



BAR COMMUNITY

BOARD OF GOVERNORS MAY MEETING REVIEW

The State Bar of Arizona Board of Governors held its regular meeting May 20, 2016, in Phoenix. To see the complete minutes go to www.azbar.org/aboutus/leadership/boardofgovernors2015-2016/minutes.

► **President Geoffrey Trachtenberg** called the board meeting to order at 8:37 a.m.

► **President's Report**—Geoffrey Trachtenberg:

► Four bills that challenged the Bar in some fashion were defeated this session. CCO Rick DeBruhl and CEO John Phelps were thanked for their work representing the Bar.

► Reported that all incumbents were reelected to board service in the recent elections as well as a new member, Professor Kenny Hegland, elected from the Pima/Santa Cruz District. Election results will be certified at the June board meeting.

► **CEO/ED Report**—John Phelps:

► **Employee of the Quarter**—The board recognized Wendell Chin, Administrative Services Coordinator in the Tucson office. Mr. Chin and Southern Regional Office Manager Amy Ihrke have developed great relationships with the lawyers in Pima County and successfully replicate the services provided in the Phoenix office.

► **Convention**—Board members urged to encourage their colleagues to register for the Bar's flagship event (411 registrants compared to 520 last year at this time).

► **July Board of Governors Retreat** planning well under-way.

► **Flawless election process** concluded in five Board Districts. The online elections were handled by Carrie Sherman, Director of Board Operations.

► The State Bar of Arizona was recognized by the *Phoenix Business Journal* as one of the Valley's Healthiest Employers

(small company). The Wellness Program has now received three statewide awards since its inception.

► **Legislative Update**—Lobbyist Janna Day:

► SB1169—Mental health powers of attorney legislation, crafted by the State Bar's Elder Law, Mental Health & Special Need Planning Section, was signed by the Governor.

► HB2221, which would have split the Bar into mandatory and discretionary functions, was defeated.

► House Concurrent Memorial Resolution 2002 also failed, thanks to all those who contacted their elected officials.

► The board thanked Ms. Day for her outstanding efforts this session.

► **Appointments Committee**—Chair Jeffrey Willis:

► Board of Governors Public Member

► The Board of Governors interviewed three candidates for the public member opening on the board.

► After discussion regarding all three candidates the board voted via secret ballot.

► General Counsel John Furlong announced that John W. Gordon of Prescott would be the new public member replacing Meredith Peabody.

► **Client Protection Fund Board of Trustees**

► **Motion:** Coming as a motion from the committee, requiring no second, passed unanimously to recommend the reappointment of James B. Penny (Law Office of James B. Penny LLC) to a second and final five-year term on the Client Protection Fund Board of Trustees.

► **Community Legal Services Board of Directors**

► The Appointments Committee recommended three candidates for the one opening on the CLS Board of

Directors. After discussion,

► **Motion:** Alex Vakula moved, Tyler Carrell seconded, and the motion carried unanimously to appoint Ms. Jennifer Holsman Tetreault (U.S. Foods Inc., Phoenix) to the CLS Board of Directors.

► **Finance and Audit Committee**—Chair David Byers: The Finance Committee had two items for action.

► **Reallocation of \$10 Dues to Client Protection Fund.** The Finance Committee recommended asking the Supreme Court to reallocate \$10 of the scheduled 2017 dues increase to the Client Protection Fund. The committee voted to recommend to the board that consideration of a deferral of the scheduled 2018 dues increases be postponed. Finance Committee recommends a wait-and-see approach. The reasons to delay a deferral are: Client Protection Fund payout amounts have not stabilized; penalty income is dropping; and the U.S. economy is uncertain.

► **Motion:** Coming as a motion from the committee, requiring no second, passed to ask the Court to reallocate \$10.00 of the scheduled 2017 dues increase to the Client Protection Fund. David Byers abstained from the vote.

► **Motion:** Dee-Dee Samet moved, Sam Saks seconded and the motion passed to request the Supreme Court to defer the scheduled 2018 dues increases to 2019. David Byers abstained from the vote.

► **Motion to amend:** Sam Saks moved to amend the motion to ask the Supreme Court to defer the scheduled 2017 dues increase. Motion to amend was not accepted.

► **Hotel del Coronado Contracts**

► Recommendation from the

RELIGIOUS LIBERTY LAW SECTION INITIAL MEETING

The initial meeting of the Religious Liberty Law Section of the State Bar of Arizona will be held on Monday, August 22, 2016, from noon to 1:00 p.m., in the CLE Center at the offices of the State Bar of Arizona, 4201 N. 24th Street, Suite 110, Phoenix, AZ 85016-6266. The Section's Executive Committee will be elected at the meeting. This is a brown-bag lunch meeting.

Finance Committee is to continue holding CLE by the Sea at the Hotel del Coronado for 2018, 2019 and 2020.

► **Contract financial value:** 2018 – \$432,203; 2019 – \$439,966; 2020 – \$447,729

► The sum of the three contracts requires board approval pursuant to adopted Financial Policies.

