

UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES

September 21, 2006

J. REUBEN CLARK LAW SCHOOL, BRIGHAM YOUNG UNIVERSITY  
PROVO, UTAH

**Present:** President Gus Chin and Commissioners: Nathan Alder, Steven R. Burt, Christian Clinger, Mary Kay Griffin, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, Herm Olsen, Stephen W. Owens, Rodney G. Snow and V. Lowry Snow. Ex-Officio Members: David Bird, Hiram E. Chodosh, David R. Hall, Cheryl Miyuki Mori, Margaret Plane, Kathryn K. Shelton and Kevin Worthen. Supreme Court Liaison Marilyn (Matty) Branch. Executive Director John C. Baldwin and General Counsel Katherine A. Fox.

**Excused:** Commissioners: Yvette D. Diaz, Lori W. Nelson and Scott R. Sabey. Ex-Officio Members: Charlotte L. Miller and Paul T. Moxley.

**Also in Attendance:** Thomas Green (Grant Thornton, Performance Review Auditor)

**Minutes:**

**1. PRESIDENT'S REPORT**

**1.1 Today's Lunch with Students and Tonight's Dinner Agenda**

Gus reminded those in attendance about the Bar's 75<sup>th</sup> Anniversary and program to be held tonight at Rice Eccles. He distributed a program highlighting the events that will occur at tonight's dinner. He also reminded those in attendance that after the meeting lunch will be held with the BYU law students.

**1.2 Legislative Relations**

Gus reported that John Baldwin, Lori Nelson and John T. Nielsen were making plans for the annual Bar-sponsored constitutional law class and that Commissioners are invited. John said there would be two legislative events. The first will be the breakfast with legislative leadership and the second will be the constitutional law class. Gus concluded by saying that a proposed bill relating to the judiciary is being carefully monitored by the Bar.

### **1.3 Retreat Date Change to June 1<sup>st</sup> and 2<sup>nd</sup>, 2007**

Gus reviewed the Commission calendar and asked those in attendance to make note of the date change for the Commission retreat. The retreat will be held at the Zermatt Resort in Midway on June 1 & 2, 2007.

### **1.4 Tables at Minority Bar Association Dinner on October 20<sup>th</sup>**

Cheryl Mori distributed invitation flyers for the Minority Bar dinner to be held on October 20, 2006. She said that a silent auction will be held that evening also.

Gus added that the Bar will be buying tickets for two tables for those Commissioners who are interested in attending this annual event.

### **1.5 Judicial Conference Report**

Gus reported that during the recent Judicial Conference meeting, Gov. Huntsman appeared and solicited assistance from judges to encourage possible nominees for new judicial openings.

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

### **2.1 UPL Committee Work on "Notario" Legislation**

John Baldwin reported that the UPL Committee is currently working on trying to get tighter control over the "notario" situation. They are currently seeking sponsors for a bill to change the law to provide for criminal sanctions for "notarios" who prey on mostly non-English speaking immigrants who need legal assistance for a variety of problems. He reminded Commissioners that they supported this concept a few years ago and the work in this area is continuing. In response to Dean Chodosh's question about the Bar being proactive in this area, Katherine Fox explained the UPL outreach program and noted that new Spanish notario brochures are close to being published. They then will be distributed in the Hispanic community.

### **2.2 Bar Examination Statistics**

John distributed the list of October 2006 Bar Exam applicants who qualified for admission to the Bar. He reported that 307 applicants sat for the exam. There was an 84.4% passing rate with a 89% passing rate for first-time exam takers. Dean Chodosh said that he liked the higher cut score and further observed that a relatively high passing rate on the exam actually hurts the law schools because it puts the schools at a statistical disadvantage for out-of-state recruiting. In response to Dean Worthen's observations that we need to better assess whether the exam is truly measuring competency, Dean Chodosh noted that he welcomes such a study because he believes the law schools aren't necessarily doing a good job in this area.

Gus said that he sent a despondent failing examinee to Lawyers Helping Lawyers for assistance. He said he is concerned whether the Bar is doing enough for those who have emotional difficulties after failing. Nate suggested having a group such as the Young Lawyers Division get involved with those examinees who are not successful in passing the exam.

Gus also observed that there were complaints regarding the cramped July exam conditions. John responded that the admissions office is currently looking into alternative sites to hold the exam next July. John continued by noting that the July 2007 exam falls on a state holiday (July 24<sup>th</sup>) and said a decision needs to be made on whether the exam date should be moved from the traditional days of Tuesday and Wednesday to Wednesday and Thursday to accommodate this holiday. Dean Chodosh opined that is seemed somewhat strange to hold the exam on a state holiday. David Hall said that students' preference would be to have nationally prepared questions rather than state prepared questions and asked that this be kept in mind when considering the date change. Nate opined that using admissions funds to buy questions would be a benefit, but Gus countered that admission fees are already too high. Gus will place this issue on the December agenda for further discussion to obtain more input from the Deans and Young Lawyers Division to ascertain the advantages and disadvantages of moving the July exam date.

### **2.3 Clarence Darrow CLE Performance at Masonic Lodge**

John distributed a new handout announcing a full-length play entitled "Clarence Darrow: Crimes, Causes and the Courtroom" to be held on November 9<sup>th</sup> at the Salt Lake Masonic Temple.

## **3. ACTION ITEMS**

### **NEW ITEM:**

Gus asked for vote on giving special recognition at the Fall Forum to Richard L. Bird who is 99 years old and the most senior member of the Bar. **Nate made a motion to present this special recognition. Steve Owens seconded the motion which passed unopposed.**

### **3.1 Professionalism, *Pro Bono* & Community Member Awards**

Two individuals were nominated for the Community Member award: Donna Johnson and Dominique Meier. Discussion ensued over both nominees. **A vote was taken and Donna Johnson was designated as the recipient of the award.**

John distributed new handouts for the Pro Bono Service award and Professionalism award. Handouts included a letter in support of Pro Bono Service award nominee Jensie Anderson as well as Heidi Leithead, Louise Knauer, Randy Phillips and Michael Deamer. Also included were letters nominating Marlene Gonzales and Ray Christensen for the Professionalism award.

Discussion ensued over all nominees for the Pro Bono Service award which included Jensie Anderson, Michael Deamer, Associate Dean Kristin Erickson, Craig Galli, Louise Knauer, Heidi Leithead, Randy Phillips, Edward Stone and Matthew Wirthlin. Gus spoke in favor of recognizing the S.J. Quinney Pro Bono Initiative program at the University of Utah Law School which Kristin Erickson oversees. **Steven Owens made a motion to award Jensie Anderson with the Pro Bono Service award and bestow the Pro Bono Initiative Program at the S.J. Quinney Law School with the Distinguished Service award. Christin Clinger seconded the motion which passed unopposed.**

Four lawyers were nominated for the Professionalism award including Bert Dart, Victoria Kidman, Ray Christensen and Marlene Gonzales. Discussion ensued. **Nate Alder made a motion to present Bert Dart with the Professionalism award. Rob Jeffs seconded the motion which passed unopposed.** Mary Kay Griffin abstained from voting.

Gus then requested that John recognize and thank those who were nominated but who did not receive an award this year. Nate asked that all nominees be carried over to next year for consideration.

### **3.2 Approve 2005-2006 Audit**

Mary Kay Griffin distributed the recent auditor's report and stated that the Budget and Finance Committee had recently met with Deloitte & Touche to review the financial statements. The auditors issued an unqualified or "clean" opinion. She reported that assets are fairly stable with the decrease mostly due to depreciation, that licensing fees are up and finally, that the Bar expended \$173,860 in excess of revenue this past year. Overall, the Bar is in "excellent stable financial condition at this time."

In response to Steve Burt's question, John replied that the Client Security Fund assessment was just raised to build up the account. He also answered Rob Jeff's question by noting that excess cash is held in a "sweep account" with a variety of different investment vehicles and that licensing fees account for only 62% of revenues. The remainder of revenue comes from operational/service related items such as CLE. Lowry interjected that John and Arnold were excused at the end of the Budget and Finance Committee meeting so that the auditors could state that no irregularities were found in the Bar's finances. Lowry then asked about the note repayment for the Law and Justice Center ("LJC") to which John responded that while cash will not change and the LJC corporation will probably dissolve

within the year, the tax exempt status of the building will be an issue to resolve in the future. **Nate Alder made a motion to approve the audit. Lowry seconded the motion which passed unopposed.** John will prepare a letter to the Budget and Finance Committee and will send copies of our investment policies to Commissioners.

**NEW ITEM:**

Gus reported that Arnold Birrell has announced his retirement sometime between February and March of 2007 so a new Financial Administrator will need to be hired.

**4. INFORMATION ITEMS**

**4.1 Diversion Rule Status**

Lori Nelson will address a proposed OPC diversion rule at December's meeting.

**4.2 Judicial Council Report**

David Bird reported that the courts are concerned with judicial independence in general. There is a national program entitled "Justice at Stake" which helps educate the public on the importance of judicial independence and David will provide a copy to John for possible future consideration. Aspects of a recent Valley Research poll regarding access to justice issues were also discussed. One particular aspect mentioned was that the public tends to get their information on the justice system primarily from television "legal programs" like "Judge Judy." Furthermore, 82.7% of respondents had internet access which also provided them with access to legal information. John responded that this information is not inconsistent with findings of the Bar's Dan Jones focus group research a few years ago.

**4.3 Leadership Training Seminar**

Lowry Snow reported that the annual leadership training seminar is scheduled for October 26<sup>th</sup> from 11:30a.m. – 3:00 p.m., at the Little America Hotel. A proposed agenda has been drafted and Justice Jill Parrish is the scheduled keynote speaker. He will apply for CLE approved for the event and invite YLD officers and selected committee chairs to attend.

**4.4 Status of Discussions on Use of Ethics Advisory Opinions**

Gus said this issue has been rescheduled for the December meeting. Billy Walker and a representative from the Ethics Advisory Opinion Committee will be in attendance to present pertinent relevant information relating to issues raised by the Chief Justice in her recent letter of inquiry to the Bar.

#### **4.5 Young Lawyers Report**

David Hall distributed a handout for the “Bar Sharks for Justice” annual pool tournament and fundraising event. Participants (including law firms) in the Tuesday Night Bar program also will be recognized for their pro bono work in the *Bar Journal*. The Bar will send individual thank-you letters to participants and offer discounts for the upcoming Fall Forum.

YLD is in the process of obtaining the “Choose Law” video and program materials from the ABA. This program, offered every year by the ABA, focuses on high school and junior high school students and attempts to encourage minorities to be more interested in considering the legal field as a possible profession. The Division would like to involve judges and lawyers in this program.

#### **4.6 AOC Self Representation Committee Report**

Representatives from the AOC’s Committee on Resources for Self-Represented Parties were in attendance for this portion of the meeting including: Judge John L. Baxter, Chair (Salt Lake City Justice Court), Mary Boudreau (Program Manager, AOC) and Jessica Van Buren (Director, Utah State Law Library). Also in attendance was Profession James Backman. The Committee’s Report to the Judicial Council (Strategic Planning Initiative) was distributed to those in attendance. The Committee was created in response to a charge from Chief Justice Christine Durham and the purpose was “to study the needs of self-represented parties within the Utah State Courts and propose policy recommendations concerning those needs.”

Judge Baxter presented highlights from the report. He said that statistics reflect high numbers of unrepresented persons in litigation, particularly in divorce cases. The Committee determined that people do not hire attorneys because: (1) they think they can not afford it; or (2) they perceive their case is not sufficiently complex to warrant legal assistance. Lowry interjected that the number of unrepresented persons is increasing and impacting the quality of justice, the administrative system, and other attorneys when only one party is represented. He further said that the majority of lawyers agree the best situation is for everyone to be represented but realize that is not the reality.

