

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes

Held Virtually

April 17, 2020

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Rajeev D. Majumdar on Friday, April 17, 2020 at 9:07 AM. Governors in attendance were:

Hunter M. Abell
Sunitha Anjilvel
Daniel D. Clark
Peter J. Grabicki
Carla Higginson
Kim Hunter
Russell Knight
Tom McBride
Bryn Peterson
Kyle D. Sciuchetti
Alec Stephens
Paul Swegle
Judge Brian Tollefson (ret.)

Also in attendance were Immediate Past President William D. Pickett, Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Financial Officer Jorge Perez, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, Chief Communications Officer Sara Niegowski, Interim Director Advancement Kevin Plachy, Human Resources Director Felix Neals, Executive Administrator Shelly Bynum, and Jean Cotton.

Consent Calendar

Treas. Clark moved for approval of the consent calendar. Motion passed unanimously. Gov. Abell was not present for the vote.

President's Report on Necessary & Routine Matters and WSBA's Response to COVID-19

Pres. Majumdar provided his report.

Interim Executive Director's Report on Necessary & Routine Matters and WSBA's Response to COVID-19

Interim Executive Director Nevitt provided her update on WSBA's response to COVID-19. Gov. Stephens noted that the "Contact Us" page at wsba.org provides information on visiting the WSBA offices and should be updated during the closure of the physical office. Gov. Abell asked for an update on questions previously raised related to employee leave, which was provided.

Member & Public Comments

Addie Smith provided public comment.

Reports of Standing or Ongoing BOG Committees

Executive Committee. Pres. Majumdar reported that Monday's Executive Committee meeting is rescheduled to May 4 and the May board meeting is rescheduled to June 11-12.

APEX Awards Committee. Gov. Knight reported that the Committee met last week to select nominations for APEX Awards. He noted that the Committee is still collecting nominations for the Outstanding Judge award until April 24. Nominations will be presented at the June meeting for approval by the Board.

Personnel Committee. Gov. Stephens reported that the Committee is working on the performance assessment of the Interim Executive Director and will present the Board with a recommendation at the June meeting. Human Resources Director Neals provided an update on the process the Committee is using.

Legislative Committee. Gov. Sciuchetti noted that a full report of the Committee's activities will be provided later in the meeting.

Nominations Review Committee. Gov. Sciuchetti reported that there are no updates for this Committee.

Diversity Committee. Pres. Majumdar reported that the Committee is working on developing a process for the election of the at-large governor position pursuant to the amended bylaws. Gov. Stephens reported that the Committee put on a Legal Lunchbox on March 31, *Hate Crimes in the Pacific Northwest* that reached our maximum capacity of 2,500 people and has been made available for free, on-demand.

Long-Range Planning Committee. Gov. Swegle asked for feedback on the purpose of the Committee. Discussion followed.

Member Engagement Workgroup. Pres. Majumdar and Gov. Hunter provided updates, noting that the March meeting was cancelled due to COVID-19 and some activities were also impacted.

Budget & Audit Committee. Pres. Majumdar read comments from Treas. Clark and referenced the written report. He noted the Committee will meet on Monday, April 20.

Corona Task Force Report

Co-Chair and Interim Director of Advancement Kevin Plachy presented on the goals of the Task Force, which was established on March 25 to advise WSBA on broader issues impacting the membership and the public and work collaboratively with WSBA's internal task force. As a result of this collaboration, the internal task force has produced a library of seven on-demand CLEs on COVID-19 related topics; developed a free, live webinar series, *Practicing During a Pandemic*; written blog posts on COVID-19 related topics; and posted resources on the CARE Act. Co-Chair Cherry reported on the Task Force's other work including, discussing whether and how to provide guidance to the membership on which legal services are considered essential; the inconsistency of courts in interpreting the Supreme Court's order related to court operations; and the orderly reopening of courts. Co-Chair Plachy reported on the most recent meeting focused on concerns related to witnessing of wills. Based on the advice of a group of experts they convened, the Task Force is recommending that the WSBA offer education to members about best practices for witnessing wills during this time, but that the larger issue is best left to the Legislature. This will be addressed in an upcoming webinar. Chief Niegowski referred to WSBA's COVID-19 News, Resources and Response page, which has been informed by both task forces based on questions and needs of members and the public.

Interim Executive Director Nevitt read a public comment from Jean Cotton.

Gov. Hunter reported on the evolving feedback she has been receiving from the Solo and Small Practice Section seeking guidance from WSBA.

Governor Liaison Reports

Gov. Anjilvel reported on her work with the Practice of Law Board, the International Practice Section, and the Editorial Advisory Committee. Treas. Clark reported on the Yakima County Bench-Bar Meeting and his work with the Superior Court Judges Association. Gov. Hunter reported on her work with the Solo and Small Practice Section and the District and Municipal Court Judges Association. Gov. McBride reported on feedback he has received on inconsistency in court openings. Gov. Peterson reported on his work trying to get information out to members about COVID-19. Pres-Elect. Sciuchetti reported that the Legislative Review Committee has not met and on his work with the World Peace Through Law Section and the Committee on Professional Ethics. Gov. Stephens reported on his work providing information to potential candidates for the at-large seat and his blog post about that position. Gov. Swegle reported on his communications with members about BOG elections. Gov. Tollefson reported on his communications with members, which has already been shared with the COVID-19 Task Force and his work with the Superior Court Judges Association.

First Read: Ratification of Emergency Amendment to WSBA Bylaws Article XVII Re: Presidential Authority During COVID-19 Emergency

Pres. Majumdar presented the topic as provided in the materials noting that the emergency bylaws passed by a two-thirds majority at the March 30 meeting. He reported that no powers had yet been executed under this order.

Legislative Committee Matters

Gov. Sciuchetti and Outreach & Legislative Affairs Manager Sanjay Walvekar provided a report on the work of the Committee including a proposal for WSBA sections to develop white papers to make available as resources and a request that the WSBA co-sponsor an ABA resolution to prohibit the sale of shark fins. The Committee will continue to explore both topics.

Update on Recommendation Re: Proposed Policy Re: Legislative Activity of Sections. Gov. Sciuchetti provided an update on the development and review of this proposed policy. He noted that Gov. Higginson is working to align the policy with our existing Legislative Comment Policy and the policy will come back to the Board in June. Nancy Hawkins, Annie Fitzsimmons, and Jean Cotton provided public comment. Interim Executive Director Nevitt read a comment from the Real Property Probate and Trust Section. Discussion followed.

Law Student Petition Re: July Bar Exam and Impact of COVID-19

Former SBA President Efrain Hudnell, Seattle University School of Law; SBA President Emina Dacic, University of Washington School of Law; and Daniel Keum, representing students outside of the state wishing to practice in Washington, presented their petition for diploma privilege in lieu of the Uniform Bar Exam requirement if it cannot be administered safely in July. The Washington Supreme Court Chief Justice and other Justices were also participants in the discussion. Chief Regulatory Counsel Jean McElroy presented an overview of WSBA's exam planning and the rules governing admissions, including the Rule 9 limited license. Chief McElroy reported that the National Council of Bar Examiners clarified yesterday that states can offer both a July examination and one fall examination as an option to students. She also clarified that the Utah diploma privilege rule is not yet adopted, but has been open for comment. Discussion followed among the presenters, governors and members of the Supreme Court of Washington. Several public comments were taken.

Gov. Higginson moved to respectfully reject the law-student proposal and forward a recommendation to the Court with a suggestion that they contact the Governor to clarify whether the bar exam could proceed if appropriate precautions were taken. Pres. Majumdar requested that the motions be bifurcated. Gov. Higginson and her second consented to the bifurcation. On the first part of the motion, Gov. Higginson clarified that her motion would not require that the exam be held at the Tacoma Convention Center if that's not possible. Motion passed unanimously. Gov. Swegle was not present for the vote.

The Board then took up the second part of the motion, restated as: that WSBA, through our President, contact the Governor to request that he clarify that the exam can be held in July without violating his social distancing orders. Discussion followed. Gov. Higginson withdrew her motion and moved that bar staff work to hold the bar exam in July in the safest manner reasonably possible, to include holding it in smaller groups across the state, including possibly at the law schools. Gov. Higginson accepted a friendly amendment that her motion would not exclude moving the exam date if necessary. Motion passed unanimously. Gov. Swegle was not present for the vote.

Pres. Majumdar noted that he would report to the Court the results of the board's discussion as well as all the public comments received.

Washington State Bar Association Trustee Appointment

WSBF President Kristina Larry presented an overview of the make-up of the WSBF Board of Trustees and requested approval of the appointment of Peter Finch, who was recommended unanimously by the WSBF Board of Trustees. Gov. Grabicki moved for approval. Motion passed unanimously. Gov. Swegle was not present for the vote.

Committee on Professional Ethics Matters

Update on Proposed Comment 8 to RPC 6.5 Re: Nonprofit and Court-Annexed Limited Legal Service Programs. CPE Subcommittee Chair Brooks Holland reported the Committee's position that the proposal is moot because the proponent has requested that the Court withdraw the proposal and intends to submit a revised proposal in the fall. Chair Holland reported that the CPE recommends the Board support the request of the Pro Bono Council in their request to withdraw their proposed comment. Gov. Clark moved to accept the proposal. Motion to adopt the Council's recommendation passed unanimously.

Recommendation on Revised Proposed Amendment to RPC 7.3 Re: Solicitation of Clients. CPE subcommittee members Asel Neutze and Pam Anderson presented the Committee's recommendation that the revised proposed amendment not be adopted as provided in the materials. Gov. Knight moved that to recommend to the Supreme Court that the rule not be adopted in line with the CPE's recommendation. Gov. Knight accepted an amendment to his motion to embrace the points made by the Committee in the materials. Motion passed unanimously.

Council on Public Defense Matters: Comment on Amending CrR 3.1(f), CrRLJ 3.1(f) and JuCrR 9.3(a) to Require that Judges Consider Defense Requests for Expert Funds Ex Parte

Chair Daryl Rodrigues presented the recommendation of the Council on Public Defense and requested that the Board approve sending comments on its behalf. Gov. Grabicki moved to approve the request, to adopt the recommendation of the Committee, and to allow them to go forward with their comment to the Court on behalf of the WSBA. Discussion followed. General Counsel Shankland confirmed that the comment deadline had been extended. Gov. Clark moved to table to the next meeting and send the proposal to the Criminal Law Section. Motion was approved 11-1. Gov. Anjilvel was not present for the vote.

Pres. Majumdar requested that Chair Rodrigues reach out to the Criminal Law Section and to copy Gov. Hunter and himself on the request. He requested that Interim Executive Director Nevitt provide Gov. Hunter with all of the materials.

Establish Task Force to Investigate Courts Systems' Ability to Respond to COVID-19

Gov. Grabicki presented his proposal. Pres. Majumdar read a public comment from Laura Bradley. Discussion followed. Gov. Grabicki moved for adoption of the proposal. Gov. Higginson moved to table the proposal pending a financial forecast. Motion failed 7-5. Gov. Anjilvel was not present

for the vote. Gov. Grabicki's original motion passed 8-4. Gov. Anjilvel was not present for the vote.

Establish and Empower Governor-Led Negotiating Team to Begin Collaborative Discussion with Court Regarding Delegated Administrated Entities on Issues Both Substantive, Fiscal, and Administrative Due to the Continual Conflicts Resulting

President-Elect. Sciuchetti presented the proposed charter and roster for the Task Force. Gov. Peterson moved to approve. Discussion followed. Gov. Sciuchetti indicated he would welcome a seventh member from the incoming class of governor-elects. Motion passed 9-1. Gov. Hunter abstained. Gov. Anjilvel was not present for the vote.

FY20 Budget Reforecast

Treas. Clark provided an overview of the Budget Reforecast process and Chief Financial Officer Perez presented the results and requested the Board's approval of the reforecast budget for use in the second half of the year. Gov. Stephens moved for approval. Chief Regulatory Counsel McElroy noted that changes to the July Bar exam might impact the admissions budget. Motion passed unanimously. Chief Perez agreed to distribute the PowerPoint and the reforecast budget.

Governor Roundtable

There were no Governor Roundtable items.

ADJOURNMENT

There being no further business, Pres. Majumdar adjourned the meeting at 4:39 PM on Friday, April 17, 2020.

Respectfully submitted,

Terra Nevitt

Terra Nevitt
WSBA Interim Executive Director & Secretary