

WASHINGTON STATE BAR ASSOCIATION

The WSBA Board of Governors held its final meeting of the fiscal year on September 28-29 in Seattle. The two-day September meeting is punctuated with the APEX Awards Dinner, where numerous awards are presented to legal community luminaries. Videos of the award recipients can be found [here](#). Below is a recap of the meeting. A full agenda can be found [here](#).

Election of 2017-2018 At-Large (New and Young Lawyers) Governor

With former At-Large Governor Sean Davis moving to the General Counsel position at the WSBA, the board considered three candidates nominated by the Washington Young Lawyers Committee (WYLC) for the At-Large (New and Young Lawyers) Governor seat. After discussing the candidates' qualifications, the board elected Jean Y. Kang of Seattle to the seat for a term to start immediately. Jean will serve the remainder of Sean Davis' term (ending in September 2018). Jean is a litigation associate at Smith Freed & Eberhard in Seattle. She has focused the majority of her practice on civil litigation, specifically insurance defense/coverage and personal injury cases. Prior to civil work, Jean served as a criminal deputy prosecuting attorney in Cowlitz County and King County. She was sworn in at the meeting by Pierce County Superior Court Judge Susan Serko so she could take her seat at the table immediately following the vote. Congratulations to Governor Kang and welcome! (See [public materials](#) beginning at page 19.)

Appointment of Members to the Washington State Bar Foundation Board of Trustees

Each year, the Washington State Bar Foundation conducts its annual meeting as part of the last Board of Governors' meeting of the fiscal year. At this meeting, the Board of Governors, convened as the members of the Foundation, appoint trustees to the Foundation Board. The Board of Governors approved a slate of candidates that includes appointing James W. Armstrong, Jr. to an additional one-year term, appointing Valerie Holder to complete the remainder of a vacating Trustee's term, appointing Kinnon Williams to a three-year term, and appointing Jabu Diagana as Student Trustee, for a term to conclude upon graduation from law school. Congratulations, new and returning Trustees! (See [public materials](#) beginning at page 55.)

Approval of Proposed Mandatory Malpractice Insurance Task Force Charter

In 2016, the board convened a Mandatory Malpractice Insurance Work Group to gather information about jurisdictions that require lawyers to have professional liability insurance and the systems used to implement such requirements. At the May 2017 board meeting, the board asked the Executive Committee to consider creation of a Task

Force to evaluate whether to recommend adoption of a mandatory malpractice insurance requirement for lawyers in Washington. The Executive Committee recommended formation of such a Task Force under the WSBA Bylaws and submitted a proposed charter, which was approved by the board.

The charter directs the Task Force to: (1) solicit and collect input from WSBA members and others about whether to recommend a system of mandatory malpractice insurance for lawyers in Washington state; (2) review information gathered by the Work Group and gather any additional information needed; (3) consider materials regarding mandatory malpractice insurance systems used in the U.S. and elsewhere; (4) determine whether to recommend adoption of a mandatory malpractice insurance requirement in Washington; (5) if a regulatory requirement is recommended, determine the best model for such a system; and (6) submit a final report to the board including, as appropriate, draft rules to implement a system of mandatory malpractice insurance for Washington lawyers, including any minority report(s).

Per the charter, the Task Force membership shall consist of a WSBA member serving as chair; three current or former members or officers of the board; no fewer than 10 at-large members of the WSBA; a full-time judge; an individual with professional experience in the insurance/risk management industry; and two community representatives who are not licensed to practice law. The Task Force will begin meeting no more than six weeks after appointments are completed and submit a final report to the Board no later than the January 2019 board meeting, unless the timeline for completion is extended by the board. (See [public materials](#) beginning at page 69.)

Proposed WSBA Bylaw Amendment re Vacant Immediate Past-President Seat

The board heard from WSBA General Counsel Sean Davis regarding a proposed amendment to the WSBA Bylaws dealing with Immediate Past-President vacancies. Under the current WSBA Bylaws, if the Immediate Past-President is disqualified, removed, or resigns, the office remains vacant until the close of the term of the then-current President. The Bylaws do not address what happens if the office is vacant for another reason. Such an "other" vacancy may occur, for example, if the WSBA President resigns or is removed prior to the end of his or her term, leaving no one to become the Immediate Past-President in the next term. The proposed amendment addresses this type of situation by allowing the current Immediate Past-President to serve another year; in the event the Immediate Past-President does not want to serve another term, the President, with board approval, can appoint an individual to serve as Immediate Past-President for the term that would otherwise be vacant. The board voted on this proposed amendment at a special board meeting on October 3. (See [public materials](#) beginning at page 75.)

