

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
December 8, 2017
Phoenix, AZ**

BOARD MEMBERS PRESENT: Alex Vakula, President, Prescott; Brian Furuya, Vice President, Flagstaff; Jeffrey Willis, President-Elect, Tucson; Lori Higuera, Secretary-Treasurer, Phoenix; Daniel Mazza, Young Lawyers Division President, Phoenix; Tyler J. Carrell, Phoenix; David Wm. Engelman, Phoenix; Hector Figueroa, Payson; Denis M. Fitzgibbons, Casa Grande; Patrick Greene, Tombstone; Robert J. McWhirter, Phoenix; Pouria Paknejad, Phoenix; Jennifer Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jessica Sanchez, Phoenix; Sara A. Siesco, Phoenix; Jimmie Dee Smith, Yuma; Benjamin P. Taylor, Phoenix; Public Members: Jason E. Cobb, Phoenix; John Gordon, Prescott Anna C. Thomasson, Phoenix; and At-Large Members: David K. Byers, Phoenix; Paul Senseman, Phoenix; Ex-Officio Members: Gary Stuart, on behalf of Dean Douglas Sylvester, Tempe; Leah Won on behalf of Dean Marc Miller, Tucson; and Lisa S Loo, Immediate Past President, Tempe;

EXCUSED ABSENCES: Ex-Officio Member: Dean Penny Wilrich, Phoenix

OTHERS PRESENT: Nina Benham, Board Services Specialist; Matt Campbell, Help Desk Technician; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Communications Officer; Kathy Gerhart, Chief Financial Officer; Gayle Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Rick Palmatier, Assistant General Counsel; Lisa Panahi, General Counsel; John Phelps, CEO/Executive Director; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; George Schader, Information Technology Manager; and Carrie Sherman, Director of Board Operations and Justice John Lopez IV.

GUESTS: Jack Levine, Bev Burns, Judge Alison Bachus, Mark Harrison, Josh Whitaker and Lisa Ryan

President Alex Vakula called the Board meeting to order at 8:35 a.m.

CALL TO THE PUBLIC – President Vakula made a Call to the Public. Each person requesting time is allowed three-minutes to address the Board of Governors.

- Jack Levine presented to the Board of Governors his perception of the financial status of the State Bar and his concerns regarding big firms' representation of the utility companies.

PRESIDENT'S REPORT – Alex Vakula

- Thanked Board member Anna Thomasson for hosting the Board of Governors' Holiday Party at her home Thursday, December 7. In attendance were Board members, a number of past presidents, members of the Supreme and Appellate Courts and members of the staff's Leadership Team.
- Convention planning going well.

PRESIDENT'S REPORT (Continued)

- Next week attending the Arizona Society of Association Executives' Annual Awards Gala in Scottsdale. The State Bar will receive the Excellence in Education Award for its seminar on dementia.

BAR LEADERSHIP INSTITUTE (BLI) PROPOSED EXPANDED MISSION – Judge

Alison Bachus

- BLI has been in existence for 11 years with 157 graduates;15 in the current class
- They have added a Community Service Project to their activities
- BLI graduates are bar leaders:
 - 29% have served on boards of local bar associations
 - 12% (19 graduates) have or will serve as president of a local bar association
 - 3 elected and currently serve on the State Bar of Arizona Board of Governors
- Proposal is to restructure the BLI governing body and expand the BLI's mission.
 - Expand the program, utilizing the talent and enthusiasm of the alumni to create a true Institute – with a Governing Council comprised primarily of BLI graduates appointed by the State Bar to staggered two-year terms.
 - Annual forum – could bring together BLI graduates and other stakeholders to discuss important policy issues of interest to diverse lawyers and/or the Board of Governors. It would address strategic issues facing the legal profession and serve as a year round “brain trust” for big picture issues. The BLI Council would choose a topic based on survey results and work with Bar staff to recruit faculty and develop the “Town Hall”. A final report of recommendations would be provided to the Board of Governors, BLI graduates and posted on the Bar's website.
 - The Council would also oversee other alumni engagement events, including but not limited to, networking and professional development programs coordinated with the Bar's CLE Department as well as the curriculum for the leadership development program.
 - **MOTION:** Tyler Carrell moved, Pouria Paknejad seconded and the motion carried unanimously to approve the proposed restructure of the BLI Program and expand the Program's mission.

