

**Comments received prior to  
BOG Governance Work Group  
meeting on August 12, 2015**

**COMMENTS TO DRAFT BOG GOVERNANCE WORK GROUP REPORT AS OF 08-12-15**

**From:** Bill Viall [mailto:billviall3@gmail.com]

**Sent:** Thursday, July 16, 2015 1:29 PM

**To:** email; Paula Littlewood

**Subject:** Re: Board seeks input on report of draft responses to Governance Task Force recommendations

WSBA Board,

I believe that one three year term is sufficient. I agree with the proposition that a President selected from outside the Board is a good idea rather than a member of the Board. I think expanding the board to 18 is problematic as 15 is already a little unwieldy. I don't agree with adding two non-attorneys on the Board and an LLLT. I don't believe Non-attorneys will add much about the practice of law but will add additional "politics" to the Board, when there is already enough of that to go around anyway. As to the LLLT member, why should a relatively small number of practitioners get one position on the Board. They will be greatly over represented. Why not wait and see how many there are in ten years, and then, if their numbers are sufficient, they might merit a seat at the table. Way too soon.

Respectfully,

Your Colleague

Bill Viall

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**From:** vlaparker@aol.com [mailto:vlaparker@aol.com]

**Sent:** Sunday, July 26, 2015 1:11 PM

**To:** email

**Subject:** Re: Board seeks input on report of draft responses to Governance Task Force recommendations

If you are truly looking for input and if they wish to uphold our oath of office, take suggestions for change to the Bar Association to the Washington State Legislature which established our association.

Vicki Lee Anne Parker,  
Attorney at Law

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**From:** Reg P [mailto:reginapaulose@gmail.com]

**Sent:** Wednesday, July 22, 2015 4:29 PM

**To:** Governance

**Subject:** Report feedback

Hi

I am really annoyed to see this draft report which does not mention anything positive for the members. I think its wonderful that you all have met to discuss items that do not pertain to the everyday practice of all and unsurprisingly have still not taken up anything in this report relating to attorney privacy with regards to the bar. I am assuming that there will be some power as a result of this report that you will get that will allow you to better serve the attorneys who work for the public.

Regina

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**From:** DICK MANNING [mailto:jmb@seanet.com]  
**Sent:** Saturday, July 18, 2015 2:36 PM  
**To:** Governance  
**Subject:** Governance Task Force Recommendations and the BOG Response

July 18, 2015

I've read the task force recommendations and the BOG's response. I agree with each item of the BOG's response. As one who had the privilege of 5 years working with the BOG as well as many other occasions over the last 25 years, wise heads have prevailed in the BOG's analysis of the task force recommendations. I can give many reasons. One example is the task force recommendation to create a new state bar act. If all of my years' experience with this august body – the legislature – counts for anything, don't approach the legislature about a state bar act; that is - unless you want to open a hornet's nest you'll never forget and much regret. Just ask former WSBA general counsel Bob Welden.

Thanks to the Task Force and especially to your review work force to its thoughtful analysis and response.

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**From:** James Clark [mailto:jameswayneclark@comcast.net]  
**Sent:** Saturday, July 18, 2015 12:47 PM  
**To:** Governance  
**Cc:** jameswayneclark@comcast.net  
**Subject:** Governance Task Force Comments

This responds to the request for input on the Governance task force and BOG recommendation.

I have been a member of the WSBA since 1981, bar number 11461. My practice has been limited to that of a government attorney representing serving a large federal agency from which I am retired. During my career I primarily lived in states other than Washington although I had the good fortune to live and work in Washington for over ten years. I currently reside in the Portland, OR area.

My responses to the recommendations are as follows (I will follow the number system used in the BOG report Part III):

A. I concur with the BOG responses.

B. I concur with the BOG response. I particularly see no reason to change the name of the BOG or its members.

C.     1. I agree with the BOG terms should not be increased.  
       2. I agree with the BOG.

3 and 4. I agree the current elected and at large membership on the BOG should remain. I disagree with the BOG and task force on adding three members. Increasing board size decreases efficiency and effectiveness and does not effectively address the problem. A better solution is to establish one or more stakeholder advisory groups (advisory panel or some such title). Adding two general public and one para-professional member severely limits input from a broad sector of the public while expanding the board and decreasing its effectiveness. A large advisory panel including ten or more members from these sectors allows for a greater diversity of public opinion without impacting the effectiveness of the board. The chair of the advisory panel could be a non-voting member of the board (providing input on issues of interest to that sector and by being non-voting a substitute could attend if the chair is not available).

5. I agree all members of the bar should be allowed to run for BOG positions.

6. I disagree. Routine non-policy, non-strategic matters should be handled by the WSBA staff not the board. As for other matters procedures should be developed for electronic voting between sessions (if they do not already exist). With modern technology there is no reason all board members cannot participate in meetings and vote on issues significant enough to need board attention.

7. I agree with the BOG that workload reduction, particularly through eliminating board issues not requiring their attention, and also through enhanced use of ever developing technology should occur.

D. Isn't this beyond the scope of the bar and an issue for the legislature and administration? I agree with the BOG it should not expend resources to seek repeal of this statute.

In addition I think the task force and the Bar is ignoring some of the key issues facing not only legal practice, but all professional groups akin to attorneys (accountants, engineers, etc.) and that is the proliferation of multi-jurisdictional options including not only increasing practice across state borders by large legal and quasi-legal organizations as well as multi-jurisdictional practitioners, but also increasing international competition. Technology has erased borders and the bar needs to deal with that change. If this issue is not effectively addressed we can expect to see larger and larger percentages of foreign regulated and unregulated legal practice in the state.

