to the WSBA to unilaterally determine what Section activities should and should not be supported based on the profitability of those activities and the “best interests of the WSBA.” This proposal seriously threatens the viability of small Sections, whose events may not be as profitable as those of large Sections simply due to Section size. Small Sections’ resources should not be seized to pay for the most

profitable activities of large Sections. This penalizes small Section members and deprives them of the tailored, practice-specific programming they have come to expect from their Sections.

A small Section like ILS should not be precluded from generating significant funding, if it so chooses, to provide a broad array of benefits to its members. ILS members pay for their membership and for ILS events entrusting that ILS will use those funds to continue providing Section-specific benefits to those members.

We believe the Workgroup's proposals would be very damaging to the long-term viability and success of ILS and other Sections. The proposed policies are misguided and should be rejected. The discussion that follows demonstrates the serious procedural and substantive failings with the Workgroup's process and proposals.

II. Discussion

A. Procedural Problems with the Workgroup's Proposals

Exclusion of Section Leaders. Section leadership was not invited to join the Workgroup. It is simply dumbfounding that Section leaders would be excluded from a Workgroup tasked with proposing changes to Section funding, leadership, and administration.

Lack of Transparency and Misleading Communications. Section leadership should have been notified directly and candidly regarding the Workgroup's intentions and activities. ILS leadership was informed that the Workgroup was tasked with "improving" WSBA relations with Sections, but none of the proposals we raised at a Workgroup session (largely directed to obtaining more autonomy, not less) were adopted. Through discussions with other Sections, it is apparent to ILS that the Workgroup also ignored other Sections' proposals. In fact, we are not aware of a single Section that supports the Workgroup's proposals.

Insufficient Notice of Proposals and Time to Respond. Communication with Sections has been abysmal throughout the Workgroup process. Certain Sections (like ILS) never received notification of the proposals, only discovering their existence through third parties. The timing of the release of the proposals on December 31, 2015, provided insufficient time for Sections to review and respond to the proposals. Many Sections, including ILS, had not scheduled Executive Committee meetings or calls in January until after the Section responses to the Workgroup's proposals were due.

These procedural failings have fractured the already fragile relationships between the Sections and the WSBA. We urge that the Workgroup reconsider its approach and remedy the above problems by (1) inviting Section leaders to join the Workgroup, to the extent the WSBA still intends to implement reforms to Section leadership, funding, and administration; (2) communicating its intentions and plans directly and candidly with Section leaders; and (3) giving Sections sufficient notice of, and time to respond to, any future proposals.

B. Substantive Problems with the Workgroup's Proposals

The Workgroup's Proposal to Control Section Treasury Reserves Will Decrease and Potentially Eliminate ILS Member Benefits. Under the WSBA Bylaws, each Section has 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. The Workgroup's proposal to seize Section reserves and unilaterally determine which Sections should receive funds from the collective treasury (or whether the funds should be used to fund WSBA expenses instead) threatens ILS's ability to maintain the current array of practice-specific benefits we offer our members. The proposal also frustrates our ability to plan for future years due to the uncertainty surrounding funding for such activities.

Indian law is a specialized practice area. We enjoy a small and close-knit bar with consistent attendance at our annual events. Through careful and responsible budgeting, ILS has been able to establish substantial reserves.

These reserves allow ILS to continue its established activities and expand the benefits we offer our members. ILS uses its financial reserves exactly how it should – to grow and evolve ILS in its ability to fulfill its mission and to provide direct value and benefits to its members. For example, in cooperation with law schools located in Washington State and with the Northwest Indian Bar Association, we have initiated scholarship and mentorship programs aimed at encouraging young lawyers and law students (with a special focus on Native students) to pursue a career in Indian Law. We have received overwhelming support from law schools and our membership for these programs. The Workgroup's proposal threatens to eliminate these programs and to frustrate the time and effort law schools and other partners have already put in to developing ILS's mentorship and scholarship programs for law students.

