

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

APRIL 24, 2009
WEBER COUNTY OFFICES
OGDEN, UTAH

Present: President Nathan D. Alder and Commissioners: Steven R. Burt, Christian W. Clinger, Yvette D. Donosso, Mary Kay Griffin, Robert L. Jeffs, Curtis M. Jensen, Felshaw King, Herm Olsen, Stephen W. Owens, Scott R. Sabey and Rodney G. Snow. Ex-Officio Members: Julie Eriksson, Evelyn J. Furse, Charlotte L. Miller and Paul T. Moxley. Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Katherine A. Fox, and Supreme Court Liaison Marilyn (Matty) Branch.

Excused: Commissioners: James D. Gilson, Lori W. Nelson and E. Rusty Vetter. Ex-Officio Members: Simón Cantarero, Hiram E. Chodosh, Jim Gordon (Interim Dean, J. Reuben Clark), Karthik Nadesan and V. Lowry Snow.

Minutes:

NEW ITEMS:

Nate announced that Wood Moyle, a long-time Utah lawyer, recently passed away.

Eve Furse reported that the Women Lawyers Symposium will be held on May 21st. The Symposium will include panel discussions, breakouts and a presentation on the initial survey analysis. The second part of the survey findings will be presented on June 25th. She continued that Chief Justice Christine Durham will be opening the first session and Dean Hiram Chodosh will open the second session. Judges Brooke Wells and Paul Warner will also be part of the Symposium. Nate said that we will post this information in the upcoming e-Bulletin.

1. PRESIDENT'S REPORT

1.1 Report on Western States Bar Conference

Nate said that four Commissioners attended the Western States Conference this year (Richard Dibblee, Nate Alder, Steve Owens and Rob Jeffs) and that there were many good panel discussions. He further said that other Bars are interested in our new mentoring program. Steve Owens interjected that the presentation on independence of the courts stressed the importance of building a network which includes non-lawyers like the League of Women Voters and bankers to assist with this and other difficult legislative issues when the need arises. Paul Moxley said that the Center for State Courts, Office of General Counsel Committee, is also very active and effective in the area of judicial independence. Rob Jeffs said he was surprised at how many jurisdictions' Access to Justice and Bar Foundation programs are in serious financial condition. He continued that bar dues was also a topic of discussion and Utah is near the bottom end of the spectrum. Nate interjected that we are among the few western states that have not asked for a dues increase recently and it has been 19 years since the last time. Other bars appear to be on a regular 5 or 7 year cycle for increases. Nate then informed Commissioners that on May 5, 6 and 7th he will be in North Carolina attending the National Courts' Conference ("Coalition for Justice").

1.2 Report on Law Day Activities

Nate reported that we have a good plan in place for Law Day. The events will be held at the Little America. He further stated that on May 5th, a free CLE with John Kessler, Chief Justice Christine Durham and Michael Zimmerman will be held to discuss civility. Nate is currently working on a newspaper article for the *Deseret News* in conjunction with John Baldwin about Law Day issues.

1.3 Review Calendar

Steve Owens announced that he is open to ideas for the upcoming retreat and asked Commissioners to let him know what they believe needs to be discussed.

1.4 Report on ABA Day in Washington

Nate Alder reported on his recent attendance at ABA Day in Washington and observed that this event is now in its 14th year. This year he met with Senators Orrin Hatch and Bob Bennett and Representative Jim Matheson (he was unable to meet with Chaffetz or Bishop). He lobbied among other things for an increase in the National Legal Aid budget, a portion of which will go to Utah. Overall, Nate said, the meetings were great. Other bars allow more people to attend than we do and he opined that we should look into increasing our attendance.

1.5 License Fee Discussion

Attorney General Mark Shurtleff joined this part of the meeting. Mr. Shurtleff said that when he first came on board at the A.G.'s Office, he wanted to do more training including supervisory, leadership, management and mentoring and has been engaged in these efforts for the past seven years. He is currently trying to mesh the A.G.'s

mentoring program with the Bar's mentoring program. He continued that the A.G.'s office has approximately 500 employees with 200-220 attorneys. The A.G.'s office has had significant budget cuts which they are trying to address by instituting a hiring freeze and offering early retirement among other cost saving measures. In light of current economic times, the A.G.'s work load has increased, particularly with more crime and new government mandates (education primarily). He understands that Rule 14-107 sets Bar fees and he is requesting a one or two year temporary reduction in Bar dues which now cost the A.G.'s approximately \$84,700 annually. He said if the Bar allowed a 25% cut, it would reduce their fees by \$21,000. He would also like to eliminate the Client Security Fund assessment because the attorneys who are employed by the A.G.'s do not have trust accounts or private clients.

