

2011-2012

American Samoa
Bar Association



President:	Sean Morrison
Vice President:	MitzieFolau
Treasurer:	Kevin Kornegay
Secretary:	Blake Hanley

[ANNUAL REPORT]

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ANNUAL MEETING AGENDA

Adoption of prior minutes and agenda

Officers' Reports

- President'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

- Adoption of Strategic Plan

New Business

- Official Launch of ASBAR.org

Elections

- President
- Vice President
- Treasurer
- Secretary

ANNUAL REPORT

The 2011-2012 year proved to be a great year for the American Samoa Bar Association. The Bar focused on improving services for its members and the public at large. We re-asked what it means to improve the administration of justice in the territory, and ended up with some important answer. For the first time in its history, the Bar has a seat in the American Bar Association House of Delegates and the territory is recognized in the world's largest professional organization. Recognizing that relationships with other professional organizations is vital to our success, the Bar is also reaching out to the South Pacific Lawyers Association. 2012 is also the Bar's 40th Anniversary. In celebration, the Bar is looking toward the next 40 years. As such, the Bar is introducing a five year strategic plan, which outlines the goals for the Bar and actions to obtain them. A new ASBAR.org has been unveiled that hopes to improve communication and legal research for all members. Finally, many new events were introduced that will set the stage for years to come. This report outlines the issues and projects that the Bar worked on during the year.

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 began years ago under the initiative of Jay Foonberg, who obtained an honorary ASBA membership after a CLE event on island. The initial attempt was a resolution in the ABA House of Delegates to give American Samoa a delegate. The House of Delegates tabled the resolution pending a report by the ABA Admissions and Credentials Committee. The following year the Committee, under the Chair C. Elisia Frazier, submitted a report recommending a delegate for each of the U.S. Territories. In 2010, ABA Constitutional amendment 11-2 was put before the House of Delegates. Ms. Frazier was a strong supporter, as were the delegates and representatives from the other territories. Governor Togiola even appeared and spoke to the House. Unfortunately, the amendment failed by three votes.

2011

After the failed vote in 2010, those interested in the amendment began early building support from key ABA figures, and the amendment was put back before the House of Delegates in 2011. Unfortunately, nobody from American Samoa was able to attend the ABA Annual Meeting in Toronto, Canada in 2011. However, robust lobbying efforts were conducted remotely. Members were encouraged to reach out to delegates from their home states for support. A letter writing campaign was conducted, including support from the Governor, CJ, and others. The Bar adopted a resolution in support of the proposed amendment and elected Charles Alailima to act as delegate should the effort be successful.

At the meeting, the islands worked tirelessly for admittance. Jay Ariola of Guam was particularly effective and a strong champion of the cause. In the end, the ABA voted in favor of the amendment granting all the territories one delegate each, including American Samoa.

Charles Alailima is American Samoa's first ABA delegate, and attended the ABA mid-year meeting in New Orleans, Louisiana in February 2012. He was able to meet the other island delegates and sit in on the islands caucus. The islands are working together to formulate a resolution.

Recommendations

The ABA offers a lot in services and support, and the Bar should use the delegate as an opportunity to bring those resources to American Samoa.

ASBAR.ORG

ASBAR.org got a complete overhaul in 2012. Through ARRA stimulus funding, the Bar was able to secure a contract with Koa Hills for \$30,000. The new ASBAR.org is built on the most common content management system, Joomla. As an open source program, Joomla allows the Bar to easily maintain the site while leaving significant room for upgrades and modules in the future. Further, it's easy enough to use that a bunch of lawyers can do it. As in the past, ASBAR.org continues to be the only online source of American Samoa law, however, now it has increased research capabilities. With a focus on topic organization and a dynamic digest, ASBAR.org will make legal research much more user friendly to the Bar members.

Unfortunately, \$30,000 is not much for website development, and much more work remains to be done. Most important is compilation of the dynamic digest, requiring a team to go through the cases and recreate the digest in the system. A deal has been made with the High Court to release important cases as they are finished, especially the Appellate decisions. These can be input into ASBAR.org, headnoted, and will be ready for display and research in the site.

