

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes

Hilton Hotel, Vancouver, WA

September 23-24, 2021

Call to Order and Welcome ([link](#))

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Kyle Sciuchetti on Thursday, September 23, 2021 at 8:05 AM. Governors in attendance were:

Hunter Abell
Sunitha Anjilvel
Lauren Boyd
Treas. Daniel D. Clark
Matthew Dresden
P.J. Grabicki
Carla Higginson
Serena Sayani
Russell Knight
Tom McBride
Bryn Peterson
Brett Purtzer
Alec Stephens
Brent Williams-Ruth

Also in attendance were President-Elect Brian Tollefson, Immediate Past President Rajeev Majumdar, Gov-Elect Francis Adewale, Gov-Elect Jordan Couch, Executive Director Terra Nevitt, General Counsel Julie Shankland, Executive Administrator Shelly Bynum, Chief Disciplinary Counsel Doug Ende, Chief Communications & Outreach Officer Sara Niegowski, Broadcast Services Manager Rex Nolte, Director of Advancement Kevin Plachy, Chief Equity & Justice Officer Diana Singleton, Chief Financial Officer Jorge Perez, Chief Regulatory Counsel Renata Garcia, Director of Human Resources & Chief Culture Officer Glynnis Klinefelter Sio, Betsylew Miale-Gix (WSAJ), Nancy Hawkins (Family Law Section), James E Macpherson (Washington Defense Trial Lawyers), Kari Petrasek, Chalia Stallings-Ala'ilima, and Michael Cherry (Practice of Law Board).

Pres. Sciuchetti led the Board in observing a moment of silence for former WSBA President Robert Redman. He welcomed participants to Vancouver, WA and announced the health and safety protocols that would be followed, including a vaccination requirement for staff and board members.

Consent Calendar ([link](#))

Pres. Sciuchetti asked if anyone would like to remove an item from the consent calendar. Treas. Clark moved to approve the consent calendar. Motion passed unanimously. Govs. Higginson, Purtzer, and Sayani were not present for the vote.

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

Pres. Sciuchetti answered questions from Nancy Hawkins regarding public access to certain portions of the meeting.

Resolution of Remembrance and Thanks ([link](#))

Gov. Abell described the resolution distributed in the late materials, noting that it does not make any comment on the US withdrawal from Afghanistan and that the resolution had been improved based on comments from the WSBA Legal Assistance for Military Personnel (LAMP) Section and the Washington State Veterans Bar Association. Discussion followed in support of the resolution. Gov. Williams-Ruth moved for approval. The motion passed unanimously. Govs. Higginson, Purtzer, and Sayani were not present for the vote.

Court Rules Committee Proposed Rule Changes ([link](#))

Court Rules Committee Chair Isham Reavis walked through the proposed changes as set forth in the meeting materials. He highlighted a substantive change to RALJ 6.2 to insert language that would direct the trial court clerk to number the materials in the record from the beginning to the end to avoid parties numbering materials on their own, which leads to inconsistencies and confusion. Chair Reavis noted that the change had received positive feedback from stakeholders and therefore the committee does not anticipate there being implementation challenges. He also highlighted a substantive change to RALJ 8.1 regarding who may present an argument. The proposed change would require represented parties to file a brief before presenting oral argument in order to avoid surprise. He noted that the proposed change was modified in response to comments from the District and Municipal Court Judges Association to clarify that the briefing requirement only applies to represented parties and also to give the courts discretion to grant a continuance to allow for briefing and, ultimately, oral argument. Chair Reavis noted that they had received some stakeholder comment in favor of the briefing requirement applying to all parties, including those that are not represented. Gov. Peterson moved for approval. Discussion followed regarding the committee's decision to only apply the rule to represented parties. Motion passed unanimously. Govs. Purtzer and Sayani were not present for the vote.

