

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS SPECIAL MEETING

Public Session Minutes

Seattle, WA

February 15, 2018

The Special Meeting Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by Acting President Bill Pickett on Thursday, February 15, 2018, at 12:40 p.m., at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

Dan W. Bridges  
Daniel D. Clark  
James K. Doane (phone)  
Angela M. Hayes (phone)  
Kim E. Hunter  
Jean Y. Kang (phone)  
Rajeev D. Majumdar (phone)  
Christina A. Meserve (phone)  
Athan P. Papailiou  
G. Kim Risenmay  
Kyle D. Sciuchetti  
Alec Stephens  
Paul Swegle  
Judge Brian Tollefson (ret.)

Also in attendance were Immediate Past-President Bill Hyslop, Executive Director Paula Littlewood, General Counsel Sean Davis, Chief Regulatory Counsel Jean McElroy, Chief Disciplinary Counsel Doug Ende, Director of Human Resources Frances Dujon-Reynolds, Chief Operations Officer Ann Holmes, Director of Advancement/Chief Development Officer Terra Nevitt, Chief Communications and Outreach Officer Sara Niegowski (phone), and Executive Assistant Margaret Shane. President Brad Furlong was not present for the meeting.

President-elect Pickett advised the Board and guests in attendance that President Furlong would not be available for most of the Special Meeting and had asked President-elect Pickett to preside over the meeting as Acting President in his absence.

**REQUEST FROM WSBA CIVIL RIGHTS LAW SECTION TO PUBLICLY COMMENT IN SUPPORT OF SB 6052 (ELIMINATE DEATH PENALTY IN WASHINGTON STATE)**

Governor Stephens advised that the death penalty is a priority area for the Civil Rights Law Section and the Section would like the authority to speak as a section on this topic. He noted that the Section believes the request fits under GR 12, especially as it relates to the administration of justice; i.e., is death an appropriate penalty and should the death penalty be a part of criminal justice statutes. Discussion ensued regarding the following topics: the death penalty being a human issue; the right that Sections and Section leaders should have to voice and present issues relevant to their members and mission; the feasibility of Sections using language to clearly distinguish the Section from WSBA as a whole; the importance of WSBA being perceived as speaking with one voice; and the overtly political nature of the issue. In answer to an inquiry regarding Board precedent on this issue, Executive Director Littlewood reviewed the history, which included a Resolution to study the death penalty in 2000; a report issued by a subcommittee of the Council on Public Defense on the cost of the death penalty; and the adoption of that report by the Board in 2007 with one amendment.

Governor Papailiou moved for a determination that the request satisfies the requirements of GR 12. Motion passed unanimously. Governor Stephens moved that the Civil Rights Law Section be allowed to publicly comment on the death penalty issue and urged the Board to allow the Section to speak on this issue. Concerns were raised regarding clarification of the request and parameters around the Section's comments. Kathleen Kline and Fred Diamondstone, At-Large members of the Civil Rights Law Section, responded by stating that the Section is only requesting approval to send the letter, nothing further, and in light of the bill passing in the Senate the previous night, the letter would be modified so that it would be directed to the House. In addition, it was observed that the letter clearly states that it is on behalf of the Section only. Governor Bridges moved to amend the motion to give authority to the Section to issue the letter as stated, with the exception that the letter be sent to the House rather than the Senate, and the proviso that the Section needs to return to the Board if it wants to expand the request. Motion to amend passed 13-0-1. Governor Risenmay abstained. Original motion as amended passed 13-1-0.

**INITIAL TERMS OF THREE NEW BOARD OF GOVERNOR MEMBERS AND POTENTIAL WSBA BYLAW AMENDMENTS (first reading)**

Governor Bridges raised a point of order, observing that it appeared to him that the proposals had not been posted until the morning of the Special Meeting. General Counsel Davis replied that the proposals were posted on the website the previous day.

