

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
January 26, 2018
Phoenix, AZ**

BOARD MEMBERS PRESENT: Alex Vakula, President, Prescott; Brian Furuya, Vice President, Flagstaff; Jeffrey Willis, President-Elect, Tucson; Lori Higuera, Secretary-Treasurer, Phoenix; Tyler J. Carrell, Phoenix; Denis M. Fitzgibbons, Casa Grande; Patrick Greene, Tombstone; Robert J. McWhirter, Phoenix; Pouria Paknejad, Phoenix; Jennifer Rebholz, Phoenix; Dee-Dee Samet, Tucson; Jessica Sanchez, Phoenix; Sara A. Siesco, Phoenix; Jimmie Dee Smith, Yuma; Benjamin P. Taylor, Phoenix; Public Members: John Gordon, Prescott; Anna C. Thomasson, Phoenix; and At-Large Members: David K. Byers, Phoenix; Paul Senseman, Phoenix; Ex-Officio Members: Gary Stuart, on behalf of Dean Douglas Sylvester, Tempe; Leah Won, on behalf of Dean Marc Miller, Tucson; and Lisa S Loo, Immediate Past President, Tempe

EXCUSED ABSENCES: David Wm. Engelman, Phoenix; Hector Figueroa, Payson; Samuel Saks, Phoenix; Public Member: Jason E. Cobb, Phoenix; Daniel Mazza, Young Lawyers Division President, Phoenix; Ex-Officio Member: Dean Penny Willrich, Phoenix

OTHERS PRESENT: Nina Benham, Board Services Specialist; Matt Campbell, Help Desk Technician; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Communications Officer; Octavius Garrett Accountant II; Kathy Gerhart, Chief Financial Officer; Gayle Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Lisa Panahi, General Counsel; John Phelps, CEO/Executive Director; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Roberta Tepper, Lawyer Assistance Programs Director; Maret Vessella, Chief Bar Counsel; and Justice John Lopez IV.

GUESTS: Jack Levine; Hon. Sam Thumma; Tim Berg; Michael Crawford; Sandra Bensley; James Susa; and Doreen McPaul.

President Alex Vakula called the Board meeting to order at 8:35 a.m.

CALL TO THE PUBLIC – President Vakula made a Call to the Public. Each person requesting time is allowed three-minutes to address the Board of Governors.

- Mr. Jack Levine requested, and was granted, time to address the Board.

PRESIDENT'S REPORT – Alex Vakula

- Announced that Pouria Paknejad submitted his resignation, effective 1 February 2018; he is moving to California for personal reasons. Presented Mr. Paknejad with a memento and the Board thanked him for his service to the Bar.
- Attended the Arizona Judicial Council (AJC) meeting - a very aggressive agenda that handled ten substantive items
- Convention planning going well
- Bylaws Review Working Group held its first meeting

President Vakula turned it over to Lisa Loo, Immediate Past President, who spoke about the National Movement in a number of states to recognize Fred Korematsu, an American civil rights activist who objected to the internment of Japanese Americans during World War II - Executive Order 9066 which authorized the removal of individuals of Japanese ancestry living on the West Coast from their homes and their mandatory imprisonment in internment camps. Korematsu instead challenged the order. The legality of the internment order was upheld by the Supreme Court and has never been explicitly overturned.

Mr. Korematsu received the Presidential Award of Freedom. On Tuesday, January 30th the Asian American Community will be celebrating his birthday and the Fred Korematsu Day of Civil Liberties and the Constitution which was first observed in 2011 on his 92nd birthday. The Fred T. Korematsu Institute was founded in 2009 to carry on Korematsu's legacy as a civil rights advocate by educating and advocating for civil liberties for all communities.

UNIFORM LAW COMMISSION – Hon. Sam Thumma and attorney Tim Berg

- The Commission drafts non-partisan legislation that brings clarity to state statutory law mostly in the areas of business and family law.
- The Study Committee researches a subject matter and recommends whether drafting should be undertaken. The Drafting Committee undertakes drafting a specific uniform or model act for consideration. Product could take up to three years.
- Recent accomplishments: LLC Act, Registration of Virtual Currency Act and Model Veterans' Treatment Court Act
- Study Committee considering: Adverse Possession; Data Breaches; Electronic Registry for Electronic Mortgage Notes; Tort Law re: Drones; Tribal Probate Code; Criminal Trial Records Accuracy, and more.

COMMUNICATIONS/GOVERNMENT RELATIONS DIVISION – Legislative Report – Janna Day, Lobbyist and Rick DeBruhl

- Requested ratification on work being done to oppose HB-2119 which is the same bill that was run last year and the Bar opposed it.
- MOTION: Dee-Dee Samet moved, Pouria Paknejad seconded, and the motion carried unanimously to continue to oppose HB2119 at the Legislature.
- Reviewed the hearing before the House Judiciary Committee on HB2119 which would bifurcate the Bar. Bill passed out of Committee and was sent to the Rules Committee, with no hearing scheduled to date. Bills must be out of Committees by February 12th.
- Discussion regarding the Supreme Court's survey that it sent to membership.
- Dave Byers reminded the Board that the survey was an information gathering tool from the Court. He shared that the Arizona Judicial Council has opposed HB2119.
- Two proactive Bar Bills:
 - HB1353 modernizing the Limited Liability Corporation Statutes – Business Law Section worked on the proposal for six years
 - SB1204 Probate and Trust Law Section's Bill; waiting for a hearing in the House.
 - Senator Bob Worsley is sponsoring both of these Bills.

APPOINTMENTS COMMITTEE – Chair Jessica Sanchez

Board of Legal Specialization (BLS) – Pursuant to recent changes to Ariz. Sup. Ct. R. 32(d) and Rule 44 governing the BLS, the State Bar Board of Governors now sends nominations to the Court and the Court makes the appointments. The Appointments Committee recommended four candidates to fill an unexpired term of a public member: Robert J. Denison, Tucson (ranked the #1 candidate) followed by (in no particular order) Kimberly Heldt, Mesa, Abe W. Lai, Tucson, and Chris Pfund, Phoenix. The Board concurred with the Committee’s recommendations and voted unanimously to forward the four nominations as indicated to the Supreme Court for its consideration and ultimate appointment to fill the BLS public member vacancy.

Board of Governors, District 5 Seat:

- Interviewed the four finalists recommended by the Appointments Committee:
 - Sandra Bensley, Waterfall Economidis
 - Michael Crawford, Mesch Clark & Rothschild PC
 - Doreen McPaul, Pascua Yaqui Tribe
 - James Susa, DiConcini McDonald Yetwin & Lacy PC
- MOTION: Benjamin Taylor moved, Jessica Sanchez seconded and the motion to go into Executive Session at 10:50 a.m. to discuss the candidates carried unanimously. All staff left the room with the exception of CEO John Phelps and General Counsel Lisa Panahi.
- Returned from Executive Session at 11:10 a.m. where the Board proceeded to vote by secret ballot. Board Secretary-Treasurer Lori Higuera counted the ballots along with Ms. Panahi and Mr. Phelps.
- President Vakula announced that Doreen McPaul had been appointed to fill the District 5 seat on the Board of Governors. At that time, Ms. McPaul, joined the Board for the remainder of the meeting.

The Board was provided with the names of the Supreme Court’s appointments to its Committee on Character and Fitness and its Committee on Examinations, thus completing the process the Appointments Committee had undertaken to provide recommendations to the Board which submitted nominations to the Court last Fall.

JUDICIAL NOMINATING COMMISSION APPOINTMENTS PROCESS - John Phelps

- The Appointments Committee was created in 1988. Technical changes to the Guidelines included removal of term limits for the Bar’s five ABA Delegates that the Board previously approved.
- The State Bar has two Constitutional mandates: providing Arizona’s governor with nominations to the Appellate and Trial Courts Judicial Nominating Commissions (JNCs).
- Executive Council asked staff to prepare draft policy changes for the board’s consideration.
- John Phelps offered a draft for review by the Board that included identifying specific criteria for nominees as well as policy for sending nominees to Governor’s Office.
- Suggested candidate criteria proposed included:
 - legal (or trial) experience
 - other relevant experience
 - diversity criteria
 - family court experience

- Jim Smith favored creating a Board committee that would handle the recruitment and screening of the JNC candidates and making recommendations to the full Board.
- Staff was directed to take into account board discussion and provide multiple options for consideration at the next Board meeting.

CONSENT AGENDA

- a) Approval of December 8, 2017 Board Meeting Minutes
 - b) Approval of Resignations in Good Standing
 - c) Approval of Reinstatements
 - i) Approval of Reinstatements of Members Suspended for Non-Compliance with MCLE Requirements, Rule 45, Ariz. R. Sup. Ct.
 - ii) Approval of Reinstatement of Member(s) Suspended for Non-Compliance with Annual Membership Dues and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.
 - d) Dues and/or Late Fees Waiver Requests
 - e) MCLE Suspension List updated 1/26/18
- President Vakula asked if there was anything to come off the Consent Agenda.
 - A request was made to pull the December 8 Board minutes.
 - MOTION: After discussion and clarification of the board's previous vote on the matter, Tyler Carrell moved, Jeff Willis seconded and the motion carried unanimously to amend the December 8 minutes on page 3648 to reflect that the Arizona Attorney Editorial Board would be appointed by the president.
 - MOTION: Tyler Carrell moved, Paul Senseman seconded and the motion carried unanimously to approve the Consent Agenda as amended.

CONVENTION 2018 – Silent Auction Charity Selection – John Phelps and Lisa Deane

- Two responses were received to the RFP sent out to law-related charities to host a silent auction at the Convention:
 - Defenders of Children
 - Kingman Aid for Abused People
- The Board discussed both groups.
 - MOTION: Dee-Dee Samet moved, Brian Furuya seconded, and the motion carried unanimously to select Kingman Aid for Abused People as the 2018 Silent Auction Charity at the upcoming Convention.

FINANCE AND AUDIT COMMITTEE – Brian Furuya and Kathy Gerhart

- Draft December Financials presented. The year-end audit surplus estimated at \$800K
- Audit scheduled to begin the week of February 19.
- Reviewed two engagement letters from Eide Bailly to audit the consolidated financial statements of the State Bar of Arizona and Client Protection Fund.
- MOTION: John Gordon moved, Jeffrey Willis seconded, and the motion carried unanimously to approve the proposed Public Records Fee Schedule.
- Tyler Carrell mentioned discussion at the F&A Committee meeting regarding members who are active military and recommended that the Bar determine how many members are in that category and to consider a dues waiver for those members. Staff was asked to look into this and report back to the Board.

LEGAL FORCE LITIGATION UPDATE - Lisa Panahi and John Phelps

- In late December a lawsuit was filed against the Arizona, California and Texas State Bars, along with Legal Zoom and the US Patent and Trademark Office (USPTO), by attorney-run Legal Force, an online patent preparation company.
- The suit was filed and is pending in the Northern District of California.
- Complaint alleges that it was brought to “expose willful and systematic acts of unauthorized practice of law,” and unfair competition by Legal Zoon with respect to the preparation and filing of trademark applications before the USPTO.
- Two Counts against the Bar allege:
 - Arizona’s ethical rules prohibit Plaintiff from operating as a trademark filing service similar to Legal Zoom (which is not a law firm) and
 - State Bar has engaged in the unreasonable restraint of Trade by failing to enforce unauthorized practice of law (UPL) rules against Legal Zoom.
- Arizona Bar has retained as defense counsel Dan Goldfine of Lewis Roca Rothgerber Christie
- Filed a Stipulated Extension to Respond to Complaint by February 20, 2018.

ARIZONA SUPREME COURT – Dave Byers

- Referenced Chief Justice Bales’ letters to House Speaker Mesnard and Senate President Yarbrough, which predate the filing of HB2119, which addressed issues the Legislature has articulated about the State Bar.
- Noted Chief Justice Bales’ email to the membership along with the Court’s survey which garnered a high response rate, with 1,550 comments provided. WestGroup Research hired to handle the survey as the Court does not have the resources to do so. Information to be compiled in about three weeks and shared with the Board for future discussion.

CEO/ED REPORT – John Phelps

Recognized:

- Employee of the Quarter – Octavius Garrett Accountant II, took on additional duties related to annual budget preparation, dues processing, cash receipts and accounts payable and increased his role in managing capital project procurement.
- Employee of the Year – Roberta Tepper, Lawyer Assistance Programs Director, directed several special projects including drafting the Bar’s new Public Meetings and Public Records Policies and training staff on the new procedures.
- Carol Lloyd, Business Analyst, was remembered and honored with a Celebration of Life ceremony.
- John Furlong, former General Counsel/Deputy Director, continues his recovery from a stroke. John Phelps, John Furlong and John Stookey of Osborn Maledon, also a stroke survivor, met recently and it was a great opportunity to share experiences.

Summarized:

- Petition to Adopt New Rule 42.1, Ariz. R. Sup. Ct. is currently out for review and comment. This Petition would have a Supreme Court Committee issue Formal Opinions regarding ethics, UPL, and professionalism, entertaining public comment on said drafts.

- R-18-0014, Petition to Amend Rules 32, 46-49, 53, 55-58, and 60-63 Ariz. R. Sup. Ct. Outlined the many changes that would be advanced when these Rule changes go into effect including having the Court approve the hiring of discipline counsel made by the Bar's CEO.

The Public Service Center is fully staffed. All technology issues have now been worked out. Launching March 21. All attorneys will be asked to update their profiles. All profiles will be free of charge (previous \$39/year fee). A presentation on the PSC platform will be given to the Board at its February meeting.

The Bar's growing involvement in legal services include:

- Veterans Stand Down, January 25 and 26
- Arizona Chapter of Corporate Counsel and probate attorneys – providing free meeting space for mediations at the Bar's offices
- Wills For Heroes – providing tech support

EMAIL UPDATE – Rick DeBruhl

- Approximately 1,192 members were using azbar.org as their primary email address; that number has now dropped by 33%.
- With resources/instructions provided by the Bar, members have not experienced any technological problems in switching to a new email address.

ARIZONA JUDICIAL COUNCIL

- Tax Credit flyer in materials; option available until April 15th

RULES CYCLE SNAPSHOT REPORT

- Provides detail on all the Rules filed during the 2017 cycle.

GUEST DECORUM

- Asked staff to draft guidelines to present to guests at the Board meetings regarding their decorum, guest seating, where they may leave materials for the Board's information, etc.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 1:08 p.m.

Respectfully submitted,

Lori Higuera
Secretary/Treasurer