Jim Clark

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**From:** Joel Gilman [mailto:joel.gilman@stateheritage.wa.gov.au]  
**Sent:** Thursday, July 16, 2015 7:28 PM  
**To:** Governance  
**Subject:** Comments on the draft Governance report

Dear Sir/Madame,

With the following exceptions, I support all of the BOG responses to the Task Force recommendations:

**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."**

**I disagree with both of these changes because they are cosmetic and will create confusion. A little confusion might be a small price to pay for substantive changes, but not for cosmetic ones. Please reject both of these suggestions.**

**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.**

**I am opposed to having non-attorney members on the Board. The practice of law continues to become more complex. Unless one has to daily grapple with this complexity in order to earn a living, they are not qualified to pass judgement on ethical matters, policy questions addressing how WSBA members are to comport themselves, rules of court, appropriate CLE training, and other issues that come before the Board. That said, I would support having non-attorneys serve as non-voting members on the Board.**

Finally, although the Report does not specifically address this, all of the BOG's and Supreme Court's work in regard to governing the profession should embrace the goal of improving access to justice. I note that discussions on this topic usually focus on encouraging more pro bono work or seeking increased funding for legal aid, but I have yet to see any serious discussion of reducing the complexity of the law itself and its procedures, particularly in those areas of law where the greatest numbers of people of moderate means are left out of the game – family law, landlord-tenant, and criminal law. For example, the explosion of unnecessary and self-indulgent “local rules” throughout the state does nothing to reduce the cost of providing legal services. While small-claims calendars are useful, their jurisdiction is too limited. I note some other jurisdictions provide specialist tribunals to handle disputes in certain areas, usually without the need for legal assistance to navigate a labyrinth of procedural and evidence rules. In short, I believe every matter that comes before the BOG should be assessed, to some extent, on its impact on access to the courts for people of low- to moderate-incomes.

Kind regards,

**Joel Gilman**

Solicitor (WSBA #13322)

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**From:** efry sisna.com [mailto:efry@sisna.com]

**Sent:** Thursday, July 16, 2015 3:09 PM

**To:** Governance

**Subject:** Hi, I reviewed the report and recommends and the BOG response and agree to

everything. I think the name change is not necessary but will highlight the significant changes.

Elizabeth Fry

Omak, WA

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**From:** Gregory Wall [mailto:gregwall@wllps.com]

**Sent:** Thursday, July 16, 2015 12:42 PM

**To: Governance**

**Subject: Comments on Governance Task Force Recommendation**

To the Board of Governors:

I read this report with some dismay. I think it illustrates the need to examine whether a mandatory, unified Bar Association is a wise choice for the lawyers of this state. There is an inherent tension between the Bar's disciplinary role and a voluntary Bar Association's role as a trade organization. This report reflects confusion on this aspect. The Board of Governors is elected by the membership, not appointed by the Supreme Court. If the Court wants to direct the activities of the Bar Association, such as approving our Bylaws and vetoing the firing of the Executive Director, it ceases to be a membership organization. It also presents a conflict of interest, since the Court reviews our disciplinary proceedings. I don't know, but does the Court exercise these powers with regard to the Superior and District Court Associations? I suspect not. The authority of the Supreme Court over lawyers is basically to regulate discipline and admission. They are not granted authority to rule over every aspect of the practice and business of lawyers in this state.

Some specifics:

1. Meeting with the Supreme Court. Probably not a bad idea, except it again raises two issues. Is the BOG working for them, or the membership who elected them?
2. Approving our bylaws. Not advisable and not part of their function, as far as I am concerned. They have overall control over licensing and discipline. They do not rule every aspect of lawyers business. We are not employees of the Court. In the past, there have been misguided attempts to tell lawyers how to run their offices and businesses. ( I recall one attempt to have all offices use a certain percentage of recycled paper.) While the Court has overall authority over the licensing and discipline of lawyers, it does not have the authority to control every aspect of practice. Is it our Association or just an arm of the Supreme Court? If it is their agency, they should pay for it.
3. Veto of the firing of an Executive Director. I was astounded when I read this and when I saw no objection from the BOG. I have served on the Boards of several non-profits and I currently serve on the Board of Directors of my local school district. Our most important function is selection and supervision of the Executive to run the organization. If you give the Supreme Court this veto, that invites behind the scenes political maneuvering by your E.D. If I were on the BOG an such a veto occurred, I would resign immediately and urge all other members to do so. This should be rejected.
4. Bar Committees and interest sections are not the business of the Court. The sections are funded by the members. The Committees, and I have served on several, may have some expenses paid by the Association, but lawyers contribute countless volunteer hours. They do this for the benefit of the members of the association, not as unpaid employees of the Court.
5. As to training, governance structure and the strategic focus of the BOG, I think these could all bear examining. But they are issues that should be decided by the BOG and the membership. It is not the Court's business.
6. Amending the State Bar Act. It should be amended, but not by making it an "agency within the Judicial Branch." It should be amended to abolish the mandatory Bar membership. Licensing should be transferred to the Department of Licensing. It works fine for other professions. A voluntary association should be founded and run by and for the membership. This is how the majority of other States are set up. Finally, lawyer discipline should be transferred to the Supreme Court or made an independent

agency which is supervised, and paid for, out of the Court's budget, not supported by membership fees. I think making the prosecution of offenses, which are then reviewed by the Court, an agency of the Court raises some issues of conflict of interest and due process.

I think the question that should be asked by this task force is: Whose Association is this? We pay for it. We contribute our time and effort. We elect the BOG. If it is not our Association, but simply an "Agency of the Judicial Branch," then this is all a sham and the membership are just dupes. If the BOG does not answer to its constituency on issues of Bar governance, why do we need them? What is their function? The BOG should be eliminated and the Chief Justice can rule by edict. This report shows a lack of concern, or maybe a lack of understanding about this issue. It is the first question that should be addressed, not ignored.

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**From:** Joseph Quinn [mailto:[firelaw@comcast.net](mailto:firelaw@comcast.net)]  
**Sent:** Thursday, July 16, 2015 12:16 PM  
**To:** Governance  
**Subject:** Governance Report and BOG Response Thereto

Board Members: It certainly appears to me that you are on the right track to dealing with the governance issues, including training for new board members. The similarities to my work with fire districts and other local government governing boards surprised me. If you ever need free consultation with an expert on non-profit boards I am available to assist the WSBA. See the attached paper, which shows certain similarities to the issues you face, such as deciding on the proper roles for board members as compared to the CEO and other paid staff. Joe Quinn  
P.S. Local government boards have been using the "consent agenda" concept for many years to streamline the agenda at meetings.

