

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS SPECIAL MEETING

Minutes

Held Virtually

September 17-18, 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 Thursday, September 17, 2020 at 9:02 AM. Governors in attendance were:

Hunter Abell
Sunitha Anjilvel
Daniel D. Clark
Peter J. Grabicki
Carla Higginson
Jean Kang
Russell Knight
Tom McBride
Bryn Peterson
Kyle D. Sciuchetti
Alec Stephens
Paul Swegle
Judge Brian Tollefson (ret.)
Brent Williams-Ruth

Also in attendance were Immediate Past President William D. Pickett, Gov-Elect Lauren Boyd, Gov-Elect Brett Purtzer, Gov-Elect Mathew Dresden, Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Chief Financial Officer Jorge Perez, Chief Communications Officer Sara Niegowski, Interim Director Advancement Kevin Plachy, Executive Administrator Shelly Bynum, Betsylew Miale-Gix (WSAJ), Nancy Hawkins (Family Law Section), and James E. Macpherson (Washington Defense Trial Lawyers).

Appointment of Gov. Brent Williams-Ruth ([link](#), [link](#))

Gov. Stephens moved to elect Brent Williams-Ruth to fill the open seat representing congressional district 8. Motion passed unanimously. Govs. Kang and Tollefson were not present. Gov. Williams-Ruth was sworn in immediately by Chief Justice Debra Stephens.

Strategic Goals ([link](#), [link](#))

Pres-Elect Sciuchetti addressed the purpose of developing a long-term strategy for the organization. He introduced WSBA Strategy & Operations Manager Ana LaNasa-Selvidge to facilitate the discussion. Pres. Majumdar read a public comment from Nancy Hawkins liaison from the WSBA Family Law Section Executive Committee. Jim MacPherson also provided public comment. Discussion followed including a review of other bar association goals; a discussion of the overall process for developing goals, including gathering broader input and the development of strategies; potential tension between serving the public and serving the members; and specific suggestions for goals relating to access to justice, race equity, diversity and inclusion, access to court records, WSBA facilities, and professionalism.

Gov. Clark suggested the following goals: (1) The Washington State Bar Association should provide excellent resources to help all of its members achieve professional excellence and success in the practice of law, in service to their clients and public and to champion justice. (2) To uphold and elevate the standard of honor, integrity, and public confidence in the legal profession. (3) To manage the business of the State Bar Association in a prudent, efficient and cost-efficient manner. (4) To promote diversity, equity and inclusion in the legal system of Washington and to promote access to justice and improved public confidence, trust and respect of members of the public in our legal system and bar association.

Gov. Grabicki suggested an overall aspirational goal addressing access to justice, race equity, and diversity and inclusion as well as two practical goals: 1) court records access and 2) WSBA facilities. He also suggested reestablishing the Professionalism Committee.

Gov. Higginson moved for adoption of Gov. Clark's proposed strategic goals for discussion purposes. Gov. Grabicki moved to table to the end of the discussion. Motion to table passed 7-4. Govs. Kang, Swegle, and Tollefson were not present for the vote.

Discussion continued about the process for developing goals and specific goal suggestions, including fostering professional connections among the membership, and assisting the membership and courts to move electronically.

The Board recessed from 10:41AM to 10:54AM.

Pres-elect Sciuchetti read a public comment from Dan Bridges. Manager LaNasa-Selvidge shared her summary of the discussion so far. Discussion followed about specific goals including exploring better investment of our cash reserves, attracting and retaining employees and strengthening the workplace culture, separating diversity and inclusion from the access to justice work, restoring a robust member services program, measuring member satisfaction, and the challenges facing the organization. Pres-Elect Sciuchetti sought concerns about the list developed during the meeting. No concerns were raised. The Board discussed next steps, including additional work by the Strategic Planning Committee, additional Board discussion, and opportunity for member input. Gov. Higginson withdrew her motion with the consent of the second. Pres-Elect Sciuchetti indicated that the working paper would be sent to the Long Range Strategic Planning Committee for additional development.

