

UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES

April 27, 2007  
WESTON PLAZA, STOCKMAN'S RESTAURANT  
VERNAL, UTAH

**Present:** President Gus Chin and Commissioners: Nathan Alder, Steven R. Burt, Robert L. Jeffs, Felshaw King, Herm Olsen, Stephen W. Owens, Scott R. Sabey, Rodney G. Snow and V. Lowry Snow. Ex-Officio Members: David Bird, David R. Hall, Cheryl Miyuki Mori and Kathryn K. Shelton. Executive Director John C. Baldwin and General Counsel Katherine A. Fox.

**Excused:** Commissioners: Christian Clinger, Yvette D. Diaz, Mary Kay Griffin, Curtis M. Jensen and Lori W. Nelson. Ex-Officio Members: Hiram E. Chodosh, Charlotte L. Miller, Paul T. Moxley, Margaret D. Plane and Kevin Worthen. Supreme Court Liaison Marilyn (Matty) Branch.

**Minutes:**

**1. PRESIDENT'S REPORT**

**1.1 Review Calendar**

Gus Chin reminded those in attendance that after the admission ceremony on May 23<sup>rd</sup>, a special meeting with the justices of the Supreme Court will be held to discuss the Grant Thornton review. The Executive Committee will determine how to address potential questions the Court may have, including those raised by a Bar member's recent letter. Gus also reviewed the dates for the Commission retreat at the Zermatt resort which will be held June 1<sup>st</sup> and 2<sup>nd</sup>. John and Lowry asked that the retreat attendance sheets as well as the Commission self-assessment governance surveys be completed and returned today in anticipation of the retreat.

**1.2 Report on Western States Bar Conference**

Gus reported that we are in much better shape than some of our counterparts in other states while reviewing other jurisdictions' current issues (e.g., pay for judges, relationships with courts and/or legislatures, etc.) during the conference. For example, Hawaii is currently re-evaluating whether to maintain status as an integrated Bar. He highlighted a number of other issues various states are currently facing and Steve Owens discussed remaining issues of interest such as

state e-filing and the like. John Baldwin, in response to questions, reported it was not the South Dakota Bar that financially defended the attack on the South Dakota judiciary, but rather a coalition of insurance companies, banks, and others which was funded through the chamber of commerce. John has put together a file of ideas and possible resources if this situation were to occur here. Gus added that next year's Western State's Conference will be held in Arizona and encouraged Commissioners' attendance.

### **1.3 Review Mentoring Initiatives**

Rod Snow reported that there is still space available during the Sun Valley meeting for a CLE presentation on the proposed and developing mentoring program. Margaret Plane, Rod's co-chair, is heading up a Fall Forum presentation on this subject. Rod distributed a memorandum with a summary of the Mentoring Committee efforts and a first draft of the proposed program. The Mentoring Committee will be dividing into subcommittees to study and refine various aspects of the current proposal. The proposed subcommittees and their study areas include:

1. Review of the current proposal to resolve key issues such as topics and activities for mentors – developing a workable list; length of time required for mentoring to be effective, requirements for mentors, insurance issues, and CLE credits that should be provided the mentors and the new attorneys. Proposed members for sub-committee: Professor Backman as Chair, with Rod Snow and Cheryl Mori as members;
2. Recruiting Mentors and the Matching Process Chair, Nate Alder with Christian Clinger, Curtis Jensen and Margaret Plane as members; and
3. Law School/Bar programs that should qualify for mentoring credits: Co-chairs, Dean Chodosh and Dean Worthen with a law professor from the S.J. Quinney College of Law to be nominated by Dean Chodosh, a law professor from the J. Reuben Clark College of Law to be nominated by Dean Worthen, and David Hall.

Rod said that currently there is no consensus among committee members whether mentoring should be mandatory or voluntary. It will not be easy, however, to implement a voluntary program, especially in smaller firms or with solo practitioners, as well as in the more rural areas of the state. Rod added that Dean Chodosh is exploring mentoring CLE credits and asked for future Bar staff assistance to get the project underway. He also would like other Commissioners' participation in the program, consisting of one voting and one ex-officio. The Deans will find other law school faculty members to join this committee.

In response to Lowry's questions about the ideal length of a mentoring program, Rod responded that other jurisdictions have mandatory programs which span from six months to a year. Discussion then ensued over issues relating to a mandatory versus a voluntary program. Steve Burt observed that he knows of no other

profession without a mentoring or apprentice-type program before practicing in a given field is permitted. Gus said the Young Lawyers Division, the Women Lawyers, and the Minority Bar try to mentor but not to the extent it needs to be. David Hall said mentoring efforts are done informally but the Young Lawyers Division is not particularly successful simply because they are not equipped to do it. Cheryl Mori agreed with this assessment as it applies to the Minority Bar's efforts in this area.

Rod agreed to spearhead the Sun Valley presentation. Nate interjected that Alan Sullivan may be willing to help and also suggested including a justice on the panel because the Supreme Court is very interested in professionalism. In fact, he continued, Justice Parrish spoke about adding a mandatory compliance statement on the licensing for attorneys to adhere to the rules of professionalism issued by the Court. Discussion over a possible conditioning on licensure versus the ability to practice prior to fulfilling mentoring requirements. John will have Connie Howard contact Rod about the Sun Valley presentation and noted that a mentoring program may be the most significant practice related concept since the Supreme Court made CLE mandatory.

#### **1.4 Review Grant Thornton Report Issues**

Gus announced there was a letter posted on the Bar's website summarizing the Grant Thornton report and that several Bar members have asked for a copy of the entire report. John said the Grant Thornton contract may have a provision limiting the report's distribution. Gus added we need to hear from the Court first about possible distribution before doing so. Scott Sabey briefly talked to the Chief Justice about this matter. She said the Court had not yet reviewed either the report or Rusty Vetter's letter. Lowry thought the meeting would be more like a discussion and John believed that the Court is looking to us to set an agenda. Gus said that possible responses to the report's and the letter's issues will be addressed during the upcoming Executive Session. In conclusion, John said that we are working on a Bar staff conflict of interest policy.

#### **NEW ITEM:**

Gus Chin, Lowry Snow, John Baldwin, Connie Howard and Lincoln Mead met prior to this meeting with members of the Uintah Basin Bar Association to discuss CLE, impact of the new unbundling rules, member benefits, and other topics of interest.

## 2. ACTION ITEMS

### 2.1 Judge, Lawyer and Section/Committee Awards

Nominated for “Judge of the Year” were the Hon. Gregory K Orme and the Hon. Sandra N. Peuler. Discussion ensued. **Steve Owens made a motion to bestow both candidates with the award. Herm Olsen seconded the motion which passed unopposed.**

Nominated for “Lawyer of the Year” were Charles R. Brown and Oscar W. McConkie, Jr. Discussion ensued and David Bird commented that the criteria for this particular award could be revised to better reflect what we intend this award to recognize. **Oscar W. McConkie, Jr. was selected as the recipient.**

Nominated for “Committee of the Year” were the Bar Journal Committee, the Unauthorized Practice of Law Committee, and the New Lawyer CLE Committee. Discussion ensued and the **Bar Journal Committee was selected as the recipient**

Nominated for “Section of the Year” were the Young Lawyers Division, the Paralegal Division and the Banking and Finance Section. Discussion ensued and the **Paralegal Division was selected as the recipient.**

### 2.2 Deception Detection Board Appointment

The Department of Commerce has asked the Bar to appoint a member to the Deception Detection Examiners Board pursuant to Utah Code §58-64-201(d). The three candidates were Brent Bullock (who currently serves on the Board), Michael O. Zabriskie and Joanna Elizabeth Miller. Discussion ensued. **Brent Bullock was reappointed with Rod Snow opposing this appointment for conflict of interest reasons.**

### 2.3 Lawyers Helping Lawyers Funding Request

Gus reported that LHL requested a \$5,000 increase in their budget over the \$25,000 they received from the Bar last year. Nate asked if an accounting of LHL’s expenditures was available so that it was more apparent exactly what they are doing. John responded LHL prepares an annual report, but does not itemize expenses. Steve Burt also wanted to know if LHL had seen a decline in number of lawyers served since Blomquist Hale came on board. Gus did not believe so because the majority of Blomquist’s clients seem to be family members. **Steve Owens made a motion to approve LHL’s \$30,484 request. Felshaw seconded the motion which passed unopposed.** Nate would like LHL and Blomquist Hale to work together because the Bar currently spends \$150,000 between the two programs and we need to better understand how the two coordinate their efforts. Scott Sabey would like to know if LHL has incorporated as a distinct entity and if

not, why not. **After further discussion, Scott Sabey moved to reconsider the previous action and would like to defer the decision until the June meeting so that Roger Cutler can respond to Commission questions and concerns. Nate seconded this motion to reconsider which passed unopposed.**

