

## Proposal #3 (Bifurcation)

## Proposal/Option 3: Bifurcation, with regulatory functions moving under the Washington Supreme Court and a voluntary bar association performing trade association-like services and programs

*See attached materials from Gov. Abell for one specific proposal; as discussion ensues about which services would go where, the financial and legal analysis will adjust accordingly.*

### Description

A bifurcated structure would transition regulatory services to an agency of the Washington Supreme Court; the Court would directly govern these functions. Professional-association services (those permitted but not mandatory for legal licensing by various Court Rules and regulations) would be performed by a new statewide voluntary bar association. This generally mirrors the two-part process recently used to transition the structure of the State Bar of California.

Proposed split in functions: See the proposal at hand for one recommendation; how regulatory/non-regulatory services are categorized, if the board recommends bifurcation, will be part of a larger strategic planning process. (Some functions, such as discipline, are more easily decided.)

### Rationale

1. Avoid the Constitutional issue: Dissenting lawyers who sincerely disagree with decisions made and positions taken by the professional association are no longer involuntarily forced to be members of that professional association, which they do not want to belong to.
2. Bifurcation does away with the intrinsic and frequently incompatible tension between a membership organization (which advocates for the profession and serves the best interests of its professional members) and a regulatory entity (which protects the public and serves the public interest).
3. There is no evidence that states with bifurcated structures are doing a less effective job at (separately) serving lawyers and protecting the public. About 20 states, including those that are arguably peer states of Washington in terms of bar membership and attributes, use a mandatory/voluntary model with success.
4. A bifurcated model promotes the Court's direct control and authority over regulatory matters.
5. A voluntary state bar association would allow members to be as legislatively active as they their membership desires.

### Legal Analysis

- Considerations of changes in status and conditions of employment
- Transitioning from current structure to a bifurcated structure could create risks to contracts and other long-term commitments.

### Fiscal Analysis

This fiscal analysis is for the specific proposal at hand (Gov. Abell's). Under this scenario the regulatory functions and associated infrastructure would bifurcate from the WSBA and placed under the WA

Supreme Court. The WSBA would become a 501C voluntary organization. As the board decides specifically which functions would go to which agency, this fiscal analysis will change accordingly.

*Regulatory Agency:*

Estimated Regulatory and Support Staff Moved Under Court: 101

Expenses:

- Cost of Regulatory Functions: \$8.25 million
- Cost of Supporting Depts (IT/OED/COMM/HR/Service Center/OGC): \$4.55 million
- DEI and ATJ: \$500k
- Professional Responsibility: \$300k
- Governing Board/Committee Support Costs: \$400k
- Overhead: \$2.85 million
- Direct Costs for Supporting Cost Centers: \$500k
- TOTAL ESTIMATED EXPENSES: \$16.85 million

Offsetting Revenue:

- MCLE/Admissions/Other: \$2.89 million
- LPO/LLLT/CLERK: \$450k
- ODC: \$106k
- Inactive/ProBono/Judicial License Fee: \$1.239 million
- TOTAL OFFSETTING REVENUE: \$4.689 million

Net Operating Costs = Total Expenses (\$16.85 million) – Offsetting Revenue (\$4.689 million) =  
**\$12.161 million**

Active License Fee = Net Operating Costs (\$12.161 million) / # of Active Licensees (33435) =  
**\$364.00** (Note: CPF Assessment would be additional)

*WSBA Voluntary Association:*

Estimated Staffing Needed for Voluntary Organization: 38

Assuming an enrollment rate of 45% of active membership which equates to 15,000 members

Expenses:

- CLE Operations = \$1.75 million (includes regular CLEs/NME/MiniCLES)
- Sections Support = \$290k
- Member Wellness/Practice Management = \$450k
- Fastcase = \$20k
- WYLC/STAR/Public Service/CPD = \$400k
- Member Magazine Similar to Bar News = \$200k
- Overhead/Administrative Costs (Rent/ED/Finance/HR/IT/Governing Board) = \$1.98 million

- TOTAL COSTS = \$5.09 million (these costs are conservative – for point of reference King County Bar Association’s annual budget is \$4.6 million with much fewer members than projected here – 5600)

Revenues:

- CLE Revenue = \$600k
- Section Dues (assumes 1.5 join rate and \$40 section dues) = \$900k (assume sections keep)

Net Expenses = Total Costs (\$5.09 million) - CLE Revenue (600k) = **\$4.49 million**

Assuming 15k members would need to charge at least \$299.00 in member dues to break even.

*Combined*

- Cost to Join Both Organizations:
  - Regulatory License Fee = **\$364.00**
  - Voluntary Fee = \$293.00 plus a minimum section due of \$40.00 = **\$339.00**
- Total Cost to Join Both Organizations = **\$703.00**

**Other Considerations**

- This is a highly complex scenario—legally, logistically, financially, and employment-wise—to implement, requiring at least a year’s worth of planning before implementation.

