

MINUTES

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

**WALLA WALLA, WA
April 21, 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 9:00 a.m., on Friday, April 21, 2006 at the Marcus Whitman Hotel, Walla Walla, Washington. The Public Session was adjourned at 4:55 p.m. Governors in attendance were:

Marcine Anderson
James Baker
Stanley Bastian
Eron Berg
Liza E. Burke
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. The minutes shall reflect that Governor Davis was on an excused absence.

LIAISONS, GUESTS AND STAFF IN ATTENDANCE:

Steve Toole	WSTLA
Judge Kenneth Kato	Court of Appeals – Division III
Peter Karademos	Family Law Section
Dave Swartling	Court Rules and Procedures Committee, Chair
James Macpherson	President and Governor Selection Task Force, Chair
Judge Donald W. Schacht	Superior Court Judges Association

James Nagle	Walla Walla County Prosecuting Attorney
Patrick McIntyre	Northwest Justice Project
Deborah Perluss	Northwest Justice Project
Colleen Harrington	Litigation Section
Caitlin Davis Carlson	Legal Foundation of Washington
Judge Michael Schwab	Legal Foundation of Washington
Kathryn McKinley	WSBA RPPT Section
Gary Maehara	King County Bar Association
Judge Doug Goelz	District & Municipal Court Judges Association
Peter J. Dunbar, M.D.	Washington State Medical Association, President
Kenneth H. Isaacs, M.D.	Washington State Medical Association, Past-President
Judge Anne Ellington	Court of Appeals/Division 1
G. Geoffrey Gibbs	Snohomish County Bar Association
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
Paula Littlewood	WSBA Deputy Director
Donna Sato	WSBA Executive Assistant

INTRODUCTIONS

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

REPORT ON EXECUTIVE SESSION

President Taylor reported that the Board approved the Executive Session minutes of March 3, 2006; received the litigation and discipline docket reports; reviewed a reprimand; approved the Awards Committee recommendation for the 2006 Pro Bono Award recipient; verified and authorized the signing of a lease amendment for the Puget Sound Plaza; approved the Judicial Recommendation Committee screening report to be forwarded to the Governor; denied a

request for a waiver from taking the Bar Exam; and reviewed preliminary projections on revenues and expenditures for a 10-year timeframe.

APPROVAL OF THE MINUTES FROM THE MARCH BOARD MEETING

Governor Johnson made a motion to approve the minutes of the March 3, 2006 meeting; Governor Pontarolo seconded. Governor Mungia suggested an amendment to include language that, in the future, the Board wished to review all applicants for ATJ Board appointments. The minutes were approved unanimously, as amended.

APPROVAL OF THE MINUTES FROM THE MARCH (SPECIAL) BOARD MEETING

Governor Mungia made a motion to approve the minutes of the March 29, 2006 (special meeting; Governor Anderson seconded. The motion passed by a vote of 7-0-6 (Governor Johnson who chaired the meeting and governors who were not in attendance at the special meeting abstained).

CONSENT CALENDAR

All consent items as listed below were approved by the circulation of a written ballot:

- a. Approve Amendments to Lawyers' Fund for Client Protection Procedural Rules
- b. Approve Appointment to Lawyers' Fund for Client Protection Committee (1)
- c. Approve Appointments to Trust Account Responsibilities and Retainers Task Force and Charter
- d. Approve Amendment to the WSBA Policy: Purchase of Alcohol for Bar Functions
- e. Approve Washington State Bar Foundation's Proposed Amendment to Bylaws
- f. Approve Appointment to the WSBA Professionalism Committee (1)
- g. Approve Appointments to the ABA House of Delegates (4)
- h. Approve MCLE Board's Proposed Sponsor Late Fees
- i. Approve MCLE Board's Proposed Amendments to APR 8(e) for submission to the Supreme Court and Related Amendments to Article II Section C.5 of the WSBA Bylaws
- j. Approve MCLE Board's Proposed Amendments to APR 11.6(b) and (c) and APR 11 Regulation 113 for submission to the Supreme Court
- k. Approve (District 2) Appointment to the Disciplinary Board (1)

FISCAL MATTERS – Treasurer Mark Johnson

1. Treasurer Johnson deferred to Governor Lawrence for a review of recommended revisions to the WSBA Investment Policy. After discussion of the possible change to allow investing in offshore markets, Governor Lawrence made a motion to approve the revisions to the investment policy; Governor Berg seconded. The motion passed by a vote of 13-0-0. Governor Baker suggested a future amendment to allow for offshore investments.

