MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
February 27, 2015
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 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; Laura Dooley on behalf of Dean Shirley Mays, Phoenix; Leah Won on behalf of Dean Marc L. Miller, Tucson; and Gary Stuart on behalf of Dean Douglas Sylvester, Tempe.

EXCUSED ABSENCES:

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; John Furlong, General Counsel/Deputy Director; Kathy Gerhart, CFO; Rob Hosch, Information Technology Director; Gayle V. Jackson, Human Resources Director; Ann Leslie, Executive Assistant; John Phelps, CEO/Executive Director; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel; Mauri Hawkins, Professional Development Director; Amy Rehm, Deputy Chief Bar Counsel; Pat Sallen, Director, Special Services and Ethics-Deputy General Counsel; Jarod Stultz, Help Desk Technician; Roberta Tepper, Deputy Director Lawyer Assistance Programs; and Court Liaison Hon. Ann A. Scott Timmer, Phoenix.

• GUESTS: Robert Copple, CLE Task Force; Brett Dunkelman, Antitrust Section; Larry Hammond, Indigent Defense Task Force; Eliot L. Kaplan, State Bar Tax Executive Council; Kate King, Governor’s Office, Deputy General Counsel; Michael Mason, ABA House of Delegates Representative; and Rosemarie Pena-Lynch, AWLA.

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

LEGISLATIVE UPDATE – Rick DeBruhl

➢ HB 2629 passed out of House Judiciary 4-2. Would move lawyer regulation from the Bar to the Supreme Court. The bill has not been assigned to the Rules Committee, possibly waiting for a budget estimate from the Court. The Bar is opposing the bill and board members were encouraged to contact their lawmakers as constituents.
PEP Program – Public education program run by the Arizona Broadcaster’s Association. The Bar’s 30-second spot talks about how the Bar can help consumers. Perfect timing to have this on the air while the Bar is facing an issue at the Legislature.

HB 2076, which would increase the number of Supreme Court Justices from five to seven, passed through the Committee of the Whole late last week. Has not moved since then; does not appear to have enough House votes.

The following bills would require Constitutional changes, have not moved through committee and are effectively dead:

- HCR2002: Judicial Elections; would require a 60% vote for a judge to be retained.
- HCR2006: State Officers; Judges; Legislative removal with two-thirds vote.
- SCR1002: Supreme Court; Procedural Rules; Amendment would allow the Legislature to modify Court Rules.

NEW MATTER – North Carolina State Board of Dental Examiners v. Federal Trade Commission Decision – Patricia Sallen

- Ms. Sallen summarized the U.S. Supreme Court decision. After review of the make-up of the Board of Dental Examiners, the Supreme Court concluded that it was not a state agency and that it did not have appropriate supervision over market participants.
- The State Bar supervises unauthorized practice of law actions against non-lawyers. Can the State Bar be sued for antitrust violations?
- After a lengthy discussion, the Board recommended that the president consider forming a Task Force to further study this matter.
- Matter to be placed on the Scope and Operations Committee meeting agenda for March 5.

PRESIDENT’S REPORT – President Platt

- Presented, along with CEO/Executive Director John Phelps to the: Mohave County Bar Association, Lake Havasu City, January 15th; the Pima County Bar Association, Tucson, January 27th; Yavapai County Bar Association, Prescott, January 28th.

CEO/EXECUTIVE DIRECTOR’S REPORT – John Phelps

- Annual State Bar audit completed which took several weeks.
- Attended the National Conference of Bar Presidents (NCBP) midyear meeting at which Bar leaders from around the country share best practices. Also participated in the National Association of Bar Executives (NABE) midyear meeting.
- A number of State Bar executive team members presented at the NABE meeting:
  - CCO Rick DeBruhl on partnering with UNIVISION to establish a Lawyers on Call program for the Hispanic community.
  - HR Director Gayle Jackson on How to Recruit and Retain Talent.
  - CFO Kathy Gerhart and Gayle Jackson presented on best practices in finance and HR during the NABE Administration & Finance Section’s all-day workshop.
- ACLEA – Senior Member Services Officer, Lisa Deane, a former ACLEA president, and Sarah Fluke, Professional Development Coordinator, gave a presentation on customer service.
- Several Bar Counsel are involved in the National Organization of Bar Counsel (NOBC) and sit on various panels to discuss trends and lawyer regulation issues.
ABA President William Hubbard is asking states to hold grassroots conferences focused on the future of the delivery of legal services in the USA Chief Justice Scott Bales and Mr. Hubbard are planning such an event in Phoenix on April 3rd. Board member Jeff Willis is chair of the planning committee.

**APPOINTMENTS COMMITTEE** – Chair Alex Vakula
Mr. Vakula welcomed and introduced Kate King, Governor Doug Ducey’s Deputy General Counsel.

The following nominations will be forwarded to Governor Ducey for his ultimate appointment, with the advice and consent of the Senate.

**Appellate Commission (two seats)**

- **MOTION:** Coming from the Appointments Committee, requiring no second, the following applicants were recommended:
  - Ms. Monica B. Klapper, United States Attorney’s Office, Maricopa County (incumbent)
  - Mr. Keith A. Swisher, Arizona Summit Law School, Maricopa County
  - Mr. Todd S. Kartchner, Fennemore Craig PC, Maricopa County (incumbent)
- Vote: Unanimous

**Maricopa County Commission on Trial Court Appointments – Supervisorial Districts 3 and 4**

**Supervisorial District 3**

- **MOTION:** Coming from the Appointments Committee, requiring no second, the following applicants were recommended for the District 3 Commission seat:
  - Mr. Thomas M. Richardson, Friedl Richardson (incumbent)
  - Ms. Trevi Grant, Grant Creighton & Grant PLC
  - Mr. Scott Zwilinger, Goldman & Zwilinger, PLLC
- Vote: Unanimous

**Supervisorial District 4**

- **MOTION:** Coming from the Appointments Committee, requiring no second, the following applicants were recommended for the District 4 Commission seat:
  - Mr. Michael G. Parascandola, City of Goodyear
  - Mr. Gaetano J. Testini, Manning & Kass, Ellrod, Ramirez, Trester, LLP
- Vote: Unanimous

**Pima County Commission on Trial Court Appointments – Supervisorial Districts 1, 2 and 3**

**Supervisorial District 1**

- **MOTION:** Coming from the Appointments Committee, requiring no second, the following two applicants were recommended for the District 1 Commission seat:
  - Mr. Stephen M. Weiss, Karp & Weiss PC (incumbent)
  - Mr. Troy E. Larkin, Office of Asst. Chief Counsel, U.S. Customs & Border Protection
- **MOTION to Amend:** Dee-Dee Ėtém moved, Alex Vakula seconded and the motion carried unanimously to send the following three names to the Governor:
  - Mr. Stephen M. Weiss, Karp & Weiss PC (Incumbent)
Mr. Troy E. Larkin, Office of Asst. Chief Counsel, U.S. Customs & Border Protection; Staff Attorney
Ms. Jean K. Gage, Copperpoint Mutual Ins. Co.

Supervisorial District 2

- **MOTION:** Coming from the Appointments Committee, requiring no second, the following two applicants were recommended for the District 2 Commission:
  - Hon. Nanette Warner (Ret.), Warner Dispute Resolution & Consultation LLC
  - Mr. William N. Poorten, III., Snell & Wilmer
- **MOTION to Amend:** Dee-Dee Samet moved, Patrick Greene seconded and the motion carried over one abstention to send the following three names to the Governor:
  - Hon. Nanette Warner (Ret.), Warner Dispute Resolution & Consultation LLC
  - Mr. William N. Poorten, III., Snell & Wilmer
  - Ms. Maricela Meza, Karp & Weiss, PC

Supervisorial District 3

- **MOTION:** Coming from the Appointments Committee, requiring no second, the following two applicants were recommended for the District 3 Commission seat:
  - Mr. Michael L. Boreale, Jr., Boreale Law PLC
  - Ms. Marla S. Rapaport, Pima County Public Defender’s Office
  - Vote: Unanimous

Pinal County Commission on Trial Court Appointments

Supervisorial District 1

- **MOTION:** Coming from the Appointments Committee, requiring no second, the following applicant was recommended for District 1 Commission seat:
  - Mr. James P. Walsh, Walsh Consulting
- **MOTION to Amend:** Dee-Dee Samet moved, Paul Senseman seconded and the motion carried over one dissent to send the following two names to the Governor:
  - Mr. James P. Walsh, Walsh Consulting
  - Mr. Cody Weagant, Wallace, Volkmer & Weagant, PLLC
  - Prior to voting the Board was informed that the Appointments Committee had not received any responses from Mr. Weagant’s references; however, President Platt spoke on behalf of Mr. Weagant during the Board meeting.

Supervisorial District 2

- **MOTION:** Coming from the Appointments Committee, requiring no second, incumbent Kate K. Milewski, Pinal County Public Defender’s Office, was recommended for re-nomination to the Governor.
  - Vote: Unanimous

It was noted that three of the nominees are graduates of the State Bar’s Bar Leadership Institute.
PROGRAM REVIEW COMMITTEE – Chair Whitney Cunningham

- Mr. Cunningham reviewed the history of the Peer Review Program, which was created approximately 20 years ago and was active in the 1990’s, but the number of participants has continued to decline. Only one person was referred in 2013.
- Peer review issues are now dealt with by the Attorney/Consumer Assistance Program (intake office).
- Last year the Peer Review Committee’s vice chair did not move into the chair position and no new appointments were made to the Committee. There are no participants in the Peer Review Program and the Committee is dormant.
- **MOTION:** Coming from the Program Review Committee, requiring no second, the PRC recommended the elimination of the Peer Review Program and Committee. Motion carried unanimously.

TASK FORCE ON STATE BAR MISSION & GOVERNANCE REPORT – Whitney Cunningham

- The meetings of the Supreme Court’s Task Force are open to the public and a number of Board members have attended. The next meeting is April 23.
- There are three options being considered:
  - The current 26 elected and appointed Board members would shrink to 15-18 members. How these positions are determined is still being discussed. Any position proposed for elimination would finish out that respective term.
  - Term limits are being debated but three, three-year terms are being considered, and the number of officers might shrink from five to three.
  - Already debated and agreed that the Mission of the Bar is first and foremost “to protect the public”.
  - The Task Force is comprised of five past Bar presidents, five lawyers, five public members.

INDIGENT DEFENSE TASK FORCE, Chair Larry Hammond

- Task Force requested to suspend further consideration by the Board of Governors of the Task Force’s Gideon proposal.
- Mr. Hammond indicated that, rather than ask the State Bar to organize and fund a statewide review of indigent criminal defense at this time, it would be preferable to have that review handled by Arizona’s law schools.
- Collaborative efforts are underway with the law schools and others on this important project.

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 January 23, 2015 Board of Governors Meeting Minutes
  - Resignations in Good Standing
  - 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.)
2015 Dues Waiver Requests
MCLE Suspensions re 2013-2014 Non-Compliance (Updated list provided)
Young Lawyers Division (YLD) Revised Bylaws

FINANCE & AUDIT COMMITTEE – Chair David Byers
Review of December unaudited Year-End Financials:

- $1.3M Surplus for 2014 including sections activities
- Total Expenses Personnel $8.287M = 62%
- Other Operating Expenses $4.299M = 32%
- Depreciation $830K = 6%
- Membership Growth is 2% a year including attrition.
- CLE Total Revenues was budgeted $2M and showed a modest increase.
- Total expenses were reduced due to cost reduction efforts by staff and due to the hiring freeze.
- Dues penalties substantially increased from $257K in 2013 to $542K in 2014.
- Primary cause communicated by members for paying late was “delegated to someone else in office.”

PROPOSED RESERVE POLICY

- MOTION: Coming as a motion from the Finance & Audit Committee, requiring no second, recommended splitting the $1.2M reserve 50/50 between the Dues Reserve and the Capital Projects Reserve. Motion carried unanimously.

INVESTMENT POLICY

- The Board was urged to review the proposed policy as it will be voted on at the March meeting.
- This policy outlines guidelines for investing State Bar funds including the Dues Reserve, the Capital Projects Reserve and the Client Protection Fund.

TAX LAW SECTION – Eliot Kaplan for Tax Law Section

- Section is requesting a letter be sent to Congress encouraging increased funding for the IRS.
- The IRS has suffered extensive budget cuts since 2010 leaving them shorthanded resulting in audits remaining unresolved, phone calls being unanswered, backlogs on transcripts which take months to acquire.
- The lack of funding resulting in the lack of personnel is affecting the administration of justice.
- General Counsel John Furlong reported political activities, if related to the Bar’s core purpose, are permissible under Keller.
- MOTION: Jim Smith moved, David Derickson seconded and the motion carried unanimously to not send a letter to Congress to support increased funding for the IRS.

ONLINE COMMUNITIES – Roberta Tepper

- Ms. Tepper gave a PowerPoint presentation regarding the Online Communities now being used by sections. Members must be a member of a section(s) in order to see the content.
- Current sections’ web pages are static. The new portal now has the ability to:
- Post online newsletter
- Library tab which lists documents; links to documents; post additional documents
- List events – all events can be on the online community calendar
- Daily digest can be provided at the end of the day which lists all that was posted the prior day OR the member can receive postings in real time.

CLE TASK FORCE REPORT – Chair Jeff Willis
- Introduced Robert Copple, ADR Section past chair. Mr. Copple chaired one of the Task Force’s three Subgroups charged with studying ways to increase collaborative CLE efforts between the sections and the CLE Department. This was the model in the 1970s.
- The Subgroup recommended the creation of a CLE Curriculum Committee and a unified calendar.
  It also recommended the creation of a centralized system for the delivery of all CLE programs with the CLE Department overseeing all programs, paying all costs and receiving all associated revenue.
- CLE on Demand and Webcasts are a large portion of the CLEs offered currently by the CLE Department. Offering more workshops rather than formal panels is an option.
- Mr. Copple gave examples of the fees charged by different sections for their respective CLEs, between $10 and $25. The cost factor is important in considering the change to uniform pricing.
- Task Force considered how to better serve the whole state, not just the larger counties.
- The majority of the sections’ CLEs are offered in Maricopa and Pima and are live programs.
- Vote at March Board meeting on the subgroup’s three recommendations.

STRATEGIC PLANNING COMMITTEE – Chair Bryan Chambers
- The draft outline for the new Plan was reviewed last month by the Board and all comments and written suggestions were taken into consideration by the Committee.
- Mr. Chambers requested approval today so the overarching goals and sub-goals can be disseminated to the membership for comments.
- Editing changes included the following:
  - MOTION: Richard Coffinger moved, Dee-Dee Samet seconded and the motion carried unanimously to add “discipline” in front of “complaints” and delete “by consumers” in 3.A.
  - MOTION: Richard Coffinger moved and Dee-Dee seconded the motion to change Goal 1: Competency to “Provide Arizona attorneys with tools to develop and enhance the skills necessary to meet the needs of their clients and promote the administration of justice.” Lori Higuera offered a friendly amendment, which was accepted, to add the same language to Goal 3: Professionalism. The motion as amended carried unanimously.
  - MOTION: Dave Byers moved, Dee-Dee Samet seconded and the motion carried unanimously to change Goal 4: Administration of and Access to Justice. 4.B. would
read “Maintain an impartial and quality system of justice by supporting and defending the judicial selection and court rule-making process.”

- **MOTION**: Sam Saks moved, Patrick Greene seconded and the motion carried to change Goal 5: Organizational Excellence. 5.C. would read “Maintain Court-approved member fees as long as practical.” (strike “through 2019”).
- The Board voted unanimously to circulate the outline of the next Strategic Plan as amended to the members for comment.

**ABA HOUSE OF DELEGATES MID-YEAR MEETING REPORT** – Michael Mason

Mr. Mason reviewed a few of the resolutions that were adopted at the mid-year meeting in Houston in early February:

- Resolution 105 – urges legislative bodies and governmental agencies to enact comprehensive laws that prohibit the private possession, sale, breeding, import or transfer of dangerous wild animals.
- Resolution 106 – Young Lawyers Division encourages law schools to offer comprehensive debt counseling and debt management education to all currently admitted and enrolled law students, and encourages bar associations to offer similar debt counseling and debt management education to young lawyers and newly admitted. 2014 median debt was $100k.
- Resolution 107A – Urges governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an in-person opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.
- Resolution 107D – Adopts the black letter of the ABA Standards for Criminal Justice.
- Resolution 109A – Urges governments to enact civil protection order statutes that extend protection to minor and adult victims of sexual assault, rape, and stalking, outside of the context of an intimate partner relationship, and without the requirement of any relationship between the parties.
- Resolution 112 – Urges legislative bodies and governmental agencies to refrain from enacting Stand Your Ground laws that eliminate the duty to retreat before using force in self-defense in public spaces, or repeal existing Stand Your Ground laws.

- Mr. Mason informed the Board that the State Bar’s five Delegates, the Bar’s General Counsel and other staff meet telephonically before each meeting of the ABA House of Delegates to review its agenda and determine the issues that are Keller permissible and on which the Delegates may vote.

**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