

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA
May 24, 2019
Phoenix, AZ**

BOARD MEMBERS PRESENT: Jeffrey Willis, President, Tucson; Brian Y. Furuya, President-Elect, Flagstaff; Denis M. Fitzgibbons Secretary-Treasurer, Casa Grande; David Engelman, Phoenix; Hector Figueroa, Payson; Patrick Greene, Tombstone; Robert McWhirter, Phoenix; Jennifer Rebholz, Phoenix; Samuel Saks, Phoenix; Dee-Dee Samet, Tucson; Jessica Sanchez, Tempe; Sara Siesco, Phoenix; Jimmie Dee Smith, Yuma; Benjamin Taylor, Phoenix; Gaetano Testini, Phoenix; Public Members Robyn M. Austin, Tucson, Jason Cobb, Phoenix, John Gordon, Prescott, and Anna C. Thomasson, Phoenix; At-Large Member Paul Senseman, Phoenix; Ex-Officio Member Dean Marc Miller, Tucson.

EXCUSED ABSENCES: Geoffrey Balon, President, Young Lawyers Division; Tyler Carrell, Phoenix; Lori Higuera Vice President, Phoenix; At-Large Member Dave Byers; Ex-Officio Members Alex Vakula, Immediate Past President, Dean Douglas Sylvester, Tempe, and Dean Penny Willrich, Phoenix.

UNEXCUSED ABSENCES: Sharon Flack, Prescott.

OTHERS PRESENT: Assistant Dean Victoria Ames for Dean Douglas Sylvester; Matt Campbell, System Administrator; Sarah Corpening, Membership Administrator & Services Manager; Lisa Deane, Chief Member Services Officer; Tim Eigo, Editor, *Arizona Attorney Magazine*; Joel England, CEO/Executive Director; Kathy Gerhart, Chief Financial Officer; Ann Leslie, Executive Assistant; Lori Maxwell, Chief Information Officer; Rick Palmatier, Deputy General Counsel; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Carrie Sherman, Director of Board Operations; Maret Vessella, Chief Bar Counsel; Assistant Dean Leah Won, UA College of Law; Speakers/Presenters: Pamela Bridge, CLS; Nicholas Chapman-Hushek, Appointments Committee; George King and Hon. Peter Swann, Civil Practice & Procedure Committee; Ellen Katz and Brenda Muñoz Finish, Morris Institute for Justice; Steven Kramer, ADR Executive Council; Hon. Patricia Norris (ret.), Senior Lawyers Task Force; Board Members-Elect: Mark Harrison, District 6; Public Governor Jonathan Martone; At-Large Governors Doreen McPaul and David Rosenbaum; YLD President-Elect Amanda Salvione.

President Jeffrey Willis called the Board meeting to order at 8:30 a.m.

Call to the Public

President Willis made a Call to the Public and, hearing nothing, proceeded to the next agenda item.

President's Report – Jeffrey Willis

- Welcomed the Board members-elect who introduced themselves
- Attended the 12th annual BLI graduation on May 10 and congratulated these future Bar leaders

on their accomplishments. Four previous graduates currently serve on the Board of Governors.

- Reported on the Court's Legal Services Task Force pilot program which addresses the legal needs of those involved in domestic violence situations
- Accepted some Board members' offer to host bar presidents from other states who will be attending the Annual Convention.

CEO/ED Report – Joel England

- Introduced the Employee of the Quarter, Amy Ihrke, who is the manager of the State Bar's Southern Regional Office. The Board acknowledged her service and contributions to the organization.
- Reported that the State Bar was ranked 4th among small businesses in the Valley as having the healthiest employees
- Reviewed the Court's 10 appointments – At-Large, District Governors, Public Governors - to the Board
- Attended:
 - Arizona Commission on Access to Justice meeting
 - MCBA's Open House; wished the organization much success on selection of new ED, Beth Sheehan.
 - Teleconference regarding the *Fleck* case
 - BLI graduation honoring the 16 participants; each class completes a community service project and those efforts should be highlighted at future Board meetings
 - Sections' Executive Council meetings as they occur to learn more about their purpose, activities and focus
 - Convention Working Group's last meeting; everything a go for the Bar's annual premiere event
- Toured the Court's Education Services Center, this year's Board retreat location; thanked the Court for its invitation to utilize its new facility

10 Minute Topic – Robert McWhirter

Mr. McWhirter presented on "The Accusatory Trial History".

Annual ARC Report – Maret Vessella

Chief Bar Counsel Maret Vessella provided an overview of the Supreme Court's Attorney Regulation Advisory Committee's 2019 report. The report provides comparisons from 2014 to 2018 on the Arizona UBE passage rates, and the number of Arizona attorney admissions from 2016 to 2018, as well as the number of informal and formal proceedings conducted by the Committee on Character and Fitness in 2018. The report also contains data on the regulatory process, including the processing and resolution of disciplinary charges, the imposition of disciplinary sanctions and the timeframe for cases resulting in disciplinary sanctions.

<u>Regulatory Action:</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Disbarred	12	21	15
Suspended	37	44	20
Reprimanded	24	20	29
Number of Informal Sanctions	66	85	34
Number of Diversions	71	93	88
Number of Dismissals with Comment	178	204	219

<u>Intake and Investigation:</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Total charges received	3,569	3,221	3,047
Number of charges referred to investigation	744	609	555
Number of lawyers investigated relative to the charges referred	499	428	437
Percentage of complaints resolved in Intake (closed)	71%	76%	75%
Average days to resolve complaints in Intake (closed)	27	23	25
Average days to refer from Intake to Investigation	28	24	27
Average days for investigation	161	180	216

<u>Attorney Discipline Probable Cause Committee (ADPCC)</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Number of Matters Reviewed	363	384	321
Number of Probable Cause Orders Authorizing a Formal Complaint	169	121	129
Number of Orders of Admonition	61	62	33
Number of Orders of Restitution	4	24	4
Number of Orders of Diversion	70	90	86
Denial of Appeals from State Bar Orders of Dismissal	42	40	38
Granted Appeals from State Bar Orders of Dismissal	0	2	4
ADPCC increased recommended sanctions (by charge)	10	12	6
ADPCC decreased recommended sanctions (by charge)	12	17	15

<u>Presiding Disciplinary Judge (PDI)</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Formal Matters	95*	88	96
Pre-Complaint Consent Agreements	29*	25	29
Post-Complaint Consent Agreements	22	40	27
Interim Suspensions	6	6	8
Reciprocal Discipline	6	6	10

*After an audit, 2016 numbers for Formal Matters and Pre-Complaint Consent Agreements were amended to report the actual count.

The entire report is posted on the Arizona Supreme Court's website at <https://www.azcourts.gov/arc>.

Appointments Committee – Jessica Sanchez and Nicholas Chapman-Hushek for Chair Lori Higuera

Executive Session – 9:25 a.m.

MOTION: Dee-Dee Samet moved, John Gordon seconded and the motion carried unanimously to go into Executive Session to discuss the volunteers who had applied to serve on the three entities listed on the Board's agenda. The Board reconvened in Open Session at 9:40 a.m.

ABA House of Delegates

The Board was reminded of YLD President Geoffrey Balon's request that the Board consider deferring action on making its appointments until July, after his Board service concludes, citing the BOG Appointments Policy which states in part: *"To avoid the appearance of impropriety, members of the Board of Governors will not be nominated for or appointed to any commission or committee unless the Supreme Court so dictates, except that one of the board-appointed ABA Delegates shall be a lawyer member of the Board of Governors."* Hearing no motion regarding this issue,

MOTION: Coming as a motion from the Appointments Committee requiring no second, the Board voted unanimously to reappoint Judith Dávila as the State Bar's YLD Delegate to the ABA House of Delegates.

MOTION: Coming as a motion from the Appointments Committee requiring no second, the Board voted unanimously to reappoint Lynda Shely as a State Bar Delegate to the ABA House of Delegates.

Client Protection Fund Board of Trustees

MOTION: Coming as a motion from the Appointments Committee requiring no second, the Board voted unanimously to appoint Gregg Woodnick to the State Bar's Client Protection Fund Board of Trustees.

