

WASHINGTON STATE
BAR ASSOCIATION

Board of Governors Special Meeting
Supplemental Materials

June 23, 2023
Heathman Lodge
Vancouver, Washington

**WASHINGTON STATE
BAR ASSOCIATION**

Board of Governors

BOARD OF GOVERNORS MEETING Supplemental Materials June 23, 2024 Heathman Lodge, Vancouver, WA Zoom and Teleconference	
Description	Page Number
Corrected May 19-20 BIG Meeting Minutes Draft	SM-2
Letter from the office of the Attorney General of Washington RE: Guidance on Legal Advice Re Reproductive Health Care	SM-9

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING MINUTES

Yakima, WA
May 19-20, 2023

Call to Order and Welcome ([link](#))

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Dan Clark on Friday, May 19, at 9:05 AM. Governors in attendance were:

Francis Adewale
Sunitha Anjilvel
Lauren Boyd
Jordan Couch
Matthew Dresden
Kevin Fay
Nam Nguyen
Kari Petrasek
Brett Purtzer
Mary Rathbone
Serena Sayani
Alec Stephens

Also in attendance were President-Elect Hunter Abell, Yakima County Superior Court Hon. Richard Bartheld, Gov. Elect Todd Bloom, Executive Administrator Shelly Bynum, Practice of Law Board Chair Michael Cherry, Kit Chovanak, Member Engagement Specialist Melvin Curtiss, Equity and Justice Specialist Joyce Diaz, Lillibel Douglas, Merf Ehman, Chief Disciplinary Counsel Doug Ende, Volunteer Engagement Advisor Paris Eriksen, Tamara Garrison, Miryam Gordon, Family Law Section Liaison Nancy Hawkins, Bobby Henry, Kim Hunter, [Gov. Elect Kristina Larry](#) Director of Finance Tiffany Lynch, Sections Program Specialist Carolyn MacGregor, Rajeev Majumdar, Betseylew Miale-Gix, Yakima County Department of Assisted Council Paul Kelly, Outreach Specialist Mike Kroner, Chris Newbold, Executive Director Terra Nevitt, Equity and Justice Programs Coordinator Nicholas Mejia, Yakima County Superior Court Hon. Kevin Naught, Chief Communications Officer Sara Niegowski, Broadcast Services Manager Rex Nolte, Communication Strategies Manager Jennifer Olegario, Director of Advancement Kevin Plachy, Education Programs Manager Shanthi Raghu, Equity and Justice Lead Saleena Salango, TAXICAB Chair Kyle Sciuchetti, General Counsel Julie Shankland, Chief Equity & Justice Officer Diana Singleton, Christopher Swaby, Immediate Past President Brian Tollefson, Member Services and Engagement Manager Julianne Unite and Yakima Bench-Bar Committee Chair Sarah Wixson, Sarah Wixson.

Consent Calendar ([link](#))

Pres. Clark asked if anyone wished to remove an item from the consent calendar. Gov. Fay moved for approval. There was no discussion. Motion passed unanimously. Gov. Sayani was not present for the vote.

Member & Public Comments

There was no public comment.

President's Report ([link](#))

Pres. Clark referred to his written report.

Executive Director's Report ([link](#))

Director Nevitt referred to her written report and noted that the Board and Officers held a successful meeting with members of the local judiciary the day before and the most pressing topic was a lack of lawyers in Yakima and rural areas.

Training: Justice in Aging ([link](#))

Denny Chan, the Managing Director of Equity Advocacy, presented "Advancing Equity in Aging through Law & Policy: Barriers & Opportunities." The training presented protecting and supporting the rights of older adults including healthcare, housing, and social justice. Discussion followed about supporting access to courts and a growing digital divide, AI screening methods, and arbitrary aging-out rules for employment.

President-Elect Election ([link](#))

Gov. Sunitha Anjilvel was elected as the WSBA 2024-2025 President.

Identifying Key Performance Indicators for WSBA Program Review ([link](#))

Executive Director Nevitt introduced the idea of a "Balanced Score Card" that would allow the organization to measure its programs against WSBA's mission-driven principles. She explained that the WSBA's different programs and services would be evaluated on a rotating annual schedule. Discussion followed, including whether we currently have a template or uniform way to evaluate the effectiveness of programs and services; the number of programs that will be included on any given year or during the first round of evaluation; a suggestion that the executive staff should do the review; and the fiscal importance of this process.

