

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

October 28, 2011

Law and Justice Center
Salt Lake City, Utah

In Attendance: President Rodney G. Snow and Commissioners: Steven R. Burt, Su J. Chon, Christian W. Clinger, Eve Furse, James D. Gilson, Mary Kay Griffin, Curtis M. Jensen, Felshaw King, John R. Lund, Herm Olsen, Rob Rice and Tom Seiler.
Ex-Officio Members: Hiram E. Chodos, S. Grace Acosta, Danielle Davis, Robert L. Jeffs, Margaret Plane, Lawrence E. Stevens, Jenifer Tomchak, and Melanie Vartabedian. Executive Director John C. Baldwin; Assistant Executive Director Richard Dibblee; and General Counsel Katherine A. Fox. Supreme Court Liaison Diane Abegglen.

Not in Attendance: Commissioners: H. Dickson Burton and Lori Nelson.
Ex-Officio Members: Charlotte Miller and James R. Rasband.

Minutes:

1. PRESIDENT'S REPORT: Rod Snow

1.1 Leadership Conference November 3rd

Rod Snow reported that the upcoming Leadership Conference seemed to be very well organized and would last approximately one and a half hours, filled with good information. Ron Vandermyde, a guest speaker at the Commission's retreat, will be speaking for part of the session. John Baldwin asked Commissioners to please contact their committees and sections, urging them to send two representatives from each group.

1.2 Pro Bono Celebration

Rod said that the Pro Bono Celebration was launched with an awards ceremony at the S. J. Quinney College of Law. Next year, he would like to encourage more attorneys earlier in the planning stage to attend this event. The Bar sponsored a reception at the Law & Justice Center although most of the event will be held at Trolley Square.

1.3 S.J. Quinney College of Law Building Status: Hiram Chodosh

Dean Hiram Chodosh, along with his assistant, Matt Hemsley, made this presentation after Rod's introduction. The primary point of the presentation was to educate Commissioners about the need and plans for a new college of law building. The presentation was a fairly detailed but highlights included the concept of student centrality and public engagement, following a "teaching hospital" model. They are trying to offset student tuition by maximizing the true value of a new building and want to start a new low bono fee-for-service clinic in order to do that. The project is a \$60 million one and they already have \$29 million in commitments, with ground breaking scheduled in 2013. The Dean described a number of benefits that a new building could offer the Bar. He believes their biggest challenge consists of political ramifications regarding building operations and maintenance so they need assistance in the legislative area. There currently exists a window of critical opportunity so time is of the essence. A series of questions and answers followed the Dean's presentation and another smaller meeting will be scheduled.

1.4 Past President's Council

Rod announced that he has plans to create a new Past President's Council to serve as an advisory body for recommendations of appointments to boards and other openings. Those recommendations would then go to the Executive Committee.

1.5 Legislative Interim Committee Hearing Presentation

Rod reported that the proposed court reporter bill has been pulled at this point and is being re-worked. Various Commissioners are involved in this effort.

2. ACTION ITEMS

2.1 Ethics Advisory Opinion Safe Harbor Rule Petition

Curtis Jensen reported that since the last Commission vote on revisions to the proposed ethics advisory opinion safe harbor rule, the EAOC had made some additional suggestions, comments and concerns. Katherine Fox had reviewed these comments and made some additional proposed changes to the rule which incorporated, in part, concerns and suggestions. She also made revisions to the petition which had been reviewed by the Executive Committee and others, including the EAOC. Her memorandum at Tab 1 explains the changes and contains a further redlined rule for the Commission's consideration. Curtis presented these changes, noting John Snow's and Linda Smith's emails attached and responded to Commissioners' questions. Katherine also responded to questions. **After discussion, John Lund moved to adopt the final revisions to the proposed rule as outlined in the revised redlined version and Tom Seiler seconded the motion. It passed with dissent.**

2.2 Approve Client Security Fund Report: Hon. David Hamilton

Both Judge Hamilton and Jeff Einfieldt, the Bar's financial officer, were present for this portion of the meeting. Judge Hamilton commented that Bar staff has been very helpful and distributed a new handout. Most if not all of the matters the committee considered related to Mathew Graff. Over \$2 million in claims were made to Iron County. The committee made its recommendation on how to equitably treat claims made to the Fund. It will take approximately 5 and one half years to complete pay-out with all eligible claims paid in pro rate fashion or 88% per claim of approved sum. Claims under \$5,000 were paid in full with approximately \$37,000 left for larger claims. Larger claims will be paid over the next 4 and one half years with a \$75,000 maximum. The charts which Jeff had prepared clearly outlined the details. Judge Hamilton noted that last Friday the committee heard 15 additional claims which about 15 more in the pipeline which are not Graff related.

