

MINUTES

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

Seattle, WA
September 20 – 21, 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 10:15, recessed at 3:55 p.m. on Thursday, September 20, 2007; and reconvened at 8:30 a.m. on Friday, September 21, 2007, at the WSBA Conference Center in Seattle, Washington. Governors in attendance were:

Marcine Anderson
Russell M. Aoki
James E. Baker
Eron Berg (Friday only)
Liza Burke (Thursday only)
Anthony Butler
Lonnie Davis
Eric C. de los Santos
Peter J. Karademos
Douglas C. Lawrence
Salvador A. Mungia
Edward F. Shea Jr.
Jason T. Vail
Kristal K. Wiitala

Also in attendance were President-elect Stanley A. Bastian, Immediate Past-President S. Brooke Taylor, 2007-2008 President-elect Mark Johnson; Governors-elect G. Geoffrey Gibbs, Lori Haskell (Thursday only), and David Heller; Executive Director and Meeting Secretary Paula C. Littlewood, and General Counsel Bob Welden.

LIAISONS, GUESTS AND STAFF IN ATTENDANCE:

Judge Richard McDermott	Superior Court Judges Association
Steve Crossland (Friday)	Practice of Law Board
Edward Sager (Friday)	Editorial Advisory Board
James Macpherson	Washington Defense Trial Lawyers

Mike Rossotto	Environmental and Land Use Law Section
Steve Toole	WSTLA
Robert Richardson (Friday)	International Practice Section
Jean Cotton	Family Law Section
Jeff James	King County Bar Association
Scott Douglas	Chair, Sexual Orientation and Gender Identification Legal Issues
William Hyslop (Thursday)	Co-Chair, Committee on Public Defense
Jon Ostlund (Thursday)	Co-Chair, Committee on Public Defense
Joanne Moore (Thursday)	Chair, CPD Standards Subcommittee
John Strait (Thursday)	Chair, CPD Non-Legislative Fixes Subcommittee
Czarina Alison Holcomb	TARRTF
Christie Hedman	Washington Defender Association
John Brangwin	President, WYLD
Mark O'Halloran	President-elect, WYLD
Judge Richard Fitterer	District and Municipal Court Judges Assn.
Todd Timmcke (Friday)	Bar News Managing Editor
Randy Beitel (Thursday)	Senior Disciplinary Counsel
Trina Doty (Thursday)	Audit Manager
Cheryl Heuett (Thursday)	Auditor
Tiffany Lynch (Friday)	Budget and Financial Analyst
Gregg Hirakawa	Deputy Director for External Relations
Gail Stone	Director, Justice and Diversity Initiatives
Judy Berrett	Director, Member and Community Relations
Jean McElroy	Director, Regulatory Services
Julie Mass	Deputy Director of Administration and Finance
Douglas Ende	Director of Lawyer Discipline
Diane Plummer-Cranston	Administrative Assistant/Facilities Coordinator
Donna Sato	WSBA Executive Assistant

WELCOME AND INTRODUCTIONS

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

APPROVAL OF MINUTES FROM THE JULY BOARD MEETING

Governors Anderson and Karademos offered corrections to the minutes. The minutes were adopted as amended.

REPORT ON EXECUTIVE SESSION

President Dial reported that in Executive Session the Board adopted the Executive Session minutes of July 27 – 28, 2007, and August 30, 2007; approved two recommendations from the Lawyers' Fund for Client Protection; received the Litigation and Executive Director's reports; discussed policy regarding a general election ballot matter; and discussed and acted on an amicus brief issue.

CONSENT CALENDAR

The following items were approved by the circulation of a written consent form:

- a. Hearing Officer Appointment Recommendations (2) by the Hearing Officer Selection Panel;
- b. Proposed WYLD Bylaw Amendments;
- c. Non-lawyer Appointment to the Lawyers' Fund for Client Protection Committee;
- d. Proposed Alternate Position to the ABA House of Delegates; and
- e. Reappointments to the Access to Justice Board (2).

LIAISONS' FORUM

James Macpherson - WDTL

James Macpherson announced that he will personally work with both the defense and plaintiff bars to spearhead efforts regarding the release of medical records.

Judge Fitterer – DMCJA

Judge Fitterer provided updates on the Violence Against Women's Act; CR 3.2, forfeiture of bail; and the DMCJA's version of the arraignment rule.

Mike Rossotto – Chair Environmental and Land Use Law Section

Mike Rossotto thanked the Board for its efforts to enhance communications and contact with WSBA sections, which demonstrates that the Board values the contributions made by sections.

Scott Douglas – Chair Sexual Orientation and Gender Identification Legal Issues Section

Scott Douglas thanked the Board and *Bar News* staff for the extremely timely and encouraging message printed in the September *Bar News*. The *Bar News* issue exemplifies why the pioneers of the SOGILI approached the Board for approval in establishing the section.

TRUST ACCOUNT RESPONSIBILITIES AND RETAINERS TASK FORCE – Mark Johnson, Chair

Chair of the Trust Account Responsibilities and Retainers Task Force Chair, Mark Johnson, provided background on the establishment of the TARRTF and a history of the task force's work and final report. President Dial noted for the Board's attention the correspondence received from WACDL and the Family Law Section in support of the TARRTF recommendations before the Board for action.

Governor Karademos clarified that he is not opposed to the TARRTF recommendations however, he believes availability retainers should be more specifically clarified to prevent disciplinary problems in the future. Douglas Ende, former staff liaison to TARRTF, reported that the definition of retainer as proposed by TARRTF remains consistent with black letter law.

Governor Lawrence moved, seconded by Governor Karademos, that the Board approve the recommendations of the Trust Account Responsibilities and Retainers Task Force. Discussion transpired.

After a lengthy discussion, Jean Cotton, Chair of the Family Law Section, suggested that a CLE to educate lawyers on how to draft appropriate fee agreements would be helpful. Randy Beitel, Senior Disciplinary Counsel, referred the Board to comment #13 of the proposed rule which would provide answers to many of the questions being raised today. Further, in speaking in support of the ODC Minority Report, Beitel reminded everyone that placing an unearned fee into a lawyer's general account should be considered a violation of the basic tenet that client property must be held in a trust account until earned; he further asked that the Board support

the minority recommendation that fee disputes over refunds of flat fees be submitted to fee arbitration.

Doug Ende, former staff liaison to the TARRTF, commended the work of the TARRTF in arriving at its final recommendations through mutual compromises with the assurance that all sides were heard. Ende then offered a refocus in an advisory capacity as Chief Disciplinary Counsel. Ende stated that the proposed rule is not a great rule because it is less protective of client interests than a rule requiring all unearned fees be held in trust; however, because of the void created by withdrawal of Formal Ethics Opinion No. 186, the rule is better than nothing and the WSBA will have moved considerably forward if it is approved.

A vote was taken on the motion. The motion passed with a vote of 13-0-0. Governor Berg was excused.

LEGAL FOUNDATION OF WASHINGTON – President Erika Lim

Legal Foundation of Washington's President Erika Lim, accompanied by other LFW officers and trustees, provided the Board with highlights of their 2007 Annual Report. Lim thanked the Board for its continued support and concluded by announcing that the 2008 Goldmark Annual Awards Luncheon is scheduled for February 29, 2008.

COMMITTEE ON PUBLIC DEFENSE – Co-Chair William Hyslop and Co-Chair Jon Ostlund

Co-Chair Hyslop reported that the CPD has been before the Board at each of its meetings since March 2007. The CPD appreciates the attention and action taken by the Board to date and they appear today for one last time to conclude the work of Phase I of its Charter prior to continuing its work under the Board-approved Extended Charter.

Non-Legislative Fixes for Enforcement of Standards Subcommittee – Proposed RPC 1.8

Subcommittee Chair, John Strait, reported that the subcommittee found that the only effective way to deal with public defense contracts that have a built in conflict of interest or built in disincentive was to amend RPC 1.8. The proposed rule change would bar an attorney from entering into an agreement with a governmental entity if the terms of the agreement obligated the attorney or contracting law firm to bear the costs of conflict counsel or to bear the costs of

investigative or expert services unless a fair and reasonable amount for those services is specifically set out in the contract.

Strait reported that the proposed amendments to RPC 1.8 were vetted completely and considered by the WSBA Court Rules and Procedures Committee, the Rules of Professional Conduct Committee and the WSBA Criminal Law Section; he noted that the proposed rule is considered a non-controversial change. After discussion, Governor Mungia moved, seconded by Governor Vail, that the Board adopt the proposed RPC 1.8 for submission to the Supreme Court. The motion passed with a vote of 13-0-0.

Standards Subcommittee – Proposed Non-Caseload Standards

Subcommittee Chair, Joanne Moore, introduced the work of the Standards Subcommittee as critically important to Washington State's efforts to improve public defense by raising standards of effective representation in all counties. The Standards Subcommittee's task was to review and update the 1989 Washington Defender Association's (WDA) Standards for Public Defense, which the WSBA endorsed in 1990. These standards set the goals for local jurisdictions to follow. Moore shared that in December 2006 when the WDA was also engaged in standards review, the two groups joined together and arrived at agreement involving all non-caseload standards. The non-caseload standards were unanimously approved by the CPD.

The non-caseload standards include: compensation, duties and responsibilities of counsel, responsibility for expert witnesses, administrative costs, investigators, support services, reports of attorney activity, training, supervision, monitoring and evaluation of attorneys, substitution of counsel, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of defender services and removal of attorney, non-discrimination, and guidelines for awarding defense contracts.

President-elect Bastian questioned whether the standards are aspirational or mandatory. Moore clarified that the standards are looked upon as a model. For example, in 2005 the legislature established a procedure by which counties may receive state funds for improvement of public defense services. A key benchmark by which counties may continue to receive state funding is to show progress toward meeting the WSBA-endorsed standards.

Clarification was requested concerning the rate paid in death penalty cases and the language the Board adopted in April 2007. It was confirmed that it is the intent of the CPD that all proposed standards remain consistent with any companion language. The Board approved the following language at its April 2007 meeting:

“The subcommittee recommends that ~~under no circumstance should~~ the hourly rate for lead counsel appointed in a death penalty case should be not less than \$125.00 per hour (in 2006 dollars).”

Governor Mungia moved, seconded by Governor Vail, that the non-caseload standards be approved with the foregoing change. The motion passed with a vote of 13-0-0.

Standards Subcommittee – Proposed Caseload Standards

Subcommittee Chair, Joanne Moore, provided highlights on the subcommittee recommendations for caseload standards which include: Felony caseload standard – no change at 150; misdemeanor caseload standard – adjusted to 400, however reduction to 300 by meeting prescribed factors is an option; civil commitment caseload standard – no change at 250; juvenile offender caseload standard – no change at 250; juvenile dependency and termination caseload standard – 80 open cases; and appeal caseload standard – adjusted to 36 appeals per year.

Moore noted that the full CPD, at its August 10th meeting, adopted these recommendations with the exception of the misdemeanor caseload standard. This caseload standard was the subject of significant debate at the CPD. Supporters of setting the standard at 400, with the ability to adjust downward to 300 in certain circumstances, argued that most misdemeanor defenders are currently carrying caseloads far in excess of 400, so 400 represents a reduction in their caseloads. As well, these proponents argued that local governments do not have the resources to hire enough defenders to meet a caseload standard of 300. Supporters of setting the standard at 300, with the ability to adjust upward to 400 in certain circumstances, argued that many of the simpler misdemeanor cases are being handled via alternatives such as diversion, the result of which is that misdemeanor cases remaining in a defender’s caseload are more complicated and time consuming than has historically been the case. These proponents added that setting the standard at 400 with the ability to adjust downward places the burden of reducing caseloads on the defender, while a caseload of 300 with the ability to adjust upward places the burden of justifying a higher caseload on local government, which is where the

burden should lie. In the end, by a vote of 13 yes and 12 no, the CPD recommended setting the misdemeanor caseload at 300 with the ability to adjust up to 400 in certain circumstances.

Discussion transpired on the recommendation to adjust the misdemeanor caseload standard to 400. The subcommittee reports that in most courts, public defense attorneys with a 400-case caseload will have sufficient time to provide effective representation. However, in some courts, the ratio of simple misdemeanors to complex misdemeanors may require that the caseload standard be reduced to as low as 300 cases, to ensure effective representation.

Governor Mungia urged the Board to consider the original subcommittee recommendation of a misdemeanor caseload standard of 400. Co-Chair Ostlund offered that there are valid arguments on both sides as to who owns or should own the burden. He further noted that caseloads throughout the state are much higher than 400 currently. Governor Butler suggested that the 300 level be adopted because of the ongoing complaint that public defenders are overworked in most areas, hence, by maintaining the 300 level the better representation the public defender will be able to provide. Governor Aoki, who is the BOG liaison to the CPD, offered that this issue received a tie vote, the tie breaking vote was in favor of establishing a caseload standard of 300.

Co-Chair Ostlund reported that he personally does not feel 400 is unreasonable in most jurisdictions and his own experience is that many defenders are currently carrying caseloads ranging from 400-500. Ostlund believes that the compromise in establishing the 300 level was necessary in dealing with the legislature and future funding; however 400 is an achievable standard.

Governor Mungia moved, seconded by Governor Lawrence, that the Board adopt the CPD-recommended caseload standards with the exception of misdemeanors, which should be set at 400, adjusted down to 300 based on meeting prescribed factors.

Several defenders were present to speak in favor of establishing the misdemeanor standard at 300 cases (adjustment up to no more than 400 cases). Amongst those in favor were Kathy Knox, representing the Public Defender's Office for the City of Spokane; Eileen Farley, representing the Northwest Defenders Association; and Craig Platt of the Washington Defender Association.

