

**MEETING OF THE  
BOARD OF GOVERNORS  
OF THE  
STATE BAR OF ARIZONA  
September 29, 2017  
Phoenix, AZ**

BOARD MEMBERS PRESENT: Alex Vakula, President, Prescott; Jeffrey Willis, President-Elect, Tucson; Brian Furuya, Vice President, Flagstaff; Lori Higuera, Secretary-Treasurer, Phoenix; Daniel Mazza, Young Lawyers Division President, Phoenix; Tyler J. Carrell, Phoenix; Hector Figueroa, Payson; Denis M. Fitzgibbons, Casa Grande; Patrick Greene, Tombstone; Robert J. McWhirter, Phoenix; Pouria Paknejad, Phoenix; Jennifer Rebholz, Phoenix; Samuel Saks, Phoenix; Jessica Sanchez, Phoenix; Sara A. Siesco, Phoenix; Jimmie Dee Smith, Yuma; Benjamin P. Taylor, Phoenix; Public Members: Jason E. Cobb, Phoenix; John Gordon, Prescott; 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; Dean Marc Miller, Tucson; Lisa S Loo, Immediate Past President, Tempe; and Dean Penny Willrich, Phoenix.

EXCUSED ABSENCES: David Wm. Engelman, Phoenix; Dee-Dee Samet, Tucson;

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: Robyn Austin, Scott DeWald, Frank Jackson, Jack Levine, Brent Nelson, Michael Paterson, Hon. Christian Price, Lynda Shely, Bernardo McGee Velasco and Leah Won

The Public Meeting of the State Bar of Arizona's Board of Governors was held September 29, 2017, in Phoenix, Arizona.

President Alex Vakula called the Board meeting to order at 8:30 a.m.

- President Vakula announced that Mr. Kenney Hegland, an elected member from District 5 (Pima/Santa Cruz counties), has resigned from the Board of Governors.

**CALL TO THE PUBLIC** – President Alex Vakula made a Call to the Public.

- Jack Levine urged the president to appoint a committee to investigate what he alleges to be misconduct by several large law firms in connection with the public utility companies setting of consumers' energy rates.

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

- Mr. DeBruhl reported that Sections were bringing three Legislative Bills forward for the Board's consideration; one from the Business Law Section regarding the Limited Liability

Company Act and two from the Probate and Trust Section regarding technical corrections to Title 14 and the Decanting Statute. He added that the Bar can support bills designed to improve the legal and judicial processes and all proposals brought to the Board are Keller permissible.

- Lobbyist Janna Day reported that she was familiar with all the Bills being presented and had no concerns to bring to the Board's attention.
- Limited Liability Company (LLC) Act and Resolution, Business Law Section – Scott DeWald and Chair Michael Patterson reported.
- The Business Law Section created a subcommittee of its Legislative committee to review possible improvements in the Arizona LLC Act. Over seven years they met biweekly for several hours and additionally all day Saturdays when they worked on the more complicated provisions that resisted consensus.
- During the seven year project, representatives of the subcommittee also made presentations at bar-sponsored CLE programs to report on the subcommittee's progress. The representatives requested comments and questions at these events that were very helpful to resolve difficult policy choices.
- The proposed LLC Act retains important aspects of existing Arizona law. Among its key benefits:
  - Adds more freedom of contract than currently exists for the operating agreement.
  - Clarifies the fiduciary duties of members and managers, and allows modification of those duties in the operating agreement.
  - Sets out circumstances for expelling a member for specified kinds of bad conduct.
  - Provides rules for indemnifying a member or manager, and allows modification of those rules in an operating agreement.
  - Provides a method for handling frivolous derivative claims by members instead of the current default rule of one person, one vote; can be varied in the operating agreement.
  - Eases the burden of record-keeping by allowing records to be maintained electronically.
  - Allows “virtual” LLCs lacking a physical place of business.
  - **MOTION:** Tyler Carrell moved, Pouria Paknejad seconded and the motion carried unanimously to support the proposed LLC Act and authorize the Bar's lobbyist to assist in the introduction of the Act in the Arizona legislature and its passage.
- Technical Corrections and Clarifications for Arizona Probate and Trust Law, Arizona Probate and Trust Section – Brent Nelson reported
  - The proposed legislation consists of technical corrections to Title 14 that primarily affect trust and estate practitioners and financial institutions. The Section Executive Council and Arizona Banker's Association representatives reviewed and approved the proposed changes. Nine separate statutes were reviewed and modified by the technical corrections and clarifications proposed: 14-2517, 14-3306, 14-3403, 14-10105, 14-10113, 14-10506, 14-10813, 14-10819 and 14-11013.
  - **MOTION:** Jimmie Smith moved, Daniel Mazza seconded and the motion carried unanimously to support the proposed Technical Corrections and Clarifications for Arizona Probate and Trust Law and authorize the Bar's lobbyist to assist in the introduction of the proposed bills in the Arizona legislature and its passage.

### **RETREAT FOLLOW UP** – Alex Vakula

- President Vakula called attention to the great ideas the Board formulated at its Retreat that the Bar could undertake to support the new generation of lawyers, and opened the discussion in order to prioritize said proposals for the coming year. Focus centered on mentoring circles and staff reported that steps to create these statewide had already begun. YLD President Danny Mazza hoped that the program could be channeled electronically.
- Public Records and Public Meetings Policies – General Counsel Lisa Panahi
- Ms. Panahi referred the Board to the final version of the Public Records Policy, which had not been issued prior to the Retreat, which takes effect January 1, 2018. She also reported that the organization has a document retention policy.
- Ms. Panahi responded to Board members' questions about the new policies, including what constitutes a meeting of the Board, whether Board business can be conducted by email, and whether the Board can convene in Executive Session.

### **FINANCE AND AUDIT COMMITTEE** – Brian Furuya and Kathy Gerhart

- 2018 Budget Timeline – provides the schedule for the budget preparation; the proposed budget will come to the Board on December 8 for a vote.
- 2018 Budget Guidelines Memorandum with Recommendation from Finance and Audit Committee and Human Resources Sub-Committee
  - **MOTION:** Daniel Mazza moved, John Gordon seconded and the motion carried unanimously to approve the 2018 Budget Guidelines as presented.
- Lease Negotiation – The potential tenant would like to move in December 1. The Committee requested that the Board delegate to CEO/ED John Phelps to negotiate the Letter of Intent and wrap up the completion of the lease. Lease term - 63 months; three months revenue neutral. The tenant requested early occupancy.
  - **MOTION:** Tyler Carrel moved, Lori Higuera seconded and the motion carried unanimously to delegate final lease negotiations to the CEO.
- Annual Convention Financial Summary
  - Convention attendance - trend is down and not a sustainable model; future Board topic about revitalization including an afternoon of free CLE for young lawyers as well as a mentoring program.
  - Financially the 2017 net surplus was \$100,150; \$104,236 in 2016 with operating margins of 22.3% in 2017 (Westin La Paloma, Tucson) and 19.6% in 2016 (Wild Horse Pass, Chandler)
- Client Protection Fund Financial Statements Quarterly report provided.

### **PRESENTATION**

- The Board welcomed and congratulated Bernardo McGee Velasco on receiving the highest score on the recent Bar Exam. President Vakula presented him with a memento. Mr. Velasco is a graduate of the James E. Rogers College of Law at U of A and is currently a judicial clerk for the Chief Judge Peter J. Eckerstrom of the Arizona Court of Appeals, Division II.

### **ABA HOUSE OF DELEGATES REPORT** – Lynda Shely

- Ms. Shely reported that she was one of five Delegates that represent the State Bar of Arizona at the ABA Annual and Mid-Year Meetings. The other delegates are Jimmie Dee

Smith, a solo practitioner and the Board of Governors' representative from District 7 – La Paz and Yuma counties; Margarita Silva, Silva & Fontes, Phoenix; Judy Davila, National Labor Relations Board, Phoenix, and the young lawyer representative; and Adam Zickerman, Zickerman Law Office PLLC, Flagstaff.

- The Delegates don't vote on any House Resolutions that violate Keller.
- A national task force is being formed on lawyer wellbeing which will address mental health, weight loss, and other related issues.
- Resolution 104 passed which opposed the division of the Ninth Circuit Court of Appeals.
- Resolution 108 passed – Bar admission should not be based on immigration status.
- Resolution 116 passed – Courts provide lawyers with constructive participation in the Courts.
- Resolution 121 passed – training about explicit bias.
- Resolution 110 passed – Lawyer Discipline Rules minimizing instances of lawyers' misappropriation of monies held in trust accounts.

#### **CONSENT AGENDA** – Alex Vakula

- Approval of July 28, 2017 Board Meeting Minutes
- Approval of Resignations
  - In Good Standing
  - In Lieu of Reinstatement
- Approval of Reinstatements
  - Approval of Reinstatements of Members Suspended for Non-Compliance with MCLE Requirements, Rule 45, Ariz. R. Sup. Ct.  
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)
- Approval of the Proposed Amendments to the International Law Section Bylaws
  - President Vakula asked if there was anything that should be removed from the Consent Agenda, hearing nothing,
  - **MOTION:** Pouria Paknejad moved, Lori Higuera seconded, and the motion carried unanimously to approve the Consent Agenda.

#### **APPOINTMENTS COMMITTEE** – Jessica Sanchez

##### Arizona Supreme Court Committee on Character and Fitness- Lawyer Members

- The Appointments Committee recommended to the Board of Governors the following slate of qualified candidates to be sent to the Arizona Supreme Court for its consideration and ultimate selection of two lawyers to serve on the Committee on Character and Fitness: Ms. Jennifer S. Rock, Maricopa County Public Defender's Office, Phoenix; Mr. Edward Maldonado, Law Office of Edward Maldonado, Phoenix; Ms. Aryka S. Radke, Industrial Commission of Arizona LJ Division, Phoenix; Ms. Ashley D. Adams, Ashley D Adams PLC, Scottsdale; Ms. Carrie L. Thompson Jones, Vial Fotheringham LLP, Tempe; Mr. Gerard Morales, Snell & Wilmer LLP, Phoenix and Mr. Timothy A. Stratton, Gust Rosenfeld PLC, Phoenix.
  - **MOTION:** Jimmie Smith moved, Brian Furuya seconded and the motion carried over the abstention of Jeffrey Willis to forward the slate of candidates to the Court.

### Arizona Supreme Court Committee on Character and Fitness – Public Members

- The Appointments Committee recommended to the Board of Governors the following slate of qualified candidates to be sent to the Arizona Supreme Court for its consideration and ultimate selection of four public members to serve on its Character and Fitness Committee: Ms. Joya J. Dunbar, Peoria; Dr. Beverly C. Muhammad, Laveen; Dr. Michael L. Crudder, Peoria; Mr. Ronald J. Oberholtzer, Show Low; Mr. Augustine P. Bartning, Phoenix; Dr. Paul J. Hanley, Sun Lakes and Sgt. David L. Audsley, Pinedale.
  - **MOTION:** Jimmie Smith moved and Paul Senseman seconded the motion to send all seven candidates to the Arizona Supreme Court for the four non-lawyer openings on the Committee on Character and Fitness.
  - **Motion to Amend:** Tyler Carrell moved and Lori Higuera seconded the motion to remove Sgt. David L. Audsley from the list. Motion failed.
  - After further discussion the Board voted on the original motion to send up all seven candidates to the Court. Motion carried over Pouria Paknejad’s abstention.

### Arizona Supreme Court Committee on Examinations

- The Appointments Committee recommended to the Board of Governors the following slate of qualified candidates to be sent to the Arizona Supreme Court for its consideration and ultimate selection of three lawyers to serve on the Committee on Examinations: Ms. Aryka S. Radke, Industrial Commission of Arizona, Phoenix; Mr. Michael J. Donovan, Dignity Health, Phoenix ; Mr. Benjamin R. Eid, Law Office of Amy M. Hamilton (Nationwide Insurance), Scottsdale; Mr. Timothy A. Stratton, Gust Rosenfeld, Phoenix; Mr. David A. Timchak, Wilenchik & Bartness, Phoenix; Mr. Gregg C. Gibbons, Gregg Clarke Gibbons PC, Scottsdale; Ms. Chelsea M. Kartler, Charles Schwab, Phoenix; Mr. Mark E. Criner III, The Northern Trust Company, Phoenix; and Mr. Kristopher L. Smith, O’Connor & Campbell PC, Tempe.
  - **MOTION:** Tyler Carrell moved, Paul Senseman seconded and the motion carried unanimously to send the slate of candidates to the Court.

### **Executive Session:**

- Staff left the room at Noon except General Counsel Lisa Pinahi, Chief Bar Counsel Maret Vessella and Board Services Specialist Nina Benham
- Reason for Executive Session: discussion/consideration of applicants for open Board of Governors public member seat.

### **Open Session 12:15 p.m. and short break**

#### Public Members, Board of Governors (non-Maricopa County seat)

- The Board of Governors interviewed three candidates individually for the one public member position on the Board: Hon. Christian Price of Maricopa, Mr. Frank Jackson of Sierra Vista and Ms. Robyn Austin of Tucson. This seat must be filled by an individual from outside Maricopa County. Each candidate returned to their place of business or residence when their interview concluded.
- The Board convened in executive session to discuss the candidates and then reconvened in open session.

- The Board voted by secret ballot. There was no majority winner but Mr. Jackson with the fewest votes was dropped from the next ballot.
- The Board voted again by secret ballot. Ms. Austin and Mayor Price each received 10 votes.
- General Counsel Lisa Panahi advised that, given the absence of the candidates, Article 7.03 of the Bylaws could be suspended by a vote of the Board. The Article states: In the event of a tie vote, the Board shall determine by lot and in the presence of the candidates which candidate shall be declared elected.
  - **MOTION:** Robert McWhirter moved, Pouria Paknejad seconded and the motion carried unanimously to suspend the portion of the Bylaws that would require the candidates to be present for the vote.
  - To break the tie the finalist was chosen by lot. Robyn Austin, Community Liaison for Tucson Federal Credit Union in Tucson, Arizona was selected to fill the public member Board seat.

#### **ABA PRO BONO SURVEY RESULTS – Rick DeBruhl**

- January 19: survey for Arizona was distributed by email; 1,383 responses were received from active and retired attorneys. 45,941 surveys returned nationally; 24 states participated.
- 39% of Arizona attorneys (48% nationally) are not providing any pro bono.
- Arizona Supreme Court's aspiration goal is 50 hours annually. 72% of Arizona attorneys (80% nationally) are doing less than that.
- Attorneys under the age of 29 do the least pro bono while attorneys over the age of 65 do the most (33 hours on average).
- Large firms do more pro bono.
- In Arizona the top three practice areas are: family law, criminal and estate/probate. Nationally the order is family, estate/probate and criminal. Typical clients in Arizona are: 1) single parents, 2) ethnic minority and 3) non/limited English.
- Typical Clients Nationally are: 1) ethnic minority, 2) single parent and 3) disabled.
- Top three reasons to do more pro bono in Arizona: 1) CLE Credit, 2) Judge Solicits 3) Limited Scope. Top three reasons to do more pro bono nationally: 1) Judge Solicits, 2) Limited Scope and 3) CLE Credit
- Top three reasons (Arizona and nationally) limiting pro bono: 1) lack of time; 2) family/personal and 3) lack of skills.
- Will use statistics to enhance the work of the new Public Service Center. Learned that 48% of Arizona lawyers engage in limited scope work which was thought to be more of a major roadblock for doing pro bono.

#### **CLIENT PROTECTION FUND TRUST – Lisa Panahi**

- General Counsel Lisa Panahi summarized the technical amendments to the Client Protection Fund Declaration of Trust which include: Rule 8 – clarifies how meetings will be conducted under the Open Meetings Policy.
- Rule 15 – attorney fees and costs if the CPF Board employs an attorney to collect fees.
- Rule 16 – confidentiality of files/documents.
  - **MOTION:** Jimmie Smith moved, Tyler Carrell seconded and the motion carried unanimously to approve the amended restated Client Protection Fund Declaration of Trust.

**LAWYER REGULATION OFFICE QUARTERLY REPORT** – Chief Bar Counsel Maret Vessella

- 2011 implemented a new lawyer regulation system
- 2016 total charges received - 3,569
- Year to Date Statistics – Charges received as of 8/31/16 are 2,417 compared to 2017 - 2,244 (down 7%)
- Average number of days to resolve in Intake in 2016 - 27 days
- Year to Date Statistics – Average days to resolve charge in Intake as of 8/31/16 – 28 days; 24 days in 2017 (down 14%)
- 2016 – 744 charges referred for investigation
- Year to Date Statistics – Charges referred to Litigation for Investigation as of 3/31/16: 572 as compared to 492 in 2017 - (down 13%)
- Charges Reviewed by Attorney Discipline Probable Cause Committee in 2016 – 363
- Year to Date Statistics – Charges reviewed by ADPCC as of 8/31/16 – 232; 261 in 2017 (up 11%)
- Probable Cause Order in 2016 - 169
- Year to Date Statistics – Probable Cause Orders Issued by ADPCC as of 8/31/16 - 110; 87 in 2017 (down 21%)
- 2016 Formal Complaints Filed – 85
- Year to Date Statistics – Formal Complaints Filed by the State Bar as of 8/31/16 - 51 as compared to 70 in 2017 (up 27%)
- The survey went on to compare Arizona to KY, OK, OR and CO regarding the number of charges received against the number of active attorneys. Arizona, with a higher number of active attorneys (except for Colorado), a larger general population and a larger incarcerated population, had the highest number of charges.

**DIVERSITY AND INCLUSION PANEL REPORT AND POLITICAL ACTIVITIES POLICY** – Pouria Paknejad

- Mr. Paknejad reported on behalf of the Diversity/Inclusion Panel of the Board of Directors.
- Panel requested that the Board issue a statement against the recent presidential pardon and in support of the judiciary and of democratic norms.
- General Counsel Lisa Panahi gave an overview of the Keller and policy limitations that are relevant to this issue.
- The Board took no action on this matter.

**PRESIDENT'S REPORT** – Alex Vakula

- Attended the National Conference of Bar Presidents (NCBP) in August as did Jeff Willis and Lisa Loo.
  - Served on a panel regarding challenges facing unified bars.
  - Lisa Loo served on a panel regarding political activities and how unified bars respond. The Board congratulated her on her appointment to the NCBP's Executive Committee.
- Appellate Court Investitures:

- Hon. Karl Eppich, September 22, 2017 was presented the engraved gavel set on behalf of the unified Bar by Denis Fitzgibbons at the historic courthouse in Florence.
- Hon Marie Elena Cruz, August 25 was presented the engraved gavel set on behalf of the unified Bar by President Vakula at the Supreme Court.
- 2018 Convention at Sheraton Wild Horse Pass Resort & Spa in Chandler - planning is underway; Co-Chairs are Appellate Court Judge Jennifer Campbell and attorney Manuel Cairo. Focus will be on the new generation of lawyers.
- Kicked off the Section Leadership Summit on September 14 – great new group of Section leaders.
- Attended the Bar Leadership Institute (BLI) weekend kickoff retreat September 15-17 in Tubac, Arizona. The BLI is a year-long program that has brought the organization many new leaders, including three who were elected as new Board members.

**CEO'S REPORT** – John Phelps

- Introduced Manuel Espinosa, Employee of the Quarter. Mr. Espinosa is a Trust Account Examiner in the Lawyer Regulation Office.

**CORRESPONDENCE/PARTNER BAR REPORTS**

- ABA Appointment of CEO John Phelps to Standing Committee on Bar Activities and Services
- Appointment of John Phelps to Commission on Veterans Legal Services
- Chief Justice Scott Bales' Notice on Constitution Day 2017
- 2017 Arizona Black Bar Excellence in Diversity Law Public Agency Award Recipient – State Bar of Arizona
- ABA Board of Governors Report

**ADJOURN**

There being no further business to come before the Board of Governors, the meeting adjourned at 1:40 p.m.

Respectfully submitted,

Lori Higuera  
Secretary/Treasurer