

## MINUTES

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

**Richland, WA  
April 24-25, 2009**

The Public Session of the Washington State Bar Association Board of Governors was called to order by Acting-President Salvador Mungia at 9:30 a.m. on Friday, April 24, 2009, at the Courtyard Marriott in Richland, Washington. Governors in attendance were:

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

Also in attendance were President Johnson (Friday afternoon and Saturday), Immediate Past-President Stan Bastian, Executive Director and Meeting Secretary Paula C. Littlewood, and General Counsel Bob Welden.

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

Greg Dallaire	Access to Justice Board
Dan Gottlieb	Access to Justice Board, Liaison
Karla Carlisle	Attorney
Greg Liebler	Attorney
Kenneth Miller	Benton-Franklin Bar Association, President
Barbara Otte	Benton-Franklin Legal Aid Society, Director
Bob Schultz	Benton-Franklin Legal Aid Board, President
The Honorable Lesley Allan	Civil Legal Aid Oversight Committee, Chair

John Midgely	Columbia Legal Services, Executive Director
Jean Cotton	Family Law Section, Bar Executive Committee
Ed Holm	Government Lawyers Association
Marty Andrews	Kibble and Prentice
Clarke Daffern	Kibble and Prentice
The Honorable Richard McDermott Jr. (by phone)	King County Superior Court, Judge
Paul Fjelstad	Kitsap County Bar Association, President
Chris Mertens	Lawyers' Fund for Client Protection
Bill Kinsel	Legal Aid for Washington Fund, Board Member
Caitlin Davis Carlson	Legal Foundation of Washington, Executive Director
Nick Gellert	Legal Foundation of Washington, President
William Hyslop	Legal Foundation of Washington, Trustee
Jim Corbett	Legal Services, Project Manager
Jorge Baron	Northwest Immigrant Rights Project, Executive Director
César Torres	Northwest Justice Project, Executive Director
Jim Bamberger	Office of Civil Legal Aid, Director
Steve Crossland	Practice of Law Board
Brian Knopf	Real Property, Probate and Trust
Craig Matheson	Superior Court Judge's Board of Trustees
Steve Toole	Washington Association of Justice, Liaison
Gary Riesen	Washington Association of Prosecuting Attorneys
Dan Fazio	Washington Farm Bureau, Director of Employer Services
Katherine Knox	WSBA Amicus Committee, Chair
Randy Gordon	WSBA Board of Governors, Former Member
Renea Saade	WSBA Committee for Diversity, Co-Chair
Rick Rasmussen	WSBA Committee for Diversity, Co-Chair
Chad Dold	WSBA Continuing Legal Education Committee, Chair
Douglas C. Lawrence	WSBA Discipline Review Committee, Chair
Jaime Hawk	WSBA Young Lawyers Division, President
Nanette Blackburn	WSBA Young Lawyers Division, SE District Trustee
Michael Heatherly	WSBA <i>Bar News</i> , Editor
Julie Mass	WSBA Deputy Director, Finance & Administration
Judy Berrett	WSBA Director, Member & Community Relations
Doug Ende	WSBA Director, Office of Disciplinary Counsel
Jean McElroy	WSBA Director, Regulatory Services

Mark Sideman	WSAB Director, Continuing Legal Education
Gail Stone	WSBA Director, Justice & Diversity Initiatives
Elizabeth Turner (phone)	WSBA Assistant General Counsel
Chach Duarte White	WSBA Diversity Programs Manager
Joan Fairbanks	WSBA Justice Programs Manager
Peter Lee	WSBA IT Senior Developer
Emily Robinson	WSBA Events Coordinator
Margaret Shane	WSBA Executive Assistant

### **WELCOME AND INTRODUCTIONS**

Officers, Governors, liaisons, guests, and staff introduced themselves. Acting-President Sal Mungia announced that President Johnson would join the meeting in the afternoon, and welcomed the Board and everyone in attendance to the Courtyard Marriott in Richland, Washington.

### **APPROVAL OF MINUTES**

The Minutes of the January 22-23, 2009, Public Session were deemed adopted by consensus. The Minutes of the March 6-7, 2009, Public Session were deemed adopted by consensus. The Minutes of the April 9, 2009, Special Meeting were deemed adopted by consensus.

### **REPORT ON EXECUTIVE SESSION**

Acting-President Mungia informed those in attendance that in Executive Session: (a) two awards were discussed and voted upon; (b) three requests for waiver of APR 3(b) were denied; the Board heard Chief Disciplinary Counsel's quarterly report on the lawyer discipline system; (c) the Executive Director reported on recent meetings with the local bar and bench, as well as the topic at the Bar Leaders Conference joint session with the Governors and the Supreme Court Justices being GR 12.

### **EXECUTIVE DIRECTORS' REPORT – Paula Littlewood**

Executive Director Littlewood reported that: (a) it is anticipated the Home Foreclosure Legal Aid Project will launch to the lawyer community to seek volunteers on Law Day, May 1; video-based training will be available by the end of May; roll-out to the public in early June; and details for a press conference are being worked out with a half-hour interview with KPLU already completed; (b) a roll-out of "My WSBA" is anticipated in the near future and will be a portal for members to enter the WSBA website to do such things as change address online, with eventual capability

for online licensing, access to the CLE store, volunteer forms, and training request forms; (c) the electronic Board book is now in use; thanking the Governors, liaisons, and guests for their willingness to lean into this new technology and the WSBA's efforts to go more online; she reported that if the April meeting materials had been printed as usual, 27,000 sheets of paper, or 54 reams, would have been used. This resulted in the saving of approximately 3 trees, a cost savings of \$1,600 and a time savings for staff of 25 hours; (d) the WSBA has moved to electronic voting, explaining the procedure, stating that the feedback received to date has been very positive, and noting that it is hoped there will be an increase in voter turnout; she reminded everyone in attendance that the deadline to vote is May 15 and stated that a further report will be made at the May meeting; in addition, she announced that Leland Kerr is the Governor-elect for the 4th District; and (e) invited everyone in attendance to lunch with the Governors and to the evening Reception with the local bar where a Local Hero award would be presented.

### **CONSENT CALENDAR**

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

### **DISCIPLINE REVIEW COMMITTEE (DRC) REPORT – Doug Lawrence, Chair, and Stan Bastian, Task Force 4 Chair**

DRC Committee Chair Lawrence informed the Board that this will be the last installment of the DRC Report and that discussion would be held on the issues reviewed by Task Force 4. He noted that Task Force 4's recommendations were reviewed by the DRC and by members of all other Task Forces before the DRC formulated its own recommendation to the BOG.

Stan Bastian, Chair of Task Force 4, reviewed the considerations and recommendations of Task Force 4 and provided the names of the task force members. He stated that the working principles which informed Task Force 4's discussions and decisions were its determination that the processes currently in place were working well, and its determination that the ABA's recommendation to establish an independent administrative oversight committee should not be adopted. The BOG voted not to adopt that recommendation of the ABA at its January 2009 meeting.

*ABA Recommendation 13: The Court Should Amend Rule 7.2 of the Rules for Enforcement of Lawyer Conduct to Streamline Other Interim Suspension Procedures.*

Chair Bastian noted that there are three parts to the ABA's recommendation:

1. *Eliminate Review Committee Review:* Chair Bastian reported that the Task Force unanimously recommends no change in the current system. One reason for not changing the current system is that it protects Disciplinary Counsel from allegations of unfairness. The Task Force believes the current system works and does not unduly delay the process.
2. *Eliminate the Requirement for Personal Service on Respondents:* Chair Bastian reported that the Task Force unanimously recommends no change in the current system for the reason that personal service is a reasonable requirement and a matter of fairness and is not significantly delaying the imposition of suspensions.
3. *Eliminate Show Cause Proceedings:* Chair Bastian reported that the Task Force unanimously recommends no change in the current system because there is no compelling reason articulated by the ABA to eliminate the show cause proceedings. The Task Force felt it is a process that provides an important structural checkpoint and that it is important to keep it in place.

Chair Bastian reported that it is the recommendation of Task Force 4 that ABA Recommendation 13 not be adopted.

Governor Gibbs moved, seconded by Governor Lee, that the Board not adopt ABA recommendation 13, but approve the recommendation of Task Force 4 and the DRC. Motion passed unanimously with a vote of 13-0-0.

*ABA Recommendation 14: The Court Should Amend the Rules for Enforcement of Lawyer Conduct Relating to Disability Inactive Status.*

Chair Bastian reported that it is the recommendation of Task Force 4 that the ABA recommendation to move the function of transferring lawyers to and from disability inactive status from the WSBA to the Supreme Court not be adopted. The Task Force found that there are no concerns with the current system and that, therefore, there is no need to change it.

Governor Gibbs moved, seconded by Governor Gipe, to support the Task Force 4 and DRC recommendation and not adopt ABA Recommendation 14. Motion passed unanimously with a vote of 13-0-0.

ABA Recommendation 21: The Court's Role in Enhancing Consistency in Sanction Recommendation.

Chair Bastian noted that there are several parts to this recommendation and that Task Force 4 felt there was no need to make any changes to the rules:

1. *The Supreme Court Should Issue More Written Discipline Decisions:* Chair Bastian reported that, although it agrees that more written decisions would assist the process, the Task Force does not believe it is in a position to make recommendations to the Court about its procedures; therefore, recommends that the Board not adopt this ABA recommendation.
2. *Admonitions and Probation Should Be Considered Sanctions:* Chair Bastian reported that the Task Force believes the current distinction in the ELCs between sanctions and admonitions is important and should be retained; therefore, it recommends that the Board not adopt this ABA recommendation.
3. *ELC 13.1 Should Be Amended to Prevent Lawyers Who Have Received an Admonition From Claiming They Have Not Been Sanctioned:* Chair Bastian reported that the Task Force suggested that the issue related more to how questions might be posed on the subject rather than how admonitions are characterized under the ELCs. Chair Bastian also stated that the Task Force felt the distinction between admonitions and sanctions is an important one and should be retained. Accordingly, Task Force 4 recommends that the Board not adopt this ABA recommendation.
4. *Probations Should Be a Sanction That Can Be Imposed Without Discipline:* Chair Bastian reported the Task Force believes that the WSBA's current system, which only allows the imposition of probation if a lawyer is sanctioned, is appropriate and should be retained. Therefore, Task Force 4 recommends that the Board not adopt this ABA recommendation.

Chair Bastian reported that it is the recommendation of Task Force 4 that ABA recommendation 21 not be adopted.

Governor Gibbs moved, seconded by Governor Lee, that the Board support the Task Force and DRC recommendation and not adopt ABA Recommendation 21.

Discussion ensued regarding the fact that, when a lawyer is admonished, it is public information that the lawyer has been subject to disciplinary action. When a lawyer, asked if he or she has been "sanctioned," says no, he or she takes advantage of the technical distinction between a

disciplinary “sanction” and a disciplinary “action.” This is deceptive on the part of the lawyer and can mislead the inquirer or the public.

Governor Karademos moved to amend the motion to add language that the question be changed to include admonishments. Motion died for lack of a second.

Governor Gibbs amended his motion, agreed to by Governor Lee, to read: that the Board support the Task Force and DRC recommendation and not adopt ABA Recommendation 21, with the exception of ABA sub-recommendation 3, which shall be referred to the ELC Task Force for further consideration. Motion passed 12-0-1. Governor Williams abstained.

