

**MEETING OF THE
BOARD OF GOVERNORS
OF THE
STATE BAR OF ARIZONA**

February 23, 2024

BOARD MEMBERS PRESENT: Benjamin Taylor, President, Phoenix; Ted Schmidt, President-Elect, Tucson; Sam Saks, Vice President, Tempe; Doreen McPaul, Secretary/Treasurer, Gilbert; Heather Baker-Mushkatel, Phoenix; Diandra D. Benally, Fountain Hills; Sandra Bensley, Tucson; Jena Decker-Xu, Phoenix; David Johns, Flagstaff; Kelsi Lane, Tempe; Leticia Marquez, Tucson; Robert McWhirter, Phoenix; Preston Pollock, Globe; David Rosenbaum, Phoenix; Christopher Russell, Sierra Vista; Jessica Sanchez, Board Advisor, Mesa; Elizabeth Schmitt, YLD President, Phoenix; Jimmie Smith, Yuma; Henry Whitmer, Prescott; Public Governors Robyn Austin, Tucson, Cedric Dave, Chandler; At-Large Governors, Mike Baumstark, Scottsdale and Marcus Reinkensmeyer, Phoenix (Substitute for Dave Byers); Dean Stacy Leeds, Ex-Officio, ASU College of Law.

BOARD MEMBERS WITH EXCUSED ABSENCES: Denis Fitzgibbons, Casa Grande; Hollis Mignonne, Public Governor, Sierra Vista; Dean Marc Miller, UA College of Law; John Moody, District Governor, Phoenix.

STAFF: Joel England, CEO/Executive Director; Sarah Epperson, Ethics Counsel; Joe Hengemuehler, Chief Communications Officer; Craig Henley, Senior Bar Counsel; Natalie Hughes, Lawyer Regulation; Jessica Iennarella, Chief Financial Officer; Trish McCarty, HR Director; Darla Neill, Board Administrative Assistant; Kendra Owens, Membership Administration Services Manager; Lisa Panahi, General Counsel; Amy Rehm, Deputy Chief Bar Counsel; Patricia Seguin, Legal Services Manager; Carrie Sherman, Director of Board Operations; Roberta Tepper, Chief Member Services Officer; Maret Vessella, Chief Bar Counsel; Randal Westbury, BLS Administrator.

GUESTS: Janna Day, Lobbyist; Justice William Montgomery, Arizona Supreme Court Liaison, Phoenix; New ABA Delegates Rachel Raynes and Tiffany Tom; Eli Dalton Webb (member of the public); State Bar Attorneys Nick Faussette, Kina Harding, Lonnie Williams and Sheree Wright.

Call to Order – Benjamin Taylor

President Taylor called the meeting to order at 8:32 a.m.

Call to the Public – Benjamin Taylor

President Taylor made a Call to the Public, at which time the following State Bar members were recognized and addressed the Board regarding their experience with the lawyer regulation system:

- Sheree Wright, Phoenix
- Kina Harding, Mesa
- Nicholis Faussette, Phoenix

President's Report – Benjamin Taylor

- Attended:
 - National Conference of Bar Presidents along with CEO Joel England and President-Elect Ted Schmidt earlier this month in Louisville.
 - Learned about other bar associations' wellness programs
- Bar's new Access to Justice Committee
 - As of last Friday, 26 applications received
- ABC15 AZ Family appearance today
 - Will speak about the Bar's access to justice efforts
- Shout out to Kelsi Lane and the Communications staff for setting this up
- Arizona Legal Opportunities Scholarship
 - DEI Director Noah Coakley presented to the Executive Council
 - Focus on 1st generation/low-income law students; pipeline - college sophomore through Bar Exam journey
 - Scholarship would cover Exam and Bar prep courses; corporate sponsors could partner with Bar to subsidize these costs
 - More to come

