

## MINUTES

### ***Public Session*** **Washington State Bar Association** **BOARD OF GOVERNORS**

**Kelso, WA**  
**April 13, 2007**

The Public Session of the Board of Governors of the Washington State Bar Association was called to order by President Ellen Conedera Dial at 9:30 a.m., on Friday, April 13, 2007, at the Red Lion Hotel in Kelso, Washington. Governors in attendance were:

Marcine Anderson  
Russell M. Aoki  
James E. Baker  
Anthony Butler  
Liza Burke  
Lonnie Davis  
Eric C. de los Santos  
Peter J. Karademos  
Douglas C. Lawrence  
Salvador A. Mungia  
Edward F. Shea Jr.  
Jason T. Vail  
Kristal K. Wiitala (excused for the morning)

Also in attendance were President-elect Stanley A. Bastian, Immediate Past-President S. Brooke Taylor, Executive Director and Meeting Secretary Jan Michels, and General Counsel Bob Welden.

#### **LIAISONS, GUESTS AND STAFF IN ATTENDANCE:**

Rima Alaily	Legal Foundation of Washington, Trustee
Steve Crossland	Real Property Probate & Trust Section/ Practice of Law Board
Geoff Gibbs	Snohomish County Bar Association
Jean Cotton	Family Law Section
Meredith Wright Hutchins	Government Lawyers Bar Association

Thomas Campbell	WACDL
Maureen Hart	Attorney General's Office
Gary Riesen	WAPA
Christopher Veley	WYLD
Steve Toole	WSTLA
Colleen Harrington	Litigation Section
Judge Richard Brosey	Lewis County Superior Court
Judge Michael Roewe	District and Municipal Court Judges Association
William Hyslop (presenter)	Committee on Public Defense, Co-Chair
Ken Davidson (presenter)	Committee on Public Defense
Mark Baum	MCLE Board Chair
Craig Platt	Platt & Buescher
Sandra Brown (presenter)	Microsoft Corporation
James McCullagh (presenter)	Perkins Coie
James Macpherson	WDTL
Kathy Todd	Regulatory Services Manager
Paula Littlewood	WSBA Deputy Director
Judy Berrett	WSBA Director of MCR
Gail Stone	WSBA Legislative Director
Jean McElroy	WSBA Director of Regulatory Services
Donna Sato	WSBA Executive Assistant

## **INTRODUCTIONS**

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

## **APPROVAL OF MINUTES FROM THE MARCH BOARD MEETING**

The Public Session minutes of March 2-3, 2007 were approved subject to the corrections offered by Governors Anderson and Lawrence.

## **REPORT ON EXECUTIVE SESSION**

President Dial reported that in Executive Session the Board approved the Executive Session minutes of March 2-3, 2007, as well as the Special Executive Session minutes of April 2, 2007; engaged in discussion regarding the litigation and discipline docket reports; received an update on two requests for waiver of bar examination requirements; acted on a WSBA Editorial Advisory Board/Bar News Editor matter; approved Step Two of the Classification/Compensation Plan as recommended by the Budget and Audit Committee; and approved the recipient of the 2007 WSBA Pro Bono Award as recommended by the Awards Committee.

## **CONSENT CALENDAR**

The two consent items listed below were removed from the consent calendar for further discussion:

- a. Approve Proposed Resolution in Support of Lawyers with Disabilities; and
- c. Approve an Appointment to the Character and Fitness Board.

The following item was approved by the circulation of a written ballot:

- b. Approve the Proposed Charter and Updated Roster for the Local Rules Task Force.

## **GOVERNORS' FORUM**

### Governor Marcine Anderson

Governor Anderson reported that she is currently working with the minority bar presidents to coordinate a meeting with the Board of Governors. Governor Anderson requested input from the governors as to their availability for a late afternoon/dinner meeting in May.

### Governor Peter Karademos

Governor Karademos reported that he would like to coordinate a meeting with the Board of Governors and WSBA Section leadership. Governor Karademos welcomed input from the governors.

### Governor Baker

Governor Baker reported on a recent meeting he attended with General Counsel Welden and the insurance broker for the bar sponsored medical insurance program currently offered to the WSBA membership. Governor Baker reported that less than 500 members are currently enrolled; however it is a beneficial plan and warrants advertising to our membership.

### Immediate Past-President Taylor

Immediate Past-President Taylor asked the delegation of governors who attended the ABA Bar Leaders Institute to share their thoughts. Governors Aoki, Butler, Shea and Vail said the conference was very interesting and resourceful. Governor Shea reported the focus leaned towards executive directors and presidents-elect; Governor Vail reported he benefited from what he described as considerable focus on young lawyers; Governor Butler reported there was an ample opportunity to pick and choose focus areas; and Governor Aoki reported it was interesting and rewarding to observe and learn how other state bars conduct business.

### President Ellen Conedera Dial

President Dial addressed a request she received from ABA President-elect Bill Neukom for the WSBA to conduct a pilot project on the understanding of the rule of law within the State of Washington by convening a state-wide, multi-disciplinary discussion forum, bringing together leaders from across the community (architecture/engineering, clergy, education, environment, labor, media, public health, public safety, military and business). President Dial called on Deputy Director Paula Littlewood to report to the Board on her discussions with ABA staff regarding this pilot project. Littlewood reported there would be 50-60 attendees (with 3-4 representatives from each discipline), travel costs may be the primary funding expense; the ABA will provide us with materials used in their recent Washington D.C. conference, which can be customized for the State of Washington; and President-elect Neukom will support the effort with personal outreach.

A lengthy discussion transpired. Governor Mungia moved, seconded by Governor Butler that the WSBA commit to doing a pilot project led by Governor de los Santos along with Immediate Past-President Taylor. Motion passed with a vote of 8-4-1.

### **FISCAL MATTERS – Treasurer Eron Berg**

Treasurer Berg, participating by phone, presented the following items as recommended by the Budget and Audit Committee to the Board for adoption:

1. WSBA Section Per-Member Charge for 2008.

The question is whether the WSBA will continue to absorb some of the costs attributed to sections administration or effect a larger increase in the per-member charge in 2008. Governor Lawrence moved, seconded by Governor Mungia, that the section per-member charge be no

higher than \$8.00 (currently \$7.75) in 2008 as recommended by the Budget and Audit Committee with a future-year formula to be suggested by the Budget and Audit Committee. Motion passed 13-0-0. Governor Wiitala was excused.

2. Budget Policies.

Treasurer Berg highlighted the proposed Budget Policies as recommended by the Budget and Audit Committee for Board approval. Governor Lawrence moved, seconded by Governor Karademos, that the Board approve the Budget Policies as recommended by the Budget and Audit Committee. Motion passed with a vote of 12-0-1. Governor Shea abstained and Governor Wiitala was excused.

3. Classification/Compensation Step 2.

Treasurer Berg reported that the Board unanimously authorized Step 2 of the WSBA Classification/Compensation Plan Implementation earlier in Executive Session.

4. ATJ Board Request for Approval.

The ATJ Board has requested the WSBA's approval of their proposed expenditure of 2008 funds from the Supreme Court as outlined in their memo to the Budget and Audit Committee dated April 6, 2007. Governor Lawrence moved, seconded by Governor Davis, that the WSBA approve the proposed ATJ Board expenditure of funds from the Supreme Court for 2008. Motion passed with a vote of 13-0-0. Governor Wiitala was excused.

5. Final Report on Move to Puget Sound Plaza.

WSBA Deputy Director of Finance and Administration Julie Mass presented the final report on the WSBA move to the Puget Sound Plaza. President Dial took this opportunity to commend Julie Mass and Deputy Director Paula Littlewood for their excellent work on this project.

## **BOG MATTERS**

### **ABA Delegate – Appointment**

President Dial reported that S. Brooke Taylor has excused himself from this portion of the meeting.

Discussion about the candidates transpired. On the first vote S. Brooke Taylor and Tom Fitzpatrick received the highest number of votes. A runoff vote was taken and S. Brooke Taylor was selected to represent the WSBA on the ABA House of Delegates filling the vacancy created when Paula Boggs was elected the Washington State Delegate.

### **GR 12.3 Amendment re: Immunity, and Related Rule Amendments**

General Counsel Welden presented a proposed new GR 12.3 which would provide immunity to the boards, committees, and the personnel and employees of the WSBA who are acting on behalf of the Supreme Court under the Admission to Practice Rules, the Rules for Enforcement of Lawyer Conduct, and the Disciplinary Rules for Limited Practice Officers. Governor Davis moved, seconded by Governor Anderson, that the Board submit the proposed GR 12.3 Amendment re: Immunity and Related Rule Amendments to the Supreme Court for review and adoption.

Governor Anderson moved, seconded by Governor Karademos that the proposed amendment to APR Rule 19 be amended to read:

“(3) Ethics Inquiries. Any member of the Bar Association, or any lawyer or Rule 9 legal intern permitted by rule to practice law in this state, may direct an ethics inquiry to . . .”

Discussion transpired. The motion to amend passed with a vote of 10-1-1. Governor Mungia voted against, Governor de los Santos abstained, and Governor Wiitala was excused.

A vote was taken on the main motion to submit the proposed GR 12.3 Amendment re: Immunity and Related Rule Amendments to the Supreme Court for adoption. This motion passed unanimously.

### **Conflict of Interest Policy**

President Dial presented a proposed Board of Governors Conflict of Interest Policy for Board consideration. A lengthy discussion transpired. Governor Karademos moved, seconded by Governor de los Santos, to defer action until the July Board meeting. The motion passed with a vote of 10-3-0.

### **Amicus Brief Committee Recommendation**

Governor Anderson moved, seconded by Governor de los Santos, that the Board adopt the recommendation of the Amicus Brief Committee to not file an amicus curiae brief in Beal Bank SSB v. Steven and Kay Sarich, et al. Discussion transpired. The motion passed with a vote of 8-5-0.

### **Character and Fitness Board – Appointment**

After a brief discussion, Governor Mungia moved, seconded by Governor Anderson, that Jose Dino Vasquez be appointed to the Character and Fitness Board to serve from October 1, 2007, through September 30, 2010. Motion passed unanimously.

### **Resolution in Support of Lawyers with Disabilities**

Governor Anderson reported that upon review of the minutes of the March 2-3 Board meeting, the proposed Resolution in Support of Lawyers with Disabilities requires no further action. (The Resolution in Support of Lawyers with Disabilities is attached to these minutes). The Board suggested it be featured in a future Bar News article.

### **Justice in Jeopardy Continuity**

Executive Director Michels reported on a proposed one-day retreat in Fall 2007 for outgoing leadership to pass the baton to new leadership on the Justice in Jeopardy initiative. Governor Lawrence moved, seconded by Governor Mungia, that the Board support the foregoing plan. The motion passed unanimously.

### **LEGISLATIVE REPORT – WSBA Legislative Director Gail Stone**

Legislative Director Gail Stone provided the Board with a general session update reporting that 5:00 p.m. this afternoon is the cut-off for opposite house bills and it was an overall stunning year for Justice in Jeopardy. Specific updates on WSBA bills included: (a) Corporate Act Bill regarding significant transactions is on its way to the Governor; (b) probate needs to pass by 5:00 p.m. today; (c) homestead passed with an amendment from Department of Revenue; (d) public guardian will be implemented as a pilot project; and deed of trust will return next year.

Stone noted that the GR 12 and Marriage Equality legislation information was included in the Board book for informational purposes. Discussion transpired in light of General Counsel Welden's opinion that the Board could take action on marriage equality legislation since significant administration of justice issues were implicated by it. Legislative Director Stone suggested that it may not be advisable for the Board to take action on marriage equality legislation, and the officers suggested that a committee be appointed to consider all options. Governor Karademos moved, seconded by Governor de los Santos, that the officers establish a committee to coordinate an open forum of WSBA sections and law-related organizations no later than the December Board meeting. Motion passed unanimously.

## **COMMITTEE ON PUBLIC DEFENSE**

Co-Chair Bill Hyslop addressed the Board with the three items before it for action: (a) Approval of an Extended Charter; (b) Approval of the Death Penalty Subcommittee's Report and Recommendations; and (c) Approval of the Proposed Resolution Establishing a System for Providing Statewide Public Defense.

### **Extended Charter**

Hyslop introduced the proposed Extended Charter for the Committee on Public Defense and reported that the work of the CPD must move to the implementation phase. Governor Lawrence moved, seconded by Governor de los Santos, that the Board adopt the Extended Charter as proposed. Governor Vail suggested the following sentence in paragraph one be deleted: "The CPD's recommendations were acted upon by the Board of Governors in March 2007." The deletion was agreed to and the motion passed unanimously.

### **Death Penalty Subcommittee Report and Recommendations**

Ken Davidson, Chair of the Death Penalty Subcommittee, presented the subcommittee's report along with its recommendations for implementation. It was reiterated that the CPD is not asking for the Bar to take a position on the death penalty per se. Discussion transpired.

Governor Karademos moved, seconded by Governor Aoki, that the Board adopt the report of the Death Penalty Subcommittee and its recommendations for implementation.

Gary Riesen spoke on behalf of the Washington Association of Prosecuting Attorneys in noting that it is not good policy for the WSBA to engage in fee setting. Governor Wiitala moved, seconded by Governor Mungia that the last sentence in recommendation 9 be amended to read:

"The subcommittee recommends that ~~under no circumstance should~~ the hourly rate for lead counsel appointed in a death penalty case should be not less than \$125.00 per hour (in 2006 dollars)."

The motion to amend passed with a vote of 8-5-0. Governors Aoki, Anderson, Burke, Shea, and Vail against.

A vote was taken on the original motion to adopt the report of the Death Penalty Subcommittee and its recommendations for implementation. Motion passed unanimously.

### **Resolution Establishing a System for Providing Statewide Public Defense**

Joanne Moore, Director of the Washington State Office of Public Defense, presented a history of HB 1542 and the tremendous success OPD has experienced over the past two years in structuring the Washington State Office of Public Defense and obtaining funding. Moore described the Board's support of the proposed Resolution as establishing WSBA's continued support of OPD.

Governor Aoki moved, seconded by Governor Burke, that the Board adopt the proposed Resolution Establishing a System for Providing Statewide Public Defense. Governor Mungia suggested element number 2 of the proposed resolution be amended by deleting the phrase "in the next two to three years." The proposed amendment passed unanimously. The motion to adopt the proposed resolution, as amended, passed unanimously.

### **MCLE PROPOSED RULE CHANGES – REPORT – Mark Baum, Chair and WSBA Director of Regulatory Services Jean McElroy**

WSBA Director of Regulatory Services Jean McElroy reported that this MCLE rule matter was originally submitted as an action item however the MCLE Board is currently considering comments and therefore requests additional time to prepare a final version of the rules for submission to the Board and Supreme Court.

Chair Baum acknowledged members of the WSBA Staff; the coalition of law firms and corporations (Coalition) two of whom were present, Sandra Brown and James McCullagh; and BOG liaison Liza Burke who have all engaged in an incredible amount of work to complete a final version of the proposed rule changes. Baum requested postponement of action through May to allow a complete review of the comments currently being received, and anticipates a final version being submitted to the Board in June. Governor Karademos moved, seconded by Governor Burke that the Board defer review of the MCLE Proposed Rule changes until July 2007. Motion passed unanimously.

President Dial took the opportunity to introduce Sandra Brown of Microsoft Corporation as a member of the Pipeline Grant Project Committee. Dial further announced that Microsoft Corporation has agreed to match the WSBA grant amount of \$25,000 per year for three years.

## **LIAISONS' FORUM**

### **Superior Court Judges Association**

Judge Richard Brosey announced the Spring Judicial Conference on behalf of the Superior Court Judges Association.

### **WACDL**

Tom Campbell thanked the WSBA and the Board for the devotion of time regarding defense issues. Campbell noted that the amount of effort and time has improved defense enormously and thanked Jan Michels for her work on this effort. Campbell suggested that a timetable of recommendations scheduled for future Board action would be very helpful.

### **Family Law Section**

Jean Cotton, current chair of the Family Law Executive Committee, announced the upcoming Family Law Section Skills Training CLE.

### **DMCJA**

Judge Michael Roewe thanked the WSBA and the CPD for efforts made concerning the presence of defense counsel at arraignment.

### **WSTLA**

Steve Toole announced the WSTLA Annual Law Day dinner on May 1 at the Seattle Sheraton Hotel. The Keynote Speaker will be Senator John Edwards.

### **Immediate Past-President Brooke Taylor**

Immediate Past-President Brooke Taylor thanked the Board for its vote of confidence in selecting him as a WSBA Delegate to the ABA House of Delegates.

## **PRESIDENT'S REPORT**

By written report only.

## **PRESIDENT-ELECT'S REPORT**

By written report only.

## **EXECUTIVE DIRECTOR'S REPORT**

By written report only.

## **ADJOURNMENT**

There being no further business at hand, the Board of Governors meeting was adjourned at 5:25 p.m. on Friday, April 13, 2007.

Respectfully submitted,

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Paula C. Littlewood  
WSBA Executive Director