

## MINUTES

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

**Tulalip, WA  
July 24-25, 2009**

The Public Session of the Washington State Bar Association Board of Governors was called to order by President Mark Johnson at 9:45 a.m. on Friday, July 24, 2009, at the Tulalip Resort in Tulalip, Washington. Governors in attendance were:

Russell M. Aoki  
Brian L. Comstock  
Loren S. Etengoff (Friday only)  
G. Geoffrey Gibbs  
Anthony D. Gipe  
Lori S. Haskell  
David S. Heller  
Peter J. Karademos  
Carla C. Lee  
Catherine L. Moore (Saturday only)  
Patrick A. Palace  
Brenda Williams

Also in attendance were President-elect Salvador Mungia, Executive Director and Meeting Secretary Paula C. Littlewood, and General Counsel Bob Welden. Governors Butler and Shea were not present for the meeting.

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

Ronald Ward	ABA WSBA Delegate
Deborah Perluss	ABA WSBA Delegate
Greg Dallaire	Access to Justice Board
Jeff Hall	Administrative Office of the Courts
Howard Goodfriend	Attorney
Chori Folkman	Juvenile Law Section Executive Committee
Paul Fjelstad	Kitsap County Bar Association, President
Dick Manning	LAW Fund, President
Caitlin Davis Carlson	Legal Foundation of Washington, Executive Director
Michele Radosevich	Legal Foundation of Washington, Secretary

Robert Severns	Limited Practice Board, Chair
Jean Cotton	Local Rules Task Force, Member
Lish Whitson	Local Rules Task Force, Chair
Steve Crossland	Planning Ahead Committee, Chair
Melvin Sheldon, Jr.	Tulalip Tribal Chairman
Gary Riesen	Washington Association of Prosecuting Attorneys
The Honorable Marlin Appelwick	Council on Public Legal Education, Co-Chair
James Macpherson	Washington Defense Trial Lawyers Association
Steve Toole	WSBA President-elect 2009-2010
Lee Kerr	WSBA BOG-elect, District 4
Roger Leishman	WSBA BOG-elect, District 7W
Marc Silverman	WSBA BOG-elect, District 1
Ken Masters	WSBA Court Rules and Procedures Committee, Chair-designate
Todd Nunn	WSBA Court Rules and Procedures Committee, ESI Subcommittee Chair
Roger Wynne	WSBA Court Rules and Procedures Committee, Chair
Tom Fitzpatrick	WSBA Litigation Section
Julia Bahner	WSBA WYLD, President-elect
Jaime Hawk	WSBA WYLD, President
Kari Petrsek	WSBA WYLD, Trustee
Michael Heatherly	WSBA <i>Bar News</i> , Editor
Steve Larsen	WSBA Deputy Director, External Relations
Julie Mass	WSBA Deputy Director, Finance & Administration
Judy Berrett	WSBA Director, Member & Community Relations
Doug Ende	WSBA Chief Disciplinary Counsel
Mark McDonald	WSBA Director, Information Technology
Jean McElroy	WSBA Director, Regulatory Services
Mark Sideman	WSBA Director, Continuing Legal Education
Gail Stone	WSBA Director, Justice & Diversity Initiatives
Elizabeth Turner	WSBA Assistant General Counsel
Chach Duarte White	WSBA Diversity Program Manager
Pam Inglesby	WSBA Public Legal Education Manager
David Powell	WSBA Professional Responsibility Counsel
Emily Robinson	WSBA Events Coordinator
Margaret Shane	WSBA Executive Assistant

## **WELCOME AND INTRODUCTIONS**

Officers, Governors, liaisons, guests, and staff introduced themselves. President Mark Johnson welcomed the Board and everyone in attendance to the Tulalip Resort in Tulalip, Washington.

## **APPROVAL OF MINUTES**

The Minutes of the May 29, 2009, Public Session were deemed approved by consensus.

## **REPORT ON EXECUTIVE SESSION**

President Johnson reported that in the Executive Session, the Board received the Litigation Report, the Discipline Report, and the Executive Director's Report. In addition, he advised that the Supreme Court has decided to table the Legal Technician program for one year.

## **EXECUTIVE DIRECTOR'S REPORT – Paula Littlewood**

Executive Director Littlewood reported that: (a) the *mywsba.com* website will be online by October 15 and will include member licensing and CLE reporting; (b) she and President-elect Mungia attended a meeting of the Law Society of British Columbia; the Law Society had requested information regarding how the WSBA's regulatory system works; (c) the WSBA job seekers group, run by the Lawyer Services Department, is increasing to five groups in the weekly sessions with a consistent 15-20 members attending the monthly group, an indication that the WSBA members are feeling the pressure of the economic downturn; (d) the Home Foreclosure Legal Aid Project (HFLAP) press conference generated extensive media interest, over 360 attorneys have now signed up to volunteer and enhanced efforts are currently being made to educate the public about the program; (e) an extensive report on the membership survey, which was based on one the American Bar Association conducted on a national level, can be found in the meeting materials; the local survey resulted in similar concerns to the national trends, the escalating cost of litigation being the number one concern nationally and the number two concern in Washington; a task force will be formed to study this concern and decide what the WSBA can do to address this issue; and (f) everyone in attendance is invited to the lunch, as well as the reception at 5:30 with the local bar members and judges where three local hero awards will be presented.

## **CONSENT CALENDAR**

The Consent Calendar was approved by circulation of a written consent form.

- a. Appointment to Hearing Officer Selection Panel
- b. Chief Hearing Officer Start Date
- c. Presidential Correspondence to Federal Trade Commission re “Red Flag” Rule

## **COURT RULES AND PROCEDURES (RULES) COMMITTEE REPORT – Roger Wynne, Chair; Ken Masters, Chair-designate; Todd Nunn, ESI Subcommittee Chair; and Elizabeth Turner, Assistant General Counsel**

Chair Wynne introduced Ken Masters as having been appointed (subject to Board approval) by President-elect Mungia as next year’s Chair of the Rules Committee and noted that Todd Nunn will address the Board on the Electronically Stored Information (ESI) agenda item, which is on for first reading. Chair Wynne informed the Board that the Committee is recommending what the WSBA should report to the Supreme Court and noted that those materials could be divided into three sections: non-controversial recommendations that the Committee agreed to by consensus; Washington Association of Prosecuting Attorneys (WAPA) recommendations which the Committee was divided upon and took no vote; and first-reading materials on ESI and discovery matters related to ESI.

Chair Wynne then referred the Board to the memo contained in the meeting materials listing the Committee’s activities for this year and noted that next year’s cycle will focus on the criminal rules. He explained that one item not in the materials is a 2008 WSBA proposal for a new criminal subpoena rule, which was sent back to the WSBA by the Supreme Court and which the Committee will bring to the Board with a recommendation at a later date.

