

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

DECEMBER 6, 2013

UTAH LAW AND JUSTICE CENTER

In Attendance: President Curtis M Jensen and Commissioners: Steven Burt, H. Dickson Burton, Kenyon Dove, Hon. Evelyn Furse, Mary Kay Griffin, Susanne Gustin, Michael Leavitt, John Lund, Herm Olsen, Rob Rice, and Tom Seiler.

Ex-Officio Members: Robert Alder, Nate Alder, Heather Farnsworth, Carl Hernandez for James Rasband, Lori Nelson, Jesse Nix, Lawrence Stevens, and Gabe White. Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Katherine A. Fox, and Supreme Court Liaison Tim Shea.

Not in Attendance: Commissioners: James D. Gilson, Janise Macanas, and Angelina Tsu. Ex-Officio Members: Robert Adler, Danielle Davis, and Margaret Plane.

Also in Attendance: Sean Toomey, Utah State Bar Communications Director, Lincoln Mead, Bar IT Department, and Scott Sabey, Bar's lobbyist.

Minutes:

1. President's Report: Curtis Jensen

1.1 Recognize Adam Bevis and Sharadee Fleming at 10 Year Anniversary

Curtis introduced Adam and Sharadee in recognition of their 10 year anniversary at the Bar. Commissioners congratulated both of them and John presented them with gift baskets.

1.2 Database Committee Report: Hon. David Nuffer (Tab 1)

Curtis introduced this topic by stating that we are at a critical juncture and a decision needs to be made sooner rather than later about replacing our database. Bar Alliance will not be servicing, maintaining or hosting the Bar's current system in a few months. Judge David Nuffer who chaired this Committee appeared to explain the Committee's thinking and recommendations on the Bar's database system. He began his presentation by noting that this was probably as big of decision that the Bar would ever make. There is an extremely broad range of programs from which to choose coupled with the need to provide remarkable level of service through out the state. We've looked at reducing services from time to time

but this approach doesn't comport with what we are obligated to do and what we want to do. With software, the price increases with more specialization and it is already expensive. David drew a comparison: there are 94 federal district courts and they spend millions of dollars developing their databases. It takes 40 programmers to maintain the system and it's very, very expensive. The long term prognosis is not good for their system.

Our needs fall into three areas: admissions software (\$52,000); OPC software (\$150,000); and general management software for everything else such as licensing, MCLE, CLE, etc. (\$300,000). In response to questions, he noted that even if Bar Alliance wasn't discontinuing their database service, there are real advantages in moving to other systems rather than buying and then trying to make Bar Alliance work for us. Working from scratch hiring programmers in-house isn't a good idea, either. After careful and long-term evaluation, the Committee recommends purchasing suitable systems off the shelf and then customizing them for our needs. The Committee is recommending an overall management program called Euclid with two other subsidiary systems for admissions and OPC.

Lincoln Mead did a "walk through" of the current system we have and said that the three new systems would be fully integrated. In response to Rob's questions, Lincoln said that making improvements would be easier and less expensive than with Bar Alliance. In the admissions area, we would have more control and it would allow applicants to do more "self-service." John Lund observed that when the courts moved to e-filing, they saw significant savings with cutting staff. He inquired if the potential was here as well. John Baldwin said that we would review that aspect.

John Baldwin said that we had done our homework and there has been good experience with other bars with the three vendors we are considering. We spend more upfront on the new programs, but actually less money over the next 10 years. Dave added that there is no single vendor that can do it all like Bar Alliance purported to do. Moreover, he said that a single developer, like Bar Alliance, had too many risks involved. Again, taking over and maintaining Bar Alliance is costly and risk prohibitive, in the Committee's opinion. As to cost of the management system, that bid included transition costs. Lincoln interjected that we would have a double fire wall in-house with the new database.

Eve Furse would like a self-reporting feature CLE included in the new system. Another inquiry focused on any available discounts. If the two other systems are incorporated, Euclid would offer a starting 22% discount potentially increasing to 35%. John Lund wanted to know the impact on Bar staffing and Curtis asked if there were costs that haven't been identified. Dave replied that they had reviewed that possibility and didn't think so and Lincoln agreed. Lincoln believes that we will not need to add

to our technology staff consisting of himself and Summer Shumway. Curtis asked about the impact on our members which the Committee believed would be negligible.

Rob Rice wanted to know where the money would come from to pay for these new systems. John Baldwin responded that 20% of it was already budgeted and \$400,000 would come out of our substantial cash surplus. He reminded Commissioners that we still have \$1.2 million in the bank. Lincoln added that we could make the Euclid payments in six increments. John Lund had a number of questions about 20% of the budget already having been allocated towards this purchase. He asked if \$650,000 was the best number we could arrive at. John Baldwin replied that we current pay Bar Alliance \$100,000 a year so that amount is already in the budget. Bar dues should not go up with this purchase.

1.3 Report on Deregulation of Court Reporters

Last year there were two bills involving court reporters at the legislative session. One of the issues was whether if all a reporter was doing was videotaping a deposition, was state licensure necessary? This issue doesn't really affect the courts since they don't use court reporters except for capital cases. As a consequence, the courts do not want to regulate court reporters and instead, prefer that DOPL oversee their activities. The other issue, and not a particularly significant one, addressed increasing rate charges per page of the deposition or proceeding. The current rule prohibits legislators from naming a bill a title that doesn't reflect the nature of the bill and there are 37 pending bills with a relevant title involving court reporters. At this point, there are no more details. Katherine Fox was asked to find a Utah Supreme Case involving Derrick/Derek Brown that may have addressed some aspect of the court report issue.

1.4 Legislative Session Preparation

Scott Sabey reported on the legislative session preparation. He said that we were in the process of setting up the first meeting for the upcoming session. There are currently between 800-1200 bill requests. Scott continually reviews the requests, attends the Governmental Relations Committee meetings, and provides assistance to the Bar as needed. We review the pending bills objectively rather than subjectively. Scott is the first filter before the bills are turned over to the appropriate sections that have the specific expertise. The Supreme Court has its own lobbyist (Rick Schwermer). Scott closed his report by noting that there is a task force to examine the circuit court system that Utah previously discarded. He

invited Commissioners to attend the first Governmental Relations meeting in January.

John Lund observed that there is a great need to maintain diligence and awareness of judicial nominees as well as the court system changes that the legislative task force has taken up. Nate Alder remarked that the legislative breakfast is a really important education opportunity. John Baldwin interjected that the legislative lawyer breakfast will be held on January 23rd this year. Nate also believes it is time for move beyond Utah issues to ones of international and federal nature. Curtis asked that Commissions please plan to attend the breakfast to foster those important legislator relationships. He also said that we had distributed form letters to be personalized as desired to be sent to Commissioners' respective legislators.

1.5 Report on Meeting with Ron Gordon of Commission on Criminal Juvenile Justice

John Baldwin reported that we have some concerns about the judicial appointment process. Ron Gordon is the Governor's consultant to legislative counsel and we wanted him to know that we are supportive of the Governor's efforts relating to the process. We want to help ensure fairness as well as promote a sense of encouragement for potential judicial applicants.

1.6 Report on Meeting with Terrie McIntosh, Chair, Ethics & Discipline

Curtis, Jim Gilson and John Baldwin talked with Terrie McIntosh during the Fall Forum about roles and responsibilities of the Ethics & Discipline Committee. More specifically, they discussed the Committee being able to issue public reprimands. The group believes that public reprimands should only be issued by a court. Terrie will consider the group's concerns and the allegation that this process does not provide sufficient due process for the lawyer.

1.7 Report on Meeting with Rules Committee on Advertising Rules

John Baldwin reported that Katherine Fox, Rob Jeffs and he attended the most recent meeting with the Advisory Committee on the Rules of Professional Conduct where the pending advertising rules were discussed. Steve Johnson, who chairs this Committee, said further meetings would be necessary but that he appreciated the input, particularly from Rob who answered a number of questions and provided a lengthy background.

