

MINUTES

Public Session **WASHINGTON STATE BAR ASSOCIATION BOARD OF GOVERNORS**

**SEATTLE, WA
March 3, 2006**

The Public Session of the Board of Governors of the Washington State Bar Association was called to order by President S. Brooke Taylor at 10:02 a.m., on Friday, March 3, 2006 at the Washington State Bar Association, Seattle, Washington. The Public Session was adjourned at 3:55 p.m. Governors in attendance were:

Marcine Anderson
James Baker
Stanley Bastian
Eron Berg
Liza E. Burke
Lonnie Davis
Eric C. de los Santos
Mark Johnson
Douglas C. Lawrence
Salvador A. Mungia
Kristin Olson
Kathleen O'Sullivan
Michael Pontarolo
Kristal K. Wiitala

Also in attendance were President-elect Ellen Conedera Dial, Executive Director and Meeting Secretary Jan Michels, and General Counsel Bob Welden.

LIAISONS, GUESTS AND STAFF IN ATTENDANCE:

Daniel S. Gottlieb	ATJ Board Chair
Jennifer King	RPPT Section
Judge Anne Lake Ellington (presenter)	ATJ Impediments Committee
Judge Catherine D. Shaffer (presenter)	ATJ Impediments Committee Co-chair
Mattie Harvin-Woode	WALJA
James E. Macpherson	WDTL

Steve Toole	WSTLA
Karen Weaver	Washington Women Lawyers
Tom Campbell	WACDTL
Judge Eileen Kato	DMCJA
Noah Davis	WYLD President
Marijean Moschetto	Family Law Section
Richard Sayre	CLE Committee Chair
Geoff Gibbs	Snohomish County Bar Association
Rachel Da Silva	Sexual Orientation and Gender Identification Issues (proposed) Section
Scott Douglas	Sexual Orientation and Gender Identification Issues (proposed) Section
Caitlin Davis Carlson	Executive Director, LFW
Nick Gellert	Trustee, LFW
Diana Moller	American Immigration Lawyers Association
Gail Nunn	Family Law Section
Jim Bamberger	OCLA
Paula Littlewood	Deputy Director
Jean McElroy	WSBA Regulatory Services Director
Julie Mass	WSBA Administration and Finance Director
Gail Stone	WSBA Legislative Director
Judy Berrett	WSBA Director, Member and Community Relations
Lindsay Thompson	Bar News Editor
Donna Sato	WSBA Executive Assistant

LEGISLATIVE REPORT – WSBA Legislative Director Gail Stone

Legislative Director Gail Stone reported the following:

The House budget does some fantastic things for the Office of Public Defense:

- \$5.659 million for parents representation in the top five priority counties (the Senate budget had this at \$3.4 million)
- \$3.8 million for public defense quality standards (the Senate had this at \$1 million)

- \$425,000 for WDA training (the Senate had the same number)

The rest of the Justice in Jeopardy budget items:

- The House budget also includes \$569,000 for AOC's juror pay pilot project. This is the amount AOC put in their budget. The Senate budget included \$3.5 million to implement a different jury fee bill.
- The House budget includes the \$600,000 for the Office of Civil Legal Aid. This is what OCLA put in their budget and is also in the Senate budget.

WSBA section bills:

- All WSBA section bills are on its way to the Governor for signing.

INTRODUCTIONS

Officers, governors, liaisons, guests and staff introduced themselves.

REPORT ON EXECUTIVE SESSION

President Taylor reported that the Board approved the minutes of the January 12, 2006 Executive Session; were presented with the litigation and discipline docket reports; reviewed a reprimand; received a report on an 8th Circuit Court Opinion in light of Judicial Canon 7 by General Counsel Welden; discussed the BOG Special Fund and the WSBA's alcohol purchase policy; denied an appeal concerning an armed forces exemption; received a legislative report from Gail Stone; discussed lease negotiations with the Puget Sound Plaza; discussed the receipt of a late application from a candidate for a Board of Governors position and discussed an item currently on the Consent Calendar.

APPROVAL OF THE MINUTES FROM THE JANUARY BOARD MEETING

Governor Mungia made a motion to approve the minutes of the January 12, 2006 meeting; Governor Johnson seconded. The minutes were amended to reflect that Governor Baker was on an excused absence. The amended minutes were approved unanimously.

Governor Mungia made a motion to approve the minutes of the February 13, 2006 (special) meeting; Governor Lawrence seconded. The minutes were amended to reflect that General Counsel Welden was present. The amended minutes were approved unanimously.

CONSENT CALENDAR

President Taylor reported that item “b” has been removed; item “c” has been deferred; and item “d” has been withdrawn from the Consent Calendar. The Board approved item “a” an appointment to the Editorial Advisory Board by the circulation of a written ballot.

PRACTICE OF LAW BOARD – PROPOSED LEGAL TECHNICIAN RULE - Steve Crossland, Chair

Steve Crossland, Chair of the POLB introduced POLB members present: Vice-Chair, Judge Paul Bastine, Rita Bender, Stephanie Delaney, Cheryl Kringle, Daniel Perez and staff liaison Julie Shankland. The POLB members present lead the Board through its work beginning with its inception and mission. They then presented a proposal for a new court rule which would set a structure for the WSBA regulation of non-lawyer practice of law.

President Taylor thanked the POLB for all its work and efforts in pursuing its mission. The following points of concern were noted by Board members as they discussed the proposed “legal technician” rule:

- The rule needed sufficient attorney client privilege language;
- There would be significant financial and staffing impact to the WSBA;
- The proposed rule may not solve the current access to justice problem of meeting civil legal needs at low or no cost;
- Ways and means of educating and protecting the public were unaddressed;
- The proposed rule does not address unlicensed practice of law;
- The proposed rule presents too many “unknowns”;
- The proposed rule does not define the areas of non-lawyer practice of law; and
- The insurance market does not yet offer an insurance package for non-lawyer practice.

Governor Bastian moved to take no position at this time; Governor Wiitala seconded.

Noah Davis, President of the WYLD presented the concerns of the WYLD by noting that the proposed rule does not appear to be the solution to meeting civil legal needs or the unlicensed practice of law. The WYLD voted in opposition to the proposed rule by a vote of 13-1. Gail Nunn, representing the Family Law section, concurred with Davis and noted that the Family Law section opposes the proposed rule by 89% of its members. Diana Moller, representing the

American Immigration Lawyers Association voiced the vulnerability of the immigration community to poor practice if the proposed rule were approved and non-lawyer practice were applied to immigration law.

Jim Bamberger reported that the Office of Civil Legal Aid supports the proposed rule noting it may not be the answer to access to justice however it provides the first step towards an answer. Dan Gottlieb, speaking for the ATJ Board reported that the ATJ Board unanimously supports the proposed rule as well. Nick Gellert reported that the Legal Foundation of Washington (LFW) does not offer a formal opinion at this time however the LFW is concerned that the proposed rule lacks enough specificity as to practice areas for legal technicians.

Governor Bastian withdrew his motion to take no action. Governor Mungia moved to oppose the proposed rule as currently drafted; Governor Burke seconded. The motion passed by a vote of 12-2-0 (Governors Davis and Lawrence opposed).

Governor Berg moved to leave the door open to a revised, more specific proposal from the POLB; Governor Pontarolo seconded. The motion passed by a vote of 12-0-2 (Governors de los Santos and Mungia abstained).

JUDICIAL ELECTION/SELECTION TASK FORCE – Governor Lawrence

Governor Lawrence presented background information supporting the need for a Judicial Election/Selection Task Force. Lawrence noted the following points:

- Erroneous vast public assumption that judges reach the bench by election;
- The public lacks information regarding the qualifications of judicial candidates;
- 80% of voters don't vote in judicial elections. The reason cited is that they don't know the candidates and/or elections are uncontested;
- The ratio of judges appointed including justices of the Supreme Court is over 50%; and
- 73% of county judges are appointed.

Governor Lawrence moved; seconded by Governor Johnson that the WSBA form a Judicial Election/Selection Task Force consisting of ten members to include geographically diverse members of the Board, members of the judiciary, legislative representation and minority bar representation. This task force shall review all levels of judicial races and provide recommendations to the President of the WSBA. A progress report should be given at the July 2006 Board meeting. Motion passed by a vote of 13-0-0 (Governor Berg excused).

FACILITIES REPORT – Ellen Conedera Dial, Chair

Facilities Committee Chair Ellen Dial reported on the action taken at the February 13, 2006 “Special” Meeting of the Board of Governors. The Board authorized negotiations for additional space at Puget Sound Plaza required to meet growth projections and programming assumptions for a ten-year period. Dial emphasized that the Facilities Committee reviewed WSBA’s management/staff programming assumptions and felt they were reasonable and modest.

FISCAL MATTERS – Treasurer Mark Johnson

Treasurer Mark Johnson reported that the Budget and Audit Committee will be voting on a proposed WSBA Investment Policy at its April meeting which will ultimately be brought before the Board for its approval. A question and answer period ensued relating to the Fiscal Year-to-Date report contained in the Board books.

BOG MATTERS

A. Commission on Judicial Conduct (Appointment)

Governor O’Sullivan moved to appoint Josephine Townsend, seconded by Governor Anderson. Governor Pontarolo moved to appoint Joseph P. Delay, seconded by Governor Olson. After discussion, a vote was called. Josephine Townsend will be appointed to the Commission on Judicial Conduct to serve a two-year (unexpired) term.

B. Access to Justice Board (Nominations)

Governor Johnson nominated Wayne Blair and Bruce Reeves to the Access to Justice Board (as recommended by the ATJ Board), seconded by Governor O’Sullivan. The motion passed by 13-0-1 (Governor Berg abstained). The Board agreed to vote on the three applicants for the third and fourth nominations (as recommended by the ATJ Board).

Governor Bastian moved, seconded by Governor Pontarolo to table this matter for action in April. In the interim, request and review the background materials for all applicants. The motion did not pass by a vote of 5-9-0.

A vote was taken on the ATJ recommended nominations. Elizabeth Fry and Millicent Newhouse will be nominated to the Supreme Court for appointment to the Access to Justice Board.

The Board noted that in the future the WSBA should also conduct a recruitment process and that all applicant materials received be provided to the Board for review prior to making their nominations to the Supreme Court.

C. Notice to Form Sexual Orientation and Gender Identification Issues Section (SOGII) – Rachel Da Silva and Scott Douglas

Rachel Da Silva and Scott Douglas presented their recommendation that the WSBA form a Sexual Orientation and Gender Identification Issues Section by noting that the issues they currently face are of extreme importance to the state of Washington and nationally in numerous areas including professional responsibility. General Counsel Welden suggested that the proposed section consider changing its name to Sexual Orientation and Gender Identification Legal Issues Section. Governor Berg moved, seconded by Governor Lawrence that the WSBA create the Sexual Orientation and Gender Identification Legal Issues Section as a WSBA section and further approve its proposed bylaws as submitted. The motion passed unanimously.

D. CLE Committee Member Terms – Richard Sayre, Chair

Richard Sayre, Chair of the CLE Committee provided the Board with history relating to the composition of the CLE Committee and its membership. After a discussion, Governor Berg moved, seconded by Governor Lawrence that the Board approve the modified committee terms (staggered, 3-year terms) as recommended by the CLE Committee Chair. Motion passed unanimously.

MEMBER AND COMMUNITY RELATIONS DEPARTMENT REPORT – Judy Berrett, WSBA Director

WSBA Director of Member and Community Relations, Judy Berrett reported on the day to day operations of the department by introducing the department's staff via a powerpoint presentation and describing what each person's primary functions include.

ACCESS TO JUSTICE BOARD IMPEDIMENTS COMMITTEE REPORT – Judge Catherine Shaffer and Judge Anne Ellington

Judges Shaffer and Ellington reporting for the Access to Justice Impediments Committee reported that despite there being nothing new in disability law, accessing the courts based on impediments remains a major difficulty. These major impediments include: hearing, vision, mobility and cognitive impediments. Judges Shaffer and Ellington who were the primary authors of a new guide “Ensuring Equal Access for People with Disabilities” provided insight into the difficulties for persons with disabilities to equal justice and requested the WSBA’s support of their efforts. Governor Davis moved, seconded by Governor Johnson that the “Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts” report be endorsed, published and distributed by the WSBA. The Budget and Audit Committee will review costs and make recommendations for funding the publication and return to the Board for final approval. The motion passed unanimously.

PRESIDENT’S REPORT

By written report only.

PRESIDENT-ELECT’S REPORT

By written report only.

EXECUTIVE DIRECTOR’S REPORT

By written report only.

Executive Director Michels announced that the WSBA recently acknowledged Shirley Naccarato’s retirement from the WSBA after 30 years of employment.

There being no further business to come before the Board, the Board of Governors meeting was adjourned at 3:55 p.m., Friday, March 3, 2006.

Respectfully submitted,

M. Janice Michels

