

# **Summary of Utah State Bar Operations 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 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 currently numbers twenty-five full-time and five part-time employees.

The Bar Commission currently consists 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**

1<sup>st</sup> Division

Hillyard, Anderson & Olsen, Logan

**Felshaw King**  
2<sup>nd</sup> Division  
King & King, Farmington

**Nathan D. Alder**  
3<sup>rd</sup> Division  
Christensen & Jensen, Salt Lake City

**Christian Clinger**  
3<sup>rd</sup> Division  
Clinger, Lee, Clinger, Salt Lake City

**Yvette Diaz**  
3<sup>rd</sup> Division  
Jones, Waldo, Holbrook & McDonough, Salt Lake City

**Lori W. Nelson**  
3<sup>rd</sup> Division  
Jones, Waldo, Holbrook & McDonough, Salt Lake City

**Stephen W. Owens**  
3<sup>rd</sup> Division  
Epperson & Rencher, Salt Lake City

**Scott R. Sabey**  
3<sup>rd</sup> Division  
Fabian & Clendenin, Salt Lake City

**Rodney G. Snow**  
3<sup>rd</sup> Division  
Clyde, Snow, Sessions & Swenson, Salt Lake City

**Rob Jeffs**  
4<sup>th</sup> Division  
Jeffs & Jeffs, Provo

**Curtis M. Jensen**  
5<sup>th</sup> 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 have 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. A final report was presented at the January 26, 2007 Commission Meeting. Discussions on the appropriate means and schedule of implementation took place at the March 8<sup>th</sup> meeting. Work is underway to incorporate approved changes.

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

##### **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.

##### **Relations with the Judiciary:**

Leadership met several times during the year with Chief Justice Durham and Matty Branch to discuss issues of common concern and to preview items of interest on the Commission's agenda. The November 3<sup>rd</sup> 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 during the Fall Forum on November 3<sup>rd</sup> included 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 during the Spring Convention included Hon's. Tom Higbee, James Shumate, Philip Eves and Michael Westfall.

### **Relations with Governor's Office**

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.

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 3<sup>rd</sup>. Activities are currently limited to providing volunteers for senior citizens clinics through the Needs of the Elderly Committee and *pro bono* placements. The Commission has 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 services, reporting and recognition. We are also awaiting some recommendation 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 has been drafted and will be presented to the Court.

**4. Current Membership Statistics**

	<u>2005-2006</u>	<u>2006-2007</u>	<u>Change</u>
<b>A. <u>Active Lawyers</u></b>	<b>6,836</b>	<b>7,026</b>	<b>190</b>
Active Lawyers	5,894	5,852	(42)
Active Under 3 Years	833	1,060	227
Emeritus	109	114	5
By Location			
1 <sup>st</sup> Judicial District		124	
2 <sup>nd</sup> Judicial District		557	

3 <sup>rd</sup> Judicial District	4,312
4 <sup>th</sup> Judicial District	687
5 <sup>th</sup> - 8 <sup>th</sup> Judicial Districts	358
Out of State	688
Out of Country	7
No Division Designated	<u>293</u>
	7,026

<b>B.</b>	<b><u>Inactive Lawyers</u></b>	<b>2,014</b>	<b>2,038</b>	<b>24</b>
	Inactive, Full Service	968	826	(142)
	Inactive, No Service	864	1,036	176
	Inactive, Emeritus	182	176	(6)
	<b>Total Active &amp; Inactive</b>	<b><u>8,850</u></b>	<b><u>9,064</u></b>	<b><u>214</u></b>

## 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%**

<u>Essay Scores</u>	<u>Multistate Scores</u>	<u>Combined Scores</u>
60 Points Possible	200 Points Possible	Highest Exam Score: 351.5
Varied from 15 to 48	Varied from 102.5 to 179	Lowest Exam Score: 197.5
<b>Average Score: 34.73</b>	<b>Utah Average: 145.91</b>	<b>Median Score: 292.4</b>
	National Average: 143.29	Passing Score: 270
	(51,176 tested)	

## February 2006 Bar Examination Statistics

124 Took the February Bar Exam.  
99 Passed the February Bar Exam.

**Pass Rate for the February 2006 Bar Exam: 80.0%**

<u>Essay Scores</u>	<u>Multistate Scores</u>	<u>Combined Scores</u>
60 Points Possible	200 Points Possible	Highest Exam Score: 361.1
Varied from 18 to 51	Varied from 111.8 to 183.69	Lowest Exam Score: 228.1
<b>Average Score: 33.02</b>	<b>Utah Average: 142.37</b>	<b>Median Score: 284.73</b>
	National Average: 137.8 (22,824 tested)	Passing Score: 260

## Summary of Past Bar Examination Results

February 2005	84.9%	July 2005	87.5%
February 2004	84.5%	July 2004	88.7%
February 2003	76.7%	July 2003	91.9%
February 2002	78.4%	July 2002	85.9%
February 2001	81.4%	July 2001	92.9%
February 2000	91.5%	July 2000	87.9%
February 1999	79.4%	July 1999	89.3%
February 1998	83.5%	July 1998	94.1%
February 1997	92.6%	July 1997	92.8%

### 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 2006 Annual in Newport, California: 367 lawyers; 15 CLE hours.

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

In 2006, 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 jointly operates the 33,000 square foot building which provides low cost room rental and services for charitable, educational and public service purposes. Services included food services, low cost leases, tenant support, interior and exterior grounds maintenance and security. Last year there were 630 meetings in the building. 386 were for Bar-related sections, committees, divisions, seminars, meetings and 244 were non-Bar related charitable, educational, public and commercial groups. *Law & Justice Center Corporation Board of Trustees* supervise 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.