The Board recessed from 11:56AM to 1:02PM.

Approve Proposal to Annotate Minutes with Video Links ([link](#))

Pres. Majumdar presented the consensus recommendation of the Executive Committee to bookmark the meeting minutes with video links to allow members to observe the full discussions of the Board. Discussion followed including the reason the issue was before the Board and the challenges inherent in summarizing discussion. Gov. Grabicki moved for approval of the proposal. Motion passed 10-1. Gov. Tollefson abstained from the vote. Govs. Kang and Peterson were not present.

Consent Calendar ([link](#))

Pres. Majumdar asked if anyone wished to remove an item from the consent calendar. No requests were made. The consent calendar was approved unanimously. Govs. Higginson, Kang, and Tollefson were not present for the vote.

President-Elect's Report on Board Retreat ([link](#))

Pres-Elect Sciuchetti summarized the retreat that morning, which resulted in some work on draft goals, which will be further developed by the Long Range Strategic Planning Committee and circulated for comment.

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

Pres. Majumdar noted it was his last meeting and expressed his appreciation.

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

Executive Director Nevitt reported on the opportunities presented by a virtual workplace, equity training to be conducted next year, the bar exam, and practice management guides. She also introduced new Chief Regulatory Counsel Renata Garcia. Director Nevitt deferred to Chief Communications Officer Sara Niegowski to present on plans to remotely celebrate the APEX Award winners and the quarterly member sentiment survey. Discussion followed about contingency planning for the February bar exam.

Member & Public Comment

There were no public comments.

Presentation on WSBA's Diversity, Equity & Inclusion Programming ([link](#))

Equity & Justice Manager Diana Singleton and Equity & Justice Lead Paige Hardy presented on the makeup, history, approach, and work of the WSBA's Equity & Justice Team, as well as the WSBA's history of commitments to diversity, equity, and inclusion through the Diversity and Inclusion Plan adopted in May 2013 and participation in the Alliance for Equal Justice and the Race Equity and Justice Initiative. Discussion followed including a request that the slides be sent to the Board, proposed next steps, member feedback about the work, consistency with GR 12.2, the use of a public advisory board, the access to justice conference, and the focus of WSBA's equity work.

The Board recessed from 2:51PM to 3:02PM.

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

Executive Committee. Pres. Majumdar reported on the most recent Executive Committee meeting. He noted that his intent is for each entity to meet with the Executive Committee annually and the Board on a three-year rotation. He also reported on the meeting-minutes proposal, which the Board had adopted earlier in the meeting. Finally, he reported on the Committee's discussion of a request to sign on to or draft an amicus brief in a matter regarding pro se representation by parents and the committee's decision to wait and see if the Supreme Court accepts cert in the case.

APEX Awards Committee. No update.

Personnel Committee. Gov. Stephens reported that the Committee approved a list of investigators pursuant to the Board's anti-harassment policy. He noted there will be no further actions this year and thanked the committee members. Pres. Majumdar noted that the ED contract should be taken up by Personnel but that he and Pres-Elect Sciuchetti had not yet finished their work. The Board heard a public comment from former Human Resources Director Felix Neals. Discussion followed about the Executive Director job description.

Legislative Committee. Gov. Sciuchetti noted that the Committee would be working closely with the Legislative Review Committee in the coming year.

Nominations Review Committee. Gov. Sciuchetti noted that the Committee will meet on September 28.

Diversity Committee. Gov. Anjilvel reported on committee transitions.

Long-Range Planning Committee. Gov. Swegle shared his enthusiasm for the work done at the retreat this morning and the idea of diversifying our WSBA footprint.

Member Engagement Workgroup. Treas. Clark reported that the Committee has not met recently but will meet next year with new co-chairs.

Budget & Audit Committee. Treas. Clark referred to his detailed report in the materials, noted the strong financial results this year, and thanked the outgoing committee members for their service.

