

**BOARD OF BAR COMMISSIONERS**  
**August 1, 2019 MEETING MINUTES**  
**Hotel Albuquerque at Old Town, Albuquerque, NM**

<b>MEMBERS PRESENT:</b>	Erin M. Atkins Allison Block-Chavez Aja N. Brooks Ernestina R. Cruz Gerald G. Dixon Sean M. FitzPatrick Judge Kevin L. Fitzwater (ret.) Mick I. R. Gutierrez Jared G. Kallunki David P. Lutz Carla C. Martinez	Clara Moran Wesley O. Pool Lynette Rocheleau Joseph F. Sawyer Benjamin I. Sherman Lucy H. Sinkular Constance G. Tatham Elizabeth J. Travis Carolyn A. Wolf Bradford H. Zeikus
<b>MEMBERS ABSENT:</b>	Parker B. Folse	
<b>STAFF PRESENT:</b>	Kris Becker Evann Kleinschmidt Chris Morganti	David Powell Stormy Ralstin Richard Spinello
<b>OTHERS PRESENT:</b>	Bobbie Batley Ian Bezpalko Charles Gurd	Ellen Kelly Deian McBryde Michael Rueckhaus

**I. CALL TO ORDER**

**A. Approval of May 17, 2019 Meeting Minutes**

Commissioner Sinkular requested an amendment to the May 17, 2019 meeting minutes regarding the Family Law Section Update to change the word “proposed” to “opposed,” and with that change, she made a motion to approve the minutes; the motion was seconded and it passed. Commissioners Cruz and Atkins abstained due to their absence from the May 17<sup>th</sup> meeting.

**II. STRATEGIC PLANNING**

**A. Regulatory Committee Report**

The Regulatory Committee met on July 24, and Chair Liz Travis reported on the discussion and recommendations as follows:

1. MCLE

The committee reviewed and recommended approval of the proposed MCLE policies, which have been updated and clarify the rules. Chair Travis made a motion to approve the committee’s recommendation and the motion passed.

2. Legal Specialization

The committee reviewed the proposal for a Legal Specialization Program. Groups that want a specialization would take ownership in the process by creating the criteria and test. The

committee recommended that the Board approve the structure and allow staff to continue creating the new program. Chair Travis made a motion to approve the committee's recommendation and the motion passed.

**B. *Bar Bulletin Update***

At the October meeting, proposals will be presented regarding the printer leasing. We own one black and white printer. There have been concerns about providing an electronic only *Bar Bulletin* in 2020, so we have obtained proposals from outside companies in the range of \$70,000 - \$80,000 per year for printing. Advertising revenues would potentially cover the outsourced printing. Current advertisers are less willing to purchase electronic ads in 2020. Staff will continue to research outsourced printing options for the Board's consideration at the October meeting.

**III. ACTION ITEMS**

**A. New Mexico Medical Review Committee Request for MCLE Rule Change to Allow MCLE Credit for Serving on Medical Review Panels**

Ellen Kelly, Chair of the NM Medical Review Committee, and Michael Rueckhaus, Director of the NM Medical Review Commission, attended the meeting and reported that the committee was established to fulfill the Bar's statutory duties under the Medical Malpractice Act. The statute requires three lawyers to serve as jurors on medical review panels to review malpractice claims against health care providers covered by the Act. They reported that the number of cases is accelerating and there is a critical shortage of panelists, so they proposed that the MCLE Rules be amended to allow one MCLE credit per panel to try to get more volunteers. General Counsel Stormy Ralstin reported that staff would like to propose a change in the self-study rule to give credit to lawyers who serve on various committees rather than request the Supreme Court to approve just this request. Ms. Kelly reiterated the timing issue and lack of volunteers and urged the Board to act on their request as soon as possible. Staff will assist with marketing in the *Bar Bulletin* and on the committee's web page to try to get more volunteers. Commissioner Fitzwater made a motion to refer the proposal to the Regulatory Committee to draft a proposed rule change that would include service on such panels as self-study credit for the Board's and the Supreme Court's approval; the motion was seconded and it passed.

**B. Solo and Small Firm Section Request Regarding Becoming a Division**

Solo and Small Firm Section Chair Charles Gurd and Chair-elect Deian McBryde attended the meeting to present the section's written proposal to become a division of the State Bar. Mr. McBryde reported that they would like to expand programming, education, services, forums, and networks to as many solo and small firm practitioners as feasible, seek out eligible members, develop member benefits, such as defined-group savings on professional and general liability insurance, to serve as a voice for solo and small firms on the Board and be a member-based resource. He reported that their proposal is similar to the change made by the ABA when it moved their Solo and Small Firm Section to a division in 2005. The section requests that their board work with the State Bar to draft changes to the State Bar Bylaws to add a new division for solo and small firms for the Board's approval and to draft a change to Rule 24-101 for the Supreme Court's approval. Commissioner Sinkular made a motion for the Regulatory Committee to study the proposal and provide a recommendation. Commissioner Wolf recommended creating a special committee of Board members and staff, instead of referring it to the Regulatory Committee.

Commissioners expressed concern with the proposal, including administrative, tracking and budgetary issues. Executive Director Richard Spinello asked how the section board responded to the fact that their ability to lobby would be restricted, and Mr. McBryde stated that they haven't had a chance to discuss the matter. Following discussion, Commissioner Sinkular amended her motion to create a special committee composed of Board members and staff to review the proposal and meet with members of the Solo and Small Firm Section; the motion was seconded and it passed. President Dixon requested volunteers to serve on the special committee, and Commissioners Cruz, Moran, FitzPatrick, Block-Chavez, Sinkular, Martinez, Brooks, and Wolf volunteered.

### **C. Creation of an Insurance Review Committee**

Executive Director Richard Spinello requested a special committee be appointed to assist with the review of all of the insurance policies and coverages for the State Bar and the Bar Foundation. President Dixon requested volunteers to serve on the committee, and Commissioners Fitzwater and Lutz volunteered.

### **D. Rename the State Bar’s Robert H. LaFollette Pro Bono Award—“LaFollette / Singleton Pro Bono Award” in Memory of Judge Sarah Singleton**

Executive Director Richard Spinello presented a proposal to rename the State Bar’s LaFollette award in memory of Judge Sarah Singleton. Commissioner Atkins made a motion to rename the award. Commissioner Pool suggested another award be created instead. Commissioner Cruz suggested looking at other alternatives. Commissioner Atkins withdrew her motion. Commissioner Brooks made a motion to refer it to the Awards Committee to study and develop a recommendation of how to appropriately recognize Sarah Singleton; the motion was seconded and it passed.

### **E. Nomination of 2020 BBC Officers**

Commissioner Cruz made a motion nominating Commissioner Martinez as President-Elect for 2020; no other nominations were received. Commissioner Pool made a motion to close nominations; the motion was seconded and it passed. Commissioner Cruz made a motion nominating Commissioner Wolf as Secretary-Treasurer for 2020; no other nominations were received. Commissioner Kallunki made a motion to close nominations; the motion was seconded and it passed.

## **IV. BBC COMMITTEE REPORTS**

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

President Dixon reported that the Executive Committee met on July 24 to review and approve the meeting agendas.

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

The Finance Committee met the day prior to the Board meeting, and Secretary-Treasurer Carla Martinez reported on the discussion and recommendations regarding the following:

1. Approved the May 17, 2019 Meeting Minutes as submitted;
2. Reviewed the June 2019 State Bar Financials; Secretary-Treasurer Martinez made a motion to accept the June 2019 financials and the motion passed. The committee discussed whether MOUs are needed for the Indian Law Section, Children’s Law Section and any other section which collects donations for scholarships or other projects and recommended having staff research the issue and if determined they are needed, draft MOUs for the Board’s approval; Secretary-Treasurer Martinez made a motion to approve the recommendation and the motion passed;
3. Reviewed the revised 2018 State Bar Financial Dashboard, which includes a differentiation between restricted and unrestricted revenues and expenses; and
4. Received the CPF, ATJ and JLAP Second-Quarter 2019 Financials.

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

The Policy and Bylaws Committee met on July 9 and Chair Carolyn Wolf reported on the committee’s discussion of the Lawyers Professional Liability and Insurance Committee recommendation regarding requests for professional liability insurance information. The State Bar has received subpoenas and IPRA requests for this information, but a Supreme Court Order provides that the information that the State Bar collects is designed for internal use by the State Bar and the Supreme Court only. The Bar’s LPLI Committee recommended that the Board request the Supreme Court to disclose the information that the State Bar collects regarding malpractice insurance. Commissioner Wolf made a motion to approve

the committee's recommendation; the motion was seconded, and following a vote, the motion failed with a vote of 10 to 10. Commissioner Atkins made a motion to table the decision to the October meeting in order to give commissioners time to obtain more information from their constituents; the motion was seconded and it passed. Discussion after the vote indicated that commissioners were divided as to the Bar's focus as a regulatory body or a member service organization. That distinction informs the discussion as to whether the State Bar has a duty to disclose to the public or keep the member's information confidential.

## **V. INFORMATIONAL ITEMS**

### **A. Annual Meeting Overview**

Kris Becker provided an overview of the Annual Meeting and highlights of programming and events in the schedule; she also reported that there were almost 50 exhibitors and 90 silent auction items.

### **B. Bar Commissioner Districts Annual Events Updates**

Commissioners reported on events in their districts over the next couple of months, including a trust accounting program in Las Cruces, a *Bar Bulletin* presentation at the 12<sup>th</sup> Judicial District Bench & Bar Conference in Ruidoso in September, and a reception at the Los Alamos Golf Course in October, in addition to Pro Bono and Law-la-Palooza events in September and October.

### **C. Member Association Software Evaluation Update**

Director of Finance David Powell reported that the search for Association Management Software is in Phase 3 of 5, and we are receiving proposals from vendors and rating them. The deadline to submit proposals is August 16, and an outside consultant who specializes in AMS applications will assist with the implementation. The goal is to present a recommendation for the Board's approval at the October meeting and to begin implementation in early or mid-2020.

### **D. President Report**

President Dixon reported on the following:

1. He attended the Jackrabbit Bar Conference, the Arizona and Texas State Bars' Annual Meetings and the ALPS Retreat; ALPS is interested in developing a relationship to be the endorsed malpractice liability insurance carrier for the Bar;
2. Chief Justice Nakamura appointed him chair of the Business Courts / Complex Litigation Committee to study the issue and they will be meeting with a representative from the National Center on State Courts in September;
3. Commissioners discussed the IPRA issues regarding e-mail addresses for those who work for state agencies and it was recommended that they no longer use their state e-mail addresses for Board business; and
4. There are 29 people signed up for CLE Cuba Trip.

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

President-Elect Cruz reported on the following:

1. The Board Retreat is scheduled for September 26-28 at the Blake in the Taos Ski Valley. A survey will be sent out to commissioners following the Board meeting to assist with the planning of the retreat, and a portion of the retreat will be facilitated;
2. The 2020 Board meeting dates are as follows: February 7, April 17, June 18 (Santa Fe), September 25, and December 9 or 10—TBD (Supreme Court); and
3. The 2020 Annual Meeting, which is being held in conjunction with the Judicial Conclave, is scheduled for June 17-20 in Santa Fe.

**F. Executive Director Report / Second Quarter State Bar Newsletter**

The executive director's written report and second quarter newsletter were included in the materials. Executive Director Richard Spinello reported that other mandatory bars are monitoring the *Fleck* case and discussing whether they are regulatory or membership driven at our request. The Court is looking at creating a committee comprised of members of the Disciplinary Board, Board of Bar Examiners and BBC to discuss this issue. The diversity survey was sent out on July 29, and a letter from Chief Justice Nakamura encouraging members to participate in the survey was included in the materials. We've already received a 10 percent response rate, and he encouraged commissioners to talk with their constituents about completing the survey.

**G. Bar Commissioner Division / District / Supreme Court Liaison Reports**

SLD Delegate Brad Zeikus reported that the division is working on its Attorney Memorial Scholarship Program. Paralegal Division Liaison Lynette Rocheleau reported that the division has a Facebook page, a quarterly newsletter and is holding meet and greets around the state; they are looking for volunteers to speak at their December CLE.

**VI. OTHER BUSINESS**

**A. New Business / Adjourn**

There being no new business, Commissioner Pool made a motion to adjourn the meeting at 12:20 p.m.; the motion was seconded and it passed.

**VII. 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**