

**MEETING OF THE  
BOARD OF GOVERNORS  
OF THE  
STATE BAR OF ARIZONA  
May 19, 2017**

BOARD MEMBERS PRESENT: Lisa Loo, President, Phoenix; Alex Vakula, President-Elect, Prescott; Jeffrey Willis, Vice President, Tucson; Brian Y. Furuya, Flagstaff; Secretary-Treasurer, Phoenix; Alexia Semlek, Young Lawyers Division; Richard D. Coffinger, Glendale; Hon. David G. Derickson, Phoenix; Diane L. Drain, Phoenix; Hector Figueroa, Payson; Denis M. Fitzgibbons, Casa Grande; Patrick Greene, Tombstone; Melissa S. Ho, Phoenix; Jennifer Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jimmie Dee Smith, Yuma; Tucson; Public Members: Tony Finley, Tucson; Audrey R. Jennings, Scottsdale; John Gordon, Prescott; Anna C. Thomasson, Phoenix; and At-Large Members: David K. Byers, Phoenix; Lori Higuera, Phoenix; and Paul Senseman, Phoenix; Ex-Officio Members: Geoffrey M. Trachtenberg, Immediate Past President and Dean Marc Miller, Tucson

EXCUSED ABSENCES: Kenney F. Hegland, Tucson; Ex-Officio Members: Dean Douglas Sylvester; Dean Penny Willrich.

OTHERS PRESENT: Nina Benham, Board Services Specialist; Sarah Corpening, Membership Administrator & Services Manager; Tim Eigo, Editor *Arizona Attorney*; Kathy Gerhart, Chief Financial Officer; Rob Hosch, Information Technology Director; Gayle Jackson, Human Resources Director; Ann Leslie, Executive Assistant; Lisa Panahi, Senior Ethics Counsel/Interim General Counsel; John Phelps, CEO/Executive Director; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel; and Court Liaison Hon. John Lopez, Phoenix.

GUESTS: Daniel Mazza, YLD President, Janna Day, Lobbyist; Acting Chair of Appointments Committee Sheena Chiang; Lara Slifko, AzFLS&E.

President Lisa Loo called the Board meeting to order at 8:35 a.m.

**PRESIDENT'S REPORT** – Lisa Loo

- Encouraged the Board to consider adding back into the 2018 budget the ability for the president-elect to attend the Western States Bar Conference in the future. It is one of the most helpful conferences, focusing on issues facing mandatory bar associations.
- Attended the Bar Leadership Institute (BLI) Graduation where 15 graduates received their certificates of completion of the program. There will be a BLI event after the Board's June 13<sup>th</sup> meeting.
- The Convention is approaching and there will be a silent auction which benefits the homeless in Tucson. Dee-Dee Samet requested Board members participate by providing one to two auction items each from throughout the state. Suggestions include: restaurants, hotels, cabins, sports events, etc. Dean Marc Miller has agreed to being auctioned off for "Dinner with the Dean".

**CALL TO THE PUBLIC** – President Lisa Loo made a Call to the Public and, hearing nothing, moved to the next agenda item.

**CEO/ED REPORT– John Phelps**

- Announced new General Counsel Lisa Panahi. John Furlong who suffered a stroke will not be in a position to return to work as General Counsel.
- Introduced Employee of the Quarter - Lisa Casablanca, Fee Arbitration Program Coordinator.
- Introduced Cheryl Kulas, Manager of the Bar’s new Public Service Center. The pilot program is in place and the soft launch will be this summer.
- For the fifth year in a row, the Bar’s Wellness Program is being recognized, this year by the Phoenix Business Journal.

**MEMBER SERVICES MOMENT** – Lisa Deane, Chief Member Services Officer

Ongoing series featuring the programs/services/activities handled by staff.

- Ms. Deane gave a recap of the Member Services Moments that have been shared at Board meetings to-date.
- Introduced Roberta Tepper, Lawyer Assistance Programs Director, to report on the Member Assistance Program.
  - The program has over 65 lawyer volunteers that have agreed to provide peer support and have had the State Bar training.
  - If a member calls in requesting assistance, Ms. Tepper will match them up with a qualified volunteer.
  - The program is notified of members needing assistance in various ways including peers, family members, partners in the law office, etc.
  - The data and program used is completely confidential from the Bar and staff outside of the Member Assistance program staff do not have access.
  - Currently they have one or more judges as volunteers but they are not identified as such. Ms. Tepper plans to approach Superior Court judges to see if someone will volunteer to fill the role another now-retired judge use to fill and serve as an identified judge.
  - The website has numerous support groups listed with contact information including 12 Step Programs and will soon have a listing of treatment centers that are in Arizona.
  - The program has received an increased number of calls per year, up from 12 to about 30. This is a significant increase, with some long-time volunteers having received their first calls.
  - If someone is truly in crisis there is a crisis response network. Those numbers are also listed on the web site.

**COMMUNICATIONS/GOVERNMENT RELATIONS DIVISION** – Legislative Report – Janna Day, Lobbyist

- Ms. Day reported that the Legislature has finished for this year.

- This year there were a number of new freshman. Early outreach was made to make members aware of the bills of interest to the Bar before they would be voting on the proposed legislation.
- Ms. Day reported that HB 2295 passed the House by one vote but never received a hearing in the Senate Judiciary Committee and died.
- Ms. Day suggested to Board members that before next session they reach out and have a meet and greet with their elected officials. Representatives and Senators like to hear from people in their districts.
- The Board thanked Janna Day for all her work this year and her dedication to the State Bar.

#### **PROGRAM REVIEW COMMITTEE (PRC)** – Geoffrey Trachtenberg

- The PRC was given the task of evaluating all Bar committees with set criteria in order to review and make recommendations to the Board for a vote.
- President Loo made five additional (temporary) appointments to the Committee to accomplish the work and meet the May 19 deadline.
- The Standing Bar Committees were reviewed in light of the directives outlined previously, the letter from Arizona Supreme Court Chief Justice Bales dated February 15, 2017, and the Supreme Court Administrative Order 2017-34 which goes into effect August 1.
- The PRC reviewed the purpose and function of each Standing Committee and each Standing Board Committee, applying the criteria outlined in the letter from Chief Justice Bales. It was determined that those Standing Committees that meet this criteria would remain Committees of the Bar and be subject to the Public Meetings Policy.
- For those groups not meeting this criteria, the PRC suggests they no longer be Committees but instead renamed to reflect their actual function. A list was provided in the Board materials along with the PRC's recommendations.
- In reviewing the recommendations from the PRC a lengthy discussion occurred regarding the Arizona Attorney Editorial Board. Options for renaming the Board were considered.
- Mr. Trachtenberg proposed that the Arizona Attorney Editorial Board keep its name but that it is not subject to Public Meeting Law.
- MOTION: Jennifer Rebholz moved and Dee-Dee Samet seconded to adopt all of the name changes as suggested by the PRC with a caveat regarding the Arizona Attorney Editorial Board.
- No vote taken
- MOTION: Motion from the Program Review Committee for the Board to approve the changes listed in the attachment in the Board materials and in addition approve the policy that the Board of Governors recognizes that the Arizona Attorney Editorial Board is not subject to the Open Meeting Policy, notwithstanding the name. Motion carried unanimously.

#### **NEW BUSINESS**

**Bylaws** – Richard Coffinger submitted a Board Reporting Form regarding changes to the Bylaws and requested a status.

- CEO John Phelps reported that staff is going through the Bylaws and making numerous changes, including necessary revisions to comport with the various Administrative Orders and Rule changes issued by the Supreme Court that take effect later in 2017 and in 2019. Proposed Bylaw changes should be presented to the Board at its July Retreat.

- Mr. Phelps further reported that there are new variations of Roberts Rules of Order that staff is researching and that the Board may want to consider.