## **Recommendations – Roger Wynne, Chair; and Ken Masters, RAP Subcommittee Chair, and Rules Committee Chair-designate**

Governors Haskell and Moore were not present for the votes in this portion of the meeting.

Chair Wynne and Chair-designate Masters informed the Board that the Committee recommends the Board approve the following court rules amendments and submit them to the Supreme Court for consideration:

- RAP 5.2(a) and (b): setting a deadline for filing a motion for discretionary review when a motion for reconsideration is pending; and RAP 12.5(b): clarifying the timing of the court’s issuance of a mandate when a party has filed a motion to publish the court’s

decision. Governor Karademos moved, seconded by Governor Lee, to approve the Committee's recommendation to approve the suggested amendments for submission to the Court. Motion passed unanimously with a vote of 10-0-0.

- ER 1101(c)(3): clarifying that certain juvenile court hearings are exempt from the Rules of Evidence. Governor Lee moved, seconded by Governor Comstock, to approve the Committee's recommendation to approve the suggested amendments for submission to the Court. Motion passed unanimously with a vote of 10-0-0.
- CR 43(a)(1): mirroring a federal rule allowing testimony by contemporaneous transmission where appropriate. Discussion ensued regarding further clarification, with concern expressed that this would make it too difficult for judges to allow telephonic testimony and a request that "compelling circumstances" be more clearly defined. Chair Wynne noted that the Committee decided it is a high standard and they wanted to ensure that it is an option since there is currently a Washington State Court of Appeals Division III opinion that says trial courts may not allow telephonic testimony without the consent of both parties. Chief Disciplinary Counsel Ende expressed his concern that the "compelling circumstances" standard is too high; under the Rules for Enforcement of Lawyer Conduct, the Civil Rules are looked to for procedural guidance, and this proposal could restrict the availability of telephonic testimony in disciplinary hearings, a context where it is relied upon frequently. Governor Gibbs moved, seconded by Governor Lee, to approve the Committee's recommendation.

Further discussion ensued with Mr. Macpherson of the Washington Defense Trial Lawyers Association (WDTL) requesting that the Board obtain more information before rushing into a decision because, at this point, it is unsure how the rule will be applied. Chair Wynne was asked if this was a unanimous recommendation of the Committee and he replied in the affirmative. Governor Heller moved, seconded by Governor Gipe, to table until the September Board meeting in the hope that the Rules Committee could present more details on the federal standard at that time. Motion passed 8-2-0. Governors Karademos and Williams opposed.

- MAR 3.2, 6.3, 6.4, and 7.1: responding to the Supreme Court's and the Board's request to reexamine the proposed amendment to certain procedural requirements for filing a request for a trial *de novo*, including making amendments to related rules. Chair Wynne noted that there have been no changes to MAR 3.2 since the July 2008 Board meeting, that there is no confusion about the arbitrator's authority to award attorneys' fees and

costs, with a clear dividing line between the court and the arbitrator, and that arbitrator fee awards are clearly authorized. The proposed amendment to MAR 6.3 is new in 2009, explaining how to know when to go to court to get money owed, with the time period referenced in MAR 7.1. MAR 6.4 encourages prompt resolution of requests for fees and costs. Governor Karademos moved, seconded by Governor Gipe, to approve the Committee's recommendation.

Discussion ensued regarding updating and receiving input from all stakeholders concerned, fairness to litigants who might be denied attorneys' fees because the arbitrator hasn't done their job, and the tightness of the proposed time frames. Governor Palace moved, seconded by Governor Lee, to table the slate of four proposed amendments. Motion passed 8-2-0. Governor Karademos and Williams opposed. The Board directed Chair Wynne to bring back a recommendation that takes into account the concerns raised about fairness and tight timeframes.

Chair Wynne noted that the following items are all consensus Rules Committee recommendations to the Board. The first set of recommendations regard various amendments proposed by the Office of Public Defense (OPD), which the Committee recommends the Board endorse, albeit with some modifications to improve clarity and consistency. Chair-designate Masters then brought the Board's attention to the details of the OPD proposals, all of which are to amend the Rules of Appellate Procedure.

- RAP 5.3 and 15.2, and Forms 12, 12A, and 13: clarifying the procedures for determining indigence for purposes of appeal. Rules Committee modifications to OPD's suggested amendments are purely technical, not substantive, and OPD agrees with the modifications pending approval by the Board, therefore, the Rules Committee recommends endorsement with modifications. Governor Williams moved, seconded by Governor Karademos, to approve the recommendation to endorse with modifications. Motion passed unanimously with a vote of 10-0-0.
- RAP 6.2: ensuring that appointed appellate counsel have adequate time to prepare a motion for discretionary review after appointment by the Court of Appeals. The Rules Committee recommends endorsement. Governor Karademos moved, seconded by Governor Lee, to approve the Committee's recommendation to endorse. Motion passed unanimously with a vote of 10-0-0.

- RAP 9.2: clarifying that closing argument may be transcribed at public expense without specific authorization by the trial court. The Rules Committee recommends endorsement with the suggested modification to set out the text of section (b) for reference. Governor Lee moved, seconded by Governor Karademos, to approve the Rules Committee's recommendation to endorse with modifications. Motion passed unanimously with a vote of 10-0-0.
- RAP 15.5: extending the time for determining claimed expenses from 10 days to 15 days. The Rules Committee recommends endorsement. Governor Williams moved, seconded by Governor Lee, to approve the Rules Committee's recommendation to endorse. Motion passed unanimously with a vote of 10-0-0.

Chair-designate Masters then brought the Board's attention to the Committee's consensus recommendations regarding the Washington Appellate Lawyers Association (WALA) proposed amendments.

- RAP 9.6(c): encouraging court clerks to number and compile clerk's papers in electronic format. The Rules Committee recommends endorsement with modifications. Governor Karademos moved, seconded by Governor Gibbs, to approve the Rules Committee's recommendation to endorse with suggested modifications. President Johnson declared the motion passed by consensus.
- RAP 11.3: codifying the process for seeking recusal of appellate judges. The Rules Committee recommends endorsement with suggested additional amendment to RAP 17.2(a). Governor Karademos moved, seconded by Governor Palace, to approve the Rules Committee's recommendation to endorse with suggested additional amendment. President Johnson declared the motion approved by consensus.
- RAP 18.1(h): clarifying that an award of fees and costs on appeal is a sum certain on which prejudgment interest should accrue. The Rules Committee recommends endorsement. Governor Karademos moved, seconded by Governor Gibbs, to approve the Rules Committee's recommendation to endorse. President Johnson declared the motion approved by consensus.

