

**PRACTICE OF LAW BOARD
STATE OF WASHINGTON**

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**MINUTES
July 11, 2008**

The Practice of Law Board met on Friday July 11, 2008 at the Washington State Bar Association in Seattle, Washington. Those attending were Steve Crossland, Chair, Hon. Paul Bastine, Vice Chair, Jeanne Dawes, Rita Bender, Cheryl Kringle, Brian Dano, Renee Shadel and Daniel Perez. Julie Shankland, Board Administrator, also attended and acted as secretary to the Board. Kristal Wiitala, WSBA Board of Governors Liaison, and David Estudillo, WSBA Young Lawyers Division Representative, attended the public portion of the meeting.

MINUTES

A motion to adopt the June 2008 minutes was made, seconded and unanimously passed.

NEW MEMBER UPDATE

The Board held a short discussion about the open positions and the applications received. There are two open Board positions beginning in October 2008. The Board has received 2 applications and may have interest from a third person.

A motion was made, seconded and passed unanimously to extend the deadline to one week prior to the August meeting. The Board will take a vote at the August meeting. Those who have submitted application materials should be notified that the Board did not take action in July.

LEGAL TECHNICIAN RULE UPDATE

The Board briefly discussed TVW's "The Docket" that will be devoted to the Legal Technician Rule in September. The station plans to tape the three participants separately. The Board suggests that a session in the same room at the same time might be easier for viewers to understand.

The Board briefly discussed Mr. Crossland and Hon. Bastine's meeting with the Chief Justice last week. Mr. Crossland and Hon. Bastine explained to the Chief Justice that the Board members would like clarification from the Court on the POL Board's role, if any, in advocating for the Legal Technician Rule. The Board drafted the rule proposal at the Court's directive. The Board and the Court agree

that the Board's role is to propose the rule and answer questions. There was also discussion about an annual meeting between the Court and the POL Board. Justice Charles Johnson asked Mr. Crossland and Hon. Bastine why the POL Board had not submitted legislation to make UPL a per se violation of the state Consumer Protection Act. Mr. Crossland and Hon. Bastine explained to Justice Johnson that the Board has discussed this issue and it is a part of the Board's long range planning.

MEETING DATES

The Board discussed making a change to the 2008-9 meeting schedule. A motion was made, seconded and passed unanimously to add a meeting on May 1, 2009 and delete the June 2009 meeting.

PROPOSED WSBA RETREAT POLICY

After a short discussion of the proposed retreat policy, the Board requested a written copy of the policy. The Board is concerned that forcing the retreat to be in Seattle may not be the least expensive option for this Board. This Board has 13 current members, only five are in the Seattle area. The Board questions why a "free" location anywhere in the state with similar travel costs would not be appropriate. A motion was made, seconded and unanimously passed to authorize Steve Crossland to communicate with WSBA President Stan Bastian and WSBA Executive Director Paula Littlewood about the Board's concerns regarding this policy.

PROSECUTORIAL INQUIRY ABOUT CEASE AND DESIST PROCESS

The Board had a discussion about a statement made by a local prosecutor concerning the process of issuing cease and desist letters. The prosecutor indicated that with the two year statute of limitations on criminal actions and no civil enforcement mechanism for POL Board cease and desist agreements, he did not understand why the Board would enter cease and desist agreements. This prosecutor's view was that the Board and the public would be better served if the Board retained the right to contact the prosecutor instead of agreeing to give up that ability, unless the Board learned of a second offense. This prosecutor also recommended that the Board contact the prosecutor immediately on any case that appears to have irrefutable evidence of a UPL violation.

The Board noted that it has discussed these issues several times in the past. The Board discussed organizing a conference for state prosecutors to discuss UPL issues. The Board discussed presenting either a CLE for prosecutors or asking for time on their annual meeting agenda. Ms. Kringle noted that the AG's Office has been doing outreach for the last several years and this appears to be effective. No action was taken on this discussion item. The Board noted that the

August agenda should include time to discuss combining a retreat with a conference.

SUBPOENA AUTHORITY

The Board reviewed a memorandum prepared by Cheryl Kringle. Ms. Kringle determined that although the legal authority is not clear, it appears that the Court could adopt a rule giving the POLB investigative subpoena authority. The Board discussed the difficulties of investigating internet-based UPL without subpoena authority. Ms. Kringle will work on a rule proposal. This item will be placed on the agenda when a proposed rule is available for discussion.

OTHER RULE CHANGES

Jeanne Dawes also reminded the Board that the rules and procedures need to be clarified regarding the Board's authority to resolve cases. The Board would like to have three alternatives: 1) dismiss the case with a letter indicating that although the conduct was UPL, it appeared to be a one time error and further action would not be appropriate; 2) issue the cease and desist agreement; and 3) go straight to the prosecutor. The current rules and procedures are at least confusing and perhaps contradictory on these issues. The Board discussed needing several options because some people engage in UPL due to lack of knowledge and others do it intentionally. These two types of people need different types of Board action. No action was take on this item. Board members will submit suggested rule changes. This item will be placed on the agenda when rule changes are received.

A motion to enter executive session was made, seconded and unanimously passed.

EXECUTIVE SESSION

A motion to end executive session and adjourn the meeting was made, seconded and unanimously passed.