

## MINUTES

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

**Bellevue, WA**  
**March 2 – 3, 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 10:30 a.m., on Friday, March 2, 2007 recessed at 5:18 p.m. and reconvened at 9:00 a.m. on Saturday, March 3, 2007 at the Sheraton Bellevue Hotel in Bellevue, Washington. Governors in attendance were:

Marcine Anderson  
Russell M. Aoki  
James E. Baker  
Anthony Butler  
Eron Berg  
Liza Burke  
Lonnie Davis (March 2, 2007)  
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.

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

Jean Cotton (Friday and Saturday)	Family Law Executive Committee
Steve Toole (Friday and Saturday)	WSTLA
Geoff Gibbs (Friday and Saturday)	Snohomish County Bar Association
Jeff Sakoi	King County Bar Association, Trustee

Gary A. Riesen	WAPA
Judge Michael J. Trickey	Superior Court Judges Association
J. Reiko Callner	State Commission on Judicial Conduct
J.D. Stahl (Friday and Saturday)	Litigation Section
Judge Paul A. Bastine	Practice of Law Board
Caitlin Davis Carlson	Legal Foundation of Washington, Executive Director
Lael Echo-Hawk	Committee for Diversity, Co-Chair
Rick Rasmussen	Committee for Diversity, Co-Chair
Maureen Hart	Attorney General's Office
Greg Dallaire (Friday and Saturday)	ATJ Board
Mark Johnson	Former WSBA Governor
Jim Pidduck	WA State Association of Municipal Attorneys, President
Doug Ende	WSBA Assistant General Counsel
Joan Tierney	WWL, President
John Brangwin	WYLD, President
Thomas Campbell	WACDL
James Macpherson	WDTL
Bill Hyslop	Committee on Public Defense, Co-Chair
Jon Ostlund	Committee on Public Defense, Co-Chair
Christie Hedman	Committee on Public Defense
Ken Davidson	Committee on Public Defense
Ed Holm	Committee on Public Defense
John Strait	Committee on Public Defense
John Rodgers	Committee on Public Defense
Anita Paulsen	Committee on Public Defense
Rafael Gonzales	Committee on Public Defense
Joanne Moore	Committee on Public Defense
Bob Boruchowitz	Committee on Public Defense

George Yeannakis	Committee on Public Defense
Judy Berrett	WSBA Director, Member and Community Relations
Julie Mass	WSBA Director of Administration and Finance
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 JANUARY BOARD MEETING**

Governor Lawrence moved, seconded by Governor Mungia to approve the Public Session minutes of January 11, 2007 subject to the corrections offered by Governor Lawrence. The motion passed with a vote of 12-0-2. Governors Burke and Butler abstained.

## **REPORT ON EXECUTIVE SESSION**

President Dial reported that in Executive Session the Board engaged in discussion regarding a WSBA Editorial Advisory Board/Bar News Editor matter; and received a report from the Executive Director Task Force. Executive Session was recessed and will reconvene at the conclusion of Public Session on Saturday, March 3 to complete its business.

## **CONSENT CALENDAR**

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

- a. Approve Proposed Amendments to the Real Property, Probate and Trust Section Bylaws
- b. Approve Proposed Revisions to Pro Hac Vice motion form
- c. Approve Appointment to the Character and Fitness Board
- d. Approve Appointment to the Civil Rights Committee
- e. Approve Removal of a Member from the Court Rules and Procedures Committee

## **GOVERNORS' FORUM**

### Governor Marcine Anderson

Governor Anderson reported that the Law Clerk Committee intends to submit rule revisions for the Board's review at the Board meeting in June, and will ask for Board action in July.

### Governor Salvador Mungia

Governor Mungia announced the upcoming Pierce County Minority Bar Association Mock Trial that has had 230 high school participants in the past; stressed the importance of governors reporting on their individual diversity efforts to demonstrate that the Board is committed to diversity outreach; and emphasized that the Board needs to follow the newly adopted policy that departing governors form a committee to encourage candidates and the election process in their districts.

### Executive Director Michels

Executive Director Michels announced that the winter bar exam was completed very successfully.

