

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

December 2, 2022

BOARD MEMBERS PRESENT: Jessica Sanchez, President, Mesa; Benjamin Taylor, President-Elect, Phoenix; Ted Schmidt, Vice President, Tucson; Sam Saks, Secretary/Treasurer, Tempe; Diandra Benally, Fountain Hills; Sandra Bensley, Tucson; YLD President Nicholas Brown, Phoenix; Jena Decker-Xu, Phoenix; Denis Fitzgibbons, Casa Grande; Sharon Flack, Prescott; Kelsi Lane, Phoenix; Leticia Marquez, Tucson; Robert McWhirter, Phoenix; John Moody, Phoenix; Preston Pollock, Globe; Jennifer Rebholz, Board Advisor, Phoenix; David Rosenbaum, Phoenix; D. Christopher Russell, Sierra Vista; Jimmie Dee Smith, Yuma; Public Governors Robyn Austin, Tucson, Cedric Dave, Chandler, Mignonne Hollis, Sierra Vista, and Jonathan Martone, Paradise Valley; At-Large Governors Dave Byers, Phoenix, and Doreen McPaul, Window Rock.

EXCUSED ABSENCE: At-Large Governor Mike Baumstark, Scottsdale

UNEXCUSED ABSENCE: Eric Ruchensky, Flagstaff

STAFF: Deanna Commack, Executive Assistant; Joel England, CEO/Executive Director; Joe Hengemuehler, Chief Communications Officer; Jessica Iennarella, Controller; Lori Maxwell, Chief Information Officer; Karen Oschmann, Client Protection Fund Administrator; Rick Palmatier, Deputy General Counsel; Lisa Panahi, General Counsel; Patricia Seguin, Legal Services Manager; Amy Rehm, Deputy Chief Bar Counsel; Carrie Sherman, Director of Board Operations; Roberta Tepper, Chief Member Services Officer; Maret Vessella, Chief Bar Counsel.

GUESTS: Victoria Ames, ASU College of Law; Dylan Burstein; Michael J. Farrell; Shayna Frieden and guest; Mrs. Frieden; Hon. William Montgomery, Arizona Supreme Court Liaison; Leah Won, UA College of Law; Gregg Woodnick.

Call to the Public – Jessica Sanchez

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

President's Report – Jessica Sanchez

- Publicly thanked former Public Governor Anna Thomasson and her husband, Gary, for hosting the Board's holiday reception the previous evening. It was a lovely event and a wonderful opportunity to network beyond the Board meetings.
- Recognized Marla Hudgens of Lewis and Roca who, along with her entire family, tragically died recently. Ms. Hudgens recently finished serving six years on the Bar's Appointments Committee. Those present joined together in a moment of silence to remember and honor Ms. Hudgens.
- Recognized the following for receiving the highest score on the Uniform Bar Exam and presented a memento to each on behalf of the Board:
 - Dylan Scott Burstein – February 2022 Exam

- Shayna Frieden – July 2022 Exam (tie)
- Michael Schellhous – July 2022 Exam (tie)
- Mr. Schellhous was unable to attend but photos were taken of the other honorees who made brief self-introductions
- Attended:
 - AJC Meeting in Flagstaff
 - New Member Orientations – spoke at the two programs offered
 - Fall Admissions Ceremony at the Supreme Court – welcomed new admittees
- January 20 Board Meeting – Meet and Greet planned from 8:30A to 9:00A with members of the current Bar Leadership Institute class; Board members encouraged to attend in person
- Considering holding a Board meeting(s) outside Phoenix; Governors asked who would be willing to “host”

CEO’s Report – Joel England

- Attended:
 - same events as President Sanchez
 - 1–1 meetings with legislators
 - 1-1 meetings with managing law firm partners
- Annual Staff Wellness Week
 - A different event offered each day, including sound meditation, financial health seminar, self-defense instruction
- Open Enrollment just completed
- HR Director Rachel Williams’ last day will be December 23 as she moves on to a new professional opportunity; thanked her for her contributions to the organization

Client Protection Fund 2021 Annual Report - Gregg Woodnick

- The Fund was established in 1961; \$20 of each members’ fees go to the Fund; the Governors appoint five Trustees to administer the Fund, consider claims and pay claimants.
- 2021 Financial Overview:
 - Net assets as of 12/31/20 \$2,463,044
 - Revenue received in 2021 \$461,342
 - Claims paid in 2021 \$197,568
 - Operation expenses paid in 2021 \$130,938
- 76 claims filed in 2021; 44 in 2020
- As of December 31, 2021, the Fund had a balance of \$2,528,933 in CDARS.
- In 2021, the Fund received a total of \$13,253 in restitution from lawyers against whom claims had been paid. A lawyer whose conduct has resulted in a paid claim may not seek reinstatement to active status until the lawyer has reimbursed the Fund for any claims paid.
- Thanked Karen Oschmann, CPF Administrator, for her outstanding work.

Mark Harrison Memorial 10-Minute Topics – Robert McWhirter

Mr. McWhirter presented on “Where Do Courts Come From?”

