

CIVIL RIGHTS COMMISSION

**October 2, 2020
Via Go to Meeting**

1. CALL TO ORDER

The first meeting of the Risk Management Advisory Board called to order at 2:04 pm by Richard Bosson, Chair of the Civil Rights Commission. The meeting was held via GoToMeeting due to the current restrictions.

2. ROLL CALL

Roll call indicated the presence of a quorum as follows:

Commission Members Present:

Richard Bosson, Chair
Denise Torres
Zackeree Kelin
Senator Steve Neville
Gerald Byers
Victor J. Rodriguez
Kim Stewart
Judge Stan Whitaker

Members Excused:

Mark Baker, Vice Chair

Others Present:

Raul Burciaga, Legislative Council Service
Mark Tyndall, Risk Management Division Director
Secretary Ken Ortiz, General Services Department
A.J. Forte, Executive Director-NM Municipal League
Clinton Nicley, General Counsel-NM Municipal League
Steve Hebbe, President NM Association of Chiefs of Police
Steve Kopelman, Executive Director-NM Counties
Grace Phillips, General Counsel-NM Counties
John Chino, John J. Gallagher & Company
Richard Valerio, Executive Director-NM Public School Insurance Authority
Martin Esquivel, General Counsel-NM Public School Insurance Authority
Alexandra Smith, Counsel to the Commission
Abby Bannon-Schneebeck, Law Student Intern
Jacques Chouinard, Law Student Intern

Chair Bosson gave a brief introduction of the Commission and the duties they are tasked with.

Chair Bosson discussed the topics the Commission has covered so far. If additional time is needed, the Commission will schedule accordingly. However the Commission would like to get as much done as possible today. At the next meeting on October 16th the Commission will have those who are not able to finish today and Ms. Maureen Sanders from UNM Law School. Chair Bosson asked the presenters to specifically cover the topic today which is the cost of additional protection, how much will it cost, and what are the protocols the presenters would use. The Commission is tasked with presenting approximate the costs to the Legislature.

3. APPROVAL OF AGENDA

With all members in agreement the minutes were passed unanimously by voice vote.

4. APPROVAL OF MINUTES

Chair Bosson stated there was a small discrepancy on the date.

With that small change as to the date, all members in agreement the agenda was passed unanimously by voice vote.

5. FISCAL IMPACT OF CIVIL RIGHTS ACTIONS

- **NEW MEXICO MUNICIPAL LEAGUE (AJ FORTE, EXECUTIVE DIRECTOR; CLINTON NICLEY, GENERAL COUNSEL; STEVE HEBBE, PRESIDENT NM ASSOCIATION OF CHIEFS OF POLICE)**

Mr. Forte stated the League has seen legislation like this before in previous sessions. Mr. Forte never had the opportunity to present in this setting or to lay out in detail how it affects the New Mexico Municipal League (NMML) and its members.

Mr. Forte stated it would be difficult to put down a number on costs. It depends on the final bill and what it looks like. This Commission is important and considering all the insurers' perspectives on how it will affect them is also important. NMML has a unique perspective as an insurer and sets policy for the members. Mr. Forte has seen from other roles how claims flow, and how the state budget is affected. There is always a delay. When insurers receive a claim, for example if it involves Senate Bill 8, insurers can do their jobs better when there is video documentation. The insurer can establish the facts based on the investigation, and video helps with the valuation of the claim. The insurer then holds a mock jury so it can make a coverage recommendation.

Mr. Forte stated in 2015 a grant program was established to have every insurer to buy body cameras for insured police departments. This was a two year program, and there were very few insurers that did not participate. It did not change behavior of officers. There are incidents still happening even with the cameras.

There are two new causes of action under consideration.

Ms. Torres asked what municipalities that NMML insures so the Commission has an idea.

Mr. Forte stated NMML mainly insures smaller rural communities. The risk is very different than in larger cities. NMML does insure Rio Rancho.

Chair Bosson asked who NMML does not insure.