Chair-designate Masters then brought the Board's attention to the Committee's consensus recommendations regarding amendments proposed by a group of experienced *amici curiae* counsel.

- RAP 10.2(f): lengthening the time to file an *amicus curiae* brief; and RAP 10.6(d): shortening the time to object to a motion to file an *amicus curiae* brief from five days to two days. The Rules Committee recommended opposing both proposals; in particular, the time to object is too short. President Johnson declared the Rules Committee's recommendations approved by consensus.

Chair Wynne then brought the Board's attention to the Committee's consensus recommendation regarding the proposal made by Alan Parmalee.

- Various CRs: suggesting categories of amendments to address the process by which courts process Public Records Act cases. The Rules Committee recommended opposing the proposal as it is not appropriate to tailor general court rules to a particular statute, and this proposal is better directed to the Legislature. President Johnson declared the Rules Committee's recommendation approved by consensus.

Chair Wynne then brought the Board's attention to the Committee's recommendations regarding various proposed amendments from the Washington Association of Prosecuting Attorneys (WAPA). He noted that the Committee was unable to reach consensus on these proposals and reported the Committee's vote on each recommendation. He also noted the Rules Committee's gratitude for the assistance of Seth Fine, an assistant prosecutor in Snohomish County, and Eric Broman, who is in private practice, both of whom are very well known counsel on criminal appeals.

- RAP 2.2(a)(10) and (11): eliminating an appeal as a matter of right for a defendant whose CrR 7.8 motion to vacate judgment is denied. The Rules Committee recommends opposing this proposal. Governor Gibbs moved, seconded by Governor Lee, to approve the Rules Committee's recommendation to oppose. President Johnson declared the Rules Committee's recommendation approved by consensus.
- RAP 2.2(b)(5): granting the state the ability to appeal a pre-sentencing withdrawal of a guilty plea as a matter of right. The Rules Committee recommends endorsing this proposal. Governor Heller moved, seconded by Governor Gibbs, not to adopt the Rules Committee's recommendation to endorse. Motion passed 9-0-1. Governor Karademos abstained.
- RAP 2.2(b)(6) and (7): allowing the state to appeal sentences that are unauthorized or omit a required provision. The Rules Committee recommends endorsing this

proposal with stylistic modifications. Governor Gibbs moved, seconded by Governor Palace, to approve the Rules Committee's recommendation to endorse with stylistic modifications. Motion passed 9-1-0. Governor Williams opposed.

- RAP 12.3: requiring the clerk of the appellate court to transmit a copy of a decision terminating review in a criminal case directly to the defendant. The Rules Committee recommends opposing this proposal. Governor Gibbs moved, seconded by Governor Etengoff, to approve the Rules Committee's recommendation to oppose the proposal. Motion passed unanimously with a vote of 10-0-0.
- RAP 14.3: specifically enumerating fees paid for court-appointed counsel (as authorized by RCW 10.73.160) among the items that may be awarded as costs when the state prevails in an appeal. The Rules Committee recommends opposing this proposal. Governor Gibbs moved, seconded by Governor Gipe, to approve the Rules Committee's recommendation to oppose. Motion passed unanimously with a vote of 10-0-0.
- RAP16.15(h): directing litigants to RCW 10.73.150, which governs the appointment of counsel at public expense in personal restraint petitions. The Rules Committee recommends endorsing this proposal. Governor Karademos moved, seconded by Governor Comstock, not to approve the Rules Committee's recommendation to endorse. Motion passed unanimously with a vote of 10-0-0.
- RALJ 2.2(c)(2)(b): allowing the state to appeal an order suppressing evidence under certain circumstances. The Rules Committee recommends opposing this proposal as there are concerns it may lead to unintended consequences and the State has other satisfactory options. Governor Heller moved, seconded by Governor Williams, to approve the Rules Committee's recommendation to oppose. Motion passed unanimously with a vote of 10-0-0.
- RALJ 2.2(c)(5): granting the state the ability to appeal a pre-sentencing withdrawal of a guilty plea as a matter of right. The Rules Committee recommends endorsing this proposal. Governor Heller moved, seconded by Governor Gipe, to not approve the Rules Committee's recommendation to endorse. Motion passed unanimously with a vote of 10-0-0.
- RALJ9.3(c): specifically enumerating fees paid for court-appointed counsel (as authorized by RCW 10.73.160) among the items that may be awarded as costs when the state prevails in an appeal. The Rules Committee recommends opposing this proposal. Governor Gipe moved, seconded by Governor Lee, to approve the Rules

Committee's recommendation to oppose. Motion passed unanimously with a vote of 10-0-0.

- RALJ 10.2(a)(2): establishing a procedural mechanism for obtaining an involuntary dismissal of an appeal for want of prosecution. The Rules Committee recommends opposing this proposal. Governor Lee moved, seconded by Governor Gipe, to approve the Rules Committee's recommendation to oppose. Motion passed 9-1-0. Governor Gibbs opposed.

### **Electronically Stored Information (ESI) Amendments – Roger Wynne, Chair; and Todd Nunn, ESI Subcommittee Chair**

Chair Wynne referred the Board to the information in the meeting materials, noting that this item is for "first reading" on the July Board agenda and that he and Subcommittee Chair Nunn would be back before the Board at its September meeting with recommendations for Board action.

He reminded the Board that, at the end of last season, the Committee proposed an amendment to track the federal rules that provided a "claw back" provision to CR 26 and CR 45. He noted that this is not specific to ESI, but is part of the same federal rule amendments that speak to what happens when a party inadvertently reveals confidential information and provides a mechanism for what must be done once confidential information has been inadvertently disclosed. There was broad consensus that this made sense, and the Board voted to submit the amendment to the Supreme Court, which published the proposal for comment. Two comments were received on the language of the proposals and the Court has asked the WSBA to respond to those comments. Because the Rules Committee does not meet again until after the Court's October 15 deadline, Chair Wynne asked the Board for guidance on how to advise the Board. He then suggested putting together a working group from the Rules Committee to return to the Board with a proposal in September. President Johnson noted that there were no objections.

Chair Wynne drew the Board's attention to the proposed new ER 502, which mirrors a new federal rule that provides substantive standards to determine disputes over the existence and scope of an inadvertent waiver of privileged material.

Subcommittee Chair Nunn then referred the Board to the information in the meeting materials and explained the background, procedures, and modifications to CR 26, CR 33, CR 34, CR 37,

and CR 45, all regarding discovery of ESI. Discussion ensued regarding clarification and suggestions were made regarding rewording and location within the Rules.

