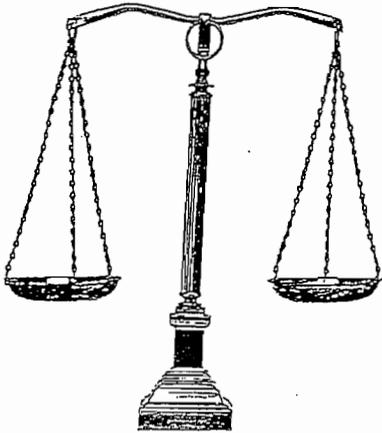


REPORT ON THE CORPORATE GOVERNANCE OF THE  
UTAH STATE BOARD OF COMMISSIONERS

JANUARY 2007



# Table of Contents

<b>Introduction</b>	<b>3</b>
Introduction and our appreciation	3
Our methodology	3
<b>Structure</b>	<b>5</b>
The implications of being an Integrated Bar	5
Size of the Board	6
Recommendation qualifications	8
Recommendation	8
Composition	9
Elections	11
<b>Objectives</b>	<b>13</b>
A framework for understanding the Utah State Bar Board of Commissioners as a nonprofit entity	13
The Bar Association's organizational philosophy	14
Recommendations	15
The long-term mindset of the Executive Director	16
<b>Monitoring</b>	<b>18</b>
Recommendations	19
<b>Information and Communication</b>	<b>22</b>
Recommendation	23
<b>Concluding Thoughts</b>	<b>24</b>
<b>Appendix - A</b> Bar Governance Self Assessment Template	
<b>Appendix - B</b> Sample Strategic Plan	

# Introduction

## **Introduction and our appreciation**

Beyond Sarbanes-Oxley, there exists increased attention on the governance of organizations such as the Utah State Bar. In addition, stakeholders of such organizations have raised their expectations requiring a heightened level of accountability and broader openness than in the past. The purpose of this report is to assist the Bar Board of Commissioners in its governance of the Utah State Bar.

We wish to thank the many individuals who have participated in this project. Without exception, we were greeted warmly and openly by all whom we contacted to participate. We recognize that participants had very busy schedules and were willing to offer their time freely. Without this willingness to participate, our task would have been impossible to complete.

Of course, we were unable meet with all Commissioners and others who expressed interest in participating in this project, largely due to time availability and scheduling. We thank all those who were willing to participate but with whom we were unable to visit. We also thank all the interviewees who provided ideas for other interviews.

## **Our methodology**

Our task was to analyze the Utah State Bar Board of Commissioners ("Board") on these dimensions:

- the Structure of the Board, which includes an analysis of the size, configuration, and elections;
- the ability to meet Objectives, which includes Admissions, Discipline, Continuing Legal Education ("CLE"), Public Outreach and Member Benefits (collectively "Other");
- the Monitoring function of the Board.
- the Communication amongst the various stakeholders, which includes the Utah Supreme Court (the "Court"), the Board, the Executive Director of the Utah State Bar and his staff, various Sections, Divisions and local Bars, as well as "rank and file" members. Note here that we consider communication in all of the other sections (Structure, Objectives and Monitoring) either implicitly or explicitly.

Our approach included interviews with operation personnel, governance bodies and stakeholders of the Bar. We also performed an analysis of Bar meetings and of organizational and other pertinent documents. Our interviews included over forty individuals, including members of the Court and Court officials, past and current Board Executive Committee members, past and current Board Presidents, past and current Commissioners, the Executive Director and key staff members, Bar members, and members of key committees and divisions. Additionally, we interviewed outside parties including the Director and Counsel of the Division of Occupational and Professional Licensing ("DOPL") and one of the Bar's registered lobbyists.

As part of our engagement, we also contacted Executive Directors and Bar Presidents in Arizona, Idaho, Nevada, New Mexico, Colorado and Wisconsin.

The information obtained from the interviews and other subject matter was utilized in brainstorming sessions with internal specialists at Grant Thornton and then taken to further analysis. The resulting recommendations, conclusions and examples are included in this report for the consideration of the Board.

# Structure

## **The implications of being an Integrated Bar**

The unique status of attorneys in our democracy has a major impact on how the Board carries out its objectives. The practice of law is inherently part of the judicial branch of government. This means that the individual professionals who practice law are held to be doing so as part of a governmental function. This is very different from other professionals in our society. Physicians and engineers, for example, practice as professionals but are in no way considered part of a branch of government when they are performing as professionals.

The Utah State Constitution states that "The Supreme Court by rule shall govern the practice of law, including admissions to practice and the conduct and discipline of persons admitted to practice law." (Article VIII, Section 4). Consequently, admissions and discipline are the responsibility of the Court, and it has delegated that responsibility to the Board and the Executive Director and staff. Based on the constitutional mandate, admissions and discipline are the only regulatory requirements of the Court. Over the years, the Court has seen the value of CLE and has mandated that attorneys constantly update their knowledge in this manner. The Board and the Executive Director and staff are similarly tasked with other things pertaining to the practice of law, such as Public Outreach and Member Benefits, as defined above. CLE and these "Other" matters do not have the weight of constitutional authority, but they have, nonetheless, become part of the landscape either through continued practice and specific Court edict.

Granting a defined set of individual professionals an official role in governmental business is not a trivial step, nor are the consequences of doing so perceived in the same way in all states, and so the philosophies for how a state Bar association should be run have evolved in two different directions. When a Bar association is organized such that the Court, a Board and/or an Executive Director and staff perform both regulatory and so-called "Other," activities for a combined yearly fee, it is termed an "Integrated" Bar. When a state Bar does not require this connection, it is known, not surprisingly, as a non-Integrated Bar. In a Non-Integrated Bar, practicing attorneys are required to support, through yearly fees, the regulatory activities, but have a choice in supporting financially the "Other," association-type activities.

Approximately 32 of the 50 states, including Utah, have Integrated Bars. In both Integrated and Non-Integrated Bars, the administration of regulatory matters may be handled by the Court or it may be delegated. For example, an Integrated Bar may have the Court, an Executive Director and staff or an outside board handle admissions and discipline. Further, the Court or an outside board may also handle Admissions and Discipline in a Non-Integrated Bar. In both Integrated and Non-Integrated Bars, the association-type functions are typically handled by an Executive Director and staff. Again, the distinguishing feature of Integrated versus Non-Integrated Bars includes the voluntary or non-voluntary nature of payment for association-type functions.

Utah's decision to be an Integrated Bar is based largely on its history and culture. Based on our many discussions with Bar stakeholders, there appears to be no general interest (or current structure or ability) in moving toward a Non-Integrated Bar. However, there are some benefits associated with a Non-Integrated Bar that should be identified and discussed in this report, in order to provide a balanced observation. The recommendations we make are geared toward continuing an Integrated

Bar approach, as that is the current and likely long-term model the state of Utah has adopted and will continue to maintain. Our discussion of a Non-Integrated Bar is discussed, rather than as a recommendation, because we want to address the benefits and implications of the type of Bar model Utah utilizes, but do not see moving toward a Non-Integrated Bar as a plausible recommendation in the near term.

One primary benefit to utilizing a Non-Integrated Bar is that of the relative market forces in effect. Market forces are often very powerful in helping curtail inefficient and unwanted uses of member fees, particularly with regards to association-type activities. Utilizing a Non-Integrated model forces the administrators of association-type fees and activities to compete for member dollars. In an Integrated Bar, members are a "captive audience" with regards to activities outside of regulatory matters. They must pay for both regulatory and association-type functions or they cannot practice law in the state. They pay full fees, even if they have limited or no access to various "Other" services provided by the Board or the Executive Director and staff.

We fully recognize the philosophical and practical implications of moving toward a Non-Integrated Bar. Most immediately it would put at risk a meaningful portion of the budget including that component which includes the association-type functions. Eventually it would most likely result in association-type functions devolving to a regional level as attorneys in various parts of the state organize themselves more fully to deliver these kinds of services. In other words, those providing the "Other" services (including state and local Bar organizations) would become more efficient and attuned to market forces and demands. For example, should they provide services not demanded by the members, there would be little or no participation. Conversely, if services are provided for which there is a specific demand, participation would likely increase and be highly valued.

There are additional benefits and drawbacks with both type of Bar organizational models. For example, in a Non-Integrated Bar, certain fee-paying members may be more compelled to accept the services and benefits offered. Next, the idea of requiring a member to pay for potentially unwanted or unneeded service likewise raises concerns in a "free market." On the other hand, banding together as a group provides the opportunity to negotiate better rates and terms that benefit all members. Decision-makers at the Board level are elected and are collectively representative of all members. Members have recourse by removing representatives who do not comply with the needs of their members. This representative form of government allows the rank and file member to "go about their business" and at the same time have a voice in the governance of the Bar, and take part in decisions related to association-type benefits through their duly elected Commissioners and Bar Presidents.

