

MINUTES

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

**YAKIMA, WA
June 9, 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 9:32 a.m., on Friday, June 9, 2006 at the Red Lion Hotel, Yakima, Washington. Governors in attendance were:

Marcine Anderson
James Baker
Stanley Bastian
Eron Berg
Liza E. Burke
Lonnie Davis
Eric C. de los Santos
Mark Johnson
Kathleen O'Sullivan
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 Governors Lawrence, Mungia, Olson, and Pontarolo were excused.

LIAISONS, GUESTS AND STAFF IN ATTENDANCE:

Colleen Harrington	Litigation Section
Steve Toole	WSTLA
Judge Michael Schwab	Legal Foundation of Washington
Judge Stephen M. Brown	Court of Appeals, Presiding Chief Judge
Noah Davis	WYLD President
John Brangwin	WYLD President-elect
Peter Karademos	Family Law Executive Committee and Legislative Committee
John Monter	Criminal Law Section

Dave Swartling	Court Rules and Procedures Committee, Chair
Douglas Ende	WSBA Assistant General Counsel
James Pidduck	Washington State Association of Municipal Attorneys, President
Scott Smith	Equal Justice Coalition, Chair-elect
Ronald R. Ward	Immediate Past-President ABA Delegate
Judge Marlin Appelwick	Council on Public Legal Education
Judge Jim Hutton	Superior Court Judges Association
Jason Vail	WYLD
Geoffrey Gibbs	Snohomish County Bar Association
Dan Gottlieb	ATJ Board
Paula Littlewood	WSBA Deputy Director
Gail Stone	WSBA Legislative Director
Judy Berrett	WSBA Director, Member and Community Relations
Julie Mass	WSBA Director of Finance and Administration
Suzanne Kim	Office of the Executive Director, Secretary
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 April 21, 2006; received the litigation and discipline docket reports; reviewed four reprimands; approved the 2006 WSBA Awards Committee's recommendations; adopted the WYLD at-large governor election process; discussed the UNICO lease, several issues relating to the move, and other financial issues; approved the Office of Disciplinary Counsel's recommendations for Supreme Court appointment of a Conflicts Review Officer; and approved a Lawyers' Fund for Client Protection gift recommendation.

APPROVAL OF THE MINUTES FROM THE APRIL BOARD MEETING

Governor Berg moved to approve the minutes of the April 21, 2006 meeting; Governor Anderson seconded. Several corrections were recorded and the minutes were approved unanimously, as amended.

CONSENT CALENDAR

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

- a. Approve a Lawyers' Fund for Client Protection Recommendation to Co-Sponsor Proposed Amendments to Rules 1 and 10 of the ABA Model Rules for Lawyers' Funds for Client Protection;
- b. Approve Appointments to the Washington Leadership Institute Advisory Board;
- c. Approve an Appointment to the Washington Pattern Jury Instruction Committee; and
- d. Approve Additional Appointments to the Trust Account Responsibilities and Retainers Task Force.

WSBA PRESIDENT 2007-2008 STANLEY A. BASTIAN

Governor Bastian spoke to his vision and aspirations in serving as WSBA President 2007-2008. Bastian hopes to improve communications between the Board and WSBA members through membership participation and involvement. He expressed the importance of continuing the work of former President Ron Ward by fostering the Washington Leadership Institute; and current President Brooke Taylor by promoting the Foundations of Freedom and the need to educate citizens on the four tenets of our democracy.

Governor Johnson moved to declare Stanley A. Bastian as WSBA President 2007-2008, seconded by Governor Anderson. The motion passed unanimously. WSBA President 2007-2008 Bastian thanked the Board for its overwhelming support and expressed his honor in serving the WSBA.

INTERVIEW/SELECTION OF THE WYLD AT-LARGE GOVERNOR

Interviews of the two candidates were conducted: Allison Williams (by phone) and Jason Vail. Following the interviews, governors and liaisons discussed the candidates. The Board then voted by secret ballot. The appointed canvassers certified the election of Jason Vail as the new WYLD At-large Governor.

WYLD ANNUAL REPORT – Noah Davis, President and John Brangwin, President-elect

WYLD Trustees Rachelle Anderson, Jennifer Brugger, Michael DeWitt, Michael Talbott, Chris Veley, Todd Wyatt, and Heather Young were present as WYLD President Noah Davis presented the 2006 WYLD Annual Report. Davis focused on the three areas of priority during 2006 as being membership service, public service, and diversity. Davis concluded by extending his apologies for the misunderstandings concerning the manner in which the WYLD conducted its selection of candidates for the WYLD At-large (BOG) position. Positive changes have since been implemented including a proposed Diversity At-large position on the WYLD Board of Trustees.

