

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes

Held Virtually

June 26-27, 2020

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Rajeev D. Majumdar on Friday June 26, 2020 at 8:33 AM. Governors in attendance were:

Hunter M. Abell

Sunitha Anjilvel

Daniel D. Clark

Peter J. Grabicki

Carla Higginson

Kim Hunter

Jean Kang

Russell Knight

Tom McBride

Bryn Peterson

Kyle D. Sciuchetti

Alec Stephens

Paul Swegle

Judge Brian Tollefson (ret.)

Also in attendance were Immediate Past President William D. Pickett, Gov-Elect Matthew Dresden, Gov-Elect Brent Williams-Ruth, Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Financial Officer Jorge Perez, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, Interim Director Advancement Kevin Plachy, Executive Administrator Shelly Bynum, Nancy Hawkins (Family Law Section), James E. Macpherson (Washington Defense Trial Lawyers), and Betsy Miale-Gix (Washington State Association for Justice).

Consent Calendar ([video recording link](#))

Pres. Majumdar asked if anyone wanted to remove an item from the consent calendar. Gov. Swegle moved for approval. Motion passed unanimously. Treas. Clark was not present for the vote.

[President's Report \(video recording link\)](#)

Pres. Majumdar honored local hero recipients chosen by the Whatcom and Skagit County Bars, Heather Powell and Heather Webb.

[Interim Executive Director's Report \(video recording link\)](#)

Interim Executive Director Nevitt referred to her written report and provided a brief summary. She introduced Washington Supreme Court Justice Mary Yu to answer questions with regard to the process for approving revised rules for discipline and incapacity. Discussion followed.

[President-Elect Report on July Board Retreat \(video recording link\)](#)

Pres-Elect Sciuchetti provided a report and preview of the July Board Retreat.

[Interview and Selection of 2020-2021 WSBA President-Elect \(video recording link\)](#)

Pres. Majumdar presented the only candidate for 2020-21 Pres-Elect, Gov. Brian Tollefson. Gov. Tollefson made remarks. Gov. Grabicki moved for the election of Gov. Brian Tollefson. Discussion followed. Motion passed unanimously.

[First Read: Ratification of Emergency Bylaw Amendment Art. VI.G Re Governor Elections \(video recording link\)](#)

Pres. Majumdar presented the topic and referred to the materials. He noted that this was a required first read and no action would be taken.

[Member & Public Comments \(video recording link\)](#)

Theresa Butler, President of the Mason County Bar Association and James E. Macpherson provided public comment.

[Reports of Standing or Ongoing BOG Committees \(video recording link\)](#)

Executive Committee. Pres. Majumdar reported on the work of the Committee, which met last week to plan for the July Board Meeting as well as meet with the Client Protection Fund Board and the Committee on Professional Ethics.

APEX Awards Committee. No report.

Personnel Committee. Gov. Stephens reported on the work of the Committee. He noted that the performance evaluation of the Interim Executive Director Nevitt would be taken up during this meeting, as well as the Committee's recommendation to remove Director Nevitt's interim status.

Legislative Committee. Gov. Sciuchetti reported on the work of the Committee, including a recommended policy regarding legislative activity of sections that will be taken up later on the agenda.

Nominations Committee. Gov. Sciuchetti reported on the work of the Committee. He noted that its role is to appoint committee chairs for the next fiscal year and it will be meeting to do so tomorrow.

Diversity Committee. No report.

Long-Range Planning Committee. Gov. Swegle reported on the work of the Committee, noting that with so many changes, it has not felt timely to engage in long-range planning. He shared some suggestions for future long-range planning. Discussion followed

Member Engagement Workgroup. No report.

Budget and Audit Committee. Pres. Majumdar read Treas. Clark's report regarding the work of the Committee. He provided details on the May financials noting that we have gone from a budgeted deficit to a substantial surplus. Discussion followed.