Appointments Committee – Ted Schmidt

- ABA House of Delegates
 - One opening; discussion regarding aspirational goal that the Bar's Delegates come from different areas of the state; currently all Delegates are from Maricopa County
 - Two candidates recommended by the Committee:
 - Dr. Ernest Calderón (Calderón Law Offices PLC, Phoenix)
 - Tiffany Tom (Pima County Attorney's Office, Tucson)
- **Executive Session:** A motion was made, seconded and passed unanimously to move into Executive Session. Returning to Open Session:
 - Board members voted for their top candidate
 - Dr. Calderón is the newest State Bar Delegate to the ABA HOD
- Arizona Commission on Judicial Conduct
 - One opening; three candidates recommended by the Committee:
 - Scott Silva (Silva Law Firm, Chandler)
 - Sandra Hunger (City of Phoenix, Phoenix)
 - Andrew Jacobs (Snell & Wilmer LLP)
 - **MOTION:** A motion was made, seconded and carried over two dissents to appoint Scott Silva to the ACJC.
- City of Mesa Judicial Advisory Board
 - One opening; three nominations requested
 - Committee recommended, and Board endorsed, two candidates at the September meeting:
 - Keith Berkshire (Berkshire Law Office PLLC, Tempe)
 - Aimee Marie Costa (Attorney at Law, Mesa)
 - Reopened/re-advertised to seek a third candidate; Committee recommended:
 - Sonia Martinez (Law Office of Sonia Martinez, Mesa)
 - Sarah De Oliveira (Fort McDowell Yavapai Nation, Fountain Hills)
 - **MOTION:** Denis Fitzgibbons moved, Mignon Hollis seconded and the motion carried over one abstention to submit the following slate to the Mesa City Council for its consideration to appoint the State Bar representative on the Mesa JAB:
 - Keith Berkshire (Berkshire Law Office PLLC, Tempe)
 - Aimee Marie Costa (Attorney at Law, Mesa)
 - Sonia Martinez (Law Office of Sonia Martinez, Mesa)
- DNA-People's Legal Services, Inc. Board of Directors
 - Two openings; Committee recommended that the two incumbents be reappointed but due to the strong applicant pool also endorsed a third candidate:
 - Incumbent Virjinya Torrez (Pascua Yaqui Tribe, Tucson)
 - Incumbent Nancy White (Lewis Roca Rothgerber Christie LLP, Phoenix)
 - Katya Lancero (Sacks Tierney PA, Scottsdale)
 - **MOTION:** Denis Fitzgibbons moved, Kelsi Lane seconded and the motion carried over one dissent to reappoint Virjinya Torrez and Nancy White to the DNA Board.

Appointments to Arizona Foundation for Legal Services & Education Board of Directors – Jessica Sanchez

- The State Bar has six seats on the Foundation's Board; two appointments need to be made.

- David Rosenbaum has served one three-year term and is seeking reappointment to a second but final term.
- Several Governors expressed interest but at present Mignonne Hollis remains the only candidate.
- No other Governors stepped forward.
- **MOTION:** Bob McWhirter moved, Cedric Dave seconded and the motion carried unanimously to reappoint David Rosenbaum and appoint Mignonne Hollis to the AzFLSE Board.

Finance and Audit Committee – Kelsi Lane

- Summarized the extensive internal process followed for developing the 2023 Budget and the 2023-2027 Capital Budget. Both the FAC and the Executive Council have reviewed and approved the budgets.
- The SBA Budget complies with the budget memorandum
 - Budget should have a minimum surplus of \$200k when excluding sections & investment earnings – if exclude those amounts then budgeted \$378k surplus
 - Personnel budget will not exceed 60% of revenue excluding sections & investment earnings – actual at 58.1%
 - Bottom line: total revenues of \$18,618,878 and total expenses of \$18,397,365 lead to a change in net assets of \$221,513.
- The Capital Budget is \$524K
 - IT – Emphasis on software implementations (primarily case management software for Lawyer Regulation), as well as replacement of equipment (i.e. laptops, desktops)
 - 24th Street & Tucson – Focus on necessary building maintenance & parking lot repaving for Tucson
- **MOTION:** Cedric Dave moved, Bob McWhirter seconded and the motion carried over one abstention to approve the 2023 SBA Budget and the 2023-2027 Capital Budget.
- Thanked the Accounting staff for their outstanding efforts.
- Referred the Board to the financial statements as of 9/30/22 and the Q3 Dashboard in their materials.

Proposed Policy re: ABA Delegates' Voting Authority – Joel England and Lisa Panahi

- The Bar's ABA Delegates meet with the CEO, GC and Director of Board Operations in advance of the Midyear and Annual House of Delegates meetings to review the HOD agenda and proposed resolutions.
- The Delegates are provided guidance on voting instructions, including the need to abstain from voting on resolutions that would be deemed to violate *Keller*.
- Because of the timing of the HOD meetings, the volume of resolutions, and the addition of late resolutions to the agenda, it is not feasible to seek voting instructions by the full Board.
- The Delegates asked that consideration be given to formalize their voting authority with guidance from the staff (noted above).
- Voting instructions would be guided by advancing initiatives that reflect the mission and purpose of the Bar and positions that the Board of Governors or the Arizona Supreme Court have taken in the past on the same or similar issues.

