

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

September 21, 2018

BOARD MEMBERS PRESENT: Jeffrey Willis, President, Tucson; Brian Furuya, President-Elect, Flagstaff; Lori Higuera, Vice President, Phoenix; Denis M. Fitzgibbons, Secretary-Treasurer, Casa Grande; Tyler J. Carrell, Phoenix; David Wm. Engelman, Phoenix; Hector Figueroa, Payson; Sharon M. Flack, Prescott; Patrick Greene, Tombstone; Doreen M. McPaul, Tucson; Robert J. McWhirter, Phoenix; Jennifer Rebholz, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Jessica Sanchez, Phoenix; Sara A. Siesco, Phoenix; Benjamin P. Taylor, Phoenix; Gaetano Testini, Phoenix; Public Members: Robyn M. Austin, John Gordon, Prescott, Anna C. Thomasson, Phoenix; and At-Large Members: Paul Senseman, Phoenix; Ex-Officio Members: Dean Marc Miller, Tucson; Victoria Ames representing Dean Douglas Sylvester, Phoenix; Alex Vakula, Immediate Past President, Prescott;

OTHERS PRESENT: Nina Benham, Board Services Specialist; Rick DeBruhl, Chief Communications Officer; Kathy Gerhart, CFO; Gayle Jackson, Human Resources Director; Jillian Kinsalla, Sales Communications Assistant; Cheryl Kulas, Public Service Center Manager; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Lisa Panahi, General Counsel; John Phelps, CEO/Executive Director; Amy Rehm, Deputy Chief Bar Counsel; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel; and Justice John Lopez IV; Brian Flood, Systems Engineer.

GUESTS: Sloan Johnson

EXCUSED ABSENCE: Geoffrey Balon, Young Lawyers Division President, Phoenix; David K. Byers, Phoenix; Samuel Saks, Phoenix; and, Public Member: Jason E. Cobb, Phoenix.

President Jeffrey Willis called the Board meeting to order at 8:30 a.m.

CALL TO THE PUBLIC – President Willis made a Call to the Public and, hearing nothing, moved to the next agenda item.

EXECUTIVE SESSION: 8:31 a.m.

- President requested a motion to move to Executive Session to discuss the CEO search.
- MOTION: By consensus the Board of Governors agreed to move to executive session.
- Staff remaining in the room: CEO/ED John Phelps, Chief Bar Counsel/Deputy Director Maret Vessella, General Counsel Lisa Panahi and Board Services Specialist Nina Benham.
- MOTION: Paul Senseman moved, Tyler Carrell seconded and motion carried to move to open session at 8:55 am.

10 Minute Topic: “the Constitution and where do we lawyers come from?” – Robert McWhirter

- President Willis stated that each month there will be an opportunity for Board Members to have ten minutes to cover a topic of interest related to the law. If interested, the Board Members are to contact President Willis with their topic and the date of the Board meeting they wish to present.
- Mr. McWhirter was introduced and presented on the history of lawyers.

PRESIDENT’S REPORT – Jeffrey Willis

- August attended National Conference of Bar Presidents (NCBP) meeting in Chicago; much discussion among unified bars regarding U.S. Supreme Court cases and potential impact of *Janus* decision and *Fleck* case out of North Dakota. If Supreme Court grants certiorari 32 unified Bars may be affected.
- Appointed Convention Chairs: Kelly Kszywienski and Judge Kathleen Quigley.
- Appointed the Seniors Task Force Chairs: Judge Pat Norris, Chas Wirken and Laura Zeman-Mullen
- Appointed the Board and Standing Committee members
- Saturday, September 22nd attending Bar Leadership Institute in Tubac, Arizona
- Met with Chief Justice Scott Bales who was interested in plans as president during the coming year; shared senior lawyer initiative
- Court would like to participate in the Board retreat this coming year
- Vice Chief Justice Brutinel’s task force will look at expanding the rules governing legal document preparers/legal technicians.
- The Board thanked Gayle Jackson, HR Director for her six (6) years of service to the State Bar and wished her well in her new opportunity. Ms. Jackson’s last day is October 4, 2018.