#### **2.4 Family Law Section Bill on Visitation**

Gus reported that the Family Law Executive Committee has asked the Commission take a supportive position toward the “Custody and Visitation for a Person Other Than a Parent” proposed legislation. He opined that it is not appropriate for the Commission, however, to take a position opposing a recent court case. Discussion ensued. **Herm made a motion that the Commission not take a position on the proposed legislation, but allow the section to do so with the caveat that Commission guidelines are followed in doing so. Scott Sabey seconded the motion. Motion passed unopposed.**

#### **2.5 Ethics Advisory Opinion Committee Status**

Steve Owens reported that the recent Court letter upset some members of the EAOC because while lawyers previously had a “safe harbor” when abiding by an opinion, they now will only have a “rebuttable presumption”. Rob expressed support for Gary Sackett’s position in modifying the Court’s language in the Court’s letter for insertion in the EAOC rules and suggested bringing this topic up at the May meeting with the Court. Felshaw King voiced his agreement with this suggestion. Lowry added that he had spoken with Gary Sackett who reported that Alan Sims as well as Mary Corporan are considering quitting and that Craig Mariger has resigned from the chair position. **Steve made a motion to defer a final decision on adopting new language for EAOC rules until the June meeting. David Bird amended the motion to include incorporating Gary’s language and develop proposed language for consideration for the June meeting. Nate seconded the amended motion which passed unopposed.** Steve will bring the suggested substitute language to June’s meeting.

#### **NEW ITEM:**

Scott Sabey announced that the Judicial Council will be meeting on Monday, April 30<sup>th</sup> to discuss a proposed new courthouse.

### **3. INFORMATION ITEMS**

#### **3.1 Review March Financials**

John reported that we are approximately \$126,000 to the good for the year. The March 2007 financial statements were discussed with concentration on the “variance” column. We have \$128,874 revenue to the good year to date and we’ve spend \$32,840 less than budgeted for year to date. The admission budget

has been carefully reviewed and we may need to request an increase in admission fees. Steve Burt had a question regarding the cash flow basis on the “balance sheet”. John said he will talk with Mary Kay during Budget and Finance Committee meeting and get back with him.

John said that s the Bar’s annual report is behind Tab 9. Among other items, the annual report states that the Bar has paid off the Law and Justice Center note. Nate asked if the annual report was published in the *Bar Journal* as well as posted on the website. John replied that it will be printed in the next issue of the *Bar Journal* and has already been posted on the website. A notice of the Deloitte yearly audit, in fact, is always published in the *Bar Journal*.

### **3.2 Review Preliminary Draft Budget**

See item #3.1

### **3.3 Diversity Committee**

Postponed.

### **3.4 Spring Convention Review**

John reviewed the comments received regarding the Spring Convention.

### **3.5 Diversion Rule Petition Status**

Katherine Fox reported that the petition had been filed and will be slated for comment under applicable judicial rulemaking provisions.

## **NEW ITEMS:**

- David Hall announced that the Law Day luncheon is on Tuesday, May 1, 2007.
- Kathryn Shelton said the Paralegal Day luncheon is scheduled for May 17<sup>th</sup> and on June 16<sup>th</sup>, there is a full day CLE opportunity.
- Cheryl Mori said the Minority Bar’s annual banquet will be held in September this year.
- David Bird said Kristin Brewer has resigned (Office of the Guardian ad Litem) and noted that we should send her a thank you letter for her service.

## **5. CONSENT AGENDA**

By policy, the March 8, 2007 minutes are approved without amendment.

**MEETING ADJOURNED AT 4:00 P.M.  
AND THEREAFTER, CONVENED IN EXECUTIVE SESSION**

**NEW HANDOUTS DISTRIBUTED DURING MEETING:**

- 1) Summary of Mentoring Committee Program Memorandum.
- 2) Memorandum from Gary Sackett responding to Chief Justice Durham's April 5, 2007 letter.
- 3) Nomination letter for the Young Lawyers Division for Section of the Year from Amy Poulson.
- 4) Paralegal Division membership application and brochure.
- 5) LHL semi-annual contact report.
- 6) Nomination letter for Oscar W. McConkie, Jr. for Lawyer of the Year from Robert C. Hyde.
- 7) ABA Midyear Meeting summary.