



WSBA

WASHINGTON STATE BAR ASSOCIATION

Board of Governors Meeting

Transcript

September 29-30, 2016

WSBA Conference Center

Seattle, Washington

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**Board of Governors Meeting
WSBA Conference Center
Seattle, WA
September 29-30, 2016**

***WSBA Mission: Serve the public and the members of the Bar,
ensure the integrity of the legal profession, and to champion justice.***

PLEASE NOTE: ALL TIMES ARE APPROXIMATE

THURSDAY, SEPTEMBER 29, 2016

GENERAL INFORMATION 2

1. AGENDA 14

10:15 A.M.

2. EXECUTIVE SESSION

- a. Approval of July 22-23, 2016, Executive Session Minutes **(action)** E-2
- b. President's and Executive Director's Reports
- c. Lawyers' Fund for Client Protection (LFCP) Gift Recommendation **(action)** E-7
- d. Report on Executive Director Evaluation E-13
- e. Litigation Report – Jean McElroy E-21
- f. Meeting Evaluation Summary: July 22-23, 2016 E-58
- g. Meeting Evaluation Summary: August 23, 2016 E-63

12:00 P.M. – LUNCH

1:00 P.M. – PUBLIC SESSION

- Introductions and Welcome
- Report on Executive Session
- Consideration of Consent Calendar*

OPERATIONAL

3. FIRST READING/ACTION CALENDAR

- a. Washington State Bar Foundation (WSBF) Annual Meeting – Judy Massong, President, and Terra Nevitt, Director of Advancement/Chief Development Officer
 - 1. Appoint Members to WSBF Board of Trustees **(action)** 19
- b. WSBA FY2017 Budget – Governor Karen Denise Wilson, Treasurer; Ann Holmes, Chief Operations Officer; and Tiffany Lynch, Controller **(action)** 33
- c. 2018-2020 WSBA License Fees – Governor Karen Denise Wilson, Treasurer; Ann Holmes, Chief Operations Officer; and Tiffany Lynch, Controller **(action)** 108

* See Consent Calendar. Any items pulled from the Consent Calendar will be scheduled at the President's discretion.

- d. Recommendation from BOG Legislative Committee re Council on Public Defense (CPD) Statement on Legal Financial Obligations (LFO) Reform in Washington State – Governor Phil Brady, BOG Legislative Committee, Chair; Travis Stearns, CPD Member; and Alison Grazzini, WSBA Legislative Affairs Manager **(action)**..... 112
- e. Lawyers’ Fund for Client Protection (LFCP) Recommendation re Gift Limit – Kathryn Hermann, Chair, and Kevin Bank, Assistant General Counsel **(first reading)**..... 116
- f. Resolution re Limited License Legal Technician (LLLT) Program **(action)** 130

2:00 P.M.

GENERATIVE DISCUSSION

4. LAW SCHOOL EDUCATION AND SKILLS FOR THE 21st CENTURY LEGAL PROFESSIONAL

- a. Institute for the Advancement of the American Legal System (IAALS) Presentation on Foundations for Practice Project Presentation – Alli Gerkman, IAALS Director of Educating Tomorrow’s Lawyers..... 132
- b. Discussion

FRIDAY, SEPTEMBER 30, 2016

8:00 A.M. EXECUTIVE SESSION

9:00 A.M. PUBLIC SESSION

OPERATIONAL (continued)

5. FIRST READING/ACTION CALENDAR (continued)

- g. Suggested GR 12 Amendments – Paula Littlewood, Executive Director; Jean McElroy, General Counsel/Chief Regulatory Counsel; and Doug Ende, Chief Disciplinary Counsel **(action)**..... 206
- h. Proposed WSBA Bylaw Amendments – Immediate Past-President Anthony Gipe, Chair, and Jean McElroy, General Counsel/Chief Regulatory Counsel **(action)** 233
- i. Suggested Amendments to Admission and Practice Rules (APRs) for Administrative Coordination – Jean McElroy, General Counsel/Chief Regulatory Counsel **(action)** 609
- j. WSBA Spiritual Practices Policy – Jean McElroy, General Counsel/Chief Regulatory Counsel, and Frances Dujon-Reynolds, Director of Human Resources **(action)** 730
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- k. Update re Sections Policy Work Group – Immediate Past-President Anthony Gipe, Chair; Ann Holmes, Chief Operations Officer; and Terra Nevitt, Director of Advancement/Chief Development Officer 742
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- c. 2017 Keller Deduction Schedule.....**late materials**
- d. WSBA Committee on Mission Performance and Review (CMPR) Report 759
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2016-2017 Board of Governors Meeting Issues

NOVEMBER (Seattle)

Standing Agenda Items:

- Financials
- FY2016 Fourth Quarter Management Report
- BOG 2016-2017 Legislative Committee Agenda
- WSBA Legislative Committee Recommendations
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- Washington Leadership Institute (WLI) Fellows Report
- WSBA Practice Sections Annual Reports (information)
- WSBF Annual Report

JANUARY (Spokane)

Standing Agenda Items:

- ABA Midyear Meeting Sneak Preview
- Financials
- FY2016 Audited Financial Statements
- FY2017 First Quarter Management Report
- Legislative Report
- LFCP Board Annual Report
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- Third-Year Governors Candidate Recruitment Report

MARCH (Olympia)

Standing Agenda Items:

- ABA Mid-Year Meeting Report
- Financials
- Legislative Report
- Outside Appointments (if any)
- Supreme Court Meeting

May (Seattle)

Standing Agenda Items:

- BOG Election Interview Time Limits (Executive Session)
- Financials
- FY2017 Second Quarter Management Report
- Interview/Selection of WSBA At-Large Governor
- Interview/Selection of the WSBA President-elect
- Legislative Report/Wrap-up
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- WSBA Awards Committee Recommendations (Executive Session)

JULY (Walla Walla)

Standing Agenda Items:

- ATJ Board Report
- BOG Retreat
- Court Rules and Procedures Committee Report and Recommendations

- Discipline Selection Panel Recommendations
- Financials
- Draft WSBA FY2017 Budget
- FY2016 Third Quarter Management Report
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- WSBA Committee and Board Chair Appointments
- WSBA Mission Performance and Review (MPR) Committee Update
- WSBA Treasurer Election

SEPTEMBER (Seattle)

Standing Agenda Items:

- 2018 Keller Deduction Schedule
- ABA Annual Meeting Report
- Chief Hearing Officer Annual Report
- Professionalism Annual Report
- Executive Director's Evaluation Report
- Financials
- Final FY2018 Budget
- Legal Foundation of Washington and LAW Fund Report
- WSBA Annual Awards Dinner
- WSBF Annual Meeting and Trustee Election

Board of Governors – Action Timeline

Description of Matter/Issue	First Reading	Scheduled for Board Action
Law Clerk Waiver Policies	November 13, 2015	TBD
WSBA Committee on Mission Performance & Review Report	July 22-23, 2016	Sept 29-30, 2016
WSBA Draft FY2017 Budget	July 22-23, 2016	Sept 29-30, 2016
2018-2020 WSBA License Fees	July 22-23, 2016	Sept 29-30, 2016
WSBA Reserve Policy	July 22-23, 2016	Sept 29-30, 2016
Amendments to APRs for Administrative Coordination	July 22-23, 2016	Sept 29-30, 2016
Recommendations re WSBA APEX Awards	July 22-23, 2016	Sept 29-30, 2016
WSBA Spiritual Practices Policy	July 22-23, 2016	Sept 29-30, 2016
Construction Law Section Design Professional Model Residential Contracts	July 22-23, 2016	Sept 29-30, 2016
Amendments to WSBA Bylaws	August 23, 2016	Sept 29-30, 2016
Lawyers' Fund for Client Protection (LFCP) Recommendation re Gift Limit	Sept 29-30, 2016	November 18, 2016

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Washington State Bar Foundation Annual Meeting (WSBF)

Presenters:

Judy Massong – President, WSBF

Terra Nevitt – Director of Advancement/Chief
Development Officer, WSBA

BILL HYSLOP: Ladies and gentlemen, I want to welcome you on behalf of the Bar to this September meeting of the Washington State Bar Association Board of Governors. We have a number of things on the agenda this afternoon. We will march through them as efficiently as possible, and we will be adjourning in time for the awards dinner tonight. So, we will try our best to stay on schedule.

This is being broadcast online, and we may have some participation from members and others who are participating online. Likewise, we may have some folks who sign in and participate via telephone. We welcome everyone's participation.

As we go through the agenda, as time permits, I will recognize and ask for any input from members of the audience. And we ask that if you are present, that you speak at the microphone-- the standing mic-- that is at the front of the audience section. That way, those online can be sure and hear you as well.

I want to start out with introductions. Obviously, I'm Bill Hyslop, and I'm very pleased and proud to be President of the State Bar Association, and I practice law in Spokane.

ROBIN HAYNES: I'm Robin Haynes. I'm the President-Elect of the Bar, and I also practice law in Spokane.

ANTHONY GIPE: I'm Anthony Gipe, the Immediate Past President of the State Bar. I live and practice in Seattle.

FRANCES DUJON-I'm Frances Dujon-Reynolds, the Human Resources Director of the State Bar.

REYNOLDS:

JILL KARMY: I'm Jill Karmy, the Governor from District 3. I forgot what I was for a minute. I am a second year Governor, and I practice in Clark County.

ANN DANIELI: Ann Danieli, I'm the Governor from District 7 North, and this is my co-patriot, District 7 South. I live and work in Seattle.

JAMES DOANE: James Doane, District 7 South. Welcome to my district.

KIM RISENMAY: I'm Kim Risenmay, District 1. I live and work in Redmond.

MARIO CAVA: I'm Mario Cava, Governor, At-Large.

PHIL BRADY: Phil Brady, Governor for the 10th District. I live and work in Tumwater.

ANGELA HAYES: I'm Angela Hayes. I'm from District 5 in Spokane.

ELIJAH FORDE: Elijah Forde, third year Governor from District 9. I have a practice in Olympia. I work in Seattle, and I am sliding off tomorrow.

DEBRA CARNES: Hi, I'm Debra Carnes, Communications Officer for the Washington State Bar.

ANN HOLMES: I'm Ann Holmes, Chief Operations Officer for the Washington State Bar.

DOUG ENDE: Doug Ende, Chief Disciplinary Council, Washington State Bar.

DAN BRIDGES: Dan Bridges, Governor Elect from District 9. I live in Bellevue but my office is in Seattle.

CHRIS MESERVE: My name is Chris MESERVE. I'm the Governor-Elect from District 10.

BILL PICKETT: Good afternoon. I'm Bill Pickett. I am the Fourth District Governor from Yakima. It's where I live and where I practice. Welcome.

RAJEEV MAJUMDAR: Rajeev Majumdar, Governor-Elect from District 2, but I work out in Blaine, in District 1.

KEITH BLACK: Good afternoon, everyone. I'm Keith Black, finishing my second year as a Governor in District 6.

BRAD FURLONG: Good afternoon. My name is Brad Furlong. I am the third year Governor from the Second Congressional District. I live on Fir Island. I work in Mount Vernon. Like Elijah, I'm going to slide off at noon tomorrow, but then I'm going to just catch a thermal and rise back up as the President-Elect to follow in the esteemed footsteps of soon to be president Haynes. And good afternoon and welcome to everyone.

SEAN DAVIS: Good afternoon, Sean Davis, first year Governor, At-Large.

ANDREA JARMON: Good afternoon, Andrea JARMON, Governor from District 8. I live in South King County, and I work in both South King County and Pierce County.

TERRA NEVITT: Good afternoon. I'm Terra Nevitt. I'm the Director of Advancement, and the Chief Development Officer for the State Bar .

KAREN DENISE: Good afternoon. I'm Karen Denise Wilson. I am a third year At-Large Governor. I'm also the

WILSON: Treasurer of the Washington State Bar, and I will be joining Eli and Brad and Phil sliding off this year.

JEAN MCELROY: I'm Jean McElroy, General Counsel and Chief Regulatory Counsel for the Washington State Bar.

PAULA LITTLEWOOD: Paula Littlewood, Executive Director.

[INAUDIBLE]

KARA RALPH: Kara Ralph, Events Specialist.

LINDA JENKINS: Linda Jenkins, Editor of Northwest Lawyer, Washington State Bar.

JENNIFER OLEGARIO: Jennifer Olegario, Communications Manager, State Bar.

ROBIN NUSSBAUM: Robin Nussbaum, Inclusion and Equity Specialist here at the Bar.

WYNNIA KERR: I'm Wynnica Kerr. I'm the Chair of the Animal Law Section.

STEVE CROSSLAND: Hi, I'm Steve Crossland, former President of the Bar, and Chair of the Limited License Legal Technician Board.

PARIS ERICKSON: Hi. Good afternoon. This is Paris Erickson, and I'm the Section's Program Manager here at the Bar Association.

JIM MACPHERSON: Hello. I'm Jim Macpherson. I'm here representing the Washington Defense Trial Lawyers.

JEAN COTTON: Good afternoon. Jean Cotton with the Family Law Section, Chair-Elect-Elect for next year.

RUTH EDLAND: Ruth Edland, Incoming Chair of the Family Law Section. Chair as of Sunday, I think.

LISA BREWER: Lisa Brewer, I sit on the Family Law Executive Committee, Treasurer.

BETSYLEW MIALE-GIX: Betsylew Miale-Gix, I'm the liaison for WSAJ, the Washington State Association for Justice.

HAROLD CLARKE: Harold Clarke, I'm from Spokane county. I'm the immediate past President of the SCJA, and I'm the liaison to this board for this meeting.

SUE STRACHAN: I'm Sue Strachan. I'm the Legal Community Outreach Specialist at the State Bar.

CHUCK SZURSZEWSKI: Chuck Szurszewski. I practice family law in Olympia, and I'm a former Chair of the Family Law Executive Committee.

KEVIN BANK: Kevin Bank, Assistant General Counsel at the State Bar.

CHACH DUARTE WHITE: Chach Duarte White, Incoming Chair for Lawyers Fund for Client Protection Board.

KEN MASTERS: Ken Masters, former Governor, former Treasurer for Washington State Bar

DIANA SINGLETON: Hi. I'm Diana Singleton, the Access to Justice Manager here at the Bar.

[INAUDIBLE]

ALI GERKMAN: I'm Ali Gerkman, Director of Educating Tomorrow's Lawyers at IAALS, the Institute for the Advancement of the American Legal System.

JUDY MASSONG: Hi, I'm Judy Massong. I live, work, and play in Seattle.

ALISON GRAZZINI: Good afternoon. I'm Alison Grazzini, Legislative Affairs Manager here at the State Bar.

TRAVIS STEARNS: My name is Travis Stearns. I'm a member of the Council on Public Defense. I have a statewide practice as a public defender.

JAIME HAWK: Good afternoon. I'm Jaime Hawk, member of Council on Public Defense, and also one of your delegates to the AVA House of Delegates

TIFFANY LYNCH: Good afternoon, Tiffany Lynch, outgoing Controller.

MARK HAYES: Mark Hayes, incoming Controller.

GEOFF REVELLE: Geoff Revelle, incoming Chair of the Access to Justice Board, and Liaison to the BOG.

BILL HYSLOP: Have we missed anyone who would like to be introduced? All right. I'd like to report to you that

the Board of Governors held an executive session this morning. We approved the executive session minutes from our July session, heard the president's and executive director reports, received a report and recommendations, took action on Lawyers Fund for Client Protection Recommendations. I received the executive director's annual evaluation, dealt with some confidential personnel matters, and we adjourned the executive session and had lunch. And here we go for this afternoon.

We have a consent calendar that will now be circulated. The items on the consent calendar, I believe, are listed in your agenda. Governors, as you know, if there are any items on the consent calendar that you want to be separately discussed and debated, you need to signify that you want those removed from the consent calendar. Otherwise, the consent calendar will be passed around. The items on the consent calendar are generally those that we do not anticipate there to be discussion on, or whatever, and that's why they are adopted by consent. Karen Denise?

**KAREN DENISE
WILSON:**

Yes. With respect to the consents calendar, I don't have anything that I want to remove, but I would ask, if it is permitted, there is a Scrivener's error in the minutes that are on the consent calendar. At page 7 of the minutes, and page 752 in our book, it is truly a Scrivener's error. It's transposing of numbers. It reflects license fees being set at \$343, and that was a transposition. It should be \$434. With that correction, if it is acceptable, I would like the minutes to remain on the consent calendar, but I wanted everyone to be aware of the Scrivener's error.

BILL HYSLOP:

And Governors, do all agree to that clerical change? Obviously, clerical changes are normally accepted, and so we will pass around the consent agenda for your signature, with that change being made. Thank you very much.

The first action item is a report in presentation from our very good friend, Judy Massong, who is President of the Washington State Bar Foundation. Judy, if you would come forward, and I will pass the gavel to you to conduct the annual meeting of the foundation. And as she's doing this, this is a lady who has put in a lot of time in the vineyards for the attorneys of the state, and particularly for the State Bar Association. She's a former member of the Board of Governors, and has been the President of our State Bar Foundation for a number of years. We thank you very, very much for your service.

JUDY MASSONG: At this time, I call to order the members of the Washington State Bar Foundation. And it really

gives me great pleasure to be here today to do two things. One, to say thank you, and also to seek approval for the 2016-2017 slate of trustees.

The slate of trustees material you'll find on page 19, together with their curriculum vitae, should you care to review them. The Foundation Board of Trustees, at their September 8th meeting, unanimously approved the slate. And I can tell you, without reservation, that this slate has already proven themselves to be hardworking, eager, enthusiastic, showing it for the activities of the foundation. They're funny. They're just good souls to work with. And even though they have not been officially given their title as trustee, they've already proven themselves to be successful fundraisers.

BOARD: [INAUDIBLE]

JUDY MASSONG: Oh, great. [LAUGHTER] So do I have to do anything, or shut up, or start all over again? Keep going? OK.

So, our people, that hopefully you will vote for, have already raised money on behalf of the foundation, and also built awareness of bar programs across the state. So unless I hear questions, concerns, statement, I will gladly entertain a motion to approve the 2016-2017 slate of trustees.

BOARD MEMBER: So moved.

JUDY MASSONG: All right. All those in favor, say aye. All those opposed, nay. Any abstentions? Got the count, OK? So, all right. They've been approved.

BOARD: [INAUDIBLE]

JUDY MASSONG: All right. Going forward.

BOARD: [INAUDIBLE]

JUDY MASSONG: We're all here, OK. Before I leave this comfortable chair here-- well, this is like being in a loud restaurant, you know? Before I leave, I do wish to thank the Board of Governors and staff for their unbelievable, generous support of the foundation. This year's BOG campaign raised \$12,500, including a challenge by the former Board of Governors members. And this is more than \$10,000 than we raised last year.

And even without the dollars and cents, which is really important, the thing that made-- I think--

the trustees of the board of the foundation feel really good, was that it was 100% participation of the current and incoming Board of Governors. And with that 100%, that gives the foundation credibility to go out across the state and ask for donations. So, thank you. Thank you for your hard work. And it couldn't have been done but for the leadership and unbelievable dogged determination of three of your own, so Jill Karmy, Phil Brady, James Doane, thank you. Thank you. And I think a round of applause to your hard working Board of Governors.

[APPLAUSE]

The foundation this year has had an unbelievably good year, and has made great strides with a new focus on the donor appreciation and donor stewardship. We have been contacting our donors this year to invite them to participate and watch bar program events, which allows us to show them what their dollars-- the impact of their gifts, and at the same time, we've been able to minimize the costs for these events. This is a program that we're going to continue into the next year, and probably add to.

So in closing, a special thanks to our wonderful foundation staff, Terra Nevitt and Laura Samford. I don't-- she's not here.

BOARD: [INAUDIBLE]

JUDY MASSONG: Yeah, she's raising-- So without their steadfast belief in this unbelievable partnership between the Board of Governors-- or the Bar Association and the foundation, we probably would not have had this energetic year. And so, I wish to say thank you to them. You rock my world.
[APPLAUSE]

And next up on this is Jill. To announce a few gifts?

JILL KARMY: Yes. So to follow up on the announcement of the conclusion of the BOG giving campaign, otherwise known as the former governors versus the current governors, I have a couple people to thank, and a few very small gifts to hand out. I won't do that right now. So don't leave this room today until you get your gift, if I rattle your name off.

First, I want to thank Ken Masters, because he's really the former governor that turned this into a challenge that allowed us to get to the number we got to. This started out as an inter BOG competition, and Ken really had the foresight to turn this into something bigger. So, thank you, Ken Masters. He also enlisted the help of several former governors, Judy Massong, James Armstrong, Jerry Moberg, and Vern Harkins, who were all a big part of this campaign.

We had three first time givers to the foundation, and so I have a small gift for those individuals. And that is Dan Bridges, Chris Meserve, and Athan. Please forgive me for not saying your last name in public session. Where are you? Oh, did he-- OK.

Our BOG members with the highest points, which includes giving and social media, I have a small gift for you. And that's Karen Denise, and Robin Haynes. So, thank you both.

We also have a gift for the first person to share a Facebook post from the foundation, because we're really focusing on getting the word out there. And that small gift goes to Ann Danieli.

ANN DANIELI: [INAUDIBLE]

JILL KARMY: OK. Here you can hold this for now.

[LAUGHTER]

And then finally, because this-- what we set-- was it the fifth year for the moderate means program? The anniversary of the fifth year that the moderate means program has been in place, we decided to give a random gift for the person who gave on the 5th day of this campaign that started several months ago. But we did not announce that, so this is very random, and that is Angie Hayes.

JUDY MASSONG: All right.

JILL KARMY: So, thank you all for your support, and for the fact that we have 100% giving from both this board and the incoming board.

JUDY MASSONG: Meeting adjourned. Fastest meeting ever. I'm going to pass this over.

[APPLAUSE]

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WSBA FY2017 Budget & 2018-2020 WSBA License Fees

Presenters:

Governor Karen Denise Wilson – Treasurer
Ann Holmes – Chief Operations Officer, WSBA
Tiffany Lynch – Controller, WSBA

BILL HYSLOP: Thank you very much, Judy, for your report and for the foundation meeting. The next item on our agenda will be a presentation of the WSBA fiscal year 2017 budget by Governor Karen Denise Wilson, who is our esteemed treasurer, Ann Holmes, chief operating officer, and Tiffany Lynch, controller. Welcome.

KAREN DENISE WILSON: Thank you. Good afternoon. Governors and members, we are here for your consideration of action on the fiscal 2017 budget, which is in your materials, starting at page 33. And I'd like to just give a brief overview of how we got here and what this budget includes before we go into some brief detail and answer any questions or hear any comments or input. So the fiscal 2017 budget consist of \$18.8 million in expenses and \$16 million in revenues. This is with a reduced FTE of 141.9, which is actually a reduction down to the 2008-2009 level of FTE for WSBA, and its plans to use up to \$2 million in reserves that's required to fund existing programs and services and operations.

The budget reflects policy decisions and programs, services and operations that are needed to advance WSBA's mission, which is to serve the public and the members of the bar, to ensure integrity of the legal profession, and to champion justice. Some of these programs are regulatory in nature, such as discipline and licensing services. Others are offered to ensure competent and qualified legal representation in our profession. They're available to all of our members. However, at any given point in time, WSBA's services are very important to some members and not others. It depends on where they are in their career and their particular circumstances.

So understanding, this the bar supports many varying programs as an integral part of our mission and our responsibility. I am going to leave some of those details as we go through this a little bit. But I will give you the overview of our licensing proposal after we address the budgeting issue first.

So the other thing I'd like to remind the board of and to have our membership be aware of is how we got to the place of the budget that's before you now. The historical context is that it's both current and projected for multiple years of revenue expenses, fees, and reserves. Over the last four years, the board has made some very deliberate decisions to reshape the Washington State Bar Association, including reductions in staff, reductions in expenses, reduction in our space-- so even though we've had a recent remodel, we've had a significant

reduction in space-- and the costs associated with that.

We strengthened our infrastructure by having a disaster preparedness plan and technology plan. We will continue to strengthen our infrastructure with a goal towards redesign of our website. We're introducing and enhancing free and low cost programs to support our members. And these include the Legal Lunchbox and other free CLEs, free legal research tools, free help with confidential ethics issues, free employment tools, a mentorship support and program, free lawyer assistance programs, free low-cost, low-map consultations and presentations. And then we also have financial accommodations-- excuse me-- through our hardship option and payment plan for license fees.

We've also been focusing on expanding our non-licensed fee revenue. And we've planned the use of our reserves to cover shortfalls. We've had a deliberate spend down of our reserves to maintain our fees as low as possible. The license fees projections and the reserves focus on a number of years and multiple static variables.

So the board initially began our look at the budget at our April mini retreat, you'll recall. And then those ideas were reviewed by our budget and audit committee at several meetings. At our last meeting in July, we had a first reading and full presentation of the fiscal 2017 budget that's before you in the materials at this time. There have been very few changes to the first draft we will go through. And they are identified for you the changes in the memo, which is on page 33 through 35. But we will verbally review those changes with you.

ANN HOLMES: So as Karen Denise mentioned, page 33 identifies the changes in the budget that you see before you and the first draft that we reviewed together in July. As she mentioned, they're all small changes. One of the changes that we talked about in July were the additional expense for insurance premiums by virtue of the fact that we now have cyber coverage and a significant increase in our professional liability coverage. The other increase that we talked about was on the capital budget. And that was the approval that you gave for us to redesign the website.

There are several smaller changes as well. The cost in the capital budget of mailing equipment has gone down and that's reflected, kind of offsetting the additional costs for the website redesign. There was also a small increase in legal research that the Office of Disciplinary Counsel uses, and other than that, really nothing that's negligible. I'd be pleased to answer any questions, but we did go over this in July and there are no other changes.

BILL HYSLOP: Any questions from any governors? All right, please proceed.

KAREN DENISE WILSON: So I just want to inquire those were any questions about any changes that we've had since the first presentation in July, I want to, at this time, inquire. Is there any questions about the budget overall, any comments or input either from our governors or from our guests before I request a motion?

BILL HYSLOP: Governors? Seeing none. Any of our guests? Anyone online or on telephone? All right, please go ahead, Karen Denise.

KAREN DENISE WILSON: With that, I would encourage one of our governors at the table if there is a motion with regard to the fiscal year 2017 budget as posed your materials.

BILL HYSLOP: Phil Brady is moved and--

ANN HOLMES: James.

JAMES DOANE: Second.

BILL HYSLOP: James Doane seconded. Any further discussion? All those in favor of adopting the fiscal year 2017 budget, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed? It's adopted. For everyone in the audience, I think you may already appreciate this, but just in case-- these budgets are the result of a great deal of work that occurs over a long period of time. And the fact that we have just adopted it without discussion by the board is indicative of the fact that this has been discussed with this board at several meetings prior to this and a tremendous amount of work by the Board of Governors Budget and Audit Committee that brings it to us here today. So, thank you to all of you. Go ahead, KD.

KAREN DENISE WILSON: Thank you. So next on the agenda is our license fees. And it comes before you in your materials, starting at the memorandum on page 108. It is on the agenda for action. The materials are the full packet that was before you in first reading in July with some supplemental materials in the memorandum for further clarification and explanation.

This proposal for license fees was unanimously recommended by the Budget and Audit Committee, was presented in full for the first time in our meeting in July, and proposes license fees increases as follows-- for 2018, an increase to \$449; for 2019, an increase to \$453; and

for 2020, an increase to \$458. All three of those levels assumes a goal of getting to a reserve of \$2.2 million dollars by 2019.

Examination of the license fees options was a detailed and integral part of extensive deliberations by the Board of Governors and including the setting of the budget. As we discussed in July, these fees are proposed to be set to maintain the minimum general fund reserves of \$2 million.

A couple of observations-- in 2010, the license fee was set at \$450. Following that in 2012, there was a referendum which reduced our license fees to \$325. The number, as far as we can tell, was arbitrarily chosen and coincided with the license fees that were previously set in 2001. So following the referendum in 2012, we went down to a license fee rate of \$325, which was previously a rate in 2001.

At the same time, the cost of business continues to rise each year. WSBA has been able to maintain the license fee rate at that \$325 from the time of the referendum through 2015 through efficiencies that I mentioned earlier-- reductions in FTEs, evaluations of programs, prudent use of our reserves. And when I say prudent use of our reserves, I want to be clear that it was a deliberate intention to spend down our reserves.

We've reorganized management, changed how some programs are administered. We've reduced our facilities footprint by 7,700 square feet. We have extended our lease at this location to 2026, which was a savings of over \$3 million over the term of the lease, compared to the best next alternative. And all of them in the downtown corridor as well as in outlying areas were examined. We've expanded our revenue that is not directly tied to our license fees-- for example donations from our foundation, which we just heard from, fees on mandatory CLEs, regulatory member services, pro hac vice, advertising sponsorship.

By design, as I indicated, we've been reducing reserves. At fiscal year 2012, which was around the time of the referendum, they were almost \$9 million. Currently for fiscal year 2016, we are at approximately \$3.4, \$3.5, \$3.4 or \$3.5 million. We closely listened to our membership and reduced our footprint. We introduced and enhanced programs while maintaining our required regulatory systems.

The BOG did increase fees in 2016 and 2017 from that referendum rate of \$325 up to \$385. At the time this was done, it was knowing that this was just a slowdown and not a stop,

meaning that we knew we would have to continue to diminish our reserves to support our programming, but that at some point, we would need to have an additional increase. That point is now.

As fiduciaries, the board must set a license at a level that enables the bar to continue to meet our regulatory obligations, to advance our mission, and to provide value for our members at a reasonable cost and allows us to maintain prudent reserves. The budget before you as presented in July does maintain reserves at \$2 million and proposes the license fees increase. Again, I'll remind you what those are.

2018, the increase would be from our current rate of \$385 up to \$449. And in 2019, it would go up from \$449 to \$453. And in 2020, it will go up from \$453 to \$458. Mind you, these fees have been set to maintain the level of operations and services that we have now. It does not contemplate growth. And that was an intentional decision to keep our fees as low and reasonable as possible for our members. Without

the fee increase, we would need to cut operations to severely cut back on professional competence programs and services to our members. We would also need to change our mandatory program in ways that would impact its effectiveness. So I have presented before you in your materials the license fee programming. I think Ann is going to give us a brief-- no?

ANN HOLMES: No. See if there's any questions.

KAREN DENISE I'll just check in with you to see if there are any questions, comments, concerns?

WILSON:

BILL HYSLOP: Governors? Anyone in the audience? Ruth?

RUTH EDLUND: Governor Wilson, you've been very kind in answering my many questions. I just have a couple more. First, what is the projected date at which the board anticipates that the limited license legal technician program will actually be self-sustaining?

KAREN DENISE I can't give you a precise year. As you know, the program is new. By order of the Supreme
WILSON: Court, we are implementing and regulating the program without any additional funds. The program is growing at a slow rate. I would-- and this is, frankly, Ruth, a best guess-- estimate that within three to five years, it should be completely self-sufficient, including start up costs.

But it is a best guess estimate, because it is difficult to calculate the rate of growth which with

LLLTs will increase over the years. So all I can do is give you a best guess.

RUTH EDLUND: Thank you. It was my recollection from reading the materials that among the efficiencies that the bar is seeking by sort of consolidating administration is that the licensing fee cycles for lawyers, LLLTs and LPOs were eventually going to be synchronized. Is our LLLT and LPO licensing fees going to be-- are those increases all be going to be considered in the same cycle? Because I believe that the proposal currently before the board is to increase only lawyer licensing fees.

KAREN DENISE WILSON: That is correct. The license fees for the LPOs and for the LLLTs are not set by this board but are set by the Supreme Court. And so the synchronization that you're talking about will depend on the movement and the decision making of the Supreme Court.

RUTH EDLUND: And I have only one more question. Has there been any forecasting done of the projected cost to the association of extending member benefits to LLLTs and LPOs with the understanding that they may be more interested in some benefits than others?

KAREN DENISE WILSON: The simple answer to your question is no. And it's for many of the reasons that I've already indicated. The number of LLLTs at this point is very small. Determining the rate of growth or precisely which services they will engage in, I think it's reasonable to think that they will not be engaging in services at the same level as our lawyer members do. But being more precise than that is difficult at this time. So those projections were not included in calculating this license fee increase.

RUTH EDLUND: Thank you.

BILL HYSLOP: Jean.

JEAN COTTON: Just a follow up-- and thank you again for all the hard work you've done, Madam Treasurer. Interested in an answer you just provided to Ruth with an estimated projection that the LLLTs will be self-sustaining and break even within three to four years. The reason I ask this question, I look at page 37 of your book that has the budget summary.

I think LPOs have been in effect at least 10 years, if not longer. And they have substantially greater numbers. I think its over 600. And yet here we are, down the road a decade or so later, and they're still not completely self-sustaining with a projected net loss of about \$70,000, with the LLLTs right above them with a projected net loss of about \$222,000. So where do you come to the conclusion to estimate that within three to four years, this new program will be

self-sustaining when the other one that's been successful for so many is not?

KAREN DENISE WILSON: Thank you, Jean. I first just like to remind you and clarify that I was very clear that that was a guess and a best guess at that. So I don't want anyone to say concretely that I projected it would be within three to five years. I'd also like to distinguish when we talk about the LLLTs from when we talk about LPOs.

For several years since we took over LPOs from the court, we were functioning at a gain with respect to LPOs. Only in the last few years-- I think it's two to three years-- has there been any realize of a loss. So for-- I don't have the specific numbers, but if you want to contact me directly, I'm happy to give you the specific numbers-- for multiple years, year after year, we benefited from LPOs.

PAULA LITTLEWOOD: We've netted \$500,000.

KAREN DENISE WILSON: Thank you. There's a number for you. So we've netted \$500,000. And that takes into consideration the loss in the last few years. So talking about LLLTs and talking about LPOs, there is a difference there. I'm not sure I've answered all of your questions. Did I miss any?

JEAN COTTON: No, but I [INAUDIBLE].

BILL HYSLOP: Any other questions by members of the audience? Seeing none. Any further questions by members of the board? All right. KD, are you ready for a motion?

KAREN DENISE WILSON: I am.

BILL HYSLOP: You've heard the recommendation on setting license fees for 2018, 2019, and 2020. Members of the board, are you prepared to act your motion?

BRAD FURLONG: Move to approve.

BILL HYSLOP: Any further discussion?

BRAD FURLONG: Well, I'd just like to first thank the members of the budget and audit committee for all their incredibly hard work, for their support from Tiffany and Ann, and Tiffany, who we will miss very much. But in particular, say thank you to Governor Wilson, Treasurer Wilson, for her extraordinarily hard work. And I think Karen Denise, you did an excellent job of articulating the

financial situation that we're in. And I can think of nothing to add to it, other than to say thank you very, very much for the hard work.

BILL HYSLOP: All right, any further discussion on the motion? Seeing none, although-- Andrea, sorry, apologize.

ANDREA JARMON: Thank you. I just want to-- well, first of all, thank you for the excellent work. The numbers make my brain hurt. But your presentation was very clear. And it has been presented to us on several occasions, so I appreciate the time and the thoroughness. I would be remiss if I did not speak to some of the emails that I received about the fees increasing and so forth.

I guess what I want to say is that while I'm going to vote in support of this, I would like us to think about how better we can communicate to membership about some of the options with respect to the license fee, like the payment plan or the hardship, so that they know that it's available. Those are some of the resources or some of the options that I have been able to identify for individuals. And they were surprised. It was welcome information, but they were surprised. So thank you. But I also want to make sure we kind of promote that and maybe explore some other options as well.

BILL HYSLOP: Bill Pickett.

BILL PICKETT: One of the-- this is a comment more than anything on the license fees increase. I've received a number of comments from members who have point blank been very clear with me. Their desire is that I vote no on this, period. Because they are not-- number one, they don't like the fees being increased. And number two-- and I understand that as a sole practitioner. I don't like-- I pay dues to three separate state bar associations, so I'm conscious of the impact of having to pay dues and the increases that come.

But the second point that has been brought to my attention by membership is that they do not believe that they have had enough time to even contemplate what this means, let alone the numbers. And so-- and I take that-- that resonates with me, not because I believe there's been a lack of effort by WSBA to try and communicate this, but people, for whatever reason, don't believe they've had enough time to think about it and to digest the information. And that does matter to me. And so for that reason and that reason alone, I cannot support the license fees increases while I have people repeatedly telling me they haven't had the time to at least think about it, to digest it, and to understand the necessity of it. And that's all I have to say.

BILL HYSLOP: Thank you. Any other governors? All right. We have a motion on the table to adopt license fees as Karen Denise has presented for the years 2018, 2019, and 2020. Governors, all those in favor of the motion, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed?

BOARD: No.

BILL HYSLOP: I have one opposed. Abstaining? The motion is adopted. Again, ladies and gentlemen, this is a topic that has been discussed by the Board of Governors at innumerable public sessions this year. And the board takes it with great seriousness and appreciates immensely the work that Ann, and Tiffany, and Karen Denise, and the budget and audit committee, and those others who have been involved have put into this. And I'd like to-- and do you have anything else, KD, at this point?

KAREN DENISE WILSON: Yes, I do have something additional, if you're--

BILL HYSLOP: OK.

KAREN DENISE WILSON: This is my best and favorite part of today's presentation. As Tiffany Lynch here to my left shared with us, she is our outgoing controller. Tiffany-- I just whispered to Ann, how many years? Because I've only had the joy and benefit of her expertise and knowledge for my three years on the board. But it is my understanding that she has been contributing to WSBA and the membership of the bar for almost 10 years.

ANN HOLMES: Over.

KAREN DENISE WILSON: Or slightly over 10 years. And she's making a frowny face. I'm not sure what that means-- for slightly over 10 years. I think to all of the Board of Governors, particularly those who are on the budget and audit committee, that this goes without saying, but I wanted to do this in public to share with our membership what an outstanding, excellent, unwavering, knowledge, expertise, commitment, professionalism, that Tiffany has shared. And I have only had the opportunity to see three years of it.

There is no doubt in my mind that she has given what I have seen in the last three years for

more than 10 years to this organization. It has certainly benefited the organization, and both directly and indirectly benefited our membership. In addition to that, she is funny, and delightful, and patient, and kind, which is particularly important when putting up with me. So she absolutely-- many of you sat here and thanked me for my hard work. But I shall confess now that the hard work was done by Tiffany. And I just sit here at the end of the table and take credit.

And I probably would not confess that, but she is leaving us. And I want everyone to know what she has meant to me, and what she has meant to this organization, and how much she will be missed. I have here a presentation-- this is one of those nerdy controller things that you might not think is all that exciting but I'm hoping Tiffany enjoy. The final budget, the fiscal year 2017 budget that you just approved, along with some wonderful thoughts inside. Tiffany, I hope you'll have a chance to review those and know that those truly come from the heart. On behalf of the Board of Governors, on behalf of the Washington State Bar, and all of its members, I present this to you with our greatest gratitude for your service.

TIFFANY LYNCH: Thank you.

[APPLAUSE]

BILL HYSLOP: Before you leave that position, I want to recognize Jill Karmy for just a moment.

JILL KARMY: Thank you. I have a few words to say to Karen Denise, but first, my sincerest thank you to Tiffany as well. I am glad that we approved the budget, or that would have been an awkward gift.

[LAUGHTER]

So that was good. I also like to welcome Mark, our new controller. And I look forward to working with you. KD, as you put a lot of faith in me nominating me for next year's treasurer, I want you to know that I hope to follow in your footsteps as far as your leadership of meetings, always being on time, or even ending meetings early, and just the thoroughness of your preparation. It is truly appreciated. And it helps to make a difficult subject understandable. So we have a sweet, truly sweet, parting gift for you. And thank you for your service.

KAREN DENISE Thanks.

WILSON:

[APPLAUSE]



Recommendation from BOG Legislative Committee re Council on Public Defense (CPD) Statement on Legal Financial Obligations (LPO) Reform in Washington State

Presenters:

Governor Phil Brady – BOG Legislative Committee,
Chair

Travis Stearns – CPD Member

Alison Grazzini – WSBA Legislative Affairs Manager

BILL HYSLOP: All right. The next item on our agenda is recommendation for the BOG legislative committee and the Committee on Public Defense. And I'll recognize Phil Brady, who's our 'ledge chair, Travis Stearns, from the Council on Public Defense, and Alison Grazzini, our legislative affairs manager.

PHIL BRADY: Good afternoon, president Hyslop, members of the board. I'm Phil Brady. I am the outgoing chair of the BOG legislative committee.

And we're here to talk to you about a statement that the BOG legislative committee has approved and is recommending for the approval of this board. It concerns legal financial obligations. The BOG legislative committee heard this and discussed it in August.

We found that it met GR 12.1, and that it was in the best interests of the Bar to support this statement by the Counsel on Public Defense. It is just a preliminary statement of principles and goals. It's not a final actionable item for the legislature. But we thought it would be useful to have this approved going into the legislative session, as this issue is likely to see some movement this year. And with that, I will let Travis talk about the content.

TRAVIS STEARNS: Thank you. So my name is Travis Stearns. I'm the training director at the Washington Appellate Project. I am a member of the Council on Public Defense. For those of you who are not entirely aware of who we are, we're a very diverse group of lawyers and judges and citizens and-- my microphone is not close enough is it? And so we are not just public defenders. We are a large and very diverse group of people. And we focus on issues that impact the right to counsel and access to justice.

Legal financial obligations have been a concern for the commission for a long period of time, because it is so clearly a barrier, not only to re-entry and also is a real barrier for our courts in general. I want to just read a couple of things and let you be aware of the surroundings and where we are right now.

Last week, you may know that the Department of Justice gave a grant to the Washington Supreme Courts to do a study on legal financial obligations, realizing the same thing that we do, which is that we can't be funding our courts the way that we are. And we need to find a new way of doing that.

The Supreme Court, in making that application, said this, that Washington state has a particularly challenging court funding scheme. The result is a systemic dependency on the imposition of legal financial obligations as a way to fund courts in the criminal justice system. Not unlike other states, the imposition of LFOs falls disproportionately on those least able to afford them, resulting in a vicious cycle of never-ending debt for anyone seeking to re-enter society after a criminal conviction.

Now, last week the Supreme Court issued an opinion, en banc without opposition from the state. So both the city of Richland and Brianna Wakefield agreed that this remedy needed to take place. And they asked for essentially an advisory opinion on how to deal with legal financial obligations.

The court made clear that the system that was working now, where this woman, Brianna Whitfield, who was homeless, disabled, and indigent survived on Social Security disability payments, had only in her entire history, three misdemeanor convictions. And yet was paying enough in legal financial obligations, or had enough debt in legal financial obligations that she would never be able to pay that debt back.

10 years after the debt had been imposed, she would owe more under our current system than that she currently owed now. She tries to treat herself. She's active in treatment. She's trying to get her family back together, and just simply can't recover from this debt that is imposed upon her. And the court recognizes the real problems with that.

The statement that we crafted-- and again, crafted in this very diverse group is intended to help this conversation move forward. We all recognize that legal financial obligations-- the fines and fees that are imposed, not the restitution, but the fines and fees that are imposed to pay for our court system is not working and that we need a better solution.

And the statement that we crafted is intended to help move that conversation forward. I think that this is an incredibly important voice to be heard on this issue. I think that the support from the Bar Association in trying to help these reforms go forward will make an enormous difference in finding a better way to fund our court system, and to improve re-entry for so many of our clients. And thank you very much for your time and consideration on this.

BILL HYSLOP: Thank you very much.

ALISON I'll just add a couple of items. Thank you, governors very much for your time this afternoon.

GRAZZINI: Very quickly-- as mentioned by Governor Brady, there have been a number of LFO-related reform proposals in the state legislature the last couple of years. They have not reached final passage. They have been bipartisan in nature. So those conversations are ongoing.

What I can leave you with this afternoon-- there is a momentum shift. So the timing of this statement is critical, is fantastic in terms of legislators who are engaging in these conversations during this interim leading up to the 2017 session starting in January and is very timely. So we'll continue to watch and engage and use this statement if and when appropriate, as those conversations continue.

BILL HYSLOP: Thank you. Governors, any questions? Audience members? Anyone online? Telephone? Andrea?

ANDREA JARMON: Thank you. I like this. I understand and respect the intent of it and I want to support it. My only question is-- there is language in here about a full, fair, and a meaningful hearing. And I guess I'm wondering if-- so I've been in court and we're doing the sentencing and the judge is able to do a very quick little colloquy of the defendant, and asked, OK, what's your situation like and so forth? And that's sufficient for the judge to make a determination that the person does not have the ability to pay.

And my only hesitation is, is this going to impose like a higher sort of standard? I know that's not the intent of it. But it just seems so formal, whereas like, those little quick questions are like, good, waived, as opposed to this language here. Does that make sense? Do you understand what I'm getting at?

KAREN DENISE WILSON: I understand your concern and why you raised it. I think the intent of the full and fair is actually the opposite. While we've both had the experience where a colloquy occurs with a judge between the parties about ability to pledge to pay, some of us have also had the experience where the colloquy does not occur at all.

And so, part of the impetus for indicating that there needs to be a full and fair review was to suggest that the review actually occur, as opposed to indicate that it needs to be greater than is currently occurring. I think it was more to address the instances where there is a lack of a review or colloquy at all. And it is unfortunate that that happens more times than it should in courtrooms around the state.

PHIL BRADY: The intent of the statement is not to set policy for the state or to try and write policy for the

legislature to enact. This is a statement by the Council on Public Defense and potentially by the Bar Association to say, these are the things you should think about. These are the things you should look at as you go through the legislative process. So we're not trying to impose any particular methodology or requirement on the courts.

ANDREA Yeah, I get it. I just want to make sure that intended actually actualized, because sometimes
JARMON: the language can sort of now impose sort of-- I don't know, make it a little bit more burdensome.

PHIL BRADY: It's a fair question.

ANDREA I get it.
JARMON:

BILL HYSLOP: Any further questions or comments? Hearing none, is there a motion?

BOARD: So moved.

BILL HYSLOP: Who brought the motion?

PHIL BRADY: You've got Keith and Mario.

BILL HYSLOP: OK. I'm going to give this one to Mario, Keith. And I--

BOARD: [INAUDIBLE]

BILL HYSLOP: And I heard KD give a second. Governors, any further debate? All those in favor, please say, aye.

BOARD: Aye.

BILL HYSLOP: Opposed? Abstain? Passes unanimously. Thank you very much for your work on this important issue.

BOARD: Thank you, very much. Good luck.

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Lawyers' Fund for Client Protection (LFCP) Recommendation re Gift Limit

Presenters:

Kathryn Hermann – Chair

Kevin Bank – Assistant General Counsel, WSBA

BILL HYSLOP: All right the next item on the agenda, is a presentation on the lawyers fund for client protection recommendation. Want to recognize Chach Duarte White and Kevin Bank.

KEVIN BANK: Thank you. This recommendation involves simply the lawyer fund for client protection. Giving out of gifts basically, to injured clients. There has been a limit on the maximum gift, since 2004, of \$75,000. That is somewhat arbitrarily set, there's no rule from the court, or anywhere else setting what a maximum gift should be. There has been no change since 2004.

The board spent the last year, considering whether there should be a change and an increase. Considering a number of factors of that are outlined, in the material. One, is that there continue to be a significant, but not overwhelming, number of applications for gifts above 75,000. And those are not the result of any bad behavior of the applicant, they're just the simple bad luck, of having gotten involved with a lawyer who steals a settlement for 250,000, instead of 150,000. And those people are maxed out at 75. There's been approximately 18 such claims since 2004, so they're not an overwhelming number, but they are a significant number.

The other issues that the board considered, and which is always a concern for the fund, is does the fund have enough money? Can it pay out gifts, if there were a horrendous event, where a lawyer stole multiple settlements over 150,000. And for those of you who might have been around in the 2000s, this was a significant concern, because there were some truly horrendous acts of malfeasance, and a lot of applications.

But a number of steps were taken, to address exactly that concern. In 2010, the court approved a doubling of the assessment, from \$15 to \$30 on every lawyer. So that as you can imagine is pretty significant, because it's 100% more that each lawyer is paying. So if you look at the financial history, since 2010, you see this fairly dramatic creep up in the funds, and in the fund balance.

Just two years after that, to assure that the fund would never be in a situation, where there are such a significant number of claims, that it literally cannot afford to pay out the claims, the admission and practice rules, were amended, to provide full proration. So that if the fund is running out of money, the LFCP, with the board, with the approval, of course, of the Board of Governors, who are the trustees, can pro-rate amounts over \$5,000, that any applicant is

entitled to receive. So that assures that the fund will still be kept in a fairly healthy state, no matter how many claims are made.

So, with that in mind-- and I think the incoming chair, Chach can talk about some of the other aspects, that might have motivated the board-- the board decided to recommend unanimously, that the BOG recommend a rule change. To make clear, what the amount is, in the admission for practice rules, it's never been particularly clear, which leads to a lot of confusion. And also that the BOG, in its authority, consider increasing the maximum gift amount, from 75 to 150,000.

CHACH DUARTE I'll just add, that the board talked about this in great depth, with Kevin's help, and Tiffany
WHITE: Lynch's help, looking at the budget. One of the concerns for the board, is that the balance in the fund is going up. And we don't want to hold on to those funds, if we have people that have losses, that we can give out. Particularly if they are large losses, and we can cover them. We would like to cover them, as opposed to having a random cap, where people are out a great deal of money. So the board has looked at different things, but particularly, if we can cover those losses, we would like to, without devastating the fund itself.

And we think we can do that, with raising the cap from 75,000 to 150,000, and remembering that anything that is that large, will come in front of the Board of Governors. So that you can approve it, we don't approve it with a blank check. You have to make sure that that's OK, and then you'll decide whether that will move forward.

BILL HYSLOP: Thank you, Chach. Any questions from members of the board? Comments or questions from the audience or anyone online? Doug.

DOUG ENDE: Did you look into a comparison of Washington's limits, with the limits imposed by other lawyers funds, in other jurisdictions?

KEVIN BANK: We did not. It's very varied. All these funds are very different, they're funded in different ways. Some have limits on the gift amount, some have limits on the amount that can be given out on behalf of one lawyer, some have both. We do know that the balances vary greatly, so it's hard to really analogize from one to another.

BILL HYSLOP: Jim? It's on.

JIM Yeah. Certainly there must be a procedure for exceeding the \$75,000 limit currently. What is

MACPHERSON: this? Can somebody explain what the procedure is for me, as I'm aware of several that have been beyond that over the last several years.

Because if in fact, it tends to be mobile over time, and there tend to be pockets of claims-- and historically I'd think an actuary could probably help us with things like that. To try to anticipate, using historical data to look to the future. It seems to me that if rather than coming up with a number, that we claim is a limit, and then have a process in which we exceed that limit, perhaps factoring in a percentage of the current balance, and doing something similar to the reserves, that you're doing in your budget. To make it appear that we're not simply--

I don't mean to be flip about it, encouraging lawyers to do things, knowing that there's going to be a massive amount of money, to pay for their mistakes. That's not the intent of it, I'm just saying that for budgeting purposes, perhaps rather than coming up with a number, that apparently can be exceeded anyway, under certain circumstances. How about tying it to either a percentage of the reserves, or some way, to the amount of money that's available. And also anticipating the additional increases on the lawyers.

If it went from 15 to 30, I think this is one of those benefits that lawyers would actually accept and agree on. And that's a good idea. And I will take 10 seconds to say, I didn't raise my hand during the fee situation, because I've been watching it now for a long time. And you voted on it today. But it's the opportunity for the Bar to say, there's value in what the Bar does. And I know that the Bar has been trying to do that, since the referendum went through. But here's an example, to say we've got your back, the Bar is valuable.

The fee now, is what it was eight years ago. It will be, when finally all the dust settles on this. Because you're going to get some clamor, I got to tell you know you're going to get some clamor when they open the envelopes. Because of the one big jump that's going to happen, before those three little jumps.

So that's two comments. One is for the lawyers fund for client protection. Maybe do it other than having a number, and then keep selling us as a Bar.

CHACH DUARTE I'd like to respond to that really quickly.

WHITE:

BILL HYSLOP: Please.

CHACH DUARTE I believe that-- and Kevin can jump in if I'm wrong-- I believe that there was a way to get more

WHITE: than the \$75,000. You could appeal to the BOG, however not everybody knew that. So part of the problem was, is that if you knew to appeal to the BOG, you can go ahead and do that, and you might get a larger gift. If you didn't know to do that, well then you were stuck at the 75,000 limit.

So by raising the gift amount, we would like to make it more clear to people that lose money, that this is the gift amount, this is the process, this is how much you can get and the cap. And I think one of the concerns of the board is, basically if you were savvy, you had a better chance of getting more money as a gift. If you weren't, you were out of luck. That is one of the things.

And the board did actually think about different ways that we could figure out percentages, or what if maybe \$100,000 was the right amount. We could hire an actuary, we could go through that whole process. At some point, you're spending more money than probably you're getting, where we could use those gifts to get to people that actually lost money. So yes, the number might seem a little more arbitrary. But we decided that in this amount of years, it made sense to look at \$150,000, and that only affected 18 cases and that's where the board fell.

BILL HYSLOP: Ken Masters.

KEN MASTERS: Thank you. Just very briefly-- having sat in your position for three years and looked at these issues, I was constantly frustrated. And never able to figure out how-- watching the balance go up, and not watching the ability to remedy people. This is one of the most important things you do. It's one of the best things you do, for the citizens of the state. And lawyers are justly proud of this fund, so I strongly urge you to raise the cap. I think they're doing it in a responsible way, and I think you're going to help an awful lot of people by doing that. Thank you.

BILL HYSLOP: Thank you. KD?

KAREN DENISE WILSON: Not many of the citizens making a request had the knowledge, that they could request more. I would also echo what Ken says, that this is a service that many of our member lawyers are proud to provide this protection for injured clients. I'd also indicate that it feels arbitrary, but in context, it's not at all.

And in our materials we have on page 121, and I'm not going to recite the whole thing, but I just want to give an example. It shows the actual injury to clients who were even receiving the \$75,000 max. And I'm just randomly picking some examples. It has an example of a actual loss of \$1,002,683 and the reimbursement to that client was-- the maximum it could possibly

be was \$75,000. So please know, that although we are considering increasing this from 75 to 150-- and considering inflation over years, and the years that it's been set there, I think that's a reasonable in itself.

But I also know that what an injured client receives from this fund, is often a very small percentage of their actual loss and the impact on their lives. Not withstanding, whether that cap is at 75 or 150. So in that sense, it may feel arbitrary, but it should also feel like not enough.

BILL HYSLOP: Any other comments or questions? See none. There a motion? Mario has moved to increase the cap from 75,000 to 150,000. Is there a second?

BOARD: Second.

BILL HYSLOP: Ann Danieli gets the nod this time.

[LAUGHTER]

Yes, Andrea.

ANDREA [INAUDIBLE]

JARMON:

BILL HYSLOP: No it's a-- it is. It is. That's not saying that it could move on to action.

BOARD: [INAUDIBLE]

BILL HYSLOP: Everyone ready to act or do you want to keep it? Sounds like we're ready to act.

BOARD: Ready to act.

BILL HYSLOP: All right. All those in favor of the motion, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed. Abstain. Pass unanimously. Thank you very, very much--

CHACH DUARTE Thank you.

WHITE:

BILL HYSLOP: --for your service and for your presentation.

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Resolution re Limited License Legal Technician (LLLT) Program

BILL HYSLOP: All right governors, the last action item on our agenda, and then we'll go on to our generative discussion regarding legal education. The last action item is item F, resolution regarding the limited license legal technician program.

BOARD: [INAUDIBLE]

[LAUGHTER]

BILL HYSLOP: We are pressed for time so, please move forward.

BOARD: [INAUDIBLE]

BILL HYSLOP: 130.

ANDREA JARMON: Thank you. The resolution's at page 130, and the materials. This is a resolution being proposed to the board to consider. And the purpose, is to really solidify our support of the work of the LLLT board.

You may recall that our last meeting, in Walla Walla, we had the pleasure of having the chair of the LLLT board, Stephen Crossland present. And he was able to answer some questions about the LLLT board, the work, the history, and where they are looking at moving forward, with this program. And one of the things that came out of that discussion, was a conversation about, what can this board do, to really make it clear that we support the work of this board?

And this is the product of that. So this resolution, is simply a statement that one, recognizes the incredible challenge that we have with the unmet legal, civil needs of members of our community. And it recognizes the intent of this LLLT program, and not being the sole answer, but one way that we can address this issue.

The LLLT board has done just incredible work. This is just a tremendously hardworking board. They have developed and implemented the the program for the first practice area, which was that of family law. They are now looking at an exploration of additional practice areas. And of course as you begin to develop a program, you go back and you look at, OK, what did we start out with? And are there any ways that we can refine what we've already done? Or you also start to evaluate-- OK, those initial limitations and parameters, do we need to come back and

think about if those are practical limitations, and if we should expand any of that.

So there's language in here that supports the LLLT board, looking at the next practice areas, exploring what those areas should be, and also exploring how the LLLT can be better utilized. So for example, an exploration of their ability to engage, negotiate, and perhaps even some limited appearances in court. So I am asking that-- well hopefully you've read it-- having read it, I'm asking that you support this resolution, and support-- continue to support-- the work of the LLLT board. And make that clear by passing this.

JAMES DOANE: So moved.

KEITH BLACK: Second.

BILL HYSLOP: James Doane--

ANDREA Oh I'm sorry I didn't get--

JARMON:

BILL HYSLOP: James Doane moved, and Keith Black seconded. Any further comments? Brad?

BRAD FURLONG: Thank you. I won't repeat anything that Andrea has articulated so well. She has a passion and an understanding of the LLLTs and the LLLT board that is really valuable for all of us.

But I want to address just a different vein of this. Public service organizations, be they counties, cities, towns, public hospitals, all sorts of things, they make investments and programs, to benefit the people that they serve. And the Supreme Court, when it created the LLLT program, called upon us to make an investment in a program, to address the access issues. At least to partially address the access issues. And this was pointed out in some very cogent questions, asked during our budget discussions earlier today.

The LLLT program right now does not pay for itself, our investment has not reaped the benefits, that we ultimately know and hope that it will have. Both in terms of generating revenue, for this organization, but also in having enough folks out on the street, actually performing LLLT duties, to make a dent in a very difficult problem.

I think it's our obligation to maximize our investment, I think it's-- hopefully the court will see it the same way, in approving new and increased practice areas, not just one but two quickly. And that we can streamline the educational portion of this, so that we can really, reap the

benefits of this investment. And if we're going to do it, let's do it right, let's do it with vigor, and let's make it successful. And I think that's what this resolution, puts this board on record as saying, and I hope it can be supported.

BILL HYSLOP: Thank you Brad. Bill Pickett.

BILL PICKETT: Yeah, I just want to say as I read through this-- and one of the problems, when you get these proposals, is it triggers you start reading more and more information. And I, at this point, really support this program. I think it's a fantastic effort, to specifically try and address the needs, the unmet civil, legal needs, that exist in this state.

But I also have this one reservation. and I support this, because the language-- and I just want to highlight this-- it talks about the possible rule changes. Exploration of the possible rule changes, to allow LLLTs to appear in court, in a limited fashion, and to allow LLLTs to negotiate on behalf of clients. That raises great concerns for me, as a trial attorney, where I spend most of my practice going to court, speaking on behalf of clients, as a lawyer, and negotiating resolution of their claims.

That being said I am open to what the language specifically says. It's the exploration of the possibilities. And I think that's a a fantastic way to phrase it, and to allow it to be open for discussion, to see if it in fact helps us meet, and becomes a vehicle where we can meet, these unmet civil, legal needs in this state.

BILL HYSLOP: Thank you very much. Any further comments, Mario?

MARIO CAVA: I want to add-- and I am not going to repeat what's already been said-- but I know there's discussions at the national level, pertaining to Washington's development of the LLLT program. And other states are looking to Washington to really lead in this area. And I think that in the past, the board may have sent a different message. And with the Supreme Court passing APR 28, and now we are in a new regulatory world, that it is really important that we move forward with a resolution, that stands behind APR 28, that supports the LLLT program. And that this also will help really send a message nationally, that we are leaders in this area, and committed to these programs.

BILL HYSLOP: Thank you, Mario. Any further board members? All right. Jean Cotton I'll come back to you, Keith.

JEAN COTTON: I've never stood before you guys and lied. I've never soft shoot anything, I've tried to be

straight with you at all times. This body, your predecessor's, three times voted overwhelmingly against this program, overwhelmingly, and they had all the facts and all the research with them. The Supreme trumped it and ordered it. With this, you are ignoring what your predecessors did, with they knew, what they understood.

And too often in this conversation, you are only given the positive things about this program, and the future of it. And you are not given the negative, you do not listen. You, oftentimes, don't have the opportunity to listen, to the other side. I'm not going to take that time here today, because it would not be appropriate, but there is not misinformation as set forth in this memo. It's fact. Go back and look at your meeting minutes. The BOG three times, maybe four-- and I was here for every one of them-- voted overwhelmingly against this program. There is nothing that says you have to put out a resolution. And no, you are not looked upon graciously by the other states, by all people. Many think it's a joke. We have a lot of work to do, but one of the promises made to us, is these people would never go into court. You have broken faith with the lawyers, the young people that are spending 150, \$200,000 for a legal education, so that somebody from community college can go into court for them. There's never been a first reading on this resolution, and here we are at action. This is all part of the conversation, that's been going on the last couple of months about bylaws. You're breaking the faith with your members. Please don't do this. At the very least, put it over. Make this truly a first reading, and get some comments from your constituents.

BILL HYSLOP: Thank you, Jean. Ruth, did you want to add to that?

RUTH EDLUND: Based on this paragraph, that says, "as we've navigated, there continues to be misinformation, quoted and printed in various national media and other sources, about the WSBA's and BOG's lack of support for the program" close quote. My assumption, based on reading that, is that you are wanting to create a document, that when googled, will turn up comments about BOG's and WSBA's current support for the program.

I have to agree with Ms. Cotton, that it is a historical fact that there has been opposition in the past. The Supreme Court has overruled that, but I gather that a concern is trying to get something to come up in the search engines, that hits higher, and is more current. In light of that-- leaving aside the substance of how to go about doing that-- I would respectfully suggest that the Board of Governors might want to think about a document, if that is their objective, that will be higher up in the Google hits. And that is something that I would like to think that you'd put over for a while, that that would be final action, and that this should be a first reading.

So that the terms can be refined, you can think about whether it's a searchable PDF, and so on.

My second comment is that I was kind of intrigued. I went and I looked at the last resolution that the board passed. And this actually relates to my previous comment about the costs of the LLLT program. I noticed that the last resolution, was a resolution praising the updated civil legal needs study. Which indicates that family related problems have dropped, which is the original practice area of LLLTs. Family law related problems are not even in the top 3 anymore, according to the updated survey, that was promulgated last October, and then the board passed a resolution praising it.

And again, reading the resolution in light of what we've heard, about whether and to what extent the LLLT program is projected to become self-sustaining it raises the question in my mind. If the actual unmet civil legal needs, are in practice areas in which LLLTs are not currently licensed to practice, what does the Board of Governors, acting as fiduciaries, project will be the estimated cost of expanding those practice areas? And in light of that, when is the program expected to be self-sustaining?

PAULA

LITTLEWOOD:

So just a quick on the national misinformation. Just to clarify that's not references to the Board of Governors prior votes. That's actually a reference to an individual, who sent a letter to national media outlets earlier this year, saying that this board was interfering and not supportive of implementation of the program. So I just wanted to make clear, that that reference about the national misinformation isn't about prior Boards of Governors.

RUTH EDLUND:

So the resolution is to counteract a single letter?

PAULA

LITTLEWOOD:

I think Andrea delineated quite well what the resolution's for.

BILL HYSLOP:

And Ruth and Jean, I will tell you that-- is Jean certainly knows-- I served on the Board of Governors from 2000 to 2003. And there was significant discussion, at that point in time, about the LLLT program. In fact, my recollection is that I opposed it at that point in time. But the program has matured so tremendously, and has grown so tremendously into what it is today. And the Supreme Court has directed that we will have a LLLT program. We intend to support that program, and as you've heard, the presentation here-- the purpose of this is to have and continue a discussion about the program, and how it can best serve the people of the state of

Washington. This resolution, by and of itself, does not change the program at all. Jill.

RUTH EDLUND: It does--

BILL HYSLOP: Ruth, I'm sorry

RUTH EDLUND: I'm sorry.

BILL HYSLOP: We're running short on time. I want to recognize you, but I also have to get around to these other folks, and we do have another very significant presentation after this. So Jill Karmy.

JILL KARMY: So I want to respond just briefly. And I thank you for-- Jean and Ruth-- for your comments. What I want to make clear, is that this is a resolution, that stands for this board's opinion on the LLLT program. This does not change history, this doesn't change anything about description of what prior boards did. This is our opinion, and as such I am ready to move forward with a vote, and I intend to make a motion at the end of my statement. Because, I don't think that this board needs to delay, or hold over action on a resolution, that states our opinion in support of the LLLT program and board.

And just quickly, I have said this in prior meetings-- so I think it's going to become my mantra, with the LLLT, for as long as I'm on this board-- I work in a practice area, where lay representation in hearings has been allowed for decades. I am still in gainful employment. I work against lay representatives, who do a fabulous job sometimes for their clients, and employers who hire them.

I guess what irks me the most, is when I hear comments, that only lawyers can do this. That hits a nerve in me, personally, I don't take it well. And I want to be careful, that we steer clear of that type of elitism, in my opinion. So I am going to make a motion to support this resolution.

PAULA Do we have a motion?

LITTLEWOOD:

BILL HYSLOP: Karen Denise.

PAULA Do we? Oh, OK.

LITTLEWOOD:

KAREN DENISE: Jill has covered what I have to say.

BILL HYSLOP: Phil Brady.

PHIL BRADY: We've heard a number of times, questions about the projections for the LLLT program, and when it's going to be able to pay for itself, and I'd like to point out one thing. We can make pretty good projections, about the number of lawyers we're going to have, because we have decades of data, and we have 50 other fellow regulators that do roughly the same thing. And we can see the trends there. This is a unique program, the LLLT program is a unique program.

You're asking us for do it for us to make projections that are essentially meaningless, because we have no idea. We can tell you who's in the program, we can tell you what our capacity is, we can't tell you how many people are going to go through the program successfully. We cannot make a meaningful projection, when it comes to LLLTs.

I mean I get that a lot of people don't like LLLTs, the reality is, until the Supreme Court tells us otherwise, we have a LLLT program. And it is incumbent on this board, as our fiduciary responsibilities to this organization, to support the programs that we are tasked with supporting. I happen to think it's a really good idea. And as for the idea that somehow they're going to drive people out of business, we've had LPOs in the state since the 1970s.

BOARD: 80s.

PHIL BRADY: And let me tell you, in my day job, when we started talking about what was the practice of law, and we started trying to regulate the escrow area, attorneys came out of the woodwork to defend that part of their practice. The LPOs have not damaged that practice, especially in eastern Washington. There is enough work that everyone can do their job. And frankly, if as an attorney, you can't make the case that you are worth more than a LLLT, to a potential client, you probably aren't.

BILL HYSLOP: Any further comments by the members of the Board of Governors? Keith Black.

KEITH BLACK: Well I only wanted to say, as an aside, I think we are very, very fortunate to have Steve Crossland in the role that he is playing and serving. I think he's doing an absolutely outstanding job. I think they have somebody in that role, who's been a prior president. I just really appreciate having him.

KAREN DENISE: I just have one sentence, please.

BILL HYSLOP: Oh, yes.

KAREN DENISE: I'm just worried, and I want to speak for myself. But I have an awareness, that many of the other governors around the table feel the same way. While as a trial attorney, I am happy with my conditioning to give deference to the Supreme Court, but I want to be clear to my fellow governors and to the members, that I support this resolution, not just because it was ordered by the Supreme Court that we support the LLLT program. I support this resolution, because I very strongly believe-- notwithstanding that order-- that this program will contribute greatly, to an area of need to our legal community, which I serve.

BILL HYSLOP: Steve Crossland.

STEVE CROSSLAND: Thank you for the resolution, and I obviously I would support-- or encourage your support of the resolution. This is aspirational, this is something that we want to affirm our working relationship-- the good working relationship, that the LLLT board has with you, the BOG. And has had, since the inception of the LLLT board, over four years ago. I assure you, the things that were discussed in the referendum--

[LAUGHTER]

--you're quick back there-- in the resolution are items that will be coming back to this board. We have to explain to you, before we go to the Supreme Court, explain what these things mean. They are aspirational. We're working on them, we're working on them as fast as we can, and as furious as we can. And we really appreciate, again, the good working relationship. I think Bill, you identified the things that we are concerned about and are interested in, and we'll do our best to come back to you within the next 12 months, with items of further information and greater depth on these issues. So thank you, and I hope you all support the resolution.

BILL HYSLOP: Thank you Andrea Jarmon.

ANDREA JARMON: Thank you. I'm just going to go deep here for a moment, but I'll be quick. 20 years ago, I stood in King County family court, as a pro-se litigant. I was a homeless, single parent, trying to leave a domestic violence situation. I didn't even know that I was called a pro-se litigant. 20 years later, every day that I'm in family court, I see individuals with the same struggles. They don't even know that a pleading is merely a piece of paper, that I write what I'm asking the court to do on it. The reality is, 20 years ago-- lawyers, there weren't enough doing the work to

meet the need. 20 years later, there still aren't enough.

We have a rule. That rule has constituted the LLLT program, and all I'm asking right now, today, is for you to say, we support this rule, we support the work that the LLLT board is doing, and we want the LLLT board to continue to look at what it can do more. To accomplish the goal, of addressing unmet civil legal needs, that's what I'm asking you to do. I'm not asking you to think about how it's going to impact your job as lawyers, I'm asking you to think about how it's going to impact the people in our state who need legal help.

[APPLAUSE]

BILL HYSLOP: We are running out of time. I've got three people-- four people in the audience who've asked to be recognized, two of which have already spoken. Jim McPherson, if you can very shortly, and then we need to move to a vote. We have additional business yet this afternoon we have to address.

JIM MCPHERSON: Yeah, and obviously I don't want to rehash. My first appearance before this board, was in 1998, and I watched everything since then, and I did go through this whole LLLT. So I do recognize the history that's happened, and it was a very difficult birth, believe me, for that thing to occur, because it occurred from the top down. And it's here with us now, and we have to recognize it, and move forward with what we have. But we still have to recognize that there were issues and questions about this program, that you can't just not keep watching and making sure that those things happened.

Family law has been on the point of the spear, but the rest of the profession was there. Defense trial lawyers was there, the plaintiff's bar was there, one of the few times we were arm in arm, questioning the LLLT program. All we're saying is, please remember that there's a lot more going on here than just all the positive stuff, there's plenty of things that can go wrong here, and we don't want to have those unintended consequences.

Now I started in 1975, working as a non-lawyer, representing clients in food stamps matters and doing legal aid work, before I went into law school. And I've done the whole gamut since then, so I know the difference between the non-lawyers and lawyers. And believe me, there is a huge difference. And we're just concerned, not just for our jobs, but for the public, that there are going to be people out there, that cannot properly represent them. Just remember your history, that's all we're saying. And we're not going anywhere, we'll still be here to make sure

that these things happen properly.

BILL HYSLOP: Thank you, Jim. Jill Karmy.

JILL KARMY: Thank you, Jim, and I guess I want to assure everyone that we are actively looking at any issues with the LLLT program, and we want to make it the best program possible. But knowing what we have this afternoon, and how important that is to the presentation as well, for the day, I would like to call the question and cease debate.

BILL HYSLOP: All right the question's been called.

BOARD: [INAUDIBLE]

It's non-debatable, isn't it?

PAULA Then you have to have a 2/3 vote.

LITTLEWOOD:

BILL HYSLOP: Is there a second to calling the question, I heard it over here someplace. I think Andrea called it, did you make the second?

ANDREA Yes, I did

JARMON:

BILL HYSLOP: All right. Non-debatable. All those in favor of calling the question, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed. OK, it passes by more than a 2/3 vote. We will now move to the main motion, which is to adopt this resolution, regarding limited licensed legal technicians. All those in favor of the resolution, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed. Abstain. It's adopted. Thank you very much, and thank you everyone for your opinions. This is obviously a discussion that is ongoing, will continue, and will come back to us, and we're going to have further discussion about it. This is one further step in the process. All right, that concludes all of our action items here today.

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Institute for the Advancement of the American Legal System (IAALS) Presentation on Foundations for Practice Project

Presenter:

Alli Gerkman – IAALS Director of Educating
Tomorrow's Lawyers

BILL HYSLOP: We are going to continue this without taking a break in the deference of time. Allie Gerkman has come from out of town. We are very pleased to have the deans with us have our three law schools-- Jane Korn from Gonzaga University School of Law, Annette Clark from Seattle University's School of Law, and Kellye Testy from the University of Washington School of Law. And we're going to be talking about a very interesting and very dynamic presentation that many of us saw at the Western States Bar Conference earlier this year, and then we'll have a discussion about the legal professionals and law school education. And we're very pleased to have the deans here with us to join in that discussion. So I'm going to turn this over to Paula to introduce Alli.

PAULA LITTLEWOOD: Super excited to have Alli Gerkman with us who is the director of Educating Tomorrow's Lawyers. I've been working on IAALS to change that to educating tomorrow's legal professionals. And Alli has been with Educating Tomorrow's Lawyers since 2011, she became its director in 2013. And prior to that-- so she's kind of used to what was going on today. She worked at the Colorado Bar Association for five years in the CLE department. And I just wanted to highlight that she were received the award of Professional Excellence from the national CLE organization in 2011, so for using technology and education. So she's very dedicated to education, very dedicated to the profession, is a lawyer herself, and is a good friend to the profession. So we're thrilled to have her here today. Thanks, Alli.

ALLI GERKMAN: Thank you, Paula. And thank you to all of you for having me here today. As Paula said, I'm the Director of Educating Tomorrow's Lawyers at IAALS, the Institute for the Advancement of the American Legal System, which I sometimes say is a cautionary tale about what happens when you put lawyers in a room to name something. As the name suggests, we are in fact an Institute focused on advancing the American legal system. And we do that often by identifying problems, working actually with groups just like you to identify problems, and then thinking about the path to a solution. And that path, at IAALS, often involves either a collection of research or research that we undertake. We then convene stakeholders, experts, again, people often just like you to discuss potential models and potential solutions. And then we actually try to put models in place and evaluate whether they have, in fact, made an improvement on the initial problems.

So today I'm going to start out by talking to you about a problem, and it's a problem that I'm

sure is not news to you, but it helps set the stage for the project that I'm going to talk to you about. So 40%-- this is the percentage of 2015 law graduates who at that 10-month mark had not landed full-time employment that required bar passage. Which is maybe OK, because you don't only go to law school to take on a position as a practicing lawyer. That said, 30% is the percentage of 2015 law graduates who did not land a full-time job that either required bar passage, or recognized the JD as an advantage. And what's more, 25%, again at that 10-month mark, of 2015 law graduates hadn't landed a full-time job, and that includes, not just bar passage required and JD advantage, but also other professional or even non-professional jobs.

So this employment gap is obviously a problem and a concern for many in law schools and in the profession, but it's exacerbated, we think, by another challenge, and that's this. 71%. This is the percentage of third-year law students who believe that they have sufficient skills to practice. 45%. This is the percentage of law professors, the people who are teaching those third-year students, who believe that new lawyers have sufficient skills to practice. And finally, 23%. This is the percentage of all of you who believe that new lawyers have sufficient skills to practice. And so it's also, in a sense, the percentage of people who we hope will ultimately hire new grads, who believe that those new lawyers have sufficient skills to practice, and again too, with a body like yours, it's a percentage of people who are thinking about the clients that these people will ultimately be serving who believe that they have sufficient skills to practice.

So this, again, is a problem. And at Educating Tomorrow's Lawyers as we thought about how we might be able to approach this we brought together practitioners, we brought together leaders of the bar, we brought together law schools and leaders in legal education, and we--

BILL HYSLOP: Try the one to this the other side.

ALLI GERKMAN: OK, it sounds like I'm back. And here's what Foundations for Practice sought to do. First, we wanted to identify the foundations that entry-level lawyers need. Second, we wanted to then use that and develop measurable models of legal education that support those foundations. And critically, we also wanted to align market needs with hiring practices to incentivize positive improvements-- this one has a lot of business speak in it. What it really means is that if we talk to the profession, and we talk to legal employers, and we find out what is needed in new grads, the best way to ensure that law schools will undertake the teaching of those things, or the conveying of those things, is to hire based on those things that are stated as needed.

So these are the objectives at the outside of the project. And we have completed number one, and that's what I'm here to talk to you about today. What we did is we created a survey and I'll talk about the survey itself, but I'm going to give you a little background on what we did with it. We distributed it in 37 states. And I want to pause right here and thank you all, because you were one of the states that agreed to distribute the survey to all of your lawyers, and I think actually you were the first state to distribute it to all of your lawyers. So thank you for that.

We ultimately distributed it in 37 states, which means we ended up with more than 24,000 valid responses to the survey. This gives us a lot of information to hit that first question. And I'm going to run through the respondents and what they looked like, just so you have a sense of whether the survey hit the types of lawyers who are actually out there working and practicing.

So this is the gender breakdown that we received back in the survey. We had 58.5%, men 41.5%. This is the race and ethnicity breakdown. Actually, I will say when I first got these results I nearly had a heart attack, because I thought that our survey had not done a good job of reaching the full profession, but then I actually saw the numbers in the profession and had a real heart attack. This is the breakdown of salary. Interesting side note, this was actually the question most likely to be skipped as people took the survey. And here's the breakdown in terms of practice setting. Just so you know, this gives you a broad look at the breakdown of practice setting. 57.8% in private practice-- no surprise. Within that, solos and small by far the majority of those respondents, and we have a lot of information just across the board about firm size, about organization size, but I show you this to give you the general sense of who responded.

We also got a good spread across years of experience with most of the respondents actually being in either 1 to 10 years of practice, or 31 plus, which mirrors not only the face of the legal profession, but also the broader workforce in general. And in terms of geography and regions where our respondents came from-- we had 24% in the West, 32% in the, guess I'll call that, Midwest, 32% in the South, and then in the Northeast, 12%. 50% came from urban settings, by the way, with 37% in suburban, and 13% in rural.

As we looked at our results, and we looked at figures from the ABA, and from other organizations that look at the face of lawyers in America, the respondents that we have, pretty closely mirror what we see in the profession. So I'll tell you about the survey itself and what we asked.

We created a list of 147 foundations and these foundations included three broad categories of things. They included things we think of as legal skills, so traditional legal skills. They included broader professional competencies, and competencies are basically skills, but skills that are useful in any profession or career. So this includes communication skills, teamwork, that type of thing. And then we also included characteristics, traits, so things like integrity, diligence, grit, resilience-- these are things that are not skills, but that we heard were potentially important in new lawyers.

The way we pulled that list together of 147 items is that we looked at existing work. So we looked at the ABA's MacCrate report, we looked at the Shultz Zedeck report that came out of Berkeley, and identified the types of competencies, skills, characteristics that lawyers might need. And we looked at some other work that is out there from a number of organizations that have looked at this either regionally or through their alums over the years. We then pulled together groups of lawyers to vet that list and to help us refine it a bit, which is how we ended up with the list we had.

