

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA**

September 22, 2023

BOARD MEMBERS PRESENT: Benjamin Taylor, President, Phoenix; Ted Schmidt, President-Elect, Tucson; Sam Saks, Vice President, Tempe; Doreen McPaul, Secretary/Treasurer, Gilbert; Heather Baker-Mushkatel, Phoenix; Diandra Benally, Fountain Hills; Sandra Bensley, Tucson; Jena Decker-Xu, Phoenix; Denis Fitzgibbons, Casa Grande; David Johns, Flagstaff; Kelsi Lane, Tempe; Dean Stacy Leeds, Phoenix; Robert McWhirter, Phoenix; Preston Pollock, Globe; Christopher Russell, Sierra Vista; Jessica Sanchez, Board Advisor, Mesa; Public Governors Robyn Austin, Tucson, Cedric Dave, Chandler, Mignonne Hollis, Sierra Vista, Cortez Smith, Casa Grande; At-Large Governor, Marcus Reinkensmeyer, Phoenix.

BOARD MEMBERS WITH EXCUSED ABSENCES: At Large Governor Mike Baumstark, Scottsdale.

STAFF: Justin Dudenhoeffer, IT Specialist; Tim Eigo, Editor of *Arizona Attorney*; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Joe Hengemuehler, Chief Communications Officer; Jessica Iennarella, Deputy CFO; Lori Maxwell, Chief Information Officer; Trish McCarty, HR Director; Darla Neill, Board Administrative Assistant; Lisa Panahi, General Counsel; Carrie Sherman, Director of Board Operations; Roberta Tepper, Chief Member Services Officer; Sam Tisdale, Advertisement Sales Manager; Maret Vessella, Chief Bar Counsel.

GUESTS: Victoria Ames, ASU College of Law; State Bar ABA Delegates Ernest Calderón and Judy Dávila; State Bar Members Brian Garcia, Garo Moughalian and Christy Thompson; Gregg Woodnick, CPF Board Chair.

Call to Order – Benjamin Taylor

President Taylor called the meeting to order at 8:30 a.m.

Call to the Public – Benjamin Taylor

President Taylor made a Call to the Public and hearing nothing, moved on to the next item on the agenda.

President's Report – Benjamin Taylor

- February 2023 Bar Exam
 - Highest score received by Garo Moughalian, a UA College of Law graduate. Photos were taken as he received an award from President Taylor. Mr. Moughalian thanked the Board and spoke about his practice with the law firm of Wilenchik and Barness in Phoenix.
- Attended:
 - State Bar of New Mexico's Annual Meeting end of July
 - Annual National Conference of Bar Presidents in Denver in August

- 2023 Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) Western Region Summit earlier this month in Vancouver – focus on criminal law and proposed limitations on Motions to Continue
- BLI Annual Kickoff in Tubac the weekend of September 9th, where he enjoyed meeting new members.
- Hon. Anni Hill Foster’s Appellate Court investiture is Friday, October 6 at 4:00 pm in Memorial Hall at Steele Indian School Park. Reception to follow. Board members are invited to attend.
- Thanked CCO Joe Hengemuehler for celebrating 1,000 Arizona legal consumers served through ABC15 *Let Joe Know* segments. Sam Saks was thanked for working the phone bank.
- The annual Board/Staff Meet & Greet will be held from 8:30 am to 9:00 am before the October 20 Board meeting.

CEO/ED’s Report – Joel England

- Employee of Q2
 - Justin Dudenhoefer, I.T. Support Specialist, was recognized for his exceptional job performance and attitude, most notably the upgrade of the National Association of Bar Executives’ website, digital platform rewrite of the Bar Staff Directory, members’ on-site Convention registration assistance, and support of the Arizona Bar Foundation’s Lawyer referral program.
- Attended:
 - Annual National Conference of Bar Presidents in Denver in August, as well as National Association of Bar Executives Meeting. The impact of AI on the legal profession was discussed.
 - BLI Annual Kickoff in Tubac the weekend of September 9th
 - A.I. December Conference planning; the all-day Conference will be held on December 11th at ASU.
 - Pro Bono Recognition event with our LSO partners; brainstormed regarding how to highlight attorneys’ good works in AZ and how to help get the word out.
 - Ongoing internal budget and benefits meetings; will have proposal ready in December for approval.
 - Pre-Legislative Session meeting with the Court.
 - Board Ambassadors
 - Recognized Ted Schmidt and his son, attorney Matt Schmidt, for presenting on the U.S. Constitution at a Tucson elementary school dressed as Thomas Jefferson and George Washington. Ted Schmidt was impressed when the entire class recited the Declaration of Independence!
 - Recognized Sam Saks for working the phone bank on a recent ABC15 *Ask Joe* segment on insurance law.

Lawyer Wellness Task Force Update – Dean Leeds

- As discussed at the Retreat, President Taylor formed a task force to study and propose a program to expand lawyer wellness efforts.
- Thanks to Kelsi Lane who volunteered to chair the group which has already met

- Ms. Lane reported that the FAC had approved the use of Opportunity Funds for a lawyer wellness project
- Staff is collecting information from other Bar associations on the costs and utilization of their programs.
- ASU's proposal is before the Board as information with additional proposals and the task force's recommendations expected for consideration at the October Board meeting.
- Dean Leeds is a member of the Task Force and reported that she has been working on developing such a program for 16 years. She says Arizona can be the first state in the country to originate this program. At this point Dean Leeds presented the slides containing ASU's proposal and a discussion ensued.
 - Stand-alone 501(c)(3) – will not replace MAP
 - Two boards, two functions
 - I.R.S. documents could be filed between October – December; could begin hiring, recruiting volunteers and partner organizations in January; could announce the launch of the program by summer 2024 and have discussion panels during Convention with the program going live in August. Fundraisers would start in the Fall of 2024.
 - Jena Dexter-Xu expressed concern regarding the overlap with MAP. Dean Leeds explained that MAP provides referrals for assistance whereas the stand alone (“JLAP”) provides actual treatment by therapists specializing in lawyer issues. Roberta Tepper added that MAP can provide information but not treatment.
 - Sam Saks asked whether there is any flexibility regarding the initial investment, to which Dean Leeds replied not much at the beginning.
 - John Moody asked whether MAP funding would be reduced and CEO England responded that JLAP is not a replacement; its funding would come from the Opportunity Reserve.
 - Discussion regarding the Arkansas program and how law students using the program results in healthy lawyers.
 - Dean Miller and Doreen McPaul expressed their support of the framework as it partners with law schools.
 - Bob McWhirter expressed his support of the program.
 - Justice Montgomery asked how the Arkansas Supreme Court assisted a similar program in Arkansas. Dean Leeds indicated they supported with funding.
 - Regarding financial support, CEO England stated a reallocation of the Client Protection Fund could also be considered
 - YLD President Liz Schmitt asked if there were contractual agreements. Dean Leeds informed that time could be bought in advance and treatment could be in-house rather than at a law school.
 - Heather Baker-Mushkatel asked about triage prioritization to which Dean Leeds said this would need to be worked out.

Diversity and Inclusion Panel – Jessica Sanchez and Dr. Shannon Portillo

- The Board's D&I Panel met and discussed a perception survey on lawyer's opinions of the discipline process. More specifically to determine if the system is perceived to be biased.

- Jessica Sanchez, Board Advisor, introduced Dr. Shannon Portillo who attended the Panel meeting and provided a proposal for conducting an exploratory member survey to evaluate the perceptions of the disciplinary process.
 - Dr. Portillo said the first step of understanding is to determine what types of data are needed. She said she could draft a survey next month and have results by the spring (May).
 - Bob McWhirter asked what the barriers are for having a voluntary instead of a mandated survey, to which Dr. Portillo responded that there is only a 25% response rate to a voluntary survey.
 - Regarding financing, the Board could use \$17,500 from the Opportunity Fund for the survey and analysis of the results.

MOTION: Jessica Sanchez moved, Chris Russell seconded, and the motion to approve the procurement of Dr. Portillo at a cost of \$17,500 for the exploratory survey passed unanimously.

PRESENTATIONS

- CEO England presented Board Advisor Jessica Sanchez with a bound book of her articles published in *Arizona Attorney Magazine* during her tenure as president.

ABA House of Delegates – Benjamin Taylor and Dr. Ernest Calderón

- The Board appoints five delegates who represent the State Bar at the midyear and annual ABA meetings of the House of Delegates.
- The delegates and Bar staff review the delegates’ agenda before the meeting to determine which proposed resolutions cannot be voted on pursuant to *Keller* restrictions.
- Recognition of the Bar’s delegates who have completed their service
 - Judy Dávila served as the Bar’s YLD delegate since 2016; she is now past the “young lawyer” age cutoff
 - Ms. Dávila was presented with her award and photos with President Taylor were taken.
 - She thanked the Bar and expressed her gratitude for the privilege of serving as a delegate.
 - Lynda Shely served as a Bar delegate since 2015. Unfortunately, she had a conflict and was unable to attend the BOG meeting. Her award had been mailed to her.
- Ernie Calderón provided a recap of the House of Delegates’ August actions
 - Dr. Calderón gave kudos to the State Bar staff for the *Keller* “cheat sheet” they provided.
 - Resolution 100 amends the Black Letter and Comments to Model Rule of Professional Conduct 1.16 (Declining or Terminating Representation). “A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it.” The Bank Securities Act was an example of a reason for withdrawal.

- There was a debate during the ABA meeting: 30% agreed with the proposal but the Bar’s delegation voted against it as there is already an ethical code for Arizona lawyers.

Client Protection Fund – 2022 Annual Report – Gregg Woodnick

- For new Board members’ information, the Board of Governors appoints five Trustees to oversee the Client Protection Fund.
- \$20 of every member’s fees go to the Fund.
- The Trustees only consider claims alleging a loss of money or property due to the dishonest conduct of a lawyer.
- Gregg Woodnick , CPF Chair, provided a summary of the 2022 CPF Annual Report
 - There first needs to be a triggering event
 - Sixty-three (63) claims were approved and paid during 2022 - forty-five (45) received in 2021 and eighteen (18) received in 2022. The remaining 16 claims approved in 2022 will be paid in 2023
 - Claims filed in 2021, paid in 2022
 - Amount sought - \$413,168.93
 - Amount paid - \$295,007.35
 - Claims filed in 2022, paid in 2022
 - Amount sought - \$109,423.86
 - Amount paid - \$67,368.45
 - 58 claims were filed alone in 2022 and 2023 against two partners of a law firm
 - Kudos to staff who support the Trustees’ work – CFO Kathy Gerhart, Deputy CFO Jessica Iennarella and General Counsel Lisa Panahi – and especially CPF Administrator Karen Oschmann who is excellent at communicating with the public

Mark Harrison Memorial 10-Minute Topics

Bob McWhirter gave a presentation entitled *What was America to Be - A Republic or Aristocracy? The Question that Still Haunts Us Today*

Inter-Bar Cooperation Initiative Update – Ted Schmidt

- Proposed Amended Communications Policy
- At the Retreat, President-elect Ted Schmidt summarized the work of the Inter-Bar Cooperation Initiative, an effort to build bridges between the State Bar and the affinity bar associations.
- A Board policy prohibits the promotion of non-State Bar CLEs/programs.
- Rescinding that stipulation would go a long way in fostering better relations between everyone.
- A proposed amended policy is before the Board for consideration and vote.
- Discussion regarding the next step of implementing a “Bulletin Board” for notices of events, the potential overlap between organizations and why promotion is limited to non-profits.
- Editor Tim Eigo indicated that by accepting this proposal staff would be returning to the Bar’s previous practice.

MOTION: Ted Schmidt moved, Bob McWhirter seconded, and the motion to adopt the amended Communications Policy as presented carried unanimously.

SALA Board Appointment – Joel England

- The SALA Board is requesting the Board’s assistance by making an appointment to its board, specifically appointing Kimberly Cromwell of Cromwell & McReynolds PLLC in Pinetop.
- The Board of Governors has acted upon a similar request in the past.

MOTION: Doreen McPaul moved, Jessica Sanchez seconded, and the motion to appoint Kimberly Cromwell to SALA’s Board carried unanimously.

Finance and Audit Committee - Doreen McPaul and Jessica Iennarella

- The 2024 Budget Guidelines Memorandum provides staff guidance on the development of the budget. Of note:
 - Estimated change in net assets will not be less than a \$200,000 surplus – excluding Sections and investment earnings.
 - Estimated personnel-related expenses will not represent greater than 60% of estimated annual revenues – excluding Sections and investment earnings.

MOTION: Bob McWhirter, Jessica Sanchez seconded, and the motion to approve the 2024 Budget Guidelines Memorandum carried unanimously

- 2023–2027 Audit & Tax Return – CPA Firm Selection Delegation

MOTION: Bob McWhirter moved, Jessica Sanchez seconded and the motion to approve the proposal that the Finance & Audit Committee be given the authority of selecting a CPA firm carried unanimously.

- Information provided on the following:
 - 2024 Budget Timeline
 - Q2 2023 SBA Financial Statements & update
 - Q2 2023 Client Protection Fund Financial Statements
 - 2022 State Bar of Arizona & Client Protection Fund Audit report

Consent Agenda – Benjamin Taylor

President Taylor asked if there were any matters that needed to be removed from the Consent Agenda and hearing nothing,

MOTION: Mignonne Hollis moved, Bob McWhirter seconded and the motion carried unanimously to approve the Consent Agenda:

- Approval of July 21, 2023 Board Meeting Minutes
- Approval of Resignations in Good Standing
- Approval of Resignations in Lieu of Reinstatement
- Approval of Reinstatement of Member(s) Suspended for Non-Compliance with Annual Membership Fees and/or Trust Account Compliance

Lawyer Discipline Study Update - Maret Vessella

- At the Board Retreat, Professor George Farkas provided an overview of the California Study on Racial Disparity in Lawyer Discipline, including an evaluation of the necessary data to perform a similar study. Following the discussion at the Retreat, Maret Vessella, Chief Bar Counsel, collected 3-years of discipline data, including all lawyers receiving a formal sanction, race/ethnicity, gender, firm size and practice area. Ms. Vessella provided the data to Dr. Tammi Walker for analysis for a lawyer discipline study.
- Dr. Walker reported at last week's Discipline System Oversight Committee (DSOC), tasked with evaluating the feasibility of doing a lawyer discipline study. Dr. Walker pointed out key data differences between California and Arizona that inhibit an effective Arizona study. The sample size of disciplined lawyers in Arizona is much smaller than California and Arizona lacks the complete demographic data that California has.
- The DSOC committee will consider measures taken by California and other bars to reduce the potential for bias in the discipline process.
- Jessica Sanchez advised that a draft policy outlining the process for written allegations of bias or discrimination will be brought to the October D&I Panel meeting.

Convention Update – Benjamin Taylor

- Mr. Taylor reiterated that he would like to bring in a big-name speaker and asked if anyone had any ideas. A letter was sent out to each U.S. Supreme Court Justice asking if they would speak. No responses received yet.
- Convention planning has already begun. Roberta Tepper and Sam Tisdale gave a report on plans:
 - silent auction
 - 50 exhibit booths
 - recruiting a new event coordinator

Strategic Planning Working Group - Kelsi Lane

- The Working Group met to begin addressing the Board's comments/input collected at the Retreat in order to "refresh" the current Plan.
- A redline of said input will be considered at the next Group's meeting.

Correspondence/Reports

- Executive Council Minutes August 18, 2023
- Public Governor Mignonne Hollis informed the Board that she has been appointed to a task force and that she has written a plan regarding broadband accessibility in Arizona, testing upload speeds, guidance to consumers on checking their broadband capacity, etc. The URL is broadbandforall.org and asked the Board members to spread the word.

MOTION: Bob McWhirter moved, Jessica Sanchez seconded and the motion carried unanimously to adjourn the meeting at 12:10 p.m.

Respectfully submitted,

Doreen McPaul
Secretary/Treasurer