# Member Survey

# WASHINGTON STATE BAR ASSOCIATION

## MEMO

**To:** WSBA President Brian Tollefson and Board of Governors

**From:** Executive Director Terra Nevitt

**Date:** Aug. 12, 2022

**Re:** ETHOS Member Survey Results

At the request of the Board of Governors, the Member Engagement Council in July created a survey to gather member feedback about their preferred bar structure. The Council's objectives were to ensure neutrality in the survey and a reliable cross sampling of the membership. The Council worked with National Business Research Institute (NBRI)—which administers the WSBA's ongoing member perception survey—to design the questions and administer the survey. The conversations were robust between Council members, the ad hoc Council team that worked on the questions, and the NBRI organization psychologists; ultimately, everyone agreed on a balance between information in the preamble to allow the survey takers to knowledgeably respond and a straight-forward question to collect members' preference on structure. The survey ran from Aug. 1-11, 2022.

Important items of note: As with the quarterly perception survey, NBRI advised against an all-member "opt-in" approach; this approach tends to collect extreme points of view—as those are the members motivated to respond—which are likely not representative of the entire membership. To ensure a good response rate, we sent invitations (randomly generated from amongst the entire membership) to twice as many members as we generally do for the quarterly perception survey. The invitations and responses were issued by NBRI, completely anonymous to anyone at the WSBA. Overall, NBRI was very pleased with the response rate and validity of data.

Please refer to the attached reports for complete survey results.

## SUMMARY INFORMATION

### *Response Rate*

- 479 members
- 97.75 confidence level / 5% sampling error (exceeding NBRI's 95/5 goal for statistically valid data)

### *Which of the following options best describes your preferred structure for the WSBA?*

- 45%: WSBA should remain **integrated** (performing regulatory and professional association-like services) as it currently is
- 38%: WSBA should **bifurcate** so regulatory services are performed by a WA Supreme Court agent and other services are performed by a voluntary bar association
- 3%: An **alternative** structure
- 14%: I have **no opinion** on the structure of the state bar

## THEMES

### *WSBA should remain integrated (performing regulatory and professional association-like services) as it currently is*

- Creates efficiencies—single point of contact for legal licensees—and cost savings (don't want to pay more to get similar—or likely less—benefits).
- Preference for lawyer oversight in regulation, not just the Supreme Court (checks and balances; self-governance and autonomy).
- If it's not broken, don't fix it. This structure has worked well for years.
- Professional services support the regulatory functions in a proactive manner—especially CLEs, Professional Responsibility (Ethics Line, etc.), Sections, Member Wellness, and Practice Management; in fact, some services categorized as “professional” are critical for regulation.
- Changing the structure will harm the public and profession.
- The integrated structure facilitates connection and development among all members; it promotes a more professional, civil profession.
- A unified state bar pools resources to support all members, especially in areas/practices/demographics where resources may be scarce.
- Afraid important services will fall by the wayside if the bar bifurcates.
- A unified bar represents *all* members, with a focus on diversity, equity, and inclusion and access to justice.
- Rather than throwing out the entire structure, focus on specific improvements to current WSBA policies/procedures to comply with rules and laws while allowing members to advocate as they need/want.
- Experience: working in non-integrated jurisdictions is less user friendly and beneficial.

*“A fully integrated bar with mandatory bar membership can and will create efficiencies that allow the WSBA to perform both the regulatory function and the various membership functions. A voluntary bar that fails to achieve 100% membership (which is the most likely outcome) will undermine the professional mission of the WSBA.”*

*“Don't want to pay two entities for functions that can be - and have been - satisfactorily performed by one.”*

*“I think the administration of the bar by WSBA has been fair, flexible and user friendly and am resistant to changing it for an unknown.”*

### *WSBA should bifurcate so regulatory services are performed by a WA Supreme Court agent and other services are performed by a voluntary bar association*

- COST. Bar dues are too expensive. No benefit from bar fees; current services/programs are not relevant.
- Freedom of association and expression. The WSBA takes ideological stances and administers programs some members do not agree with. It is biased (toward the “left”).
- The Keller Deduction is not adequate.
- Mission conflict/conflicts of interest: it's problematic for the bar to try to serve lawyers and the public at the same time.
- Regulatory functions would have more independence and objectivity directly under the Court.

- Much of the current scope of WSBA services/programs is outside of what is required—why should payment for that be mandatory?
- The current bar does not provide much for in-house counsel, government employees, or those outside of private practice.
- No benefit to those living outside Washington state.
- Little benefit to those outside the Puget Sound region.
- The current ideology is too “woke” / focused on diversity, equity, and inclusion.”
- Support access to justice and diversity/inclusion efforts through involvement and power of the Court.
- The current structure is too big and bureaucratic with too much administration cost.
- Experience: working in non-integrated jurisdictions is preferable.
- Break up the WSBA's monopoly of non-regulatory services; strengthen local and specialty bars, which are set up to do these professional functions.
- Improve the voluntary services, which can be weighed down by rules and regulations of the mandatory regulatory side of the bar.