Low Bono Section Proposed Comment to Proposed GR 40 ([link](#))

Low Bono Section Chair Jennifer Ortega presented the section's proposed comment on proposed GR 40. Discussion followed regarding whether the comment would be considered a comment of the WSBA or only the section; clarification about the comment itself; and clarification that sections are required to bring proposed comments on court rules to the Board for approval. Gov. Grabicki moved for approval. Motion passed unanimously. Govs. Purtzer and Sayani were not present for the vote.

Washington State Bar Foundation Annual Meeting ([link](#))

Pres. Sciuchetti recessed the Board meeting for the annual meeting of the Washington State Bar Foundation.

Pres. Tracy Flood called to order the annual meeting of the Washington State Bar Foundation noting that the governors sit as the members of the Foundation. She reported that the WSBF has approved distributing a grant of \$315,000 to the WSBA, including direct grants to recipients of the Powerful Communities project. Pres. Flood noted an overall increase in fundraising. She highlighted some of the programs the Foundation supports, including the Moderate Means Program, the Powerful Communities project, and Legal Lunchbox CLEs. She noted that the Board of Trustees is seeking approval of the appointment of Rajeev Majumdar as an at-large member of the Board of Trustees. Gov. Clark moved for approval. There was a brief discussion to clarify the appointments. Motion passed unanimously. Gov. Higginson abstained. Govs. Purtzer and Sayani were not present for the vote.

Pres. Flood adjourned the meeting of the Washington State Bar Foundation. Pres. Sciuchetti resumed the meeting of the Board of Governors.

Proposed Amendments to the Late Fee Waiver Policy ([link](#))

Chief Regulatory Counsel Renata Garcia described the proposed amendments to the Late Fee Waiver Policy and requested approval by the Board. She noted that the changes remove gendered language, clarify the appeal procedures, expand the definition of extraordinary personal circumstances, and allows for waiver of late fees based on financial hardship. Chief Garcia shared feedback received from the Executive Committee and how it was addressed. She noted that she did not anticipate a significant fiscal impact, likely less than \$1,500, with the worst case being less than \$5,000. Clarification was sought as to where the appeal language was replaced. Gov. Grabicki moved for approval. Motion passed unanimously. Gov. Sayani was not present for the vote.

Discussion with Deans Annette Clark, Mario Barnes, and Jacob Rooksby ([link](#))

Pres. Sciuchetti welcomed the deans of the three Washington State law schools and invited opening remarks. Dean Clark noted that applications for law schools around the country were up 25%, with the greatest increase occurring in the Pacific Northwest. She shared demographic information about the entering class at Seattle University. Dean Clark also noted that Seattle University is back in person and is a fully vaccinated university. Dean Clark encouraged the Board to reach out to the University's new president, Eduardo M. Peñalver, most recently serving as the Dean of Cornell Law School. She also noted that this would be her final year as dean of the Seattle University Law School. She also shared that the law schools have been collaborating on a race in the criminal justice system task force and will be releasing their findings next week.

Dean Barnes noted that UW Law just completed orientation this week and has also returned to in-person learning. He noted that they welcomed a class with the strongest credentials of any class in a decade and also the most diverse.

Dean Rooksby noted that the three Washington Law Schools have a high level of collaboration that he does not believe is common amongst law schools in other states. He reported that Gonzaga Law School enrolled its largest class since 2007, the strongest class, and a class tied for the most diverse. He noted that Gonzaga was in-person last year with a hybrid option and that this year they are 100% back in-person. He noted that, like the other schools, Gonzaga has a vaccination mandate with a high rate of compliance.

Gov. Williams-Ruth made remarks honoring Dean Clark's service as dean and her personal impact on his life. Discussion followed including about the changing demographics of the profession and the reasons for the change, including effective recruitment and successful fundraising for financial support; curriculum changes to address bias and racism; appreciation for the University of Washington's work to support access to justice through its work on the technology justice plan; Seattle University's incoming president; access to legal education in central Washington; the need to retain folks from rural areas to come back and practice law in their home communities; efforts to address the cost of law school; diversity of law school faculty; and input on the bar exam, including a recognition that the bar exam is not the gold standard for ensuring competent professionals and that the history of the exam is to be an impediment to attorneys of color and others that were not welcome to the profession, appreciation for WSBA's provision of accommodations and space to take the test, concerns with ExamSoft, and clarification that WSBA does not have the option of offering a remote exam for the upcoming session.

