MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
December 4, 2015
Phoenix, AZ

BOARD MEMBERS PRESENT: Geoffrey Trachtenberg, President, Phoenix; Lisa S. Loo, President-Elect, Phoenix; Jeffrey Willis, Second Vice President, Tucson; 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; 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; and At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Stacey Pynn for Dean Shirley Mays, Phoenix; Leah Won for Dean Marc L. Miller, Tucson; Gary Stuart for Dean Douglas Sylvester, Tempe.

EXCUSED ABSENCES: Patrick Greene, Tombstone; Melissa S. Ho, Phoenix; Alex B. Vakula, First Vice President, Prescott;

OTHERS PRESENT: Nina Benham, Board Services Specialist; Matt Campbell, Help Desk Technician; Rick DeBruhl, Chief Communications Officer; Carolyn DeLooper, Membership Administrator & Services Manager; John Furlong, General Counsel/Deputy Director; Martin Gaxiola, Accounting Manager; Kathy Gerhart, Chief Financial Officer; Rob Hosch, Technology Support Director; Gayle V. Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Carol Lloyd, Business Analyst I; Thomas McCauley, A/CAP Manager; John Phelps, CEO/Executive Director; Myron Pecora, Outside Consultant & Project Director; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations and Court Liaison Hon. Ann A. Scott Timmer, Phoenix; Maret Vessella, Chief Bar Counsel.

GUESTS: Jeff Jacobson, Wills for Heroes; Hon. Steven McMurry, Maricopa County Justice Courts; Sam Thunma, Uniform Law Commission; Timothy Berg, Uniform Law Commission; Ellen Katz, Legal Services Committee.

President Geoffrey Trachtenberg called the Board meeting to order at 8:30 am.

PRESIDENT’S REPORT—President Geoffrey M. Trachtenberg

- Attended the Arizona Society of Association Executives Awards Gala at which the State Bar received the Excellence in Education Award for its work in providing outreach and education to the Hispanic Community through its partnership with Univision’s “Abogados a Su Lado (Attorneys on Your Side)”.
Ad Hoc Amicus Committee met, did their work and has wrapped up. Analyzed the case – Friedrichs v. California Teachers Association et al – pending before the U.S. Supreme Court and reviewed the amicus brief being filed by 21 past presidents of the D.C. Bar, who respectfully declined Arizona’s participation but stated that it was for tactical reasons.

**CEO/ED REPORT** – John Phelps
Made presentations to:
- Inn of Court regarding the integrated bar; YLD President Tyler Carrell presented on challenges facing lawyers in their practices.
- Mohave County Bar in Kingman.
- Cochise County Bar in Bisbee.
- Met with new Pima County Bar Association President Natasha Wrae. The PCBA had surveyed its members; results showed strong support for the integrated bar.
- Presenting, with President Trachtenberg, at MCBA Forum on the Unified Bar – December 8.
- Attended the AzASAE Awards Gala as described by President Trachtenberg.
- The Arizona Wellness Council presented two awards to the State Bar: the Process, Progress & Leadership in Worksite Health Promotion Award for the organization’s wellness program (third time to be recognized); Mike Fusselman, Lawyer Regulation Investigator, received the Champions of Worksite Wellness – Personal Achievement Award.
- Proud of the proposed 2016 budget built from the ground up, and which comports with the Board’s approved budget guidelines. Each department builds their budget line by line and is required to justify it to management and ultimately the Audit and Finance Committee.

**CEO’S ANNUAL PERFORMANCE REVIEW** – Audrey Jennings, Human Resources Committee Chair
Reviewed the schedule for the CEO’s/Executive Director’s performance evaluation process and timeline over the next few months. Any Board member may participate in the process.

**LAWYER DISCIPLINE SYSTEM PRESENTATION (1 of 3)** – Maret Vessella, Chief Bar Counsel, and Tom McCauley, A/CAP Manager
- Presentation regarding the lawyer discipline process was being made at the Board’s request to become better educated about the system.
- This first educational piece covered the Intake system handled by the Attorney/Consumer Assistance Program.
- January presentation: Investigation/Attorney Discipline Probable Cause Committee (ADPCC) with Judge Lawrence Winthrop
- Purpose of Lawyer Discipline have been clearly defined by the Supreme Court of Arizona:
  - Protection of the Public
Protect the Integrity of the Legal System
- Deterrence of other Lawyers from Engaging in Similar Misconduct
- Instill Public Confidence in the Bar’s Ability to Regulate the Profession

- The Model for Resolution of Cases is an inverted triangle: Intake at the top; ADPCC in the middle; Formal proceedings at the bottom
- Mr. McCauley reviewed the Intake process and options for resolution by the five Intake Counsel and communication of the decision and the appeals process.
- 2014 Intake statistics: 3,549 charges received; 71% resolved in Intake; average time to resolve an issue – 29 days; 751 charges forwarded to litigation lawyers to conduct a full investigation.
- Overwhelming feedback of support from members regarding the process.

FINANCE AND AUDIT COMMITTEE – Vice-Chair Steve Hirsch, presenting for chair David Byers
The Board was provided with informative materials regarding the budget and the Association Management System (AMS). The AMS is a separate discussion and does not need a motion as its approval comes as a motion from the Committee, however, the CEO can’t approve expenditures over $750K and this is a significant expense so it needs to be brought to the full Board. After a general introduction, Rick DeBruhl presented a power point program and fielded questions concerning details of the AMS program and expenses.

- This is an important strategic project. It is much more than just a database; rather, it is a software system to manage all members’ activities and to make their experience a better one than exists now under our current software. The current database is outdated and is no longer supported by the vendor as of 2013.
- The AMS offers: one stop shopping for Bar programs, services and activities; member profile snapshot; management tools for law firm administration; accounting improvements; and events management capacity.
- A very detailed and robust due diligence process resulted in three vendors demonstrating their products to a cross section of Bar staff for 1.5 days per vendor. The SBA has 866 requirements in comparing options. Two vendors made the initial cut: Abila and Aptify. Abila can do 100% of the 866 requirements while Aptify can do 95%. Abila was recommended.
- Original budgeted estimate for acquisition cost was $1,025,000; after the passage of time and actual presentation of the package by the vendor the cost is now $1,189,000 over a five-year period.
- $1,000,000 is currently set aside in the five-year capital budget; the vendors’ initial costs slightly higher.
- The contract agreement is to have the code source and data put into proprietary escrow immediately at no charge.
- Outside counsel volunteered to review the contract in addition to SBA General Counsel and their input has been communicated to the preferred vendor, who has agreed with the additional terms suggested in the Bar’s favor.
- It will take 12 to 18 months to implement the AMS.
• MOTION: Following detailed discussion and questions, coming from the Finance Committee, requiring no second, the Board unanimously approved Abila as the AMS provider at a cost of $1,189,000 over a five-year period.

BREAK – 10:00 – 10:10 a.m.

LEGISLATURE UPDATE – Lobbyist Janna Day
• Changing leadership and length of the 2016 session noted.
• Ad Hoc Study Committee on Mandatory Bars – next and last meeting scheduled for December 7. No agenda circulated yet.
• Per Board’s directive, seeking sponsor for mental health powers of attorney legislation crafted by State Bar section.

FINANCE AND AUDIT COMMITTEE (Continued) – Vice-Chair Steve Hirsch
• The next matter discussed was the 2016 Budget. The 2016 Budget Guidelines are consistent with five-year financial projections provided to Board on July 23, 2015.
• Personnel costs were budgeted so as to not exceed 3% increase over the 2015 budget (excluding new positions).
• 2016 Budget – Operations
  ➢ Revenues $15,700,000
    o Dues Income= $9,564,000
    o CLE Income = $1,809,000
    o Other Income = $4,327,000
  ➢ Expenses $14,733,000
    o Personnel = $9,031,000
    o Other Expenses = $5,702,000
  ➢ Revenues less Expenses = $967,000 Surplus
• 2016 Budget Adjustments
  ➢ Proposed Expenses $14,932,000
  ➢ Reductions ($199,000)
  ➢ Revised Expenses $14,733,000
• The Board then considered specific line items. Wills for Heroes support was part of the reduction listed above. After a call to the audience for further budget input, Jeff Jacobson from the Wills for Heroes program addressed the Board on the importance of the State Bar’s support.
  ➢ 8,955 wills have been prepared in 10 years.
  ➢ 17,000+ volunteer hours at 192 events.
  ➢ Program is still going strong and has a wait list.
  ➢ Tucson Fire Department alone has 385 new firemen who want the services.
  ➢ To date 14 of 15 counties served.
  ➢ Expansion to Veterans’ Clinics with discussions ongoing with other groups.
• Lisa Loo stated that with a $770K surplus and staff following the Board-approved budget guidelines, these additional cuts were not necessary and have unintended consequences that services will be lost.
• **MOTION:** Lisa Loo moved and Meredith Peabody seconded the motion to return to the original budget and restore the recommended reductions.

• **MOTION:** Dee-Dee Samet moved and Jimmie Smith seconded the motion to restore into the budget the money allocated to Wills for Heroes. Motion withdrawn as this line item is included in Ms. Loo’s original motion.

• **MOTION TO AMEND:** Diane Drain moved to amend the original motion to have staff maintain the reductions where possible. Died for the lack of a second.

• **FRIENDLY AMENDMENT TO THE ORIGINAL MOTION:** Samuel Saks moved to amend, seconded by Tyler Carrell, to give the staff the discretion to add back the reductions required to move the Strategic Plan forward. Friendly amendment accepted by Lisa Loo and Meredith Peabody. Motion carried unanimously to approve the 2016 Budget as originally presented.

**Capital Discussion:**

• **2016 Budget – Capital**
  - Capital $1,338,000
    - $791,000 AMS project
    - $163,000 IT projects
    - $384,000 Other

• **MOTION:** Coming from Committee, requiring no second, the Board unanimously adopted the entire budget, subject to the reductions being added back in staff’s discretion as outlined in the previous vote.

**Arizona State Uniform Laws Commission** – Hon. Sam Thumma and Timothy Berg

• Plan to introduce three Acts. Each are in various stages of progress.
  - Uniform Legal Electronic Material Act
  - Uniform Child Abduction Act

• Arizona has six commissioners, no paid staff and receives lobbying support from Fennemore Craig, Mr. Berg’s law firm. The Commission is an unfunded state agency.
  - Requested Governor add $75,000 to his budget.
  - Requesting the State Bar to support the Acts and their request for funding from the State.

• **MOTION:** Bryan Furuya moved, Anna Thomasson seconded and the motion carried to assign State Bar Lobbyist Janna Day to support the efforts of the Arizona State Uniform Laws Commission on behalf of the State Bar.

**Appointments Committee** – Chair Jeffrey Willis

**ABA House of Delegates – two openings**

• Six candidates were vetted. The Committee recommended the following: appoint Lynda Shely and reappoint Tom Ryan.
• MOTION: Jim Smith moved, Dee-Dee Samet seconded, and the motion carried over three dissents to appoint Lynda Shely and reappoint Tom Ryan as ABA House of Delegates representatives.

DNA PEOPLE’S LEGAL SERVICES, INC. BOARD OF DIRECTORS — one opening

• Four new applications and six previous applications were vetted. The Committee recommended Ms. Nancy White, Mr. John Sledd and Ms. Guadalupe Gutierrez to the Board for consideration.
• MOTION: Dee-Dee Samet moved and Lisa Loo seconded the motion to appoint Nancy White.
• MOTION: Brian Furuya moved and Jim Penny seconded the motion to appoint John Sledd.
• MOTION: Hector Figueroa moved, Steve Hirsch seconded the motion to appoint Guadalupe Gutierrez.
• VOTE: By a show of hands, John Sledd received 17 votes and was selected to fill the DNA Board vacancy.

CONSENT AGENDA – President Trachtenberg
a) Approval of October 23, 2015 Board of Governors Meeting Minutes
b) Resignations in Good Standing
c) Reinstatements
   i) Reinstatement to Practice of Members Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
   ii) Reinstatement to Practice of Members Suspended for Non-Compliance With Annual Membership Dues and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
d) Proposed Petition submitted by the Family Practice & Procedure Committee to Amend Rules 2, 5, 10, 14, 24, 26, 27, 28, 41, 42, 44, 45, 49, 66, 67, 68, 73, 76, 91, and 95, Ariz. R. Fam. L. P.
e) Proposed Petition submitted by the Family Practice & Procedure Committee to Amend Rule 78, Ariz. R. Fam. L. P.
f) Proposed Petition submitted by the Family Practice & Procedure Committee to Amend Rules 65 and 76, Ariz. R. Fam. L. P.
• MOTION: Tyler Carrell moved, Steve Hirsch seconded, and the motion carried unanimously to approve the Consent Agenda as presented above.

RULES COMMITTEE – Chair Steve Hirsch
Mr. Hirsch pointed out that included in the Consent Agenda were three Petitions that were approved by Board vote following a positive recommendation by the Rules Committee. Two matters were being presented to the Board for discussion and vote.
Legal Services Committee Proposed Petition to Amend Rules of Procedure for Eviction Actions

- Ellen Katz appeared on behalf of Legal Services Committee. Three previous times the Board submitted a similar petitions crafted by the Committee to the Supreme Court, which did not act in adopting the relief sought. Included in this revised petition is a proposed two-year trial period allowing a change of judge. Justice of the Peace C. Steven McMurry, as he had on previous occasions, spoke against the petition indicating that judges will be noticed and that the proposal adversely affects self-represented litigants
- MOTION: Mike Baumstark moved and Diane Drain seconded the motion to file the Petition.
- FRIENDLY AMENDMENT: Sam Saks moved, Jim Smith seconded, and the amendment was accepted to modify the change of judge trial period to one year.
- VOTE: Passed by a vote of 16-5.

Civil Jury Instructions (Civil RAJI’s)

- The Board has final say regarding approval of proposed jury instructions. Language in one Instruction was discussed - under Intentional Torts #24 – “Later approval (instead of “Ratification”) of the actions to make the community liable.”
- MOTION: Dee-Dee Samet moved to change the suggested wording from “later approved” to “ratified” The motion failed for lack of a second.
- MOTION: Jim Smith moved, Diane Drain seconded, and motion carried over one dissent to approve the Civil RAJI’s as submitted to the Board.

PROGRAM REVIEW COMMITTEE – Chair Alex Vakula

- No report as Mr. Vakula was unable to attend the Board meeting.

STRATEGIC PLANNING COMMITTEE – Chair Lisa Loo

- The first meeting was held November 20th.
- The committee asked Senior Leadership to provide initial recommendations of the appropriate party(s) responsible and the timeline for each action item contained in the Plan. In order to provide adequate time for the staff’s work, it was agreed to cancel the December and January committee meetings. The next meeting will be held February 12.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:00 p.m.

Respectfully submitted,

Steven A. Hirsch
Secretary-Treasurer