February 27, 2014

BOARD MEMBERS PRESENT: Whitney Cunningham, President, Flagstaff; Richard Platt, President-Elect, Coolidge; Bryan B. Chambers, First Vice President, Globe; Lisa S. Loo, Second Vice President, Tempe; Alex Vakula, Secretary-Treasurer, Prescott; Richard D. Coffinger, Glendale; Tom Crowe, Phoenix; Hon. David G. Derickson, Phoenix; Diane L. Drain, Phoenix; Patrick Greene, Tombstone; Melissa S. Ho, Phoenix; Jack Levine, Phoenix; James B. Penny, Tucson; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Geoffrey Trachtenberg, Phoenix; Jeffrey Willis, Tucson; Public Members: Tony Finley, Tucson; Audrey R. Jennings, Scottsdale; At-Large Members: David K. Byers, Phoenix; Jennifer Burns, Tucson; and Virginia Herrera-Gonzales, Mesa; Ex-Officio Members: Amelia Craig Cramer, Immediate Past President; Gary Stuart on behalf of Dean Douglas Sylvester, Tempe and Dean Marc L. Miller, Tucson.

EXCUSED ABSENCES: Alyse Meislik, Young Lawyers Division, Phoenix; Public Member: Meredith Peabody, Prescott and John J. Sullivan, Sahuarita; Ex-Officio Member: Dean Shirley Mays, Phoenix

OTHERS PRESENT: Nina Benham, Board Services Specialist; Justice Ann A. Scott Timmer, Supreme Court Liaison; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Communications Officer; Tim Eigo, Arizona Attorney; John Furlong, General Counsel/Deputy Director; Martin Gaxiola, Accounting Manager; Kathy Gerhart, CFO; Rob Hosch, Technology Support Director; Gayle V. Jackson, Human Resources Director; Ann Leslie, Executive Assistant; John Phelps, CEO/Executive Director; Pat Sallen, Director, Special Services and Ethics-Deputy General Counsel; Carrie Sherman, Director of Board Operations; and Maret Vessella, Chief Bar Counsel.

ADDITIONAL GUESTS ADDRESSING THE BOARD: Rosemary Anton, Esq.; Kim Barnhart, AZFLSE; Tyler J. Carrell, YLD Treasurer; MCBA YLD, President-Elect; Brett Dunkelman, Antitrust Section; Christopher Gilfillan, Record Reporter; James Griffith, Esq.; Mauricio “Mo” Hernandez, Esq.; Denise Quinterri, Esq., Denise M. Quinterri Law Office; James B. Reed, Esq., Former Chair Committee on Persons with Disabilities in the Legal Profession and current member of the Appointments Committee; Tom Ryan, Law Office of Tom Ryan, ABA House of Delegates; Debbie Weecks, Esq., Sole Practitioner.

President Whitney Cunningham called the Board meeting to order at 2:05 p.m.

PRESIDENT’S REPORT – President Cunningham

- Announced voting members with excused absences: John Sullivan, Meredith Peabody and Alyse Meislik.
• Announced the passing of the Bar’s former CFO, Tom Johnson, who had predicted that it would take five years for the $800K first floor build out to pay for itself. The addition of the Daniel J. McAuliffe CLE Center has resulted in the need to rent off-site venues two dozen times less in 2013 alone, resulting in a $160K cost savings.
• There are two proposed dues models for consideration:
  - $15/$10: $15 dues increase and reallocation of the $10/member fee from the Client Protection Fund (CPF) for four consecutive years beginning in 2015, 33% increase in membership dues late fees and MCLE late compliance and late filing fees in 2015, along with expense reductions of $300K including a reduction in staff of three to five FTE’s.
  - $10/$5: $10 dues increase and reallocation of $5 (of the $10/member fee) from the CPF for four consecutive years beginning 2015, 33% increase in membership dues late fees and MCLE late compliance and late filing fees in 2015, along with expense reductions of $500K including a reduction in staff of seven FTE’s.
• Beyond 2019, in both proposals, there would be potential increases tied to some index, the Consumer Price Index, for example.
• The Bar does not have a reserve cash account. Any “surplus” is reinvested in the building that the State Bar purchased a few years ago. A revolving line of credit was established rather than a typical mortgage. When dues income comes in, that sum is used to pay down the line of credit annually. Toward the end of the year, the SBA borrows money from the revolving line of credit to pay its bills. At the time the credit line was established, the interest rate was tied to the current LIBOR rate making it a very reasonable and creative way to finance the building and to leverage its value.
• The line of credit renewal is up in July 2014 and will require renegotiation in order to continue using it as the Bar has in the past. Otherwise a traditional mortgage would be required which would be at a much higher interest rate.
• The Scope and Operations Committee voted unanimously to recommend to the Board that it support the $15/$10 dues increase proposal model to begin in 2015 for four years with any automatic increase beginning in 2019 tied to an index that is nationally recognized.
• Richard Coffinger requested that the Board vote on the motion to table from the December 12, 2013, meeting regarding the $25 proposed dues increase. President Cunningham asked that that action wait until after the membership had the opportunity to speak.

Public Input (Membership)

• James Reed spoke in support of a dues increase. The following members spoke in opposition: Mauricio Hernandez; Denise Quinterri; Rosemary Anton; Tyler Carrell
• Debbie Weecks discussed her proposal - a $30 one-time assessment for attorneys in practice 3+ years and active in-house counsel, or $472,000 to fund a new database.
• Public Comment portion of meeting concluded at 4:30 p.m.

Dues Proposal Continued – President Cunningham

• Recap: December 2013 the Program Review Committee proposed the $25 dues increase model and the Scope and Operations Committee recommended it to the Board.
• December 12-13 meeting: Motion to table this proposal until the February 2014 Board meeting.
Since that time there has been a Scope and Operations Committee recommendation to support the $15/$10 model. Having met two days prior, the Finance Committee recommended postponing a vote and to continue to study a dues increase further.

Additional debate and comments continued. President Cunningham stated there is important work to be done - many young lawyers who can’t find jobs, mature lawyers who are overwhelmed, etc. - and the Board can’t get to these important issues until the Bar’s financial house is in order.

MOTION: Finance Committee recommendation comes as a motion, requiring no second, to table action regarding a dues increase to allow further study and consideration at a future Board meeting. Motion failed by a vote of 9-12.

MOTION: Jeff Willis moved and Jennifer Burns seconded the motion to modify the initial dues increase proposal of $25 from the Program Review Committee to the Scope and Operation Committee’s recommended $15/$10 model beginning in 2015 through 2018, which includes a proposed CPI-type index, the proposed increase in late fees and $300K in reduced expenditures.

MOTION TO AMEND: After further discussion, Jeff Willis amended his motion, which was accepted by Jennifer Burns, to exclude the CPI-type index. The amendment carried over the dissent of Tony Finley.

MOTION TO AMEND: Bryan Chambers moved and Geoff Trachtenberg seconded the motion that there not be a dues increase in 2015, but to reallocate the $10/member Client Protection Fund fee in 2015 only and to approve the proposed late fees and a $300K reduction in expenses. The amendment failed by a vote of 10-12.

MOTION TO AMEND: Sam Saks moved and Geoff Trachtenberg seconded the motion to reallocate the $10/member Client Protection Fund fee. Motion failed.

RESTATED MOTION: Scope and Operations Committee’s recommendation to (1) support a $15 yearly dues increase and reallocation of the $10/member CPF fee for four consecutive years (2015-2018), (2) a 33% increase in membership dues late fees and MCLE late compliance and late filing fees in 2015, (3) budget reductions of $300K and staff reductions, and (4) no Consumer Price Index (CPI) attached. In a vote of 11-11, President Cunningham cast the deciding vote in favor of the motion. Those voting against the motion requested a roll call. The nay votes were as follows: Bryan B. Chambers; Richard Coffinger; Hon. David G. Derickson; Tony Finley; Patrick Greene; Melissa Ho; Jack Levine; James Penny; Sam Saks; Dee-Dee Samet; and Geoffrey Trachtenberg.

Mr. Ryan summarized the Delegates meeting in Chicago and the resolutions that were voted upon including, but not limited to:

- **Resolution 101** – Concerns the approval and re-approval for certain paralegal education programs including Everest College Phoenix, Paralegal Program, Phoenix, AZ; Phoenix College, Paralegal Studies Program, Phoenix, AZ. (Adopted by ABA)
- **Resolution 102A** – Urges cooperation and coordination among various levels of judicial and legislative bodies. (Adopted by ABA)
- **Resolution 103A** – Urges guarantee of effective appellate representation for juveniles. (Adopted by ABA)
ABA President Jim Silkenat visited Arizona recently and met with leaders of the State Bar and its ABA Delegates.

Meeting adjourned 5:25 p.m. to February 28, 2014.