2. Governor Johnson briefed the Board on plans for the selection of an investment broker. Governor Olson suggested the need for a conflict of interest policy and will forward one she is aware of from her service on other boards.

3. Governor Johnson reported that the Budget and Audit Committee had approved up to \$17,000 for the printing of the ATJ Board's Impediments Committee Guide "Ensuring Equal Access for People with Disabilities" and brochure. The \$17,000 will be allocated from the contingency fund. The Budget and Audit Committee has asked Deputy Director Paula Littlewood to work with Governor Lonnie Davis to pin down the finances and numbers for the printing.

4. Governor Johnson reported that the Budget and Audit Committee had approved the Access to Justice Board's request to the Supreme Court for 2007 expenditures of the allocated \$100,000.

5. Regarding the move to Puget Sound Plaza in December of 2006, Julie Mass Director of Finance and Administration, walked the Board through the costs of the move. Facilities Committee chair, Ellen Dial, described the logistics of the move.

FACILITIES REPORT – Ellen Conedera Dial, Chair

President-elect and Facilities Committee Chair, Ellen Dial, walked the Board through the planning and floor space allocations for the new building. She noted that an ADA consultant would be used when more details were available on the actual office configurations. She assured the Board that the facility was ADA compliant and that this consultant would provide advice on amenities and other features, which would make the facility more ADA friendly. Dial noted that the Budget and Audit Committee set aside "1% for art" and that this amount would be included in the tenant improvement cost spreadsheet.

PRESIDENT AND GOVERNOR SELECTION TASK FORCE – James Macpherson, Chair

Jim Macpherson reviewed the final report of his task force concerning governor selection. He called attention to the two specific recommendations of the committee: first, regarding the rotation within districts, and second, regarding a process for outgoing governors to recruit their replacement.

Regarding rotations, he noted that Districts 2, 3 and 4 have informal agreements currently and that the problems with rotations are primarily in the 5th District where governors were elected from Spokane and the 6th District where governors were generally elected from Tacoma. He added that the latest committee recommendation now included a “safety valve” in case a required rotation did not result in a governor filing from the required sub-district. Comments and questions concerned rotation in general; how to effectuate a mandated rotation; and how to assure contested elections (assuming elections are an important part of the governing process).

Many governors spoke for their respective districts.

- Governor Berg raised questions about the 2nd District, noting that the new location cycle was very recent and that the numbers were unverified.
- Governor Mungia requested a neutral position on the 6th District in hopes that the districts themselves could work out the best representation. He raised the issue that sometimes personal timing of individual candidates did not meet the goals of geographic representation and again emphasized that the districts could work out a more geographic representation.
- Governor Pontarolo spoke about the 5th District noting that 75% of the district adamantly opposed a mandatory rotation. Though he personally favors rotation for the 5th District, he noted that members may feel it is interference with local politics.
- Governor Anderson spoke on former Governor Hinojos-Fall's points regarding how the required rotations would limit the selection pool.
- Governor de los Santos argued against rotation as a limitation on who could run at any one time.
- Governor Lawrence spoke about the possibility of a re-districting process using state legislative rather than federal congressional districts.
- Governor Wiitala stated that she is in favor of enforced rotation in the 3rd District and that geography should not be an element of diversity for the At-large seats.

- Governor Bastian noted that most of his constituency when polled was lukewarm regarding a mandatory rotation.

Governor Mungia made a motion to adopt recommendation number two outlining outgoing governors' active role in recruiting future governors from their district; Governor Berg seconded. The motion passed by a vote of 12-0-1. Governor Baker abstained.

The debate continued with liaison comments:

- Geoffrey Gibbs, Past-President of the Snohomish County Bar spoke strongly against the new rotation plan for the 2nd District noting that 75% of the lawyers in the 2nd District lived in Snohomish County and the proposed rotation only went to Snohomish County 50% of the time.
- Steve Toole, former governor, pointed out that for some districts, a candidate would have to wait 6-9 years before being eligible to file for governor.
- Colleen Harrington, practicing in Pullman noted that all counties in the 5th District, except Spokane, favored a mandatory rotation in the 5th District.

Governor Olson made a motion to approve the proposed rotation plan as described in the follow-up report with the inclusion of the "safety valve" mechanism; Governor Wiitala seconded.

Governor Mungia made a motion to exclude the 6th District noting that this provision is about member representation, not about the Board of Governors; Governor Pontarolo seconded. The motion to exclude the 6th District was defeated by a vote of 4-8-1; Governors Berg, Lawrence, Mungia and Pontarolo in favor; Governor de los Santos abstained.

Governor Berg cautioned that the proposal as it relates to District 2, was new and needed more review and verification of the numbers. Governor Johnson wondered how mandatory rotation would necessarily gain the desired geographical representation. The motion to adopt a mandatory rotation was defeated by a vote of 2-11-0; Governors Olson and Wiitala in favor.

Governor Lawrence made a motion to request the task force's review of re-districting, but then withdrew the motion upon assurance that the task force would certainly review this possibility in the course of their ongoing work.

DOCTORS' AND LAWYERS' ONGOING PROFESSIONAL DISCOURSE – Dr. Dunbar, WSMA President and Dr. Isaacs, WSMA Past-President

The dialogue opened with the doctors presenting the Washington State Medical Association mission statement: “The object of the Washington State Medical Association shall be to promote the art and science of medicine, to protect and improve the health of the public, and to serve and provide leadership for the membership of this Association, allied health professionals, and the public.”

They noted that the Washington State Medical Association (WSMA) is progressive and strong within AMA leadership and went on to describe the Physicians Health Program (PHP), which is a crown jewel of the WSMA. They noted that WSMA is a voluntary association, but that 70 - 80% of physicians in the State of Washington are members. In describing the WSMA leadership, they noted that the WSMA Board is a House of Delegates styled group of 35 members who meet four times a year and that an executive committee composed of past and present officers meets monthly. WSMA has 20 full-time staff. The following were noted as commonalities among the legal and medical professions:

- Non-licensed practitioner’s issues
- Scope of practice by non-physician health service providers
- Access to care and how to provide services for low income individuals
- Pro bono and the expectation that doctors take care of the poor

The doctors pointed out the uniqueness of the medical profession is that overhead is extremely high, approximately 70% of income must support overhead, and at least four staff per physician. They also reported that 95% of all payments are from 3rd-party insurers. Opinions in WSMA membership varied widely about one party insurance (universal health care model) but there was agreement that the current multiple-insurers system was extremely duplicative and inefficient for everyone. They discussed the economics of medical practice, where Medicare and Medicaid reimbursement rates are less than 50% of overhead costs requiring physicians to maintain a significant number of private insurance patients to meet overhead costs.

They closed with a statement of interest on further collaboration regarding commonalities and the need for “rules of engagement” between the two professions and acknowledged the serious problem with the current state regulation of the medical profession.

WSBA COURT RULES AND PROCEDURES COMMITTEE (INTERIM REPORT) – Dave Swartling, Chair

Suggested General Rule 33 Regarding Accommodation of Persons with Disabilities

Court Rules and Procedures Committee Chair Dave Swartling was joined by Appellate Court Judge Anne Ellington and Deborah Perluss to present the need for General Rule 33. They noted that the proposed GR 33 tracks to the ADA, is endorsed by the Superior Court judges, Superior Court administrators, and the disability community. Governor Johnson made a motion to endorse the rule for transmission to the Supreme Court; Governor Pontarolo seconded. The motion passed by a vote of 13-0-0 with comment that costs to local jurisdictions may be a consideration in implementing the rule.

Proposed Amendment to RALJ 9.3 (a)

Swartling explained that there was a need to make a correction to the recently adopted amendment to the Courts of Limited Jurisdiction Rule 9.3 (a). Governor O'Sullivan made a motion to correct the rule as proposed; Governor Anderson seconded. The motion passed by a vote of 13-0-0.

Citing to Unpublished Opinions

Swartling discussed the ambiguities and differences among the court levels regarding the allowance to cite to unpublished opinions. The federal courts have voted to allow the citing to unpublished opinions after January 2007. The Court Rules and Procedures Committee leans towards a rule allowing citation to unpublished opinions, at least at the appellate level. The Board of Governors advised the rules committee, that they were inclined to support a rule that allowed citation to all unpublished opinions at all court levels. The history regarding unpublished opinions was a logistical distinction unnecessary in modern times.

Civil Rule 45

Civil Rule 45 regards subpoenas, service of subpoenas, and the use of subpoenas. Swartling noted that this was an important rule that would need extensive and careful review before it comes back to Board of Governors in July 2006. The rule as recommended by the Court Rules and Procedures Committee will be e-mailed to all governors for consideration.

Elimination or Restrictions on the Proliferation of Local Rules

Swartling and Colleen Harrington, representing the Litigation section, emphasized the myriad of problems with the proliferation of local rules. The Board of Governors agreed that some concerted action may be warranted and suggested that this matter be discussed by the Court Rules and Procedures Committee with possible recommendations at a future Board meeting.

WSBA'S ADMINISTRATION OF SUPREME COURT CREATED BOARDS – Governors Stan Bastian and Katie O'Sullivan

Governors Bastian and O'Sullivan framed the question for the Board as whether there should be a general rule defining the Supreme Court's intent in requiring the WSBA to administer Supreme Court created boards and whether the suggested Memorandum of Understanding (MOU) with the Access to Justice Board should be executed. A proposed rule, as well as a MOU that has been worked out with the ATJ Board, was proposed. They noted that the ATJ Board was in full agreement with the MOU with one minor edit, but that they did not favor or support a general rule. Dwight Williams appearing by phone reaffirmed the ATJ position against the general rule and endorsement of the MOU. He suggested waiting to see how implementation of the MOU worked before pursuing a court rule.

General Counsel Welden offered that a MOU needed a court rule structure on which to derive the understandings. Governor Bastian pointed out that the general rule would reflect the Supreme Court's interest in this issue. Governor O'Sullivan made a motion to approve the MOU with the edit suggested; Governor Pontarolo seconded. The motion passed by a vote of 12-0-1, Governor de los Santos abstained.

Governor Berg made a motion to propose the recommended general rule to the Supreme Court; Governor Lawrence seconded. The motion passed by a vote of 13-0-0.

BOG MATTERS

A. Consideration of a Statewide GAAP (Greater Access and Accountability Project)

Deputy Director Paula Littlewood explained that the WYLD had proposed an addition of one FTE and a budget of \$80,000 to support expanding the GAAP Program to statewide in their 2006-2007 budget request. When WYLD had presented this suggestion to the ATJ they met with cautions and the following suggestions were offered: (a) data should be collected, and (b) a feasibility study for statewide expansion should be developed. They questioned whether the program really served those in need. Littlewood shared the staff recommendation that for the 2006-2007 budget, funds be included to develop a feasibility study, cost parameters, and the necessary agreements and partnerships before a decision to expand the program is made. She committed to developing this information within the context of the 2006-2007 budget.

B. President's Initiative Advisory Committee (PIAC) Update – President Taylor

President Taylor recapped the current activities of the PIAC noting that the moniker 'Foundations of Freedom' has been adopted. Taylor noted that the current effort is to match a WSBA member with all daily news and radio editors for the purpose of establishing a media network and pursue the need to educate citizens on the 4 tenets of our democracy: rule of law, separation of powers, checks and balances, and judicial independence.

C. Proposed Resolution Requesting the ABA to Develop a Program to Increase Public Understanding of the U.S. Government

The idea of this resolution was developed at the Western States Bar Conference. The concept behind the resolution was passed unanimously by the 17 states present but because the Western States Conference has no organizational status with the ABA, each state bar association committed to adopting their version of this resolution. Washington agreed to take the lead. After WSBA action we will work to have other states join the resolution as sponsors and submit the resolution to the ABA House of Delegates for action. Governor Berg made a motion to adopt the resolution as presented; Governor Anderson seconded. The resolution (as attached) was adopted by a vote of 13-0-0.

D. Minority Bar Liaison Reports

President Taylor reported on the intent in creating a log of minority bar activity participated in by the governors for each Board meeting. The Board requested that the liaison list be corrected and updated to include groups not yet formally created. This feature will be in each Board book.

E. Western States Bar Conference Report – Governor Berg

Governor Berg reported on the workshops and information sharing that had occurred at the Western States Bar Conference in March.

F. Eminent Domain Issue Addressed by Supreme Court Decision in Miller Case

The Supreme Court had recently issued an opinion by a vote of 5-4 concerning notification in an eminent domain case. The decision was highly controversial and the Board discussed whether any public action by WSBA was warranted. The Board recommended that the recent presentation by Scott Osborne, regarding public takings be submitted to the Bar News for possible publication. They also suggested that the WSBA follow up with TVW; i.e. "The Docket" might be interested in featuring the outcome of this case and explaining it.

G. Executive Summary of Draft Statewide Plan and ATJ "Hallmarks"

It was noted that the information placed behind this tab was for informational purposes and required no further explanation.

LAWYER SERVICES DEPARTMENT REPORT – Barbara Harper, WSBA Director

Barbara Harper, WSBA Lawyer Services Department Director and Laura Schroeder, Chair of the Lawyer Assistance Program Committee presented a snapshot of both the activities and programs of the department. Their report featured newly developed posters, each cleverly pointing to one of the WSBA's services for members.

JUDICIAL RECOMMENDATION COMMITTEE REPORT – Tony Miles, Chair and Norma Urena, Vice-Chair (by phone)

JRC Chair Tony Miles Chair and Vice-Chair Norma Urena, both appearing by phone, presented recommendations to respond to Governor Gregoire's request that the Judicial Recommendation Committee be more flexible and timely in screening appellate judicial candidates. The proposal was to increase the number of meetings of the committee per year from two to four, develop an annual meeting schedule so potential committee members know their obligation, and authorize the committee chair to cancel meetings, if warranted. The committee had considered but rejected the idea of increased members or alternate members on the committee and felt that the proposals they were making would meet the need. Governor Mungia made a motion to adopt the recommendations; Governor Anderson seconded. The motion passed by a vote of 13-0-0.

Governor Burke wanted to assure that the motion included the necessary amendments on the criteria sheet as shown in the Board materials and was assured that the motion included these changes.

Miles pointed out the need to eliminate secret balloting on screening votes to avoid the difficulty with identifying individuals and how their votes were cast in the event of a request for review. Miles assured the Board that signed ballots would only be opened in the event of a review request. Governor Berg made a motion to approve the change in procedure; Governor Lawrence seconded. The motion passed by a vote of 13-0-0.

LEGISLATIVE SUMMARY – Gail Stone, WSBA Legislative Director

Legislative Director, Gail Stone, noted that 2006 had been a good session for WSBA's legislative interests. The final state budget was favorable to WSBA's commitments to court funding, legal services, and public defense as laid out in the 'Justice in Jeopardy' package. She also noted that all section bills had passed. Stone will circulate the written summary of her report.

PRESIDENT'S REPORT

By written report only.

PRESIDENT-ELECT'S REPORT

By written report only.

EXECUTIVE DIRECTOR'S REPORT

By written report only.

There being no further business to come before the Board, the Board of Governors meeting was adjourned at 4:55 p.m., Friday, April 21, 2006.

Respectfully submitted,

M. Janice Michels



WSBA
WASHINGTON STATE BAR ASSOCIATION
BOARD OF GOVERNORS

Resolution Requesting the American Bar Association to Develop a Program to Increase Public Understanding of the United States Government

Whereas, an ABA 2005 public opinion poll found:

1. Just over half (55%) of Americans can correctly identify the three branches of government; and
2. Less than half (48%) of Americans can correctly identify the meaning of the concept of separation of powers; and
3. More than one-third of Americans (36%) are unable to correctly identify the principle of checks and balances; and
4. Less than half (48%) of respondents correctly identified the role of the judiciary in the federal government.

Whereas, most states do not include civics or civics concepts in public school curricula; and

Whereas, liberty and our democracy depend on a citizenry that understands and exercises their right to be self governing; and

Whereas, all 16 states of the Western States Bar Conference on March 25, 2006 agreed that educating citizens about their rights and duties in our democracy is an essential national focus;

Now, Therefore, Be It Resolved That:

The WSBA urges the American Bar Association, in cooperation with the judiciary, state and local bar associations and civic groups, to develop and implement an overall national, strategic, research-based framework of sustainable policies, programs and strategies to address and improve (a) public understanding of our system of government; (b) the role each branch of government, particularly the judiciary, plays in our democracy; (c) the significance of separation of powers; and (d) the importance of the rule of law.

Adopted by the Washington State Bar Association Board of Governors on April 21, 2006.

A handwritten signature in cursive script that reads "M. Janice Michels".

M. Janice Michels
Executive Director

