

M&O CONTRACTOR ATTORNEY ASSOCIATION
Spring Meeting Minutes

DOE Nevada, North Las Vegas Facility
Las Vegas, Nevada
April 10, 2001

The meeting convened at approximately 9:45 a.m. PST:

I. WELCOME

-- Rachel Claus, MOCAA President called the meeting to order. Ms. Claus mentioned that Greg McKenna, MOCAA Secretary, was seriously ill and was undergoing surgery the next day. Linda Guinn agreed to take meeting minutes in the interim. Previous minutes were approved.

II. ELECTION OF A NEW DIRECTOR-AT-LARGE

-- After opening for nominations from the floor, Robert Carter was re-elected Director-at-Large for a three year term.

III. REPORTS OF THE OFFICERS

-- Treasurer's Report, Gregory Scott, MOCAA Treasurer: Mr. Scott stated that MOCAA had _____. He reported that MOCAA had targeted to collect \$3000.00 because that is the amount required for deposit for hotels for meeting space.

IV. COMMITTEE REPORTS

-- WEBSITE COMMITTEE: Hugo Teufel. Mr. Teufel has established the website, currently hosted by Hall & Evans. Mr. Teufel is also seriously ill, is leaving Hall & Evans and has resigned from the committee. Discussion was had about transitioning the website to another server. Ron Nelson from the University of California was added to the committee.

-- CLE COMMITTEE: Guy Cunningham. Committee has done limited investigation of obtaining CLE credits for presentations. Washington State has been approached. Washington charges for being a provider of group education. Discussion followed, with the statement that it was thought that most states allowed you to just submit the agenda as an individual to obtain credit. Guy will follow-up. Greg Scott will check with Colorado, especially as that is where the MOCAA headquarters is located.

-- EXTERNAL RELATIONS: Bob Goodwin. Committee has been conveying the reasons for being a member of MOCAA.

-- PROGRAM COMMITTEE: No one from the Program Committee was in attendance. Greg Scott volunteered to join the committee and review locations for next program meeting. Discussion followed as to likely locations, with Denver, Las Vegas and the Washington D.C. area as primary candidates. A meeting in Washington D.C. would enable new members of the DOE Office of Chief Counsel, especially Lee Otis, the General Counsel designee, to attend. BWXT will participate on the committee to facilitate such a meeting. It was suggested to look at conducting the meetings over a weekend in order to get lower travel rates.

V. PRESENTATIONS

1. Adoption of FAR Cost Principles – New Risks for M&O Contractors. Bob Goodwin and Dick Haimes.

FAR 52.228-7 “Insurance – Liability to Third Parties” now takes precedence. DEAR changes published 12-22-00. Discussed how the allocation of risk by contract has changed.

2. Price Anderson renewal. Guy Cunningham.

The Price Anderson Act expires August 1, 2002. Although law may expire, existing indemnification will remain until the end of current contracts. Renewal is a high priority for DOE contractors. Lots of opposition is expected. Discussed various bills introduced or expected to be introduced.

3. Executive Orders. Robert Carter.

Summary of Executive Orders given (see listing below under “Other”). Circuit City, was upheld: fee cap awarded by arbiter. Discussed severance in exchange for waivers for involuntary separations. If lose in arbitration/litigation over terminations, then penalties are non-reimbursable and backpay awarded may be non-reimbursable under the FAR.

4. Legislative & Regulatory Summary. Ron Nelson.

Legislation reviewed: Price Anderson; HR 376 to abolish the DOE; S 517 on Technology Transfer; S. 591 on export controls on high performance computers; S 16 Section 3335, Qui Tam relator’s access to DOJ criminal investigation information.

Final rules: Rules suspended under the change in administration; Nuclear Safety (66 FR 1810), Diversity (65 FR 80994 and 81028); Contractor Legal Management (66 FR 4616)

Proposed rules: Conditional Payment of Fee (66 FR 8560); protected whistleblowing disclosures (66 FR 4639); Recycling (65 FR 71292)

Other: EO 13202 limitation on Closed Shop Subcontracting; Listing of Facilities covered under Energy Employees Occupational Illness Compensation Act of 2000 (66 FR 4003); DOE public participation policy revisions (66 FR 7898).

VI. OPEN DISCUSSION

Considerable discussion was had on the Legal Management rule, and ethical considerations. There was concern that compliance with the rule violates ethical obligations to keep client’s information private. Gregg Scott will distribute ethics opinion.

Discussion was also held on the Conditional Payments rule. If fee is forfeited, need due process because it is a taking. This is different than a fee reduction, which is the application of contractual measurements before fee is awarded.

There being no further business, the meeting was adjourned.

- Submitted by Linda Guinn, on behalf of Greg McKenna, SECRETARY