

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

**State Courts Building, Phoenix**

**Meeting Minutes: August 22, 2014**

**Members attending:** Hon. Rebecca White Berch (Chair), Paul Avelar, Betsey Bayless, Bennie Click, Amelia Craig Cramer, Whitney Cunningham, Dr. Christine Hall, Chris Herstam, Joseph Kanefield, Ed Novak, Gerald Richard, Martin Shultz, Hon. Sarah Simmons

**Members absent:** Dr. Lattie Coor, Jose de Jesus Rivera, Grant Woods

**Guests:** Tim Eigo, Heather Murphy, Mike Baumstark

**Staff consultant:** John Phelps

**Staff:** Mark Meltzer, Chris Manes, Sabrina Nash, Nick Olm

**1. Call to Order, Introductions, and Preliminary Matters.** The Chair called the initial meeting of the Task Force to order at 9:05 a.m. The Chair reviewed Administrative Order 2014-79, which establishes the Task Force. The Order requires the Task Force to examine Rules of the Supreme Court concerning the mission and governance structure of the State Bar of Arizona (“SBA”) and to make recommendations, if needed, for changes that would (1) clarify or modify the SBA’s mission, (2) improve the efficiency and effectiveness of SBA governance, and (3) promote the SBA’s primary mission of protecting the public. The Task Force must submit its report and recommendations to the Supreme Court by September 1, 2015. The Chair noted that there is no legislative pressure, citizen initiative, or SBA misstep that gave rise to establishment of the Task Force. Rather, it is simply a good business practice to periodically review the structure of the governing board of a non-profit organization, such as the SBA, and to reexamine its mission and duties.

The Chair observed that the title given to the Task Force under A.O. 2014-79 is lengthy, so, for brevity, we will call it the *State Bar Mission and Governance (M&G) Task Force*. She mentioned that the Task Force has a webpage on which meeting materials, background reading and reference materials, and other matters related to the Task Force will be posted. She anticipates that the Task Force will meet monthly. She introduced the SBA’s executive director, Mr. John Phelps, as consultant to the Task Force, and she introduced Task Force staff. She noted that each member of the Task Force has a very distinguished background, and she invited the members to introduce themselves.

The Chair reminded the members that this committee is subject to the open meeting requirements of the Arizona Code of Judicial Administration. She then referred the members to a page of proposed rules for conducting Task Force business that were included in the August 22 meeting packet. These rules establish policies for a quorum, decision-making, and proxies.

**MOTION:** A member moved to adopt the proposed rules, which was followed by a second and unanimously passed by the members. **M&G: 2014-01**

The Chair then asked Mr. Phelps to provide a history of the SBA, and to describe its governance structure.

**2. Overview of SBA history and governance.** Mr. Phelps began with a history of bar associations in the United States. He described the influence of the Inns of Court, physician associations, and the American Judicature Society on the development of bar associations. An *integrated* or *unified* bar integrates a disciplinary function with other member services, such as continuing legal education. The majority of state bars nationwide, including Arizona's bar, are integrated. An attorney who wishes to practice law in a state with an integrated bar must be a member of the bar. A minority of states have *voluntary* bars. In those states, regulation and discipline are separate from other functions, and membership in the bar is optional; however, attorneys must still pay dues to support the regulatory function. Legislation establishes some state bars. In other states, the legislature authorizes the court to regulate attorneys, and in the remainder of states, courts assume their inherent authority to regulate lawyers.

There was no licensing of attorneys in pre-territorial Arizona. Colleagues just vouched for an attorney's qualifications to practice before a judge. In 1895, 139 practicing attorneys formed the Arizona Bar Association, an organization primarily devoted to networking. The association was incorporated in 1906, six years before statehood. Arizona's 1933 State Bar Act created the State Bar of Arizona. It required practicing attorneys to be members. This Act expired in 1985, but the Arizona Supreme Court had taken the lead on regulating attorneys by then. Arizona Supreme Court Rules 31 and 32 codify the organization and the structure of the SBA. Other rules adopted by the court, judicial administrative orders, and goals of the Court's Strategic Agenda further establish the relationship between the SBA and the Court.

As of July 2014, the SBA had more than 23,000 members, almost 18,000 of whom were "active." The SBA has 107 staff and a budget of \$14.8 million. The bar's activities include the regulation and discipline of attorneys, as the bar prepares disciplinary cases and brings them to court. The SBA also fosters high ideals and standards of professional responsibility, provides a forum for changes in the law, including section membership, and provides input to the court on rule petitions and related issues. The crux of the bar's duty is protecting and serving the public. This primary duty encompasses the goal of improving the knowledge and skills of attorneys. The SBA's mission statement and strategic plan also promote these goals. The Board of Governors ("BOG") recently added "access to justice" as a component of its mission and strategic plan. Each SBA president focuses the BOG on particular aspects of the strategic plan.

The BOG has twenty-six voting members. This includes eighteen attorneys elected in eight statewide districts, one young lawyer, typically the elected president of the Young Lawyers Division ("YLD"), four public members appointed by the BOG, and three at-large members appointed by the Supreme Court. The elected members frequently view their role as representatives of their constituencies. There are also four

non-voting members of the BOG: three law school deans plus the bar's immediate past president. The newest justice of the Supreme Court attends BOG meetings as a court liaison. Rules establish the qualifications and terms of members of the BOG. Lawyer members serve a three-year term with no term limits, except for the YLD member, who can serve a single one-year term. Public members appointed by the BOG serve a limit of two three-year terms. Court-appointed members serve three-year terms with no term limit. Members have served as long as fifteen years on the BOG. Lawyers' interest in seeking election to the BOG ebbs and flows. For example, in the last election in District 6 (Maricopa County), thirty-four candidates vied for nine seats on the board; other districts, particularly in rural areas of Arizona, may have uncontested elections. Mr. Phelps noted that in Maricopa County, less than twenty percent of the members participate in BOG elections, but that percentage may double in outlying districts. The Court may use its three at-large appointments to promote balance on the BOG, including rural-urban and large firm-small firm balances, as well as to enhance other types of diversity.

The scope and operations committee of the BOG serves as an executive committee. The president, president-elect, first and second vice-presidents, and a secretary-treasurer compose this committee. The president and president-elect automatically assume their offices. The other officers are elected by the BOG, and while those positions are occasionally contested, they usually move ahead by acclamation. Officers can be removed by a two-thirds vote of the board, but members of the BOG cannot be removed. The executive director of the SBA was selected by the BOG following a national search. The Arizona Supreme Court approves the amount of member dues set by the BOG; fees are currently \$460 for an active member in practice for three years.

The members concluded Mr. Phelps' presentation by discussing the practice of law in multiple states, the portability of uniform bar examination scores, and admission on motion. Although admission on motion allows attorneys to have a more nationwide practice, admission on motion in Arizona has not had as large an impact on Arizona's legal economy as had been predicted, possibly because admission on motion does not require an attorney to reside in Arizona.

**3. California' Governance Task Force.** The Chair then welcomed Mr. Joseph Dunn, executive director of the State Bar of California ("SBC"), who appeared at the meeting by video-conference. The SBC is a mandatory bar with 250,000 members, about 80 percent of whom are active members. It has an annual budget of \$150M.

The California bar reviewed and revised its governance structure about four years ago. The crux of governance reform addressed the question of what the bar really is – is it a regulatory organization with powers of a trade association, or is it a trade association with regulatory powers? He noted that the California bar represents the people of California rather than California's attorneys. The primary mission of the SBC is to protect the public. The SBC performs all facets of attorney regulation, including admission, discipline, IOLTA administration, and section membership. The SBC established a state bar court in 1989 that includes five full-time judges who hear cases brought against attorneys by state bar prosecutors, and an appellate division with three full-time jurists.

**M&G draft minutes**  
**08.22.2014**

The SBC's existence has footing in both the legislative and judicial branches. California's legislature approves the annual bar fee, which is now \$375. Mr. Dunn noted that the SBC was a party to the *Keller* decision [*Keller v. State Bar of California*, 496 U.S. 1 (1996)], which held that a mandatory bar can charge compulsory fees only for its core functions of regulating the profession and improving the quality of legal services. The 2010 initiative to examine the SBC's governance came not from its own BOG, but from the court and the legislature. Those branches of government traditionally perceived the bar as a regulatory body, with trade association characteristics. More recently, however, the bar was seen as acting in the interests of its attorney members, sometimes in disregard of the public's interest. Mr. Dunn noted a few events that increased tensions between the bar and other branches of state government:

- Notwithstanding a decades-old statute capping medical malpractice awards, several years ago the SBC's BOG passed a resolution criticizing the cap. The governor viewed this resolution as exceeding the powers of the board; the governor's response was to veto funding for the bar, which resulted in substantial layoffs of the bar's staff.
- During the 2008 housing crisis, a small number of attorneys advertised loan modification services, and obtained "advance" fees from their clients. These fees were not placed in trust accounts, which gave rise to widespread fraudulent practices and significant harm to the public. The legislature asked the BOG to close the loophole that made this possible, but the BOG declined the request after it was lobbied by those attorneys.
- The legislature requested the BOG to support mandatory disclosure by attorneys of whether they had legal malpractice insurance coverage. The board yielded to constituency pressure from the bar and did not support disclosure.

Accordingly, the legislature in 2010 insisted on reform of bar governance. It established an eleven-member task force, and it gave the task force nine months to complete its work. Mr. Dunn noted that the task force consisted solely of attorney-members of the State Bar's BOG, and stakeholders quickly split into two opposing camps. A majority camp was almost exclusively lawyers, which was opposed by a minority camp of public advocates. Public hearings were contentious, and there was little communication between the two camps. The public advocates believed that attorneys elected by attorneys could not regulate attorneys without eroding public confidence in the organization. Lawyers maintained that there was no causal relationship between governance by elected attorneys and the board's disposition of high-profile issues. For example, they contended that the BOG's failure to support the disclosure of legal malpractice insurance was not a result of having a BOG with a majority of elected lawyers.

Mr. Dunn cautioned that a governance task force composed solely of attorneys caused California's task force to "defend its territory." He added that California has more than 200 specialty bar associations, but regrettably, those associations provided little input at public meetings. He stated that the most consistent voice at several public hearings was Professor Robert Fellmeth, an expert on regulatory law at the University

**M&G draft minutes**  
**08.22.2014**

of San Diego Law School and an advocate of governance reform. A survey of 20,000 members of the bar had marginal value. It was expensive, had a very low response rate (about 10 percent), and a survey by lawyers of other lawyers that did not include a survey of members of the public that the bar is charged with protecting was not thought to be meaningful. Mr. Dunn also noted that the California task force failed to realize that when the legislature directed it to review bar governance, it did not expect the task force to report that no reform was necessary, although by and large that was the conclusion of its task force.

The Task Force submitted separate majority and minority reports. The attorney majority recommended only minor changes to the existing governance structure. The reformer minority on the other hand recommended that board members not be elected; it contended that elected positions result in a dysfunctional board. The legislature adopted a compromise between these opposing positions. The legislature's new system of State Bar governance included the following features:

- It reduced the size of the board from twenty-six to nineteen members.
- While the board retained six public members, the overall reduction in the board's size had the effect of increasing the public members' proportionate representation on the board.
- The remaining thirteen members of the board are attorneys. One attorney is elected from each of the state's six appellate districts. (The appellate districts have roughly equal populations, but the boundaries of those districts have no relationship to the number of attorneys within each district. Preexisting bar districts were eliminated.) Of the remaining seven attorney members of the board, the Supreme Court now appoints five, and the Senate President and Assembly Speaker each appoint one.
- The young lawyers' dedicated seat was eliminated, although young lawyers are encouraged to serve on the board.
- The new governance structure was implemented in phases over a period of three years so that no elected member lost a seat. In the fall of 2014, the entirety of the board will be seated under the new system.
- Public members need no prerequisites. Lawyer members must have five years of practice and be in good standing.
- A process has been added for removal of governors.
- The old system had only the office of president. The new system includes a vice president and a treasurer, who serve as chairs for the executive and budget committees, respectively. These officers do not automatically ascend the leadership ladder. The immediate past president has been added as a non-voting member of the board to assure continuity in leadership.
- The board's new name is the "board of trustees," which clarifies its role.
- The state bar's seal bears its mission: "protect the public."

Mr. Dunn elaborated that an attorney seeking court appointment to the board must submit an application to the SBA. These applicants are screened, vetted, and interviewed by the bar, and the bar refers the top candidates to the Supreme Court for consideration. Whether appointed or elected, members of the new board are limited to

**M&G draft minutes**  
**08.22.2014**

two terms. Sections and committees were largely unaffected by the reform process. The annual meeting of the bar is now focused on education. A “conference of delegates” was separated from the bar about five years ago and has its own election process; this conference was known for adopting some politically contentious resolutions.

One member asked if the SBC is still a “full service” bar. Mr. Dunn responded that as a result of governance reform, California is “about as close to a pure regulatory bar as there is in the country.” Although it still has some trade association functions, it no longer uses the term “member services.” The SBC still engages in continuing education, but it does not compete in this area with local bar associations, whose lifeblood is CLE. The SBC’s sections are self-funded and do not depend on mandatory dues. Education, sections, IOLTA administration, and other SBC functions are now seen through the lens of public protection. The boards’ discussions now are driven by what is in the best interests of the people of California rather than what is in the interests of the attorneys.

Mr. Dunn observed that the former board was opposed to reform legislation, and it actually asked him to work to defeat it. However, now that the reforms have been implemented, the board is less contentious. Reform crystalized the mission of the bar, unified its governing board, and made the organization more focused, professional, and collegial. The public and attorney members of the bar now are jointly engaged in the mission of protecting the public. Whereas formerly the bar was reactive to developments in the legal community that were inimical to the public, the bar now proactively deals with these issues and events, and it works to educate the public. Mr. Dunn concluded by saying that even some of the most vocal opponents of reform now say that reform was the best thing that’s ever happened to the bar.

The members applauded Mr. Dunn’s presentation. The Chair thanked Mr. Dunn for appearing, and Mr. Manes for facilitating the technical aspects of the video presentation.

**4. Roadmap.** The Chair indicated a preference for meetings on the third Friday of each month, beginning with a meeting on September 19. That meeting will focus on a discussion of today’s presentations. She asked staff to research implications of appointed versus elected non-profit governing boards. She invited input from the members about which subjects should, or should not, be the focus of the Task Force. The Arizona Bar Foundation and client protection fund were mentioned in this regard. The Chair also welcomes additional materials from the members. She would like the members to drive the agendas of future Task Force meetings.

**5. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting adjourned at noon.

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

**State Courts Building, Phoenix**

**Meeting Minutes: September 19, 2014**

**Members attending:** Hon. Rebecca White Berch (Chair), Paul Avelar, Bennie Click, Amelia Craig Cramer, Whitney Cunningham, Dr. Christine Hall, Joseph Kanefield, Gerald Richard, Jose de Jesus Rivera, Hon. Sarah Simmons, Grant Woods

**Members absent:** Betsey Bayless, Dr. Lattie Coor, Chris Herstam, Ed Novak, Martin Shultz

**Guests:** None

**Staff consultant:** John Phelps

**Staff:** Mark Meltzer, Sabrina Nash, Nick Olm

**1. Call to Order and Preliminary Remarks.** The Chair called the meeting to order at 1:15 p.m. The Chair reminded the members that the Supreme Court established this Task Force to review bar governance not because of an immediate problem, but because a periodic governance review is a sound practice for non-profit organizations like the State Bar of Arizona (“SBA”). The Chair summarized the presentation by Joseph Dunn, executive director of the State Bar of California, at the August 22<sup>nd</sup> meeting. She pointed out lessons that were learned from the California process, including that attorneys exclusively composed the California Task Force, without public members. She emphasized the significance of public members on the Arizona Task Force. She noted that California’s Task Force and Washington’s Task Force, whose report was in today’s meeting materials, were anchored by legislative requirements, whereas Arizona’s is not. The Chair added that the Arizona Task Force has begun its work with no preconceived notions about its conclusions, and that the group may make broad recommendations.

**2. Mission of the State Bar of Arizona.** The Chair invited Mr. Phelps to comment on the SBA’s mission. Mr. Phelps remarked that in an integrated bar, such as the SBA, a tension exists between two primary missions: protecting the public, and providing member services. A number of SBA members, perhaps a majority of them, might believe that the primary purpose of the bar is providing them services. Some members of the Board of Governors reflect this view during board meetings. SBA board leaders, however, have consistently understood and promoted the Bar’s responsibility to the public.

Mr. Phelps believes that providing services and protecting the public are not mutually exclusive. For example, continuing legal education, and the “Fastcase” legal research program, are SBA member services, yet legal education and a free research program enhance attorney competence and therefore serve to protect the public. In some board decisions, the public interest prevails over that of bar members. As an example,

**M&G draft minutes**  
**09.19.2014**

Mr. Phelps noted that notwithstanding substantial member opposition, the board agreed to make an attorney's disciplinary history available to the public on the SBA's website. This decision, however, was debated by the Board of Governors over a long period, and some board members advocated that it should be more difficult rather than easier for the public to access lawyer discipline history in order to protect the reputation and image of lawyers. Other functions the bar performs that protect the public include regulation and discipline, mandatory disclosure on the SBA website of practitioners' malpractice insurance, a process for resolution of fee disputes, the client protection fund, trust account examinations, and a lawyer assistance programs to help attorneys with substance abuse problems or difficulties in law office management.

Members then made the following comments.

- The concept that the bar exists to serve lawyers is misplaced because its purpose is to protect the public. Protecting the public is a vital mission. If it is no longer the primary mission, then the bar should be bifurcated.
- The board does not tolerate or protect errant attorneys, so the bar should not be bifurcated. The board works well, although it could work better. It implements the Court's guidance professionally and effectively.
- Serving the public and enhancing the profession are included in the bar's mission statement. The mission statement is too lengthy and should be more concise and memorable. The mission statement should include enhancing the administration of justice and the image of the profession.
- Unless the sole purpose of the bar is to protect the public, the practice of law should not be conditioned on mandatory bar membership.
- Other professionals, such as psychologists, have a national association that functions as a trade association, but state associations protect the public by regulation and discipline.
- Arizona Supreme Court Rule 32 is not clear concerning the bar's "primary" mission. Some legislators may view the bar as a trade association. If the bar is primarily a trade association with mandatory membership, some may suggest that the bar is a union, and contrary to Arizona's right-to-work law.
- The SBA board is large and inefficient. There is inadequate turnover of the board (some members have served for more than a decade), and the board would benefit from "new blood." Public members should have a background and the experience that allows them to understand their role on a board. The officer succession ladder is too lengthy. A one-year term may be insufficient for a bar president to establish and execute an agenda.

**3. Approval of meeting minutes.** At this point the Chair asked the members to review draft minutes of the August 22 meeting.

**MOTION:** A member moved to approve those minutes, which was followed by a second and unanimously passed by the members. **M&G: 2014-02**

**4. Governance of the State Bar of Arizona.** A discussion of governance began with determining an appropriate size for a governing board. The Chair summarized literature that indicates the maximum size of a non-profit board should be twenty members. A smaller size allows a board to progress more efficiently through its agendas, to have thorough discussions, and to reduce meeting expenses. While a small board reduces conflicts of interest, it also has the drawback of reducing diversity.

