

**UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES**

FRIDAY, JUNE 13, 2014

UTAH LAW & JUSTICE CENTER

In Attendance: President Curtis M Jensen and Commissioners: Kenyon Dove, Steven Burt, H. Dickson Burton, Hon. Evelyn Furse, James D. Gilson, Mary Kay Griffin, Susanne Gustin, Janise Macanas, Herm Olsen, Rob Rice, Tom Seiler, and Angelina Tsu.

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

Not in Attendance: Commissioners: Mike Leavitt and John Lund.

Also in Attendance: Sean Toomey, Utah State Bar Communications Director

Minutes:

1. President's Report: Curtis Jensen

1.1 Welcome and Review Calendars

Curtis reviewed the Snowmass events including the all-day Section Leadership Meeting schedule for Wednesday, July 16th. Jim Gilson reminded Commissioners that the Commission Meeting was scheduled for 1 p.m. on that day as well. Both encouraged Commissioners to spread the word about the details of the upcoming Summer Convention to promote attendance.

1.2 Report on Northwest States Bar Meeting

Curtis, Jim and John Baldwin reported on the recent Northwest States Bar Meeting held in Seattle this year. Typically, representatives from the states of Washington, Oregon, Utah, Montana, Nevada, and Idaho attend this meeting which began with the development of a reciprocity arrangement for admission. Each state Bar's President and President-elect along with their Executive Directors attend. This year's one-day meeting included discussions on limited licensing, aging lawyers, and dealing with ongoing organizational challenges.

1.3 Report of Meeting with Chief Justice Durrant

Curtis began his report by noting that our relationship with the Utah Supreme Court is an exceptionally good one. Feedback from the recent meeting included positive reaction to the Bar's and courts' efforts to enable CLE attendance at courtrooms throughout the state. Tim Shea interjected that this project will be possible because the legislature gave the courts funds to enable remote hearings which has been of great value. Eve Furse inquired about obtaining Tim's list of over 100 volunteers for nine openings on court committees.

NEW: Dean Robert Adler reported that the new S.J. Quinney College of Law was under budget and on schedule. He invited Commissioners to attend a tour mid-progress of the new building. Dean James Rasband added that there is a great deal of renovation and construction occurring on the BYU campus as well. He enjoyed hosting a recent Commission meeting at the J. Reuben Clark Law School and invited us to come back.

1.4 Model Utah Jury Instructions Committee

Curtis announced that there is a possibility that the courts may transfer work on the Model Utah Jury Instructions Committee to the Bar to oversee. This is still a work in progress.

1.5 Report on Status of Database Implementation

John reported on the status of switching over from the Bar Alliance database to the new Euclid/Clear Vantage database. The 2014-15 licensing renewal cycle has been launched under the new system.

NEW: Rob Rice inquired about the progress with obtaining RFP's for the proposed Pro Bono Commission database. His understanding was that proposals were due at the end of June. John responded that he will check with Lincoln Mead and let Rob know where we are.

1.6 Report on Billboard Campaigns

Sean Toomey reported on the Bar's billboard campaign. We currently have 25 billboards in the Salt Lake Valley. A new one is larger and located on the 6th South exit ramp. An electronic format billboard will be installed soon on southbound I-15. Tim Shea inquired as to any measures to assess effectiveness. Sean said those measures are prohibitively expensive but we can presume that the billboards have influence under the circumstances. Tom Seiler interjected that "branding" is a valuable advertising tool and anytime we use something over and over, it will have an effect. Lori Nelson opined that one bad lawyer has a disproportionate negative effect and it's important to counteract that influence.

John opined that we are essentially competing against lawyers who advertise because those advertisements become the face of lawyers. Lawyers who do similar advertising have committed bigger budgets to their public relations than we are able to commit. Curtis observed that emphasis on civility and professionalism should start earlier in the legal education process beginning with law school. Sean closed the discussion by noting that our target is really our members and they should be happy that we are promoting a positive image of them.

1.7 Report on Judiciary Committee Meeting

Curtis reported that we received an invitation from the Legislature to visit with their Judiciary Committee recently. That committee is examining resources and anticipating future needs related to law in general for a long range plan. The courts also were invited to meet with the committee and reported on the number of cases being filed, their needs and the like. Jim Gilson added that we had a good and positive interaction. During the meeting, we pitched the need for funding for unmet legal needs throughout the state.