Phase 1 – Complete input of Code Annotated and Administrative Code into Joomla.

Phase 2 – Redo the ASRs in the appropriate format.

Phase 3 – Begin input and headnoting of unpublished cases.

Phase 4 – Continue updates through the Legislative reports, agreement with the Lt. Governor's office, and cases as they are released.

PUBLICATION OF LAWS

Case Law

The Bar worked very closely with the High Court to ensure the publication of new ASRs. Last year, the Court indicated that 6 ASR3d, which had been pulled for further edits, would not have new edits, and the old version is the final version. In the beginning of 2012, the Court finally released 8 ASR3d, which covers the first half of 2004. Further, the Court clerks indicated that 9 ASR3d would be available by August when their term ended, with subsequent ASRs coming out on an annual basis. 9-12 ASR3d were completed by off-island consultants, yet are still awaiting publication. The Court lacked the funds necessary to publish hard copies of 8 ASR3d, so the only publication is online through ASBAR.org. Importantly, the Clerks indicated that CJ was willing to allow the Bar to post unpublished cases online even before they are compiled in an ASR.

This year, the Court has been sharing the Appellate decisions in pdf as they come out. These have been posted on ASBAR.org through an unpublished cases section in Legal Resources. Similarly, the District Court has begun releasing its decisions, which will add tremendously to the case law of the territory. The Bar does have early versions of 9-12 ASR3d in its ftp server, and these can be used to publish the cases online as unpublished cases.

Code Annotated

The Fono is still working on their website that will have the final version of the ASCA online, along with legislative records, and the bill process. The Fono's project also contemplates compiling the Code in Samoan. There is no specified date as to the launch of this site. The Fono is awaiting the construction of their IT building to continue. The ASBA should continue to get the latest updates from the Fono. Once the latest version of the Code is input into ASBAR.org, then regular updates through the legislative reports should suffice to maintain the website. The ASBA should contemplate doing its own Samoan Code compilation.

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. The Bar has continued the piece-meal collection of 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 for publishing the laws. Suggested projects include compiling the code in Samoan (since the Fono project will never finish), hiring interns to input the collected materials into ASBAR.org, and purchasing minor equipment (scanners, etc). The Bar should work on creating formal MOUs with the Fono and Lt. Governor's office to have them send final versions of the codes to the Bar. Nat Savali has indicated that he would be willing to work with the Bar on such an agreement.

STRATEGIC PLAN

The ASBA compiled its first Strategic Plan. The Plan outlines the goals, objectives, and strategies for implementation for the next five years of the Bar's operations. The process included a membership survey, a strategic planning retreat, and numerous comments on plan drafts.

Recommendations

The Bar should implement the strategies in the Strategic Plan.

SCHOLARSHIP

The ASBA awarded a \$1,000.00 scholarship to JanelleEtelagi for the 2011-2012 academic year. \$200 was also sent to the other two applicants, Lornalei Meredith and MacieTuiasosopo. Special thanks once again to Jennifer Joneson for handling the scholarship.

40TH ANNIVERSARY LAW CONFERENCE

Prior to the Annual Meeting on April 28, 2012, the Bar hosted its first annual Law Conference, celebrating the 40th Anniversary as well as an early Law Day. The event was hosted at the ASCC Lecture Hall. Speakers included Judge Elvis Patea on case management in the Court, Roy Hall on the history of the Bar, and a panel discussion of the effects of citizenship on American Samoa. The panel consisted of Charlie Alailima, Falefatu Alailima-Utu, and Afoa Lutu, moderated by Nate Mease. During the event, Sharron Rancourt presented Ipu Lefiti with the first annual Arthur A. Morrow Justice Award.

JUSTICE AWARD

The ASBA established the Arthur A. Morrow Justice Award to be presented annually to an individual or organization that has brought a significant contribution to justice and the rule of law in American Samoa. A call for nominations, including those from the public, went out at the beginning of 2012. At the March meeting, the ASBA voted Ipu Lefiti as the first recipient. Ipu was presented the award at the Law Conference.

CITIZENSHIP: THE CONSTITUTIONAL ACCOUNTABILITY ASSOCIATION

The Constitutional Accountability Association (CAC) contacted the ASBA about a federal case they were filing that challenged the lack of citizenship for the territories. Essentially, it argues that the territories are included in the definition of "United States" in the 14th Amendment, thus all those born in the territories are full Constitutional Citizens of the U.S. This issue has raised fears in the Territory that other clauses of the 14th Amendment would also apply, such as equal protection, which would undermine the cultural system in place.

The Bar hosted the lead CAC attorney on this case, Neil Weare, at a social gathering at Maliu Mai, where members were given the opportunity to question him regarding the case. It led to a lively discussion on the intricacies of the 14th Amendment and local case law. This conversation continued in the press, with Congressional Representative Faleomavaega Eni Hunkin coming out opposed to the case. The Bar hosted a panel discussion on this topic and the effects of citizenship on the cultural system in American Samoa during its Law Conference.

MOCK TRIALS

The ASBA worked to begin a mock trial competition at ASCC. The college was chosen over the high schools as being more practical due to less teams to manage. There were many obstacles in organizing such an event. The most important was the difficulty in scheduling. Attorneys, who would help train the kids, were unable to come to the school during the day, while the kids could not stay after hours due to family demands. General organization was lacking, and it was difficult to get volunteers to come together when necessary. For these reasons, no mock trial occurred during the term.

However, the Bar has formed a close relationship with the Criminal Justice division at ASCC. With the help of Dennis Fuimaono, who is very dedicated to this project, and the recent addition of Lupe to the Bar, it is expected that a mock trial competition can be held before Thanksgiving during the Fall 2012 semester. Lupe has indicated that he will manage the project on behalf of the Bar.

SOUTH PACIFIC LAWYERS ASSOCIATION

The President and Vice President opened the line of communication with Raymond Schuster, the President of the Western Samoa Law Society. Mr. Schuster is also an active member of the newly established South Pacific Lawyers Association (SPLA). The group is made up of Pacific Island nations and is headquartered in Australia. The SPLA would be a great fit for American Samoa, and according to Schuster, they would be open to having ASBA join. The SPLA offers key benefits, such as a forum for island nations with shared issues to discuss, possible funding for things like bar association offices and executive directors, and an international lobbying effort. The President wrote twice to the Chairman of the SPLA, but never heard back. However, through Schuster, the SPLA is informed of our interest. The ASBA should seek to join the SPLA, as they have similar issues to American Samoa, and can offer new opportunities for assistance and collaboration with other islands.

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

Blake Hanley

Unfortunately, the Continuing Learning Education committee remained vacant for the entire term due to lack of volunteers to take on the duties. However, the Bar Secretary, Blake Hanley, did arrange the first Brown Bag Lunch Series event with Judge Ward on November 3, 2011, at the District Court.

For the Brown Bag Lunch, Judge Ward covered the following subjects over a period of one hour: Criminal procedure, recent Supreme Court cases, pleading and procedure format, and ethics. The Secretary created "Certificates of Attendance" for those attorneys that wanted to submit this lecture as potential CLE credit.

Recommendations

We first need a CLE Committee that will take an active approach in arranging CLE events. The CLE Committee must not only organize CLE events, but also compile standard paperwork for attendees that they can then use to apply for their own CLE credits in their home jurisdictions. The CLE Committee should also put together criteria for certifying CLEs. Creativity is the name of the game, and the Committee can also look to using technology to provide webinars, or even using off-island members as speakers.

LAW REFORM

Aaron Masser, Sean Morrison, and Camille Philippe

The Law Reform Committee continued to advocate for the proposed revisions to Titles 13 and 46, but no bills were passed with the recommendations. The ASBA attempted a new project, to review and revise the business laws of the Territory. Talks have been had between the President and the Chamber of Commerce, however, no drafts have been completed. There was one Fono request for an ASBA opinion, for SB 32-31, which would have allowed the winner in a matai title case to recover attorney fees from an appeal, and prohibiting any matai titles from being bestowed until all possible judicial remedies had been exhausted. The President testified to the Fono in opposition to the bill. Rep. ToeainaAutele expressed a lot of interest in increasing ASBA participation in the legislative process.

