

**MEETING OF THE  
BOARD OF GOVERNORS  
OF THE  
STATE BAR OF ARIZONA  
September 27, 2019  
Phoenix, AZ**

BOARD MEMBERS PRESENT: Brian Y. Furuya, President, Flagstaff; Denis M. Fitzgibbons, President-Elect, Casa Grande; Jennifer Rebolz, Vice President, Phoenix; Jessica Sanchez, Secretary-Treasurer, Mesa; Sandra Bensley, Tucson; Hector Figueroa, Payson; 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; Amanda Salvione, President, Young Lawyers Division; Sara Siesco, Phoenix; Jimmie Dee Smith, Yuma; Public Members Robyn M. Austin, Tucson; John Gordon, Prescott; and Jonathan Martone, Paradise Valley; At-Large Members David K. Byers, Phoenix, and Doreen McPaul, Window Rock; Ex-Officio Members Leah Won on behalf of Dean Mark Miller, Tucson, and Victoria Ames on behalf of Douglas Sylvester, Phoenix.

EXCUSED ABSENCES: Dee-Dee Samet, Tucson; Benjamin Taylor, Phoenix; Public Member Anna C. Thomasson, Paradise Valley; At-Large Member Lori Higuera, Phoenix; Board Advisor Jeffrey Willis; and Supreme Court Liaison Justice John Lopez.

OTHERS PRESENT: Matt Campbell, System Administrator; Candice French, HR Manager; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Joe Hengemuehler, Chief Communications Officer; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Carrie Sherman, Director of Board Operations; Karen Van Allen, Administrative Assistant; Maret Vessella, Chief Bar Counsel.

President Brian Furuya called the Board meeting to order at 9:00 a.m. Immediately preceding the meeting, the Board of Governors and State Bar staff held their annual networking event.

**Call to the Public**

President Furuya made a Call to the Public and, hearing nothing, proceeded to the next agenda item.

**President's Report** – Brian Furuya

- Attended:
  - New Mexico State Bar's Annual Meeting – focus on attorney wellness; coincidentally his President's Column in *Arizona Attorney Magazine* addresses this topic as well.
  - National Conference of Bar Presidents – mandatory bars continue to focus on ongoing *Fleck*-type cases which challenge the mandatory bar model. Also, national focus is on Arizona with the anticipated release of the Supreme Court's Task Force on Delivery of Legal Services which contains a sea change in the practice of law (abolish ER 5.4, expansion of paraprofessionals' roles).
  - Section Leadership Training
  - Bar Leadership Institute – kickoff retreat for 13<sup>th</sup> class of participants

- Reported that, as an experiment, Board and staff will be given remote access for the October Board meeting. Goal is to streamline logistics and to save costs and participants' valuable time.

### **CEO's/Executive Director's Report** – Joel England

- Staff Surveys: Benefits survey just completed as open enrollment is on the horizon. Next up: an organizational climate survey.
- Find-A-Lawyer (FAL): Launched first attempt at marketing this program/service. Spots featured in KTAR's Detour Dan's a.m./p.m. commute reports and in *Bruce and Pamela* podcasts. FAL rolled out in May 2018; one-year re-subscribers trending down. Executive Council will address at October meeting.
- Membership Assistance Program (MAP):
  - Approached by several members who requested that the Bar expand the current program. Officers agreed to have a task force study possible changes to the MAP, research what other bars are doing, and report back with a proposal.
  - The State Bar, Supreme Court and InReach have collaborated to offer a three-part (October 21, November 12, December 9) webinar on wellness and well-being strategies. CLE credit is not applicable for this free member service series.
- Introduced Karen Van Allen the new Administrative Assistant in the Board Operations Department.

### **10 Minute Topic** – Robert McWhirter

Mr. McWhirter presented on "Confrontation Clause History".

### **Board Policies and Board Members' Fiduciary Duties** – Jessica Sanchez and Lisa Panahi

- Although fiduciary obligations and conduct of Board members were covered at the July Board Retreat, the Executive Council felt it important to continue to build on that training.
- Recapped from Retreat:
  - Rule 32 which governs the State Bar of Arizona
  - A.R.S. Title 10: Duty of Loyalty and Duty of Care
  - Board Rules and Policies
    - Bylaws
    - Code of Conduct
    - Conflicts of Interest Policy
    - Conflicts of Interest Policy: Serving as Respondent's Counsel
    - Public Meetings/Records Policies
- The Board members weighed in on the scenarios presented.

### **Appointments Committee** – Sara Siesco

Appointments Committee Chair Sara Siesco summarized the process undertaken by the Committee to screen all the applications that had been received for the lawyer openings on Supreme Court's two committees as well as the interview process conducted with the public member candidates.

**MOTION:** Coming as a motion from the Appointments Committee requiring no second, the Board voted unanimously to submit the following slate of candidates to the Supreme Court for its consideration and appointment of one public member to its Committee on Character and Fitness:

Ms. Lisa D. Cagnolatti, Executive in Residence, ASU's W.P. Carey School of Business  
Mr. Dennis B. Fleming, Ordained Deacon in the Catholic Church  
Dr. Aaron D. Allen, Assistant Medical Examiner  
Ms. Katie J. Bryant, Executive Director, Udall Shumway

**MOTION:** Coming as a motion from the Appointments Committee requiring no second, the Board voted unanimously to submit the following slate of candidates to the Supreme Court for its consideration and appointment of three lawyers to its Committee on Character and Fitness:

Mr. Jared C. Leung, Davis Miles McGuire Gardner PLLC  
Ms. Erin M. Evans, Garrey Woner Hoffmaster & Peshek PC  
Ms. Kristin M. Wrobel, Maricopa County Office of the Legal Advocate  
Mr. Joseph G. Adams, Snell & Wilmer PA  
Ms. Elizabeth L. Feldman, Burt Feldman Grenier  
Ms. Lisa T. Hauser, Bonnett Fairbourn Friedman & Balint PC  
Mr. Timothy W. Durkin, Jackson White PC  
Ms. Ashley D. Adams, Adams & Associates PLC  
Mr. Richard K. Mahrle, Gammage & Burnham  
Mr. Michael Hensley, Jones Skelton & Hochuli  
Mr. Michael A. Schern, Schern Richardson Finter PLC

**MOTION:** Coming as a motion from the Appointments Committee requiring no second, the Board voted unanimously to submit the following slate of candidates to the Supreme Court for its consideration and appointment of four lawyers to its Committee on Examinations:

Mr. Timothy W. Durkin, Jackson White PC  
Ms. Erin M. Evans, Garrey Woner Hoffmaster & Peshek PC  
Mr. Jack L. O'Connor, Curry Pearson & Wooten PC  
Mr. Ira Rogal, Continental Testing Services  
Mr. Robert O. Stirling, Beus Gilbert PLLC  
Ms. Cory E. Tyszka, Jones Skelton & Hochuli PLC  
Ms. Ashley D. Adams, Adams & Associates PLC  
Mr. Michael G. Galloway, Lewis Roca Rothgerber Christie LLP  
Mr. Michael K. Goldberg, Goldberg Law Group  
Mr. Jeremy A. Rovinsky, National Paralegal College

**Consent Agenda** – Brian Furuya

- a) Approval of July 26, 2019 Board Meeting Minutes
- b) Approval of Resignations in Good Standing
- c) Approval of Resignations in Lieu of Reinstatement
- d) Approval of Reinstatement of Member(s) Suspended for Non-Compliance with Annual Membership Fee and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
- e) Ratification of the Bar's Filing of a Petition to Amend Rule 56, Ariz.R.Sup.Ct.

President Furuya asked if there was anything that needed to be removed from the Consent Agenda and, hearing nothing, the following motion was made:

**MOTION:** Denis Fitzgibbons moved, Jessica Sanchez seconded and the motion carried unanimously to approve the Consent Agenda.

**Finance and Audit Committee Report** – Kathy Gerhart

2020 Budget Guidelines Memorandum

**MOTION:** Coming as a motion from the Finance and Audit Committee requiring no second, the Board voted unanimously to approve the 2020 Budget Guidelines Memorandum as presented.

2020 Budget Timeline

The timeline for the preparation and presentation of the 2020 State Bar budget was reviewed with the Board.

Client Protection Fund Q2 2019 Financial Statements

\$196K cash  
\$2.5M CDARS  
\$428K Assessments  
\$16K Dividends/Interest  
\$8K Restitution  
\$114K Claims Paid  
\$241K Claims Paid to Date (\$400K budgeted)

A Board member requested a better picture regarding trends in the future. Is the current \$20/member from membership fees still appropriate to support the Fund? Is less or more required?

2019 Convention Financial Summary

	<u>2018</u>	<u>2019</u>	
Registrants	1,381	1,452	[new pricing for young lawyers increased attendance]
Net Surplus	\$69K	\$131K	[staff time not included]

2019 CLE by the Sea Financial Summary

	<u>2018</u>	<u>2019</u>
Registrants	269	256
Net Surplus	\$25K	\$23K

**Amicus Curiae Participation** – Lisa Panahi

9<sup>th</sup> Circuit Cases

Issues: Whether or not to join an *amicus* or file own *amicus*; filing deadlines and the fact that the Board does not meet in November.

- 9<sup>th</sup> Circuit found in favor of Oregon State Bar; Bar's position – 11<sup>th</sup> Amendment Immunity; Court ruled that *Janus* is binding authority; decision appealed.
- Appellees' brief due early November; Arizona has entered into a Common Interest Agreement with Oregon; Arizona's outside counsel (from *Fleck amicus*) re-engaged.
- Does the State Bar participate? If so why and what does Arizona say?
- Board's Amicus Curiae Policy authorizes a working group to determine the Bar's participation.

**MOTION:** Following discussion, Bob McWhirter moved, Hector Figueroa seconded and the motion carried to designate the Board's Executive Council as the working advisory group in this matter and to commit the Bar's resources towards this effort. Mark Harrison and David Rosenbaum recused from the vote.

### Arizona Court of Appeals – Division One

- Late last week the Bar received a soft mandate from the Court to opine, via an *amicus* brief, on certain issues – immunity and privilege - in connection with the attorney discipline process. Staff is looking at the underlying case which stemmed from a civil suit.
- Briefs are due by October 31.

**MOTION:** Following discussion, Dave Byers moved, Denis Fitzgibbons seconded and the motion carried unanimously to designate the Board’s Executive Council as the working advisory group in this matter with the brief provided to the Board in time for the October 25 meeting.

### Proposed *Keller* Refund Request Policy and Procedures – Lisa Panahi

- The handling of members’ requests for refunds of membership fees related to lobbying activities was included in the previous versions of the State Bar bylaws.
- This section was removed when the bylaws were recently rewritten and are now a stand-alone policy and procedures. Minor technical amendments were made to the original language.

**MOTION:** After review of the policy and procedures, John Moody moved, Mark Harrison seconded and the policy and procedures relating to *Keller* refund requests carried unanimously. Pursuant to the bylaws, the policy and procedures will be posted on the State Bar’s website.

### Proposed Governor Removal Procedures – Rick Palmatier

- Bylaw 6.08 and amended Rule 32(e) provides for the removal a Governor “for good cause by a vote of two-thirds or more of the Governors case in favor of removal.” Rule 32(e)(6) states four circumstances for which removal would be warranted.
- The Board must now establish procedures that provide a structure for the investigation and referral of a complaint against a sitting Governor to the Board for possible removal.
- The draft document was reviewed and scheduled for a vote at the October Board meeting.

### Rules Review Committee – New Committee Guidelines – Jennifer Rebholz

- Reviewed the proposed guidelines which codify the Committee’s process and determines on what petitions, proposed comments and matters that come before the Committee are appropriate for the Board of Governors to take action.
- The Board reviewed the proposed guidelines and scheduled the issue for a vote at the October Board meeting.

### Rocky Mountain Mineral Law Foundation Report

President Furuya reported that the presenter was unable to appear due to illness. This report will be rescheduled.

### Status Reports

#### Supreme Court’s Task Force on Delivery of Legal Services – Robyn Austin and Dave Byers

- Task Force edits are due by October 1; final will be presented at the October 24 meeting of the Arizona Judicial Council for a vote.
- Recommendations include:

- Deregulation: Abolish ER 5.4 (no fee sharing); non-lawyers can partner in law firms; licensing of entities (permitted in the U.K.)
- Creation of “nurse practitioner model” for family courts, justice courts, administrative hearings; lay legal advocates; exam/education requirements
- Pilot programs in Tucson at the UofA and Emerge! Center Against Domestic Abuse
- 3<sup>rd</sup> tier of providers:
  - Arizona Supreme Court’s Certified Document Preparers – program 10 years old; approximately 600 CDPs; Court has authority and looking to impose a fine on those engaging in UPL; states that allow “licensed legal technicians” into court – Utah, New Mexico, California, Washington
  - Rule 38(d) – allows law school graduates to practice for one year until Bar Exam is passed; follow same rules as attorneys
- Once recommendations approved, Supreme Court Rule 28 petition written and circulated for comment.

Goldwater Institute – Lisa Panahi

- GI petition proposed bifurcating the State Bar; mandatory fees for regulatory functions; all other programs/services voluntary (fee)
- Board of Governors previously voted to oppose the petition
- Arizona Supreme Court denied the petition in August with no comment

Fleck Case – Lisa Panahi

- Update on the status of this case, in which the North Dakota Bar was sued by a member asserting freedom of speech and association infringements. The Supreme Court accepted cert and remanded the case back to the 8<sup>th</sup> Circuit in light of the 2018 decision in *Janus*. In August, the 8<sup>th</sup> Circuit upheld its prior ruling.

Board’s Strategic Planning Working Group (SPWG) – Jessica Sanchez

- Proposal received and accepted, with minor modifications, from the ABA for resources/services in assisting with State Bar’s next strategic planning efforts
- SPWG meets in October to begin work, define structure and timeline for a new plan

Correspondence/Reports

- a) Thank You Letter from Hon. Penny Willrich
- b) Executive Council Minutes – July 12, 2019
- c) Reminder to RSVP for Justice James P. Beene’s November 1 Investiture

Adjourned at 12:02 p.m.

Respectfully submitted,

Jessica Sanchez  
Secretary/Treasurer