Mr. Forte explained NMML does not insure the larger municipalities like Santa Fe, Albuquerque, and Las Cruces. Those cities are much larger and have different issues. They have more severity and more volume. NMML also advocates for all municipalities in the state. A new civil rights cause of action will cost NMML more money since the action will affect every municipality differently. NMML can use reserves in the event of large judgements.

NMML looks at the potential for liability differently depending on the location and jury pools. From the insurance perspective, NMML did not see a change in officer behavior after body cams were used.

Judge Whitaker asked what does NMML base its opinion and perspective on if there is a lack in change of behavior. For instance, are there studies?

Mr. Forte explained when NMML evaluates a claim by watching a body cam video, it sees on a regular basis the training the officers get. When NMML looks at the officers, there is generally prior discipline in their personnel file.

Mr. Forte stated that the entire system has to work. The Law Enforcement Academy (LEA) has to have the cases flow through the process with a reasonable time if they need to remove a bad officer. Mr. Forte explained a labor bill passed in 2019 made it difficult to move bad officers along. It all comes back to training, and NMML is working with loss control to tailor a training specifically for law enforcement. The training will focus on reality based training, de-escalation, and mental health.

Mr. Kelin asked if the budget used for training comes from the same pool of money NMML uses to defend and indemnify.

Mr. Forte explained that the training budget is part of the premium and loss control is part of the training program. NMML does an allocation draft and sets premiums. NMML is going to implement a quarterly program to ensure every officer runs through the program every eighteen months. NMML does not pick out specific claims when they have a training.

Mr. Kelin asked if training is informed by the claims NMML are gets.

Mr. Forte explained NMML does not want to highlight a certain municipality; rather, it looks at what the Department of Justice (DOJ) does. NMML does not generally look at specific claims.

Ms. Smith asked if most of the claims NMML has are against law enforcement.

Mr. Forte explained yes, and that he will allow NMML General Counsel Clinton Nicley to explain the data.

Ms. Torres asked if there has been a decline in civil rights claims and why.

Mr. Nicley explained NMML has a different risk profile than other insurers. NMML deals with rural areas, which form a smaller group. In the data, there is a drop off and NMML thinks it can explain. The maturity of a tort claim is a good example. It may not necessarily be an active lawsuit. There could be several other modifiers that can have different causes of action. They can all implicate different self-insured "buckets." NMML believes things go back to the date of loss. The others may be using a different or longer data period.

Ms. Torres asked how many claims are related to law enforcement.

Mr. Nicley would get that information.

Ms. Smith asked how many claims are employment related or law enforcement related.

Mr. Nicley stated it is lower and he can get the information.

Ms. Smith asked if the data set shows cases that were filed or are pending.

Mr. Nicley explained that there are fewer pending claims than claims in litigation.

Ms. Torres asked if any of the cases are settlements or judgments.

Mr. Nicley explained when NMML discusses settlements, it does do because settlements are more reasonable on cost. If the law changes, costs will really change. Without loss data, it will be difficult to estimate cost.

Chair Bosson asked what does NMML do when there is a new statute? Does NMML have to provide coverage, and if members ask how much more it will cost, what does NMML say?

Mr. Nicley stated NMML can answer these questions several ways. NMML can wait a couple of years for an incurred loss period. It can build in modifiers or solvency rates. There will be some guesswork in the first year.

Judge Whitaker asked how cities in other states compare to like municipalities.

Mr. Nicley stated most of the studies done are in the aggregate; NMML does not do city-to-city studies.

Ms. Torres asked if any of the cases resulted in a judgement.

Mr. Nicley did not include judgements.

Ms. Torres asked if in the last five years the defense costs surpassed any payments to plaintiffs that were injured.

Mr. Nicley stated that is correct.

Chair Bosson asked if legislators ask the Commission if there is a new law, with or without qualified immunity, will it cost additional money to the cities? If so, how much will they need?

Mr. Nicley explained NMML does not have a reasonable approximation to what a law change may do to an insurer. NMML can show past data but it is difficult to know for certain.

Chief Hebbe stated the training that Mr. Forte was referred to came from events police encounter on the street. It is a new training they are developing, but it is informed by what they see. The police internal affairs division speaks to the training division. They train the officers to the policies and they review the complaints. The two work together; if not they need to change things.