### **Size of the Board**

Throughout this project we were given varying feedback regarding the size of the Board of Commissioners. Some interviewees said it was too large, while others perceived it as adequate. When we interviewed out-of-state Bar leadership we noted that the size of their boards varied significantly. For example, in Arizona, there are about twice as many active Bar members as in Utah and their board is comprised of only 29 board members. However, 26 of the 29 board members have voting rights, whereas in Utah only 15 have voting ability. In Idaho, there are five voting Commissioners, and it's Bar membership approximates 5,000 individuals.

New Mexico is similar to Utah in terms of active Bar members with approximately 6,000 members and 22 board members with 19 voting. On the high end, in Colorado, the only Western Non-

Integrated state, there are about 150 board members serving approximately 16,000 Bar members. However, a comparison between Colorado and Utah may not be exactly pertinent due to the Non-Integrated versus Integrated nature of the respective states. Colorado also has an executive committee of 22, whereas Utah's is currently six. The Colorado executive committee meets every other month, and the board meets once or twice a year. In Utah, the Executive Committee and Board meet about 10 times a year.

We attended a Commission meeting, which we observed and we perceived that it was conducted very professionally and efficiently with a great amount of relevant focus on matters of strategic importance.

In our research, we found no authoritative pronouncement dictating Bar association board size. It appears that the local culture, legal needs, customs and desires have dictated the size of the respective states' boards.

During the course of our interviews with Utah State Bar stakeholders, we also learned that this same topic of Board size has been frequently discussed. Additionally, we learned that previously unheard voices have been recently added to the slate of non-voting Commissioners. Examples of valuable additions to the Commissioner group included members representing Paralegal and Women's Divisions. We sense there has been a great effort to be very inclusive when it comes to various positions and points of view within the Bar community. Yet there continues to be a lingering question about board size.

We suggest that the persistent question of Board size results from different, though unacknowledged, expectations. Traditionally, nonprofit boards of directors fulfill two roles: governance and fundraising. For the Utah Board of Bar Commissioners and the Executive Director and staff the governance role is highly relevant, and fundraising is not. In the case of any association, the Board of directors' meetings are intended to facilitate the communication channel. In many ways, the value of any association lies in its ability to produce for its member's reliable information in a timely manner. In this context, the board of directors' meetings represents tightly-packed information sessions whose contents can immediately be transmitted to various constituencies.

We recognize that there are an abundant number of communication devices currently utilized by the Board and the Executive Director and staff. Examples include the Bar Journal, the websites, newsletters, emails, and other sources. The frequency of the Board meetings and the diverse representation at these meetings represent a quicker means of communication than these devices, and represent a sometimes less filtered communication method.

We believe that the perception of an unwieldy board of directors arises from a confusion of the governance role in contrast with the communication function. In essence, the duly elected Commissioners attend board meetings for governance purposes, while the rest of the attendees attend for communication purposes. No serious student of board governance could argue that a board of fifteen voting members constitutes an overly large governance board. Yet when two dozen people attend a board meeting of a board with only fifteen members it is fully understandable that it would be perceived as being too large.

For instance, as a voting member of the Board, one may not fully appreciate that the role of non-voting members is communication. As a voting, elected Board member, one has a responsibility to both participate in governance and has the ability to communicate to respective constituencies. Attendance by non-voting members may appear to a voting member to complicate and weigh down

the proceedings. However, once understood that a non-voting members' attendance is for communication purpose, the perspective may change. Periodic emphasis on the respective roles of voting and non-voting Board members will assist in reducing the concern over the size of the Board.

### **Recommendation qualifications**

As we begin making our recommendations, we want to highlight three qualifications to the recommendations. First, as Utah has decided to utilize the Integrated model for the administration of Bar activities, the recommendations we make below are related to utilizing that model. Some inherent benefits are lost by utilizing an Integrated Bar model, such as market forces as discussed previously. The recommendations below are designed to compensate for some of these losses.

Second, by stating there is some inherent disadvantage to utilizing an Integrated Bar, we are not suggesting that moving to a Non-Integrated Bar is a preferred solution. Both models, as we discussed above, have significant benefits and drawbacks. We are offering our recommendations on the current and long-term structure of the Bar which is that of an Integrated Bar model.

Third, our recommendations should not be viewed as a checklist that needs to be adopted by the Board and the Bar in total. We expect the Board and other stakeholders to have a robust discussion about our recommendations and adopt, modify and utilize the recommendations below in the form and number that best suits the needs of the Utah State Bar and Board of Bar Commissioners. The recommendations are, for the most part, guidelines which provide opportunity for personalized and selective utilization.

### **Recommendation**

#### **1. Consider changing Board meeting attendance policies to emphasize transparency**

If Board meetings currently are used for the parallel purposes of governance and communication, Commissioners may want to consider different approaches to meeting attendance policies. There is a laudable theme of transparency in the recent attempts to bring non-voting members to Bar meetings, and this could be encouraged in several ways:

- Keep the current mix of voting and non-voting members, but repeatedly be explicit about the differences in the roles and expectations. For example, remind all in attendance at the beginning of each meeting of the differences and then take votes by name of voting member or by written ballot.
- Keep the current mix of voting and non-voting members, but arrange for voting members to be seated around the Board table and non-voting members to be seated elsewhere, as is currently the case. However, reserve the right to excuse non-voting members and go into executive session under specific circumstances.
- Eliminate the attendance of non-voting members in meetings but announce that all Bar association meetings will be completely open to the public. Run all meetings as described in the bullet immediately above, reserving the right to excuse public observers and to go into executive session as necessary.

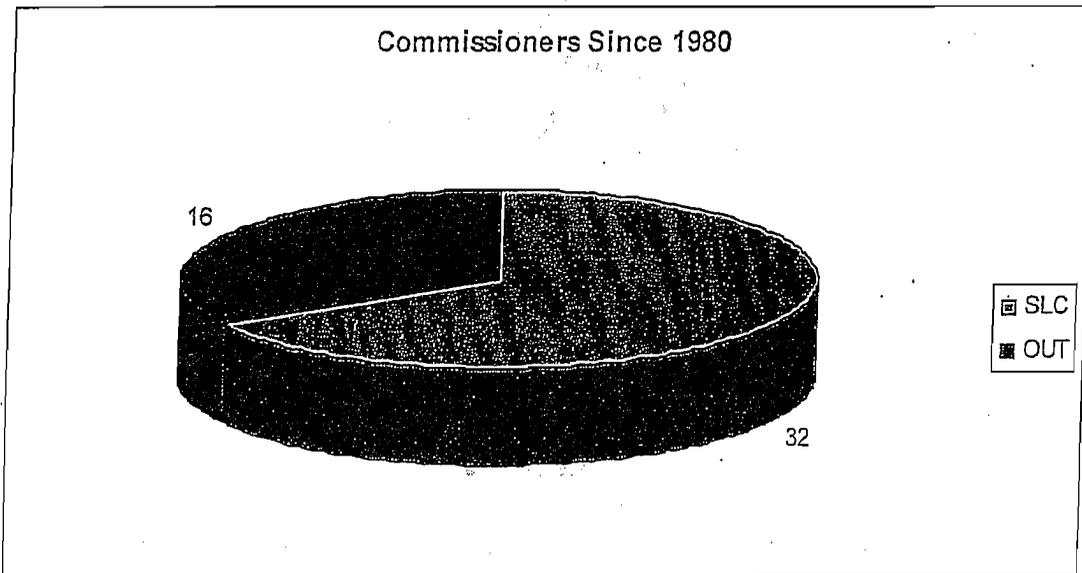
*Note: We did not observe the use of a consent agenda in written documents or at the Board meeting we attended. A consent agenda can save time by streamlining the voting process for routine, Non-controversial items in a single up-or-down vote.*

### Composition

We have also developed an understanding during our work that there is concern over the composition of the Board. Specifically, there is a perception that the Board is dominated by large Salt Lake City law firms. As an objective check on this concern, we requested a list of all new Commissioners beginning in 1980 through 2006, and we partitioned each of the Commissioners into two categories: geographical location (Salt Lake area, which corresponds to the 3<sup>rd</sup> Division – Salt Lake, Tooele and Summit Counties or Out of the Salt Lake area, which includes the rest of the state) and firm size (Small – ten or less; Medium – 11 to 50; and Large – 51 and over). The categorization and size break-downs of Small, Medium and Large are subjective and somewhat artificial. The results are listed below:

#### Chart one –Geographical location:

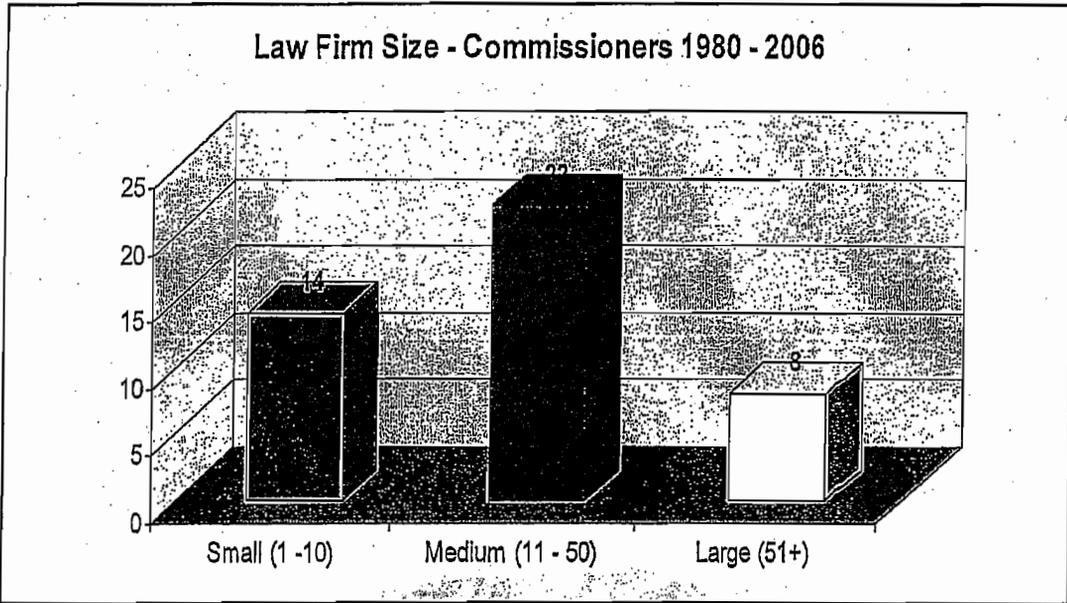
Since 1980, 32 Non-Public Member Commissioners have been from the Salt Lake area and 16 have been from outside the Salt Lake area.



Note that there have been more than 48 new Commissioners since 1980, but these have largely been Public Members and thus they are not included in the above graph.

Chart two- Firm size:

The chart below indicates that about 82% (36 of 44) new Commissioners since 1980 have been from law firms that have 50 or fewer attorneys.



Note that Public Members and Commissioners from governmental entities such as State Courts were not included in the graphs above.

According to recent statistics provided by the Executive Director's office, nearly 4,300 of the nearly 7,000, or 61%, of active Bar members in the state are from Division 3, which is comprised of Tooele, Salt Lake and Summit Counties. Graph one above highlights that about 66% of new Commissioners since 1980 are from the Salt Lake area. Assuming current geographical trends are commensurate with past results, and past geographical divisions are essentially unchanged, there is a strong correlation between number or percentage of potential Commissioners in a given area, and the number and percentage of actual Commissioners.

Eight of the new Commissioners since 1980, which are categorized as coming from large law firms, are from the Salt Lake area. This is to be expected as Salt Lake is considered to be the only city in the state that can sustain a large law firm. In total, 18% of new Commissioners since 1980 have been from large firms. There has been a mix of Past-Presidents, the Current President and the President-Elect from the Salt Lake area and outside of the Salt Lake area. Based on this limited analysis, it appears that currently, the perception of the Board being dominated by large Salt Lake law firms is more perception than reality. Finally, during a number of meetings with interviewees, we noted that there was a strong desire by these individuals to avoid the perception that the Board is dominated by large law firms. For example, the recent President-Elect election, two non-Salt Lake Commissioners from smaller sized firms were encouraged to run to avoid the big-firm perception, which indicates there is an effort to spread the presidency between rural and urban Bar members, thus providing broad representation at the President level.

A concern brought to our attention was that more time was spent during Commission meetings on less substantive, "social" activities, than on more weighty, "professional" matters. As a response to this concern, we requested copies of the Commission Meeting Agendas beginning in December 1996

– September 2006. The purpose of this request was to perform an analysis on Agenda items, categorizing them into either Social or Professional matters, and to determine how much time during Commission meetings was spent on each. We recognize some inherent weaknesses in this analysis. For one thing, we are subjectively categorizing agenda items. For another, we cannot make a determination of actual time spent on each agenda item, nor can we determine if the item was fully addressed or even if it was addressed at all. Nevertheless, the analysis does provide some insight into matters deemed worthy of discussion at Commission Meetings for nearly 10 years.

In our random sample of about 30 Agendas spanning the timeframe of December 1996 – September 2006, we categorized only 21% of the Agenda items as Social matters, such as planning retreat dates and identifying award recipients. The Professional matters represented the vast majority (79%) of the Agenda items, and included items such as Judicial Council Reports, Proxy Voting Policy, Review of Multistate Admissions Initiative, etc. This analysis seems to indicate that a substantial amount of time is spent in Commission meetings on more Professional, regulatory matters.

Conversely, it is in the “Other,” public and member welfare matters, that there is the most leeway in terms of what the Board and Executive Director and staff can do. It is here that the Board and the Executive Director and staff should be more accountable as they are spending fees that are provided by a membership that may not appreciate what is being done with its money. Admissions and Discipline, and to a large extent CLE, are highly regulated and leave little room for the Board or the Executive Director and staff to act without Court approval. As such, the Board needs to weigh how much time is spent on “professional” mandatory-type activities and on the more discretionary matters.

In general terms, it could be argued that about 25% of Board meetings and effort should be devoted to each of the following: Admissions, Discipline, CLE and “Other” matters. Our analysis shows that during Bar Board meetings “Other” matters account for about 21% of the focus. However, it could be argued that *more* time at Board meetings and effort should be devoted to “Other” activities, due to the broad range of efforts and relative responsibility the Board has over these matters.

### **Elections**

Elections to a position on the Board occur for the President-Elect and for each of the Commissioners. Commissioners are elected for a three-year term, and are voted in by members in their respective Divisions. Election to the presidency of the Board is a two-fold process: potential candidates are submitted to the Commission by Commissioners and the Bar membership at large. From all of the nominated candidates, the Commissioners select two for a state-wide election. Votes are delivered to and tallied by the Executive Director and his staff. The process is largely manual, but electronic solutions are currently being considered by the Bar.

It was out of the scope of this engagement to observe the election process. Rather, our objective was to gain an understanding of the process, and offer any value-added insight. The varied election processes for President-Elect and Commissioners are effective in that there is a form of direct representation at both the Commission level and for the President-Elect. Additionally, governing the Bar at the Presidential level requires ample time, dedication, knowledge and experience. Allowing Commissioners to nominate potential Board Presidential candidates provides assurance that such qualifications will be sufficient.

Conversely, the most recent Past-President, the Current President and the President-Elect each have emerged from the ranks of the Commission. In theory, any Bar member can be elected to a Commission seat, serve for a number of periods, network with Bar members and other Commissioners, perform at a high level, and ultimately seek and obtain a nomination to be Board President.

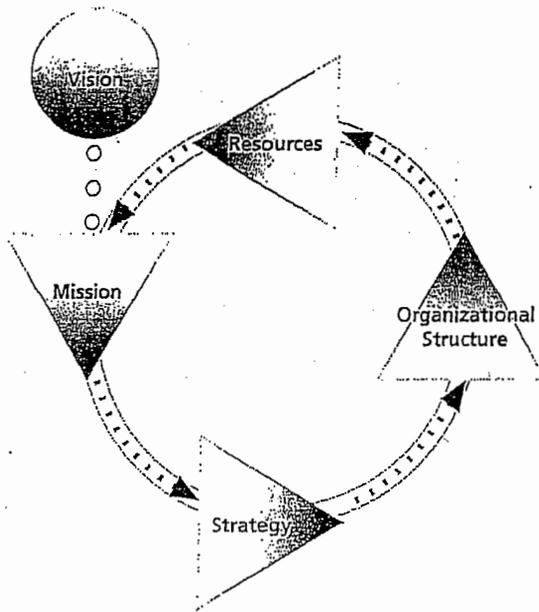
One area for potential concern is the integrity of the election process, though no one has alleged any irregularities in the course of our interviews. The vote delivery and tallying processes may not be adequately independent to give Bar members comfort that they were conducted objectively. We cannot be certain if election-related By-Laws have been properly observed. In the Monitoring section below, we outline a number of opportunities the Board has in order to improve its functionality for this and other areas of governance.

In the corporate world, many boards have a separate, independent committee in charge of the auditing function apart from, but members of, the board, generally called an audit committee. The role of this committee is to hire external, financial auditors, to hire fire and consult with the internal audit director, and to approve the year's auditing plan, both internal and external. The role also includes monitoring suspected or known fraud, conflict of interest and the financial reporting function. We did not note such a committee at the Bar's Board level. We will address this observation further in the monitoring section of this report.

