

MINUTES

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

Wenatchee, WA
June 1, 2007

The Public Session of the Board of Governors of the Washington State Bar Association was called to order by President Ellen Conedera Dial at 9:30 a.m., on Friday, June 1, 2007, at the Wenatchee Convention Center in Wenatchee, Washington. Governors in attendance were:

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

Also in attendance were President-elect Stanley A. Bastian, Immediate Past-President S. Brooke Taylor, Executive Director and Meeting Secretary Paula C. Littlewood, and Assistant General Counsel Douglas Ende.

LIAISONS, GUESTS AND STAFF IN ATTENDANCE:

Meredith Wright Hutchins	Government Lawyers Bar Association
Dan Gottlieb	ATJ Board
Steve Toole	WSTLA
Gary Riesen	WAPA
Judge Vickie Churchill	Island/San Juan Superior Court

Amee Tilger	Editorial Advisory Board
James Macpherson	WDTL
John Brangwin	WYLD, President
Gail Nunn	Family Law Section
Jon Ostlund	CPD, Co-Chair
George Yeannakis	CPD, Juvenile Subcommittee Chair
Bob Boruchowitz	CPD, System Efficiencies Subcommittee Chair
James Hershey	WSBA Criminal Law Section
Richard Potter	Administrative Law Section
Geoffrey Gibbs	Snohomish County Bar Association
Zulema Hinojos-Fall	Former At-Large Governor
Mark Johnson	Former District 7W Governor
Julie Mass	WSBA Deputy for Finance and Administration
Judy Berrett	WSBA Director of Member and Community Relations
Gail Stone	WSBA Director of Justice and Diversity Initiatives
Jean McElroy	WSBA Director of Regulatory Services
Frances Dujon Reynolds	WSBA Director of Human Resources
Donna Sato	WSBA Executive Assistant

WELCOME AND INTRODUCTIONS

President-elect Bastian welcomed everyone to his hometown of Wenatchee, Washington.

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

President Dial extended a welcome to Executive Director Paula Littlewood to the Board table for her first Board meeting since being selected as Executive Director of the WSBA.

APPROVAL OF MINUTES FROM THE APRIL BOARD MEETING

President Dial called for any corrections, additions, or deletions to the Public Session minutes of April 13, 2007. President Dial offered a correction to the last sentence on page five of the

minutes to reflect that “the section per-member charge be no higher than \$8.00 (currently \$7.75) in 2008 ...” The minutes were adopted subject to this correction.

REPORT ON EXECUTIVE SESSION

President Dial reported that in Executive Session the Board adopted the Executive Session minutes of April 13, 2007; engaged in discussion regarding the litigation and discipline docket reports; denied a petition for reinstatement after resignation; adopted the election process for both the President-elect and Governor At-Large positions; adopted the recommendations of the 2007 Awards Committee; received an update on the *Bar News* editor selection process; and approved a recommendation received from the Judicial Recommendation Committee.

CONSENT CALENDAR

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

- a. Approve proposed Bylaw Amendments of the Legal Services to the Armed Forces Section; and
- c. Approve an appointment to the Local Rules Task Force.

WSBA PRESIDENT-ELECT (2007-2008)

WSBA President-elect 2007-2008 candidate, Mark Johnson, presented his vision to the Board as detailed in his letter of interest dated March 19, 2007.

There being no questions and/or comments. President Dial proceeded with a secret ballot vote procedure as adopted in Executive Session.

James Macpherson spoke in his capacity as the former chair of the President and Governor Selection Task Force by reiterating to the Board that contested elections demonstrate membership involvement and revitalizes the bar.

Executive Director Littlewood provided President Dial with the results of the secret ballot vote. President Dial invited Mark Johnson to the Board table as the unanimously elected President-elect 2007-2008.

INTERVIEW AND SELECTION OF THE AT-LARGE (A) GOVERNOR

Brenda Williams, Janice L. Smith-Hill, Dennis W. Morgan, and Carrie Coppinger Carter were each allowed five minutes to address the Board. Their five minute presentations were followed by a question and answer period. Following this interview process, governors and liaisons discussed the qualifications of the candidates. The Board proceeded to vote by secret ballot.

Executive Director Littlewood provided President Dial with the results of the secret ballot vote. President Dial invited Brenda Williams to the Board table as Governor-elect At-Large (A).

GOVERNORS' FORUM

President Dial

President Dial presented a publication titled "*Legal Guide for Cancer Patients*" produced by the Texas Young Lawyers Association Legal Cancer Guide Team. President Dial reported that she had occasion to share this publication with the Washington Women Lawyers and they have committed to produce, in collaboration with the WSBA, a pamphlet for the state of Washington which will focus on people living with cancer and their legal issues.

Governor Anderson

Governor Anderson announced the following upcoming events:

- *Getting Ahead and Giving Back: Diversity in Washington's Legal Community*, presented by the Minority Bar Associations of Washington; scheduled for June 8 at the Seattle University School of Law; and
- *Successful Litigation in a Changing Landscape – The Diversity Litigation All Stars*; presented by the WSBA Litigation Section; scheduled for June 22-23 at Campbell's Lake Chelan Resort.

Governor Anthony Butler

Governor Butler shared his concern about the practice of law being engaged in by individuals for a lower cost; for example, the proposed legal technician rule.

Governor Ed Shea

Governor Shea reported that the Limited Practice Board has completed a full-scale review and revision of its current rules which will be before the Board in July for action. Shea acknowledged

the WSBA staff who worked very hard to provide the Board with the proposed amendments for its “first reading.”

Governor de los Santos

Governor de los Santos shared a general concern about the conduct of certain WSBA committee members and inquired whether or not committee chairs are authorized to remove committee members for inappropriate conduct.

LIAISONS’ FORUM

President John Brangwin – WYLD

John Brangwin, President of the WYLD announced that the first At-Large Trustee will be selected at the upcoming June 23rd WYLD Board of Trustees Meeting.

Judge Vickie Churchill – Island/San Juan Superior Court

Judge Churchill reported that the Superior Court Judges Association is in the process of developing their long-range plan. Issues include: access to justice, adequate court funding, public defense, indigent defense, sentencing reform, a judicial college, and foster youth programs.

Steve Toole – WSTLA

Steve Toole asked that the WSBA include him on any bar communications, including e-mail distribution lists, which may provide an opportunity to lend input on upcoming Board meeting agendas.

James Macpherson – WDTL

James Macpherson also requested that the WSBA include him on any bar communications, including e-mail distribution lists.

COMMITTEE ON PUBLIC DEFENSE – JON OSTLUND, Co-Chair

Juvenile Defense/Representation Report and Recommendations

Co-chair Ostlund introduced George Yeannakis, Chair of the Juvenile Defense/Representation Subcommittee. Yeannakis presented an overview of the Juvenile Defense/Representation Subcommittee’s research and deliberations and informed the Board that the subcommittee seeks a uniform procedure to waive counsel.

Governor Aoki moved, seconded by Governor Vail, that the Board approve the proposed JuCR 7.15 Waiver of Right to Counsel.

Discussion transpired. There were concerns raised about the waiver form and the difficulty juveniles would have in understanding its proposed language. Governor Davis, who strongly supports the proposed JuCR 7.15, remained troubled by the waiver form language and urged the Board to defer a vote on this issue or approve the proposed rule with a request to redraft the form. Others pointed out that if the rule passes, juveniles will have counsel who can explain the form.

Discussion continued, Judge Alicia Nakata, Chelan County District Court, noted a concern raised at the District and Municipal Court Association regarding the potential need for additional conflicts counsel, since many juvenile cases involve more than one offender. They also noted a concern about the ethical obligations of an attorney who acts on behalf of a juvenile for the limited purpose of advising regarding waiver, and whether that attorney would be prohibited by ethics rules from future representation in the case.

The motion passed with a vote of 12-0-1. Governor Davis abstained, despite his support of JuCR 7.15 he noted his concern about the readability of the language contained on the waiver form. Governor Anderson was excused.

System Efficiencies Report and Recommendations

Bob Boruchowitz, Chair of the System Efficiencies and Legislative Changes Subcommittee, presented three proposals: a two-track system for contempt of court proceedings, a resolution in support of diversion programs, and the right to counsel at initial court proceedings, including arraignments and probation hearings. Discussion transpired.

Concerns were raised regarding the three proposals. Governor Karademos moved, seconded by Governor Vail, that the Board postpone consideration of the two-track system for contempt of court proceedings until such time as the Family Law Executive Committee has had an opportunity to completely review the recommendation, i.e. until the July Board meeting. The motion passed with a vote of 8-5-0. Governors Aoki, Berg, Burke, Butler, and Mungia voted against. Governor Anderson was excused.

Governor Karademos moved, seconded by Governor Mungia, that the Board adopt the proposed Resolution in Support of Diversion Programs. The motion passed with a vote of 13-0-0. Governor Anderson was excused.

Governor Mungia moved, seconded by Governor Lawrence, that the Board adopt the recommendation RE: Right to Counsel with amendments to delete paragraph 2 and to make advisory instead of mandatory paragraphs 4 and 5. The motion passed with a vote of 12-1-0. Governor Butler voted against. Governor Anderson was excused.

FISCAL MATTERS

Treasurer Berg and Deputy Director of Finance and Administration Julie Mass presented the year-to-date financials in a revised format and welcomed feedback on the quarterly narrative summary. Mass urged the Board to call or e-mail her with questions about the financial reports and she would be happy to provide assistance. A question and answer period followed.

Treasurer Berg announced that the GAAP Feasibility Study will be addressed by the Budget and Audit Committee at its July meeting, copies of which will be distributed to the Board via e-mail.

Discussion transpired regarding the WSBA IT network upgrade proposal. Governor Lawrence moved, seconded by Governor Butler, that the Board approve the expenditure of approximately \$119,698 to replace the WSBA's Storage Area Network which is currently unreliable. The motion passed with a vote of 13-0-1. Governor Karademos abstained.

BOG MATTERS

Commission on Judicial Conduct – Appointments (2)

President Dial turned the gavel over to President-elect Bastian and disclosed that her law partner, Kathleen O'Sullivan, is a candidate for appointment to the Commission on Judicial Conduct.

President-elect Bastian suggested that the Board proceed with nominations and the appointment of the regular member vacancy, followed by nominations and the appointment of the alternate member vacancy.

Governor Anderson moved, seconded by Governor Davis, that the Board appoint Kathleen O'Sullivan to fill the regular member vacancy to the Commission on Judicial Conduct. Motion passed unanimously.

Governor Anderson moved, seconded by Governor Vail, that the Board appoint Octavia Hathaway to fill the alternate member vacancy to the Commission on Judicial Conduct. Governor Lawrence moved, seconded by Governor Karademos, that the Board appoint Zachary Mosner to fill the alternate member vacancy to the Commission on Judicial Conduct.

Zachary Mosner was appointed to fill the alternate member vacancy to the Commission on Judicial Conduct with a vote of 8-6-0.

ABA Delegates – Appointments (3)

All candidates for WSBA appointment to the ABA House of Delegates were provided with the opportunity to address the Board. President Dial turned the gavel over to President-elect Bastian and disclosed that her law partner, James Williams, is a candidate for appointment to the ABA House of Delegates.

Candidates James Williams (by phone), Julia Bahner, Michael Pellicciotti, and Deborah Perluss presented their platforms followed by a question and answer period. Discussion transpired.

Governor Berg moved, seconded by Governor Davis, that the Board appoint Julia Bahner to the young lawyer position to the ABA House of Delegates. Governor Anderson moved, seconded by Governor Karademos, that the Board appoint Michael Pellicciotti to the young lawyer position to the ABA House of Delegates.

Michael Pellicciotti was appointed to fill the young lawyer position to the ABA House of Delegates.

Governor Butler moved, seconded by Governor Anderson, that the Board appoint James Williams to the ABA House of Delegates. Governor Lawrence moved, seconded by Governor Baker, that the Board appoint Thomas Fitzpatrick to the ABA House of Delegates. Governor Davis moved, seconded by Governor Vail, that the Board appoint Deborah Perluss to the ABA House of Delegates.

Governors voted for two candidates, the two candidates who received the highest number of votes were appointed. Fitzpatrick and Perluss received the same number of votes. President-elect Bastian cast the tie-breaking vote. James Williams and Deborah Perluss were appointed to the ABA House of Delegates.

Special Appointments – Executive Director Littlewood

Executive Director Littlewood addressed special appointments to the Washington State Center for the Court Research Advisory Board, and the BJA Best Practices Committee, and whether the appointments should be made by the president or the Board. Two possible scenarios were proposed for Board action. Discussion transpired.

Governor Mungia moved, seconded by Governor Karademos, that the Board adopt scenario #1: Presidential appointment (names are surfaced by BOG members, WSBA staff, officers, and AOC/BJA (where relevant)) and presented to the BOG for confirmation.

Governor Lawrence moved, seconded by Governor de los Santos, that the Board adopt scenario #2: Appointment by the BOG after posting to members asking them to submit letters of interest.

Discussion transpired. Pursuant to discussion, Governor Lawrence moved, seconded by Governor Berg that the Board adopt a broader based selection process: after posting to members asking them to submit letters of interest, a presidential appointment be made and presented (along with the entire candidate pool) to the BOG for confirmation. Motion passed unanimously.

Public Records Exemptions Accountability Committee – President Dial

President Dial reported that the Chair of the Administrative Law Section, Richard Potter, recommends that the Board support Governor Wiitala as an appointed member to the Public Records Exemptions Accountability Committee established by SSB 5435. Governor Berg moved, seconded by Governor Mungia, that the Board support Governor Wiitala's appointment to the Public Records Exemptions Accountability Committee by submitting a letter of consideration to Governor Gregoire. Motion passed with a vote of 13-0-1. Governor Wiitala abstained.

Conflict of Interest Policy

Governor Lawrence moved, seconded by Governor Anderson, that the Board adopt the Conflict of Interest Policy.

Assistant General Counsel raised some concerns about the definition of "immediate family." It was the consensus of the Board that the concerns be addressed before taking any action.

Governor Berg moved, seconded by Governor Mungia, that the Board defer action on the Conflict of Interest Policy until the July Board meeting. Motion passed unanimously.

LEGISLATIVE REPORT AND APPOINTMENT OF LEGISLATIVE COMMITTEE

Director of Justice and Diversity Initiatives Gail Stone reported that this was a great session which included, among other highlights that will be detailed in a final legislative report, substantial gains in the area of trial court funding.

Stone presented the recommended 2007-2008 WSBA Legislative Committee Appointments for the Board's consideration.

Governor Lawrence moved, seconded by Governor Karademos, that the Board approve the recommended appointments to the 2007-2008 WSBA Legislative Committee. Motion passed unanimously.

MCLE PROPOSED RULE CHANGES – Director of Regulatory Services Jean McElroy

WSBA Director of Regulatory Services Jean McElroy reported that this matter was originally submitted to the Board in April. Pursuant to the Board's consensus that action be deferred, the MCLE Board continued its extensive comment process by considering the comments received and incorporating them into a complete review of all regulations. A final version of the rules are now before the Board for adoption and subsequent submission to the Supreme Court.

A lengthy discussion transpired. Governor Karademos noted his concern specifically relating to the proposed change that would eliminate in-house CLE limits and the potential disadvantage to small firms and sole practitioners.

Governor Lawrence moved, seconded by Governor Mungia, that the Board approve the proposed amendments to Admission to Practice Rule 11 and Appendix APR 11, Regulations of the Washington State Board of Continuing Legal Education, for submission to the Supreme Court with a request for emergency adoption. Motion passed with a vote of 13-1-0. Governor Karademos voted against.

PRESIDENT'S REPORT

By written report only.

PRESIDENT-ELECT'S REPORT

By written report only.

EXECUTIVE DIRECTOR'S REPORT

By written report only.

ADJOURNMENT

There being no further business, the Board of Governors meeting was adjourned at 5:15 p.m. on Friday, June 1, 2007.

Respectfully submitted,

Paula C. Littlewood
WSBA Executive Director