1.8 Report on Change in Insurance Underwriter

John explained that Marsh, our former insurance underwriter for the member benefits professional malpractice insurance, has been acquired by its parent company, Mercer. He distributed a handout which outlined that Mercer is promoting Berkley malpractice insurance to replace Liberty insurance. Marsh has donated \$20,000 to the Bar annually, \$10,000 of which has been a designated donation to Lawyers Helping Lawyers. Mercer will continue the annual payment. A brochure report from Mercer was distributed during the meeting.

2. Action Items

2.1 Select Lawyer of the Year Award Recipient

One lawyer was nominated for the Lawyer of the Year Award. The Commission would have liked more nominations in order to make the award more fair and meaningful. **Curtis suggested that we postpone this award for a week or so in order to gather more names.**

2.2 Select Judge of the Year Award Recipient

One judge was nominated for the Judge of the Year Award. Again, the Commission wanted more nominees to consider. **After discussion, Jim moved to table the discussion over the selection of both the Judge and the Lawyer of**

the Year Awards until next Friday (or several days thereafter) and conduct a voice vote via telephonic conference. Dickson seconded the motion which passed unopposed. John Baldwin will designate a day and time for the discussion and subsequent voting and Commissioners should email their additional nominations and supporting materials to him before the designated deadline.

2.3 Select Committee of the Year Award Recipient

Only one Bar Committee was nominated for the Committee of the Year Award. Again, although worthy of the award, the Commission felt as though they should have more than one nominee from which to choose. In response to a suggestion, John will send out a list of committees, sections and their charges to aid Commissioners in their deliberations and soliciting nominations. **The Commission decided to postpone this award in conjunction with the upcoming telephonic conference call.**

2.4 Select Section of the Year Award Recipient

Several nominations for the Section of the Year Award were distributed. Those entities included the Intellectual Property Section, the Real Property Section and the Young Lawyers Division (YLD). Discussion ensued, much of which focused on whether the YLD was truly a section and should be competing with other Bar sections for this award since their goals, resources and charges are so different. **By written ballot, Commissioners chose the Intellectual Property Section for the Section of the Year Award.**

NEW: After considerable additional discussion, Dickson moved to give the YLD a special Distinguished Service Award. Tom Seiler seconded the motion which passed. Janise Macanas and Angelina Tsu opposed because they did not think it should be a separate award.

NEW: James Rasband suggested that the Bar ask for award nominations on the post-convention surveys. This suggestion was met with great approval.

2.5 Approve 2014-2015 Budget

Curtis introduced the Bar budget discussion by complimenting Jim for his thoughtfulness in thinking one word a head. As we adopt more and more programs and projects, more cost is involved and we need to be mindful of what we are spending. The last Bar fee increase occurred for the 2008-9 fiscal year. Although it was the first increase in 20 years, dues jumped from \$350 to \$425 and our membership wasn't happy. At that time, we predicted that unless costs were

cut, we would need another increase in 5-6 years time. In January, that line will be crossed unless we take measures to curb expenses. John distributed an outline for discussion purposes.

There are four factors to consider when evaluating the proposed budget: (1) the Bar mission and values of existing programs, services and activities; (2) the proposed budget figures; (3) the existing cash reserves and their purposes along with estimated future reserves; and (4) the funds needed to perform programs, services and activities are not limitless. John also distributed several Bar graphs which help to explain the direction of the budget in light of pertinent factors. The graphs estimate that if an additional \$200,000 were saved in the proposed budget, at current trends, the revenue and expense lines would probably not cross until 2017-2018.

Extensive discussion ensued over the proposed budget. Jim noted that we need to tighten our belts. We need to cut \$200,000 in expenses and postpone a licensing fee increase for at least two years. We have \$2,000,000 in reserves (which is four months income) but the Budget & Finance Committee has recommended six months of reserve. We've had extraordinary expenses lately with the HVAC system and new computer database software. A prudent course of action is to look now for ways to save money through efficiency and cuts. These are hard decisions to make, but the Bar can't continue its current direction without increasing fees which is not something we want to do at this point.

John explained that the HVAC and new database expenses were a cash outlay, not part of the operations budget. He reviewed the highlights of the budget outline document he distributed and also explained Tab 8 materials in the packet. In renewing our health insurance for employees this year, we saved \$80,000. There were a number of inquiries from the Commission about the budget. John said that we are saving \$10,000 by hiring a paralegal for the New Lawyer Mentoring Program position and if we don't replace the employee in the Pro Bono program, we'll save another \$10,000. In addition, the new auditors will cost approximately \$35,000 less than we have spent in the past with Deloitte.

The Executive Committee has been discussing the budget concerns carefully. Some ideas are: (1) Cut Blomquist Hale (\$75,000); (2) Summer Convention (cut Commissioners' attendance from three days to two days (\$75,000)) (3) stipend to President reduced from \$1,000 to \$500 a month; (4) stipend to President-elect reduced from \$500 to \$250 a month; (5) eliminating Past Presidents' dinner (\$4,500); (6) eliminating the LHL annual contribution (\$20,000); and (7) eliminating UDR annual contribution (\$20,000). We also need to examine how credit card fees could be reduced from current level of \$73,000. Eve observed that the Bar's staff benefit package is extremely generous and could be reduced. More discussion occurred.

Angelina wanted to know why the Bar's postage costs were so high and wanted more detail. Nate said that he was shocked that the CLE revenues were so low but Jim responded that there is more competition for CLE dollars and that Bar conventions are losing money. Angelina also wanted to know how CLE revenue could be increased. Steve Burt opined that the "sky wasn't falling" and we should not overreact, but Jim said we don't want to wait to address budget issues until panic sets in. Rob Rice wanted to know if the budget includes \$80,000 for the pro bono database (it doesn't). Lori said that we should not cut benefits for our members and we seem to be a bit alarmist about the situation. Eve wants more accountability for budgeting in the CLE department and said that we need a line item. Curtis closed the discussion by noting that the Executive Committee will continue to examine expenditures and revenues over the next year. **Approval for the budget was postponed until the Commission meeting in July.**

A. Utah Dispute Resolution Funding Request

Utah Dispute Resolution (UDR) has requested \$20,000 from the Bar in order to help support community mediation for the 2014-5 fiscal year. Typically, mediation services are provided to low income individuals for cases that lawyers aren't drawn to accept. Curtis noted that we denied their request last year and that we do approximately \$10,000 in kind each year for their office space. Rob inquired if we can shift this request to the Utah Bar Foundation (UBF). Jim responded, however, that UDR already receives \$20,000 a year from UBF. Nate Alder explained that UDR provides a huge benefit to the judicial system by the work they provide. They also provide cost effective mediation training. Nate questioned the need for UDR to file funding requests every year while Law Related Education is a \$40,000 plus line item in the Bar's budget. Steve Burt opined that we should "wean them off [their reliance on] the Bar." More discussion ensued. **Jim moved to deny UDR's request and Kenyon Dove seconded the motion which passed with none opposed.**

B. Young Lawyers Division Funding Request

Katherine Judd, the Young Lawyers Division (YLD) new incoming president, appeared to present YLD's request for \$59,000 for the 2014-5 fiscal year. She gave an informative and detailed report on all the good things YLD does for the legal profession and the public as outline in the packet materials. They plan on two new programs for the upcoming year with school aged children: "Bully-Proof" and "Arrive Alive" which deals with texting and driving. They also would like to fund two attendees at the upcoming Summer Convention.

A comprehensive discussion took place. Lori said that the Commission is making this decision in light of a previous discussion to trim the Bar's budget. Curtis

wondered if more local bars could be solicited for contributions. For instance, SUBA could be asked to help fund the new St. George VA Legal Clinic. Commissioners observed that we gave YLD an \$11,000 increase last year and they are asking for a \$10,500 increase this year. We have essentially raised our contribution of \$40,000 to \$60,000 if this request is granted. Nevertheless, Commissioners also recognized the tremendous work that YLD accomplishes. Rob observed that the two new programs “Bully Proof” and “Arrive Alive” aren’t core to the Bar’s mission unlike Wills for Heroes. Countering those observations, both Steve and Heather Farnsworth opined that we get a lot more bang for our buck from YLD than we get with a \$60,000 budget for billboards.

Jim noted that we are grateful for YLD’s efforts but suggested that we maintain last year’s level of funding as we need to tighten our financial belt. **Herm Olsen moved to add \$7,500 to last year’s contribution which would total \$56,000 for 2014-5. Dickson seconded the motion. The motion passed.**

2.6 Appoint Commission Liaisons

Jim announced that while Commission Liaison assignments for Sections and Committees were included in the packet, the list has been finalized. He asked for any Commissioner feedback and requested them to send letters to their chairs so that those individuals know who their Commissioners are. John will circulate up-to-date chair contact information at a later date.

