

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS SPECIAL MEETING - ETHOS

Minutes

WSBA Office, Seattle, WA

June 18, 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, June 18, 2022, at 9:02 AM. Governors in attendance were:

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

Also in attendance were Mark Alexander, Douglas Becker, Executive Administrator Shelly Bynum, Chief Disciplinary Counsel Doug Ende, Cameron Fleury, Nancy Hawkins, Robert Malae, Executive Director Terra Nevitt, Gov. Elect Nam Nguyen, Chief Communications & Outreach Officer Sara Niegowski, Broadcast Services Manager Rex Nolte, Gov. Elect Kari Petrasek, Director of Advancement Kevin Plachy, Parliamentarian G. Kim Risenmay, Immediate Past Pres. Kyle Sciuchetti, General Counsel Julie Shankland, Chief Equity & Justice Officer Diana Singleton, and Member Services & Engagement Manager Julianne Unite.

There was an opening discussion about whether a discussion of governance should be added into the ETHOS process, including a concern that the topic is too significant to take on with the time remaining; and a concern that the topics are not sufficiently linked.

Gov. Stephens moved that the Board does not include governance in the ETHOS process and that it recommend that the Board take up the topic of governance next year. Discussion followed for and against the motion.

Gov. Clark offered a friendly amendment to remove the portion of the motion that recommends the Board take up the discussion next year and that language be added to recommend that WSBA maintain the current structure of the Board with 14 governors and not adopt a recommendation of additional

governors, including public members and/or a dedicated LLLT governor. The motion was not accepted as friendly.

Discussion continued for and against the motion, including whether and when the topic should be taken up by the Board and a concern that the motion would require the Board to take up the topic. The Board took public comment from Nancy Hawkins that the Board has significant issues to take up rather than revisiting the structure and governance of the organization annually.

Gov. Stephens changed the motion to not include governance in the ETHOS process and to *refer* the question of governance to the next Board for their consideration, noting that he's not trying to tie the hands of the next Board. The seconder agreed to the modified motion. Discussion followed for and against the modified motion. Chief Disciplinary Counsel Ende advised that many of the governance issues and recommendations are structural and that the two issues are intertwined.

Gov. Higginson moved to sever the motion. The motion to sever passed unanimously. Gov. Stephens abstained. Gov. Abell called the question on the first part of the motion, that the Board not include governance in the ETHOS process. The motion to call the question passed unanimously. The underlying motion passed unanimously.

Discussion continued on part two of the motion, that the Board refer the question of governance to the next Board for their consideration. The motion failed 1-8. Gov. Anjilvel was not present for the vote. Gov. Stephens suggested that Pres. Tollefson, Pres. Elect Clark, and Executive Director Nevitt communicate to the Court the outcome of the discussion.

Discussion and Potential Action: Question 1 ([link](#))

Discussion commenced regarding question one, including whether the topic is ripe; and a perspective that WSBA's integrated model is the best model, and that there has not been any change or action that requires a change at this time, and therefore a change should not be made. Gov. Peterson moved that as to question number one, the answer is no, WSBA is not required by law to change its structure.

Discussion followed in support of the motion; regarding the value of a contingency plan; and clarification that question one and the motion on the table refer to the narrow question of whether a change is legally required.

Gov. Higginson moved to table the discussion to later in the meeting. The motion to table passed unanimously. Gov. Anjilvel was not present for the vote.

Discussion of Supreme court Boards Administered by WSBA and the Applicability of GR12 and Keller ([link](#))

Practice of Law Board Chair Michael Cherry made comments, including the Board's interest in understanding where it will fit if there is any change to WSBA. He noted that, in his view, the work of the POLB falls within the *Keller* definition of what is germane to the purposes of a mandatory bar association. He expressed concern that it is unclear whether bifurcating the bar would be feasible.

Discussion followed including a perspective that one of the benefits of an integrated bar is the ability support Supreme Court Boards, as well as the educational work of sections; the distinction between Supreme Court Boards and sections; and an explanation of TAXICAB, the task force that is looking at the relationship between WSBA and the Supreme Court Boards it is charged with administering.

The Board took public comment from Douglas Becker that the question of whether the Supreme Court Boards are germane to the purposes of a bar association is irrelevant to the question as to whether the bar should be unified or not. He noted that any organization with Board and staff is going to have natural and necessary tension, but that it is unnatural to have a third power center in the Supreme Court. He noted that there are inherent conflicts in the mission and that taken together with the three power centers means there will always be conflict in the mission and in decision-making. He concluded that WSBA cannot continue as a unified bar.

