

WASHINGTON STATE B A R A S S O C I A T I O N

BOARD OF GOVERNORS MEETING

Minutes

Held Virtually

April 16-17, 2021

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 Kyle Sciuchetti on Friday, April 20, 2021 at 9:02AM. Governors in attendance were:

Hunter Abell
Sunitha Anjilvel
Lauren Boyd
Treas. Daniel D. Clark
Matthew Dresden
Peter J. Grabicki
Carla Higginson
Russell Knight
Tom McBride
Bryn Peterson
Brett Purtzer
Alec Stephens

Also in attendance were President-Elect Brian Tollefson, Immediate Past President Rajeev Majumdar, Gov-Elect Serena Sayani, Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Director of Advancement Kevin Plachy, Equity & Justice Manager Diana Singleton, Chief Financial Officer Jorge Perez, Chief Regulatory Counsel Renata Garcia, Executive Administrator Shelly Bynum, Chief Communications & Outreach Officer Sara Niegowski, Betsylew Miale-Gix (WSAJ), Nancy Hawkins (Family Law Section), James E. MacPherson (WDTL), and Kari Petrasek.

Executive Session Announcement ([link](#))

Pres. Sciuchetti made welcoming remarks and announced the purpose and basis for moving into Executive Session pursuant to the WSBA Bylaws Article VII (B)(7)(a)(4) in order to receive advice from legal counsel regarding a request to indemnify the attorneys fees of Robin Haynes pursuant

to WSBA Bylaws Article XIV. He noted that the Board would be in executive session until 9:40 AM. Pres. Sciuchetti announced an extension of executive session to 10:00 AM.

Action Related to Executive Session ([link](#))

Gov. Grabicki moved to decline to indemnify Robin Haynes because her actions were not qualified acts under the Bylaws. Motion passed unanimously. Gov. Higginson was not present for the vote.

Consent Calendar ([link](#))

Gov. Grabicki moved for approval of the consent calendar. Motion passed unanimously with Gov. Boyd abstaining. Gov. Higginson was not present for the vote.

President's Report & Presentation of Spokane County Bar Special Recognition ([link](#))

Pres. Sciuchetti discussed the hybrid nature of this meeting and the future of WBSA Board meetings. Discussion followed about the safety of holding a meeting in Idaho. Pres. Sciuchetti reported on a meeting with the Washington Supreme Court regarding the WSBA climate, which was attended by Pres. Sciuchetti, Executive Director Nevitt, Chief Culture Officer Sio, and our consultant Jeff Turner. Pres. Sciuchetti noted the Court's suggestion that we revisit the WSBA Governance Task Force report from 2016.

Pres. Sciuchetti reported that WSBA will be honoring one individual and a group from the Spokane County Bar that is challenging systemic racism in the regional justice system during lunch.

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

Executive Director Nevitt reported that the organization is planning for transitions related to COVID-19, noting that there are two aspects to these discussions (1) responding to relaxing public health restrictions and (2) establishing a new normal. She noted that the latter will be discussed tomorrow. In terms of the former, she noted that the WSBA office remains closed through the end of June however WSBA is beginning to grant exceptions for employees to come into the office and is also beginning to allow for in-person events, subject to restrictions.

Executive Director Nevitt congratulated Treasurer Dan Clark for his reelection as the Governor for District 4 and Governors-Elect Frances Adewale of District 5 and Serena Sayani of District 7S. She reported that the runoff election for District 1 between Gov. Anjilvel and Paul Taylor will run from April 13 to April 23.

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

The Board took public comment from James E. MacPherson, Jean Cotton, and Nancy Hawkins about concerns related to a proposed rule change to CR 71 affecting withdrawal of attorneys.

Jean Cotton also gave public comment about her concerns about the new Case Management System and a draft local rule that has been circulated to implement the mandatory fee of \$5/filing that must be made by credit or debit card, which is only charged to private attorneys. Nancy Hawkins requested the Board propose a policy to allow Sections to comment directly to the Supreme Court. Pres. Sciuchetti confirmed there would be an opportunity to speak to the proposed bar exam resolution and proposed disciplinary rules when those topics are taken up. The Board heard public comment from Ailene Limric in opposition to the proposed resolution regarding the bar exam.

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

Executive Committee. Pres. Sciuchetti reported that the committee continues to receive reports from WSBA entities, including most recently from the Editorial Advisory Committee and the Washington Young Lawyers Committee. He reported that at its last meeting the committee discussed the *Crowe v. Oregon State Bar Association* case, a proposal to create a rural practice committee, and heard a request for refinements to the sections legislative comment policy.

APEX Awards Committee. No report.

Legislative Committee. Deferred.

Long-Range Planning Committee. Pres. Sciuchetti reported that the committee has a number of recommendations for discussion tomorrow.

Personnel Committee. Gov. Anjilvel noted that she and Gov. Williams-Ruth have formed a work group to review the results of the WSBA Climate Survey and report back to the Personnel Committee.

Member Engagement Workgroup. Gov. Peterson reported on the committee's last meeting, which was focused on gathering feedback about the proposed resolution regarding the bar exam. The committee also continued discussion about conducting a member survey.

Budget & Audit Committee. Treas. Clark referred to his written report in the late materials and reported that through February WSBA has generated a positive fund balance, however due to expenses later in the year, this may be eroded before the year-end.

Equity & Disparity Work Group. Gov. Stephens noted that the Work Group's subcommittees continue to do their work and the steering committee will meet in the next couple of weeks to check-in to see where we are at in terms of potential recommendations.

Supreme Court Bar Licensure Task Force. No report.

Judicial Recommendations Committee. Chief Communications Officer Niegowski reported that we are able to restart the activities of the Judicial Recommendations Committee and are seeking applications, which are due May 10.

Diversity Committee. Gov. Anjilvel reported that the committee is focused on the pipeline to the legal profession working with law schools and law students and is working with Bar News to develop magazine content. She noted that the Legal Lunchbox last month on structural racism was attended by thousands. Gov. Anjilvel also reported that the committee co-chairs attended the last MBA leaders meeting to provide updates. She also reported that the Diversity Committee has proposed comments to APR 11 and has been encouraging others to comment.

In response to a question, Executive Director Nevitt announced the restructure of the WSBA's equity and justice work, including the creation of a new department and appointment of Diana Singleton as the Chief Equity & Justice Officer.

Nominations Review Committee. Gov. Dresden noted that the committee did not have any activity in the last month.

Discussion of Proposed Rules for Discipline & Incapacity ([link](#))

Gov. Purtzer introduced the topic and his proposal to extend the comment period for the proposed rules for discipline and incapacity, which would otherwise end on April 30, 2021. Chief Disciplinary Counsel spoke to the process by which the proposed rules were developed, noting that the process began in 2015 with regulatory staff. He noted that the proposed rules represent the best thinking of regulatory staff only. He reported that while stakeholder comment was sought and considered, not all suggestions were accepted. He encouraged the Board and sections to make comments, remarking that the current rules are a fine alternative to what has been proposed. Discussion followed, including support for the process that was undertaken.

Anne Seidel addressed the Board in support of the request for extending the comment period, while noting that if the Court chooses not to extend the period, the Court will not have a comment from the Board. She recommended the Board at least make a comment that identifies that there are some concerns about the proposed rules among members. Anne Seidel noted she is not aware of any concerns about bringing the three license types under one system, but expressed a number of concerns, including the process for developing the proposed rules, whether the discipline system has a disparate impact on racial minorities, and whether it sufficiently addresses those with mental health issues. She spoke against a change that takes away a grievant's right to appeal; the change that when approval for a hearing is sought, it must be granted under the same standard as a motion to dismiss; that there are fewer mechanisms

for lower level discipline; and a concern about concentrating too much power in the professional Chief Hearing Officer. Discussion followed, including a recommendation that the Board authorize all WSBA entities to comment on the proposed rules, subject to compliance with the 75% rule. Gov. Abell moved for approval of the proposal from Govs Purtzer and Higginson.

Solo & Small Practice Section Executive Committee Request to Comment on the Proposed Rules for Discipline and Incapacity. At-Large Committee Member Nicholas Pleasants presented the proposal. He noted that the Executive Committee unanimously voted to comment on the proposed rules and conducted a GR 12 analysis, the comment is not in opposition to a position of the Board of Governors, and requested permission to comment. He spoke in favor of all sections being able to comment on the proposed rules. Gov. Grabicki noted his desire to make a motion in support of sections making comments to the Court following resolution of the motion on the table.

Criminal Law Section Executive Committee Comment on the Proposed Rules for Discipline and Incapacity. John Straight spoke in favor of the sections being able to make comments to the Court. He noted that the Criminal Law Section is in support of some of the proposed rules but not all and has not yet had the opportunity to comment. Areas of concern include less review of acts of discretion by disciplinary counsel, lack of private disciplinary action for minor violations of the rules of professional conduct, and the lack of input by those most impacted. He requested that the Board permit the Section to comment to the Court and to request remand of the rules for input by those most impacted.

The Board heard public comment from Nancy Hawkins on behalf of the Family Law Executive Committee, which is requesting that the Board oppose the proposed rules. She spoke in favor of the ability of sections to comment directly, the value of fairness over efficiency, and the members of the public on the on the other side of frivolous grievances. Betsylew Miale-Gix spoke in opposition to the proposed rules on behalf of the Washington State Association for Justice. She noted the organization would support the Board taking a position in opposition to the proposal and expressed concern about the Court not granting the request for more time.

Michael Cherry gave comments regarding the process, specifically the challenge of things taking too long to develop and then requesting that the process be started over at the end.

Gov. Stephens requested whether there could be more specificity to the period of time being requested for additional comment. Discussion followed about the appropriate timing. Gov. Grabicki proposed that the language be amended to ask the Court for an additional 90 days. Gov. Abell modified his motion to include a request to extend the comment period by "90 days". Motion passed unanimously.

Gov. Grabicki moved to authorize the sections to comment directly to the Court on the proposed rule, without any further review or intervention by the Board. The motion passed unanimously.

Gov. Peterson moved that WSBA forward any comments we receive, directly to the Court. Discussion followed in term of the content of those comments, giving notice to members about what will happen with their comments. Gov. Peterson indicated that he expects that WSBA will do what is legally appropriate in carrying out the motion. Motion passed 11-1.

Discussion & Resolution Regarding the Bar Exam in Washington State ([link](#))

Gov. Knight recapped the discussion on this topic at the prior board meeting, noting what he believes to be three areas of general agreement, (1) some form of bar exam is appropriate to protect the public, (2) the way in which diploma privilege was granted was problematic, and (3) there are concerns about whether the current form and content of the bar exam has a discriminatory impact. He provided an overview of how input has been gathered. He noted the role of the Board is not to do the work of the Task Force, but to take the pulse of the membership, which is overwhelmingly in support of the resolution and noted the perils of the Board not weighing-in.

Co-Chair Andrea Jarmon presented the feedback of the Diversity Committee urging the Board to take action consistent with the feedback received and set aside the resolution in favor of allowing the Task Force to do its work without predetermined conclusions. Discussion followed about the weight that should be given to the comments of the Minority Bar Associations, which represent hundreds of members and that the resolution does not support the current bar exam.

Gov. Grabicki amend his motion (back on the table from the March meeting) to add to the end of paragraph three the language, "the WSBA commits to working with testing and academic professionals to accomplish this review" and to add a new paragraph four that reads that sections of the WSBA are authorized to provide comments directly to the Supreme Court without the prior review of the BOG of the Legislative Committee.

Discussion continued, including that many of the comments related to diploma privilege; that the resolution is premature; that now is the time to be optimally effective; the role of WSBA in having this dialogue as licensing agency; the role of Governors in representing their districts; that the Court should be aware of current member sentiment; that the message sent by the resolution to the Task Force is ambiguous; that the impact of the resolution is a data point and not an action; that the primary barrier for a first generation law student is law school, rather than the bar exam; that there is no harm in participating in the debate; whether not acting will reinforce the idea that WSBA is out of touch with members and slow to act; and that the Court should have the benefit of hearing this input. It was clarified that the intent of the amended language is to authorize support for the task force with WSBA resources. Discussion continued, including that it would be preferable not to state a position and instead raise questions/concerns and the importance of a feedback loop with our own task forces, work groups, and committees.

The Board heard public comment from Nancy Hawkins on behalf of the Family Law Executive Committee in opposition to the resolution and any comment at this time, as well as comments

on the weight given to comments by the MBAs; James E. Macpherson commented on various aspects of the resolution and the process taken to arrive here; Jordan Couch spoke in opposition to the resolution, and to the impact of the Board's comments; Ailene Limric commented in opposition to the resolution and read a comment signed by Washington Women's Lawyers, the Filipino Lawyers Association, and QLaw, and noted that there was not sufficient time or process for meaningful comment; Diversity Committee Co-Chair Jarmon spoke in opposition to the resolution and read a comment from the Loren Miller Bar Association.

Discussion followed regarding the budget impact of the amendment and its intent and how it will fit with the expectations of the Task Force. Motion carried 6-5. Gov. Peterson abstained.

Diversity Committee Matters ([link](#))

Request to Partner with the Joint Minority Mentorship Program. Gov. Anjilvel requested that the Diversity Committee be able to support and partner in this program. Discussion followed, including a comment in support of the request. Gov. Grabicki moved to approve the request. Discussion followed about promoting the program. Motion passed unanimously. Gov. Higginson abstained from the vote.

Proposed Comment to MCLE Board Proposed Amendments to APR 11. Gov. Anjilvel presented the request to approve the Diversity Committee's comment in support of the MCLE Board's proposed amendment to APR 11. Treas. Clark moved for approval. Gov. Grabicki seconded. Motion passed unanimously. Gov. Higginson abstained from the vote.

Law Clerk Board Proposed Amendments to APR 6 and Law Clerk Program Regulations ([link](#))

The Board shared a promotional video regarding the law clerk program. Law Clerk Board Member Alexa Ritchie provided an overview of the program, noting increasing interest and growth. Law Clerk Board Member Christell Casey presented the suggested amendments. She highlighted the amendments to expand beyond the geographic borders of Washington State and to expand the pool of those eligible to be mentors. She noted that the other changes are meant to bring consistency, clarity, and to close loopholes. Discussion followed in support of the proposed amendments.

Legislative Session Report ([link](#))

Gov. Grabicki reported on the legislative session, noting that the two bar request bills are pending the signature of the Governor. He noted that the Committee has referred more than 700 bills to sections and are at their request are tracking 489.

Update on the Future of Work and WSBA ([link](#))

Executive Director Nevitt reported that WSBA has initiated the plan outlined at the March Board meeting. Departments are currently assessing their activities to identify which require physical presence and where changes in work flows or technology might allow those activities to be done remotely; WSBA is also examining potential changes to the sixth floor, which is a public floor; and

WSBA is examining policies and procedures that may require amendments. She noted that the intent is to bring any policy proposals for the Board of Governors alongside the budget in July.

Governor Liaison Reports ([link](#))

Gov. Peterson reported on his work with the District and Municipal Court Judges Association. Gov. Dresden reported on his work with the Office of Civil Legal Aid, which is expecting the Governor's signature on a bill that will fund the right to counsel for indigent tenants in unlawful detainer actions. He also reported that the International Practice Section recently put on CLEs from Vietnam and Brazil. Gov. McBride reported on his work with the Senior Lawyers Section and expressed appreciation for WSBA resolving an issue they had with their Executive Committee selection process. Gov. Stephens reported on his work with the Civil Rights Law Section, which is moving forward with expanding its connections with communities around their work. He noted that in addition they recently adopted a values statement; they are working on a CLE with the World Peace Through Law Section; and they are collaborating with the Environmental Law Section on a law school networking event. Gov. Stephens noted that they are having a difficult time recruiting folks to serve on their executive committee. Discussion followed about the nature of the challenge and the steps WSBA is taking to support entities.

Fiscal Year 2021 Reforecast Budget ([link](#))

CFO Perez presented the current and reforecast fund balances for FY 2021, noting that we did not reforecast the Sections Fund. He presented the key issues impacting the reforecast including a reduction in CLE revenue as a result of the 2020 MCLE extension, the impact of COVID-19, and a reduction in anticipated revenue in the area of late fees. He noted that the losses in revenue were largely offset by savings on the expense side. Discussion followed about whether we should assume late fees in the budget.

Director of Advancement Kevin Plachy presented the actual and anticipated financial results for the CLE Fund, including actions taken to mitigate the loss of revenue. Discussion followed about how sales revenue is split with sections and the shelf life of recorded CLEs.

CFO Perez presented the two net FTEs included in the reforecast, noting the FY 2021 impact of \$15,360, as well as the annual impact of \$207,110. He also noted that we will be eliminating the WSBA Connect Contract at \$43,000 as an additional annual offset. Discussion followed regarding the need for additional resources in MCLE, whether outsourcing had been considered as an alternative to increasing FTEs.

CFO Perez and Chief Communications Officer Sara Niegowski presented changes to the WSBA Deskbook model in an effort to reduce our administrative costs. Discussion about whether this was on for action and the impact of the action with regard to the additional FTEs.

