

## MINUTES

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

**Tumwater, WA**  
**January 11, 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 9:50 a.m., on Thursday, January 11, 2007 at the Tumwater Valley Lodge in Tumwater, Washington. Governors in attendance were:

Marcine Anderson  
Russell M. Aoki  
James E. Baker  
Eron Berg  
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

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. Governors Burke and Butler were excused.

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

Meredith Wright Hutchins	Government Lawyers Bar Association
Marc Christianson	Family Law Executive Committee
Erika Lim	Legal Foundation of Washington
Steve Crossland	Real Property, Probate & Trust Section Chair
Pamela McClaran	RPPT Subcommittee Chair
John Rizzardì	Creditor/Debtor Law Section

James Macpherson	WDTL
Anne Seidel	WSBA Director of Lawyer Discipline
Doug Ende (by phone)	WSBA Assistant General Counsel
Chris Sutton	WSBA Professional Responsibility Counsel
John Brangwin	WYLD President
Judge Gordon Godfrey	SCJA
Daniel Gottlieb	ATJ Board
Russ Garrett	Creditor/Debtor Law Section
Bill Hames	Chair, Creditor/Debtor Law Section
Fred Corbit	Creditor/Debtor Law Section
Pamela Grinter	Business Law Section
Barbara Harper	WSBA Director of Lawyer Services
Paula Littlewood	WSBA Deputy Director
Gail Stone	WSBA Legislative Director
Suzanne Kim	Office of the Executive Director, Secretary
Donna Sato	WSBA Executive Assistant

## **INTRODUCTIONS**

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

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

Governor Berg moved to approve the Public Session minutes of December 8 – 9, 2006 subject to the corrections offered by Governor Mungia and General Counsel Welden, Governor Anderson seconded. The motion passed with a vote of 11-0-1. Governor Mungia abstained.

## **REPORT ON EXECUTIVE SESSION**

President Dial reported that in Executive Session the Board approved the December 8 Executive Session minutes; debriefed the December BOG Workshop; received the Litigation and Discipline Docket Reports; discussed a bar admission petition; received the Officers, Legislative, and Executive Director Task Force Reports; and discussed an analysis provided by WSBA antitrust counsel.

## **2007-2008 BOARD MEETING SCHEDULE**

President-elect Bastian introduced the proposed 2007-2008 Board Meeting Schedule.

## **CONSENT CALENDAR**

The recommended appointment of G. Tim Gojio to a three-year term on the Character and Fitness Committee was approved by written consent.

## **GOVERNORS' FORUM**

### Governor Peter J. Karademos

Governor Karademos reported that the Fifth District is currently unrepresented on the Character and Fitness Committee therefore he requested clarification on whether or not a Fifth District appointment was in order. Executive Director Michels will review the composition of the Character and Fitness Committee with staff and respond to Governor Karademos.

### Governor Jason T. Vail

Governor Vail reported that the WYLD will be campaigning to name Seattle the host city for the "Fall-2008 ABA YLD Conference." Governor Vail described the process as highly competitive and suggested that a statement of support from the WSBA would enhance their campaign. Governor Mungia moved, seconded by Governor Davis that the WSBA support the WYLD's efforts in their campaign for the "Fall-2008 ABA Conference" to be held in Seattle. Motion passed unanimously.

### Governor Marcine Anderson

Governor Anderson announced that the WLI's Session I – Leadership Styles and Skills will be held on January 19 at the Cedarbrook, Washington Mutual Leadership Center, in SeaTac. A reception will immediately follow the January 19 session and the Board's presence would demonstrate the WSBA's support.

### Executive Director Jan Michels

Executive Director Michels highlighted the activities and accomplishments of the Justice in Jeopardy initiative commencing with the 2004 report issued under Wayne Blair's leadership through the 2006 gains for civil legal aid and the passage and funding of HB 1542. Michels urged the Board to begin to consider who should carry the WSBA banner by identifying the next

wave of leadership. Michels recommended that the BOG have a sense of its slate of representatives by Spring-2007.

## **LIAISON'S FORUM**

### Meredith Wright Hutchins – Government Lawyers Bar Association

Meredith Wright Hutchins announced that the GLBA had recently donated \$1,000 to the WSB Foundation's LRAP. Hutchins reported that the \$1,000 donation would be matched by the Family Law Section and challenged all WSBA sections to make a donation to this well deserving program.

## **RPC RULE 1.15A – SAFEGUARDING PROPERTY**

President Dial presented background information on this issue, the occurrences that gave rise to the current dialogue, and the process the Board will follow in addressing the issue at this meeting.

