



**Nevada Supreme Court
Access to Justice Commission
State Bar of Nevada**

Carson City: AOC Conference Room, 2nd Floor
Supreme Court Building
201 S. Carson St.
Carson City, NV 89701

Las Vegas: AOC Conference Room, 17th Floor
Regional Justice Center
200 Lewis Ave., 17th Floor
Las Vegas, NV 89101

MINUTES
Thursday October 23, 2008
12-4

Commission members in attendance:

Justice James Hardesty Co-Chair

Cooney	Valerie
Dahl	Hon. Stephen
Doherty	Hon. Francis
Elcano	Paul
Ferenbach	Cam
Gonzalez	Hon. Betsy
Johnson	AnnaMarie
Kandt	W. Brett
Mucha Abbott	Kimberly
Nielsen	Ernest
Thronson	David
Vogel	Sheri Cane
Voy	Hon. William
Warden	Tom

Marzec	Kristina	Commission Director
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Non-voting members in attendance:

Buckley	Barbara	Executive Director, Clark County Legal Services
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Non-voting members by phone:

Candelaria	Amber	Director, Eighth Judicial District Family Law Self Help Center
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Guests:

Baucum	Suzan	Executive Director, Nevada Law Foundation
Beesley	Bruce	President, State Bar of Nevada
Farmer	Kimberly	Executive Director, State Bar of Nevada
McCormick	John	Administrative Office of the Courts
Myers	Carolyne	Chair, Nevada Law Foundation

Members unable to attend (excused absences):

Douglas,	Hon. Michael
Desmond	John
Steinheimer	Hon. Connie
Puccinelli	Hon. Andrew

1. Minutes 6.20.08

Moved and approved to ratify minutes of last meeting with minor amendments.

2. Access to Justice Section

The State Bar reported that as requested, the Access to Justice Section is formally retired and roll-over of remaining funding (approximately \$5,000) approved for allocation to Commission pro bono recognition and awards activities.

3. Committees

Each of the Committees presented verbal reports as follows, supplementing the written reports provided in the agenda, with some motion actions taken as indicated:

- **Marketing-** Tom Warden

Tom reported that the subcommittee met on 10/20 to begin laying out the formal assessment marketing plan. The group has a good picture of the goal, identifying a three tiered approach to lawyers, the general public/community, and legislators. Tom acknowledged the providers stated concern that caution be taken to avoid public marketing crossing over into advertising for the providers services, given the current overload in existing clients.

Given that the Needs Assessment will be approved today, Justice Hardesty asked Tom and the subcommittee to prepare a list of service organizations north and south to obtain schedules and communicate back with the Commission. Tom noted targeted areas would be useful given the escalating tough economic times-some potential donor groups will be more viable than others. Justice Hardesty stated the need for urgency, with a quarterly marketing plan that keeps the needs in the collective consciousness.

- **Emeritus**

Moved and approved to ratify the Emeritus Attorney Application Packet (SCR 49.2). Moved and approved to ratify each of the Legal Services Providers as an EAPB provider, with the exception of the City of Las Vegas Senior Law Project, which will work under LACSN on Emeritus cases for liability insurance reasons.

Kimberly noted the Providers must provide significant input for the polices for roll out and took lead on this project. The concern is some potential applicants have called who aren't adequately staffed and resourced to take on cases, so the program needs to define and list a variety of ways in which a broad spectrum of applicants can help provide services. Kristina also noted a spate of calls from lawyers clearly seeking to circumvent the *pro hac vice* requirements, and noted emphasis must be placed on the program's prime objective of helping the legal aid providers with existing programs and cases.

- **Cy pres**

Justice Hardesty asked Judge Gonzales to assist with getting time to address the next district court judges meeting. John McCormick offered assist Paul in this regard. The meeting is currently tentatively set for April.

- **Court posted fees**

Justice Hardesty noted the December administrative docket extended the ban on jury fee deposits under 38(b), and noted that the rule appears to be flexible in allowing counties to make those decisions. Some counties do appear to still want jury fee deposits. As such, this may well remain an open issue. Requesting any portion of this revenue would obviously deprive the counties of revenue and the Commission should weight that carefully, especially in these economic times.

Paul updated the group on the issue of potentially requesting some portion of accrued interest payable to general fund. Justice Hardesty asked if there was any appetite to pursue. Judge Dahl expressed Justice Hardesty's wisdom in being cautious of the county's positions, there is always someone trying to squeeze

courts, which have so far been good about giving money to expand services. Since the courts have at least been working with us, not the right time to ask. The majority expressed agreement. Barbara noted that because the legislative process is fluid and you never know where things fall into a broader mix, we should never foreclose on opportunities altogether. Justice Hardesty commented on the enormous risk to the rurals in this matter, and expressed concerned about implications this legislative session.

