



**Arkansas Bar Center
2224 Cottondale Lane
Friday, September 17, 2010
10:30 AM – 12:00 PM**

Members Attending

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| Rose Adams | Rep. Bubba Powers |
| Jean Carter | Lee Richardson |
| Zina Frazier | Sen. Robert Thompson |
| Prof. Chuck Goldner | Justice Annabelle Imber Tuck, <i>Chair</i> |
| Hon. Craig Hannah | Bill Waddell |
| Prof. Kelly Olson | Danyelle Walker |

Special Guests

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| Jon Comstock | Jim Julian, <i>AR Bar Assn. President</i> |
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Staff

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| Amy Johnson, <i>Executive Director</i> | Ron Lanoue, <i>Secretary</i> |
| Samantha Tobias, <i>Communications Specialist</i> | |

MINUTES

Welcome & Approval of Minutes from July 16, 2010

Justice Annabelle Imber Tuck opened the meeting at 10:38 AM. She introduced special guest Jim Julian, who was present to honor Mr. Bill Waddell with the Lawyer Community Legacy Award on behalf of the Arkansas Bar Association. Mr. Julian offered some remarks about Mr. Waddell's history of service and presented him with the award.

Justice Tuck asked the Commissioners to review the minutes from July 16, 2010 after mentioning two corrections. Ms. Rose Adams made a motion to approve the minutes as corrected, Ms. Danyelle Walker seconded the motion, and it passed unanimously.

Pro Bono Committee

Ms. Amy Johnson began a discussion of the proposed rule change developed by the Pro Bono Committee that would permit out-of-state attorneys to perform pro bono services in Arkansas without having to obtain an Arkansas license. She explained that the proposed rule is limited in application to out-of-state licensed attorneys. Mr. Jon Comstock, who is an active member of the Pro Bono Committee and was instrumental in developing the proposed rule, continued the discussion with additional background regarding the proposed rule. Mr. Comstock, who is Associate General Counsel for Walmart, indicated that Walmart's legal department has been in discussions about the development of a pro bono program, but that out-of-state licensed attorneys who work at Walmart Legal (of which there are about 70) cannot currently do pro bono work in Arkansas because they are not licensed in Arkansas. According to Mr. Comstock, the

Committee reviewed numerous similar rules in other states and concluded that many such rules imposed stringent requirements that placed significant burdens on prospective pro bono volunteers. The Committee's goal, he said, was to arrive at a solution that would strike an appropriate balance between making the process for out-of-state licensed attorneys as simple as possible and ensuring that attorneys providing pro bono services under the rule are qualified.

The Committee's proposal (**see attached**) addresses two current Model Rules of Professional Conduct—Rules 5.5 and 6.1. Rule 5.5(d), which currently provides certain exceptions permitting out-of-state attorneys who are in good standing to provide legal services in Arkansas, would include an additional exception that would allow out-of-state attorneys to provide legal services in Arkansas that meet the definition of and requirements related to “pro bono publico services” in Rule 6.1. The new proposed language under Rule 6.1 then provides that pro bono services shall only be rendered under the auspices of one of the two legal aid organizations in Arkansas, both of which are named in the proposed rule. The Committee desired an incremental approach, laying groundwork for the Supreme Court to approve other sponsoring organizations at a later date.

Mr. Comstock indicated that the Committee unanimously recommended the proposed rule change included in the meeting packet, but stated that there had been subsequent discussions about whether to include a paragraph in the Rule that would set forth elements that a petition for approval as a “sponsoring entity” should include. He asked the Commission to consider whether this additional language (**see attached**) should be approved.

Justice Tuck opened the floor for discussion. In response to an inquiry by Mr. Bill Waddell, Justice Tuck explained that any applications for approval by other organizations could be submitted to the Supreme Court in the form of a motion. She also noted that the proposed additional language concerning requirements for other entities seeking approval should only be presented as a suggestion. After discussion, Mr. Comstock suggested that paragraph 5 be dropped, leaving it to the Supreme Court's discretion to determine what qualifications an applicant seeking to become a sponsoring entity should establish.

Ms. Carter stated that she thought the proposed rule was a good idea, and that it would be especially useful when emergency situations, such as Hurricane Katrina, are concerned. Mr. Richardson indicated that he agreed with Ms. Carter's thoughts.

With regard to requesting the Arkansas Bar Association's support of the proposed rule change, it was agreed that the Committee should try to get the petition drafted for presentation at the Fall Board of Governors by that meeting. The petition and proposed rule would then be presented to House of Delegates at the Mid-year meeting in January, with the filing of the petition in the Supreme Court to be thereafter.