### **GOVERNORS' FORUM**

Governor Lee referred the Board to her memo in the meeting materials regarding the Minority Bar Associations (MBA) Liaison Report and noted that she had no further comments on the information provided.

### **LIAISONS' FORUM**

The Honorable Marilyn Paja, liaison and Immediate Past President for the District and Municipal Court Judges Association (DMJCA), thanked the Board and the WSBA staff working with the DMJCA and their Diversity Committee to establish a *pro tem* training program, as well as the work Chief Disciplinary Counsel Doug Ende has done on RPC 8.5, which is now at the Supreme Court waiting approval.

### **WASHINGTON YOUNG LAWYERS DIVISION (WYLD) REPORT – Jaime Hawk, President**

President Hawk thanked the Board for receiving her report and introduced the WYLD President-elect, Julia Bahner, and Trustee Kari Petrasek. She then referred the Board to the information in the meeting materials and highlighted several of the WYLD's programs and activities: the first Young Bar Leaders Summit; adoption of the WYLD Diversity Plan; the initiation of a Task Force focusing on internal review with three subcommittees – public service and pro bono, transition into the practice, and young and new lawyer representation and outreach; and the receipt of three sub-grants this year as a result of participating in the ABA Young Lawyers Division. In addition, WYLD President Hawk announced a pro bono CLE and fair on October 30 during ABA Pro Bono Week, and noted that the WYLD is thrilled about the vote in May by the Board to develop a state-wide moderate-means program. She also noted that the Family Law Section is very supportive of the Greater Access and Assistance Project (GAAP) and has offered a couple of free family law CLEs if the participant signs up for GAAP as well. WYLD President Hawk concluded by thanking Governors Williams and Gipe, and Diversity Program Manager Chach Duarte White, for attending the recent WYLD Diversity Meeting.

### **REPORT FROM THE LIMITED PRACTICE (LP) BOARD – Robert Severns, Chair**

Chair Severns reported that within the last several years the LP Board has: (a) revised the entire set of forms, which are used predominantly for the formal closing of real estate, and

added a representative acknowledgement on all forms; (b) completed a review of the rules and regulations, with the entire revised set becoming effective in January 2009; and (c) completed a review and revision of the study topics for the LPO exams. Chair Severns also passed out some historical statistics regarding what is happening in the LPO program and briefly discussed how that pertains to the current real estate market. He noted that the LP Board has the following committees: an Exam Committee, which writes and grades the LPO exams; a Continuing Education Committee, which determines accreditation for LPO Continuing Education courses; a Discipline Committee, which reviews and is involved in resolving grievances against licensed LPOs; a Liaison Committee, which engages in outreach to other groups and organizations; and a Rules Committee. Chair Severns concluded by stating that his tenure on the LP Board has been a wonderful experience, and that the LP Board is doing a good job with the rules, regulations, and forms. In addition, he stated that the WSBA staff, in particular Bobby Henry and Jean McElroy, have been great to work with and have been the support the LP Board has needed.

**LOCAL RULES TASK FORCE (LRTF) RECOMMENDATIONS ON FAMILY LAW RULES – Lish Whitson, Co-Chair; Jean Cotton, LRTF Family Law Subcommittee; Governor Pete Karademos, LRTF Family Law Subcommittee; and Elizabeth Turner, Assistant General Counsel**

Co-chair Whitson referred the Board to the information in the meeting materials, in particular the letter from Chief Justice Alexander, and explained the historical background of the Local Rules Task Force. He noted that Assistant General Counsel Elizabeth Turner worked very closely with the Family Law Subcommittee. Counsel Turner further explained the review process, elicitation of comments, and drafting. She noted that, since the last Board presentation, the materials before the Board had been vetted and scrubbed by both volunteers from the Court Rules and Procedures Committee and the Family Law Subcommittee of the Task Force, resulting in an improved work product.

Ms. Cotton explained the overview and intent of the proposed Family Law Civil Rules (FLCRs) which it is hoped will result in best practices. As there is currently no consistency or continuity in the numbering system, she advised that the proposed new rules will follow the same numbering and indexing system as the Civil Rules, emphasizing that the new rules will not replace civil rules, but rather would augment them and are intended to ultimately reduce the number of local rules. She advised the Board that the Task Force made its best efforts to draft the rules to reflect the differences in procedures between counties, including the fact that some counties

have oral arguments and others have hearings. Ms. Cotton concluded by stating that the Committee is requesting approval of the suggested Family Law Civil Rules for submission to the state Supreme Court. Discussion ensued regarding clarification, with Governor Karademos noting that Rule 7, regarding the maximum number of pages in a pleading, is probably going to elicit some opposition.

Governor Williams moved, seconded by Governor Lee, to adopt the recommendations made by the Task Force. Governor Gibbs suggested adding a recommendation that the Supreme Court establish a timetable and methodology to require local rules to be brought into conformance. Governor Williams accepted as a friendly amendment and suggested including the recommendation on the GR9 cover sheet. Motion passed unanimously with a vote of 11-0-0. Governor Moore was not present for the vote.

Co-chair Whitson suggested forming another Task Force to look at the District Court and other Superior Court Rules, and to decide, for example, whether or not the Board wants local arbitration rules to be looked at across the state.

Governor Gibbs moved, seconded by Governor Gipe, to extend the charter of this Committee until December 2010. Motion passed unanimously with a vote of 11-0-0. Governor Moore was not present for the vote. It is anticipated that the Task Force will use the additional time to help counties implement the changes to the local rules.

**PROGRAM REVIEW – Russ Aoki, Treasurer; Julie Mass, Deputy Director for Finance and Administration; and Mark Sideman, Director of Continuing Legal Education**

**WSBA Service Center** – Treasurer Aoki reported that it is the recommendation of the Program Review Committee that the WSBA Service Center be maintained as is, but to continue to explore new ways to supply efficient services to the members and the public and to continue regular review during the process to set license fees and any other program review. He reviewed the history of the Service Center and noted the volume of calls received, emphasizing that the Service Center provides a substantial benefit in terms of having a “live” voice as the first point of contact as opposed to an electronic voice or a voice-driven menu. The Committee asked the Board to adopt its recommendations.

Governor Gipe moved, seconded by Governor Karademos, to adopt the Committee's recommendations. Motion passed unanimously with a vote of 11-0-0. Governor Moore was not present for the vote.

**New Lawyer Education (NLE)** – Deputy Director Mass advised the Board that no action is required on this item at the current meeting and explained the process the Program Review Committee has gone through over the last several months, noting that there is a significant relationship among the Washington Young Lawyers Division (WYLD), New Lawyer Education (NLE), and the Continuing Legal Education (CLE) Department, which were reviewed together resulting in an overlap in the presentation and reports.

