

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
October 25, 2019
GoToMeeting and Phoenix, AZ**

BOARD MEMBERS PRESENT IN PHOENIX: Brian Y. Furuya, President, Flagstaff; Robert McWhirter, Phoenix; D. Christopher Russell, Sierra Vista; and At-Large Member David K. Byers, Phoenix.

BOARD MEMBERS PRESENT VIA GoToMeeting: Denis M. Fitzgibbons, President-Elect, Casa Grande; Jennifer Rebholz, Vice President, Phoenix; Jessica Sanchez, Secretary-Treasurer, Mesa; Sandra Bensley, Tucson; Sharon Flack, Prescott; Mark Harrison, Phoenix; Leticia Marquez, Tucson; John Moody, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Sara Siesco, Phoenix; Jimmie Dee Smith, Yuma; Benjamin Taylor, Phoenix; Public Members: Robyn M. Austin, Tucson; John Gordon, Prescott; Jonathan Martone, Paradise Valley; and Anna C. Thomasson, Paradise Valley; and At-Large Members Lori Higuera, Phoenix; and Doreen McPaul, Window Rock; Dean Mark Miller, Tucson.

EXCUSED ABSENCES: David Rosenbaum, Phoenix; Amanda Salvione, Scottsdale; and Dean Douglas Sylvester, Phoenix.

UNEXCUSED ABSENCES: Hector Figueroa, Payson; Jeffrey Willis, Tucson.

OTHERS PRESENT: Matt Campbell, System Administrator; Sarah Corpening, Membership Administrator & Services Manager; Mona Fontes, Administrative Assistant III; Joe Hengemuehler, Chief Communications Officer; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Carrie Sherman, Director of Board Operations; Karen Van Allen, Administrative Assistant; Maret Vessella Chief Bar Counsel; Supreme Court Liaison Hon. John Lopez, Phoenix; Leah Won, Assistant Dean, UofA College of Law.

President Brian Furuya called the Board meeting to order at 8:30 a.m. A roll call was taken to confirm that a quorum was present. Confirmed.

President Furuya reviewed the purpose of having the October 25, 2019 Board Meeting via the GoToMeeting format. It is a Go Bold initiative presented at the 2018 Board Retreat, a measure to cut costs and utilize technology.

President Furuya recognized the fact that Bylaw 9.09 doesn't allow teleconference Board meetings. The bylaw reads: *Teleconferencing. Participation and voting by telephone shall not be permitted at any meeting of the Board.* He requested that for this meeting, this time only, that the Board consider suspending the bylaw. The alternative otherwise would be to not hold this meeting, schedule a meeting in November or be aware that the December Board meeting will be quite lengthy.

MOTION: Dee-Dee Samet moved, Denis Fitzgibbons seconded, and the motion carried unanimously to suspend Bylaw 9.09 for the 10/25/2019 Board meeting only.

Call to the Public

President Furuya made a Call to the Public. Attorney Ken Mann was the only individual to request, and was afforded, time to address the Board. After introducing himself, Mr. Mann indicated that he was objecting the \$133 late fee regarding his MCLE submission. He was asked to clarify why it was not submitted before the September 15 deadline since he had completed his hours in June. The Rule states that a waiver can be granted for undue hardship, i.e., medical and financial issues and military service.

President Furuya indicated that all the waiver request denials are on the Consent Agenda which will be addressed later in the meeting. Any Board member may move to remove any item from the Consent Agenda.

President's Report – Brian Furuya

- Attended the AJC meeting on 10/24/19, where the Task Force on the Delivery of Legal Services Report was discussed. The AJC adopted the recommendations. The report is available in the meeting materials. Specific areas of discussion were:
 - What can legal document preparers do?
 - What is allowed, and what is disallowed?
 - What are permissible areas for licensed paraprofessionals (family law, real estate, probate)?

These questions will be discussed with members as the president and CEO tour the state. David Byers reminded everyone that part of the Bar's mission is to protect the public. How will the public be engaged in the planned outreach? Dee-Dee Samet also recommended that the report be disseminated to the local bars.

CEO/ED Report – Joel England

- Active Shooter Training was conducted by an expert from the Phoenix Police Department for the staff on October 8.
- The staff's Annual Wellness Week was held from October 21-25.
- Budget preparation remains the main focus for staff, especially the Finance Department. Following a review by the Finance and Audit Committee and the Executive Council, the Board will receive the proposed 2020 budget by November 26.

POLICY DISCUSSION AND POTENTIAL ACTION

Judicial Nominating Commissions - Nominations – President Brian Furuya

On behalf of the Governor, the Governor's General Counsel, Anni Foster, made a written request that the State Bar reopen its process of nominating attorneys for the appellate and trial court commissions and provide more candidates for the Governor's consideration. Following the correspondence, CEO Joel England and President Brian Furuya had a conversation with Anni Foster concerning the request. Ms. Foster indicated that all 30 appellate nominees were interviewed and provided feedback that some applicants didn't necessarily appreciate the gravity of the position and the scope of commission service. Additionally, she indicated the Governor's office also had to consider whether a candidate would be confirmed by the Senate.

President Furuya reviewed three options:

- Indicate to the Governor that the Bar has completed its Constitutional charge with regard to this process and stands by its nominations;
- Comply with the Governor's request which includes sending up all applicants who meet the Constitutional criteria but who have not been ranked by the Bar's Special Constitutional Appointments Committee (SCAC) and approved by the Board itself; and
- Comply with the Governor's request but follow the Board's Appointments Policy.

It was noted that the SCAC does not interview all lawyer applicants for the commission positions. This could be a failure in the Bar's process which should be reviewed.

MOTION: Dee-Dee Samet made a motion to have the SCAC contact the people that previously submitted an application to ascertain if there is still an interest and a commitment to the role of a commissioner, and if there is, interview those individuals. If there are not enough qualified applicants, open the application process again for new names with a limited time frame for responses of three weeks and interview those candidates. David Byers seconded the motion.

- A suggestion was made to go back to people that were previously deemed unqualified to determine if they are now qualified.
- Anni Foster had offered to address the SCAC and/or the Board about what the Governor's Office looks for in the nominees and explain its screening process.

FRIENDLY AMENDMENT: Mark Harrison offered a friendly amendment that the Board go back and vet the original list as suggested, but also open up the application process for a limited time and add any qualified new applicants for the Governor's consideration. Ms. Samet and Mr. Byers accepted the friendly amendment.

AMENDED MOTION: The motion as amended carried over four dissents.

Proposed Governor Removal Procedures – Rick Palmatier

Reviewed the draft of the Removal of Governor for Cause Procedures that was presented at the September Board meeting.

MOTION: Denis Fitzgibbons moved, Jennifer Rebholz seconded and the motion carried unanimously to adopt the Removal of Governor for Cause Procedures.

Rules Review Committee – Jennifer Rebholz

The "New" Rules Review Committee Guidelines and Process were reviewed.

MOTION: Bob McWhirter moved, Dave Byers seconded and the motion carried over one dissent to approve the Rules Review Committee Guidelines and Process.

Consent Agenda

Bob McWhirter requested that agenda item 8(e), Waiver Request Denials, be removed from the Consent Agenda.

MOTION: Denis Fitzgibbons moved, Bob McWhirter seconded and the motion carried unanimously to approve all the Consent Agenda items except for 8(e), Waiver Request Denials.

- CEO Joel England explained the criteria noted in the Rule that he employs to determine hardship when a waiver is requested. There are currently 76 waivers requested, of which 69 have been granted. The criteria are: financial, medical, and military service.

MOTION: Robert McWhirter moved, Christopher Russell seconded, and the motion carried unanimously to sustain CEO Joel England’s waiver request denials as presented.

- The Board agreed to revisit the underlying issue addressed by member Ken Mann at a future Board meeting.

Amicus Curiae – Pending Matters – Lisa Panahi

- 9th Circuit - reported that the draft is still being prepared. The filing deadline is the 2nd week in November 2019. A common interest agreement has been signed with the Oregon State Bar to share work products.
- Arizona Court of Appeals – this draft is also being prepared. The filing deadline is October 31. At the September meeting the Board voted to designate the Executive Council as the working advisory group in both of these matters and to commit the Bar’s resources towards these efforts.

Finance & Audit Committee – Benjamin Taylor and Kathy Gerhart

- Benjamin Taylor reviewed the slide that covers the Q3 financials.
- Kathy Gerhart reviewed the budget process and timeline.
- Estimating a \$900K surplus at yearend due to:
 - Unanticipated Revenues: late MCLE filing fees; online CLE registrations; advertising
 - Expenses (savings): salary vacancies; I.T. projects
- President Furuya wants to spend a substantial amount of time on the budget at the December meeting.

Status Reports

- Supreme Court’s Task Force on Delivery of Legal Services: David Byers gave the report since Robyn Austin did not attend the meeting. He focused on two of the 10 recommendations:
 - Recommendation 1: Eliminate Arizona’s ER 5.4, “which generally prohibits lawyers from sharing fees with nonlawyers and prohibits nonlawyers from having any financial interest in law firms ...”
 - Recommendation 6: “Develop, via a future steering committee, a tier of nonlawyer legal service providers, qualified by education, training, and examination, to provide limited legal services to clients, including representation in court and at administrative proceedings.” Question: What will they be authorized to do?

The Steering Committee should look at tier three and list their concerns, especially with respect to confidentiality, paraprofessional license versus a lawyer license, conflict of interest, and the advertising rules. Ten other states are looking into the nonlawyer license issue. Board members were encouraged to speak to their colleagues about these controversial proposals. It was suggested that past Bar president Whitney Cunningham, Judge Peter Swann and Judge Elena Maria Cruz, who served on the Task Force and the working group assigned to study these issues, be invited to a future Board meeting to address these matters.

- Strategic Planning Working Group – Jessica Sanchez
Ms. Sanchez reported that the Group’s organizational meeting was held. A timeline was reviewed for identifying stakeholders, collecting data and drafting the next strategic plan which will likely be a three, not a five, year plan as change occurs so rapidly.

Lawyer Regulation Office – Maret Vessella

- Administrative Order Establishing Discipline System Committee Oversight – The DSCO is a result of the recent Lawyer Regulation Operational Review. Justice John Lopez will serve as chair, and the CEO and three Board members, one of which is a Public Governor, will be members.
- Conflict of Interest Issue – Ms. Vessella asked the attorney Board members to alert staff if their spouse or domestic partner is also a lawyer. This question will be added to the Conflict of Interest Policy and Form that Board members execute annually.

Correspondence/Reports

- President Furuya announced that James Patrick Ristvedt who received the highest score on the July 2019 Bar Exam, will attend the December Board meeting to be recognized. Rosemary Rosales who served on the Client Protection Fund Board of Trustees for 10 years, and who served as chair during her last year, will also be recognized.
- Executive Council Minutes – September 13, 2019
- Announced that the 12/6/19 Board Meeting will be an in-person meeting.

Adjourned at 11:25 a.m.

Respectfully submitted,

Jessica Sanchez
Secretary/Treasurer