

MINUTES

Public Session Washington State Bar Association BOARD OF GOVERNORS

**Union, WA
July 27-28, 2017**

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Brad Furlong on Thursday, July 27, 2017, at 1:30 p.m., at the Alderbrook Resort, Union, Washington. Governors in attendance were:

Keith M. Black
Dan W. Bridges
Mario M. Cava
Daniel D. Clark (Friday only)
Ann Danieli
James K. Doane
Angela M. Hayes
Andrea S. Jarmon
Jill A. Karmy
Rajeev D. Majumdar
Christina A. Meserve
G. Kim Risenmay

Also in attendance were President-elect Bill Pickett, Immediate Past-President Bill Hyslop, Executive Director Paula Littlewood, General Counsel Sean Davis, Chief Regulatory Counsel Jean McElroy, 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, and Executive Assistant Margaret Shane. Governor Papailiou was not present for the Public Session portion of the meeting.

The following items were discussed on Thursday, July 27, 2017.

REPORT ON EXECUTIVE SESSION

President Furlong reported that no action was taken to deal with internal matters during Executive Session except to set time limits for the District 4 Governor interviews. He advised

that WSBA is conducting its own investigation of allegations made regarding former President Robin Haynes and that the internal processes around reimbursements to volunteers were reviewed by WSBA's independent auditors.

SWEARING-IN OF 2017-2018 PRESIDENT-ELECT

William D. Pickett was sworn in as the 2017-2018 WSBA President-elect by The Honorable Barbara L. Linde.

INTERVIEW AND SELECTION OF DISTRICT 4 GOVERNOR

President Furlong explained the election process for the 2017-2018 District 4 Governor to fill the remaining term of President-elect Bill Pickett's seat that was vacated upon the resignation of President Haynes: the presentation order was determined by random draw: Bret J. Uhrich first; Matthew R. Kaminski second, Richard R. Johnson third, and Daniel D. Clark fourth; each candidate will be out of the room for the other candidate's presentation; each candidate will have 10 minutes to address the Board and answer questions with the exception of Mr. Clark who will have 20 minutes due to an accommodation; all candidates will be excused for discussion and debate during Public Session; a vote by secret ballot will be taken by the Board; the President will cast a secret ballot to be used only in the event of a tie; and the results will be announced to the candidates outside the meeting room. President Furlong appointed Executive Director Paula Littlewood, General Counsel Sean Davis, and The Honorable Barbara Linde as canvassers.

Each District 4 candidate in turn presented their vision to the Board and responded to questions from the Board. Following the interview process, with all candidates out of the room, discussion by the Board ensued regarding the four candidates. President Furlong then proceeded with the secret ballot vote. Executive Director Littlewood provided President Furlong with the results of the election secret ballot vote and he announced Daniel D. Clark as the WSBA District 4 Governor for the remaining 2017-2018 term. Mr. Clark was sworn in by The Honorable Barbara L. Linde and took his place at the table the next day. President Furlong and Executive Director Littlewood informed the candidates of the outcome of the vote. It was noted that Mr. Clark will be eligible to run in the 2018-2021 election for the District 4 seat.

WSBA LEGISLATIVE WORK GROUP RECOMMENDATION (first reading) – Former Governor Phil Brady, Chair (by phone)

Former Governor Brady summarized the work of the WSBA Legislative Committee and the basis for the Work Group's recommendations regarding the future of the Committee. He explained that the Work Group discussed whether to sunset the Committee in light of the work of the BOG Legislative Committee and its more active role during the Legislative Session, but ultimately unanimously decided some form of the WSBA Legislative Committee could add value as an ad hoc committee. He then explained the interface between the Board and the Committee if the Work Group's recommendations are adopted. Discussion ensued regarding the recommendation that a Committee member not be reappointed if they don't attend meetings due to significant attendance issues and problems reaching a quorum at meetings; the recommendation that the Committee not be reviewed by the Committee on Mission Performance and Review; the term limits of Committee members; and the email from Governor-elect Kyle Sciuchetti, Chair of the WSBA Legislative Committee, that was circulated to the Board prior to this meeting expressing his concerns with the recommendations. President Furlong advised that Governor-elect Sciuchetti was unable to attend this meeting, and suggested the Board members have discussions with him individually if they feel the need. He concluded by stating that he hoped Governor-elect Sciuchetti would be available to attend the September Board meeting.

