

MINUTES

Public Session Washington State Bar Association BOARD OF GOVERNORS

**Seattle, WA
May 18-19, 2017**

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Robin Haynes on Thursday, May 18, 2017, at 1:10 p.m., at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

Keith M. Black
Dan W. Bridges
Mario M. Cava
Ann Danieli
Sean M. Davis (Friday afternoon only)
James K. Doane
Angela M. Hayes
Andrea S. Jarmon
Jill A. Karmy (by phone)
Rajeev D. Majumdar
Christina A. Meserve
Athan P. Papailiou
William D. Pickett
G. Kim Risenmay

Also in attendance were President-elect Brad Furlong, Immediate Past-President Bill Hyslop, Executive Director Paula Littlewood*, General Counsel/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.

*With the agreement of the Board and the Executive Director, Chief Operations Officer Ann Holmes served as Acting Secretary for the items marked with an asterisk.

The following items were discussed on Thursday, May 18, 2017.

INTERVIEW AND SELECTION OF 2017-2018 WSBA PRESIDENT-ELECT

President Haynes explained that William D. Pickett was the sole candidate running for the 2017-2018 WSBA President-elect position and explained that Mr. Pickett will have 10 minutes in which to address the Board and answer questions; he will leave the room for the Board's discussion and debate during Public Session; a vote by secret ballot will be taken by the Board; and the results announced to Mr. Pickett outside the meeting room. President Haynes appointed Executive Director Paula Littlewood, General Counsel Jean McElroy, and Geoff Revelle as canvassers. Discussion ensued regarding the lack of clarity in the WSBA Bylaws regarding a person being a sitting Governor while holding the office of President-elect. General Counsel McElroy explained that the description of permissible actions for the President-elect and for a Governor are different; in particular, the President-elect cannot vote and all Governors have a vote, so the two seats are incompatible and cannot be held at the same time.

WSBA President-elect 2017-2018 candidate William D. Pickett presented his vision to the Board and responded to questions from the Board. Following this interview process, Mr. Pickett left the room and discussion ensued regarding the candidate. President Haynes then proceeded with the secret ballot vote. Executive Director Littlewood provided President Haynes with the results of the secret ballot vote and she announced William D. Pickett as the President-elect for 2017-2018. President Haynes and Executive Director Littlewood informed Mr. Pickett of the outcome of the vote and he returned to his seat at the Board table.

INTERVIEW AND SELECTION OF THE 2017-2020 WSBA AT-LARGE (B) GOVERNOR

President Haynes explained the election process for the 2017-2020 At-Large (B) Governor: the presentation order was determined by random draw: Robert M. Leen by conference call first; Karama H. Hawkins second; Krista K. van Amerongen third; Renee Maher fourth; Elizabeth M. René fifth; George S. Lundin sixth; Carrie Blackwood eighth; and Alec C. Stephens Jr. ninth; 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; 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 Haynes appointed Executive Director Paula Littlewood, General Counsel Jean McElroy, and Geoff Revelle as canvassers. President Haynes advised that Karama Hawkins had been taken ill and would not be present for her interview, but that she would like to remain on the ballot. It was the consensus of the Board to do so.

Each At-Large 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 nine candidates. The Board was urged to encourage the candidates who were not chosen to become or remain involved in the work of the Bar. President Haynes then proceeded with the secret ballot vote. President Haynes announced that none of the candidates received more than 50% of the votes and that a second-round secret ballot vote would be held between the two candidates with the most number of votes: Alec Stephens and Carrie Blackwood. Executive Director Littlewood provided President Haynes with the results of the run-off election secret ballot vote and she announced Alec Stephens as the WSBA At-Large Governor for the 2017-2020 term. President Haynes and Executive Director Littlewood informed the candidates of the outcome of the vote.

PREVIEW OF UPDATED WSBA.ORG – Jennifer Olegario, Communications Manager

Manager Olegario reviewed the highlights of the WSBA.org website, which is being updated, and answered questions from the Board.

UPDATE ON COMMUNICATIONS DEPARTMENT EVOLUTION

Executive Director Littlewood explained that the Communications Department has been undergoing a realignment in order to improve the WSBA's outreach to its members and the public. She noted that its new name will be the Communications and Outreach Department and will include four divisions: Communication Strategies; Bar and Broadcast Services; Publication

and Design Services; and Outreach and Engagement. She then described the newly updated outreach plan and advised that the Chief Communications Officer position will be posted in the near future.