A question and answer sessions followed the presentation and Curtis commended the committee's diligent work. Felshaw asked about the claimants' reactions to less than full reimbursement. Judge Hamilton responded they already were aware of the Fund's limitation at the outset of the process and reactions typically range from anger to gratefulness. He added that while most clients lived in southern Utah, several resided in Nevada and California. He also said that Graff's associate picked up a lot of work to complete. Eve Furse asked about nominating Graff's associate for the pro bono award after we review the situation. **John Lund moved to approve the pay-outs as recommended. Tom Seiler seconded the motion which passed with none opposed.**

2.3 Approve 2010-2011 Audit: Mary Kay Griffin

Mary Kay directed attention to the materials at Tab 3 and reported that the Bar had a good, unqualified audit this year. She noted that MCLE had been formally combined with the Bar under Utah Supreme Court directions. Mary Kay continued to highlight various details of the financials including but not limited to total assets (\$6,371,000 compared to 5,148,000 last year) and said we were in very good financial condition. She reviewed the 'statement of activity' and observed that we are very well managed operationally. Cash flow is \$2.9 million versus \$3.8 million last year because we moved investments.

John Baldwin said that as always, we encourage sections to spend their money. He believes that often there is hesitation to do so as a result of turn-over in leadership. John Lund asked to cover this topic at the upcoming Leadership Conference. Christian noted that the IP Section has surpassed the Litigation Section in accumulated funds and Jeff Einfieldt interjected that the former has talked to him about ways to spend their money. James Gilson observed that they could donate i-Pads for the membership survey prize. Dean Chodosh suggested more deliberate advice to sections about how to spend funds in conjunction with partnerships in the larger community. For instance, sections could partner with the law schools that could provide points of contact. Mary Kay said that this was an excellent idea.

Jeff added that we tried to be responsive and provide meaningful assistance to the auditors. This audit is more comprehensive than the monthly financial statements. Rob Jeffs noted the re-characterization on page 3 more accurately defining property management. He also commented about the reduction CLE funds due to the change of time in the reporting cycle. Despite that, we had more CLE revenue than he had expected. The financials reflected increase in Bar Exam fees and Jeff provided that we have saved considerably with credit card fees. Mary Kay concluded her report by noting that the public education budget/expenditures had increased. **John Lund made a motion to approve the audit and Curtis seconded John's motion which passed with none opposed.** Rod commended John and Jeff for their diligence and being careful with the Bar's dollars. John then thanked Mary Kay and Jeff for their work.

2.4 ABA Resolution on LSAT Accommodations: Margaret Plane

Margaret reported that an ABA resolution on LSAT accommodations for those with disabilities would be coming up at the Mid-Year meeting in February. The resolution urges all entities that administer the LSAT to provide appropriate accommodations for test takers with disabilities to best ensure that the exam is designed to measure, and not the test taker's disability. These accommodations should include, but not be limited to, the following: (1) removal of architectural and communication barriers; (2) modification of rules, practices and procedures; and (3) provision of auxiliary aids and services.

The resolution would become policy if adopted and also would allow the ABA to file amicus briefs in any related lawsuits. Currently, there are no clear regulations governing this entry examination and applicants need to seek guidance through DOJ. The ABA is committed to developing a process in a timely manner which could be put into place. Hiram Chodosh supports this resolution and made several comments about the LSAT licensure testing generally. **Christian Clinger moved in favor of supporting the resolution and Curtis Jensen seconded the motion which passed unopposed.**

2.5 Approve \$2,000 Contribution to "Books for Barristers"

Rod announced that Books From Barristers had requested seed money in the amount of \$2,000. This subject was discussed earlier at another meeting. **John Lund moved to donate the money and Curtis seconded John's motion. The motion passed unanimously.**

2.6 2014 Summer Convention Site

John Baldwin reported that we are essentially ready for Summer Convention at Snowmass in 2013 but that Sun Valley wants our commitment for 2014 now. We broke even at San Diego last year and typically break even at Sun Valley, but won't know about Snowmass in time to decide whether we want to hold the convention there in 2014 before committing to Sun Valley. Discussion ensued over the pros and cons about committing to Sun Valley for 2014. **Herm Olsen moved to release our 2014**

tentative reservation at Sun Valley and John Lund seconded the motion. The motion passed with James Gilson opposed.

2.7 Diversity Statement

Rod distributed a revised handout of the Bar's Diversity Statement and a lengthy discussion ensued. After airing many issues and further modifying the statement at the meeting, it will be referred back to the Executive Committee based on the Commission's feedback. John Baldwin will schedule a conference call to vote on the final product.

3. INFORMATION ITEMS

3.1 Disaster Relief Committee Report: Ed Rutan

Ed Rutan, Salt Lake City Attorney reported on the Disaster Relief Committee's efforts. With his background being very involved in city disaster planning, Ed has an experienced perspective to bring to the committee of which he is chair. He began his report by noting that numbers of insurance disputes arise after a disaster and that it is malpractice per se not to plan for client's disaster-related needs. The aftermath of Hurricane Katrina pointed out that there was a great need for pro bono legal assistance for the low income population and small businesses. The ABA has published a guide for legal needs disaster planning (which they distributed at the last Fall Forum).

Ed updated the Commission on various efforts being made in the information gathering and planning stages. He noted that the Utah Supreme Court declined to adopt the recommended ABA Disaster Rule. The committee (Christian is a member and Brooke Ashton is co-chair of the committee) wants to participate as a non-government entity in a FEMA sponsored disaster exercise planned for spring of 2012. They would like to recruit volunteers. Christian then provided a summary of a 3-year background of the committee's work. Steve Burt interjected that he recently attended an earthquake conference and wondered if the committee could interface with engineers and architects.

3.2 Lawyer Advertising Committee: Rob Jeffs & Eve Furse

Postponed.

3.3 High School Education Committee: Christian Clinger

Christian announced that the High School Education Committee has been meeting every week since the beginning of August and has been through five drafts of the proposed curriculum and lesson plan. They have prepared a pilot program of six East High School presentations on November 15 through 17th. The subject matter consists of the three branches of government intersect where students will draft legislation concerning a noise ordinance in parks after 10 p.m. where an ambulance driver violates the regulation which then needs to be enforced. There will be a court room

setting with three justices to determine whether the ordinance is constitutional. There also will be follow-up writing assignments under the teacher's guidance. There also will be a state-wide civics class with principals and superintendents in attendance to be held in the fall and spring and which eventually will add law students to the mix. Dean Chodosh observed that scaling the project is a real challenge and using technology will be important. He suggested using the State Board of Education's website as a teacher resource.

3.4 Pro Bono Commission: Rob Rice

Rob Rice reported on progress with the Pro Bono Commission. They have added three new members: Judge Davis, Judge Royal Hansen and Louise York who all have brought a lot of enthusiasm to the project. He is working with Debra Moore at the AOC on the concept of courts in the process of making the matches between lawyers and clients but meeting some resistance. Debra believes that court clerks simply cannot add one more task to their already over burdened plates. Rob said that they will need to draft administrative court order to create the judicial commissions and district groups. They currently are interfacing with John Baldwin in hiring the Bar's new Pro Bono Coordinator. They also will need to coordinate between the Bar's Modest Means Program and the various Pro Bono committees. John interjected that the deadline for the new position at the Bar is today and so far, they have 35 applicants. They hope to have the finalists in the next two weeks.

Diane Abegglen interjected that the AOC's concerns are significant ones and advised Commissioners not to underestimate court clerk resources because they are stretched to the maximum. Rob Rice responded that their role would not be an onerous one because either the Bar's Pro Bono Coordinator or the judicial district pro bono commissions would do the heavy lifting of matching clients and lawyers and the clerks would merely do the notifying. The client economical screening would also be done at the Bar. Rod observed that there is a great need to clarify the clerks' role in the process and that need to be accomplished before we can move forward.

3.5 Modest Means Committee Report: Su Chon

John Lund led this discussion. The new Pro Bono Coordinator will need to handle intake (gathering and assessing financial data and identifying the type of legal issue) and assign the case to either the Pro Bono or the Modest Means program. Currently, they are looking at 400% of poverty level for a referral and they suggest a fee schedule according to the client's income level. Some Commissioners wondered why we don't have a mandatory fee schedule and John responded that there is a great lack of enthusiasm from potential lawyer participants. There also are some concerns re "price fixing" discouraging potential lawyer participation but anti-trust vetting showed these concerns to be groundless.

