

EUGSTER LAW OFFICE PSC

2418 West Pacific Avenue, Spokane, Washington 99201
(509) 624-5566 / Mobile (509)990-9115

Stephen Kerr Eugster
eugster@eugsterlaw.com

February 15, 2017

Attorney General Bob Ferguson
Washington Attorney General
Office of the Attorney General
PO Box 40100
Olympia WA 98504-0100

Re: Washington State Bar Association of the Bar Act 1933

Dear Attorney General Ferguson:

I write as member of the Washington State Bar Association and a taxpayer of the state of Washington.¹

The Washington State Bar Association is “an association” which is an “agency of the state.” It is: “to be known as the Washington State Bar Association, hereinafter designated as the state bar.” It “may sue and be sued and which may, for the purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.” [RCW 2.48.010](#).

The WSBA is a creation of the Bar Act of 1933, [[1933 c 94](#)]. Under the Act members are limited to lawyers admitted to the bar of the Supreme Court. [RCW 2.28.020](#) and [RCW 2.28.021](#). The creation also required WSBA lawyer regulation and discipline. [RCW 2.48.060](#). The lawyer limitation and requirement and Washington lawyer regulation and discipline were requirements of the legal entity association created by the Act, that is, Bar Act sections.

¹ I have practiced law in Washington for 47 years, I reside in Spokane, Washington.

On September 30, 2016, the WSBA Board of Governors amended the WSBA Bylaws. The amendments created a new organization.² The new organization is called the “Washington State Bar Association,” but the name is a misnomer. The organization is not a bar association, it is an organization of members of the bar of the Washington Supreme Court, Limited Practice Officers (APR 12) and Limited License Legal Technicians (APR 28). [New WSBA 2017 Bylaw Article III \(A\)\(1\)](#).

It is also an organization which “[a]dminister[s] admissions, regulation, and discipline of lawyers, Limited License Legal Technicians (LLLTs), and Limited Practice Officers (LPOs) in a manner that protects the public and respects the rights of the applicant or member.” [WSBA 2017 Bylaw Article I \(A\)\(7\)](#).

The new organization calls itself the “Washington State Bar Association.” [WSBA Bylaw Article I \(A\)](#). It does not have the right to do so, the name is already taken by the Washington State Bar Association of the Bar Act. [RCW 2.48.010, \[1933 c 94 § 2\]](#).

The new organization is led by the Executive Director, currently, Paula C. Littlewood. [WSBA 2017 Bylaw Article IV \(B\)\(5\)](#). This leadership began on January 1, 2017.

The following table shows a comparison between WSBA 1933 and WSBA 2017.

Character	WSBA 1933	WSBA 2017
Organic Source	Bar Act 1933	WSBA 1933 Bylaw Amendments
Members	Lawyers	Lawyers, Limited Practice Officers, Limited License Legal Technicians
Integrated	Yes	Yes, as to all members
Compelled Membership	Yes	Yes, as to all members
Compelled Dues	Yes	Yes, as to all members
Member Regulation and Discipline	Lawyers	All members

² The amended bylaws can found here, <http://www.wsba.org/~media/Files/About%20WSBA/-Governance/WSBA%20Bylaws/Current%20Bylaws.ashx>.

From this one can see that WSBA 1933 is no longer functioning, cannot be functioning. The obvious reasons are:

1. The membership of the WSBA 1933 is limited by law to members of the bar of the Supreme Court. RCW 2.28.020 and RCW 2.28.021.
2. The discipline system function is limited to the members of the Association, the lawyers.

The WSBA 1933 cannot, under the provisions of the Bar Act, continue to function. The whole purpose of the integrated bar association movement and the adoption of the Bar Act is comprised, compelled to comprise and must comprise these two elements. Without them, the Association has no purpose.

It does have assets, substantial assets. They belong to the WSBA 1933. And they belong to the members of the Association, the lawyers admitted to the bar of the Supreme Court. They do not belong to the WSBA 2017, nor do they belong to the membership of WSBA 2017. As is clearly apparent, the members consist of lawyers, LPOs, and LLLTs.

I must repeat: WSBA 1933 is a legal entity.

WSBA 2017 and the Executive Director think they have accomplished what might be called “downstream merger” of two entities.