Small Town and Rural Practice Committee Presentation ([link](#))

Executive Director of Columbia Legal Services Merf Ehman and Gov. Kari Petresk presented information about what the Small Town and Rural Practice (STAR) Committee accomplished in its first year and their goals for next year. Successes include a forum in Yakima that brought together many rural practitioners; a rural job fair; free postings for rural job posters via WSBA's online job board; the Governor's proclamation in support of rural practice; and stories/articles highlighting the benefits and opportunities of practicing in a small town. On the horizon, the committee plans to host more rural job fairs and hold outreach events at law schools; to present some ideas for changes to the Rule 6 Law Clerk program to facilitate more people moving through that pipeline; loan forgiveness programs for rural practitioners; and bringing together rural

interns to learn from each other. Chief Regulatory Counsel Renata Garcia suggested the Committee work with the Law Clerk Board on proposed rule changes to that program.

Yakima Attorney Shortage ([link](#))

Yakima Bench-Bar Committee Chair Sarah Wixson, Yakima County Superior Court Hon. Kevin Naught, Yakima County Department of Assisted Council Paul Kelly, and Yakima County Superior Court Hon. Richard Bartheld spoke about the challenges in Yakima courts due to a severe attorney shortage. The group shared some of the solutions they have or would like to undertake, including hiring first-year law students through a paid intern program; asking retired attorneys to take on cases; and partnering with a local post-secondary school to offer a law curriculum into their class offerings. The presenters and Board identified that this is a complicated, statewide situation and will need a myriad of solutions and approaches to overcome. Discussion included flexibility and work/life balance; availability of remote hearings; the need for diversity among rural practitioners; and the need for legislative support for defenders and other positions.

Member Wellness Presentation ([link](#))

Member Wellness Council Co-Chair Francis Adewale, Member Wellness Program Manager Dan Crystal, Member Wellness Co-Chair Matthew Dresden, EVP Alps and President of the Institute for Lawyer Well Being Chris Newbold, and Advancement Director Kevin Plachy presented on the history of the member wellness program at the WSBA, best practices for bar-association member wellness programs, and a recommendation for how to move forward from the Member Engagement Council. Manager Crystal and ALPS EVP Newbold presented the statistics that show lawyers experience greater instances of mental illness, depression, and addiction than the general population, that the pandemic exacerbated the problem, encouraged the Board to think about member wellness as a foundation necessary for the integrity of the profession, and that the WSBA to join a growing list of jurisdictions that have formed lawyer wellbeing task forces.

Gov. Adewale and Gov. Dresden recommended the WSBA add member well-being to the Board of Governor's goals adopted in June 2023, work to create a council or task force to study the issue of member well-being and report back to the Board of Governors with a proposed charter at a later date, and that the new entity focused on member well-being, keep the work of the task force/council connected to the Member Engagement Council with period updates. Director Plachy and Manager Crystal explained that a task force would bring stakeholders together to expand WSBA's understanding of what is causing unwellness in the legal community and that the next step would be identifying solutions. Gov. Stephens moved to approve the recommendations from the Member Engagement Council. The motion passed unanimously.

Discussion of Proposed Changes to the WSBA Bylaws ([link](#))

Gov. Stephens presented three proposals for a preliminary discussion. First, shifting the election for the President-Elect to be conducted by the entire WSBA membership rather than by the Board of Governors. He described that it seemed contradictory for all other Board of Governor positions to be elected by the membership but not one of the most important positions, President-Elect. Discussion followed about the role and function of the President; opposition to the proposal; the importance of setting some criteria for

who is eligible; how to educate members; and the importance of the Governors needing to know and respect the President. Gov. Stephens summarized that the idea did not seem to have traction.

Second, Gov. Stephens introduced the idea of a bylaw change that would permit committees to have working sessions, without taking formal action, without a quorum present. Discussion followed, including how to define what work could be done in such a session and how the current bylaws address quorum. Gov. Stephens suggested that he continue to work with General Counsel Shankland and bring this back for a first read at a future board meeting.

Third, Gov. Stephens suggested that, in each fiscal year, a minimum of three in-person or hybrid Board meetings be held in King County, at least two of which would be at the WSBA headquarters. Gov. Stephens cited the inefficiency and cost of traveling for the majority of meetings, including bringing all the broadcasting equipment. He noted that technology has made it possible for people all over the state to easily interact with board meetings without travel. Discussion followed about the benefits of interacting in local communities with local practitioners; the cost of traveling meetings, versus the value; and the importance of perception. It was suggested that Gov. Stephens suggestion could be effectuated by a recommendation to the President rather than a bylaw change. Executive Director Nevitt commented on the challenges of a changing the travel philosophy every year, and suggested other ways that the WSBA can connect with local practitioners outside of Board meetings. Gov. Stephens indicated that he would bring back a proposal for consideration and action.

Governor Roundtable ([link](#))

Gov. Stephens wished all the mothers and mother figures a happy Mother's Day, a week late. Gov. Fay commented that Executive Administrator Shelly Bynum has done a fantastic job organizing the May Board meeting.

Recommendations from the Long-Range Strategic Planning Council Future of WSBA Space ([link](#))

Long-Range Strategic Planning Council member Rajeev Majumdar presented the Long-Range Strategic Planning Council's recommendation for the long-term future of the WSBA office space. The recommendation included purchasing a building in King County, and to establish a satellite office in Spokane to use as a potential model for establishing satellite offices in other parts of the state in the future. Council Member Majumdar explained that the decision to buy a building is dependent upon getting actual real estate estimates and discovering what is possible, noting that the recommendation presented is meant to be an expression of values and a direction for moving forward, but the final decision will be made when a real estate or lease deal comes before the board. Executive Director Nevitt commented that the value of the board indicating its goal, in advance of a final decision, is that it will allow the organization to plan accordingly, including earmarking funds and growing the reserves as necessary. Gov. Fay gave a presentation supporting his analysis that staying in the current location with a renegotiated lease is the best fiscal option. Treasurer Adewale presented analyses from the Budget and Audit Committee.

Discussion followed, including about the wisdom of short-term versus long-term thinking and projecting; competing priorities for budget allocation; the benefit of being present throughout the state to serve all

members while recognizing that the majority are in King County and along the I-5 corridor; the purpose of office space and conference space; the purpose and usefulness of satellite offices to support rural practitioners and county bars; and the wisdom of considering the purchase of a building when we don't yet know the market conditions or terms; whether this Board of Governors should take action now when it's a future board that will make the ultimate decision; the challenges and opportunities of having a headquarters in downtown Seattle; and the importance of gathering member feedback to inform the process.

The Board took public comment from Nancy Hawkins who shared comments from the Family Law Section in opposition to a current plan for the WSBA to purchase a building.

Converting Deskbooks to a Member Benefit ([link](#))

Council Member Rajeev Majumdar presented the Long-Range Strategic Planning Council's recommendation to that WSBA offer its Deskbooks as a free member benefit. Treasurer Adewale commented that the Budget and Audit Committee does not want this proposal implemented in this budget cycle and that the Member Engagement Council recommends that the Board seek member input before deciding. Discussion followed about the permanence of this decision because members will not likely transition back to a paying model for deskbooks; the concern that this proposal is overbroad to meet the problem and an alternate solution could be a grant program to supply deskbooks to those who cannot afford them; the opportunity to investigate and present several options to members for feedback; the many number of programs and priorities the Board has competing for finite resources; a perspective that not all members need or want any or all deskbooks; a suggestion that as an alternate proposal WSBA provide a free deskbook to new members or as an incentive to join a section; the impact on our relationships with current vendor-partners that are involved in publishing deskbooks; and how to expand the offerings/areas of deskbooks content and ensure we have robust volunteers to author the content.

Gov. Dresden moved to have the Long-Range Strategic Planning Council come back with more than just one option to make Deskbooks a more widely accessible member benefit. Council Member Majumdar recommended that this issue not go back to the Long-Range Strategic Planning Council but proceed to the entire Board of Governors and/or the Member Engagement Council to continue. Gov. Dresden made a friendly amendment to move the topic to the Member Engagement Council to come up with more options and member feedback. The motion passed unanimously.

Executive Director Nevitt suggested that the Council take up the larger question of how to determine what types of WSBA programs and services should be included as "free" and funded with license fees.

Meeting Feedback ([link](#))

President-Elect Abell announced the death of Asotin County Prosecuting Attorney Ben Nichols, and the Board took a moment of silence.