Each of those 147 foundations, we asked the respondents to place them in buckets. So rather than saying on a scale of 1 to 10, is this important. Instead we asked them to say, is this necessary in the short term-- meaning right out of law school-- necessary, but it can be acquired over time, advantageous, but not necessary, or not relevant. We did this because this let us know a really important thing, and especially in that first box, is this something that new grads need at the point they're leaving law school. Whether they got it in law school, or got it somewhere else, is this something that's necessary right there. The other piece I would say to this group, in particular, is that dividing in this way does another thing, which it also it lets bar associations know the types of ways they might be able to help lawyers develop professionally over time, because that second box goes to things that lawyers need at some point, just not necessarily right out of law school.

So in this chart, what you can see is that for the most part the foundations that we had on this list were viewed as necessary. So in that dark red to the left of the line, that indicates that the percentage of characteristics, professional competencies, and then legal skills that were identified as necessary at some point either right out of law school, or over time. And so, again, this was a list that was intentionally pulled together to be relevant, so it seems we hit that right on the head. As you see, legal skills 97.5%, were the item that has the most legal skills were necessary at some point. But I'm going to dive into that in a little bit.

In total, 77 of the 147 foundations were identified as necessary right out of law school. And 48 of those items were identified as still quite necessary, but as things that could be developed over time.

So this is where it starts to get a little interesting. This chart shows the breakdown in the necessary items. So the dark red means that 75.6% of characteristics were identified as necessary in the short term, or right out of law school. 45.5% of competencies for necessary right out of law school. And 40% of legal skills were identified as necessary right out of law school. So in total, we would say well, clearly a new lawyer needs some package of all three of these things. But-- I'm going to jump back real quick-- the other thing we noticed was that of all of the things that were viewed as most important right out of law school, the number one were characteristics. So not legal skills, not even competencies, but characteristics. So let's dive into that a little bit.

This is the list of the top 20 foundations that were identified as necessary right out of law school. And it's a long list and I don't intend for you to read all of them. I'm going to walk through a couple slides here that will illuminate the point. The first is this. When and when we looked at this list we wanted to see how many of these were traditional legal skills-- one, research the law. So in fact, I would almost be inclined to make it a slide that was easier to read, make it just the top 10 items, but we have to do top 20 to actually capture the first legal skill that shows up.

So the rest of these items. Here are the competencies-- so these are things that would be useful across professions, or across careers, not necessarily just in law. And then these items are characteristics-- conscientiousness, common sense, intelligence, that's one that is not especially surprising. And none of them are surprising. But what is interesting is that when we look beyond that top 20 list, we also see all of these characteristics that are important. So personality fit, passion for work, resourcefulness, grit, humility, initiative, self-awareness, a whole host of things that are critical to new lawyer performance.

And so when we sat back and looked at all this, and thought about what this might mean, we thought well maybe-- we know that IQ is important, not just in the legal profession, this is a concept that's been discussed for a very long time. And we know, more recently, that EQ is important. We know that communication skills, and teamwork, and things like that are important, but potentially there's also a CQ-- character quotient-- that is important in new

lawyers.

So we showed that top 20 list of the items that are necessary right out of law school. And what I want to do is dig a little deeper to find exactly where legal skills are, in part, because that slide is a slide that has-- and the overall findings with only 40% of legal skills being identified as necessary in the short term, I want to dig in and show where the legal skills are, and show the items that actually do show up as necessary in the short term.

So this is the top 20 list of the foundations that must be acquired over time. And what you'll see right away on this list is that there are a lot more legal skills here. We have very, very tangible legal skills-- preparing a case for trial, quality in-court appellate advocacy, and so on. So, I'm going to dig a little deeper even into the categories and show you the specific legal skills we asked about. And sometimes I joke that we did actually ask about legal skills, they just did not show up in our top items for whatever reason.

So these are the survey categories that we categorized all of the foundations under for purposes of survey distribution. And most of the legal skills show up in three categories-- legal thinking and application, litigation, and transaction practice. So these are the items that we asked about in litigation. These are all pretty clearly things we think of as traditional legal skills. These are the items that were identified as necessary right out of law school-- comfort with e-discovery, draft pleadings, motions, and briefs, interview clients and witnesses, request and produce written discovery. The rest of the items were still identified as necessary. They were just items that were identified by respondents as necessary, but they could be acquired over time.

I would note, too, that for the litigation in the transaction sections, when we distributed the survey, we did ask lawyers to indicate whether they had a litigation practice or a transactional practice, or both, but they only received questions about litigation if they indicated that they did work in litigation, and same with transactional. So here are the items we asked about in a transactional practice. And again, we actually see only two items show up as necessary in the short term, or right out of law school-- drafting contracts and preparing client responses. Again the rest of these items with, I think maybe one exception, I want to say possibly business formation services was identified as only advantageous, but the rest of the items were identified as necessary, but as things that can be developed over the course of a lawyer's career.

And finally, legal thinking and application. And this is actually an interesting one. So these are the items that are identified as necessary in the short term, right out of law school. And what we notice when we look at this list is a lot of these are items that law schools are already, certainly already teaching, but also most people think they're doing a really good job of teaching these things. These are things that go into that package of thinking like a lawyer. And so it is interesting that those are all items that show up as certainly things that they should be focusing on as their students go out into practice.

So one of the notes I would like to make on this is that when we set out to do the survey, we expected to see potentially some differences across practice setting, across region, across any number of areas, across years of experience. And in fact, we saw far more similarities than differences, which has made it really easy to report out on and present on, because we are able to talk about the national results. I'm going to show you some of the differences that we've noticed, so that you know where there may be are some differences of opinion across some of these groups of respondents. But for the most part, I don't think they're going to surprise you.

So one of the areas where we saw differences is in the area of foundations related to business development and rainmaking-- so solos and small, or medium-sized, firms were more likely to say that those foundations were important. While big firms, public interest, government, in-house lawyers were less likely to say that. We also asked about a series of foundations related to passion for the law, and passion for justice, and the rule of law, and we found that public interest and government lawyers were more likely to say they were important. Well in-house counsel, or large-firm lawyers were less likely to say they were important. I will note that's not to suggest that a large-firm lawyers said they were not important. They just were less likely to say they were important, at least in that short term, than these other groups. And in the area of commitment to pro bono, we saw that large firms are more likely to say a commitment to pro bono work was important, while in-house counsel and government lawyers were less likely to say it was important.

One of the areas where we have actually seen some pretty significant differences is gender, and we've seen the differences in a couple ways. One is that we've actually seen many, many, many statistically significant differences in the way men and women answered across the survey, but we also have a couple of beyond statistical differences. Meaning by more than 10%, we saw differences in the way women valued things like customizing communications to

context, reading and understanding others' subtle cues, thinking strategically, and big picture thinking. Women were at least 10% or more likely to indicate that those were important in the short term. While men were at least 10% more likely to say that appreciation for the market for legal services, generation of new business, retaining existing business, and an entrepreneurial mindset were important.

One area I'll flag where we really did expect to see a lot of differences was across years of experience. And we expected to see differences in foundations related to technology, loyalty, and work-life balance. And we simply did not see differences for the most part. The way more experienced lawyers and less experienced lawyers answered, was very much aligned.

So I'll talk to you about a few of the specific foundations we asked about through the lens of trends. And when I say trends, I mean we have a lot of conversations going on about legal education, what's the silver bullet sort of conversations. And so I pulled out from the survey some of the items that you hear a lot of people talking about as being really important to improving legal education in some way. So the first is business skills, so things like entrepreneurial mindset, appreciation for the legal services market, and accounting and financial acumen. The percentages I'm about to show you will be the percentages of respondents who said that these are necessary right out of law school-- quite low compared to many of the others. Only 17% said an entrepreneurial mindset was important right out of law school, 14% appreciation for the legal services market, and only 14% that accounting and financial acumen.

Another thing we hear a lot about is the importance of teamwork and community, so things like well, teamwork, finding a mentor, and leadership. 73% said teamwork was an important foundation right out of law school. And well 73%, I will note, didn't landed in the top 20 list, it's still a pretty compelling number, especially when you consider how much teamwork is actually used in law school. And that differs from law school to law school, but often the curriculum is not set up in a way that is supporting teamwork. 44% thought finding a mentor was important, and 19%, leadership. And I do want to note too, again, this doesn't mean that overall respondents said leadership is not necessary, they just found it to be necessary over time, not necessarily right out of law school.

And finally to place the work we're doing in this broader context, we're not the only profession that is trying to think about what goes into a successful outcome. This is happening in education circles across the board. And one of the ways that conversation is taking place that

probably some of you are familiar with is through terms like grit, resilience, and positivity, and so those were included in our survey. And in fact, lawyers found all of them to be characteristics that are necessary right law school, which is very much aligned with the broader work in this field that is certainly finding that characteristics in general, and also specifically, grit, resilience, and positivity are things that are important factors and success for any professional.

So what I just talked to you about is the first section of our survey, but we had a second section of the survey where we asked respondents to reflect back on the foundations they had just identified as important, and to tell us what are the accomplishments or experiences that would help you identify in a prospective job candidate that they have those foundations. And I have this resume up as my transition slide, because I want to note that we did not ask respondents how do you currently hire, what are the things you look for when you're filtering your resumes. We asked, if you wanted to hire based on the foundations you just said are important, what would you look at.

And so across all respondents this is the list. And again, this is really hard to read, I apologize, but I'm going to explain it in just a moment through a series of slides. So we have here the highest number of very helpful responses was actually legal employment. The highest number of very unhelpful responses was actually law review experience, which you see up at the top. Law review experience, for the purposes of this slide, I combined helpful and very helpful, and then I combined very unhelpful and unhelpful. So law review experience was actually identified as the second to least helpful item, while legal employment is the most helpful, followed by recommendations from practitioners or judges. But even more than that, what you'll see here, the items that are highlighted in red they include legal employment, recommendations from practitioners or judges, legal externship, life experience between college and law school, other experiential education, participation in a law school clinic, federal court clerkship, state court clerkship. The way these are different than the items that were identified as not being as helpful is that these are all based in some kind of experience. Rather than being necessarily an accomplishment, like class rank, they are actual experience either related to the law or, in the case of life experience between college and law school, just broader experience, which is not surprising when you consider how important characteristics turned out to be in the survey.

So when I first looked at that I thought, I bet it's totally different for big firms, I bet that these shifts a lot. And they shift a little, but those top 10 items still stay pretty strong. And class rank

and law school attended both jump up-- those items are actually more helpful to this particular group of firms 100 and plus, than any other item. But the other 10 still stay strong. Same with firms 2 to 100-- and I apologize, I know that's a very broad range. But for purposes of presentation, I pulled it together in that way. I do separate out solos here, though. So you can see, again, those 10 experiential items still hanging tough up there. Law school course in a particular specialty is the gray bar that jumps up into the mix as also being important. Government lawyers, again, would value those experiential opportunities and if they were hiring on the foundations. And same with legal services organizations-- PD offices-- where again we see law school courses in a particular specialty jump up.

One more note, we will be releasing soon our next-- I believe you have our first report on foundations in your information. We're releasing in our next report in a few months and we're diving into these hiring criteria, and the information we've learned there. And one of the things that has popped up is while there weren't many differences across practice settings, there actually are differences here across years of experience. So young lawyers were more likely than more experienced lawyers to indicate that experience-based criteria would be valuable to them in hiring lawyers based on the foundations they identified as important.

So for the project I wanted to talk a little bit about what's next, because I think I mentioned that we're a research center, but we're really more than a research center because we carry our work forward. And so the first piece of the next phase of this project is that we are taking this work and we're using it to work with law schools and their employers to identify learning outcomes using the information that we have from this study to create then ways to measure whether those learning outcomes are being achieved. And importantly, to find ways to ensure that those employers are hiring then based on the foundations that they've indicated are important. So that's the next phase.

One of the questions I get a lot about that, and so I want to mention it is that seems are we missing a group if we're focusing on legal employers, because there are people who will go out, and they hang their shingles, or their potentially not getting hired right out of law school. Our view is that if we can get legal employers to shift the way we're hiring, it means there's great incentive, really great, positive incentive for law schools to make sure that their graduates are graduating with those things. Or I would note, too, sometimes to find a better way to communicate that their graduates are graduating with those things. Because one of the things that we've done over the last couple of years is hold a series of round tables with

members of the profession and legal employers, and we think that while there are probably things that law schools can do differently, there's also a lot that they're doing really well. But there is sometimes a communications gap between the law schools, and the profession, and the employers, and we hope to bridge that as well.

We also think there's an opportunity here to think about alternative paths to bar admissions to the extent that these are the foundations that the profession has identified as important in new lawyers. We think it would be important to ensure that the path to admissions is looking at those things. And finally, I just throw this out here, one thing I'll note about all of these three items is these are all things that influence law schools-- the way employers hire, the bar admissions, meaning the bar exam, because there is often curriculum that has to be developed around that, and rankings. And so what we'd also like to do is work with the folks who do rankings to try to come up with some objective criteria that can be used in the rankings to give a better picture of law schools and their value.

And with that, I will stop talking and turn things over to conversation.

BILL HYSLOP: So governors, earlier this year we talked about topics that the board would like to learn more about and would like to discuss. And one of those that was high on the list was legal education, both in terms of the skills that are identified that employers are looking for for new lawyers coming out of law school, and the challenges that the law school's face. And so we invited Alli to come here and give this presentation. As I said, several of us saw it at the Western State's bar coverage. I think it was brand new at that point in time. And we're very pleased to have the deans of our three law schools here. And we would like to have a discussion with everyone here on the board, and in the audience, and address your questions about legal education in today's environment, the challenges, and the needs as well. And, you want to comment on that, Paula?

PAULA I was going to-- are you done?

LITTLEWOOD:

BILL HYSLOP: Yeah, go ahead.

PAULA As you know, we speak at all the law school orientations. And I always give our law schools huge kudos, but they are doing amazing stuff in their orientations, which I think is addressing some of these maybe softer skills, or ELs. So we had invited, if the deans would like, to kind of give you guys some idea of what they're doing in their orientation. So as they're on-boarding

these people in right as I start law school to be thinking about a lot of these bigger issues.

BILL HYSLOP: So, Dean Clark.

ANNETTE CLARK: Yes? Here.

BILL HYSLOP: Would you like, and would Dean Korn, Dean Testy, would you like to add any comments to this? Talk a little bit about some of the challenges you're seeing? Opportunities?

KELLYE TESTY: Let me first thank you all for the discussion. And one of the things that really struck me as I read this study is that it really builds upon, what I would call, decades of very similar information, which is that students need not only to have what we used to think of as the thinking-like-a-lawyer skills, and the classic skills of legal research, but that increasingly, we also need to be attentive to how those things work together, and also how they work with what we might capture as a broader professionalism concerns, things like showing up on time, and treating people with courtesy, and the kind of things we all wish people learned in elementary school, but maybe we have to wait the law school to make sure they have. So one of the things that I think I can share in summary that I think affects all of us is that each of the deans in Washington, and around the country, have been strongly aware from their MacCrate report forward of the need for students to have this broader suite of skills, and values, and competencies. And starting with orientation, all the way through the first year, and then all the way to the third year, the education is building sequentially to help the students gain more skills, and do even apprenticeships in the third-year through clinics and other activities. I think that's getting at exactly what our students need to have when they're out in the real world, so to speak.

I find the most interesting part of this study the question of how well does what lawyers in the field say they want match with how they're hiring. And I think there is a deep dissonance there that is very interesting to explore. And I think that's going to be one of the most interesting things about the work you're doing, Alli, and something really fun to talk about.

ANNETTE CLARK: Thanks, Kellye. I just want to echo what Kellye just said. We certainly experience as we talk to employers about the quality of graduates that they're looking for that there is a huge disconnect between what we hear and then what we see in the hiring market. For the most part what we see is class rank, grade point average, and I will say some emphasis on have they had externships or internships, and US news ranking. It continues to be a very elitist

profession from that standpoint.

I really liked Alli's emphasis going forward on looking at how do we better communicate to employers what it is that law schools are doing, and even more importantly, what it is that these graduates have as they come out. And it's not just the law schools communicating to those employers. I think it's incumbent on us to help our students and graduates figure out how to communicate what they bring.

We've talked a lot about how do we help our students present a portfolio of their experiences, their skills, and their characteristics that come with evidence of those skills, experiences, and characteristics that we hope would be quite persuasive to employers, and perhaps help those students in graduates stand out in what is still a very competitive marketplace.

PAULA But, Annette, can you-- Annette? Annette?

LITTLEWOOD:

ANNETTE CLARK: Yes.

PAULA Can you talk what you have the first-year class--

LITTLEWOOD:

ANNETTE CLARK: Oh, sure. Should we line up so that we're not constantly--

PAULA Yeah, and then talk about orientations. Yeah.

LITTLEWOOD:

JANE KORN: I think one of the other-- I totally agree with everything Kellye and Annette said, but one of the issues that I see, too, is people tend to look at law schools as frozen in time. So people tend to think that the way law school is today is exactly the way it was when they went to law school. And I'd like to tell you that it's not.

KELLYE TESTY: Paula, you want to hear a little bit about orientations?

PAULA Sure, sure.

LITTLEWOOD:

K.D. WILSON: Kellye, I'm sorry can I interrupt. Something that you just said, and I apologize, I don't know your name. I knew you were the Dean of Gonzaga, I just didn't know your name. I apologize for that. So I'm agreeing with you that I entertain the idea that law school is exactly the way it

was from my experience, and I accept and hope that it's not. But I guess the flip side of that is, I don't know, but it feels like the hiring practice of the firms, particularly those who come to law schools for recruitment, at least that is what have learned through some of the lawyers that I have mentor relationships with, is the same. So while what you are doing might be different, the way people are using what you're doing is still the same. Is that wrong?

KELLYE TESTY: No, I think I think that's exactly right, and a really interesting part of this. An example, Paula's asked us about our orientations, and the extensive orientations we do. There's often been this call to say, students need to be more practice ready, they need to have more skills. But many times I see a little shift here, so I don't want to overstate it, because I think I'm starting to see employers ask more about clinics and externships. But for the most part, as Annette said, they're looking not so much at that, even though they're pushing the law schools to do it. They're still looking at the classic questions of where did you land in the class, what's the rank of your school, and interestingly, did you do our review. That was an interesting one for me for a couple reasons. One is employers ask the question all the time, and second I actually think a lot of those character quotients that this talks about are actually learned by the students serving on the boards, and having to learn how to run meetings, and pay attention to deadlines, and do really close work, and take responsibility, and all those things.

So there's some internal inconsistency I think in what's reported. But you're right. The hiring is still very, very traditionally I think.

JANE KORN: And we can try and explain when employers come to recruit say, at Gonzaga, or any of the other law schools the kind of portfolio approach that Annette was talking about, about the other things that we are teaching our students. What we can't do is make them want those things.

ANNETTE CLARK: Can I make one really quick distinction that I think is important too, is that remember that as law school Deans, we're mostly focused on entry-level hiring market, right? I think a lot of what goes on in the lateral hiring market looks more like what this data shows in terms of at that point people care about what can you actually do for me in the minute you walk in here, and what have you already been doing in your practice. So we might have a little bit of data squishiness around just those differences.

ANTHONY GIPE: Well you know I want to follow up on this because we're a board that helps govern a regulatory entity. And if you look in the terms of what's the biggest barrier to implementing a better

training system that we could address as a body, what would you-- and this goes not just to the deans, but to our guests as well. If you're going to identify a barrier that it's something we could address at this level, what would be?

ALLI GERKMAN: So a barrier to, you mean a barrier to law schools being able to provide the type of education that will result in the outcomes that are necessary? I would say the barrier that is often raised with me when I was-- so I should note, we actually have a consortium of 36 law schools across the country that we work and Educating Tomorrow's Lawyers Seattle is one of them. And when we're at the conference and we discussed this, and we discussed what the schools can do with it, one of the main things they raise as a challenge and issue for them is the bar exam, particularly, probably now when a lot of schools are really trying to see if they need to do more bar training to ensure that their graduates are actually able to pass the bar exam. But what they would suggest is that when you look at the bar exam and what it's testing, it is not actually testing and evaluating the same things that the profession is actually saying that it needs in new lawyers.

I'm not saying that's a recommendation we are necessarily making at this point. But I will say when I talk to legal educators around the country, that's one of the big barriers that they raise.

ANTHONY GIPE: Does that hold true regardless of the type of bar exam they're administering?

ALLI GERKMAN: I haven't heard anyone say you know the x state has an incredible bar exam though, and if we just did that everything would be perfect. So I think, yes, at least with the bar examinations that we have across the country, that yes.

ANTHONY GIPE: Across--

JANE KORN: Part of the issue is that-- I think I've talked for enough that I think I can project out here.

Part of the issue is that law schools are being asked to do more and more in less and less time. So we have to cover courses that are tested on the bar exam. We have to provide experiential learning. And it's always a toss up, and sort of a weighing of how much experiential learning do you offer versus the classroom. And then if we also want to then go and build, which we all do, on these professionalism skills, it's always a balance that has to be done within a certain period of time. And that's the issue.

BRAD FURLONG: Mr. President, can I ask a question? Thank you. First off I want to thank all four of you for

attending. This was wonderful and I appreciate this discussion. The data was presented and discussed within the context of what do employers think they want, what do employers hire based on, or what criteria do they use to make hiring decisions. And I think ultimately as a regulatory board, I mean certainly we're concerned that new graduates are able to find work to the extent they want, and the kind of work they want. But ultimately, I think what we should be concerned about is the quality of the services that those young lawyers can bring to the profession, the service that they can bring to their clients, the competency for their clients, the integrity that they have with respect to their clients. And that seems to be a bit of a different nut then what's it take to get hired.

And I guess I would ask you to evaluate whether, for my sake I guess, or for anyone else's, whether the focus on the hiring criteria does enough to recognize the ability of a young woman or a young man to actually be a competent, ethical, effective attorney for her or his clients.

ALLI GERKMAN: So the first part of this survey I do believe would go to that. We didn't ask what do you want to hire in a new lawyer for that first part of the survey, the whole first part I talked about. We said, what's important for a new lawyer. And so this is the profession saying what's important. And I have talked to a number of folks in the regulatory offices and disciplinary offices around the country who are really interested in these results, and do think that they speak to them in terms of the problems that they see with new lawyers coming in.

The second piece, though, you're right. That piece is focused on if you're hiring, what would you look at to identify that someone has these foundations. Because the assumption there is that if these foundations are important to a practicing lawyer, you might want to hire based on them. And the reason we included that piece is we believe that's a really important piece to bringing all of this together, to empowering law schools to really ensure that their graduates have that, and to ensuring that out in the profession, employers are hiring based on that. Because ultimately, that will result in better outcomes for clients. If employers are making better hires in that first point, and they're not hiring just based on the traditional criteria, but they're hiring on this broader set of characteristics, that will ultimately be better, not just for the employer, and not just for that new lawyer, but also for the clients who are served by that lawyer.

BILL HYSLOP: Kellye?

KELLYE TESTY: I would add just a couple thoughts to your great question too, and that is that when I think

about my own experience in law school, and now being in legal education for over two decades, I don't think the quality of legal education in the United States has ever been stronger. I think it is so much stronger now than it was five, 10, 15, 20 years ago is to be a remarkable sea change.

What I worry about, though, with the question you ask and about not looking just at when they see the lawyer starts, but when you're in working with clients and progressing through your career, is that the hallmark of being a professional is that you're someone who takes on the responsibility for lifelong learning and development. And so I think a place where we all across academics, the profession, the regulatory bodies need to really focus, is what happens after the bar, and in terms of the investment in lawyer development. Because there's no industry I know of other than law that has resisted the investment in post graduation education. That's a cost of doing business that you see engineering firms take on, technology firms take on, businesses take on. And that's something that clients have not wanted to pay for. And so the question then is come back to well, does that mean we don't do it. And I think that we can't not do that.

I think that no matter how great your three years of law school is, and no matter how smart you are, that is just the start of being a professional. And what happens next is what's going to answer the question that you ask, which is how well are those clients being served over the balance of lawyer's lifetime.

BRAD FURLONG: Can I just ask a quick follow up? And thank you, that's really helpful. How do you all as, from the academic standpoint, and from your research, and this might be a question for Jean also, how well is academia aligned with the bar exam, with the regulatory expectations that we have, and with our mandatory continuing legal education? How well are we aligned in trying to bring these young professionals through their education, through their regulatory testing, through their character and fitness evaluation, and into the profession, and beyond? Are we aligned, or are we not? And if not, where do we need to align?

ANNETTE CLARK: I'll go, and then maybe Jean wants to comment as well. One of the complicating factors of legal education is that we are training individuals to be lots of different things. We have to acknowledge that a number of people who come to law school don't plan to practice traditionally, and yet most want to take a bar exam. And so we are a lot of things to a lot of people. Every single law school in this state has a strong foundational curriculum, covers all of the core courses, all of the bar tested courses. Many of those are required in our curricula,

others are strongly encouraged, or viewed as core courses that lead to other more specialized courses. We have professional responsibility that goes toward the MPRE. We have skills training, writing training, that goes to the MPT portion of the UBE, since we're now a UBE state. And so I think we do a really good job. And if you look generally at our bar passage rate from our three schools, as compared to nationally on the UBE, we do very well. But what I would say is we also do so much more than just help our graduates get to the point where they can pass a bar exam, and I think that that's what the profession expects is that we do much more, and from the very beginning.

I do want to just segue, because Paula had asked us to talk a little bit about orientation. And we did a different orientation this year and one that we're pretty proud of. We had all of our students, our faculty, and our senior staff read a book called *Enduring Conviction*, which has authored by Professor Laurie Bannai. It's the story of Fred Korematsu and his quest for justice.

We then had a great small table discussions about the relevance of Fred Korematsu story for lawyers, law, and all of us in current society. We brought in two facilitators to work with the students and the faculty on racial justice issues, and how to have those difficult conversations. We brought in Paula and Justice Hugh to talk about the importance of professionalism and to bring home this notion that profession starts day one in law school.

And I just want to read to you. We did an assessment with our students asking them what did you learn from orientation. And there were two responses that, frankly, are just really encouraging to me. I want us to feel inspired by what we're doing in legal education.

The first student responded, law school is a professional school and from the day we start a legal education, we need to behave as members of a profession and keep ethical, and character considerations in mind. No matter where we end up after law school, we have the power to encourage and effect positive change, and to reduce inequality. That was one.

Another, I can sum up the three most important lessons from orientation in three words-- professionalism, perspective, and possibilities. The need to be a consummate professional, even in law school, was a great take away from orientation. On the issue of perspective, the racial justice workshop helped with showing how one person, or group, may have a difficult time seeing through the eyes of another people, or group, unless they make a conscious effort at it. And I felt that Justice Hughes speech stressing the importance of carrying out social

justice in all fields was inspiring.

So our goal is to start our students off with an understanding that that's what we aspire for them. And then, of course, the challenge over three years is to deliver on the expectations that we set.

BILL HYSLOP: Jane, did you want to--

JANE KORN: Orientations?

BILL HYSLOP: Go ahead, go ahead.

PAULA And Jane, your is sequencing through all three years, right?

LITTLEWOOD:

JANE KORN: Yes. So we have a new program, which we're grappling to find a name for, but it's because we understand that teaching about the law is no longer enough. And so at orientation, we had one facilitator come and do a afternoon long session dealing with that critical values that we believe a professional needs to have, and looking at asking students to think about what are their core values, and where do they want to be 10 years from now, and is there an alignment between those core values, and their career goals. And to try and get them right from day one to start thinking about what their values as a human being are, and where they want to go, what their goals are.

The other thing that we did this year which was different doesn't speak directly to this, but we had all of the various service providers on campus-- mental health counseling, substance for free housing-- come talk in small groups. And so every first-year student had to circle through listening to each of the campus providers to talk about the services they provide in small groups, so they would be freer to have a conversation about these services. Because we know about the substance abuse problems that can either appear in law school or later, and trying to meet those head on right away.

KELLYE TESTY: Yeah, and I think you'll see more commonalities than differences among these approaches. Our orientation program for about a decade has been called Foundations of Legal Studies, FLS, and it's very similar in bringing trying to bring home the professionalism from the start, having some kind of common case or reading that the students do with the faculty. This year, I think as all of us are trying to respond to the issues around race and equity in our society, we

partner with the city of Seattle for a training on racial justice, and then trying to help the students get used to what's expected of them, and just really start to make that turn from student to being a professional.

And I think that the good news of some of your questions is I think that we're very fortunate here in Washington that we have only three law schools, they're three very good law schools. I think we're well-aligned with the bar. I think there's a lot of collaboration and cooperation here that I certainly don't hear about in many states that I'm seeing. And so I think that there's a lot of good things that happened here. Yes, I'm sure there are always things we can all work on together, but finding those points for collaboration I think are really critical.

BILL HYSLOP: Ruth?

JANE KORN: I forgot to say one thing, that this orientation, the skills and values continues over the three years. And so we then had a workshop in the afternoon on giving and getting constructive feedback. We're going to have one on listening skills. There was one on implicit bias. So it goes throughout the curriculum, sort of five workshops each year.

BILL HYSLOP: Ruth, go ahead.

RUTH EDLUND: Yes, thank you. This is actually a question for Alli. This is just fascinating. This is really interesting. And what I'm wondering, because as I understand it, you collected the data from students in traditional law schools, is this sort of the next step? Or do you have a good way for the bar to apply the data in here to the law clerk program, to LLLT education, and to CLEs, sections do a lot to of CLEs. And if we're doing CLEs that aren't training young lawyers in the way they should be trained, that's certainly something that presenters at CLEs should know.

ALLI GERKMAN: Sure, and we did actually at least with respect to CLE, the project, and the data has been presented to the national CLE organization. So CLE organizations around the country have seen it, and they actually saw a more in-depth presentation on the second box too, on those items that are necessary but can be developed over time, going to the comments about the ongoing professional the development and opportunities for bars there. And this will be presented at the National Association of Bar Executives meeting in February, which also has-- it might not be the CLE group, but certainly those bars are engaged in continuing legal education as well.

That's in part because we've had a lot of interest from those groups. So certainly the ways that

this can be used for ongoing professional development are many, and we look forward to working with groups on that.

BILL HYSLOP: Mario.

MARIO CAVA: This is actually a nice segue from Ruth's comment, because I think she, for a brief moment, read my mind related to the law clerk program. And I had actually had a question about the rule 9 program, or whether there are possibilities during that period of time following law school when people are waiting for their bar results, and they need additional training, or they're thinking about maybe even setting up their own practice. Are there any regulatory barriers that you're seeing recent graduates face as they consider, perhaps, setting up their own? Anyone may answer. Is there anything we can do to help you know ease that transition from school to practice?

ANNETTE CLARK: You know, my sort of glib response is help us build a huge endowment so that we can have a little start up funds for the students, you know, because that so often that's more of a barrier is both their fear, and trying to find that start up funding and space. But let me ask my colleagues if they're seeing regulatory barriers.

ANNETTE CLARK: Yeah, I don't think it's so much regulatory barriers. It's just helping, particularly those who are thinking about solo practice, position themselves within a community where they will have the mentoring the advice that they need. Because no one coming out, just starting out, can practice solo even though they will set up solo practices. And so it's certainly been a huge help that there is now a solo and small firm, or small practice section of the bar. There's some terrific programming that goes on through that.

We do have an incubator program where six or seven of our graduates, with some funding from one of our donors, begin their own practices and we have a mentor who helps guide them. But we really do have concerns about folks going out in that environment that aren't sufficiently set up with what they need. And also this question of, do they understand how to run a business. And all of the different ways that they can get into trouble. And so anything that the bar can do to help with programming, mentoring, advice, counsel, because there will always be graduates who will go out and do solo work. Some of them really want to, others can't find other employment. And certainly the law schools are working hard to support them. I think really important for the bar to do so as well.

BILL HYSLOP: Jean McElroy. Oh, I'm sorry. Jane, did you want to comment on that?

JANE KORN: No, I agree with Annette. There's no regulatory bar, it's more how are they actually going to accomplish this. And I think all the law schools are providing coursework to help with that. For example, we have a course in law practice management and accounting for lawyers, but that's just the tip of the iceberg.

JEAN MCELROY: I did want to also comment about, and reinforce the relationship, that I think the bar has with the law schools in Washington state. One of the things that we've asked from the law schools, and they let us come and do every year, is a presentation about the bar exam, and about the character and fitness process, so that we are not catching those students after they graduate, finish their law school, and then they apply to the bar, they don't know what to expect. So we work hard to get somebody into each of the law schools every year to talk to people about that, and to also help people understand what they can do when they're in law school still to try to improve their chances at getting through a character and fitness review, and being permitted to take the bar exam. So we are working on that, and we appreciate that very much.

The other thing that I would like to say is that we are always interested at the bar here in trying to find the best and most equitable bar exam. So if you find that there is a great bar exam somewhere that it would be possible to administer to the number of people that we have to administer it to, we are interested in hearing about that, learning about that, and looking at whether that's a possibility here in the state.

ANNETTE CLARK: Thank you for that. And I think I speak for all of us when we say we really feel that openness and that dialogue, and appreciate it.

ANNETTE CLARK: Can I say one more thing about that?

BILL HYSLOP: Sure.

ANNETTE CLARK: I do think that our graduates appreciate the flexibility that comes with the UBE. And so while it's surely not the perfect bar exam, and it doesn't test remotely what I think we as a profession would say is needed in new lawyers or lawyers generally, the fact that it's portable in a way that the prior exam wasn't has made a huge difference to our graduates, and we're appreciative of that.

BILL HYSLOP: Paula?

PAULA

LITTLEWOOD:

I just want to follow on, too, about the relationship. When about-- I don't know how many years it's been now-- seven years or eight years ago I invited myself into the orientations, the vision was to-- we've branded, the four of us-- the schools and the bar, day one in law schools, day one in the profession. Because I look back on my law school experience, nobody talked to me about that we are a self-regulated profession and what it meant to hold that bar card, and so that was sort of this vision. And then we go back and we talk in each of the ethics classes-- a volunteer and me or other senior staff-- to talk about being a member of the only self-regulated profession, only profession responsible for a whole branch of government and how do you navigate.

And in the beginning, I throw out what are the self-regulated professions in the United States? And you always get medicine, and none of them are. And I have to tell you, all three schools-- we just finished the presentations for the fall, and all four classes a student raised their hand after people were guessing and said, isn't it just lawyers? And I thought, wow.

And actually I had a guy come up to me and he said, I remember when you said that in orientation and it drove it home for me. And so I think it's just those kind of things, and that's a lot of what you guys are getting at, is it's not just the hard skills. It's all that other context. Anyway, so thanks.

BILL HYSLOP:

James Doane, Karen Denise Wilson, Jill, and then I've got a couple comments.

JAMES DOANE:

Sure. I've got two questions for the deans. The first is, during the three years of law school starting from orientation, to what extent is there discussion about the different career paths, whether it be private practice, government practice, in-house practice, any other kind of practice, and the judiciary? So identifying that the paths during the three years that people are actually in law school and paying tuition. The second question is, to what extent is it being done or would it be feasible to reach out five, 10, 15, 20, 30 years later to alums to check up on them and see how they're doing and what they're doing and maintaining that relation? Probably you're maintaining the relationship for obvious purposes, but--

KELLYE TESTY:

Strictly for data purposes, yeah. Again, I suspect we'll be a lot more similar than different on this, but really from that orientation program forward you're trying to open these windows into saying to the students there's many things you can do with a law degree. It's a degree in complex problem solving. You can be a lawyer in all these ways. You can be in business. You can be in tech and entrepreneurship. And just trying to let them see that big range, because I

think we've all seen as a profession that sometimes lawyers don't understand that.

And there's a deep groove pulling you into particular kinds of areas, and it may not be the best fit. So we're trying to help our students match up their own passion and who they are with the possibility, so that they're both successful and also happy and healthy, as our profession has struggled with those issues as well. So really it starts day one. It goes through every year. And then in terms of alumni surveys, I'll just mention quickly that we do continually do that as a good way to stay in touch, but also just to see are you satisfied with your career, would you do it again, what did you wish we had done, what can you advise us to do now and try and get that information.

ANNETTE CLARK: I think there is a lot of similarity here. A lot of this comes out of our career services office, and so it's so common now to have nontraditional career pathway panels where we bring in alums or others who've done really interesting things with their law school that might not otherwise occur to law students. We do it in courses. We now have a corporate counsel course, where we have in-house counsel that team-teach it, that give our students some insight into that as a career pathway, but also the skills that you need to have as a corporate counsel-- learning that assessing risk and helping the business side of an enterprise is a really important part of a lawyer and that environment.

Compliance panels, with the idea that you may not be practicing law but the skills that you learn in law school are great in the regulatory world in which we live. We all know so many industries now are compliance-oriented. And so I think we're doing a lot in that regard.

I will say, sometimes it's a struggle to get the students to take advantage of all of the programming that we do. They get a little overwhelmed with the course expectations and the "you need to be networking" and "now you need to do OCI" and then "here are all of these programs regarding what you can do with your career." And I do think sometimes they get a little paralyzed, a little overwhelmed by everything that we're offering them.

JANE KORN: In addition to what Kellye and Annette said, at all three schools there's these opportunities for externships or internships, and that also allows students to do a little bit of experimenting. So they think they may want to do criminal law, and then they go work at the prosecutor's office or at the public defender's and decide, no, not really. And so that gives them a chance in learning what you don't want to do, is I think just as important as what you might.

BILL HYSLOP: Denise.

KAREN DENISE WILSON: To use an education analogy, I'm about to feel like the kid in the classroom who raises their hand and strays from a really wonderful lesson, as it is wonderful to engage in this dialogue about the strides and improvements in education, the research and its sort of pointing to any inconsistencies or need for communication between education and hiring practices. But it would be difficult for me to share with anybody that I had a conversation about law school and law school education and the practice of law without at least raising the issue of cost.

So at 4:24, I don't want to open up Pandora's box, but it's a question of the costs exceeding the grasp of anyone and interest. It's also a question of, notwithstanding what sounds like exceptional strides in the way that the education is provided and presented in practical matters, value. So I've said it. The elephant's out of the box.

KELLYE TESTY: Yeah, it's a great question and one we think about all the time. I mean, I think, again, one of the things that I would say if you looked at the cost of legal education over the last five years or so, there has been a flattening. Because there really was an acceleration for a while, and it's really flattened out now. And so you're getting more for that same price today than you were five years ago.

But even more revealing is that the sticker price, so to speak-- like if you look on the websites and see the tuition figure-- I would say that there's a discount rate, as we say, which is the money that you give back in scholarships. And schools have just accelerated that scholarship rate. I would imagine that if you looked at how much money is being given in scholarships today to five years ago, it would be at least double, maybe triple or four times. I should look and know. I don't, but I know it's a trend like this.

Now, the problem with that though, Katie, that we should all really focus on is that a lot of that scholarship support, though, may be going in some ways to students who can afford to bear the debt more than the students who aren't getting the support. And I think throughout higher education in America, not just in law school, you have that dynamic, where sometimes it's the middle class student who ends up paying the full freight. And that's driven by a lot of complex factors.

I want my colleagues to talk a little bit about how they see it, but some it is a lot about how much people care about rankings. And schools are driving to do well in the rankings. There's a lot of complexity around that, but I think the whole issue of cost and financial aid throughout higher education in America needs to be constantly on our minds and in our focus.

ANNETTE CLARK: Couple of things. If you're interested in what the current discount rates look like, there's a *National Jurist* article that just came out last week or the week before. So *National Jurist* is an online magazine. It uses 2014, 2015 data and I think it's only private schools, but frankly it's the private schools that have been discounting at the highest rates. And what you'll see, as Kellye said, is that the sticker price doesn't remotely represent what many students are paying now.

And so what we hope we'll see over time is that the debt load will flatten out. We worry about it a lot. The dilemma that we've been faced with is at the same time that the cost has spiraled out of control-- and higher education generally, including law schools. We've also seen a huge decline in applications. So applications have declined 40% to law schools across the country in the last five years.