Deputy Director Mass advised that it is the recommendation of the Program Review Committee to move the CLE efforts currently conducted by the WYLD into the NLE program. A couple of key issues and recommendations are for the NLE to take on some of the WYLD seminars, resulting in free or low-cost CLEs, as well as developing a comprehensive approach for new lawyers coming into the profession. She noted that this will be discussed further at the September Board meeting when the WYLD report is presented. Further recommendations are to continue live seminars in their present form, increase the number of webcasts, continue to develop existing online programming, expand the current learning management system, and reallocate the funding of the 1.0 FTE NLE position so it is paid completely by the General Fund. She concluded by informing the Board that the staff allocation changes have been incorporated into the FY10 budget and may be discussed further during the budget presentation. Governor Lee suggested including MBAs when hosting CLEs.

**Continuing Legal Education (CLE)** – Director Sideman reviewed the CLE vision within the current economy and the WSBA, and related the scope of the department. He advised that online video is moving the direction of much of CLE programming, especially for new attorneys, and that new options are needed to work with online courses in conjunction with live programming. He noted that the second phase of NLE is skills training for new lawyers and that great resources are now available electronically, emphasizing that it will be necessary to start doing low-cost track programs, then move from skills training to regular training.

Director Sideman then explained the Learning Management System (LMS), which is an electronic system that will coordinate and integrate all the WSBA's programs administratively,

including online videos and products. He noted that LMS is a fundamental infrastructure piece that is compatible with TIMSS and that will support the CLE Department and the entire WSBA. He then explained that a Learning Content Management System (LCMS) is software that creates online programming; i.e., allows for the development of course templates and online interactivity.

Director Sideman continued by noting that finances is an area that is of major concern to the CLE Department and that there is a need to bring online research in-house and to have a webcasting studio in order to do webinars, both of which would be a tremendous resource for the WSBA as a whole. He advised that cost control is a major priority and noted that the number one cost in doing CLE programming is facilities costs, so he is recommending a seminar facility which would take 80% of the greater Puget Sound programming and provide more flexibility, be more responsive, and provide a better environment, along with better cost control and programming. This seminar facility would better serve WSBA members and keep costs down.

Treasurer Aoki explained the Committee's analysis and that the Committee is recommending the CLE Department be maintained as is and continue to provide CLEs in order to satisfy the Guiding Principles. In addition, the Committee recommends establishing a stable webcasting studio, bringing online publications in-house, and developing an LMS and LCMS as noted in the NLE recommendations. It is the goal of the CLE Department to break even and to maintain adequate reserves. The Committee is making no recommendation as to the seminar facility as there is not currently sufficient information to determine feasibility.

Governor Gipe moved, seconded by Governor Lee, to approve the recommendations of the Program Review Committee regarding webcasting, online research, learning management system, and learning content management system, and to wait on approving the seminar facility until feasibility can be ascertained. Discussion ensued regarding clarification of the intents of the Program Review Committee recommendations and the financial impact. Motion passed 10-0-1. Governor Gibbs abstained. Governor Moore was not present for the vote.

**Public Legal Education (PLE)** – Treasurer Aoki referred the Board to the information in the meeting materials and reported that it is the Committee's recommendation that the PLE

program be maintained, but work toward a more focused goal, and that 100% of the PLE Manager's time be allocated to PLE.

Governor Palace moved, seconded by Governor Karademos, to approve the recommendations of the Program Review Committee. President Johnson declared the recommendation approved by consensus.

- Proposed Focus for WSBA PLE Programming – Paula Littlewood, Executive Director; and Pam Inglesby, Public Legal Education Manager

Executive Director Littlewood advised that two of the main audiences for PLE are either the K-12 population or the adult population. Manager Inglesby suggested looking at particular issues and using them as a lens to reach out to both audiences, with the result that the recommendation for PLE Programming undertaken by WSBA be directed to both populations with a particular focus on educating about the importance of having three branches of government.

President Johnson asked Judge Marlin Appelwick to weigh in on the recommendation. Judge Appelwick joined the table and reported that the Council feels it would be a mistake to focus on just schools or just adults and so is in support of the recommendation. In addition, he commented that it is important to make what is happening around us today relevant.

Governor Palace moved, seconded by Governor Gibbs, to approve the recommendation for the WSBA PLE programming focus. Motion passed unanimously with a vote of 11-0-0. Governor Moore was not present for the vote.

Treasurer Aoki advised the Board that the Program Review Committee also discussed the Uniform Bar Exam (UBE) and is proposing that the Committee take a look at the UBE, make a fiscal analysis, and present a report at the Board's October meeting, and that a presentation by the National Council of Bar Examiners be made to the Board at its December meeting, with the issue coming before the Board for a vote in January 2010. Executive Director Littlewood advised that the Supreme Court has expressed an interest in the WSBA learning about the UBE.

Governor Gipe moved, seconded by Governor Comstock, that staff be directed to pursue further research and present its findings on the subject to the Board. Motion passed unanimously with a vote of 11-0-0. Governor Moore was not present for the vote.

**CIVIL LEGAL AID FUNDING – Dick Manning, President, LAW Fund; and Michele Radosevich, Secretary, Legal Foundation of Washington (LFW)**

**Proposed Joint Agreement Between WSBA and LAW Fund**

Executive Director Littlewood informed the Board that, pursuant to its motion in May, a group was formed which included Executive Director of the Legal Foundation of Washington Caitlin Carlson Davis, President of LAW Fund Dick Manning, Executive Director of LAW Fund Karen Falkingham, and three Governors appointed by President Johnson: Governors Etengoff, Gipe, and Lee. She then referred the Board to the information in the meeting materials and noted that there are a number of issues that need to be worked through and that the subcommittee needs the Board's feedback.

LAW Fund President Manning and LFW Secretary Radosevich thanked the Board for the motion passed at the previous meeting and reflected that it is a giant step for indigent civil legal aid services and may very well open the door for LAW Fund and LFW to receive additional grants from other foundations.

LAW Fund President Manning then informed the Board that the draft agreement in the meeting materials had been fine tuned by General Counsel Welden, Executive Director Littlewood, Campaign for Equal Justice Director Karen Falkingham, and LFW Director Caitlin Davis Carlson. He noted that one of the key components of the agreement is that a \$50 contribution to the Campaign for Equal Justice be included on the Bar license fee statement, along with the options to increase the amount of contribution, decrease the amount of contribution, or opt out of making any contribution. Contributions received by WSBA will be periodically distributed to LAW Fund, which will do all bookkeeping, recordkeeping, and acknowledgement of receipts. Director Mass later reported that LAW Fund has also agreed to cover credit card merchant fees.