Reaffirming the WSBA Commitment to DEI: Exploring How to Strengthen the Structure of the Diversity Committee ([link](#))

Gov. Anjilvel cited the WSBA's mandate to engage in diversity work and reported the history of the Diversity Committee's structure, which is in need of updating. She clarified that this was not an action item but that an action item would be forthcoming. Discussion followed regarding whether the committee should return to being a standing BOG committee, including public comment from Chalia Stallings-Ala'ilima and Betsylew Miale-Gix in support of the current structure of the committee, which included BOG members and non-BOG members. Gov. Grabicki moved that the Board resolve today that it supports the work being done to resolve the conflicts in the Bylaws and to identify an appropriate structure to be brought back in the future for approval. Discussion followed as to whether there is a conflict in the Bylaws and whether the merger was a result of Board action.

Gov. Stephens moved the question. Motion passed 8-3. Govs. Williams-Ruth abstained from the vote. Govs. Purtzer and Sayani were not present for the vote. The underlying motion passed 10-2. Govs. Purtzer and Sayani were not present for the vote. Discussion followed regarding the committee's intent to include MBAs, Governors and anyone that wishes to engage in the process.

Honoring of Outgoing Governors & Officers ([link](#))

Pres. Sciuchetti made remarks honoring outgoing governors and officers Gov. Russell Knight, Gov. PJ Grabicki, Gov. Jean Kang, and Past Pres. Rajeev Majumdar. He also acknowledged Govs. Sunitha Anjilvel and Dan Clark completed a term and were continuing on to a second term. Exec. Dir. Terra Nevitt made remarks honoring outgoing President Kyle Sciuchetti.

Swearing-In of Governors and WSBA Officers ([link](#))

Washington Supreme Court Chief Justice Steven González swore in incoming and continuing governors Francis Adewale, Sunitha Anjilvel, Dan Clark, Jordan Couch, Serena Sayani, and Alec Stephens; FY22 Treasurer Bryn Peterson; FY22 President-Elect Dan Clark; and FY22 President Brian Tollefson.

Senior Lawyers Proposed Change to the WSBA Bylaws ([link](#))

Pres. Sciuchetti noted that the proposal by the Senior Lawyers Section to change the WSBA Bylaws is presented for first reading and that no action would be taken. Section Chair Eleanor Doermann presented the background for the issue, which is the section's desire to allow honorary and inactive members to be voting members of the section's executive committee. She presented the feedback from other sections, which were largely supportive of the change to the Bylaws that would give sections discretion to allow inactive/honorary members of the WSBA to join a section as a voting member and to serve as a voting member of a section executive

committee. Discussion followed about stakeholder input; the impact of the change on volunteerism; related conflicts and lack of clarity in the Bylaws related to the definition of "inactive member"; that changing the language regarding voting from "are not" to "may be" eligible maybe overly broad; and the different meanings of the term "honorary". The Board took public comment from Jim Macpherson in support of the change. Pres. Sciuchetti noted that the item would return in November.

ABA Annual Meeting Report ([link](#))

Delegate Jaime Hawk reported on the ABA Meeting held virtually and in-person in Chicago on August 9-10, 2021. She reported that the House of Delegates voted on 30-40 resolutions and highlighted some of the topics the resolutions addressed. Delegate Hawk noted that the February 9-13, 2022 meeting will be held in Seattle where Chief Justice Steven González will be receiving the Spirit of Excellence award. Delegate Kari Petrasek highlighted additional topics and noted an upcoming ABA panel for Washington members. Delegate and Past President Rajeev Majumdar reported on his virtual participation and commented on ABA membership and its role.

