

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

SEPTEMBER 12, 2008
LAW & JUSTICE CENTER
SALT LAKE CITY, UTAH

Present: President Nathan D. Alder and Commissioners: Steven R. Burt, Christian Clinger, Yvette D. Donosso, James D. Gilson, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey, Rodney G. Snow, and Rusty Vetter. Ex-Officio Members: Chrystal Mancuso-Smith (for Young Lawyers Division), Sue Chon (for Minority Bar), Julie Eriksson, Eve Furse, Charlotte L. Miller, Paul T. Moxley and V. Lowry Snow. Executive Director John C. Baldwin and General Counsel Katherine A. Fox.

Excused: Commissioners: Mary Kay Griffin. Ex-Officio Members: Simón Cantarero, Hiram E. Chodosh, Karthik Nadesan, and Kevin Worthen. Assistant Executive Director Richard Dibblee. Supreme Court Liaison Marilyn (Matty) Branch.

Minutes:

NEW ITEM:

Lowry reported that the new Judicial Review Commission met for the first time last week. He said that appointments to that Commission come from all three branches of government. There are 12 members including two members from both the Senate and the House of Representatives. We currently have the maximum number of lawyers on the Commission. An advertisement for the Executive Director of the Commission position will be posted soon and the Commission should use Bar resources to disseminate information about the opening. On a related note, Scott Sabey reported the number one priority of the Judicial Council was to appoint a new judge and hire four new law clerks. Nate added we have a very good relationship with the courts, which, as Scott pointed out, is not necessarily the case in other states.

NEW ITEM:

John distributed applicant information for the Second District Trial Court Nominating Commission. He said that an opening became available when a current member applied for a judgeship position. He reminded Commissioners that the Bar will submit six names and the Governor will choose one. Discussion ensued. **Felshaw moved to submit the**

following names to the Governor: Joseph M. Bean, Laura Masner Rasmussen, James Hasenyager, Bernard L. Allen, Steven M. Kaufman and Camille L. Neider. Scott Sabey seconded the motion which passed.

1. PRESIDENT'S REPORT

1.1 Report on National Conference of Bar Presidents Meeting

Nate Alder reported on the NCBP meeting. He said that a resolution was adopted to encourage Senators John McCain and Barack Obama to sign a resolution statement supporting the judiciary. John Baldwin reported that Utah was highlighted as an exemplary state during a presentation on "Wills for Heroes." John further reported that he attended a presentation addressing the FLDS child situation in Texas and other high profile law cases like Duke University/Nifong prosecution as well as legal disaster response efforts with pro bono. Nate said that during 2009, the ABA will begin major pro bono efforts and the Bar will use Anna Jespersen, a new Bar employee, for assistance in this national effort.

1.2 Review Calendar and UMBA Dinner October 17

Nate encouraged Commissioners to attend the UMBA annual dinner.

Nate discussed the conflicting scheduled events ("Meet the Bar" and Admissions Ceremony) scheduled for October 23rd at noon. He said Commissioners will need to split their attendance between both events.

Paul Moxley observed that the Jackrabbit Bar Conference slated for June 4-6, 2009 in Santa Fe, New Mexico was inadvertently omitted from the 2008-09 calendar and asked that it be added. Evelyn Furse then added that an event hosted by Women Lawyers slated for September 26 & 27, 2008 was also inadvertently omitted from the calendar and then asked that it, too, be added.

1.3 Report on Justice Scalia Speech at USU

Nate said that he has been invited to attend the Scalia event at USU and will assist other Commissioners to attend if anyone is interested. He added that former Supreme Court Justice O'Connor has tentatively accepted an invitation to attend the Bar's Annual Convention in July 2009.

