

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
January 24, 2020
Phoenix, AZ**

BOARD MEMBERS PRESENT: Brian Y. Furuya, President, Flagstaff; Denis M. Fitzgibbons, President-Elect, Casa Grande; Jennifer Rebholz, Vice President, Phoenix; Jessica Sanchez, Secretary-Treasurer, Tempe; Sandra Bensley, Tucson; Hector Figueroa, Payson; Sharon Flack, Prescott; Mark Harrison, Phoenix; Leticia Marquez, Tucson; Robert McWhirter, Phoenix; David Rosenbaum, Phoenix; D. Christopher Russell, Sierra Vista; Samuel Saks, Phoenix; Amanda Salvione, Young Lawyers Division; Jimmie Dee Smith, Yuma; Benjamin Taylor, Phoenix; Public Members Robyn M. Austin, Tucson; John Gordon, Prescott; and Anna C. Thomasson, Paradise Valley; and At-Large Members David K. Byers, Phoenix; Lori Higuera, Phoenix; and Doreen McPaul, Window Rock; Ex-Officio Member: Leah Won on behalf of Dean Mark Miller, Tucson.

EXCUSED ABSENCES: John Moody, Phoenix; Dee-Dee Samet, Tucson; Jonathan Martone, Paradise Valley; and Ex-Officio Members Jeffrey Willis, Board Advisor.

UNEXCUSED: Sara Siesco, Phoenix; Victoria Ames for Dean Douglas Sylvester, Phoenix.

OTHERS PRESENT: Sarah Corpening, Membership Administrator & Services Manager; Tim Eigo, Editor, *Arizona Attorney* Magazine; Mona Fontes, Administrative Assistant; Joe Hengemuehler, Chief Communications Officer; Joel England, CEO/Executive Director; Candice French, Human Resources Manager; Kathy Gerhart, Chief Financial Officer; Deanna Commack, Executive Assistant; Lori Maxwell, Chief Information Officer; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Carrie Sherman, Director of Board Operations; Mike Vallone, Procurement & Facilities Manager; Maret Vessella, Chief Bar Counsel; Chris Wyatt, IT Lead; and Supreme Court Liaison Hon. John Lopez, Phoenix.

President Brian Furuya called the Board meeting to order at 8:35 a.m.

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 the AJC Meeting on December 12, 2019 at which court processes were discussed. The Access to Justice Commission's annual report was reviewed; most notable statistic is that Court website traffic has doubled in the last year.
- Thanked President-Elect Denis Fitzgibbons for stepping in and making a presentation at Justice William Montgomery's investiture on January 10, 2020. President Furuya was unable to attend due to inclement weather.
- The schedule has been set for the statewide Focus Groups.
- April issue of *Arizona Attorney* Magazine will include articles on legal services activities.

CEO's Report – Joel England

- Introduced Employee of the Year, Mike Vallone, Procurement & Facilities Manager. Noted his expert handling of the day-to-day and special projects throughout the facility that helps to maintain the excellent condition of the property and attract tenants.
- Court's Task Force on the Delivery of Legal Services
 - Rule 5.4 Entity Regulation Review Group has met three times. He and Chief Bar Counsel Maret Vessella attended the meetings.
 - Petition to amend Rules pursuant to the Task Force's recommendations are to be filed by January 31, 2020 with comments due by March 22, 2020. Proposals reviewed/possibly refined/recirculated for second comment period that ends late April/early May. Court's possible action scheduled for its August Rules Agenda.
- Time will be scheduled on the February Board agenda for a briefing on the Rules Petition, possibly by Vice Chief Justice Ann Timmer, AOC Director Dave Byers and others.
- Attended Justice William Montgomery's Investiture on January 10, 2020.
- Attended the St. Thomas More Society Red Mass on January 14, 2020.

10 Minute Topic – Robert McWhirter

A presentation on the topic of "States' Rights ain't Right!" was delivered by Mr. McWhirter.

POLICY DISCUSSION AND POTENTIAL ACTION

Filing Deadline – MCLE and Membership Fees – Sarah Corpening, Membership Administrator and Mona Fontes, Administrative Assistant

- The discussion was based on an appearance of Bar member Ken Mann at the October 25, 2019 Board meeting. He objected to the late fee regarding his MCLE submission. His request was denied, and the Board voted to uphold CEO England's decision to deny the fee waiver request. The Board did, however, agree to review this issue at a future meeting.
- Mses. Corpening and Fontes reviewed the process of how and when fees are due and collected. Part of the notification process is to send reminder blasts to members when the filing process opens in June, with targeted emails in July and in the beginning of September sent to those who have yet to file. A full-page notice appears in *Arizona Attorney Magazine* in the July/August issue and as well as in every edition of eLegal between June and September 15th reminding members of the filing deadline. This year all communications included the Sunday, September 15th deadline to file. Filing deadlines are stated in the Court Rules.
- Following discussion regarding the *what happens when a deadline falls on a weekend or holiday* and the possibility of combining the various filing deadlines in order to simplify the process,
MOTION: Mr. Saks moved and Mr. Figueroa seconded the motion to petition the Court to change the MCLE and membership fee filing deadlines to the same date.
FRIENDLY AMENDMENT: Mr. McWhirter proposed a friendly amendment to ask the Court to allow the Bar to interpret the filing deadline as "the next business day" if the filing deadline falls on a weekend.

MOTION WITHDRAWN: After further discussion in which it was noted that the deadlines for late fees would also have to be considered, the motion was withdrawn.

PRESENTATION

Rocky Mountain Mineral Law Foundation – 2019 Activity Report – Sarah Strunk

Ms. Strunk was not present, and the report was not presented.

Proposed Amendments to the BLS Rules and Regulations (Peer Review Confidentiality) – Sarah Corpening and BLS Members M. Maureen Anders and James Cross

- The Court approved the State Bar's and the BLS' proposed revisions to the BLS Rules and Regulations in April 2018 with an effective date of July 2018. The Court amended the Section regarding the confidentiality of the peer review process (not a part of the Bar's/BLS' recommendations) now allowing that an applicant, upon request, be given access to the applications and statements from peer review references.
- The BLS Administrator has received numerous responses from Bar members who will not participate in the peer review process without confidentiality. Input from those who have provided comments on specialist candidates have been generic in nature.

MOTION: After discussion, Ms. Rebholz moved and Mr. Rosenbaum seconded the motion to file a Rule change petition with the Court to return to the previous version of the peer review confidentiality rules. The vote was 10-10 with President Furuya breaking the tie in favor of the motion.

New Area of Specialization – Administrative Law – Sarah Corpening and members of the State Bar's Administrative Law Section: Jessica Thomas, Camila Alarcon, Chris Kleminich, and Michael Goldberg

After 24 years, a new area of specialization is being proposed in Administrative Law. A survey of the Administrative Law Section showed great support for the proposal. The guest presenters responded to questions of the Board.

MOTION: Ms. Sanchez moved, Ms. Higuera seconded, and the motion carried unanimously to approve Administrative Law as the newest area of specialization.

Charity Selection for Silent Auction – 2020 Convention – President Furuya

The solicitation process was conducted from a list of 25 charitable organizations submitted by the Arizona Bar Foundation. One proposal had been received.

MOTION: Mr. Harrison moved, Mr. Rosenbaum seconded and the motion carried unanimously to select Step Up to Justice as the charity to run the silent auction at the 2020 Convention.

Consent Agenda – President Furuya

- Approval of December 6, 2019 Board Meeting Minutes
- Approval of Resignations in Good Standing
- Approval of Resignations in Lieu of Reinstatement
- Approval of Reinstatements – 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.)
- Approval of Reinstatements - Member(s) Suspended for Non-Compliance with MCLE Requirements

- (Rule 45, Ariz. R. Sup. Ct.)
- Approval of MCLE Suspensions (*up-to-date list provided at January 24 Board Meeting*)
- MCLE Fee Waiver Requests Denials
- Membership Fee Waiver Requests Denials

President Furuya asked if any item should be removed from the Consent Agenda and, hearing nothing,

MOTION: Mr. Fitzgibbons moved, Mr. Taylor seconded, and the motion carried unanimously to the Consent Agenda.

INFORMATION

Bankruptcy Law Section – Request for Support of HR 4421 – Bankruptcy Law Section members Katherine Sanchez, Carolyn Johnsen, and Brad Cosman

- The Executive Council heard from Ms. Sanchez and Ms. Johnsen regarding HR 4421, which is federal legislation that modifies venue requirements relating to bankruptcy proceedings.
- There is no opposition from the business community, only from lawyers in the Southern District of New York and Delaware where the majority of filings occur.
- Examples were presented about the lack of due process for creditors.
- Both the officers and the State Bar’s Bankruptcy Section support the proposed changes as outlined in the legislation.
- This is for information only with a vote calendared for the February Board meeting. President Furuya requested that Board members review the materials prior to the meeting.

Finance and Audit Committee Report – Benjamin Taylor and Kathy Gerhart

- Q4-2019 Preliminary financial were presented. Annual revenues were \$17,340K, \$275K over budget and \$204K more than 2018 revenues. Annual expenses were \$16,713K, \$402K under budget and \$195K less than 2018 expenses.
- 2019 Finance Audit & Tax Engagement Letters were summarized by Committee Chair Mr. Taylor.

Status Reports – Lisa Panahi, Jessica Sanchez, Sara Siesco

- *Amicus Curiae* Matters – Lisa Panahi
 - *Amicus Curiae* Matters – GC Lisa Panahi discussed the two cases that are pending before the 9th Circuit, that the State Bar joined as amici. In the *Crowe* case, the Goldwater Institute challenged the Bar’s filing of an amicus brief, and the State Bar responded. Oral argument in both the *Crowe* and *Gruber* may be scheduled for May. We are awaiting the final oral argument date.
 - The United States Supreme Court has pending *cert.* petitions out of the 7th and 8th Circuits, including from the *Fleck* matter again. The Board was updated on the current responsive brief dates, and that the GC’s office will be monitoring to see if the Court accepts cert.
- Strategic Planning Working Group – Ms. Sanchez reported that the Working Group is in the process of collecting data via focus groups, one-to-one interviews, and other means. Data

collection should be completed by the end of February. The Working Group meeting is in late March to discuss the data, trends, and other feedback.

- Special Constitutional Appointments Committee – Ms. Siesco was absent, and Ms. Sherman, Director of Board Operations, reported that the application process is ready for the next step, which is to interview qualified applicants. This is expected to take place in February 2020.

Correspondence/Reports

- Executive Council Minutes – November 22, 2019
- Executive Council Minutes – December 11, 2019
- AO 2020-08 BLS Certification Standards
- AZ Legislative/Policy Update

Human Resources Subcommittee – Anna Thomasson

Subcommittee Chair Thomasson reminded members to complete CEO England’s online evaluation.

Adjourned at 11:24 a.m.

Respectfully submitted,

Jessica Sanchez
Secretary/Treasurer