

MEETING
OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
December 17, 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; Diane L. Drain, 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: Frank Barriga, Glendale; Alexander B. Jamison, Scottsdale; 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; Raymond A. Hanna, Immediate Past President, Prescott.

EXCUSED ABSENCE: Stephen M. Dichter, Phoenix; Tom Crowe, Phoenix;
Ex Officio: Dean Shirley Mays, Phoenix; Dean Lawrence Ponoroff, U of A, Tucson; Hon. Justice John Pelander, Supreme Court Liaison.

OTHERS PRESENT: Nina Benham, Board and Member Services Specialist; Patty Berg, Human Resources Director; Mark Bolton, Lobbyist; Rodney Bruce, Legal Secretary; Janna Day, Lobbyist; Lisa Deane, Member Services Director; Rick DeBruhl, Chief Communications Officer; Carolyn DeLooper, BLS/MCLE Administrator; Tim Eigo, Editor, *Arizona Attorney*; Betty Flores, Resource Center Director; John Furlong, General Counsel/Deputy Director; Pat Giallanza, Public Relations Specialist; Rob Hosch, Director of Information Technology; Tom Johnson, Chief Financial Officer; Bill Klain, Civil Practice and Procedure Committee; 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; John Phelps, CEO/Executive Director; John Rogers, Civil Practice and Procedure Committee; Pat Sallen, Director Special Services and Ethics/Deputy General Counsel; George Schrade, Network Administrator; Carrie Sherman, Director of Board Operations; Roberta Tepper, Senior Bar Counsel; Stephen Wastek, In-House Counsel Committee and Teri Yeates, Section and Committees Administrator.

President Alan Bayham, Jr. called the meeting to order at 8:30 a.m.

PRESIDENT'S REPORT

President Bayham thanked Diane Drain and Jay McClimon for hosting the Board of Governors at their home. President Bayham announced that Amelia Craig Cramer has been chosen to receive the Judge Learned Hand Public Service Award and there will be a luncheon in upcoming months. Ms. Cramer was also recently honored with the Sarah Herring Sorin Award from the Arizona Women Lawyers Association (AWLA)

CEO/EXECUTIVE DIRECTOR'S REPORT

John Phelps summarized the major initiatives that staff has been working on including transitioning to the new discipline system, preparing the 2011 budget for Board approval, and developing a membership survey. He introduced Rodney Bruce, a paralegal in the Lawyer Regulation Division, who was selected by the staff as Employee of the Year for his customer service and winning attitude.

STRATEGIC PLANNING

- **MCLE Review**—President Bayham reported on behalf of Tom Crowe, chair of the newly forming MCLE Task Force. The February *Arizona Attorney* will include information about the review of the MCLE program and invite input from the membership.
- **Discipline Guidelines**—Richard Platt reported that the Bar's probable cause panelist is being replaced by a nine-member panel under the new discipline system. The new panel will hold its first meeting on January 20.
- **Positive Things Lawyers Do**—CCO Rick DeBruhl reported the Communications Committee will move to Phase II of its communications plan and actively focus on searching out stories that show lawyers in a positive light.
- **Strategic Planning Committee**—Ted Campagnolo reported that the Strategic Planning Committee discussed recent issues raised relating to probate court matters and how the Bar could participate in providing resolutions.
- **Diversity**—Lisa Loo reported on her visit with members in Yuma, noting that geographic location of practice should be honored in building/maintaining diversity-related programs/services in the legal community. A visit to Globe is next on her itinerary.
- **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 and the Integrated Bar**—John Phelps stated that a January meeting is scheduled with representatives of the Judges Association, the Supreme Court and Justice at Stake representatives to develop a plan to respond to potential legislative initiatives.

LEGISLATIVE UPDATE

Janna Day introduced Mark Bolton who works with her on the Bar's legislative issues. Ms. Day reported that to date, 31 legislators have accepted the invitation to attend the Law School for Legislators on Thursday, January 6.

Elder Law and Mental Health Legislative Subsection Chair James McDougall addressed the Board regarding the proposed statutory amendments to: ARS 14-5312.01 Mental Health Guardianship (granting Mental Health Powers)

Amelia Craig Cramer moved and Whitney Cunningham seconded and motion carried unanimously to support the proposed statutory amendments to: ARS 14-5312.01 Mental Health Guardianship.

Mr. McDougall reviewed the proposed statutory amendments to ARS 36-540 Expanding Authority of the court to order investigations into the need for a Guardian or Conservator and addressing issues that occur when a court order for treatment and a Mental Health Guardianship co-exist.

Richard Coffinger moved and Chris Jensen seconded and the motion carried to support the statutory amendments to ARS 36-540 Expanding Authority of the court to order investigations into the need for a Guardian or Conservator and addressing issues that occur when a court order for treatment and a Mental Health Guardianship co-exist.

Mr. McDougall reviewed the proposed statutory amendments to ARS 14-5304.01 A new proposed statute regarding drivers license issues.

Richard Platt moved and Amelia Craig Cramer seconded and the motion carried to support the proposed statutory amendments to ARS 14-5304.01 A new proposed statute regarding drivers license issues. Joe Kanefield abstained.

Mr. McDougall reviewed the proposed statutory amendments to ARS 36-518.02, 36-524 and 36-525 Facilitation for Agents or Guardians to get treatment for their Principal or Ward.

Amelia Craig Cramer moved and Whitney Cunningham seconded and the motion carried to authorized its Executive Committee to: approve proposed language agreed upon by the Elder Law Subsection and the Pima County Attorney's Office if language were to be moved from Title 36 to Title 14; approve proposed legislation, following a recent Appellate Court decision, regarding ARS 36.501.14 and the definition of a [physical] examination. Joe Kanefield abstained.

CAPITAL CASE ATTORNEY FEES

Mr. Phelps reported that proposed ARS 13-4041 would raise the hourly fees for attorneys handling capital cases from \$100 to \$125. Input from State Bar entities will be sought and shared with the Board in order to formulate a position.

STRATEGIC PLANNING COMMITTEE

Ted Campagnolo reported that the 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."

Joseph Kanefield moved and Amelia Craig Cramer moved and motion carries to approve the modification to have the Mission Statement read: "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."

Dee-Dee Samet moved and Richard Coffinger seconded to add another three words -- "The State Bar of Arizona serves the public **and its members** and enhances..." , motion failed.

APPOINTMENTS COMMITTEE

Chair Whitney Cunningham presented the committee's recommendations and no motion being necessary, the Board:

- Voted to nominate Ms. Jill Harrison (W.L. Gore & Associates, Inc.), Mr. Peter Guerrero (Roush McCracken Guerrero Miller & Ortega) and Ms. Lizzette Zubey (Microchip Technology Inc.) to fill one position on the Arizona Commission on Appellate Court Appointments (ACACA) for a four-year term. Ms. Harrison's reappointment is encouraged.
- Voted to reopen and re-advertise the ACACA position that recently became available due to the resignation of Mr. Louis A. Araneta (Administrative Office of the Courts), and set this matter for its January meeting.
- Voted to nominate Ms. Margot Wuebbels Leal (SRP), Ms. Jennifer Rock (Maricopa County Public Defender's Office), and Mr. Thomas Richardson (Friedl Richardson) to fill the Supervisorial District 3 seat on the Maricopa County Commission on Trial Court Appointments. This is a four-year term.
- Voted to table the Supervisorial District 1 opening on the Pima County Commission on Trial Court Appointments (PCCTCA) in order for the General Counsel to provide an opinion on a policy regarding the eligibility of Board members to be considered. Voted to nominate Stephen Gonzalez (Stephen J. Gonzalez PC), Ms. Marla Rapaport (Pima County Public Defender's Office), and Ms. Edith Rudder (Thompson Krone PLC) to fill the PCCTCA Supervisorial District 3 position. Mr. Gonzalez' reappointment to a full four-year term is encouraged.

RULES COMMITTEE

Chair Bryan Chambers reviewed the recommendations from the Rules Committee.

- a) Rule 77(d), Ariz.R.Civ.P. (peremptory change of judge);
- b) Rules 5(c) and 6(e), Ariz.R.Civ.P. (electronic service of post-complaint filings in civil actions);
- c) Rule 4, Ariz. Rules of Family Law Procedure (provide clarification of the time calculation provisions);

- d) Rule 38(i), Ariz.R.S.Ct. (in-house counsel MCLE requirements);
- e) ER 1.5(b), Ariz.R.S.Ct. (lawyer fees);
- f) Rules 13(f) and 15(a)(1), Ariz.R.Civ.P.(modifications of said rules to comport with recently amended federal rules) (alternate petition approved);

Dee-Dee Samet moved and Whitney Cunningham seconded the motion to approve the recommendations of the Rules Committee for the above rules.

Motion was made to remove IOLTA item g) Rule 43, Ariz.R.S.Ct. (trust accounts); from the Rules Committee recommendation and discuss it separately.

After discussion, and not requiring a motion, the recommendation from the Rules Committee regarding item g) Rule 43, Ariz.R.S.Ct. (trust accounts) was approved unanimously.

Mr. Chambers reviewed the recommendations from the Rules Committee regarding item h) Rule 38(h), Ariz.R.S.Ct. (in-house counsel Admission on Motion).

Whitney Cunningham moved and Amelia Craig Cramer seconded and the motion carries to approve the version that contains the active practice provision.

CONSENT AGENDA

Joe Kanefield moved and Richard Platt seconded and the motion carried unanimously to approve the consent agenda: Approval of November 19 , 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.

MODIFICATION OF THE DISCIPLINE FEE SCHEDULE

Chief Bar Counsel Maret Vessella reported that the proposed changes to the discipline fee schedule would conform to the new discipline rules that go into effect January 1, 2011.

Richard Platt moved and John Sullivan seconded and the motion carried unanimously to approve the proposed Modification of the Discipline Fee Schedule and forward it to the Supreme Court for consideration.

CHIEF BAR COUNSEL REPORT

Ms. Vessella reported the new Probable Cause Committee consists of the following members: Justice Michael Ryan, Ella Johnson, Jeffrey Messing, Daisy Flores, Richard Segal, Jeff Pollitt, Public Members: Gene Manring, Ben Harrison and Karen Osborne.

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

An offer of employment has been made to fill one of the two investigator positions.

Ms. Vessella recognized Deputy CBC Amy Rehm and the entire Lawyer Regulations staff for their tremendous efforts this past year in preparing for the implementation of the new discipline system.

FINANCE COMMITTEE/CFO REPORT

Chair Joe Kanefield reviewed highlights of the proposed 2011 budget.

Richard Platt moved and Jana Flagler seconded and motion carried to approve the 2011 budget as presented.

CFO Tom Johnson and the accounting staff were thanked for all their efforts.

Mr. Johnson presented the financial statements for November, noting that Bar operations for the month resulted in a surplus of \$120K compared to a budgeted surplus of \$114K for a favorable variance to budget of \$6K. The year-to-date surplus of \$1,341K is \$255K better than budget primarily as a result of the Bar having reduced its expenditures as compared to budget.

Mr. Johnson reported that the SBA and the Foundation continue negotiations regarding the Foundation's lease.

AUDIT COMMITTEE

Chair Frank Barriga reviewed the RFPs that were received regarding future audits of the State Bar and Foundation. The Committee voted to continue to work with Miller Allen & Co., P.C.

RED FLAGS RULE UPDATE

Patricia Sallen, Director Special Services and Ethics/Deputy General Counsel, reported that Congress had approved legislation exempting lawyers from the "Red Flags Rule." The "Red Flag Program Clarification Act of 2010" narrowed the definition of "creditor" to exempt attorneys and other professionals from having to comply with the record-keeping and safeguarding requirements of the Fair and Accurate Credit Transactions Act of 2003. [Update: on Dec. 18, President Obama signed the Red Flag Program Clarification Act.] The State Bar was among 54 state and local bar associations that joined in an amicus brief supporting the American Bar Association's litigation over the Red Flags Rule.

LIAISON REPORTS

- **AWLA**—No report
- **Young Lawyers Division**—President Maricela Meza reported that the annual holiday party for underprivileged 100 youth in Maricopa was very successful and that the Pima County party for 300 disadvantaged children that come from unsafe home environments was scheduled that day.
- **Arizona Asian American Bar Association**—No report

- **Los Abogados**—Virginia Herrera-Gonzales reported that the association has a new slate of officers, and that Los Abogados is working with Phoenix College to set up a scholarship fund honoring attorney and community activist Cecilia Esquer.
- **Arizona Black Bar**—No report
- **Native American Bar Association**—Ted Campagnolo reported that his written report was included in the materials.
- **Pima County Bar Association**—No report
- **Other County Bar Associations**—None reporting
- **Section Reports**—by Jana Flagler for Indian Law Section; written reports from the Executive Council of both the Family Law and Trial Practice Sections were noted.
- **Professionalism Committee**—written report referenced.

E-VOTING

Carrie Sherman, Director of Board Operations, reported that the Board of Governors elections are conducted by paper ballots. Some bar associations are moving to run their elections online. Considerations are: 1) voting process; 2) cost; 3) members' mail and e-mail addresses; 4) staff's and volunteers' time; 5) goal within the Bar's Long-Range Plan. Ms. Sherman provided the pros and cons of online voting and the Board calendared a vote on this proposal at its January meeting.

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