

Twenty Years of Bar Operations

By Nathan D. Alder, President, Utah State Bar

Over the past three years, the Supreme Court, Bar Commission, Bar staff and certain Bar committees have engaged in extensive reviews of Bar governance, operations, regulatory obligations, financial status and investments, member services and public programs. At the direction of the Court, the Commission retained the services of Grant Thornton to conduct a non-financial audit of Bar governance and management. That report had several recommendations, one of which was an extensive review of the Bar's operations. Through Court direction, the Bar then conducted five extensive year-long reviews (management and technology, communications, admissions, access to justice, member benefits) by July 2008, and is now finishing five more reviews (professional conduct, continuing legal education, building and property, fee dispute resolution, client security fund) by this July. As an outside provider, the Grant Thornton review came at a significant financial cost. The remaining two years of operational reviews have been conducted by volunteers, namely Bar Commissioners, key bar leaders and members, in order to ensure that no additional cost would be incurred by the Bar for such reviews. I would like to thank those volunteers for the many thousands of dollars in donated time to this intensive review of the Bar's finances, assets, operations, and programs.

The goal of this three-year review process was for the Court, Bar leaders, staff and all Utah lawyers to have a better understanding of future Bar needs, challenges, operations and obligations. The reviews have also provided essential information to Bar leaders, lawyers and the Court to make critical decisions in order to protect the Bar's ongoing interests so that it can fulfill its mission and meet the on-going needs of the membership and the public we all serve. The first two years of review materials have been and remain available online at the Bar's website; the final year's review will be online in the coming weeks and months. Many of our Utah lawyers have participated in online surveys, interviews, committee work, and in writing and reading these reviews. Bar Commissioners have reviewed all of this very carefully; we have engaged in a significant amount of work these past three years. The information and reviews, thus far, have highlighted several areas where the Bar needs more resources; where the Bar needs to invest in anticipation of future issues and concerns; and how additional revenue is essential to the Bar's ability to achieve its interests and mission.

In addition to the reviewers of the past three years, the Bar Commission has long been advised by an independent Budget and Finance Committee consisting of dedicated financial professionals, including CPAs, and lawyers with financial expertise. This work is in addition to our annual outside audit by Deloitte & Touche. For each of the last several years, the Budget and Finance Committee has made strong recommendations regarding the need for the Bar to operate with a solid reserve reflecting 4 months of operations. As the Bar has grown in number and as services and operations have increased, the reserve has not grown in proportion to the budget. Where a \$1 million dollar reserve may be appropriate for a \$3 million budget, that same reserve would not be appropriate as the necessary costs of Bar operations reaches \$4.5 million annually. According to the Budget and Finance Committee, the shortfall in reserves needs to be remedied as soon as possible. Bar Commissioners agree. Operating with a reasonable and prudent reserve in place is sound fiscal policy. In an economically challenging year like this year, the reserve is even more important. And with future economic challenges ahead of us, the

Commission desires to heed the Committee's recommendations for a solid four month reserve. Thus, it is time to invest in the future.

In addition to the Budget & Finance Committee (which further recommends that prudent fiscal management includes a sinking fund for building repairs, refurbishment, and replacement), the Bar Commission's sub-committee analyzing the building and property is finalizing its year-long review of the issues affecting our building and surrounding property. That special review committee indicates that the 22 year-old building is facing significant improvements, repairs and refurbishment in the near future. As the building continues to age the cost of repair and maintenance will increase accordingly. Both committees recommend preparing now for future years.

The Bar building has served us well, housing thousands of meetings and CLE sessions. However, over the last several years and during extensive use, the building's limitations on the membership's ability to use the building have become readily apparent. The Bar Exam is now administered off-site and at a significant cost. Many sections are unable to hold meetings at the building because of constraints on available meeting space. Saving for major remodeling or replacement is something that should begin sooner rather than later. Even if larger meetings and events cannot be accommodated at the current building, the building requires enhanced maintenance and upkeep as it grows older. Saving into a building fund will allow for future maintenance and adaptation.

The Bar also requires several technology improvements. Investing in technology will further enhance the Bar's ability to deliver services to Utah lawyers. Other review committees, e.g., admissions, communications, member services, etc., indicate needs for various modernizing and other improvements, and for developing more sophisticated operational methods and enhancing our offerings. With the increasing demands on the Bar's technology, its web-based services, and web-based portals for member services and benefits the Bar will necessarily need to add professional staff to deliver those technology services.

Bar management and staff have diligently attempted to continue to deliver the services and programs to the expanding membership as directed by the Bar and the Bar Commission. Because of budget constraints placed on them, the staff of the Bar are stretched to the limits of their capacity in many areas. As the size of the Bar continues to grow, new staff members will necessarily need to be added to be able to provide essential services.

In response to the information being delivered to the Bar Commission over the past three years, the Bar Commission has decided that prudent fiscal management demands that we petition the Utah Supreme Court for an increase in licensing fees and admissions fees, thus enhancing the Bar's ability to generate revenue and meet operational demands as well as prepare for the future. Even before the reviews began three years ago, Bar Commissioners and staff knew that it was not a matter of "if" but "when" the Bar would need additional revenue. I have been attending Bar Commission meetings since 2001 when I was president of the Young Lawyers Division and I have seen Bar Presidents, Commissioners and staff undertake tremendous efforts to manage programs and services in order to hold off the eventuality of a licensing fees increase request. Every Bar President I know was grateful that they were fortunate enough to not have to incur a licensing fee increase during their tenure, although each recognized that a licensing fee increase was inevitable. Over the years, we have taken advantage of certain economies of scale, an influx

of thousands of new lawyers who now pay fees, the benefits of technology in place of additional professional staff, interest income from generous market economies, and reduced levels of services, in order to maintain fiscal stability year after year. Where other bars have undertaken new programs and offerings, or where other bars offer more services, we have been more conservative and have provided less. For every Utah lawyer who wants the Bar to essentially leave them alone and thereby offer less and therefore require less by way of licensing fees, there are other Utah lawyers, particularly new and younger lawyers, who want more services, more assistance, more offerings and who expect benefits from being admitted to the Bar. Striking a balance is the work of the elected Commission. However, everyone at this leadership level has acknowledged that one day we would no longer be able to provide traditional services and still meet Court-mandated obligations at the current level of licensing fees. That day has come. Bar leaders are prepared to meet that obligation and present a request for increased licensing fees.