The WSBA Response to Our National Dialogue ([video recording link part 1, part 2](#))

Pres. Majumdar introduced this portion of the agenda including the purpose and intent behind it. He listed and recognized the many entities that have written publicly and to the WSBA calling for action.

Approval of Statement by Council on Public Defense. Council on Public Defense Vice-Chair Travis Stearns presented the Council's statement for approval as provided in the materials. Discussion followed. Gov. Grabicki moved for approval of the statement. Motion passed unanimously.

Mission Statement of the WSBA. Gov. Higginson presented the proposed revised mission statement as presented in the materials. Gov. Higginson moved for approval of the proposal. Discussion followed. Gov. Stephens moved to amend to add, "with a strong commitment to serving its members and the public." Discussion followed. Gov. Stephens moved to table to have this reviewed by as many people in the association as possible. Motion to table failed 5-7. Discussion followed. The motion to amend the proposal passed 9-3. Gov. Swegle moved to amend the proposal again to make it a *proposed* amendment to the mission statement for consideration and input, after which the Board will take it up again. It was clarified that the effect of the amendment would be to push the proposal out for comment and then put it back on a future agenda. Treas. Clark moved to call the question. Motion to call the question passed unanimously. Second motion to amend passed unanimously. The underlying motion, as amended twice passed unanimously. Govs. Hunter and Kang were not present for the votes.

Reports of Task Forces, Work Groups, Liaisons, and Other WSBA Entities ([video recording link](#))

Editorial Advisory Committee. Pres. Majumdar introduced Chair Ralph Flick and recognized the staff and committee for the magazine's recent selection as an honoree of the Public Relations Society of America (PRSA) - Puget Sound Chapter Board of Directors. Chair Flick referred to the materials and provided an overview of the work and approach of the committee. Chair Flick also provided information about the Letter to the Editor Policy. Discussion followed.

The WSBA Response to Our National Dialogue (Continued) ([video recording link](#))

Discussion with WSBA Diversity Committee Re Reaffirming the WSBA's Current 2013 Diversity and Inclusion Plan. Diversity Committee member Serena Sayani and Gov. Anjilvel presented the Committee's proposal, and specific actions, as presented in the materials. Discussion followed.

Reports of Task Forces, Work Groups, Liaisons, and Other WSBA Entities (Continued) ([video recording link](#))

Corona Task Force. Co-Chairs Michael Cherry and Kevin Plachy presented an overview of the work of the internal and external task forces to respond to the global pandemic. Discussion followed.

Council on Public Defense Matters ([video recording link](#))

Proposed Charter Revision. Vice-Chair Travis Stearns presented the Council's revised charter as provided in the materials, which will remove term limits for the Supreme Court Justice position on the Council. He noted Chief Justice Stephens affirms the proposal. Gov. Stephens moved for approval. Motion passed unanimously. Govs. Hunter and Kang were not present for the vote.

Comment on Amending CrR 3.1(f), CrRLJ 3.1(f), and JuCrR 9.3(a) to Require that Judges Consider Defense Requests for Expert Funds Ex Parte. Council Member Sophia Byrd McSherry presented the proposed comment as provided in the materials. She noted that the comment was initially presented to the Board in April and that since the April meeting, the Criminal Law Section has reviewed the proposal and is in support. Gov. McBride moved for approval. Motion passed unanimously. Govs. Hunter and Kang were not present for the vote.

Reports of Task Forces, Work Groups, Liaisons, and Other WSBA Entities (Continued) ([video recording link](#))

Ad Hoc Committee to Investigate Alternatives to Mandatory Malpractice Insurance for Consideration by WSBA and the Washington Supreme Court. Gov. Sciuchetti presented on the work of the Committee, including some of the alternatives they've explored, noting that he anticipates bring a proposal to the Board in late summer. Discussion followed.

