

**BOARD OF BAR COMMISSIONERS
FEBRUARY 5, 2021 MEETING MINUTES
Virtual Meeting**

MEMBERS PRESENT:	Erin M. Atkins Aja N. Brooks Daniel J. Behles Ernestina R. Cruz Judge Kevin L. Fitzwater (ret.) Connie J. Flores Parker B. Folse Shasta Inman Robert Lara David P. Lutz	Carla C. Martinez Mitchell Mender Angela Minefee Joseph F. Sawyer Benjamin I. Sherman Lucy H. Sinkular Constance G. Tatham Elizabeth J. Travis Carolyn A. Wolf
MEMBERS ABSENT:	None	
OTHERS PRESENT:	Bobbie Batley Kris Becker Ian Bezpalko Evann Laird Pam Moore	David Powell Stormy Ralstin Jim Reist Bill Slease Richard Spinello

I. CALL TO ORDER

A. Welcome New Board Members

President Martinez welcomed the new members to the Board as follows: Robert Lara representing the Third and Sixth Judicial Districts; Shasta Inman, the Young Lawyers Division Chair; and Angela Minefee, the Paralegal Division Liaison.

B. Approval of December 9, 2020 Meeting Minutes

Commissioner Sinkular requested that the Special Committee on Sections written report be attached to the minutes. Commissioner Inman noted that she was one of the others present. Commissioner Sinkular made a motion to approve the December 9, 2020 meeting minutes with the amendments; the motion was seconded and it passed.

II. STRATEGIC PLANNING

A. Professional Practice Program Update

1. Formation of Standing Advisory Committee

Professional Practice Program Director Bill Slease reviewed the Professional Practice Program outline included in the materials, including resources for practitioners, education and training, compliance support, practice support and outreach, and infrastructure and delivery methods. He asked the Board to create an advisory committee to assist with the program to be comprised of a variety of representatives from various groups, including the Lawyers Professional Liability and Insurance Committee, the Solo and Small Firm Section, the YLD, the SLD, and others including some of the voluntary bars. Commissioner Lara made a motion to create the advisory committee; the motion was seconded and it passed. Staff will identify and solicit committee members and provide the list to the Board for approval at the April meeting; an email will be sent to the Board following the meeting inviting commissioners to participate. President Martinez stated that at the National Conference of Bar Presidents

Midyear Meeting, there was talk about getting people outside of the legal profession, i.e. those with an accounting or finance background, and others who engage with lawyers for some outside perspective.

B. Communications Plan / Elevator Pitches

Director of Communications and Member Services Evann Laird reported that the next round of elevator pitches were included in the materials and are on compliance deadlines and the new AMS upgrade. For each meeting, they will include the types of things that we expect members will have questions on to assist commissioners in communicating with constituents.

Commissioner Behles asked if there were any comments from members on the new member directory. Ms. Laird reported that there were some issues that need to be worked out which will be discussed prior to next year's issue. There weren't many comments on it being split into two parts and we saved money by printing it in-house. The member listing is out-of-date before we even send it to the printer, so we hope to be able to move people in the direction of more digital. Commissioner Behles stated that there is a lot of public service information that would be useful to more people; non-attorneys used to be able to purchase the directory and he asked if we anticipate a bigger market for the resource manual. Ms. Laird stated that she would think so, and it will cost less to print because the resource manual is half the size of the previous directory with the member listing.

C. Strategic Plan Timeline

Executive Director Richard Spinello reported that there were no changes to the Strategic Plan at this time. The plan was developed at the Board Retreat in September 2019, and the document is used to track where we're at with the various areas in the plan.

III. ACTION ITEMS

A. Executive Session

Commissioner Lutz made a motion to go into executive session; the motion was seconded and it passed. President Martinez reported that the Executive Committee voted to approve Chris Saucedo with Saucedo and Chavez to be our outside counsel for the executive director evaluation and compensation process.

B. Appointments to Board of Bar Commissioners

Seven candidates applied for the vacancy in the Second Judicial District. Following a vote by secret ballot, Allison H. Block-Chavez was appointed to the vacancy through December 31, 2021.

One candidate applied for the vacancy for the Out-of-State District. Commissioner Lutz made a motion to appoint Michael Eshleman by acclamation to the vacancy through December 31, 2021; the motion was seconded and it passed.

Two candidates applied for two vacancies in the Seventh and Thirteenth Judicial Districts. Commissioner Lara made a motion to appoint Elias Barela and Jesus Lopez by acclamation to the vacancies through December 31, 2021; the motion was seconded and it passed.

C. NM Legal Aid Appointments Update

Executive Director Richard Spinello reported that the Board made four appointments to the NM Legal Aid Board at the December meeting. However, the NMLA Board rejected two of the appointees because they were from the Third Congressional District which was already represented and requested the Board to make appointments to the unrepresented First and Second Congressional Districts. One of the appointees was Damon Hudson who applied for both the NM Legal Aid Board and the ATJ Commission, and he asked to be considered for appointment to the ATJ Commission.

We received a letter of interest from Christopher K. P. Cardenas from the Second Congressional District. Commissioner Lutz made a motion to appoint Christopher K. P. Cardenas to the NM Legal Aid Board by acclamation; the motion was seconded and it passed. A notice will be published in the Bar Bulletin for the vacancy in the First Congressional District for appointment at the April meeting.

D. Appointments to Access to Justice Commission

Three candidates applied for two vacancies on the Access to Justice Commission. Following a vote by secret ballot, Damon Hudson and Ramona J. Martinez-Salopek were appointed to the ATJ Commission for three-year terms.

COMMITTEE REPORTS

A. Client Protection Fund Commission

1. 2019 Annual Report

Client Protection Fund Commission Chair Jim Reist presented the 2019 Annual Report. He stated the purpose of the Commission and the process for when a claim is filed. The funds come from a \$15 assessment paid by all active lawyers as well as pro hac vice funds, and he reviewed the claims received in 2019.

2. CPF Rule Revision

At the last meeting, the Board had questions regarding the proposed rule change to Rule 17A-010 NMRA and referred it to the Executive Committee to make a determination once more information was obtained from the CPF Commission in order to provide it to the Court before January. General Counsel Stormy Ralstin provided an update as to why the rule change wasn't sent to the Executive Committee as was requested. When we went back to the Commission, we learned that there wasn't an urgency to have the rule changed, so we decided to bring it back to the full Board rather than the Executive Committee.

Mr. Reist reported that the Commission requested the Board to consider modifying Rule 17A-010 NMRA to protect the public when they're damaged by someone practicing without a license to practice. This has only come up a couple of times over the last 10 years and would impact a relatively small number of claims. Those affected by it don't understand the licensure and the importance of the license or realize that they weren't being represented by a lawyer. The Commission's purpose is to promote the public confidence and the integrity in the administration of justice and also the integrity of the profession. There should be an opportunity to reimburse someone based on those findings of the Supreme Court.

Commissioner Behles asked why the Supreme Court has to make the decision. Bill Slease reported that this rule is in the Disciplinary rules. This would only apply to someone who was engaged in the unauthorized practice of law and the individual would have to show how they were damaged. There was a question regarding online legal service providers, and unless found to be engaged in UPL, they would not fall under this rule. Executive Director Richard Spinello stated that the statute that authorizes the attorney general to prosecute the unauthorized practice of law also gives the State Bar and local bar associations the ability to prosecute UPL, but we have never used those provisions because the Disciplinary Board received a rule change from the Supreme Court to handle UPL.

Following discussion, Commissioner Wolf made a motion to proceed with the rule changes to be recommended to the Supreme Court; the motion was seconded and it passed. General Counsel Stormy Ralstin noted that there are a couple of other places in the rule that also need to be changed prior to presenting it to the Supreme Court and she would be working with the Client Protection Fund Commission to complete the rule changes.

B. Executive Committee Report

The Executive Committee met on January 25 to review the meeting agendas for the Finance Committee and Board meetings. The Executive Committee also approved a statement from the State Bar on the acts of violence at the U.S. Capitol on January 6, 2021 for the website. Executive Director Richard Spinello reported that the National Association of Bar Executives and the National Conference of Bar Presidents collected statements on behalf of the ABA, and there were many bar associations, including mandatory bar associations that issued statements in support of the constitution and the rule of law.

C. Finance Committee Report

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

1. Approved the December 8, 2020 Meeting Minutes;
2. Reviewed the 2020 Unaudited Year-End Financials; Secretary-Treasurer Sherman made a motion to accept the financials and the motion passed;
3. First Meeting Requirements
 - a. Reviewed the Finance Committee Mission;
 - b. Approved the annual recurring electronic payments and added the three lease payments to the list;
 - c. Reported that there was no recommendation for an intercompany payment from the Bar Foundation to the State Bar this year, because the State Bar provided debt reduction in an amount to reimburse the Bar Foundation for the free CLE provided last year due to COVID-19; in addition, the cash balance was less than the amount of cash we would want to have on hand at the beginning of the year
4. Reviewed the CPF, ATJ and JLAP 2020 Unaudited Year-End Financials, which were provided for informational purposes only;
5. Provided an update on the 2021 Licensing; as of this week, we have received 6,350 out of 7,500 active members and 1,200 inactive members out of 2,100 renewals, and we're on track with where we're supposed to be at this time of year; there are 1,230 members who are non-compliant for MCLE; and
6. Reported that the 2020 Audit is about to get underway; Clifton Larson Allen is our auditor and they have through 2022, which they would perform in 2023, so we will be going out for bid with an RFP in 2023. CLA will present the 2020 Audit results to the Finance Committee at the April meeting.
7. There was no new business.

D. Special Committee on Diversity and Gender Recommendations Update

Special Committee on Diversity and Gender Recommendations Chair Aja Brooks reported that the special committee was created to delve into the recommendations of the Diversity and Women's Committees. She met with Executive Director Richard Spinello and Director of Communications and Member Services Director Evann Laird on January 25. They reviewed the recommendations tracking document and she requested a feasibility section to be included to see which recommendations would be accomplished sooner rather than later. They met with the committee chairs on February 1 to obtain some more information on the recommendations, and they can now move forward with tackling some of them. They also discussed having someone from the special committee attend the committees' meetings to give a report on what we've been looking at and have some communication with them. Chair Brooks volunteered to attend the Diversity Committee meetings, since she's already on that committee, and suggested Commissioner Block-Chavez be the representative for the Committee on Women. No action was needed from the Board at this time.

E. Regulatory Committee Report

Regulatory Committee Chair Liz Travis reported that she attended the Legal Specialization Commission meeting. The Commission is meeting monthly and one of the things they're starting to recognize is the cost of testing and what that might mean. They also have some ideas about ascertaining the level of interest beyond the pilot group,

and they have an aggressive schedule to get a program together in about a year and half. The Regulatory Committee hadn't met prior to this meeting, but regular meetings for the year have been scheduled, and the committee will be meeting before the April Board meeting. The committee expects to have applications for CLE credit for legal activities to review related to the new self-study rule that went into effect at the end of 2020. The committee will review the applications and determine what activities qualify for self-study credit and which organizations the rule will apply to and will have recommendations for the Board's approval at the April meeting.

V. INFORMATIONAL ITEMS

A. Lobbying Presentation

Executive Director Richard Spinello reported that the Special Committee on Sections looking at the issues surrounding lobbying and whether sections should be allowed to lobby. He noted that everything is on the table at this point from tweaking the lobbying guidelines to not lobbying, and he outlined the reasons why lobbying is an issue for the State Bar. We are a mandatory state bar and as a mandatory state bar, the judicial branch of government says our members have to pay licensing fees and so there are restrictions under *Keller* on what we can and can't do with our members' licensing fees. It's the reason why we give our members the opportunity to challenge our budget, and mechanisms have been put into place to make sure we don't violate our members' rights. A handful of mandatory bars allow their sections to lobby and there are a number of other bar associations that allow sections to lobby, and their member benefit from that activity. The committee will be looking at all of these issues and coming to the Board with a recommendation.

B. AMS Update

Director of Finance David Powell provided an update on the AMS project and reported that one of the primary goals of the project was to unify the two separate databases, one that houses all of the members' licensing certification information and the MCLE PACLE database, which we are accomplishing. The other goals were to make the staff and members' experience better in utilizing and accessing the database. We have completed the data validation testing for the combined databases and also completed administrator training and will be having trainings for all staff members, so we are on track with the project to date. There are a lot of pieces to the website and most of the content has been moved over and they're finalizing the licensing renewal system.

C. Sections and Committees Annual Reports

Pursuant to the State Bar Bylaws, all standing committees and sections are required to submit annual reports to the Board, and the reports are posted on the State Bar's website at: <https://www.nmbar.org/NmbarDocs/AboutUs/2020AnnualReports.pdf>.

If a section or standing committee does not submit an annual report by December 31, it is placed on the sunset list for the following year. A list of sections and committees that did not submit an annual report was included in the materials, and they will be added to the sunset list for this year. Director of Communications and Member Services Evann Laird reported that the deadline was extended to January to give them extra time to submit the reports and multiple reminders were sent. She noted that there is some good information in the reports, and the groups actually did quite a lot last year in spite of COVID-19. Commissioner Sinkular noted that the Family Law Section was on the list of those that didn't submit a report, but they actually did submit a report. Ms. Laird noted that was correct and the section will not be placed on the sunset list this year.

D. President Report

President Martinez reported on the following:

1. The new officer swearing-in ceremony was conducted virtually on December 9 and it was streamed live through the State Bar's YouTube channel. President Martinez, President-Elect Wolf and Secretary-Treasurer Sherman were sworn-in by Chief Justice Michael Vigil. Senior Justice Barbara Vigil, Justice Shannon Bacon and Justice David Thomson also attended and provided remarks.

2. The 2021 Board meeting dates are as follows: April 16, June 11, October 7, (the Annual Meeting will be held on October 8, which will hopefully have an in-person component pursuant to the current health orders), and December 8, which is typically held at the Supreme Court.
3. The 2021 BBC Internal Committees Roster was included in the materials, and the new Board members will be added to the list.
4. The National Conference of Bar Presidents Midyear Meeting was held virtually this week, and President Martinez, Commissioner Wolf and Commissioner Sherman participated in the conference. Immediate Past President Cruz sits on the programming committee and she reached out to Bill Slease, JLAP Director Pam Moore and President Martinez to do wellness breakouts. The breakout that President Martinez and Pam Moore did was on “How to Start Up a Well-Being Committee for Your State Bar” and Bill Slease’s presentation was on civility.
5. President Martinez, Commissioner Wolf, and Executive Director Richard Spinello met with Immediate Past President and ATJ Co-Chair Tina Cruz, Co-Chair Judge O’Connell and Grace Spulak to discuss ways in which the State Bar can continue to support the Commission, including creating an ATJ portal. There are a couple of different parts to it, and they want the State Bar to be involved in it and host the initial portal, so we’ll be exploring that and determining the extent of involvement. They’re planning to come to the April Board meeting to present Portal 101.
6. President Martinez will chair her first Balancing Committee meeting for the Court of Appeals Judicial Nominating Commission. Immediate Past President Tina Cruz had some good thoughts about how to improve the process, and they had a meeting with staff prior to the committee meeting. The Judicial Nominating Commission is meeting on February 17.
7. President Martinez attended a meeting of the Well-Being Committee in January. The new co-chairs are Sean FitzPatrick and Bonnie Stepleton. She also participated in meetings of the short-term subcommittee. During the Well-Being Committee meeting, she agreed to be the champion for the State of New Mexico for the Institute on Well-Being and Law. Martha Knudson with the Utah State Bar is leading the charge to get out promotional materials related to law well-being in May. The state champions will be meeting next month, and she’ll provide an update at the April meeting on Law Well-Being Week; last year it was focused on lawyer well-being and they’re trying to expand it this year to people who include those working in the area of law.

E. Executive Director Report / 2020 State Bar Annual Report

Executive Director Richard Spinello provided a written report in the materials. A 2020 Year in Review of the department projects and programs was also included. We’re going to turn the document into a four-page graphical annual report which will include the financial dashboard and send it out to the membership to give them a snapshot of our year. An updated organizational chart was also included for the Board’s information.

F. State Bar Representative Reports

1. Senior Lawyers Division Delegate Dan Behles reported that the Division elected Peter Chestnut as the 2021 Chair at their January Board meeting. Commissioner Behles will be the delegate to the Board again this year. The Division put on a CLE with YLD on the ethics of the 2020 election challenge lawsuits around the country with UNM Law Professors David Stout and Alejandro Rettig y Martinez; they used some of their travel funds to provide 44 scholarships to their members to participate in the CLE. Charles Gurd will be the liaison between the Division and the Solo and Small Firm Section. They meet every other month and their next meeting is in March.
2. Young Lawyers Division Chair Shasta Inman reported that YLD held their first meeting on January 9; they have a vacancy in Region 3 (5th and 9th Judicial Districts), so they need to fill that position. They are trying to figure out how to increase participation in virtual events and overcome some zoom fatigue after a year. They had their annual law school mock interviews and had a higher turnout this year than last year. They’re also working on a spring or early summer ask a lawyer call-in day and expanding their virtual lunch with judges. They had a virtual veteran’s clinic and are doing some more regular Fit to Practice events. They’re also trying to figure out Wills for Heroes and if they can notarize virtually and if they can expand it to nurses and teachers.

3. Paralegal Division Chair Angela Minefee reported that the primary focus of the Division is member engagement and giving members what they're looking for when they join. They've done their committee appointments and all of their officers and directors are serving on committees and participating in some form. They have three new members this year, and they're planning to hold meetings outside of Albuquerque with one in Las Cruces in July and are trying to plan a mini convention in Roswell in September.

4. Bar Commissioner Districts

There were no district reports.

5. Supreme Court Board and Committee Liaison Reports

Commissioner Travis reported that she's on the Disciplinary Board and the Board met on January 22. They published the cases they've had over the last year, and COVID-19 has had a negative impact on wellness for attorneys and those impacts are showing up in the disciplinary complaints, which is increasing the likelihood of negligence or misconduct. They're also struggling with reduced financial insecurity with reduced caseloads and limited ability for social interaction. The Disciplinary Board requested that the State Bar address these concerns by offering webinars, such as managing a law office effectively under governmental restrictions. President Martinez stated that it seems like these issues can be addressed by the Well-Being Committee and Short-Term Subcommittee. Commissioner Travis will put a list of issues together and forward them to staff and the Well-Being Committee Chairs. JLAP Director Pam Moore stated that she thinks the Well-Being Committee will be addressing the stress and worry and anxiety due to COVID. The Solutions Group did multiple webinars last year for free on the stress and working through COVID, and they also have a stress management tool on their website. Bill Slease stated he and Ann Taylor had talked about some joint training on trust accounting and fee structures and there's no reason they can't find a financial expert for things such as how to apply for a PPP loan and other resources.

Commissioner Wolf asked about the Board of Bar Examiners. President Martinez stated that Executive Director Sophie Martin will be leaving the BBE in April and will be going to the National Council of Bar Examiners. The BBE is planning to do an in-person bar exam in February because it's a smaller group and is discussing possibly having an online bar exam in July.

6. ABA House of Delegates Report

ABA House of Delegates representative Bobbie Batley reported that the ABA Annual Meeting was held virtually last August and the Midyear Meeting will be held February 17-20 and will be virtual as well. There are between 500 and 700 members on the ABA House of Delegates and it was a great platform and it ran seamlessly. She noted that the Midyear Meeting is smaller than the Annual Meeting and she didn't see a lot on the agenda that was controversial or would affect New Mexico. One of the resolutions that was controversial the last time and will be up again this time is basically that a resolution has to advance one of the four ABA goals. It was a divisive issue and is expected to be at this meeting as well. She asked commissioners to contact her if they ever have any questions about the ABA and its activities.

VI. OTHER BUSINESS

A. New Business

There was no new business.

B. Adjourn

Commissioner Cruz made a motion to adjourn the meeting at 3:53 p.m.; the motion was seconded and it passed.