# Objectives

## A framework for understanding the Utah State Bar Board of Commissioners as a nonprofit entity

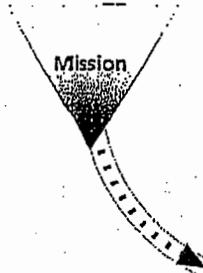
Over many years of work with Nonprofit organizations, we have developed the following framework as both a guide to action and a diagnostic tool. In a Nonprofit organization such as with the Utah Bar and its Board of Commissioners, the vision is a highly personal experience often held only by the founder or an established CEO. But such a vision is so personalized and unique that it is difficult to communicate widely. A Nonprofit organization needs something more direct in order to inspire and motivate its members, staff, leaders, volunteers, and professional community. This is the role of the organization's mission, which is the primary tool for communication with both internal and external audiences.



From the mission comes an organization's strategy, the entity-wide commitment to where the organization wants to be several years in the future. In turn, executing the strategy involves making choices about structure, both corporate and operational, which then go a long way toward determining how the entity allocates its resources. This is why the budgeting process in an organization often seems anticlimactic — in many ways, it is. Resource decisions are so tied to structure that it would be self-defeating not to allocate resources largely according to structural dictates. Finally, the scope and allocation of resources has a feedback effect on the attainability of the mission. Throughout, the overriding objective is to align strategy, structure, and resources for maximum effectiveness. Throughout this report, we will use the above framework to analyze certain aspects of our observations, and to offer suggestions to the Board.

**The Bar Association's organizational philosophy**

The Bar, and subsequently the Board's overall mission has been defined by the Utah State Constitution and the Utah Supreme Court and includes: "regulating admissions and discipline and fostering integrity, learning, competence, public service and high standards of conduct." The Court has also instructed the Bar to "provide a forum for the discussion of law reform and the practice of law and encourage practices that will advance and improve the honor and dignity of the legal profession."



The Court's strategy for carrying out its mission was to establish a Board of Bar Commissioners (Board) and an Executive Director and staff to regulate much of this responsibility. The areas of responsibility and functions of the Board and the Executive Director and staff are structured in four broad areas, as shown in Illustration 1 below: Admissions, Discipline, CLE and "Other." The Other broad category is association driven in nature and generally includes two types of activities categorized by Grant Thornton as Public Outreach and Member Benefits. Public Outreach includes such things as various activities to honor and recognize service to the legal community and the public at large, and to keep the public aware of, and educated about, important legal developments and activities. Public Outreach also includes Fee Arbitration and other similar services. Member Benefits includes such things as the Bar Journal, Casemaker, IT support, Lawyers-Helping-Lawyers, various annual Bar member meetings, group negotiations for items that will benefit Bar members, etc. We also utilized the representative structure below to guide us as we performed our work. Note that in this report, "Other" and "association-type activities" and "Public Outreach and Member Benefits" are used synonymously.

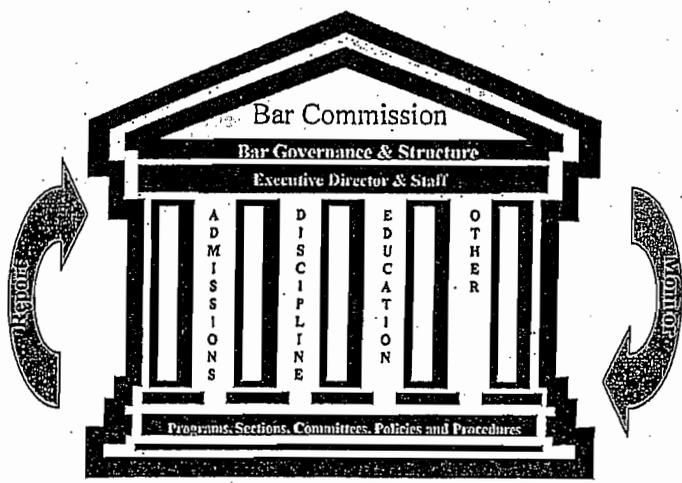
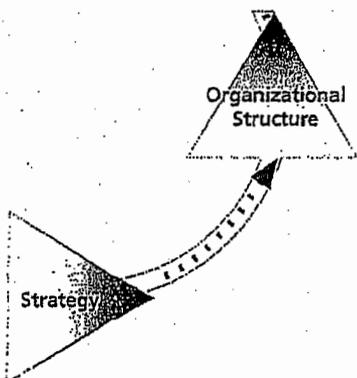


Illustration 1

## Recommendations

2. Formally utilize the Non-Profit Framework when analyzing any project that falls within the "Other" category

Based on our observations and interviews with various Board members, the Executive Director and staff, as well as participation at various meetings, we sense the Board is generally utilizing the steps listed in the non-profit model. However, this is likely done very informally, and may not be used in all circumstances. The model is very intuitive. But having it firmly entrenched in Board and other meetings will enhance the opportunity for success.

As an example, each time a new "Other" event or activity is proposed; the Board members should begin with whether or not that event or activity meets the vision and mission of the Bar. A strategy should be identified to carry out the event or activity. As strategy is discussed, consideration should be given to the structure and resources available to successfully accomplish the task. This Model should be used in conjunction with the long-term strategy by identifying an activity performed and measuring its results against the Bar's mission.

This model also envisions the Board properly communicating its desires to the Executive Director, who in turns communicates this to the staff. At key, well-defined intervals, the staff should report to the Executive Director where they are on each project and the Executive Director should in turn report to the Board. This reporting, at all levels, should concentrate on defining key measurements of success, on defined reporting intervals and on holding accountable, and on rewarding, those who are responsible for the results.

The Non-Profit Framework is best utilized by the Bar with a formal methodology of setting strategy, documenting direction to the staff in the form of objectives, and measuring performance against the objectives and strategy.

3. Regularly formulate and document a long-term strategy for the Bar

Without a long term strategy, the Board and the Executive Director and staff must necessarily respond to developments of strategic importance on a short term, operating basis. Absent such a strategy, the association has no effective way of assessing if it is achieving its objectives. More important, the Bar Board of Commissioners has no effective way of assessing its own performance, nor that of its Executive Director.

With a formal long term strategy in place, planning for yearly activities at the beginning of the new President's term will be easier and more synergistic. The new President will discuss his or her agenda with the Executive Director and Board, who will determine the plans for that year within the context of the longer term strategy. The Executive Director should set specific, objectives, actionable goals and a timetable for achievement. These documented goals and objectives, known as the annual strategic plan should formally be presented to the Board for its discussion and to compare it with the long term strategic plan. Once agreed to, the annual strategic plan and its corresponding policies and procedures should be the focus for the year, and there should be a formal mid-year and year-end report on these matters. This process provides a method to increase the accountability and effectiveness of the Executive Director and the President to the Board, the Bar members, and ultimately the Court. The strategic plan, with all of its components, is intended to include both regulatory and association-type activities of the Bar. An example of this approach is included in Appendix A for reference purposes.

We recognize that the Board and Executive Director and staff have been mostly effective in the periodic operation of both regulatory and association-type activities. The focus of the Bar's efforts in previous years has largely been short-term in nature. Our recommendation is designed for the Bar to build on its short-term focus, formalize it and expand it to include a closer alignment with a long-term strategic plan.

### **The long-term mindset of the Executive Director**

Currently, the Executive Director's staff is composed of approximately 30 individuals who perform both regulatory and association-type activities. The Board of Bar Commissioners is composed of 25 members; 15 of whom are voting members. The Board has a President who serves for one year, a President-elect who "shadows" the Board President for a year, and 11 elected other-voting Commissioners, who represent five geographical areas of the state. These other voting Commissioners are elected for three-year terms by Bar membership. The Board also has two voting Public Members who are appointed by the Court for three years.

The non-voting members of the Board consist of two ABA Delegates, the deans of Utah's two law schools, the most recent Past-President, and certain special-interest members, which include: the Minority Bar, the Paralegal Division, Women Lawyers, the Young Lawyers' Division and a Supreme Court Liaison.

Fittingly, the Board and the Executive Director and staff allocate significant resources to the combination of admissions and discipline efforts. While these two functions are both expected to help the Court achieve its mandated objective of improving the practice of law, they are starkly different from each other. The admissions process is designed to permit only qualified individuals to practice law, while the disciplinary process is designed to disqualify incompetent or unfit individuals. The paid admissions staff is relatively small; the paid disciplinary staff is relatively large. The admissions process is more or less designed to pay for itself. The disciplinary process could appear unethical if it were designed to pay for itself as there would be an incentive to discipline those who are not in need of discipline in order to collect fees and fines. The admissions process is comprised of a large number of volunteers; there are fewer volunteers in the discipline process. The paid staff members administrating admissions report directly to the Executive Director, and have no "dotted lines" to any other entity. The paid staff for discipline likewise report to the Executive Director, but are understood to have a "dotted line" responsibility to the Court and other entities. In most instances, the Executive Director represents the staff at the Board level. The allocation of resources and the lines of authority for these objectives appear as though it is geared toward the budget process and it may not be associated with a strategic plan previously recommended. This is another indication that there are improvements to be implemented in order to provide more direction for short term activities in line with a long-term strategic plan.

