

**Washington State Bar Association
Legislative Committee Meeting
WSBA Office, Seattle
October 17, 2008**

Minutes taken by Richard Bartholomew

1. Members present: Kathleen Coghlan, chair; Rick Bartholomew, vice-chair; Pat Aylward; Watson Blair; Lisa Brodoff; John Cary; Janet Chung; Raymond Clary, Frederick Corbit; Deanna Dawson; Marilyn Endriss; Kenneth Henrikson; Taud Hume; Martha Lantz; Donald Law; C. Dean Little; Merrilee MacLean; Mark Miller; D. Roger Reed; Geoffrey Revelle, Sally Savage, Kyle Sciuchetti
Members not in attendance: Roy Berg; David Carlson; Lise Ellner; Michael Guadagno; Gregory Lighty; Sean O'Donnell; Scott O'Halloran; John Ostlund; Michele Radosevich; Mark Rising; Klaus Snyder.
Also present:
2. Meeting called to order at 1:07 p.m.
3. **Uniform Limited Partnership Act presented by Brian Todd of the WSBA Business Law Section.**
 - 3.1. He was here at our September meeting.
 - 3.2. Last time, issue regarding insert requirement in duty of loyalty to partnership to require knowledge of adverse interest.
 - 3.2.1. Our committee suggested that this might not be appropriate as a policy matter.
 - 3.2.2. This was then taken out of the bill.
 - 3.3. Comments from Washington Bankers' Association
 - 3.3.1. Peter Mucklestone of that association raised question re secured creditors' rights. This came up over the last couple of days. Issue relates to uniform act itself.
 - 3.3.1.1. Bankers' Association would probably not oppose the act but no signoff yet.
 - 3.3.1.2. Brian agreed to reluctantly put off this act to get more comment on this issue.
 - 3.3.1.3. So will be on the November agenda.
 - 3.4. Please raise issues now.
 - 3.5. Uniform Law Committee is okay with the act with the change we asked for.
4. **Differing federal and state tax exemption amounts.**
 - 4.1. Dean Butler and Michael Carrico of the Taxation Section.
 - 4.2. Here as member of Estate and Gift Tax Committee of the Taxation Section.
 - 4.3. They have gone to stakeholder groups and the Department of Revenue.
 - 4.3.1. Dept of Rev informally approved similar bill in 2004.
 - 4.4. Banker group looking at it.
 - 4.5. American Estate Council looking it.
 - 4.6. This is about rule of construction re marital deductions in estate taxes in wills or revocable living trusts.

- 4.7. Bill also addresses procedure for resolving issues.
- 4.8. Issues: (See memo)
 - 4.8.1. Exemption under estate tax for both spouses.
 - 4.8.1.1. Make sure both can use these exemptions.
 - 4.8.2. \$2,000,000 are the exemptions now per person.
 - 4.8.3. A trust giving surviving spouse use of money but going to kids in future is okay.
 - 4.8.4. For the amount over the exemption, can give it to wife outright, or in a trust. But if so, there can be an estate tax postponement election. The money can then be treated as though it went to wife for taxes after her death. This is a common gift for amount over the deduction. This is fairly standard for those with significant estates.
 - 4.8.5. Exemption trust: If \$10M, for example – trust with some of the income sprinkled to the descendants.
 - 4.8.6. Problem is that state exemption is static, and federal is going up to 3.5 mil next year, no estate tax the next year, and later it will go to another amount. So if there is not specific language in the will, exemption issues are problematic.
 - 4.8.7. Prior to 2001, most wills described exemption amount in terms of federal estate tax. But next year, WA exemption \$2M but fed is \$3.5M. This causes estate tax issues.
 - 4.8.8. The bill creates a presumption that decedent intended to take full advantage of estate tax exemption and defer all taxes to second death.
 - 4.8.9. To qualify for marital exemption, spouse has to be only beneficiary, so sprinkling now would cause it to be taxed. Bill would peel off the non-exempt amount and make the surviving spouse the only beneficiary during his or her life, so can take full advantage of the federal exemption and avoid WA tax on the first death because executor would elect to have the excess qualify for the WA exemption. When the second spouse dies that amount would be subject to the WA estate tax.
 - 4.8.10. Proposed similar bill in 2004, dept of rev had no problem with it because it did not avoid tax but deferred it.
 - 4.8.10.1. Gives dept clear procedure and avoids them having to make difficult judgment calls after 2009.
 - 4.8.11. Non spouse beneficiary can rebut presumption by a preponderance of evidence.
 - 4.8.12. Procedure that surviving spouse and kids could agree that this is the intent.
 - 4.8.13. Question: What if federal law changes?
 - 4.8.13.1. Obama wants to take the \$3.5M federal exemption permanently, 45% flat rate. McCain wants \$5M on up but if forced would accept \$3.5M, and wants lower rate. Probably will have minimum of \$3.5M exemption from feds.
 - 4.8.13.2. Bill would take into account differences between fed and state law in the future.
 - 4.8.14. Stakeholder groups still reviewing the proposal.
 - 4.8.14.1. By end of November all but Dept of Rev should have weighed in.

- 4.8.14.2. Mood has changed at Dept of Rev.
 - 4.8.14.2.1. If Dept is concerned, that is a problem.
- 4.8.14.3. What are stakeholders' concerns. Not voiced yet.
 - 4.8.14.3.1. Dept of Rev may be concerned about deferring money too long after the first to die.
 - 4.8.14.3.2. State also has a budget problem. This may make a difference.
- 4.8.15. Section purposely did not try to change the state estate tax.
- 4.9. Bar lobbyist is looking to state legislators about this bill.
- 4.10. Dept of Rev did not factor in the time value of money. Has that changed since then? Probably not.
- 4.11. This is to help out folks who have not amended their wills. Wills can fix this problem now under current law.
- 4.12. Other states:
 - 4.12.1. NY practitioner said they liked this idea but legislature did not pass it. Not know about other states.
- 4.13. The section and RPPT section approved the bill.
- 4.14. Argument: Bill appears to be tax avoidance for people with lots of money. Protective measure for "rich widows who had dumb husbands."
 - 4.14.1. Should the WSBA be involved with this?
 - 4.14.1.1. People who have \$2 - \$4M don't feel rich. The bill helps those folks.
 - 4.14.1.1.1. Large number of lawyers out there who don't know this stuff and can cause problems. The intention of everyone who wrote the will was almost indisputably that there would be no tax on the first death. Rule of construction in will limited to the four corners of the will. This statute changes that four corners rule, and you can look at extrinsic evidence, or the parties can agree.
 - 4.14.1.2. Should we use the bar's capital on this in today's climate. But can say that the truly wealthy have lawyers to fix this but those in the margins don't have this protection. So can pitch this as helping the nominal little guy.
 - 4.14.1.3. How many people will this affect.
 - 4.14.1.3.1. Michael says he has 1,000 clients are affected by this. 30% have gotten back to him about their wills, 70% have not.
 - 4.14.1.3.2. At a seminar, most attorneys had sent out letters to clients, but fewer than 40% of clients had approved.
 - 4.14.1.3.3. Nationally, 30% in the country have wills.
- 4.15. Suggested we could approve subject to Dept of Rev taking no position or supporting.
- 4.16. Motion to sponsor subject to Dept of Revenue approving or taking no position.**
 - 4.16.1. Argument: Should the WSBA look like it is protecting rich people. In favor of bill itself but what happens to WSBA's political capital.
 - 4.16.2. But anything we can do to protect widows from "death taxes" is a good thing.

- 4.16.3. Also protects people who have high assets but not necessarily high income. E.g., Lake Chelan homes, farms, and similar assets.
 - 4.16.4. Allows clear judicial decisions with a clear presumption.
 - 4.16.5. **Passed with one no vote and one abstention.**
 - 5. **Military and parenting plans**
 - 5.1. Presented by Adam Torem of LAMP (Legal Assistance to Military Personnel)
 - 5.2. Two bills last year that were supported in committee but not on the floor.
 - 5.3. Mark Sullivan of North Carolina helped with language on this bill.
 - 5.4. The bill does four things.
 - 5.4.1. Expedited hearings
 - 5.4.2. Electronic testimony
 - 5.4.3. Delegation of visitation rights
 - 5.4.4. Custody protections for military parents
 - 5.4.5. Walk through the bill
 - 5.4.5.1. Makes bills more military friendly.
 - 5.4.5.2. Fights over kids go on after divorce is done.
 - 5.4.5.3. Trying to give child a stable environment.
 - 5.4.5.4. Change in custody now only with change of circumstances.
 - 5.4.5.4.1. If parent has to go elsewhere, kid has to go somewhere else, usually the other parent.
 - 5.4.5.4.1.1. Bill makes sure this is a temporary change.
 - 5.4.5.5. Addresses “military duties potentially affecting parenting functions”.
 - 5.4.5.6. If remarried, may want to leave child with new spouse.
 - 5.4.5.7. Many individual situations.
 - 5.4.6. 26.09.010 – hearings
 - 5.4.6.1. Sec 7 provides means to facilitate hearing when parent is deployed, etc. Court shall with good cause hold an expedited hearing.
 - 5.4.6.1.1. Possible to get no-notice orders or orders on short notice.
 - 5.4.6.2. This is done in North Carolina.
 - 5.4.7. 26.09.260 – mods
 - 5.4.7.1. If a parent is activated, itself, that fact by itself cannot be a ground for modification.
 - 5.4.7.2. Lively discussion about the various issues involving military families.
 - 5.4.8. **Motion to support the bill**
 - 5.4.8.1. We usually don’t act on bill until we see the final bill.
 - 5.4.8.2. Suggest to defer.
 - 5.4.8.3. **Friendly amendment to table until next month.**
 - 5.4.8.4. **Motion to table until next month passes.**
6. **Homeowners’ Associations presentation**
 - 6.1. Marco de Sa e Silva from RPPT section presented the bill.
 - 6.2. Comments from stakeholders.
 - 6.2.1. Need to put the brakes on this to resolve issues.
 - 6.2.1.1. Condo committee of RPPT took a quick look and raised issues.
 - 6.2.2. Marco said we should not get into the revisions that are wanted but rather should talk to stakeholders first.
 - 6.3. Another issue – Uniform common interest ownership act, not adopted in WA

- 6.3.1. Commissioners considering amendments to that act.
- 6.3.2. The homeowners' association act committee should look at this and to discuss this with the condominium committee.
- 6.4. WA has condo act and condo committee of RPPT is looking at that. New uniform common interest owners' act supersedes this and needs to be looked at.
- 6.5. Dean Little suggested a task force to look at this. To be convened by BOG.
 - 6.5.1. Also include some public safety agencies as stakeholders.
- 6.6. The matter will come back next year.
- 7. **Automatic restoration of felon voting rights**
 - 7.1. Jennifer Shaw of the ACLU of Washington presented the bill
 - 7.2. Right to vote we all possess at 18 unless incompetent or "infamous crime" which is defined as a felony. Right can be restored by operation of law.
 - 7.3. Current system: See handout.
 - 7.3.1. Need certificate of discharge.
 - 7.3.2. Have to complete all conditions including paying all fines and debts related to the offense.
 - 7.4. Most people don't make it. Time limited. They can't pay their debts.
 - 7.4.1. 12% interest.
 - 7.4.2. Most have to continue to pay off their obligations after discharged for DOC.
 - 7.4.3. LFO = legal financial obligations.
 - 7.4.4. When case goes from DOC to county clerks, info of what felon has done is not passed on.
 - 7.4.4.1. In some but not most counties, clerks will file the petition for the certificate of discharge.
 - 7.4.4.2. Hard to prove they have completed their sentence. Fill out petition, take to prosecutor, sentencing judge, clerk.
 - 7.4.4.3. ACLS has done this on behalf of felons. They have obtained 160 certificates over four years out of 167,000 people who are disenfranchised in the state.
 - 7.5. Why should WSBA get involved?
 - 7.5.1. Administration of justice issue.
 - 7.5.2. 39 counties with 39 systems and people who can't get through they system on their own.
 - 7.6. Bill divorces right to vote from cert of discharge.
 - 7.6.1. Once discharged, right to vote is automatically restored.
 - 7.6.2. The only debtors who lose right to vote are those convicted of crime.
 - 7.6.3. Bright line rule.
 - 7.6.3.1. Easier for clerks.
 - 7.6.3.2. Right now is not a good way to figure out who has a cert of disch and who does not.
 - 7.6.3.3. Battle over validity of ballots, which this would eliminate.
 - 7.7. Only organized opposition is the House Republican caucus.
 - 7.8. Concerned that giving felons vote takes away their incentive to pay LFO's.
 - 7.9. Organized victims groups have not opposed to the bill.
 - 7.10. Prosecutors have not taken a position.

- 7.11. County auditors and sec of state support.
- 7.12. County clerks have not taken position.
- 7.13. Fresh start issue.
- 7.14. Suggested that we get a statement from sec of state, etc., that they approve this.
- 7.15. **Motion to table until November meeting and have ACLU provide statements from stakeholders regarding their positions. Clerks, prosecutors, corrections, sec of state, auditors, and whoever else is appropriate.**
 - 7.15.1. **Motion passed unanimously.**
- 7.16. Meeting adjourned at 4:40 p.m.