The Board took public comment from Nancy Hawkins with regard to the agenda and the value of discussion. In terms of the Supreme Court boards, she commented that there should be a better understanding between the Supreme Court and the WSBA. She noted that while much work is done well and efficiently, some work has been controversial and expensive, which has caused conflict. She noted that, in her opinion, the boards should have to follow the same rules that all WSBA entities, including the sections, have to follow.

Pres. Tollefson noted that the 11:15 topic was removed and suggested that after the break the Board return to the discussion of question one.

Gov. Adewale reported that the Access to Justice Board would have an official comment for the July ETHOS meeting. He clarified that he was not speaking for the Access to Justice Board when he said that it would be helpful to have specific questions for the Board to answer.

Executive Director Nevitt commented on the purpose of having discussions so that there could be specific feedback on the proposals in July.

Discussion followed about the potential impact on Supreme Court Boards in the event of bifurcation, including how they would be funded and where they would live; whether a regulatory body would have a role in educating the public and/or innovating the practice of law; that the Supreme Court boards have different functions and funding structures; and how a bifurcation might impact license fees.

Discussion and Potential Action: Question 1 ([link](#))

Pres. Tollefson reopened discussion regarding question one. Comments shared included that the question is moot and therefore no discussion needs to occur; and that no change is needed in light of the US Supreme Court's recent action.

Gov. Abell moved that the Board respond to question one and answer no and cite the US Supreme Court denial of cert of the structure. An objection was raised as to the appropriateness of the motion. Following advice from the parliamentarian, Pres. Tollefson ruled the motion as being out of order.

Discussion continued, including a perspective that WSBA cannot predict what will happen in the future, but that not change is needed at this time. The Board took public comment from Michael Cherry that if the question is moot now, it may not be for long and that the Court should be provided with further analysis than a simple "no". There were additional comments in support of answering "no" to question number one. The Board took public comment from Nancy Hawkins in favor of providing a definitive answer that the answer to question one is "no". Discussion followed, including about whether there was proper notice. The Board took public comment from Mark Alexander, speaking in his personally capacity, that even if the current cases don't require a change, the issue will continue to be raised nationally and with respect to the WSBA, specifically. He identified the fundamental challenge is that it's unclear who the WSBA serves and his perspective is that the Governance Task Force concluded that the WSBA serves the Washington Supreme Court and made recommendations along those lines. He noted the kinds of conflicts that will inevitably arise when there is a conflict between what the members of the organization want and what the Supreme Court directs and that will continue to cause problems. He concluded while there is not a law or case that applies the agency principle to whether you can have a mandatory bar, but that, in his opinion, it is only a matter of time and the problem is that there should be a duty of undivided loyalty to the principle and in the case of WSBA it's not clear and it must be changed.

Discussion of Question 3 – What is the ideal structure for WSBA to achieve its mission? ([link](#), [link](#))

There was a brief discussion of what order to take up questions two and three.

Discussion followed regarding question three, including a perspective that the question should not be narrowed to the current mission statement and a perspective that the Board revisited and reaffirmed the mission recently, and that should guide the answer to question three.

Gov. Williams-Ruth presented his proposal to create the Political Arm of Washington Lawyers (PAWL) and his rationale for it, which is that the legislative work is valuable, but not wholly appropriate within the integrated bar. Discussion followed, including whether PAWL is necessary given the voluntary legal associations that already exist; support for the concept, but concern about the effectiveness of the entity if it doesn't carry the name of WSBA; a concern that any outcome proposed should not sidestep WSBA's role in championing justice; a perspective that the proposal is responsive to much of the feedback from sections; a perspective that the question is one of morality; clarification that PAWL would be open to all WSBA members, while existing organizations are exclusive to specific practitioners; and a concern that the entity will simply appear to be an extension of the WSBA, rather than a truly separate organization.

The Board took public comment from Nancy Hawkins that the legislature moves to quickly for a broad organization like PAWL to be effective; that in her view it is not correct that every comment a section wants to make about a proposed bill is political speech; and that the proposal is not workable. She further noted that there is no case that forbids WSBA from analyzing proposed bills and providing input. She noted her disagreement that the challenge of WSBA is it has three centers of powers.

Discussion followed, including a concern that WSBA become too risk adverse in terms of legislative activity; whether the proposal solves the problem and concerns that have been expressed; curiosity about

how PAWL will be funded and how much funding would be required for it to be self-sustaining; a perspective that there should be more of a frank discussion of germaneness and that the conflicts raised by the DRAW letter are deserving of consideration; clarification that the proposal is not to create a superPAC or get into political races; that the considerations for sections of different sizes are distinct; the value of WSBA programs that benefit only a small number that are possible due to economies of scale; a perspective that the mission doesn't feel like a clear conflict of interest; and concerns about the helpfulness of a brief membership survey.