*“The voluntary structure is less imperious, is concerned about providing value for membership fees, and tends to be more bottom-up than top down. Voluntary structures meet the needs of their constituencies better. Integrated bars push too many pet projects onto the entire bar, few to none of which actually reflect the interests and concerns of the majority.”*

*“I feel the current bar structure is a monopoly that uses excessively high bar dues to fund a large number of programs, lobbying, and self-marketing that fall far outside the scope of regulating legal practice. As a younger attorney, I have often struggled to pay the near \$600 fees year after year .... I would like to have a choice in these matters instead of being locked in as a requirement to practice law here.”*

*“It is an inherent conflict of interest for the same organization to have both the regulatory and support/promotional roles for the profession.”*

#### *Alternative Structure*

- Something that addresses governance by elected governors that has the ability to control regulatory functions—need more balance. There is a monopoly of power.
- Totally voluntary, in all respects.
- Two mandatory with different function.
- The Supreme Court cannot be both regulator and adjudicator of disputes.



**Number Responding**

**Number Possible**

**Response Rate**

Total Population

479

6000

7.98%

**WASHINGTON STATE BAR ASSOCIATION  
ETHOS MEMBERSHIP SURVEY  
TOTAL COMPANY**



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**Date: August, 2022**

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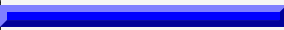


Appendix A: Washington State Bar Association ETHOS Membership Survey

**Washington State Bar Association - ETHOS Membership Survey - Total Company**

**Section I: Response Rates**

<b>Group Name</b>	<b>Number Responding</b>	<b>Number Possible</b>	<b>Response Rate</b>
Total Company	479	6,000	8%

Section II: WSBA Structure

	Number Responding	0% 25% 50% 75% 100%	Percent Responding
<b>1. Thinking about the information on the preceding pages of this survey, which of the following options best describes your preferred structure for the Washington State Bar Association (WSBA)?</b> <b>WSBA should remain integrated (performing regulatory and pro.</b> Total Company	214		45%
<b>WSBA should bifurcate so regulatory services are performed b..</b> Total Company	184		38%
<b>An alternative structure.</b> Total Company	16		3%
<b>I have no opinion on the structure of the state bar.</b> Total Company	65		14%

## **ETHOS Membership Survey**

Thank you for taking this survey; your feedback matters and will be considered by the Washington State Bar Association's Board of Governors (Board) when making its recommendation about the future structure of the bar to the WA Supreme Court. Your participation and answers are anonymous.

Background: At the request of the Washington Supreme Court, the Board has been meeting for the past six months to study and consider whether to make a recommendation to remain an integrated bar or to change structure. An integrated bar is mandatory for legal professionals and performs both regulatory and professional-association services. Changing this structure would mean separating out some or all of the professional-association services to a voluntary bar while retaining the mandatory regulatory functions under an agency of the Washington Supreme Court. To learn more about the reasons behind the structure study, the process, and what's at stake, you can read [the June Bar News issue](#) or visit the [structure-study webpage](#).

The Board has a deadline of August 2022 to decide on its recommendation to send to the Washington Supreme Court. Member feedback will play a critical role in the Board's decision, and this survey is a way to gather input from a wide variety of legal practitioners. The next two pages will describe the mandatory services and the professional association-services (also referred to as "other" services) the state bar currently performs as an integrated bar, and then you will be able to weigh in on your preferred structure. It should take about 5 minutes.

Thank you for your time and participation.

Context: Regulatory bar services

These are the current regulatory services performed by the WSBA as an integrated bar association. \*

Regulatory services are mandated for legal licensing under various Court Rules and regulations. If the state bar were to change structure, these regulatory services would likely be performed by an agency of the Washington Supreme Court and would remain mandatory.

- Admission to practice, including bar examinations
- Professional discipline
- License renewal
- Mandatory continuing legal education (MCLE) accreditation and certification
- The Client Protection Fund
- Diversity, equity, and inclusion efforts in the legal profession, including demographic research, education, the Diversity Committee, and Washington Leadership Institute
- Access to justice efforts in the legal profession
- Supreme Court mandated boards (Access to Justice Board, Disciplinary Board, Limited Practice Officers Board, Practice of Law Board, Limited License Legal Technician Board, Character and Fitness Board, Mandatory Continuing Legal Education Board, Board of Bar Examiners)

\* These are not brightline categorizations. They are based off interpretations of General Rule 12 as well as caselaw and trends in other jurisdictions that have changed structure. If the WSBA were to change structure, the Washington Supreme Court would ultimately decide the categorization of regulatory/mandatory versus association/voluntary services.

Context: Professional-association (“other”) services

These are the current professional-association services performed by the WSBA as an integrated bar association. \* They are permitted but not mandated for legal licensing by various Court Rules and regulations. If the state bar were to change structure, some or all of these professional association services would likely be performed by a new statewide voluntary bar association.

- Sections
- The Washington Young Lawyers Committee
- Small Town and Rural Committee
- Member Wellness, including free professional counseling and consultations

- Ethics Advisory Opinions, Ethics Line, and ethics outreach
- Professional development, including the free Legal Lunchbox series, continuing legal education programs, new lawyer education programs, and mentorship programs
- Job-seeking and career assistance (job marketplace and career-resource groups)
- Law improvement and government relations, including legislative tracking and efforts and judicial recommendations for Court of Appeals and Supreme Court vacancies
- Practice assistance, consultations/referrals and the reference library
- Public service programs, including Moderate Means Program and pro bono and public-service committees
- Free legal research tool (Fastcase)
- Deskbooks
- Washington State Bar News
- Practice Management Discount Network (exclusive discounts for members)
- Health Insurance Marketplace (insurance coverage access exclusively for members and their employees and dependents)

\* These are not brightline categorizations. They are based off interpretations of General Rule 12 as well as caselaw and trends in other jurisdictions that have changed structure. If the WSBA were to change structure, the Washington Supreme Court would ultimately decide the categorization of regulatory/mandatory versus association/voluntary services.