The Chair also mentioned electorates for a board, such as a public electorate (e.g., when the public elects a school board), or a membership electorate (e.g., bar members elect the SBA board.) She noted that elections are perceived as democratic, but they may not be if election districts are not designed democratically. Popular elections do not assure that the best individuals run for office, and elections typically require candidates to make compromising promises before entering office. On the other hand, appointed board members sometimes have a relationship with whoever makes the appointment, leading to perceptions of insider-dealing and cronyism. There are also issues involving *ex officio* and non-voting board members. Members then made these comments:

- The size of a board depends on the board's mission; how many people are necessary to accomplish that mission?
- There is a preference for board members who are able to work together (analogous to an employment environment), but it's undesirable that all board members think alike.
- A board should have an odd number of members.
- Do bar board members owe their fiduciary duties to the profession, to the public, or to those who elect them?
- Board members should have term limits. The Task Force should consider the number of officers, and length of the officers' terms. It should also consider population-based representation, as California has done with election by appellate districts. The Task Force should discuss the bar's relationship with the Supreme Court, because the board serves the Court. The Task Force should consider giving appointment authority to the legislature and the governor, as a sign of transparency and openness, and to reduce hostility from the other departments of state government.
- The form of the board should follow its function. Determining the board's function, and deciding whether it represents the public interest or the attorneys, may shed light on who should elect or select the board.

**M&G draft minutes**  
**09.19.2014**

- Access to justice is critical and should be a prominent mission of the bar. *Ex officio* members, including law school deans and a Supreme Court justice, are important board members.

The Chair observed that, as was done by the California and Washington task forces, the Arizona Task Force could recommend changing the board of governors' name to the "board of trustees." This would highlight the board's fiduciary role. The Task Force could also recommend that the bar's executive committee meet regularly with the Chief Justice and the Vice Chief Justice. A training requirement for new board members is another item to consider. This led to another series of comments.

- The Task Force should consider defining the internal and external roles of the board, the bar staff, and the executive committee ("scope and operations").
- The Task Force should review the entire governance structure, including sections and committees.
- The current board spends considerable time dealing with rules, appointments, and finances, sometimes micromanaging these areas. Consider delegation of duties, and the selection of those to whom duties are delegated. If the size of the board is reduced, the board should have a commensurate reduction in the matters brought before it.
- The need for public input is understood, but the public should not elect a professional board. However, it is unfortunate that only a small percentage of attorneys participate in board elections. Supreme Court appointment of board members might give greater consideration to the members' knowledge and experience.
- Why does the bar have so many roles? For example, there are many continuing legal education providers; why does the bar provide CLE? Is the reason solely related to revenue? The Task Force should examine all bar functions, starting with the core function of discipline and expanding from there.
- The SBA's mission statement is a distillation of Supreme Court Rule 32. The SBA's primary mission is attorney discipline. However, the SBA board spends little time on discipline because a dedicated disciplinary judge and the bar's professional disciplinary counsel handle it.
- During election campaigns, some board candidates make recurring promises concerning dues (they should be lower) and attorney discipline (the system is broken and needs to be fixed.)
- Rural counties have higher voter turnout, elect well-qualified board members, and produce a significant number of bar presidents. The election system should not change in a way that shuts out the rural counties.

**M&G draft minutes**  
**09.19.2014**

- If Arizona's two appellate divisions served as electoral districts, Division Two board members would probably all be from Pima County, and the other counties in Division Two would probably have no board members.
- If the current eighteen elected board members were chosen solely by population, Maricopa would have fifteen members, Pima would have two, and the rest of the state would have one. The board should be representative of the state's diversity; elections based only on population will not accomplish this goal.
- The Supreme Court could use its appointments to promote diversity and fill gaps in representation, as was done recently when large firms were underrepresented.

The Chair noted two paradigms in the discussion. One asks, *what should the bar be, and how can it be made that way?* The other asks, *does the bar function well now, and if so, what can be done to make it better?* Members made further comments:

- The board does a good job of directing proposed rule changes to constituent groups for vetting.
- Sections have a valuable education function, which serves to protect the public.
- The bar works as an organization because the management and staff are effective. However, the board operates as a legislative body rather than focusing on policy issues. Constituent voting is premised on candidates' promises rather than who would best serve as fiduciaries. The Task Force must perform a "zero-based" analysis of the bar.
- It's worthwhile that the board gets input from small-town attorneys, but that doesn't mean those attorneys need to sit on the board. Like the Supreme Court, the SBA's board should serve and represent the interests of the entire state.
- Geography makes a difference. For example, access to justice in rural areas has a different meaning than in urban centers. The Supreme Court can protect the public if regulation is the sole objective, and then a mandatory bar would be unnecessary. But if Arizona had only a voluntary bar, it would not effectively fulfill other important objectives, such as access to justice.

**5. Workgroups and Roadmap.** The Chair commended the members for their robust discussion, and she encouraged the members to vet their ideas fully. To further the discussion of mission and governance, the Chair established three workgroups. Each workgroup consists of five members, and each workgroup will meet at least once before the next Task Force meeting. Each workgroup will discuss, and present at the next meeting, its recommendations concerning the mission and governance of the bar. Staff provided a partial list of areas for discussion by the workgroups, but as a result of today's meeting, staff will distribute a supplemental list. Mr. Phelps will also provide a list of SBA functions.

**M&G draft minutes**  
**09.19.2014**

Staff will inquire about the availability of the members regarding tentative dates for the next two meetings, November 21 and December 19.

**6. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting adjourned at 3:05 p.m.

DRAFT

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

**State Courts Building, Phoenix**

**Meeting Minutes: November 21, 2014**

**Members attending:** Hon. Rebecca White Berch (Chair), Paul Avelar, Betsey Bayless, Bennie Click, Dr. Lattie Coor, Amelia Craig Cramer, Whitney Cunningham, Chris Herstam, Joseph Kanefield by his proxy Tom Crowe, Gerald Richard, Jose de Jesus Rivera by his proxy Helen Perry Grimwood, Martin Shultz, Hon. Sarah Simmons, Grant Woods

**Members absent:** Dr. Christine Hall, Ed Novak

**Guests:** Tim Eigo, Theresa Barrett

**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 9:35 a.m. She introduced the proxies attending today's meeting. The Chair then asked the members to review draft minutes of the September 19 meeting.

**MOTION:** A member moved to approve those minutes, which was followed by a second and unanimously passed by the members. **M&G: 2014-03**

**2. Comments from workgroup coordinators.** The Chair established three workgroups at the September 19 meeting. Each workgroup met separately thereafter. The Chair thanked the hosts of the workgroup meetings. She noted one hundred percent attendance by Task Force members at their respective workgroups. A report from each workgroup was included in the meeting materials, and the Chair invited comments on the reports from workgroup coordinators and other participants.

Ms. Bayless (workgroup #1) observed a variety of areas of agreement among the workgroups; she was optimistic that there were other areas on which Task Force members would be able to agree. She emphasized the importance of diversity -- gender, ethnic, urban-rural, areas of practice -- in bar leadership. Diversity would also encompass having public members on the board in addition to attorneys.

Mr. Shultz (workgroup #2) expressed his workgroup's preference that the mission of the bar be to "serve" rather than to "protect" the public. He noted a distinction between what the bar actually does, and what the public perceives it does. Mr. Click, a member of this workgroup, added the desirability for more emphasis on the attorney's creed; he observed that old-school lawyers sometimes hung the creed on their office walls. Two members of the workgroup suggested including legislative representatives on the board. They believe this might promote legislative buy-in for the mission of the bar, establish another bridge of communication with the legislative branch of state government, and reduce friction between that body and the judiciary. Judge Simmons

**M&G draft minutes**  
**11.21.2014**

and Mr. Shultz offered different views on term limits. He suggested that the board might benefit from term limits because they encourage new thought and new blood, and she noted the impact term limits might have on rural counties, which have challenges finding attorneys willing to serve on the board.

Mr. Woods (workgroup #3) stated that this workgroup began by asking: what is the purpose of the bar, what should it do, and what does it do now that it could do better? The group believed that the bar should have a limited function, and that it should do whatever it does well. Mr. Woods observed that the Court actually performs functions that the public perceives as being the bar's role. He suggested that the bar should administer attorney admissions and discipline, and that it should have a limited function regarding continuing legal education. Membership dues should include at least some no-cost CLE. Otherwise, CLE should be a market-driven, private sector undertaking and meet standards set by the bar.

Mr. Woods added that the bar's functions should include working with the court on the administration of and access to justice, and enhancement of attorneys' proficiency in their respective areas of practice. Because the Court is responsible for the administration of justice, the workgroup recommended that the Court appoint all board members. Although this would deprive attorneys of the prerogative of electing a board, he noted that few bar members actually vote. The group recommended that the bar submit a list of nominees to the Court, and that the Court in turn make the appointments after considering diversity and other factors. Mr. Woods opposed adding legislative representatives on the board. He believed that doing so would be a long-term solution to what may be short-term circumstances and concerns. He further stated that the legal profession needs to set its own standards and stand above and apart from politics.

The Chair noted that the Court has exclusive authority to administer attorney admissions. The Character and Fitness Committee needs time to consider applications, but it recently modified its procedures to reduce processing time for the majority of applicants. In 1999, some of the discipline functions were transferred to the Court's building to dispel any appearance of unfairness because both prosecution and adjudication staff had been formerly housed at the State Bar's office. More recently, the disciplinary process has added a full-time presiding disciplinary judge with an office in the State Courts Building, as well as other changes that make the disciplinary process more efficient and fair. The Chair added that when the Court adopted a CLE requirement, there were few CLE providers, so the bar stepped in to provide this service and expand the availability of courses. One member stated that private-provider CLE is not customarily available in rural areas, and that lawyers in rural areas statewide depend on the bar's distance-learning opportunities.

**3. Reaching consensus on particular items.** The Chair then directed the members to particular items on which the workgroups appeared to agree.

Mission of the bar. Although the members agreed that the bar's mission is to protect and to serve the public, they discussed whether one included the other and whether the use of both was redundant. One member stated that the use of both terms

**M&G draft minutes**  
**11.21.2014**

appropriately recognizes the existence and needs of legal service consumers. Another noted that while “to serve” might ordinarily be adequate, the bar should expressly state its mission “to protect” the public to preempt potential legislative regulation of attorneys. A third member expressed concern about a possible conflict of interest between licensed attorneys and those applying for licenses, and the need to assure that lawyers are not restricting admission into the profession for their own self-interest. Another member responded that most professional governing agencies in Arizona have members of their professions on their respective boards, and what the bar does is no different.

These comments led to a discussion about deunification of the bar. One member noted the extent to which certain functions, such as admissions and discipline, are performed by the Court, and whether this rendered a unified bar unnecessary. Another expressed the need to engage attorneys in bar governance, and not limit the bar’s mission to admissions and discipline. Such a narrow view of the role of the bar (as including only admissions and discipline) does not fully protect the public, as it fails to include programs such as MAP, LOMAP, and fee arbitration, and it does not fully serve its members. Some members believed that a unified bar that serves its members does a better job of also serving the public’s needs. The members concluded their discussion without achieving consensus.

Bar governance. However, the members did join in passing the following motions.

**MOTION:** A member moved that the name of the responsible board of the State Bar of Arizona be changed from “board of governors” to “board of trustees.” The motion received a second and passed unanimously without further discussion. **M&G: 2014-04**

**MOTION:** A member then moved that there be a range of 15 to 18 voting members on the board of trustees. (This would be a reduction from the current number of 26 voting members on the board.) The motion received a second and it also passed unanimously and without further discussion. **M&G: 2014-05**

Having considered the name and tentative size of the board, the members next discussed the manner of selecting board members. The Chair advised that notwithstanding that the Court solicits and advertises for prospective members, the Court does not typically have a large pool of applicants for “at-large” positions. For that reason, and because it would be too insular, she does not believe that the Court would adopt a recommendation that it appoint the entire board. Nevertheless, it would probably appreciate the opportunity to appoint some members, as it does now. She noted that the Court has the flexibility to appoint members that promote the board’s diversity. A former bar president serving on the Task Force affirmed instances where Court appointments to the board were effective in filling diversity gaps.

Mr. Woods suggested that the board establish a procedure for attorneys to apply, and that the board submit a list of names to the Court following an evaluation process. Some members supported this process because it would codify opportunities for the Court to diversify attorney representation on the board. Others believe that a portion of attorney members should be elected. Mr. Phelps noted that voter turnout in rural counties can approach 50 percent; and while Maricopa may sometimes have less than 20 percent, issues in the last election pushed the turnout to more than 25 percent.

***M&G draft minutes***  
**11.21.2014**

Electronic ballots in bar elections have improved voter turnout, and a member suggested that distributing the ballot with the annual dues statement might result in a higher voter response.

Another member observed that although Arizona voters have analogous low turnouts in legislative and local elections, it is not justification for abandoning the election process. One member perceived a conflict because only attorneys vote for members of the bar's board, while another member responded that constituents should have the right to choose their representatives. The members agreed to about 10 attorney members on the board, although there were different views on whether there should be more elected attorneys or appointed attorneys as board members. Appointments could expand the gender, ethnic, and practice diversity of attorney board members, although one member commented that geographic diversity was less crucial. More than half of the active members of the bar are from Maricopa County. The Chair noted that it is more difficult to achieve diversity with a smaller-size board.

The current administrative director of the Administrative Office of the Courts is an "at-large" appointee of the Court, and is therefore a voting member. Task Force members believe that this person has a unique, long term perspective of the court system and is a highly useful individual to have on the board.

The members found the "junior justice" liaison to be a useful non-voting board member. Some members commented that the law school deans, who attend meetings sporadically, should not have three non-voting seats on the board. One member favored retaining the law school deans as non-voting members because law schools are responsible for educating their students concerning realities in the practice of law, and there is value in the deans communicating to their faculties practice developments that are discussed during bar board meetings. A member proposed a compromise: that the three deans share a single non-voting seat on the board, either by annually rotating the seat among them, or by each attending every third meeting. The compromise, which was supported by the members, would entail a responsibility for the attending dean to discuss with the other two the substance of each board meeting.

The Task Force discussed the necessary experience level of attorney board members. Five and ten years were proposed, with either alternative requiring an unblemished disciplinary record during that period. The YLD president, who may have less than five years of experience, currently serves a one-year term as a voting attorney member, and the sense of the Task Force was that this seat should not be preserved. However, without a YLD board member, a requirement of five years of experience might preclude a significant number of young attorneys from having a voice on the board. Mr. Phelps will provide information concerning the percentage of attorneys admitted for less than five years.

The Task Force members recognized the value and importance of public members, and the need for them to have a significant voice on the board. An informal poll of Task Force members indicated that about one-third of the board should be members of the public. Currently, a nominations committee of the bar nominates public members, the board selects finalists for interviews by the full board, and then the full

**M&G draft minutes**  
**11.21.2014**

board appoints its public members. Although this process works well, one Task Force member commented that using regulated attorney members to select public members, whose purpose is to counter-balance the attorneys, seems to defeat that purpose. A former bar president noted that the board usually has a good pool of talented applicants, and often selects public members to fill a current need on the board, such as financial expertise. He added that public members are not shy about disagreeing with attorney members. Still, one member felt that the bar's mission of protecting and serving the public at least required a perception that public members were not chosen by the governing board, and suggested that public members be appointed by the Court. Some members supported this suggestion, conditioned on the board interviewing the applicants and sending a nomination list to the Court. Task Force members agreed that public members should be appointed, and the Chair added that the Task Force would detail the appointment process in future meetings.

**4. Roadmap and additional comments.** The Chair expressed the view that it would be more productive for Task Force members to meet again as a full group to continue the discussion of particular topics and various models, rather than to reconvene the workgroups for that same purpose. The Task Force will resume its discussions on mission and governance, and then proceed to discuss member services. She added that while the Task Force might submit to the Court more than one proposal concerning a particular subject, the Court would probably appreciate receiving alternatives and having thoughtful choices. She asked if anyone had any further comments.

Mr. Crowe said that his service on the board made him more appreciative of the board's functions. He noted that CLE is an important source of revenue for the bar (a point on which Mr. Click specifically concurred), that the bar's Rules Committee serves an important role, and that the Member Assistance Program was a great service to bar members needing rehabilitation more than discipline. He mentioned the Arizona Attorney magazine and the bar directory as publications that are highly valued by SBA members. Mr. Phelps confirmed that the bar had previously prepared a report concerning CLE, and he will provide that report before the next meeting. Mr. Woods observed that if the bar removes itself from functions that it should not have, it will have more time for those that it should.

**5. Call to the public; confirmation of meeting date; adjourn.** There was no response to a call to the public. The Chair confirmed the next meeting date of December 19, 2014, from 9:30 a.m. until noon. She requested members to advise staff if there were times other than the third Friday of each month that were more convenient for meetings during 2015. She commended the members for the quality of today's discussion, and she adjourned the meeting at noon.

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

**State Courts Building, Phoenix**

**Meeting Minutes: December 19, 2014**

**Members attending:** Hon. Rebecca White Berch (Chair), Betsey Bayless, Bennie Click, Dr. Lattie Coor, Amelia Craig Cramer, Whitney Cunningham, Dr. Christine Hall, Chris Herstam, Joseph Kanefield, Ed Novak, Gerald Richard, Jose de Jesus Rivera, Hon. Sarah Simmons (by telephone), Grant Woods

**Members absent:** Paul Avelar, Martin Shultz

**Guests:** Mark Harrison, Heather Murphy, Rose Meltzer, Samuel Meltzer

**Staff consultant:** John Phelps

**Staff:** Mark Meltzer, Annette Mariani, Nick Olm

**1. Call to order; approval of meeting minutes.** The Chair called the meeting to order at 9:35 a.m. She welcomed the members and introduced the guests. She noted that the Task Force has met several times, and that it was approaching the halfway point of its timeline under A.O. 2014-79. She summarized the Task Force's previous recommendations: changing the name of the board of governors to the board of trustees, focusing the bar's mission on protecting and serving the public, and reducing the size of the board to between 15 and 18 trustees. The Chair stated that today's meeting would concentrate on additional details of the bar's governance structure.

Before proceeding further, the Chair asked the members to review draft minutes of the November 21, 2014 meeting.

**MOTION:** A member moved to approve those minutes, which was followed by a second and unanimously passed by the members. **M&G: 2014-06**

**2. Review of bar governance concepts.** The Chair then invited Mr. Phelps to review bar governance concepts. Mr. Phelps stated that bar governance was both an art and a science. He mentioned various studies about how non-profit organizations generally, and bar associations in particular, can be made more effective and relevant. The Arizona State University Lodestar Center, BoardSource, and the American Bar Association conducted some of these studies. One generally accepted principle in these studies is that large governing boards are unwieldy, and they fail to focus on issues of the greatest consequence to the organization. Large boards characteristically have reduced accountability and less unity of effort. A large board's inefficiency, by default, can have the unintended result of transferring greater authority to the organization's professional staff.

Mr. Phelps observed that the State Bar of Arizona had no professional staff when it was established 80 years ago; instead, volunteers managed it. The bar developed a professional staff several decades later. However, because of this historical legacy, and

**M&G draft minutes**  
**12.19.2014**

because many of the state bar's governors served on local bar associations and other non-profit organizations without support staff, there is a tendency to focus on day-to-day operations rather than the strategic goals and direction of the organization. For some governors, it is not an easy transition from the role of hands-on volunteer to one of delegation of routine matters to professional staff.

Mr. Phelps stated that bar governance involves three general areas: policy, strategic direction, and stewardship. Policy determines the organization's philosophy. For example, the State Bar of Arizona assures that its positions on political issues deal solely with the practice of law and the administration of justice. Strategic direction sets long-term goals, and establishes the board's priorities and vision. Staff works with the board to implement the strategic direction. Stewardship includes the hiring and firing of a chief executive officer (who hires other staff), and making sure that resources are available to fulfill the bar's mission. Stewardship includes an annual third-party audit. A properly functioning board can distinguish between governance and management; it concentrates on the former and delegates the latter.