One of the main reasons the Sections exist is to create practice-specific benefits, including continuing legal education seminars, programs to foster growth of young attorneys in the practice area, networking events, and other practice-specific activities. The Workgroup's proposal to seize and redistribute ILS funds to other Sections and to the WSBA's own administrative expenses is unacceptable.

The Workgroup's Focus on Profitability Will Likely Put Small Sections Like ILS at a Competitive Disadvantage and Eliminate Scholarship Programs. The Workgroup's proposal to pool money means that the money ILS members pay to fund ILS activities could instead go to a completely unrelated Section, as the Workgroup explicitly acknowledges:

... all sections would be able to propose beneficial programs, as the financial outcome of the program is no longer directly linked to the individual section's financial resources.

It is inappropriate for funds paid by our members to support ILS activities to be instead used for other more “profitable” Sections or for “programs deemed to be in the best interest of WSBA”:

WSBA staff would work with Executive Committees to determine whether a proposed program is likely to result in profit or loss, or break even. While it is a goal for all programs to at least pay for themselves, programs deemed to be in best interest of WSBA and its members, the section, and the public could also be supported by the WSBA Sections Fund.

ILS highly doubts that anyone in the WSBA could enunciate a workable policy on what exactly constitutes “the best interests of the WSBA.” Furthermore, the consideration given to how “profitable” a program will likely prejudice smaller Sections and Sections that run scholarship programs, for which there is no fiscal “gain” except Section goodwill. Does this mean that the WSBA would disburse funds only to large Sections simply because of greater attendance at their CLEs or events? Does this mean that the WSBA would discontinue all scholarship and mentorship programs, or simply decide unilaterally which practice areas should be permitted to mentor and fund law students, based on how profitable or large the Section is?

The Workgroup’s proposals threaten the ability of fiscally responsible Sections like ILS to be able to continue the member benefits they now provide (and pay for with Section-raised funds). Simply put, the proposals appear to compel ILS to pay for CLEs and other member benefits requested by other Sections, resulting in diversion of funds from small Sections like ILS to large Sections that, due to their size, conduct more activities and generate more profits from those (more costly) activities than small Sections.

Section Dues Should be Set by Sections Familiar with their Membership, not by the WSBA. ILS opposes any change where WSBA would set Section dues. ILS has purposefully kept Section dues low for members, even as WSBA has raised the per member charge. We have also purposefully kept Section dues low to make membership in ILS affordable to new and young lawyers and those in smaller firms or working for tribes that do not pay for “extras” such as Section dues. Any increase in our dues will result in loss of membership, especially if it is coupled with a decrease in the ILS-specific member benefits.

The Proposed Policies Do Not Permit ILS to Maintain Continuity in its Leadership and do not Encourage Volunteering for an Executive Committee Position. ILS opposes any proposal mandating a specific number of officers or length of term. ILS officers have terms ranging from one year to three years. ILS does not require all officers to commit to three years on the Executive Committee because such extended terms would discourage busy attorneys from donating their time to serve on ILS.

Changes to ILS’s Election Date Is Unnecessary. ILS opposes any change to the ILS election date. ILS conducts its elections annually at the most well-attended Indian law seminar of the year. This timing means that (1) more members are present to vote and (2) individuals who

are interested in serving can do so efficiently, minimizing travel (especially for those members located outside Seattle) and potential scheduling conflicts that would arise if ILS held its elections at a different time.

However, while ILS opposes any change to its election date, we understand the administrative need to enact leadership changes across Sections at the same time each year. We would propose that the WSBA not alter election dates, but instead alter the effective date for the new leadership to begin their terms. Under this approach, Sections could retain their election dates, but the new leadership would not begin their terms until a specified later date that would be the same for all Sections (e.g., January 1 of each year).

III. ILS Members' Response to the Workgroup's Proposals

On Wednesday, January 20, ILS sent an email to its members notifying them of the Workgroup's proposals. We have pasted some of the many comments we received from ILS members in Appendix A to this response. The comments echo and add to the concerns outlined above.

