

**BOARD OF BAR COMMISSIONERS  
FRIDAY, JUNE 19, 2020 MEETING MINUTES  
Virtual Meeting via Go to Meeting**

<b>MEMBERS PRESENT:</b>	Erin M. Atkins Allison Block-Chavez Aja N. Brooks Daniel J. Behles Ernestina R. Cruz Gerald G. Dixon Michael Eshleman Connie J. Flores Tomas J. Garcia Yolanda K. Hernandez	David P. Lutz Carla C. Martinez Mitchell Mender Clara Moran Joseph F. Sawyer Benjamin I. Sherman Lucy H. Sinkular Constance G. Tatham Elizabeth J. Travis Carolyn A. Wolf
<b>MEMBERS ABSENT:</b>	Judge Kevin L. Fitzwater (ret.) Parker B. Folse	
<b>STAFF PRESENT:</b>	Kris Becker Evann Laird Pam Moore Chris Morganti	David Powell Stormy Ralstin Richard Spinello
<b>OTHERS PRESENT:</b>	Jeffrey H. Albright Ian Bezpalko Patricia Galindo	Leon Howard Rebecca Mulcahy Professor Gabriel Sanchez

**I. CALL TO ORDER**

**A. Approval of February 7, 2020 Meeting Minutes**

Commissioner Sinkular made a motion to approve the minutes; the motion was seconded and it passed. Commissioner Travis abstained because she was not present at the meeting.

**II. STRATEGIC PLANNING**

**A. Follow up from Strategic Planning Sessions**

The Board of Bar Commissioners held Strategic Planning Sessions the day before the Board meeting, and the following are the action items from those sessions:

1. After a two-year board review of the Bar Foundation Bylaws and in an effort to provide more independence, President Cruz made a motion for the Board of Bar Commissioners to appoint all of the Bar Foundation Board members and that the Bar Foundation Board be composed of a majority (at least 51%) of Board of Bar Commissioner members and the motion passed. Commissioner Martinez abstained from the motion.
2. President Cruz made a motion to create a rainy day reserve fund for the State Bar and for the Policy and Bylaws Committee to draft the policy and the motion passed.

3. President Cruz made a motion to create a special committee to work with the sections and their role in the State Bar and the motion passed. Commissioner Martinez abstained from the motion. President Cruz asked for volunteers to serve on the committee, and Commissioners Wolf, Behles and Sinkular volunteered. President Cruz also offered to assist the committee.

## **B. Communications Plan**

Communications and Member Services Director Evann Laird presented the Communications Plan for the State Bar as well as elevator pitches for the Board to use when talking with members and addressing their questions about the State Bar, which will change for each Board meeting and will cover topics such as licensing and MCLE. She noted that she and her staff on focusing on ramping up digital communications and social media with the COVID-19 pandemic. The State Bar has created a podcast called SBNM is Hear, the first of which was a JLAP presentation, and YLD is creating others with President Cruz and Commissioner Garcia.

## **C. Strategic Plan Update and Timeline**

Executive Director Richard Spinello went through the highlights of the Strategic Plan and timeline. The original plan from last year's retreat had four major areas of focus, and he separated out regulatory and turned it into five areas. The updated plan includes everything from the original plan; he took some of the more general goals and determined the next steps, which the individual committees can review and make any adjustments to, as necessary.

# **III. ACTION ITEMS**

## **A. Judicial Standards Commission Appointment for a four-year term**

One vacancy existed on the Judicial Standards Commission. A notice was published in the *Bar Bulletin*, and the following submitted letters of interest:

1. Jeffrey L. Baker
2. RoseAnne B. Esquibel
3. Mark A. Filosa
4. Zachary C. Jones

The Board discussed the criteria for the appointment and the applicants. Commissioner Martinez recommended appointing someone outside of the Albuquerque area and that a summary of the current composition of the board or commission (gender, geographic area, practice type, etc.) be included in the materials to assist the Board in making a more informed decision. Pursuant to the voting procedure outlined, Mark A. Filosa was appointed to the Judicial Standards Commission for a four-year term.

