

MINUTES

Public Session Washington State Bar Association BOARD OF GOVERNORS

**Seattle, WA
September 29-30, 2016**

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Bill Hyslop on Thursday, September 29, 2016, at 1:20 p.m., at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

Keith M. Black
Philip L. Brady
Mario M. Cava
Ann Danieli
Sean M. Davis
James K. Doane
Elijah M. Forde
Bradford E. Furlong
Angela M. Hayes
Andrea S. Jarmon
Jill A. Karmy
William D. Pickett
G. Kim Risenmay
Karen Denise Wilson

Also in attendance were President-elect Robin Haynes, Immediate Past-President Anthony Gipe, Executive Director Paula Littlewood, General Counsel/Chief Regulatory Counsel Jean McElroy, Chief Disciplinary Counsel Doug Ende, Director of Human Resources Frances Dujon-Reynolds, Chief Communications Officer Debra Carnes, Chief Operations Officer Ann Holmes, Director of Advancement/Chief Development Officer Terra Nevitt, Governors-elect Athan Papailiou (web-cast part of Thursday; in-person Friday), Christina Meserve, Dan Bridges, and Rajeev Majumdar, and Executive Assistant Margaret Shane.

WELCOME AND INTRODUCTIONS

Officers, Governors, staff, liaisons, and guests introduced themselves. President Hyslop welcomed the Board and everyone in attendance to the WSBA Conference Center, Seattle, Washington.

The following items were discussed on Thursday, September 29, 2016.

PRESIDENT'S REPORT

President Hyslop reported that in Executive Session the Board approved the July 22-23, 2016, Executive Session Minutes; heard the Executive Director's Report, acted on the Lawyers' Fund for Client Protection Board gift recommendations, and received the report on the Executive Director's annual evaluation.

CONSENT CALENDAR

Nothing was pulled from the Consent Calendar. Treasurer Wilson noted that there was a scrivener's error in the July 22-23, 2016, Public Session Minutes where the numbers of one of the proposed license fee options for 2018 were transposed from \$434 to \$343. It was the unanimous decision of the Board that these Minutes stay on the Consent Calendar and that the number be corrected accordingly.

- a. July 22-23, 2016, Public Session Minutes
- b. August 23, 2016, Special Meeting Public Session Minutes
- c. 2017 Keller Deduction Schedule
- d. WSBA Committee on Mission Performance and Review (CMPR) Report
- e. Recommendations re WSBA APEX Awards
- f. WSBA Reserve Policy
- g. Construction Law Section Design Professional Model Residential Contracts
- h. Proposed Amendments to Civil Rights Law Section Bylaws
- i. Appoint Member to Continuing Legal Education (CLE) Committee
- j. Appoint Co-Chair to Pro Bono and Public Service Committee

WASHINGTON STATE BAR FOUNDATION (WSBF) Annual Meeting – Judy Massong, President, and Terra Nevitt, Director of Advancement/Chief Development Officer

WSBA President Hyslop turned the gavel over to WSBF President Massong who called the meeting of the Foundation members to order at 1:30 p.m. She explained that she was seeking approval for the 2016-2017 slate of WSBF Trustees as recommended by the WSBF Board. Governor Davis moved to approve the slate as presented. Motion passed unanimously. WSBF President Massong thanked the Board for its 100% participation and reported on fundraising efforts for the WSBF. She adjourned the meeting of the Foundation members at 1:40 p.m. and returned the gavel to WSBA President Hyslop.

WSBA FY2017 BUDGET – Governor Karen Denise Wilson, Treasurer; Ann Holmes, Chief Operations Officer; and Tiffany Lynch, Controller

Treasurer Wilson referred the Board to the information contained in the meeting materials, then summarized the Budget & Audit Committee's and Board's extensive work this year examining historical, current, and projected multi-year revenues, expenses, license fees, and reserves; Board decisions over the past four years that have reshaped the Bar; WSBA program impacts; and license fee projections, approaches, and options. She explained that the proposed budget, which was unanimously recommended by the Committee, reflects Board policy decisions about the programs, services, and operations needed to advance the WSBA mission and to serve its members and the public. Chief Operations Officer Holmes reviewed the few changes to the proposed budget since the Board considered it on first reading on July 23. Governor Brady moved to approve the WSBA FY2017 Budget as contained in the meeting materials. Motion passed unanimously.