IV. Conclusion

For a great many of the most active members of the WSBA, the 28 Sections serve as their primary source of, and opportunity for, participating in educational programming, networking opportunities, outreach events, and giving back to the community. From the members' perspective, the Sections are their professional connection to the WSBA.

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 Workgroup's proposals threaten to undo the countless hours of work that Section volunteers have put in to establishing the broad array of practice area-specific benefits that their members have come to expect. ILS strongly opposes the Workgroup's draft policy proposals and recommends that the proposals be rejected, with the exception of the start dates for officer terms as discussed above.

In the event the Workgroup does not address the concerns we raise in this response, ILS intends to work quickly with the other Sections to submit a Member Referendum under the WSBA's Bylaws to reaffirm and clarify the Sections' roles and autonomy.

Sincerely,

The Executive Committee of the Indian Law Section

APPENDIX A: ILS Member Comments Regarding the Workgroup's Proposals

The following comments are a representative sample of the feedback ILS has received so far from its members:

- “I agree that funds in reserve held by a voluntary section membership should not be shunted to a totally different voluntary section membership for their use. Why would people who support an environmental section, as one example, want their funds shunted to corporate sections? This is inappropriate. As one example, Gov. Christine Gregoire set up a rainy day fund for the state of WA. It would not make sense if those funds had to go to Oregon. What is not clear is how we can stall such an implementation by the Bar at large. Are our voices enough? They should be, but are they? If not, that is a huge problem within the Bar itself.”
- “I agree completely with the recommended position. Our section functions very well. I'd be happy to be listed as endorsing your position.”
- “I join in your concern about this odd action. I join sections because of a particular interest and practice focus. Sections provide unique growth and professional connections. The proposed action simply blurs the intent of where I send my extra dollars to join a section.”
- “I am in total agreement with the section leadership's concerns here. I also don't like what this will incentivize sections to do each year, which is spend all the money they collect annually lest it be forfeited to the pool. And on the leadership structure, it does not make sense to me that you'd force people to either get in line to be chair or they can't serve as secretary or treasurer. Those are totally different skill sets, no reason to force the person that takes that on into the chair succession line. I am super happy to be NNABA's secretary right now, and I think I'm doing a good job. I could not be chair, at least not now, with what's going on in my practice. How silly would it be if NNABA couldn't have my service as secretary because I can't commit to being chair two years later? Similarly silly to have that problem at the WSBA.”
- “I am a member of the Washington State Bar. I currently am a member of two sections: the Criminal Law Section, and the Indian Law Section. I participate in these sections because they cover areas of my professional interest and expertise. I do not participate in other sections in which I do not have an interest, and I do not always support the initiatives of other sections, or those of the State Bar in general. I object to the idea of funds I provide voluntarily to participate in the Sections of which I am a member being used to support other initiatives or sections and therefore I object to the proposed changes to Section Fiscal Policy. Should the changes to section funding pass, I will cease to participate in any of the sections.”
- “I agree completely with the position laid out in your e-mail, and add these thoughts:
 - (1) A less obvious result of the Indian Law Section's coordination with the law schools and the sponsorship of scholarships is the good will within the schools and nascent

lawyers towards the WSBA. With too many lawyers asking ‘what’s in the WSBA for me?’ rather than seeing a formal organization that has non-monetary benefits for the profession and the bar as a whole, the Indian Law Section’s work is a good example of value-added membership.

- (2) An original purpose of the Indian Law Section, leading to the scholarship program, was to encourage tribal members, who were then and probably still are, underrepresented in the bar, to enter the Indian Law field, and consider working for Tribes, who usually cannot compete with private firms for top talent due to location and fiscal constraint. This is a goal that not many, if any other, Sections embrace within their specialization. Our stipends, modest as they are, relieve the law students of that much student debt, thus contributing to a wider horizon of law school clinical participation and post law school employment.”