American Samoa Bar Association

President: Sean Morrison
Vice President: Jeremy Dubyak
Treasurer: Kevin Kornegay
Secretary: Kelly Smith

[ANNUAL REPORT]
# TABLE OF CONTENTS

- Annual Meeting Agenda ........................................................................................................... 3
- Annual report ........................................................................................................................... 4
  - ASBAR.ORG .......................................................................................................................... 4
  - American Bar Association ........................................................................................................ 5
  - Publication of Laws .................................................................................................................. 7
  - Bench-Bar Relations ................................................................................................................ 8
  - Security .................................................................................................................................... 8
  - Scholarship ............................................................................................................................... 8
  - Law Library .............................................................................................................................. 9
  - Judicial Council ...................................................................................................................... 9
  - Constitutional Convention ........................................................................................................ 9
  - Dog Law ................................................................................................................................... 9
- Committee Reports .................................................................................................................. 10
  - Standing Committees ............................................................................................................. 10
    - Continuing Learning Education ............................................................................................. 10
    - Law Reform .......................................................................................................................... 10
    - Ethics and Grievances ......................................................................................................... 11
    - Outreach ............................................................................................................................... 11
  - Special Committees ................................................................................................................ 12
    - Admissions ............................................................................................................................ 12
    - Constitution and By-Laws .................................................................................................... 12
    - Mediation ............................................................................................................................... 12
- Other Organizations .................................................................................................................. 13
  - Legal Aid Board ...................................................................................................................... 13
  - The Bar Justice Foundation .................................................................................................... 13
- Financial Report ....................................................................................................................... 14
ANNUAL MEETING AGENDA

Adoption of prior minutes and agenda

Officers' Reports
  President's Report
  Treasurer's Report
  Secretary's Report

Committee Reports
  Standing Committees Reports
    Continuing Learning Education
    Law Reform
    Ethics and Grievances
    Education and Outreach
  Special Committees Reports
    Constitution and By-Laws
    Mediation
    Administrative Code
    Legal Aid Board

Old Business
  New Appellate Memo

New Business
  Amendments to the Constitution and By-Laws

Elections
  President
  Vice President
  Treasurer
  Secretary
The American Samoa Bar Association enjoyed another productive year in 2010-2011. With a focus on visibility and transparency, the ASBA upgraded its website to be more user-friendly, communicate more clearly and directly, and to provide up-to-date legal resources. The ASBA increased its awareness of court security in response to the shooting of Lt. Brown. The continued efforts to gain a seat in the American Bar Association failed, by a close margin, but the ASBA remains committed to the goal. Meanwhile, the ASBA worked to build contacts with other organizations, both on and off island, to increase visibility and services for its members. This report will discuss many of the issues that the ASBA dealt with during the last year.

ASBAR.ORG continues to be the only on-line source for American Samoa laws, regulations, and cases. In many cases, it is the only viable source at all. A concerted effort was undertaken by the ASBA to update the materials on the website and make it more open and user-friendly.

Upgrades

- A Google search bar was added to the Legal Resources section for better search results.
- The officers signed up for Google Business Apps, giving the officers new email addresses with an @asbar.org suffix. It also allowed for a shared calendar, shared Google docs among exec officers, and shared contact list. The old Yahoo! email account had become clogged with spam and other annoyances.
- The Events and News pages were merged into a “News & Events” blog.
- Online dues payment was established with PayPal, though it is not yet launched on the site.
- There is an ASBA page on both Facebook and LinkedIn.

