

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS

Public Session Minutes

Seattle, WA

September 28-29, 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, September 28, 2017, at 1:15 p.m., at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

Keith M. Black
Mario M. Cava
Daniel D. Clark
Ann Danieli
James K. Doane
Angela M. Hayes
Andrea S. Jarmon (by phone)
Jean Y. Kang
Jill A. Karmy (by phone)
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. Governors Bridges and Papailiou were not present for the meeting.

The following items were discussed on Thursday, September 28, 2017.

REPORT ON EXECUTIVE SESSION

President Furlong reported that in Executive Session the Board approved the July 27-28, 2017, Executive Session Minutes, set the time limit for the At-Large (New and Young Lawyers)

Governor candidates, heard the Executive Director's Report, acted on recommendations of the Judicial Recommendation Committee and the Client Protection Fund Board, and received the report on the Executive Director's annual evaluation.

CONSENT CALENDAR

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

- a. July 27-28, 2017, Public Session Minutes
- b. 2018 Keller Deduction Schedule
- ~~c. Proposed Amendments to Article XI Sections re Legislative Activity~~
- d. Proposed Amendments to Antitrust, Consumer Protection, and Unfair Business Practices Section Bylaws and to Family Law Section Bylaws
- ~~e. Conforming Amendments to Indian Law Section Bylaws~~
- ~~f. Mandatory Continuing Legal Education (MCLE) Board Recommendation to Coordinate Fees~~
- g. Committee on Mission Performance and Review (CMPR) Report and Recommendations
- ~~h. Legislative Work Group Recommendations~~
- ~~i. Council on Public Defense re Rules for Appeal of Decisions of Court of Limited Jurisdiction (RALJ) 9.3~~
- ~~j. Discipline Advisory Round Table (DART) Annual Report and Suggested Amendments to Charter~~
- k. Updated WSBA Amicus Brief Policy

INTERVIEW AND SELECTION OF AT-LARGE (NEW AND YOUNG LAWYERS) GOVERNOR

President Furlong explained the election process for the 2017-2018 At-Large (New and Young Lawyers) Governor to fill the remaining one year of former Governor Sean Davis' term that was vacated upon his resignation to become the WSBA General Counsel. He advised that the presentation order was determined by random draw: Jean Y. Kang first; Annie Yu second; and Russell Knight, third; each candidate will be out of the room for the other candidates' presentations; 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 Furlong appointed Executive Director Paula Littlewood, Chief Regulatory Counsel Jean McElroy, and Geoff Revelle as canvassers.

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 and guests ensued regarding the three 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 Jean Y. Kang as the WSBA At-Large (New and Young Lawyers) Governor for the remaining 2017-2018 term. President Furlong and Executive Director Littlewood informed the candidates of the outcome of the vote. Ms. Kang was sworn in by The Honorable Susan K. Serko and took her place at the table. It was noted that Ms. Kang will be eligible to run in the 2018-2021 election for the At-Large (New and Young Lawyers) seat.

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

WSBA President Furlong turned the gavel over to WSBF President Massong who called the meeting of the Foundation members to order. She referred the Board to the information contained in the meeting materials and explained that approval is being sought for the 2017-2018 slate of WSBF Trustees as recommended by the WSBF Board. She advised that the WSBF would be presenting a check to the WSBA in the amount of \$200,000 to be used for public service and diversity efforts, which she noted is a 14% increase over last year's gift. She reported that in the past year she had met with the Budget and Audit Committee to explore concerns the Board has had regarding the WSBF's ability to meet its full potential. She explained the WSBF's fundraising history to this point and emphasized that it takes time to develop a donor base and that the donor base has risen to 8,000 in a short period of time. She advised that WSBF has increased trustees and donor engagement and that the APEX Awards Dinner was leveraged this year to raise approximately \$30,000 through sponsorships and donations. Discussion ensued regarding the desire to have WSBF Trustees present at this Board meeting to share their vision, and continued donor confusion about the role of the WSBF.

WSBF President Massong explained that James Armstrong, the current WSBF Vice-President, is anticipated to be the WSBF President next year, and that he has termed out at two three-year terms. He had planned to attend the meeting, but was called into court. The WSBF Bylaws allow for a one-year extension for officers. Governor Doane moved to extend the term for James Armstrong for one year. Motion passed unanimously. She then referred the Board to the slate

of Trustees contained in the meeting materials, along with information on the candidates. Governor Doane moved to approve the slate. Motion passed unanimously. WSBF President Massong adjourned the meeting of the WSBF members and passed the gavel back to WSBA President Furlong.

