

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

NOVEMBER 20, 2009
OAKRIDGE COUNTRY CLUB
FARMINGTON, UTAH

Present: President Steven W. Owens and Commissioners: Steven R. Burt, Christian W. Clinger, Yvette D. Donosso, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, Lori W. Nelson, Herm Olsen, Scott R. Sabey, Tom Seiler and Rodney G. Snow. Ex-Officio Members: Nathan D. Alder, Michelle Allred, Chrystal Mancuso-Smith, James R. Rasband, Lawrence E. Stevens and Aaron Thompson. 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: James D. Gilson, Mary Kay Griffin and Rusty Vetter. Ex-Officio Members: Hiram E. Chodosh, Charlotte L. Miller, Margaret Plane and Lisa Yerkovich.

Minutes:

1. PRESIDENT’S REPORT:

1.1 Professional Services Tax Update

Steve said that we are not certain whether a professional services tax will be an issue in upcoming legislative session but he is planning to write a *Bar Journal* President’s Message on this topic. Herm Olsen said that he recently spoke with Senator Lyle Hillyard and it is going to be a grim upcoming year with a \$900 million budget shortfall. He continued by saying that even if a tax on food is instituted, that will only create \$120 million in new revenue. Consensus seemed to be that while we need to have written materials prepared in advance, we do not want to “lead out” on this issue. Scott Sabey said that he does not believe the issue will come up because the Governor really does not want to raise taxes. John Baldwin asked Commissioners if they wanted the issue included in the upcoming “constituent letter” to legislators and the response appeared to be “no.” He observed that we are having a somewhat difficult time rallying other professional groups to be as concerned as we are about this potential issue.

1.2 State Court Voluntary E-Filing Program Update

Steve wanted to make it clear that court e-filing fees are not a Bar instituted fee when Commissioners discuss this matter with members. John then added that the AOC solicited our assistance with rolling out this new program. John said it was important to note that there are no other service provider groups right now that are certified except for Tybera with whom we contracted to provide the service. He noted we are scheduling targeted CLE's at least once a month on e-filing and Felshaw King said that he recently was involved in training session for an Inns of Court program and it went very well. Matty apprised the Commission that the appellate courts are not yet involved in e-filing.

1.3 Commission Self-Assessment Survey Follow Up

Steve observed that the Commission should focus on the “weaker” response areas on the self-assessment survey in order to improve.

a. #13 “Periodic Assessment of Programs”

We currently engage in periodic assessments of Bar programs.

b. #14 “Measurable Program Results & Successes”

Steve suggested that sub-committees should include measurable goals in their program recommendations. Steve Burt believes that goals are appropriate and achievable but warned not to set too many. James Rasband said that this concept is being disseminated to higher education through the ABA for law schools (e.g., Bar Exam passage results for each law school). He understands that it is a difficult process and also warned not to set goals that are “too lofty” in light of likely failure. Rob Jeffs said that our focus should be on core functions and we want to enhance lawyers’ perception of judiciary, but we do not really know at this point how to accomplish that.

c. #18 “Effectiveness of Communicating Successes”

Curtis Jensen observed that members do not really comprehend what the Commission does or what the benefits of membership are even though they are very appreciative of the Bar’s recent outreach efforts in going out to various areas and providing information. Michelle Allred said that the Young Lawyers Division regularly tries to submit articles to the *Bar Journal* to inform new lawyers what is available to them. Nate Alder likes the feature of yearly inclusion of committees, sections, etc., in *Bar Journal*. Steve Burt observed that the main focus is usually on OPC.

d. #70 “D&O Insurance Coverage”

John provided a handout containing details on the Bar’s D&O coverage.

1.4 Report on Meetings with Lawyer in Box Elder, Grand, Carbon, Emery & San Juan Counties

Steve said that lawyers have been very appreciative of meetings held in the outlying areas. Rob said that it has been a great experience to be involved (particularly in Price) and he has received great feedback. He noted, however, that locally provided CLE is a real problem for outlying areas due to heavy financial burdens and limited opportunities. He suggested enhancing more self-study options. Nate said CLE in those areas can be a “numbers” problem where the number of attendees is low, making it difficult to provide inexpensive CLE. Curtis thinks it would be good to extend CLE invitations to members of the judiciary in outlying areas as well.

1.5 Operations Committee Meetings Follow-up

Steve reminded Commissioners that he would like one-page motions from each operations subcommittee groups and would like to have the operations process completed in time for Sun Valley. The chairs of each group then provided brief reports as follows:

a. Courts:

Lori Nelson said the goal in this area should be to educate the public as well as our members of judicial service. She noted, however, that she is a little unsure how to best accomplish this. Nate said that one way is to promote more interaction among the three branches of government. John said that John Becker is working on this aspect and will be reporting back to him shortly.

b. Public & Government Relations:

Christian Clinger said that he is pleased in general with more and better press coverage over the last year. He further reported that the subcommittee would like to send out requests for proposals for a possible public relations person replacement. The position will still be part time as well as outsourced, and John Becker will be invited to submit a proposal. **Christian moved to send out RFP’s. Scott Sabey seconded the motion which passed unopposed.**

Scott then reported that the Bar plans to send three letters as follows: (1) Bar Commissioner letter to respective legislators; (2) Government Relations letter to Bar leadership; and (3) Bar letters to all legislators describing the services the Bar can provide. He also noted that the following events are scheduled during this legislative session: (1) reception/State of Judiciary; (2) Law Day; (3) Constitution Law class for legislators; and (4) a lawyer/legislator breakfast. He also said that we need to be mindful of finding a replacement for John T. Nielsen eventually. Rob suggested providing a weekly email to members during the legislative session to update them on developments.

c. Management/Communications/LJC:

Rob reported that there are a lot of issues that require money to fix. He would like the Commission to appoint a long range planning committee to analyze problems with the building over the next 3-5 years as well as discuss the 2011 Summer Convention site.

d. Mentoring/CLE:

Rod Snow requested to be part of the new CLE Committee chaired by Nanci Snow Bockelie. He also encouraged management to be more proactive in raising CLE fees.

He further reported that the mentoring program remains a concern. Several Commissioners noted difficulties with staff communications relating to the NLTP. John Baldwin said that a new Chicago lawyer, Tracy Gruber, has been hired to head the program and that more comprehensive contacts will ensue shortly. He continued by saying that we are not missing anything and are aware of issues as the NLTP is a “work in progress.” Steve Owens said he would like to do a simple letter to both groups (mentors and new lawyers) apprising them of where things currently stand. Michelle Allred said the Young Lawyers Division could include information on the NLTP in its newsletter and John agreed to provide her with details. Rod said additional staff may be required to move this program along better at this juncture. Possible resources could be more volunteer help from YLD and Paralegal Division as well as hiring temporary clerical help. Matty noted that the courts may be able to lend some assistance. He emphasized that the program details need to come together by end of January. The Supreme Court will be appointing new NLTP mentors shortly and Matty added the letters will be mailed on Monday.

e. OPC:

In Jim Gilson’s absence Steve reported that Jim met with the Supreme Court on November 12, 2009 to discuss the OPC operations report. The Court indicated that the Commission should proceed to consider the report’s recommendations. Matty noted, however, that Court retains ultimate authority in this core function area.

2. EXECUTIVE DIRECTOR’S REPORT

2.1 Commission Self-Assessment Survey Follow Up

See #1.5 above.

3. ACTION ITEMS

3.1 2008-2009 Audit

Jeff Einfeldt was in attendance for this portion of the meeting. Steve said the Executive Committee met with representatives from Deloitte and Touche and Jeff reported that he was pleased with how the audit went. There were no real issues or problems. We received a “clear opinion” letter which is the most common and favorable type of opinion. We ended up losing less money than anticipated and he we have budgeted to lose money again. He further reported that 2008 total assets were \$3.7 million with 2008 net assets valued at \$2.6 million. Total assets for 2009 are \$2.3 million. Deloitte increased the value of Lehman \$10-15,000 more than we had scheduled.

John then touched on a few items: (a) the *Bar Journal* costs \$15,000 per quarter to print, resulting in a net loss; (b) CLE made \$21,000; and (c) Conventions made \$45,000 income although they were budgeted to break even. He continued that our largest expenditures are Blomquist, LHL and Casemaker. Steve suggested exploring more aggressive advertising solicitation to help address the revenue loss with *Bar Journal* and Commissioners agreed that we should consult with Leniece Roberts or Christine Critchley on this. **Lori moved to adopt the audit. Rob seconded the motion which then passed unopposed.**

4. DISCUSSION ITEMS

4.1 Fund for Client Protection Process

Tim Anderson (appointed as the Graff matter trustee upon OPC request) and Dave Hamilton were in attendance for this portion of the meeting. Tim provided background information and reviewed salient features of a new handout on the Matthew Graff matter. He explained the details surrounding the trusteeship. He has worked diligently to get files to clients and meet immediate needs regarding court continuances. (There were 450 file boxes.) He received an order from the court allowing files to be destroyed after sending notice to clients on cases four years or older. He sent out 500 letters to “active” clients. Requests are largely from the following categories: (1) the most prevalent claims - case settlement funds to be disbursed – are mostly fine, but Graff failed to pay medical expenses and other case expenses in some instances; (2) cases more prominently featured in the media have been conversion of funds, e.g., the airplane crash where clients thought cases were still ongoing but Graff had “closed” them without disbursing funds; and (3) funds deposited by individuals for investment purposes with Graff (which are non-reimbursable under CSF rules). Some claims included ongoing restructured settlements where Graff paid minimum monthly payments up to a total amount of \$100,000. There is approximately a \$2.5-\$3 million total loss. Tim further reported that the principal source of available funds should be approximately \$450,000 in clients fee earned in Idaho and noted that someone needs to approach the Iron County Attorney about release and distribution of these funds. Other than that, there are no real assets left because most of

Graff's tangibles have been repossessed. Graff led a very elaborate lifestyle beyond his means.

Dave distributed a new handout with details about current CSF recommendations. He reported that the CSF fund balance is \$170,883. There is currently only \$225,000 left from Iron County prosecutors funds available out of \$450,000. He continued reported that no restitution hearing has currently been scheduled. The CSF has received \$211,000 in claims but only \$40,000 has been recommended to payout so far. The CSF Committee has dealt with identical cases in last five years and in the past, instead of a single pro rata distribution, they have "stretched" claims out. (The fund is limited to a \$50,000 payout attorney cap per year.) Commissioners asked numerous questions. Felshaw suggested considering a "lifetime maximum" cap per lawyer. Rob said the bigger issue is how to treat all claimants fairly. He believes claims should be paid pro rata because that way it eliminates arbitrary element.

Felshaw moved to appoint a subcommittee to review CSF rules and issues like imposing a lifetime cap per attorney. Lori seconded the motion. Dave asked how rules could be adjusted to deal with claims given that there is a statute of limitations. Steve asked Felshaw to come up with a "plan" for next meeting. Rob asked what to do with Graff claims now. Felshaw responded that we should table the Graff claims. Tim said a discussion should be held soon with the Iron County Attorney and Bar Staff regarding victim rights. **Felshaw withdrew his motion. Felshaw then moved to pay all claims except Graff claims.** Discussion ensued. **Rob seconded the motion. Motion failed with a tie vote. Scott moved to pay all claims except Graff and Patrick Kelly claims.** He does not believe that CSF should reimburse claims when an attorney dies. **Curtis seconded the motion.** Discussion ensued. **Motion failed. Lori moved to hold all payments until an analysis of CSF is complete. Christian seconded the motion which passed with Felshaw opposed.** Rob volunteered to help out with analysis of CSF and Katherine Fox will produce some research to aid the subcommittee's efforts.

4.2 Admissions Application Process

Deferred

5. INFORMATION ITEMS

5.1 Judicial Council Report

Lori reported that the new St. George courthouse is scheduled for dedication and urged Commissioner attendance at this event. Curtis endorsed the invitation to attend the dedication and said to let them know if you plan to attend.

5.2 Davis County Bar Report

5.3. Section Reports

Chad Platt and Bill Mark were in attendance for this portion of the meeting.

Criminal Law Section

Chad reported that the criminal law section is very large with over a hundred members most of whom are defense attorneys. He further reported that the section meets quarterly and he gave further details on how the section functions.

Collection Law Section

Bill reported that the section focuses mainly on providing CLE and is a forum for strategies. There are currently 117 members of this section and the section is quite active on the legislative scene. Section leadership meets quarterly. Scott said there was some confusion on the hill last year regarding who/what members were representing in opposition to the Bar and courts. Bill said he investigated, however, and determined that the two individuals were “cleared”.

6. CONSENT AGENDA

By policy, the October 16, 2009 minutes were approved by consent and without amendment (Tab 7).

MEETING ADJOURNED AT 12:00 P.M.

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- 1) Report to the Utah State Bar re Matthew T. Graff Matter;
- 2) Letter from David Hamilton Recommending CSF payouts;
- 3) Memo from Nanci Snow Bockelie re Newly Form CLE Committee.