

# MEMO

TO: BOARD OF GOVERNORS  
FROM: BOG GOVERNANCE WORK GROUP  
RE: WORK GROUP MEETING OF October 16, 2014

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The BOG Governance Work Group met on October 16, 2014, in follow up to the BOG meeting In Seattle on September 19, 2014. The meeting was for the purpose of reviewing the discussion that took place at the BOG meeting regarding the Task Force Recommendations and to incorporate that discussion into a concise written response of the BOG.

The BOG discussion at the September meeting focused on the second, third and fourth recommendations of the Governance Task Force dealing with "V. THE BOARD OF GOVERNORS AND THE WSBA: ISSUES AND RECOMMENDATIONS." Attached is the BOG response to this recommendation as prepared by the Work Group at the September 19th meeting.

Also attached to this memo is a set of discussion points to guide and focus the BOG's discussion at the November BOG meeting on the next section of the Task Force Report for discussion: "VI. ORGANIZATION AND SELECTION OF THE BOARD OF GOVERNORS; ISSUES AND RECOMMENDATIONS." This section can be found beginning at page16 of the Task Force Report, a copy of which is contained in the meeting materials.

It is anticipated that the discussion of this section of the Task Force Report will exhaust the time allocated at both the November and January BOG meetings.

The BOG work group will thereafter meet following the November BOG meeting to review the BOG discussion on the above recommendations and to generate further discussion points for conclusion of the discussion of this section at the January BOG meeting.

# Draft

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## SECOND RESPONSE OF THE BOG GOVERNANCE WORK GROUP TO THE RECOMMENDATIONS OF THE GOVERNANCE TASK FORCE

*Response to Recommendation #2: 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."*

The BOG is the governing body of the WSBA. In performing its responsibilities as governors it is 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. Changes to bylaws and organizational documents as necessary to clarify this role should be done.

A change to the name of the Washington State Bar Association is another matter. While the WSBA should continue to perform not just mandatory functions but also provide benefits and services to members and the public, as it has, calling itself an association is not necessary. The prudent choice of name, given the WSBA's regulatory functions and anti-trust and other legal issues, should be the Washington State Bar. This name is consistent with other mandatory bars in the country.

*Response to Recommendation #3: 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.*

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 doing 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.

*Response to Recommendation #4: The Board agenda should focus on strategic matters.*

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 accepted 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 format has now become the model for meeting agendas.

## GTF RECOMMENDATION DISCUSSION

The purpose of these discussion points is to help us focus our discussion at a policy level. They are not intended to limit discussion in any way.

Provisions in *italics* are taken directly from the final GTF Report, stated as questions. Governors should consider the entire context of the Final Report in addressing these recommendations.

### **GENERAL TOPIC: ORGANIZATION & SELECTION OF THE BOARD OF GOVERNORS**

#### **DISCUSSION POINT 1: How do we compose and select our board?**

##### **Specific GTF Recommendations:**

1. *Should we increase the Governors' terms to four years and permit former Governors to serve a second term at a later date?*
2. *Should we reduce the current elected positions on the Board of Governors to nine to allow for the inclusion of two public, non-attorney members and LPO / LLLT member?*
  - a. *Should these latter three members be appointed by the Supreme Court?*
  - b. *Should the three current "at-large" positions be retained to ensure participation by a young lawyer and members that reflect historically under-represented groups?*
3. *Should we have a Search Committee, appointed by the Board of Governors, to solicit qualified candidates for the Board?*
4. *Should the WSBA provide more information regarding candidate qualifications?*
5. *Should we establish a permanent process designed to reduce Governor workload?*

##### **Some issues/considerations to be balanced (certainly not an all-inclusive list):**

Historical memory vs. fresh perspectives

Stability vs. flexibility

Openness to non-lawyer ideas vs. focus on members' perspectives

Protection of public vs. focus on members' needs

Direct control/influence vs. delegation of authority

Comprehensive knowledge vs. focused attention

**DISCUSSION POINT 2: How do we select and train our leaders?**

**Specific GTF Recommendations:**

1. *Should the WSBA President be selected from the Board of Governors and continue to serve as a voting member of the Board?*
2. *Should we establish an Executive Committee to address routine and non-strategic matters on behalf of the Board of Governors?*

**Some issues/considerations to be balanced (certainly not an all-inclusive list):**

Continuity vs. innovation

Stability vs. flexibility

Broad selection of talent vs. those with deep emersion in current/pressing issues

Direct control vs. delegation of authority

Focus on policy vs. grasp of (sometimes important) details

## **WSBA Board of Governors Discussions on the Governance Task Force Final Report**

*The Washington Supreme Court has asked the Board of Governors for a response to the Task Force's Final Report. The Board is discussing sections of the report as noted below and final action will be taken by its September 17-18, 2015, meeting. Member feedback is welcomed throughout this process by emailing [governance@wsba.org](mailto:governance@wsba.org).*

### **I. THE BOARD OF GOVERNORS AND THE WSBA** (September 2014 BOG meeting)

1. Clarify the duties of the Governors in the WSBA Bylaws and other relevant materials.
2. 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."
3. 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 a vis WSBA staff and provide opportunities for self-reflection and self-improvement.
4. The Board agenda should focus on strategic goals.

### **II. ORGANIZATION AND SELECTION OF THE BOARD OF GOVERNORS** (November 2014 & January 2015 BOG meetings)

1. Increase the Governors terms to four years and permit former Governors to serve a second term at a later date.
2. The WSBA President should be selected from the Board of Governors and continue to serve as a voting member of the Board.
3. 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.
4. To accommodate the additional Governors, the number of elected positions on the Board of Governors 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.
5. A Search Committee, appointed by the Board of Governors, should solicit qualified candidates for the Board.
6. The WSBA should provide more information regarding candidate qualifications.
7. Establish an Executive Committee to address routine and non-strategic matters on behalf of the Board of Governors.
8. Establish a permanent process designed to reduce Governor workload.

### **III. SUPREME COURT AND THE WSBA** (March 2015 & April 2015 BOG meetings)

1. 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.
2. Amendments to the WSBA Bylaws should be approved by the Supreme Court.
3. The dismissal of the Executive Director or the Chief Disciplinary Counsel should be subject to veto by the Supreme Court.
4. 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 ensure adequate funding.

### **IV. STATE BAR ACT** (June 2015 BOG meeting)

1. Repeal most provisions of the State Bar Act, with that statute then serving simply to create the WSBA as an agency "within the judicial branch" under the Supreme Court's control.