

March 5, 2004

MINUTES OF THE MEETING OF THE BOARD OF GOVERNORS

A regular meeting of the Board of Governors of the State Bar of Nevada was convened on March 5, 2004, in the Board Room of the State Bar Offices in Las Vegas.

The following members were in attendance:

N. Patrick Flanagan III	...	President
Ann Price McCarthy	...	President-Elect
Vincent A. Consul	...	Vice President
Gloria J. Sturman	...	Immediate Past President
Nancy L. Alf		
Bruce T. Beesley		
James W. Bradshaw		
Kathleen J. England		
Cam Ferenbach		
Dara J. Goldsmith		
Rew R. Goodenow		
Bridget Robb Peck		
John P. Schlegelmilch		
Bruce I. Shapiro		
William C. Turner		
Steven B. Wolfson		

The following members were absent:

John A. Curtas
Richard Morgan

STATE BAR STAFF PRESENT:

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Allen W. Kimbrough

Rob Bare

Christopher Boadt

Patrice Eichman

Mae Flennoy

Marc Mersol

Damon Dias

Kristina Marzec

GUESTS PRESENT:

Stephanie Hardie

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1. CALL TO ORDER AND INTRODUCTIONS

The meeting was called to order by the President at 9:25 a.m. and a quorum was declared.

2. APPROVAL OF MINUTES OF PRIOR MEETING OF BOARD OF GOVERNORS

The Revised Minutes of the meeting of December 5, 2003 were approved.

The following corrections were made to the Minutes of the January 22, 2004 meeting: (1) the word "for" was deleted from the first line of section 15, and (2) the absence from the room of Mr. Ferenbach for the discussion of the *Michel* matter should have been noted in section 19. With those corrections the Minutes were approved.

3. REPORT ON ACTIONS AND RECOMMENDATIONS OF OPERATIONS COMMITTEE

The Board approved the actions of the Operations Committee taken at its February 11 and February 20, 2004 meetings, reserving matters related to the annual review of Bar Counsel until later in the meeting.

4. REPORT OF DIRECTOR OF FINANCE AND INFORMATION SYSTEMS

Marc Mersol presented the financial condition of the State Bar at January 31, 2004, and responded to questions regarding same. Several Board members raised questions regarding the cost of the February 2004 bar examination but were advised that those amounts had not yet been computed.

Mr. Ferenbach presented the report of the Audit Committee regarding its recommendation regarding the selection of a new outside auditor for the State Bar for tax years 2003-2005. With one dissent the Board approved the selection of Piercy Bowler Taylor & Kern of Las Vegas as the new auditors.

5. CONSIDER MATTERS RELATED TO NORTHERN NEVADA STATE BAR CENTER

Executive Director Allen Kimbrough provided the Board with a report on the planning for the interior construction of the new State Bar offices and conference center in Reno, including a viewing of the architect's renderings of the interior design. Questions were raised regarding security issues, and it was determined that a secured door should be added to the main office hallway. Mr. Kimbrough reported that contractors would be interviewed later in March and that construction would commence

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in early April with a target completion date of not later than July 15.

6. REPORT OF YOUNG LAWYERS SECTION

Stephanie Hardie gave the report of the Young Lawyers Section focusing on its various projects and plans. She also provided the Board with copies of the new *Coming of Age* booklet to be distributed to high school seniors in Nevada.

7. CONSIDER MATTERS RELATED TO BUSINESS LAW SECTION

The Board ratified the slate of officers and executive council members as requested by the Business Law Section.

8. CONSIDER MATTERS RELATED TO LEGAL ASSISTANTS DIVISION

The Board discussed the request of the Legal Assistants Division for Board assistance in its revitalization efforts. The Board appointed President Flanagan, Ms. Goldsmith, and Mr. Beesley as liaisons to the group for such purposes.

9. REPORT OF ETHICS 2000 COMMITTEE

Committee Chair Steven Wolfson and Bar Counsel Rob Bare presented the final report of the Ethics 2000 Committee with a request to the Board to approve or disapprove it in total. On motion made and seconded the Board agreed that it would adopt the report as submitted by the Committee but that the ADKT petition forwarding the Committee's recommendations to the Supreme Court would contain any Board-approved contrary comments.