1.4 Report from Communications Committee

Christian Clinger said that John Becker had previously issued a report which now has been reviewed. The plan is to keep using John Becker's services but the Committee will send out RFP's to other vendors. John Baldwin said that some concerns have been expressed over the lack of publicity with various Bar events over the past year, but when

John Becker attended a recent Executive Committee meeting, he discussed the inherent difficulties with newspaper publicity. Christian said the hope is to be aggressive with Bar communications and the Committee is working to develop a plan which includes increasing the budget to \$20,000 to provide for increased media coverage. Rob Jeffs said that according to John Becker, it is not a matter of increasing funds but more a problem with “mundane” Bar issues in which larger newspapers are not particularly interested.

Nate said the Bar’s future media exposure may be better served in small newspapers with some events being reported in the larger papers. Rod Snow suggested using someone at the “top” to lead to better coverage rather than working from the bottom up. Towards that end, Rusty suggested Mike O’Brien as a possible contact. Charlotte said Mike does a lot of work with the Deseret News but thinks Juvenile Court Judge Charles Behrens’ wife, Marjorie Cortez, may be a better resource since she is an editor with the Deseret News. John said it costs approximately \$1,000 a day to have a continuous, but brief spot on the radio. However, Rusty has met with a local radio station about more low cost exposure which will be discussed later in the agenda.

Nate suggested inserting a solicitation in the October Bar e-Bulletin for input from members and to solicit volunteers for this committee.

1.5 Review Lifetime Service to Bar Award

Nate said that we could make the decision on the “Lifetime Service to Bar Award” either today or at the upcoming October 24th meeting. Rusty opined that transitioning from “Lawyer of the Year” to an award focusing more on lifetime service would be a good idea and he suggested reviewing the distinguishing characteristics of “Lawyer of Year” vis a vis “Lifetime Service Award”. Evelyn believes that it is worth defining these awards, but prefers the different categories, especially in light of women lawyers who rarely achieve lifetime status. John said that the “Lifetime Service Award” has criteria but the Commission has not defined criteria for the other award categories. Nate suggesting compiling a list of nominees which will roll over from year to year and then choosing a recipient from that list. John said that despite publicity, we do not receive many nominations for awards other than the “Lifetime Service Award.” Charlotte said that the individualized contact with county bar presidents and the broad solicitation approach doesn’t really work for this award and Evelyn said that a simple application form for nominations would be more helpful. Rusty observed that time devoted during Commission meetings to this issue may be ill suited for this policy making body and suggested forming a subcommittee comprised largely of past presidents to further develop what is needed.

1.6 Review Request to Re-Appoint Bar Delegate to ABA House

Nate explained that the Commission was reviewing the Bar designated ABA delegate and that Utah ABA members elect the other representative, who is Paul Moxley. Paul then recounted service terms for the Bar’s past delegates: Reed Martineau, 8 years; Paul Moxley, 2 years; Charles Brown, 6 years; and Charlotte Miller, 2 years. He said that

delegate longevity is more beneficial to the Bar because these individuals dominate the discussions and have more influence. **Curtis Jensen moved to re-appoint Charlotte Miller as the Bar’s ABA delegate. Christian Clinger seconded the motion which passed unopposed.**

1.7 Review Executive Director Goals and Objectives

Nate said that we have instituted the framework for the future evaluations of the Executive Director. Rob Jeffs said that a formal meeting is slated for April but the new policy provides for periodic meetings throughout the year and the evaluation language can be revised over time as necessary.

1.8 Review Survey on Bar Governance

John said the Bar governance survey was conducted based on a recommendation from the Grant Thornton review; the survey reflects concerns in some areas. Rob said that some questions need to be reworked and the number of questions reduced. Lori Nelson and Steve Burt concurred. John said perhaps a Commission subcommittee or the Executive Committee could revise the questions. Nate said that we want the same questions to carry over from year to year to monitor progress. Steve Burt added that we need to define “effective” versus “somewhat effective” and further said that we cannot answer questions on behalf of the whole Commission so we should reframe the perspective format. Scott Sabey does not believe the survey to be particularly useful and he believes that we should deal with the problems and issues set forth on the agenda. Steve Burt said the focus needs to be more on the “don’t knows” and negative responses as opposed to discussing all the “yes” responses. Felshaw King said the purpose of the survey is to identify problem areas and we should not make the survey a project in itself. Nate concluded by saying this issue will be forwarded to the Executive Committee for further discussion.

