

Board of Governors Meeting Highlights December 16, 2011

The State Bar of Arizona Board of Governors held a regular meeting on December 16, 2011.

President's Report—President Joseph A. Kanefield called the meeting to order at 8:30 a.m. He stated that his article on technology in *Arizona Attorney* received the most comments to date. February 14 is Arizona's Centennial and the Convention theme continues the celebration by recognizing "100 years of Arizona lawyers serving the public".

No Executive Session held.

CEO/Executive Director Report—CEO/Executive Director John Phelps reported on the following:

- The 2012 budget was before the Board for approval. Kudos were given to Interim CFO Kathy Gerhart, the staff and the Finance Committee.
- Los Abogados, the Bar's Communications Division and Univision initiated a "Lawyers on Call" type program for the Spanish-speaking community.
- First floor renovation projects are on schedule and budget.
- Co-employees of the month Katy Clark and Sandi Allison were introduced and recognized for their extraordinary work in the Finance office.
- Employee of the Year Carolyn de Looper was introduced and recognized for her superb leadership of the new Membership Administration and Services office.

Legislative Update—President Kanefield reported on behalf of Lobbyist Janna Day indicating that Rep. Cecil Ash has agreed to sponsor the Mental Health/Elder Law Section's bill which now has three primary components:

- Updates Arizona's statutes by replacing outdated references to the Veterans Administration and replaces those references with the current name of the agency, Department of Veteran Affairs.
- Establishes a process for re-evaluation of individuals submitted involuntarily for treatment. The court order for involuntary treatment lasts one year. At the end of that year, the patient must be re-evaluated, but there was no guidance in the statute for how this second evaluation should be conducted, and what it should consist of. The legislation establishes a process to be utilized.
- Completes last year's efforts to further define the type of evaluation that must occur during a court-ordered evaluation and treatment proceeding.

Mark Bolton and Janna Day chaired last week's BLI session on Navigating the Legislative Process with panelists Rep. Ted Vogt from Tucson and Rep. Ruben Gallego from Phoenix. It was a great panel and a good relationship building opportunity for the Bar.

Legislators are still consumed with Redistricting Commission issues and the uncertainty around what districts they will run in next year.

Consent Agenda—President Kanefield asked if anything should be taken off the Consent Agenda and hearing nothing, the Board voted to approve the following: a) Approval November 18, 2011 Board of Governors Meeting Minutes; b) Approval of Resignations in Good Standing; c) Approval of Dues Waiver Requests; d) NCBP Fellows Award Nomination (ratified the officers' action); e) Approval of Proposed Petition to Amend Rule 1(M), Ariz. R. Protective Order Practice; f) Approval of Proposed Petition to Amend Rule 16(g)(2), Ariz. R. Civ. P.; g) Approval of Proposed Petition to Amend Rule 31(d), Ariz. R. S. Ct.; h) Approval of Reinstatement to Practice of Member Suspended for Non-compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.) and Approval of Reinstatement to Practice of Member(s) Suspended for Non-compliance with Annual Membership Dues and/or Trust Account Compliance (Rule

Appointments Committee—Chair Richard Platt stated there was no report at this time.

Rules Committee—Chair Lisa Loo reported on the following:

- Rule 11-0030 Proposed Comment to Amend Supreme Court Rules 34, 35, 37 and 38 - Uniform Bar Exam (UBE). The board voted unanimously to file a comment in support of the petition.
- Proposed Petition to Amend Ariz. R. Sup. Ct. Rule 34 (3Ls may take the February bar exam) The Rules Committee recommended that the proposal be vetted to the full membership prior to further action.
- Proposed Petition to Amend Ariz. R. Civ. P. 55(a) and Ariz. R. Family Law P. 44 (entries of default) Ms. Loo gave the background and status of this petition. It is information only and will return to the Board if there are additional new developments.
- Petition to Amend Ariz. R. Sup. Ct. Rule 42, ER 3.8 (prosecutor's post-conviction discovery of exonerating evidence.) The Rules Committee forwarded the petition to both the defense and prosecution subcommittees of the Criminal Practice and Procedure Committee and requested their comments by the end of January 2012. Those comments will be forwarded to the Ethics Committee, which will be asked to submit comments at least a week before the April Rules meeting.
- R-10-0031 Petition to Amend ER 8.4, Rule 42, Ariz. R. S. Ct.
Ms. Loo reviewed the history of the issue and the presentations by Jane Ross, representing the SOGI Committee, and Gary McCaleb, representing attorneys who filed an objection to the petition. The board returned this matter to the Rules Committee to examine the language to try to work with representatives who support and oppose the amendment and to try to come to a consensus regarding the language. The working group proposed not changing the rule but amending the existing comment. The Rules Committee recommended 4-2 that the SBA pull the filed petition and that the president-elect appoint a task force to work the issue further. Stanna Michelle, Secretary of the SOGI Committee, and Bret Harvey with the Alliance Defense Fund were present and addressed the board before the vote.

Coming from the Rules Committee as a motion on the floor with no second being required, the Board voted 13 to 5 to pull the petition previously filed and that the president-elect would appoint a task force to work the issue further.

Human Resources/Finance Benefits Task Force—Chair John Sullivan reported on Employee Benefits:

- 2012 medical costs up 1.4%
- 2010-2011 dental costs - no increase; 2012 - 5.9% increase
- Basic Life and AD&D – no increase
- Long-term disability – 6.1% increase
- Vision care - employee pays full cost with discounts available
- Retirement costs: 2011 - \$422,000; 2012 – \$425,000
- Deferred compensation – Senior Management 5+ Years of Service (three employees): \$7,500/employee
- Deferred compensation – Senior Management at CEO's discretion
- CEO's review process will be done January 16 to February 3; survey to the officers, HR Committee and several senior staff members yet to be determined. All surveys will be handled by a consultant and will be anonymous. March review and discussion in Executive Session
- Reviews of senior management to the Executive Compensation Committee in March

Access to Justice Task Force Final Report and Recommendations

(<http://www.azbar.org/sectionsandcommittees/taskforces>) - Actions taken by the Board regarding the Task Force's recommendations:

APPROVED

- Develop and Promulgate a Model Public Agency Pro Bono Policy
- Work with the Superior Courts to Establish a System for Appointment of Counsel in Civil Cases – passed over one dissent; authorized president to assign an entity (Legal Services Committee (LSC) suggested) to take lead/develop policy; suggested to get presiding judges' feedback
- Continue to Support the Arizona Foundation for Legal Services and Education in Its Coordinating Role
- SBA Should Distribute the \$400,000 It Has Set Aside for Increasing Access to Justice to the LSC-Funded Legal Aid Agencies for Programs to Build Infrastructure and Leverage Other Forms of Support as described in the Report– passed over 5 nays; motion included a change in the proposed \$325,000 to now reflect a further division of use -- \$300K to be divided proportionately between the 3 legal services providers and \$25K to now be used by the Foundation to develop a five-year fundraising plan; motion also included that reps from the LS providers and the Foundation report at least annually to the Finance Committee and the Board on the use of the funds and benefits received
- Provide Ongoing Financial Support for Legal Aid Programs and for the Foundation – continue support of sweeping 1% of SBA dues revenue to the Foundation but the proposed increase in the current 15% sweep of pro hac vice fees was deferred to Rules Committee
- Promote Participation in the Dues Check Off Program – to include \$10,000 to develop methods to increase participation.
- SBA Should Support Efforts to Develop Loan Repayment Assistance Programs for Lawyer Engaged in Public Service
- SBA Should Encourage Use of the Working Poor Tax Credit to Provide Funding to Legal Services Agencies

TABLED

- SBA Should Continue Its Efforts to Increase Filing Fees to Support Legal Services Agencies – current statute doesn't allow; agreed to ask Legal Services Committee to study and consult with SBA lobbyist if statute amendment required
- SBA Should Encourage the Use of Cy Pres Awards to Distribute Class Action Residuals to Access to Justice Initiatives – deferred to LSC
- Petition to Revise Rules 32(c)(5), 38(e) and 38(i) – maintain Board procedure: defer to Rules Committee to vet and return recommendations to Board ASAP; can ask the Court to adopt on an emergency basis if the Court's filing deadline is missed
- Petition to Revise Ethical and Procedural Rules to Facilitate Limited Scope – maintain Board procedure: defer to Rules Committee to vet and return recommendations to Board ASAP; can ask the Court to adopt on an emergency basis if the Court's filing deadline is missed
- Provide Ongoing Financial Support for Legal Aid Programs and for the Foundation – maintain Board procedure: defer to Rules Committee to vet and return recommendations to Board ASAP; can ask the Court to adopt on an emergency basis if the Court's filing deadline is missed; specifically addressing the proposed rule change to increase the pro hac vice fees sweep

Finance Committee—Chair Whitney Cunningham reported:

- The first draft of the budget was reworked with an overall deficit of \$200k cut in half.
- With cutting expenses in a number of departments and estimating the potential of an appeal in the Andrew Thomas case costing approximately \$200k, the new deficit of \$91,477 is in the 2012

budget.

- Motion on the floor from the Finance Committee to approve the 2012 budget as presented carried unanimously.
- November financials are not provided this month and will be included with December's in the January meeting materials.
- A \$1M umbrella policy is in place for the sublease by the Foundation.

Strategic Planning—Chair Amelia Craig Cramer reported that:

- The Committee has completed its review of the entire strategic plan and that every action item has been assigned to a responsible party(s) with deadlines attached.
- Board Fellow Mohit Mehta met with representatives of the lawyer regulation office, MAP and LOMAP to determine what data needs to be collected that currently is not in order to establish measurements to track and determine the success of lawyer discipline initiatives.
- The board voted to give Mr. Mehta limited access to the lawyer regulation database for said study. Mr. Mehta would execute a confidentiality/non-disclosure agreement and be supervised by Chief Bar Counsel Maret Vessella or her designee. Such authorization to confidential records information is allowed pursuant to Rule 70(c)(7), Ariz. R. S. Ct.

ABA House of Delegates—Mike Mason, one of the State Bar's four ABA Delegates, reported that Arizona has a strong voice at the ABA. The Delegates' preliminary agenda for the mid-year meeting in February was referenced and the Board, Sections and Committees were encouraged to provide comments to the proposed resolutions.

Chief Bar Counsel Report—Maret Vessella reported that the Discipline Oversight Committee met and discussed the Discipline on the Web function. The original proposal provided to the Board in June will be bifurcated. One issue deals with the disclaimer on the website with regard to discipline listed. The Committee recommends that information be tailored to the history of the member. The other issue pertains to posting probable cause orders and formal complaints.

CCCF Committee—Work continues on the Memo Of Understanding between the AzFLS&E and the State Bar.

Liaison Reports—

- **ABA House of Delegates** – previously noted
- **Arizona Asian American Bar Association** – Lisa Loo reported that the holiday party was a big success and that several needy families were “adopted” for the holidays.
- **Arizona Black Bar** – no report
- **Arizona Foundation for Legal Services & Education** –Meredith Peabody reported on the handouts “ 2011 Top Ten Foundation Efforts” and “Defining Legal Services” which covered the scope of the work of Arizona's three legal services providers.
- **Arizona Women Lawyers Association** – Rhonda Barnes reported on Maricopa County Chapter Luncheon in Phoenix on January 25, 2012 at the Wyndham Hotel at Noon. Ann Rea will speak on “Health Tips for Legal Professionals” - how to improve your health, eat to thrive and manage your stress.
- **Los Abogados Hispanic Bar Association** – no report.
- **Native American Bar Association** – no report
- **Young Lawyers Division** –
 - December 3: Sunshine Residential & Group Homes party for 75 young men; each received movie passes.
 - Monthly breakfast held the third Friday of the month; CLE speakers needed.
 - Developing nominations of BLI candidates for the next class.

▪ **Geographical/County Bar Reports**

- **PCBA** – Judge Sally Simons will conduct a court planning session in January. The superior court has an attorney bypass entrance at the courthouse that is working well.
- **MCBA** – Jack Levine reported that Jennifer Cranston (Gallagher & Kennedy) is the new board president. Their annual Christmas party was successful.
- **Yavapai CBA** – Holiday party was snowed out. At next month’s meeting, four members will receive lifetime achievement awards.
- **Yuma CBA** – Jim Smith reported that approximately 20 people regularly attend scheduled events with about 150 attorneys in the district, the majority of whom are public lawyers.
- **Pinal CBA** – Richard Platt reported that their Christmas party was well attended and successful.
- **East Valley BA** – Held their last meeting in November for the year with topics on ethics, the internet and marketing. Check www.evbar.org for updates. January 20 CLE luncheon at Noon: Hon. John Buttrick of the Maricopa County Superior Court presenting “The Ins and Outs of ‘Complex’ Litigation Under Ariz. R. Civ. P. 8(i)”.
- **West Valley BA** – Richard Coffinger reported the members assisted with plans when the Supreme Court held oral arguments at the Thunderbird School of Global Management.

▪ **Committees**

- **CMWL** – Sharon Ng reported that the Minority Bar Conference is in the works and will feature an “Ethical Jeopardy” session.

- **Law Schools** – Dean Lawrence Ponoroff, U of A, reported that the three law schools will comment on the Proposed Petition to Amend Ariz. R. Sup. Ct. 34 (3Ls may take the February bar exam). The Board will be provided a copy prior to submission.

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>

ABA Bar Leadership Institute—Notice was sent to the presidents of the bar associations to apply for two scholarships for the annual BLI held in Chicago at the ABA headquarters. The State Bar will contribute \$500 if an Arizona applicant is selected, with the ABA waiving the \$575 registration fee and paying \$500 toward costs.

The new Criminal Tower ribbon cutting is on February 14, 2012 at 3 pm with the Hon. Sandra Day O’Connor speaking.

Meeting Schedule—The next Board meeting will be held on January 27 at 8:30 a.m. The full schedule is posted on the Bar’s website: www.azbar.org/aboutus/leadership/boardofgovernors/meetingschedule