

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Special Meeting
Meeting Materials

June 8, 2021
Zoom and Teleconference

TO: WSBA Board of Governors
FROM: Julie Shankland, General Counsel
DATE: June 7, 2021
RE: Request to Submit Comment in Support of Lauren King's Judicial Nomination

The Indian Law Section requests Board approval to send a letter recommending a WSBA member for judicial appointment in the District Court for the Western District of Washington. We did not find any authority specifically prohibiting the Board from granting the Section's request, but there are some questions or concerns the Board may wish to consider or discuss. The first part of this memo is a discussion of the various sources of authority and limitations relating to publicly supporting judicial candidates. The second part of this memo contains a short discussion of other potential concerns and issues to discuss.

A. Authority and Limitations Relating to Publicly Supporting Judicial Candidates

State Bar Act

Nothing in the State Bar Act appears to prohibit the Section or the Board from publicly supporting a candidate for federal judicial nomination and confirmation.

GR 12

GR 12.2(a) Purposes:

- (6) Promote diversity and equality in the courts and the legal profession;
- (11) Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the association and the legal profession.

GR 12.2(c) The Association will not:

- (1) Take positions on issues concerning the politics or social positions of foreign nations;
- (2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or
- (3) Support or oppose, in an election, candidates for public office.

The Indian Law Section’s letter promotes diversity and equality in the courts, so it appears to be in line with one of the purposes of the WSBA listed in GR 12.2(a). GR 12.2(c)(3), like the WSBA Bylaws, contain prohibitions on supporting candidates for public office *in an election*. These same prohibitions do not exist for nominations/confirmations. Given the short preparation time for this meeting, we have not yet located documents explaining the policy decision behind differentiating elections from appointments. Although authorizing this letter does not appear to be prohibited by GR 12, the Board may want to discuss the policy reasons for not supporting candidates in an election, but allowing support for candidates who are nominated or in confirmation proceedings.

WSBA Bylaws

Several provisions of the Bylaws are important to consider; however, none appear to prohibit the Board from authorizing this letter.

The BOG acting as a board must not publicly support or opposed, in any election, any candidate for public office. (Article IV.D.1.a)

The BOG acting as a board must not take a side or position publicly or authorize any officer or the Executive Director to take a side or position publicly on any issue being submitted to the voters or pending before the legislature, unless the matter is considered in public session at a meeting of the BOG with advance notice to the Bar’s membership, and the following requirements are met: (1) the BOG first votes to determine whether the issue is within the scope of GR 12.2; and (2) if the BOG determines that the matter is within the scope of GR 12.1, then the BOG will vote to determine what position, if any, to adopt on the issue. This restriction applies fully to participation or support to any degree in the candidate’s campaign, or the campaign, on either side of the issue. (Article D.1.b and D.1.c)

Governors, other officers, and the Executive Director must not publicly support or oppose, in an election, any candidate for public elective office in the State of Washington the prerequisites for which include being an attorney, except where the candidate is a member of that person’s immediate family. (Article IV.D.3)

Except as specifically set forth in these Bylaws, no committee, section, task force, or other Bar entity, or member thereof, member of the BOG, of officer or employee of the Bar is permitted to speak for or represent the Bar or any committee, section task force, or entity thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State, unless prior authorization to do so has been specifically granted by the BOG by policy adopted by the BOG or by specific BOG actions. (Article IV.E)

Sections are entities of the Bar created and tasked to carry on the work of the Bar and further their purposes as defined in individual section bylaws. . . .Sections are subject to all Bar Bylaws, policies, and procedures. (Articles XI.A and XI.E)

The Bylaws appear to require Board approval before sending this letter to Congress. Board approval must be given after notice to the members and a public meeting. The Board might discuss whether the notice provided to members was sufficient. The Bylaws require notice to be provided five days prior to a Special Meeting, unless waived by unanimous consent of the BOG. (Article VII.C.2.b) Here, notice was provided to the members on Friday and the BOG unanimously consented to waive the required notice, so that the matter could be considered.¹

WSBA Legislation and Court Rule Comment Policy (as amended by the Sections Legislation Comment Policy)

This Policy applies to Sections when they seek authority to publicly comment on legislation, state and federal court rules, executive orders, administrative rulemaking, and international treaties. This policy does not directly apply to publicly supporting a federal judicial nomination.