Discussion ensued regarding the \$50 contribution amount, financial details, current policy for sharing WSBA member information, and potential methods of sharing WSBA member information with LAW Fund while respecting members' privacy. Executive Director Littlewood noted that Court Rules make it mandatory for members to provide their phone numbers to WSBA and there is an absolute prohibition against sharing phone numbers under the current

policy. Governor Palace suggested the Board be more active in protecting member information by requiring LAW Fund to put a limit on the use of member emails and phone numbers, and agree that member emails and phone numbers will not be used for any other purpose or sold to outside entities.

Governor Heller moved, seconded by Governor Haskell, that the WSBA adopt a policy of sharing WSBA member contact information with the Campaign for Equal Justice, including email addresses, phone numbers, and office addresses, and that this information be limited to LAW Fund uses only. Motion passed 10-1-0. Governor Karademos opposed.

Executive Director Littlewood then brought the Board's attention to the proposed draft agreement contained in the meeting materials between WSBA and LAW Fund per the Board's amended motion at its May meeting.

- Section 2 (F) and (G): Fundraising by Board members - Because Board members have an impact over the regulatory system, it is the Subcommittee's recommendation that the policy of prohibiting fundraising by Board members and staff should be formally written through the Bylaws or through a separate Board policy.

Discussion ensued regarding the intent of the Board's motion at the previous meeting. Governor Gibbs moved, seconded by Governor Gipe, to grant authority for members of this Board to solicit funds, with the intent being to limit fundraising to the Campaign for Equal Justice, and not allow staff to do such fundraising. Motion passed 7-3-1. Governors Heller, Karademos, and Williams opposed. Governor Lee abstained. Governor Moore was not present for the vote.

- Section 2(H): Cy Pres Award - consists of monies left after a class action suit. Executive Director Littlewood noted that LAW Fund is asking the Board to help educate people about the Rule and to get more of the award directed toward LAW Fund. She also noted that the Bar Foundation has also discussed the possibility of seeking residual *Cy Pres* funds. She advised that the three options are: leave as is, limit to only education about the *Cy Pres* award, or attempt to have a greater percentage of the award directed to LAW Fund. No motion was made and President Johnson declared it the consensus of the Board that it be kept as is.

- Section 3(B): Dissemination of materials - Executive Director Littlewood then brought the Board's attention to the section of the proposal related to giving out materials at various WSBA events such as CLEs and the 50-year member tribute luncheon, and including in new admittee packets, and advised that more time is needed to ascertain the impact on the relevant affected entities.
- Section 3(D): Use of WSBA logo – Executive Director Littlewood noted that use of the WSBA logo on Campaign materials would require an exception to the current policy. It was noted that LAW Fund is not a WSBA-related organization, but an outside organization.

Governor Etengoff moved, seconded by Governor Gipe, to amend WSBA policy to permit LAW Fund, in its discretion, to use the WSBA logo on LAW Fund's solicitation materials. Discussion ensued regarding the authority which the logo carries, with a possible mixed result in fundraising. General Counsel Welden noted that the use of the WSBA logo in conjunction with the LAW Fund logo would demonstrate partnership. Motion passed 8-2-1. Governors Heller and Karademos opposed. Governor Williams abstained. Governor Moore was not present for the vote.

- Section 3(E): Free or discounted ads in *Bar News* – Executive Director Littlewood advised that it is the Subcommittee's recommendation that a discussion with *Bar News* staff be had to ascertain impact on revenues. Executive Director Littlewood reported that free or discounted ads would have no direct fiscal impact on *Bar News*, since LAW Fund ads would replace content, not paid ads.

### **Update on Proposed Opt-Out Provision**

Executive Director Littlewood brought the Board's attention to the two opt-out forms contained in the meeting materials and noted that the Subcommittee prefers the first opt-out form because it is more readable. There was general agreement by the Board that option one was preferable.

### **WSBA IT UPDATE – Mark McDonald, IT Director**

Director McDonald presented an overview of the WSBA IT Department to the Board. The overview covered the two IT divisions: Application Development, which provides software application development and maintenance; and Network Operations, which supports and manages the technology infrastructure and network. He then described the makeup of the IT

staff and reviewed the key Application Development and Network Operation's projects that will be delivered in the next three years. He noted that *mywsba.org* will be launched in October and will, for the first time, provide full online licensing capabilities to the WSBA members.

## **FISCAL MATTERS – Russ Aoki, Treasurer, and Julie Mass, Deputy Director for Finance and Administration**

### **Draft FY 2010 Budget**

Deputy Director Mass reminded the Board that the budget is a policy-setting document and guides the WSBA's operations throughout the year. She then proceeded to explain the proposed FY 2010 budget, noting that cost centers are basically the same as last fiscal year, though Alternative Dispute Resolution (ADR) has been sunsetted and some of the ADR staff time has been reallocated to the professional responsibility program cost center.

Deputy Director Mass noted that there are four different funds in the WSBA budget: the General Fund, Sections, Lawyers' Fund for Client Protection, and Continuing Legal Education. She noted that, for the General Fund, there are five revenue-positive cost centers: license fees, Mandatory Continuing Legal Education, member benefits, Limited Practice Officers, and *Resources*. She explained that the General Fund is supported primarily by license fees and advised that the WSBA currently enjoys a positive cash gain situation, although the Committee is proposing to use reserves for some of the capital projects. The Continuing Legal Education Department, which is self-supporting and operates under a slightly different business model, generates 75% of its income from seminars and 25% from products. She noted that staffing is a major part of the budget, with General Fund salaries and benefits 66% of the total General Fund budget, and that the FY 2010 budget is currently in line with the 2010-2011 projections which were considered when setting license fees last year. She added that new projects included in the General Fund are the Moderate Means Program (\$200,000 in FY 2010) and the WSBA website redesign (\$240,000 total over the next few years).

Deputy Director Mass then reported that the Budget and Audit Committee is suggesting combining the October and December Board of Governors meetings into one November meeting starting in FY 2011 in order to save money and increase efficiency, and that the Committee would like a decision at the current meeting so the Executive Director and President-elect-elect could start planning FY 2011. Discussion ensued regarding impact on Legislative Committee proposals to the Board, trying it for a couple of years then evaluating, and not voting at this meeting because it is a topic within a "first reading" agenda item and the Board needs

time to decide the issue. President Johnson declared it the consensus of the Board to defer the decision on this topic until the September Board meeting.

Deputy Director Mass advised that other budget increases include the 50-year member tribute luncheon and Character and Fitness expenses, noting that the number of Character and Fitness hearings has increased substantially.

