

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS SPECIAL MEETING

Minutes

Held Virtually

December 14, 2021

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 President Brian Tollefson on Tuesday, December 14, 2021 at 12:03 PM. Governors in attendance were:

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

Also in attendance were Elly Baxter, Regulatory Services Counsel Cathy Biestek, Online Communications Specialist Noel Brady, Executive Administrator Shelly Bynum, Michael Cherry (Practice of Law Board), IT Director Jon Dawson, Chief Disciplinary Counsel Doug Ende, Volunteer Engagement Advisor Paris Eriksen, Chief Regulatory Counsel Renata Garcia, Tamara Garrison (Family Law Section), Chief Justice Steven González, M. Gordon, Practice Management Assistance Advisor Margeaux Green, Assistant General Counsel Nicole Gustine, Graphic Designer Jim Hanneman, Michael Harris, Nancy Hawkins (Family Law Section), Assistant General Counsel Thea Jennings, Director of Human Resources & Chief Culture Officer Glynnis Klinefelter Sio, Community Outreach Specialist Mike Kroner, Victoria L, Rajeev Majumdar, Jonathan McCoy, Sections Program Specialist Carolyn McGregor, Member Engagement Specialist Curtiss Melvin, Senior Legal Editor Margaret Morgan, Anna "Mickey" Mortiz, Executive Director Terra Nevitt, Chief Communications & Outreach Officer Sara Niegowski, Broadcast Services Manager Rex Nolte,

Sierra Ogasawara (LGBT Law Section), Chief Financial Officer Jorge Perez, Director of Advancement Kevin Plachy, Peder Punsalan-Teigen, Communications Specialist Collin Rigley, Parliamentarian G. Kim Risenmay, Immediate Past President Kyle Sciuchetti, General Counsel Julie Shankland, MCLE Manager Adelaine Shay, Chief Equity & Justice Officer Diana Singleton, Member Services & Engagement Manager Julianne Unite, Legislative Affairs Manager Sanjay Walvekar, Randy Winn (World Peace Through Law Section), and Barnaby Zall.

Pres. Tollefson welcomed Chief Justice González, who explained that the Washington Supreme Court is seeking WSBA's opinion regarding WSBA's structure and that the Court will engage in its own legal analysis with advice from the Assistant Attorney General that they work with. He noted that the Court has not decided and is asking WSBA to develop its own view, uninfluenced by the Court's view. The Chief Justice articulated three questions for WSBA to answer (1) Are there changes in the law that require changes to WSBA? (2) Even if changes aren't required, if there was a change, what would the new structure look like? (3) Regardless of any of the answers to those two questions, are there suggested changes as improvements? He noted that in answering these questions, the Court wants WSBA to consider a broad viewpoint – what is good for the public and what is good for the profession.

Discussion followed, including whether it would be reasonable to only answer the first question and wait until some future date to answer the other two questions; whether and when executive session is appropriate; the extent to which the 2019 report produced by the Washington Supreme Court Workgroup on WSBA Structure was sufficient or had been superseded by ongoing litigation; a suggestion that stakeholders need education before they can contribute to the conversation; the extent to which WSBA is being asked to conduct a risk assessment; a suggestion that WSBA consider how any changes to WSBA's structure might impact newer members of the bar; suggestions that the process include sections and as many people as possible; a perspective that WSBA should be proactive so as not to be caught "flat footed"; and a perspective that the proposal should consider how diversity and inclusion will be supported in any new structure.

Member & Public Comments ([link](#))

The Board took public comment from Sierra Ogasawara that stakeholders need adequate time to get fully informed and provide input; that communicating should include members outside of sections and that there should be time built-in to the process for that; and that there should be dedicated seats at the table for stakeholders.

Nancy Hawkins commented that that the process is destined for failure due to inadequate member participation in the decision making.

Tamara Garrison commented that there should be stakeholders at the table during the process.

The Board took public comment from Barnaby Zall who shared his view that these issues do need to be taken up given changes to conflict among the circuit courts.

Randy Winn commented that WSBA should make educating stakeholders a priority.

Continuing the Conversation About WSBA's Structure ([link](#))

Discussion continued, including support for a transparent process; the need to create time and mechanisms to expand on the education efforts already underway; a suggestion to invite stakeholders into the process as presenters; and acknowledgment that this is an important question and doesn't have to be rushed.

