

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

MARCH 12, 2009
DIXIE CONVENTION CENTER
ST. GEORGE, UTAH

Present: President Nathan D. Alder and Commissioners: Steven R. Burt, Christian W. Clinger, James D. Gilson, Mary Kay Griffin (via phone), Robert L. Jeffs, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey, Rodney G. Snow and Rusty Vetter (via phone). Ex-Officio Members: Simón Cantarero, Hiram E. Chodosh, Eve Furse, Charlotte L. Miller, Karthik Nadesan and V. Lowry Snow. Executive Director John C. Baldwin, General Counsel Katherine A. Fox, and Supreme Court Liaison Marilyn (Matty) Branch.

Excused: Commissioners: Yvette D. Donosso and Curtis M. Jensen. Ex-Officio Members: Julie Eriksson, Jim Gordon (Interim Dean, J. Reuben Clark) and Paul T. Moxley. Assistant Executive Director Richard Dibblee.

Minutes:

1. LUNCH WITH SOUTHERN UTAH BAR AND MENTOR TRAINING

2. PRESIDENT'S REPORT

2.1 Review Convention Schedule and Calendar

Nate Alder reviewed the Spring Convention schedule and John Baldwin noted that the program will begin at 8:15 Friday morning. He further said that the Salt Lake County Bar film is taking the place of the usual Friday night dinner event. In response to questions, John said we were at about 85% attendance from last year and we should end up with approximately 400 attendees which will include "at door" registrations.

2.2 Report on National Conference of Bar Presidents Meeting

Nate highlighted various events that took place during at the Boston ABA meeting. He said he has a new understanding of what we need to be doing with government relations and it will take additional resources in order to become even more effective.

2.3 Report on Governmental Relations and Legislative Session

Nate said that the recent CLE event, Utah State Bar Day, at the Capitol was really exciting. He compared and contrasted that event with other states' similar programs. He said that other professional groups in Utah (medical, etc) regularly conduct these types of annual events at the Capitol. John said the biggest problem was that space was insufficient which limited attendance and Lori Nelson suggested alternating two (or more) rooms to help offset the space problem. Nate continued that while this event was good, the real work lies with individual contacts at the legislature. He said that we are moving into a political era due to factors like decreasing funds, the Court's shrinking budget, and other aspects. John said we need information earlier to know how and when to get involved in light of political concerns and that meaningful involvement is demanding and time intensive. Nate observed that the Bar was (strategically) instrumental with the DeCaria confirmation process.

John T. Nielsen was in attendance for this portion of the meeting. A new handout ("Utah State Bar Governmental Relations Committee Report of Actions Taken") was then distributed. John T. Nielsen said that the Governor has asked him to stay for another year because there is a much higher level of judicial candidate scrutiny now. He continued that S.B. 271 will probably pass. This bill gives the legislative committee access to judicial applicants' confidential information and makes the process more difficult. Nate opined that we may need to "transform" the Bar's courts and judges committee to more of a "courts advocacy" committee to assist with increasing and difficult issues. He added that perhaps judges could mentor judicial applicants. Dean Chodosh asked if there were things we could do "pre-candidacy" for possible judicial applicants. He suggested a "stealth-type" education committee to prepare a pool of potential applicants before they are nominated. Nate readily agreed with the Dean's suggestion. Lori said we will need someone on this committee who really knows the "personality" of any given legislative body in order to be effective.

2.4 Report on Selection of Fall Forum Chairs

Fall Forum chairs were announced as Kate Toomey and Amy Dolce.

3. EXECUTIVE DIRECTOR'S REPORT

3.1 Report on Mentoring Program

John said that as opposed to the Supreme Court as originally contemplated, yesterday's Professional & Civility Committee approved a list of 120 mentors. We need to set up a committee to determine the standards for appointment, however. He further reported that we still need: (1) to recruit additional mentors; and (2) to institute appropriate training. He continued that there is some concern among lawyers with "outside" mentoring *vis a vis* ethical conflicts (or potential conflicts) and that the Ethics Advisory Committee has indicated that it does not want to be the designated entity to evaluate conflicts in individual cases.

Rod Snow said that the intent was not for mentors to be an "elite" group. They do not need to be models of perfection, but rather, just good lawyers. Nate said we need approximately 60 more mentor lawyers for our current group of new admittees and an additional 350 for October admittees. Eve Furse said the Bar needs to encourage younger lawyers to serve as mentors because they do not perceive themselves as "qualified" and require an additional "push" to volunteer. Charlotte Miller suggested contacting groups like Women Lawyers, local bars, and prosecutors for recruitment. Katherine Fox, in response to Rod's question, explained that mentors are not truly engaged in the practice of law and therefore, they do not need malpractice insurance to cover claims nor does the Bar need to try to provide coverage for mentors' possible malpractice claims. It is the newly licensed lawyer who is practicing law and who needs insurance, she opined. She continued that mentors on active status are required to have professional liability insurance (or the equivalent for government lawyers) to serve as an example to the newly admitted lawyers rather than for expected malpractice claims. In response to follow up questions from Jim Gilson, Katherine elaborated that if the Bar were to be sued on the basis of alleged liability connected to the mentoring program, there really is no difference between this program and others such as Tuesday Night Bar so that our current D&O insurance should extend coverage.

On a related note, Dean Chodosh observed that the law school's "Law for America" program is a low bono service which provides legal services for those who can't afford legal services and do not qualify for legal aid. He believes this could be a companion piece to the mentoring program. It also serves as a "teaching hospital" for law students e.g., "legal residents". He continued that on April 17th the law school is sponsoring a two day conference. They will be bringing in national individuals who have experience in this area to work alongside with 15 faculty members to help establish a plan. Dean Chodosh also volunteered, for no charge, the college's videographer to video the proposed mentoring training video (as opposed to paying an outside company \$3,000-5,000).

3.2 Report on Status of Supreme Court Petitions

No discussion – see handout

3.3 Report on 2009 Elections

No discussion.

3.4 Financial Report and Lehman Bankruptcy Status

John reported that the Bar's service income is down approximately \$30,000 and interest income is down about \$40,000 due to more conservative investments. The Budget and Finance Committee is currently reviewing a new investment policy. He further reported that we are about \$75-78,000 in the red at this point because we have had some one-time expenses related to newly assessed real property taxes, trademark legal fees and the new mentoring program. He continued that because of the new mentoring program, CLE revenue will also decrease somewhat.

Rod interjected that he had hoped that the \$150 new lawyer fee would make the program self supporting but John responded that the program is not yet budget neutral. He will have better financial information available in April, but the budget is tighter than it has been in 20 years. Christian Clinger said we need a clarifying statement for sections that want to recoup interest from their allotted budgets which include section dues. John responded that we do not have any interest income to disburse this year. Lori said we need to review Bar services and income at the upcoming retreat to develop new strategies to meet new challenges. Nate reported there is no change at this point in the Lehman Brothers situation.

4. ACTION ITEMS

4.1 Select Eight District Nominating Commission Nominees

John announced we only have three qualified people for the Eighth District Nominating Commission but we need to provide four names to the Governor for his consideration. He continued that Curtis Jensen has been trying to obtain more names so we may need to do an email vote after we get a fourth name. There was a consensus to approve the three individuals we currently have on board then come up with more qualified individuals and vote by email. **Lori moved to select Lance Dean, Gregory Lamb and Daniel Sam as nominees for the Eighth Judicial District Nominating Commission. Herm Olsen seconded the motion which passed unopposed.**

