MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
June 10, 2014
The Westin La Paloma, Tucson, AZ – Canyon III

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; 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: Jennifer J. Burns, Tucson; David K. Byers, Phoenix and Virginia Herrera-Gonzales, Mesa; Ex-Officio Members: Amelia Craig Cramer, Immediate Past President; Dean Shirley Mays, Phoenix; Dean Marc L. Miller, Tucson; and

EXCUSED ABSENCES: Public Members: John J. Sullivan, Sahuarita; Ex-Officio Member: Dean Douglas Sylvester, Tempe.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Communications Officer; Carolyn de Looper, Membership Admin & Services Manager; Tim Eigo, Editor, Arizona Attorney; John Furlong, General Counsel/Deputy Director; 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; Patricia Seguin, Senior Legal Assistant; Carrie Sherman, Director of Board Operations.

GUESTS: Brian Y. Furuya; Steven A. Hirsch; Jennifer R. Rebolz; Erik J. Stone; Lori Huguera and Paul Senseman.

President Whitney Cunningham called the Board meeting to order at 1:15 p.m.

PRESIDENT’S REPORT – President Cunningham

- Congratulated newly elected, re-elected or appointed Board Members:
  - District 1 (Apache, Coconino, Mohave and Navajo Counties): Brian Y. Furuya (Aspey Watkins & Diesel PLLC)
  - District 2 (Yavapai County): Alex B. Vakula (The Vakula Law Firm PLC); re-elected
  - District 6 (Maricopa County): Richard D. Coffinger, Attorney at Law; David G. Derickson (Ridenour, Hienton & Lewis, PLLC); Diane L. Drain (Law Office of D. L. Drain PA); Steven A. Hirsch (Bryan Cave LLP); Melissa Ho (Polsinelli Shughart PC); Lisa Loo (Deputy General Counsel, ASU); Jennifer R. Rebolz (Farley Seletos & Choate); Samuel Saks (Cantelme & Brown PLC); Geoffrey Trachtenberg (Levenbaum Trachtenberg PLC)
YLD President Erik J. Stone (Jones Skelton & Hochuli PLC)
At Large Members: Lori Higuera (Fennemore Craig PC) and Paul Senseman (Policy Development Group)

- Special recognition and thank you to Ray Hanna and Margarita Bernal for all their hard work as co-chairs for the 2014 Convention.
- Acknowledged and thanked the following Board members who served as an appellate body with regard to members’ challenges in the Board of Legal Specialization process: Richard Coffinger, Tom Crowe, Dee-Dee Samet.

CEO/ED REPORT – John Phelps
- Mr. Phelps stated that staff have been focused on the Convention and the IT Strategic Plan but directed those present to his written report which contains Project and Program Highlights, other news and contacts he has made.

CONSENT AGENDA
- President Cunningham asked if anything was to be deleted from the Consent Agenda, hearing nothing,
- MOTION: David Derickson moved, Lisa Loo seconded and the motion carried unanimously to approve the Consent Agenda:
  a) April 24-25, 2014 Board of Governors Meeting Minutes
  b) Approval of Resignations (updated 6/10/14)
    - In Good Standing
  c) Approval of Reinstatements
    - Reinstatement to Practice of Members Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
  d) Approval of Suspensions for Non-Payment of Dues (updated 6/10/14)
  e) Approval of Dues Waivers Requests/Late Fees
  f) Deferred Compensation Plan
  g) Sustainability Task Force Report
  h) Rules Committee – R-14-0016 – State Bar’s proposed comment Petition to Amend Rule 38, Ariz. R. Sup. Ct.
  i) Communications/Member Services – Member Survey

RECEIPT AND CERTIFICATION OF ELECTION REPORT – Whitney Cunningham
- Votenet Solutions provided the election results through a written confirmation with the number of votes for each member, including write-in candidates. Elected or re-elected:
  ➢ District 1: Brian Y. Furuya (Aspey Watkins & Diesel PLLC)
  ➢ District 2: Alex B. Vakula (The Vakula Law Firm, PLC)
  ➢ District 6: Richard D. Coffinger, Attorney at Law; David G. Derickson (Ridenour, Hienton & Lewis, PLLC); Diane L. Drain (Law Office of D. L. Drain PA); Steven A. Hirsch (Bryan Cave LLP); Melissa Ho (Polsinelli Shughart PC); Lisa Loo (Deputy General Counsel, ASU); Jennifer R. Rebolz (Farley Seletos & Choate); Samuel Saks (Cantelme & Brown PLC); Geoffrey Trachtenberg (Levenbaum Trachtenberg PLC)
- MOTION: Jack Levine moved, Patrick Greene seconded and the motion to accept the election results as provided by Votenet Solutions carried unanimously.
ELECTION OF BOARD OFFICERS

