

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Public Session Minutes

Bellingham, WA

January 18-19, 2018

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Brad Furlong on Thursday, January 18, 2018, at 1:45 p.m., at The Bellwether, Bellingham, Washington. Governors in attendance were:

Dan W. Bridges
Daniel D. Clark
James K. Doane
Angela M. Hayes
Kim E. Hunter
Jean Y. Kang
Rajeev D. Majumdar
Christina A. Meserve
Athan P. Papailiou
G. Kim Risenmay
Kyle D. Sciuchetti
Alec Stephens
Paul Swegle
Judge Brian Tollefson (ret.)

Also in attendance were Immediate Past-President Bill Hyslop, Executive Director Paula Littlewood, General Counsel Sean Davis, Chief Regulatory Counsel Jean McElroy, Chief Disciplinary Counsel Doug Ende, Director of Human Resources Frances Dujon-Reynolds, Chief Operations Officer Ann Holmes, Director of Advancement/Chief Development Officer Terra Nevitt, Chief Communications and Outreach Officer Sara Niegowski, and Executive Assistant Margaret Shane. President-elect Bill Pickett was not present for the meeting.

The following items were discussed on Thursday, January 18, 2018.

PROPOSED LESBIAN GAY BISEXUAL TRANSGENDER (LGBT) LAW SECTION BYLAW AMENDMENTS

Executive Director Littlewood advised that the LGBT Section is asking to amend their Bylaws and that General Counsel Davis has reviewed the request. Governor Papailiou explained that this is a simple amendment to help the Section hold their annual elections in a timely manner. Governor Papailiou moved to approve the proposed bylaw amendments as contained in the meeting materials. Motion passed unanimously.

PROPOSED BYLAW CHANGES TO CONFORM WITH RECENT COORDINATED SYSTEMS ADMISSION AND PRACTICE RULES (APR) AMENDMENTS (first reading)

Chief Regulatory Counsel McElroy noted that these proposed Bylaws amendments are on the agenda for first reading at this meeting and action at the March 8, 2018, BOG meeting. There were no questions and no discussion.

REPORT ON EXECUTIVE SESSION

President Furlong advised that the Board heard the Discipline Report and the Litigation Report in Executive Session, and there was discussion among the Board with the Diversity Team.

CONSENT CALENDAR

- a. November 15-16, 2017, Public Session Minutes

COMMITTEE ON PROFESSIONAL ETHICS (CPE) REPORT AND RECOMMENDATIONS RE AMENDMENTS TO THE LAWYER ADVERTISING RULES (RPC TITLE 7) – Don Curran, Chair (phone); Art Lachman, Lawyer Advertising Work Group and CPE Subcommittee Member; and Doug Ende, Chief Disciplinary Counsel (first reading)

Chair Curran described the purpose, mission, and makeup of the CPE. Chief Disciplinary Counsel Ende explained the background for the CPE recommendation that Title 7 be amended, an initiative that arose following a 2015 report of the Association of Professional Responsibility Lawyers. That report, which has received widespread attention nationally, has been acted on in Virginia and is being considered in a number of states, concluded that the ABA Model Rules on lawyer advertising in effect in most of the states are outdated and unworkable in the current legal environment. He observed that the overarching purpose of the amendments is regulatory reform designed to permit innovation in the marketing and delivery of legal services in ways

that will benefit the profession and consumers. Mr. Lachman underscored the idea that advertising and marketing of legal services is something to be encouraged rather than chilled through restrictive and complicated ethics rules. He emphasized that the recommendations are not designed to wholly deregulate advertising but rather to refocus the existing rules on fundamental principles of ethics, with the goal of improving access to justice and accommodating the realities of technological change. He then reviewed the proposals to amend RPC 7.1 through 7.5 and RPC 5.5 in detail. Discussion ensued regarding the ability to regulate “ambulance chasing” and the elimination of the restriction on in-person solicitation when the motive for doing so is a lawyer’s “pecuniary gain.”