So we've all been busy getting smaller, and we're getting smaller in part to make sure that we're protecting the quality of the classes that we bring in. Because in that kind of declining market, you can't stay large and maintain the quality. And in thinking about protecting clients and society as they come out, it's really important that we do that. And so we have been faced with this dilemma that at the same time we know that tuition is too high. We are taking in far fewer students.

And just as an example, Seattle U was at a steady state of 1,050 students for years. This year we're at 650, and we're a tuition-driven, tuition-dependent law school. And so when people ask me, why aren't you lowering tuition, part of the answer is there is no business model that I can think of that anyone can show me that would allow me to be able to do that at the same time that we're getting so much smaller. But, oh, by the way, we are doing that through the discount rate.

And so law schools are struggling at the same time that our graduates are struggling. And there are a lot of smart people working on this, and we do share the pain. It is so hard to look at graduates coming out with debt load, going into an uncertain market, many of them, as Alli showed us in the statistics, unable to find jobs, and they have debt. They have loans that they need to service, and so it is a huge problem.

JANE KORN: I agree with all of that, and it's also exacerbated by the fact that now a lot of our students are coming into law schools with significant undergraduate debt. So they may be accruing

\$100,000 of debt in law school, but they're coming in with \$80,000 from their undergraduate experience. And that's a problem.

The other issue is, how do you really figure in law school, how do you calculate need of a 25-year-old? When you look at need for an undergraduate, you can look at their parents' income, because typically they're still dependent on their parents. For the most part, every single law student has financial need.

ALLI GERKMAN: But I wanted to add to that conversation one piece. And I'm going to preface it by saying I think it's a really important challenge, and I don't mean to discount it. And I will just say I'm personally affected by it. I graduated in 2003. Since January of 2004, I've paid \$1,000 a month, and I've worked at a nonprofit most of that. I just don't qualify for loan forgiveness because I graduated in a weird three-year period, so I care about this issue.

When we look at what we're doing in educating tomorrow's lawyers, we're not intentionally ignoring cost. What we're trying to do is instead focus on the value that a legal education can offer, because at the end of the day if the value of a legal education actually goes up, whether that means students are better positioned to get good employment with decent salaries or if they're able to begin practicing solo and directly working with clients in a way that actually allows them to live and pay their loans, that value is more important than the cost, as long as it outweighs the cost. So that's how we look at it from the perspective of our work.

KELLYE TESTY: Bill, can I make two sentences? In terms of things you can all do, advocate for states to fund public higher ed again, because that will help publics, which have traditionally been access-oriented. Because today, most law schools at public universities don't get any state money. And then to help all law schools, advocate federally to keep the income-based loan repayment programs and the public service loan programs. That's up for discussion in Washington, DC, right now, and I think it's going to need all of our advocacy to help our graduates with that.

JANE KORN: And make a donation to whatever law school you graduated from.

BILL HYSLOP: When I served on the Board of Governors, the deans of the law schools and the board were able to meet if not every year almost every year to have a collaborative discussion, much like we've had today. This has been a fabulous, fabulous discussion, and we so appreciate, Alli, you're being here and, Annette and Kellye and Jane, you're being here and participating in this discussion. And I hope that we can continue this and do this on a frequent basis.

One of the things that you will find in the state bar mission statement is that we consider ourselves to have a significant role with our members, and it's, I think, verbatim-- Paula can help me-- but it says "cradle to grave." And that means from both the education that new law students receive through the admission process and testing process and licensing, through the services that we can provide and the help that we can provide attorneys to be successful. Because they're all serving the public in this state, and if we all accomplish that and then obviously help people as they transition out of practice, then we truly have been successful.

I'd like each of you, as we close this discussion-- and, Kellye, you started this off, and, Jane, you already added to it, but-- give us one or two challenges that you think where the State Bar Association can be helpful, either supportive or to stay the heck out of our backyard, that you think that we should be thinking about. And, Annette, I'll just start with you.

ANNETTE CLARK: I don't want to say, stay out of our backyard, but--

BILL HYSLOP: Or our front yard.

ANNETTE CLARK: There have been some state bars across the country that have gotten into the mix in terms of what they're going to require from legal education in order to have individuals licensed in their states. New York is an example, and California has been playing around with what they're going to do.

BILL HYSLOP: And you talked to the ABA President-Elect Linda Klein this summer.

ANNETTE CLARK: We had the opportunity to talk with the ABA President-Elect, and we so appreciate the fact that we are in a state where there is a good collaborative relationship between the bar and the law schools. Certainly from our perspective, law schools across the country have responded to the requests, the insistence that graduates come out with more practice experience. The change from when I went to law school-- I graduated in 1989-- and now-- it's just a sea change in terms of externships, internships, simulated courses, pro bono opportunities.

I'm very disappointed if anyone graduates who doesn't have those sorts of things on their resume. We've really done a bridge to practice transition in legal education, and so we're hoping that we can continue with that experimentation with the knowledge that the law schools really are working hard and keeping up-to-date without adding additional barriers to entry. It's hard enough in this legal employment market. And so at the same time that a number of states, including Washington, have moved to the UBE to allow increased flexibility and mobility,

if states start requiring additional "you need to have taken this many skills" courses, this many hours, this many pro bono hours, it becomes a barrier to entry to the practice of law. And my view-- and I think we share it-- is that's the last thing graduates of law schools need at this point.

KELLYE TESTY: Yeah, I agree strongly with Annette, and then the other thing that I would put at the very top of my list for your kind help is to continue to talk very openly about the value of law and the value of this profession. The thing that I lose sleep over more than anything is not what we're doing inside the law school, but it's what's happening to decrease so severely the number of outstanding students that are picking law as their profession. There has been, as Annette noted, half as many students today applying to law school as five years ago, and the deepest declines are in exactly the places where you'd most want those students to be coming to law. I think that's the problem our profession is going to have.

We need those students to come to law school. We need law to be strong in this world. And so to keep doing what all of you are known for, which is you hold up the highest ideals of our profession by your very work and who you are, keep doing that and talking about it loudly. Because we need to have that pipeline of great people so the rule of law in America and around the world stays strong.

JANE KORN: I echo what Annette and Kellye just said, and we need you to be our champions. We need you to say that the practice of law is a great thing to do. We need you to encourage people to consider law as a career. And Yale Law School is hard and it's expensive, but look where all of you got by going to law school. And we need you to tell that to other people.

BILL HYSLOP: Alli? Thoughts?

ALLI GERKMAN: A couple of years ago we released a report on a study we did of a program at the University of New Hampshire. The details of the program, I think, don't matter. You can certainly look it up and read about it.

But the reason I raise it is because it was a program that was created by a collaborative group that included the judiciary in the state, that included bar examiners in the state, and that notably included members of the law school in the state. And the results of it were very positive. The students who participate in the program actually were better positioned to enter the practice of law than students who didn't.

And so the reason I don't want to get into the details of this specific program is that the details of the program aren't what's important. What was important, we think, is the collaboration that took place between or among the bench, the bar, and the school to come up with a solution to the problem they felt they were facing at the time-- this was, I think, 15 years ago-- which was that they felt they had students who were entering the profession and were not well-situated to be working with clients. And they wanted to address that, and the program that they developed very much did address that. So what I would say is the best thing that you all could do is to continue to have communications and go further than that to potentially collaborate with your law school partners to develop whatever, whether it's a program or something else, that solves the big challenges that you are facing with new graduates.

BILL HYSLOP: On behalf of all 38,000 licensed attorneys in the state of Washington, and particularly everybody that is here today, I want to thank each one of you for participating in this discussion. This has been a fabulous discussion. It's something that many of us have wanted to engage in for some time, and I'm thrilled that we've had this discussion.

Let's continue the dialogue, continue the discussion on how we can support one another and make sure that the legal profession remains as strong as we all know that it should be and continues to serve the public, as we know the great need is out there. So I want to thank each one of you. Thank you very, very much.

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Suggested GR 12 Amendments

Presenters:

Jean McElroy – General Counsel/Chief Regulatory Counsel, WSBA

Doug Ende – Chief Disciplinary Counsel, WSBA

BILL HYSLOP: Good, morning, ladies and gentlemen. We are back in public session. First off, I want to welcome everybody, and thank you for being here.

We have a lot of work to do. We have a lot of significant decisions that the board needs to discuss, and decide how it wants to move forward. And we thank everyone for your participation.

I also want to apologize to you. It may not always appear, but my gosh, we do try to stay on time. And things arise that we do not expect.

One thing that I've certainly found is, I think all of the staff and the executive committee and board members have realized that scheduling is an art form, and not a science. And things come up that we don't expect in discussions, or determinations sometimes take longer than expected. And that was the case today.

We apologize to you. But we're going to rock and roll here. And we're going to get started.

So we will bypass introductions from everyone. But board members, please be sure-- remember that this is available online to our members. And Margaret, will we have, do you know, is the phone on? Will we have people be calling in, maybe available?

To the extent that we have time available, I will be recognizing members of the audience on separate issues after, or recognize members from the board. If you were here yesterday, you'll get the drill on that pretty quickly. And we want everyone's participation.

I would ask that your comments be kept short and succinct. And if someone has already covered the issue before-- and this is directed both to the board and to our audience-- please be generous with us, and don't just repeat what someone else has said. You make the determination of how critical or how important it is.

We will begin with item number five on our agenda, which are the suggested GR 12 amendments. And I'll turn it over to Jane McElroy and to Paula and Doug. This is at page 206 in your materials.

PAULA
LITTLEWOOD: So GR 12 is being presented as you saw it in August. There were no, at that time, suggested amendments. It's on now for action.

BILL HYSLOP: Jean, did you want to add anything to that?

JEAN MCELROY: I think the memo adequately describes what the purposes are. And they were discussed previously. Essentially, we're trying to incorporate some changes that relate to-- I'm grasping for the word, I'm sorry-- the regulatory objectives that have been considered on a national basis, and that seemed to apply, also, to the Washington State Bar Association.

We are also making efforts to align the language of GR 12.1, in terms of the functions and purposes, with the purposes and functions that the bar is currently serving and being asked to serve by the Supreme Court in terms of administering licenses, and so on, and rearranging the order of the rules to accommodate the new placement of the regulatory objectives, without changing around our GR 12.4, which is the bar's public records rule that we operate under. And other than that, I think I will just entertain questions, or Doug or Paula could entertain them as well.

BILL HYSLOP: Comments or questions from board members? Brad?

BRAD FURLONG: Mr. Hyslop, before we entertain a lot of debate on this, I thought a preliminary motion might be in order. And I therefore would move that the portions of GR 12.1 through 12.4 as presented, if it is adopted, be revised so that the word "association" remains in the name of this organization.

-Is that a motion to adopt GR 12 with that amendment?

BRAD FURLONG: I think if we are ready for that. I don't know if we're ready for that motion. It's just to make that change so we don't have to discuss it if it passes was my purpose in making that.

BILL HYSLOP: Could I suggest that we wait until there's a motion to adopt, and then you can--

BRAD FURLONG: I will withdraw my motion, if that's the chair's pleasure.

BILL HYSLOP: OK, you're entitled to make your motion. So we're going to accept your motion. Is there a second to the motion?

-Second.

BILL HYSLOP: All right, all right.

PAULA [INAUDIBLE].

LITTLEWOOD:

BILL HYSLOP: And so the motion that's on the floor right now is to amend the proposal-- not adopt the proposal, but to amend the proposal-- to add "association" wherever it is, to leave--

PAULA Just strike that. Strike that amendment.

LITTLEWOOD:

BILL HYSLOP: Yeah, does everybody understand that? Anybody have any questions? Jill.

JILL KARMY: Just to be clear, Governor Brad, would that essentially, then, have the impact also of voiding any suggestion in by-law changes that we're going to discuss next, regarding changing the way that we're referred to?

PAULA We would conform the bylaws to GR 12?

LITTLEWOOD:

BRAD FURLONG: Correct. And quite frankly, I still believe that people will refer to us as the State Bar, as we are referred to in the State Bar Act. I think we can use abbreviated terminology. I do it in contracts all the time, and in ordinances that I draft. And I think where a shortened, more precise term can be used, that would be certainly appropriate within the organization. And I won't go into all the other reasons around the suggested change.

BILL HYSLOP: Mario?

MARIO CAVA: I'm actually not going to take any position specifically on this motion before the board. I know that we will be discussing bylaws changes at a later time. And we are going to have an issue of trying to conform, for when to conform to the other what have you.

I did want to provide a little bit of background. Not everybody was participating in these discussions surrounding the name proposal. And I know that we're still going to have some great debate on that.

But I do want to provide some background, because I think members of the bar do have concerns about removing "association" from the name. The reason why the name change came before the board in the first instance was at the recommendation of the Governance Task Force. When the Governance Task Force was conducting its review, it was looking at a variety of different things impacting the board, including our relationship to our members.

And changing the name was taking into consideration potential antitrust issues, and consideration of other market participants that are joining the profession. And in the Board of Governors response to the Governance Task Force report, it was also reviewing whether to change the name of this board to the Board of Trustees. And the considerations there were that it was confusing to the members, and that it created this perception that the board was not necessarily carrying out its fiduciary duties of loyal care and obedience to the organization, but rather was serving in a more representative capacity.

The board engaged in a heated discussion about this during the meeting where it determined that it would move forward, not changing the name of the Board of Governors to the Board of Trustees, instead keeping us the Board of Governors, but indicates changing the name of the WSBA is another matter. The choice of a new name, given the WSBA's regulatory functions in antitrust and other legal issues, should be the Washington State Bar. This is consistent with other mandatory bars around the country. And the board specifically took into consideration antitrust issues related to the North Carolina Dental Board case, and whether or not this organization was engaged in the regulation of not just lawyers, but other market participants.

That said, the board decided to move forward, changing the name to Washington State Bar rather than Washington State Bar Association. I think that I've heard arguments from the members that are fairly persuasive, which is that we are an association of the members. We are a profession of attorneys.

And there are considerations involving whether or not we would become too untethered from the State Bar Act and the language that's phrased there. I think that there are good arguments both ways as to how we want to be called-- whether we want to be the Washington State Bar or the Washington Bar Association. I think that whatever we decide, we should be consistent throughout what our duties are, and where those duties flow.

These changes come against a backdrop of many different things. We have a vastly changing and dynamic profession that's trying to address access to justice for our members. We have an access to justice problem.

We have many legal needs that are not being met by attorneys with skyrocketing legal costs, professional elitism. We have the graying of the profession, and attorneys who are retiring. And science tells us that these legal needs are not being met, necessarily, by attorneys.

We have data that indicates that many of the citizens of Washington State are not having their needs met by attorneys, but may be going to other professionals-- non-attorneys, notarios, maybe acting pro se. And they may be, also, turning to corporate entities to provide them with pre-populated documents that they're filing with the court. They're looking to Avvo, and LegalZoom, and Rocket Lawyer, and entities that are not necessarily lawyers.

And so we're trying to regulate a profession, and regulate the practice of law. And we're no longer regulating just attorneys. We're also looking at a legal services industry.

And we're doing so not in a vacuum. So whatever changes we make-- whether it is to GR 12 or to the bylaws, we need to be clear to our members that these changes really have a lot of context and a lot of history as to why we're making the changes we're making, and why they're being proposed, and why they're before the board. Because I think there is still a lot of confusion.

And I think the Governance Task Force concern over that confusion is well-founded. And I think a lot of the feedback we're receiving is associated with that. So I'm not speaking out against your motion, Brad. I'm just providing the context in which it comes before this board.

BILL HYSLOP: K. D.

KAREN DENISE WILSON: I'm not speaking out against your motion, either, Brad. Mario spoke very coherently and logically, completely, about why we started to consider to remove the "association." A primary concern was the anti-trust issue and North Carolina Dental board case that was going on at the same time, or that came down at the same time we were discussing governance.

But I also want to add the clarity to respond to a lot of membership input, which I welcome, which I read, and reviewed, and thought about carefully. And the clarity that I want to add is that there was a lot of concern expressed that the suggestion to remove the "association" from the name somehow represented some transfer or movement of power away from this board to some other entity. And most often cited was the Supreme Court.

And whether you can hear it or accept it, I want the membership to know that was never the intent. That was never the motive. That was never the goal.

Another thing that I've read in membership responses is that removing "association" somehow represented our desire to change the fact that we represent you as members of the legal profession and as members of the Washington State Bar. And again, I want to be clear that

that was never discussed, never the goal, never what was meant by this. So I understand how that could have been a conclusion, but I wanted to add the clarity that that was never this organization's goal or intent, not the direction that we're moving in, not some secret or even directly stated goal or intention that we're moving toward.

I don't want our membership to have that idea. So Mario explained why we had the discussion. I wanted it to be clear why we did not, and I wanted to state that here in the board publicly, because I wanted the members to know that I heard your input, that I received it, that I read every one of those emails.

And I wanted you to hear from me what our goal and our intent was, and what it was not-- that we heard you loud and clear. And I think many of us have come to the conclusion that, antitrust issues notwithstanding, if "association," having that remain in the name, gives you the assurance and the confidence that we will always serve the public and we will always serve our members, then we are willing to leave that. And I think that's the impetus behind Brad's motion.

BILL HYSLOP: Thank you, K. D. Any further comments from members of the board? Andrea.

ANDREA [INAUDIBLE].

JARMON:

BILL HYSLOP: Thank you, Andrea. Any further comments from members of the board? Any comments on this particular motion from members of the audience? The motion is that for GR 12.1 through 12.4, any reference to Washington State Bar will remain as Washington State Bar Association and likewise, any reference in the by-law proposals that otherwise would have changed the name as we utilize it-- from Washington State Bar Association to Washington State Bar-- will remain as Washington State Bar Association. Is that a correct statement, Brad?

BRAD FURLONG: That is a correct statement.

BILL HYSLOP: All right, any further comments, members of the board? Are right, all those in favor of Brad's motion, please say aye.

-Aye.

BILL HYSLOP: Opposed. Abstain. Do you want it listed in the minutes? All right, K. D. will be listed in the minutes as abstaining. The motion passes. We are still, then, at the point of taking action to

approve the other changes to GR 12.1 through GR 12.4. Bill.

BILL PICKETT: Thanks, Bill. With regard to the remaining provisions, I'm going to bring a motion that we table those until the next meeting. And that's all of them with regard to GR 12. And I will say briefly here's my reasoning.

I think each and every one of us that comes in this room-- and for that matter, the folks that are membership-- we all carry around a lot of junk in our trunk. And some of the junk in my trunk is a fear that when you're broken, and you're fractured, and you're all alone, you're vulnerable. And one of the things that we do is we bring power when we unite. And that power is to move mountains, and to make big changes.

But when we are fractured and broken, from whether it be a client or our brothers and sisters in the bar, things grind to a halt. And we've all seen the voices through emails and correspondence from our fellow members at the bar.

-[INAUDIBLE].

BILL PICKETT: And what those voices say to me is that we are broken in trust with membership. And I believe firmly that in order for this organization to move forward, trust has to be restored. We can't represent clients who trust us effectively. And we sure as heck can't represent members who don't trust us.

And one of the things I'm asking for in this motion is not to table it indefinitely, but to say let's give some time for people to continue to digest this material. There's no fire. There's no harm.

But there's a time period to allow trust to be rebuilt. And I think that is critical if we intend to move the mountains that I hope we can move to get the legal profession into the next century and to be productive. I am so hopeful and excited when I will sit around this table and I listen to fellow governors and their desires to make the changes that are necessary to make the practice of law function, and function well to serve society.

But that doesn't happen unless we stop the train, back it up a little bit, and give membership some time to get on board. And we can sit here and say they've had time, or we can say, you know, what they're telling us is they don't think they've had enough time. And we can give them some room to breathe. So that's the basis of my motion.

BILL HYSLOP: Thank you, Bill. Is there a second to--

-[INAUDIBLE]

BILL HYSLOP: Just once second. Is there a second to the motion?

-I second it.

ANTHONY GIPE: A point of clarification-- is this motion restricted just to GR 12?

BILL HYSLOP: It's restricted. This motion is research restricted to GR 12, Anthony. But there will be a similar motion when we address the bylaws yes.

ANTHONY GIPE: As a point of information for the board, the rulemaking cycle to the court requires any rules amendments to be received by October 15th, which means what you're really talking about is a year-long delay on GR 12, rather than a simple, short delay. That would be the practicality, if you were to not take action on a rule portion.

BILL HYSLOP: All right, it's been moved and seconded that action on GR 12.1 through 12.4 be tabled to the next board meeting. K. D.?

KAREN DENISE WILSON: Thank you, Bill, for listening to our membership. I understand that that was the basis for your motion. I am speaking against your motion for two reasons. What's before us now is GR 12 and not the bylaws.

On the first reading of GR 12, I listened quietly and attentively. And then after all that, I clarified with the governors, as well as the public. The only concerns that were expressed, either in our public meeting in July or in the e-mails which I took the time to carefully review again before this meeting, were with respect to the name change from the Washington State Bar Association to the Washington State Bar.

By a previous amendment this morning, we've made that point. The membership expressed a desire for time. But I don't think that you have to throw the baby out with the bathwater.

The membership did not specifically have concerns about GR 12. The concerns that they did have about GR 12-- we've heard them. We've addressed them. Tabling this, as a point of information makes clear to us, is not for a short time.

This is important. This is something we have been working on. This is something we have been communicating with our membership on, perhaps not in a way that they received it or in

a way that was best for them. But consistently, we have been doing this.

I don't think that this particular instance, when there is nothing at issue, is something that time will cure. So I would encourage my fellow governors to go forward with a vote. You may be for or against the amendments on GR 12. But I would like us to go forward with a vote on those today.

BILL HYSLOP: Kim.

KIM RISENMAY: President, of the reason I seconded this motion-- it is on-- the reason I seconded this motion is because of perceptions often being as important as reality. I think a good argument can be made. And I'm even one of those who has pointed out that there has been notice in fact.

But it's obvious to me when we receive letters from four of the largest county bar associations in the state, as well as from countless individuals who perceive it otherwise. And perception becomes as important as reality, because perception becomes reality. I, like many of the members of our association, find incredible frustration every time I try to find anything on the bar's website, including at 10 o'clock last night and at 5 o'clock this morning.

Our website is not a model of making things available to people. And because of that, I feel that it's important that we take steps before we take any major action to make these things truly available to the people, to give them notice in fact as well as statutory required notice, and that we give them a meaningful, actual opportunity to respond. My father, and my grandfather, and all of my ancestors-- as far as I can determine-- were all simple farmers. But my grandfather had a saying that if you don't have time to do it right, when will you ever have time to do it over? And I feel that that's the state we're in now.

And that is the primary reason why I've seconded this motion, and urge others to vote in favor of it. I will point out, however, as much as I respect K D and I think she's a tremendous governor, there have been other objections to the rule 12 changes. One of them that leaps to my mind, among the scores and scores of emails that I've tried to digest, as Ruth Edlund pointed out that in the first sentence here with the proposed rule 12 kind of preamble, that it says "the Washington Supreme Court has inherent and exclusive authority to regulate the practice of law in Washington."

That is not, in fact, true. There are other courts, including federal courts, who do have voices that impact on regulatory authority to practice law, at least in some parts in the State of

Washington. And perhaps there should be other scrivener changes made to make these things more appropriate, and we should give our members time to go through these, to point out all of those things.

Even though they may be small, they do have consequences. And for these reasons, I think it is appropriate to give the membership time to make these things truly available with a website where things can actually be found, for goodness sake, and allow the members to give us the input so that we can do it right the first time, instead of doing it wrong the first time and then arguing about the adverse consequences for the next five years.

BILL HYSLOP: Bill, I've already recognized you. I want to see if there's anybody else that would like to speak to this, and then I will come back to you. I've got James Doane, Maria you and let's start with that. James.

JAMES DOANE: Thank you. I've heard the comments both for and against this motion to postpone this. And it sounds like this would be a one-year postponement-- not a short time. And I want to emphasize that I personally-- and I know that all of us do-- pay close attention to e-mails from our members.

We were elected by our members. And so I've read every e-mail. I personally have not received even a single email directed to me that said, "I am opposed to GR 12."

I also recall what K D just stated-- that GR 12 was on for first read on August 23rd. And there was a very vigorous discussion about it. And K D, at the end of that discussion, took the time to ask, is there anything left? And it was only the association name. Again, that has been rendered moot.

My final point is, I don't want to hear a governor tell me again that perception is reality. Perception is important. It's not reality.

I think we have to move beyond that. We on the board-- we, the 38,000 members of this organization-- have to move beyond that, and do their own research, make up their own minds, not simply forward emails that they receive from other people who have decided, for whatever reason, that they are for or against something. We all have a responsibility as lawyers, as professionals, to do our work, get in there, do our research, and make up our own minds.

Again, we are the elected representatives of our members and the people. And I've just

started my-- will be starting my second year. Most of these things that we're discussing today precede my coming onto the board.

I give deference to the work of the other work. I also pay attention to what was actually done prior, and what is new. And so we're not, as board members, simply saying, well, this has been decided before, and we're merely codifying this or that. We do check. So again, I think this thing needs to move forward. When we get to the amendments, that's a different discussion.

PAULA

LITTLEWOOD:

Just a quick clarification-- it's actually a two-year delay, because when you refer it to the court, then they will publish it for comment when members will be able to give the court comment on the rule. So it actually, if you don't send it until the next cycle, you're actually two years out. Because they'll have to publish for comment. So just wanted to clarify that.

The second thing on the federal courts-- and maybe Doug, this is why your hand was up-- the federal courts have jurisdiction about admitting our licensed lawyers into federal courts jurisdiction-- their bar. But the State Supreme Court has sole and exclusive jurisdiction over being licensed here in Washington.

BILL HYSLOP:

Mario, and then Doug.

MAN:

[INAUDIBLE].

WOMAN:

Well, the case law is pretty clear.

BILL HYSLOP:

Mario and then Doug.

MARIO CAVA:

I think it's really a great thing that we're having this discussion. I do think that our members want to know that they've had an opportunity to provide feedback. I think we've heard from our members, and we've also received written feedback from our members. This was on for first read before.

We've also had an opportunity to address the model regulatory objectives before. They had come before this board on a prior occasion, even before GR 12 was revisited. And I think that we need to be careful, because the policy was set that we would embrace the regulatory objectives that are, in fact, going to be codified in GR 12. It's my understanding that's the procedural posture of this.

I do not support extending the time frame for this. I think that it does not serve our members to invest more staff resources, cost, time deliberating this. I feel that we have other issues that are coming before this board that will be of significance, and that these ones, I think, we can stand behind.

There are some really good reasons why these regulatory objectives came before the board, including increased transparency about the reasons behind our regulations. I strongly encourage the board to move forward with a vote on GR 12.

BILL HYSLOP: Doug.

DOUG ENDE: Doug Ende, Chief Disciplinary Counsel. I am going to underscore the point made by Paula Littlewood, albeit with a different point than she thought I would speak to. Just to remind the board that a vote to approve this proposal is not a vote to set it in stone. It is a vote to send it to the court as a suggested rule under the general Rule 9 process, which is a process designed to ensure public participation.

The court will decide whether to publish the rule as a proposed rule for public comment. And if it does, there will be a public comment period. And any member-- the public and anyone in the world-- will have another opportunity to share views with the court, the entity responsible for rule-making in this state.

BILL HYSLOP: Bill Pickett.

BILL PICKETT: Thanks, Bill, I'll try to be brief. K D, I just want to say, one of the things I love about you is you are a get-er-done governor. And that is one of the legacies that you're going to leave when you slide off here today. And I hope that I can pick that up and run with it.

But in order to do that-- and the thing that I want to emphasize-- why this motion is before you is because of the slew of e-mails that say, "we don't trust you." And we can set around, and we can nit-pick, and we can say, well, membership complained about this or that. And they didn't complain about this thing or that thing.

But if you collectively look at those emails and letters, they are saying to us, you've broken trust with us. We want some more time. I believe that trust is imperative between us and the membership if we are going to move some mountains.

I think if we're going to try to do it alone, I know what it's like to be a solo, because I live that

every day. And you're the most vulnerable, gimped-up animal on the planet if you think you're going to do it alone. We need the membership. And what they're telling us is you broke trust with us.

I'm not focusing on who's right, who's wrong, on how it happened. But it's the reality. And I'm not talking perception, either. That is reality.

So ask yourselves this question-- do all the emails and the letters we got tell us that the membership trusts us? If you think they're telling us that they trust us, then oppose the motion. If you think they're telling us, we don't trust you people. We want more time, then you vote to approve it and suspend this. And I don't care if it's a year or two years. I'm not going to sacrifice the trust of membership over expediency, or just trying to get it done. Thank you.

BILL HYSLOP: Jean Cotton.

JEAN COTTON: Thank you, and thank you for this motion. I'm not to speak pro or con on it, just a point of information. I think it's important to remember Article 1 of the bylaws is almost word-for-word the same as the proposal for GR 12. So they are inextricably linked. And there are numerous comments on that article. I, for one, had four pages of them that I submitted.

So it's not a stand alone thing. And I think if you do decide to delay this, great. And you're ready to go before the two year cycle, I'll take bets that the Supreme Court would grant you an exceptional intervention.

And if not, so be it. Then we send our comments to the Supremes. But I just wanted to point out the link between Article 1 and GR 12. Thank you.

BILL HYSLOP: Thank you. Bill Brady.

BOARD: [INAUDIBLE].

BILL HYSLOP: I'm sorry?

BOARD: [INAUDIBLE].

BILL HYSLOP: Oh, I'm sorry. Athan.

ATHAN PAPILIOU: I had a question about the two-year versus one-year timeline, and I was hoping someone could clarify it. So I'll direct my question to the Executive Director. If the board approves the

amendment to GR 12 today, it's still a one-year timeline, correct?

PAULA Right, so--

LITTLEWOOD:

ATHAN PAPILIOU: So is that correct?

PAULA Like Doug was clarifying, this court can't approve amendments to a rule.

LITTLEWOOD:

ATHAN PAPILIOU: Right. But--

PAULA Only the Supreme Court can. So all this board would approve today is that they're sending up

LITTLEWOOD: suggested amendments for the court to consider. And the way the court's rule-making cycle happens is that they'll decide if they want to publish it for comment, or if they're just not going to take it. The Rules Committee of the Supreme Court could just say, we don't want to take these amendments. And the other thing the Rules Committee can do is publish it for comment.

ATHAN PAPILIOU: Sure, so--

PAULA If they publish it for comment, generally that comment period goes until April 30th. And then

LITTLEWOOD: the rule would have an effective date that the court would determine.

ATHAN PAPILIOU: So I just want to circle back to my question, which was, if the board recommends to the Supreme Court to make those changes, it's still a year-long process?

PAULA Exactly.

LITTLEWOOD:

ATHAN PAPILIOU: So If the board does not act on GR 12 recommendation today, it only extends it by a year, because it's already a year process.

PAULA Exactly, because you have to have any suggested rule amendments up by October. Jean

LITTLEWOOD: Cotton is correct. You can ask for expedited review. And that's up to the court.

It may be that with something like this, they wouldn't-- we don't know-- they might not entertain expedited review. So if you do it in November, then you can't submit it till next October. And then it's a whole other year for that rule-making cycle.

ATHAN PAPILIOU: Thanks.

PAULA Is that helpful?

LITTLEWOOD:

ATHAN PAPILIOU: Thank you.

BILL HYSLOP: And so that we can resolve on that point, is there anyone else that had a question about that particular issue? And I do have Phil Brady, and then Brad, and Andrea. But let's resolve on this point. Does anyone else have a question on this?

ANDREA I do, and it's a follow-up to Athan's question. It's just a follow-up to your question, so thank
JARMON: you, Athan. And I'm sorry that I don't know the answer. When we send it up, can we ask specifically that the court do open it up for public comment?

PAULA Yeah, we could say in our cover letter and in the GR 9 that we recommend that it be
LITTLEWOOD: published. That's a great point.

BILL HYSLOP: Phil.

PAULA Sorry, you'd have to make the rule-making cycle, though.
LITTLEWOOD:

ANDREA Yes, ma'am.
JARMON:

PHIL BRADY: So I'd like to address something Bill said. And he pointed out that we have heard from our membership, but I don't think that's accurate. I think we've heard from a small and very vocal minority of our membership.

We have 38,000 members in the state. We've heard from, generously, maybe 150. And I don't know about the rest of you, but I've received a number of statements in support from members of my district as well. We also have the vast majority who have not taken a position or contacted us on any issue.

And as someone who does public policy for a living, I can tell you, no matter what you're doing, the majority of the comments you get are going to be from the people who don't like what you're doing. People who are OK with it, for the most part, don't feel obliged to reach out. The people who don't care won't reach out either. I'm not sure we want to draw conclusions about what the membership as a whole is based on the comments of a small group of people,

some of whom are reacting to information that is not accurate, or is information that is out of date. I think we want to be very cautious how we treat the comments we have gotten.

We should certainly listen to them. We should consider them. But I don't think we should be substituting their judgment for our own. We were elected by our members, or selected by this board, in order to exercise our best judgment and to do what we think is right to meet our fiduciary responsibilities to this organization.

BILL HYSLOP: Brad.

BRAD FURLONG: Thank you, Bill. I think this is a really important discussion. And I know Governor Pickett and Governor Risenmay, I fully respect your views. And I don't want to repeat everything that K D said, or that Phil said, or that Mario said. But I want to do make some statements about the issue of delay.

Anybody that's talked to me over the last couple of weeks knows that this has been a very troubling question for me personally. I come from the Second Congressional District, where two of the local bar associations out of the five sent requests that we delay action on this. And I thought about that long and hard.

And I've thought about my responsibility to understand the views and be a representative of the views in my district, but also to take action on what's best for the full Bar Association. In a hour and a half long open discussion with those members of one of those bar associations, which is the San Juan County Bar Association, I was accompanied by I believe Governor Karmy was with me and Executive Director Littlewood. We had an extensive discussion of the bylaws changes that were being proposed.

One of the issues initially was delay. It came up, but in the context of we haven't had enough time to think about this. But it was followed by the next hour and a quarter of detailed, in-the-weeds discussions of the bylaw amendments themselves, the policy implications it had for the Washington State Bar Association, the potential impacts of public membership on this board, the issue around representation, the issue around the name.

And what I discovered is that I had folks telling me they needed more time to think about this who had completely cemented, very cogent arguments, either for or against provisions of this. And that the request for delay really, really paled when I realized that everybody understood these arguments. Everybody understood the implications. And what they really wanted was for

us not to adopt these. And I hear that substantive argument, and I think that's the engagement that I wish to have with my colleagues in San Juan County and elsewhere around the state.

And then I stood back, and I thought about where these comments are coming from. They're coming from licensed legal professionals-- lawyers-- who deal with much more complex issues than these bylaws, in a much shorter period of time. I don't litigate anymore, but I used to litigate.

And if I recall correctly I think you've got 17 days after you receive a summary judgment motion. And if you don't respond, your case is going to be out the door. And sometimes, those motions have complex legal issues that have to be briefed. They come with numerous declarations or affidavits.

And the job of the attorney is to respond in kind with a complex legal argument and other affidavits, and either create a material issue of fact or prove to a judge why you should win on the law. That takes 17 days, and it is a much more complex task than understanding these bylaws, and being able to formulate a response. And in the meantime, most lawyers that I know are doing a few other things at the same time-- at least, I was in my practice, and I bet anybody else is also.

So I really had to sit back and think, is this really not enough time, especially within the context of the fact that we've been working on this as a board for two years already, and that it was worked on before that by the governance subcommittee. And so ultimately, the decision that I am now coming to is that the request for time is not the real issue here. The request, I think, that I think we really need to pay attention to are the substantive arguments that our members are making to us.

And I don't buy the trust thing, Bill. Because I think that trust is based on what you've done, and what you've said, and how you've acted, not how some people think you may have acted or how some people think you should have acted. And this board has done nothing-- nothing, not one thing, in my opinion-- to lose the trust of its members.

This entire process has been wide open. The website may not be ideal, but I think all the lawyers in this state are smart enough to figure out how to get information or to call this service center and get what they need. And I won't buy that we've done anything to be mistrusted.

If people want to mistrust us based on the fact that we have acted transparently in an utmost good faith, then I'm really sorry. But we also have a job to do. We've had a ton-- a ton of work on this.

And when I woke up this morning, I really didn't know where I was going to sit on this. But now I think I've come firmly to the conclusion that we need to get that work done. We need to still listen to the debate around the policy issues. And so I would encourage everyone here to vote against this motion.

BILL HYSLOP: Geoff Revelle

GEOFF REVELLE: Masses who aren't sending you emails about this-- I'm a member of a large firm. I think the attitudes in our firm represent, pretty significantly, the same as the other large firms in town. The people I've talked to about this say, looks fine to me. Don't really care that much about any of it, but not a problem with it. But we're not going to be writing e-mails and letters about it at all.

And so I think there will be far more support among the membership-- and just following up on Phil's point. From an access to Justice Board standpoint, we support the concepts in both the GR 12 amendments, as well as a bylaw amendments, and think they are long, long, long overdue. We also, I think to some degree, speak for the Alliance for Equal Justice, which about 50 or so organizations that provide legal services to the poor that can't get anything.

And these bylaws and the statement of purposes, I think, are important in that regard, as statements. I think that, to some degree, we speak for the two million Washingtonians that are eligible for free legal services because they're poor. It's 28% of the population.

And I think, again, these statements and these amendments are certainly not going to solve that problem by any stretch of the imagination. But they are a step forward in getting those things solved. Thank you.

BILL HYSLOP: Thank you very much. Anyone else? Ruth Edlund.

RUTH EDLUND: This is, I suppose, a minor point. But I wasn't sure if the comment about the exclusive-- the language, I'm sorry, is the exclusive province of the-- inherent and exclusive authority to regulate the practice of law. Actually, the exceptions to that are not limited to federal court. There are a number of Washington State agencies that allow the practice of law before them by non-lawyers, and that are not, in my view, regulated by the Supreme Court. So I offer that

by way of example of the potential problems with the language, which is, I think, what Governor Risenmay was offering as an example in the first place.

BILL HYSLOP: Paula is going to clarify that, then Dan Bridges.

PAULA LITTLEWOOD: So just a reminder that the Supreme Court will review this. And if they have an issue with that language, they will change it before they publish it for comment. The chief, at least, has seen the draft-- I don't know if she shared it with the full court-- and did not offer any amendments. But that doesn't mean that the court Rules Committee won't.

So that language is pulled directly from Washington State case law that the Supreme Court has issued. So again, this is the court's rule. All you are doing is suggesting some amendments that they may or may not take. So I just want to be really clear about that. And then we would conform Article 1 to whatever the court adopts, if they adopt something.

BILL HYSLOP: Dan Bridges and then Anthony.

DAN BRIDGES: I think some of these comments are preloading to the bylaw amendments. And that's appropriate, because a lot of these comments touch on everything. My comment kind of does, so I'm just going to ask you-- so I won't say anything later-- apply this comment to those as well. I think it applies both to this GR 12 discussion and the bylaw comments.

I worked in restaurants coming up through college and law school. And we had a saying, if one person complained, you can bet 100 other people had the same thought but didn't say anything. Most people don't say anything, whether they're for or against it.

Long before I ever had any notion of even coming onto this board, as a member, I talked with some of my friends in [INAUDIBLE] about the fee referendum. And they were very vocal, actually, against it, because they felt it was a member service issue.

And I have very dear friend who's a president of [INAUDIBLE] said, oh, my god, these people don't know what they're voting for. This is not a proper vote, because look at how few people voted. My response always was, but more of them voted against it than for it.

I'm not speaking to the fee referendum. I'm speaking to the point that I agree with what Phil said. You have to be careful about a small sample size-- absolutely correct.

But just using the fee referendum as an example-- not trying to speak to its merits-- still more

people voted for it than against it. And I think there's a peril, when we're in favor of something, to minimize the small number-- well, fee referendum or we only have 150 emails from people against these bylaws, and only count it as 150. It's still more than what I've seen in favor of it.

It doesn't mean that should trump everything. And I'm not asking to do that. Leaders lead from in front.