The Executive Director position is currently designed to be a one-year appointment. This appears to be a vestigial element of an historic attempt to make the position highly accountable by making it subject to governance pressures on an annual and shorter term basis. In practice, however, the one year term is unobserved and the incumbent is routinely reappointed. This seeming incongruity is actually quite logical, since the Executive Director position is the chief source of institutional consistency as the voting Commissioners have three year term limits. However, the paradoxical effect is that highest ranking staff position which is designed to be the most accountable potentially becomes the least accountable given its short term nature.

In order to more effectively integrate the long-term strategy and objectives of the Bar with its daily operating activities, it becomes imperative that its executive or operational officer shares these goals and has the mindset of sustaining them for the longer term. The effect of giving the Executive Director an extended term is that of enhanced accountability and a resulting focus on improving operations in conjunction with the Bar strategy. It also creates an environment that preserves an adequate amount of the Executive Director's focus for subsequent Bar Presidents and Commissioners rather than the potential for directing an undue amount of focus on the near term in order to secure a subsequent term.

4. Restructure how the Executive Director is employed, compensated, and evaluated.

The chief executive or operating officer of any entity should be held to a longer time frame than one year. Judging this leader on the basis of decisions made, initiatives implemented, and performance evaluated within one year rewards the individual for short term thinking and actions. It is recommended that the Executive Director be given a longer term (3-5 year) contract and that the Executive Director is then evaluated annually for performance based compensation contingent on his or her ability to execute the long term strategy described in the previous recommendations. The current arrangement may discourage an Executive Director from providing constructive criticism or questioning association-wide activities, programs, plans or decisions. The Executive Director works for the Board which is charged with determining the compensation for that position and the decision to renew the employment contract, yet both parties are currently locked into a short term managerial time frame rather than operating with a shared long term, executive perspective. An example of an effective longer term compensation arrangement includes a set salary that is reasonable and additional performance based incentives such as a bonus that may be utilized to encourage the achievement of the objectives communicated by the Bar Commissioners and President.

## Monitoring

To effectively govern the affairs of their organization, a Board of directors must monitor its effectiveness. Monitoring relates to both the concept of overall accountability and activities related to internal controls. The latter category includes things like annual audits of operations, whistleblower functions, fraud detection and conflicts of interest.

Regarding the overall accountability associated with regulatory matters (Admissions, Discipline and CLE), the Board, the Executive Director, and staff, appear to be meeting their formal and informal objectives. There are clear reports issued, at both the Board and Court level, in association with these activities, follow-up matters are reported on, and deadlines are met. However, the "Other", association type activities of the Board, Executive Director and staff, are less formally controlled, monitored or reported. This leads to less clear accountability for both the Board and the Executive Director and staff in the "Other", association type matters. This informality is a source of some concern, but may be remedied by many of the recommendations in this report.

As contemplated in the recommendations of this report, the establishing of key, measurable results are paramount to executing an effective strategy to carry out the mission, vision, objectives and goals of the Board and the Courts. Objectives need to be clearly spelled-out and communicated among all levels of governance and management. During specifically-defined intervals, such as quarterly, bi-annually or at the beginning, middle and end of the year, the results should be communicated and those responsible for the results must be held accountable and rewarded for successfully meeting the strategic goals. This is especially true in the "Other" category due to the nature of the activities in this arena.

During the course of our interviews, there emerged a possible concern that conflicts of interest and ineffective programs, if any, would not be identified and resolved in a timely manner. This potential concern was also coupled with suggestions that certain operational policies and procedures within the "Other", association type activities, needed to be better formalized or designed. We noted that there were also some security concerns over confidential data and information in the Admissions and Discipline processes. These concerns indicate some possible weaknesses in internal controls both at the governance level and at the operational level. Since the scope of this engagement was to look only at the corporate governance by the Board, we could only note the possibility of the existence of internal control weaknesses, rather than pursue them further.

Our interviews and analyses clearly revealed that the current Board President, the Board, and the Executive Director have a very close relationship that assists in the effective accomplishment of the important tasks they are assigned. These individuals appear to accomplish quality work considering the limited number of staff assigned to them.

## Recommendations

### 5. Institute Periodic Operational Audits of the Executive Director and Staff

To our knowledge, there has been no operational review of the Executive Director and staff since the appointment of the current Executive Director. Back in the late 1980's and early 1990s, the Bar faced a significant financial problem. One remedy for this issue was to perform regular financial audits. The Bar has annual financial statement audits as a result.

We see the current project of Corporate Governance, and the subject matter of this report, as the next step in assessing the overall health of the Utah State Bar. A final step in this assessment is to have periodic operational reviews. These types of reviews are a regular facet of corporate America, and are viewed as having deterrent and detective benefits that add consultative value an organization's operations. These types of reviews are valuable to both the Board and the Executive Director and staff in providing an objective assessment relative to the achievement of the Board and management's objectives.

The current staff structure is not at the optimal size to support a full time operational audit function. Therefore, we offer possible options as recommendations to the Court and the Board:

- Currently, the Court has an internal audit function. It may be possible for this group to take on the role of performing yearly, risk-based operational audits of the Bar's day-to-day activities. A significant increase in Court auditors does not seem necessary to accomplish this function, and a significant reduction of the Court auditors' yearly schedule likewise does not appear necessary. Two to four operational reviews could be performed yearly without imposing a significant burden on the Court auditors. The drawback to this option is that there may be policy and adversarial relationship issues related to this option.
- The role of the Bar CFO could be expanded to include an operational auditing function. The benefit of this option is the CFO is already on staff and therefore knows the operations well, and could incorporate necessary controls and audit functionality fairly easily and with relatively little additional cost or committed hours. The drawback to this option is that there is lacking independence of reporting and a corresponding lack of objectivity. For example, the CFO would report to the Executive Director and would also be auditing the Director's operations, as well as the financial work that is the responsibility of the CFO. Ideally, the auditor should report to independent members of the Board.
- A part-time, independent operational auditor could be employed by the Bar to perform infrequent audits. This would be least costly to the Bar; however, the appropriate skill set would be more difficult to find for a part-time employee in this capacity.
- The Court and Board could employ outside experts to perform periodic operational reviews. This option is optimal in terms of independence and objectivity, but is likely more costly than the other options mentioned.

We recommend that the operational auditor(s) assists the Board and the Executive Director in establishing a risk assessment that is tied to the newly established strategic plans and corresponding objectives. The risk assessment includes areas of financial, operational and compliance objectives and is scored based on the probabilities and magnitude involved with the non-achievement of such objectives. Next, we suggest that the operational auditor(s) review all of the Bar's policies and procedures, comparing them with strategic planning and objectives and then ensuring that the policies and procedures are designed to mitigate significant risks identified in the risk assessment. The operational auditor(s) is then pivotal in advising the Board and the Executive Director as to the appropriate redesign and proper implementation of internal controls related to the achievement of key objectives. Audit programs are then created by the operational auditor(s) to monitor selected key controls and to periodically test them for operational effectiveness. Reports to the Executive Director and selected members of the Board then communicate control weaknesses and

recommendations for change and improvement. Examples of these recommendations, not necessarily specific to the current Bar might, among other examples, include:

- Review of and compliance with conflict of interest policies
- Computer security issues
- Ineffective or unprofitable programs in both the regulation or association-type areas
- Financial accounting or budgetary concerns
- Compliance with Court rules and laws
- Review of the elections process

#### 6. Create an Independent Committee Function

To complement the other observations and recommendations in this report, we recommend that the Bar establish an Independent Committee. This committee consists of "independent" members of the Board and they serve to oversee the operational audit function and communicate with the complete Board on matters related to financial audits, conflicts of interest, potential fraud and other matters requiring independence and objectivity of thought. It is advised that the Independent Committee include at least one member who is considered a financial expert. We recognize that the Bar currently has at least one non-voting Public Member of the Board who qualifies as this expert.

Various configurations of this committee are suggested as follows:

- The Public Members of the current Board could be relegated to non-voting status, in order to make them more independent, and they could be assigned to the Independent Committee Function. This Committee could also function also as the Budget Committee. The objective in utilizing Public Members without a Board vote is to have independent body serve in this vital monitoring role. In addition to the two Public Members serving in this function, another Ex Officio member(s), or voting member(s), could be part of this Committee.
- The Court could appoint two to four new individuals to function on the Board only as Independent Committee members who are removed from Bar operations and the standard affairs of the Board. Appointing new Board Members to a new Committee may provide a fresh look and the desired independence; however, it may add unnecessary layers to the already large structure of the Bar Board.

There are other configurations that could be employed for the make-up of this Independent Committee. We simply recommend that these members be independent from Bar operations and the normal activities of the Board and that they possess the proper background and experience. We recommend that the Independent Committee consist of a CPA and a member who is experienced with Not-For-Profit Boards. All members should obtain a thorough understanding of the Bar, the Board, its strategic plan, objectives and Bar policies and procedures. The group should create an Independent Committee Charter and meet with the operational auditors at least once a quarter to discuss findings. The Independent Committee should also meet with the external, financial statement auditors at least twice a year to discuss the audit planning and to receive the results of the audit. The Independent Committee is also integral to the Whistle-Blower recommendation explained below.

## 7. Establish a Whistle-Blower Function

Whistle-blower policies and procedures provide a channel through which Bar staff, Bar and Board members, and even the legal community can anonymously report concerns regarding fraud, conflicts of interest, other breakdown in internal controls, financial reporting issues and other areas of major governance concern.

We envision this function being performed by an Independent Committee as described above, or possibly by an administrative function of the Court. Should the Court and the Board decide to forego the recommendation to utilize an Independent Committee, a Whistleblower function should still be considered.

Throughout our interviews, we recognized that there are some very strong and active informal "whistleblower" activities. In some instances, complaints, almost verbatim, were echoed by more than one interviewee. We note, however, that the interviewees were mostly positive about the Board, its administration, and the functionality of the Executive Director and staff. Still, this does not diminish the positive aspects that a whistleblower function can provide. Perhaps there are more concerns that are not brought to light for a variety of reasons that would be made available for review should the Court and the Board employ a whistleblower function that is more structured in nature, and independent of both the Board and the Executive Director and staff.

## 8. Implement the Use of a Board Governance Self Assessment Checklist

According to *The 2006 Grant Thornton LLP National Board Governance Survey for Not-for-Profit Organizations*, "Self assessments can help boards determine how well they are carrying out their responsibilities and identify areas in need of improvement." The survey also reports that 37 percent of not-for-profit organizations surveyed perform self assessments and that such a practice is becoming the trend. We recommend that the Board utilize a self assessment checklist on a periodic basis and that the completed checklist be reviewed by the Court. The purpose of the checklist is to self-assess the Bar's effectiveness related to its governance responsibilities. The self assessment process by the Board also adds a greater degree for its accountability to its stakeholders. As you have requested we have designed a board governance self assessment checklist for the Bar located in Appendix B.

## 9. Institute an ongoing conflict of interest policy for the Bar staff

In addition to the existing conflict of interest policy that the Board signs and adheres to, the Executive Director and Bar staff should also be given direction related to conflict of interest policies of the Bar. These should be designed by the Board and explicit examples are valuable content in the policy. We recommend that, once it is created, the Executive Director and Bar staff sign the policy to indicate that they have read it, understand it and comply. Generally the elements of a conflict of interest policy include the following:

1. A comprehensive statement defining conflicts of interest and the organization's policies regarding them.
2. An initial conflict of interest questionnaire for new Board and staff members
3. A yearly application of the questionnaire for both Board and staff members.

We recognize that a conflict of interest policy has recently been implemented at the Board level, and encourage its continuance.

## Information and Communication

Communication is the key to all of the areas we have discussed in this governance report. We recognize five distinct Bar stakeholder groups -- the Court, Board, Executive Director and staff, various Sections, Divisions and local Bars, and Bar Members. While the details of communication among the various stakeholders can differ, there appears to be a general sense that communication is adequate across the board. Perhaps the most frequently mentioned opportunity for better communication during our interviews was between the Court and the Board/Executive Director. We understand that communication between the Court and the Board/Executive Director has improved in recent years.

We attended a quarterly meeting between the Court and the Current President, the President-Elect and the Executive Director. These meetings are relatively new, and we view them as an appropriate means to keep the Board and Executive Director and staff in synch with the Court. The quarterly meetings currently serve as a method for the Board and the Executive Director to report the status of the Bar operations and pending issues and for the Court to coordinate its directives to the Board and to the Executive Director.

The communication between the Board and the Executive Director is likely the most effective communication among any of the five stakeholder groups. The relationship between the Board, the Board President and the Executive Director is truly symbiotic. Neither can function well without the other. The Board and the Board President represent policy and to some extent forward-thinking. The Executive Director and staff represent stability, consistency and the ability to carry out the directives of the Board. The Executive Director attends the Executive Committee meetings, which consist of the current President, the President-Elect and Executive Directors as chosen by the current President. This meeting generally takes place a few days or so prior to each Commission meeting. The purpose of this meeting is to finalize agenda items for the up-coming Commission meetings. We attended the Executive Committee meeting just prior to the September Commission meeting. This meeting was well attended, was on point, facilitated pertinent agenda items, and allowed for discussion among attendees.

The Executive Director likewise attends all Commission meetings. One of the Executive Director's staff currently functions as the secretary for Commission meetings. This allows for more efficient follow-up on Commission meeting items by the Executive Director. However, we noted that the Court sends a liaison to attend Commission meetings and a Justice of the Court is not represented in the Commission meetings.

Though it was not within the scope of this report, we were able to observe some aspects of the communication within the operations of the Bar. We offer them as a byproduct of this project. Based upon our limited observations, communication between the other stakeholders and the Board and Executive Director and staff appears to be sufficient. The Bar publishes a periodic journal, there is a well-designed website, there are specific members of the Bar staff who are dedicated to communication and IT-related efforts such as email communication to members. All of this is designed to keep members abreast of Bar activities. Each Commissioner outside of the Salt Lake area has a geographical constituency and each Commissioner from outside the Salt Lake area interviewed expressed efforts they have made to reach out to their constituencies. Salt Lake area Commissioners are given liaison assignments by the current President. These assignments are again designed to keep

various constituencies informed. Additionally, there are a number of gatherings each year, also designed to offer CLE and keep communication flowing to and between Bar members.

As it pertains to Communication among the stakeholders in terms of simply Communicating, the lines appear to be open and free flowing. There may, however, be weaknesses in the messages and substance of Communications among certain groups. For example, in the "Other" association-type activities, there appears to be inadequate Communication among the Board and the Executive Director as there is no defined model for determining projects or for reporting on progress on initiatives. This was discussed previously in the Monitoring section of this report.

### **Recommendation**

10. A Justice from the Court should attend at least one Commission meeting annually.

This action would serve to improve relations and the communication between the Court and the Commission. We recognize that the Court sends a liaison to each Commission meeting, but sometimes discussion items can get lost in translation. The mere presence of a Justice at a Commission meeting sends a powerful message of judicial concern and Court representation in the activities of the Board.

We recognize that the Court has delegated administrative and other functions to the Board and the Executive Director, and they generally take great initiative in performing their functions. However, the ultimate responsibility of administering the practice of law in the state rests with the Supreme Court and it should be more visible at Commission meetings.

## Concluding Thoughts

The Utah State Bar has chosen to utilize the Integrated Bar model. This model has many advantages, and some disadvantages. The most obvious disadvantage is the captive-audience nature of Bar fees paid for "Other," non-regulatory matters by those wishing to practice law in the state. Market forces often play a key role in Non-Integrated Bars to help improve monitoring and other strategic, corporate governance-related matters for state Bars.

Due to the choice of Bar model type, and recognizing the difficulty for the Bar in moving to a Non-Integrated Bar, the suggestions in this report are intended to assist the Board regarding the governance of the Bar in its current state as an Integrated Bar. The areas of focus in this project relate to bar governance including that of structure, objectives, monitoring and communication.

This report recommends that the Bar:

1. Consider changing Board meeting attendance policies to emphasize transparency
2. Formally utilize the Non-Profit Framework when analyzing any project that falls within the "Other" category
3. Regularly formulate and document a long-term strategy for the Bar
4. Restructure how the Executive Director is employed, compensated and evaluated
5. Institute Periodic Operational Audits of the Executive Director and Staff
6. Create an Independent Committee Function
7. Establish a Whistle-Blower Function
8. Implement the Use of a Board Governance Self Assessment Checklist
9. Institute an ongoing conflict of interest policy for the Bar staff
10. A Justice from the Court should attend at least one Commission meeting annually

These recommendations are the result of our research, interviews and analyses of Bar governance and serve to assist in the improvement of its governance process. We believe that implementation of all or several of these recommendations will cumulatively adjust the focus of the Board, Executive Director and staff to a longer-term, strategic focus. It also serves to provide more adequate direction and accountability among this group. Additionally, the recommendations give the Board tools for monitoring operations, conflicts and fraud more effectively and the Court achieves higher visibility within the Bar.

The improvements that are obtained over time from these changes will allow the Bar to continue to thrive. In the longer-term, the Board will be able to see the tangible benefits from its efforts as it analyzes its efforts against its strategic plans.

We again thank all those who have offered their time, input and suggestions into this project and we look forward to discussing the contents of this report further.

# Appendix A - Bar Governance Self Assessment Template

Measurement Scale: Very Effective (5); Effective (4); Somewhat Effective (3); Somewhat Ineffective (2); Ineffective (1); Very Ineffective (0)

## I. VISION AND OBJECTIVES

Does the Utah State Bar Board of Commissioners have a clearly stated and believable overall objective that is:

- consistently used to direct actions, to set priorities, and to focus the decisions of the organization.
- understood, supported and easily articulated to others by the board;
- revisited and refined on a periodic basis to reflect changing needs or conditions.

1 Does the Utah State Bar Board of Commissioners have a written overall objective that is clearly stated, believable, and easily understood?

Rating            1            2            3            4            5

2 Does the overall objective statement reflect the core values and needs of the members of the Bar?

Rating            1            2            3            4            5

3 Is the overall objective statement revisited and refined on a periodic basis to reflect changes in the area, profession, member demographics, courts, or other?

Rating            1            2            3            4            5

4 Do board members understand and readily support the overall objective, particularly new board members?

Rating            1            2            3            4            5

5 Is the Bar's annual operational work plan clearly linked to the mission?

Rating            1            2            3            4            5

6 Are board and committee meetings and Bar decisions centered on the overall stated objective?

Rating            1            2            3            4            5

7 Is the overall objective clearly articulated in the Bar's written materials, such as:

- brochures and other marketing materials
- annual report
- strategic plan
- journal and newsletters
- board manual
- policy and procedures
- budget?

Rating            1            2            3            4            5

8 Does the Bar measure its success by determining the extent to which it is achieving the overall objective?

Rating            1            2            3            4            5

Vision and Objectives Total Score            \_\_\_\_\_

Vision and Objectives Average Score            0

## II. PROGRAM EFFECTIVENESS AND PROGRAM ASSESSMENT

Does the Utah State Bar Board of Commissioners have programs that:

- Are well defined and responsive to the Utah legal and cultural needs
- Are regularly assessed and reconfigured in response to changes in the legal profession and member needs
- Attract the appropriate members and fees

1 Are the Bar's programs aligned with the stated overall objective and formal strategic plan?

Rating            1            2            3            4            5

2 Does the organization set periodic performance targets for each program?

Rating            1            2            3            4            5

3 Does each program have the budget allocation and personnel to achieve its strategic goals and objectives?

Rating            1            2            3            4            5

4 Does the Bar periodically conduct a thorough assessment of each of its programs?

Rating            1            2            3            4            5

5 Does the assessment include measurable program results and success?

Rating            1            2            3            4            5

6 Are the results of the assessment communicated to the courts, staff, and other stakeholders?

Rating            1            2            3            4            5

7 Are the results of the assessment used to perfect or adjust existing programs or develop new programs?

Rating            1            2            3            4            5

8 When developing new programs, does the Bar organization conduct a feasibility study that includes the established need for the service, budget considerations, and plans?

Rating            1            2            3            4            5

9 Does the Bar encourage innovation in developing new programs that specifically meet the needs of members and the local legal profession?

Rating            1            2            3            4            5

10 Does the organization communicate the success of the programs to its stakeholders and the community?

Rating            1            2            3            4            5

Program Effectiveness Total Score            \_\_\_\_\_

Program Effectiveness Average Score            0

### III. STRATEGIC PLAN TO MEET OBJECTIVES

Does the Utah State Bar Board of Commissioners have a formal strategic plan that is:

- Created by key members and staff and endorsed by the board
- Utilized consistently to provide clear direction for the organization to achieve its overall objective
- Regularly reconfigured in response to changes in the legal profession and member needs

1 Has the Bar developed a written strategic plan to achieve its overall objective?

Rating 1 2 3 4 5

2 Is the strategic planning process inclusive of board, staff, program beneficiaries, community members, and other key constituents?

Rating 1 2 3 4 5

3 Does the planning involve articulating or researching the current internal and external environment in which the organization operates?

Rating 1 2 3 4 5

4 Does the organization use the strategic plan to coordinate all other activities such as programs, budgets, staffing and activities?

Rating 1 2 3 4 5

5 Does the strategic plan include:

- organizational goals and priorities
- objectives
- tasks or activities to carry out the objectives?

strategic plan's goals and objectives?

6 Does the organization consider how the program beneficiaries will be impacted by the accomplishment of the

Rating 1 2 3 4 5

7 Does the strategic plan include an annual operational work plan that is linked to the strategic plan and contains a

- timeline,
- multi-year budget, and
- personnel for the accomplishment of the goals and objectives?

Rating 1 2 3 4 5

8 Does the board evaluate the progress towards achieving the goals of the annual operational work plan and strategic plan at least on a quarterly basis?

Rating 1 2 3 4 5

9 Has the organization communicated the content of strategic plan to all constituents, including board members, volunteers, donors, program beneficiaries, and the general legal community

Rating 1 2 3 4 5

10 Is the strategic plan visible in the organization as a wall chart, poster, notebook, or other manner?

Rating 1 2 3 4 5

Strategic Plan Total Score \_\_\_\_\_

Strategic Plan Average Score \_\_\_\_\_ 0

### IV. BOARD OF COMMISSIONERS' RESPONSIBILITIES

Does the Utah State Bar Board of Commissioners have a board that:

- is dedicated to and guided by the Bar's overall objective and strategic plan
- comprehends and upholds its legal, fiduciary, and fiscal oversight responsibilities
- appropriately recruits, orients, and trains new board members

1 Does the board receive ongoing information and training about its roles and responsibilities?

Rating 1 2 3 4 5

2 Does the board understand that its role is to govern the organization by fulfilling the overall objective; ensuring financial stability and protecting the public interest?

Rating 1 2 3 4 5

3 In fulfillment of its governance role, does the board

- Provide strategic vision
- Develop and assess programs and policies
- Ensure fulfillment of legal requirements
- Elect qualified officers, and appoint qualified committee chairs
- Hire and evaluate the executive director
- Establish personnel policies and monitor compliance
- Oversee and participate in fee determination and utilization
- Act as an ambassador for the organization in public

Rating 1 2 3 4 5

4 Is the size of the board effective to meet the demands of the Bar organization and is efficient?

Rating 1 2 3 4 5

5 Does the board have clearly stated expectations of board members, including attendance at board meetings, and participation in committees?

Rating 1 2 3 4 5

6 Does the nominating process ensure that board membership reflects the diversity of the Utah Bar's membership and/or constituency, and includes those with a diversity of skills, expertise, and professional backgrounds (practice, academia, corporate, government) necessary to help guide the organization?

Rating 1 2 3 4 5

7 Does the organization provide an orientation for new board members, including an explanation of the Bar's bylaws, policies and programs as well as board members' roles and responsibilities?

Rating 1 2 3 4 5

8 Does the board have term limits for board members which are staggered?

Rating 1 2 3 4 5

9 Does the board have an advance annual calendar of meetings?

Rating 1 2 3 4 5

10 Does the board have a written conflict of interest policy that each board member has signed?

Rating 1 2 3 4 5

11 Do board meetings have written agendas and relevant written materials that are given to the board in advance of the meeting?

Rating 1 2 3 4 5

12 Does the board participate in the following committees:

- Executive (group that discusses strategy, policy, and goals)
- Finance/budget (develops financing plans; monitors cash flow and organization's financial strength)
- Independent (retains and communicates with independent and internal auditors, provides reporting mechanism for fraud and conflicts of interest)
- Program (oversees development and implementation of programs)
- Nominating/board Development (reviews and recommends individuals to fill board vacancies)

Rating 1 2 3 4 5

Board Responsibilities Total Score \_\_\_\_\_

Board Responsibilities Average Score \_\_\_\_\_ 0

**V. FISCAL MONITORING**

Does the Utah State Bar Board of Commissioners have financial procedures and systems that ensure:

- Reliable and accurate reporting of financial information
- An annual budget that reflects a plan to achieve the Bar's overall objective and goals
- Thorough fiscal oversight by the board

1 Does the Bar develop an annual operating budget which includes costs for all programs, activities and personnel.

Rating 1 2 3 4 5

2 Is the budget used as a strategic tool in planning, and is it in alignment with the Bar's overall objective.

Rating 1 2 3 4 5

3 Is the budget reviewed and approved by the board of commissioners?

Rating 1 2 3 4 5

4 In reviewing the budget, does the board consider the following issues:

- the reliability and accuracy of the budgetary process in previous periods
- the principal variables and assumptions within the budget
- what effect new programs or activities will have on the budget
- what costs are variable and what costs are fixed
- requirements for debt financing if any
- requirements for fee increases or consistency
- capital and other significant expenditure plans and considerations

Rating 1 2 3 4 5

5 Does the budget planning process include the program director, the executive director, and all other necessary individuals (with ultimate budget approval by the board)?

