

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Public Session Minutes

Seattle, WA

November 15-16, 2017

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Brad Furlong on Wednesday, November 15, 2017, at 4:30 p.m., at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

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

Also in attendance were President-elect Bill Pickett, 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, and Executive Assistant Margaret Shane.

The following items were discussed on Wednesday, November 15, 2017.

ACCESS TO JUSTICE (ATJ) BOARD ORIENTATION FOR BOARD OF GOVERNORS – Andrew Sachs, ATJ Board Member; Francis Adewale, ATJ Board Member; and Diana Singleton, ATJ Board Manager

Manager Singleton reviewed the history of civil legal aid in Washington, the mission of the ATJ Board, why it was created, and its role, as well as an overview of the Alliance for Equal Justice. Mr. Sachs gave an overview of civil legal aid funding, reviewed the ATJ Board committees, reviewed the goals of the 2018-2020 State Plan for the Coordinated Delivery of Civil Legal Aid to Low Income People, and noted that the main lens through which all the goals are focused is race equity. Mr. Adewale emphasized that it is critical that the primary focus is race equity and mentioned the Race and Equity Justice Initiative. Discussion ensued regarding the importance of viewing all the other goals through the main goal of race equity and how to get involved in the work of the ATJ Board.

MEMBER AND PUBLIC COMMENTS

James Macpherson encouraged the Board to investigate the possibility of providing group health insurance for WSBA members. Executive Director Littlewood explained that the WSBA provided group health insurance 15-20 years ago, but that the pool continually shrunk until there were approximately a dozen people who were all high-risk prescription users and the insurance carrier would no longer provide coverage. She noted that WSBA's Practice Management Advisor is putting together a history of what was offered then, what happened, and is looking into whether there is anything that could be offered in the future. Director Nevitt noted that a potential resource is the American Bar Association (ABA), which provides insurance coverage options for its members. Jean Cotton noted that much has changed since the time period Executive Director Littlewood mentioned, especially with the current state of the Affordable Care Act, and urged the Board to attempt to come up with a solution.

ENTITY REGULATION – Doug Ende, Chief Disciplinary Counsel, and Paula Littlewood, Executive Director

Executive Director Littlewood explained that there are two basic elements to entity regulation: (1) authority to regulate entities providing legal services, which may include lawyers and other professionals, and (2) Proactive Management Based Regulation (PMBR), which is an approach to regulation that seeks to improve ethical behaviors and prevent problems before they

happen. She reviewed the history of entity regulation and noted that Washington is one of two states in the United States that have adopted regulatory objectives, a codification of the purposes of the regulation of the practice of law, which is important for both regulators and the consumers of legal services. Counsel Ende noted that two U.S. jurisdictions have recently launched PMBR initiatives, which aim to improve ethical practices but do not displace discipline and enforcement. Discussion ensued regarding entity regulation on the national and international level and possible applications in Washington State. President Furlong opined that Washington state currently has a reactive discipline system, indicated that a proactive approach might be worthy of consideration, and asked if the Board was interested in pursuing the concept. The Board noted interest in receiving more information and education, and having further discussions. President Furlong advised that this topic will be back on the agenda, possibly in the Spring, and will be discussed in Executive Committee.

REPORT ON EXECUTIVE SESSION

President Furlong reported that the Board approved the Minutes of the September 28-29, 2017, Executive Session Minutes, and heard the Discipline Report and Litigation Report. He noted that no action was taken in Executive Session.

CONSENT CALENDAR

- a. September 28-29, 2017, Public Session Minutes
- b. October 3, 2017, Special Public Session Minutes

LEGISLATIVE MATTERS

2017 WSBA Legislative Priorities – Governor Chris Meserve, BOG Legislative Committee Chair, and Sara Niegowski, Chief Communications and Outreach Officer

Chair Meserve referred the Board to the information contained in the meeting materials and reviewed the proposed priorities. Officer Niegowski explained that the priorities are a long-standing practice and are framed by GR 12, giving the WSBA the opportunity to weigh in on legislative items in a particular way in order to support the improvement of the law. Executive Director Littlewood noted that working with the legislature in improving the law is one of the largest services the WSBA provides to the public and to the members. It involves shepherding

very technical bills through the legislative process and the WSBA sections provide the subject matter expertise. She stated that this service falls squarely in the WSBA's mission and the WSBA is specifically authorized by GR 12 to help improve the law after the proposed legislation is run through a GR 12 analysis. Governor Stephens moved to approve the 2017 WSBA Legislative Priorities. Motion passed unanimously.