### President Ellen Dial

President Dial presented a status report on the Pipeline Project that received the Board's approval in October 2006. Committee membership appointments are ongoing and a first meeting is planned for April.

## **LIAISON'S FORUM**

### Geoffrey Gibbs – Governor-elect, Second District

Governor-elect Gibbs announced that the Snohomish County Bar Association's Annual Auction is scheduled for March 10. This annual event benefits the Snohomish County Legal Services.

### John Brangwin – WYLD, President

In accordance with WYLD bylaws, the WYLD is looking to fill a newly created At-Large trustee position. Brangwin asked the Board to inform young lawyers about this position and encourage those interested to apply no later than May 1, 2007.

### Gregory Dallaire – ATJ Board

Access to Justice Board member Gregory Dallaire announced that the ATJ Annual Report dated February 2006 has been finalized and copies were available for the Board and will be distributed during the course of this Board meeting.

### J. Reiko Callner – State Commission on Judicial Conduct

J. Reiko Callner welcomed the opportunity to present and answer questions concerning the commission and how it operates to both individuals and organizations. Callner reiterated that the commission is highly accessible to the public for questions they may have.

### Joan Tierney – Washington Women Lawyers

Joan Tierney President of the Washington Women Lawyers reported on the Annual “Celebrate Diversity” event held on March 1, to which 160 individuals confirmed their participation, however due to the bad weather conditions many were unable to attend. Tierney co-chaired the Celebrate Diversity event this year and relayed that she was honored to do so.

### President Ellen Conedera Dial

President Dial announced that ABA President Karen Mathis will be visiting Seattle on April 3 – 5 during which time numerous events are being planned. Her visit will include a WSBA Youth at Risk Summit on April 4 at the Seattle University.

### Jean Cotton, Family Law Section

Jean Cotton, Chair-elect of the Family Law Section Executive Committee reported on the upcoming Annual Skills Training Seminar for new lawyers. She also noted their annual awards program and encouraged the Board to send candidate nominations to the Family Law Section. Governor Karademos shared that the Annual Skills Training Seminar is one of the most enjoyable and educational events to attend.

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

Legislative Director Gail Stone reported that the current legislative session is now at the half way point. Stone referred to the legislative report in the Board book and noted all bar sponsored bills are out of committee and seem likely to pass. The Justice in Jeopardy initiatives are currently going through the budgeting process but some new funding appears likely.

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

Treasurer Berg was pleased to announce that the WSBA received an unqualified and absolutely clean audit for 2006. Audited Financial Statements are contained in the Board book for informational purposes.

Treasurer Berg introduced the proposed WSBA Fiscal Responsibilities Matrix which was approved by the Budget and Audit Committee on March 1 and requested Board approval.

Discussion transpired at which time Governor Butler raised a concern surrounding the Budget and Audit Committee's authority specifically that program expenditures should remain solely within the Board's discretion and authority. Governor Vail questioned whether or not the Budget and Audit Committee had the authority to overrule the Executive Director's recommendations. Treasurer Berg noted that the intent is not to build an appeals process, however the BOG can exercise their budget authority at any time.

President Dial offered that the Budget and Audit Committee is working to make sure when budget documents are reviewed they are transparent and the WSBA Fiscal Responsibilities Matrix supports this goal of transparency.

Governor Lawrence moved, seconded by Governor Karademos that the Board approve the WSBA Fiscal Responsibilities Matrix as recommended by the Budget and Audit Committee. The motion passed with a vote of 13-1-0. Governor Butler voted against.

Treasurer Berg introduced the Budget and Audit Committee Charter for adoption by the Board. Governor Mungia moved, seconded by Governor Lawrence that the Board approve the Budget and Audit Committee Charter as unanimously recommended by the Budget and Audit Committee. Motion passed with a vote of 14-0-0.

Treasurer Berg provided a general outline of the 2007 budget development schedule and concluded by thanking the WSBA staff for their good work in receiving a clean audit report within 60 days which is astounding.

### **ABA REPORT – Paula Boggs, Washington State Delegate**

Washington State Delegate to the ABA, Paula Boggs presented the Board with highlights of action taken at the 2007 ABA Mid-Year.

