

MEETING
OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
July 21, 2011

Radisson Woodlands Hotel
Flagstaff, AZ

BOARD MEMBERS PRESENT: Joseph A. Kanefield, President, Phoenix; Amelia Craig Cramer, President-Elect, Tucson; Whitney Cunningham, First Vice President, Flagstaff; Richard T. Platt, Second Vice President, Florence; Bryan B. Chambers, Secretary-Treasurer, Globe; Richard D. Coffinger, Glendale; Michael J. Crawford, Tucson; Tom Crowe, Phoenix; Diane Drain, Phoenix; Jana Flagler, Bisbee; Melissa S. Ho, Phoenix; Jack Levine, Phoenix; Lisa S. Loo, Tempe; Sharon W. Ng, Young Lawyers Division, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Alex B. Vakula, Prescott; Public Members: Tony Finley, Tucson; Audrey R. Jennings, Scottsdale; Meredith Peabody, Prescott; John J. Sullivan, Sahuarita; At-Large Members: Jennifer J. Burns, Tucson; David K. Byers, Phoenix and Mike Baumstark (alternate); Virginia Herrera-Gonzales, Mesa and Ex-Officio Member: Dean Douglas J. Sylvester, Tempe.

EXCUSED ABSENCE: Geoffrey Trachtenberg, Phoenix; Ex-Officio Members: Alan P. Bayham, Jr., Immediate Past President, Phoenix; Dean Shirley Mays, Phoenix; Dean Lawrence Ponoroff, Tucson.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Patty Berg, Human Resources Director; Hon. Robert M. Brutinel, Supreme Court Liaison; Janna Day, Lobbyist; Lisa Deane, Member Services Director; Rick DeBruhl, Chief Communications Officer; John Furlong, General Counsel/Deputy Director; Rob Hosch, Director of Information Technology; Ann Leslie, Executive Assistant; John Phelps, CEO/Executive Director; Pat Sallen, Director Special Services and Ethics/Deputy General Counsel; Carrie Sherman, Director of Board Operations; and Maret Vessella, Chief Bar Counsel.

The State Bar of Arizona Board of Governors held a regular meeting on July 21, 2011 in Flagstaff, Arizona.

PRESIDENT'S REPORT

President Joseph A. Kanefield started the meeting at 10:05 am and welcomed everyone to the Board of Governors Retreat. President Kanefield reviewed the schedule for the two-day retreat and in the overview reported that February 14 would be the 100 year celebration of Arizona's statehood. Celebrating Arizona's rich legal 100-year history will be tied into the Convention. President Kanefield also reviewed the Board's Code of Conduct (not yet adopted) for discussion later in the retreat.

Called the Board meeting to order at 10:21 a.m.

No Executive Session.

President Kanefield stated that the Petition to Amend Rule 8.4 was pending before the Supreme Court and out for comment. The comment period closed, but after the deadline a comment was filed by lawyers concerned about the proposed changes. Further discussion was held later in the meeting.

President Kanefield also asked Board members to review the standing board committee and liaison assignments provided in the materials. He further reminded liaisons of the importance of attending their assigned groups' meetings, and reporting to the Board.

CEO/EXECUTIVE DIRECTOR'S REPORT

CEO/Executive Director John Phelps congratulated Joe Kanefield on his new role as President. Mr. Phelps gave an overview of his CEO Report including annual convention attendance, which was 1279 compared to 1325 in 2008; CLE by the Sea attendance was up from last year (300 vs.287 in 2010); and announced that Sallie Scott was selected as Employee of the Quarter for her extraordinary work in supporting conservatorships.

CONSENT AGENDA

President Kanefield asked if there was anything to be removed from the agenda, having heard nothing:

John Sullivan moved and Tom Crowe seconded and the motion carried unanimously to approve the consent agenda: Approval of June 14, 2011 Board of Governors Meeting Minutes; Approval of Resignations in Good Standing Ariz. Sup Ct. Rule 32 (c)(11)(C); Approval of Reinstatement to Practice of Members Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.); Approval of Reinstatement to Practice 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.);

STRATEGIC AGENDA – MCLE REVIEW

Tom Crowe reported the Task Force is reviewing the member survey results and that Lisa Deane will circulate a report of the results. Pre-certification of CLE garnered small support but will be explored.

Mr. Phelps stated that diversity, within the entire organizational structure, will be reviewed. I. Godwin Otu, Diversity Director, retired last week. A new hire is on hold until the review is completed.

FINANCE COMMITTEE/CFO REPORT

John Phelps reported on behalf of CFO Thomas Johnson. The next Finance Committee meeting is scheduled for August. May and June financials had surpluses and expenses below

budget. Convention revenue is less than expected. Mr. Phelps stated that it was time to review convention and work harder to increase the participation.

Mr. Phelps further reported that CFO Thomas Johnson had tendered his resignation effective September 8th. An Interim CFO, Kathy Gerhart, a CPA and experienced financial officer, has been picked to handle the transition beginning 1 August.

CHIEF BAR COUNSEL REPORT

Chief Bar Counsel Maret Vessella reported the Attorney Regulation Committee (ARC) held its first meeting and they split into three sub-committees to study: 1) costs 2) rules that may need changing; and, 3) character and fitness.

Ms. Vessella will attend the National Organization of Bar Counsel (NOBC) meeting in August, and is a presenter on one of the panels.

HUMAN RESOURCES COMMITTEE REPORT

Chair John Sullivan stated that there was nothing to report at this time.

LIAISON REPORTS

- **Arizona Foundation for Legal Services & Education**—Meredith Peabody stated the Lease Agreement between the State Bar and the Foundation was signed, and thanked Whitney Cunningham for his effort on behalf of the State Bar. Fox Restaurants hosted a second fundraiser for the Foundation on June 28 at Stingray Sushi and raised \$1,265. The Convention Thursday luncheon was a success with 150 people in attendance. Ms. Peabody further reported that 100% of the banks have signed the new IOLTA Agreement.
- **AWLA**—no report.
- **Young Lawyers Division**—Sharon Ng reported the YLD had their Annual Meeting at the Convention. Ms. Ng stated that the Division collaborates with other Bar groups to provide monthly CLE's. Requirements for being a YLD member is age 36 or younger or 5 years of practice.
- **Arizona Asian American Bar Association**—Lisa Loo reported that their Board Retreat is July 30th, that a CLE is planned for September 28, as well as a mixer in the Fall.
- **Los Abogados**—no report.
- **Pima County Bar Association**—Amelia Craig Cramer reported that Terri Roberts is this year's president. Ms. Cramer thanked those Board members who attended the Skyline Affair for dinner and dancing in Tucson which is their annual fundraiser for SALA.
- **Native American Bar Association**—no report.
- **East Valley Bar Association**—no report.
- **Mohave Bar Association**—no report.
- **Cochise County Bar** – no report.
- **Yavapai County Bar** – no report.

- **Law Schools** – Interim Dean Doug Sylvester of Arizona State University stated that a national search is underway for a replacement for Paul Berman.

RULE 42, ER 8.4

State Bar Ethics Counsel Pat Sallen gave an overview of the petition filed June 16, 2010. The proposal made the recommendation to move the comment language regarding anti-discrimination up into the Rule and add to the comment “gender expression”. After discussion of the options, the following motions were made:

Richard Coffinger moved and Tom Crowe seconded the motion to do nothing. In a 8-12 vote, the motion was defeated.

Amelia Craig Cramer moved and Diane Drain seconded the motion to send a letter to the Arizona Supreme Court urging the Court to accept the belated Comment which was signed by more than 70 lawyers, regarding the Petition pending before the Court to amend E.R. 8.4; to reopen the public comment period for 90 days; and to advise the Court that all issues raised in the Comment had already been thoroughly vetted by the Rules of Professional Conduct Committee, the Board of Governors’ Standing Rules Committee, and the Board itself.

Dee-Dee Samet moved to amend the motion, which was accepted, to include in the correspondence to the Court the names of all entities that were asked to vet the proposed amendment to E.R. 8.4.

Dave Byers moved to amend the motion, which was accepted, to address a misperception in the Comment by referring to the Bar’s original Comment that clarifies that lawyers are not required to accept any client. However, after they’ve been retained, lawyers may not “(e) knowingly manifest bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation, gender identity or expression or socioeconomic status in the course of representing a client when such actions are prejudicial to the administration of justice; provided, however, this does not preclude legitimate advocacy when such classification is an issue in the proceeding;”

After discussion, the motion as amended twice, passed unanimously. The Board subsequently sent out a news release describing the action taken by the Board.

DAVE BYERS, ADMINISTRATIVE OFFICE OF THE COURTS

Mr. Byers reported that on September 12, the Andrew Thomas/Lisa Aubuchon/Rachel Alexander disciplinary hearing will be held at the Supreme Court courtroom with a live video stream during the whole proceedings. The hearing is anticipated to last 25-45 days.

Mr. Byers reported that this week proposed Rule changes were filed with the Supreme Court regarding the Probate court system. Judge Ann Timmer did a great deal of the work. The proposal is on a special fast-track calendar.

Mr. Byers further reported on e-filing of civil cases at the rate of 17,000 a month, however this is well below the total filings of nearly 48,000 per month. It is anticipated around September 1 paper filings will be rejected in Maricopa County. Every minute entry has this reminder on it. Mr. Byers stated that no taxpayer funds are being used for this project and in the future it should be self-sustaining. Currently PayPal is the method being used and another type of payment method will be available soon. Pima County will start a soft e-filing roll out with law firms during September.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:00 pm.

Respectfully submitted

Bryan B. Chambers
Secretary/Treasurer