

**MEETING OF THE  
BOARD OF GOVERNORS  
OF THE  
STATE BAR OF ARIZONA  
February 22, 2019  
Phoenix, AZ**

BOARD MEMBERS PRESENT: Jeffrey Willis, President, Tucson; Brian Y. Furuya, President-Elect, Flagstaff; Lori Higuera Vice President, Phoenix; Denis M. Fitzgibbons Secretary-Treasurer, Casa Grande; Tyler Carrell, Phoenix; David Engelman, Phoenix; Robert McWhirter, Phoenix; Jennifer Rebholz, Phoenix; Samuel Saks, Phoenix; Jessica Sanchez, Tempe; Sara Siesco, Phoenix; Jimmie Dee Smith, Yuma; Benjamin Taylor, Phoenix; Gaetano Testini, Phoenix; Public Members Robyn M. Austin, Tucson, and Anna C. Thomasson, Phoenix; and At-Large Member Mike Baumstark, Phoenix.

NOT PRESENT: Geoffrey Balon, President, Young Lawyers Division; Public Member Jason Cobb, Phoenix; Hector Figueroa, Payson; Sharon Flack, Prescott; Public Member John Gordon, Prescott; Patrick Greene, Tombstone; Dee-Dee Samet, Tucson; At-Large Member Paul Senseman, Phoenix; and Ex-Officio Members Alex Vakula, Immediate Past President; Dean Marc Miller, Tucson; Dean Douglas Sylvester, Phoenix; and Dean Penny Willrich, Phoenix.

OTHERS PRESENT: Matt Campbell, System Administrator; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Rick DeBruhl, Chief Communications Officer; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Ann Leslie, Executive Assistant; Jack Levine, Attorney at Law; Hon. John R. Lopez, IV, Arizona Supreme Court Liaison; Lori Maxwell, Chief Information Officer; Rick Palmatier, Deputy General Counsel; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; and Maret Vessella Chief Bar Counsel.

President Jeffrey Willis called the Board meeting to order at 8:39 a.m.

**Call to the Public**

President Willis made a Call to the Public. Jack Levine was the only individual to request, and was afforded, time to address the Board.

**Executive Session** – 8:45 a.m.

**MOTION:** Tyler Carrell moved, Brian Furuya seconded, and the motion carried unanimously to move into Executive Session at 8:45 a.m. to discuss the 2019 performance objectives/goals of CEO/Executive Director Joel England. The Board reconvened in Open Session at 8:49 a.m.

**Open Session** – 8:49 a.m.

**MOTION:** Denis Fitzgibbons moved, Tyler Carrell seconded and the motion carried unanimously to approve the HR Subcommittee report and the CEO's 2019 performance objectives/goals as recently amended and presented.

### **President's Report** – Jeffrey Willis

- Offered congratulations to Board member Robert McWhirter on his selection as a recipient of the 2019 ASU Alumni Award.
- Reported that Convention planning is on track. The theme is “Power of Inclusion” and the plenary session will focus on the 19<sup>th</sup> Amendment, celebrating its 100<sup>th</sup> anniversary. Chief Member Services Officer Lisa Deane reviewed the various Convention activities involving the Board’s participation.
- Reported that he had appointed the ad hoc Awards Working Group charged with soliciting and screening nominations for the annual State Bar awards presented at the Convention and making recommendations regarding the awards recipients. The Working Group members include Chair Brian Furuya, Geoffrey Balon, Sharon Flack, Paul Senseman, Sara Siesco and Benjamin Taylor.
- Asked President-Elect Brian Furuya to report on the recent National Conference of Bar Presidents’ Meeting:
  - The *Fleck* case was a major discussion amongst the mandatory bar representatives, including potential responses and amicus briefs joinders
  - A program focused on governing boards’ functionality, i.e., boards set policy and stay out of operations; boards should push to be innovative and prototype their work.
- President Willis reported that he, along with Justice John Pelander and Paul Avelar of the Institute for Justice’s Arizona Chapter, will participate on a panel discussing the mandatory versus voluntary bar association models. The event will take place at the UofA College of Law on March 12.
- Western States Bar Conference
  - The mandatory vs. voluntary model will also be a featured topic at the upcoming Conference.
  - Immediate Past President Alex Vakula is the WSBC president-elect. He has been instrumental in getting the Conference to return to Phoenix in 2020 after a 20-year hiatus.

