

Summary of Utah State Bar Operations 2006-2007

Vision of the Utah State Bar

To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.

Mission of the Utah State Bar

To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of the Law.

1. Introduction and Grants of Authority

In 1981, the Utah Supreme Court promulgated Rules for Integration and Management of the Utah State Bar, restating its inherent authority under the Utah Constitution to regulate the practice of law, acting to "perpetuate, create and continue" the Utah State Bar under its "direction and control" and delegating specific responsibilities to the Bar. In 1993, the "the purposes, duties and responsibilities of the Utah State Bar" were stated to include, but not be limited to:

1. Advance the administration of justice according to law;
2. Aid the courts in carrying on the administration of justice;
3. Regulate the admission of persons seeking to practice law;
4. Regulate and to discipline persons practicing law;
5. Foster and maintain integrity, competence and public service among those practicing law,
6. Represent the Bar before legislative, administrative and judicial bodies;
7. Prevent the unauthorized practice of law;
8. Promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means;
9. Provide service to the public, to the judicial system and to members of the Bar;
10. Educate the public about the rule of law and their responsibilities under the law; and,
11. Assist members of the Bar in improving the quality and efficiency of their practice.

The Court acknowledged in the 1993 order that it was exercising "its authority to govern the practice of law without engaging in the daily management and operations of the Bar" and "granted the Board all powers necessary and proper to carry out the duties and responsibilities of the Bar and the purposes of the Rules and that they should have all authority not specifically reserved to the Court." The Court reserved the authority to:

1. Approve Bar admission and licensure fees;
2. Approve all rules and regulations formulated by the Board for admissions, professional conduct, client security fund, fee arbitration, procedures of discipline, legislative activities, unauthorized practice of law, and bar examination review on appeals;
3. Review all appeals from the findings of the Bar Commission on formal disciplinary matters (which need has since been obviated as a result of changes in the Rules of Lawyer Discipline and Disability); and
4. Establish appropriate rules and regulations governing mandatory continuing legal education.

In addition to the Rules for Integration, the Bar's internal operations are governed by **By-laws** adopted pursuant to authority granted from the Court, and through the establishment of a variety of administrative policies and procedures. Other rules necessary to regulate and manage the practice of law have been promulgated by the Bar and approved by the Court and have been amended from time to time as needs have changed and demands have increased. These other rules include the **Rules Governing Admission, Rules of Lawyer Discipline and Disability, Rules of Professional Conduct, Rules for Lawyers' Fund for Client Protection, the Law Student Assistance Rule and the Rules of the Utah State Bar Fee Arbitration Committee.**

2. Bar Leadership

The Bar is governed by a fifteen-member Board of Bar Commissioners, which includes eleven elected lawyer representatives, two elected officers and two court-appointed public members. The Commission also includes nine non-voting *ex officio* members. The Commission hires an executive director to carry out the operations and policies of the Commission and who employees and supervises the activities of operations staff, which numbers twenty-five full-time and five part-time employees.

During the 2006-2007 year, the Bar Commission consisted of the following:

Elected Officers:

Augustus G. Chin

President

Summit County Attorney's Office, Criminal Division

V. Lowry Snow

President Elect

Snow, Jensen & Reece, St. George

Elected Lawyers and Geographic Area:

Herm Olsen

1st Division

Hillyard, Anderson & Olsen, Logan

Felshaw King
2nd Division
King & King, Farmington

Nathan D. Alder
3rd Division
Christensen & Jensen, Salt Lake City

Christian Clinger
3rd Division
Clinger, Lee, Clinger, Salt Lake City

Yvette Diaz
3rd Division
Jones, Waldo, Holbrook & McDonough, Salt Lake City

Lori W. Nelson
3rd Division
Jones, Waldo, Holbrook & McDonough, Salt Lake City

Stephen W. Owens
3rd Division
Epperson & Rencher, Salt Lake City

Scott R. Sabey
3rd Division
Fabian & Clendenin, Salt Lake City

Rodney G. Snow
3rd Division
Clyde, Snow, Sessions & Swenson, Salt Lake City

Rob Jeffs
4th Division
Jeffs & Jeffs, Provo

Curtis M. Jensen
5th Division
Snow, Jensen & Reece, St. George

Public Members Appointed by the Supreme Court:

Steven R. Burt, AIA
Public Member
Entelen Design-Build, Salt Lake City

Mary Kay Griffin, CPA
Public Member
Mayer, Hoffman, McCann, Salt Lake City

Ex Officio Members, Appointed by the Commission for One Year Terms:

David R. Bird
Immediate Past Bar President
Parsons, Behle & Latimer

Hiram E. Chodosh
Dean, S. J. Quinney College of Law

David R. Hall
Young Lawyers Division President
Parsons, Behle & Latimer

Charlotte L. Miller
Utah State Bar's Delegate to the ABA
Unishippers Association, Inc.

Cheryl Miyuki Mori
Minority Bar Association Representative
Securities & Exchange Commission, Enforcement

Paul T. Moxley
Parsons, Kinghorn & Harris
State ABA Members' Delegate

Margaret D. Plane
Women Lawyers of Utah Representative
ACLU of Utah

Kathryn K. Shelton
Paralegal Division Representative
Durham, Jones & Pinegar

Kevin Worthen
Dean, J. Reuben Clark School of Law

Other Representatives:

Marilyn Branch
Utah Supreme Court Liaison

3. 2006-2007 Commission Priorities

The Bar Commission annually reviews its long range planning objectives and sets specific goals for the upcoming year within the plan. For the 2006-2007 year, those goals include the following:

1. Bar Performance Review

Grant Thornton representatives evaluated Bar governance operations; the relationship between the Supreme Court, the Bar Commission, Bar leadership and Bar staff; the organizational structure through which the regulation of the practice of law and other duties delegated by the Court are being performed; and recommended improvements in reporting, communications, and structure. On January 26, 2007, Grant Thornton presented their conclusions and made recommendations for improved operational oversight and management practices. The Commission adopted a plan and set a schedule to begin to implement the changes at the March 8th meeting. Work is underway to incorporate approved recommendations. Those recommendations are referenced in the letter from Gus Chin to the membership which is attached. Among the recommendations adopted by the Bar Commission was to more "regularly format and document a long-term strategy for the Bar."

The Commission began developing a current strategic plan by reviewing the existing long-range planning work papers which had been developed over the past ten years and scheduled sessions to create a more formal strategy and planning document. On April 27, 2007 they reviewed goals for proposed planning meetings, defined a process to be utilized in organizing the plan and established timetables for further sessions. On June 2, 2007 they held a planning session with a discussion leader from Grant Thornton who specializes in creating long-range strategies for non-profit and related business organizations. They evaluated the Bar's mission, vision, and the Court's Rules for Integration, and discussed trends in the profession and society.

The Commission was encouraged to formulate a plan which would represent the Bar's values and goals in four areas of focus: Membership, Courts, Public Education and Service and Governmental Relations. They were also directed to create concise aspirational objectives within each area of focus and to permit leadership and staff to design specific tasks with implementation details and dates. Sub-committees were appointed to refine findings and to summarize recommendations. The document was to be not more than two pages in length and should be reviewed and revised as appropriate on a regular basis annually as trends in society and conditions in the profession will reasonably require. Work to adopt short-term priorities for the 2007-2008 year and to complete a formal set of strategic goals and values will be completed in the fall of 2007.

2. Relations with the Legislature, the Judiciary and the Governor's Office

A. Legislative Relations:

Legislative representatives attended interim committees and were present as needed during the 2007 session. Bar leadership met personally with Senate President

John Valentine. The Bar provided a constitutional law class for new legislators and sponsored a breakfast meeting with lawyer legislators and leadership.

The *Utah Bar Journal* included pictures with brief bios of lawyer legislators in the January/February edition. Gus Chin sent a letter to lawyer legislators offering complementary registrations to all in-state Bar-sponsored CLE seminars as well as to the Spring Convention in St. George, the Annual Convention and next year's Fall Forum.

The Governmental Relations Committee met each week during the session and provided recommendations on legislation to the Bar Commission. The Commission met several times via conference calls in January and February to adopt positions. Those positions were immediately e-mailed to all lawyer legislators and our legislative representatives presented our support and opposition or requests for changes during the session.

We continue to invite legislators to participate on appropriate panels at the conventions and the Fall Forum whenever possible.

B. Relations with the Judiciary:

Leadership met several times during the year with Chief Justice Durham and Supreme Court Liaison Matty Branch to discuss issues of common concern and to preview items of interest on the Commission's agenda. Several judges participated on panels and as speakers during the July Annual Convention, including the Hon's. Dee Benson, Pamela Greenwood, James Davis, Gregory Orme, Andrew Valdez, Justice Ronald Nehring, David Nuffer and Chief Justice Christine Durham.

