# *Cotton Law Offices*

*Jean A. Cotton*
*Attorney & Counselor At Law*

*507 W. Waldrip St.*
*P. O. Box 1311*
*Elma, Washington 98541*

*Office 360-482-6100*
*Fax 360-482-6002*


September 14, 2016

Board of Governors
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Re: Proposed Amendments to WSBA By-Laws and Other Court Rules

Dear Governors:

I write these comments solely in my capacity as a private individual who is an attorney licensed to practice law in the State of Washington and who is a current member in good standing of the Washington State Bar Association. This letter is not intended to be nor should it be construed to be presented in my capacity as a long-time WSBA Section Leader, member of any particular WSBA Section or other entity. It should further be acknowledged that the comments presented herein are not intended as a personal criticism of any particular individual or individuals but rather as constructive feedback to facilitate an open dialog of controversial issues and a better work product reflecting the best practices of an organization I have long held in high esteem.

The issues presented by the proposed amendments to the WSBA By-Laws, GR 12, and the APRs now before the Board of Governors (BOG) for consideration are so vast and far-reaching that it is extremely difficult, if not impossible, to prepare a comprehensive, yet concise, presentation of what I and many of my colleagues perceive to be problematic about them. To that end, this letter is, sadly, quite lengthy and detailed but is, by no means, a complete analysis of all of the issues raised or presented by the proposed amendments. To facilitate a sense of organization, this letter is presented in sections and a set of exhibits to help the reader. These sections are as follows:

I. An overview of the concerns and questions for which I seek feedback from the BOG;
II. A general list of observations that apply to all of the proposed amendments;
III. A general list of observations/question as to each Article of the WSBA By-Laws supported by a detailed breakdown of comments, Article by Article, provided in a separate Exhibit which focuses primarily on the specific Article; and
IV. A summary and closing with requests presented to the BOG.

## I. OVERVIEW

At the outset I would like to acknowledge the tremendous amount of time and effort that many individuals have put into the proposed amendments. Having personally served on committees and task forces that have tackled major projects that required years of work, I do appreciate – probably better than most – what a Herculean effort such a project requires. I also appreciate, however, that working for so long on a project can result in the creators of the work product becoming too close to the work thereby resulting in failure to catch important errors or details as well as the likelihood of becoming too invested in the product. For that reason alone, rather than trying to push for an expedited approval, it is always helpful to subject the product to 'fresh eyes' in order to gain a better quality product, to avoid unintended consequences, and to achieve user buy-in.

In addition, I have been regularly attending the BOG meetings on for the past ten years or more. During that time I have witnessed many issues of importance to the members come before the BOG and, when the members have expressed not only interest but concern about the proposals, the BOG has taken the necessary time to have multiple readings of the proposal and take questions and feedback from the members and other stakeholders often without regard to their own expiring terms. One such example was the effort expended prior to approving the guidelines for indigent representation a few years ago.

This brings me to my first observation/question.

What is the necessity of pushing the proposed amendments through after only one short-set first reading before the BOG?

The answers provided thus far have focused on assertions that:

(A) this process has been going on for about four years (since appointment by former President Crossland of the Governance Task Force (GTF) following passage of the dues referendum);
(B) this has been a transparent process that has been available to members of WSBA via the official website at www.wsba.org;
(C) action needs to be taken before the four governors whose terms are ending in September 2016 and a past president rotate off the BOG; and
(D) an ongoing reference to a need to approve and implement these amendments to avoid anti-trust litigation from the federal government based on the *North Carolina Dental* case and, more recently, a veiled reference to some illusive legislation that may be forthcoming to tax attorneys to fund a new program to provide legal services to middle income members of the public

As to **(A)**, while it may be true that this process started in 2012, many of the faces involved since that time have rotated off the BOG or off the task forces and work groups involved. The BOG itself demanded a full year to review the recommendations of the GTF , broken into discrete pieces to be reviewed one at a time at individual BOG meetings, in order to prepare its own responses and recommendations. Thereafter, BOG created a By-Laws Workgroup (BLW) to take that work product and turn it into proposed by-law and rule amendments for consideration by the BOG. That process took yet another year but the work product was not even made available to the members for review and comment until roughly five business days prior to a Special BOG Meeting on August 23, 2016, at which the notorious first reading occurred. Only then was it learned that the proposals included things that were not part of the prior two task forces' recommendations. Moreover, a portion of the proposals are still not complete including those associated with the Sections Policy Workgroup (SPW)- yet another topic for another time - that has not even submitted its final recommendations to the BOG (nor will it do so prior to the cutoff imposed on members to comment on the present proposals in order for those comments to appear in the September BOG Book . In addition, only at that August 23rd meeting was it disclosed that there were still unresolved questions about what result certain proposed amendments actually are intended to produce. Once such example identified was whether the BOG actually intended to approve the Article that, as currently proposed, would allow non-lawyers to run not only for specific new At-Large gubernatorial seats but also for Congressional BOG seats presently only available to lawyer members of the WSBA.

Why should the current members of the WSBA not be given the same extensive opportunity to digest and comment on the proposals that has been afforded to the BOG itself? What makes the members' input less valuable, appreciated, or important?

As to **(B)**, transparency, it is true that much of the information has been placed on the WSBA website; however, that does not mean that *all* of the information has been there nor that it has been there in a timely fashion nor that it has been made easy to locate. It also would be completely disingenuous to imply that the average member actually visits the website on a regular basis, knows how to navigate it, or had actual knowledge of what has been going on. If that means the BOG has an excuse to say 'shame on you' to the members, then so be it. I wholeheartedly agree. I have been begging the Sections and other stakeholders to assign and send representatives to every BOG meeting for years but most do not understand the value nor the importance of doing unless there is a specific topic on an agenda that is of interest to that particular stakeholder group. Likewise, it is extremely costly to miss a full day (or more) of work to attend a meeting that may or may not have any business about which the individual member holds interest. Unlike those who choose to run for WSBA leadership positions and knowingly commit by so doing to the extensive amount of time required to perform the duties of their office, most members simply do not share the ability to do so either in terms of time or financial expenditure. However, perhaps that has now begun to change with the level of interest that has been generated by the debacle over the SPW letter of December 31, 2015, that has awakened the Section Leaders!

Despite all of that, holding short-set *Special* BOG meetings during the middle of the work week when most of the members have commitments in court, to clients, or to their employers that cannot be ignored, is not providing members with a meaningful opportunity to participate. Allowing attendance by webcast without providing the ability for real-time, interaction by the online attendees with one another as well as with those attending in person is not transparency nor is it a good communications practice. Withholding stakeholder comments and questions expressed during BOG meetings from the minutes themselves is not transparency nor is that a good communications practice. Citing to non-existent surveys or pools as a defense to a work product is not transparency nor is it a good communications practice. BOG members not visiting the local bar associations in their district or not visiting the Sections to whom they are a liaison is not transparency nor is it a good communications practice. All of these things are real and all of these things destroy trust between the BOG and the members. But there is still time to repair this relationship and rebuild that trust if only the BOG will listen to the voices so desperately being raised now.

As to **(C)**, does not the BOG have an obligation (and do not the members have the right) to provide its members an equal amount of time to review these work products and provide important feedback to their elected representatives? If not, why not? Neither the BOG nor any member of WSBA is omnipotent and all can certainly benefit from listening to and considering the opinions and expertise of their learned colleagues. So again I ask, what is the urgency here?

The proposed amendments are not routine housekeeping updates that typically require little discussion or in depth research. These are major changes that require an exceptional effort to review and clearly express questions, concerns, suggestions, and comments.

The amount of hard work that has gone into the drafting of proposed By-Law and rule amendments is certainly appreciated. I, for one, understand that type of effort and sacrifice from personal experience. A good work product, however, will stand the test of time and new eyes – so why not allow the members a real opportunity to become educated and respond rather than only giving them lip service? Please do not get stuck on a polarizing position of "we did our job and gave you notice, you just ignored it" vs. "how did we know when it's so hard to find anything on the website and the stuff there is so vague or incomplete". Such a dialog produces no good result and certainly does not engender either trust or good will. Moreover, it doesn't address the real issue – the proposed changes to rules and By-Laws that may forever alter the future of this organization and the practice of law in the state of Washington.

While it is human nature to take pride in one's authorship of a document, such pride can be one's ruin and cause minds to close to fresh perspectives or cause the creators to become defensive rather than being open to dialog and change. Such closed mindedness creates an environment where things are overlooked, phrases are inartfully worded, and other work product flaws flourish. It, unfortunately, appears more and more that the latter is happening with regard to the proposed amendments.

