

**BOARD OF BAR COMMISSIONERS
OCTOBER 21, 2022 MEETING MINUTES
State Bar Center, Albuquerque, NM
In Person and Zoom**

MEMBERS PRESENT:	Erin M. Atkins Daniel J. Behles Allison H. Block-Chavez Aja N. Brooks Catherine A. Cameron Sean M. FitzPatrick Connie J. Flores Parker B. Folse Tomas J. Garcia Robert Lara David P. Lutz	Carla C. Martinez Mitchell Mender Jessica A. Perez Brett Phelps Linda Sanders Joseph F. Sawyer Simone M. Seiler Benjamin I. Sherman Lucy H. Sinkular Elizabeth J. Travis Carolyn A. Wolf
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MEMBERS ABSENT: Olga Serafimova

OTHERS PRESENT:	Kris Becker Hon. Carl Butkus Andrew Cloutier Melissa Kountz Bill Kramer Pam Moore	David Powell Stormy Ralstin Bill Slease Richard Spinello Maria Tanner
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I. CALL TO ORDER

A. Meet and Greet with Staff and Tour of the Building

The Board met the staff and received a tour of the building and departments.

B. Approval of August 11, 2022 Meeting Minutes

Commissioner Brooks made a motion to approve the August 11, 2022 meeting minutes; the motion was seconded and it passed.

II. STRATEGIC PLANNING

A. 2023 Proposed Budget Presentation

The Finance Committee met the day before the Board meeting and received a presentation on the proposed 2023 Budget. A deficit budget and a balanced budget with a \$15 dues increase were provided to the committee. After discussion, the committee recommended approval of the Budget with a \$100 increase to the SLD Budget and a dues increase of \$20, and the revised Budget was distributed to the Board. Director of Finance David Powell went through the variations in the revenues and expenses. Secretary-Treasurer Erin Atkins made a motion out of Finance Committee to approve the 2023 Budget with the \$100 increase in the SLD Budget and the \$20 licensing fee increase, with the additional increase in dues to be allocated to the strategic plan efforts to provide case summaries to the membership, and the motion passed.

B. 2023-2025 Three-Year Strategic Plan

A draft of the Strategic Plan was presented at the August meeting. There being no further discussion, Commissioner Perez made a motion to approve the 2023-2025 Strategic Plan; the motion was seconded and it passed. Management will now work on an action plan for implementation.

C. BBC Survey Results

Following the retreat, a survey was sent out to the Board regarding meeting logistics, and the survey results were included in the materials. The officers will look at the results more closely and implement changes, as necessary.

III. ACTION ITEMS

A. 2023 Officer Elections

At the August meeting, Commissioner Brooks was nominated Secretary-Treasurer and Commissioner Atkins was nominated President-Elect. The nominations were uncontested. Commissioner Garcia made a motion to elect Commissioner Brooks as Secretary-Treasurer for 2023; the motion was seconded and it passed. Commissioner Garcia made a motion to elect Commissioner Atkins as President-Elect for 2023; the motion was seconded and it passed.

B. Executive Session

Commissioner Atkins made a motion to go into executive session to discuss a personnel issue; the motion was seconded and it passed.

C. Client Protection Fund Commission Request Regarding Random Audits of Trust Accounts

Client Protection Fund Commissioner Andrew Cloutier attended the meeting to report on the Commission's request regarding random audits of trust accounts. In recent years, the Commission has reached the point of almost all of their claims being paid out because lawyers don't have sufficient funds in their trust accounts to cover unearned fees.

Commissioner Atkins stated that there are a significant number of claims from attorneys that have to do with the deaths of the attorneys and they didn't have trust accounts at all, so she's not sure that random trust account audits would resolve this. She is concerned that while we are a self-governing group, random audits might not be effective. There are a lot of unknowns at this time and the matter should be further investigated before we support it.

Commissioner Travis reported that the Disciplinary Board discussed this issue and did not reach a decision and are going to be requesting more information.

Bill Slease, former Disciplinary Board Chief Counsel, stated that this issue came before the Disciplinary Board several years ago, and he thinks a compliance program is a good idea for a Bar. The answer six years ago was to provide education and now attorneys have to take the trust accounting class, which is a good first step. The word audit is charged. He suggested looking at it from the perspective of it's a proactive measure.

