

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING MINUTES

Held Virtually

January 13-14, 2022

[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 Brian Tollefson on Thursday, January 13, 2022 at 9:05 AM. Governors in attendance were:

Hunter Abell
Francis Adewale
Sunitha Anjilvel
Lauren Boyd
Pres. Elect Daniel D. Clark
Jordan Couch
Matthew Dresden
Carla Higginson
Treas. Bryn Peterson
Brett Purtzer
Serena Sayani
Alec Stephens
Brent Williams-Ruth

Also in attendance were Paul Apple, Executive Administrator Shelly Bynum, Meng Li Che, Michael Cherry (Practice of Law Board), Chief Disciplinary Counsel Doug Ende, Volunteer Engagement Advisor Paris Eriksen, Cameron Fleury, Chief Regulatory Counsel Renata Garcia, Tamara Garrison, Practice Management Advisor Margeaux Green, Nancy Hawkins (Family Law Section), Associate Director of Regulatory Services Bobby Henry, Director of Human Resources & Chief Culture Officer Glynnis Klinefelter Sio, Community Outreach Specialist Mike Kroner, Chief of Staff Ana LaNasa Selvidge, Kimberly Loges, Sections Program Specialist Carolyn MacGregor, James E Macpherson (Washington Defense Trial Lawyers), Member Engagement Specialist Curtiss Melvin, Executive Director Terra Nevitt, Chief Communications & Outreach Officer Sara Niegowski, Broadcast Services Manager Rex Nolte, Chief Financial Officer Jorge Perez, Kari Petrsek (Solo and Small Practice Section), Director of Advancement Kevin Plachy, Immediate Past President Kyle Sciuchetti, General Counsel Julie Shankland, Chief Equity & Justice Officer Diana Singleton, Equity & Justice Specialist Bonnie Sterken, and Member Services & Engagement Manager Julianne Unite.

Consent Calendar ([link](#))

Pres. Tollefson inquired as to whether any governor wished to remove any item from the Consent Calendar. Gov. Dresden moved for approval. Motion passed unanimously.

Member & Public Comments ([link](#))

The Board took public comment from Nancy Hawkins who noted that she had submitted written comments on behalf of the Family Law Section Executive Committee regarding the structure workgroup discussion.

The Board took public comment from Tamara Garrison who encouraged the Board to ask the Court to extend its order to expand the number of Rule 9 law clerks supervised by a single attorney.

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

Pres. Tollefson reported on the annual officer's meeting with the Washington Supreme Court on January 5, noting that the recording of the meeting is available on TVW. He also reported on the staff forum held on March 8. He also reminded the Board that the teambuilding retreat is scheduled for the end of February and about the upcoming ABA meeting. He also made remarks to honor the passing of former Chief Justice Mary Fairhurst and noted the passing of Stan Barer.

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

Executive Director Terra Nevitt noted that WSBA is in the middle of licensing, noting that the workload is increased this year due to the Washington Supreme Court extending the MCLE deadline by one year due to the pandemic, resulting in a double reporting period. She reported on the upcoming licensing exams, including the safety protocols in place for this in-person exam. She also reported on her work related to WSBA's approach to employee compensation. Finally, she called the Board's attention to the most recent report arising out of the Task Force on Race and Washington's Criminal Justice System.

Discussion followed regarding the testing requirements and rapidly changing public health guidance.

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

Executive Committee. Pres. Tollefson reported that the Executive Committee met in January to attempt to provide some suggestions and guidance to the Board regarding the questions about WSBA's structure.

APEX Awards Committee. Gov. Abell reported that the committee had received requests from Governors to rename the award of merit after former Chief Justice Mary Fairhurst and his intent to call a meeting soon to consider that request.

Personnel Committee. Gov. Higginson reported that the committee is working on reviewing the salary survey noting the committee's concern about the comparables used. She also noted that the committee is working on questionnaires and a timeline related to the Executive Director's evaluation.

The Board observed a moment of silence in honor of former Chief Justice Mary Fairhurst.

Legislative Committee. Gov. Williams-Ruth reported that the committee is meeting weekly during this short legislative session and that the majority of the work will likely be complete by the time the Board meets in March. He noted it is operating under the Board's directive that we operate with a business as usual approach.

Nominations Review Committee. Gov. Boyd noted that the committee had met and taken action on several nominations.

Diversity Committee. Gov. Anjilvel highlighted several of the matters the committee is working on, including exploring whether the committee should become a council and work on the legal pipeline. She noted that the committee has a retreat upcoming.

Long Range Strategic Planning Council. Pres. Tollefson reported that the Council is discussing the matter of WSBA's space when the lease expires and a few other matters.

Member Engagement Workgroup. Gov. Peterson and Chief Communications Officer Niegowski reported on the first quarterly results from the externally-conducted member engagement survey. Discussion followed about recommended modifications to the survey based on feedback from survey takers; how to interpret the mean scale information; a request to have an opportunity to review all of the written comments collected through the survey; and how the data can be sliced to understand trends, particularly related to sentiments around diversity.

Budget & Audit Committee. Treas. Peterson thanked CFO Perez and Manager Wick on putting together this year's budget retreat.

Equity & Disparity Workgroup. Gov. Stephens reported on the work of the group, including advancing the remote court model and examining GR 12.2. He noted that he expected the group to bring forward recommendations to the Board in July.

Supreme Court Bar Licensure Task Force. Gov. Williams-Ruth announced that he had recently been appointed as the co-chair of the task force. He also reported on the Oregon Supreme Court's decision to unanimously endorse an alternative to the bar exam as a pathway to licensure. Discussion followed regarding some of the high-level specifics of the Oregon approach.

Task Force Examining Xenial Involvement with Court Appointed Boards (TAXICAB). Past Pres. Sciuchetti reported on the work of the task force, including a proposal that is being developed by representatives from the Access to Justice Board, LLLT Board, and Practice of Law Board. He noted that he anticipates the task force bring a recommendation to the Board of Governors in the future, followed by a presentation to the Washington Supreme Court.

Governor Roundtable ([link](#))

Gov. Williams-Ruth expressed his view that reimbursement to governors for travel is penny-wise and pound foolish. Executive Director Nevitt responded requesting additional guidance from the Board, noting that we are revisiting the cap, and that the budget is limited.

Gov. Couch shared that he had received feedback from the Pierce County Bar Association that they are hoping for training, work and improvement around diversity, equity, and inclusion on the Board of Governors.

Gov. Dresden reported on recent accomplishments of the Pro Bono & Public Service committee.

Pres-Elect Clark inquired regarding the goals of the upcoming retreat in February, discussion followed including that the goal was pure teambuilding and inclusive of the executive staff.

Gov. Stephens expressed frustration that the Board had not reported nor taken any meaningful action with regard to our racial reckoning.

Gov. Higginson spoke about the change to no longer send physical certificates to members honoring their pro bono service. She suggested that the Board adopt a resolution that each person that donates their time receive a paper certificate and a letter signed by the Executive Director. Gov. Higginson moved that the Executive Director be directed to issue paper certificates of appreciation to every member who in 2021 donated 50 or more hours of pro bono service as reported on their license form and that it be accompanied by a letter signed by the Executive Director. The motions were seconded and further discussion was deferred until later in the meeting.

Gov. Adewale reported that the Spokane County Bar Association is very interested in the structure discussion and on a CLE being planned by the Cardozo Society.

Gov. Abell reported on the work to date of the Small Town and Rural Committee (STAR), including strong engagement by WSBA members.

Past Pres. Sciuchetti commented on the motion related to the pro bono certificate noting that it might be premature to take action without a fiscal analysis and promoted upcoming trainings.

Gov. Stephens inquired as to what can be done with regard to email spoofing and a brief discussion followed.

Council on Public Defense's Proposed Statement on the Standard for Indigent Defense ([link](#))

Chair Stearns introduced the proposal noting that it is in response to the crisis of in public defense due to COVID-19 and was unanimously supported by the Council. Prof. Boruchowitz explained that the purpose of the statement is to help local governments and public defenders to advocate for their ability to carry out the public defender standards required by the Washington Supreme Court. He outlined the nature of the current public defense crisis. Discussion followed regarding the complexity of cases and length of time that they remain open; the unique dynamics with regard to charging decisions as a result of COVID; a perspective that the statement will be useful to public defenders. Gov. Adewale moved for approval of the statement. Discussion continued regarding the current difficulty in communicating with clients and the usefulness of the statement for the entire system, including prosecutors' offices. Motion passed unanimously. Gov. Sayani was not present for the vote.

Proposed Revisions to the Member Engagement Committee Charter ([link](#))

Gov. Adewale presented the proposed revisions. He acknowledged the history, noting that the group began as a task force before becoming a committee. At this time the committee is requesting to be constituted as a council in order to include WSBA members in its makeup. Director Plachy provided additional detail on the makeup and history of the group as well as the specific changes to its charter. Gov. Stephens moved for approval of the proposal. It was restated to approve the member engagement workgroup charter revision to a member engagement council, but to leave them constituted as they are for this year and to add in Aliene Limric as a member through the balance of FY22. Discussion followed regarding the attendance requirement and the importance of attending meetings; that the work of the committee has been stifled by COVID-19; and a suggestion that governors be polled about their experience after they leave the Board. Motion passed unanimously.

Governor Election Policy ([link](#))

Pres. Tollefson noted he thought the Board should discuss adopting an election policy. Discussion followed including that WSBA should be neutral in the election process, which means that WSBA should announce when there is an opening, provide application materials, set the deadlines, set candidate forums, and beyond that should not engage in recruiting or sending out candidate statements, or ABA educational information. Gov. Higginson moved for adoption of an election neutrality policy. Motion failed for lack of a second.

Discussion continued, including what constitutes neutrality; a suggestion to look at the contact list issues; a perspective that the bar should do more e-blasts; a request to hear from staff; the perspective that having WSBA disseminate information ensures that attorneys from big firms do not have an advantage; support for each governor having a complete list; that the member and data policy restricts the information that can be shared with candidates; clarification of what happened regarding lists in the past; and the value of recruiting candidates. Gov. Couch moved that the policy in the materials be amended to ask that third year governors running for reelection recuse themselves from the recruiting committee. Motion failed for lack of a second.

Discussion continued regarding the lists. The Board took public comment from James E. Macpherson who served on the task force that adopted the policy provided in the materials who provided his perspective that the goal was to folks excited to run for the Board. The Board took public comment from Nancy Hawkins who noted that members have the option to opt out of communications from the bar and suggested that WSBA find other ways to reach them with election information, such as allowing folks to provide more detailed information. Discussion continued, including a perspective that the outreach to recruit for Board positions has been excessive; a perspective that recruiting and having multiple candidates is useful; and a perspective that we don't have enough information about the issue to take action.

Gov. Dresden sought to second or remake Gov. Couch's earlier motion. Pres. Tollefson ruled that the motion was no longer alive. Gov. Dresden remade the motion to amend policy to say that if the current governor intends to run for a second term, they shall recuse themselves from the position of chair. Discussion followed, including to clarify the motion and the meaning of the current policy; the perspective that the motion is appropriate as a stop gap, but that the policy should still be examined as it may not be the best practice; and a perspective that no one is neutral. Executive Director Nevitt and Chief Regulatory Counsel Garcia explained the difference between official and unofficial WSBA emails and noted the policy limitation on sharing non-public email addresses. Executive Director Nevitt also clarified that every person gets a ballot, and noted that the Board has encouraged extensive recruitment for volunteers for committee, boards, and panels, and it seems that the same should apply to recruiting for positions on the Board.

Discussion followed about the order in which folks are being recognized. There was additional comment that the current motion will not address the issue of address lists and a suggestion that more e-blasts be sent out to the bar in light of the inability to get complete lists to candidates. Motion passed unanimously with Govs. Higginson, Stephens, and Williams-Ruth abstaining.

