

WEST VIRGINIA LAW INSTITUTE
GOVERNING COUNCIL
MINUTES
Meeting of September 25, 2015

1. The Governing Council of the West Virginia Law Institute met on March 25, 2015, in the Davis Gallery at the West Virginia University College of Law in Morgantown. The meeting was called to order and chaired by President Scott Curnutte. Also in attendance or participating by phone were Council members Law School Dean Greg Bowman, Vince Cardi, Jason Foster, State Bar President Mike Frazier, Delegate Roger Hanshaw, Ben Hogan, Judge Gary Johnson, Brendan Leary, Larry Morhouse, Will Rhee, Delegate John Shott, Senator Charles Trump, Director/Secretary Robert Bastress, and Council Assistant Anna Dewitt.

2. Vince Cardi moved, and Judge Johnson seconded, the approval of the minutes of the Council's March 17, 2015, meeting. The motion carried.

3. Director Bastress delivered his report.

- He stated that the changeover in Bar leadership had caused a slight change in the Council's membership, although the new members had not yet been contacted. Mike Frazier continues on the Council as the new Bar President. Succeeding him as Bar President-elect and on the Council will be John McGhee. Jason Foster continued on the Council for this meeting as his successor as President of the Young Lawyers Section, Jasmine Morton, was unable to attend.
- The Director reported that \$26,167 remains in the Council account.
- Mr. Bastress informed the Council that he would be undertaking a project to catalogue and store the work of the Council.

4. Director Bastress reported on the status of the following research projects:

A. The survey of state Administrative Procedure Acts is complete, except for revisions and edits of the summary chart. When that it is done, the research will be submitted to the Legislature.

B. The survey of the fifty states' methods for redistricting has been completed, and research is now being completed on the secondary literature and the case law. That report should be done by the end of the year.

C. The work on surrogate decision-makers has been slowed by the transition from researchers who have to their successor. There have been difficulties in communication between the two sets of researchers. A survey of state judges and government workers was done last spring, but the results of the survey have not yet been given to the Council. The Council does have a survey of which states have adopted, in whole or in part, the Uniform Probate Code's handling of the issues.

D. The landlord-tenant project has continued with preparation of a memorandum on the Uniform Laws Commission's Revised Residential Landlord and Tenant Act, which the Commission adopted this past July. That proposed law and the one the Institute had drafted about ten years ago will be pitched to legislators. The major changes from West Virginia's existing law would be to provide greater definition to the warranty of habitability, to limit landlord self-help measures, to require notice by landlords prior to entry (except in cases of emergency), and to create protections for both landlords and tenants for when criminal acts occur on the rented property.

E. Work on the revision of the Legislature's Bill Drafting Manual has begun and is progressing well. The student has created a table of contents for the manual and has begun the editing process. She has been working closely with Professor David Hardesty to identify areas for improving the Manual. Professor Hardesty and W.V.U. political science professor,

Chris Plein, are writing articles on the law and bill drafting and on the policies of bill drafting. Those articles will be included in the revised manual.

F. The Council has begun work on the impact of partition suits in the Marcellus Shale counties in light of the absence of a state statute providing for forced pooling concerning gas extraction from the shale. The issue was brought to the Council by Delegate Shott, and the need to move on it quickly required immediate approval by the Executive Committee. The research has begun, and a memorandum has been produced and is now in the revision stage. Because the forced pooling bill will undoubtedly be an issue again in the next legislative session, this work is critical.

G. In another project approved by the Executive Committee, the Council has researched possible implications under the federal Constitution's Commerce Clause regarding two proposals from legislators for how to address the issue of turnpike tolls in the next couple years when the turnpike bonds will be paid off. That research has been completed, the conclusions conveyed, and a memo will ensue.

5. Professor Cardi introduced John Allevato to the Council, who participated in the meeting by phone. Mr. Allevato is Chair of the State Bar's Committee on Probate and a member of the American College of Trust and Estate Lawyers. He educated the Council on the state of disrepair that West Virginia's probate law is in, the numerous problems afflicting the process, the need to achieve statewide uniformity, and the need for clarification of numerous issues. Judge Johnson reminded the Council that he had already raised this issue and the need for reform. He thus moved, and Mike Frazier seconded, that the Council investigate the probate laws and report back. Mr. Allevato agreed to submit a memorandum identifying the various problems.

6. There was no other new business.

7. The Council set the date for its next meeting, which will be Tuesday, March 15, 2016, at noon in the State Bar offices in Charleston.

8. The meeting was adjourned.