

Notary Study Committee Meeting
Minutes
October 8, 2002

Meeting was called to order by chairman Cynthia Cotten, roll was called. Present: William L. Pratt, Stephen Broussard, Wendy Hilker, Narciso Lomeli, Paul Bello, Walter Brunty, Kathleen Clark, Linda Davison, Sue Dier, C. Alan Jennings, Jo Landry, Jim Estes, Carvel Sims, Glenn Stallings. Absent: Randall David, John Shidler.

Warren Ponder thanked all for their participation in Study Committee and hopes to send to the legislature some well thought-out proposals. Mr. Ponder encouraged everyone not to stop here but to continue to talk to his or her senator and representative and participate in the legislative process when the time is appropriate.

Cynthia Cotten explained that she did not want to limit discussion but needed to limit time of discussion asking member to keep points on task and to remember the focus. Called members attention to new reports from Sub-committee #3, recognized Mr. Estes, who officially submitted his report to the committee.

Cynthia Cotten opened the floor for discussion on any reports from members and witnesses.

Paul Bello moved that the committee approve and recommend to the secretary of state and the legislature the report from Sub-committee #1 on standardized testing. Linda Davidson seconded the motion. No discussion, motion passed: Yea - 10, Nay - 2, Abstain - 2.

Warren Ponder explained that all reports are going to the legislature and we want the legislature to have the benefit of all the information we have.

Mr. Bello recommends and moves that the committee adopts as its position either of the reports. Particularly in light that the majority report states a clear position and does not believe that it properly addresses the work that the sub-committee was charged to undertake. Mr. Bello feels the majority report does not recommend a process or structure in which mandatory continuing education could be implemented if it was a reality. Mr. Bello moved that the full committee adopt as its position the minority report of Sub-Committee #2 Mandatory Continuing Education. Seconded by Stephen Broussard.

Chair asked for discussion on the floor.

Mr. Stalling stated that to answer Mr. Bello, the report in question does recommend that the continuing education to move forward in its present form.

Mr. Sims prepared a report and stated he is against mandatory continuing education, because of the tremendous burden to place upon the public and notaries in general. Continuing education is not required of other professions, they must only maintain a license. If you take all 56,000 notaries it will be a 11.2 and 22.4 million dollar per year burden placed upon notaries. Research was done concerning notary malpractice, 1. fraud, 2. negligence. Discussed bond rates, and tried to find cases of malpractice and found attorney notaries being sued on bonds. Discussed that the problem with notaries is malfeasance, not negligence, but fraud and continuing education will not solve that. The problem is that when you have people just taking oaths and acknowledgement on many things, there just isn't that driving need to relearn, reestablish oaths and affirmations to the degree that we are trying to do. Mr. Sims stated he is not for mandatory continuing education, but he does not want it to seem like he is against education.

Mr. Brunty moves that Mr. Sims' report be included with the majority report of the sub-committee.

Mr. Estes seconded the motion.

Mr. Stallings asked for clarification from Mr. Ponder.

Mr. Ponder stated the motion on the floor was to adopt the minority report and the time for Mr. Brunty's motion would be when we are discussing the majority report.

Cynthia Cotten called to the committee's attention that we are discussing the minority report which is in favor of mandatory continuing education. With no more discussion on the floor, Ms. Cotten called for the vote, reminding the committee the motion was to adopt the minority report of Sub-committee #2 which was in favor of mandatory continuing education.

Mr. Jennings wants clarification of what we are voting to adopt. He has heard voting yea or nay on each report, minority and majority, and he has heard voting yes or no and the report with the largest number of votes stands adopted and he thinks procedurally that if a report receives a majority it stands adopted but if a majority of the committee does not vote for either that we have to retain the right to not adopt either report if the committee chooses. That generally means a vote on each, either up or down and obviously one goes up the other will not, but if they are both voted down that leaves us with no alternative but of no report or not adopting either. This might be important to some committee member.

Mr. Ponder stated Mr. Jennings point is well taken. If we vote a yea or nay on each report and if both reports get a nay vote then it stands -

Mr. Jennings asked if we were voting on each report.

Mr. Ponder, said yes, we are voting on each report. On the minority report, first, yea or nay, and on the majority report secondly, yea or nay and if both receive nay votes majority then there is no report that receives the majority.

Mr. Jennings just wanted to be sure that was the case. He heard we would vote one vote whether to adopt majority or minority and that did not seem right.

Mr. Ponder stated that we are going to vote on each report either yea or nay and if both receive majority nay votes, then there is no recommendation from the committee.

Ms. Dier asked if we were going to include witness testimony.

Ms. Cotten asked if any witness wished to speak to the committee and none came forward. She reminded witnesses to fill out the card and hand to staff if at any time they wished to speak.