[Process for Analyzing and Recommending to the Supreme Court of Washington Re the Future of WSBA \(link\)](#)

Executive Director Nevitt reported that the Executive Committee had a special meeting to brainstorm how to move forward with regard to the action the Board took at the December 14, 2021 special meeting. She noted that the Executive Committee discussion resulted in three approaches, for which she presented the potential fiscal impact. Williams-Ruth moved for adoption of the ETHOS proposal. Discussion followed including a desire for separate stand-alone meetings; a perspective that the agendas can be modified and that if public health conditions don't allow we might have to shift to virtual meetings; a request to be flexible with regard to the proposed dates; and background on the proposal in the materials.

The Board took public comment from Nancy Hawkins critical of the proposed structure of the workgroup and the lack of inclusion of non-governors. Discussion followed, including a perspective that the Board members are the elected representatives and should be the voting members for this discussion. The Board deferred further discussion following to later in the meeting.

Committee on Professional Ethics' Proposed Amendment to RPC 1.8(e) ([link](#))

Chair Pam Anderson and Committee on Professional Ethics member Monte Jewell provided background and information about the proposal which would permit civil legal aid or pro bono services to provide limited financial assistance to low-income clients. Discussion followed, including a perspective that the rule change might undermine the existing rule, which allows gifts to clients and the committee's perspective that this will instead harmonize the existing rule. Gov. Purtzer moved to adopt the proposed change to RPC 1.8. Discussion followed, including the importance of the change in the current crisis. Chair Anderson sought to clarify that the BOG would be adopting a recommendation to the Court, rather than adopting the proposed rule change. The motion was amended by Gov. Purtzer to make this a recommendation to adopt the proposal. Chief Ende provided some background on the last time RPC 1.8(e) was amended to conform to the model rules, which resulted in unintended rulemaking activity by the Department of Revenue and retreat on the RPC amendment. Chief Disciplinary Ende distinguished this amendment from the prior action. Motion passed unanimously with Govs. Higginson and Peterson abstaining. Gov. Couch was not present for the vote.

Process for Analyzing and Recommending to the Supreme Court of Washington Re The Future of WSBA Continued ([link](#))

Gov. Clark moved to amend the proposal to follow our travel policy with reimbursement for governor travel with this including potential hotel reimbursement for all governors traveling more than 100 miles each way to the WSBA office. Executive Director Nevitt clarified that the current policy sets the standard as reasonable and necessary and reimbursement for a hotel would be at the discretion of the Executive Director. Discussion followed regarding whether the amendment was necessary, including a statement from Gov. Williams-Ruth that clarified that his

motion did not intend to bind any hands with regard to the fiscal impact, noting that the normal fiscal policies should apply. Gov. Williams Ruth moved to amend the motion to allow for a poll to be sent to applicable parties that will offer available dates around the proposed dates contained in the original ETHOS proposal to allow for the 8 meetings to be held at approximately the proposed times. Discussion followed, including support for the meetings being held during the work week and a contrary perspective in support of weekend dates. Gov. Stephens moved to call the question on the motion to amend. The motion to call the question was approved 11-1. Gov. Couch was not present for the vote. The underlying motion to amend was approved 8-1. Gov. Clark abstained from the vote. Govs. Adewale and Couch were not present for the vote. Gov. Adewale indicated his positive vote after the close of the vote and was added as a yay vote without objection resulting in approval of the motion to amend by a margin of 9-1.

Discussion followed regarding the underlying motion to approve the ETHOS proposal including support for the proposal and an inclusive approach that allows the Board to hear from members first; support for the proposal and a hope that it can be done more quickly and with an emphasis on the three questions set forth by the Chief Justice; a perspective that the cost for this important process is not exorbitant; a perspective that public comment should not come at the end and that consideration should be given to having stakeholders at the table; and support for adding the discussions to the existing board meetings. Gov. Abell moved to amend the motion to have 6 meetings, with 4 to be held virtually and 2 to be hybrid. In support of his motion he noted that the Board was not starting from scratch and could therefore do the work more efficiently and save time and resources. Discussion followed including support for the motion given the prior work; a note that the prior structure work group meetings were not full day meetings; the perspective that the prior report did not address all of the questions in front of WSBA now and did not include all of the perspectives being considered now; comments in support of and opposition to the motion to amend; a perspective that its critical for the local bar associations to have a voice in the process. The motion was clarified and restated. The motion failed 8-4 with Gov. Clark abstaining from the vote.

