

**BOARD OF BAR COMMISSIONERS  
May 18, 2018 MEETING MINUTES  
State Bar Center, Albuquerque, NM**

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| <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 (phone)<br>Gerald G. Dixon<br>Sean M. FitzPatrick<br>Judge Kevin L. Fitzwater (ret.)<br>Mick I. R. Gutierrez<br>Scotty A. Holloman | Jared G. Kallunki (phone)<br>Robert Lara (phone)<br>David P. Lutz<br>Carla C. Martinez<br>Clara Moran<br>Wesley O. Pool<br>Joseph F. Sawyer<br>Benjamin I. Sherman<br>Elizabeth J. Travis<br>Carolyn A. Wolf |
| <b>STAFF PRESENT:</b>   | Kris Becker<br>Evann Kleinschmidt<br>Christine Morganti<br>Pamela Moore  | David Powell<br>Stormy Ralstin<br>Richard Spinello   |
| <b>OTHERS PRESENT:</b>  | Ian Bezpalko<br>Carlos N. Martinez<br>Tom Olson  | McKenzie St.-Dennis<br>Juan Valencia   |

**Approval of February 23, 2018 Meeting Minutes**

Commissioner Sawyer made a motion to approve the February 23, 2018 meeting minutes as submitted; the motion was seconded and it passed.

**I. STRATEGIC PLANNING**

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

- 1. Draft Amended and Restated New Mexico State Bar Foundation Bylaws**
- 2. Draft Amended and Restated New Mexico State Bar Foundation Articles of Incorporation**
- 3. Agreement Between the NM State Bar Foundation and the State Bar**
- 4. Intercompany Debt**

President Pool reported that the Board referred the NM State Bar Foundation Bylaws to the Policy and Bylaws Committee. The Committee reviewed and made revisions to the Bylaws for the Board's approval; however, it was discovered that there are several things that need to be clearly delineated prior to voting on the creation of a new Bar Foundation Board. The Board needs to look at all of the ramifications of this change, including budgetary, audit, Annual Meeting, CLE, etc., before proceeding, rather than dealing with them after the Foundation Board has been created.

The Policy and Bylaws Committee recommended tabling the approval of the Bylaws and creating a separate committee to review the ramifications and provide a report and recommendations to the Board. The committee also reviewed and made revisions to the Bar Foundation Articles of Incorporation and recommended tabling them until the Bylaws are presented to the Board for

approval. Commissioner Wolf made a motion to approve the committee's recommendations, and the motion passed. President Pool stated that he will create the committee and would like the committee to be comprised of the Executive Committee, senior staff and any other commissioners who would like to participate on the committee and for the committee to bring back recommendations to the Board by the December meeting. President Pool requested commissioners contact him following the meeting if they're interested in serving on the committee and to forward any comments or thoughts to him on the items to be addressed by the committee. Once all of the issues are addressed, an agreement will be formulated between both organizations.

**B. Mandatory / Regulatory Issues**

**1. Legal Specialization Survey Results**

Chief Justice Nakamura informed the State Bar that the Legal Specialization Program will end December 31. A survey of the current specialists was conducted and the results were included in the materials. The results of the survey were overwhelmingly in favor of Legal Specialization. Many would like the State Bar to take over Legal Specialization and they don't want a lapse in their certification. There will not be a transition to the State Bar; it would be a new program. The Court asked us to consider an expedited process to certify the former specialists. The Board discussed how it would designate or certify specialists and whether to create a standing commission or a committee. Following discussion, the Board referred Legal Specialization to the Regulatory Committee and directed the committee to look at Legal Specialization models in other states and come back to the Board with a recommendation. The committee will also consider MCLE, IOLTA and mentorship.

**2. MCLE Transition Update**

General Counsel Stormy Ralstin provided an update on the MCLE transition. She reported that Vanessa Sanchez, formerly with CLE, was hired to work with her to learn and document MCLE's processes and procedures and David Powell is assessing their IT. We will be communicating the changes to the members and will have a large presence at the Annual Meeting with an exhibit table, brochures and a CLE breakout presentation on MCLE. The Supreme Court does not want to proceed with the audits for the years 2015 through 2018, and we will internally evaluate that period moving forward. The Court has approved the transition plan which included several items which are the responsibility of the MCLE Board. Executive Director Richard Spinello, Stormy Ralstin and MCLE Board Chair, Sue George, met regarding MCLE's responsibilities. During the transition, an Order from 2017 was discovered transferring \$100,000 from MCLE to the Client Protection Fund, which will now have to be distributed.

**II. COMMITTEE REPORTS**

**A. Finance Committee Report**

The Finance Committee met prior to the Board meeting, and President-elect Dixon reported on the Committee's discussion and recommendations regarding the following:

1. Approved the February 23, 2018 Meeting Minutes as submitted;
2. Received a presentation from CliftonLarsonAllen LLP on the 2017 Audit and reported that we received an unqualified audit opinion, which is the best possible audit outcome an organization can receive; there were no current or past year adjustments or internal control deficiencies, so no management comment letter was issued; the most sensitive disclosure was a related party transaction regarding the executive director's co-ownership of a restaurant where the State Bar purchases food for CLEs and meetings; the auditor's communication to the Board and management found the financial statement disclosure to be neutral, consistent and clear. Commissioner Dixon noted that this was

also in the prior year's audit and the previous auditors looked at whether the State Bar receives fair prices from the restaurant and determined that the prices the State Bar receives are actually lower than market value and are also lower than the stated prices of The Daily Grind; the State Bar uses other vendors and not solely The Daily Grind for its catering needs for meetings and events. The Finance Committee recommended that the 2017 Audit be accepted; Commissioner Dixon made a motion to accept the 2017 Audit, and the motion passed;

3. Reported on and recommended acceptance of the April 2018 Financials; Commissioner Dixon made a motion to accept the April 2018 Financials, and the motion passed;
4. Reported that Executive Director Richard Spinello and Director of Finance David Powell are reviewing the financial policies for updates and revisions and will coordinate with Secretary-Treasurer Tina Cruz once the initial review is completed. Upon completion, the proposed changes will be presented to the committee for approval; and
5. Received an update on the 2018 Licensing; there are currently 7,265 active and 2,069 inactive members, and 12 names were sent to the Supreme Court for suspension.

## **B. Executive Committee Report**

President Pool reported that the committee met on May 9 to approve the agendas for the meeting and to discuss the next steps regarding the Bar Foundation Bylaws reported on previously in Section I.A. The committee also discussed newly appointed Board member Barry Kane from the Third Bar Commissioner District who went inactive after applying for the vacancy on the Board. The committee determined that he is ineligible to serve, and a new commissioner will need to be appointed for that district (see agenda item III.B. below). The committee also discussed the SOPA letter.

## **C. Policy and Bylaws Committee Report and Recommendations**

Chair Carolyn Wolf reported on the April 6<sup>th</sup> meeting of the Policy and Bylaws Committee regarding the following:

### **1. SOPA (Secure Odyssey Public Access) Policy / Draft Letter to Supreme Court**

The Board referred the SOPA Policy to the Policy and Bylaws Committee to look at the issues and provide recommendations. The Committee reviewed the policy and requested General Counsel Stormy Ralstin to draft a letter to the Court, which the Committee recommended for approval. The draft letter was sent to the Court and the Court requested that the letter identify Ian Bezpalko. Commissioner Wolf made a motion to approve the letter with the amendment regarding Mr. Bezpalko and authorize President Pool to sign the letter and forward it to the Court, and the motion passed.

### **2. Revised Contribution/Donation Policy**

The committee reviewed the Contribution/Donation Policy and made revisions to the application process to remove the deadlines of January 31 and July 31 for requests and added language that requests will be considered at the next Board meeting, and the committee recommended approval. Commissioner Wolf made a motion to approve the amendments and the motion passed.

### **3. Cannabis Law Section**

#### **(a) Review of Article IX, Section 9.1, Sections pursuant to the request to create a Cannabis Law Section**

The committee was requested to interpret Article IX, Section 9.1 of the State Bar Bylaws to determine whether the Board has the ability to deny the creation of a section even if the proposal meets all of the requirements. The committee determined that the Board does have the discretion to approve or deny the creation of a section. Commissioner

Wolf made a motion to approve the committee's determination, and the motion passed with three nay votes.

**(b) Review of Cannabis Law Section Bylaws**

The Committee tabled a review of the proposed bylaws pending a vote on the creation of the section.

**4. Amendments to State Bar Bylaws, Article IX, Section 9.1, Sections**

The committee made amendments to Article IX, Section 9.1, of the State Bar Bylaws removing some of the requirements for the creation of a section. Thirty days' notice is required prior to approval, so the amendments will be voted on at the August meeting.

**5. Amendments to New Mexico State Bar Foundation Bylaws**

This item was tabled; see Section I.A.

**6. Amendments to New Mexico State Bar Foundation Articles of Incorporation**

This item was tabled; see Section I.A.

**D. ATJ Fund Grant Commission Report**

The State Bar's newly created ATJ Fund Grant Commission held their inaugural meeting on February 14. Chair Tom Olson reported that the Commission reviewed a list of civil legal service providers and issued an RFP. The Commission's charge to the civil legal service providers was that their proposal had to comply with the ATJ State Plan. Nine applications were received for funding, and the Commission met on April 14 to review and consider them. One application was disqualified as the provider was ineligible to apply and one application was eliminated. The Commission awarded grants to the remaining seven providers in the amount of \$500,000 with one of them being a \$10,000 planning grant. The next funding date is July 1, 2019, and the Commission will review the application process and RFP prior to the next grant cycle.

**E Client Protection Fund (CPF) Commission Annual Report**

The Client Protection Fund Commission Annual Report was included in the materials. CPF Commission Chair Drew Cloutier will attend the next Board meeting at the Annual Meeting to present the report.

**F. Annual Meeting and CLE Trips Committee Report**

President Pool reported on the initial meeting of the Annual Meeting Committee held on April 2. The committee discussed the goals/mission of the Annual Meeting and how to obtain better attendance from judges to increase overall attendance. The discussed possibly collaborating with the Judicial Conclave. The Chief Judges' Council Meeting will be held on Thursday morning of the Annual Meeting, and all judges have been invited to the Past Presidents' Dinner. There was also a discussion about CLE trips and the decreasing attendance; the trip was not held this year and the committee discussed whether they should be continued and if there is a need for them since members can get all of their credits at the Annual Meeting. No action was taken by the committee at the meeting and it will meet again later in the year.

**III. OTHER ACTION ITEMS**

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

Following a vote by secret ballot, the creation of the Cannabis Law Section was approved.

## **B. Third Bar Commissioner District Vacancy**

The Board discussed the vacancy in the Third Bar Commissioner District due to Mr. Kane's ineligibility and options for appointing a replacement, which included: 1) appoint the second place candidate from the previous vote in February; 2) revote on the previous slate of candidates; 3) publish a new notice for the vacancy, or 4) do nothing and leave the position vacant until the election. Commissioner Sawyer made a motion to appoint the second place candidate from the previous vote, Constance G. Tatham; the motion was seconded and it passed.

## **C. Appointment to ABA House of Delegates**

A notice was published for a vacancy on the ABA House of Delegates, and the following submitted letters of interest:

1. Roberta S. Batley
2. Dennis E. Jontz (current appointee)

Following a vote by secret ballot, Roberta S. Batley was appointed to the ABA House of Delegates for a two-year term.

## **D. Appointment to Judicial Standards Commission**

A notice was published for a vacancy on the Judicial Standards Commission, and the following submitted letters of interest:

1. Peter L. Bruso
2. James A. Hayes
3. Nancy R. Long
4. Angela R. Pacheco
5. Fermin A. Rubio

Following a vote by secret ballot, Nancy R. Long was appointed to the Judicial Standards Commission for a four-year term.

## **IV. INFORMATIONAL ITEMS**

### **A. President Report**

President Pool reported that he attended the Western States Bar Conference with President-Elect Dixon and Secretary-Treasurer Cruz in March; Past President Drew Cloutier was the president of the conference this year. He also attended ABA Day with President-Elect Dixon in Washington, D.C. in April to meet with our congressional leaders. He spoke at the new admittee swearing-in ceremony in April and chaired two Judicial Nominating Commissions. The tentative schedule and registration for the Annual Meeting are on the website and registration is comped for bar commissioners. The Past Presidents' Dinner will be held on Wednesday, August 8.

### **B. Executive Director Report**

Executive Director Richard Spinello's written report and the State Bar Newsletter were included in the materials, and he distributed the New Member Handbook, which will be a useful resource guide for all members.

### **C. Supreme Court's JLAP Funding Oversight Board / Program Director Report**

Executive Director Richard Spinello reported on the new Supreme Court's JLAP Funding Oversight Board that was created for the JLAP funds received from the Disciplinary Board. He introduced Pamela Moore,

the new JLAP Program Director, and she reported on the new Employee Assistance Program for members, their families and their staff, which was approved by the Board at the February meeting. The new JLAP and EAP brochures were distributed to the Board.

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

General Counsel Stormy Ralstin reported that the letter of support from the Board to the Supreme Court and a letter to Bobbie Collins with recommendations regarding the proposal were included in the materials. The letter will also be sent to Sophie Martin, Executive Director of the Board of Bar Examiners.

**E. Bar Center Security Update**

Director of Governance and Administration Kris Becker provided an update on the security proposal approved by the Board at the December meeting, which included security cameras in the parking lot and in the lobby, upgrades to the alarm system and the installation of a second panic button at the front desk, an amber alert light and an automatic locking mechanism on the front doors. The installation is now complete and the total cost was just under the \$15,000 budget. Several staff also attended a Safety and Security Training in March and an active shooter training was held in April.

**F. Bar Commissioner Division/District Reports**

**1. Senior Lawyers Division**

SLD Chair Jack Burton reported that Susan Page is the new chair and she has a lot of new ideas for the division. She has been recruiting members for the Board and Judge Bustamante is a new member and chair-elect. They are looking at changing the requirements to be a member of the division. Ms. Page would like to liaison with YLD and reach out to emeritus members to do more pro bono work.

**2. Young Lawyers Division**

YLD Chair Sean Fitzpatrick reported on the Law Day Call-in earlier this month and the Wills for Heroes event in Rio Rancho which was the largest so far; every volunteer had a laptop and they were a huge hit. They held one in Alamogordo in April and are holding another one in Santa Fe in July. A Veteran's Clinic will be held on June 12 and they have a Board meeting on Saturday. They are working with NREEL on an Annual Meeting event.

**3. Paralegal Division**

The Division held their annual Law Day CLE; they put on three CLE programs per year and are trying to reach more members outside of Albuquerque through webcasting. They have two new board members from outside of Albuquerque, and they are pleased to be a gold sponsor of this year's Annual Meeting.

**4. District Bar Commissioners**

Commissioner Brooks reminded the Board that fall is pro bono month.

**V. OTHER BUSINESS**

**A. New Business**

There being no new business, Commissioner Holloman made a motion to adjourn the meeting; the motion was seconded and it passed.

## **VI. PARKING LOT**

The below items are issues for future planning and discussion.

- A. Communications Plan**
- B. Client Protection Fund Commission Recommendation Regarding a Mandatory Fee Arbitration Program for Lawyer/Client Fee Disputes**
- C. Committee on Women and the Legal Profession Update to the Report of the Task Force on Women**