

**MEETING OF THE  
BOARD OF GOVERNORS  
OF THE  
STATE BAR OF ARIZONA  
April 15, 2016  
Phoenix, AZ**

BOARD MEMBERS PRESENT: Geoffrey Trachtenberg, President, Phoenix; Lisa S. Loo, President-Elect, Phoenix; Alex B. Vakula, First Vice President, Prescott; Jeffrey Willis, Second Vice President, Tucson; Steven A. Hirsch, Secretary-Treasurer, Phoenix; Tyler J. Carrell, YLD President, Phoenix; Richard D. Coffinger, Glendale; Diane L. Drain, Phoenix; Denis M. Fitzgibbons, Casa Grande; Brian Y. Furuya, Flagstaff; Patrick Greene, Tombstone; 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; Meredith Peabody, Prescott; Anna C. Thomasson, Phoenix; and At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Member: Dean Marc L. Miller, Tucson; Gary Stuart for Dean Douglas Sylvester, Tempe;

EXCUSED ABSENCES: Hon. David G. Derickson, Phoenix; Ex-Officio Member: Dean Shirley Mays, Phoenix;

OTHERS PRESENT: Nina Benham, Board Services Specialist; Matt Campbell, Help Desk Technician; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Financial Officer; Tim Eigo, Editor *Arizona Attorney*; John Furlong, General Counsel/Deputy Director; Kathy Gerhart, Chief Financial Officer; Rob Hosch, Technology Support Director; Gayle V. Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Lisa Panahi, Sr. Ethics Counsel; John Phelps, CEO/Executive Director; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel;

GUESTS: Janna Day, Lobbyist; Hon. William J. O'Neil, Presiding Disciplinary Judge and John L. Belatti.

President Geoffrey Trachtenberg called the Board meeting to order at 8:30 a.m.

**PRESIDENT'S REPORT**

- Attended the Western States Bar Conference in San Diego with CEO John Phelps. A great opportunity to meet other bars' representatives, to share and learn from others. Many states send all their board officers. Recommends expanding budget in the future to allow more officers to attend.
- Arizona Asian American Bar Association Dinner – 450 attended the sold out April 14 event. President-Elect Lisa Loo was the keynote speaker. Her wonderful PowerPoint presentation will be shared with the Board for their benefit.
- Arizona Supreme Court – The officers were invited to lunch with the Court during its annual retreat and discussed issues of mutual interest.

### **CEO/ED REPORT** – John Phelps

- Employee of the Quarter – Wendell Chin, Administrative Services Coordinator in the Tucson office, was unable to attend the Board meeting but will be introduced next month. The Tucson office has two employees and provide outstanding service to the members in the Southern region.
- Wills for Heroes - in its 10<sup>th</sup> year, volunteers have prepared wills for approximately 3,000 first responders. The Bar has provided a technology refresh to replace aging computers and heavy printers. A volunteer's "to go" kit was displayed containing a portable computer/printer set up.

### **DISCIPLINE SYSTEM PRESENTATION ON THE FORMAL PROCESS** – Hon. William

J. O'Neil, Presiding Disciplinary Judge

- Purpose of attorney discipline is:
  - Protect the public
  - Maintain the integrity of the profession
  - Deter other lawyers from engaging in unprofessional conduct
- The Plan and its Goals
  - Transparency
    - Public participation
    - Public access
    - Public hearings
    - Public rulings
    - Public awareness
  - Consistency
    - The Hearing Panel
      - Comprised of a volunteer attorney, a volunteer public member and the Presiding Disciplinary Judge
      - May dismiss a complaint, order diversion or impose discipline as provided in the rules
      - Hears and rules on complaints, defaults, and reinstatements
    - The Presiding Disciplinary Judge
      - Is a Presiding Judge of a Court
      - Rules on pretrial matters
      - Presides over discipline, disability, reinstatement, and interim suspension hearings
      - Rules on consent agreements
      - Imposes reciprocal discipline
      - Member of each hearing panel
  - Swiftness
    - In Processing
      - All cases filed with the disciplinary clerk through 2015 are completed except cases on review with the Supreme Court
      - Time from Formal Complaint to Final Order for all types of cases in 2013-88 days; 2014-96 days; 2015-91 days
      - Average time from a Formal Complaint to Final Order for Contested Cases: 2013-179 days; 2014-151 days; 2015-131 days
    - Where do most complaints originate? – clients and opposing clients

