

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Public Session Minutes

Vancouver, WA

July 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 Friday, July 27, 2018, at 1:15 p.m., recessed at 4:55 p.m., and reconvened on Saturday, July 28, 2018, at 8:25 a.m. at the Hilton, Vancouver, Washington. Governors in attendance were:

Dan W. Bridges
Daniel D. Clark
James K. Doane
Angela M. Hayes
Carla 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 Governors-elect Michael Cherry, P. J. Grabicki, and Russell Knight (Friday only).

The following items were discussed on Friday, July 27, 2018.

REPORT ON EXECUTIVE SESSION

President Pickett welcomed Chief Justice Fairhurst, Justice Madsen, and other guests to the Board meeting and stated that the Board held a retreat the previous day focused on communication; reported on his attendance at the Arizona State Bar Convention; and advised that members of the Oregon State Bar Board of Governors joined the Board for dinner the previous evening.

CONSENT CALENDAR

- a. May 17-18, 2018, Public Session Minutes
- b. June 25, 2018, Special Meeting Public Session Minutes

MEMBER AND PUBLIC COMMENTS

Jean Cotton announced she would be handing over the baton as liaison of the Family Law Executive Committee to Nancy Hawkins at the Board's September 27-28, 2018, meeting and would continue to attend meetings as the President of the Grays Harbor County Bar Association.

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

Treasurer Risenmay introduced four recommendations of the Budget and Audit Committee: (1) consideration of the draft FY2019 budget on first reading; (2) for action, approving fiscal policy revisions to the Continuing Legal Education (CLE) revenue sharing model with Sections; (3) for action, increasing the annual fee for the Law Clerk Program from \$1,500 to \$2,000; and (4) for action, increasing license fees for active Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLLTs) to \$200, and requiring LLLTs to pay an annual \$30 Client Protection Fund assessment.

Draft WSBA FY2019 Budget (first reading)

Treasurer Risenmay advised that the FY2019 draft budget reflects Board policy decisions about the programs, services, and operations needed to advance WSBA's mission, as well as the cost of that programming. He noted that the FY2019 budget was developed and recommended by the Budget and Audit Committee after considering actual and projected revenues, costs, and reserves.

He then apprised the Board of a proposal to reallocate \$50,000 in FY2018 unused capital funds to enhance the sound systems in the WSBA public meeting rooms in this fiscal year. He noted that if reallocation is approved, this same cost would be eliminated from the draft FY2019 capital budget. Discussion ensued regarding the proposed reallocation, as well as other suggestions to enhance virtual and in-person participation in WSBA's onsite and offsite meetings. Governor Stephens moved to authorize reallocation of \$50,000 in the FY2018 capital budget to improve the sound system in the WSBA Conference Center, Hearing Room, and Mountain Rooms in FY2018. Motion passed unanimously. Governor Higginson was not present for the vote.

After introducing WSBA's Associate Director of Finance, Tiffany Lynch, Chief Operations Officer Ann Holmes gave an overview of the draft WSBA FY2019 budget, including the General Fund, Capital Fund, CLE Fund, and Client Protection Fund budgets, noting that the Sections Fund budgets would be presented to the Committee at its September 6, 2018, meeting and the Board at its September 27-28, 2018, meeting. She then presented the meeting materials, which detailed the purpose of each fund; depicted the General Fund expense budget by WSBA programs and operations; compared revenue and cost changes between the FY2018 and FY2019 budgets; and examined revenue, cost and General Fund reserve projections through FY2022.

President Pickett advised that the FY2019 draft budget includes additional funding for conference attendance, in particular, for all Board members and Officers to attend the Western States Bar Conference (WSBC). He noted that the current policy limits attendance. He stated that the Board rarely has time together outside of Board meetings in order to build

relationship, discuss thoughts and ideas, and brainstorm about the practice of law and how the Board is functioning, and that WSBC is very valuable for gathering information, sharing information, and collaborating with other Bars. He expressed the belief that WSBC would be good for the Board and for the members, and would be money well spent. Chief Operations Officer Holmes advised that \$23,000 had been allocated in the proposed budget for President Pickett's request. Discussion ensued regarding the costs and benefits of sending the entire Board to WSBC; the option of some attendees paying their own costs rather than being reimbursed by WSBA; not using license fees to fund attendance at the Conference; increased Board travel around Washington state; the President attending the Conference when it is in Hawaii and the Board attending when it is on the mainland; and the importance of looking at the entire Budget rather than focusing only on parts of it.

