

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

JANUARY 22, 2010
LAW & JUSTICE CENTER
SALT LAKE CITY, UTAH

Present: President Stephen W. Owens and Commissioners: Steven R. Burt, Christian W. Clinger, James D. Gilson, Mary Kay Griffin, Robert L. Jeffs, Felshaw King, Lori W. Nelson, Herm Olsen, Scott R. Sabey, Tom Seiler, Rodney G. Snow and Rusty Vetter. Ex-Officio Members: Nathan D. Alder, Michelle Allred, Chrystal Mancuso-Smith, Margaret Plane, James R. Rasband, Lawrence E. Stevens, Aaron Thompson, and Lisa Yerkovich. Bar Staff: Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee and General Counsel Katherine A. Fox. Supreme Court Liaison Marilyn (Matty) Branch.

Excused: Commissioners: Yvette D. Donosso and Curtis M. Jensen. Ex-Officio Members: Hiram E. Chodosh and Charlotte L. Miller.

1. PRESIDENT'S REPORT:

1.1 Review Calendar

Steve reviewed the calendar with emphasis on the Utah Minority Bar Association ("UMBA") mentoring marathon, the legislative teleconferencing process, breakfast with lawyer legislators, and the upcoming commission election. He noted that Yvette Donosso's seat is up and she may not run again, Felshaw King's seat is up and he may run, and Scott Sabey's seat is up and he may not run again. Rod Snow is the only nominee for President-elect and will need to run on a retention election. The Western States Bar Conference will be held on March 25-27, 2010 this year and Steve has invited members of the Commission's Executive Committee to attend.

1.2 Review Meeting with Chief Justice Durham

Steve announced that Matty Branch will be retiring this April. Matty has worked for the Court as the Appellate Court Administrator for 13 years and has been a tremendous asset as the Court's liaison to the Bar. Rob Jeffs continued that the Executive Committee's meeting with the Chief Justice included discussion of prospective New Lawyer Training Program ("NLTP") mentors who have past discipline and how to treat that factor in determining qualifications. The Court will make the final decision whether to appoint mentors who have past discipline. The Court also wanted to confirm that the Bar is aggressively pursuing electronic measures on licensing, Bar elections, etc.

The Court also asked the Bar to take a low profile with regard to lobbying on its behalf related to funding. Lori Nelson then reported on the Court's budget audit. There is a 4.1% cut pending which unfortunately will include furloughs. Matty indicated that she is anticipating two days of furlough and that alternating courts may be closed entirely for one day. The Judicial Council will make the decision on whether judges take these "voluntary" furloughs. John Baldwin reported that the Court is rolling out e-filing in Second and Third District Courts. There is an exclusive contract between Tybera and the Bar to assist with the e-filing process but lawyers are free to devise their own methods or to contract with other possible providers. Nate Alder wanted to know the term of the Tybera contract in light of recent "controversies" relating to exclusivity and choice of software. The Court has indicated that at some point in the future, e-filing throughout the court system, including the appellate level, will be mandatory.

1.3 Review Meeting with Governor Herbert's Staff

Steve discussed the Bar's recent meeting with the Governor's office. The meeting, in part, provided them with information about the Bar's Governmental Affairs Committee. They also discussed the Fifth District Court judicial opening and the professional services tax. Rob said that they reviewed the judicial selection process at the meeting as well. The Governor is concerned with diversity both on the nominating commission and the bench.

1.4 Review Legislative Session, Communications and Bar Day at the Legislature

Steve noted that last year Roger Tew was "informally" retained (approximately \$2,000-\$5,000) to lobby on the Bar's behalf on the professional services tax and that the Executive Committee is debating whether to retain him this year. Discussion ensued and those present concluded that while perhaps the tax won't be an issue this year, it probably will arise in the future. Roger Tew is unavailable to lobby on our behalf for this upcoming session. **Lori Nelson moved not to retain Roger Tew this year for two reasons: (1) the tax issue is not really "ripe" this year; and (2) John T. Nielsen assured us that he will monitor this issue for us if it arises during the session. Rusty Vetter seconded the motion** and added background information on the League of Cities and Counties becoming more aggressive regarding potential lobbyist conflicts. Scott Sabey again advised that while this issue is not active this year, it surely will arise later. James Gilson echoed Rusty's comment regarding conflicts and urged that a search be started for a replacement for Roger Tew. **Jim then offered to amend the motion. Lori responded by declining the amendment to her motion.** Nate Alder indicated that we may have limited choices for effective lobbying on this particular issue and suggested Mark Buchi. **The motion was put to a vote and passed with Steve Owens opposed.**

1.5 New Public Relations Focus on Limited Legal Representation

Steve introduced this topic by indicating that "limited legal representation" is also called "unbundling of legal services" and that "limited scope" is another term which is used.

Steve Burt noted that as a legal consumer, he views legal service as piecemeal and fails to understand why the public has difficulty with this concept. Steve Owens indicated that the courts would like to see more emphasis on “selected representation” or “limited basis” legal services from the Bar. Steve Burt stated that our money may be better spent educating the public on *when* to involve an attorney or *why* to involve an attorney, rather than trying to educate the public generally. Scott Sabey commented that there is a need to tailor limited representation to certain areas of law such as family law where there is rarely enough money to go around, let alone sometimes hire a lawyer. John observed that this is a good area of law for under-employed lawyers and that we need to better market the concept to those folks. Felshaw King added that we need to spend more time educating lawyers on *how* to do this work rather than a public education campaign and Scott concurred. Rob noted that we’ve done some work educating lawyers (Fall Forum, e-bulletins, etc.) but nothing in the public arena and that we need some concrete proposals for a public relations campaign consisting of radio and television coverage, but not newspaper educational pieces which typically fail to reach targeted audiences in his opinion. He believes that landlord/tenant and domestic law are both problem areas which are suitable for limited representation assistance.

2. PRESIDENT-ELECT REPORT

2.1 Spring Convention in St. George

Rob described the highlights of the upcoming spring convention. A Wills for Heroes program will be held on Friday afternoon. Other new aspects will include barbecue/pool party on Friday night which will be a family event held at the Washington City Community Center.

2.2 Summer Convention 2011

Rob noted that traditionally, every five years the Summer Convention is held somewhere other than Sun Valley. Since 2011 is coming up, we need to commit to a location. Alternate locations that have been considered are Lake Tahoe, Snowmass, Reno, Del Coronado, and others. It is unlikely that a different demographic would be drawn to another Summer Convention held in a mountain ski resort. A California location draws a different demographic group but about the same number of attendees. Del Coronado is too expensive but the committee studying this issue has recommended San Diego. Richard Dibblee and Connie Howard plan to take a site visit in February. John noted that this site is in the gas lamp/marina area and the hotel is designed towards accommodating conventions. (See Tab 1 –Proposal from Marriott San Diego Hotel & Marina.) Steve Owens suggested that perhaps we could perform a member survey. Rusty Vetter fully supports this idea and believes that we should include Park City. He noted that government lawyers (20% of the Bar) simply cannot afford out-of-state convention prices. A discussion followed regarding problems with accommodations for the Bar’s group size in Park City. Margaret Plane stated that the survey should be extended to the entire Bar and not just those attending the Sun Valley convention. Further discussion ensued.

Rob moved to approve the San Diego location for the 2011 Summer Convention. Scott Sabey seconded the motion which passed unopposed.

James Gilson also encouraged a quick survey on this matter. Rob stated that the Southern Utah Bar Association (“SUBA”) would be in favor of a survey. Herm Olsen noted that northern lawyers favor San Diego as a convention location. Nate Alder commented that families need advance notice to plan for attendance at a Summer Convention and 18 months is not too soon. **Lori Nelson moved to conduct a survey for a subsequent Summer Convention location. Tom Seiler seconded the motion which passed unopposed.** Rob stressed the need to design the survey properly. Lori added that the specific proposed locations should be included in the survey such as Park City, Tahoe, etc. Scott asked Richard to scope out Park City’s feasibility.

2.3 Commission Retreat

Rob began this discussion by noting that the Commission’s retreat serves three purposes: (1) it’s a significant session for review of the upcoming budget; (2) it’s a vehicle to introduce new commissioners to the process; and (3) it serves as a designated session for training and strategic goal planning. Because of these purposes, Rob believes June is not an optimal time to schedule the retreat and, instead, August should be considered after the new commissioners are seated. Rusty Vetter favors August as well because the President rather than President-elect conducts that meeting. Further discussion ensued regarding the designation of the weekend of August 27 for the Commission retreat and those present were asked to mark their calendars accordingly.

3. EXECUTIVE DIRECTOR’S REPORT

3.1 Report on Status of New Lawyer Training Program

John stated that new committee members for the NLTP have been appointed and have met. This program currently has 520 approved mentors but it’s also clear that there is an ongoing need for new mentors. (See Tab 2 – NLTP Status Report dated December 20, 2009.) Margaret Plane interjected that the new director, Tracy Gruber, is fantastic although there are still on-going issues associated with any new program and getting information out. Rod Snow indicated that he is very pleased with Tracy and noted that she exhibits good judgment and believes she will be a real asset. There are still some problems with larger firms not wanting to be involved in “outside mentoring” and towards that end, the Chief Justice will send a letter to the larger firms inquiring who has been appointed as the firm’s mentor contact person.

At this point, Tracy Gruber was introduced to the Commission. Joyce Seeley also appeared to announce her upcoming retirement. Commissioners expressed their appreciation for Joyce’s 20 plus years in the Bar’s accounting department.

3.2 Review December Financial Reports

John directed the Commissioners' attention to the Budget and Finance Committee's Highlights of the December 2009 Financial Statements (Tab 3). As noted on page 3, paragraph 10 of that report, revenues exceed expenses. There is a very positive \$203,000 balance attributable generally to CLE revenue because it was a large reporting year. However, legal expenses are higher than normal due to several factors: (1) an OPC related federal court case appeal; (2) the appeal on the Bar's property tax exemption repeal; and (3) trademark applications.

3.3 Litigation Section Attorney Volunteers in Court Program

John directed the Commission's attention to Tab 4 – Litigation Section of the Utah State Bar – Pilot Program – Attorney Volunteers in Court Report dated January 13, 2010 and noted that Wayne Klein, Nancy Vollmer (AOC) and Debra Moore are involved in the new Attorney Volunteers in Court program. The Litigation Section is excited and the Court is encouraged with the pilot program. He added that the Bar does not play a significant role in this new program.

3.4 Report on Status of Petitions

John then reviewed the details of Katherine Fox's Memorandum dated January 12, 2010 (Tab 5) to the Commission regarding the status of Supreme Court Petitions. Matty noted that the Bar's licensing fee petition will be posted next week for a 45-day comment period. Steve Owens and Rob Jeffs discussed the fee increase timing issue with Justice Durham and indicated that the Bar was anxious to have the fee increases in place in time for the upcoming licensing cycle (if approved).

3.5 Report on Status of MCLE Administration Becoming Part of the Bar

John explained the history of MCLE. Essentially, the Court originally instituted mandatory CLE and historically, the program has been governed by a Supreme Court appointed board. The Court would now prefer to have an MCLE department similar to NLTP which is associated with the Bar. MCLE will be more like the Client Security Fund as far as segregating funds. In order to formalize the shift, a member of the current MCLE Board needs to draft a petition for the change to occur.

4. ACTION ITEMS

4.1 Review Admissions Rule – FBI Background Check

Joni Seko appeared before the Commission with Steven Waterman, Admissions Committee Co-Chair, on the phone to comment on a current admission rules issue (See Tab 6 – Memo from Joni Seko dated November 12, 2009 regarding Application Procedures and the FBI Information; Article 7. Admissions Rule Nos. 14-701, 14-702 and 14-707; Overview of Utah State Bar Admissions.) Joni stated that as currently

drafted, “complete applications” must include an FBI background check report. There have been some problems, however, with timely report submissions now that the FBI is backlogged and it is difficult for applicants to obtain these reports on time. Steve Waterman commented on the history of this requirement: (1) we had previous problems with admission requirements not being satisfied where informal (ad hoc) waivers at the Bar were granted; and (2) we went from using a BCI background check which only include the western states to the more comprehensive FBI background checks with wider geographical coverage. Rob initiated a spirited discussion recapping the Admissions Committee’s review of this issue. For instance, the FBI check is now taking over 12 weeks to process but the Bar’s website stated it was only taking 4-6 weeks resulting in significant disadvantages to applicants because under the current admission rules, an application cannot be approved without an FBI report.

More discussion ensued. Is the FBI background check an appropriate requirement prior to even applying for the Bar? Given current timeframes, an individual would have to apply eight months prior to an exam which is an unreasonable expectation. We need to consider changing the rule to accommodate the length of the current FBI process. Joni proposed that the Admissions Committee make the requirement procedure similar to the certification of law school graduation in that as long as the request is timely submitted to the FBI, an applicant can apply to the Bar up to 30 days prior to the exam. Christian Clinger inquired whether a refund was available currently and Joni responded that over 50% of applications are timely filed. James Gilson asked how many applicants do not disclose important information and then that information is revealed on an FBI background checks. Rob responded that it appears to be fewer than three applicants per year. Joni noted that a revised process consisting of a 30-day period before the exam is sufficient to provide an additional 12 weeks for applicants to obtain the necessary background report.

