

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

April 19, 2024

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 D. Benally, Fountain Hills; Jena Decker-Xu, Phoenix; Denis Fitzgibbons, Casa Grande; Amy Hernandez, Tucson; David Johns, Flagstaff; Robert McWhirter, Phoenix; John Moody, Phoenix; Preston Pollock, Globe; Christopher Russell, Sierra Vista; Jessica Sanchez, Board Advisor, Mesa; Elizabeth Schmitt, YLD President, Phoenix; Jimmie Smith, Yuma; Public Governors Robyn Austin, Tucson, Cedric Dave, Chandler; Mignonne Hollis, Sierra Vista; Cortez Smith, Casa Grande; At-Large Governors, Mike Baumstark, Scottsdale and Dave Byers, Phoenix; Hon. William Montgomery, Phoenix, Ex-Officio.

BOARD MEMBERS WITH EXCUSED ABSENCES: Kelsi Lane, Tempe; Leticia Marquez, Tucson; David Rosenbaum, Phoenix; Henry Whitmer, Prescott.

STAFF: Deanna Commack, Executive Assistant; Joel England, CEO/Executive Director; Kelly Flood, Bar Counsel; Joe Hengemuehler, Chief Communications Officer; Jessica Iennarella, Chief Financial Officer; Trish McCarty, HR Director; Tom McCauley, Senior Bar Counsel; Darla Neill, Board Administrative Assistant; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Stacy Shuman, Bar Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Roberta Tepper, Chief Member Services Officer; Maret Vessella, Chief Bar Counsel.

GUESTS: Victoria Ames, ASU; Arizona Uniform Law Commissioners: Barbara Atwood, Tim Berg, Hon. Sam Thumma; ASU Survey Team: Andrew Bertucci, Kenja Hassan, Susan Miller, Dr. Shannon Portillo; Janna Day, Lobbyist; Veronika Fabian; Mike Farrell; Nancy Greenlee; Patricia Huntwork; Michael Kielsky; Lisa Presler; Joshua Smith; Leah Won, UA.

Call to Order – Benjamin Taylor

President Taylor called the meeting to order at 8:32 a.m.

Call to the Public – Benjamin Taylor

President Taylor made a Call to the Public, at which time attorney Michael Kielski was recognized and addressed the Board regarding his experience with the lawyer regulation system.

President's Report – Benjamin Taylor

- Featured on 12 News and ABC 15 News
- Access to Justice Committee Update
 - In the process of making appointments; lots of good people applied
- Advancement & Improvement Committee Update

- Application deadline April 30; committee will be formed so members can provide feedback about the Bar and find resolutions to issues
- Lengthy discussion ensued regarding new committee's role regarding discipline cases. Board discussed limitations on discussing open discipline cases, and role of Discipline System Oversight Committee to be the place to discuss issues with system, including review of closed cases, and role to recommend changes and improvements. Discussed Court's role as overall authority for the system and limits on the role of the Board of Governors. Discussed rules for public comment and importance for Board to hear from both sides on an issue.
- Attended:
 - Coconino County Bar Association presentation with CEO
 - Innocence Project Conference in New Orleans; presented on peremptory challenges, jury selection
 - Western States Bar Conference (WSBC) in Hawaii
 - ABA Day on The Hill, along with CCO, COS, and others from Arizona; promoted access to justice issues and Legal Services Corporation funding
- Introduced Amy Hernandez, the new District 5 Governor appointed by the Court; she replaces Sandra Bensley due to appointment as a commissioner.

