

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

June 1, 2007
ZERMATT RESORT
MIDWAY, UTAH

Present: President Gus Chin and Commissioners: Nathan Alder, Steven R. Burt, Christian Clinger, Yvette D. Diaz, Mary Kay Griffin, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey, Rodney G. Snow and V. Lowry Snow. Ex-Officio Members: David Bird, Margaret D. Plane, Sean Reyes and Kathryn K. Shelton. Executive Director John C. Baldwin and General Counsel Katherine A. Fox.

Excused: Ex-Officio Members: Sharon Andersen, Hiram E. Chodosh, Laurie Gilliland, David R. Hall, Charlotte L. Miller, Paul T. Moxley, Stephanie Pugsley and Kevin Worthen. Supreme Court Liaison Marilyn (Matty) Branch.

Minutes:

1. PRESIDENT'S REPORT

1.1 Review Retreat Schedule and July Calendar

Gus reviewed the retreat schedule and July calendar. He noted that Lowry may have some items for the July Commission agenda as well.

1.2 Report on Visit to Southeastern Utah Bar in Price

Gus reported that the unbundling rules, lawyer referral, and other Bar services were discussed with members of the Southeastern Bar before the Commission meeting. Curtis Jensen commented on the success of the CLE meeting but was surprised to learn that some members were not aware of Casemaker. John Baldwin noted that there is concern regarding marketing of Blomquist Hale and LHL services and suggested that we need to do more aggressive advertising

1.3 Grant Thornton Report Recommendations Follow-up

Gus recently learned from the *Bar Journal* editor that there will be an article in the next issue entitled "10 Ways to Improve the Bar" by a former Commissioner. Brief discussion ensued over whether to write a Commission response and if so,

was there enough time to draft a response so that it would appear in the same issue. A more thorough discussion will be held later during the meeting's executive session portion. A copy of Rusty Vetter's proposed letter to the *Bar Journal* was distributed to voting members at a later time.

In addressing Recommendation #1 (Consider changing Board Meeting attendance policies) Gus said we have two ex-officio ABA Commission members and that this is a unique category. He observed that perhaps only the Bar's ABA representative should be an ex-officio member of the Commission and not the state's representative. He suggested discussing this issue as well as funding these positions in the future so as not to affect Paul Moxley's current term. Further discussion ensued. David Bird opined he is in favor of the status quo of two ABA representatives due to the many benefits the Bar receives. Lowry suggested discussing this issue in more detail when the state delegate (Paul) is able to attend and provide additional information. **Herm Olsen made a motion to postpone discussion to a time when Paul Moxley can attend. Nate Alder seconded the motion which passed with none opposed.**

Gus closed the discussion by announcing that Recommendation #4 (Restructure how the Executive Director is employed, compensated and evaluated) will be discussed during the Executive Session portion of the meeting.

2. ACTION ITEMS

2.1 Approve 2007-2008 Budget

John reviewed the April financials and reported that we are projecting more cash so we are in good shape. He highlighted the "Budget Resolution" sheet and said that these five policies have been adopted by the Commission: (1) Indexed Licensing Fees.; (2) Overall Budget Level; (3) Reserves; (4) Programs to be Budgeted to Operate on a Break-Even Basis; and (5) Donations. He then distributed a new handout "Answers to Frequently Asked Questions about the Budget and the Bar's Current Fiscal Health" and reviewed it.

Lowry said we may need to revisit raising Bar licensing fees in the near future. Mary Kay Griffin suggested making smaller increases in Bar fees in periodic increments. David Bird reminded everyone that while the Court previously indicated that they would not give the Bar the authority to raise fees "unsupervised" because they were unwilling to turn over discretion to the Bar, on the other hand, they did not say they were unwilling to entertain specific amount increases in the future. Nate believes the large cash reserves will be an issue when requesting an increase but that we also need to be mindful of sufficient funds to maintain our current programs such as LHL, Blomquist Hale, and the like as well as adding new programs such as mentoring and a full time pro bono coordinator. These new programs will cost additional money to implement and maintain as

well. Mary Kay commented the large reserve is needed for maintaining the building, improvements to the building and to be conservative.

Gus said we need to be careful how to approach a possible fee increase with our members but believes the members need to be educated on the expense of maintaining current programs and adding new programs. David Bird would like to ask the Budget & Finance Committee to provide information supporting an increase for the 2008-2009 licensing cycle. Rob suggested that before requesting an increase, we should make projections on what the new programs may cost so that we do not miscalculate, obtain approval for an insufficient increase, and then need to request another increase shortly thereafter. Lori suggested asking members whether they want incremental increases or one large increase – a “not so much whether to do it but rather how to do it” approach.

Gus would like a committee to work with Nate to review this issue and come up with a proposal. Lowry reiterated that significant input is needed from the Budget and Finance Committee. Rod Snow would like to know what surrounding states are doing and believes it should be left up to Bar staff and the Budget and Finance Committee to draft a proposal for the Executive Committee to consider. Felshaw King believes we should first review programs and ascertain where the Bar’s budget could be reduced. John, in response to Christian’s inquiry about increasing *Bar Journal* revenue, said we can get more information on our *Bar Journal* advertising rates for later discussion. **Lori moved to approve the 2007-2008 budget. Yvette seconded the motion which passed unopposed.** Nate had questions on Commission travel and convention expenses. He also had questions on Admission’s budget and would like to provide an increase to offset costs and formulate a “solid” budget for that department.

2.2 Ethics Advisory Opinion Committee Rule Proposal

Steve Owens reviewed the two different redline versions (Katherine’s and EOAC’s) of incorporating the Court’s decision to make opinions non-binding into the EAOC rules. Katherine then provided an explanation of her version. She noted that a recent Supreme Court decision on an OPC case emphasized that our district courts should have sufficient discretion in such matters and that the EOAC proposed language curtails the court’s discretion. Rob Jeffs does not personally agree with Katherine’s version but sees merit with it because it clearly comports with the Court’s letter. After further discussion, **Rob moved to approve Katherine’s redline version. Curtis seconded the motion which passed with Steve Owen’s opposed.** Lowry said Allen Sims will now be the chair of the EAOC and is confident that the Ethics Committee will find a rebuttable presumption sufficient for their purposes.

2.3 UDR Grant Request

In response to UDR's request for \$20,000, Nate said UDR wants to enhance their services and be more effective by becoming more of a statewide organization and increasing their availability and accessibility. Lowry said he previously did not appreciate their caseload and the great work they do and how the courts rely heavily on UDR assistance. Scott Sabey opined that in his experience as a small claims court judge, UDR is a tremendous help.

Lowry said that UDR would like to establish a closer connection with the Bar and therefore has invited the Bar to appoint a Commissioner to sit on the UDR Board. Christian Clinger declared a voting conflict as he was recently named Director of Mediation for the Second Judicial District. Steve Owens suggested Nancy Bockelie as a Board representative. Rob believes someone other than a Commissioner might be a better choice under these circumstances. Yvette asked how this type of appointment had been handled in the past and Gus replied that this is the first of its kind so no precedent has been set. **Rob moved for the Commission to solicit applicants for the UDR board member outside Commission. Steve Owens seconded the motion.**

Scott Sabey said he is opposed to the concept because putting this out to the general membership does not address what UDR wants, i.e., a Commissioner to sit on their board. Felshaw agreed with Scott's remarks. **Rob withdrew his motion** and said that it is important for UDR to understand that there are no other organizations where Commissioners sit on boards. Nate said that some Commissioners do sit on other boards and since the Bar created UDR and this is a core mission of the Bar, and we should be supportive. **Scott Sabey moved to decline the invitation. Steve Burt seconded the motion which passed with nine in favor and Lowry, Rod, Nate, Steve Owens and Herm opposed. Christian Clinger abstained from voting.**

3. INFORMATION ITEMS

3.1 Mentoring Committee Report

Rod reported that Lori Nelson, Steve Owens and Felshaw King had volunteered to be members of the Commission's Mentoring Committee.

3.2 Pro Bono Review Committee Report

Herm reported that the Pro Bono Review Committee will be further interfacing with Dean Hiram Chodosh's group and will get together in the near future.

3.3 Diversity Committee Report

Yvette reported on the progress that has been made in this area. She reviewed the summary behind Tab 5. Overall, the Bar's response to the report's recommendations have been very positive.

3.4 UDR Request for a Board Member from the Commission

See discussion under paragraph #2.3.

3.5 Judicial Council Report

Scott Sabey reported that the Judicial Council is very interested in encouraging more judges to improve relationships with new lawyers. The Council is also interested in learning about and encouraging judges' participation on Bar committees. Scott believes we need to communicate with sections and committees to solicit participation from members of the judiciary. He opined that perhaps a *Bar Journal* insert/notice soliciting more judicial participation is in order.

3.6 Access to Justice Planning Council Report

Lowry distributed a new handout "Utah Access to Judicial Council Update". The Court formed this council to coordinate and oversee the delivery of legal services throughout the state and meet unmet needs that currently exist. Three subcommittees have been formed: (1) Pro Bono; (2) Resource Development; and (3) Education/Public Relations. Lowry would like the Commission's Pro Bono Review Committee to interface with this effort and work with the Council's Pro Bono subcommittee. He further reported that the St. George Community Legal Clinic is underway and will serve as a model for other areas. The Bar has given \$40,000 to the Council in evidence of our support.

3.7 ABA Request for Position on Attorney Client Privilege

David Bird reported that this is a critical issue which seeks a resolution from us to urge the Department of Justice to stop the process of requiring a waiver of corporate attorney/client privilege. Rod believes this process "throws officers and employees to the wolves". David suggested drafting a letter to both Utah senators and use the language which is included in the materials. **Lowry moved to draft the letter to both senators and also Utah's representatives. Herm seconded the motion which passed unopposed.**

3.8 Report from Ex-Officio Members

Margaret Plane said the Women Lawyers new database is active and online.

Kathryn Shelton reported that the Paralegal Day was very successful. Nate attended the Paralegal Day luncheon and said the Division is terrific and he urged Commissioners to involve their paralegals in the Division. Kathryn also said that there will be an all day CLE seminary for paralegals on June 15th.

Sean Reyes reported on both the Young Lawyers Division and the Minority Bar's work. He emphasized YLD participation in ethnic matters by coordinating efforts with UMBA at the two law schools in a comprehensive mentoring effort. YLD also participated in the ABA "Choose Law" project which focuses on encouraging students to elect law as a profession. He further stated that the Law Day events were very successful. Sean reported that UMBA recently assisted in Clarence Thomas' visit and also hosted a justice of the South African Court – International Legal Exchange. Finally, he reported that Lawrence Marsh, the first attorney of color in Utah was disbarred and UMBA is investigating the trial transcript and plans on challenging the disbarment proceedings with the assistance of Greg Skordas.

NEW ITEM:

Felshaw King, referring to Blomquist Hale documents behind Tab 13, asked why utilization is so low. John replied that Blomquist relies on the Bar's marketing efforts since they do not advertise availability of services. Gus said Blomquist may try to do presentations rather than just man a booth (as a vendor) during conventions. Rob asked if we could get a commitment from them to help fund more visibility. John replied that we can try to renegotiate our contract, but they are not really organized to market their services.

NEW ITEM:

Gus thanked the Commission for the opportunity to serve as President. He also advised Commissioners to review the consent agenda and asked if there were any questions or concerns.

4. CONSENT AGENDA

By policy, the April 27, 2007 minutes are approved without amendment.

By policy, the amendments on the policy of Issuing Certificates of Good Standing are approved.

By policy, Dispute Resolution Section Request for Young Lawyers Membership is approved without amendment.

By policy, amendments to Labor & Employment Law Section By-Laws are approved. The section's vice president will serve on the Governmental Relations Committee.

**MEETING ADJOURNED AT 3:40 P.M.
AND THEREAFTER, CONVENED IN EXECUTIVE SESSION**

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- 1) Utah Access to Justice Council Update.
- 2) Answers to Frequently Asked Questions about the Budget and the Bar's Current Fiscal Health.
- 3) Copy of Rusty Vetter's letter.