

PRACTICE OF LAW BOARD STATE OF WASHINGTON

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MEETING MINUTES November 6 and 7, 2008

The Practice of Law Board met on Wednesday November 6, 2008 from 1-4 p.m. and Thursday November 7, 2008 from 9 to 11:30 a.m. at the Temple of Justice in Olympia, Washington. Those attending were Steve Crossland, Chair, Hon. Paul Bastine, Vice Chair, Daniel Perez, Howard Marshack, Brian Dano, Hon. Jane Smith, Meg Bridewell, Tom Andrews, Cheryl Kringle, Renee Shadel, Nancy Ivarinen and Shamra Coy. Board investigator, Sandra Schilling and Board Administrator, Julie Shankland also attended.

NOVEMBER 6

MEETING WITH SUPREME COURT

The Board discussed the agenda for the annual meeting with the Court. Board member Ivarinen suggested that the Board and Court may want to seek more public and stakeholder input on formation of the Commission. Chairperson Crossland encouraged all Board members to speak freely during the meeting.

SHORT SALES

Mr. Crossland told the Board that he had received a call regarding short sale consultants. Apparently the current Short Sale Consultant statute is causing trouble for real estate agents and the public. The Attorney Generals Office is aware of this issue.

POL BOARD SUBPOENA AUTHORITY

Ms. Kringle stated that she is not moving forward on this issue until the POL Board has the conversation with prosecutors about the big picture of UPL enforcement. The POL Board does not want to inadvertently cause enforcement issues for law enforcement or other agencies. The Board believes that material obtained with a civil subpoena cannot be used in a criminal prosecution because this constitutes a 4th Amendment violation. The ideas of whether UPL should be a per se violation of the Consumer Protection

Act is a big picture idea. Subpoena authority for the POL Board is not a big picture idea. The Board discussed making sure that the correct people are involved in the discussions.

The Board discussed the potential options for UPL enforcement. If prosecutors do not have the resources to devote to this issue, it could be decriminalized and approached through civil penalties and fines. In any case, increased enforcement will require increased funding. When talking to prosecutors, should discuss whether enforcement should be all civil, all criminal or a combination of civil and criminal methods.

The meeting was adjourned.

NOVEMBER 7, 2008

Those attending were: Steve Crossland, Chair, Hon. Paul Bastine, Vice Chair, Brian Dano, Howard Marshack, Renee Shadel, Shamra Coy, Hon. Jane Smith, Nancy Ivarinen, Meg Bridewell, Tom Andrews, Daniel Perez and Stephanie Delaney.

Loren Etengoff, BOG Liaison, Sandra Schilling and Julie Shankland also attended.

PROSECUTOR MEETING

The Board was not clear on the process for moving forward on these issues. Mr. Crossland recapped that the Board decided that a meeting with all prosecutors would not be effective. A meeting with the Chelan County Prosecutor, Doug Walsh from the AG's Office, Steve Crossland, Hon. Paul Bastine, Cheryl Kringle, Nancy Ivarinen and Renee Shadel should be scheduled in the next few months—target date is January 2009. The issues will include the standard of proof prosecutors would like to see in POL board investigations, pre se CPA violations and civil subpoena authority for the POL Board. Prior to that meeting, the POL Board must discuss and understand these issues.

PER SE CPA VIOLATION/CIVIL REMEDIES/CIVIL SUBPOENA AUTHORITY

The idea of adding UPL as a per se violation to the CPA was discussed at the BOG about 10 years ago. Steve Tubbs and Hunter Goodman are knowledgeable on this issue. The historical information is probably with the Consumer Protection Committee. A concern is that private lawyers will not be able to get paid, so will not prosecute these cases. Another issue is whether GR 25 authorized the POL Board to propose legislation. Mr. Etengoff advised

that the legislative agenda for this year is already set. He suggested contacting the WSTLA legislative committee.

The Board determined that the civil remedies and civil subpoena authority issues are linked. The Board formed a committee to research these issues and make a recommendation to the Board. Nancy Ivarinen will chair the committee. Tom Andrews will serve on the committee.

STANDARD OF PROOF

The Board discussed making a separate finding of proof beyond a reasonable doubt for cases forwarded to the prosecutor. The Board also discussed what discretion GR 25 provides in deciding whether to forward a case to the prosecutor after a UPL finding. Bastine-If going to send to the prosecutor the burden of proof is beyond a reasonable doubt. The Board also discussed whether it had the authority to use a civil preponderance standard of proof in cases that it does not forward to the prosecutor.

A motion was made, seconded and approved that the Board make a separate finding that there is proof beyond a reasonable doubt in cases sent for prosecution for purposes of the probable cause affidavit. Sandra will make a recommendation regarding the standard of proof in her reports. Ms. Delaney abstained. Mr. Dano voted against the motion.

OTHER POTENTIAL RULE CHANGES

GR 24

Mr. Andrews suggested adding the holding of the cases to the list of exceptions in GR 24. This would provide the public with better notice of what is allowed and prohibited. The Board discussed whether this would create more problems than it would solve. The Board also discussed the broader view of this concern. The Board must make an effort to inform itself about what is going on in the real world.

GAL RULES

The issue of whether non lawyer GALs are authorized to draft and present pleadings is a big issue. The Board discussed suggesting that the Court establish a taskforce to deal with this issue. One of the issues is whether parenting evaluators and GALs have the same duties and authority. **The GAL materials should be included in the January meeting materials.**

A motion was made, seconded, and approved to enter executive session to consider two UPL investigation reports.

EXECUTIVE SESSION

A motion was made, seconded and approved to end the executive session.
The meeting was adjourned.