

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
October 15, 2021
Phoenix, AZ**

BOARD MEMBERS PRESENT: Jennifer Rebholz, President, Phoenix; Vice President, Benjamin Taylor, Phoenix; Secretary-Treasurer, Ted Schmidt, Tucson; Hector Figueroa, Payson; Sharon Flack, Prescott; Kelsi Lane, Phoenix; Leticia Marquez, Tucson; Robert McWhirter, Phoenix; John Moody, Phoenix; David Rosenbaum, Phoenix; Eric Ruchensky, Flagstaff; D. Christopher Russell, Sierra Vista; Samuel Saks, Phoenix; Gaya Shanmuganatha, Young Lawyers Division, Phoenix; Jimmie Dee Smith, Yuma; Public Members Robyn Austin, Tucson, and Anna Thomasson, Paradise Valley; At-Large Members David Byers, Phoenix and Lori Higuera, Phoenix; Board Advisor Denis Fitzgibbons; and Dean Marc Miller, UA Law School, Tucson.

EXCUSED ABSENCES: President-elect, Jessica Sanchez, Mesa; Diandra Benally, Fountain Hills; Sandra Bensley, Tucson; Public Members Mignonne Hollis, Sierra Vista, and Jonathan Martone, Paradise Valley; and Doreen McPaul, Window Rock.

OTHERS PRESENT: Deanna Commack, Executive Assistant; Sarah Corpening, Membership Administrator & Services Manager; Joe Hengemuehler, Chief Communications Officer; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Lori Maxwell, Chief Information Officer; Rick Palmatier, Deputy General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Carrie Sherman, Director of Board Operations; Roberta Tepper, Chief Member Services Officer; Karen Van Allen, Administrative Assistant; Maret Vessella, Chief Bar Counsel; Rachel Williams, Human Resources Manager; Phoenix; Leah Won, UA Law School, Tucson; and Victoria Ames on behalf of the Interim Deans of the ASU Law School, Phoenix.

President Jennifer Rebholz called the virtual Board meeting to order at 8:32 a.m.

Call to the Public – Jennifer Rebholz

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

President's Report – Jennifer Rebholz

- Continuing to meet with affinity/partner bar associations along with CEO Joel England.
- Attended the retirement event for Mike Baumstark, Deputy Director of the Administrative Office of the Courts.
- Senior Lawyer's Working Group (WG): Will soon appoint the WG to address the issue of fees; working to identify the chair of the WG.
- Convention planning is in progress.
- Attending the Judicial Conference in Flagstaff next week.
- Hon. Brian Furuya's Investiture is October 29, 2021; open invitation to the Board in the meeting materials.

CEO's Report – Joel England

- Continuing to have one-on-one, virtual conversations with Board members.
- Also attended Mike Baumstark's retirement celebration at the Court; thanked him for his efforts; and announced his replacement, Marcus Reinkensmeyer.
- Mandatory Bar Litigation Update: Have been monitoring petitions before the U.S. Supreme Court to see if guidance was offered on what was considered germane and non-germane activity; on October 4, 2021, the U.S.S.C. denied *cert* in the 9th Circuit Crowe/Gruber case effecting the Oregon State Bar. Litigation continues in the lower courts.
- Along with President Rebholz, continuing to meet with affinity/partner bar associations; welcomes the feedback from these conversations.
- Completed Ethics training sessions with all staff members.
- Continuing with budget meetings; recently met with the Human Resources Subcommittee; Finance & Audit Committee approved the HR recommendations and will look at the entire budget next month at its meeting.
- Spoke at Luke Air Force Base's training for its lawyers; enjoyed speaking about the State Bar and how it supports veterans and military members.
- Participated in three days of staff appreciation lunches; format changed from in-person to grab-and-go box lunches during continued pandemic protocols.
- Alberto Rodriquez, the State Bar's Public Relations and Marketing Manager, is leaving the Bar as of today and begins a new position on Monday as the Court's Communications Officer.
- UA Law School Lifetime Achievement Award is being given to Dee-Dee Samet on November 5, 2021. The link to the hybrid event was circulated to the Board.

