

UTAH STATE BAR COMMISSION MEETING

MINUTES

Friday, September 16, 2022

University of Utah S.J. Quinney College of Law

AGENDA

In Attendance: President Kristin “Katie” Woods, President-Elect Erik Christiansen, and Commissioners Tom Bayles, Matt Hansen, Rick Hoffman, Greg Hoole, Beth Kennedy, Chrystal Mancuso-Smith, Marty Moore, Andrew Morse, and Cara Tangaro.

Ex-Officio Members: Nate Alder, Cedar Cosner, Shalise McKinlay, Gabriela Mena, Brittany J. Merrill, and Margaret Plane.

Not in Attendance: Commissioners Traci Gunderson, Mark Morris, Shawn Newell, and Tyler Young. Ex Officio members Past-President Heather Thuet, Kim Cordova, Dean Elizabeth Kronk-Warner, Camila Moreno, Allison Phillips Belnap, and Dean Gordon Smith.

Also in Attendance: Executive Director Elizabeth A. Wright, General Counsel Nancy J. Sylvester, Utah Court Representative Nick Stiles, Sue Crismon, John Lund (via Zoom).

1. President's Welcome and Reports: Katie Woods

Ms. Woods welcomed the Commission to the meeting and introduced guests.

1.1 Innovation Office Report: John Lund and Sue Crismon

Ms. Crismon reported on the Supreme Court’s regulatory sandbox. She reported that since January 2021, 25,000 services have been provided by sandbox entities. She noted that around 19,000 of those services were individual, meaning they were not repeat customers. She reported that the vast majority of services were provided by lawyers. Ms. Crismon reported that the sandbox service providers have received less than one complaint per 4000 services. Ms. Crismon described the process for resolving complaints, which involves moving entities from green down a color spectrum to black. The colors represent levels of risk and going to black means the entity is kicked out of the sandbox if appropriate. She noted that the Sandbox has touched 15 of the 17 Utah legal deserts with services. There are 17 legal desert counties of the 29 counties in Utah. Ms. Crismon reviewed the ABS (alternative business structure) entities, which involve lawyers

partnering with non-lawyers to better serve consumers (i.e. an estate planning partnership with financial planner).

Ms. Crismon described the audit process for service files. She said that attorneys who are qualified in the practice area can become auditors. Auditors scored Timpanogos Certified Legal Advocates 4.65 out of 5 points. This means good to excellent on minimizing consumer harm and providing services. Ms. Crismon then described the partnership between i4J and Holy Cross Ministries and AAA Fair Credit to help consumers with medical debt.

Mr. Lund noted that the fears that originally were there about the Sandbox have not been realized. He said the Sandbox thus far has not seen huge entities trying to come into Utah practice law.

Ms. Woods asked what a working definition of services is. Ms. Crismon said legal services refer to unbundled services, for example, giving advice or drafting a protective order. Mr. Lund noted that there are types of services vs. area of services. Ms. Woods also asked about an access to justice definition. Ms. Crismon noted that the sandbox defines access to justice more broadly than what the court data provides. She said “access to justice” includes someone reaching out for a legal service in the sandbox who would not have otherwise contacted a lawyer.

Mr. Christiansen asked how much money is being made by entities in the sandbox. Ms. Crismon said that right now that is hard to pin down and there is not a lot of money being made yet, but that may change as software providers ramp up. Mr. Lund noted that a fee policy for applications and ongoing services is an amendment that will be made to the Supreme Court’s standing order. Nate Alder noted that Arizona has a fee structure already. Ms. Crismon pointed out that Arizona is only allowing ABS’s right now, so the fee structure refers to those only. Mr. Lund said that one idea that may be helpful is to provide a grant for non-profits or a reduced fee schedule. In response to Mr. Christiansen’s question, Ms. Crismon noted that the sandbox is collecting financial data, but she said some entities are providing a flat rate for multiple unbundled services.

Mr. Moore noted that there are immigration providers not in the Sandbox who are already pushing the line on UPL and asked how that is being regulated. Mr. Lund said they are trying to encourage providers to come into the Sandbox who are on the line. Mr. Lund said that all immigration entities are ABS’s. She said that immigration services are regulated by Homeland Security, so the Supreme Court is limited in what it can do to regulate the practice of law in this space.

Mr. Bayles observed that in his experience, Sandbox entities were not necessarily cheaper than attorneys. Ms. Crismon responded that the point of the Sandbox is not necessarily about being cheaper, but more about providing access and innovation. Ms. Crismon noted that the legal market is changing in that consumers are not seeking lawyers; they are

seeking answers online to try to solve their problems and to cut costs. Mr. Lund observed that the Sandbox is responding to what consumers are already doing. He said the market itself may not be helpful to lawyers.

