

LITIGATION SECTION EXECUTIVE COMMITTEE

Meeting Minutes – September 9, 2015

Present: Heather Thuet, Rod Andreason, Michael Stahler, Heather Sneddon, Joe Amadon, Judge Stone, Tom Seiler, Phil Lott, Erik Christiansen, Judge Roth, George Burbidge, Jon Hafen, Ben Harmon

By Phone: Tim Pack, Jenifer Tomchak

Excused: Jess Krannich, Judge Dawson, Cameron Sabin, Bryan Pattison, Sade Turner, Christian Kesselring

1. **Welcome and Chair's Report** (Heather Thuet)

Heather T. welcomed the Committee and invited comments on the minutes from the August meeting. Michael moved to approve the minutes, Heather S. seconded the motion. The minutes were approved.

a. Update re: Utah State Bar

Heather T. updated the committee on the leadership's ongoing work with the Bar. The Litigation Section Financial Guidelines were prepared and provided to the Bar Executive Committee (BEC) in August. Our Section's leadership, and other members of our committee, attended to present our Section's concerns regarding the Bar's rising costs and accounting irregularities.

The Bar has agreed to virtually all of the guidelines proposed by our Section. The Bar's consent to those guidelines is attached hereto and incorporated into the Section's minutes. Importantly, the Bar has agreed to a quicker turn around in providing accounting information, and has agreed to look at its process for allocating staff time and overhead/benefits to the Litigation Section (an issue that came to a head when the costs for the Trial Academy were revealed). The Bar has agreed to eliminate roughly \$15,500 in costs that were charged to the Section in connection with the Trial Academy, and agreed not to charge the Section for any further overhead or staff until the BEC has had an opportunity to review the issue on behalf of all sections. By way of comparison, for one particular event, the Section had historically paid roughly \$80 in Bar expenses. Last year, the Bar charged the Section \$800 for that same event.

One member commented that the Bar operates its budget on a fiscal year and advised the committee that even if the BEC is in favor of the Litigation Section Financial Guidelines, they still need to be adopted by the Bar Commission. He recommended that we continue to petition and lobby Bar Commissioners on behalf of the Section on these issues, and that we determine who our contacts at the Commission are. Although we've taken a great and positive step forward, it is not the only step we need to take.

In addition, accounting issues remain. The August financials from the Bar are cryptic, as modifications have occurred with respect to where money has been taken out and previous financial statements have been redrafted.

One member suggested that we speak to both Jeff Einfeldt and Mary Kay Griffin—the lay member of the Bar Commission who is a CPA. Members of our executive committee will meet

to discuss undertaking additional efforts with the Bar Commission to achieve transparency with the Bar.

2. **Treasurer's Report** (Michael Stahler)

a. Accounting Information

Since the Bar agreed to adopt our guidelines, Michael has received a lot of emails from Bar staff to approve expenditures, which is great. He reported on a conversation with Jeff Einfeldt yesterday. Michael learned during that call that the Litigation Section does not have a separate bank account through the Bar. We have a piece of an account, which is shared by all of the sections. That is why page 3 of the Bar's August financial report for our Section has credits and debits backwards—credits are deducted from the Bar's general account and credited to the Section balance, whereas deductions are credited to the Bar's general account and deducted from the Section balance. Jeff also informed Michael that certain people at the Bar have been presenting their personal credit card receipts to Jeff for reimbursement from Litigation Section funds without approval from any officer of the Litigation Section. For example, the Litigation Section was charged for two website licensing fees this past month; we do not know what these charges are for. Jeff indicated that our guidelines will help avoid that scenario. After reviewing the August financials and costs that we know are coming up, Michael reported that the Section only has about \$3,900, which should be kept in mind when considering sponsorship requests. The Bar has reported that our membership dues will be credited to the Section in October.

Michael also has identified further accounting issues. It appears that we have been charged the annual administration fee of roughly \$14,000 both in June and in August. The August financials also appear to start with the wrong starting balance when compared to June financials. Jeff Einfeldt gave Michael the journal entries for our Section's "account," which include the website licensing fees that were apparently incurred and reimbursed without Section approval. Michael is trying to track down other expenses and resolve these issues.