Governor Stephens suggested that the FY2019 Capital Budget should include unassigned funds that may be used to address capital issues that arise during the year. Chief Operations Officer Holmes recommended that the Capital Budget include an additional \$40,000 more for this purpose. Questions were raised regarding the adequacy of Section legislative support and the budget increase for the administration of the LLLT license. Treasurer Risenmay asked the Board to let the Budget and Audit Committee know of any other questions or concerns regarding the FY2019 draft budget by August 10, 2018.

Law Clerk Program Annual Fee

Treasurer Risenmay presented the Budget and Audit Committee's recommendation that the annual fee for the Law Clerk Program be increased from \$1,500 to \$2,000 in order to more adequately cover the cost of administering the program. He noted that the fee had been at \$1,500 for the past 20 years. Law Clerk Board Member Maureen Wickert, who became an attorney through the program, advised that the Law Clerk Board felt comfortable with this recommendation. She noted that WSBA staff support has been and remains critical to the success of the program. Discussion ensued regarding the possibility of a step increase in the fee. Treasurer Risenmay moved to approve the Budget and Audit Committee recommendation that the Admission and Practice Rule (APR) 6 Law Clerk program annual fee be increased from

\$1,500 to \$2,000. Motion passed unanimously. Governor Higginson was not present for the vote.

Continuing Legal Education (CLE) Revenue Sharing Model

Treasurer Risenmay reviewed the current and proposed Section CLE revenue sharing models, and advised that there is broad general support among the Sections for the proposed model, although some individual Section leaders have raised questions. He explained that under the proposed model, net revenue would be split with the Sections after WSBA's costs have been covered, and that overall, WSBA revenue would decrease and Sections revenue would increase. Appreciation was expressed to staff for the time taken to explain the proposed change in fiscal policy in detail. Governor Hayes suggested further explanation take place at the Fall Section Leaders meeting so the attendees can understand what is involved in producing CLEs and further education regarding indirect costs. Treasurer Risenmay moved to approve the Budget and Audit Committee recommendation to revise the Continuing Legal Education (CLE) Revenue Sharing Model. Motion passed unanimously. Governor Higginson was not present for the vote.

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

Treasurer Risenmay explained that the LPO license fee has been at \$110 since 2004 and the program is now losing money. For that reason, the Budget and Audit Committee recommended the LPO license fee increase to \$200, and inactive LPO license fees be set at \$100. The Committee also recommended that the active LLLT license fee be increased from \$175 to \$200, and inactive LLLT license fee be set at \$100. With respect to the Client Protection Fund assessment, the Budget and Audit Committee recommended that LLLTs pay the \$30 assessment as lawyers now do, but not LPOs as they have other client protection mechanisms required by law.

Treasurer Risenmay moved to approve the Budget and Audit Committee recommendation to increase active Limited Practice Officer (LPO) and Limited License Legal Technician (LLLT) license fees to \$200, set inactive LPO and LLLT license fees at \$100, require active LLLTs to pay a \$30 (CPF) assessment fee annually, and not require active LPOs to pay any CPF fee since they are

covered by other laws that cover malfeasance. He noted that fees should be commensurate with the scope of the license and that there is a difference in how LLLTs and LPOs, as contrasted to lawyers, are allowed to practice law in Washington state.

Governor Meserve moved to amend the motion and make the license fee for active LPOs and active LLLTs the same as the license fee for active attorneys. She clarified that her motion anticipates new members would pay half of the fee, as stipulated by WSBA Bylaws, and explained that she believes all license fees should be the same for all licensed legal professionals in order to help relieve the angst among the membership regarding the costs to run the limited license programs. Chief Regulatory Counsel McElroy explained that the Washington Supreme Court does not issue partial licenses, or limited licenses, to practice law except as set forth in Court Rule. She also stated that the only WSBA lawyer member type that can practice only a limited type of law by Court Rule is Emeritus Pro Bono; these members pay the same license fee as inactive lawyers and this was the model that was looked to in formulating an approach to the license fees for the other members with limited licenses to engage in the practice of law. She noted that this is not a situation where these members of the Bar were licensed to practice and they chose to limit their practice; their license provides for a limited ability to practice and a limited scope of practice, so the idea was that their license fees also should be limited.

Discussion ensued regarding the increased fee resulting in a high burden on the existing LPO license type and the new LLLT license type and a discouragement to obtaining the licenses, resulting in a continued failure to adequately provide access to justice; and regarding the possibility of tabling the motion until those affected could be present at the meeting to comment.