Updates

- New Administrative Codes were added as they were discovered and verified by the Governor’s Office.
- The latest pdf version of the Code Annotated, obtained from the Fono, was posted in pdf format, though the html remains outdated.
- While there were no ASR releases, 4-7 ASR3d were added to the website.
- A section for committees was added under “Bar Documents of Record,” and the plan to post the minutes and agendas of meetings was implemented. However, due to computer crashes, most of the electronic copies of the minutes and agendas were lost. It may be best to wait on publishing minutes and agendas until there is a members-only log-in procedure.
- The judges and justices are now listed on the “Court Information” page.
- A list with some links to scholarly works regarding American Samoa law is now on the “Legal Resources” page.
- The “Membership Information” page contains a downloadable application form, for informational purposes (applications still go through the High Court).
- The “Local Links” page was updated.
Future Upgrades

The ASBA has spoken with the ABA Rule of Law Initiative (ROLI) about a larger grant for a systematic upgrade of the website, as part of a project to update the laws throughout the Territory. This relationship with the ROLI has been endorsed by the Governor. The ROLI will be discussing working on projects with American Samoa during their April 2011 meeting.

Recommendations

Regular updates to the website are essential. The website is our only outlet to the world and our members. It is also the only source of American Samoa laws. Therefore, upgrading and easing access to these laws is imperative. The website is a bit out of date, and there exists new search software. The website should also add a members only section, with bar dues, access to minutes/agendas and reports, and other features. ASBA should continue to work on an upgrade, whether through grant or other avenue. The Bar Justice Foundation still has $5,600 that can be used for such a project. It would also be useful to find the old Samoan Pacific Law Journal, once published by the ASBA, and publish that on the website as well.

AMERICAN BAR ASSOCIATION

History

Continuing from the previous years, the ASBA continued its efforts to gain a delegate in the American Bar Association House of Delegates. Efforts were made to gain the support of top bar members from the Territory, like the CJ, Governor, Lt. Governor, Attorney General, and Independent Prosecutor, among others. The ABA meeting was held in San Francisco in August 2010. The judiciary was unable to attend, but CJ did submit a letter of support to the ABA. The Governor was present at the meeting.

Based on a report from the ABA Admissions and Credentials Committee, which advocated membership for American Samoa, a constitutional amendment was introduced by C. Elisia Frazier, the Chairman of the Admissions Committee. Amendment 11-2 would give American Samoa a delegate, as well as a delegate to Guam and CNMI, who currently split one. Active support was provided by Tom Bolt of Virgin Islands, Jay Arriola of Guam, Chief Justice Robert J. Torres of Guam, Doug Hartig of CNMI, Sean Frink of CNMI to name a few.

The ASBA passed a resolution supporting our membership in the ABA, and Ned Fluet, a former High Court clerk who lives in Chicago and had been actively pursuing ABA membership for American Samoa, was elected to serve as the first delegate should American Samoa be admitted.

The President, the Governor, and Ned Fluet attended the ABA Annual meeting. They began a robust lobbying effort, along with attendees from the other territories. Significant support was garnered from a number of sections and states, as well as important ABA members like past ABA presidents.

After a number of speeches, including a speech by the Governor, the matter came to a vote. As a constitutional amendment, it required a 2/3 vote. Out of nearly 500 voting delegates present, the amendment failed by only three votes. Due to the closeness of the vote, an intense lobbying effort
went into effect for the rest of the day and that evening. The next day the matter came to a vote again, but was defeated by a wider margin. There was issue fatigue at that point.

**Arguments**

Those who voted against had a number of objections:

- Smaller bars require 2,000 members to gain their own delegate, above those already given to the States and sections. For example, the Chattanooga Bar would need 2,000 attorney members in order to get a delegate. Of course, there are already Tennessee delegates.
- According to the 2009 roster, there were only 45 active, on-island members of ASBA. Many in the ABA felt it unnecessary to grant so few attorneys a full delegate.
- Guam and CNMI share a delegate, and many thought that American Samoa could simply be added to that.
- Adding more members would just dilute the already bloated House of Delegates.
- It was the improper time and method. Every 5 years, the ABA does a survey of its delegates to determine who should have membership and membership should only come as a result of this survey. The next survey will occur in 2013.

The arguments that seemed to be most helpful included:

- Fundamental fairness. This was most persuasive. The attorneys of American Samoa are the only attorneys in all of the United States who are not represented by anyone in the ABA.
- Diversity. The minority caucus supported us on this argument. The diversity of the islands should be represented. This was also a useful counter-argument to the idea that we could all share a delegate. The islands are as diverse from each other as they are with the mainland.
- The ABA will not be diluted. The amendment would only add two new members. This represents a less than .4% increase in the House of Delegates. The territories bring a unique perspective to the ABA and ensure the ABA is fully representative of all U.S. jurisdictions. The value added to the ABA’s goals of promoting diversity and the rule of law through the addition of the territories far outweighs any “dilutive” effect on the House of Delegates.

**2011**

The lobbying efforts have begun again. In April 2011, Doug Hartig of CNMI reintroduced Amendment 11-2. Many of the old supporters, such as C. Elisia Frazier, are no longer in the same ABA positions to help in the same way. However, we have learned many lessons on how to navigate in the ABA environment. The President and the Governor have already begun reaching out to potential allies. The President has invited high-ranking attorneys in the territory to attend the ABA annual meeting in Toronto from August 4-9, 2011.

**Recommendations**

The ASBA should continue its efforts to gain a seat for American Samoa in the ABA. To succeed, high members of the ASBA must be present and willing to lobby. This includes the Gov, the CJ, AG, and others, though everyone is encouraged to attend and push their support. The more present to help, the better. Members who do not go to the meeting should still engage in lobbying efforts. Most ASBA members maintain contacts from the mainland that may be helpful. A letter writing and phone campaign could be helpful.
The ASBA Constitution should be modified to create an ABA delegate position that serves for two years, according to ABA rules. The ABA delegate, especially the first one, should be somebody who lives and practices on-island. This was a particular point of contention with many in the ABA, and the Governor announced in his speech that this would be so.

**PUBLICATION OF LAWS**

**Case Law**

The ASBA continued to push the judiciary to publish new ASRs. As of this report, no new ASRs have been published past 2003. Those available are 1-7 ASR3d, as well as the ASR and ASR2d. The court has indicated that it will not be reissuing 6 ASR3d, and will instead move the missing cases to later ASRs. The court clerks (over the years) have stated that the 8-12 ASR3d would be published in August 2010, then 8-9 ASR3d by November 2010, and finally an indefinite timeline. One problem has been the costs of the books, which jumped from $10 per book to about $55. CJ has approved publishing them online through the ASBA website even before they are published in book form. The larger problem, however, has been last-second adding of cases, edits, etc. 8-10 ASR3d were completed by off-island consultants, yet are still awaiting publication. This is still no indication of when new ASRs will be published.

**Code Annotated**

The ASBA received and posted the Fono statutes up to the 4th Regular Session of the 31st Legislature (2010). They are in pdf format on the ASBA website under “Legal Resources.” The Fono is engaged in a project funded by the federal government to publish the code annotated on-line. Due to this, they are reluctant to share the laws with ASBA.

**Administrative Code**

The Administrative Code remains disturbingly out of date. The Governor’s Office claims that they have hired Fatu to compile the Administrative Code, however, Fatu was never informed of this. Moi Masaniai and Nate Mease have looked into hiring Roy Hall to represent the ASBA in a writ of mandamus against the Lt. Governor forcing him to compile and publish the Admin Code. The ASBA has been piece-meal collecting bits of the Administrative Code that can be verified and publishing them on the website.

**Recommendations**

The Bar Justice Foundation still has $5,600 that can be used to help purchase and publish the ASRs if necessary. However, CJ needs to release them for publication. The ASBA needs to continue to follow-up until these are published.

The Fono will continue to work on their on-line project, but the laws still aren’t publically available. The ASBA needs to continue to compile the statutes as they come out, and maintain contacts with the Fono staff to continue receiving updates. The ASBA should also strive to receive the statutory updates released by the Fono. This may also give the ASBA the opportunity to begin compiling a Samoan language version of the code annotated, which is often requested.
The Lt. Governor will probably not be updating the Administrative Code any time soon without a push by ASBA. The code is incredibly out of date. The ASBA should continue with plans for a lawsuit until an updated Administrative Code is published.

BENCH-BAR RELATIONS

Relations remained distant between the judiciary and the bar. Communication is mostly done through formal letters. However, a meeting between the President and Judge Ward did open a potential pathway to more dialogue. Judge Ward seemed open to the idea of a monthly brown-bag lunch, beginning with himself and hopefully adding the other justices later. This would allow the bar to sit and discuss issues directly with a member of the judiciary.

**Recommendations**

The Bar has followed up with Judge Ward and is awaiting a response. Regular meetings could spawn into greater communication. This could potentially open up a dialogue that would be beneficial to both parties.

SECURITY

After the shooting of Lt. Brown outside the courthouse, security concerns have been high. Especially since a number of bar members not only witnessed the incident, but were threatened at the scene. The court has increased security, adding a “metal detector” (Marshall Heather with a wand). By vote, the ASBA response was limited to a public statement condemning the act.

The court created a team to assess the security of the courts, but the ASBA was not invited to join or offer input. Judge Ward invited comments by the ASBA regarding specific projects related to security, but a proposed letter to be drafted by James Zarones never materialized. However, one of Judge Ward’s recommendations, to start mediation on the island, was acted on with the creation of a mediation committee.

Regarding natural disasters, the CJ released a memo stating that where the threat of a natural disaster looms, attorneys and their clients must use “individual judgment” to determine whether to appear at court.

**Recommendations**

ASBA is limited in its abilities without more open dialogue with the judiciary.

SCHOLARSHIP

The ASBA awarded a $1,000.00 scholarship to Lornalei Meredith for the 2010-2011 academic year. Special thanks once again to Jennifer Joneson for handling the scholarship.
LAW LIBRARY

The law library remains closed due to the 2009 tsunami. Most of the library is in storage, but some is accessible. The court clerks can provide access to the available library, and if a specific book is requested, they can retrieve it. Cheryl Morales, the librarian at the Public Library, offered to store the books in a room there, but requested that they be publicly accessible. CJ was approached with this idea by the Vice President, but CJ decided to maintain access through the clerks.

JUDICIAL COUNCIL

The President wrote to CJ regarding the creation of the judicial council. There was no response from CJ. The clerks followed up, but were unable to get a direct response. During a meeting with Judge Ward, he indicated that there is no judicial council and that there will not be one.

CONSTITUTIONAL CONVENTION

The Constitutional Convention received recommendations from the ASBA during the 2009-2010 reporting year. The “ConCon” was held in June 2010 and amendments to the Constitution were agreed upon. However, when the amendments were put to the public for vote as an all-or-none package, the public voted them down.

DOG LAW

The ASBA teamed up with the American Samoa Humane Society to put on a panel discussion entitled, “Dog Law: Vicious Dogs, Your Rights and Responsibilities.” The panel explained the laws regarding vicious dogs, including what remedies victims have and what liabilities the owners may face. The panel also created a Q&A pamphlet for dissemination which is now posted on the bar website.

The event was a success and showed that the ASBA could team up with another organization to educate the public on a focused field of law. The joint program allowed for decreased costs, increased publicity, and increased participation. For example, in the end the ASBA spent no money on the program. The Humane Society had media opportunities, such as a radio ad, and a special deal with Samoa News on ads. The Territorial Librarian is a Humane Society member, so offered the library as venue, and provided food. The joint operation also helped identify topics of interest to the public.

Recommendations

This format of joint events works well and should be used again in the future. There are many organizations that have expressed interest in doing these kinds of events in the future.
COMMITTEE REPORTS

The ASBA has both standing committees established through the Constitution, and special committees created by the President for certain tasks.

STANDING COMMITTEES

CONTINUING LEARNING EDUCATION

Steph Berens and Kelly Smith

The Continuing Learning Education committee looked into various ways of providing CLE credits to the members of the American Samoa Bar Association. While there are a number of mediums available for CLE credits, such as playing a purchased audio or video CLE, having the units count towards for bar members’ home state proved difficult due to the limited number of written materials accompanying the CLEs (i.e., one set). Based on advice from the bar, the CLE committee determined that the focus of the CLE committee should be directed towards providing local practitioners with updates of American Samoa law and procedure, regardless of whether the credits transferred.

To facilitate local CLEs, the committee met with Associate Justice John L. Ward and discussed a number of options. Brown-bag lunch CLEs, where a member of the judiciary would discuss local law and local practicing tips were thrown out as possible ideas. Judge Ward also mentioned the possibility of the Court funding a CLE to be presented by off-island judges. Though this meeting provided ample ideas for possible CLEs for local members of the bar, none of the ideas have moved past the idea stage. In addition, individual bar members would have to petition their home state to have any CLE done here count towards any other requirement they may be facing.

The committee originally found it difficult to find CLEs that would provide credits to the American Samoa Bar Association members in their home state. Once it was determined to focus on just educating and informing local practitioners of changes in the laws and procedures of American Samoa, more attainable goals were set. More follow up with Judge Ward is needed to put the ideas into motion.

LAW REFORM

Fa’amomoi Masaniai, Aaron Masser, and Sean Morrison

The Law Review Committee continued to lobby on behalf of the Title 13 and 46 changes that were adopted by the ASBA in 2009. Moi was particularly effective with lobbying. Based on advice from Rep. Archie Soliai, the committee took a new strategy of attempting to get individual section changes rather than a complete overhaul.

Recently, Moi met with the Speaker of the House and the President of the Senate regarding the revisions to Titles 46 and 13. They were both provided with a copy of the revisions and a summary indicting the intentions of the committee, our experience working with the statutes, the recent court rulings on the constitutionality of some of the statutes, and the need to revise these laws.
They received the information with enthusiasm and indicated that they would need to review our proposals prior to providing us any feedback. The Senate President was pleased with the ASBA's willingness to take action and welcomed additional support from the Bar.

These efforts, added to previous efforts to gain the support of others like Reps. Larry Sanitoa and Archie Soliai, are building a base of support for the revisions. Unfortunately, none of the proposed changes were adopted by the Fono as of the date of this report. The committee remains committed to reforms, and is already looking for new areas that can be improved.

ETHICS AND GRIEVANCES

Nathan Mease, Kelly Dixon, and Doug Fiaui

Complaints Received

During the period of this report, the Ethics Committee handled three complaints regarding attorneys licensed by the American Samoa Bar Association. Two of the complaints were given to the committee directly from the Chief Justice. One of the complaints was received from the complainant directly. The case that was received from the complainant directly was referred to the Chief Justice prior to any action being taken.

Recommendations

The committee encountered several difficulties in the execution of its functions during this reporting period. The committee believes some of these difficulties could be resolved through the development and implementation of standardized procedures for ethics complaints. Development would involve working directly with the Judiciary in revising the current High Court Rules to address this issue. The reform process should also address a mechanism for the public to easily submit complaints and to access the formal disciplinary records of ASBA attorneys. Regardless of the outcome of HCR reform, it is necessary to develop and implement standard operational procedures for the committee once it has received a complaint; be it from the public or the Chief Justice. These procedures should be transparent and available to all members of the Bar and the public at large. Once developed, adherence to these procedures by both the committee and the ASBA attorneys is imperative for the proper self-regulation necessary in the legal profession.