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**Instructions:**

1. Proceed to the questions by clicking on the Next Page button below.
  2. Please read each question completely and indicate your response using the scale shown.
  3. When complete, please click on the Submit Survey button to submit your answers.
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Thinking about the information on the preceding pages of this survey, which of the following options best describes your preferred structure for the Washington State Bar Association (WSBA)?

- WSBA should remain integrated (performing regulatory and professional association-like services) as it currently is.
- WSBA should bifurcate so regulatory services are performed by a WA Supreme Court agent and other services are performed by a voluntary bar association
- An alternative structure.
- I have no opinion on the structure of the state bar.

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What is the main reason you prefer the structure to remain the same?

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What is the main reason you prefer to change the structure?

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What is the structural model you recommend?



# Public Comment

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**From:** Board Feedback  
**Subject:** FW: [External]WSBA Elder Law Section - WSBA Structure Feedback  
**Attachments:** 22.07.13 WSBA Structure Survey Responses.pdf; Structure Survey Email.pdf

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**From:** Meredith Grigg <Meredith.Grigg@nwjustice.org>  
**Sent:** Friday, July 22, 2022 3:30 PM  
**To:** Board Feedback <BoardFeedback@wsba.org>  
**Cc:** Carla Higginson (carla@higginsonbeyer.com) <carla@higginsonbeyer.com>  
**Subject:** [External]WSBA Elder Law Section - WSBA Structure Feedback

Good Afternoon,

I am writing to you as the Chair of the WSBA Elder Law Section. The Executive Committee recently surveyed section members regarding issues related to the WSBA structure and other issues. I have attached a summary of the survey responses for your information, as well as, the email I sent to the members about the survey.

At this time, the WSBA Elder Law Section Executive Committee has chosen not to take a position on the structure of the WSBA.

Please feel free to reach out to me if you have any questions. I appreciate your time and the work you do on behalf of our members.

Sincerely,

Meredith Grigg | Attorney

## Meredith Grigg

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**From:** Meredith Grigg  
**Sent:** Wednesday, July 6, 2022 4:05 PM  
**To:** Elder Law Section  
**Subject:** WSBA Structure Survey

Dear [WSBA Elder Law Section](#),

Chief Justice Gonzales recently asked the Board of Governors to undertake a review of the current Washington State Bar Association structure and to consider the ideal structure of an organization to “serve the public and the members.” In other words, should the structure of the bar association be changed, and if so, what structure should be used? To date, the discussion has been either that the current mandatory structure is working well and should not be altered and that it supports Sections in their work, vs. concerns about the state Supreme Court being in charge of the non-regulatory functions of the bar association, the court’s unfunded mandates that require members to pay for social programs without their consent, concerns about limitations placed by the bar association on Sections’ use of their own funds and their right to create their own bylaws, restrictions on Sections’ ability to comment on pending legislation that affects a section’s practice area unless approved by the bar association, disregard of members’ needs and failure to support members while they practice law, and unrestricted spending by the bar association on top-heavy administration.

The Board of Governors has been addressing this review through a structure workgroup termed “ETHOS,” comprised of the entire Board. There have been a number of all-day sessions to date and there are two more scheduled in July and August, with the next meeting occurring on July 23rd. The Board is expected to make a recommendation to the Court by the end of August. The Elder Law Executive Committee is seeking member input before providing comment to the Board of Governors in answer to the third question posed by C.J. Gonzales. For context, our state currently has a “unified” or “mandatory” bar, the Washington State Bar Association, through which all activities are conducted, both regulatory (licensing - bar exam, admission to practice - and discipline, which are delegated by the state Supreme Court to the bar association, and professional (CLEs, Sections, ethics hotline, funding social justice programs) as well as administering and paying for the operation of the six councils created by the state Supreme Court.

**Please take a moment to complete this survey: [Elder Law Section - WSBA Structure Survey](#). It should take about three minutes. Your input is important to the Executive Committee as we consider what comment to provide to the Board of Governors on behalf of our Section. The survey will close on **July 13, 2022**.**

Sincerely,

Carla Higginson, Board of Governors Liaison to WSBA Elder Law Section  
Meredith Grigg, Chair of WSBA Elder Law Section

## Elder Law Section WSBA Structure Survey Responses

July 13, 2022

### 62 Responses

#### 1. Do you have an opinion on whether the bar association should be bifurcated?

- **44%** - Washington should keep the current unified mandatory bar association....
- **34%** - Washington should transition to a bifurcated bar association ....
- **18%** - I don't have an opinion.
- **4%** - Other:
  - "I'm not inclined to see a major structural transition because of the uncertainties that all the functions could be done effectively that way."
  - "I prefer whichever option is less costly to members".
  - "I hesitate to express an opinion because I work in King County and have KCBA to do much of that so a bifurcated bar works for me but might not for other parts of the state."

#### 2. What aspects of the current unified/mandatory bar association do you like?

- Centralized communication and information; all bar functions seem very related.
- I like the fact that except for being in different sections, I share a common connection with every other bar member, it provides a shared sense of community and being in a single profession that we all share.
- I like voting for the members of the Board of Governors. I like being able to consult with my representative on the BOG. I like the work the sections are doing and the listservs they provide. I like that the BOG is answerable to the members and when they go too far astray, the members have the ability to pull them back, i.e. the LLLT program. I would not like the general public to be in charge of the Bar by voting on the members of the WA Supreme Court.
- Nothing in particular.
- One source for CLE and Section information, licensing, etc. Ethics hotline.
- Good people. Supporting sections. Running the ethics hotline
- Attorneys and not state officials should be handling discipline along with the Supreme Court
- Everything is all in one place
- Coordination and strength of one entity
- Everything that I need in relationship to my Bar Membership is in one place. I can choose to pay for section membership or not. I do not find the mandated payment for the operation of the councils created by the Supreme Court to be a burden, compared with the privilege of holding a license to practice law.
- Simplicity and clarity. It doesn't make sense to me to spread authority out among different organizations. I also dislike the idea of lawyers existing outside the professional organization because they resent paying dues or "government" being involved in their lives. I find this attitude inconsistent with our bar admission process. We are part of a profession.

- The non-regulatory functions of the bar association to are vital for the function to "improve the quality of legal services available to the people of the state." This could easily be lost by making such a structural change. The Keller deduction I think should address any concerns about ideology. I don't have enough info to judge whether bar staff salaries are inappropriate.
- Segregation of function to reflect control over professionalism in actual practice of law while encouraging collegiality and education in the more "social" elements of practice.
- 1) economic one organization should be less to run than two; 2) a unified bar should produce a more cohesive bar. 3) separating the unified bar will have a tendency to duplicate services, increase costs, and increase time spent having to navigate two organizations instead of one.
- The current system has been responsive to the needs of attorneys while also helping to assist the public through the numerous social justice projects it has sponsored over the years. The various sections are also free to participate in their own programs promoting access to justice, such as the annual scholarship the Elder Law section sponsors a legal intern to a non-profit. I just think it works well.
- no opinion
- one stop shopping
- I am used to it. Unification promotes organization and control within the organization. I generally approve of the direction the organization is going.
- Possibly less expensive than having a bifurcated Bar and I suspect it provides more support for groups who might not otherwise have enough members to be active.
- There is no confusion as to where to go for any resources.
- Washington specific CLE & the ethics hotline
- I like the sections and the CLE's, as well as the functions to support attorneys who have special needs, such as substance abuse or mental health problems.
- Everything under one "roof" is simple and easy for members. Plus, the Bar provides many services - CLEs, support groups, section, etc. If there are issues with the way the Bar is running then fix the issues rather than throwing out the whole system
- Makes sure folks from all over the state have access to CLEs, sections, diversity efforts.
- Unified licensing/regulatory/ discipline activity

### **3. What aspects of the current unified/mandatory bar association do you dislike?**

- The dues.
- The legislative and non-regulatory aspects.
- The substitute research engine that has been adopted is impossible to navigate -- despite several tutorials. I don't like that the Supreme Court has decided that they know better than anybody else.
- I dislike the limitations on the sections and the fact that so much of what the Bar does does not help and support lawyers. The Bar seems to take the position that it needs to protect

the public from lawyers. I won't even get started on the de-professionalizing of law. Every year that I've been out of school I realize how much I learned there that I didn't appreciate at the time or in my early years of practice. Focusing on clinical work in schools or narrowly defined technicians outside of school just means that we don't have the depth and width of perspective needed for complex and changing times.

- The organization is top heavy with administrative costs and is poorly run. The board of governors, on behalf of the WSBA members, does not exercise appropriate oversight over the executive director and she acts with no sense of accountability. The sections are not allowed to spend their own money or even communicate with their members without review and approval by the WSBA. There is far too much emphasis on serving the public, when a professional association should serve its members and support its members in providing service to the public. The Supreme Court is much too involved in running the WSBA, approving all bylaw changes, mandating that the Board of Governors act (with corresponding costs that are borne by the members) or not act, and treating the elected governors as if they were meaningless. This organization is too broke to fix, and the Court should take over the regulatory functions directly and let a professional association be formed of any sections who want to participate, with that association's goal to support and serve the attorneys who belong to it.
- Too much political and ideological activity under the guise of "improving the profession," some of it encouraged or directed by the Supreme Court.
- Bureaucratic.
- The exorbitant cost of membership for little value added to my practice.
- The Supreme Court's control of the ability of sections to respond to proposed legislation that affects our clients and our ability to provide services to our clients.
- I don't like legislative advocacy and access to justice stuff being imposed upon people who disagree with it as a condition of practicing law. I don't like the Seattle-centric focus of the WSBA or the maintenance of expensive office space that is unnecessary, in my opinion, to carry out the WSBA's mission and purpose, but I am not sure that is directly related to the unification and mandatory aspects this poll is focused on.
- I dislike that sections cannot make their own decisions on lobbying questions without getting permission of the organizational leadership as a whole. I don't see why the WSBA could not change this requirement, however, without a major structural changes, by requiring sections to identify section, not WSBA, as the proponent unless WSBA joins.
- Overlap of the current encouragement of the civility and "awareness" in practice from the need for discipline as to actual practice activities.
- Agenda and promotion of ideas and viewpoints that don't represent the bar as a whole.
- Sub-groups driving agendas.
- Sometimes the WSBA board does things I disagree with, such as the failed legal technician program, but that's the price of democracy.
- The high cost of running the organization, which is passed on to members.
- I have less choice in terms of options, e.g., using some services, but not others, but for which I nevertheless have to pay for. However, this aspect does not bother me personally that much.