Immediate Past Pres. Sciuchetti presented his proposal set forth in the meeting materials and noted his suggested timeline, which is to complete work by the beginning of next year. He suggested reaching out to stakeholders given the importance of this question and noted that the Board of Governors is the decision-maker. Discussion followed, including the need for stakeholder education; a perspective that the legal landscape doesn't require changes and that WSBA shouldn't advocate for change; and a perspective that members may consider this activity a waste of time.

Gov. Higginson moved that the current bar structure remain unchanged and that the consideration of any different structure be deferred until after the United States Supreme Court has issued a ruling in the *McDonald* and *Shell* cases. Gov. Higginson noted the reasons for her motion, including that nothing mandates a change and any discussion of the best structure for WSBA should be separate from whether a structural change is legally required. Discussion followed, including a perspective that the motion is not responsive to the Washington Supreme Court's request; that a contingency plan would be prudent; that things have changed since the last analysis was conducted; and that the *Taylor* case (out of Michigan) is also pending. Gov. Higginson requested that her motion also reference the *Taylor* case. Discussion continued, including acknowledgement that the Court will ultimately make its own decision; that work based on speculation is not a prudent use of resources; that the proposal should not go forward without knowing the fiscal impact; that not deciding leaves stakeholders unclear on what work can be done; and that a process is required to answer the questions beyond risk analysis.

There was a suggestion that WSBA should consider what happens if the United States Supreme Court remands those cases rather than decides them. Gov. Higginson noted that the intent of the motion was to defer consideration of WSBA structure until there is a definitive disposition. She suggested changing the language of the motion to use the word "decision." As the second,

Gov. Purtzer agreed to the change. Discussion followed, including that the Washington Supreme Court has asked for this analysis and therefore it should be done; support for Past Pres. Sciuchetti's proposal with some minor revisions, including a tighter timeline; suggestion that a motion be made to maintain the status quo but advise sections that heightened scrutiny applies to ongoing WSBA activities while WSBA explores the structure issue and seeks member feedback; that the fiscal impact must be understood; concern that "business as usual" plus heightened scrutiny is incongruent; and that there are adequate resources in the unrestricted reserves.

Further clarification of the motion was sought, and it was restated that the current bar structure remains unchanged and that the consideration of any different structure be deferred until after the United States Supreme Court has issued a decision on all three of the pending cases, *McDonald*, *Shell* and *Taylor* cases.

Gov. Dresden moved to call the question. Gov. Higginson stated a desire to withdraw her motion. Parliamentarian Risenmay noted that strictly speaking the Board must vote on calling the question. Discussion followed. Gov. Dresden withdrew his motion to call the question with the agreement of the second.

Gov. Higginson moved that the current bar structure remain unchanged and that members be asked whether they feel they are being served by the current structure and if not what is their suggestion for how to change the structure to better serve the members.

The Board heard public comment from Nancy Hawkins in opposition to the motion and suggesting that there should be a memo defending WSBA's current structure and activities. Discussion followed, including a view that the motion is too narrow; about getting budget information; and that the Chief Justice also asked the Board to consider how WSBA will better serve the public. The motion failed 9-3. Gov. Clark was not present for the vote.

Gov. Boyd moved to adopt Past Pres. Sciuchetti's proposal with the following changes (1) include that WSBA will continue to act as it has in the meantime (2) that the work be completed by August 30, 2022; and (3) that the Board have no less than two hybrid meetings specifically set for the Board to interact with the public, with the members and with various entities, including but not limited to, sections and minority bar associations. Discussion followed, including support for prudent changes in the structure whether or not legally required; the difficulty that the California bar has experienced in the new structure, including increased expense; and support for the amendments and a suggestion that the Board may need more than two meetings to consider input.

Gov. Anjilvel called the question. The motion to call the question passed 8-2. The underlying motion passed unanimously.

Pres. Tollefson noted his intent to work with Past Pres. Sciuchetti and others that are interested to fill in any gaps in the proposal.

The Board heard public comment from Michael Cherry expressing concern about the lack of discussion of Court-appointed Boards, which will also be impacted. Gov. Williams-Ruth noted that he takes away from this decision that it is business as usual with legislation, if the GR 12.2 analysis has occurred. Chief Disciplinary Counsel Doug Ende noted that because of a history of meager public engagement, certain stakeholders have often been obliged to serve as surrogates for the public, particularly regulatory volunteers and regulatory staff. It was noted that the reference in the proposal to stakeholders was intended to be inclusive, not exclusive.

ADJOURNMENT

There being no further business, the meeting was adjourned by unanimous consent at 2:34 PM.

Respectfully submitted,

Terra Nevitt

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WSBA Executive Director & Secretary