

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes

Seattle, WA

January 16-17, 2020

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Rajeev D. Majumdar on Thursday, January 16 at 9:00 AM at the offices of the Washington State Bar Association, Seattle, Washington. Governors in attendance were:

Hunter M. Abell

Sunitha Anjilvel

Daniel D. Clark

Peter J. Grabicki

Carla J. Higginson

Kim Hunter

Jean Y. Kang

Russell Knight

Bryn Peterson

Kyle D. Sciuchetti

Alec Stephens

Paul Swegle

Judge Brian Tollefson (ret.)

Also in attendance were Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Financial Officer Jorge Perez, Director of Human Resources Felix Neals, Chief Communications and Outreach Officer Sara Niegowski, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, Interim Director of Advancement Kevin Plachy, and Executive Administrator Shelly Bynum. Also present and signed in as attending were Nancy Hawkins (WSBA Family Law Executive Committee Liaison), Jennifer Ortega (LLLT Board), James E. Macpherson (Washington Defense Trial Lawyers), and Maureen Mitchell.

Consent Calendar

Gov. Abell moved approval of the consent calendar. Motion passed unanimously. Gov. Higginson was not present for the vote.

Executive Director's Report

Interim Executive Director Nevitt referred to her written report and took questions from the Board about utilization of the Keller deduction and the legal research tools WSBA offers as a free member benefit.

President's Report

Pres. Majumdar reported on Board engagement with the members around the state, including dinner with QLaw the evening before.

Member and Public Comments

The Board received public comment from James MacPherson, Kevin Whatley, and Jennifer Ortega.

Reports of Standing or Ongoing BOG Committees

Executive Committee

Pres. Majumdar reported on the most recent Executive Committee meeting.

APEX Awards Committee

Gov. Knight reported that WSBA is seeking APEX Award nominations and the Committee is exploring a proposal to change the manner in which the awards are presented.

Personnel Committee

Gov. Stephens reported that the Personnel Committee is discussing the compensation system and the design of the evaluation for the Executive Director.

Legislative Committee

Gov. Sciuchetti reported on the joint meeting of the BOG Legislative Committee and the Legislative Review Committee. Discussion followed.

Nominations Review Committee

Gov. Sciuchetti reported on the Nominating Committee meeting held earlier in the day.

Diversity Committee

Gov. Kang reported that the Committee met yesterday and is discussing recruitment for the Committee, the Board of Governors, and sections. She also reported on the IL mentorship event the Committee recently completed as well as upcoming projects, including a Legal Lunchbox CLE and Beyond the Dialogue forum.

Long-Range Planning Committee

Gov. Swegle reported that the Committee has met and shared his vision for the Committee's work this year.

Member Engagement Work Group

Gov. Hunter reported that the Workgroup is examining its charter and the committee's vision for engaging with the members this year.

Gov. Stephens requested that we examine our most recent strategic plan with an eye toward developing a new strategic plan in the future. Pres. Majumdar asked that Gov. Swegle and the Long-Range Planning Committee consider that suggestion.

Budget & Audit Committee

Treas. Clark referred to his written report. Chief Financial Officer Perez presented on the financial audits and the budget reforecast processes. Discussion followed. CFO Perez also presented a budget request to purchase budgeting software. Pres. Majumdar set a special meeting for Friday, January 17, 2020, at 4PM to take up the budget request.

Reports of Task Forces, Work Groups and Liaisons

ABA Mid-Year Meeting Preview

WSBA ABA Delegate Maureen Mitchell reported on some of the issues the ABA House of Delegates has taken up in the past and provided a preview of issues that will be addressed at the upcoming meeting, including resolutions related to gun safety, voting rights, federal election security, regulation of unmanned vehicles, and the Violence Against Women's Act. Discussion followed.

Client Protection Fund (CPF) Annual Report

Acting Chair Carrie Umland presented the Client Protection Fund's annual report as provided in the materials. Umland and Assistant General Counsel Nicole Gustine took questions. Discussion followed.

Governor Liaison Reports

Gov. Abell reported that he has been in close contact with the Indian Law Section and passed on concerns about potential changes in the University of Washington Native American Law Center. Gov. Stephens reported that he participated in the Civil Rights Section's annual retreat.