COMMUNICATIONS/GOVERNMENT RELATIONS DIVISION – Legislative Report –

Rick DeBruhl

- Arizona isn't a state that pre-files numerous bills. Currently 45 bills have been filed; potential total of 1200.
- State Bar has two bills this session:
 - Probate Trust Code technical changes; Senator Bob Worsley, District 25, is the sponsor.
 - Arizona LLC Act amendments.
- Mr. DeBruhl encouraged Board members to meet their law makers

CONSENT AGENDA – Alex Vakula

- a) Approval of October 27, 2017 Board Meeting Minutes
- b) Approval of Resignations
 - i) In Good Standing
 - ii) Approval of Resignation in Lieu of Reinstatement

CONSENT AGENDA (Continued)

- c) Approval of Reinstatements of Member(s) 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) Approval of Proposed Petition to Amend Rules 38, 39, 49, 77, and 84, Ariz. R. Civ. P.
- e) Approval of Proposed Petition to Amend Rule 7, Ariz. R. Civ. App. P. and Rules 62 and 69, Ariz. R. Civ. P.
- f) Approval of Proposed Petition to Amend Rules 65(A)(2)(b), Ariz. R. Fam. L. P.
- g) Approval of Proposed Petition to Amend the Rules of Procedure for Eviction Actions
 - President Vakula asked if there was anything that should be removed from the Consent Agenda, hearing nothing,
 - **MOTION:** Tyler Carrell moved, Pouria Paknejad seconded, and the motion carried unanimously to approve the Consent Agenda.

CEO/ED REPORT – John Phelps

- Introduced Matt Campbell, Help Desk Technician, IT Department, and thanked him for handling all technological aspects of the Board meetings. Mr. Phelps wished Mr. Campbell a happy birthday.
- Thanked the Board for approving his attendance at the Stanford Executive Education “Leading Change and Organizational Renewal Program” held on Sunday, October 29 to Friday, November 3. Mr. Phelps appreciated the investment in his education and the program was very informative.
- Noted the good working relationship the Bar has with the Supreme Court and turned it over to Dave Byers, Director of the AOC, to discuss the possible restructure of the State Bar.
 - Mr. Byers reported that the Court has expressed great support for the Bar and the work it does.
 - No immediate plans to restructure the Bar.
 - The Court plans to poll the membership the first of the year on one issue: if given the option would the attorney pay only for the mandatory/regulatory programs (discretionary programs/services would be a separate fee)?
 - Elements of this option would be described: fees; what services the member would forfeit; remain a licensed attorney but have no State Bar attorney number; etc.
 - Discipline System – if it were moved to the Court the staff would become State employees at a 20% higher cost due to state pensions.
 - The Court will regroup once the survey results are in.

AZBAR.ORG EMAIL SERVICE – Lori Maxwell and John Phelps

- Follow-up from the October Board meeting discussion regarding the 2006 outdated member email software/system that can no longer be supported internally but can be outsourced at a price.
- The Board voted in October to discontinue this email service with the condition that staff return with a plan to implement the switch.
- Surveys were sent out to 1194 members that are active users of the az.bar.org email; 315 responded (26%); 854 are active members
- 800 of the 1194 use as primary email
- The survey asked if the email works effectively and 22% said no. There were many comments received from 78% about issues with the service.

AZBAR.ORG EMAIL SERVICE (Continued)

- It is estimated that approximately 500 members have the email printed on their stationery.
- Of the 800 that use as primary email 62% said they forward to another email address.
- 76 members have extended mailboxes which can take a little longer for the transition.
- IT worked with two members directly to transfer them to a new account and tested it with them.
- Propose communication plan to membership
 - launch December 14; goal to have affected members transfer to new service of their choosing (Office 365, GoDaddy, etc.) by March 31
 - Step-by-step transfer instructions provided by the Bar
 - Practice management checklist when one changes email service provided by the Bar
 - Ongoing outreach to affected members with one-on-one assistance provided if requested
- **MOTION:** Pouria Paknejad moved, Tyler Carrell seconded and the motion carried over two dissents to adopt the Plan to Phase Out the azbar.org Email service.

Break 9:50 – 10:10 a.m.

FINANCE AND AUDIT COMMITTEE – Brian Furuya

- Proposed 2018 Summary Budget and the 2018-2019 Proposed Capital Expense Budget - contained in the Board's materials and previously circulated twice for the Board's review. No inquiries received.
- The Human Resources Sub-Committee uses a third party for compensation review. They annually survey private, public and non-profit organizations to determine salaries and provide ranges in order to be competitive.
- Consistent with the five-year financial projections.
- Personnel costs have not exceeded 3% increase over the 2017 budget
- Revenues - \$16,109K:
 - Dues Income \$9,829K
 - CLE Income \$1,999K
 - Other Income \$4,281K
- Expenses - \$16,090K:
 - Personnel \$9,615K
 - Depreciation \$841K
 - Other Expenses - \$5,634K
- Recap - 2018 Budget - Operations
 - Revenues \$16,109K
 - Expenses \$16,090K
 - NET SURPLUS \$19K
- 2018 Budget – Capital \$853K:
 - \$424K – IT projects
 - \$127K Suite 220
 - \$302K Other
- IT Projects includes \$168K for software licensing upgrades, and \$110K for server hardware upgrade.
- Suite 220 tenant improvements represent the estimated cost of improvements needed to lease the space. With the projected lease of Suite 220 the 24th street building will be 100% occupied.

FINANCE AND AUDIT COMMITTEE (Continued)

- Other Capital expenditures includes \$83K for needed roof replacement, \$85K for parking garage resurfacing/repairs needed to extend the life of the garage, and \$50K for HVAC replacements as needed.
- **MOTION:** Comes as a motion from the Finance and Audit Committee, requiring no second, passed unanimously.

PROGRAM REVIEW WORKING GROUP – Lisa Loo and Lisa Deane

- Two proposals that were reviewed at the October Board meeting are returning for a vote.
- First gives the CEO authority to oversee recruitment and selection of participants for all of the remaining “non-committees”. This correlates with the work to reduce the number of committees from 28 to six.
- Suggestion from a Board member was to have three Board members appointed to review the applications and assist with the process.
- After discussion, the Board requested a summary sheet to list the panels, working groups etc. that would be a part of this decision.
- **MOTION:** Hector Figueroa moved and Jimmie Smith seconded to table the agenda item.
- Discussion ensued – Roberts Rules are not in effect except at the Annual Board Meeting. President Vakula determined that this agenda item will return later in the meeting for further discussion when the requested list could be provided by staff.
- 11:50 a.m. returned to topic for continued discussion
- Handout to the Governors provided the necessary information as to the Advisory Groups, Operational and Other Groups in the recommendation.
- **MOTION:** Tyler Carrell moved and John Gordon seconded to adopt the recommendation of the Program Review Working Group.
- **FRIENDLY AMENDMENT:** Dave Byers moved and Jimmie Smith seconded to exclude the AZ Attorney Editorial Board from the list. Tyler Carrell did not accept the friendly amendment.
- **VOTE:** Original motion passed over two dissents.
- Second proposal deals with the three committees that the Supreme Court reviewed - Ethics, Unauthorized Practice of Law (UPL) and Professionalism - and recommended sunseting the UPL committee as it currently exists and roll it into an Ethics advisory group and Professionalism into a working group.
- The Court will create a committee that will issue all formal Opinions on ethics, professionalism, and UPL, no longer a part of the charge of Ethics and UPL.
- **MOTION:** Tyler Carrell moved, Brian Furuya seconded and the motion carried unanimously to approve making the Ethics an advisory group (sunset the Unauthorized Practice of Law (UPL committee as it currently exists and roll it into the new ethics advisory group) and the Professionalism Committee a working group.

BOARD OF LEGAL SPECIALIZATION (BLS) – Lisa Panahi

- Proposed Rules and Regulations were previewed at the October Board meeting.
- Deadline for submitting to the Court is January 1, 2018.
- Vote required today on the rules and regulations only, and not the practice area commission standards.
- Membership was surveyed regarding the proposed changes and one comment was received from former Bar President Mark Harrison who addressed the Board.

BOARD OF LEGAL SPECIALIZATION (BLS)

- Mr. Harrison explained that he met with Ms. Panahi before addressing the Board and some of the concerns in his comment have been resolved. However, the BLS proposal and Mr. Harrison's comment still differ as it relates to confidentiality in comments received by BLS about an applicant. Mr. Harrison proposed that the name of the party/parties making those comments or accusations should be divulged to the applicant, but confidential to third parties other than an applicant's attorney.
- The BLS is the governing body that makes decisions regarding who becomes a specialist.
- After a lengthy discussion which included Mr. Harrison's suggested changes the Board was ultimately left with three options: adopt recommendations as currently presented; adopt recommendations as presented and incorporating Mr. Harrison's comment; or present everything to the Court and have the Court determine the outcome.
- **MOTION:** Robert McWhirter moved, Jimmie Smith seconded and the motion carried over three dissents and one abstention to adopt the recommendations as currently presented, but to also incorporate the comment from Mr. Harrison, only as it pertains to the confidentiality issue, to the Supreme Court.

11:40 a.m. – 11:50 a.m. Break for lunch

APPOINTMENTS COMMITTEE – Jessica Sanchez

ARIZONA COMMISSION ON APPELLATE COURT APPOINTMENTS (2 openings outside Maricopa County; may be affiliated with any political party)

- Ms. Sanchez reviewed the slate as recommended by the Appointments Committee
 - Mr. Brandon J. Kavanagh, Mangum Wall Stoops & Warden PLLC, Flagstaff
 - Ms. Adriane J. Hofmeyr, Quarles and Brady LLP, Tucson
 - Ms. Sonia M. Ramirez Sardinias, Law Office of Sonia M. Ramirez PLLC, Yuma
 - Mr. Christopher L. Straub, Pima County Attorney's Office, Tucson
 - Mr. D. Shawn Taylor, Taylor Law Office, Snowflake
 - Ms. Tina L. Vannucci, Fitzgibbons Law Offices PLC, Casa Grande
- **MOTION:** Jimmie Smith moved and Hector Figueroa seconded the motion to add Mr. David W. "Wade" Noble, Noble Law Offices, Yuma, to the slate; failed by a vote of 9-13.
- **MOTION:** Dee-Dee Samet moved and Hector Figueroa seconded the motion to add Mr. Oscar S. Lizardi, Rusing Lopez & Lizardi PLLP, Tucson, to the slate; motion failed.
- **MOTION:** Coming from the Appointments Committee, requiring no second, approved the slate above be forwarded to the Governor for his consideration and ultimate appointments.

MARICOPA COUNTY COMMISSION ON TRIAL COURT APPOINTMENTS

The Board voted unanimously to submit the following slates, as recommended by the Committee, to the Governor for his consideration and ultimate appointments:

SUPERVISORIAL DISTRICT 1

- Ms. Barbara A. Marshall (Incumbent), Maricopa County Attorney's Office
- Ms. Jessica L. Everett-Garcia, Perkins Coie LLP
- Mr. Richard L. Cobb, Lake and Cobb PLC
- Mr. Max H. Covil, ADOT

MARICOPA COUNTY COMMISSION ON TRIAL COURT APPOINTMENTS (Continued)

SUPERVISORIAL DISTRICT 5

- Ms. Maria L. Schaffer, Maricopa County Legal Defender's Office
- Ms. Rachel F. Johnson, Rachel Frazier Johnson Law
- Ms. Lina G. Garcia, Maricopa County Public Defender's Office

Pima County Commission on Trial Court Appointments

- **MOTION:** Jimmie Smith moved, Robert McWhirter seconded the motion to rank Mr. Walter B. Nash III of the Law Offices of Walter Nash, Tucson, as #1 on the slate.
- **MOTION TO AMEND:** to not rank the candidates (slate would be listed in alphabetical order). The amended motion failed.
- **VOTE:** The Board subsequently voted to submit the following slates, as recommended by the Committee, to the Governor for his consideration and ultimate appointments:

SUPERVISORIAL DISTRICT 4

- Ms. Tamara N. Mulembo, Federal Public Defender's Office
- Mr. Walter B. Nash III, Law Offices of Walter B Nash III PC
- Mr. John E. Aboud, Aboud & Aboud PC
- Mr. Roberto C. Garcia, Farhang & Medcoff PLLC

SUPERVISORIAL DISTRICT 5

- Ms. Sherry Janssen Downer (Incumbent), Law Offices of Sherry Janssen Downer
- Mr. Peter Akmajian, Schmidt Sethi & Akmajian PC
- Ms. Adriane J. Hofmeyr, Quarles & Brady LLP

PINAL COUNTY COMMISSION ON TRIAL COURT APPOINTMENTS

The Board voted unanimously to submit the following candidates, as recommended by the Committee, to the Governor for his consideration and ultimate appointments:

SUPERVISORIAL DISTRICT 2

- Mr. Tad A. Davis, Law Office of Tad Davis PLLC

SUPERVISORIAL DISTRICT 5

- Mr. James C. Dutson (Incumbent), Dutson Law Firm Ltd.

BOARD APPOINTMENTS – Alex Vakula

Arizona Foundation for Legal Services & Education

- The Board of Governors makes six appointments to the Foundation's Board
- Current representatives are Kenney Hegland, Jennifer Rebholz, Dee-Dee Samet and Alexia Semlek
- Representatives Sam Saks and Geoffrey Trachtenberg have served one three-year term and are not seeking reappointment
- Notice of the two positions had previously been circulated to the Governors; John Gordon and Robert McWhirter expressed interest in serving on the Foundation's Board
- **MOTION:** By acclamation, Messrs. Gordon and McWhirter were appointed to serve three-year terms on the Foundation's Board.

Public Member, Board of Governors

- Anna Thomasson's first three-year term on the Board of Governors expires in June 2018
- If Ms. Thomasson is not reappointed the Appointments Committee will begin the process early next year to solicit candidates so the Board may make an appointment by May
- Ms. Thomasson indicated her desire to continue her Board service if that is the will of the Board
- Ms. Thomasson's contributions to Board work were mentioned by many of the members
- **MOTION:** Tyler Carrell moved, Brian Furuya seconded and the motion carried unanimously to have Ms. Thomasson continue her Board service once her current term expires in June 2018. The Board was reminded that pursuant to amendments to Rule 32, Ariz. R. Sup. Ct., the entire Board will reset in 2019. All elected members must seek re-election and all appointed members must seek reappointment, with the Supreme Court making all future appointments.

RULES AND REVIEW COMMITTEE – Denis Fitzgibbons

Proposed Civil Jury Instructions

- **MOTION:** Coming as a motion from the Rules Review Committee, no second required, the Board voted unanimously to support and approve the proposed Nuisance Civil Jury Instructions.

Proposed Petition to Amend Rule 32(c)(7), Ariz. R. Sup. Ct.

- Petition was previewed at the October meeting of the Board.
- Addressing waiver of dues for reasons of hardship.

RULES AND REVIEW COMMITTEE (Continued)

- Member may apply for a waiver of dues based on personal hardship. Currently the Board of Governors is authorized to grant such waivers. The process by which State Bar staff receives, reviews, and makes recommendations to the Board regarding personal hardship waivers is an administrative function, which often results in the Board accepting the recommendations made by State Bar staff. In an effort to streamline this process and relieve the Board of this administrative task to focus on more pressing governance matters, the State Bar proposes that the Chief Executive Officer/Executive Director be authorized to grant such waivers, with denials of such requests reviewed by the Board.
- **MOTION:** Coming as a motion from the Rules Review Committee, no second required, the Board voted unanimously to file the Petition to Amend Rule 32(c)(7), Ariz. R. Sup. Ct.

Proposed Petition to Amend Rule 45, Ariz. R. Sup. Ct.

- Petition was previewed at the October meeting of the Board.
- The proposed amendment is necessary to eliminate certain outdated provisions of this Rule, and to allow delinquency fees to change in the future without further Rule amendments.
- The proposed amendment further gives the CEO/ED authority to decide on MCLE compliance, with right to appeal to the Board of Governors.
- **MOTION:** Coming as a motion from the Rules Review Committee, no second required, the Board voted unanimously to file the Petition to Amend Rule 45, Ariz. R. Sup. Ct.

LAWYER WELLNESS SURVEY UPDATE – Rick DeBruhl

- 2,435 Members responded to the September survey
- Job Satisfaction – 72% satisfied with their jobs
- Great Deal of Stress – 75% indicated they have a great deal of stress
- Hours Worked – 61% work more than 45 hours per week
- Stress Strategies – 65% are less likely to use drugs or other forms of over indulgence
- Stress Strategies – 65% are more likely to Keep Calm and Make a Plan
- Leave the Practice of Law? – 49% Yes (but an intentional planned career move in the future)

HUMAN RESOURCES SUB-COMMITTEE (HRSC) – Anna Thomasson

- Referenced in the Board materials the timeline for the CEO's/ED's Annual Review and encouraged participation in this important process, which is the same process that has been used over the past several years.

JUDGE SEAN BREARCLIFFE'S November 14th Investiture

- Jeff Willis attended in President Vakula's stead and presented the ceremonial gavel set on behalf of the unified State Bar.
- Mr. Willis reported it was a very well attended event.

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 12:55 p.m.

Respectfully submitted,

Lori Higuera
Secretary/Treasurer

AMENDMENT TO THE MINUTES:

The Board of Governors met on January 26, 2018 and voted to amend the Program Review Working Group section - page 3648, as follows:

- MOTION: After discussion and clarification of the Board's previous vote on the matter, Tyler Carrell moved, Jeff Willis seconded and the motion carried unanimously to amend the December 8 minutes on page 3648 to reflect that the *Arizona Attorney* Editorial Board would be appointed by the president.

Respectfully submitted,

Lori Higuera
Secretary/Treasurer