

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

APRIL 29, 2011
LAW AND JUSTICE CENTER
SALT LAKE CITY, UTAH

In Attendance: President Robert L. (Rob) Jeffs and Commissioners: Steven R. Burt, H. Dickson Burton, Su J. Chon, Christian W. Clinger, James D. Gilson, Mary Kay Griffin, Curtis M Jensen, Felshaw King, John R. Lund, Lori W. Nelson, Herm Olsen, and E. Russell (Rusty) Vetter. Ex-Officio Members: S. Grace Acosta, Stephen W. Owens, Margaret Plane, James Rasband, Lawrence E. Stevens, Carma Harper, and Gabe White (for Angelina Tsu). Executive Director John C. Baldwin; General Counsel Katherine A. Fox; and Supreme Court Liaison Diane Abegglen.

Not in Attendance: Commissioners: Thomas Seiler and Rodney G. Snow. Ex-Officio Members: Hiram E. Chodosh and Peggy Hunt. Assistant Executive Director Richard Dibblee.

Minutes:

1. PRESIDENT'S REPORT: Rob Jeffs

1.1 Report on Bar Elections

Rob appreciated everyone's efforts on running a good campaign and congratulated Lori Nelson, Dickson Burton, Herm Olsen, Eve Furse and Rob Rice on their success.

1.2 Report on Western States Bar Conference

Rob reported that Rod, Lori, Christian, John, Richard and he attended the Western States Bar Conference and reviewed the highlights of the meeting. Christian interjected that this meeting was one of the best training experiences a Bar Commissioner could have. Both he and Rob observed that our mentoring program is of great interest to others and is in the process of being copied. Rob added that some states, however, have chosen a non-mandatory alternative program or one where they partner with the law schools. Christian said that Arizona has a model CLE program that would be good to review. He also stated that Washington has a "law-in-the-box" model geared for new solo lawyers and small firms. Rob closed the discussion by observing that Texas has a similar program to Washington's that we should review.

1.3 Report on ABA Day in Washington, D.C.

Typically, only the Bar president and perhaps a small delegation attend ABA Day in D. C. every year. The purpose is to lobby congressional leaders primarily for funding for legal service organizations and the ABA provides suitable materials. Another area of interest at this year's meeting was state garnishments through the IRS for crime victim reparations. This year Rob discussed the backlog of federal judges' appointments with Utah congressional leaders since the appropriation for legal service organizations had already been made.

Rob has concerns over the value versus cost of this annual event. He has recommended that the Executive Committee look at this trip carefully. Lori said that she agrees with Rob that unless Utah has a specific issue where lobbying would be helpful, the ABA already has paid lobbyists to do their work. Steve Owens has mixed feelings. If we can accomplish the same thing by meeting with our congressional leaders in state, the trip is an expensive one. If we commit to go, however, perhaps just the Bar president should attend Rob concluded.

1.4 Appointments to Budget and Finance Committee

Mary Kay has been re-appointed to the Commission and will continue to serve on the Budget and Finance Committee. We need, however, more names by the next Commission meeting for Rod to consider for the Committee. John Lund has some ideas of those holding both a J.D. and C.P.A degree. John Baldwin added that the work is not onerous since the committee only meets twice a year. Commissioners should email John or Rob with possible names.

1.5 Appointments to Client Security Fund Committee

Rob said that we also need names to augment the Client Security Fund Committee roster. John Baldwin added that Rod authorized a \$20 per lawyer assessment for 2011-12 Client Security Fund purposes. In response to an inquiry, Katherine Fox said that the petition with its pending rule amendments currently was out for public comment but the period closed in two weeks.

1.6 Report on Public Education Project

John Baldwin and Rob Jeffs met with Love Communications to discuss the Commission's input on the new Public Education Project. The Commission had concerns that the Bar might be confused with a "club" and wants to ensure that this does not happen. The script is being finalized for the media plan. We need more coverage in southern/northern Utah and John and Rob eliminated some "bells and whistles" so that this coverage could happen within the allotted budget. The campaign begins

on May 9th with two different scenarios but materials will be submitted to the Executive Committee for approval first. The campaign will continue through November. The Court has asked for a presentation to the Judicial Council which Rob will do.

1.7 Report on Ethics Advisory Committee Request to Court

Rob directed the Commission's attention to the materials at Tab 4 containing Max Miller's email and report on the proposal to make ethics advisory opinions a safe harbor against OPC prosecution. This issue was first raised by Gary Sackett's article in the *Bar Journal* some time ago. Max met with the Court on April 6th to discuss the proposal and Rob has agreed to further discuss the issue with the Court as the Chief Justice has indicated she is willing to reconsider this issue from several years ago. The Court wants to make sure that there is a judicial review process in place before any rule changes are approved. The Commission will need to make recommendations within the next few months.

Rob explained that it will be difficult to determine where the safe harbor lines will lie. They will be, however, necessarily narrow and fact dependent. Curtis asked if Max and the committee realized that the Commission has involvement in this process and discussion ensued. Katherine explained that the committee's rules are internal committee rules approved by the Commission and that while Court approval is necessary to provide the safe harbor, the normal petition process does not apply here. John Baldwin said that he will be contacting Max in the near future and Rob concluded the discussion by noting that OPC's feedback will also come through John.

NEW: Unauthorized Practice of Law Statute

Rob announced that we recently were notified by the Office of Legislative Counsel that there is an upcoming hearing on the sunset of the current UPL statute. As background, Rob explained that the Bar uses the Court rules to handle UPL issues since the practice of law in Utah is constitutionally delegated to the Court. UPL is not a crime in Utah but rather, a violation of Court rules and thus civil in nature. Violations are formally addressed through injunctive prohibition. This is a sensitive and complicated issue and Lori has agreed to represent the Bar in conjunction with John T. Nielsen. Both Katherine and John answered questions and provided additional information on this issue including the possibility of criminalizing this conduct in the future. After considerable discussion, everyone agreed that we need to be supportive of legislative efforts in this area. Christian suggested that ahead of time, we contact Ben McAdams and Ross Romero who sit on this legislative committee.

NEW: Lawyer Advertising Issue

Rob reported that the lawyer advertising issue the Commission has been discussing for some time will be presented to the Court on May 26th.

2. EXECUTIVE DIRECTOR'S REPORT: JOHN BALDWIN

2.1 March Financials

John reported on the Bar's finances. Our cash is in a good position and we likely will have more of a surplus than we conservatively budgeted for this year. He reviewed the various balance sheets with those present, noting that we are approximately \$667,000 ahead, that admissions will break about even and that the NLTP expenses are more than expected due to the program's start-up costs and the fact that more new lawyers are deferring than we thought would.

A short discussion on the mentoring program ensued. Grace and others talked about their experience with circle mentoring and James Gilson said his committee was looking at tweaking the mentoring plan. He thinks it's a good idea to mentor young lawyers without jobs because it provides a network.

Felshaw King asked what we had designated for a building fund and John said we would have \$500,000 at year end. John continued reporting that the *Bar Journal* was still running at a deficit (\$100,000) at \$3.00 an issue. He distributed a new handout ("Projected Cash") and pointed out salient facts. We will have approximately \$2.2 million at the end of the year. Rob said that while we will accrue more than a four month surplus in the next few years, eventually that surplus will decrease as expenses increase and that we need to be careful with allocating building reserves. Steve Burt noted that we need a written policy on repairs and refurbishing the building.

Lori inquired if staff was still overburdened and John responded that technology, CLE and admissions had added personnel. He also said that while OPC could always use more lawyers, it was a balancing act in processing the workload. Steve Burt wanted to know if the Budget and Finance Committee looked at our investment mix on a regular basis. Rob replied that Zions Bank is responsible for this particular aspect but the committee reviewed our investment policy.

2.2 Program Operations Review Recommendations Status Report

John reported that we add and subtract from the Program Operations Review Recommendations on every Commission agenda. Most things have now been completed except for the CLE Committee, Management and Technology, the employee salary review and the website.

2.3 General Counsel Report

Katherine Fox briefly summarized her General Counsel report (Tab 7) which included Lehman Brothers, the status of petitions, the Bar's property tax and the increased building valuation appeals, the Rose and Kozlowicz litigation matters and UPL generally.

NEW: Summer Convention Commission Meeting in San Diego

Rob discussed what time to hold the Commission meeting on Wednesday, July 6th in San Diego. The group decided to start at noon (with lunch provided). Rob also noted that a Past President's dinner would be held on the following Friday evening.