CEO/ED's Report – Joel England

- Strategic Agenda Update
 - Following up on Public Governor Cedric Dave's suggestion that quarterly reports be given to the Board; COS/DEI Director Noah Coakley is compiling that data for future updates
- Attended:
 - ABA Bar Leadership Institute – leadership training with Doreen McPaul
 - Ms. McPaul expressed her appreciation for the great opportunity to attend practical sessions and discuss difficult Bar-related topics and network with peers
 - Coconino County Bar Association presentation with the president; a fun opportunity to engage with local attorneys
 - WSBC: Board approved CEO's designation as secretary/treasurer and his coordination of these annual conferences for the next couple of years. Big thanks to Executive Assistant Deanna Commack for all her work in organizing the three-day event and the I.T. Department for redesigning the WSBC website.
 - ABA Day on The Hill – shout out to CCO Joe Hengemuehler for his coordination of this event for Arizona's delegation
 - Access to Justice Commission Meeting
 - Requested a written Comment be submitted in opposition to the Goldwater Petition and the Commission agreed; Arizona Bar Foundation has done so; others committed to same: Arizona Black Bar, Arizona Asian American Bar, other affinity bars, managing partners of large law firms, 30 past State Bar presidents.

Discipline System Survey Update - Dr. Shannon Portillo
CEO Joel England recommended entering Executive Session.

EXECUTIVE SESSION: Jessica Sanchez moved, Bob McWhirter seconded and the motion carried unanimously at 9:00 a.m. The Board reconvened in Open Session at 10:25 a.m.

Updates

- Uniform Law Commission – Tim Berg
 - Two uniform laws signed by the Governor:
 - Partition of Estates (heirs property)
 - Unlawful Restriction in Land Records (can be redacted from title)
 - Currently working on benefits of creditors, mortgage modifications, virtual currency, conflicting laws in trust/estates, etc.
 - Feedback/comments always welcome
 - Judicial interviews project: Family Law - best practices for uniformity regarding custody cases
 - Yearend Omnibus: Associations Act (Business Law)
- Arizona Commission on Access to Justice
 - Rule Change Petition R-24-0006, filed by the Commission, seeks to add a comment to the Arizona Code of Judicial Conduct Rule 2.6, specifying certain things that a judicial officer can do to ensure a self-represented litigant’s right to be heard.

Rules Review Committee - Lisa Panahi

(Comments by Veronika Fabian and Joshua Smith, Criminal Practice & Procedure Committee; Mike Ferrell, Civil Practice & Procedure Committee)

- Proposed Comment to R-24-0026, Petition to Amend Rule 49(d)(1), Ariz. R. Civ. P. and Rule 18.1, Ariz. R. Crim. P.
 - Petition seeks to amend the civil and criminal rules to require that in §13-4521 proceedings, the criminal rules re the number of jurors and unanimity control.
 - Civil Practice & Procedure Committee recommended that the State Bar oppose the Petition.
- Proposed Comment to R-24-0010, Petition to Amend Rule 10.2(a), Ariz. R. Crim. P.
 - Petition seeks to amend the criminal rules to correct an “imbalance between prosecutors and defendants” but instead recreates the imbalance in favor of the defendant by removing the State’s access to relief.
 - The Criminal Practice & Procedure Committee recommended opposing the Petition.
- Proposed Comment to R-24-0016, Petition to Amend Rules 17.4 and 38, Ariz. R. Crim. P.
 - Petition seeks to enact a sweeping change to the rules by creating a restorative justice conference as a means of resolving cases with little to no input from stakeholders.
 - The Criminal Practice & Procedure Committee recommended supporting the Petition insofar as it proposes the formation of a task force only.
- Proposed Comment to R-24-0022, Petition to Amend Rule 11(b)(1), Ariz. R. P. Eviction Actions
 - Petition seeks to amend the rules to require the court in an eviction action to recall a case at the end of a calendar in which the plaintiff or defendant did not appear or respond after an initial call.

- The Civil Practice & Procedure Committee recommended opposing the Petition and advocated the Supreme Court create a task force or working group to determine the best method to avoid unnecessary defaults in eviction actions.
- Proposed Comment to R-24-0024, Petition to Amend Rule 5(d), Ariz. R. P. Eviction Actions
 - Petition seeks to amend rules to require verification that landlords comply with the CARES Act in order to proceed with a state special action.
 - The Civil Practice & Procedure Committee recommended opposing the Petition as drafted but suggested alternative language to amend the rule.
- Proposed Comment to R-24-0028, Petition to Amend Rule 34(f), Ariz. R. Sup. Ct.
 - Petition seeks to amend rules relating to the process for attorneys admitted in other states to become authorized to practice in Arizona.
 - State Bar officers recommended filing a comment in opposition to the proposal to eliminate the active practice requirement and the proposal to substitute another jurisdiction's character and fitness examination for Arizona's current process but took no position on the other proposed amendments.
- Proposed Comment to R-24-0030, Petition to Amend Rule 32(b) and (c), Ariz. R. Sup. Ct.
 - Petition seeks to amend rules to eliminate State Bar membership dues for non-regulatory functions.
 - State Bar staff recommended filing a comment in opposition.

MOTION: Bob McWhirter moved, Jessica Sanchez seconded and the motion carried over two abstentions to approve the Rules Review Committee report and recommendations as presented.

Certification of the 2024 Board of Governors Election Results - Joel England

- Publicly thanked all the candidates for their candidacy
- Elected:
 - Louis Fidel, District 5 (Pima/Santa Cruz Counties)
 - Chloé Woods, District 6 (Maricopa County)
- Re-elected:
 - Henry Whitmer, District 2 (Yavapai County)
 - Sam Saks, District 6 (Maricopa County)
 - Jimmie Smith, District 7 (La Paz/Yuma Counties)

MOTION: Cedric Dave moved, Bob McWhirter seconded and the motion carried unanimously to certify the 2024 Board of Governors election results.

Awards Working Group - Benjamin Taylor

Presented the AWG's proposed slate of recipients of the 2024 State Bar awards:

- Award of Appreciation (non-lawyer): Gabe Goltz, Arizona Supreme Court, Administrative Office of the Courts
- Award of Special Merit: D. Christopher Russell, The Russell Law Firm
- Diversity and Inclusion Leadership Award: Hon. Joseph Welty, Maricopa County Superior Court

- Hon. John R. Sticht Disability Achievement Award: African American Conference on Disabilities
- James A. Walsh Outstanding Jurist Award: Hon. Robert Brutinel, Arizona Supreme Court
- Mark I. Harrison Excellence in Mentorship Award: Debbie Weecks, The Law Offices of Debbie Weecks
- Member of the Year Award: Regina Nassen, Tucson City Attorney's Office
- Michael C. Cudahy Criminal Justice Award: William Ring, Coconino County Attorney's Office
- Outstanding In-House Counsel of the Year Award: Matthew Meaker, Sundt Construction, Inc.
- Sharon A. Fullmer Legal Aid Attorney of the Year Award: David Newstone, Defenders of Children
- Tom Karas Criminal Justice Award: Susan Corey, Office of Legal Advocate

MOTION: Sam Saks moved, Bob McWhirter seconded and the motion carried over one abstention to approve the 2024 award recipients as presented.

Special Constitutional Appointments Committee - Sam Saks

The SCAC met on April 18th. The due diligence reports were reviewed. All candidates were deemed constitutionally qualified. Each applicant was discussed regarding merit qualifications. The SCAC recommends the following applicants for the Board's consideration in crafting its nominations to the Governor of Arizona:

- Arizona Commission on Appellate Court Appointments
 - Mr. Keith Berkshire, Berkshire Law Office PLLC
 - Ms. Alexis Danneman, Perkins Coie LLP
 - Mr. Joel Nomkin, Perkins Coie LLP
 - Ms. Sara Presler, Presler Consulting LLC
 - Mr. Joel Robbins, Robbins & Curtin PLLC
 - Reaffirm the 2023 nominations to the Governor:**
 - Ms. Kathryn Marie Martin, U.S. Army Cyber Command
 - Ms. Brenda Muniz Furnish, Wm. E. Morris Institute for Justice
 - Mr. James Rappaport, Pima County Attorney's Office
 - Mr. Charles Wirken, Gust Rosenfeld PLC
- Maricopa County Commission on Trial Court Appointments
 - Supervisorial District 3**
 - Mr. James Peter Palestini, Palestini Law PLC
 - Mr. Joel Brooks Robbins, Robbins & Curtin PLLC
 - Supervisorial District 5**
 - Mr. Jesse R. Ritchey Silence Law Group
- Pima County Commission on Trial Court Appointments
 - Supervisorial District 3**
 - Mr. James L. Fullin, Pima County Legal Defender's Office Democrat
 - Mr. Adam Thomas Peterson, Farhang & Medcoff PLLC

MOTION: John Moody moved, Cedric Dave seconded and the motion to accept the SCAC's recommendations and submit them to the Governor of Arizona carried unanimously.

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: Motion made, seconded, and carried unanimously to approve the Consent Agenda:

- Approval of February 23, 2024 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
- Approval of Reinstatement of Member(s) Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
- Proposed Amendments to the Environmental & Natural Resources Law Section Bylaws
- Proposed Comment to R-23-0045, Petition to Amend Rule 7.2, Ariz. R. Civ. P.
- Proposed Comment to R-23-0051, Petition to Amend Rule 42, ER 1.8, Ariz. R. Sup. Ct.
- Proposed Comment to R-24-0002, Petition to Amend Rule 4.1(d), Ariz. R. Civ. P. and Rule 41(c), Ariz. R. Fam. L. P.
- Proposed Comment to R-24-0004, Petition to Permanently Adopt FASTAR
- Proposed Comment to R-24-0005, Petition to Amend Rules 1.5, 17.1, 17.2 and 17.3, Ariz. R. Crim. P.
- Proposed Comment to R-24-0009, Petition to Amend Rule 32.14(a) and 33.14(a), Ariz. R. Crim. P.
- Proposed Comment to R-24-0007, Petition to Amend Rule 31.2(a)(2)(A), Ariz. R. Crim. P.
- Proposed Comment to R-24-0008, Petition to Amend Rule 31.8(b)(1)(B), Ariz. R. Crim. P.
- Proposed Comment to R-24-0017, Petition to Amend Rule 1006, Ariz. R. Evid. and Add New Rule 107
- Proposed Comment to R-24-0018, Petition to Amend Rule 412, Ariz. R. Evid.
- Proposed Comment to R-24-0019, Petition to Amend Rule 613(b), Ariz. R. Evid.
- Proposed Comment to R-24-0020, Petition to Amend Rule 801, Ariz. R. Evid.
- Proposed Comment to R-24-0023, Petition to Amend Appendix A, Ariz. R. P. Eviction Action
- Proposed Comment to R-24-0025, Petition to Amend Rules 14.4 and 17.2, Ariz. R. Crim. P.
- Proposed Comment to R-24-0027, Petition to Amend Rule 23, Ariz. R. Civ. P.

Ethics Hotline Member Service - Lisa Panahi

- Overview of the Ethics Hotline service and statistics were provided:
 - Hotline deals with prospective issues and can mitigate potential discipline
 - Non-binding advice and guidance provided to members quickly, returning calls within one-two days (unless “urgent”)
 - Calls are not recorded but written summarized notes are maintained and are confidential

- 2017 Task Force agreed that the Hotline provides valuable services and recommended the Hotline remain intact
- Over the past three years, 5,723 calls received
- Currently averaging six calls daily
- There are two other practice hotlines: Practice 2.0 and Trust Account Hotline
- Bar's Ethics Counsel is key personnel with volunteers providing backup
- Chief Bar Counsel Maret Vessella indicated that out of 28,000 discipline charges, about 15/20 involved Hotline callers
 - A caller must authorize the release of the notes from their call for review by the Lawyer Regulation Office
 - A caller's good faith effort to mitigate potential ethics issues rarely results in discipline; great deference given to members who received advice
- Could an AI product be utilized for ethics advice 24/7 by members?
- How to increase use of the Hotline? Are more resources (staffing) needed?

MOTION: Sam Saks moved and Dave Byers seconded a motion to form a task force to study ways to strengthen the Hotline service and expand it so it's more widely used. The motion failed to pass.

Bylaw Amendment - Benjamin Taylor

- The Board discussed Bylaw 6.02 and 7.05
- A bylaw change must mirror Rule 32 since the Rules trump the bylaws, thus a Rule change is the first step
- Include this matter in the bylaws review scheduled for 2025
- No action taken at this time on this matter

Discrimination Complaint Policy - Jessica Sanchez

- The D&I Panel has completed its work with regard to proposed amendments to the current Board policy
- Amendments summarized

MOTION: Jessica Sanchez moved, Elizabeth Schmitt seconded and the motion to approve the proposed amendments to the Board's Discrimination Complaint Policy carried unanimously.

Finance and Audit Committee - Doreen McPaul and Jessica Iennarella

- Year-end December 31, 2023 Financial Statements
 - In February predicted a \$1.3M surplus, however, the surplus ended up being \$1.4M.
 - Annual audit begins first week in May.

Legislative Update - Janna Day

- SB1145 (Political Speech Rights) - dead at this point
- SB1471 (Complaints Against SBA Members; Dismissal) - dead at this point
 - Mr. Byers indicated that next week he will file a Petition with the Court requesting it take up this matter on an emergency basis
- SB1589 (Attorneys; court-appointed professionals; juries) – dead at this point
- SB1214 (CLE) - Signed by the Governor on 3/25/24

- SCR1044 (Judges’ Terms of “Good Behavior”) – alive; ballot referrals being held in Rules in the opposite chambers until leadership determines which ones they’re going to let continue to the ballot; just “Do Pass.”
- Strike All Amendments deadline has passed with no talk of revival.

Discipline System Oversight Committee Update - Dave Byers

EXECUTIVE SESSION MOTION: Jessica Sanchez moved, Bob McWhirter seconded and the motion carried unanimously to enter into Executive Session at 12:30 p.m. The Board returned to Open Session at 12:45 p.m.

Wellness Services Update – Joel England

- Six members have been identified to serve on the nonprofit board but three more are being recommended including two practicing attorneys and a mental health professional
- Bylaws for the nonprofit are being drafted

Convention Update – Joel England

- Reminder – **by April 26** - complete the Survey Monkey previously circulated in order to obtain luncheon/event tickets, reserve a hotel room, order a Convention polo shirt.
- Update:
 - Marketing is working on advertisements
 - Exhibit booths are still available
 - Revenue still under budget
 - Brochures being printed today and will be sent digitally
 - Website is open for registration

2024-2025 Board/Executive Council Meeting Schedule - Ted Schmidt

- Calendar for the upcoming year reviewed
- Two events called to Board’s attention; urged to attend in person:
 - Retreat July 25-26 at the Hassayampa Inn in Prescott
 - More opportunities for cooperation and collaboration between the Bar and the Yavapai County Bar
 - December Tucson events at Hacienda del Sol:
 - Bench/Bar CLE and reception on December 5th
 - Board meeting December 6th

Nominating Committee - Jessica Sanchez

- Board Advisor Sanchez will be sending an email Monday seeking candidates for a Board officer position (president-elect, vice president, secretary/treasurer)

Correspondence/Reports

- February 16, 2024 Executive Council Minutes
- March 18, 2024 Executive Council Minutes

MOTION: Cedric Dave moved, Preston Pollock seconded and the motion to adjourn the meeting at 1:17 p.m. carried unanimously.

ADJOURNED at 1:17 p.m.

Respectfully submitted,

Doreen N. McPaul
Secretary/Treasurer