Mr. Lund noted that there are many lawyers who are seeing the benefits of innovating and are doing so. He also noted that there are entities coming into Utah who are interested in hiring multiple lawyers. Ms. Plane asked how the auditors are selected. Ms. Crismon said the Innovation Office puts out an advertisement and attorneys applied. They were then interviewed and placed on a panel. Attorneys are paid \$50 per file, or \$2,000 per audit. Only Utah lawyers are used for the panel. She noted that the Supreme Court is exploring using volunteers for the audits, which could be problematic if there is not a volunteer expert in a certain area.

Mr. Hanson asked about the amount of study that has been done on the funding self-sufficiency of the Innovation Office. Ms. Crismon noted that it is challenging to project because they do not know what kind of entities will be in the Sandbox in the future if one calculates a flat fee per revenue amount. Mr. Lund noted that the cost per service will be much lower over the years as services grow.

In response to a question from Mr. Christiansen, Mr. Lund noted that getting staffing correct will help with reducing costs. Right now, they are using contractors, for example. Mr. Crismon noted that the Sandbox framework is data-driven. Consumer harm is very data-driven so there is not a way to take the data measurement piece out of it. She noted that knowing what the data says will result in rule changes.

Mr. Alder asked whether the Conference of Chief Justices or Pew Charitable Trusts would be able to help with data collection. Mr. Lund said that they have been working with funding at the national level on that piece. But, he said, when it comes to governmental routine regulation of a provider of services, those charities do not want to fund an ongoing operation.

Mr. Christiansen asked why, instead of auditors, a complaint process like the one that the Department of Consumer Protection has wouldn't work for Sandbox entities. Ms. Crismon noted that the complaint process currently for lawyers is not capturing every consumer harm, which is why the data is helpful.

Ms. Woods asked what a parting message should be to members. Mr. Lund said that the lawyers hold the keys to the legal system, but they don't own it. He said if consumers can't get help to navigate the system, then the system becomes distrusted. Mr. Lund said that change is coming and the lawyers who are embracing it see it as an opportunity. He noted that the J. Reuben Clark Law School at BYU has a legal innovation club with 50 student members. So, this is the way the legal market is headed.

In response to a comment about pushback from lawyers about paying this, Ms. Crismon

said that there are justices who see the licensing fees as the Supreme Court's money. She said the hope is to work together to get the budget ask down, but ultimately the court can decide what happens with legal regulation.

Ms. Woods observed that Utah lawyers are interested in the local data, not a national experiment. She said it is helpful for the Commission to understand what the services actually mean. Ms. Tangaro pointed out that Rasa, for example, is a for-profit entity, so it's helpful to know what a service means there. Mr. Christiansen and Ms. Wood noted that there is a quick need for a pared down Innovation Office budget since the Commission is scheduled to take a vote on the Supreme Court's ask at the December meeting. Ms. Crismon noted that there are certain fixed expenses that cannot be pared down, such as the Innovation Office's database. Mr. Stiles said the database is about \$25,000 per year.

Ms. Wright observed that this request comes down to resources. The ask is not necessarily about what the entity itself is doing, but about this being a request amounting to 10% of the Bar's budget. So the discussion can be framed in terms of what programs the Bar has to give up. Ms. Crismon said that the Supreme Court is looking at partial funding and then using the Bar's captured savings from COVID as a stop gap. Mr. Alder asked about legislative funding and Ms. Crismon said all options are being explored. Mr. Moore noted that the justices should be giving presentations around the state to lawyers. Ms. Crismon said the court is happy to do so.

Ms. Plane said the Court is passionate about its constitutional prerogative to regulate the practice of law but it needs to get out to educate the members to form the consensus. Ms. Woods asked that the message be carried back that the justices need to speak on this and the Bar will give as many forums as possible to speak to lawyers.

1.2 New Utah State Bar Website

Ms. Woods reported that the Bar's new website is up and running and is a vast improvement over the old one. She said it is much more navigable than before. Other commissioners voiced their agreement.

1.3 In-Person Admissions Ceremony – October 18th at State Capitol

Ms. Woods reported that on October 18, 2022, the Bar will be holding its first in-person admissions ceremony in three years.

1.4 Lawyer-Legislator Breakfast – Tentative - November 15th - 7:30 am

Ms. Woods reported that the Commission's lawyer-legislator breakfast is tentatively scheduled for November 15th at 7:30 a.m.

2. Action Items

2.1 Select Fifth District Judicial Nominating Commission Nominees (TAB 1, Page 3)

Ms. Wright noted that there is a vacancy in the 5th District Court and the Commission is tasked with providing four lawyer names to the governor for recommended appointment. She noted that the nominating commission should not be weighted one way or another in terms of political parties. Commissioners discussed the merits of each applicant.

