

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Public Session Minutes

Seattle, WA

November 16, 2018

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Bill Pickett on Friday, November 16, 2018, at 11:50 a.m. at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

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

Also in attendance were President-elect Rajeev Majumdar, Executive Director Paula Littlewood, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, Director of Advancement/Chief Development Officer Terra Nevitt, Chief Communications and Outreach Officer Sara Niegowski, and Executive Assistant Margaret Shane. Governor Hunter was not present for the Public Session meeting.

REPORT ON EXECUTIVE SESSION

President Pickett reported that the Board heard the Litigation Report from General Counsel Shankland.

PRESIDENT'S REPORT

President Pickett reported that he, the Officers, Executive Director Littlewood, and General Counsel Shankland attended the annual meeting with the Supreme Court, and that he, President-elect Majumdar, and Executive Director Littlewood attended the annual Northwest Bars Leadership meeting. He advised that the main topic at both meetings was Bar structure as a result of the *Janus* decision, and advised that the Washington Supreme Court will be forming a WSBA Structure Work Group. He recognized the Washington Leadership Institute (WLI) Fellows attending the meeting and advised that they would present their 2018 Community Service Project during lunch.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Littlewood reported that the Service Awards celebration for staff who have been at the WSBA for 5, 10, 15, 20, 25, and 30 years was held this week and that among the staff being recognized there was a combined total of 200 years of service to the Bar and the people of the State of Washington. She announced that there is a specific webpage related to the structures conversation being built that will contain all relevant information in one place. She concluded by stating that she recently attended a conference on lawyer regulation.

MEMBER AND PUBLIC COMMENTS

Nancy Hawkins noted that it was helpful to receive the BOG materials earlier in order to have adequate time to review them and asked about the internal Structure Group. President Pickett replied that the Board will discuss the BOG Structure Group moving forward in relation to the letter received from the Washington Supreme Court regarding the formation of its WSBA Structure Work Group.

CONSENT CALENDAR

- a. September 27-28, 2018, Public Session Minutes

APPOINT CHAIR TO WSBA LEGISLATIVE REVIEW COMMITTEE

Governor Sciuchetti moved to approve the appointment to the WSBA Legislative Review Committee as contained in the meeting materials. Motion passed unanimously.

MANDATORY MALPRACTICE INSURANCE TASK FORCE CHARTER EXTENSION

Governor Grabicki moved to approve the extension of the Mandatory Malpractice Insurance Task Force Charter as contained in the meeting materials to authorize the Task Force to report to the Board at the March 7, 2019, Board meeting. Motion passed 11-2.

WASHINGTON STATE BAR FOUNDATION – Ken Masters, President (phone), and Terra Nevitt, Director of Advancement/Chief Development Officer

Annual Report and Treasurer’s Report

Chair Masters thanked the WSBA staff for their support and dedication. He reported that the Foundation has refocused its energies on raising funds for the WSBA diversity and inclusion programs and that it contributed \$275,000 to those programs this year, exceeding its FY18 goal. Director Nevitt referred the Board to the Foundation’s Annual Report and Treasurer’s Report contained in the meeting materials and reviewed the background of the Foundation and its relationship to WSBA. In answer to an inquiry regarding the cost of raising funds, she explained that the net contribution to WSBA this year was \$120,000 after taking WSBA’s costs into consideration, and that it was a significant increase over FY16 and FY17.

Trustee Appointment

Governor Grabicki moved to approve the appointment of Tracy Flood to the Board of Trustees for the Foundation as contained in the meeting materials. Motion passed unanimously. Governor Swegle was not present for the vote.

2018-2019 LEGISLATIVE PRIORITIES – Governor Kyle Sciuchetti, BOG Legislative Committee Chair, and Sanjay Walvekar, Outreach and Legislative Affairs Manager

Chair Sciuchetti presented the 2018-2019 Legislative Priorities and explained that they are similar to past years with the addition of soliciting input from Sections. Governor Meserve

moved to adopt the 2018-2019 Legislative Priorities as contained in the meeting materials. Motion passed unanimously. Governor Swegle was not present for the vote.

2018-2019 LEGISLATIVE COMMITTEE RECOMMENDATIONS – Taud Hume, Legislative Review Committee Chair (phone); Michael Hutchings, Business Law Section’s Corporate Act Revision Committee Member; and Sanjay Walvekar, Outreach and Legislative Affairs Manager

Committee Member Hutchings explained and the makeup and work of the Committee and stated that the goal of the Committee is to stay apprised of changes in corporate law happening throughout the country. He advised that the amendments being recommended focus on preemptive rights, cumulative voting for directors, and a test to determine whether a corporation needs to obtain shareholder approval when it decides to sell its assets. Chair Hume advised that the Committee discussed GR 12 and decided that the recommendations do meet the GR 12 test. Governor Stephens moved to approve the 2018-2019 Legislative Committee Recommendations as contained in the meeting materials. Motion passed unanimously.

BOG NO RETALIATION POLICY – Governor Chris Meserve, Personnel Committee Chair

Chair Meserve explained that she was giving an interim report from the Personnel Committee. She explained that the Committee members are appointed by the WSBA President, and that the Committee conducts an annual evaluation of the Executive Director and is the touchpoint for significant personnel action. She advised that the Committee is not asking for approval at this meeting of the No Retaliation Policy contained in the meeting materials as it has only had one meeting and would like more time to consider the Policy. She noted that comments and suggestions are welcome. A suggestion was made to circulate the Policy in Word so redlines could be submitted to the Committee. In answer to a comment regarding the effectiveness of the Committee with the Executive Director sitting on it, Executive Director Littlewood explained that the Executive Director is not present during evaluation discussions and that the Committee does many things other than evaluating the Executive Director such as consideration of significant personnel action and drafting a policy such as that before the Board at this meeting. She offered to supply the Personnel Committee charter.

COUNCIL ON PUBLIC DEFENSE (CPD) LETTER OF SUPPORT FOR OFFICE OF PUBLIC DEFENSE (OPD) 2019 BUDGET REQUEST – Daryl Rodrigues, CPD Chair

Chair Rodrigues explained the importance for adequate funding in order to attract attorneys to do the much needed work and advised that the letter is a continuation of support that has been provided in the past. Governor Stephens moved to approve the CPD letter of support for the OPD 2019 budget request as contained in the meeting materials. Motion passed unanimously.

PERFORMANCE GUIDELINES FOR ATTORNEYS REPRESENTING RESPONDENTS IN CIVIL COMMITMENT PROCEEDINGS – Eileen Farley, CPD Member (first reading)

CPD Member Farley referred the Board to the information contained in the meeting materials. She explained the requirements and the standards, and described the process used by CPD. She noted that there has been a great deal of discussion of this neglected practice area and that there was no opposition, only concerns regarding duration and scope of representation. In reply to concerns raised regarding mental health courts, especially in rural areas, CPD Member Farley explained that these Guidelines do not apply to mental health courts, but to civil commitment proceedings which are held in just 13 counties in Washington state. She noted that the Guidelines will be revised if proceedings are eventually held in other jurisdictions. She advised that currently there are no performance guidelines, case load recommendations, or practitioner certifications in this area. President Pickett advised the Board that this item will be on the January Board meeting agenda for action. CPD member Farley asked that any comments be routed to Bonnie Sterken at WSBA so they can be consolidated.

UPDATE RE FASTCASE AS AN ADDITIONAL MEMBER BENEFIT – Governor Michael Cherry, and Terra Nevitt, Director of Advancement/Chief Development Officer

Governor Cherry advised that, if added, Fastcase would be in addition to Casemaker and that the recommendation has approval from the Budget and Audit Committee. Officer Nevitt reviewed the background and explained the member research conducted by staff. She noted that approval of this request would require a budget amendment of \$58,432. She advised that the Budget and Audit Committee also recommended adding the Docket Alarm feature, which would not occur until FY2020 and would therefore not impact the current budget, but would be an additional cost of approximately \$40,000 annually thereafter. Despite the recommendation

from the Budget and Audit Committee, she recommended that the BOG delay making a decision to bring on Docket Alarm. She shared that since the Budget and Audit meeting she had learned more information about Docket Alarm that was driving this recommendation. She noted that Docket Alarm is a recently acquired product by Fastcase and would not be available until the second or third quarter of 2019. She clarified that we did not need to make a commitment now to bring the product on line later. She also clarified what specific benefit members would get from adding Docket Alarm. Governor Meserve requested that the “Snapshot of the Existing Legal Research Benefit” contained on page 66 of the Board materials for this meeting be shared with the membership in *NWLawyer*. Governor Grabicki moved to add Fastcase to current member benefits and amend the budget by \$60,000. Motion passed 12-0-1. Governor Papailiou requested that his abstention be recorded in the Minutes.

SENIOR LAWYERS SECTION AMENDED BUDGET – Governor Dan Bridges, Treasurer

Treasurer Bridges reviewed the background and explained the request for the budget amendment by the Senior Lawyers Section, and noted that the Budget and Audit Committee approved recommending the request to the Board. Governor Clark moved to approve the Senior Lawyers Section amended budget request as contained in the meeting materials. Motion passed unanimously.

UPDATE FROM BUDGET AND AUDIT COMMITTEE – Governor Dan Bridges, Treasurer

Treasurer Bridges reviewed the Investment Report and the Financial Statements, and advised that less was spent and more was received than budgeted in FY2018, resulting in a budget surplus of approximately \$400,000. He reported that the recent Budget and Audit Committee meeting was well attended and that goals were reviewed and discussed. He noted that it is his desire to do a comprehensive review of spending and to consider outside help in order to do so.

President Pickett advised that he recommends doing a stipend for future Bar Presidents. He explained that serving as Bar President has devastating consequences to an individual’s practice during their term of service because of the time and attention commitment required. In

addition, he noted that it is difficult to get members to run for President because they feel they cannot afford it.

GOVERNOR ROUNDTABLE

Washington Supreme Court WSBA Structure Work Group

President Pickett advised that the Board would be discussing the three Board members to be seated on the Supreme Court WSBA Structure Work Group. Discussion ensued regarding one Board member from each class; including a representative from a rural area; and methods for the three Board members to report back to the entire Board and seek the Board's input, face-to-face rather than email. Governors Bridges, Clark, Grabicki, Sciuchetti, and Swegle expressed interest in serving on the Supreme Court WSBA Structure Work Group. Governor Cherry noted on behalf of Governor Hunter that she was also interested in serving. It was the consensus of the Board to submit three names each via secret ballot. President Pickett stated that he, Executive Director Littlewood, and General Counsel Shankland would tabulate the ballots and advise the Board of the outcome. After the first round, President Pickett announced that Governor Clark and Governor Sciuchetti received the highest number of votes, but the votes on the remaining three names were too close to call. A second round was held, resulting in a tie between Governor Bridges and Governor Swegle. A third round resulted in Governor Swegle being named as the third Board representative on the Washington Supreme Court WSBA Structure Work Group.

Discussion ensued regarding Sections representation on the Supreme Court WSBA Structure Work Group. Governor Grabicki moved that the Board write an advisory letter to the Court with the recommendation that the court consider choosing a member from a large, a medium, and a small Section. Motion passed 12-0-1. Governor Papailiou requested that his abstention be recorded in the Minutes. President Pickett noted that the Board now has three representatives and that the entire Board does not need to be involved. Executive Director Littlewood explained that staff will help the Chief divide the Sections into small, medium, and large and advised that the Board will either need to delegate to the three representatives to advise who should be chosen, or there will need to be a Special Meeting of the Board in order for the Board

to choose. Governor Stephens requested that some feedback be given to the Court so it will understand that there is a need to be respectful regarding how the Sections operate, and that it be made clear to the Sections that the Section seats are Court appointments. Executive Director Littlewood noted that the notice has been disseminated and applications will go to the Chief, so there is nothing to be done at this time. It was the consensus of the Board that a special meeting be held once the list of interested Section applicants has been completed.

Board of Governors (BOG) Structure Group

President Pickett requested input regarding the future of the BOG Structure Group. Discussion ensued regarding further meetings of the Group since the Sections only participated in one meeting; and further meetings being a waste of people's time since the Court is forming its own committee. President Pickett stated that he would not continue the ad hoc meetings. He explained that he was asked to add two Board members to supplement an ongoing staff dialogue, then many more people started attending. It was noted that if the Group continues, it would double-task the WSBA executive staff since they will be staffing the Chief's Work Group; that some key members of the Group will not want to continue; and since the Chief's Work Group will be held in public meetings at WSBA, anyone can attend and will likely have opportunities to comment. Suggestions were made to revisit the BOG Structure Group once the Supreme Court Structure Work Group is meeting, and to hold an open forum listening session to get clarity on what the Bar's preferred future would be.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 4:20 p.m. on Friday, November 16, 2018.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary