

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
October 27, 2017
Phoenix, AZ**

BOARD MEMBERS PRESENT: Alex Vakula, President, Prescott; Brian Furuya, Vice President, Flagstaff; Lori Higuera, Secretary-Treasurer, Phoenix; Daniel Mazza, Young Lawyers Division President, Phoenix; Tyler J. Carrell, Phoenix; David Wm. Engelman, Phoenix; Hector Figueroa, Payson; Patrick Greene, Tombstone; Robert J. McWhirter, Phoenix; Pouria Paknejad, Phoenix; Jennifer Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jessica Sanchez, Phoenix; Sara A. Siesco, Phoenix; Jimmie Dee Smith, Yuma; Benjamin P. Taylor, Phoenix; Public Members: Jason E. Cobb, Phoenix; Anna C. Thomasson, Phoenix; and At-Large Members: David K. Byers, Phoenix; Paul Senseman, Phoenix; Ex-Officio Members: Gary Stuart, on behalf of Dean Douglas Sylvester, Tempe; Leah Won on behalf of Dean Marc Miller, Tucson; and Lisa S Loo, Immediate Past President, Tempe;

EXCUSED ABSENCES: Jeffrey Willis, President-Elect, Tucson; Denis M. Fitzgibbons, Casa Grande; Public Member: John Gordon, Prescott and Ex-Officio Member: Dean Penny Willrich, Phoenix.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Matt Campbell, Help Desk Technician; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Communications Officer; Kathy Gerhart, Chief Financial Officer; Gayle Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Rick Palmatier, Assistant General Counsel; Lisa Panahi, General Counsel; John Phelps, CEO/Executive Director; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; George Schader, Information Technology Manager; and Carrie Sherman, Director of Board Operations and Justice John Lopez IV.

GUESTS: Jack Levine

The Public Meeting of the State Bar of Arizona's Board of Governors was held October 27, 2017, in Phoenix, Arizona.

The Board and staff held their annual Meet and Greet from 8:30 a.m. to 9:00 a.m.

President Alex Vakula call the Board meeting to order at 9:05 a.m.

CALL TO THE PUBLIC – President Alex Vakula made a Call to the Public. Hearing nothing, moved to the next agenda item.

PRESIDENT'S REPORT

- Welcomed Robyn Austin from Tucson, the newest public member of the Board.

PRESIDENT'S REPORT (Continued)

- The CLE Center, the site of this meeting, was being tried out for the Board meetings. It has easier access, is easier to provide security (than the 3rd Floor Board Room) and provides better A/V support.
- Congratulated Dee-Dee Samet who received the first Annual Pima County Bar Foundation's Excellence in Public Service Award.
- Congratulated the State Bar for receiving the Diversity and Public Service Award given by the Arizona Black Bar Association. CEO John Phelps accepted on behalf of the Bar at the ABBA's Annual Hayzel B. Daniels Scholarship Dinner the previous evening.
- Congratulated Lisa Loo who received the ABBA's Lifetime Achievement Award for her work on diversity and inclusion issues.

CEO/ED REPORT – John Phelps

- Introduced Employee of the Quarter Mikyela Cordero, Advertising Strategist – Sales and Marketing. Ms. Cordero was recognized by her co-workers for the teamwork she provides across departments.
- A busy fall: the 29 Sections are active and the CLE Department is in high gear.
- Legislative Districts Form was provided for the Board members' completion.

COURT-BAR INITIATIVE – Alex Vakula and John Phelps

- Reminded the Board that the Court recently denied a petition from the Goldwater Institute to bifurcate the Bar: regulatory/mandatory functions and discretionary functions.
- Court and Bar staff are working on a concept to explore the financial impact and structure of a model that would allow members to file an affidavit objecting to membership in the Bar and relieving them from paying for non-regulatory functions.
- Concept will be considered in early December by the Court with the possibility of a rule petition proposing adoption of this concept.
- During the Rules review process the State Bar will be given an opportunity to comment.
- Justice John Lopez, the Court's Board Liaison, indicated that at this point the Court is not committed to any action.

