

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS SPECIAL MEETING - ETHOS

### Minutes

Tacoma Convention Center, Tacoma, WA

July 23, 2022

[Call to Order and Welcome \(link\)](#)

The special meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by Pres. Brian Tollefson on Saturday, July 23, 2022, at 9:07 AM. Governors in attendance were:

Hunter Abell  
Francis Adewale  
Sunitha Anjilvel  
Lauren Boyd  
Pres. Elect Daniel D. Clark  
Matthew Dresden  
Carla Higginson  
Tom McBride  
Treas. Bryn Peterson  
Brett Purtzer  
Alec Stephens  
Brent Williams-Ruth

Also in attendance were Anne Block, Executive Administrator Shelly Bynum, Michael Cherry, Carrie Donnelly, Chief Disciplinary Counsel Doug Ende, Gov. Elect Kevin Fay, Sandra Ferguson, Nancy Hawkins, Executive Director Terra Nevitt, Gov. Elect Nam Nguyen, Chief Communications & Outreach Officer Sara Niegowski, Broadcast Services Manager Rex Nolte, Gov. Elect Kari Petrusek, Director of Advancement Kevin Plachy, Terry Price, John Scannell, Immediate Past Pres. Kyle Sciuchetti, General Counsel Julie Shankland, Chief Equity & Justice Officer Diana Singleton, and Member Services & Engagement Manager Julianne Unite.

Pres. Tollefson made preliminary remarks and opened the floor for public comment.

Terry Price made comments on behalf of the Access to Justice Board that the Board wishes to remain at the Bar and that the Bar should remain a champion of justice. He stated that the Access to Justice Board's position is that the Keller deduction is sufficient remedy for those that object to activities in furtherance of access to justice. Discussion followed, including how the Keller deduction has operated with respect to the activities of the Access to Justice Board and the bar's conservative approach to the Keller deduction. Mr. Price commented further that the Access to Justice Board sees its work as being germane and essential to the work of the Bar association.

In response to a question, Pres. Tollefson confirmed that a quorum of the Board was present and had been established.

Michael Cherry commented that although the Practice of Law Board has not taken a formal vote, he believes that the perspective of the ATJ Board is echoed by the Practice of Law Board. Commenting on his own behalf, Mr. Cherry commented that the market for legal services is ripe for disruption due to consumers being unable to find the legal services they need at a price point and time that they desire. He commented that he would like to see a bar that was more focused on looking at the market for legal services and being proactive in addressing the related issues, such as cross-state practice of law. Discussion followed as to what would need to change in the organization for it focus on the issues identified by Mr. Cherry. In response he noted an overemphasis on internal issues, rather than projects, and fear of innovation.

The Board took comment from Gov. Elect Kevin Fay on behalf of the Executive Committee of the Corporate Counsel Section, which he reported has determined that it would like the Bar to remain integrated. He noted that the section benefits from the services of the organization and do not see any benefit to bifurcation, particularly economically. Gov. Elect Fay commented on his own behalf that as a corporate counsel he has seen that companies have already been innovating in terms of cross-border practice and use of paraprofessionals. He commented further that he believes the problem is economic rather than regulation; that there is a great unmet need for free legal services and that professionals cannot afford to give their services away. He commented that he believes the only thing the Bar can do is to lobby for more funding for civil legal aid. He summarized that on behalf of himself and his section the Bar should not bifurcate as it will not have any benefits and will reduce services to the members.

The Board took comment from Carrie Donnelly that any system requires accountability and that, in her opinion, the discipline system failed her. She noted there is a conflict of interest in the WSBA mission statement and that the organization cannot represent both sides. She further commented that there should be more transparency and participation of the public in the system.

During a break in public comment, Pres. Tollefson suggested each Board member comment on their responses to question number one from the Supreme Court, regarding whether there are any changes in the law that require a change to the WSBA structure.

Gov. Clark moved that the answer to question one, as to whether we are legally required to change the structure of the Bar association, the answer is no. Discussion followed, including a suggestion to amend the motion to add a citation to the three recent Supreme Court Cases, that amendment was accepted. The motion was restated as "Gov. Clark moved that the answer to question one, as to whether we are legally required to change the structure of the Bar association, in light of the US Supreme Court's denial of cert in Schell v. Oklahoma Supreme Court Justices, McDonald v. Firth, and Taylor v. Heath, the answer is no." Discussion continued, including a perspective that there are still pending cases that could require a change in the future; a perspective that the issue needs to be put to rest, regardless of the litigation, and focus on the work of the bar; a suggestion from Executive Director Nevitt that the Board considering

setting a roadmap for when the organization would revisit the structure question; comments in support of the motion and perspectives that the issue can never be fully resolved; a request that governors who are taking a position that the structure is strong, keep that in mind when the questions arise in the future.

Gov. Clark moved to call the question. The motion to call the question carried 8-3. Gov. Higginson was not present for the vote. The underlying motion passed 11-1.

Pres. Tollefson opened the conversation to responding to the second question from the Supreme Court relating to contingency planning. Discussion followed, including a perspective that the question comes down to risk tolerance; a suggestion from General Counsel Shankland that the Board start from the question as to what they want, rather than from a focus on legal barriers; and the extent to which legislative work is a key theme in the caselaw.

The Board took public comment from Anne Block that the regulation of the practice of law should be regulated by the executive branch and noted that she will continue to advocate that the Bar be abolished.