- The Washington State delegation is one of the most diverse groups nationwide.
- ABA's annual Meeting will be held in San Francisco – reports must be filed by May 9, 2007.

- ABA President Karen Mathis will be visiting in Seattle on April 2 – 5, which is wonderful news for the state of Washington.
- Kathleen Hopkins has been elected to the ABA House of Delegates representing the 18<sup>th</sup> District (representing Washington, Indiana, and Maryland).
- ABA Day in Washington is scheduled for April 18 in Washington D.C.

### **RPC 1.8(e)(1) – DEPARTMENT OF REVENUE PROPOSED NEW REGULATION – Mark Johnson and Bob Mahon**

Former Governor Mark Johnson and Bob Mahon, representing the WSBA Tax Section, presented background information in support of their recommendation that the Board send RPC 1.8(e)(1) back to the Supreme Court with a request for reconsideration of its adoption of the new 1.8(e)(1) in light of the significant unintended consequence described as follows.

RPC 1.8(e) now allows attorneys to be liable for costs advanced in contingency fee cases. The Department of Revenue (DOR) believes that because RPC 1.8(e) has been amended to allow attorneys to be responsible for costs advanced that when those costs are reimbursed, the reimbursement is subject to the State's business and occupation taxes. The DOR's position is that unless the attorney has no responsibility or liability for the costs being advanced, any reimbursement for costs advanced is revenue and as such subject to the business and occupation taxes.

Johnson reported that there appears no dispute that the Board of Governors or the Supreme Court did not consider the tax impact of the rule change, and therefore it was not the intention of the rule change to consider reimbursement of litigation costs and other advanced costs as revenue.

President Dial, immediate past-chair of Ethics 2003, shared that the BOG voted not to adopt ABA Model Rule RPC 1.8(e)(1) however, the Supreme Court chose to adopt the model rule without discussion with the BOG or the Committee.

Governor Berg moved, seconded by Governor Mungia that the Board of Governors request the Supreme Court to reconsider adoption of Model Rule RPC 1.8(e)(1), on an expedited basis, and, further to restore RPC 1.8(e)(1) back to its original form, as previously recommended by

the Board of Governors, in light of the unintentional consequence to the business and occupation taxes.

After further discussion, it was the consensus of liaisons, including Steve Toole and James Macpherson that the current rule was clearly adopted without awareness of the unintended consequence.

Governor Butler urged support of the motion based on the potential harsh impact on solo practitioners, Tom Campbell representing WACDL, concurred.

Doug Ende, WSBA Assistant General Counsel reported that the DOR is taking a very aggressive position, and it very well may be that reversion to the old rule may not be sufficient to alleviate the tax question.

A vote was taken on the motion to request the Supreme Court to reconsider adoption of Model Rule RPC 1.8(e)(1), on an expedited basis, and, further to restore RPC 1.8(e)(1) back to its original form, as previously recommended by the Board of Governors. The motion passed unanimously.

### **COMMITTEE ON PUBLIC DEFENSE – William Hyslop and Jon Ostlund, Co-Chairs**

Co-chair of the Committee on Public Defense Jon Ostlund acknowledged WSBA staff liaisons Jan Michels and Gail Stone for their dedicated efforts and support towards achieving the goals set out in the current CPD Charter.

Ostlund proceeded with providing an overview of the Committee of Public Defense activities and report beginning with the Board of Governors Retreat in 2002, the creation of the Blue Ribbon Panel on Criminal Defense, the recommendations and findings of the Blue Ribbon Panel on Criminal Defense, and the current Committee on Public Defense. Ostlund noted that public defense impacts all phases of the judicial system. He stressed the diversity of committee composition which promoted dialogue between prosecution, defense, the judiciary, and academia which has proven to be a strength to the CPD's work. Each subcommittee chair presented their report.

#### **A. Ken Davidson – Death Penalty Subcommittee Chair**

Ken Davidson, Chair of the CPD Death Penalty Subcommittee provided an overview of the final report of the Death Penalty Subcommittee. Davidson requested the Board's approval of the subcommittee's final report.

Discussion transpired on whether or not the Board was being asked to endorse the report. WSBA Legislative Director Gail Stone clarified that from the legislative perspective the question will be is this report the CPD's recommendation or the recommendation of the WSBA Board of Governors.