President-elect Bastian reminded the Board that he was also reminded at the July Board meeting that it is not the WSBA's charge to consider costs it is, however, the WSBA's duty to set standards for best practice. Therefore, setting the standard at 400 would send the wrong message.

A vote was taken on the motion that the Board adopt the caseload standards with the exception of misdemeanors of 400 which is adjusted down to 300 based on meeting factors. The motion failed with a vote of 5-8-0. Governors Anderson, de los Santos, Lawrence, Mungia, and Wiitala in favor. President Dial took this opportunity to thank the CPD for the spirited and informed debate at the committee level and the extensive work and accomplishments it achieved.

Governor Vail moved, seconded by Governor Shea, that the Board adopt all caseload standards as recommended by the CPD. The motion passed with a vote of 13-0-0.

Governor Davis moved, seconded by Governor Anderson, that the Board approve the CPD recommendation that a review of standards be undertaken every 10 years. The motion passed with a vote of 13-0-0.

Governor Burke moved, seconded by Governor Anderson, that the Board approve the additional language added to Standard 3, as distributed in late materials. The motion passed with a vote of 13-0-0.

Education Subcommittee

Co-Chair Hyslop provided an overview of the work of the Education Subcommittee. Governor Wiitala moved, seconded by Governor Shea, that the Board adopt the recommendations of the Education Subcommittee. The motion passed with a vote of 11-0-0. Governors Karademos and Vail were not present.

CPD Final Report

Co-Chair Ostlund thanked the Board of Governors for their support and thanked the CPD subcommittee chairs for their work. He then requested Board approval of the CPD final report as meeting its charter mandates.

Governor Mungia moved, seconded by Governor Vail, that the Board approve the CPD final report as meeting its charter mandates. Motion passed with a vote of 12-1-0. Governor Karademos voted against.

Co-Chairs Hyslop and Ostlund were acknowledged by President Dial for their efforts and leadership and each were presented with a Jacob Lawrence print in appreciation.

WYLD Annual Report – President John Brangwin

WYLD President John Brangwin presented the WYLD 2007 Annual Report. Brangwin thanked the WSBA staff for their work and support and highlighted a year of accomplishments and observations. Brangwin urged the Board to consider the statewide GAAP proposal as an opportunity to provide public service and to benefit our membership. Governor Vail added that the work being done by the WYLD is inspiring and amazing as demonstrated by the amount of time and commitment given. Governor Vail concurred with Brangwin's comments in support of GAAP. President Dial thanked the WYLD for its leadership.

President Dial performed the swearing-in of WYLD President-elect Mark O'Halloran as 2007-2008 WYLD President. O'Halloran thanked President Dial and President-elect Bastian for including the WYLD in the BOG Long Range Planning Committee and stated they have exciting plans ahead in their efforts to further the goals of the WSBA in 2008.

BAR NEWS EDITOR – CANDIDATE INTERVIEWS

President Dial introduced the process for interviewing and selecting the Bar News editor candidates by the Board.

Paul Fjelstad, Michael Heatherly, and William Trippet were each provided five minutes for their presentation to the Board followed by a ten minute question and answer period. The Board proceeded to deliberations. Governor Anderson moved, seconded by Governor de los Santos, that the Board select Michael Heatherly as Bar News editor.

Discussion transpired on the reason why Governor Vail was not selected as one of the top three candidates. Governor Vail spoke in support of the process and stated that he remains confident that all criteria was carefully weighed by the EAB in that he is fine with their decision; therefore,

he does not support to defer consideration on his behalf. Governor Vail was excused from the meeting.

The Board discussed this issue with the Chair of the Editorial Advisory Board Hiring Subcommittee, Anh Nguyen, and subcommittee member Michelle Szambelan.

Governor Karademos moved, seconded by Governor Butler, that the Board defer consideration on the selection of a Bar News editor until such time the Board is provided with copies of the materials submitted by Jason Vail to the Editorial Advisory Board. The motion failed with a vote of 2-10-0. Governors Butler and Karademos voted in favor.

Governor Vail rejoined the meeting. A vote was taken on the motion to select Michael Heatherly as the Bar News editor. The motion passed with a vote of 13-0-0. Governor Burke was excused.

BOG MATTERS

Civil Legal Aid Oversight Committee

Governor Mungia moved, seconded by Governor Shea, that the Board reappoint Thomas Brown to the Civil Legal Aid Oversight Committee. The motion passed with a vote of 12-0-0. Governor Berg was excused.

Washington State Bar Foundation Board of Trustees

Executive Director Littlewood presented the following recommendations from the WSB Foundation Board of Trustees for the Board's consideration: Marcine Anderson will complete her term as a BOG representative on the Foundation at the end of September and is willing to continue service on the Foundation in a WSBA Member seat. Ron Ward, currently serving in a WSBA Member seat, is willing to move into Dave Savage's vacated "WSBA Past President" seat for the remainder of his term so Marcine can serve in his current WSBA Member seat.

Governor Berg moved, seconded by Governor Lawrence, that the Board adopt the Washington State Bar Foundation's Board of Trustees' proposed slate for appointments to its Board of Trustees. The motion passed with a vote of 13-0-0.

Loan Repayment Assistance Program Report – Dwight Williams, Chair

Dwight Williams, outgoing Chair of the LRAP, presented an update on the status of this program. Williams passionately spoke about the need for this program, which he described as a good, solid program helping new lawyers and those in need of legal services. Williams further emphasized that we are at the worst of times and that the Washington legal community must commit to its success. The good news for the Program is that over the past three years, it has become established and there are currently 7 participants in the Program and applications are now open for the 2008 class. However, funding continues to be the problem that plagues the Program and through the outreach efforts by the Committee to possible funders they have learned that funders generally feel attorneys should be the first to fund such a Program.

President Dial presented Williams with a plaque in acknowledgement for his service as Chair of the LRAP, Williams was applauded by everyone in attendance.

FISCAL MATTERS – Treasurer Eron Berg and Deputy Director of Finance and Administration Julie Mass

Adoption of 2007-2008 Budget

Treasurer Berg provided a budget overview. Berg reported that the Budget and Audit Committee's goal in revising the budgeting schedule and procedures this year is to present a more accurate budget. He highlighted that the proposed 2008 budget presents a \$250,000 deficit. The Budget and Audit Committee recommends the use of savings to allow the Board and staff to engage in a thorough program review in 2008.

The following Budget and Audit Committee recommendations were highlighted:

- (a) Statewide GAAP Coordination – a request of \$192,500 over a three year period was received from the ATJ/WYLD GAAP Committee. The Budget and Audit Committee remains interested in the idea of a statewide GAAP, but the proposal was not feasible as submitted and implementation and operational concerns remain.
- (b) Practice of Law Board Consultant – a request for \$5,000 for a consultant to assist with the legal technician project, and an additional \$4,000 for meeting expenses was requested by the POLB. This request was not included in the 2008 budget.
- (c) Bar Examiners Increase in Stipend – an additional \$30,000 would be required to increase the stipend for bar examiners. The Budget and Audit Committee recommends that this matter be deferred for address during the 2008 program review process.

- (d) Spokane Bar Exam – an estimated cost of \$36,000 would be required to hold a bar exam in Spokane in July. The Budget and Audit Committee recommends that the WSBA continue to hold only one main site for the bar exam in July.

Treasurer Berg described the \$250,000 budget deficit as modest; however, he emphasized that the 2% scheduled dues increase will not sustain the WSBA's levels of expense. Therefore, the Board must look at revenues going forward for at least the next five years.

President Dial reported that the moving expense of close to \$2.0 million, of which \$1.0 million was held in reserves, was expended in fiscal year 2007. Dial urged the Board to begin considering a future forecast with respect to facility needs (i.e., planning for the future and forecasting what that might cost). Further, and based on the foregoing, it remains imperative that reserve funds be built into the budget. Dial commended the practice of requesting a fiscal analysis prior to taking Board action on new proposals.

Governor Mungia moved, seconded by Governor Lawrence, that the Board approve the 2007-2008 Budget with the condition that a balanced budget be reached within a year.

Governor Karademos urged his support of the GAAP and offered his strong opposition to funding the POLB's legal technician project. Treasurer Berg reiterated that the GAAP idea is not dead. The proposal received for the 2008 budget was not feasible, but discussions are ongoing. Governor Karademos moved, seconded by Governor Davis, that the Board approve funding GAAP by adjusting other specific line items including the Practice of Law Board budget, increasing the section per-member charge, and raising rates for CLE seminars.

General Counsel Welden cautioned the Board not to amend the budget for the following reasons: (a) there are other unresolved issues regarding the attorney-client relationship between the WSBA and potential clients; and (b) because the Board administers the POLB pursuant to Supreme Court order. President Dial urged the Board to adopt the budget as presented and then continue its discussion of issues of concern after lunch.

Steve Crossland, Chair of the Practice of Law Board, spoke in support of the POLB's request for an additional \$9,000 and provided an explanation for the additional funds.

