

**Task Force on the Review of the Role and Governance Structure
of the State Bar of Arizona**

State Courts Building, Phoenix

Meeting Minutes: January 14, 2015

Members attending: Hon. Rebecca White Berch (Chair), Paul Avelar, Betsey Bayless, Dr. Lattie Coor, Whitney Cunningham, Dr. Christine Hall, Chris Herstam, Joseph Kanefield, Ed Novak, Jose de Jesus Rivera, Hon. Sarah Simmons (by telephone), Martin Shultz

Members absent: Bennie Click, Amelia Craig Cramer, Gerald Richard, Grant Woods

Guests: Tim Eigo, Heather Murphy

Staff consultant: John Phelps

Staff: Mark Meltzer, Sabrina Nash, Nick Olm

1. Call to order; approval of meeting minutes. The Chair called the meeting to order at 9:33 a.m. After introductory comments, the Chair asked the members to review draft minutes of the December 19, 2014 meeting.

MOTION: A member moved to approve those minutes, which was followed by a second and unanimously passed by the members. **M&G: 2014-07**

2. Discussion of an initial draft of the Task Force report. Supreme Court Administrative Order 2014-79, which established the Task Force, requires the Task Force to file its findings and recommendations, including any proposed rule changes, with the Court by September 1, 2015. The Task Force and its workgroups have met several times, and for discussion purposes, staff has prepared an initial, and very rough, draft report. The Chair expressed a goal of refining the report into a version that could be circulated to local bar associations and other interested stakeholders in the next few months.

The initial draft includes an executive summary and a list of 13 recommendations concerning the mission and governance of the State Bar of Arizona ("SBA"). The Chair noted each of these recommendations, and responded to member questions concerning specific recommendations by clarifying that

- The law school dean member would have a responsibility to report to the two non-member deans following each board meeting, and to educate students -- the next generation of attorneys -- about the role of the SBA.
- The director of the Administrative Office of the Courts would not be designated specifically as a member, but the Court would probably appreciate the opportunity to appoint some members of the board, including, if appropriate, the AOC director.

- If an officer's term is limited, he or she could still remain on the board after the term expired in order to complete the officer succession track.
- Until the final version of the report is prepared, anything is open for additional discussion.

One member asked if the report, rather than recommending a board size of "15 to 18," should specify a recommendation of 15 members. The Task Force tentatively agreed that it should. Another member raised a question about whether an officer could be re-elected to an office. The Task Force had not considered this question previously, and it will need to address the issue.

Supreme Court Rule 32(a) establishes and details the mission of the bar. The draft report also includes an appendix that proposes substantive changes to this rule. Those proposed changes also would restyle the rule to make it more comprehensible and easier to read.

The Chair stated that the next draft of the report would elaborate on rationales for Task Force recommendations, and the report would note any dissenting views.

3. Discussion of a Michigan Task Force report. The meeting materials included a 2014 report to the Michigan Supreme Court by its Task Force on the Role of the State Bar of Michigan. The Chair posed whether any of the recommendations in that report would also be appropriate for the Arizona Task Force report.

The first recommendation of the Michigan report is, "The State Bar of Michigan should remain a mandatory bar." Mr. Phelps reminded the members that in recent years, Arizona legislators have introduced bills that would make SBA membership voluntary. These bills perceive the SBA as a union, and mandatory union membership is contrary to the principles of a right-to-work state such as Arizona. But Mr. Phelps observed that the SBA is not a union because it does not act solely in the interests of its members. The members of the SBA practice law, and the practice of law is a profession. Every lawyer in Arizona has professional responsibilities to the public and to the administration of justice. The SBA, as an integrated bar, is the most effective way of coordinating these responsibilities.

A lack of participation in the SBA by any member of the profession would dilute the SBA's universal objective that all attorneys fulfill these duties. The legal profession includes a significant public protection goal. Lawyers should not have the option to decline membership in a professional association that serves to fulfill a common goal. One example of a professional responsibility that protects the public is trust account administration. The SBA has educated its members about trust account requirements. The SBA's proactive approach has reduced the number of complaints concerning trust account mismanagement, which has benefitted the general public.

Members concurred that a mandatory bar best serves the needs of the legal profession, and the majority of state bar associations nationwide are mandatory. A member then moved to include in the Arizona Task Force report a recommendation

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similar to the first recommendation in the Michigan report. The ensuing discussion included the following comments:

- The role of the bar should be limited to admission and regulation. Because these functions now take place within the Supreme Court, there is no need for a mandatory bar in Arizona. There is an inherent conflict in the SBA regulating its own members.
- One Task Force member who was a member of a voluntary bar in another jurisdiction felt a lack of connection with the voluntary bar.
- Member services that protect the public (for example, the member assistance program or the law office member assistance program) would be added to the cost of discipline if the bar was not mandatory.
- The most common complaint about a mandatory bar is that members are paying for services that don't benefit them. But those services protect the public, and without an integrated bar, they might not be funded.
- The recommendation in the Task Force's report regarding an integrated bar should follow the recommendation that the bar's primary purpose is to protect the public.

MOTION: The Arizona Task Force report should include a recommendation that Arizona continue to have a mandatory (integrated) bar. Passed (10 in favor, 1 opposed). **M&G: 2014-08**

The Michigan Task Force report contained 5 other recommendations, some of which related to the Michigan bar's unique governance structure. The Chair and the members reviewed those other recommendations, but declined to adopt any of them.

4. Discussion of Keller. The Chair then invited Mr. Phelps to advise the members of the SBA's response to the *Keller* opinion [*Keller v. State Bar of California*, 496 US 1 (1990).]