- Having to run Sections through the Bar--the CLE process is particularly cumbersome and the amount shared with the section has decreased over the years. One example is the Bar's decision to not provide paper copies of CLE materials even if participants were willing to pay. Not very oriented to customer service.
- Domination by urban thinking
- The organization seems to have trouble serving all of its stakeholders. Sometimes they act for the benefit of the public, sometimes for the benefit of the attorneys, and sometimes what seems like for the benefit of themselves.
- I believe we are paying for functions that are not necessary. The ABA is voluntary and an organization similar to that would allow participation in the "extra" activities, but not require it.
- Having its political agenda—which has \*nothing\* to do with the practice of law—relentlessly rammed down my throat.
- Don't have any dislikes - but again if folks have issues with certain Bar functions - then address those concerns.
- Sections not being able to take leg positions.
- Section involvement by Bar Assoc.

**4. Should the Keller deduction be more broadly interpreted and increased?**

- **41%** - No
- **36%** - Yes
- **22%** - I don't have an opinion
- **2%** - other
  - "I have no idea how the decision is made that it is the amount it is, so I have no basis for an opinion about the interpretation. It seems like such a trivial issue at the stated cost that only a bunch of hair-splitting lawyers would give a damn about it in the first place."

**5. Do you think that your dues are reasonable for the services provided by the bar association?**

- **44%** - Too high
- **44%** - Just right
- **3%** - Too low
- **8%** - other
  - "While any expense is an expense. I don't think I am qualified to answer this question. For instance, how much would it cost me under a bifurcated system?"
  - "I think they could be reduced if the WSBA got rid of the swanky downtown Seattle headquarters and had people work remotely or in another lower-cost location, otherwise no complaints."
  - "Don't really know; high for lower-income practitioners, but that doesn't mean it is unreasonable."
  - "The dues should reflect necessary cost to run the organization."
  - "I am concerned that our headquarters take too much of our dues that could be used for other purposes."

**6. Do you believe it is appropriate for the Supreme Court to direct the bar association's activities, such as approving bylaws, overriding decisions by the Board of Governors, and otherwise overseeing governance matters that are not strictly related to licensing and discipline?**

- 58% - No
- 26% - Yes
- 13% - I don't have an opinion.
- 2% - other
  - "I believe it is appropriate to manage the bar but should be related to licensing and discipline."
  - "No, unless there is some kind of illegal activity going on."

**7. Do you believe the headquarters should be moved to a location with lower overhead and more ready physical access by members across the state, such as SeaTac or a location in the middle of the state?**

- 83% - Yes
- 0% - No
- 6% - I don't have an opinion
- 11% - other
  - "How about people come back to work? If not, then the cost needs to come down for our new, virtual Bar Office."
  - "I would choose a more frugal option but locating offices in the State's largest city seems appropriate."
  - "Find cheaper space, but downtown Seattle is closest to the largest number of attorneys."
  - "Only if a move is cost-effective. Physical access by members seems irrelevant, however."
  - "SeaTac yes. The middle of the state: no. It should be in the center of where the most lawyers are and I bet that is SeaTac."
  - "Yes, for lower overhead, but not necessarily to the middle of the state."
  - "I don't think the office needs to be relocated, but if people are working from home and not using the space, then the amount of space leased should be decreased."

**8. Is it important to you that the various practice and other Sections should be free to lobby, submit comments, or take a position on pending legislation without the currently required process?**

- 63% - Yes
- 22% - I don't have an opinion.
- 11% - No
- 5% - Other
  - "I agree with some level of oversight. However, if it prevents valuable input by sections with special expertise, the process should be revised."
  - "If we do not allow that, some other process needs to be developed because we are obviously stakeholders and (hopefully) well-informed about legislation in our own

practice areas, so our input should be encouraged. But does it have to be through the WSBA and sections? I don't think it does. There are other ways to advocate."

- "Only if multiple options available for a given section."

