

**BOARD OF BAR COMMISSIONERS  
DECEMBER 6, 2023 MEETING MINUTES  
La Fonda Hotel, Santa Fe, NM  
In Person and Zoom**

<b>MEMBERS PRESENT:</b>	Erin M. Atkins Daniel J. Behles Allison H. Block-Chavez Aja N. Brooks Rosenda Chavez-Lara Sean M. FitzPatrick Parker B. Folse Tomas J. Garcia Damon J. Hudson David P. Lutz Mitchell Mender	Brett Phelps Linda Sanders Joseph F. Sawyer Steven S. Schöll Simone M. Seiler Olga Serafimova Benjamin I. Sherman Lucy Sinkular Elizabeth J. Travis Carolyn A. Wolf
<b>MEMBERS ABSENT:</b>	Connie J. Flores Jessica A. Perez	
<b>OTHERS PRESENT:</b>	Kris Becker Ian Bezpalko Hon. Carl Butkus Kasey Daniel Jerry Dixon Bill Kramer Pam Moore	Helen Padilla David Powell Stormy Ralstin Bill Slease Richard Spinello Meryl Sutton

**I. CALL TO ORDER**

**A. Approval of October 13, 2023 Meeting Minutes**

Commissioner Wolf made a motion to approve the October 13, 2023 meeting minutes; the motion was seconded and it passed.

**II. STRATEGIC PLANNING**

**A. Review of Objective #2, Promote the Interests of the Legal Profession in the State of New Mexico, in Rule 24-101(A) NMRA, Rules Governing the NM Bar**

President Sherman introduced objective #2 of Rule 24-101(A) NMRA, to promote the interests of the legal profession in the State of New Mexico. He asked if there are common interests of the profession that the State Bar can promote, and as leaders, do we have an obligation to promote all of the members' interests. Commissioner Behles noted that paralegals and judges are also members of the legal profession. Commissioner Atkins stated that there is a correlation with the work we're doing with the Hermit's Peak / Calf Canyon fire. Additionally, there is a Supreme Court Commission that is investigating the possibility of creating a path for non-attorneys to represent people for a reduced fee, which some other states have, and the commission is meeting with them. We will likely be regulating those people at some point. What we do as a State Bar is going to continue to grow in the future and some of our members are against these changes. We need to be mindful of and listen to our constituents. Executive Director Spinello stated that everything we do should relate to these rules.

**B. 2023-2025 Three-Year Strategic Plan**

Executive Director Spinello reported that he updated the Strategic Plan for the October meeting. There haven't been any changes or updates since that meeting, and we're on track with each of the areas in the plan.

**III. ACTION ITEMS**

**A. Executive Session**

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

**B. Ethics Advisory Letter Regarding the Hermit's Peak / Calf Canyon Fire and Trust Accounts**

President Sherman reported that we were asked by Antonia Roybal-Mack and Brian Colon to take some action or provide some response regarding the Hermit's Peak / Calf Canyon fires and FEMA issues concerning IOLTA accounts. He reported back to Antonia Roybal-Mack that we had requested an analysis from our Ethics Advisory Committee. Professional Development Program Director Bill Sleese reviewed the Ethics Advisory Committee's response and stated that the Committee's mission and guidelines provide that the committee will not offer opinions on matters of substantive law and therefore, they offered no opinion on whether FEMA is correct or incorrect in its position. The committee believes the lawyer's recourse is through the retainer agreement. The Board thanked Bill Sleese for preparing the letter and within such a short timeline and stated that it's very valuable to have the analysis. Commissioner Travis stated that she is a member of the Ethics Advisory Committee and feels that this is a FEMA rule issue; she expressed concern with the Board getting involved in how federal cases should be handled.

Following discussion, Commissioner Sinkular made a motion to respond to Antonia Roybal-Mack and Brian Colon and provide them with the ethics advisory analysis, but not take any stance or recommendation; the motion was seconded. President Sherman will provide the letter to them and inform them that we obtained an analysis of the issue from the Ethics Advisory Committee and no further action was taken by the Board. Following discussion, the motion passed.

**C. Appointments to Access to Justice Commission**

A notice was published for two vacancies on the Access to Justice Commission, and the following submitted letters of interest, which were included in the materials, as well as recommendations from the Commission.

1. Laurence S. Donahue
2. Douglas A. Echols
3. Sonya Bellafant
4. Alexander F. Flores
5. Lawrence R. Jones

Following a vote by secret ballot, Douglas A. Echols and Alexander F. Flores were appointed to the ATJ Commission for three-year terms.

**D. Appointment to Client Protection Fund Commission**

A notice was published for the vacancy on the Client Protection Fund Commission. The following submitted letters of interest, which were included in the materials, as well as a recommendation from the Commission.

1. Don Anque (current appointee)
2. Albert N. Thiel, Jr.

Following a vote by secret ballot, Don Anque was reappointed to the CPF Commission for a three-year term.

**E. Appointments to Access to Justice Fund Grant Commission**

A notice was published for two vacancies on the Access to Justice Fund Grant Commission. The following submitted letters of interest, which were included in the materials, as well as recommendations from the Commission.

1. Judge Nan G. Nash
2. Benjamin I. Sherman (current appointee)

Commissioner Wolf made a motion to appoint Judge Nan Nash and reappoint President Sherman to the Access to Justice Fund Grant Commission for three-year terms; the motion was seconded, and it passed.

**F. Appointment / Reappointments to New Mexico State Bar Foundation Board**

Three positions on the New Mexico State Bar Foundation Board expired the end of the year, one of which was the public member, and one position became vacant due to the resignation of Commissioner Aja Brooks. A notice was published for the public member position, and the following submitted letters of interest requesting appointment / reappointment to the Bar Foundation Board.

1. Rosenda Chavez-Lara
2. Mitchell L. Mender
3. Elizabeth J. Travis
4. Stephanie Wagner (public member)

Commissioner Atkins made a motion to appoint/reappoint all four members to the Bar Foundation Board; the motion was seconded, and it passed.

**G. 2024 Supreme Court Board and Committee Liaisons**

Commissioner Garcia made a motion to approve the liaison appointments to the 2024 Supreme Court Boards and Committees pursuant to Rule 23-106(F), the motion was seconded, and it passed.

**IV. COMMITTEE REPORTS**

**A. Joint Executive Committees of the State Bar and Bar Foundation Report**

President Sherman reported on the meeting of the joint Executive Committees of the State Bar and Bar Foundation. The committees had a lengthy discussion on the Annual Meeting and how both organizations can work together and split the costs. Staff was requested to develop some models for different types of Annual Meetings—in person, hybrid, traditional, etc. They decided to create an Annual Meeting Committee to assist with the planning.

They also discussed the treatment of the financial loss related to the 2023 Annual Meeting and the options of splitting the deficit between the two organizations and whether it should be a cash payment or debt forgiveness, and a recommendation was made by the Bar Foundation Board to the Finance Committee.

Judge Butkus stated that we originally weren't sure what would be accomplished in the joint meetings, but they have turned out to be very productive. He also stated that he looks forward to future efforts to get more involvement from the judiciary at the Annual Meetings.

**B. Executive Committee Report**

President Sherman reported on the following Executive Committee meetings:

1. November 9<sup>th</sup> Meeting – New Mexico Legal Aid’s requests re: BBC Appointments to their Board.

NMLA requested that two of the Board’s appointees be extended for two additional years due to their bylaws not addressing partial terms, and the Executive Committee approved the request. There are two other appointees, and they asked the Board to postpone those appointments in order to get the recruitment committee up to speed and complete the process. The Executive Committee also approved that request.

2. November 30<sup>th</sup> Meeting – Reviewed and approved the agenda for the December Board meeting.

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

### **C. Finance Committee Report**

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

1. Approved the October 12, 2023 Meeting Minutes;
2. Reviewed the October 2023 Financials; Secretary-Treasurer Brooks reported on the deficit, which will be between \$150,000 to \$200,000, and noted that while we do have a deficit this year, we have taken some steps to help with the deficit and have made adjustments in the 2024 budget. Secretary-Treasurer Brooks made a motion out of the committee to accept the October 2023 financials, and the motion passed.
3. Received the 2024 Budget Disclosure and reported that there were no challenges to the 2024 Budget;
4. Discussed a recommendation from the Bar Foundation to be reimbursed for the free CLE provided throughout the year and the Annual Meeting content in the amount of \$92,044.80, and the committee recommended approval; Secretary-Treasurer Brooks made a motion out of the Finance Committee to approve the recommendation to reimburse the Foundation at the 20 percent discounted rate, which is based on \$28 per credit hour, in the amount of \$92,044.80, which is the same formula we have used the last three years to reimburse the Bar Foundation, and the motion passed.
5. Discussed a recommendation from the Bar Foundation to be reimbursed for the Annual Meeting deficit in the amount of \$49,517.50 as debt forgiveness, and the committee recommended approval; Secretary-Treasurer Brooks made a motion out of the Finance Committee to approve the recommendation to reimburse the Bar Foundation in the amount of \$49,517.50 as debt forgiveness; Commissioner Wolf recommended during the Finance Committee meeting that the Bar Foundation members not vote on the issue. Following a vote, the motion passed. Commissioner Garcia voted against the motion and recommended a discussion about whether we are going to continue to forgive debt or whether the Foundation is going to pay it back and the history of what comprised the debt. Management will provide the breakdown of debt forgiveness and in-kind contributions for the next meeting.
6. Provided an update on licensing; there were 906 active attorneys out of 8,110 who have renewed, which is 11 percent and is typical for this time of year. There were 565 out of 1,777 inactive attorneys who have renewed, which is 32 percent. There are 1,161 attorneys eligible for the inactive fee waivers and of those, 599 have responded to confirm that they would like to remain inactive.

### **D. Member Services Committee Report**

Member Services Committee Chair Liz Travis reported that the committee met three times and provided a recap of its work. A new set of Standing Committee Policies were presented for approval by the Board. Commissioner Behles noted the proposed section regarding the appointment of committees would require a bylaw amendment. Commissioner Travis made a motion out of the committee to adopt the Standing Committees Policies, and following discussion, the motion passed.

## **V. INFORMATIONAL ITEMS**

### **A. Committee on Diversity in the Legal Profession Update**

Committee on Diversity in the Legal Profession Chair Helen Padilla attended the meeting to provide an update on the committee. She reported that Denise Chanez and Leon Howard were the co-chairs for several years, and she became the chair in January of 2023. The committee held their 9<sup>th</sup> annual diversity symposium the end of October; they would like to be able to offer scholarships for their 10<sup>th</sup> annual symposium next year. One of their subcommittees is on diverse applicants for the bar exam, which works with diverse applicants and matches them with attorneys to coach them with helping them take the bar exam. The subcommittee is also talking about the UBE—NextGen; a different way that the UBE will be administered. The committee also oversees the Art Jaramillo Clerkship Program and the Judicial Clerkship Program. The committee is also responsible for updating and issuing the minorities in the legal profession report every 10 years.

She noted a couple of issues they have had regarding lack of support staff to assist the committee and no orientation last year as she took over leadership. The former committee co-chairs have been very helpful, and they're still involved in the Art Jaramillo Clerkship Program. Executive Director Spinello indicated he was not aware of the leadership change and will meet with her following the meeting to discuss these issues.

### **B. PPG Roadshow Update**

Professional Programs Director Pam Moore provided an update on the Professional Practice Group (PPG), which encompasses the Professional Development Program, the LAP, Wellness Committee, and the Judicial Wellness Program. They started the PPG Roadshows a year ago and worked with a BBC representative in the districts and offered a two-hour CLE, an overview of the PPG programs, and a choice of topic—all of them chose ethical dilemmas in hot topics, which Bill Slease taught. Commissioners commented that they felt the response to the roadshows was great. The Judicial Wellness Program is doing very well and is getting a lot of recognition around the country. Judge Engel will be attending a conference to speak about the program. Executive Director Spinello noted that we're one of only two bar associations in the country that provide a dedicated program for judges.

### **C. President Report**

President Sherman reported on the following:

#### **1. Commission on Legal Regulatory Reform**

He serves on the Supreme Court's Commission on Legal Regulatory Reform, and since the last meeting, they met on October 18 and heard from Alaska and on November 29, they heard from Utah, and will hear from Arizona and Colorado next. The Court is looking for more volunteers, so he asked commissioners to let him know if they are interested in serving on the Commission.

#### **2. NextGen Bar Exam Planning Forum**

He attended a meeting to talk about the NextGen Bar Exam, which is coming, but the Supreme Court wants to study it further. They're concerned about minorities and the impact it could have on that group.

#### **3. He attended the following events:**

- UNM School of Law Distinguished Achievement Awards Dinner;
- Public Lawyer of the Year Award Ceremony;
- Senior Lawyers Division Attorney Memorial Scholarship Ceremony and Reception;
- SBNM Friendsgiving Luncheon

#### **4. Disciplinary Board Appointment**

He reappointed Commissioner Travis to the Disciplinary Board for a three-year term.

**D. State Bar President-Elect Report**

President-Elect Atkins reported on the following:

1. 2024 BBC Meeting Schedule

The 2024 meetings are as follows: February 23, May 17, July 26, October 24-25 (Fin. Com. and BBC Meeting, in conjunction with the Annual Meeting on the 25<sup>th</sup>), December 4 or 11 (Santa Fe, pursuant to the Supreme Court's schedule, in conjunction with the new officer swearing-in ceremony and reception)

2. 2024 Annual Meeting / Creation of Annual Meeting Committee

The Annual Meeting will be on October 25, and she asked for volunteers who would like to serve on a planning committee to let staff know; Commissioner Sawyer volunteered.

3. Officer Meeting with Supreme Court to Present 2024 Budget

The officer meeting with the Supreme Court went well. The Chief Justice put us on notice for a couple of issues, one of which is a change they are working on for the Judicial Nominating Commissions.

4. 2024 BBC Internal Committees

She appointed the chairs to the BBC Internal Committees, and the roster was included in the materials.

5. District Bar Events

She asked the commissioners to inform the Board what and when their district events will be at the February meeting, so that they can be calendared.

6. She and Executive Director Spinello are working on a CLE trip.

**E. NM State Bar Foundation President Report**

President Butkus reported that the new officers of the Foundation Board for 2024 are the following: Commissioner Travis, Secretary-Treasurer; Stefanie Davis, President-Elect, and Jerry Dixon, President. Commissioner Brooks resigned from the Board. He also noted that the Bar Foundation was featured on the National Conference of Bar Foundations member spotlight.

**F. Executive Director Report**

Executive Director Spinello's written report was included in the materials. He noted that there is a donation on the licensing form for civil legal services and with the Supreme Court's recent approval, 100 percent of the money donated on the licensing form will now go to the NM State Bar Foundation for its programs and the donation is tax deductible.

**G. State Bar Representative Reports**

1. Senior Lawyers Division

Senior Lawyers Division Delegate Dan Behles reported that the division held its Attorney Memorial Scholarship Ceremony last month and it was well attended. The scholarship competition had fewer entries due to turnover at the law school. He will be the SLD Delegate on the Board again next year. Charles Gurd will be the chair of the SLD next year.

2. Young Lawyers Division

Young Lawyers Division Chair Damon Hudson reported that they will have spent all of their budget by the end of the year. They sent members to a tax law conference and held an event at Top Golf. Randy Taylor will be the new chair and will serve on the Board next year.

3. Paralegal Division

Paralegal Division Liaison Linda Sanders reported that they held their last two lunch and learns and offered them at no cost to their members. They also held their Paralegal Institute. Meryl Sutton is the incoming chair for next year and will be the liaison to the Board.

4. Bar Commissioner Districts

Due to time constraints, no district reports were provided.

5. Supreme Court Board and Committee Liaison Reports

Due to time constraints, no liaison reports were provided.

**VI. OTHER BUSINESS**

**A. Presentation of Outgoing Commissioner Awards**

NM State Bar Foundation President Carl Butkus presented a plaque to Commissioner Aja Brooks for her service as the inaugural president and a member of the Foundation Board.

President Sherman presented outgoing commissioners awards to the following: Paralegal Division Liaison Linda Sanders, Young Lawyers Division Chair Damon Hudson, and Commissioner Carolyn Wolf. Commissioner Atkins presented a plaque and gift to President Sherman for his service as president this year.

**B. New Business**

There was no new business.

**C. Adjourn**

Commissioner Wolf made a motion to adjourn the meeting at 3:51 p.m.; the motion was seconded and it passed.