Pro Bono and Public Service Committee Proposed Amendments to WSBA Bylaws Art. III(B)(4), APR 1(e), and GR 24 to Reduce Barriers to Access for Emeritus Pro Bono Status ([video recording link](#))

Co-Chair Nick Larson and Committee Members Althea Paulson and Bonnie Aslagson presented the proposed amendments of the Committee as provided in the materials. Gov. Higginson moved for approval of the proposal. Pres. Majumdar noted that the Bylaws change requires a second read. If this passes, his intent would be to send all the proposals together at the same time. Motion passed unanimously. Govs. Hunter and Kang were not present for the vote.

Proposed Comment to Northwest Justice Project 2020 Private Attorney Involvement Plan ([video recording link](#))

Co-Chair Nick Larson presented a proposed comment in support of the Northwest Justice Project's 2020 plan for private attorney involvement. Gov. Stephens moved for approval. Motion passed unanimously. Govs. Hunter and Kang were not present for the vote.

APEX Awards Committee Recommendations for 2020 Awards ([video recording link](#))

Gov. Knight noted that out of respect for the nominees and those that won't be receiving an award, the materials for this agenda item were provided confidentially. He requested a single motion approving the entire slate. Gov. Stephens moved for approval. Motion passed unanimously. Gov. Higginson abstained. Govs. Hunter and Kang were not present for the vote.

Budget and Audit Committee Items ([video recording link](#))

Second Read: Proposed Amendment to WSBA Bylaws Art. III.I.5 Re License Fee Exemptions Due to Hardship. Chief Regulatory Counsel Jean McElroy presented the proposal and the rationale for it. Discussion followed. Motion passed unanimously. Govs. Hunter and Kang were not present for the vote. Pres. Majumdar noted that he would send the amendment to the Court after the July meeting along with the other bylaws amendment. There were no unresolved objections to this course of action.

Proposed Reduction of the Client Protection Fund Assessment. Gov. Peterson moved for approval. Motion passed unanimously. Govs. Hunter and Kang were not present for the vote.

The WSBA Response to Our National Dialogue (Continued) ([video recording link](#))

WSBA Equity and Disparity Workgroup. Pres. Majumdar introduced the proposal as presented in the materials. Gov. Sciuchetti moved for approval. Motion passed unanimously. Govs. Higginson and Tollefson abstained. Govs. Grabicki, Hunter, and Kang were not present for the vote.

Resolution of the WSBA in Affirming the Rule 6 Program's Value and Role in Providing an Additional Path to Justice for Underrepresented Communities. Gov. Abell presented the resolution as provided in the materials. Discussion followed. Gov. Abell moved to amend the resolution to add to the second to last paragraph the following language, "Be it further resolved that the Board of Governors respectfully encourages the Washington Supreme Court to amend the Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules dated June 12, 2020 to include qualified graduates of the Program." Motion to amend passed unanimously. The resolution as amended passed unanimously. Govs. Hunter and Kang were not present for the votes.

Budget and Audit Committee Item (Continued) ([video recording link](#))

Results of Process and Execution Audit. Joseph Purvis and Mitchell Hansen of Clark Nuber presented. Discussion followed, including remarks by Treas. Clark. Chief Financial Officer Jorge Perez reported on actions taken to respond to the audit results.

The WSBA Response to Our National Dialogue (Continued) ([video recording link](#))

Resolution of the WSBA in Response to National Dialogue. Pres. Majumdar presented the resolution and suggested adding the two statements received after its drafting from the Washington State Bar Foundation and the Association of Washington Assistant Attorneys General and the Solidarity Caucus of the Professional Staff Organizing Committee. Gov. Sciuchetti moved for approval. Discussion followed. Motion passed unanimously. Govs. Hunter, Kang, and Knight were not present for the vote.

Recommendation Re Proposed Policy Re Legislative Activity of Sections ([video recording link](#))

Govs. Sciuchetti and Higginson presented the proposed policy as provided in the materials. Discussion followed. Gov. Stephens proposed to amend the proposed policy so that it reads "...supersedes and replaces any and all prior policies on the same subject as it applies to sections." Discussion followed. Gov. Grabicki moved to table. Motion to table failed for lack of a second. Motion to call the question passed unanimously. Govs. Grabicki, Hunter, Kang, and Knight were not present for the vote. Motion to amend passed 9-2. Govs. Hunter, Kang, and Knight were not present for the vote. Motion to approve the policy as amended was approved 10-1. Govs. Hunter, Kang, and Knight was not present for the vote. Pres. Majumdar asked Gov. Grabicki to reach out to concerned sections for a possible future amendment to the policy.

Diploma Privilege ([video recording link part 1](#), [part 2](#), [part 3](#))

Pres. Majumdar introduced and provided the procedural background on the topic.

APR Board Permission. Treas. Clark moved for approval of the APR Board's proposal. Discussion followed, including public comment. Motion passed unanimously. Gov. Tollefson abstained. Govs. Grabicki, Hunter, Kang, Knight, and Swegle were not present for the vote.

Maintain Existing Refund Policy. Treas. Clark deferred to Chief McElroy to present information on the proposal. Discussion followed including public comment. Motion passed unanimously. Govs. Grabicki, Hunger, Kang, and Knight were not present for the vote.

Request for Contingency Plan in the Event the Summer Bar Exam Cannot be Held Safely. Pres. Majumdar introduced JD graduates Efrain Hudnell and Katie Koch and they presented concerns about the need to provide an alternative path to licensure for those not benefiting diploma privilege in the event the exam *cannot* be held safely. Discussion followed, including public comment. Gov. Stephens moved that the Board ask staff to do contingency planning regarding LLM exam takers in the event we have to cancel the July exam and find other ways to assist them. Motion passed 4-2. Govs. Higginson and Tollefson abstained. Govs. Abell, Grabicki, Hunter, Kang, Knight, and Swegle were not present for the vote.

Additional discussion took place regarding diploma privilege, including additional public comment. Gov. Higginson moved that we forward member comments about diploma privilege and the future of the bar exam to the Court. Gov. Higginson accepted a friendly amendment to submit the comments we've received to date in the redacted form we have in our materials and that the President be directed to circulate the Court's decision to the members for comment by July 31. Motion failed for lack of a quorum.

The meeting resumed on June 27, 2020. Pres. Majumdar ruled on a dispute regarding Roberts Rules of Order. He ruled that abstentions are noted and recorded but do not count as a yay or nay vote.

The Board returned to discussion on Gov. Higginson's motion from the previous day. Motion passed unanimously. Govs. Hunter and Swegle were not present for the vote.

Evaluation of the Interim Executive Director and Consideration of Removal of Interim Title ([video recording link part 1](#), [part 2](#), [part 3](#))

Gov. Stephens walked through the materials provided in the public and confidential materials and presented the results of the evaluation.

Pres. Majumdar announced the basis and purpose for moving into executive session and that public session would resume at 9:40 AM. The Board moved into Executive Session at 9:03. Pres. Majumdar announced extensions of executive session to 10:20 AM, 10:45 AM, and 11:05 AM.

Pres. Majumdar resumed public session at 11:05 AM.

Gov. Stephens presented and moved for acceptance of the rating and qualitative statement in response to the evaluation of the Executive Director. Motion passed unanimously. Gov. Higginson abstained. Govs. Abell and Swegle were not present for the vote.

Gov. Grabicki moved to remove the title of interim subject to negotiation of a contract to be led by Pres. Majumdar and Pres-elect Sciuchetti. Gov. Stephens confirmed this was also the recommendation of the Personnel Committee. Discussion followed. Motion passed unanimously. Govs. Higginson and Stephens abstained. Govs. Abell and Swegle were not present for the vote.

Committee on Professional Ethics Matters ([video recording link](#))

Proposed Amendments to Comment 4 to RPC 1.16 and New Additional Washington Comments 16 to RPC 1.13. Committee Member Brooks Holland presented the Committee's proposal. Discussion followed. Gov. Grabicki moved for approval of the comments. Gov. Peterson moved for an amendment to remove the "however" clause. It was accepted as a friendly amendment. Motion passed unanimously. Gov. Hunter abstained. Govs. Abell and Swegle were not present for the vote.

