

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Public Session Minutes

Seattle, WA

January 17-18, 2019

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Bill Pickett on Thursday, January 17, 2019, at 1:15 p.m., recessed at 2:00 p.m., and reconvened at 8:00 a.m. on Friday, January 18, 2019, at the WSBA Conference Center, Seattle, Washington. Governors in attendance were:

Dan W. Bridges
Daniel D. Clark
Peter J. Grabicki
Carla Higginson
Kim Hunter
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 (by phone for one item), Director of Human Resources Frances Dujon-Reynolds, Chief Operations Officer Ann Holmes, Director of Advancement/Chief Development Officer Terra Nevitt, Chief Communications and Outreach Officer Sara Niegowski, and Executive Assistant Margaret Shane. Governor Michael Cherry had resigned from the Board due to health reasons, so was not present at the meeting.

President Pickett reminded the Board that this is an opportune time to reflect on what it is the Board members are attempting to accomplish as they sit at the Board table and further WSBA's mission: serve the public and the members; protect the integrity of the profession; and champion justice. In addition, he stated that the three touchstones necessary to accomplish the WSBA's mission are trust, relationship, and service.

The following items were discussed on Thursday, January 17, 2019.

CONSENT CALENDAR

Nothing was pulled from the Consent Calendar.

ACCESS TO JUSTICE (ATJ) BOARD ORIENTATION FOR THE BOARD OF GOVERNORS – Sal Mungia, ATJ Board Chair; Michelle Lucas, ATJ Board Member; and Laura Bradley, ATJ Board Member

Chair Mungia reviewed the goals of the ATJ Board and gave an overview of the three major sources of funding for civil legal aid in Washington State. ATJ Board Member Lucas advised that the ATJ Board is in the second year of the State Plan for the Coordinated Delivery of Civil Legal Aid Services and gave an overview of the goals of the Plan: race equity; legal education and awareness; access for underrepresented populations and communities; development of holistic and client-centered services; and systemic advocacy. ATJ Board Member Bradley focused on the first goal of race equity and reported that the ATJ Board is working with the Alliance for Equal Justice to dismantle structures that perpetuate race inequity. She also shared that the ATJ Board has been working over the last two years to update the 2004 ATJ Technology Principles and have solicited input from a range of stakeholders, including focus groups facilitated by UW Tech Policy Lab, and most recently court-related entities. Chair Mungia invited the Board to attend the ATJ Conference in Spokane, June 14-16, 2019, and Executive Director Littlewood advised that all Board members are funded to attend.

The following items were discussed on Friday, January 18, 2019.

EXECUTIVE DIRECTOR REPORT

Executive Director Littlewood reported that (1) the Mandatory Continuing Legal Education (MCLE) Board received a request to add a requirement on the topic of equity and inclusion and that a subcommittee is working on the project [Diversity and Inclusion specialist Dana Barnett reported later in the meeting that the proposal has been edited to reflect the involvement of the Washington Women Lawyers and other minority bar associations]; (2) requests were made to staff by federal employees seeking a waiver of license fees during the government shutdown, and were informed that the current WSBA Bylaws and Court Rules do not allow for any sort of waiver; and (3) the Quarterly Management Report is in the materials and she highlighted the continuing development of Washington Legal Link, which is an opt-in directory for members to build a profile and use for marketing; Fastcase will be launching late January 2019; and online admissions are moving forward on track. Discussion ensued regarding options for granting waiver of license fees and late fees for federal employees during the government shutdown that included WSBA Bylaw amendments and a Washington Supreme Court Order, and the likely inapplicability of hardship waiver because it is based on prior year income. Governor Swegle moved that the Board make a statement written to the Washington Supreme Court asking the Court to extend the due date of bar fees for all WSBA members currently not receiving their salary due to their employment with the federal government during the shutdown, and continuing for 30 days following the end of the shutdown and resumption of pay to those affected. Governor Stephens amended the motion to include waiver of the late fee. Governor Swegle accepted as a friendly amendment. Motion passed unanimously. Governors Hunter and Papailiou were not present for this vote. Executive Director Littlewood advised that there would be minimal fiscal impact if the Court were to do so.

REPORT ON EXECUTIVE SESSION

President Pickett reported that the Board took up one confidential personnel matter. He advised that there would be an additional Executive Session immediately following the conclusion of this Public Session in order to address the remaining Executive Session items on the agenda.

PRESIDENT'S REPORT

President Pickett thanked the staff for their hard work and stated that the staff make this organization great.

MEMBER AND PUBLIC COMMENTS

Staff: Several members of the WSBA read an open letter to the Board, signed by numerous staff members and attached to these Minutes, that expressed disappointment and concerns in the way the Board handled the complaint of misconduct by a Board member filed by one of their co-workers; that the Board has failed to hold itself accountable, has ignored conflicts of interest, and has failed to exhibit courageous leadership, which has led to low staff morale and concern for staff safety as a result of what appears to be a lack of intervention or action by the Board; and a request that the Board create a process for handling these types of situations, including removal of a Governor or other volunteer when appropriate. Copies of the letter were distributed to each of the Board members and a copy is attached to these Minutes. Governor Grabicki thanked the staff and stated that their concerns would be considered and discussed in Executive Session because of a pending claim that must be dealt with in Executive Session. Governor Higginson asked if any of the staff presenters had brought the concerns enumerated in the open letter to Executive Director Littlewood or Human Resources Director Dujon-Reynolds prior to writing the open letter to the Board. Inclusion and Equity Specialist Nussbaum replied that while the letter was not shared with the executive staff before reading it to the Board, no one on staff would be surprised by the message, and that the Directors know how staff feel. Numerous other staff and guests added their comments of agreement and support of the open letter and the staff who read it to the Board. In response to Governor Higginson's statement that the Board had not been apprised of staff concerns, Executive Director Littlewood responded that the Board had been notified of staff concerns on numerous occasions. Governors Grabicki, Meserve, and Stephenson also confirmed that the Board had been advised many times of staff concerns, and Executive Director Littlewood asked that this statement be recorded in the Minutes.

Jonathan Grindell with Veterans for Guardianship and Probate Reform asked if the Board would be willing to vote at this moment in the interest of transparency, to remove the Treasurer in light of the allegations until the issue is resolved. Governor Papailiou moved to remove Governor Bridges as the Treasurer until the current claims involving him are resolved. Governor Stephens noted that the very body that is accused is a part of is the body also trying to deal with the issues, and that the next piece that needs to be addressed is that this is not the body to address/resolve a complaint against a Governor; it has to go someplace else. Governor Swegle expressed discomfort discussing this item in public session because of the sensitive nature of the issues. He noted that in his view it was not a case of harassment that it has been made out to be, but if true as stated, was a one-time, isolated, unfortunate incident that happened before the Governor was seated. He stated that the Board looked at the facts and the investigative report carefully, and the independent investigator said the claimant is potentially more believable. He stated that after looking at all the facts of the matter, that voting to remove the Treasurer is inappropriate. General Counsel Shankland asked if the Board was discussing a case that was currently active and received no response. Governor Higginson stated that the Board should not be taking comments from anyone but the Governors and Governor Stephens reminded her that the Board has a history of taking comments from guests as well as Governors before votes are taken. Governor Grabicki asked Governor Bridges if he would voluntarily step down until the claim is resolved so the Board could move on; Governor Bridges declined to do so.

Comments included: a question regarding whether Board members would step down when subject to litigation; some staff members having the same education as Board members and the ability to read and make their own decisions; the Board being unable to give fair and adequate consideration when the complainant is not allowed in the proceedings but the accused is; the importance of the accused being recused from any discussion related to the claim; the Board being incapable of internal discipline; support for removing the accused from the position until there is a resolution to the claim; disappointment in the Board after hearing the nature of the allegations in the open letter to the Board and the lack of response from the Board; a reminder from staff that the open letter was about process and conflict of interest;

disappointment expressed by staff that the Board heard that staff were upset and did not believe it; the maxim that people are innocent until proven guilty; the motion being about policy and not about agreement or disagreement regarding the claim; concerns about the Treasurer controlling the purse strings of the organization that can be involved in litigation, which makes for a bad appearance; consideration of the Board members' power and position and the demographics of the Board, which is mostly white and male; and the unfairness that Governor Bridges is being put on trial during a Board meeting. In response to statements made by Governor Hunter on the phone in support of Governor Bridges and likening the treatment of Governor Bridges to a "lynching," Governor Papailiou requested his following statement be put on record: that Governor Hunter had ignored the comments made during this meeting, that everything she said was unacceptable, and that he was embarrassed to have her as a colleague on this Board. Governor Higginson raised a Point of Order, referred to *Robert's Rules of Order*, and stated that Board members are not allowed to make personal attacks on each other. She then asked President Pickett if he was going to allow Governors to attack each other personally and President Pickett replied that no one is attacking anyone personally.

