

UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES

JANUARY 13, 2012

LAW AND JUSTICE CENTER  
SALT LAKE CITY, UTAH

**In Attendance:** President Rodney G. Snow and Commissioners: H. Dickson Burton, Steven R. Burt, Su J. Chon, Christian W. Clinger, Eve Furse, James D. Gilson, Mary Kay Griffin, Curtis M. Jensen, Felshaw King, Lori Nelson, Herm Olsen, Rob Rice, and Tom Seiler.

Ex-Officio Members: Danielle Davis, Margaret Plane, Lawrence E. Stevens, Linh Tran-Layton, Jenifer Tomchak, and Melanie Vartabedian. Executive Director John C. Baldwin; Assistant Executive Director Richard Dibblee; General Counsel Katherine A. Fox. Supreme Court Liaison Diane Abegglen.

**Not in Attendance:** Commissioners: John R. Lund. Ex-Officio Members: Hiram Chodosh, Robert L. Jeffs, Charlotte Miller, and James R. Rasband.

**Minutes: (Revised Agenda)**

**1. President's Report: Rod Snow**

**1.1 Report on Meeting Scheduled with Governor Herbert**

Rod reported that the meeting with the Governor will be held on January 23<sup>rd</sup>. We will update the Governor's office on our numerous projects and activities among other things. One of those items will be our efforts in the pro bono area. John Baldwin interjected that New Mexico obtains a block grant from the legislature to help fund pro bono legal services. Tom wanted to know what our financial priorities are (such as judiciary salaries, court clerks, or pro bono) and how those are going to be reported to the Governor's office. Rod responded that we have been advised to avoid lobbying on behalf of the courts. We intend, however, to continue to promote the concept that a business-friendly environment includes a well-funded court system. Tom continued to express his thoughts that a number of well-qualified lawyers do not apply for judgeships because they would take such a significant decrease in income.

Jim Gilson said that we need to "plant the seeds" for legislative and executive branch pro bono support during that meeting. Rod added that he, John and Lori have a meeting with the Chief Justice soon and they would report the discussion with the Governor. On a related note, Eve Furse wanted to know if the legal services tax topic had been re-introduced. Response was that it has not.

## **1.2 Review Legislative Session, Breakfast & Phone Conference Calendar**

John asked Commissioners to please let us know if they learn anything that we might need to address in the upcoming legislative session. He said that the regular legislative session telephone conference calls begin on January 24 and will be held on Tuesdays at 4 p.m. thereafter. He also reported that the breakfast with lawyer legislators is scheduled for January 27 (which is the first Friday of the session) in the multi-purpose room. Lori interjected with a summary of how the Government Relations Committee works, pointing out that John T. Nielsen reviews every bill which he then transmits to Lincoln for distribution to the Government Relations Committee members. The vast majority of bills receive a “no position” vote from the Bar. All stances but particularly those of “support” or “oppose” need to be funneled through the Commission.

## **1.3 Report on Love Communications Media Campaign**

John directed attention to the first draft of a radio announcement “Protecting the Public” on how lawyers help people at Tab 1. Rob Rice inquired whether Love monitored our web traffic to ascertain how effective these announcements are. John responded that he had asked Lincoln to do this and would revisit the issue. Love can monitor but at a cost and the day-to-day pattern changes frequently. Eve asked about the feasibility of billboard advertising which she touted as very effective. She suggested that we explore this possibility for the pro bono program launch. This idea was enthusiastically received.

## **1.4 Report on Certification of Transcribers**

Rod reported that Rep. Morley has been looking at repealing certain requirements for court reporters. The Bar is opposed to this move. Rep. Morley pulled his bill and referred it to a legislative committee for study. Currently, they are looking at a process to certify tape recordings by “certified transcribers” to reduce the costs associated with the recording process generally. We are being asked to help draft the revised legislation. Eve posed some questions and Tom responded that these “certified transcribers” would not have the same skill set and training as certified court reporters. He added that at the federal level, you can bring your own camera to record a deposition. There are obvious problems associated with that process, however. Tom and Rob Jeffs are meeting next week on this issue. Jim wanted to know if proposed changes would affect the rules of evidence and Tom replied that they would.

## **2. Executive Director’s Report: John Baldwin**

### **2.1 Report on MCLE Finances**

John began this portion of the meeting by noting that the Commission had asked him to look into the MCLE budget surplus. He reported that the surplus can be largely accounted for because the last two MCLE calendar reporting years were collapsed into one fiscal year. MCLE, however, is also spending more. Among other things, MCLE charges a sponsor \$25 to certify an event and a dollar per attendee. They also charge a

yearly compliance fee and late fees. John anticipates that it will be about seven years before MCLE needs to petition for an increase in fees. That office eventually will pay for the ability of a member to check his or her own CLE record online when a computer system is devised.

### **3. Action Items**

#### **3.1 Nominate Bar President-Elect Candidates**

Curtis Jensen gave a short presentation in support of his petition to run for President-Elect. No other petitions were received. Curtis excused himself from the meeting and **Christian Clinger made a motion to nominate him for the office of President-Elect. Tom seconded the motion which passed with none opposed.**

#### **3.2 Law & Justice Center Committee: Steve Burt & Tom Seiler**

Steve Burt directed the Commission's attention to the materials in the packet relating to the condition of the building at Tab 3. After personal interviews, this review committee has recommended an engineering proposal which outlines problems with the HVAC system set forth in a facilities assessment. The report contains issues with the roof, the control system, the glass, and the building's boiler. We currently have a pneumatic control system which is outdated and problem-prone as opposed to the newer direct digital control systems which are computer-driven onsite. WHW Engineering is approximately one-half of SMD's \$65,000 bid. Either company would prepare a more detailed bid for engineering drawings/specifications to be bid out among contractors who would do the actual work which will cost about \$500,000. Some of the retrofitting will pay for itself through more efficient operating.

A handout containing WHW's Services Fee Proposal was distributed. John Baldwin observed that in addition to these designated fixes, we have and will always have cosmetic updating (with tile, window coverings, paint, carpet, etc.). In response to Curtis's question, Tom said we could retrofit "zones" periodically (rather than all at once) and plan for more administrative office space or even a different configuration. Doing the work piecemeal will cost more money and obviously take longer. Steve said that a new electronic system would give us more options and control of the building's future use. However, we don't necessarily have to use all the features that type of system would provide. He stressed that cost savings are definitely available through an electronic system.

Tom opined that WHW had more experience with remodeling and retrofitting projects than SMD and Steve added that their bid is less expensive. Lori and Christian Clinger both said that we need to decide what we want to do with the building in terms of moving or staying before we commit. Herm Olsen said if we keep the building and upgrade it, it's still an investment and more marketable in terms of when we do sell. Rod said one option was to hire a consultant to advise us what to do along those lines. Su Chon observed that most of our members in the recent survey want to keep the building but

for the Bar to offer more CLE off the Wasatch Front rather than increase space in Salt Lake City for these purposes. Dickson Burton stated that it was not a good time to sell commercial space and favored retrofitting to add future value and make current use more comfortable. **Felshaw King moved to accept WHW's bid to draft the necessary design engineering documents. Tom seconded the motion which passed unanimously.** John added that we are still making more money than we are spending so we will replace this withdrawal of funds from the sinking fund.

#### **4. Information Items**

##### **4.1 Report on Lawyers Helping Lawyers: Brook Millard**

John introduced Brook Millard, Chair of the Lawyers Helping Lawyers (LHL) Board of Trustees, who spoke on behalf of the organization. He said that as an organization, LHL was struggling to re-define itself. He reported that they have reverted from advancing and growing as a group under former Executive Director Rich Uday to a virtual infancy stage. Due to lack of funds for an executive director to promote meeting its goals, he lamented that LHL has lost sight of the ABA COLAP Audit Report's aspirational goals. Rod responded that when the Commission last received LHL's request for annual funding, we asked for a comprehensive financial statement which to date we still have not received.

Brook said that their outside accountant told them it would cost between \$1,000-2,000 to produce financial statements and that the organization did not have the money to pay for it. At that point, he distributed handouts reflecting a profit/loss statement. LHL's expenses are approximately \$32,000 and revenue is between \$30,000-33,000. Some of their surplus has been there for years as they carry over from the previous \$125,000 budget. Marianne McGregor Guelker is the only paid individual associated with LHL. She makes an hourly wage for about 25 hours a week to answer phones and make referrals. LHL has discussed eliminating that office all together to save money.

Brook continued that LHL wants to be more like the ABA COLAP model which cannot be done on a \$35,000 yearly budget. With a full-time staff person, however, achieving that model would be more feasible. Blomquist Hale now serves the function that LHL previously performed to some degree. LHL's number of contacts has dropped but the number of lawyers they are educating has increased. Currently, they are trying to present information, a change from what they used to do. Towards that end, they want to provide more education with national speakers which requires a bigger budget. Christian asked Brook about other sources of funding. Brook said that Marsh Insurance provides the bulk and they make a little through CLE fees. In order to seek outside funding, they need to have grants written which no one has the expertise to do and they have no funds to pay for it. Moreover, LHL doesn't really know how to fundraise with any degree of success.

In response to Rod's questions, Brook replied that LHL meets with Blomquist and they also make referrals to them but receive very few referrals back. In response to Felshaw's questions, Brook responded that LHL does peer-to-peer counseling but they are frustrated

that they don't get more calls for help. In total, they had 36 new referrals but not all of those were peer counseling. Brook said that 15-20% of referrals came to them from the judiciary, fewer than 5% from Blomquist, 30-40% came from family members or law partners and the remainder of contacts came from individuals directly. One of the items needing improvement is their website but they have no money to have that done. He said that there needs to be better communication between the Bar and LHL, too, since they had no idea that the Commission wanted financial statements from them. Several people countered that assertion, however, and said that the request was repeated and made very clear to Marianne since we require that from all of those seeking grants.

**The Commission held discussion on revisiting the grant policy that was previously adopted. LHL needs to be put on the agenda again and the Commission would like a true balance sheet so that the request can be better evaluated..**

#### **4.2 Pro Bono Commission: Rob Rice**

Rob Rice reported on developments with the Pro Bono Commission. Rob, Sue Crismon, Jim Backman, John Baldwin and Michelle Harvey, the Bar's new Pro Bono Co-ordinator, recently traveled to Albuquerque to learn about their program. Rob said that they use an integrated database referral system which is key to their success. They also have heavy judge involvement (not for matching, however) which encourages lawyer participation. Paid staff, particularly for the rural areas of the state, is a critical component and we will need this at some future point.

In the short term, the group needs to meet with the Chief Justice to talk about obtaining an order by the end of the month which would encourage formation of judge-based districts. They are meeting with the Judicial Council on the 23<sup>rd</sup> to discuss the role of district court judges as chairs of each area. This structure will help "sell" the program and aid the recruiting process. Finally, Rob asked that Commissioners serve as vice chairs of each of the district committees along with the judges to assist them, especially with initial organizing efforts. Eve and Jim will serve as co-chairs in the Third District. After the Chief Justice consents and we obtain Judicial Council support, he hopes to get a 12-13 statewide member commission in place by the end of the month.

#### **4.3 CLE Advisory Committee: Nanci Bockelie & John Hafen**

Connie Howard, the Bar's CLE Administrator, was in attendance for this portion of the meeting. John Hafen reminded the Commission of the CLE Advisory Committee's role to improve the quality and quantity of CLE, largely through the Bar's sections. This committee has been mentoring and monitoring sections. They also have been motivating them to provide more CLE events. Currently, they have looked at CLE fees and the issue as to whether to promote more education on diversity. Nancy Bockelie reported that the quality of handout materials is improving by identifying the level of difficulty (e.g., beginner, intermediary, etc.) of subject matter. As to diversity, they have concluded that while there is a clear need for training in this area, members do not want to make the subject mandatory. The issue therefore is how to best include it in curricula.

The committee is recommending that diversity be addressed within presentations on professionalism and civility and ascertain how that works.

Lori said that sections should be educated about informing speakers to include diversity topics in their presentations since speakers are largely white males from Salt Lake City. Towards that end, Margaret Plane suggested efforts towards recruiting more diverse speakers. John Hafen addressed the topic of charges for CLE. In particular, Judge Connors, a member of the committee, is strongly opposed to increasing costs in light of the harsh economic environment. The committee's recommendation is to maintain the status quo for now and monitor the CLE department financial condition. Lori reported that she had just learned that we sell online videos of CLE. She suggested that we provide the materials separately even if the event is not videotaped, and particularly when the materials are of high quality. Dickson noted that we should require copyright releases in conjunction with this distribution and Eve observed that the committee needs a rural member. Rod said that his current *Bar Journal* article stresses that there is a real need for implicit bias training. He also opined that there is nothing wrong with CLE making a small profit.

#### **4.4 Ethics and Discipline Report: Bruce Maak & Terrie McIntosh**

Bruce Maak, Chair of the Ethics and Discipline Committee (E & D Committee), and long-time committee member Terrie McIntosh appeared to report on recently submitted revisions to the Rules on Lawyer Discipline and Disability that are being evaluated by the Supreme Court and its Advisory Committee on the Rules of Professional Conduct. This information was presented as a courtesy to the Commission. The first revision is to allow the E & D Committee Chair to recommend to the Supreme Court the removal of a panel chair for other reasons than missing three consecutive meetings. The second set of revisions relate to a judge's failure to address misconduct in court and to require them to report misconduct whether or not it was addressed by them. This change is necessary because when screening panels hear matters, some panel members presume that if a judge has not addressed the misconduct during a judicial proceeding, that the panel members have no authority to issue sanctions. This problem produces inconsistent results in how unethical conduct is treated.

