

**AMERICAN BAR ASSOCIATION**  
**SECTION OF ADMINISTRATIVE LAW & REGULATORY PRACTICE**  
**Spring Meeting**  
**Las Vegas, NV**  
**April 12-13, 2008**

**April 12**

Persons present: Chair Michael Asimow, Chair Elect Russ Frisby, Vice Chair Bill Luneburg, Secretary Jamie Conrad, Budget Officer Bill Morrow, Delegate Judy Kaleta, Last Retiring Chair Dan Troy, Councilmembers Cary Coglianese, Ken Hurwitz, Bill Jordan, Richard Murphy, Paul Noe, Lois Oakley (State Administrative Judiciary), Richard Parker, Mort Rosenberg (Federal Legislative Branch), Dick Stoll and Joe Whitley and Liaisons Nancy Eyl (Law Student) and James Muetzel (Young Lawyers Division).

Absent: Councilmembers Charlotte Bahin, Michael Herz, Brett Kavanaugh (Federal Judiciary), Dan Meron (Executive Branch), Steve Vieux, Ann Young, and Delegate Tom Susman.

**I. Administrative**

The meeting began at 8:30 a.m. Persons present introduced themselves. The minutes of the Mid-Year Meeting were approved.

**II. American University**

Andy Popper, American University Washington College of Law, announced that his school would be sponsoring the Section's Annual Meeting in New York. He expressed his school's appreciation for its symbiotic relationship with the Section, anchored by our collaboration on the Administrative Law Review. On behalf of the Section, Chair Michael Asimow returned the compliment.

**III. Chair's Report**

Michael announced that the two new Section Fellows will be Dan Troy and George Bermann, and that the Distinguished Service Award will go to George Koenig for his yeoman's efforts in making the Homeland Security Law Institute so successful this year. Michael is appointing John Vittone to fill the balance of Tom Susman's delegate term. He welcomed Mort Rosenberg of the Congressional Research Service as Section's new Federal Legislative liaison.

Michael noted that ACUS refunding is not on the ABA's Legislative Priorities list, but that Russ Frisby and Jamie Conrad will be doing Hill visits on ABA Day this coming Wednesday and Thursday. Eleanor Kinney urged us to do more to get ACUS on the priority list. Jean Cooper urged others to participate on those Hill visits. Otto Hetzel also

flagged the attorney-client privilege issue, which is one of the two top priority issues for ABA Day. Judy noted that lobbying as part of ABA Day is a change from the Section's prior reticent practice. We will email the ACUS one-pager to the Council on Monday, and available members should join Russ and Jamie.

Michael proposed that our policy on payment of state ALJs not be archived. Lois Oakley argued that state ALJs are not in fact underpaid, based on more current data, and that salaries are not a top issue for central panels. Jody Levine countered that salaries are in non-central panel states. Ron Levin clarified that the policy only declares that ALJs should not be underpaid, not that they are. After much discussion, the motion was approved.

Michael recognized Jon Rusch for organizing the meeting, particularly the Yucca Mountain and Gaming Law Panels, and Greenberg Traurig for sponsoring the meeting. He also recognized Randy May for organizing a teleconference on FCC law and Joe Whitley for organizing a program on privacy and civil rights in homeland security.

#### **IV. Chair-Elect's Report**

Russ Frisby described his goal of getting younger and newer faces into committee leadership, and continued to urge people to nominate themselves or others for appointments.

The POTUS Committee met yesterday. Ron Levin, Bill Funk and Jamie Conrad will have the lead in coordinating redrafts of the three main sections of the draft document, and will hold a conference call soon to that end. He also emphasized that the report will be nonpartisan. The Committee will have a final draft for the Annual Meeting.

The Spring 2009 Meeting will not be held in Tucson but will be moved to Williamsburg or Charlottesville to enable the program to be directed to appointees and staff of the new administration and to focus on POTUS and election issues. Jean Cooper will remain the chair.

#### **V. Vice-Chair's Report**

Bill Luneberg reported on the upcoming Rulemaking Institute, focused on issues related to guidance. Thomson West will be monitoring it for possible future sponsorship. The Pro Bono Committee has identified a list of pro bono opportunities for members and internships for students, which is now posted on the Section's webpage. Michael urged folks to look for other opportunities and forward them to Bill.

#### **VI. Expedited SSA Funding Resolution**

Jodi Levine explained the reason for this proposed expedited report & recommendation, which would go to the Board of Governors for approval before the next House of Delegates meeting: the Social Security Administration is inadequately funded, but there

is no ABA policy on the adequacy of SSA's budget. Richard Parker proposed that the document include some more objective benchmark for adequacy of funding. The resolution passed unanimously. Jodi also described the extent of the Section's representation in an upcoming meeting with Commissioner **Astruh**.

Jodi also spoke about activities of the **HIV/AIDS\_\_\_\_\_**

## **VII. Delegate's Report**

Judy began by expressing her regret at no longer being partners in crime with Tom Susman and her happiness at working with John Vittone.

The report to accompany the Model Land Use Planning Ordinance is included as Tab 5 and is still in draft. People with comments should supply them to \_\_\_\_\_ before May 8.

The Council agreed to oppose the draft R&R on Physicians' Orders for Life Sustaining Treatment unless comments previously supplied by the Section are addressed.

The Council discussed the draft R&R on medical adverse event reporting but felt the report insufficiently explained basis of the Section's interest.

## **VIII. Nominating Committee**

Eleanor Kinney announced her committee's nominations and expressed pleasure at being able identify such a slate of young Councilmembers. (The Secretary was secretly pleased.)

## **IX. Earmarks Program**

Eleanor Kinney moderated this program, which provided input for deliberations tomorrow.

The meeting adjourned at 11:20.

### **April 13**

Persons present: Chair Michael Asimow, Chair Elect Russ Frisby, Vice Chair Bill Luneburg, Secretary Jamie Conrad, Budget Officer Bill Morrow, Delegate Judy Kaleta, Councilmembers Cary Coglianesse, Ken Hurwitz, Bill Jordan, Richard Murphy, Paul Noe, Lois Oakley (State Administrative Judiciary), Richard Parker, Mort Rosenberg (Federal Legislative Branch), and Joe Whitley and Liaisons Nancy Eyl (Law Student) and James Muetzel (Young Lawyers Division).

Absent: Last Retiring Chair Dan Troy, Councilmembers Charlotte Bahin, Michael Herz, Brett Kavanaugh (Federal Judiciary), Dan Meron (Executive Branch), Dick Stoll, Steve Vieux, Ann Young, and Delegate Tom Susman.

## **I. Administrative**

The meeting began at 9:00 a.m. Persons present introduced themselves.

## **II. Publications Committee**

Anna Shavers said the Developments book is finished and that we will soon receive an email telling us how we can review and download it. One can buy a paper copy, and the document has already turned a profit. Books in process: EU Project (multivolume series; almost ready); Lawyers on TV, growing out of Michael's program at the Mid Year Meeting; and a homeland security volume. Folks should help find advertisers for ALR and AL&RN. Bill Morrow emphasized that our book publication activities are among the extensive of any ABA section.

## **III. Misuse of the Appropriations Process**

Michael initiated a lively discussion of the issues raised at yesterday's program. There was broad sentiment that the Section should address the transparency of "earmarks" as they are conventionally understood, as well as the two issues flagged in Peter Strauss' draft R&R (the effect on the administrative process of appropriations directives to spend or not to spend funds on particular activities; and legislating on appropriations bills). The Council referred the issue to the Legislative Process Committee, supported by Mort Rosenberg and Beth Garrity, to more fully investigate and ventilate those questions and come back to the Council in August within an initial report. This will require a detailed, empirical report, rather than a selection of anecdotes -- which may be its most important contribution. Any recommendations should be focused, and the Committee should bear in mind that (i) some of its recommendations may already be required by law or legislative rule, and (ii) sometimes these "earmark" activities may serve useful purposes.

## **IV. Interstate Compact Report & Recommendation**

Bill Morrow described the changes that have been made to this draft document since the Mid Year Meeting. (The report still requires some work to conform it to the recommendation.) They have obtained cosponsorship of the Section on State and Local Government. The Council urged the committee to specify the high-level general principles of administrative law that the recommendation ought to specify, and to discuss the range of solutions available to Congress. Michael will offer a draft of principles. The Committee will attempt to finalize the document within the month, in time to send it to the House for the Annual Meeting.

## **V. Report of the Legislative Liaison**

Mort Rosenberg expressed his appreciation for being tapped as our legislative liaison. He also:

- Expressed support for the decision excluding from evidence materials seized by the FBI from Rep. Jefferson's office;
- Reported on the ongoing litigation regarding Congress's subpoenas to White House Chief of Staff Bolton; and
- Encouraged the POTUS Committee to review testimony that his colleague Curtis Copeland will present at an upcoming congressional hearing.

## **VI. Budget Report**

Bill Morrow noted that the Section has run deficits five of the past seven years and that the Section's reserves are about half of what they ought to be. He walked the Council through his memo listing proposed cuts and revenue opportunities.

The Council voted:

- To approve the final FY 2008 budget;
- To cancel the 2009 Mid Year Meeting and instead have (i) the Council meet for one day only at the ABA offices in DC and (ii) only the Chair and the Delegates attend the ABA's Annual Meeting; and
- To limit Councilmembers' air fare reimbursements to \$500 and to limit any other reimbursements to a total of \$100 per day for up to two days.<sup>1</sup>

The Council will assess how much money the above Mid Year Meeting approach saves and, if necessary, consider holding the Council meeting in 2010 as a conference call.

## **VII. EU Project/Annual Meeting**

Michael described the one-day conference on the EU Project to be held at Cardozo Law School on Thursday August 7 and several other programs that we will be producing or cosponsoring on Friday, August 8.

## **VIII. ALR**

Sarah Brown, Editor-in-Chief of the Administrative Law Review, described the materials she handed out and offered to host Section events in DC. Michael reiterated the Section's appreciation for the quality of the journal and its thanks for AU's sponsorship of the Annual Meeting.

## **IX. Fall Meeting**

Russ reported on plans for this meeting, which will include programming on the POTUS report and the international election standards. Other program proposals are eagerly solicited.

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<sup>1</sup> The Executive Committee will look into the possibility of staggering the airfare reimbursements geographically as was done in the 1980s.

The meeting adjourned at 10:48 a.m.