But I do urge you, we're talking about numbers, it cuts both ways. I ask you, don't minimize the comments you have looking at raw numbers. Realize the representation behind it.

It's a lot greater than that. And what this gentleman said as well, I'm sure there are a lot of people in favor of many of these things. I'm just asking you, just don't minimize the fact that-- don't put these people on an island, I guess is what.

I'm not saying you are Phil. And I apologize in using this as an example. But I don't think we, as a body, should ignore-- even if it's a small minority, and I don't think it is a minority-- but the numbers. I think you hear what I'm saying.

If these people feel passion enough to say what they are saying, do you need 30,000 people saying it? We have, historically, a small participation anyway. So you have to kind of look at the percentages as much as the numbers. Thank you.

BILL HYSLOP: Thank you. Anthony.

ANTHONY GIPE: I just wanted to reinforce the two ideas. The second one came up during Dan's comment. But firstly, we're going to have, on GR 12, there'll be a full year of public comment-- nearly a full year of public comment-- once the court publishes.

So I don't think, if that's the sole issue is to get more comment, as a board, do we need to take care of that process here versus there? And I think maybe in that regard, when the Supreme Court chooses to publish it, it will get far more attention. So that's one comment.

The second is-- this is from a leadership perspective, and Dan's comments are correct. We don't minimize when we see comments like this. However, we also have an obligation to analyze the comments we've received, and realize what they are.

I went through every email ever received after we published for the first time in July, and came up to August. And when I went through every email-- and Phil is correct-- generously, it's

about 150 to 200 comments. Half of them are not independent analyses of the data. They are "ditto," or they are, "I've never liked what the bar does, so I agree with x."

We have an obligation as leaders to look at the substance of each and every response and see if it's credible, and then make our decision. And our system is set up to allow for a couple of checks and balances on that. One of them is the court.

If they see these and they say, gosh, bar, you got it wrong, would you please go re-address that, they will tell us. Because they've done it to us before. When we rejected LLLTs, they came back and said, sorry, folks. You're going to do it.

And they'll do it to us again if they believe we're in the wrong direction. And our memberships have ways to do that, too, if they don't like a specific vote. So the leadership obligation for us is to look at it, and we've looked at it for a long time. So that's all I want to add.

BILL HYSLOP: Yes, ma'am.

JULIE FOWLER: [INAUDIBLE].

BILL HYSLOP: Yes, and I'm sorry, please introduce yourself.

JULIE FOWLER: Julie Fowler. I'm in District 9. I am extremely concerned that I'm hearing governors say that the membership is somewhat passive on this issue, when you have bar associations that speak for their members that are reaching out to you, and saying, don't do this. If my bar association speaks for me, I don't have to speak to you also. I'm trusting my bar association. If my section speaks out to you on an issue, then I trust you're listening to my section as well.

And I'm also very concerned that I'm hearing comments about e-mails where you didn't cite to the rule. You didn't cite to this section. I don't write legal briefs when I write an email.

I tell you this is what I'm concerned about. These are my specific issues. And I think that's appropriate.

And I also think it's appropriate, if someone speaks what you're feeling, that you can forward that, and say, I'm concerned about this. So to discount that there's a lack of trust-- there's a huge lack of trust. And just because you're not getting emails directly from the membership doesn't mean that the membership's not talking about this very vigorously in their listservs, of which you might not be a part.

So if the vote happens, I hope you vote against it. And I hope you hear that your membership is talking. They are concerned about this. And whether it's been a two-year process or not, they're talking now, and you need to listen now. Thank you.

BILL HYSLOP: Jill Karmy.

JILL KARMY: Thank you for the comment. And I guess it highlights the question I have in my mind, and I think has been danced around a little bit. I think we're blurring lines between some concerns people have over bylaws changes versus what we're dealing with in this vote, which is the GR 12.

So I have not heard GR 12-specific concerns except for the association name. So if there is something out there other than concerns about bylaws, which we're going to talk about next, I would like to hear them. The county bars that you referred to-- we have received their e-mails and reviewed them, and I--

[CELL PHONE CHATTER]

BILL HYSLOP: Thank you for the levity, Ann.

JILL KARMY: That was like the music to get offstage. So I just want to be clear. I mean, I think GR 12 is a much easier answer than I think the next issue we're going to get to, which is bylaws. And that those are the bar letters that we've received.

BILL HYSLOP: James Doane.

JAMES DOANE: Yeah, I just want to be responsive to-- I want to correct a statement I made. I said that no email directed to me by a member expressed any concern about GR 12. I did invite that member, when I responded initially, to please attend the meeting, log in. And she is.

And she reminded me that she did mention GR 12, and so I want to address that. And I will need some help with that. What she said was, her concern about GR 12 was she's wanting to circumscribe the authority of the Supreme Court to regulate the practice of law in the State of Washington.

Not sure that's something the bar can do. I'm sure it is something the bar cannot do. And I would throw it to Paula-- can I throw the ball to you to sort of respond to that more fully?

PAULA Well, I think I did. I think the court has to determine what language they think would be appropriate in GR 12, with respect to that language. Again, this was pulled from case law. So if the court determines that that's not what they want GR 12 to say, then they will make that change before they publish it for comment. Is that helpful? Is that what I've-- yeah, OK.

LITTLEWOOD:

BILL HYSLOP: All right, governors. We have before us a motion to table the consideration of the approved suggested amendments to GR 12.1 through 12.4. Are there any comments by the board that have not been discussed?

All right, we're going to move to a vote on this. Again, this is a motion to table the consideration of changes to 12.1 to 12.4. And it would be tabled to the next meeting of the Board of Governors.

All those in favor of the motion, please raise your hand and keep it in the air. All those opposed-- and that's two in favor. All those opposed to the motion.

Any abstentions? One.

PAULA Do you want that recorded?

LITTLEWOOD:

BILL HYSLOP: Just a second. All right, so two in favor of the motion, one abstaining, 11 opposed to the motion. The motion fails.

Now, the proper procedure would be at some point in time for there to be a motion to put the amendments on the table so we could consider that. Jill.

JILL KARMY: Yes, I'm making a motion to approve the suggested amendments and forward to the court.

BILL HYSLOP: Of 12.1 to 12.4?

JILL KARMY: Yes, what the issue in front of us, yes.

BILL HYSLOP: All right, and who was the second? K D. All right, thank you very much.

JILL KARMY: As amended by Governor Brad.

BILL HYSLOP: All right, does everyone understand the motion? Does anyone want to discuss the motion? Hearing none? Oh, I'm sorry, Kim.

KIM RISENMAY: I'm going to move to amend the motion with one slight clerical change. we've talked about this. And I recognize as Paula Littlewood pointed out that the language in that first sentence that I read earlier did, in fact, come from a state Supreme Court decision. Doesn't mean that we can't improve on it.

And I reject the idea that we should send unfinished products to the Supreme Court because they can tidy up where we left loose ends. So I'm just going to suggest that in that first sentence, the preamble to Rule 12, that it should read "The Washington Supreme Court has inherent and plenary authority to regulate the practice of law in Washington." Just a small change, but there's no sense in us being technically incorrect.

BILL HYSLOP: It's been moved and seconded that the first line of Rule 12 be that the Washington State Supreme Court-- it currently says, "Washington State Supreme Court has inherent and exclusive authority." My understanding of your motion is, "Washington State Supreme Court has inherent and plenary authority." You're substituting the word "plenary" for "exclusive."

KIM RISENMAY: That's correct.

BILL HYSLOP: All right.

PAULA Still [INAUDIBLE].

LITTLEWOOD:

[INAUDIBLE BACKGROUND DISCUSSION]

BILL HYSLOP: They're both looking at it right now.

[INAUDIBLE BACKGROUND DISCUSSION]

ANTHONY GIPE: Counsel requires it be legal advice that it cannot be taken in public.

BILL HYSLOP: I understand that. Thank you.

PAULA They can offer it.

LITTLEWOOD:

ANTHONY GIPE: Yes.

JEAN MCELROY: I'm going to--

[LAUGHTER]

Got the rulebook out. [INAUDIBLE] technically be giving legal advice. However, I would say that there are Supreme Court cases where the court says that they have plenary authority over the practice of law in the State of Washington. So it's not an incorrect statement.

PAULA [INAUDIBLE].

LITTLEWOOD:

BILL HYSLOP: While Doug is looking at that, I'm going to recognize Kim Masters.

WOMAN: Morning.

KIM MASTERS: As you know, I'm on the Scrivenering Group. And I was actually on the subcommittee that worked on this. And I have to agree with the governor and with what our council said. Certainly, the Supreme Court has used the word "plenary."

The definition of the word "plenary" is exclusive. And so--

WOMAN: It's unconditional and absolute.

KIM MASTERS: Unconditional and absolute-- so I just want to be clear you're actually strengthening, not weakening.

KIM RISENMAY: But it does leave--

KIM MASTERS: Which I don't object to. That's all I'm going to say.

KIM RISENMAY: To clarify the reasoning behind this, "exclusive" means nobody else has any authority. "Plenary" says, we have all the authority to do anything with it we want. But it leaves open the question of if anybody else may also concurrently have authority, and it just sidesteps the whole issue that was raised, that there are other people who can affect the practice of law in Washington.

BILL HYSLOP: Was there a second?

KIM RISENMAY: And that's the only reason I even raised it.

BILL HYSLOP: All right, I haven't seen Doug flag us yet. Is there anyone else that would like to comment on

this motion to amend? Keith Black

KEITH BLACK: Brad tells me there was a second. Was there a second to the motion?

BILL HYSLOP: Yes.

KEITH BLACK: OK.

PAULA Who was it?

LITTLEWOOD:

BILL HYSLOP: Jill.

KIM RISENMAY: Do I need to move the previous question on my own?

BILL HYSLOP: No, I'm already recognizing Doug Ende. If you are--

DOUG ENDE: These are not ideal conditions under which to form comprehensive legal research.

BILL HYSLOP: Understatement of the day.

DOUG ENDE: My preliminary surmise is you can find instances of both phrases being used by the court in rules and cases to describe its authority over the practice of law.

BILL HYSLOP: Thank you.

PAULA Put them both in, plenary and--

LITTLEWOOD:

BILL HYSLOP: So any further discussion by members of the board? Ruth Edlund.

RUTH EDLUND: Well I would just be curious the case law that you're looking at, because-- and again, I am trying to research this as quickly as I can-- *Short v. Demopolis* uses the phrase "exclusive inherent," but that's talking about, "the power to admit, enrol, discipline, and disbar attorneys," which is not exactly the same thing. *Graham v. State Bar* says "the regulation of the practice of law is within inherent power of Supreme Court." But the exclusive inherent power to admit, enrol, discipline, and disbar attorneys is not precisely the same thing as having the power to-- in other words, regulating the practice of law is a broader statement than admit, enrol, discipline and disbar attorneys. That's as far as I can get with the research in 30 seconds.

BILL HYSLOP: Thank you for your 30 seconds. Appreciate it. Jean.

JEAN COTTON: I've been madly researching definitions of plenary. It does seem to definitely include the idea of absolute and complete. However, I think that there may be some distinction between plenary and exclusive, in the sense that it has complete control.

But I think "exclusive" is implied by saying that it has absolute, and it's the same as "absolute and complete." So I'm not certain that it makes a difference. But there might conceivably be room for argument there.

ANTHONY GIPE: Again, in my day job I'm a tax attorney and I deal with state and local taxes. There are US Supreme Court decisions going back to the early 1800s on the Commerce Clause, that said that the Commerce Clause of the US Constitution gives Congress power to regulate interstate commerce. And the US Supreme Court said that is plenary power, but it does not prevent other agencies and the states from having some impact on regulating interstate commerce. So that is the background in which I am accustomed to it-- that it recognizes you have complete authority, but it doesn't mean you're the only one that has any authority.

BILL HYSLOP: Jim McPherson.

JIM MCPHERSON: And you thought this was going to be boring.

BILL HYSLOP: Jim McPherson.

JIM MCPHERSON: Two quick comments-- one is that I will make a comment when there is an additional motion to table the bylaws. But my quick comment on this one is, I'm a little confused about this exclusive jurisdiction. If we're all concerned about anti-trust laws somehow affecting the practice of law in the State of Washington, why are we bending over backwards worrying about anti-trust laws, unless somebody other than our own state Supreme Court has some control over us?

Why are we even worried about it-- the word like "association?" Apparently, we get scared when the feds are going to come and look at us on anti-trust law, but whatever it has anything to do with us internally, we think we're the only ones in the room. So I agree with Kim's-- I guess I will say, this is not a great example of what this board should do, which is to change a single word on one thing here, and try to somehow make it controversial.

"Plenary" makes sense to me. "Exclusive" might be fine. Let's move on. The purpose of the

GR 12, and the reason that the bylaws will be a different question is because we do have LLLTs We do have LPOs. The GR 12 is being changed in order to take that into account, right?

BILL HYSLOP: Thank you, Jim.

**PAULA
LITTLEWOOD:** Yeah, and that's actually a great point-- that with the GR 9, the court has asked us to give more of a legislative history. So we could put in the GR 9 that this was an issue that the board discussed. That's a great point. Thanks, Jim.

BILL HYSLOP: Anyone else that wanted to be heard on this issue? Doug.

BOARD: Let's move on.

DOUG: Just for the record, the first paragraph of Benny and Van Camp, Hagan and Ruhl against Kassler Escrow 1981, the Supreme Court is given the exclusive power to regulate the practice of law. It doesn't come from nowhere.

BILL HYSLOP: Thank you. The motion that's on the table is to amend the first line of proposed GR 12, remove the word "exclusive" and insert the word "plenary." Any further comments from members of the board? All those in favor of the motion to amend, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed.

BOARD: Nay.

BILL HYSLOP: Let's do a hand vote. Kind of a quiet board here today. All those in favor of the motion to amend, raise your hand, and keep it in the air.

All those opposed.

I've got eight to four. Those abstaining.

PAULA Do you want that recorded? No? Yes?

LITTLEWOOD:

BILL HYSLOP: The motion is adopted.

MAN: [INAUDIBLE] the numbers?

BILL HYSLOP: Eight to four to two. All right, well, we're now to the main motion to adopt and approve the suggested amendments to GR 12.1 through 12.4 as amended. Any discussion by members of the board? Yes, K D.

KAREN DENISE WILSON: I have two amendments. The first is that the word "association" remains throughout. The second is "exclusive" is changed to "plenary."

BILL HYSLOP: That's right. That's right, those are the only amendments. All right, all those in favor of the main motion to approve the suggested amendments to 12.1 through 12.4 with the two amendments we just discussed, please say, aye.

BOARD: Aye.

BILL HYSLOP: Opposed.

BOARD: Opposed.

BILL HYSLOP: Abstain. It's approved. Thank you very much.

MAN: That was [INAUDIBLE].

PAULA LITTLEWOOD: President Hyslop has asked me to start getting your dinner orders.

[LAUGHTER]

WOMAN: [INAUDIBLE]?

PAULA LITTLEWOOD: Just kidding. [INAUDIBLE].

BILL HYSLOP: OK, the next item is--

PAULA LITTLEWOOD: I think Jean Cotton has--

BILL HYSLOP: Oh, I'm sorry, Jean.

JEAN COTTON: I just have a question. You didn't ask for any other comments before you took the vote. I was trying to wave my hand. I have some questions. I don't know who to address them to now, because they'll affect the bylaws as well.

BILL HYSLOP: Can you hold them for the bylaws?

JEAN COTTON: I can, but we may have to come back to GR 12 if the answer is different.

BILL HYSLOP: Go.

JEAN COTTON: OK, just two quickies.

PAULA You need a microphone.
LITTLEWOOD:

BILL HYSLOP: Yeah, microphone, please Karen.

[BACKGROUND DISCUSSION]

JEAN COTTON: Over here. Paragraph 6, under what would be the specific activities authorized--

BILL HYSLOP: This is in GR 12?

JEAN COTTON: In GR 12. I don't know if it's GR 12.1 or 2.

BILL HYSLOP: Well, let's be specific so everybody can track where we are, please.

JEAN COTTON: Let me see if I can find it. I'm trying to flip between the two here, the bylaws. It is different than what's in the bylaws. It's about the only thing I can find it's different. Because a word was left out in the bylaws that's in here.

And I can read it to you if it makes it easier. It says, "Administer an effective system of discipline of lawyers, LLLTs and LPOs." That's how it starts.

In the GR 12 one, it leaves in the word "misconduct," which I think is appropriate. But it is not. It is x-ed out in the bylaw change. I think it's a disconnect, to scrivener's error. I just wanted to point that out to make sure they're both consistent. If you meant it to be in, great. If you meant it to be out, you have to change GR 12.

The other question was--

BILL HYSLOP: Can we address that one first?

JEAN COTTON: Sure.

BILL HYSLOP: Anthony and Jean, are you able to answer that?

JEAN MCELROY: The word "misconduct" should be in the bylaws.

JEAN COTTON: Yes.

ANTHONY GIPE: Yeah, the bylaws have always been-- in this regard, any bylaws that are designed around GR 12 are to conform to the proposed amendments to GR 12.

BILL HYSLOP: So we'll assume that there will be a motion to amend that when we get to the bylaws. Your second question, please. Thank you for that.

JEAN COTTON: The second question was given to me by a member, and I put it in my letter. And it was specifically, what services does WSBA provide to the public, other than competent attorneys, distinguishing that from services that are offered to members? And why is it in that item Number 3 of the purposes portion? That's it, thank you.

BILL HYSLOP: I'm going to ask Paula to summarize that, please.

**PAULA
LITTLEWOOD:** And I'll let Terra jump in, but things like the Moderate Means Program, the Call to Duty, and things like that would be exempt.

ANTHONY GIPE: As well as providing services to the public about who is practiced, who has disciplined, et cetera.

**PAULA
LITTLEWOOD:** Right, sure. And filing grievances.

ANTHONY GIPE: Filing grievances, also, and a few other areas.

**PAULA
LITTLEWOOD:** Thank you.

BILL HYSLOP: Thank you for those questions, Jean.

WOMAN: [INAUDIBLE].

BILL HYSLOP: We're going to move on to the proposed--

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Proposed WSBA Bylaw Amendments

Presenters:

Immediate Past-President Anthony Gipe – Chair

Jean McElroy – General Counsel/Chief Regulatory Counsel, WSBA

BILL HYSLOP: We're going to move on to the proposed bylaw amendments. This begins at page 233 in your materials. Just for point of clarification for everyone, you'll find in your materials essentially two packets of bylaw materials. Each is preceded by a memo. And the first are those sections that where the bylaw work group has made some changes since our last meeting that we'll be discussing. The second are those where, at my understanding, there aren't any changes since the last bylaw meeting.

And so in the materials, you don't necessarily find those sections in sequential order. However, for purposes of our discussion here today, we are going to take each of the articles of the bylaws in sequential order and address each article. And we'll invite a motion with regard to each article as we move through them.

ANTHONY GIPE: Thank you Bill. To begin with though, before we commence, the memo for this meeting dated September 19th from the bylaws work group lists only the articles that were changed after receiving public comment in our last board meeting and since the last board meeting up to September 19th, which is when the bylaws work group recommended these changes. For those who are online and may not have the materials before them, I will summarize them briefly.

Changes to Article III-- about changing the heading to classes of membership to member license types. Article 4 on governance-- we refined down the three options down to just two of the options-- options 1 and option 3. As you will remember, option 1-- this has to do with Articles 4 and 6 about adding three additional seats to the board. Version 1 is that the LLT, LPO governor, and two public governors are all elected by the board in the same method as we currently elect our at large.

Version 3 was called quote unquote "the hybrid mode," which has the LLT, LPO governor elected by the bog as per our at large, but the non-licensed public members to the board be nominated by the board to the Supreme Court or the Supreme Court appoints them. Those are the two preferred versions from all the comments. Those are kept in the materials.

There was also discussion, and there may be amendment on another aspect of Article 4 about representation. But we'll talk about that later when we get to Article 4. I want to point out that Articles 4 and 6 relating to adding and electing the three new at large governor's positions--

any motion will expressly have to delay its implementation, its effective date, until this Supreme Court chooses to take action and order the creation of those seats.

In that last meeting, a couple of things were taken off of the table from consideration, and you'll see that in the memo as well. For instance, the indemnification provision, which is article 14, was opening up a lot of other legal issues. The general counsel's office will have to research further. Hence, the work group has recommended it be removed from your agenda. So when we get to Article 14, we're basically going to ask you to table that piece of it.

I think that covers all of the differences. Everything else based on public comment-- the work group's recommendations conform to the copies that were originally provided for the August 23rd meeting. Any questions about the process to date? And if not, I will dive into our first article.

BILL HYSLOP: Star diving.

ANTHONY GIPE: OK.

BILL HYSLOP: So begin governors, if you would, go to page 397-- Article 1 functions. 3 9 7, Article 1 functions. And I will entertain a motion to adopt to get it on the table.

ANTHONY GIPE: Remember, Article 1 is the piece that conforms to GR 12 in large parts. So this is the one that since you've amended the GR 12 provision, you will want this to conform to that.

KAREN DENISE WILSON: Question.

BILL HYSLOP: So in other words Anthony, under 1A purposes in general, where it says, in general the Washington State Bar-- are you saying that it would say, the Washington State Bar Association?

ANTHONY GIPE: Correct. That's another good point. Maybe we should just take it from the get go. I understand that one of the conforming issues that'll have to be taken to all of the bylaws since you've amended GR 12 about the name of the association, I assume this board, as its first piece of business, should determine do you want that to apply to these bylaws and conform the bylaws to that decision?

BILL HYSLOP: I think that was incorporated into the first motion to amend.

ANTHONY GIPE: Well, that's to incorporate. But that was about GR 12. I made that clarification. They were talking about GR 12.

BILL HYSLOP: Yeah, but we said including the bylaws.

ANTHONY GIPE: All right. Was that the ruling of the board?

KAREN DENISE It was.

WILSON:

ANTHONY GIPE: The motion on GR 12 about changing the name-- did that motion include the bylaws, specifically?

KAREN DENISE I don't believe it didn't include it. We agreed that we would conform the bylaws--

WILSON:

ANTHONY GIPE: All right.

--with our motion.

ANTHONY GIPE: Right, if that motion was consent to conform the bylaws to that decision, then you don't need to act here. We'll just conform that.

KAREN DENISE Question, please. On page 397, it is red line dated August 15, 2016. I just want to be sure that

WILSON: that is the most recent red line for Article 1. OK, thank you.

KEITH BLACK: And Anthony, does that include all of the proposed changes or just the most recent?

ANTHONY GIPE: This is the recommended version that came out of the work group that was looked at by the board in the August meeting. And no additional changes were recommended to this when we sent it up for this meeting. So this is the work group's recommended document to you.

BILL HYSLOP: With all of the proposed changes from the current language.

ANTHONY GIPE: From prior. But the question here today is do you intend this to conform to the decisions you made on GR 12? And I hear that the answer is yes. The board has to decide if they want a specific motion on that or just have it adopted by the prior motion.

JILL KARMY: Just to be--

BRAD FURLONG: Mr. President--

JILL KARMY: Sorry, Governor Brad. Just to be safe given some confusion we had at the last meeting with the recall referendum that we thought we had taken off the table but had only done half of it apparently, let's just be clear. And I would like to just make a formal motion to-- would it be to reject the proposal to drop "association" from the Washington State Bar Association?

ANTHONY GIPE: I would recommend that you just have a motion that says the bylaws in Article 1 shall conform to GR 12 and throughout the bylaws in regards to the name of the organization.

KEITH BLACK: So moved.

BILL HYSLOP: Thank you for that motion Keith and that second Jill. Any questions on that motion? So we now have a formal motion on the table to-- yeah. We now have a formal motion on the table to conform the bylaw proposals to GR 12 to include the word "association."

ANTHONY GIPE: Yes. In all parts of the bylaws, correct?

BILL HYSLOP: Yes.

ANTHONY GIPE: Yes.

BILL HYSLOP: Any discussion on that? By Bill Pickett.

BILL PICKETT: Thanks Bill. I just want to make sure that I'm clear, because I'm bringing a motion to suspend a vote on all of the bylaws until the next meeting. And so my question is if we're approving this conforming the GR 12 language to the bylaws, we're not approving it-- the bylaws?

BILL HYSLOP: No.

BILL PICKETT: OK.

JILL KARMY: Right. So I would hold off on that until we maybe do away with a couple potential changes--

BILL PICKETT: Thank you.

JILL KARMY: --and then come to you.

BILL PICKETT: OK, thanks.

BILL HYSLOP: Any further comments or questions by members of the board on this? All right. Jim, is it really

important?

JIM When you do contracts, you do the definition at the beginning. So it says 1A1. If you just take
MACPHERSON: out the cross of the association so that the word "bar" throughout--

BILL HYSLOP: That's what they're doing.

JIM That's not what I heard. But that's what's happening? Because that's all you have to do is
MACPHERSON: change that one word.

ANTHONY GIPE: But the problem is that it's not just in that spot, Jim. You then have to conform all references in all of the bylaws to that. So I think conforming it does have that effect.

BILL HYSLOP: The intent is the same.

ANTHONY GIPE: The intent is to do exactly that.

BILL HYSLOP: All right, any further discussion on this? All in favor of the motion please say, "aye."

BOARD: Aye.

BILL HYSLOP: All opposed? Abstaining? Passes.

ANTHONY GIPE: I guess before we jump in to talking about individual because we're going to vote article by article unless this board chooses to suspend action on the bylaws today.

BILL HYSLOP: Right now, we're considering article 1, Anthony.

ANTHONY GIPE: I know that. But I'm just saying as a matter of procedural order, I believe since each article is going to be voted upon separately by the board if someone is going to entertain a motion to stay action on all of the bylaws, we should deal with it first.

JILL KARMY: Well, let me-- can I ask a question? I'm sorry.

BILL HYSLOP: Sure. You can do whatever you want.

JILL KARMY: Hey.

BOARD: How come I never get that?

BOARD: Me either.

JILL KARMY: Sorry, Bill.

BILL HYSLOP: And what not.

JILL KARMY: OK. So I believe there is going to be a motion to delay. But I think there is an issue that can be taken off the table that I would like to address before we get started. At the last meeting, we agreed as a board not to make any changes to the referendum provisions of the bylaws. I think many of us thought we had also included in that not making any changes to recall of governors, but that wasn't explicitly stated. So I would like to make a motion to not make any changes currently to the recall provisions for governors in the bylaws.

KEITH BLACK: Second.

ANTHONY GIPE: If I may for purposes of people who are online or may not have been present, I'd like to point out that yes, at the last meeting this board made the decision to withdraw recommendations of any referendum procedures. They made that decision at the July meeting. Part of those procedures were also adjusting recall. It was ambiguous whether that is included, so the recall provisions in Article 6F of the bylaws were not pulled from consideration.

So it is a good point of order. And the decision was referendum and recall were to be placed for further consideration next year. So if that is what the board intended, tell me that and it's off the table.

BILL HYSLOP: No, we will have a motion on that I assume at the appropriate point in time.

ANTHONY GIPE: She just made it.

BILL HYSLOP: Jill Karmy has just moved.

KEITH BLACK: And I second it.

BILL HYSLOP: Keith, thank you very much. The recall--

ANTHONY GIPE: Article 6F.

BILL HYSLOP: Article 6F. The changes to Article 6F with regard to recall be removed from the proposal

ANTHONY GIPE: And dealt with in this-- I think it's to be dealt with in the same fashion as the referendum.

BILL HYSLOP: Thank you very much. Any debate on that? All those in favor of the motion please say, "aye."

BOARD: Aye.

BILL HYSLOP: Opposed? Abstained? All right, thank you very much. Back on Article 1.

ANTHONY GIPE: Well, Mr. President, with the indulgence, procedurally-- because I don't want to waste time talking about individual articles if someone's going to make a motion to try and stay action on all of these-- so I would like to hear and deal with any such motion first.

BILL HYSLOP: That's fine. I haven't heard the motion yet. But I see Bill Pickett sticking his hand in the air.

BILL PICKETT: Thanks, Bill. I will move that we stay, not delay. I think that's a little-- to say delay. To stay the action and the vote on this until the next meeting specifically to allow membership time that a significant number of people have expressed to us that they would like to make additional comment, and to review the materials, and to comment, and give us their insights. I think that's important, and I won't belabor the point suffice to say I believe this is a trust issue. And that it is significant to this board being able to move forward in the future, and that's the reason I bring the motion. Thank you.

BILL HYSLOP: Bill, is that a motion to table consideration of any of the further bylaw proposals until the next meeting?

BILL PICKETT: Correct.

BILL HYSLOP: All right, is there a second to that motion?

KIM RISENMAY: I Second.

BILL HYSLOP: Kim Risenmay seconded. All right, the motion is on the table. Governors? Angie?

ANGELA HAYES: I have a question. Does that mean that we're not going to debate any of the content of these? Or we're just--

BILL HYSLOP: So the motion--

ANGELA HAYES: --delaying the vote or postponing the vote?

BILL HYSLOP: The motion that's on the table right now is to table further consideration of the bylaw proposals to the next meeting of the Board of Governors. That would move this to the November meeting of the Board of Governors.

ANGELA HAYES: Does the word "consideration" include further debate on any of this? Any discussion at all or consideration meaning a vote? I'm unclear. Are we going to continue to talk about this today, or are we just tabling-- whatever the word is?

PAULA
LITTLEWOOD: If you lay it on the table, there's no further debate.

BILL HYSLOP: Yeah.

BILL PICKETT: The motion, though, is for further consideration. And that includes feedback from members, as well as discussion amongst the BOG, yes.

BILL HYSLOP: And I interpret that as the same effect, that we would not have further discussion on it today. It will come back up on our agenda at our November meeting for the board to decide what they wanted to do at that point in time. Who's-- Kim?

KIM RISENMAY: Then in that case, because it is not my intent that we stop discussion about this today or stop member input today, I would propose to amend the motion-- if I'm getting this right, I'm looking at page 9 here for everybody-- that we amend the motion to be a motion to postpone to a certain time. Meaning that votes on the final enactment would not occur until the November meeting. But I believe it leaves us open--

PAULA
LITTLEWOOD: That's the motion Bill made. That's the motion Bill made.

BILL PICKETT: It is.

ANTHONY GIPE: It wasn't a motion to table indefinitely. It was a motion to postpone to a time certain. November was the date. Do I have that correct?

BILL PICKETT: Correct.

KIM RISENMAY: And Anthony, you're the--

ANTHONY GIPE: Parliamentarian.

KIM RISENMAY: Parliamentarian-- yeah. Does this accomplish what I just stated is my purpose?

ANTHONY GIPE: Well, considering that's what the original motion is, it wouldn't be well taken.

PAULA Once you put it on the table, it's on the table and you move on to your next order of business.

LITTLEWOOD:

BILL HYSLOP: So if someone wanted to amend the motion to say that we would--

ANTHONY GIPE: Table till November.

BILL HYSLOP: That we would table any vote until November but not table discussion, I suppose you've got the prerogative to do that. But right now, the motion that is before us is to postpone the entire consideration of the bylaws, debate, decision, amendment, et cetera to the next meeting.

ANTHONY GIPE: And in my role as parliamentarian, a debate to postpone to a certain time is debatable. But the only thing that can be amended is the date for which you reset its hearing.

BILL HYSLOP: So right now, the motion is to not have further discussion but to move this to the next meeting. Jill Karmy?

JILL KARMY: Yeah, Bill. And I think the intent though of what you really want to accomplish here though is to allow further public discussion today--

BILL PICKETT: Correct.

JILL KARMY: --since we have members here. So I'm almost wondering if this is a motion we would want-- and I'll leave this in your discretion-- a motion we would want to withdraw and start going through these point by point. And after we have taken public input, if you want to renew a motion to delay on that specific point--

BILL PICKETT: Let me withdraw the motion and make it more specific and that is we delay--

ANTHONY GIPE: You can't withdraw once it's been seconded.

BILL HYSLOP: It's on the table.

PAULA The table owns it.

LITTLEWOOD:

BILL PICKETT: All right. Can we move to amend the motion then?

ANTHONY GIPE: Only as to the date.

PAULA Well, then let's vote on the motion.

LITTLEWOOD:

BILL PICKETT: OK.

BILL HYSLOP: So just to march through it as quickly as we can, the appropriate thing would be to reject the motion and then make the next motion.

BILL PICKETT: OK.

BILL HYSLOP: Any further discussion or debate? All those in favor of the motion to postpone any further consideration of the bylaw amendments to the next meeting please say, "aye." All those opposed?

BOARD: Nay.

BILL HYSLOP: Abstained? Passed-- or excuse me-- rejected unanimously. All right.

BILL PICKETT: All right, let me clarify a new motion to table the vote but not to table discussion until the next meeting.

BILL HYSLOP: Is there a second?

KIM RISENMAY: I will second.

BILL HYSLOP: Kim has seconded. Any discussion? Again, this is to table any action on any of the bylaw amendments, but we would continue to discuss them here today. Phil Brady?

PHIL BRADY: We've been at this for three years. As we have seen from the volume of comments we've gotten, the people who want to take the time to review the proposals have done so. People who have not taken the time in the last month to review the proposals are not going to probably in a three month wait. I don't see much point to pushing this over and derailing the agenda for next year.

I think we have heard from our members. I think that we can consider what those members have to say. I think that it incumbent on us as governors to make decisions based on what we've seen and what we've experienced over the last few years. I think a delay is not a good choice for us.

BILL HYSLOP: Brad?

BRAD FURLONG: I think somebody's going to call the ASPCA, because I think we've beaten this horse to death. So you've heard what I've had to say. I say the same thing. Done.

BILL HYSLOP: Mario?

MARIO CAVA: All of the issues that I started this discussion out with were considered by this board sitting around the table today-- everything from how do you regulate the unauthorized practice of law, to how do you regulate a legal services profession that includes non-lawyers, how do you deal with the future of the law where you have non-lawyers practicing law, how do you regulate, administer, license LLLTs and do so with a uniform regulatory framework-- all of these things were considered, including the governance task force report, by the board sitting around the table here today.

All of the people involved in the governance task force discussions, including discussions that involved the training and on-boarding of new members on all of these issues, and why that was important, and why it's important to have those with institutional knowledge voting on the critical decisions that are coming before the board-- all of those decisions and all of those discussions that occurred over the course of years-- those sitting around the table here today participated in those discussions. I don't think it's in the best interest of our members to have four or five-- five-- of the governors sitting around the table here today not participate in that vote. So I oppose continuing the vote on this.

BILL HYSLOP: Any further discussion or debate? Karen Denise?

KAREN DENISE WILSON: I'll be brief. So this is in the form of bullet points. If the issue is trust, I don't think that inaction builds trust. I think appropriate action builds trust. Appropriate action would be a meaningful discussion and debate of the issues. It would be thoughtful consideration of comments and input that we've had. It would be a thoughtful vote on each one of the issues. Making the tough decisions is what we were elected to do. I suggest that we do that today.

BILL HYSLOP: Thank you KD. Bill Pickett?

BILL PICKETT: Just briefly, I think that's exactly the point-- meaningful thoughtful discussion. And we've got a number of members who have said they want time to look at this, and I don't think we can sit here or should sit here and ignore them because a number of years and a great deal of time has gone into this. I don't think that's appropriate. And I think what that does at the end of the day is it fractures and destroys trust with membership. And if we intend to move forward in a

positive way that literally can move mountains into the new practice of law and the things that we are trying to accomplish, we cannot do it alone as a board. We will need member support. That's the basis and the reason for my asking us to postpone this. Thank you.

BILL HYSLOP: Any other members of the board? Yes ma'am? If you'd please identify yourself.

AUDIENCE: Hi, my name is [INAUDIBLE] Park. I'm a lawyer a member of the WSBA, and I'd like to hear the core policy rationale for the name change. Personally, I can't understand how come the deletion of the association of the word can possibly serve better the benefits of the members. Is there any avoidance of liability? Or any other core issues? In case of persons, they tend to change their names if they want to avoid some sort of a possible dispute in the future. So I'd like to clarify why you want to change the name.

BILL HYSLOP: Let me answer that this way. The board already voted to delete that proposed change from GR 12 and leave the name the same in GR 12. And the board has already voted earlier in this discussion about bylaws to not make that change there. So right now the proposal that's before the board does not include a name change.

AUDIENCE: OK, so could you please explain the core policy rationale for the change? Why it was submitted for the first time-- I mean suggested two years ago.

BILL HYSLOP: I'm going to suggest in the interest of time-- and I want to be appreciative of your understanding of the proposal-- that I use take a look at the materials that were posted online or at a break. I'm sure one of the members of the Board of Governors would be happy to discuss with you why that originally was proposed. But what we are considering now does not have that change included in it.

AUDIENCE: OK, thank you.

BILL HYSLOP: Thank you so much. And please, would one of the members of the board please discuss that with her. We want to be sure that she has an understanding and that her questions are answered. Right now, the motion that's on the table is to table the vote on any bylaw proposals but continue the discussion. Any further board members? Ruth Edlund or Jean Cotton?

RUTH EDLUND: With great respect for Governor Furlong's comment about having 17 days to respond to a motion for summary judgment, I believe that the final version of the bylaws was posted on September 23rd. And today is September 30th. And again, maybe I am just not as smart as any member of the Board of Governors, but I find it helpful to review and do a final reading of

an entire draft, among other things, to make sure that one has teased out all of the potential interrelations between different articles that were considered at different times.

Given the press of my other duties, I personally have not had the opportunity to review the final draft. And I know that it has been red lined, but I think that these are important documents. And it would be nice to get them right. There is no table of contents. There is no index.

There are possibly changes that may be small but may not be. And everyone is saying that these have been under consideration for years and years. The first actual draft-- because language is important-- as far as I can tell wasn't generated by the bylaws work group until some time in November or December of 2015.

And as I said, the current draft-- and there have been, and again, I know that the bylaws work group has worked very, very hard. They have taken on a number of changes, but we do words. Words are important. And given some of the other issues that have been identified, I do not feel comfortable in, at least me personally, being able to tease out everything in what essentially a seven day time span. Thank you.

BILL HYSLOP: Thank you. Jean Cotton?

JEAN COTTON: I'll be brief. In a letter I submitted, I hope I emphasized and made clear that I have the ultimate respect for the amount of work that's gone into this by a lot of people on this board and by their predecessors. But also having done those kinds of products, I understand that things get missed over time, and that's what dialogue is about.

Governor Cava says, enough's enough. We've got the product. It's done. And yet just again this morning I pointed out another problem-- a word-- it's small. But it's that attention to detail that's so important, and that's what the conversation brings us a better product.

On the other hand if that's what you want to do, then follow Governor Karmy's lead from yesterday. Suspend all discussion. Vote, pass it, and let us go home. But enough of the back and forth, either respect our input or don't. Thank you.

BILL HYSLOP: Thank you, Jean. As you know very well, there's always back and forth in any board, and the board will debate this and discuss it as they deem appropriate. We appreciate your comments. Any further-- Jim

JILL KARMY: Can I respond?

BILL HYSLOP: Just a second.

JIM
MACPHERSON: Thank you, President Hyslop. When I spoke in Walla Walla, I encouraged us to have the meeting in August. Do you remember when we had that big discussion about whether we should move forward? And I said that this board deserves to have it heard. And what I meant by that was deserve to have the product created.

I will remind you that last night this organization gave Russ Aoki a very great award because he spent five years working on the escalating costs of civil litigations material. And you'll remember that as we went through those five years what happened in the last year and a half to two years was that when we finally got to the actual documents and actual materials, and we saw it on the screen, and we carefully went through it, we finally got a product that everybody could live with. You'll remember sometimes the vote was 7 to 8, 8 to 5 for whatever, and it changed over time because we were given the opportunity to look at it more closely.

It's very difficult to let go of something that you spent a lot of time personally working on. Just because you leave the board doesn't mean that your voice is not heard anymore. Any of the people that are leaving the board certainly will be listened to by those coming onto the board and by the rest of the members. I guess I have now come to the conclusion that products need to stand on their own. And the only time that we saw the product itself was allegedly at the August meeting, but now a few more changes have been made and we have another product at the September meeting.

