

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

January 25, 2008
SALT LAKE CITY, UTAH

Present: President V. Lowry Snow and Commissioners: Nathan Alder, Steven R. Burt, Christian Clinger, Yvette D. Diaz, Curtis M. Jensen, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey, and Rodney G. Snow. Ex-Officio Members: Sharon M. Andersen, Gus Chin, Laurie D. Gilliland, Paul T. Moxley, and Karthik Nadesan. Supreme Court Liaison Marilyn (Matty) Branch. Executive Director John C. Baldwin and General Counsel Katherine A. Fox.

Excused: Commissioners: Mary Kay Griffin, Robert L. Jeffs, and Felshaw King. Ex-Officio Members: Hiram E. Chodosh, Charlotte L. Miller, Stephanie W. Pugsley, and Kevin Worthen.

Minutes:

1. PRESIDENT'S REPORT

NEW ITEM:

Lowry Snow, Nate Alder and John Baldwin have been invited to the Capitol for lunch to assist in finalizing pending legislation revising the judicial evaluation form and process. Earlier, John T. Nielsen, John, Nate, Sen. Chris Butters, Sen. Gregory Bell and Rick Schwermer met for an Independent Judicial Evaluation Committee discussion. Lowry had previous discussions with Chief Justice Christine Durham on this proposed legislation and her opinion tracks the Judicial Council's findings. She recommends that the Bar continue to work with legislative leaders to "tweak some language". Sen. Bell had indicated that the Bar is welcome to participate in judiciary's scoring issues but reiterated that the legislation is going to pass.

Christian Clinger asked if this bill was going before a committee today and Lowry replied "yes". Rod Snow requested a quick refresher on this legislation; in pertinent part, Scott Sabey responded that legislators are dissatisfied with the current evaluation form. The issue then transformed from revising the voter information pamphlet to revising the process and procedures for judicial evaluations. A thirteen-person Commission (the chair of which is CCJJ chair) consisting of a minimum of four lawyers, but no more than six, will oversee the

“grading” of judges. The current questionnaire has a 50% benchmark. The revised questionnaire adds new questions such as “should this judge be re-appointed”. The new form also sets a 70% benchmark and was added after the Court’s input. There are issues with who will receive this questionnaire as well as a new aspect of a “thumbs-up, thumbs-down” vote and, in turn, only allowing the judge a 100 word written rebuttal for the pamphlet. The Commission observed that there is no other area of voting where a commission tells the electorate how to vote re the thumbs up/thumbs down recommendation.

Lowry said Senators Bell and Hillyard are involved in this process and are optimistic that changes will result in a better overall evaluation process. They have emphasized that Utah is only state where members of the judiciary oversee judicial evaluation. Scott said that it is important to note that because the judicial evaluation form changes came out of a task force, the bill does not have to go through the regular legislative process to be enacted. Lowry said that we have also spoken with Sen. Bell about increasing judicial salaries, but we’ll need broad legislative support for that proposal in this legislative session.

1.1 Report on Meeting with Governor Huntsman

Nate, John, Lowry and Jason Perry met with Gov. Huntsman about a month ago. Three primary issues were discussed: (a) the judiciary; (b) the nominating commission for judges vis a vis the Bar’s role; and (c) our work providing input on legislative issues. They extended an offer to assist the Executive Branch with appropriate endeavors and also discussed diversity within the judiciary. The Governor suggested that this meeting should be an annual event and expressed his support for Rep. Urquhart’s Access to Justice bill to increase that entity’s funding.

1.2 Report on Meeting with Chief Justice Durham

Lowry reported that the quarterly meeting with Chief Justice Durham is slated for this afternoon. Nate, Lowry and John will be attending and report at the next Commission meeting.

1.3 Review Progress on Annual Priorities

Lowry reported that a Long Range Plan has been adopted and incorporated into the current operations review process. Steve Owens said he has held his fourth Communications Committee meeting and is currently preparing a report. The e-bulletin has new improvements and about a quarter of membership (out of those providing e-mail addresses) opens and presumably, reads the e-bulletin. Rob Jeffs, reporting on the Technology Committee, said that they are making progress. A technology audit report prepared by Lincoln Mead is due today and the committee report should be complete prior to the Spring Convention. Curtis Jensen said Connie Howard is gathering information related to member benefits and he will have his committee’s report complete by the Spring Convention also.

Nate reported that he has met with Joni Seko for three hours and has generated an admissions draft report. The committee also has a follow-up meeting scheduled for January 31st.

Herm Olsen said that a preliminary report on access to justice issues is currently circulating among committee members and Rod Snow said he has a meeting scheduled for next Thursday with the entire Mentoring Committee. Rod added that a revised draft of the mentoring program was sent out yesterday. The committee has resolved confidentiality concerns and is reviewing the Georgia program parameters and examining the details. Funding, Rod continued, is a big concern since the program will need at least a part time director, and preferably an experienced lawyer. To help with the funding, Bar sections could be used initially to support the program. An application fee may also be instituted, but that charge would be minimal. He further reported that there is a National Conference on Mentoring held in South Carolina in March that Matty and others, including himself, will be attending. His final report should be complete by the Annual Convention.

2. EXECUTIVE DIRECTOR'S REPORT

NEW ITEM:

Lincoln presented a slide show preview on the proposed lawyer referral directory (LRD) service while John distributed a handout addressing the proposal. The goal is to utilize the Bar's website technology to create a simple, turnkey and extremely low maintenance system to create a listing of lawyers with specific matching criteria which would be readily available to the public. Lawyers wishing to participate in the LRD will complete an online form providing their address, areas of legal focus, any languages spoken, and a website address if they have one. The Bar may at this preliminary stage and subject to change, (a) charge a nominal \$100 fee for simple listing on the directory to cover costs; (b) charge an additional \$100 fee to list additional information about the lawyer; and (c) provide a disclaimer stating that we are not endorsing competence. We will not require malpractice insurance.

Clients will fill out their search criteria and submit their request. Matching records that meet the criteria will be returned to the web page. At this early stage it is contemplated that the Bar may: (a) provide educational material explaining how to prepare to meet an attorney with some Spanish content; (b) help direct people to Legal Aid or other pro-bono/low-bono programs around the state with some Spanish content; (c) dedicate a phone number for support; and (d) establish a means to obtain feedback on the directory. There will be no expectation on setting a minimum fee or time for initial consultation and fees will be negotiable.

The LRD online web directory will be managed by Bar IT staff as part of day to day duties and will be focused on maintaining the information of participating attorneys. We will create an e-mail address to manage the LRD – lrld@utahbar.org. This address will route to Brooke Bruno and Lincoln Mead. We will have a demonstration ready for the Spring Convention and will begin marketing to attorneys in the licensing form sent out in May. We will follow that initial notice with notices in the June e-bulletin, the website, and in the July/August *Bar Journal* and in Sun Valley. We will market to the public through a press release, the phone book listings, Tuesday Night Bar, the website and other sources to be determined.

Lowry said the Bar’s primary directory will be more “global” than specialty bar online referral directories. We are using Women Lawyers and Minority Bar models for demonstration purposes. Karthik Nadesan interjected that to avoid competing with the Minority Bar’s service, there will be a link to the Minority Bar’s directory if a member of the public wants Spanish language oriented legal service. John, in response to various questions, said a number of important policy decisions remain to be finalized including those discussed above. Steve Owens disagreed with charging the \$100 fee and would like the service to be free for both lawyers and clients. Lowry agreed but suggested charging a fee for an “enhanced” service, e.g., supplying a link to the lawyer’s specific web page. Nate suggested inviting a Women Lawyers, Minority Bar and the Young Lawyers Division representative to attend a meeting to help ensure there is no competition between LRD and those referral services. Lowry concluded the discussion by stating that he will notify our publicist John Becker for a possible story when the LRD goes live.

NEW ITEM:

Nate reported that the Court’s Access to Justice Council currently includes legal service providers, legislators, and others. The Council has a minimum target goal of \$100,000 (and up to \$500,000) and has made a number of in-roads. Scott Sabey added that a breakfast meeting with legislators this morning was helpful to facilitate discussions on funding this program. Lori commented that an appropriations request for the Council’s work is already in the works.

2.1 Introduction of John Becker

John Baldwin introduced John Becker in observation that the Bar needs to “ratchet up” its public relations. John Becker has been our consultant for the last 20 years and is the perfect choice because he already understands the Bar’s structure. John Becker then reported on his recent efforts in the public relations area. His primary role is to make sure attorney-related bad news is balanced with good news. He is currently working with legal aid providers for an article on legal resources available to the public and several sections and committees have already contacted him for publicity assistance (e.g., Cache County Tuesday Night

Bar efforts). Christian suggested covering the Access to Justice breakfast next week here at the Bar. Nate mentioned the efforts the Bar staff, especially Christy Abad's recent efforts soliciting classroom books for Lincoln Elementary School. Katherine Fox added that the Bar (along with family members and friends) collected over \$5,000 worth of new and age-suitable books for the students at this inner city school.

Nate suggested inviting John Becker to next year's section and committee leadership training meeting to educate attendees on what he can do for their projects and programs.

2.2 Review Second Quarter Financials

John reviewed the balance sheet found behind Tab 1. December was \$90,000 to the good. He observed that costs are going up in light of inflation, salaries and items like renting the Salt Palace for the admission ceremony, noting that Bar expenditures are starting to catch up with income. Lowry said as the sheer number of lawyers increase, demands also increase which results in costs increasing.

3. ACTION ITEMS

3.1 Annual Convention Site 2011

Discussion ensued over the future site to hold the 2011 Annual Convention. Although an alternate site was not designated, **Lori made a motion to decline holding the 2011 Annual Convention at the previous Newport Beach Marriott site. Scott Sabey seconded the motion which passed.**

3.2 Appointment to Executive and Judicial Compensation Commission

John said we need to appoint John T. Nielsen's replacement on the Executive and Judicial Compensation Commission. Lowry recommended David Bird. Discussion ensued. **Scott Sabey made motion to appoint David Bird. Nate Alder seconded the motion which passed unopposed.**

3.3 Select Brothers Award for Advancement of Women

This year's nominees include Constance Lundberg, Steven T. Waterman and Susan Peterson. Discussion ensued over the candidates. **Nate Alder nominated both Constance Lundberg and Susan Peterson to share the award. Christian Clinger seconded the nomination. A vote was taken and the award will be presented to both Constance Lundberg and Susan Peterson during the Spring Convention.**

3.4 Select Uno Award for Advancement of Minorities

This year's nominees include Su Chon and Charlotte Miller. Discussion ensued over the candidates. **A vote was taken and the award will be presented to Su Chon during the Spring Convention.**

3.5 Distinguished Service Award for Southern Utah Bar Association

Nate made motion to present award to Southern Utah Bar Association for their efforts in setting up a comprehensive pro bono program. Rob Jeffs seconded the motion which passed unopposed.

3.6 Request for Action on UPL Complaint

Katherine Fox explained the UPL Committee's request to obtain approval for formal action in a current UPL case. **Steve Owens moved to approve the complaint for formal action. He also would like a report for the Commission showing costs every three months. Scott Sabey seconded the motion which passed unopposed.**

Katherine then took a minute to address the fact that UPL complaints involving "notarios" have greatly diminished. She attributes this fact largely to the development and wide distribution of 3,600 copies of the notario education pamphlets.

3.7 Nominate President-elect Candidates

Steve Owens and Scott Sabey announced that they both are running for President-elect.

4. INFORMATION ITEMS

4.1 Report on Jackrabbit Bar

Paul Moxley reported that the Jackrabbit Bar's annual event is slated for June 5-7th at Snowbird and includes a number of the western states. This is a great opportunity to develop institutional knowledge and Lori inquired if an invitation will sent to all Bar members via e-mail. Connie responded that we have already made arrangements for approximately 40 attendees and it may be difficult to accommodate additional attendance. Lori then suggested that the e-mail to members should specify that "space is limited" at the upcoming event.

4.2 Introduction of Brent Hale and Report on Blomquist Hale

Brent Hale was introduced as a representative for Blomquist Hale. Brent reported that the numbers of lawyers/families being served recently has significantly increased. Both the number of lawyers and number of family members have increased. The *Bar Journal* article and mailing seem to have been a factor and Blomquist is monitoring the utilization rate very closely. Rod Snow said that he recently referred a colleague and after one appointment, that colleague was referred elsewhere so it appears that there is no ongoing long or even short term, counseling. Brent responded that Blomquist can handle 98% of cases but a small handful are referred out depending on the nature of the illness or impairment, e.g., depression, etc. Lori commented that if the Bar's relationship with Blomquist does not include unlimited visits at no cost, then we need to revise the description of the program because that was the Commission's understanding. Steve believes we need to adjust the fee from approximately \$177 for an initial session since after that initial session, the client is referred out. Lori would like a quarterly report in time for the Spring Convention meeting. John responded that we could get updated information but not a comprehensive quarterly report by then.

Rod would like description of what disorders are covered along with expected length of treatment, etc. Brent said that if the problem is a medical issue, it is generally referred out for long term care. A normal EAP session is limited and refers the majority of cases into other programs. Blomquist is trying to set up a program where the majority of cases are treated "in-house" but they are not providing long-term service for significant issues like multiple personality disorder. Shawn Morris added that Blomquist evaluates first, then if the client is truly suicidal, they offer treatment but not as an in patient service. He further said that the spike in numbers was apparently due to self-referrals but in order to increase utilization rates overall, the number of referrals from "outside others" needs to increase. Rod interjected we need to educate leaders of large law firms about these services to increase utilization rates and Shawn responded that several law firms have recently asked for Blomquist presentations. Shawn also provided his personal cell phone number to facilitate communication.

4.3 Introduction of Denise Forsman and Report on Marsh

In attendance for this portion of the meeting were Grant Clayton (chair of Member Benefits Committee); Connie Howard (Bar staff); Blake Miller (co-chair of Member Benefits Committee); Denise Forsman (Client Executive for Marsh); Deborah Wade (senior VP at Marsh); and Thomas Camperelli (Assistant VP at Liberty Underwriters). Denise Forsman distributed a handout (Marsh USB Endorsed Professional Liability Insurance) and gave a background and history of the relationship between the Bar and Marsh. She explained that Liberty Insurance replaced Westport when Westport moved out of state after several large claims. Liberty (through Marsh) currently offers a 30% discount for new lawyers; a 20% discount for 2nd year lawyers and a 10% discount for 3rd year lawyers. They also

offer a 5% longevity credit after three years of service. Also, if the lawyer has three years of continuous coverage, the tail coverage is provided free which is approximately a \$9,000 savings on the average policy.

Denise then reviewed the new Bar insurance-related website enhancements e.g., an easy 8-10 question initial application for a premium quote which also includes a risk analysis for practitioners. Lowry added that those changes came as a result of a meeting with Marsh to facilitate insurance coverage to members.

Deborah Wade said the market is “soft” right now and rates are very competitive. She also stated that the risk assessment analysis on the website is a very useful new tool for lawyers. Thomas Camperelli said prices are currently going down and the drop probably will continue into next year. He also explained that there are some risks that are nearly impossible to place in today’s marketplace. Hard to place risks are not unique to our insurance program or even in the State of Utah. These hard to place risks include: class action law; intellectual property law (patent prosecution); securities law; collection practices; medical malpractice; and any account with prior loss history. These risks can be written, but the cost can be significant and the coverage may be exceptionally limited.

Denise continued that Liberty has right of first refusal for applications. This builds the program for long term and more lawyers. Other insurance carriers are available, however, including: Chubb; XL Insurance; Hartford Insurance Group; Interstate Indemnity Company, CNA Insurance Companies; Old Republic; One Beacon; and The St. Paul.

Denise said Marsh pays 1% royalty on all Marsh business in Utah. Steve Owens asked why should the Bar continue to endorse Liberty/Marsh excluding consideration of a royalty payment. Connie responded that the \$16-23,000 royalty is used as an “educational fund” and has no bearing on premiums. Grant explained that having one person (Denise) to contact gives us benefits that we do not have from other brokers with whom we don’t have the endorsement relationship. Deborah said the endorsement relationship is an advantage in order to negotiate good coverage and assistance in the form of resources, e.g., conventions, education, information to the Commission, etc. Grant added that Marsh/Liberty holds a CLE for risk assessment/avoidance CLE open to the entire membership. Connie added that no other carrier seems interested in an endorsement relationship at this point.

5. CONSENT AGENDA

By policy, the December 7, 2007 minutes are approved without amendment (Tab 7).

The house counsel/reciprocity admittee names were approved.

MEETING ADJOURNED AT 12:25 P.M.

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- (1) Basic Lawyer Referral Directory Proposal;
- (2) February 2008 Motion Applicants and House Counsel Names;
- (3) Steve Owens resume; and
- (4) Marsh USB Endorsed Professional Liability Insurance