A third area relates to the diversion process in order to simplify and streamline it. Currently, screening panel members who recommend diversion are heavily involved in the aftermath which is cumbersome and unnecessary. OPC will now memorialize the diversion decision in its role as secretary to the screening panel and panel members' role after that point will cease. Yet another area involves composition of the E & D Committee. The number of lawyer members will be increased from 26 to 27, two lawyer members will serve as vice-chairs, and in the chair's absence or resignation, a vice-chair will become the chair. Finally, the Advisory Committee and the E & D Committee chair are still discussing another contemplated change where OPC would be permitted to appeal a screening panel decision to the chair the same way that a complainant or respondent is allowed to do so. This change would increase uniformity and fairness in decisions because it would allow the chair more authority to actively oversee every

decision where there is a difference in opinion. This proposed change is meeting some resistance from one lawyer in particular.

#### **4.5 Bar Membership Survey Committee: Dickson Burton**

Dickson Burton introduced the topic of the Bar membership survey by noting that we received largely positive feedback. He then introduced Randy Shumway (Cicero Group CEO) and Scott Hardy who oversaw the project. A compilation handout was distributed and Scott presented highlights. Discussion took place and questions were posed and answered. Dickson said that sometime in the future, we should survey the public on their lawyer perceptions. The Commission agreed that the survey was illuminating and of great value.

### **NOON: BREAK FOR LUNCH**

#### **4.6 Lawyer Referral Service Review Committee: Curtis Jensen**

Postponed until February meeting.

#### **4.7 Lawyer Advertising Committee: Rob Jeffs & Eve Furse**

Eve reported that Rob Jeffs had circulated a proposal and received a letter back from some members who were unhappy with some of the Nevada program's details which we are considering. They are in the process of setting up a meeting to discuss these concerns.

#### **4.8 Modest Means Committee Report: Su Chon**

Su Chon would like approval of some details related to the Modest Means program in order to move ahead. Su provided several new handouts. Discussion was held on each item and wherein the committee is recommending: (1) a \$25 client fee for a Modest Means referral to a lawyer; (2) the listing of caps on attorney's fees according the percentage above the federal poverty level income for clients; (3) the requirement of malpractice insurance for lawyers; and (4) a limit for program participation at 300% above the federal poverty level for clients. Su is still unclear on how much it will cost to create a database and needs that information from the Bar. John responded that rough estimates range from \$35,000 to \$55,000 and at least one more staff person at \$30-40,000. The committee is looking for a March launch date. **After discussion, Jim moved to accept the committee's recommendations as outlined and Dickson seconded the motion. The motion passed unanimously.**

#### **4.9 High School Education Committee: Christian Clinger**

Christian reported that over 100 students participated in December's High School Education pilot program. The program had a good reception and the committee received a number of good suggestions for improvement. Christian will give Rod a copy of the

revised curriculum and he is contacting the Chief Justice's secretary for calendaring purposes for her to observe and then teach a class. Robert Austin, a committee member, had suggested that instead of the principals and superintendants handling the administrative details, that teachers should receive materials and scheduling details directly to facilitate the program. Angelina Tsu and Rich McKeown are handling recruiting efforts. Kathy Dryer is working on the curriculum changes and recruiting as well. The committee is seeking permission to film the presentations and put them on the educational website.

**NEW:** John Baldwin explained the last minute notice for a request for funds from the Minority Bar Association relating to U.S. Attorney Eric Holder's speech slated for January 13, 2012. John learned, as a result of talking with the mayor's office, the state Attorney General's office and others, that this request was not really a political contribution or reimbursement to the U.S. Attorney General for his speaking fees but rather, a request for a donation to a Martin Luther King, Jr. organization. The Minority Bar declined to participate and passed the request to the Bar Commission. Rod interjected that we had previously contemplated a \$2,500 contribution but Tom responded that we really don't know where the money would go. Eve and others expressed similar reservations. Discussion ensued. John will follow up to learn more about the particular organization and Linh will also provide additional information, if possible.

**NEW:** John reported that Lowry Snow had been appointed to replace Dave Clark in the legislature and that Todd Weiler had been appointed to replace Dan Liljenquist.

### **CONSENT CALENDAR**

1. Approved Minutes of December 2, 2011 Commission Meeting.
2. Approved Minutes of December 9, 2011 Special Commission Meeting.
3. Approved List of February Bar Admittees.

### **NEW HANDOUTS DISTRIBUTED AT MEETING**

1. List of February Bar Admittees.
2. Lawyers Helping Lawyers Financials (3 pages).
3. WHW Engineering Inc. Professional Services Fee Proposal.
4. Cicero USB December 2011 Study & Insights (Executive Summary).
5. Modest Means Report Chart (dated 01-14-12).
6. Modest Means Referral Service (Do I Need a Lawyer-Intake Review) Flow Chart.
7. Modest Means Referral Service (Potential MIM Client) Flow Chart.
8. Revised Agenda for Meeting.

**ADJOURNED AT 1:35 P. M.**