



MEMO

TO: Board of Governors
FROM: BOG Governance Work Group
RE: Work Group Meeting of August 12, 2015

Action: Adopt BOG Responses to Governance Task Force Recommendations

The BOG Governance Work Group met on August 12, 2015, in follow up to the BOG meeting in Bellingham on July 24, 2015. The meeting was for the purpose of reviewing the discussion that took place at the BOG meeting regarding the First Reading of the proposed BOG responses to the Governance Task Force recommendations entitled "Leadership for Today and Tomorrow," which included a proposed Charter and Bylaw amendment for a BOG Executive Committee, a proposed Bylaw amendment to the duties of the Immediate Past-President, and the entire Governance Task Force Report.

The Work Group made and approved modifications to the BOG proposed responses as discussed at the BOG meeting, and finalized the BOG responses to the Task Force Report. The final version is attached to this memo for approval at the September 17-18, 2015, BOG meeting. The Work Group also reviewed the attached emails that were submitted by WSBA members by the time of its meeting regarding their comments to the proposed BOG response to the Task Force Report. Additional emails submitted by WSBA members since the Work Group meeting are also attached.

Leadership for Today and Tomorrow

**Report of the Board of Governors
of the
Washington State Bar Association
On Governance**

September 17, 2015

I. INTRODUCTION

Governance for the 21st Century

The Washington State Bar Association (WSBA) was formed 125 years ago, and the Bar became mandatory and integrated statewide in 1933. Over the years, many programs, court rules, and other legal developments have structured and restructured the procedures and institutions of WSBA governance. As the WSBA has grown – both in terms of its size and in its mission (including as a result of directives from the Supreme Court) – the increasing complexity has tested and challenged the WSBA’s governance structure, and its ability to effectively serve its mission. Although the Board of Governors (BOG) has maintained a high dedication to the WSBA’s mission and principles, at times its governance structure has created substantial barriers to effectively managing its mission.

The primary goal of this Report, including the BOG’s specific responses to the Governance Task Force Report, is to highlight both the governance work being done, and also the work that is yet to be accomplished, and to move WSBA governance into a more sustainable mode for governing the WSBA’s mission in the future. In particular, this Report should create a roadmap for the next steps to overhaul the WSBA’s Bylaws and to implement reforms capable of reducing volunteer-time burden, promoting efficiency, promoting training and coordination between the professional staff and BOG members, and maintaining proper oversight.

As discussed below, the BOG has conducted an extensive review of the Governance Task Force Report’s recommendations. The BOG’s high-level takeaways are that it is imperative for the WSBA and the Supreme Court to work closely in concert in protecting the public and in championing justice, and that the BOG must consistently strive to improve its governance procedures and policies in order to serve its members and to achieve its mission. The detailed roadmap on how to achieve these goals is laid out below.

History of the Governance Task Force

At its September 20-21, 2012 meeting, the BOG approved the charter and roster for an independent Governance Task Force to examine the organization’s basic governance structure. In approving the membership roster and work charter¹ for the Task Force, the BOG asked that the following items be considered:

¹ Appendix B to the Task Force report contains a copy of the Task Force Charter.

- WSBA overall governance including, but not limited to, the structure of representation, boards and committees, staff and financial matters;
- Continuity of operations from year to year;
- Interrelationship between staff and the governing body; and
- Effective means of reviewing programs and goals.

The Task Force met from October 2012 through June 2014 to consider many facets of WSBA governance. The Task Force presented its Final Report in June, 2014.² The Report was issued both to the Board of Governors and to the Washington Supreme Court.

The WSBA Board of Governors thanks the members of the Governance Task Force for their service, commitment to good governance, and their recommendations. Their work will have a lasting positive impact upon the WSBA. The BOG congratulates them on their comprehensive, thoughtful, and insightful analyses of the future of WSBA governance.

The Board of Governors' Review of the Task Force Recommendations

Upon receiving and reviewing the Task Force report at its June 2014 meeting, the BOG established a BOG Governance Work Group for the purpose of leading the BOG through a systematic discussion of the Task Force recommendations and to craft proposed responses for the BOG to be adopted at the September 2015 BOG Meeting.