WSBA Chief Disciplinary Counsel Anne Seidel, Assistant General Counsel Douglas Ende (by phone), and Professional Responsibility Counsel Chris Sutton raised the following points:

- “Orphaned” wills remain an ongoing and continual problem because of law firm dissolutions, attorneys who abandon their practices, and deceased attorneys.
- The WSBA is required to take custody of original wills which are ultimately filed with the Court under seal at WSBA expense.
- RPC Rule 1.15A went through the normal rule making process.
  - The BOG Ethics 2003 Committee considered this rule at considerable length, the BOG approved the rule, and public comment was received.
- Amending RPC Rule 1.15A at this point would bypass the comment period and/or disregard the rule making process.
- The probability of losing contact with a client is enhanced over time therefore annual reporting is the corresponding requirement that would fulfill the custodial attorney's responsibility.

Overall, WSBA staff recommended the rule as originally submitted.

Steve Crossland, Chair of the Real Property, Probate and Trust Section and Pamela McClaran, Chair of the Subcommittee on Rule 1.15A presented their position in support of the proposed amendment:

- The interpretation of RPC 1.15A clearly demonstrates unintended consequences.
- Does not agree that annual reporting will solve the problems inherent with “orphaned” wills.
- Retention and safeguarding documents is a service to clients and the safest and most efficient way to safeguard property and the “safeguarding” provisions remain unchanged.
- Continued access to original documents and knowledge of where they are located is vital, and that is often lost when the documents are not retained by lawyers.
- If the rule making process is of concern, the Board is reminded that the Court is asking for assistance and will procedurally do what they need to do.

Marc Christiansen spoke on behalf of the Family Law Section by requesting clarification of the documents that require reporting, i.e. a clear definition of property. The Family Law Section further recommends an exemption for reporting during periods of litigation.

Jim Macpherson spoke on behalf of the Washington Defense Trial Lawyers and the Washington State Trial Lawyers Association (in Steve Toole’s stead), in support of the annual reporting of funds, however requested clarification, as well, on the definition of property.

President Dial noted that neither the Ethics 2003 Committee nor the Board of Governors engaged in this level of discussion previously regarding safeguarding property and reporting requirements.

Governors offered the following points:

- Governor Lawrence: Lawyers retain wills as a service to their clients and any benefit gained by requiring annual reporting is outweighed by the burdens it creates.
- Governor Mungia: The current rule imposes additional costs to our members for record keeping, reporting, and the duty to track. It also imposes additional costs to the WSBA to responsibly oversee compliance. The unintentional consequences and additional costs imposed by the current rule are unjustifiable.
- Governor Karademos: Supports annual reporting on funds only, effective September 1, 2006.

- Governor Shea: Received overwhelming support to revise the current rule from his constituents and therefore supports an amendment.
- Governor Vail: Concurs with the concerns raised, however his concern is about the process. Therefore, he does not support any change to the rule without engaging in a complete rule making process.
- Governor Davis: Supports the benefit of annual reporting as it provides the connection between the original will and the attorney.
- Governor Berg: Views disconnect as being between client and document and supports further review by staying the rule in its current form.

Governor Lawrence moved, seconded by Governor Mungia that the WSBA recommend to the Supreme Court that the annual accounting requirement of RPC 1.15A as it relates to documents be stayed, and that the rule be modified to require an annual accounting only for funds. Motion passed with a vote of 8-4-0. Governors Berg, Davis, Vail, and Wiitala opposed.

### **WSBA DIRECTOR'S REPORT – Barbara Harper, Director of Lawyer Services**

WSBA Director of Lawyer Services Barbara Harper presented an overview of accomplishments and a status report on ongoing projects of the department. Harper announced the LaSD 10th Annual Statewide Conference:

- *“Lawyer Services and Young Lawyers Present: Evolution of a Legal Career”*
  - March 23 – 25, 2007, Wenatchee, Washington

Lawyer Services and the WYLD are working together to coordinate and present an exploration of the ever-evolving legal career. In addition, representatives of the ABA Commission on Lawyers Assistance Programs will be in attendance.

### **BOG MATTERS**

#### **Revision to Proposed GR 12.1 – General Counsel Bob Welden**

In response to concerns raised by the Practice of Law Board (POLB) regarding the proposed GR 12.1 currently pending before the Supreme Court, the WSBA antitrust counsel was asked to provide an analysis of the proposed GR 12.1.

Pursuant to recommendation of counsel, an amendment to the proposed GR 12.1 is before the Board for approval. The amendment serves to eliminate the vagueness of the terms “supervising and monitoring” as follows:

~~... supervising and monitoring~~ overseeing the boards and committees and ~~monitoring~~  
~~of their general functions~~ — to monitor their compliance with the rules and orders that  
authorize and regulate them, ...

Governor Berg moved, seconded by Governor de los Santos that the Board approve the amendment to proposed GR 12.1 as recommended.

