

LITIGATION SECTION EXECUTIVE COMMITTEE

Meeting Minutes – August 12, 2015

Present: Heather Thuet, Michael Stahler, Heather Sneddon, George Burbidge, Cameron Sabin, Joe Amadon, Phil Lott, Hon. Andrew Stone, Hon. Glen Dawson, Dan Steele, Jon Hafen

By Phone: *None*

Excused: Rod Andreason, Sade Turner, Hon. Stephen Roth, Jess Krannich, Bryan Pattison

1. **Welcome and Chair's Report.** Heather Thuet welcomed the committee and invited any proposed changes to the June 10, 2015 meeting minutes. Hearing none, the minutes were approved. Heather T. reported that the Litigation Section is facing some financially-driven issues that will be more fully discussed by Michael Stahler, and that some proposals will be made for the committee to consider in addressing them.
2. **Treasurer's Report.** Michael reported on the officers' meeting with John Baldwin, Jeff Einfeldt and Connie Howard at the Utah State Bar to address the Section's financial concerns. (George Burbidge also attended the meeting.) The officers informed the Bar that the Section has noticed a decline in revenues as well as unknown expenses charged by the Bar. In some instances, the Section has been charged for costs that were not associated with our Section's events or approved by us. The officers informed the Bar that we would like to receive an explanation as to how the Bar's administrative fee, hourly time and other expenses are billed, and to receive more timely and detailed accounting information.

With respect to the Bar's annual administrative fee, we understand that the Bar charges all sections a portion of its overall administration and overhead costs (on a per capita basis, based on each section's membership levels) for putting on CLE events that fall below a certain threshold and, therefore, the fees associated with those CLE events are not charged specifically to the section sponsoring them. For larger CLE events, the Bar sets up a separate account, including for events like the Trial Academy, and expenses associated with those events are charged directly to that account and the section sponsoring them.

One committee member noted that we are more active than other sections, which could cut both ways with respect to the Bar's administrative fees. Another member indicated that the committee needs to determine how we continue to provide great services to our members based on our resources, and how we budget for the upcoming year given the Bar's accounting practices. The Bar bills its employees in half-hour increments. Employee time sheets are provided to Jeff Einfeldt, who then calculates all staff expenses, building fees and other Bar expenses and allocates a portion of that amount to each section based on their membership through an annual administrative fee. In addition, our Section is charged roughly \$60/hour for time spent by Bar employees on our events. By way of example, for the Cache County Golf & CLE, the Section was charged nearly \$1,300 for Bar-related costs even though Dan Steele handles virtually all of the logistics. The Section was also charged 14 hours for overhead expenses, or roughly \$800. A member asked if the Bar provided an explanation for those charges. Another member responded that, according to the Bar, it needs to account for its expenses and the Section pays its share. Combining the Bar's annual administrative fee and hourly billings, however, it really amounts to about \$80/hour for Bar staff time on every event. A member expressed his concern that the Bar hasn't informed us who worked on our events,

how many hours were billed or what tasks were performed. We have requested that information but haven't received it.

Another member questioned whether the Bar charges other sections \$80/hour for Bar time. The response was that we only have access to our Section's accounting information, but we assume the same rate is being charged to other sections. If the annual administrative expense from last year (\$14,327.94) is added to the hourly overhead fees we were charged (roughly \$2,400), that's over \$16,700 of our membership revenue paid directly to the Bar (roughly a third). We cannot maintain our current level of services to members with that kind of expense. Other members identified the issues they've experienced with the Bar.

Michael discussed a spreadsheet he prepared that identified the Section's income and expenses at year-end in June 2015, as reported by the Bar, and comparisons from previous years. One member questioned how we have a negative seminar profit/loss when we bring revenue in for our events. Another member asked whether that money is reflected in the general revenue. A third member informed the committee that the Bar gives us a balance sheet and statement of revenue and expenses. Oftentimes, however, separate details are not provided timely (and sometimes not at all), and the Bar's manner of accounting is not easily decipherable. One member noted that our receipts from the Trial Academy should have been closer to \$12,000. Another member commented that the financial documentation from the Bar is not particularly helpful in assisting the Section in planning events because we don't know how much individual events cost.

A member questioned whether the Bar receives both the \$14,000 annually for an administrative fee in addition to billing us hourly per event. We believe that to be the case. For some of the events, the member noted that we should see some offset for revenue collected. If the administrative fee is the \$14,000, another member asked where the other administrative fees show up—in seminar profit/loss? Last year the loss was only \$12,000, this year it was over \$19,000. One member commented that, based upon the numbers provided by the Bar, we will likely have roughly \$47,000 to work with this year before further Bar charges.

Heather T. thanked Michael and the committee for their discussion of the financial issues facing the Section and identified two proposals that could help offset the Bar charges, including an increase to membership fees and the possibility of hiring an executive director for our Section.

- a. Membership Fees. Heather S. discussed a proposal to raise membership dues for the Section, which are currently \$30/year. Most other sections charge somewhere between \$30 and \$35 per year, with a handful of outliers that are lower and some that are higher such as the IP Section with dues of \$45/year. Dan believes the committee voted upon and agreed to an increase to \$35 last year.

One member raised the concern that the Litigation Section has had historically high revenue from membership and does not want to see additional charges by the Bar if our dues increase. Other members also noted that increasing dues will raise revenue only if we do not lose membership as a result. Another member commented that the committee should remain focused on working on the financial issues with the Bar.

- b. Executive Director. Heather T. raised a second proposal to hire an executive director for the Section who would attend committee meetings, keep an accounting and be the sole contact with the Bar for \$25/hour, which could significantly reduce the Section's costs. One member noted that we still would not have control over what the Bar is charging the Section. Another member commented that we would be adding an expense before we've had our questions answered about the Bar's charges. The Section needs transparency from the Bar, but we are a Section of the Bar and need to collaborate on a solution.

A member asked whether third parties should be involved in addressing these issues. Another member identified the bar commissioners and new president Angelina Tsu as potential interested parties on these subjects. One member said that we need to have a clear indication of what we're working with when it comes to the Bar.

Another committee member reported on the Section's history with the Bar's accounting and the difficulty in understanding what costs we are facing. The Section exists to provide services to its members and has provided great assistance to the Bar, but because of the high and unpredictable Bar charges, the Section is burning through money and will have to cut back on services because we cannot afford the Bar. This concern was expressed at the meeting with the Bar and that, because of these issues, the Section was considering hiring an executive director. John Baldwin seemed to recognize the economics of our situation.

One member said that because of the manner in which the Bar does its accounting—waiting until all expenses are in for the year to calculate an administrative fee and hourly rate—we will never know what kind of charges to expect in advance. He expressed his opinion that Section dues should not be used to fund Bar expenses—that is what general Bar membership dues are for. Several committee members expressed the need for the Section to have a firm expectation from the Bar regarding charges so that we can plan for upcoming events. Heather T. reported on her email communications with John Baldwin, and his indication that the issues have been brought to the attention of the Budget and Finance Committee, which does not meet again until the Fall. Members expressed their willingness to be involved in resolving these issues.

George made a motion to raise membership dues to \$35/year. Cameron seconded and the motion carried.

3. **Judicial Receptions**

- a. Second District. George Burbidge is assigned and is handling.
- b. Third District. Joe Stultz is assigned and is handling.
- c. Fourth District. Lisa Hancock and Tom Seiler are assigned. (*No report at meeting.*)
- d. Fifth District. Bryan Pattison is assigned to organize.

4. **Continuing Legal Education**

a. Quarterly Lunches

- i. Third Quarter 2015 (Erik Christiansen): September 22, 2015.
- ii. Fourth Quarter 2015: Jon nominated Rod Andreason to organize.
- iii. First Quarter 2016: Jon Hafen was assigned.
- iv. Second Quarter 2016: Cameron Sabin was assigned.
- v. Third Quarter 2016 (TBD)

b. Rise and Shines

- i. Third Quarter 2015 (Cameron Sabin): Developments in Utah Law – A Review of 2014-2015 Appellate Cases, September 9, 2015. Jon commented that this should be an annual event, and Cameron agreed.
- ii. Fourth Quarter 2015: Phil Lott was assigned.
- iii. First Quarter 2016 (TBD)
- iv. Second Quarter 2016 (TBD)
- v. Third Quarter 2016 (TBD)

- c. Legal Writing CLE w/ the Courts. Presenter: Prof. Terrell. (\$2,500 co-sponsor w/ Utah Courts and Appellate Section)

Heather T. explained that the state court has asked us to co-sponsor this event with the Appellate Section. The court would bring in Prof. Terrell for a judges-only CLE one day, with a second day for lawyers. Prof. Terrell's price is typically \$5,000/day, but the hope is that he will agree to \$5,000 total for two days with the Litigation Section paying half. The CLE would be 3 hours, and Prof. Terrell is comfortable with a crowd from 45-75. Heather T.'s goal would be to make the event revenue neutral.

Dan asked whether any professors at our local law schools could do the same thing, as \$5,000 is a significant cost. Heather T. agreed that the cost is high, but the court has requested our assistance. Jon said we should do the event, but make it revenue neutral. He also suggested that we consider having the CLE for lawyers at the court or the U law school. George commented that we'd save on overhead. Cameron proposed that we invite students to the event. Heather T. asked whether the committee is interested in proceeding with the event. The committee expressed its interest, as well as the need for further information.