As to **(D)**, if there has been any anti-trust suit brought or legislation dropped, then when and where has that occurred? While admittedly I may be wrong, I am unaware of any suit that has been brought against WSBA (or any other Bar Assn) to date by the feds asserting anti-trust – so why rush? This is the same argument that was raised to justify creating LLLTs and yet there has been no such suit filed, to my knowledge, in any state in the entire United States. Would it not be better to know the allegations actually involved in such a suit in order to respond appropriately or take appropriate corrective action rather than speculate by conducting such a wholesale, enormous change with only the hope it's what is needed/expected to avoid suit? Why be afraid? There are over thirty thousand lawyer-members of our Bar Association many of whom are extraordinarily gifted at their craft and most of whom take on cases every day and work them through in a logical order to successfully resolve the issues involved. As to any potential legislation that may be forthcoming, essentially the same observations apply. In either situation, acting in haste sends a message that our leadership has no faith in the skills of our members to successfully defend against any such suit or legislation. That certainly cannot be the intent of the WSBA leadership or so I would hope it is not.

In summary, all of the reasons presented to date to justify rushing this process rather than providing for a thorough vetting of the questions presented are nothing more than excuses to prevent member participation in this process when it has been so loudly requested by so many.

## II. GENERAL OBSERVATIONS AS TO PROPOSED AMENDMENTS

Because of the short timeline provided, I have found it to be impossible to provide any comment specific to the proposed changes to the APRs or to GR 12. Having said that, however, it is my observation that those proposed rule changes and inextricably linked to the proposed amendments to the WSBA By-Laws such that neither can or should be submitted without a full vetting of all to assure consistency and avoid contradiction.

### 1. PROPOSED WSBA BY-LAW AMENDMENTS.

Throughout the proposed By-Law amendments are various substitutions of terms now in use with new words whose use appears to be suggested in order to encompass non-lawyers under the WSBA By-Laws as full members on equal footing with lawyers. The problem is that it becomes the situation of putting a square peg in a round hole. It just doesn't fit.

While many of the functions, purposes, and activities (both those authorized and those not authorized) set forth in the current WSBA By-Laws may be appropriate to set forth in the By-Laws or Charters of the Boards specifically applicable to LPOs and LLLTs, the merging of them into the document originally designed to apply only to lawyers is one of those square peg-round hole dilemmas in that it changes the meaning as originally applied and diminishes the value to the current (original) members of WSBA; i.e. the lawyers.

Many entities are accountable or report directly to the state Supreme Court but that does not make all of them (nor should they be) subject to becoming part of the WSBA; i.e. AOC, SCJA, BJA, etc. Each of these entities has their own structure, regulatory authority, and budget. The same should be true for the limited license non-lawyer regulatory boards and programs created for the benefit of these limited license non-lawyers. Although in 2012 the state Supreme Court *ordered* WSBA to provide administrative support to those Boards and handle the budgets and funds for those entities, it did not dictate that these limited license non-lawyers were to assume equal standing with lawyers as members of the WSBA. Moreover, in the dissenting opinion to that 2012 order, it was quite eloquently pointed out that requiring the lawyers of this state to fund those programs was equivalent to taxing those lawyers and that the authority of the Court to do so was questionable.

If limited license non-lawyers wish to form a professional association to represent their unique interests, they should be encouraged to do so. That, however, does not mean that they should be rolled into an association that was formed for the unique purpose of representing the interests of lawyers. The two are not one and the same and should not be treated as such.

It has been pointed out recently that there has been no apparent analysis performed by the WSBA as to the cost of extending full member benefits to non-lawyers and to reflecting those costs in the non-lawyer license fees in the same manner as the costs of membership are calculated and included in the license fees for this state's lawyers (and the proposed lawyer license fee increases to be voted on at the September 2016 BOG meeting). Due to the unknown fiscal impact of the issues associated with this question, the matter needs to be fully vetted and the membership made aware of the resulting research before the proposed By-Law amendments should be presented for final approval.

Along the same area of concern is the proposal to add non-lawyers to the governing body of the WSBA; i.e. the BOG. As has become the custom in the last couple of years, comments in opposition to this proposal and suggestions for less dramatic proposals have fallen on deaf ears. I, for one, strongly oppose such additions to the BOG. That being said, however, non-voting non-lawyer members on the BOG or non-lawyer members of an advisory committee to the BOG are more attractive alternatives if, in fact, the point is to obtain feedback from and consider the perspectives of these non-lawyer groups.

Most of the members of WSBA who have become even slightly informed about the proposed By-Law amendments are aware that there is a proposal to add three new at-large governor seats to the BOG to be filled by non-lawyers. What is of considerably greater importance, however, is the oft

overlooked proposed wording in Article VI, ELECTIONS, and the likely consequence of the proposed By-Law amendments that may result from the language presented. That consequence is that non-lawyers would be eligible and could run for the current BOG seats presently only available only to lawyers and voted on by members based on Congressional District. In addition, based on this same proposed language, these same non-lawyers would be eligible and could run for every officer position of the BOG except that filled by the Executive Director as *ex officio* Secretary. This would leave only the three at large seats reserved for lawyers (i.e. one for Young Lawyers and two for under-represented or diversity groups). Under this possibility, 14 of the 17 possible positions could ultimately be filled by non-lawyers! That is unacceptable.

Another significant area of concerns lies with the effort for force all WSBA Sections (currently 28 of them) to be cookie cutter, Stepford wives on one another; an outcome that would essentially destroy the very essence and value of the Sections. Each Section is a reflection of the unique areas of practice or interest with their only common denominator being that each Section serves the needs of the lawyers who are dedicated to improving that area of practice and to better protect the clients they represent along with the citizens of the State of Washington as a whole. The unique needs, goals, and composition of each Section demands something other than a cookie cutter approach. One size all does not fit them all. If that is the goal of the proposed amendments, then why not just abolish the Sections and refund all of the voluntary dues the members have paid to be a part of those special entities or allow the Sections to break away from the WSBA to form their own organizations akin to the Minority Bar Associations now present within our State.

What will the cost be to implement all of the proposed amendments within the operational infrastructure of the Bar? The cost to upgrade the various computer systems and redesign tools like the lawyer director alone will undoubtedly be substantial. So, where are the estimates for these costs? What was included in them? Were studies even performed to address this issue?

There has been a great deal of commentary and discussion regarding whether or not WSBA is a state agency. Some argue that it is while others argue the opposite. Some on both sides argue that it must be/or can't be in support of their interpretations of what such a designation (or lack thereof) means in terms of allowable activities and functions. Some argue that it is not a State Agency and therefore not subject to the Open Public Meetings Action while at the same time defending its status as a "pseudo" State Agency (or, the other terminology being "agency of the state") to justify things such as WSBA employees being the beneficiaries of falling under highly enviable state retirement programs. Either it is a state agency or it is not. If it is not, get out of the state retirement system and save a ton of money. If it is, then get rid of the open public meeting policy within the By-Laws and simply operate in accordance with the Open Public Meetings Act.

## III. EXHIBITS WITH ARTICLE-BY-ARTICLE COMMENTS/QUESTIONS

Attached to this letter are individual Exhibits numbered A-I through A-XVI one to coincide with each Article within the By-Laws. It is within these exhibits that Article-specific questions and comments are presented so as to aid the reader in matching the questions and comments more easily with each Article.

## IV. SUMMARY AND CLOSING

As with the observations presented in the preceding sections of this letter and the exhibits thereto, every effort has been made to be thorough but it must be emphasized that the information presented is NOT intended to be an exhaustive presentation of every possible question or comment. There is simply insufficient time to do so and the body of knowledge necessary to provide an exhaustive analysis requires minds and resources far more well-equipped than what I have to offer.

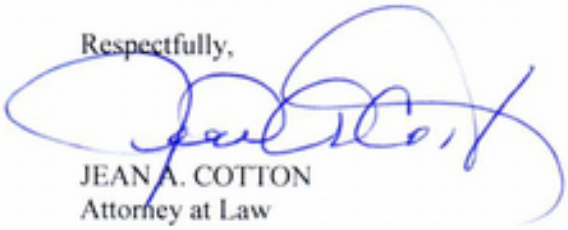
There are so many significant (as well as several very subtle) issues presented in the proposed By-Law amendments about which there is simply insufficient time for one person to provide a thoughtful and complete commentary by the deadline imposed.

Several of my colleagues have submitted their own effort for your consideration. Not all of us agree on every issue but we all respect one another's effort in bringing these varying perspectives to your attention. I also do not disagree with every proposed amendment being brought forth. And I will endeavor to identify and provide you with my comments/questions on new issues that are identified hereafter.

With all that has been discussed thus far, it should be crystal clear to any reader that this unique and vast set of proposed amendments demands a level of expertise and precision that does not presently exist in the documents that were put forth for first reading at the August 23, 2016, Special BOG Meeting.

For so many reasons, it is respectfully requested that the BOG decline to take a final vote on the proposed By-Law and rule amendments scheduled to be considered at the September 2016 BOG Meeting and to, instead, schedule a series of meetings over then next year to address a limited set of Articles at each such meeting in the same manner that it analyzed and vetted the GTF Recommendations in between June 2014 and September 2015.