RECOMMENDATION RE RENAMING WSBA EXCELLENCE IN DIVERSITY AWARD

Governor Doane reported that the BOG Awards Committee met to discuss the request from the State of Washington Minority and Justice Commission to rename the WSBA Excellence in Diversity Award to the Justice Charles Z. Smith Award in honor of Justice Smith’s contributions to diversity in the legal profession. He reviewed the history of WSBA’s current awards and reported that the Work Group discussed whether it was appropriate to name this award after any one person, and then whether to name it after Justice Smith. He advised that, after much thoughtful discussion, the Work Group decided not to rename this award after a particular person, and so not to rename the award after Justice Smith. Input was received from several judges on the phone and guests present at the meeting in support of renaming the award after Justice Smith. Discussion ensued regarding moving this item to the Board’s March meeting in order to allow more people time to give their input; the huge impact Justice Smith had both locally and nationally and his work on diversity in all forms throughout his life; and whether this and other awards could be renamed years in the future after a then current hero. Governor Meserve moved to approve renaming the WSBA Excellence in Diversity Award to the Justice Charles Z. Smith Award. Motion passed unanimously.

MEMBER AND PUBLIC COMMENTS

Jim Britton, past-President of the Whatcom County Bar Association and current member of the Law Advocates Board, shared that the recently initiated Odyssey system electronic access to court files comes with a fairly significant fee and imposes a significant burden on access to

justice for indigent people. He opined that access to court files should be a state function and asked the Board to consider sponsoring or initiating legislation under which access to justice to public records would be a state function and part of the general budget, which would level the playing field so that everyone would have access to public documents.

Peter Arkison shared his opinion that the current license fees are too high and that adding mandatory malpractice insurance will dramatically increase the cost of practicing law in the state of Washington. He requested that the Board form a committee to look into how to cut costs, including moving the Bar out of downtown Seattle to Leavenworth since it is centrally located in the state.

Nancy Hawkins replied to Mr. Britton's comments related to the access to justice issue regarding online access to civil records by stating that family law filings are intensely personal and should not be easily accessible by the public.

Geoff Revelle also replied to Mr. Britton's comments by stating that the Access to Justice (ATJ) Board is aware of the issues related to electronic filing and the ATJ Board is hoping to take some action on the issue.

Hon. Laura Bradley advised that if individual litigants are given access to the records, it would be limited only to them, so other people would likely not be able to read those records.

Jean Cotton thanked Executive Director Littlewood for including an update on provision of health insurance coverage in her ED Report and spoke on the current difficulty of finding such coverage. She requested that the Board continue to look into health insurance coverage for aging legal professionals.

PROPOSED FY2018 BUDGET AMENDMENT – Governor Kim Risenmay, Treasurer, and Ann Holmes, Chief Operations Officer (first reading)

Treasurer Risenmay explained the background of the proposed budget amendment to bring several staff salaries in line with current market compensation. As recommended by the Budget

and Audit Committee and directed by the Board in September: (1) the total salary line was not increased in the approved FY18 budget; (2) the FY18 budgeted salary pool was allocated and salary savings realized during FY17 of \$115,836 were reallocated to partially address market disparities; and (3) a budget amendment of \$138,0885 (for salary and associated benefits) is sought in order to bring affected positions in line with the market. Treasurer Risenmay noted that the allocation of the FY18 budgeted salary pool and reallocation of salary savings realized during FY17 did not increase the FY18 budget. He also advised that the proposed increase of \$138,085 represents approximately one-half of one percent of the total budget, and that cost center budgets would be adjusted to reflect all salary and benefit changes made to address market compensation issues.

Discussion ensued regarding the compensation survey; the process of reallocating budgeted funds; and the importance of rewarding good employees, staying competitive in the marketplace, and planning for long-term spending increases. Executive Director Littlewood noted that WSBA reviews nine salary surveys each year in order to ascertain the current marketplace and that several years ago the market disparity of WSBA compensation was known and addressed for administrative and professional staff. She advised that the recent study highlighted the market disparity for senior positions and that long-term planning for spending increases includes having salary pools each year that help keep staff in pace with the current marketplace.

Governor Stephens moved to waive second reading and approve the recommendation of the Budget and Audit Committee to increase total salaries and benefits by \$138,085, and to adjust cost center budgets to reflect all salary and benefit shifts arising from implementation of the compensation survey recommendations, effective October 1, 2017, as contained in the meeting materials at this meeting. Governor Doane moved to table the vote until the March 8, 2018, Board meeting. Treasurer Risenmay noted that waiting longer to make a decision on this recommendation affects the budget for next year and is counterproductive to the budgeting process. He reminded the Board that this item was brought to its attention six months prior to this meeting. Motion to table passed 11-3. President Furlong noted that this item will be on the Board's March 8, 2018, meeting agenda for action.