CEO/ED's Report – Joel England

- Recognized Natalie Hughes, LRO Administrative Assistant, as the Employee of the 4th Quarter and highlighted her contributions to large lawyer discipline prosecutorial case.
- Advised that the Program Review Working Group has undertaken the review of 18 different Bar working groups, panels, etc. to determine whether changes to their charges need to be made.
 - The Bar's Technology Working Group is looking at AI from an ethics standpoint as well as computer use and collaborating with the Court's Commission on Technology
- Discussion regarding disciplinary issues (Justice Montgomery was not present for this discussion)
 - The Board has a Discipline System Oversight Committee (DSOC) which is chaired by Justice John Lopez
 - The Bar takes comments and complaints very seriously
 - Regarding attorney Bryan Sloan's remarks made last month during the Call to the Public, staff reviewed the 2016 complaint against Mr. Sloan and its disposition and discussed his case at the last DSOC meeting. The DSOC was satisfied with the handling of Mr. Sloan's case.
- Recommended that the Board think about the Call to the Public segment of the meetings and decide what should be discussed within it
 - Understand the need for venue for public comment.
 - However only one side presented as Mr. England directed Chief Bar Counsel Maret Vessella, Deputy Chief Bar Counsel Amy Rehm not to discuss cases in open board forum
 - Ms. Rehm opined that the Board should know the whole story regarding a case prior to forming opinions
 - This matter will be put on the next Executive Council agenda
- The results of the discipline survey should be available in a month or two

Midyear House of Delegates Meeting - Rachel Raynes and Tiffany Tom

- The Bar's two newest ABA Delegates recapped action taken by the House of Delegates at the Midyear Meeting
 - Tiffany Tom is an attorney at the ADEQ in Pima County. She thanked the Bar for her appointment.
 - Rachel Raynes works for the Coconino County Attorney's Office and expressed her gratitude for the appointment.
- Ms. Raynes spoke regarding her attendance at the Midyear Meeting and said it was very informative and interesting.
 - \$6.6M deficit needs to be addressed by the ABA
 - Attended Young Delegates and Women's Caucus
 - Regarding the elections, nominations have been completed
 - She enjoyed meeting members of Arizona's delegation
- Ms. Tom spoke about Keller and meeting with Bar staff in advance to determine what Resolutions the Delegates could and could not vote on
- Topics discussed at the Midyear meeting included:
 - 177C regarding membership dues
 - General rate increased less than \$45;
 - There has been no increase since 2015;
 - Rate increase was voted on and approved;
 - Declining membership is the reason for the dues increase
 - 508 - students gender identity privacy
 - Opposes parental notification;
 - Arizona delegate abstained;
 - Intense debate;
 - Resolution approved
 - "Firekeepers: Elevating the Voice of Native American Women Attorneys in the Profession"
 - Diandra Benally panel speaker
- President Mary Smith touted the Presidential Speakers Series during which local leaders discuss how the profession can improve
 - Date to be determined for Phoenix event
- 2024 Annual Meeting in Chicago July 31 – August 6
 - Judge (Ret.) Leslie Miller is planning it

Senior Manager Community Engagement at Amazon - John Pombier

- President Taylor introduced John Pombier, the Senior Manager of Community Engagement at Amazon
 - Member of the Bar since 1994
 - Former Assistant Manager, City of Mesa
 - Discussed his passion for DEI and how it is paramount at Amazon and the reason he went to work there
 - Recommended DEI track at upcoming Convention
 - He opposes the Goldwater Petition as he believes it would take us backwards

Finance and Audit Committee – Doreen McPaul and Jessica Iennarella

- 2023 Annual Cash Surplus Reserve Allocation

- Finance Committee proposes allocating the estimated surplus of \$1,355,000 as follows:
 - Capital Reserve - \$229,000
 - Opportunity Reserve - \$400,000
 - Annual Fees Reserve - \$726,000 (estimated)

MOTION: Cedric Dave moved, David Johns seconded and the motion to accept the Committee's proposal passed unanimously.

- Treasurer Doreen McPaul provided an overview of the Client Protection Fund Q4 2023 Financial Statements.

Proposed Amendments to Board of Legal Specialization - Kendra Owens-Johnson and Randal Westbury

- Discrepancies noted in BLS Rules, Regulations and Standards
 - 52 revisions are recommended and noted in the redlined version
 - If approved by the Board, they will go to the Supreme Court for consideration

MOTION: Cedric Dave moved, Bob McWhirter seconded, and the motion to approve the proposed amendments to the Board of Legal Specialization Rules carried unanimously.

Consent Agenda - Benjamin Taylor

President Taylor asked if there were any matters that needed to be removed from the Consent Agenda and hearing nothing,

MOTION: Cedric Dave moved, Bob McWhirter seconded and the motion to approve the Consent Agenda carried unanimously.