Governor Stephens moved to postpone the vote on this item until the September 27-28, 2018, Board meeting so interested stakeholders could have notice. Motion failed 4-8-1. Governor Higginson was not present for the vote. Governor Meserve's motion to amend passed 9-4. Governor Higginson was not present for the vote. Governor Risenmay's original motion

regarding license fees, as amended, passed 10-3. Governor Papailiou was not present for the vote.

Governor Hayes moved to amend the Budget and Audit Committee's recommendation regarding the annual CPF fee assessment, to require that both LLLTs and LPOs be assessed the \$30 CPF fee annually. Motion passed 13-1. Governor Risenmay's original motion regarding the CPF assessment, as amended, passed 12-1-1.

COMMITTEE ON PROFESSIONAL ETHICS (CPE) REPORT AND RECOMMENDATION RE SUGGESTED AMENDMENTS TO RPC 1.2 AND RPC 8.4 CONCERNING MARIJUANA-RELATED CONDUCT – Don Curran, CPE Chair (by phone); Lucinda Fernald, CPE Subcommittee Chair; and Jeanne Marie Clavere, Professional Responsibility Counsel (by phone)

CPE Chair Curran referred the Board to the information contained in the meeting materials and reviewed the background of the request. CPE Subcommittee Chair Fernald reviewed and explained the recommendations. She emphasized that the recommendations would not undermine Washington's rule of law but rather would serve to ensure that Washington lawyers are authorized to provide services to clients in need of advice and assistance in order to comply with state law. Governor Swegle moved to approve the CPE's revision of Washington-specific Comment 18 to RPC 1.2 and adoption of Washington-specific Comment 8 to RPC 8.4 to be sent to the Washington Supreme Court. Motion passed 13-0-1. Governor Bridges requested his abstention be recorded in the Minutes.

UPDATE FROM WASHINGTON NEW AND YOUNG LAWYERS COMMITTEE (WYLC) – Mike Moceri, Chair; Kim Sandher, Chair-elect, and Ana LaNasa-Selvidge, Member Services and Engagement Manager

Chair Moceri explained the makeup of the WYLC. Chair-elect Sandher advised that the WYLC is looking for the Board's support regarding health care exchanges and public service loan forgiveness for new and young lawyers. Executive Director Littlewood stated she would be happy to be a resource since she spent much of her early career working on loan repayment initiatives and advised that the Bar Foundation previously had a loan repayment program until the primary funder, Sallie Mae, discontinued its support. Chair Moceri noted that the WYLC Debt Subcommittee might be able to help explore this angle. Chair Moceri then advised that

several of the WYLC's themes this year include improving communication within the Committee and its constituents by increasing utilization of social media; and improving the nomination and selection process for the BOG At-Large (WYLC) Governor.

The following items were discussed on Saturday, July 28, 2018.

APPROVE MARCH 19, 2018, SPECIAL MEETING PUBLIC SESSION MINUTES

Governor Risenmay referred the Board to the information contained in the meeting materials and moved to approve the Minutes of the March 19, 2018, Special Meeting Public Session as amended by his redline version contained in the meeting materials in order to more clearly reflect the proceedings for the March 19, 2018, meeting. Motion passed 11-0-3. Governors Doane and Higginson requested that their abstentions be recorded in the Minutes.

SELECTION OF 2018-2019 WSBA TREASURER

Treasurer Risenmay shared his experiences as Treasurer with the Board and noted that it is helpful to have training and experience in finances. He explained that it is a fiduciary duty to ensure that license fees are being used appropriately and to examine each of the programs to ascertain whether they are effective and efficient. He stated that Chief Operations Officer Holmes and her staff were a tremendous resource to him. He concluded by stating that being Treasurer of this organization was challenging but rewarding. Former Treasurer Jill Karmy also shared her experience as Treasurer, echoing much of what was said by Treasurer Risenmay. President Pickett appointed Executive Director Littlewood, Interim General Counsel Shankland, and Chief Justice Fairhurst as Canvassers.

Treasurer Risenmay nominated Governor Stephens as the 2018-2019 Treasurer. Governor Hunter nominated Governor Bridges as the 2018-2019 Treasurer. Discussion ensued regarding whether the nominees should be in the room when they each spoke to their candidacy and whether they should be allowed to vote. It was decided by the Board that each candidate would be out of the room while the other candidate spoke, and that the candidates could vote in the secret ballot voting process. Each candidate spoke to his background and experience, and

answered questions from the Board. The Board then held a discussion regarding the candidates and a secret ballot was taken. Governor Bridges was announced as the 2018-2019 Treasurer.

