

**BOARD OF BAR COMMISSIONERS
OCTOBER 13, 2023 MEETING MINUTES
State Bar Center, Albuquerque, NM
In Person and Zoom**

MEMBERS PRESENT: Erin M. Atkins
Daniel J. Behles
Allison H. Block-Chavez
Aja N. Brooks
Rosenda Chavez-Lara
Sean M. FitzPatrick
Tomas J. Garcia
Damon J. Hudson
David P. Lutz
Mitchell Mender
Jessica A. Perez
Brett Phelps
Linda Sanders
Joseph F. Sawyer
Steven S. Scholl
Simone M. Seiler
Olga Serafimova
Benjamin I. Sherman
Lucy Sinkular
Elizabeth J. Travis
Carolyn A. Wolf

MEMBERS ABSENT: Connie J. Flores
Parker B. Folse

OTHERS PRESENT: Kris Becker
Hon. Carl Butkus
Deshawnda Chaparro
Tina Cruz
Bill Kramer
Pam Moore
David Powell
Stormy Ralstin
Richard Spinello

I. CALL TO ORDER

A. Approval of July 27, 2023 Meeting Minutes

Commissioner Perez made a motion to approve the July 27, 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 New Mexico Bar

President Sherman reported that the Board reviewed Objective #1 at the last meeting and is now looking at the second objective, which is to promote the interests of the legal profession in the State of New Mexico. It's a broad objective, so some discussion points were included in the materials to assist the Board with the discussion and use as a guide. The questions include what are the interests of the legal profession and how do we represent all of them, since there may be different interests. Who are our stakeholders and what are we not doing that we should be doing.

Commissioners discussed potential areas including the issue with FEMA, as well as AI. Educating the public on the legal profession and how the justice system works is also important. In addition, educating people on what lawyers do and the value they bring would help promote the interests of the profession. We need to define whether the legal profession is all members first.

Commissioner Garcia suggested referring it to the Policy and Bylaws Committee or another committee, since the topic is very broad and may be too unwieldy to tackle as a group. Executive Director Spinello stated that there was a discussion with the Board regarding this, and the Board decided to tackle the objectives as a whole and not send them to a committee to come up with recommendations. The Member Services Committee is going to be looking at the standing committees, and the Board may want to consider creating an Issues in the Legal Profession Committee.

Commissioner Atkins stated that this is a Board item, and the entire board needs to discuss it together. There are shared common interests and individual interests, but we should be able to identify common interests of attorneys. Commissioner Atkins made a motion to revisit it at the December meeting to allow commissioners time to think about it and come up with additional questions; the motion was seconded and it passed.

B. 2023-2025 Three-Year Strategic Plan

Executive Director Spinello stated that he updated the strategic plan to add the progress that has been made to date. We're coming to the end of the first year of the three-year plan and there isn't any particular area in which we're not making progress, so we're right on track.

III. ACTION ITEMS

A. 2024 Proposed Budget Presentation

Secretary-Treasurer Brooks reported that the Finance Committee met the day prior to the Board meeting and received a presentation on the 2024 proposed Budget. She noted that there was a \$225,000 deficit, and the committee discussed options to try to make up for some of the deficit, and the changes made during yesterday's meeting are included in the revised 2024 budget column. Executive Director Spinello explained the shortfall, including a reduction in members for a total of \$88,000 loss; we had previously been budgeting a one to two percent increase in membership, and this year we only had a one-half percent increase. For the first time ever, we're projecting a decrease in membership due to the baby boomers reaching retirement age over the next eight years. We're also budgeting for a reduction in late fees; we had over \$300,000 in 2022 and in 2023 we only brought in \$190,000, which we expect will continue to be the trend. Additionally, judges are no longer going to be paying licensing fees which totals a loss of \$44,000.

The options to reduce the deficit included eliminating the printed resource deskbook and member directory and doing them digitally, as well as only printing 12 Bar Bulletins and doing 12 digitally. After making those changes, there was a surplus of \$51,500, which the committee recommended putting in operating reserves, which is used to fund emergency type items not in the budget. Commissioner Sinkular noted that the change to eliminate the publications doesn't eliminate them completely; only the print version, but they'll still be available on the website and we'll also send them out to the membership. Commissioner Atkins recommended alerting the membership of these changes and revisiting if there is negative feedback from the members.