The Board took comment from Douglas Becker that there are actual conflicts within the bar association and that the concerns that there would be a tremendous loss if the bar was bifurcated seem overstated. A comment from a Board member followed expressing appreciation for the points made in the letter from Domestic Relations Attorneys of Washington (DRAW) about competing interests and the benefits of bifurcation in addressing that challenge.

Discussion of Whether WSBA's Referendum Process Would be Useful ([link](#))

Discussion began with a comment from a Board member that a referendum on the topic of bifurcation would not be useful because the yes/no model is too simplistic. The Board took comment from Douglas Becker that a survey would be preferable to a referendum. Discussion followed against using the referendum process and for and in opposition of a survey. Nancy Hawkins commented on the care that must be put into developing and administering a survey.

Discussion of Question 2 ([link](#))

Discussion continued on the topic of referendum, including a perspective that the referendum would be inappropriate given that the Supreme Court asked for the Board's recommendation; and that the existing survey platform/model should be used. Discussion on question two began with a comment that a contingency plan should be based on the potential worst-case scenario, not based on the answer to question three. Mark Alexander commented that the Board should be seeking as much information as it can, including getting input from members. There was a proposal that WSBA survey the members generally, and also to specific stakeholders, and that the Executive Director, President, and Chief Communications Officer work to accomplish that. Director Nevitt suggested that the task of developing a survey be delegated to the Member Engagement Council.

Discussion continued about the response to question two, including whether the proposal on the table should be considered a contingency plan; that there is an implicit proposal to maintain the status quo; that the response to question two should be similar to the DRAW proposal and should address what would happen to funds in the event of a bifurcation; that it's difficult to develop a contingency plan when we can't predict what the ninth circuit or the US Supreme Court might do; that it's not a good use of resources to try to predict and respond to what might happen down the road; that much of the work has already been done and simply needs fine-tuning; and a suggestion that we gather the work that has already been done and outline what a 90-day workplan might look like.

The Board took public comment from Nancy Hawkins that WSBA should have a legal contingency plan in the event that the Ninth Circuit issues a ruling that is adverse to the WSBA structure. She suggested that

WSBA develop a list of the issues that would need to be addressed, including allocation of funds, contracts, and disposition of assets and equipment.

Director Nevitt shared how she intended to proceed with regard to surveying the members and invited clearer direction from the Board. There was a request from a board member to add a presentation of the history to the July ETHOS agenda. Discussion followed regarding the survey, including a suggestion that the President appoint a governor from each side of the issue to collaborate on developing a survey.

Gov. Higginson moved that two people be designated by the President to work with Gov. Bryn Peterson on behalf of the Member Engagement Council to come up with survey questions to be sent to the members regarding restructuring the bar association. Discussion followed, including a perspective that Chief Niegowski and Director Plachy should take the lead and work with the survey company to formulate questions and that it can also make sense to ensure that there are diverse perspectives represented.

Gov. Peterson moved to amend the motion to include that Directors Niegowski and Plachy will work with WSBA's survey company and the Member Engagement Council and to appoint Govs. Higginson and Abell to work on the survey questions. Discussion followed, including a suggestion that staff develop the survey questions and bring them to the Board for approval at the July meeting; that the task be delegated to the Member Engagement Council as it exists; clarification that the underlying motion did not intend to include the Member Engagement Council, but instead two board members and the chair of the Member Engagement Council; that discussion of the survey questions could take an entire day; concern that in the amended motion it is unclear who is the decision-maker; and a recommendation that WSBA work with the professional survey company, rather than having individual board members develop questions.

Gov. Peterson withdrew his amended motion in favor of a proposal that the Member Engagement Council decide on the issue, including a vote if needed. Without objection, the motion to amend was withdrawn. Discussion on the underlying motion continued, including a perspective that the original motion would not mean that the group cannot be supported by staff or consult with the Member Engagement Council; and that the Member Engagement Council always invites all to participate in their meetings. Clarification was sought on whether the motion would permit engagement of the Council and NBRI. It was clarified that the motion did not include working with the entire Council. There was a suggestion that there seemed to be consensus that the Member Engagement Council should work with NBRI to develop the survey questions. The Board voted on the underlying motion, which resulted in a 4-4 tie. Pres. Tollefson voted no and the motion failed. Govs. Abell and Anjilvel were not present for the vote.

Pres. Tollefson sought a motion to refer to the matter to the Member Engagement Council to work with NBRI to develop the survey with the understanding that everyone can attend the meeting of the Council. Gov. Purtzer made the motion, which passed 7-1. Govs. Abell and Anjilvel were not present for the vote.

ADJOURNMENT

Pres. Tollefson suggested that the Executive Director send out a preview of the next meeting via email and adjourned the meeting at 4:42PM.

Respectfully submitted,

Terra Nevitt

Terra Nevitt
WSBA Executive Director & Secretary