ETHICS AND GRIEVANCES

Nathan Mease, Doug Fiaui, Jennifer Joneson, and Joe Everett

The Ethics Committee continued its work reviewing complaints. During the year, they also reviewed the grievance process to seek out possible solutions to some of the issues that have been plaguing the legal community in American Samoa regarding professional responsibility. The Committee is currently working on a report on this matter.

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 7 new members over the last year, and lost 11 members. However, a number of members were removed from the rosters because of nonpayment of dues, and many of them sought reinstatement. A process is being developed to easily apply for reinstatement when membership is lost for nonpayment of dues.

The total membership is at 105, with 62 active, on-island members.

CONSTITUTION AND BY-LAWS

Sean Morrison, Kelly Smith, and Doug Fiaui

A vote was held on a Committee recommendation to a dynamic 20% of on-island members. This proposal was rejected with a preference to simply drop the number of members required for quorum from 10 to eight. However, no follow up on this proposal has been conducted. Interestingly, the Bar has not missed a meeting due to lack of quorum since this vote took place.

MEDIATION

Blake Hanley, Sean Morrison, Terrie Bullinger, Kevin Kornegay

Judge Ward sent a letter to ASBA along with proposed rules for a mediation program to operate in the Territory. The letter and the proposed rules were emailed to the Alternate Dispute Resolution (ADR) Committee.

After review of the Court's materials, it is this Committee's position that the proposals are unworkable. Specifically, the requirement that a mediator must be an attorney limits the amount of eligible mediators, endorses a non-Samoan ADR Program (most attorneys on island are non-Samoan), and shuts out the possibility of non-attorney mediators (which are often better mediators than attorney-mediators).

As we understand mediation, the process is based on what the parties think is fair and is an attempt to come to a mutually acceptable agreement – not necessarily what the law demands. Further, the proposed rules suggest that the mediator report to the Court about the circumstances of the mediation. It is our position that the mediations must be confidential to promote a safe zone in which parties can speak freely and honestly without fear of compromising their case. With the exception of notification to the Court of whether an agreement was reached (and the contents of that agreement), anything else absent of fraud or physical violence should remain absolutely confidential.

Recommendations

We recommend that the Court's proposals be wholly abandoned for the reasons stated above. We recommend starting from the California mediation rules and making necessary changes to account for the culture and the needs of American Samoa. We suggest setting up a mediation class at ASCC and as part of the class, have students conduct both court and community mediations (for example: small claims court, Samoan Affairs, etc).

OTHER ORGANIZATIONS

LEGAL AID BOARD

Terrie Bullinger, MitzieFolau, and FalefatuAlailima-Utu

The Legal Aid Board is an independent non-profit corporation working on 501(c)(3) status. In September 2010, the Board requested an \$800 loan from ASBA for 501(c)(3) filing fees, which was agreed to. The actual cost of the filing fee is \$850, and ASBA has set aside that money in its budget. The ASBA has not paid the money to the board, but will do so when the IRS application is filed.

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 ASBA has set aside \$850 in its budget to cover the filing fees.

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.

FINANCIAL REPORT

2011-2012 marked the first year the ASBA provided online dues payment options through PayPal. 26 people took advantage of the service at a cost to the ASBA of an average of 3.4%, or about \$62. The added convenience to the member of online payment options far outweighs the costs, and the service should be continued.

Annual Financial Report FY2011 (May 1, 2011 - April 30, 2012)

Assets

Income (Dues)	\$ 8,219.33
Other	\$ 328.33
Total	\$ 8,547.66

Liabilities

Christmas Party	\$ 2,747.00
Scholarship	\$ 1,580.00
Meals	\$ 2,903.38
Outstanding Debts	\$ 2,005.00*
Misc Expenses	\$ 1,573.87
Total Expenses	\$ 10,809.25

Net Gain or Loss **\$ (2,261.59)**

Previous Year (April 30) \$ 10,030.51

Account Balance **\$ 7,768.92**

* Debts include \$850 each set aside for the 501(c)(3) filing fees for the Bar Justice Foundation and the LSC Legal Aid.