

UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES

OCTOBER 25, 2013

J. REUBEN CLARK LAW SCHOOL  
PROVO, UTAH

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

**Ex-Officio Members:** Nate Alder, Danielle Davis, Heather Farnsworth, Lori Nelson, Jesse Nix, James Rasband, and Gabe White. Executive Director John C. Baldwin; Assistant Executive Director Richard Dibblee, and General Counsel Katherine A. Fox.

**Not in Attendance:** Commissioners: Stephen Burt, H. Dickson Burton, Susanne Gustin. Ex-Officio Members: Robert Adler, Margaret Plane, and Lawrence Stevens. Supreme Court Liaison Diane Abegglen.

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

**Minutes:**

**1. President's Report:**

**NEW:** Curtis thanked Dean Rasband for his hospitality in hosting the meeting. Dean Rasband in turn encouraged the Commissioners' attendance at the student reception after lunch. Curtis also mentioned the passing of Judge Anthony Quinn and asked John to send flowers as well as look for an opportunity to dedicate a program or event to his memory.

**1.1 Leadership Conference Report (Tab 1)**

Curtis asked those in attendance to review the materials behind Tab 1 in the packet. He described generally the conference. Eve Furse commented that it was a good format for productive discussion purposes and she enjoyed it. Rob Rice also commented that the format encouraged discussion which was different than in the past events. He said that those attending observed that the wide availability of online legal services is a concern because not only does it encroach on business, but it is problematic and often requires lawyers to correct those problems. Kenyon Dove interjected that we really need to focus on what is irreplaceable in a

“real” lawyer’s service. He also said that members at the conference mentioned that they need a “benefit” to attend our conventions other than CLE credit. Herm Olsen then added that that the new format was superb. He heard attendees say that reducing the number of our current 3 conventions would probably increase attendance at the others. He also suggested that the Commission and law schools get together to identify areas of practice that are diminishing as a result of the internet

Jesse Nix said that the conference was fantastic and wondered if it were possible to schedule this opportunity twice a year. Jim Gilson opined that the format was a winner since it was interactive. He wants to follow up on some of the ideas that were expressed and do this type of thing at different events. What we ought to be doing as a Bar is being relevant by emphasizing the role of lawyers in giving counsel/advice and not so much dispensing legal information. John Baldwin observed that the average status of attendees at his table was 4 years out. That group typically takes changes in stride and are less “reactionary” than older lawyers. Mary Kay Griffin said that the attendees at her table were very interested in the Bar providing resources relating to how to manage a law practice.

Curtis asked Commissioners to summarize their discussions and provide that feedback to him.

## **1.2 Pro Bono Celebration Report**

John Baldwin provided some examples of the types of events that the pro bono folks held for this occasion.

## **1.3 Fall Forum November 14-15**

The Fall Forum will be held on Thursday night and the following Friday all day on November 14<sup>th</sup>-15<sup>th</sup>. It is the largest convention we do. Janise Macanas will be sworn-in as a new Commission during the event. John Lund wondered if we could do an electronic board for attendees to share rides and plan gatherings. Lori suggested that we could do a registration listserv to accomplish this. Eve asked if there could be an opportunity for some attendees to opt out for security or privacy reasons. Janise also inquired if we could do a “meet the Bar Commission” reception outside of the CLE events so that lawyers who can’t afford or don’t otherwise plan on attending could have a chance to interact with leadership.

## **1.4 Commission Priorities Review**

Curtis asked Commissioners to review priorities #1-5 in the packet. We are still in the process of gathering information and want to meet with the court on the future of legal practice. John Baldwin said that in light of a

fair and impartial judiciary priority, a district court candidate was recently rejected by the Utah Senate. The court had initially asked the Bar for its involvement in this development but later withdrew that request. Discussion took place on the Utah Legislature vetting judicial candidates. Perhaps we need to better educate governmental offices and contact key individuals and offer our resources. It was also suggested that we invite the members of the Senate Judiciary Committee to the Annual Lawyer Legislative Breakfast.

### **1.5 Underemployed Lawyers Issues**

Curtis said that he had a recent sobering experience when a new lawyer at the swearing-in ceremony reported to him that he would be returning to the farm to work since he could not find a job in the legal profession. Curtis then opined that we need to try harder to find opportunities for these new lawyers and encouraged Commissioners to do just that. Janise Macanas interjected that along those lines, some new lawyers simply can't afford to attend the Fall Forum. She asked Commissioners to think about creating an opportunity to meet and greet before the conference and without charge. Nate added that a non-profit law firm is engaging in community-based legal services. They are developing a niche for low income services and do a lot of divorces and criminal defense. John Lund observed that we have a demand problem in light of an over-supply of lawyers. Curtis closed the discussion by asking Commissioners to email him and John Baldwin as new legal opportunities arise.

### **1.6 Video Recording Licensure Issues**

This issue came up a few years ago but has been resurrected. Tom Seiler reported that Rule 30 (b) (2) governing video recording for depositions done without a court reporter doesn't provide how you obtain a transcript. Court reporters are very concerned about this issue; they are required to be certified, undergo periodic training and education, but non-court reporters do not operate under these requirements. AV Reporters is a relatively new player in the market and are not required to adhere to these constraints. They make a video available at the end of the deposition which is nice but the downside is that there is no capability of these businesses to produce a quality transcript. The recordings are often poor quality with gaps and unintelligible comments. Witnesses cannot get a free transcripts copy to review for accuracy, either. Court reporters may approach legislators for a rule change.

Danielle Davis added that these videos are often sent out of the country for transcription at a cheaper cost but the quality is not good. Rob Rice said that the solution is to modify the rule. Eve Furse said that Jonathan Hafén is the chair of the appropriate Advisory Committee on the Rules of Civil

Procedure. Kenyon offered that it is nice to have market pressures to turn out transcripts faster from the court reporters, however. John Lund said that there is no way to obtain a transcript unless a lawyer or witness travels to AV offices in Spanish Fork and unless one pays a hefty fee in advance.

## 2. Action Items

### 2.1 Select Public Education Message: Sean Toomey

Sean Toomey, the Bar's Communications Director, distributed a handout (Media Coverage September 20 – October 21, 2013) and conducted a power-point presentation. He broke down the ensuing discussion down to several concepts: (1) Is this a good concept? and (2) the Mission Statement series. Several Commissioners asked if there was a way to track "results" of the different billboards Rob Rice suggested in the "hire a lawyer series" if we could insert a unique link to more information. The use of phrases was examined and eventually, Sean asked if he could get a budget in order to fine tune the billboard concepts. Curtis told Sean to proceed in accordance with the discussion (a \$45,000, \$55,000 and a \$65,000 budget with the inclusion of Modest Means promotion) and bring back the developments to the next Executive Committee meeting.

### 2.2 Select "Heart and Hands" Award Recipient (Tab 2)

Three individuals were nominated by our members for this award: Jensie L. Anderson, Sarah Spencer and Erin M. Stone. Each candidate was discussed in detail. After much discussion, **Eve Furse moved to designate Erin Stone for the Heart and Hands Award. Kenyon Dove seconded the motion which passed unopposed.**

### 2.3 Approve 2012-2013 Audit: Mary Kay Griffin (Tab 3)

Mary Kay reviewed the 2012-2013 Bar audit. We received a "clean opinion" and the audit went very well this year. Mary Kay proceeded to point out the audit's highlights and responded to questions, including information about the Lehman Brothers investment (we have received \$72,750 so far from our \$300,000 investment). **After close of the discussion, John Lund made a motion to accept the audit. Herm Olsen seconded the motion which passed with none opposed.**

## 3. Discussion Items

### 3.1 Pro Bono Commission Issues: Rob Rice

Rob reported that the Pro Bono Commission's goal for next year is to have "every lawyer check yes" on the annual licensing form. They are also

working on enlarging the working sphere for inactive lawyers to engage in pro bono activities.

### **3.2 Modest Means Program Issues: John Lund**

John Lund reported that the Modest Means Program already has a dedicated Listserv in response to earlier suggestions. He observed that there has been 20,754 domestic law case filings in Utah District Courts in 2013 so far and that 20,657 of those have been resolved albeit fewer than 50% of these cases have had a lawyer involved. Modest Means is experiencing several calls a day in the last six months. They have made 264 referrals and 155 of those referrals have been in family law. John continued to report that while our program is good, and better than some bar associations have in place, it's significantly under-utilized. Of new lawyers who have just been admitted, 160 signed up in the program. We need to reach another level and need to convince potential clients that they need "real" lawyers. Further discussion ensued. There has been an uptick in judges' referrals, but we continue to have low participation in the Uintah Basin and Carbon County areas.

### **3.3 Transition from the Practice of Law Issues**

Curtis observed that there is a great need to help facilitate retiring lawyers in transitioning from full time legal practice. Lori echoed Curtis' thoughts and said that there was discussion at the break out session at the Leadership Conference on this topic.

## **4. Information Items**

### **4.1 Database Review Status: John Baldwin**

John Baldwin reported that Bar Alliance anticipates cutting our Bar database services off in May 2014. They still have not indicated that we have a viable option to purchase our current database. The committee reviewing this issue will have a recommendation at December's Commission meeting when Judge David Nuffer is scheduled to appear to discuss this issue.

### **4.2 Beneplace Group Benefits Report: John Baldwin (Tab 4)**

We now have a fully executed Beneplace Group Benefits contract in place. Stay tuned for further developments but we plan on having access around the time of the Fall Forum.

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

John reported that the Judicial Council is debating whether to attend Snow Mass for their July monthly meeting. As most Commissioners already know, John Pearce was designated to the Utah Court of Appeals vacancy. There continues to be problems finding *guardian ad litem*s to represent juveniles in court proceedings. We need to do more education of lawyers regarding the role of judges so that judicial surveys more accurately reflect judges' performance. E-filing in criminal matters becomes mandatory in March of 2014.

#### **4.4 Lawyer Advertising Rule Proposal Update: Katherine Fox**

Katherine Fox said that on November 18<sup>th</sup>, she and Rob Jeffs will be attending the Court's Advisory Committee meeting on the Rules of Professional Conduct. That committee will be discussing the proposed lawyer advertising rules. Sometime after, the court will expect the Bar's summary and analysis of the public comments submitted on the proposed rules, including the committee's written response. This process seems to be taking longer than usual in light of the fact that the petition was filed in February.

### **5. Executive Session**

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

1. Media Coverage September 20 – October 21, 2013

**ADJOURNED:** Noon

**CONSENT AGENDA:** None