



# BAR COMMUNITY

## BOARD OF GOVERNERS APRIL MEETING REVIEW

The State Bar of Arizona Board of Governors held a regular meeting on April 24-25, 2014, in Phoenix. To see the complete minutes go to [www.azbar.org/about-us/leadership/boardofgovernors/minutes](http://www.azbar.org/about-us/leadership/boardofgovernors/minutes).

- ▶ President Whitney Cunningham called the board meeting to order at 2:05 p.m. with an Executive Session to discuss CEO/ED John Phelps' review and compensation recommendation from the Human Resources Committee. Return to Open Meeting 2:30 p.m.
- ▶ **President's Report**—President Cunningham
  - ▶ After the Executive Session and coming from the Scope and Operations Committee as a unanimous motion requiring no second, the board unanimously approved the recommendation of the Human Resource Committee regarding the CEO/Executive Director's compensation.
  - ▶ President Cunningham attended Western States Bar Conference and ABA Day in Washington, D.C.
  - ▶ He was the keynote speaker for a meeting of the Forensic Expert Witness Association.
  - ▶ He welcomed Leah Won, Director of Career Development at the University of Arizona James E. Rogers College of Law, representing Dean Marc Miller on the board.
- ▶ **Finance Committee's Report – CFO Kathy Gerhart**
  - ▶ **Due Diligence**—In connection with the preparation of the Tax Form 990 for the year ended 2013, the State Bar of Arizona is required to provide information regarding relationships between officers, directors, trustees, and key employees of the organization as well as transactions with interested persons. These relationships and transactions would not necessarily be identified by the organization's standard conflict of interest form that is annually

completed. A questionnaire was in the Board materials to be completed and returned the next day.

- ▶ **Financial Policy Discussion**—Mr. Phelps stated that the Finance Committee reviewed Draft 11 of the Financial Policy Manual.
  - ▶ Latest addition: Supreme Court requires State Bar to conduct a financial review every five years.
  - ▶ Major policy changes: Procurement authority of CEO/ED, CFO and Division/Department Heads; CEO/ED's authority to hire/fire CFO; CEO/ED's authority to set senior staff's executive compensation.
  - ▶ Procurement policies from the other 33 mandatory bars were provided.
  - ▶ A robust discussion took place and suggestions were captured for the rewrite of the Procurement Policy. It will return to the Finance Committee and to the board in June.
- ▶ **401(k) Plan Redesign**—Meredith Peabody
  - ▶ Ms. Peabody reviewed the current plan which contains a discretionary match of 10 percent of the first six percent contribution; a profit-sharing component with incremental vesting over five years.
  - ▶ The current plan requires a nondiscrimination test that regularly failed, resulting in contribution refunds to highly compensated employees.
  - ▶ Current plan enrollment, based on eligibility, is offered January 1 and July 1 (6+ months wait period)
  - ▶ Ms. Peabody reviewed the Current Plan Optimized, Safe Harbor plan, and a Qualified Automatic Contribution Agreement (QACA) Plan. The Human

Resources Committee is recommending a Qualified Automatic Contribution Agreement (QACA) Plan. Match would be 100 percent of first 1 percent, 50 percent of the next 5 percent with 4 percent Discretionary Profit Sharing component. Vesting for the 401(k) employer match would be two-year cliff (100 percent) and five years for the Profit Sharing component. Nondiscrimination Testing is not required. Also adopted would be a 6 percent Auto Enrollment with 1 percent auto escalation ending at 10 percent. Eligibility would be the first of month following 30 days of employment. Changes would be effective with the 2015 plan year.

- ▶ This item scheduled for an April 25 vote.
- ▶ **Awards Committee 2014**—Chair Richard Platt reported that the Committee unanimously recommended the following slate of annual award recipients:
  - ▶ Award of Appreciation (non-lawyer) – John J. Sullivan
  - ▶ Award of Special Merit – William “Bill” Walter Owsley
  - ▶ James A. Walsh Outstanding Jurist Award – Chief Justice Rebecca White Berch
  - ▶ Member of the Year – Amelia Craig Cramer
  - ▶ Sharon A. Fullmer Legal Aid Attorney of the Year Award – Ellen S. Katz
  - ▶ Tom Karas Criminal Justice Award – Stanton Bloom
  - ▶ Michael C. Cudahy Criminal Justice Award – Theodore Campagnolo
  - ▶ Hon. John R. Sticht Excellence in Disabilities Accessibility Award – Attorney General's OfficeThere were no nominations from the floor. The board voted unanimously to accept the committee's recommendations.
- ▶ **President's Award**—Whitney

Cunningham announced that Patricia Refo of Snell & Wilmer LLP will receive the President's Award for 2014 for her distinguished service to advance the administration of justice, her pursuit of the highest ideals of the legal profession, and the honor she has brought to the lawyers of Arizona. Ms. Refo was elected Chair of the House of Delegates of the American Bar Association.