**FINANCE AND AUDIT COMMITTEE** – Jeff Willis

- Updates to the Financial Policies Manual is informational this month and will be voted upon at the annual meeting in June.
- Mr. Willis highlighted the proposed changes including:
  - Annual review of the Manual will be changed to every three years or as deemed necessary to ensure sound financial policies.
  - Added Client Protection Fund and Bench & Bar reporting.
  - Currently the Chair of the F&A Committee is required to review and approve the expenditures of and reimbursements to the president and Board members; recommending this approval process to exclude recurring travel reimbursement for the monthly Board meetings.

**CONSENT AGENDA** – Lisa Loo

- a) Approval of April 21, 2017 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 Dues and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, Ariz. R. Sup. Ct.
- d) Dues and/or Late Fees Waiver Requests
- e) Rules Reporting Form
- f) Proposed Revisions to Civil Jury Instructions – Instructions for Commercial Torts 21 and 22
- g) Proposed Revisions to Criminal Jury Instructions
- h) Proposed Civil Jury Instructions - Instructions for Cases of Admitted Fault (new)
- i) Proposed Civil Jury Instructions – Instructions for Privacy Torts (new)
- j) Proposed Comment to R-16-0046, Petition to Amend Appendix to Ariz. R. Crim. P.
- k) Proposed Comment to R-17-0024, Petition to Amend Rules 32.4, 32.5, 32.6 and 32.8, Ariz. R. Crim. P.
- l) Proposed Comment to R-17-0027, Petition to Modify Rules 15.1 and 15.4, Ariz. R. Crim. P.
- m) Proposed Comment to R-17-0003, Petition to Amend Rules 803(16) and 902, Ariz. R. Evid.
- n) Proposed Comment to R-17-0001, Petition to Amend Rule 4.1(d), Ariz. R. Civ. P.
- o) Proposed Comment to R-17-0009, Petition for Necessary Technical Amendments to Ariz. R. Civ.P.
- p) Proposed Comment to R-16-0047, Petition to Amend Rule 38, Ariz. R. Sup. Ct.

Ms. Loo asked if any item needed to be removed from the Consent Agenda, hearing nothing,

- MOTION: Patrick Greene moved, John Gordon seconded and the motion carried unanimously to approve the Consent Agenda.

## **APPOINTMENTS COMMITTEE** – Acting Chair Sheena Chiang

### ABA House of Delegates

- The Appointments Committee after vetting and doing due diligence on each candidate unanimously recommended to the Board of Governors that the incumbents, Judith Davila and Lynda Shely, be reappointed as State Bar Delegates to the ABA House of Delegates.
- MOTION: Coming as a motion from the Appointments Committee, requiring no second, the Board voted unanimously to reappoint Judith Davila (National Labor Relations Board – Region 28) and Lynda Shely (The Shely Firm PC) to serve as State Bar Delegates to the ABA House of Delegates.

### Community Legal Services Board of Directors

- The Appointments Committee, after vetting and doing due diligence on each candidate recommended the following highly qualified candidates for the Board's consideration in making its two appointments to the CLS Board of Directors: Yvette B. Kinsey; Max H. Covil; Franklin (Troy) Dodge; and Richard K. Mahrle.
- The Board unanimously voted to appoint Yvette B. Kinsey (Arizona Corporation Commission Hearing Division) to fill one of the openings on the CLS Board of Directors.
- MOTION: Dave Derickson moved and Jimmie Smith seconded the motion to appoint Franklin "Troy" Dodge to fill the second seat.
- MOTION TO AMEND: Dee-Dee Samet moved to add Max H. Covil to the list for the Board's consideration. After lengthy discussion regarding these two candidates the Board voted to appoint Max H. Covil (Arizona Department of Transportation) to fill the second seat on the CLS Board of Directors.

### Public Members, Board of Governors

- The Board of Governors interviewed four candidates, three from Maricopa County and one from Cochise County, for the two public member openings on the Board. The Board convened in closed session to discuss the candidates and then reconvened in open session.
- The Board voted by secret ballot and selected Jason E. Cobb of Compass Fiduciary Group LLC in Phoenix to fill one of the public member Board seats. With this appointment, pursuant to Supreme Court Rule 32, the maximum number of public members from any one county, in this case Maricopa County, had been reached and therefore the second public member seat must be filled by an individual from any other county within Arizona.
- MOTION: Dave Byers moved, Dee-Dee Samet seconded and the motion carried by a 14-4 vote to instruct the Appointments Committee to reopen and re-advertise the remaining public member Board position which must be filled by an individual from any county other than Maricopa.

