

**BOARD OF BAR COMMISSIONERS  
February 23, 2018 MEETING MINUTES  
State Bar Center, Albuquerque, NM**

- |                         |  |   |
|-------------------------|--|---|
| <b>MEMBERS PRESENT:</b> | Joshua A. Allison<br>Erin M. Atkins<br>Christina G. Babcock<br>Aja N. Brooks<br>John P. Burton<br>Ernestina R. Cruz<br>Gerald G. Dixon<br>Sean M. FitzPatrick<br>Judge Kevin L. Fitzwater (ret.)<br>Mick I. R. Gutierrez | Scotty A. Holloman<br>Jared G. Kallunki (phone)<br>Robert Lara<br>David P. Lutz<br>Carla C. Martinez<br>Clara Moran<br>Wesley O. Pool<br>Joseph F. Sawyer<br>Benjamin I. Sherman<br>Carolyn A. Wolf |
| <b>MEMBERS ABSENT:</b>  | Elizabeth J. Travis  |   |
| <b>STAFF PRESENT:</b>   | Kris Becker<br>Evann Kleinschmidt<br>Christine Morganti  | David Powell<br>Stormy Ralstin<br>Richard Spinello  |
| <b>OTHERS PRESENT:</b>  | Jeff Albright<br>Ian Bezpalko<br>Anna Blanch Rabe<br>Brenda Castello<br>Laura Castille<br>Bobbie Collins<br>Katherine Goyette  | Carlos N. Martinez<br>Chief Justice Judith K. Nakamura<br>Quiana Salazar-King<br>Kara Shair-Rosenfield<br>Lucy Sinkular<br>Paula Tackett  |

**Approval of December 7, 2017 Meeting Minutes**

Commissioner Lara made a motion to approve the December 7, 2017 meeting minutes as submitted; the motion was seconded and it passed.

**I. STRATEGIC PLANNING**

**A. CURRENT STRATEGIC PLANNING ISSUES:**

**1. Restructured Board Meetings and New Agenda Format**

The new format includes current and future strategic planning issues discussed at the Executive Committee / Senior Staff Retreat.

**2. The State Bar / Bar Foundation Relationship**

**(a) NM State Bar Foundation Revised Draft Bylaws**

The Bylaws and Policies Committee met on February 21 to review the revised draft Bylaws and decided to table them for further review. Commissioner Burton will update the Articles of Incorporation.

**(b) Agreement between the Bar Foundation and the State Bar**

After the new Bar Foundation Board is formed, a contractual agreement will need to be drafted between the State Bar and the Bar Foundation regarding the functions of each organization and services provided by the State Bar to the Bar Foundation, as well as the interlocking financial arrangements defined.

**(c) Intercompany Debt**

Director of Finance David Powell provided the history of the debt owed by the Bar Foundation to the State Bar and the related party loan. The State Bar absorbs 27 percent of 37 percent of the shared costs, including occupancy and IT costs, owed by the Bar Foundation to the State Bar. The Bar Foundation reimburses 100 percent of its direct costs paid on its behalf by the State Bar. The debt will need to be incorporated into the written agreement between the two organizations.

**3. Mandatory / Regulatory Issues**

**(a) Legal Specialization**

Correspondence from the New Mexico Board of Legal Specialization to the specialists notifying them that the program is being discontinued at the end of 2018, as well as correspondence from State Bar members expressing concern over it being discontinued, was included in the materials. The Court does not want to continue the program and certify the specialists. The Board discussed whether the State Bar should take over Legal Specialization. This will be a new program and not a continuation of an existing program. Staff will poll the current specialists to determine how valuable the program is and whether they would like it to continue, and if so, what improvements could be made to the program. If we decide that we do want to handle Legal Specialization and begin certifying the specialists, then it would be desirable to have a plan in place before the end of the year.

**(b) MCLE Transition**

The proposed Transition Plan for the transfer of the oversight responsibility of MCLE to the State Bar was distributed at the meeting. Executive Director Richard Spinello went through the four phases of the plan, including the Due Diligence Review, Transition Phase, Date of Transition to the State Bar, and MCLE Board Wrap up of Operations. The plan will be sent to the Supreme Court on February 28 for approval, and he asked the Board to review the plan and provide input by that date. The most recent audit was 2013-2014 and is of concern to the Executive Committee. The MCLE Board will discuss with the Supreme Court whether to have the remainder of the audits completed. Mr. Spinello noted that he doesn't anticipate any issues for the transition by not having the audits conducted as our internal controls will be applied moving forward. Commissioners may wish to consider whether a separate committee should be formed to review and approve appeals which will now come to the full Board of Bar Commissioners. Commissioner Sawyer made a motion to approve the plan; the motion was seconded and it passed.

**B. PARKING LOT (issues for future planning or discussion):**

**1. Communications Plan**

Director of Communications Evann Kleinschmidt provided an overview of the plans for the *Bar Bulletin*, the *Bench & Bar Directory*, the Website and the Digital Print Center in order to be more relevant to members. She highlighted features of the revamped Directory for upcoming printing along with an electronic version that will also be available. President Pool said that he would like

to see a directory app. She asked commissioners to think about what they want going forward and provide feedback. Commissioner Wolf, the Board's representative to the Board of Editors, spoke about the *Bar Bulletin* and the issues with timing and formatting the opinions. She noted that the BOE questions the need to include them in the *Bar Bulletin*. Chief Clerk Joey Moya emails the Supreme Court opinions to the members, but the Court of Appeals does not.

## **2. Lawyer/Client Fee Disputes—Mediation/Fee Arbitration Program**

The current Fee Arbitration Program is voluntary. The Client Protection Fund Commission has been discussing and is considering whether the program should be made mandatory, and it is looking at the model rule on fee arbitration programs. If the Commission determines that the program should be mandatory, it will recommend that the Supreme Court create a rule. Former bar commissioner Raynard Struck, an extern at Pepperdine, is looking at options and will provide a recommendation for the Board's consideration. The LPLIC is also discussing the issue and is in favor of making the program mandatory, since fee disputes aren't covered by malpractice insurance policies.

## **II. COMMITTEE REPORTS**

### **A. Finance Committee Report**

The Finance Committee met prior to the Board meeting, and Secretary-Treasurer Cruz reported on the Committee's discussion and recommendations regarding the following:

1. Approved the December 7, 2017 meeting minutes as submitted;
2. Reported that new signature cards were completed by Wesley Pool, Jerry Dixon, Carla Martinez, Scotty Holloman and Richard Spinello for the State Bar bank accounts;
3. Recommended an intercompany payment for the shared costs of the Bar Foundation to the State Bar in the amount of \$20,000; Commissioner Cruz made a motion to approve the recommendation and the motion passed;
4. Recommended a credit card for Executive Director Richard Spinello with a \$10,000 credit limit; Commissioner Cruz made a motion to approve the recommendation and the motion passed;
5. Contribution/Donation Requests:
  - (a) Received a request for a contribution in the amount of \$1,000 to assist with funding for a national speaker for the 11th Annual NM Legal Service Providers Conference and recommended approval; Commissioner Cruz made a motion to approve the request and the motion passed;
  - (b) Received a request from the Committee on Women and the Legal Profession for additional funding in the amount of \$1,000 for the Justice Pamela Minzner Permanent Award at the Court of Appeals Building; Commissioner Cruz made a motion to approve the request and the motion passed;
  - (c) Received a thank you letter from the YMCA of Central New Mexico Youth and Government Program for the 2017 Donation from the State Bar (informational only)
6. Received proposals for an Employee Assistance Program; JLAP recommended The Solutions Group at a cost of \$2,610 per month, and the funding has been provided by the Disciplinary Board; Commissioner Cruz made a motion to approve the recommendation and the motion passed;
7. Reported that there are 264 active and 202 inactive members who have not paid their dues to date; we received 50 new admittees for a total of 9,461 active and inactive members; and
8. Reported that the financial policies will be updated and revised for the Board's consideration.

## **B. Financials**

Commissioner Cruz provided an overview of the 2017 year-end and the January 2018 financials for the Board's information. Commissioner Cruz made a motion to accept the financials and the motion passed.

## **C. Executive Committee Report**

President Pool reported on the committee's January 22<sup>nd</sup> meeting to discuss the following and requested the Board's approval and ratification. The committee met again on February 10 to review the meeting agendas and consider a sponsorship request with a deadline of February 12.

### **1. State Bar Access to Justice Fund Grant Commission Appointments**

The State Bar has three appointees to the newly created Commission. Jared Kallunki was appointed at the December Board meeting, so a notice was published in the *Bar Bulletin* for the two additional appointees. Letters of interest were received from Thomas W. Olson and Judge Timothy Aldrich, and the committee appointed Thomas W. Olson as a member and chair of the commission and Judge Timothy Aldrich.

### **2. New Mexico Legal Aid Board Appointments**

The State Bar had three appointments to make to the Legal Aid Board with one being a member of and recommended by the Indian Law Section. Letters of interest were received from the current appointees Stuart Bluestone, David Hernandez and Mekko Miller, who is a member of and was recommended by the Indian Law Section, as well as Michael Eshleman and Judge Timothy Aldrich. The committee reappointed Stuart Bluestone, David Hernandez and Mekko Miller for three- year terms.

### **3. Appellate Practice Section's request to carry over funds**

The section requested that it be permitted to carry over \$1,000 to its 2018 budget to help fund the section's Appellate Pro Bono Program and the committee approved the request.

### **4. Bench & Bar Directory Printer Proposals**

Four proposals were received for the printing of the Bench & Bar Directory; staff narrowed them down to three and recommended Aiken Printing at a cost of \$49,500 plus postage. The committee approved the recommendation and authorized staff to negotiate the postage to no more than \$10,000 since it will be shipped from Phoenix.

### **5. Sponsorship for UNM Law School Symposium on 50 Years of the Indian Civil Rights Act**

A request was received for a sponsorship in the amount of \$1,000, and the committee approved the request.

President Pool made a motion to approve the action taken by the Executive Committee at their January 22<sup>nd</sup> and February 10<sup>th</sup> meetings and the motion passed.

## **D. Bylaws and Policies Committee Report and Recommendations**

Chair Wolf reported on the February 21<sup>st</sup> meeting of the Bylaws and Policies Committee regarding the following:

**1. NM State Bar Foundation Revised Draft Bylaws**

The committee is continuing its review of the revised draft Bylaws and once they're finalized, they will be distributed to the Board for consideration and approval at the May meeting.

**2. SOPA (Secure Odyssey Public Access) Policy**

In follow up from the December meeting, the committee was requested to review JIFFY's SOPA Policy and make a recommendation. The committee requested General Counsel Stormy Ralstin to draft a letter to the Supreme Court to address questions regarding the policy for the Board's approval.

**3. Contribution / Donation Policy**

In follow up from the Executive Committee meeting on February 10, the committee referred the policy to the Bylaws and Policies Committee for review and revisions. The committee requested revisions to the policy, which will be provided to the Board for consideration at the May meeting.

**4. Tax Section Bylaw Changes to Sections 7.2 Chair and 8.1 Chair-elect**

The section requested changes to its bylaws to reduce the term of the chair and chair-elect from two years to one year in order to attract more interest in the chair position, and the committee recommended approval. Chair Wolf made a motion to approve the recommendation and the motion passed.

**III. OTHER ACTION ITEMS**

**A. Request to Support Proposed Rule to Permit the Admission of Military Spouse Attorneys Licensed in Other Jurisdictions**

Member Bobbie Collins, on behalf of the Military Spouse JD Network (MSJDN--a bar association for military spouse attorneys), attended the meeting to request the Board's support and endorsement of a rule to permit the admission of military spouse attorneys licensed in other jurisdictions. A report from the MSJDN on the state of affairs of military spouse attorneys licensed in NM and a proposed rule were included in the materials. Ms. Collins reported that 26 states have joined in the effort to support the military spouse legal community. The rule is important because most state reciprocity requirements are unattainable for military spouse attorneys and admission on motion doesn't work because it requires practice in a state for five of seven years. Under the proposed rule, military spouses would qualify for admission if they are licensed in at least one other jurisdiction and hold a degree from any law school; are a member in good standing in all jurisdictions where they have been admitted, are not subject to any pending disciplinary actions in jurisdictions where they have been admitted and have the character and fitness to practice law in New Mexico. In addition, military spouse attorneys would be required to take the NM Supreme Court course on Indian law, New Mexico community property law and professionalism, prior to admission. Qualified military spouse attorneys would be full members of the State Bar of New Mexico while living in the state on active duty military orders and would be subject to the same ethical, legal, minimum continuing legal education requirements and annual dues requirements as other attorneys in the jurisdiction.

She noted that the NM Women's Bar Association is endorsing the proposed rule, and the admissions committee of the Board of Bar Examiners is reviewing the draft rule before it is submitted to the Supreme Court. The goal is to send the proposed rule to the Supreme Court in July. Commissioners Cruz and Martinez suggested presenting the proposal to the Board of Bar Examiners at their next meeting. Commissioner Burton recommended obtaining letter of support from legislators. Following discussion, Commissioner Dixon made a motion for the Board to send a letter in support of the proposal as outlined

in the materials to the BBE and the Supreme Court; the motion was seconded and it passed. General Counsel Stormy Ralstin will draft the letter for President Pool's signature.

**B. Request to Create Cannabis Law Section**

State Bar Member Carlos N. Martinez requested that the Board create a new section on Cannabis Law. Pursuant to the State Bar Bylaws, the following were included in the materials: 1) a petition signed by a minimum of 50 members, 2) the proposed dues amount, 3) draft bylaws, and 4) the names of nine persons to serve as an initial board of directors from whom two shall be designated the chair and budget officer. Mr. Martinez attended the meeting and reported that there are a lot of gray areas with regard to state and federal laws and that the issues affect many areas of law. The purpose of the section would be to discuss both sides of the issue and help members understand the current laws, rights and responsibilities and provide clarity and direction to members in their practices. The section will not be advocating for or against legalization. Oregon, Michigan and Colorado have such a section and there is also a national organization. Executive Director Richard Spinello reported that members have been making inquiries of the Ethics Committee for over two years and the committee has issued an opinion.

Following discussion, Commissioner Allison made a motion to refer the proposed section's bylaws to the Bylaws and Policies Committee for review to ensure that they are consistent with other sections' bylaws and to make sure they aren't in conflict with GAC. Commissioner Martinez requested an amendment for the Bylaws and Policies Committee to review the State Bar Bylaws to determine whether the Board has the ability not to create a section if the proposal meets all of the requirements and to interpret and clarify the language regarding the formation of sections as to whether it should be "shall" or "may." The motion was seconded and it passed. Executive Director Richard Spinello clarified that currently, section bylaws are reviewed by the general counsel for accuracy and consistency and then they are forwarded to the Bylaws and Policies Committee for review.

**C. Committee on Women and the Legal Profession Presentation Regarding Update to the Report of the Task Force on Women Subcommittee**

The Committee on Women and the Legal Profession attended the meeting to make a presentation on updating the Task Force on Women and the Legal Profession's Report, per Chief Justice Nakamura's request. The five-year update to the first report was included in the materials. The update is to be completed in early 2020, which is 30 years after the initial report was published. The committee plans to conduct a survey of all active attorneys in New Mexico and is asking UNM for assistance in conducting the survey. They need a focus group for survey questions and assistance with advertising the survey; the goal is to launch the survey in 2019 and have the results finalized the end of the year. The committee has established a subcommittee and requested the Board to appoint a commissioner to serve as a liaison on the subcommittee. They would like to get buy-in from all of the major stakeholders—UNM, the Women's Bar Association and the State Bar, and will explore various sources for funding. President Pool will appoint a liaison from the Board following the meeting.

**D. Appointment of Commissioner to Third Bar Commissioner District**

Only one nomination petition was received for the two positions in the Third Bar Commissioner District, so a notice was published in the *Bar Bulletin* for the vacancy, and the following submitted letters of interest which were included in the materials. The term will run through December 31, 2018 and an election for the position shall be held with the next regular election of Commissioners.

1. John M. Greacen
2. James A. Hayes
3. Barry C. Kane
4. Constance G. Tatham

Following a vote by secret ballot, Barry C. Kane was appointed to the vacancy in the Third Bar Commissioner District through the end of the year.

#### **IV. INFORMATIONAL ITEMS**

##### **A. New Mexico Compilation Commission Report**

Compilation Commission Director Brenda Castello and the Commission's Advisory Committee Chair Paula Tackett attended the meeting to provide an update regarding where the Commission is currently and the plans for the future. In May of 2019, the Commission's contract with Conway Greene will expire. Print is no longer viable due to the cost and they don't receive enough funding to remain self-sustaining. The Commission is considering whether to convert to online only for state laws and provide public access free of charge; they will continue to publish slip opinions in real time. Additionally, they currently have three separate websites for rules, opinions and the public, so they are consolidating them into one and plan to launch the new site in May of 2019. They also upgraded the smartphone and tablet access. They will no longer publish the administrative code or federal law, since Ravel publishes all court opinions for all states free of charge.

##### **B. President Report**

President Pool reported on the following:

1. The 2018 BBC Internal Committee and Supreme Court Board and Committee liaison appointments were finalized and the rosters were included in the materials.
2. He met with Chief Justice Nakamura, Dean Mathewson, Justice Vigil, and David Stout regarding the Judicial Compensation Commission Report and lobbying for a compensation increase and constitutional initiative, and they agreed to propose an increase.
3. He met with Retired Justice Richard Bosson, Judge Nan Nash, Liz McGrath, Stuart Bluestone, Ed Marks, Commissioner Aja Brooks and Executive Director Richard Spinello regarding pro bono in our state and how the State Bar can help with this endeavor. The State Bar will assist with the pro bono efforts in obtaining more participation in the Volunteer Attorney Pool.
4. He provided an overview of the discussion and topics covered during the Executive Committee and Senior Staff Retreat held on February 9 and 10.

##### **C. Executive Director Report**

Executive Director Richard Spinello's written report was included in the materials. He reported that the newly formed ATJ Fund Grant Commission issued its RFP, which was included with his report. The proposals are due on March 19, and they will be meeting in April to distribute \$500,000 to the legal service providers. He noted that the new organizational chart and the JLAP 2018 Mission and Goals were also included with his report for the Board's information.

##### **D. Section and Committee Annual Reports**

Pursuant to the State Bar Bylaws, all standing committees and sections shall present annual reports to the Board, and the reports are posted on the State Bar's Website at the below link. If a section or standing committee does not submit an annual report by December 31, it will be placed on the sunset list for the following year. All of the committees and sections submitted annual reports, with the exception of the Family Law Section, so it will be placed on the sunset list.

<http://www.nmbar.org/NmbarDocs/AboutUs/Sections/SectionReports.pdf>  
<http://www.nmbar.org/NmbarDocs/AboutUs/Committees/CommitteeReports.pdf>

##### **V. Bar Commissioner District and Division (SLD, YLD & PD) Reports**

Commissioners and division representatives reported on meetings and activities in their districts and divisions. Young Lawyers Division Chair Sean FitzPatrick reported on the Wills for Heroes event at Loma Linda in Rio Rancho, which will be the largest event ever. Upcoming events include a 5K run on St. Patrick's Day and a Shamrock and Roll event.

## **V. OTHER BUSINESS**

### **A. Swearing-in of New Bar Commissioners**

Chief Justice Judith K. Nakamura attended the meeting to swear-in the new and re-elected missioners as follows:

First Bar Commissioner District: Aja N. Brooks and Robert Lara, Jr.

Third Bar Commissioner District: Elizabeth J. Travis

Sixth Bar Commissioner District: Erinna M. Atkins and Jared G. Kallunki

2018 Division Representatives: Sean M. FitzPatrick, Young Lawyers Division Chair  
Christina G. Babcock, Paralegal Division Liaison

### **B. New Business**

The Board went into Executive Session but no action was taken.

President Pool announced that SLD Delegate Jack Burton was receiving a 50-year practitioner certificate at the State Bar 132<sup>nd</sup> Birthday Celebration following the meeting.

There being no further new business, the meeting was adjourned.