Community Legal Services Board of Directors

MOTION: Coming as a motion from the Appointments Committee requiring no second, the Board voted unanimously to appoint Annette Cox Sandoval to Community Legal Services Board of Directors.

Consent Agenda – Jeff Willis

- a) Approval of April 19, 2019 Board Meeting Minutes
- b) Approval of Resignations in Good Standing
- c) Approval of Resignations in Lieu of Reinstatement
- d) 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 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) Suspension for Non-Compliance with Professionalism Course (Rule 34(n), Ariz. R. Sup. Ct.)
- f) Receipt and Certification of the 2019 Board of Governors Election Results
- g) Proposed Revised Criminal Jury Instructions

President Willis asked if there was anything that needed to be removed from the Consent Agenda and, hearing nothing, the following motion was made:

MOTION: Patrick Greene moved, Denis Fitzgibbons seconded and the motion carried unanimously to approve the Consent Agenda.

Revisions to Board of Legal Specialization Standards – Joel England

During 2017, the SBA (Specialization) Advisory Commissions (AC) and Board of Legal Specialization (BLS) reviewed the standards for certification for each of the eight areas of specialization. The proposed revisions to the standards were made available for comment to all members of the State Bar, on the Bar's website. One comment was received and the BLS approved the revisions effective January 1, 2018.

In Arizona Supreme Court Administrative Order 2018-36 dated April 25, 2018, the Court approved the Rules and Regulations of the BLS and further ordered the BLS to conduct a review of the current standards for certification and make appropriate recommendations to the Court. The Court indicated a particular interest in the elimination of unneeded inconsistencies between standards and ensure standards are appropriate. The directive was further explained in a letter of May 4, 2018 to then President Alex Vakula, in which the Court indicated, “[I]n conducting its review of standards for final approval, the State Bar should address the justification for distinguishing among specialties in terms of similar standards (e.g., years of practice, number of jury trials). The Bar should also consider the changing nature of the practice of law in each area to ensure the standards appropriately identify particularly qualified lawyers. Lastly, the Court would expect and benefit from an effort to solicit input on these standards from the general membership of the Bar.” At the request of the Court, the standards for certification for each of the eight areas were submitted in June 2018 for interim approval, pending the final submission by July 1 of 2019.

The furnished materials described the process for conducting the review of the Standards for Certification, as well as the review process undertaken by each of the Advisory Commissions. Comparative information from the other states which certify specialists in each area was included in the studies. In late November 2018, a survey was sent to all Active members of the Bar, approximately 18,000 of which 1108 or 6% responded. Of the 1108 who responded, 160 are specialist (32% of the total number of specialists in Arizona) and 948 (5% of the total Active Bar members) are non-specialists. The survey was designed to elicit feedback from members about Specialization in Arizona, including the Standards for Certification and the process to become certified as a specialist in Arizona. The survey was divided into two tracks – responses from members currently certified as specialists in one of the eight areas of certification, and responses from members who were not certified as specialists.

Approval was sought to submit results of the Advisory Commission's review of each of their Standards and the recommended revisions to the Standards for Certification for Criminal Law, Real Estate Law, Tax Law and Workers' Compensation to the Court. After a lengthy discussion by the Board,

MOTION: Brian Furuya moved, Denis Fitzgibbons seconded and the motion carried over one dissent to submit to the Court the Advisory Commission's review of each of their Standards and the recommended revisions to the Standards for Certification for Criminal Law, Real Estate Law, Tax Law and Workers' Compensation.

Rules Committee Report – David Engelman

Proposed Reply to R-19-0015, State Bar's Petition to Abrogate Rule 68, Ariz. R. Civ. P.

- The State Bar's Petition seeks to abrogate Rule 68 of the Civil Rules.

- Civil Practice & Procedure Committee recommended filing a reply supporting the Bar's Petition but addressing all of the opposing comments filed and discuss division within the Committee (see footnote in Reply).
- Important that Petition move forward to allow Court to review as it's fully briefed.
- Rules Review Committee:
 - Voted 4 to 1 to file the proposed reply submitted by Civil Practice & Procedure Committee but edit to include recommendation to establish task force to study issue
- George King, Steven Kramer and Judge Peter Swann addressed the Board and responded to questions.

After a lengthy discussion,

MOTION: Jimmie Smith moved and Dee-Dee Samet seconded the motion to file the Bar's Reply.

MOVED TO AMEND: Sam Saks moved to amend the motion to indicate that if the Court is not inclined to abrogate Rule 68 that it study the issue first. That is included in the Bar's Reply so the motion to amend was withdrawn.

ORIGINAL MOTION: Passed by a vote of the Board.

Proposed Reply to R-19-0018, State Bar's Petition to Amend Rule 5(d) and 10(a), Ariz. R. P. Eviction Actions

- The State Bar's Petition seeks to amend the Eviction Rules to require landlords to serve additional relevant documents with complaints.
- Legal Services Advisory Panel recommended filing a reply addressing the comments filed to the Bar's Petition.
- Rules Review Committee:
 - Does not come as recommendation from Committee
 - No quorum at meeting – forward to Board of Governors for consideration
- Pam Bridge of Community Legal Services addressed the Board and responded to questions.

After discussion,

MOTION: Benjamin Taylor moved, Jessica Sanchez seconded and the motion carried over two dissents to file the Proposed Reply contained in the Board's materials crafted by Bar staff.

Preliminary Suspension List for Non-Compliance with Membership Fees (Rule 32(c)(10), Ariz. R. Sup. Ct.) – Jeff Willis

President Willis referred to the list of members who had not yet paid their 2019 membership fees. Members will continue to cure and the final suspension list will be voted on at the June 25 Board meeting.

Senior Lawyers Task Force Report and Recommendations – Hon. Patricia Norris (ret.)

Hon. Patricia Norris (ret.) thanked Co-Chairs Laura Zeman-Mullen, Chas Wirken, Jim O'Sullivan and Jacob Jones for presenting the Task Force Report and Recommendations at the April Board meeting when she was unavailable. She was present today to respond to the Board members' questions now that they've had a month to digest the information and recommendations and preceded to engage the Board in discussion.

Some of the feedback included:

- How was the number of pro bono legal services hours - 10 – determined which would allow retired and inactive lawyers to be exempt from paying annual fees if they provide such service during the preceding 12-month period?
- The proposed 10 hours of pro bono is significantly less than the Court’s aspirational goal of 50 hours; discount on membership fees should could be based on hours of pro bono performed under the Court’s goal, i.e., 20% discount for 10 hours, 40% for 20 hours, etc.
- Suggested phase in of proposed Rule 38 changes affecting membership fees (in exchange for performing legal services)
- Should the Court move forward with changes to Rule 38, the Bar would encounter administrative costs in order to track compliance of the members participating

A five-year financial forecast was reviewed regarding implementation of the Task Force recommendations and the impact to membership fees under the Rule 38 proposed changes.

Finance and Audit Committee – Denis Fitzgibbons and Kathy Gerhart

Secretary/Treasurer Denis Fitzgibbons referred to the 2018 audit report of the State Bar and the Client Protection Fund. It is a clean audit. The report outlines the Bar’s regulatory, compliance and other functions pursuant to new reporting standards, and “dues” are now referred to as “fees” which mirrors the Supreme Court rules.

Status Reports

Supreme Court’s Task Force on Delivery of Legal Services – Robyn Austin and Guy Testini

The Task Force subgroups continue to study and develop proposals to unbundle services, propose amendments to Rule 38 (Special Exceptions to Standard Examination and Admission Process) and propose the elimination of ER 5.4 (Professional Independence of a Lawyer).

Correspondence/General Reports

- a) Executive Council Minutes – April 5, 2019
- b) CJ Bales Letter re: Public Governors Slate 04.24.19
- c) MCLE Regulations effective 07.01.19 (FINAL)
- d) 2019-2020 BOG and EC Meetings Schedule

Adjourned at 11:38 a.m.

Respectfully submitted,

Denis Fitzgibbons
Secretary/Treasurer