The BOG spent substantial time at each of its 2014-15 board meetings discussing each of the Task Force recommendations.

This report, Section III, addresses the BOG response the specific Task Force Recommendations relating to Sections IV-VII of the Task Force Report, including:

- The Supreme Court and the WSBA;
- The Board of Governors and the WSBA;
- Organization and Selection of the Board of Governors; and
- The State Bar Act

Washington State Supreme Court Review of the Governance Task Force Report

The Governance Task Force Report was issued to both the WSBA and to the Washington Supreme Court. The Court formed its own Governance review committee.

² The June 25, 2014 Governance Task Force Report is attached as [Appendix A](#).

The Board of Governors appreciates the Court's involvement in this process, both in terms of WSBA governance issues and in its overall supervision of and regulation of the practice of law in the state of Washington.

Upon final adoption of the BOG's response to recommendations to the Task Force Report, this report will be forwarded to the Supreme Court for their review and whatever action they deem appropriate to provide.

II. BOARD-IMPLEMENTED ENHANCEMENTS

Prior to responding to the specific Task Force Recommendations, this Section provides a report on the steps the BOG has already taken to address the Task Force suggestions regarding WSBA governance, and to educate the Court and membership about efforts to enhance the function of WSBA governance practices.

The BOG has already implemented the following aspects of its operation, which improve the BOG's ability to govern in an effective and responsive manner.

A. BOG Generative Discussions

BOG meeting agendas now include high level policy discussions where Governors are educated on and discuss policies affecting the practice of law and the direction and programs of the WSBA. The discussions were commenced in November 2014 and are titled "Generative" discussions as they are designed to generate the seeds of ideas used to guide policy for the board. The BOG has continued these discussions in six out of its seven meetings for the 2014-2015 year, including topics pertaining to implementing a new CLE fiscal policy effective in FY 2017, the future of diversity, inclusion and cultural competency in the profession, and new and young lawyers.

Each of these topics is a critical component in identifying how the WSBA can be as responsive as possible to its member's needs and in a prudent and fiscally responsible manner. The BOG intends to continue generative discussions in the 2015-2016 year, including on the future of the legal profession and the dynamic changes that are occurring, with the ultimate focus on how the WSBA can assist its members in preparing for and directing an ever-changing legal environment.

B. Expansion of the BOG Consent Agendas

Effective agenda management has been one of the primary barriers to good governance for the WSBA. In order to provide more time at BOG meetings for high-level policy discussions, routine operational or non-controversial decisions on the BOG's monthly business agenda have been moved to the "Consent Calendar." If a Governor wishes to discuss or debate an item on the Consent Calendar, any Governor

may pull the item for separate consideration. Otherwise, all board members sign off with their approval of the items on the Consent Calendar.

C. Governance Training

The Board of Governors is committed to effective and efficient leadership. At its 2014 annual Retreat, the BOG spent considerable time discussing how decisions are made and how the Board can work to become a highly effective board. By focusing the Board on training regarding the proper role and scope of board duties, it both increases the efficiency of board work and decreases the burden on board members as to time and volume of work.

The July training was followed by another training at the January, 2015 meeting, where the BOG discussed in further detail the traits of highly effective Boards, and determined that it would engage in a Board Self-Assessment survey through BoardSource (formerly the National Center for Nonprofit Boards), a respected leader in promoting good governance practices for nonprofit boards of directors, executives, and others.

The BOG will continue to train new BOG members on governance at their annual day-long Orientation session. Likewise, the BOG will continue to train and discuss good governance throughout its work.

D. Board Self-Assessment Project

As another component of training and obtaining effective board governance practices, the BOG has commenced a Board Self-Assessment survey through BoardSource. All members of the Board, Officers, and the Executive Director participated in the survey for a 100% response. Subject areas included the BOG's roles in setting direction for the WSBA, ensuring financial resources and member volunteer participation, providing oversight, and Board structure and operations. The results of the survey were reviewed at the Board's 2015 Retreat in July and goals for improvement were determined. It is anticipated that Board self-assessment and improvement will be a "journey" of continued work over time rather than a "one time" function.