2018-2020 WSBA LAWYER LICENSE FEES – Governor Karen Denise Wilson, Treasurer; Ann Holmes, Chief Operations Officer; and Tiffany Lynch, Controller

Treasurer Wilson explained that the 2018-2020 WSBA license fees proposal, also unanimously recommended by the Budget and Audit Committee and considered by the Board on first reading in July, was an integral part of deliberations involved in setting the budget. At that meeting, the Board agreed that 2018-2020 license fees should be set to preserve a minimum General Fund reserve of \$2 million by 2019, which would entail license fees of \$449 in 2018,

\$453 in 2019, and \$458 in 2020. Treasurer Wilson reviewed the many changes that the Bar has made since the 2012 referendum, which reduced license fees from \$450 to \$325 (the 2001 level), to keep license fees as low as possible for as long as possible. Fees were held at \$325 through 2015 by improved efficiencies and intentional use of reserves that had built up from program cuts made prior to and after the referendum. Governor Furlong moved to approve the 2018-2010 lawyer license fees as contained in the meeting materials. Motion passed 13-1. On behalf of the Board, Treasurer Wilson thanked Controller Lynch for more than ten years of exceptional service to the Bar.

RECOMMENDATION FROM BOG LEGISLATIVE COMMITTEE (BLC) RE COUNCIL ON PUBLIC DEFENSE (CPD) STATEMENT ON LEGAL FINANCIAL OBLIGATIONS (LFO) REFORM IN WASHINGTON STATE – Governor Phil Brady, BLC Chair; Travis Stearns, CPD Member; and Alison Phelan, WSBA Legislative Affairs Manager

Chair Brady advised that the CPD statement meets GR 12 and is a preliminary statement of goals, not a list of final actions. CPD Member Stearns explained that the CPD is seeking to encourage the Legislature to reform the use of court fees and fines and adequately fund the court system without reliance on fines and fees collected from low-income people. Governor Cava moved to approve the statement drafted by the CPD regarding LFO reform policies in Washington state. Motion passed unanimously.

LAWYERS' FUND FOR CLIENT PROTECTION (LFCP) BOARD RECOMMENDATION RE GIFT LIMIT – Chach Duarte White, LFCP Vice-Chair, and Kevin Bank, Assistant General Counsel

Assistant General Counsel Bank explained that the limit for each LFCP Board gift is currently \$75,000 and that the LFCP Board had spent the past year considering whether there should be an increase to the gift limit, and if so, how much. He advised that the LFCP Board had come to the conclusion that the gift limit should be increased. He explained that gifts over \$5,000 can be prorated as permitted by the Fund's procedural rules, which will prevent depletion of the Fund. The LFCP Board unanimously recommends that the BOG recommend a rule change in the APRs to raise the limit to \$150,000 and to clearly state that in the rules. Vice-Chair Duarte White added that the LFCP Board discussed this matter in great depth and that one of the considerations was that there currently is a large Fund balance and there are people whose losses could be better alleviated by a larger gift. Governor Cava moved to approve the LFPC

Board recommendation to increase the per-claim gift limit from \$75,000 to \$150,000, and to recommend to the Washington Supreme Court that the Fund's procedural rules be amended to clearly state the new claim limit, as set forth in the suggested amendments to the APR. Motion passed unanimously.

RESOLUTION RE LIMITED LICENSE LEGAL TECHNICIAN (LLLT) PROGRAM – Governor Andrea Jarmon and Governor Brad Furlong

Governor Jarmon explained that the purpose of the proposed resolution is to make clear the Board's support for the work of the LLLT Board and to recognize the intent of the LLLT program, which is to help alleviate the unmet legal civil needs of the public. Governor Doane moved to approve the proposed resolution in support of the LLLT license and profession. Discussion ensued regarding the possibility of LLLTs appearing in court; the hope that the proposed resolution would help refute misinformation in some national media that the current Board was interfering with and not supporting the LLLT program; the expected timeline for when the LLLT program will become self-sustaining; and the estimated costs of expanding to other practice areas. Governor Karmy called the question. Motion to call passed 13-1. Main motion to approve the resolution as proposed passed unanimously.

LAW SCHOOL EDUCATION AND SKILLS FOR THE 21st CENTURY LEGAL PROFESSIONAL

Alli Gerkman, Institute for the Advancement of the American Legal System (IAALS) Director of Educating Tomorrow's Lawyers, gave a presentation on the IAALS Foundations for Practice Project, which identified the foundations and characteristics needed by new lawyers in order to possess sufficient skills to practice. Executive Director Littlewood highlighted that the Washington state law schools are doing innovative programming in their orientations which address some of the Project's findings and recommendations. Annette Clark, Dean of Seattle University School of Law, Jane Korn, Dean of Gonzaga University School of Law, and Kellye Testy, Dean of University of Washington School of Law, each shared practices at their respective schools and how many of the Project's findings relate to their own experiences in dealing with students and prospective employers. Discussion ensued regarding internships and externships; debt load and scholarships; decline in applications; state funding for public education; and retaining income-based and public service loan programs. The Deans

emphasized the importance of continued collaboration and open discussion regarding the value of law and of the profession. IAALS Director Gerkman suggested looking into a New Hampshire program that involves an innovative collaboration among the judiciary, the Bar, and law schools to provide an experience-based pathway to admission to the New Hampshire Bar.

The following items were discussed on Friday, September 29, 2016.

SUGGESTED GR 12 AMENDMENTS – Paula Littlewood, Executive Director; Jean McElroy, General Counsel/Chief Regulatory Counsel; and Doug Ende, Chief Disciplinary Counsel

General Counsel McElroy explained that the purpose of the suggested amendments is to clearly reflect in the rule all of the activities that the Supreme Court has authorized the WSBA to perform in line with the Court’s authority to regulate the practice of law, and to incorporate the ABA Model Regulatory Objectives into Washington state’s court rules. Governor Furlong moved to amend the suggested GR 12 amendments and the proposed Bylaw amendments to retain the word “Association” in the name of the organization. Governor Wilson explained that the proposal to remove the word Association in no way represents either a shift of power from the Board to the Washington Supreme Court or a change in the organization’s commitment to serve the legal professionals of Washington state, but rather was recommended to more accurately reflect the dual nature of the Bar’s function as both a regulatory agency and professional association as well as to align with the names of most unified Bars nationwide. Motion to retain the word Association in the name of the organization and in the rules and Bylaws passed 13-0 -1. Governor Wilson abstained.

Governor Pickett moved to table the vote on GR 12 until the Board’s November 18, 2016, meeting in order to give the membership more time to digest the materials. Discussion ensued regarding the lack of any opposition, other than the name change, at the first reading of this item at the Board’s August 23, 2016, special meeting and the two-year delay that would ensue if the suggested GR 12 amendments are not sent to the Washington Supreme Court after this Board meeting due to the Court’s rule making cycle. Discussion ensued regarding whether the word “exclusive” in the first line of suggested Rule 12 should be changed to “plenary.”

Executive Director Littlewood reminded the Board that under the GR 9 process, the Court will decide whether to publish the suggested GR 12 changes as proposed amendments for public comment; if it does, anyone will have an opportunity to submit comments to the Court. Geoff Revelle, Access to Justice (ATJ) Board liaison, stated that the ATJ Board supports the concepts in the suggested GR 12 amendments, as well as the proposed Bylaw amendments, and feels they are long overdue and a step forward in getting unmet civil legal needs solved.

Governor Pickett's motion to table this item to the November Board meeting failed 11-2-1. Governor Black abstained. Governor Karmy moved to approve the language and send the suggested GR 12 amendments to the Washington Supreme Court. Governor Risenmay moved to amend the first line of Rule 12 to replace "exclusive" with "plenary." Governor Risenmay's motion to amend passed 8-4-2. Governor Pickett was among the abstentions. Governor Karmy's main motion as amended (keep "Association" in the name and replace "exclusive" with "plenary" in the first line of Rule 12) passed 13-1. General Counsel McElroy noted that the word "misconduct" will need to be added to the Bylaws since they need to conform to GR 12.

PROPOSED WSBA BYLAW AMENDMENTS – Immediate Past-President Gipe, Bylaws Work Group Chair, and Jean McElroy, General Counsel/Chief Regulatory Counsel

Chair Gipe explained the composition of the materials and what would be discussed at this meeting. He noted that implementation of Articles III and IV, if passed, would be delayed if and until the Washington Supreme Court issues an Order; and that Article XIV on Indemnification had been taken off the table for consideration at this meeting. He reminded the Board that everything in the WSBA Bylaws must comply with GR 12.

Governor Black moved that the proposed WSBA Bylaw amendments be conformed to GR 12 to include the word "Association" in all parts of the Bylaws. Motion passed unanimously. Governor Davis was not present for the vote.

Governor Karmy moved to make no changes to the recall provisions (Article VI.F.) at this time. Motion passed unanimously.

Governor Pickett moved to table action on the proposed WSBA Bylaw amendments until the November 18, 2016, Board meeting in order to allow the WSBA membership additional time to comment. Motion failed 12-2. Governor Pickett then moved to table the vote on the proposed WSBA Bylaw amendments, but not table discussion, until the November 18, 2016, Board meeting. Discussion ensued regarding the work of the Board on WSBA governance and the Bylaws over the past three years, and input received from the WSBA membership during that time; trust of the membership being built by appropriate action rather than inaction; and it not being in the interest of the membership for five Board members going off the Board after the September meeting not to participate in the decisions regarding the proposed WSBA Bylaw amendments after three years of education, debate, and discussion of the issues. Motion failed 9-4-1. Governor Black abstained.

Article I – Functions

Governor Jarmon moved to adopt the proposed amendments to Article I as contained in the meeting materials. Governor Wilson clarified that “misconduct” would be added to this article as discussed during consideration of the suggested GR 12 amendments (Article I.B.6). Discussion ensued regarding whether to keep “bar” in proposed Article I.A.1; it was noted that “legal profession” broadens the scope of this particular article rather than narrowing it. Governor Jarmon moved to amend the motion to allow for including “and the bar” in Article I.A.1. Motion died for lack of a second. The original motion passed unanimously, with the clarification described by Governor Wilson.

Article II – Definitions and General Provisions

Governor Brady moved to adopt the proposed amendments to Article II as contained in the meeting materials. In answer to an inquiry, Chair Gipe clarified that “the office of the bar” is wherever the main office is located. Motion passed 13-1.

Article III – Membership

Governor Brady moved to adopt the proposed amendments to Article III as contained in the meeting materials.

Chair Gipe clarified that the proposed change to require taking the bar exam when transferring to active status after being inactive and not practicing anywhere for ten years or more (Article III.D.3) is more generous than was allowed in previous WSBA Bylaws (which provided for three or five years), and consistent with current practice.

In addition, Chair Gipe clarified that the intent of the Bylaws Work Group was not to make any change to the license fee referendum process, because that type of referendum is and would continue to be covered by the general referendum provisions in other sections of the Bylaws. Governor Wilson explained that the proposed amendment is intended to clarify that the provision is intended to apply to referenda on the Bar's budget as distinguished from the Bar's license fee. Chair Gipe emphasized that the sole point of the proposed amendment makes it explicit that WSBA members can have a referendum on the license fee, but not on the license fee through the budget, and that this distinction is already contained in the current WSBA Bylaws.

Governor Karmy moved to amend the motion to include "...shall be subject to the same referendum process as other BOG actions, but..." as in the current Article III.H..6. Motion passed 8-5-1. Governor Pickett abstained. Original motion as amended passed 13-1.

Article IV – Governance

Chair Gipe reminded the Board that the proposed WSBA Bylaws amendment with regard to the addition of BOG members is in actuality a recommendation to the Washington Supreme Court and will not be effective unless the Court issues an Order or adopts a Court Rule consistent with this provision. Governor Doane moved to amend Article IV.B introductory paragraph to include "lawyer" between "Active" and "members." Discussion ensued regarding whether limited license members should be Officers; importance of including the potential of limited license

members as Officers in light of the North Carolina Dental case; and whether to move forward in a measured manner or open the door fully. Motion to amend proposed Article IV.B amendment passed 9-5.

Article IV.A.1 – Board of Governors

Chair Gipe advised that the Board would need to choose between two versions regarding election of the proposed newly added At-Large Governors to the Board: Version 1 would result in six At-Large Governors elected by the Board (that is, the three current At-Large BOG members and the proposed 3 new At-Large BOG members); Version 3 would result in four At-Large Governors elected by the Board (that is, the three current At-Large BOG members and the one proposed new LLLT/LPO At-Large member), and the two proposed new At-Large Governors from the public nominated by the Board and appointed by the Washington Supreme Court.

Governor Risenmay moved to amend the proposed WSBA Bylaw amendments to Article IV.A.1 to state that the Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLLTs) be elected by their respective license types. Discussion ensued regarding “WSBA members” including lawyers, LPOs and LLLTs. Motion failed 4-10. Governor Furlong moved to adopt Version 1 (election of six At-Large Governors by the Board). Motion passed 11-2-1. Governor Risenmay abstained.

Governor Furlong moved to amend the language in proposed Article IV.A.1 (Composition of the Board) and Article IV.A.2.d (Duties of the Board Members) as contained on page 576 in the meeting materials. He explained that his intent is to clarify that each Governor is to represent their own district and to bring that unique perspective to the Board to help it make wise decisions that are in the best interest of the entire Bar, not just the members in that particular Congressional District. Governor Furlong’s motion to amend Article IV.A.1 and Article IV.A.2.d passed unanimously.

Governor Cava then moved to amend the amended Article IV.A.1 – Composition of the Board by striking the words “and representing” from the amended language in the first sentence of Article IV.A.1. Governor Cava’s motion to amend passed unanimously.

Article V – Appropriations and Expenses

Governor Cava moved to adopt the proposed amendments to Article V as contained in the meeting materials. Motion passed unanimously.

Article VI – Elections

Chair Gipe reminded the Board that Version 1 contained in the meeting materials matches the decision the Board made during discussion of Article IV – Governance, in which the BOG voted to have six At-Large Governor positions, with three as designated in the current bylaws, and three more as decided today - two for members of the public and one for either a LLLT or a LPO. Governor Doane moved to amend Article VI.A.1. to insert “lawyer” between “Active” and “member” in the opening paragraph, to clarify that District governor positions are reserved for lawyers and not open to LLLTs and LPOs. Motion passed 8-6. Governor Cava moved to approve the proposed amendments to Article VI as amended. Motion passed unanimously.

Article VII – Open Meetings

Governor Cava moved to adopt the proposed amendments to Article VII as contained in the meeting materials. Motion passed 13-0. Governor Pickett abstained.

Article VIII – Member Referenda and BOG Referrals to Membership

Chair Gipe advised the Board that this Article has been withdrawn from consideration at this meeting and that the Board will take action at a future date.

Article IX – Committees, Councils, and Other Bar Entities

Governor Brady moved to adopt the proposed amendments to Article IX as contained in the meeting materials. Motion passed 13-1.

Article X – Regulatory Boards

Governor Jarmon moved to adopt the proposed amendments to Article X as contained in the meeting materials. Motion passed unanimously.

Article XI – Sections

Chair Gipe advised the Board that the proposed amendments in this Article were recommended by the Sections Policy Work Group at its September 15, 2016, meeting. Governor Doane moved to adopt the proposed amendments to Article XI as contained in the meeting materials. In answer to an inquiry, Chair Gipe and Governor Wilson clarified that Sections can determine how many people would be on their Executive Committee as long as they have at least the minimum number of officer positions. They also clarified that a question was raised about whether LPOs and LLLTs would be voting Section members, and whether they would be eligible to be elected to serve as officers of the Sections. It was requested that the Board hold Article XI until the November 18, 2016, Board meeting in order to give the Sections time to provide further input. Governor Black moved to table Article XI until the November 18, 2016, Board meeting. Governor Cava moved to extend the Charter of the Sections Policy Work Group through the November 18, 2016, Board meeting. Chair Gipe advised that these discussions would not require the Sections Policy Work Group, but that the Board could empower the incoming President to create a small group of active Governors and any Sections members from the Sections Policy Work Group to review input on Article XI and prepare a proposal for final action at the Board's November 18, 2016, meeting. Governor Black's motion to table this item until the November 18, 2016, Board meeting passed 11-2-1. Governor Karmy moved to not reassemble the full Sections Policy Work Group, but that the Work Group members should be sent the changes and comments to the draft and be allowed to comment on it. Governor Wilson advised that the members of the Sections Policy Work Group do not want to continue their service and it is not necessary to reconstitute a formal structure. Governor Karmy withdrew the motion.

Article XII – Young Lawyers

Governor Cava moved to adopt Article XII as contained in the meeting materials. Motion passed unanimously.

Article XIII – Records Disclosure and Preservation

Governor Cava moved to adopt Article XIII as contained in the meeting materials. Motion passed unanimously.

Article XIV - Indemnification

The Board agreed unanimously to table this Article indefinitely and that it can be brought back in the future if new amendments are developed and ready for review by the Board.

Article XV – Keller Deduction

Governor Cava moved to adopt Article XV as contained in the meeting materials. Motion passed unanimously.

Article XVI – Amendments

Governor Cava moved to adopt Article XVI as contained in the meeting materials. Motion passed unanimously.

SUGGESTED AMENDMENTS TO ADMISSION AND PRACTICE RULES (APRs) – Jean McElroy, General Counsel/Chief Regulatory Counsel

Governor Wilson moved to approve the suggested amendments to the APRs, as contained in the meeting materials, for submission to the Washington Supreme Court. Motion passed unanimously.

WSBA RELIGIOUS AND SPIRITUAL PRACTICES POLICY – Jean McElroy, General Counsel/Chief Regulatory Counsel, and Frances Dujon-Reynolds, Director of Human Resources

General Counsel McElroy reported that discussions had continued since the July BOG meeting with members of the Indian Law Section and work is being done to produce an agreed-upon revision of the proposed policy. She requested that the Board delay consideration of this item

to a later meeting. Governor Jarmon moved to table this item until the November 18, 2016, Board meeting. Motion passed unanimously.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 3:20 p.m. on Friday, September 29, 2016. President Hyslop passed the gavel to incoming President Robin Haynes.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary