

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Public Session Minutes

Olympia, WA

March 7, 2019

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Bill Pickett on Thursday, March 7, 2019, at 10:35 a.m., at the Hotel RL, Olympia, Washington. Governors in attendance were:

Dan W. Bridges
Daniel D. Clark
Peter J. Grabicki
Carla Higginson (phone)
Kim Hunter
Jean Y. Kang
Russell Knight
Christina A. Meserve
Athan P. Papailiou
Kyle D. Sciuchetti
Alec Stephens
Paul Swegle
Judge Brian Tollefson (ret.) (phone)

Also in attendance were President-elect Rajeev Majumdar, Executive Director Paula Littlewood, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, 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, and Executive Assistant Margaret Shane.

REPORT ON EXECUTIVE SESSION

President Pickett reported that the Board discussed a potential litigation matter during Executive Session.

PRESIDENT'S REPORT

President Pickett advised that he had recently travelled to Cambodia on an outreach mission and wanted to make clear that the trip was not Bar related and no Bar money was used to finance the trip. In addition, he emphasized how important it is that people who are in difficult circumstances work in collaboration if they are going to move forward.

MEMBER AND PUBLIC COMMENT

Several WSBA employees commented on recent Board actions, including a reminder for the Board to think about its actions, civility, doing the right thing, and abstaining from offensive personalities; support for Executive Director Littlewood; concern about the delay in publicly announcing Executive Director Littlewood's termination; concern that a Board member commented at the January Board meeting that staff sounded like a lynch mob and the Board made no attempt to reprimand that Board member; and concern that the Board's new direction may not include diversity and inclusion training and education.

Other public comments included a request for the President to do a "State of the Bar" more than once a year and to include more controversial topics; concern regarding the amount of tension in the meeting room; talk in the State Legislature that the Board is out of control; that ESHB 1788 is moving forward in the Legislature and the legislators know what is going on with this Board; that the Board should solicit input from the membership regarding any "new direction" in leadership; clarifying that the Board's role is to the organization and the membership; concern that the Board is not actively involved in opposing HB 1788; and concerns about Board leadership, transparency, accountability, and diversity.

Concern was expressed that Board Public Session meetings were the wrong venue for non-lawyer employees of the Bar to speak up. The employees present clarified that their managers were consulted, that they were following WSBA policies, and that some employees attending the meeting took vacation time to do so because they care about what is happening.

Comments regarding the Mandatory Malpractice Insurance Task Force recommendations on the agenda for discussion included: a survey of the members should have been done; freedom of choice regarding whether to carry malpractice should be retained; the Task Force presented no evidence that plaintiffs who have worthy claims against uninsured attorneys have had any problems collecting judgments; mandatory malpractice insurance would be a windfall only for the insurance companies since there would be a captive market allowing insurance companies to raise rates at will, which would then be passed on to the public; insurance companies would effectively be able to disbar attorneys by refusing to insure them; and pro-bono and low-bono attorneys would disappear over time and poorer members of the public would suffer.

Governor Papailiou moved that Paula Littlewood be retained as the Executive Director through the conclusion of the Washington Supreme Court Bar Structure Work Group. Discussion ensued later in the meeting regarding whether this was a personnel issue and whether Public Session was the correct forum in which to address it. Governor Stephens asked that the vote on Governor Papailiou's motion be a roll call vote.

Governor Bridges stated that the motion was not appropriate under rules mentioned earlier in the meeting and moved to call the question. Discussion continued about whether the motion was appropriate under the rules. Governor Stephens requested a roll call vote on Governor Bridges' motion to call the question, which passed 8-5. Governors Bridges, Grabicki, Higginson, Hunter, Kang, Sciuchetti, Swegle, and Tollefson voted yes. Governors Clark, Knight, Meserve, Papailiou, and Stephens voted no.

Details were requested regarding the process to appoint an Interim Executive Director. Governor Papailiou's motion that Paula Littlewood be retained as the Executive Director through the conclusion of the Washington Supreme Court Bar Structure Workgroup failed 4-8. Governors Clark, Meserve, Papailiou, and Stephens voted yes. Governors Bridges, Grabicki, Higginson, Hunter, Kang, Knight, Sciuchetti, and Swegle voted no. Governor Tollefson was not present for this vote.

Governor Meserve questioned whether the action taken to terminate Executive Director Paula Littlewood had been appropriately taken in Executive Session. Governor Hunter moved to terminate Executive Director Paula Littlewood effective March 31, 2019, and accepted Governor Higginson's friendly amendment to conserve the vote taken during the January 17, 2019, Executive Session. It was requested the basis for the motion be articulated for the benefit of the public and those in the audience and concern was expressed regarding talking about these matters outside of Executive Session. Discussion followed. Governor Bridges moved to amend Governor Hunter's motion and friendly amendment to include all subsequent decisions and actions taken. Motion died for lack of a second. Discussion continued, including questions about the underlying reason for the termination, concern about whether the discussion was appropriate in Public Session, and appropriate procedures for the action.

Governor Higginson called the question. Motion passed 9-4. Governors Bridges, Grabicki, Higginson, Hunter, Kang, Knight, Sciuchetti, Swegle, and Tollefson voted yes. Governors Clark, Meserve, Papailiou, and Stephens voted no. Governor Hunter's original motion with friendly amendment to terminate the employment of Executive Director Paula Littlewood effective March 31, 2019, and reconfirm the January 27, 2019, vote of the termination of the employment of Executive Director Littlewood, modifying the end date to March 31, 2019, passed 9-4. Governors Bridges, Grabicki, Higginson, Hunter, Kang, Knight, Sciuchetti, Swegle, and Tollefson voted yes. Governors Clark, Meserve, Papailiou, and Stephens voted no.

CONSENT CALENDAR

Nothing was pulled from the consent calendar.

RECOMMENDATIONS FROM MANDATORY MALPRACTICE INSURANCE TASK FORCE – Hugh Spitzer, Chair, and Doug Ende, Chief Disciplinary Counsel

Chair Spitzer presented the Task Force report, which recommends adoption by the Washington Supreme Court of a mandatory malpractice insurance rule for lawyers. He reviewed the Task Force's key findings, possible approaches considered, recommendations, exemptions considered but not recommended, feedback-gathering process, the main concerns expressed by WSBA members, and the benefits of mandatory malpractice insurance. Counsel Ende provided

background on the reasons for the Board's creation of the Task Force and acknowledged the diligent work of the appointed Task Force volunteers.

Ensuing discussion included comments by members regarding the following:

- availability of malpractice insurance, through the Legal Foundation of Washington's program, for lawyers who provide civil legal aid and pro bono services;
- the observation that the Oregon PLF model is a success;
- concern that the Task Force had not adequately identified a problem in Washington;
- asserted conflicts of interest, lack of solo practitioner representation, and lack of an experienced statistician on the Task Force;
- distrust of the insurance industry;
- a contention that uninsured lawyers keep premium rates down because they can cancel their policies, resulting in more competition;
- concern that insurance companies will dictate the way lawyer's practice law;
- concern that a mandatory malpractice insurance requirement will impose an unfair burden on retired attorneys who do a small amount of pro bono work or serve underrepresented communities;
- whether to carry malpractice insurance should be a personal decision; and
- if there is to be a regulatory requirement it should be mandatory disclosure rather than mandatory insurance, as well as improved communication to the public about how to select a lawyer.

Governor Bridges recognized that Task Force did what the Board had asked it to do, and expressed the opinion that all concerns raised at this meeting could be addressed by including additional exemptions in a draft rule. Chair Spitzer addressed several questions and issues that had come up during the discussion by making the following points:

- as alternatives to mandatory insurance, the Task Force considered performance bonds and letters of credit but concluded they provide less protection and/or are too expensive;
- because statistics on uncollectable judgments are extremely or impossible difficult to obtain, the Task Force relied on multiple sources of information cited the Task Force

report, including case law, academic studies, and anecdotal reports from lawyers in the industry;

- the Oregon PLF model was not recommend because it would costly, laborious, and complicated to implement, and because the open market system provides more flexibility; and
- the Task Force heard little from the Washington public, but information from other states suggest that the vast majority of the public assumes that all lawyers are required to carry malpractice insurance and 78% of the public thinks it should be mandated.

Chair Spitzer advised that the Task Force would be willing to gather additional Washington-specific information if the Board provides it with a budget to do so.

Governor Higginson requested that a special meeting be set to discuss this item further. Governor Stephens agreed and recommended the scheduling of a half-day, public-session special meeting prior to the May 2019 Board meeting, when the item is expected to be on the agenda for action; such a meeting would be devoted exclusively to receiving additional member and public comment on the Task Force recommendation. It was the consensus of the Board to do so.

INPUT ON WSBA BOARD OF GOVERNORS NO RETALIATION POLICY – WSBA Employees

Several WSBA employees thanked President Pickett for allowing them the opportunity to be heard and referred the Board to the information contained in Late Late Materials. Before presenting the materials, they reported that comments had been made to them at this meeting that felt threatening and that one of commenters was a candidate for the Board.