Proposed Amendment to RPC 7.2(b)(2), 5.4, and 1.5(e)(2) Re Fee Sharing with Nonprofit Lawyer Referral Services. Professional Responsibility Counsel Jeanne Marie Clavere and Brooks Holland presented the Committee's proposal. Discussion followed. Gov. Grabicki moved to propose the amendment to the Court. Motion passed unanimously. Govs. Abell and Swegle were not present for the vote.

Interviews and Selection of 2020-2023 WSBA At-Large Governor ([video recording link part 1, part 2, part 3](#))

Pres. Majumdar presented the proposed process for the at-large election as presented in the materials. Gov. Stephens moved for approval. Motion passed unanimously. Govs. Abell, Grabicki, Hunter, and Swegle were not present for the vote.

Pres. Majumdar administered the election. The first candidate was Kim Sandher who provided her opening remarks and responded to the standard questions. The next candidate was Kristine Kuenzli who provided her opening remarks and responded to the standard questions. Jean Cotton followed and withdrew her candidacy. Michael Hall followed and provided his opening remarks and responded to the standard questions. Candidate Connie Wan followed with her opening remarks and responses to the questions. Candidate Lisa Mansfield followed with her statement and responses to the standard questions. Candidate C. Olivia Irwin followed with her presentation and responses to the standard questions. Luis Beltran followed with his

presentation and responses to the standard questions. Laura Sierra was the next candidate. She presented her initial statement and answered the standard questions. Allison Foreman was the next candidate. She presented her initial statement and answered the standard questions. Discussion followed. The Board moved to its first round of voting. The results were 6 votes for Lisa Mansfield, 3 votes for Kristine Kuenzli, 2 votes for Sandher, and 2 votes for Wan. Gov. Hunter was not present for the vote.

With no candidate receiving more than 50% of the votes, Pres. Majumdar announced that we would move to a run-off election between the top two vote getters, Kristine Kuenzli and Lisa Mansfield. Discussion followed. Gov. Knight moved to invite the top two vote getters back for a 30 second response to anything that came up in the discussion. Gov. Knight accepted a friendly amendment to give them each 2 minutes. Motion passed unanimously. Gov. Hunter was not present for the vote. The Board moved to its second round of voting. The results were 11 votes for Lisa Mansfield and 3 votes for Kristine Kuenzli.

Proposed Policy: Transparent Salary Information ([video recording link](#))

Pres. Majumdar noted that there is no proposal before the Board and provided an opportunity for discussion. Gov. Stephens moved to send the topic to the Personnel Committee. Discussion followed. Gov. Stephens withdrew his motion. Gov. Higginson moved to have published on the WWSA website (1) the written compensation policy, (2) a range of all salaries and paid classification bands, (3) a list of current starting, mid points, and ceilings, (4) a list of current employee job titles, and (5) a written summary of other benefits. Discussion followed. Gov. Grabicki suggested that the President, President Elect, and Treasurer work with the leadership team to develop a proposal for July that doesn't involve identifying individual salaries. Gov. Sciuchetti moved to amend Gov. Higginson's motion to adopt Gov. Grabicki's proposal. Pres. Majumdar recommended that the language be amended to allow for more than one proposal. Gov. Sciuchetti accepted that as a friendly amendment. Amended motion passed unanimously. Govs. Abell and Swegle were not present for the vote.

Governor Roundtable ([video recording link](#))

Gov. Anjilvel requested that the Governors make a donation to the Washington State Bar Foundation.

ADJOURNMENT

There being no further business, Pres. Majumdar adjourned the meeting at 5:12 PM on Saturday, June 27, 2020.

Respectfully submitted,

Terra Nevitt

Terra Nevitt

WSBA Interim Executive Director & Secretary