INITIAL REPORT AND DISCUSSION OF REFERENDUM PROCESS REVIEW WORK GROUP RECOMMENDATIONS – Governor Kim Risenmay, Chair, and Sean Davis, General Counsel

Chair Risenmay explained the background and formation of the Work Group and advised that discussions were contentious with narrow vote margins. He advised that discussions included scope, petition filings, signature gathering, signature verification process, signature threshold, referendum voting methods, and threshold of total votes. He stated that the Work Group has proposed four recommendations and that most of the recommendations have both a majority report and a minority report: (1) should license fees be subject to the referendum process; (2) enacting a resolution; (3) amending the WSBA Bylaws; and (4) referendum petition filing deadline. He noted that reducing license fees without taking programming into consideration is disruptive to the operation of the organization, and that referendums in general are disruptive to the entire governance process. He noted that other matters for consideration include physical signatures; electronic signatures; threshold number of signatures; and minimum number of active member participation. In answer to an inquiry, Chair Risenmay advised that next steps are up to the Board.

The following items were discussed on Friday, January 19, 2018.

UPDATE FROM WSBA DIVERSITY COMMITTEE – Ailene Limric, Co-Chair (phone); Governor Alec Stephens, Co-Chair; and Joy Williams, Diversity and Public Service Programs Manager

Manager Williams reviewed the background, history, formation of the Committee, and current programming. She noted that goal setting and program evaluation will be the focus moving forward and that a five-year anniversary celebration of the Board’s approval of the Diversity and Inclusion Plan is being discussed. Co-Chair Stephens advised that the Committee will be looking at outreach to the minority bar associations regarding getting involved and becoming members of the Board and of various committees, being careful not to poach from any particular organization’s resources. Co-Chair Limric stated that the growth and engagement of this Committee has been phenomenal, including excellent programming and excellent diversity training by Inclusion and Equity Specialist Robin Nussbaum, along with helpful networking events.

THIRD-YEAR GOVERNORS CANDIDATE RECRUITMENT REPORTS

James Doane reported that he has included information about his seat in the BOG Update after every Board meeting, and has reached out, both in person and by email, to members in his district and to the minority bar associations, but has had little response.

Angela Hayes reported she has been enthusiastically recruiting and that there are a couple of members from her district who are committed to running. She noted that she has had conversations with two other members who are actively involved in the Spokane County Bar Association. She advised that the biggest challenge for candidates from Eastern Washington, especially if they are not in Spokane, has to do with travel. She concluded by stating that every District 5 newsletter has contained a recruitment blurb.

Kim Risenmay reported that he has been working to recruit people from District 1 who have worked on WSBA committees, has contacted past candidates, and has spoken with attorneys in his area.

Dan Clark – President Furlong advised that Dan Clark will be running for the District 4 seat (his current position), so President-elect Pickett (former District 4 Governor) will be handling the recruitment for District 4 candidates.

Jean Kang reported that she will not be eligible to run for the Washington Young Lawyers At-Large seat as she is aging out, but that she has been actively recruiting candidates by reaching out to the minority bar associations and past Washington Leadership Institute classes. She advised that she is considering running for the District 7 South seat on the Board.

Executive Director Littlewood gave an update on the three seats recently added to the Board and noted that application will be opened in conjunction with the WYLC seat on February 15, with a deadline of April 20, the same as the President-elect deadline. She noted that all three new seats could be filled at the same time, but staggered per the Bylaws: one public member for a three-year term; one Limited License Legal Technician/Limited Practice Officer (LLLT/LPO)

member for a two-year term; and one public member for a one-year term and eligible to run for a second term. Governor Bridges opined that the WSBA Bylaws don't allow for the suggested staggered method of filling the three new seats because they state that a Governor sits for a three-year term. Executive Director Littlewood explained that sometimes the Bylaws will delineate staggering in the Bylaws and then the Board amends the Bylaws in the future after several years have passed because the description of filling the seats using staggering would no longer be relevant or necessary going forward. In answer to questions, she replied that the same process will be used for these public member appointments to the Board as is currently being used to recruit public members for other WSBA entities; and that notice will be sent to WSBA Section leaders.