**9. What services should a voluntary professional association provide to its members?**

- 62 - CLEs
- 61 - Sections
- 60 - Listservs
- 57 - A robust ethics hotline
- 46 - Legal research/search engine
- 42 - Networking opportunities
- 41 - Analysis and position statements on legislation and rulemaking
- 34 - Referral requests/services
- 29 - Voluntary malpractice insurance
- 27 - Drug/alcohol counseling
- 27 - Mental health/wellness counseling
- 16 - Health insurance
- 2 - Automobile insurance
- 6 - Other
  - "more activities for lawyers NOT in Seattle"
  - "Publications which provide a diversity of opinions and viewpoints"
  - "Judicial candidate ratings"
  - "Mandatory malpractice insurance"
  - "help with IOLTA and other practical aspects of running a law office"
  - "Regular updates on pending legislation effecting the practice of law"

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**From:** Board Feedback  
**Subject:** FW: [External]WSBA structure

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**From:** Boruchowitz, Robert <boruchor@seattleu.edu>  
**Sent:** Saturday, July 23, 2022 11:26 AM  
**To:** Board Feedback <BoardFeedback@wsba.org>  
**Subject:** [External]WSBA structure

**Dear WSBA BOG Members:**

**I write to support the continued structure of the WSBA.**

**For most of my career, I have been active in the WSBA, initially in the Criminal Law Section, for which I served as an officer several times, and then as a member of the Council on Public Defense(CPD).**

**I have been a member of the Council on Public Defense since it began. I have been an emeritus member for the past several years.**

**For nearly 40 years , the BOG has supported public defense reform efforts recommended by the Criminal Law Section and the CPD. Key among those efforts has been endorsing Standards for Public Defense, which have been cited in appellate opinions and local ordinances and are now reflected in court rules.**

**The WSBA's involvement has helped to transform public defense in the state and, while much remains to be done, has helped to make Washington a leader in public defense services.**

**I urge that the structure of the WSBA remain inclusive of the work of the CPD.**

**Thank you for your consideration.  
Sincerely,**

**Robert C. Boruchowitz**  
Professor from Practice  
Director, The Defender Initiative  
**SEATTLE UNIVERSITY SCHOOL OF LAW**

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**From:** Board Feedback  
**Subject:** FW: [External]Integrated or Non-Mandatory WSBA Membership

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**Sent:** Thursday, July 28, 2022 1:01 PM  
**To:** Board Feedback <BoardFeedback@wsba.org>  
**Subject:** [External]Integrated or Non-Mandatory WSBA Membership

**Date:** July 28, 2022  
**To:** WSBA Board @ e-mail [boardfeedback@wsba.org](mailto:boardfeedback@wsba.org)  
**From:** Forrest Dexter, WSBA 16537  
**Subject:** Integrated or Non-Mandatory WSBA Membership

Dear Board:

I am responding to information request concerning whether members prefer the WSBA to be an integrated or non-mandatory organization.

I prefer a voluntary or non-mandatory WSBA organization. I have membership in several other organizations both voluntary and mandatory and for which I prefer a voluntary organization.

I have been a member of the WSBA since 1986. Since 2000, I mainly provide legal, financial and consulting services to family owned closely held corporations, LLC's and trusts.

Thank you for your service.

Forrest

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**From:** Board Feedback  
**Subject:** FW: [External]Integrated system opinion

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**From:** Josh Dabling <jarabarow@hotmail.com>  
**Sent:** Monday, August 1, 2022 6:02 PM  
**To:** Board Feedback <BoardFeedback@wsba.org>  
**Subject:** [External]Integrated system opinion

I'll try to keep it short...

The Keller deduction is only the beginning. Activities that give rise to the Keller deduction question should not be activities that the Bar participates in at all. Individual lawyers should be free to join any association and advocate for any idea they believe in. The Bar should advocate solely for the licensed and moral practice of law but should otherwise stay out of politics. It doesn't matter if it is conservative or woke. Sure, I get a Keller deduction. But when MY bar advocates for something I disagree with then it sullies me all the same, even if I get a couple bucks back once a year.

Merit and ability should be what guides our leadership choices, not political whimsey.

Regarding the mandatory membership: I have opposed unions and anything like them since I lost my job as a young man because I couldn't afford union dues. Those Teamster \*@&\$'s advocated my firing with no regard to whether I needed \$11 to eat enough that month. The bar dues are **burdensome** to me every year. Not all of us make enough to justify the amount we pay. I'm not lazy, but not every year was the best despite every effort.

I understand the necessity of an oversight board that ensures only qualified people practice law, but I would rather have a once and done system that thereafter relies on courts to enforce ethical rules. I don't have to keep earning a new juris doctorate each year, and unless there's something heinous in my behavior (which there isn't) then I have little need for the bar after I get my license number.

That isn't to say that I'm ungrateful for what the bar does so far as enforcing ethics rules. We should self-regulate to the minimum amount necessary. But that is the end of it, and we should keep ourselves from further politics or advocating of groups/ideas/policies.

*Joshua David Dabling, J.D.*

*Dabling Law Firm, PLLC 425-210-5495*

*WSBA #44792*

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**From:** Board Feedback  
**Subject:** FW: [External]Bar Structure

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**From:** Lee Roussel  
**Sent:** Monday, August 8, 2022 11:30 AM  
**To:** Board Feedback <BoardFeedback@wsba.org>  
**Cc:** brett@hesterlawgroup.com  
**Subject:** [External]Bar Structure

Please consider these comments on the structure of the WSBA.

**\*\* Ideal structure.** The best structure would be the Pennsylvania model. In PA (where I am also admitted) admission and discipline are handled by a disciplinary board appointed by and reporting to the Supreme Court, funded by lawyer assessments. CLE is handled by a similar board. The Pennsylvania Bar Association is a separate voluntary organization.

