

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
4201 N. 24th Street, Suite 100
Phoenix, AZ**

May 18, 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; Jessica Sanchez, Phoenix; Jimmie Dee Smith, Yuma; Benjamin P. Taylor, Phoenix; Public Members: Robyn M. Austin, Tucson; John Gordon, Prescott; Anna C. Thomasson, Phoenix; and At-Large Members: Paul Senseman, Phoenix; Ex-Officio Member: Lisa S Loo, Immediate Past President, Tempe; Leah Won on behalf of Dean Marc Miller, Tucson;

OTHERS PRESENT: Nina Benham, Board Services Specialist; Matt Campbell, Help Desk Technician; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Tim Eigo, Editor *Arizona Attorney*; Martin Gaxiola, Accounting Manager; Kathy Gerhart, Chief Financial Officer; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Lisa Panahi, General Counsel; John Phelps, CEO/Executive Director; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel; and Justice John Lopez IV

EXCUSED ABSENCE: Dee-Dee Samet, Tucson; Sara A. Siesco, Phoenix; Public Member: Jason E. Cobb, Phoenix; Ex-Officio Members: Dean Douglas Sylvester, Tempe; Dean Penny Willrich, Phoenix;

GUESTS: Lisa Aubuchon, Rachel Alexander, Janna Day, Mark Harrison, Shelby Hunsinger, and Jack Levine.

President Alex Vakula called the Board meeting to order at 8:32 a.m.

CALL TO THE PUBLIC

President Vakula made a Call to the Public and Jack Levine, Lisa Aubuchon and Rachel Alexander responded.

PRESIDENT'S REPORT – Alex Vakula

- Bar Leadership Institute Graduation on May 4th. This was the 11th successful BLI program.
- State Bar Member Services Division put on a mentoring program in Prescott the previous day; 42 in attendance.
- CEO John Phelps appeared on *Horizon* to promote the Public Service Center's Find A Lawyer platform.
- Convention

- WA State Bar President will attend. Lisa Loo volunteered to serve as his host at the Bar's event.
- 368 registrants to date; ahead of 2017 (Tucson) numbers – 257- and 2016 (Phoenix) numbers – 236 – at this same point in time.
- Recognition – Presented an award to Lisa Loo, immediate past president and outgoing Board member, and thanked her for her nine years of Board service.

CEO/ED REPORT – John Phelps

- Introduced Nick Gustin, Senior Business Analyst, as the Employee of the Quarter. He received this recognition for all his work on the new Find A Lawyer platform and his diligence in working days in the Resource Center assisting members and the public.
- Recognized Tim Eigo, editor of *Arizona Attorney Magazine*, who will receive the Peer Excellence Award at the National Association of Bar Executives Annual Meeting in August.
- Sexual Harassment: Changing the Conversations – Free 75-minute program was held on May 9 and available live and as a webcast. Collaborators: State Bar, Arizona Supreme Court, InReach and the ABA. Over 500 IP addresses were noted but actual number of participants likely higher.
 - The ABA would like to repurpose and use the broadcast to reach a broader base. SBA was the first Bar to host such a program. InReach, the webcast vendor, will allow free access for the next 90 days.
- The first Bar Leadership Summit was held and is an expansion of the program to have alums gather together to address leadership development. This Summit focused on career advancement which emphasized the importance of creating mentorships.
- Encouraged Board members to take advantage of the Bar's Tucson office when in that city. Resources include a conference room, free WiFi and a fully equipped office.
- Held bi-annual tenant breakfast with those in the SBA's building. Tenants very pleased with their accommodations. The only rentable space remaining is 3,000 sq. ft.
- Reviewed the process for the election of Board officers at the June meeting.

COMMUNICATIONS/GOVERNMENT RELATIONS DIVISION

Legislation – Janna Day and Shelby Hunsinger

- Session was 116 days; target is always 100 days.
- 1206 Bills were filed; 369 passed; 23 vetoed; 346 signed by the Governor and became law.
- Two proactive Bar Bills passed and signed:
 - SB1353 modernizing the Limited Liability Corporation Statutes – Business Law Section worked on the proposal for six years; rare – a 67-page Bill.
 - SB1204 Probate and Trust Law Section's Bill
- Senator Kern's "anti-Bar" Bill did not pass out of the House.
- SB2564 passed with an emergency clause – an immediate increase in Court fees which will help fund elected officials' retirement fund.
- The Board thanked the two lobbyists for their efforts this session on behalf of the Bar.

Find A Lawyer Update – Cheryl Kulas

- The most recent statistics on the program since its May 1 launch were shared:

- 8600 members completed the sign up process
- 8200 have not turned off the notifications
- Only a small number of attorneys have turned off pro bono cases notifications
- 361 clients; 303 projects posted with 322 attorney applications responding to those projects; 70 attorneys have paid the annual \$300 fee for a premium subscription which allows them to be available for paying clients seeking representation
- Many landlord tenant cases are being posted; fewer pro bono requests than expected.
- Discussion: petition the Court to allow public lawyers to do pro bono work; risk management and availability of malpractice insurance coverage; bigger push to publicize the Find A Lawyer platform (suggestion: apply for a Google ads grant; up to \$10K may be awarded to a nonprofit).

Developing analytics to share.

POLICY DISCUSSION – PROPOSED AMENDMENTS TO SBA BYLAWS

- Working Group consisted of board members Alex Vakula, Jimmie Smith, Patrick Greene, Jessica Sanchez and John Gordon.
- No consensus re: Roberts Rules of Order; three options included
- Outside counsel has reviewed the bylaws and Articles of Incorporation and has recommended changes. The Group will meet again to discuss those changes and further refine the bylaws.
- Not on the agenda for vote. Current bylaws direct a 30 day notice is required to vote on changes to the bylaws.
- President Vakula requested a vote on one item – Articles 1.07 of the Bylaws regarding when the president-elect takes office; right after the (June) Board meeting or at the end of “Annual Meeting” (Convention) as it is now stated.
- MOTION: John Gordon moved and Jessica Sanchez seconded the motion to suspend Bylaw 1.07 defining the Annual Meeting as the Convention in its entirety, for the upcoming June meeting. The Motion passed.
- Discussion: pros and cons of using Roberts Rules at regularly scheduled meetings instead of only at the Annual Meeting, and whether such a procedure should be included in the bylaws or written as policy; suggested policy regarding Board meeting decorum and professionalism.
- Straw vote was taken to give direction to the Working Group – 18 of the 23 Board members favored Option #1 – “Proceedings at meetings of the Board shall be conducted in accordance with policies adopted by the Board. In the event of a disagreement regarding procedure at a meeting, the State Bar’s General Counsel shall act as parliamentarian and shall follow a simplified version of Robert’s Rules.”

Deferral of Scheduled 2019 Membership Fee Increase

- Reviewed letter directed to President Vakula from Chief Justice Scott Bales which covers a number of topics including review of the membership fees increase that is scheduled to take effect on January 1, 2019. The Court requested that the Finance Committee reexamine the Bar’s revenues and expenditures and respond by July 1, 2018, if that increase is justified and if so why.
- CFO Kathy Gerhart gave a short presentation on the work that the Finance Committee had done the previous day and the gap between revenue and expenses and how to close the gap.

- Finance Committee recommends that President Vakula or CEO John Phelps respond to the Chief Justice indicating that the SBA will recommend that the Court defer the last of the approved annual fee increases for an indefinite period.
- MOTION: Sam Saks moved and Benjamin Taylor seconded the motion to vote on the issue; however, as this matter was on the agenda as informational, the motion was withdrawn.
- Consensus was to place the response to the Chief Justice on the June Meeting Consent Agenda.

Immigration Section's Press Release

- U.S. Representative Paul Gosar made public statements that lawyers who help migrants are committing a crime. Without prior knowledge of or approval by the Board, the chair of the Immigration Section added his name and position with the Section to a press release responding to Rep. Gosar's comments noting that migrants have a right to counsel under the Constitution.
- The chair has been reminded of the Section's Operational Guidelines with regard to commenting publically on behalf of the Bar without prior Board approval.
- After discussion, the Board determined it would take no action.

BREAK 10:32 – 10:46 a.m.