## **RULES REVIEW COMMITTEE** – Hon. Dave Derickson

- Proposed Comment to R-17-0014, Petition to Amend Rule 23.1, Ariz. R. Crim. P.
  - Petition seeks to amend rule to clarify that a jury foreperson may sign the verdict form using their juror number and initials in lieu of a signature.
  - Criminal Defense Practice & Procedure Committee (CDP&PC) submitted a proposed comment opposing the Petition; the Criminal Prosecution Practice & Procedure Committee did not submit a comment.

- MOTION: Coming as a motion from the Rules Review Committee, requiring no second, the Board unanimously voted to file a comment with the Arizona Supreme Court taking no position on the Petition but to provide the proposed comment submitted by the CDP&PC.
- Proposed Comment to R-17-0028, Petition to Delete Rule 20, Add Rule 24.1, and Renumber Rules 24.1, 24.2, 24.3, and 24.4, Ariz. R. Crim. P.
  - Petition seeks to delete Rule 20, Ariz. R. Crim. P., and move the post-verdict provisions of that rule to Post-Verdict Proceedings in order to enforce the State's right to a jury trial and to protect victims' rights while retaining sufficient protections for defendants who may be convicted in cases with insufficient evidence.
  - Criminal Defense Practice & Procedure Committee submitted a proposed comment opposing the Petition; the Criminal Prosecution Practice & Procedure committee did not submit a comment.
  - Rules Review Committee unanimously recommended filing the proposed comment, opposing the Petition, submitted by the Criminal Defense Practice & Procedure Committee.
  - Subsequently, the Scope and Operation Committee recommended that after consideration of the Rules Review Committee's recommendation it respectfully disagreed and recommended filing a comment with the Arizona Supreme Court taking no position on the Petition but to provide the proposed comment submitted by the Criminal Defense Practice & Procedure Committee.
  - MOTION: Richard Coffinger moved, Dee-Dee Samet seconded and the motion carried in a 12-3-1 vote to follow the Rules Review Committee recommendation and file the proposed comment with the Arizona Supreme Court opposing the Petition submitted by the Criminal Defense Practice & Procedure Committee.
- Proposed Comment to R-17-0010, Petition to Modify Rules 8, 8.1, 11, 16, 26, 26.1-.2, 29, 30, 31, 33-37, 45, 45.2; Abrogate Rule 16.3; Adopt New Rules 26.2 and 45.2; and Modify Rule 84, Ariz. R. Civ. P.
  - Petition seeks to amend rules relating to case management, discovery, and sanctions in order to reduce the cost and time required to resolve civil cases in Arizona's superior courts.
  - Civil Practice & Procedure Committee submitted a proposed comment agreeing that reducing discovery cost and speeding litigation is a good idea, supporting the case management proposals and discovery proposals, but against the proposals to modify Rule 11.
  - Rules Review Committee unanimously voted to do nothing and forward the matter to the Board of Governors for further action, if any.
  - Scope and Operations Committee recommended filing the proposed comment submitted by the Civil Practice & Procedure Committee.
  - MOTION: Richard Coffinger moved, Jim Smith seconded and the motion carried by a vote of 7-3 in favor of filing with the Arizona Supreme Court the proposed comment submitted by the Civil Practice & Procedure Committee.
- Proposed Comment to R-17-0022, Petition to Amend Rule 32(c) and (d), Ariz. R. Sup. Ct.
  - Petition seeks to amend Rules 32(c) and (d), Ariz. R. Sup. Ct., to maintain the current mandatory membership requirement for all lawyers but (1) eliminate mandatory

membership requirements for non-regulatory functions and (2) allow voluntary contributions for all non-regulatory functions.

