

MINUTES

AMERICAN BAR ASSOCIATION SECTION OF PUBLIC CONTRACT LAW SPRING COUNCIL MEETING

Nashville, Tennessee
May 19, 2007

Sheraton Nashville Downtown

Chair Michael Hordell called the Council Meeting to order at 8:38 a.m.

Minutes

The reading of the minutes of the Midyear Council Meeting held in Annapolis, Maryland on March 3, 2007 was waived upon motion by Sharon Larkin, seconded by Mary Ellen Coster Williams, and approved by the Council's unanimous vote. The Council then approved the minutes by unanimous voice vote. A copy of the minutes appears at Tab 1 in the Council Agenda Book.

Membership, Diversity and Outreach Committee – Fellowship Program

At Chair Michael Hordell's request, Council Member Jennifer Dauer presented a proposal to establish a Public Contract Law Section Fellowship Program. Dauer explained that the idea for establishing a fellowship program arose from a diversity discussion at the ABA Midyear Meeting in Miami. One program other Sections have found helpful in encouraging greater diversity was a fellowship program, where deserving individuals are given the opportunity and mentoring to grow into leadership roles within the Section. Dauer noted that Council Member Jenny Kim did a lot of the work on the proposal, which appears at Tab 2 in the Council Agenda Book. Dauer recommended that the Council adopt a fellowship program, with one to two fellows selected each year for a two-year fellowship program. The Section's financial commitment would be to reimburse each fellow for up to \$1,000 per program for travel, lodging and per diem costs. Dauer noted that the reimbursement would be similar to the reimbursement provided to Council members except that if the fellow's travel, lodging and per diem costs were less than \$1,000, the fellow could apply the balance of the \$1,000 to the costs of lodging for a second night and possibly to pay for the program fees. Dauer envisioned that the Council would assign Committee officers to monitor the fellows. The fellows would commit to use their best efforts to attend four Council meetings each year, participate in at least one committee, and make at least one substantive presentation.

Vice-Chair Michael Mutek asked about the experience of other Sections that have adopted a fellowship program. Dauer stated that some Sections, including in particular

the Business Law Section, had very good experience with their fellowship programs while other Sections have had mixed success. Dauer expressed her belief that a fellowship program would be successful in the Public Contract Law Section because of the Section's relatively small size and the members' positive attitude toward newcomers who express an interest and desire to get involved in the Section's activities.

Council Member Sharon Larkin asked Dauer if she had a sense for why some Sections have successful fellowship programs and some do not. Dauer stated that there was no consensus, and it depends on the characteristics of each Section.

Council Member Paul Haseman asked whether government employees could participate in the fellowship program. Dauer stated that it was her understanding that government employees can participate and accept reimbursement for travel expenses so long as they have been assigned some task. She expressed concern that accepting reimbursement for the second night or for the program fees could be problematic for government employees.

Council Member Dave Ehrhart stated that there are a number of ways government folks can participate. He noted, for example, that they have to report the reimbursements they receive, and if they are participating at their own expense, they may have to take leave or be on permissive temporary duty. Ehrhart stated that it is a great program and an effort to get younger folks to participate in the Section. He opined that when they see the Council's collegiality and professional debates and meet the people in this community, they will want to be a member. Ehrhart stated that it is the personal care that will make the program a success for the Public Contract Law Section.

Budget and Finance Officer Carol Park-Conroy stated that she thought the fellowship program is an excellent idea, and agreed with General Ehrhart that while government employees may have to go through many hoops, where there's a will, there's a way. Park-Conroy stated she thought the Section should offer complimentary program admission for the fellows. Additionally, she would assign a Council member to be responsible for the fellows. Dauer responded that she agreed about reimbursing the program fees, but had understood that it was problematic for government folks to accept benefits of that nature.

Council Member Sandy Hoe asked whether the Committee had thought about how the Section would identify candidates for the fellowship program. Dauer responded that as the program got going, it will spread by word of mouth. Dauer stated that she senses there are already qualified people participating in Committee activities, but they have just not taken the next step to come to Council meetings. She said that, initially at least, the Committee would solicit recommendations for the program.

Immediate Past Chair Robert Schaefer stated that this is the next logical step in the Section's diversity efforts. We should have the fellows participate in the programs, which would resolve the concern about waiving the program fees being a gift. Schaefer suggested that we find a different name for the program to avoid confusion with the Section Fellows.

