

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS SPECIAL MEETING

Minutes

Held Virtually

November 13-14, 2020

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Kyle Sciuchetti on Friday, November 13, 2020 at 9:16 AM. Governors in attendance were:

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

Also in attendance were President-Elect Brian Tollefson, Immediate Past President Rajeev Majumdar, Parliamentarian Alec Stephens, Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Director of Advancement Kevin Plachy, Equity & Justice Manager Diana Singleton, Chief Financial Officer Jorge Perez, Chief Regulatory Counsel Renata Garcia, IT Director Jon Dawson, Executive Administrator Shelly Bynum, Chief Communications and Outreach Officer Sara Niegowski, James E. MacPherson (WDTL), Betsylew Miale-Gix (WSAJ), Nancy Hawkins (Family Law Section), Hon. Lisa Mansfield, and Ken Henrikson.

Pres. Sciuchetti introduced former Gov. Alec Stephens who accepted his invitation to serve as parliamentarian this year. Pres. Sciuchetti conducted a roll call to confirm a quorum.

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

Julie Lucht, Perkins Coie, presented an anti-harassment training to the Board of Governors.

Open Public Meetings Act Training ([link](#))

Morgan Damerow and Heather Carter from the Washington State Office of the Attorney General presented OPMA training. Discussion followed about recordings of meetings, notification requirements for committee meetings, and the information that needs to be shared when an action is taken in public session following discussion in executive session.

Setting the Table: Preparing to Learn and Engage in Equity Work ([link](#))

Pres. Majumdar presented on his role and the goals for the working session: (1) How can we create a productive space where governors are able to collectively learn, grow, and transform with empathy? Empathy being a high degree of understanding of other people's positions; (2) How can we be accountable to one another, the organization, the WSBA members, and the public?; (3) How can we lead with vulnerability and an openness to learn? Vulnerability being an act of courage, an act of courage because you present your authentic self, instead of hiding behind a facade to appease others; and (4) How can we develop an organizational culture that allows for intentional listening on the experiences of underrepresented voices and disrupt any structures in place that prevents those ideas from being heard and acted upon, or disrupt structures that allows harm to occur to those groups. He introduced Jeff Turner to facilitate the discussion. Discussion followed about the development of community agreements, the difference and similarities between agreements and rules, the importance of having agreements, and what each member of the group needs to feel safe, supported, open, productive, and trusting to learn and do their best work. Jeff noted that he would synthesize the information and send it back to the Board.

Commitment to Learning and Action in Response to Letters and Comments from Washington Minority Bar Associations ([link](#))

Pres. Sciuchetti provided an overview on (1) the communication that Immediate Past Pres. Majumdar, Treas. Dan Clark, and he sent to minority bar associations; (2) the listening session with representatives of minority bar associations on October 20; and (3) the request for a response from the Board. Gov. Grabicki moved for adoption of the response as provided in the meeting materials. Discussion followed about the delay in replying to member concerns, and the importance of going beyond this initial response. Gov. Higginson reported on the steps she had taken in response to her comments in June and expressed her regrets and apologies, as well as her support of the motion. Motion passed unanimously. Govs. Abell and Purtzer were not present for the vote.

Equity & Disparity Workgroup Report ([link](#))

Chair Stephens reported that the workgroup held its first meeting on October 29 and noted that the roster of participants was provided in the materials. He reported on some of the issues the workgroup has identified it wishes to explore, including barriers to entering law school and the legal profession through WSBA processes. He also shared his intended approach to gathering

public comment and periodically updating the Board. Discussion followed about the bar exam and access to WSBA Diversity Committee materials and meetings.

Governor Liaison Reports ([link](#))

Pres. Sciuchetti noted his intended purpose for this agenda item and invited governors to give updates. Gov. Anjilvel read a letter from Practice of Law Board Chair Michael Cherry noting the Board is focusing on recruitment, educating the public about legal services, new and alternative legal services, unlawful practice of law complaints, and measurement of its activities. Gov. Higginson reported that she participated in the Client Protection Board and Limited Practice Officer Board meetings and provided an update on those discussions.

Washington State Bar Foundation Annual and Financial Report ([link](#))

Pres. Larry provided an overview of the purpose and structure of the Foundation and presented its annual report.

