

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

JULY 14, 2010
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SUN VALLEY, IDAHO

Present: President Stephen W. Owens and Commissioners: Steven R. Burt, H. Dickson Burton*, Su J. Chon*, Christian W. Clinger, James D. Gilson, Mary Kay Griffin, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, John R. Lund*, Lori W. Nelson, Herm Olsen, Scott R. Sabey, Thomas W. Seiler, Rodney G. Snow, and Rusty Vetter (participated via telephone).
Ex-Officio Members: Nathan D. Alder, Heather Finch, Chrystal Mancuso-Smith, Charlotte L. Miller, James R. Rasband, Angelina Tsu and Lisa Yerkovich. Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Katherine A. Fox.

Excused: Commissioners: Yvette D. Donosso. Ex-Officio Members: Hiram E. Chodosh, Margaret Plane and Lawrence E. Stevens. Supreme Court Liaison Clark W. Sabey.

Minutes:

1. PRESIDENT'S REPORT: Stephen W. Owens

1.1 Welcome and Review Schedule

Steve Owens introduced the new Commissioners (H. Dickson Burton, Su Chon and John Lund) in attendance and reviewed the convention schedule with those present. He also noted that the convention co-chairs, Scott Mayeda and Sammi Anderson, had done a wonderful job and that we should encourage their participation in future Commission programs.

1.2 Legal Research Review Committee Report: Rob Jeffs

Rob Jeffs reported that the Commission's Legal Research Review Committee has done comparison testing on "Fastcase," a free program similar to Casemaker. The committee anticipates having a full report by next Commission meeting but at this point, Fastcase does not appear to be a viable replacement option.

*New Commissioners to be sworn in July 16, 2010.

2. ACTION ITEMS

2.1 Insurance Review Committee Report: Matt Anderson

Matt Anderson joined the meeting via telephone to report on the Commission's Insurance Review Committee's final findings. The report's primary recommendation was to maintain the Bar's relationship with Marsh (an insurance broker) and Liberty (a professional malpractice insurance underwriter). Liberty has lowered its rates so that they are neither the most expensive nor the least expensive market provider in this area. Overall, the committee concluded that Liberty provides good service with a quality product based on a long-term commitment. Matt stated that we need to better educate our membership about the service that Marsh/Liberty provides including an annual financial contribution to Lawyers Helping Lawyers. He also recommended that we need to use a disclaimer wherein we explain what we mean by the use of the term "Bar endorsed" or "Bar sponsored."

General discussion ensued regarding use of the term "endorsed" versus "sponsored." Marsh prefers "endorsed." Christian Clinger offered the alternative term "preferred provider" which Matt observed conveys an actual recommendation which we want to avoid. **Rob made a motion to modify the singular use of "Marsh" and "Liberty" to the compound term "Liberty/Marsh" in all Bar promotional materials and Scott Sabey seconded the motion. The motion passed unanimously. Rob moved to provide that Marsh pay Lawyers Helping Lawyers directly without involving the Bar. Christian seconded the motion which passed unanimously.**

Rob then asked Matt to stay on board and review other member benefit programs as well.

2.2 Communications Committee Report: Christian Clinger

Christian reported that Scott Sabey, Mary Kay Griffin, Aaron Thompson and Michelle Allred (in addition to himself) were all part of the Commission's Communications Committee charged with making recommendations to: (1) improve both internal and external Bar communications including press/media stories, press releases, improvements to the *Bar Journal* and Bar's webpage, as well as the use of social media; (2) implement public education/awareness campaigns to teach about the Bar, the role of attorneys and the judiciary in society; and (3) educate the public how the Bar leads society in the creation of a justice system that is understood, valued, respected and accessible to all. The committee sent out 16 Requests for Proposals ("RFPs") and subsequently made office visits to Love Communications, Kim Brown Associates, Vanguard Media Group and Richter 7. The Bar's long-term and current public relations entity, John Becker, indicated that he was not interested in staying on and did not submit a RFP. In discussing the matter with those present, Christian asked that certain details in the packet be kept confidential as sensitive information such as billing practices were contained in the materials.

Discussion took place in light of Christian's continuing report where the pros and cons of each firm were presented. Christian indicated that the committee's final recommendation was to retain Love Communications based on various criteria and the committee's evaluations. The recommendation was based on Love's costs, experience, in-house staff and departments, as well as their experience with governmental relations. The committee also recommended a line-item budget expenditure of \$50,000 per year for public relations, marketing, public education campaign development/implementation, and internal communications consulting with the yearly contract being subject to annual review and Commission approval.

Additional discussion took place with a number of questions. Rob responded that most of the issues raised (such as details associated with what kinds of messages we want to send) will be scheduled for the upcoming retreat. Christian added that we need both a public and private section of our website and we need to look at a 3-5 year communications plan. Mary Kay agreed with Christian's latter observation. Both Steve Burt and Felshaw King advocated in favor of increasing the communications budget. Rod Snow opined that \$50,000 was probably insufficient and that we needed a lawyer advertising component like the Nevada Bar has in place with a full-time staff member who reviews proposed lawyer advertisements. Jim Gilson expressed skepticism that expensive public relation efforts will really improve the Bar's image, especially among membership. He believes that we should use a public relations firm more like a consultant and that the Commission should do the work. Nate said that the Bar's lawyer directory and find a lawyer features have never been very successful and that we need improvement in this area. He also said that the communications provider we choose should have a good, multi-pronged legislative proposal. John Baldwin added that when we survey membership, the number one response to "what should the Bar be doing for lawyers?" is to improve the image of attorneys.

Lori Nelson moved to increase the line item budget for communications to \$50,000 and Scott seconded the motion. The motion passed with Jim Gilson and Curtis Jensen opposed. Rob Jeffs moved to designate Love Communications as the new communications provider and Scott seconded the motion. The motion passed with none opposed.

2.3 Client Security Fund Final Report: Rob Jeffs

Rob introduced his report by reminding Commissioners that a number of issues arose when significant numbers of claims were presented last fall, primarily related to the Matthew Graff matter. A sub-committee was comprised at that time to review the Client Security Fund (CSF) rules and the committee has now made three recommendations. The *first recommendation*, in order to forestall a "run on the fund" when significant claims are generated resulting from the conduct of one attorney, was to revise CSF Rule 14-913 to add a per attorney lifetime claim limit of \$250,000. The *second recommendation* was to revise CSF Rule 13-913 to read as follows: "In the event that the [CSF] Committee determines that there is a substantial likelihood that claims against an attorney may exceed either the annual or lifetime claim limits, such claims shall be paid

on a pro rata basis or otherwise as the [Commission] Board and the [CSF] Committee determines is equitable under the circumstances.” The *third recommendation* was to revise CSF Rule 910(b) as follows: “The claim for reimbursement shall be filed within two years after the claimant discovers or through the use of reasonable diligence should have discovered the loss.” After discussion **Lori moved to approve all three recommendations and Thomas Seiler seconded the motion. The motion passed unopposed. Felshaw then moved to have the new statute of limitations apply retroactively. Tom seconded Felshaw’s motion which also passed with none opposed.** Katherine Fox will need to draft a petition in order to have the changes incorporated within the rules and the CSF Committee will need to resubmit claims formerly presented but not acted upon and process all pending claims.

2.4 Approve 2010-2011 Budget

John Baldwin highlighted various features of the budget with the Commission, including the budgetary boost that the newly time-shortened MCLE reporting requirements helped produce. He projected a surplus of between \$190,000 to \$250,000 for the current fiscal year. At the end of John’s observations, Rob commented that a 5 year budget projection which contemplated the various fee increases (admissions, licensing and pro hac vice) indicates that we will be back to a near deficit budget. He also cautioned that we should not too vigorously expand programs *vis a vis* the expectation of a decreasing surplus and that continued prudent spending is needed.

Discussion ensued. Both Steve Burt and Christian observed that in light of their experiences, *Bar Journal* advertising efforts seemed to be lackluster and in need of “ramping up” with better follow-up and initial solicitation to help offset costly publishing costs. Rob interjected that the advertising review process had already begun and a report would be made at a later point. **Rob moved to approve the budget (as amended with budget allocations and contributions to LRE, UDR, YLD and LHL as outlined below) and Lori seconded the motion which passed with none opposed.** The Commission then requested that the budget materials be paginated for ease of reference and that materials better reflect a monthly allocation of staff time to projects and programs.

