

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes

Riverside Hotel, Boise, ID

August 20-21, 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 Kyle Sciuchetti on Friday, August 20, 2021 at 9:07 AM. Governors in attendance were:

Hunter Abell
Sunitha Anjilvel
Lauren Boyd
Treas. Daniel D. Clark
Matthew Dresden
P.J. Grabicki
Carla Higginson
Serena Sayani
Russell Knight
Tom McBride
Bryn Peterson
Brett Purtzer
Alec Stephens
Brent Williams-Ruth

Also in attendance were President-Elect Brian Tollefson, Immediate Past President Rajeev Majumdar, Gov-Elect Francis Adewale, Gov-Elect Jordan Couch, Executive Director Terra Nevitt, General Counsel Julie Shankland, Executive Administrator Shelly Bynum, Chief Disciplinary Counsel Doug Ende, Chief Communications & Outreach Officer Sara Niegowski, Broadcast Services Manager Rex Nolte, Director of Advancement Kevin Plachy, Chief Equity & Justice Officer Diana Singleton, Chief Financial Officer Jorge Perez, Chief Regulatory Counsel Renata Garcia, Director of Human Resources & Chief Culture Officer Glynnis Klinefelter Sio, Betsylew Miale-Gix (WSAJ), Nancy Hawkins (Family Law Section), Kari Petrasek, Chalia Stallings-Ala'ilima, and Michael Cherry (Practice of Law Board).

Swearing-in of Gov. Serena Sayani ([link](#))

Pres. Sciuchetti announced that Gov. Jean Kang resigned from the Board for family reasons and welcomed Justice Mary Yu to the meeting to swear Gov. Elect Serena Sayani into office. Gov. Williams-Ruth thanked Gov. Kang for her service and moved to appoint Serena Sayani to fill the vacant position representing district 7 south. The motion passed unanimously. Govs Abell, Anjilvel, Higginson, and Purtzer were not present for the vote. Justice Yu administered the oath of office.

Consent Calendar ([link](#))

Pres. Sciuchetti asked if anyone would like to remove an item from the consent calendar. Gov. Williams Ruth moved to approve the consent calendar. Motion passed unanimously. Govs Abell, Anjilvel, Higginson, and Purtzer were not present for the vote.

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

The Board heard public comment from Peter Arkison regarding moving the WSBA office outside of the downtown Seattle area and difficulty navigating the WSBA website. Discussion followed.

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

Pres. Sciuchetti reported on a request to receive meeting materials at least one week in advance, with late materials being rare. He reported on an order from the Washington State Supreme Court mandating vaccines for all of its employees, including volunteers, and "strongly encouraging" the WSBA to adopt similar measures. He noted that he is working with Executive Director Nevitt to explore what that means for WSBA employees and volunteers and how best to implement those measures. He reported on the 2021 Listening Tour, which is an opportunity to meet with members throughout the state, noting that additional stops are being planned in eastern Washington. Pres. Sciuchetti also reported his attendance at the funeral of former City Attorney Jim Sloan in Spokane. Discussion followed.

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

Executive Director Terra Nevitt reported on the Listening Tour, noting stops in Kitsap, Island, Snohomish, Skagit, Pacific, and Mason counties. Director Nevitt updated the Board regarding the reopening of the WSBA office on August 1. She noted that masks are required and that there have been a handful of visitors each week. Director Nevitt reported that the comment period was extended for General Rule 40 regarding informal family law trials, noting that the BOG has until September 28, 2021 to submit any further comment. Finally, Director Nevitt reported on WSBA's work to notify members about the new malpractice insurance disclosure requirement in the Rules of Professional Conduct.

Discussion followed regarding the vaccine mandate; who will make decisions about whether or not to impose the mandate on employees and volunteers; whether the issue will be discussed later in the meeting; and any issues regarding notice. Pres. Sciuchetti indicated that he would add it to the agenda for discussion later in the meeting.

