

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

December 6, 2024

BOARD MEMBERS PRESENT: Ted Schmidt, President, Tucson; Samuel J. Saks, President-Elect, Tempe; Doreen N. McPaul, Vice-President, Gilbert; Cristina Poletti, YLD President, Scottsdale; David J. Johns, Flagstaff; Preston L. Pollock, Globe; D. Christopher Russell, Sierra Vista; Amy P. Hernandez, Tucson; Diandra Day Benally, Fountain Hills; Jena Decker-Xu, Phoenix; Robert J. McWhirter, Phoenix; Robyn M. Austin, Public Member, Tucson; Cedric Dave, Public Member, Chandler; Mignonne Hollis, Public Member, Sierra Vista; Cortez W. Smith, Public Member, Casa Grande; Mike Baumstark, At-Large Member, Scottsdale; and Marcus Reinkensmeyer, At-Large Member, Phoenix.

BOARD MEMBERS PRESENT VIA ZOOM: Kelsi Lane, Secretary-Treasurer, Tempe; Heather Baker-Muschkatel, Sun City; John W. Moody, Phoenix; David B. Rosenbaum, Phoenix; Chloé Woods, Phoenix; Jimmie Dee Smith, Yuma; Denis M. Fitzgibbons, Casa Grande; Benjamin Taylor, Ex-Officio Member, Phoenix; and Justice Kathryn King, Supreme Court Liaison, Phoenix.

BOARD MEMBERS WITH EXCUSED ABSENCES: Louis S. Fidel, Tucson; Dean Stacy Leeds, Ex-Officio Member, ASU; and Dean Marc L. Miller, Ex-Officio Member, UofA.

STAFF: Joel England, CEO/Executive Director; Jessica Iennarella, Chief Financial Officer; Joe Hengemuehler, Chief Communications Officer; Lori Maxwell, Chief Information Officer; Trish McCarty, HR Director; Lisa Panahi, General Counsel; Roberta Tepper, Chief Member Services Officer; Maret Vessella, Chief Bar Counsel; Genna Barela, Manager of Board Operations; Deanna Commack, Executive Assistant; Chris Wyatt, IT Lead; and Patricia Seguin, Legal Services Manager.

STAFF PRESENT VIA ZOOM: Noah Coakley, Chief of Staff/DEI Director; Meredith Vivona, Ethics Counsel; and Karen Oschmann, CPF Administrator.

GUESTS: Denise Blommel, Retired Judge Sally Simmons, Gregg Woodnick and Judge Samuel Thumma.

1. Call to Order – Ted Schmidt

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

2. Call to the Public – Ted Schmidt

President Schmidt made a Call to the Public at which time Retired Judge Sarah R. (“Sally”) Simons and Denise Blommel (via Zoom) were recognized. Both Denise Blommel and Judge Simons advised the Board that they would be considering a proposed petition to amend Rule 32(e), which would create voting position on the Board for the President of the Senior Lawyers Division. They respectfully requested that the Board consider approving the proposal, which would bring the wisdom of the many years of experience of the Senior Lawyers Division to the Board.

3. President's Report – Ted Schmidt

- President Schmidt welcomed the Board to the Hacienda del Sol.
- President Schmidt attended Judicial Conference Flagstaff on October 21st.
- President Schmidt attended Judicial Council Meeting on October 24th in Flagstaff.
- President Schmidt attended and spoke at the Arizona Justice Project Event in October in Tucson.
- President Schmidt attended Senior Lawyer Division Drop-In Session re Keller & the Rule of Law on October 25th.
- President Schmidt attended Young Lawyers Judicial Reception in Tucson on October 30th.
- President Schmidt attended Chief Justice Robert Brutinel Retirement Celebration on November 1st.
- President Schmidt attended and spoke at the Fall Admission Ceremony at the Supreme Court on November 6th.
- President Schmidt attended and spoke at New Member Orientation on November 20th.
- President Schmidt attended the Dedication of the Office of the Clerk of the Court Division 2 Court of Appeals on November 21st.
- President Schmidt attended the Ribbon Cutting Ceremony at the University of Arizona College of Law on October 18th and commented on how wonderful it is.
- President Schmidt turned the floor over to Joe Hengemuehler, Chief Communications Officer, who then introduced the “Living the Mission Statement” via video produced by his team. The video was shown to the Board. President Schmidt thanked Joe Hengemuehler and his Communication team for outstanding work.

4. CEO/ED's Report – Joel England

- CEO England informed the Board that Board Member Henry Whitmer, Prescott, submitted his resignation to the Board as he was recently elected to serve as the Judicial Officer in Division 5 of the Yavapai County Superior Court. Judge Whitmer began serving on November 20th and we wish him the best.
- CEO England informed the Board that the Arizona Supreme Court issued its decision on the Goldwater Petition. The Court modified Supreme Court Rule 32 to clarify that the State Bar's compliance with *Keller* extends beyond lobbying activities to include activities related to regulating the legal profession or improving the quality of legal services. The State Bar already applies *Keller* to its activities generally; therefore, we do not anticipate any significant changes to our operations.
- CEO England informed the Board that the State Bar's internal Employee Retention Workgroup recommend changes to the annual review process; new system and process will be rolled out to employees beginning in January of 2025.

The following agenda item was taken out of order.

15. Commission on Judicial Performance Review – Judge Danelle Liwski gave the Board an overview of the Commission on Judicial Performance Review and it's JPR results. Judge Liwski indicated that not enough participants fill out the surveys; however, voters are starting to pay attention to the results. The Board discussed.

5. Appointments to the Arizona Foundation for Legal Services and Education Board of

Directors – President Schmidt reminded the Board that it makes six appointments to the Foundation’s Board. President Schmidt has reached his term limits and Denis Fitzgibbons is not seeking renewal of his expired term. President Schmidt called for volunteers. Jena Decker-Xu and Diandra Day Benally volunteered.

MOTION to appoint Jena Decker-Xu and Diandra Day Benally to the Arizona Foundation for Legal Services & Education Board of Directors by: Robert J. McWhirter

Seconded by: Mignonne Hollis

Unanimous

6. Appointments Committee - Doreen McPaul

- **Arizona Supreme Court Committee on Character and Fitness**

The Appointments Committee received six applications for four lawyer member openings. The Committee recommended the following qualified individuals in ranked order for the Board’s consideration in crafting its nominations to the Court for the four lawyer positions.

- Mr. Oscar Lizardi, Rusing, Lopez & Lizardi PLLC
- Mr. Kevin Morrow, Office of the Attorney General
- Mr. George Biederman, Biederman Law Office
- Mr. Adam Wintz, Mangum Wall Stoops & Warden PLLC
- Mrs. Yvette Ashworth, Johnson & Associates
- Ms. Elizabeth Ortiz, Arizona Prosecuting Attorneys’ Advisory Council

MOTION to nominate the applicants, as ranked and noted above, as submitted by the Appointments Committee to the Court by: Robert J. McWhirter

Seconded by: Mignonne Hollis

Passed by a majority of the vote; Doreen McPaul abstained.

- **Arizona Supreme Court Committee on Examinations**

The Appointments Committee received two applications for four lawyer member openings. There is currently ongoing recruitment; however, the Committee recommended the following qualified individuals in alphabetical order, with no distinction, for the Board’s consideration in crafting its nominations to the Court for the open lawyer positions.

- Mr. George Biederman, Biederman Law Office
- Ms. Elizabeth Ortiz, Arizona Prosecuting Attorneys' Advisory Council

MOTION to nominate the two applicants, without distinction as noted above, as submitted by the Appointments Committee to the Court by: Robert J. McWhirter

Seconded by: Marcus Reinkensmeyer

Unanimous

- **City of Phoenix Judicial Selection Advisory Board**

There is one lawyer opening. The Appointments Committee received no applications for this position. Recruitment is ongoing.

- **Commission on Judicial Conduct**

There is one lawyer opening. The Appointments Committee received six applications. The

Committee recommended the following qualified individuals in ranked order for the Board's consideration in crafting its nominations to the Court for the lawyer position.

- Ms. Denise Aguilar (Incumbent)
- Ms. Elizabeth Ortiz, Arizona Prosecuting Attorneys' Advisory Council
- Mr. Brian Snyder, Snyder & Wenner PC
- Mrs. Yvette Ashworth, Johnson & Associates
- Mr. Oscar Lizardi, Rusing, Lopez & Lizardi PLLC
- Mr. Adam Wintz, Mangum Wall Stoops & Warden PLLC

MOTION to nominate the applicants, as ranked and noted above, as submitted by the Appointments Committee to the Court by: Robert J. McWhirter

Seconded by: Christina Poletti

Unanimous

- DNA-People's Legal Services
The Appointments Committee received two applications for one lawyer member opening. The Committee recommended the following qualified individuals in ranked order for the Board's consideration in crafting its nominations to the Court for the open lawyer position.
 - Mr. Adam Wintz, Mangum Wall Stoops & Warden PLLC
 - Mr. George Biederman, Biederman Law Office

MOTION to nominate Mr. Adam Wintz to the Court by: Mignonne Hollis

Seconded by: Chris Russell

Unanimous

- Board of Legal Specialization
There are two public openings and one law school representative opening. The Appointments Committee received one application appropriate for the law school representative opening. Recruitment is ongoing for the two open public seats. The Committee recommended the following qualified individual for the law school representative.
 - Prof. Paul Bennett, University of Arizona James E. Rogers College of Law

MOTION to nominate Prof. Paul Bennett to the Court by: Robert J. McWhirter

Seconded by: Mignone Hollis

Unanimous

Heather Baker-Mushkatel left the meeting for the next item on the agenda.

7. Special Constitutional Appointments Committee – Doreen McPaul

- Arizona Commission on Appellate Court Appointments
The Appointments Committee recommend the following applicants ranked in order of merit for the Board's consideration in crafting its nominations to the Governor:
 - Mr. Oscar Lizardi, Rusing, Lopez & Lizardi PLLC
 - Mr. Micah Schmit, United States Attorney's Office

MOTION to nominate the two applicants, as ranked and noted above, as submitted by the Appointments Committee to the Governor by: Robert J. McWhirter

Seconded by: Mignonne Hollis

Passed by a majority of the vote; Doreen McPaul abstained

- Coconino County Commission on Trial Court Appointments
The Appointments Committee recommend the following applicant for the Board's consideration in crafting its nominations to the Governor:
 - Hon. Mark R. Moran (ret.), Supervisorial District 3

MOTION to nominate the applicant as submitted by the Appointments Committee to the Governor
by: Marcus Reinkensmeyer
Seconded by: Robert J. McWhirter
Unanimous

- Maricopa County Commission on Trial Court Appointments
The Appointments Committee recommend the following applicant for the Board's consideration in crafting its nominations to the Governor:
 - Ms. Yvette Ashworth, Johnson & Associates, Supervisorial District 4

MOTION to nominate the applicant as submitted by the Appointments Committee to the Governor
by: Robert J. McWhirter
Seconded by: Christina Poletti
Unanimous

- Pima County Commission on Trial Court Appointments
The Appointments Committee recommend the following applicants, with no order of rank as both applicants are in different supervisorial districts, for the Board's consideration in crafting its nominations to the Governor:
 - Mr. Thom Cope, Supervisorial District 3
 - Ms. Katherine Voll, Supervisorial District 5

MOTION to nominate the applicants as submitted by the Appointments Committee to the Governor
by: Robert J. McWhirter
Seconded by: David J. Johns
Unanimous

- Pinal County Commission on Trial Court Appointments
The Appointments Committee recommend the following applicant for the Board's consideration in crafting its nominations to the Governor:
 - Mr. George Biederman, Biederman Law Office, Supervisorial District 5

MOTION to nominate the applicant as submitted by the Appointments Committee to the Governor
by: Robert J. McWhirter
Seconded by: Mignone Hollis
Unanimous

8. Finance and Audit Committee – Jessica Iennarella, Chris Russell

- President Schmidt thanked CFO Iennarella and State Bar staff on finalizing the State Bar's

budget.

- Operating and capital budgets have been signed off on by the F&A Committee and the Executive Council and are presented for the Board's ultimate approval today.
- State Bar of Arizona 2025 Budget – CFO Iennarella presented the 2025 Budget. The Board discussed.
 - Budgeted surplus of \$259K excluding section activity.
 - Revenue is \$18,826K excluding section activity – 1.8% increase over 2024's budget & 0.2% increase over 2024's projected actuals.
 - Expenses are \$18,566K excluding section activity – 3.0% increase over 2024's budget & 6.0% increase over 2024's projected actuals.
 - Section activity is net deficit of \$179K.
 - Net budgeted surplus is \$80K.

MOTION to approve the State Bar's 2025 Operating Budget by: Robert J. McWhirter
Seconded by: Chris Russell
Unanimous

- State Bar of Arizona Capital Budget (2025-2029) – CFO Iennarella presented the 2025-2029 Capital Budget. The Board discussed.
 - In line with targeted average.
 - Most significant project is completion of case management software replacement.

MOTION to approve the State Bar's 2025-2029 Capital Budget by: Chris Russell
Seconded by: Robert J. McWhirter
Unanimous

- Status/informational reports were provided on the following:
 - State Bar of Arizona Q3 2024 Financial Reports
 - State Bar of Arizona Q3 Client Protection Fund 2024 Financial Statements

9. Proposed Petition to Amend Rule 45 – Lisa Panahi, Meredith Vivona

- Meredith Vivona, Ethics Counsel and Legal Advisor to the Fee Arbitration Program, presented the Proposed Petition. The Petition seeks to increase the amount of Continuing Legal Education awarded to volunteer Fee Arbitration Program arbitrators who compete a hearing for the Program. The Petition seeks to increase the amount of CLE awarded from one hour to two hours for each hearing completed, unless the arbitrator serves as a panel chair. A panel chair would be eligible to receive four hours of CLE credit. The Board discussed.

MOTION to file the Proposed Petition to Amend Rule 45: Sam Saks
Seconded by: Robert J. McWhirter
Unanimous

BREAK – The Board took a short recess.

10. Consent Agenda – Ted Schmidt

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

MOTION to approve the Consent Agenda: Chris Russell
Seconded by: Marcus Reinkensmeyer
Unanimous

- a) Approval of October 18, 2024, Board Meeting Minutes
- b) Approval of November 1, 2024, Board Special Meeting Minutes
- c) Approval of Resignations in Good Standing
- d) Resignation in Lieu of Reinstatement
- e) Approval of Reinstatement of Member(s) Suspended for Non-Compliance with Annual Membership Fees and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
- f) Proposed Petition to Amend Rule 8.1(d), Ariz. R. Civ. P.
- g) Proposed Petition to Amend Rules 4 and 55(a), Ariz. R. Civ. P.
- h) Proposed Petition to Amend Rules 47(a) and 47.2(a), Ariz. R. Fam. L. P.
- i) Proposed Petition to Amend Rule 47(k), Ariz. R. Fam. L. P.
- j) Proposed Petition to Amend ER 8.5(a), Rule 42, and Rules 60, 64 and 65, Ariz. R. Sup. Ct.

11. Rules Review Committee – David Rosenbaum

- Proposed New Civil Jury Instruction - Adverse Inference – Invocation of the Constitutional Right Against Self-Incrimination Jury Instruction
David Rosenbaum presented the proposed instruction regarding the invocation of the constitutional right against self-incrimination. The Board discussed.

MOTION to approve the Proposed Civil Jury Instruction: Chris Russell
Seconded by: Mignone Hollis
Unanimous

- Proposed New Criminal Jury Instructions – Hazardous Materials
David Rosenbaum presented the proposed instruction, which would clarify that photos may be used in place of hazardous items and to avoid speculative language. The Board discussed.

MOTION to approve the Proposed Criminal Jury Instruction: David Johns
Seconded by: Christina Poletti
Unanimous

- Proposed Petition to Amend Rule 32(e), Ariz. R. Sup. Ct.
David Rosenbaum presented the proposed petition, which would add the President of the Senior Lawyer’s Division as a voting member position to the Board. The Board discussed.

MOTION to file the petition: Chris Russell
Seconded by: Sam Saks
Unanimous

- Proposed Petition to Amend Comment 1 to ER 4.2, Rule 42, Ariz. R. Sup. Ct.
David Rosenbaum presented the proposed petition, which would clarify that lawyers can counsel their clients about communications the client has with a represented party, even

though the lawyer would not be able to have that communication directly. The Board discussed.

MOTION to file the petition: Robert J. McWhirter
Seconded by: Chris Russell
Unanimous

The next two agenda items were taken out of order.

13. Access to Justice; Chat Bot for the public and member– Joe Hengemuehler

Joe Hengemuehler, Chief Communications Officer presented the State Bar’s new website chatbot: Lee Gull. A demonstration was provided, and the Board discussed.

14. Client Protection Fund Board of Trustees– Gregg Woodnick

Gregg Woodnick, Chair of the CPF Board of Trustees presented the 2023 Annual Report of the CPF. Mr. Woodnick thanked Karen Oschmann for her dedication and hard work and Jessica Iennarella, our new CFO for the seamless transition.

12. Arizona Commission on Access to Justice – The Honorable Judge Samuel Thumma

Judge Thumma discussed the Commission’s two new proposals to the Arizona Code of Judicial Administration. The first re Community-Based Justice Work Service Delivery Models and the second proposal would transition the Arizona Commission on Access to Justice to the ACJA from an Administrative Order.

16. Mandatory In-Person Board Meetings – Ted Schmidt

President Schmidt presented the dates for the two mandatory in-person meetings for 2025:

- February 21, 2025
- April 18, 2025

17. Human Resources Subcommittee – Kelsi Lane

Kelsi Lane informed the Board that a survey will be sent to Board Members re CEO England in January 2025.

18. Mark Harrison Memorial 10-Minute Topics – Robert J. McWhirter

Bob McWhirter presented on Legal Logic.

19. Character and Fitness Review Process – Marcus Reinkensmeyer

President Schmidt thanked Marcus for his dedication and service.

Marcus Reinkensmeyer presented a brief update on changes to the Character & Fitness Application Process, specifically a re-writing of the application itself to a more streamlined version.

MOTION to adjourn the meeting by: Robert J. McWhirter

Seconded by: Christina Poletti

Unanimous

Meeting adjourned at 11:21 a.m.