President Furlong inquired of the Board whether there would be any objections for he and Governor Meserve to attend discussions of the OCLA funding for access to justice as liaisons and report back to the Board with the outline of any proposals so the Board can respond early. There were no objections from the Board.

Suggested Amendment to Washington Business Corporation Act re Shareholder Meetings – Michael Hutchings, Corporate Act Revision Committee (CARC) Chair; Sara Niegowski, Chief Communications and Outreach Officer; and Clark Mclsaac, Outreach and Legislative Affairs Coordinator

Coordinator Mclsaac advised that there is one proposed bar request bill to consider from the Corporate Act Revision Committee (CARC) of the Business Law Section that was vetted and unanimously supported for Bar sponsorship by the WSBA Legislative Review Committee. CARC Chair Hutchings explained the makeup and work of the Committee, as well as the background of the proposed amendments, and safeguards built into the suggested amendments. Governor Swegle moved to approve sponsorship of the proposed request bill. Motion passed unanimously.

COUNCIL ON PUBLIC DEFENSE (CPD) PROPOSED PERFORMANCE GUIDELINES FOR JUVENILE OFFENSE REPRESENTATION – Eileen Farley, CPD Chair, and Ann Christian, CPD Member

Chair Farley explained the makeup of the CPD and the background of the proposed Guidelines, which are similar to the adult Guidelines previously approved and in operation. Ms. Christian advised that the proposed Guidelines are the product of almost four years of work by CPD volunteers, and reviewed the positive experience in Oregon of similar Guidelines. Governor Risenmay moved to approve the propose Guidelines. Motion passed unanimously. Governors Papailiou and Swegle were not present for the vote.

PROPOSED FORMATION OF CANNABIS LAW SECTION – Danica Noble, Formation Group Member, and Paris Eriksen, Sections Program Manager

Manager Eriksen referred the Board to the information contained in the meeting materials and reported that, following the September Board meeting, feedback from members was solicited through *Take Note* and through the Governors’ blast emails, which resulted in 12 responses: seven supporting; three opposing; and two unclear. Formation Group Member Noble advised that at least nine other state bar associations have a cannabis law section and no state bars have voted a cannabis law section down. She noted that there is a great interest in learning more about cannabis law among the WSBA members and that there are currently over 60 pieces of legislation related to marijuana. She concluded by stating that the three Washington law schools offer courses on marijuana law and that the impetus for forming this Section is to help lawyers working in this area to have a place to exchange information and ideas.

Governor Doane moved to approve the formation of the Cannabis Law Section. Discussion ensued regarding the viability of membership in the proposed Section and the Board’s responsibility if the Section proved not to be viable; the rule of law principle and having a Section that deals with something that is a violation of Federal law; and the importance of providing a forum to help lawyers comply with state law without giving them advice to break Federal law. Formation Member Noble noted that the proposed Section would not take or endorse a certain view; at least half the varieties of cannabis are federally legal; and allows for lawyers to become educated and discuss important pieces of policy in their practice, which is currently happening. Governor Papailiou called the question, which needed a two-thirds vote and failed. Further discussion ensued regarding the possibility of fitting the proposed section in with another current Section in order to save on costs to both WSBA and to existing Sections, as well as staff resources. Manager Eriksen advised that she did not anticipate an impact on either staff resources or the per-member charge due to the addition of a cannabis law section. Motion passed 12-0-2. Governors Bridges and Clark abstained.

MANDATORY MALPRACTICE INSURANCE TASK FORCE ROSTER – Doug Ende, Chief Disciplinary Counsel

Counsel Ende advised that there was a miscommunication regarding one of the nominees, Peter Moy, who turned out not to be an insurance industry professional, and recommended

that the name be withdrawn from the proposed roster. Governor Risenmay moved to approve the Roster as contained in the meeting materials, with the exception of Peter Moy, and to authorize President Furlong and the Chair of the Task Force to designate an insurance industry professional appointee without further Board action. Motion passed unanimously. Governor Bridges requested that it be noted on the roster that he is a current Board member.

ADDITIONS TO CIVIL LITIGATION RULES DRAFTING TASK FORCE ROSTER – Sean Davis, General Counsel

General Counsel Davis advised the Board that Judge Robertson is already on the Task Force, so approval is being sought to add Judge Aimee Maurer and Hozalfa Cassubhai to the Task Force Roster. Governor Majumdar moved to approve the Civil Litigation Rules Drafting Task Force Roster as contained in the meeting materials. Motion passed unanimously.

PROPOSED AMENDMENTS TO INDIAN LAW SECTION BYLAWS – Terra Nevitt, Director of Advancement/Chief Development Officer

Governor Stephens moved to approve the proposed amendments to the Indian Law Section Bylaws as contained in the meeting materials. Motion passed unanimously.