DAY TWO

February 28, 2014

BOARD MEMBERS PRESENT: Whitney Cunningham, President, Flagstaff; Richard Platt, President-Elect, Coolidge; Bryan B. Chambers, First Vice President, Globe; Lisa S. Loo, Second Vice President, Tempe; Alex Vakula, Secretary-Treasurer, Prescott; Richard D. Coffinger, Glendale; Hon. David G. Derickson, Phoenix; Diane L. Drain, Phoenix; Patrick Greene, Tombstone; Melissa S. Ho, Phoenix; Jack Levine, Phoenix; Alyse Meislik, Young Lawyers Division, Phoenix; James B. Penny, Tucson; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Geoffrey Trachtenberg, Phoenix; Jeffrey Willis, Tucson; Public Members: Tony Finley, Tucson; Audrey R. Jennings, Scottsdale; Meredith Peabody, Prescott; At-Large Members: Mike Baumstark, Phoenix; Jennifer Burns, Tucson; and Virginia Herrera-Gonzales, Mesa; Ex-Officio Members: Amelia Craig Cramer, Immediate Past President; Dean Marc Miller, Tucson; and, Gary Stuart on behalf of Dean Douglas Sylvester, Tempe.

EXCUSED ABSENCES: Tom Crowe, Phoenix; Public Member: John J. Sullivan, Sahuarita; Ex-Officio Member: Dean Shirley Mays, Phoenix.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Justice Ann A. Scott Timmer, Supreme Court Liaison; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Communications Officer; Tim Eigo, Arizona Attorney; John Furlong, General Counsel/Deputy Director; Martin Gaxiola, Accounting Manager; Kathy Gerhart, CFO; Gayle V. Jackson, Human Resources Director; Ann Leslie, Executive Assistant; John Phelps, CEO/Executive Director; Pat Sallen, Director, Special Services and Ethics -Deputy General Counsel; Carrie Sherman, Director of Board Operations; and Maret Vessella, Chief Bar Counsel.

8:30-9:00 a.m. – Meet and Greet with the Staff

9:00 a.m. – Call to Order

President's Report

- The 2014 Annual Convention will be held June 10-13th in Tucson at the Westin La Paloma.
- Board members were encouraged to register and to also become Patrons.

CEO/ED REPORT – John Phelps

- Bar Track – A popular service offered to the membership that tracks legislative issues that could affect lawyers’ practices and the State Bar.
- MLAC – Public Service – Military Legal Assistance Committee partnered with Army OneSource and recruited volunteers to provide legal services to veterans. At the recent Arizona StandDown 23 volunteers provided legal assistance to 177 veterans. Arizona’s program is so successful it is being modeled on a national level as an example of best practices.
• **Arizona Wellness Council** – For the third year in a row, the State Bar has been recognized for its employee wellness program which costs little to run but produces huge healthcare premiums savings.

**FINANCE COMMITTEE** – Chair Richard Platt

- Mr. Platt introduced CFO Kathy Gerhart to discuss the Finance Committee meeting.
- The new auditors, Eide Bailly LLP, completed their field work and have given a positive response. There are small technical changes that will show on the audited statement.
- Some funds relating to Sections will show as temporarily restricted funds.
- The audit of the Client Protection Fund (CPF) has been done separately in the past but was conducted at the same time as the State Bar audit as a cost saving measure. CPF is filed on the same tax return. Some concern was expressed regarding combining the audits. Information regarding the legal versus financial reporting will be added to the April Board agenda.
- December Financials Summary
  - For the twelve months ended December 31, 2013, the Bar’s unaudited income statement generated a surplus of $623K. The surplus year-to-date is $616K more than budget. This is due to $99K more in revenues, $481K less in operating expenses, $1K more in Sections expenses, $69K less in Professional Services (Thomas case), and $32K more in expenses for Access to Justice initiatives. Cash and cash equivalents decreased $512K which includes draws of $1,700K and principal payments of $2,200K on the line of credit. The balance sheet reflects a Net Worth/Net Assets of $8,837K.

**CONVENTION SILENT AUCTION UPDATE** – Dee-Dee Samet

- The silent auction will be held to benefit Southern Arizona Children’s Advocacy that assisted 1400 children who went through the system last year.
- Items needed from all over the state include sports tickets, weekend staycations, themed baskets, restaurants certificates, etc.
- A donated king size quilt is being made by eight ladies for this worthy cause.

**ARIZONA ASIAN AMERICAN BAR ASSOCIATION (AAABA)** – Lisa Loo

- The National Asian Pacific American Bar Association’s 2014 Convention will be held in Arizona on November 7-9 at the Westin Kierland Resort in Scottsdale.
- SB1062 - NAPABA wrote Governor Brewer expressing its concern over this legislation and were considering pulling the convention from Arizona due to the non-inclusive message.
- The AAABA requested a letter from the State Bar’s president urging NAPABA to move forward with its plans to have its convention in Arizona.
- MOTION: Richard Platt moved and Bryan Chambers seconded the motion to authorize the President to sign a letter that is Keller appropriate and states the SBA’s mission and core values (including “diversity”) and welcomes NAPABA to Arizona.
- MOTION TO AMEND: Jim Smith moved and David Derickson seconded the motion to have the letter simply encourage NAPABA to come to Arizona. Motion to amend failed.
• **RESTATED MOTION:** The original motion to authorize the President to sign a “Keller pure” letter that states the SBA’s mission and to encourage NAPABA to hold its convention in Arizona. Motion passed over the abstention of Samuel Saks.

**RULES PETITION – Late filed** – General Counsel John Furlong

- LateFiled Rules Petition Amending Capital Case PostConviction Relief Proceedings.
- Because comments are due April 15, and the Board will not meet again until April 24-25, the Board was asked to authorize the Scope and Operations Committee to determine the comment or action to be taken, at its March 20 meeting, on behalf of the Board.
- **MOTION:** Jack Levine moved, Jim Smith seconded and the motion carried over the abstention of Virginia Herrera-Gonzales to authorize Scope to determine the comment or action to be taken regarding the LateFiled Rules Petition Amending Capital Case PostConviction Relief Proceedings.

**CONSENT AGENDA**

- **MOTION:** Richard Platt moved, Patrick Greene seconded and the motion carried unanimously to approve the Consent Agenda:
  a) December 12-13, 2013 Board of Governors Meeting Minutes
  b) Reinstatements:
    - Reinstatement of Members Suspended for NonCompliance with Annual Membership Dues and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
    - Reinstatement to Practice of Members Suspended for Non-compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
  c) Resignations
    - Resignations in Good Standing
    - Resignations in Lieu of Reinstatement
  d) 2014 Dues Waivers
  e) MCLE Suspensions re 2012-13 Non-Compliance (updated handout 2/28/14)

**APPOINTMENT COMMITTEE – Chair Lisa Loo**

**Appellate Commission (five seats)**

- **MOTION:** The Appointments Committee recommended that the following incumbents be reappointed:
  - Mr. William Ekstrom. Mohave County Attorney's Office - Mohave County
  - Mr. Ted Schmidt, Kinerk Schmidt & Sethi PLLC - Pima County
  - Ms. Jill Harrison, W.L. Gore & Associates, Inc. - Coconino County
  - Mr. Michael "Mick" Rusing, Rusing Lopez & Lizardi PLLC -Pima County

To fill the 5th seat, the Appointments Committee recommended that the Bar's previous nominees be considered:

- Mr. Peter Guererro, Roush, McCormack & Guererro - Maricopa County
- Ms. Lizzette Zubey, Amkor Technology Inc. - Maricopa County
- Mr. Wm. Michael Smith, Bowman & Smith -Yuma County
- Ms. Monica Klapper, U.S. Attorney's Office - Maricopa County
- Ms. Karen Hartman-Tellez, AG's Office - Maricopa County
If the Governor were to reconsider all of the vacancies and needs three names per vacancy, the Appointments Committee recommended these nominees in the following order:

- Mr. William Ekstrom, Mohave County Attorney's Office - Mohave County
- Mr. Ted Schmidt, Kinerk Schmidt & Sethi PLLC - Pima County
- Ms. Jill Harrison, W.L. Gore & Associates, Inc. - Coconino County
- Mr. Michael "Mick" Rusing, Rusing Lopez & Lizardi PLLC - Pima County
- Mr. Peter Guererro, Roush, McCracken & Guererro - Maricopa County
- Ms. Lizzette Zubey, Amkor Technology Inc. - Maricopa County
- Mr. Wm. Michael Smith, Bowman & Smith - Yuma County
- Ms. Monica Klapper, U.S. Attorney's Office - Maricopa County
- Ms. Karen Hartman-Tellez, AG's Office - Maricopa County
- Mr. Frank Moskowitz, Berk & Moskowitz PC - Maricopa County
- Mr. Milton Hathaway, Murphy, Schmitt, Hathaway & Wilson PLLC - Yavapai County
- Mr. Stephen Dichter, Christian Dichter & Sluga PC - Maricopa County
- Mr. Todd Kachtner, Fennemore Craig PC - Maricopa County
- Ms. Krista Carman, Warnock, MacKinlay & Carman PLLC - Yavapai County
- Mr. Troy Larkin, U.S. Customs & Border Protection - Pima County

MOTION: The Appointments Committee recommends sending up the 15 names above; motion carried over the dissent of Jim Smith and the abstention of Meredith Peabody.

Maricopa County Trial Court Commission – Supervisorial District 1

- MOTION: The Appointments Committee recommended:
  - Barbara A. Marshall, Maricopa County Attorney's Office
  - Ms. Isabel M. Humphrey, Hunter, Humphrey & Yavitz PLC
  - Mr. J. Robert Tolman, Tolman Law Firm
- Motion carried unanimously.

Pima County Trial Court Commission – Supervisorial District 1

- No new applications were received.
- MOTION: The Appointment Committee recommended the three previous nominees:
  - Ms. Carrie Rednour, Rednour Law Offices PLLC
  - Mr. Stephen Weiss, Karp & Weiss PC
  - Mr. John Leader, The Leader Law Firm PC
- Motion carried unanimously.

Pima County Trial Court Commission – Supervisorial District 2

- MOTION: The Appointments Committee recommended two previous nominees and one new applicant, respectively:
  - Ms. Nanette Warner, Of Counsel, Karp & Weiss PC
  - Ms. Maricela Meza, Karp & Weiss PC
  - Mr. Troy Larkin, U. S. Customs and Border Protection
- Motion carried unanimously.
Pima County Trial Court Commission – Supervisorial District 5
- MOTION: The Appointments Committee recommended two previous nominees and one new applicant, respectively:
  - Leticia Marquez, Federal Public Defender's Office
  - Rick Unklesbay, Pima County Attorney's Office
  - Sherry Downer, Fennemore Craig PC
- Motion carried unanimously.

Pinal County Trial Court Commission – Supervisorial District 1
- MOTION: The Appointments Committee reported that it received one application; candidate vetted and recommended by the Appointments Committee.
  - James Walsh, Walsh Consulting
- Motion carried unanimously.

City of Avondale Judicial Advisory Board – Newly forming Board
- 24 applications were received and vetted.
- MOTION: The Appointments Committee recommended the following to the Board; three nominations per opening are requested by the Avondale City Council:
  - Ms. Nonnie L. Shivers, Ogletree Deakins Nash Smoak Stewart PC
  - Ms. Trevi Grant, Grant Creighton & Grant PLC
  - Mr. Bacle Don Taylor, III, Phoenix Municipal Court
- Motion carried unanimously.

Conflict Case Committee – Lisa Loo
- The CCC has been sunsetted therefore the Appointments Committee will no longer recruit volunteer lawyers to serve on the committee. Some of the committee members have been appointed by the Supreme Court to serve on the new Independent Bar Counsel Attorney Panel. Conflicts will now be investigated and handled by the Independent Bar Counsel, a Court staff attorney.

COMMUNICATIONS DEPARTMENT – CCO Rick DeBruhl
- Introduction of Gary Strickland who reported to the Board on SB 1176 and HB2093.
- Proposed legislation takes away from judge the discretion to make a determination in the best interest of the ward.
- MOTION: David Byers moved, Jennifer Burns seconded and the motion carried unanimously to oppose this legislation and to authorize Lobbyist Janna Day to work on behalf of the State Bar to defeat it.

LEGISLATIVE UPDATE – Lobbyist Janna Day
- Three weeks remain for proposed legislation to crossover to House hearings. At that time any bill can morph into something completely different.
- HB2262 B Corporations - passed out of House 59-1.
• SB1353 Restructuring Act - at 79 pages it is overwhelming; meeting with the Senate President to review it. Supported by the Business Law Section. To-date no opposition expressed.

LEGAL SERVICES COMMITTEE – Anthony Young (via phone)
• The Legal Services Committee requested the Board’s support of a proposed draft Pro Bono Policy for Government Lawyers. It would be a model policy for governmental/public agencies to adopt or to use portions thereof in crafting their own policy to allow their staff attorneys to engage in pro bono work.
• MOTION: Bryan Chambers moved, Geoff Trachtenberg seconded and the motion carried unanimously to approve the Model Pro Bono Policy subject to correcting the Arizona Revised Statute referenced on the bottom of page one of the document to ARS § 41-191.B.2.

SOUTHERN ARIZONA LEGAL AID BOARD OF DIRECTORS OPENING – Anthony Young
• The SALA Board met and is amending its bylaws to reduce the Board’s size from 27 to 24 members which entails combining some representation from some counties; i.e., one Board member representing both Apache and Navajo counties.

OBITUARIES
To honor our members who have passed, a Web page has been created and will be posted at www.azbar.org/NewsEvents/InMemoriam.

ADJOURN
There being no further business to come before the Board of Governors, the meeting adjourned at 11:20 a.m.

Respectfully submitted,

Alex Vakula
Secretary-Treasurer