

Minutes – March 12, 2009 ELC Drafting Task Force

Present: Geoff Gibbs, Chair, Randy Beitel, Kim Boyce, Kurt Bulmer, Ron Carpenter (phone), James Danielson (phone), Seth Fine, Bruce Johnson, Julie Shankland, Patrick Sheldon, Elizabeth Turner, Norma Linda Ureña, Charlie Wiggins (phone), Matt Williams (phone), Scott Busby, Reporter, and Nan Sullins, AOC/Supreme Court Liaison

Excused: Erika Balasz

Call to Order/Approval of Minutes

After calling the meeting to order at 10:00 a.m., the Chair acknowledged that Nan Sullins had identified typographic errors in the minutes of the November 20, 2008 meeting. The Chair called for further corrections. No further corrections being proposed, the minutes were approved.

Preliminary Matters

The Chair reminded the group that materials will be disseminated via the WSBA website (<http://www.wsba.org/lawyers/groups/elctaskforce.htm>) and asked that the Task Force members contact Natalie Cain if they experience problems accessing the materials. Ms. Cain may be contacted at 206-733-5939 or nataliec@wsba.org.

Topics

Meeting Schedule – the Chair noted that the meeting schedule as proposed was designed to allow for subcommittee meetings in between meetings of the whole. No objections were raised to the proposed schedule.

Subcommittee structure – the Chair introduced the proposed subcommittee organization chart and then asked whether the group preferred to work in subcommittees or as a committee of the whole. Seth Fine felt that breaking into subcommittees was the right approach. Jim Danielson suggested that subcommittees are efficient for drafting purposes, but the committee of the whole should determine how the issues should be addressed. Ron Carpenter agreed, but suggested that the group break into subcommittees to do an initial review of the suggestions in order to vet and winnow them. Each subcommittee would then present the results of its initial review to the committee of the whole for discussion before returning to the drafting process. Randy Beitel suggested that the subcommittee chairs should focus on identifying the most controversial issues requiring policy determinations for the committee of the whole.

After some discussion, the Chair identified the emerging consensus: the group should follow a two step process, breaking into three subcommittees to classify issues, report to the committee of the whole for policy determinations, and reconvene to begin the task of drafting. The Chair asked for dissenting views and hearing none adopted the consensus as the Task Force's procedural framework.

The Chair then asked to group review the six major areas identified in the Possible Subcommittee Organization chart: (1) Organization & General Procedures (Titles 1–4), (2) Investigations & Interim Procedures (Titles 5, 7, 15), (3) Resolutions without Hearing (Titles 6, 9), (4) Hearing & Disability Proceedings (Titles 8, 10), (5) Review by Board & Supreme Court (Titles 11–12), and (6) Sanctions & Remedies (Titles 13–14). The group identified areas 2, 4, & 5 as the areas most likely to generate the most controversy and the heaviest workload. After some discussion, the group agreed that each of these areas should be paired with one of the lighter areas in order to balance the subcommittees' workload. The Chair identified the consensus as to appropriate pairings as areas 1 & 4, 2 & 3, and 5 & 6. Hearing no dissenting views, the Chair adopted the following subcommittee structure:

Subcommittee A

- (1) Organization & General Procedures (Titles 1–4) &
- (4) Hearing & Disability Procedures (Titles 8, 10)

Subcommittee B

- (2) Investigations & Interim Procedures (Titles 5, 7, 15) &
- (3) Resolutions without Hearings (Titles 6, 9)

Subcommittee C

- (5) Review by Board & Supreme Court (Titles 11–12) &
- (6) Sanctions & Remedies (Titles 13–14)

The Chair next asked the group members to consider which subcommittees they would prefer. After taking input from the members, the Chair announced that he would make subcommittee assignments, accommodating as far as possible the preferences expressed by the members, and appoint subcommittee chairs by email in the next two weeks. The subcommittees' first task will be to classify issues and suggestions in their respective areas into three categories:

- (1) issues/suggestions expected to generate little or no controversy,
- (2) issues/suggestions expected to generate some controversy, and
- (3) issues/suggestions expected to generate serious controversy and for which clear policy direction from the committee of the whole will be required.

Subcommittees should generate a report for the next meeting of the whole. To aid in this endeavor, staff is preparing a matrix of the suggestions submitted to date, including the specific ELC affected and the source of the suggestion. The matrix will be circulated via email and posted on the website. The matrix format

will mirror the format of the BOG Discipline Task Force Recommendations chart from this meeting's materials.

The Chair identified two policy issues that must be addressed: vexatious litigants and non-felony sanctions. After some discussion, the group agreed that both of these issues would be properly addressed by Subcommittee B.

The Chair also clarified that the subcommittees are free to begin work as soon as they wish, without waiting for the matrix. Mr. Beitel, as spokesman for ODC, informed the group that ODC will prepare memos for each of the suggestions it proposed. The purpose of the memos is to identify the problems perceived by ODC and suggest drafting solutions. Kurt Bulmer, speaking on behalf of respondents' counsel, noted that respondents' counsel will review the matrix and respond to the suggestions therein rather than submit suggestions separately.

Next Meeting

The next meeting of the Task Force will be Thursday, May 14, 2009 from 10:00 a.m. to 12:00 noon in the conference center at the WSBA offices. The deadline for submitting materials to Ms. Cain for posting will be 12:00 noon on Tuesday, May 5, 2009.

Adjournment

The Chair asked for further business and, hearing none, adjourned the meeting at 10:40 a.m.

Minutes Respectfully Submitted by

Scott Busby
Disciplinary Counsel
Task Force Staff Reporter