- d. Chocolate and CLE. Heather S. will organize. Jon Hafen commented on the success of the prior Cheese and CLE event and expressed his willingness to assist.
- e. Litigation and Healthy Lifestyle CLEs. Heather T. expressed her interest in putting on these events as a way to drive membership, particularly with respect to other sections that may be losing members, such as those aging out of Young Lawyers. A social function would be planned for Thursday evening, and a CLE and activity scheduled for Friday. That way, the events are still a draw for Salt Lake City lawyers willing to travel. They can also be made family friendly. She'd like to keep them as revenue neutral as possible. Jon and other members expressed their excitement about these events.
- i. Ski & CLE. Michael Stahler is assigned and handling.
 - ii. Rafting, Reception & CLE in Moab. Judge Anderson is assigned.
 - iii. Bike & CLE (TBD): Heather T. said that she's contemplating scheduling this CLE in the Logan area.
 - iv. Zen in Zions & CLE (TBD): Heather T.'s concept for this event is to invite Michael Zimmerman, or perhaps a yoga instructor to guide an activity. Dan expressed his willingness to lead an off-road motorcycle event in Moab if there is enough interest. He also mentioned the idea of a rock-crawling event and identified Paul Matthews as a rock crawler. Committee members identified other potential excursions, including mountain biking, most of which would be low-cost.
- f. Golf and CLE. Dan Steele discussed the history of these events, which were previously overseen by Deno Himonas and then taken over by Dan when Himonas took the bench. In past years, he believes the committee budgeted for a total loss of \$5,000 on all Golf & CLE events combined and he operated on that understanding last year. We have since learned more about what the Bar is charging us on these events.

Dan has set up three events going forward. Cache County has been advertised. The other two are set and ready to be advertised. He has had fruitful discussions regarding revenue on these events and he's provided his best estimates on revenue projections, recognizing that we are not entirely clear on what the Bar will charge us. Currently, he estimates a \$1,000 loss per event. Although the Utah County event is more expensive because of the inclusion of the presenter's book, the St. George event is nearly revenue

neutral. He has eliminated postcards entirely. These events provide real value to our members, particularly those located outside of Salt Lake Valley who cannot easily attend Rise & Shines or Quarterly Lunches as there isn't sufficient value in just one CLE credit hour. He proposed that rather than make these events revenue neutral that the Section continue to budget for a small loss on them. If 25 people attend, revenue loss is only \$14 per CLE credit hour. He believes the loss per credit hour is greater for some of our other events. He needs to pull the trigger on advertising these events to make them a success and, therefore, needs input on pricing.

Heather T. said that under the pricing structure proposed by Dan, the Section will lose \$1000 or more per event. Historically, only 20 people on average attend the golf portion of the CLE. She proposed getting rid of the \$500 cash prizes for golf given the Section's financial position, but expressed that these are great events the Section wants to continue offering. The question is whether the Section can continue to lose \$1000 per event that only a small portion of our membership attend, or whether the Section should increase the cost to attendees. George commented that there are two aspects: a certain number of members attend the CLE and a smaller number play golf. Dan agreed; typically there are 20-25 golfers and 30 who attend the CLE. Attendance is largely driven by CLE topic. The CLE is \$60-65 depending on the event, and \$20 for golf. Heather T. suggested an increase to \$35 for the golf portion. George said that the CLE aspect is likely raising money because it is more than enough to offset CLE-related costs. Dan agreed that the CLE price raises revenue to provide breakfast and to help underwrite the golf. Cameron proposed an increase of \$10. Jon commented that we would then face the elasticity of demand issue, which is aggravating because the Section should be able to afford a loss on these events. He is concerned that if we don't continue with them we will lose momentum and the tradition of having Golf & CLEs. Heather T. said that the Bar charged us \$1,300 per event last year, which did not include the postcard. Dan said that he has cut down roughly \$10,000 so that the estimated overall loss on these events is now at \$3,000.

Dan moved to keep the pricing structure he has proposed with an estimated loss of \$3,000. Heather S. seconded and the motion carried.

Heather T. apologized for length of meeting, but said we had a lot to cover. Jon congratulated her for doing a great job of getting things set up for this year. Heather T. invited the committee to propose additional healthy lifestyle CLEs or any others.

The meeting adjourned at 9:18 a.m. The next meeting will be at 8:00 a.m. on Wednesday, September 9, 2015.

Respectfully submitted,

/s/ Heather M. Sneddon
Executive Committee Secretary