

MEETING
OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
September 24, 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; Theodore Campagnolo, Phoenix; Bryan Chambers, Globe; Richard D. Coffinger, Glendale; Tom Crowe, Phoenix; Stephen M. Dichter, Phoenix; Diane L. Drain, Phoenix; Jana Flagler, Bisbee; Christopher Jensen, Prescott; Lisa Loo, Tempe; Maricela Meza, Young Lawyers Division, Tucson; Jimmie Dee Smith, Yuma; Public Members: Alexander B. Jamison, Scottsdale; John J. Sullivan, Sahuarita; and Meredith Peabody, Prescott; 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; Paula Nailon, on behalf of Dean Lawrence Ponoroff; Raymond A. Hanna, Immediate Past President, Prescott.

BOARD MEMBERS WITH EXCUSED ABSENCES: Michael J. Crawford, Tucson; David K. Byers and Mike Baumstark, alternate for David K. Byers, Phoenix; Public Member: Frank Barriga, Glendale; H. Leslie Hall, Phoenix; Dee-Dee-Samet, Tucson, and Ex-Officio Member: Dean Shirley Mays.

OTHERS PRESENT: Rhonda Barnes, AWLA Liaison; Nina Benham, Board and Member Services Specialist; Chief Justice Rebecca White Berch; Patty Berg, Human Resources Director; Janna Day, Lobbyist; Carolyn DeLooper, BLS/MCLE Administrator; Anne DePalma, Administrative Assistant; Tim Eigo, Editor, *Arizona Attorney*; Rosie Figueroa, Diversity Assistant; Betty Flores, Resource Center Director; John Furlong, General Counsel/Deputy Director; Pat Giallanza, Public Relations Specialist; Tom Johnson, Chief Financial Officer; Karolyn Kiburz, Contract Convention Coordinator; Rich Kingdon, UPL Administrative Assistant; Donna Klimek, Section and Committees Assistant; Mari Kline, Continuing Legal Education Secretary; Ilona Kukan, Publications Coordinator; Ann Leslie, Executive Assistant; Kathleen Lundgren, Government Relations Administrator; Michael C. Mason, ABA House of Delegates; Hal Nevitt, Director of Member Assistance Program; Nancy Nichols, Sections and Committees Administrator; I. Godwin Otu, Diversity Director; Christine Oxford, Controller; John Phelps, CEO/Executive Director; Pat Sallen, Ethics Counsel; George Schrade, Network Administrator; Carrie Sherman, Director of Board Operations; Michael Simes; Maret Vessella, Chief Bar Counsel and Teri Yeates, Sections and Committees Administrator.

President Alan Bayham called the meeting to order at 8:25 a.m.

PRESIDENT'S REPORT

President Alan Bayham, Jr. acknowledged Chief Bar Counsel Maret Vessella and Dave Byers, Director of the Administrative Office of the Courts, for all of their work on the new lawyer discipline system. One of the Bar's major tasks for the coming year will be to get the new system streamlined and running.

President Bayham and CEO John Phelps have met with Arizona Supreme Court staff regarding e-filing. As the court moves toward turbo court, the Bar must be mindful of attorneys who don't have all of the equipment necessary to work with that system.

President Bayham recently attended a legal malpractice conference, and the projection is that there will not be any immediate increase in malpractice insurance premiums.

The 2011 State Bar Annual Convention will be held at the Westin La Paloma in Tucson. Leticia Marquez is the chair, and Dee-Dee Samet is assisting her. The State Bar will reach out to the minority bar community to assist in the planning.

BOARD MEMBERS' COMMITMENTS/BOARD LIASION JOB DESCRIPTION

Director of Board Operations Carrie Sherman recapped the commitments made by Board members at the July retreat. Those members who serve as liaisons to committees, sections, or sister organizations were asked to review their role and responsibilities. Ms. Sherman introduced the staff liaisons to the Board, and then asked the Board liaisons to report back to the Board on an ongoing basis regarding the challenges and successes of their groups.

CEO/EXECUTIVE DIRECTOR

John Phelps summarized the major initiatives the staff is working on: contracting for health insurance for staff, tying new programs to the strategic plan, finalizing the budget process, assimilating new leadership in sections and committees, and establishing performance metrics.

Mr. Phelps encouraged the Board to attend a special screening of "To Kill a Mockingbird" on Oct. 14 at the Pollack Tempe Cinemas. All proceeds will benefit the Arizona Foundation for Legal Services & Education.

Mr. Phelps announced that 11,855 MCLE Affidavits were filed online this cycle, an improvement of 1,100 over the last educational cycle.

Strategic Planning—

- **MCLE Review**— Member Services Director Lisa Deane reported that there has not been a review of the MCLE program for 11 years. She recapped the history of Arizona's MCLE program. Arizona is the only mandatory bar association that does

not have a preapproval process for courses or providers. President Bayham has appointed Tom Crowe to chair a task force to study the program.

- **Discipline Guidelines**—Chief Bar Counsel Maret Vessella announced that the Discipline Oversight Committee would review the charging guidelines to see if they should be modified.
- **Positive Things Lawyers Do**—Mr. Phelps noted the large number of press releases issued by the Communications Department, with a push toward positive news about the work lawyers do.
- **Mission Statement**—Ted Campagnolo reported that the Long-Range Planning Committee is reviewing three suggested changes to the mission statement, will solicit additional input from section chairs, and have General Counsel John Furlong review any proposal for Keller issues. The committee hopes to have a proposal to the Board before year-end.
- **Diversity**—Diversity Director I. Godwin Otu announced that the fourth class of the Bar Leadership Institute kicks off on September 25. By May 2011, the BLI will have graduated 62 attorneys. President Bayham has asked Lisa Loo to head a task force to review the recommendations established by the original Diversity Task Force to see what goals have been achieved and which ones need further attention.

LAW PRACTICE MANAGEMENT SECTION

Lisa Deane reported that, based on a survey conducted with members of the Law Practice Management Section, there has been no section activity for several years and there is no current leadership. Section members were receiving CLE through other State Bar programming. After thorough discussion,

Diane Drain moved and Chris Jensen seconded the motion to sunset the section.

Amended motion: sunset the section at the end of the year.

Amend the amendment: To limit the motion to remove the section from the annual fees statement. Motion carried over one dissent.

A decision to sunset the section was tabled until the October meeting.

RULES COMMITTEE

Chairman Bryan Chambers provided a detailed report on the Supreme Court's 2010 Rule changes and the 2010-2011 court filings by the State Bar. The filing date for next year's rule petition submissions is January 10, 2011.

APPOINTMENTS COMMITTEE

Whitney Cunningham reviewed the following:

Scottsdale Judicial Appointments Advisory Board (one opening)

Mr. Cunningham reviewed the criteria and make up of the current Board Committee and reviewed the Committee's recommendation.

Coming as a motion from the Appointments Committee to nominate:
Mr. Donald Alvarez, Alvarez & Gilbert; Ms. Wendy Harnagle Roberts, The Phoenix Law Group of Feldman Brown Wala Hall & Agena; and Ms. Stacy Gabriel, Gabriel & Ashworth PLLC. Motion unanimously carried.

Supreme Court Committee on Character and Fitness (one opening)

Mr. Cunningham reviewed the criteria and make up of the current Committee and reviewed the recommendations of the Appointments Committee.

Coming as a motion from the Appointments Committee to nominate:
Ms. Yvonne Tagart, Davis Miles PLLC; Mr. Zachary Cain, Polsinelli Shughart PC; and Mr. Gabriel Fernandez, Law Offices of Gabriel D. Fernandez. Motion unanimously carried.

Supreme Court Committee on Examinations (two openings)

Mr. Cunningham reviewed the criteria and make up of the current Committee and reviewed the Appointment's Committee's recommendations.

Coming as a motion from the Appointments Committee to nominate:
Mr. Roric Massey, Goodyear's City Attorney
Mr. Thomas Murphy, Gila River Indian Community
Ms. Lisa Wahlin, Graif Barrett & Matura PC
Ms. Yvonne Tagart, Davis Miles PLLC
Mr. Mitchell Resnick, Burch & Cracchiolo PA
Mr. Richard Strohm, Law Office of Richard L. Strohm
Motion unanimously carried.

Conflict Case Committee (one opening) – Mr. Cunningham stated that due to time constraints experienced at the Committee's meeting yesterday, this matter will be handled during the Committee's October 28th teleconference.

CONSENT AGENDA

President Bayham asked if there was anything on the Consent Agenda that should be removed. Chris Jensen requested that the minutes reflect a minor change on page 3187, 2nd line: Chris Jensen seconded the motion, not Lisa Loo.

Joe Kanefield moved and Jim Smith seconded and the motion carried unanimously to approve the Consent Agenda to include the following: Approval of the revised July 9, 2010 Board of Governors Meeting minutes; Approval of Resignations in Good Standing; Approval of Reinstatement of 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 and Professionalism Course Reinstatements.

FINANCE COMMITTEE REPORT

Joe Kanefield reported that the final budget for fiscal year 2011 would be voted on at the December meeting. The committee approved the hotel contract for the 2014 Annual Convention, as well as funds to improve the camera equipment in both CLE centers. The committee will continue a feasibility study of moving some of the Bar operations to the first floor of the Phoenix office once the tenant moves out. Leasing the space remains an option.

CFO Tom Johnson presented the June, July and August financial statements noting that as of August 31, 2011 the bar has a surplus of \$236,000 better than budget primarily as a result of a decrease in expenses as compared to the budget. As a result of the decrease in expenses the bar is projected to have a favorable 2010 year-end variance to budget in the range of \$250,000.

UNIFIED BAR EXAM

Chief Justice Rebecca White Berch noted that law schools are teaching a national curriculum. The Uniform Bar Examination (UBE) recognizes that trend. In addition, lawyers are relocating more frequently. For these reasons, she supports Arizona considering moving toward the UBE.

Arizona's bar examination currently includes the multiple choice multi-state bar examination, along with general essay questions prepared by the NCBE and specific essay questions geared to Arizona law. Three-quarters of the exam mirrors those of other jurisdictions.

Home states are responsible for the character and fitness process, set cut-off scores levels and evaluate special accommodation requests. Chief Justice Berch believes a professional national panel should evaluate special accommodation requests.

Missouri and North Dakota are on board with the UBE, and the Chief Justice hopes that Arizona will soon support it. She requested that the State Bar solicit opinions from members about the exam as soon as possible.

CHIEF BAR COUNSEL REPORT

The Lawyer Regulation department continues to do presentations on the new discipline system, with recent programs held at CLE by the Sea and the Workers' Compensation Section Workshop. Future programs are scheduled with the Tucson Defense Bar, the Maricopa County Attorney's Office and the Arizona Attorney General's Office.

As of August, Lawyer Regulation moved three litigation lawyers into the Intake Department. One intake lawyer moved back into litigation. Two new positions in intake have been created from existing administrative positions. The primary responsibilities of

the new Intake Assistants will be to answer live calls and do a preliminary screen of those calls. The result will be to get consumers into the process quicker or to direct them to other appropriate resources.

The Discipline Oversight Committee met on September 23, 2010. The Committee reviewed case clearance numbers for the past several months. Overall, Lawyer Regulation continues to dispose of cases within the current guidelines with a yearly compliance rate of 97%.

On September 9, 2010, the Supreme Court appointed the State Bar as a special investigator in a Character and Fitness case. The appointment is for the investigation of two applicants for admission and for representation of the Committee and presentation of evidence at a formal Committee hearing.

In 2008, NOBC appointed a committee to study and report on methods for improving the development of professionalism and professional identities in the law school experience. The NOBC report focuses on the need for change in legal education including the development of professionalism plans that address legal analysis, practical skill and professional identity. The officers voted to send the report to the State Bar's Professionalism Committee for evaluation and for a recommendation back to the Board on whether the State Bar should endorse the report and/or propose a plan to further advance the positions taken in the report.

LEGISLATIVE UPDATE

Janna Day reported there would be a significant turnover in both the House and the Senate. A number of candidates are vying for Senate President. The State Bar continues its outreach program with President Alan Bayham, CEO John Phelps, CCO Rick DeBrühl, and Ms. Day meeting with leadership and legislators. The Law School for Legislators Program will probably be held during the first week of January.

Ms. Day asked the Board to approve the Alternative Dispute Resolution Section's request to pursue technical amendments, amending subsection "A", of the recently enacted Revised Uniform Arbitration Act.

Jennifer Burns moved and Jana Flagler seconded the motion to authorized Janna Day and the ADR Section to move forward in pursuing technical amendments, amending subsection "A" of the recently enacted Revised Uniform Arbitration Act. Motion carried; Joe Kanefield abstained.

Ms. Day also noted that the Probate & Trust Section intends to propose small changes to the newly enacted Arizona Trust Code. The Mental Health and Elder Law Section will also be presently a request for legislation soon that would amend various statutes dealing with guardianship issues.

ABA HOUSE OF DELEGATES

Michael Mason informed the Board about significant announcements at the ABA Annual Meeting.

- The ABA has dramatically reduced fees for government lawyers, judges, and sole practitioners. As a result, the organization has seen large increases in membership. Further dues reductions for other members have been put on hold.
- The ABA has lobbied for exemption for lawyers under the Consumer Protection Act, debt relief for graduates, and prompt placement of judicial nominees. The organization filed an amicus brief before the U. S. Supreme Court claiming that denial of COLA benefits for judges is unconstitutional.
- The new ABA president's agenda is to pass the Katrina rule.

Mr. Mason reviewed items passed by ABA, although Arizona didn't take positions on many issues based on Keller concerns. He sought input from State Bar members on future issues, prompting Amelia Craig Cramer to request that Mr. Mason's report be distributed to all sections and committees for response.

Lunch - Special Presentation

Past President Ray Hanna acknowledged the co-chairs of the 2010 Convention Committee, Roberta Tepper and Chris Jensen, and presented them with crystal plaques.

STATUS REPORT: FTC/"Red Flags" Rule

Ethics Counsel Patricia Sallen summarized the ABA's dispute with the FTC over the "Red Flags Rule," which would have required lawyers to take steps to prevent identity theft. In June the State Bar agreed to sign on to the amicus brief authored by the New York State Bar Association. The brief was filed in the United States Court of Appeals for the District of Columbia on September 17, with 54 state and local bar associations having signed onto it.

Ms. Sallen also updated the Board on three briefs filed by the State Bar in admission on motion cases tied to ER 5.5. The Arizona Supreme Court denied one petition and remanded the other two. The Board agreed to forward future actions to the Unauthorized Practice of Law (UPL), Ethics and Professionalism Committees for review.

Liaison Reports

- **AWLA**—Rhonda Barnes announced that the Maricopa County Chapter would host the two candidates for clerk of the court at its monthly luncheon. The Tucson Monthly Luncheon is scheduled for October 22, and the AWLA Convention for November 5, 2010.
- **Young Lawyers Division**—Maricela Meza reported that YLD would hold its first meeting on September 29. They will be partnering with sister sections and associations on other networking events throughout the fall.
- **CMWL/Arizona Asian American Bar Association**—Lisa Loo noted that CMWL would sponsor its annual Judge Tang writing competition. They continue to work

with the Sandra Day O'Connor College of Law on their writing program, and assist with the Minority Bar Convention. The Asian Bar has a weekly newsletter, collaborates with other bars, and will have a special presentation at the Minority Bar Convention.

- **Los Abogados**—Virginia Herrera-Gonzales announced that three members of the group have been selected for the Bar Leadership Institute.
- **Pima County Bar Association**—Amelia Craig Cramer said the PCBA is sponsoring a joint event with the doctors association and has expanded its offering of CLE to complement those that the State Bar is sponsoring.

DIVERSITY REPORT

I. Godwin Otu acknowledged Board members who have been very active with the Bar Leadership Institute. He believes that the Bar has accomplished most of the recommendations of the Diversity Task Force. He emphasized the Diversity Pipeline Program at Cloves C. Campbell Senior Elementary School. Their program has created a pool of 16 volunteer attorneys and 22 law students who connect with the program. President Bayham has asked Lisa Loo to head up the Task Force to coordinate and align the various diversity-related groups and projects.

POLICY REGARDING PROMOTION OF NON-BAR ACTIVITIES

Mr. Phelps presented a policy drafted by the Communications Advisory Committee. The basic principle is that the Bar has an obligation to protect the privacy of its members. The policy, which would restrict direct access by outside organizations to its membership, will be voted on at the next meeting. Amelia Craig Cramer requested an addition to the policy of periodic (quarterly) reporting by the CEO/ED to the Board on the number of requests and their dispensation.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 1:15 p.m.

Respectfully submitted,

Richard T. Platt
Secretary/Treasurer