Mr. Phelps explained how the *Keller* case was a challenge by several California attorneys to positions taken by the California bar, as an entity, on issues such as immigration, capital punishment, and gun control, which were outside the scope of the bar's regulatory mission. The U.S. Supreme Court's opinion in *Keller* determined that mandatory membership in a bar association was permissible under state law. However, in light of the fact that state law required membership in the organization as a condition of engaging in the practice of law, the decision also found it improper for that organization to advocate on issues that exceeded its designated mission.

Mr. Phelps referred the members to Article XIII of the SBA's by-laws, which precludes the bar from using member dues to engage in activities of a political or ideological nature that are not reasonably related to the bar's mission. There are six areas designated in the by-laws where the bar can engage in activities related to such

things as regulation of attorneys, the administration of justice, and the availability of legal services. There are also procedures in the by-laws that allow members to challenge a State Bar activity if it goes beyond those areas. Mr. Phelps noted that *Keller* does not apply to political advocacy by an individual member, but an individual member cannot advocate on political or ideological issues on behalf of the SBA. He added that the SBA does not take positions on certain issues that may be within the bounds of *Keller*, but on which its membership is divided, such as caps on damage awards, or when to allow awards of attorneys' fees. Mr. Phelps added that the SBA takes positions on the merit selection of judges because the manner in which judges are selected fundamentally affects the administration of justice. One member commented that although the perception may be otherwise, the SBA has scrupulously avoided engagement in political issues.

5. Member services. The discussion on *Keller* led to a discussion of member services provided by the SBA. Meeting materials included the results of a recent SBA committee that reviewed about 30 bar programs, services, and activities ("PSAs"). The SBA committee compiled a score for each discretionary program, service, and activity, based on criteria such as member impact, public impact, cost per member served, and cost per member. Mr. Phelps reviewed an Excel matrix with the committee's scores, and explained some of the services in detail, including continuing legal education, the Tucson office, conservatorships, sections, the client protection fund, and law office management. One member of the Task Force, a former state bar president, added that the SBA is committed to periodically reviewing the PSAs, and assessing the relevance of each PSA to the SBA's mission.

The Chair noted that lawyer regulation, which is a major bar expense, was revamped a few years ago. Those changes included moving the adjudication function from the SBA office to the Court building; rule changes that provide for a presiding disciplinary judge (whose expense is charged back to the SBA); and modifications to the probable cause panel that improve the efficiency and fairness of the disciplinary process. The Chair added that the Task Force was not directed to do an item-by-item review of each PSA, but she solicited questions and comments regarding these services, which included the following.

- Although diversity is broken out as a separate PSA in the matrix, is it a stand-alone program? Mr. Phelps responded that diversity is now integrated with all of the bar's work, and that activities in many other PSAs incorporate diversity goals. He advised that the SBA created a board-level committee to consider the impact of board programs and policies on diverse communities within Arizona, which has encouraged strategic discussions of diversity by the board.
- Are sections self-funded? Mr. Phelps advised that the board has established requirements for sections (for examples, that a section have at least 100 members, that it collect dues), and that each section reimburse the SBA for half of its administrative costs. The board will review a few sections that may not meet these requirements.

- Does the SBA provide “Fastcase” to members of the public? Mr. Phelps replied that this legal research database is for bar members only, and it is provided to them without additional charge. The board reviewed whether it should reduce or eliminate this benefit, and decided that it should not.
- If attorneys are required to do research, why does the SBA provide this service without an extra charge? Mr. Phelps, joined by other members, explained that Fastcase is used in large measure by sole practitioners and small firms, who constitute a substantial segment of bar membership and who might otherwise not be able to afford private research databases. Providing Fastcase to SBA members benefits the public served by those members.
- Is the *Arizona Attorney* magazine available on-line or in printed format? It is available in both, and because it is revenue positive, it is self-sustaining. It is also one of the services rated highest by members of the bar.
- Would a reduction of the board’s size reduce the bar’s ability to provide PSAs? None of the members believed it would.

The Chair requested that the Task Force defer its continuing discussion of CLE until a future meeting so that a member who was particularly interested in this subject would have an opportunity to join the discussion.

6. Roadmap and additional comments. The Chair reminded the members that Task Force meetings are open to the public. Therefore, if members have comments, suggestions, or revisions concerning the draft report, they should send them directly to staff so he can appropriately circulate them to the Task Force pursuant to the public meeting provisions of Arizona Code of Judicial Administration §1-202. She also confirmed, and the full Task Force agreed, that other than the mandatory nature of the bar, none of the initial recommendations in the draft report are unalterable.

The Chair requested that members send their comments, suggestions, and revisions to staff at the earliest opportunity. It is desirable to have a version of the report that can be distributed to outside individuals, groups, and associations for their input prior to submission of a final report to the Supreme Court. These individuals and organizations may have particular concerns, for example, the size of the board (which the Task Force intends to address in its implementation section with a recommendation for “grandfathering.”) Early and broad input on a preliminary version of the report will allow the Task Force time to address those concerns. The Chair emphasized that even at this stage of the Task Force, if other issues come to the attention of any member, they should be communicated to staff and considered by all of the members at a future meeting. She encouraged public input and would welcome the public at the next meeting.

The next meeting is scheduled for Thursday, February 19, 2015, beginning at 1:30 p.m. Subsequent meetings are set for the mornings of Thursday, March 19, and

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Thursday, April 23, but the need for those meetings depends on the extent of progress made by the Task Force at the February meeting, and on the Task Force's plan for vetting the draft report.

5. Call to the public; adjourn. There was no response to a call to the public. The meeting adjourned at 11:30 a.m.

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