## **B. Nomination of 2021 State Bar Officers (in accordance with the State Bar Bylaws, Section 5.2, if only one commissioner is nominated for an officer position, that commissioner may be elected by acclamation immediately following the nomination process)**

President Cruz requested nominations for the officer positions for 2021. Commissioner Atkins made a motion nominating Commissioner Sherman as Secretary-Treasurer and the motion was seconded. No other nominations were received. Commissioner Sinkular made a motion to close nominations and elect Commissioner Sherman as Secretary-Treasurer for 2021 by acclamation; the motion was seconded and it passed.

Commissioner Martinez made a motion nominating Commissioner Wolf as President-elect and the motion was seconded. No other nominations were received. Commissioner Atkins made a motion to close nominations and elect Commissioner Wolf as President-Elect for 2021 by acclamation; the motion was seconded and it passed.

President Cruz noted that there was a discrepancy between the Bylaws and Rule 24-101 regarding the election of the President. Commissioner Sawyer made a motion to refer it to the Policy and Bylaws Committee for review and clarification and to ensure that there aren't any other discrepancies; the motion was seconded and it passed.

Commissioner Travis made a motion nominating Commissioner Martinez as President and the motion was seconded. No other nominations were received. Commissioner Sinkular made a motion to close nominations and elect Carla Martinez as President for 2021 by acclamation; the motion was seconded and it passed.

### **C. Recommendation Regarding the Criminal Law Section**

Director of Communications and Member Services Evann Laird reported that the Board discussed the Criminal Law Section a number of times with the last time in February when the Board discussed annual reports of the sections, which the Criminal Law Section didn't submit. Staff was asked to discuss the section and make a recommendation. Staff recommended that the section be sunset due to inactivity and to refund the 2020 section member dues. Commissioner Atkins made a motion to accept staff's recommendation to sunset the Criminal Law Section and refund the section members' 2020 dues; the motion was seconded and it passed

### **D. Corporate Resolution to Amend the SBNM Cafeteria Plan to Allow Reimbursement for Over-the-Counter Medications**

General Counsel Stormy Ralstin reported that the Cafeteria Plan, which is a flexible spending account for tax-deferred health care expenses, now allows for reimbursement for over-the-counter medications, and she requested the Board's approval to adopt the Corporate Resolution to amend the plan. Commissioner Sinkular made a motion to adopt the resolution to amend the cafeteria plan as proposed; the motion was seconded and it passed.

## **IV. INFORMATIONAL ITEMS**

### **A. Supreme Court Complex and Commercial Litigation Task Force Report and Recommendations for a Pilot Program**

Commissioner Dixon reported that Chief Justice Nakamura attended a conference in Canada with Supreme Court judges and administrators and out of that came innovative ways to improve the civil justice system in the United States. As a result of that, the Chief Justice created an Innovation Team, which developed other programs and projects to more easily move through the civil justice system, one of which was the Complex and Commercial Litigation Task Force comprised of judges and attorneys, which he was asked to chair. The committee developed a recommendation for the Court's consideration for a pilot program to free up the courts for handling other cases and provided options for how to implement the program. The new program is under consideration with the Court.

### **B. Supreme Court Temporary Alternative Practice Working Group Report**

This working group was formed by Order of the Supreme Court for the Board of Bar Examiners to work with the State Bar to evaluate what can be done in the event the Bar exam is canceled. The exam was postponed from July to September. There are two options for the exam, and some jurisdictions are allowing a diploma privilege where lawyers can practice without taking the bar exam. The working group is recommending a temporary supervised practitioner program, which will include rules as to what they can and can't do. Some of it models the law school program that's in place that would allow students to have a similar experience; they must register for the first available bar exam in order to participate in this program. The limited license for government lawyers has a built-in system of supervision, but the law school had concerns about students getting bogged down by the supervised role. This program will be for all attorneys and only goes into play if the September bar exam is canceled.

### **C. Minorities in the Legal Profession Decennial Survey Report and Update**

Professor Gabe Sanchez with American Decisions, Leon Howard with the Committee on Diversity in the Legal Profession, and Patricia Galindo, Rebecca Mulcahy and Jeff Albright with the Committee on Women and the Legal Profession attended the meeting to report on results of the Diversity Survey. The Committee on Women's Gender Diversity Report was included in the materials.

Professor Sanchez went through the summary of the methodology and outlined the various focus groups. He reported on the main findings and stated that it is difficult to tell whether things have gotten better or worse over 40 years and whether it looks worse because people are more comfortable speaking about discrimination. He noted that one of the biggest issues identified was work life balance.

President Cruz thanked Professor Sanchez and reported that we've invited him to present his report at our Annual Meeting and Member Appreciation Event in September. Commissioner Brooks stated that the pandemic is hitting the black community very hard and she's hoping that mental health programs are made available and provided by the Bar. Rebecca Mulcahy said that they plan to compile the results and the short and long-term recommendations into a report. Jeff Albright mentioned that the Committee on Women plans to coordinate with the Diversity Committee, so that they cover all of the major issues from the report. Patricia Galindo reported that the Committee on Women is kicking off a new initiative and they're having Law Moms Panel presentations on parenting and the COVID crisis, and the first one is scheduled for June 22.

### **E. President Report**

President Cruz reported on the following:

1. ABA Day, which typically takes place in April in Washington, D.C. with representatives from around the country visiting with their congressional leaders, was held virtually this year, and several representatives from New Mexico participated in the meetings. They discussed funding for legal services, student loan forgiveness, legal services for homeless veterans, and access to rural broadband.
2. Judicial Nominating Commissions  
  
There has been a lot of activity with the commissions, and the process has been refined to make it more efficient.
3. Pro Bono  
  
Justice Shannon Bacon is launching a pro bono initiative due to all of the issues around COVID-19. Justice Bacon would like to have 1,000 attorneys take on cases in four areas. She wants to work closely with the State Bar and get assistance from members statewide. The first one will be on domestic violence related issues. The need is going to be significant, and we need to let our members know what we can do to assist.
4. Annual Meeting and Member Appreciation Event  
  
The schedule for the one-day virtual Annual Meeting and Member Appreciation Event was included in the materials. President Cruz reviewed the programming for the event, which will be free for all members.
5. Executive Director Evaluation Committee  
  
President Cruz reported that she is required to form a committee to evaluate the Executive Director by the end of the second quarter. The committee is comprised of the president, president-elect, immediate past president, and two BBC members who are not officers, and

the members are: President Cruz, President-Elect Martinez, Past President Dixon, and Commissioners Brooks and Folse.

6. Other

The ABA Annual Meeting in August will be held virtually, as well as the ABA Midyear Meeting in February.

President Cruz stated that she is working with the Board of Bar Examiners on a letter to the bar exam applicants regarding the resources available through the State Bar and JLAP to assist them in preparing for the Bar Exam. She also reached out to Denise Chanez and Leon Howard as the Co-Chairs of the Committee on Diversity to enlist their help in putting something together for the applicants. She also noted that she would work with the Committees on Diversity and Wellness to develop programming regarding wellness and racial justice per Commissioner Brooks' earlier request.

**F. Association Management Software Update**

Since the Board's approval of the AMS system, we proceeded with contract review and decided to engage an IP firm who confirmed that there were issues with the contract. The Executive Committee approved engaging with our second choice vendor and subsequently we were able to work things out with Euclid and signed the contract. We began project implementation on June 8 and are currently in the business system evaluation phase. The next phase will be the business system design phase and the development phase will take about three and a half months. Our tentative launch date is the last week of January. Euclid has a strong relationship with many bar associations throughout the country, and the project manager is very familiar with bar associations. We also have our new IT Manager who has been fantastic; he has been through similar transitions several times and has a lot of experience with these types of systems.

**F. Executive Director Report**

Executive Director Richard Spinello's written report was included in the materials. He reported on the status of litigation against mandatory bar associations. The Supreme Court denied cert in two of the challenges, and he provided the dissent in one of the most recent cases. All of the decisions so far have been supportive that a mandatory bar association does not violate the members' first amendment rights as long as the protections are put in place.

**G. Client Protection Fund Commission Appointment Discussion**

A vacancy existed on the Client Protection Fund Commission due to the resignation of one of its members, and a notice was published in the *Bar Bulletin*. No letters of interest had been received when the materials were sent out. Prior to the meeting, we received a letter of interest from Judge Linda Vanzi. Commissioner Wolf made a motion to appoint Judge Vanzi to the Client Protection Fund Commission for the remainder of the unexpired term through December 31, 2021; the motion was seconded and it passed.

**H. Bar Commissioner Divisions / Districts / Supreme Court Liaison Reports**

1. Senior Lawyers Division

SLD Delegate Dan Behles reported that the Division held their first virtual board meeting last month. They are starting to plan the Memorial Scholarship Program at which scholarships are awarded to third-year law students in memory of attorneys who have passed away during the year. This year's topic is the importance of an independent judiciary, and a committee reviews the essays and selects the students to receive the scholarships. A reception is held with the students and the families of the deceased attorneys in November, which will likely be held virtually this year. The oral history project has been put on hold with the pandemic, but they may do those virtually.

2. Young Lawyers Division

Young Lawyers Division Chair Allison Block-Chavez reported that they are transitioning their programs to virtual. They are doing recordings for the podcast series and are planning a webinar on the student loan forgiveness program. They are trying to figure out how to do their mentorship program in other ways and will be meeting to develop their 2021 budget.

3. Paralegal Division

Paralegal Division Liaison Yolanda Hernandez reported that due to the pandemic, they held their law day event virtually and will be holding their next board meeting in Las Cruces to provide outreach to members in that district. They may need to cancel Paralegal Day in August, but she's getting ideas from attending BBC meetings as to how the Paralegal Division might be able to conduct their meetings and events.

4. Bar Commissioner Districts

Commissioner Brooks reported that she has been in discussion with the volunteer attorney program at Legal Aid which is preparing for a tele-clinic to assist the public, and they're looking for attorney volunteers.

5. Supreme Court Board, Committee, Commission Liaison Reports

Commissioner Travis reported that the Disciplinary Board has been meeting telephonically for the last few months. There's been an increase in complaints due to the stay in place orders, so the Board is very active. Commissioner Sinkular reported that she was appointed to the Domestic Rules Committee; she noted that it's a very busy committee and she would like to talk with former liaisons to get their perspective.

## **V. COMMITTEE REPORTS**

### **A. ATJ Fund Grant Commission Report**

ATJ Fund Grant Commission Chair Tom Olson reported that the Commission met on May 29 to review the proposals submitted by the legal service providers in response to the RFP. The Commission awarded \$900,000 in grants to 11 legal service providers, with \$700,000 for ongoing projects and \$200,000 for a one-time online resource project on behalf of the ATJ Commission. He went through the list of providers and their projects and the amount awarded to each. The State Bar will enter into grant agreements with each of the providers and distribute the funds.

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

The Finance Committee met prior to the Board meeting and Secretary-Treasurer Wolf reported on the committee's discussion and recommendations as follows:

1. Approved the February 7 and May 20, 2020 Meeting Minutes;
2. Accepted the State Bar April 2020 Financials;
3. Reported that CLA presented the 2019 Combined Financial Audit to the committee on May 20, and the committee recommended that it be accepted; Secretary-Treasurer Wolf made a motion to accept the 2019 Combined Financial Audit and the motion passed;
4. Reviewed the State Bar 2019 Financial Dashboard, which is a five-year comparison of revenues and expenses with the restricted and unrestricted net assets separated out;
5. Reviewed the CPF, ATJ and JLAP First Quarter 2020 Financial, which were provided for informational purposes only;

6. Received an update on the 2020 Licensing; 42 names were sent to the Supreme Court for non-payment of licensing fees;
7. New Business – The committee recommended authorizing Executive Director Richard Spinello to apply for a PPP loan from the Federal Government; the loan amount is based on our payroll and we believe that most, if not all, of the loan will be forgiven and if not, it can be paid back over a five-year period at a low interest rate. Secretary-Treasurer Wolf made a motion to approve the recommendation and apply for a PPP loan, and the motion passed.

### **C. Executive Committee Report**

President Cruz reported that the Executive Committee met several times over the last few months regarding issues related to COVID-19, including the cancellation of the April Board meeting and the Annual Meeting. The committee also met to make appointments, including Michael Eshleman to the Sixth Bar Commissioner District, Mitchell Mender to the Fifth Bar Commissioner District, Roberta S. Batley to the ABA House of Delegates, and Paul Spruhan to the New Mexico Legal Aid Board; the committee also approved MCLE waiver requests. The minutes from those meetings were included in the materials. Commissioner Behles made a motion to ratify the action taken by the Executive Committee; the motion was seconded and it passed.

### **D. Annual Awards Committee Report and Recommendations**

Annual Awards Committee Chair Atkins reported that the committee met on June 9 to review the nominations received for the 2020 Annual Awards and to recommend the recipients for the Board's approval. She noted that Judge Alvin Jones was tragically killed in an accident last year, and he will be receiving the award posthumously. The committee decided to send a note and certificate to all of the people nominated this year. Commissioner Atkins made a motion to approve the committee's recommendations, and the motion passed. We will put together a video on the recipients that will be shown during the virtual Annual Meeting and Member Appreciation Event.

### **E. Regulatory Committee Report**

Regulatory Committee Chair Travis reported on the following:

1. Creation of Legal Specialization Commission

The committee developed a proposal for the creation of a Legal Specialization Commission based on the number of hours it is going to take to get a program up and running. The proposal was sent to the Board on May 1 pursuant to the 30-day notice requirement. Commissioner Sinkular requested a change to the paragraph entitled Composition to change the word in the sixth line from "shall" to "may" include specialists. Chair Travis made a motion to recommend approval to establish a Legal Specialization Commission in accordance with the proposal included in the materials with Commissioner Sinkular's amendment and the motion passed. Commissioner Travis made a motion for the Commission to start with a Family Law Specialty and the motion passed.

2. MCLE Update

Chair Travis reported that 69 members' names were sent to the Supreme Court for MCLE non-compliance. Commissioner Behles asked if a rule change to stagger the compliance period, which would alleviate some of the burden on staff, was being considered. General Counsel Stormy Ralstin reported that we are going to be meeting with the Supreme Court and proposing how we can align the licensing and MCLE timelines to help members meet those deadlines.

### **F. Member Services Committee Report**

Member Services Committee Chair Moran reported that the committee met on May 19 and looked at redistricting for the purposes of better aligning the bar commissioner districts with the judicial districts. The committee reviewed the options for equal representation with the number of commissioners and members.

The committee looked at the options and while the second option was the best model, it results in the loss of a commissioner in the Sixth Bar Commissioner District.

There was also discussion regarding a liaison to represent the out-of-state member constituency and an at-large member to represent the more remote parts of the state. Having a remote member elected from one of those areas would be advantageous. An additional board member would cost approximately \$3,000 annually.

President Cruz reminded the Board of the concern regarding the Las Cruces area and the number of attorneys in El Paso; there are currently 214 members in El Paso. When added to the 3<sup>rd</sup> and 5<sup>th</sup>, there would be over 500 attorneys in that area, which is significant. Commissioner Lutz recommended a rule change for the El Paso attorneys to vote in the 7<sup>th</sup> bar district. Commissioner Flores stated that El Paso and Las Cruces are almost the same city, regardless of whether they're in different states, and it would be very important to get them involved and try to bring El Paso into the Las Cruces district.

Following discussion, Commissioner Sinkular made a motion to adopt the committee's recommendation (map option 2) with one commissioner per 250 members; the motion was seconded and it passed with one nay. The Board discussed whether it wanted to add an additional board member for a total of 20. Commissioner Sinkular made a motion to use the allocation that adds up to 19 commissioners; the motion was seconded and it passed with one nay.

Commissioner Sinkular made a motion to create an out-of-state liaison position, including several restrictions; the motion was seconded. Executive Director Richard Spinello spoke against putting restrictions on this position. Commissioner Garcia expressed concern with the proposal and the previous motion and stated that there isn't enough information to vote on this issue now and requested further discussion so that the Board could make a more informed decision. Commissioner Travis stated that out-of-state attorneys already have voting rights and representation; they won't be represented any better by having one person, so she is against the proposal. President Cruz stated that in light of Commissioner Garcia's comments, the issue needs to be more fully vetted and explored. Commissioner Sinkular withdrew her motion and recommended sending it back to the Member Services Committee for further review. Commissioner Behles made a motion to send the question of creating an out-of-state representative to the Member Services and Policy and Bylaws Committees to review and provide a recommendation; Commissioner Travis requested a friendly amendment to send it to the Policy and Bylaws Committee after the Member Services Committee makes a recommendation for the Board's consideration; the motion was seconded and it passed with the friendly amendment.

President Cruz asked about the timeline and whether the rule change will be able to be put into place by the end of the year. The rule will need to be approved by the Board prior to being submitted to the Court, so the Executive Committee could approve it. Commissioner Atkins made a motion to allow the Executive Committee to make the decision to approve the Rule; the motion was seconded and it passed.

#### **G. Statewide / Rural Outreach Committee Report**

Statewide / Rural Outreach Chair Sawyer reported that the committee met on May 29 and discussed the committee's role in the Strategic Plan, the redistricting plan, and the recommendations in the LLT Report. The committee also discussed the composition of the committee and decided to keep the composition as is and open to anyone who wants to be a member.

#### **H. Bar Center Committee Report**

Bar Center Committee Chair Garcia reported that the committee met on June 8 and discussed a request to provide recognition for Access to Justice at the Bar Center. The ATJ Commission would like to display some items at the Bar Center, including the resolution that was presented to the commission at the Legislature in January. Staff proposed naming a new conference room at the Bar Center the Access to Justice Boardroom. Chair Garcia made a motion to approve the naming of the new conference room and the motion passed.

The committee also considered a request from a member to have a room designated for litigants to use at the Bar Center. The committee recommended denying the request due to COVID-related concerns and limited staffing during the phased re-opening and will look into creating a designated space for public education



regarding the legal system and access to justice. Chair Garcia made a motion to approve the recommendation and the motion passed.

The third recommendation is that the Board create a policy regarding a reserve fund that would provide for improvements to the Bar Center, which would be a separate fund from the rainy day reserve fund. Chair Garcia made a motion to approve the recommendation to create a reserve fund for building improvements and to have the Policy and Bylaws Committee draft the reserve fund policy and the motion passed.

The committee also reviewed the Bar Center reopening plan in various phases, which staff will implement pursuant to the Governor's Orders.

**I. Special Committee Regarding Solo and Small Firm Section Proposal to Become a Division of the State Bar Report and Recommendation**

President Cruz reminded the Board the Solo and Small Firm Section presented a proposal to become a division of the State Bar last August, and the Board created a special committee to review the proposal and make a recommendation. Chair Wolf reported that the Special Committee met last October and decided to meet with the Solo and Small Firm Section to obtain more information on their proposal. They met with the section on June 16 and heard their concerns, including outreach to the membership. The committee felt that while the section was only asking for \$5,000 for the first year, it could be cost-prohibitive for the State Bar in the future. The committee recommended denying the section's request to become a division.

President Cruz stated that the committee also discussed a law office management program that staff has been working on developing and requested that a committee be created to help build the program. This committee would pull together several things that the State Bar is already doing and which would be the basis for moving forward in several areas of law practice management; staff can reach out and identify the key constituents, including the Solo and Small Firm Section, to serve on the committee or commission. Chair Wolf noted that one of the things that came out of the retreat was reaching out to members outside the Albuquerque and Santa Fe corridor and outreach was one of the issues the section addressed. Executive Director Richard Spinello stated that this could be a committee or a commission, and we aren't ready to form it yet, but we will come back to the Board with a proposal in the future. Chair Wolf made a motion to approve the committee's recommendation to deny the section's request to become a division and to create a committee or commission with staff identifying the key constituents to be invited to join the committee, including a representative from the Solo and Small Firm Section, and the motion passed.

**VI. OTHER BUSINESS**

**A. New Business / Adjourn**

There being no new business, Commissioner Dixon made a motion to adjourn the meeting at 5 p.m.; the motion was seconded and it passed.