

UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES

DECEMBER 5, 2008  
LAW & JUSTICE CENTER  
SALT LAKE CITY, UTAH

**Present:** President Nathan D. Alder and Commissioners: Christian Clinger, James D. Gilson, Mary Kay Griffin, Robert L. Jeffs, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey, and Rusty Vetter. Ex-Officio Members: Simón Cantarero, Julie Eriksson, Eve Furse, James Gordon (Interim Dean for J. Reuben Clark), and V. Lowry Snow. Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Katherine A. Fox, and Supreme Court Liaison Marilyn (Matty) Branch.

**Excused:** Commissioners: Steven R. Burt, Yvette D. Donosso, Curtis M. Jensen and Rodney G. Snow. Ex-Officio Members: Hiram E. Chodosh, Charlotte L. Miller, Paul T. Moxley and Karthik Nadesan.

**Minutes:**

**NEW ITEMS:**

Nate Alder discussed the need for the lawyer community to participate in the Utah Food Bank drive this year. He also encouraged the Board's participation in Leonard Burningham's annual legal community food & clothing drive.

Nate would like to expand "Law Day" so that it encompasses more events and projects by partnering with other organizations. In response to Jim Gilson's inquiry, the Board was apprised that Richard Dibblee and YLD most heavily participate in planning these events.

In addressing the topic of the Commission election process that was extensively discussed at the last Commission meeting, Scott Sabey said there may be problems with conducting the Commission election online because we are an integrated Bar. Rusty said that we could send postcards asking for ballot preferences to those who do not have or do not provide e-mail addresses. Nate asked John to put this item on the "to do" list. Eve Furse said Women Lawyers are in favor of paperless ballots. Steve Owens observed that candidates' statements will be online which will save both the Bar and the candidates money. Rusty said we may want to think about shortening the timeframe for Commission

voting. Nate agreed and said the voting period should be reduced to 15 or 20 days from the current 30 days. John will outline prospective changes to the election process for Commission review.

Several comments were received concerning the Mentoring (New Lawyer Training Program) petition. Matty said that a court conference is scheduled for December 10<sup>th</sup> to consider and discuss those comments and whether the court will approve the petition.

In response to Herm's questions, John said that we recently paid the Bar's newly increased property taxes, but under protest.

Nate has invited the Consumer Assistance Program coordinator, Jeannine Timothy, to the next Commission meeting. On a related note, Rob Jeffs voiced concerns over OPC complaints being required to be signed and notarized because then they cannot be referred to Jeannine first.

Eve Furse reported that the Women Lawyers recent survey is doing well with 2,300 responses received as of the date of the Fall Forum. They need a minimum of 2,500 responses for statistical validity; January 15<sup>th</sup> is the deadline.

## **1. PRESIDENT'S REPORT**

### **1.1 Report on Utah Nonprofits Association Luncheon**

Nate remarked that it was a very smart move on the Bar's part to join the Utah Nonprofits Association. Community leaders from all sectors attended the "Philanthropy Day" event which was held on December 4<sup>th</sup>. Our top lawyer volunteer, Troy Booher, was honored at this event.

### **1.2 Public Education on Fair & Independent Judiciary**

Nate said that we responded as well as we could under the circumstances to Judge Hilder's nomination to the Court of Appeals. Extensive discussion ensued. One point in the discussion was provided by Scott who observed that while there are objective and subjective standards surrounding judicial nominations, we can only take positions on the process. Nate added that we are holding off publishing an opinion piece at this point for various reasons. Consensus was that we need to make lawyers more aware of the process, regardless of whom is nominated. Christian observed that the general citizenry does not truly understand the judicial appointment process and why it is so important. Eve said that we also need targeted education for lawyers who apply for judgeships. Rusty added that there are those lawyers who have transitioned from litigation to the corporate/transactional areas were suitable candidates who could increase the applicant pool. Lowry said we should extend the "sphere of influence" to those in the business world who could be useful and supportive in these areas.

### 1.3 Legislative Session Calendar

Nate said that Governor Huntsman and his staff will meet with John Baldwin, Steve Owens and him on January 7<sup>th</sup>. The lawyer legislative breakfast has been rescheduled from January 30<sup>th</sup> at 8:00 a.m. to January 29<sup>th</sup> at 7:30 a.m. Further discussion unfolded on legislative related issues. Rob Jeffs has spoken with Rep. Lorie Fowlke and does not yet have sense of what is of particular concern to the legislature body *vis a vis* talking points for the legislator breakfast. Nate said perhaps we should stress the judicial budget cuts; Matty Branch and Scott Sabey opined that staff reductions and court closures were real possibilities. Nate observed that budget cuts to the judicial branch during an economic downturn are particularly difficult because needs increase. He will be meeting with Sen. Waddoups and John T. Nielsen to try to arrange for a dinner with Republican leadership. Nate further said that he, Lowry Snow, Scott Sabey, John Baldwin and Steve Owens have scheduled a meeting with Senator Clark (Speaker of the House) on December 17<sup>th</sup>.

Nate also reported that on Tuesdays at 4 p.m. conference calls will be held during the legislative session. He continued that a free lunch (CLE opportunity) is being contemplated for sometime during the legislative session at Capitol, and it tentatively is entitled "Utah State Bar Day." Nate asked John to draft an email with legislative related dates and times for Commissioners to review. John will also do a draft letter for Commissioners to make contact with legislators.

### 1.4 Commission Election Campaign Discussion

Nate encouraged Commissioners to run for re-election and for office of President-elect. Petitions for President-elect are due by January 2<sup>nd</sup> and petitions for open Commission slots are due February 10<sup>th</sup>. Rob's, Christian's and Jim Gilson's seats will be all open. Rusty asked that the petition form be placed on the website and made generally available to all members year round. He continued that there may be an appearance that we are trying to "protect" incumbents by limiting access to a small window of opportunity for the general membership. Nate and Scott agreed with Rusty's observations. **Steve Owens moved to make the petition form generally available by posting it online; (effective next year). Scott seconded the motion which passed unopposed.** Jim Gilson would like clearer instructions on ballots, i.e., "vote for up to 3" candidates or "must vote for 3" candidates. We could also post names of those who have completed and returned petitions.

### 1.5 Access to Justice Council Update

Scott Sabey said that Steve Sullivan has co-chaired the Access to Justice Council for three years along with Justice Nehring. Steve would like to have a replacement for his position which requires strong leadership skills. Scott said this is an established 501(c)(3) organization and they need someone who has business experience and particularly fundraising efforts. In response to Steve Owen's questions, previously there was no oversight of uniform distribution of available legal services, so the underlying purpose of the Access to Justice Council was to make sure all the varying areas of needs in the

community are being addressed. We need to help with names for possible candidates for this position.

## 1.6 Ideas on Reducing Expenses to Replace Lost Reserves

John distributed a memo with a number of ideas on how to reduce Bar expenses. Nate began the discussion by stating that he does not want to curtail necessary and appropriate Commission activities at this point, but we need to be poised to act. John continued that the Bar is in good financial health and the memo does not include a reduction on services, programs or core operations. It also does not include proposed reductions for contributions to UDR, LHL, Casemaker or elimination of staff. Rob said our bigger responsibility is to effectively manage the Bar rather than focus on replacing reserves. Nate said we could adopt a policy similar to the Alaska Bar's by spending down the reserves and having a zero-based budget. As a consequence, however, there would be no monies left to fight a harmful initiative or unexpected crises. Rob said we currently have a zero-based CLE and he does not see any reason why we need to continue that practice. He continued that we have obligation to provide good, low cost CLE, but we could provide other higher cost CLE opportunities as well. He noted that other bars use CLE as a profit center. Mary Kay said for accountants, mandatory continuing education provides 30-40% of the association's revenue. Matty said the justices were interested in increased CLE revenue when Mary Kay met with them recently and discussed this issue.

Nate then proposed charging a "convenience fee" on credit card transactions as a significant potential cost saving avenue. He also said taking credit cards is an "administrative nightmare" according to Jeff Einfeldt. Lori said governmental entities generally charge a "convenience fee" on credit cards. Steve Owens noted that we need to accept use of credit card transactions from our members. **Scott moved to charge a 5% fee on all credit card transactions rounded up to the nearest dollar. Lori seconded the motion.** Rusty interjected at this juncture that merchant banks do not permit percentage convenience fees, so we need to set a "regular fee." **Rob amended the motion to develop an internal policy of a 5% fee to be converted to a fixed dollar amount and apply this fee to all card transactions.** Further discussion ensued. Christian suggested also accepting electronic checks. Lowry suggested exempting debit cards so our members are given another payments method to avoid paying the "convenience fee" in addition to paying via check. **A vote was taken and the motion passed with none opposed. The policy will take effect January 1, 2009.**

Nate said there appears to be a consensus about sending representatives to national meetings for a variety of reasons. He is concerned that if we reduce number of days Commissioners attend at annual and spring conventions, it will change the nature of those meetings. Further, it is important that we hold Commission meetings at those events. Lori emphasized that attendance is essential for Bar leadership purposes. **Lori moved to reduce reimbursement at the Annual Convention to 2 days and at the Spring Convention to 1 day. Mary Kay seconded the motion.** Further discussion ensued. Felshaw said that this is a relatively small amount of money but it is important to support Commissioner's attendance at these events and would like to maintain current

reimbursement policies. Christian concurred with Felshaw. Rob said that the reduction may affect individual attorneys who serve on the Commission during the difficult economic times where they essentially will subsidize their own attendance. He then reminded everyone that this issue was discussed during Executive Meeting.

Rusty agreed with Lori and suggested reimbursing Commissioners by providing a flat set amount only. Christian said that a significant benefit of Spring Convention is having a luncheon with southern Utah lawyers prior to the Commission meeting and that if we move the Commission meeting to Friday, we will miss that opportunity. Jim Gilson agreed that reduced days attendance at Sun Valley with a flat reimbursement fee would be helpful. Scott said Felshaw's point is valid and that a change will hurt solos/small firms. We also need to be present to introduce speakers. He would like to leave the structure the way it is but move Commission meeting to later in the afternoon. **Lori withdrew her motion and Mary Kay withdrew her second. Rusty moved to reduce the days attendance at Bar convention for reimbursement purposes. Jim Gilson seconded the motion. Motion failed. In favor of the motion were Steve Owens, Jim Gilson, Rusty and Nate. Opposed to the motion were Christian, Rob, Felshaw, Lori, Herm, Scott and Mary Kay.**

After conducting a straw poll, Steve Owens said that we will have a Commission retreat and provide accommodations for those who are outside the Salt Lake area. Consensus is that the retreat needs to be an all day event along with newly elected Commissioners in attendance.

## **2. EXECUTIVE DIRECTOR'S REPORT**

### **2.1 October 2008 Financial Report**

John reviewed the October financials and said that we are in the black so far this year. Slow replacement of new staff helps financially and we are ahead in licensing fees but a little behind in admissions fees. The Budget and Finance Committee will meet in a few weeks to review the Lehman Brothers issue and Bar reserves. They have always advocated large reserves. Mary Kay said it is always prudent to have 3 to 4 months reserves but mandatory fees somewhat help to offset a smaller reserve. She warned, however, that major building issues could severely impact the Bar's financial status.

### **2.2 Lehman Bankruptcy Claim Update**

Nate reported that the "right communications" are in place with Zions Bank now and John has everything under control with what we need to do with the Lehman Bankruptcy matter. Wilmington Trust will file a Proof of Claim and we are working with Kami Peterson and Ginger Smith in Zion's legal department. Rusty said if we do not file claim on time we have lost everything so it would be wise to file a claim now and amend it later, if necessary. Nate said that by January 20<sup>th</sup> we need proof that we filed the claim.

John explained details and said that the deadline to file is January 30<sup>th</sup>. Steve Owens would like a copy of the Proof of Claim once it has been filed.

### **2.3 Review Admissions Ceremony Date Change**

Nate said the date of the February 2009 Bar Exam Admission Ceremony has been changed to May 15<sup>th</sup>.

### **2.4 Report on Staff Changes**

Postponed.

### **2.5 Report on Fall Forum**

John reported that we broke about even and it was a good event.

### **2.6 Report on Petition on Bar Management**

John said that the Petition to modify rules relating to the offices of President and President-elect was filed on November 24<sup>th</sup>.

### **2.7 Report on UPL Case**

Katherine reported on the Mary Ann Lucero case which resulted in a contempt order and award of attorney's fees.

## **3. ACTION ITEMS**

### **3.1 KCPW CLE Proposal**

John discussed the KCPW CLE proposal outline behind Tab 5. He said that there are a number of positive aspects about this proposal with one downside being the loss of CLE revenue. Connie Howard is currently fathering input from sections. The major positive factor would be free public exposure. Lori believes, however, the public exposure could backfire. Rusty said he recently talked with Ed Sweeney who is also a member of the Bar. Ed will move forward with this opportunity even if the Bar does not. He is currently developing underwriting and will approach Minority Bar, Women Lawyers, and other sections for their assistance. He is concerned about the quality of these programs and wants to concentrate on large firm attorneys, if possible to ensure quality. Nate said we have talked to John Hafen (Federal Bar Association) and others and they are very interested in this concept. Rob said a radio format is very different from a CLE luncheon event vis a vis just "recycling" CLE content and we need to exercise caution here. Nate said lawyers need to present things from a consumer point of view and "recycling topics" will be acceptable if the format is restructured.

Lori said this idea has the potential for malpractice concerns and she believes the negatives outweigh positives. Rob inquired if it makes sense for us to do this if there is no revenue gained, e.g., what benefit do we actually derive from this endeavor? John responded that it would be a CLE service and public outreach for Bar in addition to the free exposure. Herm is in favor of trying the program. He said that it may or may not work but it is a good outreach opportunity. Rusty said the show is hosted as an online “streaming show” so we can reach members outside the immediate Salt Lake area. Nate we also can publicize to our members via the Bar’s E-bulletin.

Christian spoke on behalf of Scott Sabey and reiterated Scott’s concerns previously expressed at the last Commission meeting. Lori continued to express additional concerns over the drop in CLE revenue and the burden that will be placed on Bar staff and Bar resources. Rusty said the program will not take cold calls and there will be only minimal expense involved. He further said that the radio station wants this new program to work and will exercise reasonable control. Discussion continued of the potential benefits versus the concerns. **Steve Owens moved to adopt the program for a period of 9 months and then reevaluate. Rusty seconded the motion. The motion passed with Christian, Lori and Rob Jeffs opposed.**

### **3.2 Fund for Client Protection Hearings Report**

**Felshaw moved to approve the disbursement as proposed behind Tab 6. Christian seconded the motion which passed unopposed.**

## **4. INFORMATION ITEMS**

### **4.1 Judicial Council Report**

In Scott Sabey’s absence, Matty reported on the recent Judicial Council meeting. She said that the Council reviewed the proposed judicial budget cuts and the trend is to eliminate reporters, which is a 1.5 million dollar annual expense. The Council would like to upgrade technology to make electronic means better and more cost efficient but emphasized that there will be an exception to electronic filing for death penalty cases. She continued that if there is a 7% budget cut next year, the impact will be distressing. Nate would like to mobilize member forces on this issue. In response to Jim’s inquiry, John responded that the most effective means of legislative lobbying is by individual contacts. Nate said that on January 14<sup>th</sup>, the Bar will host a Past Presidents’ lunch at the Law & Justice Center to discuss issues like the new mentoring program. Prospective judicial budget concerns can be added to the agenda. Jim opined that we need to put together the underlying speaking points on these issues in an e-mail and send it to our membership. Nate said that about midway through the legislative session (February), he will send a E-bulletin with talking points on these issues. Lori suggesting contacting John T. Nielsen to handle this sensitive issue and Jim said lawyers need to have their clients contact their legislators with their concerns.

#### **4.2 Weber County Bar Report**

Felshaw introduced Kenyon Dove, President of the Weber County Bar (“WCBA”). WCBA has 200 “official” members and 50-100 “unofficial” members who regularly attend CLE events. Kenyon reported that within the last year they have implemented e-mail communications because actual mail was so expensive. WCBA has hired a part-time Executive Director, Cindy LaRose, to help with Bar activities, banking, reservations, arrangements for special events and board minutes. Every year WCBA tries to give their membership opportunities for service. In the past they solicited donations from businesses, then held a drawing at their Christmas party for the Christmas Box House event. Another service opportunity was the “Summer Splash Party” held at an aquatic center. Membership donations and food were given to St. Anne’s Center (a homeless shelter in Ogden). To help develop recognition of WCBA, they also have hired a graphic designer to develop a logo for name recognition and use on advertising, events, letterhead. They have developed a website with Brooke Bruno’s assistance. Some of their future project include: (a) developing a Weber County based lawyer referral service; (b) begin periodic newsletters; (c) hosting a ½ day or full day CLE event. They currently host 11 CLE events a year, including one ethics course. WCBA will be hosting the Commission on April 24<sup>th</sup> in Ogden.

#### **4.3 Creation of Awards Committee**

Postponed

#### **4.4 UMBA Report**

Postponed.

#### **4.5 Group Health Insurance Plan Update**

Steve Owens said that on Tuesday, December 9<sup>th</sup> at 10 a.m. he will be meeting with two underwriters (Moreton and ACE) on health insurance. He further reported that Tom Schaeffer and Tim Summerhill recently joined the committee.

### **5. CONSENT AGENDA**

By policy, the October 24, 2008 minutes are approved without amendment (Tab 9).

**MEETING ADJOURNED AT 1:45 P.M. WITH NO EXECUTIVE SESSION HELD**

**NEW HANDOUTS DISTRIBUTED DURING MEETING:**

(1) Memorandum dated 12/3/08: Ideas on Reducing Expenses.