BOARD OF BAR COMMISSIONERS
APRIL 30, 2010 MEETING MINUTES
Daniels Leadership Center, Roswell, NM

MEMBERS PRESENT:	Henry A. Alaniz	J. Brent Moore
	Erika Anderson	Hilary A. Noskin
	Daniel J. Behles	R. David Pederson
	David M. Berlin	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
	Twila B. Larkin	
MEMBERS ABSENT:	Gary D. Alsup	
OTHERS PRESENT:	Kris Becker	Chris Newbold (by phone)
	Kee Allen Begay	Dan Seman (by phone)
	Joe Conte	Howard Thomas
	Hugh Dangler	Madonna Vandeventer
	Christine Morganti	

1. Approval of February 26, 2010 Meeting Minutes

Commissioner Dutton made a motion to approve the February 26, 2010 meeting minutes and the motion was seconded. Commissioner Larkin requested amendments to number 3 to replace the words "will meet" with "met" and to number 12 to add the word "study" after "feasibility." The motion passed with the amendments.

2. 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 March 2010 financials and executive summaries;
B. Reviewed the accounts receivable aging report as well as the directors' travel reimbursements and credit card file;
C. Received a proposal in the amount of $1,322 for a door to be installed in front of the former coat closet in the lower west wing by the auditorium to store beverages for the Bar Center and the committee recommended approval; Commissioner Cloutier made a motion to approve the proposal for the door and installation, and the motion passed;
D. Discussed the scanning process of the dues forms for the Supreme Court and reviewed a document conversion proposal from PDS in the amount of $2,000 and the committee recommended approval; Commissioner Cloutier made a motion to contract with PDS in the amount of $2,000 for the scanning of the dues forms and the motion passed;
E. Received a request from the YLD to sponsor the ABA/YLD Fall conference in Santa Fe in the amount of $10,000 and the committee recommended approval; the funding will come from the following line items: Leadership Training Institute, since it was not held this year; travel budget, since President Shanor and Executive Director Joe Conte will

not be attending the NCBP Annual Meeting this year; and CLE; Commissioner Cloutier made a motion to approve the request to sponsor the ABA/YLD Fall Conference in the amount of $10,000 and the motion passed.

3. Acceptance of Financials

Commissioner Cloutier reported that revenues over expenses to date are $32,000. He also noted that that there have been more suspensions for non-payment of dues than in previous years and that dues were collected for 160 fewer members than anticipated; he made a motion to accept the March 2010 financials and executive summaries and the motion passed.

4. Dues Form and Fee Structure Committee Report and Recommendations

Chair Hilary Noskin reported on the March 31st meeting and requested the Board's approval of the following:

A. Dues Form

The Board requested a review of the dues form and recommendations for possible amendments for 2011. The following amendments were recommended by the committee:

- Section 3, Reporting of Pro Bono Hours, to clarify that reporting of hours is mandatory and that providing pro bono services is aspirational; and
- Sections 5 and 6, Disciplinary Board and Client Protection Fund, were combined and language was added clarifying that these fees are mandated by the Supreme Court and are not part of the State Bar dues.

Commissioner Noskin made a motion to approve the amendments and the motion passed. She noted that criteria needs to be drafted in Section 8, Contributions, as to what types of entities should be included under that section and requested that another committee draft the criteria. Commissioner Wolf made a motion to refer it to the Bylaws and Policies Committee and the motion passed.

B. Fee Waiver and Legal Service Discount Applications

The Board requested a review of the Fee Waiver and Legal Service Discount Applications, and the committee recommended amendments to the Fee Waiver Application to limit fee waivers to two consecutive years and to remove the sentence regarding tax returns and medical records will be provided upon request. The committee also recommended eliminating the Legal Service Discount for which no one currently qualifies. Following discussion, the Board requested further amendments to the Fee Waiver Application to clarify 70 years of age and two consecutive years and whether to limit the waiver to two years. Commissioner Wolf asked whether there is a written policy for fee waivers and whether there are standards. Executive Director Joe Conte stated that there is no formal written policy other than the form and that Rule 24-102 states that the State Bar may grant fee waivers. Executive Director Joe Conte expressed concern over the lack of consistency with the regulatory boards not granting waivers and recommended that either he or President Shanor speak with Chief Justice Daniels to determine his thoughts on whether or not those members should continue to practice law.

Commissioner Dutton made a motion to refer the applications to the Bylaws and Policies Committee for further review and amendments. Commissioner Voss requested a friendly amendment to the motion to also authorize Executive Director Joe Conte or President Shanor to talk with the Court and the regulatory boards; the amendment was accepted and the motion passed.

C. Fee Structure

The committee discussed the fee structure and recommended eliminating one of the three fee categories for those in practice for one year or less and approving two fee categories for those in practice less than three years and those in practice three years or more. Commissioner Noskin made a motion to approve the recommendation, and the motion passed.