Michael reported on the meeting with the BEC and the positive contributions given by Dan Steele regarding the Golf & CLEs. He also reported on the Orientation for Section Officers held by the Bar, which he and Heather T. attended, and his conversations with the president of the IP Section who has noticed similar accounting issues with the Bar.

Michael moved that the committee give the officers the authority to explore setting up a separate bank account for the Litigation Section. Rod and George seconded the motion, after which much discussion was had.

- One member asked what the reason has been historically for having a co-mingled account. Michael reported that his understanding is that this is simply how it has been done. He informed the committee that during the Orientation with the Bar, John Baldwin indicated that the Bar is trying to be transparent but informed everyone that the Bar has previously experienced financial hardship and taken a loan from the sections to finance Bar activities.
- Another member asked whether Bar regulations allow sections to have separate accounts. One member said that he was willing to second Michael's motion because it simply gave the officers the ability to explore options. Another member informed the committee that YLD has a separate account, but YLD is not a section of the bar and it is set up differently in the Bar bylaws/articles. He suggested that one of the members of our committee become an ex officio member of the Bar Commission to speak to issues that concern the Litigation Section—the largest section of the Bar. Michael reported that our officers have been invited to the next Bar Commission meeting and that the IP Section will be joining as well.

- One member questioned whether we really want a separate bank account. In his experience with the ABA, none of the sections manage their own accounts. All financial concerns are dealt with by ABA staff. Volunteer lawyers spend their time on content. Another member commented that we've let the Bar staff manage our account and the Bar has been overcharging the Section. A member commented that the local bars all handle their own accounts without too much trouble, but another member said that Heather T. would spend much less time signing every check for the Section than she has spent in the last two months trying to figure out and resolve the morass of Bar accounting issues. And through that work, the Section has pulled back over \$20,000 in inappropriate charges. Another member commented that if the money is in the Section's hands, we wouldn't have that issue.
- One member advised that unless the Section takes over all of the administrative aspects of our Section, the problem will remain because attendees pay the Bar for our CLEs, and that money is then passed on to the Section. If our cash flow continues to go through the Bar, a separate account may not resolve our accounting issues. Another member suggested that might be an easier problem to face than the current situation where the accounting information provided includes multiple-entry and huge charges. Another member commented that for the local bars, where the State Bar collects the money for CLEs, the local bars simply set the revenue split beforehand so they get a check based on the gross. If there are expenses to be covered, those are then discussed. At the officers' July meeting with the Bar, we learned that if our CLEs are for more than one hour, they are kicked into the "seminars" category where we share the expenses of all other seminars. And we have recently learned that if our events make a profit, the Bar takes 50% of the profit. One member said that he is fine with the Bar taking 50% of the profit because our Section does not plan our CLEs to generate a profit—we are typically planning to control expected losses. Another member commented that our real problem is overhead allocation, and we need to have an understanding from the Bar on how expenses will be allocated to us. Having our own account won't resolve that issue. A member responded that we are working toward understanding the overhead allocation through our guidelines, but are still facing accounting discrepancies and unapproved expenses. Another member mentioned that at least with a separate account, the Bar has to bill the Section for expenses and we would see the bills and be able to approve them or not. A member said that we are currently trying to plan our CLEs without knowing what our budget is, which is impossible. Yet another member suggested that we review all bylaws, articles and other rules that apply to the Bar and that affect our Section so that we better understand our relationship to the Bar and what rules, if any, we should seek to change through the Bar Commission. A member suggested making a written request for those.

Following discussion, the committee voted unanimously to approve Michael's motion to explore options for a separate account.

b. Membership Fees

Heather T. raised whether the Section should continue to offer free memberships to new admittees and judges. Although the Bar has agreed to cap the Section's administrative fee at \$14,000 this year, going forward, the Section will be charged \$6.59 for each free membership we offer as part of our administrative fee. Heather T. proposes that we continue to offer free memberships and instruct the Bar that free members should not be included in our denominator when calculating our annual administrative fee. The Bar has this agreement in place with other sections. Rod asked how many free memberships we're giving this year. Heather T. responded that for October this year, there are 250 plus the judges, and there will be additional admittees in February. Michael commented that Connie Howard has previously suggested that our free

membership be opt-in rather than opt-out. Tom commented that in his experience, discounts on membership result in committed members, whereas free membership results in little to no commitment. Heather S. asked whether we know how many free members (new admittees) are choosing to continue as members after their first year. Heather T. commented that, according to Connie, 70% are renewing. One member noted that we don't know if the data backs that up. Judge Roth questioned what judge membership in the Section actually produces for the Section. He suggested that judges likely participate in CLEs and on panels when invited because they want to, not because they are members of the Litigation Section. George commented that by having judges as members, they are on our email list and receive the Zealous Advocate and invitations to our events. Heather T. reiterated her suggestion that we continue offering free memberships so long as they do not result in cost outlays to the Section. A motion was made and seconded, which carried.