President-elect John Brangwin extended his appreciation to the WSBA Board of Governors for their support in promoting the efforts of the WYLD.

COURT RULES AND PROCEDURES COMMITTEE – Dave Swartling, Chair; Roger Wynn, Committee Member; and Douglas Ende, Staff Liaison

1. GR 14.1 Citation to Unpublished Opinions

Chair Swartling presented three proposals regarding a new GR 14.1. The proposals were presented in the order of committee preference. A lengthy discussion transpired:

- Court of Appeals is opposed to any change to the rule;
- Superior Court would like to see all opinions published;
- Courts are concerned with the amount of time it would take to read the unpublished opinions for all cases cited;
- Unpublished opinions lack precedent value; and
- Litigation Section is against citing to unpublished opinions for lack of precedent and the anticipated increase in time for litigants and the courts.

The Court Rules and Procedures Committee will present proposals at the July Board meeting for action including a proposal for no change or action.

2. Proliferation of Local Rules

The Court Rules and Procedures Committee suggested that a task force be created to

address the issue of limiting the proliferation of local rules. It was also suggested that this task force include representation from the Family Law and Litigation Sections. Governor Berg moved, seconded by Governor Davis that a task force be created (subject to review of the feasibility of staff for this effort). The motion passed unanimously by a vote of 10-0-0.

3. CR 45

Chair Swartling introduced the committee's proposed amendment to CR 45 and noted a simultaneous revision to CrR 4.8 is suggested to separately address the issuance of subpoenas in criminal matters. The Court Rules and Procedures Committee will present this proposal at the July Board meeting for action.

WSBA DIRECTOR'S REPORT – Mark Sideman, CLE Director

Mark Sideman, CLE Director reported on several noteworthy occurrences in the CLE Department over the past six months.

1. The mandatory 4-hour orientation requirement for all new admittees is now available.
2. A solo/small firm conference was held in Chelan in May of this year which was sold out. The CLE Department received the best feedback they've received in 25 years concerning this conference.
3. The CLE Department's online presence continues to be enhanced.
4. Working with WSBA sections to promote "brown bag" lunch sessions at no cost is ongoing with a focus on better programs, chairs/faculty, and speakers.
5. Future goals include a CLE legal research component.

President-elect Dial inquired about the CLE Department's posture in anticipation of the Supreme Court's approval of the proposed RPCs in July (which would take effect on September 1). Sideman reported that a Professionalism CLE (3-hour) is ready to present immediately upon approval of the proposed RPCs.

Colleen Harrington, chair of the Litigation Section, spoke in support of the WSBA CLE Department and the great strides and achievements that have occurred under the direction of Mark Sideman. The governors concurred by unanimously applauding Sideman in appreciation.

FISCAL MATTERS – Treasurer Mark Johnson, Deputy Director Paula Littlewood and Finance and Administration Director Julie Mass

Treasurer Mark Johnson reported that the Budget and Audit Committee met on June 8 and directed the governors' attention to the Tenant Improvement Budget (late materials – pages 293a-e). Treasurer Johnson stated that the Budget and Audit Committee voted unanimously to recommend the following items for Board approval at this time:

1. Approval of the construction budget with a 5% cushion factor (i.e., includes authorization of up to 5% over budget);
2. Approval of the consultant and fees budget with a \$5,000 cushion factor (i.e., includes authorization of up to \$5,000 over budget);
3. Approval of the data/voice cabling; WAP; audio/visual/sound system; access control system; and relocate LAP security system portion of the “soft costs/direct tenant costs” budget with a 5% cushion factor (i.e., includes authorization of up to 5% over budget); and
4. Approval of the \$30,000 art budget within the “soft costs/direct tenant costs” budget.

President-elect Dial, chair of the Facilities Committee, expanded by reporting that the Facilities Committee worked with the Budget and Audit Committee consistently throughout the construction budget process and maintained a keen focus on insuring that the construction budget remained consistent and in-line with the budget of this organization. The Facilities Committee concurs that the construction budget is appropriate. Further, the Facilities Committee supports the fixed consultant and fees numbers and concurs they are good numbers. In response to query concerning the need for action on the art budget, President-elect Dial reported that the art budget will provide necessary guidance to the Arts Subcommittee in the commencement of their charge. President-elect Dial concluded by noting that Board approval is requested at this time to allow the WSBA to begin the bid process. Governor Bastian moved, seconded by Governor Wiitala that the Board approve the four items, enumerated above, as recommended by the Budget and Audit and Facilities Committees. The motion passed by a vote of 9-1-0, Governor Anderson against.