### **CEO/ED Report** – Joel England

- Introduced the Employee of the (2018) Year Jennifer Sonier, Professional Development Supervisor. Ms. Sonier directs CLE on demand programming including webinars shared throughout the world and helped create and continues to develop the staff’s Wellness Program.
- Reported that Chief Communications Office Rick DeBruhl is resigning but will remain to onboard his replacement. The Board expressed its appreciation for his outstanding contributions during his nine plus years tenure.
- Reported that the search for a new HR Director continues.

### **Communications/Government Relations Division**

#### **Legislative Report** – Shelbe Hunsinger for Lobbyist Janna Day

- Legislature focusing on two big issues: water and tax conformity
- The investigation into Representative David Stringer continues

- Watching HB 2231 sponsored by Representative Anthony Kern regarding licensing of non-health professionals
- Unprecedented – 200+ bills not even assigned to committees (“dead on arrival”)
- First time in five years that an “anti-Bar bill” hasn’t been dropped

**10 Minute Topic** – Robert McWhirter

Mr. McWhirter presented on “from where do courts come?”

**Consent Agenda** – Jeffrey Willis

- a) Approval of January 18, 2019 Board Meeting Minutes
- b) Approval of Resignations in Good Standing
- c) Approval of Reinstatements
  - i) Approval of Reinstatements of Members Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
  - ii) Approval of Reinstatement 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.)
- d) Hardship Waiver Denials
  - i) Membership Fees
  - ii) MCLE
- e) MCLE Suspension
- f) Proposed Amendments to the Environmental & Natural Resources Law Section’s Bylaws

President Willis asked if there was anything that needed to be removed from the Consent Agenda and, hearing nothing, the following motion was made:

**MOTION:** Brian Furuya moved, Tyler Carrell seconded and the motion carried unanimously to approve the Consent Agenda.

**Appointment to Arizona Foundation for Legal Services & Education Board of Directors** – Jeffrey Willis

- The Board of Governors makes six appointments to the AzFLS&E Board of Directors
- Jennifer Rebholz’s three-year term has expired; she is requesting reappointment
- The Governors had been provided notice of this volunteer position; no response indicating an interest in the position was received
- President Willis asked if there were any nominations from the floor and, hearing none, requested a motion to reappoint Ms. Rebholz.
- **MOTION:** Brian Furuya moved, Tyler Carrell seconded and the motion to reappoint Jennifer Rebholz to a three-year term on the AzFLS&E Board of Directors carried unanimously.

**Proposed Revisions to the BOG Appointments Policy** – Carrie Sherman

- Suggested changes to the BOG Appointments Policy were discussed at the Board’s January meeting and have been incorporated into the document for the Board’s review.

- “Minimally qualified” now reads “Constitutionally qualified”
- Nominations: A specific number of nominations to be submitted to the Governor was not defined, however, the following language was included to emphasize that candidates are considered on merit based on a list of noted criteria and that the Special Constitutional Appointments Committee (SCAC) “shall submit to the BOG as many candidates as it deems to be the most highly qualified.”
- Memorialized that the chair of the State Bar’s Standing Appointments Committee, the Board’s vice president pursuant to the bylaws, also serves as chair of the SCAC.
- Comments included:
  - The number of nominations provided the Governor will fluctuate depending on the pool of candidates for any given opening
  - Emphasis on the importance of the SCAC’s work with regard to merit-based nominations
  - Asking the Governor’s staff to indicate what qualifications they look for when filling the attorney seats on the judicial nominating commissions
- **MOTION:** Jimmie Smith moved, Tyler Carrell seconded and the motion carried unanimously to approve the proposed revisions to the BOG Appointments Policy as presented.

**Rules Committee Report** – David Engelman and Lisa Panahi

- The Goldwater Institute filed a petition, similar to the one it filed in 2017, to bifurcate the State Bar with regard to its regulatory and non-regulatory functions.
- The proposed comment before the Board addresses the new *Janus* opinion, and highlights the Bar’s services and programs that further the Bar’s Court-directed mission to protect and serve the public.
- Board members were asked to review the proposed comment carefully as a vote on it is scheduled for the April Board meeting in order to meet the Court’s comment deadline of May 1<sup>st</sup>.
- Mr. England reported that a Bar/Court working group previously met to study contingency models - should the mandatory bar model no longer be upheld - planning continues to work through related issues including finances.

