

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

August 24, 2007
SALT LAKE CITY, UTAH

Present: President V. Lowry Snow and Commissioners: Steven R. Burt, Christian Clinger, Mary Kay Griffin, Robert L. Jeffs, 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, Hiram E. Chodosh, Laurie D. Gilliland, Paul T. Moxley, Karthik Nadesan and Stephanie W. Pugsley. Supreme Court Liaison Marilyn (Matty) Branch. Executive Director John C. Baldwin and General Counsel Katherine A. Fox.

Excused: Commissioners: Nathan Alder, Yvette D. Diaz and Curtis M. Jensen. Ex-Officio Members: Charlotte L. Miller and Kevin Worthen.

Minutes:

1. PRESIDENT'S REPORT

NEW ITEM:

Lowry Snow introduced Arnold Birrell and expressed the Commission's sincere appreciation for his dedication. Arn joined the Bar in 1991 and helped guide it through a difficult period. Arn was presented with a plaque memorializing his work for the Bar over the years.

1.1 Present Special Service Award to Steve Sullivan

Lowry also presented a Special Service Award to Steve Sullivan and thanked Steve. The Bar has great appreciation for the service he has provided on behalf of not only the Bar, but the larger legal community through participation on numerous Bar committees, sections and special projects over the years. Steve served as a long time chair on the UPL Committee, the Fee Arb Committee and the Utah Bar Foundation. Currently, he is co-chair with Justice Nehring on the Access to Justice Council.

1.2 Welcome and Review Schedule

Lowry briefly reviewed the calendar noting that the September 21st Commission meeting will be held in Salt Lake City rather than Logan and will include an extended agenda. He asked that the start time for the meeting be changed to 9:00 a.m. If feasible, the April meeting will be held in Logan. Lowry also announced that on September 28th the grand opening of the new Southern Utah Community Legal Center in St. George will be celebrated. A banquet will be held as part of a fundraising event and Justice Ronald E. Nehring will be participating in this event.

1.3 Report on National Conference of Bar Presidents Meeting

Nate Alder, Richard Dibblee, John Baldwin and Lowry Snow recently attended the NCBP conference at the ABA meeting in San Francisco. The break-out session discussions included such things as the New Hampshire Bar sponsoring a “one stop shopping/all inclusive member insurance package” to programs which help reintegrate women lawyers back into practice after an extended hiatus. Lowry stated that current trends in the law include: (1) larger east coast law firms outsourcing legal work to foreign countries; (2) pervasive negative public perception of lawyers and ideas for improvement; and (3) a new emphasis in law schools on ethics to incorporate into lawyers’ personal as well as professional lives. Lowry reported that the next Western States Conference will be held in Tucson in March. He encouraged those who have not attended this conference in the past to contact him. He also learned that Utah continues to have one of the highest passing rates in the United States.

Dean Hiram Chodosh added that the public may not understand what lawyers actually do (and its value) because the media drives a largely negative perception. The S.J. Quinney College of Law has formed a “Jackie Chiles Law Society” which could be a possible resource to help offset the negative perception.

1.4 Report on Gus Chin Presentation to Asian Pacific Bar Conference

Gus Chin reported that the Asian Pacific Bar addresses diversity and advancement of minority members in the law. A conference will be held in Las Vegas in November and he will be attending.

1.5 Discuss Jackrabbit Bar Sponsorship June 6-7, 2008

Paul Moxeley distributed an invitation to the 2008 Jackrabbit Bar. The meeting is scheduled for June 6-7, 2008 at Snowbird. The format and value of the meeting is similar to that of the Western States Conference. Paul explained that the states which are involved include Montana, Wyoming, Utah, Colorado, Idaho, North and South Dakota among others. The Bar has been asked to help underwrite the

Snowbird venue and Connie Howard filled in some details on financial aspects. **Scott Sabey made a motion to help financially support the event. Felshaw King seconded the motion which passed with none opposed.**

1.6 Review Yearly Priorities

Lowry reviewed the list of Commission priorities behind Tab 1. He noted that John and he are currently working on a two-year review plan for Bar operations and that the long range plan and operation review are actually two separate items on the list of priorities with the mentoring program coming in third. Rod Snow interjected that the Mentoring committees will be meeting again on August 27th to review the subcommittees' progress. Lowry further reported that we are moving forward on a lawyer referral program replacement. Felshaw observed that in relation to item #3 (Public Education, Public Relations, Surveys), we need especially an improved lawyer referral service to help connect lawyers who are willing to do "low bono" with potential cases. John Baldwin opined that a Commission subcommittee has already met and is assessing possibilities. Scott observed that in his opinion, the Bar simply is not equipped to address the public's perception of lawyers because we aren't public relations experts. Christian, however, said we need to incorporate lawyers who are already in the media e.g., Amanda Dixon, Ruth Todd, etc. to assist in this effort. Dean Chodosh said often it is difficult to translate a concept into action, e.g., "low bono". Sometimes, he continued, it is easier to pick a project and expand on it. For example, senior lawyers joining with junior lawyers for mentoring projects or that the new lawyer referral service should take into account a client's income for sliding scale fees. We should do things in a more targeted way, to knock off problems in targeted areas rather than just repeating discussions and formulating plans.

Steve Owens said we should reinvigorate Law Day participation of lawyers in the classrooms as it seems to have fallen by the wayside; it would be a positive public relations project. Stephanie Pugsley interjected the Young Lawyers Division is still doing this on an ongoing basis throughout the year. Lori Nelson opined that professionalism and mentoring can't be separated from public perception. She likes idea of choosing a project and implementing it. Lowry said perhaps we need to look at designating an internal public relations person. Steve Burt said the issue really isn't "how much lawyers make" and being on defensive on that issue isn't helpful so we need to shift our focus. Christian Clinger said "Dialogue on Freedom" was an incredible positive project and suggest producing something similar in the future. Scott Sabey countered taking on more projects isn't necessarily the answer and that more service doesn't change perception. He believes that we need to educate the public about what lawyers do if we are going to improve our relationship with the public rather than engage more service projects.

Dean Chodosh commented that the law school has four projects they currently are working on and would welcome Bar participation. Rod said we need to designate

a public relations person to coordinate our efforts and perhaps consult with Judge Jenkins as a possible speaker on “what lawyers do”. Steve Burt likes the media-based proposed solution rather than adding more projects. Christian suggested using Steve Owen’s already existing Commission committee to come up with suggestions. Lowry charged Steve’s committee to develop several concrete concepts by the next Commission meeting.

1.7 Long Range Planning Committee Report

Lowry explained that materials behind Tab 2 contain reports of all four Commission subcommittees on long range planning. Scott Sabey then asked Commissioners to look at the draft letter behind Tab 3. See discussion under 1.9.

1.8 Commission Liaison Contact Assignments for September

Lowry encouraged Commissioners to make contact with their assigned committees/sections. John distributed a list of committee charges and said these charges highlight topics to encourage discussion between Commission liaison and committee chairs. He also distributed a section liaison sample letter. Lowry prepared this draft letter to encourage section chairs to spend their money on worthwhile endeavors.

1.9 Clarify Policy on Section Lobbying

Scott Sabey said that sometimes there is a problem with section representatives focusing on their personal legislative agenda. This can cause conflicts if section officers take opposing position from the Bar’s legislative committee. A proposed letter (Tab 3) is designed to educate section leadership that when taking a position, they must clear it first with section membership/government relations committee/Bar Commission in concert with the Bar’s Rules for Integration and Management. Lori Nelson believes that the Commission liaison should communicate with section leadership that before a section lobbies on behalf of the section, they must first poll their members.

Rob inquired as to the definition of “strong consensus” found in the letter on page 2, second paragraph. Gus replied that the term is intended to impress that it’s important to represent the section majority, not just the view of the section executive committee. Lori observed that requiring a 100% response from section membership would hamstring any further action. **Steve Owens moved that after effort to poll the section, 75% of section members must respond before the section can take a position. The motion died for lack of a second.** Discussion ensued. **Rod Snow then made a motion that the section have the ability to adopt positions on legislative matters as long as it has “strong consensus” from its membership consisting of a 60% approval rate of polled section members responding. Rob seconded that motion.** Discussion ensued. **Lori wants is expressly stated that section officers’ votes count as only one vote in**

the entire polled membership process. Motion, along with Lori's amendment, passed with Herm Olsen and Steve Owens opposed. Commissioners instructed John to add these key concepts to the Bar's policies and procedures.

2. EXECUTIVE DIRECTOR'S REPORT

2.1 Annual Convention Follow-up

John reported on the Annual Convention feedback obtained from the recent survey. Approximately 450 lawyers were in attendance, up from 367 in Newport last year and from 438 two years ago. The average attendance for the Annual Convention is generally around 429 lawyers. He added that it was a very good meeting and then asked for Commissioner input. Gus said that Saturday's session attendance was "dismal" and we should look at arranging for more substantive topics so more lawyers will want to attend during that particular time frame. John said that Bar staff suggestions included shortening the Annual Convention brochure and moving the Bar's Annual Report to the Fall Forum. In response to Rod's inquiry, John replied that while we do not know yet how we came out financially we do heavily subsidize this event.

2.2 Review Commissioners' Lobbying Assignments

John said the most important and effective way to communicate with legislators is one-on-one contact. Scott added that if there is initial contact before the legislative session, then legislators are far more likely to listen to concerns during the session when they are overwhelmed. John would like to obtain a commitment from Commissioners to contact their legislators and will provide a list of bullet.

2.3 Malpractice Insurance Information Update

John said collecting this information has placed a significant burden on staff this year. Fifteen lawyers have not yet responded despite e-mail contact, several phone calls and a recent letter. Because the Court indicated that disclosure was mandatory, administrative suspension for failure to renew will be the next step in the process.

2.4 Real Property Tax Issue Update

Bruce Olsen of Ray Quinney & Nebeker recently represented the Bar at a hearing before the Tax Commission. That entity is deciding if the Bar qualifies for the same tax exemption that the Law & Justice Center enjoyed. The Commission is limited, however and can only collect back taxes for the previous four years which amounts to approximately \$50,000.

2.5 Review Fall Forum Awards

John announced he is anxious to receive nominations from Commissioners for the upcoming Distinguished Community Award and the Pro Bono Award.

3. ACTION ITEMS

3.1 Approve Dispute Resolution Section Bylaws Changes

Chair of the Bar's Dispute Resolution Section, Michele Mattsson, along with Kent Scott, appeared to present the proposed change to the section's bylaws which would add the language, "From the date of their initial admission to the Utah State Bar and continuing for two years (two billing cycles) thereafter, all new admittees shall be given free admission to the Dispute Resolution Section of the Bar." Rod Snow would like to see a CLE on how to be an advocate in a mediation proceeding rather than just focusing on the role of a mediator. Dean Chodosh also suggested focusing beyond litigation and addressing negotiation which should improve membership and CLE value. In response to Lori's question, Michele replied that the section has student representatives and has held CLE's at both law schools. **Scott Sabey moved to approve the new language. Herm Olsen seconded the motion which passed with none opposed.**

NEW ITEM:

Lowry extended a warm welcome to Karthik Nadesan, the new Minority Bar ex-officio member. Sharon Anderson, the new Paralegal Division ex-officio member, was also welcomed and thereafter issued an invitation to the Commissioners to attend a light breakfast at Snell & Wilmer on September 28th sponsored by the Constitutional Law Section where a representative from the ACLU will be speaking.

3.2 Review LegalMatch Contract Renewal

Lowry said the Commission needs to decide whether to renew or terminate the current contract with LegalMatch. If we decide to terminate, notice needs to be given by September 21, 2007. He further stated that most of the membership does not appear to favor LegalMatch since it was instituted although some lawyers have done very well under this system. Rob interjected that he has not had a single positive response in all of the feedback he has received and Felshaw agreed with Rob's sentiments. After further discussion, **Lori moved to terminate the contract. Scott seconded the motion which passed with none opposed.** Lowry added that preliminary work will begin on fashioning an internal lawyer referral service modeled after the Washington State Bar.

3.3 Appointment to Self Represented Parties Study Committee

Lowry announced that since his resignation on this Committee, there is now a vacancy. Rob Jeffs and Laurie Gilliland both expressed interest in the position and Lowry then appointed Rob with the Commission's approval.

4. DISCUSSION ITEMS

4.1 City Attorney Request for Emergency Legal Assistance Plan

Lowry said he had received the letter (Tab 6) from the Salt Lake City Attorney relating to emergency legal assistance in the event of a large scale disaster. He said that the Southern Utah Bar Association stepped up during the St. George floods for insurance claims (and disbursement of other funds) providing an invaluable service to the community. Stephanie Pugsley said that during the Katrina disaster, the ABA Young Lawyer members were instrumental in sending an initial e-mail to lawyers using Bar resources (such as listserv) and that they answered 1-800 number phone calls. The dispensed information pertaining to how to make a claim, etc., for the entire state and not just in the immediate New Orleans area. This plan was put in place before the disaster and was a key component to enlist help outside the disaster area. Gus likes the idea of a response plan rather than a group of volunteer attorneys and Rob suggested disseminating basic resource information to volunteer attorneys rather than information pertaining to a specific type of disaster. Steve Burt agreed with Rob.

Sharon Anderson observed that formulating this plan would be a great project for the Paralegal Division to work on by collecting data. In response to Karthik's inquiry, Lowry responded that we don't know if our technology communication devices (servers, etc.) are all centrally located here and capable of performing in the event of a local disaster and Lori agreed that we need to examine our own technical infrastructure. Gus suggested inviting Ed Rutan to conduct a presentation at a future Commission meeting and Lowry also suggested inviting the Salt Lake County bar to attend Ed's presentation. Scott Sabey then suggested distributing information to the local Bar presidents. Lowry said he will respond to Ed's letter by informing him that the Bar "is evaluating a plan" and will suggest that Ed contact the Salt Lake County Bar.

5. CONSENT AGENDA

By policy, the July 18, 2007 minutes are approved without amendment.

MEETING ADJOURNED AT 12:00 P.M.

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- 1) Invitation to the Jackrabbit Bar
- 2) Committee charges
- 3) Draft letter to Section chairs