



WSBA

OFFICE OF THE EXECUTIVE DIRECTOR

Margaret Shane
Executive Assistant

direct line: 206-727-8244
fax: 206-727-8310
e-mail: margarets@wsba.org

MEMO

TO: President, President-elect, Immediate Past-President, and Board of Governors

FROM: Margaret Shane

DATE: April 8, 2015

RE: Governance Discussion

Attached please find the preliminary draft of all of the BOG responses to date regarding the Governance Task Force recommendations for discussion at the April 24, 2015, Board meeting in Spokane. Also included are the proposed Bylaw amendments and Charter related to the proposed Executive Committee.

Working Together to Champion Justice

BOG RESPONSE TO TASK FORCE RECOMMENDATIONS

IV. THE SUPREME COURT AND THE WSBA: ISSUES AND RECOMMENDATIONS

Task Force Recommendation: The Supreme Court should meet with representatives of the Board of Governors and the WSBA Executive Director at regular and frequent intervals during the year to discuss priorities and ongoing projects.

Draft Response to Recommendation:

Since the Supreme Court has ultimate authority over the WSBA, both the BOG and the Executive Director agree that regular, frequent meetings with the Court are valuable. Effective and efficient communication with the Court in performance of its oversight function is essential in serving the interests of both the BOG and the Court. While the BOG believes that current levels of communication – both in person and otherwise – have been good, the BOG is available to work collaboratively with the Court to devise a plan to address this recommendation, should the Court deem it prudent. For instance, the BOG has now tentatively recognized the value of creating an Executive Committee (see *infra*) and the members of that EC could be available to meet with the Court as necessary to address specific issues viewed as important by the bar and/or by the Court. Of course, the Fall and Spring meetings with the Court are very helpful and we strongly believe that they should continue.

Task Force Recommendation: Amendments to the WSBA Bylaws should be approved by the Supreme Court.

Draft Response to Recommendation:

Again recognizing the Supreme Court's ultimate authority over the WSBA, and mindful of recent United States Supreme Court precedent regarding direct supervision by the State, the BOG agrees that it would be prudent to have the Supreme Court approve, or at least to review, proposed bylaw amendments before they become final. While proposed bylaw changes dealing with membership, licensing, and the budgeting process, likely would require careful review, many other minor or purely procedural matters would not. Nonetheless, the BOG agrees that all bylaws changes should be sent to the Court for review.

Task Force Recommendation: The Dismissal of the WSBA Executive Director or the Chief Disciplinary Counsel should be subject to veto by the Supreme Court.

Draft Response to Recommendation:

The BOG acknowledges the Court's plenary authority to take any action it wishes with regard to the Executive Director and the Chief Disciplinary Counsel. We have no objection to this recommendation.

Task Force Recommendation: The Supreme Court should re-evaluate the placement of certain Boards under the WSBA as well as their funding. For those that remain under the WSBA, the Court should help to ensure adequate funding.

Draft Response to Recommendation:

The BOG disagrees with the portion of this recommendation that would ask the Court to reevaluate the placement of its Boards "under the WSBA." The Court's Boards are staffed and administered by the WSBA, but they work "under" the Court's authority. The BOG believes that each of the currently operating Court Boards (leaving aside the suspended POLB) is cost effective and well worthwhile. The BOG further believes that the WSBA has an excellent relationship with each of those Boards and that, while "tensions" may at times arise, there is nothing that the WSBA, the Boards, and the Court cannot work out through continued mutual respect and close collaboration.

The BOG does agree, however, that the Court should consider whether it can help to ensure adequate funding for its Boards. By this, the BOG does not mean (as the Task Force seems to suggest) that the Court should carve-out its Boards from the same budget-setting processes that currently exist for all WSBA-related entities. Fairness to our members requires that when license fees are used to fund Court Boards, that funding should be subject to the same budgeting processes as all other WSBA-related entities. But if the Court could find additional resources for funding its Boards, our members would certainly welcome any funding assistance. Nonetheless, the BOG reiterates that these Court Boards are cost effective and well worthwhile and that the WSBA has no objections to continuing to staff and administer the Court's Boards.

V. THE BOARD OF GOVERNORS AND THE WSBA: ISSUES AND RECOMMENDATIONS

Task Force Recommendation: Clarify the duties of the Board and Governors in the WSBA Bylaws and other relevant materials.

Draft Response to Recommendation: The BOG agrees that an amendment to the Bylaws and other relevant materials would be helpful to clarify the duties of the BOG. The BOG strongly believes, however, that it is a representative body. BOG members are chosen either by election of members in their respective congressional districts or by election of the BOG to fill at-large positions on the Board. Regardless of how they are chosen, BOG members represent all members of the WSBA and are obligated to make decisions that are judged to be in the best interest of the organization. In its governing role, the BOG is the voice of lawyers in this state and has an obligation when governing to listen to the members, communicate with the members, and speak on behalf of the members. At the same time, the BOG has an overarching responsibility to protect the public and the justice system in the State of Washington.

The BOG agrees that governors, when acting in their official capacity, should deal with WSBA staff in accordance with the communications policies established by the Executive Director. This principle should be clearly dealt with by appropriate training of BOG members so that they are educated as to their role as governors and the separate role of the ED as the director of the day-to-day work of the organization.

Task Force Recommendation: Change the name of the Board of Governors to the Board of Trustees and change the name of the Washington State Bar Association to "The State Bar of Washington."

Draft Response to Recommendation: The BOG is the governing body of the WSBA. In performing their responsibilities as governors, they are responsible to meet common-law fiduciary duties of care, loyalty, and obedience. This role requires making decisions that are judged to be in the best interests of the organization as a whole, not just those who elected them. A name change from governor to trustee is not necessary to accomplish this goal and in fact may cause unnecessary confusion among members. The Board of Governors is the appropriate term for the body; the Board of Trustees is not an accurate term. Changes should be made to the bylaws and organizational documents as necessary to clarify this role.

Changing the name of the Washington State Bar Association is another matter. While the WSBA should continue to perform not just mandatory functions, but also to

provide benefits and services to members and the public, calling itself an association is unnecessary. The prudent (and perhaps easiest) choice of a new name, given the WSBA's regulatory functions and anti-trust and other legal issues, should be the Washington State Bar. This is consistent with other mandatory bars around the country.

Task Force Recommendation: The Board of Governors should provide governance training to new Governors and adopt practices that help to define the respective roles of the Board vis à vis WSBA staff and provide opportunities for self-reflection and self-improvement.

Draft Response to Recommendation: The BOG agrees with the Task Force recommendation regarding new governor training. Such training is essential for proper preparation of new governors for the understanding and performance of their duties as governors. In fact, current training is already providing more in-depth preparation for all governors that covers the items referenced in the Task Force report.

The BOG also agrees that it should conduct a periodic self-evaluation in accordance with best practices for evaluation of its performance. Such a process will provide opportunities for growth in performance of its expected role and will help ensure accountability. The BOG is currently taking action to implement this recommendation.

Task Force Recommendation: The Board agenda should focus on strategic matters.

Draft Response to Recommendation: The BOG agrees with the Task Force recommendation that the BOG meeting agenda should focus on strategic matters. The July 2014 retreat provided in-depth training on such an approach and was unanimously appreciated by the BOG. Discussion led by the consultant at the retreat focused on methods of accomplishing this transition that resulted in a change to the structure of the BOG agenda at the September meeting. This new format has now become the model for meeting agendas. This excellent suggestion is working.

VI. ORGANIZATION AND SELECTION OF THE BOARD OF GOVERNORS: ISSUES AND RECOMMENDATIONS

1. Board Member Selection

Task Force Recommendation: Increase Governor terms to four years and permit former Governors to serve a second term at a later date.

Draft Response to Recommendation: The BOG is mindful of the Task Force concerns about enhancing institutional knowledge on the BOG and the ability of new members to be better prepared for active and meaningful participation from the beginning of their term. The BOG is also concerned, however, that adding a fourth year to the term of service would make it difficult for small-firm lawyers, government lawyers, and others, to serve at all. The BOG therefore would retain three-year terms and have newly chosen members begin a non-voting period of training following their selection, lasting up to the date they are sworn into office. During this roughly six-month period, in addition to the normal training provided to new members, they would attend BOG meetings and activities and receive the benefit of that involvement. This will assist with institutional memory.

The BOG further agrees with the Task Force recommendation that a second term of service on the BOG should be allowed for any BOG member who chooses to run a second time, but believes that this second term would not be served consecutively.

2. President Selection

Task Force Recommendation: The WSBA President should be selected from the Board of Governors and continue to serve as a voting member of the Board.

Draft Response to Recommendation: In choosing the president of the WSBA, the BOG feels it is vitally important to have candidates who offer experienced leadership and who are knowledgeable of the workings of the WSBA and the issues it is facing. It is also important to have people with fresh ideas and perspectives, from diverse backgrounds, who represent all geographic parts of the state and who are motivated to serve the organization. There have been several excellent presidents who did not previously serve on the BOG. Limiting the pool of applicants to those currently serving on the BOG can fail to accomplish the above objectives and in fact would eliminate many excellent candidates who might otherwise be willing to serve. The BOG therefore disagrees with the Task Force recommendation and would continue with the current method of presidential selection and service as described in the current bylaws.

3. Non-attorney Membership and Selection

Task Force Recommendation: Two public, non-attorney members and one LPO / LLLT member should be added to the Board of Governors. These three members should be appointed by the Supreme Court.

Draft Response to Recommendation: Recognizing the WSBA's responsibility to protect the public and further cognizant of best practices followed by other bar associations, the BOG agrees with the Task Force recommendation that three public members should be chosen for service on the BOG. They should be chosen from a group of nominees from the general public and limited license professionals. The potential members should be vetted and nominated by the existing Nomination Review Committee with input from the limited license professionals. Nominees would then be submitted to the Supreme Court for appointment.

4. Composition of the Board

Task Force Recommendation: To accommodate the additional Governors, the number of elected positions should be reduced to nine. The three current "at-large" positions should be retained to ensure participation by a "young lawyer" and members that reflect historically under-represented groups. This would provide for a Board of 15 persons, one of which would be the President.

Draft Response to Recommendation: While the BOG agrees that it would be a good idea to add the above referenced members, it does not agree that changing or reducing the current structure of the board is prudent. Current geographic representation by congressional district as well as "at large" membership to ensure diversity on the BOG has proven beneficial. The current method of electing BOG members by congressional district and choosing at-large members should continue. The BOG should work with the Supreme Court to investigate methods to allow for the additional members, while preserving existing positions on the BOG.

5. Recruitment for the Board

Task Force Recommendation: A Search Committee, appointed by the Board of Governors, should solicit qualified candidates for the Board.

Draft Response to Recommendation: The BOG agrees that a search committee would benefit the WSBA in helping to identify and recruit candidates to fill open positions. WSBA governance is strengthened by having a diverse pool of interested candidates who bring energy and a variety of talents to potential service on the BOG. A committee should be appointed by the president and include the outgoing governors as well as other interested BOG and WSBA representatives. The search committee should identify skills that will fill needs on the BOG. But any active WSBA member should be permitted to submit their name for election to an open position regardless of whether they have been contacted by the search committee.

6. BOG Executive Committee

Task Force Recommendation: Establish an Executive Committee to address routine and non-strategic matters on behalf of the Board of Governors.

Draft Response to Recommendation: The BOG recognizes the need for an Executive Committee to address non-strategic, non-policy matters that need timely attention between BOG meetings. It is unusual for an organization the size of the WSBA not to have such an EC. The EC should include the following members: the President, the President Elect, the Past President, the Treasurer, the Personnel Committee Chair, and the Executive Director. Pursuant to appropriate Bylaws, the EC shall have authority to do the following:

- To meet as necessary to develop the BOG Meeting Agenda, which meetings shall be properly announced and open to all BOG members.
- To exercise limited powers of the Board between regularly scheduled BOG meetings because it is generally impractical to convene a full meeting to respond to a time-sensitive decision or action. Provided, however, that the EC may not take any action to establish, change, or alter prior Board decisions or policies; may not take final action to amend bylaws; may not remove a board member from office; may not take any steps to hire or remove an Executive Director; and may not make any changes to the WSBA budget approved by the Board or alter the fiscal matrix.
- To serve as a sounding board for executive management on emerging issues, problems, and initiatives.
- To take such other actions that are not specifically prohibited above, are expedient and necessary, and are consistent with the prior policies and decisions of the Board.

7. Board Workload

Task Force Recommendation: Establish a permanent process designed to reduce Governor workload.

Draft Response to Recommendation: The BOG agrees that it should be an ongoing priority to explore ways to reduce the BOG workload and to find ways to become more efficient in meeting its responsibilities. While remaining ever-mindful of its primary responsibility to provide monitoring, oversight, and direction to the work of the WSBA, it must be open to new ways of doing business so as not to discourage anyone from service on the BOG. The BOG has already undertaken efforts in this regard. Changes have been made to both the content of the agenda and the manner in which the agenda is formulated. BOG training is focusing on the true role and responsibility of Governors in meeting their governance responsibilities and in delegating appropriate responsibilities to WSBA staff and volunteers. Work will continue in finding ways to meet this priority.