Gov. Stephens wished fathers and father-figures a happy Father's Day.

ADJOURNMENT ([link](#))

There being no further business, Pres. Clark adjourned the meeting at 12:51 PM on Saturday, May 20, 2023.

Respectfully submitted,

Terra Nevitt
WSBA Executive Director & Secretary

DRAFT



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

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June 22, 2023

Via Electronic Mail

Daniel D. Clark
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Re: Request for Action—Guidance on Legal Advice Re Reproductive Health Care

Dear President Clark:

On August 3, 2022, I wrote on behalf of the Attorney General of Washington requesting that the Washington State Bar Association’s Board of Governors provide guidance to the bar regarding the provision of legal advice related to reproductive health care, including abortion. Specifically, we asked the Board to recommend that the Supreme Court adopt proposed comments to Rules of Professional Conduct 1.2 and 8.4 to clarify that attorneys may advise and assist clients in accordance with Washington’s reproductive health care laws without fear of professional discipline, even if another state’s law purports to prohibit the provision of such legal advice.¹

It is our understanding that the WSBA’s Committee on Professional Ethics recently recommended that the Board approve our request to propose comments to RPC 1.2 and 8.4. We write now to express our office’s gratitude for your consideration of the proposal and to request that the Board adopt the Committee’s recommendation and submit the request to the Supreme Court, with one proposed edit to the Committee’s recommendation. We suggest including the following language in the proposed comment to RPC 1.2: “A Washington lawyer will not face

¹ Proposed comment to RPC 1.2: “Under paragraph (d), a lawyer may counsel a client regarding Washington’s reproductive health care laws and may assist a client in conduct that the lawyer reasonably believes is permitted by those laws. A Washington lawyer will not face discipline even if another state’s law purports to prohibit the provision of legal advice regarding access to reproductive services in Washington. If Washington law conflicts with other potentially applicable law, the lawyer shall also advise the client regarding the related law and policy.”

Proposed comment to RPC 8.4: “A lawyer who counsels a client regarding Washington’s reproductive health care laws or assists a client in conduct that the lawyer reasonably believes is permitted by those laws does not thereby violate RPC 8.4. See also Washington Comment [] to RPC 1.2.”

ATTORNEY GENERAL OF WASHINGTON

Daniel D. Clark
June 22, 2023
Page 2

discipline even if another state’s law purports to prohibit the provision of legal advice regarding access to reproductive services in Washington.” The Attorney General’s Office submits that this explicit protection will directly address and mitigate the chilling effect described in the Committee on Professional Ethics’ letter.

At the time of our August 3, 2022 letter, shortly after the Supreme Court’s *Dobbs* decision overturning *Roe v. Wade*, we were only just beginning to see the efforts by state governments to apply anti-abortion laws extraterritorially and in a manner that targets speech about reproductive health care. Now, almost a year later, the list of restrictive laws has grown, increasing the urgent need for guidance to Washington attorneys.

Of particular concern are new state laws that purport to apply across state lines and target conduct related to reproductive health care that Washington law protects. Idaho’s criminal ban on abortions, Idaho Code § 18-622, which went into effect shortly after the *Dobbs* decision, is one such example. In a letter earlier this year, Idaho Attorney General Raúl Labrador opined that Idaho Code § 18-622 “prohibits an Idaho medical provider from ... referring a woman across state lines to access abortion services” and “requires the suspension of a health care professional’s license” for doing so.² Attorney General Labrador further opined that Idaho Code § 18-603 “prohibits the promotion of abortion pills,” and makes it a felony to publish any “notice or advertisement of” abortion services.³ Under Attorney General Labrador’s interpretation, these criminal laws would apply to and penalize abortion care lawfully obtained or provided in Washington, and would even target truthful speech about the availability of such care.⁴

Additionally, on April 5, 2023, Idaho Governor Brad Little signed into law HB 242, which makes it a felony to travel with a minor across state lines for an abortion or to help a minor obtain abortion medication without parental consent.⁵ This law, too, targets reproductive health care that is lawfully obtained or provided within Washington State. These alarming developments highlight both the growing need for legal advice regarding the availability of reproductive health care amid a landscape of diametrically opposed state laws, and potential threats to the ability of Washington lawyers to provide candid and fulsome legal advice amid efforts to criminalize or chill speech itself.

