

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes

Silver Cloud Hotel, Ruston, WA

November 4-5, 2021

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, November 4, 2021 at 9:05 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
Brett Purtzer
Serena Sayani
Alec Stephens
Brent Williams-Ruth

Also in attendance were Immediate Past President Kyle Sciuchetti, Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Communications & Outreach Officer Sara Niegowski, Chief Disciplinary Counsel Doug Ende, Chief of Staff Ana LaNasa Selvidge, Member Services & Engagement Manager Julianne Unite, Executive Administrator Shelly Bynum, Broadcast Services Manager Rex Nolte, Director of Advancement Kevin Plachy, Chief Equity & Justice Officer Diana Singleton, Chief Financial Officer Jorge Perez, Director of Human Resources & Chief Culture Officer Glynnis Klinefelter Sio, Communications Strategy Manager Jennifer Olegario, Community Outreach Specialist Mike Kroner, Sections Program Coordinator Omar Abdulla, Past Pres. Rajeev Majumdar, WSBA Pres. Tracy Flood, Nancy Hawkins (Family Law Section), James E Macpherson (Washington Defense Trial Lawyers), Kari Petrasek, and Michael Cherry (Practice of Law Board).

Consent Calendar ([link](#))

Pres. Tollefson asked if there were any objections to the consent calendar. There being none, Gov. Dresden moved for approval. Motion passed unanimously. Govs. Clark and Higginson were not present for the vote.

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

The Board heard public comment from Michelle Su of the Korean American Bar Association of Washington regarding collaboration with other Minority Bar Associations to ensure that diversity, equity, and inclusion is a priority of the Washington State Bar Association, including proposing accountability measures for members of the Board of Governors.

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

Pres. Tollefson reported on his participation at the Northwest Bar Leaders meeting in Bozeman, MT in October where WSBA leaders met with other bar leaders from the region and discussed judicial independence among other topics. He reported on the officers' meeting with Washington State Governor Jay Inslee, where the officers updated him on issues impacting WSBA. He also reported on his meeting with Chief Justice González. He reported that they discussed the Court's request that WSBA engage in an open and inclusive process to develop recommendations for the Court on WSBA's structure in light of ongoing first amendment litigation. He also reported that the Chief Justice encouraged WSBA to comment on proposed court rule changes.

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

Executive Director Terra Nevitt referred the Board to the findings of the Task Force on Race and Washington's Criminal Justice System's Research Working Group and the Gender and Justice Commission's report on how gender and race affect justice. She noted that both include data and findings that are relevant to WSBA's strategic goals to promote equity in the legal system and to promote access to justice and promote public confidence in our legal system. She deferred to Task Force member Gov. Anjilvel who noted the connection to WSBA's upcoming work to conduct a new demographic study and revise WSBA's Diversity & Inclusion Plan.

Director Nevitt also reported WSBA's transition to a hybrid workforce, noting that of approximately 140 employees, 76 have indicated a desire to work entirely remotely. She reported that WSBA will be looking to consolidate its use of space at Puget Sound Plaza.

Director Nevitt deferred to Chief of Sara Niegowski to report on the member engagement survey developed by the Member Engagement Committee to obtain real time feedback on the work of the bar and the new online platform for Bar News. Gov. Higginson inquired as to the history and background of the member engagement survey and whether it had been approved by the Board of Governors. Discussion followed, including clarification that this item had come to the Board,

including for budget approval; that the project had been worked on for a year with ample opportunity for governor input; and the value of the input that will be gathered.

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

Executive Committee. Pres. Tollefson reported that the Executive Committee met to review the agenda for this meeting and also discussed a change to the committee's approach in reviewing the work of WSBA entities.

APEX Awards Committee. Gov. Abell reminded the Board that the awards celebration will be held live and virtually on December 13.

Personnel Committee. Gov. Higginson reported that the committee met once and is working to schedule a second meeting. She noted that she will further discuss the substance of the first meeting during the Personnel Committee agenda item.

Legislative Committee. Deferred.

Nominations Review Committee. No report.