**Finance and Audit Committee** – Denis Fitzgibbons

Secretary/Treasurer Denis Fitzgibbons requested that each Board member complete and return the related party information questionnaire needed to complete the IRS Form 990 he/she had been given prior to leaving the meeting.

FAC member Tyler Carrell reported that at the previous day’s meeting a discussion occurred regarding the Bar’s sponsorship program. All requests for support are reviewed for *Keller* issues prior to the Bar’s participation. A menu of sponsorship options is being considered to provide support other than financial support.

## **Status Reports**

### Fleck Case – Lisa Panahi

- The president-appointed Amicus Working Group met in early February. The State Bar of Michigan plans to draft an amicus and Arizona signed on to a common interest agreement. The Group agreed to reconvene once there is something concrete to consider.
- An amicus in the *Fleck* case is due by March 22. Since there is no March Board meeting, options were discussed with regard to who would have the authority to authorize the joinder or filing of an amicus on the State Bar of Arizona's behalf.
- **MOTION:** David Engelman moved, Guy Testini seconded and the motion carried unanimously to delegate authority to the Board's Executive Council to join or file an amicus brief in the *Fleck* case.

### Senior Lawyers Task Force – Jeff Willis for Hector Figueroa

- The Task Force is in the process of surveying senior lawyers and 800 responses have been received to date.
- Work is on schedule for the Task Force's report to be presented at the May Board meeting for a vote in June.

### Supreme Court's Task Force on Delivery of Legal Services – Robyn Austin and Guy Testini

- At the last meeting received a presentation on Washington state's Limited License Legal Technicians (LLLT) program and Arizona's Legal Document Preparers program. Utah is working on launching a similar LLLT program.
- Ms. Austin is on the working group looking at unbundling services and Mr. Testini is on the working group studying possible changes geared to broadening Arizona Supreme Court-certified Legal Document Preparers' authority.
- Much public comment was received at the meeting.

### ABA House of Delegates (HOD) Report – Judith Davila

- 32 resolutions were introduced on the HOD agenda. Prior to the meeting the State Bar's five Delegates and Bar staff reviewed the matters and determined that half were Keller permissible to vote on.
- Resolution 105A – the Board of Governors had voted to support this resolution which indicates that 75% of law school graduates have two, not five, years to pass a bar exam. The resolution failed by a vote of 334-88.
- Split of State Bar of California – The SBC had 11 delegates in the HOD. A resolution passed to split the delegates between the SBC (mandatory bar) and the newly formed California Lawyers Association (voluntary bar) resulting in six and five delegates, respectively.

### Recognition – Jeffrey Willis

#### Highest Score on the July 2018 Bar Exam

Tyler Carlton, along with his invited guests Arizona Supreme Court Justice Clint Bolick and United States District Court Judge James Teilborg, joined the Board meeting. Mr. Carlton graduated *summa*

*cum laude* from ASU's Sandra Day O'Connor College of Law in May 2018. He is clerking for Justice Bolick until August, and then will clerk for Judge Teilborg for a year.

President Willis presented Mr. Carlton with a plaque commemorating his accomplishment of receiving the highest score on the July 2018 Bar Exam. The Board joined in in congratulating Mr. Carlton on his success.

#### **Maricopa County Bar Association**

MCBA Board member Tyler Carrell announced that:

- the annual Barristers Ball will be held April 6 at Chateau Luxe
- the MCBA executive director search continues
- the MCBA will move into space in the Copperpoint Insurance building effective March 2.

#### **John Bouma's Memorial Service**

Board members were reminded of the memorial service at 2:00 p.m. for John Bouma who was State Bar president 1983-1984.

#### **Correspondence/General Reports**

- Doreen McPaul's Resignation from the BOG
- Executive Council Minutes – January 11, 2019

Adjourned at 11:00 a.m.

Respectfully submitted,

Denis Fitzgibbons  
Secretary/Treasurer