Director McElroy was asked to comment on the reason for the increase in the number of Character and Fitness hearings and she replied that a new set of rules has been drafted that governs Character and Fitness hearings which are excellent and make very clear what has to go to hearing and what does not have to go to hearing. In addition, she advised that the increase seems to be a national trend, possibly because people are more open in their applications. In addition, there were a number of very serious hearings this year which increased costs, as well as a request from the Character and Fitness Board to receive transcripts of hearings before writing decisions, as well as mental health evaluations. General Counsel Welden also noted that there is pressure on law schools to increase admissions and the schools do not do a good job of advising their students on character and fitness issues.

Deputy Director Mass then informed the Board that there is a proposal from President-elect Mungia to amend the Governor training policy to allow the President-elect to attend both National Conference of Bar Presidents meetings. Currently the policy allows attendance at the Western States Bar Conference, the Bar Leaders Institute, and one National Conference of Bar Presidents meeting – either the annual meeting or the mid-year meeting. She noted that the Committee needs guidance from the Board whether it wants to change the policy to include the additional meeting and that it is not in the budget at the moment. President Johnson replied to add it to the budget and it can be taken out in September if it is the Board's desire. Deputy Director Mass further informed the Board that other items not yet in the budget are the new position of Strategic Technology Advisor/Web Developer and funding for a Legal Technician Program.

Deputy Director Mass then advised the Board that the bottom line in this draft of the proposed FY 2010 budget is a net operating gain of \$506,304. She noted that because monies need to be found to fund the \$1.5 million civil legal aid contribution, the previously budgeted \$400,000 contribution to the WSBA facilities reserve fund will likely not be made next year as anticipated.

She noted that minor changes from refining the numbers will be made to the draft budget in the current meeting materials, but that the final budget submitted at the September Board meeting should be in the general range of what has been submitted at the current Board meeting.

Governor Moore asked to see a proposal for the recapitalization of the facilities reserve fund.

### **May 2009 YTD Financial Statements**

Treasurer Aoki referred the Board to the information in the meeting materials and invited the Governors to contact either him or Deputy Director Mass if there are any questions.

### **BOG MATTERS**

#### **WSBA Committee Appointments – Judy Berrett, Director of Member and Community Relations; and Chach Duarte White, Diversity Program Manager**

Director Berrett informed the Board that this is the first phase of the WSBA committee appointments and provided an overview of the changes made to the appointment process this year. She reminded the Board, as recommended by the Program Review Committee and as the Board approved at its April Board meeting, the size of most committees has been reduced to a default of 18; all positions are now funded; and for most committees, each Governor will nominate one individual to serve on each committee. After the initial round of appointments made at this meeting, Diversity Program Manager Chach Duarte White and Bar Leaders Program Manager Moni Law will compile and provide to each committee chair, demographic information for each committee. For the following year, most committee terms will be for two years with some being staggered for the 2010-2011 appointments, so individual Governors will not make nominations for every committee every year. Manager Duarte White then explained the diversity information provided in the meeting materials.

Governor Karademos asked if there is a way to tell if the same people are applying year after year so the Board can get new members involved. Director Berrett replied that those statistics will be available at the September meeting and Executive Director Littlewood noted that a column will be added next year to note whether or not an individual has served on the committee previously. Director Berrett noted that the WSBA is hoping to involve committee members more in recommending people to apply.

Director Berrett then informed the Board that is the Committee's recommendation that the Board approve the slate of candidates which its Governors have nominated and which are in the

meeting materials, with two corrections: remove Ron Ward from the AIC Panel as he was included erroneously, and the term of service on the Discipline Board is three years rather than one as stated in the meeting materials.

Governor Karademos moved, seconded by Governor Lee, to approve the slate of candidates with the changes mentioned. President Johnson declared the motion approved by consensus.

### **WSBA Committee Chair Appointments – Salvador Mungia, President-elect**

President-elect Mungia referred the Board to his nominations for the 2009-2010 WSBA Standing Committee Chair Appointments and Regulatory Boards Chair Appointments contained in the meeting materials. He advised the Board that he has requested the BOG Diversity Committee to develop a policy with a goal of promoting diversity within the leaders of WSBA and to delineate steps to take the WSBA in that general direction. He further noted that it is one of his goals that the BOG Diversity Committee actively assist the President-elect in fulfilling the mission of promoting diversity.

Governor Gibbs moved, seconded by Governor Karademos, to approve President-elect Mungia's nominations. Executive Director Littlewood noted that the correct spelling for the nominee to the Chair of the Continuing Legal Education Committee is Chad Dold. President Johnson declared the motion approved by consensus.

### **Various Committee and Board Appointments – Judy Berrett, Director of Member and Community Relations**

- **Approve Law Clerk Board Appointments**

Director Berrett referred the Board to the meeting materials, noting that applications have been received from Josephine H. Lai of Kirkland and Jeffrey L. Smoot of Seattle. Governor Karademos moved to appoint Ms. Lai and Mr. Smoot to the Law Clerk Board. Motion died for lack of a second.

Governor Gipe moved, seconded by Governor Aoki, to appoint Jeffrey L. Smoot to the Law Clerk Board, effective October 1, 2009, through September 30, 2015. President Johnson declared Mr. Smoot appointed by consensus.

- Approve Practice of Law Board Appointments

Executive Director Littlewood referred the Board to the Late Materials as there had been some last-minute changes in the recommendations.

Governor Etengoff moved, seconded by Governor Comstock, to approve the recommendation to appoint Gail Hammer, Crystal Lambert, and Priscilla Selden to the Practice of Law Board. President Johnson declared Ms. Hammer, Ms. Lambert, and Ms. Selden recommended for Supreme Court appointment by consensus.

- Approve Disciplinary Board Appointment

Director Berrett informed the Board that Governor Palace's nomination from District 6 will be included in the bulk of the committee nominations, and Governor Comstock's nomination from District 5 is pending. She further noted that this particular appointment can be from any district.

Governor Lee moved, seconded by Governor Gipe, to appoint Thomas Waite to serve on the Disciplinary Board for a three-year term, effective October 1, 2009, through September 30, 2012. President Johnson declared Mr. Waite appointed by consensus.

### **Election of 2009-2010 WSBA Treasurer**

President-elect Mungia asked the Board to ratify his nomination of Governor Gibbs as the WSBA Treasurer for 2009-2010. Governor Gipe moved, seconded by Governor Lee, to approve the nomination. Motion passed 9-0-1. Governor Gibbs abstained. Governors Haskell and Moore were not present for the vote.

