



BAR COMMUNITY

BOARD OF GOVERNORS JANUARY MEETING REVIEW

The public meeting of the State Bar of Arizona's Board of Governors was held January 26, 2018, in Phoenix, Arizona, at the State Bar offices.

- ▶ President Alex Vakula called the board meeting to order at 8:35 a.m.
- ▶ **Call to the Public**—President Vakula made a Call to the Public. Mr. Jack Levine was the only guest present who requested, and was granted, time to address the board.
- ▶ **President's Report**—Alex Vakula:
 - ▶ Announced that Pouria Paknejad submitted his resignation, effective February 1, 2018; he is moving to California to be closer to family. Presented Mr. Paknejad with a memento and the board thanked him for his service to the Bar.
 - ▶ Attended the Arizona Judicial

Council (AJC) meeting, which had a very aggressive agenda that handled 10 substantive items.

- ▶ Convention planning going well
- ▶ Bylaws Review Working Group held its first meeting
- ▶ **Fred T. Korematsu Recognition**—President Vakula turned it over to Lisa Loo, Immediate Past President, who spoke about the national movement in a number of states to recognize Fred Korematsu, an American civil rights activist who objected to the internment of Japanese Americans during World War II via Executive Order 9066, which authorized the removal of individuals of Japanese ancestry living on the West Coast from their homes and their mandatory imprisonment in internment camps. Korematsu instead

challenged the order. The legality of the internment order was upheld by the Supreme Court and has never been explicitly overturned.

Mr. Korematsu received the Presidential Award of Freedom. On Tuesday, January 30, the Asian American Community celebrated his birthday and the Fred Korematsu Day of Civil Liberties and the Constitution, first observed in 2011 on his 92nd birthday. The Fred T. Korematsu Institute was founded in 2009 to carry on Korematsu's legacy as a civil rights advocate by educating and advocating for civil liberties for all communities.

- ▶ **Uniform Law Commission**—Hon. Sam Thumma and attorney Tim Berg:
 - ▶ The Commission drafts non-partisan legislation that brings clarity to state statutory law

mostly in the areas of business and family law.

- ▶ The Study Committee researches a subject matter and recommends whether drafting should be undertaken. The Drafting Committee undertakes drafting a specific uniform or model act for consideration. Product could take up to three years.
- ▶ Recent accomplishments: LLC Act, Registration of Virtual Currency Act and Model Veterans' Treatment Court Act
- ▶ Study Committee considering: adverse possession; data breaches; electronic registry for electronic mortgage notes; tort law re drones; Tribal Probate Code; criminal trial records accuracy, and more.
- ▶ **Communications/Government Relations Division**—Legislative Report—Janna Day, Lobbyist,

and Rick DeBruhl

- ▶ Requested ratification on work being done to oppose HB2119, which is the same bill that was run last year and the Bar opposed it.
- ▶ **Motion:** Dee-Dee Samet moved, Pouria Paknejad seconded and the motion carried unanimously to continue to oppose HB2119 at the Legislature.
- ▶ Reviewed the hearing before the House Judiciary Committee on HB2119 that would bifurcate the Bar. Bill passed out of Committee and was sent to the Rules Committee, with no hearing scheduled to date. Bills must be out of Committees by February 12.
- ▶ Discussion regarding the Supreme Court's survey that it sent to membership.
- ▶ Dave Byers reminded the board that the survey was an information-gathering tool from the Court. He shared that the Arizona Judicial Council has opposed HB2119.

- ▶ Two proactive Bar bills:
 - ▶ HB1353 modernizing the Limited Liability Corporation Statutes – Business Law Section worked on the proposal for six years
 - ▶ SB1204 Probate and Trust Law Section's Bill; waiting for a hearing in the House
 - ▶ Senator Bob Worsley is sponsoring both of these bills.
- ▶ **Appointments Committee—** Chair Jessica Sanchez:
Board of Legal Specialization (BLS)
 - ▶ Pursuant to recent changes to ARIZ.R.S.Ct. 32(d) and Rule 44 governing the BLS, the State Bar Board of Governors now sends nominations to the Court and the Court makes the appointments. The Appointments Committee recommended four candidates to fill an unexpired term of a public member: Robert J. Denison, Tucson (ranked first among candidates) followed by (in no particular order) Kimberly Heldt of Mesa, Abe W. Lai of

Tucson, and Chris Pfund of Phoenix. The board concurred with the committee's recommendations and voted unanimously to forward the four nominations as indicated to the Supreme Court for its consideration and ultimate appointment to fill the BLS public member vacancy.