UPDATE FROM PERSONNEL COMMITTEE – Governor Angela Hayes, Chair

Chair Hayes reviewed the work of the Personnel Committee this year. She stated that the compensation survey confirmed that the Executive Director's salary is within the market for that position. She then referred the Board to the updated Executive Director job description contained in the meeting materials and noted that it was an education for the Board to learn what the position requires and the time spent in each area. She explained that a significant amount was added to the Regulatory function, which is outside the Board's purview. She concluded by expressing her gratitude for Human Resources Director Dujon-Reynolds and the Committee members.

UPDATE RE FREE LEGAL RESEARCH TOOL FOR MEMBERS – Terra Nevitt, Director of Advancement/Chief Development Officer; Ana LaNasa-Selvidge, Member Services and Engagement Manager; and Destinee Evers, Practice Management Assistance Advisor

Director of Advancement Nevitt provided background regarding WSBA's history with Casemaker, the legal research tool currently offered free of charge to WSBA members as a member benefit. She advised that the contract with Casemaker would expire on October 1, 2018, and that the team had initiated an RFP to determine what other legal research tools might be available. Manager LaNasa-Selvidge reported that two responses were received: one from Casemaker and one from Fastcase. She referred the Board to the comparison of the two tools contained in the meeting materials. She further advised that two member surveys had been conducted, as well as usability studies with focus groups, and that counterparts across the country were interviewed regarding Fastcase since staff had not previously worked with it.

Advisor Evers reported that over 600 responses were received during the general member survey regarding the legal research tools members are using and their needs. She referred the Board to the results of the survey contained in the meeting materials and explained the findings. Advisor Evers noted that both platforms are expected to undergo significant upgrades in the coming year. Manager LaNasa-Selvidge noted that neither platform was perfect and that

both would present challenges. She stressed that there would be a need for training and available resources for members to use whatever tool is provided. Executive Director Littlewood noted that staff would need guidance from the Board at this meeting on how to proceed. Discussion ensued regarding waiting to make any change until the platforms are updated in the near future; whether to provide one option or both; offering both and getting member feedback; negotiating a contract for the shortest amount of time until the platforms are upgraded; the length and cost of the contracts; the importance of being frugal with this item; and a good member benefit to continue. It was the consensus of the Board to move forward with renewing the Casemaker contract, continue discussions with Fastcase, and report back to the Board at its September 27-28, 2018, meeting.

UPDATE RE MEMBER HEALTH INSURANCE – Kim Hunter, Governor; Terra Nevitt, Director of Advancement/Chief Development Officer; and Ana LaNasa-Selvidge, Member Services and Engagement Manager

Governor Hunter reviewed her research on health plans through Washington state and the need among WSBA members. Director of Advancement Nevitt reviewed the history and research involved and reported on the two solutions used by other bar associations: (1) a private exchange or (2) a multiple employer welfare arrangement (MEWA). She suggested that the private exchange would likely be the better model, as MEWAs are expensive to set up and there is currently some regulatory uncertainty. Discussion ensued regarding the possibility of engaging with Member Benefits, Inc. based in Florida to set up a private exchange with the understanding that there is no guarantee of significant savings, but the exchange will provide members with more options; that staff has been told, but not yet confirmed, that ABA health benefits are no longer offered in Washington state; that some county bar associations may offer health insurance; and that HB 24008 signed by Governor Inslee requires health care providers to provide health insurance in Washington state. It was the consensus of the Board to move forward to establish a private exchange through Members Benefits, Inc.

UPDATE RE MANDATORY MALPRACTICE INSURANCE – Hugh Spitzer, Chair; Doug Ende, Chief Disciplinary Counsel; and John Bachofner

Chief Disciplinary Counsel Ende advised the Board that this was an interim report and that no action was being requested. He emphasized that although he is the staff liaison to the Task

Force, a mandatory malpractice proposal would not be a disciplinary initiative. He noted that the idea is aligned with the core purposes for regulating the practice of law as reflected in the regulatory objectives of General Rule 12.1: that legal services must be regulated in the public interest, including the objective to protect the public. He then reviewed the background, charter, and composition of the Task Force. Chair Spitzer reviewed the current status of the Task Force, its key findings, feedback received, and possible approaches. He stated that the tentative recommendation is that malpractice insurance should be required for Washington state lawyers based on a free market model with mandated minimum coverage levels and a “continuing” coverage requirement, and with specific exemptions to be developed further. He concluded by stating that the next steps are to obtain and consider feedback from the Board, continue information-gathering efforts, inform WSBA members about the initiative, and consider additional comments. He noted that the Task Force will continue to refine the proposal and prepare a draft court rule for consideration by the Board when the Task Force final report is submitted.