Spokane Bar Exam

Dean of the Gonzaga University School of Law, Earl Martin, and President of the Student Bar Association, Brandon Rouche, participated by phone in this discussion. Dean Martin expressed his support for a summer bar exam to be held in Spokane. Dean Martin supports the Spokane Bar Exam as an equity issue. In the area of revenue sources, Dean Martin suggested raising the bar exam fee to offset the costs; he further offered volunteer services if staffing is an issue.

Governor Berg questioned whether or not there were comparable facilities on campus available because the cost to use the convention center would amount to approximately \$18,000. Dean Martin agreed to follow up in exploring site options.

Former WSBA President Dave Savage spoke in support of a Spokane Bar Exam and further proposed that a one-time trial exam be held in 2009. WSBA Director of Regulatory Services, Jean McElroy, shared that staff levels are currently low and it currently takes 16 staff to hold the exam in Bellevue. Of 915 applicants, 456 are from King County, 145 are from Western Washington, 118 are from Eastern Washington, and 196 are out of state. To hold a simultaneous, valid exam, all applicants are entitled to equally suitable facilities. General Counsel Welden noted a potential liability issue in engaging volunteers to staff the bar exam.

A vote was taken on the motion to approve the budget as presented with the condition that a balanced budget be reached within a year. Motion passed with a vote of 12-1-0. Governor Karademos voted against.

Discussion then turned to clarification about the engagement of volunteers to staff a Spokane Bar Exam. Dean Martin concurred with the potential liability issue and clarified that volunteers would be engaged only in situations where the use of volunteers would be appropriate. Martin stated that the Board's continued consideration of an alternate site in overcoming the current challenges posed would demonstrate that the WSBA is truly a statewide organization. General Counsel reiterated that a decision not be made today based on an assumption that volunteers will be used until a complete examination of the liability issue is addressed.

Governor Karademos moved, seconded by Governor Baker, that the Executive Director provide the Board with an implementation plan detailing the feasibility to hold a summer 2009 Eastern Washington Bar Exam in Spokane. Governor Mungia asked if he could make a friendly

amendment to the motion to examine locations other than Spokane (e.g., Vancouver, Bellingham, etc.). Governor Karademos declined to accept the amendment. The study should include costs, staffing, volunteers, bar exam fees, and facilities. Said study should be completed in six months. The motion passed with a vote of 11-2-0. Governors Anderson and Mungia against.

Discussion ensued regarding alternate sites vs. holding two exams simultaneously. Governor Mungia reminded the Board that the data currently available demonstrate this is not solely a staffing issue, it is simply not feasible to hold two exams simultaneously. Dean Martin concluded by asserting his willingness to assist in any way possible to make this happen.

POLB

Governor Baker moved, seconded by Governor Lawrence, that the Board approve an additional \$4,000 for the POLB for operating expenses. Discussion transpired. Treasurer Berg reported that the Budget and Audit Committee did not cut the POLB budget; they just did not approve the additional \$9,000 requested. However, the overall POLB cost center budget did increase by 8%. The motion passed with a vote of 7-6-0. Governors Anderson, Aoki, Berg, Butler, Karademos, and Mungia voted against.

GAAP

Governor Vail moved, seconded by Governor Karademos, that General Counsel Welden review the proposal for any liability concerns and that the GAAP Committee present a revised proposal to the Budget and Audit Committee for consideration by the Board at its March 2008 meeting. The motion passed with a vote of 13-0-0. General Counsel Welden reiterated that a review of unresolved liability issues regarding clients must be completed.

2008 Keller Deduction Schedule

General Counsel Welden presented the proposed Keller Deduction Schedule for 2008. Governor Lawrence moved, seconded by Governor Berg that the Board approve the 2008 Keller Deduction Schedule. The motion passed with a vote of 12-0-0. Governor Mungia was not present.

Lawyers' Fund For Client Protection Committee

General Counsel Welden presented a procedural rule amendment on behalf of the Lawyers' Fund for Client Protection Committee for submission to the Supreme Court. Governor Davis moved, seconded by Governor Anderson that the Board approve the proposed procedural rule amendment as presented. The motion passed with a vote of 12-0-0. Governor Berg was not present.

General Counsel Welden presented the Lawyers' Fund for Client Protection Committee's Annual Report. Governor de los Santos moved, seconded by Governor Vail, that the Board approve the annual report for submission to the Supreme Court. The motion passed with a vote of 12-0-1. Governor Aoki abstained.

