

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

March 6, 2002
1:43 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault

MEMBERS ABSENT

Senator Dave Donley, Vice Chair
Senator Johnny Ellis

COMMITTEE CALENDAR

Confirmation Hearings:
Board of Governors of the Alaska Bar - William A. Granger
Board of Judicial Conduct - Jeffrey M. Feldman
Violent Crimes Compensation Board - Leslie D. Bogda Wheeler

CONFIRMATIONS ADVANCED

PREVIOUS COMMITTEE ACTION

No previous action.

WITNESS REGISTER

William Granger
13810 Jarvi Drive
Anchorage, AK 99515

Jeffrey M. Feldman
Suite 400
500 L St.
Anchorage, AK

Leslie D. Bogda Wheeler
P.O. Box 878885
Wasilla, AK 99687

ACTION NARRATIVE

TAPE 02-08, SIDE A

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:43 p.m. Present were Senator Cowdery, Senator Therriault and Chairman Taylor. He announced there were three confirmation hearings before the committee.

CHAIRMAN TAYLOR said the first confirmation hearing would be for the Board of Governors for the Alaska Bar Association (Bar). He asked Mr. William Granger to give a brief synopsis of his experience.

MR. WILLIAM GRANGER said he was a lifetime Alaskan educated in Alaska. He was a banker and had been in the banking industry for over 30 years. As a banker he had a great deal of contact with members of the Alaska Bar mainly in commercial transactions, bankruptcy transactions and some construction litigation and personal injury litigation. He was involved with various firms and private practitioners and had seen the gamete of experience and professionalism from one end to the other. He found this would be a good way to share his vast experience from dealing with many members of the Bar in improving the quality of the Bar from an educational standpoint and a moral standpoint.

SENATOR COWDERY said he had heard Mr. Granger was Vice President of National Bank of Alaska (NBA). He asked if that was Wells Fargo now.

MR. GRANGER said National Bank of Alaska was acquired by Wells Fargo. He was no longer with them because he retired at the end of 2001 as a Senior Vice President of Wells Fargo Bank, Alaska and the Senior Regional Credit Officer in Alaska.

SENATOR COWDERY said he had been in Alaska since 1950 and did a little bit of flying also. He had heard Mr. Granger was a private pilot. He asked if he still flew.

MR. GRANGER said he did. He owned a PA 14 and flew as much as he could. He had put ten hours on it the previous weekend.

SENATOR COWDERY asked if he was a conservative, moderate or liberal.

MR. GRANGER said if he had to put a tag on it he would probably be a conservative. It kind of depended on the subject.

SENATOR COWDERY said he was a conservative. He said Mr. Granger

had a concealed weapon permit.

MR. GRANGER believed he was one of the very first people in Alaska to get a concealed weapon permit.

SENATOR COWDERY said he was in the process of getting one. After September 11th people had started thinking about that more strongly than before. He said they had a problem a few years earlier with pilots carrying weapons in their plane.

SENATOR THERRIAULT asked him for an idea of his educational background. He asked if he had a law or business finance background.

MR. GRANGER said he had an interesting educational background. He attended Dimond High School and decided they were not teaching him fast enough. He dropped out of high school and went to Gonzaga University in Spokane, Washington for a few years. While there he watched friends graduate and not be able to find good jobs so he went back to Alaska. He had taken dozens of different banking classes and was currently enrolled in a Pacific Coast Banking School out of the University of Washington. He was in his second year of a three year masters program. He said he was a believer in the educational process. He had not obtained any formal degrees but studied law and bankruptcies. His high school time was spent working in a bank or living in the law library.

SENATOR THERRIAULT said David Bundy was listed in Mr. Granger's references. He asked if Mr. Bundy used to be with Guess and Rudd PC.

MR. GRANGER said David Bundy was with Guess and Rudd PC and one of the finest bankruptcy lawyers in town. Mr. Bundy was the past president of the Bar Association. Mr. Granger said he thought a lot of him.

SENATOR TAYLOR asked Mr. Granger he had been on the board for a two or three year term.

MR. GRANGER said he had been on the board for six months or more. He said the position was a three year term with an option to renew for three years.

SENATOR TAYLOR said correct. Mr. Granger was appointed in June of 2001.

SENATOR THERRIAULT said he recently had a conversation and had not had a chance to track down information but it was his

understanding that the Bar Association currently has on account in excess of a million dollars. He said he did not know if that was just their operating fund or a holding account they have generated over the years from the Bar fees. He asked, since Mr. Granger had been there for awhile, what he could tell him about that.

MR. GRANGER said that number was approximately correct and had been substantially derived through Bar fees. It was a planned event to avoid the raising of Bar fees in the near future. Projections over the next few years showed that excess would be decreasing as planned. The Bar Association would not have to adjust Bar fees for extended periods of times. He thought it would be eight years. There is an excess to their current operating needs at the moment but they are going to be eaten away.

SENATOR THERRIAULT asked why it would be eaten away. Generally most boards and commissions set their yearly fees so it covers their expected general operating experience. When they have an extraordinary expense, some kind of litigation, their fees are adjusted for the next couple of years to cover that cost. Now Mr. Granger was indicating that for some reason the fees were adjusted to build up this pool of money and it would be eroded over time. He asked if they were anticipating some expense that is going to do that or are they going to be adjusting the annual Bar fees down.

MR. GRANGER said to the best of his knowledge there was no plan to adjust the annual Bar fees down. He believed the operating expenses and the planned activities of the Bar Association are going to be using up that excess over the next several years. The Bar, like everyone, has increasing expenses from one year to the next. The Bar Association will be doing some exciting things in the area of providing services to its members particularly in the area of research. He thought the membership was going to receive a great deal more service than it had in the past for their dues.

SENATOR THERRIAULT said the concern was brought to him by an attorney who asked why they were paying more than they need to. The attorney wanted to know the reason the Bar Association had a million dollars, some of which was his money.

SENATOR THERRIAULT said most boards and commissions have to adjust the fees on an annual basis. They have to explain and give a justification to the individuals that pay for the service on exactly what they are getting for that fee. There is a little

bit of consternation that the Bar Association had been able to amass roughly a million dollars out of people who are paying their \$400 or \$450 annual fee.

MR. GRANGER said there was no doubt it was a very hot topic and one that was discussed heatedly at every Bar convention. He expected the upcoming convention to be no exception.

SENATOR THERRIAULT said there was some allegation that they were on thin ice in the way the Bar Association is treated differently than every other board and commission. He said if they wanted to fight with somebody over legal issues they would not necessarily want to take on the Bar Association. He said it was an item that had been brought to his attention.

MR. GRANGER said it was a very sensitive area for all the members of the Bar. He did not have a great deal of history but had looked at the million dollars like Senator Therriault. He had asked why it was there, how did it get there, what is the plan for it, why are they not giving it back and why aren't they lowering the dues. Those questions are constantly asked.

CHAIRMAN TAYLOR thanked Mr. Granger for volunteering for the service and providing them with the candid responses.

SENATOR COWDERY moved the letter approving Mr. William Granger to the Board of Governors of the Alaska Bar Association be sent forward to the joint body of the legislature. There being no objection the letter will issue.

CHAIRMAN TAYLOR asked Mr. Jeffrey Feldman, candidate for the Commission on Judicial Conduct, to give the committee his background and some of his experience in these matters.

MR. JEFFREY FELDMAN said he was a lawyer and was seeking another term on the Commission on Judicial Conduct. He had previously served two terms on the commission. He had been in Alaska since 1975 practicing law, a mixed civil and criminal practice. He had previously served as the President of the Bar Association, President of Trial Lawyers Association, and had sat on several other related professional organizations.

MR. FELDMAN said he had a committed interest in the system of justice and judicial discipline in particular. He thought it was an important function that the state fulfills. During his tenure he had attempted to work with the other members on the commission who are a combination of lawyers, non-lawyers and judges towards increasing both the speed in which cases are resolved, opening

the process up to the public to the greatest extent permissible and increasing what he regarded as the professionalism by which the tasks of the commission are addressed. He said he would be happy to serve another term if that was the will of the committee.

CHAIRMAN TAYLOR thought if Senator Donley were there he would ask the following questions. Senator Donley and Chairman Taylor had worked with Dana Fabe and the Alaska Supreme Court to try and get a little more timeliness out of their orders and to see to it that cases don't languish after they had been argued before the Supreme Court Justices. He said it was his understanding from Justice Fabe's latest speech that the Alaska Supreme Court is in the process of developing timelines and processes by which they will make a more rapid decision. There are cases that have been pending for over two years after final oral argument. He asked if that was an issue the commission had looked into.

MR. FELDMAN said they had not looked at it in an abstract way. Like any other adjudicated body their mission is to resolve specific cases and complaints that are filed with the commission. If someone files a grievance or complaint with the commission alleging delay on the part of a judge or alternatively if the commission becomes independently aware of delay and initiates a complaint on its own motion, which sometimes happens, then in that specific instance they will take it up and review it but it is not their jurisdiction to undertake a study of the entire system and how the courts are behaving in a local way.

Their mission by constitutional provision is to enforce the Code of Judicial Conduct. There are instances in which judicial delay can rise to the level of being the equivalent of an unethical act by a judge, which is what would have to happen before it would come before their commission. Not every slow decision or every delay falls within that realm. They had cases where people had complained of extreme delay. They looked at them and issued cautionary letters and issued minor sanctions in some instances. They are dependant upon individuals filing specific complaints with them and then they act on them. Judicial delay is a matter the commission is deeply concerned about. During the time he has been on the commission it has been an area where his colleagues and he had focused their own efforts in terms of making sure their own house was in order, processing their own claims on their own cases timely before demanding that anyone else do the same. They are not in any respect insensitive to the issue.

MR. FELDMAN appreciated the concern Chairman Taylor and Senator

Donley had towards dealing with this issue with the Alaska Supreme Court because anytime they have one body of government, the legislative body, calling into question the performance of another body of government, that being the judicial body, there are areas of separation of powers that make it difficult for some of those issues to be ironed out very easily. He knew it was an issue that Chief Justice Fabe is deeply concerned and committed to. He thought she had in place for sometime a committee devoted solely to the issue of appellate delay and trying to speed up the timeline in the resolution of those cases. He assured them if a complaint were to be lodged with his commission they would take it seriously.

CHAIRMAN TAYLOR said the other matter he was sure would be inquired of was the commission's case filings and complaint filings over the last three years. He asked if they were seeing an increase in filings against judges for improper conduct or is it flat or going down.

MR. FELDMAN did not have the statistics with him but had looked at them during a meeting a couple of weeks previously so they were somewhat fresh in his mind. He said the total statistics had stayed relatively flat for several years.

They get a lot of complaints each year many of which are not within the jurisdiction of the commission. For example they get dozens and dozens of complaints from prisoners, defendants in criminal cases, typically people in custody who are not happy with the decisions that were reached in their cases. Those are obviously not complaints within their jurisdiction. They are not an appellate court and are not there to second guess whether a judge decided the case correctly or incorrectly. They get a lot of complaints that are not within their jurisdiction and get turned away without a lot of attention by the commission. The number of complaints they receive that are within their jurisdiction has stayed relatively flat.

CHAIRMAN TAYLOR asked if they had had many serious cases in the last three years requiring either private or public sanctions.

MR. FELDMAN said on the average they had what he regarded as one or two major cases a year. He defined a major case as a case resulting in a public hearing and a public level of discipline. The Alaska Supreme Court then ultimately reviews it because by constitution the commission can make recommendations on public discipline on judges but only the Alaska Supreme Court has the authority to actually impose that discipline. They have one or two major cases a year.

They have a half dozen or so medium size cases, which are cases that do not result in public hearings but do result in some form of reprimand or censure that is reached by stipulation with the judge who has committed the violation. They have a dozen or so cases a year that result in minor letters of caution or private reprimands for minor infractions. They get some number each year of instances that are not found to be actual violations of the code but where there is still something at issue that is a matter of concern to the commission. They engage in some private counseling with the judge to bring to his or her attention an incident that causes some concern though it may not constitute an actual violation of the code.

SENATOR COWDERY asked if when he finished his current term would he have served eight years.

MR. FELDMAN said he should know whether his terms were three or four years each but he had served two terms. He said it felt like more than that to him.

SENATOR COWDERY asked if he were confirmed would this be his third three year term or would it be his third four year term.

MR. FELDMAN said he thought it was three years but he might be wrong.

CHAIRMAN TAYLOR thanked Mr. Feldman for the three years of service he had provided to the state and especially thanked him for volunteering to continue in that matter. He thought it was important they had continuity within boards of this type that can provide experience and background to new members.

SENATOR THERRIAULT explained a number of attorneys came to him expressing concern over the way the court system in rural locations conducts themselves. He asked if that was an administrative function that the commission would not get into or would the commission be an area that individual attorneys can come and express some concern and frustration to.

MR. FELDMAN said anybody that has a concern about the performance of a judge can and should bring those concerns to the commission. Some of those concerns fall in their jurisdiction and some don't so they can't address every type of complaint that comes before them. They receive complaints that involve the performance of judges both in urban and rural areas that are within their jurisdiction and they do act on them. They get a fair number of complaints each year that he regarded as demeanor complaints,

complaints that a judge said something or behaved in a certain way in a judicial proceeding that caused someone to feel offended or concerned. It may have risen to the level of being unethical conduct on the part of the judge so they would take action on it. Even if it wasn't unethical that is the kind of complaint where they would engage in some counseling because they believe strongly that judges should act judiciously and treat everybody with respect. If they don't it is proper for someone to discuss it with the judge.

MR. FELDMAN said they are receptive to receiving complaints but there is a judicial code and their mission is to enforce that code. If conduct that is the source of a complaint falls outside of that code they are not going have the authority to act on it. They can take informal steps and refer things to the presiding judge for action by the court system. They do what they can when things are outside their jurisdiction but sometimes things are just beyond what they have the authority to deal with.

SENATOR THERRIAULT asked if somebody comes to them with a concern is it kept in confidence.

MR. FELDMAN answered yes and no. During the investigatory stage the commission's files are closed and not available to the public. Judges are not informed of the names or identities of those who complain against them. If the complaint rises to the level of establishing probable cause to believe the judge committed a violation of the Code of Judicial Conduct then at that point it is made a public matter. The public has a right to observe and participate in the proceedings and look at the file and the press can report on it. At that point the person that filed the complaint is going to be identified. The substance of the complaint will be identified as well because the judge has to be given an opportunity to respond to it. That only happens once it has been determined it is a complaint within the jurisdiction within the commission and that there is probable cause to believe that a violation was committed.

MR. FELDMAN thanked Chairman Taylor. He said the Commission on Judicial Conduct is a very strong commission, especially the lay members that had been appointed and the legislature had confirmed. It is a very strong commission and is a pleasure to work with the members.

CHAIRMAN TAYLOR said that was good. He said Mr. Feldman had lengthy experience and was speaking from that experience. He said it was good to hear they had a strong commission because it breeds confidence in the credibility of the entire system and

especially of the judicial system.

SENATOR COWDERY moved the letter approving Mr. Jeffrey Feldman to the Commission on Judicial Conduct be sent forward for confirmation by the full body of the legislature. There being no objection the letter will issue.

CHAIRMAN TAYLOR asked Leslie D. Bogda Wheeler from Wasilla to make an opening comment on the Violent Crimes Compensation Board and her experiences there.

MS. LESLIE BOGDA WHEELER said she was currently the Chair of the Violent Crimes Compensation Board. They provide compensation to victims of violent crimes in the State of Alaska. She is the public member and there is also a doctor and an attorney position on the board.

She believed she had been on the board since 1995. She was appointed to complete a term and thought she had served two three year terms.

SENATOR COWDERY said his information was that she was first appointed 5/15/96 and reappointed on 12/11/98.

MS. BOGDA WHEELER thanked Senator Cowdery and said it goes by so quickly she had not paid much attention to how long it had been. She said the board was looking forward to the increased limits of assistance they can provide in July 2002. As a rule they don't provide the full amount of assistance available to victims. There are however instances in which they cannot compensate anywhere near what the loss, as a result of their crime, had been even after insurance and personal means were exhausted. She was very please that the legislature, in their wisdom, chose to make that decision.

MS. BOGDA WHEELER said the Alaska Violent Crimes Compensation Board had prepared, prior to September 11th, for the event of terrorism occurring within the state. There was some comfort that they were prepared for that type of incident. The President of the National Association of Crime Victims Compensation Boards, in his quarterly news letter to the body, mentioned "Never Forget," the motto that was placed on the television screen on the three month anniversary of September 11th. In his statement he wanted everyone to remember that even in these events of terrorism where they have a large body of people who have humongous losses the other victims of crime still exist. If they don't maintain their services for all victims of crime those individuals also become victims of that greater crime. She

thought that was an interesting point of view and one that she will keep with her as they go into the future should she be reappointed.

CHAIRMAN TAYLOR said they appreciated the years of service she had provided to the state. He said he could only imagine that these have to be heart wrenching tales and situations that she and board had to deal with. He was proud that they can provide a group of people like her to screen folks and provide some token of assistance and compensation to them. He appreciated that she was there and could provide continuity to the board with some institutional knowledge on how victims and crime had been treated over the tenure she had been on the board.

MS. BOGDA WHEELER thanked the Judiciary Committee for their time and interest in the Violent Crimes Compensation Board and sent her appreciation to the legislature for the support they gave victims in the State of Alaska.

CHAIRMAN TAYLOR said he worked closely with Representative Ramona Barnes when they tried to take Permanent Fund Dividends away from convicted felons and give it to the Violent Crimes Compensation Board. Lawsuits had happened and they did not get to give them that money but he knew the money they did get to the board really helped.

MS. BOGDA WHEELER said they receive letters occasionally from victims who had been assisted and they are very heartwarming and made it all worthwhile.

SENATOR COWDERY moved the letter approving Ms. Leslie D. Bogda Wheeler to the Violent Crimes Compensation Board be sent forward for confirmation by the full body of the legislature. There being no objection the letter will issue.

CHAIRMAN TAYLOR adjourned the meeting at 2:16 p.m.