Respectfully,



JEAN A. COTTON
Attorney at Law

cc: WSBA President Bill Hyslop
WSBA Section Leaders
Washington Supreme Court
Governor-Elect Christine Meserve
Governor-Elect Dan Bridges
Governor-Elect Rajeev Majumdar

EXHIBIT A -I

ARTICLE I. FUNCTIONS

Comments/Questions:

A. PURPOSES ON GENERAL

- removes “Association” from name of organization

  See comment below re ¶10 and ¶11.

  “Association” has been a part of the name of this organization since its inception in 1933. Even today, the Washington State Bar Association can be found on the Department of Revenue and Department of Licensing websites identified as “Entity type: Association” and with the NAICS (North American Industry Classification System) Code 813920 defined as a Professional Organization.

¶ 1 changes “Bar” to “legal profession”

What does this mean? There are a lot of people who are a part of the “legal profession” who are not included; i.e. secretaries, legal assistants, court clerks, court administrators, process servers, and so forth.

It also becomes confusing in that the term “Bar” has a well-established meaning, function, and purpose that has been developed over centuries. Think of places where it is part of our lingo; for example, Bench-Bar.

Black’s Law Dictionary describes “bar association” to mean an organization that is composed of attorneys.

This history of the term “bar” is delightfully presented in the on the website of the Florida bar association as follows:

> “The history of the term “bar” as representing a legal organization dates from the early 13400s. The word originated when King Edward II established a system of courts throughout his kingdom to settle disputes among the people. Judges moved from village to village to hear and settle disagreements in the surrounding communities. The people of this early era derived most of their entertainment and education in public gathering places. Hearing the plights and disputes of fellow villagers was a great diversion for them. As the courts grew in number, more people began attending these sessions as a social gathering. Consequently, the court sessions had to be held in fields or commons to accommodate the crowds. It soon became necessary to set up boundaries to separate the spectators from the proceedings. This was accomplished by surrounding the court with a square of logs. Only those person who were part of the

court or party to the argument were allowed within the square of logs of "bars". Thus, the terminology, "admission to the bar," became synonymous with practicing law. The term "bar" since has come to mean an organized group practicing law in a given locality."

The proposed change is more than semantics, it would change the entire meaning and purpose of the sentence and should not be approved.

¶ 3 adds "and the public"

What "services" does this organization provide to the public? It does not represent them in litigation. It does not offer them treatment if they have problems that affect their work ethic. It does not require them to maintain continuing legal education credits. It does not discipline members of the public. It does not grant them a license of any kind. The only way this organization "serves" the public is through the regulatory functions of assuring that persons licensed and practicing law in this state are properly vetted prior to admission, maintain proper continuing legal education to assure competence, providing assistance to members who are experiencing a crisis or problem that affects their work (i.e. addiction, mental health, etc.), and disciplining those who fail to uphold the standards imposed upon them by rules, statutes, and case law. Co-mingling the term "and the public" in this sentence is not only highly misleading, it is also quite confusing and subject to misinterpretation.

A possible solution would be to add a separate item in the list that says something like "Serves the public by assuring that the standards imposed upon its members as set forth in the RPCs, APRs, and other applicable rules, statutes, and case law are fully enforced ." This, however, is already provided in subparagraph 7 which is addressed below and therefore would seem to be redundant and unnecessary.

¶6 Assuming that LLLTs and LPOs are to be elevated to full members of the WSBA, the statement seems to be benign; however, it would be more clear if a clause were added at the beginning of the statement such as "As delegated by the Washington Supreme Court, …"

That being said, what if the ultimate decision is NOT to place LLLTs, LPOs, and Lawyers on equal membership footing within the WSBA? This begs the question of why non-lawyers should be included as full members of the WSBA. The only answer being expressed by some at WSBA is something to the effect that this is required because they have a limited license to practice law per Supreme Court Order and the Supreme Court has delegated the administrative function for these individuals to the WSBA. That's not good enough. The LLLTs have their own Board – the Limited License Legal Technician Board (APR 29(C))– and the LPOs have their own Board – the Limited Practice Board (APR 12(b)). Both Boards include representatives of that type of practitioner and all Board members are appointed by the Supreme Court. If they (the LLLTs and LPOs) wish to amend those rules so that they have a vote in selecting their Board members, that would seem the place to do so – not under the Board historically designed specifically for lawyers?

In addition, why remove the word “misconduct” from the statement? Is it not an allegation of misconduct that is being investigated? We are certainly not opening investigations based oon bad hairdos or bad breath are we?

¶10 and 11 changes “association” to “organization”

According to Black’s Law Dictionary Free Online Legal Dictionary 2nd Edition, a “Bar Association” is an organization that is composed of attorneys. “Attorneys” are defined as a lawyer, counsel, a member of the bar and an officer of the courts who is engaged by a client to represent them and try a case. “Attorney at Law” is defined as an advocate, counsel, official agent employed in preparing, managing, and trying cases in the courts. An officer in a court of justice who is employed by a party in a cause to manage the same for him. When used with reference to the proceedings of courts, or the transaction of business in the courts, the term attorney always means “attorney at law”. An “Association” is described as the act of a number of persons who unite or join together for some special purpose or business; the union of a company of persons for the transaction of designated affairs, or the attainment of some common object; an unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. An “Organization”, on the other hand, is simply a group of people, structured in a specific way to achieve a series of shared goals.

Removing the word association from its companion word, Bar, is technically a misnomer and inaccurate.

B. SPECIFIC ACTIVITIES AUTHORIZED.

¶6. This paragraph assumes that the WSBA is the body responsible for receiving and investigating complaints and disciplining, etc. LPOs and LLLTs when, in fact, APR 12 and APR 28 provide that the Boards for each of those entities have those duties. WSBA has only been delegated the authority to handle the budgets and funds for those entities and provide administrative support to those Boards (see APR 12(b)(3) and APR 28(C)(4). Neither of the APRs provide for the WSBA to absorb all functions of the applicable limited practice boards nor that WSBA must absorb the members of those limited license professions into the WSBA as “members” of the WSBA.

In addition to the types of problems/concerns suggested above, there are also those that are more about substance than semantics. Specifically, see I.B.22 and 23.

¶22. This authorizes the WSBA to establish the amount of all license and other fees as well as the amount charged (presumably to members?) for services provided by the bar but then trumps that with a provision allowing the Supreme Court to modify the amounts established by WSBA if that body doesn’t like it. There is no accountability here, for example, to require WSBA (or the Court) to distinguish and clearly publish what portion of a license fee is necessary for the regulatory functions such as admissions, discipline, or regulatory matters versus what portion is for non-mandatory, permissive or discretionary functions of WSBA ; i.e. the function of serving the professional association for lawyers.

factual or supporting information as to some statements made by some proponents of the

I have taken the time to conduct a limited, yet enlightening, amount of research to ascertain

proposed By-Law amendments. In that effort, I have attempted to look briefly at each of the 50 state bars' websites. I found it interesting that several actual publish the various parts of the license fees for their jurisdiction b segregating out the mandatory regulatory functions from the other functions of their respective associations. Why doesn't WSBA do so?

¶23 Why must this item be listed? There is great concern that if the Supreme Court wants the WSBA or some other entity to administer the boards the court has created, then the court should assure funding for those boards is provided by those benefitting or reliant upon them; i.e. the public, the Legislature, the Executive Branch, or the practice area (LPO or LLLT) - but not funds mandated on other practitioners who are not governed by nor and have any authority over those other entities' boards. It is a tax upon lawyers with no benefit to them; an unfunded mandate; a taking. Is that not the same type of conduct attempted by a cruel, mad English King over two hundred years ago that resulted in the infamous Boston Tea Party?

C. ACTIVITIES NOT AUTHORIZED

No comment.

EXHIBIT A -II

ARTICLE II. DEFINITIONS AND GENERAL PROVISIONS

COMMENTS/QUESTIONS:

A. HEADQUARTERS

- why change “shall” to “will” – what is the functional purpose of this?

B. SEAL

- why change “shall” to “will”
- note that the Seal will continue to use the word “Association”

C. FILING PAPERS WITH THE BAR

- no comment

D. COMPUTATION OF TIME

- why remove the word “shall” – is the intent simply to make the sentence a bit less cumbersome? What about legal holidays designated by the US Congress?

