

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
January 18, 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; Geoffrey Balon, Young Lawyers Division; Tyler Carrell, Phoenix; David Engelman, Phoenix; Hector Figueroa, Payson; Sharon Flack, Prescott; Patrick Greene, Tombstone; Doreen McPaul, Tucson; Robert McWhirter, Phoenix; Jennifer Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jessica Sanchez, Tempe; Sara Siesco, Phoenix; Jimmie Dee Smith, Yuma; Gaetano Testini, Phoenix; Public Members: Robyn M. Austin, Tucson; Jason Cobb, Phoenix; John Gordon, Prescott; Anna C. Thomasson, Phoenix; and At-Large Members: David K. Byers, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Alex Vakula, Immediate Past President; Leah Won on behalf of Dean Mark Miller, Tucson; Victoria Ames on behalf of Dean Douglas Sylvester, Phoenix.

EXCUSED ABSENCES: Benjamin Taylor, Phoenix; Dean Penny Willrich, Phoenix; Hon. John R. Lopez, IV, Arizona Supreme Court Liaison.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Matt Campbell, System Administrator; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Joel England, CEO/Executive Director; Tim Eigo, *Arizona Attorney* Editor; Martin Gaxiola, Accounting Manager; Kathy Gerhart, Chief Financial Officer; Christopher Kaup, Tiffany & Bosco PA; Ann Leslie, Executive Assistant; Jack Levine, Attorney at Law; Lori Maxwell, Chief Information Officer; Lisa Panahi, General Counsel; John Phelps, Immediate Past CEO, and his wife, Barbara; Amy Rehm, Deputy Chief Bar Counsel; Alberto Rodriguez, Public Relations Manager; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Maret Vessella Chief Bar Counsel.

President Jeffrey Willis called the Board meeting to order at 8:30 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.

Recognition of Outgoing CEO John Phelps – Jeffrey Willis

A special ceremony occurred during which Mr. Phelps was praised and thanked for his 10 years of outstanding leadership as the State Bar's CEO. The Board presented him with a memento that was commissioned by Navajo artist Abraham Begay. Mr. Phelps expressed his thanks for the opportunity to serve the State Bar, and his gratitude to the Board, staff and members for "the best job I've ever had."

President's Report – Jeffrey Willis

- He, along with CEO Joel England and John Phelps, met with PCBA President Michael Aaron and E.D. Susan Trentham to explore additional SBA/PCBA networking events beyond the one current, annual fall event, and continue building the relationship between the organizations. Expanding the concept of sharing resources will require ongoing encouragement.
 - Convention planning continues to go well. The request for Patrons has gone out.
 - Senior Lawyers Task Force: Subgroups making great strides in their respective study areas. The TF report and recommendations is anticipated for the May Board meeting.
 - Goldwater Institute: Petition filed to bifurcate the State Bar, which is similar to the petition it filed last in 2017, but this time references the recent *Janus* case.
 - Staff drafted a comment to the last petition; should the Board wish to comment the deadline is May 1st.
 - The Board agreed to request that the Rules Committee draft a comment to the petition at its next meeting so the Board can consider the proposal at its February 22nd meeting and vote on the proposal at its April 19th meeting (there is no Board meeting in March).
 - Congratulated Doreen McPaul on her appointment as Attorney General of the Navajo Nation. Ms. McPaul indicated that, regrettably, she must resign from the Board pursuant to Court Rule as she is relocating out of Board District 5 (Pima/Santa Cruz counties).

CEO/ED Report – Joel England

- Thanked the Board for his selection as the State Bar’s new CEO. His take away after his first two weeks is that the Bar has a professional and competent staff.
- Introduced the Employee of the 4th Quarter - Aaron Shelby, Senior Programming Analyst in the I.T. Department.
- Referenced the 2018 State Bar Lobbying Report which includes the cost per member as it relates to each bill upon which the Bar took action. The report will be posted on the Bar’s website providing further transparency into the Bar’s activities.
- Reminded those present that Rule 32(c)(7) was amended by the Court to allow the CEO (previously the Board) to grant or deny hardship waivers, with only the denials given to the Board for review. He reported that he had approved 41 waiver requests and denied two which are on the Consent Agenda.

Policy Discussion – Revisit BOG Appointments Policy

- Following one full cycle of recruitment, screening candidates and making nominations to the Governor for the judicial nominating commissions under the recently adopted BOG Appointments Policy, some Board members raised concerns at the December meeting about 1) sending all minimally qualified applicants to the Governor and 2) whether the definition of a “partial term” should be more clearly defined. The Board agreed to revisit the Policy at this meeting.
- With regard to incumbency, the current policy indicates that the Board shall limit service of its appointees/nominees to two terms or eight years, with any partial term counting as a full term. Discussion ensued as to whether:
 - a commissioner’s term shouldn’t count if the commission didn’t meet/conduct business during that respective commissioner’s partial term
 - a partial term shouldn’t count if it is 50% or less than a full term

- After discussion, the Board ultimately agreed to allow the current incumbency policy to stand; however, in the future, candidates who are nominated to fill a partial term are to be notified of the policy in advance.
- A brief history was provided on the nomination process, the fluctuating number of nominations from year to year and the differing preferences of the various Governors. Discussion surrounding the Bar's nomination process included:
 - The Bar's constitutional responsibility in providing nominations to the Governor
 - Whether to nominate all applicants simply because they have been in practice at least five years and have had no discipline sanctions
 - Remove "minimally qualified" language from the Policy
 - Whether to nominate only those who are ranked or received votes from the screening committee and/or the Board
 - How many to nominate and how that number is decided
 - Focus on merit-based nominations
 - Whether to revise the application form to ask applicants if they have voted in general elections
- **MOTION:** Dee-Dee Samet moved to revise the BOG Appointments Policy to recommend the "best qualified" applicants, with no limit placed on that number. The motion was not entertained as this matter was not an action item on the agenda for this meeting.
- The Board ultimately asked staff to revise the Policy based on the discussion and to place the matter on the February 22nd agenda for action.

Consent Agenda – Jeffrey Willis

- a) Approval of December 7, 2018 Board Meeting Minutes
- b) Approval of Resignations in Good Standing
- c) Approval of Reinstatements of Member(s) 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) Anti-Discrimination and Harassment Policy for Board Members
- e) Dues Waiver Denials

President Willis asked if any item(s) needed to be removed from the Consent Agenda.

- Dee-Dee Samet requested that applicant #1 on the dues waiver denial list be removed from the list and be granted the waiver. She indicated that the applicant seeks to maintain Active status in order to do pro bono immigration work. Sarah Corpening, Membership Administrator and Services Manager, indicated that Supreme Court Rule 38 allows Inactive and Retired members to perform pro bono work, and that this member's reason for the waiver does not rise to the level of "hardship" as defined in the Court rule.
- It was reported that the Senior Lawyers Task Force report will include a recommended Rule 38 amendment which allows Retired and Inactive members' dues be waived if they perform pro bono work. It was also reported that the Court's Attorney Regulation Advisory Committee filed a petition earlier this month that proposes to exempt Retired and Inactive members who volunteer at least ten (10) hours with a legal services organization from paying SBA annual bar dues..

- Staff were encouraged to advise members of the different advantages of the different membership categories at the time members are considering changing their membership status.
- **MOTION:** Dee-Dee Samet moved to grant applicant #1 a dues waiver. The motion died for the lack of a second.
- **MOTION:** John Gordon moved, Tyler Carrell seconded and the motion carried over two dissents to approve the dues waiver denial report as presented.
- **MOTION:** Paul Senseman moved, Tyler Carrell seconded and the motion carried unanimously to approve the remaining matters on the Consent Agenda.

Ms. Corpening reported that the officers approved staff's recommendation to allow State Bar members, furloughed due to the federal government shutdown, to file their dues statement but to also file a late fee waiver at the same time so they can remain in compliance. When the shutdown ends those members can pay their dues once they receive their back pay. This option has been posted on the Bar's website and included in *eLegal*. She reported that affected members are very appreciative of this proactive solution.

2019 Convention Charity – Lisa Deane

- Pursuant to policy, the Board selects the charity that runs a silent auction at the annual Convention. The nonprofit is responsible for all aspects of the auction, including collecting auction items, set up/tear down, and disbursement of items to successful bidders. No staff time is involved in this project.
- RFPs were sent out; two nonprofits responded. The Board reviewed the mission statements of each.
- **MOTION:** Dee-Dee Samet moved, Sharon Flack seconded and the motion carried unanimously to select Defenders of Children to run the silent auction at the 2019 Convention.

MCLE Suspensions – Sarah Corpening

- September 15th is the MCLE filing deadline. Members received four email reminders beginning in July, in addition to targeted emails being sent to segments of the membership (YLD, In-House counsel, etc.), with the filing deadline published in *Arizona Attorney* magazine, *eLegal* and posted on the website. The Rules require that a letter, sent by Return Receipt Requested, be mailed to members who had not filed their affidavits, and those letters were mailed December 14.
- As of today, 66 members failed to file their affidavits and six had filed but failed to pay the late filing fee.
- Dee-Dee Samet requested that one member be removed from the list based on specific circumstances. Discussion ensued.
- **MOTION:** Dee-Dee Samet moved, Tyler Carrell seconded and the motion carried unanimously to approve the MCLE suspension list as presented subject to the removal of this member.

