

UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES

September 21, 2007  
SALT LAKE CITY, UTAH

**Present:** President V. Lowry Snow and Commissioners: Nathan Alder, Christian Clinger, Mary Kay Griffin, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey and Rodney G. Snow. Ex-Officio Members: Sharon M. Andersen, Gus Chin, Laurie D. Gilliland, Charlotte L. Miller and Stephanie W. Pugsley. Executive Director John C. Baldwin and General Counsel Katherine A. Fox.

**Excused:** Commissioners: Steven R. Burt and Yvette D. Diaz. Ex-Officio Members: Hiram E. Chodosh, Karthik Nadesan, Paul Moxley and Kevin Worthen. Supreme Court Liaison Marilyn (Matty) Branch.

**Minutes:**

**NEW ITEM:**

Lowry Snow reported that Victoria Kidman and Mark Baer will co-chair the next Annual Convention.

**NEW ITEM:**

Lowry reviewed the calendar and encouraged Commission attendance at various upcoming events. He announced that a previously unscheduled Commission meeting will be held on Friday, November 9<sup>th</sup> during the lunch hour. It will be brief, but in part will allow Rod Snow to update Commissioners on the mentoring program. The meeting will also include a public relations proposal for review and discussion.

**NEW ITEM:**

Lori Nelson reported that the diversion rule petition was approved by the Supreme Court and the new rule will become effective November 1, 2007. A new diversion rule committee is currently being formulated to facilitate the process.

**NEW ITEM:**

John Baldwin distributed two handouts. The first contained the July Bar Exam results and statistics for informational purposes. He noted that approval for those passing the last examination is on the consent calendar. The second handout contained a copy of the current license suspension list for informational purposes.

**NEW ITEM:**

John informed the Commission that a certified mail letter will be sent to LegalMatch today notifying them our intention to terminate the contact next July.

**NEW ITEM:**

He further said that Arnold Birrell's farewell will be held on Wednesday, September 26 from 4-6 p.m. and encouraged Commissioners to attend to extend their best wishes.

**NEW ITEM:**

**Nate Alder made a motion for David Hall to receive the Distinguished Service Award. Steve Owens seconded the motion which passed with none opposed.**

**1. PRESIDENT'S REPORT**

**1.1 Review Contacts with Legislators**

Lowry clarified with Commissioners that when making the initial contact with their legislators, to do so without an "agenda" so that the contact was more in the nature of a short introductory encounter. Scott Sabey then reminded those in attendance to make the initial contact before the legislative session begins when legislators become over scheduled. John distributed a list of "talking points" to discuss with respective legislators at a later date. Steve Owens asked to have Bar staff draft letters of introduction to legislators on behalf of Commissioners and include what services the Bar can provide to them.

**1.2 Commissioners' Reports on Sections, Committees and Bars**

John distributed a CLE annual report which listed presentations and activities offered throughout the year. Commissioners then reported on the status of their assigned section and committee groups. Lori observed that in light of a particular issue with the Family Law Section *vis a vis* the Commission's position on

lobbying, the Family Law Section's Executive Committee has expressed a desire to be more independent.

### **1.3 Report on Blomquist Hale Discussions**

Lowry noted that a significant amount of money out of the Bar's budget has been appropriated for Blomquist Hale services. According to the current report, the service, which has been operating for about 18 months, the utilization rate may not be supporting the current budget appropriation. The initial forecasted utilization rate, based on a typical private employer, was 10-12% but the Bar's utilization rate, however, is 2.87% by case and 4.36% by individual. Accordingly, the Bar may need to renegotiate the initial fee agreement to offset the lower utilization rate. Scott Sabey suggested designating a portion of the fee and launching a marketing program before making a final assessment of the program's effectiveness. Gus Chin commented that Blomquist's marketing efforts are marginal at best and he is not convinced that they are fulfilling their end of the bargain. Rob Jeffs opined that Bar members are receiving a significantly different type of service by using a professional counseling firm rather than LHL services and if the benefit only assists a very small number of members, then we should revisit our support in light of budgetary pressures.

Steve Owens agreed with Rob's assessment and opined that perhaps an hourly rate of \$60-70 and shifting the remainder of the funds into marketing efforts would be a better arrangement. Charlotte Miller interjected that Blomquist could have meeting with managing law firm partners, distribute posters at the workplace to advertise services and the like to encourage more usage. She further said that the Bar could distribute members' e-mail addresses to Blomquist for marketing outreach purposes. Felshaw King said Blomquist needs to be more involved in the Bar's marketing efforts and, rather than change the program, make a mid-course adjustment.