A. Request from Law Related Education

The Commission reviewed the materials submitted by Law Related Education (LRE) and discussed their request for \$45,000 in light of last year’s decreased funding in the amount of \$35,000. The Commission concluded that the value of the numerous programs LRE sponsors is immeasurable. **Rob Jeffs moved to restore the LRE line item in the budget to \$45,000. Christian seconded the motion which passed unanimously.**

B. Request from Lawyers Helping Lawyers

The Commission reviewed the financial sheet submitted by Lawyers Helping Lawyers (LHL) in support of their request for funds. After much discussion including questions about the recent ABA review and the revenue that LHL receives from other sources including CLE's and Marsh as well as the lack of documentation relating to how many lawyers were assisted with what types of issues, **Tom Seiler moved to postpone contributing financial support unless LHL submitted additional financial information but the motion died for lack of a second. Rob then made a motion for a budget allocation of \$27,330 along with consideration of additional funding upon receipt of a new request which would include: (a) a copy of the recent ABA Review Report; (b) a current and complete profit/loss statement including revenue from other sources (pursuant to a "friendly" and accepted amendment to the motion offered by Tom); and (c) a description of the numbers of lawyers helped and the types of issues being addressed. Lori seconded the motion which passed with none opposed.**

C. Request from Utah Dispute Resolution

The Commission observed that we historically contribute \$20,000 to Utah Dispute Resolution (UDR) but in light of budget constraints last year, we declined to allocate any financial support. Christian Clinger recused himself from discussion and voting on this issue due to his involvement with UDR. Tom questioned whether UDR did any business outside Salt Lake City and opined that their efforts were geographically limited but others disagreed. **After further discussion, Scott moved to contribute \$20,000 and Lori seconded Scott's motion which passed with Tom opposed.**

D. Request from Young Lawyers Division

Historically, the Commission has contributed \$25,000 to the Young Lawyers Division (YLD) as a line item in the budget with the exception of a brief time where the Bar contributed \$30,000. This year, the YLD requested \$30,000 and if feasible, upwards of \$35,000 for an additional project to expand outreach and open up YLD Board opportunities. After much discussion, **Christian moved to contribute \$30,000 and Lori seconded the motion. The motion passed unanimously.**

3. COMMISSION REORGANIZATION

3.1 Appoint 3rd Division Commissioner

Steve Owens said that Rod Snow had resigned his 3rd Division Commission seat and that H. Dickson Burton had been nominated to fill that one-year term vacancy. **Christian made a motion to ratify Dickson's appointment and Tom seconded the motion which passed without opposition.**

3.2 Approve Committee Chairs

Rob discussed the committee chair appointments as set forth under Tab 9 in the materials and explained that Dave Broadbent would be replacing Dave Eckersley in admissions. After further discussion, **Lori moved to approve the designated chairs and Curtis Jensen seconded the motion. The Commission voted unanimously to approve the motion.**

3.3 Welcome New Commissioners

Steve extended a warm welcome to the new Commissioners in attendance at the meeting.

3.4 Appoint *Ex Officio* Members

Lori moved to approve the following Ex-Officio members with Scott seconding the motion: Steve Owens (past president), Larry Stevens and Margaret Plane (ABA Representatives); Charlotte Miller (ABA Delegate); Grace Acosta (UMBA); Peggy Hunt (Women Lawyers of Utah); Heather Finch (Paralegal Division); James Rasband (BYU Law School Dean); Hiram Chodosh (U of U Law School Dean); and Angelina Tsu (YLD). **The motion passed without dissent.**

3.5 Approve Executive Committee

The following Commissioners were designated via Lori's motion and Tom's second as Executive Committee members: Rob Jeffs, Rod Snow, Lori Nelson, Christian Clinger and Curtis Jensen.

3.6 Adopt Resolution on Bank Signatures

The Executive Committee members were designated via Lori's motion and Scott's second as bank signators.

3.7 Sign Conflict of Interest Disclosures

3.8 Review Calendar of 2010-2011 Commission Meetings

3.9 Retreat Information

Rob said that issues to be discussed at the retreat would include the image of the Bar and lawyers *vis a vis* lobbying, advertising and public relations. A survey would be distributed and the results tabulated by the retreat.

3.10 Description of Commissioner Duties and Responsibilities

3.11 Commission Reimbursement Policies

4. RECOGNIZE RETIRING COMMISSIONERS

5. EXECUTIVE SESSION

MEETING ADJOURNED AT 4:30 P.M.

6. CONSENT AGENDA

By policy, the June 4, 2010 minutes (Tab 14) were approved.