Discussion continued, including a suggestion that the Executive Director and leadership team be asked to develop an emergency plan to present to the Board for potential adoption, similar to the existing disaster recovery plan. There was also a suggestion that it makes sense to discuss the ideal structure of the Bar before resolving the question of contingencies.

The Board took public comment from Nancy Hawkins that executive sessions are not required to discuss caselaw and it would give a bad impression; that sections have commented that they do not want a political action committee; and her perspective that some of the comments in favor of bifurcation seem to indicate a lack of information.

[\(link\)](#) Gov. Higginson moved that in response to question 2, assuming we do not vote to bifurcate and we keep our current structure, the Executive Director and the Executive Leadership team develop a back-up emergency plan to present to the Board for potential adoption in the event that we are forced to change our current structure. Gov. Adewale offered a friendly amendment that all comments and papers submitted during the ETHOS process be considered. Gov. Higginson noted that she preferred not to include that in the motion.

Discussion followed, including a perspective that the staff is well positioned to develop a contingency plan; and a suggestion that the motion clarify that the contingency plan be specific to address a complete and total bifurcation. Gov. Higginson accepted a friendly amendment to restate the motion as "in response to question 2, assuming we do not vote to bifurcate and we keep our current structure, the Executive Director and the Executive Leadership team develop a back-up emergency plan to present to the Board for potential adoption in the event that we are forced by court order to separate the regulatory from the non-regulatory functions." The Board took comment from Chief Disciplinary Counsel Doug Ende suggesting that the Board not make a plan based on a guess about what the US Supreme Court might ultimately do. The meeting was briefly recessed due to disruption in the chat function of the virtual meeting platform.

[\(link\)](#) Discussion continued, including about the extent to which public comment has been received and considered in the process; and a perspective that it might be not be a good use of time to develop a contingency plan.

Gov. Stephens moved to sever the original motion from the amendment, noting that in his view a contingency plan should not be limited to a court decision that calls for a complete bifurcation of the bar. The motion was restated, and Gov. Stephens clarified the part that he wished to sever. His motion died due to the lack of a second.

Discussion followed, including support for the motion and the idea that some planning would be useful even if only a rough draft; opposition to the motion based on a concern that its difficult to make a plan without knowing what we will be planning for; comments in support of the motion because it will be similar to any emergency planning; and comments in support of the motion and a perspective that WSBA *does* have sufficient information to plan and doesn't have to implement the plan if the result is different than what is expected.

The Board took public comment from Sandra Ferguson who identified herself as a non-practicing lawyer and a member of public. She asked the Board whether it had discussed question three and urged the Board to slow down and give the public and members an opportunity to weigh-in on that question, which she views as critically important. She inquired as to whether the Board would consider slowing down the process. She noted that she was interpreting Chief Justice Gonzalez's questions about bifurcation to refer to moving the regulatory functions under the Supreme Court, noting that she believes that there should be additional options, including the creation of a regulatory agency that is responsive to the electorate and that reports to the executive branch. She inquired as to how many other states regulate the profession under the executive branch. She further inquired as to who has the legal responsibility to ensure that the public is protected from dishonest.

Gov. Higginson moved to table the pending motion to the next structures meeting, expressing curiosity about what might happen that would require such an urgent response. Discussion followed in support of and in opposition to the motion. The Board took public comment from Nancy Hawkins in opposition to the motion. Discussion followed, including support for the motion to table; and a perspective that it is critical it is to be mindful of the input received throughout the process.

Sandra Ferguson asked the Board whether question three had been discussed and whether any motions had been made. It was clarified that question three was discussed at the June ETHOS meeting and that no action had been taken.

The motion to table passed 8-2. Govs. Abell and Anjilvel were not present for the vote.

Discussion followed regarding the survey to the membership and how it will be carried out. The Board took a question from Sandra Ferguson as to the rationale for not distributing the survey to all members.

Discussion followed as to development of proposals for the August 13 meeting. Several comments were suggested the three areas to look at status quo, complete bifurcation, and the PAWL proposal.

The Board took public comment from Sandra Ferguson who identified herself as a practicing attorney from 1993 to 2016, when she was harassed into quitting the practice of law. She walked through her personal experience in the discipline system and as a victim of white-collar crime by other attorneys. As to question three, she expressed her view that the structure needs fixing. She expressed her view that the structure has increased the wealth and power of a small group of lawyers over the profession and the public. She expressed her concern that the organization is being used to perpetuate criminal activity. She reiterated her question from earlier as to who has the legal obligation to protect the public. Ms. Ferguson recommends that WSBA be dissolved and that an independent investigator be appointed to investigate her allegations of case fixing. She recommended that the regulatory agency not be moved under the Supreme Court and instead be under the Executive branch.

#### **ADJOURNMENT** ([link](#))

Pres. Elect Clark moved to adjourn given that the Board has already had ample opportunity for discussion and reflection.

Gov. Dresden noted he was aligned with the comments made by Boyd and Peterson, but is keeping an open mind and would like to see the additional information. Gov. Williams-Ruth commented on the poor quality of the closed captioning.

Pres. Tollefson asked if there were any objections to adjournment. There being none, the meeting was adjourned at 3:11 PM.

Respectfully submitted,

*Terra Nevitt*

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Terra Nevitt  
WSBA Executive Director & Secretary