Pres. Sciuchetti announced that there would be changes to the September Board meeting as a result of the Court indicating that it will not meet with the Board in person as originally planned.

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

Personnel Committee. Gov. Stephens noted that Personnel Committee will present to the Board later in the meeting regarding the Climate Survey. He expressed appreciation to outgoing Gov. Jean Kang for her service on the Board and as the co-chair of the Personnel Committee.

Equity & Disparity Work Group. Gov. Stephens reported that the work group will meet this month and is looking at GR 12 and access to the courts.

Diversity Committee. Gov. Boyd directed the Board to the meeting materials which are intended to supplement the presentation at the July meeting. She thanked everyone that attended the joint meeting with the minority bar associations (MBAs), the Board, and the Diversity Committee and encouraged participation in the Diversity Committee meetings. Diversity Committee Co-Chair Andrea Jarmon reported on the CLE held the day prior. Discussion followed about feedback from the last presentation.

Executive Committee. Pres. Sciuchetti reported that the committee heard a report from the Discipline Advisory Round Table (DART) and the Continuing Legal Education (CLE) committee as part of the ongoing effort to increase dialogue with WSBA entities. He further reported that the committee had a discussion with the Personnel Committee about the issues to be discussed later in the meeting.

APEX Awards Committee. Gov. Knight reported that all of the honorees have been notified and the videos are under production for a fall celebration.

Legislative Committee. Gov. Grabicki reported that the committee and staff have been working on draft revisions to the legislative policy but have put that on hold following the 5th Circuit *Longley* decision and the 9th Circuit remand of the Oregon matter. He noted the Board will be receiving a report on these issues later in the meeting. The Board heard public comment from Nancy Hawkins expressing concern that the discussion of those issues will take place in executive session without the presence of sections. Discussion followed regarding the rationale for an executive session discussion and that no action would be taken without seeking the input

of stakeholders, especially sections. Gen. Counsel Julie Shankland clarified that the comment policy is not the subject of the executive session and that any changes to the policy should occur in public session.

Nominations Review Committee. Pres. Elect Tollefson reported that the committee met on August 17 and made a number of appointments and nominations. He noted that the decision on the Access to the Justice Board appointment was deferred. Gov. Boyd noted it was deferred pending additional information from the ATJ Board on the rationale for its recommendations.

Long Range Strategic Planning Council. Pres. Sculichetti reported on appointments made to the Council. He further reported that the Council may be coming forward with revision to its charter to address its size.

Member Engagement Committee. Gov. Peterson reported that the committee is expecting to launch a quarterly member survey in the next month or so and expressed appreciation for the work of Chief Communications Officer Sara Niegowski.

Budget & Audit Committee. Treas. Clark reported that the Board will discuss Budget & Audit Committee items later in the meeting.

Regarding the decision of the Nominations Review Committee to defer the Access to Justice Board's nominations, Gov. Elect Francis Adewale sought clarification as to what conditions trigger the need to provide additional information. Discussion followed about these kinds of requests, the role of the committee, the impact on timing, and the need for clarity of expectations at the outset.

Bar Licensure Task Force. Gov. Williams-Ruth reported that the most recent meeting was cancelled due to attendance. He noted that eight subcommittees have been created and will be meeting outside of the full task force. He also reported that Dean Rooksby has stepped aside as co-chair and thanked Hon. Montoya-Lewis for her service as co-chair.

Election of FY22 WSBA Treasurer ([link](#))

Pres. Sculichetti suggested that the Board strengthen the Treasurer Election process set forth in the Bylaws and walked through the process to be used for the election. Discussion followed regarding whether the process should be the same for the Treasurer as it is for the President Elect, given the difference in the rolls. Gov. Knight nominated Bryn Peterson. Gov. Boyd nominated Gov. Brent Williams-Ruth.

Pres. Sculichetti indicated that each candidate would have twenty minutes to address the Board with the other candidate out of the room. Gov. Williams-Ruth volunteered to go second. Gov.

Peterson made brief remarks and answered questions from the members of the Board. Gov. Williams-Ruth also made brief remarks and answered questions from the Board. Gov. Williams-Ruth's time was extended to 21 minutes to match the time Gov. Peterson was given.

Discussion followed regarding the candidates, including support for improving the budget process, appreciation for the candidates being willing to take on this important roll, and support for specific candidates. Pres. Sciuchetti conducted a roll call to confirm which governors were present and should receive a ballot for the secret, electronic ballot. Pres. Sciuchetti recessed the meeting pending announcement of the results.

Pres. Sciuchetti returned from recess and announced that the votes had been received, but that Gov. Higginson arrived during the voting process. He asked for a decision from the Board as to whether she should receive a ballot. Discussion followed. Gov. Stephens moved to allow all governors present to vote, even if they arrived after the roll call vote. Discussion followed. Motion passed 8-1 with Gov. Peterson abstaining. Govs. Abell, Anjilvel, Sayani, and Purtzer were not present for the vote. Pres. Sciuchetti directed that Gov. Higginson be forwarded a ballot and that the Board take up the next item pending the results of the treasurer election.

Presentation on the Washington Leadership Institute ([link](#))

James Williams thanked the Board of Governors for 17 years of investing in the program, which continues to yield results for the WSBA and the legal community. The fellows shared remarks about their experience in the program during a very difficult year and presented their community service project, "Dismantling White Supremacy and its Intersectional Impacts." Discussion followed regarding the impact of white supremacy in the legal system, the importance of WLI in our legal community, appreciation for the project, and support for continuing to support the program financially. When asked if there was a specific request for support, James Williams clarified that it was a generalized request for ongoing support at established levels, as well as for involvement in the program.

Committee & Board Chair Appointments ([link](#))

Pres. Elect Tollefson presented his appointments. Gov. Williams Ruth moved for approval. Motion passed unanimously. Govs. Abell, Anjilvel, Higginson, and Purtzer were not present for the vote.

Election of FY22 WSBA Treasurer (continued) ([link](#))

The Board recessed to count the votes in the treasurer election. Pres. Sciuchetti announced that there was a tie, which gave rise to questions about whether the president votes on a ballot and whether the President can vote to change the result. He reported that we did not have certainty as to how to answer those questions and, as a result, he would abstain from breaking the tie.

Discussion followed, including a suggestion for co-treasurers; whether it is the right result to vote tomorrow with potentially different governors present to vote; whether it is the right result to have Pres. Sciuchetti delay his decision about whether to abstain or vote until the Board has more information; whether the Bylaws provide for a coin toss; possible interpretations of the Bylaws and the interaction with Roberts Rules of Order; and whether the election should be held over to the September meeting.

Council on Public Defense Proposed Amendments to CrR 3.1 & 7.8 ([link](#))

Vice-Chair Jason Schwarz presented the proposed amendments the Council is seeking to support. The proposed changes, which were developed by the Washington Defenders Association, will provide a mechanism for representation of defendants in *Blake*-related matters. This will facilitate the use of funds that the legislature and the Office of Public Defense have allocated for *Blake* matters. Gov. Knight moved for approval of the request. Discussion followed regarding how the proposed changes might impact other non-*Blake* matters. Motion passed unanimously. Govs. Abell, Anjilvel, Higginson, and Purtzer were not present for the vote.

Proposal to Address Potential Conflicts for Judges Serving on the Board of Governors ([link](#))

Member Gabe Galanda presented the background for his request that the Board consider recognizing that a board member sitting as a *pro tem* judge can create an organizational conflict of interest. Discussion followed including whether judicial service by board members should be prohibited due to the appearance of a conflict (similar to the provision prohibiting governors from representing individuals engaged in the discipline system); that the approach seems reasonable; support for the general approach; that additional time is needed to make sure the proposed language is technically workable; whether the language is broad enough to address other potential conflicts that could arise and the timing of when a conflict arises; and clarification that the language is intended to recognize that a member in judicial status cannot serve on the Board per other provisions of the Bylaws.

Discussion with the Idaho State Bar Board of Commissioners ([link](#))

Pres. Sciuchetti opened the discussion with the Idaho State Bar Board of Commissioners with introductions and an invitation to share thoughts on the biggest issues facing the profession. Discussion followed about whether the ability to get malpractice insurance has been a problem in Idaho, which has not been an issue except for part-time practitioners; appropriate insurance minimums; that insurance prices have not increased; lack of ongoing questions and concerns about the requirement; the background of the proposal which went out to the membership based on the recommendation of the president of the Idaho State Bar and passed on a very close vote; information on the Idaho State Bar's decision-making process, which requires that all resolutions, including license fees, go to a referendum of the membership; turnout for referenda; whether this process engenders a greater feeling of connection with the members of the bar;

clarification that the process is largely for rules and occasionally policy questions or advisory issues will be addressed; drawbacks of the process, including that it's not nimble process; benefits of the process, including that it is deliberative and results in greater buy-in; the relative size of the Idaho State Bar and the Washington State Bar; efforts to engage out-of-state members; the history of Idaho State Bar's purchase of a building; the Idaho State Bar's lack of engagement in legislative lobbying; the pros and cons of having a small board, as is the case in Idaho; Washington's relationships with the Washington law schools; Idaho's handling of recent bar exams; rural practice challenges; demographics information maintained by each bar; how COVID has impacted the use of office space and whether attorneys would want to use state bar space; and the benefits of hybrid meetings and events.

Election of FY22 WSBA Treasurer (continued) ([link](#))

Pres. Sciuchetti reported that the idea of co-treasurers was considered and rejected and that his recommendation is to set the election over the September meeting. Gov. Stephens moved that the election be set over to the September meeting. Discussion followed regarding the motion. Gov. Higginson moved to amend the motion to provide that we take the matter up at 11:30 AM this morning. Discussion of the amendment followed. Gov. Higginson revised her motion to take up the matter immediately. Discussion followed, including whether it would be possible to achieve full participation of the Board and whether those governors not present for the interview portion of the election should have the opportunity to hear from the candidates on the issues. The motion to amend passed 13-1.

Pres. Sciuchetti directed that the Board repeat the interview process, with each candidate having twenty minutes to make a statement and answer questions. Discussion followed about timing. Gov. Peterson left the room and Gov. Williams-Ruth made his statement and answered questions. Gov. Williams-Ruth left the room while Gov. Peterson made his statement and answered questions.

The votes were delivered by secret electronic ballot and reviewed by Pres. Sciuchetti, Executive Director Nevitt, and General Counsel Shankland. Pres. Sciuchetti announced the winner, Treas. Elect Bryn Peterson.

Personnel Committee Items ([link](#))

Gov. Stephens introduced the topics for discussion, including a general discussion of the results of the WSBA Climate Survey.

Discussion & Update of WSBA's Climate and Culture Survey. Consultant Jeff Turner of Praxis HR presented a high-level summary of the results and recommendations from the survey conducted from September 21, 2020 to October 6, 2020. Discussion, questions, and answers followed

including understanding how the key strengths fit with the key weaknesses; how the recommendations will help impact key weaknesses, such as morale; how to address what appears to be leadership's lack of accountability; the nature of concerns regarding staff leadership; and the direction employees are seeking from the Board. Director Klinefelter Sio presented the work that has been done to respond to the climate survey, including recent pulse survey results.

Personnel Committee Recommendations. Govs. Williams-Ruth presented the committee's proposal regarding climate survey recommendation number one related to clarifying the governance operating model. He noted that this is an initial presentation and his expectation and hope is that governors will make proposals to revise it. Discussion followed regarding what sources were referenced to prepare the proposal. Gov. Stephens requested feedback from governors, staff, and the public for input on whether this proposal is hitting the mark and how it can be simplified.

