

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
Sheraton Grand at Wild Horse Pass Resort & Spa
June 27, 2022
Chandler, AZ**

BOARD MEMBERS PRESENT: Jennifer Rebholz, President, Phoenix; Jessica Sanchez, President-Elect, Mesa; Benjamin Taylor, Vice President, Phoenix; Ted Schmidt, Secretary-Treasurer, Tucson; Diandra Benally, Fountain Hills; Sandra Bensley, Tucson; Hector Figueroa, Payson; Kelsi Lane, Phoenix; Leticia Marquez, Tucson; John Moody, Phoenix; D. Christopher Russell, Sierra Vista; Sam Saks, Tempe; Jimmie Dee Smith, Yuma; Public Member Robyn Austin, Tucson; At-Large Members Marcus Reinkensmeyer, Phoenix, Lori Higuera, Phoenix, and Doreen McPaul, Window Rock; Board Advisor Denis Fitzgibbons, Casa Grande.

EXCUSED ABSENCES: Sharon Flack, Prescott; Robert McWhirter, Phoenix; David Rosenbaum, Phoenix; Eric Ruchensky, Flagstaff; YLD President Gaya Shanmuganatha, Phoenix; Public Governors Mignonne Hollis, Sierra Vista, and Jonathan Martone and Anna Thomasson, both of Paradise Valley; Law School Deans Adam Chodorow and Zachary Kramer (ASU) and Marc Miller (UA).

STAFF: Deanna Commack, Executive Assistant; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Joe Hengemuehler, Chief Communications Officer; Lori Maxwell, Chief Information Officer; Elena Nethers, Director of Diversity, Equity and Inclusion; Lisa Panahi, General Counsel; Carrie Sherman, Director of Board Operations; Roberta Tepper, Chief Member Services Officer; Maret Vessella, Chief Bar Counsel.

BOARD MEMBERS-ELECT: At-Large Governor Mike Baumstark; District 3 Governor Preston Pollock.

GUESTS: Ari Burshell; 2002-2003 State Bar President Ernest Calderón; Supreme Court Liaison Hon. William Montgomery; Attorney Michael Simes; Leah Won, UA College of Law.

President Jennifer Rebholz called the Board meeting to order at 8:11 a.m.

Call to the Public – Jennifer Rebholz

President Rebholz made a Call to the Public and hearing nothing, moved on to the next item on the agenda.

President's Report – Jennifer Rebholz

- Welcomed returning Board members:
 - At-Large Governor Mike Baumstark
 - District 6 Governor Jena Decker-Xu
- Welcomed new Board members:
 - District 3 Governor Preston Pollock
 - YLD President Nicholas Brown

- Public Governor Cedric Dave
- Attended:
 - Mark Harrison’s Memorial Service April 29
 - Participated in the virtual New Member Orientation in early May; received good evaluations/comments about the Bar’s event
 - Happy Hour Celebration Honoring Jessica Sanchez June 2 in Tucson
 - Spoke at New Admittees Ceremony at the Supreme Court June 16; the Court is holding these twice a year
 - AJC Meeting and Chief Justice Brutinel’s Summer Reception June 21 in Tucson
- Convention
 - Welcome to the 89th Annual State Bar Convention!
 - About 1,200 registrants at last in-person event in 2019; coming in with over 900 pre-registrations but expect the usual on-site registrations will grow attendance

CEO’s Report – Joel England

- Attended the same events noted by the president
- Held a one-day off-site retreat with the Senior Leadership Team; focused on the Strategic Plan and training on the activities/metrics tracking platform (Cascade)

Nominating Committee – Denis Fitzgibbons

- Five Board members are seeking three officer positions:
 - President-elect – Benjamin Taylor
 - VP – Ted Schmidt
 - Secretary-Treasurer – Kelsi Lane, Doreen McPaul and Sam Saks
- Each applicant completed the Board-approved Questionnaire and was interviewed by the Committee.
- Thanked each applicant for their interest in serving in an officer position and for their courtesy and cooperation while participating in the process.
- President: Under Court Rule, the president-elect will automatically ascend to the presidency at the conclusion of the Annual Meeting/Convention. Those present congratulated Jessica Sanchez on becoming president of the State Bar of Arizona.
- Presentation of Slate:
 - Benjamin Taylor: president-elect
 - Ted Schmidt: vice president
 - Sam Saks: secretary-treasurer
- Nominations from the floor:

Jimmie Smith nominated Doreen McPaul for the secretary-treasurer position and Hector Figueroa seconded the nomination, however Ms. McPaul declined the nomination.
- **MOTION:** Chris Russell moved, Kelsi Lane seconded and the motion carried unanimously to suspend the bylaw directing the election of officers be conducted by secret ballot.
- **MOTION:** Hector Figueroa moved, Lori Higuera seconded and the motion carried unanimously to elect Benjamin Taylor as president-elect and Ted Schmidt as vice president.

- **MOTION:** Chris Russell moved, John Moody seconded and the motion carried unanimously to suspend the bylaw directing the election of officers be conducted by secret ballot.
- **MOTION:** Kelsi Lane moved, Doreen McPaul seconded and the motion carried unanimously to elect Sam Saks as secretary-treasurer.
- Photos of the 2022-2023 Board of Governors and Executive Council were taken.

Appointments Committee – Benjamin Taylor

- There are two Delegate positions in the ABA House of Delegates (HOD) to fill; four applications were received including two from the two incumbents, however one of the incumbents is now ineligible to be considered for reappointment.
- The Committee ranked the remaining three candidates:
 - George Chen
 - Edward Scibilia
 - Ross Carponelli
- **MOTION:** Kelsi Lane moved, Diandra Benally seconded and the motion carried unanimously to reappoint George Chen as a State Bar Delegate in the ABA HOD and to reopen and re-advertise the second position.
- The Board discussed options for sending an alternate to fill the second position so the State Bar has its full delegation of five Delegates at the upcoming Annual Meeting in August in Chicago. The ABA HOD allows for alternates with the submission of the required paperwork. After discussion,
- **MOTION:** Diandra Benally moved, Ted Schmidt seconded and the motion carried unanimously to appoint Jessica Sanchez as an alternate Delegate for the Annual HOD Meeting.

Board's ABA HOD Representative – Jennifer Rebholz

- Board policy indicates that one of the five State Bar Delegates in the ABA HOD is to be a lawyer member of Board. After a call for candidates was sent, one Board member completed and submitted an application – Diandra Benally.
- **MOTION:** Lori Higuera moved, Jessica Sanchez seconded and the motion carried unanimously to appoint Diandra Benally as the Board's representative to the ABA HOD.

Board of Legal Specialization Chair – Jennifer Rebholz

- At its April meeting, the Board voted to send nominations to the Supreme Court to fill certified specialists, non-specialists and public member positions on the Board of Legal Specialization (BLS). The Court has made its appointments.
- The Governors also must nominate individuals to the Court to be considered as chair of the BLS.
- Wendi Sorensen completed her 2020-2022 term as BLS chair and is willing to serve another term. The BLS strongly supports her nomination. No other BLS members stepped forward to serve.

MOTION: Jimmie Smith moved, Lori Higuera seconded and the motion carried unanimously to nominate Wendi Sorensen to the Supreme Court to serve as BLS chair for a two-year term (2022-2024).

Civil Jury Instructions Amendment – Jennifer Rebholz

- The Board was reminded that it has the final authority to approve jury instructions.
- The amendment before the Board was proposed by the Civil Jury Instructions Committee and vetted and approved by the Board's Rules Review Committee.
- On July 9, 2012, the Arizona Supreme Court published its opinion in *Engler v. Gulf Interstate Eng'g, Inc.*, 230 Ariz. 55 (2012). In its ruling, it adopted The Restatement (Third) of Agency § 7.07 as the appropriate test for evaluating whether an employee is acting within the scope of employment. Until now, however, RAJI Standard 5 Respondeat Superior Liability has not been updated to reflect the application of the new test adopted in Engler. The revised standard 5 RAJI is necessary in light of Engler. After discussion,
- **MOTION:** Sam Saks moved, Diandra Benally seconded and the motion carried unanimously to approve the amendment to the Civil Jury Instructions as presented.

Diversity Survey – Elena Nethers

- On September 24, 2021 the Board of Governors approved a diversity and inclusion member survey with the understanding that a pilot test group would review the survey for feasibility and accessibility. Pilot group testing was conducted from April 27 - May 4, 2022. The Social Justice Work Group reviewed the feedback and is seeking Board approval to modify the survey as described:
 - Microaggression questions were moved to the end of the survey and are optional. The basic survey will take approximately 10 minutes to complete and participants will be given the opportunity to answer an additional set of microaggression questions at the end of the survey as desired. This ensures the most valuable data is captured at the beginning of the survey and provides participants a clear opportunity to exit early if they wish.
 - The introduction will state more clearly the approximate amount of time needed to complete the survey. A progress bar was added so participants can track how quickly they are progressing through the survey.
 - Reworked the questions so solo practitioners and supervising attorneys can efficiently navigate through questions that are not applicable.
 - Under practice settings, tribal added to the "Public lawyer/Government" and "Judicial" options.
 - Provided a clearer explanation for why the survey is being conducted.
 - Survey will be sent to all active members of the State Bar, including active members with non-Arizona addresses on file. Questions will be preceded with a statement that answers should be based on participant's experience practicing law in Arizona.
 - Incentive – Everyone who participates in the survey will be entered into a drawing to win a year's worth of State Bar CLE (15 hours). A total of three prizes will be awarded. Some exclusions apply.

- **MOTION:** Ted Schmidt moved, Lori Higuera seconded and the motion carried unanimously to approve the dissemination of the survey once it is in final form and signed off by the State Bar’s partners at the University of Arizona.

Revised MCLE Regulations/Mentor Program – Jennifer Rebholz

- On Friday, the officers met with staff and discussed earned CLE credits for those participating in the Mentor Program. The Court’s AO established the program as a two-year pilot program in 2020.
- The Executive Council agreed to remove the Mentor Program issue from the Board’s agenda, to seek an extension of the pilot program from the Court, and then work to “marry up” the Court Rule and the Regulations, the latter of which are created and governed by the Board. This matter would return to the Board in August for consideration.
- Therefore, the Board is only being asked to approve the proposal with regard to the Teaching Hours as redlined in the MCLE Regulations provided.
- After discussion of the proposed amendments which clarify CLE credit allotted for teaching hours if one serves on a panel,
- **MOTION:** Sam Saks moved, Chris Russell seconded and the motion carried unanimously to approve the MCLE Teaching Hours as presented.

Legislative Update – Joel England

- SB 1565 – died; the House did not take action on this legislation before the legislative session adjourned early Saturday morning, June 25.
- SB 1566 – previously signed into law by the Governor
 - the Bar bears costs if it loses a discipline case; damages and loss of reputation were removed from the bill prior to the Senate vote
 - language in law vague - how would Bar implement it?
- **MOTION:** Sam Saks moved, Denis Fitzgibbons seconded and the motion carried unanimously to move into Executive Session as 9:42 a.m.
- **MOTION:** John Moody moved, Kelsi Lane seconded and the motion carried unanimously to return to Open Session at 10:30 a.m.
- **MOTION:** Jimmie Smith moved, Hector Figueroa seconded and the motion to take no action with regard to SB 1566 failed.
- **MOTION:** Ted Schmidt moved, Sandra Bensley seconded and the motion carried over two dissents to delegate authority to the Executive Council to work with the established working group which is drafting a Rule change to address the new law (SB 1566).

Consent Agenda – Jennifer Rebholz

President Rebholz asked if there were any matters that needed to be removed from the Consent Agenda and hearing nothing,

- **MOTION:** Sam Saks moved, Jimmie Smith seconded, and the motion to approve the Consent Agenda passed unanimously.
 - a) Approval of April 22, 2022 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 Fees and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
- e) Approval of Reinstatements of Members Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
- f) Approval of Suspensions for Non-Compliance with Annual Membership Fee and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
(*Final suspension list was circulated to the Board on Friday, June 24*)
- g) Fee Waiver Denials

Retired Lawyers' Annual Fees Task Force Report – Joel England

- Based on concerns presented by the Senior Lawyer's Division, President Rebolz appointed a Task Force to review retired lawyer fees. After studying the issue, the Task Force recommended lowering the fee from \$215 to \$100 for those lawyers in the retired category who reached the age of 70.
- The Finance Committee considered the Task Force's recommendation and recommended a modification. Instead of an age requirement, the Finance Committee recommended that the fee be lowered from \$215 to \$100 based on years of membership – that 30, 40, or 50 years be considered. The Executive Council reviewed the years of membership and recommend the fee be lowered for those lawyers in the retired category with 35 years of membership in the State Bar of Arizona.
- The Board Executive Council recommends the Board approve the Finance Committee recommendation and seek the fee reduction from the Supreme Court of Arizona.
- The proposal before the Board is to approve the reduction in the Retired membership fees category from \$215 to \$100 for those who have been State Bar members for 35 years.
- The reduced fee proposal does not greatly adversely affect the Bar's budget. Financial projections were reviewed in the handouts provided by CFO Gerhart.
- The differences between Retired versus Inactive membership status were summarized.
- **MOTION:** Jimmie Smith moved, Chris Russell seconded and the motion carried unanimously to submit a draft Administrative Order to the Court to lower Retired membership fees to \$100 as discussed.

Financial Update – Kathy Gerhart

- Staff is currently finalizing the books for May.
- April Financial Results:
 - Excluding all investment activity, the budgeted deficit through April 2022 is \$126K. Actual is \$760K surplus.
 - Given anticipated timing differences and future known activity, permanent surplus through April is \$178K prior to investment activity
 - Revenue is higher than budgeted as a result of CLE, Advertising Sales and Pro Hac Vice revenue streams all outperforming budget. Slightly offset by lower than anticipated annual fees revenues – current projection is that we will collect about 98% of budgeted annual fees and 98% of budgeted late fees.

- Expenses are lower than budgeted – the majority are currently thought to be timing differences. However, bank/credit card fees are \$37K less than budgeted, which is a permanent variance stemming from the banking RPF undertaken last year.
- Investment activity through April 2022 is \$860K loss, resulting in net deficit of \$101K through April. The investment activity is all occurring in the reserve funds, so it does not impact cash flow.

Recognition of Outgoing Board Members – Jennifer Rebholz

- Recognized outgoing Board members and presented them with mementos:
 - Hector Figueroa, District 3 (Gila/Graham/Greenlee counties) Governor since 2015; served on various Board committees, most recently on the Special Constitutional Appointments Committee; appointed by this Board to serve a three-year term on the Foundation Board.
 - Lori Higuera, At-Large Member since 2014; chaired Appointments, Awards, Diversity & Inclusion and Special Constitutional Appointments Committees, and served on almost every other Board entity.

Recognition of Outgoing President by Staff – Joel England

- Surprised President Rebholz by showing a video of Board and staff members sharing personal comments and well wishes on her outstanding year as State Bar president.

Recognition of Outgoing President on Behalf of State Bar of Arizona and Board of Governors – Jessica Sanchez

- Recognized President Rebholz’s contributions to improving access to justice in Arizona with a donation in her name to the Arizona Foundation for Legal Services & Education.

Comments by President-Elect – Jessica Sanchez

- Pointed out her focus for the coming year; Board Retreat theme – “The Whole Lawyer, The Whole Community”; lawyer wellness; Governors as ambassadors for the Bar and lawyer wellness.
- Requested the Governors’ annual compliance forms be turned in.
- Requested the Governors’ choice of Board service for the coming year before the assignments are made.

Adjournment: Jimmie Smith moved, Sam Saks seconded, and the motion carried unanimously to adjourn the meeting at 11:20 p.m.

Respectfully submitted,

Ted A. Schmidt
Secretary/Treasurer