Judicial Information Systems Committee Request for Support for Adoption of Revisions to JISCR 13 ([link](#))

Vicky Cullinane presented the JISC request for support for revisions to JISC Rule 13 in order to address data sharing across court systems. Discussion followed regarding the current landscape of data sharing. Gov. Grabicki moved to approve a comment supporting the change to the rule. Gov. Stephens sought clarification on what the next steps will be. It was clarified that Pres-elect

Sciuchetti would draft a letter of support using a template provided by Vicky Cullinane. Motion passed unanimously with one abstention. Govs. Kang and Knight were not present for the vote.

Equity & Disparity Work Group Update ([link](#))

Gov. Stephens, Chair of the workgroup reported that he anticipates the first meeting of the Work Group will be in October, the first substantive report will occur in November 2020, and the group will bring forth proposed rule changes no later than September 2022. He also reported on the Work Group's membership, and thanked staff liaison Paige Hardy for her work.

Governor Liaison Reports ([link](#))

Gov. Stephens reported on his work with the Civil Rights Law Section, which is hosting a virtual concert and award ceremony. Honorees are Neil Fox & Lyla Silverstein, Rev. Harriet Walden, Ron Ward, Mora Villapando, and Sandy Restreppo. Gov. Anjilvel reported on her participation on the Race and Criminal Justice Task Force chaired by Profession Chang. She noted that the meetings are open to all who are interested and that the group will meeting monthly. Gov. Williams-Ruth encouraged anyone that has time next Friday to attend a public reinstatement hearing of the Character & Fitness Board.

Budget & Audit Committee Matters

Approval of the 2021 Keller Deduction ([link](#)). Treas. Dan Clark referred to the materials and General Counsel Shankland provided an overview of the proposal to set the Keller Deduction at \$3.85. She also explained the applicable standards, including the distinction between the standard set forth in GR 12.2 and the *Keller* case standard. Treas. Clark moved to approve the recommendation. Motion passed unanimously. Govs. Abell, Kang and Knight were not present for the vote.

Approval of the Sections Administration Per-Member-Charge ([link](#)). Interim Director of Advancement Kevin Plachy presented the proposal to set the Sections Per-Member-Charge at \$18.18, including the history of the charge, and an overview of restructuring that has allowed WSBA to reduce the overall cost allocation to sections. He noted the need to keep an eye on section membership numbers, which could impact the charge. Gov. Peterson moved for approval. Discussion followed about section membership trends. Motion passed unanimously. Gov. Kang was not present for the vote.

Presentation and Approval of the WSBA FY21 Budget ([link](#)). Chief Financial Officer Jorge Perez presented the proposed FY 2021 Budget and the history of its development, including the implementation of new budgeting and forecasting software. He noted that the budget reflects, in error, the per-member-charge at \$18.23 rather than \$18.18 and the net change will be approximately \$9,000. Discussion followed including the impact of license fees, appreciation for Treas. Clark, the nature of the budget shortfall, and the impact of moving to virtual meetings. Gov. Stephens moved to adopt the budget. Motion passed 11-1 with one abstention. Gov. Kang was not present for the vote. Discussion followed about how the loss reflected in the budget relates to the reserves.

Approval of the 2022 and 2023 WSBA Member License Fee ([link](#)). CFO Perez presented the proposal to reduce the 2022 and 2023 license fees by \$10 and the accompanying analysis. Discussion followed about the fiscal impact, future dues increases, potential perceptions around the decrease, uncertainty around the lease and impact of COVID19. Gov. Higginson moved to reduce the attorney member dues from \$458 to \$448 per year for 2022 and 2023 and a pro rata deduction for new attorney dues. Gov. Higginson moved to call the question and then withdrew her motion to allow the next two governors in the queue to speak. Gov. Williams-Ruth moved to table and then withdrew his motion to allow Gov. Higginson to renew her motion to call the question. Motion to call the question failed to achieve a 2/3 majority, 8-5. Gov. Swegle was not present for the vote. Gov. Sciuchetti moved to table the motion to the November meeting. Discussion followed about the purpose of tabling. Motion passed 7-6. Gov. Swegle was not present for the vote. Gov. Sciuchetti moved to table discussion on other license fees. Motion passed 10-1 with one abstention. Govs. Peterson and Swegle were not present for the vote.