Gov. Grabicki moved for approval of the reforecast budget. Motion passed 11-1.

Discussion of Crowe v. Oregon State Bar and Potential Implications for Mandatory Bars ([link](#))

General Counsel Shankland presented on the significance of cases such as *Crowe v. Oregon State Bar*. Discussion followed about the difference between *Crowe* and *Lathrop*; germaneness as a standard as compared to political; the state bar activities that resulted in the lawsuits discussed and what we can learn from it; the larger constitutional values at issue and the need for us to envision what the best structure is for WSBA. The Board heard public comment from Nancy Hawkins opposing additional discussion of the bar structure following the conclusion of the Supreme Court Bar Structure Work Group.

Governor Equity, Diversity, and Inclusion Reports ([link](#))

Pres. Sciuchetti referenced the Board's response to the letters from the Minority Bar Associations. He noted that he has appointed to the Gov. Stephens as a liaison to the Race Equity & Justice Initiative. Discussion followed about the intent of this agenda item and individual reports about work within and outside of WSBA.

Proposal to Create a Rural Practice Committee ([link](#))

Former Governor Paul Swegle, Director Plachy, and Gonzaga Law School Assistant Dean Laurie Powers provided an update on the rural practice project and presented the proposal to create the STAR committee to continue to explore the issue. They presented the need and the research conducted, including stakeholder outreach. Gov. Stephens moved to approve the proposal, Discussion followed in support of the proposal; the reason for a committee to sustain the effort; the positive interactions with members of the bar that have resulted from this project; the law clerk program as a potential avenue of solutions and whether a law clerk or representative from that Board should be included on the committee; that the charter and materials set forth should not be considered limitations, but rather foundations of the work. Motion passed unanimously.

Long Range Planning Committee Matters ([link](#))

Pres. Sciuchetti noted the work the committee has been doing since the last Board meeting and introduced the three topics and presenters.

Proposed Charter for WSBA Long Range Strategic Planning Council. Past Pres. Majumdar identified the Committee's goal in developing and maintaining a strategic plan that continues with consistency and presented the proposed charter for a new council. Gov. Peterson moved for approval. Discussion followed regarding whether the Council should have the responsibility to reach out directly to members and the public rather than leaving that to the direction and discretion of the Board. The Board took public comment from Nancy Hawkins expressing concern that charter vests too much authority in the Council. Gov. Grabicki moved the question. Gov. Dresden seconded. Motion passed 7-3. Govs. Knight and McBride were not present. Gov. Higginson sought to move to table. The motion was ruled out of order over Gov. Higginson's objections. The underlying motion passed 7-3. Govs. Knight and McBride were not present for the vote.

Draft Strategic Goals. Gov. Peterson the draft goals developed out the Board's September brainstorming session. Gov. Grabicki moved for approval. Discussion followed regarding whether outreach should occur before approval; whether a fiscal analysis has occurred regarding these goals; and whether the goals set forth a specific plan that can be operationalized. Gov. Grabicki moved the question. Motion failed for lack of second. The underlying motion passed 6-1 with Gov. Clark abstaining. Govs. Abell, Knight, and McBride were not present for the vote.

Communications & Outreach Recommendations. Executive Director Nevitt presented a recommendation for best practices for outreach and engagement. Discussion followed on expectations for outreach moving forward; how the goals will be operationalized and where that decision will be made; that outreach should occur on the goals; and an understanding that the Board passed draft goals for outreach and not final goals to take action on. Executive Director Nevitt sought to clarify next steps including that the draft goals should be pushed out to the membership and that specific stakeholder outreach is also appropriate.

Report on the Board's Equity, Diversity, and Inclusion Activities ([link](#))

Pres. Sciuchetti reported on three upcoming trainings and a planned meeting with MBAs, possibly in connection with the May meeting. Past Pres. Majumdar provided further detail on the planned training.

Governor Roundtable ([link](#))

Gov. Peterson asked whether a tutor in the law clerk program should be able to seek CLE credit for the work that they do. Chief Garcia noted that both the MCLE Board and the Law Clerk Board are discussing the idea. Gov. Stephens shared his thoughts about and urged reconsideration of the plan to hold a meeting in Idaho in August.

ADJOURNMENT

There being no further business, Pres. Sciuchetti adjourned the meeting at 3:10PM on Saturday, April 17, 2021.

Respectfully submitted,



Terra Nevitt
WSBA Executive Director & Secretary