

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
May 22, 2020
GoToMeeting**

BOARD MEMBERS PRESENT: Brian Y. Furuya, President, Flagstaff; Denis M. Fitzgibbons, President-Elect, Casa Grande; Jennifer Rebholz, Vice President, Phoenix; Jessica Sanchez, Secretary-Treasurer, Mesa; Sandra Bensley, Tucson; Sharon Flack, Prescott; Mark Harrison, Phoenix; Leticia Marquez, Tucson; Robert McWhirter, Phoenix; John Moody, Phoenix; David Rosenbaum, Phoenix; D. Christopher Russell, Sierra Vista; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Benjamin Taylor, Phoenix; Public Members: Robyn M. Austin, Tucson; John Gordon, Prescott; Jonathan Martone, Paradise Valley; and Anna C. Thomasson, Paradise Valley; At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Doreen McPaul, Window Rock; Ex-Officio Members: Jeffrey Willis, Board Advisor; Dean Mark Miller, Tucson; and Leah Won on behalf of Dean Mark Miller, Tucson.

EXCUSED ABSENCES: Hector Figueroa, Payson, and Sara Siesco, Phoenix.

UNEXCUSED ABSENCE: Amanda Salvione, YLD President, Phoenix.

OTHERS PRESENT: Deanna Commack, Executive Assistant to CEO/Executive Director; Sarah Corpening, Membership Administrator & Services Manager; Christine Davis, Ethics Counsel; Lisa Deane, Chief Member Services Officer; Joel England, CEO/Executive Director; Candice French, Human Resources Manager; Kathy Gerhart, Chief Financial Officer; Joe Hengemuehler, Chief Communications Officer; Lori Maxwell, Chief Information Officer; Richard Palmatier, Assistant General Counsel; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Patricia Sequin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Roberta Tepper, Lawyer Assistance Programs Director; Karen Van Allen, Administrative Assistant; Maret Vessella, Chief Bar Counsel.

GUESTS (identified): Vice Chief Justice Ann Scott Timmer; Jennifer Albright, Administrative Office of the Courts; Ann Ching, Sandra Day O'Connor College of Law, Arizona State University; Nancy Greenlee, Phoenix; Lynda C. Shely, The Shely Firm PC; Board Members-Elect: YLD President-Elect Jena Decker-Xu, Fragomen Del Rey Bernsen and Loewy LLP; Kelsi Taylor Lane, Davis Miles McGuire Gardner PLLC; Eric Ruchensky, Coconino County Attorney's Office; Ted Schmidt, Schmidt Sethi & Akmajian.

President Brian Furuya called the virtual Board meeting to order at 8:30 a.m.

Rules Review Committee

Proposed Comments to Petition Filed by the Task Force on the Delivery of Legal Services

President Furuya said that the two draft Comments, one in support and one in opposition, are being presented for a vote. The Board needs to decide which of the two Comments will be submitted on behalf of the State Bar.

- Vice Chief Justice Ann Scott Timmer joined the virtual meeting and said she would speak about the controversial points. President Furuya asked if she would present her context.
 - Recall the approach that the Supreme Court is taking—as a regulator—to protect the public; this might constrain lawyers
 - Talked about Family Court and rural areas; there have been five Town Halls; Alternative Business Structure (ABS) Proposal; licensed paralegals—these all had support
 - One Stop Shop – better services for the do-it-yourself (DIY) platform; people need to know “when should I even use it?”; LegalZoom is an example; floundering when people try to DIY
 - There are comments that ABS will not help fund the access to justice; it is not just about the poor but also about infusing partners with technological advances, allowing for more innovation
 - ABS wants to help attorneys; to keep lawyers relevant
 - Commentary was taken from those that have had the experience, e.g., Australia; the comments were positive
 - Non-lawyers will pressure lawyers; that pressure exists now; lawyers need to remain ethical
 - Tightening up the language in any final rules
 - ABS will be regulated by the Court; annual registration fee; discipline - there will still be consequences
 - LLLPs are to provide more avenues for legal assistance; allow for lower costs in Family Court; maybe more people will have access
 - Education requirements—for paralegals—need to be licensed, specific endorsement, pay into the Client Protection Fund, ethical requirements; Ontario, Canada examples - sometimes a paralegal operates at a higher level (than some lawyers)
 - Concern that lawyers will be put out of business—possibly in Family Court, but they are not seeing that; the capacity is there
- **Q & A**

Question: Dee-Dee Samet mentioned that the Court had been asked for more time, and she didn’t understand why the Supreme Court denied the request.

Justice Timmer: The Court thinks there was enough time; there have been Town Hall Meetings; a discussion at the Board of Governor’s meeting last July; multiple webinars and speaking engagements; the Court did not think there will be a big payoff if there is more time; however, it is a dynamic process and communication is still available.

Question: Dee-Dee Samet: Why isn’t it being tested in certain areas?

Justice Timmer: A pilot basis is not off the table; they want to attract people to be innovative; time/money; Utah did it that way and then grandfathered everyone in; not sure it was a good idea.

Question: Board Member-Elect Ted Schmidt asked for clarification about investors.

Justice Timmer: There is some concern about passive investors or any investor that will interfere with lawyers (ethically); it is always a concern, but not a prohibitive concern (see earlier comments).

Question: David Rosenbaum asked if the vote of the BoG is to submit a pro/con comment. The pro comment has about a dozen criticisms; are they criticisms that the Task Force will reject? Has Justice Timmer had time to review it?

Justice Timmer: Has not read it; received it last night; any concerns will be welcomed; Task Force ended in December; two regulatory committees are continuing work on drafting rules.

Question: Robert McWhirter said the response he is getting from his constituents is a universal negative; lawyers on the street don't like it; what can he tell them?

Justice Timmer: She hears the same comments but also positive comments; the Supreme Court is not necessarily looking to protect lawyers; need to get the legal services to the public.

Benjamin Taylor: Works in the community a lot, and he is scared that corporations will come in and take advantage of poor people.

Justice Timmer: The Court has to approve applications; big corporations might not want to even engage with this because they have to reveal information.

Justice Timmer

Is it a done deal? No, but going in that direction (August); talking to experts outside the area; are there real risks; adjustments will be made; the Court has no desire to do anything to harm the public. This is a dynamic process.

Jennifer Albright (Justice Timmer had to leave the meeting)

Added input on scrivener issues; her job is to take all comments (189 comments on Rule sections); they are actively being worked on; all comments in the BoG drafts are being considered whether or not the Board votes pro/con; AOC is taking comments seriously.

Question: Sharon Flack: Her question is geared to Lynda Shely about the statutory framework; it doesn't exist for LLLPs or ABS; would a client be liable for civil penalties?

Lynda Shely: Is the question whether LLLPs would be subject to sanctions?

Sharon Flack: If a lawyer breaches confidence.

Lynda Shely: The Task Force is working on each of the challenges; confidentiality and privilege; reiterated that the application is very comprehensive.

Question: Sam Saks to Dave Byers: He just heard (during the discussion) that the Task Force ended in December and is not sure what he is voting on; it is a moving target.

Dave Byers: The Task Force did its job and made its recommendation; it is a normal process; the Rule was posted; two comment periods; now goes to a working group; nothing unusual about the Rules process.

Dave Byers: Spoke about a survey that reviewed wills that were written by both attorneys and non-lawyers; the non-lawyers' work product was rated slightly higher and also rated better in customer satisfaction; the Court receives lots of complaints about customer service, not about ability.

MOTION: Jennifer Rebholtz moved and Dee-Dee Samet seconded the motion to adopt the Comment in opposition to the amended Petition.

Discussion ensued:

Mark Harrison: Will support the proposals with reservations; every major change by the legal community resisted; lack of affordable legal services has been an issue for decades; should support because the need is clear and unmistakable.

Sam Saks: A misnomer that any change is good; onus has to be on protecting the public; an

ever-changing package; limit it to certain areas; why do we have to support everything; wait and see what happens in California. We have an affirmative duty to protect the public; lack of evidence right now; encourages a pilot program.

Dee-Dee Samet: She is a 'con'; one of the issues not looked at is that corporations can come in and take the cream of the crop and others will fall by the wayside; protect the public by working out the bugs and take time; doesn't understand the rush to get it done; people didn't know the Task Force existed and are involved in other concerns right now; thinks there should be more time and also do a pilot program.

Benjamin Taylor: How does a corporation owning a law firm protect the public?

Sharon Flack: If Court is going to support LLLPs and ABS, it needs to be a pilot program.

Jonathan Martone: Is there a way to delineate ABS and LLLPs? He supports LLLPs but not ABS.

MOTION TO AMEND: Jonathan Martone moved and Bob McWhirter seconded the motion to vote on the ABS and LLLPs issues separately. Jennifer Rebholz and Dee-Dee Samet did not accept the Motion to Amend.

Further discussion,

David Rosenbaum: The Amendment—he would rather give one a chance to survive; both are related but different. Several folks want a pilot program, and Vice Chief Justice Timmer commented that it is a possibility. Perhaps another amendment down the road should be considered.

President Furuya: The Comment is on the Amended Petition, which says they are open to a pilot program.

Denis Fitzgibbons: Agrees with David Rosenbaum; in favor of an Amendment to split them up; the pilot program makes more sense.

Sam Saks: With regard to the Amendment, the BoG should ask the Court to give them more time; these are two separate issues; if there is more time, he would definitely split it.

President Furuya: Repeating, the Amendment is to split the Comments on each of the points in the Comments, proposed Comments 5.4 ABS Non-Ownership of Law Firms and LLLPs; the Con Comment opposes both; the Pro Comment supports both; Mr. Martone's Amendment is to split and Comment on 5.4 and on the LLLPs separately.

Christine Davis (Drafter): There is no time to send it back to the Rules Review Committee; would entail suspension of the normal process; might need to go to the Executive Council for final disposition.

Dean Marc Miller: In reference to David Rosenbaum's earlier suggestion, what about voting on pilot programs (another Amendment)?

Jonathan Martone's Amendment: Voting on Motion to suspend the Rules process as a Comment has to be filed by May 26, 2020; Motion is to separate the two (ABA/LLLPs) issues; if it succeeds, do we still send a Con Comment on 5.4 and on LLLPs?

President Furuya thinks it is better to separate them; it is an important moment in history, and it has come forward multiple times; in the sixties with real estate; we (the Bar) were on the wrong side of that; came up again in document preparers.

Amendment carried by a vote of 13-9-1.

- **Opposition to ABS:**

Anna Thomasson: Strongly in favor of ABS; she is disturbed by the tone in Comment; it seemed arrogant; who are we protecting the public from? The implication is that non-lawyers are not as ethical as lawyers.

Dee-Dee Samet: Doesn't see the benefit to the public; it could benefit law firms with an infusion of cash; disagrees with Anna's comment about the arrogant tone; against it; thinks it is different than the real estate issue; it is more about the whole profession.

David Rosenbaum: Anna Thomasson's remarks are right on; Con Comments are protectionist; desire to preserve rather than to protect the public.

John Gordon: Once you open the doors, things happen; have to regulate them but with change comes opportunities.

President Furuya: Against the Motion; votes down innovation; approval of the Courts is lowest that it has been; various solutions have been tried that have not worked; thinks it would be harmful to do nothing.

MOTION to submit a Comment opposing the ABS failed by a vote of 14-7-1.

Opposition to LLLPs

MOTION to submit a Comment opposing the LLLPs failed by a vote of 9-8-2.

MOTION: David Rosenbaum moved and Mark Harrison seconded the motion to submit a Comment in support of the ABS.

FRIENDLY AMENDMENT: Dee-Dee Samet made a Motion to Amend, seconded by Jimmie Dee Smith, to submit both pro and con Comments to the Supreme Court. The Amendment was deemed moot as the Board can't send up the Con Comment as it was voted down.

FRIENDLY AMENDMENT: Denis Fitzgibbons made a Motion to Amend, seconded by John Gordon, to submit the Comment in support of the ABS, encouraging the Court to adopt the ABS on a pilot basis. The Motion to Amend was accepted by Messrs. Rosenbaum and Harrison. The Motion, as amended, passed by a vote of 13-8-1.

MOTION: David Rosenbaum moved and Denis Fitzgibbons seconded the motion to submit to the Court the Pro Comment included in the Board's materials, encouraging that the ABS and the LLLPs proposal be rolled out on a pilot basis. The motion carried by a vote of 13-8-2.

MOTION: Sam Saks moved, Dee-Dee Samet seconded and the motion to include the Board votes in the Comment carried by a vote of 17-1-1.

Agreed that the Executive Council will review the modified Comment before it is filed.

Call to the Public – President Brian Furuya

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

Senior Lawyers Division – Walter Nash, Laura Zeman-Mullen, Roberta Tepper

President Furuya reminded the Board that in May 2019 it had approved the recommendations contained in the Senior Lawyers Task Force report which included establishing a Senior Lawyers Division. Walter Nash and Laura Zeman-Mullen have been leading a working group that is creating the Division, including its governing bylaws which are before the Board today for approval. President Furuya publicly thanked them for their efforts.

MOTION: Denis Fitzgibbons moved, Mark Harrison seconded and the motion to approve the Senior Lawyers Division bylaws carried unanimously.

President's Report – Brian Furuya

- Court Appointments: The Court's appointed members to the Board who received a one-year staggered term last year, when the Board reset, have been reappointed to full three-year terms:
 - Jonathan Martone, Public Governor
 - Doreen McPaul, At-Large Governor
 - David Rosenbaum, District Governor
- Reported that about 200 lawyers have stepped up to volunteer for the legal services hotline; this is a great resource for assisting the public during the pandemic.

CEO's Report – Joel England

- Hotline rolled out this week; partnering with the Bar Foundation, the legal services agencies and county bar associations
- Bar staff are still working remotely; Maret Vessella is leading an internal team to propose protocols for a plan to reopen the office; probably a phased approach; should have the plan next week; there will be policies and procedures in place

POLICY DISCUSSION

Future Planning – Annual Board Retreat – Denis Fitzgibbons

It is difficult, with current COVID conditions, to plan. The draft 2020-2021 BoG/EC Meetings Schedule is included in the materials for discussion and the Board's input especially with regard to the annual July Retreat. A virtual retreat would not be as productive, difficult to engage speakers and build relationships between Board members. An August Retreat is a possibility; maybe a one-day Retreat rather than two days. Consensus to cancel the July Retreat with the president-elect and staff continuing to investigate alternatives.

Temporarily Amend Bylaw 1.07 re: Annual Meeting – Joel England

- The Annual Meeting is tied to the Convention which has now been rescheduled for December.
- Temporarily amend Bylaw 1.07 so the Annual Meeting can take place at the scheduled June 9 Board meeting during which the Board officers will be elected.

MOTION: David Rosenbaum moved, Jennifer Rebholz seconded and the motion to temporarily amend Bylaw 1.07 to allow the Annual Meeting to take place at the Board Meeting on June 9, 2020, and not be linked to the Convention, carried unanimously.

Nominating Committee – Jeff Willis

- Explained that Amendments to Rule 32 created the Nominating Committee. At the June 2019 meeting, the first Nominating Committee presented its Report and Recommendations for the election of the president-elect, vice president and the secretary-treasurer.
- After electing Board officers at that meeting, the Board decided that it wanted to approve/formalize the Committee's process before the next Committee undertook its charge.
- This year's Committee reviewed the Candidate Criteria Guidelines and the Candidate Questionnaire developed last year and made minor changes. They are before the Board for approval.
- The call for officer candidates was emailed to the full Board twice. Once the Board approves the materials before them the Committee will schedule interviews of the candidates.
- The recommendations of the Committee will be presented at the Annual Meeting. It is also possible for someone to nominate themselves or another person at the meeting, but they would not have been vetted by the Committee.

MOTION: Coming as a motion from the Nominating Committee requiring no second, the motion carried over one dissent to approve the Candidate Criteria Guidelines and Candidate Questionnaire as presented.

Appointments Committee – Jessica Sanchez (on behalf of Chair Sara Siesco)

ABA House of Delegates

- Jessica Sanchez reported that the Committee voted unanimously to recommend to the Board of Governors the reappointment of incumbent Adam Zickerman to another two-year term as one of the State Bar's five ABA Delegates.
- George Chen received unanimous support from the Committee, recommending that the Board of Governors appoint him to his first two-year term as one of the State Bar's five ABA Delegates.
- The Committee received feedback from several former Bar presidents and other Board members about the applicants and was appreciative of that participation during the vetting process.

MOTION: Coming as a motion from the Appointments Committee requiring no second, the motion to reappoint Adam Zickerman and to appoint George Chen as ABA Delegates carried unanimously.

Client Protection Fund Board of Trustees

- Incumbent Public Member Matthew Gerst is seeking a second, but final, five-year term as a Trustee on the CPF Board. No other applications were received but Mr. Gerst is highly qualified to continue his service. The Committee unanimously recommends his reappointment.

MOTION: Coming as a motion from the Appointments Committee requiring no second, the motion to reappoint Matthew Gerst to the Client Protection Fund Board of Trustees carried unanimously.

ABA Delegate – Board of Governors’ Representative – Brian Furuya

- This Delegate position is handled by Board Policy, not by the Appointments Committee. The position is filled by a lawyer Board member, and Lori Higuera has been serving for the past two years. The position was “advertised” to the full Board.
- President Furuya asked if anyone wished to add their name to the candidate list or if there were any nominations from the floor. Hearing nothing,

MOTION: Jessica Sanchez moved, Denis Fitzgibbons seconded and the motion carried unanimously to reappoint Lori Higuera as an ABA Delegate.

Finance & Audit Committee – Benjamin Taylor and Kathy Gerhart

- Field work on the State Bar’s financial audit is scheduled to begin June 8, with the final audit available by July 31.
- The 2019 401(k) audit should be finalized by the end of next week.
- CEO Joel England spoke about how the pandemic has affected finances. A possible \$510,000 impact was discussed at the previous day’s Committee meeting. The Committee and staff are looking at what action can be taken.
- The Committee approved the staff’s recommendation that CLE by the Sea in July be cancelled due to COVID-19. To avoid cancellation fees or litigation, the Committee also approved adding one year on to the next three-year contract with the Del Coronado Hotel, which has been signed. The hotel is agreeable thus the contract would cover years 2021, 2022, 2023 and 2024. President Furuya thanked CEO Kathy Gerhart and her team for all the work they have been doing.

Consent Agenda – Brian Furuya

President Furuya asked if any item needs to be removed from the Consent Agenda and, hearing nothing,

MOTION: Denis Fitzgibbons moved, David Rosenbaum seconded and the motion to approve the Consent Agenda carried unanimously:

- Approval of April 17, 2020 Board Meeting Minutes
- Approval of Resignations in Good Standing
- Approval of Resignations in Lieu of Reinstatement

Preliminary Suspension List for Non-Compliance with Membership Fees – Sarah Corpening

As of this morning, 253 members are out of compliance. Five separate notices/reminders have been sent through the entire process. Members continue to cure. A list will be presented for Board action on June 9 to summarily suspend members who are in arrears. Board members should feel free to contact anyone they know on the list as a courtesy.

Status Reports

Amicus Curiae Matters – Richard Palmatier

- *Fleck* case: sent back following Circuit 8th decision; rehearing denied May 4
- *Gruber* and *Crowe* cases: oral argument May 12
- *Jarchow* case: distributed for Court conference May 21

Legislative Update – Joe Hengemuehler

- The House adjourned sine die last evening.
- The Senate reconvenes after the Memorial Day holiday weekend to transmit the bills passed by the House to the Governor's desk and formally conclude the regular Legislative session.
- It is still unclear whether there will be a special session in June to address the budget and make additional modifications depending on the state revenue projections.
- Included in the priority bill list this week was SB 1274/Professional Regulatory Board Composition Bill. This has been a priority of the Governor since his State of the State address and passed out of the House yesterday afternoon on a party line vote of 31-29.
- SB 1114 fell victim to COVID circumstances. It is the Limited Liabilities Bill sponsored by Senator Pace. It passed through the Senate in February on a unanimous approval and was awaiting assignment in the House.

Strategic Planning Working Group – Jessica Sanchez

Due to the pandemic, the timeline to present a draft plan to the Board has been slightly pushed back. It was fortuitous that the data gathering process with members, strategic partners, stakeholders, including the president's and CEO's Listening Tour, was completed before the pandemic "shutdown".

Uniform Bar Exam Update – Dave Byers

The current plan is to offer the UBE in July. Two factors might affect this: 1) a deterioration in the health situation, and 2) the Convention Center UBE site might not reopen in time. Alternate sites all over the state are being considered. It will not be the same as in the past; protocols are being put into place. The Court Rule has been exempted allowing law school students who are eligible to take the UBE early can skip the July exam if they feel uncomfortable, but then must take the UBE in February.

Adjourned at 12:04 p.m.

Respectfully submitted,

Jessica Sanchez
Secretary/Treasurer