

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

DECEMBER 20, 2019

LAW AND JUSTICE CENTER

In Attendance: President Herm Olsen and President-elect Heather Farnsworth (by phone). Commissioners: John Bradley, Steven Burt, Chrystal Mancusco-Smith, Mark Morris, Mark Pugsley, Michelle Quist, Tom Seiler, Heather Thuet and Katie Woods.

Ex-Officio Members: H. Dickson Burton, Kate Conyers, Torie Finlinson, Amy Fowler, Candace Glead, Camila Moreno and Dean Elizabeth Kronk Warner.

Not in Attendance: Mary Kay Griffin, Marty Moore and Cara Tangaro. Ex-Officio Members: Nate Alder, Erik Christiansen, Jiro Johnson, Margaret Plane, Robert Rice, and Dean Gordon Smith.

Also in Attendance: Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Elizabeth A. Wright, and Supreme Court Liaison Larissa Lee.

Minutes: 9:10 a.m. start

1. President's Report: Herm Olsen

1.1 '20 Legislative Session/Tax Reform. The Bar's lobbyists Frank Pignanelli, Steve Foxley and Doug Foxley were introduced to the Commission. The Commission discussed last year's tax reform effort and resulting legislation and the upcoming 2020 legislative session.

1.2 Legislative Conference Call Schedule. Commissioners were reminded of the legislative session conference call that takes place every Tuesday at 4:00 p.m. during the legislative session.

OUT OF ORDER

3.2 2020 Leadership Academy Selection Process. Leadership Academy Co-Chairs Jen Tomchak and Cheryl Mori presented the Commission with the proposed 2020 participants. The Leadership Academy was very pleased to present a diverse group that is representative of each of the judicial districts in the state. Jen Tomchak reported on the highlights of last year's academy and outlined the plans for 2020. **Katie Woods moved to ratify the Leadership Academy's selection of 2020 participants. Michele Quist seconded the motion which passed unopposed.**

2. Information Items.

Regulatory Reform Committee. Chair of the Bar's Regulatory Reform Committee, Judge Tom Willmore, joined the Commission to report on the first meeting of the Committee. Judge Willmore reported that the sense is that the proposed reforms are going ahead without any input from the Bar and that the Committee will therefore focus on keeping lawyers informed about the reforms and any proposed rule changes. The Commission discussed the concern that the reforms are happening so quickly that lawyers have not had time to study the issues. Commissioners expressed concern about ownership and use of client data by tech companies. Some expressed a concern about the lack of transparency about the sandbox and the criteria for participation. Larissa Lee pointed out that the Task Force has a new website, that its meetings are open to the public, and that agendas and materials will be posted on the website. **Mark Pugsley moved to ask the Court for an extension of the comment period for any regulatory-reform rule changes from 45 days to 6 months so that lawyers have ample time to study the issues and provide comments. John Bradley seconded the motion which passed unopposed.** Herm Olsen will send a letter to the Court asking for an extension of comment period time for regulatory-reform rule changes.

OUT OF ORDER

4.2 2020 Approve Fund for Client Protection Recommendations. The Commission reviewed and discussed the Fund for Client Security award recommendations. Herm Olsen pointed out that one claimant was awarded \$250 of a \$500 claim and indicated the Commission should award the entire \$500. **Tom Seiler moved to approve the Fund's recommendations with the modification that the claimant discussed be awarded his entire \$500 claim. Chrystal Mancusco-Smith seconded the motion which passed unopposed.**

3. Discussion Items.

- 3.1 **Proposal to Prohibit "Bullet Voting."** The Commission discussed the pros, cons and necessity of prohibiting lawyers from voting for only one of three candidates in Commissioner elections.
- 3.2 **2020 Leadership Academy Selection Process.** See above.
- 3.3 **Position on Resolution to Amend the Constitution.** The Commission discussed the permissibility, pros and cons of supporting an amendment to the United States Constitution.

4. Action Items.

- 4.1 **Review Ethics Advisory Opinion 19-03.** Billy Walker from OPC and Linda Smith and Kenneth Lougee from the Bar's Ethics Advisory Opinion Committee joined the Commission to discuss whether the Commission should reject Ethics Advisory Opinion 19-03. The Opinion concerns an interpretation of Rule 5.5's prohibition against a non-

Utah lawyer having a “continuous and systematic presence” in Utah for the practice of law. OPC believes the Commission should reject the opinion because it is inconsistent with the plain language of Rule 5.5(b) and the Utah Supreme Court’s decision in Jardine. After hearing arguments from both sides, **Kati Woods moved to retain the opinion and recommend that the Rules of Professional Conduct Committee make changes to Rule 5.5 to clarify the rule. Michelle Quist seconded the motion which assed unopposed.**

4.2 2020 Approve Fund for Client Protection Recommendations. See above.

4.3 Petition to Amend Rule 14-508. Elizabeth Wright asked the Commission to approve a petition to the Supreme Court to clarify language in Rule 14-508. The word “resign” in the current rule is inaccurate and confusing. The Admissions Committee also proposed changes to admissions rules to correspond with the proposed clarification of 14-508 and other “cleanup” changes to 10 admissions rules. **Tom Seiler moved to approve petitioning the Court for the proposed rule changes. John Bradley seconded the motion which passed unopposed.**

4.4 Request to form Cannabis Law Section. Heather Thuet moved to approve the request to create a Cannabis Law Section. Mark Pugsley seconded the motion which passed unopposed.

4.5 Approve New YLD Membership Requirements. Torie Finlinson reported that the YLD Board will vote on expanding YLD membership eligibility from lawyers in their first 6 years of practice to lawyers in their first 10 years of practice. This change will make the Bar’s membership requirements consistent with a recent change by the ABA for its YLD membership eligibility.

5. Executive Session.

The meeting adjourned for the day at 1:10 p.m.

Consent Agenda

1. Approved Minutes from the November 8, 2019 Commission Meeting.

Handouts:

1. List of 2020 Leadership Academy participants
2. Memorandum regarding Admissions rules changes.
3. Memos regarding Keller.
4. Copy of statement made by Oregon Bar.