3. Sponsorship Requests

- a. YLD High School Debate, \$500, Oct. 2-3, 2015. Heather T. explained that we have sponsored this debate for 4 years in a row, it is a good event, and money goes to trophies and supporting the debate tournament. Michael commented that roughly a dozen high schools from around the state participate, from 9th-12th grade. One member noted that YLD gets credit for the event and we don't. Heather T. moved to approve the sponsorship request, which motion did not carry. The sponsorship will be denied. We will explain to YLD that we do not currently understand our budget given issues we are having with the Bar so as to soften the blow.
- b. Utah Dispute Resolution, \$1,500 (for the year). Heather T. explained that this sponsorship request is to support UDR in its services and events. Judge Roth discussed the importance of UDR's services to judges and suggested that, given the Section's budgetary issues, we consider a reduced sponsorship of \$1,000. Heather S. moved to approve a \$1,000 sponsorship which Judge Roth seconded. The motion carried.

4. Judicial Receptions

Heather T. encouraged those assigned to judicial receptions to get dates scheduled:

- a. Second District (George Burbidge)
- b. Third District (Joe Stultz)
- c. Fourth District (Liisa Hancock, Tom Seiler)
- d. Fifth District (Bryan Pattison)

5. Continuing Legal Education

- a. Rise and Shines. The following members were assigned to plan and schedule Rise and Shines:
 - i. First Quarter 2016 (Erik Christiansen)
 - ii. Second Quarter 2016 (Rod Andreason)
 - iii. Third Quarter 2016 (Jon Hafen)

Fourth Quarter 2015 Rise and Shine scheduled: "Avoiding Legal Malpractice: Beginning and Ending Client Relationships," December 8, 2015 @ 8:30-9:30 a.m., Federal Courthouse. Presenters: Ken Landis, Heather Thuet, and a judge (TBD).

- b. Fall Forum, Nov. 19-20, 2015. Michael reported that the Fall Forum is very ambitious this year with a new format. The Litigation Section is putting on 2 hours of CLE. A social event

will be scheduled for Thursday night, Roger Dodd will present on Friday and a judicial reception at the federal courthouse will be that evening. No prices yet.

- c. Spring Convention. Heather T. reported that the first planning meeting is on September 9th from 12:00-1:15, and we need to assign a member. Tom suggested assigning two members to raise our visibility with the Bar. He accepted the assignment and proposed that one of our member judges also be assigned.

6. **Request for Volunteers from The Triple A (Affordable Attorneys for All) Communications Task Force**

Heather T. communicated that The Triple A is seeking a volunteer for its communications task force and a planned website. No committee members expressed interest.

7. **Committee Reports**

- a. Law Student Relations (Jenifer Tomchak, Joe Amadon (U of U))
 - i. Introduction to Matheson Courthouse: Jenifer is looking at Nov. 12th or 20th. Michael suggested the 12th would be better given that the Fall Forum is scheduled on Nov. 19th and 20th. Jenifer will proceed with that information.
 - ii. Mentoring Social @ Squatters: Jenifer is looking at January 14th or 21st. Erik commented that the 21st is Sundance, and that Outdoor Retailers might also be in town. Jenifer will try to schedule it on Jan. 14th.
 - iii. Student / Mentoring Event @ BYU: Jenifer hasn't started planning this event yet.
 - iv. Heather T. stated that we need a law student from BYU for the Law Student Relations Committee. Jon Hafen's daughter and Judge Harris's son were discussed as possible candidates. Jon reported that the committee has an idea for an event in the Spring at BYU and just needs the law student to help broadcast that event.
- b. Judicial Outreach / Bench Books (Jess Krannich, Sade Turner). Heather T. reported that, based on Sade's report, 3 more bench books were added this month and expressed her appreciation for Sade and Jess's efforts.

The meeting adjourned at 9:08 a.m. The next meeting will be at 8:00 a.m. on Wednesday, October 14, 2015.

Respectfully submitted,

/s/ Heather M. Sneddon
Executive Committee Secretary

From: [John Baldwin](#)
To: [Angelina Tsu](#); [Robert Rice](#); [H. Dickson Burton](#); [Margaret Plane](#); [Kate Conyers](#); [Herm Olsen](#); [Heather Thuet](#)
Subject: Litigation Section
Date: Wednesday, August 26, 2015 5:58:15 PM
Attachments: [2015 Litigation Section Financial Guidelines 8.26.15.docx](#)

Executive Committee and Heather,

Here is the response you requested to the requests from the Litigation. We will implement much of this immediately. We will need to talk more with the section leadership about a few things we need to understand better.

We appreciate your involvement in helping clarify your expectations for staff. We value the work of the section and want to give them the tools now they need to accomplish their goals in a more timely and transparent manner. Please let me answer questions. If I have been unclear, I will be happy to explain more completely. I have been brief in the responses for the sake of getting this response back today but welcome additional ideas and input. I am always available for discussion and clarity if needed!

Thank you.

John

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1) Required Refunds

a. Trial Skills Academy

i. Overhead and Salaries/Benefits have been refunded and posted to the section as requested.

ii. Errors for charges for the Admissions Director have been refunded and posted as requested.

iii. Refunds have been posted prior to September 15th, 2015

2) Transparent & Timely Accounting:

a. The Bar shall provide to the Litigation Section's Treasurer detailed account statements from the Bar and/or its accountant(s) and all supporting documentation no later than the second Monday of every month.

Bar staff can provide those statements, but they may be incomplete if we have not yet received bank statements. We have aimed at getting those out by the 15th. If there is a means to get those from the bank more quickly, we will implement that to meet this deadline.

b. The Litigation Section account shall be credited with fees paid by attendees for events within 30 days of the event.

We can do that, but the accounting for the events may be incomplete if all expenses have not been paid and revenues not yet received.

c. Detailed account statements:

i. The current practice of lumping charges into the 4091 (Profit/Loss) and 4200 (Seminar Profit/Loss) categories shall be discontinued and replaced with a transparent approach that allows the Section to see all charges.

We will do that.

ii. The current practice of adding multiple charges and labeling them "Multiple" shall be discontinued and each charge will appear.

We will do that.

d. The Litigation Section shall be treated as a client of the Bar. Requests for financial information will be responded to by the Bar within a reasonable time and, absent extraordinary circumstances, a complete response shall be provided within three business days.

We agree to that request. The section should have more prompt, helpful and accurate information.

e. No funds shall be withdrawn from the Litigation Section's account without prior written authorization from the Section Chair and/or Treasurer.

We will do that.

3) Membership Fees:

a. The Bar shall provide the Litigation Section with a list of all paid members and credit the Section membership fees no later than September 30, 2015.

We will do that. It may not be complete but we would then add late registrants and a supplemental list would be provided.

b. The Litigation Section membership fee is \$35, effective August 12, 2015.

We will make that change now in our database. We do not know if any new members have come in between the 12th and now and could charge them the difference if the section wants us to do that.

c. The Bar shall no longer include the Litigation Section's non-paying members (i.e., first-year members of the Utah Bar and judges) in its allocation of overhead expenses and/or other fees to the Section.

We can do that, but the Bar Commission has been asked to be involved in approving the methods used by the accounting department to calculate overhead and allocate direct and indirect costs to programs and departments. Once they have had a chance to consider those policies, we will implement that process. In the meantime, we will not charge the section's account for any overhead.

4) Online CLE:

a. All profit generated from the online rebroadcast of Litigation Section events shall be credited to the Litigation Section account within 30 days.

We will do that.

5) Administrative Fees:

a. The Bar shall not charge the Litigation Section more than \$14,000 for Administrative Fees for the July 1, 2015- June 30, 2016 fiscal year.

We can do that depending on the results of the review of overhead being done by the Commission.

b. The Bar shall provide the Treasurer of the Litigation Section with a detail of the Administrative Fee expense for each year thereafter no later than August 30 each year so that the Section can prepare its budget.

We will do that.

6) Bar Staff Time:

a. Bar staff time shall not be considered unless each invoice indicates the billing individual, the date and amount of time spent on each task, a sufficiently detailed description of the task, and the total for each task. Invoices for Bar staff time shall be submitted to the Section Treasurer

within 30 days. The staff time is subject to review and no funds may be withdrawn by the Bar from the Section account without written approval provided by the Section Chair and/or Treasurer. The Section shall not pay for any staff time submitted after 60 days.

Time and the description of tasks will be more detailed and totaled. Invoices can be submitted but we would like to discuss this in more detail with the section before determining how we can get them what they need in a timely basis. We agree on the need to be accountable and transparent

b. Unless otherwise agreed to in writing and approved by the Section Chair and/or Treasurer, for all Litigation Section events, total Bar staff time shall not exceed 2 hours per event.

We can do that and would need to set up a process to determine how to effectively get approval.

c. Bar staff time shall be accounted for in 6 minute increments (as opposed to the current approach of billing in ½ hour increments). The Litigation Section will only pay for Bar staff time spent handling a specific task on behalf of the Section.

We can account for staff time in 6 minute increments. There are times when staff performs services for all the sections and it might be difficult to allocate among the sections, but we can talk about how to make this happen.

d. Unless otherwise agreed to in writing, the Litigation Section shall not pay for Bar staff to attend events and will not pay for more than one staff member to attend the same task unless approved in advance by the Section Chair and/or Treasurer. Further, the Litigation Section shall not pay for intra-office meetings and consultations or staff time responding to requests for accounting and transparency, answering billing questions, or compliance with these guidelines.

We understand and agree to get approval for any staff to work at section events and will not charge the section for time as requested above.

e. Unless preapproved in writing, the Litigation Section shall not pay for Bar staff travel, food or other expenses to attend any event.

We will seek preapproval in writing as requested and not charge unless approved.

f. The Litigation Section values the Bar staff and appreciates their efforts to work as efficiently and effectively as possible on behalf of the Litigation Section.

7) Summer Convention, Spring Convention, Fall Forum, and other Bar sponsored events:

a. The Litigation Section donates its time, resources, members, talent, and ideas to Bar sponsored events, which the Section is happy to provide. The Section would like to continue providing these contributions to future Bar programs. However, the Section does not share in

the revenue generated by these events, which saves the Bar a significant amount of money. Accordingly, unless preapproved in writing by the Litigation Section Chair and/or Treasurer:

i. No Bar staff time or overhead expenses related to these events shall be charged to the Litigation Section.

We agree.

ii. Fees for Keynote Speakers shall not be paid by the Litigation Section.

We agree.

iii. No food and beverage related to these events shall be charged to the Litigation Section.

We agree.

iv. Fees for other speakers or attendees of conventions shall not be paid by the Litigation Section.

We agree.

v. No other expenses for these Bar sponsored events shall be paid by the Litigation Section.

OK

vi. Litigation Section events, such as the Trial Academy and other multiple-hour CLE events, shall no longer absorb any cost overruns attributed to general Bar sponsored events.

We need to explore what the sections means by this.

8) Invoices:

A copy of all invoices shall be submitted to the Litigation Section Treasurer within 30 days. Those invoices are subject to review and no funds may be withdrawn from the Section account without Section approval from the Chair and/or Treasurer. The Section will not pay for any invoices submitted after 60 days.

We agree as long as we have received all invoices from third parties within that time period.

a. The Section shall only reimburse the Bar the actual cost charged by outside vendors, if prior approval has been provided.

We agree.

9) Food & Beverage:

a. If Bar staff orders food and beverage, Bar staff shall not order in excess of the number of registrants.

We will do that.

b. Only Bar staff who staff the Litigation Section event are invited to eat once attendees, presenters, and other Section guests have taken their food. Food and beverage at Litigation Section events is not for other Bar staff, or people not attending the event, to consume.

We agree.

c. Leftover/excess food will be donated to the Crossroads Urban Center, 347 South 400 East, Salt Lake City Utah 84111. (801) 364-7765.

We have contacted the center and will work out details to do this.