OUTREACH

Doug Fiaui (webmaster) and Jennifer Joneson (scholarship)

Updates regarding the website and scholarship and discussed in the ASBA’s annual report above.
SPECIAL COMMITTEES

ADMISSIONS

Roy Hall

The bar gained 11 new members over the last year, and lost 10 members, most of whom were old members off island. However, some of the new members have already left the island. This brings the total active, on-island membership to 49 members.

CONSTITUTION AND BY-LAWS

Sean Morrison, Kelly Smith, and Doug Fiaui

The committee sought to tackle the problem of quorum. The current requirement is 10 members present, which is often difficult to achieve. Failure to meet quorum often holds up important business, especially since meetings are only held once per month. After researching other jurisdictions, including smaller jurisdictions such as Guam and CNMI, the committee recommended an amendment to change the static number of 10, to a dynamic 20% of on-island members.

Recognizing the potential need for an ABA Delegate should one be granted to American Samoa, the committee proposed an amendment to the Constitution and By-Laws. The Constitutional amendment would add an ABA delegate to the list of officers and make the term of office for two years, in order to meet ABA requirements. The By-Laws would have mirroring amendments.

With the advances of technology, the ASBA’s old notice requirements become cumbersome. “Snail mail” is expensive and rarely used in today’s society. Therefore, the committee offered a bill, submitted as an amendment, to interpret the meaning of the bar’s notice requirements to include e-mail, and other forms of communication.

MEDIATION

Sean Morrison, Terrie Bullinger, Kevin Kornegay, and Jeremy Dubyak

Based on a letter from Judge Ward, the ASBA created a Mediation Committee to look into establishing alternative dispute resolution in the Territory. Research was conducted and a meeting with Judge Ward occurred. During the meeting Judge Ward laid out the judiciary’s plans, which apparently were created about 10 years ago. During that time, the ASBA had submitted comments to proposed rules, but somewhere the plan died. Judge Ward provided those old rules, as well as the comments. Review of those rules is ongoing.

Recommendations

Renew the committee. The committee should review the old rules again, and submit comments or a new draft of rules for the court’s consideration.
OTHER ORGANIZATIONS

LEGAL AID BOARD

Terrie Bullinger, Mitzie Folau, and Falefatu Alailima-Utu

The Legal Aid Board is an independent non-profit corporation working on obtaining sufficient board membership to apply for 501(c)(3) status. The prior board initiated the application with Marshall Ashely. An application and plan was submitted by Terrie Bullinger to the Legal Services Corporation (LSC) prior to the June 2010 deadline. However, the current board discovered that the IRS application was incomplete, and further action could not be taken without a quorum and application fee.

In September 2010, Julia Harty resigned as a board member and a request for $800 was made to the ASBA for 501(c)(3) filing fees. The ASBA declined a gift, but agreed to loan the $800 fee during the September 2010 meeting. The ASBA has not paid the money to the board, but will do so when the IRS application is filed.

In January 2011, Falefatu Alailima-Utu was added to the board, giving the board quorum once again. The board still requires two “client representatives” before the IRS application may be submitted. The IRS application does not be approved, just submitted, prior to making a legal aid grant application to LSC. The process for 2011 begins in May 2011.

THE BAR JUSTICE FOUNDATION

Jennifer Joneson and Gwen Tauiliili-Langkilde

The American Samoa Bar Justice Foundation is a non-profit organization incorporated under the laws of American Samoa. It was organized to promote education and awareness of American Samoa laws. The Justice Foundation does not yet have 501(c)(3) status, and has two empty board seats.

The Justice Foundation’s largest project was the digitization of American Samoa laws for publication on ASBAR.ORG. This was granted to the Justice Foundation by the Institute of Museum and Library Services. Cheryl Morales, the Territorial Law Librarian, is the grant administrator for these funds. This grant still has $5,652.95 that can be used for legal publication and website upgrades.

### Assets

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### Liabilities

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### Net Gain or Loss

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### Previous Year (April 30)

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### Account Balance

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*The ASBA also has an available keg of Vailima from the 2008 Christmas party.