E. DEFINITIONS AND USE OF TERMS

- ¶2 – refers to “membership” without a definition for same later; also refers to “members” a therefore is subject to comments concerning what should constitute who is a member of th organization that appear throughout this correspondence.
- ¶4 – why are all other documents such as those handwritten, typed, and electronic writings excluded such as emails, scanned documents, etc.? May want to redraft to restate as “incl but not necessarily limited to…”
- ¶5 – what about digital media (not just video which implies a different technology); again m be more appropriate to include a phrase “including but not necessarily limited to” in this definition to account for changing technology
- ¶6 – does “electronic form” mean digital? Based on the preceding definition for “electroni means”, why not have a definition for “electronic form”?
- ¶7 - why remove the word “shall” – is the intent simply to make the sentence a bit less cumbersome? and same comments as to ¶2 re word “member”

- ¶10 - “member” – please see comments in letter as to this definition
- ¶11 – “may” is not a term to describe a RIGHT; it is discretionary and, at most, a privilege; suggest changing “has a right to” to “is allowed to” or removing the phrase completely
- Why no definition of either “shall” or “will”? Since these terms are either being used or replaced throughout the by-laws, there should be a clear, concise definition of each. They are no less important than the terms “may” and “must” which do have their own definitions!
- Why are there several other Articles with “Definitions” sections within them (and some with none whatsoever) rather than having ALL definitions located in one place for ease in reference AND to assure no term of art within these By Laws is overlooked? For example, Article VII, MEETINGS, uses the term “Bar entity” (or its plural) many times without a specific definition for this new term of art. That article has its own “Definitions” section as well. So why is that terms of art not defined anywhere?

F. PARLIAMENTARY PROCEDURE

Why is this subject being eliminated from this Article and moved to ARTICLE VII?

EXHIBIT A -III

ARTICLE VIII. MEMBERSHIP

The greatest dilemma with regard to this section of the by-laws appears to be an intermixing of the function of licensure and the function of membership without consideration of the differences between the two. The terms are not synonymous but the proposed amendments attempt to treat them as such.

The primary basis for this conundrum is the apparent attempt to pull under one umbrella three (or more) separate types of service providers when the core function of each type of service provider is substantially different as are their interests, needs, and financial realities.

To utilize the term "member", or its derivative "membership", when referring to a licensure function is extremely misleading and is causing substantial confusion when discussions ensue regarding the proposed amendments to the by-laws.

While I wholeheartedly oppose the attempt to include non-lawyers under the umbrella of the WSBA, if that is the reality that is going to happen despite the objections of lawyers for whom the WSBA was created to represent and serve, then perhaps a better method of handling the non-lawyer service provider categories would be to have separate Articles for each group; i.e. Article VIII. Lawyer Membership; Article XIV. Limited License Legal Technician Membership; and Article XV. Limited Practice Officer Membership.

Throughout this entire Article there is great inconsistency in the use of terminology which must be corrected for purposes of clarity and accuracy. Some examples of this are cited in the following comments but, as a time-saving measure, not all incidents are noted.

A. CLASSES OF MEMBERSHIP

The section is completely new and replaces the existing[1] Section A of Article VIII that is now addressed under a new Section B in Article VIII that is entitled "Status Classifications". The existing version of this Section describes the various classifications available to attorneys (i.e. lawyers) based on their licensure status; i.e. active, inactive, etc.

In the existing version, there was no need to breakout the Section into two separate ones because only one type of service provider was being addressed and all persons who fell into that category had the same things in common; i.e. educational requirements, licensing fees, membership interests and benefits, financial obligations and needs, etc.

Perhaps the better method of rewriting this Article's Section would have been as indicated above, a separate Article for each type of service provider category with each new Article having its own Sections for the various classifications, etc. That would then allow for this particular Article to start by simply

[1] The use of "existing" refers to the By-Laws of the Washington State Bar Association last approved by BOG on September 18, 2015.

changing the heading of this Section to MEMBERSHIP STATUS under which the various status categories are/should be addressed as in the existing Article III.

That being said, if the decision is to maintain all categories of service providers under one Article, then, at the very least, the title of this Section should be changed from CLASSES OF MEMBERSHIP to TYPES OF LICENSURE to distinguish it from the next Section that discusses "classifications".

¶1 - The intermingling of the concept of membership and licensure is put to the forefront in the introductory sentence – this is problematic

a. For attorneys, the proposed language limits membership to those admitted to practice law pursuant to only APR 3 and APR 5 even though those qualified to practice pursuant to APR 8 and APR 14 are currently members of the WSBA and pay fees to WSBA pursuant to those two latter rules.

b. Why is not similar additional language such as "admitted and licensed to practice in a limited capacity pursuant to APR 28" included for the LLLT "members" as was for the attorney members?

c. Why is not similar additional language such as "admitted and licensed to practice in a limited capacity pursuant to APR 12" included for the LPO "members" as was for the attorney members?

The final, unnumbered paragraph of Section A.1 rambles and could be considerably more concise.

¶2 - Why are those licensed pursuant to APR 8 and APR 14 being excluded from membership in the Bar when they are required to pay fees to WSBA and the current APRs describe them as members? What's the benefit of excluding them? And, if excluded from membership status, why should they have to pay any fees?

The final sentence of the paragraph should, in its entirety, be a separate, numbered paragraph and should be redrafted to be considerably more concise. Would not a simple sentence such as "Membership in the Bar ends upon termination or revocation of a member's license, whether or not such act is voluntary."

B. STATUS CLASSIFICATIONS

This Section, now a new one, is the proposed rewriting of the existing Article's Section A.

Again, by attempting to combine descriptions for the status of a lawyer-member with those of non-lawyer service providers, the wording in this Section is often convoluted, difficult to read, and inartfully crafted.

The heading of this Section could be more accurately relayed by changing the heading to MEMBERSHIP STATUS TYPES. Then, if all such service providers are addressed in this one Section, it would be much more appropriate to provide applicable titles to sub-sections for each type of service provider that are

appropriately titled; i.e. Active-Lawyer, Active-LLLT, Active-LPO, etc. rather than trying to address them all in the manner presented in the proposed amendments. This specific concern/comment is applicable when addressing Article IV.

These sub-categories of service provider types would be most beneficial when transferred to the WSBA member directory. Currently when looking up an attorney, the on-line directory displays a field entitled "Status". Right now, because only attorneys are in the directory, that status field simply reflects "Active" or some other status. If all service provider types are going to be lumped together, it would be difficult to distinguish between an Active lawyer versus an Active LPO or an Active LLLT. That would be EXTREMELY misleading to the public as well as to other WSBA members. This fact alone justifies breaking out the service providers into separate sections within the by-laws rather than lumping all into one.

To begin the Section, I would suggest a re-write of the introductory sentence. One suggestion could be: There are XXX types of membership status. The qualifications, privileges, and restrictions for each type of status are set forth in the sub-sections hereafter."

Why aren't the other classes of licensure included under this Section when they are clearly mentioned later in this Article without the same type of descriptive information; i.e. Disbarred, Resign in Lieu of Disbarment, Voluntary Resignation, Resignation in Lieu of Discipline, Revocation? Aren't all of these akin to subcategories within a "Revoked" status? What about Administrative Suspension?

¶1 – if changed to address the service provider type, the title of this sub-section should be "Active-Lawyer"; otherwise "Active Status" ; In addition, removal of the phrase "or disbarred…" and leaving only the disqualifying act of being suspended is misleading and incomplete. What about members who are not only disbarred but are inactive, have resigned, or are some other status other than fully active? This needs to be further fleshed out to be concise and comprehensive.

¶1.b.2 Considering the practice elsewhere in the by-laws, why list all of these "entities" and just simply say "other Bar Entity"?

¶1.b.4 This is not accurate if non-lawyers become Active bar members as is being proposed. Each Section currently has its own by-laws, some of which exclude certain types of practitioners such as non-lawyers. Sections should be allowed to make such a determination rather than being forced to take in a new class of members - voting or non-voting - without their consent – a topic yet to be fleshed out in that Article and a separate workgroup's efforts. Suggest adding clause at end of statement that states "if allowed under the Section's by-laws".

¶1.b.5 This is a debatable issue as the cost and funding to support such additional members' access to full member benefits now financed solely by attorney members of the Bar.

¶2 The introductory paragraph that is being deleted is informative and helpful. It is suggested that this remain in the updated by-laws and possibly expanded to include "Inactive-Nonlawyer". Are inactive members going to be allowed to serve on other "Bar entities"? Why list only committees and boards?

¶2.a.1 Again, this should remain the decision of each Section and be subject to the provisions set forth in their by-laws. One size does not fit all and should not.

¶2.a.5 What member benefits are being offered to inactive members and what are the costs of this as well as the source of funding? Has any analysis been performed? If so, where can this information be found?

¶2.b.2) Is the intent to call this status "disability inactive" or simply "inactive"? If the latter, then a simple statement under the preceding statement to indicate inclusion of such individuals would be more concise and sufficient. If the former, then clearly use the two-word term throughout whenever referring to that status classification would be more appropriate.

¶2.b.3) Why are "honorary" members included under this status classification? Why not a separate one or, as stated for 2.b.2) above, why not list them under the inactive class description? Reading the description in this paragraph begs for the class to be a separate, standalone one and not part of the inactive classification.

¶3 Throughout this section there is reference to "resign" and "voluntarily resigned" – the use should be made consistent to say one or the other but not use both. It is somewhat misleading and confusing otherwise.

¶3.d.2 Considering the practice elsewhere in the by-laws, why list all of these "entities" and just simply say "other Bar Entity"?

¶3.d.3 What member benefits are being offered to judicial members and what are the costs of this as well as the source of funding? Has any analysis been performed? If so, where can this information be found?

