

UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES

AUGUST 23, 2013

PARK CITY HOTEL  
PARK CITY, UTAH

**In Attendance:** President Curtis M Jensen and Commissioners: Stephen Burt, Kenyon Dove, Hon. Evelyn Furse, James D. Gilson, Mary Kay Griffin, Susanne Gustin, Michael Leavitt, John Lund, Herm Olsen, Rob Rice, and Tom Seiler.

**Ex-Officio Members:** Robert Adler, Nate Alder, Danielle Davis, Heather Farnsworth, Lori Nelson, Margaret Plane, Lawrence Stevens and Gabe White. Executive Director John C. Baldwin; Assistant Executive Director Richard Dibblee; General Counsel Katherine A. Fox; and Supreme Court Liaison Diane Abegglen.

**Not in Attendance:** Commissioners: H. Dickson Burton and Angelina Tsu. Ex-Officio Members: Jesse Nix and James Rasband.

**Minutes:**

**1. President's Report: Curtis Jensen**

**NEW:** Eve Furse advised John Baldwin that Commission meeting materials were difficult to locate on the Bar's website if one did not have a direct link. She asked if this issue could be addressed.

**1.1 Report from Judicial Performance Evaluation Committee: Joanne Slotnik & John Ashton**

Joanne Slotnik (Executive Director) and John Ashton (Commissioner) of the Judicial Performance Evaluation Committee (JPEC or Committee) paid a courtesy call on the Bar Commission to help explain some new developments with the judicial performance evaluation process. They began by describing JPEC's purpose. The legislature wanted to remove some aspects of the evaluation process from lawyers' and judges' hands to better address public concerns and make the process more transparent as well as easier to understand. Mr. Ashton said that more lay people were now on the Committee since the statute had been enacted. He also explained that they favored a process to increase the questionnaire responses from a larger number of lawyers.

Ms. Slotnik continued to report that JPEC wanted to “level the playing field” with no deference to judges or the legislature while tweaking the process. In fact, all substantive issues were handled by the 13 member Committee as a whole with no “side groups.” She observed that a tremendous amount of work went into revising the evaluation process. Mr. Ashton added that court staff and courtroom observers now give input on judges in addition to lawyers, but that jury comments no longer count. He said that while the cutting edge changes have been somewhat controversial, the changes have been valuable tools. Midterm reports are now issued so that judges have opportunities to improve their performance before the retention elections. The changes also include revisions to the evaluation scale where a score of “3” is no longer sufficient to retain a judge. Both Ms. Slotnik and Mr. Ashton admitted that the changes were novel among jurisdictions.

The Commission discussed some issues relating to the presentation and asked some questions. Ms. Slotnik and Mr. Ashton offered to attend a Commission meeting annually to report on their activities and respond to questions. Rob Rice suggested that the Bar’s Governmental Affairs Committee be asked for their recommendation on how to follow-up with the offer.

## **1.2 Report on National Conference of Bar Presidents Meeting**

Curtis Jensen and Jim Gilson provided an overview of the recent ABA National Conference of Bar Presidents. Curtis reported on the ABA award given to our NLTP program and Jim said that there were interesting issues relating to the practice of law and law schools. John Baldwin continued that Margaret Plane, Rod Snow and Jim Backman were largely responsible for launching the NLTP. He also explained that Washington had just approved a Limited License Technician rule which allows certain qualified non-lawyers to fill out family law related forms for clients in order to increase access to justice. Gabe White added that the YLD’s new federal court program “Help Rise” also received an ABA award.

## **1.3 Review Commission Meeting Locations**

John Baldwin noted that the October 25<sup>th</sup> Commission meeting had been to the J. Reuben Clark School of Law building instead of the Law & Justice Center. He asked Commissioners to please revise their calendars accordingly.

## **1.4 Executive Committee Report**

The Commission approved the following members of the new Executive Committee: John Lund, Rob Rice, Lori Nelson (past president), Jim Gilson (President-elect), Curtis Jenson (President), Dickson Burton, and John Baldwin (non-voting member).

## **1.5 Introduction to Bar Mission & Vision Plans**

John Lund distributed a new handout containing Sean Toomey's memo on proposed changes to the Bar's Mission and Vision Statements. John proceeded to highlight some of the concepts but said that the topic would be addressed more fully in Saturday's session.

## **2. Executive Director's Report**

### **2.1 Review Unaudited Year-end Financial (Tab 1)**

John Baldwin reviewed the year end financial summary with Commissioners. We brought in a lot more licensing and CLE revenue than we expected and expended \$17,000 less than anticipated. We are approximately \$573,563 to the good. Jeff Einfeldt is very concerned about maintaining sufficient reserves which is a good thing. We currently have 4 months of reserves; Jeff would be more comfortable with 6 months. There are drawbacks to having that much in reserves, however. Jeff forecasts a dues increase in 3-5 years depending, of course, on our expenditures. Lori Nelson observed that most bars do annual licensing increases. Mary Kay Griffin added that 4 months of reserves is sufficient in light of mandatory licensing fees and that the Bar is on solid footing.

### **2.2 Report on Fall Forum**

John reviewed the draft Fall Forum brochure which was distributed at the meeting.

### **2.3 Report on Database Review**

John reported that there are considerable changes afoot with Bar Alliance. They will be exiting the bar database business within the next 2 years. That development will mean that we need to find an alternative to our current arrangement. While they have not decided for sure, they may decide to offer to sell the current system codes necessary to us. This would mean something less than an entirely new database system but result in something we could presumably revise. It would be a lot less expensive to maintain and fix up our current system but we would need to hire some programmers part time to accomplish that. BarAllance has provided 3 or 4 other bars with a similar system, but have not informed those entities of their plans at this point.

John Lund expressed reservations about buying our current system and trying to fix it. In response to his questions, John Baldwin replied that we are just starting to get a

handle on things and that this option had not yet been fully examined. John Lund opined that we need an outside, independent, and knowledgeable evaluation of what to do, rather than just relying on staff analysis and recommendations. Jim Gilson voiced his support for this approach. John Baldwin responded that he is currently looking for an individual to do just that. There was further discussion on this issue. A committee is being put together in order to move forward.

#### **2.4 Report on Bar Benefits**

John Baldwin reported that Rob Jeffs is still reviewing the possibility of bringing on the Texas bar benefit provider. We are also making sure that the new provider does not conflict with any contractual arrangement we currently have in place.

#### **2.5 Report on Advertising Rule**

Katherine Fox reported that we are in a holding pattern with the proposed revisions to the advertising rules. While the court wants the normal public comment analysis and Bar responses, it does not want our response before their Advisory Committee on the Rules of Professional Conduct issues its commentary. That group will have its first meeting on this issue in mid-September and issue a report with the next few months. Katherine will draft the response to all the comments and provide it to Rob Jeffs for his input before it is submitted to the court. Commissioners asked that Katherine send them scanned copies of the public comments as well as a link to the petition and supporting documentation.

### **3. Action Items**

#### **3.1 Select 2014 Summer Convention Site (Tab 2)**

Curtis began the discussion by noting that over all, Snowmass was a successful venue although some aspects need improvement. He said that his preference was to return to Snowmass next year. Lori Nelson added that the convention was great and feedback indicated that those who didn't attend were sorry to have missed it. The CLE was top notch as well. The downside was the weather and a lack of duck pond like Sun Valley. Curtis said that we need more places for teenagers to "hang out" like the duck pond location and that we did not provide information on available activities for inactive middle-aged attendees.

Jim said that the CLE was awesome and that he and his family really liked the location. One drawback was that it was hard to reach the reception site and the reception was expensive to host. He also said that overall, Snowmass was not a cost savings as anticipated. However, Snowmass has indicated how we can reduce expenses. We can mitigate a lot of the negative factors except for the 2-1/2 hour increased driving time as compared to Sun Valley.

Herm Olsen opined that we should give Snowmass a chance for 2-3 years as a summer convention site before moving it. Tom Seiler said that facilitating small bus transportation might be added value and Lori said that those who traveled by train loved it. Mike Leavitt said that we should do something locally every 3 years and Kenyon Dove agreed. More discussion took place. **Commissioners voted unanimously to hold the summer convention next year in Snowmass.**

### **3.2 Commission Liaisons: Assignments/Goals/Reporting (Handout)**

Curtis distributed handouts on Commission liaison assignments. He asked Commissioners to become familiar with their sections and committee chairs. John helped facilitate discussion with a power point. Lori added that she would like to see an “end of law practice” committee and wondered if Benson Hathaway would chair that group. Tom inquired about adding Inns of Courts to the list. Curtis closed the discussion by stating that he would like selected Commissioners to report on their assignments periodically at Commission meeting.

## **4. Information Items**

### **4.1 Pro Bono Program Report: Rob Rice**

Rob announced that the Pro Bono Program was up and running in all the judicial districts now with the 8<sup>th</sup> District being the last one onboard. He observed that pro bono needs were different in different areas of the state. They have placed 185 cases to date. The 4 “signature programs” (e.g., debt collection, the A.G.’s office, etc.) have been successful in the 3<sup>rd</sup> District on the motion calendars. The committee was in the process at looking at other district calendars as well. The 3<sup>rd</sup> and 2<sup>nd</sup> districts are interested in the Office of Recovery cases. Dean Adler asked if 3<sup>rd</sup> year law students could be useful in this program and Rob responded in the affirmative. They are making presentations at the annual Judicial Council Meeting in September. The program is nearly at capacity to place cases based on the number of volunteer lawyers as well as Bar resources (staff and the current database).

### **4.2 Modest Means Program Report: John Lund**

John reported that the Modest Means Program continues to move ahead. They have 131 lawyers signed up and one or 2 prospective clients per day sign up. They have made 185 referrals so far. The \$25 client sign up fee mechanism is now working and their goal is to hold 4 CLE’s a year for training purposes. The Litigation Section is planning a presentation in the fall and the federal bankruptcy judges have expressed interest in light of their *pro se* concerns. The judges expressed a concern that pro se filers do not experience good results with their cases and a second concern is that unapproved bankruptcy preparers – who are not authorized to give legal advice – are taking up the slack that modest means could fill.

### **4.3 Judicial Council Report: John Lund**

John said that the Judicial Council recently had its budget planning meeting which went smoothly. The AOC seems to be doing a very effective job and the number of cases are stabilizing. The district bench judges have asked for 6 permanent law clerks. John Becker has decided they can fund 4 of those slots and do it with the savings that they have generated through e-filing. Larry Stevens interjected that the ABA House of Delegates has several resolutions related to limited pro se litigants which might be helpful for the Council to review.

#### **4.4 ABA Delegates Report: Nate Alder, Margaret Plane & Larry Stevens**

Both Larry Stevens and Margaret Plane reported. Larry began by noting that Nate Alder had been elected to the National Caucus of State Bar Associations and the National Conference of Bar Presidents. Margaret Plane reported that there was a great deal of discussion pertaining to legal education, the legal profession and law schools. On a final note, Margaret has been elected to the Standing Committee on Lawyer Discipline.

### **5. Commission Governance (For Action)**

#### **5.1 Select Process to Fill 3<sup>rd</sup> Division Commission Vacancy (Tab 3)**

Curtis began the discussion by stating that certain decisions had already been made by the Commission and this discussion was limited to procedure only. The Commission needs to decide one of 3 options: (1) leave the open position open until the next regular election; (2) make an appointment to fill the slot; or (3) hold an election to fill the remainder of Jim's vacated 3<sup>rd</sup> judicial division seat. John Baldwin explained that in option 3, we would hold a special election with a 90 day notice for the balance of Jim's 2013-4 term. The 2014-5 term would be filled in regular fashion.

Eve Furse asked that if there is a special election, could we decide the parameters. Steven Burt observed that if we appoint, the non-lawyer public members have no real input into the process. Mike Leavitt interjected that he leans towards just leaving the slot open until the next election cycle. He sees no sense of urgency to fill a 3<sup>rd</sup> division seat since it is already well represented. Eve said that we could do an email notice with a 2 week ballot period under new special election Commission policies. She believes that it's important to hold an election rather than appoint under an "inside old club" system.

Tom agreed with Eve and asked if we need to change the bylaws and provide for special election details. Katherine opined that because the bylaws are silent and we enacted a policy filling in the gaps, amending the bylaws would not be necessary. Rob Rice favors an election option but Margaret agreed with Eve and Mike. Jesse Nix distributed a handout from the Utah Minority Bar expressing its dismay with an

appointment process and advocating for the “next highest vote” method used in the past.

**Eve Furse moved to hold a special election and John Lund seconded that motion.** More discussion ensued. Lori suggested we include language for details on the special election procedure and do it as fast as possible with the blessing of the court. **The motion passed with Mike Leavitt opposed.**

## **6. Executive Session**

### **HANDOUTS DISTRIBUTED AT MEETING:**

1. Proposed Changes to Bar’s Mission and Vision Statements.
2. Fall Forum Draft Brochure.
3. 2013-4 Committee and Project Chairs, Committee Membership and Commission Liaisons to Bar Committees, Sections and Local Bar Associations.
4. Utah Minority Bar Association Letter re Process to Fill 3<sup>rd</sup> Division Commission Vacancy.

**ADJOURNED: 5 p.m.**

### **CONSENT CALENDAR**

1. Approved July 17, 2013 Commission Meeting Minutes
2. Approved Committee Charges