PROPOSED MANDATORY MALPRACTICE INSURANCE TASK FORCE CHARTER

Governor Doane moved to approve the Charter as contained in the meeting materials. Motion passed 11-1.

PROPOSED WSBA BYLAW AMENDMENT RE VACANT IMMEDIATE PAST-PRESIDENT SEAT – Sean Davis, General Counsel

General Counsel Davis referred the Board to the information contained in the meeting materials and explained the proposed Bylaw amendment. Discussion ensued regarding accelerating the process for voting on the proposed Bylaw Amendment so the Immediate Past-President seat would not be vacant until the November 2017 Board meeting. General Counsel Davis explained that the five-day notice for a Special Meeting could be waived if a motion passed with a unanimous vote of the Board at this meeting. Governor Danieli moved to waive the five-day notice requirement. Motion passed unanimously. President Furlong advised that a Special Meeting via conference call will be held on Tuesday, October 3, 2017.

ANNUAL DISCUSSION WITH DEANS OF WASHINGTON STATE LAW SCHOOLS – Annette Clark, Seattle University School of Law Dean; Jane Korn, Gonzaga University School of Law Dean; and Anita Krug, University of Washington School of Law Interim Dean

Each of the three Deans shared current practices and priorities at their respective schools including mentorship, recruitment and scholarships, diversity, and education related to technology and business practices. In answer to an inquiry regarding what the Bar can do to help connect law school graduates with marketplace employment, the Deans suggested building connections between law students and Bar members, and increasing mentoring in order to help law students gain experience in various practice area. In answer to whether there have been any developments in response to the IAALS Foundations for Practice Project that was presented at the September 2016 Board meeting, the Deans replied that legal writing and fundamental skills and values have been added to the course work, along with beefing up

mentorship programs, experiential learning, and experimenting with the mix of in-class and long-distance learning. In response to whether tuition costs can be decreased, Dean Korn replied that tuition costs at Gonzaga have been the same for three years and mentioned that ABA regulations help drive tuition costs. She noted that discussions regarding what change is needed in law schools need to take place in order for costs to go down. Dean Clark noted that the real cost of legal education is dropping, but is not reflected in public tuition rates. It is a very competitive market with fewer applications, and so discounted tuition is offered by offering scholarships. She noted that, on average, Seattle University School of Law is significantly less expensive than six to seven years ago. Interim Dean Krug noted that the University of Washington School of Law's tuition is affected by the Washington Legislature since the school is part of public education. Tuition has been kept level for three years, but currently has a moderate increase. Since the school is dealing with fewer resources from the Legislature, fundraising for scholarships is a big component. In addition, experiential education is more expensive and rating services place a premium on how rich the various law schools are.

In answer to what the law schools are doing to prepare students for practice in the profession of the future, the Deans replied that they are paying attention to advances in technology and artificial intelligence, creating curiosity within their students and encouraging them to be life-long learners, developing incubator programs, developing collaborative relationships with the school of engineering and sciences, emphasizing skills training to meet changing client expectations, and focusing on an integration of law and business in order to help law students think more entrepreneurially.

The Deans concluded by inviting the Board to visit their respective law schools and experience today's law schools first hand, then give the Deans feedback regarding what the Board thinks the law schools can do to further help their students.

President Furlong announced that Dean Korn would be retiring as the Dean of Gonzaga University School of Law at the end of this year and thanked her for her service to the Law School and the profession. He then advised that there would be no Executive Session the following morning.

MEMBER AND PUBLIC COMMENTS

Governor-elect Kim Hunter commended the Board for the Annual APEX Awards dinner the previous evening.

Member Nancy Hawkins suggested that the meeting agenda and materials be made available earlier as there is currently not enough time to consider items and discuss them before the Board meetings; a more detailed report be provided about Executive Session items; and that more detailed information be shared about the meeting with the Supreme Court the following week. She also stated that links to Minutes on the Board webpage were not working, and discussion regarding the legislative budget discussed at the July Board meeting was not included in the Minutes.

Governor-elect Alec Stephens commended President Furlong for setting the tone at the Annual APEX Awards Dinner regarding the importance of diversity, inclusion, and moving this association forward in these efforts.