Daniel Gottlieb, Chair-elect of the ATJ Board, presented the ATJ Board's proposed amendment to proposed GR 12.1 as follows:

~~... supervising and monitoring the boards and committees and monitoring of their~~  
~~general functions ...~~

The ATJ Board contends that its proposed amendment of GR 12.1 is consistent with its recommendation that the Memorandum of Understanding between the WSBA and the ATJ Board be viewed as a model for the clarification of administrative responsibilities for the other boards and committees which are administered by the WSBA.

President-elect Bastian reported that the WSBA's annual budget provides approximately \$400,000 to the ATJ Board in support of its efforts. It is the WSBA's responsibility to manage these funds therefore the amendment as recommended by Welden clearly comports with this Board's intent.

Gottlieb stated the ATJ Board will not oppose proposed GR 12.1 however, their proposed amendment is a friendly suggestion to solve any WSBA antitrust concerns and also addresses the ATJ Board's concerns relating to the phrase "supervising and monitoring."

Governor Berg noted that both funding as well as activities should remain consistent (and in compliance) with the court's order, therefore the language as recommended by Welden should be maintained.

The motion to approve the amendment to proposed GR 12.1 as recommended by Welden passed with a vote of 10-2-0. Governors Karademos and Vail opposed.

### **Executive Director Task Force – S. Brooke Taylor, Chair**

S. Brooke Taylor reported on the work of the Executive Director Task Force and their efforts to screen the candidate pool of 57 applicants. The task force met at considerable length and has identified the top seven candidates. The task force will invite the candidates to interview on January 24 and 25. Upon completion of the interviews, each candidate will be evaluated and a group of 2-4 finalists will be named. The finalists will be invited to interview with the Board, WSBA staff, and special interest groups. These interviews will be held on February 22 and 23.

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

#### **Homestead**

Russ Garrett representing bankruptcy trustees of the Creditor-Debtor Law Section presented his concerns relating to the process followed by the Creditor-Debtor Law Section Executive Committee in introducing proposed legislation to the Board for sponsorship. Garrett reported that proposed legislation to increase the homestead exemption was passed by the Creditor-Debtor Executive Committee without a quorum, and further the proposed legislation was not shared with the subcommittee nor the section membership prior to submission to the Board by the Legislative Committee.

Martin Snodgrass reported that the Executive Committee felt the increase in the homestead exemption could not wait, the process followed is standard process, and the section has never, to his knowledge, taken a general membership poll on any Executive Committee action in the past. Snodgrass confirmed that the initial proposal to raise the homestead exemption was presented to the Executive Committee without a quorum however an e-mail discussion ensued for a period of approximately three weeks. Voting was conducted by e-mail to which 75% was in favor.

John Rizzardi reported that there was substantial e-mail traffic on this issue, the Executive Committee remains sympathetic to the bankruptcy trustees' position, but the Executive Committee is happy with the process it followed.

Fred Corbit addressed the state exemption by noting that the legislature sets the homestead value which is a portion of the value of the house and at its current level of \$40,000 it covers less than one-fifth of the value of homes in the state of Washington. The federal exemption is currently set at \$19,000 per person, or \$38,000 per married couple.

Mike Hitt reported that he was unaware that the section was discussing this issue. His concern is that the Board relied on information that was not dealt with properly and stressed that the intent of the homestead exemption is to provide a “fresh start” not a “head start” and urged the Board to send the matter back to the section for further work.

Governor Mungia shared his concern about the issue which he views as a lack of communication and is troubled by the Board’s action to increase the proposed recommendation to \$125,000 despite the Creditor-Debtor Executive Committee’s recommendation of \$100,000 and the WSBA Legislative Committee’s adoption of that recommendation. Governor Vail, being apprised that the outcome of the vote was 75% is less comfortable in increasing the \$100,000 upward to \$125,000.

Governor Vail moved, seconded by Governor Mungia that the Board adjust its recommendation to increase the homestead exemption to \$100,000 consistent with the original recommendation proposed by the Legislative Committee.

Governor Lawrence related he did not believe the Board’s decision was based on faulty information, the dissent and debate was disclosed, federal bankruptcy law recognizes state exemptions up to \$125,000. Governor Berg stated the Creditor-Debtor Executive Committee followed the required procedures, the Legislative Committee unanimously voted to present its recommendation to the Board for sponsorship, and that the BOG duly considered those recommendations in voting to sponsor the legislation at \$125,000. He recommends the BOG not reconsider its December action.

The motion to adjust the recommendation to increase the homestead exemption to \$100,000 consistent with the original recommendation proposed by the Legislative Committee failed with a vote of 3-8-1. Governors Mungia, Vail, and Wiitala voted in favor. Governor Karademos abstained.