Section Delegate Mary Ellen Coster Williams stated that she thought the program was an excellent idea. She asked Dauer how the Committee would solicit recommendations. Dauer stated that they would post a notice on the Section's website, as well as asking people to make recommendations.

Secretary Karen Manos suggested that instead of having the fellows participate in the quarterly programs by being on a panel for each program, we could instead appoint them as Co-Chairs of the Annual and Quarterly Programs. Chair Hordell pointed out that it would be difficult for someone new to the Section to serve as a Co-Chair of the Annual and Quarterly Programs, and the participants should instead be appointed as Assistant Co-Chairs. Hordell also suggested that we should call the program a scholarship program rather than a fellowship program. Hordell stated that the proposal should be modified, in the first bullet under section IV, to remove the word "ideally" from the sentence that reads, "Ideally, the fellowship recipient shall increase his or her knowledge of public contract law by attending the educational programs as well, although there is no commitment to doing so;" and to add a more affirmative statement for the scholarship recipients to attend the programs.

Council Member Paul Haseman moved to approve the recommendation, and change the proposal to delete the word "ideally" and change the word "fellowship" to "scholarship." Budget and Finance Officer Carol Park-Conroy asked if it would be necessary to appoint a nominating committee. Chair Hordell stated that the nominating committee for Council Members and Officers would also select the scholarship recipients. Immediate Past Chair Rob Schaefer seconded Haseman's motion.

Chair Elect Pat Meagher moved to amend the motion by further changing the proposal, in the first bullet of (the second) section III, by striking everything after the word "limit" in the sentence that reads, "The total reimbursement shall not exceed the \$1,000 per meeting limit," and adding: "Selection of the fellowship recipient is contingent upon confirmation of the candidate's eligibility for the fellowship program from his or her employer." Council Member Sharon Larkin asked what Meagher had in mind for confirmation of eligibility. Meagher said she thought the candidate should discuss it with his or her supervisor, and ensure that any eligibility issues were resolved before the selection process.

Council Member Sandy Hoe stated that having heard no objection from the Budget and Finance Officer, the Council should note that the program will cost at least \$12,000 per year. Budget and Finance Officer Carol Park-Conroy said the Section can afford it. Immediate Past Chair Rob Schaefer asked whether this should be a line item in the budget, and Chair Michael Hordell said it would be. Section Member Paul Dauer asked whether law students were eligible for the program, and Hordell said no, there are other programs for law students.

Section Member Jerry Walz suggested that it would be helpful for the Committee to review the regulations governing government employees' acceptance of scholarships and

travel reimbursement. Section Member Tim Connelly stated that he recently left active duty as an Army judge advocate, and his previous duties included providing ethics advice on this issue. Connelly offered to stay after the Council meeting and discuss the governing regulations with Council Member Dauer. Chair Hordell thanked Connelly for the offer.

Council Member Dave Ehrhart sought clarification as to whether a self-certification would be sufficient, and no letter from the employer was necessary. Dauer confirmed that self-certification was all that would be required. Dauer also noted that in revising the proposal, the numbering should be corrected since there are two section III's. Dauer also suggested that the proposal should be revised, in the first bullet under section IV, to remove the words "although there is no commitment to do so" from the sentence that reads, "Ideally, the fellowship recipient shall increase his or her knowledge of public contract law by attending the educational programs as well, although there is no commitment to doing so."

Council Member Haseman accepted all of the modifications to his motion, and Immediate Past Chair Schaefer confirmed his seconding of the motion. The Council voted unanimously to approve the program, modified as noted above.

Council Member Holly Svetz pointed out that the membership statistics shown at Tab 37 of the Council Agenda Book show a marked increase in the number of members in all categories. Svetz said credit should go to the Committee for their efforts. Chair Hordell thanked the Committee for their hard work.

Public Contract Law Journal Budget Request

Chair Michael Hordell recognized Karen Manos, Editor-in-Chief of the Public Contract Law Journal, for the purpose of making a budget request. Manos noted that several years ago, the Journal published a 25-year index, and the current editorial board would like to publish another index. However, the editorial board does not want to devote one of the four regularly published issues to an index, and would instead like to publish a fifth issue. It will take about 18 months to prepare the index, so the additional budget authority would be needed in 2008. The fifth issue in Volume 38 will cost approximately \$12,241.75 (computed based on estimated costs less projected revenues). Immediate Past Chair Rob Schaefer moved to approve the request, and Council Member Sharon Larkin seconded the motion. The Council voted unanimously to approve the request.

