

The Supreme Court
State of Washington



Supreme Court Work Group on WSBA Structure
Monday, June 26, 2019
WSBA Conference Center
1325 Fourth Avenue, Seattle, WA 98101

MEETING NOTES

Approved by Chair on July 2, 2019.

Work Group Attendees

Andre Lang; Andrea Jarmon; Dan Clark; Eileen Farley; Esperanza Borboa; Frederick Corbit; Hunter Abell; Jane Smith (phone); Kyle Sciuchetti (phone); Mark Johnson; Mary Fairhurst, Chair; Paul Swegle

Work Group Staff Attendees

Dory Nicpon; Margaret Shane

Presenters

Julie Shankland, WSBA General Counsel; Kevin Plachy, WSBA Interim Director of Advancement; Emily Chiang, ACLU of Washington Legal Director

Welcome

Mary Fairhurst called the Work Group meeting to order at 1:00 pm.

Specific WSBA Programmatic Activities

Kevin Plachy reviewed the history and activities of the WSBA's Access to Justice Program and the WSBA's Diversity, Equity, and Inclusion Program.

Julie Shankland explained potential "speech" implications in other WSBA programs, noting that they center on written and reported content, speech, and support of activities.

Work Group Discussion and Recommendation Development

Dory Nicpon reviewed the recommendations from the previous meeting. Work Group discussion included:

- Deciding whether to maintain and tweak the current structure or develop a different structure; i.e., bifurcating the Bar
- Analyzing each of the activities conducted by the Bar considering First Amendment implications and making assessments in light of *Janus*
- Reviewing the budget to ascertain where to cut costs, including no longer publishing *NWLawyer*
- Keeping access to justice programs, as well as programs related to minority, diversity, and equity, as core values
- Strengthening the *Keller* deduction and doing a robust *Keller* audit

Compelled Financial Speech, Compelled Association, and the First Amendment

Emily Chiang referred the Work Group to her letter contained in the meeting materials and noted that she would only be speaking to First Amendment considerations. She stated that it is her opinion that nothing is required by law to be changed in the existing Bar structure, and noted that if the goal for adjusting the structure is to make it easier for members not to spend money on ideological speech they do not agree with, changing the structure would actually make it harder for members to object to ideological speech.

Work Group Discussion Continued

Mary stated that she had heard favor among members of the Work Group for two options: (1) keep the current system, but evaluate and make minor adjustments; and (2) divide the bar into regulatory on one side with mandatory fees, and voluntary on the other side with voluntary fees. She reminded the Work Group that more than one recommendation can be sent to the Washington Supreme Court (Court). She suggested the Work Group discuss the information shared by Emily and decide whether it supported the opinions of the individual Work Group members. Work Group discussion included:

- Considering a model similar to California; a Work Group member participated in listening sessions with WSBA members, and suggested that a change in structure could restore member trust

- Sticking to the scope of work prescribed in the Work Group's Charter, which could be accomplished by tweaking the current Bar system, and focusing on governance
- Considering the optimal current structure for the Bar regardless of other issues
- Focusing on speech rather than whether an activity is mandatory or voluntary
- Having an outside entity review and analyze activities of the Bar

Dan moved to keep the integrated Bar structure as it currently is and make some tweaks. Paul seconded. Motion passed 10-1. Mary abstained.

Mark moved that with respect to free association and compelled speech claims currently being litigated throughout the country, and based on presentations received and discussion among members of the Work Group, and case law reviewed by the Work Group, the Work Group does not recommend any fundamental changes to the six Court-created Boards administered and funded by the WSBA, that the Court has determined, based on its constitutional authority, that WSBA members should pay for. Andre seconded. Mary clarified that the six Court-created Boards are: the Access to Justice Board; the Disciplinary Board; the Limited License Legal Technician Board; the Limited Practice Board; the Mandatory Continuing Legal Education Board; and the Practice of Law Board.

Discussion ensued regarding minimizing anti-trust issues by the Court having veto power over the termination of the Executive Director and the Disciplinary Counsel. Eileen moved that there be a more robust supervision of the Bar by the Court and that the Work Group recommend the Court take steps to review the process under the *North Carolina Dental Board* case so that there would be sufficient active supervision by the Court of the discipline process. Motion died for lack of a second.

Statements were made opposing Mark's motion as it was felt that more specific issues such as the Board and the Executive Director needed to be addressed and resolved first, and that Keller might suggest some adjustment, perhaps the motion is too sweeping without more discussion. Mary reminded the Work Group of the option of revisiting any adopted recommendation based on subsequent discussion. Andrea moved to table Mark's motion. Seconded by Eileen. Motion failed 4-6. Jane was not present for the vote. Mary abstained. Mark's motion passed 10-1. Mary abstained.

Mary requested that Work Group members email their motions for the next meeting to Dory and that the Work Group would be moving through the Work Group Charter and governance at the next meeting.

Adjournment

Mary announced that this meeting was adjourned at 4:00 p.m. She stated that the next meeting would be on Monday, July 8, 9:00 am – 12:00 pm, at the WSBA offices.