► **Motion:** Coming from the committee, requiring no second, passed unanimously to approve the 2018, 2019 and 2020 contracts with the Hotel del Coronado for the CLE by the Sea program in the dollar amounts stated above.

► **Client Protection Fund Annual Report**—Chair Charles Wirken: In 2015:

► 53 claims approved and paid against 26 lawyers for a total of \$409,000

► Operating expenses: staff/overhead \$140,000

► Fund received a total of \$100,544 in restitution, \$211,445 annual revenue from assessment and \$9,000 investment income = \$320,000

► Deficit is \$228,000

► Since this report the Trustees have had another quarterly meeting and paid out

additional claims.

- ▶ 50 claims currently pending with more being received; processing them as swiftly as possible.

▶ **Proposed Formation of Religious Liberty Law Section**—John Furlong and David P. Brooks:

- ▶ General Counsel John Furlong reviewed the supporting documentation submitted by the Ad-Hoc Committee working on the formation of a Religious Liberty Law Section. Mr. Furlong stated that all the requirements have been met:
 - ▶ At least 100 signatures of prospective members have been collected;
 - ▶ Section dues proposed;
 - ▶ Bylaws and Charter vetted and approved by the General Counsel.
- ▶ The Section organizers are aware of the restrictions imposed by *Keller* and agree to comply with *Keller* and the State Bar's related bylaws and political activities policy.

- ▶ **Motion:** Tyler Carrell moved, Paul Senseman seconded and the motion carried unanimously to approve the formation of the Religious Liberty Law Section.

▶ **State Bar's Proposed Pro Bono Initiative**—Geoffrey M. Trachtenberg:

- ▶ President Trachtenberg proposed the formation of a State Bar-led Pro Bono program that would connect lawyers with clients looking for legal services while not disrupting other organizations' current LRIS and volunteer programs.
- ▶ To participate, an attorney would first need to handle a pro bono case.
- ▶ He would work on this initiative during his year as Immediate Past President.
- ▶ Supreme Court rules have been amended that provide for the unbundling of legal services. Training and CLE would be provided to members to navigate opportunities to provide limited scope representation.

- ▶ The recommendation would be for CEO/ED John Phelps to create a program proposal and draft budget for the board's consideration.

- ▶ Only 1,325 attorneys reported pro bono hours during 2015; average of 20 hours/attorney versus the aspirational goal of 50 hours. Data will be provided on the number of calls coming into the State Bar daily asking for a referral or legal assistance.

- ▶ **Motion:** David Derickson called for the question, Jeffrey Willis seconded and the motion carried unanimously.

- ▶ **Motion:** Alex Vakula moved, Audrey Jennings seconded and the motion carried over three dissents to charge CEO/ED John Phelps with creating a program proposal and draft budget for a State Bar pro bono initiative to include a Lawyer Referral Service and possible other related programs for the board's consideration.

▶ **Consent Agenda**

- a) Approval of April 15, 2016

Board of Governors meeting minutes

- b) Resignations in Good Standing
- c) Reinstatement to Practice of Members suspended for Non-Compliance with MCLE Requirements (Rule 45, ARIZ.R.S.Ct.)
- d) Dues Waivers—May 2016
 - ▶ **Motion:** Tyler Carrell moved, Dee-Dee Samet seconded and the motion carried unanimously to approve the Consent Agenda as presented.

▶ **Changes in Concept to Ethics Committee Charter**—Geoffrey M. Trachtenberg, Lisa Loo and Steve Hirsch:

- ▶ Handout titled SBA Policy re Ethics Committee and Opinions
- ▶ Proposal to the board to change the Ethics Committee to (1) be compliant with the *North Carolina Dental Board* case, (2) be consistent in our ethics advice and regulatory action, and (3) deliver more

value to members.

- ▶ The following three items are the major changes in the policy:
 - ▶ The Chief Bar Counsel, or his/her designee, shall be a liaison to the Ethics Committee (in addition to SBA Ethics Counsel, who currently serves as liaison to the Ethics Committee)
 - ▶ Opinions of the Ethics Committee shall be provided to the board for final approval (up or down vote);
 - ▶ The Bar will regulate consistent with approved ethics opinions.

After an extensive discussion,

- ▶ **Motion:** Jimmie Smith moved, Jeffrey Willis seconded and the motion carried over two dissents to adopt the SBA Policy re Ethics Committee and Opinions.

▶ **Attorney Regulation Annual Report**—Chief Bar Counsel Maret Vessella:

- ▶ 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. The report may make recommendations on specific issues addressed by the Committee.

- ▶ Pursuant to Rule 46, ARIZ.R.S.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 2015 data regarding: Intake process; Investigative process; Attorney Discipline Probable Cause Committee case review; Presiding Disciplinary Judge case processing and disposition.
- ▶ The State Bar received 3,127 charges against lawyers in 2015.
 - ▶ 81 percent of charges were resolved in Intake. On average it took 27 days to resolve a charge.
 - ▶ 664 charges were sent on for a full screening investigation.

- ▶ The 664 charges were attributable to 391 lawyers.

- ▶ In 2015 the total number of charges were 3,127; number referred 664; number of lawyers investigated 391; percentage resolved in intake 81% with an average time for investigation of 200 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 554 charges not including the dismissal appeals.
 - ▶ 315 charges received a probable cause order.
 - ▶ 58 charges received an order of admonition (42 included probation)
 - ▶ 26 orders of restitution
 - ▶ 81 orders of diversion.

- ▶ The committee also reviewed 49 dismissal appeals.

- ▶ The committee may change State Bar recommendations. The recommended disposition of three charges was increased by the committee and 12 charges decreased.
- ▶ Pursuant to Rule 55, an attorney who receives an order from the committee may demand formal proceedings be instituted. Four committee orders were appealed in 2015:
 - ▶ Two orders of restitution were appealed; one dismissed and one still on appeal
 - ▶ Two orders of admonition were appealed; both resulted in an admonition (one lawyer)
- Presiding Disciplinary Judge
- ▶ 97 complaints were filed in 2015. Of those, 41 were direct consent agreements.
- ▶ Average time calculated from filing of formal complaint to final disposition by the Presiding Disciplinary Judge:
 - ▶ Contested cases: 131 days

- ▶ Default cases: 89 days
- ▶ Consent Agreements: 52 days
- ▶ Sanctions Ordered and Other Dispositions
 - ▶ 13 lawyers disbarred
 - ▶ 39 lawyers suspended
 - ▶ 25 lawyers reprimanded
 - ▶ 80 informal sanctions
 - ▶ 86 diversion orders/agreements
 - ▶ 186 instructional comments
- ▶ Looking Ahead – Current Trends
- ▶ Total charges received as of April 30 in:
 - ▶ 2015 – 1053
 - ▶ 2016 – 1170
- ▶ Total number of formal complaints filed as of April 30 in:
 - ▶ 2015 – 26
 - ▶ 2016 – 21
- ▶ **Arizona Attorney Magazine Survey**—Editor Tim Eigo:
 - ▶ Mr. Eigo summarized what was learned from the survey of readers regarding *Arizona Attorney Magazine*.
 - ▶ The survey is done every three years.
 - ▶ Readers want to talk about the

magazine.

- ▶ Takeaways: They have a sense of trust, they are engaged and find value in what they read and take action from what they have learned.
- ▶ The typical respondent is a 51-year-old white male with multiple practice areas.
- ▶ The electronic devices most commonly used for reading: a computer and smartphone.
- ▶ 96 percent of the attorneys read the magazine.
- ▶ Members on an average spend 37 minutes a month reading articles in the magazine and have read 4 out of 4 of the last issues.
- ▶ Topics of interest: Ethics articles rank number 1, followed by legal writing tips, and how-to stories on law practice issues.
- ▶ **2016 Board Retreat**—Director of Board Operations Carrie Sherman:
 - ▶ Reminded the board members to mark their calendars for the board retreat July 21-22 at the

Prescott Resort & Conference Center.

- ▶ Shelly Alcorn, CAE, will be the facilitator; presenter at various ABA meetings.
- ▶ Board self-assessment—Ms. Alcorn will send a short survey

in the next week. The survey is confidential and responses will be reviewed in the aggregate. Results will be discussed at the Retreat.

- ▶ **Adjournment**—12:15 p.m.

APRIL MEETING REVIEW

The State Bar of Arizona Board of Governors held its regular meeting April 15, 2016, in Phoenix.

- ▶ President Geoffrey Trachtenberg called the Board meeting to order at 8:30 a.m. and reported:
 - ▶ He attended the Western States Bar Conference in San Diego with CEO John Phelps. A great opportunity to meet other bars' representatives, to share and learn from others. Many states send all their board officers. Recommends expanding budget in the future to allow more officers to attend.
 - ▶ Arizona Asian American Bar Association Dinner—450

attended the sold-out April 14 event. President-Elect Lisa Loo was the keynote speaker. Her PowerPoint presentation will be shared with the board for their benefit.

- ▶ Arizona Supreme Court—The officers were invited to lunch with the Court during its annual retreat and discussed issues of mutual interest.
- ▶ **CEO/ED Report**—John Phelps:
 - ▶ Employee of the Quarter—Wendell Chin, Administrative Services Coordinator in the Tucson office, was unable to attend the Board meeting but will be introduced next month.

The Tucson office has two employees and provide outstanding service to the members in the Southern region.

- **Wills for Heroes**—In its 10th year, volunteers have prepared wills for approximately 3,000 first responders. The Bar has provided a technology refresh to replace aging computers and heavy printers. A volunteer's "to go" kit was displayed containing a portable computer/printer set up.

► **Discipline System Presentation on the Formal Process**—Hon.

