**VERMONT BAR ASSOCIATION**

**BOARD OF BAR MANAGERS MEETING**

**February 18, 2022**

**1PM via zoom**

Present: Jessica Bullock, Rich Cassidy, Josh Diamond, Judith Dillon, Pam Eaton, Bob Fletcher, Elizabeth Kruska, Kate Lamson, Jordana Levine, Kevin Lumpkin, James Rodgers, Ted Tyler, Matt Valerio, Alfonso Villegas.

VBA Staff: Mary Ashcroft, Teri Corsones, Lisa Maxfield, Laura Welcome.

1. **Call to order**: The meeting was called to order at 1:05 by President Bob Fletcher.

2. **Emerging Issues**: None

3**. Acceptance of Consent Agenda**:

A. Minutes: Upon motion by Elizabeth Kruska, seconded by Judith Dillon, the minutes were unanimously approved as printed.

B. Treasurer’s Report: Lisa Maxfield reported that we collected $7,000 in dues during January but are behind in dues by about $9,000. The Lawyer Referral Service is doing very well, having collected $17,000 more this year than last year at this time. Michelle has been working hard to get LRS payments up to date. Lisa reported no unusual expenses. We paid $2,500 to Intelinx to allow for multi day, multi time slot programming for CLE programs. This expense was above the initial payment to Intelinx.

C. Executive Committee—did not meet.

D. Board Committee Reports:

i. Operations Committee: Bob Fletcher said that the committee met to discuss the client security fund. He surveyed other NE states with similar funds, and found that four funds were court established, and RI and VT were bar managed. The client security fund is an action item below.

ii. Membership Committee: Alfonso Villegas said that the committee met and discussed adding demographic questions to the VBA membership application form. They are researching whether demographic data points can be added to the new database. The committee also discussed renewals and the VT Mentor Advice Program. The committee is looking forward to working with the new director of education and communication and discussing programming and other ideas with her.

iii. Program and Planning Committee: Jim Rodgers noted that the committee met today and reviewed the programs for the Mid-Year Meeting. There will be interesting offerings both in person and remotely the following week. Other CLE program options for Spring include procrastinators day, and possible programs on Medicaid, family law and probate. Other possible programs include how to do a jury draw. Alfonso urged attendance at the diversity program at the Mid-Year Meeting.

Kevin Lumpkin noted that the Young Lawyers Division has rescheduled its Thaw programs for April 29th and 30th. Most of the programming remains the same. There will be announcements in the Pulse and on the VBA website. Registration will open in March.

iv. Pro Bono Committee: Mary Ashcroft said that the committee had met on Feb. 16 to consider four nominees for the VBA’s annual Pro Bono Service Award. The nominees were Laura Savall, Matt Garcia, Sarah North and Joy Karnes Limoge. This will be discussed as an action item later in the meeting. The committee also discussed whether to hold the Pro Bono Conference this year in October. The VBA has hosted this free, all day CLE program event in even-numbered years. Due to covid restrictions, the program was not held in 2020. The purpose of the all-day conference at the statehouse is to train and encourage attorneys to do pro bono work. The VBA Board agreed we should plan on holding a Pro Bono Conference this October.

v. Governance Committee: Did not meet.

vi. Workforce Development Committee: Judith Dillon said that the committee met Tuesday. They discussed creation of a webpage to promote Vermont as a place to practice law. The committee will consider components for this webpage. Judith referred to a recent national poll that ranked Vermont as the third best state in which to raise children. This is something we can use to market to young lawyers. The committee will be recommending changes to the VBA application form including the addition of questions to capture demographic information. They will see what data other states gather. The Committee also wants to work with Vermont Attorney Licensing on this information. The Committee is also exploring a WCAX program about a “day in the life of a Vermont lawyer”, as a promotional tool. They also discussed expanding orientation presentations to Vermont colleges as well as VLS, to encourage students to consider law in Vermont as a profession and career. The Committee also discussed funding for internships and loan repayment programs.

vii. Covid 19 Committee: Bob Fletcher reported that the VBA and Judiciary are preparing an MOU to establish an attorney vaccine registry for judges’ use in courtrooms. The committee organized a Town Hall meeting with Dr. Bromage, who has been advising the Judiciary regarding Covid. Het predicts that the pandemic is likely to plateau through 2022, with fewer peaks and valleys in numbers of cases. Elizabeth Kruska liked what Dr. Bromage had to say and how he explained things. There was discussion about ways for Dr. Bromage to directly address the VBA membership, possibly during the remote portion of the Mid-Year Meeting.

