



**UALR-Bowen School of Law**  
**1201 McMath Avenue**  
Friday, April 13, 2007  
Conference Room 515  
1:00 P.M.

### **MINUTES**

**Attending:** Dean Charles Goldner [Chair], Mr. Bill Brown, Judge Waymond Brown, Mr. Nate Coulter, Justice Annabelle Clinton-Imber, Mr. Mike Mullane, Ms. Susie Pointer, Mr. Lee Richardson, Mr. Frank Sewall, Ms. Danyelle Walker, Mr. Ron Lanoue [Secretary], Ms. Gina Cothorn [Staff] and Mr. Vince Morris [Staff]

Dean Goldner opened the meeting at 1:25 PM. The Commission could not review and approve the February 23, 2006 Commission meeting minutes because a quorum of the members was not present.

#### **Commission Presentation at the 2007 Arkansas Bar Association**

Mr. Lanoue told the Commission that a CLE had been developed and placed on the Arkansas Bar Association's CLE schedule for Friday 8<sup>th</sup>, 10:30 – 11:30, as 1 hour of Ethics. A panel will include Justice Imber, Dean Goldner, Mr. Lanoue and Mr. Morris who will provide pro bono resources training.

Dean Goldner opened a discussion as to what the Commission can do to have a better turnout this year at the Bar Association training. Mr. Brown requested that the CLE information be sent to the Commissioner's list serve so that the commissioners can distribute the information. Ms. Pointer stated that we should find out what the Commission's CLE training is competing against in the schedule. Discussion developed on making the CLE focused on how the Commission can make pro bono work easy especially with upcoming Model Rule 6.1 changes related to reporting pro bono hours.

Mr. Coulter asked what would be the impact of the rescission of General Order 35 in the Eastern District of Arkansas (*see attachment*). Mr. Richardson stated that

the lack of financial contributions will not effect Legal Aid of Arkansas (LAA), however, Ms. Carter is expecting a huge loss of donations to the Center for Arkansas Legal Services (CALs).

Mr. Coulter stated that he felt it is evident that actual pro bono hours will still excuse an attorney from service for appointments from federal court for pro bono work and that the Commission should communicate that to attorneys at the upcoming CLE training. Mr. Richardson stated that in the Western District, if an attorney has done pro bono work, they file an affidavit with the Court to that effect, making them unavailable to take a court-ordered appointment.

Dean Goldner stated that the Commission should be clear on this issue and make sure that there is a procedure to use for the Eastern District concerning pro bono hours. He suggested contacting Judge Leon Holmes, Chief Judge of the Eastern District. He requested that Ms. Cothorn and Mr. Lanoue research this issue and provide some clarity.

Mr. Mike Mullane suggested using “GET OUT OF COURT FREE” cards to be given away at the June Bar Meeting Pro Bon Partnership table to promote the Commission’s CLE.

### **Report on the National Access to Justice Meeting in Denver**

Ms. Cothorn provided an overview for the Commission of the Equal Access to Justice Conference held in Denver last month. Mr. Richardson, Ms. Carter, Mr. Lanoue, Ms. Frazier, and she attended the Conference in addition to over 140 people from across the nation hailing from 40 different states. Commissioners were sent the participants’ notes via email prior to the meeting. Mr. Lanoue pointed out that in those notes, a statement in all caps indicated a question for the Commission to consider.

Some highlights from the conference included:

- We must educate those in power about how hard it is for the average person to get access to the courts – much less low-income, uneducated citizens
- Funding: a majority of the states have been able to increase funding for legal aid this past year. Most of that was done through IOLTA comparability (banks paying the same interest to IOLTA as to other accounts with similar balances)
- Other highlights and sessions include: fundraising; private bar campaigns; civil Gideon (*60% of the public believe that there is already a right to free civil counsel*)
- Trial judges and justices need to play an active role in the access to justice movement; they have the power to make things happen
- We need to alleviate the fear of doing pro bono work and provide resources to practicing attorneys

- Self-Help Litigants – an important document that should be created is a guide for court clerks on how much/what kind of assistance they can provide without constituting the practice of law
- The southern region states met – Alabama, Arkansas, Louisiana, and Mississippi to exchange ATJ ideas
- Possibly, have Justice Dickinson, Chief Justice of the Mississippi Supreme Court, come and speak to the judicial conference here in October
- What is the best way to communicate to the public, to those in power, to funders, and to those who carry our message about access to justice issues

Funding – Ms. Pointer with the IOLTA foundation stated that the IOLTA rule had been amended and Arkansas now requires attorneys to have their IOLTA accounts in banks that will provide comparable interest on IOLTA accounts as they do on accounts with similar balances. [The new rule is attached; please see new section Rule 1.15(c).]

