

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING MINUTES

Tacoma, WA
July 21-22, 2022

Call to Order and Welcome ([link](#))

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Brian Tollefson on Thursday, July 21 at 10:15 AM. Governors in attendance were:

Hunter Abell
Francis Adewale
Sunitha Anjilvel
Lauren Boyd
Pres. Elect Daniel D. Clark
Jordan Couch
Matthew Dresden
Carla Higginson
Tom McBride
Treas. Bryn Peterson
Serena Sayani
Alec Stephens
Brent Williams-Ruth

Also in attendance were Nancy Hawkins, Jon Burke, Rajeev Majumdar, Meng Li Che, Michael Cherry, Anne Watanabe, Immediate Past President Kyle Sciuchetti, Gov. Elect Kevin Fay, Gov. Elect Kari Petrusek, Gov. Elect Nam Nguyen, Executive Director Terra Nevitt, Chief Communications Officer Sara Niegowski, Director Finance Tiffany Lynch, Chief Disciplinary Counsel Doug Ende, Advancement Director Kevin Plachy, General Counsel Julie Shankland, Chief Equity & Justice Officer Diana Singleton, Culture Officer and Human Resources Director Glynnis Klinefelter Sio, Executive Administrator Shelly Bynum, Volunteer Engagement Advisor Paris Eriksen, Associate Director for Regulatory Services Bobby Henry, Chief Outreach Specialist Michael Kroner, Sections Programs Specialist Carolyn MacGregor, Broadcast Services Manager Rex Nolte, Communication Strategies Manager Jennifer Olegario, Education Program Manager Shanthi Raghu, Equity and Justice Specialist Saleena Salango, Member Services and Engagement Manager Julianne Unite.

Consent Calendar ([link](#))

Pres. Tollefson asked if anyone wished to remove an item from the consent calendar. Gov. Clark moved for approval of the consent calendar. Motion passed unanimously. Gov's Abell, Couch, Higginson, Purtzer, and Sayani were not present for the vote.

Member & Public Comments ([link](#))

There was a comment from someone that indicated that there were there to listen. Discussion followed with regard to whether they were in the correct meeting.

President's Report ([link](#))

Pres. Tollefson reported on his participation with the Inns of Court and the ALPS Bar Leaders Conference in Missoula, MT.

Executive Director's Report ([link](#))

Executive Director Nevitt provided an update on the process to examine the bar structure (ETHOS), noting that the next meeting will occur on Saturday, July 22 and it will be our second all-day input meeting. She noted that the Board will be reaching conclusions on the three questions at the August 13 meeting and will also need to decide what form the final work product will take. She reported that the bar exam will be held in Yakima, WA for the first-time next week, noting the health and safety protocols they will be following. She also reported on Listening Tour stops in Central Washington and the discussions that occurred.

Pres. Tollefson shared his takeaways from yesterday's meeting with members of the Pierce County judiciary.

Reports of Standing or Ongoing BOG Committees ([link](#))

Executive Committee. Pres. Tollefson reported that July Board of Governors meeting agenda was the product of the last Executive Committee meeting.

APEX Awards Committee. Gov. Abell reported that the award recipients for this year have been selected, notified, and are posted on the website. He encouraged participation in the virtual awards ceremony, which is scheduled for September 22, 2022.

Personnel Committee. No report.

Legislative Committee. No report.

Nominations Committee. Gov. Boyd reported that the committee has continued to do its work to make appointments and improve the appointment process. She expressed appreciation for the staff support provided by Paris Eriksen.

Diversity Committee. Gov. Anjilvel reported that the Diversity Committee co-hosted the ARC reception with Seattle University Law School this week.

Long-Range Strategic Planning Council. Pres. Tollefson reported the Council has been exploring what it would look like to make Deskbooks free to membership and anticipates bringing a recommendation to the Budget & Audit Committee and then the full Board. He also reported on the Council's review of Legal Link and the examination of WSBA's space.

Member Engagement Workgroup. Gov. Peterson reported on the Council's work to get a survey out to gather member feedback on ETHOS.

