MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
December 12, 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; Diane L. 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; Audrey R. Jennings, Scottsdale; Meredith Peabody, Prescott and At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Whitney Cunningham, Immediate Past President and Dean Marc L. Miller, Tucson

EXCUSED ABSENCE: Public Member: John J. Sullivan, Sahuarita; Ex-Officio: Dean Shirley Mays, Phoenix and Dean Douglas Sylvester, Tucson

OTHERS PRESENT: Nina Benham, Board Services Specialist; Lisa Bormaster, Advertising Sales Manager; Lisa Deane, Chief Member Services Officer; Rick DeBruhl Chief Communications Officer; Carolyn de Looper, Membership Admin & Services Manager; John Furlong, General Counsel/Deputy Director; Kathy Gerhart, CFO; Mauri Hawkins, Professional Development Director; Rob Hosch, Information Technology Director; Gayle V. Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Cameron Mustamandi, Systems Administrator; John Phelps, CEO/Executive Director; Carrie Sherman, Director of Board Operations; Pat Sallen, Director, Special Services and Ethics-Deputy General Counsel; Patricia Seguin, Senior Legal Assistant; and Court Liaison Hon. Ann A. Scott Timmer, Phoenix; Maret Vessella, Chief Bar Counsel

• GUESTS: Kyle Fields, clerk for Arizona Court of Appeals Judge Maurice Portley; Vail Cloar, clerks for Arizona Supreme Court Justice Robert Brutinel; Ellen Katz, Legal Services Committee; Mark Zinman; Hon. C. Steven McMurry; Debbie Weecks; Stanna [Jeffrey Slater], SOGI

Meet and Greet 8:30-9 a.m. The staff and the Board of Governors mingled during this annual holiday get-together.

President Richard Platt called the meeting to order at 9:10 a.m.
PRESIDENT’S REPORT – President Platt

- Thanked board member Diane Drain and her husband Jay Mcclimon for hosting the Board of Governors’ well-attended holiday party the previous evening.
- Presented briefcases to Kyle Fields and Vail Cloar who tied for the highest score on the July Bar Exam. Mr. Fields received his J.D. from Arizona Summit Law School and currently clerks for Arizona Court of Appeals Judge Maurice Portley. Mr. Cloar graduated magna cum laude from ASU’s Sandra Day O’Connor College of Law and currently clerks for Arizona Supreme Court Justice Robert Brutinel.

CEO/EXECUTIVE DIRECTOR’S REPORT – John Phelps

- Introduced and recognized employees: Jennifer Dugan, Receptionist, Employee of the Quarter; Sandra Montoya, Lawyer Regulation Records Manager, Employee of the Year.
- Introduced Mauri Hawkins, the new Professional Development Director.
- SBA received the Arizona Society of Association Executive’s Excellence in Education Award for its Violence in the Workplace webinar. The video was viewed by 1,000 members nationwide.
- Budget has consumed staff time since August. Thanks to David Byers, Finance Committee Chair, for his leadership.
- Human Resources: just completed the open enrollment for employee benefits; new plan design for the 401(k) plan is on track for launch date of 1/1/15.
- Instituted internal monthly Leadership Development Program; about 24 managers participating. Topics: recruiting, coaching, mentoring, strategic planning, etc. Next session is about personalities and working with others.
- Online dues launch successful; minor error early on in the launch was caught, corrected; largest response ever of lawyers getting online this early and paying their dues.

FINANCE & AUDIT COMMITTEE – Dave Byers

- 2015 proposed budget version 2: revenues $15,102K; expenses $14,542K
- Consistent with 5-year financial projections provided to the Court
- In accordance with board’s budget guidelines, personnel costs do not exceed 3% increase over the 2014 budget
- Capital $922K
  - $654K IT projects (includes Association Management System)
  - $268K Other (includes Phoenix and Tucson Bar facilities)
- Consistent with 5-year capital projections provided to Court
- 2015 Budget version 2 - $559,909 “surplus”
- 2015 Budget changes after the first presentation in November to the Board:
  - Professional Services revenue increased $40,000
  - Vacancy Factor increased from 3% to 3.5% - $40,392
  - Medical premium expense increase ($15,108)
  - YLD expenses increased ($5,000)
- 2015 Budget version 3 - $620,193 “surplus”
- Reminded the Board of a Cash Reserve Policy adopted in September: in the event the Bar acquires a cash surplus at the end of the fiscal year, any such surplus shall be added to a
reserve account; account is divided into two sub-accounts – Capital Reserve and Dues Reserve.

- MOTION: Diane Drain moved and Jim Smith seconded the motion to add money in for lunch for the Board of Governors.
- AMENDED MOTION: Diane Drain moved and Meredith Peabody seconded to add into the 2015 budget money for breakfast for the Board of Governors. Motion carried.
- JIM SMITH moved to add in money into the budget to provide lunch for the Board of Governors. Motion failed due to the lack of a second.
- MOTION: Coming from the Finance Committee to recommend adoption of the budget for 2015 as amended, requiring no second, motion carried unanimously.

