

**BOARD OF BAR COMMISSIONERS  
THURSDAY, OCTOBER 7, 2021 MEETING MINUTES  
Hybrid Meeting – In Person and Zoom**

**MEMBERS PRESENT:**

Erin M. Atkins	Robert Lara
Elias Barela (Zoom)	David P. Lutz (Zoom)
Allison H. Block-Chavez	Mitchell Mender
Aja N. Brooks	Joseph F. Sawyer
Ernestina R. Cruz	Benjamin I. Sherman
Michael Eshleman (Zoom)	Lucy H. Sinkular
Judge Kevin L. Fitzwater (ret.) (Zoom)	Constance G. Tatham
Connie J. Flores	Elizabeth J. Travis
Parker B. Folse	Carolyn A. Wolf
Shasta N. Inman	

**MEMBERS ABSENT:**

Daniel J. Behles  
Jesus Lopez  
Carla C. Martinez  
Angela Minefee

**OTHERS PRESENT:**

Kris Becker (Zoom)	David Powell
Ian Bezpalko (Zoom)	Stormy Ralstin
Evann Laird	Bill Slease
Pam Moore	Richard Spinello

**I. CALL TO ORDER**

**A. Approval of June 11, 2021 Meeting Minutes**

Commissioner Sinkular made a motion to approve the June 11, 2021 meeting minutes; the motion was seconded and it passed.

**II. STRATEGIC PLANNING**

**A. 2022 Proposed State Bar Budget Presentation**

Secretary-Treasurer Ben Sherman reported that the Finance Committee met the day prior to the Board meeting and received a presentation on the 2022 Proposed State Bar Budget, which was included in the materials, as well as the Senior Lawyers Division and Young Lawyers Division proposed Budgets. A deficit budget of \$230,000 is proposed for 2022 and staff is proposing to spend it on one-time expenses for the building, IT, travel, the board retreat, and reserve accounts. He noted that these are not recurring expenses and will not affect budgets from here on out; they are one-time only expenses to deal with the net assets that we have due to the PPP loan and positive net assets from last year and this year created by a reduction in expenses.

The Board previously discussed at the last meeting reducing the age for the inactive licensing fee waiver from 75 to 70, which results in a decrease in revenue of approximately \$22,000, or 383 members; that was assumed in the proposed budget and the committee recommended approval. The new rule that is going into effect regarding licensing and MCLE will not allow inactive attorneys to remain inactive and not in good standing; currently there is no consequence, but the new rule will provide that members will automatically be withdrawn from the practice after five years. Some of those inactive attorneys that haven't been paying dues may start to pay fees, so we anticipate that we will get some of that revenue back. Secretary-Treasurer Sherman made a motion out of the

Finance Committee to approve the recommendation to lower the age for the inactive fee waiver from 75 to 70, and the motion passed.

Director of Finance David Powell reviewed the highlights and changes from 2021 to 2022. Mini budgets were included for IT and Membership Outreach. The BBC Meetings and Governance line item includes two meetings in Albuquerque, one in Las Cruces combined with a retreat and member district event, one in Santa Fe, and one at Tamaya during the Annual Meeting. Commissioner Wolf noted that the Member Services Committee recommended holding one Board meeting outside of Albuquerque and Santa Fe, so we combined the retreat with the Board meeting and a district event to try to keep costs down. Additionally, the commissioner district events were increased to \$1,200 per district. Commissioner Inman presented the YLD Budget, and there were no changes; the SLD Budget was reviewed with no changes. Chair Sherman made a motion out of the Finance Committee to approve the 2022 State Bar Budget including YLD and SLD, and the motion passed.

#### **B. Communications Plan / Elevator Pitches**

Director of Communications and Member Services Evann Laird reported we'll be doing an internal review of the various communication tools. We'll also be working on getting the word out to members on the new MCLE and licensing compliance rule changes and the new website, which includes a dashboard for the licensing and MCLE portal, and communicating information on what they need to do. The licensing form isn't up yet, but it will be soon and we'll provide more information on licensing at the next meeting.