This structure offers some protection from "mission creep" at members expense since mandatory assessments are limited to funding these limited purpose entities. With the WSBA, there is always some new way to spend mandatory dues, whether on politics or "services" many members do not need or want (such as Casemaker/ Fastcase.)

The Pennsylvania model also avoids the appearance of conflict of interest and impropriety inherent in having discipline and admission handled by an organization with a political or ideological agenda. Like courts and judges, discipline and admission must avoid not only the substance but also the *appearance* of bias. The solution is to remove the WSBA from discipline and admission. The Pennsylvania model does that.

**\*\* Contingency plan: dues refunds.** . If the WSBA misses this final chance at reform, it is foreseeable that it will be hit with demands for refunds of unconstitutionally collected dues used for purposes other than discipline, admission and CLE. The WSBA should reserve funds for that purpose.

**\*\* The Constitution requires a voluntary bar.** Professor Levin (June, 2022 Bar Journal at 33) is correct that even if the interests underlying mandatory bars in Keller are "compelling," mandatory bars must also show those interests cannot be achieved by significantly less restrictive means than compelled dues payments. The Fifth Circuit, in McDonald.v. Longley, involving the Texas Bar, agreed:

Moreover, there are other means significantly less restrictive of associational freedoms to achieve the state's legitimate interests. Almost twenty states--including some the largest legal markets, such as New York, Illinois and Pennsylvania-- directly regulate the licensing and discipline of attorneys....

The Bar cannot reasonably suggest that those states are unable to regulate their legal professions adequately. McDonald, slip op at 19 (citations and quotation marks omitted.)

The WSBA is similarly unable to show the absence of less restrictive means of regulating the legal profession. Pennsylvania provides one.

Beyond that, it is telling that courts continue to apply Keller not because they find it was correctly decided or consistent with modern First Amendment jurisprudence as set forth Janus, but because it is up to the Supreme Court to correct its own mistakes. As stated in McDonald:

Since *Lathrop* and *Keller* were decided, the Supreme Court's First Amendment caselaw has changed dramatically. Both cases drew from the then-existing jurisprudence on the First Amendment implication of mandatory union dues, but that jurisprudence has evolved. *Keller*, in particular rested almost exclusively on *Abood*... which the Court overruled in *Janus*.... Those changes, and *Janus* in particular, cast doubt on *Lathrop* and *Keller*....



[D]espite their increasingly wobbly, moth-eaten foundations... we apply them, leaving to ... the Court the prerogative of overruling its own decisions....

McDonald, slip op. at 13 n. 14 (citations and quotation marks omitted.)

This ringing endorsement of Keller and its reasoning should counsel the WSBA not to rely on a case likely to be reversed when the Supreme Court does revisit the issue.

Finally, the WSBA should consider that some of its actions as a mandatory bar may be subject to antitrust challenge under North Carolina State Board of Dental Examiners v. FTC. For example, the WSBA requires all members to purchase and pay for Fastcase/ Casemaker through their mandatory dues whether they need or use them or not or have a competing service. The legislature has not adopted a public policy requiring lawyers to purchase them. Even if the state Supreme Court reviewed them at some point, its usual *ex parte* review of WSBA actions without notice or hearing may not satisfy the requirement of "active supervision..." and "pointed re-examination...", North Carolina, slip op at 13, required for state action immunity.

Moving to a voluntary bar, where only those who chose to join WSBA have to pay for Fastcase, could avoid this antitrust issue as well.

The WSBA should respect its members constitutional rights to freedom of speech and association and move to a voluntary organization, based on the Pennsylvania model.

Lee Roussel  
WSBA # 27134  
Tacoma, WA

cc: Brett A. Purtzer, District 6 Governor

**To:** Board Feedback  
**Subject:** [External]ETHOS and the Future Structure of the WSBA

Dear WSBA BOG,

I add my voice to the calls to **convert the WSBA to a voluntary bar association** regardless of what the courts may decide about the constitutionality/legality of mandatory bars.

A voluntary association is simply a matter of fairness toward those members, like myself, who do not need and do not wish to pay for bar functions beyond the necessary attorney licensing and regulation.

I am a licensed attorney in both Washington and Pennsylvania who has practiced primarily in corporate and academic settings.

Pennsylvania has a voluntary bar association, the PBA, which I have never joined because I do not have a need for the services it provides. My current annual Pennsylvania bar registration fees are only \$275.

To practice in Washington I am required to be a full member of the WSBA and my current Active Lawyer License Fee is \$458. While I have occasionally participated in WSBA free CLE, in general I do not have a need for WSBA functions beyond the necessary licensing and regulation and would prefer the lower bar dues associated with a voluntary bar association.

I do understand that both the WSBA and the PBA provide a plethora of valuable services that are used and appreciated by many attorneys, but strongly believe that any services beyond the minimal licensing and regulation functions should be optional. Each attorney should be able to choose whether (s)he wishes to participate in and pay for those optional services.

Thank you for all the hard work you are doing to determine the future structure of our bar. Again, **I urge you to recommend that the WSBA alter its structure by converting to a voluntary association.**

Sincerely,  
Julie K. Smith  
Bainbridge Island