Deputy Director Paula Littlewood explained the net negative \$933,374 cited on page 227 of the Budget Summary as spending not from 2007 revenue but from accumulated savings. After adjusting for depreciation, straight line rent, capital labor, and non-capital move expenses (paid from surplus funds); the anticipated net cash flow from 2007 operations is positive by \$104,660.

The WSBA received notice that contribution levels to the Public Employees Retirement System will escalate from 2.44% to 5.47% per employee effective January 1, 2007 with increases expected for each of the next five years. In addition to the increase in PERS contribution levels, the WSBA is faced with consistently increasing employee medical benefit costs. The 2007 budget accommodates an increase in medical benefit costs of up to 10%. The 2007 budget will be before the Board for adoption at its July meeting.

ABA RESOLUTIONS: CIVIL RIGHT TO COUNSEL AND PRINCIPLES OF A STATE SYSTEM FOR DELIVERY OF CIVIL LEGAL AID – Michael Greco, ABA President; Ronald Ward, Immediate Past-President of the WSBA; Scott Smith, Chair-elect of EJC and Deborah Perluss, Northwest Justice Project

Michael Greco, President of the American Bar Association; Ronald R. Ward, Immediate Past-President of the WSBA; Scott Smith, Chair-elect of the Washington State Equal Justice Coalition; and Deborah Perluss, Northwest Justice Project; presented the ABA's request for co-sponsorship of the Resolutions on *Civil Right to Counsel* and *Principles of a State System for Delivery of Civil Legal Aid*.

Deborah Perluss presented history on the development of the Resolution on Civil Right to Counsel by way of ABA President Greco's creation of a presidential task force 10 months ago.

President Greco expanded on what he referred to as the "Civil *Gideon*" as founded on the rule of law however it is nothing more than an empty promise if low income persons are not afforded legal counsel to protect their rights. It is this country's first step in the right direction to establish a civil right to counsel in the following defined categories of cases: shelter, sustenance, safety and health, or child custody. Co-sponsorship by each state will provide the ABA with a strengthened ability to advocate throughout our country.

WSBA Immediate Past-President Ronald Ward reminded Board members of the statistics contained in Washington's Civil Legal Needs Study; and urged co-sponsorship of the ABA's Resolution on the Civil Right to Counsel as a step forward for the state of Washington towards the actualization of the fulfillment of the promise.

Governor Johnson moved, seconded by Governor Bastian that the Board co-sponsor the ABA Resolution on Civil Right to Counsel. The motion passed unanimously.

President Taylor took this opportunity to thank ABA President Greco for his presence. Scott Smith reported that in time, additional basic needs will hopefully be added to the initial core of defined categories. The ABA did a careful job at looking at the needs and continues to study funding questions (i.e., cost for providing counsel vs. not providing counsel); Smith concluded by noting that President Greco remains committed to the creation of what he visualizes to be a permanent research center at the ABA. Scott went on to describe the Washington statewide plan for the delivery of legal services.

Governor Davis moved, seconded by Governor Anderson that the Board co-sponsor the ABA Resolution on Principles of a State System for Delivery of Civil Legal Aid. The motion passed unanimously.

FACILITIES REPORT – Ellen Conedera Dial, Chair

President-elect and Facilities Committee chair, Ellen Dial, announced that the floor plans for the WSBA offices in the Puget Sound Plaza have evolved into construction drawings (which were made available for review). The project is expected to be out to bid in July and a 13-week construction project is anticipated. Dial noted that the Arts Subcommittee has begun its work and are in the process of identifying the public areas for possible art. Dial emphasized that there is no intent to purchase art in one fell swoop, however the Arts Subcommittee has been charged to present a professional and pleasing environment for our members and staff when we open our doors in mid-December and the art budget will serve towards accomplishing this charge. In conclusion, Dial reported that options are being reviewed on the phone system, furniture, and cubicles and a recommendation will be before the Board for action at a future date.

LEGISLATIVE COMMITTEE APPOINTMENTS – Pete Karademos, Legislative Committee Chair and Gail Stone, Legislative Director

Legislative Committee Chair Pete Karademos and Legislative Director Gail Stone presented recommendations for the 2006-2007 Legislative Committee appointments. Both report that the recommendations contain a broad slate of members with two additional appointments scheduled to be made in July. Governor Berg moved, seconded by Governor Davis that the Board approve the recommendations as presented. The motion passed by a vote of 9-0-0. (The record shall reflect that Governor Anderson was excused to attend to the Washington Leadership Institute session).