Director of Finance Powell reviewed the highlights in the revenues and expenses with significant changes from 2023 to 2024, including the compensation line item due to cost of living increases and increases in benefits. He went through the budget detail pages, which break out the line items with various expenses, including BBC / Travel & Conferences; he noted that the Meetings and Governance line item decreased since the Annual Meeting will be held in-state in Albuquerque next year. Senior Lawyers Division Delegate Dan Behles reported on the SLD 2024 Budget and explained the two increases, one for a reception at the Annual Meeting again next year and an increase in the Attorney Memorial Scholarships for a total of \$1,500 from 2023 to 2024.

Young Lawyers Division Chair Damon Hudson reported that incoming Chair Randy Taylor presented the YLD 2024 Budget to the Finance Committee yesterday and explained the changes, which included adjusting some line items and moving other line items around, and the total budget request is the same as last year.

Secretary-Treasurer Brooks made a motion out of the Finance Committee to approve the 2024 Budget, and the motion passed.

IV. COMMITTEE REPORTS

A. Executive Committee Report

President Sherman reported that the Executive Committee met on October 3 and reviewed and approved the agenda for this meeting and also received a preview of the 2024 Proposed Budget.

B. Finance Committee Report

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

1. Approved the July 26, 2023 Finance Committee and September 21, 2023 Audit Committee Meeting Minutes;
2. Received a presentation on the 2024 Proposed Budget (see above under Strategic Planning);
3. Auditor Recommendation - The joint Audit Committees of the State Bar and the Bar Foundation met on September 21 and received presentations from three auditing groups—SJT, CLA, and Burt & Co., and the committees recommended SJT Group and the auditor. Secretary-Treasurer Brooks made a motion out of the Finance Committee to approve the recommendation to enter into a contract with SJT, and the motion passed. It's a one-year contract with up to five one-year extensions.
4. Reviewed the August 2023 Financials; Director of Finance Powell stated that we're anticipating about a \$160,000 deficit, but there are some areas where there are savings that will help to reduce the deficit. Secretary-Treasurer Brooks made a motion out of the Finance Committee to accept the August 2023 Financials, and the motion passed.
5. Provided the CPF, ATJ and JLAP Third Quarter 2023 Financials for informational purposes only.

C. Member Services Committee Report

Chair Travis reported that a survey was sent to the standing committees and the committee looked at the responses and is focusing on updating the committees policies to include guidelines and protocols. The committee met last week and reviewed other bar associations' policies. The committee is meeting again in November and anticipates having the policy finalized for the December meeting. The committee is also looking at whether all of the current committees are necessary and if there are other ones that we may want to add.

D. Policy and Bylaws Committee Report

1. Committee Awards Policy
2. Committee on Women and the Legal Profession Justice Pamela Minzner Award

Chair Lucy Sinkular wasn't able to attend the Policy and Bylaws Committee meeting due to a medical issue, so President Sherman chaired the meeting and provided the report.

The first item discussed was whether committees should be allowed to give awards, and they decided to recommend the proposed policy as follows: "Standing and Special Committees of the BBC shall not create or issue awards to the State Bar membership or the public. If a Standing Committee or Special Committee of the BBC wishes to promote an award, it must follow the process established by the BBC Awards Committee to request that a new State Bar award be created." President Sherman made a motion out of the Policy and Bylaws Committee to approve the policy.

The Policy and Bylaws Committee also decided that if the Committee on Women and the Legal Profession voted to rescind the award, they would need to bring it to the BBC and the Committee on Women was notified of that decision. The committee decided not to make a recommendation whether to rescind awards; any decision to create or rescind an award would need BBC approval.

Following discussion, the motion passed. The Member Services Committee can determine how to incorporate this into the new Committees Policies.

The Committee on Women's Justice Minzer Award has not been awarded this year. Commissioner Block-Chavez stated that they've already started the process and collected nominations, so she recommended that we let them give the award this year and have the policy go into effect in January.

Commissioner Sinkular made a motion to make the policy effective January 1, 2024; the motion was seconded and it passed. Commissioner Travis suggested having the Annual Awards Committee discuss whether the previous awards should be grandfathered in or transition it to a State Bar award and maybe include the Committee on Women in the conversation. Commissioner Block-Chavez said she'd be happy to address this with the Awards Committee. Commissioner Travis made a motion to send the existing Committee on Women's award to the Awards Committee for a recommendation; the motion was seconded and it passed.

V. INFORMATIONAL ITEMS

A. ATJ Commission / Judicial Clerkship Program Update

ATJ Commission Co-Chair Tina Cruz presented a powerpoint presentation on the activities of the ATJ Commission, which was distributed to the Board. She thanked the Board for their support of the Judicial Clerkship Program. She stated that she will have more information to share on the fundraising initiatives, and the gap in funding will be filled by the end of the year.

B. Immigration Law Section Update

Immigration Law Section Chair Deshawnda Chaparro attended the meeting to provide an update on the section's activities. The section focused on three initiatives this year—a lunchtime series over the summer with a general credit on various immigration topics; they also collaborated with UNM School of Law on a CLE and will be doing another CLE in November; they also presented several scholarships and are planning to do more this year. Their annual institute will be held the end of November as a hybrid. They have 120 members and quite a few of their members practice outside of New Mexico.

C. Report on Meeting with Antonia Roybal-Mack Regarding the Hermit's Peak /Calf Canyon Fire

President Sherman reported that he met on August 16 with State Bar member Antonia Roybal-Mack, who is working with the Hermit's Peak/Calf Canyon fire victims in northern New Mexico, concerning the State Bar taking some action with the way victims are being compensated by FEMA. She submitted a memo which was included in the materials, and a letter was also received from Brian Colon supporting Ms. Roybal-Mack's position. Commissioner Phelps reported that this is an area he has been personally involved with, since he was evacuated during the fire, and the handling of the payments is just one of the issues. People in the FEMA claims office have even acknowledged that the process is confusing. FEMA has admitted fault and people just need to prove their damages; part of the process is if they're not happy with the original award then they need to go to binding arbitration. We offered an in-person meeting to delve into some of the issues and they refused to meet with the attorneys. The most direct thing that's so frustrating is the payment side and he supports anything the State Bar can do.

Commissioner Scholl proposed a resolution or statement saying that we oppose what they're doing. President Sherman stated that before making a statement, it needs to be studied further. President Sherman suggested issuing a statement using language in Ms. Roybal-Mack's memo about what a trust account is and how the funds work. Commissioner Phelps made a motion for the State Bar to make a statement about trust accounts and their function that doesn't go into the lobbying; make it more educational and include how IOLTA accounts benefit everyone in the State and allow and help attorneys fulfill their duty to their clients. The motion was seconded.

General Counsel Stormy Ralstin suggested that the Board could ask the Ethics Committee to review the issue and ask them to address the question about whether that is an assignment of depositing a check into the trust account and ask Bill Sleese to assist. Commissioner Wolf made a friendly amendment to look at how long it would take to get an ethics opinion and if it would take too long, then we issue the statement about IOLTA accounts. If the State Bar writes a letter or issues a statement, then the Board would need to approve it.

Following discussion, Commissioner Phelps made a motion to request on behalf of the Board an expedited ethics advisory opinion regarding the issue of trust accounts and assignments, and a letter, which the State Bar staff would draft based on the Ethics Opinion for the Board's consideration at the next meeting, if possible. The motion was seconded and it passed. Commissioner Brooks recused herself from the motion.

Commissioner Atkins made a motion to have President Sherman report back to Ms. Roybal-Mack and Mr. Colon to let them know that we've requested an expedited ethics opinion from the Ethics Committee; the motion was seconded and it passed. Commissioner Brooks recused herself from the motion.

D. President Report

President Sherman reported on the following:

1. He attended the ABA Annual Meeting in Denver on August 4-6; the NM Delegation breakfast was well attended and Justice Thomson also attended.
2. He served on the Judicial Compensation Commission which met three times and is recommending significant pay and benefit increases for all judges.
3. He attended and spoke at the UNMSOL Back to School Fiesta on September 25.
4. The Commission on Legal Regulatory Reform created by Chief Justice Bacon met; he and several commissioners were appointed to it. Alaska's program is the least constraining of these types of programs.
5. He appointed Carla Martinez to the Risk Management Advisory Board for a four-year term.
6. He attended the Equal Access to Justice 35th Anniversary Event celebrating Justice Edward Chavez on September 20. There was a reading of a poem for Justice Chavez; it was a great event and well attended.
7. He attended and spoke at the 12th Judicial District Bench & Bar Conference on September 29; it was a great conference and well attended.
8. He attended and spoke at the New Admittee Swearing-in Ceremony the day before the Board meeting at the UNM School of Law. YLD Chair Damon Hudson also spoke at the ceremony.
9. He thanked the State Bar staff for their work on the Annual Meeting; everyone worked very hard and he wanted to commend them for putting on a great conference.

E. State Bar President-Elect Report

President-Elect Erin Atkins reported on the following:

1. 2024 BBC Meeting Schedule—February 23, May 17, July 26, October 23-24 (Fin. Com. and BBC; in conjunction with the Annual Meeting on October 25), 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. She reported that this year's Annual Meeting had a deficit of \$50,000, so she decided that rather than holding the Annual Meeting in Arizona, it will be a one-day hybrid event at the Bar Center with food trucks and give aways, and there will also be a virtual component. There will be an additional 6 CLE credits provided to the attendees that they can take anytime before the end of the compliance period. She and Executive Director Spinello are also exploring a trip abroad and are looking at Edinburgh, Scotland.
3. The new Officers Swearing-in Ceremony and Reception will be held at the LaFonda Hotel on December 6.
4. 2024 BBC Internal Committees Sign-up Sheet was distributed at the meeting.

F. Supreme Court Board and Committee Liaisons for 2024

The current list of supreme Court Board and Committee liaisons was included in the materials, and it will be emailed following the meeting requesting volunteers to serve as liaisons to the boards and committees for 2024.

G. NM State Bar Foundation President Report

1. Discuss BBC Positions on Foundation Board

President Butkus reported that the terms of Commissioners Travis and Mender are up the end of this year, and they would like to be reappointed. Commissioner Brooks' term is automatically renewed since it coincides with her term on the BBC which runs through 2026. She is going to be president-elect on the BBC next year and while she is happy to continue on the Foundation Board, she would like to take a step back. If there's someone else interested in serving on the Foundation Board, she would encourage them to serve. Stephanie Wagner's term is also up, and she is interested in serving another term on the Foundation Board. A notice will be published for her position, and the Board will make the appointments at their December meeting.

A local fundraising consultant was hired, and she will be attending the next Board meeting to meet with the Board and discuss her fundraising plans. He and Jerry Dixon attended the National Conference of Bar Foundations Annual Meeting in Pittsburgh the end of September. They may be interested in holding the conference in New Mexico next year.

H. Executive Director Report

Executive Director Spinello provided an update on the appellate court case summaries. He and General Counsel Ralstin met with the Appellate Court Chief and Chief Clerk to check in and see how things are going from their perspective, and they are very pleased so far. We may be sending out the Supreme Court case summaries in the future. Regarding categorizing the cases, we would be able to divide the cases between civil and criminal, but getting the civil cases into the various buckets will require more discussions and possibly some third-party assistance. He included a chart of statistics for the four main weekly emails we send out to the membership—ENews, Member Services Spotlight, CLE Weekly Roundup, and the Court of Appeals Opinions; they all have an open rate of 39-49 percent; the click rate is 7.9 percent on the case summaries.

I. State Bar Representative Reports

1. Senior Lawyers Division

Senior Lawyers Division Delegate Dan Behles reported that they had their annual meeting and hosted a breakfast during the State Bar's Annual Meeting at the Tamaya in July and they had a good turnout. The attorney memorial scholarship ceremony will be held on November 14 at the State Bar; they read the list of deceased attorneys and invite their families and colleagues to attend and award three \$5,000 scholarships to the winners of the essay contest for third year lawyers.

2. Young Lawyers Division

Young Lawyers Division Chair Damon Hudson reported that they had their public service project during the 12th Judicial District Bar Association Conference. They hosted an Isotopes Game for their members and had a mentorship program which was well received. They're planning an end of year event and are going to hold a second law day call-in. They'll be cosponsoring the 1st Judicial District event.

3. Paralegal Division

Paralegal Division Liaison Linda Sanders had to leave the meeting early, but mentioned that she was approached by the Department of Workforce Solutions to put on a training for an apprenticeship program for paralegals and they're asking for the Paralegal Division to be involved in it.

4. Bar Commissioner Districts

Commissioners reported on Legal Fairs in their districts. Commissioner Chavez-Lara reported on a recent legal fair in her district and issues she encountered with the New Mexico Legal Aid VAP, and she asked for clarification on the funds. Executive Director Spinello informed her that staff will meet with her and will try to assist in resolving the issues.

5. Supreme Court Board and Committee Liaison Reports

Commissioner Atkins reported that she will be stepping away from the Code of Judicial Conduct Committee as the liaison next year.

VI. OTHER BUSINESS

A. New Business

There was no new business.

B. Adjourn

Commissioner Behles made a motion to adjourn the meeting at 4:32 p.m.; the motion was seconded and it passed.