

CIVIL RIGHTS COMMISSION

August 21, 2020
Via Go to Meeting

1. CALL TO ORDER

The first meeting of the Risk Management Advisory Board called to order at 2:07 pm by Raul Burciaga of the New Mexico Legislative Council Service. The meeting was held via Go to Meeting due to the current restrictions.

2. ROLL CALL

Roll call indicated the presence of a quorum as follows:

Commission Members Present:

Mark Baker
Richard Bosson
Gerald Byers
Zackeree Kelin
Senator Steve Neville
Victor J. Rodriguez
Kim Stewart
Denise Torres
Stan Whitaker

Members Absent:

None

Others Present:

Secretary Ken Ortiz, General Services Department
Randall Cherry, General Counsel General Services Department
Mark Tyndall, Division Director Risk Management
Jacob Maule, Legal Bureau Risk Management
Raul Burciaga, Legislative Council Service
Amy Chavez-Romero, Legislative Council Service

3. INTRODUCTION OF BOARD MEMBERS

All members introduced themselves and gave a brief description of their background.

4. ELECTION OF CHAIR AND VICE CHAIR

Ms. Torres nominated Justice Bosson to serve as Chair of the Civil Rights Commission. There being no other nominations, Justice Bosson accepted the nomination.

MOTION: Ms. Torres moved to appoint Justice Bosson as Chair of the Civil Rights Commission with a second from Mr. Rodriguez which passed by unanimous voice vote.

Ms. Torres nominated Mark Baker to serve as Vice Chair of the Civil Rights Commission and gave the reasons why. Mr. Baker immediately starting working on the issues and reached out to experts in the fields they will be addressing. Mr. Baker states he researched the law as well as other states. There are local experts that they can work with.

There being no other nominations, Mr. Baker accepted the nomination.

MOTION: Ms. Torres moved to appoint Mr. Baker as Vice Chair of the Civil Rights Commission with a second from Mr. Whitaker which passed by unanimous voice vote.

Mr. Baker thanked Ms. Torres

5. LOGISTICS AND ASSISTANCE BY THE LEGISLATIVE COUNCIL SERVICE (LCS) AND THE RISK MANAGEMENT DIVISION (RMD) OF THE GENERAL SERVICES DEPARTMENT

Mr. Burciaga introduced himself to the Commission and discussed HB 5. They agreed to the tasks that LCS will be tasked with and the support that General Services will give.

Mr. Burciaga introduced his staff that is present.

Secretary Ortiz introduced himself to the Commission and the tasks GSD will support. Secretary Ortiz introduced his staff. Secretary Ortiz offered assistance with a webpage that is similar to another legislatively created Council that falls under his purview. This webpage can post meeting notices, minutes and any other documents they wish to share. The link to join the meeting can also be posted for public access.

Chair Bosson asked the Commission for any ideas or objections.

Secretary Ortiz will work with Vice Chair Baker on the technical issues.

6. OVERVIEW OF CIVIL RIGHTS CLAIMS HANDLED BY THE RMD

Mr. Tyndall introduced himself to the Commission. Mr. Tyndall is the Director of the Risk Management Department (RMD).

Mr. Maule thanked the Commission for allowing him to review their process.

In the system they have 250 cases that have activity. From tort claim act claims, waivers of liabilities to settlements. Civil rights cases often come through RMD. Many law enforcement agencies have cases from excessive force to litigation.

Currently there are 250 cases that have some activity. Some litigated files are in the process of being resolved. Half of the cases are related to civil rights. Cases range from auto related claims to civil rights abuse.

When dealing with these types of cases they initially get a tort claim stating they are intending to take legal action. They work with the General Counsel of the agency or DPS and members of the senior officers to gather information on a claim. RMD will then assign the case to outside counsel to represent the agency or officer.

Mr. Rodriguez asked as they move forward gathering information, can RMD gather information from New Mexico Municipal League (NMML) and New Mexico Counties with other independent insurers.

Mr. Maule stated they can facilitate gathering information. They have good relations with them.

Chair Bosson asked if they take testimony can they hear from self-insured entities?

Mr. Maule stated that he believes they can obtain representatives or meet with them it is within their charges.

Ms. Stewart stated she has reached out to NM Counties who gave her an estimate of cases. She would like to hear from NMML as well.

Chair Bosson asked if there is anyone else to inform them on decisions.

Mr. Maule believed AJ Forte from NMML, Jeanette Chavez with the City of Albuquerque, and there is a contact at the Association of Counties.

Chair Bosson explained that the bill it stated the Commission can discuss and make recommendations on the needs for additional policies.

Mr. Kelin asked if RMD could help with actuarial studies.

Mr. Maule explained they can look through the claims history systems and gather averages they can look at average cost of settlements. Civil rights cases are not capped under the tort claims cap it can be difficult to predict where cases will go. They can research their cases.

Mr. Baker asked if other states with civil right statutes have cost estimates. They would like to avoid the worst case without concrete information. It would be difficult to make judgements. They would prefer to get actuarial data.

Mr. Baker stated he knows of some folks that could speak on topics. One would be the public entity perspectives (NMML, NM Counties). Another would be the NM State Constitution and the status of the law today (Judge Linda Vanzi, Andy Schultz and Professor Browde). It would be worthwhile to look at a national level as well (Joanna Schwartz from UCLA, James Vander from Northwestern, and Alex Reinard from Cardozo) would all be good prospects.

A final issue would be on the outside cost issues. Perhaps an insurance law expert like Maureen Sanders. Those all seem like subjects to work on during the meetings.

Chair Bosson agreed.

Mr. Rodriguez asked if GSD could be the liaison to gather policies from the Law Enforcement Academy.

Secretary Ortiz placed his cell phone number in the chat for the members for any other help he can give the members.

7. DISCUSSION OF THE COMMISSION'S CHARGE

Chair Bosson would like to discuss the contract staff first.

Mr. Burciaga stated some of the charge will be assigned to the contract staff. He suggested they focus on researching other local public bodies and other states and what they have done.

Ms. Stewart asked about the focus of qualified immunity in certain instances, is it for law enforcement or is it across the board.

Chair Bosson did not recall any specific limitations. Mr. Burciaga stated that the charge is very broad.

Mr. Baker explained there is no cause of action in the Constitution. Chair Bosson stated perhaps an expert can cover it when they get them to speak at a Commission meeting in the future.

Mr. Whitaker suggested the Commission review the article written in 2018 by Judge Vanzi and Mr. Schultz. Perhaps they can go over it with the Commission.

Chair Bosson asked Mr. Burciaga to get a copy of UNM Law Review article to the Commission.

Ms. Torres reminded the Commission they will also need to start hearing from the Public.

Chair Bosson asked that Mr. Burciaga look for some other articles on the issue.

Mr. Whitaker explained the charge of the Commission is very broad. The comments he has received has been from law enforcement although there is a broad perspective on this matter.

Mr. Byers stated there are a number of government agencies that take action. It could involve their action as well, perhaps they can learn about the fiscal impact these cases have on those agencies.

Senator Neville discussed that while he sat on the County Commission he was made a party in many lawsuits and that the cost of liability could be extraordinary.

Mr. Kelin encouraged the Commission to gauge the public on the issues as quickly as possible. They will need to get it into the report and gather analysis. It would be wonderful to have public comment and gather information. They will need to find a mechanism to start the community engagement.

8. DISCUSSION OF HIRING CONTRACT STAFF FOR THE COMMISSION

Chair Bosson would like to know if they could have someone on contract to coordinate witnesses and write the report to the Legislature.

Mr. Burciaga suggests that they can allow LCS and GSD to look or if the commission has any suggestions they can work on it with the Chair and Vice Chair.

Mr. Burciaga explained he has authority to proceed with hiring contract staff once they are selected.

Chair Bosson will contact Mr. Baker and discuss it if any members have suggestions they can reach them.

Chair Bosson and Vice Chair Baker gave out their contact information. It was decided to send out a list of all contact information to all members and staff. Secretary Ortiz explained his Executive Assistant Linda Vigil will email all members a listing. Also, she can help Chair Bosson with setting up the meeting on his computer for the next meeting.

Mr. Burciaga explained the LCS has attorneys on staff who can help with some of the research. They are getting bill requests but certainly they can help with draft legislation and work with the Commission as needed.

Chair Bosson stated if any members has any ideas for subject matter experts they can contact himself and Vice Chair Baker.

Mr. Whitaker asked how many staff members they will need. Mr. Baker explained perhaps a lawyer and perhaps some law students.

Mr. Whitaker asked about the recording of the meetings and minutes for the Commission meetings.

Secretary Ortiz explained Ms. Vigil is currently recording the meeting and will draft minutes for the Commission.

Mr. Rodriguez made a motion to designate the Chair and Vice Chair to hire the staff to avoid a rolling quorum.

Mr. Whitaker wants to be assured the names be shared with the Commission.

MOTION: Mr. Rodriguez moved to designate Chair Bosson and Vice Chair Baker with the selection of contract staff, with the understanding they notify the Commission with a second from Mr. Whitaker which passed by unanimous vote voice.

9. OTHER BUSINESS

Mr. Burciaga explained the draft Open Meetings Resolution he emailed. It is a boiler plate resolution that Boards use.

Chair Bosson states they also need this Resolution to avoid litigation.

MOTION: Senator Neville moved to adopt the Open Meeting Resolution with a second from Ms. Torres which passed by unanimous voice vote.

Mr. Baker wanted to make sure the public access instructions are included, it doesn't necessarily need to be in the Resolution however he wants to make sure it is explained.

Chair Bosson reminded the Commission they should have received their appointment documents from the Secretary of State, they will need to have it notarized and mailed back in.

10. PROPOSED MEETING SCHEDULE

Mr. Byers noted in the act it indicates if a commission member misses two meetings they get replaced. Therefore, a larger number of smaller meetings is preferred. If a member is removed and a replacement has to be found, they will need to be brought up to speed.

Chair Bosson explained he would be in the position to remove a member but does not find it likely.

Ms. Torres explained Fridays are the best bet for her she will do her best to accommodate schedules however she is booked three months out.

Mr. Whitaker states he is busy on Fridays as well. Thursdays are better, however he can try to make it work.

Mr. Burciaga sent out a doodle poll for today's meeting. He can send another to get a sense of when the meeting can be scheduled.

Senator Neville states there are many late week meetings for him.

Mr. Burciaga reminded the Commission that there will be an archive of these meetings on the LCS page if any member misses a meeting they can always view it.

Mr. Rodriguez explained it will depend on the topics they wish to discuss. Some meetings may be longer so perhaps they can determine that meeting by meeting.

Chair Bosson asked if there were any days they can agree on and set them on a particular day.

It was decided to choose a day of the week and keep it, some members are available on weekends if needed.

It was decided the next meeting will be on Thursday September 3, 2020 at 2:00 p.m. via virtual meeting.

Mr. Baker stated they can they have a primary discussion on topics to cover. Perhaps cover the state constitution and relevant law today and get speakers.

11. ADJOURN

MOTION: With all business conducted Mr. Rodriguez moved to adjourn at 3:51 p.m. with a second from Ms. Torres.

Signed and approved:

/s/ Justice Bosson, Chair