BOG MATTERS

A. Proposed Juvenile Law Section – Governor Liza Burke

Governor Burke reported on the efforts of Justice Bobbe Bridge and others who spearheaded the formation of a Juvenile Law Section. Burke referred to a 2003 ABA/National Juvenile Justice Association report on juvenile criminal matter deficiencies in support of the need for a juvenile law section. Burke concluded by reporting that the Family Law Section is very supportive of the formation of this proposed section. Pete Karademos concurred and offered the Family Law Executive Committee's support. Governor Burke moved, seconded by Governor Johnson that the Board approve the formation of a Juvenile Law Section.

Several recommendations were offered as amendments to the proposed bylaws as presented. Executive Director Michels suggested that it is very likely section leadership will review and modify the proposed bylaws at the onset of its formation; and the amendments will be before the Board for approval in due course. The motion to approve the formation of a Juvenile Law Section passed by a vote of 8-0-0. (The record shall reflect that Governor de los Santos was excused).

B. Amicus Brief Committee Recommendation – Ehsani, et al. v. McCullough Family Partnership

General Counsel Bob Welden presented the Amicus Brief Committee's unanimous recommendation that the Board authorize the WSBA to file an amicus curiae brief in support of the petition for review in Ehsani, et al. v. McCullough. Discussion transpired on whether or not the conflict of interest introduced by the lower court ruling in this case warranted the filing of an amicus curiae brief. Governor Davis moved, seconded by Governor O'Sullivan that the Board authorize the WSBA to file an amicus curiae brief. The motion passed by a vote of 7-1-0, Governor Baker against.

C. Judicial Information System Committee Appointment

Executive Director Michels described this committee as an oversight committee to the court's automation of access to electronic court information. Further, and of importance, is that this committee establishes the security levels of electronic information and therefore the WSBA representative is looked upon as a strong voice for our membership. It was noted that Marc Lampson and Joseph Lopez are both highly regarded for their technical backgrounds. Dan Gottlieb endorsed Marc Lampson. Governor Bastian moved, seconded by Governor Berg that

the Board appoint Marc Lampson to the Judicial Information System Committee. The motion passed by a vote of 8-0-0.

D. Minority Bar Liaison Reports

Executive Director Michels referred the governors to her report on the June 2 Diversity Event (page 379a of late materials). Governor Davis offered his willingness for assignment as a liaison to a minority bar association.

4th DISTRICT VACANCY (ONE YEAR TERM) – BOG ELECTION

Governor Bastian spoke to the one-year unexpired term that becomes vacant in September 2006 when he is sworn in as President-elect. Governor Johnson supported the possibility of Governor Bastian serving as President-elect as well as simultaneously fulfilling his term as Governor for the 4th District. President-elect Dial spoke against serving in a dual-position for practical and organizational reasons (i.e., workload, overlap, more than is reasonably realistic, the requirement to observe, future planning, and possible conflicts of interest).

Governor Bastian suggested amending the WSBA Bylaws to allow the person who assumes the one-year unexpired term the opportunity to run for another full term.

Governor Berg suggested amending the WSBA Bylaws by moving the 4th District election to 2006. Governor Berg moved, seconded by Governor O'Sullivan that the WSBA Bylaws be amended by moving the 4th District election to Section D 2. (from Section D 3) calling for an election to be run by August 2006 for a full three-year term. The motion passed by a vote of 5-3-0, Governors Bastian, Davis, and Johnson against.

GOVERNORS OPEN FORUM

The *Governors Open Forum* is a new standard agenda item for Board meetings and is intended to provide an opportunity for governors to report on issues of particular interest within their respective districts. President-elect Dial suggested that for future meetings the "open forum" be placed earlier on the agenda when liaisons are more likely to be present.

Governor Berg requested that the budget summary detail be presented in the same format as FY07 (with net cash flow shown for future budgets).

President Taylor reported on the scope of the upcoming BOG Retreat in July and encouraged all governors to begin to seriously consider the future of the WSBA. "Where do we want to be 5-10 years from now?" President Taylor intends to define and identify WSBA programs as follows: mandatory programs, Supreme Court directed programs, and those programs the Board may want to review.

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 4:35 p.m., Friday, June 9, 2006.

Respectfully submitted,

M. Janice Michels