Meeting with the Washington State Supreme Court ([link](#))

Chief Justice González began the discussion with introductions. Chief González noted that the Court has asked the WSBA to adjust the presentation to avoid the need for an executive session. Pres. Sciuchetti spoke about his goals for the year and recent meetings with the Idaho Board of Commissioners and the Oregon Board of Governors.

Climate and Culture Update. Human Resources Director and Chief Culture Officer Glynnis Klinefelter Sio outlined the recommendations for the Board arising out of the Climate Survey conducted in Fall of 2020 and provided updates regarding the steps the Board has taken to implement them. Gov. Stephens provided more detail about the Board's current work to outline the roles and responsibilities of the Board, officers, and Executive Director. Discussion followed regarding how new employees are on-boarded during the pandemic; plans to reduce the WSBA footprint; the benefits of hybrid meetings; vaccination requirements; frameworks for clarifying governance; and a suggestion to review the Gender & Justice Commission report.

Bar Exam. Associate Director of Regulatory Services Bobby Henry provided updates and information about the summer bar exam, noting an increased passing score and addressing nationwide technical challenges. He also shared information about plans for the winter bar exam, which is to be held in-person. He noted that the LLLT exams will be held separately in January and May due to the sunset of the program.

Treasurer's Report. Pres. Sciuchetti read the Treasurer's Report as provided in the meeting materials. Discussion followed regarding WSBA's approach to staff allocations.

WSBA's Role in Court Rules. Justice Yu shared the work the Court's Rules Committee is doing with law students to address gendered and outdated language. Discussion followed regarding the timing of rule proposals and expectations of WSBA, Justice Johnson shared that in terms in timing the preference is for the cycle, but exceptions are considered on a case by case basis. Justice Yu expressed an interest in hearing from WSBA on everything, even to say "no comment." Discussion followed about the need for consistent language in the final product, which requires clear communication between WSBA and the Court; interest in how the rulemaking process could be evolved; and curiosity about how other states do the work.

Bar Licensure Task Force. Justice Montoya-Lewis provided a brief update about the Task Force which has been meeting monthly to discuss where folks are and what folks want the Task Force to discuss. She noted the groups has formed a number of subcommittees to look at data from Washington and what is being done in other jurisdictions. She highlighted the various and strong viewpoints about the bar exam. She noted that Dean Rooksby had to resign as the co-chair and she is looking for a new co-chair, preferably someone with a different perspective.

Request to Support the Legal Foundation of Washington's Proposed Changes to RPC 1.15A ([link](#))
Legal Foundation of Washington (LFW) board member Sean Davis presented LFW's proposal as presented in the materials, noting that the discretion to designate property as unidentified lies with legal practitioners. Gov. Grabicki expressed support for the proposal and it's potential to raise significant funds for civil legal aid and moved to approve WSBA serving as a co-sponsor of the proposal. Gov. Stephens seconded. Discussion followed regarding the concerns of the Department of Revenue; that the decision regarding the rule sits with the Court and WSBA's appropriate role; that the issue has already been litigated and addressed elsewhere; and the significant distinction between "unclaimed" and "unidentified" property.

Committee on Professional Ethics Chair Pam Anderson and Professor Holland presented the work of the committee to provide recommendations to the Board of Governors regarding the proposal. Professor Holland noted that the work resulted in a briefing memo from the Department of Revenue (DOR) taking the view that this rule would conflict with the Unclaimed Property Act and that there is a potential separation of powers issue. He noted that the DOR may be willing to facilitate a legislative fix to allow the proposal. He noted that the CPE would also be willing to move forward with developing the proposed rule changes if directed by the Board. Discussion followed regarding the lack of a timely response from the Attorney General and the lack of specific rule language for the Board to consider.

