

## WSBA Board of Governors Meeting, April 26–27, 2013 Spokane

**D**ebate over possible changes to the Board of Governors' process for handling politically sensitive issues highlighted the Board's meeting in Spokane on April 26–27, 2013. Meanwhile, the Board heard reports on the 2013 bar exams, the Moderate Means Program, and the WSBA budget, and discussed issues including a proposed WSBA diversity plan and a court rule amendment involving the shackling of juvenile defendants in courtrooms.

### Handling Political Issues

The Board had its first reading of a proposed amendment to the WSBA Bylaws that would require more formal analysis, a mandatory opportunity for member comment, and possibly a supermajority vote before the board could take a position regarding legislation, public ballot issues, and other political matters.

The Board's involvement in social/political subjects has become a particular issue in recent years, as the Board has voted to take positions on certain topics, most notably same-sex marriage. At its September 2012 meeting, the Board voted to endorse Referendum 74 to legalize same-sex marriage, after having voted twice previously to support that position. Some WSBA members have objected to the Board's taking a position on this and other issues on which WSBA members' personal opinions are deeply divided. WSBA members and some Board members particularly objected to the September vote, as the matter had not appeared on the meeting's agenda.

At the April 26–27 meeting, the Board discussed the proposed Bylaw amendments. Most notably, the provisions would require that before publicly taking a side on a political issue the Board would need to address the matter in a public session of a Board meeting, with advance notice to WSBA membership that the issue was on the agenda. In addition, the Board would need to first find by vote that the issue was within the scope of General Rule 12.1, which allows the WSBA to take a position on political or social issues only if they "re-

late to or affect the practice of law or the administration of justice." It is already implicit in the Board's consideration of such issues that the Board will take a position only on matters within Rule 12.1; there is no Bylaw explicitly requiring a vote on that question. Under the proposed Bylaw amendment, if the Board found by vote that consideration of the issue was allowed under GR 12.1, it would then need to vote on whether and what position to take on the issue.

The proposed amendments contain four options for the voting threshold regarding the GR 12.1 determination and taking a position on an issue: 1) a two-thirds majority of those voting, 2) a 75 percent majority of those voting, 3) a 75 percent of the members of the Board, and 4) a simple majority of the members of the Board. The Board will need to choose one of the options (or draft an additional option) to implement.

In debate, virtually all Board members who spoke on the issues favored the notice and hearing requirements, as well as the one requiring a vote that the issue met GR 12.1. However, the proposals requiring a supermajority vote prompted arguments on both sides, from Board members and others who spoke at the meeting. Proponents of a supermajority requirement — which included WSBA Legislative Liaison Kathryn Leathers (who is not a member of the Board) — argued that such a requirement would reassure WSBA members that the Board could take a political position only where the position enjoyed overwhelming support on the Board. Meanwhile, the requirement would increase WSBA's credibility in the Legislature by demonstrating that the Board only involved itself in issues if it was convinced the position was well supported, they argued.

Immediate Past-president Steve Crossland (a non-voting member of the Board) spoke in favor of a supermajority requirement, noting that while serving as president he spoke to many WSBA members who were opposed to the Board taking positions on sensitive issues, even when they personally agreed with the position the Board was taking. President-elect Patrick Palace (also a non-voting member of the Board) noted that when the Board had voted to take positions on recent political issues — such as same-sex marriage — the proposed position was approved

by a supermajority anyway. Thus, formally requiring a supermajority would represent a small price to pay in exchange for increased credibility with the membership, he said.

However, several others spoke in opposition to a supermajority requirement. Gov. Susan Machler argued that imposing such a high threshold would be a "knee-jerk reaction" to criticism the Board heard from some members regarding the same-sex marriage issue. Gov. Jerry Moberg agreed, noting that a 75 percent threshold would allow a few Board members to effectively overrule the majority by withholding their votes.

However, Gov. Brian Kelly, who favored a supermajority requirement, said, "I'm doing it in the members' best interests," and noted that future Board members could always change the rule again if it proved ineffective.

The proposed amendment will be refined in light of the Board's comments and is expected to be addressed again — and possibly voted on — at the May 31 meeting in Seattle.

### February 2013 Bar Exam and Examiner Recognition

The Board heard a report on the February 2013 bar examination and presented honors to the current and two past chairs of the Board of Bar Examiners. The February 2013 exam was the last to follow the essay-only format that has been used in Washington, the only state still using essays for the entire exam. A new format, which incorporates the Uniform Bar Examination (UBE), begins with the July 2013 exam (see article on page 43).

To commemorate the end of the essay-only era of the Washington exam, WSBA President Michele Radosevich presented plaques to three Bar members who have chaired the Board of Bar Examiners, which previously wrote and scored the bar exams and, in the future, will only serve the multi-state essay and performance portions of the exams. Honored were the current chair, Craig Beles, as well as former chairs Joe Nappi Jr. and Frank Slak.

### Moderate Means Program

The Board watched a presentation updating them on the progress of the WSBA Moderate Means Program, which makes legal services available at reduced fees to people whose income

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is within 200 to 400 percent of the federal poverty level. Megan McNally, WSBA director of advancement/chief development officer; Ana Selvidge, public service program manager; and Kaitlin Roach, a Gonzaga law student and a trustee for the Washington State Bar Foundation, reported on the progress of the program after its first two years of service.

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### Diversity Plan

The Board heard a first reading of the proposed WSBA Diversity Plan, which would be the foundation of the bar's ongoing comprehensive diversity efforts aimed at member- and public-focused programs. The plan would be the direct descendant of WSBA diversity efforts that began in 2003, when the bar officially established diversity as one of its nine strategic goals. In 2006, the Board formed its own Diversity Committee, meant to help improve diversity within the elected leadership of the Board of Governors. In 2007, the WSBA established its five guiding principles, of which one is focused on promoting "diversity, equality, and cultural understanding

throughout the legal community."

The proposed plan also incorporates information gathered in the 2012 WSBA membership study, which compiled detailed information regarding membership demographics and trends. A second reading, and perhaps action to approve the proposal, is expected at the May Board meeting.

### Fiscal Report

Gov. Phil Buri, who also serves as WSBA treasurer, and WSBA Chief Operations Officer Ann Holmes updated the Board on the WSBA's finances. They noted that the WSBA investment stock portfolio has nearly recovered from the 2008 financial crisis. When the account was created in March 2007, its value stood at \$1.2 million. With the mortgage and investment market crash, the value dropped to \$600,000 by February 2009. However, with the gradual recovery of investment markets since then, the account's value has rebounded to \$1,147,981, nearly returning it to its original value.

Meanwhile, Holmes projected that with increased revenues and reduced costs so far this year, the WSBA budget will avoid a net loss for the fiscal year. During the budget-making process last fall, it had appeared that a shortfall was likely, which would have necessitated dipping into reserves.

### Juvenile Shackling Issue

The Board heard the first reading of a proposed juvenile court rule amendment that would create a strong presumption against the mandatory shackling of juvenile respondents in the courtroom, a practice followed in some counties. The amendment was requested by the Council on Public Defense, which feels that shackling is unduly punitive. Under the proposal, judges would have the discretion to order the use of shackles only on juvenile respondents specifically found to present a risk of violence or escape. Further consideration of the proposal, and a possible vote, is expected at the May Board meeting. **NWL**

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