

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
December 4, 2020
Zoom**

BOARD MEMBERS PRESENT: Denis M. Fitzgibbons, President, Casa Grande; Jennifer Rebholz, President-Elect, Phoenix; Jessica Sanchez, Vice President, Mesa; Benjamin Taylor, Secretary-Treasurer, Phoenix; Sandra Bensley, Tucson; Jena Decker-Xu, President, Young Lawyers Division; Hector Figueroa, Payson; Sharon Flack, Prescott; Mark Harrison, Phoenix; Kelsi Lane, Phoenix; Leticia Marquez, Tucson; Robert McWhirter, Phoenix; John Moody, Phoenix; David Rosenbaum, Phoenix; Eric Ruckensky, Flagstaff; D. Christopher Russell, Sierra Vista; Samuel Saks, Phoenix; Ted Schmidt, Tucson; Jimmie Dee Smith, Yuma; Public Members: Robyn M. Austin, Tucson; John Gordon, Prescott; Jonathan Martone, Paradise Valley; and Anna C. Thomasson, Paradise Valley; At-Large Members Dave Byers, Phoenix, Lori Higuera, Phoenix and Doreen McPaul, Window Rock; and Ex-Officio Members Brian Furuya, Board Advisor; and Dean Marc Miller, UA Law School, Tucson.

OTHERS PRESENT: Victoria Ames on behalf of Dean Douglas Sylvester, ASU College of Law, Phoenix; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Tim Eigo, Editor; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Connie Hay, Board of Legal Specialization Administrator; Joe Hengemuehler, Chief Communications Officer; Craig Henley, Senior Bar Counsel; Lori Maxwell, Chief Information Officer; Elena Nethers, Director of Diversity, Equity & Inclusion; Rick Palmatier, Assistant General Counsel; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Stacy Shuman, Bar Counsel; Roberta Tepper, Lawyer Assistance Programs Director; Karen Van Allen, Administrative Assistant; Maret Vessella, Chief Bar Counsel; Assistant Dean Leah Won, UA Law School; and Supreme Court Liaison Hon. James P. Beene, Phoenix.

GUESTS: David Allen, Wesley Jamiel Allen, Dr. Wendy Campbell, David Case, Michael Crawford, Michael Farrell, Nancy Greenlee, Jennifer Holder, Nicholas Chapman-Hushek, Dawn Walton, Lonnie Williams

President Denis Fitzgibbons called the virtual Board Meeting to order at 8:33 a.m.

- Announced that the agenda will be in a different order today. Both the President's and CEO's report are moved from the beginning of the meeting to later in the agenda in order to accommodate the schedules of special guests and presenters.
- Referenced the Board of Governors Rules of Order that were adopted by the Board on July 20, 2018 and included in the Board's materials. The Rules of Order should be followed during Board meetings:
 - Every action item requires a motion.
 - All motions require a second.
 - The two bullet points above are especially true for recommendations coming from Board committees.

Call to the Public – President Denis Fitzgibbons

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

Employees of the 3rd Quarter – Joel England

- CEO Joel England introduced Senior Bar Counsel Craig Henley and Bar Counsel Stacy Shuman, employees of the 3rd quarter. He spoke about their untiring efforts prosecuting the various cases against attorney Juan Martinez and obtaining appellate rulings in the State Bar's favor in each case that was prosecuted which led to the eventual disbarment of Mr. Martinez.
- Mr. Henley and Ms. Shuman expressed their gratitude for the recognition and thanked their team for their assistance.

Member Assistance Program (MAP) Task Force – Nancy Greenlee, Roberta Tepper

- President Denis Fitzgibbons thanked the Co-chairs Nancy Greenlee and Regina Nassen and the entire task force for bringing forth a program that is a tangible benefit to the members.
- Nancy Greenlee reported that the proposal includes:
 - A rule change to:
 - Mandate a MAP provision by the State Bar
 - Enhanced confidentiality for participants, volunteers and staff involved in MAP
 - Provide immunity from civil suit to MAP participantsThe Petition will be discussed later in the meeting during the Rules Review Committee report.
 - Client Protection Fund to provide funding for one or two treatment professionals who will facilitate a variety of support groups for Bar members.
 - The Board's approval of the concept of enhancing the MAP by the creation of partnerships with one or more treatment centers or providers to provide voluntary, confidential assessments and referral to treatment for members of the State Bar of Arizona consistent with the recommendations of the Task Force.
 - CEO Joel England: CPF funding would have to be coordinated with the Court.
 - David Byers: Questioned whether the \$50,000 mentioned in the proposal would come close to covering the costs. They can work through the math when the Court is involved.
 - For clarification, the proposal, in concept, not the budget/funding, was before the Board for a vote.
- **MOTION:** Jennifer Rebholz moved, Jonathan Martone seconded and the motion to approve the MAP Task Force's proposal, in concept, carried unanimously.

Proposed A.R.S. §14-10821 Submitted by the Probate & Trust Law Section – David Case

- The Legislative Committee of the Probate & Trust Section has been working on the proposed legislation regarding Qualified Self-Settled Spendthrift Trusts since 2018.
- 19 states have similar legislation.
- Why Arizona needs this Statute:

- To update Arizona trust law.
- To provide Arizonans access to best practices in estate planning.
- To provide a measured means of protecting limited personal assets from claims, consistent with and subject to Arizona fraudulent conveyances law.
- Proposal reviewed by stakeholders: Probate and Trust Law Section whose members re lawyers and judges, and the Arizona Bankers Association.
- The Executive Council reviewed this matter in November and recommends that the Board approve it.
- The Section is seeking approval of the proposed changes to the statute and asking that the Bar's lobbyist find a sponsor and guide this through the next legislative session.
- It was recommended that the proposal be shared quickly with the presiding probate judge in Maricopa and Pima Counties, and Mr. Case indicated that he would do so.
- **MOTION:** Jennifer Rebholz moved, Jessica Sanchez seconded and the motion carried unanimously to approve the proposed changes to A.R.S. §14-10821 and to assign the Bar's lobbyist to secure a sponsor and shepherd the Bill through the next legislative section.

Proposed Legal Paraprofessionals' Membership Fees – Joel England, Kathy Gerhart, Lisa Panahi

- This matter was discussed at the last meeting. The Board's input has been incorporated into the proposal which is up for a vote today.
- The proposed fee schedule sets the membership fees, delinquency fees and the assessment of membership fees for Affiliate Members at the same rate that attorneys pay who are admitted less than three years and those admitted three years or more.
- The Court sets the fees.
- David Byers reported that certification tests for Affiliate Members are anticipated in February so membership fees payments may begin as soon as March.
- **MOTION:** Jennifer Rebholz moved, John Gordon seconded and the motion carried unanimously to approve the proposed membership fees for the LPs or Affiliate Members and submit the fee schedule to the Court for its consideration.

Finance & Audit Committee – Benjamin Taylor, Kathy Gerhart

- Benjamin Taylor reported that the Bar staff and the Committee have been working on the 2021 State Bar budget for months. He thanked CEO England and CFO Kathy Gerhart for coming in with a budget surplus of \$474,743 (estimated earlier in the year as a possible \$450K deficit!), with revenues projected to be \$17,069,123 and expenses projected to be \$16,469,539 (before Sections' impact).
 - Revenue sources were reviewed; caveat – the Social Justice Task Force, which will be discussed later in the agenda, is not included in the numbers; projecting a surplus without this item.
 - Reviewed the Capital Budget.
- CFO Gerhart: LPs/Affiliate Members' membership fees are not included in the budget. A wait-and-see approach is being taken with regard to this potential revenue and expenses.

- CEO England: If CPF money will be funding the MAP it won't affect the budget. If CPF funding isn't approved, and we still want the MAP proposal to advance, the funding matter will be brought back before the Board.
- **MOTION:** After discussion, Mark Harrison moved, John Gordon seconded and the motion carried unanimously to adopt the proposed 2021 State Bar Budget as presented.

Task Force on Social Justice, Bias & Inclusion – Lonnie Williams, Lisa Deane, Elena Nethers

- Lonnie Williams indicated that the Task Force report and recommendations were presented to the Executive Council in November.
- This report is for the Board's information today, with a vote scheduled for January.
 - October 2020: *The Arizona Republic* printed an article about the judicial system and where it is in terms of diversity; reviewed the statistics.
 - Court mandate that one of the 15 required MCLE annual hours focus on diversity and inclusion training. Bar provides one free CLE option (at least for the first year); if it is not feasible, charge a nominal fee. [Proposed rule petition to be addressed later on the agenda by the Rules Review Committee.]
 - Survey membership to determine demographics and where work needs to be done.
 - Collect demographic data both related to disciplinary action and for CLE programming.
 - Bar adopt written policies and procedures to reflect its ongoing commitment to diversity and inclusion.
 - Bar establish a vendor/supplier diversity policy.
 - Publish an article(s) in *Arizona Attorney Magazine*—focus on steps that the State Bar is taking related to Bar operations or any other focus areas of the Task Force.
- Suggestion that a working group, perhaps the chair and the three subcommittee chairs, continue to oversee the initiatives ultimately undertaken and provide periodic reports to the Board.
- David Byers: The proposal is not clear about requiring CLE. Other groups are putting on programs like this; does someone have to take the Bar's program? If not, the cost might be less than what has been discussed.
- Jennifer Rebholz: The Rule reads that members have to take Ethics with one hour being on the topic of D&I. One does not necessarily have to take a Bar CLE program.
- Mr. Williams, the subcommittee chairs and the State Bar staff were thanked for their outstanding expeditious work and thoughtful well-crafted recommendations.

Electoral College and Census was presented by Robert McWhirter.

Rules Review Committee – Jennifer Rebholz

- Proposed Petition to Amend Rule 68, Ariz. R. of Civ. P. with Appendices
 - This was discussed previously to change the sanctions and sent back to Civil Practice and Procedure Committee (CPPC).
 - Need to vote on it to meet the January filing deadline.
 - Are there questions or does the Board want to send it to the Court or send it back to Committee? If the latter, it would have to wait until the next rules cycle.

- **QUESTION:** Brian Furuya: The court asked the CPPC to look at “making sanctions discretionary or giving the courts discretion to reduce or otherwise tailor a sanction if the court finds the sanction excessive”. If it is a sanction, why is it only one way?
- Tax evaluation cases require expert witnesses; expert witness fees are unpredictable.
- Jennifer Rebholz: The issue with discretion is a Catch 22; the court wants it to be reasonably calculated and expert fees proportional.
- Michael Farrell:
 - Believes the sanction can be excessive.
 - Trying to incentivize the parties to make a good faith offer.
- Board’s options: Vote on whether to send this to the Court or not. If the vote is against the proposal the Board can reconsider other alternatives.
- Ted Schmidt:
 - Dissenting vote; has a problem that the Court can come in and undo the offer of judgment.
 - He has run it by trial lawyers.
 - Thinks it would create another layer of litigation.
- Jennifer Rebholz: Recommendation to approve the CPPC’s proposal came out of Rules.
- Mark Harrison: Did the CPPC consider drafting comments?
- Brian Furuya: It seeks to eliminate sanctions, not to improve the situation.
- Michael Farrell:
 - Vote on value.
 - Does this add to the access to justice?
- Jimmie Smith: The Board has talked about this for years; thinks the Board should vote on it now.

MOTION: Jimmie Smith moved, John Gordon seconded and the motion carried by a vote of 13 to 9 to approve the Rules Review Committee’s recommendation regarding proposed changes to Rule 68 and forward the proposed petition to the Court for its consideration.
- Proposed Petition to Amend Rule 45(a)2, Ariz. R. Sup. Ct. with Appendices
 - CLE:
 - One hour of the three hours of Ethics should be diversity and inclusion focused.
 - Discussed whether it should be free, but that is not included in the proposal.
 - **MOTION:** Mark Harrison moved, Ted Schmidt seconded and the motion carried by a vote of 21 to 2 to approve the Proposed Petition to Amend Rule 45(a)2.
- Proposed Petition to Amend Rules 32 and 48, Ariz. R. Sup. Ct. and Rule 42, ER 8.3
 - Coming out of the MAP Task Force Report and Recommendations regarding confidentiality and reporting.
 - **MOTION:** Mark Harrison moved, Benjamin Taylor seconded and the motion carried by a vote of 21 to 1 to approve the Proposed Petition to Amend Rules 32 and 48, Ariz. R. Sup. Ct. and Rule 42, ER 8.3.

Appointments Committee – Jessica Sanchez

- DNA-People’s Legal Services Inc. Board of Directors has one vacancy that needs to be decided today.
 - The Board of Governors appoints three members.
 - 18 applications were received.
 - The Committee met on November 18, 2020 and vetted applicants.
 - Ms. Laurie Lynn Kalivas had the highest number of votes and is the Committee’s recommendation.
 - Brian Furuya:
 - Has no problem with Ms. Kalivas.
 - Knows Dennis Glanzer would be a qualified candidate; he has close ties to the Nation.
 - **MOTION:** Jimmie Smith moved and Sharon Flack seconded to appoint Dennis Glanzer of Flagstaff to the DNA Board.
 - Jessica Sanchez:
 - There is another vacancy coming up in two years.
 - The Committee undertakes an extensive vetting process.
 - Anyone is welcome to address the Appointments Committee during its public meetings.
 - David Byers: Is there diversity information on the DNA Board?
 - Jessica Sanchez:
 - Information about the diversity of the Board was not available.
 - Will request this for next time; it is a 24-member Board; not just in AZ, but also in Utah, New Mexico, and Colorado, everywhere the Nation is located.
 - Mark Harrison: Supports the Committee’s recommendation.
 - President Denis Fitzgibbons: Motion and second on the floor - vote on appointing Dennis Glanzer to the DNA Board.
Vote: 73% no; 18% yes; 9% abstain. Failed to pass.
 - **MOTION:** Doreen McPaul moved, Mark Harrison seconded and the motion to appoint Ms. Laurie Lynn Kalivas to the DNA-People’s Legal Services Inc. Board of Directors carried by a vote of 19-1-2.

Arizona Foundation for Legal Services & Education Board of Directors – Denis Fitzgibbons

- Thanked John Gordon and Robert McWhirter for their service on the Foundation Board as they complete their three-year terms this month.
- Two Governors have expressed interest in serving on the Foundation Board: Brian Furuya and Kelsi Lane.
- Ted Schmidt indicated an interest, and his name was added to the list of candidates.
- For the Board’s information there will be one Foundation Board seat to fill next December.

- **VOTE:** The Board members proceeded to cast up to two votes through a Zoom poll which listed the three candidates. Mr. Furuya and Ms. Lane received the highest number of votes and were appointed to the Foundation Board for a three-year term.

Reconsideration of Administrative Suspension – Joel England, Lisa Panahi, Rick Palmatier

- CEO England reviewed the request to reinstate to practice a member suspended for non-compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.).
- Lisa Panahi gave context about the request.
- **MOTION:** Mark Harrison moved, Lori Higuera seconded and the motion carried unanimously to issue an order vacating the noted suspension nunc pro tunc.
- General Counsel Lisa Panahi reported that she received a letter from the member’s counsel that morning requesting that any Board order include language that the member has been in good standing for a certain number of years. She counseled that the order should state that the member has been in good standing this year (2020) and the Board concurred.

Consent Agenda – Denis Fitzgibbons

- President Fitzgibbon inquired if anything needs to be removed from the Consent Agenda and hearing nothing:
- **MOTION:** John Gordon moved, Anna Thomasson seconded and the motion carried unanimously to approve the Consent Agenda:
 - a) Approval of October 23, 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 Suspension for Non-Compliance with Professionalism Course (Rule 34(n), Ariz. R. Sup. Ct.)
 - f) Rules Review Committee
 - i. Proposed Petition to Amend Rules 4.1 and 4.2, Ariz. R. Civ. P. with Appendices
 - ii. Proposed Petition to Amend Rules 75 – 80, Ariz. R. Sup. Ct., with Appendices

President’s Report – Denis Fitzgibbons

- Brian Furuya reported on “his”/the 2020 Bar convention.
 - Thanked CEO England, Chief Member Services Officer Lisa Deane and Convention Coordinator Karolyn Kiburz for their outstanding work.
 - Delighted with the most recent registration count of 825.
 - Thanked Convention Co-chairs Hon. Maria Elena Cruz, Arizona Court of Appeals, Division One, and Bill Ring, Coconino County Attorney.

CEO/ED's Report – Joel England

- Added his thanks to Lisa Deane for her efforts to produce a successful convention. Also thanked staff members Alex Marlar and Jennifer Sonier for their leadership in moving to a virtual platform and becoming experts on the system.
- The legal services hotline continues with modified hours with approximately the same number of callers. About 34% of the 2500 calls are about housing/evictions.
- Announced the hiring of the new HR Manager, Rachel Williams. She will start January 4, 2021.
- Announced the promotion of Elena Nethers to Director of Diversity, Equity and Inclusion.
- Held a Staff Appreciation Event - gifts were given out in a drive-through event with no contact. Thanked the Employee Enrichment Experience team.
- Managers/supervisors completed their 6th annual Leadership Development Program. Studied *The Speed of Trust* by Stephen Covey this year and broke into groups to present virtually on the principles of trust.
- Access to Justice Commission raised concerns that some people were in violation of the CARES Act. A working group is looking at resolving some of those issues.
- David Byers complimented the staff on turning the budget from a potential deficit to a surplus, seizing opportunities for revenues and cutting expenses.

Status Reports

- Delivery of Legal Services Implementation Team – Lisa Panahi
 - The team met in both October and November; the most pressing item was to determine the Associate Members' fees.
 - I.T. and the Lawyer Regulation Office are working to adjust the required automation systems to track new Associate Members and new Alternative Business Structures.
 - No identified roadblocks.
- Strategic Planning – Jessica Sanchez
 - Senior staff will be determining which strategic priority objectives they are responsible for and will define Key Performance Indicators for those objectives. I.T. will develop a dashboard/methodology for tracking progress on the Plan's initiatives.
- Legislative/Government Relations - Joe Hengemuehler
 - 55th Legislature: The Arizona Legislature will convene on January 11, 2021. Due to the COVID-19 pandemic, expecting to see some changes in how they conduct business down at the Capitol, i.e., move to more online hearings, limited testimony and seating capacity during committee hearings, etc.
 - The House will maintain its Republican majority with 31-29. There will be 11 freshmen, with 1 switching from the Senate. The House has three attorneys – Jacqueline Parker, Domingo DeGrazia and Diego Rodriguez.
 - The Senate will maintain its Republican majority by a smaller margin 16-14. There will be 7 freshmen, 5 of whom are switching from the House. The Senate has 4 attorneys - Warren Petersen, Kirsten Engel, Lupe Contreras, Martin Quezada.
 - Staff have opened a bill folder for the LLC Act modifications. Senator Tyler Pace has agreed to champion the bill again this session. No opposition is expected and

there are talks of fast-tracking consensus bills that did not make it through last session. This would be included in that list.

- AZ Policy Connect is also teed up and ready to engage on the Probate and Trust Law Section Legislation presented by Mr. Case at today's meeting.

David Byers: The results of the October virtual Bar exam were just posted on the Court's website. Passage rate was low – 44%.

MOTION: Jennifer Rebholz moved, Jimmie Smith seconded and the motion carried unanimously to adjourn at 12:17 p.m. The Board members joined Zoom breakout rooms to spend some time catching up and for fellowship prior to the holidays.

Respectfully submitted,

Benjamin P. Taylor
Secretary/Treasurer