

WASHINGTON STATE B A R A S S O C I A T I O N

BOARD OF GOVERNORS MEETING

Public Session Minutes

Seattle, WA

May 17-18, 2018

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Bill Pickett on Thursday, May 17, 2018, at 1:05 p.m., recessed at 6:05 p.m., and reconvened on Friday, May 18, 2018, at 9:35 a.m. at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

Dan W. Bridges
Daniel D. Clark
James K. Doane
Angela M. Hayes
Kim E. Hunter (phone)
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 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.

The following items were discussed on Thursday, May 17, 2018.

CONSENT CALENDAR

- a. March 8, 2018, Public Session Minutes
- ~~b. March 19, 2018, Special Meeting Public Session Minutes~~
- c. April 6, 2018, Special Meeting Public Session Minutes

The March 19, 2018, Special Meeting Public Session Minutes were pulled from Consent by Governor Risenmay for discussion. These Minutes were not discussed during this meeting, and will be placed on the agenda for discussion at the Board's June 25, 2018, Special Meeting.

INTERVIEW AND SELECTION OF 2018-2019 WSBA PRESIDENT-ELECT

Governor Majumdar recused himself, except for his interview process, since he was a candidate for the 2018-2019 WSBA President-elect seat. President Pickett announced that Governor Majumdar would be voting in this election and, if he is the successful candidate for the 2018-2019 President-elect seat, he planned to continue serving as Governor of District 2 until he becomes President in one and one-half years. In answer to an inquiry regarding whether a sitting Governor could also serve as President-elect, General Counsel Davis advised that the Bylaws do not explicitly address an individual holding both roles; however, the distinct nature of both roles implicitly demonstrates that holding both roles is inconsistent with the intent of the Bylaws. Later in the meeting, President-elect Majumdar stated that it would be most ideal if he resigned at some point in the future and requested that a Special Meeting be scheduled in June 2018 in order to hold an election so the successful candidate could sit at the Board table at the July 17-18, 2018, Board meeting and fill his remaining term. It was the consensus of the Board to do so.

President Pickett explained the election process for the 2018-2019 President-Elect: the presentation order was determined by random draw: Rajeev Majumdar first, Doug Shepherd second, and Geoff Revelle third; each candidate would be out of the room for the other candidates' presentations; each candidate would have 15-20 minutes to address the Board and answer questions; all candidates would be excused for discussion and debate during Public Session; a vote by secret ballot would be taken by the Board; the President would cast a secret ballot to be used only in the event of a tie; and the results would be announced to the

candidates outside the meeting room. President Pickett appointed Executive Director Paula Littlewood, General Counsel Sean Davis, and former Governor Keith Black as canvassers.

Each candidate in turn presented their vision and responded to questions from the Board. Following the interview process, discussion involving the Board and various liaisons and guests ensued regarding the three candidates. President Pickett then proceeded with the secret ballot vote. Executive Director Littlewood provided President Pickett with the results of the secret ballot vote and he announced Rajeev D. Majumdar as the WSBA 2018-2019 President-elect. President Pickett and Executive Director Littlewood informed the candidates of the outcome of the vote.

Governor Majumdar was sworn in as the 2018-2019 President-elect by The Honorable LeRoy McCullough by phone. Governor Risenmay raised a Point of Order and explained that Article IV(B)(2) of the WSBA Bylaws specifically state that the President-elect is not a voting member of the Board, so even though he may continue to be a Governor, he no longer has the right to vote except under the one exception set forth in the Bylaws. President Pickett ruled in agreement with Governor Risenmay's Point of Order.

INTERVIEW AND SELECTION OF THE 2018-2021 WSBA AT-LARGE (NEW AND YOUNG LAWYERS) GOVERNOR

President Pickett explained the election process for the 2018-2021 At-Large (New and Young Lawyers) Governor: the presentation order was determined by random draw: Zishan Lokhandwala first, and Russell Knight second; each candidate would be out of the room for the other candidate's presentation; each candidate would have 10-15 minutes to address the Board and answer questions; both candidates would be excused for discussion and debate during Public Session; a vote by secret ballot would be taken by the Board; the President would cast a secret ballot to be used only in the event of a tie; and the results would be announced to the candidates outside the meeting room. President Pickett appointed Executive Director Paula Littlewood, General Counsel Sean Davis, and former Governor Keith Black as canvassers.

Each At-Large candidate in turn presented their vision to the Board and responded to questions from the Board. Following the interview process, discussion ensued involving the Board and various liaisons and guests ensued regarding both candidates. President Pickett then proceeded with the secret ballot vote. Executive Director Littlewood provided President Pickett with the results of the secret ballot vote. He announced Russell A. Knight as the WSBA At-Large (New and Young Lawyers) Governor for the 2018-2021 term, and advised that Mr. Knight would be sworn in at the APEX Award dinner in September. President Pickett and Executive Director Littlewood informed the candidates of the outcome of the vote.

Governor Swegle stated that he was appealing the decision of the Chair on Governor Risenmay's Point of Order as the Bylaws do not state that the Chair has the right to determine the interpretation of the Bylaws. Governor Risenmay raised a Point of Order that Governor Swegle was untimely as the Chair does have the right to make a ruling on any Point of Order and any objection or appeal is required to come before the next piece of business. Discussion ensued regarding the untimeliness of a Point of Order. Governor Doane moved to table the elections until the issue could be resolved. Motion failed for lack of a second. President-elect Majumdar stated that he would abstain from voting. President Pickett advised that President-elect Majumdar's abstentions would not be recorded in the Minutes. Governor Stephens requested that this matter be taken up during Executive Session the following day since there were procedural issues that were troubling to him.

UPDATE FROM PRACTICE OF LAW BOARD (POLB) – Paul Bastine, Chair

Chair Bastine referred the Board to the information contained in the meeting materials and explained what the POLB is and the mission as defined by the Washington Supreme Court. He advised that the POLB is working on several initiatives: (1) developing a legal health checkup list as well as a web-based application for the checkup with the goal that the tool would be a win-win situation for the Bar Association, the courts, and the public; (2) revisions to GR 24 dealing with online provider; and (3) grievances for the unauthorized practice of law in a very limited fashion in accordance with the revised Order. He reported that the legal health checkup list had been circulated to 150 entities and that the POLB was constantly receiving additional information.

The following items were discussed on Friday, May 18, 2018.

APPOINT FREDERICK B. RIVERA TO THE LEGAL FOUNDATION OF WASHINGTON (LFW) BOARD

Governor Doane moved to approve the appointment of Frederick B. Rivera to the Legal Foundation of Washington Board, term to begin immediately through December 31, 2019. Motion passed unanimously. Governor Papailiou was not present for the vote.

ADOPT PROPOSED PERSONNEL COMMITTEE EXECUTIVE DIRECTOR SUCCESSION PLAN – Governor Angela Hayes, Chair

Governor Hayes referred the Board to the information contained in the meeting materials. Governor Swegle opined that it is the Board’s decision, not the Selection Committee’s, to determine whether the Executive Director should be involved in the process to select a successor. Discussion ensued regarding whether to leave in or strike C(4)(i) that states: “Should the ED be involved in the selection process and if so what would the ED’s involvement be;” no need to strike since this is a recommended process and the Board would approve the final process; the concern that the language increases the concentration of power; and the opinion that the current language addresses the concern. It was noted that all three clauses are questions to be answered at the time the Succession Plan is brought to the Board, and that “should” and “how” are not mandates, but rather questions asking for a determination. Governor Swegle moved to adopt the proposed Succession Plan with the revision that C(4)(i) be deleted. Motion died for lack of a second. Governor Stephens moved to adopt the Succession Plan as contained in the meeting materials. Motion passed 11-1. Governor Papailiou was not present for the vote.

APPROVE PROPOSED WSBA BYLAW AMENDMENTS RE PRESIDENT’S AND GOVERNORS’ AUTHORITY

President Pickett advised the Board that the proposed Bylaw amendments do not deal with the proposed three new seats, but with the authority of the President and the Board. Governor Risenmay raised a Question of Privilege and reminded the Board that at the previous Public Meeting he had raised a Question of Privilege that all proposed amendments to the Bylaws

would be out of order until the three new Governor seats had been filled as required by the Bylaws. He explained that the Board voted at its January 2018 meeting to hold in abeyance the Supreme Court Order adding the three new seats, which caused a continuing breach and effectively acted to suspend the rules for the Board's parliamentary procedures by not allowing the three new Board members to take their seats and act in them, with the result that representation to the members is denied in those three seats. He stated that rules contained in the Bylaws cannot be suspended no matter how large the Board vote in doing so, and that the motion by its very nature was contrary to the Bylaws for that reason. Governor Risenmay explained that taking action to change the fundamental Bylaws of the WSBA while denying representation to members of the organization that are required by the Bylaws is a fundamental breach of the Bylaws and is topical for any action that would involve Bylaw changes. He noted that he is in favor of some of the proposed amendments, but that it is improper for the Board to vote on the proposed amendments when certain elements of the Bylaws are being breached by the absence of three members of the Board. He suggested that the President find the motion passed at the January Board meeting out of order because it violates the principals just iterated, fill the three empty seats, and then address and vote on the proposed Bylaw amendments. Discussion ensued regarding whether the Point of Order was topical to the proposed amendments; other actions of the Board since the January meeting being null and void; concern with timeliness of the Point of Order; there being a procedural due process issue since the three seats were currently not filled; whether the Board is in violation of the Court's January Order; the Board's ability to request modification of the Court Order; and interpretation of the Bylaws that the three seats are not vacancies and that according to the schedule in the Bylaws the only seat to be filled this year is the Limited License Legal Technician/Limited Practice Officer (LLLT/LPO) seat, and it would be up to the Board to decide whether to do so. Governor Stephens stated for the record that he did not believe the Board's actions since January were null and void.

President Pickett consulted with General Counsel Davis. He expressed his concern that seats are being taken away from three people by not allowing them to sit on the Board in light of the Supreme Court Order that grants them that privilege, as well as the number of years, extensive research and discussion, and countless volunteer hours that went into the process of adding

the three seats to the Board. He stated that his ruling is that the Board will move forward and let the process take place. He stressed the importance of Board members to trust each other, start collaborating, and stop bickering.

Governor Bridges stated the reasons for the proposed Bylaw amendments and that all but one of the proposed amendments is to remove ambiguity and give additional clarity to the Bylaws. Discussion ensued regarding whether to vote on all the proposed amendments at one time or vote on each proposed amendment individually. Concern was expressed that some Governors agree with some of the proposed amendments, but not others, with the result that a negative vote would have to be cast if the vote is on all the proposed amendments at one time.

Clarifying a quorum is required for a vote to be valid – Article II(E)(2) on page 236 of the meeting materials.

Governor Bridges stated that the proposed amendment is to clarify the rule for a quorum. Discussion ensued regarding whether requiring a quorum at the time of a vote would apply to committees as well as the Board, and if so, the hardship that small committees might experience, and clarification of what *Robert's Rules of Order* actually state on this matter. General Counsel Davis clarified that the definition of “action” in the WSBA’s Bylaws is very broad; if enough people leave a meeting that there is no longer a quorum, attempts must be made to reach a quorum or the meeting will have to disband. Governor Risenmay moved that each proposed Bylaw amendment be considered and voted on separately. Motion failed 5-7. Governor Papailiou was not present for the vote.

Affirming the authority of the WSBA, except where limited by statute, order, or court rule, resides with and is retained by the Board – Article IV(A) on page 259 of the meeting materials

Governor Bridges stated that the proposed amendments to this section of the Bylaws make it clear that the Board has the authority to delegate rather than being told what it can and cannot do. Immediate Past-President Hyslop requested that “case law” be included; President Pickett suggested also adding “subject to the plenary authority and supervision of the Washington Supreme Court.” Governor Bridges agreed to do so. Later in the meeting, Governor Tollefson moved to amend Article IV(A) after “Subject to” to add “the supervision and plenary authority

of the Washington Supreme Court, and limitations imposed by Statute, Court Rule, Court Order, or case law..." Motion passed 12-1. Governor Papailiou was not present for the vote.

Affirming the President sets the agenda, but affirming the Board's ability to act on any item properly moved and seconded at a Board meeting – Articles IV(A) on page 259; IV(B)(1) on page 262; and VII(C)(4) on page 285 of the meeting materials

Governor Bridges stated that these proposed amendments give the Board the ability to affect the agenda if it sees fit. Discussion ensued regarding the lack of notice and lack of transparency to members and the public if the Board discusses and/or votes on an item not listed on the agenda; the only requirement for notice being amendments to the Bylaws; concern regarding unfettered power of the Board; and the potential for diluting voices at the Board table. Governor Stephens moved to approve the entire set of proposed amendments to the WSBA Bylaws. Governor Risenmay moved to amend the motion and eliminate the first full new sentence "Subject to limitation..." and the third full new sentence "The Board's authority..." in Article IV(A) on page 259 of the meeting materials. General Counsel Davis advised that the Board needs to clarify what is already stated and not run the risk of making language related to the Washington Supreme Court unclear for future Boards. Governor Bridges stated that Governor Risenmay's motion would eviscerate the point of the amendment. Governor Risenmay's motion failed 2-9-1. Governor Papailiou was not present for the vote.

Final: ...Subject to the plenary authority and supervision of the Washington Supreme Court and limitations imposed by Statute, Court Rule, Court Order, or case law, the Board possesses all power and discretion on all matters concerning the WSBA. The Board may delegate the exercise of its authority but that does not constitute a transfer of it. The Board's authority is retained and may be exercised at any time upon a majority vote of the Board. [Article IV(A)]

Later in the meeting, Governor Stephens expressed concern regarding the proposed amendment to IV(B)(1) on page 262 of the meeting materials, which provided that the agenda could be changed by a simple majority vote of the Board and moved to add "...two-thirds" prior to "majority of the Board..." Discussion ensued regarding new items being added to the agenda without notice to the members and the public; the advantage of requiring a supermajority vote resulting in increased collaboration; and the disadvantage of requiring a supermajority vote that might affect a routine issue. Governor Stephens moved to include "action by two-thirds of

the Board,” rather than “action by a majority of the Board.” Further discussion ensued regarding adding items to the agenda with no notice to the members or to other Governors; no time to review materials prior to the meeting; and keeping the power dynamic in balance rather than shifting it from one side to the other. Motion failed 5-8.

Final: The President has the authority to: set the agenda however that authority is secondary to the authority of the Board of Governors at any Board meeting to take action on any issue raised by a duly seconded motion;... [Article IV(B)(1)]

Final: ...However, nothing in this section shall prohibit the Board of Governors upon a duly seconded motion from addressing any issue or taking any action a majority of the Board determines to take if otherwise permitted by these Bylaws.... [Article VII(C)(4)]

Reorganizing the Executive Committee to include one member from each class. Clarifying the notice required to call a Special Executive Committee Meeting – Article VII(D)(2-3) on page 285-286 of the meeting materials

Governor Bridges stated that the proposed amendments ensure that a representative from each class would be a member of the Executive Committee, and that no one on the Executive Committee would have a vote except the President-elect and Governors. Discussion ensued regarding the definition of “class;” basing membership on talents and ability to contribute rather than classes; and the President appointing members to the Committee rather than having classes elect one of their members to the Committee. Governor Meserve moved to change the proposed amendment to reflect that one member of each governance class be appointed by the President unless that class is already represented. Discussion ensued regarding appointment versus election; whether to have the classes hold an election each year; and concern regarding no election process being in place. Motion failed 5-7. Governor Papailiou was not present for the vote. Governor Bridges moved to add after “...as elected by that class,” “at or before the first Board meeting of the fiscal year....” Motion passed 9-2-1. Governor Papailiou was not present for the vote. In answer to an inquiry as to why the voting rights of the Immediate Past-President and the Executive Director were removed, Governor Bridges explained that only those who are able to vote at the Board table should be able to vote in committees. Discussion ensued regarding being more inclusive rather than exclusive; decentralizing power within the WSBA; President-elect being more reflective of the Board’s wishes since they were just elected than the Immediate Past-President who was elected two

years before; and the wisdom of thinking long-term. Governor Meserve moved to strike the last sentence in VII(D)(2) since the Treasurer and Personnel Committee Chairs are already Governors. Motion failed 4-8. Governor Papailiou was not present for the vote. Later in the meeting discussion ensued regarding keeping the Immediate Past-President as a voting member of the Executive Committee. Governor Hayes moved to keep the last sentence in VII(D)(2) on page 285 of the meeting materials and include the Immediate Past President. Governor Meserve moved to amend the motion and omit Treasurer and Personnel Committee Chair because they are already covered in the word "Governors." It was noted that who may vote on the Committee does not change who is on the Committee and the suggested amendment cleared up redundancy. Governor Meserve's motion to amend passed 7-5. Governor Hayes' motion to restore the Immediate Past President's vote failed 5-7. Governor Papailiou was not present for these two votes.

Final: The Executive Committee members shall include the President, the President- elect, the Immediate Past President, the Treasurer, the Chair of the BOG Personnel Committee, the Executive Director, and one member of each Governor class as elected by that class at or before the first Board meeting of the fiscal year unless that class is already represented. Only the President, President-elect, and Governors may vote on the Executive Committee. [Article VII(D)(2)]

Governor Stephens moved to amend VII(C)(5) on page 285 of the meeting materials to strike the remainder of the sentence after "...Robert's Rules of Order..." and to change "...may be governed..." to "...shall be governed... ." He explained that he was making this amendment due to recent arguments during Board meetings over parliamentary procedure. Motion passed 11-1. Governor Papailiou was not present for the vote.