RECOMMENDATIONS FROM COURT RULES AND PROCEDURES COMMITTEE – Jefferson Coulter, Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) Subcommittee Chair (phone), and Julie Shankland, Interim General Counsel (first reading)

Subcommittee Chair Coulter reported that the Criminal Rules were on the Court Rules and Procedures Committee’s schedule this year. He reviewed the process and work of the Committee and listed the stakeholders. There were no questions or discussion.

RECOMMENDATIONS FROM CIVIL LITIGATION RULES DRAFTING TASK FORCE – Ken Masters, Chair (first reading)

Chair Masters reported that the recommendations from the Civil Litigation Rules Drafting Task Force were the result of a 10-year voluntary effort, including the work of the Escalating Cost of Civil Litigation Task Force. He reviewed the Roster and noted that the mandate of the Task Force was to find ways to reduce the cost of civil litigation in Washington state. He advised that the Board needs to take the long view when considering the proposed amendments. He stated that the proposed amendments aspire to change the culture of litigation by making cooperation the lynchpin in the effort to lower the cost of civil litigation and ending the trend toward larger and larger sanctions. He advised the Board that it is important for the Board to

make a recommendation and comments to the Supreme Court on these Rules and urged the Board to review all the rules in context, not just look at individual rules. He reviewed the proposed amendments to the Civil Litigation Rules and reminded the Board that policies are set by the Board, not by the Task Force, and so the Task Force drafted rules consistent with policies the Board had set. He concluded by noting that the President of the District and Municipal Court Judges Association (DMCJA) agreed with the Cooperation Rule and would be reviewing the remainder of the proposed amendments. There were no questions or discussion.

APPOINT CHAIRS AND VICE-CHAIRS TO WSBA COMMITTEES AND BOARDS

Chief Regulatory Counsel McElroy advised the Board that the Character and Fitness Board Vice-Chair position had been pulled from the slate as they had more than one individual interested in the position. Governor Clark moved to approve the slate as contained in the meeting materials with the exception of the Character and Fitness Board. Motion passed 12-0-1. Governor Papailiou was not present for the vote.

MEMBER ENGAGEMENT WORK GROUP CHARTER AND ROSTER – Rajeev Majumdar, President-elect, and Sara Niegowski, Chief Communications and Outreach Officer

Governor Bridges moved to approve the Member Engagement Work Group Charter and Roster as contained in the meeting materials. Motion passed unanimously. Governors Hunter and Papailiou were not present for the vote.

COMMITTEE ON MISSION PERFORMANCE AND REVIEW (CMPR) UPDATE AND RECOMMENDATIONS (first reading)

Governor Risenmay noted that the only issue he had seen addressed by the CMPR in the past three years was the diversity and inclusion issue on committee memberships. He suggested that the Board is not looking at mission performance, only at diversity and inclusion, and that there had been no meaningful report or analysis regarding whether the committees are effectively performing the tasks they had been given.

UPDATE FROM ADDITION OF NEW GOVERNORS WORK GROUP – Governor Alec Stephens and Governor Dan Bridges, Co-Chairs

Co-Chair Bridges reported that the Addition of new Governors Work Group Roster has been filled and that the Work Group is working diligently. He advised that the next meeting of the Work Group would be on August 14, 2018.

PROPOSED BYLAW AMENDMENT RE ENDORSING CANDIDATES – Governor Chris Meserve (first reading)

Governor Meserve referred the Board to the information contained in the meeting materials and stated that she assumed everyone had read the proposed amendment. President Pickett advised that this item would be on the Board's September 27-28, 2018, agenda for action.

CONTINUED DISCUSSION OF REFERENDUM PROCESS REVIEW WORK GROUP RECOMMENDATIONS – Governor Kim Risenmay, Chair, and Julie Shankland, Interim General Counsel

President Pickett announced that this item would be taken up at the Board's September 27-28, 2018, meeting.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 12:20 p.m. on Saturday, July 28, 2018.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary