

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

March 8, 2007
DIXIE CONVENTION CENTER
ST. GEORGE, UTAH

Present: President Gus Chin and Commissioners: Nathan Alder, Steven R. Burt, Christian Clinger, Robert L. Jeffs, Curtis M. Jensen, Lori W. Nelson, Herm Olsen, Stephen W. Owens, Scott R. Sabey and V. Lowry Snow. Ex-Officio Members: David Bird, David R. Hall, Margaret Plane and Kathryn K. Shelton. Supreme Court Liaison Marilyn (Matty) Branch. Executive Director John C. Baldwin and General Counsel Katherine A. Fox.

Excused: Commissioners: Yvette D. Diaz, Mary Kay Griffin, Felshaw King and Rodney G. Snow. Ex-Officio Members: Hiram E. Chodosh, Charlotte L. Miller, Cheryl Miyuki Mori, Paul T. Moxley and Kevin Worthen.

Minutes:

1. PRESIDENT’S REPORT

1.1 Report on National Conference of Bar Presidents’ Meeting

Gus Chin reported on the NCBP ABA meeting held in Miami in February. Judicial independence was discussed and “fair and impartial judiciary” is now the preferred term to “judicial independence”. He further reported that the South Dakota Bar recently spent close to \$2 million dollars to defeat a negative impact judiciary initiative (JAIL). He opined that the attack is not over and similar campaigns against the judiciary will continue in the future. The situation was a difficult one and the Bar’s executive director was forced to solicit funds to put together an advertising campaign to help educate voters and defeat the bill.

Lowry Snow interjected that while early polls showed the initiative would pass, late in the process it was defeated by an overwhelming majority. He further said that he was surprised the burden to campaign against the initiative fell solely to the South Dakota Bar and if similar developments were to occur in Utah, he would want other influential people to share the burden. Christian Clinger opined that the Bar should have a crisis management plan in place in the event a similar issue arises in Utah. John Baldwin replied that we currently have a protocol in place relating to defense of judges who are publically criticized. Matty Branch

added that the Courts have a task force to study this issue and the task force carefully tracked the South Dakota initiative.

On a different topic, Gus said that member benefits were also discussed at the conference. Georgia, Oklahoma and Washington DC Bars have “practice management” programs to which they have dedicated a staff person to assist solo and small firm practitioners in setting up their practices. While those programs cost approximately \$130-\$140,000 annually, he believes Fall Forum fills that niche.

Gus reported that another session at the ABA meeting related to conducting board meetings. Suggestions made were to hold executive sessions more often, provide less detail in minutes, eliminate discussions via written summaries and other ideas. He did not believe most of these suggestions would be helpful *vis a vis* what we are currently doing. David Bird observed that in his experience with municipalities, school districts, and other organizations in Utah, organizations are more likely to be sued when people are more suspicious because meetings are not open.

1.2 Report on ABA House of Delegates Meeting

Postponed.

1.3 Review Lawyer Referral Status with LegalMatch

Gus asked Commissioners to review the material behind Tab 1. He said there are several proposed alternatives if we discontinue the LegalMatch arrangement in the future. In response to Steve Owens’ question, Gus said this information can be shared with others.

NEW ITEM:

Scott Sabey said Rick Schwermer from the AOC updated the judges on the legislative session at a recent Judicial Council meeting. The bill sponsored by Sen. Buttars which would create a task force to study judicial retention elections, selections and appointments passed, but the Governor had not signed it as of yet. Lori Nelson and Scott both believe that the bill’s original text was acceptable until the closing session when a second substituted bill with the new provisions was presented. Originally, the Court had the opportunity to choose four members on the task force, but the second substituted bill does not give the Court any designated seats. Scott believes the bill may be unconstitutional. He thinks that the result of the changes would be to politicize the entire judicial process and he would like to see the Bar take a strong position with the Governor at this juncture because the courts cannot properly do so.

After further discussion, the Commission concluded that the reasons for opposing the bill are:

- (1) it does not respect judicial independence (e.g., the Court cannot pick its own representatives on the task force);
- (2) the purpose of the task force exceeds what was agreed upon during the legislative session;
- (3) it potentially affects not only the judiciary's but the Governor's sphere of authority; and
- (4) it potentially impacts the balance of separation of powers.

Christian Clinger suggested hand delivering a letter and sitting down with the Governor, Mike Mower and the Governor's new General Counsel, Tani Pack Downey, to discuss this matter. Gus asked Lowry to spearhead this effort since he has a conflict. **Nate made a motion to state the Bar's position and concerns as outlined above in a letter to the Governor. Steve Owens seconded the motion.** David Bird urged caution in this area because the consequences could place the Bar in a political hot spot. Christian suggested first asking the Court for permission to become involved before drafting the letter to the Governor. John T. Nielsen's impression was that Court inserted language that their representatives on the task force would only be chosen after "consultation" between the legislature and courts. He believes the Legislatures' discontent with the judiciary may have been driven in large part by Judge Leslie Lewis' recent situation *vis a vis* the voter pamphlet. John T. also urged caution since the Bar did not take a strong stance during the session and obtaining the Court's permission before contacting the Governor would be wise.

Nate withdrew his previous motion and instead moved to arrange a meeting with Mike Mower, Lowry Snow and Scott Sabey pursuant to Rob Jeffs' remarks. Rob Jeffs seconded the motion. Herm Olsen suggested amending the motion to include empowering Lowry to sign the letter as discussed in case the Governor needs "ammunition" to veto the bill. David Bird opined that the Governor likely will not veto a bill that creates a task force to institute a study. Steve Burt observed that the situation exemplifies a fundamental misunderstanding of separation of powers and suggested that the Bar should sponsor educational forums since the Legislature seems to focus on the concept of "majority rules". John T. suspects the Governor will sign the bill after which the Bar could speak with Greg Curtis and John Valentine regarding the nature of the Bar's opposition. **The substitute motion as amended passed with none opposed.**

NEW ITEM:

Scott Sabey said the Legislature approved a judicial pay raise of 10% this year (which actually works out closer to 20%) which helps to insure a better applicant pool for judicial openings. John T. noted the Judicial Compensation Committee recommended an 11% increase so they are very pleased with the results.

1.4 Review Legislative Session

John T. distributed his 2007 Legislative update outline for his presentation slated for tomorrow. He said the bill to increase child support passed and Rep. Lori Fawlkes appreciated the Bar's efforts in this area.

2. EXECUTIVE DIRECTOR'S REPORT

2.1 Status of Malpractice Insurance Disclosure Petition

Katherine Fox has drafted and filed the mandatory insurance disclosure petition. A meeting with the Court is scheduled for March 14th and Rod and Yvette have been invited to attend that meeting along with Katherine.

2.2 Confirm Attendance at Vernal Meeting and Dinner

John asked Commissioners to review the materials behind Tab 2 and confirm their attendance at the Vernal Commission meeting in writing for planning purposes. He added that the Bar will handle their reservations if advised they plan to attend.

2.3 Confirm Attendance at June Meeting and Retreat

John asked Commissioners to review the materials behind Tab 3 and confirm their attendance at the retreat at the Zermatt in writing for planning purposes. He added that the Bar will handle their reservations if advised they plan to attend. Gus added the June 1st is the last meeting for the current ex-officio Commissioners to attend but their replacements are welcome to attend the retreat portion of the Zermatt meeting.

3. ACTION ITEMS

3.1 Mentoring Committee Report

Margaret Plane reported that the Commission's Mentoring Committee has held two meetings so far with both deans in attendance. Currently the committee is surveying existing resources and has reviewed Ohio's and Georgia's programs. Prof. James Backman of BYU and a third year law student are also looking at Texas', San Diego's, Illinois' and Indiana's programs as well as applicable ABA materials. The committee will present its findings along with a sample pilot program at a March 20th meeting. The committee would like to give new lawyers a variety of opportunities, e.g., "low bono" program for credit and education. Lori opined that the deans would also like to see, in addition to 3rd year law students, a component for 1st and 2nd year students. Margaret continued that in

addition to Utah law school graduates, the program should help others. Steve Burt noted that architects have a program which the committee may want to review.

3.2 Pro Bono Review Committee Report

Herm Olsen reported on the Commission's Pro Bono Review Committee. Lowry, Gus and Curtis are serving on the committee and particularly like Dean Chodosh's "Lawyering for America" approach to do outreach programs to educate the public which ties into the unbundling of legal services. Currently, while an income verification information form is used to qualify for pro bono services, some middle income individuals are more suitable candidates for "low bono". Gus added that the Southern Utah Bar Association along with Judge Shumate are looking at the unbundling aspects to ascertain if wider legal services can be provided under those previously modified rules.

4. INFORMATION ITEMS

4.1 Request to Raise Fee Arbitration Threshold

Steven Johnson, the new Fee Arbitration Committee chair, appeared before the Commission and reported that the committee voted to amend the fee arb rules as proposed in the memo behind Tab 4. The first amendment would be change the current name from "Fee Arbitration Committee" to "Fee Dispute Resolution Committee" to more accurately reflect the scope of the committee's work. The second amendment is to increase the one-arbitrator case threshold from \$1,500 to \$3,000. **Steve Owens moved to approve the changes as proposed. Nate Alder seconded the motion which passed with none opposed.**

4.2 Diversion Rule

Lori directed attention to the proposed diversion rule behind Tab 5 and said that three minor changes needed to be made. First, on page 4, paragraph 5 the "Chair of the Ethics and Discipline Committee" should read "Chair of the Diversion Committee". Second, on page 5, paragraph J the asterisks before "Fund" need to be replaced with "General". Last, in paragraph J, last line "Ethics and Discipline Committee" needs to be replaced with "Diversion Committee". Katherine Fox asked if the Court will appoint these committee members since the new rule will be a disciplinary rule of the Supreme Court. Lori responded affirmatively and said that the committee would like to see a member of the Ethics and Discipline Committee sit on the new Diversion Committee with OPC serving as staff support. **Steve Owens moved to approve new rule. Scott Sabey seconded the motion which passed unopposed.** Katherine will draft the petition and submit it to the Court.

4.3 Child Support Guidelines Advisory Committee

Gus directed attention to the list of nominees for the Governor's Advisory Committee on Child Support Guidelines behind Tab 6. He and Lori would like the Commission to particularly consider rural area candidates because it's important to have someone outside the Wasatch Front metropolitan area. Discussion ensued over candidates. **Scott moved to appoint Stewart Ralphs and Adam Caldwell. Nate Alder seconded the motion which passed with none opposed.**

NEW ITEM:

Margaret Plane said the Women Lawyers was finalizing the formation of an online lawyer referral service for women lawyers (which is somewhat similar to option #3 of the memo behind Tab 4). The group submitted opt-out forms for members who did not want to be listed on the internet referral service and only four members opted out. Gus asked for a report on this new program at a later meeting and asked John to discuss the details with Lincoln as a possible alternative for a Bar lawyer referral service.

NEW ITEM:

David Hall said he has received a great deal of e-mail from young lawyers who would like the Bar's website to post job openings. Since we already have this option available, John will discuss website modifications with Lincoln to more clearly advertise these job openings.

NEW ITEM:

Kathryn Shelton reported that the Paralegal Division is updating their long range plan and the Division has a committee to study the current paralegal licensing trend. The Division's CLE program continues to afford valuable opportunities and the group continues to emphasize educating lawyers as to the role of paralegals in the legal profession.

NEW ITEM:

Gus announced that the UMBA recently received the Pete Suazo Community Award and the University of Utah College of Social Work Award for Community Outreach at Rice Eccles Stadium.

4.4 Grant Thornton Governance Review

Gus directed Commissioners' attention to the Governance Review Report behind Tab 7 where each recommendation was discussed.

#1 Consider changing Board meeting attendance policies to emphasize transparency. Gus strongly opposes the portion of this recommendation that would exclude ex-officios. He noted, however, that we do have “duplicate” ABA representatives on the Commission. As background he explained that previously, we only financially supported the Bar’s ABA representative but approximately 10 years ago, we voted to fund the state-delegate who is designate by the ABA, not the Bar. Rob commented that while the overall structure of the Commission is fine, we’ve arbitrarily chosen the ex-officios categories. He believes that more issues could be handled on the consent calendar in order to streamline the meeting. He further said we need to have more time during Commission meetings to discuss “meatier” issues. **Lori moved to decline adoption of recommendation #1 and to postpone the ABA delegate discussion. Steve Burt seconded the motion. Motion passed unopposed.**

#2 Formally utilize the non-profit framework when analyzing any project that falls within the “other” category. The discussion was tabled and will be brought into the long range plan discussions. **Nate moved to table discussion. Lori seconded motion which passed unopposed.**

#3 Regularly formulate and document a long-term strategy for the Bar. **Lowry moved to review and rewrite the long range plan. Nate seconded the motion which passed unopposed.**

#4. Restructure how the Executive Director is employed, compensated and evaluated. This item will be discussed during the executive session following the meeting.

#5 Institute periodic operational audits of the Executive Director and staff. Gus believes this recommendation will require an in-depth discussion and suggested tabling it for later. **Rob moved to approve periodic audits, but to postpone discussing the underlying details. Nate seconded the motion which passed unopposed.**

#6 Create an independent committee function. **Lowry moved to discuss this recommendation after a whistleblower policy is developed. Herm Olsen seconded the motion which passed unopposed.**

#7 Establish a whistleblower function. David Bird suggested discussing this recommendation with the Court. **Steve moved to adopt the recommendation. Curtis seconded the motion which passed unopposed.**

#8 Implement the use of a Board governance self assessment checklist. Lowry suggested responding to the sample checklist found in Appendix A on an individual basis before the Commission retreat. Steven Burt thinks the checklist is too long and thinks it should be modified. Rob agreed with Steve’s assessment because the form is designed for “general” non-profit organizations and it should

be revised to be more suitable for our particular organization. David Bird also suggested including an “I don’t know” response. Nate believes the feedback will establish a baseline for how we are doing. **Lowry moved to have Commissioners complete the checklist and submit it to John for tabulation before the April meeting. Steven Burt seconded the motion with none opposed.** David asked that the checklist be put in electronic form pursuant to Christian’s suggestion.

#9 Institute an ongoing conflict of interest policy for Bar staff. Although Commissioners have a conflict of interest policy already in place, Rob was in favor of this recommendation because the Bar could have an employee who has an interest in a company and receives benefits from the Bar contracting with such company. **Rob moved to adopt this recommendation. Nate seconded the motion which passed unopposed.**

#10 A Justice from the Court should attend at least one Commission meeting annually. Matty does not believe this recommendation to be of value since she regularly attends as the Court’s representative. Gus concluded that we can acknowledge that members of the Court are welcome to attend anytime without formally adopting this recommendation.

Rob would like a detailed summary of these recommendations and the results of the discussions on the “Action Item Summary” list in the e-mail follow-up lists.

5. CONSENT AGENDA

By policy, the January 26, 2007 minutes are approved without amendment.

**MEETING ADJOURNED AT 4:30 P.M.
AND THEREFATER, CONVENED IN EXECUTIVE SESSION**

NEW HANDOUTS DISTRIBUTED DURING MEETING:

- 1) 2007 Legislative Update