ABA Resolution 105 (Bar Exam Passage Standard) – Dave Byers

- At the October Board meeting, a panel of distinguished guests spoke about the bar admissions process and policies.
- Former Chief Justice Rebecca White Berch moderated that panel and also serves on the ABA Council for the Section of Legal Education and Admissions to the Bar. The Council has proposed a 75% Bar Exam passage standard. The standard affects other law schools even if your respective law school has a high pass rate. The proposal is admittedly not the highest standard, but is clean, cut and dry.
- The ABA House of Delegates (HOD) will consider the proposal at its meeting in late January. Mr. Byers requested that the Board endorse the proposal and direct the Bar's ABA Delegates to vote in favor of it at the ABA Midyear Meeting of the HOD.
- **MOTION:** Dave Byers moved, Jimmie Smith seconded and the motion carried unanimously to support ABA Resolution 105 and direct the Bar's Delegates in the ABA HOD to vote in favor of it at the ABA Midyear Meeting.

Finance and Audit Committee – Denis Fitzgibbons and Kathy Gerhart

- Preliminary 4th Quarter financials year-to-date were reviewed:
 - Bar operating surplus of \$76K (had budgeted \$19K)
 - Sections activity – net - \$32K
 - Total surplus of \$108K
- The F&A Committee met with the new auditors at its meeting the previous day. The Board reviewed the audit letters. The CFO and accounting staff are heavily engaged in providing the auditors with requested documentation, financial information and policies and procedures for the audit.

Status Reports

Fleck Case – Lisa Panahi

- The 8th Circuit is now vested with the mandate from the Supreme Court, and has vacated its prior judgment. The 8th Circuit also issued its order setting the briefing schedule:
 - Appellant's brief due February 5th.
 - Appellee's brief due March 15th.
 - Oral argument set for June 13th.
- Options: does the State Bar join an amicus? File its own? Not comment?
- President Willis indicated that he would appoint an Amicus Working Group, previously approved under the recently amended Amicus Policy, to consider the issues and the State Bar's options.

Senior Lawyers Task Force – Hector Figueroa

- The Task Force is chaired by Hon. Patricia Norris (ret.)
- Working subgroups are:
 - Mentoring chaired by Judge Norris
 - Pro Bono chaired by Chas Wirken
 - Transition from the Practice of Law chaired by Laura Zeman-Mullen

- The three groups are looking at the topics with the perspective of increasing engagement of senior lawyers and helping them with the steps in planning for and following retirement.
- The Task Force agreed to survey the senior lawyers of the Bar to gauge reaction to the ideas the subcommittees have discussed.
- The Task Force's final report and recommendations are scheduled for the Board's May meeting.

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

- First meeting convened January 7th
- Tasked with reviewing Rules 31 and 32 – scope of representation between the lawyer and client
- Received presentations on: the legal market landscape; the paralegals program in Ontario, Canada, in which paralegals can appear in limited jurisdiction courts; and the Arizona Supreme Court's licensed document preparers (LDP) program.
- Two working subgroups: LDP Review/Non-Lawyer Legal Services/Rule 31(d) led by Don Bivens, and Unbundled Services/Alternative Business Structures (ABS) led by Hon. Maria Elena Cruz
- Next meeting is January 22nd
- Report and recommendations due October 15th

Communications/Government Relations Division

Legislative Report – Shelbe Hunsinger for Lobbyist Janna Day

- November elections resulted in a shift in the makeup; Republicans lost 3 seats
 - Senate 17 Republicans, 13 Democrats
 - House 31 Republicans, 29 Democrats
- Hon. Karen Fann is new Senate President
- Hon. Rusty Bowers is new House Speaker
- Only five attorneys serve in the collective body
- Governor's State-of-the-State address focused on:
 - Complete the drought plan by January 31st
 - Legislative immunity
 - School safety
 - Wayfair (goods/services) tax
 - Transportation
- No bill attacking the State Bar has been dropped to date
- HCR dropped giving the Legislature the authority to overrule Court rules
- Board members urged to meet their elected officials and build relationships, and to complete the legislative survey CCO Rick DeBruhl emailed out.

Recognitions

HR Consultant Deb Krutz – Anna Thomasson

- Ms. Krutz was recognized by the Board for her outstanding work on the recent CEO search effort. The process was completed in less time than anticipated. She was presented with a token of thanks by the Board.

Board Services Specialist Nina Benham – Joel England and John Phelps

- Ms. Benham was recognized by the current and the former CEO and the Board for her outstanding service to the State Bar over the past 16 years. Ms. Benham received well wishes for the next chapter of her life as those present enjoyed a special cake ordered to commemorate her service.

Correspondence/General Reports

- Appointments Summary: Court's Character and Fitness and Examinations Committees
- 2019 Board of Governors Candidates

Adjourned at 11:45 a.m.

Respectfully submitted,

Denis Fitzgibbons
Secretary/Treasurer