Several governors raised concerns relating to providing stakeholders an opportunity to provide input. CPD Co-chair Bill Hyslop asked the governors to review the list of committee members and to recognize the efforts made to have all interest groups actively participate and provide all means to enable all parties to be heard prior to bringing its final report to the Board for approval. Executive Director Michels shared that all members of the CPD were provided with the report and were invited to attend today's meeting.

Stone provided that there is a death penalty study bill currently in the legislature and the legislative deadline creates some pressure to get Board approval on the death penalty final report. Ostlund noted that the final report of the Death Penalty subcommittee has a wealth of information that could be forwarded to the legislature.

Governor Mungia was concerned about endorsing the whole report, without more deliberation, as the WSBA's position.

Governor Berg moved, seconded by Governor Anderson that the Board approve the Death Penalty Subcommittee's recommendation #6 that a separate task force be created by the legislature dedicated to a multi-disciplinary examination of the death penalty. The motion passed unanimously.

Governor Baker moved, seconded by Governor Davis that the Board adopt the final report of the Death Penalty Subcommittee as the position of the WSBA including all recommendations.

Several governors felt more time was needed to completely review the final report of the Death Penalty Subcommittee as well as provide constituents with communication and the opportunity

to comment on the CPD report as a whole. Governor Berg moved, seconded by Governor Mungia that the motion to adopt the final report of the Death Penalty Subcommittee including all recommendations be postponed until the April Board meeting.

Discussion continued. Governor Burke who serves as one of the BOG Liaisons to the CPD (along with Governor Aoki) reported that she is comfortable with accepting the Death Penalty Subcommittee's final report at this meeting, however if delaying adoption of the report would result in a unanimous adoption at a later date, then she would support a postponement.

Legislative Director Stone assured the Board that there are ways to use the data contained in the report without an official delivery of the report.

A vote was taken on the motion to adopt the final report of the Death Penalty Subcommittee including all recommendations be postponed until the April Board meeting or other time certain. The result was 7 governors in favor and 7 governors against. President Dial voted in favor based on the likelihood of a unanimous position if action were postponed.

**B. Bill Hyslop – Education Subcommittee**

Bill Hyslop presented the Final Report of the Education Subcommittee in Marc Boman's absence. Boman chaired this subcommittee.

**C. George Yeannakis – Juvenile Defense/Representation Subcommittee**

George Yeannakis Chair of the Juvenile Defense/Representation Subcommittee presented the subcommittee's final report to the Board which included a presentation of the proposed JuCR7.15 Waiver of Right to Counsel.

**D. Joanne Moore – Standards Subcommittee**

Joanne Moore Chair of the Standards Subcommittee presented the subcommittee's final report to the Board noting that the caseload standards are on hold until early summer but that the WSBA will ultimately adopt both the non-caseload and caseload recommended standards.

**E. John Strait – Non Legislative Fixes Subcommittee**

John Strait Chair of the Non Legislative Fixes Subcommittee presented the subcommittee's final report to the Board including recommended court rules.

**F. Bob Boruchowitz – System Efficiencies and Legislative Changes Subcommittee**

Bob Boruchowitz, Chair of the System Efficiencies and Legislative Changes Subcommittee presented the subcommittee's final report to the Board including a proposed two-track system for contempt of court proceedings, a proposed Resolution in Support of Diversion Programs, as well as a proposed Resolution Re: Right to Counsel.

Co-Chair Jon Ostlund presented the CPD's Resolution Establishing a System for Providing Statewide Public Defense and the Proposed Extended Charter.

**RECESS**

The Board of Governors meeting was recessed at 5:18 p.m., and reconvened at 9:00 a.m. on Saturday, March 3, 2007. Governor Davis was excused.

**BOG MATTERS**

**Local Rules Task Force – Lish Whitson, Co-Chair**

President Dial presented a brief report on the status of the Local Rules Task Force and introduced Lish Whitson, Co-Chair of the task force.