- ▶ **2014-2015 Plan Year**—President-Elect Richard Platt
  - ▶ **Calendar of Meetings** – Mr. Platt discussed the current year's calendar and his intention to keep a similar calendar with board meetings every other month. A number of board members spoke in favor of returning to monthly meetings. Mr. Platt will make his decision soon and advise the board.
  - ▶ **Board of Governors Retreat** – July 31-Aug. 1, 2014, in Prescott. Plans for the retreat are being formulated; more information to follow.
- ▶ **Wrap Up**
  - ▶ **Workflow**—President Cunningham stated that the board has one employee, CEO/ED John Phelps. Many times board members request additional information on something and go directly to staff. In order to keep workflow and productivity consistent, it is requested that any request for information or reports go through John Phelps.
  - ▶ **Election**—President Cunningham reminded those present that elections for board officers will be at the annual meeting in June and that a Secretary/Treasurer will be chosen. Those interested in that position were encouraged to begin communicating with their fellow board members.
  - ▶ **In Memoriam**—The board discussed those who have passed away recently and their

contributions to the legal profession. A full listing can be found at:

[www.azbar.org/newsevents/inmemoriam](http://www.azbar.org/newsevents/inmemoriam)

- ▶ **Bar Under Water**—CEO/ED John Phelps gave an update on the recent flood at the Bar offices. Over the weekend there was a break in the irrigation line and a number of places in the foundation were compromised allowing water to seep into the building. About 12 staff were displaced and damage is being assessed. Drywall, carpet, flooring will all need to be replaced in the affected areas. Asbestos in the glue from the flooring was found and determined to be Class 1 (lowest category).
- ▶ Meeting adjourned to April 25, 2014.

**DAY TWO—April 25, 2014**

- ▶ **Call to Order 8:30 a.m.**
- ▶ **President's Report**
  - ▶ President Cunningham called the meeting to order and recognized CEO/ED John Phelps.
- ▶ **CEO/ED Report—John Phelps**
  - ▶ Mr. Phelps stated that in the board materials for today are handouts to share that provide information about what staff is working on today and in the future.
  - ▶ *26 Ways to Save In Your Practice and In Your Life*—Lists all the member benefits and services that are offered at a discount rate.
  - ▶ *Revised Arizona Jury Instructions (Civil) Fifth Edition* are available.
  - ▶ Calendar of CLE Events for May was distributed and available at [www.azbar.org/CLE](http://www.azbar.org/CLE).
  - ▶ He encouraged board members to attend the seminars and not just the luncheons during Convention.
  - ▶ Encouraged the board to attend regular CLE seminars put on by the State Bar. They are free to board members.
  - ▶ CLE by the Sea—Mr. Phelps informed the board that this is the last year the CLE by the Sea program will be offered. It has lost revenue the past few years.
  - ▶ Introduction of Employee of the Quarter Patricia Seguin, who was nominated by her peers after having been on staff only one year.
- ▶ **401(k) Plan Redesign**—Meredith Peabody
  - ▶ Ms. Peabody reviewed the 401(k) Plan as described April 24.
  - ▶ MOTION: Coming as a motion from the Human Resources Committee, requiring no second, carried unanimously to support the recommendation for the State Bar to adopt the Qualified Automatic Contribution Agreement (QACA) Plan.
- ▶ **Client Protection Fund**—General Counsel John Furlong
  - ▶ Legal and Financial Structure of the Trust—Provided in the materials: an Executive Summary; Legal Memorandum of March

18, 2014; Memo from Eide Bailly of March 20, 2014, on the consolidation of financial statements.

- ▶ The materials provided covered: Rules relating to the creation of the fund; the board's relationship to the fund (a comparison of duties and powers); how the Court interacts with both entities; the type and purpose of the CPF Trust; the accounting guidelines associated with a consolidated audit.
- ▶ Informational only; not an action item for the board.
- ▶ **Legislative Update**—Lobbyist Janna Day
  - ▶ Reported that it was a successful session and after 101 days, sine die was at 1:42 a.m. April 24, 2014.
  - ▶ No bills affecting the Bar were filed this year.
  - ▶ The Court of Appeals was underfunded by \$250,000; she assisted in getting the funds added back in to the budget.
- ▶ **SB1353 Restructuring Act**—The 79-page bill was signed this week. Mesa Senator Bob Worsley, Vice-chair of the Finance Committee, sponsored it supported by the Business Law Section. Passed over one no vote out of committee.
- ▶ **Finance Committee—Chair Richard Platt**
  - ▶ Mr. Platt stated that the committee is working on the Finance Policy rewrite.
  - ▶ Rob Leslie of Eide Bailly LLP presented their findings on the State Bar's audit.
  - ▶ Mr. Leslie stated that the CPF meets the standards of single consolidation but is separated out in the schedule at the back of the audit. The board has an economic interest in the Trust and appoints the Trustees and can terminate, with cause, at any time. Thus it controls the Trust.
  - ▶ A dissolution clause will be added to the Declaration of Trust; research underway to determine whether the Trust is a grantor trust.
- ▶ **Financial Dashboard Report**—CFO Kathy Gerhart
  - ▶ Bar Operating Surplus (Loss): Quarter 1 2014 reflected a \$579,000 surplus
  - ▶ Revenues: \$51,000 (1.5 percent) more than budget; and \$354,000 (11 percent) more than Q1 2013
  - ▶ Dues are down (1 percent) less than budget.
  - ▶ Number of Members YTD 23,016 total compared to 22,487 last year, a 2.35 percent increase
  - ▶ Timing issue: Seminar revenue is \$37,000 (8.8 percent) less than budget due to live seminars budgeted for March postponed to April and June.
  - ▶ Arizona Attorney Advertising revenue is up 16 percent over budget.
  - ▶ Royalty revenue is up \$33,000 over budget due to LexisNexis income received that was not budgeted.
  - ▶ Expenses: \$453,000 (13.6 percent) less