1.9 Report on Membership in Utah Nonprofits Association

Nate said that the Bar recently joined the Utah Nonprofits Association (“UNA”) and that we need to partner with these types of organizations that have already “done the work” in light of conserving limited resources. He further said that it should be easy for us to abide by the ethics standard they have promulgated. He also believes that we should promote this organization to our members to help build our connections to the “larger community.” Rusty interjected that joining UNA is extremely beneficial and positive for a number of reasons and Nate continued that we could use this organization as a recruiting tool for new Bar employees. UNA has a fall event, the “Fall Philanthropy Day” luncheon, on December 4, 2008, where community volunteers are honored. We could incorporate lawyers in this event. He asked Commissioners to be thinking of someone to nominate for this event.

1.10 Report on Judicial Conference

Scott Sabey reported briefly on the recent Judicial Council meeting. At the meeting, former judge Hans Chamberlain suggested that the Bar appoint a Commissioner every year to conduct an eulogy of deceased lawyers and judges at a designated event. Christian Clinger said the Nebraska Bar includes a monthly entry in their Bar Journal of deceased lawyers. Nate said he recently attended a “Judicial Outreach” CLE with judges and was surprised to find that they have same issues as lawyers do in that they agree that there is a lack of understanding of judicial process and a lack of faith in the system.

2. EXECUTIVE DIRECTOR’S REPORT

2.1 Report on Casemaker X

John said that the Bar is trying to be more useful to law students. Towards that end, he said the new Casemaker X program is not just limited to legal research, but also incorporates clerking-related information and provides networking opportunities for law students.

2.2 Report on E-Filing in State Courts

John said that e-filing at the state courts will begin in about a month and will start with the Second District. This affords a good opportunity for the Bar to determine if solo practitioners are willing to pay a flat fee of \$200 a year to e-file. In response to Rob’s inquiry, John replied that the program is optional and Nate said that this is the court’s program, but we can be a partner in this new endeavor as a “private provider.” He continued that this is a great opportunity to address the importance of collecting e-mail address from our members to enhance paperless communications. He believes the Bar should make providing e-mail addresses mandatory with some limited opt-outs.

3. ACTION ITEMS

3.1 Approval of Communications Law Section

John reported that J. Ladd Johnson, currently an associate of Holme, Roberts & Owen, filed an application for the creation of the new Communications Section. There has been a favorable response to the proposed section with 36 attorneys expressing strong interest to collaborate on issues particular to this area of law. **Lori moved to approve the creation of the Communications Section. Rob seconded the motion which passed unopposed.**

3.2 Community Member, *Pro Bono* and Professionalism Awards

Evelyn Furse said that Women Lawyers is still working on obtaining nominations as the deadline has not yet passed. Nate said this item would be postponed for further discussion during the October Commission meeting.

3.3 Approve Liaison Assignments

Nate directed attention to the Commission liaison assignments behind Tab 7. He then asked John to assign Curtis Jensen to the new Garfield County Bar Association. Rusty said that it has been his experience that Commissioner liaison involvement is marginal and if we are really trying to understand the sections and committees, we need to determine criteria for evaluations and set up policies. Christian believes these concerns have been addressed and have improved. Lowry agreed with Rusty that the Commission role is really not defined. He, however, also agreed that improvement has been made. John said at a recent retreat, the Commission required every section to provide an annual report but only 20% of the sections did so. He continued that we regularly try to encourage sections to spend their money while realizing that they are inherently independent. Christian opined whenever a section holds a meeting, the liaison should be in attendance. Steve Owens said the October 15th leadership luncheon meeting is a great way for Commissioners to make contact with their assigned sections and committees. Nate said his current plans are to concentrate on program reviews and the new mentoring effort but in April, we will continue a discussion on this topic because he understands that we have sections that “struggle.” Pursuant to Jim Gilson’s request, John will send a letter with liaison assignments and carbon copy respective Commissioners. **Lori Nelson moved to approve Commission liaison assignments. Scott Sabey seconded the motion which passed unopposed.**

3.4 Approve Operations Review Committee Assignments

Nate directed attention to Tab 8 for the assignments for the upcoming Bar Operations Review. He did not include the Deans of the law schools due to demands on their schedules. He announced that he had contacted Kim Wilson, the former chair of the Ethics and Discipline Committee, to ascertain if he would be willing to serve on the OPC review committee. Committee assignments are as follows:

OPC: Jim Gilson (Chair), Lori Nelson, Lowry Snow, Laurie Gilliland, and Kim Wilson.

CLE: Eve Furse (Chair), Rod Snow, Curtis Jensen, Steve Owens, and Julie Eriksson.

Fee Arbitration: Rusty Vetter (Chair), Yvette Donosso, Karthik Nadesan and Su Chon.

Client Security Fund: Felshaw King (Chair), Herm Olsen and Mary Kay Griffin.

Utah Law & Justice Center: Christian Clinger (Chair), Steve Burt, Rob Jeffs and Simón Cantarero.

Lori Nelson moved to approve the assignments. Scott Sabey seconded the motion which passed unopposed. John said he will provide binder copies of pertinent information to each committee.

3.5 Select Distinguished Service Award Recipient

Nate would like to honor “and Justice for All” with the Distinguished Service Award at the Fall Forum. **Curtis Jensen moved to approve the award. Herm Olsen seconded the motion which passed unopposed.**

3.6 KCPW Radio Request for CLE/Outreach Program

Rusty reported that he was contacted by the new director of KCPW radio. KCPW is the alternative public radio station (in addition to NPR) and located in Park City. He continued that lawyers and law firms are significant contributors to public radio and suggested exploring the option of having two KCPW programs a month: one, a CLE and the other, a more general legal format program. Rusty believes that this would be a great opportunity for Bar promotion because the radio station would publicize the Bar on their website and would be virtually free to Bar members. By using the online streaming option, lawyers in remote locations of the state could readily participate. In response to Lori’s question, Nate responded that the number of credit hours would be limited so that it would not usurp all Bar CLE. He further said that the speakers would need to be “educated” in order to speak in a general problem format and be careful to not give legal advice.

Rusty said recruitment of lawyers is needed to get this program started and Eve suggested using sections to help recruit speakers because it would keep the CLE quality “elevated.” Scott said that this is a good idea; however, he is concerned because it is only available in Salt Lake and we will need to counter the criticism. He added that finding speakers could be problematic. John said there is some cost vis a vis CLE and we could charge. Eve said there is some value in having some a limited number of free CLE hours. Lori would like to further study this concept. Nate asked those involved with this program to come back in October with more information. **Scott Sabey moved to approve a formal written proposal for a CLE/Outreach program through KCPW radio. Curtis Jensen seconded the motion which passed unopposed.**

4. INFORMATION ITEMS

4.1 Proposed Resolution to Add Two Voting Commissioners

Rusty said that representation on the Commission typically is tied to the male membership and larger law firms. WLU and UMBA are independent organizations with a proven record of representing members and he opined that they should be given the opportunity to be better represented. A letter from Simón Cantarero referring to this issue was distributed. Eve said Women Lawyers is appreciative of this proposal and what it attempts to address. She said that we could also use “cumulative voting” where if three Commission positions become open, we could “vote” all three votes to one person (which is not the same as just voting for one person when there are three openings). Yvette said as the first woman of color on Bar Commission, she would be interested in studying this proposal in more depth. She said the Bar’s Bylaws would need to be changed because

they only allow for seven voting members from Third Division, and the Rules for Integration would need to be tweaked because they allow for no less than 13 but no more than 15 voting members. Both these rule revisions would require a petition and court approval. She added that she would favor adding YLD as well. Rob said the governance report recommended eliminating ex-officios to reduce the number of Commissioners and further, said that if any group is underrepresented, it is solo and small firm practitioners.