5. Personnel Committee Report and Recommendations

Chair Danny Jarrett reported on the March 17th meeting and requested the Board's approval of the following:

A. New Cell Phone Policy

A policy was developed for employee use of cell phones at work and while driving, pursuant to state and local laws to protect the Bar from liability, for inclusion in the Employee Handbook and the committee recommended approval. Commissioner Jarrett made a motion to adopt the new policy and the motion passed.

B. New Open Door Policy

The Bar has a policy for complaints involving the executive director but did not have a policy for complaints involving department directors or supervisors, so a new policy was drafted for inclusion in the Employee Handbook and the committee recommended approval. Commissioner Jarrett made a motion to adopt the new policy and the motion passed.

6. Bylaws and Policies Committee Report and Recommendations

Commissioner Don Dutton reported on the April 15th meeting regarding the following:

A. New Loan Policy

Pursuant to the Board's request, the committee drafted a loan policy for the bar exam prep course pilot project approved at the February meeting; however, after the policy was drafted, the committee recommended that the policy not be adopted due to all of the issues that arose during discussion and because it would be too difficult to implement. As an alternative, the committee suggested providing a $10,000 scholarship through YLD to fund the prep courses for three students. Commissioner Chicoski stated that the YLD already has criteria in place for its Fellowship Program. Commissioner Cloutier stated that the Bar has already made a promise to the law school and if the student defaults, it would in effect be a scholarship, and the Board can always revisit it again next year. He made a motion to adopt the policy and Commissioner Larkin seconded. Commissioner Berlin stated that the policy puts all of the risk on the Bar as the Bar is guaranteeing payment to the credit union, so they have no risk and it would be up to the Bar to collect on the loans. Commissioner Behles expressed concern with the Bar getting involved in the loan business. Commissioner Jarrett expressed concern with the fair debt collection laws. Following a vote of 17 opposed and 3 in favor, the motion failed.

Commissioner Anderson made a motion for the YLD to provide a $10,000 scholarship, the criteria for which will be established by the YLD. Commissioner Cloutier stated that there is no money budgeted for this expenditure. Commissioner Jarrett requested a friendly amendment to provide the scholarship for one year only and that the criteria include financial need and academic performance. Commissioner Wolf requested a friendly amendment to limit it to one scholarship in the amount of $2,000, but it was not accepted. Following a vote of 13 in favor and 8 opposed, the motion passed with Commissioner Jarrett's amendments.

B. Editorial Policy Amendments

The Board of Editors requested extensive amendments to the Editorial Policy to make the policy consistent with its practices and amended the definition, purposes and functions of the Board of Editors and the State Bar staff, in addition to amendments to the descriptions of publications and advertising and the committee recommended approval. Commissioner Dutton made a motion to approve the amendments to the policy and the motion passed.

7. ABA House of Delegates Appointment

One vacancy existed on the ABA House of Delegates for a two-year term and a notice was published in the *Bar Bulletin*. Only one letter of interest was received from Chuck Vigil, the Bar's current appointee, requesting reappointment, and the letter was included in the materials. Commissioner Voss made a motion to reappoint Chuck Vigil to the ABA House of Delegates for a two-year term; the motion was seconded and it passed.

8. Judicial Standards Commission Appointment

One vacancy existed on the Judicial Standards Commission for a four-year term and a notice was published in the *Bar Bulletin*. The following submitted letters of interest and resumes for the Board's consideration:

A. John H. Clough
B. Catherine F. Davis
C. Pete Dinelli
D. Eric D. Dixon
E. Ramona C. Martinez
F. Barney James Reeves
G. Michael Schwarz
H. Norman S. Thayer
I. Pilar Vaile

Following a vote by secret ballot, Norman S. Thayer was appointed to the Judicial Standards Commission for a four-year term.

9. ALPS/MEWA Report and Survey Results

At the April meeting, the Board requested a presentation by ALPS on the Multi-Employer Welfare Association (MEWA), a third party insurer which provides health insurance to members through ALPS. The Board also requested that a survey be conducted through Survey Monkey to ascertain interest from the membership. Healthcare costs and a lack of available options were the major concerns of members. Of the 175 members that answered the survey, 92.5 percent were interested in such a plan and 95 percent were in favor of expending funds to conduct a feasibility study; 58 percent of the respondents were solo practitioners and 77.6 percent of the respondents currently have health insurance coverage. The Idaho and Wyoming State Bars have the program, which is a self-funded trust. New Mexico has a statutory framework for regulating MEWAs. Commissioner Moore with the Department of Insurance stated that there are currently no MEWAs in New Mexico. Chris Newbold and Dan Seman with ALPS reported that MEWA was designed to meet the needs of small firms and solo practitioners who have been unable to obtain coverage. The State Bar would offer health care benefits and be able to control the types of coverage; members would have a voice in plan design and management to control long-term administrative costs. ALPS would serve as the facilitator in helping to develop the trust, creating the board of trustees and third party administrators who would process the claims. The goal would be to get at least 250 members insured and ALPS would assist with the marketing.

Commissioner Moore with the Department of Insurance asked if the bar associations were responsible for losses and risks associated with the plan. Mr. Newbold and Mr. Seman responded that a non-profit

entity would be set up to do so and ALPS would be the plan administrator and advisor. ALPS does not underwrite the policies; the TPA does. The board of trustees will have input into the underwriting guidelines. A minimum surplus level of $100,000 will be required as a deposit plus an additional $100,000 or three months of benefit claims. Commissioner Jarrett stated that there may be some hurdles because the NLRB Board ruled that the State Bar is an arm of the court. He asked what would happen if an employer went out of business and how it would affect the trust and whether the trustees have a fiduciary duty to collect. Mr. Newbold and Mr. Seman stated that everyone would be jointly and severally liable. The Board discussed whether to conduct a feasibility study, which would cost between $25,000 and $35,000 and take two to three months. Commissioner Moore cautioned the Board about proceeding with a feasibility study in light of the costs associated the program and the fact that everyone who is in the program is responsible for its losses. Following discussion, no action was taken by the Board.

10. Mentorship Program Committee Report, Approval of Program and Rule Changes

President Shanor reported on the March 30th and April 19th meetings of the Mentorship Program Committee regarding a mandatory mentorship program for new admittees and requested the Board's approval of the proposed program, the new Rule 24-110 creating the program and amendments to Rule 23-110, Commission on Professionalism, which were included in the materials. Other bars that have mentorship programs include Georgia, which has had a program for 10 years; Ohio, which has had a program for one year; and Utah, which just implemented their program last year. The proposed program was modeled after the Utah State Bar's program. The program will be mandatory for new admittees and includes both substantive and elective requirements. The program will meet MCLE requirements and will replace the professionalism requirement. The Commission on Professionalism will screen mentors. The program will be administered by the Bar pursuant to Supreme Court Rule and he anticipates starting the program in 2011. He has met with the voluntary bars, the Court and Art Jaramillo and all are in favor of the program. The Law Practice Management Committee expressed concerns and opposition to the program and rule change, and President Shanor will meet with committee members to discuss the program. Commissioner Berlin questioned whether the mentee also has to have malpractice insurance in addition to the mentor, and President Shanor stated that Hank Kelly and the Lawyers Professional Liability Committee are looking into that issue, but he doesn't think that should be a requirement. Commissioner Cloutier requested amending the language in I(2) of new Rule 24-110 to emphasize that there would be no client-attorney privilege waiver in the relationship. Commissioner Behles requested amending Rule 23-110 to add a member of the Senior Lawyers Division to the Commission on Professionalism. Commissioner Larkin noted that there was a typo in I(4) and that Subsection "H" should be Subsection "I." The committee made a motion to approve the program and rules with the amendments requested and the motion passed.

11. Casemaker Update and Survey Results

A survey of the membership was conducted through Survey Monkey. Of the 93 members who responded, 100 percent reported that they have a need for legal research in their practices, 38.7 percent were solo practitioners, 51.6 percent reported that they or their staff use Casemaker as their primary source of legal research, and 83.9 percent recommended that the State Bar continue to offer Casemaker as a member service. President Shanor requested volunteers to serve on a Legal Research Committee to review the Casemaker contract and look into Fastcase, the Compilation Commission and Lexis. Commissioners Larkin, Voss, Perez, Cloutier and Berlin volunteered to serve on the committee.

12. Bar Center Wall of Distinction Committee Report and Recommendation

Chair Alaniz reported on the March 31st meeting of the Bar Center Wall of Distinction/Honor to honor members who have made significant contributions to the State Bar. He stated that the committee recommended naming the wall after the late Justice Gene E. Franchini and placing a wooden plaque on the windows in the Bar Center lobby; future honorees would be added on additional wooden plaques or their names would be etched into the glass. Once all of the quotes are received, they will be submitted to the Finance Committee for consideration.

13. 2012 National High School Mock Trial Committee Report

Co-Chairs Alaniz and Voss reported on the April 1st 2012 Mock Trial Committee meeting. They reported that letters have been sent out to potential sponsors and that all funds need to be raised by August 1, 2011. The fundraising brochures, pledge form and list of sponsorship opportunities were distributed to commissioners at the meeting.

14. UPL Task Force Report

Chair Cloutier reported on the April 15th UPL Task Force meeting and stated that the task force is working on proposed rule revisions, which will be presented at the next meeting.

15. Client Protection Fund Commission Annual Report

Secretary-Treasurer Cloutier stated that the 2009 CPF Commission Annual Report will be mailed to the Board. He reported that two attorneys created multiple claims resulting in the fund paying out a large sum last year. He also reported that $100,000 was recently transferred from MCLE to the fund and that a $15 assessment for the fund was approved by the Court and was included on the dues form.

16. Indigent Defense in NM

Chief Public Defender Hugh Dangler reported on indigent public defense in New Mexico. Per statute, he is responsible for setting contract rates for public defender work and the state doesn't have enough funding to set reasonable rates. They also have a backlog of cases, particularly in the Second Judicial District. The ABA has published a document called "Eight Guidelines for Handling Excessive Workloads" that deals with indigent defense systems, and one area that New Mexico fails is having one attorney for an entire case, in addition to the fees being significantly undervalued. He stated that the Public Defender Department's funding comes from the Legislature and they are administratively under the Department of Corrections. The Public Defender Department's budget is divided into three areas—contracts, expert witness payments and employee salaries. He reported that public defenders rank very low for funding with the Legislature and that they may need some sort of reform. Mr. Dangler stated if the State Bar takes positions on issues, it's significant as the Bar represents the entire membership. He suggested that the Bar conduct a study regarding the effectiveness of contract counsel and to look at the *Gideon* case to ensure that New Mexico is in compliance. Commissioner Pederson stated that he believes the Public Defender Department should be placed in the judicial branch of government. President Shanor suggested publishing an article in the *Bar Bulletin* to increase awareness and generate ideas to help solve the issues, one of which is to increase the pay scale for contract attorneys. Commissioner Cloutier suggested appointing a task force or committee to look at all of the issues to be comprised of members of the Board, the law school, judges, and the ATJ Commission. President Shanor will talk with Mr. Dangler and ask him for input in identifying members to serve on the task force.

17. President's Report

President Shanor reported on meetings and events that he attended, including appointment of the First Judicial District Nominating Commission, the Western States Bar Conference in San Antonio, Executive Committee, UPL Task Force, Mentorship Program Committee, site visit to the Inn of the Mountain Gods, ABA Day in Washington, D.C., Dean Washburn and the Supreme Court justices regarding the mentorship program, and he spoke to the new admittees at the swearing-in ceremony in Santa Fe.

18. Executive Director Report

Executive Director Joe Conte reported that PLSD Director Kasey Daniel is leaving the State Bar to work for New Mexico Legal Aid and that he is waiting to advertise the position due to three pending grants.

19. State Bar Newsletter and Department Reports

The April State Bar Newsletter was included in the materials and the directors reported on their department highlights. Membership and Communications Director Chris Morganti reported that practice sections are working on CLE programs for the annual meeting as well as annual fall institutes. The department has assisted with various Law Day activities and media coverage for the YLD Ask-a Lawyer Call-in program. CLE Director Rob Koonce stated that he has been finalizing programs for the annual meeting and the CLE at Sea Alaskan Cruise.

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

Commissioners and division representatives reported on meetings and activities in their districts and divisions. YLD Past Chair Roxanna Chacon reported that YLD awarded two fellowship scholarships to law students and that the Division will host the Law Day call-in programs around the state, in addition to monthly brown bag meetings. She also thanked the Board for the sponsorship of the ABA/YLD Fall Conference. SLD Delegate Dan Behles reported that SLD will present a CLE at the annual meeting on transitioning from full-time to part-time practice. Paralegal Division Chair Debbie Tope reported that the Division is working on its 15-year commemoration of membership in the State Bar.

21. Board Self Evaluation

President Shanor distributed a board self evaluation to the commissioners at the meeting on board responsibility, performance and operations.

22. New Business

A. Kee Allen Begay, Chairman of the Navajo Nation Council's Standing Judiciary Committee, requested a letter of support for federal funding for the construction of a Navajo Nation Supreme Court facility. They are requesting $11.2 million from Congress for the facility and the Navajo Nation has already appropriated $1.3 million for the construction. He stated that the Utah and Arizona State Bars provided letters of support. Commissioner Cloutier made a motion to authorize President Shanor to send a letter of support. Commissioner Berlin requested a friendly amendment to the motion that the request be approved subject to review and approval by the Governmental Affairs Committee (GAC). The GAC met during a break in the Board meeting and Chair Alaniz reported that GAC unanimously approved the request.

B. President-elect Perez reported that she attended the NCBP Midyear Meeting in Orlando in February, the Bar Leadership Institute in Chicago in March, Access to Justice Commission meeting and is looking for speakers and a location for next year's annual meeting.

C. Madonna Vandeventer requested that the State Bar section board members be added to the D & O coverage under the Bar's insurance policy. Commissioner Wolf made a motion to approve the request; the motion was seconded and it passed.

There being no further new business, the meeting was adjourned at 3:30 p.m.