I guess I would reluctantly say I think that you should vote on this later. I felt like that things should happen in a timely fashion, but they didn't. And I agree with the comments that say that having a product that's done that you can say we did a good job on, and we really like it, and if I appreciated it, the fact that there's three or four other people who frankly have been here for the last two meetings and have heard a lot of the controversy anyway and have read if they've done their jobs all the material that you have read and tried to come up to speed-- I think that's why you have board turnover.

It's unfortunate. But I know this whole concept about perception of reality and reality and perception and so forth, but I really liked Kim's comments about having to do it again. And I guess I'll leave you with this. The Bar's in enough trouble convincing its members that what

you do is a good thing. I would rather that you not give them more ammunition to say that you're not doing what you're supposed to do and you're not listening to us. Because we go on these listening tours, and if we don't listen when they talk, that's what they're going to remember.

BILL HYSLOP: Thank you, Jim. Jill Karmy?

JILL KARMY: So we're hearing a lot of comments that are related to slow down, wait. But what I would like to do-- and it's not just stop, debate, and go home-- is to actually start talking about these changes that we have been talking about for months. And for months I have heard slow down, wait, stop. But let's start talking about the changes. And if we get to a specific proposal that needs to be delayed, let's delay. If we get to a specific proposal that needs to be approved, let's approve.

But I'm done with the general conversations. I think it's time to move on in the interest of time. And let's start talking about the changes.

BILL HYSLOP: Phil Brady?

PHIL BRADY: So a couple of quick comments-- one, Mr. MacPherson, that's the purpose of a first reading is that we take comments. We make changes. We accommodate the suggestions we receive. That's the legislative process. Of course, things have changed since August. That's what we do.

I don't think we would love a world in which the thing we heard on first reading was always exactly what we heard on second reading and always what we took final action on. That's just not how the legislative process works. I appreciate the comment, but that's just not how it works.

The other thing is that there's been a theme in the last few speakers about us ignoring our members somehow, and that's just not accurate. We've listened too carefully and contemplated for a full year-- more than that, but a year at least on these particular topics-- the comments of the membership. We've considered them very carefully.

The fact that we don't agree with everyone is an inevitable part of the fact that we're all attorneys. We all have our own opinions. Our job is to exercise our best judgment. That may not always agree with the people that choose to be very vocal in their commentary. It doesn't mean we've ignored them.

Within this board, there's been a fair amount of disagreement on a lot of issues over the last three years. Brad and I have ended up on the opposite side of a lot of issues. That doesn't mean I didn't hear what he said. It didn't mean he didn't hear what I said.

We can listen. We can understand. We can appreciate. And we can still disagree. That is where I'm at with a lot of these comments. I have heard you. I have considered what you had to say. I just don't agree that that's the best direction for this organization.

BILL HYSLOP: Any further discussion by members of the board?

KAREN DENISE A point of clarification.

WILSON:

BILL HYSLOP: KD?

KAREN DENISE If we go forward with a vote, the procedure will be that we can vote on each article of the

WILSON: bylaws separately? Or do we do the thing as a whole?

BILL HYSLOP: No, no.

PAULA The motion on the table right now--

LITTLEWOOD:

KAREN DENISE I know what the motion is. My question is--

WILSON:

BILL HYSLOP: What's next.

KAREN DENISE --if we decide to go forward today, when we go forward we are voting on each article

WILSON: separately?

BILL HYSLOP: Yes.

KAREN DENISE Thank you.

WILSON:

BILL HYSLOP: Yes.

PAULA But if you pass the motion on the table you can't take any--

LITTLEWOOD:

KAREN DENISE WILSON: I understand that. I just wanted to understand what would happen if we didn't.

BILL HYSLOP: All right, any other governors? All right, we're going to move to a vote on this. This is a motion to table the vote but to continue discussion on the bylaw proposals. The tabling of the vote portion would be to the next meeting of the Board of Governors. All those in favor of the motion please raise your right hand and keep it in the air. Four in favor.

All those opposed to the motion? 1, 2, 3, 4, 5, 6, 7, 8, 9-- nine against. Those abstaining?

BOARD: You want it recorded?

BILL HYSLOP: I do. The motion fails. The motion to table the vote fails. We will proceed with Article 1. It is now just-- thank you.

ANTHONY GIPE: Thank you.

BILL HYSLOP: Give me just a second Anthony to get it out of my mouth, OK? It is now almost 10 minutes after 12:00. We will break for lunch, which will be served in the adjoining rooms. And we want to invite everyone to join us.

Let's try and be back in here. It's going to be a quick lunch, because we have a lot to cover. Let's try and be back in here by quarter to. But before we do that--

KAREN DENISE WILSON: Can we just have 30 minutes? Is that possible to just have lunch-- oh, it's 10 minutes after-- nevermind.

BILL HYSLOP: Before we do that, we have someone who's very special to this Bar Association who is leaving us. And that's Sue Strachan. And Sue, could you come up here a second? Come on over here.

PAULA LITTLEWOOD: She tried to climb out that window.

BILL HYSLOP: So Sue is an incredibly special person. If any of us have had the opportunity to work with her absolutely adore this lady. She does a great deal of member outreach. She does a huge, huge amount behind the scenes that none of us every sees. She handles whether president elect,

the nomination process-- she gets involved in so many different areas of the bar, but I also want to talk about who Sue Strachan is.

This lady has an effervescent personality. She has a wonderful heart. She loves people. She loves people to be treated well, and she does her best to put the very best face on our Washington State Bar Association.

And we are so blessed to have her as part of the staff of this association. Sue is leaving us to go on to another great opportunity. And while I'm really sad about that, those people are going to have an absolute dynamo in Sue Strachan. And we love you, and we miss you, and we want to give you a little note here of some comments from some of these fellow board members who, like me, love you to death.

SUE STRACHAN: Oh, thank you.

KEITH BLACK: Bill?

BILL HYSLOP: Yes

KEITH BLACK: I just have to add this, and I told Sue I'm going to cry a river. Last night, I think, was such an exceptionally fine night. I really think it is about the best of so much of everything that we do. I had the privilege of serving as the chair of the awards committee this year with a great group of people. Sue plays such a big, big major role in that. Deborah Carnes, of course, likewise does.

Sue, I don't know how we're going to live without you. I don't know what my future role will be in that sense. But if it is, I'm going to probably camp on your doorstep.

SUE STRACHAN: We're in the same district.

KEITH BLACK: I'm really going to miss you, and I just love you to pieces.

SUE STRACHAN: Thank you very much. Yeah, I just wanted to say I've had a great time at the Washington State Bar. I've been here off and on for probably 10, 11 years. And I'm moving on to have a three-- well, a six minute commute, instead of a three hour commute on the ferry round trip. So that'll be pretty cool. I'll be at Olympic College in Bremerton.

And you guys here on the board and all of my coworkers at WSBA-- this is a great organization. It is the smartest people you'll ever work with. My coworkers are the best. I've

had the best time here. I've had lots of opportunities. And just keep focusing on the members and trying to do what's right for the membership and the people of Washington, and it'll all work out OK. So thank you so much.

[APPLAUSE]



Proposed WSBA Bylaw Amendments (Continued)

Presenters:

Immediate Past-President Anthony Gipe – Chair

Jean McElroy – General Counsel/Chief Regulatory
Counsel, WSBA

BILL HYSLOP: Under is moved to adopt the changes, restated bylaws, Article I. Is there a second?

BRAD FURLONG: Second.

BILL HYSLOP: Brad Furlong has seconded.

BOARD: Passed in form.

BOARD: Yeah, that's everything--

BILL HYSLOP: Yeah, consistent with the prior two amendments. Any discussion or questions?

KAREN DENISE Question.

WILSON:

BILL HYSLOP: KD.

KAREN DENISE Anthony and/or Jean Cotton, is this the point, is this the one where, somewhere in here, we're

WILSON: supposed to add the word misconduct?

ANTHONY GIPE: Yes.

JEAN COTTON: Yes.

KAREN DENISE OK, that's what I thought. Is it number (7)?

WILSON:

ANTHONY GIPE: Yes.

JEAN COTTON: I thought it was number (6),

ANTHONY GIPE: (6).

JEAN COTTON: (6), I think.

BILL HYSLOP: Where are you?

ANTHONY GIPE: (6) or (7)?

KAREN DENISE It's not (6). (6) is promote diversity. Number (7) is administer admissions--

WILSON:

ANTHONY GIPE: Right, (7).

AUDIENCE: Yes.

KAREN DENISE --regulation.

WILSON:

ANTHONY GIPE: Yes.

AUDIENCE: --to adopt the--

KAREN DENISE OK.

WILSON:

ANTHONY GIPE: I had it right.

BILL HYSLOP: OK.

KAREN DENISE So I would move to amend (7) to add the word misconduct appropriately to conform to any

WILSON: bylaws. Or do I need to--

ANTHONY GIPE: I thought we had the motion earlier that said we would conform this to GR 12.

KAREN DENISE If we did, that's fine. I just didn't want it to slip through the cracks.

WILSON:

ANTHONY GIPE: So, I think that would be brought in. We would make sure it conforms to GR 12 in every respect.

KAREN DENISE Then, I withdraw my motion before the second.

WILSON:

BILL HYSLOP: OK, the motion that's on the table is the adoption of Article I. Ann Danieli.

ANN DANIELI: So I'm speaking, right now, as a liaison to the Washington Women Lawyers organization. There was no one from that organization that could be here today. So they asked me to address their concerns to two changes.

One is the Article I. And the other is Article III, which I'll save for Article III. So this letter is

written by Shannon Lawless, who is the State Board President. And it's written by the Executive Committee as, I guess, in favor of the letter.

"First, we do not support the proposed change to Article I (A) 6, which seems to eliminate the WSBA's goal of promoting diversity and equality within its own organization. The line edits, proposed to adopt this language, promote diversity and equality in the courts and the legal profession," and then, crossing out "and the Bar".

"The WSBA cannot effectively advocate for diversity and equality, in the court system and legal profession, without promoting those values within its own organization. Given that women and minorities have historically been underrepresented in the WSBA's leadership, it is particularly important to recognize diversity and equality as goals the WSBA strives to achieve."

BILL HYSLOP: Robin.

ROBIN HAYNES: So Ann knows this. Sorry. So Ann knows this.

And I had previously been the WWL liaison. And I spoke with Shannon, and Becca-- the incoming president of the WWL Statewide-- and then, another woman on the Board. And I can't think of her name right now.

ANN DANIELI: Rebecca?

ROBIN HAYNES: Not Rebecca.

ANN DANIELI: Liz.

ROBIN HAYNES: Liz, excuse me.

ANN DANIELI: Liz Findley.

ROBIN HAYNES: Yeah, who is tasked, from WWL, with the handling these issues. And what we talked about was that with regard to that specific revision, when we say the profession, we're including the organization. And so we talked about that before the letter came. And so we did have that discussion, that it was not a narrowing but an expansion that profession covers both the inside of the house and the outside of the house so to speak.

BILL HYSLOP: Andrea.

ANDREA Thank you. Thank you, Ann, for sharing that. I'm very receptive to that critique. And in our

JARMON: discussions about institutional knowledge and making sure that the policies and the cultural things that we had been working on-- diversity and inclusion-- that that becomes a part of the institution itself.

I want to make sure that we're not leaving this to subject to our interpretation. And if it adds greater clarity to include the Bar Association, even though I take and I understand your response, Robin. I pose it as a question.

KEITH BLACK: In other words--

BILL HYSLOP: Any further discussion or comment about this?

KEITH BLACK: Bill.

BILL HYSLOP: --put input.

KEITH BLACK: Bill.

BILL HYSLOP: There's no motion. So the motion that's on the table is to adopt the changes in Article I. Keith Black.

KEITH BLACK: What would just by way of follow-up. So what would the downside be of keeping it the way it is?

BILL HYSLOP: And before you answer that, Anthony or Jean, if you look at the first line, it says, "In general, the Washington State Bar Association strives to." And then, it lists all these different items. And so obviously, "Washington State Bar Association strives to promote diversity and equality in the courts and the legal profession."

And the objection is to delete the "and the Bar". Is that just deleting surplusage? Or is that intended to have some meaning?

KAREN DENISE WILSON: It was redundant.

BILL HYSLOP: Yeah.

KAREN DENISE WILSON: Here, the discussion that we had is that the Bar, by definition, is a part of the legal profession. And when you're looking at the red line like this, where it strikes out "and the Bar", it

precipitates questions. Are you saying that this is not something we have to do in the Bar?

But when you read it when it's not the red line, and it would say, "Promote diversity and equality in the courts and in the legal profession," I don't think anybody would think that that doesn't mean us too.

ANDREA Except we have a letter from the WWL, I mean.

JARMON:

KAREN DENISE WILSON: And that's because they're looking at the red line, is my point. The distinction between looking at the red line and looking at the clean copy, they're trying to understand what's the meaning in striking "the Bar". But when you read number 6 on a clean copy, where it would just say, "Promote diversity and equality in the courts and in the legal profession," I believe anyone would say that means all the members of the Bar, who are part of the legal profession.

ANDREA JARMON: I agree with you. But by the same token, to the extent that we have the critique, I think, is worthy of the conversation. So thank you for responding. I guess, additionally, I would say that sometimes, with respect to making sure that we are giving voice to these issues, redundancy is OK.

It is so imperative and so important that we're actually going to repeat it here. So I don't see an issue with including it. But having made those points--

BILL HYSLOP: Keith, does that answer your question?

KAREN DENISE WILSON: Move on.

KEITH BLACK: It does even out.

BILL HYSLOP: All right.

KEITH BLACK: Thank you.

BILL HYSLOP: The motion that's on the table right now is to adopt Article I as it's revised. Jean Cotton.

JEAN COTTON: I just wanted to clarify. And I think it was Andrea that cited that it was--

AUDIENCE: Microphone.

JEAN COTTON: --misconduct. That's incorrect. Subpart (B) 6.

BILL HYSLOP: I'm sorry, Jean. I can't hear. It's which subpart? How many?

AUDIENCE: Who?

AUDIENCE: Jean's got it.

JEAN COTTON: I just want to clarify the correct, for the minutes, when Andrea was referring to the misconduct needing to be in number 7. That's wrong. It's subpart (B) 6. Just to make sure the record's straight.

ANTHONY GIPE: For the record is straight. The Board has already adopted to conform Article I to Article GR 12 in all respects.

AUDIENCE: Thank you.

ANDREA Not that it matters in that greatness, because I love KD. I'd love to be KD. But it was, actually,
JARMON: KD. I'm Andrea.

BILL HYSLOP: OK, Thank you.

ANDREA I know.
JARMON:

BILL HYSLOP: Right now, the motion on the table is to adopt Article I. Any further comments?

ANDREA Can you teach? Can you tell me how? Can I make a friendly amendment that we adopt it with
JARMON: legal--

BILL HYSLOP: If you can do it quickly.

ANDREA Yeah. That's it. I just I would make a friendly amendment to, what's on the table, just to allow
JARMON: for the Association, or however we've adopted the language, to be included in that line as well.

KAREN DENISE What?
WILSON:

ANTHONY GIPE: Requires a second.

BILL HYSLOP: What line?

ANDREA So I want to respond to the critique about the elimination of "the Bar" being included in 6,
JARMON: "Promoting diversity and equality in the courts and the legal profession."

ROBIN HAYNES: And you want it to say "and Bar".

ANDREA I want just a friendly amendment to whatever we decide. I think we've--
JARMON:

BILL HYSLOP: There are no friendly amendments. You've just made a motion to amend--

ANDREA Oh. Oops, sorry.
JARMON:

BILL HYSLOP: (A)6, to add the words back in "and the Bar", Is there a second? I don't hear a second. That motion fails for a second.

We're back to Article I. Those in favor of Article I, as it has been revised, please say aye.

BOARD: Aye.

BILL HYSLOP: Those opposed?

BOARD: Opposed.

BILL HYSLOP: Article I is-- one opposed. Any abstentions? Article I is adopted.

Thank you very much. Please go to Article II, which begins, the red line begins on page 402 in your materials. Anthony and Jean?

ANTHONY GIPE: Yep. This, again, was not one of the items that had been amended since the first reading. You will see this as the DEFINITIONS AND GENERAL PROVISIONS there. It's open for discussion, debate, amendment.

BILL HYSLOP: Is there a motion on the table to adopt Article II.

ANDREA Second.
JARMON:

BOARD: Second.

BILL HYSLOP: Who made the motion?

BOARD: Phil.

BILL HYSLOP: Phil, Phil Brady. And Andrea seconded.

Any comments, questions on Article II? Hearing none? Are you stretching or are you making a comment, Jean?

JEAN COTTON: [CHUCKLES] Yes.

BILL HYSLOP: OK.

JEAN COTTON: OK, and these comments were submitted in my letter to the Bar. Specifically, with respect to the definitions provisions in the proposed Article, I was asking. There's much reference to the word membership without a definition, and would be, obviously, subject to whatever is decided in terms of Article III. But I think there should be a definition there.

Number two, there are limits on a couple of items, in paragraphs (4) and (5), as to the type of documents or media that are just leaving you open, I believe, for further amendment down the road as technology advances. And I made a couple of suggestions, in my letter, how to account for that, to have to avoid going through this all over again.

Again, paragraph 10, same comment as to members. And then, under the definition of may, part of the definition says may is defined as being a right, which I respectfully disagree with. And I suggested changing that, or either removing the word right or substituting in it means allowed. Those were my comments of any substance.

BILL HYSLOP: Thank you very much. Anthony?

ANTHONY GIPE: I would point out that member is defined under subparagraph (E) 10 of the Definitions. It defines member, as an individual in any of the groups of licensed legal professional services, in Article III(A) of these bylaws unless otherwise specified. So it's clearly defined with reference to Article III, which we'll be talking about next.

BILL HYSLOP: Ruth Edlund.

RUTH EDLUND: Now, this is just a kind of a housekeeping sort of a thing. You define the Office of the Bar is

maintained in the state of Washington. You say filing papers with the Bar, that they must be filed at the Office of the Bar.

There's no, the bylaws don't direct how one determines what the Office of the Bar is. Usually, if it's a contract, it would say, it shall be this address unless otherwise specified. But given that it is you're talking about filing and service, I'd like to see some provision indicating how one determines what that office is for purpose of filing papers or service. And I don't know how that jibes with requirements in some cases that something be submitted via the web or electronically.

BILL HYSLOP: Thank you. Any further comment? Anthony?

ANTHONY GIPE: The Office of the Bar is wherever the main office is. It's changed from time to time. It's never been included. Defining where its location is has never been included in a bylaw. And no organization or Bar Association, that we've reviewed, does so.

BILL HYSLOP: Mario, did you have your hand up?

MARIO CAVA: I just wanted to briefly comment on the definition of member. I know that we'll be addressing other sections separately. And I'm aware that there might be a potential motion related to privileges afforded to certain membership types and how they might be identified.

I just want to be clear that this is the definition we'll be using going forward. And as we get to other areas of the bylaws, we would designate, specifically, if a different type of member, membership would apply. That's just a clarification.

ANTHONY GIPE: Correct.

BILL HYSLOP: And at this point, we don't have a motion on the table to adopt Article II yet?

ANTHONY GIPE: We do actually.

KAREN DENISE Yeah, we do.

WILSON:

BILL HYSLOP: We do have one.

KAREN DENISE Yeah.

WILSON:

BILL HYSLOP: Oh, I'm sorry. Thank you, Phil. I just didn't write it down.

ANTHONY GIPE: But--

BRAD FURLONG: I had a question for Counsel, Mr. President, when it's time.

ANTHONY GIPE: --I need to do, just respond to Mario. That's why the paragraph 10, about definition of member, says what it says. Whatever changes you make to Article III will be referenced.

And it also incorporates that if other specific terms are used to modify that, those are incorporated by reference as well. So that's why it's written the way it is. Any

BILL HYSLOP: Further?

ANTHONY GIPE: It allows for change.

BILL HYSLOP: Brad?

BRAD FURLONG: Just a quick question for Counsel listening to Jean Cotton's comment. I just want to know, Jean McElroy, if you're satisfied that the definitions in toto of writing electronic means and Bar records are sufficient to provide adequate definitions for our responsibilities pursuant to these bylaws.

JEAN MCELROY: Yes, I am. We did consider the fact that electronic means are changing, what's the methods that people use to communicate are changing. Yet, at this time, we still receive communications by fax, which was the one most people identify as being outmoded.

And unless and until that becomes completely outmoded as a means of communicating with the Bar, we will continue to include it in our bylaws as an acceptable writing. In the other sections, we do think that's sufficient to meet our needs.

BRAD FURLONG: OK, Thank you.

BILL HYSLOP: Further comments? Ready to vote? All those in favor of adopting Article II as amended, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed?

BOARD: Opposed.

BILL HYSLOP: Abstain? Passes.

ANTHONY GIPE: Article III is the next. You'll find the clean copy of the Revised version at page 235.

BILL HYSLOP: And the red line with all current changes is--

ANTHONY GIPE: All current changes.

BILL HYSLOP: --277, if you're looking for the red line.

ANTHONY GIPE: Oh, no, it's 235. It's the clean copy from 9/16/2016.

BILL HYSLOP: Yeah.

ANTHONY GIPE: And then, the red line change, 277.

KAREN DENISE The red line is at 277?

WILSON:

ANTHONY GIPE: Yep. And that's all of the changes to date, after all of the comments received. I would like to point out that, in hearing some of the feedback from Governors over the last week or so, we had raised, repeatedly, some of the implied effects of changing membership as we have.

And asked for all input. But had never received any specific input to some of those implications, such as as we get into to other Articles, what they end up meaning for who can run for what offices. So this will tie in, as we said before on many meetings, into how you resolve Articles IV and VI.

BRAD FURLONG: Point of order, Mr. President.

BILL HYSLOP: Brad.

BRAD FURLONG: Because of the relationship between these two Articles, I just wonder if we shouldn't consider them simultaneously. And there are, I know there are some concerns about what membership means and what membership makes someone eligible for.

So it seems that, maybe, we should look at both of these. I don't know if you would agree, Past President Gipe. But it might make sense to look at these in *pari delicto*, I think is the word.

ANTHONY GIPE: Yeah.

BRAD FURLONG: I'm not sure. My Latin's pretty bad.

ANTHONY GIPE: I think that might, considering the time and the confusion it would cause, that might be difficult to do, especially considering these membership classifications also extend to dealing with other issues outside of the bylaws. So I think if we can address these, Article III on membership and terms, then, if we get to Articles IV and VI, and you change them significantly enough that it requires some address back to this, we can circle back around. But I don't believe that it'll be necessary to do them in parallel.

BILL HYSLOP: Is there a motion on the table to adopt Article III?

PHIL BRADY: So moved.

ANDREA Second.

JARMON:

BILL HYSLOP: Phil Brady and Andrea? Questions? Comments? Governors?

BOARD: Why?

BOARD: It's 277.

BILL HYSLOP: Ruth Edlund.

RUTH EDLUND: Under, I could make a number of comments. But under III.A, MEMBER LICENSE TYPES, you have that, "Members of the State Bar consists of these types of licensed legal professionals." I think the following paragraph should say licensees of one type do not automatically qualify to become, be or become a licensee of another type.

Because as I understand it, there is only one type of Bar membership. There are three classes of licensees. What this is trying to say is that just because you're an LPO, that doesn't make you a lawyer or vice versa.

So what you mean here, I think, is that licensees of one type do not automatically qualify to be or become a licensee of another type. And in order to become a licensee of another type, the licensee must comply with the requirements for admission as a licensee of that type.

BILL HYSLOP: Governors, comments? Questions? Jean.

JEAN MCELROY: In the provision, right above the one that Ms. Edlund was just referring to, it says that, "Members of the Washington State Bar consist of these types of licensed legal professionals." And so we are using that term, that word type to identify those different license types.

And so when we say that, "Members of one type do not automatically qualify to be or become a member of another type," that is exactly what we're talking about. lawyer members, LLLT members, and limited practice officer members.

RUTH EDLUND: Grammatically, the heading says, "MEMBER LICENSE TYPES". So you're talking it's one membership, three license types. So but if you're going to change, I don't think that's correct, but.

BILL HYSLOP: All right, appreciate your comment. Governors, any further questions or comments about Article III? Ann Danieli.

ANN DANIELI: Again, I'm talking as the BOG liaison to the Washington Women Lawyers. They had some concerns about the proposed change to Article III, D.3. And this deals with going from inactive to active status. And so I will read the paragraph.

ANTHONY GIPE: Did you see (D) 3?

ANN DANIELI: The original Article III, (D) 3, D as in dog or Danieli.

ANTHONY GIPE: Right.

ANN DANIELI: "We are concerned that women will be disproportionately and negatively affected by the proposed change to Article (D) 3, which would require attorneys, who have been inactive status and not practicing law for more than 10 years, to retake the bar exam before returning to practice. In our experience, most attorneys who return to practice after extended time in active status, are mothers who took years off to take care of their children.

We believe retaking the bar exam will serve as a significant barrier to reentry, to the profession, for mother attorneys. While we understand the importance of making sure that attorneys returning to practice, after a long break, are apprised of changes in the law, we are not convinced that the current CLE requirements are insufficient to accomplish these goals.

If there is evidence that supports the WSBA's proposed change, such as increased number of malpractice findings against attorneys who have returned to practice after extended time in inactive status, then we would reconsider our position. In absence of such evidence, however, we oppose this change as an unnecessary barrier to the success of mother attorneys, who wish to return to practice."

BILL HYSLOP: Jean.

JEAN MCELROY: So I think in order to understand this amendment to the bylaws, it's necessary to talk a little bit about the history of this particular provision in the bylaws. Back when I started working for the Bar Association, which was a very long time ago, the rule, at that time, was that if you were inactive for three years, you had to retake the bar exam.

And one of my first actual functions, that I ever performed for the Office of General Counsel, was when I was in the Office of Disciplinary Counsel, and had to handle a hearing involving a member who'd been inactive for three years, who wanted to come back-- more than three years-- who wanted to come back to active practice. After we looked at this provision, it was decided that three years was too short a period of time. And so that was increased to five years.

And that's what it was for a while. And then, we talked about it some more, and considered exactly the issues being raised by the Washington Women Lawyers, and decided that five years was, perhaps, too short a time also. And at that time, rather than setting a time limit, it was left in as a discretionary determination, basically saying you may need to retake the bar exam, which doesn't give anybody any guidance. And it gets very difficult to apply that.

You're talking about needing to distinguish among people who have been out of practice for a long time, some of whom will be women, some of whom will be men. And we can't just say, well, you were a woman staying home to take care of your kids. You don't have to retake the bar exam.

And we also don't think it would be appropriate to say, you were a man staying home to take care of your kids. You don't have to take the bar exam. Because not everybody has kids. And there are lots of reasons why people go on inactive status.

It's just very difficult. And it requires a complete balancing act every time somebody's been out of practice for more than six years. So right now, we have requirements up to six years. And

then, we have to do this balancing act.

And in practice, what we are applying now is a 10-year provision. So and I don't actually have a strong preference for what the Board sets it at. But you really should set a time period.

PAULA

LITTLEWOOD:

Yeah, I would just add the policy decision behind it was not just for staying home with kids, people staying home with elderly parents. And so what we did was create the Readmission Course. I know Anthony contributes to that. Many of you contribute to that, which is this great course.

I would also remind the Board that you received a letter, this past week, or an email from somebody. And he was saying, I want to go inactive. But it's confusing to me, in the bylaws, if I would have to retake the bar exam.

So I think this is, clearly, just to clarify. And I think Jean's right. If it's 10 years, if it's whatever you guys want to set it at. The recommendation was 10 years from the work group.

BILL HYSLOP:

Anthony.

ANTHONY GIPE:

And I would just point out that this is more generous, than our current policy allows, for time out of practice before having to retake the exam. And it's among the largest of any Bar Associations' inactive scheme.

BILL HYSLOP:

Thank you. Are there any other comments or questions, Ann?

ANN DANIELI:

No.

BILL HYSLOP:

Any other comments or questions by members of the Board, by the audience?

PAULA

Good.

LITTLEWOOD:

BILL HYSLOP:

We've one online.

PAULA

Two.

LITTLEWOOD:

JILL KARMY:

Bill, can I comment?

BILL HYSLOP:

On that point?

JILL KARMY: Yes.

BILL HYSLOP: Yeah. Please.

JILL KARMY: So I appreciate the comment raised. And as someone who could potentially, one day, be affected by that, having two young children, I believe, excuse me, sincerely that 10 years is very liberal and gives plenty of, I mean, I think it's as liberal as you want to be. And I don't think it creates an undue hardship on young mothers. And frankly, I think in some-- well, I'll leave it at that.

BILL HYSLOP: We have a question online from, oh, Tracy Flood. And I'll just read it. "The distinctions appear to be confusing in nature concerning quote, "type", unquote. It does not seem to be clear. Is there any way to clarify?"

ANTHONY GIPE: Type is referring to III(A). It's a little hard to try and imagine what is confusing there. But III(A) is the only part that refers to type, so.

BILL HYSLOP: And that's all the information we have.

ANTHONY GIPE: Right.

BILL HYSLOP: All right, Governors? Rajeev?

RAJEEV I just have one question.

MAJUMDAR:

BILL HYSLOP: Into your mic, please.

RAJEEV Thank you very much.

MAJUMDAR:

BILL HYSLOP: Thank you.

RAJEEV For judicial officers, will they have to retest? Or does their membership status allow them to

MAJUMDAR: not have to retest?

ANTHONY GIPE: You mean, you're referring now back to D.3, and whether that clause would apply to judicial officers?

RAJEEV Yes, thank you.

MAJUMDAR:

ANTHONY GIPE: Jean, do you want to cover that?

JEAN MCELROY: Judicial members are not inactive as that term is used in our bylaws. And they are constantly exposed to the law and updates in the law. They do have a requirement. They do have to be current on whatever their judicial CLE requirements are.

Or if they're ALJs, they have to be current on the our, the lawyer MCLE requirements. And if they've been in judicial status for, I believe, it's more than six years, they do have to take a one-day course before they come back to practice. And that one day, of that Readmission Course, is designed to reorient them to the lawyer rules of professional conduct, and rules around the IOLTA accounts, and updated training on doing online legal research. That's the primary focus of that first day.

ANTHONY GIPE: And since III(D) 3 specifically refers only to suspended and inactive classifications, and judicial as a separate classification, I don't think that would apply to them at all.

BILL HYSLOP: Any further questions or comments about Article III? Brad.

BRAD FURLONG: Yeah, and I'm really sorry to slow this down. I didn't think I would have a question about this. But I assume that someone that's occasionally named as a pro se-- I mean, not a pro se. I'm sorry. A pro tem judicial officer is not covered as a judicial--

ANTHONY GIPE: Correct.

BRAD FURLONG: --member or a judicial type. But what about someone that's, say, employed half-time as a municipal court judge or a municipal court commissioner, and works half-time, in the court system, as a court commissioner or, maybe, even as a judge, and spends half of her time working as a regular lawyer? Where do they fall in this? And how do you know? Where's the threshold?

JEAN MCELROY: So in the definition of judicial members, that issue is addressed. And in terms, it's defined in terms of the position. And in terms of administrative law judges, it's full-time administrative law judges.

And if you look in provision. So it's Article III. I think it's (A) still, or (B), Judicial, 3(3). Judicial membership, and then you go down to subsection (b) of that provision.

It also provides that you, it defines. It talks about pro tem judges not being eligible. And it talks, in the provision below that, in (c), that one of the requirements for being a judicial member is that you cannot otherwise engage in the practice of law.

So the intent here was to not have judicial membership apply to people who are occasionally engaging, practicing as occasionally practicing law, and then, also serving as a judge. If you are in judicial status, you are not authorized to practice law.

BRAD FURLONG: So in other words, if someone takes a job as a half-time commissioner, and is paid either by a municipal court, or a district court, or possibly even a Superior Court, and they wish to practice law in the rest of their life, that's not allowed. Is that correct?

JEAN MCELROY: That's correct. They have to be active members. Because the active membership carries the ability to practice law. And judicial membership does not.

BRAD FURLONG: OK, I find that troubling. So I'd like to understand the policy reason behind it.

JEAN MCELROY: That's been the case for many years. That's not a change. That went through the provisions relating to judicial membership were the result of extensive negotiation, if you will, the last time the bylaws were changed, amended.

And we had a work group that was put together that involved judges, and ALJs, and members of the Board, and members of the staff. And we talked through all of these provisions. And this was what was agreed upon, was that if people are out earning money practicing law, they need to have a license that permits them to practice law. And that is an act of license.

BRAD FURLONG: OK, If this field's been plowed, then I'll go somewhere else.

BILL HYSLOP: Mario?

BRAD FURLONG: Thank you, Jean.

MARIO CAVA: Thank you. Thank you, President Hyslop. The only suggestion I would make is as we go through these bylaws, if we could just focus our attention on bylaws that have proposed changes. I know that we want to discuss every bylaw. But I just want to remind folks--

BILL HYSLOP: Thank you.

MARIO CAVA: --that there are many bylaws that have not been revised. They are the same.

BILL HYSLOP: Karen Denise?

KAREN DENISE I'm going to leave it at that.

WILSON:

BILL HYSLOP: Phil Brady?

PHIL BRADY: Already got it.

[CHUCKLING]

BILL HYSLOP: Jean Cotton?

JEAN COTTON: Just a quick question-- is I (6), the License Fee Referendum, is that one that you pulled? Or is that still on the table? If it's still on the table, I have a comment.

ANTHONY GIPE: This piece, so sorry. Rex? All right. Is this on?

Thanks. Subsection (6) there, the License Fee Referendum, is not pulled. Because this has to do with a separate issue about the budget, which has always been separated out from the regular referendum procedure.

There's a minor modification here, which is mainly about language with the BOG. But otherwise, it is up for adoption. This piece is up for adoption.

JEAN COTTON: So if I may be then, proceed with my comment based on that. I have a real problem with this. And a number of members have reached out to me and have a real problem with this.

It's a substantial change in that it is no longer being subjected to the same rules and regulations that are covered by other referendums. It should be in the referendum Article, not here. And everyone that has reached out and commented to me, which there have been many, unfortunately, are opposing this, and feel it's very inappropriate. So whatever that means to you.

BILL HYSLOP: Jean?

JEAN MCELROY: So if you look at the language, the current language that's in the current bylaw, unamended, it says that, "License fee shall be subject to the same referendum process as other BOG actions." So that is superfluous language.

The other process is the process that's under the referendum provision. And so in order to set the license fees, the Board of Governors has to take a final action, which if you look at the referendum provision, that is an action that is subject to modification through the referendum process. So that was why this change was being made.

Also I just think it's a very odd place to put information about a referendum, in the membership section. It's just not where people would expect to find it. And if it's already covered in the other referendum section, it's not necessary.

BILL HYSLOP: I've got to Phil Brady, and then Jill, and then KD.

PHIL BRADY: Jean answered my question. So go ahead.

BILL HYSLOP: Jill.

JILL KARMY: Yeah. And I appreciate Jean's comments. Because the intent here is not to make any change. However, I do understand as with some of these other clarification changes we've made, membership seems to be assuming our intent is to make some substantial change or any change.

So I'm not sure that I'm making a formal motion. Because I'd like to hear what some other Governors think. But I personally don't have any issue with leaving this one as is and not adopting the change to the License Fee Referendum.

Because it's not a change. It's clarifying some language. And if membership thinks that's so troublesome, I don't think that's the, what is it?

ANN DANIELI: Hill you want die on.

JILL KARMY: Hill you want to die on. Is that the phrase? So. What is it?

BILL HYSLOP: So Governors, any further comment Governor Anthony?

KAREN DENISE My name is on the list.

WILSON:

BILL HYSLOP: Oh, yes, it is.

KAREN DENISE Are you using it?

WILSON:

BILL HYSLOP: Yes, it is. It is. KD goes before you, Anthony. Thank you.

ANTHONY GIPE: As always.

KAREN DENISE You're welcome. I just want to, we talked about this during first reading. It was actually you,
WILSON: Governor Jill, who clarified that one of the things that this is intended to do is not to say that membership couldn't have a referendum on a license fee-- That would be covered by the other section that we're referring to-- but to specifically say that as a part of a referendum on the budget.

JILL KARMY: Right.

KAREN DENISE OK, so I just want to be sure that that distinction is clear. And then, if your comments still
WILSON: stand, that's fine. But I wanted the membership and Jane Cotton to understand that this is specifically clarifying as to a referendum on the Bar's budget as distinguished from a referendum on license fees.

JILL KARMY: And I agree that is the comment that I pointed out at first reading. However, even making that comment, membership still thinks we're changing referendum. So if we're not making a change, why start a fire? Just leave it the way it is.

ANTHONY GIPE: I would just point out that even before any proposed amendments to this section were created, this section's sole purpose is to make it explicit that members can referendum a licensing fee. They cannot referendum a budget. That's the sole point of this piece.

BILL HYSLOP: Any further comments? Mario?

[SIDE CONVERSATIONS]

ANTHONY GIPE: Through the budget.

[SIDE CONVERSATIONS]

MARIO CAVA: All right. I want to clarify that section (6) has always been in the bylaws.

JILL KARMY: Since it--

MARIO CAVA: Right. The location of this discussion is still in the same place. And that's not new. Just want to

point that.

BILL HYSLOP: Jean?

JILL KARMY: Since April of--

JEAN MCELROY: Well, I don't know that it's accurate to say that this section has always been in the bylaws. I believe some of this was amended during the course of the last set of bylaw amendments, which was, I believe, in 2010. And so, yeah.

MARIO CAVA: I noted that change.

ANTHONY GIPE: Right.

JILL KARMY: But there is a change being proposed to the language, crossing out, "Shall be subject to the same referendum process as other BOG actions."

BOARD: No change to the subsequent--

JILL KARMY: Right. And so--

MARIO CAVA: What you're saying is this action has always been. And that discussion is not new. It's kept separate from referendum--

BOARD: Excuse me, can you use the mic at all?

MARIO CAVA: Sorry. All I'm trying to clarify is that the discussion of a referendum on the budget, specifically, has been kept separately from the discussion on of other referenda. And that separation is not new. It was that way before.

BILL HYSLOP: Any further discussion on this issue? I don't here a motion.

JILL KARMY: Well, I'm going to make a motion to amend. Do we have a motion to approve?

BILL HYSLOP: We do.

JILL KARMY: So I'm going to make a motion to amend to approve section (3), Article III with the amendment that we leave-- is this?

ANTHONY GIPE: i(6).

JILL KARMY: i(6) as currently worded.

BRAD FURLONG: Second. And I'd like to speak to why.

JILL KARMY: They what?

BILL HYSLOP: Brad.

BRAD FURLONG: As I read this again, and not only for the reasons that Governor Karney has articulated, but when I read this paragraph as changed, it's there's a part of me that says, why is this even in here? And all it says is what you can't do. It doesn't say what you can do.

And I get that it's elsewhere. I understand that. But if we're going to have the paragraph in there, I don't think it hurts to let it state what it did. I think it just makes more sense to have the complete thought there instead of part of it. So I would support Governor Karney's amendment.

BILL HYSLOP: Further comments on the motion to amend? Hearing none.

BRAD FURLONG: I seconded.

BILL HYSLOP: The motion to amend would be to leave the language in i(6), as it presently is written, and not make any change to it.

BILL HYSLOP: Ted?

AUDIENCE: BOG.

JEAN MCELROY: I think they're raising the question of whether we can leave the abbreviation BOG for--

BILL HYSLOP: With the exception of the acronym BOG.

BRAD FURLONG: That's what I meant.

BILL HYSLOP: All those in favor of the motion to amend, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed?

BOARD: Nay. All those in favor of the motion to amend, raise your right hand. Please keep it in the air.

