



Justice... Professionalism... Service... Since 1886

August 27, 2019

The Honorable Mary Fairhurst
Chief Justice, Washington Supreme Court
415 12th Avenue SW
Olympia, WA 98504

Dear Chief Justice Fairhurst:

We write, in the spirit of *amicus curiae*, to ask the Court, to consider a different approach for the future of our Washington State Bar Association than the recommendation from the Bar Structure Work Group to retain the existing structure. Specifically, we believe the legal profession and the public would be best served if the Court proceeds with a comprehensive restructure of the Washington State Bar Association that proactively protects the access to justice and diversity work of WSBA.

Founded in 1886, the King County Bar Association represents over 14,000 attorneys, judges, law professors, and law students in King County. Our mission is to support our diverse membership by promoting a just, collegial, and accessible legal system and profession; to work with the judiciary to achieve excellence in the administration of justice; and to serve our local community through organized pro bono legal services.

Like the Court, the King County Bar Association is a strong proponent of the important work being facilitated by WSBA in the areas of access to justice and diversity that benefits our state's justice system. However, we are concerned that the successes and pending efforts underway in access to justice and diversity may be threatened if the Court does not take affirmative steps to protect these functions by exercising the Court's plenary leadership role and directing a new structure for WSBA.

Our analysis of recent events both in Washington State and across the country is that momentum will continue to grow nationwide to bifurcate mandatory bar associations. Whether rooted over issues of compelled speech, antitrust and unfair trade practices, or political considerations, the result is the same. The structure of mandatory bar associations is under scrutiny from both federal courts and state legislatures (including our own elected officials in Olympia). Most recently we have witnessed our colleagues in California, the largest state bar in the nation, endure a crisis in leadership and vision for the profession before the solution of a bifurcated bar structure was adopted in 2018. The pending State Bar Association of North Dakota appeal most likely will result in a forced decision of these questions for remaining mandatory bar associations by the U.S. Supreme Court.

The Washington Supreme Court, along with the state's legal profession, has the opportunity to act now to protect the things that matter most to us in Washington, rather than be forced to react

to solutions imposed from other branches of government whether based in Olympia or Washington, D.C. Action now would also demonstrate to the legal profession that the Court has heard the underlying messages of discontent by lawyers across the state with the status quo.

We propose that these three principles be adopted by the Court:

1. **Regulation of Practice of Law Best Done by the Court.** We recommend moving the mandatory functions of WSBA to a new Supreme Court-overseen entity similar to the Administrative Office of the Courts. This new office would have responsibility for all attorney, LLLT, and LPO licensing, as well as discipline, MCLE regulation (not course offerings), and client protection functions of WSBA and would be funded by a court-imposed license fee. A court-appointed advisory committee could oversee this work with relevant current WSBA staff reassigned to this entity.
2. **Access to Justice and Diversity Are Judicial System Responsibilities.** The Court and WSBA have achieved important successes with these initiatives that are currently funded by license fees and managed by WSBA. Yet so long as they are tied to the license fee, even with tweaks to what is included in a "Keller" deduction, they are still at risk in the future. We believe access to justice and diversity should not be solely the responsibility of licensees, but instead a core function of society as a whole. Instead of housing these activities within WSBA, we suggest these functions become Supreme Court administered commissions such as the current Gender & Justice Commission, elevating them to the prominence they deserve. Funding should come not from license fees but instead should be treated as a judicial branch operation, fully funded by legislative appropriation. The cost would be minimal in the context of the judicial branch overall budget. This approach protects these activities from challenges by licensees or others, including the U.S. Supreme Court.
3. **Non-Mandatory Activities Are Best Served in a New Statewide Voluntary Bar Organization.** Remaining activities currently conducted by WSBA (e.g., sections, publications, YLD, awards, and judicial evaluation to name but a few) should be transferred to a voluntary statewide nonprofit that is funded by voluntary dues and overseen by attorneys themselves, independent of the Court. This organization would serve as the bar's "trade association," promoting the interests and needs of member attorneys without conflicting responsibilities for non-member-focused efforts. The current leadership of WSBA could oversee this refocused organization and take it to new levels of success.

We appreciate that our proposal would require significant planning and organization to implement, but we do not believe these challenges are insurmountable. Utilizing a small amount of WSBA reserve funds the Court could hire qualified professionals to design a plan to implement these changes and conduct the transition. The Court need adopt only the three broad principles we propose and then task professionals to proceed with the implementation. KCBA stands ready to actively participate in and support this work.

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The Washington Supreme Court has the ability to create a nationally-recognized best practices model for the regulation of the practice of law and the administration of justice -- just as it did when it innovatively launched programs here such as the Access to Justice Board. We call on the Court to resist the status quo of a single mandatory bar structure and instead adopt a bold forward-thinking vision that protects those programs in which we all believe so strongly.

Sincerely,

King County Bar Association