FINANCE AND AUDIT COMMITTEE – Chair Brian Furuya

- 2017 Audit – Auditor Selection
 - Selection of auditor for the 2017 audit – vote required.
 - Considered contract submitted by Eide Bailly LLP which includes a five percent increase over a zero percent increase last year. The cost will be \$40,450 which includes the audit of the consolidated financial statements of the State Bar and Client Protection Fund, audit of the State Bar of Arizona 401(k) Plan, preparation of the State Bar's IRS Form 990 & 990-T and related state returns, and the preparation for the Client Protection Fund IRS Form 1041 and related state return. If the contract is approved, it would be the last year with Eide Bailly LLP, of a five-year period. Pursuant to the Financial Policies Manual, the Bar is obligated to send out an RFP next year.
 - **MOTION:** Coming from the Finance Committee, requiring no second, the Board unanimously approved Eide Bailly, LLP as the auditing firm for 2017.

FINANCE AND AUDIT COMMITTEE (Continued)

- Q3 Financial Reports
 - For the nine months ending September 30, 2017 the State Bar generated a surplus of \$802K excluding Sections. The surplus year-to-date is \$417K more than budgeted. This is due to \$55K more in revenues and \$362K less in expenses.
 - Sections Activity reported a surplus of \$60K compared to a budgeted surplus of \$27K.
 - No significant variances.
 - Revenues consist of dues income - 59%. Non-dues revenue - 37%, and Dues penalties - 4%
 - Expenses consists of Personnel 63%, Depreciation 5%, and Other Operating expenses 32%
 - Currently forecasting a net surplus of \$671K for the year ended December 31, 2017 which is \$251K more than budget.
 - MCLE Late Fees revenue – forecasted to over-achieve budget by \$100K by year-end.
 - Discussion regarding the numerous ways members are contacted to encourage to pay dues or file affidavits more timely as well as a few suggestions regarding the timing between the deadline for dues and the deadline for filing the MCLE affidavit.
 - Suggestion was made to combine dues date and MCLE to align them both together.
 - Public Service Center revenue – budgeted \$75K in subscription revenue for the year; projecting \$0 revenues for the year due to delay in start date of project.

- Client Protection Fund
 - Investments as of September 30, 2017 equal \$2.4M
 - Funds are invested in the Certificate of Deposit Account Registry Service (CDARS) which provides access to FDIC insurance above \$250,000 with the convenience of working directly with on financial institution.
 - Assessment revenue has doubled due to the reallocation of dues from \$10 to \$20 per member going to the Fund.
 - Suggestion to invest further out to get a greater return on investment was discussed.

- 2016 IRS Form 990 and 990-T have been prepared by our outside audit firm Eide Bailly, LLP
 - Draft of the returns included in the board materials for information and review.
 - The State Bar owes \$21K in taxes
 - CFO Kathy Gerhart signs the return on behalf of the State Bar

- IT Strategy 2018 – CIO Lori Maxwell
 - The IT Department has been trying to convert member email to the new system but it is an outdated system from 2006.
 - The SBA has been an email host for decades but it has become very costly to maintain.
 - Of the 24K active members 1,540 use the azbar.org email service as their primary email; 2,887 members had some activity this year.
 - Moving Forward Options:
 - Option A. Get out of email hosting completely.

- Discussion regarding having a period of six months for members using azbar.org email to transition to a new email service and for the Bar to assist them with transition.
- Option B. Pay the money to have a professional service update the system requiring a capital investment of \$200 – 350K initially; annual cost thereafter for maintenance.
- Recommendation from Finance Committee is to move away from hosting an email service; in favor of Option A.
- Discussion ensued regarding members’ need to have time to transition and revised business-related items that list their azbar.org address and to notify clients.
- **MOTION:** Sam Saks moved to table this matter and Patrick Greene seconded in order to study these, and potentially other, options and acquire firm costs.
 - Suggestions to make it an eight-month transition period and provide members with a list of options to pursue for their individual needs.
 - Maintaining the current email system is not included in the draft 2018 capital budget which will be voted on at the December meeting.
- **FRIENDLY AMENDMENT:** Accepted by Sam Saks and Patrick Greene to table this matter for one month and transition and assist members with moving client data.
- **VOTE:** Motion failed by a vote of 7-14-1.
- Further discussion on Option A which was recommended by the Finance and Audit Committee for the management of the elimination of the email service.
- **MOTION:** Finance and Audit Committee recommends Option A, requires no second.
- **AMENDED MOTION:** Dave Byers moved and Hector Figueroa seconded to amend the motion to recommend Option A with the request that at the December 8th Board meeting staff come with a plan for notification of membership of the six-month transition period.
- **MOTION TO AMEND THE AMENDMENT:** Dee-Dee Samet moved and Jimmie Smith seconded the Motion to Amend the Amendment to remove the 180 day termination of the end of hosted email service and make the determination of the length of transition period at the December 8th meeting of the Board.
- Amendment and Amended Amendment were accepted.
- **VOTE:** Amendment to the Amended Motion carried over one abstention.
- Staff direction –
 - ❖ Report to the Board with the dollar amount for transfer from the old email service to a new provider for those affected by the transfer.
 - ❖ Communications proposal on how to notify membership.
 - ❖ Board to decide operational details.

Break and Lunch – 11:00 a.m. to 11:25 a.m.

CONSENT AGENDA – Alex Vakula

- a) Approval of September 29, 2017 Board Meeting Minutes
- b) Approval of Resignations in Good Standing
- 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 Dues and/or Trust Account Compliance, Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.
- d) Approval of Technical Change to Deferred Compensation Policy
- President Vakula asked if there was anything that should be removed from the Consent Agenda, hearing nothing,
- **MOTION:** Patrick Greene moved, Paul Senseman seconded, and the motion carried unanimously to approve the Consent Agenda.

ARIZONA FOUNDATION FOR LEGAL SERVICES & EDUCATION (AZFLS&E) –

CEO Kevin Ruegg

- Dr. Ruegg reported on the shared programs between the SBA and the AZFLS&E.
- **IOLTA** – 69 financial institutions participate and all of them give 100% of the IOLTA interest earned on 5,257 accounts to the Foundation.
 - Principal balance of \$421M is an 8% increase over January.
 - Interest remitted for August was \$48K, a 10% increase over last year.
- **Wills for Heroes** – 11 events/year providing free wills for First Responders. Program held in Maricopa, Graham, Pima and Yavapai Counties this year with 101 volunteer attorneys or 1,471.5 volunteer hours; 474 wills prepared this year.
- **Modest Means** – 146 active Modest Means attorneys and 31 pending; served 1,735 clients.
- **Clearing House Center** – March 15 through September 30 – 6,299 calls routed to:
 - 1,296 to Legal Aid Agencies
 - 1,275 to Modest Means
 - 237 to lawhelp.org (out of state)
 - 265 direct transfer to State/County Bars
 - Remaining 3,226 to azlawhelp.org

Report also covered:

- online referrals
- bankruptcy help and hotline
- military legal assistance (assisted 603 veterans and 214 family members by 200 volunteers)
- Mock Trial – 611 student participants in Regional Competition (170 in-state students with 16 teams); 166 volunteers; 37 Arizona schools participating
- Connecting with Classrooms – 2,718 students, 34 attorneys, 94 classes benefited
- Legal Legacy – <http://www.legallegacy.org/> - 44 interviews of legal pioneers; begun 39 years ago

APPOINTMENTS COMMITTEE UPDATE – Chair Jessica Sanchez

- Committee meeting in October and November to craft recommendations for the Board's action at its December 8th meeting for the following:
 - Arizona Commission on Appellate Court Appointments

APPOINTMENTS COMMITTEE UPDATE (Continued)

- Maricopa County Commission on Trial Court Appointments
- Pima County Commission on Trial Court Appointments
- Pinal County Commission on Trial Court Appointments

PETITIONS PREPARED BY STAFF

- First draft petition would delegate authority to the CEO to make decisions regarding dues and penalty waivers. (Petition to Amend Rule 32(c)7, Ariz. R. Sup. Ct.)
 - Historically these waivers are primarily due to medical hardship.
 - Approximately 120 waivers are requested annually and about 100 are granted.
- Second draft petition is consistent with the Board's decision to eliminate the MCLE Committee, and would delegate authority regarding MCLE matters to the CEO. (Petition to Amend Rule 45, Ariz. R. Sup. Ct.)
 - Recommendation is for the fee schedule to be removed and follow the usual delinquency fees established by the Board with the consent of the Court.
- In both of these instances the CEO's decisions are subject to appeal to the Board.
- These matters are scheduled for December Board action.

PROGRAM REVIEW WORKING GROUP UPDATE – Lisa Loo and John Phelps

- The Group met and offered two proposals:
 - **Proposal One.** Makes recommendations on how to manage all of the groups that used to be standing committees of the Bar but are no longer.
 - Appointment to these groups took a great deal of time for the President and staff time getting them organized and prepared for the President's review.
 - Recommendation that the Board would delegate authority to the CEO to appoint, structure and manage those groups that are no longer standing committees.
 - The groups would be reconfigured and less formal with the probability that a less formal structure will provide opportunities for more Bar members to be engaged.
 - The CEO would report annually to the Board of Governors on the groups' activities.
 - **Proposal Two.** Deals with changes to the Ethics, UPL and Professionalism Committees following the Supreme Court's task force report on these committees.
 - Proposed merging Ethics and UPL Committees into an advisory group and similarly transitioning the Professionalism Committee into an advisory council.
 - In doing so these groups will not be subject to the Public Meeting Policy as they are not engaged in the Bar's constitutional, statutory or regulatory obligations.
 - Board would maintain oversight through regular reporting.
 - Less formal structure will provide opportunities for more Bar members to be engaged.

BOARD OF LEGAL SPECIALIZATION (BLS) – Proposed Revisions to Rules, Regulations and Specialization Standards – Lisa Panahi and Sarah Corpening

- The Court established a new Rule 44 last January on a temporary basis, changing the way the State Bar appoints the BLS and related procedures. At that time the Court directed the Bar to provide draft rules and regulations by January 1, 2018 for its approval.
 - Included in the materials for the Board members was the Standards for each of these practice areas: Bankruptcy Law Standards; Criminal Law Standards; Estate and Trust Law Standards; Family law Standards; Personal Injury & Wrongful Death Law Standards; Real Estate Law Standards; Tax Law Standards and Workers' Compensation Law Standards.
 - Proposal included in October 24 *eLegal* encouraging members' comments by November 22.
 - Board action scheduled at December 8th meeting.
 - Deadline to submit to the Supreme Court is January 1, 2018.

CORRESPONDENCE/PARTNER BAR REPORTS

- Arizona Judicial Council Update October 2017 and the Strategic Agenda Awards Program 2017
- County Bar Reports
 - Pima –YLD-hosted judicial reception at Arizona Inn November 7; silent auction benefitting Arizona's Children Association; Supreme Court hearing oral arguments in Tucson that day
 - Yavapai – State Bar participated in two county bar events in September; e-filing effective December 1
 - Maricopa – Judge Geoffrey H. Fish is president-elect; MCBA is selling its building and will rent space in another location
 - Federal – recognizing Arizona Legends Justice Ruth McGregor, Judge Andrew Hurwitz and UofA Dean Emeritus Toni Massaro on November 2 at the Arizona Inn

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:25 p.m.

Respectfully submitted,

Lori Higuera
Secretary/Treasurer