Eight, we got eight. Opposed? Abstain? Do you want that shown?

ANTHONY GIPE: Yes, please.

BILL HYSLOP: Eight in favor, five opposed, one abstained. The motion to amend is adopted.

ANTHONY GIPE: I believe that with a point of clarification, I believe Jill's motion was to accept Article III with that amendment. So that accepts Article III. Is that understanding correct?

BILL HYSLOP: No the motion was to amend i(6).

ANTHONY GIPE: I heard the motion differently from Jill.

BILL HYSLOP: Well, I'm chairing today. And we're going to do that.

ANTHONY GIPE: All right.

BILL HYSLOP: OK? So the next, we're now back to the main motion, which is Article III as amended. Any further discussion?

Hearing none. All of those in favor of Article III, as amended, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed?

BOARD: Opposed.

BILL HYSLOP: Abstain? Passes. Moving on to Article number IV. Anthony?

ANTHONY GIPE: All right. There are two points with Article IV. And let's go to the red line to follow it, which commences on page 308.

First is, as we discussed, Article IV, (A)1, Composition of the Board. This is the piece that goes hand in hand with Article VI about choosing to add the three new At Large members. But essentially, all this says here is, "Six Governors elected At Large pursuant to these bylaws," was the compromise. That will work regardless which method of election you choose in Article VI. Because it could be elected or through appointment.

The other proposal, the other point of discussion had to do with (A)2, which is Duties, subsection (c), and some discussion around that. We have the current language. It remains

unchanged from the original offered to you.

But there was a lot of discussion, at the work group meeting about this. And I believe it's subject to a comment and, maybe, a motion. So those are the two areas that are probably up for attention here.

BILL HYSLOP: Governors, comments? Questions?

ANDREA I--

JARMON:

BILL HYSLOP: Andrea.

ANDREA I'm sorry. I just want to clarify. So and there's no decision that needs to be made about the

JARMON: process by which the additional three members will be added. It's just whether they will be added at all.

ANTHONY GIPE: Correct.

ANDREA OK, thank you.

JARMON:

ANTHONY GIPE: Because all Article IV says is what's the Board composed of. Article VI is how do you choose them. I will also point out that Article IV could also be the location for some other suggestions. But we'll see it a motion's made.

BILL HYSLOP: Is there a motion to adopt either version 1 or version 3?

ANDREA Oh, so I guess I don't know.

JARMON:

JILL KARMY: Can I ask quick clarification point before your amendment? Is it my understanding, and I think this would be helpful for the Board as well as members, that if we approve the new make-up of the BOG, that would include three additional members, that that would be our recommendation to the Court. However, that does not become effective unless and until the court adds those members and amends the size of the Board, or.

ANTHONY GIPE: Yes, any bylaw change made by the Board, as to the composition that would extend the Board by three members, would be conditional upon the Court issuing an order to that effect. So it

would not go into effect until the Court took that action.

JILL KARMY: And if the Board--

ANTHONY GIPE: If the court chose not to, then this body would have to go back and amend that section back to its original.

JILL KARMY: Thank you.

BILL HYSLOP: James.

JAMES DOANE: Yes, thank you. I'd like to propose amendment to Article IV(B), OFFICERS OF THE BAR on page 310.

ANTHONY GIPE: Yes.

JAMES DOANE: The introductory paragraph, the third sentence, which reads, "Except for the Executive Director, all officers must be active members of the Bar." I would move that we add the word lawyer between active and members. So it would read, except for the Executive Director, all officers must be active lawyer members of the Bar.

ANN DANEILI: Second.

BILL HYSLOP: James has moved. Ann has seconded. And which provision is it, James, to be sure everybody's with it?

JAMES DOANE: Article IV(B).

ANTHONY GIPE: (B), introductory paragraph.

JAMES DOANE: Introductory paragraph, third sentence, last sentence in the introductory paragraph.

BILL HYSLOP: And you're saying you want to add the word lawyer after the word active.

JAMES DOANE: Correct. OK, Mario.

MARIO CAVA: And I just I'm speaking on the amendment only to the extent that, well, not only to. When we had our governance discussions, and the Board of Governors prepared its response to the *Governance Task Force Report*, it included a discussion of adding three non-lawyer members. It did not include clarification, and this was a discussion point that we had during our Bylaws Work Group, that there wasn't, I don't believe, a policy was set as to whether or not the

new members could serve as officers. I don't oppose James' amendment personally. But I did want to put that out there that whether or not these non-lawyer members could serve as officers was not part of the policy discussion originally.

BILL HYSLOP: Phil Brady.

PHIL BRADY: In order to be an officer of the Bar, a LPO, LLLT, or a member of the public would have to be approved by this body. They would have to be selected by this body from among its membership. If we were to have an exceptional individual, who as a LLLT, an LPO, or a member of the public, were to win the trust and respect of this Board enough to be appointed to an officer position, that seems to me like a person we would want in an officer position.

I get the reluctance to allow for that possibility. I, personally, don't think it's likely to happen. But should you have that kind of exceptional individual, I think we want to trust our future Boards to be able to capture the right candidate for those positions.

BILL HYSLOP: Other comments? Jim McPherson.

JIM MCPHERSON: I am not willing to trust a future Board with that decision. And I think that the only person who holds a position, of an officer, of this organization ought to be an attorney. And I think that if you just go out there and put on the website, today, that a member of the public can become the President of the Bar Association, if they convince 14 of you that they are the right person for that job, there will be chaos. Please don't allow the non-lawyer members to become officers of the Bar Association.

BILL HYSLOP: Angie Hayes.

ANGELA HAYES: I would agree with James' proposed amendment. And I think that it's not from an elitist perspective. I think there is walking a fine line between serving 38,000 attorney members in a more limited group of other people that we're bringing into the fold. And that moving forward in a measured manner, as opposed to opening the doors wide, is a better way to go.

And the fact that it's not likely to happen, doesn't mean that it couldn't happen. And I think, at this point in time, it's more appropriate to take a more restricted view going forward with that, or at least keep some parameters on it.

If that person were to come into the fold, and in the future, we wanted to amend it again,

amend the bylaws to allow something like that to happen, then I think that that discussion is appropriate to be had at that time. But I think right now is not the appropriate time to open it up to that.

BILL HYSLOP: Ken Masters.

KEN MASTERS: Thank you. I would urge you to reject the amendment. One of the key things that we talked about, in making this proposal, was that it is not only possible but, I think, quite likely that at least one of the public members, eventually, will be a CPA, an accountant, somebody who would be an outstanding Treasurer for the Bar. By blocking public members from being anything, any officer, you would prevent yourself from being able to access, if you, if the Board-- in its wisdom-- thought that person was the right person to be Treasurer, you would be walking away from a great opportunity.

I also want to say something that I know I don't have to remind you. Your primary duty is to protect the public. And having public members is a great step. And I commend the Board to the extent you will be doing that. Limiting their participation, in this fashion, does not indicate that you're trying to protect the public.

BILL HYSLOP: Governors, I'll just add to that. I'm not speaking either for or against. But just to let you know that the Legal Foundation of Washington has had a public member for a number of years. And their current Treasurer is a public member. And everything I hear is that it is a fantastic fit. Keith Black.

KEITH BLACK: Notwithstanding my great respect for former Governor Masters, for a number of reasons, I would support the motion.

BILL HYSLOP: Any further comments? Sean.

SEAN DAVIS: OK, just so we're clear here. It sounds like we're making the decisions who limits the future choices, choices of the future Board of Governors. And we're saying that right now, sitting here, we're going to tell them, in the future, they're not able to appoint certain members to be officers.

That's a difficult position to be in. You're limiting the choices of someone in the future that we're just not aware of, what the options are going to be. And it's a hard thing, once again, to tell someone, welcome to the profession. Welcome to being a member. However, these are the barriers that you have before you.

And then, we've all also considering North Carolina decision and what the officers actually do with their role in setting the agenda and leading this organization. And we're saying that's the limit. That's the ceiling for you based upon your classification. That's a dangerous precedent to set for this organization. Just so we're all aware of that.

BILL HYSLOP: Further comments, members of the Board of Governors? Brad?

BRAD FURLONG: I guess I must be confused. Because this says, "Except for the Executive Director, all of officers must be active members of the Bar." I think that means that you've got at least be an LPO, a LLLT, or a lawyer.

ANTHONY GIPE: Correct.

BRAD FURLONG: Correct?

SEAN DAVIS: Correct.

BRAD FURLONG: OK, so public is never going to get there, at least under this.

BOARD: Yeah, that's true. Yeah.

SEAN DAVIS: Right, correct.

BRAD FURLONG: So we've already set one barrier for new members.

ANTHONY GIPE: Correct. Based on membership classifications, a public member this Board would never be qualified under this language.

BRAD FURLONG: Right. And--

BOARD: Then, I don't think it's--

BRAD FURLONG: --the rules of practice, that apply to the different types of membership, create certain hierarchies already in the structure. I tend to agree with Phil. And I agree with Sean that there may be an exceptional person, who's not a lawyer, who'd we want to elevate to be an officer.

But ultimately, it's the Executive Committee, of this organization, that sets the agenda and does all the things the Executive Committee does. And it's not so much the officers anymore. That distinction really starts to become a little irrelevant in sense of any particular powers that

are granted under the bylaws.

It's really the Executive Committee, which includes a non-officer. I think this is one of those places where listening to our members, taking an incremental approach is not such a bad idea. We can always go back after these members have come in to the Board of Governors.

We see how it's working. We see how it's playing out. Possibly, our lawyer members gain some confidence in non-lawyers being on the Board of Governors, and get more comfortable with this idea. And I think we could always go back in two, three, four years and say, you know, this is really working well. Let's open this up so that the non-lawyers can become members.

So as I'm thinking through this, I do think that Governor Doane's amendment makes sense. And I would encourage you to support it for those reasons.

BILL HYSLOP: Andrea.

ANDREA I'm sorry I just want to ask a clarifying question. So the motion as presented, then, would not
JARMON: allow for a LLLT or an LPO to be one the officers?

KAREN DENISE That's correct.
WILSON:

BILL HYSLOP: That's correct.

ANTHONY GIPE: That is correct.

ANDREA OK.
JARMON:

JAMES DOANE: Right. Could not be the President, could not be the President-Elect, could not be--

KAREN DENISE Treasurer.
WILSON:

JAMES DOANE: --the Treasurer.

BOARD: (WHISPERING) That's what you meant, wasn't it?

BILL HYSLOP: All officers must be active lawyers.

JAMES DOANE: All officers.

BOARD: For now.

JAMES DOANE: And there is precedent. We do have different classes of lawyers already who cannot be officers because they're not active members. They are members.

But they're not active members. So we're not setting a precedent. In fact, if we did adopt the amendment as proposed, we would be setting a precedent that we don't need to set right now. We could try it later once we have more than 21 LLLTs.

ANDREA JARMON: So now having asked my clarifying question, I want to make a comment. I'm going to admit that I'm on the fence with this when you heard me speak yesterday about the LLLTs. So you know where I stand with respect to that.

BOARD: Sure do.

ANDREA JARMON: But at the same time, I do understand those concerns. But then, from the other perspective, I am never a fan of the philosophy of open opportunity slowly. I'm just from a community where that has really gone so well.

So I tend to take the position that to the extent that we are going to make the progressive movement to open the door, we should do so fully. And I believe, I trust that this Board now, and any Board in the future, will have the same degree, if not more, of intellectual capacity, and experience, and training such that they will be able to gauge the qualifications and skills of that individual. And if that individual rises to the occasion, then no opportunity, or no limitations should be set upon their leadership opportunities.

BILL HYSLOP: Thank you very much. We have a comment from a member online. A comment from Tracy Flood, "Lawyer members should be the only officers.

And I agree the decision should be made today." Any further comments or questions by the Board? Jean.

JEAN COTTON: It's just I'm a little concerned. Because there's another Article that effects this, that you haven't gotten to yet. For all the reasons stated by Governor Doane, and Governor Furlong, and Governor Black, I agree with you. I think the one thing that I'm concerned about is the unknowns.

What you guys are doing today has yet to be tested. How we are going to elect Governors has

yet to be tested. If in fact, when you get to Article VI, because that's what's going to affect this, and you open up the Congressional seats to non-lawyers. OK?

Now, you have a potential for 14 non-lawyers. Because we don't know how that voting is going to occur, how the individual member, that's voting, is going to know whether they're voting for a lawyer or a non-lawyer. It's not that I have no faith in anyone. It's I have no answers to these major questions.

And so when you talk about having faith that this body can select the right group, well, this body's not going to be the one that selects this body. It's going to be the members. And if they don't know who and what they're electing that now becomes an eligible candidate for an office, that's a gray area I can't answer. And that's the concern. And--

BILL HYSLOP: So, Jean, just to tie this up, because time is short.

JEAN COTTON: Sure.

BILL HYSLOP: Are you in favor of this motion to amend or opposed?

JEAN COTTON: Absolutely in favor of it.

BILL HYSLOP: OK.

JEAN COTTON: Thank you.

BILL HYSLOP: Thank you very much. Sean.

SEAN DAVIS: OK, I'm going to try to be brief with an example. If we were to go back in time, 1960s, '70s, and say that there was a medical board that provided for medical services for the public, and that board decided to exclude the officers, and that nurses couldn't be allowed to be officers on that board, looking back at that, how would we feel about that? That's a we're saying that they're not permitted to have set the agenda and have full impact in their practice of law in Washington state because of the classification of membership.

That's a very limiting message. And we're also saying that we don't trust future Boards enough to select the right people, given a broad category to choose from. That's, once again, that's dangerous. I just, so.

BILL HYSLOP: Anthony.

BRAD FURLONG: And my wife's an--

ANTHONY GIPE: I just want to move us along because of the interest of time. We have a pretty hard time stop of 3 PM. And we're already over our allotted time.

I want to say one thing. Sean's comment is exactly right. And the medical profession did fall into that. And it's why they lost self-regulation, by the way.

It's one of the reasons. It is not opening up its membership to other practitioners. So they had a lot of that taken away from them. I would like to just move us along, though, if there's nothing else. And I think the issues have been well-cleared, so.

BILL HYSLOP: Any further comment? All right. All those in favor of the motion to amend to add the word lawyer after active, so it would say, "All officers must be active lawyer members," please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed?

BOARD: Nay.

BILL HYSLOP: OK, if you're in favor, raise your hand. Keep them up. 2, 3, 4, 5, 6, 7, 8, 9. I got nine.

Those opposed? 2, 3, 4, 5. And I think that covers everybody. There's no abstentions, right?

OK, nine in favor, five opposed, the motion to amend passes. Back to the main motion.

ANTHONY GIPE: And I want to bring up one other thing for you. In IV(A) 1, Composition of the Board, you do have to choose between two versions of the very end of that paragraph. Version 1 says, "Six Governors elected pursuant to the bylaws." That's the Board electing all at-large is added.

And version 3, which specifically delineates to, "One voted in by the Board," to, "Recommended to the Court for appointment."

BRAD FURLONG: I move the former.

ANTHONY GIPE: So that's--

BILL HYSLOP: Which one are you moving, Brad?

KAREN DENISE Will you tell me the page, please?

WILSON:

ANTHONY GIPE: Version 1 is at 308. Version 2 is at 327. Or version 3 is at 327.

BRAD FURLONG: I moved adoption of the-- pardon me. I moved adoption of the former of the first mentioned by Governor, or Past President Gipe.

BILL HYSLOP: OK, so let's be real clear which is which, Brad.

BRAD FURLONG: Well, he just said we did.

ANTHONY GIPE: So version 1, at page 308, is the version where IV(A) 1(c) says, "Six Governors elected pursuant to the bylaws." That's the version where the Governors elect all members who join it. At page 327, is the version 3, the hybrid version, which states that the LLT, LPO is appointed by this Board. And the public at-large members are nominated by the Board and appointed by the Court.

ANDREA Bill, I just have a question.

JARMON:

BILL HYSLOP: OK, hang on just a second. So, Brad?

BRAD FURLONG: I'll withdraw the motion until there's clarity here. I apologize.

BILL HYSLOP: OK.

BRAD FURLONG: I thought we all knew where we were going here on this.

BILL HYSLOP: James, then Andrea.

JAMES DOANE: My point of clarification is do we, well, I do have another proposed amendment. It's on Article VI, election of Governors from Congressional Districts. And it would also, similarly, be a proposal to insert the word lawyer between active and member, so that it would be clear that only active lawyer members could run from Congressional Districts. And so my point of clarification is do I make that amendment now, or try to make that amendment now?

ANTHONY GIPE: No.

BOARD: No.

JAMES DOANE: OK, or wait until we decide on a version?

ANTHONY GIPE: Wait until VI. Because that's where it would be brought up.

JAMES DOANE: OK, great. OK.

ANTHONY GIPE: Regardless which decision you make now on this, it's not going to control that amendment in VI.

JAMES DOANE: Got it. OK.

ANTHONY GIPE: All this will do is control which choice you're making for IV and VI as to how you elect or appoint them.

BILL HYSLOP: Andrea.

ANDREA JARMON: I'm sorry. I thought you said we didn't have to decide that today. Because that, ultimately, we need to hear from the Court as to whether or not they're going to approve the additional members in the first place.

ANTHONY GIPE: We do.

BOARD: Because they don't know unless we decide.

ANTHONY GIPE: But we have to choose a method by which we recommend.

ANDREA JARMON: That's what asked you about.

ANTHONY GIPE: Yeah, so I apologize if that was less than clear. And but this is the point of decision as to whether we choose to retain election right to the new members, or whether we give some of those, as nominations, to the Court to elect. This will govern the decision here and in Article VI.

BRAD FURLONG: 308 and, I think, 317.

KIM RISENMAY: Regardless of which of these options you take, I wish to propose an amendment that the LPO, LLLT representative be directly elected by those member licensed types. There's no reason for this BOG to be taking away voting rights of people to select their own representative.

ANDREA I like that idea, actually.

JARMON:

BILL HYSLOP: Is there a second?

JILL KARMY: Second.

BILL HYSLOP: Kim's moved. Jill's seconded. We have a motion to amend. And do you have specific language on that?

KIM RISENMAY: I'm so lost on this form, I can't find it.

BOARD: Is this the place for that, Anthony.

KIM RISENMAY: Anthony, hopefully, can tell us where that is.

ANTHONY GIPE: Yes. Essentially, if I understand Kim correctly, he is suggesting an additional alternative to both versions you've been given. And he's asking you to say that the LLLT member, which regardless how you choose to deal with public members, will be elected by similarly licensed types.

JAMES DOANE: Point one of clarification.

BILL HYSLOP: State your point.

JAMES DOANE: I specifically requested whether I had to wait for a decision on this and prepare to make a motion.

ANTHONY GIPE: Yeah.

JAMES DOANE: I've seen [INAUDIBLE]

ANTHONY GIPE: And here's the point. Kim's motion is properly in section IV. Because composition doesn't decide, tell you how you elect them. Section VI, Article VI tells you how you elect them. So it is-

-

JAMES DOANE: And see, I wanted to go to my motion, and now--

ANTHONY GIPE: Right.

JAMES DOANE: [INAUDIBLE]

ANTHONY GIPE: But yes, he has. But that's the issue. That's a Article VI motion.

BILL HYSLOP: Kim can we hold that till we get to Article VI?

JAMES DOANE: I was in, I was going Article VI.

KIM RISENMAY: I will be happy to hold mine till we get to the proper point.

BILL HYSLOP: Let's continue on Article.

KIM RISENMAY: But I'm lost on where the proper point is.

BILL HYSLOP: Let's continue on Article IV.

JEAN MCELROY: Bill.

BILL HYSLOP: I've got KD, and then Andrea. Do you have anything to add?

JEAN MCELROY: Bill, point of clarification. Kim's amendment is appropriate for Article IV. Because the language in IV(A) 1 talks about, if you look, there's either a (c) that says, "Six Governors at-large pursuant to these bylaws," or "Four Governors elected by the Board, and two who are appointed by the Court." As I understand Kim's proposal, it's to change whichever one of those, whether you want to elect all the rest or whether you want to have the Court appoint the two public members, is in either version of those to also add into that that the LLLT, LPO member would be voted on by the LLLTs and the LPOs. So that is proper in Article IV as opposed to Article VI.

KAREN DENISE Is it my turn?

WILSON:

BILL HYSLOP: Yes.

KAREN DENISE So this is to the substance of Kim's motion and just generally speaking. What is very, very troubling for me is I feel like we're on a slippery slope from the last amendment, which I accept has already been made. And the slippery slope, that I see, is that we defined membership as lawyers-- in the membership definitions-- lawyers, LLLTs, and LPOs.

WILSON: They are all members. And now, we're going through-- and I'm going to use the word because I mean it-- segregating LLLTs and LPOs, and putting them in a box because we're not sure

that we're comfortable with you. We're going to restrict what you can do, as a member, to only this. And so Kim's point is now, his restriction specifically is let the people who are like them, pick them.

They, the them is us. They are members. If we allow, whether you choose the option where we, membership picks them, that's membership everybody, including lawyers, including LPOs, including LLLTs. Or if we make a recommendation and the Court approves it, that's everybody-- lawyers, LLLTs, and LPOs.

If you are uncomfortable, when we get Article VI, with LLLTs, and LPOs, or public members being on this Board, then vote that way. But do not put up a sign that says, lawyers only.

BILL HYSLOP: Andrea.

ANDREA What KD just said.

JARMON:

[CHUCKLING]

BILL HYSLOP: Further comment? Dan?

DAN BRIDGES: I'm going to tread very carefully. We are already considering doing a carve-out, right? So we talk about, on the one hand, equality of everyone who's a part of this Bar, or Association, or what have you.

And yet, we already are doing a set-aside by even talking about reserving these spots for these other classes of licensure. So I respect the history that goes behind that comment. But I would, respectfully, not share it.

Here's the deal. If what KD is saying, well, let me rephrase. I'm trying be very careful.

If the idea is to treat those other licenses on all four as the same, and I'm not trying to express an opinion whether they should be on the Board or not. But if they're to be on the Board, then let them stand for election out of a Congressional District like everyone else at this table. And they can get elected or not.

But when you go down the road of doing a carve-out to begin with, you already are setting up that distinction. And so you create that artificial distinction. And so then, you have to allow for, OK, we have an artificial distinction. How are we going to reconcile it with all of our other

distinctions?

So it's either all in, or you have to acknowledge these differences and take them onboard, which is not to take away from anything KD said. But I think it's a different issue.

BILL HYSLOP: Robin.

BOARD: Could we stop talking?

ROBIN HAYNES: Dan, I appreciate what you're saying. And thank you for speaking up. But to your point, and to follow with what Karen Denise has articulated, we currently have three At Large seats here. Everyone who's an At Large Governor, at this table, is also someone who is able to run for any of the other seats as well, even though there's a specific carve-out for them.

Sean Davis is a good example. Because his carve-out is only for new and young lawyers. So he has to fit that specific qualification at the time of the election. And then, once he's in, he's in, regardless of when he ages out or experiences out.

But Sean Davis could have run for any of the, well, could have run for a specific Congressional seat as well. So there's a carve-out. But there's another option. So I think that further distinction takes away from what we already do.

BILL HYSLOP: Mario.

MARIO CAVA: I just want to clarify that when we provided the definition of member, it wasn't necessarily specific to how we add LLLTs and public members to the Board. We were also taking into account a uniform regulatory framework for how we streamline the licensure of LLLTs, LPOs, and attorneys. And where our goal is to have a more streamlined and efficient way of handling admission of non-lawyer members.

I'm not speaking to the point that James is saying. I'm just clarifying that there are different reasons for why we provided the legal definition of member. And now we get to the question as to who is going to compose this Board, which I think is a separate discussion. But I wanted to make clear for those, who weren't aware, that there's two issues going on at once that we're trying to balance when we're drafting the bylaws.

BILL HYSLOP: Eli, and then Jill, and Phil, and then, Ruth Edlund.

ELIJAH FORDE: So the At Large position is actually a really good example. Because the reason that those

positions were created, not just created, but how the selection process was chosen for those positions, in particular, was because it was noted that people of color and young attorneys would be disadvantaged in the general election process. So not only was there a carve-out, but there was consideration for the relative disadvantage, if you will, that those groups had to face in the selection process. And I think there's a really good parallel to be made here with the LLLTs and the LPOs.

BILL HYSLOP: Jill.

JILL KARMY: Yeah, and I'm going to try and focus this specifically on the amendment that I think we're still talking about.

BOARD: [INAUDIBLE]

JILL KARMY: Right, right.

[CHUCKLING]

And I want to be clear.

[SIDE CONVERSATIONS]

And the reason I support this amendment is not to take away a voice. It's to give a voice. We're creating a LLLT representative. Why should they have that person for selected by a group of lawyers? They should have that person selected by LLLTs. That gives them a stronger voice, not a lesser voice. It's more inclusionary for LLLTs, not exclusionary.

BILL HYSLOP: Phil.

PHIL BRADY: [INAUDIBLE]

BILL HYSLOP: Ruth Edlund.

RUTH EDLUND: There are a lot of consequences that flow from changing the definition of member to include three licensee types, or three license types. I understand Governor Wilson's point, expressed philosophically, is that the license types should all be treated equally. If that is the case, if membership to each license type is still a full membership, one consequence of that is that they should be paying equal licensing fees if they are equal members.

If they are receiving equal services, the membership fee should be equal. If this is true, it is also the case that there is no longer a justification for the Article of the bylaws that is limited to young lawyers, and that should be young professionals. And that is a provision of the bylaws that would be subject to attack by the other license classes as discriminating against them.

I do not know if the Bylaws Work Group has considered this interplay of the member definitions section. And I simply throw it out for consideration. Because I understand and actually respect the import of Governor Wilson's point. Thank you.

BRAD FURLONG: Anthony?

ANTHONY GIPE: All right. To Ruth's comment, yes, the Bylaws Work Group did review a lot of these implications. Another piece of history about what the Work Group reviewed, in this regard, was a discussion in the Work Group about self-election for LLLTs and LPOs versus appointment through the BOG.

And the reason that the Work Group came up with this sort of approach, the appointed approach rather than self-election, is because it is new. And they said, there needs to be a monitoring function as we start rolling out this position, at least for a little while, so that this Board could be assured that the people who are being selected for it are ready for it.

That was the consideration for why. It was protective of this Board. It was acknowledged that if it turned out to be there was a good crop of people there, we could have even versions that work like the YLC, where they choose someone to nominate to us. And then, we choose from among them.

All good ways, but like the many stepped approaches we've heard today, this one was chosen because it's new. And we need to make sure we've got qualified people serving with us. Because once they are, they have an equal voice. And we have to protect the Board's ability to function.

So that's why this was made. In the future, if they turn out to be great contributors, and we have no worries about the pool, self-election could be done.

BILL HYSLOP: All right. Any further comments by Board members. And are you prepared to vote on this issue?

OK, the motion is that LPOs and LLLTs would be elected by those license types. Is that

correct? All those in favor of the motion, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed?

BOARD: Nay.

BILL HYSLOP: Motion fails. Sure. Division of the house, those that are in favor of the motion to amend, please raise your hand. And keep them up, please. 1, 2 3, 4 in favor.

Those opposed? 1, 2 3, 4, 5, 6, 7. Ten. And I assume no abstentions. All right, we're back to the--

ANTHONY GIPE: We're back to the primary issue that we've got to resolve before we can move on to Article VI. And that is the fundamental question of fully appointing these new seats by the Board versus divvying up and nominating public members for appointment by the Court.

BILL HYSLOP: Do we need a motion on version 1 or version 3?

BRAD FURLONG: I move to adopt version 1, which is appointment of all three of those members by the Board of Governors.

Second.

BILL HYSLOP: It's been moved and seconded.

KAREN DENISE WILSON: So just a point of clarification. If we pass Brad's motion, then that's it. If we don't pass Brad's motion, the default is the other option.

ANTHONY GIPE: Not necessarily.

KAREN DENISE WILSON: Oh, that's why I was clarifying.

BILL HYSLOP: So right now, the motion is to adopt version 1. Correct, Brad?

BRAD FURLONG: [INAUDIBLE]

BILL HYSLOP: Comments? You ready to vote? All those in favor of adopting version 1, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed?

KAREN DENISE Nay

WILSON:

BOARD: Opposed.

BILL HYSLOP: Fails.

ANTHONY GIPE: Passes.

BOARD: It passes.

BILL HYSLOP: Excuse me. Pardon me.

[CHUCKLING]

BILL HYSLOP: No, no. It passes.

ANTHONY GIPE: Yeah.

BILL HYSLOP: It passes. Pardon me. Any abstentions? Hugh, do you want to be listed?

PAULA We need to count all the nays. The nays can just hold their hands up.

LITTLEWOOD:

BILL HYSLOP: I'd say there's three, OK. All right.

BRAD FURLONG: Mr. President?

BILL HYSLOP: Yes, sir. So version 1 has been adopted. Yes.

ANTHONY GIPE: So, Governors, that's all of the really fundamental changes in Article IV. Are there any other amendments to the language of Article IV?

BRAD FURLONG: I would like to make a proposal for one further amendment.

BILL HYSLOP: Go.

BRAD FURLONG: I would ask the Board to go to page, and the audience, to go to page 576.

[SIDE CONVERSATIONS]

We talked--

BILL HYSLOP: Brad, give us the section. Because a few of us looking at different versions of it.

BRAD FURLONG: OK, this concerns IV(A) 1 and IV(A) 2(d). And if anybody doesn't have it, I'll be happy to read the change to get this started. But I do have a couple of comments to make about it.

BILL HYSLOP: IV(A) 1, Composition of the Board?

BRAD FURLONG: Yes. And I don't know what the title is to IV(A) 2(d).

ANTHONY GIPE: It's the duties of the Board members.

BRAD FURLONG: Duties of the Board. I don't think it has a, that subsection has a title. We all there?

BOARD: 576.

ANTHONY GIPE: Page 576 is the proposed amendment that Brad provided in the materials. The original form, as adopted by the current motion, version 1, is on page 308. 0

BRAD FURLONG: The first time I proposed something, language like this to the bylaws committee, the language I provided was rejected. And I realized, in the discussion, that ultimately what we were talking about is the definition of the word representations, and what it means to represent.

And I think what I would like to convey is that if we're going to leave our lawyer hats behind when we walk in this room, I think we need to think about leaving our lawyer hats behind when we think about how we represent a constituency. What this aims to say is that, and it says it pretty clearly, I hope, is that when you represent a Congressional District, you're not there to be their lawyer. You're not there to get them what they want and act in their specific best interest.

But you're there as a representative of what that particular group is about. You've got a viewpoint, experience, understanding of circumstances in a particular area of the state that, I can tell you, is very different in Mount Vernon, than it is in Seattle, than it is in Tacoma, than it is in Spokane, than it is in Ephrata. And I think, as with our current Governors At Large, they come from what have been called traditionally underrepresented groups.

And I don't think any of those three folks, who are on this Board, are here just to represent the best interests of whatever group they might have been underrepresented that they are a part of. But rather, for them to bring that perspective that they have, that unique perspective in life, to this Board and to help us make wise decisions with that perspective in mind. And I think the same thing happens geographically in this state.

The second part of this language says that although you are a representative, you come with this background. You are here to make decisions as to what's best interest, what's in the best interest of the entire Bar and not just the folks back home. So it's my idea.

If you don't want to do it, it's fine. But I think it helps clarify our relationship with our constituents. And I guess, I would just note, in this vein, that there's an accountability issue that goes with this.

If you look at the recall requirements, the votes taken in the Congressional District, those are the people you're beholden to. So there is a real strong tie there. If we're not going to do this, you sort of wonder why the devil we have all these people out there, running from Congressional Districts, if we don't treasure the fact that they come with the unique perspective that their hometown and their home region gives them.

BILL HYSLOP: Brad, what page is your amendment on?

BRAD FURLONG: 576.

ANTHONY GIPE: 576. -

BOARD: Thank you.

BILL HYSLOP: Any, is there a motion?

BRAD FURLONG: So I move the adoption of the language that's contained in 576 as an amendment to--

JAMES DOANE: I second.

BRAD FURLONG: --Article IV.

JAMES DOANE: Sorry.

BILL HYSLOP: OK, James Doane seconds.

BOARD: There's two of those--

BOARD: Now, you have the whole thing.

ANTHONY GIPE: And essentially, the first one only inserts, "and representing after one Governor elected from each Congressional District."

BOARD: (WHISPERING) You first.

ANTHONY GIPE: But I-- Mario?

MARIO CAVA: I would support. The reason why I asked is I would support the second. I think that the first is problematic when I look at the original. When I look at the Board's response to the *Governance Task Force Report*, what it says is that the BOG strongly believes that it is a representative body. But the BOG's, it says, "BOG members are chosen either by election of members to their respective Congressional Districts or by election of the BOG to fill At Large positions."

It says, "Regardless of how they are chosen, BOG members represent all members of the WSBA, and are obligated to make decisions that are judged to be in the best interests of the organization." The second, I actually I really like some of the language in the second proposal. I think that the first proposal can be confusing in that it indicates that there's representation for the Congressional District.

And it seems to narrow the scope of that representation at the BOG. Whereas, the BOG response to the *Task Force Report* seems to indicate that it's representation of all members of the WSBA, not just within that District.

BRAD FURLONG: A brief response, if I may. Governor Cava, were you to make a motion to amend the motion that I've made to remove the first portion of that on to section IV(A) 1, and only make the change to IV(A) 2(d). I would support that. I think that's a good criticism. And I appreciate it.

MARIO CAVA: So moved.

BILL HYSLOP: So there's been a motion to amend the motion to amend that would strike the first amendment and would retain the second. Everybody understand?

ANTHONY GIPE: And to be clear, it would retain only the portion of the amendment from Brad concerning Article IV(A) 2(d).

BILL HYSLOP: Correct.

MARIO CAVA: Right.

BILL HYSLOP: Comments, Board members? Ready to act?

BOARD: Yeah.

ANTHONY GIPE: Yeah.

BOARD: Ready to act? Yep.

BILL HYSLOP: Andrea, did you have your hand up? I wasn't sure.

ANDREA JARMON: I was just going to tell Brad that I appreciate this. Because I remember when I was interviewed, you guys were having this very discussion about the Task Force. And one of the questions, that came from James Armstrong, was whether or not I believed I represented the membership, or the members of the public, and so forth.

And I thought at the time, OK, that's a very interesting question. Why am I being asked that? But I think this helps clarify.

I don't think we can say that we come from that Congressional District, but leave behind those issues. So I appreciate it. And I'm in support of it. Let's move.

BILL HYSLOP: Any further comment on this? All those in favor of the motion to amend the motion to amend, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed. Passes. Now, we're back to the motion to amend, which would be to adopt just the second portion. Further?

BOARD: Which one?

BILL HYSLOP: Well, we voted to change. We're being technical. We voted to delete the first part. Now, we've got to add the second part, if that's what the will of the group is. James?

JAMES DOANE: Just a comment. I think the abbreviation BOG would alleviate the need for the word Board before it. Just--

JEAN MCELROY: Yeah.

ANTHONY GIPE: Correct. It would be conforming it to the standard language we've used throughout the bylaw amendments.

BOARD: Yeah, I didn't think that was part of my change.

BILL HYSLOP: Got a friendly amendment?

JEAN MCELROY: We'll change all the Boards to BOGs.

BILL HYSLOP: OK.

ANTHONY GIPE: We'll change the Boards to BOGs.

BILL HYSLOP: All right.

ANTHONY GIPE: Yes.

BILL HYSLOP: Any further discussion? All those in favor of the motion to amend, which adopts only the second portion, or incorporates only the second portion, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed. Abstain? Passes.

ANTHONY GIPE: OK.

BRAD FURLONG: I'm not going to make any more motions that have gone out on that one.

[CHUCKLES]

[CHUCKLING]

BILL HYSLOP: All right. That is pretty funny.

BOARD: Are you leaving? No.

[CHUCKLING]

BILL HYSLOP: OK, we're back to adopting Article IV, version 1 as amended. All those in favor of Article IV, version 1 is amended, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed? Sustain, adopted.

ANTHONY GIPE: All right. So Article V, this was all ministerial. There was no substantive items on this.

BILL HYSLOP: Sure hope. Yeah, I sure hope that [INAUDIBLE] got this.

BOARD: Second.

BILL HYSLOP: Discussion? All those in favor, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed? Abstain? Adopted.

ANTHONY GIPE: Article VI, so now that you've made the decision that you're going to choose to elect the new seats by the Board, we know we are dealing solely with version 1 of Article VI. And that's what's before you.

KAREN DENISE WILSON: Page?

BOARD: Page.

ANTHONY GIPE: Oh, let me find it.

BOARD: 407.

ANTHONY GIPE: 407, yes.

BILL HYSLOP: I've got 414. But it's all depends on which one you're looking at.

ANTHONY GIPE: Yes, 414 is the red line version.

BILL HYSLOP: 414, yeah.

ANTHONY GIPE: 414 is the red line version of version 1, which matches the decision you just made with Article IV as far as how you elect them. In all other respects, this remains unchanged from the August meeting. So I understand that people may have some amendments to make to this. So that would be appropriate.

BILL HYSLOP: James.

JAMES DOANE: Well, I'm going to risk proposing an amendment on Article VI(A) 1, Governors from Congressional Districts, inserting the word lawyer before active. And so it'll be, "active lawyer member of the Bar." The reason--

ANTHONY GIPE: Excuse me. I want to be clear and direct everyone to Article VI(A) 1, Governors from Congressional Districts. You're proposing it would read, "Any active lawyer member of the Bar."

JAMES DOANE: That's correct. And the reason is this. And it's been stated very well, I think, that under the APRs, we're proposing a unified system to streamline and to put everybody into the same regulatory scheme, all legal professionals.

We have different categories of legal professionals. We have the lawyers, who aren't admitted to the full practice of law. Or they jump significantly higher hurdles than the other legal professionals that are being added to the Bar.

They pay higher fees. And there are 38,000 of them. And as drafted, without the proposed amendment, limited licensed professionals, who pay a lesser fee-- cannot practice as broad a scope-- would have the same rights and privileges as lawyers who have jumped significantly higher hurdles, and pay a higher fee. And they are not similarly situated at all. And so that's the basis of my proposal.

ANTHONY GIPE: And James is correct. Because we discussed it at both of the last two meetings, where we discussed this. If you don't amend it, theoretically speaking, any member-- LLLT or LPO-- from a District could run. So he is correct in his analysis.

BILL HYSLOP: So there's been a motion on the table. Is there a second?

MARIO CAVA: I second.

BILL HYSLOP: Mario's seconded. OK. Phil, and then Jill.

PHIL BRADY: So the problem is that that argument could be made for all of our other At Large positions, including-- and it has been made-- young lawyers. Young lawyers pay a lower license fee, at least for the first three years of practice. As far as I know, I'm the first young lawyer that's actually been elected from a District that, the parallel to what you're proposing is that I would

not have been allowed to run for the 10th Congressional District because I qualified as a new or young lawyer.

And I find that really problematic. The reason we have At Large positions is not that the people who qualify for them are not worthy of being elected from whichever District they happen to live in. It's that they are historically underrepresented groups that are very unlikely to be elected, by their membership, to a position on the Board. We've seen that.

And the majority of the diversity on the current Board are not people elected from Districts. They're mostly people that are either in At Large positions or were selected for a Congressional District, by this Board, due to a vacancy. I find that really troubling.

I get where you're going with this. Again, I don't think this is very likely that you're going to get LPO or LLLT that will be sufficiently popular in a Congressional District to be elected. But again, if you have someone who is that exceptional, why would you not want them to serve on this Board?

BILL HYSLOP: Jill, and then Mario.

JILL KARMY: So for sake of clarity, I need Governors to look at (A) 2, so VI(A) 2. Because you're making the argument against what's in there. So if you don't support this amendment, look at what you have under 2(a) and (b). You see?

You limit, right now as it's worded, you limit the two At Large positions to lawyer members. You limit the young lawyer position to lawyer members. And then, you have the LLLT position.