E. Continuous Efforts

Along with these efforts, the Board is also slated to address and implement efforts in two areas by adopting Bylaw changes along with the recommendations in Section III. These include a proposed bylaw change to create an Executive Committee of the BOG to handle certain low-level BOG procedures. The second initiative is tasking the Immediate Past President with specific duties related to training new board members.

In addition, over the next year the BOG will continue to implement and fine-tune other training and agenda management techniques commenced this year. As the BOG

continues this work, it will also consider over the next year how to implement additional recommendations stemming from the Task Force Report. The timeline and contents of future work is discussed in Section IV below.

III. RESPONSE OF THE BOARD OF GOVERNORS TO THE RECOMMENDATIONS OF THE GOVERNANCE TASK FORCE REPORT DATED JUNE, 2014

This Report responds to the Task Force Recommendations grouping together all recommendations relating to broad categories of the Task Force Report. For instance, Subsection A below is a reference to all recommendations in Section IV of the Task Force Report. For convenience and consistency the headings and responses are labeled below as referenced in the June 2014 Task Force Report.

Specific BOG responses and Recommendations are as follows:

A. FROM TASK FORCE REPORT SECTION IV: THE SUPREME COURT AND THE WSBA: ISSUES AND RECOMMENDATIONS

Task Force Recommendation: The Supreme Court should meet with representatives of the Board of Governors and the WSBA Executive Director at regular and frequent intervals during the year to discuss priorities and ongoing projects.

BOG Response to the Recommendation:

Since the Supreme Court has ultimate authority over the WSBA, both the BOG and the Executive Director agree that regular, frequent meetings with the Court are valuable. Effective and efficient communication with the Court in performance of its oversight function is essential in serving the interests of both the BOG and the Court. While the BOG believes that current levels of communication – both in person and otherwise – have been good, the BOG is available to work collaboratively with the Court to devise a plan to address this recommendation, should the Court deem it prudent. For instance, the BOG has now recognized the value of creating an Executive Committee (see infra) and the members of that Executive Committee could be available to meet with the Court as necessary to address specific issues viewed as important by the Bar and/or by the Court. Of course, both the annual Court/BOG meeting, typically in the spring of each year, is very helpful as is the annual Court/BOG Officers and Executive Director meeting, typically in the fall of each year. We strongly believe that these should continue, and the Executive Director and Officers should continue to coordinate communication with Court and Board, and reporting the results.

Task Force Recommendation: Amendments to the WSBA Bylaws should be approved by the Supreme Court.

BOG Response to the Recommendation:

Again recognizing the Supreme Court's ultimate authority over the WSBA, and mindful of recent United States Supreme Court precedent regarding direct supervision by the State, the BOG agrees that it would be prudent to have the Supreme Court approve, or at least review, proposed WSBA bylaw amendments before they become final. While proposed bylaw changes dealing with membership, licensing, and the budgeting process, likely would require careful review, many other minor or purely procedural matters would not. Nonetheless, the BOG agrees that all bylaws changes should be sent to the Court for review.

Task Force Recommendation: The Dismissal of the WSBA Executive Director or the Chief Disciplinary Counsel should be subject to veto by the Supreme Court.

BOG Response to the Recommendation:

The BOG acknowledges the Court's plenary authority to take any action it wishes with regard to the Executive Director and the Chief Disciplinary Counsel. The BOG has no objection to this recommendation.

Task Force Recommendation: The Supreme Court should re-evaluate the placement of certain Boards under the WSBA as well as their funding. For those that remain under the WSBA, the Court should help to ensure adequate funding.

BOG Response to the Recommendation:

The BOG disagrees with the portion of this recommendation that would ask the Court to reevaluate the placement of its Boards "under the WSBA." The Court's Boards are staffed and administered by the WSBA, but they work "under" the Court's authority. The BOG believes that each of the currently operating Court Boards (leaving aside the pending resolution of POLB issues) is cost effective and well worthwhile. The BOG further believes that the WSBA has an excellent relationship with each of those Boards and that, while "tensions" may at times arise, there is nothing that the WSBA, the Boards, and the Court cannot work out through continued mutual respect and close collaboration.