Unanimously tabled.

- **Donations**

Ernie stated on behalf of the providers the need to be clear about how donations are processed under the marketing plan, particularly because the forward role of the Foundation's relationship with Access to Justice is still in discussions. The marketing subcommittee agreed.

Justice Hardesty suggested the Nevada Law Foundation is the appropriate designate, which would separately account for the funds in a repository account. On these funds, the Commission would determine distribution. If that poses a problem, the Clark County or Washoe Bars should be considered. Suzan noted this approach would require a different policy than with directed donations and she would present to the NLF Board for approval. It was clarified that the focus of the marketing plan would be to encourage direct donations to the providers, but a mechanism must be in place in cases where donors are ready to write a check on the spot and don't have a particular group in mind. Suzan will raise with the NLF Board at its next meeting.

A secondary issue of processing court ordered sanctions was raised. Judge Gonzales noted every department is different. In her court, the first offense goes to Clark County Pro Bono, the second and third to the NLF, some directly to providers, and some to the Supreme Court Law Library. The Court gets confirming letters from providers on these payments. Barbara noted this has been a key funding source for over a decade since LACSN/CCLS merged with the pro bono project. Justice Hardesty asked that Judge Gonzales take this up with Judge Adair to request that sanction orders may include providers directly. It's likely become more of a habit to designate the law library.

Judge Gonzales will take point on the next judges meeting, Judge Doherty on the next Washoe meetings. John McCormick will facilitate getting letters out to the judges were necessary.

- **Domestic Violence Request**

Justice Hardesty agreed with the Committee that this issue is not ripe to pursue in this legislative session, but is well worth researching in Committee or perhaps a designated subcommittee working with real estate and title groups.

Suzan and Carlyne noted at the last major IOLTA conference, there was real money in other states that do this. However, being a lawyer closing state make a difference because the money is clearly lawyer trust funding. Justice Hardesty noted in any number of transactions title companies don't pay interest at all absent special arrangements, and opined they probably have difference types of escrow accounts. For example, holding disputed funds.

Paul noted the concerns were not necessarily with principle. (1) All success programs had to do with lawyer escrow, (2) too late for this legislature and (3) we must broker with real estate and title company associations in Nevada first.

The nexus to this money requires convincing real estate groups and bankers that ATJ claims are as strong to those funds as theirs. Cam stated that increasingly more title companies are showing up as adverse parties in this economy, and care should be taken to be sensitive in these efforts to reach out on this potential funding source.

Moved and approved to leave this in Development for long term planning. Paul, Suzan and Ernie to take point and start with the Title Association President.

- **Rural services- Judge Dahl**

Judge Dahl briefed the group on the Baltimore Pro Se Litigation Counsel meeting in September and discussed the questionnaire, which so far is gaining excellent responses. He will compile and provide a full report at the next Commission meeting.

Technology clearly provides a viable alternative to provide services in rural areas. By manning a lawyer during certain hours at videophones with companion phones in remote locations, it provides great economy of scale and overcomes the distance problems inherent in rural delivery. The plan itself to run the videophones appears to be about 30-40\$ per month, entirely reasonable. Often the service will provide the phone as part of the contract.

Anna noted hotlines have had great success in her program. There were over 2000 calls so far this month, with three staff. NLS just set up out in Pahrump with videophones. Judge Brisbell was out last week. Works well, has scanner attached, or you can print documents. A split screen function allows you to see the caller on one side, the website on another. It remains a pilot program for now, with infrastructure posing some problems (ie getting matching bandwidth).

Justice Hardesty noted the survey will be helpful in determining specific equipment needs. Some courts don't support basic expanded services. He has gone to the bench and bar and asked law firms to donate equipment after upgrades, something John Desmond had suggested previously. So far three lawyers have done so, and donated sophisticated equipment only a few years old. There should also be a report from Robert Castelis shortly regarding connectivity. In the Second District for example they are working with community colleges, and a network should be up and running within the next few months. The Commission will also need to monitor implementation of the rule changes expected to be effected by ADKT 424 (the proposed rule to obligate judges to conduct videoconference on certain matters as spelled out).

Justice Hardesty noted the first portion of the rule is not discretionary-the discretion is there with exemptions for criminal and evidentiary hearings at the request of district court judges, everyone else has to do telephone conferences. Request was to make it discretionary but is not now drafted that way. Expect a ruling in December.

Judge Dahl and John McCormick will continue work on this topic, and asked that the Commission postpone formation of a Rural Services Committee until the next Commission meeting pending the survey results. Moved and approved.

On a secondary note, Kristina was asked to assist Ron Titus as necessary in his duties as the statewide contact for the newly formed ABA Pro Se Litigation Counsel group.

- **Executive Directors Meeting**

Paul provided an overview of the topics in discussion with the provider executive directors, including its vision for IOLTA funding and allocation in future. Justice Hardesty relayed his and Justice Douglas request that the group provide individual reports to the Justices on how services are provided, funded, and accounted for.

4. Legal Needs Assessment

Moved and approved to ratify the Needs Assessment in full. John McCormick noted the SJI grant requires their logo and a disclaimer be affixed to the final product. Kristina will make the changes upon receipt of the information from John.

- **Bridge the Gap**

Justice Hardesty asked for the status of the reformation of Bridge the Gap. Bruce Beesely stated the upcoming Board of Governors meeting will have changes. Justice Hardesty requested that the Commission have an expanded slot as this is the perfect time to present the needs assessment.

5. Nevada Law Foundation

- **Temp liquidity program.**

The ABA has requested support for its position that the new unlimited Temporary Liquidity Guarantee Program, which provides unlimited deposit insurance on most deposits through December 2009, should be extended to apply to IOLTA. The Nevada Law Foundation Board will submit written comments in support.

The Commission voted unanimously to authorize Justice Hardesty to get in touch with the ABA delegation and indicate the Commission's and the Court's support and take whatever other action deemed necessary and proper.

Moved, seconded, and approved.

- **Grants**

Suzan gave a brief overview of the grants and IOLTA revenue for the past year as indicated in the provided written materials. The Providers indicated their ongoing request for confirmation that they are receiving a majority of the funding as required by the rule.

Bruce Beesely asked Suzan to put some flow charts together for these statistics back to 2006, which she agreed to do. Suzan also noted she contacted other similarly-situated IOLTA programs, who all have a full time ED and 2-3 staff. The ratio of distributed funds to overhead is a low of 46%, high of 90%, and average of 75%-80% paid to LSP across the country. Justice Hardesty asked that the audit summary provided to the Court by Suzan be circulated to the Commissioners. Suzan also stated the NLF auditor Steve is available to meet, organize data differently, or whatever the Commission may request.

Justice Hardesty noted that much of this is expected to be addressed in the December strategic planning. He and Justice Douglas are interested in tracking revenue by bank. Suzan indicated she has asked her database programmer to look into this, as well as a geographic breakdown. If the programming can't be amended to do so, she can do it by hand.

- **Comparability**

Suzan provided an update on IOLTA comparability. The Commission discussed that it is critical that preferred partner banks be acknowledged as much as possible. Barbara indicated she intended to do so at LACSN's upcoming awards. Suzan noted she could add the banks to the Silver Ball, and perhaps a plaque could be added in the Supreme Court Library.

The State Bar noted it had approved providing the member mailing lists to preferred interest banks for a nominal fee, which the Commission acknowledged with thanks.

Justice Hardesty noted he and Carolyn should meet with bankers to get their perspective on benchmarks.

As an interim measure, the following benchmarks were approved for preferred banks: .50 basis points off the 30-Day LIBOR, equal to the Fed Fun Target Rate, or a flat 2% for one year. All should be in writing with no fees or negative netting.

Kristina & Suzan to provide research and recommendations to the Commission on a potential comparability rule.

- **Foundation as Commission fundraiser & investor**

The Commission will revisit these issues after strategic planning. As has been stated previously, the Nevada Law Foundation has the infrastructure and positive branding in place to be a tremendous asset in partnership with the Commission on fundraising.

6. Nevada Legal Services

Anna stated the LSC outlook for NLS is optimistic. Site visits are planned for Nevada in 2009, which is a good indicator. An accord was also reached with LSC over the 280K funds. At some time in future if the NLS sells the related property, LSC gets any equity up to 280K off the sale of the current building. There are still some lingering issues; still don't have the report from the inspector general, may have some questions from 2004, 2006.

Since some addressed recent events with LSC in Wyoming, Anna briefly commented that it had no impact on Nevada. Wyoming got defunded, but had been on probation since 2003. That program was actively not participating and had poor quality legal work. Wyoming is now without legal services – they asked for national help, but everyone unanimously agreed you have to stay in-state to be effective.

- **Self-help**

Anna also noted an ongoing concern that LSC does not recognize the self-help center as providing a service. At some point NLS anticipates asking the Commission to weigh in.

Judge Gonzales noted Nevada will keep it the center, it's just a question of funding. LACSN has stated before it would assume the contract. From the Commission perspective it's one of the best sources right now to get help to people. The self-help center has gone to great lengths to make sure the Center is not tainted by LSC funds.

Judge Gonzales also noted approval was granted to increase civil filing fees by \$3 to fund the Regional Justice Center Self-Help Center and serve outlying justice courts as well.

7. Set 2009 Commission meetings

February 5, 2009 1-5

April 28, 2009 1-5

July 10, 2009 1-5

October 9, 2009 1-5

Location: videoconference by the AOC.

Meeting adjourned at 3:15 pm.