Annual Discussion with Deans of Washington State Law Schools

The board held its annual discussion with the deans of our state's three law schools. Participating in this discussion were Dean Annette Clark from Seattle University, Dean Jane Korn from Gonzaga University, and Interim Dean Anita Krug from the University of Washington. The three law school deans shared several common priorities, including mentorship, recruitment and scholarships, diversity, and education related to technology and business practices. The governors asked the deans whether the WSBA can or should be doing more to help law schools match graduates to marketplace employment. The deans responded that increased mentorship and connecting students with lawyers in different areas of the practice spectrum would be helpful. Other topics included the cost of legal education and law school tuition; the need for experiential learning in law schools; preparing students for the changing practice of law, including incorporating technology and innovation in coursework; and helping students transition from law school to practice. The board invited the deans to continue the discussion and the deans suggested a board site visit to the law schools. Thank you, Dean Clark, Dean Korn, and Interim Dean Krug, for your time and valuable input!

Orientation on WSBA Diversity and Inclusion Philosophy and Plan

The board participated in an orientation to the WSBA Diversity and Inclusion Philosophy and Plan facilitated by Joy Williams, WSBA Diversity and Public Service Programs Manager, and Robin Nussbaum, WSBA Inclusion and Equity Specialist. The Diversity and Inclusion Plan is intended to outline WSBA's next steps and long-term priorities. The Plan's objectives work toward the goals of creating conditions to promote the retention of attorneys from historically marginalized and underrepresented backgrounds, increasing their participation within the profession, and creating opportunities for leadership within WSBA.

The orientation focused on the "Inside-Out" philosophy of doing the work to make sure WSBA itself (staff and volunteers) is diverse, inclusive, and equitable in order to lead by example and provide tools and resources to the legal community. Key concepts were also covered such as inclusiveness (beyond diversity), the difference between equality and equity, the effect of unconscious bias on our decision-making, and the nature of oppression as institutional and systemic. Finally, the presentation covered allyship, interrupting bias, and how to recover when you make a mistake. (See [public materials](#) beginning at page 80.)

Council on Public Defense (CPD) Proposed Performance Guidelines for Juvenile Offense Representation

The WSBA Council on Public Defense (CPD) presented on first reading a request for the Board of Governors to submit *Performance Guidelines for Juvenile Offense Representation* to the Washington Supreme Court with a recommendation that the court include them in the Standards for Indigent Defense, as was done previously, with the adult *Performance Guidelines for Criminal Defense Representation*. The board heard a

presentation from Eileen Farley, CPD Chair; Daryl Rodrigues, CPD Vice-Chair; and Kimberly Ambrose, CPD Member, who answered questions from the board and members. The board will seek feedback from the membership on these proposed guidelines and take action at the next board meeting in November, so please share any thoughts you have on the proposed Guidelines. Comments on the CPD's proposed Guidelines on Juvenile Offense Representation can go to Bonnie@wsba.org. (See [late materials](#) beginning at page 2.)

Council on Public Defense (CPD) re Rules for Appeal of Decisions of Court of Limited Jurisdiction (RALJ) 9.3

The board approved the Council on Public Defense communicating its support to the Washington Supreme Court of proposed amendments to Rule for Appeal of Decisions of Courts of Limited Jurisdiction ("RALJ") 9.3. The proposed amendments concern awarding appellate costs for appeals and would require consideration of the defendant's ability to pay and the presumption of indigence throughout the appeal. The board heard from Eileen Farley, CPD Chair; Daryl Rodrigues, CPD Vice-Chair; Kimberly Ambrose, CPD Member; and Nick Allen, CPD Member and Member of CPD's Legal Financial Obligation Subcommittee. (See [public materials](#) beginning at page 369.)

Final WSBA FY2018 Budget

District 1 Governor and Treasurer-elect Kim Risenmay and WSBA Chief Operations Officer Ann Holmes presented the Final Draft FY2018 Budget, which reflects the cost of board-directed programs, services, and operations. The Final Draft Budget includes General Fund Revenue of \$18,913,199 and an anticipated drawdown of reserves with expenses of \$19,514,890. Based on efficiencies and savings seen at the end of FY16 and projected through FY17, and the budget presented, General Fund reserves will not fall below the \$2 million level at the end of FY18, consistent with board policy. The board approved this Final Draft Budget, which was unanimously recommended by the WSBA Budget and Audit Committee. (See [public materials](#) beginning at page 90.)

