

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

OCTOBER 16, 2009
YARROW HOTEL
PARK CITY, UTAH

Present: President Steven W. Owens and Commissioners: Steven R. Burt, Christian W. Clinger, Yvette D. Donosso, James D. Gilson, Mary Kay Griffin, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, Herm Olsen, Tom Seiler, Rodney G. Snow and E. Rusty Vetter. Ex-Officio Members: Nathan D. Alder, Chrystal Mancuso-Smith, Charlotte Miller, Angelina Tsu and Lisa Yerkovich. Bar Staff: Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee and General Counsel Katherine A. Fox. Supreme Court Liaison Marilyn (Matty) Branch.

Excused: Commissioners: Lori W. Nelson and Scott R. Sabey. Ex-Officio Members: Hiram E. Chodosh, James R. Rasband and Aaron Thompson.

Guests: James Mukasa (Uganda lawyer guest of Charlotte Miller) and Bret Crowther (3-L externing with Tom Seiler).

Minutes:

NEW ITEMS:

Christian Clinger suggested giving the pro bono awards at the upcoming ABA/Bar pro bono clinic in lieu of Law Day. Rob Jeffs, however, said we want to encourage others to participate and it would be “preaching to the choir” to present the awards at that former event. He also would like to see more general membership recognition of lawyers’ pro bono efforts.

Felshaw King announced that the November Commission meeting will be held at the Oakridge Country Club in Davis County and he would like to honor retired judge Rodney Page during the program.

Tom Seiler observed that there was an issue with scheduling the lunch with UAJ slated for June 4th at the Law & Justice Center and John Baldwin said he would address it.

Rob said the Supreme Court has appointed a committee to look at lawyer advertising. Matty Branch said that it is a sub-committee of the Court’s Advisory Committee on Rules of Professional Conduct and Commissioners may have input.

1. PRESIDENT’S REPORT:

1.1 Report on Meeting with Chief Justice Durham

Steve Owens, John Baldwin and Rob Jeffs recently attended a regularly scheduled quarterly meeting with Chief Justice Christine Durham. Steve reported that part of their discussion included the upcoming licensing fee increase petition and various governmental relations issues. He continued that the Chief Justice is strongly in favor of mandatory Bar email, court e-filing and moving annual Bar licensing renewal online. John said the Court is very interested in the Bar making as much as possible available electronically and they are not particularly concerned about credit card fees versus other potential savings. He also noted that the courts were finally ready to roll out e-filing and that we would be assisting.

Steve further reported that the Chief Justice would like the Bar to re-emphasize “unbundling” legal services and market this mode of providing legal services. At some point we will need to transition to using the term “limited representation” in lieu of “unbundling.”

Rob added that in light of the upcoming legislative budget session, the Court would like us to understand that they believe they were treated more than fairly last session and do not want to appear ungrateful for the funding they received.

1.2 Report on Legislative Session Issues

Steve reported that the Executive Committee met with Roger Tew and he is keeping an eye on developments with the professional services tax issue. He does not think the possibility of its implementation is as strong as it was last year.

Steve also reported that a referendum on limitation on attorneys fees may be coming to Utah from an out-of-state group promoting caps on lawyer contingency fees. He said we need to be aware of this issue and posed to act.

1.3 October 21st Leadership Training Luncheon

Rob reminded those in attendance of the Bar’s Leadership Training luncheon on October 21st and encouraged Commissioner attendance. He continued that this annual training event provides the sections and committees with some general education on what the Bar does for them. He further said that the program is already in place to discuss group resources, the Bar’s priorities, and what the Bar needs from sections/committees (especially during the legislative session). He concluded by saying that NLTP and upcoming e-filing requirements will also be discussed during the training.

1.4 October 23rd UMBA Banquet Commission Table

Steve said that the Bar has already purchased a table for UMBA banquet event scheduled for October 23rd. Chrystal Mancuso-Smith said that Scott Matheson will be the keynote speaker at the event and there will be \$16,000 in student scholarships. Awards will be given to David Litvak, Marlene Gonzalez, Siliva Peña-Chacon, and Workers Compensation Fund. John said that the Bar's table is already full, but to please let him know if more space is needed.

1.5 Commission Liaison Vacancies

Steve said that there are still a few committees and sections which do not have a Commission liaison. Rod Snow pointed out that although the list did not reflect it, he was already appointed the liaison for the CLE Advisory Committee and the Mentor Training & Resource Committee and Tom Seiler said that he had been appointed to the Utah Association for Justice. The following liaisons were then appointed:

Rod Snow – Appellate Practice Section
Rob Jeffs – Law & Aging Section
Christian Clinger – Constitutional Law Section
Charlotte Miller – Employment Lawyers Association
Herm Olsen – Utah Defense Lawyers Association
Jim Gilson – Utah Prosecution Council
Steve Owens – Hellenic Bar Association
Curtis Jensen – Communication Law Section

Steve reminded liaisons that he would like them to participate in at least one event with their appointed committee/section and serve as a conduit for the groups' concerns.

2. EXECUTIVE DIRECTOR'S REPORT

2.1 Report on Find a Utah Lawyer Directory

John reported that the "Find a Lawyer Directory" found on the Bar's website is simple to navigate and inexpensive to operate. However, the downside is that attorneys' names do not rotate but rather, they remain static and are listed alphabetically. He continued that it would cost approximately \$3,000-\$5,000 to institute a name rotation system but the Solo-Small Firm Section has declined to put forth the resources to make this change. He suggested that Steve write a letter to the chair of the Solo-Small Firm section encouraging them to fund this new aspect of the program. John said the next step is finding a way to use the directory to promote unbundling legal services. Steve inquired why we still use LegalMatch because he and Rob still receive complaints about that service. John replied that we receive money from this service. We also receive calls from lawyers who have made a lot of money from this service, and he continued, it is one more resource that the

Bar can offer the public. Rob said he would like to know what we make from LegalMatch for giving them a priority advertising space on our website.

2.2 Review OPC Annual Report

John reported that Billy Walker recently met with the Supreme Court to review OPC's Annual Report. If Commissioners have questions about the report, they can contact either Billy or Jim Gilson. He further reported that Chief Justice Durham is interested in seeing the Commission's review report on OPC after it has been approved and decisions are made. Steve Burt interjected that he has an employee who filed a complaint against an attorney and was very satisfied with the way OPC was handling the complaint. Steve Owens then reported that out of 1100 complaints, only 48 cases were referred for formal discipline. John then discussed the salient points of the report. Nate suggested asking Billy to prepare a graph reflecting the number of years in practice each attorney had when the complaint was filed. Jim suggested inviting Billy to attend a Commission meeting after the report has been approved and recommendations have been vetted.

3. ACTION ITEMS

3.1 September Financials & 2008-2009 Audit

John discussed the September financials and a draft of the 2008-09 Audit. He reported that we have had more lawyers this year who chose not to re-license. He reviewed selected financial aspects including the year-to-year comparison which reflects revenue and spending. We are currently in the negative approximately \$65,000 but should even out over the fiscal year. We made about \$40,000 this year on our Spring and Annual Conventions. The NLTP shows a deficit of \$35,000 because money has been slow to come in but, it should adjust over the remaining months. We have received about 67.2% of our revenue to date and we have spent 28.9% which is on par from previous years. MaryKay said that the section fund payable of \$200,000 has not yet been incorporated into cash and the total difference of \$800,000 can be explained. We've spend about \$300,000 more than brought in, but part of this is due to timing factors. Steve said we have only spent \$45,000 more last year than we had budgeted instead of the projected \$80,000. John encourages sections to spend their money and said we regularly give them various ideas where to spend it. He said we also need to remind them at the upcoming Leadership Conference.

3.2 Select Bar Representatives to ABA

After discussion, the following five finalists were selected for ABA Representatives: Margaret Plane, Lawrence Stevens, Jim Jenkins, Gus Chin and H. Dickson Burton. **After further discussion and voting, Margaret Plane and Lawrence Stevens were selected as the Bar's ABA Representatives.**

3.3 Select Awards Recipients

Discussion ensued over nominees for the Community Member of the Year. **Rob moved to select Karen Hale for the award. Curtis seconded the motion which passed with none opposed.**

After discussion and voting, Craig Mariger was selected to receive the Professionalism Award.

After discussion, Steve moved to select Leonard Burningham as the recipient of the Hearts & Hands Award. Rod Snow seconded the motion which passed with none opposed.

3.4 Final Report of OPC Review Committee

The OPC Operations Report was reviewed. Rob noted that the Commission actually supervises the administration of OPC and John responded that that was correct. He also explained that this supervision needs to be hand-in-glove with the Supreme Court, however. Jim Gilson referred to the “recommendations section” on page 7. He said that overall, OPC is “running well.” He reported that there are concerns with CAP and what will happen to that program when Jeannine Timothy is no longer employed with the Bar; there currently are no written procedures or rules in place for this program which is a concern and Billy agrees. Also, the overlap with CAP and OPC needs clarification but we need to be careful not to make CAP too formal and so “rule driven” that it loses its effectiveness. He further reported that there is a perception that OPC overpursues non-meritorious cases and there is some concern with the lack of prior experience with some of OPC’s staff attorneys. We may want to consider having a senior volunteer lawyer participate in OPC’s weekly screening meetings to help bridge this experience gap, and to help with the screening and prosecutorial decisions. If the senior lawyer is voluntary, there will be no cost involved.

