

The Supreme Court
State of Washington



Supreme Court Work Group on WSBA Structure
Monday, May 29, 2019
WSBA Conference Center
1325 Fourth Avenue, Seattle, WA 98101

MEETING NOTES

Approved by Chair on June 3, 2019.

Work Group Attendees

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

Work Group Staff Attendees

Dory Nicpon; Margaret Shane

Presenter

Geoffrey Green, Assistant Director, Federal Trade Commission Bureau of Competition

Welcome

Mary Fairhurst called the Work Group meeting to order at 2:00 pm.

Antitrust Considerations for Regulating the Practice of Law

Geoffrey Green reviewed and explained principal points to consider regarding potential antitrust violations, basics, issues, and applicable laws and defenses. He then reviewed the *North Carolina Dental Examiners v. FTC* case and explained the reasons the Dental Board was in violation of the antitrust laws and the holding of the court. He concluded by responding to questions from the Work Group.

Work Group Discussion and Recommendation Development

Mary suggested that the Work Group should share any thoughts about various options that they currently have. The Work Group should then discuss and prioritize the options, remembering that within the options, we will have to address programmatic and governance issues. The Work Group

needs to focus on what would be in the best interest of the WSBA within the current legal parameters, then decide process and assignments. She noted that she considers there are at least three options: do nothing and keep the current structure; divide into a mandatory and a voluntary bar; and do some sort of hybrid of the first two options. Each Work Group member offered initial thoughts, and suggestions included:

- viewing options through the lens of compelled political speech, compelled association, antitrust concerns, and various pros and cons;
- sectioning off political speech from funding by member fees;
- allowing members to “opt in” rather than “opt out” of paying for activities computed within the Keller deduction;
- remaining an integrated bar with “opt in” feature and motivating members to be part of the volunteer portion;
- tweaking the current structure and protecting staff rather than starting off with a clean slate;
- not separating regulatory from discretionary until the U.S. Supreme Court makes a clear decision;
- following the charge of the Work Group charter;
- enhancing oversight by the Washington Supreme Court (Court);
- requesting Section leaders review *Janus* and the Sherman Act and advise the Work Group what portion of the Sections’ work would be permitted and what would be in violation;
- reviewing recommendations of the Governance Task Force, including a Board of Trustees appointed by the Court rather than a Board of Governors, adding Limited License Legal Technicians (LLLTs) and Limited Practice Officers (LPOs) as well as public members to the Board, and recognizing that access to justice, equity and inclusion, and diversity issues are intricately related to the competency of attorneys;
- taking into account generational differences in the membership;
- being prepared to answer questions regarding the recommendations from the Work Group; tweaking the language in GR 12 to make it more clear that the Court controls the Bar, not the market participants; and
- exploring advantages and disadvantages of structural and governance issues.

It was noted that Court oversight of the Sections is unnecessary since they are voluntary therefore compelled speech is not an issue. A Work Group member commented that a Court-appointed Board would take away the members' voice.

Future Agenda Items

In answer to Mary's question regarding future agenda items, suggestions were made to:

- obtain a brief summary from a First Amendment attorney regarding the direction association cases have taken over the past 10-15 years;
- have a panel of four experts discussing the history and speculating on the future;
- hear from Representative Drew Stokesbary, Representative Laurie Jinkins, Senator Mike Padden, and Senator Jamie Pedersen;
- hear from constitutional scholars such as University of California Berkeley Law Dean Erwin Chemerinsky;
- hear from Janet Welch who recently gave a presentation at the Equal Justice Conference in Kentucky; and
- develop a list of questions regarding each of the potential approaches, then having an expert look at the questions and provide answers.

Eileen agreed to coordinate a possible presenter on First Amendment association issues for the next meeting. Mary said hearing from more speakers would be nice, but we have heard from many and the Work Group only has two more regularly scheduled, and 2 optional, meetings. Much of the remaining meetings need to be reserved for formulating the Work Group's recommendations to the Court.

Adjournment

Mary announced that this meeting was adjourned at 4:55 pm, and the next meeting would be on Monday, June 10, 9:00 am – 12:00 pm.