Dean Chodosh added that we may want to consider a flat fee on some cases because hourly rates can be abused. If we use flat fee schedules, we could serve some middle class clientele. John said that the first one-half hour consultation would be free and that the client would pay a small co-pay, perhaps \$20. Sue Chon said that we need to

further refine the budget for this program. Diane added that court clerks are already dealing with issues with electronic filing as well as maintaining a paper system so that there is no extra capacity on that end.

3.6 Law & Justice Center Committee: Tom Seiler & Steve Burt

Steve Burt reported that there is an opportunity to take advantage of the Bar survey to assess building needs if we are interested. Dean Chodosh interjected that the Commission needs to consider what the building *could* be used for rather than assessing current and more obvious needs. For instance, we could use the building for a public pro bono centralized center or share common space with the two law schools. Steve responded that servicing needs is a hard question to answer until we settle on other issues and a budget. He also said that we need more time to develop concepts and Rob observed that we need to schedule a retreat or two in order to do this. Tom Seiler said that we can forecast out 2-4 years for parking but that we also need to provide for parking in the long term. Culturally, the Bar is viewed as a facility for Salt Lake City lawyers only which is unfortunate. Steve continued that the HVAC system is examined in the report. It is not operating as originally designed and no functioning very well. The roof top mechanics are a problem. We could save 40% of energy bills by updating to a digital system.

3.7 Bar Membership Survey Committee: Dickson Burton

Along with Dickson on the teleconferencing phone, Su Chon reported on this topic. A new draft of the Dan Jones revised survey questionnaire was distributed to Commissioners. The plan is to send out the survey by November 15th and have it returned and completed by December 15th. Su and Dickson would like to report to the Commission by early January. There are four topic sections on the questionnaire: (1) economics/professional liability; (2) courts/professionalism & civility; (3) lawyer advertising; and (4) pro bono/public service. In order to encourage completion of the survey, both Dickson and Su noted that Dan Jones recommends that we provide incentives such as iPads and/or convention registration fee waivers.

She said that confidentiality relating to salary information would be important to maintain. A discussion over collecting this particular data ensued. Rob Jeffs interjected that salary information is really what members want to know so it was important to keep that survey question included. We will send out all four sections but to different demographic groups and no one member who is selected will fill out more than one section. The cost for the survey is capped at \$10,000. Discussion over the incentives took place. Su said that Dan Jones wanted to know if we wanted to include questions about OPC, diversity, the building and any other topics. Christian responded that the previous building committee had made suggestions and the current committee was revisiting the issue. Rob Jeffs agreed that this topic was not a fruitful survey area. Others noted that OPC is perennially reviewed and diversity was a somewhat limited in survey scope. Su noted that she and Dickson had some ideas relating to pro bono questions and asked Commissioners to contact either herself or Dickson with additional ideas.

Eve moved that we provide two free iPads (and explore a donation possibility from a vendor) and offer an unspecified number of gratis convention registrations. Curtis seconded the motioned which passed with none opposed.

3.8 Lawyer Referral Service Review Committee: Curtis Jensen

Postponed.

3.9 Communications Committee Report: Christian Clinger

Postponed.

3.10 Web Design Presentation: Lincoln Mead

Postponed.

NEW:

John Lund mentioned the recent Snow Christiansen event to commemorate their 125th anniversary. Justice George Sutherland, an author of the 19th amendment, was an original member of the firm and they created a DVD about him. John Baldwin would like to put the DVD on the Bar's website.

CONSENT AGENDA

1. Approved Minutes of September 30, 2011 Commission Meeting.
2. Approved Minutes of October 11, 2011 Special Commission Meeting.

NEW HANDOUTS DISTRIBUTED AT MEETING

- 1 .Utah State Bar Statement on Diversity and Inclusion (Original Draft).
2. Utah State Bar Statement on Diversity and Inclusion (Draft with Proposed Changes).
3. Client Security Fund Summary Information.
4. Utah Bar Membership Survey Proposed Questionnaires.
5. National Pro Bono Celebration Pamphlet.
6. Applicants Sought for First, Second, Sixth and Seventh District Trial Court Nominating Commissions Announcement.

ADJOURNED AT 1:40 P. M.