Diversity Committee. Gov. Anjilvel reported that the next meeting is November 8 and noted that all of the meetings are open. She described the four subcommittees, which are working respectively on WSBA's upcoming demographic study, updating WSBA's definition of diversity under the Bylaws, exploring the committee's structure under the Bylaws, and exploring collaboration with the Minority Bar Associations on a pipeline program. Gov. Anjilvel also reported on a meeting with Michelle Su on behalf of the Minority Bar Associations.

Long Range Strategic Planning Council. Pres. Tollefson reported on the makeup of the Council and reported on the Council's discussion on the issue of WSBA's physical space and next steps when the lease expires in 2026. Immediate Past Pres. Sciuchetti further reported on this topic and the options that his subcommittee is exploring, including purchasing a building, maintaining the current space, or renting elsewhere. He also highlighted some of the other issues the Council is exploring.

Member Engagement Workgroup. Treas. Peterson provided an overview of the mission of the workgroup.

Budget & Audit Committee. Treas. Peterson reported on the most recent of the meeting of committee, including a critical and productive look back at last year's budget process and

upcoming work on an investment strategy. He also noted that CFO Jorge Perez will be conducting a seminar in December for Board members to deepen their understanding of WSBA's financial statements.

Equity & Disparity Workgroup. Gov. Stephens explained the mission of the workgroup and forthcoming recommendations.

Supreme Court Bar Licensure Task Force. Gov. Williams-Ruth reported on the discussions at the most recent task force meeting. He noted that we are still at the beginning of this process and focused on gathering data and information for the subcommittees.

Second Read: Senior Lawyers Proposed Change to the WSBA Bylaws ([link](#))

Senior Lawyers Section Chair Eleanor Doermann summarized the proposed changes to Art. III and XI in order to give each section discretion to determine whether inactive members can be voting members of their section. She noted that they had conducted a poll among sections and almost all were in favor. She also noted the changes that had been made to the proposal since it was presented for first reading, including to clarify that the change only addresses the ability of these members to vote or hold office in a section and more clearly indicating which statuses this applies to, specifically inactive, disability inactive, and honorary. Discussion followed including support for the proposed change and a concern about allowing folks that are not in active status to serve as a chair or co-chair. Gov. Stephens moved for approval of the proposed changes.

Discussion continued including that we have insufficient volunteers; the wisdom of calling upon the time and talents of retired members; that the impact is limited in that it only applies to section and only provides discretion; that one of the groups identified is honorary members, which have already contributed to WSBA as active members for 50 years; that section memberships have declined and this may partially remedy this trend; that the leadership positions are a huge time investment and retired members may be better suited to donate their time; concern that the proposal is not sufficiently narrowly tailored and that opening this up will lead to opening it more broadly in the future and that volunteers should be those actively engaged in the profession; that it's unclear what the harm of this proposed change would be; clarification between the first and second read changes; that some other integrated bar associations have similar language as what is being proposed; that the section was responsive to the issues raised at first read; whether ageism plays a role in views of the issue; and the experience of the Senior Lawyers Section in using technology and adapting to the pandemic.

The Board took public comment from Nancy Hawkins that being in "active" membership is not synonymous with being a practicing attorney and in support of the diversity that older lawyers that can't afford to pay the active license fee will bring.

There being no further discussion, the underlying motion passed 9-4. Gov. Boyd was not present for the vote.

2022 Legislative Priorities ([link](#))

Gov. McBride referenced the materials, including a confidential memo from General Counsel Shankland. He clarified that this is not a proposal to take a position on a particular piece of legislation and that the proposed criteria have been used by WSBA for many years. He noted that the document informs the legislature as to WSBA's position and it also informs the committee's decision making. He noted that decisions to oppose or support particular pieces of legislation come back to the full Board. Legislative Affairs Manager Sanjay Walvekar reiterated that background and the purpose of the priorities and requested adoption. Gov. Higginson moved for approval. Discussion followed, including that the committee's approach has not changed in light of first amendment litigation impacting integrated bar associations and that the rules that apply to WSBA have not yet changed and are only speculative. The motion to approve was moved again as it was ruled out of order by Pres. Tollefson. The motion passed unanimously. Gov. Boyd was not present for the vote.

Legislative Review Committee Recommendations ([link](#))

Legislative Review Committee Chair Brian Considine introduced the presenters for the two pieces of legislation being recommended for WSBA sponsorship.

Eric DeJong presented the work of his committee to keep Washington's Business Corporations Act up to date looking at model rules and other jurisdictions. He reported that the first set of changes relate to provisions in the Act that effect the establishment of record dates for various purposes. The proposed change would move these rules from a single section to the various statutes that substantively govern those corporate actions. The proposed changes also seek to clarify that record dates cannot be set retroactively. A second set of changes relate to the portion of the Act dealing with mergers and share exchanges for Washington corporations. Mr. DeJong noted that the most significant change is to add a "medium form merger provision," which is a type of business combination transaction that consists of a front end tender offer by a buyer, followed by a back end merger that can be affected without a shareholder vote, provided certain conditions are met. The goal of the change is to allow friendly business combinations to be expedited. He noted that this change was initially implemented in Delaware and was included in the 2016 version of the model rule. He also noted a related proposed change to clarify that it will give shareholders that are not in favor the ability to dissent. Mr. DeJong presented a variety of more technical changes as well several miscellaneous changes, including clarification that when shareholders are aggregating their ownership in order to call a special meeting, the demands

have to be received within 60 days of the first demand. Last change would clarify that shareholder lists can be provided electronically.

Discussion followed regarding the applicability of GR 12.2 and whether the advocacy could happen outside of the bar association; that these types of proposals have been brought annually for 4-5 years; that the issues are not social and political; that the legislators expect and appreciate this work; and the kind of legal and stakeholder review that occurs on these proposals.

Elisabeth McNeil provided an overview of the proposed changes to the Uniform Limited Partnership and LLLC statutes, which are largely to harmonize provisions between the two acts as well as some clean-up and technical changes. She also highlighted several specific proposed changes to the LLC Act, including addressing a discrepancy in the percentage of members needed to approve a conversion versus a merger to prevent avoidance of dissenters rights; to automatically admit a successor in interest as a default setting for single-member LLCs; adjusting the default setting to allow a member to withdraw from a LLC without being entitled to a return of their investments; and to allow LLCs to have members with no economic interest.

Gov. Purtzer moved for approval of the proposals. Discussion continued about the process followed for analysis; a desire for an executive session; that the materials include a confidential memo from General Counsel Shankland; and that the guidance and rules given to the committee have not yet changed. Gov. Higginson moved to go into executive session on the topic at 2PM this afternoon. Gov. Higginson's motion passed 13-1.

Request to Support the Legal Foundation of Washington's Proposed Changes to RPC 1.15 ([link](#))

Legal Foundation of Washington Executive Director Caitlin Davis presented the proposed change to RPC 1.15. Committee on Professional Ethics Chair Pam Anderson clarified that the Committee took its direction from the Board at the last meeting, which was to work with LFW and Disciplinary Counsel to develop a draft rule for the Board's consideration. Committee member Prof. Brooks Holland presented a few highlights from the proposed rule. He notes that proposal expressly distinguishes between unclaimed and unidentified property. It would require that if after one year of diligent efforts to identify the owner of unidentified property, they cannot be identified, the funds must be remitted to LFW. He noted that unclaimed property would still be remitted to the Department of Revenue. He noted that the rule would provide that a lawyers reasonable and good faith judgement to remit the funds to LFW would protect them from discipline if later the remittance turns out to be erroneous. LFW would be responsible for the funds once remitted. He further noted that remitting funds to LFW does not provide a retroactive defense to any previous record keeping violations. Discussion followed, including that the rule addresses the duty of lawyers and not any third-party rights to claim funds; that there still appears to be a conflict with the statute; whether approaching the legislature would make more sense; concern that the

conflict would create liability for individual practitioners; whether the fact that the Supreme Court would take the action would likely influence the position of the Attorney General's office or the Department of Revenue; clarification that the intent would be to extend the rule to all licensed legal professionals; how LFW would address refunds; clarification that the current proposal would only affect licensed attorneys; and the companion amendment suggested by Chief Disciplinary Counsel Doug Ende. Gov. Adewale moved for adoption of the rule as proposed. It was clarified that the motion included the companion amendment to the ELCs proposed by Chief Ende. The Board took public comment from Nancy Hawkins as to whether the rule proposal would require reporting from LFW to disciplinary counsel and expressing concern about the Board receiving a confidential memo. It was clarified that there is no requirement for LFW to report things to WSBA. Discussion followed, including comments in favor of and in opposition to the motion. The motion to approve passed 7-5. Gov. Peterson abstained. Gov. Purtzer was not present for the vote.

Executive Session ([link](#))

Pres. Tollefson moved the Board into executive session at 2:00 PM for the purposes of receiving legal advice from counsel regarding potential litigation and to discuss legislative strategy. The executive session was ultimately extended to 3:15 PM.

Pres. Tollefson resumed public session at 3:15 PM and noted his desire to move forward on the underlying motion to approve the proposals of the Legislative Review Committee. The motion passed 11-2. Gov. Williams-Ruth abstained from the vote.

FY21 Listening Tour Report & Recommendations ([link](#))

Immediate Past Pres. Sciuchetti reported on the FY21 Listening Tour highlighting some of the updates provided and sharing his takeaways. He noted the discussions about rural practice, and some of the ideas shared, including use of the Rule 6 program to develop local attorneys. He noted that this information would be shared not only with the Board of Governors, but also with the Long Range Strategic Planning Council and the Small Town and Rural Committee. Discussion followed regarding the work of the STAR Committee as a response to some of the feedback; support for the Listening Tour and the connection it forges with the members; that the member outreach work should be centered in the Member Engagement Committee; that we also need to engage members in the I-5 corridor; that the Listening Tour should occur at the beginning of the year, rather than at the end of their term; and comments questioning the value of the Listening Tour.

Personnel Committee Proposal to Clarify WSBA Governance ([link](#))

Gov. Higginson noted that the Personnel Committee did not have any changes or a recommendation with regard to the proposal, that one governor had submitted written changes,

and that she had her own comments about the proposal as part of the discussion. Pres. Tollefson noted that at the last meeting the issue was tabled to November and clarified that the underlying motion to approve the proposal is still on the table. Discussion followed, including that the proposal has been in the works since March; that passing the proposal will not cause harm; comments in support of the motion; that guidelines already exist and the proposal is counterproductive; concern that the list of duties will be considered exhaustive, when it cannot be; that the work arises out of the climate survey and that considerable time has passed since then; the need to discuss the recommendation that individual governors not individually direct the work of staff; that not acting on the proposal timely underlines the issues identified by the climate survey; that not everyone understands what is in the proposal; that not all of the underlying documents are board-approved; the nature of the climate survey recommendations; lack of engagement on the topic; that if the Board wishes to maintain the status quo, it should take a vote to that effect; whether or not the climate survey results are stale; and that the document is useful and could be passed as non-exclusive and non-binding.

Gov. Stephens moved that the proposal be postponed indefinitely and the subject be taken up at the teambuilding retreat. Discussion followed, including that the discussion might be more comfortable to occur the retreat setting; concern that the motion would change the nature of the retreat; concern about delaying action; and that the Board meeting is the time to discuss the challenges. The Board heard public comment from former governor Tracy Flood regarding the responsibilities of governors and in opposition to the motion to postpone. Discussion followed including that the underlying issue is relationships; the need to be responsive; and that the proposal wouldn't be difficult to change in the future. Gov. Stephens withdrew his motion. Discussion followed. Gov. Williams-Ruth moved to add to the proposal "any issue that is not expressly delineated shall be determined by mutual agreement of the parties at issue. If agreement cannot be reached on any specific duty then it shall come to the next Board of Governors Meeting for discussion and action."

Gov. Stephens called the question. Motion to call the question passed unanimously with Gov. Higginson abstaining. The Gov. Williams-Ruth's motion to amend the proposal was restated and approved 9-2 with Govs. Clark, Peterson, and Stephens abstaining. Gov. Stephens moved to call the question on the underlying motion to approve. The motion to call the question passed 12-2. The underlying motion to approve the proposal, as amended, passed 11-2. Gov. Clark abstained from the vote.

Annual Anti-Harassment Training ([link](#))

Nate Bailey of Fischer Phillips conducted an MCLE-accredited training on the Board of Governors role in preventing harassment, including questions and answers with participants.

Annual Report of the Washington State Bar Foundation ([link](#))

Washington State Bar Foundation President Tracy Flood presented the Foundation's annual report. She highlighted the Powerful Communities grant project, which has extended across the state and the significant funds raised for the biennial Access to Justice Conference. She noted that 14% of members donate during the annual licensing campaign and highlighted the positive fundraising trends. Foundation Vice President Kinnon Williams highlighted the "what if" campaign to encourage giving by all members and urged Governors to contribute to the Foundation, at any level.

MCLE Board Report ([link](#))

MCLE Board Chair Todd Alberstone presented the Board's annual report. He summarized the purposes of the Board as set forth in the Admission to Practice Rules (APRs) to accredit courses and activities, consider member and sponsor petitions and appeals, and to suggest amendments to APR 11 and promulgate regulations. He noted that many of these activities are delegated to WSBA staff, as permitted by the rules, and highlighted the relationship between the Supreme Court created board and WSBA. Chair Alberstone highlighted current projects and activities including (1) exploring the possibility of providing MCLE credit to tutors under the Rule 6 Law Clerk program; (2) addressing the impact of the MCLE deadline extension due to COVID-19, which is expected to double the staff work and result in a significant increase in petitions and appeals; (3) developing regulations for the new MCLE requirement in the area of bias; (4) auditing courses; (5) increasing diversity on the MCLE Board; and (6) participating in the Task Force relating to the relationship between WSBA and Supreme Court Boards. Chair Alberstone also spoke to the Board's long-term goals. He noted that the Board of Governors can support the MCLE Board's work and mission through the provision of free and low-cost CLEs and by supporting the WSBA staff, which make the Board's work possible.

Council on Public Defense Matters ([link](#))

Council on Public Defense Chair Travis Stearns presented the Council's request to submit a letter in support of the Office of Public Defense's budget, which is seeking increased funds to address the *Blake* case, for staff increases, and for modest salary increases not requested in the prior year. Gov. Adewale moved for approval. The motion passed unanimously. Gov. Clark was not present for the vote.

Chair Stearns presented the second request of the Council to submit a comment on the Proposed New GR 41 and Amendments to CR 39 to ensure the parties have the ability to choose whether to hold hearings virtually. He noted that while there are many benefits of remote hearings, they may not be appropriate in every case. Discussion followed in support of ensuring that the defendant consents to a remote hearing. Gov. Stephens moved for approval. Motion passed unanimously. Gov. Clark was not present for the vote.

Email Security Training ([link](#))

IT Director Jon Dawson conducted an email security training for the Board of Governors. Discussion followed regarding support available for members regarding cybersecurity, including member benefits that are available for a discount and advice from the Practice Management Program, including consultation and educational resources.

Continuing the Conversation About WSBA's Structure ([link](#))

Gov. Boyd moved that there be a special meeting to discuss the bar structure topic. Discussion followed for and against the motion and suggested next steps, including requesting input from the original members of the workgroup, the members, and others; that the special meeting be an opportunity to listen to stakeholders; that the Member Engagement Workgroup to start educating and gathering input from members; and that the existing talking points be used to get the President talking to members. It was clarified that the intent of the motion is to have the special meeting before the regularly scheduled January BOG meeting. Gov. Williams-Ruth moved to amend the motion that the meeting be held before December 22. Discussion followed regarding the intent of the special meeting and it was clarified by the seconder that the intent was not make a decision, but to discuss the process for reaching a decision. There was further discussion about the timing of outreach and education, including public comment from Nancy Hawkins expressing concern about conducting outreach and seeking input at this time and noting that there is no emergency. Gov. Williams-Ruth's motion to amend passed 11-1. Govs. Clark and Sayani were not present for the vote.

Gov. Boyd clarified her motion to call a special meeting prior to December 22 for the purpose of discussing what the process is going to be for how to determine what our position is on the future structure of the bar. Discussion followed regarding the Bylaw provisions with regard to calling a special meeting and the impact of the motion in light of those provisions. The motion passed 11-2. Gov. Clark was not present for the vote.

Discussion followed regarding meeting logistics. Pres. Tollefsen said that he will work to schedule a full-day meeting in the Bar office during the first two weeks of December.

ADJOURNMENT

There being no further business, Pres. Tollefsen adjourned the meeting at 12:49 PM on Friday, November 5, 2021.

Respectfully submitted,

Terra Nevitt

Terra Nevitt

WSBA Executive Director & Secretary