The BOG does agree, however, that the Court should consider whether it can help to ensure adequate funding for its Boards. By this, the BOG does not mean (as the Task Force seems to suggest) that the Court should carve-out its Boards from the same budget-setting processes that currently exist for all WSBA-related entities. Fairness to

the WSBA members requires that when license fees are used to fund Court Boards, that funding should be subject to the same budgeting processes as all other WSBA-related entities. But if the Court could find additional resources for funding its Boards, WSBA members would certainly welcome any funding assistance. Nonetheless, the BOG reiterates that these Court Boards are cost effective and well worthwhile and that the WSBA has no objections to continuing to staff and administer the Court's Boards.

B. FROM TASK FORCE REPORT SECTION V: THE BOARD OF GOVERNORS AND THE WSBA: ISSUES AND RECOMMENDATIONS

Task Force Recommendation: Clarify the duties of the Board and Governors in the WSBA Bylaws and other relevant materials.

BOG Response to the Recommendation:

The BOG agrees that an amendment to the WSBA Bylaws and other relevant materials would be helpful to clarify the duties of the BOG. The BOG strongly believes, however, that it is a representative body. BOG members are chosen either by election of members in their respective congressional districts or by election of the BOG to fill at-large positions on the Board. Regardless of how they are chosen, BOG members represent all members of the WSBA and are obligated to make decisions that are judged to be in the best interest of the organization. In its governing role, the BOG is the voice of lawyers in this state and has an obligation when governing to listen to the members, communicate with the members, and speak on behalf of the members. At the same time, the BOG has an overarching responsibility to protect the public and the justice system in the State of Washington.

The BOG agrees that Governors, when acting in their official capacity, should deal with WSBA staff in accordance with the communications policies established by the Executive Director. This principle should be clearly dealt with by appropriate training of BOG members so that they are educated as to their role as Governors and the separate role of the Executive Director as the director of the day-to-day work of the organization.

Task Force Recommendation: Change the name of the Board of Governors to the Board of Trustees and change the name of the Washington State Bar Association to "The State Bar of Washington."

BOG Response to the Recommendation:

The BOG is the governing body of the WSBA. In performing their responsibilities as Governors, they are responsible to meet common-law fiduciary duties of care, loyalty, and obedience. This role requires making decisions that are judged to be in the best

interests of the organization as a whole, not just those who elected them. A name change from Governor to Trustee is not necessary to accomplish this goal and in fact may cause unnecessary confusion among members. The Board of Governors is the appropriate term for the body; the Board of Trustees is not an accurate term. Changes should be made to the bylaws and organizational documents as necessary to clarify this role.

Changing the name of the Washington State Bar Association is another matter. While the WSBA should continue to perform not just mandatory functions, but also to provide benefits and services to members and the public, calling itself an association is unnecessary. The prudent (and perhaps easiest) choice of a new name, given the WSBA's regulatory functions and anti-trust and other legal issues, should be the Washington State Bar. This is consistent with other mandatory bars around the country.

Task Force Recommendation: The Board of Governors should provide governance training to new Governors and adopt practices that help to define the respective roles of the Board vis à vis WSBA staff and provide opportunities for self-reflection and self-improvement.

BOG Response to the Recommendation:

The BOG agrees with the Task Force recommendation regarding new Governor training. Such training is essential for proper preparation of new Governors for the understanding and performance of their duties as Governors. In fact, current training is already providing more in-depth preparation for all Governors that covers the items referenced in the Task Force report.

The BOG also agrees that it should conduct a periodic self-evaluation in accordance with best practices for evaluation of its performance. Such a process will provide opportunities for growth in performance of its expected role and will help ensure accountability. The BOG is currently taking action to implement this recommendation.

The BOG also proposes to task one of its officers with the primary role of ensuring training and mentoring of new board members. Attached as **Appendix B** is a proposed Bylaw change providing that the Immediate Past President shall be designated by the current President to facilitate training and mentoring for new board members each year.

Task Force Recommendation: The Board agenda should focus on strategic matters.

BOG Response to the Recommendation:

The BOG agrees with the Task Force recommendation that the BOG meeting agenda should focus on strategic matters. The BOG's July 2014 retreat provided in-depth training on such an approach and was unanimously appreciated by the BOG. Discussion led by the consultant at the retreat focused on methods of accomplishing this transition that resulted in a change to the structure of the BOG agenda at the September meeting. This new format has now become the model for meeting agendas. This excellent suggestion is working.

