

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

December 7, 2007
SALT LAKE CITY, UTAH

Present: President V. Lowry Snow and Commissioners: Steven R. Burt, Mary Kay Griffin, Robert I. Jeffs, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens and Scott R. Sabey. Ex-Officio Members: Sharon M. Andersen, Gus Chin, Hiram E. Chodosh, Laurie D. Gilliland, Charlotte L. Miller, 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, Christian Clinger, Yvette D. Diaz, Curtis M. Jensen and Rodney G. Snow. Ex-Officio Members: Paul Moxley and Kevin Worthen.

Minutes:

1. PRESIDENT'S REPORT

NEW ITEM:

Lowry Snow reviewed the Commission calendar. He said that funds are available for five Commissioners to attend the upcoming Western States Bar Conference and invitations have been extended to members of the Executive Committee. If other Commissioners are interested in attending this convention, please contact him.

1.1 Program Review Committee Status Reports

Steve Owens reported that the Communications Review Committee had met and are preliminarily focused on the Bar's public relations. They are scheduled to meet later today with Christine Critchley and John Baldwin on related, but broader communications issues.

Rob Jeffs reported that he and Lowry met with Lincoln Mead on the Technology Services review. They gave Lincoln direction to gather information and data. Rather than seek outside help for this assessment in light of the cost, Lowry and Rob will do the initial review and then decide how to proceed. They expect

Lincoln to provide the requested information by January 1st and will go from there.

Herm Olsen reported that the Commission's Access to Justice Review Committee will be meeting later today.

1.2 Report on Lawyers Assistance Program Marketing

Lowry directed attention to the Blomquist Hale (aka LAP) report behind Tab 2. He said that the second page of the report reflects the utilization rate which, unfortunately, is not very high. This low rate is of concern because: (a) the need for usage is probably there; and (2) financially, it is very expensive to support this program. He further reported that the Bar is continuing to educate members about this program by dedicating the next *Bar Journal* publication to LAP.

Efforts to coordinate Lawyers Helping Lawyers (LHL) and the LAP program are ongoing. Richard Uday, John Baldwin, Lowry and Dr. Hale (from Blomquist Hale) have had several meetings to discuss educating members and thus, better promoting the program. Blomquist has developed a postcard (at their own expense) which will be mailed to our members. In response to Scott's inquiry, the postcard will be mailed to the judges' residences since they are active members of the Bar. Lori Nelson made suggestions for editing on the postcard; e.g., move the terms "free" and "confidential" up higher on the list. John then distributed a new handout outlining our marketing efforts.

Hiram Chodosh asked if a study has been conducted to assess why lawyers are not seeking help and suggested making it a professional responsibility to seek assistance when appropriate and needed. Lowry responded that through the new OPC diversion program, some progress has been made in this area. He also said the Court's Professionalism and Civility Committee is expanding its efforts to include a referral panel and Matty interjected that one member of the panel will have some expertise in stress management. John responded to Dean Chodosh's inquiry by noting that the ABA did an assessment a few years ago and found that pride, rationalization, and prominence in the community all affect utilization of EAP programs.

By way of example, Rob Jeffs expressed concern over LHL's non-responsiveness over the past year but Lowry said that in a recent meeting with Roger Cutler (LHL current outgoing chair) and David Bernstein (in-coming chair) they indicated that LHL does receive referrals, especially from judges, to which they routinely respond.

Dean Chodosh then suggested making presentations at the in-state law schools to perhaps include information as to how to be more proactive so that prospective lawyers are aware earlier in the process what help is available. Lowry said perhaps the YLD could consider spearheading this outreach to the law schools.

He further stated the Blomquist agreed to travel (at their own expense) to the Bar's Spring and Annual Conventions and to attend the Fall Forum in order to conduct CLE seminars. He concluded that we will continue to push efforts in this area and then do a re-evaluation of current program, including cost, utilization, etc., sometime in the future.

1.3 Report on Scheduled Meeting with Governor Huntsman

Lowry said that he, John Baldwin and Nate Alder have an upcoming meeting with Governor Huntsman. He is currently working with Rep. Steve Urquhart on increasing funding to "Access to Justice" and may talk to the Governor about that issue. He asked Commissioners for ideas to discuss with the Governor at the upcoming meeting. Dean Chodosh suggested talking about increasing efforts to "low bono" programs because if we are not serving the lower middle class and the small businesses legal needs, it is an economic loss to the community. The Dean has already discussed this issue with the Governor and has sought funds for community development to emphasize the economic returns on this concept vis a vis governmental expenditures.

1.4 Reminder of Commission and President-elect Elections

Lowry reminded everyone of the application deadlines for offices of Commissioner and President-elect.

1.5 Report on Fall Forum

Lowry reported that 588 people attended the Fall Forum and observed that it is a very successful program which is growing significantly. Lowry said attorneys are looking for intensive, hands-on experience which the Fall Forum provides. He noted that the Governor was the keynote speaker at the luncheon. Gus opined that the Bar may well need to hold a two-day Fall Forum convention in the future. John said, in response to Lori's inquiry, the vendors were very happy with their exposure at this event.

1.6 Report on Group Insurance Meeting

Lowry reported that the greatest need for malpractice insurance seems to be with small firms and solo practitioners and that we need to do all we can to facilitate coverage. He has scheduled a meeting with Denise Forsman (Marsh), Dale Kimsey (chair of solo/small firm) and Grant Clayton (chair of Bar's member benefits). Because Marsh is the Bar-endorsed carrier, Lowry and others would like for the Bar to: (a) provide better links for access to Marsh information through the Bar's homepage and the solo/small firm website; (b) the link would immediately go to a pre-application page rather than an e-mail inquiry; and (c) prepare FAQ's to be posted on the solo/small firm's website with a link to the Bar's homepage.

2. EXECUTIVE DIRECTOR'S REPORT

2.1 Report on CLE Webcasting Status

In response to Felshaw's inquiry on instituting webcasts for brown bag type CLE's, John replied that while webcasting looks great on paper, we currently have only two "T-1" lines and it would cost approximately \$300 more a month (in addition to the staff costs involved) to add more. He also reminded Commissioners that webcasting is considered "self study" and therefore is limited for CLE credit. Scott Sabey said we need to strongly encourage section participation in this effort because it would be a good use of section funds and the webcast costs could be based on membership numbers. John responded that there has not been an enthusiastic response from the sections so far and it may be difficult to encourage attorneys to sit in their office to earn CLE credits.

In response to Herm's questions, John reported that both individual/office broadcasts (self study CLE credit) and broadcasting to a central location with a subsequent discussion with a moderator (regular CLE credit) are possibilities. Dean Chodosh said that the University of Utah does webcasts regularly and there is a huge archive of materials which is free. Rob inquired if we could post links to these live webcasts as well as an upcoming schedule. Dean Chodosh will work on trying to flag CLE approved University webcasts for this link. **Felshaw moved to work out and implement these webcast details. Lori Nelson seconded the motion which passed with none opposed.**

2.2 Discussion of Office of Professional Conduct Annual Report

Billy Walker (to summarize OPC's Annual Report) and Jeannine Timothy (to answer questions relating to CAP) were in attendance for this portion of the meeting. Jeannine distributed a *Bar Journal* article entitled "The First Decade: The Consumer Assistance Program Has Proven Itself to be a Valuable Program". John then presented background information of the CAP structure. In response to Rob's questions about who does the initial complaint assessment, Billy explained that under current rules, CAP has no real existence as it is policy based and if a notarized complaint comes in, the only authorized route is to OPC under RLDD 10. Lowry reported that he had the opportunity to review the ABA's LHL report which talked about the correlation between discipline problems and impairment issues and inquired if OPC has data on this. Billy responded because these issues are handled administratively through the Ethics and Discipline screening panels or by other administrative methods, attorneys generally are not forthcoming about impairment issues. John, in response to Herm's inquiry about prolonged screening panel continuances, said that it is generally the Ethics Panels making these types of decisions rather than OPC. Billy added that since the hearing panel is

comprised of volunteers who are reluctant to grant last minute delays, this issue can be a difficult one.

Steve Owens then raised the idea of an “ethics czar” to handle inquiries from attorneys who have already committed violations. Billy said that Missouri has a similar position but they are in the minority of jurisdictions. The majority of attorneys who contact the ethics hotline seem to be satisfied and OPC asks at the outset if they are “self-reporting”. Felshaw expressed his interest also, and remarked that an OPC ombudsman to provide minimal guidance would be a great asset. Lowry interjected that we have examined this idea over the years and are hard pressed to justify the necessary funding. Charlotte Miller said if a lawyer receives a letter from OPC, they can always retain counsel and that an ombudsman may actually interfere with the disciplinary process. She believes, however, that amending RLDD 10 to get more matters to Jeannine initially would be a good thing. Scott Sabey sees OPC’s Ethics Hotline as a valuable and pre-emptive service and Karthick Nadesan observed that in light of how valuable the Ethics Hotline is, there should be more publicity about this service. Billy replied that certainly more publicity could not hurt but that they do plenty of CLE and other seminars to publicize availability of the service.

Jeannine then explained how the CAP process works, e.g., Bar receptionist routinely refers complaints to CAP first. Rob would like to emphasize Jeannine’s services more and would like a Commission group to review how to accomplish this. Billy said the key is trying to resolve issues before there is an actual complaint. Rob will discuss this issue with the Ethics and Discipline Committee chair.

2.3 Report on Status of Public Education Project

John has met with John Becker on the Commission’s Public Education project. We need to implement a regular means (monthly) to better broadcast Bar messages. Becker is working on this, including re-drafting an e-bulletin format to include “do you have any questions or comments for the Bar”.

3. ACTION ITEMS

3.1 Client Security Fund Report

Pam Urry reported on behalf of David Hamilton. This period was a relatively light one as compared to other periods; the requested pay out was \$11,375. Pam elaborated on the Lynn Spafford matters in response to Rob’s questions. In response to Herm’s and Steve Owens’ questions regarding collection from respondents, Katherine noted that: (1) restitution is routinely a component to being readmitted/reinstated; and (2) respondents’ assets are virtually untouchable (protected) or nonexistent, mostly due to dissipation, especially with substance

abusers. **Steve Owens' made a motion to approve payment of \$11, 375. Rob seconded the motion which passed unopposed.**

4. INFORMATION ITEMS

4.1 Women Lawyers Request for Funding

Laurie Gilliland reported that there is an ongoing national discussion about the difficulty of the advancement and retention of women lawyers. WLU would like to replicate the national-level efforts in Utah by: (1) surveying background efforts already underway; and (2) publishing a report and recommendations related to the findings. However, funding is needed for this initiative. Nate Alder and Chief Justice Durham are already on the advisory board and some larger firms are already showing their support. Rob said that this request raises the issue of the Commission's grant policy which states that requests for funds should be examined in June during the budgeting process. Felshaw agreed with Rob.

Steve Owens, however, disagreed. He opined that the WLU request is not similar to other requests and is consistent with the Bar's vision and mission statements in dealing with a systematic problem related to lawyers. Gus said it is a laudable program, but an equal concern should be minority lawyer retention. He suggested that WLU should broaden its focus from gender diversity to include ethnic and geographical diversity. Laurie said that while minority retention is certainly a concern, this is a WLU effort and that is where the focus has to be. Lowry will place this issue on agenda for action item at the January meeting. Lori asked John to e-mail her the Commission's grant policy.

4.2 Renquist Award and Jackrabbit Bar

Lowry asked Paul Moxley to attend the Rehnquist Award ceremony for Chief Justice Christine Durham. Lowry reported on Paul's behalf that it was a great success and garnered recognition for Utah.

4.3 Judicial Council Report

Scott reported that the Judicial Council has concerns over the judicial selection issues related to judicial retention. He further reported that the new courthouse planned for St. George will be breaking ground in February and a new online Court assistance program in the estate planning area (conservatorship accounting) is up and running. He is also working with Connie Howard to increase judicial participation at the St. George and Sun Valley conventions.

4.4 Mentoring Program Status Report

Margaret Plane reported that the feedback on the mentoring program from the Fall Forum attendees was very different than Sun Valley. She said that attendees at Fall Forum believe it should be mandatory and a condition of licensure. Her recent visit to Georgia Bar revealed that this program allowed a fundamental shift in CLE with more CLE being individually tailored to new lawyers. After implementation, Georgia's CLE non compliance of new lawyers dropped from approximately 30% to 1%. Georgia also found that voluntary programs in this area do not work that is why after their pilot program they immediately went to a mandatory program. The program has been successfully operating as mandatory program for two years now.

She further reported that a recent meeting with Supreme Court on this proposed program was very positive. The Justices raised a number of questions which need to be addressed, including whether judges can participate. Georgia and Ohio see court involvement as crucial and our Supreme Court seemed willing to play that role. The Mentoring Committee is currently looking at Fall 2008 or Spring 2009 for implementation and will be exploring the ramifications of Georgia's three year sunset provision. In Ohio, the Supreme Court has a full time administrator and in Georgia, the program is handled by Bar staff but is separate from CLE. Funding could be wrapped into the existing CLE program and automation (e-mail, etc.) can cut costs considerably. In Georgia, mentors serve for a year and there is a twelve month compliance period but the process can be completed earlier. Karthik and Stephanie Pugsley noted that young lawyers/law students are excited about this possible program. Stephanie noted that the program is also perceived by some students as a possible job opportunity. Steve Burt said that from a public viewpoint, it is a far better step than, for instance, mandating malpractice insurance. Lowry noted that this program will give Utah a chance to become a leader in this field.

4.5 Governmental Relations Committee Report

Lori reported that the Legislature is considering search and seizure constitutional amendments arising from concerns expressed by the Utah Attorney General's office. She will be providing in-depth legal issue memo for the January meeting. One issue is that Utah has historically created its own body of law/interpretation of the Utah constitution. Rob opined that this may be a dangerous road to embark if we adopt another jurisdiction's case law on a legal issue. **Steve Owens made a motion to oppose the amendments. Rob Jeffs seconded the motion.** Herm, however, suggested waiting. **After discussion, Steve Owens withdrew his motion.**

4.6 2011 Annual Convention Site

John laid out several issues with regard to the 2011 convention site. If we want a change in venue, Commissioners need to let the Executive Committee know; otherwise, it will be held in Sun Valley. (This issue will not be on the agenda for the January meeting unless the Commission asks otherwise.) Gus reminded everyone of the Commission costs with the convention was in Newport Beach, CA which was double that of Sun Valley and urged prudence in this area.

5. CONSENT AGENDA

By policy, the November 9, 2007 minutes are approved without amendment (Tab 10).

By policy, the Appellate Practice Section Bylaws are approved without amendment (Tab 11).

MEETING ADJOURNED AT 12:20 P.M.

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- (1) Blomquist Hale Marketing March 2006-January 2008
- (2) *Bar Journal* Article "The First Decade: The Consumer Assistance Program Has Proven Itself to be a Valuable Program.