MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
November 21, 2014
Phoenix, AZ

BOARD MEMBERS PRESENT: Richard Platt, President, Coolidge; Bryan B. Chambers, President-Elect, Globe; Alex Vakula, Second Vice President, Prescott; Geoffrey M. Trachtenberg, Secretary-Treasurer, Phoenix; Richard D. Coffinger, Glendale; Hon. David G. Derickson, Phoenix; Diane Drain, Phoenix; Brian Y. Furuya, Flagstaff; Patrick Greene, Tombstone; Steven A. Hirsch, Phoenix; Melissa S. Ho, Phoenix; James B. Penny, Tucson; 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; Meredith Peabody, Prescott and John J. Sullivan, Tucson; At-Large Members: Michael Baumstark, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Whitney Cunningham, Immediate Past President; Keith Swisher on behalf of Dean Shirley Mays, Phoenix; and Leah Won, U of A Director of Career Development on behalf of Dean Douglas Sylvester, Tempe.

EXCUSED ABSENCES: Lisa S. Loo, First Vice President, Phoenix, and Public Member Audrey R. Jennings, Scottsdale.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Lisa Deane, Chief Member Services Officer; John Furlong, General Counsel/Deputy Director; Kathy Gerhart, CFO; 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; 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: Janna Day. Lobbyist; Michael Price, Board Fellow; Charles Wirken, Gust Rosenfeld; Kerry Hodges, Jennings Strouss & Salmon PLC; and James Johnson, Aetna Life Insurance Co.

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

PRESIDENT’S REPORT – President Platt

- Reported that CEO John Phelps was not in attendance as he was at the meeting of the Supreme Court’s State Bar Mission and Governance Task Force.

- Attended the following functions: Native American Bar Association Seven Generations Awards Ceremony and Dinner; Arizona Black Bar Awards Dinner; Los Abogados Spring Gala and Awards Ceremony where Virginia Herrera-Gonzales was recognized with a Lifetime Achievement Award; Arizona Judicial Council; University of Arizona Law School Swearing In Ceremony for new admittees.
GENERAL COUNSEL – John Furlong

- Mr. Furlong introduced Mike Vallone, Procurement and Facilities Manager, who was nominated by his peers and is the Employee of the Quarter. The Board recognized Mr. Vallone for his contributions to the Bar including overseeing the subsequent repairs due to the flood and most recently the landscaping changes to xeriscape.

CONSENT AGENDA

- President Platt asked if anything was to be removed from the Consent Agenda, hearing nothing:
  - MOTION: Geoffrey Trachtenberg moved, Jeffrey Willis seconded and the motion carried unanimously to approve the Consent Agenda:
  - Approval of September 19, 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.)
  - Human Resources – Salary Administration Plan proposed changes

APPOINTMENTS COMMITTEE – Alex Vakula, Chair

- Mr. Vakula presented the Appointments Committee’s report and recommendations:
  - DNA- People’s Legal Services, Inc. Board of Directors
  - The Committee recommended the following:
  - Reappoint incumbent Thomas L. Murphy, Gila River Indian Community
  - Select from the following to fill the remaining two seats:
    - Edward L. Welsh, Jr., Business Consulting
    - Deborah M. Fine, Federal Public Defender
    - Guadalupe Gutierrez, Pascua Yaqui Tribal Prosecutor’s Office
  - MOTION: Jim Smith moved, Patrick Greene seconded and the motion carried unanimously to reappoint Mr. Thomas L. Murphy to a second but final four-year term on DNA’s Board.
  - MOTION: Jim Smith moved, Patrick Greene seconded and the motion carried unanimously to appoint Mr. Edward L. Welsh, Jr. and Ms. Deborah M. Fine to the DNA Board.
  - The Committee requested that the Board of Governors seek qualified candidates for the four judicial nominating commissions that have openings. The Committee will reopen the recruitment process as few applications had been received. It has been the practice of the Board to forward multiple candidates to the Governor for her ultimate appointment.