#### **C. Strategic Plan Timeline**

Executive Director Richard Spinello reported that we made progress in all areas of the Strategic Plan, which has been updated and is reflected in the timeline document included in the materials. There are several things that are ongoing and some things that will be wrapped up in the next version of the Strategic Plan next year. There will be a report of what has been accomplished with this plan and the results of the general membership survey that will be sent out early next year. Commissioner Wolf asked if the Committee on Diversity and Committee on Women recommendations were included in the plan. Executive Director Spinello stated that they are in separate tracking documents; however, we will move any recommendations into the Strategic Plan if action needs to be taken by the Board.

### **III. ACTION ITEMS**

#### **A. Election of 2022 Officers**

The 2022 officers were nominated at the June Board meeting and none of the positions were contested. Commissioner Cruz made a motion to elect Commissioner Erin Atkins as Secretary-Treasurer by acclamation; the motion was seconded and it passed. Commissioner Sinkular made a motion to elect Commissioner Ben Sherman as President-elect by acclamation; the motion was seconded and it passed. Commissioner Cruz made a motion to elect Commissioner Carolyn Wolf as President by acclamation; the motion was seconded and it passed.

#### **B. Executive Session / Executive Director Evaluation and Compensation Committee Report**

Commissioner Sinkular made a motion to go into executive session to discuss the Executive Director Evaluation and Compensation Committee report; the motion was seconded and it passed. In open session, President-Elect Wolf reported that the Executive Director Evaluation and Compensation Committee met to review the executive director and discuss the process and the evaluation. President-Elect Wolf and NM State Bar Foundation President Aja Brooks met with Executive Director Richard Spinello regarding his evaluation. The report of the committee was accepted by the Board during the executive session. The compensation process is being deferred because they have not done the comparison with other salaries yet, so that will be presented at the December meeting.

### **C. Appointment of New Chair to Access to Justice Fund Grant Commission**

General Counsel Stormy Ralstin reported that the ATJ Fund Grant Commission is a commission of the State Bar, and the Order specifies that the chair is appointed by the Board of Bar Commissioners from the State Bar appointments. Three members are appointed by the Board, which include Tom Olson, Donna Connolly and Commissioner Ben Sherman. Tom Olson stepped down as chair but he will serve out his term as a member of the commission, so Donna Connolly has agreed to serve as chair. Commissioner Sinkular made a motion to appoint Donna Connolly as chair of the ATJ Fund Grant Commission; the motion was seconded and it passed.

### **D. Annual Review of Sections and Committees (pursuant to Article IX, Section 9.4, of the State Bar Bylaws)**

1. Legal Services and Programs Committee
2. Animal Law Section
3. Health Law Section
4. Immigration Law Section
5. Tax Law Section

Director of Communications and Member Services Evann Laird reported that the above groups were up for sunset this year and all of them submitted petitions for continuance. She noted that staff doesn't have concerns with any of the groups and they're all doing good things. Commissioner Lara made a motion to continue the one committee and four sections; the motion was seconded and it passed.

### **E. Foundation on Open Government Contribution / Donation Request**

A request for a donation in the amount of \$1,000 was received from the Foundation on Open Government, which was included in the materials with the Contribution/Donation Policy. Commissioner Wolf noted that this isn't the typical request for funding that the Board receives; it's to support an ongoing salary of someone they're going to hire and she inquired as to whether it will be a recurring request. Executive Director Spinello stated that it will not be a recurring request as the attorney they hire will be generating money through attorney's fees, which will help support their salary. Following discussion, Commissioner Sinkular made a motion to deny the request; the motion was seconded and it passed. The Board asked that when we notify them, we let them know that the request didn't fit within the criteria contained in the policy.

## **IV. COMMITTEE REPORTS**

### **A. Executive Committee Report**

1. Denial of Licensing Fee Waiver Request

General Counsel Stormy Ralstin reported that the Executive Committee discussed all of the waiver requests at their April meeting and an additional one was received in June. In the June request, the attorney said that she contacted us in January to request a waiver, but we didn't have any record of that. In January, we had set up a payment plan for her and she made the first payment and requested a waiver of the remainder of the fee. We notified her that she was not in compliance and she didn't respond. So, we sent the request to the Executive Committee, and the committee denied her request.

2. August 2<sup>nd</sup> Meeting to Approve Annual Awards Committee Recommendations for the 2021 Annual Awards

The committee met on August 2 to approve the Annual Awards Committee recommendations for the 2021 annual awards.

3. September 27<sup>th</sup> Meeting to Approve Agenda

The committee met on September 27 to review and approve the agenda for the meeting.

#### 4. Other

Commissioner Sherman reported that he was contacted by an attorney multiple times about the unfairness of the larger out-of-state law firms setting up an office in New Mexico and having an attorney staff it and advertise. It is suspected that any gross receipts sales tax is paid to another state. The in-state attorneys take a beating from these attorneys and firms. There's no action that needs to be taken at this time, but they may ask to come to the Board at a later time. He asked the attorney to streamline and organize his arguments before coming to the Board. Commissioner Travis stated that it seems more appropriate to propose a rule change to the Supreme Court. It's a bigger issue than we can resolve, but maybe have them come and talk to us. Commissioner Sinkular noted that this is similar to the military spouse rule and the Board voted to support it, so maybe the Board could support this, even though it's not our rule. Commissioner Travis stated that it would be helpful for the Regulatory Committee to discuss it and see what changes could be made.

Commissioner Cruz made a motion to ratify all action taken by the Executive Committee; the motion was seconded and it passed.

### **B. Finance Committee Report**

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

1. Approved the June 11, 2021 Meeting Minutes;
2. Received a presentation on the 2022 proposed State Bar Budget and recommended approval; the Budget was approved under Strategic Planning above;
3. Reviewed the August 2021 Financials and recommended that they be accepted; Secretary-Treasurer Sherman made a motion to accept the August 2021 financials, and the motion passed;
4. Discussed a recommendation regarding the section carryover and recommended approval of a blanket carryover for all of the sections to be allowed to carryover their 2021 section dues to 2022 due to COVID; Secretary-Treasurer Sherman made a motion to accept the recommendation, and the motion passed; the committee also recommended that the Special Committee on Sections look at the bylaws to see if any of the processes need to be changed for review of the sections and that they're using their funds appropriately; Secretary-Treasurer made a motion to approve the recommendation, and the motion passed.
5. Reviewed proposed changes to the Financial Policies as presented by Director of Finance David Powell; the committee recommended a change to the Accountable Plan Policy for employee expenses to be received within 30, rather than 60, days and a change to the Reserve Policy to change the word "bank" to "ledger" accounts. Secretary-Treasurer Sherman made a motion out of the committee to approve the changes to the Financial Policies, as amended, and the motion passed.
6. Reviewed the CPF, ATJ and JLAP Second Quarter 2021 Financials, which were provided for informational purposes only. Secretary-Treasurer Sherman provided an update on the Board's previous discussion regarding the Client Protection Fund and options for the fund. We were waiting on the Supreme Court Code of Professional Conduct Committee to make a recommendation regarding a mandatory arbitration program. Commissioner Brooks serves on that committee and reported that the committee's recommendation was not to make any changes to the rules. So, this item is tabled for now.

### **C. Special Committee on Sections Report**

Chair Sinkular reported that in 2020 she was asked to chair the Special Committee on Sections, which was tasked with looking at how to assist the sections more, and the committee made recommendations to the Board last November. They were also tasked with looking at lobbying. Executive Director Spinello and General Counsel Ralstin reported that there has been some concerning litigation in the courts about state bars and affiliated organizations that threatens the mandatory status. The special committee had an in-depth discussion about lobbying, and the motion coming out of committee was to recommend that the Board temporarily suspend lobbying by sections. Commissioner Wolf stated that the issue is whether or not the Board could actually suspend the bylaw that allows them to lobby, so the Policy and Bylaws Committee discussed the issue. General

Counsel Ralstin stated that if the Board decides they want to do that, then we have to look at the bylaws to see how that would be done; that's more of a procedural thing, but we would need to figure it out.

Sections aren't using licensing fees to lobby, but the section's name is attached to it. There is a disclaimer that it's the position of the section and not the State Bar, but members don't realize that is isn't the position of the State Bar. Staff researched what other bars are doing and some bars don't permit their sections to lobby at all. The ones that do permit lobbying range from prior approval to no prior approval.

The committee decided to recommend that we stop the sections from lobbying for a while and monitor the mandatory bar cases. Commissioner Travis asked whether the suspension is indefinite or temporary. Commissioner Sinkular stated that the motion out of committee was to temporarily suspend it and then have the Policy and Bylaws Committee look at how it would be accomplished. Following a vote, the motion passed.

Chair Sinkular reported that the committee is also looking at the size and composition of some of the committees.

#### **D. Policy and Bylaws Committee Report**

##### **1. State Bar Bylaws Amendments**

Chair Sherman reported that the Policy and Bylaws Committee met on August 16 and September 23 to review proposed amendments to the State Bar Bylaws. Some of the bylaws are also referenced in the rule and when we change the bylaws, they get out of sync with the rules, so we've referenced the rules when it's also in the bylaws. He highlighted some of the more substantial changes, including public statements, governmental affairs, which is the lobbying section, budget process, and appointments to committees and commissions. The bylaws are just informational at this point and for comment; amendments to bylaws require 30 days' notice of changes, so the Board will be voting on the changes at the December meeting.

Commissioner Folsie asked whether we can permanently ban lobbying and if we permanently ban lobbying, then can we reinstate it and what is the implication on a future board. He suggested that instead of permanently or temporarily suspending it that it be changed to say may suspend lobbying. Chair Sherman stated that we'll make that change to Section 11.7b and then email the bylaws out to the Board 30 days prior to the December meeting and vote on them at that meeting.

Commissioner Folsie asked about the public statement by either the president or executive director and whether they should consult with anyone prior to making the statement. Executive Director Spinello stated that in certain circumstances, we have about 15-20 minutes to get a statement out before the news spreads. He talked about the Utah Bar as an example and how quickly they were able to get a statement out which was picked up by all the media as the story spread globally. Commissioner Folsie asked if we want some form of review before it goes out. Commissioner Wolf stated that she trusts the executive director and she would run anything by the rest of the officers; she's more in favor of flexibility. Chair Sherman stated that the committee can take a look at that section and see if it needs some other control in it.

##### **2. Model Section Bylaws and Solo and Small Firm Section Bylaws**

- (a) YLD Liaison Board Member and Voting
- (b) Section Lobbying and the Model Bylaws

Chair Sherman reported that the committee also looked at the model section bylaws and the Solo and Small Firm Section Bylaws regarding the YLD liaison. The model section bylaws only have certain areas where the sections can make changes, and one of the sections is the composition of the board and the model section bylaw template says that there will be a representative appointed by the YLD from among its members who shall serve for a term of one year. There was an issue with the Solo and Small Firm Section and their composition specifies that the YLD representative is a non-voting member; the SLD representative is also a non-voting member. The committee discussed not going back to the section to let them know it's a voting position at this time. Commissioner Wolf noted that the committee felt that the YLD representative should be voting, but there was some ambiguity and the Board had approved their bylaws. Chair Sherman made a motion out of committee to not go back to the section and ask them to

change their bylaws at this time and to table the issue for now and look at the model section bylaws next year with any other changes, including the suspension of lobbying, once the bylaws are approved; since we will be making other changes to the model section bylaws next year, we can address the issue with the section at that time, and the motion passed.

#### **E. Special Committee on Diversity and Gender Recommendations Report**

Chair Aja Brooks introduced the State Bar's new Equity in Justice Coordinator Dr. Amanda Parker. She reminded the Board that this was a recommendation of both the Committee on Diversity and Committee on Women to have this position at the State Bar. She met with the chairs of the committees in July and canceled the meeting of the special committee since we wanted to wait until the coordinator was hired. They discussed the annual report from the committees to the Board on how to move forward with the recommendations and we'll ask them to provide a written report for the next meeting. With Dr. Parker on board, it will be a lot easier to work on the recommendations.

#### **F. Annual Awards Committee Report and Recommendation for New Well-Being Award**

Chair Atkins reported that the committee met on July 26 to review the nominations and recommend the recipients of this year's awards, which were included in the materials, and will be presented during the Annual Meeting.

The committee met again prior to the Board meeting to discuss a new State Bar award on well-being. Chair Atkins made a motion out of the committee to create a new Well-Being Award to be presented to a lawyer, non-lawyer, judge or entity and to ask the Well-Being Committee to help develop the criteria for the award. Commissioner Lara asked if there was some way to tie the award to someone since most of the awards are named after an individual. Chair Atkins stated that once the award is created and the criteria developed, then the committee can look at that later, and the awards named after someone are in memory of deceased members.

### **V. INFORMATIONAL ITEMS**

#### **A. New Licensing and MCLE Rules**

General Counsel Ralstin reported that the proposed licensing and MCLE Rules that were included in the materials were amended to align the license renewal and MCLE compliance processes. The Supreme Court published the rules for comment in July and received 10 comments, most of which were about succession planning. The proposed rule requires an annual certification regarding succession planning, but the succession planning rule itself is not part of the proposed rule set submitted by the Bar. General Counsel Ralstin sent a response to the Court regarding the comments received on the licensing and MCLE rules. The Court is meeting next week on the rules, and we should know sometime after that if they're approved. Director of Communications and Member Services Evann Laird developed a plan for marketing the rules to the membership after they have been approved, and the marketing plan was also included in the materials.

#### **B. Real Property, Trust and Estate Section Update**

Beverly Edelman, the YLD representative on the section, attended the meeting remotely to provide an update on the section. She reported that they have been working hard on the Ghost Ranch meeting, which will also have several CLEs, and is a way to bring the section together and keep up-to-date on topical issues and share ideas. The Ghost Ranch meeting was scheduled for the fall, but they had to postpone it to next year due to COVID and it will hopefully be held in the spring. They have also been working hard on putting together indigenous art by a local New Mexico student that will be auctioned off. They participated in the law day call-in and they will be hosting the Probate institute in November and the Real Property Institute in December. They have approximately 340 members and have been focused on education and being inclusive to everyone in the community.

#### **C. Website / AMS Update**

Director of Communications and Member Services Evann Laird reported that we are almost finished with the update to the website, and we will be getting some more training and working on other features. In the meantime, an example of what the dashboard looks like is included in the materials. We have a 90 percent success rate with

members being able to log in, so it's very easy and the MCLE portal is much improved from the previous portal and provides a much better experience. We are working on some general communication on how to use it and that communication will go out soon.

#### **D. State Bar President Report**

In the absence of President Martinez, President-Elect Wolf reported on the following:

1. 2021 Annual Meeting

This report was presented below under Annual Meeting information.

2. Rocky Mountain Mineral Law Foundation Board Appointment

A notice was published in the Bar Bulletin for a position on the Rocky Mountain Mineral Law Foundation Board and six applicants applied for the position. President Martinez appointed Christina Sheehan from the Modrall Firm to the RMMLF Board for a three-year term.

#### **E. President-Elect Report**

President-Elect Wolf reported on the following:

1. 2022 BBC Meeting Dates—February 25, May 20-21 (Las Cruces, in conjunction with full board retreat and member district event), August 11 (Tamaya, in conjunction with the Annual Meeting), October 21, and December 7 (Supreme Court; date to be confirmed)
2. She participated in the virtual NCBP Annual Meeting in August. She noted that Commissioner Cruz was elected to the NCBP Executive Council.
3. She asked for volunteers to serve on and assist with the Membership Survey; we're hoping to send it out early next year, so this committee will start its work before the end of this year. She already asked Commissioners Sherman and Atkins to serve, and Commissioners Travis, Mender, and Flores volunteered.
4. 2022 Annual Meeting - She has been getting some good suggestions for speakers and is hoping to have a diversity program. We haven't heard back from Bryan Stephenson yet, but we've been turned down by Secretary Haaland. We had a meeting with some of the specialty bars to try to figure out what would make their members want to attend, and we're looking at some sort of free component.
5. The President's Reception will be held at the La Fonda Hotel in Santa Fe on December 8 following the Board meeting and new officer swearing-in ceremony.

#### **F. Bar Foundation President Report / Strategic Planning Retreat**

NM State Bar Foundation President Aja Brooks reported that the Board held its strategic planning retreat last month. They discussed several strategic planning and learning topics, including the EAJ merger proposal, board operations, succession, committees, the Foundation's focus, ATJ Commission, pro bono, statewide coordinator and VAP, as well as the MOU, the intercompany debt, fundraising and the 501(c)(3) status. We had our second facilitation regarding the EAJ merger with Judge York. EAJ is going to put together a counter proposal to our proposal with some concrete things they are asking for, so we can have a more focused discussion at the next meeting on December 6. Grace Spulak will be attending on behalf of the ATJ Commission. We will be looking for a fundraiser next year if the merger doesn't happen. The next Foundation Board meeting is scheduled for November 4. We discussed getting BBC members to serve on the Foundation Board, and we also talked about creating an officer track similar to the BBC officer track and extension of officer terms. The Foundation Board will serve as the audit committee, and a special negotiation committee was created to work with the BBC executive committee on the MOU.

#### **G. Executive Director Report**

Executive Director Richard Spinello's written report was included in the materials. He reported on the BBC election and the districts with vacancies, which include the 7<sup>th</sup>, 13<sup>th</sup> and 11<sup>th</sup> Judicial Districts, and the Board will

make those appointments at the December meeting. We are looking at the nomination process for the out-of-state district position and ways for the in-state person to obtain signatures from the out-of-state members.

## **H. State Bar Representative Reports**

### **1. Senior Lawyers Division**

SLD Delegate Dan Behles wasn't at the meeting, so there was no report for the SLD.

### **2. Young Lawyers Division**

YLD Chair Shasta Inman had to leave the meeting, so she submitted a written report that was emailed to the Board.

### **3. Paralegal Division**

Paralegal Division Liaison Angela Minefee wasn't at the meeting, so there was no report for the Paralegal Division.

### **4. Bar Commissioner Districts**

Commissioner Atkins reported that the Twelfth Judicial District Bar Conference will be held virtually next week. They have some great speakers, including Bill Slease, Executive Director Spinello General, and General Counsel Ralstin, and it should be a great event.

Commissioner Lara reported that he represents the 3<sup>rd</sup> and 6<sup>th</sup> Judicial Districts, and the Dona Ana County Bar Association has been reactivated, new officers have been elected and they had three Supreme Court Justices come down for a happy hour and meet and greet. They are discussing having a joint Dona Ana County Bar, State Bar of New Mexico and State Bar of Texas event somewhere along the southern border the end of October, and the State Bar is coming down in November to do the trust accounting CLE. They are going to be focusing on doing something with the 6<sup>th</sup> Judicial District and Silver City in the spring.

Commissioner Cruz reported that the Taos County Bar Association has been defunct for six years and they haven't been able to resurrect it, so they reached out to her because they want to make a donation to the Access to Justice Fund with what they have in their account in the amount of \$1,500. They reached out to all of their members and asked if they wanted to resurrect the bar association and if they don't respond by December 1, the funds will go to the ATJ Fund.

### **5. Supreme Court Board and Committee Liaison Reports**

Commissioner Travis reported that the Disciplinary Board has been very busy after a slower year with COVID. They are seeing a lot of issues with solo and small firm practitioners.

Commissioner Tatham reported that the Uniform Jury Instructions-Civil Committee is working on Civil Whistle Blower Jury Instructions; it's been a slow process, but the committee does a lot of good work.

Commissioner Wolf noted that we need to get back to addressing the Supreme Court Boards, Committees and Commissions liaison issue with the Policy and Bylaws Committee again.

### **6. ABA House of Delegates Report**

The State Bar's representative on the ABA House of Delegates Bobbie Batley was unable to attend the meeting, so no report was provided.

## **I. Annual Meeting Information**

Communications and Member Services Director Evann Laird reported that the 2021 Annual Meeting and Member Appreciation Event will be held the following day virtually for all members with limited in-person attendance. There are five credits with one being an ethics credit, and it is free again this year. She reviewed the schedule and noted that there will be raffles throughout the day and a reception and annual awards presentation at the end of the day.

## **VI. OTHER BUSINESS**

### **A. New Business**

General Counsel Ralstin provided an update on the Legal Specialization Commission. The Family Law Section applied to create a family law specialty and they obtained 50 declarations of support for the specialization and at least 20 declarations to apply to be a specialist, and currently, we have received 135 declarations and 50 declarations of intent to be a specialist. We're now at the point of forming the Specialty Committee that will draft the exam, and we'll ask Chair Bobbie Batley to provide a report at the December meeting.

### **B. Adjourn**

Commissioner Cruz made a motion to adjourn the meeting at 3:27 p.m.; the motion was seconded and it passed.