

State Supreme Court calls a 'timeout' for Washington Bar Association to review its rules

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Anticipating a potential legal challenge to the collection of mandatory fees from attorneys, state Supreme Court Chief Justice Mary Fairhurst issued an order directing the state bar association's governing board to put a hold on proposed bylaw amendments.



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The Washington State Supreme Court has directed the state bar association's Board of Governors to defer action on proposed bylaw amendments pending a comprehensive review of the bar's structure in light of a U.S. Supreme Court decision barring public-sector unions from collecting fees from nonmembers.

Anticipating a potential legal challenge to the bar's collection of mandatory fees from attorneys, state Supreme Court Chief Justice Mary Fairhurst issued the order in a Sept. 21 letter to the bar and elaborated on it at a Board of Governors meeting Sept. 27.

"It was meant to just take a timeout, so that we could together move forward and we felt in our role and our responsibility that we needed to do something," Fairhurst said during the meeting.

The state Supreme Court has authority over the bar, which carries out licensing, regulatory and disciplinary functions of the legal profession. The bar has about 40,000 members, with attorneys required to pay \$453 annually in membership fees.

"I won't go into, of course, the legal strategies or thoughts," Fairhurst told the bar of the pending review.

Fairhurst pointed to a June decision by the U.S. Supreme Court in a case called [Janus v. American Federation of State, County and Municipal Employees, Council 31](#), in which the court's conservative majority, in a 5-4 ruling, found that forcing workers to finance union activity violated their First Amendment rights and said government workers who choose not to join unions can't be required to pay for collective bargaining.

The high court already has before it a First Amendment challenge to North Dakota's mandatory bar-association dues, and two Oregon lawyers have filed a federal lawsuit that relies on the Janus decision to overturn compulsory dues in that state, [according to The National Law Journal](#), a professional publication for attorneys.

While no similar lawsuit has been filed against the Washington State Bar Association, the bar has been roiled in recent years by debate over the cost of bar dues, including whether they should be spent on political activities such as supporting the gay-marriage initiative approved by Washington voters in 2012.

Other issues have arisen over the [creation several years ago of limited-license legal technicians](#), who are licensed by the Washington Supreme Court to advise and assist people unable to afford a lawyer and going through divorce, child custody and other family law matters. Some in the bar have questioned whether these technicians should take business away from attorneys, as well as their participation in the bar's governance.

Questions also have emerged about the bar association's authority to oversee such work, in light of a North Carolina court case that raised antitrust issues.

In 2015, the U.S. Supreme Court ruled that North Carolina's state dental board lacked the authority to regulate teeth-whitening services, a "decision with the potential to transform the makeup and reach of similar licensing boards across the country," [according to a story in the News & Observer](#) in Raleigh, North Carolina.

In a 6-3 vote, the court ruled for the U.S. Federal Trade Commission, which had reined in the dental board after teeth-whitening businesses complained about cease-and-desist letters they had received, the newspaper reported. The board had tried to shut down the whitening services at mall kiosks, salons and other retail spaces unaffiliated with dental offices, according to the story.

On another issue, Seattle attorney Ronald Ward, two days before Fairhurst's letter, wrote to the bar's governors, fellow past presidents of the state bar association and members of the Washington Supreme Court, to express his "strong opposition (and I think that of many others)" to a proposed amendment changing the way at-large governors are elected.

Ward wrote that the change would undermine efforts to make the board more diverse.

"The proposed measure is a catastrophic governance and equity mistake for the profession and for the public we serve in Washington," wrote Ward, who previously served as the first African American president of the state bar association.

He added: "The gains that have been made in Washington with our constituents, particularly those from traditionally underrepresented groups have been the product of a long and sometimes tortured history of blood sweat and yeoman effort on the part of

people of color, women and those who have been the subject of discrimination because of their sexual orientation.”

The amendment is among those put on hold by the state Supreme Court.

In an interview, Fairhurst said the court became aware of a variety of proposed bylaw amendments as part of its examination of a “much bigger picture,” but didn’t focus on individual proposals.

She said the court’s next step was to determine the composition of a committee that will examine the bar’s structure.

Paula Littlewood, the bar association’s executive director, said in a statement that the bar works closely with the court to understand and follow its directives.

“Ultimately, our mission is to serve the public and members of the bar, to ensure the integrity of the legal profession, and to champion justice,” Littlewood said. “The question presented now is how do we fulfill our mission most effectively — and legally — in a climate of changing federal law. The Court has asked for a comprehensive review of the bar’s structure to answer such questions, and I hope and believe the result will benefit both the public and our members.”

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