

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

Boardroom
Phoenix, AZ

BOARD MEMBERS PRESENT: Joseph A. Kanefield, President, Phoenix; Richard T. Platt, Second Vice President, Florence; Bryan B. Chambers, Secretary-Treasurer, Globe; Richard D. Coffinger, Glendale; Tom Crowe, Phoenix; Diane Drain, Phoenix; Jana Flagler, Bisbee; Melissa S. Ho, Phoenix; Jack Levine, Phoenix; Lisa S. Loo, Tempe; 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; Mike Baumstark (alternate), Phoenix; Virginia Herrera-Gonzales, Mesa and Ex-Officio Members: Alan P. Bayham, Jr., Immediate Past President, Phoenix and Gary Stuart on behalf of Dean Douglas J. Sylvester, Tempe.

EXCUSED ABSENCE:

Ex-Officio Members: Amelia Craig Cramer, President-Elect, Tucson; Whitney Cunningham, First Vice President, Flagstaff; Michael J. Crawford, Tucson; Sharon Ng, Young Lawyers Division; Samuel Saks, Phoenix; Geoffrey Trachtenberg, Phoenix; Ex-Officio Members: Dean Shirley Mays, Phoenix; Dean Lawrence Ponoroff, Tucson.

OTHERS PRESENT: Sandi Allison, Senior Accountant; Nina Benham, Board Services Specialist; Patty Berg, Human Resources Director; Hon. Robert M. Brutinel, Supreme Court Liaison; Lucinda Crowley, Lead Paralegal; Carolyn De Looper, Membership Administration & Services Manager; Anne DePalma, Senior Legal Secretary; Betty Flores, Sections & Practice Resources Supervisor; John Furlong, General Counsel/Deputy Director; Kathy Gerhardt, Interim CFO; Pat Giallanza, Communications Project Manager; Rob Hosch, Director of Information Technology; Ann Leslie, Executive Assistant; Kathleen Lundgren, Government Relations Administrator; Edward Parker, UPL Attorney; Sat Patel, Network Administrator; John Phelps, CEO/Executive Director; Pat Sallen, Director Special Services and Ethics/Deputy General Counsel; Carrie Sherman, Director of Board Operations; Kim Vandenberg, Deputy Director of Professional Development and Maret Vessella, Chief Bar Counsel.

ADDITIONAL GUESTS:

Shelley Cutts, Military Legal Assistance Committee; Bill Klain, Civil Practice and Procedure Committee; Hon. James McDougall, Elder Law and Mental Health Section

PRESIDENT'S REPORT

President Joseph A. Kanefield called the meeting to order at 8:40 a.m. and welcomed everyone. President Kanefield reported the Supreme Court announced the ABA's 2012 Law Day theme this year: "No Courts, No Justice, No Freedom."

CEO/EXECUTIVE DIRECTOR'S REPORT

CEO/Executive Director John Phelps introduced Lucinda Crowley as employee of the quarter, recognized by her peers for all her additional work during the rolling out of the new discipline system when the department was short staffed. Mr. Phelps summarized the major initiatives on which staff are working: budget drafts; first floor renovation plan; technology application for smartphones. Mr. Phelps further reported that, although the legislature is not in session, he, along with Lobbyist Janna Day and CCO Rick DeBruhl have been meeting with elected officials. The Bar is recruiting a lawyer for the diversity director position and the job description is posted on www.azbar.org/AboutUs/Careers.

TECHNOLOGY REPORT

Technology Support Director Robert Hosch presented the State Bar application for smartphones that is being rolled out to members. On their smartphones, members can go to Market place, search for State Bar of Arizona and download the application to their phone giving them access to Member Finder, Rules of Professional Conduct and the Career Center. Blackberry users would go to m.azbar.org from their web browser and Apple users would use the Safari program and go to m.azbar.org. Mr. Hosch also reported on a technology newsletter that will be pushed out to members regularly. Mr. Hosch asked Board members to send him any suggestions they have for topics and functions that should be covered.

STRATEGIC PLANNING

- **MCLE Review**— Tom Crowe no report at this time.
- **Diversity** – Chair Lisa Loo - no report at this time.

MILITARY LEGAL ASSISTANCE COMMITTEE (MLAC) — Vice Chair Shelley Cutts presented a PowerPoint. Some points of interest:

- There are 600,000 veterans in Arizona and half of that population is outside the Maricopa boundaries.
- MLAC formed in 2010 to assess the legal services needs of military personnel, veterans, and their families in Arizona and provide recommendations to address said needs.
- MLAC consists of approximately 20 attorney and five community members.
- Legal services are needed in the areas of: Family Law; Criminal Law; Consumer Law; Military and Veterans Law; and Immigration Law.
- Veteran Treatment Courts (VTC) are diversion courts handling unique needs of veterans; currently Arizona has only two.
- Assessment of Needs: the State Bar can help by: adopting a resolution supporting VTC; training; reviewing legislation and taking a position when appropriate; supporting veteran and military events; assist with access to legal services.

ACCESS TO JUSTICE

Chair Todd Lang reported on the work of the Task Force whose final report will be coming before the Board in November. Mr. Lang stated that Justice Rebecca Berch confirmed her support of the Task Force and encouraged the Task Force to think broadly in developing recommendations to address the needs. The report will include recommended rules revisions to allow:

- mandatory pro bono work within the civil appointment system that includes a buy-out provision;
- allow more limited representation;
- allow retired attorneys to participate;
- a proposal to captive filing fees;
- modification to the dues check off
- recommended distribution of the \$400,000 earmarked by the Board for access to justice initiatives.

APPOINTMENTS COMMITTEE

Chair Richard Platt presented the committee's recommendations and the Board:

- Arizona Supreme Court Committee on Examinations- Lawyer Members-
Jana Flagler moved and Jack Levine seconded the motion to recommend the following 12 names in order of ranking for the Court's consideration and ultimate selection for the four openings: Thomas Murphy; Richard Strohm; Kaniatariio Gilbert; Mitchell Resnick; Jacqueline Jeffrey; Deryck R. Lavelle; Michael D. Bailey; Adam Zickerman; Kelly LoCascio; Rodney Galarza; Brad Tebow and David W. Lunn.
- Community Legal Services Board of Directors
Jim Smith moved and Mike Baumstark seconded the motion to appoint Susan B. Trujillo to the Community Legal Services Board of Directors, replacing Victoria E. Washington (Maricopa County Public Defender's Office, Phoenix), who resigned.

RULES COMMITTEE REPORT

Chair Lisa Loo introduced Bill Klain and Jodi Feuerhelm who were present to answer questions regarding Proposed Petition to Amend Rule 56, Ariz. R. Civ. P. (Motions for Summary Judgment) submitted by the Civil Practice and Procedures Committee. The objectives of the proposed petition: 1) Incorporate stylistic changes to clarify and update the language of the rule; 2) Incorporate, on a selective basis, aspects of recent amendments to Rule 56 of the Federal Rules of Civil Procedure (effective December 2010); and 3) Cure identified problems and/or ambiguities in the current rule. This item is information only this month. Ms. Loo reviewed the changes and the Board posed questions regarding the proposed petition.

- **R-11-0030, Petition to Amend Rules 34, 35, 37, and 38 of the Ariz. R. S. Ct. (Uniform Bar Exam) proposed by Supreme Court Admissions Office** – Petition is on an expedited schedule with comments due by November 15, 2011, with proposed

adoption by the Arizona Supreme Court by December, 2011, with an effective date of January 1, 2012, for the first scheduled Uniform Bar Exam to be held in July 2012.

The Rules Committee's motion and requires no second, recommends that the SBA take no position on the petition other than to suggest the consideration of an adoption of a provision requiring an Arizona-specific test after completion of the Arizona-specific class. After lengthy discussion,

Bryan Chambers moved to amend and Richard Coffinger seconded and motion passes to oppose the Petition as currently written and request from the Court six months to allow the opportunity to notify the membership about the issue. If the extended comment period is not granted, it was proposed to oppose the Petition as currently written unless it is amended to require a test for Arizona-specific law after completion of the class on Arizona-specific law.

- **Proposed Petition to Amend Rule 6, Ariz. R. Pro. Order P. (information only)**
- **Proposed Petition to Amend Rule 8(c), Ariz. R. Civ. P. (information only)**
- **Proposed Petition to Amend Rule 42, ER 5.5(d), Ariz. R. S. Ct. (information only)**

CONSENT AGENDA

President Kanefield asked if there was anything that should come off the Consent Agenda, having heard nothing, the following motion was made:

John Sullivan moved and Richard Coffinger seconded and the motion carried unanimously to approve the following: Approval of September 23, 2011 Board of Governors Meeting Minutes; Approval of the Resignations in Good Standing; Approval of Reinstatement to Practice of Members 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.); Requests for Waivers of Dues/Late Fees; and the NELF Accreditation Renewal.

FINANCE COMMITTEE/CFO REPORT

Bryan Chambers reported on behalf of Chair Whitney Cunningham. The proposed renovation of the first floor was reviewed, noting that the bids have been higher than originally expected. The plans for the layout for the first floor were provided.

Interim CFO Kathy Gerhart reported:

- Renovation of the two elevators is on target for completion.
- September Financials - For the nine months ended September 30, 2011, the Bar income statement, excluding sections showed a surplus of \$540,000 which is favorable to budget by \$28,000, achieved as a result of \$262,000 less in revenues and \$290,000 less in expenses. The balance sheet continues to remain strong with the Bar having a net worth/net assets of \$8,343,000.

- Sublease for Citizens Count – The SBA lease with the Arizona Foundation for Legal Services & Education does allow for subleasing. The AzFLSE will provide the Board with the sublease agreement. General Counsel John Furlong, is working with the Foundation on items to be included. The Finance Committee will review the sublease and make a recommendation to the Executive Committee.
- The first draft of the budget will come to the Board at its November meeting.
- First floor building renovation – 4201 N. 24th Street, Phoenix, AZ – Review of the history and the April 29, 2011 Board approval of the investment in remodeling and build-outs with an estimated cost of \$675,000. This project is to provide a signature space to showcase the State Bar to its members and the public. The build-out will include a large CLE meeting room that will handle up to 100 members, a member meet-and-greet area with Wi-Fi, a CLE library, tables, chairs, and a coffee station. It is expected to generate an annual return of \$58,000 due to savings from not booking outside facilities. During the design and bid process it was determined that the project would require an additional \$125,000 in capital investments bringing the total project cost to \$800,000. These costs are a result of a number of unanticipated costs: the addition of an ADA restroom, higher than expected design and technology costs, and additional costs associated with the use of modular walls to facilitate the open plan concept for the build-out.

Jim Smith moved and Richard Platt seconded and the Board voted unanimously to approve the Finance Committee’s recommendation to approve the increase in budget of \$125,000 to fund this project.

HUMAN RESOURCES COMMITTEE REPORT

Chair John Sullivan reported no change from last month.

ELDER LAW AND MENTAL HEALTH

The Elder Law and Mental Health Section Chair and Legislative Subcommittee Chair, the Hon. James McDougall addressed the Board to seek support for various statutory amendments during the next Legislative Session to:

- A.R.S. §36-543 and §36-542 regarding court orders for continued treatment and annual reviews
Richard Platt moved and Jim Smith seconded and motion carried to approve the proposed statutory amendments as proposed and to authorize the State Bar Lobbyist to assist in getting legislation passed to implement changes
- A.R.S. §36-501, §36-526, §36-533 regarding the definition of “examination”
Richard Platt moved and Dee-Dee Samet seconded the motion to approve the recommendation from the Elder Law and Mental Health Section proposed and to authorize the State Bar Lobbyist to assist in getting legislation passed to implement changes.