Ms. Tangaro moved to recommend the following lawyers to the governor: Victoria Carlton, William Frazier, Stephen Dent, Russell Mitchell, Angie Reddish-Day. Ms. Kennedy amended the motion to have Ms. Woods and Mr. Bayles select the alternate from the list. Mr. Moore seconded the motion and the motion carried.

2.2 Approve Bar Survey Questions: Katie Woods

Ms. Woods introduced the Bar survey, both the purpose and when it was expected to circulate. Mr. Hanson commented that the shorter the survey the better in terms of responses. Ms. Woods noted that this is a customer service survey, so the questions are intended to engage that discussion. In response to comments about having demographic information, Ms. Wright noted that this can be helpful to Bar programming and for statistics that the ABA requests. Mr. Hoole opined that unless we have a specific purpose for requesting demographic data, he did not think the Bar should be requesting it. Mr. Hoffman observed that perhaps the survey should describe why it is being circulated, for example, “this survey is designed to answer [these questions].” He opined that this would be helpful in driving response rates. Mr. Hoffman also opined that the Sandbox questions could be divisive and may not give the Commission the information it needs. Ms. Kennedy and Ms. Merrill discussed the WLU survey and the incentives needed for getting people to fill it out. Ms. Woods noted that the survey questions have been informed by staff feedback (questions, comments, or inquiries they receive frequently). Mr. Stiles noted that how the questions are framed will be helpful to informing how the responses are given, particularly with respect to the Sandbox. He offered to help with formulating those.

Ms. Kennedy noted that “I don’t know” should be an option on multiple questions. Ms. Mancuso-Smith suggested that demographic questions should appear at the end, which is becoming much more common.

Ms. Mancuso-Smith moved to approve the survey for circulation with a footnote that Mr. Stiles will send questions on the Sandbox and that Ms. Woods will incorporate comments to improve it generally. Mr. Moore seconded. The motion carried.

2.3 Approve Purchase of a Table for the November 10th UMBA Scholarship & Awards

Banquet at the Little America

Ms. Mena described the UMBA banquet and Ms. Wright discussed the various levels of sponsorship, noting that last year, the Commission gave \$2,000. She said this sponsorship would come out of the Commission's budget. Because this is an annual request, there will be a line item in the budget moving forward. Ms. Woods moved to approve a \$2,500 sponsorship. Ms. Mancuso-Smith seconded. The motion carried.

3. Information Items

3.1 Mental Health Provider Review: Andrew Morse

Mr. Morse reported on the mental health provider review. He said the task force studying this issue has narrowed the search to two: a reactive provider (provide counseling now) and another, which is a proactive provider that aims to improve the overall health of lawyers. He gave an overview of both. He said the providers are being flexible with their offerings, but he said the Bar will not be charged a flat fee, as has been done with Blomquist Hale. It will depend on how much it is used. He said unlike Blomquist Hale, which only offers one session when a lawyer may need 6, the provider will work with the lawyer's health insurance, which Blomquist wouldn't do. He said the Bar's current provider is incentivized to not do more than necessary based on the current fee structure, which is not working for the Bar. Mr. Morse said the group is very excited about providing better services and resources to members. Mr. Hoffman wondered about partnering with other Utah industries, such as accountants and doctors, which have all of the same stresses as lawyers. This could drop the price. Mr. Morse agreed and said he would follow up.

3.2 Judicial Council Report: Margaret Plane

Ms. Plane updated the Commission on the Judicial Council. She said the Council is spending a lot of time on the Court's constitutional prerogative to regulate the practice of law. There is a lot of talk about the intersection between the Council's funding mechanism and the Court's constitutional authority. Mr. Stiles said the Innovation Office is inching closer to making it through the current fiscal year, not including the \$200,000 that has been tabled by the Council. Mr. Stiles observed that in being asked to reduce staff costs, the office is struggling to self-reflect on what they can get by with on salaries. Ms. Plane noted that the Council is creating a new process whereby the Court would come to the Council specifically for funding its Article VIII responsibilities. Ms. Plane then noted that there is a lot of talk about justice court reform. Ms. Plane then highlighted that the Office of Fairness and Accountability is moving forward with studying reforms to the justice system. It is gathering data on whether there are disparities in judicial decision making. The task force will do a blind backward-looking data pull on pretrial release, sentencing, and probation violations and to see how those decisions may interact with affected groups.

4. Executive Session

The Commission held an executive session.

5. Adjournment

The Commission adjourned at 12:15 p.m. for lunch with S.J. Quinney law students.

6. Consent Agenda

The minutes of the August 26, 2022 Commission Meeting were approved by consent.