Approve Rule Changes Proposed by the Court Rules & Procedures Committee ([link](#))

Chair Claire Carden presented the proposed changes to CRLJ 17, CRLJ 56, and CRLJ 60, noting that they were not substantive and intended to update and make consistent the language. Chair Reavis presented the proposed changes to ER 413, which he noted were technical fixes. Discussion followed. Gov. Grabicki moved that we move the proposed rule amendments on to the Supreme Court with the Board's recommendation. Motion passed unanimously. Govs. Abell and Knight were not present for the vote.

Approve Proposed Amendments to Administrative Law Section Bylaws ([link](#))

Chair Eileen Keiffer presented the proposed changes to the Administrative Law Section Bylaws, which she noted are technical in nature and are intended to clarify confusing and superfluous language. Gov. Peterson moved to approve the amendments. Motion passed unanimously. Govs. Abell and Knight were not present for the vote.

2021 Legislative Priorities ([link](#))

Gov. Grabicki referred to the legislative priorities in the meeting materials. The Board heard public comment from Nancy Hawkins, who noted that the Family Law Executive Committee would like the opportunity to comment on them. Gov. Grabicki moved to approve the priorities. Motion passed unanimously with Gov. Higginson abstaining. Govs. Abell and Knight were not present for the vote.

Approve Proposed Amendments to Charter of the Task Force Team Administering Xenial Involvement with Court Appointed Boards to Change the Make-up ([link](#))

Pres. Sciuchetti presented on the purpose of the Task Force and noted that some preliminary discussions about this group had taken place with Chief Justice Stephens and Justice Yu, noting that Justice Yu is chairing a related Supreme Court task force. Pres. Sciuchetti presented the

proposed changes to the charter. Gov. Peterson moved for approval. Discussion followed. Motion passed unanimously. Gov. Abell was not present for the vote.

[Approve Amendment to RPC 1.11 Proposed by the Committee on Professional Ethics \(link\)](#)

Chair Anderson and Prof. Holland presented the proposed amendment to update the Rules of Professional Conduct to reflect recent case law. Discussion followed about the use of the *cf.* introductory signal. Chair Anderson noted they would accept an amendment to change the introductory signal to “*but see.*” Gov. Dresden moved for approval of the proposed changes as amended. Motion passed unanimously. Govs. Abell and Higginson were not present for the vote.

[2021 Legislative Review Committee Recommendations \(link\)](#)

Chair Considine presented the recommendations of the Legislative Review Committee. Eric DeJong provided additional information on the proposal to amend sections of the Washington Business Corporations Act. David Lawson presented on the proposed changes to the Non Profit Corporations Act. Discussion followed about the model rules, including the purpose of breaking out director compensation into a new section, provisions relating to the fiduciary duties of non-director officers, and provisions relating to one-director organizations. Gov. Grabicki moved to approve and recommend both proposals. Motion passed unanimously. Gov. Abell was not present for the vote.

[Public Comment](#)

Noting that the Board was ahead of schedule, Pres. Sciuchetti invited public comment. The Board heard public comment from Jim MacPherson and former Gov. Andrea Jarmon.

[Consent Calendar \(link\)](#)

Pres. Sciuchetti asked if anyone wished to remove an item from the consent calendar. No requests being voiced, Gov. Grabicki moved for approval. Motion passed unanimously. Govs. Abell and Williams-Ruth were not present for the vote.

[President's Report; President's Message of Gratitude \(link\)](#)

Pres. Sciuchetti reported on his participation in the King County Council's recognition of pro bono week and shared his message of gratitude for WSBA's volunteers.

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

Interim Executive Director Nevitt welcomed Kevin Plachy to the permanent role of Director of Advancement, provided an update on the cyber-security incident and the steps WSBA is taking to restore services and determine its impact, and provided an update on the winter bar exam. Chief Communications Officer Sara Niegowski presented the quarterly member outreach survey.

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

The Board heard public comment from former Gov. Michael Cherry.

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

Executive Committee. Pres. Sciuchetti reported that the committee is exploring whether entities should report to the committee or the full board, annually.

APEX Awards Committee. Gov. Knight reported that December 4, will be a virtual APEX award celebration.

Personnel Committee. Pres. Sciuchetti noted that there was a meeting earlier this week to consider the Executive Director's contract.

Legislative Committee. No report.

Nominations Review Committee. Pres-Elect Tollefson noted that the first meeting will occur on November 17.

Diversity Committee. Gov. Anjilvel reported on the committee's work to vet and present the candidates for the at-large governor position. She noted that the candidate forum will be held on November 17. The election will occur from December 1-15, 2020. Discussion followed regarding the election processes.

Long-Range Planning Committee. Pres. Sciuchetti noted that the committee has not yet met.

Member Engagement Workgroup. Gov. Peterson noted that the committee has not yet met. A written report was provided in the meeting materials.

Budget & Audit Committee. Pres. Sciuchetti referred to the written report in the materials.

Presidential Appointments ([link](#))

Pres. Sciuchetti presented his appointments. Discussion followed regarding presidential appointing authority and whether former governors should take up liaison roles that could go to new members. Pres. Grabicki moved that we enact a policy to allow the president to make discretionary appointments and report them to the Board of Governors. Discussion continued on the proposed policy, its impact on volunteerism, and whether the Bylaws must explicitly authorize activities for them to be permissible. Gov. Peterson moved to amend the motion to be a motion to approve the presidential appointments that Pres. Sciuchetti put forth today. It was accepted as a friendly amendment. Motion passed 9-1. Gov. Abell was not present for the vote. Discussion followed regarding the effect when the Bylaws are silent. Pres. Sciuchetti requested

that Parl. Stephens work with General Counsel and the Executive Director on a proposed policy or interpretation.

Announce Basis for Executive Session Pursuant to RCW 42.30.110(1)(c) and (i) ([link](#))

Pres. Sciuchetti announced the basis for the Board to meet in executive session under the Open Public Meetings Act and noted that they would resume public session at 11:30 AM. Pres. Sciuchetti extended the return to public session to 11:45 AM. Pres. Sciuchetti extended the return to public session to 1:00 PM.

Pres. Sciuchetti resumed the meeting at 1:00 PM and conducted a roll call to confirm quorum. Gov. Ruth-Williams provided a recognition of the celebration Diwali.

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

WSBA Lease Discussion. Chief Financial Officer Perez and Interim Executive Director Nevitt sought guidance from the Board on how to proceed in terms of evaluating WSBA's use of space and the future of work at WSBA. Discussion followed about getting input from employees about remote work and potential office locations. Gov. Petersen moved that the Board direct Executive Director Nevitt to move forward to assess what's best for the staff and best for WSBA in terms of people working remotely. Motion failed for lack of a second. Discussion continued about potential proposals, how to determine what is best for the association, what information the Board will want to know in making a decision about the space and future of work, whether a motion was required for the Executive Director to get input from staff, what is appropriately decided now and what is a long-range planning activity, and the cost of facilitating remote work. The Board took public comment from Nicholas Pleasant of the Solo and Small Practice Section, former Gov. Alec Stephens, and former Gov. Michael Cherry.

FY 2020 Year-End. Govs. Peterson and Higginson presented the FY 2020 Budget & Audit Committee report. Discussion followed about the level of member benefits currently provided compared to historical levels and the impact on the budget. The Board took public comment from Nicholas Pleasant of the Solo and Small Practice Section.

Recommendation for Reduction to Client Protection Fee. CFO Perez presented the proposal to recommend a permanent \$5 reduction to the Client Protection Assessment, noting that he understood that the Client Protection Fund Board is aware of the proposal and has not taken a position. Gov. Dresden moved for approval of the proposal. It was clarified that the motion and proposal contemplates a permanent reduction. Motion passed unanimously. Gov. Abell was not present for the vote.

2022 & 2023 License Fee Discussion Continued. CFO Perez presented the proposal to make no change to the lawyer license fee for 2022 and to defer a decision on the 2023 lawyer license fee. Treas. Clark clarified that the Board also needs to set the LPO and LLLT license fees. Gov. Williams-Ruth moved that the Board accept the recommendation to set the 2022 lawyer license fee at \$458, as well as the other license fees as set forth in the proposal provided in the meeting materials. Discussion followed regarding the ability to explore additional member benefits, the symbolic nature of a minor reduction in the license fee, the licensing rate in other states, salary increases recently approved, the impact of the pandemic on members, and WSBA's ability to afford a reduction. Motion passed 9-2. Gov. Abell was not present for the vote.

First Read: WSBA Bylaw Amendment, Art. V.A.1, Budget and Audit Committee Class Representation Clarification ([link](#), [link](#))

Pres. Sciuchetti presented the amendment, the purpose of which is to return the make-up of the committee to eight members. Discussion followed about the impact of the OPMA on the Budget & Audit Committee and alternative proposals to amending the Bylaws. Gov. Grabicki moved to approve the first reading. Gov. Grabicki withdrew his motion. A question was raised as to whether the Board should go into executive session.

Pres. Sciuchetti announced the basis for the Board to meet in executive session under the Open Public Meetings Act and noted that they would resume public session at 3:45 PM. Pres. Sciuchetti extended the return to public session to 4:15 PM.

Pres. Sciuchetti resumed the meeting at 4:15 PM. Discussion followed regarding the number of members on BOG committees, specifically the Legislative Committee.

First Read: WSBA Bylaw Amendments, Art. VI RE Governor Elections ([link](#))

Volunteer Engagement Advisor Paris Eriksen presented proposed changes. Discussion followed regarding the timing of the at-large and district elections, the ability for someone to run for both a district seat and an at-large seat, the reason for proposing that the Executive Director – rather than the Board – move the nominees to the ballot, whether the timing for regular elections should change, timing of any run-off elections, the at-large process currently ongoing, and inconsistencies in some of the changes. Gov. Grabicki moved to table and to have a group of governors work with Volunteer Engagement Advisor Erikson and Executive Director Nevitt to come back to the Board with a revised proposal. Gov. Grabicki proposed an amendment to broaden membership on the group to include former Board members. The amendment was accepted by Gov. Grabicki but not by the second. The underlying motion passed unanimously. Govs. Abell and McBride were not present for the vote. Pres. Sciuchetti directed governors to contact Executive Director Nevitt if they are interested in serving on this group.

Regulatory Matters ([link](#))

First Read: Conforming Amendments to WSBA Bylaws, Arts. III, IX, and XI Re Pro Bono Licensure Status. Chief Regulatory Counsel Renata Garcia presented the proposed amendments, which are intended to conform to recent changes to the pro bono licensure status.

Approve Proposed Amendments to WSBA Admissions Policy. Chief Garcia presented the proposed materials as presented in the late materials. She noted that the admissions policies serve to supplement the APRs. She noted the primary purpose of the amendments is to align them to our transition to online admissions for all license types and walked through some of the specific changes. Gov. Williams-Ruth moved to adopt the proposed changes to the admissions policies with an effective date of Dec. 1 as proposed in the late materials. Gov. Higginson seconded. Motion passed unanimously. Govs. Abell and McBride were not present for the vote.

Approve Executive Director Employment Contract ([link](#))

Pres. Sciuchetti presented the proposed contract as provided to the Governors. Discussion followed regarding the manner in which the contract was distributed, the term and value of the contract, and whether severance would be contingent on waiving any legal claims.

Gov. Higginson moved to table the contract to the January meeting and extend the interim contract to the end of January 2021. Discussion followed. Gov. Higginson moved to call the question. Motion to call the question failed 4-6. Govs. Abell and McBride were not present for the vote. Gov. Williams-Ruth moved to amend the motion to extend the interim contract to February 1, 2021 and to refer the contract back to the Personnel Committee to have a public session with instructions that it meet before December 15. Motion was accepted as a friendly amendment. Motion passed 8-2. Govs. Abell and McBride were not present for the vote. Discussion followed regarding scheduling the Personnel Committee meeting. Pres. Sciuchetti directed that a Personnel Committee meeting be scheduled on November 21 at 9:00 AM.

ADJOURNMENT

There being no further business, Pres. Sciuchetti adjourned the meeting at 6:57 PM on Saturday, November 14, 2020.

Respectfully submitted,



Terra Nevitt
WSBA Interim Executive Director & Secretary