The November Fall Forum included Jerry Howe of the Office of General Legislative Research and General Counsel and Senator Patrice Arent on a panel dealing with judicial selection. Judges who participated on panels and as speakers during the Forum included the Hon's. Carolyn McHugh, Paul Iwasaki, Lynn Payne, Brent West, Bruce Lubeck, Lynn Davis, Bruce Halliday, James Shumate, Gordon Lowe, Royal Hansen, Judith Atherton, Steven Henroid, James Taylor, Dennis Fuchs, and David Nuffer.

Judges who participated on panels and as speakers during the March Spring Convention in St. George included the Hon's. Thomas Higbee, James Shumate, Philip Eves and Michael Westfall.

C. Relations with Governor's Office

Bar President Gus Chin met several times during the year with Governor John Huntsman and discussed issues related to the strength of the judiciary and judicial independence. Staff has been responsive to requests from the Governor's office for information, nominations to various boards, committees and commissions, and have

communicated Bar Commission positions on legislation involving issues like the bill to create the task force to study judicial nominations and retention.

3. Communications

The Bar has implemented a formal plan to bring important, interesting and helpful information to two dozen specific constituencies we wish to reach, including specific messages tailored to each particular constituency, methods designed to be the most effective in reaching each diverse group and a pre-established schedule of regular communications.

Messages include announcements of upcoming CLE seminars and conventions, judicial vacancies, judicial procedures and rule changes, changes in the law, proposed or enacted legislation, new or important group benefit discounts, input sought on issues facing the profession and the courts and initiatives undertaken by the Bar and new regulatory changes and Bar governance, other bars and the ABA, congressional studies, surveys, ethics opinions, professionalism recommended law office management and technology information and legal services to the needy.

The Commission identified 5 specific constituencies and areas of focus for the current year:

1. Relations with law students and the Young Lawyers Division.
2. Survey the members and member outreach.
3. Public relations.
4. Section relations.
5. Visibility of the Commission.

4. Mandatory Insurance Disclosure

The Commission engaged in significant discussion on the need to protect the public and lawyers and actions which would be appropriate. After deliberations over a period of time and a tremendous amount of input from lawyers, the Commission decided to petition the Court to ask that information be disclosed to the Bar and to continue to study the issues. The Court has ordered the disclosure of certain information on the licensing form for the next two years regarding who is insured, who is not and why not, how much insurance is carried, and other demographic information. That information will be collected and analyzed during July through September.

Commissioners and staff met with representatives from the Bar's insurance underwriting partner, Marsh, to review frustrations with the current availability of affordable and sufficient overages and to ask for their increased efforts in the education process.

5. Access to Justice

The ABA has provided a specific analysis of the efforts to deliver legal services to the impoverished and the local legal service providers have been evaluating its implementation. Leadership is being provided by the Access to Justice Council and the participation of Scott Sabey. The Bar presents an annual award for outstanding volunteer services and *pro bono* legal service providers were honored with a special reception at the Fall Forum on November 3rd. Activities are currently limited to providing volunteers for senior citizens clinics through the Needs of the Elderly Committee and *pro bono* placements. The Commission agreed to fund the Council with \$40,000.

Gus Chin has appointed a committee to review the Bar's *pro bono* program's involvement with other legal service providers in the state and to focus on the extent to which the Bar can continue to perform appropriate matching, reporting and recognition. We are also awaiting recommendations from the Equal Justice Planning Council.

6. Diversion Program

In conjunction with its review of lawyers assistance programs, the Commission began to develop the concept of adding a diversion program to the list of appropriate actions possible in the process of lawyer discipline. A proposed rule which would make diversion to appropriate peer or professional assistance for impaired or otherwise professionally encumbered lawyers as a possible remedy in lieu of more formal discipline was drafted and presented to the Court.

4. Licensing Statistics

	<u>2005-2006</u>	<u>2006-2007</u>	<u>Change</u>
A. <u>Active Status</u>	6,836	7,060	224
Active Lawyers	5,894	6,030	136
Active Under 3 Years	833	887	54
Emeritus	109	139	30
In House Counsel	0	4	4
By Location			
1 st Judicial District		127	
2 nd Judicial District		551	
3 rd Judicial District		4,188	
4 th Judicial District		624	
5 th - 8 th Judicial Districts		363	
Out of State		647	
Out of Country		5	
No Division Designated		<u>555</u>	
		7,060	

B.	<u>Inactive Lawyers</u>	2,014	2,129	115
	Inactive, Full Service	968	757	(211)
	Inactive, No Service	864	1,192	328
	Inactive, Emeritus	182	180	(2)
	Total Active & Inactive	<u>8,850</u>	<u>9,189</u>	<u>339</u>

5. Bar Programs and Services

A. Regulatory Services

1. Special Admissions

Special admissions include reviewing and processing military, House Counsel (New) and *Pro Hac Vice* applications. We had no military applications last year. The House Counsel license is new. There were 263 *pro hac vice* applications approved.

2. Admissions

Includes the application process, character and fitness file reviews and hearings, Bar exam question drafting and selection, preparation and administration, grading essay exams, the Swearing In Ceremonies and all reciprocal admissions. Committees include the *Admissions Committee, Character and Fitness Committee, Bar Examiner Committee* and the *Bar Exam Administration Committee*.

July 2006 Bar Examination Statistics

307 Took the July Bar Exam.

259 Passed the July Bar Exam.

Pass Rate for the July 2006 Bar Exam: 84.4 %

Essay Scores

60 Points Possible

Average Score: 34.73

Multistate Scores

200 Points Possible

Utah Average: 145.91

National Average: 143.29
(51,176 tested)

Combined Scores

Utah Median Score: 292.4

Passing Score: 270

February 2007 Bar Examination Statistics

146 Took the February Bar Exam.

113 Passed the February Bar Exam.

Pass Rate for the February 2007 Bar Exam: 77.4 %

<u>Essay Scores</u>	<u>Multistate Scores</u>	<u>Combined Scores</u>
60 Points Possible	200 Points Possible	
Average Score: 33.65	Utah Average: 141.67	Utah Median Score: 285.8
	National Average: 136.9 (22,250 tested)	Passing Score: 260

3. Professional Conduct Enforcement

The Office of Professional Conduct investigates complaints of unethical conduct; provides ethics education seminars; formal and informal advisory opinions; makes presentation to hearing panels; and either resolves or prosecutes cases. Committees include the *Ethics and Discipline Committee (Hearing Panels) Ethics Advisory Opinion Committee*, and involvement with *Supreme Court Rules of Professional Conduct Committee, Supreme Court Professionalism Committee*.

4. Continuing Legal Education Seminars

In the past year, the CLE Department coordinated or presented 217 seminars in 35 general practice areas, for a total of 373 total credit hours at a charge to lawyers of about \$25 per credit hour. They were assisted by the New *Lawyer CLE Committee*.

5. General Bar Management and Operations

General Bar management includes annual licensing, maintenance of databases, personnel, financial controls, inventory, equipment, governance organization and support, long range and planning. Bar staff manages policy implementation and operations through various voluntary leadership committees, including: *Bar Commission, Bar Commission Executive Committee*, and the *Bar Commission Budget & Finance Committee* of Ray O. Westergard, CPA, Augustus Chin, Marilyn M. Branch, Jonathan K. Butler, Cynthia J. Crass, Peter K. Ellison, Robert M. Graham, CPA, Mary Kay Griffin, CPA, Louise T. Knauer, V. Lowry Snow, Arnold Birrell, CPA, and John C. Baldwin.

Other *Ad Hoc* committees appointed this year include the *Diversion Study Committee, Insurance Disclosure Committee, and the Pro Bono Study Committee*.

B. "Group " Services

1. Fall Forum, Annual & Spring Conventions

The goals of the conventions include providing opportunities for lawyers to network in congenial, social, informal and non-confrontational settings to renew friendships; to facilitate the administration of justice, foster professionalism and engender a collective identity through familiarity with fellow professionals and to learn. These events provide unique seminars and speakers, educate lawyers about issues facing the Bar,

the profession and the judiciary, permit interaction with judges and are budgeted to break even.

Events are coordinated by staff with assistance from the *Fall Forum, Annual Convention and Spring Convention Committees*.

The 2006 Fall Forum in Salt Lake: 530 lawyers; 7 CLE hours.

The 2007 Spring Convention in St. George: 436 lawyers; 9.5 CLE hours.

The 2007 Annual in Sun Valley, Idaho: 429 lawyers; 15 CLE hours.

