

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Public Session Minutes

Seattle, WA

September 27-28, 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, September 27, 2018, at 1:10 p.m., recessed at 4:45 p.m., and reconvened on Friday, September 28, 2018, at 8:20 a.m., at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

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

Also in attendance were President-elect Rajeev Majumdar, Immediate Past-President Bill Hyslop, Executive Director Paula Littlewood, Interim General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, 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. Also in attendance were Chief Justice Mary Fairhurst as well as Governors-elect Michael Cherry, P. J. Grabicki, and Russell Knight.

The following items were discussed on Thursday, September 27, 2018.

PRESIDENT'S REPORT

President Pickett welcomed Chief Justice Fairhurst and other guests to the Board meeting and urged those in attendance to join the Board at the APEX Awards Dinner that evening. He reported on his attendance at the National Conference of Bar Presidents in Chicago, and the creation of a "Build a Bridge Initiative" with the minority bar associations.

MEMBER AND PUBLIC COMMENTS

Jean Cotton advised that this would be her last meeting as the Family Law Section Executive Committee liaison and that she would attend future meetings on behalf of her local bar. She noted that her local bar is interested in participating in the discussion between the Board and the Court.

Nancy Hawkins requested that the Board respond to the comments that are made during the Member and Public Comment section of the BOG meeting agenda and to provide the meeting materials sooner.

Chief Justice Mary Fairhurst referred to the Washington Supreme Court's letter dated September 21, 2018, and stated that the Court made the decision to act as it did in its plenary authority. She explained that it was the unanimous decision of the Court to suspend all proposed WSBA Bylaw amendments in light of *Janus* and other national developments, as well as litigation against the Court and the Bar; and to affirm that the Executive Director is the administrative head of the organization, that most of the organization is regulatory, and that it is the Court's role and responsibility to decide what must be done. She noted that Executive Director Littlewood had been making the Court aware of this situation for quite some time and that the Court's action was not intended to stop a collaborative discussion among the Court, the Board, and other interested Bar members in considering how to move forward both from a

legal and structural standpoint. She further advanced the concerns expressed in the letter by a majority of the court about how Board members are treating each other, staff, and others. She emphasized that it is important for people to have a safe place to work and govern, and that it is the Court's direction that the Board adopt an anti-harassment and anti-retaliation policy if such policies were not already in place. She stated that the Board has the privilege of governing under the authority of the Supreme Court and that the actions of individual members of the Board reflect on the Board, the Bar, the community, and the state. She concluded by stating that the Court has made no decisions other than what was included in the letter and that the letter was unanimously agreed upon by the Court.

President-elect Majumdar stated that case law recognizes there are areas that are not regulatory, but the domain of the Board, and that the letter did not come as an order. He stated that he would like to make the Court's intent crystal clear and asked Chief Justice Fairhurst if the Court intends to stop the Board from considering or working on any Bylaw amendments as an order of law or is it a recommendation and suggestion that the Board table all proposed Bylaw amendments. Chief Justice Fairhurst responded that the language used in the letter is that the Court "directed" and if that language was not clear, she invited President-elect Majumdar to write her and she would ask the Court to be more clear, and that if he preferred an order, to include that in the letter and the Court would consider that as well.

Discussion ensued regarding timeline and process; suspension of proposed Bylaw amendments; the Court being more transparent with the information on which it bases its decisions regarding the WSBA; how to best communicate the plenary authority of the Court to WSBA members; and the Court's plenary authority living side by side with the State Bar Act for many years. President Pickett expressed appreciation for Chief Justice Fairhurst's attendance at the July Board Retreat and meeting, as well as the September Board meeting. Chief Justice Fairhurst reiterated that the Court wants to work with the Board and anyone interested in order to examine and address WSBA structural issues, and emphasized that the Court will be acting deliberately and thoughtfully. She expressed her gratitude for the understanding and receptiveness of the meeting attendees.

CONSENT CALENDAR

a. July 27-28, 2018, Public Session Minutes

WASHINGTON STATE BAR FOUNDATION (WSBF) ANNUAL MEETING – James Armstrong, President, and Terra Nevitt, Director of Advancement/Chief Development Officer

Appoint Members to WSBF Board of Trustees

WSBA President Pickett passed the gavel to WSBF President Armstrong, who called the WSBF meeting to order at 1:55 pm. President Armstrong referred the Board to the proposed slate of Foundation Board member renewals contained in the meeting materials and noted that there were still open positions, which will be brought for approval at a future Board meeting. WSBF member Pickett moved to approve the proposed slate as contained in the meeting materials. Motion passed unanimously.

WSBF President Armstrong reported that the Trustees had approved a disbursement to WSBA in the amount of \$275,000, a \$75,000 increase from last year, to support the Bar's public service and diversity programs. He highlighted WSBF's accomplishments to date and advised that WSBF has been successful in growing its donor base and increasing fundraising. He reported that a WSBF restricted fund had been successfully unrestricted and that the Trustees voted to disburse the monies to the four area law schools (three in Washington and one in Idaho) for diversity scholarships. Discussion ensued regarding the ratio of donations to cost and both outgoing Treasurer Risenmay and incoming Treasurer Bridges expressed their confidence that the Foundation had made significant progress in this area and is headed in the right direction. In response to a question about strategic goals, Director Nevitt referred to the three-year strategic plan developed the year prior, in which the Foundation seeks to fully fund the direct costs of the WSBA's public service programs by the end of FY2019 and to fully fund all costs within ten years. WSBF President Armstrong adjourned the Foundation member meeting at 2:20 pm and passed the gavel to WSBA President Pickett.

COUNCIL ON PUBLIC DEFENSE (CPD) – Eileen Farley, Chair, and Diana Singleton, Access to Justice Manager

Approve CPD Providing Input to Washington Supreme Court Rules Committee re CrR4.1

Chair Farley reviewed the background and explained the issue. Governor Clark moved to approve the request. Motion passed 11-0-1. Governors Kang and Papailiou were not present for the vote.

Approve amendments to CPD Charter

Chair Farley reviewed the proposed amendments to the CPD Charter and explained the decisions on excused absences, emeritus, and removal of term limits. Governor Swegle moved to approve the proposed amendments to the CPD Charter as contained in the meeting materials. Motion passed 12-0-1. Governor Kang was not present for the vote.

BUDGET AND AUDIT COMMITTEE RECOMMENDATIONS – Governor Kim Risenmay, Treasurer; Ann Holmes, Chief Operations Officer; and Tiffany Lynch, Associate Director of Finance

Treasurer Risenmay introduced the Budget and Audit Committee’s recommendations by noting that the WSBA budget is a policy and management document. He explained that projected revenues and expenses are the best estimates available when the Board approves the budget and that in FY2018, WSBA is exceeding budget expectations, which has a positive impact on reserves.

He then provided an overview, by fund, of the final draft FY2019 budget for Board approval as unanimously recommended by the Budget and Audit Committee. With respect to the General Fund, he referred the Board to the meeting materials, which identified developments and changes following the presentation of the first draft at the Board’s July meeting; including specifically (1) the Supreme Court’s September 6, 2018, Order setting the Limited License Legal Technician (LLLT) and the Limited Practice Officer (LPO) fees, and the LLLT Client Protection Fund assessment, as recommended by the Committee and presented to the Board at its July meeting; and (2) in addition to the \$23,000 increase presented in July for all Officers and Board members to attend the Western States Bar Conference, further increasing the Board budget by

\$5,000 so that the President and President-elect may attend the same out-of-state conferences together.

With respect to the Capital Fund, Treasurer Risenmay advised that the Capital Fund budget reflects Board discussion and decisions at its July meeting, which resulted in a net reduction of \$90,000 from the draft presented at the July Board meeting. Concern was expressed about the adequacy of the Capital Fund budget to address unplanned issues or events throughout the year. Chief Operations Officer Holmes explained that additional funds had been added to the final Capital Budget to address these concerns, and if needed, there is flexibility to shift budgeted funds by appropriate approval levels according to the WSBA Fiscal Responsibility Matrix.

As mentioned in July Treasurer Risenmay advised the Board that it is important to build the Facilities Reserve Fund to anticipate costs when WSBA's current lease expires as the current balance is \$200,000 and the lease expires at the end of 2026. Given that WSBA is exceeding FY2018 budget expectations, he recommended that the Board move \$250,000 from Unrestricted Reserves into the Facilities Reserve Fund at the end of FY2018.

Discussion ensued regarding the difficulty of holding meetings due to changes in quorum rules; the Board's resistance to meeting at the request of the President; WSBA's ability to balance the budget to zero; needing more time to review materials thoroughly; the optics of a budget increase to enable the entire Board to attend the Western States Bar Conference; and the budgeted increase to WSBA CLE compared to a budgeted decrease in Sections revenue. With respect to the latter, Treasurer Risenmay explained that, as previously discussed with both the Board and Sections, this apparent discrepancy is a timing issue: profit splits under the new model will be made once the FY2019 books close, which means they will not be realized until the FY2020 budget. A request was made to break out mandatory and non-mandatory items on the budget.

Governor Meserve congratulated Treasurer Risenmay, staff, and the Budget and Audit Committee for developing a thoughtful and remarkably closely balanced budget.

Governor Clark then moved to approve the budget as presented. Governor Bridges moved to make a friendly amendment to approve the FY2019 budget as presented, subject to any changes the Board might make to one line item that will be considered in the next day's Executive Session. Governor Clark and seconder agreed. Motion passed unanimously. [Director of Human Resources Dujon-Reynolds confirmed that no changes were made to the line item discussed in the next day's Executive Session.] Treasurer Risenmay moved to transfer \$250,000 Unrestricted Reserves into the Facilities Reserve Fund in anticipation of facilities costs when the lease at Puget Sound Plaza expires. Motion passed 11-0-3.

APPROVE KELLER DEDUCTION SCHEDULE – Julie Shankland, Interim General Counsel

Interim General Counsel Shankland referred the Board to the information contained in the meeting materials and explained the formula for arriving at the per-member charge for the Keller Deduction amount. Governor Hayes moved to approve the Keller Deduction Schedule as contained in the meeting materials. Motion passed 12-0-2. Governors Doane and Higginson requested that their abstentions be noted in the Minutes.

FASTCASE PRESENTATION – Phil Rosenthal, President, and Joe Patz, Alliance Manager

Fastcase President Rosenthal reviewed the history of the company and explained why Fastcase is different and where the company is headed. He highlighted the improved technology utilized by Fastcase, its emphasis on data-driven law, and focus on driving member engagement. He stated that bar associations are the center of the legal profession and that 30 state bar associations are currently using Fastcase. He gave a short demonstration and concluded by stating that Fastcase is determined, and would be honored, to be added as a legal research tool for WSBA members. Discussion ensued regarding the visual representation and impressive

technology; whether the budget can handle offering two packages (Casemaker and Fastcase) to WSBA members; the learning curve and potential training sessions; and integration of law students as users. Fastcase President Rosenthal concluded by stating that Fastcase has offered to integrate WSBA Deskbooks in its platform, which would result in non-fee revenue for WSBA, syndication of existing WSBA publications, and would help WSBA build new publications.

ANNUAL DISCUSSION WITH DEANS OF WASHINGTON STATE LAW SCHOOLS – Annette Clark, Dean of Seattle University School of Law, and Jacob Rooksby, Dean of Gonzaga University School of Law

Executive Director Littlewood advised that University of Washington School of Law Dean Mario Barnes was regrettably unable to attend due to a prior commitment.

Both of the Deans present shared current practices, priorities, and experiences at their respective schools including an increase in applications; statistics regarding historically under-represented groups; better employment statistics for law school graduates; live streaming at the law schools of the recent senate judiciary hearings; satellite campuses; exploring methods to add value beyond the Juris Doctor (JD) education; and Gonzaga’s launch of the Center for Human and Civil Rights. Both Deans invited the Board to visit their respective schools to spend the day and experience what law schools are like currently. Discussion ensued regarding the cost of law school education and the resulting impact on students and graduates; diversity and inclusion efforts in admission practices; helping law students embrace technology; acceptance of Graduate Record Examination (GRE) as a way of entry into law school in place of the Law School Admission Test (LSAT); and exploring ways to integrate law faculty with undergraduate education.

APPROVE SUPPORT FOR LAW SCHOOL TRANSPARENCY REPORT – Jordan Couch, WYLC Incoming Chair-elect, and Julianne Unite, Member Services and Engagement Specialist

Incoming Chair-elect Couch reviewed the background of the initiative and explained that the WYLC would like to add its support of the Iowa State Bar Association Young Lawyers Division’s Law School Transparency Report and to offer its support in any other way. He advised that the Report would require law schools to make clear what the various fiscal impacts are of attending

law school broken down by demographics. He concluded by stating that the WYLC is asking for the Board's permission to sign on to this initiative. In answer to inquiries, he stated that the WYLC had not yet spoken with the Washington law schools regarding this initiative and that the information would be given to all admitted students when they receive the offer to attend, and would require that all law schools publish the information on their respective websites. Governor Stephens moved to authorize the WYLC to move forward as they have requested. Executive Director Littlewood clarified that if the Board approves the WYLC doing as they requested, then the Board is approving WSBA doing the same. Motion passed unanimously. Governor Hayes was not present for the vote.

APPROVE EXTENSION OF MEMBER ENGAGEMENT WORK GROUP CHARTER – President-elect Rajeev Majumdar, Work Group Member

President-elect Majumdar advised that he was presenting this item on behalf of Governor Clark, Chair of the Work Group. He explained that the Work Group is requesting an open-ended extension of the Charter and empowering the Chair to decide on the process to add five non-Governor members to the Work Group. Governor Swegle moved to approve the request. President Pickett stated that Governor Clark and Governor Hunter will co-Chair the Work Group. Motion passed unanimously. Governor Hayes was not present for the vote.

APPROVE RECOMMENDATIONS FROM THE COURT RULES AND PROCEDURES COMMITTEE – Shannon Kilpatrick, Chair, and Julie Shankland, Interim General Counsel

Chair Kilpatrick summarized the recommendations and explained the proposed amendments. Governor Risenmay requested that Governor Hunter also give her recommendations on the proposed amendments since her practice is in criminal law, the subject matter of the rules in question.

CrR 1.3, CrR 3.4, and CrR 4.4

Governor Hunter advised that CrR 1.3 and CrR 4.4 are clarifications to the rules and that CrR 3.4 would ease the burden of sanctions on individuals who cannot pay, and encouraged the Board to support the recommendations as contained in the meeting materials. Governor Higginson

expressed concern regarding CrR 3.4 because she believed the Legislature had already fixed the problem. Governor Hunter explained that the judges manage this situation well and that it clarifies the warrant requirement. She noted that warrants cannot be eliminated because they are a means to get people into court and that the Legal Financial Obligation (LFO) requirement does not adequately address the warrant requirement. Governor Hunter moved to approve the suggested amendments as contained in the meeting materials. Governor Higginson reiterated her concern regarding CrR 3.4 in comparison with recent legislative changes and moved to amend the motion and adopt the suggested amendments to CrR 1.3 and CrR 4.4, but for CrR 3.4 to be sent back to the Committee to rework and resubmit to the Board for its consideration. Motion to amend failed 5-6-2. Governor Doane asked that his abstention be recorded in the Minutes. Governor Hunter's original motion passed 10-1-2. Governors Clark and Risenmay requested that their abstentions be recorded in the Minutes. Governor Hayes was not present for these two votes.

CrR 4.2

Chair Kilpatrick explained that the suggested amendments to CrR 4.2 are to correct various typos. Governor Hunter moved to approve the suggested amendments as contained in the meeting materials. Motion passed unanimously. Governor Hayes was not present for the vote.

CR 30

Chair Kilpatrick explained that CR 30 updates the language and accounts for the use of new technology, such as storage on the Cloud. Governor Stephens moved to adopt the recommendations as contained in the meeting materials. Governor Risenmay offered a friendly amendment, which was accepted by Governor Stephens and seconder, to bifurcate and discuss the two recommendations regarding CR 30 separately. Governor Stephens moved to approve the recommendations regarding updating the language as contained in the meeting materials. Motion passed unanimously. Regarding the use of new technology, Governor Higginson moved to exclude the portion of proposed amendment contained on page 321 of the meeting materials:

...If the video recording is stored exclusively on a computer or service (including cloud storage) and not on an easily removable and portable storage device, the certificate shall so state and indicate measures taken to preserve it....”

Motion failed 4-9-1. Governor Doane requested that his abstention be recorded in the Minutes. Governor Papailiou moved to approve the recommendations regarding updating the technology as contained in the meeting materials. Motion passed 12-2.

APPROVE RECOMMENDATIONS FROM COMMITTEE ON MISSION PERFORMANCE AND REVIEW (CMPR)

Governor Bridges moved to approve the CMPR recommendations as contained in the meeting materials. Motion passed 11-0-3. Governors Higginson and Risenmay requested that their abstentions be recorded in the Minutes.

RECOMMENDATIONS FROM CIVIL LITIGATION RULES DRAFTING TASK FORCE – Ken Masters, Chair

Chair Masters advised that the purpose of the Task Force recommendations is to help lower the cost of civil litigation. He stated that the recommendations consist of eight rules that utilize the expertise of over 50 highly qualified lawyers and judges who dedicated countless hours over an eight-year period for the rules to be submitted for the Board’s deliberation and action. He explained that thousands of people vetted the recommendations and comments were received from members of the Bar and public over a 12-month period, that the recommendations are responses to access-to-justice issues, and that they are Court rules, not Board rules or Task Force rules. He urged the Board to send the recommended rules to the Washington Supreme Court so they can go through the Court’s process, which includes a period for further comments, so the Court can make a decision on the recommended rules. Discussion ensued regarding the thorough and transparent process used by the Task Force; the overwhelming civil rules expertise of the Task Force; the potential for the recommendations to increase, rather than decrease, the cost of civil litigation; the need for more time for input regarding the recommendations; adding conferral requirements similar to Oregon to the recommendations; clarification regarding why some family law rules were carved out and others not; adding exclusions to rules that do not apply to family law; further opportunity for comment once the

Court publishes the proposed rules; and the desire to have public members present to make comments on the proposed rules. Chief Justice Fairhurst advised that the Court does have a process and a schedule it normally adheres to, but will accept the proposed rules when they are received and can do so out of cycle.

Chair Masters responded to various statements and questions. (1) Nothing has been stated in this meeting that the Task Force has not already heard, discussed, carefully considered, and dealt with. (2) The stakeholder list contains 263 names and is seven pages long; materials were sent to every person on the list; and the job of the liaison to the Task Force is to report to the Board what the Task Force is doing. (3) The proposed rules help people with low incomes because they will lower the cost of civil litigation and make access to lawyers broader. The Task Force decided not to focus on District Court rules at this time because further study needs to be done before doing so. (4) When the Board formed the Task Force, it did not eliminate Family Law from consideration, so the only choice the Task Force had was to apply exemptions. For example, Family Law is exempted from the case schedule; therefore, it is exempted from everything. (5) The Task Force considered adopting Oregon's system, but ultimately decided not to. (6) Whatever period of time the Board takes to reconsider the proposed rules, it will hear the same input the Task Force heard.

Governor Bridges moved to (1) table action on approval of the draft proposed civil rule amendments; (2) create a four-person Board of Governors, of which two representatives must have actual trial experience (judicial or as attorney) to take direct input from members on the proposed amendments, and those Governors will determine how to best carry that out but it should include at the very least direct contact with the executive committees of WDTL, WSAJ, Litigation section, Family law section, and DRAW; (3) all direct member input shall be forwarded in a timely manner to Chair Masters for consideration; and (4) with a report back three Board meetings hence with a meaningful time reserved for discussion and a final vote for whatever action the Board deems appropriate. Chair Masters noted that he should not be named in the motion as the work of the Task Force, and his tenure as the Chair, has been completed and he no longer has any authority regarding the Task Force. Motion passed 9-5. Governor Papailiou encouraged the Board members to contact the members in their districts when an item is on the agenda for action so the WSBA members are aware of the opportunity to provide input.

President Pickett asked that anyone interested in serving on the Committee submit their name to him. He then thanked Chair Masters for all the time that he and the Task Force members spent on this matter.

PROPOSED UPDATED JUDICIAL RECOMMENDATION COMMITTEE (JRC) GUIDELINES – Sanjay Walvekar, Outreach and Legislative Affairs Manager

Manager Walvekar explained that the proposed updated Guidelines involve revisions to mental health questions that are prohibited under the law and instead focus on skills and abilities. Governor Swegle moved to approve the updated Guidelines as contained in the meeting materials. Motion passed unanimously.

PROPOSED POLICY STATEMENT AND RESOLUTION RE FISCAL TRANSPARENCY – Governor Paul Swegle

Governor Swegle moved to remove this item from the agenda since what he was requesting in the policy statement and resolution regarding fiscal transparency was already being done by staff. Motion passed 13-0-1.

APPOINT CHAIRS AND VICE-CHAIRS TO WSBA COMMITTEES AND BOARDS

Governor Papailiou moved to approve the proposed 2018 WSBA committee and board chairs and vice-chairs as contained in the meeting materials. Motion passed 12-0-2. Governor Sciuchetti requested that his abstention be recorded in the Minutes.

TECHNICAL CORRECTION TO RPC 1.12, COMMENT 1

Governor Papailiou moved to approve the technical correction to Comment 1 of RPC 1.12. Motion passed unanimously.

NO RETALIATION POLICY – Governor Angela Hayes, Personnel Committee Chair

President Pickett advised the Board that this item had been added to this meeting's agenda for "first reading." Chair Hayes explained the background of the proposed policy and advised that it would expand the scope and explanation of "no retaliation" to incorporate some of the Equal Employment Opportunity Commission (EEOC) guidelines that exist in the WSBA policy, but do not clearly apply to Board members. Suggestions were made to use more specific wording re "disciplinary action," and to define "repeatedly" and "appropriate action." Concerns were expressed regarding vetting the proposed Policy with applicable federal and state case law and methods for keeping the Policy compliant as those

laws change. Governor Hayes moved to send the Policy back to the Personnel Committee for further work. Motion passed 13-0-1. Governor Higginson requested that her abstention be recorded in the Minutes.

BOARD OF GOVERNOR ROUNDTABLE

Several Board members expressed their appreciation for the opportunity to serve the WSBA members and to work with the WSBA staff and the Court. In addition, they expressed appreciation for the dedication of members who attend Board meetings throughout the year and to the dedication and amount of service evidenced by WSBA member Ken Masters. Immediate Past-President Hyslop stated his appreciation for the opportunity to serve and emphasized the importance of supporting access to justice and sustaining the rule of law. He urged the Board to get out of the weeds and start focusing on the future of the legal profession and to communicate with each other. He concluded by stating that the WSBA is fortunate to have a phenomenal and professional staff.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 12:15 p.m. on Friday, September 28, 2018.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary