MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
January 23, 2015
Phoenix, AZ

BOARD MEMBERS PRESENT: Richard Platt, President, Coolidge; Bryan B. Chambers, President-Elect, Globe; Lisa S. Loo, First Vice President, Phoenix; 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. Rebbolz, 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; At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Whitney Cunningham, Immediate Past President and Leah Won on behalf of Dean Marc L. Miller, Tucson; Dean Shirley Mays, Phoenix.

EXCUSED ABSENCE: Alex Vakula, Second Vice President, Prescott and Ex-Officio: Dean Douglas Sylvester, Tucson.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Rick DeBruhl Chief Communications Officer; Carolyn de Looper, Membership Admin & Services Manager; John Furlong, General Counsel/Deputy Director; Martin Gaxiola, Accounting Manager; Kathy Gerhart, CFO; 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; Jarod Stultz, Helpdesk Technician and Court Liaison Hon. Ann A. Scott Timmer, Phoenix; Maret Vessella, Chief Bar Counsel

- GUESTS: Dr. Kevin Ruegg, Ph.D., Arizona Bar Foundation; Wm. Charles Thomson, Gallagher & Kennedy; Hon. Peter Swann, Arizona Court of Appeals; Debbie Weecks, Law Office of Debbie Weecks; Catherine Jiang, Law Office of Catherine Jiang

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

PRESIDENT'S REPORT – President Platt

- Attended Law School for Legislators at the Capitol on January 8th, a biennial program sponsored by the State Bar.
- Presented, along with CEO/Executive Director John Phelps, at a Mohave County Bar Association meeting in Lake Havasu City which was well attended.
- Similar presentation in Tucson for the Pima County Bar Association on January 27th and in Prescott for the Yavapai County Bar Association on January 28th.
• Congratulated the Hon. David G. Derickson on receiving the 2015 John J. Flynn Lifetime Achievement Award - “The Dirty Shirt Lawyer of the Year” - given by the Arizona Attorneys for Criminal Justice.

LEGISLATIVE UPDATE – Rick DeBruhl
• The Legislature is 12 days into the session.
• 170 bills have been introduced.
• Two bills died – (1) Introducing Daylight Savings Time and (2) Arizona drivers licenses being changed to indicate non-citizens.
• HCR2002 as proposed judicial retention elections would require a 60% vote for a judge to be retained. Last year this change would have affected five judges.
• HCR2006 as proposed would allow the Legislature to remove a judge or non-elected state officer for no cause with a two-thirds vote.
• HB2172 as proposed would increase minimum auto insurance limits.
• HB2706 as proposed would allow an officer of a corporation to represent the corporation in the lower courts.
• Messrs. DeBruhl and Phelps met with the new House Speaker David Gowan.
• Legislature is working on the budget which is very time consuming.
• HCR1002 as proposed would allow the Legislature to modify Court Rules.

CEO/EXECUTIVE DIRECTOR'S REPORT – John Phelps
• Annual Performance Reviews are being conducted. Leaders are meeting with each employee and it is a rigorous process. Quarterly reviews are also performed to check on status and adjust performance plans. Attended, as a technical advisor, the Supreme Court’s Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona meeting which meets monthly.
  ➢ Make-up of the Task Force: five past Bar presidents; five lawyers; five public members.
  ➢ Focus is on the size of the Board; 15-18 members considered.
  ➢ Debate on: how many appointed versus elected Board members; reducing the number of officers from five to three; name change – “Governors” to “Trustees”.
  ➢ Agreed that protection of the public is paramount in the Bar's Mission.
  ➢ Transition of current Board has not been discussed.
  ➢ The Task Force voted to keep the Mandatory Bar which passed with one dissention.
• Implementing the budget approved in December, 2014.
• Phoenix Bar Building:
  ➢ Completion of the xeriscape landscaping after the 2014 Flood.
  ➢ Lobby upgrades
  ➢ Tenant improvements completed so 1st floor tenant could occupy larger space on the 2nd floor.
  ➢ Continue to market available space.
• ABA President William Hubbard, Arizona Supreme Court Chief Justice Scott Bales, ASU Sandra Day O'Connor College of Law and the State Bar are planning a statewide conference in April on the future of the delivery of legal services in Arizona. Jeff Willis chairs this initiative.
RULES COMMITTEE – Chair Jeff Willis

- 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.
- Oath: Add “and laws” to Oath.
- Creed: Reflect additional areas of emphasis coming about as the result of practical experience since the Creed was originally adopted.
- Rules Committee in a vote of 4 to 1 recommends filing of the Petition with the proposed changes.
- This item came before the Board in December and it was the will of the Board to have Judge Peter Swann and William Charles Thomson appear before the Board to further discuss the changes.
- Both Judge Swann and Mr. Thomson presented to the Board. The reasoning for the changes wasn’t intended to cause angst but to harmonize the Oath and Creed with other Rules and a Statute that is in effect now. After considerable discussion:
  - MOTION: Coming as a motion from the Rules Committee to file the proposed petition that would revise the Oath of Admission to the Bar and A Lawyer’s Creed of Professionalism of the State Bar of Arizona, passed with a vote of 12-9.
- This will be on the Supreme Court’s 2016 Rules agenda.

COMMUNICATIONS POLICY – John Phelps

- Mr. Phelps reviewed the current policy and the request from Diane Drain, representing the Sole Practitioner & Small Firm Section, to carve out an exception for Section discussion groups or chat rooms to allow announcements/discussions regarding non-State Bar CLEs. The Board did not take action in December and wanted to revisit the policy in general.
- The Scope and Operations Committee reviewed the proposal and recommended that the issue be returned to the Communications Advisory Committee for its review and recommendations before Board action.
- Related issue – advent of the “Online Communities” which will be demonstrated at the February Board of Governors’ meeting along with a suggested Board Online Community.
  - These are robust with calendars, digest of discussions, document storage, etc.
- Scope discussed what should the Online Community policies be for all groups? Posted documents - what kind of controls should be in place (copyrights or proprietary)? What kinds of disclaimers should be made in umbrella policy that (1) doesn’t unnecessarily tie hands of members; (2) enough protections to protect the organization.
- The Committee will not only discuss consideration of non-Bar CLE’s but it will also look at larger issues.
- Diane Drain, withdrew her original proposal, stating it is necessary to take a step back and look at the whole picture, supporting review by the Communications Advisory Committee.
- Debbie Weecks reported on her proposal stating that without a carve-out today, some members won’t remain members of Sections.
- Ms. Drain responded that the organization needs to take into account the impact of its decisions on the entire organization as a whole before making a business or policy decision.
- **MOTION:** Bryan Furuya moved and Meredith Peabody seconded the motion to approve the Scope and Operations Committee’s recommendation to return this matter to the Communications Advisory Committee.

- **MOTION TO AMEND:** Dave Byers moved to amend the motion to include a deadline for the return of this matter to the Board for its April meeting. Amendment accepted by Bryan Furuya and Meredith Peabody.

- **Supplement to the Amendment:** to provide notice to the Board of the Communications Advisory Board’s meeting date.

- **Vote:** Motion as amended carried over one dissention.

**CONSENT AGENDA**

- President Platt asked if anything was to be removed from the Consent Agenda, hearing nothing:
- **MOTION:** Jimmie Smith moved, Patrick Greene seconded and the motion carried unanimously to approve the Consent Agenda:
- Approval of December 12, 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.)
- Arizona Attorney Readership Survey

**CONVENTION SILENT AUCTION CHARITIES** – John Phelps

- The RFP to run the silent auction at the Convention and be the beneficiary of its proceeds went out to 21 non-profit organizations and three responded:
  - Chrysalis
  - Defenders of Children
  - Sojourner Center (Domestic Violence Shelter)
- The Board considered the pros and cons of each organization, along with their respective ratings.
- Dr. Kevin Ruegg with the Arizona Foundation for Legal Services & Education provided background on each entity and stated that each provides vital services in the community.
- Defenders of Children was a recipient in the past.
- **MOTION:** Stephen Hirsch moved, Paul Senseman seconded and the motion carried unanimously to select the Sojourner Center as this year’s charity for the Convention Silent Auction.

**STRATEGIC PLANNING COMMITTEE** – Chair Bryan Chambers

- Mr. Chambers reported that the Committee had spent several meetings reviewing the current Five Year Strategic Plan line by line to determine what goals and action plans should be carried over into the 2015-2019 Plan. A majority of the tasks were either accomplished or now continue as operational functions and do not require mention in the Plan. The Committee
made a conscious decision to craft a leaner outline of a Plan -- two pages -- so the Board could focus on the strategic vision at this point.

- The five overarching goals have not changed:
  - 1. Competency
  - 2. Ethics
  - 3. Professionalism
  - 4. Administration of and Access to Justice
  - 5. Organizational Excellence

- There are sub-goals within a broader goal; some action plans have already been captured.

- Discussion ensued and from that a number of suggestions were made including:
  - More information on what is behind each goal.
  - Cost of proceeding with the draft as proposed.
  - Narrative can be added once the major initiatives are determined.
  - The lawyer referral system referenced is for the 13 counties, not Maricopa or Pima.
  - Diversity and Inclusion - two action plans were dropped from the previous plan. Inform the Board why the Committee believes they are no longer relevant.

- Committee will report back to the Board in February. Comments from the membership would be sought thereafter and considered by the Committee.

- The Supreme Court’s Strategic Plan was provided to the Board which is also a guide for the Bar’s Strategic Planning Committee.

- Next meeting of the Strategic Planning Committee is February 13 at 10:00 a.m. at the Bar.

**FINANCE AND AUDIT COMMITTEE** – Chair Dave Byers

- Mr. Byers reported that the Accounting Department is still in the process of closing the books for 2014. Results will be available at the February meeting.

- Preliminary 2014 year-end numbers reflect a $1,338M surplus due to staff attrition, hiring freezes and cost saving measures; better than the five-year plan projection.

- The Finance Committee will bring for recommendation and action at the February Board meeting that the 2014 surplus be distributed into the two recently authorized reserve accounts; $1M in Capital; balance in dues.

**RECOMMENDATIONS OF THE SUPREME COURT COMMITTEE ON REVIEW OF SUPREME COURT RULES GOVERNING PROFESSIONAL CONDUCT AND PRACTICE OF LAW** – Chair Justice Ann Timmer and Patricia Sallen, Director, Special Services and Ethics, and Deputy General Counsel

- Justice Timmer explained the Committee’s charge: Examine and update rules to ensure that the public is protected and the rules do not impose unnecessary barriers to the delivery of legal services. Also consider making changes proposed by the ABA’s Commission on Ethics 20/20.

- Chief Justice Bales appointed the Committee in June; it finished in December.

- The Final Report includes what was considered and what was not adopted.

- Rule Petition has been filed and comments are due by May 20th. Justice Timmer encouraged the Board to read the Petition and comments.

- The Court will review the Petition and Comments received in August, 2015.
Ms. Sallen presented a PowerPoint to give an overview of the Petition stemming from the Committee’s work.

No recommendation was made to either allow non-lawyer ownership of law firms or to move away from reciprocity.

A few of the recommended changes are:

- **Recommendations regarding unauthorized practice of law: ER 5.5.**
  - Revise ER 5.5 (unauthorized practice of law) to limit application to the practice of Arizona law.
  - Must be admitted if live/establish an office in this jurisdiction and practice Arizona law.
  - Would not need to be admitted if exclusively practice the law of another jurisdiction.
  - If changed, no longer need Rule 39 (Katrina Rule).

- **Recommendation re: unauthorized practice of law: Rule 31.**
  - Clarify Rule 31(a)(2)(D) defining “mediator” to say that mediators are not practicing law.
  - Clarify Rule 31(d)(25) re: non-lawyer mediators who prepare documents must be CLDPs.

- **Recommendation: practice pending admission (PPA)**
  - Adopt ABA Model Rule with some amendments.
  - PPA allows non-admitted lawyers to engage in the “regular practice of law” in the jurisdiction for up to a year, under conditions: Associates with and is supervised by an admitted lawyer; includes disclaimer on all written communication.
  - Recommended amendments: apply only to admission on motion applicants; file application before commencing practice.

- **Recommendation to amend Rule 34(f) (admission on motion)**
  - Lower active-practice requirement to 3 of preceding 5 years. (Current Rule: 5 of 7 years)
  - Corresponding change to Rule 34(b)(1)(D) (must have graduated from an ABA-approved law school or accrued sufficient active-practice time)
  - Eliminate Arizona-custom definition of “active practice”

- **Recommendations to amend Rule 38(h)(registered In-House Counsel)**
  - Allow to appear pro hac vice in court for employer
    - Current rule: prohibited
    - Apply pro hac vice each time
  - Allow without pro hac vice if providing pro bono service in conjunction with legal services organization
    - Current rule: Must apply pro hac vice
  - Move In-House Counsel registration to the Supreme Court

- **Additional recommended changes include the following rules:**
  - **Recommendations to amend Rule 38 (special exceptions) & Rule 39 (Katrina rule)**
  - **Recommendation to amend ER 1.10(d) (imputed disqualification)**
  - **Recommendation #2 to amend ER 1.10(b) (imputed disqualification)**
  - **Recommendation to amend ER 1.6**
  - **Recommendation to amend ER 1.5(e)**
APPOINTMENTS COMMITTEE – Carrie Sherman on behalf of Chair Alex Vakula

- The Committee requests the Board to encourage qualified individuals to apply for openings on the following:
  - Arizona Commission on Appellate Court Appointments
  - Maricopa County Commission on Trial Court Appointments
  - Pima County Commission on Trial Court Appointments
  - Pinal County Commission on Trial Court Appointments
  - Descriptions and candidate qualifications are available on the Appointments Committee web page

- Public Member John Sullivan has served two three-year terms on the Board and, pursuant to Supreme Court rule, is ineligible for reappointment. The Committee requested the Board to consider any candidate criteria that should be included in related advertising.

- Phoenix Mayor Greg Stanton appointed Joseph Kanefield, Ballard Spahr LLP, to a three-year term on the City of Phoenix Judicial Selection Advisory Board.

PEER REVIEW COMMITTEE – Chair Whitney Cunningham

- The Committee was created some 20 years ago. The Peer Review Program was active in the 1990’s but the number of participants have steadily declined.

- Only the Lawyer Regulation Office makes referrals to the Peer Review Program. Peer review issues now dealt with by the Attorney/Consumer Assistance Program.

- Last year the Vice Chair was unable to move to the Chair position and no new appointments were made to the Committee; no participants in the peer review process; the Committee is dormant.

- Recommendation: sunset this Committee and Program

- Action: February Board vote.

SBA CYBER SECURITY – Rob Hosch, Technology Support Director

- Mr. Hosch reviewed the Network Security Layout

- The State Bar’s defense includes:
  - Sophisticated Firewall
  - Intrusion Protection
  - Email Protection
  - Multi-directional Web Filtering
  - Secure File Transfer
  - Vulnerability Testing
  - Penetration Testing
  - Server and Endpoint Protection

- Bar encrypts all sensitive data in transit.

- Bar complies with the following standards: Payment Card Industry and Data Security Standard 3.0; Health Insurance Portability and Accountability Act; Consumer Privacy Standards.

- SBA does not electronically store credit cards.

- Department and security audits are conducted regularly.
LAWSYER REGULATION OFFICE REPORT – Maret Vessella, Chief Bar Counsel

- The Attorney Regulation Advisory Committee (ARC) is required to file an annual report each year by April 30th.
- The annual report includes statistics for lawyer discipline processing and the report may make recommendations on specific issues addressed by the Committee.
- The Report includes data regarding:
  - Intake process
  - Investigative process
  - Attorney Discipline Probable Cause Committee case review
  - Presiding Disciplinary Judge case processing and disposition
- Intake Process
  - In 2013 the SBA received approximately 3,492 charges against lawyers
  - 69% of charges were resolved in Intake which took an average of 21 days to resolve a charge
  - 792 charges were sent on for a full screening investigation which were attributable to 475 lawyers.
- Ms. Vessella reviewed the remainder of the 2013 findings with the Board of Governors covering topics such as the investigation of charges; the Attorney Discipline Probable Cause Committee makeup and findings;
- Presiding Disciplinary Judge
  - 79 complaints were filed in 2013. Of those, 27 were direct consent agreements.
  - Cases closed out in 2013: 11% contested cases; 33% default cases and 56% consent agreements.
  - Average time calculated from filing of formal charges to final disposition by the Presiding Disciplinary Judge:
    o Contested cases: 179 days
    o Default cases: 82 days
    o Consent Agreements: 50 days
- Ms. Vessella also reviewed the Sanctions ordered and other Dispositions of the matters in the 2013 Report.

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 12:50 p.m.

Respectfully submitted,

Geoffrey M. Trachtenberg
Secretary-Treasurer