

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

JANUARY 30, 2009
LAW & JUSTICE CENTER
SALT LAKE CITY, UTAH

Present: President Nathan D. Alder and Commissioners: Steven R. Burt, Christian W. Clinger, Yvette D. Donosso, James D. Gilson, Mary Kay Griffin, Robert L. Jeffs, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey, and Rodney G. Snow. Ex-Officio Members: Simón Cantarero, Eve Furse, and James Gordon (Interim Dean for J. Reuben Clark). Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Katherine A. Fox, and Supreme Court Liaison Marilyn (Matty) Branch.

Excused: Commissioners: Curtis M. Jensen and Rusty E. Vetter. Ex-Officio Members: Hiram E. Chodosh, Julie Eriksson, Charlotte L. Miller, Paul T. Moxley, Karthik Nadesan, and V. Lowry Snow.

Minutes:

NEW ITEMS:

Nate Alder introduced Jeannine Timothy who administers the Bar's Consumer Assistance Program (CAP). He said that Charlotte Miller instituted CAP, which is a part-time position, to help reduce the number of headaches from fee dispute resolution, OPC issues and other areas. Jeannine said that CAP has been in existence for 11 years but not all attorneys are aware of it. She explained what she does and provided some examples of the types of complaints she helps to resolve one of the primary issues seems to be attorneys not returning clients' phone calls. She then responded to Commissioner questions. Discussion ensued on the placement of client complaints and whether they are initially addressed by CAP or OPC as well as other issues. Rob Jeffs (and others) opined that current OPC rules mandate that all notarized complaints must be funneled through OPC regardless of the nature and seriousness of the issue, and that procedure should be changed.

Nate reported that in light of the fact that the Bar is losing money in interest income, he is considering reducing the number of Commission reimbursed days at the Summer Convention in Sun Valley from three days to two days to help offset the loss. Rod snow

inquired how much interest income we are losing. John responded that we are down approximately \$35,000 because most of our accounts are low risk and therefore yielding less than 1% interest. In addition to moving the Commission meeting from Wednesday to Friday, Nate further said that he is considering eliminating the Past Presidents' Dinner as a cost saving measure. Rob Jeffs observed that we had already considered these types of issues in the last meeting. **Jim Gilson moved to approve eliminating the dinner and holding the Commission meeting on Friday.** Nate interjected that these items were more in the nature of calendar scheduling. **Steve Owens seconded the motion.** Nate asked John to prepare more information on this issue after discussion took place.

John Baldwin reminded those interested in running for open Commissioner seats to file their petitions as soon as possible and asked that they observe the 200 word limit. Christian asked if the deadline was February 1st or February 10th. John responded that February 10th date is the "drop dead" deadline. He also noted that Rob is not running for 4th District so his seat is open.

Steve Burt inquired about the dates of the Commission meeting and retreat listed on the calendar. Steve Owens said that the retreat will be held at Little America in Salt Lake City. Eve Furse asked that the symposium on Women Law Firm Retention which will be held on May 21st be added on the calendar. She also said that the Women Lawyers' survey has received a 49% response rate and they have decided to extend the survey deadline to February 3rd.

Nate said that sometime in May, the ABA will be sponsoring the State Court Judiciary Meeting for Fair and Impartial Courts meeting. He will be attending and Chief Justice Durham may also attend. He would like to invite President Waddoups, Speaker Clark, and the Governor to attend.

Simón Cantarero reported that the Minority Bar mentoring marathon event was very successful and Scott Sabey reported that the judges will not be attending the Spring Convention in St. George due to budget concerns.

John said that the Blomquist Hale mailings (a copy of which is included in the packet) will be mailed soon. This program is the most expensive service the Bar provides at \$9,500 per month.

1. UTAH STATE COURT REPORT

Chief Justice Christine M. Durham and Dan Becker, State Court Administrator, were in attendance for this portion of the meeting. The Chief Justice remarked that the new mentoring program has the potential to bring the bench and the Bar together. She further remarked that because of the budget crisis, the Court has had the opportunity to review judicial system core functions which has been a very valuable exercise. Issues relating to post-conviction remedies are poised to be on the forefront at this legislative session via

the Attorney General's office. Finally, she observed that the courts need the Bar's ongoing support during these difficult times.

Dan Becker reported that almost all the judiciary's budget comes from the state's general fund. He continued that 84% of the court's budget is for personnel and this contrasts with other state government agencies whose personnel costs are generally around 32%. The initial budget reductions are 4% to 7% and then perhaps 15%. To implement these reductions, the Court: (1) has instituted a hiring freeze for all positions including judges (currently have 48 unfilled positions); (2) has eliminated some important juvenile programs; (3) has decreased travel and education expenses; and (4) will eliminate all court reporters except in death penalty cases. To further cut costs if the budget remains the same, the Court is looking at implementing a mandatory 26 day furlough for its employees or closing the courts for a full week, or closing every court at least one day a week. Looking towards a possible 15% reduction next fiscal year, the Court will need to reduce 283 positions which is approximately 1/3 of its personnel.

The courts have seen unprecedented growth in overall filings with an increase of 18% in first 6 months of this fiscal year. This growth is comprised of 22% increase in general civil filings; 61% increase in contracts filings; 67% increase in debt collection filings; 101% increase in mortgage/foreclosure filings; 27% increase in child support/custody filings and 5% increase in criminal cases. With 50,000 new cases expected to be filed, the system obviously will require more personnel and judges. Unfortunately, the court system is already experiencing delays.

Dan further reported that while a filing fee increase is problematic and they do not want to increase those fees, they will have no choice but to do so with a 15% budget reduction. The proposed filing fee increases include increasing civil cases over \$10,000 from \$155 to \$300. These fee increases will put Utah in mid range of fees currently charged in other western states. He continued that Senator Bell has agreed to sponsor a bill that will generate \$12.5 million of general funds with the hope that the money would be appropriated to the courts. He asked for our support for this bill during this legislative session.

Dan continued that the courts are also looking at other changes, such as: (1) using "judicial assistants" to retrain judges' clerks to create better efficiencies; and (2) allowing judges to mediate other judges' cases in lieu of litigating. Nate Alder suggested a free mediator training at the Bar to help handle the increase of potentially 50,000 new cases. Jim Gilson suggested possibly raising the jurisdictional limits on small claims cases to increase these courts ability to handle more cases. Rob Jeffs said his fear is that public backlash will end up criticizing the current structure of the judicial system rather than recognizing the effects of these budget cuts and he suggested that the courts emphasize mandatory mediation early. Matty Branch said the Courts Advisory Rules Committee on Civil Procedure is looking at discovery rules to accommodate the reality that you cannot try cases in \$40-50,000 range economically so one solution is to mediate earlier in process. Nate said the Bar is thinking about approaching the Court to enlarge our current sphere of legislative-related efforts. Steve Burt said from lay person's perspective,

citizens expect to have their “day in court” and we need to make the legislature aware of the impact of these budget cuts. Nate said we need to raise the issue of not filling judicial vacancies and the impact it has on the ability of citizens to access the judicial system. Rod Snow said we also need to stress the public safety aspect with the legislature. In response to John Baldwin’s inquiry, Dan responded that they are stressing moving ahead with e-filing for efficiency purposes and reduced cost.

2. PRESIDENT’S REPORT

2.1 Update on Meetings with Legislature Leaders and Governor

Nate reported that he has attended a number of “inside game” legislative functions lately and has formed some very valuable relationships in the legislature. He said that we need to develop deeper relationships with key people in the government. He is currently establishing a new and more positive relationship with Office of Legislative Counsel. At a recent meeting, John Fellows said that in order to develop better relationships with legislators we need to be mindful of several key points: (1) lawyers as a group come across as arrogant; (2) the legislature not a court-like-body, they value “trust” and “relationships”; (3) legislators deserve respect for the offices they hold (use of appropriate titles); and (4) “knowledge and personal humility” yields power in dealing with legislators. Lori Nelson said we need to communicate on an effective level with legislators which means, in part, not criticizing one legislator to another one. Felshaw King said that legislators have a massive amount of work so what they want is not an advocate position but rather, good information in order to make decisions. Rob Jeffs said in recent conversations with a legislator in Utah County he has learned that they cannot function without lobbyists because that group serves as a valuable source of information.

2.2 Update on Professional Service Tax

Nate said that he predicts that the professional service tax issue will come to the forefront at the legislature in the next year or two as the Governor’s Office is really advocating this additional source of revenue. He said that every service will be affected so that sales tax on food can be eliminated and he provided additional details. John said that we are monitoring and being as inclusive as possible with realtors and other professional groups for support.

John T. Nielsen, who was in attendance for this portion of the meeting, reported on a pending bill which would prohibit a judge from awarding attorney fees unless provided by statute. He continued that the sponsor of the bill wants to impact awards of fees by judges in “vexious lawsuits”. He closed by saying that the Governor’s Office is working on the issue of a current judge nominee whose confirmation need to go to the Senate.

2.3 Report on Meeting with Past Bar Presidents

Nate reported that at the Past Bar Presidents meeting the following issues were discussed: (1) the new mentoring program; (2) proposed budget cuts to courts; and (3) the professional services tax proposal.

2.4 Review Calendar

Nate reviewed the Commission calendar with those in attendance. He emphasized more participation on the Tuesday legislative telephone conferences and highlighted the Utah State Bar day activities at the Capitol to be held on February 5 beginning at 9:00 a.m. It is a 3 hour CLE where lunch will be provided and 125 lawyers have signed up to attend. Kirk Jowers will be the main speaker and issues such as the proposed professional services tax and other state budget issues will be discussed.

3. ACTION ITEMS

3.1 Dorathy Merrill Brothers and Raymond Uno Awards

Discussion ensued over whether new nominations could be taken from the floor. Consensus was that only those previously nominated could be considered. **Lori Nelson moved to approve Judge McHugh as the recipient for the Dorathy Merrill Brothers award. Christian Clinger seconded the motion. Mary Kay Griffin recused herself from the vote. The motion passed unopposed.**

Christian moved to approve Cheryl Mori as the recipient for the Raymond Uno award. Yvette Diaz seconded the motion which passed unopposed.

3.2 Nomination of President-elect Candidates

Felshaw King and Rob Jeffs each gave a short presentation on their candidacy for President-elect. They would both like the opportunity to serve. **Lori moved to approve both Felshaw and Rob as candidates for the office of President-elect. Herm seconded the motion which passed unopposed.**

4. EXECUTIVE DIRECTOR'S REPORT

4.1 Mentor Program Update

John directed attention to the self-addressed stamped envelope along with mentoring materials included in packet. He said that letters have been sent to law school and visits will be made to each law school with additional materials to be provided. To date, 45 mentors have signed up but we have received 500-525 nominations. We will need 125 mentors for May admittees and an additional 325 -350 for the July admittees. Scott said

that the mentoring presentation at Judicial Council was valuable and judges will begin asking attorneys from the bench to volunteer. Nate said that unfortunately due to the state of the economy, the ground is now less fertile from which to glean mentors. Rod said on the other hand, Judge Orme at the Judicial Council observed that attorneys will have more time on their hands. Matty said Chief Justice Durham's letter is ready to go as soon as the Court receives the names and addresses of the mentors. Scott opined that we really need to sell this program because some lawyers are already leaning towards lateral hires rather than accommodating NLTP requirements. Simón Cantarero, Matty and Rod agreed that there are some potential judicial ethics issues posed by this program which will need to be resolved.

4.2 Lehman Brothers Bankruptcy Claim Update

John said that the Lehman Brothers Proof of Claim has been filed; however, no deadline has been set.

4.3 Group Insurance Update

John said very positive developments have been made in the area of group insurance. Steve Owens said that 70% of respondents are interested in a Bar-sponsored health insurance plan. This plan will not cost the Bar any money and no signed contract is necessary. However, to be considered a "group," we have to be united under a single payer tax ID number via payroll. The payroll must run through one system with a "common denominator." He said that it is less complex than it sounds. One problem is with solo practitioner who have no employees. We are currently directing attorneys to Fred Moreton which provides an affordable insurance alternative for some groups.

4.4 Property Tax Appeal Update

John said we lost our appeal 7 to 2 in front of Board of Equalization and we now will take our appeal to the Tax Commission. The tax lawyers are optimistic but undoubtedly, this issue will end at the Utah Supreme Court.

4.5 Notice of Nominations to Appellate Court Nominating Committee

John Adams' and Jody Burnett's seats are up in March. We have not interviewed interested candidates in the past but rather, just reviewed resumes. This item is scheduled for the March meeting.

4.6 Status of E-Filing in State Courts

John said that the court's e-filing system will be tested in 2nd District. The costs are approximately \$270 a year for unlimited filing through the Bar's portal. In response to an inquiry, Katherine Fox opined that the cost was per individual lawyer, not per firm, and John concurred.

4.7 Status of “and Justice for All” License Plate

John described Anna Jespersen’s work in this area. If approved, a portion of the money will go to “and Justice for All”.

4.8 Request for Creation of Clean Energy Section

Nate has concerns over the potential dilution of the current Energy and Natural Resources Environmental Law (ENREL) section membership vis a vis the creation of the new Clean Energy Section. The ENREL section has also expressed concerns over creation of this new Clean Energy Section. John asked the group if they are really just interested in more targeted CLE and Nate added that ENREL is currently talking about creating a subcommittee within the ENREL section.

5. CONSENT AGENDA

By policy, the December 5, 2008 minutes are approved without amendment (Tab 9).

**MEETING ADJOURNED AT 1:10 P.M. WITH AN EXECUTIVE SESSION
HELD AFTERWARDS**

NEW HANDOUTS DISTRIBUTED DURING MEETING:

None