

**Washington State Bar Association  
WSBA Legislative Committee Meeting  
WSBA Seattle  
September 17, 2009**

**Minutes taken by Richard Bartholomew**

**Members present: Kathleen Coghlan, Chair; Rick Bartholomew, Vice-chair; Pat Aylward; Watson Blair; Lisa Brodoff; John Cary; Janet Chung; Fred Corbit; Lise Ellner; Marilyn Endriss; Claudia Gowan; Ryan Harkins; Ken Henrikson; Taud Hume; Peter Karademos; Martha Lantz; Mark Miller; Sean O'Donnell; Jon Ostlund; Geoffrey Revelle; Mark Rising; Suchi Sharma; Klaus Snyder; Brian Sommer; Connie Wan**

**Members not in attendance: Michael Guadagno; Ray Kahler; Don Law; Dean Little; Merrilee MacLean; Cynthia Morgan; D Roger Reed; Sally Savage**

**Also present: Adam Torem, WSBA LAMP Section; Mark Beatty, Andrew Ledbetter, Mark Hoffman, WSBA Business Law Section, Securities Committee; Gail Stone; Jeanne Cushman; Diane Froslic**

Meeting called to order at 1:09 p.m.

Introductions around the table.

**1. Military bill – RCW 38.42.010 - Adam Torem of LAMP.**

Extend Washington SCRA protections to active duty members. Current applies to national guard and federal reserve but not full time active duty.

WA SCRA provides more protections than federal SCRA. Proposed legislation will extend WA protections to full time service members. Right now part time members are given more protections than full time.

There was discussion, with several questions of Mr. Torem for clarification and application of the bill.

The bill does not change the substance of the WA SCRA. It extends coverage to full time active service members and their dependents who are also Washington residents.

Creditors and landlords have historically opposed this type of legislation.

Pete Karademos made a motion, seconded by Lise Elner, to recommend to the Board of Governors that the WSBA sponsor the bill.

In favor: 24

Opposed: 1  
Passed.

Adam would be available for November meeting if we have questions.

## **2. Updating Securities Act of Washington – Mark Beatty, Securities Committee of the Business Section of the WSBA.**

Most disputed portion of proposed legislation allows filing of form D at any time, requires late filing fee of \$600.

Opposed as to Sections 3 and 4 by the Department of Financial Institutions of the State of Washington. Mark Beatty provided a letter from William Beatty, General Counsel for the Securities Division of DFI with this information.

Federal and state law applies to securities and Washington companies have to comply with both. Securities law must protect investors, but at the same time not impose too great a constraint on capital formation. This is a balance. Equity investments fund growth companies with concomitant growth in employment, tax revenue, etc.

Public investment offerings: Must comply with federal laws. No public offerings in Washington in the past two years because too difficult.

Private offerings are easier to raise capital. Federal law governing private offerings includes:

1980 – Regulation D from the SEC requires a Form D be filed with the SEC, providing information about investors and the private offering.

504 exemption for \$1M or less

505 exemption for \$5M or less

506 exemption for over \$5M

Under 504, no ads, no reselling.

505 Private offerings made pursuant to 505 are aimed mainly at “accredited investors”, a term of art describing certain sophisticated investors. The SEC assumes a certain level of knowledge and capital by sophisticated investors and thus does not require the same level of regulatory protection for those investors. No general solicitation or ads. 505 does, however, allow for this private offering to be offered to up to 35 “non accredited” investors.

506 Others. Investors must be financially sophisticated.

In late 1980’s the SEC clarified that immaterial violation of rules does not invalidate your exemption.

Form D is not for benefit of investors. It is for statistical purposes for SEC. Does not provide creditor protection.

In 1996 Congress pre-empted state law regarding 506 offerings. States started to have different requirements and this was confusing so Congress pre-empted to encourage capital formation.

But, Congress did allow states to require the filing of Form D, which WA did as a means of generating revenue with the filing fees. Costs \$300. The big question is what happens if client does not file Form D on time. Getting it filed is a problem for a lot of small companies. If Form D is not filed, investors can ask for rescission, which causes major problems for small companies and for the other investors in the company. This does not make sense because Form D is not intended to protect investors.

Filing fee can only be raised by statute, not rule.

Comment: Not difficult to do a Form D. How does this undermine our capital markets?

Answer: Different states have different requirements and some of these offerings involve more than one state. It may be difficult to have all the signatories together or to sign. Shouldn't be difficult, but in practical terms it can be.

Bill would raise additional revenue with proposed late filing fees.

At present, can lose exemption by late filing. This bill would prevent that.

Some members objected to bill because not filing is irresponsible. Others were in favor of the bill. Fifteen days is unreasonable for a time limit, but the bill has no limit. Can be filed, even after a complaint that there is no filing. One member wants a back end date put in the bill.

Pete Karademos moved to table, seconded by John Cary. Further discussion. SEC and DFI are concerned about the public's likely perception of this bill as eroding investor protections, particularly in the current environment. But Form D is not for investor protection.

If this is painted as deregulation, it is DOA. But it is not deregulation. So sponsors might visit with Rep. Kirby.

Committee members expressed concern about the limited political capital of the WSBA suggesting that this was not the right time or legislation to spend that capital.

Motion to table.

In favor: 19

Opposed: 2

Abstaining: 2

### **3. Forecast for legislation – Jeanne Cushman**

2010 is the second year of the biennium and so is a supplemental budget year. But with revenue collections continuing at rates lower than the previous biennium and caseload costs increasing, we can expect budget cuts.. This will be the main business of the legislature in 2010.

Senate interested in school levy equalization. House interested in housing.

They want to finish in 60 days – on time – and avoid convening a special session at the close of the regular session.

Gas tax revenues have been lower than projected, so transportation funding may be on the agenda.

Any increases to court funding probably put off to 2011. Board for Judicial Administration, Office of Public Defense and the Office of Civil Legal Aid have made the decision to not seek new funding in 2010.

Jeanne will doing outreach to local bar associations for help with legislation. WSBA Legislative Committee members may be called on to assist in those efforts.

### **4. Family Law Venue Legislation – RCW Title 26 – Rick Bartholomew**

Rick reported that there are many venue statutes in Title 26. They are sometimes difficult to find. Our proposed bill repeals some and does not specifically say so.

Three purposes for the bill:

1. Fix a hole in the venue statutes regarding establishing a parenting plan when parentage has already been established.
2. Fix the “Lincoln County problem” to limit where cases can be filed. (Lincoln County makes obtaining a dissolution very easy, it can often be accomplished by mail. However, the County then will not give up jurisdiction for parenting plan adjudication, which can be very difficult for out of-county-families.)
3. Consolidate the venue statutes or cross reference them to make them easier to use.

Rick reported that legislative staff pointed out that our bill is confusing. Legislative staff volunteered to clean up the bill. It will be re-presented at a later meeting. Rick withdrew the request to sponsor the bill today because the bill will be different later.

Meeting adjourned at 3:50 p.m.

Future meetings:

October 9, Seattle WSBA

November 6, SeaTac Radisson Gateway Hotel