- SBA staff submitted a proposed comment opposing the Petition.
- Rules Review Committee voted unanimously to file the proposed comment submitted by SBA staff.
- MOTION: Coming as a motion from the Rules Review Committee the Board voted unanimously to file with the Arizona Supreme Court the proposed comment submitted by SBA staff opposing the Petition.

**ATTORNEY REGULATION COMMITTEE ANNUAL REPORT** – Maret Vessella, Chief Bar Counsel

- The Attorney Regulation Advisory Committee is required to file an annual report each year by April 30. The annual report shall include statistics for lawyer discipline case processing and the examination/admission process. The report may make recommendations on specific issues addressed by the Committee.
- Pursuant to Rule 46, Ariz. R. Sup. Ct., a “charge” is defined as any allegation or other information of misconduct or incapacity.
- A “complaint” means a formal complaint prepared and filed with the disciplinary clerks.
- The ARC Annual Report includes 2016 data regarding: Intake process; Investigative process; Attorney Discipline Probable Cause Committee case review; Presiding Disciplinary Judge case processing and disposition.
- The State Bar received 3,569 charges against lawyers in 2016.
  - 71% of charges were resolved in Intake. On average it took 27 days to resolve a charge.
  - 744 charges were sent on for a full screening investigation.
  - The 744 charges were attributable to 499 lawyers.
- In 2016 the total number of charges were 3,569; number referred - 744; number of lawyers investigated - 499; percentage resolved in intake - 71% with an average time for investigation of 161 days.
- The Attorney Discipline Probable Cause Committee is made up of nine members; six lawyers and three public members. The Supreme Court appoints the Committee.
- Committee reviews the State Bar’s report of investigation, the respondent’s response and any objection/response by the complainant.
  - The Committee reviewed 363 matters
  - 169 orders of probable cause were issued authorizing a formal complaint
  - 61 orders of admonition issued
  - 4 orders of restitution
  - 70 orders of diversion
  - 42 dismissal appeals were reviewed
- The Committee may change State Bar recommendations. Pursuant to Rule 55, an attorney who receives an order from the Committee may demand formal proceedings be instituted. Six Committee orders were appealed in 2016.
  - Two orders of admonition were appealed; both resulted in an admonition
  - One order of diversion appealed; dismissal
  - Three remaining orders still pending
- The Committee increased the recommended disposition of ten charges:

- Seven diversion to admonition
- Three admonition to probable cause
- The Committee decreased the recommended disposition of twelve charges:
  - One probable cause to dismissal with comment
  - One probable cause to diversion
  - Three probable cause to admonition
  - Four admonition to diversion
  - One admonition to dismissal with comment
  - Two diversion to dismissal with comment

Presiding Disciplinary Judge

- 85 complaints were filed in 2016. Of those, 26 were direct consent agreements.
- Average time calculated from filing of formal complaint to final disposition by the Presiding Disciplinary Judge:
  - Contested cases: 148 days
  - Default cases: 88 days
  - Consent Agreements: 107 days
- Sanctions Ordered and Other Dispositions
  - 14 Lawyers disbarred
  - 41 Lawyers suspended
  - 24 Lawyers reprimanded
  - 66 Informal sanctions
  - 71 Diversion orders/agreements
  - 178 Instructional comments
- Looking Ahead – Current Trends
- Total charges received as of April 30 in:
  - 2016 – 1170
  - 2017 – 1108

**CLIENT PROTECTION FUND ANNUAL REPORT** – Charles W. Wirken, Chair

Mr. Wirken summarized highlights contained in the CPF Annual Report:

- Approved approximately \$400K in claims
- Restitution received - \$5,059
- Annual Revenue from Members' assessment in 2016 was \$213,990
- \$2,088,216 balance in total net assets as of 12/31/16
- Paid five (5) claims for the 2017 year thus far.

**ADJOURN**

There being no further business to come before the Board of Governors, the meeting adjourned at 2:21 p.m.

Respectfully submitted,

Brian Y. Furuya  
Secretary/Treasurer