

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes

Yakima, WA

May 16-17, 2019

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Bill Pickett on Thursday, May 16, 2019, at 8:05 a.m., at the Hilton Garden Inn, Yakima, Washington. Governors in attendance were:

Dan W. Bridges
Daniel D. Clark
Peter J. Grabicki
Carla Higginson
Kim Hunter
Jean Y. Kang (phone)
Russell Knight
Christina A. Meserve
Athan P. Papailiou
Kyle D. Sciuchetti
Alec Stephens
Paul Swegle
Judge Brian Tollefson (ret.) (phone)

Also in attendance were President-elect Rajeev Majumdar, Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, Director of Human Resources Frances Dujon-Reynolds, Chief Operations Officer Ann Holmes, Interim Director of Advancement Kevin Plachy, Chief Communications and Outreach Officer Sara Niegowski, and Executive Assistant Margaret Shane. Also present was Governor-elect Bryn Peterson.

INTERIM EXECUTIVE DIRECTOR'S REPORT

Interim Executive Director Nevitt referred the Board to her written report contained in the meeting materials. She congratulated and welcomed District 9 Governor-elect Bryn Peterson to

the meeting, advised that Governor Carla Higginson had been re-elected for a full three-year term, and noted that Governor-elect Tom McBride was not available to attend the meeting due to a previous commitment. She announced that Director of Human Resources Frances Dujon-Reynolds would be leaving the organization at the end of May to join the Girl Scouts of Western Washington and that Kevin Plachy had been appointed as Interim Director of Advancement. She concluded by sharing details of the Listening Tour and reported on input received to date.

PRESIDENT'S REPORT

President Pickett reported on the portion of the Listening Tour held the previous day in Yakima and advised that further events will be held in the near future in other parts of the state.

OPEN PUBLIC MEETINGS ACT (OPMA) TRAINING – Nancy Krier, Assistant Attorney General for Open Government

Assistant Attorney General Krier reviewed the background and purpose of the OPMA, and explained the applications, definitions, meeting types, public attendance, interruptions, disruptions, executive session requirements, violation penalties, risk management suggestions, and OPMA assistance and resources. She referred those in attendance to the website for further information at <https://youtu.be/9yTtVGTOW1A>. She then fielded questions from those in attendance.

INSURANCE UPDATE – Judy Graf, Gallagher Area Vice President

Judy Graf, Area Vice President with Arthur J. Gallagher Risk Management Services, Inc., reported that Navigators declined to renew WSBA's Directors and Officers/Employment Practices Liability policy due to the number of recent claims. Gallagher is currently appealing this decision. If successful, WSBA should expect Navigators to condition renewal on much less favorable terms, including increased premiums, higher deductibles, a more onerous hammer clause, and potentially, exclusion of particular board members from coverage. However, WSBA will then be in a better position to procure this coverage on more favorable terms in the market. The new coverage year begins August 1. She expects to have coverage options to share with the Budget and Audit Committee in July.

INTERVIEW, SELECTION, AND SWEARING-IN OF WSBA 2018-2021 DISTRICT 1 GOVERNOR

The order of candidate interviews was determined by random draw prior to the meeting: Peter Arkison; Hunter Abell; Sunitha Anjilvel; Doug Shepherd (not present); and Karrin Klotz. After the interviews, Governor Swegle moved that the Board vote. Motion passed unanimously. Governors Bridges, Higginson, Hunter, Kang, Sciuchetti, Stephens, Swegle, and Tollefson voted for Sunitha Anjilvel. Governors Clark, Grabicki, Knight, Meserve, and Papailiou voted for Hunter Abell. Candidate Sunitha Anjilvel was announced as the District 1 Governor-elect. The Honorable David Elofson swore in Governor-elect Sunitha Anjilvel as the 2018-2021 District 1 Governor and she took her seat at the Board table.

WORKING WITH LIMITED LICENSE LEGAL TECHNICIANS (LLTs) IN THE COMMUNITY – Dianne Loepker, LLT and Cowlitz-Wahkiakum County Bar Association President; Kellie Dightman, LLT; and Sherri Farr, LLT (phone)

Ms. Loepker, Dightman, and Farr shared their background, their reasons for becoming LLTs, and their experiences in working both on their own and with attorneys, resulting in benefits to all involved, including the underserved in their communities.

INTERVIEW AND SELECTION OF 2019-2020 WSBA PRESIDENT-ELECT

The order of candidate interviews was determined by random draw prior to the meeting: Zachary Mosner; Kyle Sciuchetti; Alec Stephens. After the interviews, Governor Clark moved that the Board vote. Motion passed unanimously. Governor Bridges, Clark, Grabicki, Higginson, Hunter, Kang, Knight, Sciuchetti, Swegle, and Tollefson voted for Kyle Sciuchetti. Governors Anjilvel, Meserve, and Papailiou voted for Zachary Mosner. Governor Stephens voted for Alec Stephens. Governor Kyle Sciuchetti was announced as the 2019-2020 WSBA President-elect.

REPORT FROM ABA MIDYEAR MEETING – James Williams, Washington State Delegate to the American Bar Association (ABA)

President Pickett announced that Mr. Williams was not available to address the Board due to a last minute conflict and referred the Board to the information contained in the meeting materials.

INTERVIEW AND SELECTION OF 2019-2022 WSBA AT-LARGE (A) GOVERNOR

The order of candidate interviews was determined by random draw prior to the meeting: Vicki Lee Anne Parker; Drew Pollom; Sunitha Anjilvel, and Hunter Abell. Candidate Sunitha Anjilvel did not interview for the At-Large seat since she was previously selected for the District 1 Governor seat during the morning portion of this meeting. After the interviews, Governor Hunter moved that the Board vote. Motion passed unanimously. Governors Anjilvel, Bridges, Clark, Grabicki, Higginson, Hunter, Kang, Knight, Meserve, Papailiou, Sciuchetti, Stephens, Swegle, and Tollefson voted for Hunter Abell. Hunter Abell was announced as the 2019-2022 At-Large Governor-elect.

SERVICE PROJECT

President Pickett announced an optional Service Project at Northwest Harvest scheduled for the following day at the conclusion of the Board meeting and invited all those who would like to participate.

BOG COMMITTEE REPORT ON DIRECT STAKEHOLDER INPUT RE RECOMMENDATIONS FROM CIVIL LITIGATION RULES DRAFTING TASK FORCE – Governor/Treasurer Dan Bridges

Governor/Treasurer Bridges reviewed and explained comments received by the Committee from stakeholders. He then suggested that a smaller group be formed to review the rules once again, with stakeholders in the room, and with direction from the Board regarding what it would like to achieve. He suggested the smaller group consist of each of the Task Force subcommittee Chairs and one or two Governors. Interim Executive Director Nevitt suggested that a roster and charter be formulated and brought back to the Board for approval at its July 2019 meeting. It was the consensus of the Board to do so. In answer to Governor Stephens' inquiry, President Pickett confirmed that the proposed process was for the smaller committee to rework the rules, and the Board to vote to forward them to the Supreme Court so they could undergo the Supreme Court's process. President Pickett reminded the Board that the cost of civil litigation continues to escalate and urged the Board to move the rules on to the Supreme Court.

CRITERIA FOR ADDING AND NAMING WSBA APEX AWARDS – Governor Russell Knight, Chair, and Sara Niegowski, Chief Communications Officer

Governor Knight reviewed the background of this agenda item and advised that Governor Clark had suggested that the Award of Merit be renamed the Mary E. Fairhurst Award of Merit. Chief Operations Officer Niegowski referred the Board to the information contained in the meeting materials and advised that feedback was being sought from the Board regarding the suggested Criteria and the Guiding Principles, both for naming an award and for adding an award, and that this item would be on the July 2019 Board agenda for action. Discussion followed regarding adding “retiring an award;” naming an award after a person who was still alive; making “deceased” a favorable but not mandatory criteria; and not naming any awards after people.

UPDATE FROM BOG MEMBERS OF THE WASHINGTON SUPREME COURT WSBA STRUCTURE WORK GROUP – Governors Dan Clark, Kyle Sciuchetti, and Paul Swegle, and Governor-elect Hunter Abell

Governor Sciuchetti reviewed what had been presented and discussed at the first three meetings of the Structure Work Group and noted that the Work Group will be moving into a discussion among its members regarding the information received and how the information might apply to the WSBA. He noted that comments can be made to structureworkgroup@wsba.org. Governor Swegle encouraged people to get involved, read the comments, and submit comments of their own, and advised that the Work Group will be discussing information regarding the Nebraska and the California models. Discussion ensued regarding the low number of members participating in the Work Group discussions; sending a final draft of the Work Group report to all WSBA members and having a means for them to comment; emphasizing the Work Group during the Listening Tour; access being available to the Work Group meetings by phone, webcast, the WSBA website, and the Washington Supreme Court webpage; and encouraging members to engage with the process.

UPDATE RE WSBA BOG NO RETALIATION POLICY PERSONNEL COMMITTEE REVIEW PLAN – Governor Chris Meserve, Chair, and Frances Dujon-Reynolds, Director of Human Resources

Governor Meserve referred to the letter received from WSBA staff in the March 2019 Board meeting Late Late Materials and stated that the letter had been discussed in Personnel Committee meetings. She noted that the Personnel Committee can make some changes to the

policy that will incorporate staff concerns, but that much of the letter deals more with procedure than with policy. She noted that it is the Board's responsibility to deal with policy and the Executive Director's responsibility to deal with procedures, so the Personnel Committee will only be addressing policy issues. She advised that the Personnel Committee was also concerned about being in compliance with the Open Public Meetings Act (OPMA) and not drafting or working on anything that might be in violation of the OPMA, but noted that she was less concerned after the OPMA training the previous day. She concluded by stating that the redrafted policy will be before the Board for approval at a future meeting.

REPORT AND RECOMMENDATION RE INVESTMENT PORTFOLIO AND FACILITIES RESERVE FROM BUDGET AND AUDIT COMMITTEE – Governor/Treasurer Dan Bridges and Ann Holmes, Chief Operations Officer

Chief Operations Officer Holmes stated that the Budget & Audit Committee could make the decision to reallocate monies from investment gains in unrestricted funds to the facilities reserve fund since it was not a significant change, but Committee members felt it was important to run the recommendation by the Board for its input. Governor/Treasurer Bridges noted that it would be important to not make the Capital Reserve Fund too large and that the Board would need to approve the dollar amount to be transferred. Governor Clark moved to approve the recommendation to reallocate \$100,000 of investment gains from unrestricted funds to the facilities reserve fund. Motion passed unanimously. Governor Papailiou was not present for the vote. Governor Bridges then advised that the Budget & Audit Committee was discussing how costs are currently tracked in the various cost centers and that a recommendation may be brought before the Board at a later meeting to track differently.

SUGGESTED AMENDMENTS TO MANDATORY ARBITRATIONS RULES (MARs) PER WASHINGTON SUPREME COURT REQUEST – Stephanie Dikeakos, MARs Subcommittee Chair (phone)

Subcommittee Chair Dikeakos referred to the request from the Washington Supreme Court (Court) to review the MARs and explained the suggested amendments, which had been sent to stakeholders, resulting in a small amount of feedback. She requested that the Board approve the suggested amendments as requested by the Court. Concern was expressed regarding problems of separation of powers issues in Rule 7.1. Governor Grabicki moved that the Board write a letter

to the Court regarding concerns about the language under Rule 7.1 that requires a party, rather than counsel to the party, to sign the request for a trial de novo. Discussion ensued regarding support as well as concerns for the language in Rule 7.1; who would write the letter and who would sign the letter; OPMA concerns that this discussion was beyond the scope of what was set on the agenda for action; and tabling the decision until the next Board meeting in July. Subcommittee Chair Dikeakos urged the Board to act on the suggested amendments at this meeting as the Committee is attempting to effectuate legislation that took effect in September 2018, conforming the MARs to the already amended RCWs, and suggested the Board have a discussion with the Legislature regarding their concerns.

Discussion ensued regarding OPMA concerns and risks involved with the proposed draft letter not being reviewed by the Board in open public session; sending the suggested amendments to the Court and flagging that a letter from the Board would be forthcoming, then putting the proposed letter on the agenda for the July 2019 Board meeting; and the need to send both the proposed letter and the suggested amendments to the Court at the same time. Subcommittee Chair Dikeakos reminded the Board that the statutory amendments had already gone into effect, but the Rules were just sitting in limbo; the committee went to the stakeholders and did not receive any feedback on Rule 7.1; and Justice Johnson had asked that the Committee to reply by September 2018, but the Committee was unable to meet that deadline. Governor Higginson moved to amend Governor Grabicki's motion to approve the suggested amendments to the MARs and forward them to the Court with a letter expressing the Board's concerns re Rule 7.1, and that Governor Bridges draft a letter to give to Interim Executive Director Nevitt for her signature and forwarding to the Court. Motion passed 10-1-2. Governors Anjilvel, Bridges, Grabicki, Higginson, Hunter, Kang, Sciuchetti, Stephens, Swegle, and Tollefson voted yes. Governor Meserve voted no. Governors Clark and Knight abstained. Governor Papailiou declined to participate. Governor Grabicki's motion as amended passed 12-1. Governors Anjilvel, Bridges, Clark, Grabicki, Higginson, Hunter, Kang, Knight, Sciuchetti, Stephens, Swegle, and Tollefson voted yes. Governor Meserve voted no. Governor Papailiou declined to participate.

**COMMITTEE ON PROFESSIONAL ETHICS (CPE) PROPOSED AMENDMENTS TO RPC 1.15A(h)(9)
RE SAFEGUARDING PROPERTY – Ann Seidel, CPE Member (first reading)**

CPE Member Seidel reviewed the background of the proposed amendments and explained the concerns regarding the Limited License Legal Technicians (LLLTs). She noted that the LLLT Board would likely be making a separate proposal, but that the LLLT Board did agree with the amendments proposed by the CPE as contained in the meeting materials. Discussion ensued regarding firms imposing internal requirements regarding who can sign trust account checks; and LLLTs currently having their own trust accounts since they operate under essentially the same rules as lawyers regarding trust accounts. No questions or concerns were expressed by the Board. President Pickett noted that this item would be on the agenda for the July 2019 Board meeting for action.

RECOMMENDATIONS FROM MANDATORY MALPRACTICE INSURANCE TASK FORCE – Hugh Spitzer, Chair (phone), and Doug Ende, Chief Disciplinary Officer

Chair Spitzer stated that it would be helpful for the Board to discuss specific alternatives as it works its way through the proposed alternatives and advised that he was available to answer any additional questions the Board may have. Discussion ensued regarding taking a straw vote to gauge the will of the Board; voting up or down at this meeting; the Board not redoing the work of the Task Force; and member comments being overwhelmingly opposed to mandatory malpractice insurance. Governor Bridges moved to approve the recommendations from the Mandatory Malpractice Insurance Task Force as contained in the meeting materials. Motion failed 5-9. Governors Anjilvel, Bridges, Grabicki, Papailiou, and Stephens voted yes. Governors Clark, Higginson, Hunter, Kang, Knight, Meserve, Sciuchetti, Swegle, and Tollefson voted no. Governor Meserve requested it be recorded that she had public protection concerns and that the Board should look at the South Dakota model.

Discussion ensued regarding developing a proposal based on a hybrid of the South Dakota and Illinois models and bringing it back to the Board for consideration. Interim Executive Director Nevitt suggested that it would be cleaner to bring this item to the Executive Committee to consider adding to the agenda for the July 2019 Board meeting. It was the consensus of the Board to do so. Governor Higginson asked that it be recorded that the Board should be done with this

item, she had reviewed the responses from the many members who were against mandatory malpractice insurance, and it was a solution looking for a problem.

LOCAL AND NATIONAL TRENDS IN COURT REPORTING – Phyllis Lykken and Liz Harvey, Central Court Reporting; Wendy Raymond, Washington Court Reporting Association (WCRA) President; and Brad Axel, WCRA Attorney

The presenters explained issues of concern to the WCRA; substantive issues coming to the profession that may affect both lawyers and their clients; concerning trends within the court reporting profession and the law profession; and non-condoning by the WCRA of contracting or digital recording as alternate methods of court reporting and proposed amendments to the RCWs and court rules to prohibit this practice. They suggested a liaison between the WSBA and the WCRA so issues could be addressed as they arise. President Pickett stated that there was a need to explore the suggestion of a cooperative liaison between WSBA and WCRA since reliability and integrity of the deposition process impacts the administration of justice. Governor Papailiou requested that it be recorded that Governors Bridges, Higginson, and Swegle were not in the room and wanted to be sure a quorum of the Board was present during the meeting.

DISCUSSION RE BOARD UPDATES AND COMMUNICATIONS – President Bill Pickett; Terra Nevitt, Interim Executive Director; and Sara Niegowski, Chief Communications and Outreach Officer

Chief Communications and Outreach Officer Niegowski stated that the purpose of this item is to ascertain what the Board wants to set as communication norms and expectations and how staff can help the Board be consistent in communication with WSBA members and with each other – what the Board’s goals are and what the systems look like to help accomplish those goals. She referred the Board to the information contained in the meeting materials and explained that they are a set of what is considered best organizational practices. She noted that good communication revolves around relationships and trust, and how the Board wants to show up in front of the membership and the public, which in turn impacts the organization’s credibility. She explained that staff attempt to be as factual as possible and support the Governors when they want to send their own information out, but that some things are non-negotiable. She stated that the official communications with members will always go through General Counsel and the official spokespersons of the Bar.

Discussion ensued regarding the importance of timely communications; supplying member email addresses to Governors for their individual communications; the potential for mishandling email lists; the potential for members overlooking email from Regulatory Services and getting suspended if they are flooded with other email from WSBA and Governors; the process currently being used for Governor communications to the members; and clearly noting when communications are from Governors rather than WSBA. Governor Grabicki proposed there be (1) a written agreement between each Governor and WSBA and that each Governor be given email addresses for his/her constituents to be used only for communications with those constituents with no promotion or advertising, including a disclaimer and indemnity that will go out in the form of an email from the Governor's email address, not WSBA's email address; (2) any Governor who wants to submit a draft to Sara can do so for links, and will not be subject to editing; and (3) WSBA will send out objective reports on a regular basis not subject to input or review by the Governors though it may be appropriate for the Communications staff to assist At-Large Governors regarding installation of email addresses. President Pickett asked Governor Grabicki to bring a proposal to the July 2019 Board meeting. Interim Executive Director Nevitt asked if it would be appropriate for staff to bring more than one proposal forward reflecting what was discussed at this meeting. It was the consensus of the Board to do so. Chief Communications and Outreach Office Niegowski advised that her review of Governor communications would not be limited to punctuation and grammar since incorrect information would need to be corrected and personal attacks eliminated. She noted that some of the most egregious information was being sent out by listserv. She emphasized that it is important how the Board members hold each other accountable and what it means to officially speak as a Governor and where that is done. She stated that there is a detrimental effect to the membership when they get all kinds of different messages from various senders.

CONSENT CALENDAR

Discussion ensued regarding whether giving monetary gifts as recommended by the Client Protection Fund Board violated the superior court's order in the Beauregard litigation ("Court Order"). Interim Executive Director Nevitt stated that staff had been evaluating how the Court

Order affects various responsibilities of the WSBA and it was determined that giving these gifts is not out of compliance with the Court Order. Governor Clark requested a scrivener's correction to the Minutes on page 403 of the meeting materials to reflect that Governor Higginson made the recommendation. It was agreed to do so. All items on the consent calendar passed 10-0-1. Governors Clark, Grabicki, Hunter, Kang, Knight, Meserve, Sciuchetti, Stephens, Swegle, and Tollefson voted yes. Governor Bridges abstained. Governors Anjilvel, Higginson, and Papailiou were not present for the vote.

GOVERNORS' ROUNDTABLE

Governor Swegle suggested *NWLawyer* be terminated, and possibly the blog as well, because *Janus* and *Fleck* are directed at that type of publication where political opinions can be found. A suggestion was made to replace the magazine with an online product that would not contain any political or philosophical content. Chief Communications & Outreach Officer Niegowski stated that the recent Keller arbitration decision found that *NWLawyer* was a good forum for members to use, that most Bars have a magazine where members can have a forum, and that the Board is asking staff to communicate with members, but suggesting the number one item members associate with the Bar and get value from, according to members, be terminated. She stated that an online magazine would be more expensive and that advertisers will not pay what they pay to advertise in a print magazine. Governor Stephens requested Chief Operations Officer Holmes and Chief Communications and Outreach Officer Niegowski provide the costs associated with the magazine. Further discussion ensued regarding stricter control over the content. Interim Executive Director Nevitt advised that GR 12 is the test currently applied, but it's not black and white, and suggested putting this item on a future agenda in order to have a conversation with the Board regarding how the test is applied so the Board understands the process.

President Pickett announced that Public Session was recessed at 2:30 pm for 30 minutes and the Board went into Executive Session to receive advice from Outside Counsel regarding current litigation matters. At 3:00 pm, it was announced that the Board would remain in Executive Session until 3:15 pm. Executive Session was adjourned at 3:15 pm and Public Session reconvened at 3:16 pm. Governor Grabicki moved that the Board follow Outside Counsel's advice

as stated during Executive Session. Motion passed 10-1. Governor Meserve asked that it be recorded that there is a Court Order that says if private correspondence exists, which under OPMA must be made public with regard to former Executive Director Littlewood's departure, it should be made public at once. Governors Anjilvel, Bridges, Clark, Hunter, Knight, Grabicki, Sciuchetti, Stephens, Swegle, and Tollefson voted yes. Governor Meserve voted no. Governors Higginson, Kang, and Papailiou were not present for the vote.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:20 p.m. on Friday, May 17, 2019.

Respectfully submitted,

Terra Nevitt

Terra Nevitt
WSBA Interim Executive Director & Secretary