Personnel Committee Matters

Second Read: Partial Proposed Amendment to WSBA Bylaws

Gov. Stephens presented the Bylaw proposal for second read as provided in the materials. The Board heard public comment from Jim MacPherson. Interim Executive Director Nevitt provided comment and then excused herself for the discussion. Discussion followed. Gov. Grabicki moved to table to proposal for the Personnel Committee to start over. Motion failed 8-5. Gov. Swegle moved to amend the proposal to add to Article IV, B.6 at end of the sentence: “No individual shall serve as Executive Director for more than ten years, except that the Board may extend the

contracts for the Executive Director past that period in its discretion by a 66% supermajority vote for increments of two-year periods.” Motion to amend passed 10-3. Gov. Swegle moved the proposal as amended. Motion passed 8-5.

Proposed Technical Amendments to APR 8(b)

Chief Regulatory Officer McElroy presented the proposed amendments to Admission to Practice Rule 8(b) as provided in the materials. Discussion followed. Gov. Abell moved for adoption. Motion passed unanimously.

Legislative Committee Matters

Legislative Session Report

Outreach and Legislative Affairs Manager Sanjay Walvekar provided a report on the current legislative session as provided in the materials. Walvekar took questions and discussion followed.

Legislative Review Committee Policies & Procedures

Gov. Sciuchetti presented the proposed changes to the Legislative Review Committee's policies and procedures as provided in the materials. Discussion followed. Gov. Sciuchetti moved for passage of the proposal as set forth in the materials. Motion passed unanimously.

Appointment to the Client Protection Board

Pres. Majumdar introduced the topic, noting that appointments are made by the President-Elect and approved by the Board. President-Elect Sciuchetti requested a motion. Gov. Swegle moved the appointment. Motion passed unanimously with Gov. Kang abstaining.

Proposed Amendments to WSBA Bylaws

Second Read: Article II RE: Definition of Quorum

Pres. Majumdar introduced the proposal as provided in the materials. Gov. Stephens moved for adoption. Motion passed unanimously.

Second Read: Article IV & VI RE: Board Terms, Composition, and Elections

Gov. Knight introduced the revised amendment as provided in the materials. The Board heard public comment from Jordon Couch, Jim MacPherson, Crystal Lambert (LLLT Board), Kevin Whatley, and Jean Cotton. Discussion followed. Gov. Knight moved to amend and adopt the proposal to change all references to "new and young lawyer" to "Young Lawyer," which is a defined term in the Bylaws and to add language to clarify that if the BOG adds names, the vote is still by only those members who are Young Lawyers and not the entire membership.

b. Young Lawyer At Large Governor: The Washington Young Lawyers Committee shall forward at least three candidates to the BOG who qualify as Young Lawyers as defined by Article XII(B) of these Bylaws as of December 31 in the year of the election. The BOG shall then place all candidates forwarded by the Washington Young Lawyers Committee on the ballot to be elected by a vote of all Young Lawyer Members as defined in section XII(B) of these bylaws. If the Washington Young Lawyers Committee forwards less than three candidates the BOG may, at its option, select additional qualifying candidates on its own or place only those candidates forwarded by the Washington Young Lawyers Committee on the ballot to be elected by a vote of all Young Lawyer Members as defined in section XII(B) of these bylaws.

Discussion followed. Gov. Abell moved to sever the question into three parts (1) term limits, (2) number and composition of board members, and (3) how at-large positions are filled. Motion passed 11-2.

The Board took up discussion of term limits and voted on the severed motion, which passed unanimously. Gov. Swegle was not present for the vote.

The Board took up the discussion of the number and composition of board members. Gov. Higginson called the question. Motion passed unanimously. The severed motion on this topic passed unanimously.

The Board took up the discussion of the at-large positions. The Board heard public comment from Jordan Couch, Jim MacPherson, and Kevin Whatley. Discussion followed. Gov. Higginson called the question. Motion passed 12-1. The severed motion on this topic passed 12-1.

Second Read: Article VII RE: Executive Committee Composition

Gov. Swegle moved the proposal as provided in the materials. Motion passed unanimously.

Second Read: Article XI RE: Sections

Gov. Higginson presented the recommendation of the Ad-Hoc Advisory Committee on the Form of the Proposal for a Bylaw Re: Sections and Public Positions that a Bylaw proposal is not required. Gov. Higginson presented her alternate proposed policy as provided in the materials. The Board took public comment from Nancy Hawkins and Jean Cotton. Discussion followed. Gov. Higginson moved that the policy be adopted as an initial draft to be submitted to the Legislative Committee, which will reach out to the Sections for input and report back to the Board. Motion was not seconded. Gov. Swegle moved to amend the policy where it details the basis for the GR 12 reasoning to merely state that the Section provide a good faith reason under GR 12. Motion was not seconded. Gov. Swegle moved to approve the policy. Motion was not seconded. Gov.