The Board took public comment from Kari Petrasek who noted that the executive committee of the solo and small practice section supports the memo presented by the family law section executive committee.

Gov. Stephens moved to call the question. The motion passed 8-3 with Govs. Clark and Peterson abstaining. There was a question as to whether that satisfied the requisite two-thirds majority and Pres. Tollefson ruled that it did. The ruling was not appealed. The underlying motion to approve the ETHOS proposal passed 8-4 with Gov. Clark abstaining.

Discussion followed about the impact of abstentions, including the ability to raise an objection to a ruling later in a meeting; a perspective that the county bar associations be included in the structure discussion; the role of the parliamentarian and the President in resolving such matters; and the timeliness of appealing decisions.

Proposed Changes to WSBA Admissions Policies ([link](#))

Chief Renata Garcia presented the proposed changes, noting that she is requesting to amend the policy effective February 1, which is when registration will open for the July licensing exams. She highlighted the purpose of the changes, which is primarily a conflict with WSBA deadlines and NCBE deadlines, which impacts WSBA's ability to meet ADA requests. She noted this would be a return to a prior approach and may, additionally, help WSBA to avoid some late fees. Other changes include clarifying that the policies apply to requests for reinstatement and that applications not submitted after six months can be deleted. She noted that there is no significant fiscal impact other than WSBA's ability to avoid some late fees. Gov. Peterson moved for approval. Discussion followed including clarification of the specific changes; the intent regarding the changed language related to ADA requests; and a discussion about the volume of accommodation request WSBA receives for the licensing exams. The motion passed unanimously with Gov. Stephens abstaining.

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

Treas. Peterson directed the Board to the materials and noted his availability to answer questions.

Approve Amendment to the Fiscal Policies and Procedures and FY22 Budget Amendment Re Officer Travel. Gov. Adewale moved for approval of the amendment to the Fiscal Policies and Procedures related to officer travel. Motion passed unanimously with Gov. Higginson abstaining.

Approve Exception to the Fiscal Policies and Procedures and FY22 Budget Amendment Re Governor Travel. Gov. Adewale moved for approval of the exception to the fiscal policies and procedures and the budget amendment as stated in the late materials. Motion passed unanimously with Gov. Higginson abstaining.

There was discussion about when to take up Gov. Higginson's motion with regard to the pro bono certificates. Gov. Stephens noted his support for including county bars as important stakeholders.

Volunteer Engagement Report

This topic was deferred to March.

Pro Bono Certificates ([link](#))

The Board took up Gov. Higginson's motion from earlier in the day that the Executive Director be directed to issue paper certificates of appreciation to every member who in 2021 donated 50 or more hours of pro bono service as reported on their license form and that it be accompanied by a letter signed by the Executive Director. Executive Director noted that we have not been sending physical certificates since 2013 except upon request, noting that about 100 folks requested them. She suggested that rather than sending out a certificate to everyone, it be sent to those that request it.

The Board heard public comment from Nancy Hawkins who noted that while the certificate is valuable to some, for those that have contributed pro bono time for many years, it is not necessary to receive annually. Discussion followed including a suggestion that it be easier to request the certificate; the value of certificates; support for electronic certificates during the time of COVID; a perspective that it would be wasteful to send out certificates to everyone; that we already ask folks if they wish to be recognized; and a perspective that for this year we should send out the certificates to everyone.

Gov. Higginson sought to amend her motion to clarify that we send the letter to everyone and only a certificate to those that request it. Gov. Peterson offered a friendly amendment that this year we send the certificates to everyone with an option to opt out in future years. Gov. Higginson clarified that the intent is that this year we send certificates to everyone and next year we send out an email and give them an option to opt out of the certificates. Gov. Higginson declined to amend her motion. Discussion followed including a perspective that Board action is unnecessary; the reasons that the shift was made; and a perspective that its wasteful to send certificates to everyone. Gov. Couch moved to call the question. There was a discussion as to the threshold required to pass the motion. The motion to call the question failed 8-4 with Gov. Adewale abstained from the vote.