Steve Owens responded that as a policy, all lawyers chip in for the "bad apples" regardless of whether each of us has a trust account or private clients. Charlotte Miller said that a fair number of attorneys make less money than attorneys employed by the A.G.'s office and she does not see how we could distinguish among various legal groups for licensing fee reductions. Scott Sabey and Christian Clinger noted that it is not just our decision and we would have to submit a petition on fee reduction to the Utah Supreme Court for their approval.

On a different subject and in light of the Commission's recent position opposing the A.G.'s driven proposed post-conviction relief measures, Mr. Shurtleff also asked about the Bar's policy when different sections have opposing views on these types of issues. He believes that when there were different perspectives, the Commission was obligated to adopt a neutral stance. Scott Sabey responded that under our rules, the Governmental Relations Committee only recommends to the Commission but does not dictate the Commission's position. In response, Mr. Shurtleff said he would like an opportunity to appear and present his views when the Commission does not adopt a neutral position on controversial legal issues where lawyers are divided. The Commission consensus was that this was a reasonable request. Steve Owens said that we should have CLE sessions on post conviction relief to thoroughly discuss the legal issues and Nate said that towards this end, we could involve the Bar's Constitutional Law Section.

2. EXECUTIVE DIRECTOR'S REPORT

2.1 March Financials

John Baldwin directed the Commission's attention to the financial statements which were behind Tab 1. He explained that CLE income and revenue are up about \$30,800 and Admissions income is down for the year. He continued that our investments are down \$50,000 in interest, management service income is down \$26,000 and BarAlliance net is \$80,510. John further reported that we have received some limited revenue from mentoring fees. Ultimately, we will lose income from "property management" which includes tenant rent and room rental. We made approximately \$18-19,000 on the Spring Convention and the 2008 Summer Convention was up a bit. The mentoring program will lose about \$50,000 this year but hopefully, will start catching up in the future. There is,

however, lost CLE revenue due to this program and we will continue to lose in that area. Eventually, it will nearly pay for itself but there are more start-up costs at the beginning. The General Counsel budget reflects costs related to property tax payments, and the Ray Quinney legal fees to appeal the issue, and Grant Clayton's legal fees for the trademark work. Overall, we are down about \$94,000 and the forecasted loss on interest will be a big hit.

Mary Kay Griffin said to bear in mind that this is a "cash basis" analysis and the figures will "true up" at end of the fiscal year. Nate said we will need to make some significant financial decisions at the retreat as to whether to fund a \$40,000 legislative budget and further, assess our spending priorities. He continued that there are important future needs of admissions, technology and the building. John said we have hired a part-time admissions employee so we may need to raise fees in this area to help compensate for the additional expense. Felshaw King observed that admissions has a number of needs which have resulted in budget expenditures and believes we should move on increasing admissions fees sooner rather than later. Nate said we may need to act without the Admissions Committee approval as they appear reluctant to recommend an increase.

Steve Burt said that the balance sheet reflects that we are really at a \$600,000 loss for the year which doesn't include building issues which are looming in the future and our financial health appears to be rapidly declining. Nate said that we are also slipping in our reserves which is somewhat alarming because our reserves need to cover normal operations costs for a period of time. He further said that the Budget and Financial Committee would like the Bar to have six months of costs in reserves.

John said we definitely need to make some decisions regarding increasing revenue and decreasing expenditures but that we are not in a "panic state" just yet. Scott Sabey asked if we are running at deficit and John responded yes, at approximately \$10,000 a month. Nate said it would take \$12-14 license fee increase to cover the deficit. Scott opined that we still are not addressing the upcoming and necessary expenditures by a \$12-\$14 increase. Nate said we cannot "chip away" at Bar fee increases every few years in small increments and that we have to adequately anticipate upcoming needs. Scott said the building problems are significant and we will have to be out of the building in 10 years due to lack of room. He continued that right now, the real property section cannot hold its annual meeting at the Bar because there simply is not enough room.