- Pursuant to Court rule, the president-elect automatically ascends to the office of president. The Board congratulated President Richard Platt (RT Platt Law PLLC, Coolidge) in his new role.
- Pursuant to Court rule, the first vice president automatically ascends to the office of president-elect. The Board congratulated President-Elect Bryan Chambers (Gila County Attorney’s Office, Globe) in his new role.
- Bryan Chambers moved and Alex Vakula seconded the nomination of Lisa Loo (ASU General Counsel’s Office, Tempe) to serve as first vice president. No other nominations were made. Ms. Loo was elected by acclamation and was congratulated by the Board.
- Lisa Loo moved and Jimmie Smith seconded the nomination of Alex Vakula (The Vakula Law Firm PLC, Prescott) to serve as second vice president. No other nominations were made. Mr. Vakula was elected by acclamation and was congratulated by the Board.
- Secretary-Treasurer Nominations – General Counsel John Furlong explained the election of officers pursuant to the bylaws and indicated that voting would be by secret ballot. The president is allowed to vote but not as a tiebreaker.
- Jim Smith moved and Audrey Jennings seconded the nomination of Geoffrey Trachtenberg (Levenbaum Trachtenberg PLC, Phoenix) to serve as secretary-treasurer.
- Dee-Dee Samet moved and David Derickson seconded Jeffrey Willis (Snell & Wilmer, Tucson) to serve as secretary-treasurer.
- Each candidate gave a speech covering his qualifications and interest in serving.
- Alex Vakula moved, Lisa Loo seconded the motion and the Board voted unanimously to go into Executive Session at 1:45 p.m.
- Open Session reconvened at 2:15 p.m. – The Board members voted by secret ballot and President Cunningham announced that the new secretary-treasurer is Geoffrey Trachtenberg. Congratulations from the board.
- Photos of the officers and the full Board were taken.

FINANCE AND AUDIT (F&A) COMMITTEE’S REPORT – CFO Kathy Gerhart and CEO/ED John Phelps

- Financial Policy Manual – Ms. Gerhart reported that a 401(k) fiduciary committee was created and has been meeting because of the legal obligation to do so. The Board of Governors needs to approve the creation of this committee charged with the annual review of the 401(k) Plan.
- The Financial Policy Manual before the board is draft v13.
- Procurement Authority
  - Current Policy: CEO must acquire the F&A Committee’s approval to sign contracts exceeding $50,000.
  - Proposed change: The CEO/ED given full authority to contract within Board approved budget limits up to $250,000, for contract period of three years or less, or a budgeted line item variance of not more than 4%.
  - Proposed change: Contracts greater than $250,000 but less than $700,000 and less than three years in duration require F&A Committee approval
  - Proposed change: Contracts over $700,000 or over three years in duration require full board approval.
Specific Contracting Authority
- **Current Policy:** Limits SBA department head authority to $5,000.
- **Proposed Change:** CEO/ED given authority to delegate contracting authority to division/department heads up to $15,000.

Personnel Authority
- **Current Policy:** Requires Board approval of hiring and firing of SBA Chief Financial Officer.
- **Proposed Policy:** Gives the CEO/ED authority to hire and fire SBA Chief Financial Officer with the consultation of the SBA President and Finance & Audit Committee Chair.

Executive Compensation
- **Current Policy:** Requires the CEO/ED to obtain the approval of the Executive Compensation Committee (Scope, Chairs of HR and Finance & Audit Committees, and Past President) before making changes to compensation or benefits to senior staff officers (General Counsel, Chief Bar Counsel, Chief Financial Officer, Chief Communications Officer and Chief Member Services Officer).
- **Proposed Policy:** Authorizes CEO/ED to make decisions regarding senior staff officer compensation and benefits, so long as within the approved budget.

**MOTION:** Coming as a Motion from the Finance Committee and the Scope and Operations Committee, requiring no second, the Board voted to approve the Financial Policies Manual (v13) as presented. Vote: Passed over one objection.

Line of Credit and Treasury Management Proposals
- **Ms. Gerhart reviewed the four financial institutions’ responses to the RFP that was sent out.** The previous RFP was only for the line of credit, however, this time Treasury Management was included in the proposal.
- **The current 6,930,000 revolving Line of Credit financed by Well Fargo Bank expires July 25, 2014. After review of all RFP’s, Wells Fargo is the vendor of choice, offering a Thirty (30) Day LIBOR plus 1.5% floating interest rate.** The proposal includes the management piece, saving the SBA approximately $6,000 to $16,000. LIBOR is currently .45%. Wells Fargo requires that the 24th Street property be used as collateral for the loan. The cost of the third party appraisal of the property will be absorbed by Wells Fargo.
- **MOTION:** Coming as a motion from the Finance Committee, requiring no second, the Board voted unanimously to approve the recommendation to approve contracting with Wells Fargo Bank for a Five Year Revolving Line of Credit ($4,000,000) and the Treasury Management Proposal.