4.2 Select Appellate Court Nominating Commission Nominees

John announced that we need to select six nominees for the Appellate Court Nominating Commission. He said that Dale Kimsey has also submitted his name for consideration. **Lori moved to nominate Lois Baar, Vicky Kidman, Elaina Maragakis, J. Bruce Reading, and Ryan Harris.** Discussion ensued. **Motion died for lack of a second.** Christian said that the Governor's office would like names outside the immediate Salt Lake County area. **Felshaw King then nominated Troy Booher and Jim Gilson nominated Annina Mitchell.** Further discussion ensued. **Lori then moved to nominate Lois Baar, Linda Jones, Laura Rasmussen, Annina Mitchell, Troy Booher, and Ryan Harris. With Lori's approval, Jim amended the motion to add Elaina Maragakis, Scott Hagen, David Slaughter, Stephen Christiansen, Don Petersen,**

Robert Wallace and Michael Larsen. Christian seconded the amended motion. Rob Jeffs, Lori Nelson, Felshaw King and Rod Snow were opposed to add more names but the motion passed. Steve Owens moved to close nominations at this point and Lori seconded the motion. A written vote was taken and after a count, the nominees to be submitted are Lois Baar, Linda Jones, Laura Rasmussen, Annina Mitchell, Elaina Maragakis and Michael Larsen.

4.3 Approve Petition for On-Line Bar Elections

Nate said we will need to submit petition to the Court to change our election process to go online. John said the cost savings to changing to an online election will be approximately \$10,000 a year. Scott Sabey is opposed to changing the way elections are held because there are attorneys without email addresses/computers and therefore, we cannot send the necessary notice by email. Karthik Nadesan suggested posting an opt-out form in Bar Journal. Scott reiterated his concerns that as an integrated Bar, members are entitled to sufficient notice (due process) and a vote. Discussion ensued and several suggestions were made. **Lori moved to hold the elections online and mail ballots to members who we know do not have an email address for the first year and for the second year, members will need to request a ballot to be mailed to them. A substitute motion was made to delete the second year suggestion. Herm seconded the substituted motion. Commensurate with Rob's comments, Scott made an amended motion (with Lori's approval) to email ballots to all members who have disclosed their email addresses and for those members who have not disclosed an email address, they will automatically receive written notification and a printed ballot by mail. This procedure will take effect for the election process to be held a year from now. Herm seconded the motion which passed with none opposed.**

4.4 Discontinue Taking Credit Cards on Paper Licensing Forms

John reported that although the Bar cannot charge a "convenience credit card fee" on Visa/Mastercard, we could save \$50,000 annually if we did not permit credit card payments on the paper annual licensing forms. We will still accept checks and debit cards for payment with the paper licensing form. If a member would like to pay with a credit card, they will be directed to renew online. Nate said we will no longer accept credit cards on the paper licensing form because there is a liability issue with the Bar storing the credit card numbers. **Lori moved to discontinue accepting credit cards on the paper licensing forms and to only accept them with online renewals. Rob Jeffs seconded the motion.** Rusty Vetter opined that if debit cards would still be accepted on paper licensing forms, they, too, would pose a security problem with storage. To be consistent, he suggested treating debit cards the same as credit cards. **The motion was amended to discontinue accepting debit cards on the paper licensing form as well. Motion passed as amended with none opposed.**

5. INFORMATION ITEMS

5.1 Judicial Council Report

Scott had nothing new to report and Nate observed that Scott's term on Judicial Council will end in July.

5.2 Report on Client Security Fund Operations Review

Felshaw reviewed the Client Security Fund program and his committee believes that there is no need for any change.

5.3 Report on OPC Review

Jim Gilson distributed a handout containing OPC survey questions and asked for feedback/suggestions to the questions. He reported that this review began last fall and several interviews have been conducted which helped to formulate this survey. The Committee has met with lawyers who represent attorneys and they have invited screening panel members to a luncheon. A survey was sent to 102 respondents with public discipline of which two have been received back. He continued that the Committee will be meeting while in St. George to finalize the survey. Dean Chodosh observed that in his opinion, the survey questions do not lead to accurate data compilation. He continued that based on how the questions are drafted, we probably are not going to receive very many moderate responses, but rather mostly responses from disgruntled individuals. Charlotte Miller suggested more clearly designating that CAP and OPC programs are separate entities in the survey letter. Rob asked if the survey included questions about prosecutorial discretion to which Jim responded yes. Lowry suggested including questions about the ethics hotline and other services offered in order to remind members that those services are available.

5.4 Report on Continuing Legal Education Review

Eve Furse reported that the charge to review CLE is pretty open and the Committee has learned a good deal about how CLE interacts with MCLE. Eve said there is a total lack of transactional CLE availability and added that the review is continuing. Another area of examination will include pricing. Dean Chodosh believes it is worth investing energy into electronic CLE because there is a wealth of electronic information and the law school is developing televised programming which could save money in the long run. The law school has been putting together a one week intensive program which would be helpful to new lawyers and he would like to have further discussion with the Bar.

5.5 Report on Fee Arbitration Review

Rusty reported by phone to say there was an error on the Commission Meeting agenda in that it showed that he was reporting on Client Security Fund when in fact he was in

charge of the Fee Dispute Resolution Review. He reported that he is waiting for Bar staff and the Fee Dispute Committee chair to get information from those who have used the program in order to complete the review. Sue Chon is currently working on a survey. He continued that there appears to be some concerns out there that because the program is “in-house,” it is perceived as part of Bar and not independent which makes clients suspicious of the using the program. Because a majority of references come through OPC, lawyers are also somewhat suspicious of the independence of the process. He concluded that questions and issues will be reviewed in the final report which he hopes to have completed by May (if Bar staff follows through with requested information).

5.6 Report on Law & Justice Center Review

Steve Burt reported that the Law & Justice Center facility is at the end of its useful “expected life” and that we need to develop a sinking fund for repairs and restoration. He continued that some of the rooms are not sufficiently large enough to accommodate some meetings which are growing as the Bar grows. Christian said that the committee was comparing the rental rates of other class “c” facilities. Steve observed that overall the building has been maintained well.

5.7 Report on Legislative Session

John T. Nielsen said we do not yet have final word on all the bills or the Court’s budget since the Legislature is still in session. He said that we should move Spring Convention a week later to accommodate the new legislative schedule and there was overall agreement with this suggestion. He also suggested that if the Bar plans to bring a new in-house lobbyist on board, we should probably do it within the next year or so. Nate said we need to lead on lobbying rather than being reactive. Steve Burt said perhaps we should assign Commissioners to different legislators rather than using the “scattered shot” approach by letter and emails which does not seem to produce the desired effect. Jim Gilson said we need to continue to explain to our membership why we need to be active lobbyists, i.e., it is consistent with the mission of the Bar. Nate said that after Law Day, we are planning to hold a lawyers/lobbyists brunch with 30 – 40 people toward this end.

NEW ITEMS:

Steve Owens believes the Bar needs to hire an in-house lobbyist/public relations individual because there is a need to move in this direction. He realizes that the budget is tight this year but would like to discuss this proposal at the upcoming retreat.

In response to a short discussion about the current economic climate and how it affects the Bar’s budget, Dean Hiram Chodosh said that the overall demand for law school applicants is down nationally but the quality and actual number of out-of-state applicants is up at his school. He believes the numbers are generally down because potential applicants are concerned about: (1) their credit; (2) jobs; and (3) debt. He further said that the S.J. Quinney Law School is more attractive to applicants because even for public (versus private) law schools, tuition is relatively low compared to other similar

institutions. Simón Cantarero said pressures from law firm to impose a hiring freeze affect new lawyers and employment. He added that the new mentoring program is very positive as it improves the quality and ability of new graduates.

6. CONSENT AGENDA

By policy, the January 30, 2009 minutes were approved and without amendment (Tab 4).

**MEETING ADJOURNED AT 4:40 P.M. WITH AN EXECUTIVE SESSION
HELD AFTERWARDS**

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- 1) Utah State Bar Governmental Relations Committee Report of Actions Taken;
- 2) Review of OPC and Consumer Assistance Program Membership Survey;
- 3) Supreme Court Petitions Status.