William J. O'Neil, Presiding Disciplinary Judge:

- Purpose of attorney discipline is:
 - Protect the public
 - Maintain the integrity of the profession
 - Deter other lawyers from engaging in unprofessional conduct
- The Plan and its goals:
 - Transparency—Public participation; public access; public hearings; public rulings;

public awareness

- **Consistency**—*The Hearing Panel* (comprised of a volunteer attorney, a volunteer public member and the Presiding Disciplinary Judge may dismiss a complaint, order diversion or impose discipline as provided in the rules, and hears and rules on complaints, defaults, and reinstatements); *The Presiding Disciplinary Judge* is a Presiding Judge of a Court; rules on pretrial matters; presides over discipline, disability, reinstatement, and interim suspension hearings; rules on consent agreements; imposes reciprocal discipline. A member of each hearing panel
- **Swiftiness**—*In Processing*: All cases filed with the disciplinary clerk through 2015 are completed except cases on review with the Supreme Court; time from Formal Complaint to Final Order for all types of cases in 2013-88 days; 2014-96 days; 2015-91

days; average time from a Formal Complaint to Final Order for Contested Cases: 2013-179 days; 2014-151 days; 2015-131 days. *Most complaints originate* with clients and opposing clients. *Top reason for the problems:* (lack of) communication and diligence

- **Bar Charges**: "The State Bar shall evaluate all information coming to its attention in any form...alleging unprofessional conduct, misconduct or incapacity." Supreme Court Rule 55(a). A Bar charge is an allegation, which anyone may initiate.
- **Number of attorney discipline charges** (from non-lawyers) by year: 3,127 in 2015; 3,549 in 2014; 3,492 in 2013; 3,307 in 2012.
- Of the 14 appeals ruled on or appealed in 2015:
 - Panel increased the sanction three times.
 - Panel reduced the sanction one time.

- Panel sanction remained the same eight times. Appeals remain pending in two cases.

Judge O'Neil suggested that mentoring could only benefit attorneys in their professional careers.

► **Legislature Update**—Lobbyist Janna Day:

- There are a number of bills in the pipeline, including HB2221, which would split the Bar into mandatory and discretionary functions. All bills are on hold until the budget passes.
- SB1168, mental health powers of attorney legislation, crafted by the State Bar's Elder Law, Mental Health & Special Need Planning Section, passed out of the Senate. One final vote on the amendments before it is sent to the Governor.
- **Appointments Committee**—Chair Jeffrey Willis:
 - ABA House of Delegates YLD Position
 - The State Bar is allotted five

delegates due to its lawyer population size; one must be a Young Lawyer (35 years or younger). None of the current delegates fit this criteria.

- Delegate Thomas Ryan has graciously resigned so that a young lawyer could be appointed so the State Bar can comply with the ABA Constitution.
- Appointments Committee recommended Judith Davila, a young lawyer, who was among the applicants vetted in December for the two openings, prior to knowing that a young lawyer was required to fill one of the two openings at that time.
- **Motion:** Coming from the Appointments Committee and requiring no second, motion carried over one dissent to accept the resignation of Thomas Ryan and appoint previous applicant Judith Davila to serve as the young lawyer delegate among the State Bar's five ABA delegates.
- City of Avondale Judiciary Advisory Board
 - **Motion:** Coming as a motion from the committee, requiring no second, passed unanimously to recommend the following three nominees to the Avondale City Council for the one opening:
 - David Fuller, City of Phoenix Public Defender's Office
 - Vincent Creta, Creta Law Firm PLLC
 - Timothy Casey, Schmitt Schneck Smyth Casey & Even PC
- City of Mesa Judicial Advisory Board
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to recommend the following three nominees to the Mesa City Council for the one opening:
 - Kelly Kral, Dyer & Ferris LLC
 - Wade Swanson, Bar-S Foods Company
 - Ezra Clark, Clark Law Firm PC
- City of Peoria Judicial Selection

Advisory Board

- **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to recommend the following three nominees to the Peoria City Council for the one opening:
 - Garrett Olexa, Jennings Strouss & Salmon PLC
 - Jessica Cotter, The Law Firm of Jessica M Cotter PLLC
 - B. Kathleen Gilbertson, B. Kathleen Gilbertson PC
- Pima County Commission on Trial Court Appointments Applicants must reside in Supervisorial District 1; as three of the five lawyer-commissioners are registered Republicans, the maximum allowed under Arizona's Constitution, applicants must be registered in a different political party.
 - **Motion:** Coming as a motion from the Committee, requiring no second, passed over one dissent to send the following three nominees to the Governor for the one opening:
 - Suzanne Brei, Brei Dispute Resolutions LLC
 - Carrie Rednour, Rednour Law Offices PLLC
 - G. Micah Schmit, United States Attorney Office
- Pinal County Commission on Trial Court Appointments Applicants must reside in Supervisorial District 4; there is no applicant restriction with regard to one's political party affiliation.
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to forward the one applicant, Tiffany Shedd, to the Governor with an explanation as to why the board was submitting only one nomination for this particular opening.
- **Awards Committee**—Chair Lisa Loo:

The following slate of annual award recipients was presented:

 - Award of Appreciation (non-lawyer)
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously

passed to select Christine Iijima Hall, Ph.D., as the 2016 recipient of the Award of Appreciation.