than budget, and \$249,000 (8 percent) less than Q1 2013.

► Personnel Cost is 10.5 percent less than budget primarily due to hiring freezes.

► Full Time Employees as of March 31, 2014 are 99 vs. 100.25 at March 31, 2013.

► Other Expenses are 18.5 percent less than budget due to cost-saving measures and timing differences.

► **Consent Agenda**

► **MOTION:** Richard Platt moved, Patrick Greene seconded and the motion carried unanimously to approve the Consent Agenda:

(a) February 27-28, 2014 Board of Governors Meeting Minutes

(b) Reinstatements:

1. Reinstatement of Members Suspended for Non-Compliance with Annual Membership Dues and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule

43, ARIZ.R.S.CT.)

2. Reinstatement to Practice of Members Suspended for Non-Compliance with MCLE Requirements (Rule 45, ARIZ.R.S.CT.)

(c) Resignations

(d) 2014 Dues Waivers

(e) Ratify Action of Scope to file a Comment in Opposition of the Petition following the recommendation of the Rules Committee re Petition Amending Capital Case Post-conviction Relief Proceedings (R-14-0010-Petition to Amend Rules 31.2, 31.4, 31.13, 32.4, and 32.9, ARIZ.R.CRIM.P.)

(f) Rules Committee

1. Proposed comment – R-14-0014, Rule 2.3, ARIZ.R.CRIM.P. (electronic complaint filing)
2. Proposed comment – R-13-0050, Rule 31.17, ARIZ.R.CRIM.P. (capital case warrants of execution)

3. Proposed comment – R-14-0005, Rule 24.2, ARIZ.R.CRIM.P. (prosecutor responsibilities)

4. Proposed comment – R-14-0003, Rule 5, ARIZ.R.CRIM.P. (electronic service)

5. Proposed Criminal Jury Instructions (revision of criminal jury instructions)

► **Appointments Committee—** Chair Lisa Loo  
**AZFLS&E Board of Directors (one seat)**

► **Motion:** The Appointments Committee recommends, and requires no second, that Ms. Audrey Jennings, CEO of Blood Services, Phoenix be appointed to the AZFLS&E Board. Motion carried unanimously.

**City of Scottsdale Judicial Appointments Advisory Board**

► **Motion:** The Appointments Committee recommends, and requires no second, the following slate to meet the Scottsdale

City Council's request for three nominations to fill the State Bar-designated seat on Scottsdale's JAAB:

- Incumbent Donald Alvarez, Alvarez & Gilbert PLLC, Scottsdale
- Mr. Brett Hutchison, City of Phoenix Prosecutor's Office, Phoenix
- Mr. Franklin D. "Troy" Dodge, Ryan Rapp & Underwood PLC, Phoenix
- Motion carried unanimously.

**Client Protection Fund Board of Trustees (one seat)**

► **Motion:** Coming as a motion from the Appointments Committee, requiring no second, the board voted to reappoint incumbent Rosemary Rosales (Chandler City Attorney's Office, Chandler) to a second and final five-year term on the Client Protection Fund Board of Trustees.

► **ABA House of Delegates (3 seats)**

► Incumbents Margarita Silva (At

Large) and Jimmie Smith (Board representative) have served three terms and under the current policy are ineligible to be reappointed.

- ▶ At a Scope and Operations Committee meeting, the officers received and endorsed a proposal to waive the term limits for the State Bar's ABA Delegates. Term limits adversely affect the chance of those Delegates who seek leadership roles within the ABA.
- ▶ **Motion:** The Motion coming from the Scope and Operations Committee, requiring no second, recommended rescinding the term limits for the State Bar's ABA Delegates. Motion carried unanimously.
- ▶ **Motion:** The Motion coming from the Appointments Committee, requiring no second, passed unanimously to reappoint Margarita Silva (M Silva Law Firm, Phoenix) and Jimmie Dee Smith (Attorney at Law, Yuma) to the ABA House of Delegates to another two-year term to expire August 2016.
- ▶ **Motion:** Motion from the Appointments Committee, requiring no second, carried unanimously to reappoint Adam Zickerman (U.S. Department of Justice, Flagstaff) to a second two-year term in the ABA House of Delegates.
- ▶ **Rule 38(h)(13) Waiver Request**—John Furlong, General Counsel
  - ▶ Request for Waiver of Requirements for In-house Counsel Registration. An individual, via a petition filed through his counsel, Scott Rhodes, sought a waiver pursuant to Rule 38(h)(2), which states, "An applicant may petition the Board of Governors for a waiver of any of the requirements for registration under this rule."
  - ▶ Primary issue concerns the application process for registered in-house counsel and the Board's authority to waive the requirement in Rule 38(h)(2) that an applicant graduate from an ABA-accredited law school (which the applicant had not).
  - ▶ Petitioner met the five criteria

for consideration recommended by staff in considering this and future applicants: when the applicant was first admitted to practice law in any jurisdiction; length of time in practice; discipline history; character and fitness references; whether the applicant has applied for and been granted in-house or corporate status admission elsewhere.

- ▶ It was noted that such waivers are not a path to regular membership.
- ▶ The Scope and Operations Committee voted unanimously to support the waiver requirement for this particular candidate under the given circumstances and his professional career to date.
- ▶ **Motion:** Geoff Trachtenberg moved, Jim Penny seconded and motion carried unanimously to approve the Request Waiver for Bob Byars, In-house Counsel, pursuant to Rule 38(h)(2).
- ▶ **Rules Committee Report**—Chair Geoff Trachtenberg
  - ▶ Proposed Comment to Petition to Modify Rule 111, ARIZ.R.S.C.T., Rule 28, ARCAP, & Rule 31.24, ARIZ.R.CRIM.P. (Petition R-14-0004). Petition filed proposes amending various rules to allow the citation of "unpublished decisions" for their persuasive value.
    - ▶ **Motion:** Coming as a motion from the Rules Committee, requiring no second, to file a Comment supporting the Petition as modified by the suggestions of the Civil Practice & Procedure Committee. Motion passed. Dave Byers abstained.
  - ▶ Proposed Comment to Petition to Modify Rule 15.8, ARIZ.R.CRIM.P. (Petition R-13-0004). The Petition filed in 2013 proposed an amendment to Rule 15.8, ARIZ.R.CRIM.P., to require material disclosure at least 30 days before a plea offer expires or is withdrawn. The Court adopted the rule on an expedited basis and opened the Petition for Comment.
    - ▶ **Motion:** Coming as a motion from the Rules Committee, requiring no second, unanimously passed to

file a Comment proposing the changes as recommended by the Criminal Practice and Procedure Committee – Defense.

- ▶ Proposed Comment to Petition to Modify Rule 12.5, ARIZ.R.CRIM.P. (Petition R-14-0006). The Maricopa County Attorney's Office filed a petition proposing that Rule 12.5, ARIZ.R.CRIM.P., allow law enforcement or detention officers to be present when a grand jury witness is in custody without having to file a motion with the Presiding Criminal Judge.
  - ▶ **Motion:** Coming as a motion from the Rules Committee, requiring no second, passed over three dissents, to file a Comment proposing that, if the Court is inclined to grant the Petition, that the trial court be given discretion to allow this upon the request of the prosecutor and provided the defense is notified of the request.
- ▶ Proposed Comment to Adopt Rule 32.12, ARIZ.R.CRIM.P. (Petition R-14-0007): A.R.S. § 13-4240 gives convicted felons a right to petition the court for DNA testing of evidence. Maricopa County Attorney's Office proposed Rule 32.12, ARIZ.R.CRIM.P., to provide a process for these requests.
  - ▶ **Motion:** Coming as a motion from the Rules Committee, requiring no second, unanimously passed, to File a Comment in support of the Petition, but proposing: that (d)(1)(ii) be changed to reflect that a court may order DNA testing if there is a reasonable probability that it "may" (instead of "will") produce exculpatory evidence; that the last sentence of proposed (f) provide that if evidence is destroyed, the court may impose "any appropriate sanction."; minor grammatical changes.
- ▶ Proposed Comment to Adopt Rule 23.4, ARIZ.R.CRIM.P. (Petition R-14-0008): Maricopa County Attorney's Office proposed a new Rule 23.5, ARIZ.R.CRIM.P., to limit defense counsel post-verdict contact with jurors. Criminal Practice & Procedure Committee—Defense opposes the proposed rule because: it would obviate existing Rule 24.1, which establishes permissible post trial juror inquiry; defense counsel would not be able to produce "substantial evidence" establishing good cause before interviewing jurors; ER 3.5 already governs lawyer contact with jurors. Criminal Practice & Procedure Committee—Prosecution supports the proposed rule because the court would have to approve any contact on a showing of good cause.
  - ▶ **Motion:** Coming as a motion from the Rules Committee, requiring no second, unanimously passed to file a Comment opposing the Petition for the reasons proposed by the Criminal Practice & Procedure Committee—Defense.
- ▶ Proposed Comment to Petition to Modify Rule 32.4, ARIZ.R.CRIM.P. (Petition R-14-0012): Judge Welty, the Criminal Department Presiding Judge in Maricopa County, proposes amending Rule 32.4 to allow for an (FTR) audio recording to be provided to a defendant, instead of a transcript, at the court's discretion, for pursuing post-conviction relief.
  - ▶ **Motion:** coming as a motion from the Rules Committee, requiring no second, to file a Comment opposing the petition along the lines set forth by the Criminal Practice & Procedure Committee—Defense, and noting that:
    - ▶ A similar rule may be more appropriately created within the local rules of affected court systems,
    - ▶ or a more tailored Rule 32.4, applying only to pleading defendants pursuing post-conviction relief, but providing transcripts if requested.
  - ▶ **Motion:** Patrick Green moved and Diane Drain seconded to amend the motion to strike both bullets and add a note of concern to the Court regarding pleading and non-pleading defendants.