The Board recessed at 6:29PM and resumed at 9:00AM on Friday, September 18, 2020.

Annual Discussion with the Deans of Washington State Law School ([link](#))

Dean Rooksby presented on behalf of Gonzaga Law School, including information about the student body, noting that the current entering class is the most diverse ever. He also emphasized his interest in collaborating with WSBA in examining the bar exam. Dean Barnes presented on behalf of the University of Washington Law School. He shared his hope for the future and his view that the multiple crises we are dealing with are an opportunity; reported that the law school is more than 90% online; expressed appreciation for the opportunity to work collaboratively with the law schools, WSBA, and the Court related to the bar exam and flagged that there are still open questions about the February 2021 exam; reported that WLI activities had been curbed due to the pandemic; and spoke to the diversity of UW Law School classes. Dean Clark presented on behalf of Seattle University School of Law. She also expressed optimism and discussed the challenges current graduates will face due to the circumstances around them; she described the diversity of the incoming class; reported the law school is over 90% online and shared their planning for spring; she also spoke to the collaboration on diploma privilege and the bar exam; and race equity efforts at the law school. Discussion followed regarding enrollment trends, the reasons for increased diversity in law school classes, mentorship, lack of summer employment and learning opportunities, connecting law students and the bar, the influence law school have on students, change in pursuit of racial equity, diploma privilege, disparate impacts of the bar exam, and the cost of law school.

Approve Rule Changes Proposed by Civil Litigation Rules Revision Task Force ([link](#))

Task Force Chair Dan Bridges presented the history of the project and the proposed rule changes as provided in the materials. Discussion followed about removal of the cooperation requirement, how changes might impact law school education, impact of the proposals on the cost of litigation, and public input. The Board took public comment from Betsylew Miale-Gix, Jean Cotton, and Jim MacPherson. Gov. Tollefson moved for approval of the proposed rules. Motion passed unanimously. Govs. Abell and Kang were not present for the vote.

The Board recessed at 11:08AM and resumed at 11:13AM.

MCLE Board Request for Support ([link](#))

Chair Asia Wright presented the MCLE Board's proposal to amend APR 11 to require at least one ethics credit per three-year reporting cycle in the area of equity, inclusion, and the mitigation of implicit and explicit bias in the legal profession and the practice of law. Gov. Knight moved that the Board support the MCLE Board's rule proposal. Discussion followed regarding the merits of the proposal, ideas for program effectiveness, and providing the credits for free and existing WSBA CLE programming. The Board took public comment from Bob Wayne, Dan Bridges, and Betsylew Miale-Gix. Motion passed 11-2. Gov. Kang was not present for the vote. Gov. Higginson moved that the CLE be provided by WSBA for free. Pres. Majumdar directed that the Board take up the conversation later in the day and moved to the next agenda topic.

Approve Proposed RPC Amendment as Recommended by the Ad Hoc Committee to Investigate Alternatives to Mandatory Malpractice Insurance ([link](#), [link](#))

Gov. Sciuchetti, Chair of the Committee introduced Professor Hugh Spitzer to present the Committee's revised proposal to amend the Rules of Professional Conduct to require disclosure of insufficient or lack of insurance to prospective clients and clients. Committee member Michael Cherry reported that he reached out to several insurance companies and learned 80% of the policies are wasting policies. Discussion followed about policy limits and resolution of claims and the current proposal before the Court. The Board heard public comment from Bob Wayne. Gov. Grabicki moved for approval of the proposed amendment. Discussion continued on the motion. Gov. Knight moved to remove from the proposal paragraph (c)(3) and comment 10 relating to ongoing notice requirements and to change the coverage limits from \$250K/\$500K to \$100K/\$300K. Discussion followed on the motion to amend, including the issue of giving notice when commencing a new matter for a client.

The Board recessed at 12:31PM and resumed the meeting at 1:00PM

Gov. Grabicki noted that he accepted Gov. Knight's amendment as friendly. Motion passed unanimously. Govs. Kang and Swegle were not present for the vote.

MCLE Board Request for Support (Continued) ([link](#))

Gov. Higginson amended her motion to clarify that it was for WSBA to continue to offer the three free CLE credits approved last year. Discussion continued regarding the fiscal impact. Pres. Majumdar asked whether Gov. Higginson was amenable to tabling the agenda item to the November meeting, when we might also know more from the Court. She indicated she was not. Gov. Stephens moved to table to discussion to the November meeting. Gov. Stephens withdrew his motion. Motion passed unanimously. Govs. Abell and Kang were not present for the vote.

Revised WSBA Meeting Resolution for Publication in Compliance with the Open Public Meetings Act ([link](#))

Gov. Sciuchetti moved for approval. Motion was approved unanimously. Govs. Abell and Kang were not present for the vote.

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

Updated Performance Guidelines for Persistent Offender Cases. Professor Boruchowitz presented the proposal of the Council to update the Performance Guidelines to provide guidance on persistent offender cases, which were left out of the original guidelines. Gov. Williams-Ruth moved for approval. Motion passed unanimously. Govs. Abell and Kang were not present for the vote.

COVID Guidance for Public Defense Offices. Professor Boruchowitz presented the proposed advice on reopening courts, which is intended to help interpret existing guidance in light of the Covid pandemic. He noted that they sought input from the Criminal Law Section, which had no concerns. Gov. Grabicki moved for approval. Motion passed unanimously with one abstention. Govs. Abell and Kang were not present for the vote.

The Board recessed at 1:47PM and resumed at 2:00PM.

Approve Request to Increase Size of the Law Clerk Board ([link](#))

Chief Regulatory Counsel Renata Garcia presented the proposal to increase the size of the Law Clerk Board, including an overview of the regulatory framework for the Board and the Law Clerk Program, growth of the program, and the fiscal impact. Gov. Grabicki moved for approval. Discussion followed regarding the value of the program, the fiscal impact, the program Oregon is developing, and reciprocal admission. Motion passed unanimously. Govs. Abell and Kang were not present for the vote.

Washington State Bar Foundation Items ([link](#))

Approve FY21 Trustee Appointments. Pres. Kristina Larry presented the annual report of the Foundation as well as the FY21 trustee appointments. Gov. Anjilvel moved for approval of both requests. Gov. Stephens asked that we bifurcate the motion. Gov. Anjilvel did not object. Motion to approve the trustee appointments passed unanimously with one abstention. Govs. Abell, Kang, and Knight were not present for the vote.

Approve Proposed Change to Funding Structure for the Powerful Communities Project. Pres. Kristina Larry presented the proposed change the reasons for it. Motion to change the structure for funding the project passed unanimously. Govs. Abell, Kang, and Knight were not present for the vote.

The Board recessed from 2:30PM to 3:00PM.

President's Comments, Swearing in of New Governors and Officers, and Recognition of Outgoing Governors ([link](#), [link](#))

Pres. Majumdar presented the President's Award to former Governor James Doane, who was not present. The new governors and officers were sworn-in by Chief Justice Stephens. Outgoing governors and officers were recognized for their service.

ADJOURNMENT

There being no further business, Pres. Majumdar adjourned the meeting at 4:09 PM on Friday, September 18, 2020.

Respectfully submitted,

Terra Nevitt

Terra Nevitt
WSBA Interim Executive Director & Secretary