President Furlong announced that a Special Meeting will be held by February 15, 2018, so the method of filling the seats can be decided upon prior to the filing date and that a proposed Bylaw amendment will be decided upon at the Special Meeting. Governor Stephens volunteered to help develop the proposed Bylaw amendment. General Counsel Davis reminded the Board that the deadline for electing At-Large Governors is at the May 17-18, 2018, Board meeting. President Furlong requested that General Counsel Davis draft a Bylaw amendment with staggered terms, and another Bylaw amendment with the three new seats being filled at the same time, and to send it to Governors Majumdar and Stephens for input.

UPDATE FROM LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD RE NEW PRACTICE AREA DEVELOPMENT – Steve Crossland, LLLT Board Chair; Nancy Ivarinen, LLLT Board Member; Jennifer Petersen, LLLT; and Jean McElroy, Chief Regulatory Counsel

Chair Crossland gave an overview of the LLLT Board's work during the past year and reported that the LLLT Board is currently working on outreach to make sure people understand what LLLTs can do; a greater utilization of the community college system is desired; and explained the process of vetting and establishing a new practice area, which takes 18 months to two years. Ms. Ivarinen explained that many areas were considered for the new practice area where help would actually make a difference and the LLLT Board settled on Consumer Money and Debt. LLLT Petersen recounted real-life experiences and noted that LLLTs are well received by the courts in Whatcom and Skagit County; they work closely with the court facilitators; and

they save the court time as cases move through more quickly and economically. She concluded by stating that pro bono services are very important to LLLTs. In answer to a question, Chair Crossland explained that APR 28 originally did not allow LLLTs to appear in court, but once they started working with clients, it became apparent that some assistance in court would be beneficial to all. He stated that LLLTs do not represent a client or argue a client's case; they simply assist with paperwork. Governor Bridges requested Chair Crossland's and Ms. Ivarinen's assurance that the LLLT Board would not be before the BOG in a few years asking for LLLTs to represent clients in court and they both replied that it is not contemplated at this time that the program will move in that direction. Immediate Past-President Hyslop reminded the BOG that any expansion would have to be approved by the Washington Supreme Court. Chair Crossland advised that the LLLT Board would be meeting with the Court in April. He noted that the LLLT Board would not be completely ready with the new practice area by the meeting date with the Court.

PROPOSED WSBA BYLAW AMENDMENT RE WSBA PRESIDENT ROTATION (first reading)

President Furlong explained the background for this item and referred the Board to the three proposals contained in the meeting materials. Governor Doane explained that keeping the current rotation in place would result in four or five BOG Presidents in recent history coming from East of the Cascades, which does not accomplish the original goal of geographic diversity. He reviewed the history of rotations and emphasized that diversity other than geographic needs to be considered, such as racial, ethnic, gender orientation, etc. He noted that many comments received in response to the blast email requesting feedback were focused on King County. Concerns were raised regarding the blast email that went to Governor Clark's and Governor Hayes' districts. Executive Director Littlewood explained that staff were contacted by Governor Clark and Governor Hayes to send a blast email to their districts and Governor Clark suggested that Governor Hunter and Governor Sciuchetti might also be interested in sending a blast email to their district so they were contacted by staff. Immediate Past-President Hyslop reviewed the history of this item and explained that he sent an email, then Governor Clark and Governor Hayes asked the Bar to send an email to their respective districts. He urged the Board to review all the emails received in response to the blast emails and noted that there was not one response in favor of the proposed amendment. He concluded by stating that this

amendment should not be raised at a time when a Governor from West of the Cascades wants to run for President. Governor Stephens moved to table this topic and that it not be taken up until after the election of the next President-elect. President Furlong stated that the motion is improper since there is nothing to table at this point in the meeting. Discussion ensued regarding some Governors not having knowledge of the blast email to send to their district; slowing down the process and forming a work group to look at the issue and submit recommendations to the Board; and suggesting that a Governor needs to be off the Board prior to running for President-elect.