- ▶ **Motion:** Dave Byers offered a friendly amendment that most defendants are in custody. Amendment accepted.
- ▶ **Motion Restated:** Patrick Greene moved, Diane Drain seconded and motion carried unanimously as amended.
- ▶ Proposed Comment to Petition to Modify Rules 801(d) & 803(6)-(8), ARIZ.R.EVID. (Petition R-14-0002)—The Court’s Advisory Committee on the Rules of Evidence proposed amendments to Rules 801 and 803 to conform to the pending proposed changes to the corresponding federal rules.
- ▶ Rule 801(d)(1)(b) governs admissibility of non-hearsay prior statements. The proposed change broadens admissibility of prior statements by allowing introduction of such statements in order to “rehabilitate” the declarant’s credibility.
- ▶ Rule 803(6)-(8): concern regarding the trustworthiness clauses of the hearsay

exceptions for business records, absences of business records, and public records. The proposed change clarifies that the opponent of such evidence bears the burden of proving a lack of trustworthiness.

- ▶ **Motion:** Coming as a motion from the Rules Committee, requiring no second, unanimously passed, to file a Comment supporting the Petition but proposing that the Court strike the last sentences of the third and fourth paragraphs in the comment to proposed Rule 801(d)(1)(B). Those two sentences remove references that suggest that prior consistent statements be admissible as both rehabilitative and substantive evidence.
- ▶ Proposed Comment to Petition to Amend Civil Appellate Procedure Rules (Petition R-14-0017): Petition filed by AOC Director David Byers proposes a comprehensive revision

of the civil appellate rules. Changes include stylistic revision, and others reflect the increased use of technology and eliminate most comments. Includes other more substantive changes.

- ▶ **Motion:** Coming from the Rules Committee, requiring no second, motion carried unanimously to file a Comment supporting the substance of the Petition. Minor technical suggestions already have been provided to petitioner.
- ▶ Proposed Comment to Petition to Amend Rule 26, ARIZ.R.Civ.Proc. (Petition R-013-0042)—Arizona Association for Justice filed a petition seeking an amendment to Rule 26(b)(4)(C), ARIZ.R.CIV.P., to entitle treating medical providers to a reasonable fee when compelled to testify.
- ▶ **Motion:** Coming from the Rules Committee, requiring no second, unanimously carried

to file the proposed “pro” and “con” Comment as recommended and drafted by the Civil Practice & Procedure Committee.

- ▶ **Motion:** Geoff Trachtenberg moved and Sam Saks seconded the motion to file the proposed “pro” and “con” Comment as recommended and drafted by the CPPC but add that the Board favors the pro side. In a vote of 8-9, motion failed.
- ▶ Proposed Comment to Petition to Amend Rule 67, ARIZ.R.CIV.PROC. (Petition R-13-0044)—Arizona Association for Justice proposes eliminating three sections of Rule 67 dealing with imposing “cost bonds” on plaintiffs who do not own property in Arizona.
- ▶ **Motion:** Coming from the Rules Committee, requiring no second, unanimously carried to file the proposed Comment supporting the

Petition.

- ▶ Proposed Comment to Petition to Amend Rule 38, ARIZ.R.S.Ct. (Petition R-14-0015)—The Arizona National Guard proposes amending Rule 38, Ariz.R.S.Ct. so that *pro hac vice* fees for out-of-state attorneys practicing in military court would be waived. Military Legal Assistance Committee (MLAC) recommends supporting the proposal, with one change: Limit the waiver to military attorneys.
  - ▶ **Motion:** Coming from the Rules Committee, requiring no second, unanimously carried to file a Comment supporting the rule change proposal as amended by MLAC.
  - ▶ Petition R-14-0061, AZFLS&E – Informational; not on the agenda for action—Petition would require that any class action funds remaining after distribution would go to the Arizona Foundation for Legal Services & Education.
- Disaster Assistance Plan (A Guide for Providing Legal Assistance to Victims of Disasters)**—CEO/ED John Phelps
- ▶ The State Bar of Arizona Disaster Assistance Plan pro-

