MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
September 19, 2014
Phoenix, AZ

BOARD MEMBERS PRESENT: Richard Platt, President, Coolidge; Bryan B. Chambers, President-Elect, Globe; Lisa S. Loo, First Vice President, Phoenix; Alex Vakula, Second Vice President, Prescott; Geoffrey M. Trachtenberg, Secretary-Treasurer, Phoenix; Richard D. Coffinger, Glendale; Hon. David G. Derickson, Phoenix; Brian Y. Furuya, Flagstaff; Patrick Greene, Tombstone; Steven A. Hirsch, Phoenix; Melissa S. Ho, Phoenix; Jennifer R. Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Erik J. Stone, Young Lawyers Division; Jeffrey Willis, Tucson; Public Members: Tony Finley, Tucson; Audrey R. Jennings, Scottsdale; Meredith Peabody, Prescott and John J. Sullivan, Tucson; At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Whitney Cunningham, Immediate Past President; Dean Shirley Mays, Phoenix; and Dean Marc L. Miller, Tucson.

EXCUSED ABSENCES: Diane Drain, Phoenix; James B. Penny, Tucson; Ex-Officio Member Dean Douglas Sylvester, Tempe.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Lisa Deane, Chief Member Services Officer; John Furlong, General Counsel/Deputy Director; Kathy Gerhart, CFO; Patricia Giallanza, Communications Project Manager; Carolyn de Looper, Membership Admin & Services Manager; Chris Groninger, AzFLS&E; Rob Hosch, Information Technology 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; Court Liaison Hon. Ann A. Scott Timmer, Phoenix; and Maret Vessella, Chief Bar Counsel.

GUESTS:
Bradley Abramson, Alliance Defending Freedom; Hilary Barnes, Bankruptcy Section; Edward K. Bernatavicius, U. S. Trustee, Inn of Court; Charles R. Berry, Polinelli PC; Lee P Blake, AADC & Inn of Court; Linda H. Bowers, First Western Trust; Linda Marie Brown; Law Offices of Linda Marie Brown PLLC; Ruth Carter, Carter Law Firm; Tyler Carrell, Young Lawyers Division; Gallagher & Kennedy PA; Bennett Cooper, Steptoe & Johnson LLP; Robert F. Copple, Copple & Associates PC David A. DeCabooter, Arizona School Boards; Susan Diaz, Arizona Women Lawyers Association; Brett L. Dunkelman, Osborn Maledon PA; Mary Jo Foster, Attorney General’s Office; Ben Goldstein, Legislative Analyst AZ Trial Lawyers Association; Jan Grossman, Law Offices of Jan Grossman PC; Debbie Hanson Tripp, Arizona Association of Defense Counsel (AADC); Steven R. Herman, Solo practitioner; Scott W. Hyder, Law Office of Scott Hyder PLC; Catherine Jiang, Solo practitioner;
GUESTS (continued)

Todd Kartchner, Fennemore Craig PC and four other firms; Allen Kimbrough, Maricopa County Bar Association; Ginger Kotzmann, Office Manager/Seminar Director AZ Trial Lawyers Association; Gary M. Kula, Phoenix Public Defenders; Monica Lindstrom, Scottsdale Bar Association; Sandra Macdonald, ASU College of Law; Craig McCarthy, Gust Rosenfeld PLC, ADC; Eric Menkhus, ASU College of Law; James Mitchell, Solo practitioner; Jim O’Sullivan, Chair of the sub-committee on CLE Precertification; Matt Palfreyman, SPSF Counsel; Gary Pearlmutter, Coconino County & ARPDA; Christina M. Phillis, Maricopa County Office of the Public Advocate; Tom Rogers; Az Emp Lawyers Association; Petra Sabori, ADOR; Hardy Smith, Pima County Bar Association; Anna A. Sokolova, Global Negotiations; Sylvia J. Struss, DNA Legal Services for CLS, DNA, SALA and William Morris Institute; Lisa Thompson; Thompson Law Group PC; Susan Trentham, Pima County Bar Association; Debbie Weecks, Weecks Law Office; Deborah Williams Federal Public Defender; and Gary F. Witting, Law Firm Gary F. Witting.