He continued reporting that the Commission should provide more guidance to OPC as to the types of cases to pursue. Obviously, the more complicated the case, the more resources involved. Also, the Ethics Hotline is underutilized.

Jim also said that better training needs to be provided the Screening Panel members about their role as gatekeeper. It appears that there may be too much reliance on OPC’s recommendations and they need to understand their independence. John interjected that the current process is actually loaded with due process, especially compared to government agencies like DOPL. Rob said he had an early perception that because a great deal of OPC’s processes are administrative, that some staff attorneys could be replaced with paralegals. Jim responded that the workload seems to be appropriately distributed especially among the staff members who were interviewed and that judgment calls require lawyer expertise.

The vote to receive the OPC report was unanimous.

3.5 On-Line Licensing

Steve said that we need to move toward mandatory online licensing for virtually all members of the Bar. The Court is strongly in favor of it and has encouraged us to adopt as much technology as possible. John said moving to online licensing will save staff resources (soft costs) but hard costs such as credit card fees and software changes will increase. Moving to online licensing reflects a change in Bar culture but the Bar will be willing to provide paper licensing forms to those unwilling or unable to use a computer. **Christian Clinger moved to study the issue of mandatory online licensing. Curtis seconded the motion which passed unopposed.**

3.6 Select Representative to Utah Sentencing Commission

After discussion and voting, Benji McMurray and Doug Hogan were selected as representatives to the Utah Sentencing Commission.

3.7 Creation of Section on Law and Aging

Steve said that Law and Aging has agreed to move from being a committee to becoming a section. However, they have asked that we give them a year to gain more members and collect the required dues. Discussion ensued and the Commission agreed to give them a year to meet section requirements.

4. OPERATIONS REVIEW SUB-COMMITTEE MEETINGS

4.1 Commissioners were assigned to meet in the following subcommittees between now and the next Commission meeting and report on recommended actions:

(a) Courts: Lori Nelson as Chair with Tom Seiler, Felshaw King, Nate Alder and Matty Branch as members.

(b) Public & Government Relations: Christian Clinger as Chair with Mary Kay Griffin, Scott Sabey, Michelle Allred and Aaron Thompson as members.

(c) Management & Technology: Rob Jeffs as Chair with Curtis Jensen, Herm Olsen, Steve Burt and Lisa Yerkovich as members.

(d) Mentoring & CLE: Rod Snow as Chair with Yvette Donosso, Hiram Chodosh, Charlotte Miller and James Rasband as members.

(e) OPC: Steve Owens as Chair with Jim Gilson, Chrystal Mancuso-Smith and Rusty Vetter as members.

After assignments were made, discussion ensued over how to proceed. It was decided that this process would be given an eight month timeframe to study and bring motions to

Commission on each area of review. Sub-committee chairs will be in charge of scheduling meetings.

5. INFORMATION ITEMS

5.1 Report from Minority Bar Association

Chrystal Mancuso-Smith reported that the Minority Bar currently has 150 members and the first year of membership is free. They are working to finalize formation of a 501(3)(c) and estimate a three month approval process. They will use this entity as a vehicle to run banquets and scholarships functions so that they are tax deductible events. They will also be presenting various breakouts at the Fall Forum on a variety of topics like immigration. She concluded her report by saying that they are currently working on outside projects with various courts and Salt Lake City.

5.2 Report from Women Lawyers of Utah

Lisa Yerkovich reported that the Women Lawyers Annual Retreat will be held on November 6 & 7, 2009. Also, they will be co-sponsoring the YWCA's "Walk Against Violence".

5.3. Report from Wasatch County Bar

Postponed.

5.4 Report from Summit County Bar

Postponed.

6. CONSENT AGENDA

By policy, the September 11, 2009 minutes were approved by consent and without amendment (Tab 9).

There was much discussion concerning the claims to the Fund for Client Protection. Rob suggested treating Matthew Graff's claims like a bankruptcy by paying a percentage of claims over a few years. Katherine Fox explained the CSF rules, policies, history and limits on pay-outs and related issues. Rod opined that it should be a Commission decision on whether to roll over payment of the Graff claims. **Felshaw King moved to table all Graff claims but pay all the other claims. Herm Olsen seconded the motion which passed unopposed.**

MEETING ADJOURNED AT 12:00 P.M.

NEW HANDOUTS DISTRIBUTED DURING MEETING:

None