A downstream merger is understood as a type of merger where a parent organization is absorbed into one of its subsidiaries.

This “downstream merger” cannot take place regarding WSBA 1933, it cannot take place because the assets of WSBA 1933 cannot be taken by the membership of WSBA 2017 or leadership of the WSBA 2017.

If WSBA 1933 is liquidated and its assets distributed, the assets will go to the members of WSBA 1933. They will not go to the members of WSBA 2017. They cannot go to these members.

The Constitution or bylaws of the organization, which have the force and effect of a contract between the organization and its members, may provide for a specific method of distribution of the assets of the organization upon dissolution.

The rule, in absence of any provision of the laws of the organization or statute to a different effect, is that the dissolution of such an organization as a body entitles the members thereof at the time of dissolution to a distribution, in accordance with their just interests, of its funds and other property; and this means that upon the absolute dissolution of the organization, each member in good standing has a right to an equal share of the net assets of the organization. [Footnotes omitted.]

6 AM. JUR.2d, *Associations and Clubs*, § 60, 495-96 (1997).

The income and assets of the WSBA 1933 is substantial: It includes Income from License Fees amounting to \$13,204,000.00 and Total Cash and Investments of \$12,400,686.00. [WSBA Financial Report, Year to Date December 31, 2016](#).³

The Executive Director is using these assets to conduct the business of WSBA 2017 and to pay for programs of the Supreme Court, see LPO [APR 12](#), LLLT [APR 28](#) in Word Format. The Court has also imposed other duties of payment from this resource.

The Executive Director has the view of the Supreme Court and its power which is as expressed in [Report and Recommendations by Washington State Bar Association Governance Task Force dated June 24, 2014](#), at page 23.⁴

But the Supreme Court has made it clear, based on separation of powers, that it holds ultimate authority over the regulation of the Bar, the practice of law, and the WSBA itself—notwithstanding conflicting statutes. [State ex rel. Schwab v. Wash. State Bar Ass'n](#), 80 Wn.2d 266, 272, 493 P.2d 1237 (1972); [Graham v. State Bar Association](#), 86 Wn.2d 624 (1976); [WSBA v. State of Washington](#), 125 Wn.2d 901 (1995).

This statement is not the law of Washington. The cases cited do not support the statement. Such extensive authority of the Supreme Court violates separation of powers and is not permitted by the Court's inherent powers as to lawyer regulation. These are true no matter what one might speculate to be the voting outcomes of the meaning of the dicta, in each case.

³ <http://www.wsba.org/~media/Files/About%20WSBA/Financial%20Info/Dec%202016%20Financial%20Statement%20%20webx.ashx>.

⁴ <http://www.wsba.org/~media/Files/Legal%20Community/Bylaws%20Work%20Group/WSBA%20Governance%20Task%20Force%20Report%20and%20Recommendations%20-%20FINAL.ashx>.

The income and property of the Washington State Bar Association of the Bar Act of 1933 is being used by the Executive Director of the WSBA 2017. This is improper.

The responsibilities of the Attorney General are found in RCW Ch. 43.10. RCW 43.10.040 [Representation of boards, commissions and agencies] provides:

The attorney general shall also represent the state and all officials, departments, boards, commissions and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings, and advise all officials, departments, boards, commissions, or agencies of the state in all matters involving legal or quasi legal questions, except those declared by law to be the duty of the prosecuting attorney of any county.

The Washington State Bar Association of the Bar Act is a state agency. RCW 2.48.010.

As a member of the WSBA, I ask you to act in these matters to protect and care for the Washington State Bar Association. A receivership would seem to be in immediate need. See, e.g., [Receivers, RCW Ch. 7.60](#).

Also, as a Washington taxpayer, I request that you act to protect the interests of state of Washington in these matters and especially the state agency, WSBA 1933.

I would be pleased to come to your office in Olympia to discuss this letter and further details and aspects of the WSBA 1933 and WSBA 2017 with you and or your attorneys. I have more information to convey.

I can come to Olympia with little notice.

Sincerely,

EUGSTER LAW OFFICE PSC

s/ Stephen Kerr Eugster

Stephen Kerr Eugster

cc. Jeffrey T. Even
Deputy Solicitor General
e-mail: jeff.even@atg.wa.gov