

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS SPECIAL MEETING - ETHOS

Minutes

The Davenport Grand Hotel, Spokane, WA

May 21, 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, May 21, 2022, at 9:06 AM. Governors in attendance were:

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

Also in attendance were Mark Alexander, Executive Administrator Shelly Bynum, Chief Disciplinary Counsel Doug Ende, Gov. Elect Kevin Fay, Tamarra Garrison, Nancy Hawkins, Sections Program Specialist Carolyn MacGregor, Member Engagement Specialist Curtiss Melvin, 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, Janet Welch, and Member Services & Engagement Manager Julianne Unite.

Exploring the Integrated Bar Model: Oregon, Idaho ([link](#))

Executive Director introduced the Executive Directors of Oregon and Idaho State Bar Associations, which both have an integrated bar model like Washington.

Executive Director Helen Hirschbiel explained that the Oregon State Bar (OSB) performs all regulatory functions in that State. She noted that the organization is governed by a Board of Governors with 19 members. Fifteen of the Board positions are elected by lawyers, which appoint four public members to the Board. Director Hirschbiel explained that OSB also has a 250+ House of Delegates, which is primarily

elected. The House of Delegates are the representative authority of the membership and can direct the Board of Governors, though they cannot control the professional liability fund or matters within the Supreme Court's authority. She noted that the OSB also has Boards, which are appointed by the Court and that oversee regulatory functions. OSB have 40 sections and 17 committees that carry out the work of the bar. Director Hirschbiel explained that in Oregon a fee is assessed for DEI programming, which is an established percentage of the license fee. She noted that OSB has many access to justice initiatives, and receives money from legislature to distribute to legal aid organizations in the state. Unlike the WSBA, the OSB does not have an Access to Justice Commission. Director Hirschbiel stated that the OSB engages in law improvement lobbying with sections and also for the bar priorities, which include adequate funding for courts, legal aid, and public defense. Regarding sections, she explained that membership is voluntary and that the OSB pays 50% of the cost to administer them.

Executive Director Diane Minnich explained that the Idaho State Bar (ISB) was established by statute and many changes would require legislative changes to enact. She noted that the ISB operates under Supreme Court rules, which govern its regulatory activities as well as sections and other activities of the Bar. Director Minnich stated that the ISB is governed by five commissioners, which are quite limited in what they can do, given that so much is governed by court rule. The ISB does not lobby for the most part. The only legislative activity relates to changing the rules that govern the bar association. She noted that when the bar wishes to change those rules, their process requires them to ask the membership first. Director Minnich noted that the ISB has 23 practice sections, which do not engage in legislative advocacy, though some sections have established independent groups to engage in lobbying. She noted that the sections are mostly self-supporting and that sections are charged for actual staff time, which is tracked. In addition to sections, the ISB has eleven committees, which are mostly established by rule. ISB does not receive legislative funding for legal services and does not have an access to justice commission, though it does have a fundraising group and a pro bono commission. Overall, the ISB has approximately 7,000 members, about 5,000 of which are active. Director Minnich also noted that there are many out-of-state active members that are not represented on the Board of Commissioners.

Director Hirschbiel added that the OSB was also created by statute, which is fairly detailed, including setting forth the organization's functions. Director Minnich added that license fees in Idaho are set by the legislature.

Dialogue followed, including about Idaho's resolution process; how outside lobbying works in Idaho; Oregon's House of Delegates; the extent to which Idaho and Oregon have a Keller deduction; Oregon's court-appointed boards and the relationship with the Board of Governors and the Court; the Keller challenge process in Oregon; how both states calculate the cost of administering sections; Oregon's approach to recruiting and appointing public members; the mandatory malpractice insurance programs in Idaho and Oregon; the status of Oregon's program to license paralegals and its alternative pathways to licensure for lawyers; and a suggestion that WSBA consider develop a house of delegates.

Exploring the Voluntary Bar Model: Colorado, Nebraska ([link](#))

Executive Director Amy Larson spoke about the Colorado Bar Association (CBA), which has always had a voluntary model. She noted that the CBA is in constant communication with the regulatory bodies. The

CBA engages in Legislative work, access to justice initiatives, and diversity work. Director Larson explained that over the years, communication among the entities has sometimes broken down around fees and each organization's roles in advocating for equity, diversity and inclusion (EDI) efforts. CBA recently did significant work to change its bylaws to better express how the voluntary bar is weaving EDI into all of its work. Director Larson noted that the Colorado Supreme Court has also been looking at this, including in the area of MCLE. Director Larsen explained that the CBA is seen as an important partner in communicating with membership. She described the CBA's robust legislative work, noting that there are four legislators on the Board. Colorado's Access to Justice commission, is partnership of Court, the CBA, and the Foundation and is an independent commission. Director Larsen described some of the issues they seek to address as partners, including the issue of legal deserts. Discussion followed about CBA's relationship to the discipline system; membership; member benefits; and section engagement.