It will have been twenty years since licensing fees were last increased. I have practiced 14 years now and never seen an increase. Half of our Bar is my vintage or younger; I represent the median age and practice years of our Bar. During the last twenty years, the number of Utah lawyers will have doubled, from 5,103 to over 10,350. Demands for services provided by the Bar have grown, and the Bar has worked with precision and creativity during these demanding times in order to make its budget each year. These demands, however, have occasionally required the Bar to spend unreserved surplus instead of putting that surplus into reserve for future years. We need a growing building fund to handle significant expenditures that will arise in the not too distant future. The Bar has had sufficient funds to deal with some necessary updates and repairs to the building by using unreserved surplus, but that is no longer the case now. Furthermore, the Bar's operational expenditures are now outpacing revenue as the number of Utah lawyers has grown and services have kept pace.

Of the 17 state bars in the western United States, to which Utah regularly communicates and coordinates programs, services, and leadership discussions, Utah is the longest-running organization without a licensing fees increase. The next longest is at 12 years and those leaders are in the same position as we are now, contemplating an increase. Some have recently sought and obtained increases. Licensing fees in Utah are among the lowest of the western states. Other bar organizations have marveled at our ability to hold off on an eventual licensing fee increase. Utah is no longer a small bar, however. It is now a larger state bar with a sophisticated and demanding professional community much like other large bars throughout the United States. The Utah State Bar is proactively addressing the future needs of the profession as well as the current demands upon it from the Court and the thousands of Utah lawyers. Simply put, the Utah State Bar is no longer able to operate on the levels of licensing fees established twenty years ago.

While we have some limited financial cushion for ongoing operations, our reserve is now beginning to diminish and our annual income will soon not be enough for us to keep doing what we feel is necessary to adequately administer our regulatory function (delegated to us by the Supreme Court) while also serving the profession and the public. Our financial staff has charted the lines of revenues to expenses over the last ten years and also projected those lines out to the next ten. Expenses over the last ten years have grown at a rate of just 5% per year as a result of the conservative and efficient management of the Bar. Unfortunately, because of the lack of any licensing fee increase over that same period of time, revenue has been dependant on the addition of new Bar members. As a result, Bar revenue has only grown at the rate of 3% per year. Last

year the lines of revenue and expenses nearly crossed at fiscal year-end with no contribution to either the reserve or a building fund. By the fall of 2008, however, just as the financial markets were collapsing, those two lines crossed. Our interest income has declined dramatically over the last fiscal year, and combined with several other factors at play, we are now on a course that creates a significant gap between revenue and expenses, if not rectified soon. As a result, the Bar is now budgeted to operate into the red for the first time in a long time, despite significant cost cutting, and will continue to need to operate in the red, dipping into our reserves through the immediate future until corrected.

Twenty years is a long time to slowly grow operations through care, technology and economies of scale. Because the Bar operates under authority delegated to it by the Supreme Court, any increase in licensing fees would only result through a petition request to the Court and by Court order. I recognize the argument that some may think that the Bar should do less and live within its means instead of increasing licensing fees and trying to do more. The Commission has discussed this for years now and has done its best to cut where we can and decrease where we have felt it was appropriate. We do, however, feel strongly that the Bar has an obligation to perform not only basic regulatory functions that have been delegated to us by the Court, but also should provide important services to lawyers and needed services to the public. We also believe that our financial reserves need to be increased to better protect on-going operations against unexpected fluctuations in revenue or losses in the market. To do otherwise is fiscally unsound and puts the Bar in a precarious financial position.

I realize that a few lawyers may not fully understand that the Bar is required to perform regulatory functions and may not be aware of the varied and extensive work done by the Commission, volunteers and staff on numerous fronts and issues of concern. Several areas of desired improvement are communications, governmental affairs and community involvement. To the extent that more of you will volunteer and serve, we can save some costs that would otherwise be required. As you become more involved the value of your benefits from the Bar increases. As Commissioners we realize that we are fiduciaries over licensing fees and have tried to keep costs down while providing value and accountability. We will also look to other sources of appropriate revenue where possible.

As mentioned, copies of the reviews; the 2008-2009 audit and the proposed budget for the next fiscal year are available www.utahbar.org/documents. You will also find the Utah Supreme Court's Rules for Integration and Management of the Bar, and the Bar's By-Laws through the same link.

The Bar Commission will be continuing its discussions and deliberations as it refines its petition to the Court for an increase in licensing fees. Minutes of our last several meetings, wherein we addressed fiscal decisions, are available online. We will prepare additional and detailed information and make it available to you in future communications. We are currently awaiting information from the Admissions Committee regarding the various fees that may be increased in that regard.

A petition to the Court will most likely be submitted before the end of December 2009. If the Court approves all or part of the requested action, we would anticipate that the licensing fees for 2010-2011 would include the increase. This will not affect 2009-2010 licensing that is now being processed. We recognize that the difficult economy has affected lawyers and we have

put off requesting an increase until next year in recognition of that reality. We are also hopeful that by July 2010 the nation's economic troubles will have corrected somewhat and that a more optimistic future for all is around the corner.