Gov. Grabicki withdrew his motion and restated it to support the effort to obtain this rule amendment and request that CPE and WSBA's legal staff work to finalize a rule and get back to

the Board at its November meeting. Gov. Stephens seconded the restated motion. LFW Executive Director Caitlin Davis noted that LFW will be speaking to the Court by the October 15 court rule deadline, but can also continue to work with the WSBA for the November meeting. Former Gov. Davis noted that LFW is seeking support for a concept and that there is significant process yet to come. Discussion followed regarding the constitutional issue and the risk to WSBA as the enforcer of the rules of ethics; support for the concept LFW is proposing; that the Board can't move forward without proposed rule language; questions about who will take on the administrative work the rule contemplates; and that the funds go to civil legal aid already through the State general fund. Executive Director Davis clarified that they LFW would handle the administration and is able to do so. Discussion followed, including the Court is already aware of the proposal in concept; opposition to the motion as unnecessary; and that the October 15 deadline does not seem to be firm. Gov. Grabicki's motion passed 11-2. Gov. Abell was not present for the vote.

Budget & Audit Committee Items ([link](#))

Keller Deduction Schedule. General Counsel Shankland presented the process that was used to calculate the Keller deduction for 2022. She noted that given the litigation discussed earlier in the meeting, which makes the relevant definitions less clear, in following the guidance set forth in the Bylaws, we have taken a conservative approach in arriving at the calculation. She emphasized that it is not our position that these activities are non-germane, only that it seems that they are likely to be subject to disagreement by members. Treas. Clark moved to approve the calculation. The Board heard public comment from Nancy Hawkins regarding the challenge of using last year's expenses and a proxy for moving forward and a concern that the memo does not adequately defend the legislative work of the WSBA. Discussion followed regarding in support of in opposition to the motion. Motion passed unanimously. Gov. Abell was not present for the vote.

Fiscal Year 2022 WSBA Budget Presentation. Chief Financial Officer Jorge Perez presented the FY22 budget as recommended by the Budget & Audit Committee. Gov. Boyd made a motion to amend the budget before approval to include funding for the in-person retreat in October and to change the reimbursement from \$500 back to \$700. Discussion followed, including comments in opposition to the motion due to health concerns; that many counties didn't get reimbursement for work at home; that there is more at stake than the employee reimbursement; a desire for a "balanced budget"; that attorney salaries have remained flat and that we should be decreasing the license fees; that this isn't the year to have an in-person retreat; that the amount of money saved by reducing from \$700 to \$500 should be weighed against the cost of staff turnover; clarification that the \$700 is not a "stipend", but rather a reimbursement; the critical need for an in-person retreat; that the budget should provide the option for an in-person retreat in the event that it can be done safely; and that a balanced budget is not required, unnecessary, and is unwise

with regard to staff relations. Gov. Grabicki moved to amend the amendment to include the additional \$28,000 requested by the LLLT Grabicki. Discussion followed, including that our budget should reflect our priorities and that supporting the staff in a reasonable way, after a difficult year should be a priority; concern that the discussion of balancing the budget often focuses on expenses that impact the employees; that now is the time for organizations like WSBA to be investing, rather than striving for a balanced budget; that the benefit to the members is a very small impact compared to the impact on employees to be fully reimbursed; the need for funding for the LLLT Board given that the program has been sunset; questions about the timing and process for budget requests; that the LLLT Board's work moving forward is to determine what its role will be moving forward; the reason for adding new LLLT Board members; the continuing responsibilities of the LLLT Board post-sunset of the licensure opportunity; whether the budget request by the LLLT Board could be slightly reduced; that members would not likely be shocked by the need to support remote work. Gov. Knight moved to sever the motion. Motion to sever passed 13-1.

CFO Perez that overall the budget produces revenue for the WSBA and not a deficit and also urged that as we develop next year's budget we begin with clear targets. The Board heard public comment from Chair Cherry regarding deficits in the budget process with regard to Supreme Court Boards. Gov. Boyd's motion relating to funding for an in-person retreat and to increase the reimbursement for employees passed 11-3.