**SUCCESSION PLANNING TASK FORCE REPORT – Hon. David Derickson**
- Chair David Derickson reported that after studying the issue and taking into account local and national procedures, legal and ethical obligations, and available resources, the Task Force recommends that the State Bar adopt a multifaceted approach:
  - Propose a rule that clearly obligates all members to plan for their termination of or inability to continue a law practice;
  - Propose adding comments to the relevant Ethical Rules advising lawyers that they should not retain original or client-provided documents;
Educate State Bar members about the need for succession planning and give them the tools to do so. To accomplish this, the State Bar should:

- Endorse a State Bar handbook on planning that includes an extensive set of forms to help lawyers plan for ending their practices or for their practices to be closed in their absences, whether due to expected or unexpected circumstances.
- Make a concerted effort to educate all lawyers—no matter the age, experience level or practice setting—about the need to plan for ending their legal careers, including designating a successor who could step in and handle the lawyer’s practice if necessary.

- Propose streamlining and clarifying the Supreme Court rules under which a conservatorship may be imposed on the practice of a lawyer or former lawyer;
- Propose requiring financial institutions that wish to host client-trust accounts to accord sufficient credence to conservatorship orders; and
- Adopt a plan for dealing with client files and documents in the State Bar’s possession that by existing State Bar policy have been deemed non-destructible.

Mr. Derickson stated that the report had been circulated to membership and comments were included. Many of them were favorable of succession planning; however it was pointed out that succession planning should not apply to in-house counsel or government lawyers. Mr. Derickson advised that with the Board’s consent, he would reconvene the Task Force to consider member comments and modify its report and recommendations, if necessary.

**MOTION:** Dave Derickson moved, Lisa Loo seconded and the motion carried unanimously to authorize the Task Force to continue for one year.

**PROGRAM REVIEW COMMITTEE**

- **Indigent Defense Commission**
  - Chair Amelia Craig Cramer reported that the Program Review Committee (PRC) met on four separate occasions to review and study a proposal submitted to the State Bar to establish an Indigent Defense Commission (IDC).
  - Members of the PRC included Mike Baumstark, Richard Platt, and Sam Saks. Various staff also participated. Input was also provided by various stakeholders, including Larry Hammond, Anne Chapman, Anna Finn, John Belatti, John Evans, Elizabeth Ortiz, David Euchner and Scott Bennett. Robert Hirsch submitted written comments to the PRC.
  - At the conclusion of its review, the PRC unanimously agreed with the Indigent Defense Task Force’s statement of the problems associated with indigent defense representation in Arizona and the failure to fully comply with the promise of Gideon v. Wainwright. While agreeing with the proposal on almost every issue, the PRC ultimately questioned the proposal with respect to whether the establishment of the proposed State Bar Indigent Defense Commission at this time to hold public hearings around the state is the best means by which to achieve the necessary solutions to the already-identified problems.
  - As noted in the Score Sheet under Revenue/Cost, the cost of the Commission’s activities as outlined is estimated to be approximately $7,998, and the cost of administrative staff support is estimated at $13k, for a total estimated cost of $20,998. Concern was expressed by members of the PRC that, just on the heels of significant cost cutting measures and the recent dues debate, the CEO is currently tasked with cutting $300k to $500k in expenses from the budget.
• Recommended Board Action – The PRC recognized that evaluating the delivery of indigent defense representation in Arizona and determining how it might be improved are laudable goals. Yet, it believes the Bar’s resources might better be directed to working to implement changes that already have been determined to be necessary – rule changes: establish performance standards for contract indigent defense counsel; establish training and support standards for indigent defense counsel; establish accountability standards with respect to the competency of appointed indigent defense counsel.

• The PRC recommended that the Board not establish the proposed IDC at this time. The PRC recommended that the Board of Governors re-consider the proposal, in consultation with the Arizona Supreme Court and in consideration of funding priorities, at the time it develops its next five-year Strategic Plan.

• MOTION: Coming from the Program Review Committee, not requiring a second, to reject the creation of an Indigent Defense Commission and to direct the president and CEO to urge the Arizona Town Hall to take on this issue and to ask the Criminal Practice and Procedure Committee to explore and propose rules changes to set standards for indigent defense counsel.

• Discussion ensued.

• MOTION: Melissa Ho moved and Geoffrey Trachtenberg seconded the motion to reject the Program Review Committee proposal; to create an ad hoc committee (or some entity) charged with recommending solutions to the indigent defense issues articulated; and to possibly co-sponsor the study group’s activities or find interested parties willing to bear the costs of its operations.

• MOTION: Jimmie Smith moved to table the matter to the September Board meeting. Vote: 10 – 10, with the president voting to break the tie with a vote to table.

RULES COMMITTEE – two pending petitions – Chair Geoff Trachtenberg

• R-13-0046 proposed reply in support of the State Bar’s petition to amend 1.10, which governs lateral screening. Several comments filed in support; one comment against.

• Rules Committee unanimously supported and recommended the filing of the reply, as drafted by the Ethics Committee.

• MOTION: Coming as a motion from the Rules Committee, requiring no second, passed unanimously to file the Reply in R-13-0046 as recommended.

• R-13-0047 proposed reply in support of the State Bar’s petition to adopt Rule 9.1, Rules of Procedure for Eviction Actions, allowing for change of judge as a matter of right and for cause in eviction actions.

• MOTION: Coming as a motion from the Rules Committee, requiring no second, the Board unanimously voted to support the recommendation to file the reply as drafted by the Legal Services Committee.

CLE TASK FORCE REPORT AND RECOMMENDATIONS

• Task Force Chair Jeff Willis reported that the group was asked to review issues related to: 1) CLE curriculum development and coordination oversight; 2) The Bar’s role regarding third-party providers; 3) the value of SBA programs for our members; 4) Methods to ensure the quality of SBA programs; and 5) Appropriate financial models for SBA CLE.

• The Task Force collapsed these topics into three areas and created subcommittees to review:
  ➢ CLE Provider Precertification
- The Bar’s Rule regarding third-party CLE providers; and
- SBA CLE Department Relations with SBA Sections.

- CLE Provider Precertification:
  - Recommended: The Board of Governors seek approval from the Arizona Supreme Court to implement a process for the precertification of entities offering CLE programs in Arizona. Preapproval of CLE providers will shift the burden of assuring that CLE programs comply with the Supreme Court rule and MCLE regulations from the attorney to the provider.
  - Arizona is the only mandatory Bar without precertification.

- The Bar’s Rule regarding third-party CLE providers:
  - Recommended: The Board allow and encourage staff to participate in outside speaking engagements:
    - To the extent it does not interfere with their work
    - For speaking engagements to non-profit organizations only;
    - For speaking engagements where a partnership opportunity exists, including having the Bar reimbursed for travel expenses and/or receiving a portion of any revenue generated from the program.
    - All requests to speak would be considered on individual basis using the criteria above. Requests for an exception to these guidelines should be directed to the SBA CEO.

- SBA CLE Department Relations with SBA Sections:
  - Recommended: Internal regulation of CLE was also recommended by creating a CLE Curriculum Committee made up of Section representatives, CLE Committee members, and CLE and Section staff to coordinate Section and CLE Department programs, avoid scheduling conflicts and redundancy of content, and provide a comprehensive curriculum for the membership statewide.

- Task Force Report/Recommendations to be published in eLegal for comment.

- Board Retreat July 31-August 1 in Prescott.
- The Board will return to a monthly meeting schedule
- Board liaisons to Standing Bar Committees: issue for discussion at the Retreat.

IT STRATEGY AND VISION – Technology Support Director Rob Hosch
- The Plan touches on IT Vision, Guiding Principles, Scope of Services, Priorities and Focus Areas.
- Appendices include a Five-Year Timeline, Capital Expense Graph and IT Risks.
- Mr. Hosch stated that at the Board Retreat a more in-depth presentation will be made.

NEW BUSINESS
Richard Coffinger asked about pending litigation against staff and Board notification. The Board of Governors is to be notified of any pending litigation against staff members. CEO John Phelps responded that he will notify the Board if any staff member is sued.
RECOGNITION OF OUTGOING BOARD MEMBERS – President Cunningham and the Board recognized and thanked the following members for their outstanding service to the Board and the State Bar:

- Jennifer Burns, Tucson
- Amelia Craig Cramer, Chief Deputy Pima County Attorney, Tucson
- Tom Crowe, Crowe & Scott PA, Phoenix
- Virginia Herrera-Gonzales, Assistant Attorney General, Mesa
- Jack Levine, Jack Levine PC, Phoenix
- Alyse Meislik, Office of the Attorney General, Phoenix

RECOGNITION OF OUTGOING PRESIDENT CUNNINGHAM

- CEO John Phelps presented Whitney Cunningham with a coffee table picture book, signed by the staff, which illustrated his service as a Board member and as State Bar president. He was also presented with a leather-bound book containing every issue of Arizona Attorney magazine during the past Bar year which feature his president’s columns.
- President Richard Platt presented a memento of appreciation on behalf of the State Bar to Mr. Cunningham.

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 5:25 p.m.

Respectfully submitted,

Alex Vakula
Secretary-Treasurer,