



MEETING NOTES

Approved by Chair on July 15, 2019.

Work Group Attendees

Andre Lang; Andrea Jarmon; Dan Clark; Eileen Farley; Esperanza Borboa; Hunter Abell; Jane Smith (phone); Kyle Sciuchetti; Mark Johnson (phone); Mary Fairhurst, Chair; Paul Swegle. Fred Corbit was not present for the meeting.

Work Group Staff Attendees

Dory Nicpon; Margaret Shane

Work Group Discussion

Mary Fairhurst summarized the Work Group discussions to date. She advised that the work Group voted at its last meeting to not suggest a bifurcated or hybrid Bar, but to keep the current structure and perhaps make some recommendations to the Washington Supreme Court (Court) regarding the current structure in light of *Janus*, the *North Carolina Dental Board*, and other applicable cases. In response to a statement that the Work Group should be working with the Board of Governors (BOG) regarding recommendations concerning governance, Mary noted the participation of BOG members on the Work Group and stated that the Work Group's recommendations would be taken into consideration by the Court, and then the Court can decide whether further analysis is needed and by whom. She suggested it may be most helpful for the Work Group to make high-level recommendations regarding areas that could contain exposure and suggestions to limit that exposure. She noted that the details may need to be worked on by the Court, the BOG, Bar staff, and other interested entities.

Discussion ensued regarding Eileen Farley's and Dan Clark's motions contained in the meeting materials; governance, including WSBA Bylaws, the BOG, and the State Bar Act; an independent audit

of activities and their cost; whether activities of the Bar are germane to the regulation of the practice of law or improvement of legal services; amendments to GR 12 in light of regulatory objectives; and calculation of the Keller deduction.

Eileen then explained each of her motions (A, B, and C in the meeting materials). Discussion ensued regarding using a legal professional and a fiscal professional, who they would report to, and what the timeline would be; whether the recommendations are a duplication of effort; whether the goal is a reduction of license fees or limiting exposure to law suits; and whether a consideration was made of public members on the BOG. A suggestion was made to form a work group of about seven members including some of the Bar Structure Work Group members and those who understand case law to do a deep dive regarding which WSBA activities embody ideological and/or political speech, and provide a report to the BOG and the Court. Once the report is approved, WSBA could retain an outside public accounting firm that is experienced in cost accounting and cost segregation, advise them which WSBA activities are ideological and/or political activity, and working with staff, determine the amount being spent. If there are suits, WSBA would then have expert testimony that would defend the Keller deduction.

Mary then read Dan Clark's motions. Further discussion ensued regarding methods for removing BOG members, review of the Keller deduction, governance discussions including Bylaw amendments regarding public members, at-large positions, and diversity and inclusion to the current BOG, Court order(s) regarding public members on the BOG, the duties, fiduciary obligations and loyalties of BOG members to the WSBA membership and to the public, concern for public interest, whether to suggest amendments to the State Bar Act, making it clear in the State Bar Act that the Court has the plenary authority over the WSBA, and hiring outside experts being a waste of time since the Work Group had already gathered the information and done the work.

After accepting several friendly amendments, Eileen moved to recommend to the Court that the WSBA funded boards, committees, and activities be systematically reviewed by experts outside the WSBA who would perform both a legal analysis of the Bar's activities and a financial analysis of the Bar's activities, and report to the Court as soon as possible to determine whether: 1) any WSBA funded boards, committees, or other activities identified by the experts use compulsory dues to finance political and

ideological speech, expenditures for which are not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services, and 2) the formula used by the WSBA to set the Keller deduction is accurate and, if not, what the correct deduction should be. Motion was seconded by Paul.

Discussion ensued regarding the inappropriateness of using outside, unnamed experts to do what the Work Group has been doing since March, the conflicts in asking people within WSBA to participate in the proposed determinations, support for the Keller portion of the motion, but not for the GR 12 portion since it was recently amended and the regulatory objectives define the rationale for the programs in which WSBA is engaging, and determining the appropriateness of the Keller deduction, then determining whether any amendments might be recommended to GR 12. Eileen accepted friendly amendments from Mary and Dan to first determine whether the Keller deduction is accurate, then if necessary, to recommend a review and amendments to GR 12, the State Bar Act, and the WSBA Bylaws, and that the group doing the review should an outside expert and representatives from the Court, the BOG and the Bar Structure Work Group. The group would be formed, the Work Group would be in hiatus until the review was completed and a report to the Work Group was made, then the Work Group would consider the report and make recommendations to the Court.

Mark called the question on Eileen's motion. Motion failed 4-6-1. Mary abstained. Mary then took a straw vote on whether the Work Group should continue and do a legal analysis in more detail using cost centers and more detailed activities to assess whether there is ideological and political speech based on presentations by Bar staff. Straw vote was 6-4-1. Mary abstained. She then took a straw poll of those Work Group members willing to participate. Straw vote was 10-0-0. Mary abstained.

Adjournment

Mary announced that this meeting was adjourned at 12:15 p.m. She stated that the next meeting would be on Wednesday, July 17, 1:00 pm – 4:00 pm, at the WSBA offices, and that the Work Group members would be polled in order to schedule future meeting dates.