So I feel like you can't have it both ways. We've got to have consistency.

PHIL BRADY: I'd rather take those out.

BILL HYSLOP: Mario, and then Jim McPherson.

MARIO CAVA: One clarification I want to make is when we have the *Governance Task Force Report*, the recommendation was to add three new members, who would be non-lawyers. And when the BOG responded, they confirmed in the response that we would have three new non-lawyer members, one would be a LLLT, or LPO, and public members. It didn't actually break out who would be selected.

There's no way to control that, with election from a Congressional District, as to how many

public or non-lawyer members could potentially sit on the BOG. The reason why, I think, the At Large process for selection of these three individuals makes sense is that you actually can guarantee that there will be at least three. And you would control that level of, that proportion of participation by non-lawyers.

So I don't oppose. And that's why I, actually, support James' motion is that this is pretty consistent with the BOG's response to the *Governance Task Force Report* in terms of the make-up and who would be filling the positions.

BILL HYSLOP: Jim MacPherson.

JIM Thank you, Mario. That helped me a lot. What he said.

MACPHERSON:

But beyond that, the reason that we have this other underrepresented is because there has been an assumption that the people from the Congressional Districts are going to be attorneys. I will remind you that over the years, many of the people, that have sat around this table, have reached their positions unopposed. And I would hate to there be a deadline type of situation, where a non-lawyer member realizes that no one has applied, and suddenly applies.

And I will just be honest with you. You can amend these 20 years from now, when there's 20,000 LLLTs and only 5,000 lawyers. Fine, that's great. The way it is now, we have 38,000 lawyers and a handful of LLLTs.

Let's try this out for a while. If you're determined to do it, in all deference to KD's great comments earlier about cracking the door slowly, sometimes you do that so that the wind doesn't blow it off.

BILL HYSLOP: Sean.

SEAN DAVIS: OK. So we heard earlier today, and every member of this Board, that's had training, talks about taking your lawyer hat off before you come to the Board table. And now, we're saying that as a legal professional, who's not an attorney, you can't run for election. And you can't allowed the LLLT professionals in your District to vote for you if you're not an attorney.

But we say, here, we value taking our attorney hat off and being a Board member. It's inconsistent. And once again it's, once again it's saying to people, you're a member.

Come in. Speak quietly. Sit over there in the corner and don't make waves.

BILL HYSLOP: Jean.

JEAN MCELROY: This particular provision, actually, these provisions regarding the At Large Governors were specifically discussed in the committee that worked on this. And part of the thinking behind continuing to include the lawyer requirement in the two lawyer At Large positions and the one young lawyer position was a recognition that, in fact, there is still a need for those specific positions among lawyers. Because as much as we would love to think that this Board, and all the lawyers on it, would automatically be able to include positions that people who qualify for those two positions, I think the committee felt that that is not a guarantee, and that there is still a need for, among the lawyers on the Board of Governors, that there still be those At Large positions that are protected.

This is also a continuation of a discussion that occurred a long time ago-- long, long time ago-- in the original Governance Task Force, and since then, about a possibility of just having all of the that we don't need the three At Large, lawyer At Large positions anymore. And a conclusion was reached that we actually do still think there is value in having those three lawyer positions.

So even though it seems inconsistent, I believe that that was intentional. And it was designed to reflect the fact that there's still a perceived need among lawyers to have those positions available to lawyers.

BILL HYSLOP: All right, I've got Brad, and then Ruth. And then, we're going to go to a vote.

BRAD FURLONG: Personally, I think the limitation, from the officer pool, is an adequate limitation at this point. And I used to engage in cyclocross racing. And when there were other riders there, I always came in last. But I won a few races. Because I was only one or, maybe, of two people that entered. And I always felt bad about that.

But my son, who competed also, looked at me. And he said, "Dad, you showed up. And if you show up, and you win, you deserve it."

And I think if, for some reason, only one LLLT, or one LPO, or two folks from those license types show up to run for office, then they deserve what they get. And we deserve what we get. And I think we'll probably get people who do a responsible good job on this Board.

But I think part of the spirit of this for me is the idea that we embrace these other license types. We passed a resolution yesterday getting behind the LLLT Program, in particular, with a lot of vim and vigor, and with a lot of passion around, in some quarters at this table, that was, I think, got a nice round of applause. And so I understand this, you're going too far, too fast mentality.

I think it's very unlikely that we're going to go all that fast. And I think if we need to, to some extent, walk our talk here with respect to these other license types. And so I believe the amendment's offered in good faith.

I understand the reasons for it. I respect those that support it. But I would urge the Board of Governors to vote negatively on this particular proposition.

BILL HYSLOP: Ruth Edlund. Go ahead.

RUTH EDLUND: To the extent that this section authorizes the Board to restrict some positions to lawyers, I would like to know if the sections in providing for their governance are going to have the same ability in structuring their Executive Boards. Because I think as the different sections are currently constituted, BOG is operating somewhat differently than the new rules for the sections.

So I'm just throwing that out as that's more of a, perhaps, may be more of an Article XI question. But I don't think that was actually considered by the Sections Policy Work Group. Because the change in member definition didn't come up in that committee until very late in the process.

BILL HYSLOP: Ruth, I appreciate you raising that for everyone to consider, and considering how they vote on Article VI. And we'll ultimately get to that when we get to XI. Any further comments on Article VI? On the motion to amend?

All right, let's vote. All those in favor of the motion to amend to add the word lawyer to that in the first line of VI(A) 1, "Any active lawyer." Please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed.

BOARD: Nay.

BILL HYSLOP: OK. [CHUCKLES] I don't know why I even ask for voice votes.

[CHUCKLING]

Those in favor of the motion to amend, please raise your hand. And please keep it in the air.
2,3, 4, 5, 6, 7, 8. I got eight.

Those opposed? 2, 3, 4, 5, 6, 7. And no abstains. Eight to six, the motion is adopted.

ANTHONY GIPE: That being said, I guess that's the only. Any other proposed amendments to Article VI?

BILL HYSLOP: So we move to the adoption of Article VI. I don't think we have a motion, yet, to adopt Article VI.

MARIO CAVA: Move that we adopt Article VI.

BILL HYSLOP: Mario moves. Who's seconding?

PHIL BRADY: I'll second.

BILL HYSLOP: Phil.

ANTHONY GIPE: It's a motion to adopt as amended, correct?

BILL HYSLOP: That's right.

ANTHONY GIPE: All right.

BILL HYSLOP: Discussion? All those in favor, please raise your hand.

PAULA Is your hand up?

LITTLEWOOD:

[SIDE CONVERSATIONS]

BILL HYSLOP: All those opposed?

[SIDE CONVERSATIONS]

Abstains? Passes unanimously. Thank you very much. Next, Anthony.

ANTHONY GIPE: Next, would be Article VII, the Bar's Open Meeting Act, or the Bar's version of open meetings.
Oh, let me find it.

BILL HYSLOP: The red lines is at 447.

ANTHONY GIPE: 447.

BILL HYSLOP: All right, is there a motion on the table with regard to Article VII?

MARIO CAVA: Move to adopt.

BILL HYSLOP: Thank you, Mario.

**KAREN DENISE
WILSON:** Second.

BILL HYSLOP: KD is the second. Comments?

**ANDREA
JARMON:** Nope. We're good.

BILL HYSLOP: Oh.

**ANDREA
JARMON:** This one was a easy one. Jean.

JEAN COTTON: Very simple question at a long standing RCW on the Open Public Meetings Act. It's been well-thought through. It's been tested in the courts, applies to every state agency.

I know that that's a bone of contention, whether or not the Bar is a state agency or not. But regardless, why do you need your own version? What's wrong with what exists and has been tested by time?

ANTHONY GIPE: If I may, Mr. President.

BILL HYSLOP: Yes, please.

ANTHONY GIPE: All right. There is the Open Public Meetings Act, the Court has said, doesn't apply to the Court, for instance. They have their own rules. We also do not have it applied directly to us.

However, we looked through, in adopting-- when these were originally adopted-- we looked through the Public Meetings Act, as well as the public, the production of documents in records keeping, as well as executive session statute, and adopted what we could. But we have a

number of concerns, that are of particular to us, that we did not adopt or needed its own provisions. Hence, rather than defaulting to provisions that were ill-suited to us, we have always built one that works just for us, so that we could have open meetings and give some policy guidance to staff members, and Board members, and volunteers.

BILL HYSLOP: Comments? Let's see. I think we have a-- do we have a motion on the table on that?

ANTHONY GIPE: We do.

BILL HYSLOP: OK, just getting a little bit tired, a little rummy here. Article VII, all those in favor of Article VII, please raise your hand. All those opposed to Article VII. Abstains.

PAULA Do you want it recorded?

LITTLEWOOD:

ANTHONY GIPE: Yes, please.

BILL HYSLOP: So I've got 13-0 to 4.

PAULA What?

LITTLEWOOD:

BILL HYSLOP: Excuse me, yeah. Hello.

PAULA That's the new Board.

LITTLEWOOD:

ANTHONY GIPE: 13-0-1.

PAULA The new Board will have 17.

LITTLEWOOD:

BILL HYSLOP: I'm sorry. That's right. That's right. It's adopted.

ANTHONY GIPE: It's the end of your tenure, Bill, yes.

BILL HYSLOP: Yeah, let's move.

[CHUCKLING]

Article VIII.

ANTHONY GIPE: Article VIII has been withdrawn from consideration. And The Board has chosen to set this for action in the future, to be determined by then-President Haynes as to when that would occur. That is, of course, the referendum Article.

BILL HYSLOP: That's the issue that we made at the last Board meeting. Am I right?

ANTHONY GIPE: Correct. Well, we made that decision at the July Board meeting.

BILL HYSLOP: Thank you. Article IX.

ANTHONY GIPE: Article IX. This is about committees, councils, and other entities. You'll see the clean copy commences at 358. And the red line--

BILL HYSLOP: 366.

ANTHONY GIPE: 362. No, 366, yes. There we are.

BILL HYSLOP: Is there a motion on the floor? Phil and Andrea. Comments? All those in favor of Article IX?

BILL HYSLOP: Opposed? One?

ANTHONY GIPE: I believe Ruth had a comment to make. Her hand was raised.

BILL HYSLOP: Oh, I'm sorry, Ruth. Did I miss you?

RUTH EDLUND: Yes, you did.

BILL HYSLOP: OK.

RUTH EDLUND: This is just a comment that there is no mechanism for differentiating between whether a committee or other, or whether any given entity is a BOG entity or a Bar entity. In other words, is it in Article IX or an Article VI or IV entity. I'm losing track of the numbers right now.

And that has significance in terms of the composition, who are the voting members, and a number of other things. I know there are some BOG standing committees whose authority and composition is obvious. But other entities, particularly ad hoc entities, can be confusing to, failing to differentiate under what Article an entity has been formed, that, and again, that may be go more to people who established those committees. But I think that it is a difficulty of these bylaws, is that it makes it impossible to distinguish which is which.

BILL HYSLOP: Anthony?

ANTHONY GIPE: All right. Ruth's question has to do with the fact that under Article IV, the Board of Governors has its own specific standing committees. The Board of Governors also has a provision, in Article IV, that lets it create particular other committees or working groups of the BOG.

That is the provision that guides it any time the only participants in it are the BOG and the staff members. Article IX is any time the BOG wants to create a committee or other entity where we have other volunteer or member input. And it's a larger usual entity for fact finding purposes.

This applies to anything that falls under WSBA in general, not just the BOG. That's Article IX. That's the difference between the two Articles.

There has been a history of confusion about this. But because of the fact that our standing committees also reside in the Article IV committee provision, it was impossible for us to reconcile it at this go. And that's, essentially, why there are two places for different provisions.

As a matter of reality, other than our standing committees for the Board of Governors, such as Budget and Audit, Personnel, Legislative, almost every other Bar entity, every other subcommittee, task force, anything we've ever created has fallen under Article IX, as a matter of history. Because that's, then, the easiest way to convene them.

But it does cause confusion. Any questions about that?

BILL HYSLOP: All right.

RUTH EDLUND: [INAUDIBLE]

ANTHONY GIPE: We could.

BILL HYSLOP: Ready to vote? All those in favor of Article IX as currently proposed, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed?

BOARD: Opposed.

BILL HYSLOP: Abstain? All right. Passes 13 to 1.

ANTHONY GIPE: Yep.

BILL HYSLOP: Next.

ANTHONY GIPE: Article X is not up for any substantive changes. It's just for cleaning purposes.

BILL HYSLOP: Is there a motion on Article X?

BOARD: So moved.

BOARD: I second.

BILL HYSLOP: It's been moved and seconded. Any comments? All those in favor of Article X, please say aye.

BOARD: Aye.

BILL HYSLOP: Opposed? Abstain? It passes unanimously. Article XI.

ANTHONY GIPE: Article XI, and you will find the current red line version-- oh, there we are-- starting at page 380. Article XI is the Article that applies to sections in the bylaws, and provides the guidance to sections on what they should be doing with their bylaws. This has been changed since, and adopted by the Sections Policy Work Group at its meeting in September, on the 15th.

And their meeting occurred before Bylaws met that same day. So these are the changes approved by the Sections Work Group. And I forget the vote.

It was unanimous. Or it was something like 14 to 1? Something like that. So that was the proposal to the BOG. And it's up for your adoption.

BOARD: So moved.

BOARD: I move adoption.

BOARD: Second.

BILL HYSLOP: Article XI has been moved. Any question, comments? Ruth?

ANDREA No, this is good.

JARMON:

BILL HYSLOP: Ruth?

RUTH EDLUND: Yes, this is now where I make the observation that, as currently drafted under XI(C)1 on page 380, contrary to the policy that BOG has just established for itself, "Any active member of the Bar may be a voting member of a section and eligible for election to office in the section upon paying the annual dues established by the section." That does not grant, to the sections, the same authority that the Governors have reserved themselves of creating, or of reserving lawyer officer slots. And because this issue was not, this was not, really, specifically addressed by the Sections Policy Work Group at all.

ANTHONY GIPE: All right.

BILL HYSLOP: Board members?

ANTHONY GIPE: First off, I take issue with it that it's different from what we just decided. We just dealt with the issue of Governors. C (1) has to do with members in the section.

When you get down to who can be on the executive committee and the officers of the section, the sections have plenary power under this to determine who gets to be their executive committees and officers, and who's qualified. So the real question here is in C (1), by having, and the point for, that I think Ruth is identifying for you, is any by keeping C (1) "any active member of the Bar may be a voting member of the section," member of the Bar could include of LLLTs and LPOs.

And the issue raised is whether or not it makes sense to allow sections to vary that at their own discretion and their bylaw, not who they choose as their executive council, but who they choose, allow to be members.

KAREN DENISE Can I just clarify that further?

WILSON:

BILL HYSLOP: KD.

KAREN DENISE The Section Work Group did address what Anthony is saying, that the sections can determine
WILSON: who is on their executive committee.

ANTHONY GIPE: Correct.

KAREN DENISE So that is already left up to the sections, and was discussed in the Sections Work Group, and
WILSON: approved by the Sections Work Group.

ANTHONY GIPE: Correct.

KAREN DENISE The question is whether or not the sections can prevent LLLTs and LPOs from being section
WILSON: members.

ANTHONY GIPE: Correct. Voting.

KAREN DENISE Thank you.

WILSON:

AUDIENCE: No.

KAREN DENISE Voting?

WILSON:

ANTHONY GIPE: Voting members.

KAREN DENISE Voting members?

WILSON:

AUDIENCE: No.

RUTH EDLUND: No, that's not what I'm talking about.

KAREN DENISE That's why I'm trying to clarify. Please--

WILSON:

AUDIENCE: Then make me understand that.

ANTHONY GIPE: You referenced section C (1), Ruth. So that's why I'm addressing that.

RUTH EDLUND: Well, because it's officers.

ANTHONY GIPE: C (1)?

RUTH EDLUND: Section C (1) and F (1). This is saying--

ANTHONY GIPE: All right.

RUTH EDLUND: Yeah.

BILL HYSLOP: Yeah.

RUTH EDLUND: Yes.

ANTHONY GIPE: You referenced C (1) only, which is members of the section. You did not reference--

RUTH EDLUND: No, it's members of the section and, this is the part that I was talking about, "And eligible for election to office in the section," Then, if you look also at F (1), F (1) and (2) say, "Officers, unless otherwise permitted by a sections bylaws, officers of a section executive committee must be active members of the Bar." When membership changes, what that means is that any member of the Bar can be an officer and can be on the EC.

ANTHONY GIPE: And I pointed out to you that their exact reason that it states, "Unless otherwise permitted by section bylaws," that was allowing the sections to choose how they chose their officers. Their bylaws could vary it. But the default, which is what this document is, is generic. But they're allowed to change it by their bylaw. We had that discussion at the Section meeting.

BILL HYSLOP: Governors?

BOARD: Do we have a motion on the table on this?

BILL HYSLOP: On this, that's what I'm.

BOARD: OK.

BOARD: Somebody move now.

BILL HYSLOP: We don't have a--

BOARD: Mousetrap.

BILL HYSLOP: No, we have a motion to adopt this section. We don't have a motion to amend. And that's up to the Governors whether or not they want to bring a motion to amend.

BOARD: We have a question, Bill.

BILL HYSLOP: Yeah, hang on just a second.

ANTHONY GIPE: If you have a different interpretation of that language, it is appropriate to discuss it. But I'm just laying out that was the discussion. If it's not clear to the Board, maybe it does require

adjustment.

BILL HYSLOP: All right.

ANTHONY GIPE: So I'm just here to provide that context.

BILL HYSLOP: I don't hear the Board, any Board member raising a motion. But I have others that want to comment. And I've got Jean Cotton, and Alec Stephens, and Chris Meserve. Jean?

JEAN COTTON: First of all, in my letter, to the Board, on the bylaws, I specifically did not comment on section XI. Because at that time, we were aware that the Sections Policy Work Group was having a meeting subsequent to the deadline for comments. And I wanted to see what the information was and any changes were going to be coming out of that meeting.

That, I believe, was the 15th. It wasn't until the 21st that this new version was distributed. I have the e-mail by which it was distributed. So we could see it for the first time.

That's nine calendar days ago. That's about, what, six business days ago. Our section, while we have representation on the Policy Work Group, which is a wonderful thing, our section hasn't had an opportunity to review this at all because of the shortness in time.

There were a substantial number of comments I would've submitted on the old version. But it seemed to be ridiculous to do so when it was a changing target. If there is any Article in here that deserves to have further scrutiny, and it may pass well without objection from anybody. But to continue any Article until the November meeting, this would be the one.

And I would ask you to consider doing so. Because the list may be long. And it may be nonexistent. But at least, it would be a fair opportunity to respond. Thank you.

ANTHONY GIPE: All right. If I may respond.

BILL HYSLOP: Yeah.

ANTHONY GIPE: Jean, the Sections Policy Work Group allowed the proposed Article XI to come to the Board in August with the express understanding that they would not take final action on it until the Section Policy Work Group viewed it in September, after the August meeting. And I made that commitment to them, to the members of that work group, that it would be pulled if they chose to in September, after they got feedback.

And I can't recall if you were present at that meeting, when that discussion was had, Jean. But that was the thing, was to allow the sections all of that time from July, when it was first published, through the August meeting, and up to the September 15th meeting to provide comment. And so when we reconvened with the Section Work Group on the 15th, we had gotten all of that commentary.

We had gotten all that information. They made the changes to this document. And they specifically, I gave them the option again.

You can choose to delay this. Or you can move it forward. And they opted to move it forward. So I just want that context for you all.

BILL HYSLOP: Thank you. Alec?

ALEC STEPHENS: I was not at the September 15th meeting. But I've always been concerned about making sure, especially, that sections have-- no, excuse me-- section members have adequate opportunity to see what the whole picture looks like. And there was a, with a number of changes being made in a very, very brief period of time, I'm not sure that's been done for the section members.

And that's problematic. Because of how even representation from sections came on to the Policy Work Group. I would suggest, or I would urge, that you would hold this one. That is just to give the sections time, and you time, to actually have the conversation with the sections. I make that suggestion because the whole process with sections has been very, very painful.

[SIDE CONVERSATIONS]

And that's a process that's painful with the next, and actually, the largest group of active members outside of the BOG and some of the committees actually engaging in the work of the Bar Association. Now, I remember hearing from some of the BOG members, who were leaving, that they were really concerned that they'd like to get everything done before they go off of the BOG. I actually believe by holding this, this will still set a good tone for the next BOG going forward.

I don't really believe there is a problem with holding off, letting this be vetted and understood, including-- because I was about to speak to say, you know, if you pass this, I would hope, then, at the Sections workshop that it would really be clearer, to all the sections, what they can do regarding their membership, regarding LLLTs, regarding LPOs. And then, I thought, well,

wait a minute. That's after the fact.

And that would, in fact, still stir up. We're just really getting to understand what this is. And now, you're just telling us to get on with life. I would suggest you hold off.

You have the proposal. It will not change. But it does give time for the sections, and you, to actually have the conversation. So that when it comes up for action, I believe this will be fairly quickly done.

BILL HYSLOP: All right.

ANTHONY GIPE: I think--

BILL HYSLOP: Chris, thank you very much.

ANTHONY GIPE: I need to respond, Bill.

BILL HYSLOP: I've got Chris Meserve, and then Brad, and then Keith. Yes?

ANTHONY GIPE: Bill, I need to provide some context here. I agree with Alec on that in one regard. It is vital that we get this right.

And what has changed isn't what's happened before today. This Board has made a number of decisions that impact the interpretation of Article XI and how it gets applied that might require some further view. So in that regard, I agree with Alec.

But it's because of the decisions, and changes, and amendments you've all made here today. And that might be a very good reason to give them another chance at it. Just my view.

BILL HYSLOP: Chris?

CHRIS MESERVE: Well, it certainly isn't my intention to derail that line of thinking. And if that's what the Board is inclined to do, I am fully supportive of that. I think that's a great suggestion.

But I did want to say, clearly C (1) and F (1) are inconsistent. And if you wanted to reconcile the inconsistency, I had some suggested language, where you could just delete the second half of the first sentence of C (1). But that doesn't address the larger issue of whether this should be tabled and considered more fully by the sections.

BILL HYSLOP: Brad.

BRAD FURLONG: I'll be very brief. I have not served on the Sections Work Group. I would really like to hear from the BOG members, on the Sections Work Group, as to whether they feel that this requires a bit more time.

This is not something that grew out of Governance. This is not one of the things that the third year Governors have been working on forever. And so I really would defer to the expertise of those members who've been on the Board. I'd like to hear from them.

BILL HYSLOP: Keith.

KEITH BLACK: Thank you very much, Bill.

BILL HYSLOP: You're next, KD.

KEITH BLACK: I really think we have accomplished a tremendous amount today. I think this has been a tremendous discussion we've raised. We've discussed so many sides of all of these things.

I have served on the Sections Work Group. I care tremendously about sections. I think we really made a great decision when we brought on all these good, fine section representatives.

They're very awesome. They're great people. I would strongly favor that on this one, on balance, that we give this more time.

BILL HYSLOP: Is that a motion?

KEITH BLACK: It is.

KAREN DENISE WILSON: Second.

BOARD: Second.

BILL HYSLOP: OK, it's been moved and seconded to table this until it come-- just to say it. Is there a time on that? Or just until the executive committee puts it back on the agenda?

KEITH BLACK: Next meeting.

BILL HYSLOP: OK. All right. It's been moved and seconded to table consideration of section IX until the next Board meeting.

ANTHONY GIPE: XI, section XI.

BILL HYSLOP: Thank you very much. Dyslexic. You know, what the heck. Mario.

MARIO CAVA: I would move to amend the current motion to extend the charter of the Section Policy Work Group through the next BOG meeting.

BOARD: Second.

ANTHONY GIPE: May I speak to that?

[LAUGHTER]

BILL HYSLOP: Ah, no, you cannot. No, you may not.

[SIDE CONVERSATIONS]

KAREN DENISE Then, I will.

WILSON:

BOARD: --so we never slide off.

[SIDE CONVERSATIONS]

[CHUCKLING]

BILL HYSLOP: No, you may not.

[LAUGHTER]

I'm going to put you and Russ Aoki--

KAREN DENISE May I?

WILSON:

BILL HYSLOP: --in the same boat.

ANTHONY GIPE: I always like to point out as just for purposes. The group, the Board did set a specific deadline of today for the termination of the Section Policies Work Group. In reality, what you're talking about won't require the Section Policy Work Group.

It'll require some input from section members and this Board to decide, do you need to tweak

that section? I don't think it requires the whole Policy Work Group to do that.

BILL HYSLOP: I heard the motion to keep the Section Policy Work Group alive if needed through the next Board meeting. Is there a second to that?

KEITH BLACK: Second.

BILL HYSLOP: And there's several seconds.

BOARD: What's wrong with these people?

[CHUCKLING]

BILL HYSLOP: And so the motion is to table Article XI to the next Board meeting, and to utilize the services of the Section Policy Work Group through that point in time.

BRAD FURLONG: I just I think need to point out that there's some members of sections who think they're done with this. And I think dragging those folks back into more committee meetings, when we don't need to, is a burden we may not want to really think about whether we want to impose.

BILL HYSLOP: So--

**KAREN DENISE
WILSON:** Hello.

BILL HYSLOP: --right now, the motion is to amend the motion to table to include the Section Policy Work Group with that.

BOARD: What point of order to be held? [INAUDIBLE]

BILL HYSLOP: That's what we're doing.

ANTHONY GIPE: It's actually a point of order is correct. A motion to table is only debatable and only amendable for the purpose of its timing.

BOARD: That's right. It's timing.

BILL HYSLOP: OK.

ANTHONY GIPE: So the motion to amend--

BILL HYSLOP: Why didn't you bring a second motion, Lionel?

ANTHONY GIPE: --and the motion to extend the Policy Work Group isn't currently on there. You're still dealing with the motion to table.

BILL HYSLOP: You can bring it again. OK.

[SIDE CONVERSATIONS]

OK, so the motion is to table section XI to the next Board meeting. All those in favor.

BOARD: Aye.

BILL HYSLOP: Opposed.

BOARD: Nay.

ANTHONY GIPE: May I make a suggestion?

BILL HYSLOP: No, just wait a second. I heard two opposed. Any abstaining?

One abstaining. So we've got. So the motion to table passes.

ANTHONY GIPE: I would like to make a humble suggestion--

BILL HYSLOP: Please do.

ANTHONY GIPE: --on what to do for input rather than reconstituting the entire Section Work Group.

BILL HYSLOP: Please do.

ANTHONY GIPE: I would ask that, I can't make motions. So this is for one of you to do if you think it's a good idea. I would ask that you empower the incoming President to create a small group of Governors, active Governors, and any section members from the Section Work Group to look at input on this, and finalize this for action in November.

KAREN DENISE My hand is up.

WILSON:

BILL HYSLOP: So right--

ANTHONY GIPE: I would recommend that. Because there are certain members of the Section Policy Work

Group that want it to be over with. All right?

KAREN DENISE My hand is up.

WILSON:

BILL HYSLOP: Right now, there's not a motion on the table.

ANTHONY GIPE: So that's my humble suggestion.

BILL HYSLOP: Yeah, that's Anthony's. If you like Anthony's humble suggestion, then somebody needs to raise it as a motion. Otherwise--

KAREN DENISE I can't make up such a motion.

WILSON:

BILL HYSLOP: --it dies. Jill.

JILL KARMY: OK. I am going to make a second after--

AUDIENCE: Move on.

JILL KARMY: --Robin.

AUDIENCE: Mic?

ROBIN HAYNES: Mm mm. I'm not agreeing with it, no.

BILL HYSLOP: Microphone.

JILL KARMY: You're not?

ROBIN HAYNES: Uh uh.

JILL KARMY: OK. Then, here's my motion. I was going to include Robin. But I'll do it separate then.

My motion is going to be that we do not reassemble a full work group again. However, I think that the people, who have been involved in it these last few months, including the section representatives and the Governors, should be sent this draft. And they should be allowed to comment on it. They are the ones who have done the work.

BOARD: Oh, yeah.

KEITH BLACK: Concur.

[SIDE CONVERSATIONS]

BILL HYSLOP: Is that a motion?

JILL KARMY: That was a motion.

BOARD: Second. That would be changes or comments to the draft, right, Jill?

JILL KARMY: Yes.

BOARD: Time.

JILL KARMY: Yes, changes or a comment period from the people who have already been involved in this process all along, yes.

BILL HYSLOP: So it's been moved and seconded that the members of the Section Policy Work Group be allowed to provide comment to Article IX? Is that what you were saying?

JILL KARMY: Yes. No.

BILL HYSLOP: Wouldn't they have the right to give comment to Article IX? You mean as a group?

JILL KARMY: I'm saying people want time to comment on it, and comment on this alleged inconsistency. We have moved to table until the next meeting. Right?

BILL HYSLOP: I'm just saying, don't they all have the opportunity to comment anyhow?

JILL KARMY: Absolutely. But this is specifically a motion not to reconstitute the entire work group again and have a formal meeting.

BOARD: OK.

BILL HYSLOP: Those who are interested, OK.

ROBIN HAYNES: But Karen Denise has had her hand up--

BILL HYSLOP: OK, KD.

ROBIN HAYNES: --longer than I have.

BILL HYSLOP: KD.

KAREN DENISE WILSON: This is we are here because Alec asked us to table this to have an opportunity to communicate with section members. We do not need a work group for that. Members of the Section Work Group, who were BOG members and who were section leaders, did not want to continue their service.

We can table this, as we've already done. We can accept input from the members. We don't need a formal structure to do that. Clearly, we are capable of doing that. We've seen examples of it in the last month. Can we just vote, please, and move on with the process?

JILL KARMY: But that's what I said. Don't reconstitute the work group. What are you--

KAREN DENISE WILSON: But you were putting a new thing in position where those people, on the Section Work Group, still have to communicate, or receive messages, or.

JILL KARMY: They--

ROBIN HAYNES: I don't know.

KAREN DENISE WILSON: They don't. They want to be able to talk to section membership.

BILL HYSLOP: Robin.

ROBIN HAYNES: So I'm going to agree with Karen Denise, like I often do. I know Alec's here. I don't know if you want to volunteer and hang out. But I think we are certainly capable, and Paris is in the back here, to communicate to the sections, through the section list serves, that we are tabling this for the month, and that anyone, whether you're on the Section Work Group or not, can provide input.

And if your section executive committees wanted to get together, I'm looking at Jean Cotton shaking her head. And you want to send something on behalf of Family Law, and some of your members want to send something as well, that's fine instead of bringing everyone back, unless Anthony wants to come back and run a meeting.

BILL HYSLOP: All right. So--

ANTHONY GIPE: I'm totally down with that.

BILL HYSLOP: --I know that I've got some section members back here. Alec, you had your hand up.

ALEC STEPHENS: So first of all, just for Anthony, and Katie, and some others, I feel your pain.

[CHUCKLING]

But having said that, I would hope we would recognize that we have a great opportunity, with the Fall Section Leaders workshop, to make this a key part of that work, since a number of us will be there. And also then, to communicate between now and then what the proposals are, but have a place where by, I think, its October 20th, we can actually come to have the conversation in time for then, whatever needs to go on with the November BOG meeting. And that would be my suggestion.

And yeah, I'm one of these weird people who, some of us are going to hang out anyway. Some of us are going to be burning up the wires or the e-mails anyway. But it's a way to also bring that all together in a formal structure for the sections to come together, comment, and provide information back to you.

BILL HYSLOP: Mario.

MARIO CAVA: So am I to be clear that this would be on for action in November? And that the time for comment is now, between now and the November meeting?

BILL HYSLOP: You're talking about this Article?

MARIO CAVA: Correct.

BILL HYSLOP: Yes.

ANTHONY GIPE: If since there's no motion pending on this, it's just that you're having procedural discussion.

BILL HYSLOP: Well, there is a motion.

ANTHONY GIPE: No, there isn't.

BILL HYSLOP: Jill brought a motion. And it was seconded.

ANTHONY GIPE: Did it get a second?

BILL HYSLOP: Yes.

ANTHONY GIPE: All right.

[SIDE CONVERSATIONS]

BILL HYSLOP: Will you restate the motion, Margaret, on this one?

JILL KARMY: Let's-- can I do this?

BILL HYSLOP: Yeah, please do.

JILL KARMY: Let's just withdraw the motion. Because I don't think what I'm saying, fundamentally, is any different than what--

BILL HYSLOP: Yeah, I don't think it is.

JILL KARMY: --than what KD and Robin are saying.

BILL HYSLOP: I don't think it is.

JILL KARMY: That we're finding ways to disagree, for some reason. Just it's open. People can comment. I would hope that we reach out to section members, who were on the Sections Work Group. Because they are the most invested and the most knowledgeable of the background. Period.

ANTHONY GIPE: So I would--

BILL HYSLOP: OK, whoever the second is, I didn't write it down. But I assume you've withdrawn that. Was that you, Bill?

BILL PICKETT: Withdrawn.

BILL HYSLOP: Thank you very much for withdrawing that. We don't have a motion on the table on that.

ANTHONY GIPE: In light of time, there's only one other bylaw provision that this Board has to take a single piece of action on. The committee, the work group recommended tabling Article XIV on indemnity, INDEMNIFICATION. And we just need the Board's approval to do that, time to make sure it's done.

KEITH BLACK: So moved.

ANTHONY GIPE: It's tabled indefinitely as it's being reviewed. So there, it's not a certain return until the Board sets it on agenda.

BILL HYSLOP: All right. Any comment on that? All in favor?

BOARD: Aye. Opposed? Just for purposes of quick review, is the Board ready, in one mass, to adopt Articles XII, XIII, if XV, and XVI?

ANTHONY GIPE: All ministerial changes with no substantive changes.

BOARD: So moved.

BOARD: Second

BILL HYSLOP: Comments? All in favor?

BOARD: Aye. Let's have a resounding aye.

BOARD: Aye.

BILL HYSLOP: Opposed? Abstain? Adopted.

ANTHONY GIPE: Bill, would you allow me a moment of personal privilege?

BILL HYSLOP: In just a second. First off, I think that the amount of work that you, Anthony Gipe, have put into the Section Policy Work Group and into the Bylaw Work Group is absolutely above and beyond and incredibly outstanding. And I think we all owe you an incredible debt of gratitude.

There's been some ups. There's been some downs. There's been some bumps and some grinds.

But we've all worked through it. And we have resulted in really, what I think, is a great improvement. And we are truly in debt to you. And I think we owe you a great debt of gratitude.

[APPLAUSE]

ANTHONY GIPE: Now, you make me blush.

[SIDE CONVERSATIONS]

ANTHONY GIPE: A moment of personal privilege? Bill?

BILL HYSLOP: Oh, yes. I'm sorry.

ANTHONY GIPE: All right. I want to thank you. I was asked to serve on both of these. It wasn't what I had had planned for my Past President year. But I was asked to serve.

BILL HYSLOP: I'm with you, Anthony. I hadn't planned it either.

ANTHONY GIPE: I was asked to serve. And I served. I'd like a point of personal privilege.

As this'll be, now, my very last meeting after 12 continuous years of service to the Bar in various capacities. And I have three points for you. I profoundly thank you for giving me the opportunity to serve you. I think the staff. You have my gratitude.

My humility, you aid me. You educated me. You supported me.

I couldn't have done a lot of what I did without you. Boy, I didn't expect to be so emotional about it. So the power of this organization is its willingness of good people to serve without expectation, no matter how difficult.

So I want to leave you with a closing thought I had when I think about serving without expectation. It is to be joyful in service, avoiding ignorance and calumny, to be charitable in victory. Because if you do not, it is a temporary joy to prevail over your opposition.

You may get some temporary satisfaction. But true joyfulness comes from helping others. This way you get much more satisfaction.

Joyfulness is really the important factor in building a successful society and a peaceful society. In order to create that peace, we must first, as individuals, create it within ourselves, share it with people, and be of service to people. Thus service, is the key to all happiness. Thank you.

[APPLAUSE]

BILL HYSLOP: And with that, since we are talking about, have talked about sections, we do need to very much recognize and thank the members of the Section Policy Work Group for all of your work, this year, on sections. I think we really have moved the ball forward. As I say, there's been some bumps and grinds along the way.

But we've moved the ball forward. So thank you, on behalf of everybody, on that. KD.

**KAREN DENISE
WILSON:**

So one of the instrumental components of the Sections Work Group was our Chief Financial Officer, Ann, who drafted a lot of the proposals. In addition to that, our Chief Financial Officer, Ann, was not only instrumental but primarily responsible for me being able to execute my duties as Treasurer. And significantly contributes to this organization, on our Budget and Audit committee, is just one example of many contributions.

And I wanted to publicly say thank you to her, and to give her this gift of thanks. And then, I would really like to make a motion about the APRs.

[CHUCKLING]

[APPLAUSE]

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WSBA Spiritual Practices Policy

&

Suggested Amendments to Admission and Practice Rules (APRs) for Administrative Coordination

Presenter:

Jean McElroy – General Counsel/Chief Regulatory
Counsel, WSBA

Washington State Bar Association | WSBA Spiritual Practices Policy & Suggested Amendments to Admission and Practice Rules (APRs) for Administrative Coordination

- BILL HYSLOP:** All right. Next item are the suggested amendments to the APRs. It's page 609 in your materials. I'm going to recognize KD.
- KAREN DENISE WILSON:** At our last meeting, the consensus of the group was that this could go on consent. I specifically requested to take it off for the purposes of amendment, which I no longer like to make. So I would move that we accept the APRs as proposed in our materials.
- BILL HYSLOP:** It's been moved and seconded. Any discussion? All those in favor, please say aye.
- BOARD:** Aye.
- BILL HYSLOP:** Opposed? Abstained? Unanimously adopted. JEAN MCELROY, how fast can you give us an update on the spirituality policy?
- JEAN MCELROY:** I have been in communication with members of the Indian law section-- and Francis Dujon Reynolds and I both have been. We are working on some agreed upon revisions to that policy. And we would like to ask the board to delay consider further consideration until we've had a chance to complete some further review and revision.
- BOARD:** So moved. So moved. Second.
- PAULA LITTLEWOOD:** What was the motion?
- BOARD:** To table it.
- PAULA LITTLEWOOD:** To November?
- BOARD:** Yeah.
- PAULA LITTLEWOOD:** [INAUDIBLE].
- JEAN MCELROY:** Probably until next meeting.
- PAULA** We need a date certain.

LITTLEWOOD:

JEAN MCELROY: November.

BILL HYSLOP: November. All those in favor.

BOARD: Aye.

BILL HYSLOP: Opposed? Abstain? Thank you very much. That's all of the items I believe.

PAULA Section workgroup, but I think we covered that.

LITTLEWOOD:

BILL HYSLOP: Yes. I think we have.

BOARD: [INAUDIBLE].

BILL HYSLOP: So this is truly a working board. And it has been my great privilege to chair these meetings this year and to work with all of you. And I think we are continuing to keep this profession vibrant and relevant to our members and to the public that we serve. And I thank you very, very much for the opportunity.

And I'm passing this gavel to my left, to our new--

BOARD: [INAUDIBLE]

BILL HYSLOP: What's that?

BOARD: [INAUDIBLE]

BILL HYSLOP: Yes. And certainly, certainly, absolutely, thank the third year members who are going off today, and welcome our new members. And that occurs right now. And I'm passing the gavel. Thank you everyone very much.

BOARD: Thank you, Bill.

BILL HYSLOP: Let's go drink.

ROBIN HAYNES: So one last item. Thank you so much, Bill for your service this year. And thank you so much for chairing this meeting and getting most of it off the table before our next meeting. I won't appoint to any work group or two or three gigantic work groups just yet. But thank you for

being here and humoring us and being very, very patient.

BILL HYSLOP: Absolutely.

ROBIN HAYNES: Thank you.

BILL HYSLOP: Thank you, everybody.