NEW: Women Lawyers of Utah First 100 Event

Rob noted that Women Lawyers of Utah will be holding a dinner event to honor the first 100 women lawyers in Utah. Among others, the Chief Justice will be speaking. The Bar is hosting a table for eight and Lori, Christian, Su and Dickson (and their partners) opted to attend.

3. ACTION ITEMS

3.1 Legal Research Review Committee Report: Rob Jeffs

Rob informed Commissioners that the current Casemaker contract was expiring. The Legal Research Review Committee has looked at various alternatives and agreed that Casemaker was the best option *vis a vis* the product and costs. Lincoln Mead, who was in attendance for this part of the meeting, provided a handout and explained that new Casemaker revisions were in the beta stage. The changes include such things as the ability to personalize research options, the ability to track time against a client and shepardizing-like tools. These new services are all fee based with one service being \$20 per month and combined services being offered at \$40 per month. Casemaker will fee split with the Bar if we get 320 subscriptions for full service and Lincoln believes we will get there. Lincoln provided additional details relating to Casemaker's sorting function and "drilling down" on search results "on the fly."

Rob interjected that renewing the Casemaker contact required a vote and approval had been recommended by the Executive Committee. **Lori moved that we approve the new contract and Felshaw seconded the motion. The motion passed unanimously.**

4. INFORMATION ITEMS

4.1 Judicial Council Report: Lori Nelson

Lori discussed the new Judicial Performance Evaluation survey prompted by a new statute. The scoring has been changed where a former “3” is no longer acceptable and instead, the survey uses percentages. She suggested writing a *Bar Journal* article to educate lawyers who fill out these surveys about the new scoring system.

The courts are trying to make changes in the guardianship/conservatorship rules for purposes of consistency. They are attempting to pull together all the parties who might have input earlier in the process, including the Trust and Estates and Elder Law sections. She also noted that we need to emphasize to sections that they need to go through the Governmental Relations Committee before speaking to the legislature on pending issues. One section failed to follow that process last session.

4.2 Modest Means Committee Report: Su Chon

Su Chon reported that so far there have been 350 responses to the Modest Means Committee’s survey as well as five separate emails. There seems to be a misunderstanding among those responding that where prospective clients had any assets, they should not qualify for pro bono services. The intended purpose, however, is to target those of modest means for reduced fee services, i.e., the working poor. So far, the responses indicate that lawyers believe the target income level should be the same as for legal aid service. Su praised Lincoln for his helpfulness in implementing the survey.

4.3 Membership Survey Review Committee Report: Dickson Burton

Dickson wanted to know whether the Commission truly desired to do another membership survey before his group proceeded any further. If so, at what level do we want to spend for a more scientifically valid result which might include demographic targeting, formatting better questions, etc.? He observed that currently, we have a large number of topic areas that we would like addressed. Dickson said that a good survey with expert help would cost between \$15,000 to \$20,000 even with a discounted rate from Tom Seiler’s client. Discussion ensued. Christian said that Women Lawyers went through the University of Utah for their survey for about \$7,500.

John Lund added that the Commission should have input on the questions and thinks a good survey would be a valuable resource because it’s an important part of assessing what we are doing. John Baldwin interjected that if we use the survey, it would be a good opportunity and a great investment. If we don’t use it, it’s not worthwhile doing. Curtis saw an

aspect of great service to our members. He also said that we need more young lawyer orientation and that a survey would provide feedback to members. After further discussion, Rob concluded that there was a lot of interest in doing an expert survey. He asked the committee to get firm numbers and come back to the Commission with a potential line item for the budget. Dickson responded that he could include the University survey option as well and asked Commissioners to email him with additional topic suggestions.

5. EXECUTIVE SESSION

MEETING ADJOURNED AT 11:20 A.M. FOR EXECUTIVE SESSION.

CONSENT AGENDA

Approved March 17, 2011 Commission Meeting Minutes.
Approved Bar Applicants for Admission (Tab 10).

NEW HANDOUTS DISTRIBUTED AT MEETING

- (1) Projected Cash at June 30, 2011 (dated April 2011)
- (2) Casemaker 2.2
- (3) S. L. Tribune Article "Law Day Honors the Legal System"
- (4) Utah State Bar Press Release dated April 25, 2011 ("Bar Celebrates Law Day")