ORIENTATION TO WSBA DIVERSITY AND INCLUSION PHILOSOPHY AND PLAN – Joy Williams, Diversity and Public Service Programs Manager, and Robin Nussbaum, Inclusion and Equity Specialist

President Furlong stated that it is important to do these kinds of trainings in public in order for members to see what the Board is doing and to experience it as well, and emphasized the need for a safe and nonjudgmental environment. Manager Williams and Specialist Nussbaum reviewed the internal and external focus of their respective portfolios; the WSBA's history of diversity and inclusion efforts; and WSBA's continued commitment to advancing diversity. They then explained the dimensions of diversity; social barriers; the inside-out approach; WSBA 2012 and 2015 research; explicit and implicit bias; stereotypes; inclusion and equity; institutional oppression/racism; and allyship.

Following this discussion, President Furlong turned the gavel over to President-elect Pickett and excused himself from the meeting temporarily.

COUNCIL ON PUBLIC DEFENSE (CPD) PROPOSED PERFORMANCE GUIDELINES FOR JUVENILE OFFENSE REPRESENTATION – Eileen Farley, CPD Chair; Daryl Rodrigues, CPD Vice-Chair (on phone), Kimberly Ambrose, CPD Member; Terra Nevitt, Director of Advancement/Chief Development Officer; and Diana Singleton, Access to Justice (ATJ) Board Manager (first reading)

Chair Farley explained the background of the proposed guidelines and noted that they would apply to anyone who represents juvenile clients. Vice-Chair Rodrigues advised that these proposed guidelines are a result of a great deal of work and a deep level of debate, and that they are focused on children since they have a different and disadvantaged position in the justice system. They emphasized that these proposed guidelines are not mandated, but are suggestions for best practices. Discussion ensued regarding confidentiality when counsel advocates for necessary resources, and concerns regarding funding sources, especially in rural areas. Chair Farley noted that the CPD is asking that the proposed guidelines go to the Supreme Court for inclusion in the Court Rules and, if the same process is followed as for the adult guidelines, they would be incorporated in Standard 14.1 Qualifications of Attorneys.

Executive Director Littlewood requested guidance from the Board regarding this agenda item for the November Board meeting. It was suggested it be put on the agenda for Action rather than Consent, and that the proposed guidelines be disseminated to the WSBA members for feedback. Executive Director Littlewood advised that the proposed guidelines would be distributed through *Take Note* between this meeting and the November Board meeting and in Governors' district reports. She reminded the Board that the cutoff date for submission of suggested rule changes to the Washington Supreme Court is October 15, and advised Chair Farley that the Court could be asked to take these proposed guidelines out of cycle when they are forwarded to the Court. President-elect Pickett returned the gavel to President Furlong.

COUNCIL ON PUBLIC DEFENSE (CPD) RE RULES FOR APPEAL OF DECISIONS OF COURT OF LIMITED JURISDICTION (RALJ) 9.3 - Eileen Farley, CPD Chair; Daryl Rodrigues, CPD Vice-Chair (on phone), Kimberly Ambrose, CPD Member; Nicholas Allen, CPD Member (on phone); Terra Nevitt, Director of Advancement/Chief Development Officer; and Diana Singleton, Access to Justice (ATJ) Board Manager

Governor Majumdar explained that he pulled this item from Consent because if a matter requires Board approval, WSBA members should have the opportunity for input; then stated that in his view the proposed letter should not require BOG approval and should be signed by

the CPD. Chair Farley noted that the deadline for submission to the Washington Supreme Court is October 15, so the CPD could send the letter and the BOG endorse it later. President Furlong reminded the Board that it is the Board's policy for the many WSBA entities to speak through the Board in order to ensure coordination. He noted that this item is not controversial, and the Washington Supreme Court will not adopt it without adequate opportunity for public and member comments. Executive Director Littlewood advised that she and the Chair could both sign the letter to the Court, and explained that the Court Rules and Legislative Committee policy is designed to help coordinate its entities' actions. She reminded the Board that the draft letter contained in the meeting materials clearly states that WSBA is not taking a stand, but that the Board is approving the CPD sending the letter to the Court. Discussion ensued regarding input from the Rules Committee and the judges. Vice-Chair Rodrigues explained that the nature of this rule is that when the court determines what fees a defendant should be required to pay on appeal there be a particular individual analysis of the defendant's ability to pay, which is already established by case law in this state. Governor Majumdar moved to put this item on the November 2017 Board meeting agenda for Action so the membership has time to comment. Motion died for lack of a second. Governor Danieli moved to approve sending the letter to the Washington Supreme Court Rules Committee signed by both Executive Director Littlewood and Chair Farley. Motion passed unanimously.