Mr. Cloutier stated that the CPF Commission had some of these discussions on the program and they aren't proposing any sort of rule on what this would look like; maybe the request should be whether the Board would support a Supreme Court task force looking into these issues. Commissioner Atkins stated that she supports creating a task force since we don't have enough information to support it at this time. Commissioner Folse stated that the Board should be involved in the process; it needs to be the primary point of how it's created and what it would look like.

Following discussion as to whether the issue should be referred to the Executive Committee, a task force or a special committee, Commissioner Sinkular made a motion to refer the issue to the Executive Committee to decide the best process; the motion was seconded and it passed. Mr. Cloutier noted that they aren't going to send anything to the Supreme Court at this time, so they don't have a specific timeline.

D. ATJ Fund Grant Commission Reappointment of Chair Donna Connolly

Commissioner Sherman made a motion to reappoint Donna Connolly to the ATJ Fund Grant Commission for an additional three-year term; the motion was seconded and it passed.

E. New Mexico Legal Aid New Process and Appointments

There were four items presented to the Board from New Mexico Legal Aid:

1. New Appointment Process, Application, Job Description, Q & A, Notice in Bar Bulletin, and Memo re: Appointees
2. Reappointment of Current Member for the 3rd Congressional District—James C. Martin
3. Appointment of Member to Vacancy for the 2nd Congressional District—Joseph M. Zebas
4. Appointment of Member to Vacancy from the Indian Law Section—Hon. Timothy David Eisenberg (ret.)

New Mexico Legal Aid proposed a new process for appointments to their Board, which was included in the materials, as well as applications for two vacant positions and one reappointment. Commissioner Sinkular made a motion to refer the new appointment process to the Policy and Bylaws Committee for a recommendation; the motion was seconded and it passed. Commissioner Lara made a motion to appoint all of the candidates recommended by New Mexico Legal Aid; the motion was seconded and it passed.

IV. COMMITTEE REPORTS

A. Executive Committee Report

President Wolf reported that the committee met on October 12 to review the agenda and had a brief presentation on the 2023 Proposed Budget.

B. Finance Committee Report

The Finance Committee met the day prior to the Board meeting, and Secretary-Treasurer Atkins reported on the following:

1. Approved the August 10, 2022 Meeting Minutes;
2. CLA proposed an increase to their Audit and Tax Prep Rates for 2023 and the committee recommended that the Board direct staff to negotiate with CLA starting at 15 percent and if a counter is made, to accept that amount; Secretary-Treasurer Atkins made a motion to approve the committee's recommendation and the motion passed;
3. 2023 Proposed Budget Presentation; this item was previously approved under Strategic Planning;
4. The committee discussed the Reserve Funds and recommended approval for management to create a policy for the surplus funds at the end of the year to automatically roll over to the reserve fund for the committee's consideration; Secretary-Treasurer Atkins made a motion to approve the recommendation and the motion passed;
5. Reviewed the highlights in the revenues and expenses in the September 2022 Financials and recommended approval; Secretary-Treasurer Atkins made a motion to accept the September 2022 Financials and the motion passed.

C. Policy and Bylaws Committee Report

The Policy and Bylaws Committee met on October 7, and Co-Chair Sherman reported on the following:

1. YLD Bylaw Amendments

The YLD requested amendments to their bylaws to remove the age requirement. The previous requirements were that members be under the age of 36 and less than five years in practice and are now 10 years of practice, regardless of age. Chair Sherman made a motion out of committee to approve the amendments to the YLD Bylaws and authorize management to ask the Supreme Court for a rule change to match the Bylaws, and the motion passed.

2. Licensing Renewal Waiver Policies

Co-chair Sherman reported that the committee looked at the draft licensing renewal waiver policies. They explain and define what extreme hardship is, which includes financial, medical and other extreme hardships. They also contain deadlines for when a requested waiver of the late fee can be made. General Counsel Ralstin reported that last year was the first year using the new rule that combined licensing and MCLE compliance. Going through the process, staff found that the lack of definitions in the rule made implementation difficult, and therefore proposed policies to remedy the problems they faced.

Co-chair Sherman stated that the committee also discussed who would have the authority to find extreme financial or medical hardship, which would lie with the Board. As far as excusable neglect for filing after February 1, the executive director would have the authority to make that determination to waive the late fee. Commissioner FitzPatrick noted that pursuant to Rule 24-102, the Board could waive the MCLE requirements if it wanted to, but this policy says that we won't do that, so he feels that should be left open-ended. Additionally, he noted that a waiver for extreme medical hardship shouldn't be defined on a time basis.

General Counsel Ralstin stated that the rule does allow the Board to waive MCLE requirements, but the proposed policies do not allow the Board to waive MCLE requirements. Commissioner Atkins expressed concern that this is one of the Board's responsibilities, but we're making a policy that says we're not going to follow the rule, and this policy is limiting the Board's authority. General Counsel Ralstin stated that the rule says the Board may waive the requirements, but it doesn't say they have to.

Commissioner Sinkular made a motion to amend the policies to include a paragraph that the Board reserves the authority granted to it to consider full waivers. Co-chair Sherman stated that other changes were needed, so the Board needed to vote on the motion out of committee first and then it could be sent back to the Policy and Bylaws Committee. Co-chair Sherman made a motion out of committee to approve the policies as drafted; following a vote, the motion failed. Commissioner Sawyer made a motion to send the policies back to the Policy and Bylaws Committee; the motion was seconded and it passed.

3. Late Fee Waiver Forms

The late fee forms also include language that the Board does not waive MCLE requirements, so based on the action that was previously taken, they are inconsistent and need to be amended. Co-Chair Sherman made a motion out of committee to approve the forms; following a vote, the motion failed. Commissioner Lutz made a motion to forward the forms back to the committee; the motion was seconded and it passed.

4. Rule 18-204(C)(1) Provider Application Forms for Legal Service Providers and Working Boards, Committees or Commissions

Co-Chair Sherman made a motion out of committee to approve the forms for pro bono credit for legal service providers and working boards, committees or commissions. The motion was seconded and it passed.

D. Governmental Affairs Committee Report re: Request to Support H.R. 4436, the Daniel Anderl Judicial Security and Privacy Act of 2021

Commissioner Martinez reported that in her position as the immediate past president, she chairs the Governmental Affairs Committee (GAC). The committee met on September 20 and considered a request from the New Jersey State Bar Association to send a letter to the New Mexico congressional delegation asking for their support of legislation to protect judicial officers. As required by the bylaws, this is action that needs to be approved by GAC. The committee approved for President Wolf to send a letter to the congressional delegation requesting their support of the legislation, and a notice was published in the Bar Bulletin notifying the membership.

E. Bar Center Committee Report

Bar Center Committee Chair Tomas Garcia reported that the committee met on October 14 and reviewed some spaces in the Bar Center in need of repairs or updates and discussed potential projects for the building. The committee will be looking at those things over the next year, since the State Bar now has a long-term plan for the reserve fund for these building improvement projects. The committee also received a request from the NREEL Section to display two plaques for awards at the Bar Center. Space is limited in the Bar Center and other sections may make the same request, so the committee discussed implementing a policy that would establish some guidelines and parameters. Commissioner Wolf made a motion to authorize the drafting of the proposed policy for the Board's consideration at the December meeting; the motion was seconded and it passed.

V. INFORMATIONAL ITEMS

A. State Bar President Report

President Wolf reported on the following:

1. Judicial Nominating Commissions

There have been a couple of Balancing Committees since the August meeting.

2. Compilation Commission Meeting

As president she serves on the Compilation Commission; they met twice to review the RFP for the publisher of OneSource and the Rulebooks and traffic, criminal law and tax manuals. They reviewed the contracts and approved continuing with the current vendors and the contract for the annotations.

3. Judicial Compensation Commission Meeting

She also serves on the Judicial Compensation Commission, and this year the Commission is recommending that the legislature adopt the bill that passed last year that ties judicial compensation to federal magistrates, which will get the salaries for district court judges to \$167,000.

4. New Admittee Swearing-in Ceremony

She attended the first live swearing-in ceremony since COVID at the law school.

5. Visit to Alamogordo

She visited Alamogordo and spoke to members of the local bar.

6. Executive Director Contract Update

This was discussed previously in executive session.

B. State Bar President-Elect Report

President-Elect Ben Sherman reported on the following:

1. 2023 Meeting Schedule—February 24, May 12, July 27 (Hyatt Regency Tamaya, in conjunction with the Annual Meeting), October 13, December 6 or 13 (Santa Fe, TBD by Supreme Court)
2. The Swearing-in Ceremony for the new officers will be held at the Inn & Spa at Loretto with a reception following.
3. The current BBC internal committee roster and the sign-up sheet for the 2023 committees were distributed for commissioners to volunteer to serve on next year.