C. FROM TASK FORCE REPORT SECTION VI: ORGANIZATION AND SELECTION OF THE BOARD OF GOVERNORS: ISSUES AND RECOMMENDATIONS

1. Board Member Selection

Task Force Recommendation: Increase Governor terms to four years and permit former Governors to serve a second term at a later date.

BOG Response to the Recommendation:

The BOG is mindful of the Task Force concerns about enhancing institutional knowledge on the BOG and the ability of new members to be better prepared for active and meaningful participation from the beginning of their term. The BOG is also concerned, however, that adding a fourth year to the term of service would make it difficult for small-firm lawyers, government lawyers, and others, to serve at all. The BOG therefore would retain three-year terms and have newly chosen members begin a non-voting period of training following their selection, lasting up to the date they are sworn into office. During this roughly six-month period, in addition to the normal training provided to new members, they would attend BOG meetings and activities and receive the benefit of that involvement. This will assist with institutional memory.

The BOG further agrees with the Task Force recommendation that a second term of service on the BOG should be allowed for any BOG member who chooses to run a second time, but the second term shall not be served consecutively.

2. President Selection

Task Force Recommendation: The WSBA President should be selected from the Board of Governors and continue to serve as a voting member of the Board.

BOG Response to the Recommendation:

In choosing the President of the WSBA, the BOG feels it is vitally important to have candidates who offer experienced leadership and who are knowledgeable of the workings of the WSBA and the issues it is facing. It is also important to have people with fresh ideas and perspectives, from diverse backgrounds, who represent all geographic parts of the state and who are motivated to serve the organization. There have been several excellent Presidents who did not previously serve on the BOG. Limiting the pool of applicants to those currently serving on the BOG can fail to accomplish the above objectives and in fact would eliminate many excellent candidates who might otherwise be willing to serve. The BOG therefore disagrees with the Task Force recommendation and would continue with the current method of presidential selection as described in the current bylaws.

3. Non-attorney Membership and Selection

Task Force Recommendation: Two public, non-attorney members and one LPO / LLLT member should be added to the Board of Governors. These three members should be appointed by the Supreme Court.

BOG Response to the Recommendation:

Recognizing the WSBA's responsibility to protect the public and further cognizant of best practices followed by other bar associations, the BOG agrees with the Task Force recommendation that three public members should be chosen for service on the BOG. They should be chosen from a group of nominees from the general public and limited license professionals. The potential members should be vetted and nominated by the existing BOG Nomination Review Committee with input from the limited license professionals. Nominees would then be reviewed and approved by the BOG for submission to the Supreme Court for appointment.

4. Composition of the Board

Task Force Recommendation: To accommodate the additional Governors, the number of elected positions should be reduced to nine. The three current "at-large" positions should be retained to ensure participation by a "young lawyer" and members that reflect historically under-represented groups. This would provide for a Board of 15 persons, one of which would be the President.

BOG Response to the Recommendation:

While the BOG agrees that it would be a good idea to add the above referenced members, it does not agree that changing or reducing the current structure of the board is prudent. Current geographic representation by congressional district as well as "at

large” membership to ensure diversity and new and young lawyer representation on the BOG has proven beneficial. The current method of electing BOG members by congressional district and choosing at-large members should continue. The BOG should work with the Supreme Court to investigate methods to allow for the additional members, while preserving existing positions on the BOG.

5. Recruitment for the Board

Task Force Recommendation: A Search Committee, appointed by the Board of Governors, should solicit qualified candidates for the Board.

BOG Response to the Recommendation:

The BOG agrees that a Search Committee would benefit the WSBA in helping to identify and recruit candidates to fill open positions. WSBA governance is strengthened by having a diverse pool of interested candidates who bring energy and a variety of talents to potential service on the BOG. A committee should be appointed by the President and include the outgoing Governors as well as other interested BOG and WSBA stakeholders. The Search Committee should identify skills that will fill needs on the BOG. Any active WSBA member should be encouraged to submit their name for election to an open position regardless of whether they have been contacted by the Search Committee.

