


# MEMORANDUM

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TO: WSBA Board of Governors, President and Executive Director

FROM: Paul Swegle  
Governor, District 7N,   
Immediate Past Chair, Corporate Counsel Section  
Member, Securities Law Committee

DATE: September 12, 2018

SUBJECT: Supporting Cover Memo re Amendments to WSBA Bylaws, Article IV to:  
(i) Protect and Facilitate Governor Communications  
(ii) Eliminate the Position of Immediate Past President  
(iii) Transfer Certain Hiring and Firing Authorities to the Board  
(iv) Cap the Executive Director's Compensation  
(v) Limit the Executive Director's Term to Ten Years

Below are discussions of five distinct proposed amendments to Article IV of the WSBA Bylaws. The language of the specific amendments is shown in the attached.

Each of the five proposed amendments should be considered by and voted upon separately by the WSBA Board of Governors.

1. The proposed amendment to Article IV.A.2 requires the WSBA staff to transmit communications of sitting Governors to their constituents.

In 2018, the WSBA President and Executive Director restricted the ability of sitting Governors to send communications to their district constituents, a situation the impacted Governors and many of their constituents rightly characterized as impermissible interference with political speech.

This amendment to Article IV.A.2 has been necessitated to clarify and codify that neither the WSBA staff nor the WSBA President has any right to interfere with the ability of WSBA Governors to communicate with their constituents and that the WSBA staff is *obligated* to timely transmit the proposed communications of Governors to their constituents without delay, alteration or other interference.

2. The proposed amendment to Article IV.B.3 eliminates the position of “Immediate Past President.” This amendment will potentially save the WSBA tens of thousands of dollars per year in travel and entertainment costs and other related expenses without in any way impacting operations or governance. The elimination of the Immediate Past President position should also help to reduce the concentration of power that has formed within the senior leadership of the WSBA in recent years and prevent similar concentrations of power in the future.
3. There are two proposed amendments to Article IV.B.5. The first set of changes transfers authority for hiring and firing of both the WSBA's General Counsel and its Chief Disciplinary Officer from the Executive Director to the Board of Directors. These changes are consistent with good governance and the avoidance of conflicts of interest by ensuring that neither the General Counsel nor the Chief Disciplinary Officer will feel pressured by the Executive Director, directly or indirectly, to take or not to take particular actions.

These two officer positions are analogous to general counsel and chief compliance officer positions in the private sector. It would be inconceivable for the CEO of a larger private or public company to have the authority to remove a general counsel or chief compliance officer without prior Board approval. This buffer insulates such officers, often referred to as “gatekeepers,” from retaliation for taking positions that might adversely impact the CEO or other senior officers. Such gatekeeper protection is particularly important as a check and balance on the conduct of CEOs themselves, as well as other senior officers.

Further, over the years, the WSBA has developed a reputation among many WSBA Members, WSBA volunteers and current and former Members of the Board of Governors as an intimidating and vindictive organization. Removing hiring and firing authority of these two positions from under the Executive Director will help to make the WSBA a less intimidating organization for its Members and volunteers,

including members of the Board of Governors. Many current members of the Board of Governors want to see the WSBA transformed into a less opaque, intimidating and top down organization to improve Member confidence in and respect for the WSBA.

4. The second change to Article IV.B.5 would limit the Executive Director's total annual compensation so that it may not exceed the then current total compensation paid to the Associate Supreme Court Justice of Washington. The rationale for this change is two-fold.

First, many current and former members of the Board of Governors have been extremely concerned around the extraordinarily high level of secrecy and opacity of the Executive Director's compensation, especially given the WSBA's self-identification as a quasi-governmental entity. The compensation of government officers is rarely if ever nearly so opaque and secretive.

Second, tying maximum compensation as described would all but eliminate Member and Governor concern and speculation around the amount of the Executive Director's compensation and how it is determined. Second, the WSBA is directly regulated by the Washington Supreme Court. It is illogical for the Executive Director to be paid more than the Associate Supreme Court Justice of Washington, a senior officer of a senior entity.

5. The proposed amendment to Article IV.B.7 provides a term limit of ten years for any person holding the office of Executive Director.

The language proposed to be added to the end of Article IV.B.7 states:

*"No individual shall serve as Executive Director for more than ten years."*



Adoption of this amendment would require the current Executive Director to step down immediately and would require future holders of the office to step down after ten years.

The rationale for this proposed change is to promote good governance by preventing the unhealthy, long-term domination of WSBA leadership and governance by any Executive Director. Long-term domination of any Board by a powerful, entrenched Executive Director dangerously undermines an organization's internal systems of controls and checks and balances.

As with many large non-profit organizations, the WSBA Executive Director has vast WSBA information, staff, patronage and process resources at her disposal to inspire unhealthy levels of personal loyalty from individual Members of the Board of Governors. As used above, the term patronage includes the power to control appointments to office and grant privileges, as well as other opportunities for favoritism, nepotism, preferential treatment and cronyism. With its \$22 million budget, myriad influential activities, large number of high-level positions to hire and appoint, and \$1 million+ annual spending on travel and entertainment, opportunities for patronage within the WSBA abound.

A current and troubling example of these very types of concerns involves an At-Large Governor whose law firm performs a substantial amount of lucrative legal work for the WSBA. Coincidentally or not, That Governor's loyalty to the Executive Director and his resistance to virtually any governance changes at the WSBA both appear to be unwavering.

The WSBA Executive Director also has substantial actual and perceived resources to directly or indirectly cause fears of retribution – fears that can be equally harmful to Governor independence. Current and former Members of the Board of Governors have openly expressed fear of challenging the current Executive Director due to concerns about being sued, professionally disciplined or falsely

accused of harassment or discrimination. Based on recent occurrences, WSBA Governors who challenge the status quo can expect to have false claims and accusations leveled against them by Executive Director loyalists.

Current and former Members of the Board of Governors believe that the WSBA Board of Governors has been and continues to be unable to independently and competently discharge its duties to exercise appropriate oversight over the Executive Director due to the presence of both unhealthy personal loyalties to the Executive Director by certain Governors and legitimate fears of retribution on the part of other Governors.

When a Board is unable to fully exercise its Executive Director oversight duties, the result is a dangerously weak and ineffective Board and the loss of critical checks and balances. These conditions lead to an unhealthy lack of transparency and greatly increased risks of conflicts of interest, financial impropriety, self-dealing and misconduct.

Imposition of a reasonable ten-year term limit on the position of the Executive Director would greatly reduce, or at least limit the duration of, any imbalances of power that might arise due to the presence of a powerful and highly political Executive Director at the WSBA and the governance and leadership risks such imbalances pose.

**Proposed Bylaw Amendments – Administration  
(Art. IV)**

These amendments are intended to achieve two goals:

1. Policy/Governance Transparency.
2. Fiscal/Public Responsibility.

These changes affect Art. IV and the administration and oversight of the WSBA, and reduce costs, including: the right of governors to communicate with the membership; eliminating the Immediate Past President position; capping E.D. compensation; requiring Board of Governors approval for hiring or firing of GC or Chief Disciplinary Counsel; and putting a ten year term limit on the position of the E.D.

**REDLINE PROPOSED BYLAW AMENDMENTS re: Administration**

**IV. GOVERNANCE**

**A. BOARD OF GOVERNORS**

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**2. Duties**

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d. Each Governor is expected to engage with members about BOG actions and issues, and to convey member viewpoints to the Board. In representing a Congressional District, a Governor will at a minimum: (1) bring to the BOG the perspective, values and circumstances of her or his district to be applied in the best interests of all members, the public and the Bar; and (2) bring information to the members in the district that promotes appreciation of actions and issues affecting the membership as a whole, the public and the organization. To facilitate such Governor communications, at the request of any Governor representing a Congressional District, the staff of the WSBA shall transmit to the members of such Congressional District without delay any communications described in (2) above by the means requested by such Governor, whether electronic or physical mail, and without in any way altering such communications without the express permission of said Governor.

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**B. OFFICERS OF THE BAR**

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**3. Immediate Past President (Eliminated)**

~~The Immediate Past President performs such duties as may be assigned by the President or the BOG. The Immediate Past President will perform the duties of the President in the absence, inability, recusal, or refusal of the President, President-elect, and Treasurer to perform those duties. Among the duties specifically assigned to the Immediate Past President is to work on behalf of the BOG and the officers to ensure appropriate training and education of new BOG members and officers during their term.~~



~~The Immediate Past President is not a voting member of the BOG except when acting in the President's place at a meeting of the BOG and then only if the vote will affect the result.~~

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#### 5. Executive Director

The Executive Director is the principal administrative officer of the Bar. The Executive Director is responsible for the day-to-day operations of the Bar including, without limitation: (1) hiring, managing and terminating Bar personnel, (2) negotiating and executing contracts, (3) communicating with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters, (4) preparing an annual budget for the Budget and Audit Committee, (5) ensuring that the Bar's books are kept in proper order and are audited annually, (6) ensuring that the annual audited financial report is made available to all Active members, (7) collecting debts owed to the bar and assigning debts for collection as deemed appropriate, (8) acquiring, managing, and disposing of personal property related to the Bar's operations within the budget approved by the BOG, (9) attending all BOG meetings, (10) reporting to the BOG regarding Bar operations, (11) ensuring that minutes are made and kept of all BOG meetings, and (12) performing such other duties as the BOG may assign.

Notwithstanding the foregoing, the Executive Director shall not have the authority to hire or fire the General Counsel or the Chief Disciplinary Officer, which authority is reserved exclusively to the Board of Governors, acting by majority vote to take such actions. The Executive Director serves in an ex officio capacity and is not a voting member of the BOG. The Executive Director's total annual compensation may not exceed the then current total compensation paid to the Associate Supreme Court Justice of Washington.

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#### 7. Vacancy

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b. The Executive Director is appointed by the BOG, serves at the direction of the BOG, and may be dismissed at any time by the BOG without cause by a majority vote of the entire BOG. If dismissed by the BOG, the Executive Director may, within 14 days of receipt of a notice terminating employment, file with the Supreme Court and serve on the President, a written request for review of the dismissal. If the Supreme Court finds that the dismissal of the Executive Director is based on the Executive Director's refusal to accede to a BOG directive to disregard or violate a Court order or rule, the Court may veto the dismissal and the Executive Director will be retained. No individual shall serve as Executive Director for more than ten years.