2.7 Advertising Rule Petition Amendment

Katherine Fox reported on the proposed changes to the Bar’s Advertising Rule which consist of amendments from the Court’s Advisory Committee on the Rules of Professional Conduct. The most significant change is that submitting advertising for review will no longer be mandatory. Another change is that it substitutes a procedure similar to a request for an ethics opinion for those lawyers who seek more guidance than is provided in the rule. Katherine directed the Commission’s attention to the materials in the packet which outline exactly what is being amended. **Jim moved to adopt the proposed changes and Susanne Gustin seconded the motion which passed unanimously.**

2.8 Approve *Magna Carta* Exhibit Project

Jim, Dickson Burton and Larry Stevens reported on a new ABA program (in conjunction with the Law Library of Congress) which is a traveling exhibit to raise awareness about the *Magna Carta* and celebrate its enduring legacy. The exhibit will be comprised of 12-16 free-standing banners with images that tell the story of the *Magna Carta* and its catalyst role in promoting the rule of law. The centerpiece will be one of four original copies made in 1215 of the document,

building up to the *Magna Carta*'s 800th anniversary in 2015. The Matheson Courthouse or the Capital are strong possibilities as a suitable venue and no Bar funds are being solicited. **Tom Seiler made a motion to approve the program and the motion was seconded by Steve Burt. The motion passed.**

2.9 Select Auditors

Jim explained that our long-term Bar auditors have significantly increased their fees. Comparable service can be obtained at a more reasonable cost and the materials contain information in response to RFP's that were sent. **After discussion, Rob Rice moved to appoint Tanner & Company and Susanne Gustin seconded the motion which then passed without opposition.**

2.10 Judicial Council's Technology Committee

The Judicial Council's Technology Committee is in need of a Bar recommended member. John said that Lincoln Mead recommended Blake Miller to fill this appointment. **Tom Seiler made a motion to approve Blake Miller and Dickson seconded the motion. The motion passed with none opposed.**

3. Information Items

3.1 Disaster Relief Committee Report

Andrea Valenti Arthur and Brooke Ashton, co-chairs, appeared at this portion of the meeting to report on the work of the Disaster Relief Committee. They provided a handout which outlined the accomplishments of the committee to date. The committee's charge is to develop a plan for providing pro bono legal assistance to low-income individuals and businesses as needed after a disaster. The group has 11 members but only five regular participants, unfortunately, which is a problem. As such, the group is seeking suggestions as how to recruit volunteers. The work has developed into two prongs: (1) establish a referral service for legal assistance; and (2) establish a clinic-like format. They have presented CLE's and are working on a basic law manual (which includes such things as construction law, fraud, FEMA law, etc.) for attorneys who want to help in the event of a disaster. They also are working with the state emergency office and on establishing a St. George office to help with rural area's legal needs.

Nate suggested that the Bar's Military Law Section and the National Guard be contacted for potential volunteers. More discussion ensued. Another idea was to contact the sections to have a member help with updating the manual in different areas of law. Curtis said that SUBA should be able to help the Disaster Committee as well. He said that he would help pave the way to SUBA and contact them.

NEW: The Commission Retreat is scheduled for August 22-23 and will be held at The Canyons. Commissioners should schedule this meeting accordingly.

HANDOUTS DISTRIBUTED AT MEETING:

1. 2014-2015 Budget Discussion Outline.
2. Disaster Legal Response Committee Request for Bar Support.
3. Tanner and Company Auditors Proposal.
4. Mercer (f/k/a Marsh) Report.
5. Dickson Burton's nomination for IP Section for Section of the Year Award.
6. Curtis Jensen's nomination for Judge James L. Shumate for Judge of the Year Award.
7. Michelle Harvey's nomination for the Disaster Legal Response Committee for Committee of the Year Award.
8. Scott Sabey's nomination for the Real Property Section for Section of the Year Award.
9. Copy of Intermountain Commercial Record for May 1, 2014.
10. Graph "Projected Revenue & Expense - \$200,000 Reduction in Expenses for 2014-5 year with Revenue Increase of 3% and Expense Increase of 5%.

ADJOURNED: 1:20 P.M. Noon

CONSENT AGENDA (Tab 3):

1. Approved April 25, 2014 Commission Meeting Minutes.
2. Renew Casemaker Contract
3. Appointments to Utah Legal Services Board