

MOTION: Regarding proposed establishment of a Supreme Court fee in lieu of current member license fees to fund various cost centers of WSBA.

In looking at the task that the workgroup is tasked with regarding the bar structure analysis under potential Janus and Fleck and related case law issue potential litigation filed by members that would allege that their license fees were erroneously being used to what would amount to "forced compelled" political speech and activities against their 1st amendment rights. I see the current WSBA budget cost centers being most likely to potentially be subject to an attack by a member under the first amendment.

- **Diversity:** \$445,817 in deficit spending subsidized by member license fees for FY 2019.
- **Access to Justice:** \$327,232 in deficit spending subsidized by member license fees for FY 2019.
- **Legislative:** \$154,066 in deficit spending subsidized by member license fees for FY 2019.
- **Sections Administration:** \$224,315 in deficit spending subsidized by member license fees for FY 2019.
- **Washington Leadership Institute:** \$75,000 in an annual deficit spending donation by WSBA to the program paid for by member license fees for FY 2019.
- **NW Lawyer:** \$197,103.00 in deficit spending subsidized by member license fees for FY 2019.
- **Public Service Programs:** \$262,919.00 in total deficit spending after receipt of donations from Bar Foundation, this is the figure subsidized by member license fees.
- **Washington State Bar Foundation:** \$164,863 in deficit spending to subsidize this 501C3 to be operated by WSBA staff. The foundation did contribute \$220,000 towards public service and diversity efforts, which are reflected above in reduced costs to both of these cost centers. Overall though, all of these are cost centers that are administered through member license fees.

The FY 2019 total of these above programs is **\$1,851,315.00** in member license fees used to subsidize the operation of these programs. I could see a member that wanted to file a mirror litigation to that of Fleck or the Oregon litigation, or Texas, arguing that each of the above categories amounted to compelled political speech as each arguably under a strict scrutiny analysis is not currently being operated in the least restrictive means.

So overall the task of us is not to identify if we think these are important or not, obviously we and likely the vast majority of the members would agree that they are. The task seems to be to try to if possible insulate these programs from attacks by members of forced compelled political speech and/or erroneous use of member license fees based on forced compelled political speech.

So obviously to want to establish a best practice regarding this, I think the following makes sense.

For the Court to establish a mandatory fee through newly enacted Court rule that would directly provide a clear funding stream for these important cost centers and services that WSBA does, but not be paid through member license fees.

I would believe it could be called something like the "Enhancement of Justice Fee" (or whatever term the Court wanted to call a new proposed fee) which would be intended to be a "fee" by court rule analogous to the Client Protection Fund Fee to be hereafter used to pay for these important programs.

If the Court would be willing to do so, it would seem to take away from the member license fee compelled speech argument and rather it is a court ordered fee that is earmarked to cover the expenses associated with the administration of these programs. I would believe that the fee could be set at around \$55.00 (but obviously having WSBA staff calculate what the appropriate fee would need to be established makes sense).

WSBA could then look to reduce the overall license fees collected by this much, and the funding for these programs would be clearly isolated and established by Court rule and ordered fee.

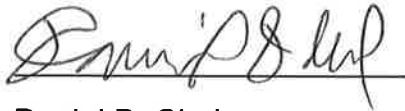
Doing so seems prudent and wise as it would clearly earmark funds that would be a stable funding stream for these important programs. It would also seem to take away from arguments that members license fees were being used to pay for compelled political speech under Fleck and Janus. The license fees would not be used to pay for these programs, but rather this established fee would be pursuant to court order for the enhancement and advancement of justice and equity and inclusion.

Based on this, I hereby move that this Work Group recommend to the Supreme Court the following:

- 1. That we recommend that the Washington State Supreme Court look to potentially order through Court order a new proposed mandatory "fee" similar to the Client Protection fund that is applicable to all licensed members to pay to attempt to fund some or all of the above described cost centers and important WSBA functions.***

- 2. That if the Supreme Court do so, that a correlating reduction in mandatory member license fees be made to make the overall impact on WSBA members cost neutral.**
- 3. That if this mandatory fee is adopted that the order be recommended to be annually reviewed for "reasonableness" to ensure that adequate funding of those programs remain in order to provide continued important robust services to the public, and to the WSBA membership that serves the Public.**

Respectfully submitted by:

A handwritten signature in dark ink, appearing to read "Dan Clark", written over a horizontal line.

Daniel D. Clark
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District 4, Governor