FINAL WSBA FY2018 BUDGET – Governor Jill Karmy, Treasurer (by phone); Governor Kim Risenmay, Treasurer-elect; Ann Holmes, Chief Operations Officer; and Mark Hayes, Controller

Treasurer-elect Risenmay referred the Board to the Final FY2018 Budget contained in the meeting materials, which reflects the cost of Board-directed programs, services, and operations, as unanimously recommended by the Budget and Audit Committee. He explained several minor adjustments made to the draft FY2018 Budget reviewed by the Board at its July 2017 meeting; then emphasized that the proposed Budget will maintain reserves at the \$2 million minimum. He then reviewed WSBA's five budgets: the General Fund; Capital Budget; Continuing Legal Education Fund; Client Protection Fund; and Sections Fund.

A question was raised regarding the lack of funding in the Budget for an independent look at the Washington Bar Exam regarding bias. Chief Regulatory Counsel McElroy explained that a

separate WSBA study would not be done; rather, WSBA will be looking at the New York State bar exam study that is in process and due to be finished in the next two to three years. It includes 123 law schools and tens of thousands of takers. She advised that this approach, which will result in more accurate results, was presented to the Deans of the three Washington law schools and the representative of the Loren Miller Bar Association who originally presented the request for a study, and that positive feedback was received. Governor Cava moved to approve the FY2018 Budget as contained in the meeting materials. Motion passed unanimously.

Treasurer Risenmay advised that results of a salary survey had been recently received with the outcome that several staff salaries are below the Seattle market. He reminded the Board that it has been a long-standing policy that WSBA salaries be competitive, at around the 50th percentile for similar jobs in similar markets in Seattle. As a result, the Budget and Audit Committee may submit an amendment to the FY2018 Budget at the November Board meeting.

PROPOSED FORMATION OF CANNABIS LAW SECTION – Joshua Ashby and Sativa Rasmussen, Formation Group Member, and Paris Eriksen, Sections Program Manager (first reading)

Mr. Joshua Ashby and Ms. Sativa Rasmussen explained that formation of a Cannabis Law Section is being requested in order to fill the need for a centralized information repository location, and described the process used to gather signatures and submit information to the Board for approval of the new Section. They emphasized that the Section would be a resource for members to understand what the current laws are in order to help them comply with the laws. Discussion ensued regarding the split between Federal law and Washington state law regarding cannabis; the types of activities expected at this Section's functions; and the importance of providing mentoring and support. Governor Majumdar requested that members be given an opportunity for comment and that this item be put on the November Board meeting agenda for Action.

PROPOSED WSBA STATEMENT DENOUNCING RECENT ACTS OF VIOLENCE AND A REAFFIRMATION OF EQUITY AND INCLUSION PRINCIPLES

President Furlong explained the background leading up to the proposed statement. Governor Cava moved to approve the statement as contained in the meeting materials. Discussion ensued regarding what to do with the statement once it is approved. Suggestions included

posting it on the Board of Governors webpage; publishing it on *Take Note*; circulating it to the minority bar associations; doing a press release; promoting it through social media; and making the ABA delegates aware of it. In reply to an inquiry, General Counsel Davis stated that the proposed statement contained in the meeting materials complies with GR 12. Motion passed unanimously.

FOLLOW-UP FROM JULY RETREAT RE 2017-2018 BOG PRIORITIES

President Furlong referred the Board to the information contained in the meeting materials and reminded the Board that the topics developed at the July Board retreat on policy and organization priorities for this year included the court system; member engagement and ambassadorship; entity regulation; retention/diversity/inclusion and cultural competence; and member benefits. Discussion ensued regarding which of these five topics to focus on this fiscal year. It was decided to keep entity regulation as the generative discussion topic at the November Board meeting and decide next steps at the end of the discussion.

ITEMS PULLED FROM THE CONSENT CALENDAR

Proposed Amendments to Article XI Sections re Legislative Activity – Governor Majumdar explained that he pulled this item from the Consent Calendar because he was not sure if this item was different from the “Legislative Work Group Recommendations” that were also contained on the Consent Calendar. Director Nevitt responded that they are two separate items and explained that the proposed amendment is intended to make it easier for Sections to effectively participate in the legislative process. Governor Meserve moved to approve the proposed amendments as contained in the meeting materials. Motion passed unanimously.