CONSENT AGENDA – Richard Platt

- President Platt asked if anything should be removed from the consent agenda; items d and f were removed. MOTION: The Board voted unanimously to approve agenda items a, b, c and e.
  a) Approval of November 21, 2014 Board of Governors Meeting Minutes
  b) Resignations
     1. In Good Standing
     2. In Lieu of Reinstatement
  c) Proposed Comment submitted by Criminal Practice and Procedure Committee – Prosecution to Amended Petition R-14-0010, Petition to Amend Rules 31.2, 31.4, 31.13, 32.4, 32.6 and 32.9, Ariz. R. Crim. P.
     R. Crim. P.
  d) Proposed Petition submitted by the Civil Practice and Procedure Committee to Amend Rule 11, Ariz. R. Civ. P.
  e) Proposed Petition submitted by the Civil Practice and Procedure Committee to Amend Rule 55(a)(1)(ii), Ariz. R. Civ. P.
  f) Proposal submitted by the Professionalism Committee to revise the Oath of Admission to the Bar and A Lawyer’s Creed of Professionalism of the State Bar of Arizona

- Extensive discussion regarding item d. - Rule 11 amendment would require a meet-and-confer and written notice of specific alleged deficiencies before the filing of a motion under the rule. The Rules Committee recommended filing the proposed Petition. MOTION: Dee-Dee Samet moved, Geoff Trachtenberg seconded and the motion to change “must” to “may” failed by an 11-12 vote.
- MOTION: Coming as a motion from the Rules Committee, requiring no second, to file the proposed Petition submitted by the Civil Practice and Procedure Committee to Amend Rule 11, Ariz. R. Civ. P. carried in a 16-5 vote.
• Agenda item f. Oath and Creed –Discussion ensued regarding the proposed changes to the Oath: “I will support the Constitution of the United States and the Constitution and laws of the State of Arizona.”
• MOTION: Dee-Dee Samet moved and Dave Derickson seconded a motion to retain the original language (without “and laws”).
• After further discussion it was recommended that Judge Peter Swann present to the Board as he did at the Rules Committee. Suggestion to ask the Professionalism Committee to consider adding “laws of Arizona” and not “laws of the United States” pursuant to what voters just passed in the recent election.
• MOTION: Jeffrey Willis moved and Richard Coffinger seconded to table the matter.
• MOTION TO AMEND: Jeffrey Willis moved, Diane Drain seconded and the motion carried to bring this item back at the January meeting of the Board.
• A Lawyer’s Creed of Professionalism of the State Bar of Arizona
• MOTION: Jeffrey Willis moved, Jimmie Smith seconded and the motion to table the Creed along with the Oath passed unanimously.

RULES REVIEW COMMITTEE – Jeffrey Willis

• Proposed Petition submitted by the Legal Services Committee to Amend Rules of Procedure for Eviction Actions and Proposal by the Supreme Court’s Committee on Limited Jurisdiction Courts
  ➢ Rules Committee recommended not taking a position but forwarding both proposals to the Supreme Court for its consideration.
  ➢ Ellen Katz, William E. Morris Institute, and a Legal Services Committee representative, reviewed the Committee’s Petition which provides for a change of judge in eviction action in Justice Court cases.
  ➢ Presiding Justice of the Peace C. Steven McMurry summarized the JP’s Petition which gives the right to a change of judge if another JP is available. This petition mitigates delays in the legal process perceived in the other Petition.
  ➢ MOTION: Jimmie Smith moved and Diane Drain seconded the motion to only send the Legal Services Committee’s proposal to the Supreme Court. Motion failed in a 16-6 vote.
  ➢ MOTION: Coming from the Rules Committee, requiring no second, the Board voted to send both proposals to the Court for its consideration.
• Proposed Petition submitted by the Sexual Orientation and Gender Identity Committee to Amend Judicial Canon 2.3 in Rule 81, Ariz. R. Sup. (Information Only)
  ➢ President Platt stated that this item is information only and not for vote today.
  ➢ Stanna Slater addressed the Board in favor of the Petition.
  ➢ This item was discussed at the Scope and Operations Committee meeting last week and it was noted that the Petition may not have been vetted by all interested parties.
  ➢ The Board agreed to circulate the Petition more broadly amongst interested stakeholders and for the officers to decide when this issue is ready to be brought back before the Board for consideration.

BREAK 11:10 a.m. – 11:25 a.m.
CLE TASK FORCE REPORT AND RECOMMENDATION

- CLE Pre-certification
- MOTION: Jimmie Smith moved, Geoffrey Trachtenberg seconded and the motion carried unanimously that there be no pre-certification of CLE providers by the State Bar.

LAWYER REGULATION ISSUES – Richard Coffinger

- Mr. Coffinger revisited his Board Reporting Form first submitted at the Board’s Retreat in July regarding his concern about the proposed sun-setting of the Board’s Discipline Oversight Committee and his request for clarification regarding the Board’s role in the lawyer discipline process.
- Following his discussion with the officers at their December meeting, Mr. Coffinger proposed the following for the Board’s consideration:
  - Maret Vessella, Chief Bar Counsel, provides quarterly reports to the Board of Governors including statistics and trends regarding lawyer discipline matters.
  - Requested that the President write to the Chief Justice requesting appointment of a current Board member, in lieu of a past president who is serving, to the Attorney Regulation Advisory Committee.
  - The Discipline Oversight Committee (DOC) be sun-setted as it no longer has a viable charge or purpose due to the recent changes in the lawyer regulation process.
  - MOTION TO TABLE: Richard Coffinger moved, Steven Hirsch seconded and the motion carried unanimously to table the issue of sun-setting the DOC for six months. Currently the DOC has no chair and no appointments were made for the 2014-2015 Bar year.
  - MOTION: Sam Saks moved, Diane Drain seconded and the motion carried unanimously for Richard Platt to appoint a study group to meet and make recommendations to the Board on its role and the parameters of the oversight function. Jim Smith moved to table the discussion on the discipline oversight issues but the motion failed for the lack of a second.

BYLAWS DISCUSSION REGARDING PRESIDENT’S AUTHORITY – John Furlong

- Article 8.02 of the Bylaws states that the president acts as parliamentarian for all Board meetings. Article 11.01 states that the president determines the Board’s meeting schedule. Basic structure of the agenda is established by the parliamentarian.
- Diane Drain submitted a Board Reporting Form suggesting that the Board be notified when the cancellation of a Board meeting is being considered.

POLICY RE COMMUNICATIONS ACCESS TO MEMBERS – Diane Drain

- John Phelps reviewed the reasons for and history of the Policy.
- Last year the following was added: “Comment to 2013 amendment: added language that, in general, the organization will not promote non-Bar CLE events (exceptions may be granted by the Bar’s CEO).”
- Criteria used for exceptions: 1) is the group/requestor valid? and 2) reciprocity (in promoting Bar’s programs).
• Diane Drain stated that the Solos/Small Firms Section has set up its own list-serve, and other Bar groups may do the same, in order to share any information it decides best serves its members.
• Debbie Weecks asked the Board to rescind the policy language noted above.
• Mr. Phelps stated that the change was approved by the Board after the Communications Advisory Committee made the recommendation to the Board.
• Lisa Deane explained that the sections’ and committees’ listservs were initially set up for notices to be sent to the respective groups. Separate from that the Solos Section has a Discussion Group listserv which acts more like a chat room.
• If the policy were to change a notice should be sent to all sections and committees.
• Diane Drain will submit a Board Reporting Form to request that at its January meeting the Board reconsider its policy.

DIVERSITY AND INCLUSION COMMITTEE UPDATE – Sam Saks

• Nothing to report at this time.

MEMBER SURVEY PRESENTATION – Rick DeBruhl:

Summarized the 2014 Member Survey Results

• 4019 members responded in 2011, 2525 in 2014
• Timing – survey was sent out on the heels of the dues increase, as well as during the month of June (conflicting with convention – past years survey was in March) which could contribute to the low response numbers and the degree of dissatisfaction with the Bar.
• Satisfaction – 2011 – 77% satisfied; 2014 – 63% satisfied.
• Most-Used Services
  ➢ Arizona Attorney 73%; Website 61%; Directory 60%; CLE Programs 59% and eLegal 50%
• Most-Valued Services
  ➢ Directory 73%; Website 73%; Arizona Attorney 72%; CLE 68%; Ethics Hotline 55%
• Printed Directory or Robust Online Directory
  ➢ 32% Printed; 68% Online
• What Services Should Bar Provide?
  ➢ 14% want better, less expensive, more relevant and more accessible CLE
  ➢ 13% want more, better and less costly research tools and resources
  ➢ 12% want cuts in dues, fees, costs or services
  ➢ 11% want group insurance for health or malpractice
• Personal Challenges
  ➢ Stress – 29%
  ➢ Balance family and work – 17%
  ➢ Time management – 21%
  ➢ Keeping up with new developments in the law – 21%
  ➢ Keeping up with new developments in technology – 19%
• Issues Bar Should Address
More responsive to sole practitioners and small firms 31%; efforts to increase professionalism 30%; preserving judicial independence 29%  

- Next Five Years  
  - 16% plan to retire; 7% leave practice of law; 9% change practice setting; 4% change area of practice; 4% move out of state; 60% no change  

**HUMAN RESOURCES – CEO/ED Annual Review Process Timeline** – Meredith Peabody, Chair  
- Ms. Peabody reviewed the schedule for the CEO’s/Executive Director’s performance evaluation process over the next few months. Board members were invited to inform Ms. Peabody of their interest in participating in the process.  

**OBITUARIES**  
To honor our members who have passed, a webpage has been created and will be posted at [www.azbar.org/NewsEvents/InMemoriam](http://www.azbar.org/NewsEvents/InMemoriam).  

**ADJOURN**  
There being no further business to come before the Board of Governors, the meeting adjourned at 1:05 p.m.  

Respectfully submitted,

Geoffrey M. Trachtenberg  
Secretary-Treasurer