It was noted that the areas of controversy or disagreement were the following: SCR 202.1 (self-reporting of sanctions), SCR 156 (confidentiality), SCR 158(12) (sex with clients), SCR 155(5) (fee sharing), and SCR 160-161 (imputed disqualification). The Board took up each of these issues for discussion in that order.

With respect to SCR 202.1 (self-reporting of sanctions), a motion to amend the Rule as drafted failed for lack of a second. On motion made and seconded, the Board determined (by a vote of 8-5) that there should be no such rule and that the proposed Rule would not be forwarded to the Supreme Court.

Concerning SCR 156 (confidentiality), the Board deleted the last sentence of section 2 thereof and approved the remainder of the rule with one dissenting vote. A motion was made and seconded that the current SCR 156 be retained except

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for the addition of newly proposed section 3(d), but this motion was overwhelmingly defeated.

With respect to SCR 158(12) (sex with clients), the Board determined on a divided vote that certain changes were required to the language of the proposed Rule. By a vote of 8-4, the Board revised the first sentence of part 12 to read as follows: "A lawyer shall not have a sexual relationship with a client unless the sexual relationship between them is consensual and non-exploitative."

Concerning SCR 155(5) (sharing of fees), a motion was made to amend part (b) to provide that the respective lawyers' duties and responsibilities should be set out, which failed. A separate motion was made and seconded to amend part (a) to change the word "or" to "and." With this amendment the Board approved the submission of SCR 155(5) to the Court.

As to SCR 161(4)(a), the Board voted unanimously to incorporate SCR 160(3) into the list of rules cited therein.

Subject to the above-described amendments, the Board voted unanimously to approve the new Rules of Professional Conduct as proffered by the Ethics 2000 Committee. The Board also expressed its appreciation to the members of the Committee and to staff members Rob Bare and Kristina Marzac for their exceptional work on this project.

10. CONSIDER MATTERS RELATED TO LAW RELATED EDUCATION

The Board had a general discussion regarding its disappointment that the Nevada Law Foundation did not award any grant funds to the State Bar's law related education programs in its 2003 cycle, but assurances have been given that 2004 requests will receive due consideration.

The Board approved the proposed Bylaws of the Advisory Commission on Law Related Education.

11. REPORT OF DIRECTOR OF ADMISSIONS

Patrice Eichman reported to the Board on the recent February bar examination and plans for the upcoming July exam. She also advised the Board that the grades were tentatively scheduled to be released on Thursday, April 22.

12. CONSIDER APPOINTMENTS TO FEE DISPUTE ARBITRATION COMMITTEE

The Board reappointed the following persons to the Fee Dispute Arbitration Committee for a term expiring March 2007:

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Paul L. Larsen	Las Vegas Panel A
Edward R. Miley	Las Vegas Panel A
Michael Bohn	Las Vegas Panel B
Eric Dobberstein	Las Vegas Panel B
Patrick McKnight	Las Vegas Panel B
Howard Miller	Las Vegas Panel B
Victor Perri	Las Vegas Panel B

The Board reappointed Jeffrey Kump as Chair of the Rural Pane for a term expiring March 2005.

The Board reappointed the following persons for a term expiring May 2007:

Fran Evans (lay member)	Las Vegas Panel B
Brad Peterson (lay member)	Las Vegas Panel B
Mark Solomon (lay member)	Las Vegas Panel B
David Hamilton	Reno Panel
William Harrison	Reno Panel
Paul Matteoni	Reno Panel
Richard Cornell	Reno Panel

The Board reappointed Robert Johnston as Chair of the Carson City Panel and CiCi Cunningham as Chair of Las Vegas Panel C, both for terms expiring May 2005.

The Board then appointed the following persons to terms expiring March 2007:

Martha Anderson	Las Vegas Panel A
Christine Roberts	Las Vegas Panel A
Bruce D. Schupp	Las Vegas Panel A
Gary Backus	Rural Panel
Thomas Coyle, Jr.	Rural Panel
David Stanton	Rural Panel
Stewart Wilson	Rural Panel

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13. CONSIDER APPOINTMENTS TO CLIENT SECURITY FUND COMMITTEE

The Board reappointed Vernon "Gene" Leverty to the Client Security Fund Committee for a term expiring March 2007.

14. CONSIDER APPOINTMENTS TO SOUTHERN NEVADA DISCIPLINARY BOARD

The Board redesignated Steven Altig and Shelley Krohn as primary attorney members of the Southern Board. Ms. Goldsmith and Mr. Wolfson abstained from this vote.

The Board redesignated the following lay members to the primary Southern lay panel : Erin Beesley, Hugh Conwell, Michelle Gex, and Marlene Kolicius.

15. CONSIDER MATTERS RELATED TO PUBLICATIONS COMMITTEE

Director of Communications Mae Flennoy presented the report of her department. With Mr. Ferenbach abstaining the Board appointed Megan Bowen and Anne Wellborn to the Publications Committee for terms expiring December 2006. The Board also ratified the expiration dates suggested by the Committee for its other members and reappointed same.

The Board approved the revised Bylaws of the Committee.

16. CONSIDER RESIGNATION OF MEMBERS

The Board approved the applications for resignation from the State Bar filed by the following Inactive members: Carl A. Alcorns, Thomas J. Beale, Norman K. Kellison, Michael K. Kirschner, Susan J. Martin, Diana M. Fulton, and Annette Tamamian Smurr. During the course of the Board's discussion it was noted that Arizona's inactive dues have been increased to \$250 annually.

17. CONSIDER MATTERS RELATED TO MODEL PATTERN JURY INSTRUCTIONS COMMITTEE

The Board appointed Andrew Gordon as Chair of the Civil Instructions committee and appointed The Hon. Ron Parraguirre and the The Hon. Brent Adams as judicial members.

The Board delegated authority to Mr. Gordon to recruit a faculty member from the William S. Boyd School of Law,

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subject to the approval of the Operations Committee.

18. CONSIDER MATTERS RELATED TO 2004 ANNUAL MEETING

Christopher Boadt gave a report to the Board regarding the upcoming Annual Meeting in San Diego. He advised the Board that registrations were running ahead of last year and discussed the new format for the meeting, which includes opening and closing plenary sessions.

19. CONSIDER CLE DEPARTMENT STRUCTURE, PROCEDURES AND PHILOSOPHY

Mr. Boadt discussed with the Board the operations of the Continuing Legal Education Department and particularly how sharing with the various substantive law sections is handled in the case of jointly-produced programs. He also responded to concerns from various Board members regarding these arrangements and the Board engaged in a general discussion about same. The Board agreed to address this matter again at the May 12 meeting.

20. CONSIDER MATTERS RELATED TO LAWYER REFERRAL AND INFORMATION SERVICE

Damon Dias, LRIS Coordinator, presented certain amendments to the LRIS's Rules of Operations for the Board's consideration. The Board made a single revision (removing the word "substantial" before the word "overbiling" in Article 3, Section 5) and thereafter approved the Rules as so revised and amended.

The Board approved the creation of experience panels within the Service.

The Board appointed Thomas Susich as Vice-Chair of the LRIS Committee.

21. REPORT OF BAR COUNSEL

The Board (in Executive Session with Mr. Ferenbach not present) discussed pending litigation matters including the *Herb Michel* matter.

22. REPORT OF EXECUTIVE DIRECTOR

Mr. Kimbrough expanded on his written report to the Board, and Ms. Allf provided the Board with a further report on the Midyear Meeting/Bar Leadership Forum.

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23. REPORT OF PRESIDENT-ELECT

President-Elect McCarthy discussed some thoughts regarding the upcoming bar year, including potential legislative issues. She also expressed a desire to investigate providing Casemaker (developed by the Ohio State Bar Association) to the State Bar membership.

24. INFORMATIONAL ITEMS

Mr. Kimbrough called the Board's attention to various items included in this section of the Agenda Book.

25. ANNUAL REVIEW OF BAR COUNSEL (EXECUTIVE SESSION)

The Board heard comments from and thereafter conducted the annual review of Bar Counsel Rob Bare.

26. REPORT OF PRESIDENT

President Flanagan stressed to the Board the importance of full attendance and participation at events sponsored by the State Bar and/or the Board including the annual First District Bar Reception in January and the Bar Leadership Forum.

He also reminded the Board that only the President (or his specific designee) should ever speak to the press regarding State Bar matters. The Board viewed the factually-incorrect story run on the Las Vegas NBC affiliate and discussed other options for improving the image of the State Bar. These matters also received input from Ms. Flennoy.

27. ADJOURNMENT

There being no further business, the meeting was adjourned at 4:30 p.m.

Respectfully submitted,

N. Patrick Flanagan

Allen W. Kimbrough

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President

Executive Director