Civilian Board of Contract Appeals Subpoena Power

Chair Michael Hordell asked Council Member Stu Nibley and Section Member Tom McGovern to present a whitepaper prepared by the Co-Chairs and Vice-Chairs of the Contract Claims and Disputes Committee regarding the Civilian Board of Contract Appeals subpoena power. Copies of the whitepaper were distributed at the meeting. Nibley described the issues the Council's request that the Committee prepare the paper. Nibley stated that Tom McGovern and Dan Graham did most of the work drafting the

whitepaper, and John Pachter and Stanley Dees provided input. McGovern thanked Past Chair Ruth Burg for providing a history of pre-Contract Disputes Act practice. McGovern summarized the legal discussion in the paper. Nibley stated that it was an objective exercise, and when one boils it down, three things are clear: (1) in enacting the CDA, Congress intended to level the playing field, repeatedly using the word “due process,” (2) Congress wanted to make sure there was a complete de novo record; and (3) Congress wanted to enhance the pre-CDA subpoena powers. Looking at those facts, Nibley opined that it was clearly intended that a “person” would include the federal government.

Hordell thanked Nibley, McGovern and the Committee for their work, and praised the whitepaper as scholarly. Hordell noted that the paper meets the definition of a whitepaper because it is balanced and does not advocate a position. Hordell stated that the Council must now decide how best to get the paper to the government. Nibley stated that speed is the most important objective right now. He requested that the Council approve the whitepaper, subject to minor editorial revisions, and get it out as quickly as possible.

Council Member Jeri Somers praised the whitepaper as an incredible piece of work, but recused herself from any discussion of its merits. Hordell stated that he presumed Section Delegate Mary Ellen Coster Williams and Budget and Finance Officer Carol Park-Conroy must also recuse themselves. They agreed that this was so.

A Council Member noted that although this is a problem at the CBCA, all of the boards of contract appeals operate under the same subpoena rules.

Council Member Sandy Hoe praised the Committee for its good work, but stated that one thing that concerned him is that the paper does not address the Federal Circuit’s strict “plain meaning” approach to interpreting statutes, contracts and regulations. Although Hoe stated that he disagreed with the Federal Circuit’s views on this point, which sometimes result in rigidly applying the plain meaning and achieving an absurd result, but he questioned whether the paper should point out that if the Federal Circuit were to decide the issue, it would likely go no further than the Dictionary Act.

Secretary Karen Manos stated that she objected to including any prognosis about the Federal Circuit’s likely holding for two reasons: (1) the Federal Circuit may view it as a gratuitous insult, since it suggested that the circuit was likely to interpret the statute in manner that achieves an absurd result, and (2) it could adversely influence the decision makers.

Section Delegate John Pachter stated that we should consider what would happen if there is no effective subpoena power enforceable against the government – the agencies would stop producing documents and witnesses. It would allow agencies to play games. Pachter suggested that perhaps the Section should take the next step and seek blanket authority.

A Council Member stated that it is absolutely critical to have subpoena authority because agency attorneys represent only their agencies and cannot agree to produce another agency's witnesses or documents. The Council Member noted, for example, that in one case at the GSBCA, the board issued dozens of subpoenas because the case involved a General Services Administration Schedule contract, and the GSA attorney did not have authority to produce documents from the agencies using the Schedule.

McGovern noted that it is also relevant in terms of past practice. He pointed out that the Department of Justice never refused to obey a subpoena before the D.C. Circuit sua sponte raised the issue.

Nibley stated that we are in a volatile situation and may have to quickly seek authority to entertain a legislative fix. Nibley recalled that during the Council Meeting in Annapolis, a jurist stated that he could not imagine a forum without subpoena power.

Summarizing the discussion thus far, Hordell observed that one Council Member was saying we should seek blanket authority and the Committee was saying we need to move quickly.

A Council Member observed that subpoena authority is absolutely critical to developing a de novo record.

Pachter stated that at a seminar recently, CBCA Chief Judge Daniels said that the next step, if the issue is not resolved, is that the CBCA would "speak in an opinion." Pachter suggested adding to the whitepaper a section about why subpoena power is so critical. Council Member Rich Rector seconded Pachter's recommendation, and stated that he cannot imagine an issue of more significance for this Council.

Hordell asked Nibley if he agreed with Pachter's suggestion to add a conclusion about why it is important for the CBCA to have subpoena power. Nibley asked whether the Council could seek blanket authority on a contingent basis, meaning that the Council would seek authority before the whitepaper was finalized.

Pachter observed that the draft CBCA rules were being held up at OIRA, and blanket authority would be directed to opposing a position of DOJ. Pachter stated that putting the whitepaper out would be taking a position without taking a position.

McGovern stated that there may not be a formal mechanism for submitting our comments. The draft CBCA rules do not cover the subpoena issue and they have not been published for public comment.

Section Member Jerry Walz asked why the Section did not just propose a legislative change to the CDA. Hordell responded that he thought what Pachter was saying was that we do not want to suggest a legislative change because that would concede that the DOJ position is correct.

Council Member Paul Haseman stated that he was sensitive to Pachter's concern about putting the whitepaper on the website as a "wink wink" position of the Section, but believes it is legitimate to post the paper on the website for Section comment. Haseman moved that the Section seek blanket authority and put the whitepaper on the website for public comment.

Council Member Sharon Larkin seconded the motion, with an amendment to add the previously suggested language explaining why subpoena power is important.

Pachter opposed the motion, explaining that in order to seek blanket authority, you have to have a fixed document. It is inappropriate to seek blanket authority while the document is still in a state of flux.

Past Chair Norm Thorpe stated that there was no problem with the second half of the motion – posting the paper on the website for public comment.

Pachter moved that the Council approve the document with the amended language, and that the whitepaper conclude by advocating a position in favor of subpoena authority. Rector seconded the motion.

A Council Member pointed out that we do not know the procedural posture of the draft rules.

Nibley stated that the Committee has heard that OIRA wants the CBCA to add a statement to the draft rules stating that there is no subpoena power. There followed a brief discussion about the procedural posture of the draft rules. The Section Delegates opined that any request for blanket authority would have to be very carefully worded. At that point, the Section Delegates left the Council Meeting to confer about requesting blanket authority. Hordell announced that he was going to ask that a few special reports be made, and the subpoena authority discussion would be continued later.

Special Report of the IT Procurement (State and Local) Committee

At Chair Michael Hordell's request, Karen Walker made a presentation about the IT Procurement (State and Local) Committee. Hordell thanked Walker and her co-chair for their hard work, and noted that Walker is one of the co-chairs for the Third Annual State and Local Procurement Symposium. Walker stated that if members want to participate in the Committee meetings, they may contact her at Karen.Walker@hkllaw.com or refer to the Committee's webpage.

Council Member Jennifer Dauer stated that one of the things she has noticed about this Committee's meetings is the active government participation. She stated that it seems to be a great resource for state and local government. Section Member Don Featherstun stated that the Committee's work is the most exceptional performance he has seen in 20 years, and Walker should be complimented for it.

Model State and Local False Claims Act Task Force

Section Member Paul Dauer made a report about the Model State and Local False Claims Act Task Force. Dauer noted that the dialogue the Council was having about the subpoena issue is a prime example of the value of these Council meetings. He stated that the ground work is wonderful, but the discussion is tremendously valuable.

Dauer explained that the task force was created by the Council in response to model state false claims act legislation proposal by the Taxpayers Against Fraud (TAF). Under the Medicare statute, states that have a false claims act modeled after the federal false claims act are entitled to greater financial rewards. The Council was concerned at the time that there would be a flood of legislation. Since then, 11 states have proposed new false claims act and 3 states have proposed amendments to existing false claims acts. None of these states has followed the TAF proposal. Dauer reported that 10 states have requested Office of Inspector General (OIG) approval; 3 passed and 7 did not. Dauer stated that the OIG was clearly following the federal False Claims Act literally. Since that time, 3 more states – Hawaii, Tennessee and Virginia – proposed new legislation, and all 3 were approved. Dauer stated that since no one seems to be following the TAF proposal, the need for the task force has been significantly reduced.

Model Procurement Code WTO Task Force

At Chair Michael Hordell's request, Section Member Paul Dauer made a report about the Model Procurement Code. Dauer explained that the Council appointed a task force as a result of a discussion about the World Trade Organization (WTO) Government Procurement Agreement. Past Chair Norm Thorpe, Professor Chris Yukins and others are working on a comparison of the treaty and the Model Procurement Code, and expect to be finished soon, perhaps as early as next month. Dauer noted that there are other treaties that have similar provisions, e.g., the Australian Free Trade Agreement, and some states, including California, have adopted those treaties. Dauer suggested that this may be an area where we find the Model Procurement Code does not have sufficient detail to comply with the treaty. Dauer lamented that when he joined the Section 42 years ago, California was a poster child for a good state procurement system, but California is now a poster child for what not to do.

CBCA Subpoena Power

Chair Michael Hordell noted that the Section Delegates had returned and the Council could continue its discussion of the CBCA subpoena issue. Hordell asked Section Delegate John Pachter to make a motion so the Council could discuss it, and noted that Council Member Paul Haseman had withdrawn his motion. Pachter stated that he already introduced a motion, which was to modify the whitepaper to add examples about why the subpoena power is necessary and to seek blanket authority. In addition, the whitepaper should address the Department of Justice concern about the government suing itself. Pachter noted that there are examples in other contexts where it happens, and it is viewed as a ministerial act.

Hordell asked whether, if the Section's request for blanket authority were to be blocked by one of the reviewing authorities, that would preclude the Section from posting the whitepaper on its website. Pachter stated that if the Section did so, it would have to include a statement saying the paper was presented for ABA approval and not approved. Posting it on the website after the blanket authority was disapproved would also present the appearance of going around the blanket authority process. Immediate Past Chair Rob Schaefer said that if we seek blanket authority and it is disapproved, we cannot post the whitepaper on our website. Schaefer suggested posting the whitepaper on the website for Section comment before seeking blanket authority. Schaefer also stated that we should seek counsel from people who have been active at the ABA level to see how best to proceed. He noted that the problem is really one of timing.

Council Member David Innis asked whether we are seeking blanket authority in order to make a recommendation to OIRA. Innis observed that the value of the whitepaper is as an academic document, to help focus the debate and enhance the intellectual debate.

Council Member Jeri Somers, without relinquishing her recusal, pointed out that (1) it is possible to submit comments to OIRA, and (2) there should not be a problem with posting the whitepaper on the website for comment while also seeking blanket authority. Haseman said he liked that idea: we could put the paper out for comment without submitting it to OIRA, and then in a couple of weeks, circulate it to the Council for approval and submit it for blanket authority.

Past Chair Pat Wittie reminded the Council of an incident where the Section posted a whitepaper and the Labor Law Section complained. As a result of that incident, the Section developed language to say the paper was not an ABA position or policy; it is an internal document for discussion purposes only. Wittie stated that there is value in posting it, but we can anticipate receiving comments from other sections.

Council Member Dan Doogan stated that there are three issues before the Council: (1) Is this matter ripe for blanket authority? (2) Is the whitepaper ripe for going forward? (3) Should the whitepaper be posted on the Section's website. Doogan said he understood Pachter's comment to be advocating subpoena authority. Doogan proposed that we add examples of why subpoena authority is necessary, and then post the paper with the appropriate disclaimers as a draft whitepaper. Doogan moved to amend Pachter's motion to post the draft whitepaper for comment and not include a section advocating subpoena authority, but that we include examples of why subpoena authority is necessary. Then, when we go forward for blanket authority, we can add the advocacy language. Pachter accepted Doogan's amendment to his motion. Haseman seconded the motion, as amended.

Council Member Rich Rector noted that the Section's principles of dispute resolution already say that parties should have a full and fair opportunity. Rector suggested that we add that point to the whitepaper. Nibley responded that that point should go in at the second step, when we add the advocacy piece.

Council Member Sandy Hoe stated that, to bring this full circle, the legal analysis should include rules of interpretation for statutes where words appear clear and have a plain meaning. Pachter reiterated that we should add examples of consequences of not having subpoena power, for example, in cases involving GSA multiple award schedule contracts, without advocating in favor of subpoena authority. Innis stated that we can go further without advocating and explain the importance of subpoena power.

Hordell asked Nibley how much time it would take the Committee to revise the whitepaper along the lines discussed by the Council. Nibley responded that it should take about one week. Hordell and Nibley agreed to a deadline of May 31, 2007.

The Council then voted unanimously to approve the following motion: (1) to revise the whitepaper to include examples of why subpoena authority is necessary, (2) to post the whitepaper on the Section's website for public comment, and (3) when we later go forward for blanket authority, that we add a section advocating in favor of granting subpoena authority. Section Delegate Mary Ellen Coster Williams, Budget and Finance Officer Carol Park Conroy and Council Member Jeri Somers recused themselves and did not vote.

Section Resolution on Waiver of Bar Dues, CLE Requirements and Other Membership Fees for Deployed Service Members

A copy of the Section's Resolution is at Tab 7 in the Council Agenda Book. Section Delegate John Pachter reported that the issue came to the Council's attention through Section Member and Army Reserve Colonel Liz Fleming, who wrote that it was a hardship to serve in a combat zone and still try to fulfill CLE requirements. Hordell noted that Charlie Weiss and Section Director Marilyn Neforas were very helpful in advancing the resolution. Pachter stated that the resolution would be taken up by the House of Delegates at the Annual Meeting in San Francisco.

Accounting, Cost and Pricing Committee Working Group on Harmonization of Cost Accounting Standards with the Pension Protection Act of 2006

Chair Michael Hordell asked Section Member Greg Bingham to make a report on the AC&P Committee's working group on the CAS harmonization rule. Bingham noted that Section Member Larry Rabyne is leading the working group. Bingham explained that the Cost Accounting Standards and Generally Accepted Accounting Principles have different rules, and they are not consistent in the area of pensions. The Pension Protection Act of 2006 forces harmonization. The working group is tasked with developing a whitepaper to help the CAS Board with this requirement. Bingham noted that the whitepaper could be overcome by events because the CAS Board is expected to approve a Staff Discussion Paper on the CAS harmonization rule at its next meeting. At that point, the AC&P Committee would be working on a response to the Staff Discussion Paper rather than a whitepaper.

Special Report of the Legislative Coordinating Committee

Section Member Todd Overman made a presentation regarding the Legislative Coordinating Committee (LCC). Overman reported that comments the Committee prepared on the Accountability in Contracting Act were nearly final and hopefully will be approved at today's Council meeting. Two other projects the Committee is working on include: (1) drafting a whitepaper with the Accounting, Cost & Pricing Committee on the disclosure of audit reports and fixed price development contracts, and (2) working with the Small Business Committee on portions of a small business bill. In addition, the Committee is preparing a list of key contacts for Hill staff working on procurement issues. Overman noted that many of the staffers are new, and one thing the Committee is considering is some sort of educational initiative for them. Overman distributed a legislative tracking chart and noted that Section Member John Janocsek maintains the chart on a regular basis. An earlier copy of the chart is included at Tab 8 in the Council Agenda Book.

Chair Michael Hordell asked what type of educational program the Committee thought would be effective. Hordell noted that the program should take place on the Hill, and will help develop relationships with both parties. Overman responded that the Committee's very preliminary thoughts envision something along the lines of "government contracts 101" and focused on key concepts. Council Member Jennifer Dauer noted that the Section has a model presentation that was designed for people to use at law schools, which may be a good starting point for the Committee. Council Member Paul Haseman suggested that we could do a joint program with the Federal Bar Association. Council Member Sandy Hoe asked whether the Hill staffers would fit within our scholarship program. Hordell referred the idea to Dauer.

Secretary Karen Manos moved that the comments on the Accountability in Contracting Act be approved, subject to minor editorial revisions at the discretion of the Chair. Hordell amended the motion to include seeking blanket authority. The amended motion was seconded and unanimously approved by vote of the Council.

Special Report of the State Law Database Coordination Committee

At Chair Michael Hordell's request, Section Member Missy Copeland made a presentation about the State Law Database Coordination Committee. A copy of the Committee's report appears at Tab 10 in the Council Agenda Book. Hordell noted that Copeland will be Co-Chair of the Third Annual State and Local Procurement Symposium, and has worked tirelessly on the state law database project. Hordell stated that he would like to see all 50 states in the database by the time of the Third Annual State and Local Procurement Symposium. Copeland thanked Hordell, and agreed that that was a great goal.

Copeland said the Committee's goal is to include all 50 states in the database. There are currently 20 states in the database, and there will soon be 25. Copeland explained that the database has hyperlinks to each state as well as a summary of the state's procurement

laws. The Committee works with the state chair to get the summaries written. The Committee prepares the summaries when there is no state chair. The Committee would like to have an “e-blast” whenever a new state summary is completed. Anyone interested in working on the project should contact Copeland at Missy.Copeland@nelsonmullins.com. Section Member Tim Connelly volunteered to prepare the summary for Minnesota.

Special Report of the State and Local Bid Protest Committee

Section Member Missy Copeland made a presentation regarding the State and Local Bid Protest Committee. A copy of the Committee’s report appears at Tab 9 in the Council Agenda Book. Copeland noted that the Committee’s mission is to monitor developments in this area. The Committee also helps with topics and speakers for the annual State and Local Procurement Symposium. The Committee works closely with the division chairs and state chairs. The Committee meets quarterly by telephone conference. Anyone interested in participating should contact Missy Copeland or Don Featherstun. Chair Michael Hordell thanked Copeland for all of her work.

Section Member Paul Dauer stated that there was a recent California bid protest for which a petition for review has been submitted to the California Supreme Court. Dauer stated that it was a very bad decision with a number of disturbing holdings, including that employees of procuring agencies may act as arbitrators without complying with the normal disclosure rules that apply to arbitrators.

Special Report of the Health Care Contracting Committee

At Chair Michael Hordell’s request, Section Member David Dowd made a presentation about the Health Care Contracting Committee. Dowd noted that the Committee was formed about ten years ago, and focuses on federal programs. Its mission is to monitor the progress of legislative developments and look for areas of interest. The Committee’s current focus areas include healthcare related Federal Supply Schedule and Department of Veterans Affairs’ schedule contracts, TRICARE, Federal Employees Health Benefits contracts, and Medicare. The Committee is working to expand from its historical focus on pharmaceutical companies to include service providers. The monthly meetings are held on the fourth Thursday at Hogan & Hartson.

Special Report on Public Contract Law Section ABA-CLE Teleconferences

Council Member David Innis made a special presentation on the Section’s ABA-CLE teleconferences. A listing of the teleconferences is included at Tab 40 in the Council Agenda Book. Innis reported that coming up on May 23, 2007 is a teleconference on Organizational Conflicts of Interest; the Intellectual Property Committee has a teleconference coming up in June; and the Procurement Fraud Committee is working on a teleconference. Innis stated that the Section is getting back into the practice of having teleconferences on a monthly basis.

Chair Michael Hordell reminded Committee Chairs that committee presentations can be easily adapted to a teleconference.

Section Member Aaron Silberman suggested a teleconference on the CERCLA case pending before the Supreme Court. Section Member Paul Dauer questioned whether anyone has considered the idea of a passport to attend multiple teleconferences. Innis stated that he thought that was a good idea, and it is something the committee can consider.

Special Report of the Research & Development and Intellectual Property Committee

Council Member Dan Doogan made a presentation about the Research & Development and Intellectual Property Committee. A written copy of Doogan's remarks is attached.

Special Report of the IT Procurement (State and Local) Committee

Section Member Karen Walker made a presentation about the IT Procurement (State and Local) Committee. Walker noted that she and Anne Donohue have been Co-Chairs of the Committee since it was formed in August 2004. Cheryl Burtzel is the Vice-Chair. Walker stated that although the official roster has only 23 members, the participating group is much larger. Membership has increased since last year, and includes in-house, private firms and government attorneys. The Committee meets the second Wednesday of the month by teleconference. The Committee meets in person at the Spring and Annual Meetings. The Committee has had sponsored three CLE programs and several guest speakers. The Committee plans to host a teleconference program on intellectual property in 2008.

Special Report of the Strategic Alliances, Teaming and Subcontracting Committee

David Silberman made a presentation about the Strategic Alliances, Teaming and Subcontracting Committee. A copy of the Committee's report appears at Tab 14 in the Council Agenda Book. Silberman noted that although the Committee's name does not roll off the tongue, it is nevertheless very descriptive of the Committee's focus and mission. The Committee meets monthly by teleconference on the first business Monday at 10 a.m. Pacific time. Silberman noted that the Committee has two terrific liaisons: Charles Rumbaugh from the Regulatory Coordinating Committee and Alan Chvotkin from the Legislative Coordinating Committee. The liaisons provide a tremendous amount of information, and the Committee members discuss and analyze it. In addition, the Committee discusses case developments. The Committee's other focus is publications, and its crown jewel is the publication on subcontract flow down clauses. The Committee now has a web-based update to the book, and is currently working on a similar guide for services contracting. The Committee expects to have a draft by the end of June and hopes to be finished by the Annual Meeting in San Francisco. The Committee would like to turn the services contracting work product into a teleconference and/or a quarterly program.

Chair Michael Hordell pointed out that at Tab 16 in the Council Agenda book there are comments the Section filed on contractor code of ethics and compliance program. Tab 17 includes information regarding the U.S. Court of Appeals for the Federal Circuit task force that the Chair established in response to Chief Judge Michel's request. Tab 19 includes information about a contribution the Section received from the Peterson Foundation. Hordell noted that the Peterson Foundation has been a generous supporter of the Section for many years.

Hordell concluded by stating that the Symposium was a smashing success, and he looks forward to the Third Annual Symposium in Austin. Hordell is also looking forward to seeing everyone at the Annual Meeting in San Francisco.

Adjournment

Council Member Dan Doogan moved to adjourn the meeting, and Council Member Paul Haseman seconded the motion. The meeting was adjourned by the Chair at 11:45.



Karen L. Manos
Secretary
Section of Public Contract Law
American Bar Association

R&D IP
Committee

PUBLIC CONTRACT LAW SECTION			
AMERICAN BAR ASSOCIATION			
Saturday, May 19, 2007			
Nashville, Tennessee			
<u>Last Name</u>	<u>First Name</u>	<u>Title</u>	<u>Phone #</u>
Wittie	Patricia	Previous Past Chair	202-496-3493
Pachter	John	Section Delegate	703-847-6260
Pickens	Scott	Council Member	202-663-8843
Larkin	Sharon	Council Member	202-512-2680
Innis	David	Council Member	415-956-2878
Rector	Richard	Council Member	202-861-6426
Hoe	Sandy	Council Member	202-496-7562
Haseman	Paul	Council Member	303-344-6102
Raine	Abby	Liason to Student Division	615-491-8119
Park-Conroy	Carol	Budget Officer	703-681-8507
Mutek	Michael	Vice Chair	972-205-5177
Hordell	Michael	Chair	202-220-1232
Meagher	Patricia	Chair- Elect	415-362-6517
Manos	Karen	Secretary	202-955-8536
Schaefer	Rob	Immediate Past Chair	805-373-4608
Coster Williams	Mary Ellen	Delegate	202-357-6660
Nibley	Stu	Council Member	202-508-4334
Svetz	Howie	Council Member	703-394-2261
Somers	Jeri	Council Member	202-606-8831
Ehrhart	Dave	Council Member	937-257-2964
Doogan	Dan	Council Member	313-665-4733
Dauer	Jennifer	Council Member	916-492-5073
Overman	Todd	Moon & Munson LLP	202-637-3565
McGovern	Tom	Hogan & Hartson LLP	202-637-5784
Whiteman	Neil	US Air Force	618-229-0806
Colley	Mark	Arnold & Porter	202-942-5720
Featherstun	Don	Seyfarth Shaw	415-544-1088
Heckman	Annejanette	EDS	703-456-2396
Levy	Herman	Legal Editor	703-698-5246
Walz	Jerry	Pub Klaw LLC	703-862-6062
Swisher	Kate	Oldaker Briden & Belair	202-496-3496
Walker	Karen	Holland & Knight LLP	850-425-5612
Hinton	Angela	Sr. Asst. City Attorney, City of Atlanta	404-330-6499
Pennington	Richard	McKenna, Long & Aldridge LLP	303-634-4383
Bumford	Sean	Pepper Hamilton LLP	202-220-1217
Kilgore-Weiner	Heather	Pepper Hamilton LLP	202-220-1212
Wilkins	Charles	FTI Consulting	202-589-2320
Lathrop	Bruce	Law Office of Bruce D. Lathrop	213-830-5745
Dauer	Paul	Attorney	916-488-2431
Casamento	Barbara	Purchasing Supervisor	816-881-3253
Fellin	Pamela	Asst. Co-Counselor, Jackson Cty, MO.	816-881-3364

Neforas	Marilyn	Section Director	312-988-5596
Leibas	Ernestine	Section Asst.	312-988-5699
Elderkin	Lannie	Membership Co-Chair	N/A
Copeland	Missy	Nelson, Mullins	919-329-3890
Sales	Peter	Boult Cumming Couners & Berry	615-252-2365
Rose	W. Michael	DOE	505-234-7319
Hanson	Mark	Smith Pachter	N/A
Bingham	Greg	Navigant	N/A
Silberman	Aaron	Rogers Joseph O'Donnell	415-956-2828
Connely	Tim	Special Counsel, Eckland & Blando	612-236-0165
Doyle	Alison	Co-Chair of Some Committees	202-496-7604
Vacketta	Carl	Vice Chair, Products & Svcs.	202-861-6460
McAlwee	Marty	Vice Chair, Standards & Conduct	321-951-3134
Dowd	David	Co-Chair, Health	202-263-3378