Conforming Amendments to Indian Law Section Bylaws – Governor Majumdar explained that he pulled this item from the Consent Calendar because it is requesting the Board impose the conforming section bylaws on the Indian Law Section at the same time the Section is working to draft its own amended section bylaws to present to the Board. Governor Cava moved to extend the time frame to the November Board meeting for the Indian Law Section to provide proposed amended section bylaws and to strike the recommendation to impose the conforming section bylaws that were requested at the July 2017 Board meeting. General Counsel Davis reminded

the Board that imposition of the conforming section bylaws was requested by the Board at the July 2017 Board meeting and that the conforming section bylaws simply state the functionality that is currently in place. Governor Risenmay moved to amend the motion to state that if there is no proposed set of section bylaws from the Indian Law Section by the November Board meeting, that the conforming section bylaws contained in these materials be adopted at that time. Governor Risenmay's motion to amend failed 1-9. Governor Cava's original motion passed unanimously.

Mandatory Continuing Legal Education (MCLE) Board Recommendation to Coordinate Fees –

Governor Majumdar explained that he pulled this item from Consent because he needs more information regarding how the Limited License Legal Technician (LLLT) fees and the Limited Practice Officer (LPO) fees are different from lawyers' fees, and how they were handled the previous year. Chief Regulatory Counsel McElroy explained that the recommendation simply brings the sponsor fees on CLE accreditation fees in line with lawyer fees. Governor Doane moved to approve the recommendation to coordinate fees. Motion passed unanimously.

Legislative Work Group Recommendation –

Governor Majumdar explained that he pulled this item from Consent in order to give Governor-elect Kyle Sciuchetti, who is the Chair of the WSBA Legislative Committee, an opportunity to speak. Governor-elect Sciuchetti explained his concerns regarding deadlines in the recommendations and requested the Board table this item until the November Board meeting so members who have reached out to him have time to comment on the proposed recommendations. Phil Brady, former Governor and Chair of the Work Group, explained the process used by the Work Group to obtain stakeholder input before making its recommendations, as well as the history of deliberations by the Work Group. He noted that concerns included overlapping and duplicative work, few requests for input in recent history, most of what was previously done by the WSBA Legislative Committee is now being done by the BOG Legislative Committee, inefficiency of current structure, and meetings required even when not needed. He advised that the Work Group felt its recommendations would result in a committee whose structure is more flexible, streamlined, and efficient, and able to provide more value when its input is needed. In answer to a query regarding review by the Committee on Mission Performance and Review, Chair Brady explained that the Work

Group felt there would not be a need for the review since its recommendation was for the WSBA Legislative Committee to meet on an ad hoc basis rather than on a regular basis. Governor Cava explained the difference in the responsibilities of the BOG Legislative Committee and the WSBA Legislative Committee, and requested that the Board not redo the work of the Legislative Work Group.

Governor Cava moved to adopt the recommendation with the following amendments: make the WSBA Legislative Committee a standing committee of nine; to be reviewed by the Committee on Mission Performance and Review; and allow the Chair the opportunity to accept proposals outside the deadlines in consultation with the Legislative Affairs Manager, provided there is sufficient time to properly vet the bill. Discussion ensued regarding the current work of the Committee being focused on vetting legislation and the proposed deadlines being too tight. Executive Director Littlewood clarified that the deadlines have not changed and that the recommendation is simply codifying what is already in place; the main impetus for making the committee smaller is because of problems reaching a quorum; and the proposed changes are because of the creation of the BOG Legislative Committee rather than because of GR 12. Further discussion ensued regarding sunseting the Committee; keeping the committee because of its usefulness in vetting legislation; and the Committee's role in reviewing how proposed bills affect other sections. Governor Cava's motion passed 9-3.

Discipline Advisory Round Table (DART) Annual Report and Suggested Amendments to Charter -

Governor Majumdar explained that he pulled this item from Consent because he didn't understand the request for the suggested amendments. Executive Director Littlewood explained the current makeup of the roster and that the proposal before the Board is to amend the DART Charter to make the DART an ongoing entity that includes positions for Limited Licensed Legal Technician (LLLT) and Limited Practice Officer (LPO) representatives, sets term limits for appointed members, and provides current members with a one-year extension. She advised that DART was initiated following a 2006 ABA review of the discipline system, has been in existence for eight years, meets ad hoc, is a joint venture between the Bar and the Supreme Court, and enables all actors in the discipline system to convene and confer. She noted that the original charter was for two years, and that the charter has been renewed several times for

two-year intervals. She observed that DART has addressed significant discipline-system issues over the past eight years. Governor Risenmay moved to approve the proposal as contained in the meeting materials. Motion passed unanimously.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 3:10 p.m. on Friday, September 29, 2017.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary