

UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES

May 29, 2009  
LAW & JUSTICE CENTER  
SALT LAKE CITY, UTAH

**Present:** President Nathan D. Alder and Commissioners: Steven R. Burt, Christian W. Clinger, James D. Gilson, Mary Kay Griffin, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey, Rodney G. Snow and E. Rusty Vetter. Ex-Officio Members: Simón Cantarero, Julie Eriksson, Evelyn J. Furse and V. Lowry Snow. Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Katherine A. Fox, and Supreme Court Liaison Marilyn (Matty) Branch.

**Excused:** Commissioners: Yvette D. Donosso and Tom Seiler. Ex-Officio Members: Hiram E. Chodosh, James R. Rasband, Charlotte L. Miller, Paul T. Moxley and Karthik Nadesan.

**Minutes:**

**NEW ITEMS:**

Scott Sabey reported that there will be eight judicial openings including three judges on the Court of Appeals. The Judicial Council has decided to spread out the appointments over a period of time for economic reasons. He further reported that the judiciary is in a tough spot with lobbying issues and the Bar should consider stepping up to help fill this void. The Council also discussed the possibility of the Bar establishing a “limited practice” section for attorneys who only make limited appearances. He continued reporting that in light of budgetary constraints, the courthouse building construction has slowed down. A new courthouse plan has been forecasted out to 2030 and the Provo area will be the next major, long term building development.

Nate proposed to Steve Owens and Rob Jeffs that they create a newly constituted committee comprised of lawyers, judges and community members to replace the current “Courts and Judges Committee”. The new committee should be designed to address issues to “lift up” the judiciary by helping judges understand how legislators work and vice versa to improve that relationship, among other things.

# 1. PRESIDENT'S REPORT

## 1.1 Report On ABA Summit: Fair and Impartial State Courts

Nate Alder attended the ABA Summit with Chief Justice Christine Durham, Dan Becker, Rick Schwermer, Senator Lyle Hillyard and Ron Gordon. He reported that Chief Justice Durham has been elected chair of the State Court of Chief Justices Association and spoke at the ABA symposium. Part of the symposium's presentations included addressing the fallout of the negative results from judges not interacting with legislators and members of the public and that more efforts need to be made in this area. Utah is in better shape with the integration of the judicial branch than a number of other states and this is, in large part, because of the Chief Justice's efforts.

## 1.2 Report on Meeting with Chief Justice Durham

Nate reported on the quarterly meeting with Chief Justice Durham. They discussed the mentoring program, the status of the operational reviews, the proposed professional services tax, along with a potential dues increase, the Bar's Lehman Brothers loss and the Summer Convention. He concluded that our relationship with the Court and Dan Becker could not be any better.

## 1.3 Report on Professional Services Tax

Nate said that we are ahead of other professional groups in Utah on reacting to the proposed professional services tax. He believes that this initiative has slowed somewhat for the next year or so. Public hearings on this issue will begin in June but the agenda for those meetings has not yet been "fine tuned."

## 1.4 Review Process to Replace Bar's ABA Representative

John Baldwin reminded Commissioners that Charlotte Miller is currently the Bar's ABA representative and will assume Paul Moxley's place as our ABA state delegate. We therefore will need to find an ABA representative replacement in the near future. He continued that the opening will need to be advertised and filled by October. Christian Clinger suggested placing notice in the upcoming *Bar Journal*. **A motion was made to place a notice in the June/July *Bar Journal* edition to gather applications by Labor Day and vote for the replacement at the October Commission meeting. Rob Jeffs seconded the motion** and reminded Commissioners that applicants need to be an ABA member. **The motion passed without dissent.**

### **1.5 Review Plans for Dutch Past President's Dinner in Sun Valley**

Nate said that as a compromise and in the interests of saving money, we are doing a "Dutch treat" (pay-if-you-attend) at a Sun Valley restaurant on Friday night for the Past President's Dinner.

### **1.6 Review Dinner Tonight and Retreat Schedule**

Nate reviewed Friday night's and Saturday's retreat schedules with Commissioners.

## **2. EXECUTIVE DIRECTOR'S REPORT**

### **2.1 Report on E-Filing**

John said that the e-filing provider is ready to conduct testing in the Second Judicial District and we have attorneys ready to participate. Unfortunately, there is a backlog with the AOC but they are working through it. There are logistical issues at the courts due to court clerk problems but they are anxious to proceed with e-filing in order to gain budgetary savings. Matty Branch also explained that there has been a major overhaul of clerk's cross-training and changing the nature of the work itself. These changes have been overwhelming along with the hiring freeze but they are moving along in anticipation of e-filing and other improvements.

### **2.2 Report on New Lawyer Training Program**

New handouts were distributed on the NLTP. John summarized the first handout ("New Lawyer Training Program Matching Report May, 2009") relating to the new lawyers admitted by motion and the statistical-laden second handout ("Mentor Recruitment Notes, May 13, 2009") reflecting the current status of our efforts. He said that we will deal with problems in the program as they arise. Rob inquired about the size of the incoming admissions class and John responded that we have about 300. Nate noted that we need to recruit between 750-1000 mentors to be in good shape. John said we currently have 300 approved mentors but are in need of more women lawyer mentors in particular. He continued that the "pending mentors" (which have been nominated but have not yet responded) will receive a follow-up letter from Justice Durrant and then will receive a one-to-one contact from Bar staff. Herm Olsen said that when John notifies Commissioners about a gap in a particular geographical area, Board members need to contact lawyers on an individual level to increase participation. Rob observed that alarmingly few lawyers in Utah County have volunteered at this point and we need to focus on this problem. Scott believes that judges need to solicit mentors from the bench to help solve the problem and continued that while the issue was discussed at Judicial Council, we may need the Supreme Court to push those efforts. Lowry Snow said we should enlist regional bar leaders to recruit mentors as well. Eve Furse believes we could

enlist the local Inns of Court to recruit more lawyers and Rod observed that the economy has negatively impacted our efforts.

Nate discussed the ethics conflicts issue in the NLTP that recently arose which in turn negatively affected law firm recruitment efforts. The fear seemed to be that lawyers could not provide mentoring outside their firm settings. In response, the Bar made a rule change which was approved by the Court. Nate interjected that there is a need to reinvigorate the mentoring committee so that original members can recover from initial demands. John said that we have had three or four lawyers who have not been approved by the Professionalism Committee and Rod and Scott agreed that while we can keep some of these individuals in the “possible pool” of volunteers, John will not process appointments if there are current “issues”.

### **2.3 Review April Financial Report**

Jeff Einfeldt joined this portion of meeting. John highlighted some agenda items to prepare for the financial discussion at the retreat. He discussed membership statistics with total active and inactive members currently at 9,804. Both the numbers and categories affect the budget. He further said that we are in the red currently, but for reasons the Commission has previously discussed. Additional costs this year include Bar litigation and the property tax issue along with our interest income being significantly down. In response to an inquiry, Jeff said that we moved the Lehman Brothers loss to another category on the balance sheet. He continued that the end of May is typically a cash low point and we start gaining on licensing revenue in June. He will be attending the retreat tomorrow and will be available for questions and to provide clarification during the financial portion of the meeting. Steve Burt, in response to another inquiry related to assets versus total liabilities said that we have about \$1 million in assets.

Steve Owens asked Commissioners to please read the materials at Tabs 11-14 before the retreat. He also distributed the Bar survey responses and a handout with ideas for cutting expenses and asked that Commissioners review them. Nate interjected that the Budget and Finance Committee’s continuing recommendation is that we should have one third of our operating expenses (\$4.5 million) in reserves (\$1.5 million). Rob also noted that the Committee recommended a dues increase based on an \$800,000 projected deficit within the next five years. Nate said that we don’t need to panic now as we did in 1988. John added that there was no reserve at that time. Moreover, the Bar was spending sections’ funds, it failed to raise enough money for the new building, and they were spending next year’s licensing fees to keep pace with expenditures. It was a “perfect storm” but none of those factors are present now. Nate said that the membership did not receive prior notice of the increase and the action produced a great deal of ill will. He emphasized that education is key here. Lowry agreed and said that for those jurisdictions that have successfully raised dues, they required a period of education prior to the increase. Steve Burt said that the portion of dues that was applied to pay off the building is now being absorbed into the yearly budget. Therefore, our financial condition is really worse than it appears on paper. He emphasized establishing a sinking fund for building upkeep purposes.

## 2.4 Report on Licensing Renewal Process

John said that the licensing form is ready to go out next week and noted that getting it ready for printing requires a great deal of staff time. He further said that the Bar's Lawyers Referral Service now requires a minimum malpractice insurance requirement. Jeff noted that our expenses are increasing at about 5% but our revenue is climbing only at 3%. John said that we need to decide what to do with programs and that savings need to be substantial to offset the difference between our expenses and revenue.

## 3. ACTION ITEMS

### 3.1 Select Committee/Section of the Year Award Recipient

Nate said that we received no nominees for Committee of the Year. He suggested selecting the New Lawyer Training Program (Mentoring) Committee. Lori agreed. **Steve Owens moved to award the Committee of the Year to the New Lawyer Training Program Committee. Curtis Jensen seconded the motion which passed unanimously with Rod Snow abstaining.**

**Christian Clinger nominated and moved to select the Appellate Section as Section of the Year. Nate seconded the motion which passed unanimously.**

### 3.2 Select Judge of the Year Award Recipient

Nominations for Judge of the Year included Judge Judith S. Atherton, Judge Robert K. Hilder and Chief Justice Christine M. Durham. **Lori moved to select Judith S. Atherton. Jim moved to select Robert K. Hilder.** Discussion ensued. **Jim withdrew his motion. Christian seconded Lori's motion to select Judith S. Atherton as Judge of the Year. The motion passed without dissent.**

### 3.3 Select Lawyer of the Year Award Recipient

Nominees for Lawyer of the Year include Paul T. Moxley and Peter Stirba. After discussion, **Rob moved to select Paul T. Moxley. Lori seconded the motion which passed unanimously.**

### 3.4 Extend Policy on Campaign Services for General E-mailing

Rob said that there was an issue of using e-mail in last year's campaign and the Bar's policy was somewhat unclear. He believes that if a candidate wants to use free Bar e-mail service to disseminate campaign messages, the opposing candidate should not have veto power. John responded that we do not have a policy in place to provide for candidates to use Bar e-mail and that's why the issue arose. The proposal is to establish a policy for President-elect candidates to send out one campaign e-mail statement using the Bar's e-

mail service. Rusty Vetter said that if we are moving towards online election, then this idea makes a lot of sense because it saves additional money by absorbing the costs of hard mailing. **Rob Jeffs moved to approve the proposed policy but added to allow Commissioner candidates one e-mail also. Lori seconded the motion. Christian made a “friendly” amendment to allow two e-mails but Rob rejected the amendment. A vote was taken and the amended motion passed without dissent.** The new policy will allow all candidates to send one campaign statement to Bar members’ home e-mail accounts (via the Bar’s server) and there are no limits on the length of the message.

### **3.5 Select New Representative to Judicial Council**

**Nate moved to appoint Lori Nelson as the Bar’s representative to the Judicial Council.** He pointed out that we are doing this earlier than usual (this appointment is normally made during the Sun Valley meeting). **Scott seconded the motion** and he pointed out that one of the biggest advantages is having someone who can provide assistance on the hill and Lori is a registered lobbyist. She will not be able to be the chair of the Government Relations Committee. **The motion passed unanimously.**

### **3.6 Approve Investment Policy**

Deferred.

## **4. INFORMATION ITEMS**

### **4.1 Report on Women Lawyers of Utah Symposium**

Eve Furse said the Women Lawyers of Utah Symposium was a huge success. The second part of the symposium is slated for June 25<sup>th</sup> to be held at the Federal Courthouse. This session will have an entirely new format although a short summary of the first symposium will be provided at the beginning.

She also reported that there was a very high response rate to the survey. Two surprising statistics were: (1) Utah has a higher level of gender harassment and discrimination than any other jurisdiction; and (2) a higher percentage of women leave the practice of law to raise families which is also a higher rate than any other state. She continued that elsewhere, women go to other areas of law when leaving law firms which is not the case here. She noted that an important finding was that maintaining and promoting women attorneys makes more money for a firm.

### **4.2 Report on Multicultural Legal Center**

Simón Cantarero reported on the current status of the Multicultural Legal Center. The clients who are served there are 86% non-English speaking and a high number of battered

women are served by the Center. The Center also receives landlord/tenant disputes and civil rights issues which are generally referred out. The Center currently has only one attorney (Marlene Gonzalez) for over 160 violence cases and only one paralegal. Major underfunding is a problem although they receive some grant money from the Utah Bar Foundation. The bottom line is that they need more attorney volunteers. Some possibilities for soliciting continued support may be through the Tuesday Night Bar program or the new mentoring program. We should also think about how new lawyers can help out, if possible. He noted that translation help is available at the Center so attorneys do not need to speak Spanish.

Steve Owens suggested placing a solicitation on the E-bulletin for volunteers. Rob said this is a much bigger issue than sporadic solicitation can address and his impression is that the Bar's pro bono program could be playing a larger and more active role here as well as other areas. He said that money should be used for Bar-level efforts to put together programs and resources and that the Bar needs to be a "connection point" rather than mere solicitation. Scott said what we need to do is provide personnel and leadership for the Access to Justice Council and by doing so, it could help with needs to organizations like the Multicultural Legal Center. Simón added that the Center needs considerable administrative help, too as Marlene must do grant applications as well as handle the overwhelming case load. Nate said we need to review this issue sometime in August.

## **5. CONSENT AGENDA**

By policy, the April 24, 2009 minutes were approved and without amendment (Tab 9).

### **MEETING ADJOURNED AT 4:10 P.M. EXECUTIVE SESSION TO BE HELD AFTER TO REVIEW EXECUTIVE DIRECTOR'S CONTRACT**

#### **NEW HANDOUTS DISTRIBUTED DURING MEETING:**

- 1) New Lawyer Training Program Matching Report May 2009;
- 2) Mentor Recruitment Notes May 13, 2009;
- 3) 2008/09 Attorney Survey of Utah State Bar Members (Eve Furse, Women Lawyers);
- 4) Impressions of Budget and Finance Committee 5/27/09 (Steve Owens);
- 5) 2009 Annual Utah State Bar Survey of Membership.