1.8 Report on Disaster Preparedness Committee: Michelle Harvey

Postponed.

NEW: Herm Olsen reported that at a recent Cache County Bar Association meeting at which John Baldwin and Lincoln Mead presented, there were over 40 lawyers who attended. Those members were appreciative and there was an opportunity to ask questions about “who we are.” Curtis noted that there is an ongoing invitation for Commissioners to visit the outlying areas and speak.

1.9 Report on YLD “30 for 30” Lawyer Referral Program: Michelle Harvey

Gabe White reported on this topic in lieu of Michelle Harvey. This new Young Lawyers Division (YLD) program enables a potential client to seek 30 minutes of legal advice for \$30. It draws from members of the YLD. Curtis opined that there may be concerns re liability but Gabe responded that it’s not really a Bar program but a funnel for private and for profit consultations. Rob Rice further inquired if the program has legal malpractice implications for the Bar but again, Gabe responded that it’s not a true Bar referral service. Rob, Michelle Harvey and Curtis will discuss this program in more detail at a later date.

2. Action Items

2.1 Approve Database Committee Report

John Lund moved to approve the Committee’s recommendations and without financing the purchases, along with reviewing staff positions for possible changes. Eve Furse seconded the motion which then passed unopposed.

2.2 Appointment to Children’s Justice Board (Tab 2)

We have been provided with six criminal defense bar names for this open appointment: C. Markley Arrington, Trevor A. Bradford, David W. Brown, Lisa Crawford, Tasha M. Williams, and Ron D. Wilkinson. After much discussion, **Markley Arrington was nominated by Kenyon Dove. The motion was seconded by John Lund and passed without dissent.**

2.3 Public Education Budget: Sean Toomey

Last month the Commission whittled down various ideas for the public education billboards. Changes were suggested of which Sean took note but the remaining task is to approve the budget for the billboards. No more than \$60,000 was initially suggested. The Executive Committee has recommended a mix of medium and large billboards to reach 90% of the population where the average person sees the billboard at least 20 times. They also recommended placing billboards around the state in cities and along the freeways. The money is already incorporated into the Bar’s budget if the expenditure is approved. Curtis noted that each billboard is

subject to Commission approval and we could start as early as March. **Dickson moved to approve a \$60,000 budget along with the parameters discussed, and Herm Olsen seconded the motion which passed unopposed.**

3. Information Items

3.1 Modest Means Program Report: John Lund

Postponed.

3.2 Judicial Council Report: John Lund

Postponed.

NEW: Larry Stevens announced that ABA Day in Washington, D. C., was scheduled for April 8th. Larry received a call from Linda Kline who is the chair of ABA Day, encouraging our Bar's participation in this annual event. He opined that it was important to have someone attend to represent Utah. He described the agenda for those in attendance which always includes requesting more funding for legal services. Nate Alder added that although the event was disappointing last year, it doesn't mean that we don't have significant impact with our input. He believes that we should "double down" on our investment. Lori Nelson interjected that we need to start planning now if we are going to attend and obtaining specific information on Utah to highlight the Utah issues we care about. Nate said that funding for public defenders will certainly be a topic.

Dean Robert Adler observed that we can meet with our congressional representatives while they are in Utah and perhaps have more significant one-on-one time with them. Curtis said that was an important aspect as they did not have the opportunity to even meet with some representatives last year. Mike Leavitt said that while we probably could have a larger contingency and attend, perhaps we should follow Dean Adler's suggestion. Curtis said he would take the issue under advisement.

HANDOUTS DISTRIBUTED AT MEETING:

1. List of Database Questions (Jim Gilson) and Answers (Lincoln Mead)
2. Media Coverage from October 22 to December 5, 2013 (Sean Toomey)

ADJOURNED: 1 p.m.

CONSENT AGENDA:

1. Approve Minutes of October 25, 2013 Commission Meeting

2. Approve Client Security Fund Recommendations.
3. Approve Formal Policy on E-Mail Distributions