

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
Sheraton Grand & Wild Horse Pass
Chandler, AZ**

June 26, 2018

BOARD MEMBERS PRESENT: Alex Vakula, President, Prescott; ; Jeffrey Willis, President-Elect, Tucson; Brian Furuya, Vice President, Flagstaff; Lori Higuera, Secretary-Treasurer, Phoenix; Daniel Mazza, Young Lawyers Division President, Phoenix; David K. Byers, Phoenix; Tyler J. Carrell, Phoenix; David Wm. Engelman, Phoenix; Hector Figueroa, Payson; Denis M. Fitzgibbons, Casa Grande; Patrick Greene, Tombstone; Doreen M. McPaul, Tucson; Robert J. McWhirter, Phoenix; Jennifer Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jessica Sanchez, Phoenix; Sara A. Siesco, Phoenix; Benjamin P. Taylor, Phoenix; Gaetano Testini, Phoenix; Public Members: Robyn M. Austin, Jason E. Cobb, Phoenix; John Gordon, Prescott, Anna C. Thomasson, Phoenix; and At-Large Members: Paul Senseman, Phoenix; Ex-Officio Members: Dean Marc Miller, Tucson;

OTHERS PRESENT: Nina Benham, Board Services Specialist; Sarah Corpening, Membership Administrator & Services Manager; Rick DeBruhl, Chief Communications Officer; Ann Leslie, Executive Assistant; Lisa Panahi, General Counsel; John Phelps, CEO/Executive Director; Patricia Seguin, Legal Services Manager; Maret Vessella, Chief Bar Counsel; Carrie Sherman, Director of Board Operations and Justice John Lopez IV, Sheldon Joseph, IT Project Manager.

EXCUSED ABSENCE: Jimmie Dee Smith, Yuma; Ex-Officio Members: Dean Douglas Sylvester, Tempe; Dean Penny Willrich, Phoenix and Lisa S Loo, Immediate Past President, Tempe;

GUESTS: Geoffrey Balon, new YLD President, Sharon M. Flack (new Dist. 2 representative); William Pickett, Washington Bar Association President; Charles (Chas) Wirken, Chair, Client Protection Fund and Jack Levine.

President Alex Vakula called the Board meeting to order at 1:03 p.m.

CALL TO THE PUBLIC

President Vakula made a Call to the Public and Jack Levine responded.

PRESIDENT'S REPORT – Alex Vakula

- Welcomed and introduced the new Board members: District 2 (Yavapai) – Sharon Marie Flack, Musgrove, Drutz, Kack & Flack PC, and District 6 (Maricopa) – Gaetano “Guy” Testini, Industrial Commission of Arizona
- Immediate Past YLD President Danny Mazza introduced the new YLD President, Geoffrey A. Balon, City of Mesa Prosecutor’s Office.

CERTIFICATION OF 2018 BOARD ELECTION RESULTS

- President Vakula stated it was an uncontested election in District 2 (Yavapai County).

- Votenet Solutions' certified results indicated Sharon Marie Flack was elected.
- **MOTION:** Sam Saks moved, Lori Higuera seconded and the motion carried unanimously to accept and certify the results of the 2018 Board of Governors election as submitted by Votenet Solutions.

Election of 2018-2019 State Bar of Arizona Officers

- Pursuant to Supreme Court Rule 32(f), the president-elect automatically becomes president. Jeffrey Willis was congratulated on his ascension to the presidency.
- Pursuant to Supreme Court Rule 32(f), the remaining officers are elected in the following order: president-elect, vice president and secretary/treasurer.
 - **MOTION:** Jeffrey Willis moved the nomination of Brian Furuya for the office of president-elect, seconded by Dee-Dee Samet.
 - As there were no other nominations, the nominations were closed.
 - By acclamation the motion carried unanimously. Mr. Furuya was congratulated on becoming president-elect.
- Nominations for vice president were then accepted.
 - Two members disclosed their interest in running for the vice president seat, Hector Figueroa and Lori Higuera.
 - As there were no other nominations, nominations were closed.
 - General Counsel Lisa Panahi reviewed election procedures as directed by the bylaws.
 - Both candidates were given 5 minutes to make statements.
 - **MOTION:** Tyler Carrell moved, Jessica Sanchez seconded and the motion carried unanimously to go into Executive Session at 1:23 p.m. Both candidates and staff stepped out of the room.
 - **MOTION:** John Gordon moved, Tyler Carrell seconded and the motion to return to Open Session at 1:32 p.m. carried unanimously.
 - The board voted by secret ballot.
 - After the votes were tallied President Vakula announced that by majority vote Lori Higuera was elected as the new vice president. She was congratulated on her election.
- Nominations for secretary-treasurer were then accepted.
 - **MOTION:** Jennifer Rebholz moved the nomination of Samuel Saks for the office of secretary-treasurer.
 - **MOTION:** Hector Figueroa moved the nomination of Denis Fitzgibbons for the office of secretary-treasurer.
 - **MOTION:** Danny Mazza moved the nomination of Tyler Carrell for the office of secretary-treasurer.
 - **MOTION:** David Wm. Engelman moved the nomination of Jessica Sanchez for the office of secretary-treasurer.
 - As there were no other nominations, the nominations were closed.
 - Ms. Panahi again reviewed the voting process.
 - Each candidate addressed the board regarding their qualifications for the officer position.
 - **MOTION:** Anna Thomasson moved, Lori Higuera seconded and the motion carried unanimously to move into Executive Session at 1:52 p.m.
 - The candidates and staff stepped out of the room.
 - **MOTION:** By acclamation the board reconvened in Open Session 2:12 pm

- The board voted by secret ballot.
- After the votes were tallied President Vakula announced that Denis Fitzgibbons had been elected secretary-treasurer. He was congratulated on his election.
- Photos of the new Board and Executive Council were taken.
- President Vakula thanked Justice John Lopez for swearing in the new 2018-2019 Board of Governors.
- 2:53 pm Returned to the Business Agenda.

PRESIDENT'S REPORT (continued) – Alex Vakula

- Thanked Jeff Willis for attending the recent Arizona Judicial Council meeting in Tucson.
- Thanked Chief Justice Scott Bales and AOC Director Dave Byers for the tour of the State Courts Building following the May board meeting. Attendees included other board members and Bar Leadership Institute participants.

CONSENT AGENDA

- a) Approval of May 18, 2018 Board Meeting Minutes
 - b) Resignations:
 - i) Approval of Resignations in Good Standing
 - ii) Approval of Resignation in Lieu of Reinstatement
 - 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 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) Nomination of BLS Chair
 - e) Approval of June 2018 Dues/Late Fees Waiver Requests
 - f) Approval of Summary Suspension Non-Payment of 2018 Dues
- President Vakula asked if there was anything that should be removed from the Consent Agenda.
 - CEO John Phelps reminded the board that a handout was provided with the most up-to-date list for Summary Suspension for Non-Payment of 2018 Dues. Sarah Corpening, Member Administrator and Services Manager, reported that three additional members had paid their fees since the list was printed, bringing the total number down to 175.
 - Dee-Dee Samet requested that item e) Approval of June 2018 Dues/Late Fees Waiver Requests be removed.
 - **MOTION:** By acclamation the board approved all remaining items as presented on the Consent Agenda.
 - **MOTION:** Dee-Dee Samet moved and Hector Figueroa seconded to approve the waivers for Waiver Request #1 and #3. In a 16-8 vote, the motion failed.
 - After a lengthy discussion regarding two of the requests for a waiver,
 - **MOTION:** Brian Furuya moved, Tyler Carrell seconded and the motion carried unanimously to approve staff's recommendations regarding the four waiver requests as submitted. The board ultimately determined that the waiver requests did not meet the criteria for "personal hardship" as the stated in the Rules.

BOARD OF GOVERNORS' SPECIAL CONSTITUTIONAL APPOINTMENTS COMMITTEE

- Five members of the Board of Governors
 - Lori Higuera, SCAC Co-Chair – Board Vice President and Appointments Committee Chair
 - David Engelman, SCAC Co-Chair
 - Robyn Austin
 - Jessica Sanchez
 - Jimmie Smith
- Four Members of the State Bar's Standing Appointments Committee
 - John Blanchard, Osborn Maledon PA
 - Juan Flamand, Fragomen Del Rey Bernsen and Loewy LLP
 - Marla Hudgens, Lewis Roca Rothgerber Christie LLP
 - Andrew Reilly, Office of the Arizona Attorney General
- **MOTION:** Brian Furuya moved, Paul Senseman seconded and the motion carried to approve the composition of the Special Constitutional Appointments Committee.
- Jessica Sanchez reviewed the reasons for the creation of the committee.

RESPONSE TO THE CHIEF JUSTICE REGARDING DEFERRAL OF FUTURE MEMBERSHIP FEE INCREASES

- Draft letter in the materials as discussed at the May board meeting.
- There is a July 1 deadline to respond to Chief Justice Bales.
- Board members offered several suggested modifications to the letter.
- **MOTION:** Brian Furuya moved, Lori Higuera seconded and the motion carried unanimously to give Jeff Willis final editing authority and permission to send the letter to the Court on behalf of the Board requesting deferral of the 2019 annual fee increase.

PROGRAM REVIEW WORKING GROUP – Standing Committee Guidelines

- The PRWG is working to make the Standing Committee Guidelines congruent with board policies, the Public Meetings Policy and the recent committees' restructuring. The proposal includes less formal committee meetings; decisions by consensus; no quorum need be established; and to now allow proxy voting. Discussion regarding the pros and cons.
- Dee-Dee Samet felt a quorum is always needed to ensure that a few are not acting on behalf of an entire group.
- **MOTION:** Dee-Dee Samet moved to table.
- **MOTION:** Brian Furuya moved, John Gordon seconded and the motion carried unanimously to return the proposal to the Program Review Working Group for further review regarding:
 - Providing greater clarity regarding the board's and committees' authority
 - Number for a quorum
 - Defining proxy voting: committee member sends designee to meeting? Or committee member gives his/her vote to another committee member?
 - Teleconference capability