¶3.d.4 Again, this should remain the decision of each Section and be subject to the provisions set forth in their by-laws. One size does not fit all and should not.

¶3.d.5 What does this mean? If they can serve on Bar entities, why wouldn't they be eligible to vote or hold an officer/chair type of position within that entity? This seems to be contradicting 3.d.2 above.

¶4.a Considering the practice elsewhere in the by-laws, why list all of these "entities" and just simply say "other Bar Entity"?

¶4.b Again, this should remain the decision of each Section and be subject to the provisions set forth in their by-laws. One size does not fit all and should not.

¶4.d What member benefits are being offered to Emeritus Pro Bono members and what are the costs of this as well as the source of funding? Has any analysis been performed? If so, where can this information be found?

¶5 The statement that "Members of any type can…" [emphasis added] have their membership suspended is not only inaccurate but also grammatically incorrect. First, any type would arguably include disbarred members (recognizing that this status is not currently identified under this Section of the Article but arguably should be identified) and it appears the writer only intended "any" to include active and inactive status classes included by the statement. Second, "can" imparts that the member "is able to" and therefore has a choice or control over the decision when, in fact, that is not true. If I understand the intent of the writer, I believe the statement should be rewritten to indicate that the Supreme Court has authority to order any member to be suspended based on some criteria specified in the statement.

C. REGISTER OF MEMBERS

No comment.

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

¶1 What include the second sentence? Would it not be better to add a clause at the conclusion of the preceding sentence stating "and as set forth in applicable APRs"?

¶1.b What does the newly added last sentence mean?

¶2 Why is the reinstatement/readmission course only required for lawyer members?

E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE through H. VOLUNTARY RESIGNATION

Comments that may be applicable to these Sections are not provided in this document due to the time restrictions for submittal of position letters to the BOG. The writer reserves the right to provide additional feedback at a later date if necessary.

I. ANNUAL LICENSE FEES AND ASSESSMENTS

¶6 This provision DOES NOT belong in this Article and should be removed and placed under Article VIII.

J. SUSPENSION through O. EXAMINATION REQUIRED

Comments that may be applicable to these Sections are not provided in this document due to the time restrictions for submittal of position letters to the BOG. The writer reserves the right to provide additional feedback at a later date if necessary

EXHIBIT A -IV

ARTICLE IV. GOVERNANCE

COMMENTS/QUESTIONS:

There are 3 versions provided in the materials disseminated for the August 23rd meeting. Having insufficient time to address all three versions, only Version 1 is addressed below.

Why isn't the Executive Committee described in this Article instead of only being mentioned in Article VII????? Since by its very Charter the Executive Committee is clearly a function of governance, it should be fully addressed under this Article.

If removing "Board of Governors" essentially throughout the Article (and elsewhere in these By Laws) and replacing it with "BOG", then, for consistency, every reference to "BOG" should be prefaced with the word "the" or it shouldn't be – not both. The prefacing "the" is not consistently used in these proposed amendments.

Why replace "shall" with "will" or "must" here and in other Articles? What is the purpose/rationale to do so?

A. BOARD OF GOVERNORS

¶ 1. – changing three at large Governors to six at large Governors –

First, regardless of the Governance Task Force recommendations, I have found the most members of the Bar oppose this change as do I. Second, why call these "elected" Governors when they are really just appointed by the BOG? Say that. They are appointed. They have no representative capacity as to any group of the membership. The same is true of the President. See subparagraph 2b comments.

¶ 2. - a. It is true that the BOG elects the President, but why is that the case? Why isn't the President elected by the members? What would be wrong with that? With electronic voting now available, it would be simple to do and provide much greater support by the members than the current methods which often appear to simply provide an existing insider with the upper hand in the selection process over one not a current BOG member (look at the last two selections)!

b. The sentence is missing an "and" after the newly proposed clause and the existing clause that begins with "annually…."

c. Each Governor is elected to represent the interests of their district's members and in doing so, represents the interests of all members. Representing one's district does not mean that the Governor is absolutely bound by misinformed or uninformed members (which would occur less often with better communications from the Governors to their districts). Even more important is that the Governors DO NOT represent the public who are not members of the Bar! While the Bar may serve the public through the its obligation to assure competency in its members, it does NOT represent and is NOT elected by the general public. Use of the word "represent" in this paragraph is

a misapplication of the term itself as well as applied to the role of the governors and should not be used.

d. As written in the existing version of the bylaws, the statement is accurate. As proposed in the amended version, the statement is not only inaccurate but also dilutes the duties and responsibilities of the elected governors.

e. There should be some recourse against Governors who are appointed to serve as BOG liaisons but who do not attend the meetings nor communicate with those entities to which they are to be liaising. Moreover, there should be no special treatment required that an entity to allow such a Governor to attend their executive sessions. This change from a permissive to a mandatory in the proposed amendment is inappropriate and not well received. Moreover, why is/should not the same courtesy be extended to entity liaisons to the BOG?

f. – Is the intent of the amended portion of this paragraph to excuse Governors from attending other functions that, prior to these proposed amendments, they have historically been expected to attend?

¶4 b 2) – Why not conduct a special election as described in section 4.b.3) under this circumstance and where the Governor in question is one elected based on Congressional District, rather than have the BOG select the successor Governor? It makes sense for BOG to appoint a successor when it was BOG who made the original appointment but not when the original Governor was elected by the members.

Based on the foregoing concerns/comments, the BOG is urged to NOT approve the proposed amendments as written at this time.

B. OFFICERS OF THE BAR

Considering the core, unresolved problem of who will be an "Active" member under the proposed bylaw amendments and whether there needs to be one or more subcategories of active members (i.e. Active-lawyer, Active-LLLT, Active-LPO, etc.) requires an answer before being able to accurately comment on parts of this Section of Article IV and other applicable Articles.

In this case, the clause indicating that "all officers must be Active members of the Bar" is highly misleading without that clarification being in place. Using only the term Active member in this situation without more clarification will mean that one or more non-lawyer members of the BOG (assuming that provision is adopted) could be officers of the Bar. That is completely unacceptable since not a single one of those individuals would be elected by the lawyer members of the Bar.

¶ 1 – Why list all of the potential bar entities here when elsewhere throughout these proposed by-law amendments the effort is being made to eliminate such lists other than in a definition? Why is the President only expected to provide one report to the members of the activities of the Bar? Why isn't it a minimum of one report with an expectation of multiple reports?

¶ 6 – Why change from the word "pleasure" to "direction"? Would it not be more accurate to say that the "Executive Director serves at the pleasure of the BOG as directed and is subject to

an annual performance review by the BOG." This implies that the position will not be subject to hiring/firing/disciplining by the employer as any other employee would be. Is that the desired intent?

¶ 7 a- Same question/comment as to why isn't the President elected by the members rather than by the BOG? This topic requires discussion involving all of the current members of the association.

¶7 b- Same comment as for paragraph 6 above. In addition, despite the Governance Task Force Report recommendation to the contrary, the Supreme Court should play no role in the selection or termination of the Executive Director of this organization. That individual is an employee of the organization mandated to follow the directives and serve at the pleasure of the BOG . If the Supreme Court has issue with those directives, they should be addressed directly to the BOG, not to its employee. Moreover, as illustrated in case law that has been cited by others in their presentations to BOG over the last few weeks, the Supreme Court only has authority over the regulatory/discipline/licensure side of the organization and not the professional side of it that should be representing the members' interests. This would undoubtedly cross that line and place too much authority in the hands of the Supreme Court over issues it should not be involved in.

C. BOARD OF GOVERNORS COMMITTEES

¶1 - Here is another example of why trying to make a one-size fits all set of By-Laws is cumbersome and confusing to the reader. Are BOG committees subject to the same rules and regulations (bylaws) as all other Bar entities that are supposedly being lumped into that one term, Bar entity? If not, why not? If BOG Committees are special, then what limitations are there on creating new ones or eliminating old ones on a whim or to silence dissenting members? What's the difference between a BOG Standing Committee, a BOG Special Committee, a BOG Work Group, any other BOG subgroup, and non-Bog committees, work groups, or other subgroups?

¶2 - Why, in subparagraph 2, aren't non-BOG or non-Bar staff persons listed as potential members of these "committees"? And, if there are such members, why are they not automatically voting members? Why shouldn't they be? [Also, the last sentence in the subparagraph needs a rewrite to make it more concise and clear.]

¶3 - Subparagraph 3 contradicts provisions elsewhere in these proposed by-laws as to who may attend and under what circumstances. There needs to be work done to make these various provisions consistent with one another.

¶4 - Why is this Committee segregated out and made a part of the By-Laws when the others listed in paragraph 1 are not?

Why is this committee only required to have a 2/3 (67%) majority for determining either that the legislation complies with GR 12.1 or for purposes of taking a legislative position WHEN SECTIONS ARE REQUIRED TO HAVE A ¾ (75%) MAJORITY in order to do either???????