Budget & Audit Committee. Treas. Peterson reported that the staff has been working to develop the FY23 budget and that the committee has started its review. He noted that the Board will review that budget later in the meeting and noted that it is an opportunity for the Board to give feedback to the committee.

Equity & Disparity Workgroup. Gov. Stephens reported that the Workgroup is finishing up its work. He noted that the Board will hear a report from one of its subcommittees during this meeting and will hear a proposal from the other subcommittee in September.

Supreme Court Bar Licensure Task Force. Gov. Williams-Ruth expressed his condolences to Dean Rookby following the passing of his wife. He noted that he had stepped in to help lead the Task Force over the last few months but that the newly hired dean of the Seattle University Law School would be stepping in as co-chair with Justice Montoya-Lewis. He noted that he reported to the Court on the Task Force's progress on the deliverables, noting some of the Task Force's concerns relating to one of the deliverables that suggested studying the group of graduates that recently received diploma privilege. He noted that he hopes the Board can revisit the resolution regarding the bar exam and that noted that the Task Force is going to recommend alternative pathways to licensure. There was a brief discussion about the history of excluding members of the LGBTQ and BiPOC communities from the bar exam.

TAXICAB. Immediate Past Pres. Sciuchetti reported on the work of TAXICAB, which is focused on WSBA's working relationship with Supreme Court appointed Boards administered by WSBA. He noted that he anticipates a proposal coming to the Board in November. Discussion followed about how the work has been getting done, including with a subset of the task force.

Ad Hoc BOG-Staff Task Force Report on Key Takeaways from the BOG-Staff Teambuilding Retreat. ([link](#)) Gov. Adewale shared key takeaways from the BOG-Staff retreat in February, including its purpose and the concepts arising out of the discussions, including expectations for board members, the Board, and the board-staff relationship. They also shared some of the concerns raised by participants, as well as some of the proposed solutions, and commitments arising from the retreat. Gov. Adewale walked through some suggested community agreements that he would like to see the Board walk through at upcoming Board meetings. Dir. Klinefelter-Sio presented the action plan. Discussion followed regarding the last action point, which was to reconsider the philosophy related to license fees.

Equity and Disparity Work Group ([link](#))

Subcommittee Chair Kim Sandher reported on the work of the Experiences of the Justice System subcommittee of the Equity and Disparity Work Group. She noted that they focused on experiences of people of color and low-income people and after examining an array of topics, the group identified maintaining some aspect of a hybrid/virtual court system as its priority. She referenced the subcommittee's report, which set forth key considerations and identified stakeholders. She noted that the subcommittee successfully proposed the project as a strategic priority for the Board for Judicial Administration. Gov. Stephens and Executive Dir. Nevitt spoke to next steps and the benefits of the BJA taking up the topic.

Revisit Volunteer Vaccination Policy ([link](#)) ([part 2 link](#))

Gov. Williams-Ruth reported on the significance of this policy among WSBA events and volunteers. He noted that the pandemic, our understanding of it, and our tools to address it are changing. He reported that he sees the policy as being exclusionary and requests that the Board revisit it. Discussion followed, including a suggestion that WSBA staff enforce the vaccination mandate at an upcoming event at the Mariners game; a perspective that there should be a more inclusive volunteer policy. Gov. Clark moved that the Board keep the existing policy as is. Discussion followed regarding public health conditions; a perspective is that the issue is one of public health and not civil rights; that people have the right to decide

when and whether to follow the science and a perspective that some aspects of science are being followed and others aren't. Director of Advancement reported on some of the challenges with the policy and its overlay with the attendee procedure and noted that we don't have sufficient staff to attend all of the in-person events that are put on by sections. Discussion continued, including a perspective that the science indicates that vaccination effectiveness wanes after a period of time and other data that would support the changing the policy, as well as a perspective that those that are afraid of catching COVID can chose to participate remotely; a perspective that this would be the worst possible time to change the policy and a suggestion that the Board revisit the discussion early next year with a presentation from a state public health official and a staff proposal for a comprehensive policy; perspectives about approaches taken by other organizations; a perspective that the mandate should not be lifted as a matter of ethics; that the Supreme Court has not changed its requirement and that the last time this was revisited, the Board agreed not to reconsider the policy until the Court changed its policy. Motion passed 6-5. Govs. Couch, Purtzer, and Sayani were not present for the vote.