Chief Hebbe quoted a question from the last meeting where a gentleman asked if there is a system, and qualified immunity costs more, the system would react to try to improve policing. They already have that they just paid out nationally. In New Mexico, they paid out on a case. Their system is properly motivated. What money will be paid in addition will not radically change the system. Chief Hebbe agrees that he will provide his insurance for employees so they are not personally being sued. How is a new cause of action really going to change officer's behavior if they are just providing private insurance until the case settles? This may fix a few things.

Chief Hebbe explained taking away qualified immunity will not improve everything or radically change policing. They just need to hire the best people and recruit people to go into police work. They should have the best policies, good training, and accreditation.

Police departments have a Chiefs of Police accreditation to ensure the best policies are being used. In Farmington, the police department is in CALEA, which is a national accreditation program. But the LEA is only funded at 40% and is short staffed. LEA is not delivering the training essential to hiring good officers. There should be accountability. LEA is in charge of decertification and is behind on cases.

Removing qualified immunity is not going to be a broad-based reform initiative. Police know what the solutions are and what the costs are. What will improve policing is good people, good

policies, good training, and accountability. If the law makers remove it, they will wind up presenting to the public something that will not do what they say it will do.

Ms. Stewart thanked Chief Hebbe for helping Las Cruces with CALEA certification. They are one of two in New Mexico, and it is no small feat. Ms. Stewart then asked, in general, what is the cost of improving LEA and assisting with CALEA? What is the cost in comparison to a lawsuit? How do you [Chief Hebbe] see it more or less?

Chief Hebbe stated it is way less. The cost is negligible. Police departments may have to spend on accountability portion. They may need to catch up on the backlog of 120 officers that shouldn't be officers anymore. If they had funding for those things, it would be cheaper than the payouts.

Mr. Rodriguez asked Mr. Forte if there have been any municipalities that NMML has had to drop due to excessive claims.

Mr. Forte explained he has not lost a member; rather, NMML will just allocate premiums. There have been expensive claims. If NMML cannot settle a claim, some municipalities have had to do land sales to cover the claim.

Ms. Torres stated they did not receive the NMML civil rights claims sheet.

Mr. Forte explained it was sent this afternoon.

Ms. Torres asked, from all of the claims, is there is a percentage where the plaintiffs are actually paid something.

Mr. Forte stated NMML does not track that.

Chair Bosson asked if NMML could take a city, and say there was a large settlement, does NMML go back and raise the premiums or is the settlement distributed amongst the pool.

Mr. Forte explained historically NMML has operated as a pool. NMML is adjusting the methodology, which will be a slow multiyear process.

Judge Whitaker asked if the increase in premiums depends upon the amount of the payout. If so, how is the increase determined?

Mr. Forte stated it depends on the claim; if the claim is under the limits, it goes to the pool. Going forward, the municipality will pick up more of a share over time. If the municipality goes into that additional layer of coverage, the premium is allocated to the in above the excess layer then it is in the municipality.

Chair Bosson explained they have been in contact with the City of Albuquerque who will reach out if they wish to appear.

- **NEW MEXICO COUNTIES (STEVE KOPELMAN, EXECUTIVE DIRECTOR; GRACE PHILLIPS, GENERAL COUNSEL; JOHN CHINO, JOHN J. GALLAGHER & CO.)**

Mr. Kopelman discussed the coverage New Mexico Counties (NMC) offers to 29 of the 33 counties for all lines of coverage. The only counties NMC does not cover for liability is San Juan, Lea, Rio Arriba, and Los Alamos.

Mr. Kopelman was concerned with the bill to create to a state civil cause of action for a violation of the constitution. Looking at the bill, the Commission will create a policy proposal for creation of a civil right of action. The Commission will determine monetary damages, including punitive damages and attorney's fees. The Commission will also consider extension of statute of limitation and whether qualified immunity would be used as a defense. From NMC's vantage, Mr. Kopelman hopes for the best. The cause of action could be for any violation of civil rights. The state constitution is broader than the federal. NMC is working with an actuary to quantify what the fiscal impact might be. Mr. Kopelman cautions the Commission to be partial and prudent with the state's fiscal situation. The counties, cities and schools are all in crisis. They are seeing reduction in gross receipt taxes.