D. POLITICAL ACTIVITY

no comments

E. REPRESENTATION OF THE BAR

This introductory paragraph is yet another example of missing what is being promoted elsewhere in these proposed by-law amendments - Why list all of the potential bar entities when elsewhere throughout these by-laws the effort is being made to eliminate such lists other than in a definition?

For all of the above concerns/comments, the BOG is urged NOT to approved the proposed amendments to Article IV.

EXHIBIT A -V

ARTICLE IV. APPROPRIATIONS AND EXPENSES

COMMENTS/QUESTIONS.

Generally, the verb tense in this Article is not consistent within the Article itself and also does not matcl that of other Articles and should be modified to be consistent throughout the By-Laws.

Same general comment as to substitutions such as the word “will” for “shall”, etc.

A. APPROPRIATIONS

¶ 1.a. an example of the general comment above; i.e. “shall appoint” is more consistent than “appoints”.

Also, the paragraph following subparagraph 1.c. appears to be part of the primary paragraph and, as such, the margin should be extended to the left to line up with the primary paragraph. Same general comment about verb tense. Also, is it the intent of the last sentence in this paragraph to allow/include non-BOG members on the BOG Budget and Audit Committee and, if so, what type of individuals are envisioned: i.e. staff, members of the public, lawyer members of the Bar, others? Please clarify.

B. EXPENSES; LIMITED LIABILITY

¶ 2 Typographical error resulting from substation of “is” for “shall” without removing word “be” needs to be corrected.

¶ 3 and ¶ 4 – Both of these statements appear to require cross referencing to Article XIV, INDEMNIFICATION, and should be consistent with that latter Article. Is it the intent of either or both of these provisions to impose personal liability on such individuals or entities when the liability has been incurred through no fault of their own? That is what is implied.

EXHIBIT A -VI

ARTICLE VI. ELECTIONS

COMMENTS/QUESTIONS:

There are 3 versions provided in the materials disseminated for the August 23rd meeting. Having insufficient time to address all three versions, only Version 1 is addressed below.

A substantial amount of comments have already been provided regarding the contents of this Article and therefore I will not spend a great deal of time on detail here. However, there are some quite substantial issues that the BOG was unable to answer during the August 23, 2016, Special BOG Meeting with respect to the intent of the use of certain terms within this Article. In fact, it was acknowledged during that meeting that the question posed as to the intent of the proposed changes in this Article had been previously discussed but not resolved as to what the intent will be.

The question posed surrounds the drafted language where the terms “Active member” and “Active lawyer member” are utilized . This is the primary issued below in each of the affected sections and paragraphs.

A. ELIGIBILITY FOR MEMBERSHIP ON BOARD OF GOVERNORS

¶ 1 The existing Congressional District Governors are now elected by the members and currently only lawyer members of the Bar are eligible to fill these positions; the term used to indicate this currently is “Active member”. However, if the term “active” is amended (as suggested in Article III) to include non-lawyer limited licensed individuals, this changes completely who may be eligible to run for a Congressional District Gubernatorial seat and would potentially mean that non-lawyers would be allowed to fill any or all of these 11 seats in addition to the proposed new at-large seats reserved for non-lawyers. This brings the total potential seats a non-lawyer could fill to 14 of the total 17 seats on the BOG as well as being eligible to run for the Presidency of the Bar.

This is completely unacceptable and should not be allowed.

¶ 2 This section addresses the At Large Governor positions all of which are appointed by the 11 Congressional District Governors rather than by the members of the Bar. There are currently only three such positions on the BOG; a Young Lawyer position and two positions designed for members representative of traditionally underrepresented or otherwise diverse candidates. The proposed amendments would add three additional at large governor positions; two for limited license non-lawyers and one for a layperson.

¶ 2.a. addresses the two lawyer positions and ¶ 2.b. addresses the Young Lawyer position – all of which the proposal continues to identify as available only for active lawyer members.

B. NOMINATIONS AND APPLICATIONS

I have no particular comments or questions as to the procedural aspects of the nominations and applications processes as set forth in this Section of the Article.

My question/comments only has to do with why there should be any appointment process other than to fill a position vacated due to resignation, death, or similar disability.

It has never been clear why the at-large positions are appointed by the BOG rather than being elected by the members they are intended to represent; i.e. the Young Lawyer position by young lawyers and the other two positions by the members (lawyers) of the entire Bar. There have been several recent comments by others that have called this practice into question and I concur with their voices that the time has come for all members of the BOG to be elected by their intended constituents rather than appointed by the BOG.

C. ELECTION OF GOVERNORS

¶ 2.a. – see comment above as to Section A ¶ 1.

¶ 2.c.1 – why not base the deadline on the date postmarked instead of the date delivered to the Bar office. For many rural communities, the standard "3-day" delay for mail to be received is pure fiction. I, for one, live in a community where when I mail a letter to an adjacent community immediately west of my city using the US Postal Service, that piece of mail is first sent by my post office to the main sorting postal center 40-50 miles to the east of my town and then processed and sent to the address on the mailing label I prepared that is only 10 miles to my west. I have tracked this process and discovered that it is not unusual for my letter to be received at its intended recipient's address anywhere from the next day to 10 days later. However, if the postmark shows the date of mailing, there is proof of the timeliness of my act of mailing by any particular deadline. It would seem logical that this same method be used by the Bar for the mailing of ballots until such time as all ballots are cast only via electronic voting (then the problem of power and internet outages come into play).

¶ 2.e Please clarify what the place to which the ballots are delivered is intended to be; i.e. 10 days after the date the ballots are delivered to the voter or to the Bar.

¶2.f Please clarify what type of "active members" are being referred to in this paragraph.

D. ELECTIONS BY BOARD OF GOVERNORS

¶ 1 -¶ 3 - See comments above as to Section A ¶ 1. and as to Section B.

F. MEMBER RECALL OF GOVERNORS

Same question as to what constitutes an Active member for purposes of this Section. Would it be allowed for a non-lawyer "Active" member to generate a recall of a lawyer governor and vice-versa?

¶ 1 - Raising the threshold for a recall petition from 5% to 25% of the active members of the Governor's Congressional District would require, in many cases, more signatures than the

number of active members who actually vote for their governors. This is just WRONG! It also brings to mind a new question: If it is determined that the Congressional District Governors shall remain all lawyer governors, the when counting who may vote for a Governor in a Congressional District, will “Active” member non-lawyers be included in that headcount and balloting for the lawyer members?

¶ 2 At least in terms of a recall of a Young Lawyer Governor, only Young Lawyers would be allowed to participate in any vote and petition process. However, once again, raising the threshold for a recall petition from 5% to 25% of the active Young Lawyer members is just not right and should not be approved.

What about recall of one of the proposed new at large governor seats as well as the remaining current two at large governor seats? What is the process for each of these and why is it not included in this Article?

EXHIBIT A -VII

ARTICLE VII. MEETINGS

COMMENTS/QUESTIONS:

Although Sections A and B appear to be intended to apply to all "Bar entities" (including committees, Sections, task forces, etc.), they are really applicable only to BOG and do not reflect the reality of meetings of other entities.

A. GENERAL PROVISIONS; DEFINITIONS

See comment under Article II, Definitions.

¶ a. Why eliminate the description for "Regular meetings" yet include a special description for "Special Meetings"? Such drafting is inconsistent and potentially misleading. What was misleading or inconsistent about the existing sentence concerning regular meetings? What is the rationale behind this change?

¶ b. All the other terms that are defined in this section begin with the term being defined EXCEPT FOR "Bar entity" (or its plural). To be consistent in the formatting, this paragraph should be rewritten to follow the same layout. More appropriate would be to move all definitions, including this one to Article II.

In addition, under the proposed amendment, the individual entities delineated in the existing Article are stricken-through and replaced by the term "bar entity" (or its plural); however, the procedures and practices covered are, in actuality, more akin to the procedures and practices of the BOG rather than of many of the other bar entities involved. For example, where BOG may not allow proxies for purposes of voting, other entities through their approved By-Laws do.

¶ c. Since it is broken out into a separate paragraph, why not separately enumerate the definition for "final action" to maintain consistent formatting?

¶ d. This is a new definition for "minutes" that is not in the existing By-Laws. Why?

This addition to the By Laws is particularly interesting in that it will now codify the excuse for no longer listing liaison and guest attendees at BOG meetings that began earlier this year. When asked why these individuals were no longer included in the minutes of BOG meetings, the answer given by the Executive Director was that the By Laws did not require their identification!

A gradual sterilization of the minutes of BOG meetings has occurred over the last two years beginning with the elimination of any reference to questions/comments from liaisons and guests with the minutes produced in the September 2014 BOG Book and now the complete elimination of any record whatsoever that these individuals even attended the BOG meetings either on their own behalf or in a representative capacity for another organization. Despite the removal of any mention of member attendees, Bar staff (employees) are routinely listed in the minutes as attendees as is their input on issues/topics thus placing them in a what appears to be a priority position over the actual members. Such sterilizing of the minutes is not

representative of a transparent organization, does not promote the involvement nor interest of the members, nor promote good will and should be discouraged.

