BOARD OF BAR COMMISSIONERS
SEPTEMBER 24, 2010 MEETING MINUTES
Bar Center, Albuquerque, NM

MEMBERS PRESENT:	Henry A. Alaniz	Twila B. Larkin
	Gary D. Alsup	J. Brent Moore
	Erika Anderson	Hilary A. Noskin
	Daniel J. Behles	R. David Pederson
	David M. Berlin (by phone)	Jessica A. Perez
	Roxanna M. Chacon	Wesley O. Pool
	Martha Chicoski	Stephen S. Shanor
	Andrew J. Cloutier	Raynard Struck
	Dominic E. Dutton	Deborah R. Tope
	Michelle Lujan Grisham	Hans Voss
	Danny W. Jarrett	Carolyn A. Wolf
OTHERS PRESENT:	Kris Becker	Christine Morganti
	Ian Bezpalko	Artie Pepin
	Joe Conte	Dorma Seago
	Veronica Cordova	Richard Spinello
	Rob Koonce	Madonna Vandeventer
	Amy LaFaver	

1. Approval of July 15, 2010 Meeting Minutes

Commissioner Cloutier made a motion to approve the July 15, 2010 meeting minutes; the motion was seconded and it passed.

2. Board of Bar Commissioners 2011 Officer Nominations and Election

President Shanor requested nominations for the 2010 Board officer positions of Secretary-Treasurer, Vice President and President-elect. Commissioner Chacon made a motion to nominate Erika Anderson for the position of Secretary-Treasurer; Commissioner Pool made a motion to nominate Twila Larkin for the position of Secretary-Treasurer; Commissioner Cloutier made a motion to close nominations; the motion was seconded and it passed. An election was held for which seventeen votes were cast and nine were needed for either candidate to win. Commissioner Larkin received eight votes and Commissioner Anderson received nine, so Commissioner Anderson was elected to the position of Secretary-Treasurer. Commissioner Alaniz made a motion to nominate Drew Cloutier to the position of Vice President. Commissioner Pool made a motion to close nominations; the motion was seconded and it passed. Commissioner Cloutier was elected to the position of Vice President by acclamation. Commissioner Alsup made a motion to nominate Hans Voss to the position of President-elect. Commissioner Cloutier made a motion to close nominations; the motion was seconded and it passed. Commissioner Voss was elected to the position of President-elect by acclamation.

3. 2011 Dues and Licensing Form

This item was tabled for discussion later in the meeting. Pursuant to action taken under agenda items 4B, Fee Waiver Application, and 8, Approval of 2011Budget Worksheet, Commissioner Pool made a motion to approve the 2011 Dues and Licensing Form with amendments to remove fee waivers and increase the license fee by five percent. The motion was seconded and it passed.

4. Bylaws and Policies Committee Report and Recommendations

Commissioner Anderson reported on the August 27th meeting regarding the following:

A. Amendment to State Bar Bylaws Article IX, Sections, Committees and Commissions

At the July meeting, the committee provided thirty days' notice of the below bylaw amendment to add a new section to Article IX regarding compliance with the State Bar Bylaws and Policies by sections and committees.

> **Section 9.5 Bylaw and Policy Compliance by Sections and Committees.** Sections are required to follow their Bylaws, and sections and committees must comply with the Bylaws and Policies of the State Bar of New Mexico. Failure to do so may result in being placed on the sunset list to be heard at the next meeting of the Board of Bar Commissioners.

Commissioner Anderson made a motion to approve the amendment and the motion passed.

B. Fee Waiver Application

At the July Board meeting, the Board referred the application back to the committee to review the language in section (b) with the rule regarding hardship for any changes. The committee recommended a proposed change to coincide with the rule. Following the meeting, Chief Justice Daniels sent an e-mail regarding fee waivers. Commissioner Anderson made a motion to approve the amended application, but the motion failed. The Board discussed whether to continue to offer hardship and military waivers. General Counsel Richard Spinello stated that the revised Fee Waiver Application tracks the rule, which only gives the Board the authority to grant waivers for an extreme individual hardship, so the application would need to be revised to include military waivers in the definition of extreme individual hardship. Commissioner Wolf suggested eliminating the application and taking waivers off of the dues form and deciding them on an ad hoc basis. Commissioner Behles made a motion to remove fee waivers from the dues form and authorize the executive director and staff to grant fee waivers for deployed military reservists or personnel and any other fee waiver requests will be brought to the Board; the motion was seconded and it passed.

C. Bar Bulletin Cover Art

The Executive Committee met on August 2 to discuss correspondence from attorney Tim Covell regarding art on the cover of the *Bar Bulletin* and referred the matter to the Bylaws and Policies Committee for consideration. Mr. Covell and Mark Glenn, Chair of the Board of Editors, met with the committee to discuss the issues. The committee proposed the following policy, for discussion purposes only, to be voted on at the December meeting.

> "There shall be no art published in the Bar Bulletin unless it pertains to State Bar business or is law related."

The Bar's editor, Dorma Seago, made a presentation to the Board. Following the presentation and discussion, the Board decided to vote on the policy at the meeting rather than wait until the December meeting. Commissioner Anderson made a motion to approve the proposed policy, but following a vote, the motion failed. Executive Director Joe Conte suggested adopting the language that is in the State Capitol for the artwork that is displayed in the building. The Board determined that the decision to adopt the language should be up to the Board of Editors and no further action was necessary.

D. Proposed Bylaw Amendment to Article II, Section 2.3, License Fees

Kathleen Jo Gibson drafted proposed amendments to the reinstatement language in Article II, Section 2.3, of the State Bar Bylaws for the committee's consideration. The committee revised the proposed language and recommended approval of the bylaw amendment. Thirty days' notice is required prior to approval, so the amendment will be voted on at the December meeting.

E. Bankruptcy Law Section Bylaw Amendment

The Bankruptcy Law Section Board requested an amendment to its bylaws increasing the number of positions on its board from 11 to 13, and the committee recommended approval. Commissioner Anderson made a motion to approve the amendment and the motion passed.

F. Sections and Committees Scheduled for Sunset

Pursuant to Article IX, Section 9.4, of the State Bar Bylaws, sections and committees scheduled for sunset in a given year must submit a petition to continue the section/committee by September 1. The following submitted petitions requesting continuance and the committee recommended continuing them.

Committees:
- Ethics Committee
- Technology Committee

Sections:
- Elder Law Section
- Family Law Section
- Public Law Section
- Solo and Small Firm Section

Commissioner Anderson made a motion to approve continuing all of the above sections and committees and the motion passed.

5. Executive Session

Commissioner Wolf made a motion to go into executive session to discuss a personnel issue tabled from the July meeting; the motion was seconded and it passed.

6. Finance Committee Report

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

A. Accepted the August 2010 financials and executive summaries;
B. Reviewed the accounts receivable aging report as well as the directors' travel reimbursements and credit card file;
C. Reviewed an estimate for roof repairs in the amount of $7,500 and the committee requested bids for a full roof replacement, since the roof is 15 years old and the repairs would only be guaranteed for four years;
D. Reported that the banking services are being transferred over from Wells Fargo to the US NM Federal Credit Union and deposits will begin October 1;
E. Recommended an amendment to the Bar's Investment Policy under III(B)(3), Certificate of Deposit, to increase the amount from $100,000 to $250,000; Commissioner Cloutier made a motion to approve the amendment and the motion passed;
F. Received a request from the Center for Civic Values to assist with printing costs for the 2012 Mock Trial brochure, which will cost $6,000; CCV will pay $3,000 and the State

Bar will pay $3,000; Commissioner Cloutier made a motion to approve the $3,000 expenditure towards the cost of the brochure and the motion passed; and

G. Received a request to join the Hispano Chamber of Commerce for business and community benefits; the annual dues are $625; following discussion, Commissioner Anderson made a motion to refer it to the Bylaws and Policies Committee to determine whether there would be any constraints under *Keller* or *Popejoy*; the motion was seconded and it passed.

7. Acceptance of Financials

Commissioner Cloutier made a motion to accept the August 2010 financials; the motion was seconded and it passed.

8. Approval of 2011 Budget Worksheet

The Finance Committee met prior to the Board meeting on the 2011 Budget Worksheet. The proposed budget is $17,000 to the positive with no dues increase. Commissioner Cloutier made a motion to approve the 2011 Budget Worksheet and the motion was seconded. Following discussion regarding anticipated cuts to the Civil Legal Services Fund, Commissioner Noskin requested a friendly amendment to approve the budget with a five percent dues increase in anticipation of further cuts to civil legal services. The amendment was accepted and the motion passed.

9. Governmental Affairs Committee Report and Recommendation

Chair Alaniz reported on the August 19th meeting regarding the following:

A. New Mexico Foundation for Open Government's Request to Support its Opposition to Two of the Public Access Recommendations by the Judicial Information Systems Council

The committee met with the Bar's Jiffy Committee representative, Dennis Jontz, and Kip Purcell, on behalf of the NM Foundation for Open Government, and recommended approving the NM Foundation for Open Government's request to oppose two of the public access recommendations of the Judicial Information Systems Council. Following the meeting the Court issued a rule on the recommendations, which coincides with the committee's position.

B. 13th Judicial District Court E-Filing

Commissioner Berlin brought the 13th Judicial District Court's mandatory e-filing on attorneys practicing in that court and the filing fees to the Board's attention and the Board referred it to GAC to discuss. The Supreme Court and the Legislature supported the pilot program, which will be reviewed again in the next Legislative Session to assess its effectiveness. The committee determined that the filing fee of $6 per document was economical and provided the information on the program from the Court to the Board.

C. Hispanic Bar Association's Request

The Hispanic Bar Association requested the Bar's support of a resolution stating that the State Bar will not schedule any events in Arizona until the immigration issues are resolved, and the committee recommended approval of the request. Commissioner Alaniz made a motion to approve support of the resolution. The Board discussed whether it was an issue as there are currently no out-of-state meetings nor are there any planned in the near future. There was also a question as to whether there were any *Keller* constraints with regard to the political or ideological aspects of the resolution. General Counsel Richard Spinello stated that it was more of a business decision as to where the State Bar holds its annual meetings. Following a vote, the motion failed with a vote of eight to six.

D. Civil Legal Services Update

The Government Restructuring Committee has proposed eliminating the Civil Legal Services Commission and funding. ATJ Coordinator Amy LaFaver attended the meeting and reported on the two recommendations being proposed, which include eliminating the general fund portion of the program's funding to reprioritize elsewhere. Most states have state funding for civil legal services. New Mexico is one of the poorest states in the nation and eliminating funding will greatly increase the number of people not served. The funding cuts would also affect LREP. Those in favor of the proposal believe that providing civil legal services is not a core function of government. Currently two million of the funds come from the general fund and two million comes from filing fees. The proposal would place the filing fees in the general fund and eliminate two million for civil legal services. Commissioner Perez stated that there needs to be training for legislators and recommended reinstituting the Law School for Legislators program that the Bar coordinated a few years ago. Chair Alaniz suggested that GAC assist commissioners in contacting the legislators.

E. YLD Request to Support Gender Neutral Language

The YLD requested support to endorse gender neutral legislation. The request and a draft of last year's house bill, which did not pass due to lack of time, was included in the materials. In 2002, the Board approved the Committee on Women in the Legal Profession's request to lobby the Legislature for amendments to the statues regarding gender neutral language. The committee recommended approving the request. General Counsel Richard Spinello asked the Board whether it wanted to support YLD's request or if it would like to expand the request to the full Board, which would eliminate the need for future groups to come to the Board each time for approval. Commissioner Anderson made a motion for the Board to support the gender neutral legislation; the motion was seconded and it passed.

F. Judicial Funding

A request was received from the Supreme Court regarding support for judicial funding. Artie Pepin with the Administrative Office of the Courts attended the meeting to discuss issues with the judiciary and he distributed proposed legislation. Commissioner Perez asked whether any of the proposed legislation had sponsors. Mr. Pepin stated that they don't have difficulty getting sponsors, just getting the legislation passed. He requested assistance from the Board in talking with legislators and distributed a list of legislators in each bar commissioner district. Chair Alaniz made a motion to refer the proposed legislation to GAC to review and make recommendations as to what issues the Board should support at the December meeting and the motion passed.

10. EAJ Merger Report and Update

President Shanor reported on the discussions regarding the EAJ merger and outlined the terms and conditions of the merger, which included the following:

A. EAJ will become a committee of the Bar Foundation;
B. Sixty six (66) percent of the money raised will be distributed only to Statewide Legal Service Providers – providing a full range of services to all indigent people;
C. Money raised in excess of that percentage will be available for all civil legal service providers;
D. New or existing providers who expand their services statewide will be eligible for the statewide percentage;
E. The EAJ committee will require the providers to account for the funds provided; and
F. The committee will work in the future to integrate the PHV and Dues Form funds into the structure.

Commissioner Noskin made a motion to authorize the merger, in concept, pursuant to the terms and conditions outlined and to draft bylaws to effectuate the merger; the motion was seconded and it passed.

11. LLC Special Committee Report

The LLC Special Committee, formed in 2009 to review the issues that were presented by the Ethics Advisory Committee regarding attorneys establishing limited liability companies, requested the Board's approval of a change to Rule 24-107. General Counsel Richard Spinello reported on the proposed rule change, which was distributed at the meeting. He noted that there may be a statutory fix to resolve the issue as well, but the committee decided to start with a rule change. Commissioner Dutton made a motion to approve forwarding the proposed rule change to the Supreme Court; the motion was seconded and it passed.

12. Legal Research Committee Report

The committee, which was appointed to look into other legal research options, met with Fastcase, Casemaker and the Compilation Commission on July 15 to obtain information on the costs and services that they each offer. Chair Larkin provided a written report for the Board's information and reported that the Bar's contract with Casemaker expires in August 2011 and that a decision needs to be made by April 2010.

13. Lawyers Assistance Committee Report and Update

Executive Director Joe Conte reported that he met with Briggs Cheney, Bill Stratvert and Jill Anne Yeagley to discuss expanding the Lawyers Assistance Program. Jill Anne Yeagley will become a full-time employee of the Bar in January to better assist the membership.

14. UPL Task Force Report and Update

Chair Cloutier reported on the September 23rd UPL Task Force meeting and the proposed rule changes, which were forwarded to other entities. A proposal will be presented to the Board for approval at the December meeting.

15. Public Defender Special Committee Report

The committee was appointed in follow-up to Chief Public Defender Hugh Dangler presentation at the April Board meeting regarding public defender issues with indigent defense and funding in New Mexico the Board. The committee met on September 15 and Chair Berlin provided a written report for the Board's information.

16. NM Women's Bar Association Update

Commissioner Anderson reported that the NM Women's Bar Association is being revived and a board has been put in place. The organization has $42,000. A reception will be held on September 28 at the Hotel Andaluz and a team has been organized for the Race for the Cure.

17. BBC Election Schedule

The BBC election schedule for six positions was included in the materials. Ballots are being mailed out on October 29 and the election will be held on November 30.

18. 2012 Mock Trial Funding

Commissioner Alaniz reminded the Board of its funding commitment for the 2012 National Mock Trial and requested assistance from each commissioner in soliciting donations. The funds need to be raised by next summer and donors will receive tax deductions.

19. President's Report

President Shanor reported on the following:

A. Mentorship Program Report and Update

He met with the Supreme Court last month and they are eager to begin the program. The target date is next February, but it may be spring before it is up and running.

B. Regulatory Boards Meeting

He met with the chairs of the regulatory boards—Board of Bar Examiners, MCLE and Disciplinary Board—last month and had a productive meeting.

C. Local Bar Visits

He visited with members of the local bar associations in Clovis, Lea County and Alamogordo.

D. Other

He spoke at the new admittee swearing-in ceremony last week. He was pleased to report that the annual meeting came in at $1,700 to the positive.

20. President-elect Report

President-elect Jessica Perez reported on the following:

A. Appoint Membership Survey Committee

She plans to do a membership survey in 2011 and requested volunteers to serve on a committee to develop the survey. Commissioners Cloutier, Dutton, Larkin, Noskin, Pool and Struck volunteered.

B. Board Retreat

The Board Retreat will be held November 4-6 at the Hard Rock Hotel.

C. Other

The CLE trip will be to Napa Valley and the brochure will be published in the December 6th *Bar Bulletin*. The deadline to sign up for the trip is mid-April.

21. Executive Director Report

Executive Director Joe Conte reported that he was appointed to serve on a committee that reviews and determines the mayor's and councilor's salary.

22. Bar Commissioner and Division (SLD, YLD & PD) Reports

Commissioners and division representatives reported on meetings and activities in their districts and divisions. Dan Behles reported that there are 11 open positions on the SLD Board next year and that there will be an oral history presentation in December. Roxanna Chacon reported that the ABA YLD Fall Conference will be held October 14-16 at the El Dorado Hotel in Santa Fe and that the Division will be participating in the Serving our Seniors Project and drafting wills during the conference. Debbie Tope reported that the Paralegal Division is celebrating its 15th anniversary and that Ruby Silva will be the chair of the division next year and Kay Homan will be the liaison to the Board.

23. Rocky Mountain Mineral Law Foundation Report

Elizabeth Ryan, the Bar's appointee to the Rocky Mountain Mineral Law Foundation Board, submitted a a written report on the Foundation's annual meeting for the Board's information.

24. Article Regarding Support for Pro Bono Committees

An article published by the ABA highlighting the Board's action supporting the local judicial district pro bono committees, in addition to information on the 2010 National Pro Bono Celebration, October 24-30, was included in the materials for the Board's information.

25. New Business

A. The Indian Law Section requested an amendment to its bylaws to add a non-voting student member to its board. Commissioner Cloutier made a motion to approve the request; the motion was seconded and it passed.

B. Chief Justice Daniels requested that the State Bar form a committee to respond to unfair criticism of judges around the state. The Board previously approved a mechanism for the president to write letters to the editor regarding judicial criticism. Executive Director Joe Conte suggested sending a letter to all of the judges around the state asking them to notify us when there's a criticism in their district or have commissioners from those districts bring issues to the Board. President Shanor requested volunteers for a committee to take a look at the issues and make recommendations. Commissioners Jarrett, Pederson and Wolf volunteered.

There being no further new business, the meeting was adjourned.