

MEETING
OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
November 19, 2010

Boardroom
Phoenix, AZ

BOARD MEMBERS PRESENT: Alan P. Bayham, Jr., President, Phoenix; Joseph A. Kanefield, President-Elect, Phoenix; Amelia Craig Cramer, First Vice President, Tucson; Whitney Cunningham, Second Vice President, Flagstaff; Richard T. Platt, Secretary-Treasurer, Florence; Mike Baumstark, alternate for David K. Byers, Phoenix; Theodore Campagnolo, Phoenix; Bryan Chambers, Globe; Richard D. Coffinger, Glendale; Michael J. Crawford, Tucson; Tom Crowe, Phoenix; Jana Flagler, Bisbee; H. Leslie Hall, Phoenix; Christopher Jensen, Prescott; Lisa Loo, Tempe; Maricela Meza, Young Lawyers Division, Tucson; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Public Members: Meredith Peabody, Prescott; John J. Sullivan, Sahuarita; At-Large Members: Jennifer J. Burns, Tucson; Virginia Herrera-Gonzales, Mesa; and Ex-Officio Members: Gary Stuart, on behalf of Dean Paul Schiff Berman, Tempe; Dean Shirley Mays, Phoenix; Raymond A. Hanna, Immediate Past President, Prescott.

EXCUSED ABSENCE: Diane L. Drain, Phoenix; Public Members: Frank Barriga, Glendale; Alexander B. Jamison, Scottsdale; Dean Lawrence Ponoroff, U of A, Tucson; Stephen M. Dichter, Phoenix; Hon. Justice John Pelander, Supreme Court Liaison.

OTHERS PRESENT: Kelly Barr, In-House Counsel Committee; Nina Benham, Board and Member Services Specialist; Patty Berg, Human Resources Director; Janna Day, Lobbyist; Lisa Deane, Member Services Director; Rick DeBruhl, Chief Communications Officer; Carolyn DeLooper, BLS/MCLE Administrator; Tim Eigo, Editor, *Arizona Attorney*; Jodi Feuerhelm, Ethics Committee; Betty Flores, Resource Center Director; John Furlong, General Counsel/Deputy Director; Jenny Gadow, Family Practice & Procedure Committee; Pat Giallanza, Public Relations Specialist; Isabel Humphrey, Professionalism Committee; Tom Johnson, Chief Financial Officer; Ann Leslie, Executive Assistant; Kathleen Lundgren, Government Relations Administrator; James McDougall, Elder and Mental Health Section; Regina Nassen, AWLA Liaison; I. Godwin Otu, Diversity Director; Christine Oxford, Controller; Edward Parker, Staff Bar Counsel; John Phelps, CEO/Executive Director; Pat Sallen, Ethics Counsel; George Schrade, Network Administrator; Carrie Sherman, Director of Board Operations; Carol Stiles, Paralegal; Michael Tannery, Administrative Assistant, Special Services; Roberta Tepper, Senior Bar Counsel; Stephen Wastek, In-House Counsel Committee.

President Alan Bayham called the meeting to order at 8:30 a.m. and the board moved into Executive Session.

EXECUTIVE SESSION: 8:37 – 9:05 am

OPEN SESSION: 9:05 am

PRESIDENT'S REPORT

President Alan Bayham, Jr. introduced Dean Shirley Mays, Phoenix School of Law. He announced that the Long-Range Planning Committee has changed its name to the Strategic Planning Committee to align with its refocused purpose.

CEO/EXECUTIVE DIRECTOR

John Phelps summarized the major initiatives on which staff are working. He introduced Carol Stiles, a paralegal in Lawyer Regulation Division, who was selected by the staff as Employee of the Month for her work on an internal litigation team. He announced that the dues statements had gone out one week earlier than usual and that the number of online users is increasing. He thanked Richard Platt for hosting him and the Pinal County Bar at a luncheon program.

STRATEGIC PLANNING

- **MCLE Review**— Tom Crowe reported that 10 qualified diverse individuals have been identified to serve on the study group, whose charge will soon be developed.
- **Discipline Guidelines**—Richard Platt reported that Supreme Court and State Bar representatives were currently meeting with Colorado Bar staff to review certain areas of the new discipline system that mirrors what Arizona is implementing.
- **Positive Things Lawyers Do**—CCO Rick DeBruhl reported that the new public web site- www.azbar.org –has been launched. The Communications Committee will focus on where to find the stories about attorneys' positive contributions in the community so these stories can be circulated.
- **Mission Statement** —Ted Campagnolo reported that the Long-Range Planning Committee recommends that three words be added to the end of the State Bar's Mission Statement: "The State Bar of Arizona serves the public and enhances the legal profession by promoting the competency, ethics, and professionalism of its members and enhancing the administration of **and access to** justice." The Board will vote on the proposal at its December 17th meeting.
- **Diversity**—Lisa Loo updated the Board on various meetings she has had to coordinate diversity-related programs/services in the legal community. Her itinerary takes her next to Yuma.
- **Section Management Policies Review** – General Counsel John Furlong reported that information is being collected from other bar associations regarding policies and guidelines relating to the maintenance and management of committees and sections.
- **Support Independence of the Judiciary** – Amelia Craig Cramer suggested that the Bar needs to develop a short and long-term strategy regarding issues such as merit selection and the independence of the judiciary.

LEGISLATIVE UPDATE

Janna Day reported on the turnover in the House and Senate following the elections. The number of attorney-legislators has decreased from 11 to eight. The Law School for Legislators will be held Thursday, January 6 with the Hon. Sandra Day O'Connor as the keynote luncheon speaker. The Elder Law and Mental Health Legislative Subsection is addressing concerns raised by the Pima County Attorney's Office regarding proposed revisions to Titles 14 and 36 which is slated for Board action in December.

Richard Platt moved and Whitney Cunningham seconded and the motion carried to support the proposed technical changes to numerous statutes relating to the Arizona Trust Code and the Uniform Probate Code and authorized Ms. Day to shepherd these proposals through the upcoming legislative session. Joe Kanefield abstained.

CONSENT AGENDA

Amelia Craig Cramer moved and Joe Kanefield seconded and the motion carried unanimously to approve the consent agenda: Approval of October 29, 2010 Board of Governors Meeting Minutes; Approval of Resignations in Good Standing; Approval of Reinstatements: Members Suspended for Non-Compliance with Ariz.Sup.Ct. Rule 32(c)(9) and/or Rule 43 (Annual Membership Dues and Trust Account Compliance); Approval of MCLE Reinstatement.

APPOINTMENTS COMMITTEE

Chair Whitney Cunningham presented the committee's recommendations on the following matters:

Arizona Commission on Judicial Conduct

Coming as a motion from the Committee, the Board voted to appoint Mr. J. Tyrrell Taber (Aiken Schenk Hawkins & Ricciardi PC, Phoenix) to a six-year term.

DNA-People's Legal Services, Inc. Board of Directors

Coming as a motion from the Committee, the Board voted to reappoint Ms. Milagros A. Cisneros (Federal Public Defender's Office, Phoenix) and to appoint Mr. Thomas L. Murphy (Gila River Indian Community, Sacaton) to serve four-year terms.

Foundation for Legal Services & Education Board of Directors

Coming as a motion from the Committee, the Board voted to reappoint the following individuals to a final three-year term on the Arizona Foundation for Legal Services & Education Board of Directors: Hon. Thomas J. Berning (Tucson City Court), Commissioner Frank A. Johnson, Jr. (Maricopa County Superior Court, Phoenix), and Ms. Robin Mitchell (Arizona Corporation Commission, Phoenix). Motion carried.

Coming as a motion from the Appointments Committee, the Board also voted to appoint Ms. Meredith Peabody, a Public Member on the Board of Governors, to a three-year term to further advance the working relationship between the sister organizations

Break 10:00 – 10:12 PM

RULES COMMITTEE

Chair Bryan Chambers reviewed the two rule petitions to be voted on:

Petition to Amend Rule 55(a)(1), Ariz.R.Civ.P. (Entry of Default)

Motion from the Rules Committee to approve the filing of the Petition to Amend Rule 55(a)(1), Ariz.R.Civ.P. (Entry of Default) Motion unanimously passed.

Petition to Amend Rule 38(h), Ariz.R.S.Ct. (Admission on Motion)

After discussion, Amelia Craig Cramer moved and Richard Platt seconded and the motion carried unanimously to table the Petition to Amend Rule 38(h), Ariz.R.S.Ct. (Admission on Motion) to the December meeting, returning it to the Rules Committee for further study.

Mr. Chambers introduced Isabel Humphrey, Professionalism Committee Vice Chair, and Kelly Barr, In-House Counsel Committee Chair, who presented the pro and con side of the Petition to Amend Rule 34 and 38, Ariz.R.S.Ct. regarding in-house counsel and the professionalism course.

Lisa Loo moved and H. Leslie Hall seconded the motion to table the petition for a year to give the recently formed In-House Counsel Committee time to gather demographics of its members and study the proposal. Motion carried over one dissent.

Mr. Chambers asked the Board to review all the information included in their materials for a substantial discussion and vote at the December 17 meeting on the following petitions to amend the following rules:

- Rule 77(d), Ariz.R.Civ.P. (peremptory change of judge);
- Rules 5(c) and 6(e), Ariz.R.Civ.P. (electronic service of post-complaint filings in civil actions);
- Rule 4, Ariz. Rules of Family Law Procedure (provide clarification of the time calculation provisions);
- Rule 38(i), Ariz.R.S.Ct. (in-house counsel MCLE requirements);
- ER 1.5(b), Ariz.R.S.Ct. (lawyer fees);
- Rules 13(f) and 15(a)(1), Ariz.R.Civ.P.(modifications of said rules to comport with recently amended federal rules);
- Rule 43, Ariz.R.S.Ct.(trust accounts).

COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT (“Ethics Committee”)

Vice Chair Jodi Fuerhelm presented revisions to the Statement on the Jurisdiction of the Ethics Committee. The procedural change provides a mechanism to notify Bar leadership of an upcoming opinion and time to discuss it if necessary.

Whitney Cunningham moved and Amelia Craig Cramer seconded and the motion carried unanimously to approve the Statement on the Jurisdiction of the Ethics Committee as submitted.

LIAISON REPORTS

- **AWLA**—Regina Nassen, Pima County Attorney’s Office, reported that the 31st annual conference “Achieving Without Limits”, and the Mothers/Lawyers Breakfast in Phoenix, were very successful. Teri Thomson-Taylor was elected State Chapter President. Former ASU Law School Dean and current Professor Paul Bender is the keynote speaker at the Maricopa Chapter’s December 8th luncheon. Amelia Craig Cramer will be honored at the Southern Arizona Chapter’s December 15 holiday luncheon.
- **Young Lawyers Division**—President Maricela Meza reported that the YLD held a very successful mixer the previous evening with the CMWL and Solo/Small Firm practitioners. The annual holiday parties for underprivileged youth are set in Maricopa (12/11) and Pima (12/17) counties, and volunteers and donations are welcome.
- **Arizona Asian American Bar Association**—Lisa Loo stated that the AAABA officers were attending the national Asian Pacific Bar conference in Los Angeles.
- **Los Abogados**—Virginia Herrera-Gonzales reported that Sal Ongaro was re-elected as President, and that the association’s efforts include promoting access to justice and civil rights in Arizona. The diversity of the Maricopa County Superior Court bench has been affected with the recent retirement of five Latino judges.
- **Black Bar** – No report
- **Native American Bar Association** – Ted Campagnolo reported that the NABA-AZ had coordinated a CLE on Native Health, and participated in one on SB 1070 which was hosted by the Indian Law and Immigration Sections. Four \$1,000 Seven Generations Scholarships have been awarded.
- **Arizona Minority Bar Association** – Board of Governors member Dee-Dee Samet will be honored.
- **Pima County Bar Association**—Amelia Craig Cramer reported that the PCBA has raised its dues; that its CLE’s are experiencing better attendance and are designed not to conflict with those of the State Bar; and that the joint event with doctors was successful.
- **Other County Bar Associations** – None reporting
- **Disabilities Committee** – Meredith Peabody reminded the Governors of the December 1 luncheon program entitled “If You Let Us Play: Sports, Disabilities, and the Impact of the Law”. The panel includes University of Oregon Golf Head

Coach Casey Martin (PGA Tour, Inc. v. Martin), District Court Judge Lawrence O. Anderson, and Arizona Center for Disability Law attorney Jose de Jesus Rico.

- **Member Assistance Committee** – John Sullivan reported that the committee formulated its charge, is focusing on outreach to the law schools and rural attorneys, and is reviewing statistical data in order to tailor services to members in need, among other initiatives.
- **Public Lawyers Section** – Ted Campagnolo reported that the Section's first electronic newsletter is scheduled for rollout in January. The Section welcomes learning of public lawyer(s) that should be recognized for their work/accomplishments.

FINANCE COMMITTEE REPORT

Joe Kanefield reviewed highlights of the 2011 draft budget which will be voted on in December. CFO Tom Johnson presented the financial statements noting that as of October 31, 2010, the Bar has a surplus of \$1,221,000 which is favorable to budget by \$250,000. The Board discussed in executive session a few options regarding the budget and ultimately voted to approve a 2.5% performance pay pool for staff. It was to be ratified in open session and the following motion was made:

The motion to include a 2.5% performance pay pool for staff passed in a 17 to 3 vote. CFO Thomas Johnson was directed to prepare a revised draft budget for 2011 to be submitted to the Board of Governors for vote at the December meeting.

Richard Coffinger moved to have a roll call vote:

Votes were as follows:

No: Richard Coffinger, Tom Crowe and Joseph Kanefield

Yes: Amelia Craig Cramer; Whitney Cunningham; Richard T. Platt; Mike Baumstark, alternate for David K. Byers; Theodore Campagnolo; Bryan Chambers; Michael J. Crawford; Jana Flagler; H. Leslie Hall; Christopher Jensen; Lisa Loo; Maricela Meza; Jimmie Dee Smith; Public Members: Meredith Peabody and John J. Sullivan; At-Large Members: Jennifer J. Burns and Virginia Herrera-Gonzales.

CHIEF BAR COUNSEL REPORT

Roberta Tepper, Senior Bar Counsel, reported that the Lawyer Regulation Division staff continue to make presentations statewide on the new discipline system. She reported that the members seem to be pleased with the new system which includes additional staff Bar counsel in the Attorney/Consumer Assistance Program devoted to quickly and efficiently handling live calls.

The Division continues to dispose of cases within the current guidelines with an overall yearly compliance rate consistent with last year.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:40 p.m.

Respectfully submitted,

Richard T. Platt
Secretary/Treasurer