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**THE BOARD AND THE FIRE CHIEF—  
WHO'S RESPONSIBLE FOR WHAT?**

*By Joseph F. Quinn, The Firehouse Lawyer*

I. Introduction. About 12 years ago, in 1996 if not earlier, I wrote a paper entitled, “The Board and the CEO-Working Together”, to be delivered at a fire district retreat. In that paper, and many times since then, I have shared my advice concerning the relative roles, responsibilities, or “spheres of influence” of fire commissioners and fire chiefs. There, and ever since then, I (and others) have stressed that the fire commissioners should be the policy makers at the fire department, and the Fire Chief should implement but not make policy. Because both the Board and the Chief should stay in their appropriate sphere of influence, the advice continues, micro-management of district affairs by the Board is not recommended. Well, this is all fine and dandy as far as it goes, but 12 more years of experience working intensely with fire departments has led me to believe it is time to get more specific. That belief is based upon observations of districts that continue to struggle with making these general principles work effectively in particular fact situations. Like the first paper, this paper is based more on observations of what works and what does not work in actual instances. It is not based on the law, which provides little guidance in this area. (Title 52 merely provides that the commissioners are elected to manage the affairs of the district, but it also authorizes them to hire a Fire Chief, and then delegate some or many of their duties and powers to the Chief and other personnel.) The views expressed in this paper, about the relative roles of the Board and the Chief, are consistent with the NFPA standard on the organization of the fire department.

II. In General. Generally speaking, it is the proper role of the governing board to make policy and the proper role of the Fire Chief and his/her staff to implement that policy. The board is partly a legislative body and so in that arena the board acts collaboratively as a body, rather than simply as individuals. Of course, such a board also has executive powers to manage the district, so the fire district and fire authority (see RCW 52.26) model is different from some state and local government governance models that have a clear delineation between the legislative and executive branches. Compare state government (the Governor v. the Legislature) and some charter county governments (the County Executive and the County Council) with the organization of a fire district and you will see that most fire departments have governing boards that have some executive functions as well as just “legislative” functions, such as executing contracts. As implied above, however, we need to go beyond the “making policy/implementing policy” dichotomy in order to really understand some of the issues occurring in the field in actual fact.

III. Actual Functions. By examining some actual individual functions of fire districts or fire authorities we may be able to elaborate on these concepts, and see why these issues keep arising.

A. Budget/Financial Issues. In accordance with a state statute, the governing board is the body that adopts the municipal corporation’s annual budget. But the practice, nearly everywhere, is to delegate to the Chief and other administrative persons the responsibility to draft the budget for the department, and the Board’s consideration. Input into various line item

expenditures is often sought by the staff in a very broad fashion, from many stakeholders or interests within the department. Certain key financial decisions are often (and properly) reserved to the Board, such as the appropriate amount of any Reserve funds, whether any non-voted bonds need to be issued (borrowing money) and other major financial decisions. But the details of how to invest surplus funds are generally left to others; some departments have officially appointed an Investment Officer. Typically, after several study sessions with the Board, and at least one public hearing, the budget for the year, for each fund maintained by the district, is adopted by Board resolution. Thus, it can be seen that on the budget/financial issues, the role of the Board is that of final decision maker and the role of the staff is to be the proposer.

- B. Development, Adoption, and Implementation of Policy and Procedure. I would say this topic is handled very similarly to the above. The staff develops, presents, and then implements policy, but the board is “The Decider” as President George W. Bush calls it. The one legitimate exception is probably in the area of operational policies and procedures. For example, a department may want a policy or operational guideline on responding to mass casualty incidents. Since the details of how this technical rescue or EMS work would be accomplished are not fundamental to the managing of the corporate enterprise itself, I would say this is operational. My recommendation is that such operational policy or procedural guidelines are provided to the Board as adopted guidelines, not for their approval, as they are

technical in nature, as opposed to representing policy guidance for the district. As such, I would place these operational guidelines at most in an appendix to the official policy and procedural guidelines of the fire department. All other PPG's --of general application at the department—are best included in the primary policy manual approved wholly by the board.

- C. Contracts, In General. Since the board manages district affairs, in general, only the board should execute and sign contracts. However, having said that, I would hasten to add that the board can certainly *delegate* that contracting function to the Fire Chief or a delegee, and not violate state law. And many departments do just that. Some delegate to the Fire Chief the power to execute all contracts up to a specified maximum amount, or any amount that has been budgeted to expend for that purpose during the year. A few delegate all contract execution to the Fire Chief. Most departments, especially in the smaller fire districts, reserve the contracting power to the board. Finally, some will approve the contracts and then by motion authorize either the Chair of the Board, or the Chief to actually sign the contract, on a case by case basis.
- D. Personnel Decisions. The statutes provide authority for districts to employ personnel, and districts handle those duties ordinarily by having the board delegate a good deal of authority to the Fire Chief. Recruitment, hiring or appointing paid employees is usually the duty of the Fire Chief, but some districts still have the Board act as the “appointing authority” for paid firefighters. It appears to me to be almost a ceremonial duty, in those departments that do that, as often the district has already made a conditional

offer of employment to the candidate when the Board actually takes the action of appointing. At the other end of the spectrum, firing or discharge decisions are often reserved to the Board. However, even there, some boards have delegated to their Fire Chief the power to discharge at least with lower level employees. With respect to other, lesser discipline, it is even more common to delegate disciplinary decisions to the Fire Chief, and with verbal reprimands or counseling, that is done at a level below Fire Chief in many districts. Promotional testing and eligibility lists are usually done with little or no Board involvement, except perhaps for making a final or formal decision, which some Chiefs take to the Board for approval. Creating a new position, especially if unbudgeted, normally takes Board approval. Negotiating collective bargaining agreements is typically something that does not include the entire Board, although we have seen many departments that have one board member serving on the negotiating team. We recommend that the Board be responsible for laying out the parameters for the bargaining team, such as the ultimate maximum pay raise %, the extent of benefits, and other bread and butter issues, and then leaving the negotiating within those parameters to the negotiating team. At least for a first collective bargaining agreement, we recommend that the district hire a professional negotiator as the lead person on the team. The Fire Chief can and should serve on the team, in our opinion, since he/she has to implement the CBA or live with during the time it is in effect. On the other hand, if the Chief's salary is a percentage of the pay scale in the CBA or tied thereto, the Chief should not be on the team

at all. The Chief is often delegated the power to negotiate and maybe even execute non-union contracts or personal service contracts. However, Boards that do so delegate should make it crystal clear to the Chief just how much authority he is being given and whether final approval is for the Board only. In one case recently, we had hard feelings between the Chief and the Board, as the latter did not clearly inform the Chief that they wanted the agreements brought back to the Board for approval; when they saw the final version of the agreements apparently they felt he was too generous in some terms of contract.

E. Procurement/Purchasing. With regard to public works projects, usually the Chief's staff prepares the specifications with little board input. Ordinarily, however, bids are opened at board meetings and the board is involved in the award of the contract to the best bidder. The same is usually true with regard to hiring architects, engineers, and other professionals such as attorneys, physicians, political consultants and the like. Once these contracts are awarded, the monitoring of performance of the contracts is left to the Fire Chief or his staff. Board members seldom interact directly with such outside professionals or contractors, but in some cases it does occur. I have found that, with public works contracts, it is best for individual board members not to get too involved with the details of performance. Let the architect, Fire Chief or hired project manager deal with those details. More than one construction contract has gone awry, with disastrous financial consequences, due to "interference by owner", and that owner has in some cases been an

individual fire commissioner. In most departments, the custom or practice is for the Fire Chief (and often several subordinates) to be the primary point of contact for the district's attorney. Sometimes, for various reasons, the Chair may be the primary contact, as for example, when the issue at hand is disciplinary issues or misconduct by the Fire Chief. Albeit rarely (in the last 22 years), I have seen problems ensue when several fire commissioners have free rein to just call the attorney for legal opinions. On at least one occasion, I have personally experienced some "opinion shopping" by board members, who for some reason unbeknownst to me, were unable to provide complete or objective facts to the attorney. Then I later learned from a different Board member or the Fire Chief, that there were facts I had not heard! Needless to say, when that happens you may even need a board policy or resolution stating who is allowed to call the attorney and who is not. If nothing like that is in place, and a fire commissioner calls for advice, my practice is to respond to this apparently legitimate client request. Many departments do not need any such restrictions, but "if the shoe fits, wear it." I have a standard resolution for that situation. In summary, the best practice is to let the staff and the Fire Chief deal with procurement and purchasing of goods and services, except for the big decisions.

- F. Resolutions. Obviously, only the Board of Commissioners can adopt resolutions, which are by definition legislative actions. Of course, staff is often delegated the responsibility of drafting resolutions for Board approval. Sometimes, with sophisticated resolutions such as those related to bond issues,

or primary programs, or election/ballot propositions, it is often prudent to have counsel do the drafting.

G. Board Committees. With the advent of so many five-member boards at fire districts, and with regional fire protection service authorities, the governing board may be large enough to have committees. Many of my larger, more sophisticated client departments have multiple board committees, some of which meet every month. These committees may, for example, do all of the preparatory work prior to an issue coming before the full board. Chiefs and Boards sometimes ask, "How does the staff relate to the committee, as opposed to the entire Board?" Frankly, I do not see that the laws require any different treatment for these committees. Since no quorum is present, and since the committees have no final deciding authority, these committee meetings are not subject to the Open Public Meetings Act, in my opinion. While formal minutes may not technically be required, it may be a good idea for someone to take informal minutes of such meetings. Staff could perform that function. Staff should support fully the work of the board committees and be just as diligent at providing information and doing research for such committees as they would be for the whole Board. In general, Board members have a right to all information they need to perform their managerial and leadership functions at the department. They are not just members of the general public, and subject to the Public Records Act. So, when a board member asks for a document, such as a copy of a chief's contract, it should be immediately provided, and not with a caveat that "I will have to tell Chief X

that you asked for a copy of his contract. Otherwise, I am reluctant to give it to you.” (It is a public record, and you could not even tell a member of the public that such a condition will be imposed, so how could you insist on that to a Board member?)

H. Access to Information. In my view, elected commissioners are different than members of the general public. This implies that they would have at least as much access to district records or information as a citizen, and probably considerably more. Generally, commissioners should have access to all district records and matters, since they are the “managers” of the enterprise. However, I recommend that some matters and records be kept confidential from all persons (including but not limited to commissioners) except those with an absolute “need to know”. Examples of such confidential material would be employee medical records and certain patients’ protected health information. Only rarely will a commissioner’s duties actually require them to access such records or information, such as the case of an employee seeking leave of absence for medical reasons.

IV. Conclusion. As you can see, there are very few areas where the power is exclusively reserved by statute to the Board or the Fire Chief. The law is flexible enough to allow boards to delegate to the Fire Chief or his staff nearly all of the duties or functions discussed above. The lesson to be learned, however, is that your local rules, SOPs, policies, PPG’s, or whatever you call them are clearly written so that you know locally, in your department, what the Board’s expectations are, with respect to the role of the Board and the Fire Chief, respectively, in all of the various sectors of the

department's administration and operations. At a recent retreat, we discussed the related topic of Board/Fire Chief communications. We did so by asking the question, "What should the Chief tell the Board, between meetings, as to the day to day events at the department?" For example, I expressed my opinion that most board members would appreciate being advised between meetings in the event of (1) a fatal fire in the district; (2) a significant injury to a firefighter, whether paid or volunteer; (3) any serious discipline needing to be imposed, and similar "big events". Of course, what is a "big event" may vary from one department to another. Therefore, here is a novel idea: Have the Board write out their expectations in this regard! In fact, that may point up the advantages of having the Board memorialize their wishes in a much broader sense than just the things they want to be apprised of between meetings. That might come in handy during the Chief's annual evaluation. I hope you have found this paper thought provoking at the very least.

**Comments received between  
BOG Governance Work Group  
meeting on August 12, 2015, and  
September 9, 2015**

**COMMENTS RE DRAFT BOG GOVERNANCE WORK GROUP REPORT RECEIVED  
AUGUST 12 – SEPTEMBER 9, 2015**

**From:** Christi Goeller [mailto:Christi.Goeller@lucelawfirm.com]  
**Sent:** Friday, August 21, 2015 11:22 AM  
**To:** Governance  
**Subject:** Comments on BOG's review of Governance Task Force Recommendations

Good day,

I am writing in response to the WSBA's email of 8/20 seeking comments on the BOG's report regarding the Governance Task Force's recommendations. Overall, I agreed with the BOG.

**Regarding changing the name of the Washington State Bar Association** to the Washington State Bar or the State Bar of Washington: I agree with the BOG that it should be changed to the Washington State Bar. As the report notes, that is consistent with other states – like Oregon's OSB (Oregon State Bar). Additionally, going from WSBA to just WSB will be far less confusing for members of the public since we'd just be dropping the "A". No matter what, it shouldn't be the State Bar of Washington. The acronym would likely be a very awkward SBOW or SBW. SBW stands for a lot of things, including Standard Body Weight but it is also a slang term used on the internet and in text messages that is very offensive. (Just to be clear, I didn't know this until I ran a search on acronyms. I don't want you to get the wrong idea about me. Rather it just seemed like a good idea to check what the potential new acronyms may already stand for). I'll let you look up SBW if you really want to know the slang version stands for.

**Regarding length of term for governors:** I agree a longer term of 4 years will likely make it more difficult/burdensome for lawyers in small or solo practices to serve. In fact, 3 years is already a pretty big commitment. What if it were a two year term but people could serve one more consecutive term? That way, it makes it possible to serve 4 years if a person wants to (which would meet the Task Force's recommendation) but might also get more involvement from other attorneys who are reluctant to take on such a long term commitment of serving for 3 or 4 years (as the BOG noted in its response to the recommendation).

Thanks,  
Christi

**Christi C. Goeller**  
WSBA #33625  
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**From:** vlaparker@aol.com [mailto:vlaparker@aol.com]  
**Sent:** Thursday, August 20, 2015 3:04 PM  
**To:** Governance  
**Subject:** per your request

Take the requests for governance change to the legislature which established WSBA.

Vicki Lee Anne Parker,  
Attorney at Law

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**From:** yukiko.stave@stavelaw.com [mailto:yukiko.stave@stavelaw.com]  
**Sent:** Tuesday, August 18, 2015 1:51 PM  
**To:** Governance  
**Subject:** [FWD: Board seeks input on final report addressing Governance Task Force recommendations]

President of WSBA must be elected from all active members of WSBA, not from existing Board of Governors members. If President of WSBA is elected only from the existing Board of Governors members, it will be a step closer to a tyranny. Active members of WSBA are reasonably sophisticated voters to assess the qualification of President candidate. Whoever elected by active members, regardless of whether the person is an existing BOG member or not, is the one who is willing to serve WSBA members and the one Board of Governors is required to accept. Board of Governor's will should not supersede the will of active WSBA members.

"Experience level" may be just an excuse for some people close to the Board of Governors to get more power to President that they don't like. "Experience level" may be a subtle pretext of discriminating President who is coming from a non-traditional background. Limiting a pool of applicants for President will weaken the democratic structure. President has to have a strong leadership, enabling elected President to have a different opinion from existing Board of Governor members. If an existing Board of Governors member candidate is better than a non-existing Board of Governors member candidate, then just let voters decide who is the best. Limiting applicants' pool is unnecessary. Existing BOG members are not prohibited from being a president candidate.

President elected by active WSBA members with fresh eyes but without a previous connection with WSBA governance is also beneficial to watch and notice any corruption of WSBA and misuse of WSBA membership dues.

I request my comment be included in a report sent to the Supreme Court without editing it. If not, I will send it on my own.

Yukiko Stave

**From:** Jeff Tolman [mailto:jefft851@gmail.com]  
**Sent:** Monday, August 17, 2015 3:57 PM  
**To:** Governance  
**Subject:** Governance Task Force recommendations - Comments

Thank you for the opportunity to address the Governance Task Force's recommendations. Early on in the process I gave my two-cents as a long time Bar activist and former Board of Governors member. My comments have changed somewhat since then. Here are my thoughts:

- Perhaps the most telling recommendation is changing the title of the Board of Governors to Trustees. This accurately reflects the Task Force's belief in how to develop a better WSBA. I certainly disagree. Lawyers should be, as they have been for over 100 years, governed by lawyers. While the Supreme Court (Sct) has always had the "ultimate control" over the practice of law, they have stayed away from the day-to-day, year-to-year governance and concentrated on their job of being the highest court in WA. That – apparently with the blessing of the BOG – is about to change.
- Certainly the BOG should meet with the Sct to discuss issues. That has for decades occurred in January. The meetings should continue.
- The recommendations significantly dilute the WSBA members' ability to govern themselves in these ways:
  - o Requiring the Sct to approve amendments. Why would we do that? Lawyers should govern the day-to-day rules by which they work.
  - o Why would any organization capitulate to another group having veto power in the retention of their staff? Lawyers should govern lawyers and the senior WSBA staff, as they have for 100+ years pretty successfully.
  - o Why would the Sct have any interest in determining the funding and status of WSBA Boards? And why would the lawyers let them? Not wise for 9 folks who don't practice law anymore to govern the day-to-day life of those who do.
  - o Clarify the duties of the BOG. What is unclear? The Board of Governors are tasked to – as the name implies – govern its members.

The inconsistencies continue in the next section of the recommendations. Increase Governors/Trustees terms to 4 years, allow former Governors to be re-elected, get qualified candidates and decrease Governors/Trustees workloads. In the organization that has worked very diligently to increase diversity, doesn't lengthening terms and allowing former Goves to be re-elected fly directly in the face of increasing the voices who govern the WSBA members? It would seem so to me is an anti-diversity posture that is unwise.

Why should the Prez be required to be a BOG member? Our former Prez who had not served on the BOG did a wonderful job. Why not keep that diversity as an option? I think it should be.

Lawyers seem to think if they take certain steps public opinion will be changed. Have a LPO member. Have two members of the public on the BOG. In doing so the direct democracy of the members to select their leaders is significantly diluted. Are we better off taking that away? Does anyone REALLY think one public opinion will be changed through these steps? Would anyone's opinion (whatever the opinion is) be changed if the Chiropractic Board opened itself to a public member? I think not. Nor will anyone's opinion about lawyers be changed. A bad trade – dilution of democracy re expanding the Board to non-lawyers – in my view.

I don't understand the push to "get qualified candidates" issue. While some of the leaders have had profoundly different opinions of the WSBA than I, I believe all of our leaders have been qualified.

To create an Executive Committee to run the day-to-day issues of the WSBA gives more power to fewer people. A bad idea.

Ultimately the proposal, if (when?) ratified by the BOG will diminish the basic nature and "skeleton" of the WSBA. Not to the benefit of the members in my view.

Jeff Tolman, Poulsbo

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**From:** stvejones@comcast.net [mailto:stvejones@comcast.net]  
**Sent:** Monday, August 17, 2015 2:53 PM  
**To:** Governance  
**Subject:** A name change for the WSBA requires a statutory amendment.

WSBA:

The name of the WSBA is set by RCW 2.48.010. The name cannot be changed except by an act of the state Legislature, which could open up the State Bar Act to other (unwanted) changes.

Also, the name of the Board of Governors is set in RCW 2.48.040. Any change in the board' name will also require an amendment to that statute. Risky business!

Stephen L. Jones  
WSBA no. 7090  
Olympia, WA

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**From:** Paget, Joel H. [mailto:Paget@ryanlaw.com]  
**Sent:** Monday, August 17, 2015 1:25 PM  
**To:** Governance  
**Subject:** Comments on the Report

I read the entire report:

I disagree with the change of the WSBA name and the designation of Governors as Trustees. For what good is the change. Look at the expense of the name changes.

I agree that the term should be longer but three years rather than four. Four is a huge commitment and possible good members cannot commit to four years.

**Joel H. Paget**

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**From:** Ken Snyder [mailto:info@nursinglaw.com]  
**Sent:** Monday, August 17, 2015 12:55 PM  
**To:** Governance  
**Subject:** Governance of the Legal Profession

All right, since you sent me an email asking for my opinion, here's my opinion:

I think the Board of Governors and the Supreme Court should push for a constitutional amendment transferring governance of the legal profession to an administrative agency directly responsible to the people via the state legislature, like everybody else. Then the Board of Governors should furlough the WSBA staff and dissolve itself.

The quantum of opposition from the lawyers and judges to this modest proposal is probably a realistic measure of the good it would do.

Sincerely,  
E. Kenneth Snyder WSBA #12274 (Inactive)

## Comments to the BOG Response on the Governance Task Force—by Paul Bastine

I feel compelled to comment on some aspects of the BOG response to the Governance Task Force recommendations. While I did not serve as a member of the Task Force, I was liaison to it from the Board of Governors. I attended every meeting and heard the diverse and careful considerations of all of the issues by the Task Force and others who appeared before it.

The issue of the size and composition of the Board of Governors was one of the most discussed and considered aspects of the recommendations. Early on, the Task Force heard from one Supreme Court Justice that nine would be an ideal number for the Board. Literature and studies indicated that efficient boards were probably in the range of 5 to 15 members. The reasons, among others, are: smaller boards are more cohesive and come to consensus in an efficient manner; board members feel more involved in the decision making process; board members feel more compelled to be conscientious as they cannot easily rely on other members to carry to load; and further the board is less likely to break down into factions and cliques. The Task Force having several former governors and recognizing there are 17 officers and governors currently on the BOG, it was felt these were important considerations. This particularly became a factor when it was determined that three additional non-lawyer board members should be added. Having determined that diversity was important; that three diverse and “new lawyer” members were important and those positions should be retained; that geographic diversity was important and that election of governors by members was desired by the membership (though the percentage of members voting does not in reality support this concept), adding three additional members to the board would raise the BOG to twenty. It was concluded that would be undesirable for the reasons stated above. Thus the reasoning was to reduce the number of elected governors and to do so by changing the boundaries for the elections to the appellate districts rather than Congressional districts. The Task Force recommendation would simply reduce the number of elected governors from eleven to nine. By electing the President from the Board and eliminating the additional offices of President-elect and Past President the board size would be a fifteen, a number more in line with good practices and yet retain all of the desirable classifications.

After being on the Board of Governors for three years, having observed it for fifty years from various positions and having observed the extended discussions of the Governance Task Force, I believe it is a serious mistake not to adopt the recommendations of the Task Force in these regards. The recent self-evaluation by the Board, the evaluation of the Executive Director and the intra-action of the Board in recent history, all demonstrate that the Board is divided into factions, that it does not function as a cohesive body and reducing the size rather than increasing it, would better serve the organization. As an aside, I believe that having only two elected governors from each appellate district with four year terms and thus reducing the elected governors to six and the BOG size to twelve, would be the optimum change. I recognize this was not the recommendation of the either the Task Force or the Work Group and thus the pros and cons have not been considered. However after due consideration, I believe this would be the better structure as the Bar moves forward.



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THE ALLIANCE  
for Equal Justice

SUPPORTER

August 20, 2015

Anthony Gipe, President  
Washington State Bar Association Board of Governors  
1325 4<sup>th</sup> Avenue, Suite 600  
Seattle, WA 98101

RE: Governance Task Force Recommendations

Dear President Gipe,

Thank you so much for the opportunity to comment on the WSBA Board of Governors (BOG) final report regarding the Governance Task Force Recommendations, which we understand is scheduled for adoption at the September 17-18 board meeting in Seattle. As you know, the Access to Justice Board has followed the Task Force's work and the BOG's review carefully and has appreciated the thoughtful process.

We circulated the BOG's draft report to our stakeholders in the Alliance for Equal Justice on July 17, but did not receive any feedback. Our comments are provided below and should reflect what you heard from Geoff Revelle, our liaison to the BOG, at your July board meeting. With regard to the BOG's conclusions and next steps, we believe that the remaining process should be as short as reasonably possible, that the public and other stakeholders should have an opportunity to provide input and that the Court should be the final decision-maker on the process to be followed and the adoption of final outcomes.

**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.

ATJ Board Response: The ATJ Board agrees with the Task Force Recommendation and the BOG response.

**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.

ATJ Board Response: The ATJ Board agrees with the Task Force recommendation that the Supreme Court should help ensure that its Boards are adequately funded. The ATJ Board agrees with the portions of the BOG response that correct the Task Force’s characterization of these Boards as being “under the WSBA”. They work under the Court’s authority and the Court. The POLB issues have been resolved so the ATJ Board suggests that the language about resolution being pending should be deleted. The ATJ Board agrees that its current relationship with the WSBA should be maintained and that the relationship is generally excellent and the staffing and other support provided by the WSBA is outstanding subject to the caveat that it is underfunded as are most WSBA activities. This is a result of the continued hangover from the dues rollback referendum which in our view should not have been and should not now be allowed to stand. The Supreme Court Order and the MOU between the WSBA and the ATJ Board which was discussed extensively by all parties at the time of adoption should remain intact.

One thing that is missing from the Task Force report and the BOG response is that the six Boards involved are all very different in terms of subject matter, duties and authority. Some are regulatory with enforcement powers and duties for lawyers and/or non-lawyers. Some (like the ATJ and POLB Boards) have no enforcement authority or powers. The relationship between the Boards, WSBA and the Supreme Court should be and are customized for each Board. The POLB and MCLE Boards recently had significant changes made in their scope and relationship with the WSBA, the Supreme Court and the Boards' constituencies. The ATJ Board participated in and generally supports those changes. The ATJ board is governed by the court order and MOU as identified above. The differences in the Boards and their relationships to the Court and WSBA should be acknowledged and maintained.

The ATJ Board believes that WSBA members' views about funding the Boards should not be a significant factor in funding decisions for the Boards. WSBA members should not be able to defund the disciplinary and public duty obligations of the Court and the bar including the Supreme Court boards. That is what the referendum did. The ATJ Board believes that the Court should not allow that to occur again and the ability of the membership to defund essential activities that protect the public and the justice system should be eliminated. The Court can mandate funding levels through membership dues or other assessments of lawyers to carry out the public duty and disciplinary responsibilities of the legal profession owed to clients and the public at large or the court could have the WSBA do that without the threat of dues rollbacks by WSBA members. The only part of the funding that the membership should be able to dictate or eliminate are the trade organization functions of the WSBA. If a majority of the WSBA members do not want to subsidize Sections or lobbying they should be able to defund them. If the WSBA membership wants to defund the disciplinary system, mandatory CLE functions or the Boards, the Court should not allow that to occur nor should it be theoretically possible.

**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.

ATJ Board Response: The ATJ Board agrees with the Task Force Recommendation and the more detailed comments in the Task Force report. The ATJ Board has no knowledge of or view on BOG/Executive Director/WSBA staff communications.

The ATJ Board believes that the Bylaws and other governing documents of the WSBA should make clear that the responsibility to protect the public and the justice system take precedence over its trade organization functions. Its primary activities should not be member driven but rather public duty driven as determined by the Court and the BOG through an infrastructure that supports those functions whether the WSBA membership agrees or not. This has been a historical conflict that should now be resolved in favor of serving the public. The ATJ Board believes that the trade organization functions of the WSBA should be secondary.

**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.

ATJ Board Response: The ATJ Board has no view on the Task Force recommendation or the BOG response on the name change questions. The ATJ Board's view on the BOG response that goes beyond the name questions are expressed elsewhere in this response.

**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.

ATJ Board Response: The ATJ Board disagrees with the Task Force recommendation and agrees with the BOG response.

**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.

ATJ Board Response: The ATJ Board agrees with the BOG response and modification of the Task Force recommendation.

**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.

**ATJ Board Response:** The ATJ board agrees with the Task Force recommendation and the BOG response.

**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.

**ATJ Board Response:** The ATJ Board agrees with the Task Force recommendations and disagrees with the BOG response for the reasons supporting the recommendation in the Task Force report. The ATJ Board understands the concerns of the BOG and perhaps the Court about undertaking a discussion with the Legislature about control over the practice of law at the present time. The timing may not be right because of current issues between

the Court and the Legislature. However, at some point, the ATJ Board believes that this issue should be addressed and resolved as recommended by the Task Force.

The Access to Justice Board has no view on the recommendations not addressed here. Thank you so much for your consideration of our feedback and your tremendous efforts to improve the governance of the Washington State Bar Association.

Sincerely,



Ishbel Dickens  
Access to Justice Board Chair

CC: Bill Hyslop, WSBA BOG Chair Elect  
Robin Haynes, WSBA BOG Chair Elect Elect  
Paula Littlewood, WSBA Executive Director  
Vern Harkins, Governance Work Group Chair  
Rima Alaily, Governance Task Force Chair

# **ALTERNATIVE PROPOSALS**

**From:** Barbara Rhoads-Weaver [mailto:barb@sustainablelawpllc.com]

**Sent:** Tuesday, September 01, 2015 3:44 PM

**To:** William D. Hyslop; Andrea Jarmon; Ann Danieli; Anthony Gipe; Brad Furlong; Elijah Forde; Jerry Moberg; Jill Karmy; Karen Denise Wilson; Keith Black; Ken Masters; Mario Cava; Patrick Palace; Paul A. Bastine; Paula Littlewood; Phil Brady; Robin Haynes; Angie Hayes; James Doane; Kim Risenmay; Sean-Michael Davis; William Pickett; Ann Holmes; Debra Carnes; Doug Ende; Frances Dujon-Reynolds; Jean McElroy; Margaret Shane; Megan McNally

**Subject:** Governance Task Force discussion

All,

I submitted the attached memo to be included in the public materials for our July meeting in Bellingham after having raised the issue several times and been directed by the Work Group that it would be helpful for the discussion if I provided something in writing to direct the discussion. I was told that the memo was not included in the public materials because it contained a by-law redline to get the discussion started, which I mistakenly believed was the type of writing the workgroup asked for to direct the discussion. I was also told that the Work Group's draft response addresses and recommends by-law review and revision regarding the role of the executive director to take place next year. I have re-read the 7.14.2015 First Reading Draft Report and can find no such recommendation. So I am providing you all with my memo and again requesting that we, as a body, have this discussion before our response to the Governance Task Force Report is finalized.

I wrote the memo before the July retreat. It is my belief that clarification and a shared understanding of all the roles, including Executive Director, will directly address issues raised at the retreat.

Barb Rhoads-Weaver  
Sustainable Law, PLLC  
206-259-5878 ext. 101  
P.O. Box 47, Vashon, WA 98070

## MEMORANDUM

TO: Board of Governors  
FROM: Barb Rhoads-Weaver, Governor 7-South  
RE: WSBA Governance Structure Discussions

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While the Executive Director is called out as a separate stakeholder along with the Board of Governors and the Supreme Court in the Governance Task Force Report, despite my requests to discuss the role of the Executive Director and the structural relationship between the Executive Director and the Board of Governors within the Association, we as a body have not yet had such a discussion. During my tenure as a governor, the lack of clarity and shared understanding of the roles has been an issue. Because I believe the Association will function better if the roles are clarified and a shared understanding is reached, I am requesting that the discussion take place and clarifications to the role of the Executive Director be considered as part of the Board of Governors' discussions of WSBA's governance structure and as we determine actions to take in response to the Governance Task Force recommendations.

Below is a redlined copy of Article IV, Section B.5 of the Bylaws with some suggested revisions to begin the discussion:

### 5. Executive Director

The Executive Director is the principal administrative officer of the Bar. The Executive Director serves at the pleasure of and as directed by the Board of Governors.<sup>1</sup> The Executive Director is responsible for the day-to-day operations of the Bar in furtherance of and pursuant to policy established by the Board of Directors including, without limitation: (1) hiring, managing and terminating Bar personnel within the budget approved by the BOG, (2) negotiating and executing contracts within the budget approved by the BOG, (3) communicating with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters, (4) preparing an annual budget for the WSBA Budget and Audit Committee, (5) ensuring that the WSBA books are kept in proper order and are audited annually, (6) ensuring that the annual audited financial report is made available to all Active members, (7) collecting debts owed to the bar and assigning debts for collection as deemed appropriate, (8) acquiring, managing, and disposing of personal property related to the Bar's operations within the budget approved by the BOG, (9) attending all BOG meetings, (10) reporting to the Board of Governors regarding Bar operations, (11) ensuring that minutes are made and kept of all BOG meetings, and (12) performing such other duties as the Board of Governors

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<sup>1</sup> Article IV, Section B.6.c. already states that the Executive Director serves at the pleasure of the Board of Directors. I have added the language regarding "as directed by" the BOG.

may assign. The Executive Director serves in an *ex officio* capacity and is not a voting member of the Board of Governors.

**FURLONG ♦ BUTLER**  
ATTORNEYS

**MEMORANDUM**

TO: WSBA Board of Governors and Officers

FROM: Brad Furlong

DATE: September 2, 2015

RE: GTF Alternative Response

Accompanying this memo is a trio of Motions, each adopting an alternative to the tentatively accepted response to the GTF recommendation that the Supreme Court have veto authority over the dismissal of the WSBA Executive Director and Chief Disciplinary Counsel. The attached alternatives are the result of my consultations with and advice from fellow Governors and others. The first Motion modifies the BOG's response to the GTF recommendation concerning both the ED and CDC; each of the latter two Motions would change the BOG's response concerning only one of these positions and will only be offered if the first Motion fails.

The alternative in Motions No. 1 and No. 2 concerning the ED expressly recognizes the Court's authority over the WSBA and the BOG and it endorses a process for the Court's veto of the firing of the ED in the limited circumstances where the dismissal is based on the ED's refusal to follow BOG directive to disregard or violate a Court rule or order; but otherwise, it leaves intact the BOG's full authority to hire, supervise and hold accountable the ED.

Elsewhere in the GTF responses, the BOG recognizes its duties to represent its members and to protect the public. As members of the BOG, we carry a great responsibility to see that our members' licensing fees are well-spent and that the WSBA fully and efficiently carries out its regulatory duties, while providing meaningful member services. We delegate to the ED the direct supervision of these operations, along with other duties. While the ED relies on staff to perform effectively and efficiently, the BOG may not direct any other employee or intervene with respect to any other employee's performance. The BOG may only look to and hold the ED ultimately responsible for the performance of the organization. Blanket adoption of the recommendation would leave the BOG unable to assure our members and the public that we can hold accountable the ED for the organization's performance.

The loss of authority that a blanket endorsement of this proposal fulfills no necessity. Yet, it would be of long-term negative consequence to our ability to govern and a far greater detriment to the organization than the marginal, if not theoretical, benefit its

adoption might bring. The alternative response stated in the Motion is balanced - it recognizes the Court's plenary authority over the WSBA, while leaving intact the BOG's authority to effectively carry out its duties. It is a sensible compromise.

With respect to the Chief Disciplinary Counsel, the same reasoning applies – the ED needs to have unquestioned authority to supervise and hold accountable this employee who is vital to our regulatory functions. The recommendation also introduces an uncomfortable overlap between the adjudicative and prosecutorial functions of the disciplinary system. Adoption of the GTF recommendation for the CDC offers little benefit and has clear drawbacks. It should be rejected.

I ask that you to please vote in favor of the Motions. Thank you.

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS

### **MOTION #1 TO AMEND BOG RESPONSE TO GOVERNANCE TASK FORCE RECOMMENDATION**

Motion by Governor Furlong to amend the BOG response to the recommendation to make the termination of the WSBA Executive Director and Chief Disciplinary Counsel subject to state Supreme Court Veto to read as follows:

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

The Board of Governors appreciates its unique relationship to the Supreme Court. The Board further recognizes the Court's inherent authority to direct and oversee the actions of the WSBA as needed. In conjunction with the Court's role, the Board of Governors has a fiduciary responsibility to assure that the WSBA carries out the regulatory responsibilities delegated to the Board by the Court, while protecting the public interest and delivering value to its members. These responsibilities are discharged under the direction of the WSBA Executive Director, who is hired by, and reports to, the Board of Governors.

The Board of Governors believes that the blanket adoption of this recommendation would diminish its ability to effectively carry out its responsibility to hire, evaluate and hold accountable the Executive Director. The Board nonetheless supports a process whereby the Court may veto the Board's dismissal of the Executive Director under the extraordinary circumstances in which the Court finds that the Board's action is based on the Executive Director's refusal to accede to a Board of Governors' directive to disregard or to violate a Court order or rule. Under any other circumstances, however, a veto would substantially undermine the authority of the Board of Governors and the leadership challenges following such a veto would be highly detrimental to the day-to-day functioning of the WSBA.

The Executive Director hires and holds accountable the Chief Disciplinary Counsel. The Board of Governors has no role in the hiring or supervision of the Chief Disciplinary Counsel and may not interfere in any way in a matter before the Office of Disciplinary Council. Because the Office of Disciplinary Counsel uses 42% of the entire WSBA budget and carries out a paramount regulatory function, the Executive Director must have full authority to hire and hold accountable the Chief Disciplinary Counsel to assure this important function is effectively and efficiently carried out.

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS

### **MOTION #2 TO AMEND BOG RESPONSE TO GOVERNANCE TASK FORCE RECOMMENDATION**

Motion by Governor Furlong to amend the BOG response to the recommendation to make the termination of the WSBA Executive Director and Chief Disciplinary Counsel subject to state Supreme Court Veto to read as follows:

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

The Board of Governors appreciates its unique relationship to the Supreme Court. The Board further recognizes the Court's inherent authority to direct and oversee the actions of the WSBA as needed. In conjunction with the Court's role, the Board of Governors has a fiduciary responsibility to assure that the WSBA carries out the regulatory responsibilities delegated to the Board by the Court, while protecting the public interest and delivering value to its members. These responsibilities are discharged under the direction of the WSBA Executive Director, who is hired by, and reports to, the Board of Governors.

The Board of Governors believes that the blanket adoption of this recommendation would diminish its ability to effectively carry out its responsibility to hire, evaluate and hold accountable the Executive Director. The Board nonetheless supports a process whereby the Court may veto the Board's dismissal of the Executive Director under the extraordinary circumstances in which the Court finds that the Board's action is based on the Executive Director's refusal to accede to a Board of Governors' directive to disregard or to violate a Court order or rule. Under any other circumstances, however, a veto would substantially undermine the authority of the Board of Governors and the leadership challenges following such a veto would be highly detrimental to the day-to-day functioning of the WSBA.

The BOG acknowledges the Court's plenary authority to take any action it wishes with regard to the Chief Disciplinary Counsel. The BOG has no objection to that portion of this recommendation related to the Chief Disciplinary Counsel.