### **Legislative Update**

Legislative Director Gail Stone presented an update on bills supported and sponsored by the WSBA. Stone provided a highlight of the components of Representative Schual-Berke’s campaign finance bill and shared the following on judicial campaigns: a bill to move judicial

faces to the general election process has not yet appeared; and the commission system bill if drafted will get a public hearing. Other legislative activities noted:

- Justice in Jeopardy: Governor Gregoire left the judicial budget intact however she noted a \$55 million savings from the judicial budget as a footnote.
- Dispute Resolution Centers: General fund request.
- Administrative Law Judges: Request for increase in salary ranges.
- BJA: BJA is considering legislation to set a higher standard for disqualification or recusal of a judge in water rights cases.

### **BOG MATTERS (Continued)**

#### **ABA Model Court Rule Regarding Provision of Legal Services Following Determination of a Natural Disaster – General Counsel Bob Welden**

General Counsel Welden provided a status report on his request at the December Board meeting that the WSBA cosponsor a resolution to be submitted to the ABA House of Delegates to adopt the Model Rule on Provision of Legal Services Following Determination of a Major Disaster.

The Board expressed an interest in knowing how such a rule would work if a proposed model rule were adopted in Washington. Director of Regulatory Services Jean McElroy and he discussed the matter and propose that it be part of the Admission to Practice Rules. A draft rule was crafted, however it would be premature to adopt the rule at this time because further study and consideration are needed, in particular with registration requirements.

Governor Davis moved, seconded by Governor Karademos that the WSBA cosponsor the ABA resolution to be submitted to the ABA House of Delegates to adopt the Model Rule on Provision of Legal Services Following Determination of a Major Disaster. Motion passed unanimously.

#### **Practice Regarding Change of Status to Deceased**

Executive Director Michels reported that this matter was deferred to WSBA Staff and the standard practice regarding change of status to deceased is reflected on page 131 of the board book.

### **WSBA Service to Sections**

President Dial noted her encouragement in support of the WSBA's good working relationship with sections. She reported that she has had the opportunity to meet with WSBA staff and welcomes the Board's participation in relation to ongoing issues that should be addressed. Following the presentation at the December meeting by the ELUL Section, the Board requested a description of the services WSBA provides to sections. A report is contained in the board book at page 136. President Dial acknowledged WSBA Director of Member and Community Relations Judy Berrett for the excellent work in her reporting.

### **Sentencing Guidelines Commission Nomination (Defense Bar Position)**

There are two defense bar positions on the Sentencing Guidelines Commission one of which is now vacant. The defense bar positions are recommended by the WSBA, appointed by the Governor, and confirmed by the Senate.

Governor Aoki moved, seconded by Governor Baker that the Board recommend Michael Kawamura to fill a defense bar position on the Sentencing Guidelines Commission to Governor Gregoire for appointment. Motion passed unanimously.

### **Commission on Judicial Conduct (Alternate Position)**

President Dial turned the gavel over to President-elect Bastian because Kathleen O'Sullivan who is a candidate for this appointment is her law partner. Two positions on the Commission on Judicial Conduct are lawyer positions. Each position has a designated alternate. The alternate for Commission member Josephine Townsend is currently open.

Governor Baker moved, seconded by Governor Lawrence to appoint Kathleen O'Sullivan as an alternate member of the Commission on Judicial Conduct. O'Sullivan received 6 votes.

Governor Berg moved, seconded by Governor Anderson to appoint Patricia Paul as an alternate member of the Commission on Judicial Conduct. Paul received 5 votes.

The Board will appoint Kathleen O'Sullivan. The record will reflect that Governor Mungia was excused momentarily from the meeting.

## **NEW BUSINESS**

### **Practice of Law Board – Legal Technician Pilot**

Marc Christiansen representing the Family Law Executive Committee requested that a member of the Family Law Section be appointed to serve on the Family Law Subcommittee (one of four subcommittees being formed by the POLB to review and determine possible areas of practice for the Legal Technician Pilot Project concept).

Governor Berg encouraged the POLB to avoid any disenfranchising and if the Family Law Executive Committee wants a position on the subcommittee then that request should be seriously considered.

Governor Karademos stated that it was his understanding that the POLB would return to the BOG with a proposed pilot project on one subject matter and requested clarification as to whether any member of any of the subcommittees is in opposition to the project.

Steve Crossland stated that it's premature at this point to know the form or practice area of a pilot of non-lawyer practice. There are four subject matters under consideration and a possibility they may return with more than one subject matter. He hopes that subcommittee members support the concept of the legal technician rule, but would critically analyze their subcommittee practice area and make an appropriate recommendation concerning whether or not legal technicians should be allowed to practice in that area.

President Dial asked for an explanation as to when an Executive Session is called by the POLB. Crossland reported that Executive Sessions are called for purposes of discussing complaints filed alleging the unauthorized practice of law which are dealt with as confidential.

## **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 3:10 p.m. on Thursday, January 11, 2007.

Respectfully submitted,

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M. Janice Michels