

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
May 20, 2016
Phoenix, AZ**

BOARD MEMBERS PRESENT: Geoffrey Trachtenberg, President; Alex B. Vakula, First Vice President, Prescott; Jeffrey Willis, Second Vice President, Tucson; Steven A. Hirsch, Secretary-Treasurer, Phoenix; Diane L. Drain, Phoenix; Tyler J. Carrell, YLD President, Phoenix; Richard D. Coffinger, Glendale; Hon. David G. Derickson, Phoenix; Denis M. Fitzgibbons, Casa Grande; Brian Y. Furuya, Flagstaff; 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; and At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; At-Large Member: Leah Won for Dean Marc L. Miller, Tucson;

EXCUSED ABSENCES: Patrick Greene, Tombstone; Lisa S. Loo, President-Elect, Phoenix; Public Members: Meredith Peabody, Prescott and Anna C. Thomasson, Phoenix; Ex-Officio Members: Dean Shirley Mays, Phoenix; Gary Stuart for Dean Douglas Sylvester, Tempe; Court Liaison Hon. Clint Bolick

OTHERS PRESENT: Alternate for Dave Byers, Mike Baumstark; Nina Benham, Board Services Specialist; Matt Campbell, Help Desk Technician; Lisa Deane, Chief Member Services Officer; Tim Eigo, Editor *Arizona Attorney*; John Furlong, General Counsel/Deputy Director; Kathy Gerhart, Chief Financial Officer; Rob Hosch, Technology Support Director; Ann Leslie, Executive Assistant; Lisa Panahi, Sr. Ethics Counsel; John Phelps, CEO/Executive Director; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel

GUESTS: Lobbyist Janna Day; Chair Charles Wirken, Client Protection Fund; Representatives for the Formation of the Religious Liberty Law Section: David P. Brooks, Linda H. Bowers and Bradley Abramson.

PRESIDENT'S REPORT – Geoffrey Trachtenberg

- Four bills that challenged the Bar in some fashion were defeated this session. CCO Rick DeBruhl and CEO John Phelps were thanked for their work representing the Bar.
- Reported that all incumbents were reelected to Board service in the recent elections as well as a new member, Professor Kenny Hegland, elected from the Pima/Santa Cruz District. Election results will be certified at the June Board meeting.

CEO/ED REPORT – John Phelps

- Employee of the Quarter – The Board recognized Wendell Chin, Administrative Services Coordinator in the Tucson office. Mr. Chin and Southern Regional Office Manager Amy Ihrke have developed great relationships with the lawyers in Pima County and successfully replicate the services provided in the Phoenix office.

- Convention –Board members urged to encourage their colleagues to register for the Bar’s flagship event, 411 registrants compared to 520 last year at this time.
- July Board of Governors Retreat planning well underway.
- Flawless election process concluded in five Board Districts. The online elections were handled by Carrie Sherman, Director of Board Operations.
- The State Bar of Arizona has been recognized by the Phoenix Business Journal as one of the Valley’s Healthiest Employers (small company). The Wellness Program has now received three statewide awards since its inception.

LEGISLATIVE UPDATE – Lobbyist Janna Day

- SB1169 - mental health powers of attorney legislation, crafted by the State Bar’s Elder Law, Mental Health & Special Need Planning Section, was signed by the Governor.
- HB2221 which would have split the Bar into mandatory and discretionary functions was defeated.
- House Concurrent Memorial Resolution 2002 also failed.
- Ms. Day was appreciative of the degree of member and board involvement in the legislative process this year.
- The Board thanked Ms. Day for her outstanding efforts this session.

APPOINTMENTS COMMITTEE – Chair Jeffrey Willis

- **Board of Governors Public Member**
 - The Board of Governors interviewed three candidates for the public member opening on the Board.
 - After discussion regarding all three candidates the Board voted via secret ballot.
 - General Counsel John Furlong announced that John W. Gordon of Prescott would be the new public member, replacing Meredith Peabody.
- **Client Protection Fund Board of Trustees**
 - **MOTION:** Coming as a motion from the Committee, requiring no second, passed unanimously to recommend the reappointment of James B. Penny (Law Office of James B. Penny LLC) to a second and final five-year term on the Client Protection Fund Board of Trustees.
- **Community Legal Services Board of Directors**
 - The Appointments Committee recommended three candidates for the one opening on the CLS Board of Directors. After discussion,
 - **MOTION:** Alex Vakula moved, Tyler Carrell seconded, and the motion carried unanimously to appoint Ms. Jennifer Holsman Tetreault (U.S. Foods Inc., Phoenix) to the CLS Board of Directors.

FINANCE AND AUDIT COMMITTEE – Chair David Byers

- The Finance and Audit Committee has two items for action.
- **Reallocation of \$10 Dues to Client Protection Fund and Potential Deferral of 2018 dues increase.** – The Finance and Audit Committee recommended asking the Supreme Court to reallocate \$10 of the scheduled 2017 dues increase to the Client Protection Fund. The Committee voted to recommend to the Board that consideration of a deferral of the scheduled 2018 dues increases be postponed. The Finance and Audit Committee recommends a wait and see approach. The reasons to delay a deferral are: Client Protection

Fund payout amounts have not stabilized; penalty income is dropping; and the U.S. economy is uncertain. Committee member Steve Hirsch outlined a minority opinion of the Committee supporting a deferral in light of the projected surpluses in the Bar budget.

- **MOTION:** Coming as a motion from the Committee, requiring no second, passed to ask the Court to reallocate \$10.00 of the scheduled 2017 dues increase to the Client Protection Fund. David Byers abstained from the vote.
- **MOTION:** Dee-Dee Samet moved, Sam Saks seconded and the motion passed to request the Supreme Court to defer the scheduled 2018 dues increases to 2019. David Byers abstained from the vote.
- **MOTION TO AMEND:** Sam Saks moved to amend the motion to ask the Supreme Court to defer the scheduled 2017 dues increase. Motion to Amend was not accepted.
- **Hotel del Coronado Contracts**
 - Recommendation from the Finance Committee is to continue holding CLE by the Sea at the Hotel del Coronado for 2018, 2019 and 2020.
 - Contract Financial Value: 2018 - \$432,203; 2019 - \$439,966; 2020 - \$447,729
 - The sum of the three contracts requires Board approval pursuant to adopted Financial Policies.
 - **MOTION:** Coming from the Committee, requiring no second, passed unanimously to approve the 2018, 2019 and 2020 contracts with the Hotel del Coronado for the CLE by the Sea program in the dollar amounts stated above.

CLIENT PROTECTION FUND ANNUAL REPORT – Chair Charles Wirken

In 2015:

- 53 claims approved and paid against 26 lawyers for a total of \$409k
- Operating expenses: staff/overhead \$140k
- Fund received a total of \$100,544 in restitution, \$211,445 annual revenue from assessment and \$9k investment income = \$320k
- Deficit is \$228k
- Since this report the Trustees have had another quarterly meeting and paid out additional claims.
- 50 claims currently pending with more being received; processing them as swiftly as possible.

PROPOSED FORMATION OF RELIGIOUS LIBERTY LAW SECTION – John Furlong and David P. Brooks

- General Counsel John Furlong reviewed the supporting documentation submitted by the Ad-Hoc Committee working on the formation of a Religious Liberty Law Section. Mr. Furlong stated that all the requirements have been met:
 - At least 100 signatures of prospective members have been collected;
 - Section dues proposed;
 - Bylaws and Charter vetted and approved by the General Counsel.
- The Section organizers are aware of the restrictions imposed by *Keller* and agree to comply with *Keller* and the State Bar's related bylaws and political activities policy.
- **MOTION:** Tyler Carrell moved, Paul Senseman seconded and the motion carried unanimously to approve the formation of the Religious Liberty Law Section.

STATE BAR'S PROPOSED PRO BONO INITIATIVE – Geoffrey M. Trachtenberg

- President Trachtenberg proposed the formation of a State Bar led Pro Bono program that would connect lawyers with clients looking for legal services while not disrupting other organizations' current LRIS and volunteer programs.
- To participate, an attorney would first need to handle a pro bono case.
- He would work on this initiative during his year as immediate past president.
- Supreme Court rules have been amended that provide for the unbundling of legal services. Training and CLE would be provided to members to navigate opportunities to provide limited scope representation.
- The recommendation would be for CEO/ED John Phelps to come up with a program proposal and draft budget for the Board's consideration.
- Only 1,325 attorneys reported pro bono hours during 2015; average of 20 hours/attorney versus the aspirational goal of 50 hours. Data will be provided on the number of calls coming into the State Bar daily asking for a referral or legal assistance.
- **MOTION:** David Derickson called for the question, Jeffrey Willis seconded and the motion carried unanimously.
- **MOTION:** Alex Vakula moved, Audrey Jennings seconded and the motion carried over three dissents to charge CEO/ED John Phelps with creating a program proposal and draft budget for a State Bar pro bono initiative to include a Lawyer Referral Service and possible other related programs for the Board's consideration.

CONSENT AGENDA

- a) Approval of April 15, 2016 Board of Governors Meeting Minutes
 - b) Resignations in Good Standing
 - c) Reinstatement to Practice of Members suspended for Non-Compliance with MCLE requirements (Rule 45, Ariz. R. Sup. Ct.)
 - d) Dues Waivers – May 2016
- **MOTION:** Tyler Carrell moved, Dee-Dee Samet seconded and the motion carried unanimously to approve the Consent Agenda as presented.

CHANGES IN CONCEPT TO ETHICS COMMITTEE CHARTER – Geoffrey M. Trachtenberg, Lisa Loo and Steve Hirsch

- Handout entitled SBA Policy re Ethics Committee and Opinions
- Proposal to the Board to change the Ethics Committee to (1) be compliant with the *North Carolina Dental Board* case, (2) be consistent in our ethics advice and regulatory action, and (3) deliver more value to members.
- The following three items are the major changes in the policy:
 - The Chief Bar Counsel, or his/her designee, shall be a liaison to the Ethics Committee (in addition to SBA Ethics Counsel, who currently serves as liaison to the Ethics Committee)
 - Opinions of the Ethics Committee shall be provided to the BoG for final approval (up or down vote);
 - The Bar will agree to regulate consistent with approved ethics opinions going forward.

After an extensive discussion,

- **MOTION:** Jimmie Smith moved, Jeffrey Willis seconded and the motion carried over two dissents to adopt the SBA Policy re Ethics Committee and Opinions.

ATTORNEY REGULATION ANNUAL REPORT – Chief Bar Counsel Maret Vessella

- The Attorney Regulation Advisory Committee is required to file an annual report each year by April 30. The annual report shall include statistics for lawyer discipline case processing. The report may make recommendations on specific issues addressed by the Committee.
- Pursuant to Rule 46, Ariz. R. Sup. Ct., a “charge” is defined as any allegation or other information of misconduct or incapacity.
- A “complaint” means a formal complaint prepared and filed with the disciplinary clerks.
- The ARC Annual Report includes 2015 data regarding: Intake process; Investigative process; Attorney Discipline Probable Cause Committee case review; Presiding Disciplinary Judge case processing and disposition.
- The State Bar received 3,127 charges against lawyers in 2015.
 - 81% of charges were resolved in Intake. On average it took 27 days to resolve a charge.
 - 664 charges were sent on for a full screening investigation.
 - The 664 charges were attributable to 391 lawyers.
- In 2015 the total number of charges were 3,127; number referred 664; number of lawyers investigated 391; percentage resolved in intake 81% with an average time for investigation of 200 days.
- The Attorney Discipline Probable Cause Committee is made up of nine members; six lawyers and three public members. The Supreme Court appoints the Committee.
- Committee reviews the State Bar’s report of investigation, the respondent’s response and any objection/response by the complainant.
- The Committee reviewed 554 charges not including the dismissal appeals.
 - 315 charges received a probable cause order.
 - 58 charges received an order of admonition (42 included probation)
 - 26 orders of restitution
 - 81 orders of diversion.
 - The Committee also reviewed 49 dismissal appeals.
- The Committee may change State Bar recommendations. The recommended disposition of three charges was increased by the Committee and 12 charges decreased.
- Pursuant to Rule 55, an attorney who receives an order from the Committee may demand formal proceedings be instituted. Four Committee orders were appealed in 2015:
 - Two orders of restitution were appealed; one dismissed and one still on appeal
 - Two orders of admonition were appealed; both resulted in an admonition (one lawyer)

Presiding Disciplinary Judge

- 97 complaints were filed in 2015. Of those, 41 were direct consent agreements.
- Average time calculated from filing of formal complaint to final disposition by the Presiding Disciplinary Judge:
 - Contested cases: 131 days
 - Default cases: 89 days
 - Consent Agreements: 52 days
- Sanctions Ordered and Other Dispositions
 - 13 Lawyers disbarred

- 39 Lawyers suspended
- 25 Lawyers reprimanded
- 80 Informal sanctions
- 86 Diversion orders/agreements
- 186 Instructional comments
- Looking Ahead – Current Trends
- Total charges received as of April 30 in:
 - 2015 – 1,053
 - 2016 – 1,170
- Total number of formal complaints filed as of April 30 in:
 - 2015 – 26
 - 2016 – 21

ARIZONA ATTORNEY MAGAZINE SURVEY – Editor Tim Eigo

- Mr. Eigo summarized what was learned from the survey of readers regarding *Arizona Attorney Magazine*.
- The Survey is done every three years.
- Readers want to talk about the magazine.
- Takeaways: They have a sense of trust, they are engaged and find value on what they read and take action from what they have learned.
- The typical respondent is a 51 year old white male with practice areas across the board.
- The electronic devices most commonly used for reading is a computer and smartphone.
- 96% of the attorneys read the magazine.
- Members on an average spend 37 minutes a month reading articles in the magazine and have read 4 out of 4 of the last issues.
- Topics of Interest – Ethics articles rank #1 followed by legal writing tips and how-to stories on law practice issues.

2016 BOARD RETREAT – Director of Board Operations Carrie Sherman

- Reminded the Board members to mark their calendars for the Board Retreat July 21-22 at the Prescott Resort & Conference Center.
- Shelly Alcorn, CAE will be the facilitator; presenter at various ABA meetings.
- Board Self-Assessment – Ms. Alcorn will be sending out a short survey in the next week. The survey is confidential and responses will be reviewed in the aggregate. Results will be discussed at the Retreat.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:45 p.m.

Respectfully submitted,

Steven A. Hirsch
Secretary-Treasurer