Nate said another example of need is the possibility of opposing a proposed professional services tax which will require more funding. Rod Snow believes that if the Bar has not had a dues increase in 19 years, then we have not planned wisely. Eve Furse suggested taking a hard look at our expenditures to see what items benefit large numbers of Bar members versus just a few and Nate noted that Casemaker (\$60,000) and Blomquist Hale (\$120,000) are significant annual costs. Scott interjected that we have already determined that these particular programs are desirable and necessary and we should not cut them. Nate continued that he has already talked to UDR about cutting our annual contribution of \$20,000 and John added that publishing the *Bar Journal* is a \$90,000 loss annually.

Rob Jeffs said we need to go through an analysis process to determine what Bar fee increase amount would be appropriate. Paul Moxley suggested forming a task force to examine issues as was the case the last time a need arose to increase dues. Nate believes we need to establish a building sinking fund, sufficient reserves and make no cuts to current approved programs like Casemaker and Blomquist Hale. He also wants to accommodate a new legislative lobbyist hire. He opined that we really are moving out of the “small state bar” category. Felshaw said we will need to justify any dues increase to our members with hard numbers and Curtis Jensen believes we need to involve membership to some extent so that the backlash from the increase is not as severe. Eve thinks we need to publish two *Bar Journal* articles: (1) John explaining the budget/facts; and (2) reasons supporting a dues increase. She agrees with Curtis that we should talk to our membership first and ask for their feedback.

Scott moved to increase bar dues \$75 and include an allocation of funds for a building sinking fund and institute a Commission 5 year review program with possibility of additional increase in May meeting. Rod seconded the motion. Further discussion ensued. Steve Owens is concerned that this issue was not on the agenda as an action item but John replied that nothing prohibits this action. Eve, however, emphasized that our membership will criticize the lack of openness and we should have an actual notice of this issue. Nate suggested putting the vote on the May 29th agenda which would give us a month to put the necessary analytical structure together. He continued that this issue was discussed during the St. George meeting executive session so it is not a totally new idea. Paul suggesting having the vote in May along with a building report and a survey of other bars. Matty Branch said from the Court’s perspective, the Bar has plenty of time to review and act on this issue for the next annual renewal cycle. Rod recommended voting today for increase and deferring the exact amount to May. Herm Olsen said even if this increase passes today, we don’t want a division among Commissioner’s on today’s procedure. He likes Rod’s suggestion to defer the exact amount of the increase to May but vote today on whether or not to institute an increase. Nate said we could announce the agenda item on the upcoming E-bulletin which would allow for membership to offer feedback for a month.

Herm Olsen amended Scott’s motion and Scott accepted the amendment. Felshaw said our members need proper notice. Steve Owens preferred to table this issue until the next meeting and Curtis Jensen agreed. **Scott Sabey restates and clarifies motion to raise annual license fee now to be effective in 2010 in amount of \$75 with exact amount to be reviewed at May meeting to determine if it should be more or less; to establish a Committee to review licensing fees in five years; and to allocate portion of dues increase to a building sinking fund. Motion passed with Rod Snow, Rob Jeffs, Herm Olsen, Christian Clinger, Yvette Donosso, Scott Sabey, Steve Burt, Nate Alder and Mary Kay Griffin in favor. Steve Owens, Felshaw King, Curtis Jensen opposed. Absent for the vote were Rusty Vetter, Lori Nelson and Jim Gilson.**

2.2 Report on “*Avvo*” On-Line Lawyer Review

Postponed.

2.3 Report on Mentoring, Kickoff and Recruiting Video

Postponed.

2.4 Report on Petitions to Supreme Court

Postponed.

3. ACTION ITEMS

3.1 Petition for Rule to Clarify Conflicts and Confidentiality Issues in New Lawyer Training Program

Rod moved to approve petition to clarify conflicts and confidentiality issues in New Lawyer Training Program. Nate seconded the motion which passed unopposed.

3.2 Establish a Professional Services Tax Response Committee

Postponed.

3.3 Extend Policy on Campaign Services for General E-Mailing

Postponed.

4. INFORMATION ITEMS

4.1 OPC Operations Review

Postponed.

4.2 CLE Operation Review

Postponed.

4.3 Fee Arbitration Operation Review

Postponed.

4.4 Law & Justice Center Operations Review

Postponed.

5. CONSENT AGENDA

By policy, the March 12, 2009 minutes were approved and without amendment (Tab 6).

MEETING ADJOURNED AT 12:00 P.M.

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- 1) New Lawyer Training Program Mentor Recruitment Status Update.