- vides a checklist of actions and contacts to assist Bar officials and volunteers in responding to the needs for legal assistance during statewide disasters that are not declared disasters by the U.S. President
- ▶ The plan was coordinated with the Arizona Division of Emergency Management and complements the State of Arizona Emergency Response and Recovery Plan.
  - ▶ The Bar’s Plan was evaluated after the Yarnell Fire and enhanced.
  - ▶ No board action is required.
- Succession Planning Task Force Report**—Hon. David Derickson
- ▶ The State Bar of Arizona formed the Succession Planning Task Force in fall 2013 to make recommendations for dealing with a law practice if the lawyer dies, retires or becomes incapacitated or otherwise abandons the practice and either has failed to appropriately close or has a plan for closing it.
  - ▶ After studying the issue and taking into account local and national procedures, legal and ethical obligations, and available resources, the Task Force recommends that the State Bar

- adopt a multifaceted approach:
- ▶ Propose a rule that clearly obligates all members to plan for their termination of or inability to continue a law practice;
  - ▶ Propose adding comments to the relevant Ethical Rules advising lawyers that they should not retain original or client-provided;
  - ▶ Educate State Bar members about the need for succession planning and give them the tools to do so. To accomplish this, the State Bar should:
    - ▶ Endorse a State Bar handbook on planning that includes an extensive set of forms to help lawyers plan for ending their practices or for their practices to be closed in their absences, whether due to expected or unexpected circumstances.
    - ▶ Make a concerted effort to educate all lawyers—no matter the age, experience level or practice setting—about the need to plan for ending their legal careers, including designating a successor who could step in and handle

- the lawyer’s practice if necessary.
- ▶ Propose streamlining and clarifying the Supreme Court rules under which a conservatorship may be imposed on the practice of a lawyer or former lawyer;
  - ▶ Propose requiring financial institutions that wish to host client-trust accounts to accord sufficient credence to conservatorship orders; and
  - ▶ Adopt a plan for dealing with client files and documents in the State Bar’s possession that by existing State Bar policy have been deemed non-destructible.
  - ▶ The Succession Planning Report is an extensive 177 pages and will be on the June agenda for the Board of Governors’ action.
  - ▶ The board directed that the report be circulated for members comment.
- ▶ **Meeting adjourned.**
- Meeting Schedule**—The full schedule is posted on the Bar’s website: [www.azbar.org/aboutus/leadership/boardofgovernors/meetingschedule](http://www.azbar.org/aboutus/leadership/boardofgovernors/meetingschedule)

NEWS FOR MEMBERS

PROFESSIONAL VOLUNTEER OPPORTUNITIES

The State Bar Appointments Committee is currently accepting applications from active members in good standing to fill the following upcoming vacancies. Application forms are due at the State Bar office by **Wednesday, August 27, 2014**, and may be obtained by calling Nina Benham in the State Bar’s Phoenix office at (602) 340-7329. An application form also may be downloaded from the Bar’s website [www.azbar.org](http://www.azbar.org) (click on: For Lawyers/Sections and Committees/Committees/Appointments).

The Standing Appointments Committee and the Board of Governors consider all aspects of diversity in their recommendations and appointments.

**Arizona Supreme Court Committee on Character and Fitness**

**Application Deadline: Wednesday, August 27, 2014**

**Purpose:** The committee members are responsible for the investigation and recommendation of applicants for admission to the practice of law in Arizona. Committee members review applications and attend hearings for further investigation of applicants.

**Openings:** Two appointments may be made by the Arizona Supreme Court to fill one attorney and one non-attorney position. The State Bar

Board of Governors is asked to submit three nominations per opening to the Court for its ultimate selection.

**Candidate Criteria/Qualifications:** Committee members must possess the time, skill and patience to review confidential detailed reports of background investigations into financial, criminal, civil, employment, disciplinary and academic matters. Committee members must have the ability to marshal and present evidence, examine witnesses and write clear, concise and well-reasoned findings and recommendations when required. Committee members must under-

stand the importance of applying the Supreme Court Rules pertaining to this process consistently and fairly. Communication with Court staff and other Committee members is encouraged and expected. Applicants should describe prior experience with regulation or discipline of professionals, and their views on the observance of an attorney’s professional ethical obligations, **on their application.** Applicants who currently serve or have served within the past two years as law school faculty (including adjunct) at one of Arizona’s accredited law schools shall not be considered if such service could

give rise to significant conflicts of interest regarding their duty to the Supreme Court to review and evaluate the character and fitness of current or former students.

A petition to modify Committee processes was filed in January 2014, and is pending before the Arizona Supreme Court. The Court may modify current investigation and hearing processes, and may determine that additional members need not be appointed at this time. Court modification may change the type and amount of work conducted by committee members. Under the current process, the Committee

conducts at least one formal hearing/meeting monthly in Phoenix and members are expected to participate in each hearing. Members must also participate in one or more panels per month held throughout the state on an as-needed basis. In addition, each member is assigned several applicant files for independent review each month. Currently, including file review and hearings/ meetings, members devote an average of about 25 hours per month to their committee responsibilities. Mileage is paid for any members residing outside Maricopa County, but there is no other compensation for service as a committee member.

**Term:** Initial term of four years, with the possibility of reappointment.

**Arizona Supreme Court  
Committee on  
Examinations**

**Application Deadline:  
Wednesday, August 27, 2014**

**Purpose:** The committee members oversee the Uniform Bar

Examination, MBE, MPRE, and grading and administration of all test components, and proctor the February and July exams. In addition, Examiners are responsible for the performance of the graders (12,000 essay answers per year) and for the formula and weighting of the components of the required Bar Examinations.

**Openings:** One appointment will be made by the Arizona Supreme Court. James Drake, Jr. (Secretary of State’s Office) is completing his term and is ineligible for reappointment. The State Bar Board of Governors is asked to submit three nominations per opening to the Court for its ultimate selection.

**Candidate Criteria/Qualifications:** Applicants should familiarize themselves with Supreme Court Rules 33 and 35, which establish the duties of the committee. Committee members must possess the time, skill and patience to fulfill the responsibilities of committee members,

including review, organization and grading of confidential bar examination materials. It is important to apply the Supreme Court Rules pertaining to this process consistently and fairly. Communication with Court staff and other committee members is encouraged and expected. Applicants should describe prior experience with regulation or testing of professionals, and their views on professional ethical obligations, **on their application.** Applicants for membership on the committee who currently serve or have served within the past two years as law school faculty (including adjunct) at one of Arizona’s accredited law schools or as tutors or faculty for bar review courses will not be considered if such service could give rise to significant conflicts of interest regarding their duty to the Supreme Court to review or grade the examinations of their current or former students.

Committee members are expected to attend and participate both days

of each bar examination, held the last consecutive Tuesday and Wednesday of February and July. Members must also participate in grading calibration sessions and attend committee meetings held throughout the year. Mileage is paid for any member residing outside Maricopa County, but there is no other compensation for service as a committee member.

**Terms:** Initial term of four years, with the possibility of reappointment.

**City of Phoenix Judicial  
Selection Advisory Board**  
**Application Deadline:  
Wednesday, August 27, 2014**

**Purpose:** The Judicial Selection Advisory Board (JSAB) seeks out and encourages qualified individuals to apply for the office of Judge of the Phoenix City Court. The JSAB conducts investigations into the background and qualifications of said individuals/applicants and submits recommendations regarding candidates for appointment or

reappointment to the office of Judge of the City Court or Chief Presiding Judge to the Mayor. The Mayor thereafter convenes the City Council for the purpose of interviewing all candidates recommended.

**Openings:** One. Margarita Silva (M Silva Law Firm, Phoenix) is completing her second term and,

pursuant to a Board of Governors' policy, is ineligible for reappointment. The Board of Governors is asked to submit three nominations per opening to the Mayor for his ultimate selection.

In addition to one active member of the State Bar, the other JSAB members are: the Presiding Judge of the Maricopa County Superior

Court (or designee); an Appellate Court Judge (appointed by the Chief Justice of the Arizona Supreme Court); and the following who reside in the City of Phoenix—a member of the Maricopa County Bar Association (appointed by the Mayor from among three nominees), and three public members who are not city employees (appointed by the

Mayor subject to the approval of the City Council).

**Criteria/Qualifications:** Applicants must be active members of, and in good standing with, the State Bar of Arizona and reside in the City of Phoenix.

**Length of Term:** Three years beginning December 2014.

## PEOPLE, PLACES, HONORS & AWARDS

SALONE



BUTLER-CHRISTENSEN



Mary Jo Salone joined The Butler Law Office as Of Counsel. She focuses her practice in estate planning, wills and trusts.

Also joining the office, as an associate, is Mindy Butler-Christensen. She practices in the firm's estate planning, wills and trusts practice group.

GLASSMAN



Ryley Carlock & Applewhite announced that former Tucson City Councilman and Interim Town of Cave Creek Manager Rodney Glassman joined the firm to lead its External Affairs and Government Relations practice.

His practice focuses on providing private sector, public sector, and non-profit clients with

## PEOPLE

government relations, external affairs, community relations, and legal consulting.

DEL VECCHIO



LUKACSIK



Bishop Law Office PC (formerly Bishop & Martin Law Office) welcomed Allyson Del Vecchio and Heidi Lukacsik as partners with the firm. They will continue their practice emphasis in divorce and family law. The firm also offered a sad farewell to Kristen A. Martin as she departs with her husband for their life together in North Carolina.

SALERNO



Thomas J. Salerno joined Gordon Silver as a shareholder and administrative partner in charge of the Phoenix office. He is a member of the firm's Business Restructuring & Bankruptcy practice group.

Salerno concentrates his practice on representing distressed companies, acquirers and creditors in financial restructurings and bankruptcy proceedings, pre- and post-bankruptcy workouts, and corporate recapitalizations.