## **DISCIPLINE SYSTEM PRESENTATION ON THE FORMAL PROCESS (Continued)**

- Top reason for the problems – (lack of) communication and diligence
- Bar Charges – “The State Bar shall evaluate all information coming to its attention in any form...alleging unprofessional conduct, misconduct or incapacity.” *Supreme Court Rule 55(a)*
  - A Bar charge is an allegation.
  - Anyone can initiate a bar charge.
- Number of Attorney Discipline Charges (non-lawyers) by Year:
  - 3,127 Charges in 2015
  - 3,549 Charges in 2014
  - 3,492 Charges in 2013
  - 3,307 Charges in 2012
- Of the 14 appeals ruled upon or appealed in 2015
  - Panel Sanction increased three times
  - Panel Sanction reduced one time
  - Panel Sanction remains the same eight times
  - Appeals remain pending in two cases

Judge O’Neil suggested that mentoring could only benefit attorneys in their professional careers.

## **LEGISLATURE UPDATE** – Lobbyist Janna Day

- There are a number of bills in the pipeline, including HB2221, which would split the Bar into mandatory and discretionary functions. All bills are on hold until the budget passes.
- SB1168 - mental health powers of attorney legislation, crafted by the State Bar’s Elder Law, Mental Health & Special Need Planning Section, passed out of the Senate. One final vote on the amendments before it is sent to the Governor.

## **APPOINTMENTS COMMITTEE** – Chair Jeffrey Willis

- **ABA House of Delegates YLD Position**
  - The State Bar is allotted five Delegates due to its lawyer population size; one must be a Young Lawyer (35 years or younger). None of the current Delegates fit this criteria.
  - Delegate Thomas Ryan has graciously resigned so that a young lawyer could be appointed so the State Bar can comply with the ABA Constitution.
  - Appointments Committee recommended Judith Davila, a young lawyer, who was among the applicants vetted in December for the two openings, prior to knowing that a young lawyer was required to fill one of the two openings at that time.
  - **MOTION:** Coming from the Appointments Committee and requiring no second, motion carried over one dissent to accept the resignation of Thomas Ryan and appoint previous applicant Judith Davila to serve as the young lawyer Delegate among the State Bar’s five ABA Delegates.
- **City of Avondale Judiciary Advisory Board**
  - **MOTION:** Coming as a motion from the Committee, requiring no second, passed unanimously to recommend the following three nominees to the Avondale City Council for the one opening:
    - Mr. David Fuller, City of Phoenix Public Defenders Office
    - Mr. Vincent Creta, Creta Law Firm PLLC
    - Mr. Timothy Casey, Schmitt Schneck Smyth Casey & Even PC

## APPOINTMENTS COMMITTEE (Continued)

- **City of Mesa Judicial Advisory Board**
  - **MOTION:** Coming as a motion from the Committee, requiring no second, unanimously passed to recommend the following three nominees to the Mesa City Council for the one opening:
    - Ms. Kelly Kral, Dyer & Ferris LLC
    - Mr. Wade Swanson, Bar-S Foods Company
    - Mr. Ezra Clark, Clark Law Firm PC
- **City of Peoria Judicial Selection Advisory Board**
  - **MOTION:** Coming as a motion from the Committee, requiring no second, unanimously passed to recommend the following three nominees to the Peoria City Council for the one opening:
    - Mr. Garrett Olexa, Jennings Strouss & Salmon PLC
    - Ms. Jessica Cotter, The Law Firm of Jessica M Cotter PLLC
    - Mrs. B. Kathleen Gilbertson, B. Kathleen Gilbertson PC
- **Pima County Commission on Trial Court Appointments**
- Applicants must reside in Supervisorial District 1; as three of the five lawyer-commissioners are registered Republicans, the maximum allowed under Arizona's Constitution, applicants must be registered in a different political party.
  - **MOTION:** Coming as a motion from the Committee, requiring no second, passed over one dissent to send the following three nominees to the Governor for the one opening:
    - Ms. Suzanne Brei, Brei Dispute Resolutions LLC
    - Ms. Carrie Rednour, Rednour Law Offices PLLC
    - Mr. G. Micah Schmit, United States Attorney Office
- **Pinal County Commission on Trial Court Appointments**
- Applicants must reside in Supervisorial District 4; there is no applicant restriction with regard to one's political party affiliation.
  - **MOTION:** Coming as a motion from the Committee, requiring no second, unanimously passed to forward the one applicant, Ms. Tiffany Shedd, to the Governor with an explanation as to why the Board was submitting only one nomination for this particular opening.

## AWARDS COMMITTEE – Chair Lisa Loo

The following slate of annual award recipients were presented:

- Award of Appreciation (non-lawyer)
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select Christine Iijima Hall, Ph.D. as the 2016 recipient of the Award of Appreciation.
- Award of Special Merit
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select Gary M. Kula as the 2016 recipient of the Award of Special Merit.

### AWARDS COMMITTEE (Continued)

- Diversity and Inclusion Leadership Award
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select the Indian Legal Program at the ASU Sandra Day O'Connor College of Law as the 2016 recipient of the Diversity and Inclusion Leadership Award.
- James A. Walsh Outstanding Jurist Award
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select Hon. Andrew Klein as the 2016 recipient of the James A. Walsh Outstanding Jurist Award.
- Member of the Year
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select three recipients of the 2016 Member of the Year Award: Jodi Knobel Feuerhelm, Andrew Jacobs and Brian J. Pollock.
- Sharon A. Fullmer Legal Aid Attorney of the Year Award
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select Stanley Silas as the 2016 recipient of the Sharon A. Fullmer Legal Aid Attorney of the Year Award.
- Tom Karas Criminal Justice Award
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select John M. Sears as the 2016 recipient of the Tom Karas Criminal Justice Award.
- Michael C. Cudahy Criminal Justice Award
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select James Alan Goodwin as the 2016 recipient of the Michael C. Cudahy Criminal Justice Award.
- Outstanding In-House Counsel of the Year Award
  - **MOTION:** Coming as a motion from the Awards Committee, requiring no second, unanimously passed to select Nima Jacobs Kelly as the 2016 recipient of the first Outstanding In-House Counsel of the Year Award.
- Hon. John R. Sticht Disability Achievement Award
  - **MOTION:** Coming as a motion from the Committee, requiring no second, unanimously passed to select Edward L. Myers III as the 2016 recipient of the Hon. John R. Sticht Disability Achievement Award.
- President's Award
  - The President's Award does not go through the Committee but is given at the discretion of the President. President Trachtenberg has chosen to honor Thomas M. Ryan and Alex H. Lane.

### RULES COMMITTEE – Chair Steve Hirsch

- a) Proposed Comment to R-16-0031, Petition to Delete Rule 20, to Add Rule 24.1 and to Renumber Rules 24.1, 24.2, 24.3, and 24.4, Ariz. R. Crim. P.
  - Would delete Rule 20 (Judgment of Acquittal) and move post-verdict provisions of that rule to new Rule 24.1 (Post-Verdict Proceedings); provisions for judgment of acquittal before verdict would be eliminated.

## RULES COMMITTEE (Continued)

- Criminal Prosecution Practice & Procedure supports the Petition.
  - Criminal Defense Practice & Procedure opposes the Petition.
  - Rules Review Committee recommended by a vote of 3 to 2 to take no position and to send both proposed comments to the Court.
  - After considerable discussion,
    - **MOTION:** Jim Smith moved and Richard Coffinger seconded to send up both the Defense's and Prosecution's comments to the Court with support of the Defense position. Motion failed by a vote of 6-13.
    - **MOTION:** Coming from the Rules Review Committee, requiring no second, to take no position and to send both proposed comments to the Court. Motion passed.
- b) Proposed Comments to R-16-0007, Petition to Amend Rule 8.4, Ariz. R. Crim. P.
- Would add to the list of exclusions of time from the computation of speedy trial limits a period of 30 days, if the delay under Rule 8.4(a) ends within 30 days of the speedy trial time limits, to allow time to schedule and prepare for trial.
  - Criminal Prosecution Practice & Procedure Committee – supports the Petition.
  - Criminal Defense Practice & Procedure Committee – opposes the Petition.
  - Rules Review Committee had no recommendation; Committee's vote was tied 2 to 2.
    - **MOTION:** Richard Coffinger moved and Jim Smith seconded to send both the Defense's and Prosecution's proposed comments with support of the Defense position. Motion failed by a vote of 3-16.
    - **MOTION:** Dee-Dee Samet moved, Tyler Carrell seconded and the motion carried to send both proposed comments to the Court without taking a position. Motion carried over one dissent.
- c) Proposed Comment to R-15-0038, Petition to Amend Rule 16.4, Ariz. R. Crim. P.
- Would require the trial court to ensure compliance with the prosecution's Brady and Rule 15.1(b)(8) disclosure obligations.
  - Criminal Prosecution Practice & Procedure Committee – opposes the Petition.
  - Criminal Defense Practice & Procedure Committee – did not submit a proposal but finds the Petition procedurally problematic.
  - Rules Review Committee recommended by a vote of 3 to 1 to take no position but send the Prosecution's proposed comment to the Court.
    - **MOTION:** Coming as a motion from the Committee, requiring no second, unanimously approved sending the Criminal Prosecution Practice & Procedures Committee's comment to the Court but to take no position.
- d) Comment to R-16-0013, Petition to Amend Rule 32 (filed April 1; information)
- Mr. Hirsch reviewed the comment and the schedule for the revised Petition, should one be filed by the Court, and the Bar's timing for a response, should the Board decide to provide a second comment.
- e) Past President's Position (information)
- Mr. Hirsch reported that this issue surfaced during the drafting of the Bar's comment to R-16-0013 (above). The Scope and Operations Committee reviewed the Bylaws and, based upon their review and advice of counsel, decided the Bylaws give an immediate past president who is in his/her third year of an elected three-year term the right to vote. Geoffrey Trachtenberg and Jeffrey Willis had abstained from that vote at the Committee meeting.

**CONSENT AGENDA** – President-Geoffrey M. Trachtenberg

- a) Approval of February 26, 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) 2014-2015 MCLE Suspensions
- e) Dues Waivers – March and April 2016
- f) Sole Practitioner & Small Firm Section Bylaws Changes
- g) Proposed Comment to R-16-0006, Petition to Amend Rules 41 and 42, Ariz. R. Fam. L. P.
- h) Proposed Comment to R-16-0011, Petition to Amend ER 1.6(d), Rule 42, Ariz. R. Sup. Ct.
- i) Proposed Comment to R-16-0027, Petition to Amend ER 1.2, Rule 42, Ariz. R. Sup. Ct.
- j) Proposed Comment to R-15-0043, Petition to Amend Rule 11, Ariz. R. Civ. P.
- k) Proposed Comment to R-16-0017, Petition to Amend Rule 5.1(a), Ariz. R. Civ. P.
- l) Proposed Comment to R-16-0018, Petition to Amend Rule 49(a), Ariz. R. Civ. P.
- m) Proposed Comment to R-16-0019, Petition to Amend Rule 10, Ariz. R. Civ. P.; Rule 110, Just. Ct. R. Civ. P.
- n) Proposed Comment to R-16-0024, Petition to Amend Rule 7.6, Ariz. R. Crim. P.
  - **MOTION:** Alex Vakula moved, Patrick Greene seconded and the motion carried unanimously to approve the Consent Agenda as presented above.

**APPOINTMENTS PROCESS STUDY GROUP** – Alex Vakula

- Met April 12 with Lori Higuera, Lisa Loo, John Phelps, Eadie Rudder, Carrie Sherman and Jeffrey Willis.
- Reviewing the Board’s nomination/appointment process as well as the guidelines under which the Bar’s Standing Appointments Committee operates. Looking at candidate criteria for the volunteer positions handled.
- Report/recommendations to the Board in the near future.

**JUDICIAL APPOINTMENTS AND DIVERSITY ON THE BENCH** – Mike Liburdi and Kate King

- Mike Liburdi, Governor Doug Ducey’s General Counsel, and Kate King, Governor Ducey’s Deputy General Counsel, summarized the Governor’s process for making judicial appointments.
- The judicial nominating commissions have been asked to recommend as many qualified candidates as possible. Seven were nominated for the recent Supreme Court vacancy.
- The Governor looks for diverse backgrounds and experience among candidates including distinguished legal accomplishments, integrity and respect for the separation of powers.
- Finalists recommended by the judicial nominating commissions are asked to submit a writing sample, background checks are performed on the candidates and they are interviewed by a staff panel of four or five.
- The Governor has made 18 judicial appointments in the past 15 months:
  - 1 Supreme Court Justice
  - 1 Appellate Court Division One Judge
  - 14 Maricopa County Superior Court Judges

## **JUDICIAL APPOINTMENTS AND DIVERSITY ON THE BENCH (Continued)**

- 2 Pima County Superior Court Judges
- 6 women appointed, 3 minorities appointed, appointments outside the party – highest numbers among Arizona’s governors
- Outreach: Mr. Liburdi and Ms. King are traveling the state to speak to presiding judges in Yavapai, Pima and Yuma counties and Division Two of the Appellate Court. Mr. Liburdi was a panelist on one of the Collaborative Bar’s programs. Meeting with AWLA in 2017.

## **YOUNG LAWYERS DIVISION (YLD) REPORT** – Tyler J. Carrell

- Issues Facing Young Lawyers
  - Student Loan Debt
  - Law School Applications Plummeting
  - Depressed Job Market
- College costs increased 590% between 1980 and 2010; student debt growth up 500% between 1999 and 2011.
- Law School Debt
  - Arizona: \$100,902
  - ASU: \$106,426
  - Arizona Summit: \$178,263
  - Debt is non-dischargeable in bankruptcy, new payment options (income based); interest proposals
- LSAT scores are falling and Bar Exam passage rates are crashing. Some law schools are pushing for changes to the Exam.
- Depressed Job Market
  - Lawyers per Capita in Arizona: 23.7 (about #44 nationwide)
  - Underemployed
  - Many going Solo
- Six Goals set forth in the 2016-2020 YLD Strategic Plan
  - Goal 1: Competency
  - Goal 2: Ethics
  - Goal 3: Professionalism
  - Goal 4: Administration of and Access to Justice
  - Goal 5: Professional Advancement and Success
  - Goal 6: Community Involvement

## **FINANCE AND AUDIT COMMITTEE** – Steve Hirsch, Vice Chair on behalf of Chair Dave Byers

- Q-1 2015 Financials: The SBA is on track. Surplus is \$476K compared to a budget of \$206K (variance of \$270K, and compared to \$620K in 2015 (variance of \$144K).
- Dues penalties are \$90K less than anticipated. As of March 31, 2016 less members have paid late fees in comparison to the same time period last year.
- 2015 Combined Audit of State Bar of Arizona and Client Protection Fund
  - Auditor Eide Bailly addressed the clean audits at the recent Finance and Audit Committee meeting. Management letters provided to the Board. Staff commended for facilitating smooth process.

### **FINANCE AND AUDIT COMMITTEE (Continued)**

- Reporting 2015 year-end operating surplus of \$1,209,082 excluding sections. The SBA Cash Reserve Policy requires that any cash surplus that exists at year end be added to a reserve account.
  - Finance and Audit Committee recommendation: split equally between the Cash Reserve and Capital Reserve.
  - **MOTION:** Patrick Greene moved, Jimmie Smith seconded and the motion carried unanimously to equally split the 2015 yearend surplus of \$1,209,082 between the Cash Reserve and Capital Reserve Accounts.

### **STRATEGIC PLANNING COMMITTEE** – President-Elect Lisa Loo

YLD President Tyler Carrell had also made a presentation on the YLD's Strategic Plan to the Committee. The Committee is working to integrate the YLD's Plan with the State Bar's Strategic Plan. Mentoring is an important initiative in both Plans.

### **COMMUNICATIONS/GOVERNMENT RELATIONS DIVISION** – CCO Rick DeBruhl

- Launch of the new revised version of the website is scheduled the week of April 18.
  - Responsive to more smart phones and tablets.
  - “Scrolling” (which is back in fashion) ability.
  - Main tool bar remains in place for easier navigation.
  - In-house project saved time and money. Connie DeCinko, the Bar's Programmer Analyst, recognized.

### **2016-2017 PRESIDENT'S YEAR** – President-Elect Lisa Loo

- 2016-2017 Board Meeting schedule provided.
- Board Retreat: Prescott Resort & Conference Center, July 21-22. Focus on governance issues.
- Convention: Noted the first Practice Toolkit Track designed for new lawyers. Free professional headshots available.
- Standing Committee Appointments: Outreach begun with Bar committees regarding the importance of adhering to term limits in order to allow the opportunity for other talented lawyers, including young lawyers, to perform Bar service.

### **BOARD SECTION LIAISON REPORT** – President Geoffrey Trachtenberg

Board members began reporting out on the activities of the Sections to which they were assigned liaison roles.

### **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