APPOINTMENTS COMMITTEE – Chair Jessica Sanchez

Board of Governors – District 6 Seat

- Appointments Committee interviewed/recommended five candidates to fill the one open seat due to a resignation. Four were interviewed at the April Board meeting [Alane Breland, Salt River Pima-Maricopa Indian Community; Manny Cairo, Midwest University; Norma Izzo, Jennings Strouss & Salmon, PLC, Phoenix; and Guy Testini, Industrial Commission of Arizona ALJ Division, Phoenix], and the Board voted to add Richard Coffinger, Attorney at Law, Glendale, for consideration. Sandra Etherton, Etherton Law Group, Scottsdale, along with Richard Coffinger were interviewed at this meeting.
- MOTION: Tyler Carrell moved and Patrick Greene seconded the motion to move into Executive Session to discuss each candidate at 11:22 a.m.
- MOTION: John Gordon moved and Jeff Willis seconded the motion to return to Open Session at 11:35 a.m.
- General Counsel Lisa Panahi reviewed the voting process that would be followed.
- Secret ballots were distributed and counted by CEO John Phelps and Secretary-Treasurer Higuera.
- President Vakula announced that Gaetano (Guy) Testini would be the next member of the Board representing District 6.

ABA House of Delegates – 2 positions

- Three applications were received for the two openings: Margarita Silva (incumbent), Silva & Fontes, Phoenix, Adam Zickerman (incumbent), The Zickerman Law Office PLLC, Flagstaff and Lonnie Williams, Stinson Leonard Street LLP, Phoenix.
- MOTION: Coming from the Committee, requiring no second, unanimously passed to reappoint Margarita Silva and Adam Zickerman to a two-year term.

Client Protection Fund Board of Trustees – one position

- Three applications were received; the Appointments Committee's recommendations were provided in ranked order.
- MOTION: Dave Byers moved, Tyler Carrell seconded and the motion carried to use the ranked order to appoint Sandra Etherton, Etherton Law Group, Scottsdale, to the CPF Board of Trustees.

Board of Legal Specialization

- Twelve applications were received and vetted. The Appointments Committee recommended the following slate to the Board of Governors for its consideration. The Court rule does not indicate how many nominations the Governors submit to the Court for its ultimate appointment.
 - Law School Representative – (one position) – Maureen M. Anders, ASU Office of General Counsel, Tempe
 - Certified Specialist – (two positions)
 - Wendi Sorenson, Burch & Cracchiolo, Phoenix
 - James E. Cross, The Cross Law Firm, Phoenix
 - David L. Rose, Tiffany & Bosco PA, Phoenix
 - Non-Specialist (one position) – Michael K. Goldberg, Goldberg Law Group, Scottsdale
 - Public Member (one position)
 - Abe W. Lai, Pan Am Financial Group LLC,
 - Kimberly M. Heldt, Tait and Hall PLLC, Mesa
 - Chris Pfund, Care at Home Denver LLC, Phoenix
- MOTION: Dave Byers moved, Paul Senseman seconded and the motion carried unanimously to submit the slate as provided by the Appointments Committee to the Supreme Court for its consideration and ultimate appointments.

ABA House of Delegates – Designated Board Representative

- In accordance with Board policy, of the five State Bar ABA Delegate positions appointed by the Board, one seat is filled by a lawyer member of the Board.
- Incumbent Jimmie Smith served five terms (10 years) sought reappointment.
- Lori Higuera also applied for this appointment.
- Both individuals addressed the Board and outlined their qualifications.
- MOTION: Sam Saks moved, Benjamin Taylor seconded and the motion carried unanimously to go into Executive Session at 12:10 p.m.
- MOTION: Patrick Greene moved, Tyler Carrell seconded and the motion carried to reconvene in Open Session at 12:15 p.m.
- Secret ballots were distributed and counted by General Counsel Lisa Panahi, CEO John Phelps and Vice President Brian Furuya.
- President Vakula announced that Secretary/Treasurer Lori Higuera was selected to represent the State Bar in the ABA House of Delegates.

FINANCE AND AUDIT COMMITTEE – Lori Higuera and Kathy Gerhart

- Informational – The 2017 IRS Tax Returns Form 990 and 990T were provided to the Board for review prior to filing.

CONSENT AGENDA

- a) Approval of April 20, 2018 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 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) MCLE Summary Suspension for Non-Compliance for Educational Year 2016-2017
- e) Approval of May 2018 Late Membership Fees Waiver Requests
- f) Proposed Amendments to the Fee Arbitration Program Rules
- g) Board Policy re: Executive Sessions
- h) Appointment of Board's Special Constitutional Appointments Committee
- i) Civil Jury Instruction Comte - Proposed Revised Personal Injury Damages 4 - Punitive Damages
- j) Proposed Revisions to Criminal Jury Instructions-Non-Capital Aggravating Circumstances
- k) Proposed Comment to R-17-0050, Petition to Further Amend Ariz. R. Civ. P. to Modify Rule 11 and add Rule 26(b)(2)(D)
- l) Proposed Comment to R-18-0007, Petition to Amend Rule 26(b)(4), Ariz. R. Civ. P.
- m) Proposed Comment to R-18-0002, Petition to Amend Rule 28, Ariz. R. Sup. Ct.
- n) Proposed Comment to R-18-0004, Petition to Amend Rule 31, Ariz. R. Sup. Ct.
- o) Proposed Comment to R-18-0001, Petition to Amend the Rules of Criminal Procedure and Repeal Rule 39, Ariz. R. Crim. P.
- p) Proposed Comment to R-18-0003, Petition to Amend Rule 807, Ariz. R. Evid.
- q) Proposed Comment to R-18-0012, Petition to Amend Rules 11.5 and 11.6, Ariz. R. Crim. P.
- r) Proposed Comment to R-17-0054, Petition to Amend the Rules of Family Law Procedure
- s) Proposed Comment to R-17-0044, Petition to Amend Rule 43, Ariz. R. Sup. Ct.
- t) Proposed Comment to R-18-0009, Petition to Amend ER 1.2, Rule 42, Ariz. R. Sup. Ct.
- u) Proposed Comment to R-18-0013, Petition to Amend Rules 38 and 39, Ariz. R. Sup. Ct.
 - President Vakula asked if there was anything to come off the Consent Agenda.
 - CEO John Phelps requested that agenda item h) Appointment of Board's Special Constitutional Appointments Committee be removed as the final slate of Committee members has yet to be determined.
 - MOTION: Tyler Carrell moved, Lori Higuera seconded and the motion carried unanimously to remove agenda item h) from the Consent Agenda.
 - MOTION: Tyler Carrell moved, Paul Senseman seconded and the motion carried unanimously to approve the remainder of the Consent Agenda.

RULES REVIEW COMMITTEE – Denis Fitzgibbons

- Two proposed comments required Board discussion and vote in order to meet the Court's comment deadline.
- Petition filed by Mark Harrison seeks to remove the provision of the current rule which requires posting of probation on the SBA website for five years.
- Proposed Comment to R-17-0035, Petition to Amend Rule 49(A)(2)(C)(ii), Ariz. R. Sup. Ct. prepared by the SBA staff opposed the Petition and in the alternative proposed an amendment to the rule so probation remains on SBA website for two years from the effective date of the probation or until probation is completed, whichever is later.
- Rules Review Committee voted unanimously to file the proposed comment.

- MOTION: Coming from the Rules Review Committee, requiring no second, the motion carried unanimously to file the comment as proposed by the Committee.
- The second Petition for consideration was filed by the AOC and seeks to clarify the process for appointing and overseeing the functions of Chief Bar Counsel and to create an Attorney Discipline Oversight Committee appointed by the Board of Governors.
- Proposed Comment to R-18-0014, Petition to Amend Rules 32, 46-49, 53, 55-58, and 60-63, Ariz. R. Sup. Ct. prepared by the SBA staff supports the petition in general but opposes the creation of an Attorney Discipline Oversight Committee.
- Rules Review Committee voted unanimously to file the proposed comment.
- MOTION: Coming from the Rules Review Committee, requiring no second, passed over one dissent and one abstention.

REPORTS (Information)

Update on ABA Draft Model Rules of Professional Conduct re: Advertising

Arizona Supreme Court's Judicial and Attorney Engagement Workgroup – Survey Responses re: Law_Firms' Pro Bono Policies

Thank you letter from Walter Nash

Board of Governors Executive Council Minutes – March, April and May, 2018

ADJOURN

There being no further business to come before the Board of Governors, the meeting adjourned at 1:20 p.m.

Respectfully submitted,

Lori Higuera
Secretary/Treasurer