

MEETING
OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
December 14, 2007

Arizona Bar Center
Phoenix

BOARD MEMBERS PRESENT: Daniel J. McAuliffe, President, Phoenix; Raymond A. Hanna, First Vice President, Prescott; Alan P. Bayham, Jr., Second Vice President, Phoenix; Joseph A. Kanefield, Secretary-Treasurer, Phoenix; Bryan B. Chambers, Globe; Richard D. Coffinger, Glendale; Roger H. Contreras, Sierra Vista; Amelia Craig Cramer, Tucson; Stephen M. Dichter, Phoenix; Diane L. Drain, Phoenix; Abbe M. Goncharsky, Young Lawyers Division, Tucson; H. Leslie Hall, Phoenix; Richard T. Platt, Florence; Foster Robberson, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, President, Immediate Past President, Yuma; Public Members: Frank Barriga, Glendale; Bennie R. Click, Munds Park; and Alexander B. Jamison, Scottsdale; At-Large Member: Paul W. Ahler, Phoenix; Alternate Mike Baumstark, Phoenix; Virginia Herrera-Gonzales, Phoenix; and Ex Officio Member: Dean Dennis Shields, Phoenix.

BOARD MEMBERS ABSENT: Edward F. Novak, President-Elect, Phoenix; Whitney Cunningham, Flagstaff; Michael J. Crawford, Tucson; Ex Officio Members: Dean Patricia White, Tempe and Dean Toni Massaro, Tucson; Public Member: Fernando Gonzales, Tucson.

OTHERS PRESENT: Teresa Schmid, Executive Director; John Furlong, General Counsel; Colleen McManus, Senior Director of Human Resources; Larry McVey, Chief Financial Officer; I. Godwin Otu, Diversity Director; Nina Benham, Assistant to the Executive Director; Carrie Sherman, Director of Executive Projects; Patricia Giallanza, Director of Communications; Tom Harper, Manager of Accounting; Betty Flores, Director of the Resource Center; Ruth Khalsa, AWLA; and Michael Jeanes, Clerk of the Maricopa County Superior Court.

President Dan McAuliffe called the meeting to order at 8:45 a.m.

PRESIDENT'S REPORT

President Dan McAuliffe reported that he had started the Presidents' Information Exchange, an e-mail discussion group for past, present and future presidents of the Board of Governors to provide their thoughts and ideas. President McAuliffe recognized the newest member of the Board, Dean

Dennis Shields, Phoenix School of Law.

President McAuliffe congratulated Richard Platt, Pinal County Chief Criminal County Attorney, for his recognition from the National District Attorneys Association. Also Mr. Platt was inducted into the "Home Run Hitters Club" which is an honor recognizing their outstanding work in trying complicated and difficult high profile cases.

President stated that as an action item under Tab 1 was the proposed In-House Counsel Rule and due to time constraints they would come back to that subject.

Mandatory e-Filing in Maricopa County Superior Court

President McAuliffe reported that at the request of Chief Justice McGregor, Michael Jeanes, Clerk of the Maricopa County Superior Court, was present to update the Board on the status of the e-filing system being tried by the Court. The Board received comments from the Criminal Justice Section Executive Council and the Civil Practice and Procedure Committee, both of which support mandatory e-filing in Maricopa County Superior Court and offered recommendations that they believe would help make such an initiative successful.

Diane Drain moved and Foster Robberson seconded and motion carried unanimously to support e-filing and to submit the Civil Practice and Procedure report to the Chief Justice.

EXECUTIVE DIRECTOR'S REPORT

Teresa Schmid reported first on the 2008 Budget that was being presented for a vote at this meeting. Ms. Schmid went through her ED Executive Summary, which was a handout and the "Revised Agenda Item 5." Ms. Schmid noted the paragraph on staff compensation and indicated that it is not part of the budget process. The handout also alerted that Human Resources Committee will consider salary ranges for the upcoming year and that it won't have any budgetary impact.

Ms. Schmid also reviewed her Memorandum in detail, pointing out that the Long Range Plan (LRP) was cross-referenced with the Budget and it is a resource for the Board members.

FINANCE COMMITTEE REPORT – 2008 Budget Approval

Mileage Reimbursement 2008

Raymond Hanna, Chair, reported that the Finance Committee recommends the SBA mileage

reimbursement rate be increased to \$.505 to match the new Internal Revenue Service rate.

No motion being required, the Board voted unanimously to approve the mileage reimbursement consistent with the Internal Revenue Service of \$.505 per mile for those qualifying including staff and Board members.

2008 Baseline Budget

Mr. Hanna then presented the 2008 Baseline Budget, which anticipates a deficit of \$140,421. The 2008 Baseline Budget and list of new FTEs and initiatives had been presented at the November 30, 2007 meeting as an informational item. The 2008 Baseline Budget with a surplus of \$331,000 and the list of new FTEs and initiatives costing \$471,000 was discussed. The net loss of adopting all of the new FTEs and initiatives is \$140,000. The Bar has not budgeted a loss in recent years, if ever, so much discussion ensued. CFO Mr. McVey pointed out that the Bar has reported surpluses in excess of budget in each of the past six years and that this trend could continue in 2008 resulting in a surplus, that the budgeted loss of \$140,000 is insignificant compared to the Bar's \$13.5 million revenues in the previous two years and is less than 2.3% of the Bar's \$6.3 million of net assets.

September and October 2007 financial statements of the State Bar and the Chief Financial Officer's financial report to the Finance Committee were included in the BOG package of meeting materials.

Mr. McVey reported that the YTD surplus through October of \$717,000 and is significantly above budget due to the following favorable variances from budget:

Dues income less than budget by .2%	\$ (10,000)
Non-dues income is 3.9% higher than budget	\$ 199,000
Total Personnel Costs is 5.9% less than budget	375,000
Other expenses are 2.1% less than budget	102,000
Net Sections Activity less than budget	<u>(36,000)</u>
Net Favorable variance	\$630,000

The forecast of the annual surplus is on page 4 of the financial statements. The forecast of the 2007 annual surplus is \$632,000 at this time.

The Line of Credit balance at October 31, 2007 is \$1,430,000 and the current interest rate is

6.56% per annum. Net assets of the Bar at the end of October are \$6,300,000 compared to \$5,510,000 a year earlier. Section carryovers at October 31, 2007 are \$216,000.

Mr. Hanna, continued with discussion regarding the budget and the 75th Anniversary of the State Bar of Arizona and related activities. While in years past there was a budgeted surplus, there are a number of projected activities, including a research tool that would be of no cost to the membership. Mr. Hanna opined that this is an investment worth making. The Board also discussed using some of the reserves that are being held to make this a zero budget.

Dee-Dee Samet moved, Alan seconded the motion to show as a line item under income \$147k from reserves, using a footnote to show Revenue Item with an astrisk to further qualify that it would come from the current reserves being held, motion fails.

Board members continued with a lengthy discussion regarding the budget.

Steve Dichter moved and Dee-Dee Samet seconded a motion for a roll call vote, motion failed, no roll call vote will be taken.

The recommendation from the Finance Committee, needing no motion, to approve the budget as submitted showing a \$140,421 deficit, was amended to include a footnote that reflects that the State Bar has sufficient capital in its reserves to cover the \$140,421 deficit budget and that it would be drawn upon as, or if, necessary, the recommendation carried unanimously.

The long-range plan anticipates several possible sources of new income but those may not cover additional mandatory expenses and new initiatives. In light of these changes, a dues increase in 2009 is a possibility.

RULES

Amelia Cramer, Chair, reported that Rules Committee is expecting something from Criminal Jury Instructions for January and that February and March will have a heavy docket.

APPOINTMENTS COMMITTEE

Alan Bayham, Chair, reported on the recommendations from the committee:

The Arizona Foundation for Legal Services & Education Board of Directors (ASFLS&E)

The AZFLS&E has four vacancies on their Board of Directors. The committee recommended the

following: (1) reappoint incumbent Hon. Roxanne K. Song Ong to serve a three-year term; and (2) approve the appointment of Hon. Thomas J. Berning, Ms. Robin Mitchell and Hon. Frank A. Johnson, Jr. to serve their first three-year terms as Directors.

No motion being required, the Board voted unanimously to (1) the reappointment of incumbent Hon. Roxanne K. Song Ong to serve a three-year term; and (2) the appointment of Hon. Thomas J. Berning, Ms. Robin Mitchell and Hon. Frank A. Johnson, Jr. to serve their first three-year terms as Directors.

City of Glendale Judicial Selection Advisory Board

Mr. Bayham reported that there is one vacancy on the City of Glendale Judicial Selection Advisory Board, and the committee recommended that the Board of Governors submit three nominations: Adam E. Lang, Terrance C. Mead and Hon. George B. Nielsen, Jr.

No motion being required, the Board approved the committee's recommendations to submit three nominations: Adam E. Lang, Terrance C. Mead and Hon. George B. Nielsen, Jr.

Mr. Bayham additionally updated the Board on the Town of Guadalupe Judicial Selection Advisory Board and the Arizona Supreme Court on Examinations and the Conflict Case Committee vacancies and deadlines.

FILE RETENTION POLICY FOR CONSERVATORSHIPS

John Furlong, General Counsel, reported on the recommendation by the Discipline Department and Oversight Committee regarding the retention/disposition of conservatorship files. The essential provisions state that: (1) all files in active cases be returned to clients; (2) for those closed files that are 5 years or less, after adequate notices and no response, destruction of the files may occur after a 2 year and 2 month waiting period; and (3) certain original documents and files that are of such importance that they should not be destroyed will be retained indefinitely. After discussion,

Jim Smith moved and Steve Dichter seconded and the motion carried unanimously to approve the recommendation by the Discipline Department and Oversight Committee regarding the retention/disposition of conservatorship files. The essential provisions of the policy state that: (1) all files in active cases be returned to clients; (2) for those closed files that are 5 years or less, after adequate notices and no response, destruction of files may occur after a 2 year and 2 month waiting period; and (3) certain original documents and files that are of such importance, they should not be destroyed, but rather will be retained indefinitely.

CONSENT AGENDA

President McAuliffe requested that the minutes be removed at this time from the Consent Agenda. He then asked for a motion to approve the remaining items on the Consent Agenda.

Amelia Craig Cramer moved and Alan Bayham seconded and motion carried unanimously to approve the Consent Agenda to include the following: Approval of Resignations of Members in Good Standing and Reinstatements of members suspended for non/compliance with Ariz.Sup.Ct.Rule 32(c)(9) and/or Rule 43: Per Ariz.Sup.Ct. Rule 64(f).

Minutes Approval

President McAuliffe then asked the Board members to consider two issues raised by the draft minutes that related to the satisfaction of past MCLE requirements when a member on Inactive, Retired or *Emeritus* status sought to return to active membership status. President McAuliffe reminded the Board that a Petition was being drafted and that we should clarify any ambiguity at the present time so that the Petition accurately reflects the Board's intent.. The issues in question are: 1) was it the Board's intent that the proposed amended Rule would require the person seeking such a status change to only show "up to" two years of CLE or was the Board's intent to require a showing of a full two years of CLE when a member switched from inactive or retired to active? and (2) did the Board intend that the same requirement would apply when a member in *Emeritus* status wished to return to Active status?

Steve Dichter moved and Ben Click seconded and the motion carried unanimously for both sections to be listed as requiring two years CLE.

TUCSON BUILDING TASK FORCE REPORT

Amelia Craig Cramer reported on behalf of the Task Force that the Committee met yesterday and they were seeking authorization for staff to seek another 60 days for due diligence and to move the closing date. The survey for the parking lot was deemed to be sub-standard and the seller and broker agreed. Ms. Cramer reviewed the other concerns of the Task Force that require the additional time.

Amelia Cramer moved and Dee-Dee Samet seconded and motion carried unanimously to authorize staff to extend the due diligence period an additional 60 days.

IN-HOUSE COUNSEL REGISTRATION

President McAuliffe reported, on behalf of Ed Novak, who was unable to attend the Board meeting, regarding the proposed In House Counsel rule status. Both he and Mr. Novak met with AvNet, US Air and Allied Waste which are significant in size employers. They would like the State Bar to pull the proposal until they have time to comment. The concerns fell in two categories, problems with unauthorized practice in other jurisdictions which the Bar could not cure by a rule change and the second category was regarding minor particulars, fine tuning language. Both President McAuliffe and Mr. Novak feel it was unnecessary to postpone for a year and therefore decided to leave it on the agenda for today in order for the Board to decide if they want to go forward to have their group meet with SCOPE or Discipline Oversight Committee so that the proposed Petition could be filed by January 10th deadline.

Richard Coffinger moved and Jim Smith seconded the motion to authorize the Discipline Oversight Committee to meet with members of Scope and Operations to work out the issues and language on the new Rule 38(g) In House Counsel Registration and to move forward to file the petition by the January 10, 2008 deadline.

After lengthy discussion, Jim Smith called for the question.

Mr. Smith restated the Motion for the Discipline Oversight Committee to hold a special meeting to work out the language on the proposed new Rule 38(g) In-House Counsel Registration and to move forward to file the Petition in Supreme Court by the January 10, 2008 deadline, motion was unanimously approved.

Legal Services Committee

On behalf of the committee, Hon. James G. Blake requested that the Board petition the Arizona Supreme Court to amend Rule 38(a) to increase funding to Arizona's legal services providers by (1) increasing the fees paid by pro hac vice attorneys from 85% to 100% of the dues paid by active members of the State Bar; and (2) allocating this additional 15% to Legal Services. The Board approved the recommendation.

Joseph Kanefield moved and Raymond Hanna seconded and the motion carried to adopt the recommendation of the Legal Services Committee to petition the Arizona Supreme Court to amend Rule 38(a) to increase funding to Arizona's legal services providers by (1) increasing the fees paid by pro hac vice attorneys from 85% to 100% of the dues paid by active members of the State Bar; and (2) allocating this additional 15% to Legal Services.

LEGISLATIVE REPORT

The 2008 State Bar Legislative Agenda will include two new pieces of legislation suggested by the Probate and Trust Section: (1) a comprehensive Arizona Trust Code; and (2) changes and improvements to the statutes dealing with the appointment and administration of guardians and conservators under Section 14. The Agenda also includes a third piece of legislation to amend Section 46-456 regarding duties to incapacitated adults. The Alternative Dispute Resolution (ADR) Section will again introduce the Revised Uniform Arbitration Act (RUAA).

LIAISON REPORTS

Young Lawyers Division - Abbe Goncharsky, President of the Young Lawyers Division, reported that the YLD will host its annual holiday party for children in both Pima and Maricopa counties next week.

Arizona Women Lawyers Association (AWLA) – Ruth Khalsa reported they didn't have any activities in December and the January meeting will plan the 2008 year. On Saturday, February 2nd they will be having a seminar "Secrets of Success of Women in Practice: Women Lawyer Retention Program."

75th ANNIVERSARY COMMITTEE

The Board discussed the upcoming 75th Anniversary of the State Bar and a new committee was formed with Richard Coffinger, Dee-Dee Samet, Virginia Herrera-Gonzalez and H. Leslie Hall volunteering. Ms. Hall will chair the committee.

OTHER BUSINESS

Dee-Dee Samet requested that in January the Board discuss their philosophy as regards to the funds from CLE and other revenue and bottom line regulatory discussion.

ADJOURN

Jimmie Smith moved and Richard Coffinger seconded and the motion carried unanimously to adjourn.

Respectfully submitted,

Joseph A. Kanefield
Secretary-Treasurer