Ms. Phillips asked the Commission to consider, when making recommendations to the state legislature, that the legislature cannot change federal law. What are the rights and remedies available for New Mexicans? Ms. Phillips recognized a horrible case from another jurisdiction; however NMC needs to be concerned with the law in New Mexico.

Ms. Phillips showed a slide that shows cases from the years 2012-2016. There are plenty of cases that can be filed. The cost can take years to be resolved. If you compare the numbers, there is a vast difference. The majority of civil rights claims (not lawsuits) can resolve it while they are a claim. Those claims cost over \$71 million. The possibility of civils rights cases can arise in any of the County's departments.

Ms. Philips stated she recognizes the task the Commission has: changing the law to allow for compensatory and punitive damages with attorney's fees on all manner of claims. This could mean a lot of new claims or hardly new ones according to the experts that were in a previous meeting.

Judge Whitaker asked how they break down the costs that include payouts and attorney's fees.

Ms. Phillips explained that she has a slide later on that shows the break down. These claims do not have to be litigated cases. Ms. Phillips discussed the total claims and the percentage that are actually civil rights claims. Ms. Phillips discussed the litigated claims. The law enforcement category covers detention centers. On average that is 41% of claims.

Ms. Smith asked about the employment cases. Are those constitutional claims or human rights claims?

Ms. Phillips stated that is all included in that category.

Ms. Smith asked how they breakdown the jail claims and other law enforcement claims.

Ms. Phillips stated they have that information, and she can provide it. There is another slide broken down by detention centers and Sheriffs.

Ms. Smith asked if any of the detention cases are for medical care claims. She thought it was usually a private medical company who covers cost.

Ms. Phillips stated often times there is but the county will still have liability exposure or will be named as the defendant. Ms. Phillips explained the large area of claims. For cost and civil rights exposure, employment and law enforcement are the larger cases. The paid settlements and judgements were over \$48 million, and attorney's fees were \$15.9 million of that amount.

Ms. Smith asked if the paid attorney fees that were awarded were part of the statutory fees.

Ms. Phillips stated if NMC wrote the check specifically to a claimant it would be included.

Mr. Kelin asked if NMC has an expectation that the numbers for employment practice liability would have changed in a private right of action if the action was created from the constitution.

Ms. Phillips stated New Mexico already has those statutes in place. New Mexico is interesting because it is notorious for being the most difficult for employers.

Mr. Kelin asked if there is there data comparing new laws.

Ms. Phillips stated they have tried to collect that data. It is very difficult to resolve those cases.

Mr. Kelin asked how they planned for the additional claims. Were there answers for the legislature at that time?

Ms. Phillips stated this is new to have this conversation. There was not any reception on the Women's Fair Pay Act. They did not present dollar figures. They would like to revisit that.

Ms. Phillips discussed the reserves. The defense costs were broken down the same way; they are almost the same as plaintiff's costs.

Ms. Smith asked about defense attorney's fees. Are they in addition to the \$48 million as discussed before?

Ms. Phillips explained that is correct. It is important to remember tax dollars are not available to provide the training.

Chair Bosson asked if there is a claim, does NMC have an insurance pool to pay the claim from?

Ms. Phillips stated there is a pool where premiums are paid. They pay up to a certain amount.

Chair Bosson asked where the money comes from.

Ms. Phillips explained it is county tax money.

Judge Whitaker asked what does the pool account look like at any given time.

Ms. Phillips stated they just reorganized into one pool. Workers Compensation, multi-line, and law enforcement is above \$40 million.

Ms. Torres asked with regards to the detention facilities, are they trying to rectify it in training or certifications.

Ms. Phillips explained detention facilities do generate a lot of claims. They do not provide adequate medical and mental care. The prisoners who do not get released quickly usually have medical and mental health issues. They can have injuries and workers comp claims. They have created an accreditation program.

Ms. Torres asked what percentage is from premiums.

Ms. Phillips stated

Ms. Torres asked if there are layers of coverage.

Ms. Phillips explained the self-insured rate (SIR) is \$2 million. Some detention facilities are no longer eligible for self-insured retention.

Ms. Torres asked what happens when they are not eligible and have a claim.

Ms. Phillips stated there was a recent case that was not covered.

Ms. Torres asked if in that case what happens if they are not covered.

Ms. Phillips states the County would have to cover that amount. These are all unintended circumstances.

Ms. Torres asked what the premium cost for reinsurance is.

Ms. Phillips stated that Mr. Chino will explain that. Ms. Phillips discussed the caps and the statute when a person's rights are violated.

Ms. Smith asked how much it would cost to get a higher policy.

Ms. Phillips would like to allow Mr. Chino to answer.

Ms. Phillips would like to discuss the statements made on the Commission website. Ms. Phillips discussed the Tort Claims Act law enforcement waiver.

Chair Bosson stated the corrections officers section is new. Chair Bosson asked about personal injury for tort claims.

Ms. Phillips explained there is now an addition to the statute. This addition would cover correction officers. It is still new and amended. If you compare it, it took out the requirements to be a principal duty.

Ms. Torres asked if the waiver would cover damages for excessive force.

Ms. Phillips explained if the excessive force involves a law enforcement officer, then yes.

Ms. Torres asked if constitutional violations and excessive force are already covered.

Ms. Phillips stated yes, absolutely.

Chair Bosson asked if this is all for personal injury as the Tort Claims Act is.

Ms. Phillips stated there is new language and NMC does not know what it will cost.

Ms. Stewart stated her officers often work with federal task forces. If qualified immunity is removed, and there are federal agents on the task force, and they have a person with no option of qualified immunity, she would be reluctant to have her deputies serve on the task force.

Ms. Phillips said she is happy to follow up.

Mr. Chino stated the larger claims are transferred to reinsurance companies. It has become increasingly difficult to obtain reinsurance. He works with Arizona, Utah, Nevada, California, Idaho, Washington, Ohio, Michigan and New Mexico. In those states, the actual immunity and the tort claims sublimit would put New Mexico in a bad tier. It is his job to provide reinsurance for civil rights, general liability, auto liability and law enforcement. He has spoken to some reinsurers who state that if they could not rely on qualified immunity, they would no longer be able to provide law enforcement insurance. The pool would need to have \$2 million in limits. You cannot buy higher limits. The only way to keep reinsurers is by having a good risk management service. The \$48 million dollar fund could not absorb a \$10 million dollar retention.

Judge Whitaker asked if Washington or any others have a standalone statute like New Mexico does.

Mr. Chino stated he is not sure if Washington has one, but there is not a tort claims sublimit.

Ms. Phillips stated California does not have punitive damages, they are one year away from not being able to receive excess insurance.

Chair Bosson asked if it would make it easier to get excess insurance if the Commission recommends a bill with a cap.

Mr. Chino stated it would be helpful.

Judge Whitaker asked if punitive damages were not on the table, would that make it easier.

Mr. Chino stated that would be a deal breaker. The reinsurance market is fragile because of claims of being paid throughout the country. For those insurers left, it is critical to show that their clients are doing everything possible to avoid the large claims.

Mr. Chino explained the randomness in large claims. Smaller entities cannot accommodate them. This is a bad time for the contributions to go up.

Ms. Torres asked if it was on a pool basis.

Mr. Chino explained it is. The premium amount is \$2.2 million with a \$3 million limit.

Chair Bosson asked if under the federal civil rights act, which has no cap, are they able to provide insurance for those entities.

Mr. Chino stated yes, because of the County's detention centers have an aggressive loss retention policy. If not for that, NMC wouldn't be able to achieve that.

Chair Bosson asked with those programs if they had a state civil rights action, why would that have an impact.

Mr. Chino stated lack of qualified immunity would have an impact.

Chair Bosson asked if Mr. Chino had quantification on that.

Mr. Chino stated he only has had conversations if that is the case. The reinsurers have over a trillion dollars in surplus.

Ms. Torres asked Ms. Phillips what all other claims entails.

Ms. Phillips explained it would include, auto, third party, employee benefits and general liability claims.

Ms. Torres asked if a First Amendment right would be included for a commissioner.

Ms. Phillips stated if the person is considered law enforcement or has the power to maintain order. It is not required to be a principal duty.

Ms. Torres asked if there is an increase of lawsuits because of that.

Ms. Phillips stated there has not been; however it has been raised. She is not aware of any cases that postdate the language.

Mr. Kelin asked about the scope of the analysis from Mr. Chino. Mr. Kelin understands the inability for reinsurance as it pertains to law enforcement. At a \$2 million policy, there wouldn't be any available unless they moved up to a self-insurance policy of \$10 million.

Mr. Chino stated that is correct. That is Mr. Chino's opinion is based on the idea that there would be no cap, punitive damages or qualified immunity. NMC is fighting hard to keep a good relationship with the reinsurers.

Mr. Rodriguez asked if the reinsurance is about as expensive as what NMC offers.

Mr. Chino stated that they do not know for sure and cannot budget for some unknown claims. Then NMC will have to go to its members.

Mr. Rodriguez asked if it is per event or for the entire pool.

Mr. Chino explained it is for the pool and it will reimburse itself. He believed it is at least \$10 million dollars.

Mr. Rodriguez asked if it can be dissolved in one year.

Mr. Chino stated they get a limit per year, it does not carry over.

Chair Bosson asked if they capped claims it at the level the reinsurance would kick in. Why not cap it at \$2 million dollars?

Mr. Chino states there would be two components. Mr. Chino states that it seems if there is a cap for tort claims, what would be a sensible cap?

Mr. Kopelman would like to return and may have more numbers from their actuary.

Chair Bosson wants as many figures that they can use.

Mr. Ortiz offered to present at the next meeting.

- **NEW MEXICO PUBLIC SCHOOL INSURANCE AUTHORITY (RICHARD VALERIO, EXECUTIVE DIRECTOR; MARTIN ESQUIVEL; GENERAL COUNSEL)**

Mr. Valerio discussed how New Mexico Public School Insurance Authority (NMPSIA) was created in 1986 by the legislature. It covers several pools, employee benefits, and a risk management pool. NMPSIA covers every school district in the state with the exception of Albuquerque Public Schools (APS). NMPSIA covers all charter schools, including those under APS. NMPSIA also covers some higher educational institutions and associations. It is governed by an eleven-member board of directors.

Mr. Valerio discussed the risk program which has a million dollar deductible. NMPSIA has excess coverages and cover \$ 2 billion dollars in payroll. NMPSIA covers 325,000 students, athletic participants, and volunteers.

Mr. Valerio discussed the civil rights suits with the same years as New Mexico Counties. There was 84 litigated claims during the time frame specified. The loss total was \$9.7 million and \$568,403 for non-litigated claims. Plaintiffs' attorney's fees were \$3.2 million and \$187,440 for non-litigated claims. Defense fees totaled \$7.6 million and \$205,563 for non-litigated claims. These totals do not include a very large loss.

Mr. Valerio discussed coverage and reinsurance. NMPSIA can use the memorandum of coverage to reinsure the MOC.

Mr. Valerio discussed the premiums. NMPSIA utilizes the cost allocation formula and stops each occurrence at \$100,000. NMPSIA has a great loss prevention program that is contracted out. The highest dollar exposure is sexual molestation, with over 87 claims that have totaled \$40 million dollars. NMPSIA has developed a boundaries policy and is working on an identifying a predator program for all school staff. NMPSIA is also working with the New Mexico Activities Association on training and making it mandatory. NMPSIA also played a role in the legislation (HM 57) creating a task force to review school misconduct.

Mr. Valerio stated that NMPSIA will look at mandatory anonymous statewide reporting systems. It insures employers and extended resources. The whistleblower cases seem to be problematic. NMPSIA provides consulting for issues encountered by the schools such as the ADA, FLSA, FMLA, and the Families First Coronavirus Recovery Act.

Mr. Valerio stated that NMPSIA has a School Violence program that has been providing training and on site security assessments. NMPSIA also developed policies on school bullying.

Mr. Valerio discussed the restraint and seclusion programs NMPSIA provides. The programs have de-escalation training and have extended it to special education staff. NMPSIA gave its input to the revision of the law passed in 2020.

Mr. Valerio discussed the survey NMPSIA conducted about armed school security officers. There are 86 school resource officers across the state. There are 260 unarmed guards and 33 security officers. There are 17 school district law enforcement agency officers and 8 contracted security armed officers throughout the state. In 2019, NMPSIA worked to define an armed

security guard. NMPSIA has been reviewing the memoranda of understanding between schools and law enforcement agencies.

Mr. Esquivel appreciated the information he received today. He stated that the central question is what the increased cost is going to be. Increased cost is difficult to quantify based on what is before the Commission right now. NMPSIA will not know if there are going to be caps or punitive damages. It will cause an increase in premiums, and the answer is the same.

Mr. Esquivel stated that the NMPSIA broker can come along if they are asked back. This comes at a time where NMPSIA is also dealing with potential COVID claims, which are uncharted waters. Mr. Esquivel believed the complexity of civil rights claims is inclusive of the issue of cost. It is going to be uncharted litigation. In federal court, there are levels or tiers. There is an opportunity for more resources for motions for summary judgement in federal court. State courts do not have those resources. Mr. Esquivel questioned what the impact would be on state courts and advised that the Commission should look at the additional load.

Chair Bosson asked if it would be easier to quantify cost if they did not include punitive damages or if they had a cap on claims.

Mr. Esquivel stated it would make it easier to quantify cost. It would be better than where NMPSIA is right now.

Mr. Rodriguez asked if they were to enact the state cause of action, would it allow them to sue under the state constitution. On the state side, there is the right to educate. If that opens up will that put schools in a position facing many lawsuits?

Mr. Esquivel stated it could be very damaging if there is liability based on those claims.

Mr. Kelin asked if qualified immunity has muddied the waters and increased the complexity.

Mr. Esquivel explained NMPSIA would not have established appellate law that would make it more expensive. Mr. Esquivel gave the example of an unfortunate accident and negligence case with a law enforcement officer. Plaintiff's counsel was alleging civil rights claims to avoid the tort claims act cap. It was a hard battle, and because of case law on qualified immunity, the court granted qualified immunity. If you take a case like that in state court, will they take the reckless disregard or apply gross negligence to allow that claim to proceed? Mr. Esquivel believes the case law is well established; it is clear rather than vague.

- **RISK MANAGEMENT DIVISION (RMD) & GENERAL SERVICES
DEPARTMENT (MARK TYNDALL, DIVISION DIRECTOR; KEN ORTIZ,
CABINET SECRETARY)**

This item will be placed on the next meeting agenda.

6. OTHER BUSINESS (COMMISSION MEMBERS)

7. NEXT MEETING (COMMISSION MEMBERS)

Chair Bosson would like to have the next meeting on October 16, 2020 to finish the discussion and have another presenter. For the meeting thereafter they will need to begin voting and answering the portions of HB 5. The report is due on November 15th; however a draft has to be circulated ahead of time.

Judge Whitaker reminded the Commission that they still need to hear from General Services Department and Maureen Sanders before the vote.

Chair Bosson stated that they will need a longer meeting.

Mr. Rodriguez suggested the discussions be in separate meetings in order to be able to digest the information. Judge Whitaker agreed.

Mr. Rodriguez asked that the documents be sent via a link for the public and members.

Mr. Ortiz was happy to get the items on the website if the presenters sent them to him.

Chair Bosson stated they will start with Risk Management Division at the next meeting. The Commission has communicated with the City of Albuquerque and City of Santa Fe, and for now the Commission can assume the Cities are not interested.

8. ADJOURN

With all business concluded Mr. Rodriguez moved to adjourn at 5:00 p.m. with a second from Ms. Torres.

Signed and approved:

/s/ Justice Bosson, Chair