*ABA Recommendation 23: The Court Should Eliminate the Imposition of Admonition After Hearings on Formal Charges.*

Chair Bastian explained the current system and reported that the Task Force recommends the Board not adopt ABA Recommendation 23. The Task Force believes the right to protest an admonition is an important procedural right for respondent lawyers and that it would not be appropriate for a hearing officer to be prevented from imposing the correct result in a particular case merely because the respondent did not accept an admonition at an earlier stage in the proceedings.

Governor Gibbs moved, seconded by Governor Shea, that the Board support the recommendation of the Task Force and the DRC and not adopt ABA Recommendation 23. Motion passed 12-0-1. Governor Williams abstained.

*ABA Recommendation 24: The Court Should Consider Amending Rule 14.2 of the Rules For Enforcement of Lawyer Conduct to Clarify That a Lawyer Disbarred, Suspended or on Disability Inactive Status Cannot Work in a Law Office or as a Paralegal.*

Chair Bastian explained the current system and reported that the Task Force agreed that ELC 14.2 should be amended to clarify that a lawyer disbarred, suspended or transferred to disability inactive status cannot work in a law office or as a paralegal. He noted that the rules do not specifically state that a disbarred, suspended or disability inactive lawyer cannot act as a legal assistant. Chair Bastian reported that the Task Force recommends that ABA Recommendation 24 be adopted by the Board.

Governor Gibbs moved, seconded by Governor Butler, that the Board support the Task Force and DRC recommendation that such clarification be adopted and the matter be referred to the ELC Drafting Task Force for further consideration and clarification.

Discussion ensued regarding the phrase: "in any capacity." Chief Disciplinary Counsel Ende and General Counsel Welden clarified that the current RPC and ethics opinions prohibit a lawyer from employing a disbarred, suspended, or disability inactive lawyer in a law office in any capacity, but the ELCs do not specify that the disbarred, suspended, or disability inactive lawyer is precluded from acting in that capacity. Jean Cotton, a member of the Family Law Section Executive Committee, suggested clarification of all aspects of what a disbarred or suspended lawyer can and cannot do.

Governor Gibb's motion passed 10-1-2. Governor Karademos opposed. Governors Haskell and Lee abstained.

*ABA Recommendation 25: The Court Should Amend Rule 13.8 to Provide Greater Detail Regarding the Imposition of Probation and to Set Forth Specific Requirements for the Monitoring and Revocation of Probation.*

Chair Bastian reported that the Task Force disagreed with all of the proposed changes to Rule 13.8 contained in ABA Recommendation 25.

1. *Add a summary procedure to the rules allowing a lawyer to be prosecuted for violations of probation violations:* Chair Bastian noted that the WSBA currently has a more detailed procedure and that the Task Force believes the WSBA's procedure provides more protection for the lawyer involved.
2. *Add specific factors to the rule for guidance in imposing probation:* Chair Bastian reported that the Task Force could find no problem that the ABA identified, therefore, no change is needed.
3. *Add a requirement that the respondent lawyer file an affidavit of compliance prior to the end of probation:* Chair Bastian reported that the Task Force is not aware of any problems this ABA recommendation would solve, therefore, no change is needed.
4. *Disciplinary Counsel, not the Disciplinary Board Chair, should select the probation monitor.* Chair Bastian noted that the current practice is to select monitors by stipulation, which allows the lawyer to be involved, and that having the Disciplinary Board involved takes some pressure off Disciplinary Counsel.
5. *ODC should work with the proposed oversight committee to develop a list of trained and screened probation monitors. Monitors should be required to attend annual training.*

6. *Probation should be an alternative disciplinary sanction:* Chair Bastian reported that the Task Force believed probation should be an alternative to a disciplinary sanction. In WSBA's Rule 13.1, probation is not a form of discipline, but is a tool that is used once misconduct is found. In addition, he reported that the Task Force felt the system of probation is not used often, but when it is used, it works well and does not need changing.

Discussion ensued with a number of Governors expressing general support for the idea of greater specificity in the rule with respect to available conditions of probation. Chief Disciplinary Counsel Ende observed that the ABA Recommendation calls for a far more comprehensive probation system than Washington has had, akin to a criminal probation model, and that such an approach would require a substantial augmentation to or shift in ODC resources.

Governor Gibbs moved, seconded by Governor Comstock, that the Board support the recommendations of the Task Force and the DRC to leave the current rules unchanged, but directing that the ELC Drafting Task Force consider factors that should be considered as requirements or guidelines for all probation proceedings (including those addressed in the ABA Recommendation). Motion passed unanimously with a vote of 13-0-0.

President-elect Mungia thanked Chair Lawrence and the entire Committee for its splendid work on this discipline review project.

**REPORT FROM WSBA CONTINUING LEGAL EDUCATION (CLE) COMMITTEE – Chad Dold, Chair; and Mark Sideman, Director of Continuing Legal Education**

Chair Dold informed the Board that the Committee's focus is to be of assistance to the CLE Department. In addition, he assured the Board that every effort is made to support the department in quality control including increasing the vetting of speakers before presentations, reaching out and identifying issues, and suggesting topics relevant to lawyers, in the hopes that they will also be relevant to staff.

He emphasized that CLEs are one of the main value propositions for the WSBA membership and that the WSBA has an opportunity for serious branding and keeping members involved, interested, excited, and energized in activities far beyond just sending in licensing fees. Chair Dold noted that the CLE Department has the capacity to assist sections in putting on high-quality programs for interesting topics which the sections can provide. He concluded by

extolling the continuing good cooperation between the CLE Department and the sections. CLE Director Mark Sideman noted the support he receives from the Committee in policy support and future planning.

## **GOVERNORS' FORUM**

### **Governor Williams:**

Governor Williams informed the Board that she is coming before them as Chair of the Board of Governors Diversity Committee with a request from the Minority Bar Association (MBA) for the WSBA to send a broadcast email regarding the Law Firm Diversity Report (aka the Minority Report Card) and is requesting a decision from the Board as to whether this MBA request is in compliance with internal WSBA policy. She noted that the Co-Chair of the Minority Report Card, Thuy Nguyen-Leeper, has requested that the WSBA send a copy of the Minority Report Card, or a link to the Report Card, to the full WSBA email list. She reported that the Committee voted to put an announcement and link on the WSBA home page and to include a link on the diversity page of the WSBA website to the Minority Bar Association that has the Report Card located therein.

Director of Member and Community Relations Judy Berrett noted that it is the WSBA's policy not to send broadcast emails for other groups except other Bar Associations in Washington or state courts. She clarified that these types of requests are not automatically granted.

Discussion ensued regarding the methodology of the Minority Report Card, the validity of the statistics, the possible perception of the information being punitive and the effect this could have on law firms' willingness to participate in future comprehensive studies, including a study being contemplated by the WSBA. Discussion also focused on the wisdom of highlighting both those firms perceived to be doing well and those who aren't; firms whose understanding of some of the questions led them to answer the survey in a way that created an incorrect picture of the firm's diversity; the importance of viewing the information as a door to open dialogue rather than being a pat on the back or a need for improvement; and the concern that the Report will be assumed to have the WSBA's stamp of approval on it since it is being sent from the WSBA. It was noted by Director of Justice and Diversity Initiatives Gail Stone that the June issue of *Bar News* will report on the study in detail and provide a link to the Minority Report Card.

Governor Williams moved, seconded by Governor Lee, that the Board authorize the distribution of a brief email announcing that the Minority Bar Associations of Washington Joint Committee on Diversity has issued the Minority Report Card.

Governor Gibbs moved to amend that any such email make it clear that it is not a WSBA work product, nor is it endorsed by the Board of Governors. Governor Williams accepted as a friendly amendment and noted that a disclaimer has been discussed and is being drafted.

Director of Member and Community Relations Judy Berrett asked for clarification that the email contain a link to the survey. Governor Williams answered in the affirmative.

Governor Karademos asked for clarification of the motion. Governor Williams restated the motion: that the Board authorize the distribution of the Minority Report Card in a broadcast email, stating that the Minority Bar Association issued the Minority Report Card, with a link to that Report, and with a statement that the Minority Report Card is not a WSBA product.

Governor Palace made a friendly amendment that the statement also include the Board of Governors takes no position on it and that it is neither endorsed nor does it represent the views of the WSBA. Governor Williams did not accept as a friendly amendment and asked Executive Director Littlewood for an example of the standard disclaimer that goes out on WSBA emails. Executive Director Littlewood responded that she would locate the Board of Governors Diversity Committee's disclaimer language used when posting the information about the Report Card to the website.

Governor Palace moved, seconded by Governor Karademos, to amend the motion to state: This report is not the product of WSBA. It does not represent the views of WSBA, nor is it endorsed by WSBA.

Governor Gibbs moved, seconded by Governor Haskell, to defer the matter to later in the meeting so time can be taken to draft specific language and then brought before the body. Governor Williams stated that she was not opposed to postponing this item to later in the meeting. Governor Butler requested that the language used not be customized to this particular product, but be broad enough to be used in other similar situations. Motion passed unanimously with a vote of 13-0-0.

This item was again taken up during the Saturday session of the Board of Governors meeting and the following disclaimer language was put forth by Governor Williams:

*This is a publication of the Minority Bar Associations' Joint Committee on Law Firm Diversity. All opinions and comments in this publication represent the views of the authors and do not necessarily have the endorsement of the Association nor its officers or agents.*

Governor Williams moved, seconded by Governor Gibbs, to send a broadcast email to the WSBA list serve announcing publication of the Minority Report Card by the Minority Bar Association providing a link and utilizing the afore-mentioned disclaimer language. Motion passed 13-1-0. Governor Karademos opposed.

Governor Lee:

Governor Lee addressed the Board on:

- legal process outsourcing. She noted that the ABA does have a Formal Opinion regarding this issue and suggested that this issue be discussed at the July Board of Governors meeting, then referred to the Rules for Professional Conduct Committee to ascertain whether Washington state needs to promulgate a rule to regulate conduct pertaining to this issue in our state. She advised that the ABA opinion allows lawyers engaged in legal outsourcing to do a number of things and opined that this issue is relevant to us because many young lawyers are considering the practice of law in this manner. She noted that Chair of the Discipline Review Committee Doug Lawrence and Executive Director Paula Littlewood have a great deal of information about this paradigm shift, which is a client-driven model and becoming a competitive marketing issue because we now operate in a globalized market.
- being contacted, in her capacity as a Governor, by the Commission on African-American Affairs to join a task force that is investigating the attack of a 15-year-old prisoner in her cell by a police officer. She advised the Commission that she could not serve as a Governor, but would be willing to serve as an individual and noted that the Commission is looking at helping to bring about a policy change to allow for decertification of law enforcement officers. She noted she will be able to serve as a conduit to the Board for information.
- her attendance at the Law for Americans workshop presented by the Access to Justice (ATJ) Conference which took place at the University of Utah School of Law. She noted

Governors Aoki and Williams brought Justice Sanders' proposed court rule, which would ensure lawyers meet WSBA standards of public defense, to the Board's attention. Governor Williams volunteered to draft a memo in support of the proposed court rule, noting that the comment period for the proposed rule would expire on April 30th. Discussion ensued regarding the drain on public defense monies when appointed defense lawyers are not competent, and the opposition of the SCJA and the DMCJA, as they feel it is not a judge's position to decide whether or not a lawyer is competent.

The Honorable Craig Matheson, of the Superior Court Judges' Association (SCJA), informed the Board that the SCJA is adamant about retaining the right not to appoint people who are incompetent and do recognize the duty to make sure counsel is competent. He noted that it is his personal opinion that it is a good idea to support Justice Sanders' proposed court rule.

Governor Williams moved, seconded by Governor Lee, to draft a letter and bring it to the Board for consideration in its Saturday session. Motion passed unanimously with a vote of 13-0-0.

During the Saturday session of the Board of Governors meeting, Governor Williams moved, seconded by Governor Lee, to send the letter of support for the proposed rule change that Governor Williams had drafted and circulated.

Discussion ensued regarding the strong opposition to the proposed rule by the SCJA and the DMCJA, a judge being in the best position to make an observation, the purpose being to touch upon qualification of lawyers across the state even though judges don't appoint lawyers in some jurisdictions, and the possible conflict of interest for judges to rule on competency and also appoint counsel.

Governor Williams' motion to send a letter supporting the Justice Sanders' proposed rule change passed 8-6-0. Governors Aoki, Butler, Etengoff, Lee, Shea, and Williams opposed.

### President-elect Mungia:

President-elect Mungia reported that he would have a presentation on his initiatives during his term as President of the Board during the Board Retreat in July, and that he and Executive Director Littlewood have had conversations with some local school districts in Washington to get the WSBA involved with the students in grades K-3.

### Governor Gipe:

Governor Gipe requested the meeting evaluation form be put in a clickable PDF format.

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

### **Budget and Audit (B&A) Recommendations on Requests from WSBA Leadership Institute (WLI)**

Treasurer Aoki briefed the Board on the background and discussions related to two requests from the WSBA Leadership Institute (WLI) and reported that B&A recommends the following:

1. Approval of WLI 's request to allow Seattle Fellows to stay overnight in a Seattle hotel with out-of-town Fellows for the first session of the WLI as outlined in the memo from the WLI Advisory Board. Governor Gipe moved, seconded by Governor Lee, that this B&A recommendation be approved. Motion passed unanimously with a vote of 13-0-0.
2. Approval of WLI's request that (a) WLI Fellows, Advisory Board members, and faculty be allowed to submit reimbursement requests and receipts to a designated member of the WLI Advisory Board for approval, and (b) copies can be submitted to the WSBA electronically for a second review and payment. Governor Lee moved, seconded by Governor Gipe, that this B&A recommendation be approved. Discussion ensued regarding WLI being treated differently than other boards. It was noted by Treasurer Aoki that part of the Fellows' teaching/education program has a fiscal component and this will be used as a teaching tool, since many of the WLI members have no experience with expense accounts, budgets, allocation, etc. Motion passed 12-0-1. Governor Karademos abstained.

### **Video Conference Proposal**

Treasurer Aoki reported that B&A recommends the Board approve the purchase of audio/video equipment to be installed in the St. Helens conference room at the WSBA Conference Center, as well as a videoconferencing cart which would have multiple uses. Deputy Director Mass explained that up to \$60,000 is needed for this recommendation and would come out of the existing Capital Reserve Fund. Discussion ensued regarding projected cost savings, the useful

life of the equipment, and expanding the service as a potential member benefit, creating a source of revenue to help defray cost. It was noted that the main purpose of the proposal was to enhance the meetings and participation experience, rather than to save money. (Although there would be some cost savings, it might not cover the cost of the equipment for some time.)

Governor Shea moved, seconded by Governor Gibbs, to approve this recommendation and that \$60,000 from the Capital Reserve Fund be expended for these capital costs. Motion passed unanimously with a vote of 13-0-0.

### **February 2009 YTD Financial Statements**

Governor Aoki referred the Board to the informational material in the Board book regarding the February 2009 YTD Financial Statements.

### **FY 2010 Budget Process and Timeline**

Governor Aoki referred the Board to the informational material in the Board book regarding the FY 2010 Budget Process and Timeline.

## **PROGRAM REVIEW COMMITTEE (PRC) REPORT**

### **Recommendations Relating to WSBA Committees – Russ Aoki, Treasurer, and Julie Mass, Deputy Director for Finance and Administration**

Treasurer Aoki referred the Board to the meeting materials and reported that the following recommendations are being made by the PRC:

- *committee size*: beginning with the 2009-2010 appointments, all committees have a maximum of 18 members, except Court Rules and Procedures (28), Judicial Recommendation (22), and Legislative (33);
- *nomination/appointment process*: beginning with the 2009-2010 committee appointment process, current committee chairs and members recruit and recommend future members; each Governor make one nomination for each committee; committee chair, BOG liaisons, and staff liaisons actively recruit applicants and make nominations for remaining positions; Diversity Program Manager and Bar Leaders Program Manager review all committee nominations to ensure adequate representation and diversity and to point out duplicate nominations; and all nominations remain subject to confirmation by the Board of Governors at their July meeting;

- *committee funding*: beginning with the 2009-2010 appointments, all committee members be funded to achieve equality among the members and eliminate confusion about who is funded, who is not, and why;
- *term length*: beginning with the 2010-2011 appointments, all committees have a term length of two years, with the exception of Continuing Legal Education (CLE) and Judicial Recommendation (JRC), which retain a term length of three years; members may serve for two consecutive terms, then will not be eligible to serve again on the same committee until three years have lapsed.

Governor Karademos moved, seconded by Governor Gibbs, that the Board adopt the recommendations made by the Program Review Committee. Discussion ensued regarding the rationale for the size of the committees, the length of the terms, and the appointment process, clarifying that the Board has the final appointing authority. Governor Gipe suggested a friendly amendment to add (*italicized*): The committee chair, BOG liaisons, and staff liaisons *shall collaborate to* actively recruit applicants and make nominations for additional positions. Governors Karademos and Gibbs accepted as a friendly amendment. Motion passed 10-3-0. Governors Butler, Lee, and Williams opposed.

**Recommendations Relating to Diversity Programs – Russ Aoki, Treasurer; Julie Mass, Deputy Director of Finance and Administration; and Gail Stone, Director of Justice and Diversity Initiatives**

Treasurer Aoki referred the Board to the meeting materials and reviewed the history of the Committee for Diversity (CFD), noting that the WSBA Young Lawyers Division (WYLD) also has a diversity committee which acts independently, doing its own programming. Treasurer Aoki informed the Board that the PRC looked at the need for identifying the common focus of the organization, as well as promulgating and clarifying the mission statements for both entities. He noted that the PRC decided it was not its charge to decide the specific direction and work plans of the respective committees, but to look at the structure of each.

Treasurer Aoki advised that the PRC recommends the Board: clarify the roles of the various diversity committees. The Committee for Diversity (CFD) shall be the central provider of diversity initiatives for the WSBA consistent with the stated principles and direction by the BOG and in consultation with the BOG Diversity Committee; the WYLD Committee for Diversity (WYLD CFD) shall be directed to two missions, namely advising the WYLD Board of Trustees on diversity issues and providing input and support to the CFD on behalf of the WYLD; the CFD

shall be a generator of ideas, and is encouraged to recommend ideas or focus areas consistent with WSBA policy to the BOG. Likewise, the WYLD CFD is encouraged to bring forward ideas to and work with the CFD on implementing the WSBA's diversity plan.

The PRC further recommends the Board direct that the governing documents for the BOG Diversity Committee, the CFD, and the WYLD Committee for Diversity be amended to be consistent with the proposed roles of the respective committees; designate the WYLD At-Large seat on the Board of Trustees as a formal liaison to the CFD (not as a member appointed by the Board of Governors); set specific direction and overall program focus in a timely manner; and consider looking at funding and staff resources once the direction and focus are set and implementation is underway.

Mr. Rasmussen, Co-Chair of the WSBA Committee for Diversity, responded to the PRC's recommendation to designate the WYLD At-Large seat on the Board of Trustees as a formal liaison to the CFD, noting that the WYLD has identified a need to have a diversity committee of their own and expressed concern that the way the recommendation is worded would hamper the WYLD Diversity Committee. Executive Director Littlewood noted that this recommendation is not intended to curtail the WYLD's enthusiasm, but is intended to coordinate diversity efforts through the WSBA CFD. Director Stone noted that a substantial number of the current members of the CFD are young lawyers.

Discussion ensued regarding elimination of duplicate efforts, setting up a work group of representatives from each committee to create coordinating mission statements, obtaining guidance and support from the Board of Governors in terms of direction, and the need for a comprehensive study to determine the WSBA's diversity and retention.

#### **WSBA COMMITTEE FOR DIVERSITY (CFD) REPORT – Renea Saade and Rick Rasmussen, Co-Chairs**

Co-Chair Rasmussen thanked the Board for the opportunity to share their report and introduced Co-Chair Saade who referred the Board to the meeting materials, including a summary of the CFD's mission statement and a summary of the current composition of the committee. She noted that there is a greater composition of under 10 years in practice and practice in King County. She suggested the Board look more closely at candidates in future years to obtain greater diversity, and to find individuals from different counties, different practice areas, and longer practice terms in order to garner more experience on the Committee. Co-Chair Saade

reported that attendance at meetings has been very good with good input on agenda items, then highlighted successes for the year. She advised the Board that the CFD is a resource available to help and noted the BOG candidate Meet and Greet on May 6 and the King County Bar Swearing-in Ceremony on June 4.

## **BOG MATTERS**

### **Nominations to Mandatory Continuing Legal Education (MCLE) Board – Jean McElroy, Director of Regulatory Services**

Director McElroy informed the Board that the recommended nominations to the MCLE Board are John W. Chessell and Archer Summers for a three-year term effective October 1, 2009, through September 30, 2012.

Governor Karademos moved, seconded by Governor Gibbs, to adopt the recommendation to nominate John Chessell and Archer Summers to the MCLE Board, the appointment to be made by the Supreme Court. Motion passed unanimously with a vote of 13-0-0.

### **Chief Hearing Officer (CHO) Selection Panel Recommendations – Ed Shea, Chair, and Elizabeth Turner, Assistant General Counsel (by phone)**

Chair Shea noted that this discussion will include the selection of, as well as the compensation for, the Chief Hearing Officer. He reviewed the history of the CHO position and the makeup of the panel, its vetting process, and the criteria used to arrive at a short list of candidates. He advised the Board that, in coming to its final decision on the short list, the Panel deadlocked on Joe Nappi Jr. and David Summers. He noted that he broke the deadlock as Chair of the panel and recommends the Board support Joe Nappi as the next CHO because of Mr. Nappi's leadership abilities and because this would result in geographic diversity.

Assistant General Counsel Turner noted that a very spirited discussion was had by the panel. The decision was difficult because both candidates were very different, but both were extremely well qualified.

She further noted that the Panel did not address the compensation issue because the members felt it was not within their purview. She reminded the Board that the current CHO is working on a contract basis and advised that the notice posted for this position included compensation to be determined by the Board, consistent with the current ELC. She advised that the current contract is for \$30,000 annually, or \$2,500 monthly.

Governor Karademos nominated, seconded by Governor Butler, Joe Nappi Jr.

Governor Gibbs nominated, seconded by Governor Comstock, David Summers.

Governor Karademos spoke to Mr. Nappi, noting that he has a good reputation overall, and specifically as a litigator. In addition, he noted that Mr. Nappi is the current Chair of the Board of Bar Examiners and doing an excellent job.

Governor Gibbs spoke to Mr. Summers, stating that Mr. Summers has done many contested hearings, which are quite a specialized process, over the last year and done them very well. In addition, he noted that the service done by Jim Danielson for the Board and the profession has been incalculable. President Johnson advised the Board that Mr. Danielson would receive a letter thanking him for his service.

A vote was taken, with Joe Nappi Jr. receiving 5 votes and David Summers receiving 8 votes, resulting in David Summers being appointed to the Chief Hearing Officer position.

Regarding the compensation for the Chief Hearing Officer, Governor Shea reported to the Board a recommended a salary of \$2,000 per month for a term of one year and felt this would be in line with the amount of work being done. Assistant General Counsel Turner mentioned that the Chief Hearing Officer would be conducting hearings from time to time, but that the Hearing Officers are not compensated and this was one factor taken into account in arriving at a salary recommendation. Executive Director Littlewood advised that since the advent of the full-time Assistant General Counsel at the WSBA, much of the administrative work that the Chief Hearing Officer used to do has been pulled in-house.

Governor Lee moved, seconded by Governor Gipe, to approve the compensation recommendation of \$2,000 per month for a one-year term. Motion passed unanimously with a vote of 13-0-0.

**Amendment to RPC 8.5: Disciplinary Authority Over Judges – Doug Ende, Chief Disciplinary Counsel**

Counsel Ende referred the Board to the draft suggested amendment in the meeting materials and explained the long-standing controversy that began with the judiciary's concern about the Bar Association's authority to investigate and discipline elected judges. He reported that the

issue has resolved successfully. If the draft is approved by the Board, it will be submitted to the Supreme Court for publication and, it is hoped, adoption as a new section of the Rules of Professional Conduct. He explained that the draft sets forth a rule-based solution that delineates circumstances where the WSBA does have disciplinary authority over judges and where it does not. He reported that all stakeholders are pleased with the draft and eager for it to be adopted by the Court. He noted that both judges' associations have voted to support it, and it has also been reviewed and agreed to by the Commission on Judicial Conduct and the Court of Appeals judges. Consensus has been gained and he requested it be put on the Consent Calendar for the May Board of Governors meeting. There was general agreement with this course of action.

### **BOG Diversity Committee Mission Statement – Brenda Williams, Chair**

Chair Williams referred the Board to the Mission Statement contained in the meeting materials, which had been revised based on comments received after the Board of Governors meeting in March. She reviewed the history of the process and the sources of input that resulted in the draft Mission Statement before the Board for consideration, and requested further input from the Board.

Discussion ensued regarding the history of the BOG Diversity Committee; the importance of a Mission Statement that gives the Committee clear direction; the relationship and communication between the Committee for Diversity, the BOG Diversity Committee, and the WSBA Young Lawyers Division Diversity Committee; the need to decide the focus of the Committee under the diversity guiding principle; the importance of receiving feedback on retention and lay of the land, with structure to follow; the importance of choosing one or two areas to focus on rather than spreading the mission too thin; and the need for long-term vision and continuity.

President Johnson requested a conversation regarding the Mission Statement after the Board meeting.

### **Proposed Member Benefits:**

- **Disability and Long-Term Care Insurance Programs for WSBA Members – Clarke Daffern, Kibble & Prentice**
  - Mr. Daffern explained the pricing discounts and underwriting, and reviewed the information presented at the March Board meeting, noting that the insurance would be offered to the WSBA's 30,000+ members and promoted through ads in

Governor Karademos moved, seconded by Governor Gipe, to adopt the recommendations for long-term care with John Hancock Insurance Company and long-term disability with Standard Insurance Company. Motion passed unanimously with a vote of 13-0-0.

- **Health Insurance Program Renewal – Marty Andrews, Kibble & Prentice**

- Mr. Andrews reviewed the medical and dental plan renewal, advising the Board that the rates are good on the medical plan, which would increase 9%, and on the dental plan, which would increase 3%. He noted that the WSBA has an attractive prescription drug benefit, with a resulting utilization rate of 30% compared to a typical 15%-18% utilization rate for similar groups, two-thirds of which is related to 12 individuals. He opined that the plan is attracting a risk segment and, if the benefit remains the same, it may damage the plan in the long-run, making it unsustainable. He also noted that the plan has no cap related to prescription drugs.

In reviewing the proposed new plan, Mr. Andrews noted that the prescription drug benefit includes the option of the greater of a \$35 co-pay or a 40% co-insurance benefit. He advised that this needs to be addressed within the plan, but noted that the Board would likely hear from constituents because it will raise the out-of-pocket expense for individuals. He added that, if this new plan is adopted, the rate increase would lower from 9% to 7-1/2 %. He emphasized that fundamentally, the decision is not about price reduction this renewal year, but about the integrity of the plan in the long-term. He recommended the Board adopt the new plan as long as it is willing to deal with unhappy constituents. He noted that Group Health is the only group provider willing to underwrite the WSBA's member benefit program and it may be the only choice if the WSBA is going to offer group health insurance to its members. He also noted that the WSBA would receive a 60-day notice should the company decide to pull the plan.

Discussion ensued regarding the details of the plan and the likely outcome if no changes are made, and alternative prescription drug plans, including the state high-risk pool.

Governor Karademos moved, seconded by Governor Palace, to renew the group health plan at 9%. Motion passed 12-0-1. Governor Shea abstained.

- **CourtTrax – Jim Corbett**

- Mr. Corbett referred the Board to the information in the meeting materials and reviewed the benefits of the CourtTrax system. In addition, he gave the Board a demonstration showing the ease of use, as well as the breadth and depth of the information. He noted that there are no overhead costs, no upfront or startup fees, no monthly maintenance fees, and no minimum usage charges, and emphasized that it is strictly a pay-as-you-go system.

**Revised *Bar News Editor's Handbook* – Judy Berrett, Director of Member and Community Relations, and Mike Heatherly, Editor of *Bar News***

Director Berrett informed the Board that it had been 15 years since the *Bar News Editor's Handbook* had been revised. She reviewed the revision process undertaken by the Editorial Advisory Committee and noted that the Committee is requesting approval of the revised *Handbook*. Editor Heatherly commended the Committee for their hard work and noted that they did a great job.

Governor Lee moved, seconded by Governor Karademos, that the Board accept the Committee's recommendation. Motion passed unanimously with a vote of 12-0-0. Governor Gipe was not present for the vote.

**Amicus Curiae Brief Committee Recommendation Re *Turner v. Stime* – Kathy Knox, Chair**

Chair Knox reported that the Committee is requesting the Board approve its unanimous recommendation to file an amicus brief on appeal to the Court of Appeals, Division III. In addition, she advised that the Committee is also asking for the Board to give authority to the ACLU to join the Bar's brief, should they decide to file a brief.

Governor Palace moved, seconded by Governor Haskell, to accept the Committee's recommendation and that the ACLU file a separate brief. Motion passed 11-0-2. Governor Karademos recused himself; Governor Butler abstained.

**Proposed Amendments to Supreme Court Audit Regulations (Regulation 106) – Julie Mass, Deputy Director of Finance and Administration**

Director Mass reported that the WSBA IT Department is moving forward with online licensing, but that the language on the Trust Account declaration form needs to be altered to include only questions that need answering per the regulation. The Board is being asked to approve the proposal to streamline the content and eliminate the separate certification requirement so a simple box can be checked on an online form.

Governor Lee moved, seconded by Governor Butler, to accept the recommendation. Motion passed unanimously with a vote of 12-0-0. Governor Gipe was not present for the vote.

**Revisions to Limited Practice Officer Study Topics**

President Johnson referred the Board to the meeting materials, noting that they are for information only.

**LEGISLATIVE REPORT/WRAP-UP – Gail Stone, Director of Justice and Diversity Initiatives**

Director Stone reported to the Board that it has been a very busy legislative session, especially since this is a budget year. She noted that a final decision is yet to be made on the legislation that establishes a surcharge on filing fees and that the landlords have introduced amendments to either remove or reduce the amount of surcharge they would have to pay. She noted that three of the BOG's four Section-sponsored bills had passed the legislature and that both domestic partnership legislation, as well as legislation establishing an automatic process for restoration of felon voting rights, had passed the legislature. She further noted that WSBA Sections had put in significant and influential work this session in response to a variety of legislative proposals.

**RECOMMENDATIONS RE WASHINGTON LAWYERS' FUND FOR CIVIL JUSTICE**

President Johnson reported that he had been in Washington, DC, with the Equal Justice Coalition and met with legislators, and most of the state delegation specifically on the Federal Legal Services Corporation (LSC) budget and on other civil legal aid issues. He noted that the LSC asked for \$485 million, but that the Obama administration has offered

\$435 million as a budget figure. He advised that the issue before the Board, and the WSBA membership, is what if anything should the WSBA do to assist with the civil legal aid funding problems. He advised those in attendance that the Board is working very hard on this issue and that a vote would be taken at the May Board meeting in Yakima.

President Johnson then turned the floor over to representatives from various legal aid organizations who presented an overview of their work, their current situation, the effect the economic downturn has had on their ability to provide services, and the potential effect of further budgetary restraints. Also heard were first-hand accounts from clients served.

- Washington Farm Bureau: Dan Fazio – opposes proposal
- Judge McDermott (by phone) – supports proposal
- Benton Franklin County Legal Aid Society: Barbara Otte and Bob Schultz – supports proposal
- Statewide Programs: John Midgley, César Torres, and Jorge Baron – supports proposal
- Greg Dallaire – supports proposal
- Benton Franklin Bar Association: Ken Miller – opposes proposal
- Craig Liebler, Attorney – opposes proposal
- Government Bar Lawyers Association: Ed Holm – will declare position by May meeting, but will likely oppose
- Chach Duarte-White – Minority Bar Associations will declare position by May meeting
- WSBA Young Lawyers Division: Jaime Hawk, President – will declare position by May meeting
- Jim Bamburger and The Honorable Lesley Allen – supports proposal
- Legal Foundation of Washington: Nick Gellert, Bill Hyslop, Bill Kinsel, and Caitlin Davis Carlson – supports proposal

Governors Lee and Moore presented an alternative proposal to the Board. Governor Lee advised that their goal was to be as fiscally prudent as possible, taking into consideration the legal aid crisis, the Bar's budget, the economic crisis the membership is dealing with, and continue to build reserves, resulting in a win-win solution for all involved. She noted that the proposal includes an amount of \$1.5 million over a three-year period (\$500,000 per year), \$1 million from CLE reserves (replenished using its business model), and \$500,000 from facilities reserves (replenished using licensing fees). She noted that she and Governor Moore would be willing to consider an automatic \$50 assessment on all members, including judges and inactive

members, but with an opt-out provision and alternate contribution options of \$0, \$25, \$75, \$100, Other.

Governor Lee also encouraged the Board to focus its efforts on not only pro bono initiatives, but also on low bono initiatives. She opined that the Home Foreclosure Legal Aid Project is the perfect model to adopt for a more generalized low bono program and encouraged the Board to look again at Civil Gideon.

Governors Etengoff and Gipe then presented their proposal. Governor Etengoff noted that their proposal was based on President Johnson's *Bar News* article and took into consideration feedback from other members, governors, stakeholders, and the civil legal aid system. He noted that they are proposing a transfer of funds from CLE reserves of \$800,000 and a surcharge on attorneys of \$50 per member with a opt-out provision if income is less than 200% of the federal poverty level, along with a request that the judiciary participate as well. The proposal suggests commencing with the 2010 license year which would require special action from the Supreme Court if the Board approves: the Supreme Court would have to consider the proposal at their en banc in September, which would shorten the comment period.

### **ADJOURNMENT**

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

Respectfully submitted,

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Paula C. Littlewood  
WSBA Executive Director