

**MEETING OF THE  
BOARD OF GOVERNORS  
OF THE  
STATE BAR OF ARIZONA  
June 14, 2016  
Phoenix, AZ**

BOARD MEMBERS PRESENT: Geoffrey Trachtenberg, President; Lisa S. Loo, President-Elect, Phoenix; Alex B. Vakula, First Vice President, Prescott; Jeffrey Willis, Second Vice President, Tucson; Steven A. Hirsch, Secretary-Treasurer, Phoenix; Diane L. Drain, Phoenix; Richard D. Coffinger, Glendale; Hon. David G. Derickson, Phoenix; Denis M. Fitzgibbons, Casa Grande; Brian Y. Furuya, Flagstaff; Patrick Greene, Tombstone; Melissa S. Ho, Phoenix; James B. Penny, Tucson; Jennifer R. Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Public Members: Tony Finley, Tucson; Audrey R. Jennings, Scottsdale; Meredith Peabody, Prescott and Anna C. Thomasson, Phoenix; and At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Dean Shirley Mays, Phoenix; Dean Marc Miller, Tucson; Court Liaison Hon. Clint Bolick.

EXCUSED ABSENCES: Tyler J. Carrell, YLD President, Phoenix; Ex-Officio Member: Dean Douglas Sylvester, Tempe;

OTHERS PRESENT: Nina Benham, Board Services Specialist; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, CCO; Tim Eigo, Editor *Arizona Attorney*; John Furlong, General Counsel/Deputy Director; Kathy Gerhart, Chief Financial Officer; Rob Hosch, Technology Support Director; Gayle Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Lisa Panahi, Sr. Ethics Counsel; John Phelps, CEO/Executive Director; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel

GUESTS: Newly elected or appointed Board members: John W. Gordon; Kenney F. Hegland; YLD President Alexia J. Peterson; Pat Gerrich, Community Legal Services; Andrea Goddard, DNA People's Legal Services Inc.; Ellen Katz representing Legal Services Committee; Dr. Kevin Ruegg, Arizona Foundation for Legal Services & Education; and Anthony Young, Southern Arizona Legal Aid.

President Geoffrey Trachtenberg called the Board meeting to order at 1:15 p.m. and welcomed everyone.

**PRESIDENT'S REPORT** – Geoffrey Trachtenberg

- New and re-elected Board members:
  - District 1: Brian Y. Furuya, Coconino County Attorney's Office, Flagstaff (elected)
  - District 3: Hector M. Figueroa, Town of Payson, Payson (elected)
  - District 4: Patrick K. Greene, Patrick K. Greene Attorney at Law, Tombstone (re-elected)
  - District 5: Kenney Hegland, University of Arizona College of Law, Tucson (elected)
    - Dee-Dee Samet, Dee-Dee Samet PC, Tucson (re-elected)
    - Jeffrey Willis, Snell & Wilmer LLP, Tucson (re-elected)
  - District 7: Jimmie Dee Smith, Law Office of Jim D. Smith PC, Yuma (re-elected)

YLD President: Alexia J. Peterson, DeConcini McDonald Yetwin & Lacy PC, Phoenix (elected)  
Public Member: John W. Gordon, Prescott (appointed)

### **CEO/ED REPORT** – John Phelps

- Today is Army Day and Flag Day, reminders to remember all those who have served and are serving in the armed forces around the world.
- Attended the 2016 Retired Army Judge Advocates (RAJA) Conference in Tucson last week. It was well attended and the eldest Judge Advocate in attendance was 94.
- Staff in supervisory roles completed the Bar's 2<sup>nd</sup> Annual (internal) Leadership Development Program. The nine monthly programs culminated in a graduation ceremony with keynote speaker Shirley Mays, Dean of Arizona Summit Law School.
- Convention starts June 15; pre-registration is 100 higher than last year. Congratulations to Convention Co-Chairs Hon. Patricia Norris and Samuel Chang and the Committee.
- Working on transition in Board leadership. President-Elect Lisa Loo will soon make appointments to the Bar's 28 standing committees as well as the seven standing Board committees.
- Planning for the July Board Retreat. Results of the Board self-assessment survey will be discussed.
- Planning and preparing for CLE by the Sea at the Hotel del Coronado.

### **CERTIFICATION OF ELECTION RESULTS** – Geoffrey Trachtenberg

- **MOTION:** Lisa Loo moved, Brian Furuya seconded and the motion carried unanimously to certify the 2016-2019 Board election results as provided by Votenet Solutions Balloting Services Division.

### **ELECTION OF 2016-2017 STATE BAR OF ARIZONA OFFICERS** - Geoffrey Trachtenberg

- Pursuant to Court rule, the president-elect automatically ascends to the office of president. The Board congratulated President Lisa Loo (Arizona State University's General Counsel, Tempe) in her new role.
- Pursuant to Court rule, the first vice president automatically ascends to the office of president-elect. The Board congratulated President-Elect Alex B. Vakula (The Vakula Law Firm PLC, Prescott) in his new role.
- Lisa Loo nominated Jeffrey Willis (Snell & Wilmer LLP, Tucson) to serve as first vice-president. No other nominations were made. Mr. Willis was elected by acclamation and was congratulated by the Board.
- Jeffrey Willis nominated Steven Hirsch (Quarles & Brady LLP, Phoenix) to serve as second vice-president. No other nominations were made. Mr. Hirsch was elected by acclamation and was congratulated by the Board.

#### **Secretary-Treasurer position.**

- Richard Coffinger nominated Jimmie Dee Smith to serve as secretary-treasurer.
- Meredith Peabody nominated Brian Furuya as secretary-treasurer.
- Melissa Ho nominated Sam Saks as secretary-treasurer.
- President Trachtenberg asked for any other nominations and, hearing none, the nominations for secretary-treasurer were closed.
- Each candidate nominated was then given the opportunity to address the Board.

- After Brian Furuya spoke, Sam Saks withdrew his name from consideration and publicly supported Mr. Furuya for the position.
- Voting was conducted by secret ballot and were counted, pursuant to the bylaws, by the (current) secretary-treasurer and the CEO/executive director.
- President Trachtenberg announced that Brian Furuya was elected to the 2016-2017 secretary-treasurer position.

**BREAK** – Photos of the 2016-2017 Board of Governors and Officers were taken.

### **CONSENT AGENDA**

- a) Approval of May 20, 2016 Board Meeting Minutes
  - b) Approval of Resignations – In Good Standing (list updated 6/14/16)
  - c) Approval of Reinstatements of Members suspended for Non-Compliance with MCLE Requirements, Rule 45, Ariz. R. Sup. Ct.
  - d) Approval of Suspensions for Non-Payment of Dues (list updated 6/14/16)
  - e) Request for 2015 Annual Dues Waivers Requests/Late Fees
- **MOTION:** Patrick Greene moved, Alex Vakula seconded and the motion carried unanimously to approve the Consent Agenda as presented.
  - **AMENDED MOTION:** Alex Vakula moved and Hector Figueroa seconded the motion to remove the Approval of Resignations and the Approval of Suspensions for Non-Payment of Dues for a technical change. During the meeting Membership Administrator and Services Manager Sarah Corpening received word that a member should be removed from the Suspension list and added to the Resignations in Good Standing list. After making those modifications to both documents, the Board voted unanimously to support the changes and approve the entire Consent Agenda.

### **RULES COMMITTEE** – Chair Steve Hirsch

Revised Criminal Jury Instructions

- The proposed revisions to the Criminal Jury Instructions are lengthy and thorough.
- Changes were designed to update the jury instructions with legislative changes.
- In a vote of 5-0 the Rules Committee unanimously supports them as written.
- **MOTION:** Coming as a motion from the Rules Committee, requiring no second, carried unanimously to adopt the Revised Criminal Jury Instructions.

Proposed Reply to R-16-0022, Petition to Amend the Rules of Procedure for Eviction Actions

- The Board previously voted to support the Legal Services Committee's proposed petition that would allow for a change of judge in eviction actions and to track such actions for one year to ascertain how this provision is working.
- The Petition was filed and comments in opposition were received. The Legal Services Committee prepared a proposed Reply. The Rules Committee voted to approve the Reply in a vote of 3-2.
- Mr. Coffinger and Mr. Derickson explained their "no votes" at the Committee level and urged the Board to adopt a revised Reply that stated that differing constituencies of our membership and the judiciary had different views on the issue and that the Bar therefore no longer takes a position on the issue.
- **MOTION:** Coming from the Committee, requiring no second, in a vote of 14-10 the motion carried to file the Reply that was provided in the materials that supports the petition and rule change.

Proposed Comment to R-16-0034, Petition to Amend Rule 5(a), Ariz. R. Civ. App. P.

- The current rule provides five extra days when calculating the deadline for filing a response to a brief, motion or other filing served by either mail or electronic transmission. If the proposed amendment is adopted, this additional five day period would no longer apply to the deadline for responding to electronically-filed documents. The proposed comment in opposition emphasized that no need exists, however, to amend the Rule or eliminate the five day period for e-filed documents.
- Rules Committee felt the opposition was well stated and voted 5-0 in favor of supporting the proposed comment and the State Bar would oppose the Petition.
- **MOTION:** Coming from the Committee, requiring no second, the motion carried unanimously to file the Comment to R-16-0034 as written (to oppose the Petition).

R-16-0013 Petition to Amend Rule 32, Ariz. R. Sup. Ct.

- Mr. Hirsch summarized the details in the Bar's Comment that had been filed with the Court noting where the Board was in agreement with the recommendations, where it provided alternatives to the recommendations contained in the Petition, and where the recommendations were in opposition of the Board's proposals.

#### **APPOINTMENTS COMMITTEE** – Chair Jeffrey Willis

ABA House of Delegates

- The terms of two of the Bar's five Delegates in the House of Delegates will expire in August.
- The Appointments Committee screened four applications which included the two incumbents' applications.
- **MOTION:** Coming as a motion from the Appointments Committee, requiring no second, unanimously carried to reappoint Margarita Silva (M. Silva Law Firm PLC, Phoenix) and Adam Zickerman (Zickerman Law Office PLLC, Flagstaff) to another two-year term as ABA Delegates.

#### **BOARD OF GOVERNORS' ABA DELEGATE** – Geoffrey Trachtenberg

- According to a Board policy created in 2003, at least one of the ABA House of Delegates members appointed by the Board of Governors shall be an attorney member of the Board at the time of appointment.
- Currently Jimmie Dee Smith is occupying that seat and is eligible for reappointment.
- **MOTION:** Alex Vakula moved, Richard Coffinger seconded and the motion carried unanimously to reappoint Jimmie Dee Smith to a two-year term as the Board's appointed ABA Delegate.

#### **DUES OPT-IN/OPT-OUT PROPOSAL RE; LOBBYING EXPENSES** – CEO John Phelps and CCO Rick DeBruhl

- The Bar is subject to the current Administrative Order regarding the dues structure.
- Any change or modification to dues would require the Court to act.
- Pursuant to the Board's vote at its May meeting, President Trachtenberg submitted a request to the Court to consider a reallocation of funds for the Client Protection Fund and a postponement of the scheduled 2018 dues increase to 2019.
- The Board had a meaningful discussion regarding future funding for lobbying expenses if it considered the opt-out/opt-in process on the dues statement.
- The Board reiterated its commitment to the policy of remaining "Keller pure".

- Other mandatory bars are studying this issue. Utah and Michigan provide an opt-out on their dues statements.

**PRO BONO INITIATIVES IN ARIZONA PANEL DISCUSSION** – Geoffrey Trachtenberg, Moderator

- **Panelists:** Pat Gerrich, Community Legal Services; Andrea Goddard, DNA People’s Legal Services Inc.; Dr. Kevin Ruegg, Arizona Foundation for Legal Services & Education; and Anthony Young, Southern Arizona Legal Aid.
- Each panelist gave a brief summary of their background and tenure with their respective organizations.
- Pat Gerrich reported that CLS covers Maricopa, Mohave, Yuma, La Paz and Yavapai, however no one is currently assisting in Yavapai at this time.
  - CLS screens and organizes cases.
  - Stressed the importance of Ethical Rule 6.5.
  - Recommended number of hours of pro-bono work be 50 hours a year or donate money.
  - Attorneys responding to the opportunity to receive five CLE credit hours for 25 hours of pro bono work. Larger firms haven’t shown interest thus far.
  - Front-end staff work: screen client for financial need; evaluate case before assigning it out.
  - CLS has nine staff and eight advocates.
  - Not one malpractice claim in 22 years; importance of matching volunteer attorney with case.
  - Requested the State Bar to continue to recognize volunteer lawyers (see April 2016 *Arizona Attorney Magazine!*) and thank them for their service.
- Andrea Goddard reported that DNA is based in Flagstaff and covers Coconino County and into Utah with 250 active members and 150 are registered volunteers.
  - Divorce Clinic (for clients who are not in a rush or do not have domestic violence issues) most successful program; held same day each month and facilitated by same volunteer which provides continuity.
- Dr. Kevin Ruegg reported that AzFLS&E doesn’t have a Volunteer Lawyers Program but offers the following:
  - Modest Means Program - for consumers who make 250% or less of the Federal Poverty Guidelines; can meet with an attorney for \$75/hour.
  - Online Intake – public can apply for legal aid and if their income is too high can get a referral.
  - ABA program – people can get legal questions answered by qualified attorneys.
  - The Foundation works with the State Bar, Maricopa County Bar Association and the Pima County Bar Association to handle referrals.
- Anthony Young reported that SALA covers nine counties.
  - For every client helped, one is turned away.
  - Upfront triage – cases assigned to either staff lawyers or volunteer lawyers.
  - Last year 20K hours donated - \$2M in services.
  - The Bar could assist in educating members, including via CLEs, that the rules have been changed to allow for the unbundling of legal services and limited scope representation.

## **COMMUNICATION/GOVERNMENT RELATIONS DIVISION** – CCO Rick DeBruhl

### **Economics of Law Survey Report**

- Mr. DeBruhl reported that the survey is conducted every three years. A new survey company was used this year. Some of the questions were reworded which means it is difficult to make direct comparisons to data from earlier surveys.
- 2600 participated in the survey.
- Median wage three years ago for a full-time lawyer was \$100k; in the new survey \$118k.
- Survey captures such things as age; number of years practicing; geographic area, etc.
- Billable hours per week were reported as 31 three years ago and 40 hours now.
- Only 3% reported they didn't take a vacation and most reported they take 2-4 weeks.
- Debt survey question – 31% reported graduating with more than \$100k debt.
- Pro Bono – median number of hours was 24 three years ago. This year only 21 hours were reported. Most numbers on the survey are going up but pro bono is going down.
- Limited Scope Representation is the ability to do a small aspect of the case – 50% have never represented a client for a portion of their legal matter.
- A book will be compiled with all the statistics and made available for purchase.

### **RECOGNITION OF CEO JOHN PHELPS**

- President Trachtenberg thanked CEO John Phelps for his outstanding leadership and management of the organization. The Board gave Mr. Phelps a standing ovation as he received a crystal award in recognition of and appreciation for his service.

### **RECOGNITION OF OUTGOING BOARD MEMBERS**

President Trachtenberg and the Board recognized and thanked the following members for their outstanding service to the Board and the State Bar:

- YLD President Tyler J. Carrell, Gallagher & Kennedy PA (honored in abstentia)
- Public Board Member Meredith Peabody, Prescott
- District 5 Board Member James Penny, Law Office of James B. Penny, LLC, Tucson

### **RECOGNITION OF OUTGOING PRESIDENT TRACHTENBERG**

- CEO John Phelps presented Geoffrey Trachtenberg with a coffee table picture book, signed by the staff and Board members, which illustrated his service as a Board member and as State Bar president.
- President-Elect Lisa Loo presented him with a leather-bound book containing every issue of *Arizona Attorney* magazine during the past Bar year which feature his president's columns.
- He was also presented a memento of appreciation on behalf of the State Bar.

### **ADJOURN**

There being no further business to come before the Board of Governors, the meeting adjourned at 5:15 p.m.

Respectfully submitted,

Steven A. Hirsch  
Secretary-Treasurer