

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA**

April 14, 2023

BOARD MEMBERS PRESENT: Jessica Sanchez, President, Mesa; Benjamin Taylor, President-Elect, Phoenix; Sam Saks, Secretary/Treasurer, Tempe; Diandra Benally, Fountain Hills; Sandra Bensley, Tucson; Nicholas Brown, Phoenix; David Byers, Phoenix; Jena Decker-Xu, Phoenix; Denis Fitzgibbons, Casa Grande; Sharon Flack, Prescott; Kelsi Lane, Phoenix; Leticia Marquez, Tucson; Robert McWhirter, Phoenix; John Moody, Phoenix; Preston Pollock, Globe; Jennifer Rebholz, Board Advisor, Phoenix; David Rosenbaum, Phoenix; Eric Ruchensky, Flagstaff; D. Christopher Russell, Sierra Vista; Jimmie Dee Smith, Yuma; Public Governors Robyn Austin, Tucson, Cedric Dave, Chandler, Mignonne Hollis, Sierra Vista; At-Large Governors Mike Baumstark, Scottsdale, and Doreen McPaul, Gilbert; and Ex-Officio Member Dean Stacy Leeds, ASU College of Law, Phoenix.

BOARD MEMBERS WITH EXCUSED ABSENCES: Ted Schmidt, Vice President, Tucson; Public Governor Robyn Austin, Tucson.

BOARD MEMBERS WITH UNEXCUSED ABSENCES: Public Member Jonathan Martone, Paradise Valley.

STAFF: Deanna Commack, Executive Assistant; Joel England, CEO/Executive Director; Sarah Epperson, Ethics Counsel; Dixie Fuller, Professional Development Administrator; Kathy Gerhart, Chief Financial Officer; Joe Hengemuehler, Chief Communications Officer; Lori Maxwell, Chief Information Officer; Trish McCarty, HR Director; Darla Neill, Board Administrative Assistant; Lisa Panahi, General Counsel; Rick Palmatier, Deputy General Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Roberta Tepper, Chief Member Services Officer; Maret Vessella, Chief Bar Counsel.

GUESTS: Victoria Ames, ASU College of Law; Hon. William Montgomery, Arizona Supreme Court Liaison; State Bar ABA Delegates George Chen and Lynda Shely; Uniform Law Commissioners Barbara Atwood, Tim Berg and Hon. Sam Thumma; Mike Farrell, Civil Practice and Procedure Committee Chair; Lean Won, UA College of Law.

Call to Order – Jessica Sanchez

President Sanchez called the meeting to order at 8:35 am.

Call to the Public – Jessica Sanchez

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

President's Report – Jessica Sanchez

- Convention
 - Return the RSVP form to Convention Coordinator Jodi Lee Beert
 - Governors must request the free tickets to the three luncheons

- Deadline Monday, May 1st
- Convention registration fee is waived depending on Governors' classification
- Attended:
 - Los Abogados event Feb. 24 – Jessica Sanchez featured regarding first Latina State Bar President; family members spoke.
 - Latinas Mentoring Program lunch.
 - State Bar's Bar Leadership Institute Reception March 23. Benjamin Taylor also attended.
 - WSBC March 29-April 1 - Joel England also attended. Comforting to learn Arizona is not the only Bar facing challenges and that the SBA is actually ahead in terms of innovation in many areas. Artificial Intelligence figured prominently in programming.

CEO's Report – Joel England

- Events:
 - Same events President Sanchez attended.
 - Met with Maricopa County Attorney Rachel Mitchell to establish relationship.
 - ABA's Bar Leadership Institute with President-Elect Taylor; former State Bar CEO John Phelps was a presenter.
 - Held president's orientation with Mr. Taylor.
 - He'll be making Bar committee appointments and Board assignments before the Convention; committees application deadline was extended.
- Staff performance evaluations and merit increase process completed.
- Election
 - Results from vendor in materials; topic later on the agenda

Uniform Law Commission – Commissioners Barbara Atwood, Tim Berg, Hon. Sam Thumma

- Provided an update on recent uniform laws that are being enacted around the country including two in the family law arena - the Uniform Cohabitants' Economic Remedies Act (2021) and the Uniform Unregulated Child Custody Transfer Act (2021).
- Invited suggestions for laws for the ULC's consideration; fielded questions regarding budget and funding and indicated that each state pays dues based on size; commissioners are not salaried
- Have established rapport with commissioners from Colorado, New Mexico and Utah for sharing information and ideas
- ULC established in 1892; one president from Arizona since; Mr. Berg will be the 2nd and serve a two-year term

Arizona Commission on Access to Justice – Hon. Sam Thumma

- Judge Thumma is current chair of the Commission established by the Arizona Supreme Court in 2014
- Referenced 2022 Annual Report and Plan for Excellence in Board's materials
- One change can make a difference in how legal consumers access courts
 - Rate of tenants failing to appear in landlord/tenant cases dropped from 40% in 2019 when one had to appear in court, to less than 25% in 2020 during the pandemic when virtual options were approved by the Court