Final: Proceedings at BOG meetings shall be governed by the most current edition of Robert's Rules of Order. [Article VII(C)(5)]

Later in the meeting, Executive Director Littlewood asked for clarification regarding the proposed amendment for a notice provision for Executive Committee meetings in Article VII(D)(3) on page 286 of the meeting materials. Governor Bridges explained that the proposed amendment just requires notice to the Board that the Executive Committee is meeting.

Aligning who may vote on standing Board committees to those who may vote at Board meetings. Allowing committees to select their own chairperson. Articles IV(C)(2) on pages 265-266 and V(A)(1) on pages 269-270 of the meeting materials

Governor Bridges advised that there is a scrivener's error on page 266 of the meeting materials and that the paragraph under Article IV(C)(4)(b)(4) should be on page 265 of the meeting materials. He explained that the goal of this amendment is not to take away the President's power, but to make WSBA governance more Board-centered resulting in Committees being able to appoint their own chairperson. Governor Meserve moved to strike the proposed amendment. She explained that this amendment is not practical; it is critical to get the committees working at the beginning of the year; the Chair of the committee sets up the meeting schedule so the committee is ready to go once the new year starts; staff need to know who they will be working with; and the organization functions more efficiently and responsibly if someone is lined up to take on the responsibilities of a chair. It was noted that some committees are up to 28 people. Governor Bridges advised that he was persuaded by Governor Meserve and that his value policies do not outweigh the efficiencies she described. Motion passed 11-1. Governor Papailiou was not present for the vote.

Final: ... Only Governors may vote on standing Board committees. Voting members of ad hoc committees will be determined by the Board on a case-by-case basis. [Article IV(C)(2)]

SUPPORT AMERICAN BAR ASSOCIATION (ABA) RESOLUTION RE LEGAL FINANCIAL OBLIGATIONS (LFO) – Jaime Hawk, WSBA Delegate to the ABA, and Diana Singleton, Access to Justice Manager (first reading with possible action)

Delegate Hawk urged the Board to support the ABA Resolution on Court Fines and Fees, which in Washington state are referred to as Legal Financial Obligations (LFOs). She explained that the Board supported an LFO statement drafted by the CPD at its September 2017 meeting and that the work had inspired ABA leaders to draft a similar statement to be proposed to the ABA House of Delegates. She referred the Board to the Resolution and Report contained in the meeting materials and advised that the CPD had approved of the Resolution earlier in the month. She explained that the Resolution would be presented to the ABA House of Delegates at the upcoming ABA Annual Meeting in August and that the Resolution seeks to address the fundamental unfairness created when people are subjected to disproportionate sanctions,

including imprisonment, simply because they do not have the ability to pay a fine or fee for a criminal offense or civil infraction. She also noted that the goal of the Resolution is to build public trust in the justice system. Governor Hunter moved to support the Resolution re Legal Financial Obligations as contained in the meeting materials. In reply to an inquiry regarding victim restitution, Delegate Hawk explained that victim restitution is not included in the definition of fines and fees and that it would require a separate analysis by the court. Discussion ensued regarding whether license revocation was included in the definition of fines and fees. Motion passed unanimously. Delegate Hawk then asked if the Board would like her to advocate listing WSBA as an official co-sponsor, even though the deadline had passed. It was the consensus of the Board to do so.

APPROVE PROPOSED WSBA BYLAW AMENDMENTS RE PRESIDENT’S AND GOVERNORS’ AUTHORITY (continued)

Affirming the President’s discretion to call executive session but making it subject to override by majority vote by the Board. Clarifying who may attend – Article VII(B)(7)(a-b) on pages 280-283 of the meeting materials

Governor Bridges referred the Board to Article VII(B)(7) on page 280 of the meeting materials and stated that the intention is not to exclude anyone from Executive Session who needs to be there and that the Executive Director and General Counsel should be in every Executive Session; to reduce the amount of discussion in Executive Session; and to give power to the Board to decide whether the discussion should be moved to Public Session. Governor Papailiou moved to strike this proposed amendment as it was ambiguous. Motion died for lack of a second. Governor Bridges moved to amend the proposed amendment to read “...subject to a majority vote of the Board...” Governor Papailiou moved to amend the motion by changing “...the issue...” to “...a particular issue...” in order to add more clarity. Motion passed unanimously. Governor Bridges’ motion passed 11-1.

Final: The BOG may meet in Executive Session at the discretion of the President subject to a majority vote of the Board of Governors that an issue is not properly raised in Executive Session, or as specifically provided by court rule... [Article VII(B)(7)(a)]

Discussion ensued regarding the importance of not abusing Executive Session; that “embarrassment or criticism of the Board of Governors” is not a sufficient reason for a topic to

be discussed in Executive Session; and request for the President to publicly identify what issues were addressed in Executive Session so members would be informed. It was noted that conflict is healthy, but incivility is not, and the Board needs to have a conversation about the difference. Governor Papailiou moved to strike the proposed last sentence of Article VII(B)(7)(a)(6) starting with "This section shall be narrowly construed..." as ambiguous and unnecessary. Motion died for lack of a second. Governor Papailiou agreed with Governor Bridges' suggestion to add "...subsection (6)...." Motion passed unanimously. Governor Swegle was not present for these votes.

Final: ...This subsection 6 shall be narrowly and strictly construed; mere embarrassment or criticism is insufficient standing alone to address an issue in Executive Session. [Article VII(B)(7)(a)(6)]

Governor Papailiou stated that redlining and being in the weeds at the Board table is not a good use of the Board's and staff's time, this process should have been done in a Committee and then submitted to the Board for its discussion and approval, and that this process identifies a larger Board issue.

Later in the meeting, Governor Meserve stated that the Board should not skip over the additional language regarding who can attend Executive Session without acknowledging what it is the Board is doing: presumptively excluding staff who have traditionally been at the Board table in Executive Session; a dramatic change from who has been at the table. Governor Bridges stated that the intention of this proposed amendment is for the Board to be more thoughtful regarding what items are being dealt with in Executive Session and who needs to be involved in the discussions. President Pickett stated that the only staff person at the Board table who reports to the Board is the Executive Director and it is inappropriate for the Board to decide which Executive Team members can attend Executive Session; all staff report to the Executive Director so it would be the decision of the Executive Director as to which staff would sit at the Board table. He reminded the Board that the Executive Management Team operates as a team and is very effective; they are cross trained and keep each other informed on issues; they were invited by the Board to sit at the Board table as a collaborative body so Board and staff can work together collaboratively and everyone is informed. Governor Bridges noted that the

decision to invite the Executive Management Team to sit at the Board table was done by a past Board; it should be clear by now that this Board desires to go in a different direction; it is the prerogative of the Board if a majority of the Board agrees; and who sits at the Board table is not the Executive Director's decision. Discussion ensued regarding lack of knowledge and resources when the Board is discussing a topic and relevant staff are not readily available; the difficulty of staff adjusting their schedules to be available on a moment's notice; the advantage of having resources available at the moment they are needed; and the President and Executive Director exercising discretion to decide what staff will be needed at any given Board meeting and if that does not work, staff can call in. Governor Bridges moved to amend the language in the proposed amendment to "...will be admitted subject to approval of a majority of the Board." Governor Papailiou noted that this proposed amendment is a major change and will force the Board to have a mini meeting at the beginning of each Executive Session to decide who can and cannot be in the meeting room; that it is nothing more than an anti-staff amendment; is totally unnecessary, sends a terrible message, and ignores the responsibilities of this Board during Executive Session; and undermines the value of the Executive Team, each of whom provides insight regarding matters being discussed. He then moved to strike "...on a case by case basis." Motion failed 5-8. Governor Bridges moved to add "All others shall be presumptively excluded, but may be admitted upon approval of a majority of the Board." Governor Hayes requested that "All others..." be changed to "Any others..." and Governor Bridges agreed. Governor Bridges noted that the Executive Committee is a good place to identify which staff would be needed during Executive Session, those staff can be available at the meeting, and will likely be approved by the Board. Motion passed 10-1-2

Final: Executive session of the BOG may proceed with no persons present except the President, President-elect, Immediate Past President, Governors, Executive Director, General Counsel, and such other persons as the BOG may authorize on a case by case basis. Any others shall be presumptively excluded, but may be admitted upon approval of a majority of the Board... [Article VII(B)(7)(a)(6)]

Requiring more detail in the Board Minutes – Article VII(A)(1)(d), page 279 of the meeting materials

Governor Bridges stated that the Minutes do not require anything more than what is currently being done. It was requested that the sign-up sheet that was previously available at Board

meetings be put back in the lobby so liaisons and guests can sign their name as attendees in order to show who is actually at the meeting and then attached to the Minutes as an exhibit. President Picket shared his concern that detailed Minutes are a potential disaster for litigation and encouraged the Board not to take extremely detailed Minutes that could potentially open up problems for WSBA, specifically regarding litigation. Governor Bridges noted that he agreed with President Pickett and that the proposed amendment does not say “detailed,” but rather says “...a reasonable summary.”

Final: “Minutes” means, at a minimum, recording the members of the Bar entity in attendance, the date and time of the meeting, the agenda of the meeting, the subject and results of any final action taken, and a reasonable summary of the issues and points raised during discussion. [Article VII(A)(1)(d)]

Governor Stephens stated that he was attempting to get clarity on why these Bylaw amendments were being proposed. He noted that nothing will change how things are done at Board meetings if relationships remain lousy. Paper cannot be depended upon to deal with the Board’s problems and these proposed amendments are not a panacea to solve the Board’s problems. He urged the Board to recognize that there have been a number of abuses, ill treatment, and power dynamics in play. He stated that the focus of these proposed Bylaw amendments deal with what governance looks like and how the Board will do that work, and he expressed hope that as these proposed amendments are put into practice and that the Board will be open to fixing what does not work, though he was not sure about the wisdom of the proposed amendments. He stated that he was looking forward to dealing with this item and moving on, and at the July Board meeting, getting back to how the Board members work with each other and not be disagreeable. Several Governors noted that they agreed with some proposed amendments but not others, since they were unable to vote for each proposed amendment individually, they would have to vote against the entire package. President Pickett urged the Board to focus on the big picture in the future, and to think more collaboratively regarding items such as the proposed amendments at the front end so the Board does not end up with brokenness and mistrust. Governor Bridges stated that he too desired to work on big picture things, but that this exercise was not wasting time since it was a part of governance. Motion on all proposed amendments passed 7-5-1.

PROPOSED MEMBER ENGAGEMENT WORK GROUP – Governor Kim Hunter and Sara Niegowski, Chief Communications and Outreach Officer (first reading)

Officer Niegowski explained that the goals of the proposed Member Engagement Work Group include engaging members in a meaningful way; defining what interactions and information would be helpful to the Board as it makes governance decisions; providing opportunities to members to participate, learn, and provide feedback; and making sure the Board is up to date on what the Communications and Outreach Department is involved in both department- and WSBA-wide. Governor Hunter referred the Board to the information contained in the meeting materials and highlighted that the Work Group would like to educate the members in a proactive manner regarding the action of WSBA and the Board; involve members in the decision-making process by asking for their input on a regular basis; investigate what the members currently know and what they need to know; get the Sections ramped up and involved by inviting Section Executive Committee members to the Board meetings in order to interact with the Board; involve members on a one-on-one basis and build relationship with individuals so they understand what is going on in the area they are experts in; and have a couple of Governors sign letters that are currently signed by the President, the Executive Director, and General Counsel. In answer to an inquiry regarding the size of the Work Group, the inception date, and methods for reaching out, Officer Niegowski replied that what was hoped for at this meeting was a general discussion since member engagement is a very large topic and if the Board indicates that this is a Work Group it would like to charter, that can be done. Governor Bridges moved to approve the formation of a Member Engagement Work Group. Motion passed unanimously. Officer Niegowski advised that she and Governor Hunter would submit a Charter and Roster to the Board for its approval.

UPDATE FROM COMMUNICATIONS AND OUTREACH DEPARTMENT – Sara Niegowski, Chief Communications and Outreach Officer

Officer Niegowski reported that the department has initiated a Professionalism Practice Award, given “Clearing House” style. The first award, nominated by an opposing counsel in a contentious civil litigation matter, has been presented. She requested the Board let others know about the Award and explained that making nominations is very easy, referred the Board

to the WSBA website and search “Professionalism in Practice”, and advised that the Awards would be presented as the nominations are received. She explained that the goal of the Award is to recognize members and to showcase what is being done professionally and collaboratively around the state. In addition, she reported that the ongoing Outreach Member Perception Survey, which randomly selects from 105 active members, has been launched and is resulting in a good snapshot of member perception and will give good trend information. She noted that Survey reports will be given to the Board on a consistent basis, as well as the various outreach and engagement that is taking place WSBA-wide. She concluded by stating that the members will also have an opportunity to do an opt-in online survey.

EXECUTIVE DIRECTOR REPORT

Executive Director Littlewood referred the Board to her report in the written materials and highlighted the portion dealing with health insurance.

APPROVE EXTENSION OF CIVIL LITIGATION RULES DRAFTING TASK FORCE TIMELINE

Governor Risenmay moved to approve the extension of the Civil Litigation Rules Drafting Task Force through the July 27-28, 2018, BOG meeting. Motion passed unanimously.

BUDGET AND AUDIT COMMITTEE RECOMMENDATIONS – Treasurer Kim Risenmay and Ann Holmes, Chief Operations Officer (first reading)

Treasurer Risenmay explained that the Budget and Audit Committee had examined all three recommendations being presented at this meeting and uniformly recommended they be adopted.

Continuing Legal Education (CLE) Revenue Sharing Model

Treasurer Risenmay reported that the proposed CLE revenue sharing model had been widely vetted and supported by Section leadership. He compared the recommended plan with the current plan and advised that the net result would be a decrease in WSBA revenue and an increase in Section revenue. He noted that the Model is somewhat experimental and may need to be tweaked in future years.

Mandatory Continuing Legal Education (MCLE) Fee Structure

Governor Swegle recused himself during this discussion. Treasurer Risenmay explained the recommendations regarding the MCLE fee structure and advised that, because of timing, it would be helpful for the Board to take action on the MCLE fee structure recommendations at this meeting since notification needs to be made to CLE sponsors and all those affected so they will be prepared when the fee increase goes into effect in October 2018. He reported that a significant amount of time had been spent on both email and phone with representatives of various sections and the overall feedback was that the recommendations were positive. Governor Stephens moved to approve the recommendations regarding the MCLE Fee Structure. Motion passed 11-0-1. Governor Kang abstained.

Limited Practice Officer (LPO) and Limited License Legal Technician (LLLT) License Fees and Client Protection Fund Assessment

Treasurer Risenmay advised that this is the first year that the Board would be making a recommendation to the Washington Supreme Court regarding LPO and LLLT license fees; historically it has been the LPO Board and the LLLT Board. In addition, LPOs and LLLTs were not previously eligible to contribute to the Client Protection Fund, and that neither has had a claim arise against them. He explained the fee increase and noted that the recommendation is for only the LLLTs to contribute to the Client Protection Fund since the LPOs already carry coverage for their clients through the large brokerage firms where they work. Discussion ensued regarding the procedure for the Client Protection Fund Board if it received an application from someone harmed by an LPO; that LLLT license fees be aligned with lawyer license fees, with the possibility that the increase be staggered. Treasurer Risenmay noted that the Budget and Audit Committee was continuing to prepare the budget for the next fiscal year and, while the Board's input is appreciated, the Committee's intention was to use the fees proposed in these meeting materials to calculate the draft FY2019 budget that would be before the Board at its July 2018 meeting. He emphasized that the Committee wants to be transparent with the Board, but that it has an obligation to move forward.

REQUEST FROM GOVERNOR JAY INSLEE

President Pickett advised that Governor Inslee had requested recommendations from the WSBA's Judicial Recommendation Committee, and in order to meet the deadline, the Committee would need to meet the candidate on June 7, 2018. He requested that the Board approve the Executive Committee review and approve the Judicial Recommendation Committee recommendation sometime after the June 7 meeting. Governor Risenmay moved to approve President Pickett's request. Motion passed unanimously. Governor Sciuchetti was not present for the vote.

APPROVE ADDITION OF NEW GOVERNORS WORK GROUP CHARTER AND ROSTER – Governor Alec Stephens and Governor Dan Bridges

Governor Bridges moved to adopt the Charter as contained in the meeting materials with the proviso that he and Governor Stephens would provide a roster for approval by President Pickett. Motion passed unanimously. Governor Sciuchetti was not present for the vote.

APPROVE PRESIDENT-ELECT SELECTION WORK GROUP CHARTER AND ROSTER – Governor Chris Meserve

Governor Meserve moved to adopt the Charter as contained in the meeting materials and advised that she would provide a roster for approval by President Pickett. Motion passed unanimously. Governor Sciuchetti was not present for the vote.

President Pickett noted that the following items would be set over to the July 17-18, 2018, Board meeting: Continued Discussion of Referendum Process Review Work Group Recommendations; Governor Roundtable; and Generative Discussion re Entity Regulation.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 5:10 p.m. on Friday, May 8, 2018.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary