

AMERICAN BAR ASSOCIATION
SECTION OF ADMINISTRATIVE LAW & REGULATORY PRACTICE
Annual Meeting
New York, NY
August 9-10, 2008

August 9

Persons present: Chair Michael Asimow, Chair Elect Russ Frisby, Vice Chair Bill Luneburg, Secretary Jamie Conrad, Budget Officer Bill Morrow, Delegates Judy Kaleta and John Vittone, and Councilmembers Charlotte Bahin, Cary Coglianese, Ken Hurwitz, Bill Jordan, Richard Murphy, Paul Noe, Steve Vieux, Joe Whitley, and Ann Young.

Absent: Last Retiring Chair Dan Troy, Councilmembers Michael Herz, Brett Kavanaugh (Federal Judiciary), Lois Oakley (State Administrative Judiciary), Richard Parker, Jeffrey Rosen (Executive Branch), Mort Rosenberg (Federal Legislative Branch) and Dick Stoll and Liaisons Nancy Eyl (Law Student) and James Muetzel (Young Lawyers Division).

I. Administrative

The meeting began at 9:08 a.m. Persons present introduced themselves. The minutes of the Spring Meeting were approved.

II. Chair's Report

Michael announced that we would have an appropriate ceremony at the Fall Meeting to recognize Kim Knight for her service. He also thanked Jenny Abreu for her great help and presented her with a plaque. He thanked Jim Gerkis and Elaine Reiss for organizing this meeting, Andy Popper of American University for so generously funding the meeting, and Proskauer Rose for the reception Thursday night. He also thanked the six folks who organized the impressive programs yesterday. He announced that we received an \$83,000 grant from the ABA's Enterprise Fund to support our Veterans Pro Bono Project.

Michael presented plaques to departing Delegate Judy Kaleta, Councilmember Ann Young and yours truly. He enthusiastically welcomed our new staffer, Ann Kiefer, who introduced herself. He expressed regret that the EU project's program Thursday had to be cancelled, but great pleasure that the project's book is completed and available at the Hilton. Jim O'Reilly also spoke about the book.

Our ALJ Committee is investigating the circumstances of GSA's latest opening of the GSA application registry, where it appears that many applicants got advance notice, to the detriment of other would-be applicants.

III. Chair-Elect's Report

Russ Frisby summarized the schedule of upcoming meetings. The precise date and time for the Council's Mid-Year Meeting (to be held in Washington, D.C. in lieu of attending the ABA's Mid-Year Meeting in Boston) have yet to be determined. The Spring Meeting will be at the Kingsmill in Williamsburg, VA.

Dan Troy's new position will not allow him to serve on the nominating committee, but Judy Kaleta has graciously agreed to serve in his place.

The POTUS Committee will meet at 2:00 today.

IV. Vice-Chair's Report

Bill Luneberg announced that the Rulemaking Institute had a huge turnout (90% government lawyers) and great speakers. Unfortunately, the program lost \$6,000, largely because of the government employee discount. The Council thanked him for putting on such a great program.

V. Delegates' Report

Judy described some of the new procedures that our former Delegate Tom Susman is implementing as the new head of the ABA's Government Affairs Office, including establishing procedures to ensure that the ABA works to effectuate the resolutions that the House approves.

The Section's two reports & resolutions before the House concern interstate compacts and a model state land use ordinance. There is no opposition to either and they both may end up on the consent calendar.

Michael described his pride that the Section was able to spearhead the model land use ordinance, and challenged the Section to take up Michael Cardozo's request that it study the challenges of providing appropriate due process in the literally millions of small adjudications that large cities have to conduct.

Judy highlighted resolution 121, which revises and shortens the ABA's list of goals to make member service the first of several co-equal goals. John pointed out resolution 112A about registration of inhouse counsel, which engendered some discussion. Judy and persons present also discussed 119B about lawyers being able to work at the polls, which fails to discuss issues that government lawyers could face.

In response to a question from Jamie Conrad, Bill Luneburg reported that there is a small group working on a draft report & recommendation on the subject of earmarks writ large. Hopefully they will have a draft for the Fall Meeting.

VI. Benefits Committee Report

Rudy Patterson reported on several positive developments that the Committee had a hand in promoting.

VII. Rulemaking Institute

Russ Frisby said he and Tom Susman are looking to orient the Institute toward incoming agency general counsels.

VIII. Fall Conference

Charlotte Bahin described the status of planning for this event. Randy May urged the program chairs to call the firms who have previously supported the conference to do it again (and potentially annually thereafter).

IX. Model State APA

Ron Levin, the ABA Advisor to the drafting committee for this effort, introduced Fran Provetti and Greg Ogden of the Uniform Law Commission, who thanked him for his assistance. The Council then discussed at length the controversial issue of agency heads sitting as adjudicators being able to have ex parte contacts on technical and scientific issues with agency staff not involved in that proceeding. No consensus was reached.

X. Lawton Award Report

Elaine Reiss presented the committee's enthusiastic nomination of Peggy Mastroianni for the award, which was approved by acclamation. The Council thanked the committee members for their service.

XI. Scholarship Award Report

Michael noted the enormous amount of work entailed in serving on this committee and expressed the Council's gratitude to committee members. Reuel Schiller will be present at the Fall Meeting to receive the award.

XII. Law Student Essay Contest Report

The winning article is one on quarantines by Karen Weathersbee.

XIII. 2008-2009 Section Budget

Bill noted that the budget will generate net revenues and opined that it was fair. He then initiated a discussion of the budget process and the challenges this year of transitioning to a new section director and (next year) to a new budget officer. The Council approved the budget.

Bill proposed the creation of a budget committee, which was widely supported. Anna noted the importance of having a Publications Committee representative on the budget committee, which Bill concurred in. Bill Luneburg proposed that committee members commit to serve for at least three years.

Russ noted the potential need to ‘borrow’ funds from the reserves for periods of less than a year to bridge from years when we have to recognize expenses (e.g., for the lobbying book) to the following year when the predictable revenues would roll in. Expenses could also be “capitalized” and recognized over the time period when revenues would be received. Michael thanked Bill for his diligent service and frank advice.

The meeting recessed at 11:34.

August 10

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Absent: Last Retiring Chair Dan Troy, Budget Officer Bill Morrow, Delegate Judy Kaleta, Councilmembers Charlotte Bahin, Michael Herz, Brett Kavanaugh (Federal Judiciary), Lois Oakley (State Administrative Judiciary), Richard Parker, Jeffrey Rosen (Executive Branch), Mort Rosenberg (Federal Legislative Branch), and Dick Stoll, and Liaison James Muetzel (Young Lawyers Division).

I. Administrative

The meeting began at 9:05 a.m. Persons present introduced themselves.

II. Election Law Resource

Jack Young described the Elections Committee’s Election Law Resource, which provides a comprehensive overview of election law, organized by potential problems, and which will shortly be on-line on the ABA’s website. Michael commended the Committee for creating such a needed and useful resource.

III. Authentication of State On-Line Regulation Websites

Jim O’Reilly explained a request of the American Association of Law Libraries that the ABA call on states to ensure that online databases of state regulations are authenticated (i.e., authoritative). Michael authorized Jim to identify a Section committee to take the lead on this request.

IV. Board of Governors Liaison Report

David Gienapp, our liaison, reported that the ABA has adopted a deficit budget for the year. Membership has also declined. Some of this is attributable to law firms no longer paying the dues of all of their lawyers. A variety of approaches were discussed to attract and retain members.

V. Publications Committee

Anna Shavers said that Section members would soon get an email explaining how they can download the Developments book from the ABA's website. The Rulemaking Book and the Sourcebook are both doing well. The editors of the EU Project book were able to cut the estimated costs of that book from \$60,000 to \$30,000. The International Election Principles book and the Lobbying Manual are in the pipeline. She also has great expectations for Michael's book on law and television, and the Homeland Security & National Defense Committee's nascent book. ALR has two symposia in the works.

VI. Report of the Committee on the Status and Future of Federal E-Rulemaking

Committee (and former Section) Chair Sally Katzen, accompanied by Reporter Cynthia Farina,

- recounted the origin of this project;
- emphasized its non-partisan orientation; and
- described the factors and considerations driving its recommendations and tying them together.

She explained:

- why they recommended a single lead agency;
- why GSA should be that agency;
- how they balanced the needs for agency independence and portal commonality;
- why they call for a dedicated appropriation for the system;
- their recommended "no wrong door" approach; and
- the importance of having two standing advisory groups to represent (i) agencies and (ii) the public.

Everyone on the Committee signed off on the Report, and confidential reviewers either were supportive or were critical in offsetting ways.

Sally also explained the precedent for drafting their proposed report and recommendation to be short and to essentially incorporate the Report by reference. Their proposed timetable is to get Section approval of the report and recommendation so that they can begin circulating the draft Report now under blanket authority, with the goal of having the report and recommendation approved by the House at the Mid Year Meeting.

The Section approved the draft report and recommendation. John Vittone urged that we get it (and the underlying Report) out as early as possible to all potentially interested

Sections to attract cosponsors and enhance the prospects for success. Russ will also work with SOC to smooth that process.

VII. Administrative, con't

Brandon Sherr, incoming Law Student Liaison, introduced himself. Michael presented plaques, and conveyed the Section's thanks, to outgoing Law Student Liaison Nancy Eyl and former Delegate Tom Susman. Tom requested time on the agenda at the Fall Meeting to discuss how the ABA's Government Affairs Office can work to accomplish the Section's legislative agenda.

VIII. Delegate's Report, con't

It is unclear yet whether the model land use planning ordinance will go on the consent calendar.

IX. POTUS Report

Russ Frisby summarized the changes to this document agreed to by the drafting committee yesterday. The Section discussed some changes proposed by Cary Coglianese and then adopted the report, subject to editorial changes approved by the style committee.

Section Annual Meeting

The report of the nominating committee was approved.

The meeting adjourned at 11:10 a.m.