Several employees read the statement contained in Late Late Materials and asked the Board to pass a stronger No Retaliation Policy that included specific procedures and policies. They concluded by referring the Board to the model policies contained in the materials.

Governor Stephens stated that he was glad staff felt safe enough to come before the Board to express their concerns, that some of staff's points are well taken, and that he would like to have this item referred to the Personnel Committee for consideration. Governor Grabicki agreed and

stated that the comment to staff that they are at-will employees crossed the line and should be reported to the Human Resources Director. Discussion followed, including how to address employee concerns and whether a board/employee forum would be helpful or appropriate; and questions about the Board's new direction.

Governor Meserve stated that the Personnel Committee would be happy to take staff's recommendations and suggestions contained in Late Late Materials, make revisions, and return with a policy, but did not want to run interference with the investigations the Court had ordered and did not want to re-traumatize anyone, therefore, the Committee would move carefully. In answer to President Pickett's request that the Personnel Committee be allowed to transmit a letter to Director of Human Resources Dujon-Reynolds in the next couple of weeks to share with staff, Governor Higginson expressed concern with the Personnel Committee speaking for the Board.

REQUEST FOR BOG SUPPORT OF DIVERSITY COMMITTEE STATEMENT OF SOLIDARITY – Governor Alec Stephens, and KJ Williams, Diversity Programs Manager

Governor Stephens referred the Board to the information contained in the meeting materials, explained the impetus for the request, and reviewed the statement. He then moved that the Board approve its support of the Diversity Committee Statement of Solidarity. Motion passed unanimously.

RESOLUTION OF THE STATUS OF THE OFFICE OF TREASURER

Governor Grabicki moved:

(1) After careful review of the WSBA governance documents, particularly the Bylaws, the Board acknowledges that suspension of an officer is not within the powers or the authority of the Board; rather, the Board can only remove and then replace an Officer, and removal requires an affirmative vote of 75%, thus the vote for "suspension" of an officer was not within the scope of the Board's authority and such action was a nullity;

(2) With respect to the two claims that are before us at the present time, Mr. Bridges will be excluded from any consideration, discussion, or decision with respect to such claim; he will be

completely walled off; he will leave the room during those discussions and will not be part of that at all;

(3) That we request Outside Counsel, who has been assigned to the Bridges claim, Suzanne Michael, to commission an independent investigation of that claim; and

(4) Upon receipt of the report of that investigation we can consider what further action, if any, this Board should take.

Governor Grabicki clarified that the intent of #1 was that the BOG did not have the power to do what it did in January (temporarily suspend Dan Bridges from Treasurer authority) since the BOG has no authority to suspend an officer, so Governor Bridges was still the WSBA Treasurer. In answer to an inquiry, General Counsel Shankland stated that the Board had received her advice via email regarding whether the Board could act on something the WSBA Bylaws were silent about, and that she could not advise the Board in Public Session other than to state there were probably two reasonable interpretations.

Discussion ensued regarding Governor Bridges' participation in the drafting of the motion and not voluntarily recusing himself during this conversation to avoid appearances of impropriety and conflicts of interest; whether the motion was actually for reconsideration and could be raised at this time; whether to go into Executive Session to receive advice of counsel; the message that would be sent by reversing the decision to temporarily remove Governor Bridges as Treasurer; the importance of the Board understanding the impact it has on employees; that Governor Bridges has continued to call himself Treasurer and the Board has done nothing to reprimand him; the hypocrisy of the Board's interpretation of the bylaws reflected in its desire to do very thing now that it stated it could not do earlier in this meeting regarding voting on Executive Director Littlewood's termination; and the Board's perceived manipulation of *Robert's Rules of Order* based on what the Board's motives are in the moment.

It was the consensus of the Board to take a roll call vote. Motion passed 7-4-2. Governors Grabicki, Higginson, Hunter, Knight, Sciuchetti, Swegle, and Tollefson voted yes. Governors Clark, Meserve, Papailiou, Stephens voted no. Governors Bridges and Kang abstained. In answer to an

inquiry regarding whether a two-thirds majority was required, General Counsel Shankland responded no since it was a motion to say that the original motion was null.

RESOLUTION IN RECOGNITION OF CHIEF JUSTICE MARY E. FAIRHURST

Governor Clark moved to adopt the resolution contained in the meeting materials honoring Chief Justice Fairhurst. Motion passed unanimously.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 6:35 p.m. on Thursday, March 7, 2019.

Respectfully submitted,

Terra Nevitt

Terra Nevitt
WSBA Interim Executive Director & Secretary