Discussion of Vaccination Mandate ([link](#))

Pres. Sciuchetti reported that last week the Court issued a vaccination mandate, which strongly urged WSBA to adopt a similar mandate. Pres. Sciuchetti noted that he and Past Pres. Majumdar prepared a proposal to mandate vaccinations for volunteers.

Gov. Williams-Ruth moved to adopt the proposed policy. Discussion followed for and against the proposal; support for the Executive Director to adopt a similar policy for WSBA employees; whether there may be legal exposure for taking this action; that the Board has not had sufficient time to consider unintended consequences; that while the proposal is new, the issues are not new; that the proposal is unclear with regard to whether it applies when governors are performing their duties at events not organized by WSBA and suggestions for clarifying the language to be more or less restrictive. Gov. Higginson moved to table to the September meeting. Motion failed for a lack of a second. Discussion continued, including a view that the policy should be expanded to include employees. Gov. Grabicki moved to amend to strike "or on-site" and to add "or as a representative of the WSBA." It was considered a friendly amendment. Gov. Grabicki called the question. Motion to call the question passed 8-2. Govs. Abell, Anjilvel, Peterson, and Purtzer were not present for the vote. The underlying motion (to approve the proposal with changes to remove the words "or on site" and to add "or as a WSBA representative)" passed 10-1. Govs. Abell, Anjilvel, and Purtzer were not present for the vote.

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

Proposal Re Employee and Volunteer Safety at the WSBA Office. Chief of Staff Ana LaNasa Selvidge presented the proposal and recommendation of the Budget and Audit Committee to approve expenditure of up to \$75,000 for the project to add glass safety doors on the sixth floor

of the WSBA office and to add access key cards to the seventh and eighth floor freight elevator doors. Gov. Grabicki moved for approval of the project. Motion passed unanimously. Govs. Abell, Anjilvel, Higginson, Sayani, and Purtzer were not present for the vote.

2023 License Fee Recommendation. CFO Jorge Perez presented the recommendation of the Budget & Audit Committee to maintain license fees at current levels, as presented in the meeting materials. Pres. Sciuchetti clarified that this is an action item. Gov. Peterson moved for approval. Chief Regulatory Counsel Renata Garcia clarified that the new admittee fee for a LLLT member should be \$114.50. Discussion followed in opposition to and in support of the motion; the need to look at the impacts of keeping the license fee steady; that the license fee has been kept at \$458 since 2020; that the cost of living has increased; and that attorney wages have not kept up with inflation. Motion passed 9-2. Govs. Abell, Anjilvel, and Purtzer were not present for the vote.

WSBA Court Rules & Procedures Committee ([link](#))

Chair Isham Reavis presented on the work of Court Rules & Procedures Committee, including an overview of the proposed rule amendments the committee has under consideration and will be presenting to the Board following the committee's final action on August 23. He noted that most of the proposed changes are not substantive.

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

Fiscal Year 2022 WSBA Budget Presentation. CFO Perez presented the current version of the FY22 budget. Discussion followed regarding the timing of the budget and the ability to influence its results and the impact of having a different fiscal and license fee year. The Executive Director noted that while this budget responsibly funds all of our existing programs and services, it requires the use of reserves or an increase of revenue. Chair Crossland presented a request for funding a LLLT Board retreat next year. Discussion followed, including a concern the ability to get the information needed to meaningfully impact the budget; that there has not been a consensus of the Board or the Budget & Audit Committee to perform a program review; that a \$19 increase to license fees would close the gap; and whether the LLLT Budget can be increased to \$20,000.

Gov. Grabicki moved to increase LLLT Budget to \$20,000. Gov. Higginson raised a point of order as to whether it is appropriate to take up the issue given that the matter was not on for action. Pres. Sciuchetti ruled against the point of order, noting that the Board can take action even if it's not noted as such. Treas. Clark offered a friendly amendment that the motion be taken as a recommendation to add the funding into version three of the budget. Gov. Higginson moved to table. The motion to table failed for a lack of a second. Gov. Grabicki declined to accept the amendment as friendly. Discussion followed in opposition to the motion as being outside the

normal process and the significance of the motion. CFO Perez noted that he considers the impact of the motion to be a change in assumptions. Executive Director Nevitt restated the motion. Discussion continued about whether the motion was out-of-order and whether its impact would be binding on the final budget or was merely an instruction to update the budget accordingly. Motion failed 7-4. Govs. Abell, Anjilvel, and Purtzer were not present for the vote.

Gov. Grabicki moved to raise the license fee by \$19 to close the gap in the budget. Discussion followed regarding the whether the motion was in order. Gov. Grabicki clarified that the motion was for 2023 and changed his motion to a motion to reconsider. Discussion followed for and in opposition to the motion. Motion failed 8-3. Govs. Abell, Anjilvel, and Purtzer were not present for the vote. Discussion followed regarding the budget development process and the tools and information available to the Board. Executive Director Nevitt requested that moving forward the Board and/or Budget & Audit Committee provide guidance to the Executive Director and CFO with regard to the budget development process and expectations for the budget, and that it do so with one voice, at the outset of the process.

Announce Basis for Moving Into Executive Session ([link](#))

Pres. Sciuchetti announced that the Board will meet in executive session at 2:33 PM to continue discussion with legal counsel regarding a request to authorize collective bargaining for WSBA staff and to receive advice and discuss with legal counsel litigation affecting integrated bars as permitted under the WSBA Bylaws. He noted that executive session would end at 3:35 PM. Executive session was extended to 4:30 PM.

Proposed Amendments to the Late Fee Waiver Policy

This topic was deferred to the September Board meeting.

WSBA Career Center ([link](#))

Director Niegowski referred to the written materials for a description of and background about the WSBA Career Center. She noted feedback about the cost of advertising for employers. She reported on the existing discounts for non-profits, governments, and solo and small practice members and highlighted upcoming plans for special campaigns.

WSBA Legal Research Tools ([link](#))

Director Plachy introduced Practice Management Advisor Margeaux Green and presented the background on the free legal research tools offered by WSBA as a member benefit. He reported that Casemaker will be going away following the merger of that company with Fastcase, that members have been notified of the change, and that WSBA has negotiated with Fastcase to maintain Casemaker's availability through September 30 to give the members more time to transition, as well as to transition WSBA's online deskbooks. Director Plachy noted that WSBA is

under contract with Fastcase through December 2023 and has been on a month-to-month contract with Casemaker with no further obligations after September 30. He noted that it is not recommended that Docket Alarm be added to our offering at this time and that the recommendation is to maintain Fastcase for the next two years and focus on transitioning members, assessing member satisfaction, and assessing interest in the add-ons. This change will result in an annual savings of \$65,000/year.

Public Comment & Governor Roundtable ([link](#))

The Board heard public comment from Nancy Hawkins expressing concerns about not having the opportunity to provide comment before the executive session discussion occurred. Discussion followed about the timing of public comment.

Gov. Williams-Ruth commented on the retirement of Dean Annette Clark of Seattle University Law School.

Michael Cherry inquired as to whether we would be getting money back from Casemaker. Director Plachy clarified that the contract with Fastcase is not changing and the Casemaker contract is void.

Discussion followed in response to Nancy Hawkins' comment, including support for providing opportunities for member comment on all agenda items; the various ways the Board has conducted the member comment agenda item; that WSBA would benefit from more and longer meetings; and rejection of the idea that member input is not being taken.

ADJOURNMENT

There being no further business, Pres. Sciuchetti adjourned the meeting at 4:01 PM on Saturday, August 21, 2021.

Respectfully submitted,

Terra Nevitt

Terra Nevitt
WSBA Executive Director & Secretary