President Richard Platt called the meeting to order at 8:35 a.m.

PRESIDENT’S REPORT – President Platt

- Reported that he and CEO John Phelps traveled to Safford, AZ and gave presentations on “The Case for an Integrated Bar”.
- President Platt reviewed the agenda and plans for the Board to move from the Boardroom to the CLE Center on the first floor later in the morning to hear from members regarding the CLE Task Force Report.

CEO/ED REPORT – John Phelps

- Mr. Phelps introduced Jennifer Sonier, Professional Development Supervisor, who was nominated by her peers and is the Employee of the Quarter. The Board recognized Ms. Sonier for her contributions to the Bar.

CONSENT AGENDA

- President Platt asked if anything was to be removed from the Consent Agenda, hearing nothing:
- **MOTION:** Geoff Trachtenberg moved, Lisa Loo seconded and the motion carried unanimously to approve the following Consent Agenda:
  - Approval of August 1, 2014 Board of Governors Meeting Minutes
  - Resignations in Good Standing and In Lieu of Reinstatement
  - 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.) 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.)
  - Reinstatement to Practice of Members suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
  - Dues Waivers
  - Two Survey Requests for academic research
Mr. Vakula presented the Appointments Committee’s report and recommendations:

- **Arizona Supreme Court Committee on Character and Fitness – Public Member**
  - **MOTION**: The Committee recommended the following:
    - Chantell J. Cornett, The Ward Group - VP
    - Alexander B. Jamison, MORE Ombudsman
    - Thomas M. Mitchell, Sims & White Economic Consultant, Expert Witness
    - Jim Smith moved, Patrick Greene seconded and the motion carried unanimously to recommend to the Supreme Court Chantell J. Cornett, Alexander B. Jamison and Thomas M. Mitchell for the public member opening on the Committee on Character and Fitness.

- **Arizona Supreme Court Committee on Character and Fitness – Lawyer Member**
  - **MOTION**: The Committee recommended the following:
    - Nora F. Greer, Law Office of Nora F. Greer
    - Michael L. Boreale Jr., Boreale Law PLC
    - Stephen L. Weiss, Law Office of Stephen L. Weiss
    - **MOTION** coming from the committee and requiring no second, carried unanimously to forward Nora F. Greer, Michael L. Boreale, Jr. and Stephen L. Weiss to the Supreme Court for its consideration and ultimate selection to fill one opening on the Committee on Character and Fitness.

- **Arizona Supreme Court Committee on Examinations**
  - **MOTION**: The Committee recommended the following:
    - Nora F. Greer, Law Office of Nora F. Greer
    - Tanja K. Kelly, Cochise County Public Defender
    - Rebecca L. van Doren, Cohen Kennedy Dowd & Quigley PC
    - **MOTION** coming from the Committee, requiring no second, passed unanimously to forward Nora F. Greer, Tanja K. Kelly and Rebecca L. van Doren to the Court for its consideration and ultimate decision to fill one opening on the Committee on Examinations.

- **City of Phoenix Judicial Selection Advisory Board**
  - **MOTION**: The Committee recommended the following:
    - Joseph A. Kanefield, Ballard Spahr LLP
    - Robert A. Colosi, Esquire
    - Elizabeth L. Fleming, Burke Panzarella Rich
    - **MOTION** coming from the Committee, requiring no second, passed unanimously to recommend Joseph A. Kanefield, Robert A. Colosi and Elizabeth L. Fleming to the Mayor of Phoenix for the opening on the City of Phoenix JSAB.

**Arizona Foundation for Legal Services & Education**

- Two openings on the AzFLS&E Board of Directors.
- Geoffrey Trachtenberg and Samuel Saks have requested to be considered for these openings.
- **MOTION**: Richard Coffinger moved, Lisa Loo seconded and the motion unanimously passed to appoint both Geoffrey Trachtenberg and Samuel Saks as members of the AzFLS&E Board of Directors.
FINANCE AND AUDIT COMMITTEE – Geoffrey Trachtenberg, Vice-Chair

- Mr. Trachtenberg reported that the Finance and Audit Committee recommended approval of the Cash Reserve Policy provided in the materials.
- Capital reserve and dues reserve are outlined in this policy.
- Discussion regarding interpretation of the policy.
- Recommendation was made to accept the policy as written and to instruct the Finance and Audit Committee to also look at an Investment Policy as discussed.
- MOTION: The motion to approve the Financial Cash Reserve Policy comes from the Finance and Audit Committee, requiring no second; motion passed unanimously.

BUDGET GUIDELINES – CFO Kathy Gerhart

- Ms. Gerhart reviewed the two versions of the 2015 Budget Guidelines, one recommended by the Finance and Audit Committee and the second recommended by the Human Resources Committee. The changes suggested by the HR Committee related to the personnel expense guidance. The general consensus was that the Finance and Audit version was too restrictive and could result in unintended consequences.
- The budget will include an increase in annual membership dues and membership delinquency fees, and a reduction in expenses of $300,000 as directed by Supreme Court Administrative Order No. 2014-32. The reduction in expenses will be achieved through reductions in 1) full-time employees; 2) facilities rental cost; 3) office services costs; 4) additional catering cuts; 5) other miscellaneous expenses.
- Revenues and expenses in the 2015 budget will be consistent with the five year financial projections as provided to the Board of Governors on August 1, 2014, which support the long range vision of the SBA to include the following:
  - Estimated annual revenues will be based on analysis of dues and non-dues income trends.
  - Estimated operational expenses will be based on analysis of costs associated in the functional areas of the SBA.
  - Total personnel expenses including payroll taxes, compensation and benefits not to exceed a 3% increase over the 2014 personnel budget.
- MOTION: Coming as a motion from the Finance and Audit Committee, requiring no second, carried to approve the 2015 Budget Guidelines with the changes suggested by the Human Resources Committee.

INDIGENT DEFENSE COMMISSION – Richard Platt

- At its June meeting the Board of Governors agreed to postpone any action regarding a proposal to appoint an Indigent Defense Commission to the September meeting.
- The Indigent Defense Task Force requested a further postponement - from September to January 2015 - due to stakeholder Larry Hammond being out of the country.
- MOTION: Jim Smith moved, David Derickson seconded and the motion to postpone the Indigent Defense Commission proposal to the January 2015 Board of Governors meeting carried unanimously.
Mr. Derickson presented the Task Force’s original report and recommendations at the April 2014 BOG meeting. At the June 2014 meeting, the BOG authorized the Task Force to continue meeting to consider member comments to its original report and recommendations. At this meeting, Mr. Derickson presented the Task Force’s original recommendations as well as a supplemental report for action.

Mr. Derickson provided an overview of the Task Force’s recommendations: proposed rule changes, including eliminating the State Bar file-retention policy; educate members about succession planning; deal with stored “non-destructible” conservatorship files.

Specific recommendations include:
- Publish a handbook on planning; make a concerted effort to educate all lawyers.
- Amend the IOLTA “participation certification” to require financial institutions to honor conservatorship orders.
- Adopt a plan to assess client files and documents that have been deemed “non-destructible” per State Bar policy, including seeking judicial orders for storage or destruction.
- Streamline and clarify Supreme Court Rules 66-69 under which a conservator may be appointed to handle the affairs of a lawyer or formerly admitted lawyer.

The Task Force proposed a revised comment to proposed new Rule 41(i), Ariz. R. Sup. Ct. that would oblige all members to plan for their termination of or inability to continue a law practice.

Original proposed comment specified that government lawyers and in-house counsel would have to identify another person who agrees to assume responsibilities for appropriately disposing of client-related materials or other property.

Revised proposed comment [2]: Lawyers must plan for the possibility that they will be unable or unwilling to discharge their duties to current clients or to appropriately dispose of client-related materials or other property of former clients. For lawyers in private practice – whether in solo or multi-lawyer firms – this obligation at a minimum includes identifying another person who agrees to assume such responsibilities. Lawyers who are not in private practice, such as those employed by government or corporate entities, should have a plan reasonable for their practice setting.

The Task Force also revised proposed comments to ERs 1.15 and 1.16 that originally specifically directed lawyers not to retain original wills or other estate-planning documents. Estate planning lawyers objected to this.

Revised proposed comments to ERs 1.15 and 1.16: Lawyers have an ethical duty to assure that all documents provided to them by their clients are returned or tendered to the clients. If a client does not receive all client-provided documents, the lawyer has a duty to safeguard that property for the length of time required for the practice area. Consistent with Rule 41(i), Ariz. R. Sup. Ct., all lawyers in private practice must identify successor counsel to assume responsibility for the lawyer’s files when the lawyer ceases to practice law, either temporarily or permanently. Failing to designate successor counsel may result in the State Bar perfecting a conservatorship pursuant to Rules 66-69, Ariz. R. Sup. Ct., including assessing the lawyer or the lawyer’s estate with costs.
The Task Force also made several new recommendations:

- Standardize nomenclature in all rules and State Bar materials to refer to “successor counsel.”
- Require lawyers in private practice to disclose successor counsel on dues statement. This is patterned after professional liability disclosure. It would have the member say yes or no to being an active member of the State Bar and in private practice and then disclose the name of successor counsel.

The Task Force is requesting the Board approve the recommendations, as revised; authorize the filing of the rule-change proposals ASAP; and, adopt a revised file-retention policy to alleviate the State Bar’s burden.

Discussion regarding changing from the word “person” to “lawyer” in the proposed comment to proposed new Rule 41(i).

MOTION RE REVISED COMMENT: Jim Smith moved and Brian Furuya seconded the motion to change the language in the Revised Comment [2] from “person” to “Active Arizona Lawyer”; the motion passed over one nay.

Discussion regarding the interpretation of proposed Revised Comment to ER 1.15 and 1.16.

MOTION TO AMEND: Richard Coffinger moved and Dave Derickson seconded and the motion passed to add the language “Lawyers are encouraged to return original documents to the clients, unless safeguards are in place to keep the clients’ files.”

Discussion regarding the new recommendation to require lawyers to disclose successor counsel on the dues statement.

Call for the Question – Dee-Dee Samet

MOTION: Coming as a motion from the Task Force, requiring no second, passed to adopt the new recommendation to have lawyers disclose their successor counsel on the dues statement.

MOTION: Dee-Dee Samet moved, Alex Vakula seconded and the motion carried unanimously to adopt the Task Force’s recommendations, as outlined in its original and supplemental reports and as further amended by the BOG.

RULES REVIEW COMMITTEE – Jeffrey Willis, Chair

AOC Director David Byers filed a petition to conform Rule 39, Ariz. R. Crim. P., to the definitions added by HB 2454.

HB 2454:

- Parts went into effect 7/24/14
- Amended A.R.S. § 13-4434 related to a crime victim’s privacy
- Provides that any identifying and locating information of a victim obtained, compiled or reported by any law enforcement or prosecution agency shall be redacted from records pertaining to the criminal case, including discovery disclosed to the defendant.
- Identifying information is specifically defined as a victim’s date of birth, social security number and official state or government issued driver’s license or identification number.

Opposition/Support

- Criminal Practice & Procedure Committee – Defense
  - Opposes petition
General position: Violates the due process and Sixth Amendment rights of the criminally accused, substantially impedes, if not prevents, defense counsel from ascertaining whether a conflict of interest exists.
- Criminal Practice & Procedure Committee – Prosecution
- Supports petition
- General position: Any issue as to the constitutionality of the statute is for the court or Legislature if/when properly raised.

Rules Review Committee unanimously recommended:
- Not take a single position.
- File the proposed “pro” and “con” comment incorporating both positions.
- MOTION: Coming from the Rules Review Committee, requiring no second, the Board voted to follow the recommendation of the Committee and take no position and file a comment incorporating both the pro and con position; motion passed.

POLICY RE BAR REPRESENTATION ON NON-BAR ENTITIES – CEO John Phelps
- Mr. Phelps reviewed the policy which is similar to the policy which covers the appointment or nomination process for Court Task Forces and Ad Hoc Committees.
- This implements a selection process and as part of that the Bar’s due diligence process will require the requesting organization to submit a copy of its bylaws, annual report and other information deemed necessary by the Scope and Operations Committee. Once completed and participation deemed appropriate, it may seek recommendations from the full Board, staff and/or independently identify a candidate(s) for consideration.
- The person selected via this process may act or vote on their own behalf as members of the body to which they have been appointed, but shall not act or vote “on behalf of the State Bar” concerning any matter without first getting the approval of the Board of Governors or, when time does not permit, a meeting of the Board, the Scope and Operations Committee.
- The Bar nominees/appointees selected under this policy shall inform the body to which they’ve been appointed of their responsibilities and limitations as outlined in the Policy at the first official meeting of the body.
- MOTION: Jim Smith moved, Meredith Peabody seconded and the motion carried unanimously to adopt the Policy re: Bar Representation on Non-Bar Entities.

RECOGNITION: The Board recognized CFO Kathy Gerhart who was named by the Phoenix Business Journal as one of the top 10 CFOs in Phoenix. The Board also recognized President Richard Platt who was celebrating his birthday that day.

ABA ANNUAL HOUSE OF DELEGATES MEETING RECAP – Margarita Silva
- ABA has teamed up with the United Kingdom and other Commonwealth nations in honoring the sealing of Magna Carta in 1215 with its 800th anniversary celebration. Events within the United States and the United Kingdom will lead up to commemorative meetings and events in London and Runnymede from June 11-14, 2015.
- Ms. Silva recapped the Annual Meeting noting a few of the major resolutions passed by the House:
  - Encourages law schools to create veterans law clinics to ensure that all veterans who cannot afford legal services can access them.
o Urges states and territories to adopt clearly articulated, transparent and timely procedures to ensure that judges disqualify or recuse themselves in instances where conflict or bias or other grounds exist to warrant recusal in order to assure fair and impartial judicial proceedings.

o Encourages each federal, state and territorial jurisdiction where capital punishment is permitted to adopt a statute or rule providing an appropriate judicial procedure whereby successors of an executed individual may bring and litigate a claim that the individual executed was in fact innocent of the capital offense.

- Arizona’s delegates continue to expand their ABA leadership roles:
  o Myles V. Lynk - re-elected as a Delegate at Large – Chair, ABA Standing Committee on Ethics and Professional Responsibility 2014-
  o Adam K Zickerman appointed to the ABA’s Commission on Domestic and Sexual Violence.
  o Margarita Silva elected as Secretary of the Minority Caucus.
  o Patricia Lee Refo elected Chair of the ABA House of Delegates

Transition Break – Move to CLE Center

CLE TASK FORCE REPORT AND RECOMMENDATIONS – Chair Jeffrey Willis and Lisa Deane

- Jeff Willis reviewed the CLE Report and Recommendations with a PowerPoint presentation.
- President Platt laid out the plan to have members wishing to speak to have three minutes each to address the CLE Precertification proposal.
- The Board had been provided all the membership comments that came in via email, mail and online on the website.
- 27 members personally appeared to speak on behalf of various State Bar Sections, law firms and county and minority bar associations.
- President Platt thanked everyone for their participation and indicated that the Board will take all comments it received into consideration.

OBITUARIES

To honor our members who have passed, a webpage 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.

Respectfully submitted,

Geoffrey M. Trachtenberg
Secretary-Treasurer