MEETING
OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
May 29, 2009

State Bar of Arizona
Phoenix, AZ

BOARD MEMBERS PRESENT: Edward F. Novak, President, Phoenix; Raymond A. Hanna, President-Elect, Prescott; Alan P. Bayham, Jr., First Vice President, Phoenix; Joseph A. Kanefield, Second Vice President, Phoenix; Amelia Craig Cramer, Secretary-Treasurer, Tucson; Richard D. Coffinger, Glendale; Roger H. Contreras, Bisbee; Michael J. Crawford, Tucson; Tom Crowe, Phoenix; Whitney Cunningham, Flagstaff; Stephen M. Dichter, Phoenix; H. Leslie Hall, Phoenix; Michael C. Mason, Young Lawyers Division, Phoenix; Tajudeen "Taj" O. Oladiran, Phoenix; Richard T. Platt, Florence; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Public Members: Frank Barriga, Glendale; Bennie R. Click, Munds Park; Emily R. Johnston, Winkelman; Alexander Jamison, Scottsdale; At-Large: David K. Byers, Phoenix and Virginia Herrera-Gonzales, Phoenix; Ex-Officio Member: Dean Eugene "Gene" Clark and Dean Paul Schiff Berman.

BOARD MEMBERS ABSENT: Bryan B. Chambers, Globe; At-Large Member: Daniel J. McAuliffe, Immediate Past President and Ex-Officio Member: Dean Toni Massaro;

OTHERS PRESENT: John Phelps, CEO/Executive Director; Colleen McManus, Chief Administrative Officer; Thomas Johnson, Chief Financial Officer; Roberta Tepper, Sr. Bar Counsel; Carrie Sherman, Director of Executive Projects; Patricia Giallanza, Director of Communications; Kathleen Lundgren, Administrator Government Relations; Kristine Fox, AWLA; Betty Flores, Resource Center Director; Rachael Myers, Communications Coordinator; Janna Day, Lobbyist; Hon. Scott Bales; Ann Leslie, Executive Assistant; Tim Eigo, Editor, Arizona Attorney; George Schrader; Lisa Dean, CLE Director; Nina Benham, Board and Member Services Specialist; Judge Lawrence Winthrop; Kevin Ruegg, Ph.D., AZFLS&E; Cathy O'Grady and Paula Nailon, respectively, representing the Sandra Day O'Connor College of Law at Arizona State University and the University of Arizona James E. Rogers College of Law; Jared O. Smith, Esquire; Pamela Donison, AWLA Vice-Chair; Tanya Wheeless, President and CEO of the Arizona Bankers Association, and James Lundy, President of Alliance Bank; Jim Reed, Chair, Committee on Persons with Disabilities in the Legal Profession.

President Ed Novak called the meeting to order at 8:30 a.m.

CEO/EXECUTIVE DIRECTOR'S REPORT

John Phelps welcomed Cathy O'Grady and Paula Nailon, respectively, representing the Sandra Day O'Connor College of Law at Arizona State University and the University of Arizona James E. Rogers College of Law.

Mr. Phelps recapped events for the past month including a 2-½ day continuity of operations exercise, the graduation of the second class of the Bar Leadership Institute and Law Day. He highlighted upcoming events/services including the Bar Convention, Lawyers in Transition (LIT) Pavilion and the LIT Web site.

He introduced George Schader, who was recognized by staff as Employee of the Month for his work on the new Southern Regional Office's technology.

PRESIDENT'S REPORT

President Novak reported that the number of active Arizona attorneys who have failed to take the professionalism course is now down to 45. Next month the Board of Legal Specialization may present some proposed rule changes to the Board.

REQUEST TO ADDRESS "OPEN LETTER TO THE BOARD"

Jared O. Smith, a former member of the Board of Governors, addressed the Board regarding a letter he had sent in opposition to the Bar's continued funding and maintenance of a permanent standing Committee on Sexual Orientation and Gender Identity (SOGI) and that Committee's presentation of a continuing legal education (CLE) program at the Bar Convention. Brendan Mahoney, a founding member of the SOGI Committee, responded by explaining that the CLE program's format is a moot court in which both sides of the issue are presented. At the next Board meeting, General Counsel John Furlong will discuss his analysis of how the Keller case applies to the SOGI Committee and its operations, including the CLE program.

CONSENT AGENDA

President Novak asked if there was anything that anyone wanted to take off the Consent Agenda. Hearing nothing, he asked for a motion of approval.

> Tom Crowe moved and Frank Barriga seconded, and the motion carried unanimously to approve the Consent Agenda as follows: Approval of April 17, 2009 Minutes of the Board of Governors; Approval of the May 15, 2009 Special Meeting of the Board of Governors; Approval of Resignations of Members in Good Standing; Approval of dues Waivers; Approval of the 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); Ariz.Sup. Ct. Rule 64(f); Approval of the Summary Suspension List for non-compliance with MCLE Requirements (Rule 45, Ariz.R.S.Ct.)

FINANCE COMMITTEE/CHIEF FINANCIAL OFFICER'S REPORT

Amelia Craig Cramer, Vice-Chairman, reported on behalf of the Finance Committee that it received the audited financial statements of both the State Bar of Arizona and the Client Protection Fund for the year ended December 31, 2008, and that both statements were issued with unqualified opinions. No negative issues or concerns were discovered during the audit process. The auditors praised the Bar's Chief Financial Officer, Tom Johnson, and his staff for doing a great job of accurately accounting for and reporting on the Bar's financial operations.

Other items covered by Ms. Cramer were:

- Dues Waiver Form: As a result of a minimal number of requests being received this year, the development of a form and more formalized process for dues waivers is being tabled until a need is determined, possibly for the 2010 dues billing cycle.
- R&R Partners: The Bar is looking to retain the communication services of Matt Silverman of R&R Partners to assist with our communication strategic initiatives that are on the horizon. No action is required at this time.
- Chief's Retirement Dinner 6/19/09: The staff purchased a table for 10 for the Chief's retirement dinner at a cost of $1,700. A motion was made and seconded in favor of the staff's purchase of the table. The motion carried unanimously.
- Contribution Moratorium: Due to the current economic uncertainties, the BOG has a contribution moratorium in place which is effective through May 28th. After discussion it was determined that the Bar is financially healthy enough to end the moratorium if so desired. At the Finance Committee a motion carried unanimously to recommend to the BOG that the contribution moratorium end effective the end of May. That motion came to the Board as a motion on the table for its consideration.

  The motion in favor of ending the contribution moratorium effective the end of May carried.

Chief Financial Officer Tom Johnson discussed the April 2009 financial statements and noted the following:

- The Statement of Operations is $43,000 favorable to budget for the month, and year-to-date is favorable to budget by $241,000. On a year-to-date basis, the Bar has a $28,000 unfavorable variance to budgeted revenue and a $210,000 favorable variance to budget for the expenses. The Bar is closely allocating resources to ensure that funds expended are to the maximum benefit of our stated mission. Open staff positions have been evaluated, and some have not been filled; overtime is tightly controlled; and overall our team is conscious of every dollar that the organization spends.

The balance sheet is in excellent shape; current assets exceed current liabilities by $499,000, and the Bar has $6,452,000 in net assets.

LEGISLATIVE UPDATE

Janna Day noted that the Legislature is still working on the budget and will not consider any bills until the budget process is completed.

LIAISON REPORT: AWLA Report

AWLA president-elect Pamela Donison announced upcoming events including the Maricopa Chapter's Open House on June 11, Mary Anne Richey Breakfast on June 26 at the State Bar Convention, and Chief Justice Reception on July 9. AWLA will celebrate its 30th anniversary at its annual convention on Nov. 6 and will hold an evening reception on Nov. 30 to kick off its foundation. AWLA advocated that its member Kellie Johnson be nominated for the Commission on Appellate Court Appointments.

APPOINTMENTS COMMITTEE

Alan Bayham on behalf of Joe Kanefield, reported that Governor Brewer withdrew her nomination of Michael Sillyman and appointed Michael "Mick" Rusing to serve on the Arizona Commission on Appellate Court Appointments. Mr. Rusing's appointment is subject to the consent of the Arizona State Senate.

For one additional vacancy on the Arizona Commission on Appellate Court Appointments, after discussion:

> Ray Hanna moved and Steve Dichter seconded the motion to forward to Governor Brewer the top three votes from the Appointments Committee: Judge Louis Araneta (ret), Peter Guerrero and Kellie L. Johnson.
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> Steve Dichter withdrew his second, and Whitney Cunningham withdrew his offer as a second. Emily Johnston offered her second to the original motion.
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> AMENDMENT: After discussion, Amelia Craig Cramer, spoke as a motion to amend the motion to remove Kellie L. Johnson and add Michael Sillyman and send the first two top votes from the Appointments Committee. Richard Coffinger seconded this Amendment.
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> AMENDMENT TO THE AMENDMENT: Amelia Craig Cramer modified her amendment to add Kellie L. Johnson as the 4th candidate and to forward to the Governor the top three from the Appointments Committee voting and add Michael Sillyman. Dee-Dee Samet seconded this Amendment. After discussion, the motion failed
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> Alex Jamison moved and Steve Dichter seconded the motion to remove Kellie L. Johnson and add Michael Sillyman. After discussion, the vote was 10-8, motion failed.

Jim Smith discussed the motion and stated he misunderstood and would have voted differently. Discussion on re-vote.

> Motion restated: The vote will be on sending to the Governor for consideration for the one vacancy on the Arizona Commission on Appellate Court Appointments: Judge Louis Araneta (ret), Peter Guerrero and Michael Sillyman. Vote: Motion fails 8 to 12
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> Ray Hanna moved and Dee-Dee Samet seconded the motion to accept the recommendation of the Appointments Committee to send to the Governor for consideration for the one vacancy on the Arizona Commission on Appellate Court Appointments: Judge Louis Araneta (ret.), Peter Guerrero and Kellie L. Johnson. Motion passed.

Break 10:45 a.m. – 10:55 a.m.
Return from Break

COMMITTEE ON PERSONS WITH DISABILITIES IN THE LEGAL PROFESSION UPDATE

Retiring committee chair Jim Reed recapped several successful programs the committee sponsors including the IMPACT Career Fair for Law Students and Attorneys with Disabilities and a Mentor Subcommittee that matches law students with attorneys. The committee submitted a memo on accessibility to the State Bar's Web site as well as proposals on entryways and technology at the new Maricopa County Courthouse. The committee also sponsors a Great Speakers event, the Hon. John R. Sticht Excellence in Disabilities Accessibility Award, and has presented numerous CLE and State Bar Convention seminars.

CHIEF BAR COUNSEL REPORT

Senior Bar Counsel Roberta Tepper reported on behalf of Acting Chief Bar Counsel Maret Vessella, who is attending a conference presented by the ABA Center for Professional Responsibility and the Georgetown Center for the Study of the Legal Profession at the invitation of Vice-Chief Justice Berch, followed by the national ABA conference on Professional Responsibility.

Bar counsel met at a retreat on May 21 to discuss an alternate discipline model. It is their intent to have a proposal ready to be vetted by the Board at its July retreat.

For the month of April the Lawyer Regulation Department achieved a 96% compliance rate with the Arizona Supreme Court's guidelines on informal complaints.

LIAISON REPORT – YOUNG LAWYERS DIVISION (YLD)

Michael Mason reported that Samuel Saks is the incoming president of YLD, and Maricela Meza is president-elect. YLD's Touring Arizona group just completed a trip to Yuma. Next year they'll switch from touring geographic areas to exploring different practice areas.

INDEPENDENT ETHICS OPINION LETTER

Scott Rhodes and Tim Burke presented an Opinion Letter dated May 19 on the question "whether the State Bar Board of Governors are precluded from appointing a lawyer to the State Bar's Conflicts Committee when the lawyer regularly represents respondents lawyers in State Bar lawyer regulation matters." President Novak stated that no action is to be taken today. This offers an opportunity for making a motion for reconsideration if someone voted on behalf of those wanting an outside independent opinion. Seeing no hands, President Novak stated the meeting would continue to move on.

LONG-RANGE PLAN HIGHLIGHTS

H. Leslie Hall reported that the Long-Range Plan Committee is not suggesting any changes to the plan at this time. The plan will be discussed at the July retreat of the Board of Governors.

IOLTA TRUST ACCOUNTS – REPORT FROM THE ARIZONA FOUNDATION FOR LEGAL SERVICES & EDUCATION

The Hon. Larry Winthrop, President of the Arizona Foundation for Legal Services & Education Board of Directors, presented a brief history of the IOLTA Participation Agreement and reported on changes incorporated into the 2009-2010 agreement.

Under the new agreement, the Foundation has set the participating financial institutions' service fee at 10% of the interest earned on the aggregate principal balances of the IOLTA accounts. The agreement also includes a blanket election for all IOLTA accounts that will automatically result in the highest yield that the financial institution has available. The deadline for banks to sign the agreement is June 15. A significant percentage of banks already have signed the agreement; however, the Arizona Banking Association reported that it is recommending that other banks not sign the agreement because it believes:

- The Foundation does not have authority to regulate banks thru Rule 43;
- The higher yield requirement creates confusion and is not reasonable given the nature of the account; and
- The fiduciary requirement is not contained in the rule and is inappropriate for this kind of account, as the relationship for the banks is one between them and their lawyer customers - not with the clients of their lawyer customers.

Tanya Wheeless, President and CEO of the Arizona Bankers Association, and James Lundy, President of Alliance Bank, presented their concerns about the proposed agreement.

The Board, having heard both sides of the argument,

> Ray Hanna moved and Richard Coffinger seconded the motion to accept the report that has been provided by the Arizona Foundation for Legal Services & Education and the Arizona Bankers Association.
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> Motion to Amend: Whitney Cunningham moved to accept the report and for the Bar to should make a formal request to the Foundation to extend the current agreement at least thirty days and by email notify the entire membership of the dispute. Jim Smith seconded the Motion to Amend. On a vote of 10-10, the motion to amend failed, with the President breaking the tie with his vote.
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> The motion was restated as originally made: Ray Hanna moved and Richard Coffinger seconded the motion to accept the report that has been provided by the Arizona Foundation for Legal Services & Education and the Arizona Bankers Association and to support the June 15 deadline.
> On a vote of 17-1, the motion passed

NATIONAL MALPRACTICE INSURANCE REPORT

Alan Bayham attended the National Conference and reviewed his written report that was included in the Board materials.

NEW STATE BAR COMMITTEE CONSIDERED

There had been a request to form a new committee: Class Actions and Derivative Suits Committee. After discussion,

> Leslie Hall moved and Amelia Craig Cramer seconded, and the motioned passed to form a new committee called the Class Actions and Derivative Suits Committee.

APPOINTMENTS COMMITTEE (Continued)

ABA Position #1

The Bar has two vacancies to fill on the American Bar Association House of Delegates. The Appointments Committee recommends Amy Courson and Adam Zickerman. After discussion,

> Jim Smith asked for an election for both of these positions.

Jim Smith nominated Mike Mason as the Young Lawyers Division Delegate to the American Bar Association House of Delegates.

Whitney Cunningham nominated Adam Zickerman and spoke on his behalf.
Dee-Dee Samet nominated Amy Courson.

Leslie Hall moved and Dee-Dee Samet seconded the motion that one cannot be appointed to a commission or committee while sitting on the Board of Governors.

President Novak stated this motion would be treated as one going forward because this appointment for ABA Delegate is not an appointment to a commission or committee.

After discussion, there was a motion to table made by Emily Johnston, seconded by Richard Coffinger. On a vote of 10-6 the motion passed.

Dee-Dee Samet will work with Carrie Sherman to draft a policy to bring to the Board, at which time the item may be taken off the table.

The Board held a paper ballot vote for the one Young Lawyer Delegate of the American Bar Association House of Delegates. Michael Mason was voted to fill this vacancy on the ABA House of Delegates.

ABA Position #2

This ABA House of Delegates opening is to fill the vacancy of Susan Villarreal. At the Appointments Committee meeting, C. Brad Vynalek received the highest number of votes for this 2nd Delegate position, and Clarence Matheson received the second highest number of votes.

Jim Smith nominated C. Brad Vynalek for his third and final, two-year term as an American Bar Association House of Delegates Representative.

Dee-Dee spoke on behalf of Clarence Matheson.

The Board held a paper ballot vote for this second ABA House of Delegates position, and the board voted for C. Brad Vynalek to fill Susan Villarreal's position on the ABA House of Delegates.

Client Protection Fund Board of Trustees

No motion being required, as the motion comes from the recommendation of the Appointments Committee to nominate Rosemary Rosales to the Client Protection Fund Board of Trustees, motion carried.

Community Legal Services Board of Directors

The Community Legal Services (CLS) Board has one opening to replace Todd Lang who is completing a six-year term and is ineligible for reappointment pursuant to a Board of Governors' policy and CLE Bylaws. The Appointments Committee recommended Robert Pastor, Kelly Johnson and Clarence Matherson for the Board's consideration to fill the CLS Board position.

No motion was required, as the motion came from the Appointments Committee with a recommendation of Robert Pastor as the highest in votes.

Tom Crowe nominated Steve Gonzales

After discussion, the Board voted to appoint Robert Pastor.

ADJOURN

Ray Hanna moved and Alan Bayham seconded the motion to adjourn. The Board adjourned at 2:18 p.m.

Respectfully submitted,

Amelia Craig Cramer
Secretary-Treasurer

President Novak reported that immediately following the Board of Governors meeting, Tajudeen "Taj" Oladiran submitted his resignation from the Board.