Historical Actions

In 1985, the Board of Governors unanimously adopted a Resolution supporting the nomination and confirmation of Carolyn R. Dimmick to be a judge of the United States District Court for the Western District of Washington. The memorandum in the meeting materials states that a similar Resolution was approved and adopted by the Board for Honorable Robert R. Beezer when he was considered for confirmation as a judge of the Ninth Circuit Court of Appeals. We were not able to locate any additional similar actions after 1985. We have not located any criteria for when the Board decided to support federal judicial nominations.

B. Potential Concerns to Consider

This section of the memorandum is a list of issues the Board may wish to consider and discuss.

1. Potential recusals-WSBA defends cases in federal district court. Sending this letter may require the judge, if confirmed to recuse from WSBA's cases. Judges may believe that decisions favoring WSBA could be viewed as biased, if they do not recuse.
2. Potential confusion with "well-qualified" ratings from JRC-The Judicial Recommendation Committee has set criteria analyzed based on gathered information and significant interviewing to determine whether a candidate receives a rating of "well qualified." It is not clear what process the Indian Law Section used and what information backs up their use of this same term. This is not meant, in any way, to comment on this nominee's qualifications-only on the potential confusion of this term with the JRC process.
3. Publication of the Letter-The letter may be published in newspapers or as attachments in pleadings.
4. Awkwardness for federal practitioners-Does this letter create an awkward situation for Indian Law Section members, and other WSBA members who practice in federal court? WSBA's Indian Law Section supports this judicial nominations, but not others-would that argument be an issue for practitioners?

¹ At the time of this memo, not all BOG members had agreed to waive the required notice. It is possible that the meeting will be cancelled if not all BOG members consent.

5. Board process for conflicting section requests-How would the Board handle conflicting requests from sections relating to judicial appointments? Could different Sections both oppose and support the same candidate? Would the Board approve both or neither?

TO: WSBA Board of Governors
FROM: WSBA Indian Law Section Executive Committee
DATE: June 7, 2021
RE: Request to Submit Comment in Support of Lauren King's Judicial Nomination

The Executive Committee of the WSBA Indian Law Section is requesting that the Board of Governors approve our request to submit the attached letter of support for federal judicial nominee Lauren King to the Committee on the Judiciary.

The section Executive Committee has taken the requisite votes to approve the letter of support and now seek approval from the Board of Governors to submit the letter.

Respectfully Submitted,

WSBA Indian Law Section Executive Committee



Chair
Maryanne Mohan

Chair Elect
Danielle Bargala

Secretary/Treasurer
Bree Black Horse

Immediate Past Chair
Ann Tweedy

Trustees
Amy Lettig
Mary Neil

Andrew Pollom
Daniel Rey-Bear
Jessica Roberts
Cheyenne Sanders
Thomas Schlosser
Stephanie Tsosie
Jennifer Yogi

Newsletter Editor
Jeremy Wood

BOG Liaison
Hunter Abell

June 8, 2021

Chair Dick Durbin|
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Chuck Grassley
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Lauren J. King to Western District of Washington

Chair Durbin and Ranking Member Grassley,

The Washington State Bar Association Indian Law Section writes to urge the Committee on the Judiciary to approve the nomination of the Lauren J. King to serve as a judge on the United States District Court for the Western District of Washington. Ms. King is an exceptional and well-qualified attorney with substantial experience in Federal Indian Law and federal trial practice.

Ms. King's experience includes serving as the Chair of the Native American Law Practice Group at Foster Garvey, P.C., serving as a Commissioner on the Washington State Gambling Commission, and as an adjunct professor of Federal Indian Law at Seattle University School of Law. Ms. King's practice includes extensive federal trial experience, intellectual property disputes, and complex commercial disputes. Ms. King also has served as a pro tem appellate judge for the Northwest Intertribal Court system, which adjudicates cases for 24 member tribes.

Ms. King's service includes membership in and executive roles for the Washington State Bar Association Indian Law Section, Northwest Indian Bar Association, Northwest Tribal Court Judges Association, and Federal Bar Association. Ms. King has served as the Chair-Elect, Chair, and Immediate Past Chair of the Washington State Bar Association Indian Law Section.

The Washington State Bar Association Indian Law Section's Executive Board fully supports the nomination and confirmation of Ms. King to the federal judiciary. Ms. King is a consummate professional who is known for always being prepared, respectful, and reasonable. Ms. King, as a Muscogee Nation citizen, would be among the few American Indians to serve on the federal judiciary and would be the first American Indian federal judge in Washington State. Ms. King is a well-rounded judicial candidate with an outstanding career, education, and service background.

Sincerely,

Maryanne Mohan on behalf of the Indian Law Section Executive Board