Board of Governors, District 5 Seat:

- ▶ Interviewed the four finalists recommended by the Appointments Committee:
 - ▶ Sandra Bensley, Waterfall Economidis
 - ▶ Michael Crawford, Mesch Clark & Rothschild PC
 - ▶ Doreen McPaul, Pascua Yaqui Tribe
 - ▶ James Susa, DiConcini McDonald Yetwin & Lacy PC
- ▶ **Motion:** Benjamin Taylor moved, Jessica Sanchez seconded and the motion to go into Executive Session at 10:50 a.m. to discuss the candidates carried unanimously. All staff

left the room with the exception of CEO John Phelps and General Counsel Lisa Panahi.

- ▶ Returned from Executive Session at 11:10 a.m. where the Board proceeded to vote by secret ballot. Board Secretary-Treasurer Lori Higuera counted the votes along with Ms. Panahi and Mr. Phelps.
- ▶ President Vakula announced that Doreen McPaul had been appointed to fill the District 5 seat on the Board of Governors.
- ▶ The board was provided with the names of the Supreme Court's appointments to its Committee on Character and Fitness and its Committee on Examinations, thus completing the process the Appointments Committee had undertaken to provide recommendations to the board, which submitted nominations to the Court last Fall.
- ▶ **Judicial Nominating Commission Appointments Process—** John Phelps:

- ▶ The Appointments Committee was created in 1988. Technical changes to the Guidelines included removal of term limits for the Bar's five ABA Delegates that the board previously approved.
- ▶ The State Bar has two constitutional mandates: providing Arizona's governor with nominations to the Appellate and Trial Courts Judicial Nominating Commissions (JNCs)
- ▶ Executive Council asked staff to prepare draft policy changes for the board's consideration.
- ▶ John Phelps offered a draft for review by the board that included identifying specific criteria for nominees as well as policy for sending nominees to Governor's Office.
- ▶ Suggested candidate criteria proposed included:
 - legal (or trial) experience
 - other relevant experience
 - diversity criteria
 - family court experience
- ▶ Jim Smith favored creating a board committee that would

handle the recruitment and screening of the JNC candidates and making recommendations to the full board.

- ▶ Staff was directed to take into account board discussion and provide multiple options for consideration at the next board meeting.
- ▶ **Consent Agenda:**
 - ▶ Approval of Dec. 8, 2017, board meeting minutes
 - ▶ Approval of Resignations in Good Standing
 - ▶ Approval of Reinstatements of Members Suspended for Non-Compliance with: MCLE Requirements, Rule 45, ARIZ.R.S.C.T.; Annual Membership Dues and/or Trust Account Compliance (Rule 32(c)(10) and/or Rule 43, ARIZ.R.S.C.T.); Dues and/or late=fees waiver requests.
 - ▶ MCLE Suspension List updated Jan. 26, 2018
 - ▶ President Vakula asked if there was anything to come off the Consent Agenda.
 - ▶ A request was made to pull the

December 8 board minutes.

- ▶ **Motion:** After discussion and clarification of the board's previous vote on the matter, Tyler Carrell moved, Jeff Willis seconded and the motion carried unanimously to amend the December 8 minutes on page 3648 to reflect that the ARIZONA ATTORNEY EDITORIAL BOARD would be appointed by the president.
- ▶ **Motion:** Tyler Carrell moved, Paul Senseman seconded and the motion carried unanimously to approve the Consent Agenda as amended.
- ▶ **Convention 2018 – Silent Auction Charity Selection—** John Phelps and Lisa Deane:
 - ▶ Two responses were received to the RFP sent out to law-related charities to host a silent auction at the Convention:
 - ▶ Defenders of Children
 - ▶ Kingman Aid for Abused People
 - ▶ The board discussed both groups.
 - ▶ **Motion:** Dec-Dec Samet

moved, Brian Furuya seconded and the motion carried unanimously to select Kingman Aid for Abused People as the 2018 Silent Auction Charity at the upcoming Convention.

- ▶ **Finance and Audit Committee—** Brian Furuya and Kathy Gerhart:
 - ▶ Draft December Financials presented. The year-end audit surplus estimated at \$800,000
 - ▶ Audit scheduled to begin the week of February 19.
 - ▶ Reviewed two engagement letters from Eide Bailly to audit the consolidated financial statements of the State Bar of Arizona and Client Protection Fund.
 - ▶ **Motion:** John Gordon moved, Jeffrey Willis seconded and the motion carried unanimously to approve the proposed Public Records Fee Schedule.
 - ▶ Tyler Carrell mentioned discussion at the F&A Committee meeting regarding members who are active military and

recommended that the Bar determine how many members are in that category and to consider a dues waiver for those members. Staff was asked to look into this and report back to the board.

► **Legal Force Litigation**

Update—Lisa Panahi and John Phelps:

- In late December a lawsuit was filed against the Arizona, California and Texas State Bars, along with LegalZoom and the U.S. Patent and Trademark Office (USPTO), by attorney-run Legal Force, an online patent preparation company.
- The suit was filed and is pending in the Northern District of California.
- Complaint alleges that it was brought to “expose willful and systematic acts of unauthorized practice of law,” and unfair competition by LegalZoom with respect to the preparation and filing of trademark applications before the USPTO.
- Two counts against the Bar

allege:

- Arizona’s ethical rules prohibit Plaintiff from operating as a trademark filing service similar to LegalZoom (which is not a law firm) and
- State Bar has engaged in the unreasonable restraint of trade by failing to enforce unauthorized practice of law (UPL) rules against LegalZoom.
- Arizona Bar has retained Dan Goldfine and his team at Lewis Roca Rothgerber Christie
- Filed a Stipulated Extension to Respond to Complaint by February 20, 2018.
- **Arizona Supreme Court**—Dave Byers:
 - Referenced Chief Justice Bales’ letters to House Speaker Mesnard and Senate President Yarbrough, which predate the filing of HB2119, which addressed issues the Legislature has articulated about the State Bar.
 - Noted Chief Justice Bales’ email to the membership along

with the Court’s survey, which garnered a high response rate, with 1,550 comments provided. WestGroup Research hired to handle the survey as the Court does not have the resources to do so. Information to be compiled in about three weeks and shared with the board for future discussion.

► **CEO/ED Report**—John Phelps: Recognized:

- Employee of the Quarter—Octavius Garrett, Accountant II, took on additional duties related to annual budget preparation, dues processing, cash receipts and accounts payable and increased his role in managing capital project procurement.
- Employee of the Year—Roberta Tepper, Lawyer Assistance Programs Director, directed several special projects including drafting the Bar’s new Public Meetings and Public Records Policies and training staff on the new procedures.
- Carol Lloyd, Business Analyst,

was remembered and honored with a Celebration of Life ceremony.

- John Furlong, former General Counsel/Deputy Director, continues his recovery from a stroke. John Phelps, John Furlong and John Stookey of Osborn Maledon, also a stroke survivor, met recently and it was a great opportunity to share experiences.

Summarized:

- Petition to Adopt New Rule 42.1, ARIZ.R.S.CT., is currently out for review and comment. This Petition would have a Supreme Court Committee issue Formal Opinions regarding ethics, UPL, and professionalism, entertaining public comment on said drafts.
- R-18-0014, Petition to Amend Rules 32, 46-49, 53, 55-58, and 60-63, ARIZ.R.S.CT. Outlined the many changes that would be advanced when these Rule changes go into effect including having the Court approve the hiring of discipline

counsel made by the Bar's CEO.

- ▶ The Public Service Center is fully staffed. All technology issues have now been worked out. Launching March 21. All attorneys will be asked to update their profiles. All profiles will be free of charge (previous \$39/year fee). A presentation on the PSC platform will be given to the Board at its February meeting. The Bar's growing involvement in legal services include:
 - ▶ Veterans Stand Down, January 25 and 26
 - ▶ Arizona Chapter of Corporate Counsel and probate attorneys – providing free meeting space for mediations at the Bar's offices
 - ▶ Wills For Heroes – providing tech support
- ▶ **IMail Update**—Rick DeBruhl:
 - ▶ Approximately 1,192 members were using azbar.org as their primary email address; that number has now dropped by 33 percent.
 - ▶ With resources/instructions

provided by the Bar, members have not experienced any technological problems in switching to a new email address.

- ▶ **Arizona Judicial Council:**
 - ▶ Tax Credit flyer in materials; option available until April 15
- ▶ **Rules Cycle Snapshot Report:**
 - ▶ Provides detail on all the Rules filed during the 2017 cycle.
- ▶ **Guest Decorum:**
 - ▶ Asked staff to draft guidelines to present to guests at the Board meetings regarding their decorum, guest seating, where they may leave materials for the Board's information, etc.
- ▶ **Adjournment** – 1:08 p.m.
- ▶ **Obituaries**

To honor our members who have passed, a webpage has been created and is posted at www.azbar.org/NewsEvents/InMemoriam.
- ▶ **Meeting Schedule**—The full schedule is posted on the Bar's website: www.azbar.org/aboutus/leadership/boardofgovernors/meetingschedule/

PEOPLE, PLACES, HONORS & AWARDS



Kathryn Hackett King joined the labor and employment law boutique firm **BurnsBarton**, Phoenix, as a partner. She most recently served as the Governor's Deputy General Counsel.



Matthew Meaker joined **Sundt Construction, Inc.**, Tempe, as

senior corporate counsel. He also chairs the State Bar of Arizona Construction Law Section, serves on the board of directors of the Construction Financial Management Association and, in 2015, was a "Top 20 Under 40" honoree by Engineering News-Record Southwest.



Charitie Hartsig joined **Carpenter Hazlewood Delgado & Bolen**, Tempe. She is a contributing author of the *Arizona Employment Law Handbook*.

Stephanie Fierro joined **Jaburg Wilk**, Phoenix, as a partner in its business law group. She is active in the community as a former Hospice of the Valley committee member,

alumni mentor and was founding member of **MindingHerBiz**, a woman-owned business advisory council.

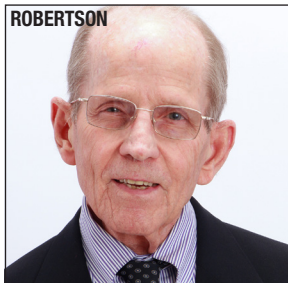


Construction attorney **Brian Flaherty** joined **Sacks Tierney**, Scottsdale. He focuses his practice on construction litigation, contractor licensing, commercial litigation, and insurance coverage disputes.

HONORS AND AWARDS

Theresa Dwyer, a director in Fennemore Craig's Phoenix office, was elected chair of the board of **The Herberger Theater**, a Phoenix performance venue and arts incubator.

PEOPLE



Lawrence Robertson, Jr., Of Counsel at MungerChadwick, Phoenix, was nominated by the Governor and confirmed by the Arizona Senate to serve as a member of the **Arizona Power Authority Commission**. The commission oversees the acquisition, allocation and use of Arizona's share of hydroelectricity generated at the Hoover Dam.



Ronda Fisk, a partner at Osborn Maledon, Phoenix, was appointed by the Governor as a judge on the **Maricopa County Superior Court**. Her achievements as an attorney have been recognized in *Benchmark Top 250 Women in Litigation* every year since 2012. She also has been recognized by *The Best Lawyers in America*, Commercial Litigation, from 2013-2017.

Arizona Assistant Attorney General **Scott Blake** was awarded Felony Prosecutor of the Year—Large Jurisdiction by the **Arizona Prosecuting Attorneys' Advisory Council** at the 2017 APAAC Annual Prosecutor Conference.

The State Bar 2017 Public Lawyer Section Award recipients were: **Bruce Washburn** – Distinguished Public Lawyer Award; **Cliff Frey** – Public Lawyer Career Achievement Award; and **Hon. C. Steven McMurry** – Justice Michael D. Ryan Award for Judicial Excellence.



Polsinelli, Phoenix, shareholder **Melissa Ho** was selected by the U.S. Commission on Civil Rights to serve a four-year term on the **Arizona State Advisory Committee**. She provides advice and recommendations to the Commission about allegations of voting rights deprivations; race, color, religion, sexual orientation, age, disability, and national origin discrimination; and denials of equal protection of the laws.



Keri Lazarus Silvyn, owner and founding partner at Lazarus Silvyn & Bangs, Phoenix, was appointed by the Governor to the **Arizona State Land Department Board of Appeals**. The board has five members selected by the Governor and confirmed by the Senate for six-year terms. She represents the First District, consisting of Pima, Santa Cruz, Graham and Greenlee Counties.



Gust Rosenfeld, Phoenix, announced that **Tim Stratton** was appointed as a member of the Na-

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).

tional Association of Bond Lawyers Nominating Committee. He focuses his practice on public finance and Section 103 tax law.

RECENTLY DECEASED

John Hakon Anderson, San Clemente, Calif.

Frank J. Bogacz, Scottsdale

Donnelly A. Dybus, Tucson

Michael L. Foudy, Tucson

Russell E. Jones, Tucson

Theodore Matz, Phoenix

Hamilton E. McRae, Phoenix

John M. Quigley, Tucson

Ned Rowan, Glendale, Ariz.