### **Planning a Strategic Planning Session**

Dean Goldner stated that he felt the Commission is at a point where we need more than just the quarterly meetings and suggested that the Commission take a full day to do strategic planning. Planning would include reviewing how the Commission is structured (committees on legal services, pro bono and pro se). The planning would also include looking to short-term objectives (specific tasks we want to accomplish) and long-term goals (a new road map).

Dean Goldner informed the commission that Mr. Lanoue will use a Winthrop Rockefeller Foundation grant to provide for the facility, training and other related expenses for the session.

Discussion began concerning locations, dates and possible trainers. Location suggestions included the Oasis Renewal Center, the 4H Center, and the new Arkansas Bar Foundation building. The trainer would be Mr. Bob Echols, the American Bar Association liaison to the national access to justice community, who is available from June 1<sup>st</sup> – June 20<sup>th</sup>.

Mr. Lanoue stated that he will send out a conflict calendar on Meeting Wizard early next week in order that members could select their availability over that time period.

### **Legislative Review and Report**

Dean Goldner stated that he would like to thank all the Commissioners who made themselves available for the legislative effort especially, Justice Imber who provided Senate Committee testimony. Dean Goldner also thanked Mr. Lanoue and Ms. Cothorn for their tremendous legislative efforts.

Discussion began concerning the failure of SB 624 on the House floor. It was stated that unfortunately Rep. Chris Thyer publicly said he was going to support legal aid in an Access to Justice Town Hall Meeting in Jonesboro last May and then publicly attacked legal aid in the House when the bill was up for consideration.

Dean Goldner stated that he felt that we all did our homework well; especially the staff, but sometimes unexpected resistance arises. This is part of the reason why the Commission needs the upcoming strategic planning meeting in June because we need to begin planning for the next session now and get legal aid funding into the general revenue budget.

Mr. Richardson stated that in his area he had one representative not vote for SB 624 who had stated that he would and it was probably directly related to Rep. Thyer's remarks on the House floor.

Dean Goldner stated that the governor's office did not follow through on this as they said that they would. Mr. Coulter stated that although it is important to do the autopsy to find out what happened but the truth is that people will tell you they will do something and then sometimes they will not do it.

Justice Imber stated that the county judge's association was against SB 624 and that it was not vocalized, but it was an undercurrent. The legislature was dealing with the education issue and that was their main focus. Justice Imber stated that she thought Senator Thompson and Representative Bond stood up for promoting access to justice and they did a good job and the Commission is really appreciative of that.

Mr. Coulter agreed that there was some group obviously that was against SB 624 that the Commission did not pick up on so their opposition could be addressed.

Dean Goldner stated that on a positive note SB 624 was successful in the full Senate and both Senate and House committees. Mr. Lanoue stated that he intends to sit down with Senator Thompson and Representative Bond to find out exactly what they perceived happened.

Dean Goldner stated that he will sit down with Representative Bruce Maloch and Senator Miller to find out what happened. Dean Goldner stated that the Commission made a valiant effort and this would be further discussed at the June planning session.

Mr. Coulter inquired as to a possibility of the Arkansas Bar Association helping the Commission legislatively. Dean Goldner stated that if the Commission asks them early enough to be a part of their formal package then they probably would do so. What they did for us in this session was formally support the legislation and provide the services of their lobbyist. Mr. Frank Sewall stated that the

Arkansas Bar Association has always been very supportive of legal services and he did not see that changing.

### **Funding Initiatives Report**

#### *Rule 23 – Governing Class Actions*

Ms. Cothorn provided an overview concerning the leftover funds (Cy Pres residuals) of a class action and how other states have had that money directed to legal aid services both through legislative and Supreme Court action. She provided materials to the Commission explaining the cy pres doctrine, and copies of other states' statutes and court rules. She also provided a list of cy pres awards that had been made in other jurisdictions. Justice Imber asked Ms. Cothorn to research a previous ruling of the Arkansas Supreme Court where cy pres money had been given to charities and this had been struck down.

Ms. Susie Pointer asked where Arkansas cy pres funds are currently going. Ms. Pointer stated that she had inquired into where these funds go in relation to IOLTA.

Mr. Sewall stated that it would be much better to go before the Supreme Court with this issue rather than the Arkansas legislature.

#### *Pro Hac Vice Funding*

Mr. Mullane stated that at one time he made a proposal to the court that part of the fee that they charge for pro hac vice be applied to legal aid funding. This may be minimal, but it could be applied to border areas and it could be a steady stream of revenue. It is all done locally so Arkansas does not have statewide numbers currently. However, if it goes through the Supreme Court then there would be statewide numbers reported. Administratively, the Commission could get information about how often pro hac vice is being used or if it is being abused.

Mr. Richardson stated that there has been a few hundred thousand dollars a year generated in Mississippi the past few years and that he has substantial research that could be provided to Commission staff. Ms. Cothorn stated that she would contact Mr. Richardson for his research and use it as a starting point for further investigation. The Commission decided to wait until the June planning meeting to go forward with this.

Meeting was adjourned at 2:35.