Governor Knight stated that the comments thus far demonstrate why a large part of this discussion needs to be held in Public Session, not in Executive Session; that the Board's practice is when the Board has a conflict regarding allegations, the applicable Governor should not vote on any issue regarding the allegations, but it is not a specific policy. Governor Meserve stated that the Board had failed to exercise courageous leadership, processes are inadequate, and the Board has not held itself accountable. She stated that the motion is to temporarily remove Governor Bridges from the post of Treasurer until the pending claims that involve him are resolved; it is not a trial; it is not voting to convict anyone; it is not a career shattering or ending move; there must be an appearance of fairness and the Board must take the processes seriously and show that the Board respects the WSBA staff and WSBA members in order to ensure the integrity of the Bar. Governor Stephens asked for a roll call vote. In response to a request, Governor Papailiou restated his motion to remove the current Treasurer until the pending claims involving the Treasurer are resolved. General Counsel Shankland requested an explanation of how this motion was intended to function and asked if it meant Governor

Bridges would remain a Governor who can participate in decisions of the Board. Governor Papailiou clarified that his motion was limited to Governor Bridges' role as Treasurer, not Governor. Governor Stephens' requested a roll call vote. Votes in favor of the motion included Governors Clark, Grabicki, Kang, Knight, Meserve, Papailiou, Stephens. Votes opposed to the motion included Governors Higginson, Hunter, Sciuchetti, Swegle. Motion passed 7-4. Governor Tollefson abstained.

COUNCIL ON PUBLIC DEFENSE (CPD) REQUEST TO APPROVE PERFORMANCE GUIDELINES FOR ATTORNEYS REPRESENTING RESPONDENTS IN CIVIL COMMITMENT PROCEEDINGS – Eileen Farley, CPD Member, and Diana Singleton, Access to Justice Manager

CPD Member Farley reviewed the background to the CPD's request and advised that the Board was being asked to approve the CPD sending the Performance Guidelines to the Washington Supreme Court for inclusion in the *Standards for Indigent Defense*, and the *Standards to the Mental Proceedings Rules (MPRs)*, and requirement that appointed counsel representing clients in civil commitment proceedings file Certifications of Compliance. She explained that these Performance Guidelines were an attempt to address a gap regarding the lack of caseload limits for involuntary treatment proceedings. In answer to a concern expressed by Governor Higginson that the Performance Guidelines may cause problems for people who do not meet the qualifications, CPD Member Farley stated that these are guidelines that people need to be familiar with and that they are nothing new. She reported that no questions had been submitted by Board members since the November Board meeting where this item was on the agenda for first reading, and it is the hope of the CPD that the Board will give approval for the CPD to send these Performance Guidelines to the Court as it did the Juvenile Guidelines. Governor Stephens moved to approve the CPD's request to recommend to the Washington Supreme Court that the Court add the *Performance Guidelines for Attorneys Representing Respondents in Civil Commitment Proceedings* to the *Standards for Indigent Defense*, add the *Standards to the Mental Proceedings Rules (MPR)*, and require that appointed counsel representing clients in civil commitment proceedings file Certifications of Compliance, as the *Standards* already require of appointed counsel representing clients in criminal proceedings. Motion passed unanimously. Governor Hunter was not present for the vote.

APPROVE RECOMMENDATIONS RE MILITARY SPOUSE ADMISSION RULE – Jean McElroy, Chief Regulatory Counsel (by phone)

Counsel McElroy summarized the reasons for the recommendations by the Military Spouse J.D. Network regarding admission for lawyer spouses of active duty military personnel. She explained that permission is being sought to submit a comment to the Washington Supreme Court that would contain the proposed recommended amendments to the amendments proposed by the Military Spouse J.D. Network so this process can work for the applicants in Washington state as easily and smoothly as possible. Governor Clark moved to approve submission by Chief Regulatory Counsel McElroy of a comment on the published proposed amendments to Admission and Practice Rule (APR) 3 regarding the admission to practice of military spouses. Motion passed 11-0-1. Governor Hunter was not present for the vote.

REQUEST FOR BOG SUPPORT OF DIVERSITY COMMITTEE STATEMENT OF SOLIDARITY – Governor Alec Stephens; Miri Cyphers, Anti-Defamation League (ADL) Pacific Northwest Regional Director, and KJ Williams, Diversity Programs Manager

Governor Stephens referred the Board to the information contained in the meeting materials and explained the background of the request. He cited examples of violence and explained that the proposed Statement is a warning to the WSBA members of what is going on and a plea to pull ranks around themselves in terms of adherence to the law and mutual respect. ADL Regional Director Cyphers explained the work of the ADL and the methods currently being used by white supremacist groups. Governor Sciuchetti advised that he believed the proposed Statement was different from the Oregon Statement in that it supports the minority bar organizations in resisting retaliation that includes punishing people for thought. Governor Stephens agreed with his assessment. Governor Swegle moved to authorize the WSBA Diversity Committee to issue its Statement to be shared with the WSBA Membership, Minority Bar Associations of Washington, Specialty Bar Associations in Oregon, and the Oregon State Bar. General Counsel Shankland advised that this item is on for “first reading” and that she had hoped to share some comments concerning it in Executive Session, but had not yet had the opportunity to do so. Discussion ensued regarding it being a risk worth taking even though there was a risk of litigation and additional angst under *Janus*; if approved, the Board would

also be approving the use of WSBA email and mailing systems, so by implication would be approved by the Board sent out by the WSBA; going into Executive Session at the end of this Public Session in order to hear from General Counsel Shankland; and it not being a good policy to vote on items that are noted on the Board meeting agenda as “first reading.” Governor Meserve moved to table this item until the March 7, 2019, Board meeting so the Board would have the opportunity to hear from General Counsel Shankland. She clarified that she is in favor of the Diversity Committee issuing the Statement but wants to be careful of the Board’s processes. With Governor Stephens’ approval, Governor Swegle withdrew his motion. Governor Meserve’s motion to table passed 10-1-1. Governor Stephens abstained. Governor Hunter was not present for the vote.

APPROVE RECOMMENDED REVISION TO WSBA FISCAL POLICIES AND PROCEDURES FROM BUDGET AND AUDIT COMMITTEE RE ATTENDANCE AT NATIONAL/REGIONAL EVENTS – Ann Holmes, Chief Operations Officer

Chief Operations Officer Holmes explained the background of the recommendation and reported that the Budget and Audit Committee considered and unanimously approved the revision as contained in the meeting materials. Governor Grabicki moved to approve the recommended revised policy on President and President-elect travel for attendance at National/Regional Events. Motion passed unanimously. Governor Hunter was not present for the vote.

ADOPT BOARD OF GOVERNORS NO RETALIATION POLICY – Governor Chris Meserve, Personnel Committee Chair, and Frances Dujon-Reynolds, Director of Human Resources

Chair Meserve referred the Board to the proposed No Retaliation Policy contained in the meeting materials and noted that the proposed Policy had been before the Board twice previously and was on the agenda for action at this meeting. She reminded the Board that it had been directed by the Washington Supreme Court to adopt a No Retaliation Policy and thanked General Counsel Shankland, Director of Human Resources Dujon-Reynolds, and former Personnel Committee Chair Hayes for their help in formulating the proposed Policy. In answer to a concern regarding whether the proposed Policy should be reviewed by the WSBA’s insurance provider to ascertain whether coverage would be lost with adoption of the proposed

