

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
4201 N. 24th Street, Suite 100
Phoenix, AZ**

February 23, 2018

BOARD MEMBERS PRESENT: Brian Furuya, Vice President, Flagstaff; Jeffrey Willis, President-Elect, Tucson; Lori Higuera, Secretary-Treasurer, Phoenix; Daniel Mazza, Young Lawyers Division President, Phoenix; Tyler J. Carrell, Phoenix; David Wm. Engelman, Phoenix; Hector Figueroa, Payson; Denis M. Fitzgibbons, Casa Grande; Patrick Greene, Tombstone; Doreen M. McPaul, Tucson; Robert J. McWhirter, 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: Robyn M. Austin, Tucson; Jason E. Cobb, Phoenix; John Gordon, Prescott; Anna C. Thomasson, Phoenix; At-Large Members: David K. Byers, Phoenix; Paul Senseman, Phoenix; Ex-Officio Member: Lisa S Loo, Immediate Past President, Tempe;

- 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 Communications Officer; Tim Eigo, Editor *Arizona Attorney*; Kathy Gerhart, Chief Financial Officer; Gayle Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Lisa Panahi, General Counsel; John Phelps, CEO/Executive Director; Sheldon Joseph, Temp Agency – IT Project Manager; Maret Vessella, Chief Bar Counsel; Carrie Sherman, Director of Board Operations and Justice John Lopez IV; Cheryl Kulas, Manager, and Noemi Lopez, PSC Coordinator.

EXCUSED ABSENCE: Alex Vakula, President, Prescott; Dean Marc Miller, (U of A, Tucson); Dean Douglas (ASU, Tempe); Dean Penny Willrich (Arizona Summit Law School, Phoenix)

GUEST: Richard Coffinger

President-Elect Jeffrey Willis called the Board meeting to order at 8:30 a.m.

CALL TO THE PUBLIC

Richard Coffinger was the only guest present who requested, and was granted, time to address the Board. Mr. Coffinger spoke in support of a rule petition, put forward by the Arizona Supreme Court, which would create a State Bar Discipline Oversight Committee.

Executive Session: 8:35 – 8:57 a.m. called by the Human Resources Sub-Committee regarding the CEO's/Executive Director's compensation and benefits package.

Return to Open Session: 8:57 a.m.

MOTION: Recommendation coming from the Human Resources Sub-Committee to accept the CEO's/Executive Director's Compensation and Benefits Package for 2018.

Call the Question: Tyler Carrell

Motion carried unanimously. Dave Byers and the Board thanked CEO John Phelps for his service.

PRESIDENT ELECT'S REPORT – Jeffrey Willis

- Attended the ABA National Conference of Bar Presidents
 - Great opportunity to share information, initiatives and programs amongst Bar leaders
 - Some mandatory bars reported they were facing challenges to their unified structure similar to the experience in Arizona.
- He and CEO Phelps met with Chief Justice Scott Bales immediately preceding the Board meeting to brief him on Bar initiatives in several areas: mentoring, lawyer wellness and sexual harassment prevention. CJ Bales expressed his appreciation for the amount and quality of the Bar's efforts and for its assistance to the Court.

CEO/ED REPORT – John Phelps

- President Alex Vakula and CEO Phelps presented to the Scottsdale Bar Association on the “state of the State Bar”. Approximately 70 attended; received great feedback
- Meeting with Legislators to talk about the Bar and its mission.
- The new Chief Information Officer has been on board six months; lots of work has been accomplished to bring the Bar's technological architecture up to industry standards.
- Annual audit began this week with Eide Bailly LLP.
- In-House Counsel group seeks to become a section which will be voted upon today.

COMMUNICATIONS/GOVERNMENT RELATIONS DIVISION – Legislative Report – Rick DeBruhl

- HB2119 passed out of the House Judiciary Committee and now is in the Rules Committee and being held there.
- House Representative Thomas R. Shope, District 8, is the Rules Committee Chair. In order for the bill to advance, he would have to put it on the agenda.
- The Bar has two proactive bills pending. The probate and trust bill is in Committee Hearing and the bill regarding LLC's has passed out of the Senate with a 29-0 vote.
- The State Bar has had its last six bills move through the system with zero no votes.

PUBLIC SERVICE CENTER – Rick DeBruhl

- The Bar's webpage has a new “Find a Lawyer”
- Two employees have been hired for the PSC: Cheryl Kulas, Manager, and Noemi Lopez, PSC Coordinator
- The new program under “Find a Lawyer” has two components. It will connect clients with lawyers that are interested in their cases.
 - Originally, the online Find a Lawyer was a white pages for the public.
 - Now it is much more robust and allows attorneys to create a profile for free and if interested, connect with clients that are seeking their services. Areas of law and fields of practice are listed.
 - Clients can post their legal needs and choose a category for the amount they can pay for the services across the financial spectrum, from pro bono to regular fees.

- Two options for Bar members' participation are offered: pay side with one-time annual fee of \$300 allows an attorney to accept paying cases and the other is the pro bono (no cost) side.
- Launch for the new program currently is expected by April 1st.
- Notice to all attorneys will be sent out. All members are automatically set up as opt-in. Members are currently being moved to set up a single sign-on to reach everything online that is available through the SBA website.
- Attorneys will need to opt-out of the PSC if they are not interested in participating. This is a simple process.
- The Board offered a number of suggestions regarding advertising and getting the word out of the changes.
- MOTION: Sam Saks moved to launch a pilot program in one county or Board District before rolling it out to everyone. Motion failed for lack of a second.
- Additional discussion – CEO Phelps asked for instruction from the Board on how long they want the roll out delayed.
- Tyler Carrell suggested that it be revisited at the April 20 meeting. There is no March meeting of the Board.

ABA HOUSE OF DELEGATES REPORT – Jim Smith

- Arizona has approximately ten delegates of which five are from the State Bar: Margarita Silva; Lynda Shely; Judy Davila; Jim Smith and Adam Zickerman.
- House of Delegates has 535 members; the American Bar Association has 400K+ members.
 - The Bar's Delegates and staff review the HOD agendas before the midyear and annual meetings to determine whether any of the resolutions are limited by the restrictions in *Keller v. California*.
 - Resolutions that passed at the February Midyear Meeting include: Uniform Trust Act and Uniform Parenting Act; specialization in Elder Law; support of the DACA program; funding for the Library of Congress
 - Uniform Unclaimed Property Act did not pass.
 - Last year a resolution to lower standards on the Uniform Bar Exam passage rates did not pass but the issue is coming back. The Arizona Supreme Court is requesting the Board of Governors to take a position. Set for discussion at a future Board meeting.

Break: 10:45 – 10:55 a.m.

APPOINTMENTS PROCESS GUIDELINES – Chair Jessica Sanchez and John Phelps

- Three proposals are in the Board Materials
 - Option 1 – Original Proposal presented to Board in January.
 - Option 2 – Includes modifications suggested by the Board at previous meeting.
 - Option 3 – Removes the process from the Appointments Committee and a sub-committee would be formed made up of all Board members to handle only the judicial nominating commission (JNC) candidates.
 - Option 4 – Jessica Sanchez offered a hybrid which would have the president appoint three Board members to sit in at the Appointments Committee meeting to hear the due diligence reports on the JNC candidates.
 - The Appellate Nominating Commission not only recommends future judges but also makes nominations to the Governor for the Redistricting Commission.

- Current practice is to have the Bar President appoint members to the Appointments Committee.
- Ms. Sanchez spoke in favor of term limits which allows the natural cycle of new talent serving on this important Committee.
- Currently there are 19 members serving on the Appointments Committee.
- All vetting of members for openings that are handled by the Appointments Committee would continue to be under that Committee. The ones that would be handled differently would be the three trial court and the appellate court nominating commissions.
- MOTION: Hector Figueroa moved, John Gordon seconded and the motion carried unanimously to limit the lawyer-commissioners to two terms or eight years of service.
- MOTION: Tyler Carrell moved, Paul Senseman seconded and the motion carried unanimously to approve the lawyer-commissioners candidate criteria as written in Option 2.
- MOTION: Tyler Carrell moved and Jim Smith seconded the motion to have a separate committee to handle the vetting and recommendation of JNC candidates, with the makeup being a majority of Board members as selected by the president.
- FRIENDLY AMENDMENT: The sub-committee would be comprised of five members of the Board of Governors and four Appointments Committee members. Tyler Carrell accepted the amendment.
- FRIENDLY AMENDMENT: Benjamin Taylor moved to have the entire Board of Governors select the five Governors to serve on the sub-committee. Tyler Carrell declined the amendment.
- FORMAL AMENDMENT: Benjamin Taylor moved and Sam Saks seconded the motion to have the president appoint the five Board members to the sub-committee, subject to Board approval.
- MOTION: Carried by a vote of 13-6.
- RESTATED MOTION: Tyler Carrell moved and Jim Smith seconded that five members of the Board of Governors would be selected by the president, and approved by the Board, to serve on the sub-committee, with four members of the Appointments Committee appointed by the president. The sub-committee would screen and recommend candidates to the full Board to serve on the three trial court and the appellate court nominating commissions. Motion carried.

CONSENT AGENDA

- a) Approval of February 23, 2018 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) Dues and/or Late Fees Waiver Requests
- e) Approval of the Creation of the In-House Counsel Section

- President Elect Willis asked if there was anything to come off the Consent Agenda, hearing nothing:
- MOTION: Brian Furuya moved, Tyler Carrell seconded and the motion carried unanimously to approve the Consent Agenda.

PROGRAM REVIEW WORKING GROUP – Lisa Loo and John Phelps

- Presented the final proposed restructuring of the Bar’s entities.
- MCLE Committee - Rule petition pending before the Court to change committee’s status, have it meet on an as-needed basis and give appointment authority to the CEO.
- The remaining committees are directly engaged in supporting the constitutional, statutory or regulatory responsibilities of the Board of Governors, the PRWG recommends:
 - The same process would be used as in the past committee appointments
 - All committees would have a chair and vice-chair position appointed by the president.
 - The chair’s term would be for one year with the president choosing whether to re-appoint the individual for a second year.
 - The committee chair would appoint a committee secretary and alternate secretary.
 - The committee appointment would be for a three-year term with a three term limit.
 - Board-proposed language modification: Exceptions would include that a member could serve additional “time” (not additional “term”).
 - Not more than one-third of the members could exceed their term limits.
 - MOTION: John Gordon moved, Tyler Carrell seconded and motion carried unanimously to approve the PRWG’s recommendations as modified.

PROPOSED COMMENT TO PROPOSED CHANGES TO ABA MODEL RULE ON LAWYER ADVERTISING – Assistant General Counsel Rick Palmatier

- Proposed Amendments to the ABA Model Rules of Professional Conduct on Lawyer Advertising – ER 7.1 through ER 7.5 - released 12/21/17 by the ABA Standing Committee on Ethics and Professional Conduct. The Association of Professional Responsibility Lawyers began working on the proposal since 2013.
- Comment period closes on March 1, 2018.
- The SBA’s proposed comment was provided to the Board for its consideration which generally agrees in principle that the Current Model Rules pertaining to advertising should be streamlined and should be updated to address the conduct that causes the most potential harm to the public.
- Proposed comment disagrees with removing the “Advertising Material” label from written solicitations. The possibility of confusion and overreaching by lawyers is too high, especially given some of the more vulnerable populations in the state (e.g., seniors). Thus, the SBA’s comment urges the Committee to retain the labeling requirement.
- The ABA votes at its annual meeting in August on this Rule.
- Arizona would be one of 18 states maintaining the labeling.
- MOTION: Dave Byers moved, Denis Fitzgibbons seconded and motion carried unanimously to amend the Bar’s comment to oppose the change that would remove the “Advertising Material” label from solicitations in the ABA Model Rules of Professional Conduct on Lawyer Advertising.

- MOTION: Tyler Carrell moved, Lori Higuera seconded and motion carried unanimously to approve the State Bar of Arizona's comment as amended.

FINANCE AND AUDIT COMMITTEE – Brian Furuya and Kathy Gerhart

- Vice President Furuya reported on the Related Party Disclosure Information questionnaire circulated to all board members present at the meeting. This information is required to complete the 2017 IRS Form 990. All Board members present were requested to complete and return to staff that day.

GENERAL COUNSEL'S REPORT – Lisa Panahi

- Legal Force vs. Legal Zoom – the State Bar of Arizona was dismissed without prejudice as a plaintiff in this matter.
- Executive Sessions for Board Committees/Working Groups – there is no policy. Staff will come back to the Board with a proposal.

IMail UPDATE – Rick DeBruhl

- Approximately 1,192 members were using azbar.org as their primary email address; that number has now dropped to 533. These members using azbar.org have until April 3 to make the change to a new email address. Step-by-step instructions on moving to a new email address have been provided to the members, and staff is also ready to give one-on-one assistance.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:13 p.m.

Respectfully submitted,

Lori Higuera
Secretary/Treasurer