Announcement – Joe Hengemuehler

Arizona Attorney Magazine won the Luminary Award (along with the Washington, D.C. Bar) from the NABE Communications Section. The large bar category of Excellence on Regular Publications received a record number of submissions this year. This huge honor is thanks to the following staff members:

Tim Eigo, Editor
Michael Peel, Production Manager
Karen Holub, Art Manager
Lisa Bormaster, Advertising Sales Manager
Marc Levine, Advertising Specialist
Sam Tisdale, Advertising Sales Coordinator

Mark Harrison Memorial 10-Minute Topics – Robert McWhirter

Congressional Oversight and Executive Immunity

The Bar's Financial Structure – David Rosenbaum, Kathy Gerhart

Reviewing the financial structure today since the budget will be presented at the December Board Meeting. This topic is generally covered at the Board retreat, which was cancelled this year. The following areas were reviewed:

- Revenues: Numbers are from 2020 since they are finalized; note that it is an anomaly due to COVID; 67% of revenue is from mandatory fees.
- Expenses: Personnel costs as a percentage of total expenses in 2020 were higher due to COVID; travel, conferences, conventions & meetings were significantly less due to virtual environment. In 2020 we did see an increase in expenses for vacation accruals.
- Five Year Projections
 - Reviewed revenue and expense projection assumptions
 - Reviewed projected surplus/loss for 2022 - 2026
- Reviewed Current Capital and Annual Fees Reserve Policies.
- Funds invested with Vanguard
- As of October 13, 2021 reserve balances were:
 - Capital Reserve \$2,725K
 - Annual Fees Reserve \$4,438K
- Key Financial Roles/Responsibilities were reviewed.

Board’s Fiduciary Responsibilities – Jennifer Rebholz, Rick Palmatier

- Duty of Care: Show up, be prepared and engaged
- Duty of Loyalty: Board member should divulge a conflict of interest; respect the validity of the Board’s choice once a vote is taken (Board speaks with one voice).
- Act in good faith; exercise the care of an ordinarily prudent person; act with the reasonable belief of those actions being in the best interests of the corporation
- External:
 - Arizona Nonprofit Corporations Act: General standards for directors and standards of conduct for officers; defined conflict of interest.
 - Rule 32:
 - Organization of the State Bar of Arizona is to “serve and protect the public ... provision of legal services and access to justice.”
 - Powers of Board
 - The Conflict of Interest forms are signed annually.
 - Board members can talk among themselves; but be cautious about the number of members doing so and attempting to reach a consensus about decisions outside the full Board experience.
- Internal:
 - Articles of Incorporation & Bylaws
 - Board of Governors Code of Conduct statement and Conflict of Interest policy
 - Board policy restricting Board members’ representation of lawyer-respondents, and also the availability of the Ethics Hotline to assist with prospective conduct.
 - Board policies: Financial Policies Manual

Break: 10:15 – 10:28 a.m.

Consent Agenda – Jennifer Rebholz

Hearing no request to have any items removed from the Consent Agenda:

- a) Approval of September 24, 2021 Board Meeting Minutes
- b) Approval of Resignations in Good Standing
- c) Approval of Reinstatements of Members Suspended for Non-Compliance with Annual Membership Fees and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.)

MOTION: Chris Russell moved, Eric Ruchensky seconded, and the motion to approve the Consent Agenda carried unanimously.

Finance and Audit Committee – David Rosenbaum, Kathy Gerhart

2020 State Bar of Arizona and Client Protection Fund Consolidated Financial Statements and Auditors' Opinion

- Unqualified clean opinion.
- Notes to Consolidated Financial Statements provide additional insight/information regarding the Bar's Financial structure and activities.
- CEO England: Received high endorsement from the auditor; thank you to Kathy Gerhart, Jessica Iennarella and their team.
- As part of Rule 32, the Arizona Supreme Court will receive the audit results.

Status Reports

- Delivery of Legal Services Implementation Team – Rick Palmatier
Nothing new to report
- Discipline on the Web Working Group – Chris Russell
Charge completed and summary provided Board at September meeting; remove from future agendas.
- Legislative Update – Joe Hengemuehler
Still no hint of any anti-bar activity; a lot of vacancies and shuffling going on with lawmakers, which could result in 25 new representatives in the House (out of 60) in the 2022 election.
- Social Justice, Bias and Inclusion Working Group – Roberta Tepper
 - Board's demographic survey approved; circulate next week; requesting 100% participation.
 - Member survey - working through the survey questions with Professor Tammi Walker.
 - Professionalism Course being revised regarding D&I issues.
- Strategic Planning Working Group – Sam Saks
Nothing new to report

Correspondence/Reports

- Open invitation to Judge Brian Furuya's Investiture on October 29, 2021.
- 2021 Annual Report from the State Bar's Representative on the Rocky Mountain Mineral Law Foundation.

Adjourn: MOTION: Chris Russell moved, Hector Figueroa seconded, and the motion carried unanimously to adjourn at 10:45 a.m.

Respectfully submitted,

Ted A. Schmidt
Secretary/Treasurer