Yvette referred to two other Task Forces which reported problems with Women Lawyers and Minority Bar representation on the Commission because statistics have changed dramatically with growth in these two groups. Scott Sabey said he has a number of problems with the proposal: (1) the proposal was reviewed by other groups before the Commission had a chance to review it which makes discussion difficult; (2) it doesn't meet the integrated rules of court and would influence the legislature on DOPL concerns; and (3) arbitrary selection of groups – where do you draw the line here? YLD is one group that may qualify under applicable rules because it has the largest membership and is funded by the Bar. Scott opined that this is simply not a well reasoned choice. He continued that these divisions are getting an opportunity to participate and he doesn't see a problem that needs to be addressed but sees many problems that may arise. Lori said if this resolution passes, it would limit these two groups' ability to lobby on their own behalf. Chrystal Mancuso-Smith said the YLD would appreciate consideration.

4.2 Summer Convention Survey

John said we did not receive as many responses to this survey as we have in the past. He expects that the Fall Forum will eventually assume Sun Valley's role because expenses are increasing and we are scrambling to cover them. We will provide the convention survey results to next year's Summer Convention Committee. Christian said we should provide an incentive for those who complete the survey and Rusty agreed. He said we have done this in the past by giving away a free registration to the next year's convention. Nate said the Bar is considering a change of venue for the summer convention and we have been solicited by Colorado resorts. We are also looking at Monterey and other venues as well. Further discussion ensued. Rusty suggested sending out a follow up e-mail as a reminder about the survey.

4.3 Report on Health Insurance Meeting

Steve Owens said that at recent meeting with Tom Schaeffer and Jack Taylor, a physician with "Health Utah," there was a presentation on a self-funded health plan. Steve said the program is feasible if we get at least 300 enrollees. However, it will be tricky at the onset if only those with health problems enroll. He continued that the auto dealers have set up a similar program already and that the Idaho Bar is exploring the option of a self-funded health plan. Steve will send a short survey on this issue to members in the near future.

4.4 Report on Status of Mentoring Petition

Margaret Plane was in attendance for this portion of the meeting. Rod distributed copies of the revised mentoring manual and observed the concepts have not changed. More changes are needed in newly revised manual. For example, on page 5 we now have chairs for a committee which need to be added: Annette Jarvis, Jeff Hunt, Nate Alder and a member of the Supreme Court. Margaret said the hope is to finalize the petition by the end of September and file it with the Court. The Court then will put the petition out for a 45-day comment period. She continued that a meeting with the Court is scheduled for December 10, 2008, to respond to the comments received. In response to Lori's questions, the program would apply to the May 2009 new admittees. Scott said the Judicial Council judges are very excited to see this program implemented and the burden is on us to move forward and show our support. Rod said that Margaret is willing to do a lot of the work but not have the primary responsibility. He continued that the hardest aspect is involving solos and small firm practitioners. Rod also observed that Bar rules need to be changed to state that mentors will be appointed by the Supreme Court.

4.5 Report on Leadership Conference

Steve Owens reported on the upcoming Leadership Conference which is slated for October 15th. The agenda includes five minute "hits" from different groups to highlight things such as "Wills for Heroes", a WLU pitch, member benefits, a mentoring presentation, and technology updates. We will also host an open round table for questions and comments. He concluded that this is a great way to meet our assigned sections and committees.

5. CONSENT AGENDA

By policy, the July 16, 2008 minutes are approved without amendment (Tab 11).
By policy, the list of 2008-09 Commission Priorities list is approved without amendment.

MEETING ADJOURNED AT 1:30 P.M.

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- (1) 2nd District Trial Court Nominating Commission applicants;
- (2) Salt Lake Tribune article;
- (3) Letter from Simón Cantarero; and
- (4) Revised New Lawyer Training Program Manual.