RULE 38(h)(13) WAIVER REQUEST

This item deals with In-House Counsel Waiver of requirement to attend an ABA-accredited law school.

- The Board approved a similar waiver request earlier this year.
The Scope and Operations Committee voted 4 to 1 in favor of granting this request.

The Petitioner attended Nashville School of Law, which is not ABA accredited.

Kerry Hodges (Jennings Strouss & Salmon), representing the Petitioner, explained the circumstances surrounding this request. After review of the facts and discussion the following motion was made:

**MOTION**: Jimmie Dee Smith moved, Alex Vakula seconded and the motion carried unanimously to approve granting the waiver of the ABA-accredited Law School requirement for In-House Counsel Petitioner.

**LEGISLATIVE REPORT** – Janna Day

- Summary of the recent statewide elections was provided.
- Senators John McComish and Adam Driggs are gone from the Senate leadership team and replacing them are Steve Yarborough and Gail Griffin.
- The new Speaker of the House is David Gowan who along with Steve Montenegro as Majority Leader and David Livingston as Majority Whip will be a markedly more conservative leadership team.
- In the House of Representatives the Rules Committee hears every single bill. Speaker of the House Gowan and Rules Chair David Stevens will work closely.
- Representative Eddie Farnsworth is Judiciary Chair in the House of Representatives.
- Senator Adam Driggs will be the new Chairman of the Senate Judiciary Committee.

**STRATEGIC PLANNING COMMITTEE REPORT** – Bryan Chambers

- Committee continues to work on the next five-year plan.
- Michael Price, Fellow and Graduate Student at the Thunderbird School of Global Management, summarized his report on the lawyer discipline process.
- Mr. Price was given the task of looking at efficiencies in and effectiveness of the lawyer discipline process by the Committee. Fellows are not paid for their services but volunteer to assist nonprofits and businesses in the community.
- Mr. Price compared Arizona’s lawyer discipline with those of Florida, Oregon, and Colorado using the ABA’s Survey on Lawyer Discipline report. He also compared the State Bar’s regulatory process with those of the State Board of Accountancy and the Arizona Registrar of Contractors.
- Mr. Price’s study focused on gathering data that could be utilized to quantify the disciplinary system’s efficiency, detecting credible variables for financial benchmarks, measuring the reactivity of different metrics when the budget amount changes, understanding organizational structure’s impact, and comparing the State Bar with other organizations in various areas. The report will be used internally by the Lawyer Regulation Office to continue to improve the system but the report concluded that the Bar economically and successfully handles its regulatory function in comparison to its peers.

**MOTION**: Coming from the Strategic Planning Committee to accept the report as written.

**AMENDED MOTION**: And to send a letter to the Dean of the Thunderbird School of Global Management expressing appreciation for Michael Price’s work.

**FINAL MOTION** as amended carried unanimously.

**CLIENT PROTECTION FUND REPORT** – Chas Wirken, Board of Trustees Chair

- Treasurer James Penny reviewed the Third Quarter Financial Reports.
- $256k in claims paid out to date; $80k pending.
- December meeting - $350k in potential claims to be determined.
- 2014 total possible payments of $690k (vs $300k in 2013)
- Discussion regarding the Fund’s investments; the Trust limits the Trustees’ discretion to the State Bar’s investment policy. The Finance & Audit Committee is currently scheduled in December 2014 and January 2015 to develop an Investment Policy for Board review and adoption.
- Annual Report - Mr. Wirken reviewed the history of the Client Protection Fund, which was created in 1960 and funded in 1961. The Fund is administered by five Trustees who meet quarterly to review claims.
- Fund comes from assessments of $10 per year per member.
- 2014 is the first year to meet the $250k cap for pay outs for claims against one lawyer.
- Revenues and restitution – last year approximately $54k was reimbursed.
- The Fund pays its own way and expenses include Administrator Karen Weigand’s salary.
- Maintaining $3M reserve.
  - Modification of Trust Agreement – During the review of the CPF by the auditor (Eide Bailly) and outside legal counsel, Ellis Carter, it was noted that the Declaration of Trust does not provide what would happen to Trust assets if the Trust were revoked. It was recommended that the Declaration be amended to so provide.
  - The CPF Board of Trustees recommends that the Declaration of Trust be amended to provide that, on revocation of the Trust, the Arizona Foundation for Legal Services & Education receive any remaining Trust assets.
  - The CPF was created to “promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed or otherwise allowed to practice in Arizona, occurring in the course of the client-lawyer of fiduciary relationship between the lawyer and the claimant.” CPF Declaration of Trust, Rule 1(A). The Foundation appears to be a logical recipient because of two substantive purposes for which it is allowed to use IOLTA interest and dividends:
    - A. support programs designed to assist in the delivery of legal services to the poor and law-related education programs designed to teach young people, educators and other adults about the law, the legal process and legal system;
    - B. fund studies or programs designed to improve the administration of justice…
  - Supreme Court Rule 43(f) (6). The Foundation also is allowed to use IOLTA interest and dividends to “maintain a reasonable reserve” and “pay the actual costs of administering this rule and the activities [in (A) and (B)],” but those purposes would not be permitted uses of any remaining trust assets.
  - When the Trustees considered amending the Declaration to address the transfer of assets on revocation, they also noted that the requirement of member approval of revocation is no longer practical. Therefore, the Trustees recommend that revocation instead be approved by the Arizona Supreme Court.
  - MOTION: Patrick Greene moved, John Sullivan seconded and the motion carried unanimously to approve the recommended changes to the Client Protection Fund Declaration of Trust.
**FINANCE AND AUDIT COMMITTEE** – Geoffrey Trachtenberg, Vice-Chair  
Mr. Trachtenberg reported that the Finance and Audit Committee recommended approval of the draft Annual Budget for 2015.  
- Consistent with the 5-year financial projections provided to the Court.  
- Personnel costs do not exceed 3% increase over the 2014 budget.  
- In 2015 added back meals for Standing State Bar Committees only; the $34k does not include BoG meeting meals.  
- 2015 Budget vs. Court Projection – Operating Surplus (Deficit) $127k Court Projection vs. 2015 Budget of $560k  
  - Personnel restructuring; office service cost reductions and miscellaneous expense reductions  
  - 2014 107.5 Full-time employees – 2015 103 FTE including 2 new positions  
  - Merit Pool recommendation from Human Resources Committee = 2.5%  
  - Health insurance increase is lower than anticipated originally budgeted 15% increase, actual increase HSA -3.6% and PPO 1.2%  
  - Capital Expenditures – 2015 Court Projection $1,136k; 2015 Budget $922k; Difference $214k  
  - Differences come from IT – membership database original budgeted 2014 updated to reflect two year project with costs in 2015 and 2016; Xeriscaping project $75k escalated from projected 2015 to 2014 project.  
  - Reviewed in detail the Capital Expenditures budget for 2015.  
  - Reserves are noted and necessary to be in line with the Court projections and dues increase. This budget allows for the building of cash reserves as required by the Court and to meet the projections in the 5-year Plan.  
- Vote on 2015 budget - December 12 Board meeting.

**UNIFORM LAW COMMISSION** – Hon. Sam Thumma and Barbara Atwood  
- Serving as volunteers, this group takes on drafting projects that take several years to complete.  
- The ULC was funded but in 2007 the budget was repealed; 2013 it was put back in the budget and again in 2014 taken out.  
- Ms. Atwood’s interest is in Family Law and over the years several Acts have come from the work of this Commission, including the Interstate Family Support Act Amendments (2008).  
- Currently working on the Uniform Fiduciary Access to Digital Assets Act. It addresses the needs of fiduciary at the time of death and facilitates them gaining access of passcodes for account holders’ email. Commission is hopeful to have Act by July 2016.  
- Requested the Board to send the ULC ideas where gaps exist – what Acts need to be written?

**RULES REVIEW COMMITTEE** – Jeffrey Willis, Chair  
**Proposed Petition to Amend Rules 9.1, 14.3, 26.11 and 41, Ariz. R. Crim. P.**

- The Criminal Justice Section proposes amending the Rules of Criminal Procedure to clarify and emphasize the consequences of a defendant’s voluntary absence on their right to appeal.  
- The proposed changes would ensure that criminal defendants are given proper notice that under A.R.S. S 13-5033(c) they lose their right to directly appeal a guilty verdict if they prevent sentencing from occurring by voluntarily failing to appear for sentencing within 90 days after conviction at a trial.
The proposed petition was circulated to stakeholders and came before the Rules Review Committee without comment.

The Rules Review Committee unanimously recommends filing of the proposed petition.

**MOTION**: Coming from Rules Committee, not requiring a second, unanimously passed to approve the recommendation of the Committee to support the proposed amendments and file the Proposed Petition to Amend Rules 9.1, 14.3, 26.11 and 41, Ariz. R. Crim. P.

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**AWARDS COMMITTEE** – Bryan Chambers

- The Committee usually begins its work in the spring but a few unique recommendations have constituted forming the Committee now.
- **RESOLUTIONS**:
  - Larry Cohen will be moving to Vermont and retiring. He has donated his time and efforts to State Bar CLE’s over the years and his program has been one of the most popular. Staff asked for special recognition of Mr. Cohen for all his volunteer work to help the State Bar with quality programming. **MOTION**: Coming as a motion from the Awards Committee, no second required, the motion was unanimous to approve the recommendation to present Larry Cohen a framed Board Resolution, signed by the President and CEO, at his last CLE program to be held on December 5.
  - Recommendation was made to honor Judge Robert Duber II from Gila County who is retiring after 28 years on the bench, seconded longest sitting judge in the County. The Committee’s unanimous recommendation was to present Judge Duber with a framed Board Resolution thanking him for his service to the profession. **MOTION**: Coming as a motion from the Awards Committee, requiring no second, unanimously passed to approve the recommended draft resolution to be signed by the President and CEO and presented to Judge Duber at his retirement reception.
- **2015 National Conference of Bar Presidents Fellows Award Nomination**
  - Recommendation was made by staff to nominate John J. Bouma for the American Bar Association’s prestigious NCBP Fellows Award.
  - Some of Mr. Bouma’s qualifications include: served as President of the State Bar of Arizona and President of the Maricopa County Bar Association; President of Arizona Bar Foundation; President of Western States Bar Conference; President of National Conference of Bar Presidents; Master Member of the American Inn of Court; President of the Arizona State University Law Society; Fellow and State Chairman of the American Trial Lawyer’s; and longtime delegate and leader in the American Bar Association.
  - Mr. Bouma’s professional accomplishments and contributions to his community are truly extraordinary and his humility, grace, compassion, integrity and commitment to excellence have influenced a generation of lawyers in and outside Arizona
  - **MOTION**: Coming from the Awards Committee, requiring no second, the motion carried unanimously to approve the State Bar of Arizona’s nomination of John J. Bouma for the 2015 National Conference of Bar Presidents’ Fellows Award.

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**CLE TASK FORCE REPORT AND RECOMMENDATION** – Jeff Willis

- Of the 44 jurisdictions that have mandatory continuing education, only two have no form for pre-certification, Arizona being one of them.
- Discussion regarding the feedback received in September from members on the CLE Task Force’s recommendation to adopt pre-certification.
- Issue will return for vote at the December 12 meeting of the Board.

**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 at 11:30 a.m.

Respectfully submitted,

Geoffrey M. Trachtenberg
Secretary-Treasurer