Whitson reported that Justice Charles Johnson has tentatively agreed to Co-Chair this effort and presented a history on the attempts to curtail the proliferation of local rules over the past 12 years. Whitson noted that Justice Johnson remains skeptical about the review process unless there is a buy-in from Superior Court judges.

Governor Butler shared his thoughts and suggested that the proposed Charter of the Local Rules Task Force may be problematic. Executive Director Michels suggested toning down the language of the proposed Charter. Governor Vail reported from an access to justice standpoint, the difficulty faced by unrepresented litigants adds yet another layer of difficulty. Governor Mungia suggested politically massaging the proposed Charter would be a worthwhile endeavor and also suggested the appointment of a lay person to the task force.

President Dial suggested that the Board approve the preliminary roster of the Local Rules Task Force allowing a first meeting with Justice Johnson to develop a preamble, scope, timeline, and categorize membership of the task force. Governor Mungia moved, seconded by Governor Lawrence that the Board approve the preliminary roster of members of the Local Rules Task Force. Motion passed with a vote of 13-0-0.

Discussion transpired on the composition of the task force. Whitson cautioned the Board that a task force that is too large may prove to be inefficient. Governor Mungia moved, seconded by Governor Butler that Co-Chair Whitson, President Dial, Executive Director Michels, and Governor Mungia work on a revised Charter and roster for presentation at the April Board Meeting. Motion passed with a vote of 13-0-0.

### **The Defender Association Board of Directors – Appointments (2)**

Governor Lawrence moved, seconded by Governor Mungia that the Board appoint Phillip Ginsberg to a two-year term on the Defender Association Board of Directors. Motion passed with a vote of 12-0-1. Governor Burke abstained.

Governor Anderson moved, seconded by Governor Vail that the Board appoint Anita Crawford-Willis to a three-year term on the Defender Association Board of Directors. Motion passed with a vote of 12-0-1. Governor Burke abstained.

### **Washington State Court Interpreter Certification Advisory Commission – Nomination (1)**

Governor Mungia moved, seconded by Governor Butler that the Board nominate Daniel C. Blom; Governor Vail moved, seconded by Governor Shea that the Board nominate Leticia Camacho; Governor Anderson moved, seconded by Governor Aoki that the Board nominate Mafe Rajul for appointment by the Supreme Court to serve the remainder of a three-year term (through September 30, 2008). Leticia Camacho received 11 votes and will be nominated to the Supreme Court for appointment.

### **APR 1 Amendment re: Immunity and Exoneration from Liability**

General Counsel Welden requested that this matter be deferred until the April Board meeting.

### **NEW BUSINESS**

Governor de los Santos presented a Disability Resolution on behalf of the BOG Diversity Committee. Governor de los Santos reported that it is the committee's intent to bring issues faced by attorneys with disabilities to the forefront and the Board's adoption of the proposed resolution will reaffirm WSBA's commitment.

Governor Butler moved, seconded by Governor Mungia that the Board adopt the Disability Resolution as presented. Governor Baker recommended an edit to paragraph number 7 by deleting the word "erroneously." Governor Lawrence moved, seconded by Governor Karademos that the Board adopt the proposed resolution however paragraph number 7 be returned to the committee for review with the suggestion that the word "erroneously" be deleted. The motion passed with a vote of 9-3-1. Governors Anderson, Butler, and de los Santos against. Governor Berg abstained.

A vote was taken on the motion that the Board adopt the Disability Resolution as presented. The motion passed with a vote of 13-0-0.

### **COMMITTEE FOR DIVERSITY REPORT – Rick Rasmussen and Lael Echo-Hawk, Co-Chairs**

Committee for Diversity Co-Chairs Rick Rasmussen and Lael Echo-Hawk were joined by WSBA Diversity Advocate Joslyn Donlin to present their report to the Board. Events for the year were highlighted and Rasmussen and Echo-Hawk thanked the Board for the support the committee has received from the WSBA. Echo-Hawk acknowledged the strengthened relationship between the WSBA, the Committee for Diversity and the minority bars.

President Dial thanked Co-Chairs Rasmussen and Echo-Hawk for their efforts and for taking time out of their schedules to present their report to the Board.

**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 11:00 a.m. on Saturday, March 3, 2007.

Respectfully submitted,

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M. Janice Michels