6. BOG Executive Committee

Task Force Recommendation: Establish an Executive Committee to address routine and non-strategic matters on behalf of the Board of Governors.

BOG Response to the Recommendation:

The BOG recognizes the need for an Executive Committee to address non-strategic, non-policy matters that need timely attention between BOG meetings. It is unusual for an organization the size of the WSBA not to have such an Executive Committee. The Executive Committee should include the following members: the President, the President Elect, the Past President, the Treasurer, the Personnel Committee Chair, and the Executive Director. Pursuant to appropriate Bylaws, the Executive Committee shall have authority to do the following:

- To meet as necessary to develop the BOG Meeting Agenda, which meetings shall be properly announced and open to all BOG members.
- To exercise limited powers of the Board between regularly scheduled BOG meetings because it is generally impractical to convene a full meeting to respond to a time-sensitive decision or action. Provided, however, that the EC may not take any action to establish, change, or alter prior Board decisions or policies;

may not take final action to amend bylaws; may not remove a board member from office; may not take any steps to hire or remove an Executive Director; and may not make any changes to the WSBA budget approved by the Board or alter the fiscal matrix.

- To serve as a sounding board for executive management on emerging issues, problems, and initiatives.
- To take such other actions that are not specifically prohibited above, are expedient and necessary, and are consistent with the prior policies and decisions of the Board.

The proposed Bylaw Amendment and Charter for creation of an Executive Committee is attached as Appendix C.

7. Board Workload

Task Force Recommendation: Establish a permanent process designed to reduce Governor workload.

BOG Response to the Recommendation:

The BOG agrees that it should be an ongoing priority to explore ways to reduce the BOG workload and to find ways to become more efficient in meeting its responsibilities. While remaining ever mindful of its primary responsibility to provide monitoring, oversight, and direction to the work of the WSBA, it must be open to new ways of doing business so as not to discourage anyone from service on the BOG. The BOG has already undertaken efforts in this regard. Changes have been made to both the content of the agenda and the manner in which the agenda is formulated. BOG training is focusing on the true role and responsibility of Governors in meeting their governance responsibilities and in delegating appropriate responsibilities to WSBA staff and volunteers. Work will continue in finding ways to meet this priority.

D. FROM TASK FORCE REPORT SECTION VII: STATE BAR ACT: ISSUES AND RECOMMENDATIONS

Task Force Recommendation: Repeal most provisions of the State Bar Act, with that statute then serving simply to create the WSBA as an agency “within the judicial branch” under the Supreme Court’s control.

BOG Response to the Recommendation:

As stated above, the Supreme Court has plenary authority concerning the state bar and the regulation of the practice of law. The BOG appreciates the Task Force recommendations, but believes that it is unnecessary to take action regarding the State Bar Act at this time.

IV. CONCLUSION: Moving Forward After September 2015 Adoption of Report

This report, with its recommendations and responses to the Task Force Report, is not intended to be the final action on the Task Force Report or the BOG's final actions to address Governance concerns in this report.

Also, the actions already undertaken this year and described in Section II of this Report, are not exhaustive of work that needs to be continued. With the exception of the two bylaw amendments to implement duties for training and for an Executive Committee, there is a list of Bylaws that have been identified which need further amendment to fully implement the recommendations in Section III.

The BOG should adopt a process for review and implementation of these remaining recommendations and should chart the next steps to review Bylaws and conform the Bylaws to the recommendations in this report. A proposed timeline of action items should be adopted and the BOG Governance Workgroup recommends the following stages for that timeline:

1. Adopt the final recommendations;
2. Allow an appropriate amount of time for the Supreme Court to provide any public input they may elect to offer on the final report, if any;
3. A work group of the BOG should be directed to work with General Counsel to identify all areas in the Bylaws impacted by the Report as adopted, and to recommend proposed language for any Bylaw amendments.
4. The work group should also examine any special barriers and concerns in implementing recommendations that increase the size of the board, add public members, or require careful coordination with the Court.
5. A specific timeline for presentation of proposed bylaw changes and implementation should be adopted by the BOG by November 2015.

Through the combination of all these efforts, the WSBA's governance will be in a more sustainable mode as it works to serve its members and to achieve its mission of protecting the public and championing justice.