Policy, Chief Operations Officer Holmes stated that she had worked on the WSBA's insurance renewals for the last six years and was not aware that the application even asks for this type of policy. In addition, General Counsel Shankland stated that the proposed Policy had been reviewed by outside employment counsel and she saw no reason why the WSBA would lose its coverage if the Board adopts a policy consistent with the law. Discussion ensued regarding concerns that the proposed Policy created obligations and duties that were greater than what the law requires; the importance of obtaining qualified advice from people in this practice area; more than one Board member having expertise in this area, especially in relation to how entities meet requirements; a reminder that the Board members are not lawyers for the Board and the Committee is trusted to seek the advice it needs; and the need to not only adopt a policy and put it in a book, but to also have training so everyone on the Board is aware of the Policy and where to find it. Governor Higginson stated that there is already a policy in the Handbook, and questioned why another special policy would be needed; how the Board would monitor federal and state law as they change to be sure the proposed Policy continues to adhere to the law; and why following state and federal law is not enough. President Pickett explained that there is currently not a policy regarding the conduct of Governors. Chair Meserve stated that the same is true for any policy the Board adopts in that one of the Board's duties is to ensure that its policies remain in compliance with federal and state law, and that she had the utmost confidence in Director Dujon-Reynolds to alert the Board if the law changes so that the proposed Policy can be revised to comply. Additional discussion ensued regarding the Board ignoring and taking no action on the charge of sexual harassment by one of its Governors and then the accuser being retaliated against; the difference between liability coverage and insurance coverage, and the importance of not making decisions based on insurance coverage issues; and it not being enough to just be in compliance with federal and state law. In answer to a statement that the proposed Policy should apply to all members of the Bar who have been subject to retaliation in the discipline system, Chief Disciplinary Counsel Ende recommended that the Board reject the premise that the discipline system has engaged in retaliation.

Director Dujon-Reynolds inquired of the Board whether, in light of some of the comments made that morning, the Board would like to consider including something in the proposed Policy that would enlist the help of an outside arbiter in cases that involve Board members. It was suggested that the proposed Policy be adopted as written, then have the Personnel Committee work on Director Dujon-Reynolds' suggestion and an amended Policy brought before the Board at a later date to be discussed in Public Session. Governor Swegle stated that he was in favor of adopting a Policy, but had some concerns regarding specific language. Governor Higginson also expressed concerns and moved to table discussion until the March 7, 2019, Board meeting so the proposed Policy had the opportunity to be reviewed and commented upon by the insurance carrier and so the Board had a chance to understand how it applies to the volunteer component, insurance coverage, and budget implications. Chair Meserve stated that she opposed tabling this item since the Board had seen it three times, and it had been vetted with outside counsel and the Board's own General Counsel. She noted that she was hearing there was some concern that the Board was increasing its risk by having the proposed Policy, but she suggested that the Board was doing just the opposite and reducing its risk by having an effective, clear policy in place regarding retaliation and reminded the Board that the Washington Supreme Court had directed the Board in a letter dated September 21, 2018, to the extent there are not policies dealing with harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance, that they be adopted as soon as possible and that another delay in adopting a policy did not seem advisable. Governor Higginson's motion to table failed 3-9. Governor Hunter was not present for the vote. Governor Grabicki moved to approve the proposed No-Retaliation Policy. Governor Tollefson stated that he wanted to be sure the Board was not squashing free speech rights and requested somebody tell the WSBA's insurance carrier to review the proposed Policy. Governor Swegle moved to add the following language shown in *italics* to the proposed Policy as a friendly amendment: "*disparaging the person publicly to others or in the media...; ...exclusion from official events or meetings...; and nothing in the foregoing is intended to interfere with an individual's right to defend himself or herself in an official action of any kind.*" Governor Grabicki did not accept as a friendly amendment. Governor Swegle's motion failed 4-6-2. Governor Grabicki's original motion to approve the proposed No-Retaliation Policy passed 10-1-1.

TEMPORARY REMOVAL OF TREASURER

Governor Bridges stated his objection and Point of Order regarding the vote on suspension of the Treasurer. He noted that the WSBA Bylaws provide for the ability to remove an Officer, not suspend an Officer. He read the applicable Bylaw and stated that the Board does not have the ability to suspend an Officer and cannot have a separate quantum for suspension than for removal. He concluded by noting that he objects to the action being taken based on only a majority vote. General Counsel Shankland stated that she had previously had this discussion with Governor Bridges and explained that the 75% vote does not apply in this case since it is for removing the Treasurer from the Board, which is not what the Board voted on. She explained that if the Treasurer was removed then the seat would be vacant and the Board would have to vote on someone else. She advised that it was more like a motion regarding conflict of interest and reiterated that if the 75% requirement was used, the Board would actually be removing Governor Bridges as Treasurer and that was not what was intended by the motion.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 1:35 p.m. on Friday, January 18, 2019.

Respectfully submitted,

Paula C. Littlewood

Paula C. Littlewood
WSBA Executive Director & Secretary