Executive Director Littlewood noted that an amendment to the WSBA Bylaws is not needed since the current Bylaws already sets out the process. General Counsel Davis explained the two options contained in his memo to the Board and noted that the language already in the Bylaws makes it clear how the length of terms and subsequent elections would be structured after an initial election in 2018. He stated that a Bylaw amendment is not necessary to proceed with elections in 2018, but that the Board could adopt additional amendments to adjust the process. Discussion ensued regarding whether to bring all three new members on at one time, which would not need a Bylaw amendment, or to bring one new member on each year for three years, which would need a Bylaw amendment. Governor Risenmay stated that the Bylaws currently require a 17-member Board of Governors and three positions are currently vacant. He moved to fill the vacancies on the Board in accordance with current Bylaws vacancy procedures. Motion died for lack of a second. Acting President Pickett stated that a motion was not needed because the current Bylaws already address this situation. Governor Majumdar moved to table until the May 17-18, 2018, Board meeting. Discussion ensued regarding making a decision at this meeting; the customary practice of the Board being to fill open positions and to stagger terms; and concern regarding bringing three new members on the Board at once.

Concern was expressed regarding recruitment of public members with little lead time. Executive Director Littlewood replied that the process for recruiting public members has been in place for many years and that recruitment of public Board members would use the same process as recruitment of public members for the WSBA's regulatory boards. Immediate Past-President Hyslop stated that this issue has been in front of the Board for four to five years, starting with two years of work by the Governance Task Force; then the Board spent a full year reviewing the Task Force recommendations, and another year writing the Bylaws amendments.

He stated that the issue of adding new members was resolved in 2016 and expressed concern that some current Board members simply oppose the decision to add new members and would like to forestall its implementation. He stated that delaying implementation is not the prerogative of the Board at this time; the Bylaws have been adopted and the Supreme Court has issued an Order; the three new positions should be filled immediately; to table making a decision about the process until May would do nothing other than delay implementation into next fiscal year. He stated that the Board has all the information it needs to make a determination regarding the election process. Discussion ensued regarding the following topics: that the 2016 Bylaws amendments were not a decision of the current Board and Bylaw amendments are not set in stone and can be changed; that the Board is obligated to proceed with electing the new Board positions in accordance with directive of the Supreme Court's Order; the anti-trust implications of not proceeding with the election of the new members; and that delay of implementation would be a violation of the WSBA's Bylaws, which require vacancies to be filled. Governor Bridges opined that the Supreme Court Order does not tell the Board it has to fill the three vacancies; rather it says the Board may fill the vacancies; that the addition of two public members on the Board would not resolve any anti-trust issues; and that the North Carolina Dental Board case does not apply to bar associations. The Board was reminded that this Special Meeting was called to decide how to elect the three new Board members; those seeking to delay implementation were urged to set forth an alternative proposal regarding the election process. It was observed that delaying implementation because some Board members disagree with the Court Order is not appropriate.

Governor Majumdar's motion to table until the Board's May 17-18, 2018, meeting passed 9-4-1. Governor Clark abstained. It was requested that the proponents of the motion to table prepare a recommended approach for the Board to vote on at the May 2018 Board meeting. Frustration was expressed that this meeting was a waste of time. Acting President Pickett stated that before adjourning this meeting the Board needs to discuss what is going to occur between this meeting and the May 2018 Board meeting so that the issue can be resolved at that time. He added that the Supreme Court will expect an explanation of what the Board is doing when the board and the Court meet on March 9, 2018. He concluded by stating that the Board needs to have a discussion regarding how the Board members work together

productively. Governor Bridges advised that he had forwarded to President Furlong, Acting President Pickett, and General Counsel Davis a set of proposed Bylaw amendments, one of which is to delete the provisions adding the three new Governors, and if that amendment passes, this discussion becomes moot.

### **ADJOURNMENT**

There being no further business in Public Session, the Special Meeting Public Session was adjourned at 2:00 p.m. on Thursday, February 15, 2018, to go in to Executive Session in order to receive advice from General Counsel Davis. In response to an inquiry regarding whether the Board would return to Public Session, Acting President Pickett announced that the Board would not return to Public Session at this meeting.

Respectfully submitted,

*Paula C. Littlewood*

Paula C. Littlewood  
WSBA Executive Director & Secretary