Sen. Thompson expressed concern about the naming of specific corporate entities (LAA and CALS) in the proposed rule in light of the fact that corporations are not permanent. The intent in naming CALS and LAA in the rule was (a) to avoid the ambiguity of simply stating that “legal service providers” could be sponsoring entities, and (b) to allow for the approval of these two organizations as sponsoring entities upon adoption of the rule. In the event that there is any

successor entity to either CALS or LAA, at organization would have to seek approval as a sponsoring entity.

Mr. Waddell moved to adopt the proposed rule change, and Prof. Goldner seconded the motion. The motion for adopting the rule was passed unanimously. It was decided that Mr. Comstock, Prof. Terry, and Prof. Goldner were commissioned to finalize the proposed rule and draft a petition to the Arkansas Supreme Court requesting adoption of the rule. Justice Tuck commended Mr. Comstock for his initiative in drafting this proposal.

Legislative Committee

Ms. Johnson reported that, following the Commission's discussion at its last meeting about a recent circuit court decision regarding the corporate practice of law, she sought the assistance of Sen. Thompson and the Bureau of Legislative Research in drafting a bill that would permit the corporate practice of law by legal aid providers. A copy of the draft bill (**see attached**) was distributed to the Commission for review. Mr. Waddell noted that this statute may be unconstitutional because it prescribes rules affecting the practice of law—something that only the Supreme Court has the power to do. He wondered whether amending the statute would even be necessary. Ms. Carter responded that the statute was enforced in an insurance case in which an in-house attorney was disqualified from representing a private client and that the constitutionality of the statute was not an issue raised on appeal. Until such time as the constitutionality of the statute is raised and ruled upon, the inclusion of an exception would work to avoid disqualification of CALS and LAA attorneys from representing clients in need.

Prof. Goldner moved that the Commission approve the draft bill for Sen. Thompson to file and sponsor, and Sen. Thompson seconded. The motion passed unanimously.

Ms. Johnson then indicated that there was interest in pursuing a possible sales tax exemption for CALS and LAA. Mr. Richardson stated that it would save about \$50,000 a year for both organizations combined. Rep. Powers and Sen. Thompson both stated that anything affecting revenues might be viewed negatively. Prof. Goldner moved that the Commission support any effort by CALS and LAA to seek an exemption, and Ms. Adams seconded. Prof. Goldner clarified that "support" meant advocacy, rather than financial support. The motion passed unanimously.

Court Assistance Committee

Ms. Johnson briefly reported that the Commission submitted a proposal (**see attached**) to the Legislative Task Force on Reducing Poverty and Promoting Economic Development. Ms. Adams, who serves on the Task Force, indicated that the group was finalizing its recommendations and that we would know in a few weeks whether our proposal was included in the final recommendations.

Committee Assignments

Justice Tuck indicated that three of the Commission's standing committees needed chairs and asked Commissioners to consider volunteering for those slots. Prof. Olson agreed to chair the Legal Services Committee, with the caveat that she would be on sabbatical next semester. It was suggested that Prof. Hughes might be able to fill this role in Prof. Olson's absence. Mr. Waddell

agreed to chair the Pro Bono Committee, as Ms. Danyelle Walker is stepping down from that position. Prof. Goldner agreed to chair the Education Committee, replacing Justice Tuck.

Proposal to Arkansas Bar Association Family Law Section

Ms. Johnson indicated that the Arkansas Bar Association's Family Law section is a potential source of funding for a new "legal needs" study. Ms. Carter and Mr. Richardson commented that the last "legal needs" study wasn't as useful as it could have been. Both Prof. Olson and Ms. Carter offered to help Ms. Johnson develop a list of projects the AATJC might want to include in a funding proposal to the ABA Family Law section. Prof. Olson suggested using part of the money to fund research on unbundling. Mr. Comstock offers to send Amy an Oklahoma initiative on unbundling. Prof. Goldner stated that redoing the Commission DVD would be a good use of funds as well. A proposal will be drafted after further consideration can be given to all possible projects.

Update on Commission Appointments

Justice Tuck reported that Judge Hannah has agreed to continue serving on the Commission and will be reappointed. Rev. William Robinson, Adam Arroyos, and Georgia Mjartan will be considered for the replacement of Angela Duran. Likewise, Chuck Ropscoff will be considered as a replacement for Leon Johnson, and Judge Stephen Routon will be considered as a replacement for Judge Waymond Brown.

Justice Tuck adjourned the meeting at 12:07pm.