### **ABA Formal Opinion Regarding Legal Process Outsourcing – Governor Carla Lee**

Governor Lee referred the Board to the memo contained in the meetings materials, noting that because legal process outsourcing is an international trend, the Board should have the Rules for Professional Conduct Committee look at the issue to ascertain if there is a need for the WSBA to guide its lawyers. In addition, the Board should decide if the WSBA needs to come up with its own Formal Opinion. Discussion ensued.

Governor Lee moved, seconded by Governor Williams, to ask the Rules for Professional Conduct Committee to look at legal process outsourcing and inform the Board if it can be guided by the American Bar Association's Formal Opinion or if the WSBA should develop its own Formal Opinion. President Johnson declared the motion approved by consensus.

**Co-Sponsor ABA Resolution Re Repeal of Federal Ban on Extending Benefits to Lawfully Married Same-Sex Marriages – Governor Anthony Gipe and ABA Delegate Ron Ward**

Governor Gipe referred the Board to the information in the meeting materials, noting that he is asking the Board to co-sponsor ABA Resolution 112, which urges Congress to repeal a provision of the Defense of Marriage Act (D.O.M.A.) that prohibits federal marriage benefits to otherwise lawfully married same-sex couples and that support of this Resolution is consistent with the Board's support of same-sex marriages. ABA Delegate Ron Ward then urged the Board to co-sponsor the Resolution, opining that this is a civil rights and a human rights issue, and that this is the last population group we as a culture continue to deny rights to.

Governor Gibbs moved, seconded by Governor Gipe, that the Board co-sponsor Resolution 112 in the American Bar Association's report to the House of Delegate. Motion passed unanimously with a voter of 11-0-0. Governor Etengoff was not present for the vote.

**Co-Sponsor ABA Resolution Re Standards for Representation of Children in Abuse and Neglect Proceedings – Debbie Perluss, ABA State Delegate; and Chori Folkman, Juvenile Law Section Executive Committee**

Ms. Folkman, on behalf of the Juvenile Law Section, requested that the Board support and co-sponsor Report 103, the ABA Model Act governing the representation of children in abuse, neglect and dependency proceedings. She advised the Board that the Report will be voted on at the upcoming ABA meeting in Chicago. She further noted that it is one of the first guiding principles of the Bar Association to advocate and promote access to the justice system. In addition, she advised that it is the mission of the Juvenile Law Section to support movements to provide increased access and better quality representation of children involved in abuse.

She further explained that the ABA Model Act provides for a thorough and effective set of guidelines for the representatives of children to follow and will vastly improve the representation once the children are involved in the system. She concluded by stating that dependency proceedings are very complex and are different from family law proceedings since the state is potentially removing the child from the family.

Discussion ensued regarding details of the Resolution, ensuing prohibitive costs if passed, and advantages and disadvantages to the child. Governor Williams moved, seconded by Governor Lee, to support the co-sponsorship of this ABA Resolution.

Further discussion ensued regarding potential conflicts with criminal law, the role of the guardian *ad litem* under the Resolution, the fact that this is a Model Act proposal by the ABA and not a Washington state-specific act, and the potential conflict of interest this Resolution would incur when the parents are themselves children. Governor Gipe called the question.

Greg Dallaire, Access to Justice Board, encouraged the Board to keep in mind that this is a Model Rule designed for many other states that do not have the protections that exist in Washington State. He concluded by stating that he does not see any damage for the Board to support this Resolution.

Motion failed 4-6-1. Governors Comstock, Gibbs, Haskell, Heller, Karademos, and Palace voted against. Governor Gipe abstained. Governor Etengoff was not present for the vote.

**Update from Planning Ahead Committee – Steve Crossland, Chair; Mark Sideman, Director of Continuing Legal Education; and David Powell, Professional Responsibility Counsel**

Chair Crossland informed the Board about the Committee's actions and future plans, and urged the Board to approve the Resolution contained in the meeting materials. He advised that roll-out plans include meeting with section heads, as well as minority and specialty bars in the Fall, articles in *Bar News*, and encourage sections to include Planning Ahead topics in their mid-year meetings. He noted that he spoke the previous week at the Solo and Small Practice Conference and was well received. In addition, he suggested not making Planning Ahead mandatory with the hope that lawyers will realize the worth and advisability of doing this on their own. He further suggested revisiting the notion of including Planning Ahead on the licensing form in the next couple of years.

Chair Crossland advised that waiving the filing fee for orphan wills will take quite an effort with the legislature and suggested waiting until a later date to work on accomplishing that goal. In addition, he noted that the Committee felt that if a comment were added to RPC 1.3, it would

give a sense of urgency to lawyers and encourage them to realize the WSBA feels this is important for lawyers, families, and clients.

Counsel Powell informed the Board that the draft website includes the handbook the Planning Ahead Committee put together and that online forms are in process. He noted that the link is [www.wsba.org/lawyers/planningahead.htm](http://www.wsba.org/lawyers/planningahead.htm) and that he would forward the link to the Board members. He concluded by stating that the Planning Ahead concept is of great interest to members at Law Office Management Assistance Program (LOMAP) road shows.

- Approve Resolution from Planning Ahead Committee – Governor Gipe noted a typographical error in the Resolution which should read “to the practice of law.” Governor Karademos moved, seconded by Governor Gipe, to adopt the Resolution with the noted correction. President Johnson declared the motion passed by consensus.

#### **Proposed Comment to RPC 1.3 Re Succession Planning – Steve Crossland (on behalf of Art Lachman)**

Mr. Crossland advised the Board that the Committee has resurrected and refined a comment not passed by the Supreme Court a couple of years ago as they felt it would place a burden on solo and small firm lawyers. He advised that this would be an action item on the Board's September meeting agenda and encouraged the Board to recommend the Supreme Court adopt this comment. He concluded by thanking President Johnson and Governor Heller for their support on behalf of the Bar.

#### **Update from BOG Diversity Committee – Brenda Williams, Chair**

Chair Williams updated the Board on the work of the BOG Diversity Committee, noting that the focus on developing the mission statement has raised several questions about diversity and how it relates to the WSBA, the Board of Governors, and various committees. It was decided that receiving input from various stakeholders was essential and a gathering was held. She reported that the information gathered will be consolidated and circulated, and future gatherings will be hosted to invite others into the dialogue as the Committee moves from internal to external processing. Chair Williams then referred the Board to the information in the meeting materials and invited everyone to comment in person or via email, noting that the Committee should have a well-thought-out and well-discussed plan to present to the Board in the near future.

**Reports from WSBA Standing Committees on FY09 Activities and FY10 Plans**

President Johnson declared this item moved to the September Board agenda and meeting.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 12:00 p.m. on Saturday, July 25, 2009.

Respectfully submitted,

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Paula C. Littlewood  
WSBA Executive Director