Discussion followed including a perspective that given that we have not mailed out all certificates since 2013 and that the feedback has been given to the Executive Director, that is sufficient; a suggestion that this topic be discussed at the retreat as a case study for how staff and governors can work better together; and a perspective that the matter was not able to be handled informally, that a policy is necessary, and that it is important to thank people for their pro bono work. The motion was clarified that that beginning in 2022 certificates only be sent when requested. Motion failed 8-5.

Pres. Tollefson announced that the ABA had shifted the meeting scheduled to be held in Seattle to a virtual meeting due to public safety concerns.

LGBTQ+ Experiences in the Legal System: A View from Practitioners and Communities ([link](#))

Denise Diskin and Dana Savage conducted an accredited CLE for the Board of Governors, staff and guests covering the legal issues faced by LGBTQ+ communities, the experiences of LGBTQ+ practitioners, and considerations in representing LGBTQ+ individuals. In terms of opportunities for WSBA allyship, they highlighted support for changes to be proposed to RAP 18.7 and RPC 8.4.

Access to Justice Board Annual Report ([link](#))

ATJ Board Member Esperanza Borboa, Chair-Elect Terry Price, and Chair Francis Adewale presented the annual report of the Access to Justice Board. They highlighted the Board's work to create and work with a community advisory panel to help inform the Board's work to address access to justice for the most impacted communities and encouraged the Board of Governors to consider community representation on its Board. They also touched on fragmentation of the judiciary, lack of adequate court funding, and lack of court user feedback. They reported on the FY21 Access to Justice Conference, which was delayed from FY20 and held virtually. Its focus was on community experiences of the justice system. Discussion followed, including asks of the BOG, get engaged on the court fragmentation issue and consider adding community members to the Board, attending the Goldmark Luncheon.

Practice of Law Board Annual Report ([link](#))

Chair Michael Cherry presented the annual report of the Practice of Law Board, highlighting the Board's efforts in the area of education, innovation and coordination. He reported on the progress of the legal check-up project. He also updated the Board of Governors regarding the POLB's proposal to the Washington Supreme Court to create a regulatory laboratory modeled after Utah's legal sandbox. He noted that they will recommend the Court create a new Supreme Court Board, administered by WSBA and authorized to raise funds in order to allow WSBA to charge back for the cost of administration. He provided details about the comment period for the proposal. He also reported on the Board's work in the area of unauthorized practice of law. Discussion followed including the rationale for having the Board administered by WSBA and cost model; a perspective that it should not be housed at WSBA citing cost and liability concerns; the relationship between WSBA and laboratory participants; national trends in regulatory innovation; legislative interest in regulatory innovation; the diversity of the Practice of Law Board; the anticipated cost of administering a new supreme court board, Chair Cherry noting they are anticipating the cost to participate in the laboratory at \$5,000; how to message the proposal to members that might perceive it as unwelcome competition, including the

opportunities it might present for legal professionals; the differentiation between the laboratory and the LLLT program; a perspective that regulation and access to justice cost money and ultimately this is going to help consumers and lawyers who are already losing that market; a perspective that concerns about costs have to be balanced with an understanding of the benefits; and concern about endorsing these new models of service.

[ABA Mid-Year Meeting Preview \(link\)](#)

Delegates Rajeev Majumdar and Kyle Bertie presented a preview of the upcoming mid-year meeting, which will be held virtually and not in Seattle as originally planned. Delegate Majumdar listed WSBA's ABA delegates, as well as the Washington State delegates, which are elected by Washington ABA members. He also walked through the governance structure for the ABA. They both highlighted the kinds of matters that come before the ABA

ADJOURNMENT

There being no further business, Pres. Tollefson adjourned the meeting at 11:59 AM on Friday, January 14, 2022.

Respectfully submitted,

Terra Nevitt

Terra Nevitt

WSBA Executive Director & Secretary