E. President’s Report: Bob attended the various committees reported above, and also connected at noon for the quarterly meeting with the Court.

F. Executive Director’s Report: Teri Corsones reported on the judicial retention process and the judges currently up for retention. There appear to be no major retention issues. She noted that Charles Romeo, former VBA Board member, was recently sworn in as the state-wide Judicial Bureau Hearing Officer. Teri reported that she, Andrew, Jim and Ben had attended the recent NEBA quarterly meeting to hear from other NE bar associations about their activities. The high school mock trial competition at VLS on April 2 will feature 10 teams competing in person. Teri is presenting programs for legislative pages at the statehouse, including information about legal careers. The Legislature is considering changes to the judicial nomination process, which has garnered many strong comments. She testified about a proposed state code of ethics, reminding the committee studying the proposal that lawyers have their own code of ethics and that attorney disciplinary actions are under the jurisdiction of the Judiciary. Other matters which Teri has been monitoring include civil jury legislation, creation of a land records commission and the right to farm bill. Cross over will be on March 11th.

Teri also announced that Kim Velk has been hired to replace Jennifer Emens-Butler as VBA Director of Education and Communication. Kim is presently an AAG and was a YLD representative to the VBA Board a number of years ago. She will be joining staff in early March. Teri also announced that a successor for Michelle’s position has been hired, whose name is confidential pending notification of his present employer. He will start in April prior to Michelle’s departure in May to insure a smooth transition.

G. Staff Reports:

Mary Ashcroft reported that she had spent the past month inputting the VBA’s VOCA grant program data into the GEARS system now required by the state for reporting on federal fund use. The VBA is now set to receive quarterly reimbursement for our $50,000 annual VOCA grant which we use primarily to pay low bono attorneys who represent crime victims. Mary said that she is working with AAG and DCF reps and Lund social workers on a pilot project to give foster/adoptive parents access to a social worker then an attorney in post adoption contact agreements in Family Division. The pilot will start in Rutland. The VBA continues to work with Sam Abel-Palmer of Legal Services Vermont to plan for transitions and insure the future of pro bono and low bono services in Vermont. Mary is clerk for the Access to Justice Coalition, which will likely revive their legislative “ask” to fund various legal services projects including the VBA’s adult involuntary guardianship representation project. Mary was recently on a panel with VLS Professors Eicks and Killoran and a business consultant to discuss how to hire and work with an attorney. This was presented to small business owners and their mentors. VBA and VLS are working out an MOU to provide grant-funded low bono services to small businesses. Low bono placements, especially for clients who are crime victims, are down to about 50% from a high of 90% placement. Discussions are under way with LSV to triage cases better, and to eliminate certain low-priority referrals. Mary will be preparing grant applications for the VBF to fund the VBA’s County Low Bono Project and to partially fund her position as Legal Access Coordinator.

Lisa Maxfield reported that a new edition of the VBA Directory is in the works. The court listing sections and ads are done. The staff is trying to verify all lawyer information as the change in the VBA’s platform requires this verification. She hopes to get the draft directory to the printer next week, for a mid-March publication. Lisa noted that she will be meeting with the Operations Committee to discuss capital improvements needed for the VBA office building. She will make a list, starting with a new roof on the back and continuing the window replacement project started years ago. She will solicit bids and discuss how to finance the work.

Laura Welcome met with the Program and Planning Committee to plan for upcoming CLE programs. Laura reminded all that the VBA is short-staffed and working hard.

H. VBF Report: Rich Cassidy attended the VBF Board meeting this morning. The primary issue is working without staff. Deb Bailey left late last year, and Josie Leavitt has announced her departure. The VBF is attempting to hire a new ED who would work alone, doing both fundraising and admin work. It’s anticipated that hiring will be a challenge.

I. ATJ Coalition Report: Teri reported that the Coalition just held its first meeting with Justice Karen Carroll as its new chair. The major item was discussion of the incoming Poverty Law Fellow, who will be housed at Vermont Law School. The focus area will be immigration and the application process opens today. Interviews will be held over the next couple of months, and the new Fellow will be identified this summer and will start in the fall. The Coalition discussed legislative funding for various access to justice proposals. Eric is getting money for Vermont Legal Aid from the Legislature, and LSV will likely see an increase from LSC federal appropriations. The Coalition two years ago had done a push to have the Vermont Legislature fund initiatives including for the VBA’s low bono projects. Dan Richardson is willing to spearhead the ask project again.

4**. Action Items**:

A. Enrollments: Jim Rodgers inquired about a chiropractor and an auctioneer seeking membership. Teri explained that we have an associate (non-lawyer) member category for those interested in the law. She noted this is an opportunity to grow membership. These are non-voting members. Lisa noted that an auctioneer has been a gold sponsor for the Mid-Year Meeting. There is a connection with lawyers doing real estate closing and foreclosures. Exhibitors and sponsors like the ability to cross-pollinate with other professionals and all benefit from cross-referrals. There was also discussion about attracting association members who may be interested in becoming lawyers. On motion of Matt Valerio, seconded by Rich Cassidy, the following enrollments were unanimously approved: Lawyer members: Thomas Atkins, Shari Bacsardi, Mark Berman, Mark Hengstler, Fadil Idrizi, Molly Ladner, Stephanie Mallick, Henry Mauck, Heather Meacham, Leslie Schreiber, George Watson; Association Members: Maurice Cyr, Laticia Garcia, Jeffrey Simone.

B. Pro Bono Award: Mary Ashcroft advised the Board that the Pro Bono Committee had nominated four attorneys for recipients of this year’s Pro Bono Service Award. The nominees are Laura Savall, an attorney with Have Justice-will Travel; Matthew Garcia, Sarah North and Joy Karnes Limoge, all solo practitioners. Mary noted that all four take low bono cases and do additional pro bono work over and above the low bono hours for which they are paid a greatly reduced rate. Mary provided the Pro Bono Committees meeting minutes to reflect the discussion of these nominees. Elizabeth Kruska knows several of them and finds them all very deserving and is glad that we are recognizing them. On motion made by Jim Rodgers, seconded by Kate Lamson, the Board unanimously voted to award this year’s Pro Bono Service Awards to Laura Savall, Matt Garcia, Sarah North and Joy Karnes Limoge.

C. Client Security Fund: The proposed statement was read to the Board:

***Shall a reserve cap of $1 million be placed on the VBA Client Security Fund, and shall the VBA Board of Bar Managers have the authority to use excess funds over that cap for purposes consistent with the VBA Mission?***

Matt Valerio moved to send this question to the full membership for a vote at the Mid-Year Meeting in March. Motion was seconded by Kevin Lumpkin. Discussion ensued.

Richard Cassidy expressed unease. He thinks we should first increase the limits on the awards we make from the fund. This is a significant resource and he doesn’t want to see it drift away, so thinks we should have a specific proposal for use of the excess funds.

Kevin Lumpkin would agree to increase the limits of the awards, but noted that at $1 million, it is not likely that we would use it all. If we add a specific purpose for use of excess funds, that will only delay getting this matter to the membership.

Josh Diamond expressed concerns similar to Rich’s. He said that $1.5 million is not a lot of money and that a catastrophic event could occur and we would need all of this. If the membership approves, we must think long and hard over the use of the excess funds.

Matt Valerio reviewed the history of the fund. He agreed that we should look at the rules and levels of pay out, but reminded the Board that the fund is not an insurance fund. It is a fund of last resort when all other means of collection have been exhausted, including insurance and assets of the dishonest attorney. We should also remember that the fund only covers dishonesty or defalcation of the attorney—negligence or gross negligence is not covered. Over the years, the claims against the fund have not added up to the money that is in the account right now. The real growth in fund is in interest earnings. Direct contribution of lawyers was maybe $500,000 at most. We can take the excess money and do something useful with it. There hasn’t been a claim against the fund in 13 years, and he sees no risk in claims that would exceed $1 million. Leaving the money sitting there doesn’t do anyone any good.

Jim Rodgers agreed with Rich and Josh and shared their concerns. We don’t know when emergencies may occur.

Bob Fletcher noted that the limits on the fund were set by the Board, not by the membership. The membership originally authorized the fund but left its operation and maintenance to the Bar Managers.

Rich Cassidy agreed that some money can be used for other purposes but wants to be sure we have met our obligation. One theft he knew of resulted in hundreds of thousands of dollars in loss, and in another case the loss was millions of dollars. Yes, there was insurance. He suggests broadening the rules of payout first, and retain enough to meet the expanded obligations. He also feels we need a good reason for use before we go to the membership.

Judith Dillon felt the committee had made a thoughtful recommendation. We are reserving $1 million; that is a lot and will continue to grow. We could change the cap in the years to come. She suggested that the Board is responsible enough to determine appropriate uses for the excess, and said that we could perhaps set up an ad hoc committee to suggest uses. Our missions include diversity, education promoting Vermont for new practitioners, and low bono projects. She disagrees sitting on a large chunk of money while we have mission and goals that would make use of these excess funds.

Elizabeth Kruska reviewed the history of this motion. We discussed this at our summer retreat and delayed taking the question to the annual meeting in October. Back in July, we were discussing $800,000 as the cap, and we have since raise that to $1 million. We should make it clear that this is not a cookie jar situation. Membership has paid in $400,000, and we are now at 3 times that amount due to investment growth in the fund.

Bob Fletcher noted that the membership raised through surcharge the amount of $380,000, and that we have paid out a total of $231,000 since 1987. The last claim was in 2013. He thinks we may be almost derelict in allowing money to accumulate and not use it. We can advance the mission of the Bar with the excess. There are extreme fiscal pressures on our young members, and we want to retain and keep new practitioners here. We must think of ways to help to people.

Josh Diamond said that he approves of putting the matter to vote of the full membership.

The pending motion made by Matt Valerio, seconded by Kevin Lumpkin, is to send the question to the full membership in March. The motion carried.

Elizabeth Kruska suggested we get a one-page summary of the question to the membership 20 days in advance of the March meeting. The Operations Committee prepared a statement that was included in the Board packet. Links to the rules and the mission statement could also be provided.

5. **Discussion**: None

6. **Executive Session**: None requested

7. **New Business**: None.

8. **Old Business**: Mike Kennedy reviewed the status of the legal malpractice insurance proposal. The Professional Responsibility Board and the VBA’s Board of Bar Managers established a committee which proposed to recommend that the Vermont Supreme Court:

a. amend the attorney licensing statement to require lawyers (with some exceptions) disclose whether they carry professional liability insurance; and,

b. starting two years after the licensing statement is amended, make the responses publicly available.

The PRB has voted to accept this proposal but is waiting to see if the VBA Board agrees before sending the proposal to the Supreme Court.

Judith Dillon moved to accept the proposal; the motion was seconded by Josh Diamond. Debate ensued.

Alfonso questioned whether the information about lack of insurance could be made publicly available with the Odyssey system. The system is not currently set up to do this, so the Court Administrator’s Office would need to make this publicly available. Alfonso also expressed concern that attorneys without the insurance would be at a competitive disadvantage to lawyers with the insurance. The latter may also be more subject to frivolous claims.

Kevin Lumpkin said that he would want to be represented by a lawyer who had insurance. This is a good public service issue. New Hampshire requires that a lawyer inform clients at the beginning of representation whether the lawyer carries professional liability insurance and the limits. Massachusetts makes this information public on the judiciary website. Matt Valerio, who was on the committee noted above, proposes that the information about insurance be disclosed when an attorney relicenses. That information would go into a data base and be made available on the Judiciary webpage so anyone could type in a lawyer’s name and find out insurance status.

Rich Cassidy thinks this is a good idea and shows that as a profession we are holding ourselves to higher standards.

The motion to accept the proposal, made by Judith Dillon and seconded by Josh Diamond, was unanimously passed.

Other Business: Mike Kennedy said that the PRB is discussing whether to eliminate the private admonition sanction for lawyer misconduct—this does not name the offending lawyer. The Board is split on the issue, and Mike is seeking comments, perhaps at the next VBA Board meeting.

Other Business: Alfonso asked about access to justice programming which is needed to meet first year requirements. Mary said the low bono project has several digitally recorded CLE programs which she would share.

9. Adjournment: There being no further business to discuss, President Fletcher adjourned the meeting at 3:14 PM.

Respectfully submitted

VBA staff