NOMINATION AND ELECTION OF 2017-2018 WSBA TREASURER

2016-2017 Treasurer/Governor Jill Karmy nominated Governor Kim Risenmay to be the 2017-2018 WSBA Treasurer. Governor Majumdar moved to accept the nomination. Motion passed unanimously.

CONSENT CALENDAR

Governor Majumdar pulled the struck-through items from the Consent Calendar and they were taken up later during Public Session:

- a. May 18-19, 2017, Public Session Minutes
- b. June 7, 2017, Special Meeting Public Session Minutes
- c. June 23, 2017, Special Meeting Public Session Minutes

- ~~d. Appoint Chairs and Vice Chairs to WSBA Committees and Boards~~
- ~~e. Amendments to Admissions Policies~~
- f. Amendment to Rules for Appeals of Decisions for Courts of Limited Jurisdiction (RALJ) 9.2
- g. Modified Amendments to Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 3.3
- h. Committee on Professional Ethics (CPE) Suggested Amendments to Rules of Professional Conduct (RPC) 1.7, 1.15A, and 4.2
 - ~~1. Request of Chief Disciplinary Counsel Under Bylaws Section IV(E) for Authorization to Submit Public Comment to Supreme Court re Suggested Amendment to RPC 4.2~~
- ~~i. Referendum Process Review Work Group Proposed Roster~~
- j. Renewal of Washington Leadership Institute (WLI) Memorandum of Understanding
- k. Updated WSBA Amicus Curiae Brief Policy
- l. Proposed Amendments to WSBA Sections Bylaws

PROPOSED AMENDMENT TO ARTICLE XI(f) SECTIONS RE LEGISLATIVE ACTIVITY – Terra Nevitt, Director of Advancement/Chief Development Officer, and Paris Eriksen, Sections Program Manager

Director Nevitt explained that the amendment to Article XI-Sections regarding legislative activity is being proposed in order to provide Section Executive Committees with additional flexibility and timeliness in responding to direct requests for feedback from legislators. Manager Eriksen advised that the Sections need to act quickly during Session and that the proposed amendment resembles the Bylaw provision for the BOG Legislative Committee. She noted that feedback had been requested from the Sections.

WSBA SECTION BYLAWS ALIGNMENT WITH WSBA BYLAWS - Sean Davis, General Counsel; Terra Nevitt, Director of Advancement/Chief Development Officer; and Paris Eriksen, Sections Program Manager

General Counsel Davis explained that the Family Law Section and the Antitrust Consumer Protection and Unfair Business Practices Section submitted proposed Bylaw amendments that conflict with Article XI and that the Indian Law Section submitted no proposed Bylaw amendments. Jean Cotton and Ruth Edlund from the Family Law Executive Committee explained that the reason the Family Law Section's proposed Bylaw amendments do not conform to the WSBA Bylaws is because the Section wishes to limit voting membership to Attorney members. They advised that the proposed Bylaw amendments conform with WSBA Bylaws in every other way and that the Family Law Section is asking for an exemption regarding this one item. General Counsel Davis emphasized that the WSBA Bylaws preempt Section Bylaws, which must be approved by the Board, with the result that any active member of

WSBA, including LLLTs and LPOs, must be a voting member of the Sections. Discussion ensued regarding the two Sections that submitted nonconforming Bylaw amendments and the one Section that submitted no Bylaw amendments. It was proposed that a letter be sent to those three Sections advising them they have until the September 28-29, 2017, Board meeting to submit proposed Bylaw amendments that conform to the WSBA Bylaws, otherwise, WSBA Bylaws are in effect.

The following items were discussed on Friday, July 28, 2017.

