Washington State Bar Association WSBA Legislative Committee Meeting WSBA Seattle November 5, 2010

Minutes taken by Sean O'Donnell

Members present: Pat Aylward; Rick Bartholomew, Chair; Watson Blair; John Cary; Kathleen Kim Coghlan; Fred Corbit; Marilyn Endriss; Claudia Gowan; Ryan Patrick Harkins; Kenneth Henrikson; Taudd Hume; Ray Kahler; Peter Karademos; Martha Lantz; Donald Law; C. Dean Little; Merrilee MacLean; Sean O'Donnell, Vice Chair; Jon Ostlund; Amit Ranade; Mark Rising; Kyle Sciuchetti; Suchi Sharma; Klaus Snyder; Brian Sommer; Carrie Valladares; Connie Wan; Sara L. Watkins.

Members not in attendance: Lisa Brodoff; Mark Miller; Cynthia Morgan; D. Roger Reed; Geoffrey Revelle.

Stakeholders present: Jim Bamberger, Office of Civil Legal Aid; K. J. Bagchi, WA Defender Assn; Emily Beschen, WA Assn of Criminal Defense Lawyers; Bob Cooper, WA Defender Association and WA Assn of Criminal Defense Lawyers; James Curry, WA Defense Trial Lawyers; Brian Enslow, WA Association of Counties; Kimberly Gordon, WA Assn of Criminal Defense Lawyers; Laura Inveen, Superior Court Judges Assn; Carol Johnston, Association for Justice; John Lane, Governor's Office, OFM; Rep. Pat Lantz (Ret.), Access to Justice Board; Mellani McAleenan, Administrative Office of the Courts; Tom McBride, WA Assn of Prosecuting Attorneys; Sophia Byrd McSherry, Office of Public Defense; Melanie Stewart, District & Municipal Court Judges Assn; Bruce Neas, Columbia Legal Services; Jennifer Shaw, ACLU of WA; Kevin Stock, WA Assn of Country Clerks; Rick Stroup, King County Law Library; Sandi Swarthout, Equal Justice Coalition; David Ward, Legal Voice; Debbie Wilke, WA Assn of County Officials.

Also present: Adam Torem, WSBA Lamp Section; Marcia Fujimoto, Real Property, Probate & Trust Section; Ruth Edlund, WSBA Family Law Section; Lynne Buchanan, Washington State Labor & Industries; Steve Toole, President, WSBA; Loren Entengoff, Board of Governor, WSBA; Steve Larsen; Kathryn Leathers; Diane Froslie.

The WSBA Legislative Committee portion of the meeting opened at approximately 1:20 pm.

Introduction and welcome by Rick Bartholomew.

AGENDA ITEM #1 (UNIFORM PARENTAGE ACT -- taken out of order)

Ruth Edlund from FLEC presented. She outlined provisions of the proposed UPA legislative changes.

Ruth explained how the current statute reconciled language within the UPA to conform with the Domestic Partnership Act -- specifically how terms like "parent" have replaced "mother" or "father" so that the legislative language is gender neutral.

Ruth further explained how the UPA bill proposes to be reconciled with the DPA on issues such as "presumptive parentage" and standing for parents when a domestic partnership ends. Other portions of the bill that include changes to the UPA includes the addition of a "holding out provisions" and changes to the timelines associated with respect to presumed or acknowledged parents.

David Ward, from Legal Voice, described the work they are going with Representative Pedersen on the bill.

The issue of primary concern to committee members was language in the bill addressing gestational surrogacy and the "no fault" or indemnification provision for a gestational parent should something go amiss during the pregnancy as a result of the surrogate's negligence, malfeasance or other act or omission (regardless of the surrogate's mens rea).

A number of members expressed concern about the adoptive parents' remedies under a surrogacy contract should such a scenario arise.

This agenda item was tabled briefly so that the Committee could consider proposals on three other bills.

AGENDA ITEM #2 (UNIFORM PRINCIPLE AND INCOME ACT)

Marcia Fujimoto from the Real Property, Probate and Trust Section presented.

She outlined the proposed changes to RCW 11.104A.290, Washington's codification of Section 505 of the Uniform Principal and Income Act. The pre-amendment law establishes the scheme for allocating income taxes between the income and principal of a trust.

Under the proposed changes, the legislation would clarify that income tax related to the trust's share of the entity's taxable income that is retained by the entity must be charged to trust principal. The proposed comments provide further guidance to trustees by way of illustration and also confirm that nothing in the amendment would prohibit a trustee from exercising discretionary powers granted under RCW 11.104A.300 and RCW 11.104A.020 to make adjustments due to taxes.

Committee members commended Marcia for her thorough presentation and a vote was taken on whether to sponsor the bill.

AYES: 24

NAYS: 0

ABSTENTIONS: 0

AGENDA ITEM #3 (SCRA -- concerning the Service members' Civil Relief Act)

Adam Torem from the Legal Assistance to Military Personnel Section presented.

Adam explained the general purpose of the current legislation, specifically that Washington's Servicemembers' Civil Relief Act (WA SCRA) protects Washington State residents serving in the National Guard (or any military reserve component) from entry of default judgments while they are away serving their country and requires courts to stay civil legal proceedings during the their absence.

The proposed amendment would re-define "military service" to mean a service member either under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than thirty consecutive days; or under a call to emergency service authorized by the governor under for a period of more than 30 consecutive days. The modification would expand the types of service that are covered by the Washington's SCRA, but would retain the current definition of "service member" such that only state residents serving in the National Guard or another branch of the armed forces reserve would be eligible for its benefits.

A vote was called on sponsorship of the changes.

AYES: 25

NAYS: 0

ABSTENTIONS 0

AGENDA ITEM #4 (HIGHER EDUCATION -- concerning missed exams for reservist students called to active duty)

Adam Torem presented.

The Committee quickly discerned that there was insufficient stakeholder input at this point for the committee to consider sponsorship of the bill. Adam proposed working with the LAMP to seek out proper input and then possibly re-submitting the sponsorship request.

Discussion on the bill was tabled with no vote on sponsorship taken.

AGENDA ITEM #5 (RECEIVERSHIP -- continued from 10-14-2010 meeting)

Changes previously suggested by Legislative Committee members had been adopted. A motion to sponsor was considered:

AYES: 22

NAYS: 0

ABSTENTIONS: 3

AGENDA ITEM #1 (Committee returned to consideration of the UPA)

A number of motions were made with respect to support of the proposed changes to the UPA. Committee member Pete Karademos proposed that the committee adopt the bill but without the language with respect to surrogates. A vote was held on the motion to recommend sponsoring the bill but without the surrogate language:

AYES: 2

NAYS: 24

ABSTENTIONS: 0

Some committee members expressed concern over the prospect of supporting only portions of a bill. A motion was made to table further discussion on the proposed bill.

AYES: 23

NAYS: 3

ABSTENTION: 0

Meeting adjourned at approximately 4:15 pm.