WASHINGTON STATE BAR FOUNDATION ANNUAL REPORT – James Armstrong, Chair, and Terra Nevitt, Director of Advancement/Chief Development Officer

Chief Development Officer Nevitt reviewed the history of the Foundation; reminded the Board that the sole purpose of the Foundation is to raise funds to promote diversity within the legal profession and enhance the public's access to and understanding of the justice system; and reviewed the programs that the Foundation currently supports: Moderate Means, Call to Duty, and Diversity and Inclusion. She then explained the Foundation's unique role and how its focus differs from other legal foundations such as the Legal Foundation of Washington (LFW) and the King County Bar Foundation. Chair Armstrong reviewed the highlights of the Foundation's FY2017 Annual Report, the Foundation's plans moving forward, and the benefits to the WSBA and its members provided by the Foundation. He concluded by stating that the Foundation remains successful and continues to grow.

LIAISON AND AMBASSADOR RESPONSIBILITIES

Liaison Responsibilities – Brad Furlong, President, and Paula Littlewood, Executive Director

President Furlong referred to the liaison duties previously assigned to each Governor and emphasized the critical importance of keeping a connection with bar entities and this Board, and being a conduit between the two, keeping in mind that he and the Executive Director are the official spokespersons for the Bar. He emphasized that it is not the Governors' job to push the agenda of any Committee or to try to act like part of the Committee.

Executive Director Littlewood noted that the impetus for this discussion came from the Member Engagement Subgroup at the July Board Retreat and a discussion about what Governors' philosophy around the three tiers of being a liaison should be: sections, committees and board, and Board committees, where the Governor is a participant, not a liaison. She relayed that past Presidents had suggested that as a liaison to a Section, Governors were not expected to go to every executive committee meeting, but were expected to introduce themselves to the Chair at the beginning of the year and be available throughout the year as needed. As for being a liaison to a Committee or Board, generally the expectation has been that the Governor would attend every meeting as a liaison because the Board Committee does the work of the Bar as directed by the Board or Court rule. Discussion ensued regarding establishing individual relationships, communicating, and being a point of contact with Sections; being more present with the WSBA entities assigned; difficulty of finding an adequate amount of time to attend all assigned entity functions; being educated by the entities assigned to; the importance of contact and communication; being a good resource when questions arise at entity meetings; and not all entities wanting the same amount of participation by Board members. It was the consensus of the Board to leave the method of appointments up to the President, whether the Governor is an expert in that area or not.

Ambassadorship – Sara Niegowski, Chief Communications and Outreach Officer, and Sanjay Walvekar, Legal Community Outreach Specialist

Officer Niegowski stated that the Communications and Outreach Department wants to serve the Governors and give them the tools they need to be out interfacing with members where they are. Specialist Walvekar referred to the Best Practices document that was handed out at

the meeting and encouraged the Board to get in touch with him to accompany them on their visits to county bar associations and to let him know when they go out on their own so he can work to fill the gaps in other parts of the state. He noted that the members highly respect and appreciate visits to them where they live and work. Officer Niegowski referred to the Winter 2018 Highlights and reviewed the format and information contained thereon.

GOVERNOR FORUM

Governor Hunter passed out a proposal to form a Member Engagement Work Group and requested this item be put on the January agenda. She emphasized the importance of getting more involved with the membership in order to overcome the negative feelings some members have. President Furlong noted that the Activity Reports are important and they are one way for the Governors to hold each other accountable. He encouraged the Board to keep track of their activities between Board meetings, complete the activity reports, and turn them in for each Board meeting. He referred to the Guiding Communication Principles on page 10 of the meeting materials and requested the Governors use these Principles to do a self-evaluation when completing their Activity Reports for the January Board meeting.

Governor Stephens referred to the statement the Board previously passed regarding violence and the WSBA's principles, and asked that time be allotted on the January Board meeting agenda to discuss what more the Board can do other than placing the statement on the website. He noted that another recent incident shows the importance of moving this issue forward.

President Furlong noted that he and the Executive Director are the spokespersons for the organization and on occasion he would like to make comments and respond positively to matters that are consistent with the WSBA's Mission and Guiding Principles and where it is appropriate for the organization to say well done or to commiserate without waiting for a Board meeting to obtain the Board's permission each time. He emphasized that it was not his intention to get involved in anything political or to express his own personal opinions. The Board noted its support for him to do so.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 5:10 p.m. on Thursday, November 16, 2017.

Respectfully submitted,

Paula C. Littlewood

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WSBA Executive Director & Secretary