



WSBA

BOARD OF GOVERNORS

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August 17, 2016

Hon. Barbara Madsen, Chief Justice
Washington Supreme Court
P. O. Box 40209
Olympia, WA 98504-0929

Re: Report of the Board of Governors of the Washington State Bar Association on the
Recommendations of the Escalating Costs of Civil Litigation Task Force

Dear Justice Madsen and Members of the Court:

With this letter, we are very pleased to transmit to you and the members of the Court the Report of the Board of Governors on the Recommendations of the Escalating Costs of Civil Litigation Task Force. The Board of Governors adopted this Report at its July 22-23, 2016, meeting.

As you know from our briefing provided to the Court last February, the BOG formed the ECCL Task Force in 2011 following a 2007 ABA survey, where 80 percent of respondents described litigation as cost prohibitive, and a 2009 WSBA survey, where members agreed (39%) or strongly agreed (36%) that litigation costs have become prohibitive. The Task Force was chartered, amongst other things, to "assess the current cost of civil litigation in Washington State courts and make recommendations on controlling those costs." The Task Force was comprised of seventeen Judges, attorneys, and others, including Justice Stephens who served from the Supreme Court, and thirty-two additional subcommittee members representing experience in specialized areas. Together, they studied the issues, conducted another substantial survey, and worked continuously on the development of recommendations until their Final Report to the BOG in June 2015.

Beginning in the Fall of 2015 through the adoption of the attached Report of the Board of Governors, the BOG heard presentations on the various sections of the Task Force's recommendations and received live testimony from interested members and stakeholder groups on each of the twelve Task Force recommendations. Throughout both the Task Force's work and the review by the BOG, substantial member input was received and considered. The BOG reviewed the Task Force's Final Report, its survey and supporting work, the written comments and input to the Task Force, and the written and oral comments and input to the BOG.

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The BOG then voted to support or not support the Task Force's recommendations at its June 2016 meeting. With the attached materials, you will find the BOG's report and decisions on each of the twelve recommendations, the Task Force's Final Report to the BOG, and the substantial supporting materials and public input. This has been a very thorough and deliberate process.

Ordinarily, the next step would be to convene a rule-drafting group to prepare and propose civil rule changes to effectuate the accepted recommendations which would then be ultimately forwarded to the Court for consideration. All agree this will be a significant task. Before convening such a group of WSBA member volunteers, the BOG seeks guidance from the Court: Is there interest from the Supreme Court to consider these rule changes for this process to proceed? The BOG is mindful that the Court is not being asked for a binding or an advisory opinion. Rather, if there is modest interest from the Court to consider these rule changes, the BOG would take that information into serious consideration in deciding whether and how to proceed.

As stated at the end of both the ECCL Task Force Final Report and the BOG's Report, this is a significant effort to "make our courts both affordable and accessible while preserving the paramount goal of justly resolving disputes." With the decisions by the BOG to support some of the Task Force's recommendations, "the BOG believes that the process begun in 2011 should continue toward implementation of meaningful change, which will have a positive impact upon the costs of civil litigation in Washington Courts."

We appreciate the Court's review of the attached Report and these materials. We look forward to any input or questions the Court may wish to offer. Thank you very much.

Very truly yours,

William D. Hyslop

Encl.

cc: Paula Littlewood, Executive Director
Russ Aoki, ECCL Task Force Chair