

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
February 26, 2016
Phoenix, AZ**

BOARD MEMBERS PRESENT: 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; Hon. David G. Derickson, Phoenix; Denis M. Fitzgibbons, Casa Grande; Brian Y. Furuya, Flagstaff; Patrick Greene, Tombstone; Melissa S. Ho, Phoenix; James B. Penny, Tucson; 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: Gary Stuart for Dean Douglas Sylvester, Tempe

EXCUSED ABSENCES: Diane L. Drain, Phoenix; Jennifer R. Rebholz, Phoenix; Geoffrey Trachtenberg, President, Phoenix; Ex-Officio Members: Dean Shirley Mays, Phoenix; Dean Marc L. Miller, Tucson.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Matt Campbell, Help Desk Technician; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Financial Officer; Tim Eigo, Editor *Arizona Attorney*; Mona Fontes, Administrative Assistant III; 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; Alberto Rodriguez, Public Information and community Outreach Specialist; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel.

GUESTS: Lynda Shely, ABA House of Delegates representative; Janna Day, Lobbyist; Mike Mason, past ABA Delegate.

President-Elect Lisa Loo called the Board meeting to order at 8:30 a.m., indicating that President Geoffrey Trachtenberg was unable to attend due to illness.

- MOTION: Alex Vakula moved, Patrick Greene seconded and the motion carried for the Board to go into Executive Session.
- Audrey Jennings, Chair of the Human Resources Committee, conducted this portion of the meeting.
- Returned to Open Session at 9:15 a.m.
- MOTION: Alex Vakula moved, Hector Figueroa seconded and the motion carried unanimously to approve the Executive Compensation Committee's recommendation regarding the CEO/Executive Director's compensation.

PRESIDENT-ELECT'S REPORT – Lisa Loo

- Referred the Board members to the 2016 Convention hotel and event forms in their materials that require action.
- Reminded the members of their Section liaison assignments noting that short reports on Sections' activities will commence at the April meeting.
- Attended the Midyear Meeting of the National Conference of Bar Presidents (NCBP) in San Diego with programming emphasis on how to run an effective organization.

CEO/ED REPORT – John Phelps

- Thanked the Board for the outpouring of support, sympathy and flowers over the recent loss of his father.
- Attended the Midyear Meeting of the National Association of Bar Executives in San Diego. Attempts to eliminate mandatory bars is spreading across the nation. Michigan, South Carolina, District of Columbia and North Dakota are seeing challenges.
- Board elections in five districts will begin May 4th.
- Annual staff performance reviews have been completed.
- Staff planning the June Convention, “My Bar, Our Future”, and the July Board Retreat, “Shaping the Future”.
- Employee of the Year – recognized Alberto Rodriguez, Public Information and Community Outreach Specialist, who has been with the Bar for over five years and is known as the face of the Bar with the Spanish community.
- Introduced Lisa Panahi, Senior Ethics Counsel, and Ann Ching, Ethics Counsel.

RULES COMMITTEE – Chair Steve Hirsch

- Rule 16-0013, Petition to Amend Rule 32, Ariz. R. Sup. Ct.
- Reminded the Board of its previous 11-9 vote in favor of the Minority Report of the Board's Governance Report Study Group.
- President Trachtenberg sent a letter summarizing the Board's positions on the issues contained in the Court's Task Force proposal to Supreme Court Chief Justice Scott Bales.
- The Court's subsequent Petition contains two options to address the Board's size, Option Z from the Task Force and the Board's proposal, with both maintaining the YLD president voting position (which was always one of the board's proposal).
- Procedural note – Petitioner and Governance Task Force Chair, Retired Justice Rebecca White Berch, requested and was granted a Modified Comment Schedule for the Petition; first Comment deadline is April 1.
- The Court's Task Force's Petition recommends three officers (currently there are five). The Study Group discussed the proposal and the importance of diversity among the Bar's leadership but did not include a recommendation with regard to the number of officers in its report to the Board, nor did the Board take a position.
- Discussed one issue not vetted by the Study Group – what happens to the past president if that individual has a portion of his/her term remaining? Another issue was that the proposed amendment to Rule 32(d)(9) strikes the provision that the State Bar has the power to form a non-profit corporation under Chapter 5 of Title 10 of the Arizona Revised Statutes.

RULES COMMITTEE (Continued)

- Petition also added a Meetings and Records Law (public access) – Rules Committee wasn't in opposition of this concept but preferred a chance for the Board to have input on its rules.
- Comment to the Court's Governance Task Force Petition is due April 1 and the next Board meeting is April 15th. The draft comment will be written by staff and Steve Hirsch using as a basis the letter from President Trachtenberg. Factual information would be added to build a persuasive argument for maintaining the board's size and its appointment of the public members.
- Accordingly, Rules Committee requests permission for the Scope and Operations Committee to be given the authority to edit, approve, and file timely the Comment in this matter.
- MOTION: Dee-Dee Samet moved, Patrick Greene seconded and the motion carried unanimously to give the Scope and Operations Committee the ultimate approval of the Comment to be filed in this matter before April 1.

CIVIL JURY INSTRUCTIONS COMMITTEE – Model Civil Jury Instructions Manual

- Item was stricken from the Agenda as no action was required by the Board.
- The Ninth Circuit Jury Instructions were circulated to the Civil Revised Jury Instructions Committee for comment and none were received.

CONSENT AGENDA – President-Elect Lisa Loo

- a) Approval of January 29, 2016 Board of Governors Meeting Minutes
 - b) Resignations in Good Standing and Resignations in Lieu of Reinstatements
 - c) Reinstatements to Practice of Members Suspended for Non-Compliance with Annual Member
Dues and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
 - d) 2016 Dues Waivers
 - e) 2014-2015 MCLE Suspensions - Updated list as of 5:00 p.m. February 25, 2016 of members who will be suspended for not meeting the MCLE requirement.
 - f) Study Group on Judicial Review of Administrative Rules (JRAD Rules) Charter
 - g) Appointments Process Study Group Charter
- MOTION: Patrick Greene moved, Jimmie Smith seconded, and the motion carried unanimously to approve the Consent Agenda as presented above.

PETER STUTSMAN KELLER CHALLENGE – General Counsel John Furlong

- Reviewed Mr. Stutsman's letter and the State Bar of Arizona's Bylaws with regard to challenging Bar activities.
- This is the first *Keller* challenge received in many years.
- The dollar amount, as a pro-rata amount of dues [approximately \$.36] was discussed.
- Scope and Operations Committee recommended paying the pro-rata refund, which has been held in escrow since the challenge was received, rather than submitting the challenge to arbitration.
- MOTION: David Derickson moved, Jimmie Smith seconded and the motion carried unanimously to return to the member a pro-rata refund.

APPOINTMENTS COMMITTEE – Chair Jeff 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 but one must be a part of Arizona's Delegation at the August Annual ABA Meeting.
 - Two Delegates will be coming to the end of their terms this year. Resolution of issue forthcoming.
- Pinal County Commission on Trial Court Appointments
 - Applicants must reside in Supervisorial District 4.
 - No applicant restrictions with regard to one's political party affiliation.
- Public BoG Member
 - Meredith Peabody's term will end in June; she is ineligible to serve another term.
 - Non-lawyer applicants may be from any county except Maricopa.
- Pima County Commission on Trial Court Appointments
- Due to a resignation there is a Supervisorial District 1 vacancy.
- Applicants cannot be registered Republicans.

FINANCE AND AUDIT COMMITTEE – Chair Dave Byers

- Current surplus exceeds expectations due to increased dues penalty revenue and reduction in expenses (two FTEs).
- Client Protection Fund - increase in claims payouts:
 - \$200K in 2011; 2014 and 2015 over \$400K (discussion had regarding the increase in claims)
 - Respondent's restitution, which has been sporadic, must be paid before being allowed to practice.
 - Policy limits on claims are \$100K/lawyer; aggregate claim \$250.
 - Annual assessment/member: was \$30 in 2008; 2009-present the amount has been \$10.
 - Fund's income \$200K/year; payouts \$400K/year plus \$130K administrative expenses/year.
- The Committee is re-evaluating ten-year forecast and allocation of funds.
- Projected (2019) Cumulative Cash Surplus:
 - Updated 5-year Projection - \$5,858K
 - Court 5-year Projection - \$3,189K
- Projected Revenue Assumptions:
 - Membership Growth= 1% annually (weighted)
 - Dues Increase 2016-2018 = \$15 annually
 - CLE= (-5%) annually through 2020, flat thereafter
- Projections – Expense Assumptions:
 - Personnel & Benefits +3% annually
 - Depreciation based on 2016 Five-Year Capital Budget
 - Other Expenses -+2% annually
 - No Program Changes
- Forecasting Risks include Bar Structure; CLE-external/internal competition, market share; personnel and benefits; other expenses – economic conditions; IT support and infrastructure

FINANCE AND AUDIT COMMITTEE (Continued)

- Finance Committee proposed two preliminary options to deal with the surplus and CPF impacts:
 - Stay the Course or
 - Re-allocate \$5 of 2017 scheduled dues increase to the CPF and re-allocate \$5 of 2018 scheduled dues increase to the CPF
- Finance Committee recommends Option Two (reallocation)
- Board discussed a third option – ask the Court to defer the dues increase to the CPF for one or two years, which would require a Supreme Court Administrative Order.
- If the Client Protection Fund didn't have any money and there were claims, there is a Court Rule that provides that an assessment would be made to all the attorneys to pay the deficit.

STRATEGIC PLANNING COMMITTEE – President-Elect Lisa Loo

- Received the staff's recommendations on action items to carry out the goals and objectives and we are working our way through those recommendations.

PRESENTATION – President-Elect Lisa Loo

- ABA House of Delegates- Michael Mason received a gift from the Board of Governors for his service as a State Bar Delegate in the ABA House of Delegates for six years. Mr. Mason is now the Human Resources Director at Arizona Public Service.

ABA HOUSE OF DELEGATES REPORT – Lynda Shely

- Thanked the Board for appointing her to the ABA House of Delegates and the opportunity to attend the ABA Midyear Meeting and represent the Bar. Ms. Shely has served the organization for 20 years in various volunteer positions.
- Five Delegates are designated to represent the State Bar of Arizona at the ABA Midyear and Annual Meetings.
- Some Resolutions that come before the House of Delegates are *Keller* restrictive which the Bar's Delegates can't vote on so they submit written abstentions. If the proposed Resolutions are "*Keller* pure", the Delegates can vote their conscience.
- Arizona's representation includes Judge Leslie Miller of Pima County who has been elected to the ABA Board of Governors and Trish Refo, Chair of the House of Delegates.
- Summarized a few of the Resolutions that passed –that are *Keller* appropriate (others passed but Arizona Bar delegates abstained on the non-*Keller* appropriate resolutions):
 - Resolution 10A – Urges DOJ to amend policies to keep emails between inmates and counsel privileged.
 - Resolution 100 – Urges people to use ADR process to resolve health care disputes.
 - Resolution 103 – Amends Model RPC 5.5 to permit lawyers who serve as in-house counsel admitted in a foreign jurisdiction but who do not have a "bar association" to be eligible for as registered in-house counsel in the US.
 - Resolution 105 from ABA Futures Commission, as amended, adopts Regulatory Objectives for the Provision of Legal Services.
 - Resolution 107 – encourages states that have MCLE to add MCLE requirement regarding Diversity and Inclusion issues.
 - Resolution 109 – urges Uniform Bar Exam to be adopted (Arizona already uses the UBE).

ABA HOUSE OF DELEGATES REPORT (Continued)

- Resolution 110 – Recommends US Supreme Court make available video recording.

LEGISLATURE UPDATE – Lobbyist Janna Day

- HB 2039 - Election of Judges Bill passed the House; would reduce the term from six years to four; all judges would be required to run for election. This is moving to Committee of the Whole. Opposed by the courts.
- Supreme Court – increase the number of justices from five to seven. Passed the House; on to the Senate. Court can increase by statute and did so years ago when the number of justices went from three to the current five.
- No forum to participate in the budget process. The Speaker would like to have this session done early (under 100 days).
- HB2219 (lawyer does not have to be a member of the State Bar to practice) – failed off by one vote in the House.
- HB2221 proposes to split the bar into mandatory and discretionary functions. All members would pay for the mandated functions, the discretionary fee would be optional. HCM 2002 and 2003 were combined and passed the House; doesn't require the Governor's signature. Memorials are recommendations to the Court.
- Now is the time for the members and public to be heard; contact elected representatives, send a personalized email and follow up with a phone call.
- 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. This is a great example to share with elected officials - the important work the Bar is engaged in in improving the administration of justice.

COMMUNICATIONS/GOVERNMENT RELATIONS DIVISION – CCO Rick DeBruhl

- The following are a few examples of the good things the Bar does:
 - Lawyers on Call
 - Law Day Clinics and other programs throughout the year
 - 400 volunteer lawyers assisted 1,366 consumers in 2015.
 - February's Stand Down: helped 400 veterans with their legal issues.
 - Conservator Files: Channel 12 aired a story about how our conservatorship program helps the public. The program collects files from attorneys who abandon their practices or die without a succession plan, and returns them to the clients or handles their disposition pursuant to Court Rule.

ARIZONA FOUNDATION FOR LEGAL SERVICES & EDUCATION – Liaison Audrey Jennings

- \$25K negative year-end balance (pre audit)
- 2nd Annual Drive For Justice Golf Tournament April 23 at Moon Valley Golf Course. Last year's event was successful and made money. Raffle items gladly accepted.
- Making a Murder (Netflix series) – Brendan Dassey is sentenced to life in prison. His attorney, Steven Drizin of the Center on Wrongful Convictions of Youth, is handling his appeal and is the keynote speaker at the annual Foundation Luncheon, Thursday, June 16.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:15 p.m.

Respectfully submitted,

Steven A. Hirsch
Secretary-Treasurer