MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
October 23, 2015
Phoenix, AZ

BOARD MEMBERS PRESENT: Geoffrey Trachtenberg, President, Phoenix; Lisa S. Loo, President-Elect, Phoenix; Alex B. Vakula, First Vice President, Prescott; Steven A. Hirsch, Secretary-Treasurer, Phoenix; Tyler J. Carrell, YLD President, Phoenix; Richard D. Coffinger, Glendale; Hon. David G. Derickson, Phoenix; Diane L. Drain, Phoenix; Denis M. Fitzgibbons, Casa Grande; Brian Y. Furuya, Flagstaff; Patrick Greene, Tombstone; Melissa S. Ho, Phoenix; James B. Penny, Tucson; Jennifer R. Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Public Members: Tony Finley, Tucson; Audrey R. Jennings, Scottsdale; Meredith Peabody, Prescott; Anna C. Thomasson, Phoenix; At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Teri Adams for Dean Shirley Mays, Phoenix; Leah Won for Dean Marc L. Miller, Tucson; Gary Stuart for Dean Douglas Sylvester, Tempe.

EXCUSED ABSENCES: Jeffrey Willis, Second Vice President, Tucson.

OTHERS PRESENT: Matt Campbell, Help Desk Technician; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Financial Officer; Tim Eigo, Arizona Attorney Editor; John Furlong, General Counsel/Deputy Director; Martin Gaxiola, Accounting Manager; Kathy Gerhart, Chief Financial Officer; Rob Hoseh, Technology Support Director; Gayle V. Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Carol Lloyd, Business Analyst I; John Phelps, CEO/Executive Director; Amy Rehm, Deputy Chief Bar Counsel; George Schader, Information Technology Manager; Carrie Sherman, Director of Board Operations; and Court Liaison Hon. Ann A. Scott Timmer, Phoenix.

GUESTS: Hon. Bryan Chambers; Andrew Erwin, Elder Law, Mental Health & Special Needs Planning Section; Richard T. Platt, Coolidge; Rebecca Johnson, President, Graham-Greenlee County, Bar; Bill Porter, Past President, Mohave County Bar; Sylvia Struss, VLP Administrative Director, DNA-People’s Legal Services; District 3 Candidates: Hector Figueroa, Timothy Grier and Arthur Lloyd.

President Geoffrey Trachtenberg called the Board meeting to order at 9:05 am. The Board and the State Bar staff held their annual meet & greet event immediately preceding the Board meeting.

PRESIDENT’S REPORT – President Trachtenberg

- Attended the Arizona Native American Bar Association Seven Generations Dinner and the Arizona Black Bar Hayzel B. Daniels Scholarship Dinner, both great events.
- Met with Arizona Supreme Court representatives regarding the upcoming legislative session.
• Reported that Richard Platt, who had agreed to serve as immediate past president following Bryan Chambers’ appointment by Governor Ducey to the Superior Court bench in Gila County, has also been appointed as a magistrate in Pinal County. Past President Platt had agreed to chair the Program Review Committee (PRC).
• MOTION: Coming as a motion from the Scope and Operations Committee, which needs no second, the Board concurred with leaving the immediate past president position on the Board vacant for the 2015-2016 Bar year. Alex Vakula will chair the PRC.

CEO/ED REPORT – John Phelps
• Introduced:
  ➢ Nancy Loya, HR Specialist - Employee of the (2nd) Quarter recognized for her outstanding service to the organization’s employees.
  ➢ Sarah Fluke, Professional Development Coordinator - Employee of the (3rd) Quarter recognized for revitalizing the CLE by the Sea program.
  ➢ Tim Eigo, Editor of the Arizona Attorney Magazine, who received the E.A. Wally Richter Leadership Award, the highest recognition bestowed by the Communications Section of the National Association of Bar Executives.
  ➢ The Board offered its congratulations to these individuals.
• Appeared before the House Ad Hoc Study Committee on Mandatory Bar Associations on October 19th, presenting on the State Bar’s history, mission and structure. The link to the archived hearing will be circulated to the Board. Additional Committee meetings are scheduled.

FINANCE AND AUDIT COMMITTEE – Chair Dave Byers
The State Bar is in great shape financially; ahead of budget by $813K. On course to hold dues to 2019 or beyond.
• Revenue: 58% dues, 37% non-dues, 5% dues-penalties
• Expenses: 61% personnel, 6% depreciation, 33% other operating costs
• CLE attendance: online seminar attendance is growing, but total revenue is down even though the online format is less expensive than in-person seminars.
• Convention: attendance lower but maintained positive revenue.

Association Management System (AMS)
• Vote at December meeting on this important strategic project. AMS is more than just a database; it is a comprehensive software system to manage all members’ activities and allow the Bar’s various components to communicate with each other more efficiently.
• Due diligence process resulted in three vendors demoing their products to a cross section of Bar staff.
• $1M set aside in the five-year capital budget for this system; the vendors’ initial costs are initially quoted as being slightly higher.
• 12 to 18 months to implement an AMS.
ELDER LAW, MENTAL HEALTH AND SPECIAL NEEDS SECTION PROPOSED LEGISLATION – Section Member Andrew Erwin

The Mental Health Legislative Subcommittee of the Section proposed legislation to improve the statutes governing mental health powers of attorney. Currently, hospitals and inpatient psychiatric facilities are reluctant to rely upon mental health POA and instead encourage the initiation of guardianship proceedings. As a result, there are a significant number of cases where mental health care is delayed and judicial proceedings are instituted unnecessarily. The proposed legislation:

- clearly indicates whether the POA is irrevocable (by the affected individual);
- removes the language regarding the obligations of hospitals and inpatient facilities and moves it to a more appropriate section of the statute;
- includes a sample revised POA form.

Banner Health’s concerns have been addressed; it now supports the legislation as revised and will lobby for it.

MOTION: Patrick Greene moved, Tyler Carrell seconded, and the motion carried over one dissent to support the proposed legislation and assign State Bar Lobbyist Janna Day to secure a sponsor.

GOVERNANCE REPORT STUDY GROUP – Steve Hirsch on behalf of Chair Jeffrey Willis.

The Study Group’s charge was to review the recommendations contained in the Report of the Supreme Court Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona, and to recommend to the Board of Governors any response to that Report or any comments to any rule petitions that are filed as a result of that Report. The Study Group gained unanimity on the majority of issues contained in the Task Force Report:

1) The State Bar of Arizona should continue to be integrated and supervised by the Arizona Supreme Court. - Concluded
2) Membership in the integrated Bar should be a requirement for practicing law in Arizona. - Concluded
3) Amend Supreme Court Rule 32 to clarify that the primary mission of the State Bar of Arizona is to protect and serve the public, and secondarily, to serve its members. – Recommended that the State Bar’s existing mission statement, which was recently revised after careful consideration, better captures the more appropriate balance between service to the public and promoting that service by enhancement of the legal profession. (“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.”)
4) Change the name of the State Bar of Arizona “Board of Governors” to the “Board of Trustees” to emphasize the fiduciary role of the Board. – Recommended that if the name is to be changed, it should be changed to “Board of Directors”. Indicated that “trustee” is a misnomer that does not accurately reflect the duties and obligations of the current Board; there is no compelling reason to change the name “governor”; Arizona Constitution refers to the Board as a “board of governors”.

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5) Reduce the State Bar’s Board size (currently 30 members) to either 15 or 18 members. 
Concurred with Task Force Option Z – 11 elected and 7 appointed members – but with the 
addition of an elected Young Lawyer Division representative (19 total members).
- A Study Group Minority Report recommended retaining the current 26 voting 
members and eliminating the 4 ex-officio non-voting members.

Term Limits – Concurred with the Task Force recommendation of a limit of three terms of 
three years each.

Appointed vs. Elected Members – The Study Group recommended that the SBA be allowed 
to nominate 4 members to the Board, at least 2 of whom must be members of the public 
(non-lawyers), and the Court appoint 3 Board Members, at least 1 of whom must be a 
lawyer.

6) Include rules amendments that would provide Supreme Court supervision over the State 
Bar’s Board of Legal Specialization. – Concurred, with the following recommendations: if 
judicial review (of an appeal) is available, eliminate the additional time-consuming and 
duplicative step of full Board of Governors review; subject-matter committees which 
recommend candidates for specialization to the BLS should continue to be appointed by the 
State Bar; if proposed Rule 40 is adopted in whole or in part, the BLS rules will need to 
revamped and possibly amended to reflect the changes, plus ER 7.4 regarding specialization 
will need to be reviewed and possibly amended to confirm with the new Rule 40.

After a lengthy discussion:

- MOTION: Jim Smith moved to approve all of the Study Group’s recommendations except 
No. 5. The motion died for the lack of a second.
- MOTION: Lisa Loo moved to revise the language in the Study Group’s report with regard 
to the “public protection” issue. The motion died for the lack of a second.
- MOTION: Dee-Dee Samet moved, David Derickson seconded and the motion carried 
umanimously to delete the first two sentences in Recommendation No. 3 of the report (“The 
Study Group believes that the Task Force’s recommended mission statement that the State 
Bar’s “core mission is protecting and serving the public” is inaccurate and unwise. The Study 
Group believes that the proposed new mission statement improperly emphasizes public 
protection, which is historically not a primary role of the Bar.”)
- MOTION: Jim Smith moved, Patrick Greene seconded and the motion carried over four 
dissents to, subject to the deletion of the two sentences noted above, approve the Study 
Group’s report and recommendations.
- After further discussion the Board agreed to revoke its last two votes.
- MOTION: Brian Furuya then moved, Dave Derickson seconded and the motion carried 
over two dissents to approve the Study Group’s report and recommendations with regard to 
issues 1, 2, 4 and 6.
- MOTION: Richard Coffinger moved, Dee-Dee Samet seconded and the motion carried 
umanimously to amend the Study Group’s Report at Recommendation No. 3 by deleting the 
entire first paragraph regarding the Mission Statement language.
• MOTION: Dee-Dee Samet moved and Patrick Greene seconded the motion to add “protect and serve the public” back into the Mission Statement language. Following discussion, the question was not called for.

• MOTION: Paul Senseman moved, Sam Saks seconded and the motion carried by a vote of 12 to 9 to adopt the Task Force’s recommendation regarding the State Bar’s Mission Statement as written: “The primary mission of the State Bar of Arizona is to protect and serve the public. This mission includes responsibilities to improve the legal profession and to advance the rule of law and the administration of justice. To accomplish its mission, this Court empowers the State Bar of Arizona, under the Court’s supervision, the authority to…..”

Task Force Recommendation No. 5

The Study Group recommended that Task Force Option Z – 11 elected and 7 appointed members - with slight alterations - be endorsed by the Board of Governors:

• Add a YLD elected representative (for a total of 19 members)
• Of the 7 appointed members:
  ➢ 4 members nominated by the Board, 2 must be public non-lawyers
  ➢ 3 members appointed by the Court, 1 must be a lawyer

MOTION: Dee-Dee Samet moved and Jim Smith seconded the motion to adopt the Minority Report’s recommendation with regard to the number of Board members. Discussion followed.

MOTION: Richard Coffinger restated the motion to adopt the Study Group Minority Report recommendations to retain 26 voting Board members:

• retain 4 public non-lawyer members appointed by the Board
• retain 3 at-large members appointed by the Supreme Court
• retain a YLD representative
• reapportion the 18 elected Board members as follows:
  ➢ 3 Board members elected from Mohave, Navajo, Coconino, Apache, Yavapai, La Paz and Yuma counties
  ➢ 1 Board member elected from Gila, Graham, Greenlee, Cochise, Santa Cruz and Pinal counties
  ➢ 10 Board members elected from Maricopa county (an increase of 1 from the current number)
  ➢ 4 Board members elected from Pima county (an increase of 1 from the current number)
  ➢ eliminate the 4 ex-officio non-voting Board members (immediate past president and Arizona’s three law school deans)

Following further discussion, the motion passed by a vote of 11 to 9.

• MOTION: Tyler Carrell moved, Melissa Ho seconded and the motion carried by a vote of 15 to 5 to adopt the Study Group’s (and Task Force’s) recommendation that Board members are limited to serve three terms of three years each.

• MOTION: Dee-Dee Samet moved and Jim Smith seconded the motion to reject the Task Force’s recommendation to shrink the number of officers and instead to retain the current Board officer structure of five officers. The vote failed by a vote of 13 to 6.
• MOTION: Diane Drain moved and Jim Smith seconded the motion to recommend to the Court that there be 4 Board officers. The motion failed by a vote of 11 to 8.

The Study Group was thanked for its time and efforts.

APPOINTMENTS COMMITTEE – Committee Member Eadie Rudder on behalf of Chair Jeffrey Willis

Ms. Rudder reported that the Committee’s recruitment efforts yielded three applications from Board District 3 (Gila, Graham and Greenlee Counties) Active Members to fill an unexpired term. Bryan Chambers resigned from the Board following his appointment by Governor Ducey to the Gila County Superior Court bench.

• The Committee interviewed each of the candidates and presented its ranking to the Board.
• The Board then interviewed the three candidates individually and then voted by secret ballot.
• Mr. Hector Figueroa, the attorney for the Town of Payson, was selected to represent Board District 3 to June of 2016. When the term expires in June of 2016, the seat will be filled by a District 3 election.

AWARDS COMMITTEE – Chair Lisa Loo

• The Bar’s Committee on Persons With Disabilities in the Legal Profession proposed modified language to the name and description of the Hon. John R. Sticht Disability Achievement Award.
• The Awards Committee proposed the creation of two new State Bar awards:
  ➢ Diversity and Inclusion Leadership Award
  ➢ Outstanding In-House Counsel of the Year Award
• MOTION: Coming as a motion from the Awards Committee, requiring no second, the three proposals as described were unanimously approved. The awards will be presented at the 2016 Convention.

STRATEGIC PLANNING COMMITTEE – Chair Lisa Loo

• The first meeting is calendared for November 20 but will be rescheduled for the afternoon.
• Each Board member received a copy of the newly-adopted five year vision 2015-2019 – Service through Law. The tri-fold brochure produced by the Bar’s Communications Team is to be shared with elected and civic leaders, members and others during presentations given by State Bar representatives.

LUNCH 12:05 – 12:30 p.m.

RECOGNITION OF OUTGOING BOARD MEMBERS

President Trachtenberg presented awards of appreciation to Richard Platt (Board District 8) and the Hon. Bryan Chambers (Board District 3) for their years of outstanding service to the legal community and to the organization as members of the Board of Governors. The Board thanked these past presidents.
RURAL ATTORNEYS PANEL

- Rebecca Johnson, President, Graham-Greenlee County Bar Association (Safford)
- William “Bill” Porter, Past President, Mohave County Bar Association (Kingman)
- Sylvia Struss, VLP Administrative Director, DNA-People’s Legal Services, Inc. (Flagstaff)
- Hon. Bryan Chambers, Gila County Superior Court (Globe) – Moderator

Each panelist shared his or her own perspective regarding the following topics:

- Life as a rural attorney (definition of a “rural” attorney; professional network; practice areas; multi-jurisdictional and/or global practice opportunities; effect/influence of elected vs. merit-selected judges)
- Access to justice issues (overview of legal aid access and challenges; access for those who do not meet the legal aid income threshold; delivery of legal services by non-lawyers and Internet; pro bono opportunities; use and effect of technology to enhance access)
- Role of the State Bar in supporting rural attorneys (distance learning CLE; Fastcase; rules; appointments; lawyer referral service; what the Bar does, and could do more of, to help)

A Q&A session followed. The Board thanked the panelists for their informative presentation.

CONSENT AGENDA – President Trachtenberg

- Diane Drain asked that the Solo Practitioner/Small Firm Section’s Revised Bylaws be pulled from the Consent Agenda.
- MOTION: The Board unanimously approved the remaining Consent Agenda matters:
  ➢ Approval of September 18, 2015 Board of Governors Meeting Minutes
  ➢ Resignations in Good Standing
  ➢ Reinstatements to Practice of Members Suspended for Non-Compliance With MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)

LEGISLATIVE UPDATE – Rick DeBruhl

- Referencing the Board’s earlier decision in the meeting to support the proposed legislation to improve the statutes governing mental health POA, noted that bills supported by the Bar during the past three years have received unanimous support by the Legislature, i.e., 344 votes in favor with 0 opposed.
- Reported that during the October 19th meeting of the House Ad Hoc Study Committee on Mandatory Bars, CEO John Phelps stood for two hours presenting and fielding questions. Mr. Phelps was thanked by the Board for providing such an outstanding resource to the Ad Hoc Committee and in stating the Bar’s position on the issues in a number of forums. The next Ad Hoc Committee meetings are scheduled for October 26th and November 16th. It may be advisable to have Bar supporters present during the public comment period.

ANTITRUST ISSUES TASK FORCE REPORT – President Trachtenberg

- The AITF Report and Recommendations presented at September Board meeting for consideration.
- MOTION: The Board unanimously approved the AITF Report and the three recommendations noted therein:
  ➢ Routinely conduct “North Carolina Dental Board reviews” of State Bar programs;
Endorse the recommendation of the Supreme Court’s Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona that lawyers may obtain judicial review of an adverse decision by the State Bar Board of Legal Specialization; Clearly direct “preferred” vendors that they cannot advertise that the State Bar “endorses” them or that they otherwise have an “exclusive” arrangement with the State Bar.

- The AITF can now be disbanded.

**NEW BUSINESS – JULY BAR EXAM RESULTS REPORT** – Tyler Carrell

- Overall pass rate was 57%, with even lower results for graduates of one of Arizona’s law schools.
- Should the Bar be engaged somehow in examining the related issues?

**DECEMBER BOARD MEETING** – President Trachtenberg

Due to the lateness of the hour, the following agenda items were deferred to the next Board meeting, December 4th:

- Appointments Committee
  - ABA House of Delegates
  - DNA-People’s Legal Services, Inc. Board of Directors
- Lawyer Discipline System Presentation

**OBITUARIES**

To honor our members who have passed, a webpage has been created and will be posted at [www.azbar.org/NewsEvents/InMemoriam](http://www.azbar.org/NewsEvents/InMemoriam).

**ADJOURN**

There being no further business to come before the Board of Governors, the meeting adjourned at 1:35 p.m.

Respectfully submitted,

Steven A. Hirsch
Secretary-Treasurer