

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
June 9, 2020
GoToMeeting**

BOARD MEMBERS PRESENT: Brian Y. Furuya, President, Flagstaff; 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; Robert McWhirter, Phoenix; John Moody, Phoenix; David Rosenbaum, Phoenix; D. Christopher Russell, Sierra Vista; Samuel Saks, Phoenix; Amanda Salvione, Young Lawyers Division; Dee-Dee Samet, Tucson; 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; At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Doreen McPaul, Window Rock; Ex-Officio Members: Jeffrey Willis, Board Advisor; Dean Marc Miller, Tucson; and Leah Won on behalf of Dean Mark Miller, Tucson.

EXCUSED ABSENCES: Hector Figueroa, Payson; Sara Siesco, Phoenix.

OTHERS PRESENT: Deanna Commack, Executive Assistant to CEO/Executive Director; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Joel England, CEO/Executive Director; Candice French, Human Resources Manager; Kathy Gerhart, Chief Financial Officer; Connie Hay, Board of Legal Specialization Administrator; Lori Maxwell, Chief Information Officer; Elena Nethers, Diversity & Outreach Advisor; 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.

GUESTS: Board Members-Elect: YLD President-Elect Jena Decker-Xu, Phoenix; Kelsi Taylor Lane, Phoenix; Eric Ruchensky, Flagstaff; Ted Schmidt, Tucson.

President Brian Furuya called the virtual Board Meeting to order at 1:01 p.m. He reviewed the protocol for a virtual meeting, e.g., send chat before speaking and keep yourself muted unless you are speaking.

Call to the Public – President Brian Furuya

President Furuya made a Call to the Public and hearing nothing, moved on to the next item on the agenda.

President's Report – Brian Furuya

Both the President and the CEO/Executive Director have received emails from law students expressing concern about sitting for the July Uniform Bar Examination due to COVID-19. He reported that at its June 1 meeting the Executive Council discussed the provisions the Court has put in place with regard to the upcoming exam. The officers agreed to have the CEO bring the students' concerns to the Supreme Court's attention as well as the students' alternative ideas – an online exam or diploma admission.

CEO's Report – Joel England

- Hotline: The legal services hotline has received over 200 calls. There are approximately 200 volunteer attorneys responding to consumers. As requested, the types of issues that are being handled will be circulated to the Board.
- Operating posture: The phased reopening of the Bar's offices started on June 8 with safety precautions in place. Only those staff who want to return to their offices are in the building; no one is required to return. Maximum footprint now is set at 20% of staff. The team that addressed the pandemic response and reopening made recommendations—daily wellness certification, social distancing, masks in public places—and they are being acted on. The office is not yet open to the public. It is a cautious and reasonable approach.

Annual ARC Report – Maret Vessella

- The Attorney Regulation Advisory Committee (ARC) was created by Administrative Order No. 2011-44 with the purpose of reviewing the rules governing attorney examination, admissions, and lawyer discipline and to make recommendations regarding those rules “to reinforce lawyer competency and professionalism and strengthen the Supreme Court’s oversight of the regulation and practice of law in this state.”
- Over the past few years the numbers have been trending down. There are decreases in the number of charges received, the number of charges investigated and the number of charges reviewed by the Attorney Discipline Probable Cause Committee.
- The State Bar received 2,874 charges against lawyers in 2019.
 - 79% of charges were resolved in Intake. On average it took 22 days to resolve a charge.
 - 480 charges were sent on for a full screening investigation. Those charges were attributable to 371 lawyers.
 - Average time for investigation was 197 days
- The average time from filing a formal complaint to final order is:
 - All Types of Cases – 112 days in 2019 compared to 106 days in 2018
 - Contested Cases – 161 days in 2019 compared to 186 days in 2018
- Sanctions or Outcomes for Formal Matters:
 - Disbarments have increased to 19 in 2019 compared to 16 in 2018
 - Suspensions have increased to 38 in 2019 compared to 21 in 2018
 - Reprimands have decreased to 21 in 2019 compared to 29 in 2018
 - There were no Hearing Panel Dismissals
- Sanctions ordered and other dispositions
 - 480 Investigations conducted
 - 18 Lawyers disbarred
 - 36 Lawyers suspended
 - 21 Lawyers reprimanded
 - 47 Informal sanctions
 - 127 Orders/agreements for diversion
 - 253 Instructional comments