Rusty Vetter stated that he had served on C&F as a chair for 10 years and that changes of this nature have potential consequences where the committee loses control of the process and asked whether Admissions needs to look at alternative background checks/processes. Steve Waterman said that he agreed with Rusty’s comments. He also commented that he believes that a new deadline will cause applicants to feel more “entitlement” and this in turn will cause more appeals.

Rob made a motion to approve filing a petition with the Utah Supreme Court for admission rule changes to modify the requirement that FBI background reports be filed with the Bar application and instead, permit applicants to submit the FBI reports up to 30 days before the Bar Admissions Ceremony. James Gilson seconded the motion. Rusty attempted a friendly amendment to send the issue back to Admissions Committee for further analysis and recommendations which Rob declined to accept. Christian Clinger stated that it was “outrageous” that the Commission would override C&F’s and Admissions’ recommendation for a 30-day deadline before the exam. Jim noted that the new rule only affects just a few cases and voice his support for the motion. Steve Waterman commented that this action will cost the Bar \$30,000 in late fees. **The motion passed with Christian Clinger opposed.**

4.2 Operations Sub-Committee Report Recommendations

Steve Owens reminded subcommittee members to craft a one-page motion and submit it by March 18, 2010, regarding the subcommittees' recommendations. Motions will be debated in April and June meetings.

4.3 Select Dorothy Merrill Brothers Award Recipient

Lisa Yerkovich excused herself during this part of the meeting. Steve directed the Commission's attention to Tab 7 – Memo from John Baldwin dated January 22, 2010 and attached nomination letters. **Lori Nelson moved to nominate Kathy Dryer as the Dorothy Merrill Brothers Award recipient. Steve Owens seconded the motion. Christian Clinger then moved to nominate Evelyn Furse, Melanie Vartabedian and Lisa Yerkovich as the Dorothy Merrill Brothers Award recipients. Rob Jeffs seconded the motion.** Discussion ensued. **Steve Owens moved to give the Distinguished Service Award to Kathy Dryer at the next meeting that "works best." Lori seconded that motion which passed unopposed. The Commission then voted on Christian's motion which also passed unopposed.**

4.4 Select Raymond Uno Award Recipient

Steve directed the Commission's attention to Tab 8 – Memo from John Baldwin dated January 22, 2010 and attached nomination letters. **Christian moved to nominate Trystan Smith as the Raymond Uno Award recipient. Lori seconded the motion.** Discussion ensued on this nomination and on a nomination for Sean Reyes. **The motion to award Trystan Smith was approved unanimously.**

4.5 Nomination of President-Elect Candidate

Rod Snow excused himself for this part of the meeting. Steve indicated that Rod is the only interested candidate for the office of President-elect at this time. John noted that under the rules the Commission can nominate two individuals for the office of President-elect and can nominate one person if two are not available. **Rob moved to nominate Rod as the President-elect candidate. Christian seconded the motion. The motion was approved unanimously.**

5. NEW ITEMS: RASBAND

Dean Rasband noted that it had been a great year with great programs and speakers at BYU with collaboration with the University of Utah on several projects. The current graduating class, however, is hurting regarding job potential. There is a hiring freeze at BYU (with few exceptions) and everyone is very busy and feeling the stress of a bad economy. Rob commented that we can't fix the basic problem of the lack of demand for paid legal services which affects the job market. Nate noted the need to discuss alternative careers with new admittees. Michelle Allred discussed possible help for new

graduates, e.g., free CLE, the need for advocates, job clinics, decreased Bar dues, how to find clients, and starting firms. What should YLD do? What should the Bar do? Steve noted that the Bar is doing what it can and Rod observed that the Illinois Bar conducts a 2-day new lawyer program that the Utah Bar should adopt.

6. CONSENT AGENDA

By policy, the November 20, 2009 minutes were approved by consent and without amendment (Tab 9).

MEETING ADJOURNED AT NOON

NEW HANDOUTS DISTRIBUTED DURING MEETING:

1. Materials related to proposed sites for 2011 Summer Convention (Sun Valley, San Diego Gaslight Marriott, Lake Tahoe, Anaheim, Newport Beach and Snowmass, Colorado).
2. List of additional nominees for Dorathy Merrill Brothers award: Diane Banks, Linda Hobbs, Sally McMinimee and Lauren Scholnick.
3. List for additional nominee for Raymond Uno Award: Sean Reyes.
4. Summary of Utah State Bar operations 2008-2009.
5. Utah State Bar 2008-2009 program reviews (L&J Center, CLE, Fee Dispute Resolution, Client Security Fund and OPC).