

Minutes – November 5, 2009
ELC Drafting Task Force

Present: Geoff Gibbs, Chair, Erika Balazs (phone), Randy Beitel, Kim Boyce, Kurt Bulmer, Ron Carpenter (phone), James Danielson, Doug Ende, Seth Fine, Bruce Johnson, Julie Shankland, Patrick Sheldon, David Summers, Elizabeth Turner, Nan Sullins, AOC/Supreme Court Liaison, and Scott Busby, Reporter.

Call to Order/Approval of Minutes

The Chair called the meeting to order at 10:00 a.m. and called for corrections to the draft minutes. Ms. Turner identified two instances in which a word had been omitted. The minutes were approved subject to correction of these two errors.

Presentation from Community Watch

The Chair introduced Bethan Tuttle, director of Community Watch, an organization that is interested in the Task Force's work particularly as it relates to ELC 7.1. Ms. Tuttle explained that Community Watch is an advocacy group, national in scope but formed locally in response to a specific incident involving a lawyer convicted of misdemeanor sex crimes. The Chair related that review of ELC 7.1, including some of the concerns raised by Community Watch, is assigned to Subcommittee B, of which Mr. Fine is the chair. Ms. Tuttle outlined three points that Community Watch advocates:

- (1) When a member of the bar is charged with a "predatory crime"—misdemeanor or felony—and that charge is substantiated, notice of the charge should be publicly posted by the WSBA;
- (2) The WSBA should not need to wait for a conviction to act; and
- (3) No registered sex offender should be licensed to practice law because of the special position, privileges, and responsibilities that lawyers enjoy.

The Chair noted that while some of the concerns raised by Community Watch are on the matrix and the group would not be able to discuss them in detail today, the Task Force values hearing Community Watch's point of view. The Chair opened the floor to questions from the Task Force.

Mr. Beitel asked for a clarification of definition of "predatory crime." According to Ms. Tuttle, Community Watch defines a "predatory crime" as any crime where the defendant has gone looking for his prey, such as stalking or luring. Mr. Fine related that there is a statutory definition of the term "predatory" in the Sentencing Reform Act. (See RCWA 9.94A.030(35)).

Mr. Ende asked for clarification of the national scope of Community Watch. Ms. Tuttle confirmed that while Community Watch is incorporated in Washington State, it is available to people nationwide. Mr. Ende asked if Ms. Tuttle had contacted the ABA regarding their model rules for lawyer discipline. Ms. Tuttle said that she has contacted the ABA. According to Ms. Tuttle, the ABA confirmed that ELC 7.1 is substantially similar to the ABA model rule in that an interim suspension is triggered by a felony conviction, but not by a conviction for a “predatory crime” that is not a felony. Ms. Tuttle said that in the particular case that brought this issue to Community Watch’s attention, the lawyer confessed to his crimes and to using his knowledge of the law to avoid being charged with a felony. Even so, there was no interim suspension and no public notice until discipline (a three-year suspension) was imposed.

Mr. Bulmer suggested that the ELC do provide for a petition for interim suspension even without a felony conviction. Mr. Beitel clarified that the rule, ELC 7.2(a)(1)(A) allows a petition for interim suspension when the lawyer’s continued practice of law poses a substantial threat of serious harm to the public. Mr. Bulmer observed that admission of a registered sex offender would be addressed by a different body: the Character and Fitness Board. Mr. Bulmer opined that a registered sex offender would it is very likely not receive approval from the Character and Fitness Board.

Mr. Beitel asked what specific action Community Watch believes that the WSBA should take before a conviction. Ms. Tuttle explained that Community Watch understands that prosecutors do not inform the WSBA when a lawyer is arrested or charged. She suggested that when the WSBA receives information that a lawyer has been charged with a predatory crime, it should be allowed to exercise discretion in determining (1) whether to seek an interim suspension and (2) whether public notice of the charge should be given.

The Chair thanked Ms. Tuttle for sharing the views of Community Watch with the Task Force.

Subcommittee A’s Request for Guidance

Mr. Johnson expressed Subcommittee A’s difficulty with the language in ELC 2.5(d) and 2.9(b) relating to diversity, which currently makes specific reference to diversity in gender, ethnicity, geography, and practice experience. Mr. Johnson referred the Task Force to Mr. Beitel’s memo at page 592 and 593 of the materials.

Mr. Johnson shared the subcommittee’s concern that while diversity is a generic concept, removing the specific language would not give sufficient policy guidance. After some discussion, Mr. Johnson moved that the Task Force adopt the following diversity language:

Diversity, including diversity in gender, ethnicity, geography, and practice experience, should be considered in making appointments.

Mr. Sheldon seconded the motion. Mr. Bulmer expressed his concern that a statement of public policy like this, focusing on gender and ethnicity, would create “super classes” of diversity, to the possible exclusion of other types of diversity. Mr. Fine stated that while he would agree if the subcommittee were drafting a new rule, removing gender and ethnicity from an existing rule might suggest a diminished commitment to these types of diversity in particular.

The Chair called for a vote on the motion. The motion passed with a vote of 7 in favor, 4 against.

Consent Calendar: Subcommittee A

Mr. Johnson submitted the ELC changes listed on page 594 of the materials for the Task Force’s consent review. Ms. Turner clarified that approving these revisions to the language of the specific rules would not preclude discussions of further changes to those rules. The Chair opened the floor for requests to withdraw any items from Subcommittee A’s list. Hearing none, the Chair declared the listed revisions adopted by consent.

For the Good of the Order

Mr. Bulmer asked how to handle cross-subcommittee items. The Chair expressed a preference for unified policy discussion in this situation. He requested that Task Force members inform Mr. Busby when items that affect more than one subcommittee arise so that the discussion can be coordinated appropriately.

Next Meetings

Thursday, January 14, 2010 at **8:30 a.m. to 10:30 a.m.** (Please note the time change.)

Consent Calendar: entries from Subcommittee B
Deadline for materials: Tuesday, January 5, 2010

Thursday, February 11, 2010, 10:00 a.m. to 12:00 noon
Consent Calendar: entries from Subcommittee C
Deadline for materials: Tuesday, February 2, 2010

Thursday, April 8, 2010, 10:00 a.m. to 12:00 noon
Deadline for materials: Tuesday, March 30, 2010

Adjournment

Noting that there was no further business on the agenda, the Chair adjourned the meeting at 11:00 a.m.

Minutes Respectfully Submitted by

Scott Busby
Disciplinary Counsel
Task Force Staff Reporter