The following items were discussed on Friday, May 19, 2017.

***LIMITED LICENSE LEGAL TECHNICIAN (LLLT) NEW PRACTICE AREA AND ENHANCEMENTS TO FAMILY LAW PRACTICE – Steve Crossland, LLLT Board Chair, and Nancy Ivarinen, LLLT Board Family Law Advisory Committee Chair**

Board Chair Crossland updated the BOG with highlights from past months and reported that the LLLT concept is becoming much more accepted in other jurisdictions around the country as well as in Canada. He explained that the LLLT Board wants this program to be accessible throughout the state and reported on jobs and volunteer positions held by current LLLTs. He reported that the Court agreed to the proposed enhancements to the existing license, but not the proposed new practice area, and requested that the LLLT Board explore the proposed area more fully as well as other possible areas. He advised that the LLLT Board is investigating the areas of guardianships, immigration, bankruptcy, consumer law, and housing among others.

Committee Chair Ivarinen explained the education component and reported that the approved providers have been expanded to include additional community colleges in Washington state and that most courses can be taken both in-person and remotely, thereby creating greater accessibility and affordability for those interested in pursuing the program. She noted that it is hoped that LLLTs will be licensed in more than one practice area, thereby aiding access to justice for consumers and better economic viability for LLLTs.

Discussion ensued regarding input from the BOG to help make the LLLT program better; development of a timeline to allow adequate time for each step in the development of new practice areas; the process used in revising the APRs; safeguards and clarifications regarding the proposal to allow LLLTs to accompany clients to court; maturation and expansion of the LLLT program; diversity in the LLLT ranks; and the need to find better and more available avenues of educating and communicating with the membership.

***GENERATIVE DISCUSSION: MANDATORY MALPRACTICE INSURANCE – Governor Kim Risenmay and Doug Ende, Chief Disciplinary Counsel**

Chief Disciplinary Counsel Ende introduced the generative discussion, reminding the Board that no recommendations would be made and no action would be requested. He introduced guest Chris Newbold, Executive Vice President of ALPS, who had been helpful in providing background information and an insurance-industry perspective. Governor Risenmay explained that the primary motivation in researching mandatory malpractice insurance is to ascertain whether lawyers, as professionals and as a self-regulating profession, should have an obligation to protect clients from financial harm through the regulatory mechanism of requiring professional liability insurance as a condition of licensing. He explained that the Lawyers' Fund for Client Protection only helps clients when the basis for their claims is malfeasance, but not when it is malpractice. He noted that almost all western nations require lawyers to have malpractice insurance and that in the United States, Oregon has required it since 1978 and Idaho's recent court rule requiring malpractice insurance goes into effect in 2018. In Washington state, malpractice insurance is mandatory for Limited Practice Officers and for Limited License Legal Technicians, but not for lawyers. He explained that there are three general regulatory approaches: the free market system, where lawyers select their own insurance plans and certify their coverage annually; the master policy system, where the bar association or regulator obtains a policy through a private insurance company to provide insurance to all members; and the mandatory fund system, where the bar or regulator runs a fund with each attorney paying into and receiving insurance through the fund. Currently in Washington state, of those lawyers reporting, 14% are not insured, with solo practitioners having the highest uninsured rate.

Governor Risenmay and Chief Disciplinary Counsel Ende touched on some of the pros and cons of mandatory professional liability insurance. Discussion ensued regarding the importance of being methodical in developing a recommendation; the importance of mandatory malpractice insurance in protecting clients; the fact that malpractice insurance often provides coverage for disciplinary allegations; and the need for different requirements for attorneys in different types and stages of practice, including government attorneys, in-house attorneys, and those attorneys who have a license but do not practice. Chief Disciplinary Counsel Ende noted that

this issue is complicated and will require time and a broadly inclusive effort, drawing on knowledge from many different sources and perspectives. Geoff Revelle suggested the Board review the work done on this topic previously by the 1986 WSBA Lawyers' Malpractice Insurance Task Force, chaired by William H. Gates. It was the consensus of the Board to move forward with further consideration of this topic and it was suggested that if a task force is formed, it include industry professionals and professional liability lawyers, and that an attempt be made to gather data from the membership regarding why they are not carrying malpractice insurance. President Haynes advised that the issue would be taken up at the next Executive Committee meeting to determine whether to propose a task force charter for approval at the July 2017 Board meeting.