In Texas, too, there is ongoing litigation and debate over state efforts to restrict interstate travel for abortion care and to prohibit the “aiding or abetting” of abortion. *See* SB 8 (banning abortion

² Letter from Raúl Labrador, Att’y Gen. of Id., to Hon. Brent Crane, Id. House of Reps. (Mar. 27, 2023) <https://bit.ly/45bs0GN>.

³ *Id.*; *see also* Caroline Kitchener and Susan Svrluga, *U. of Idaho may stop providing birth control under new abortion law*, THE WASHINGTON POST (Sep. 26, 2022), <https://wapo.st/45fo8V0> (U. of Idaho’s general counsel advised university employees not to “promote” abortion or refer students for abortion care, lest they be held criminally liable for a felony).

⁴ AG Labrador’s actions are currently the subject of litigation. *Planned Parenthood Great Northwest v. Labrador*, No. 1:23-cv-00142-BLW (D. Idaho filed Apr. 5, 2023).

⁵ *See* 2023 Idaho Laws Ch. 310 (H.B. 242).

ATTORNEY GENERAL OF WASHINGTON

Daniel D. Clark

June 22, 2023

Page 3

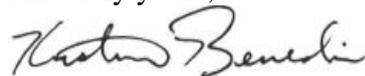
after six weeks and creating liability for anyone who “aids and abets” the performance of an abortion); *Fund Texas Choice v. Paxton*, No. 1:22-CV-859-RP, 2023 WL 2558143 (W.D. Tex.) (litigation over HB 1280 and Texas Attorney General Ken Paxton’s statements that Texas may prohibit travel that “help[s]” a pregnant person who also travels to another state to seek an abortion, and that Attorney General Paxton would be “looking at” whether his office could prosecute abortion funds that facilitate out of state abortion care). The Texas state government has also resurrected several state laws, passed prior to *Roe v. Wade* (Articles 1191-1194 and 1196), which criminalized abortion and imposed accomplice liability for anyone who assisted in procuring an abortion.⁶ In February 2023, District Judge Robert Pitman addressed the extraterritorial application of these state laws, finding that HB 1280 does not regulate abortions that take place outside of Texas, but that the pre-*Roe* laws do arguably apply to those who assist in procuring an abortion outside of Texas.⁷

Similar restrictions are a growing threat nationwide. Last year, the National Right to Life Committee circulated a model law that would make it a crime to give “information to a pregnant woman or someone seeking the information on her behalf” about “self-administered abortions or the means to obtain” an abortion.⁸ A South Carolina state senator introduced a bill using this model language in the South Carolina legislature (which stalled in committee during the 2021–2022 legislative session).⁹ Unfortunately, in all likelihood, the list of restrictive laws that implicate care provided lawfully in Washington—and legal advice and other speech regarding the availability of such care—will only continue to grow.

Accordingly, we urge the WSBA to act swiftly in endorsing and submitting the proposed comments to the Rules of Professional Conduct clarifying to Washington attorneys that they will not violate legal ethical requirements by counseling clients about Washington’s reproductive health care laws or assisting clients in lawful conduct, even if another state’s law purports to prohibit the provision of such legal advice.

Please don’t hesitate to reach out to me directly if our office can answer any follow-up questions or be of assistance in any way.

Sincerely yours,



Kristin Beneski
First Assistant Attorney General

⁶ See Tex. Rev. Civ. Stat. Ann. arts. 4512.1-4512.6.

⁷ *Fund Texas Choice*, No. 1:22-CV-859-RP, 2023 WL 2558143 (Feb. 24, 2023), at *1.

⁸ Letter from NRLC General Counsel to NRLC Committee re: NRLC Post-*Roe* Model Abortion Law (June 15, 2022) <https://www.nrlc.org/wp-content/uploads/NRLC-Post-Roe-Model-Abortion-Law-FINAL-1.pdf>.

⁹ See Equal Protection at Conception – No Exceptions – Act, 124th Session, South Carolina S.B. 1373 (Jun. 28, 2022).

ATTORNEY GENERAL OF WASHINGTON

Daniel D. Clark
June 22, 2023
Page 4

cc: Hunter M. Abell, President-Elect (2022-2023) (habell@williamskastner.com)
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