- Award of Special Merit
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select Gary M. Kula as the 2016 recipient of the Award of Special Merit.
- Diversity and Inclusion Leadership Award
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select the Indian Legal Program at the ASU Sandra Day O'Connor College of Law as the 2016 recipient of the Diversity and Inclusion Leadership Award.
- James A. Walsh Outstanding Jurist Award
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select Hon. Andrew Klein as the 2016 recipient of the James A. Walsh Outstanding Jurist Award.
- Member of the Year
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select three recipients of the 2016 Member of the Year Award: Jodi Knobel Feuerhelm, Andrew Jacobs and Brian J. Pollock.
- Sharon A. Fullmer Legal Aid Attorney of the Year Award
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select Stanley Silas as the 2016 recipient of the Sharon A. Fullmer Legal Aid Attorney of the Year Award.
- Tom Karas Criminal Justice Award
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select John M. Sears as the 2016 recipient of the Tom Karas Criminal Justice Award.
- Michael C. Cudahy Criminal Justice Award
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select James Alan

Goodwin as the 2016 recipient of the Michael C. Cudahy Criminal Justice Award.

- Outstanding In-House Counsel of the Year Award
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select Nima Jacobs Kelly as the 2016 recipient of the first Outstanding In-House Counsel of the Year Award.
- Hon. John R. Sticht Disability Achievement Award
 - **Motion:** Coming as a motion from the committee, requiring no second, unanimously passed to select Edward L. Myers III as the 2016 recipient of the Hon. John R. Sticht Disability Achievement Award.
- President's Award
 - The President's Award does not go through the committee but is given at the discretion of the President. President Trachtenberg has chosen to honor Thomas M. Ryan and Alex H. Lane.
- **Rules Committee**—Chair Steve Hirsch:
 - a) Proposed Comment to R-16-0031, Petition to Delete Rule 20, to Add Rule 24.1 and to Renumber Rules 24.1, 24.2, 24.3, and 24.4, ARIZ.R.CRIM.P.
 - Would delete Rule 20 (Judgment of Acquittal) and move post-verdict provisions of that rule to new Rule 24.1 (Post-Verdict Proceedings); provisions for judgment of acquittal before verdict would be eliminated.
 - Criminal Prosecution Practice & Procedure supports the Petition.
 - Criminal Defense Practice & Procedure opposes the Petition.
 - Rules Review Committee recommended by a vote of 3–2 to take no position and to send both proposed comments to the Court.
 - After considerable discussion,
 - **Motion:** Jim Smith moved and Richard Coffinger seconded to send up both the Defense's and Prosecution's comments to the Court with support of the Defense position. Motion failed by a vote of 6–13.
- Motion:** Coming from the Rules Review Committee, requiring no second, to take no position and to send both proposed comments to the Court. Motion

- passed.
- b) Proposed Comments to R-16-0007, Petition to Amend Rule 8.4, ARIZ.R.CRIM.P.
- ▶ Would add to the list of exclusions of time from the computation of speedy trial limits a period of 30 days, if the delay under Rule 8.4(a) ends within 30 days of the speedy trial time limits, to allow time to schedule and prepare for trial.
 - ▶ Criminal Prosecution Practice & Procedure Committee supports the Petition.
 - ▶ Criminal Defense Practice & Procedure Committee opposes the Petition.
 - ▶ Rules Review Committee had no recommendation; Committee's vote was tied 2-2.
 - ▶ **Motion:** Richard Coffinger moved and Jim Smith seconded to send both the Defense's and Prosecution's proposed comments with support of the Defense position. Motion failed by a vote of 3-16.
 - ▶ **Motion:** Dee-Dee Samet moved, Tyler Carrell seconded and the motion carried to send both proposed comments to the Court without taking a position. Motion carried over one dissent.
- c) Proposed Comment to R-15-0038, Petition to Amend Rule 16.4, ARIZ.R.CRIM.P.
- ▶ Would require the trial court to ensure compliance with the prosecution's *Brady* and Rule 15.1(b)(8) disclosure obligations.
 - ▶ Criminal Prosecution Practice & Procedure Committee opposes the Petition.
 - ▶ Criminal Defense Practice & Procedure Committee did not submit a proposal but finds the Petition procedurally problematic.
 - ▶ Rules Review Committee recommended by a vote of 3-1 to take no position but send the Prosecution's proposed comment to the Court.
 - ▶ **Motion:** Coming as a motion from the committee, requiring no second, unanimously approved sending the Criminal Prosecution Practice & Procedures Committee's comment to the Court but to take no position.
- d) Comment to R-16-0013, Petition to Amend Rule 32 (filed April 1; information)
- ▶ Mr. Hirsch reviewed the comment and the schedule for the revised Petition, should one be filed by the Court, and the Bar's timing for a response, should the Board decide to provide a second comment.
- e) Past President's Position (information)
- ▶ Mr. Hirsch reported that this issue surfaced during the drafting of the Bar's comment to R-16-0013 (above). The Scope and Operations Committee reviewed the Bylaws and, based on their review and advice of counsel, decided the Bylaws give an immediate past president who is in his/her third year of an elected three-year term the right to vote. Geoffrey Trachtenberg and Jeffrey Willis had abstained from that vote at the Committee meeting.
 - ▶ **Consent Agenda**—President Geoffrey M. Trachtenberg:

- a) Approval of February 26, 2016 Board of Governors Meeting Minutes
- b) Resignations in Good Standing
- c) Reinstatement to Practice of Members suspended for Non-Compliance with MCLE Requirements (Rule 45, ARIZ.R.S.Ct.)
- d) 2014-2015 MCLE Suspensions
- e) Dues Waivers – March and April 2016
- f) Sole Practitioner & Small Firm Section Bylaws Changes
- g) Proposed Comment to R-16-0006, Petition to Amend Rules 41 and 42, ARIZ.R.FAM.L.P.
- h) Proposed Comment to R-16-0011, Petition to Amend ER 1.6(d), Rule 42, ARIZ.R.S.Ct.
- i) Proposed Comment to R-16-0027, Petition to Amend ER 1.2, Rule 42, ARIZ.R.S.Ct.
- j) Proposed Comment to R-15-0043, Petition to Amend Rule 11, ARIZ.R.S.Ct.
- k) Proposed Comment to R-16-0017, Petition to Amend Rule 5.1(a), ARIZ.R.S.Ct.
- l) Proposed Comment to R-16-0018, Petition to Amend Rule 49(a), ARIZ.R.S.Ct.
- m) Proposed Comment to R-16-0019, Petition to Amend Rule 10, ARIZ.R.S.Ct.; Rule 110, JUST.CT.R.CIV.P.
- n) Proposed Comment to R-16-0024, Petition to Amend Rule 7.6, ARIZ.R.CRIM.P.
- ▶ **Motion:** Alex Vakula moved, Patrick Greene seconded and the motion carried unanimously to approve the Consent Agenda as presented above.
- ▶ **Appointments Process Study Group**—Alex Vakula:
 - ▶ Met April 12 with Lori Higuera, Lisa Loo, John Phelps, Eadie Rudder, Carrie Sherman and Jeffrey Willis.
 - ▶ Reviewing the board's nomination/appointment process as well as the guidelines under which the Bar's Standing Appointments Committee operates. Looking at candidate criteria for the volunteer positions handled.
 - ▶ Report/recommendations to the board in the near future.
- ▶ **Judicial Appointments and Diversity on the Bench**—Mike Liburdi and Kate King:
 - ▶ Mike Liburdi, Gov. Doug Ducey's General Counsel, and Kate King, Gov. Ducey's Deputy General Counsel, summarized the Governor's process for making judicial appointments.
 - ▶ The judicial nominating commissions have been asked to recommend as many qualified candidates as possible. Seven were nominated for the recent Supreme Court vacancy.
 - ▶ The Governor looks for diverse backgrounds and experience among candidates, including distinguished legal accomplishments, integrity and respect for the separation of powers.
 - ▶ Finalists recommended by the judicial nominating commissions are asked to submit a writing sample, background checks are performed on the candidates and they are interviewed by a staff panel of four or five.
 - ▶ The Governor has made 18 judicial

appointments in the past 15 months:

- ▶ 1 Supreme Court Justice
- ▶ 1 Appellate Court Division One Judge
- ▶ 14 Maricopa County Superior Court Judges
- ▶ 2 Pima County Superior Court Judges
- ▶ 6 women appointed, 3 minorities appointed, appointments outside the party—highest numbers among Arizona's governors

- ▶ Outreach: Mr. Liburdi and Ms. King are traveling the state to speak to presiding judges in Yavapai, Pima and Yuma counties and Division Two of the Appellate Court. Mr. Liburdi was a panelist on one of the Collaborative Bar's programs. Meeting with AWLA in 2017.

▶ **Young Lawyers Division (YLD) Report—**

Tyler J. Carrell:

- ▶ Issues Facing Young Lawyers: Student loan debt; law school applications plummeting; depressed job market
- ▶ College costs increased 590 percent between 1980 and 2010; student debt growth up 500 percent between 1999 and 2011.
- ▶ Law School Debt: Arizona—\$100,902; ASU—\$106,426; Arizona Summit—\$178,263;
- ▶ Debt is non-dischargeable in bankruptcy, new payment options (income based); interest proposals
- ▶ LSAT scores are falling and bar exam passage rates are crashing. Some law schools are pushing for changes to the exam.
- ▶ Depressed Job Market
 - ▶ Lawyers per Capita in Arizona: 23.7 (about number 44 nationwide)
 - ▶ Underemployed
 - ▶ Many going solo
- ▶ Six Goals set forth in the 2016-2020 YLD Strategic Plan
 - ▶ Goal 1: Competency
 - ▶ Goal 2: Ethics
 - ▶ Goal 3: Professionalism
 - ▶ Goal 4: Administration of and Access to Justice
 - ▶ Goal 5: Professional Advancement and Success
 - ▶ Goal 6: Community Involvement

▶ **Finance and Audit Committee—**Steve Hirsch, Vice Chair on behalf of Chair Dave Byers:

- ▶ Q-1 2015 Financials: The State Bar is on track. Surplus is \$476,000 compared to a budget of \$206,000 (variance of \$270,000, and compared to \$620,000 in 2015 (variance of \$144,000).
- ▶ Dues penalties are \$90,000 less than anticipated. As of March 31, 2016, fewer members have paid late fees in comparison to the same time period last year.
- ▶ 2015 Combined Audit of State Bar of Arizona and Client Protection Fund
 - ▶ Auditor Eide Bailly addressed the clean audits at the recent Finance and Audit Committee meeting. Management letters

provided to the board. Staff commended for facilitating smooth process.

- Reporting 2015 year-end operating surplus of \$1,209,082 excluding sections. The State Bar Cash Reserve Policy requires that any cash surplus that exists at year end be added to a reserve account.
- Finance and Audit Committee recommendation: e Cash Reserve and Capital Reserve.
- **Motion:** Patrick Greene moved, Jimmie Smith seconded and the motion carried unanimously to equally split the 2015 year-end surplus of \$1,209,082 between the Cash Reserve and Capital Reserve Accounts.
- **Strategic Planning Committee**—President-Elect Lisa Loo:
 - YLD President Tyler Carrell had also made a presentation on the YLD's Strategic Plan to the Committee. The Committee is working to integrate the YLD's Plan with the State Bar's Strategic Plan. Mentoring is an important initiative in both Plans.
- **Communications/Government Relations Division**—CCO Rick DeBruhl:
 - Launch of the new revised version of the website is scheduled the week of April 18.
 - Responsive to more smartphones and tablets.
 - "Scrolling" ability.
 - Main toolbar remains in place for easier navigation.
 - In-house project saved time and money. Connie DeCinko, the Bar's Programmer Analyst, recognized.
- **2016-2017 President's Year**—President-Elect Lisa Loo:
 - 2016-2017 board meeting schedule provided.
 - Board retreat: Prescott Resort & Conference Center, July 21-22. Focus on governance issues.
 - Convention: Noted the first Practice Toolkit Track designed for new lawyers. Free professional headshots available.
 - Standing committee appointments: Outreach begun with Bar committees regarding the importance of adhering to term limits in order to allow the opportunity for other talented lawyers, including young lawyers, to perform Bar service.
- **Board Section Liaison Report**—President Geoffrey Trachtenberg:
 - Board members began reporting out on the activities of the Sections to which they were assigned liaison roles.
- **Adjournment**—12:45 p.m.
- **Obituaries**

To honor our members who have passed, a webpage has been created and will be posted at www.azbar.org/NewsEvents/InMemoriam.
- **Meeting Schedule** – The board meeting schedule is posted on the Bar's website: <http://www.azbar.org/aboutus/leadership/boardofgovernors2015-2016/meetingschedule/>

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 **Friday, Wednesday, September 7, 2016**, and can be obtained by calling Nina Benham in the State Bar at (602) 340-7329. An application form also may be downloaded from the Bar's website 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, September 7, 2016

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 all applications which total approximately 1,200 per year and attend hearings for further investigation of applicants.

Openings: One appointment will be made by the Arizona Supreme Court. 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 understand 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 their current or former students.

The committee conducts at least one formal hearing monthly in Phoenix. Members are expected to participate in each formal hearing. Members must also participate in one or more informal hearings 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. Between file review and hearings/business 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 appointment of four years, with the possibility of reappointment.

**Arizona Supreme Court Committee on
Examinations**
Application Deadline: Wednesday, September 7, 2016

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. Additionally, 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. 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 also must 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.

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

PEOPLE, PLACES, HONORS & AWARDS



Jennings Haug & Cunningham, Phoenix, announced it had added **Jennifer Erickson** as a partner and **Shawdy Banihashemi** as an associate, expanding the firm's insurance defense practice.

Erickson has more than 20 years of experience representing personal and commercial line insurance carriers in coverage, first-party and bad-faith matters, as well as representation of insureds in third-party tort matters.

Banihashemi's practice includes general insurance defense litigation and coverage work. She also has substantial criminal defense experience and is an adjunct professor at Arizona Summit Law School.



Kurt A. Peterson joined **Andante Law Group**, Scottsdale, as partner. He has practiced in the areas of commercial finance, real estate and general business law for nearly 30 years. He also has a commercial banking and finance practice, in which he represents national, regional and community banks and other institutional and private lenders.

Kristy Peters, an attorney in the Phoenix office of employment and labor law firm **Littler**, was elevated to shareholder effective January 1. She represents and counsels employers regarding matters arising under state and federal laws such as discrimination issues, unfair competition, trade

secrets, the Legal Arizona Workers Act, Title VII of the Civil Rights Act, the Family and Medical Leave Act, among others.

Gary Verburg was elected partner at **Gust Rosenfeld PLC**, Phoenix, in January. He joined the firm in May 2014, after serving as City Attorney for the City of Phoenix from 2005 to 2014.



Law Offices of Robert E. Wisniewski PC, Phoenix, announced that workers' compensation attorneys **Chris Gulinson** and **Benjamin F. Manion** joined the firm.