John commented that Blomquist does not have the ability to reach out at mandatory meetings in firms and other similar endeavors because they simply are not set up to effectively market their services. Nate believes that this is a larger issue than "just Blomquist," and we should integrate LHL and Blomquist into a more comprehensive outreach program. Lowry said that an initial meeting with Blomquist indicated that they are motivated to maintain the contract with the Bar and he has scheduled another meeting with them.

### **1.4 Malpractice Insurance Survey Results**

John distributed a "Malpractice Insurance Information" report containing data collected from the 2007-2008 license renewal forms. According to the survey results, 68% of active lawyers represent private clients and 74% of those individuals have malpractice insurance. Moreover, the lawyers reporting to have insurance coverage generally have at least \$1 million in coverage. John opined

that we might not have the insurance crisis we thought we had based on the data but the primary reason lawyers do not have insurance appears to be that it is deemed too expensive. The survey also reflects that those not having insurance typically are solo practitioners and small firms. Nate said solo practitioners are the issue that we need to address and Lowry interjected that we can use this opportunity to impart information to this group that malpractice insurance is not as expensive as they may believe. Nate observed that from the data, it appears that 90% of solo practitioners do not have malpractice insurance. Rod Snow asked what percent of all lawyers are solo practitioners and John replied that approximately 20% are solo practitioners, and that 15% work in small firms which employ 2-10 lawyers for a total of 35%.

Lowry explained that the survey results will be shared with the Court and the information will be disseminated to Bar membership as well since it will be helpful to them. Nate suggested printing an article in a future issue of the *Bar Journal* encouraging members to obtain insurance. Discussion ensued about “tweaking” the licensing form survey for next year.

## **2. ACTION ITEMS**

### **2.1 Long Range Planning Goals and Values**

Lowry said that the long range planning goals and values are not specific task oriented but rather, focus on where the Bar spends its money for emphasis. He would like to finalize the list in the next meeting or two. Steve Owens suggested adding “fair, efficient attorney discipline process” to the “membership” portion of document.

### **2.2 Bar Program Review Outline and Timetable**

John reviewed the outline and timetable behind Tab 3 for the Bar program review. He said several areas have been identified for governance review in order for the Commission to evaluate expenditures *vis a vis* possible new programs. A nine month proposed schedule has been developed to complete this review and is primarily focused on our regulatory programs in order to provide valuable “outside” and objective information. Nate said the review will pick up other areas next year (such as OPC).

On a related note, Lowry reported that he and John recently met with the Arizona court auditor and Utah AOC’s auditor. He said that the Arizona model is comprised of an intense two year process which may be unsuitable for the Bar, at least at this point. John continued that we are looking at a summary review and educational process with the possibility to focus on any problem areas at a later time. He reminded Commissioners that Grant Thornton’s report emphasized a review of Bar programs and the Court also was very interested in a program

review. The proposed review process obviously will not be as costly as a full-blown audit.

Felshaw believes it is a good idea for the Commission to conduct the review rather than incur additional expenditures. Nate added that one additional person will be added to each committee; for example, either Steve Waterman or James Davis for admissions and perhaps Stewart Ralphs for the access to justice area of reivew. Lowry said the chair of each committee should hold its first meeting within the next four to six weeks and eventually will need to provide the Commission with a written report. John will provide comprehensive program binders to each of these committees to facilitate the review process.

### 2.3 Fall Forum Award Recipients

Lowry distributed a letter from Judge Kate Toomey nominating Frank Carney for the Professionalism Award. Discussion ensued. The Commission voted to select **Frank Carney to receive the Professionalism Award.**

Discussion then ensued over the nominees for the *Pro Bono* Award. **The three chairs of the Tuesday Night Bar program which include, Matt Wride, Kelly Latimer and Christine Micken, were selected to receive the Pro Bono Award.** After consideration, **Dan Becker was designated to receive the Community Member Award.**

### 2.4 Juvenile Law Section Creation

Julie Lund, John Norman, Sharon Sipes and Rick Smith presented proposed bylaws to create a new Juvenile Law Section. They explained that as there is a distinct court system specifically designed to handle the unique legal issues dealing with juveniles, it seems to follow that there should be a corresponding section of the Bar. They opined that the Juvenile Court poses interesting legal challenges for attorneys that can best be addressed by the specific training and assistance provided by a new Juvenile Law Section. Although there currently exist Family Law and Criminal Law Sections, neither one seems to provide the specialized training, nor has the needed expertise to deal effectively and comprehensively with the juvenile court system.

Gus asked if Utah law students could participate as “affiliate” members in the new section and if so, to include a bylaw provision expressly permitting their participation. Steve Owens would like to include a provision for a fee exemption for law student members and new lawyers. **Nate moved to create a new section and adopt the proposed bylaws with a provision that Scott Sabey insert governmental relations participation section but to reserve the issue of fee exemption. Steve Owens seconded the motion which passed with none opposed.** Charlotte would like the new section to coordinate efforts with the Needs of Children Committee. Rick Smith said there is already some involvement

by that committee which will continue. Gus volunteered to temporarily serve as Commission liaison along with Sharon Anderson.

## **2.5 Re-appoint Herm Olsen to DNA Peoples Legal Services Board**

**Nate moved to reappoint Herm Olsen to the DNA Peoples Legal Services Board. Scott Sabey seconded the motion which passed with none opposed.**

## **2.6 2006-2007 Audit Report**

Mary Kay Griffin reported that there was a Budget and Finance Committee meeting prior to the final Deloitte & Touche formal audit report. She said Deloitte has issued an “unqualified opinion” and proceeded to review highlights of that report. Nate would like to include an “admissions category” to show income added to page 10 of the report.

## **2.7 ABA Proposal on Disaster Relief**

John reported that Matty Branch has discussed the ABA disaster relief issue (which the Commission previously discussed) with the Court; the Court believes that they could address these problems, if any, as situations arose. Lori raised the issue, however, if we should review a Bar emergency preparedness plan to which John responded that it is already included in the proposed program review.

# **3. DISCUSSION ITEMS**

## **3.1 Judicial Council Report**

Scott Sabey distributed a copy of the September Judicial Council Meeting agenda. He said the most current pressing issue is lack of funding, particularly in the Fourth Judicial District. The Council hopes to obtain funding for an additional judge in the upcoming legislative session, but at a minimum, three more judges are needed in the Fourth District and one in Washington County. The Council is also considering formulating a disaster response plan. Scott concluded by saying he will present the Bar’s malpractice insurance information findings at the Council’s next meeting.

## **3.2 ABA Representative Report**

Charlotte Miller reported (as background information) that the relevance of an ABA resolution is to enable the particular entity requesting the resolution to further develop ideas with ABA staff resources. She has - and will continue - to directly e-mail ABA relevant information to targeted Bar entities, such as Women Lawyers, and the Criminal Law Section. She concluded her report by stating that

recent discussions have focused on “youths at risk” including foster care issues, and aged-based retirement issues in law firms.

### **3.3 Young Lawyers Division Report**

Stephanie Pugsley reported that the YLD is very active with a number of new and continuing projects. They are currently looking at a new URL for an independent website ([www.utahyounglawyers.com](http://www.utahyounglawyers.com)) in lieu of linking through the Bar’s website. Also, a professionally designed YLD e-letter is being created which would allow members to input content. Other projects include a school supplies community drive, an effort to increase TNB participation, the Bar Shark pool fundraising event, and conducting a number of seminars at the law schools. John invited the YLD Executive Committee to a luncheon after the December Commission meeting.

### **3.4 October Bar Leadership Luncheon**

Nate reminded those present that the Bar Leadership Luncheon will be held on October 24<sup>th</sup> at 11:30 a.m., at the Little America. He would like to modify the standard format by having informal small break-out sessions to discuss issues rather than primarily relying on a lecturn format. He asked Commissioners to notify him or Christy Abad if they are interested in attending and facilitating a small break-out discussion group. He also invited those present to invite others to attend as well.

## **4. CONSENT AGENDA**

By policy, the August 24, 2007 minutes are approved without amendment (Tab 7).

By policy, specified amendments to the Banking and Finance Section bylaws are approved without amendment (Tab 7).

**MEETING ADJOURNED AT 1:20 P.M.**

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

- 1) Bar Commissioner Contact with Legislators Talking Points
- 2) CLE Annual Offerings Report from 7/1/06 through 6/30/07
- 3) Malpractice Insurance Information 2007-2008 Licensing Forms
- 4) Letter dated September 19, 2007 from Judge Kate Toomey nominating Frank Carney for the Professionalism Award

- 5) July Bar Exam results and statistics
- 6) Licensing suspension list
- 7) Deloitte & Touche Final Audit Report
- 8) Judicial Council Meeting agenda