Based on the foregoing, the BOG is urged NOT to approve the proposed amendments to Section A of Article VII at this time.

B. OPEN MEETINGS POLICY

It is understood that the BOG is not satisfied with simply adopting the provision of the long standing statutory provision known as the Open Public Meetings Act. It is not understood why that Act is insufficient for use by WSBA nor why its scope is apparently considered to be too narrow for use by WSBA. Please explain.

¶ 1. Why eliminate the introductory paragraph 1 that is included in the existing By Laws? What purpose does eliminating it serve?

As to the second paragraph (the first in the proposed amendments), whether or not intended to be so, the second sentence can be viewed as a restrictive measure rather than a non-exhaustive, permissive list for meeting format. Some bar entities have authorized email meetings/discussions as an additional means of timely discussion. With the way this sentence is written, it could be viewed as prohibiting that. If this is the intent, why? What purpose does it serve? In addition, as technology advances, there may be other meaningful methods of conducting open meetings that would serve the purpose of transparency. Again, limiting language does not necessarily anticipate such future technological advances.

¶ 2. Why aren't matters regulated by the LLLT RPCs included in the list of entities set forth in this paragraph?

¶ 3. Here's another big change related to minutes. Presently the minutes of each BOG meeting are drafted and included in the BOG Book of the next BOG meeting for approval. Under this proposed amendment, only approved minutes would be made available to the public and the promptness requirement in generating those minutes is removed. In addition, the last sentence makes no sense. What entities are required to record minutes or not allowed to take final action on a matter and why? Finally, once again the question arises of why substitute the words "will" or "must for the word "shall"?

¶ 4 Another instance of the question of why substitute the words "will" or "must for the word "shall"?

¶ 6 This is an example of an instance specific to BOG meetings that the proposed amendment appears to be making applicable to all bar entities; i.e. voting for At Large Governors, etc. There are no votes for at large governors by most if not all other bar entities. The entire paragraph is somewhat inartfully written and effort should be made to draft a better proposal. The existing paragraph 6 is straightforward and concise and should be retained.

¶ 7 The existing paragraphs 7 through 9 are now renumbered to 8 through 10 with this new paragraph 7 (and its new subparagraphs) being added by the proposed amendments to specifically address Executive Sessions.

¶ 7a. This new paragraph is an example of a provision that is specific to BOG meetings by its very language. As such, it should not be under Section B of this Article but rather under Section C. Moreover, the items delineated beneath it in subparts 1 through 6 are either overly wordy or expand the purpose of an executive session to processes normally prohibited to occur in an executive session based on the Open Public Meetings Act. Subparagraph 6 is specifically far too permissive and essentially provides limitless authority to the President to raise and discuss anything in secret rather than in a public meeting. This is NOT transparency. This is NOT good practice. This does NOT promote trust.

The ending paragraph to subparagraph 7a is unnumbered but, again, is not only overly broad but may directly contradict or be inconsistent with provisions in Article IV.

¶ 7b & 7c. These new paragraphs are examples of provisions that are specific to bar entities other than BOG. Why break out BOG Committees separate from other bar entities? This contradicts the basic premise being put forth that all bar entities other than BOG are to be treated the same. It that premise is true, then paragraphs 7b and 7c should be combined and applicable to all such other bar entities. If, on the other hand, the committee described is such a unique entity, then tell us which committee(s) is/are at issue.

As above, the ending paragraph to subparagraph 7b is essentially identical to that provided for BOG and should not be. It is also not consistent with the provision set forth in Article IV.

This paragraph supposedly is applicable to a committee not the BOG. In addition, as above, the items delineated beneath it in subparts 1 through 6 are either overly wordy or expand the purpose of an executive session to processes normally prohibited to occur in an executive session based on the Open Public Meetings Act. Subparagraph 6 is specifically far too permissive and essentially provides limitless authority to the Committee Chair to raise and discuss anything in secret rather than in a public meeting. This is NOT transparency. This is NOT good practice. This does NOT promote trust.

As to the content of paragraph 7c, it is far less expansive than either 7a or 7b and is more akin to that set forth in the Open Public Meetings Act. It is a better example of what would be more acceptable under both paragraphs 7a and 7b. Most important, it does not include the overly expansive subparagraph 6 of the other two paragraphs discussed above.

The ending paragraph to subparagraph 7c is unnumbered but, again, is not only overly broad but may directly contradict or be inconsistent with provisions in Article IV. Moreover, why should Bar staff and the BOG liaison have an absolute right of attendance to such an entity's executive sessions?

¶ 8 thru ¶ 10 – no changes of substance; more substituting "will" for "shall" without good cause.

Based on the foregoing comments, the BOG is urged to NOT approve the proposed amendments to Section B of Article VII at this time.

C. MEETINGS OF THE BOARD OF GOVERNORS

¶ 1 – No changes of substance. This does not, however, mean that there is not good cause for at least one minor change that may promote greater transparency, notices, and good will. That minor change would be to require the posting of the preliminary and the final BOG

agendas as well as the BOG book on the Bar website by dates certain. For example, the preliminary agenda should be posted at the same time as the meeting notice at least 45 days prior to the meeting. The final agenda and book should be posted at least 14 days prior to the meeting with the ability to post supplemental materials thereafter. As it is now, there is often considerably less time between the posting of the book and the actual meeting leaving little time for anyone to give due consideration or obtain feedback from liaison's or representative's constituents .

¶ 2a - Why expand the list of who can call for a special meeting to include 3 members of the "Executive Committee"? (See question under Section D as to membership on the Executive Committee)

¶ 2b - Since the ED is already an *ex officio* officer (secretary), is not listing the ED here redundant? (see Article IV Section B) Remove the "and" prior to "the general Counsel". Why not make the time for notice of a special meeting a minimum of five business days rather than five days? Does the last sentence mean that the notice of cancellation and all supporting documents must also be posted on the website?

¶ 5 - The new location for Parliamentary Procedure. Why not utilize the same language that is proposed for removal from existing Article 2F and copy it here rather than changing the language as is now proposed?

Based on the foregoing comments/questions, the BOG is urged NOT to approve the proposed amendments to Section C of Article VII at this time.

D. EXECUTIVE COMMITTEE OF THE BOG

Is the Chair of the BOG Personnel Committee a Governor or a Bar Staff member?

This Executive Committee is the result of a recommendation of the Governance Task Force. When this topic came before BOG for discussion, there was considerable debate over whether the ED or any other unelected individual serving on this EC should be allowed a vote on committee business when such persons have no vote on BOG. Despite that, the formation documents for the committee authorized that privilege, once again diluting the authority of the members over the governance of their association.

Where is the policy for whether or not these meetings are subject to the Open Meeting Policy? If they are not, why not?

Until this issue is resolved and addressed in the By Laws, the BOG is urged NOT to approve Section D of Article VII at this time.

E. FINAL APPROVAL OF ACTION BY THE BOARD OF GOVERNORS

no comment

EXHIBIT A -VIII

ARTICLE VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

COMMENTS/QUESTIONS:

There has been a great deal of reference made during recent BOG meetings of forthcoming proposed amendments to this Article that have yet to be provided for review and comment. This is a topic of great concern and interest. While the present stance of some By-Laws Workgroup members is that there will be no such forthcoming amendments, there is already a member referenda proposed amendment within these current proposed By-Law amendments but that item is not under this Article as it should be. Rather, that proposed change is inappropriately placed at Article III.I.6.

Pending release of any additional proposed amendments to this Article (or topic), the comments below are limited only to the existing document now under review and should not be construed later as comments on a future document released for consideration by the BOG.

A. MEMBER REFERENDA

¶ 2.c - Because proposed amendments to GR 12 are running parallel to these proposed by-law amendments, references within this Section to the "new" GR 12.1 may be premature. A simple reference to GR 12 and its subparts would cover everything applicable regardless of whether or not the new GR 12.1 is adopted.

¶ 2.d - With notification of final actions of the BOG normally coming only via the issuance of the BOG minutes and with a gap in BOG meetings periodically throughout the year, it is not only possible but probable that an action may not become known within 90 days of the action being taken. This would be particularly true if the draft minutes of a BOG meeting are no longer released prior to final approval as that process will add, at a minimum, an additional 30 day period between the final action occurring and the members being aware of it via the approved minutes being released. A solution to this problem is to start that 90 day clock upon release of the approved minutes via an eblast of those approved minutes to the members.

B. BOG REFERRALS TO MEMBERSHIP

Reference is made within this Section to procedures set forth in these By-Laws for the BOG to refer a proposed resolution, etc. to a vote of the members. Where is that procedure set forth?

This Section (as well as other references to Active Members elsewhere in this Article) refers to the "Active membership". As exists today, that would include only active lawyer members of the Bar. Is the intent to include non-lawyer members, if the a provision in Article III is adopted, in the future? Or, would the references to Active be amended to limit such matters only to Active Lawyer Members?