Jaburg Wilk, Phoenix, announced that **Micalann C. Pepe** joined the firm's insurance law practice. She primarily practices in the areas of insurance coverage and bad-faith litigation. Her practice also includes commercial litigation, civil litigation, and white-collar criminal defense.

HONORS AND AWARDS



Fay Waldo was elected President of the Arizona Chapter of the **Turnaround Management Association (TMA)**, an international organization of professionals, lenders, and investors who provide a broad range of services to financially distressed or growing companies. She is the youngest president ever elected to any TMA chapter.

At **Andante Law Group**, Scottsdale, Waldo's practice is focused on restructuring, bankruptcy, and business transactions and litigation in both federal and state courts.

LEACH



Steven Leach was elected as Chair-Elect of the **Fiesta Bowl Board of Directors** for the 2016-2017 season. A partner at Jones Skelton Hochuli PLC, Phoenix, he started out as a volunteer in 2006 and has held various leadership positions within the Fiesta Bowl Committee. He was recognized as the “Rookie of the Year” during his first year, and later served as the Chair of the Yellow Jacket Committee for the 2010-2011 season. In 2011, he was invited to the Fiesta Bowl Board of Directors. After serving this year as Chair-Elect, Leach will be Chair of the Fiesta Bowl Board of Directors for the 2017-2018 season.

MUSCHEID



Ballard Spahr partner **Kendis Key Muscheid** was presented with the **Arizona Foundation for Women (AFW)** Marilyn R. Seymann Award on April 14 at its 20th Anniversary Awards Luncheon, held at the Westin Kierland Resort and Spa in Scottsdale, Ariz. The AFW’s mission is to mobilize the community’s power and resources to meet the unmet needs of women and children and enable long-term solutions by focusing on Safety, Health, and Economic (SHE) empowerment to benefit every Arizona woman and child.

Muscheid has an extensive practice in tax-exempt organizations.

BULLINGTON



Stephen Bullington was inducted as a Fellow of the **American College of Trial Lawyers**. He has been a Partner with Jones Skelton & Hochuli PLC since 1997, practicing in medical malpractice and health care defense.

The **Scottsdale Bar Association** recently elected new officers and directors for the 2016-2017 year.

Officers are: **Ryan Lorenz**, President; **Lance Davidson**, Vice President; **Perry Goorman**, Secretary; **Charles Berry**, Treasurer.

Directors are: **Donald Alvarez**, **Gail Barsky**, **Dean Dinner**, **Carolyn Goldman**, **Steve Guttell**, **Monica Lindstrom**, **Cody Hayes**,

Denise Blommel, **Coni Rae Good**, **Steve Kupiszewski**, **Callie P. Maxwell**, **James Padish**, **Paige Martin** and **Kevin Estevez** (immediate past-president).

Quarles & Brady LLP announced that Phoenix partner **David E. Funkhouser III** was appointed to the **Special Olympics Arizona Board of Directors**. A longtime advocate and volunteer for the organization, he helped to found the Special Olympics Advocacy Resources Program in 2011, which seeks to provide SOAZ athletes with increased access to legal representation, providing them with advocacy support as well as training, and life skills development.

At the firm, he handles complex commercial litigation matters, where he focuses his practice on trust, estate, and probate litigation and other business disputes.

Angela Kebric Paton, attorney and policy advisor to Arizona Corporation Commissioner Bob Burns, was

chosen by the **National Association of Regulatory Utility Commissioners (NARUC)** to participate in a U.S. Department of State-sponsored peer review with the Electricity Regulatory Authority of Vietnam. She will deliver expert presentations on the topics of renewable energy and transmission planning, and participate in group discussions to help the country improve its grid, enhance market efficiency and consumer protection, and encourage private investment in generation and transmission.

Prior to her role as policy advisor, she worked as an Assistant Attorney General in the Arizona Attorney General's Criminal Appeals and Capital Litigation Division.



Booker T. Evans, Jr., a white-collar criminal defense attorney and commercial litigator at Ballard Spahr LLP, was honored by the **Student Bar Association of the William S. Boyd School of Law at the University of Nevada** with its Legacy of Advocacy Award at the Barristers Ball.

In April, Evans was also named a 2016 Community Luminary by the **State of Black Arizona**.

He and nine others were recognized at a Community Luminary Ceremony.

Fennemore Craig attorney **James Goodnow** was featured on the March cover of the *American Lawyer* for a special issue on Millennials and how cross-generational leadership dynamics are changing the landscape of law firms nationwide.

RECENTLY DECEASED

Margaret A. Gillespie, Phoenix

John Kapacinskis, Minneapolis, Minn.

Jacob C. Robertson, Phoenix

Thomas W. Rouse, Phoenix

William E. Smith, Scottsdale

Herbert T. Swafford, Phoenix



PEOPLE ITEM SUBMISSIONS

Send items for the People column to
arizona.attorney@azbar.org.

Items run free of charge, but because we receive many submissions, we cannot guarantee when an item will run.

If you also send a photo with the item, we try to use it, depending on that month's space and the photo quality (high-resolution required).