- **MOTION:** After discussion, Bob McWhirter moved, Preston Pollock seconded and the motion carried over one dissent and one abstention to approve the State Bar's ABA Delegates' Voting Authority Policy.

Consent Agenda – Jessica Sanchez

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

- **MOTION:** Preston Pollock moved, Benjamin Taylor seconded, and the motion carried unanimously to approve the Consent Agenda:
 - a) Approval of October 21, 2022 Board Meeting Minutes
 - b) Approval of Resignations in Good Standing
 - c) Approval of Reinstatement of Member(s) 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.)
 - d) Approval of Reinstatements of Members Suspended for Non-Compliance with MCLE Requirements (Rule 45, Ariz. R. Sup. Ct.)
 - e) Proposed Petition to Amend Rule 34, Ariz. R. Fam. L. P.
 - f) Proposed Petition to Amend Rule 45, Ariz. R. Sup. Ct.

Rules Review Committee – Chris Russell

- Proposed Amendments to Insurance Bad Faith Instructions
 - AZ case law not clearly established or the existing appellate decisions conflict, therefore 2 issues flagged for the court and the parties providing alternatives for the court to choose pending further development of the law
 - Standard for Breach of Duty
 - Standard for Breach of Duty to Defend
 - Revisions unanimously recommended by the RRC
- **MOTION:** Denis Fitzgibbons moved, Ted Schmidt seconded and the motion to approve the Insurance Bad Faith Instructions carried unanimously.
- Proposed Petition to Amend Rule 35, Ariz. R. Civ. P.
 - Proposed Petition comes from the Civil Practice & Procedure Committee
 - Proposed Petition does not significantly alter the substance of the rule but makes it more user friendly
 - RRC unanimously recommends the filing of the Petition
- **MOTION:** Denis Fitzgibbons moved, Bob McWhirter seconded and the motion carried unanimously to file the Proposed Petition to Amend Rule 35, Ariz. R. Civ. P.
- Proposed Petition to Amend Rule 56(c), Ariz. R. Civ. P.
 - Proposed Petition comes from the Civil Practice & Procedure Committee (at the request of the Chief Justice to review the rule and ways to improve it)
 - Proposed Petition seeks to improve statements of fact and the practice surrounding them. The proposed amendments are intended to discourage practitioners from

misusing statements of fact as vehicles for legal argument or to evade page limitations

- RRC unanimously recommends the filing of the Petition
- **MOTION:** Bob McWhirter moved, Mignonne Hollis seconded and the motion carried unanimously to file the Proposed Petition to Amend Rule 56(c), Ariz. R. Civ. P.
- Proposed Petition to Amend Rule 76, Ariz. R. Civ. P.
 - Proposed Petition comes from the Civil Practice & Procedure Committee
 - Proposed Petition seeks to eliminate gaps and anomalies currently found in this rule which governs post-hearing procedures in matters subject to compulsory arbitration
 - RRC unanimously recommends the filing of the Petition
- **MOTION:** Bob McWhirter moved, Cedric Dave seconded and the motion carried unanimously to file the Petition to Amend Rule 76, Ariz. R. Civ. P.
- Proposed Petition to Amend Rule 42, ER 1.4, Ariz. R. Sup. Ct.
 - Proposed Petition comes from the State Bar's Program Review Working Group
 - Proposed Petition seeks to amend rule to require lawyers to disclose lack or loss of malpractice coverage
 - RRC unanimously recommends the filing of the Petition
- **MOTION:** Bob McWhirter moved, Cedric Dave seconded and the motion carried unanimously to file the Petition to Amend Rule 42, ER 1.4, Ariz. R. Sup. Ct.

2024-2027 Western States Bar Conference Secretary – Joel England

- The State Bar has been a member of the WSBC for decades.
- Annual conference where Bar presidents and CEOs/Executive Directors of 15 Western States can network and share challenges and accomplishments.
- Every four years the baton passes to a bar association whose CEO/Executive Director serves as secretary and administers the fees collection and coordination of the annual conferences. Arizona has been asked to take on this role beginning 2024 through 2027.
- Some additional duties for some staff (CEO and his executive assistant, the CFO) but currently have the bandwidth to serve in this role.
- **MOTION:** After discussion, Cedric Dave moved, Bob McWhirter seconded and the motion carried unanimously to approve the CEO to serve as the WSBC Secretary from 2024 through 2027.

Proposed Amendments to the SBA Articles of Incorporation – Lisa Panahi

- The Bar's Articles of Incorporation were filed in 1987 and needed to be reviewed.
- Some general language clean-up was proposed but Article VII, which deals with the dissolution of the corporation, would be changed to allow the assets to also be distributed to a 501(c)(6), whereas the current Articles only mention assets being distributed to a 501(c)(3).
- Board members were asked to provide comments to the General Counsel before the scheduled vote at the January 2023 Board meeting.

Information

- Executive Council November 18, 2022 Minutes

Adjournment: 11:03 a.m.

Respectfully submitted,

Sam Saks
Secretary/Treasurer