Judge Baxter said that the Committee recommends a pilot program for a self-help support center similar to Alaska’s model. Legal advice would not be part of the program but rather, the focus would be on legal information and resources. The Judicial Council has already approved the project. During the pilot phase, the center would serve the district and justice courts in a rural and urban court districts, preferably the Second and Eighth Districts. Eventually, if successful, the program would serve all districts. The Committee has asked the Legislature for

two years' funding for the pilot project and would like Commissioners to review the plan and provide assistance in lobbying efforts for funding for the project. They would also like to meet with the OPC and the UPL Committee for information on what services the self-help desk can provide without violating court rules.

Rob Jeffs responded that his constituents have expressed concerns about this program. They believe this "reduction of cases to the completion of forms" degrades our profession and that the program raises issues of complexity and possibly poses a disservice to the public. He also was startled by the demographics that 15% of self represented litigants make over \$96,000. Felshaw expressed his opposition as well. Lowry, however, said that he believes solutions to the issues raised in the report need to be found. Gus would like to review the materials and schedule an in depth discussion for another time. Rod Snow agreed with Gus. He also opined that perhaps third year law students could be utilized in this program. Steve Burt added that from a public member's viewpoint, it does not sit well that one needs to pay to access the third branch of government.

#### **4.7 Racial and Ethnic Fairness Report Status**

Gus has asked Yvette Diaz to report on recommendations at the December meeting.

#### **4.8 Paralegal Division Report**

Kathryn Shelton reported that the Paralegal Division is asking for assistance regarding the definition of "paralegal" and "legal assistant" and how it is used in practice. The Division recently changed its name from the "Legal Assistant Division" to the "Paralegal Division" to help remedy the perceived difference between the two. The group would like to educate members of the Bar and their staff regarding use of the terms. Nate recommended having OPC write a *Bar Journal* article on this issue and Herm asked if work experience qualified someone for the transition from "secretary" to "paralegal". Steve Burt opined that another group could move to become licensed "paralegals" under DOPL. David Bird requested rescheduling this issue for a more in depth discussion.

#### **4.9 Blomquist Hale Report**

Gus said the attached Blomquist Hale report shows this program is being utilized by members. John said that new brochures are at the printers and will be mailed to the members' homes in the near future.

#### **4.10 Additional Items from Board Members**

Cheryl Mori announced the UMBA awards. They are as follows:

- 1) Jimi Mitsunaga Excellence in Criminal Law Pro Bono Award was presented to Professor David Dominguez at BYU J. Reuben Clark Law School;
- 2) UMBA Honoree of the Year Award was presented to Governor Jon Huntsman;
- 3) UMBA Lawyer of the Year Award was presented to the Honorable Paul Iwasaki, Second District Juvenile Court Judge; and
- 4) Pete Suazo Community Service Award was presented to Robert Rendon, Senior Vice President of Zions National Bank.

Christian Clinger reported that he had spoken with Branch Rickey regarding an event commemorating the 60<sup>th</sup> Anniversary of Jackie Robinson along with the 50<sup>th</sup> Anniversary of Brown v. Board of Education. More details are to follow.

### **MEETING ADJOURNED AT 12:05 P.M.**

### **CONSENT AGENDA**

By policy, the August 25, 2006 minutes are approved without amendment.

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

- 1) Bar's 75<sup>th</sup> Anniversary program.
- 2) October 2006 applicants qualified for admission to Bar
- 3) Clarence Darrow CLE flyer.
- 4) Letter from Michael Mower supporting Jense Anderson's nomination for Pro Bono Service award.
- 5) E-mails nominating Heidi Leithead, Louise Knauer, Randy Phillips and Michael Deamer.
- 6) Letter from Victoria Cramer nominating Marlene Gonzales for the Professionalism award.
- 7) Letter from Phillip Ferguson nominating Ray Christensen for the Professionalism award.
- 8) Auditor's report.
- 9) Committee on Resources for Self-Represented Parties Strategic Planning Initiative, Report to the Judicial Council, July 25, 2006.
- 10) "Bar Sharks for Justice" 5<sup>th</sup> Annual Pool Tournament & Social