

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS MEETING

### Minutes

Richland, WA

July 26-27, 2019

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Bill Pickett on Friday, July 26, 2019, at 11:00 a.m., at the Courtyard by Marriott, Richland, Washington. Governors in attendance were:

Sunitha Anjilvel

Dan W. Bridges

Daniel D. Clark

Peter J. Grabicki

Carla Higginson

Kim Hunter

Jean Y. Kang

Russell Knight

Christina A. Meserve

Athan P. Papailiou

Kyle D. Sciuchetti

Alec Stephens

Paul Swegle

Judge Brian Tollefson (ret.) (phone)

Also in attendance were President-elect Rajeev Majumdar, Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, Interim Director of Human Resources Felix Neals, Interim Director of Advancement Kevin Plachy, Chief Communications and Outreach Officer Sara Niegowski, and Executive Assistant Margaret Shane. Also present were Governors-elect Bryn Peterson, Hunter Abell, and Tom McBride.

### **INTERIM EXECUTIVE DIRECTOR'S REPORT**

Interim Executive Director Nevitt referred the Board to her written report contained in the meeting materials, including the Impact Statement that attempts to articulate the return on investment for our legal research tool as a model for communicating the impact of our work. She highlighted the ongoing Listening Tour, introduced Interim Director of Human Resources Felix

Neals, advised that interviews for the Director of Human Resources were ongoing, and reported WSBA's employment practices and management liability insurance coverage for the coming year would be through RSUI (Royal Specialty Underwriting, Inc.) and that premiums would increase by \$100,000.

### **PRESIDENT'S REPORT**

President Pickett reported on the Board of Governors retreat held the previous day and on his attendance at the ALPS Conference in Missoula, Montana.

### **MEMBER AND PUBLIC COMMENTS**

Governor-elect Abell noted that the Community Service Project, in which some of the Board members and WSBA employees participated on Friday morning, was a rewarding experience.

### **CONSENT CALENDAR**

Governor Higginson noted that her name was misspelled on page 8 of the draft May 16-17, 2019, BOG Meeting Minutes. It was noted that the error would be revised by a scrivener's correction. Governor Hunter moved to approve all items on the Consent Calendar. Motion passed unanimously. Governors Anjilvel, Bridges, Clark, Grabicki, Higginson, Hunter, Kang, Knight, Meserve, Papailiou, Sciuchetti, Stephens, Swegle, and Tollefson voted yes.

### **LOCAL HERO AWARDS**

Local Hero Awards were presented to Patricia Chvatal, Leland Kerr, and Asa LaMusga for their outstanding contributions to their communities and to the legal profession.

### **LAW CLERK PROGRAM PRESENTATION – Ben Phillabaum, Chair**

Chair Phillabaum referred to the information contained in the meeting materials. He gave an overview of the program and explained requirements for participants and tutors, application process, fees, learning process, Law Clerk Board member responsibilities, and advantages and disadvantages of going through the program. He then answered questions from the Board.

### **PROCESS AND SELECTION OF 2019-2020 WSBA TREASURER**

Governor Grabicki moved to nominate Governor Clark for the 2019-2020 WSBA Treasurer. Treasurer/Governor Bridges shared his experience as Treasurer for the 2018-2019 fiscal year; President-elect Majumdar referred to Governor Clark's memo contained in the materials; and various Governors expressed their support. Motion passed 12-0-2. Governors Anjilvel, Bridges, Grabicki, Higginson, Hunter, Kang, Knight, Meserve, Papailiou, Sciuchetti, Stephens, and Swegle voted yes. Governors Clark and Tollefson abstained. The proposed process contained in the meeting materials was not discussed or voted on.

President Pickett passed the gavel to President-elect Majumdar.

**PERSONNEL COMMITTEE PROPOSED AMENDMENTS TO THE WSBA BOG NO RETALIATION POLICY – Governor Chris Meserve, Chair, and Felix Neals, Interim Director of Human Resources**  
(first reading)

Chair Meserve referred to the information contained in the meeting materials. She provided an overview of the differences between the proposed Policy and the existing Policy, including: broader definitions; greater emphasis on the importance of outside investigators; specific references to and incorporation of language from the WSBA Employee Handbook; specific emphasis on training for volunteers, including Board volunteers; deletion of specific examples; and recusal of the Board from involvement in the investigation and consequences of inappropriate conduct if the complainant is a member of the Board or the person being complained against is a Board member. Interim Director of Human Resources Neals advised that this proposed Policy attempts to address WSBA employee concerns. Discussion ensued regarding Board member concerns with various details of the proposed Policy, and it was suggested that Board members send a redline version with their proposed edits to the Personnel Committee Chair and Interim Director of Human Resources Neals. In response to comments and questions, Chair Meserve advised that the document had been reviewed and approved by outside counsel; that WSBA employee misconduct is covered under the existing WSBA Employee Handbook; and reminded the Board that it does not get involved with WSBA employee misconduct. Governor Higginson moved to hold over this discussion until the next meeting. Governor Stephens moved to amend the motion that this item be set on the agenda for the next meeting as “second reading/potential action.” Chair Meserve called a point of order and stated that the agenda is set by the President in consultation with the Executive Committee, therefore, the motion is out of order. General Counsel Shankland confirmed that the President sets the agenda and the motion was attempting to determine how an item on the agenda was set. Governor Higginson asked that it be recorded in the Minutes that she objected to her motion not being voted on.

President-elect Majumdar passed the gavel back to President Pickett.

**COMMITTEE ON PROFESSIONAL ETHICS (CPE) PROPOSED AMENDMENTS TO RPC 1.15(A)(h)(9) RE SAFEGUARDING PROPERTY – Anne Seidel, CPE Member (phone), and Jeanne Marie Clavere, Professional Responsibility Counsel (phone)**

Member Seidel referred to the information contained in the meeting materials and explained the proposed amendments. Governor Grabicki moved to approve the proposed amendments to RPC 1.15(A)(h)(9) as requested. Motion passed 10-0-2. Governors Anjilvel, Bridges, Clark, Grabicki, Kang, Knight, Meserve, Sciuchetti, Stephens, and Swegle voted yes. Governors Higginson and Hunter abstained. Governors Papailiou and Tollefson were not present for the vote.

**PRO BONO AND PUBLIC SERVICE COMMITTEE PROPOSED PRO BONO MODEL POLICIES – Paul Okner, Committee Co-Chair (phone); Diana Singleton, Access to Justice Manager (phone); and Kevin Plachy, Interim Director of Advancement**

Co-Chair Okner stated the Committee’s mission and explained the proposed Model Policies. Governor Swegle moved to adopt the Model Policies as contained in the meeting materials. Discussion ensued regarding concerns about the Model Policies potentially leading to requirements to do mandatory pro bono service. Co-Chair Okner, Governor Swegle, and Interim Director Plachy emphasized that use of the templates was not mandatory and simply provided a framework for law firms and other entities to use in order to give their employees permission to do pro bono work and would help break down barriers for legal professionals who wish to do pro bono work. Motion passed 11-0-2. Governors Anjilvel, Bridges, Clark, Grabicki, Kang, Knight, Meserve, Papailiou, Sciuchetti, Stephens, and Swegle voted yes. Governors Higginson and Hunter abstained. Governor Tollefson was not present for the vote.

**COUNCIL ON PUBLIC DEFENSE (CPD) PROPOSED APPELLATE GUIDELINES – Travis Stearns, CPD Vice Chair (phone); Gideon Newmark, Managing Attorney of the Appellate Program for the Washington State Office of Public Defense (phone); Diana Singleton, Access to Justice Manager (phone); and Kevin Plachy, Interim Director of Advancement** (first reading)

Vice Chair Stearns explained the requirements contained in the Charter and reviewed the process that resulted in the proposed Appellate Guidelines, which had been vetted with stakeholders. He emphasized that the proposed Guidelines were not mandatory. President Pickett noted that this item would be placed on the September 26-27, 2019, Board agenda for “action.”

**COMMITTEE ON MISSION PERFORMANCE AND REVIEW (CMPR) RECOMMENDATIONS – President-elect Rajeev Majumdar, Chair, and Pam Inglesby, Bar Services Manager (phone)** (first reading)

Chair Majumdar advised that it was the consensus of the CMPR to sunset itself and return this process to the Executive Committee. He advised that BOG liaisons should be working with their assigned committees throughout the year, helping to ascertain the makeup of the committee, and working on the report form with the committee throughout the year rather than waiting until the end of the year. He reported on the findings this year, highlighted recommendations from the CMPR, and explained the issues discussed. Discussion ensued regarding what happens with the reports after the Board approves the recommendations; consequences if committees do not comply with the recommendations; partnering with the Budget and Audit Committee regarding performance of committees and their return on investment; offering liaisons assistance in convincing people to apply for committee membership; committees reporting to the Board in person rather than just on paper; and the possibility of reviewing Sections similar to

the way committees are reviewed. Governor Swegle requested that it be recorded in the Minutes that he opposes review of Sections as part of this process.

**CRITERIA FOR ADDING AND NAMING WSBA APEX AWARDS – Governor Russell Knight, Chair, and Sara Niegowski, Chief Communications and Outreach Officer**

Chair Knight advised that the Board is being asked to act on three items: (1) adopt criteria for naming APEX Awards; (2) adopt criteria for evaluating requests to add or retire APEX Award categories; and (3) honor Chief Justice Mary Fairhurst by renaming the Award of Merit or other public recognition as the Board of Governors deems appropriate.

Criteria: Chair Knight reviewed the proposed process and criteria and explained that the goal is consistency. He suggested setting the process and criteria first, then applying it. Governor Grabicki moved to adopt the proposed process and criteria for naming APEX Awards and for evaluating requests to add or retire APEX Award categories as contained in the meeting materials. Governor Bridges moved to strike the criteria of “deceased.” Governor Grabicki stated that he would accept Governor Bridges’ motion to amend as a friendly amendment. In reply to an inquiry, Officer Niegowski explained that “non-divisive” refers to broad outreach and vetting with a large number of people and groups to ascertain what the legacy would mean to many different groups and that it would be accepted by many different groups. Governor Meserve offered a friendly amendment to Governor Bridges’ motion to amend by striking the first bullet point regarding “deceased.” Governor Bridges accepted. Chief Disciplinary Counsel Doug Ende expressed concern about taking out the criteria that the recipient of the award be deceased, explaining that sometimes the legacy of a “legal giant” become tarnished in unexpected ways during the individual’s lifetime. Discussion ensued regarding whether to retain or delete the criteria of “deceased” and “non-divisive;” the potential perception of naming an award after an individual being viewed as politically motivated; the recipient’s perception of receiving an award named for them while they are still alive; and naming awards for the criteria rather than for a person.

Motion to strike “deceased” tied 6-6-1; President Picket voted no, so motion failed 6-7-1. Governors Anjilvel, Bridges, Clark, Meserve, Sciuchetti, and Stephens voted yes. Governors Grabicki, Higginson, Kang, Knight, Papailiou, and Swegle voted no. Governor Hunter abstained. Governor Tollefson was not present for the vote. Motion to delete “non-divisive” passed 10-2-1. Governors Anjilvel, Bridges, Clark, Grabicki, Kang, Knight, Meserve, Papailiou, Sciuchetti, and Stephens voted yes. Governor Higginson and Swegle voted no. Governor Hunter abstained. Governor Tollefson was not present for the vote. Governor Grabicki’s underlying motion as amended passed 11-1-1. Governors Anjilvel, Bridges, Clark, Grabicki, Kang, Knight, Meserve, Papailiou, Sciuchetti, Stephens, and Swegle voted yes. Governor Higginson voted no. Governor Hunter abstained. Governor Tollefson was not present for the vote.

Rename Award of Merit: Chair Knight referred to Governor Clark's memo contained in the meeting materials and moved to rename the WSBA's highest award after Chief Justice Mary Fairhurst. Discussion ensued regarding potential conflicts of interest; appearance being important and timing not appropriate; alternative methods to honor Chief Justice Fairhurst; and forwarding the request to the Awards Committee for discussion and further action, if any. Governor Grabicki moved to amend the motion to present the resolution passed by the Board at its March 7, 2019, meeting to Chief Justice Fairhurst at the 2019 APEX Awards Dinner. Governor Clark requested that it be recorded in the Minutes that the former Executive Director told him it would be presented to Chief Justice Fairhurst and that had not yet been done. Motion to amend passed 7-5. Governors Anjilvel, Bridges, Grabicki, Higginson, Hunter, Kang, and Knight voted yes. Governors Clark, Meserve, Papailiou, Sciuchetti, and Stephens voted no. Governors Swegle and Tollefson were not present for the vote. Governor Knight's underlying motion as amended passed 10-1-1. Governors Anjilvel, Bridges, Clark, Grabicki, Hunter, Kang, Knight, Meserve, Sciuchetti, and Stephens voted yes. Governor Papailiou voted no. Governor Higginson abstained. Governors Swegle and Tollefson were not present for the vote.

#### **BREAKFAST WITH WASHINGTON LEADERSHIP INSTITUTE (WLI)**

President Pickett announced that the Board met with the WLI leadership and fellows over breakfast.

#### **UPDATE RE AMERICAN BAR ASSOCIATION (ABA) ANNUAL MEETING – James Williams, Washington State Delegate to the ABA**

Delegate Williams referred to the information contained in the meeting materials and highlighted several important resolutions that would be deliberated at the ABA Annual Meeting and reviewed the background and makeup of the House of Delegates. He explained that Resolution 10B relates to broadband availability in rural communities and asked the Board for its support and sponsorship of this Resolution. Governor Swegle moved that the Board co-sponsor Resolution 10B. Motion passed 12-0-2. Governors Anjilvel, Bridges, Clark, Grabicki, Hunter, Kang, Meserve, Papailiou, Sciuchetti, Stephens, Swegle, and Tollefson voted yes. Governors Higginson and Knight abstained.

#### **Washington State Leadership Institute (WLI)**

Governor/Treasurer Bridges called personal privilege and advised that he would be suggesting to the Budget and Audit Committee that the WLI budget be increased from \$60,000 to \$100,000 in the FY2020 WSBA budget, and that he would be asking WSBA staff and the Budget and Audit Committee to break out WLI from under the Board on the financial statements. In addition, he would personally be donating \$1,000 to the WLI. Delegate Williams advised that the additional

monies would help the WLI actively seek more people to be involved outside of the Puget Sound area since there are untapped resources throughout Washington. In response to a suggestion that the number of fellows be increased if the budget is increased, Delegate Williams and Justice Yu explained that the size had been increased to 15 fellows in the past, but that 12 fellows seemed to work best and to be the optimal size for encouraging bonding and long-term relationships.

**BUDGET AND AUDIT COMMITTEE PROPOSALS – Governor/Treasurer Dan Bridges; Terra Nevitt, Interim Executive Director; and Tiffany Lynch, Associate Director of Finance (phone)** (first reading)

Draft WSBA FY2020 Budget

Interim Executive Director Nevitt advised that this item would be on the agenda at the September Board meeting for “action” and the Budget and Audit Committee would meet again in August, so this would be a good opportunity for the Board to give further direction and ask questions. She reviewed the General Fund; Capital Budget Fund; Continuing Legal Education Fund; Client Protection Fund; and Sections Fund, and then walked through each fund in detail. Discussion ensued regarding the cost of the discipline system; deficit spending; transfer of investments to a money market account; increased expenses; webcasting all meetings from Seattle versus the Board traveling around the state; the Listening Tour being more interactive and effective; combining the Listening Tour with Board meetings; connecting with local bars after Board meetings; increased marketing of Board meetings; context, policy, and history of using temporary employees; and moving from a hardcopy to a digital *NWLawyer*. It was noted that additional meetings and traveling to more expensive locations are policy changes that should be discussed during the Board’s public meeting, and the \$50,000 for the proposed supplemental audit, are both increases in spending, and that the proposed increase to the WLI budget could be taken from these two items.

Proposed Fiscal Policy Change re Cost Centers

Governor/Treasurer Bridges explained that the changes regarding cost centers are being proposed in order to promote more transparency. In response to an inquiry regarding the letter he sent to Chief Justice Fairhurst related to the Limited License Legal Technician (LLLT) program, Governor/Treasurer Bridges stated that as an Officer of the Board he had a duty to report out and that he received input for the letter from various Governors. It was noted that there would be no change in the Section per-member charge for the coming fiscal year, and that it was important to understand the difference between budgets, reserves, and needs in the larger sections compared to the smaller sections. President Pickett advised that Chief Justice Fairhurst had invited everyone to communicate with her and that there would be a substantive discussion of Governor Bridges’ letter regarding the LLLT Program at the September 26-27, 2019, Board meeting. He urged the Governors to be sure their communications with Chief Justice Fairhurst

are included in the Board meeting materials in order to enhance transparency and encourage dialogue.

#### Proposed Supplemental Audit Options

Governor/Treasurer Bridges reviewed the options available, as well as the Budget and Audit Committee deliberations, regarding the proposed supplemental audit. It was noted that what was being requested is a forensic audit and that it should be done every 10 years. It was requested that an estimate of staff time allocations and costs that would be involved in the process be provided as time limits of staff are being stretched, especially with staff departures.

#### **DECISION RE FILLING VACANT DISTRICT 3 SEAT**

Governor Sciuchetti advised that he had not yet decided if he would be vacating the District 3 seat when he takes office as the 2019-2020 President-elect.

#### **UPDATE FROM GOVERNORS RE COMMITTEE AND LIAISON ASSIGNMENTS**

There were no updates from Governors regarding their committee and liaison assignments. President Pickett explained that he intentionally assigned Governors where they had no expertise, in order that they could learn and grow but did not force anyone to take an assignment or forbid anyone from doing what they wanted, and did not reassign anyone. President-elect Majumdar noted that it is a challenge to fill the many assignments with so few Governors and requested that the Governors accept their assignments and help be the face of the Bar. He stated that he would be expecting feedback from some of the Governors at every Board meeting.

#### **PROPOSALS RE BOARD UPDATES AND COMMUNICATIONS – Sara Niegowski, Chief Communications and Outreach Officer** (first reading)

Chief Niegowski explained that the proposals contained in the meeting materials are fleshed-out options discussed at the previous Board meeting and that they are not yet a final product. They include a code of conduct, standards, responsibilities, and consequences of violations. She advised that it would be critical to decide Option 1 first as all other options flow from that one. She noted that she would like to send out updates by districts with names and contact information for each district, rather than to all members in the state as a whole. It was the consensus of the Board to do so.

Discussion ensued regarding the Governors having the opportunity to weigh in on the updates before they are sent to their districts; time constraints in getting the updates out to the membership; Governor Grabicki's proposal in Late Materials; the distinction between Board action and a Governor's opinion of Board action; how to deal with one Board member speaking being perceived by WSBA members as speaking for the entire organization; and being respectful and elevating the WSBA to a high, positive image. President Pickett reminded the Board that it is

the face of the organization; and that individual Governors do not represent constituents, they represent the entire WSBA membership and are the representatives of the organization.

**UPDATE FROM BOARD MEMBERS OF THE WASHINGTON SUPREME COURT WSBA STRUCTURE WORK GROUP – Governors Dan Clark, Kyle Sciuchetti, and Paul Swegle**

Governor Sciuchetti reviewed the discussions and recommendations of the WSBA Structure Work Group, and advised that a draft report will be forthcoming that will be reviewed by the Work Group then sent to the Washington Supreme Court for consideration. Currently, there are no further meetings of the Work Group scheduled. Discussion ensued regarding details of the Work Group’s recommendations.

**BOARD OF GOVERNORS CIVIL LITIGATION RULES REVISION WORK GROUP CHARTER – Governor/Treasurer Dan Bridges (first reading)**

Governor/Treasurer Bridges reminded the Board that it had already voted to institute this Work Group in order for the Board to take input directly from stakeholders and to take one last look at the Rules. He advised that Interim Executive Director Nevitt developed the Charter contained in the meeting materials based on the Board’s previous discussion.

**OPEN PUBLIC MEETINGS ACT (OPMA) POLICY DISCUSSION (first reading)**

Interim Executive Director Nevitt explained that staff have been working to determine how WSBA fits into the Court Order directing the Board to comply with OPMA and reconciles with the WSBA Bylaws. She referred to the information contained in Late Materials, requested feedback, and noted that the Board may have some policy decisions to make. Discussion ensued regarding Governor Clark’s expertise in this area; the WSBA’s current appeal before the Washington Supreme Court regarding the applicability of OPMA to the WSBA; the makeup of the Board meeting agenda under OPMA; and giving clear instructions to WSBA committees regarding compliance with OPMA.

**GOVERNOR ROUNDTABLE**

Governor Higginson proposed changing the name of the WSBA magazine from *NWLawyer* back to *Bar News* because not all the members of the organization were attorneys. President Pickett advised that this item would be on the September 26-27, 2019, Board meeting agenda. It was suggested that President Pickett send an email blast to the membership asking them for their feedback.

Governor Stephens noted that the Board has been through a challenging time and that the retreat the previous day had helped the Board to start anew.

**ADJOURNMENT**

There being no further business and no need for an Executive Session, the meeting was adjourned at 2:30 p.m. on Saturday, July 27, 2019.

Respectfully submitted,



Terra Nevitt  
WSBA Interim Executive Director & Secretary