

**BOARD OF BAR COMMISSIONERS  
October 12, 2018 MEETING MINUTES  
State Bar Center, Albuquerque, NM**

- MEMBERS PRESENT:** Joshua A. Allison  
Erin M. Atkins  
Christina G. Babcock  
Aja N. Brooks  
Ernestina R. Cruz  
Gerald G. Dixon  
Sean M. FitzPatrick  
Judge Kevin L. Fitzwater (ret.)  
Mick I. R. Gutierrez  
Scotty A. Holloman
- Jared G. Kallunki  
Robert Lara  
David P. Lutz  
Carla C. Martinez  
Clara Moran  
Wesley O. Pool  
Joseph F. Sawyer  
Benjamin I. Sherman  
Elizabeth J. Travis  
Carolyn A. Wolf
- MEMBERS ABSENT:** John P. Burton  
Constance G. Tatham (phone)
- STAFF PRESENT:** Kris Becker  
Evann Kleinschmidt  
Christine Morganti
- David Powell  
Stormy Ralstin  
Richard Spinello
- OTHERS PRESENT:** Adam Henderson  
Justin Muehlmeier  
Chief Judge Nan Nash

**A. Call to Order**

President Pool called the meeting to order at 10:20 a.m.

**1. Approval of August 9, 2018 Meeting Minutes**

Commissioner Kallunki made a motion to approve the August 9, 2018 meeting minutes as submitted; the motion was seconded and it passed.

**I. STRATEGIC PLANNING**

**A. 2019 State Bar Budget**

Executive Director Richard Spinello explained the proposed use of the \$150,000 of MCLE funds that the State Bar will be receiving soon and that the deficit budget is due to spending some of those funds received in 2018 in 2019. He also provided an overview of the downsizing to the Digital Print Center (DPC) with the equipment lease expiring next November and that the savings will be used to improve our database and website to provide more timely information to our members. We budgeted \$90,000 for this in 2019, which includes \$60,000 for a consultant to look at options and make a recommendation and \$30,000 to start implementing next year. Secretary-Treasurer Cruz provided a recap of the Finance Committee's discussion regarding the YLD Budget and recommendation to approve the same amount as last year reducing the requested amount by \$1,570. She provided a recap of the committee's discussion regarding the downsizing of the DPC and the recommendation to reduce the number of Bar Bulletins that are printed from 52 to 24 in 2019 and to publish the Bar Bulletin electronically in 2020. The Finance Committee recommended approval of the 2019 State Bar Budget with the reduction in the YLD Budget of \$1,570, which is the same amount as last year. Secretary-Treasurer Cruz made a motion to approve the recommendation and the motion passed.

## **B. Print Shop / Bar Bulletin Discussion**

Director of Communications Evann Kleinschmidt explained the spreadsheet that she had prepared, which included the DPC needs in order to compare the cost savings of publishing 24 issues of the Bar Bulletin in 2019 as opposed to 52 issues and going completely electronic in 2020. A detailed transition plan and an overview of the electronic publication will be presented at the December meeting.

## **C. Revisions to the Financial Policies**

Secretary-Treasurer Cruz reported that the proposed revisions to the financial policies include updated information and references and improvements to internal controls. The Finance Committee will be meeting in November to finalize the revisions to the policies for the Board's approval at the December meeting.

# **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 August 8 and 9, 2018 Meeting Minutes;
2. Accepted the August 2018 Financials;
3. Discussed designating the MCLE assets that the State Bar will soon be receiving; Executive Director Richard Spinello explained that the Board of Bar Examiners, Disciplinary Board, and the Supreme Court are interested in partnering with the State Bar to have a shared database. To start the process, we have budgeted \$90,000 in the 2019 Budget, \$60,000 of which will be used to hire a consultant to research our options and vet potential candidates and \$30,000 of which will be used to begin implementing the project later next year. The MCLE assets would not be donor restricted, and the committee recommended that they be classified as board designated to track their use in future periods. Commissioner Cruz made a motion approve the recommendation and the motion passed.

## **B. Executive Committee Report / Approval of Agendas**

President Pool reported that the Executive Committee met on October 5 to review and approve the meeting agendas.

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

### **1. Executive Director Evaluation and Compensation Policies Amendments**

The committee recommended approval of amendments to the Executive Director Evaluation and Compensation Policies to clarify the committee members and change the timeframe for the committee to meet from the second quarter to the third quarter and report to the Board no later than the last meeting of the year. Chair Wolf made a motion to approve the amendments and the motion passed.

### **2. Real Property, Trust and Estate Section Bylaw Amendments**

The committee recommended approval of amendments to Section 7.2, Chair, in the section's bylaws to allow the chair to serve multiple terms but not more than two consecutive terms. Chair Wolf made a motion to approve the amendments and the motion passed.

**3. Senior Lawyers Division Proposed Rule Amendment**

The committee recommended approval of amendments to Rule 24-101(b)(2) NMRA regarding membership in the Senior Lawyers Division. Chair Wolf made a motion to approve the recommendation and the motion passed. The proposed Rule change will be sent to the Supreme Court for approval and the Division's Bylaws will be amended accordingly once approved.

**4. Global Section Bylaw Amendment**

The committee recommended approval of a global section bylaw amendment to Section 8.3, Absenteeism, which allows sections to determine the number of meetings that board members are permitted to miss prior to being subject to termination. Chair Wolf made a motion to approve the recommendation and the motion passed.

**5. Trial Practice Section Bylaw Amendments**

The committee recommended approval of various bylaw amendments of the section. Chair Wolf made a motion to approve the recommendation and the motion passed.

**D. SOPA Committee Report**

**1. Tyler Technologies Presentation on "re:SearchNM" (replacing Odyssey)**

Adam Henderson with Tyler Technologies provided a presentation on the new e-filing software system that will go live at the end of October. The system will not be accessible to the public until the Court finds a redaction solution. The search feature will be available to self-represented litigants. Advanced features will be available by subscription for \$99 per month.

**2. Revised SOPA Policy by the Online Access Subcommittee**

Chair Erin Atkins reported that the revised SOPA Policy, which was included in the materials, addresses the three issues identified in the previous policy and she requested input from the Board. She'll be scheduling a meeting of the committee soon in order to provide input to the Court, and she invited Board members who are interested to join the committee.

**E. Regulatory Committee Report**

**1. Role / Mission of Committee**

Chair Liz Travis presented the mission statement of the committee; she made a motion to approve the mission and it passed.

**2. Legal Specialization**

Since the Court discontinued the Legal Specialization program, the committee's priority is to study it and look at options. Executive Director Richard Spinello met with Joey Moya to discuss a plan that would allow all of the current specialists to keep their certifications until they expire or the Board decides to create a new program. Those that expired in 2017 are not valid and we will refund their money; those that expire this year will be extended for an additional year. There are approximately 35 specialists expiring each year over the next five years and we would monitor them for MCLE requirements and malpractice insurance and collect the annual fees. Rule 16-704(d) allows the Board of Legal Specialization to certify the specialists and the Court will need to change the rule to allow the State Bar to handle the certifications. The Court will rescind all specialization rules with the exception of the certifier. All other states and the ABA would continue to be named certifiers.

The committee is exploring a variety of options of what a new program would look like and who would handle the certifications and will be meeting with some of the specialists to obtain more information.

**F. Intellectual Property Law Section Report**

Justin Muehlmeier, Chair of the Intellectual Property Section, attended the meeting to provide an update on the section. He reported that they are an active section with approximately 65 members; they are focused on engaging law students and members and coordinated the IP Moot Court and provided a tag team adjunct survey course. They hold an annual CLE and brought in the U.S. Patent and Trademark Office to New Mexico last year and are holding their first annual Pro Bono IP Clinic in partnership with the Law School next month.

**III. OTHER ACTION ITEMS**

**A. 2019 Board Officer Elections (Secretary-Treasurer and President-Elect)**

At the August meeting, Commissioner Martinez was nominated to the position of Secretary-Treasurer and Commissioner Cruz was nominated to the position of President-Elect for 2019. No other nominations were received. Commissioner Dixon made a motion to elect Commissioner Martinez as Secretary-Treasurer and Commissioner Cruz as President-Elect by acclamation; the motion was seconded and it passed.

**B. ERISA Wrapper Plan Resolutions**

General Counsel Stormy Ralstin informed the Board that the Employee Retirement Income Security Act (ERISA) also includes employee welfare programs. In order to comply with ERISA requirements, she recommended adoption of a "Wrapper" Plan Agreement. Four resolutions are required for adoption by the State Bar and the NM State Bar Foundation. Commissioner Lutz made a motion for the State Bar to adopt the plan; the motion was seconded and it passed. Commissioner Travis made a motion to permit the NM State Bar Foundation to adopt the plan; the motion was seconded and it passed. Commissioner Kallunki made a motion for the State Bar to approve a joint resolution to adopt the plan; the motion was seconded and it passed.

**IV. INFORMATIONAL ITEMS**

**A. ATJ Commission Justice for All Initiative**

Second Judicial District Court Chief Judge Nan Nash, Chair of the Access to Justice Commission, attended the Board meeting to report on the Justice for All initiative. She provided the history of the Commission, which was created in 2005 and which developed the State Plan for Providing Civil Legal Aid to Low Income New Mexicans, and was co-chaired by Justice Petra Maes and Judge Sarah Singleton for the first 10 years. Judge Nash and Liz McGrath were asked to continue the Commission as co-chairs. Around that time, the national Justice for All initiative began. The goal is to provide 100 percent access for critical legal needs, including housing, benefits, landlord/tenant, family law, health care, and resources. They are creating a strategic plan which will include what they would like to accomplish. They are asking various groups to partner with them and would like more involvement from the State Bar and participation in meetings. Anyone can attend the meetings and she encouraged commissioners to attend because they are messengers in their communities. Judge Nash would also like the ability for lawyers in rural areas to Skype into meetings. President Pool asked that there be a discussion at the December meeting of who will serve on the ATJ Commission.

## **B. President Report**

President Pool reported that he spoke at the New Admittee Swearing-in Ceremony in Albuquerque on September 25. He also reported on the Annual Meeting; he received very positive feedback and comments about the Annual Meeting and Michael Morton and noted that it was his last public appearance. The attendees enjoyed the venue, the exhibitors, and the excellent networking opportunities.

## **C. President-Elect Report**

President-Elect Dixon reported that he and Executive Director Richard Spinello met with Chief Justice Nakamura and discussed the Board's liaison appointments to the Supreme Court Boards, Committees and Commissions. Since they are liaisons, they have limited roles and do not vote, so the Court is going to look into making them official voting members. They also discussed the judiciary's role and relationships between lawyers and the court and that most lawyers are reluctant to talk with the Chief Justice about issues with the courts and judges. Chief Justice Nakamura requested more feedback in order to improve the system, so we will put together a special committee in 2019 to address the matter. He also reported that Chief Justice Nakamura committed \$20,000 from Court funds to be used for the diversity survey. They also discussed amending the rule to clarify how government attorneys and judges are able to meet their pro bono goal. She also supports holding the Conclave in conjunction with the 2020 Annual Meeting if we can make that happen.

He also reported that the reception following the December 13<sup>th</sup> Officer Swearing-in will be held at Rio Chama Restaurant in Santa Fe. Additionally, he noted that Commissioner Brooks will be receiving the Alumni Promise Award at the UNM Distinguished Achievement Awards Dinner on October 20.

## **D. Executive Director Report / State Bar Departmental Newsletter**

Executive Director Richard Spinello reported that several departments were relocated, so an updated Bar Center map was included in the materials. Also included in the materials was the Order transferring the administration of the MCLE program to the State Bar; the Order regarding the Legal Specialization program hasn't been received yet, but we should be receiving it soon. Also included was a letter from Roberta S. Batley, the Board's appointee to the ABA House of Delegates, with an update on the ABA's activities and initiatives, and she plans to attend future Board meetings.

## **E. Bar Commissioner Division / District Reports**

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

SLD Delegate Jack Burton was not in attendance, so there was no report for the Division.

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

YLD Chair Sean FitzPatrick reported that 250 people attended their "Public Service Project In Outlying Areas," which was held in Farmington last month; they also held a chips and salsa 5K event, a law school mentorship program, and a reception for the new admittees who were sworn in last month. They are planning a Wills for Heroes event in Farmington and a holiday happy hour in November.

### **3. Paralegal Division**

Paralegal Division Chair Christina Babcock reported that the Division is working on their Annual Institute scheduled for November 30, and they are preparing for their elections. She also reported that Chief Justice Nakamura requested that they appoint a division member to the LLLT Committee.

**4. Supreme Court Board / Committee / Commission Liaison Reports**

President Pool reported that he serves on the Compilation Commission and that the Commission was able to get a small raise for the judiciary. Commissioner Atkins reported that the Board Governing the Recording of Judicial Proceedings which governs licensure of court monitors and reporters has multiple pending licensure issues and complaints. The board only meets once per year and has a lot of work, so she asked the Board to consider making it a multi-year position. Commissioner FitzPatrick reported that the UJI Civil Committee is making a number of rule changes.

**5. Bar Commissioner Districts**

Commissioner Sawyer reported that that the Pro Bono Clinic in Aztec was very well attended. Commissioner Brooks thanked everyone who volunteered to help with the legal fairs around the state.

**V. OTHER BUSINESS**

**A. New Business**

There was no new business.

**B. Adjourn**

Commissioner Holloman made a motion to adjourn the meeting at 2:45 p.m.; the motion was seconded and it passed.

**VI. PARKING LOT (issues for future planning and discussion)**

**A. Client Protection Fund Commission Recommendation Regarding a Mandatory Fee Arbitration Program for Lawyer / Client Fee Disputes**