- Four corner states face same challenges with regard to consumer legal access
 - Participated in successful Utah Summit – takeaway: state agencies should replicate what each other does
- June 2023 issue of *Arizona Attorney Magazine* article on how we treat litigants
- Working to have 2025 AZ Town Hall’s topic on access to civil justice; last similar one was in the 1980’s

ABA House of Delegates’ (HOD) Midyear Meeting Report – Diandra Benally, George Chen, Lynda Shely

- Thanked CEO Joel England, General Counsel Lisa Panahi and Director of Board Operations Carrie Sherman for arranging pre-HOD meetings with the Bar’s five Delegates in order to provide an analysis of the Resolutions and whether any are Keller violative and thus prohibits the Delegates from voting on said matters. At the Midyear Meeting about 50% of the Resolutions were not Keller appropriate.
- Referenced the House of Delegates’ Midyear Meeting recap in the materials and called out some matters including:
 - Resolution 400 (adopted) - adopt a code of judicial ethics binding on justices of the Supreme Court of the United States
 - Resolution 300 (not adopted but expected back with amendments at the August Annual Meeting) – making amendments dated February 2023 to Standards 501 and 503 of the ABA Standards and Rules of Procedure for Approval of Law Schools. Former Chief Justice Scott Bales and Former ABA President Patricia Refo spoke in favor of the Resolution.
- Recognized the Board’s own Governor and ABA Delegate Diandra Benally who received the Spirit of Excellence Award, one of the top five ABA awards that are presented.

Mark Harrison Memorial 10-Minute Topics – Postponed to May meeting due to Bob McWhirter’s absence.

Appointments Committee – Jessica Sanchez

- Public Governor Jonathan Martone is completing his three-year term and is not seeking reappointment.
- The Appointments Committee interviewed the three individuals who applied and the ranked list is in the materials.
- The Board will send its nominations to the Court for the Court’s ultimate selection.
- Candidates interviewed:
 - Nicole Garcia via Zoom
 - Cortez Smith in person
 - John Little in person

MOTION: Motion made, seconded and carried unanimously to submit recommendations to the Court as ranked by the Appointments Committee: Cortez Smith (6 votes), Nicole Garcia (1 vote) and John Little (1 vote).

Awards Working Group - Jessica Sanchez

The AWG recommended that the following nominees be honored with the following awards at the June convention:

- a) Award of Appreciation (non-lawyer): Dr. Susan Trentham, PCBA Executive Director
- b) Award of Special Merit: Barbara Atwood, UA College of Law
- c) Diversity and Inclusion Leadership Award: Comm. Amanda Chua, Maricopa County Superior Court
- d) Hon. John R. Sticht Disability Achievement Award: Hon. Danelle Liwski, Pima County Superior Court
- e) James A. Walsh Outstanding Jurist Award: Hon. Samuel Thumma, Arizona Court of Appeals, Division One
- f) Mark I. Harrison Excellence in Mentorship Award: Comm. Mina Mendez (ret.)
- g) Member of the Year Award: Steven Guttell, Steven M. Guttell PLC
- h) Michael C. Cudahy Criminal Justice Award: Bradley Carlyon, Navajo County Attorney's Office
- i) Outstanding In-House Counsel of the Year Award: Kevin Schutz, Savvas Learning Company LLC
- j) Sharon A. Fullmer Legal Aid Attorney of the Year Award: Habib Pierce-Byrd, Four Rivers Indian Legal Services
- k) Tom Karas Criminal Justice Award: Margarita Silva, Silva & Fontes

MOTION: Motion made, seconded and carried unanimously to accept the Awards Working Group's recommendations.

Certification of the 2023 Board of Governors Election Results

- Mr. England noted voter lists error
 - 358 Pinal and Yuma members sent ballots for Maricopa election
 - 18 cast ballots before voter list scrubbed
 - Ballots anonymous – neither vendor nor Bar staff could delete those votes
 - Did not affect District 6/Maricopa outcome

MOTION: Motion made, seconded and carried unanimously to certify the 2023 Board election results:

District 1: (Apache, Coconino, Mohave, Navajo Counties) – Uncontested Election
David Johns, Aspey Watkins & Diesel PLLC – Elected

District 4: (Cochise County) – Uncontested Election
D. Christopher Russell, The Russells Law Firm PLC – Re-elected

District 5: (Pima and Santa Cruz Counties) – Uncontested Election
Ted A. Schmidt, Schmidt Sethi & Akmajian – Re-elected

District 6: (Maricopa County) – Contested Election – 3 seats
Robert J. McWhirter, The Law Offices of Robert J. McWhirter – Re-elected
Heather Baker-Mushkatel, Mushkatel Robbins & Becker PLLC - Elected
Kelsi Taylor Lane, Davis Miles McGuire Gardner PLLC – Re-elected

Rules Review Committee

- Three proposed comments that Rules brought to the Board's attention for discussion/approval.
- The remaining 14 matters that Rules considered are included on the Consent Agenda.
- After presentation and discussion, Chris Russell put the following up for vote:
 - a) Proposed Comment to R-23-0007, Petition to Amend Rules 44.1(c), 45(c), 78(g) and 91.3, Ariz. R. Fam. L. P.