POLICY DISCUSSION

Amicus Curiae Participation

- The Board’s Amicus Curiae Committee sun-setted several years ago due to lack of requests for the Bar’s participation. Due to the pending *Fleck* case, it was determined that a review of the Amicus Policy adopted by the Board in June, 2003 should be reviewed.
- Also for discussion is whether the Bar should consider joining an Amicus, if asked, in the *Fleck* case, or whether the Board would file its own Amicus.
- A small Amicus Brief Working Group will be forming. If interested the Board is to let President Willis or CEO/ED John Phelps know.
- General Counsel Lisa Panahi reviewed the proposed changes and covered the substantive changes as follows:
 - Changed reference from Scope and Operations to Executive Council
 - With Public Meetings now the approval of filing an Amicus Brief must be approved by the full Board of Governors.
 - President may appoint a working group to review amicus applications and make recommendations to the Board.
 - Removed prohibition of paying legal fees to outside counsel to assist with drafting the Amicus Brief
 - Removed language that created strict deadlines.
 - Changed process – amicus applications would go through General Counsel’s office, rather than Chief Bar Counsel.

- Monday, September 24th the Court will be considering the *Fleck* petition.
- October 19 Board agenda will have the final Amicus Curiae Policy for vote.
- By general consensus the Board agreed to form an Amicus Brief Working Group.

SPECIAL RECOGNITIONS/PRESENTATIONS

- Recognized Jimmie Dee Smith who has completed his ten (10) year service as the Board's appointed Delegate in the ABA House of Delegates with a small memento of appreciation.
- Recognized Chas Wirken who has completed his ten (10) year service on the Client Protection Fund Board of Trustees, the last six (6) as chair with a small memento of appreciation from the Board of Governors.

APPOINTMENTS COMMITTEE

Arizona Supreme Court Committee on Character and Fitness – Lawyer Members – Lori Higuera

- Three (3) lawyer openings; thirty (30) applications received and vetted by the Appointments Committee. The Appointments Committee ranked them in the following order:
- Ms. Petra L. Emerson, Court of Appeals, Division One, Senior Judicial Clerk
- Ms. Maria L. Schaffer, Maricopa County Public Defender's Office
- Mr. Matthew H. Binford, U.S. Attorney's Office
- Mr. James J. Roche, Maricopa County Attorney's Office
- Mr. Andrew M. Kvesic, Arizona Corporation Commission
- Mr. Eugene Marquez, Yuma County Public Defender's Office
- Mr. Joseph A. Brophy, Jennings, Haug & Cunningham
- Ms. Alyson M. Foster, Law Office of Alyson M. Foster PLC
- Ms. Erin H. Walz, Udall Shumway PLLC
- Ms. Ashley D. Adams, Ashley D. Adams PLC
- **MOTION:** Coming as a Motion from the Appointments Committee, second by Tyler Carrell and carried unanimously to forward the slate as listed to the Arizona Supreme Court.

Arizona Supreme Court Committee on Character and Fitness – Public Members – Jessica Sanchez

- The Appointments Committee recommended to the Board of Governors the following slate of six (6) qualified candidates to be sent to the Arizona Supreme Court for its consideration and ultimate selection of four (4) public members to serve on its Character and Fitness Committee:
- Ms. Jennifer M. Bailey, University of Arizona Investigator
- Mr. Gary G. Nicolosi, Interim Rector, Church of the Nativity
- Mr. Chris Pfund, Business Partner/HR/Administrative Manager, WD Management LLC
- Mr. Marshall H. Porter, Retired from Honeywell
- Mr. Robert Underdown, Insurance Expert Witness
- Mr. Larry D. Schwartz, Dispute Resolution/Strategic Business Planning, Larry D. Schwartz, Ltd.
- **MOTION:** Jessica Sanchez moved and Bob McWhirter second and motion carried to forward the slate as listed to the Arizona Supreme Court.

Arizona Supreme Court Committee on Examinations – Lawyer Members – Lori Higuera

- The Appointments Committee recommended to the Board of Governors the following slate of nine (9) qualified candidates to be sent to the Arizona Supreme Court for its

consideration and ultimate selection of four (4) lawyer members to serve on its Examinations Committee:

- Ms. Maria L. Schaffer, Maricopa County Public Defender's Office
- Mr. Eugene Marquez, Yuma County Public Defender's Office
- Ms. Erin H. Walz, Udall Shumway PLLC
- Mr. Michael G. Galloway, Michael G. Galloway, Attorney at Law, PLLC
- Mr. Gregory J. Gnepper, Gammage & Burnham PLC
- Mr. Jeremy A. Rovinsky, National Paralegal College
- Mr. Marcus R. Salazar-Martinez, Vial Fotheringham LLP
- Mr. Gregg C. Gibbons, Gregg Clarke Gibbons PC
- Mr. Seth A. Turken, Maricopa County Attorney's Office
- **MOTION:** Tyler Carrell moved and Denis Fitzgibbons second and motion carried to forward the slate as listed to the Arizona Supreme Court.

FINANCE AND AUDIT COMMITTEE – Denis Fitzgibbons

- The 2018-2022 Audit and Tax Return – CPA Firm Selection
- Every five (5) years the Committee sends out RFP solicitation letters so that an auditing firm can be selected. By the Finance Committee Policy no firm can represent more than ten (10) years.
- Finance and Audit Committee is requesting the Board to give the authority to choose the auditor.
- **MOTION:** Jennifer Rebholz moved and Hector Figueroa second and motion carried to give the Finance & Audit Committee authority to select the CPA Firm to do the annual audits for five (5) years.
- Contribution Request Procedures & Guidelines Revisions
 - The revised guidelines would include the following changes:
 - Board of Governors would set a budget based on history.
 - CEO accepts all contribution requests and reviews for compliance.
 - CEO would approve items up to \$2,500 (currently \$1K approved by Finance & Audit Committee) before going to F&AC for approval.
 - Any request denied by the CEO will be reviewed by the F&AC.
- **MOTION:** Tyler Carrell moved and Jimmie Dee Smith second and motion carried unanimously to approve the proposed revised Contribution Request Procedures & Guidelines.
- 2019 Budget Guidelines Memorandum
- Recommendation of a Two Phase Budget Approach
- Phase I – base budget
- Estimated annual revenues based on analysis of dues and non-dues income trends.
- Total budgeted expenses are not to increase more than 2.5% over 2018 expense budget (based on current Phoenix CPI trending)
- Phase II – New Initiatives
- Presented with estimated revenues, expense, and capital acquisitions by initiative.
- Approved new initiatives will be funded from the Dues Reserve fund

- **MOTION:** Comes with the recommendation from Finance & Audit Committee to approve the 2019 Budget Guidelines Memorandum, second by David Wm. Engelman and carried unanimously.
- Timeline for 2019 Budget is in materials. 1st draft of the budget will be reviewed on Thursday, October 25th, and 2nd draft reviewed Thursday, November 15th by Finance and Audit Committee. Final budget will be distributed to the Board of Governors for review on Tuesday, November 20th. Final draft of the budget to be presented to the Board of Governors for a vote at the Friday, December 7th board meeting.
- Client Protection Fund Q-2 Financial Statements included in materials.
- Convention – Wild Horse Pass Financial Summary was reviewed.
- 24th Street Building – Lease Update – Currently the building space is occupied with 65% SBA and 30% tenants. There is an individual interested in leasing the remaining space in the building and would like to occupy by January 1. Leasing details are being negotiated.

CONSENT AGENDA

- a) Approval of July 19, 2018 Board Meeting Minutes
- b) Approval of Resignations
 - i) in Good Standing
 - ii) in Lieu of Reinstatement
- c) Approval of Reinstatements
 - i) Approval of Reinstatements of Members Suspended for Non-Compliance with MCLE Requirements, Rule 45, Ariz. R. Sup. Ct.
 - ii) 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.
- d) Family Law Proposed Bylaws
 - President Willis asked if there was anything to be removed from the Consent Agenda, hearing nothing the following Motion was made:
 - **MOTION:** David Wm. Engelman moved and Tyler Carrell seconded, motion carried unanimously to approve the Consent Agenda.

PROPOSED OATH (Rule 32(e)(5), Ariz.R.S.Ct. AND TRANSMITTAL LETTER TO THE COURT

- Amended Rule 32 states that “Upon commencing service, each Governor, whether elected or appointed, must take an oath to faithfully and impartially discharge the duties of a Governor.”
- Historically, the Board has been sworn in by the Chief Justice or designee at the Annual Meeting (Convention).
- The Board was asked to formalize the process due to the Rule change. The Board’s approval is being sought, a copy of the current Oath and a draft transmittal letter to the Chief Justice was provided in the materials.
- **MOTION:** Brian Furuya moved and Paul Senseman seconded and motion carried to approve the Oath and transmittal letter as submitted.

Working Lunch Provided

ABA ANNUAL MEETING HOUSE OF DELEGATES REPORT – Lynda Shely

- Ms. Shely is one of the Bar's five (5) Delegates in the ABA House of Delegates.
- Ms. Shely recapped her attendance at the Annual Meeting in August on issues of importance to the State Bar and our members.
- Among those topics discussed were:
 - Amendments to the Model Rules of Professional Conduct that regulate lawyer advertising;
 - Revisions to the ABA Dues structure;
 - Changes to the regulation for Law School accreditation;
 - New Model Code of Judicial Conduct for Administrative Law Judges.

CEO/ED REPORT – John Phelps

- Staff busy helping members meet MCLE filing deadline 15 September.
- Budget – Everyone is working hard on budget with quick turnaround in November for a vote at the December 7th Board meeting.
- Innovations – Staff was asked to participate in coming up with new innovative ideas on cost savings, revenue generating, services to attorneys and practice management. They came up with 216 different ideas which have been culled down to seven (7) which will be presented in the Phase II Budget.
- Bar Leadership Institute (BLI) Retreat – Tubac, Arizona – is being held this weekend.
- SBA will receive the 2018 Community Leadership Award from the Native American Bar Association-Arizona (NABA-AZ) at the association's annual Seven Generations Awards Dinner Saturday, September 22, 2018.

ELEGAL SOLO – Jillian Kinsala

- Sales/Communications Assistant Jillian Kinsala showcased eLegal Solo for Board newsletter focuses on technology and other topics of interest to solo or small firm practitioners. The most clicked on parts of the newsletter for Solos are technology and stress.

ATTORNEY REGULATION ADVISORY COMMITTEE (ARC) Report – Maret Vessella, Chief Bar Counsel

- ARC required to file an annual report by April 30.
- The annual report includes statistics for lawyer discipline case processing and the examination/admission process.
- The report may make recommendations on specific issues addressed by the Committee.
- With respect to lawyer regulation, the ARC annual report includes 2017 data regarding: Intake process; Investigative process; Attorney Discipline Probable Cause Committee case review; Presiding Disciplinary Judge case processing and disposition.
- The State Bar received 3,221 charges against lawyers in 2017.
- 76% of charges were resolved in Intake. On average it took 23 days to resolve a charge.
- 609 charges were sent on for a full screening investigation
- The 609 charges were attributable to 428 lawyers.
- Average number of days for investigation 180
- Committee is made up of nine members; six lawyers and three public members.
- The Supreme Court appoints the Committee members.

- Committee reviews the State Bar's report of investigation, the respondent's response and any objection/response by the complainant.

Attorney Discipline Probable Cause Committee

- Committee reviewed 384 matters
- 121 orders of probable cause were issued authorizing formal proceedings
- 62 orders of admonition issued (54 with probation)
- 24 orders of restitution
- 90 orders of diversion
- 40 dismissal appeals
- Pursuant to Rule 55, an attorney who receives an order imposing a sanction or diversion from the Committee may demand formal proceedings. 11 Committee orders were appealed in 2017.

Presiding Disciplinary Judge

- 88 Complaints were filed in 2017. Of those, 25 were direct consent agreements.
- Average time calculated from filing of formal complaint to final disposition by the Presiding Disciplinary Judge:
- Contested Cases: 165 days
- Default cases: 98 days
- Consent Agreements: 116 days

Sanctions Ordered and other Dispositions

- 18 Lawyers disbarred
- 44 Lawyers suspended
- 21 Lawyers reprimanded
- 86 Informal sanctions
- 91 Diversion Orders/agreements
- 204 Instructional comments

CORRESPONDENCE/GENERAL REPORTS – President Willis

- Reminded those in attendance to remember to review the documents that are included in the materials including:
- SBA Bylaws final
- 2018 ABA Legal Services for Vets Website Resource Guide produced by SBA staff and distributed throughout the country.
- Administrative Order 2018-67 re Deferral of SBA membership fees
- Administrative Order 2018-86 Appointing Bradley Jardine as chair of the Board of Legal Specialization (as nominated by the Board of Governors)

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 11:51 a.m.

Respectfully submitted,

Denis Fitzgibbons
Secretary/Treasurer