Rating 1 2 3 4 5

6 Does the board review the financial strength of the Bar at least quarterly?

Rating 1 2 3 4 5

7 Does the Bar prepare financial statements that reflect the budgeted versus actual basis to assist the Bar in achieving a better understanding of the finances?

Rating 1 2 3 4 5

8 Does the Bar have policies and procedures evidencing financial control that have been reviewed by the finance committee of the board?

Rating 1 2 3 4 5

9 Are the Bar's financial statements reviewed or audited by a qualified CPA firm?

Rating 1 2 3 4 5

10 Does the board consider the following each period:

- possibly changing auditors (partner or firm) every five years
- precluding the auditing firm from providing consulting and management type services
- maintaining the independence of the audit committee (should not part of the management team nor voting members of the board)
- executive director and treasurer reviewing the 990 before filing with the IRS ?

Rating 1 2 3 4 5

Fiscal Monitoring Total Score \_\_\_\_\_

Fiscal Monitoring Average Score \_\_\_\_\_ 0

**VI. ALIGNING OVERALL OBJECTIVES WITH OPERATIONAL EXECUTION**

Does the Utah State Bar Board of Commissioners have:

- A competent, motivated, and effective leader
- Dedicated and hard working staff and volunteers who understand and strive to achieve the objectives of the Bar mission

1 Does the executive director and Bar president:					
	<ul style="list-style-type: none"> <li>• lead in accordance with the overall objective?</li> <li>• have a clear vision and goals for the organization?</li> <li>• have excellent communication skills?</li> <li>• excite others around the vision?</li> <li>• have good team building skills?</li> <li>• have strength as a problem solver?</li> <li>• take responsibility for decisions?</li> <li>• understand his/her own management and leadership styles?</li> <li>• build rapport and trust with others?</li> <li>• give others freedom to work their own way?</li> </ul>				
Rating	1	2	3	4	5
2 Does the Bar have written job descriptions for staff that detail expectations?					
Rating	1	2	3	4	5
3 Are written expectations used to guide staff performance reviews?					
Rating	1	2	3	4	5
4 Does the Bar executive director and personnel have regular staff meetings?					
Rating	1	2	3	4	5
5 Does the bar operations have written personnel policies and procedures?					
Rating	1	2	3	4	5
6 Does the Bar provide training and professional development to staff?					
Rating	1	2	3	4	5
7 Does the Bar have a written ethics, antifraud and conflict of interests policy that is signed by the executive director and staff?					
Rating	1	2	3	4	5
8 Does the Bar have a process for responding to concerns, including potential fraud, conflicts of interest and significant problems as communicated to the independent committee of the board?					
Rating	1	2	3	4	5
9 Does the bar provide appropriate orientation and training for staff and volunteers?					
Rating	1	2	3	4	5
10 Does the Bar evaluate the performance of the staff and volunteers in conjunction with actual performance related to the stated objectives?					
Rating	1	2	3	4	5
11 Does the organization communicate regularly with volunteers via newsletters and email?					
Rating	1	2	3	4	5
12 Does the Bar have a formal marketing plan and communications plan?					
Rating	1	2	3	4	5
13 Does the Executive Director and staff report measurable results of objectives to the Board on a quarterly basis and are they held accountable for these results?					
Rating	1	2	3	4	5
Aligning Objectives Total Score					0
Aligning Objectives Average Score					0

**VII. OTHER**

1 Do board members understand what their legal duty of care requires under state law? For example:					
	<ul style="list-style-type: none"> <li>• director must act in good faith</li> <li>• and in a manner the director believes to be in the best interests of the Bar and the community</li> <li>• with such care as an ordinarily prudent person would use in similar circumstances</li> </ul>				
Rating	1	2	3	4	5
2 Do board members understand what their legal duty of loyalty requires? For example:					
	<ul style="list-style-type: none"> <li>• directors must act with good faith in governing the corporation</li> <li>• directors must be aware they are stewards of the Bar</li> <li>• directors must not unfairly profit, directly or indirectly, from the Bar</li> </ul>				
Rating	1	2	3	4	5
3 Do board members understand how they can fulfill their duties of care and loyalty?					
	<ul style="list-style-type: none"> <li>• become educated re: the bylaws, board materials, and all information to which they have a right of access to carry out their responsibilities</li> <li>• become familiar with the budget and all financial information and procedures to ensure that the organization is financially accountable and fiscally sound</li> <li>• attend board meetings, and come prepared to use one's own judgment</li> <li>• participate in selecting, compensating and evaluating the Executive Director</li> <li>• be aware of potential conflicts of interest</li> <li>• use their knowledge of the above to ensure compliance with all applicable state and federal laws</li> </ul>				
Rating	1	2	3	4	5



## Appendix B – Sample Strategic Plan

Consideration should be given to the sample Strategic Plan listed below. Note that the template and plan is only an example.

[Utah State Bar Logo]

### **20XX– 20XZ Strategic Plan**

[Mission/Vision Statement]

Developed By: Executive Director and Staff

June 20XX

Background  
[Discussion by Executive Director]

Mission  
[Reiteration of Bar Mission]

Critical Issues  
[Discussion by Executive Director]

Strategic Outcomes and Goals  
[Discussion by Executive Director]

UTAH STATE BAR OPERATIONAL PLAN

20XX-20XZ

CRITICAL CHALLENGE #1: Service to Members

OUTCOME DESIRED: Increase the perception of the value of membership in the Bar

- Strategy A: Evaluate the value and quality of current service  
 Strategy B: Improve service quality and value  
 Strategy C: Market current and new service

Strategy A: Evaluate the value and quality of current service

ACTION STEPS	DUE 20XX	DUE 20XY	RESPONSIBILITY	STATUS
1. Conduct focus groups to evaluate service	X		Evaluation Committee	
2. Examine other Bar's services and compare	X		Evaluation Committee	
3. Identify service improvement needs		X	Evaluation Committee	
4. Establish service level standards		X	Executive Director	

Strategy B: Improve service quality and value

ACTION STEPS	DUE 20XX	DUE 20XY	RESPONSIBILITY	STATUS
1. Implement new member orientation – individual level	X		Implementation Committee	
2. Implement new member orientation – firm level	X		Implementation Committee	

Strategy C: Market current and new service

ACTION STEPS	DUE 20XX	DUE 20XY	RESPONSIBILITY	STATUS
1. Audit current services' effectiveness		X	Internal Auditors	
2. Create new program success factors	X		Executive Director	
3. Review marketing resources	X		Marketing Committee	

UTAH STATE BAR OPERATIONAL PLAN  
 20XX-20XX  
 CRITICAL CHALLENGE #1: Service to Members

OUTCOME DESIRED: Increase member participation in Bar activities

OUTCOME BENCHMARK: 10% increase by 20XX

- Strategy A: Evaluate the value and quality of current events  
 Strategy B: Market current and new service more aggressively

Strategy A: Evaluate the value and quality of current events

ACTION STEPS	DUE 20XX	DUE 20XY	RESPONSIBILITY	STATUS
1. Develop satisfaction surveys	X		Outside Marketing Group	

Strategy B: Market current and new service more aggressively

ACTION STEPS	DUE 20XX	DUE 20XY	RESPONSIBILITY	STATUS
1. Create user friendly registration process	X		Bar Staff	
2. Develop marketing plan	X		Marketing Plan	

UTAH STATE BAR OPERATIONAL PLAN  
20XX-20XX

CRITICAL CHALLENGE #2: Increase non-due revenue

OUTCOME DESIRED: Non-due revenue increased

OUTCOME BENCHMARK: 10% increase by 20XX

- Strategy A: Develop non-due revenue growth plan
- Strategy B: Develop marketing plan for non-due revenue strategies

Strategy A: Develop non-due revenue growth plan

ACTION STEPS	DUE 20XX	DUE 20XX	RESPONSIBILITY	STATUS

Strategy B: Develop marketing plan for non-due revenue strategies

ACTION STEPS	DUE 20XX	DUE 20XX	RESPONSIBILITY	STATUS

UTAH STATE BAR OPERATIONAL PLAN  
 20XX-20XX  
 CRITICAL CHALLENGE #3: Increase Diversity Profile

OUTCOME DESIRED: Increase Bar's involvement in diversity initiatives

- Strategy A: Support minority law school graduates
- Strategy B: Support Diversity Committee initiatives
- Strategy C: Attend and Support Diversity Programs at local law schools

Strategy A: Support minority law school graduates

ACTION STEPS	DUE 20XX	DUE 20XY	RESPONSIBILITY	STATUS

Strategy B: Support Diversity Committee initiatives

ACTION STEPS	DUE 20XX	DUE 20XY	RESPONSIBILITY	STATUS

Strategy C: Attend and Support Diversity Programs at local law schools

ACTION STEPS	DUE 20XX	DUE 20XY	RESPONSIBILITY	STATUS