The second motion was restated and clarified to add \$28,000 to the LLLT Board's budget, which would take the budget to \$34,000. Discussion followed in opposition to the motion. The motion failed 8-6. Treas. Clark moved to approve the budget as amended. Gov. Sayani moved to increase the budget for the LLLT Board by \$15,000. Discussion followed regarding the appropriate process. The motion was restated as a motion to amend the budget. Gov. Stephens moved the question. The motion to call the question passed unanimously. The motion to amend the budget resulted in a 7-7 tie. Pres. Sciuchetti voted in favor of the motion to amend and it therefore passed. The motion to approve the budget as amended passed 10-4.

Personnel Committee Items ([link](#))

Gov. Stephens presented and moved for approval of the proposal of the Personnel Committee regarding clarifying the governance structure of WSBA and the roles of the Board, officers, individual governors, and the Executive Director. Discussion followed, including the ability to make amendments in order to pass a work product; clarification of the materials; and a concern about rushing the process. Gov. Higginson moved to table the motion to the November meeting. Discussion followed regarding the process to follow if the motion passes; comments in opposition of the motion to table; the value of the participation of outgoing board members vs. incoming board members; whether this should be tabled pending the teambuilding retreat with the

Executive Leadership Team; frustration that feedback was not provided following the prior presentations; and comments in support of motion to table given the importance of the proposal and the issue. The Board heard public comment from Nancy Hawkins in support of the overall proposal with a suggestion that sections be identified as not being subject to the Board's oversight in the same way as other volunteers. The motion to table passed 8-6. Gov. Abell was not present for the vote.

President's Report ([link](#))

Pres. Sciuchetti reported on the conclusion of the 2021 Listening Tour with events with members in Spokane and Asotin counties. He reported that the stops were rewarding and constructive without exception.

Executive Director's Report ([link](#))

Executive Director Nevitt highlighted several items from the written report provided in the materials including the roll out of the volunteer and employee vaccination mandates; revisions to the Letters to the Editor policy for *Bar News*; and that the ATJ Board is seeking input on a revised ATJ Technology Plan. Chief Disciplinary Counsel Doug Ende made remarks honoring 40 years of service by ODC Department Administrator Cindy Jacques. In response to a question, Executive Director Nevitt reported that WSBA had not received any requests for an exception from the vaccination mandate.

Reports of Standing or Ongoing BOG Committees ([link](#))

Executive Committee. Pres. Sciuchetti reported that the most recent committee meeting was focused on discussed scheduling of the September meeting.

APEX Awards Committee. Gov. Knight reported that the awards celebration will be live but virtual and will be held in mid-December.

Personnel Committee. No report.

Legislative Committee. No report.

Nominations Review Committee. Pres. Elect Tollefson reported that the last meeting was held earlier in the week and had filled various roles, which the Board received notice of via email.

Diversity Committee. Co-Chair Anjilvel reported on the last meeting of the fiscal year noting that the committee is continuing to work on the pipeline program, law student mentorship, and its relationship with law schools.

Long Range Strategic Planning Council. Pres. Sciuchetti reported that the Council is working on outreach and engagement.

Member Engagement Workgroup. Gov. Peterson reported that the workgroup completed a template for a quarterly member engagement survey, which is ready to go and a tool for the BOG to use going forward.

Budget & Audit Committee. No additional report.

Equity & Disparity Workgroup. Gov. Stephens updated the Board on the work of its two subcommittees.

Supreme Court Bar Licensure Task Force. Gov. Williams-Ruth shared his perspective on the lack of progress of the task force.

Governor Roundtable ([link](#))

Gov. Stephens made remarks of appreciation for outgoing governors Knight and Grabicki, as well as outgoing president Sciuchetti.

Closing Remarks of Outgoing President Kyle Sciuchetti and Passing the Gavel to Incoming President Brian Tollefson ([link](#))

Pres. Sciuchetti remarked on his year of service and passed the gavel to incoming president Brian Tollefson.

ADJOURNMENT

There being no further business, Pres. Sciuchetti adjourned the meeting at 5:26 PM on Friday, September 24, 2021.

Respectfully submitted,

Terra Nevitt
WSBA Executive Director & Secretary