Governor Hayes emphasized that staff did not contact her regarding sending a blast email to her district, she contacted staff and assumed other Governors would do the same. She stated that she should have phrased the email differently and should have included all three amendments. Governor Doane advised that he would not be running for President-elect because he wanted this discussion to be about the merits of the current rotation. He opined that there is no reason to slow down or form a work group; the Board has seen numerous comments and all Governors can reach out to the members to ask for input on the merits.

President Furlong reviewed the background and reiterated the issues discussed at this meeting: three proposed Bylaw amendments; sitting Governors running for President; East/West/King County rotation; and no action taken at this meeting. He asked the Board if it wanted to form a Work Group or have a Special Meeting. Governor Majumdar moved to take action on the three proposed Bylaw amendments at the March 8, 2018, Board meeting. It was the consensus of the Board to do so.

MEMBER ENGAGEMENT WORK GROUP (discussion)

Executive Director Littlewood stated that the Executive Management Team developed a proposed road map, with a focus on member engagement, at its recent retreat by integrating the Board's priorities that were developed at the July Board retreat into upcoming agendas as a way to make sure all the priorities were addressed: diversity and inclusion, member engagement, member benefits, court reform, and entity regulation. She explained that 900 volunteers are engaged with the Bar on any given day and that plans are in place to start

bringing the Board's entities before it to talk about their work. She then iterated the following schedule: March – generative discussion regarding innovative courts; May – Section leadership reception; update from Practice of Law Board (POLB), along with someone from the Attorney General's Office Consumer Protection Division tying into what the POLB is doing; and report from the Executive Management Team regarding status of mandatory bars across the country; July – breakfast with the Washington Young Lawyers Committee (WYLC) and possible update from the WYLC during the meeting; dinner with the Oregon State Bar leadership; update from Court Rules Committee; and revisit of entity regulation topic; September – update regarding member benefits return on investment (ROI) discussion for the last two years; and update from Law Clerk Board.

President Furlong left the meeting and passed the gavel to Governor Risenmay since President-elect Pickett was not present at the meeting. Executive Director Littlewood continued by stating that a survey is planned in connection with member engagement, and that the outreach plan to members includes a letter to five-year members encouraging them to volunteer with the WSBA and a letter to members around their 25th year in practice with information related to practice transitions, emeritus status, and other information relevant to members approaching retirement. She explained that it is currently taking three weeks after a Board meeting to get the BOG meeting blast email update to the membership, so the Executive Committee suggests the email updates to be handled as they were in the past: staff will write a recap and send it out to the membership from WSBA after the Board meeting, and staff would be available to work with individual Governors who would like to send an update to their respective districts.

President Furlong returned to the room and took the gavel. Executive Director Littlewood then referred the Board to the 2018 First Quarter Management Report (provided to the Board on a quarterly basis) contained in the meeting materials and iterated the following highlights: the coordinated discipline system is on track; work is ongoing with Sections regarding a new revenue sharing model for CLEs; and work continues on enhancing member awareness and engagement with the Bar and its programs. The member engagement work group item was tabled until the March 8, 2018, Board meeting at the request of Governor Hunter.

Chief Communications and Outreach Officer Niegowski urged the Board to log onto the new WSBA website and thanked Communications Strategies Manager Jennifer Olegario and her team for their outstanding work on the new website. Regarding membership engagement, Officer Niegowski asked the Board to take a step back and think about what the 40,000 members of the Bar are doing and how they want to be engaged. She explained that the Bar is a resource and it is important to make sure that the members are engaged at a level they want to be engaged at and the members understand what the Bar provides. She advised that plans are in the works to complete approximately 100 high-level calls each quarter with individual members in order to ascertain their perception of the Bar, how they grade the Bar, and whether they are engaged the way they want to be engaged. She advised that she would be happy to work with Governor Swegle on this endeavor. She emphasized that her department is focused on getting the Board's information out to the membership across all channels.

PRESIDENT'S REPORT

President Furlong reported that the Officers, the Executive Director, and Governor Majumdar met with the Skagit County Bench and the Skagit County Bar Association leadership on the previous Wednesday.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 1:00 p.m. on Friday, January 19, 2018.

The Board then went into Executive Session and all staff except General Counsel Davis left the room.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary