MEETING OF THE  
BOARD OF GOVERNORS  
OF THE  
STATE BAR OF ARIZONA  
April 24, 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; Steven A. Hirsh, Phoenix; Melissa S. Ho, Phoenix; James B. Penny, Tucson; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Erik J. Stone, Young Lawyers Division; Public Members: Tony Finley, Tucson; Audrey R. Jennings, Scottsdale and Meredith Peabody, Prescott; 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 Gary Stuart on behalf of Dean Douglas Sylvester, Tempe.  

EXCUSED ABSENCES: Patrick Greene, Tombstone; Jennifer Rebholz, Phoenix; Jeffrey Willis, Tucson; Public Member: John Sullivan, Sahuarita; Ex-Officio Member: Dean Marc Miller, Tucson.  

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; Amy Rehm, Deputy Chief Bar Counsel; Pat Sallen, Director, Special Services and Ethics-Deputy General Counsel; Jarod Stultz, Help Desk Technician; and Court Liaison Hon. Ann A. Scott Timmer, Phoenix.  

• GUESTS: Robert Copple, CLE Task Force; Cindie Hubiak, ED, Arizona Society of CPA’s; Stanna Michelle Slater, SOGI; Ryan O’Daniel on behalf of Janna Day.  

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

PRESIDENT’S REPORT  
• Attended the Western States Bar Conference and ABA Day in Washington, D.C. where Arizona’s delegation met with a number of Congressional members regarding the need for increased funding for the Legal Services Corporation and additional federal judges for Arizona.  
• Attended the annual Arizona Minority Bar Association awards banquet in Tucson.  
• Attended Fair Courts: Arizona’s Merit Selection System on April 18 in Casa Grande, which was a conference regarding Pinal County’s judicial system. Vice Chief Justice John Pelander was the keynote speaker.
**CEO/EXECUTIVE DIRECTOR’S REPORT** – John Phelps

- Introduced Penny Lewis, Administrator, Board of Legal Specialization, Employee of the Quarter. Any staff member can nominate for this award and Senior Leadership makes the final selection. Ms. Lewis was recognized for her willingness to step in and assist in several departments without being requested to do so and with a great attitude.

- A staff team is focused on designing an Association Management System for the organization. The new system is a large, two-year capital project with Chief Member Services Officer Lisa Deane as the Project Sponsor. An upgraded database is only one of components within the AMS.

- The staff is preparing for the June Convention.

- Arizona Forward Conference, chaired by Jeff Willis, was designed to provide the ABA and our Chief Justice Bales information regarding the delivery of legal services now and in the future. Approximately 120 individuals participated including ABA President William Hubbard. A special thanks to Justice Ann Timmer, Carrie Sherman and Jeff Willis for making this event successful.

**TASK FORCE ON STATE BAR MISSION & GOVERNANCE REPORT** – John Phelps and 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 last meeting was held April 23.

- Tentative proposals:
  - Change name of Board of Governors to Board of Trustees.
  - Reduce board size from 30 to 18.
  - Introduce term limits of three, three-year terms for a total of nine years maximum.
  - Change ratio of public members to attorney members, increasing the number of public members.

- Other issues on table include whether out-of-state lawyers should be allowed to vote or sit on the Board. Currently approximately 14% of the membership is out-of-state.

- Process going forward:
  - September 1 deadline for final report to the Court.
  - The report and recommendations will be circulated to the membership for comment.
  - In the proposed roll out the transition would take place over a number of years.
  - It is expected that this Rule Change Petition would be filed in January 2016 with a May comment deadline.

**ARIZONA SOCIETY OF CPA’s** – Cindie Hubiak, CEO

- Ms. Hubiak summarized her background and reviewed some of the similarities and differences in the two organizations and entertained questions from board members.

**LEGISLATIVE UPDATE** – Ryan O’Daniel for Janna Day

- CCO Rick DeBruhl thanked Mr. O’Daniel and Ms. Day for the significant work they did on HB2629. The bill was narrowly defeated. This proposed legislation afforded Bar representatives the opportunity to get to know and work with newly elected officials and educate them about the Bar. An important opportunity as similar legislation may likely be introduced in the next session.
• Mr. O'Daniel reported that 300 bills have been signed by the Governor. This legislative session was the first sub 100 day session since 1968.

**APPOINTMENTS COMMITTEE** – Chair Alex Vakula

• **Public Member – Board of Governors**
  • One Public Member opening; three very qualified candidates were interviewed by the Board.
  • By secret ballot the Board selected Anna C. Thomasson of Towers Watson in Phoenix. She becomes a full voting Board member at the conclusion of the June Convention.

• **City of Glendale Judicial Selection Advisory Board (one seat)**
  - MOTION: Coming from the Appointments Committee, requiring no second, the following applicants were recommended:
    - Ms. Nora F. Greer, Law Office of Nora F. Greer
    - Mr. David R. Fuller, City of Phoenix, Public Defender
    - Ms. Alane V. Breland, Salt River Pima Maricopa Indian Community
  - Vote: Unanimous

• **City of Peoria Judicial Selection Advisory Board (one seat)**
  - MOTION: Coming from the Appointments Committee, requiring no second, the following applicants were recommended:
    - Mr. Robert A. Colosi, Esquire
    - Mr. Richard L. Cobb, Lake & Cobb PLC
    - Mr. Matthew O. Brown, Brown & Little PLC
  - Vote: Unanimous

**GOVERNOR DOUG DUCEY’S LETTER REQUESTING ADDITIONAL NOMINATIONS**

• Request from Governor Ducey for more names for the Maricopa County Commission on Trial Court Appointments – District 4. The Board had nominated two out of three applicants.
• The Governor also requested additional nominations for the Arizona Commission on Appellate Court Appointments. Two incumbents and one new applicant were recommended.
• The Scope and Operations Committee met with Mike Liburdi, Governor Ducey’s General Counsel, and Kate King, Governor Doug Ducey’s Deputy General Counsel, at the last Scope meeting. The Committee recommended to the Board that the Appointments Committee re-advertise and reopen the recruitment process and provide additional recommendations to the Board.
• After discussion, Steve Hirsch moved, Dave Derickson seconded and the motion carried unanimously to add Walter Opaska to the previous slate of two nominees for the District 4 seat and forward the three names to the Governor.
• After further discussion, the Board agreed to direct the Appointments Committee to relook at the applications for the Appellate Commission in order to provide the Board
with additional names for consideration in making its nominations to the Governor for the two openings.

- The Board agreed that in the Appointments Committee’s future advertising and recruitment efforts there should be no mention of whether there is an incumbent who is eligible for reappointment.

**BAR LEADERSHIP INSTITUTE – Chicago, IL – Alex Vakula**

- Mr. Vakula reported that this ABA training was outstanding, the sessions had great content and was well worth the investment to send the Board’s officers.
- He was pleased to learn that the State Bar of Arizona is highly recognized and respected amongst its peers.
- Tim Eigo, Editor, *Arizona Attorney Magazine* was an outstanding speaker on communications.

**TIMMER COMMITTEE RECOMMENDATIONS – Part II – Patricia Sallen**

- Ms. Sallen advised the Board that she would not start at the beginning but would pick up where her last presentation left off.
- There are four significant changes to the Ethical Rules.
  - Recommendation to amend ER 1.10(d) (imputed disqualification) applies when a lawyer wants to move to opposing counsel’s firm without client consent. Current rule: If moving lawyer had a substantial role in litigation, then new firm conflicted out. Proposal:
    - Removes the litigation exception
    - More notice requirements to former client
    - Screening must be reasonably adequate to prevent info leakage
    - Result: Arizona’s rule more aligned with the ABA Model Rule 1.10
  - Recommendation to amend ER 1.10(b) (imputed disqualification) applies when lawyer has left a firm with a client and matter and old firm is trying to decide whether it can take a possibly conflicting representation. Current rule: If any remaining lawyer “has information protected by ERs 1.6 and 1.9(c) that is material to the matter” then firm cannot. Proposal:
    - If only remaining info in documents or ESI, the remaining lawyers can be screened
    - Includes comment explaining that technology may provide appropriate restrictions
  - Recommendation to amend ER 1.6 to return to a standard like in former ABA Model Code of Professional Responsibility: information privileged, the client requests to be kept secret, or would be embarrassing or detrimental to the client.
    - ABA Model Rules/ER1.6: moved to the current expansive “information relating to the representation of a “client”
    - Proposal: Return to the Code definition
  - Recommendation to amend ER 1.5(e) – Currently lawyers in different firms may share one fee if:
    - Each lawyer receiving any portion assumes joint responsibility;
    - The client agrees in a signed writing to the participation of all the lawyers; and
    - The total fee is reasonable
    - Proposed additions:
      - The division is in proportion to the services provided or each lawyer assumes joint responsibility
The client agrees, in writing signed by the client, to the participation of all the lawyers involved and the division of the fees and responsibilities between the lawyers.”

RULES COMMITTEE – Richard Coffinger
   ➢ The Proposed Comment submitted by SOGI Committee to Petition R-15-0014, which was filed by individual attorneys.
   ➢ Petition is identical to petition SOGI proposed in 2014; Rules Review Committee unanimously approved that petition. It was not filed by the Board as individuals filed this Petition.
   ➢ SOGI now proposes that the State Bar file a comment supporting the petition.
   ➢ Rules Review Committee voted in favor of filing SOGI’s Proposed Comment.
   ➢ MOTION: Coming as a motion from the Rules Committee, requiring no second, motion passed by a vote of 11-8.

b) Comment to R-15-0025, Petition to Modify Rule 15.4(B), Ariz. R. Crim. P.
   ➢ Two proposed comments were submitted and both were included in the materials. Rules voted to ask the Board to decide which one to file.
   ➢ MOTION: Jim Smith moved and Geoff Trachtenberg seconded the motion to not take a position.
   ➢ FRIENDLY AMENDMENT: Dee-Dee Samet and Alex Vakula seconded the motion to file both Comments stating that the State Bar takes no position. Jim Smith accepted the friendly amendment, motion carried unanimously.

   ➢ Timmer Committee proposes adding a Comment to ER 4.2; the Committee on the Rules of Professional Conduct (Ethics Committee) proposes filing a comment asking the Court to delete the second and third sentences of the proposed Comment. The Rules Committee voted to file a comment as the Ethics Committee proposes and support the balance of the Petition.
   ➢ MOTION: Coming from the Rules Committee to vote to file a comment as proposed by the Ethics Committee and supporting the balance of the petition. Motion passed over two abstentions.

AWARDS COMMITTEE – Chair Bryan Chambers
The following slate of annual award recipients were presented:

- Award of Appreciation (non-lawyer) – Grace M. Hawkins
- Award of Special Merit – David B. Rosenbaum
- James A. Walsh Outstanding Jurist Award – Hon. Lawrence F. Winthrop
- Member of the Year – George Chen
- Sharon A. Fullmer Legal Aid Attorney of the Year Award – Laura Belous
- Tom Karas Criminal Justice Award – Tom Henze and Walter B. Nash, III
- Michael C. Cudahy Criminal Justice Award – Kellie Johnson
- Hon. John R. Sticht Excellence in Disabilities Accessibility Award – City of Peoria
• **MOTION:** Jim Smith moved and David Derickson seconded the motion to consider the Tom Karas Criminal Justice Award separately and to award the 2015 recognition to Tom Henze. After discussion, the motion passed.

• **MOTION:** Steve Hirsch moved, Jim Smith seconded and the motion carried unanimously to approve the remaining slate of 2015 winners as recommended by the Awards Committee.

**CONSENT AGENDA**

President Platt asked if anything was to be removed from the Consent Agenda, hearing nothing:

- **MOTION:** Jimmie Smith moved, Richard Coffinger seconded and the motion carried unanimously to approve the Consent Agenda:
  a) Approval of February 27, 2015 Board of Governors Meeting Minutes
  b) Resignations
    - In Good Standing
  c) Reinstatements
    - Reinstatement to Practice of Members suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
  d) Antitrust Issues (ATI) Task Force Charter
  e) 2015 Dues Waiver Requests (March)
  f) 2015 Dues Waiver Requests (April)
  g) Comment to R-15-0015, Petition to Amend the Rules of Procedure for Eviction Actions
  h) Comment to R-15-0007, Petition to Amend Rule 23, Ariz. R. Civ. P.
  j) Comment to R-15-0011, Petition to Amend Rules 15.5 and 39, Ariz. R. Crim. P.
  k) Comment to R-15-0005, Petition to Amend Rule 7.5, Ariz. R. Crim. P.
  l) Comment to R-15-0026, Petition to Amend Rule 41, Ariz. R. Crim. P.
  m) Comment to R-15-0010, Petition to Amend Ariz. R. Protective Order P.
  o) Comment to R-15-0022, Petition to Amend Rule 38(d), Ariz. R. Sup. Ct.
  q) Comment to R-14-0028, Petition to Amend Rule 45, Ariz. R. Sup. Ct.
  r) CCCF Committee-IOLTA Participation Certification Agreement

**FINANCE AND AUDIT COMMITTEE** – Dave Byers

a) Investment Policy – returns as originally presented to the Board for a vote.
   - **MOTION:** Coming as a motion from the Committee, the Board voted unanimously to approve the Investment Policy as presented.

b) Q-1 2015 Financials: The SBA is on track and ahead of the five-year plan - $600k surplus and expected budgeted amount of $421k; $200k above projected surplus to date. Expenses are down. Late payments were expected to drop but they haven’t and are higher than anticipated.

c) 2014 Combined Audit of State Bar of Arizona and Client Protection Fund
   - Audits completed. Clean audits and copies of the letters provided to the board.
   - Discussion regarding employee’s contributions to the Bar’s non-qualified 401(k) plan - considered Bar assets and must be listed in financials. Board discussed if there were options that could protect those investments.
   - Auditors complimented staff on their organized records.
COMMUNICATIONS POLICY – Rick DeBruhl

- The Communications Advisory Committee met twice to discuss the policy regarding Communications Access to Members. The current policy prohibits, with some exceptions, the right to advertise non-Bar CLE on section listservs. A few of the reasons for not promoting non-Bar CLE as presented by Lisa Deane are: 1) It would diminish the value of the online communities, which are meant to be areas for discussion of legal issues, referrals, and references. We don’t want to see members flooded with CLE advertisements; 2) it potentially conflicts with existing CLE or section programs and increases calls to staff, which is an inefficient use of resources; 3) it compromises the Bar’s brand and gives the impression that a program has the Bar’s seal of approval; 4) it raises concerns with Keller issues because a program might relate to a political topic.

- The Communications Advisory Committee recommended that the Board maintain the current policy.

- The Board took no action on this matter.

CLE TASK FORCE REPORT

- Robert Copple, ADR Section past chair, joined the meeting and reported that he had 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.

- MOTION: Jim Smith moved and Dee-Dee Samet seconded the motion to table. Vote: Motion failed.

- MOTION: Lisa Loo moved to accept the Task Force Committee’s recommendation. The motion failed due to the lack of a second.

- MOTION: Dee-Dee Samet moved, Sam Saks seconded and the motion carried to reject proposal #3, create a centralized system for the delivery of all Bar CLE programs.

- MOTION: Dee-Dee Samet moved and Jim Smith seconded the motion to reject proposal #1 (Curriculum Committee). The motion failed by a vote of 6 to 8.

- MOTION – Sam Saks moved, Dave Derickson seconded and the motion passed to form an Exploratory Curriculum Committee for one-year.

- MOTION: David Derickson moved, Bryan Chambers seconded and the motion carried to explore the creation of a unified calendar (proposal #2).

PROGRAM REVIEW COMMITTEE – Whitney Cunningham

- The PRC, with input from the Board of Legal Specialization, recently completed its review of the BLS program which included reviewing the areas of specialty offered in Arizona and comparing the areas and criteria for specializations with other jurisdictions, and evaluating the BLS Rules and Regulations as created by the SBA Board of Governors. The PRC and BLS focused on the following: 1) A discussion regarding the SBA BLS program in light of the new U.S. Supreme Court decision, North Carolina State Board of Dental Examiners v. Federal Trade
Commission; 2) Review and consider expanding the current BLS mission; 3) Review the composition of the Board of Legal Specialization.

- Recommendations:
  - Refer further discussion and analysis of *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and its application to the SBA BLS program to a SBA task force appointed by the SBA President.
  - Add the following sentence to the Board of Legal Specialization Mission Statement: “The Board of Legal Specialization administers the legal specialization program, seeks to identify fields of law for which specialized certification serves the public, and encourages lawyers duly qualified to attain certification status.”
  - Change the composition of the Board of Legal Specialization to include four specialists, four non-specialist lawyers, four members of the public and one law school representative.
- Information this month; voted on at the May 29th Board meeting.

**LAWYER REGULATION OFFICE QUARTERLY UPDATE** – Maret Vessella

- The 2014 Attorney Regulation Advisory Committee Report is due on April 30 which includes statistics for lawyer discipline case processing.
- Ms. Vessella reviewed the definitions of “charge” and “complaint,” which are not the same. Allegation or other information of misconduct or incapacity is the “charge.” Complaint means a formal complaint prepared and filed with the disciplinary clerk.
- 3,500 charges against lawyers in 2014 which is up slightly from 2013.
- 71% resolved out of intake with an average time of 29 days.
- 751 were attributable to 422 lawyers and were sent on for a full screening investigation.
- Average time to complete the investigative process was 247 days.
- Attorney Discipline Probable Cause Committee is made up of nine members: six lawyers and three public members. Supreme Court appoints the Committee.
- Committee reviews the State Bar’s report of investigation, the respondent’s response and any objection/response by the complainant.
- Committee reviewed 305 charges not including the dismissal appeals.
- Ms. Vessella gave a comparison of data points from 2013 to 2014.
- Sanctions ordered and other Dispositions:
  - 13 Lawyers Disbarred
  - 38 Lawyers Reprimanded
  - 39 Informal Sanctions
  - 73 Diversion Orders/Agreements
  - 202 Instructional Comments

**ABA GOVERNMENT AND PUBLIC SECTOR LAWYERS DIV. (GPSLD) COUNCIL – NOMINATION OF REGINA NASSEN** – John Phelps

- Opening on this ABA Division Council to replace Theodore Campagnolo.
- Sought input from the Bar’s Public Lawyers Section; Regina Nassen’s name came forward in the process.
- The officers acted in the interim due to the pending deadline and forwarded Ms. Nassen’s name to the ABA.
STRATEGIC PLANNING COMMITTEE – Chair Bryan Chambers

- The draft outline of goals for the next five-year plan was shared with the membership; 21 comments were received and reviewed by the Committee at its last meeting.
- Staff will begin formulating the action plan needed to move each goal forward.

2015 BOARD OF GOVERNORS RETREAT – Bryan Chambers

- The July retreat will be held at the High Country Conference Center in Flagstaff July 23 and 24.

ARIZONA BAR FOUNDATION GOLF TOURNAMENT – John Furlong

- The Board members were encouraged to register for the ABF Golf Tournament that will be held at the Arizona Biltmore Golf Club on June 27, 2015 with a 7:00 a.m. Shotgun Start. Registration at www.azflse.org/driveforjustice

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