Treasurer Risenmay noted that WSBA received salary survey information showing that compensation levels fall well below midpoint for the market for several positions, which may require an adjustment to the budget in the coming year.

Proposed Formation of Cannabis Law Section

In June 2017, WSBA staff received a request from a group of WSBA members ("formation group") to form a Cannabis Law Section. The guidelines for forming a section are set forth in the WSBA Bylaws and require a petition to include the contemplated purpose of the section, the proposed bylaws of the section, the names of any proposed committees of the section, a proposed budget of the section for the first

two years of its operation, a list of Bar members who have signed a petition supporting the creation of the section, and a statement of the need for the proposed section. All of these requirements were met in a timely manner and WSBA staff received no feedback from section leaders either in support of or in opposition to the formation of this section.

The board heard brief remarks regarding the formation of this section from Joshua Ashby and Sativa Rasmussen, formation group members, and WSBA Sections Program Manager Paris Eriksen, who answered questions from the governors. The board will vote on this proposed formation at the next board meeting in November. (See [public materials](#) beginning at page 164.)

Proposed WSBA Statement Denouncing Recent Acts of Violence and a Reaffirmation of Equity and Inclusion Principles

The WSBA received a request from 11 Washington Minority Bar Associations for the WSBA to join their statement addressing the recent events in Charlottesville. In light of the constraints of GR 12.2, the Board Executive Committee considered drafting and adopting the WSBA's own statement instead of signing on as requested. The board voted to adopt the draft statement as written. This statement will be posted on the WSBA website and circulated to the Minority Bar Associations and the legal community at large. (See [public materials](#) beginning at page 205.)

Follow-up from July Retreat re 2017-2018 BOG Priorities

The board held a discussion regarding 2017-2018 board priorities facilitated by information from the discussions at the July 2017 board retreat at Alderbrook. Topics included the court system, member engagement and ambassadorship, entity regulation, retention/diversity/inclusion and cultural competence, and member benefits. A generative discussion on entity regulation will occur at the November board meeting. (See [public materials](#) beginning at page 208.)

Proposed Amendments to Article XI Sections re Legislative Activity

The board approved an amendment to XI(F) of the WSBA Bylaws regarding legislative activity to support sections taking action effectively and efficiently throughout the legislative process. The amendment adds language to Article XI allowing section executive committees more flexibility and timeliness in taking action on legislative matters, especially in responding to legislators' direct requests for feedback. (See [public materials](#) beginning at page 245.)

Mandatory Continuing Legal Education (MCLE) Board Recommendation to Coordinate Fees

Effective Sept. 1, 2017, the Washington Supreme Court amended its Admission and Practice Rules (APR) that relate to LPO and LLLT mandatory continuing legal education (MCLE). Continuing legal education for LPOs and LLLTs is now governed by APR 11; in addition, the MCLE rules for lawyers, LPOs, and LLLTs are now, with a few exceptions, the same. Pursuant to APR 11, the MCLE Board determined and adjusted fees to defray the reasonably necessary costs of administering the MCLE rules. The MCLE Board proposed a fee structure to the Board of Governors to provide for an equitable assessment of fees for all MCLE activities regardless of the license type or the intended audience. The board approved these new sponsor fees for MCLE courses for LPOs and LLLTs. (See [public materials](#) beginning at page 297.)

Legislative Work Group Recommendations

The board discussed the recommendations of the WSBA Legislative Work Group, which recommended reducing the size of the Legislative Committee and having it meet ad hoc when legislative proposals from WSBA sections need to be vetted. The board heard from District 3 Governor-elect Kyle Sciuchetti, current chair of the WSBA Legislative Committee, regarding committee member concerns and concerns that mandated deadlines would prevent the committee from taking action on relevant legislation. The board also heard from Phil Brady, Work Group Chair and former District 10 governor, regarding the history of these recommendations and the Work Group's process.

The board voted to adopt the Work Group recommendations with amendments keeping the Legislative Committee a standing committee of nine members and allowing the Committee chair the opportunity to accept a proposal outside of the mandated deadlines, provided that the chair is satisfied that there is sufficient time to vet the bills and that the chair's action will be in consultation with the WSBA Legislative Affairs Manager. (See [public materials](#) beginning at page 367.)

Discipline Advisory Round Table (DART) Annual Report and Suggested Amendments to Charter

The board voted to amend the DART Charter to make the DART an ongoing entity that includes positions for LLLT and LPO representatives, sets term limits for appointed members, and provides current members with a one-year extension. (See [public materials](#) beginning at page 372.)