**3. Workgroup proposals.** At this point, the Chair reminded the members that today's meeting is focused on bar governance. She accordingly requested each of the 3 previously established workgroups to briefly confer, and then to provide their best structural governance proposals to the Task Force. The meeting thereupon recessed for a short time to allow workgroup members to caucus. The Task Force then reconvened and the workgroups offered the following proposals.

(A) The first workgroup recommended a board size of 15 members, with 8 elected members and 7 appointed members.

- Elected: Maricopa attorneys would elect 4 board members, Pima would elect 2, and the remaining 13 counties would elect 2.
- Appointed: Appointments would require a nomination process. Appointments to the board would promote geographic and other demographic diversity. The Court would appoint 2 attorneys and 3 public members. The SBA board would appoint 2 public members.
- Terms: Term length would be 4 years, with a 2-term limit.

(B) The second workgroup recommended a board size of 15 members, with 5 elected members and 10 appointed members.

- Elected: 5 members would be elected statewide; there would be no local election districts. Elections would occur before the Court made its appointments so the Court could consider the diversity of the board's elected members.
- Appointed: The Court would appoint 5 attorneys and 5 public members from a list provided by the SBA board. The board's composition would

**M&G draft minutes**  
**12.19.2014**

require the appointment of at least 1 member from Pima and 1 member from the other 13 counties if board members were not directly elected from those areas.

- Terms: Term length would be 3 years, and terms would be staggered. There should be term limits and a process for removing a board member, although these details still need to be determined.
- Qualifications: Members would need 5 years' experience and must have no pending or current discipline.
- Ex officio: The Court should appoint 1 law school dean as a member for a 1-year term.
- Officers: There should be a president, a president-elect, and 1 additional officer.

(C) The third workgroup also recommended a board size of 15 members, with 5 elected members and 10 appointed members. (This workgroup also proposed an alternative board size of 18 members, with 6 elected members and 12 appointed members.)

- Elected: 5 members would be elected statewide: 3 from Maricopa, 1 from Pima, and 1 from the remaining 13 counties. (The alternative would have 6 elected members: 3 from Maricopa, 2 from Pima, and 1 from the remaining counties.)
- Appointed: The Court would appoint 5 members, who could either be attorneys or public members. The SBA board would appoint 5 public members. (The alternative 18-member board would have 6 members appointed by the Court and 6 appointed by the SBA.) Appointments would go through a nomination process, although the appointing authority could reject all of the nominees.
- Terms: There would be 3-year terms with a 4-term limit, or 4-year terms with a 3-term limit. Member terms would be staggered.
- Qualifications: A 15-member board would require each member to have 3 years of experience and a clean disciplinary record for 5 years. (For the alternative 18-member board, the requirements would be 5 years of experience and a clean record for 10 years.) A board member could be removed by a two-thirds vote of the board, but only with the Court's concurrence.

- Officers: There should be four officers: a chair, a vice-chair, a secretary, and a treasurer, all chosen by the board. The president should have a two-year term.

**4. Ensuing discussion of workgroup proposals.** The Task Force has previously discussed a board of between 15 and 18 members, but the workgroups' recommendations today established a preference for a 15-member board. Nevertheless, the members pointed out that a smaller board has drawbacks. One drawback is that a smaller board may have limited diversity. The Court's appointment of a number of board members is an integral element of achieving diversity and balance on the board. A limited number of elected members also narrows the pool of candidates who are eligible for the officer track. Another consideration of a small board is that a few elected board members may have substantial influence concerning the appointment of its public members. Task Force members believe that a smaller board may stimulate attorneys' interest in elections, and a higher voter turnout.

The Task Force discussed the possibility of public members not taking an active role in bar governance. The fact that public members cannot become officers may contribute to the reluctance of public members to fully engage. Public and attorney members who are appointed need to "stand tall" and be willing to serve on an equal footing with elected members. The vetting and nomination process of potential appointees is critical in finding individuals with these qualities. It is also essential to educate every board member, especially public members, on principles of bar governance and their need to fully participate. One member suggested an appointment process in which the Court not only would review nominations by the board, but the board would also review the Court's potential appointees.

The members discussed whether it would be beneficial to have a multi-year officer track, or whether it would be more appropriate to elect the bar president closer in time to when the individual assumes office. The members agreed that a longer officer track allows a future president to become integrated with the bar association, to become more familiar with its inner workings, and to have exposure to other local and national associations. This period is also important for the prospective president to develop a strategy for his or her term as president, and it would be counterproductive to defer that strategic planning until the president assumes office. The current 5-year track could be shorted to avoid burnout, but the officer track should still be at least 3 years.

The members also discussed whether the president should have a 2-year term. Proponents believe that a 2-year term allows time for the president to experience and grow into the office, and to execute a more substantial agenda. Opponents do not believe a 2-year term is realistic given the time demands of the office, which can be more than half of the person's total professional time. The demands of out-of-town travel over 2 years would be particularly difficult for a non-Maricopa president. A 2-year term for a president who became a "lone-wolf" with an unconventional strategy once in office was also a concern.

**5. Roadmap and additional comments.** Based on today's governance parameters, the Chair directed staff to prepare a draft report. The members will discuss

**M&G draft minutes**  
**12.19.2014**

the draft at the next meeting. The members will then have an opportunity to add issues or ideas that were missed, or to make revisions as necessary.

Although the Chair noted that staff had advised local and specialty bar associations of the existence of this Task Force, and invited their representatives to Task Force meetings, none have attended. It is therefore important that the Task Force, after it has reached consensus on its recommendations, circulate a draft report to the legal community for comment. The Chair and members also acknowledged the need to obtain input from the general public on Task Force recommendations.

The Chair noted that the Task Force had not completed its discussion on member services. That discussion will be set for a future meeting. A member also observed that the Task Force still needs to discuss and reach consensus on the governing board's mission, including the State Bar's role as a CLE provider.

The Chair asked the members to notify staff about their availability for 2015 Task Force meetings on the following dates:

Wednesday, January 14 (morning)  
Thursday, February 19 (afternoon)  
Thursday, March 19 (morning)  
Thursday, April 23 (morning)

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

**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

**M&G draft minutes**  
**01.14.2015**

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

**M&G draft minutes**  
**01.14.2015**

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.

DRAFT

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

**State Courts Building, Phoenix**

**Meeting Minutes: February 19, 2015**

**Members attending:** Hon. Rebecca White Berch (Chair), Paul Avelar (by telephone), Betsey Bayless, Bennie Click (by telephone), Amelia Craig Cramer (by telephone), Whitney Cunningham, Dr. Christine Hall, Chris Herstam, Joseph Kanefield, Ed Novak, Gerald Richard, Jose de Jesus Rivera, Hon. Sarah Simmons (by telephone), Martin Shultz, Grant Woods

**Members absent:** Dr. Lattie Coor

**Guests:** Tim Eigo, Geoff Trachtenberg, Bryan Chambers, Debbie Weecks, Mauricio Hernandez, Jack Levine

**Staff consultant:** John Phelps

**Staff:** Mark Meltzer, Sabrina Nash, Nick Olm

**1. Call to order.** The Chair called the meeting to order at 1:35 p.m.

**2. Comments from Mr. Chambers.** The Chair stated that today's materials included a January 15, 2015, letter from Bryan Chambers, the SBA's president-elect. Mr. Chambers' letter expressed the following views: (1) that attorneys should elect a majority of the SBA board; (2) that if a majority of the board is appointed, it will diminish members' voice on the board and cause them dissatisfaction; (3) that efficiency is not the only goal of the board, a large board may actually produce "beneficial gridlock," and the size of the board should not be reduced; and (4) that the board is already doing a good job of protecting the public. The Chair invited Mr. Chambers to address the Task Force.

Mr. Chambers elaborated on the views expressed in his letter. He observed that although the board's role is to safeguard the interests of the public, it is also the voice of Arizona's attorneys. Elections provide opportunities for attorneys, through their board members, to express views on issues that come before the board. Some Arizona attorneys, particularly those in rural areas, may not be strong advocates of mandatory membership in the SBA, but they are nonetheless satisfied that they have representation on the board.

The Chair advised Mr. Chambers that the Task Force spent considerable time discussing the issues he identified. She highlighted several of these issues, including the size of the SBA's board, proportional representation, diversity, and the advantages and disadvantages of electing versus appointing board members. She anticipates that Task Force governance recommendations will be presented as options, and the Court will ultimately determine which proposal, if any, is best. The Chair then asked if members had questions or comments for Mr. Chambers.

**M&G draft minutes**  
**02.19.2015**

One member asked Mr. Chambers if he supported any governance changes. Mr. Chambers responded that even though Task Force recommendations are not yet final, he leans toward Option 3 in the second draft, which proposes the highest number of elected board members and the most board members from rural counties. Another member asked about the discipline system, and who handled complaints about the unauthorized practice of law (“UPL”). Mr. Chambers had favorable comments concerning recent changes to Arizona’s attorney discipline system. UPL is within the scope of the bar’s professional oversight. Another question concerned the public as an SBA constituency. Mr. Chambers responded that in addition to public members serving on the board, the public is welcome to attend board meetings, and the public also can access detailed information about the SBA on its website.

A member observed that reducing the size of a governing board, as recommended by the Task Force, is a well-established principle of good corporate governance. A large board becomes unmanageable rather than producing better representation. Another member shared Mr. Chamber’s concerns about fewer elected members on the board, but felt that an elected board might not be as diverse as one that included more appointments.

The Chair thanked Mr. Chambers for his thoughtful comments and for taking the time to address members of the Task Force.

**3. Approval of meeting minutes.** The Chair then asked the members to review draft minutes of the January 14, 2015 meeting.

**MOTION:** A member moved to approve those minutes, which was followed by a second and unanimously passed by the members. **M&G: 2015-09**

**4. Discussion of the second draft of the Task Force report.** At the January meeting, the Task Force discussed a rough initial draft of its report to the Supreme Court. The Chair thereafter met with staff to prepare a second draft.

The second draft contains 7 parts. Part I (an executive summary), Part II (a summary of recommendations), and Part VII (a conclusion) are driven by other sections of the report, and the Task Force will revisit those parts later. Part III is a brief history of the SBA, and it contains no recommendations. Part IV concerns the mission of the SBA; it contains 3 Task Force recommendations, and the members concurred with those recommendations as they were stated in the second draft. The Task Force today will focus on Part V (governance) and Part VI (implementation) of the second draft report.

**5. Discussion of ex officio members and liaisons to the board.** The governance section of the second draft clarifies that every board “member” is a voting member. Others who attend meetings and who may even sit at the board’s table, such as ex officio individuals, have no vote. Therefore the draft suggests these individuals no longer be referred to as “members” of the board. The Task Force then proceeded to a discussion of the respective roles on the board of law school deans, the Young Lawyers Section president, an associate justice, and the immediate past president of the board.

**Law school deans; Young Lawyers Section president:** Although the Young Lawyers Section president serves on the board by virtue of Supreme Court Rule 32, there is no corresponding rule for the law school deans, nor is there any provision in the SBA's by-laws that specifies the deans' status on the board. The policy rationale for law school deans serving as ex officio board members is that after they attend board meetings, they will discuss issues with one another and convey important information to their faculties and students. Yet, as far as can be ascertained, the deans rarely exchange views with each other, share the board's discussions with their faculties or students, or even regularly attend board meetings.

A member reminded the Task Force that past law school deans provided thoughtful comments at board meetings. The value of having deans on the board did not emanate from what they took back to their law schools, but from their meaningful remarks during board meetings. A few members felt that the position of law school deans should be reenergized rather than removed. The members considered whether there should be no deans on the board, or one or three deans on the board; and if there were fewer than three, how they should be chosen and their term lengths. The members discussed whether deans should vote. One member opined that putting all 3 deans on the board was ceding too much power and diminished the opportunity to reduce the size of the board, and rhetorically asked whether another dean would be added to the board if a fourth law school opened in Arizona.

The Young Lawyers Section president, although representing a large segment of the bar, serves only a one-year term. If the YLS president remains on the board, the Task Force discussed whether other organized groups, such as the Hispanic Bar or AWLA, should also have their presidents serve on the board. Other groups simply send representatives to board meetings; could the Young Lawyers Section similarly send a representative? A Task Force member who was a former YLS president acknowledged that he was probably too inexperienced to be a useful or productive board member. Another member observed that the Young Lawyers Section president serves a constituency, and this was contrary to the philosophy of the SBA serving the public. One member noted that the Task Force wants board members to have experience in the practice of law, and putting a young lawyer with little experience on the board seems to contradict this objective. Another member opined that if he had a choice of the deans or the YLS president remaining on the board, he would choose the deans.

The members discussed whether the board's agenda could include "reports" from representatives of various constituencies -- such as young lawyers, law school deans, or women lawyers -- in lieu of giving these groups seats on the governing board. Members were generally opposed to this. If someone has an item that is significant, it should be placed on a regular agenda; otherwise, routine reports have minimal value.

The Chair noted that the Task Force had a variety of options, but the core issue is whether there should be "members" who sit on the board by virtue of their position or title. The second draft report eliminated the nomenclature of "ex officio member." At this point, a member made the following motions.

**M&G draft minutes**  
**02.19.2015**

**MOTION:** The governing board should not include the Young Lawyers Section president as a voting member. The motion received a second and passed unanimously. **M&G: 2015-10**

**MOTION:** Law school deans should not be ex officio members of the board. The motion received a second and passed, 11 in favor, 3 opposed. **M&G: 2015-11**

The Task Force unanimously expressed that the deans and members of their faculties should always be honored guests at board meetings, and the board should regularly extend them invitations to attend meetings. The Young Lawyers Section president and other officers of the Young Lawyers Section should receive similar invitations.

**Associate justice:** The Chair designated Mr. Cunningham as Chair and excused herself while the Task Force discussed the status of an associate justice on the board. Members' remarks confirmed that the associate justice has exceptionally good attendance at board meetings, and that the justice actively participates in board discussions. The presence of a Supreme Court justice at board meetings heightens the importance of board meetings, and board members welcome the justice's input. The board's discussions of proposed court rules generally do not present any conflicts of interest for the non-voting associate justice in attendance. Mr. Phelps said that the associate justice attends board meetings as a matter of policy, and that there is no provision in court rules or SBA by-laws that establishes the position. The associate justice functions as a liaison. A member then made this motion.

**MOTION:** The Task Force recommends maintaining the policy of having an associate justice regularly attend SBA board meetings. The motion received a second and passed unanimously. **M&G: 2015-012**

**Immediate past president:** The Chair then reentered the room and led a discussion regarding the status on the board of the immediate past president. The immediate past president is an ex officio member of the board pursuant to section 8.02 of the SBA's by-laws. The immediate past president brings wisdom and experience to the board, but he or she is "ex officio" and not a voting member of the board. One Task Force member who previously served as SBA president confirmed the importance of the immediate past president's leadership and advice, regardless of whether the past president was a member of the board. Another member opined that if the immediate past president has no official capacity on the board, what he or she says at meetings might be minimized or quickly forgotten. The Chair noted that the second draft report contemplated an officer nominating committee chaired by the immediate past president. A member then made this motion.

**MOTION:** A court rule, rather than a by-law, should state that the immediate past president is an "advisor" to (rather than a "member" of) the board. The motion received a second and passed unanimously. **M&G: 2015-013**

**6. Discussion of board size and implementation.** The second draft report contained 3 options for a board composed of elected and appointed members. The report also contained an appendix with an implementation schedule for each option. The Chair

**M&G draft minutes**  
**02.19.2015**

reviewed these portions of the report with the members and then invited their comments, which included the following.

- Rural counties are a significant part of the fabric of this state and are a valuable component of the State Bar. Options proposing that rural counties have only 2 board members slight those counties.
- Reducing the size of the board is good, but relegating elected attorney members to a minority position on the board is not good.
- Option 3, which provides for 12 elected board members, should be relabeled as Option 1.
- Maricopa County has traditionally had half of the elected seats on the board. This has worked well in the past, and this proportion should continue in the future. Although the percentage is large, it is not as large as Maricopa's proportion of lawyers in the state or proportion of non-lawyer population.
- The options should reduce the number of Maricopa seats, even if only by one, and there should be corresponding increases in the number of rural seats. Task Force recommendations should acknowledge the people and attorneys who live and work in smaller counties.
- The mission of the bar is to protect the public. If most active bar members live in Maricopa County, how is that mission furthered by electing more board members from rural counties?
- As shown in a "per capita" table appended to the second draft, the District 1 board member (Mohave, Navajo, Coconino, and Apache counties) represents a larger public population than board members from other districts, including Pima and Maricopa counties. One member suggested that the Task Force review recent demographic data and population figures.
- Pinal is no longer a rural county. A high percentage of Pinal attorneys work in Maricopa and Pima counties.
- Options proposing that rural counties be represented by Court of Appeals districts aren't feasible. The Division One district would stretch hundreds of miles, from Apache County to Yuma County. The districts should be based on common interests of counties that routinely interact, e.g., Yavapai and Coconino counties, or the Colorado River counties.
- Elections may not be the most effective way of achieving geographic diversity on the board. For example, District 1 might never have a board member from Apache County because Coconino is the population center of the district. (Mr. Cunningham, a former District 1 board member from Coconino County, advised

**M&G draft minutes**  
**02.19.2015**

that he would attend bar association meetings in each District 1 county at least annually, and he routinely communicated with attorneys throughout the district.)

- What is the rationale for the SBA board appointing public members? Doesn't that reinforce the notion of lawyers regulating themselves? One member responded that the board's appointment of public members allows the board to choose individuals who have skills that are needed by the board.
- Lawyers hold their colleagues to higher and more stringent standards than members of the public.

The Chair asked members to contemplate the various options for configuring a board, and to suggest ways for improving the current proposals. She again encouraged the Task Force to develop its best options to send to the Supreme Court.

**7. Board member terms and related subjects.** The Task Force then considered terms of elected board members. The initial proposal was a 3-year term and a 3 term limit. The members recognized the importance of having new board members following election cycles, and 9 years was considered an appropriate maximum term for board service. However, the members did not want to foreclose an experienced board member from seeking additional terms. A member made this motion.

**MOTION:** An elected board member may serve 3 terms of 3 years, and may seek reelection beyond that period only after sitting out for a 3-year term. The motion received a second and passed, 10 in favor and 2 opposed. **M&G: 2015-014**

The members also discussed the "officer track." They agreed that a total of 3 offices (president, president-elect, and secretary-treasurer) was appropriate, and that a shorter track would still be sufficiently long for a prospective president to acquire the requisite experience. The members did not favor re-election to an office, particularly the office of president, because it would improvidently "back-up" the officer track, and a 2-year term as president has other drawbacks that the members discussed at previous meetings.

**MOTION:** A board member may serve no more than a single, 1-year term in any particular office. The motion received a second and passed unanimously. **M&G: 2015-015**

An officer is elected by a majority vote, but an officer also can be removed by a two-thirds vote. Does the secretary-treasurer automatically ascend to president-elect, ascend unless removed by a two-thirds vote, or require an affirmative majority vote? And does the president-elect ascend to the presidency if not reelected to the Board in his or her district?

**M&G draft minutes**  
**02.19.2015**

**MOTION:** A secretary-treasurer ascends to the office of president-elect upon a majority vote of the board. The motion received a second and passed unanimously. **M&G: 2015-16**

**MOTION:** The president-elect ascends to the presidency even if not reelected. The motion received a second and passed unanimously. **M&G: 2015-17**

The second draft of the report proposed two qualifications for board members: first, that they have 5 years of experience, which is the current requirement, and second, that they had no formal discipline for 5 years prior to election, which is new.

**MOTION:** A member moved to approve the above proposal, a member made a second to the motion, and it passed unanimously. **M&G: 2015-18**

Although an *officer* can be removed by a vote of the board, the current rule does not provide for the removal of a board member. The second draft report proposed a provision for removal of a board member. It specifies that a board member may be removed for good cause by a two-thirds vote of the board. A member who has been removed may file a petition for review of that action with the Supreme Court. The Chair suggested that the provision include a definition of good cause, and an expedited process for the petition for review. Members then made the following motions:

**MOTIONS:** The Task Force should recommend a removal process for a board member. A board member may be removed for good cause by a two-thirds vote of the board. An aggrieved member may file a petition for review of the board's action with the Supreme Court. These motions were seconded, and all passed unanimously. **M&G: 2015-19**

**8. Roadmap.** In light of the number of revisions required for the third draft of the report, the Chair vacated the March meeting. The next meeting is set for Thursday morning, April 23, 2015. Although members will have an opportunity to include dissenting views in the report, she suggested that dissents abide the Task Force's completion of its recommendations.

House Bill 2629, which would make SBA membership voluntary and moot much of the work of this Task Force, progressed through the House Judiciary Committee yesterday. Mr. Phelps appeared at the Committee hearing, made its members aware of the existence of this Task Force, and suggested that the Committee defer action pending the recommendations of the Task Force. Mr. Phelps advised that the bill was nevertheless proceeding through the Legislature.

The Chair requested that the members review the governance options in the second draft report and provide staff with any suggestions. Are there arguments in support of, or against, any proposal in the draft report that should be included? The goal is to have a draft report that is ready for broad circulation in June.

**9. Call to the public; adjourn.** There was no response to a call to the public. The meeting adjourned at 4:40 p.m.

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

**State Courts Building, Phoenix**

**Meeting Minutes: April 23, 2015**

**Members attending:** Hon. Rebecca White Berch (Chair), Paul Avelar, Betsey Bayless, Bennie Click, Dr. Lattie Coor, Amelia Craig Cramer, Whitney Cunningham, Dr. Christine Hall, Chris Herstam, Joseph Kanefield, Ed Novak, Gerald Richard (by telephone), Jose de Jesus Rivera, Hon. Sarah Simmons (by telephone), Grant Woods

**Members absent:** Martin Shultz

**Guests:** Tim Eigo, Debbie Weecks, Heather Murphy, Lisa Deane

**Staff consultant:** John Phelps

**Staff:** Mark Meltzer, Sabrina Nash, Nick Olm

**1. Call to order; introductory comments; approval of meeting minutes.** The Chair called the meeting to order at 9:31 a.m. She noted that the primary purpose of today's meeting is discussing the third draft of the Task Force report, which is included in the meeting materials.

The Chair first asked the members if they had corrections or revisions to the February 19, 2015 draft meeting minutes. A member suggested adding, at page 4 of the draft, that presidents and officers of other constituency groups, in addition to those from the Young Lawyers Section, should be invited to attend board meetings.

**MOTION:** A member moved to approve those minutes with this revision, which was followed by a second, and the members unanimously passed the motion.

**M&G: 2015-20**

**2. Update from the State Bar.** The Chair invited Mr. Phelps to update the members on two matters under consideration by the SBA board: the board's plans concerning the Client Protection Fund ("CPF"); and the board's response to the United States Supreme Court's February 2015 opinion in *North Carolina State Board of Dental Examiners vs. FTC* ("NCDB"), which was included in the meeting materials.

Mr. Phelps reported that the CPF exists, and is maintained by the SBA, pursuant to Supreme Court Rule 32, and was established in 1961 by a declaration of trust. The trust is administered by a board of trustees who are appointed by the board of governors, and funded by a separate, ten dollar annual assessment on bar members. The fund has grown to about \$3 million. In the past year, the CPF paid more than \$300,000 to eligible claimants who were damaged because of their attorneys' ethical breaches. Mr. Phelps advised that the CPF's structure and operations are little changed from when it was established more than fifty years ago, and the SBA may consider reviewing the CPF next year with a view towards updating its policies and procedures, where appropriate, by amending the declaration of trust.

**M&G draft minutes**  
**04.23.2015**

With regard to the recent case, Mr. Phelps explained that the North Carolina Dental Board, composed almost entirely of dentists, sent cease-and-desist letters to people not licensed as dentists who were performing teeth whitening. The U.S. Supreme Court held that a state regulatory board composed of regulated members who are active market participants, and which lacks adequate state supervision, is not immune from anti-trust claims when it denies others an opportunity to participate in the marketplace. Mr. Phelps advised that bar associations nationally have concerns with the impact of this decision. In particular, the SBA's functions include sending cease-and-desist letters to individuals engaged in the unauthorized practice of law, as well as promulgating rules concerning legal specialization. Mr. Phelps stated that the SBA will establish its own task force to review and analyze the SBA's functions in light of NCDB.

One member expressed concern that a Task Force governance option that includes an attorney-majority governing board might run afoul of the NCDB opinion. He felt that to be compliant with the opinion, a majority of the SBA's board should be non-market participants. He also felt that there needed to be more supervision of the board by the Arizona Supreme Court. Other members believed that the Task Force recommendations complied with NCDB. The Chair acknowledged the issues arising under NCDB, but concluded that when the Court receives the Task Force report, it also will be aware of these issues, and that it will take the holding of the case into consideration when it adopts or rejects Task Force recommendations.

**3. Discussion of the third draft of the Task Force report.** The Chair noted that the third draft of the Task Force report builds on the first and second drafts, which the members considered at their January and February meetings. Parts I and II of the report have been extensively edited and reorganized. Parts III and IV contain more detailed explanations and rationales for proposed changes to Supreme Court Rule 32.

**Summary table:** The meeting materials included a summary table of the Task Force's Rule 32 recommendations. There are about two dozen recommendations in this table, and the members generally agreed to almost all of those items at previous meetings. The Chair proposed using the table for today's discussion. She asked the members to consider during the discussion whether each proposed provision in Rule 32 accurately reflects the members' agreement, whether the members had any changes to the draft phrasing of a proposed provision, and whether any provisions were omitted. In this regard, the Chair advised that Administrative Order 2014-79, which established the Task Force, directed the Task Force to consider a list of mission and governance items. She requested the members' comments about whether the items in the A.O. were adequately covered in the report.

**Active out-of-state members:** Before proceeding to the table, the Chair asked Mr. Phelps to elaborate on a new issue presented in the third draft of the report. Active out-of-state SBA members currently cannot vote for members of the board; should Rule 32 be amended to allow them to vote in SBA elections? Mr. Phelps noted that more than 2,500 of the almost 18,000 active SBA members are out-of-state. These out-of-state members represent about fourteen percent of active bar membership.

**M&G draft minutes**  
**04.23.2015**

Mr. Phelps recently conducted an informal survey of other states' bars. He received eighteen responses, and in eleven of those states, out-of-state members are permitted to vote in governing board elections. In nine of these states, out-of-state members are allowed to run for the board. Mr. Phelps believes that bars that permit participation in elections by out-of-state members recognize a trend toward multi-state or regional practices, and that many attorneys are members of multiple bars. Mr. Phelps recognized that his survey had responses from a limited number of states, and that a fifty-state survey might produce different data. He also noted that in those states that allow participation, boards may be considerably larger than the board proposed by the Arizona Task Force, and those states therefore have the flexibility to include a designated out-of-state member on the board, or an "at-large" seat for which out-of-state members are eligible. Regardless, allowing participation by out-of-state members encourages interest and buy-in from this significant section of the bar.

Most Task Force members agreed that if a lawyer is licensed in Arizona and subject to regulation in this state, the lawyer should be allowed to vote in State Bar elections. One member asked whether allowing out-of-state lawyers to vote would support the bar's primary mission of protecting the public. Another member reiterated his view that lawyers, whether in-state or out-of-state, should not be empowered to vote for their regulators; but he added that if lawyers do in fact elect other lawyers to the board, out-of-state lawyers should also be allowed to vote.

A shared concern of Task Force members was whether allowing out-of-state lawyers to vote would require the creation of a new Arizona governance district, or if it would require the elimination of an existing district to accommodate a new one for those out-of-state members. The members discussed an "at large" statewide district or position. They discussed an alternative that would require out-of-state members to vote in the district of their last residence in Arizona. They also discussed the options of allowing out-of-state members to designate a district (particularly if the member was not previously a resident of Arizona), or that out-of-state members be required to vote in the most populous district (i.e., Maricopa.) One member envisioned the possibility of mischief if all 2,600 out-of-state members designated a rural district for voting purposes. Another member proposed that the Court appoint an out-of-state member to the board, and allow virtual attendance by electronic means, but others believed this would promote the establishment of an out-of-state constituency. The members then voted on the foundational issue.

**MOTION:** A member moved to amend Rule 32 to permit active, out-of-state members of the SBA to vote in board elections. The motion received a second and it passed unanimously. **M&G: 2015-021**

There was little support expressed for allowing out-of-state members to serve on the board, or as an officer. But because today's meeting was the Task Force's initial discussion concerning out-of-state members, the Chair suggested the members defer their specific proposals for implementing the foregoing motion to the next Task Force meeting.

**M&G draft minutes**  
**04.23.2015**

**Rule 32 summary table:** The members agreed on the following proposed amendments to Rule 32, as explained in the report and as shown in the summary table, and subject to further discussions noted in subsequent pages of these minutes.

Rule 32 §	Proposed Rule 32 provision
32(a)(3) [#1]	“The primary mission of the State Bar of Arizona is to protect and serve the public. This mission includes responsibilities to improve the legal profession, and to advance the rule of law and the administration of justice.”
32(a) [#2]	[Restyle and reorganize the provisions of Rule 32(a).]
32(a)(2) [#3]	“Every person <del>now or hereafter</del> licensed in this state to engage in the practice of law must be a member of the State Bar of Arizona in accordance with the rules of this Court.” [Approved with the deletion shown.]
32(e) [#4]	[The board should have a greater proportion of appointed board members, as shown in Options 1, 2, and 3 below. The members’ agreement on this proposal was conditioned on their discussion regarding the NCDB opinion.]
32(e)(3)(A) [#5]	“Public trustees are nominated by the board and appointed by the Supreme Court for terms of three years and begin board service at a time designated by the Court.”
32(e)(1) [#6]	“The State Bar shall implement this Rule in a manner that provides for the election and appointment of approximately one-third of the board every year.”
32(e) [#7]	[Option 1] “The board is composed of <u>eleven elected trustees and seven appointed trustees</u> , as provided by this Rule.” [Etc.]
32(e) [#8]	[Option 2] “The board is composed of <u>six elected trustees and nine appointed trustees</u> , as provided by this Rule.” [Etc.] [Members noted that the summary table in the materials and Appendix F of the draft report incorrectly reversed the order of options 2 and 3.]
32(e) [#9]	[Option 3] “The board is composed of <u>six elected trustees and twelve appointed trustees</u> , as provided by this Rule.” [Etc.]
32(f)(4) [#10]	“The immediate past president of the board serves a one-year term as an advisor to the board.”
-- [#11]	Discontinue the board seat of the Young Lawyers Section president. [No corresponding provision is included in proposed Rule 32.]
-- [#12]	Discontinue the ex officio board membership of the law school deans. [No corresponding provision is included in proposed Rule 32.]
-- [#13]	Continue the service of an associate justice as a liaison to the board. [This is a matter of policy and proposed Rule 32 includes no corresponding provision.]

**M&G draft minutes**  
**04.23.2015**

32(e)(2)(F) [#14]	"An elected trustee may serve three consecutive terms, but may not be a candidate for a fourth term until three years have passed after the person's ninth year of service."
32(e)(2)(B) [#15]	"Every elected trustee must have been an active State Bar member, and have had no record of formal discipline, for five years prior to election to the board."
-- [#16]	An attorney member of the board who is the subject of a formal disciplinary complaint must be recused from serving on the board pending disposition of the complaint. [No corresponding provision is included in proposed Rule 32. Instead, this provision should be included as an amendment to the by-laws. The filing of a formal disciplinary charge means that a finding of probable cause for the complaint had been made.]
32(e)(5) [#17]	"A trustee of the board may be removed for good cause by a vote of two-thirds or more of the trustees cast in favor of removal at a meeting called for that purpose. Good cause for removal exists if a trustee undermines board meetings, or compromises the integrity of the board. Good cause includes, but is not limited to, conviction of a felony or a crime involving moral turpitude, imposition of a formal discipline sanction, repeatedly ignoring the duties of a trustee, or disorderly activity during a board meeting. A board trustee so removed may file within thirty days of the board's action a petition pursuant to Rule 23 of the Arizona Rules of Civil Appellate Procedure requesting that the Supreme Court review the board's determination of good cause. The Supreme Court will expedite consideration of the petition."
32(f)(1) [#18]	"The board elects its officers. The officers are a president, a president-elect, and a secretary-treasurer."
32(f)(2)(C) [#19]	"Each officer serves a one-year term."
32(f)(2)(D) [#20]	"A trustee may not be elected to a second term for any office that the trustee has held during the preceding nine, or fewer, consecutive years of service on the board."
32(f)(4) [#21]	"The board advisor, with the assistance of two or more trustees of the advisor's choosing, leads a group to recruit, recommend, and nominate candidates for the offices of president-elect and secretary-treasurer at the next annual convention."
32(b)(1) and 32(e) [#22]	"Board' means Board of Trustees of the State Bar of Arizona."  "The governing board of the State Bar of Arizona is a board of trustees."

**M&G draft minutes**  
**04.23.2015**

32(e)(4) [#23]	“Every elected and appointed trustee must take an oath upon commencing their service as trustee. The oath must require a trustee to faithfully and impartially discharge the duties of a trustee to the best of his or her ability, and to uphold the fiduciary responsibilities of a trustee of the governing board of the State Bar of Arizona.”
-- [#24]	Include fiduciary responsibilities in the orientation of board members. [No corresponding provision is included in proposed Rule 32.]

**Further discussion regarding recommendations #5, 7, 8, and 9 and the appointment of public and at-large members:** A member began this discussion by observing that appointment of public members upon nomination of the board is a good step for increasing the Court’s supervision of the bar, but it nonetheless falls short of the intent of NCDB. He suggested that Court appointments from a list provided by the SBA perpetuates the notion that attorneys regulate themselves. The member believes that the Arizona Supreme Court should have even greater involvement in the appointment of public members, and that it should be allowed to appoint whichever public members it sees fit. Another member noted that during the past two decades, the board has appointed superb public members, and there is little necessity to change the status quo. One member observed that many years ago, the relationship between the Court and the bar was not always collegial, and the proposed nomination process requires collegiality between the Court and the SBA. The sense of the members following this discussion was that the board would submit nominations of public members to the Court, but that the Court could decline to appoint everyone who the SBA nominated. Either the bar or the Court, or both, could vet the candidates. One member still had reservations about this solution, inasmuch as the Court’s rejection of every nominee could weaken the integrity of the nomination process. The Chair concluded that this recommendation would be contingent on the language of the proposed rule, and the Task Force would revisit staff’s revised language, if necessary.

The members also discussed distinctions in the process for appointment of public members and at-large members, as well as the need to distinguish their titles. One distinction is that public members currently have a two-term limit, whereas at-large members have no term limit. Another distinction is that public members cannot serve as officers, but at-large members can. Some Task Force members expressed concern that these terms were muddled. For example, at-large members can be attorneys or non-attorneys; are non-attorney at-large members therefore public members? Because the draft rule proposes that the Court appoint public members as well as at-large members, one member suggested that public and at-large members simply all be called “appointed” members. Another suggested that it might be rare that a public member would be elected as SBA president, or be elected to another office. But the rule should not foreclose the possibility; the board should have discretion about who to elect as its officers. The Task Force then considered the following motion.

**M&G draft minutes**  
**04.23.2015**

**MOTION:** Any member of the board, including a public member, should be eligible for an officer position. The motion received a second and it passed unanimously. **M&G: 2015-022**

**Further discussion regarding recommendations #7, 8, and 9 and the sequence of the three options:** During the February 19 meeting, a member suggested that Option #3 in the second draft, which proposed the greatest proportion of elected board members, appear in the third draft as Option #1, and the third draft in fact implemented this suggestion. At the April 23 meeting, another member requested that the fourth draft of the report show the options in their previous order. This member believes that presenting Option #1 as the “first” option implies that it’s preferred by the Task Force; yet because it incorporates a mechanism where the regulated select their regulators, the member felt that it runs afoul of NCDB and should be disfavored. He stated Options #2 and #3, where the Court appoints a majority of the board, are more aligned with NCDB. Another member expressed the view that Option #1 was compliant with NCDB, and that Option #1 was preferred by most Task Force members, and he recommended that the Task Force report present only Option #1.

The Chair concluded this discussion by observing that the lack of unanimity is reflected in the report’s presentation of options, and that members can submit dissents to all, or to particular sections, of the report.

**Further discussion regarding recommendation #13, and the associate justice liaison:** The members concurred with the recommendation that an associate justice continue to serve as a liaison to the board. However, one member suggested that elevating the status of this justice to more than a liaison, and conferring upon the justice specific supervisory responsibilities, would augment the SBA’s compliance with NCDB. The members did not reach consensus on this suggestion.

**Further discussion regarding recommendation #17, and removal of a board member for good cause:** A Task Force member stated the proposed rule that allows removal of a board member for good cause should clarify that a board member’s expression of unpopular views does not constitute good cause. The Chair suggested that the definition of good cause incorporate the member’s concept.

**Further discussion regarding recommendation #25, and term-limiting a president-elect.** Staff had included in the summary table a new recommendation, number 25, which would preclude an automatic extension of an officer’s term if the officer was not elected to the board during an interim election or was term-limited. Staff expressed concern that an automatic extension could disrupt the proposed election schedule, where one-third of the board would be elected every year; and also, that if the officer was defeated during an interim election, the officer’s district would be overrepresented if the officer continued to serve. With the elimination of two vice-presidents and without the automatic succession of the secretary-treasurer to a higher office, the only officer position affected by this recommendation is the president-elect.

One member advised that automatic extensions were a common governance practice. Other members noted that the president only casts a vote during board meetings to break a tie. Another member cautioned against a rule derailing the

**M&G draft minutes**  
**04.23.2015**

succession of a president-elect to the office of president. He added that such a rule could be counterproductive and disrupt the orderly transition of bar governance. To address staff's concern about maintaining balance and symmetry on the board, the member made the following motion, the substance of which would be incorporated into Rule 32:

**MOTION:** The president-elect automatically succeeds to the office of president. If automatic succession extends the person's term of service on the board beyond what is otherwise provided by these Rules, then upon completion of the term as president, a special election will be held in the person's district to elect a new board member for the remaining partial term. The motion received a second and it passed unanimously. **M&G: 2015-023**

**4. Roadmap.** The Chair suggested that the members reconvene on June 23 to finalize a report for public comment. She noted that A.O. 2014-79 included a reference to public hearings. She stated that she is open to conducting public hearings, but she asked the members whether they thought the public would come to the hearings and whether there were better alternatives for publicizing the report and soliciting public input. She asked the members to send any ideas in this regard to Task Force staff. The Chair would also like to provide the next draft to each current member of the State Bar Board of Governors. The State Bar's annual convention is in June, but its seminar agendas, which are already set, do not include a discussion of this Task Force or its report. She would like to circulate the report as widely as possible after the June 23 Task Force meeting and request comments on the report. She would also like to have a follow-up Task Force meeting in August to discuss and to respond to any comments from the legal community and the public.

**5. Call to the public; adjourn.** There was no response to a call to the public. The meeting adjourned at 11:45 a.m.