2. Group Benefit Programs

The Bar has negotiated group benefit discounts with 47 different partners, including free legal research through **Casemaker**; and free professional counseling through **Blomquist Hale Consulting** and **peer-to-peer** assistance through **Lawyers Helping Lawyers**. Assistance is provided through the *Lawyer Benefits Committee*

3. Committee Support - Unrelated to Other Programs

Stand-alone committees charged to provide professional leadership and study of issues include the *Courts and Judges, Law and Technology and Law and Aging Committees*. All other committees support specific Bar operations and activities.

4. Section & Division Support

Staff provides support services *34 Sections and 2 Divisions* which are independent and financially self-sustaining. Activities include section meetings and CLE luncheons, dues collection, general administrative and financial services and the maintenance of web sites and blogs.

5. Communications Programs

Bar Communications was mentioned in the listing of priorities. The means by which the Bar provides information on professional issues, law office management, legal education and law related opportunities generally include the *Utah Bar Journal*, which was published seven times this year by the *Bar Journal Committee*, a current and interactive web site, monthly e-bulletins, regular mailings, posters, banners, convention and seminars and surveys.

C. **Public Services**

1. Access to Justice Programs

Bar staff matches approximately one hundred members of the public with *pro bono* services, volunteers and coordinates weekly presentations at Senior Citizen Centers. The Bar also participates in the activities of the Statewide Justice Commission

2. Client Security Fund

The *Client Security Fund Committee* conducted hearings during Fiscal 2006, resulting in Commission awards of \$130,138 to clients harmed by the inappropriate activities of their lawyers.

3. Unauthorized Practice of Law Committee

In 2006, the *Unauthorized Practice of Law Committee* and staff processed 41 complaints about the unauthorized practice of law. Those closed in the year include:

- 3 Found not to be the unauthorized practice of law
- 2 Cease & desist agreement
- 2 Closed for insufficient information
- 11 Caution letters or letters of admonishment sent
- 13 Closed by various means including negotiation of lack of information

4. Tuesday Night Bar

Each Tuesday night, lawyers organized by the Young Lawyers Division provide free legal advice to over two dozen members of the public at the Law & Justice Center.

5. Young Lawyers Division

The Young Lawyers also have produced Video Mentoring on their web site; promote Law Day Activities, and provide various service projects.

D. Joint "Group " & Public Services

1. Consumer Assistance Program

The program offers support to both consumers and attorneys who need assistance in their communication with each other. Work performed eases the load for the OPC by dealing with minor complaints submitted by consumers, whose main concerns usually include not getting return telephone calls from their attorneys; not receiving regular billing statements; and not receiving regular updates about their cases. Complaints which rise to the level of ethical concerns are handled exclusively by OPC, which has more time and resources to spend attending to the more serious problems. At times, CAP has also assisted attorneys who have needed help communicating with other attorneys.

The part-time staff lawyer received 1071 calls, primarily from consumers with questions about the management of their cases and concerns about their lawyers. 466 files were then opened, which required further work and resolution.

2. Fee Arbitration

In the last fiscal year the *Fee Arbitration Committee* and staff prepared and conducted hearings with a volunteer lawyer or panels of volunteer lawyers, judges and a lay people to resolve disputes about legal fees in a process through which parties voluntarily agree to be bound. Last year, the committee opened 36 cases; settled 6; arbitrated 9 and mediated 3. The committee and staff were unable to resolve 18 cases because parties refused to participate.

3. Law & Justice Center Operations

The Bar and the Utah Law & Justice Center Corporation have jointly operated the 33,000 square foot building since 1988. The Center provides low cost meeting room space and services for mediations, arbitrations, continuing education seminars and other charitable, educational and public purposes. Services by the Center staff include audio-visual rental, catering, low cost leases, tenant support, interior and exterior grounds maintenance and security. There were 615 meetings in the building during the year. Bar-related sections, committees, divisions, seminars, and associated meetings constituted 380 of that total and 235 meetings were non-Bar related charitable, educational, public and commercial groups. The *Law & Justice Center Corporation Board of Trustees* supervised their corporate activities of the part of the building they have owned.

4. Public Education, Services and Special Projects

The Bar Commission regularly provides public education projects including participation with the American Bar Association; appointments to Utah State Boards and Committees, helps to fund the Law Related Education Project and sponsors the Law Day Celebration with the *Law Day Committee*

5. Governmental Relations

The Bar hires a legislative representative and supports the activities of a *Governmental Relations Committee* which makes recommendations for action on bills and provides assistance to legislators with specific questions on legislation. This was also mentioned as one of the priorities listed and outlined above.