Executive Director Liz Neely spoke about the bifurcation of the Nebraska State Bar Association (NSBA), which was an integrated bar previously. She noted that the Supreme Court already had discipline and admissions and mandatory fees could only be used for regulatory functions, which are defined as bar admissions, license renewal, discipline, trust accounts, UPL, and MCLE. She explained that a division was created under the Court and dues to NSBA were made voluntary. She explained that the Court's decision did not include a finding that there was a *Keller* problem, but rather that the Court wished to avoid the issue all together. Director Neely explained that all lawyers in Nebraska have to be members of the NSBA, but that payment of dues is voluntary, which is still controlled by the State Supreme Court. She noted that the NSBA can deny benefits to those that do not pay dues, but non-dues-paying members can serve on the Board. Director Neely suggested that if WSBA moves to a voluntary bar model it should budget to retain 65-75% of active members and only 35% of inactive members. She explained that the bar is most likely to lose government and corporate counsel lawyers, as well as young lawyers. Director Neely explained that the mission of a voluntary bar is, first and foremost, to provide value to members. Communications become critically important in a voluntary bar. Section members are the most likely to join the voluntary bar and they are truly the lifeblood of the association. Director Neely noted that defining what is regulatory is important, and identified the lawyers assistance program and the client assistance fund as grey areas. She noted that a benefit of having all lawyers as members of the NSBA is that they have access to all members.

Discussion followed regarding attorney input on regulatory processes and rulemaking; efforts to retain government lawyers and any impact of membership in the voluntary bar on discipline statistics; total cost to practice in each state and compensation for service provided in support of the mandatory bar; and the extent to which Nebraska has a "free rider" challenge in their model.

Exploring the Hybrid Model: California ([link](#))

Executive Director of the State Bar of California Leah Wilson presented on the change to its structure, noting that it was mandated by the legislature. She highlighted the changes before and after. She explained that client trust accounts were added, sections were split off, more non-CLE educational programming was added, the Access to Justice Commission was spun off into its own 501(c)(3), DEI work is narrowed from law school on and the bar's primary role is data collection, analyzing, and promulgating best practices, and reduced legislative work.

Executive Director of the California Lawyers Association Oyango Snell described the sections and the California Lawyers Association (CLA) governance structure. The CLA is led by a Board of Representatives, made up of 18 reps from each section, as well as a president and vice president. The President is elected by the Board and supervises the Executive Director. Director Snell explained that the Association began in 2018 when the sections were bifurcated from the State Bar of California and since that time has been focused on trying to right size the organization given the resources they have to work with. He noted that given the decades of experiences in the sections that make up the organization it has been both in the start-up phase, as well as in need of renew at the same time. Director Snell explained that membership in the CLA is requested through the annual license renewal and that has been critical to the association's success. Currently the CLA has 45,000 paid members. In addition to sections, the CLA has several committees, including those focused on ethics; diversity, equity and inclusion; and leadership development. There is also a foundation, which is involved in access to justice and civic education efforts.

Director Wilson noted that the board got smaller post bifurcation and is made up of 7 attorneys and 6 public members. She explained further that there are no elections to the Board and there are no elected leadership positions.

Discussion followed, including about changes in section memberships before and after bifurcation; drivers that influence membership in the state bar association; awareness challenges; lessons learned from the change in structure, including how critical the relationship is between the regulator and the association, mindset, and mission focus, harnessing the power of the association; clarification on changes to access to justice work and the motivation for separation; engagement of the voluntary bar in new lawyers; and the process for and cost of bifurcation.

Financial Considerations for Potential Changes to WSBA's Scope and Structure ([link](#))

Kevin Plachy presented on financial considerations for seven potential scenarios for changes to the bar structure. Discussion included who would make the decision as to what would be germane in a "Keller pure" model; the extent to which a "Keller pure" model is different from our current model; clarification that the analysis presented is financial only, not social impact; what it would like to scale back legislation; a suggestion that WSBA wouldn't need self-funding for all the work, just the legislative work; what legislative work might happen under WSBA if a separate organization was created for sections; a concern that moving the sections out of WSBA might drive regional bar associations out of existence; a discussion of what happened to California's magazine after bifurcation; the cost to practice in California; and that the models don't take into account the cost to stand up a new organization.

Comments from the Membership and Public ([link](#))

Discussion followed, including the cost of rent and how that was allocated in the scenarios; the estimated drop off assumed for the voluntary model; the impact that a drop in volunteerism might have to the need for staff for the regulatory model; how CLE might be impacted in the various models; and the potential costs associated with the process of bifurcation.

Board of Governors Questions, Comments and Discussion ([link](#))

Discussion followed, including a perspective that young lawyer engagement would go down in the voluntary model and a lengthy discussion about member input and the possibility of doing a member survey. There was a specific suggestion that the officers develop a proposal for a survey, including timing.

Future Agenda Items and Action Item Review ([link](#))

ED Nevitt reviewed plan for upcoming ETHOS meetings, suggested that board members develop proposals for the June meeting, and suggested that the Member Engagement Committee develop a proposal for a membership survey.

ADJOURNMENT

Pres. Tollefson adjourned the meeting at approximately 4:00 PM.

Respectfully submitted,

Terra Nevitt

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WSBA Executive Director & Secretary