MOTION: Motion made, seconded and carried unanimously to approve the Proposed Comment.

- b) Proposed Comment to R-23-0003, Petition to Amend Rule 615, Ariz. R. Evid.

MOTION: Motion made, seconded and carried unanimously to approve the Proposed Comment.

- c) Proposed Comment to R-22-0047, Petition to Amend Rule 80(a), Ariz. R. Civ. P.

MOTION: Motion made, seconded and carried unanimously to approve the Proposed Comment.

Consent Agenda - Jessica Sanchez

President Sanchez asked if there were any matters that needed to be removed from the Consent Agenda and hearing nothing,

MOTION: Motion made, seconded, and carried unanimously to approve the Consent Agenda:

- a) Approval of February 17, 2023 Board Meeting Minutes
- b) Approval of Resignations in Good Standing
- c) Approval of Reinstatement of Member(s) Suspended for Non-Compliance with Annual Membership Fees and/or Trust Account Compliance
- d) Approval of Reinstatement of Member(s) Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
- e) Fee Waiver Denials
- f) Proposed Comment to R-22-0046, Petition to Amend Rule 15.4(b), Ariz. R. Crim. P.
- g) Proposed Comment to R-23-0013, Petition to Amend Rule 9.1, Ariz. R. Crim. P.
- h) Proposed Comment to R-23-0024, Petition to Amend Rule 2.6, Ariz. R. Crim. P.
- i) Proposed Comment to R-23-0031, Petition to Amend Rule 38.2, Ariz. R. Crim. P.
- j) Proposed Comment to R-23-0004, Petition to Amend Rule 702, Ariz. R. Evid.
- k) Proposed Comment to R-22-0048, Petition to Amend Rule 26(d)(2), Ariz. R. Civ. P.
- l) Proposed Comment to R-23-0002, Petition to Amend Rule 106, Ariz. R. Evid.
- m) Proposed Comment to R-23-0005, Petition to Amend Rule 56(b), Ariz. R. Civ. P.
- n) Proposed Comment to R-23-0016, Petition to Amend Ariz. Tax Ct. R. Prac.
- o) Proposed Comment to R-23-0026, Petition to Amend Various Rules Req. Tables of Citations
- p) Proposed Comment to R-23-0030, Petition to Amend Rule 55(b), Ariz. R. Civ. P.
- q) Proposed Comment to R-23-0033, Petition to Amend Rule 5.1, Ariz. R. Civ. P. and Rule 43.1, Ariz. R. Fam. L. P.
- r) Proposed Comment to R-23-0009, Petition to Amend Rule 31.3(e)(1), Ariz. R. Sup. Ct.

- s) Proposed Comment to R-23-0006, Petition to Amend Rule 42, ERs 1.15 and 2.4 and Rule 43, Ariz. R. Sup. Ct.

New Rule 124, Ariz. R. Sup. Ct. – Dave Byers

- Would adopt Supreme Court Rule 124 in response to SB1265 and allow for electronic signatures on e-filed documents that require a sworn written declaration, verification, certificate, statement, oath, or affidavit.
- Comment period ends May 2 prior to next Board meeting. After discussion,

MOTION: Chris Russell moved, Mignonne Hollis seconded and the motion carried unanimously to delegate to the Executive Council the approval of a Bar comment to be filed regarding R-22-0009.

Finance and Audit Committee - Kelsi Lane and Kathy Gerhart

Year-end December 31, 2022 Financial Statements - 2022 SBA Final Operating Results (Internal)

- Net operational surplus of \$1,618K relative to a budgeted surplus of \$388K
- Surplus is a result of revenues overachieving budget by \$683K, and expenses coming under budget by \$547K.
- A couple of highlights are:
 - Higher than anticipated CLE revenue, advertising sales and rental income
 - Lower than anticipated banking & credit card fees, as well as personnel cost savings driven by higher-than-normal vacancies.
- No further adjustments anticipated – preparing for the financial statement audit for which fieldwork is scheduled in May.

Bar-Related Legislation – Joel England, Janna Day, Joe Hengemuehler

- Discussion regarding the two bills staff and leadership continue to watch (SB1092 and SB1435).

2023-2024 Board/Executive Council Meeting Schedule - Benjamin Taylor

- Proposed June 2023 – June 2024 meeting schedule in the materials
- February 2024 meeting will be rescheduled one week later to the 2/23/24
- Board Retreat is July 20 and 21 in Sedona

Correspondence/Reports

- March 9, 2023 Executive Council Minutes
- Officer elections coming up – Board members encouraged to run

ADJOURN at 11:18 a.m.