Stephens moved to refer the policy to the Legislative Committee for further work. Gov. Higginson offered a friendly amendment to approve the policy in the materials as a draft. Gov. Stephens did not accept. Gov. Peterson offered a friendly amendment that after the Legislative Committee reworks the draft, the policy be circulated to sections for feedback. This amendment was accepted. Motion passed unanimously. Gov. Swegle was not present for the vote. Pres. Majumdar directed that this item be put on the agenda for the March BOG Meeting.

First Read: Article III Re: Judicial Status

Gov. Hunter introduced the proposal as provided in the materials. Chief Regulatory Counsel McElroy provided further detail on the proposed amendments. Discussion followed. Pres. Majumdar noted that the matter was not on for action and would be taken up at the March meeting.

Update on Mandatory Malpractice Insurance

Pres. Majumdar presented his request for the Board's endorsement on his proposed approach as provided in the materials to addressing the proposed court rule related to mandatory malpractice insurance. The Board heard public comment from Kevin Whatley (Equal Justice Washington) and Jim MacPherson. Gov. Higginson moved the proposal. Motion passed unanimously.

Presentation on Office of General Counsel's Role in Disciplinary Proceedings

General Counsel Shankland presented on the Office of General Counsel's role in the Washington State legal discipline system.

Proposed Amendments to WSBA Bylaws (continued)

Second Read: Article XI RE: Sections (continued)

Pres. Majumdar introduced the bylaw change as provided in the materials. Gov. Swegle provided background on the reason for the moved the proposal. Motion passed unanimously.

Proposed Rulemaking Re: Civil Arrests in Connection with Judicial Proceedings

Vanessa Torres Hernandez, Director of Advocacy at the Northwest Justice Project, Annie Benson, Senior Directing Attorney at the Washington Defender Association, and Enoka Herat, Police Practices and Immigration Counsel of the ACLU of Washington provided the background and rationale for the proposed rulemaking.

Committee on Professional Ethics Chair Don Curran deferred to Committee Members Asel Neutze and Pamela Anderson to present the committee's position on the proposed rulemaking.

The Board heard public comment from Kevin Whatley. Discussion followed. It was pointed out that because both proposed rules are on an expedited 60-day comment period, the deadline for submission of comments is February 3. Gov. Swegle moved to recommend to the Court adoption of GR 38 as appearing on page 304 of the materials. Gov. Abell proposed that we request an extension for time to comment on the proposed amendment to Comment 4 to RPC 4.4. Pres. Majumdar indicated that there was already a motion on the table relating to GR 38, which the Board would resolve first. There was no second to Gov. Abell's proposal. The underlying motion passed 11-1. Gov. Peterson was not present for the vote.

Discussion followed regarding the proposed amendment to Comment 4 to RPC 4.4. Gov. Abell moved that WSBA request additional time from the Supreme Court to comment sufficient to encompass the next meeting of the Committee on Professional Ethics. Motion passed 9-4. Pres. Majumdar requested that the Committee consider meeting sooner to resolve the matter quickly so that the Board can comment before expiration of the February 3 deadline.

Proposed Policy Re: Process for Bringing Matters to the BOG

Interim Executive Director Nevitt presented the proposed policy as presented in the materials. Discussion followed. Gov. Abell moved for adoption. Gov. Knight moved to amend to add language that it doesn't limit President *or* any Governors authority under the bylaws to put things on the agenda. Motion passed unanimously. Underlying motion passed unanimously.

Governor Roundtable

Gov. Abell reported on efforts to move forward on the Rural Practice Initiative.

Announce Basis for Executive Session Pursuant to RCW 42.30.110(1)(i)

Pres. Majumdar announced that the Board will meet in Executive Session as permitted by RCW 42.30.110(i)-to discuss with legal counsel representing WSBA potential litigation to which WSBA is likely to become a party.

The Board recessed to executive session at 1:50 PM for advice from legal counsel about potential litigation and resumed the meeting at 2:30 PM.

LLLT Candidate Education

Interim Executive Director Nevitt introduced the proposal as provided in her Interim Executive Directors Report. The Board took public comment from Nancy Hawkins. Discussion followed. Gov. Higginson moved that the WSBA take no action to provide LLLT education at this time. Motion passed 11-1 with Gov. Stephens abstaining.

ADJOURNMENT

There being no further business, the meeting was adjourned at 2:51 PM on Friday, January 17, 2020.

Respectfully submitted,

Terra Nevitt

Terra Nevitt
WSBA Interim Executive Director & Secretary