Following the vote Gov. Stephens reiterated his suggestion that the staff arrange to bring in a public health official to educate the Board. Gov. Adewale suggested that we place the matter on the Executive Committee agenda and continue to revisit it at every meeting. Gov. Williams-Ruth suggested that the Executive Director and Chief Communications Officer update the membership on this action by the Board and that the Solo and Small Practice Section's event be vetted for compliance. Gov. Stephens moved that the Executive Director arrange for the [State] Department of Health to give a presentation to the Board of Governors regarding COVID 19, including the state of disease and to advise us on best practices looking to the future. Gov. Williams-Ruth moved to amend the motion to add that the Executive Director and the Chief Communications Officer issue a stand-alone statement to the membership that the policy is being maintained and to specify that the decision is tied to the decision by the Washington Supreme Court to maintain its vaccination policy. It was clarified that the original motion was intended to hear from the state Department of Health and not a county official.

Discussion followed, including a concern about those who opposed the motion voting on the intent of the motion; support for the motion to amend, clarification that the Court has changed its policy, and a perspective that information from the Court should only come directly from the President; a suggestion that if it's preferable, the language from the prior amendment, which tied revisiting the policy to action by Supreme Court; opposition to the amendment as inaccurately reflecting the reasons for the action; discussion about whether the State of Hawaii was requiring vaccinations at the time of the Western States Bar Conference. The Board heard public comment from Nancy Hawkins who expressed disappointment in the tone of the discussion; that she disagrees that the vaccination policy is the issue that is top of mind for the members that she engages with; and she also spoke in opposition to putting a message out to members that they will be excluded by the vaccination policy. Gov. Abell moved to call the question. Motion to call the question passed unanimously. Govs. Couch, Peterson, Purtzer, and Sayani were not present for the vote. Motion to amend failed 6-4. Govs. Couch, Peterson, Purtzer, and Sayani were not present for the vote.

Discussion followed on the underlying motion, including a perspective that information is good, but that this may not be the best use of the Board's time and could be undertaken by the Executive Committee or by staff; a perspective that the Department of Health reports to the Governor, who has taken political positions with regard to COVID19 and for that reason will vote not; and support for the motion. Motion passed 8-3. Govs. Couch, Purtzer, and Sayani were not present for the vote.

Second Read: Proposed Amendments to WSBA Bylaws Art. IV Re Scope of BOG Legislative Committee ([link](#))

Gov. Williams-Ruth moved for approval of the proposed amendment. He explained that the amendment would authorize the BOG Legislative Committee to review and approve proposed comments to Court Rules when the comment deadline is before the next regularly scheduled meeting of the Board of Governors. The Board took public comment from Nancy Hawkins on behalf of the Family Law Section, which takes the position that sections should be able to comment directly to the Washington Supreme Court. Because the Court is able to distinguish between WSBA and the sections and the section does not believe that going through the legislative comment process will not add value for court rule comments. Discussion followed about the current policies and a conflict between the Legislative Comment Policy and the Bylaws; the frequency of timing delays and whether an entity could delay intentionally to avoid having to take the matter to the Board of Governors; clarification that this policy change would make it easier for entities to comment. Motion passed unanimously. Govs. Adewale, Clark, Couch, Higginson, Purtzer, and Sayani were not present for the vote.

Second Read: Proposed Structure for the Diversity Committee ([link](#))

Gov. Anjilvel presented the proposed changes to the Bylaws to change the structure of the committee from a committee to a council on second read. She noted the purpose of the change is to allow the council to expand its reach by including judicial officer, law students, and potentially the public. As a standing committee of the BOG, membership would be limited to Board members. Discussion followed in support of the proposal; a perspective that the REJI Commitments go too far for an integrated bar and should not be referenced in the charter; clarification that WSBA signed onto the commitments in 2018 and curiosity about the GR 12 analysis. Gov. Williams-Ruth moved to approve the proposed change to the structure of the WSBA Diversity Committee. Gov. Stephens moved to call the question. Motion to call the question passed unanimously. Underlying motion passed 7-1. Govs. Adewale, Clark, Couch, Higginson, Purtzer, and Sayani were not present for the vote.

Approve Council on Public Defense's Proposed Workloads Statement ([link](#))

Prof. Boruchowitz presented the proposed workloads statements, which is intended to help defenders and administrators to advocate for themselves with regard to caseload with funders and other stakeholders. He noted that the Board has approved several similar statements. Vice Chair Schwarz added that defenders have to quarterly certify that they are within caseload standards and that this statement supports them in doing so by bringing all of the information into one place and empowering them to not certify when they are not within appropriate caseload standards. Discussion followed as to whether the statements can help with funding. Gov. Boyd moved for approval. Discussion followed, including opposition to the motion based on a concern that the Washington Supreme Court has not adopted caseload standards for deputy prosecutors. Motion passed 7-1. Govs. Adewale, Clark, Couch, Higginson, Purtzer and Sayani were not present for the vote.

Construction Law Section Proposed Model Residential Construction Contract ([link](#))

Saki James Yamanda requested approval to post updated model residential construction contracts on the WSBA website. He noted that two of the model contracts are new; 1) the cost plus contract with a guaranteed maximum price and 2) a design build contract with a guaranteed maximum price. He walked through the process the Section took to update the contracts. He noted that there would be no fiscal impact and that the activity is within the purposes of the state bar association. Discussion followed as to any risks associated with posting model contracts, it was clarified that model contracts are already posted on the website; background on the rationale for proposing the action to the Board and information about the original proposal, and support for model contracts as a great resource. Director Plachy noted that the model contracts are similar to information shared in CLEs and by other sections. The Board took public

comment from Nancy Hawkins urging the Board to be thoughtful in what approves, and noted with concern a form published on the page of the LLLT Board. It was clarified that the request is for approval to post the forms, not to approve the content. Gov. McBride moved to post on the website. Discussion followed, including clarification that Section speech is WSBA speech and therefore it doesn't seem entirely accurate to say that the Board is not approving the content; discussion followed about the other resources available on our website and put forth to the public and members; a suggestion that General Counsel and Executive Director to consider whether there could be additional safeguards put in place for the larger question all the resources WSBA is publishing; and whether publishing such a form would be considered the practice of law. The Board took public comment from Rex Nolte who commented on the value of these forms for a member of the public.

Gov. Williams-Ruth moved to request a legal memo from General Counsel's office to address the legality and risk exposure for the bar in publishing legal forms as well as a survey of the related legal landscape. Suggestion to expand the motion to include any other activities of the bar that be considered the practice of law. Accepted as a friendly amendment. Motion passed unanimously. Govs. Adewale, Clark, Couch, Higginson, Purtzer, and Sayani were note present for the vote.

Approve Moving Forward with District 8 Election ([link](#))

Volunteer Engagement Advisor Eriksen presented the question before the Board to determine whether or not to fill the seat for the time remaining in the in the term. Discussion followed including support for filling the seat; clarification that the position will be elected by the Board.

Gov. Peterson moved for approval [to move forward with the District 8 election]. Motion was restated to move forward with the District 4 and District 8 elections at the September meeting. Discussion followed, including whether it would be preferable to have next year's Board elect the new members. Motion passed unanimously. Govs. Adewale, Clark, Couch, Higginson, Purtzer, and Sayani were note present for the vote.

Long Range Strategic Planning Council Report Re Future of WSBA Space ([link](#))

Chief Communications Officer Sara Niegowski presented an update on the work being done to address the future of WSBA space. She walked through the facilities project management plan, including major milestones. Discussion followed about timing for decision-making and what level of feedback will be sufficient

Governors Roundtable ([link](#))

Gov. Abell noted that there will be a performance of To Kill a Mockingbird at the Paramount Theatre in the fall in Seattle that he hopes to attend. Gove. Stephens requested the Executive Committee to take up his suggestion that the Board review itself and the end of each meeting.

Election of 2022-2023 Treasurer ([link](#))

Paris Eriksen presented the materials setting forth the process and the nomination of Gov. Adewale. Pres. Tollefson called for any nominations from the floor. There were none. Gov. Stephens moved to elect Gov. Adewale the Treasurer by acclamation. Motion passed unanimously. Govs. Couch, Purtzer, and Sayani were not present for the vote. Treas. Elect Adewale made brief remarks of appreciation.

Budget & Audit Committee Items ([link](#))

Executive Director Nevitt introduced the Board to WSBA's new Finance Director Tiffany Lynch.

First Read: Fiscal Year 2023 Draft WSBA Budget. Treas. Peterson noted that the draft budget is being presented to the Board for a first review and an opportunity to provide feedback to the committee before

the budget is finalized. Director Plachy began the presentation by noting that the version that was being presented was changed from what was presented to Budget and Audit due to the detection of an error which is favorable by \$200K. Director Plachy walked through the budget assumptions, including assumptions related to revenue for all funds, expense assumptions related to salaries, and rent and other indirect expenses. Executive Director Nevitt walked through the rationale for adding staff capacity. Director Plachy walked through the pending items, including insurance rates, Keller deduction, benefits and taxes, transportation spending, and section budgets. Director Plachy reviewed the overall impact of the budget, noting an anticipated use of reserves of \$35,011 to \$253,495, which will leave a fund balance of more than \$7 million under either scenario.

Discussion followed regarding how inflation will impact the budget; the status of subletting the WSBA space; a perspective that we should plan for a greater increase in the health insurance; a perspective that there is not sufficient resources put into compensation; a perspective that insufficient staff is being added, particularly for the diversity and inclusion portfolio and comments on other specific expense lines; a perspectives for and against increasing dues; and a perspective that the budget should not reflect a deficit and comments about the purposes. The Board took comment from Chair Michael Cherry that the Practice of Law Board feels that it is overworking the staff and is need of additional support.

Personnel Committee Update on Executive Director Evaluation ([link](#))

Director Klinefelter Sio introduced Rick Park from FIT HR, which we have contracted with to conduct the FY22 Executive Director evaluation. Mr. Park presented the scope of the project and next steps. Discussion followed, including whether clarification as to when the work/evaluation will occur and how turnover of the Board will impact the process; that the tool being developed can be used annually; and whether the evaluations should be anonymous. Motion tied 5-5. Pres. Tollefson broke the tie and the motion carried.

Director Klinefelter Sio reported that Gov. Stephens and Gov. Boyd volunteered to work with her on the evaluation. Gov. Clark moved to approve the appointment. Motion passed unanimously. Govs Couch, Dresden, Higginson, Purtzer, and Sayani were not present for the vote.

Budget & Audit Committee Items Continued ([link](#))

The Board continued discussion on the budget. The Board took public comment from Nancy Hawkins that in her opinion there is an open question as to the level of obligation that WSBA has to staff and support the Supreme Court Boards administered by WSBA. Discussion followed, including that a perspective that we often performed favorable to the budget and that we have sufficient reserves to maintain the commitment to members to not increase the license fee; a perspective that virtual meeting would not be as effective as the in-person meeting; that amount budgeted for the board meeting doesn't support a good relationship with staff; concern that the budget included fund for two full-time positions yet the four are needed; that the board consider the WSBA staff salaries vs. the Puget Sound area living costs when making decisions in advancing the WSBA mission; information about the request for additional staff support; a perspective that the budget is ultimately a compromise and no individual is likely to be entirely happy with the result; giving specific feedback to the Budget & Audit Committee.

Proposed Conflict of Interest Policy

Deferred to September.

Law Clerk Board Suggested Amendment to the WSBA Committees and Boards Policy ([link](#))

Leone Reinbold requested an amendment of Section 8 of the Committees and Boards Policy, to expand service on Law Clerk Board to three terms. She noted that it will better mirror the time spent in the program and allow clerks to stick with the same assigned board member throughout the program. It will also

positively impact the steep learning curve. Discussion followed, including whether volunteers could continue to serve in their positions until a substitute is identified, rather than allowing three terms. Gov. Clark moved for approval of the proposal. Discussion followed, including a suggestion that term limits are not as critical for entities beyond the Board of Governors; concerns about how lack of turnover can lead to lack of diversity; a perspective that we bring some consistency to the approach with term limits with WSBA entities; comments in support of and in opposition to the motion; current practice for WSBA entities when there are not sufficient candidates and existing volunteers are termed out; how the work is distributed when there are vacancies on the Law Clerk Board. Motion passed 9-2. Govs. Couch, Purtzer, and Sayani were not present for the vote.

ADA Myth-Conceptions ([link](#))

Conrad Reynoldson and GET NAME provided a CLE presentation addressing ADA Myth-Conceptions. Reviewed the distinction between disability and impairment; models of disability; provided examples of poor access; unpacked myths related to the ADA and why those myths matter; and presented an overview of spirit and several provisions of the ADA. Questions and answers followed.

MCLE Board Suggested Amendment to Practice Rule 11 ([link](#))

Chair Todd Alberstone introduced Vice Chair Robert Malae presented the proposal, which would recognize the time, work and effort that law clerk tutors perform. He noted that the propose is a result of collaboration with the Law Clerk Board. Gov. Peterson moved for approval. Comments in support of the proposal followed. Motion passed unanimously. Govs. Couch and Purtzer were not present for the vote.

Budget & Audit Committee Items Continued ([link](#))

First Read: Proposed Fiscal Policy Revisions. Director Plachy walked through the significant proposed changes to the Fiscal Policies. Gov. Adewale noted that these changes are being presented for a first read and is looking for feedback and suggestions. The Board took public comment from Nancy Hawkins, who commented that the sections should be able to submit supplemental budgets from their reserve funds without approval; that group meals can be appropriate, but seem to cost more than individual meals; that meetings should not be outside the state of Washington. Discussion followed, including the rationale for increasing the operating reserve to \$2 million; a concern that using a reimbursement approach without clarity about what is going to be approved, that there are equity concerns; discussion followed regarding use of reserves and the rationale for a license fee stability fund and other new funds.

MBA Proposal Task Force Proposed Amendment to Board of Governors Policy Re Requests for Action ([link](#))

Gov. Williams-Ruth reported on the work of the MBA Proposal Task Force, which is working to develop specific proposals arising out of the joint MBA proposal. He presented the proposal, while noting that this is just the first step and more proposals will follow. The proposal is to include an equity analysis alongside the fiscal and legal analysis we already received. Gov. Williams-Ruth moved for approval of the proposed amendment. Discussion followed, including whether the proposal might impact first amendment rights; whether it would delay the pace at which the board acts. Motion passed 9-2. Govs. Couch, Purtzer, and Sayani were not present for the vote.

Opportunity to Sign on to Recommendations for the Commission for Judicial Conduct ([link](#))

Gov. Adewale presented the letter, noting that a legal analysis had been conducted and urged the Board to sign on as an opportunity to make a real impact in defending the independence of the judiciary and in support of mentorship. Discussion followed including some concern about specific provisions in the resolution and letter and WSBA's role in advocating for some of these changes; comparisons to the work done by volunteers on WSBA boards; a perspective that the system worked, in terms of being overturned on appeal and that signing onto such a letter would chill the judgement of the agency; a perspective that

the system does not work and action is required ensure change. Gov. Anjilvel moved to approve signing off on the letter. Discussion continued about the role of judges and the necessity of independence. Motion failed 8-2. Govs. Couch, Higginson, Purtzer, and Sayani.

ADJOURNMENT ([link](#))

There being no further business, Pres. Tollefson adjourned the meeting at 5:21PM on Friday, July 22, 2022.

Respectfully submitted,

Terra Nevitt

Terra Nevitt

WSBA Executive Director & Secretary