**Vermont Bar Association**

**Board of Managers Meeting**

**Friday, July 16, 2021**

**1PM via Zoom**

Present: Jessica Bullock (incoming), Dave Carpenter, Rich Cassidy (incoming), Josh Diamond, Judith Dillon, Tom Durkin, Pam Eaton, Bob Fletcher, Molly Gray, Elizabeth Kruska, Kate Lamson, Kevin Lumpkin, Beth Novotny, Jim Rodgers, Ted Tyler, Matt Valerio, Alfonso Villegas.

Staff: Mary Ashcroft, Teri Corsones, Jennifer Emens-Butler, Lisa Maxfield

**1. Call to Order**: President Elizabeth Kruska called the meeting to order at 1:03PM.

**2. Emerging Issues**: Elizabeth reported that she had attended a Judicial Bureau bench-bar conference earlier this month where she learned that Judicial Bureau hearings were likely to remain remote through the end of this calendar year. Right now, all the hearings are by phone, but they may switch to WebEx. Tom Durkin noted that all statewide courts, including the Environmental Division, may do away with phone conferences in favor of video conferences.

**3. Acceptance of Consent Agenda**

A. Minutes: Tom Durkin moved to approve the minutes of the meeting of 6-18-21 as printed. Motion was seconded and unanimously approved.

B. Treasurer’s Report: CFO Lisa Maxfield noted that we will be closing our fiscal year on August 31, 2021. She does not anticipate much more income until dues renewals begin in August, but that income will be deferred to the coming fiscal year. Lawyer Referral income is down in part because a number of LRS members have not yet paid the annual fee. Staff will be sending out paper invoices to those who have not yet renewed. We had a very successful Procrastinators Week which generated $12,000 more income than last year, with over 400 registrants. We have one more program this fiscal year, the Trial Academy, and registrations are coming in steadily for that. Lisa and Teri will meet with the Operations Committee later this month to firm up the budget. She reminded the Board that lawyers can now renew memberships on line. The annual audit is completed and she will review that with the Operations Committee. The audit went well and the management report contained nothing significant.

C. Report of Executive Committee: Did not meet.

D. Board Committee Reports:

i. Operations: Did not meet.

ii. Membership: Did not meet.

iii. Program and Planning: Did not meet.

iv. Governance: Did not meet.

v. Pro Bono: Did not meet.

vi. COVID-19 Committee: The committee met on July 8 and discussed the protocol for reopening court buildings. The committee will make recommendations to the Judiciary about which hearings should be in person and which should be remote by default. The committee also discussed lawyers showing vaccination cards just once at courts, and possibly setting up a registry that could be accessed at any court state-wide. There was also discussion about verifying the vaccination status of other court users, and the judges’ individual discretion to allow unmasked litigants and lawyers in courtrooms.

vii. Workforce Development Committee: The committee met on June 29th and will meet again on July 27th. In June, the committee reviewed a draft survey to tap information from recent VLS grads and newer lawyers: why are they in Vermont, what factors led them here, if they are not practicing in Vermont, why not, and what could induce them to return. VLS will review the survey and then get back to the committee for a final draft review. The survey is expected to be sent out toward the end of summer. The committee will incorporate the information gathered from it into their final report. They will soon start to outline their recommendations. Beth Novotny asked whether the committee had connected with Steve Ellis of the Employment Law Section. He is working on a panel for the Annual Meeting and will discuss who has been affected by the pandemic as well as diversification of the workplace.

E. President’s Report: Elizabeth and Teri met with Chris Newbold to do a post-retreat wrap up. Issues identified were new lawyer recruitment and retention, and access to justice. The Workforce Development Committee is already focusing on new lawyer recruitment, support and retention, and we should wait for the committee recommendations before starting any new initiatives in this area. Access to justice is a big umbrella: we need to focus the discussion more to decide whether this means services provided and by whom. Elizabeth and Teri will have another discussion with Chris Newbold in August to refine this discussion.

Elizabeth noted that the monthly section and county bar chairs calls were effective, as were regular discussions with the Supreme Court. These latter meetings usually go the full hour, with lots of time spent on new protocols for masking, mediation, and the fact that different courts are doing different things despite efforts to standardize court operations. Elizabeth and Teri met with Doug Rowe and Andy Strauss about concerns over e-filing and the use of Odyssey for re-licensing. She noted that the Judiciary did extend the re- licensing deadline until August 17th. Matt Valerio asked why the court system insists on masking when the Governor announced that we no longer have to mask. Elizabeth noted that masking in the courtrooms is left to the trial judges’ discretion. For example, the HVAC in White River Junction courthouse is a problem so no in-person hearings are being held in that building. Matt noted that litigants in criminal trials believe it is a detriment to be masked in front of a jury. Rich Cassidy expressed similar concerns for plaintiffs in civil cases, which he termed discrimination in favor of the vaccinated. Tom Durkin said that the Judiciary is getting independent advice from an epidemiologist. He agreed that there is a wide variety of courthouses and courtrooms, and it took a long time to evaluate all of them. The Judiciary eventually wants to open up all courthouses, but we are not out of the woods yet with the pandemic. Kate Lamson noted that in Bennington the trial court judge is allowing litigants in an upcoming jury trial to go unmasked if they produce proof of vaccination. They are considering whether to add jury instructions concerning mask v. no masks. Judith Dillon said that workers are wearing masks 8 hours per day. The recent PG-13 guidance is in stark contrast to the guidance in other branches of government. As a state we should all be on the same page.

F. Executive Director’s Report: Teri Corsones reported that the Court Users Group has been reinstated with the goal of meeting with the new Standard Practices Committee to address on-going Odyssey issues. The Group has sent out step-by-step instructions in an effort to help clean up the public contacts list. The VBA’s letter about issues with the new Attorney Portal resulted in lawyers being able to pay with e-check instead of only by credit card. She noted that the new Mentor Advice Program in New Hampshire provides a good framework for the type of mentoring program that new lawyers have requested. The Membership and Workforce Development Committees will look into offering a similar program in Vermont.

Teri reported that there will be a gathering in Rutland in August to honor the memory of Judge Peter Hall. The VBA will provide Pocket Constitutions at the event.

G. Staff reports:

Jennifer Emens-Butler said that during Procrastinators Week, there were 440 unique users and a total of 1600 registrations at a cost of $20 per registration. We may continue to do hybrid presentations with big meetings in person and some on-line following. Attendees appreciate the option of webinars so they don’t have to travel. The post-event surveys were overwhelmingly positive, with the top vote-getter being the ethics presentation, and the fair housing discussion. We will be in person at our Annual Meeting on October 8th. There will be two tracks of CLE programs with a plenary at the end. We will be at the Doubletree Hilton in South Burlington. The following week the VBA will host webinars for remote learning. Programs include such topics as employment, diversity, implicit bias, and trauma-informed lawyering. The spring Journal is out and the summer Journal will be out in September. Jennifer is also helping with planning for NABE.

Mary Ashcroft reported that the VBA had agreed to contract with the Judiciary for her work on the Guide and File self-help forms for the Judiciary’s website. This is work Mary had started as a member of the Court’s Self-Represented Litigants Task Force. Lisa and Mary have been talking with Sam Abel-Palmer at Legal Services Vermont to revitalize the Modest Means Referral Panel, which had been dormant. The link between LSV and the VBA was broken when LSV moved to a new web platform. The programs will be reconnected to allow smooth on-line referrals, and new lawyers will be recruited for the Panel. This program serves individuals who make too much income to qualify for traditional legal aid programs. Mary is taking a virtual training with the US Department of Justice on program sustainability to better plan for the future of the low bono programs at the VBA. She reminded the Board that when she retires, the VBA will need to decide whether the low bono programs will remain at the VBA with a new person hired to coordinate them, or migrate to another organization like LSV, or whether some hybrid form of cooperation will be established. Discussions are underway with LSV about the future of pro bono and low bono in Vermont.

Mary is working on year-end and mid-year grant reports for the VBA’s low bono programs, and will compile a summary for the Board for its review.

H. VBF Report: The VBF Board did not meet.

I. ATJ Report: The Access to Justice Coalition did not meet.

**4. Action items**:

B. October Board Meeting: Upon motion made by Bob Fletcher, seconded by Beth Novotny and unanimously voted, the October Board meeting will be held remotely on Thursday, October 7 at 1PM.

C. Enrollments: Upon motion by Bob Fletcher, seconded by Matt Valerio, the enrollments were unanimously approved. New VBA members are Eleanor Ewing, Elizabeth Fainberg, Brandon Manzo and Steven Zakrzewski.

A. Client Security Fund: The Operations Committee met and discussed the Client Security Fund. Bob Fletcher noted that this had been discussed at the Board Retreat as well. The tabled motion was the one made by Tom Durkin: that funds over $800,000 in the client security funds be used for other purposes at the discretion of the Board. A friendly amendment had been made and accepted to ask the membership to endorse this proposed use at the Annual Meeting.

Discussion of the motion as amended ensued.

--Alfonse Villegas objected to the use of CSF monies for other uses, feeling it could possibly become a slush fund for the VBA Board for whatever other interests it may have.

--Kevin Lumpkin stated that it makes sense to cap the CSF and use the surplus for other purposes, and to put that to the membership; otherwise, the funds could sit and not be used forever. He suggested that we set conditions for use with flexibility but tied to the general purpose of the funds.

--Josh Diamond was uncomfortable about a lack of parameters and noted that the memo from the Committee originally proposed keeping $1 million for client security payouts, only using excess funds above $1 million.

--Bob Fletcher agreed that was the original recommendation, but noted at the Retreat the sense of those present was that $800,000 was adequate given the low number of claims and the small size of individual claims.

--Rich Cassidy said that the CSF was collected for client security purposes and we should use it for that purpose. We don’t provide very generous benefits—maybe that could be looked at. At some time in the future, if there is a specific purpose for which we might use the excess, we can do so at that time.

--Matt Valerio noted that the amount of money collected is under $400,000 while the amount now in the fund is well over a million. The windfall comes from investments in the stock market. There are other good uses for this money –our bar membership is getting older, we are getting less dues income, there are fewer lawyers in practice. The excess may be needed to help maintain on-going VBA programs such as the legal services programs for low-income Vermonters. He also noted that some of the claims made against the CSF in the past were charitable and beyond defalcation.

--Tom Durkin said that we have a duty to inform membership of the size of the fund, and that a good share of the funds is due to investment returns. Then we should ask the membership what to do about this? Membership may authorize a cap, or restrict use of the funds in certain ways. We need to bring this to the membership for their education and approval.

--Elizabeth Kruska said that leaving $800,000 or $1 million untouched for client security purposes still provides a lot of money. We are not proposing to use the remainder as a slush fund.

--Jim Rodgers understands the discomfort of using funds for purposes not originally contemplated when the fund was first established. We should not change the use without a clear “other” purpose.

--Beth Novotny acknowledges that we have a fiduciary responsibility which we exercise when we set the budget. We are setting a cap, and allowing the Board of Bar Managers to use the funds over the cap.

--Rich Cassidy said that since the money was collected for a particular purpose, he as a VBA member would want to know that the “other” purpose will be. It is too broad just to allow funds to be used by the Board without defining the new purpose.

--Kevin Lumpkin stated that it is not feasible to be super specific about a new use. Maybe we could specify something general, such as the monies may be used for purposes to benefit the and not internally for bar association purposes.

--Alfonso Villegas suggested we use some of the accrued interest to create our own endowment. When we report to the membership we should advise as to the proposed purpose, the amount collected, the interest accrued and the amounts paid out. We need to reassure members that we are not planning to raid the fund, but to use the surplus money which was more than we expected.

--Matt Valerio has reviewed the rules of the client security fund and finds them to be completely discretionary. No one has a right to these funds; it was set up as a charitable fund of last resort. This is not an insurance fund. We set up this fund without asking the membership, but we should get membership input now. We need to provide information to the membership and give them the regulations for the fund’s use. We must give membership as much clear and detailed information as we can.

--Elizabeth Kruska recapped: the pending motion made by Tom Durkin is to recommend to the full membership that a portion of the client security fund over $800,000 be made available for other purposes at the discretion of the Board of Bar Managers. A friendly amendment, which was accepted, was made to put this matter to a vote of the full membership. Beth Novotny seconded this amended motion. The vote was called, and those voting in favor of the motion were Beth Novotny, Tom Durkin, Molly Gray, Ted Tyler, Elizabeth Kruska, Bob Fletcher, Josh Diamond, Matt Valerio, Pam Eaton, Kevin Lumpkin, Dave Carpenter and Kate Lamson. Voting against was James Rodgers. Abstaining was Alfonso Villegas.

Elizabeth will work on a draft motion and explanation to go to the full membership.

**5. Discussion**:

A. Board Retreat Initiatives: Elizabeth reported next steps in connection with the Board Retreat recommendations. She and Teri met with Chris Newbold; they will meet again in early August. The recommendations and guidance from the VBA Board on the retention and support of young lawyers should wait until after the Workforce Study Committee issues its report. The committee hopes to have something to present at the Annual Meeting in October.

On the access to justice initiative, we will need to agree how we define A2J and what pieces we want to work on. Elizabeth noted that Mary raised some topics, including the impact of her eventual retirement. Access to justice is part of our mission. Do we continue to administer the programs ourselves, are the programs the same or will they differ, or do we give the programs to someone else to run? Rich Cassidy urged the Board to think broadly about access to justice. We need to think differently and to think big. For example, what if in every WalMart in Vermont there is a not-for-profit law firm providing the ten most important legal services that low- and middle-income Vermonters need? Elizabeth agreed that the Pro Bono Committee with Mike Kennedy needs to weigh in on this matter.

Elizabeth noted that the Board should plan on spending time on both initiatives—A2J and young lawyers support and retention—at our September 10th Board meeting.

B. Data collection: The Vermont Supreme Court is collecting data in addition to the survey we are planning.

C. Where to License Attorneys? Mike Kennedy recently discussed in his blog the issue of an attorney living in one state and practicing in another—where is that attorney to be licensed? If s/he answers a legal question at home, or on vacation in another state, but is only licensed where the law practice is physically located, is that the unlicensed practice of law? Rich noted that this is an issue for every regulated profession including telehealth. Alfonso agreed that we should know who is living in Vermont and working elsewhere, and vice versa.

**6. Executive Session**: None needed.

**7. New Business**: None.

**8. Old business**: None

9. Adjournment: Upon motion made by Bob Fletcher, seconded by Alfonso and unanimously agreed to, the meeting was adjourned at 3:16PM.

Respectfully submitted:

VBA Staff