Michelle Guina Alarid joined the Phoenix office of Fennemore Craig as an associate. She will practice in the area of real estate.

Vincent M. Pecora was promoted to Senior Corporate Counsel of Viad Corp., an experiential services company headquartered in Phoenix. He advises the company on SEC and NYSE reporting and compliance issues, corporate governance, mergers and acquisitions, and

general contract law matters, and is licensed to practice law in the State of Michigan (2005) and in the State of Arizona (2011).



Attorney **Jennifer Mammano Ward** joined the Scottsdale office of the **Mountain States Employers Council (MSEC)**, assisting the employment and labor relations law team in providing MSEC members with legal advice, representation and training. She previously practiced in the areas of employee benefits and executive compensation.



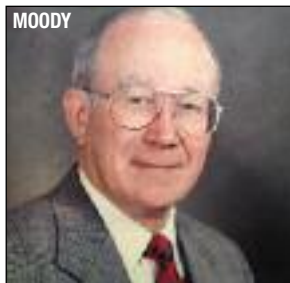
Litigation attorney **Jason M. Covault** joined the Phoenix law firm **Aiken Schenk Hawkins & Ricciardi PC**. He focuses his practice on serious personal injury claims, including medical negligence, elder abuse, catastrophic injury and wrongful death.

Covault is a member of the board of directors of the Arizona chapter of the American Liver Foundation, Desert Southwest Division.

**HONORS AND AWARDS**



**Emily G. Burns** is serving a second term as President of **Central Arizona Estate Planning Council**, a group of 200+ member attorneys, accountants, trust officers, financial planners and other related professionals. The council has been an active organization for more than 55 years and sponsors monthly educational programs for its members.



Attorney **Brent F. Moody** was honored at the State Bar Convention with his **50-year Certificate**, recognizing him for practicing law in Arizona for 50 years. Congratulating him and proudly following in his distinguished footsteps are his loving daughter and son, Hon. Brenda Moody Whinery and John W. Moody.

**Ryan B. Opel**, a shareholder with Gallagher & Kennedy, was elected to the office of Vice Chair, Nominating & Governance, for **The Phoenix Symphony Association**. He joined the Symphony's Board of Directors in 2012 and became Chairman of the Education and Community Engagement Committee in 2013.



**Scott H. Gan**, a shareholder of Mesch Clark & Rothschild PC, was elected a member of the **American Academy of Appellate Lawyers**.

Academy membership is limited to 500 members in the United States, and is by invitation only. Mr. Gan will be inducted as a Fellow at the Academy's meeting in Chicago in May.



**Carlyle ("Cary") Hall** was appointed to serve on the Corporate Advisory Board of the **Phoenix Children's Hospital Foundation**. He is a shareholder of the national law firm Polsinelli and Chair of the firm's products liability practice.

The **National School Boards Association's (NSBA) Council of School Attorneys** honored Arizona school board attorney **A. Dean Pickett** for exemplary service to school board clients and

the school law community at the 2014 Annual School Law Seminar.

Pickett, a founding member of the Arizona Council of School Attorneys, was a co-recipient of the NSBA's 2014 Award for Distinguished Service.



The **Mohave County Bar Association** gave its Community Service Award to **Deborah A. Liverence**, a solo practitioner focusing her practice in criminal law, domestic relations and juvenile law.

Her extensive history of volunteer works includes leadership of the Soroptomist International of Kingman and the Venture Club, as well as service for Sarah's House, a child and family advocacy center.

Tucson attorney **Ann M. Haralambie** became the first attorney in Arizona to be certified as a **Child Welfare Law Specialist**. She has been a Certified Family Law Specialist since 1993. The certification was offered in Arizona in the fall of 2013 after its acceptance by the State Bar of Arizona.

The **Scottsdale Bar Association** recently elected new officers and board members for 2014-2015. Officers are: **Monica Lindstrom**, President; **Kevin Estevez**, Vice President; **Ryan Lorenz**, Secretary; and **Lance Davidson**, Treasurer.

Directors are: **Donald Alvarez**, **Gail Barsky**, **Dean Dinner**, **Carolyn Goldman**, **Perry Goorman**, **Steve Guttell**, **Jamie Hanson**, **Cody Hayes**, **Paige Martin**, **Lynda Shely** and **Scott Zwillinger**. The association meets for lunch the second Tuesday of each month at Gainey Ranch Golf Club and features notable and interesting speakers.

In April, **Nussbaum Gillis & Dinner** was a Signature Sponsor of the **Scottsdale Center for the Performing Arts'** concert under the stars featuring Grammy Award-winning singer-songwriter Mary Chapin Carpenter with The Phoenix Symphony in Scottsdale Civic Center Amphitheater.

**RECENTLY DECEASED**

- Robert L. Beal, Jr.**, Tucson
- Robert L. Bluemle**, Burlington, Vt.
- James A. Mather**, Tucson
- William C. Penn**, Tucson