- Approval of January 19, 2024 Board Meeting Minutes
- Approval of Resignations in Good Standing
- Approval of Resignations in Lieu of Reinstatement
- Fee Waiver Denials

Mark Harrison Memorial 10-Minute Topics - Bob McWhirter

- Mr. McWhirter made a presentation entitled *From Testicles to Dragnet: How the 5th Amendment Protects All of Us*

Proposal to Amend SBA Bylaw 7.05 (Rule 32(e)(7), Ariz. R. Sup. Ct.)

- President Taylor suggested amending Bylaw 7.05 which deals with the recusal of an Attorney Governor; a lengthy discussion ensued:
 - Probable Cause Order should not cause recusal
 - When on probation Attorney Governors should still be able to serve
 - For five years prior to election to the Board, each elected Governor must have had no record of disciplinary sanctions under Rule 60
 - Discipline does not preclude serving on a standing Bar committee or advisory group
 - Bylaw change cannot be voted on today; 30-day notice of proposed amendment(s) required

- Bylaws are due for their periodic review in 2025; General Counsel Lisa Panahi suggested studying this proposal in conjunction with that review.

Rules Review Committee - Leticia Marquez

- Draft Comment to Petition to Amend Rule 32(b) and (c), Ariz. R. Sup. Ct. (Fees for Non-Regulatory Functions).
- General Counsel Lisa Panahi drafted a proposed Comment to the Goldwater Petition
 - Comment stresses that we follow the mission given to us by the Court; only the Court can modify it
 - No quorum at RRC meeting but informally all members were in favor of the draft
 - Board will vote on the proposed Comment in April

MOTION: Chris Russell moved, Cedric Dave seconded and the motion to move into Executive Session carried unanimously.

Executive Session

The Board moved into Executive Session at 10:43 a.m. to discuss the draft Comment and returned to Open Session at 11:02 a.m.

Legislative Update - Janna Day and Joe Hengemuehler

- SCR1022 (Amend Constitution; Legislative Authority to Regulate Practice of Law)
 - Sen. Ken Bennett did not support it and voted no which killed the bill (14-15)
 - It could be reconsidered but is dead for the time being
- SB1145 (Political Speech Rights)
 - Still moving; waiting on floor vote
- SB1214 (CLE)
 - Striker introduced by Senator Anthony Kern.
 - This bill has legs and has passed out of the Senate
- SB1589 (Overhaul of Disciplinary System)
 - No hearing; bill is dead
- SB1044 (Judicial Retention Elections)
 - This was pushed by Arizona judges and is awaiting a Senate vote
- SB1471 (Complaints Against SBA Members; Dismissal)
 - This bill would narrow the pool of who can file an attorney complaint
 - The Court talked to Sen. Kern and seemed interested in considering proposed amended language
- Ms. Day advised that this is crossover week - deadline to have gotten out of committee in three weeks
- She then gave examples of times the Bar has been proactive on bills, proving that we aren't always on the defensive with ant-Bar bills.

Wellness Services Update – Benjamin Taylor

- President Taylor and CEO England will serve on the nonprofit Board
- Judge Brutinel designated Mohave County Superior Court Judge Charles Gurtler and Lake Havasu JP Jill Davis as the Court's representatives

Convention Update - Roberta Tepper

- Working on plenary – *Brown v. BOE*; three segments:
 - Past
 - Present – moderated by Tim Overton
 - Panel discussion on continuing challenges/progeny
 - Panel members to include AG, SOS, Brown family members, Judge (Ret.) Ellie Finn
 - Reaching out to MCCA Rachel Mitchell

Correspondence/Reports

- January 8, 2024 Executive Council Minutes
- Appointments Committee Wrap Up – Supreme Court’s Committees Appointments

MOTION: Chris Russell moved, Bob McWhirter seconded and the motion to move into Executive Session carried unanimously.

Executive Session

The Board moved into Executive Session at 11:28 a.m. to discuss an administrative suspension and returned to Open Session at 11:35 a.m.

MOTION: Chris Russell moved, Cortez Smith seconded and the motion to accept the recommendation to vacate the administrative suspension carried unanimously.

Executive Session

The Board moved into Executive Session at 11:36 a.m. to address the CEO’s performance evaluation and returned to Open Session at 12:00 p.m.

MOTION: Bob McWhirter moved, Chris Russell seconded and the motion to accept the HR Subcommittee’s recommendation carried unanimously.

MOTION: Bob McWhirter moved, Chris Russell seconded and the motion to adjourn carried unanimously.

Adjournment: 12:00 p.m.

Respectfully submitted,

Doreen McPaul
Secretary/Treasurer