EXHIBIT A -IX

ARTICLE IX. COMMITTEES, TASK FORCES, AND COUNCILS

COMMENTS/QUESTIONS

Same overall question of why substituting the word “shall” with “will” or “must.

A. GENERALLY

¶ 1 - The rewrite would appear to limit the BOG’s ability to delegate a work effort to more than one Bar entity when, in fact, it may be preferable to leave the option available to the BOG to delegate whole or only discrete portions of a work effort to multiple entities to ensure a comprehensive assessment of whatever the question is along with a comprehensive recommendation. This reference to a single entity can be found twice in the second sentence of this paragraph.

In addition, the last clause that begins with “however…” is redundant and should be deleted.

¶ 3 - Rather than repeatedly list the various types of entities, at this stage of the provision it should be sufficient to restate that particular clause with “A list of the current Bar entities …” and continue the sentence thereafter as written.

The second and third sentences in this paragraph could be construed to contradict one another. A simple fix would be to add at the end of the third sentence language such as “…or by other act of the BOG”.

B. COMMITTEES AND OTHER BAR ENTITIES

¶ 1 - What is the difference between a committee under this Article and a BOG Committee under Article IV?

¶ 1.a. - Here is a situation where the BOG’s determination of whether the term “Active member” should be further expanded to provide whether the intent is for only lawyer-members to fill the role described or whether the intent to for non-lawyer members to do so. This should be discussed and clarified before passing on this provision.

¶ 1.b. – It appears that two paragraphs were scrunched together rather than being separate and distinct. As to the first paragraph, why substitute “are” for “shall be” – what is gained/lost by doing so? As to the second paragraph, the substitution of “is” for “shall” failed to remove the “be” following the word shall. It the substitution is to be allowed, that typographical error should be corrected. Again, however, why the substitution of terms in this paragraph – what is the benefit or consequence of doing so?

¶1.c. - Suggest eliminating the phrase “with the BOG having the authority to accept or reject that selection” and replacing it with “subject to BOG confirmation”.

¶1.d. – Suggest adding “balance” immediately preceding the word “unexpired”.

¶2.a. Same comment as stated above for ¶1.c. The addition of the word “committee” in the last sentence is inappropriate – this paragraph is addressing other Bar entities NOT committees. In addition, it is suggested that the ending phrase beginning with “or until such…” be replaced with something akin to “or, in the event of a vacancy, until the vacant position’s successor is appointed.”

¶2.b. Same comment as stated above for ¶1.c.

¶ 3.b. Was it intended that this subpart not apply to committees? If so, why?

¶ 3.c. Since there is reference in the title to this sub-section to two separate groups; i.e. committees and other bar entities, what is the term “These Bar entities” intended to mean – both or only one of the groups?

¶ 3.e. Is it really the intent of the writers to require distribution of minutes to each entity member rather than simply posting to the applicable website? If so, then way isn’t the BOG required to distribute its minutes to every member of the WSBA? Why the disparate treatment? Further, if an entity has its own website, why should its minutes be posted to the WSBA website rather than its own? Also, please refer to the comments under Article VII as to the definition of “minutes”.

¶ 3.f. Subparagraphs 1 and 2 again adds the word “committee” where the term should be eliminated as this subpart is supposed to be applicable to committees and other Bar entities.

C. COUNCILS

Generally this entire section of the Article should be eliminated as a council would fall under the definition of a Bar entity that is subject to only perform the work and duties set forth in its founding charter or other originating document. It is simply contradictory and redundant to maintain this section of the Article for the reasons stated.

ARTICLE X. REGULATORY BOARDS

COMMENTS/QUESTIONS:

As with several other Articles, once again there appears to be a wholesale elimination of the word "shall" without explanation being provided. The original wording of the Article is preferable to this reader.

Although both the existing and the proposed Article provide that Governors and Staff are not voting members of Regulatory Boards, neither indicate how these two types of attendees may participate in executive sessions or confidential deliberations. Both versions clearly do not allow Liaisons (no definition of "Liaison" provided) to participate in such sessions/deliberations although Liaisons are supposed to be allowed to attend them. (From personal experience, I know that this has not always been the practice despite this Article's existence.) Therefore, please clarify the distinction between Governors, Staff, and Liaisons for purposes of either executive sessions or deliberations and provide some definition of the word "Liaison" so as to clarify to whom it refers.

As to the rewording of the final sentence, should it not say "Liaisons may not be excluded from ..." rather than the wording that is currently proposed?

ARTICLE XI. SECTIONS

## COMMENTS/QUESTIONS:

With the final body of recommendations not yet forthcoming from the Section Policy Workgroup, it would be purely speculative to provide accurate, responsive comments or questions to this Article prior to having had an opportunity to fully read and digest those recommendations. Therefore, there will undoubtedly be a separate submittal as to this Article transmitted prior to the September 29th BOG meeting.

A. DESIGNATION AND CONTINUATION

B. ESTABLISHING SECTIONS

C. MEMBERSHIP

D. DUES

E. BYLAWS AND POLICIES

F. SECTION EXECUTIVE COMMITTEE

G. NOMINATIONS AND ELECTIONS

H. VACANCIES AND REMOVAL

I. OTHER COMMITTETES

J. BUDGET

K. SECTION REPORTS

L. TERMINATING SECTIONS

¶

EXHIBIT A -XII

ARTICLE XII. YOUNG LAWYERS

COMMENTS/QUESTIONS:

As a whole, the changes appear to be okay EXCEPT for, once again, the wholesale substitution of the word “will” for the word “shall”. What is the reason for such a change and why is it considered appropriate?

Moreover, now that WSBA has eliminated the WYLD (Washington Young Lawyer Division) and, in essence, demoted Young Lawyers to a “committee” status, why is this Article necessary as a standalone one rather than simply becoming a subpart of Article IX, COMMITTEES, TASK FORCES, and COUNCILS”? That is, after all, the heading under which the Young Lawyers Committee is located on the WSBA website.

EXHIBIT A -XIII

ARTICLE XIII. RECORDS DISCLOSURE & PRESERVATION

COMMENTS/QUESTIONS:

¶ A. Why eliminate the entire first paragraph of the Article? The statement contained with the paragraph the proposal deletes appears to be meaningful and to relay an intention of being transparent. Is that not what the Bar is promoting? If there is some reason necessitating the deletion of the paragraph, it would be helpful to know what that reason is. Until such time as this issue is fully vetted with the members, it is recommended that the changes to this Article NOT be approved at this time.

EXHIBIT A -XIV

ARTICLE XIV. INDEMNIFICATION

COMMENTS/QUESTIONS:

This Article has been rewritten its entirety. Because it is impossible, in the limited time provided, to review and fully comprehend the essence and purpose of the changes, a thoughtful analysis could not be completed. It is therefore requested that this Article NOT be approved without a full and thorough vetting of the reasons for the complete rewrite and the contemplated improvements the rewrite provides, if any.

For additional thoughtful insight, please refer to the revised letter of September 13, 2016, submitted by Ruth Edlund to the Bylaws Workgroup.

EXHIBIT A -XV

ARTICLE XV. KELLER DEDUCTION

COMMENTS/QUESTIONS:

Throughout this Article, the drafters have substituted the words “will” or “must” for the word “shall” in a manner that appears to this reader to be inappropriate in many instances. It is recommended that these wholesale changes not be adopted but rather than each use of the word “shall” be considered carefully as to whether a substitution of terms is actually appropriate.

These wholesale proposed By-Law amendments raise a new question as to what is/is not now included in the Keller deduction calculation performed by WSBA and whether that process requires a fresh look to assure that all expenses other than those specifically limited to the regulation/discipline/admission of lawyers are included in the deduction.

EXHIBIT A -XVI

ARTICLE XVI. AMENDMENTS

This By-Law is generally without controversy as it normally would be applicable on those rare occasions when a minor adjustment to an outdated by-law required amendment to make it more accurate. However, whenever there is a major change to the By-Laws, the Article is simply lacking in appropriate severity to guarantee an honest and ethical effort is made to inform the members that something major is about to occur that requires their utmost attention. Such an occurrence should be preceded by an extremely well-advertised campaign to notify the members of the significant changes under consideration and to facilitate a meaningful series of opportunities to exchange ideas, ask questions, obtain answers, and build trust.

A significant rewriting of the entire By-Laws is one such event that mandates more than what this simple Article requires.

Major changes such as those now facing the Bar should be discussed in segments – Article-by-Article over several months to assure complete and exhaustive efforts are made to produce the best possible work product. The BOG asked for, and received, no less when it chose to consider, recommendation-by-recommendation, the report of the Governance Task Force. The members of the Bar should have nothing less offered to them when it is their By-Laws being completely rewritten.

This Article should be amended to address such major changes and the BOG is urged NOT to pass the proposed Article now before it until that occurs.