PROPOSED ABA RESOLUTION OPPOSING 9TH CIRCUIT RESTRUCTURING – James Williams, Washington State Delegate to the ABA

Delegate Williams referred to the information contained in the meeting materials and requested the Board support the ABA Resolution to oppose restructuring the 9th Circuit by voting to co-sponsor the Resolution. Discussion occurred regarding the difference between sponsoring a resolution and supporting a resolution; the pros and cons of splitting the 9th Circuit; discussing methods to fix the access to justice problems caused by long delay in the 9th Circuit; whether the Board should take a position on this issue; and working to ensure that the 9th Circuit is properly staffed. Governor Majumdar moved to co-sponsor the ABA Resolution opposing the 9th Circuit Restructuring and to bind the WSBA delegates to vote in favor of the Resolution. Motion passed 9-5.

CONSENT CALENDAR

- a. March 9, 2017, Public Session Minutes
- b. Suggested Amendments to Law Clerk Board Regulations
- ~~c. BOG Nominations Committee Actions~~
- d. Nominate Chief Hearing Officer, and Chair and Vice Chair of the Disciplinary Board
- e. Mandatory Continuing Legal Education (MCLE) Board Recommendation for Chair
- f. Recommendations from Amicus Curiae Brief Committee
- ~~g. Proposed Amendments to WSBA Sections Bylaws~~
 - ~~1. Real Property, Probate, and Trust Section~~

Governor Cava pulled the BOG Nominations Committee Actions item and moved that Felicia Renee Value, Mark Edmund Vovos, Janice Sue Wang, and Roger Leishman be recommended to the Supreme Court as members, and Lisa Marsh and Frank Michael Washko as alternates, for consideration when making appointments to the Disciplinary Board. Motion passed 9-1. Governor Davis abstained. Governors Black, Karmy, Majumdar and Papailiou were not present for the vote.

The Real Property, Probate, and Trust Section proposed Bylaw amendments were not ready for consideration and will be brought back at a future meeting.

IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) ACTIVITIES AT COURTHOUSES

Discussion ensued regarding this item being an access to justice issue since it has caused foreign-born people to stop coming to court because they are afraid; similarities to Japanese-American internment during World War II; and these activities are contrary to what America stands for. Governor Risenmay moved that President Haynes send a letter to Secretary of Homeland Security John F. Kelly urging that ICE agents refrain from aggressive activities at Washington state courthouses. Motion passed unanimously.

PROPOSED CHARTER FOR REFERENDUM PROCESS REVIEW WORK GROUP

President Haynes reminded the Board that the Washington Supreme Court has asked repeatedly whether the WSBA Bylaws should allow for a referendum on license fees and if the percentages required for a referendum should be changed. She referred the Board to the proposed Charter contained in the meeting materials and advised that she would like to appoint a work group to research the issue and make recommendations to the Board. She noted that Governor Papailiou would like to be included on the work group. She stated that WSBA is the only mandatory state bar that allows a referendum on license fees. Governor Danieli moved to approve the charter as contained in the meeting materials and to create a work group. Motion passed unanimously.

OTHER DISCUSSION

Governor Risenmay reminded the Board that the Washington State Bar Foundation is a fundraising organization that raises funds in support of various programs that the WSBA and other organizations perform. He questioned whether the Foundation performs the function it is supposed to perform and whether the Foundation has been or can be a cost-effective fundraiser. He suggested that the future of the Foundation could be the subject for a generative discussion. Executive Director Littlewood noted that the Budget and Audit Committee will be discussing this subject at its meeting on June 29 and any interested persons are encouraged to attend. Chief Development Officer Nevitt advised that there are many avenues that could be used to resolve perceived problems and explained that without a 501(c)(3) entity at the WSBA, people could not make a tax deductible gift and it would be difficult to obtain grants.

Geoff Revelle encouraged everyone to attend the Access to Justice Conference scheduled for the first weekend of June where the State Plan for the Coordinated Delivery of Civil Legal Aid will be rolled out.

President Haynes announced that a panel discussion will be held on June 8 in the WSBA Conference Center regarding the role of allies in relation to women, race, and age.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 3:00 p.m. on Friday, May 19, 2017.

Respectfully submitted,

Paula C. Littlewood

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WSBA Executive Director & Secretary