Ms. Cotten called for the vote of the motion to adopt the minority report of Sub-committee #2 which calls for mandatory continuing education. Yea - 7, Nay - 6, Abstain - 1 Motion passed.

Mr. Bello stated that he believes that the adoption of the minority report makes consideration of the majority report mute.

Mr. Ponder deferred to Mr. Jennings, the parliamentarian.

Mr. Jennings stated the majority could technically vote in favor and adopt that report too, since it contains additional and alternative information. You don't know until you take the vote.

Mr. Ponder then asked Mr. Brunty if he wanted to make the motion to append the majority report.

Mr. Brunty then said that he did.

Mr. Ponder explained that the full committee was voting on Mr. Brunty's motion to append the majority report of Sub-committee #2.

Ms. Cotten explained we had a motion and a second.

Mr. Ponder made clear we were not voting on the report just to append the report with Mr. Sims' report which was passed out this morning.

Mr. Jennings reminded the committee that Mr. Stallings' report was amended to insert the word "not" before "as a profession" in point #1.

Mr. Ponder asked if it was page #1, item #1, it should read -

Mr. Jennings "everyone seems to view being a notary not as a profession or a job, but rather as an appointed official". That is the way Mr. Stallings explained it to us.

Ms. Cotten called for the vote on Sub-committee #2's report on mandatory continuing education. Adoption of report failed to get a majority. Yea - 7, Nay - 7

Mr. Ponder stated it failed because it did not get a majority, but it would be submitted to the legislature, but not with the recommendation of the committee.

Ms. Cotten explained we have two reports from Sub-committee #3 asking Mr. Pratt if he wanted to officially submit his report.

Mr. Pratt explained that those notaries who are not going to comply with the law should pay some sort of penalty, at least give information on bond status. What Orleans Parish does is strike notaries from the rolls if they do not comply annually. The report is based upon the system in Orleans Parish, which could be done in any parish to handle the rolls of the notaries. He stated there were 54,000 notaries to which only 25,000 status is known at this time. This is one way to clean it up, to revoke the commission, unless they are willing to comply. It is not that difficult to do; annually Orleans sends a mail out to all notaries on the rolls, and the notaries send in a \$20 fee. Then he indicated that he was not trying to make the \$20 fee mandatory, but at least wanted notaries to have to have proof of bond. If the notary doesn't, then a rule will be filed against the notary to have them stricken from the roll of notaries. He then explained Orleans Parish's procedures, saying it could be tailored to any parish. He moved that the full committee adopt the majority report from Sub-committee #3,

Mr. Broussard seconded the motion.

Ms. Cotten opened the floor for discussion.

Mr. Brunty asked Mr. Pratt if his proposal did not indicate that he wanted Orleans Parish to be responsible for all notaries complying with the same procedure as Orleans Parish.

Mr. Pratt said it does, but he is not married to that so much as we would like to get the mechanism itself adopted. But stated Orleans Parish is equipped to do it, he could certainly do it and do it in conjunction with the Secretary of State. This procedure has been in Orleans since time immemorial as far as he could gather, going back to the turn of the century.

Mr. Brunty asked Mr. Pratt if we were voting to have Orleans Parish responsible for monitoring.

Mr. Pratt stated Orleans Parish could certainly do it. If you would like to discuss it on the floor, he would be glad to entertain any dissent as to that measure.

Mr. Brunty stated although not thoroughly accurate, the secretary of state's office maintains a data base on commissioned non-attorneys.

Mr. Pratt stated that was all the secretary of state had and nothing more.

Mr. Brunty said it was incumbent upon them to clean up their act.

Mr. Pratt said that is what he was attempting to do.

Mr. Brunty said they both had the same goal in mind, maybe the means were different. Mr. Brunty said he rejected the idea of having Orleans Parish responsible for his commission, he lives in Bossier Parish. Mr. Brunty does not have an objection to reporting his status to Bossier Parish clerk of court or district attorney or district judge or anyone else, but sees no reason to report to Orleans Parish. And he states that is what we are voting on here.

Ms. Cotten agreed that was included in the report.

Ms. Dier is all in favor of keeping up with notaries and their bonds; her problem is after striking notaries from rolls, agencies still accept documents from suspended notaries. Explained DMV problems.

Mr. Pratt said notaries would be breaking the law at that point and it would be up to the district attorney then. In Orleans, once a notary who is on our rolls, does not comply, the sheriff attempts to serve them with the rule twice, then it is advertised in the newspaper. Then Mr. Pratt has to appear before a district judge to file the rule. At this point the notary has either complied or not complied; if they have not complied, the judge issues an order to revoke their commission and if they want to go ahead and notarize documents after they are revoked, then that falls into criminal status.

Ms. Dier asked Mr. Pratt if his office then notifies all state agencies not to receive any document from this notary. Explains that agencies still accept documents from revoked notaries and asked how to have notaries stopped.

Mr. Pratt stated once a notary is stricken from the rolls, a list is sent to the district attorney's office and they are responsible to monitor it. Then the list goes to the secretary of state and Orleans is the only parish that does it this way. It is up to the district attorney to enforce it.

Mr. Jennings stated the issue seems to be not whether to do the type of enforcement Orleans does but who should do it. Both reports seem to say that these actions are somehow necessary, somehow we need to get a grip on finding notaries. Either one of the reports holds the secret to it, but if it is politically a deal killer to have a report that says to let the Custodian of Notarial Archives do it, then we need to work with that. Mr. Jennings said the system that is in place is what you are looking at and regardless under whose signature these suits are filed or rules are taken perhaps we could amend that final paragraph to say rather than expanding the authority of the Custodian to expand the system currently enforced by the Custodian and have it done under the supervision of the secretary of state. Unless we elect the Custodian to the office of Secretary of State and combine the offices you are going to have problems.

Mr. Bello stated following Mr. Jennings recommendation and with Mr. Pratt's permission, proposed that the committee amend the final paragraph of the Sub-committee #3 majority report to insert after accomplished "in several ways: " Then at the end of the paragraph replace the period with a comma and continue " or that the secretary of state or local parish notary commission assume the same authority and enforcement procedures."

Mr. Pratt stated that the district attorneys need to get involved in this and wants to add that the district attorneys get involved.

Mr. Bello added " in conjunction with local district attorneys"

Mr. Pratt agreed as long as every parish mirrors what Orleans is doing. There is no reason to reinvent the wheel because it works and is not difficult. If these simple things cannot be done the notary would not seem to care enough to be a notary.

Ms. Cotten asked Mr. Pratt if he agrees to Mr. Bello's amendments.

Mr. Pratt agreed.

Ms. Cotten asked if anyone had an objection to changing the wording of the last paragraph of the report.

Mr. Jennings offered a substitute by amending the amendment by substitution. To strike out Custodian of Notarial Archives and add courts of the several parishes.

Mr. Brunty seconded the amended motion.

Mr. Jennings asked to speak to his motion. The system is what is being recommended here. If the Custodian of Notarial Archives receives \$20 for every notary in the state is a deal killer, and I have no objection to Mr. Pratt doing it, but it seems that the focus of this being concentrated in Orleans Parish is one of those things that is going to raise a lot of objection. The essence of the other report from the Sub-committee is to say let it stay with the secretary of state and the courts. I think that this would bring both of those reports in harmony. Discussion would tell.

Ms. Cotten asked Mr. Ponder for clarification of voting procedure.

Mr. Ponder said the last thing we have is a substitute motion to amend Mr. Jennings amendment to the amendment. We will vote that yea or nay.

Mr. Pratt said his goal and objective is not to do some sort of Orleans Parish power grab. If the rest of the parishes want to undertake this, by all means. I would just as soon they do it. We put this in here basically because we are already doing it and if all 63 other parishes don't want to institute another

bureaucracy to handle this then that is fine. Orleans does it already and it is not that difficult, we are set up to do it and if it is going to be a deal killer than by all means take out the Custodian of Notarial Archives. I have a problem with how things are enforced now. Let's do the political expedient thing and let's get it done properly.

Ms. Cotten again asked Mr. Ponder for clarification on exactly what we are voting on.

Mr. Ponder asked Mr. Jennings to again state his substitute amendment.

Mr. Jennings stated a substitute to that proposed amendment sort of eliminates that and says strike out Custodian of Notarial Archives and replace with "courts of the several parishes" and in my first statement it was to strike out since the office apparatus is already set up.

Mr. Ponder stated what we will be voting on whether or not to amend the last paragraph of this report to read " we recommend that this can be accomplished by expanding the authority of the courts of the several parishes to cover notaries of all parishes with regard to enforcement."

Mr. Jennings agreed that was the motion.

Mr. Brunty seconded.

Ms. Cotten asked if there was any opposition. There was none, so the motion to amend the majority report of the Sub-committee #3 was adopted.

Mr. Bello offered other wording for the amendment.

Mr. Ponder asked if it was a second substitution.

Mr. Bello said it was.

Mr. Jennings asked the body to permit him to withdraw that substitute and add another amendment. "We recommend that this can be accomplished by expanding the system currently enforced by the Custodian of Notarial Archives to cover notaries of all parishes with regard to enforcement. Said system to be administered by the courts of the several parishes." Asked if this would take the process now and put it into the hands of the district courts to do the same thing.

Mr. Sims thinks we need to leave that up to the attorneys.

Mr. Bello seconded Mr. Jennings substitution.

Ms. Cotten asked for any discussion on the floor. Then asked if there were any objections. There were none and amendment was adopted. Committee ready to vote on the amended majority report of Sub-committee #3 - Monitoring and Enforcement of Standards. Asked for discussion.

Mr. Sims noted that in the report he prepared he suggested that the secretary of state have the duty of regulating notaries because of the centralized data base. The compelling reason for the state to have an interest over the district judges and that the district judges can draw from that data base, so there is no problem there. There needs to be some legislative authority for the district judges and for any citizen to compel a notary to come before the courts to litigate anything that is of interest, such as a removal of commission for just cause. There is no method of removal. 1.2 million dollars a year will be generated just for somebody to keep the database available and that should adequately compensate the secretary of state for a job that they do now free of charge. Secondly, the reason we have a poor data base is that the district court requires a filing fee and a fee is required by the secretary of state. There needs to be one central registry for notary bonds. The issuance of a commission number that could be entered into the data base that any state agency and citizen could access. Discussed deputy clerks of court who are ex-officio notaries. Discussed laws on perjury and violations of sworn statements, need to do away with the need for ex-officio notaries.

Ms. Dier agrees that there should be one central location to file bonds and it should be the secretary of state. She sees problems with letting each parish control enforcement since it can be political and thinks that the secretary of state can be impartial. The secretary of state needs to work on its data base and get a fee annually to keep the records current. Sees a need to number notaries.

Mr. Pratt asked the committee to bear in mind that the report does not take anything away from the secretary of state's office, it gives an enforcement mechanism to the local court so that it can enforce standards and then turn that information to the state. Discussed the procedure to revoke commissions.

Ms. Dier asked for the secretary of state to send to the parishes a list of notaries that are in violation for enforcement.

Mr. Sims said the problem is that there are two places that notaries report. State and local, there should only be one and it should be the state, logically the secretary of state.

Mr. Bello said the amended report addresses that. Stated the notaries of Orleans Parish have adequate time to go back and get their bond and file it before the revocation becomes final.

Mr. Pratt said even if one slips through the cracks, Orleans Parish has the authority to go back and reaffirm a notary's commission. Notaries that are not in compliance should not be notarizing documents.

Mr. Jennings stated he has just reread both reports.

Ms. Cotten asked by both reports did he mean the majority and ad hoc report by Sub-committee #3.

Mr. Jennings affirmed and said he did not find where now the reports really conflict. Saying they seem to supplement each other. Being inclined to vote in favor of each the way they are presently on the floor, but asked the committee to point it out to him if he was wrong.

Ms. Cotten asked if there was anymore discussion on the floor.

Mr. Ponder asked Mr. Jennings if he was making a motion to combine the two reports.

Mr. Jennings moved to combine the two reports as the first one had been amended.

Mr. Estes asked if we were voting on the two reports and Mr. Sims report.

Mr. Brunty seconded the motion to combine the reports.

Ms. Cotten asked if there was any opposition to the combined reports going to the legislative.

Mr. Stallings moved that topic #5 of Mr. Sims report be added to the two reports to make them more complete.

Mr. Brunty seconded.

Mr. Bello stated that the topic #5 conflictsing with the two reports and offered a substitute motion to append as information only to the combined reports and not make it part of the findings.

Mr. Pratt seconded..

Ms. Dier stated Mr. Sims is just giving additional suggestions.

Mr. Jennings supported the appending as information topic #5 from Mr. Sims report.

Ms. Cotten asked if there was any opposition to the combined reports going forth as the committee recommendation. Asked again for opposition. Since there was no opposition there was no need for a roll call vote and the combined report was adopted. Asked for any questions.

Mr. Al Ater, Assistant Secretary of State and Chief of Staff for Mr. McKeithen came by to thank each committee member. Mr. Ater stated he could see how seriously each committee member was taking this and wanted the committee to know that whatever report that the committee makes and whatever the legislature ultimately does with it, the secretary of state's office will take it very seriously and professionally and do the very best job it can. Hopefully we have done the job the legislature gave us, hopefully everyone is pleased with the job that we have done. He said that he is pleased with Cynthia and Warren and everyone who gathered facts to present to the legislature from people in the field. Thanked each member again. The secretary of state is here for whatever need you might have.

Mr. Brunty thanked Ms. Cotten for her efforts in the meetings and hearings and sending documents to the members. Expressed his appreciation for a good job.

Mr. Bello thanked everyone for participating and moved for the meeting to be adjourned.

Ms. Davidson seconded.

Ms. Cotten adjourned the meeting with no opposition.

Cynthia Cotten