Jana Flagler moved to amend that we affirm the recommendation with the request that the committee pursue the consideration of the annual review. After discussion the amendment was withdrawn.

Original motion restated: Richard Platt moved and Dee-Dee Samet seconded the motion to approve the recommendation from the Elder Law and Mental Health Section proposed and to authorize the State Bar Lobbyist to assist in getting legislation passed to implement changes. Motion was unanimously approved.

LEGISLATIVE UPDATE

Lobbyist Janna Day reported that meetings with elected officials will be held to continue developing ongoing relationships with legislators. Ms. Day noted that two current events at the legislature are: 1) the possible recall of Senate President Russell Pierce and 2) redistricting. The legislature has convened a special committee to look at the redistricting issue. Ms. Day responded to a question about the status of the Bar's position on the merit selection ballot measure passed last year and referred to the general election in November 2012. In negotiations with the Legislature to pass the measure, the Bar agreed to support passage with a statement in the voter publicity pamphlet.

CHIEF BAR COUNSEL REPORT

Ms. Vessella reported:

- The Attorney Discipline Probable Cause Committee met on October 14 and; heard 22 cases.
- She presented to the West Maricopa Bar Association at their meeting on October 20.
- She has been invited to speak on ethics/professionalism at a conference hosted by the Georgia State University College of Law.
- The Attorney Regulation Committee (ARC): Rules Subcommittee met on September 28; subcommittee voted unanimously to retain provision of Rule 50 that allows for Attorney Discipline Probable Cause Committee to meet in three member panels and a separate provision that requires the Chair and the Vice-Chair of the Attorney Discipline Probable Cause Committee to be lawyers.
- Subcommittee on Costs met on September 30; no additional meetings scheduled.
- Full Attorney Regulation Committee met on October 7 and took reports from subcommittees.

ABA COMMISSION ON ETHICS 20/20

Pat Sallen attended that group's meetings in Denver on October 14-15. The commission plans to present its recommendations to the ABA House of Delegates at the August 2012 and February 2013 meetings. The State Bar's Committee on the Rules of Professional Conduct is reviewing the commission's preliminary proposals. One of the commission's proposals deals with pay-per-click and pay-per-lead advertising, which was the subject of a new State Bar ethics opinion.

LEGALZOOM

Because LegalZoom has recently been in the news, Ms. Sallen also gave a report on the company, which is mostly known as a self-help forms provider. LegalZoom recently sued the North Carolina State Bar for a ruling that LegalZoom is not engaged in the unauthorized practice of law by preparing legal documents for clients. In Arizona, LegalZoom is a certified legal document preparer and may prepare legal documents. As a result, it does not have the same problems here as in other states. If LegalZoom steps outside what it may do as an LDP, then the Attorney General could bring charges to revoke its certification.

CCCF COMMITTEE UPDATE

Chair Jana Flagler reported that a subcommittee was working on the MOU with the Foundation and it is in the drafting stage. At the last meeting the AZFLS&E reviewed their Third Quarter Report which listed the State Bar's and Foundation's joint programs mentioned below.

LIAISON REPORTS -

- **ABA House of Delegates- no report**
- **Arizona Asian American Bar Association-** Lisa Loo reported:
 - October 1, sponsored a hole in the Los Abogados Golf Tournament benefitting the Valdemar Cordova Scholarship Program
 - October 22, will send members to attend the Phoenix Chinese American Citizens Alliance event, "An Evening of Honors," recognizing the beloved Dr. Pearl Tang, wife of the The Honorable Thomas Tang.
 - October 25, will have a student/attorney mixer in Tempe.
 - October 26, sponsoring a table at the Asian-American Community forum for Phoenix mayoral candidates Wes Gullet and Greg Stanton.
- **Arizona Black Bar – no report**
- **Arizona Foundation for Legal Services & Education –** Meredith Peabody reported that the Foundation has need of volunteers to answer legal questions. There are over 100 topics to choose from. Pick from websites: www.AZLawHelp.org www.LawForSeniors.org or www.lawforkids.org. There's currently a backlog of 514 questions and only seven attorneys participating. It takes approximately 15 minutes to answer one question. Volunteering is available 24/7. Sign up and become a part of the solution to this exciting and fulfilling service to the public.
- **Arizona Women Lawyers Association–** President Kanefield on behalf of Rhonda Barnes:
 - October 26 Maricopa County Luncheon featuring Professor Paul Bender, giving the annual preview of the upcoming Supreme Court term.
 - October 27 Maricopa County wine and cheese reception honoring Judge Patricia Orozco will be held at the Wyndham in downtown Phoenix.
 - November 4 is the statewide annual convention entitled "Making Your Workplace Work for You", held at the Mountain Preserve Reception Center. The agenda includes keynote speaker Jessica Natkin, a national expert on attorney retention issues.

- November 21 Southern Arizona chapter monthly luncheon; and the topic will be “What does it mean to be incompetent to stand trial?”
- **Los Abogados Hispanic Bar Association** – Virginia Herrera-Gonzales reported on recent elections and President Gaetano Testini and President Elect Marian M. Zapata-Rossa are taking office January 20, 2012. Both are Bar Leadership Institute graduates. The Golf Tournament on October 10 and the October 13 event at the Walter Cronkite School of Journalism “Celebrating Our Contributions to Equal Protection” were great successes. John Phelps will speak October 27th at the CLE/luncheon.
- **Native American Bar Association**– no report
- **Young Lawyers Division** – Betty Flores reported on the success of the October 20 event in Scottsdale with over 100 attendees. The next networking event is November 17 in Scottsdale at the Capital Grille. These events are purposefully scheduled on the Thursday before Board meetings so that Board members can attend.
- **Committee/Section Reports**
 - Animal Law Section – Dee-Dee Samet reported on a networking event held in Tucson.
 - Bankruptcy – Diane Drain reported on a successful two-day seminar co-sponsored with ASU. The video is now available
 - Solos and Small Firms – Diane Drain reported on a recent CLE presentation on law office marketing.
 - Family Law Committee – Jack Levine reported on the group’s discussion whether children should be interviewed in custody cases.
- **Geographical/County Bar Reports**
 - **PCBA** – Dee-Dee Samet reported:
 - That a rules committee continues its ongoing work of reviewing proposed petitions and rule changes.
 - Joint programming with the State Bar will be offered.
 - “The Writ” is now in color.
 - **MCBA** will be having a reception from 5:00-7:00 pm for the new admittee’s on November 2, 2011.
- **Law Schools** – no report

Correspondence—President Kanefield asked Board members to note that Community Legal Services E.D. Lillian Johnson has been honored by the White House as a “Champion for Change”.

Obituaries —To honor our members who have passed, a web page has been created and will be posted at <http://www.azbar.org/NewsEvents/InMemoriam>

Lunch Presentation — Hon. Lawrence Winthrop presented “Connecting with Classrooms”, one of three Court Centennial Commission Projects, a collaborative effort between teachers, judges and lawyers with the shared goal of improving civics education in this state. The Commission is chaired by Justice Scott Bales.

This project has been endorsed by the SBA and the Arizona Judges’ Association. Board members were encouraged to go to www.lawforkids.org/Connecting-with-Classrooms, select the “register here” link, sign up and volunteer.

Strategic Planning Committee — “Did You Know”, a thought-provoking five-minute video clip on the changing world was presented.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:35 pm.

Respectfully submitted

Bryan Chambers
Secretary Treasurer