Amendment to RPC 5.5

General Counsel Welden presented the suggested amendment that the provision of pro bono legal services by in-house counsel authorized to practice pursuant to part (d) of RPC 5.5 be amended and submitted to the Supreme Court with a request that it be adopted on an expedited basis. The former version of RPC 8(f) included authorization for the non-Washington lawyers/house counsel to provide pro bono legal services. That authorization no longer exists in the rules. The suggested amendment would add a new section (e) to RPC 5.5 to restore that authorized practice. Governor de los Santos moved, seconded by Governor Vail, that the Board recommend the proposed amendment to RPC 5.5 to the Supreme Court for consideration. The motion passed with a vote of 13-0-0.

WSBA Bylaw Amendment re: Section Voting Members

The WSBA Bylaws contain multiple categories for section membership, including full membership as well as limited membership under certain conditions. Limited membership does not entitle a member to voting rights or to hold office.

WSBA Director of Regulatory Services, Jean McElroy, suggested that eliminating an element of the distinction between full membership as an active WSBA member from a limited membership may reduce the significance of active WSBA membership. The proposed bylaw amendment will entitle certain lawyers with certain limited licenses to have voting rights and be eligible for election to office in any section that changes their bylaws to allow such status.

Governor Butler described the proposed bylaw amendment as cutting away the privileges active members of the WSBA have as lawyers. Governor Lawrence suggested that if a section is best served by a person with a limited license then the Board should support this individual's willingness to serve.

Executive Director Littlewood reported that staff is currently reviewing the APRs and WSBA Bylaws from top to bottom, which will include a review of the various classifications of membership. Staff will bring their recommendations to the Board for complete vetting and discussion in due course, and she expressed concerns about making this bylaw change before that process is complete.

Governor Davis moved, seconded by Governor Lawrence, that the Board adopt the proposed WSBA Bylaw amendment to allow certain lawyers with certain limited licenses to have voting rights and be eligible for election to office in any section that changes their bylaws to allow such status.

Robert Richardson, Foreign Law Counsel in the state of Washington, thanked the Board for considering the proposed WSBA bylaw amendment, which would enable sections to determine their leadership.

The motion passed with a vote of 10-3-0. Governors Baker, Berg, and Butler voted in opposition.

International Practice Section Bylaw Amendment

Governor Lawrence moved, seconded by Governor Berg, that the Board approve the proposed International Practice Section Bylaw Amendment to allow certain lawyers with certain limited licenses to have voting rights and be eligible for election to office in the International Practice Section. The motion passed with a vote of 12-1-0. Governor Baker voted in opposition.

WSBA Standing Committee, Board and Panel Appointments

Director of Member and Community Relations, Judy Berrett, was present to address any questions the Board had concerning the WSBA Standing Committee, Board and Panel Appointments. Governor Lawrence moved, seconded by Governor Mungia, that the Board approve the appointments as presented. The motion passed with a vote of 13-0-0.

WSBA Standing Committee, Board and Panel Chair/Vice-Chair Appointments

Governor Mungia moved, seconded by Governor de los Santos, that the Board approve the appointments as presented. The motion passed with a vote of 11-0-0. Governors Aoki and de los Santos were excused.

MCLE Board Nominations

Governor Anderson moved, seconded by Governor Lawrence, that the Board nominate James Andres to serve as Chairperson and Kay Verelius to serve in the non-lawyer position of the MCLE Board. The motion passed with a vote of 11-0-0.

MCLE Increase in Accredited Sponsor Fees

Governor Berg moved, seconded by Governor Mungia, that the Board approve the increase in MCLE accredited sponsor fees as recommended by the MCLE Board. The motion passed with a vote of 11-0-0.

Commission on Judicial Conduct Appointment

The WSBA appoints four members to the CJC, two regular members and two alternate members. Currently, the alternate position (previously held by Kathleen O'Sullivan), is vacant. This alternate position carries a term that expires June 2008.

Governor Lawrence moved, seconded by Governor Vail, that the Board appoint Margaret Sowards to the alternate position.

Governor Mungia moved, seconded by Governor Baker, that the Board appoint Michael Pontarolo to the alternate position.

Governor Butler moved to appoint Tom Morris to an alternate position. The motion died for lack of a second.

A vote was taken and Michael Pontarolo was appointed to the alternate position on the Commission on Judicial Conduct.

Washington State Center for Court Research Advisory Board Nomination

Governor Berg moved, seconded by Governor Mungia, that the Board approve the nomination of Janis L. Carrington to the Washington State Center for Court Research Advisory Board as recommended by President Dial. The motion passed with a vote of 11-0-0.

Board for Judicial Administration Best Practices Committee

Governor Berg moved, seconded by Governor Mungia, that the Board approve the nomination of Steven J. Kinn to the Board for Judicial Administration Best Practices Committee as recommended by President Dial. The motion passed with a vote of 11-0-0.

Judicial Recommendation Committee Appointments

Governor Lawrence moved, seconded by Governor Shea, that the Board approve the appointments of Thomas Bothwell, Marlyn Chu, J. Donald Curran, Dennis Morgan, Zachary Mosner, Stephen Osborne, and John Tollefson to the Judicial Recommendation Committee. The motion passed with a vote of 11-0-0.

WSTLA Correspondence dated September 6, 2007

President Dial reported that the WSBA Officers will speak with the Officers of WSTLA regarding their request of September 6 with regard to the advertising by the Oppose R67 campaign.

LIMITED PRACTICE BOARD – PROPOSED RULES AND PROPOSED AMENDMENTS TO RULES AND REGULATIONS – Mark Schedler, Chair, and Jean McElroy, WSBA Director of Regulatory Services

Chair of the Limited Practice Board, Mark Schedler, thanked the Board for taking the time to consider the proposed rules and amendments. Schedler announced that the suggested IOLTA rules for LPOs had been vetted with the Legal Foundation of Washington, and that initial concerns raised by the LFW about the proposal have been addressed in the rules currently being proposed.

Governor Shea moved, seconded by Governor Berg, that the Board approve the proposed rules and proposed amendments to the rules and regulations of the Limited Practice Board. The motion passed with a vote of 10-0-0. Governor Mungia was not present.

Governor Shea reported that as liaison to the LP Board, he has observed the extensive work the LP Board and staff have undertaken with regard to rewriting these rules and commended their hard work.

JUDICIAL SELECTION TASK FORCE – Judge Richard Fitterer and Governor Lawrence, Chair

Governor Lawrence provided the Board with background information regarding the establishment of this task force to evaluate the issue of judicial selection and the subsequent issuing of majority and minority reports by the task force.

The majority report maintains that the creation of a judicial selection commission is the best approach. However, the minority report requests that the Board of Governors not support the recommendation of the majority report.

Discussion transpired. Governor Butler offered that a former King County Study Group was committed to a commission system, however, he felt that there was no vetting and it did not address issues of diversity. Governor Butler opined that the public does not favor a commission system.

Governor Lawrence noted that both the majority and minority reports are posted on the WSBA website and the task force hoped to be before the Board at its December meeting for Board consideration and action.

LONG-RANGE PLANNING COMMITTEE RECOMMENDATIONS – Governor Salvador Mungia, Chair

Governor Mungia, Chair of the Long-Range Planning Committee, presented the committee's recommendations for Board approval.

Mission Statement

Governor Karademos moved, seconded by Governor Berg, that the Board adopt the proposed new Mission Statement as presented:

Mission Statement: The Washington State Bar Association's mission is to serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice.

The motion passed with a vote of 9-0-0. Governors Vail and Wiitala were excused.

Guiding Principles

Governor Shea moved, seconded by Governor Baker, that the Board adopt the proposed Guiding Principles as presented:

Guiding Principles: The WSBA will operate a well-managed association that supports its members and advances and promotes:

- *Access to the justice system;*
- *Diversity, equality, and cultural understanding throughout the legal community;*
- *A fair and impartial judiciary;*
- *The public's understanding of the rule of law and its confidence in the legal system; and*
- *The ethics, civility, professionalism, and competency of the Bar.*

The motion passed with a vote of 9-0-0.

Strategic Goals

Governor Lawrence moved, seconded by Governor Berg, that the Board adopt the proposed Strategic Goals as presented:

Strategic Goals 2008-2011:

1. *WSBA engaging in a systematic review of all its programming.*
2. *WSBA strengthening its connection with its membership.*
3. *BOG improving its relationship with the WSBA staff.*

The motion passed with a vote of 9-0-0.

EXECUTIVE DIRECTOR'S REPORT – Paula Littlewood

Executive Director Paula Littlewood introduced recently selected Chief Disciplinary Counsel, Doug Ende, and announced that Gregg Hirakawa, who was present earlier in the day, will commence employment on October 8 as the Deputy Director for External Relations.

Executive Director Littlewood took this opportunity to speak on behalf of the entire WSBA staff in thanking President Dial for her tireless efforts throughout the 2006-2007 Board year. She

noted that it had been an eventful year for the staff and President Dial had successfully delivered WSBA to its new headquarters, ensured a smooth transition in the Executive Director position, and supported and insured implementation of the recommendations that came out of the classification and compensation study. President Dial received an ovation of thanks.

PRESIDENT'S REPORT

By written report only.

PRESIDENT-ELECT'S REPORT

By written report only.

ADJOURNMENT

There being no further business, the Board of Governors meeting was adjourned at 4:45 p.m. on Friday, September 21, 2007.

Respectfully submitted,

Paula C. Littlewood
WSBA Executive Director