C. Supreme Court Board and Committee Liaisons

The current Supreme Court Board and Committee liaison roster was distributed, and commissioners were requested to notify staff if they wanted to continue on the current committee or make a change for next year.

D. NM State Bar Foundation President Report

Judge Butkus thanked the commissioners for their efforts in finalizing the revised MOU. He noted that the indemnity provision still needs to be addressed, and both entities need to look at it and make a recommendation. The fundraising consultant is coming out to meet with the Foundation Board at its next meeting in November. He also noted that the expanded VAP program is up and running, and he hopes the funding, which is recurring but needs to be voted on annually, will continue for the program.

E. Executive Director Report

Executive Director Spinello's written report was included in the materials. He reported that the Judicial Performance Evaluation Commission completed its work on judicial retentions and asked for the report to be distributed to the board. The new organizational chart with the recent staff changes was included with his report. There were five judicial districts with open positions on the Board, and three districts were contested so they will have elections. The elections open on November 9 and close on November 30 at noon. A friendsgiving potluck with staff will be held on November 9 and certificates will be presented to staff for one, five and 10-year anniversaries, and he noted the one-year anniversary of Bill Slease, the five-year anniversary of Pam Moore, and the 10-year anniversary of Stormy Ralstin; holiday bonuses for staff will also be provided at that time.

F. State Bar Representative Reports

1. Senior Lawyers Division

SLD Delegate Dan Behles had to leave the meeting early and submitted a written report, which was emailed prior to the meeting.

2. Young Lawyers Division

YLD Chair Jessica Perez reported that the Division is having their public service project this weekend; they were going to do a service project in the areas with the fires, but it got changed. They are going to be meeting with members and young lawyers at the Taos Bar to talk with them about what they would like the YLD to do in their district. They also had a mentorship kick-off at the distinguished alumni awards ceremony.

3. Paralegal Division

Paralegal Division Liaison Linda Sanders reported that they had a presence at the Annual Meeting with a table and they held their annual luncheon with 40 members and 47 paralegal members attended the Annual Meeting. They held their second annual Paralegal Symposium in September in Roswell. They held their second to last lunch and learn for the year, and they'll wrap up the year with a full-day CLE in December.

4. Bar Commissioner Districts

Commissioner Lara reported that they have had some good success in their district. The local attorneys have done four clinics in September in Raton, Sunland Park and Las Cruces; they are planning additional clinics in November.

Commissioner Brooks reported that the Diversity Committee is putting on its annual CLE on October 28 and she encouraged commissioners to attend.

Commissioner Folsie reported that he attended the Chavez County Bar luncheon and spoke about the annual meeting and things that have happened over the last year. He spoke about the Janus decision and mandatory bars. It was very well attended and he looks forward to putting on an event in his district in the coming months.

Commissioner FitzPatrick reported on the 5K Pumpkin Run on October 29, which is an event of the YLD and SLD and they have 40 attendees signed up for it.

Commissioner Mender reported that the Ninth and Tenth Judicial District is doing their pro bono day on November 16; they've made it a hybrid event and they're doing a lunch and CLE for their members.

Commissioner Atkins reported that the Twelfth Judicial District had their pro bono day last week in Ruidoso and Lincoln County and pro bono day in Alamogordo on November 5.

Commissioner Phelps reported that he was contacted by someone in the Eighth Judicial District, and they are interested in getting their local bar association going again.

5. Supreme Court Board and Committee Liaison Reports

There were no reports on the Supreme Court Boards and Committees.

6. ABA House of Delegates

ABA State Delegate Charles Vigil provided a written report on the ABA HOD for the Board's information.

G. Employment and Labor Law Section Update

Employment and Labor Law Section Board Member Melissa Kountz reported that the section has had an active year. They held their annual CLE last month as a hybrid event and provided scholarships. They had approximately 40-50 attendees. The CLE cost a little less than last year, so they're deciding whether to award more scholarships. The section has 220 members.

VI. OTHER BUSINESS

A. New Business

B. Adjourn

There being no new business, Commissioner Martinez made a motion to adjourn the meeting at 3:45 p.m.; the motion was seconded and it passed.