- ARC participated in the drafting of proposed rule changes or provided comments on the following rule petitions:
 - R-18-0024 Amend Rule 64(f)(1)(B)
 - R-19-0004 Amend Rule 34(b)(1)(D)
 - R-19-0010 Amend Rule 37(c)
 - R-19-0011 Amend Rules 38 and 39
 - R-19-0026 Amend Rule 70
 - R-19-0030 Amend Rule 43

Statement from the State Bar of Arizona – Brian Furuya

A draft statement regarding social justice issues has been prepared and is included in your materials. Should the Bar issue such a public statement?

- The State Bar’s General Council has reviewed the statement, and her opinion is that it does not violate *Keller*.
- Elena Nethers, Diversity & Outreach Advisor, spoke about why the Bar should issue a statement.
 - Truths that should be acknowledged - racial bias in society is systemic
 - Current protests are not only because of/about George Floyd
 - Lack of confidence in the justice system; laws not being applied equally
 - The Bar should not stand by when it’s principles are not being met
 - Suggestion to also reference Dion Johnson, who was shot on May 25 and died as a result of the shooting
 - Silence might be viewed as disinterested; the American Bar Association (ABA), Arizona Asian-American Bar Association (AABA) as well as 19 state bar associations and many local bar associations have issued statements
- David Rosenbaum: Well stated by Elena Nethers. If we remain silent, it is perceived as a negative statement. The draft statement has the right tone.
- Robert McWhirter: Supports the draft statement, but he does not want anything added about looting, etc.; just speak to racial injustice.
- Board Member-Elect Ted Schmidt: Believes that time is of the essence; thinks the Bar should do more than send a statement—suggestions include a diversity task force; a panel of African American judges; a roundtable for ideas; continuing education in this area (civil rights, incarceration); requests status report from Bar’s Diversity & Inclusion Group at next Board meeting.
- Dee-Dee Samet: Note in the statement that this is not a new stance for the Bar; “we are contributors to our community”; the Bar has been doing things in this area.
- Brian Furuya: Most recently Board filed rule change to include cultural competency training in the mandatory Professionalism Course.
- Sam Saks: Also would like more action. Made a motion to work with and provide funding, suggested \$5K, to the Arizona Collaborative Bar Association to let them know that the Bar supports them. This issue is not properly agendaized for this public meeting but will be added to the next Board agenda.
- Dave Byers: Offered language modification to a sentence - “We join in condemning...”

- Lori Higuera: Noted that the alternative is no statement; we can't afford to be a bystander.
- President Furuya indicated that all comments/amendments would be incorporated in the statement.

MOTION: Dee-Dee Samet moved, Jessica Sanchez seconded and the motion carried to approve the issuance of the statement as contained in the Board's materials, and as amended during the discussion, authorizing the president and the CEO to finalize the statement and direct its release.

Appointments Committee – Jessica Sanchez (on behalf of Chair Sara Siesco)

City of Scottsdale Judicial Appointments Advisory Board – One position. The Board of Governors is asked to nominate three attorneys. Two applications were received; both candidates are deemed qualified with Ms. Tricia Schafer receiving the Committee's unanimous endorsement.

MOTION: Coming as a motion from the Committee requiring no second, the Board of Governors voted to nominate Ms. Tricia Schafer and Mr. Steven Jackson to the Scottsdale City Council for its consideration and ultimate appointment.

State Bar of Arizona's Board of Legal Specialization (BLS) - Eight openings. The Board of Governors is to submit nominations to the Arizona Supreme Court for its consideration and ultimate appointment.

- Certified Specialists - Two openings; the Committee recommended three specialists:
 1. Ms. Phoebe Moffatt, Sacks Tierney PA
 2. Mr. Jeffrey M. Neff, Udall Law Firm LLP
 3. Mr. Brian Irvin Clymer, Brian Clymer Attorney at Law
- Non-Specialists/Practicing Attorneys - Three openings; the Committee recommended three practicing attorneys:
 1. Ms. Elizabeth Barton Ortiz, APAAAC (incumbent)
 2. Ms. Georgette Morphis Hasiotis, Hasiotis Law Firm PLLC
 3. Mr. Blake William Joseph Moscatello, Goodson Manley Law & Legacies, PLLC

MOTION: Coming as a motion from the Committee requiring no second, the Board of Governors voted to submit the slates of certified specialists and non-specialists as presented to the Supreme Court for its consideration. The vote carried over one abstention.

- Public Members – Three openings; the Committee recommended the two incumbents:
 1. Mr. James R. Anderson, CPA
 2. Mr. Robert Denison

Jessica Sanchez reported that the Committee will continue its efforts to recruit candidates for the third public member position for the Board's consideration in the future.

MOTION: Jessica Sanchez moved, Denis Fitzgibbons seconded and the motion carried over one abstention to forward the two public member candidates to the Supreme Court for its consideration indicating that the Committee will continue to recruit for the third position.

- BLS Chair. Recruiting for the BLS chair is not the responsibility of the Committee but has been included as a sub-set of the Committee's report and recommendations. Ms. Wendi Sorensen has volunteered to serve as the BLS chair. The Supreme Court also makes this appointment.

MOTION: Robyn Austin moved, Amanda Salvione seconded and the motion carried over one abstention to recommend to the Supreme Court that Wendi Sorensen be appointed chair of the Board of Legal Specialization.

Following an online chat to clarify the recommendation, the Board took this action:

MOTION: Jessica Sanchez moved, Lori Higuera seconded and the motion carried over one abstention to recommend to the Supreme Court, on behalf of the BLS staff, that Wendi Sorensen be appointed chair of the BLS.

Consent Agenda – Brian Furuya

President Furuya asked if any item needs to be removed from the Consent Agenda. Dee-Dee Samet asked how many members have not paid their membership fees in 2020 compared to 2019. There are 155 this year as compared to 158 last year.

MOTION: Denis Fitzgibbons moved, Jonathan Martone seconded and the motion to approve the Consent Agenda carried unanimously:

- a) Approval of May 22, 2020 Board Meeting Minutes
- b) Approval of Resignations in Good Standing
- c) Approval of Resignations in Lieu of Reinstatement
- d) Approval of Reinstatements of Members Suspended for Non-Compliance with Annual Membership Fee and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)
- e) Approval of Suspensions for Non-Compliance with Membership Fees (Rule 32(c)(10), Ariz. R. Sup. Ct.)

Nominating Committee – Jeff Willis

David Rosenbaum addressed the Board and withdrew his candidacy, not out of lack of interest or the process, but recognizing the other qualified candidates and his brief tenure on the Board he felt this is not the year for him but will pursue running for office next year.

Jeff Willis reviewed the Committee's process undertaken. The elections are to fill the president-elect, vice president, and secretary/treasurer positions. All interested parties have completed a questionnaire (included in the Board's materials) and have been interviewed.

- President-Elect – one candidate, Jennifer Rebholz, who is currently vice president
 - Ms. Rebholz addressed the Board
 - Jeff Willis asked if there were any nominations from the floor. There were none.

MOTION: Coming as a motion from the Committee requiring no second, the Board voted to elect Jennifer Rebholz as president-elect of the State Bar of Arizona.

- Vice President – one candidate, Jessica Sanchez, who is currently serving as secretary/treasurer.
 - Ms. Sanchez addressed the Board.
 - Jeff Willis asked if there were any nominations from the floor. There were none.

MOTION: Coming as a motion from the Committee requiring no second, the Board voted to elect Jessica Sanchez as vice president of the State Bar of Arizona.

- Secretary/Treasurer – one candidate, Benjamin Taylor.
 - Mr. Taylor addressed the Board.
 - Jeff Willis asked if there were any nominations from the floor. There were none.

MOTION: Coming as a motion from the Committee requiring no second, the Board voted to elect Benjamin Taylor as secretary/treasurer of the State Bar of Arizona.

Jeff Willis congratulated Denis Fitzgibbons on his ascension to the presidency and thanked President Furuya for an outstanding job during a difficult year.

Finance & Audit Committee – Benjamin Taylor and Kathy Gerhart

- The audit of the 401(k) is required by the Department of Labor’s Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974. The audit report for 2019 reflects a clean opinion.
- Reported net assets ending 2019 of \$16.5M (vs. \$14.2M ending 2018).

Status Reports

- *Amicus Curiae* Matters – Lisa Panahi
 - *Gruber* and *Crowe* (the cases against the Oregon State Bar): we are still waiting on Court’s decision following May 12 oral argument
 - *Jarchow* case against the Wisconsin State Bar: The U.S. Supreme Court denied the petition for certiorari. There are no other cases attacking the integrated Bar model before SCOTUS at this time.
- Legislative Update
President Furuya indicated that there was nothing to report at this time.
- Strategic Planning Working Group – Jessica Sanchez
The pandemic has caused a delay in the drafting of the Strategic Plan. The goal is to present a draft to the Board in September. In light of the Board’s earlier discussion and action taken that day, issues regarding social justice will be incorporated in the Plan. Such information was also collected during the focus groups/data collection process.

Recognition of Outgoing Board Members

President Furuya recognized and thanked the following members who are leaving the Board. A memento of appreciation will be presented to them at a later date.

- Amanda Salvione, YLD President
- Sara Siesco, District 6
- Jeffrey Willis, Board Advisor
- Dee-Dee Samet, District 5 (regretfully recognized post Board meeting)

Recognition of Outgoing President Brian Furuya By Staff

On behalf of the State Bar staff, CEO Joel England thanked President Brian Furuya for his service. He spoke about their Listening Tour trips around the state and what he learned on those trips about President Furuya's commitment to the SBA and to the profession. President Furuya was behind the *Arizona Attorney Magazine* issue featuring the Task Force on the Delivery of Legal Services' report and recommendations, so that all sides were heard. President Furuya's steady leadership, even during a pandemic, was recognized and applauded.

Recognition of Outgoing President Brian Furuya on Behalf of the State Bar of Arizona and the Board of Governors

President-Elect Denis Fitzgibbons shared a memory of his first Board meeting, and how President Furuya showed kindness in introducing himself to everyone in the room. He cares deeply about the profession and the Board of Governors. He is authentic and honest in his leadership. He rose to the challenge of leadership during the pandemic and appreciates his patience. Mr. Fitzgibbons spoke about the incredible effort that President Furuya undertook to reach out and meet with members – six separate car trips covering approximately 2,100 miles.

President Furuya said that he loves serving with his fellow dedicated Board members. He is proud of the profession; it inspires his dedication. He thanked CEO England and the staff for their tireless service.

Many of the Board members offered words of appreciation about President Furuya and his year of outstanding leadership, with applause being heard through the online platform.

2020-2021 Bar Year

President-Elect Denis Fitzgibbons reported on his vision/goals for the coming year:

- Addressing social injustice issues within the profession
- Implement Court-adopted recommendations of the Task Force on the Delivery of Legal Services, while balancing protection of the public and providing access to justice
- Continue to demonstrate the value of State Bar membership

Mr. Fitzgibbons said analysis continues on whether to hold the annual Board Retreat and when that might occur.

The Board members were asked to execute and return the following documents that are recorded on an annual basis: Oath, Code of Conduct and Conflict of Interest.

The ceremonial swearing in of the Board usually occurs at the June Convention. This will be scheduled to occur during the December Convention.

Adjourned at 3:35 p.m.

Respectfully submitted,

Jessica Sanchez
Secretary/Treasurer