PROPOSED MANDATORY MALPRACTICE INSURANCE TASK FORCE CHARTER (first reading) – Bill Pickett, President-elect, and Doug Ende, Chief Disciplinary Counsel

President-elect Pickett reviewed the background and the purpose of the proposed Task Force. Chief Disciplinary Counsel Ende inquired whether the Board would like to see a proposed roster if the draft Charter is on the agenda for the September Board meeting, but received no response. Discussion ensued regarding waiting for a year to form the Task Force in order to have time to improve the relationship with WSBA members; a request for specific ideas as to how communication with the membership will be handled and method for receiving feedback; an observation that the United States is one of the few Western developed nations that does not require mandatory malpractice insurance and that within the United States only Oregon requires it and Idaho will require it soon; how to evaluate the impact on solo practitioners, new lawyers, and lawyers who charge no fees, as well as those who do pro bono work; inclusion of WSBA members and public members on the Task Force; issuance of a final report and a minority report. President Furlong advised that these comments would be discussed at the next Executive Committee meeting and a revised Charter brought to the Board for action at its September 28-29, 2017 meeting.

DRAFT WSBA FY2018 BUDGET – Governor Jill Karmy, Treasurer; Ann Holmes, Chief Operations Officer; and Mark Hayes, Controller (first reading)

Treasurer Karmy explained that the objectives at this meeting are to review the draft FY2018 WSBA budget as unanimously recommended by the Budget & Audit Committee, answer

questions, and provide the Committee with guidance to finalize and present the final FY2018 budget to the Board for action at its September 27-28, 2017, meeting.

Chief Operations Officer Holmes introduced the FY18 draft budget, presenting a graphic breakdown showing how the budget supports all WSBA programs, services, and operations. She explained that the WSBA budget actually consists of five budgets: (1) the General Fund (which supports most Bar programs, services, and operations); (2) the Capital Budget; (3) the Continuing Legal Education (CLE) Fund; (4) the Client Protection Fund (CPF; formerly the Lawyers' Fund for Client Protection); and (5) the Sections Fund. The draft budget presented included the first four of these budgets (section budgets are not due until August, and will be reviewed at the September Committee and Board meetings). As set forth in the meeting materials, Chief Operations Officer Holmes reviewed revenues, expenses, and reserves in the General Fund, Capital, CLE, and CPF budgets, and how each have changed between the FY17 and FY18 budgets.

Treasurer Karmy and Chief Operations Officer Holmes then responded to Board questions about the WSBA budget impact on reserves (consistent with Board policy, there will be at least \$2 million in General Fund reserves at the end of FY18); the Washington State Bar Foundation (although Foundation fundraising exceeds administrative costs, return on investment (ROI) will continue to be monitored closely); the WSBA sections (the per member charge has not increased, although it does not cover the actual cost of supporting the sections; this year, alternate CLE seminar and products revenue sharing models will be explored with the sections); and Limited License Legal Technician (LLLT) license fees (which, due to a rule change, the Board may now set subject to Supreme Court review).

Executive Director Littlewood explained the proposed WSBA salary pool and how it is administered. She noted that reduced funding for the Legislative Affairs Program reflects efficiencies achieved through the Communications Department realignment, not a change in WSBA's legislative footprint.

The Board expressed interest in gaining a better understanding of the value of WSBA programming. Treasurer Karmy advised that the programs, services, and operations supported by the draft budget presented were examined closely and deemed reasonable by prior Boards. It was noted that the newly instituted coordinated regulatory systems will result in savings. Treasurer Karmy advised that the Board could recommend that the Committee conduct a cost benefit analysis of WSBA programs.

Following discussion, it was the consensus of the Board that the proposed FY2018 budget was ready for presentation at the September Board meeting.

WSBA BYLAWS RE OFFICER OR GOVERNOR VACANCY

President Furlong explained that the Immediate Past-President seat would be vacant next year due to the resignation of former President Haynes and expressed his desire to have a plan presented to the Board at its September meeting to fill the vacancy, not only to support the work of the Officers, but also to have a full contingent on the Executive Committee for the coming year. Governor Risenmay referred the Board to the memo from General Counsel Davis contained in the meeting materials and recommended that the Bylaws be amended to allow for the President to nominate someone from the current or a past Board to fill the role, to be ratified by the Board. In addition, he recommended the Board consider other amendments to the WSBA Bylaws in order to clarify whether a sitting Governor who succeeds to the position of President-elect early has a vote. Discussion ensued regarding whether the WSBA Bylaws would support Governor Risenmay's recommendation, and whether bringing someone from a former Board would really help with historical continuity since they could have been off the Board for a number of years.

Governor Majumdar moved that the vacant Immediate Past-President seat not be filled and that President Furlong ask sitting Governors to help as needed. General Counsel Davis stated that there was not a viable motion on the floor as the maker of the motion and the seconder of the motion did not agree on the interpretation of the motion. Governor Bridges moved that the position be left open for the following year, that the Board not adopt a Bylaw amendment, and to delegate to President Furlong to identify specific responsibilities that need to be covered and

to appoint various sitting Governors to fill those responsibilities. It was noted that a motion could not be made that prohibits other Board members from making amendments. Further discussion ensued regarding the additional workload that Board members would be taking on in the event the seat is left open, and the loss of one of the Officers of the Board and member of the Executive Committee. Governor Bridges' motion failed 3-8.

It was suggested that the Bylaws be amended to allow the President to elect a Past-President to the position, giving the current Immediate Past-President the first right of refusal. Governor Majumdar moved that the President propose a draft Bylaw amendment to allow him to appoint the current Immediate Past-President, not subject to review by the Board, or other appropriate person if the current Immediate Past-President is unable to serve, subject to Board approval. He clarified that his intent was that the person appointed to the vacant seat of the Immediate Past-President would also sit on the Executive Committee and have a vote on that Committee. Governor Risenmay moved to amend the motion to eliminate the need that the person has to be the Immediate Past-President. Motion died for lack of a second. Governor Majumdar's motion passed unanimously. Governor Jarmon was not present for the vote.

CONSENT CALENDAR PULLED ITEMS

Appoint Chairs and Vice-Chairs to WSBA Committees and Boards

Governor Majumdar inquired why only one name was listed in the materials as a Co-Chair on the WSBA Diversity Committee. Executive Director Littlewood explained that one Co-Chair is nominated by the President and appointed by the Board from the WSBA membership and the other Co-Chair would be appointed from the Board of Governors by the President. Governor Majumdar moved to approved the slate as contained in the meeting materials. Motion passed unanimously. Governor Jarmon was not present for the vote.

Amendments to Admissions Policies

It was explained that the proposed amendments to the Admissions Policies would align them with the amendments to the Admission and Practice Rules that will go into effect on September 1, 2017, as well as implement the coordinated admissions of all member types: attorneys, limited licence legal technicians, and limited practice officers. Governor Majumdar moved to

approve the proposed amendments as contained in the meeting materials. Motion passed unanimously. Governor Jarmon was not present for the vote.

Request of Chief Disciplinary Counsel Under Bylaws Section IV(E) for Authorization to Submit Public Comment to the Washington Supreme Court re Suggested Amendment to RPC 4.2

Governor Majumdar noted that it is important to hear what Chief Disciplinary Counsel Ende has to say regarding the suggested amendment to RPC 4.2 and requested that Counsel Ende share his comments with the Board and guests. Counsel Ende reviewed the background of the process leading to the suggested amendment to RPC 4.2 and explained the position of the Committee on Professional Ethics and the reason for his disagreement with the Committee's recommendation. Governor Jarmon moved to approved Counsel Ende's request to submit a public comment to the Supreme Court. Motion passed unanimously.

Referendum Process Review Work Group Proposed Roster

Governor Majumdar requested that the spelling of his name be corrected on the Referendum Process Review Work Group Roster, then moved to approve the Roster. Motion passed unanimously.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 12:30 p.m. on Friday, July 28, 2017.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary