

**MEETING OF THE  
BOARD OF GOVERNORS  
OF THE  
STATE BAR OF ARIZONA  
August 27, 2021  
Phoenix, AZ**

BOARD MEMBERS PRESENT: Jennifer Rebholz, President, Phoenix; President-Elect, Jessica Sanchez, Mesa; Vice President, Benjamin Taylor, Phoenix; Secretary-Treasurer, Phoenix; Ted Schmidt, Tucson; Sandra Bensley, Tucson; Hector Figueroa, Payson; Kelsi Lane, Phoenix; Leticia Marquez, Tucson; Robert McWhirter, Phoenix; Eric Ruchensky, Flagstaff; D. Christopher Russell, Sierra Vista; Samuel Saks, Phoenix; Gaya Shanmuganatha, Young Lawyers Division, Phoenix; Jimmie Dee Smith, Yuma; Public Members: Robyn Austin, Tucson; Mignonne Hollis, Sierra Vista; Jonathan Martone, Paradise Valley; and Anna Thomasson, Paradise Valley; At-Large Members David Byers, Phoenix; Lori Higuera, Phoenix; and Doreen McPaul, Window Rock; Board Advisor Denis Fitzgibbons, Casa Grande; Dean Marc Miller, Tucson.

EXCUSED ABSENCES: Sharon Flack, Prescott; John Moody, Phoenix; David Rosenbaum, Phoenix

OTHERS PRESENT: Deanna Commack, Executive Assistant; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Joe Hengemuehler, Chief Communications Officer; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Lori Maxwell, Chief Information Officer; Elena Nethers, Director of Diversity, Equity and Inclusion; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Roberta Tepper, Lawyer Assistance Programs Director; Karen Van Allen, Administrative Assistant; Rachel Williams, Human Resources Manager; Supreme Court Liaison Hon. James Beene, Phoenix; Leah Won, UA Law School, Tucson; Victoria Ames on behalf of Interim Deans Adam Chodorow and Zachary Kramer, ASU Law School, Phoenix.

GUESTS: Veronika Fabian, Marc Levine, Lori Palmer, Carol Rose

President Jennifer Rebholz called the virtual Board meeting to order at 8:31 a.m.

**Call to the Public** – Jennifer Rebholz

President Rebholz made a Call to the Public and hearing nothing, moved on to the next item on the agenda.

**President's Report** – Jennifer Rebholz

- For now, Board meetings will be conducted via Zoom due to current increase in pandemic numbers.
- Attended:
  - ACJ meeting in June (in conjunction with Judicial Conference); survey results provided on how virtual judicial proceedings are going
  - Investitures:

- Attended Appellate Court Judge D. Steven Williams's in Show Low on August 13 (ceremony delayed due to COVID)
- Will attend Hon. Brian Y. Furuya's investiture in October
- National Conference of Bar Presidents (virtual): Litigation effecting mandatory bars was discussed as well as the Alternative Business Structure and Legal Paraprofessional Programs in Arizona.
- Meeting with affinity and county bars (along with CEO Joel England) to exchange information. The response has been positive.
- Retreat is scheduled for September 23-24 in Prescott. Yavapai County Bar would host Thursday evening dinner in outside venue. The hotel is willing to work with us and will not hold us to anything. It has a large conference room that could accommodate social distancing. Advise staff whether you would attend this in-person event.

### **CEO's Report** – Joel England

- Introduced Employee of the 2<sup>nd</sup> Quarter Lori Palmer, one of two Paralegals for 15 attorneys in Lawyer Regulation. Ms. Palmer volunteered to be in the office during the pandemic in order to keep the department running efficiently.
- Recognitions and Awards
  - Tim Eigo received the Bar Foundation's 2021 Mark Santana Law-Related Education Attorney Award
  - Dave Byers received the Kenneth R. Palmer Distinguished Service Award from the Conference of State Court Administrators
  - Anna Thomasson was appointed to the Arizona Judicial Council
- Meeting with affinity and county bars along with President Rebholz. Agree with her assessment that they have received valuable feedback; it keeps the communication lines open.
- Facility assessment with a focus on safety was conducted, in part due to a threat to Lawyer Regulation staff. Appreciation goes to Mike Vallone, Procurement and Facilities Manager, for leading the assessment.
- Attended an integrated bar meeting; General Counsel Lisa Panahi will discuss ongoing litigation effecting mandatory bars later in the agenda.
- 2022 budgeting underway which includes 30 plus different budget meetings.
- Operational Posture: Still in Phase II; 60% of staff footprint on any given day; masks required.
- Would like to meet one-on-one with Board members; Executive Assistant Deanna Commack will reach out to schedule a meeting.
- Moment of Silence: For the military members and all who lost their lives at the Kabul Airport as a result of a suicide bomber.

### **Mark Harrison Memorial 10-Minute Topics** – Robert McWhirter

*From the Declaration and Gettysburg to the 14th Amendment*

**Retired Members' Membership Fees** – Joel England, Roberta Tepper, Kathy Gerhart

- Executive Council considered the requests from some members of the Senior Lawyers Division to reduce or ultimately eliminate membership fees for the Retired Members. The matter was sent to the Finance and Audit Committee for review.
- Finance Committee:
  - Recommending a more robust look at the issue
  - Officers to consider the F&A Committee's recommendations at their September meeting and possibly create a group to go deeper into the issue. What is the appropriate amount of membership fees for members in the retired category for Bar services they receive? Board members interested in the topic were encouraged to contact President Rebholz.

**Find-A-Lawyer (FAL) Status Report/Recommendation** – Carol Rose, Joe Hengemuehler

- Today is for discussion and possible action.
- Background: In March, past President Denis Fitzgibbons asked for a full review of the FAL program by the Board's Program Review Working Group
- FAL:
  - Met goal of bringing clients to lawyers; about 400 cases/month
  - Is not on track to increase pro bono hours (hours not tracked due to technology)
  - Did not meet premium subscriber goals
- Legal consumers want to pay less for legal services; most pursue lower cost or pro bono services in the platform.
- Working Group's Recommendations:
  - Bring the program in-house; discuss risks
  - Terminate the contract with Legal Services Link (LSL)
  - Integrate more with the Arizona Bar Foundation and Modest Means Project; clients have to meet income requirements for Modest Means; they receive the names of three attorneys and pay \$75 for a one-hour consultation.
- Reviewed how Modest Means would be integrated into the FAL platform; Arizona Bar Foundation is on board.
- CIO Lori Maxwell reviewed the Legal Services Link platform:
  - SBA pays \$50,000/year; subscribers pay \$300 annually; \$150 of the fee goes to LSL
  - FAL platform goes to the LSL website, not to the SBA's website
  - There have been no updates to the FAL site in three-and-a-half years.
  
  - The contract with LSL is up at the end of the year; talked about ending the contract last year, but extended to consider further.

**MOTION:** Robert McWhirter moved, Hector Figueroa seconded and the motion carried unanimously to go into Executive Session.

**Executive Session:** 9:58 – 10:51 a.m.

**Return to Open Session** 10:51 a.m.

**MOTION:** Sam Saks moved, Mignonne Hollis seconded, and the motion carried by a vote of 21-0-1 to suspend the FAL program, cancel the contract with LSL, and shift resources to the Modest Means Program.

- The Board’s materials provided information on efforts to connect lawyers with people in need especially those in outlying counties. Staff also have a marketing initiative ready to launch.
- Current attorney subscribers to FAL will be refunded their fees.
- An attorney directory is and has been on the Bar’s website.

Break: 11:08 – 11:18 a.m.

**Member’s Challenge Under State Bar Bylaw 10.03 re Political and Ideological Activities** – Jennifer Rebholz, Joel England, Lisa Panahi

- Member’s challenge started as an inquiry sent to then President Denis Fitzgibbons
- Then, this member submitted two letters to Joel England, setting forth his challenge. Challenge states the State Bar of Arizona engaged in non-germane activities when it signed on as amicus in a 9<sup>th</sup> Circuit case involving the State Bar of Oregon.
- While the SBA participation was germane and permissible under Keller, recommendation is to treat this objection the same as other *Keller* objections and opt for a pro rata refund in lieu of arbitration.
- CFO Kathy Gerhart has calculated the amount, and it is being held in escrow.
- A pro rata refund will include a letter indicating the reimbursement is being made solely based on efficiency and the costs associated with arbitration and should not be construed in any other manner.
- The member asked for the calculation of staff time involved in the amicus project; he was already informed of outside counsel’s fees.
- **MOTION:** Denis Fitzgibbons moved, Robert McWhirter seconded and the motion carried unanimously to approve a pro rata refund to the member.

**Proposed Membership Survey re Mandatory Arbitration** – Jennifer Rebholz, Joel England, Veronika Fabian

- Veronika Fabian, Chair of a subcommittee of the Civil Practice & Procedure Committee, reported that the Committee is considering changes to the mandatory arbitration rules to expand access to traditional court proceedings.
- Requests the Bar survey its members and ask, “How do you perceive the compulsory arbitration system as it exists today”? (Proposed survey questions are in the Board materials; note typo on page 8.)
- Pima County’s Fast Star arbitration program was studied however rules in Maricopa County differ.
- Staff confirmed that currently there are no other member surveys in the queue.
- David Byers indicated that mandatory arbitration comes up approximately every 10 years and offered to send Ms. Fabian the results of the last survey the Court conducted.

- **MOTION:** Robert McWhirter moved, Diandra Benally seconded and the motion carried by a vote of 17-1 to approve the proposed membership survey regarding Mandatory Arbitration (after fixing the typo).

**Task Force on Social Justice, Bias and Inclusion (SJBI)** – Jennifer Rebholz, Joel England, Lisa Panahi

- Lisa Panahi: Recommendation from the Executive Council and the SJBI Working Group to add a footnote to Paragraph A.3. that adds clarifying language regarding the numbers in the SJBI Task Force Report to ensure they are not perceived as quota-based practices.
- Proposed language reviewed.
- **MOTION:** Jessica Sanchez moved, Denis Fitzgibbons seconded and the motion carried by a vote of 17-1 to approve the proposed clarifying language regarding target numbers in the SJBI Task Force Report.

**ABA Delegate Lori Higuera** – Jennifer Rebholz

- Lori Higuera’s term on the Board expires June 2022 while her term as a Board-appointed Delegate in the ABA House of Delegates (HOD) expires at the conclusion of the August 2022 Annual Delegates meeting.
- She is requesting the opportunity to complete her term as an ABA Delegate and to continue to serve on ABA committees until the 2022 Annual HOD Meeting adjourns.
- Lisa Panahi: There are no concerns with regard to policy.
- **MOTION:** Chris Russell moved, Jessica Sanchez seconded and the motion carried by a vote of 16-0-1 to allow ABA Delegate Lori Higuera to complete her term through the 2022 Annual HOD Meeting.

**Finance and Audit Committee (FAC)** – Kathy Gerhart

- 2020 SBA Audit: Finishing up audit steps
  - Additional audit work required for the 2020 audit due to a recent accounting pronouncement change which resulted in a change in how an organization is required to recognize revenue .
  - Final audited financial statements to be presented at September Finance Committee meeting and then at the October Board meeting.
- State Bar of Arizona June 30, 2021 Financial Statements  
Included in materials are the SBA financials statement, CFO comments and dashboard as of June 30, 2021.

**Bar Operating Surplus as of June 30, 2021**

Budget - \$758,973 Actual - \$2,311,024

Favorable variance - \$1,552,052

➤ **Financial Dashboard**

Revenue Sources

- Membership fees – 58%
- Program services – 36% (CLE, Convention, advertising revenue)
- Other – 6%

Expense Sources

- Personnel – 58%

- Other Operating – 38%
  - Depreciation – 4%
- Anticipate \$712K is permanent variance
  - \$371K is favorable revenue performance
    - CLE - \$345K – webinar performance, resale of convention materials, OnDemand
    - Advertising sales on website and new career center - \$46K
    - Vanguard earnings - \$112K (schedule in materials)
    - Convention - (\$183K)unfavorable variance
    - Misc. - \$51K
  - \$341K is favorable expense savings
    - Conferences, conventions & meeting - \$83K
    - Office expenses - \$156K
    - Training & Development - \$47K,
    - Board of Governor expenses - \$28K
    - Misc. Expense - \$27K
    - Remainder is considered timing difference at this stage
- Current Anticipated Year End Surplus - \$1,187K (Budgeted surplus - \$475K plus permanent favorable increase of \$712K)
- Additional work to be done in conjunction with July financial statements to update projections;
- State Bar of Arizona June 30, 2021 Investment Report
  - Included in materials is the investment report
    - As of July 31, 2021 Investment balance is:
 

Annual Fees Reserve	\$4,476,715
Capital Reserve	<u>\$2,749,199</u>
Total	<u>\$7,225,914</u>
    - Earnings:
      - Dividends & Interest \$32,631
      - Change in Value \$174,338
  - Client Protection Fund (CPF) June 30, 2021 Financial Statements
 

Included in materials are the CPF June 30, 2021 Financial Statements

    - Cash \$114K
    - CDARs \$2,704K
    - Claims paid \$47K
    - Subsequent claims paid from August 24<sup>th</sup> meeting – \$26K
    - June 30<sup>th</sup> surplus \$341K
    - Currently 42 claims open
      - 2020 claims – 5
      - 2021 claims – 37
  - Banking Relationship
    - Bank RFP Treasury management circulated to three banks

- On August 4, 2021, FAC approved continuing relationship with Wells Fargo contingent on negotiating additional reduction in merchant processing fees
- Successful in negotiating additional fee reduction
- Bank Line of Credit (LOC)
  - As part of the Bank RFP requested bids for a \$4M LOC
  - Last draw from previous LOC was 2013; \$1,700,000 which was repaid in 3 months
  - Reviewed the costs to renew for a 5-year term – \$3K-\$15K
  - The State Bar currently has reserves in excess of \$7,000,000
  - FAC recommendation is not to re-establish a line of credit with the understanding that the situation will be re-evaluated if LOC is needed in the future to cover cash flow.
  - **MOTION:** Chris Russell moved, Mignonne Hollis seconded and the motion to not renew the Line of Credit passed by a vote of 15-0-1.

#### Consent Agenda – Jennifer Rebholz

- Hearing no request to have any items removed from the Consent Agenda:
  - a) Approval of June 15, 2021 Board Meeting Minutes
  - b) Approval of Resignations in Good Standing
  - c) Approval of Resignations in Lieu of Reinstatement
  - d) Approval of Reinstatements of Members Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
  - e) Approval of Reinstatements of Members Suspended for Non-Compliance with Annual Membership Fees and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
  - f) Approval of Suspension for Failure to Complete the Professionalism Course
- **MOTION:** Chris Russell moved, Kelsi Lane seconded and the motion to approve the Consent Agenda passed by a vote of 15-1.

#### Litigation Cases Effecting Unified State Bars – Lisa Panahi

- Presentation on current litigation across the country challenging the integrated or mandatory bar model, including the history of Supreme Court precedent
  - Current litigation being monitored includes:
    - Crowe/Gruber v. Oregon State Bar* (9<sup>th</sup> Circuit)
    - Boudreaux v. Louisiana State Bar* (5<sup>th</sup> Circuit)
    - McDonald v. State Bar of Texas* (5<sup>th</sup> Circuit)
    - Taylor v. State Bar of Michigan* (6<sup>th</sup> Circuit)
    - Schell v. Oklahoma Bar Association* (10<sup>th</sup> Circuit)
    - File v. Wisconsin State Bar* (7<sup>th</sup> Circuit)
    - Pomeroy v. Utah Bar* (10<sup>th</sup> Circuit)
  - Recently denied review by the Supreme Court:
    - Jarchow v. State Bar of Wisconsin* and *Fleck v. State Bar of North Dakota* – U.S. Supreme Court denied cert. in 2020 for both of these petitions.

### **Status Reports**

- Delivery of Legal Services Implementation Team – Lisa Panahi  
There are no changes to report—in a holding pattern.
- Discipline on the Web Working Group – Chris Russell  
Working on recommended changes to the website; next meeting is September 13<sup>th</sup>.
- Legislative Update – Joe Hengemuehler  
In the off season; reaching out to Bar’s Sections for legislative issues they may bring forward; to date no new challenges to the bar structure; setting up meetings between President Rebholz, CEO England and key lawmakers.
- Social Justice, Bias and Inclusion Working Group – Elena Nethers  
The Social Justice Working Group approved the expansion of questions for their member survey adding a non-binary option. Survey now goes to the Executive Council.
- Strategic Planning Working Group – Sam Saks  
Meeting before the September Board meeting.

**Adjourn: MOTION:** Chris Russell moved, Kelsi Lane seconded and the motion carried unanimously to adjourn at 12:20 p.m.

Respectfully submitted,

Ted A. Schmidt  
Secretary/Treasurer