CLIENT PROTECTION FUND ANNUAL REPORT – Chas Wirken

- President Vakula welcomed Chas Wirken, 2004-2005 State Bar President, who was completing his Client Protection Fund Board of Trustees service after 10 years, the last five years as its chair.
- The Board of Governors appoints five CPF Trustees. \$20 of each member's annual fees go to the Fund.
- The Fund is audited annually and received a clean audit recently.
- 2017 Executive Summary:
 - 91 claims filed compared to 45 in 2016
 - Total claims amount sought - \$2,244,393 compared to \$1,590,471 in 2016
 - Claims paid - 24 compared to 49 in 2016
 - Claims total amount paid out - \$165,473 compared to \$396,770 in 2016
 - Claims denied - 17 compared to 25 in 2016
 - Claims pending - 64 compared to 14 in 2016
 - Assessments revenue - \$429,420 compared to \$213,990 in 2016
 - Interest earned - \$11,898 compared to \$9,368 in 2016
 - Restitution receipts - \$227,024 compared to \$5,059 in 2016
 - Total revenue - \$668,342 compared to \$228,417 in 2016
 - Expenses excluding claims paid - \$123,370 compared to \$137,679 in 2016
 - Surplus/Deficit - \$379,499 surplus compared to \$(306,032) deficit in 2016

RULES REVIEW COMMITTEE – Denis Fitzgibbons

Two proposed comments that require board discussion and action:

- Proposed Reply to **R-18-0017**, Petition to Amend Rule 7, Ariz. R. Civ. App. P. and Rules 62 and 69, Ariz. R. Civ. P
- Proposed Reply to **R-18-0018**, Petition to Amend Rules 38, 39, 49, 77, and 84, Ariz. R. Civ. P.
- Mr. Fitzgibbons reviewed both Replies that were unanimously approved by the Rules Review Committee.
- **MOTION:** Coming from the Rules Review Committee requiring no second, the motion to approve the filing of both Replies carried unanimously.

FINANCE AND AUDIT COMMITTEE – John Phelps

- 401(k) Audit Information
 - Employee participation over recent years has risen from 60% to 90%
- Investment Policy
 - Finance and Audit Committee will review the current investment policy and look into high return investments for the reserve funds.

BYLAWS REVIEW WORKING GROUP – Alex Vakula

- Revised Bylaws draft was provided at the May board meeting. Suggested modifications were captured.
- Outside counsel, an expert on nonprofits governing documents, recommended changes to the Working Group, most of which were incorporated into the document.
- Latest version in materials includes many of those proposed changes.

- The board in May agreed to adopt one of the three options the Working Group proposed regarding parliamentary procedures at board meetings and a couple on the Working Group believed the board favored a policy being written to cover how meetings are to be run.
- The current proposal has two options.
- The final version will be voted upon at the July or September meeting of the board.
- Discussion regarding various parts of the Bylaws including: participation by phone in case of emergency; president votes on tie votes (9.07 of proposed Bylaws); can remove an officer with or without good cause (7.04) pursuant to the Rules.

WASHINGTON STATE BAR NEWS – President William Pickett

- Neighboring bar associations invite the president to attend their conventions and the State Bar does the same.
- Introduction of President William Pickett, president of the Washington State Bar and also admitted to practice in Arizona.
- Washington considers annual fees as “licensing fees” not annual dues. Benefit is the license to practice law.
- WSB recently added two public members and one Limited License Legal Technician to its governing board. There are approximately 40 LLLTs practicing. They must complete 3,000 hours of study and are authorized to give limited legal advice only in family law matters, but the program may be expanded to include other areas of law.
- Their board is currently bogged down in the process of rewriting its Bylaws.
- Discussed bifurcation – ongoing tension between membership/regulatory side

RECOGNITION OF OUTGOING BOARD MEMBER – Alex Vakula

President Vakula presented a memento to Danny Mazza, YLD Past President, and outgoing board member, thanking him for his outstanding service to the board and the State Bar.

RECOGNITION OF OUTGOING PRESIDENT BY STAFF – John Phelps

CEO Phelps presented Alex Vakula with a personalized coffee table book signed by Bar staff which recapped his year as president. Board members were also encouraged to sign it.

RECOGNITION OF OUTGOING PRESIDENT ON BEHALF OF THE BAR – John

Phelps and Jeffrey Willis

CEO Phelps presented Alex Vakula with a leather bound book containing the *Arizona Attorney* magazines which featured the president’s columns he authored during his year. Incoming President Jeffrey Willis presented Alex Vakula with three gifts for his outstanding service to the board and the State Bar.

2018-2019 BAR YEAR – Jeffrey Willis

- The meeting schedules for the board and the Executive Committee were noted.
- Plans for the board’s Annual Retreat, July 19 and 20 in Flagstaff, are being finalized and will be shared soon.

REPORTS (Information)

- a) BLS Appointments by Supreme Court
- b) BoG Executive Council Minutes June 8, 2018
- c) Rodney B. Lewis Memorial Resolution

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 5:08 p.m.

Respectfully submitted,

Lori Higuera
Secretary/Treasurer