

SUMMARY OF ACTION
AMERICAN BAR ASSOCIATION
BOARD OF GOVERNORS

Henry B. Gonzalez Convention Center
San Antonio, Texas
February 5-6, 2004

1. REPORTS OF OFFICERS AND THE EXECUTIVE DIRECTOR

The Board of Governors (Board) received the reports of the President, President-Elect, Chair of the House of Delegates, Immediate Past President, Secretary, Treasurer and Executive Director. The minutes of the Board's November 13 and 15, 2003, meeting were approved as presented. The minutes of the Executive Committee's February 4, 2004, meeting were received.

2. MATTERS FOR DIRECT BOARD ACTION

2.1 House Reports

The actions of the Board on Reports with Recommendations to the House of Delegates are reported in the Board's Transmittal Report to the House of Delegates, #177A. Copies of Report #177A are available from the Division for Policy Administration.

2.2 ABA Legislative and Governmental Priorities

The Board approved the following ABA Legislative and Governmental Priorities for the second session of the 108th Congress:

- Anti-Terrorism and Preservation of Due Process
- Death Penalty Moratorium/Reform
- Federal Tort Laws
- Funding of the U.S. Patent and Trademark Office
- Immigration
- Independence of the Bar
- Independence of the Judiciary
- Legal Remedies to Eliminate Discrimination
- Legal Services for the Indigent and the Military
- Rule of Law – International
- Student Loan Forgiveness
- Tax Simplification

2.3 Presentation Regarding the Hugh O'Brian Youth Leadership

The Board heard a presentation from actor Hugh O'Brian regarding Hugh O'Brian Youth Leadership (HOBY). Mr. O'Brian founded HOBY in 1958 to "seek out, develop, and recognize leadership potential commencing with high school sophomores." HOBY fulfills its mission through a highly interactive process consisting of panel discussions and leadership seminars with community leaders from various sectors including business, technology, education, government, the arts, and the sciences. A private sector initiative, HOBY's programs are supported by corporations, foundations, and the efforts of over 4,000 volunteers. Every accredited public and private high school in the United States is invited to send its outstanding sophomore leader as its representative to attend a HOBY leadership seminar. Each year, 14,000 tenth-graders attend HOBY seminars, and a total of 285,000 students have participated in HOBY programs since the organization was established. President Archer informed the Board that he had participated in a HOBY event in Michigan and found the experience to be extremely worthwhile.

2.4 2003 Pulse of the Legal Profession Report

Laura L. Metzger, Director of the ABA Market Research Department, presented to the Board a summary of "The Pulse of the Legal Profession, 2003." "Pulse" research seeks to identify emerging trends in the legal profession and to understand how the ABA can best serve lawyers in various practice settings and in various stages of their careers. In alternating years, the study is based on qualitative and quantitative approaches. In 2003, the study was quantitative in nature and was conducted via 20-minute telephone interviews among 779 lawyers nationwide (487 ABA members and 292 nonmembers). Significant conclusions from the 2003 "Pulse" study include: a) there is more of a general acceptance that the practice of law is a business; b) seventy-three percent of ABA members are satisfied with their membership; c) membership is strongly affected by employers' reimbursements of bar membership dues; d) generally, employers are more inclined to reimburse state and local bar membership dues than ABA dues (82% for state bar dues, 72% for local bar dues, vs. 60% for ABA dues); and e) choosing the right way to communicate with members is more important than ever.

2.5 Report of Committee on the 321 N. Clark Relocation Project

Thomas Z. Hayward, Jr., Chair of the Committee on the 321 N. Clark Relocation Project, and Diana Z. Gilbert, Director-Administrative Services, presented a status report on the Association's planned May 13, 2004, move to new facilities at 321 North Clark Street, Chicago. Photographs of the new space and the demolition process were provided to the Board. Mr. Hayward reported that the project is on time and below budget and that the Association did not have to draw on its line of credit from LaSalle Bank until January 2004. With the exception of Lower Levels One and Two, which had to be repaired due to seepage, construction is ninety percent complete. The Board will hold its June 2004, meeting at the new location.

2.6 Africa Law Initiative Council Report

On behalf of Hon. Nathaniel R. Jones, Chair of the Africa Law Initiative (ABA-Africa) Council, who was unable to attend the Board meeting, Hon. Bernice B. Donald and ABA-Africa Director Vernice I. Guthrie presented a report on ABA-Africa's work. ABA-Africa is a public service project of the ABA. Its purpose is to provide legal expertise, advice, and training to judges, lawyers and government officials throughout Africa. Participants in ABA-Africa projects serve primarily on a pro bono basis. Funding of ABA-Africa projects comes mainly from outside sources. Current ABA-Africa projects include: a) holding roundtable discussions in Morocco to highlight concerns regarding the redrafting of their penal code; b) implementing a twelve-month program to support the protection and promotion of women and children's rights in Rwanda; and c) in partnership with the ABA Central European and Eurasian Law Initiative, conducting a War Crimes Documentation and Accountability Capacity Assessment in Sierra Leone.

2.7 Consent Calendar: Report of Board Committee Chairs

The Board adopted the Consent Calendar as presented by the Secretary. Action on all items contained on the Consent Calendar is set forth in items 3 through 5 of this Summary of Action relating to the reports of the Board Committees.

2.8 Fund for Justice and Education

The Board, sitting as the members of the Board of the American Bar Association Fund for Justice and Education (ABA/FJE): a) approved the minutes of the November 15, 2003, meeting of the ABA/FJE Board as presented; and b) accepted the ABA/FJE restricted grants and contributions received or awarded through December 31, 2003, and not previously reported, as requested by the Association's Grant Development & Administration Office.

2.9 Request to Adopt Memorial Resolution for Truman Q. McNulty

The Board passed a resolution recognizing the accomplishments, standards and achievements of Truman Q. McNulty of Milwaukee, Wisconsin, a member of the Board of Governors from 1994 – 1997, who passed away on January 26, 2004.

2.10 Update on Sarbanes-Oxley

M. Peter Moser, Chair of the Task Force on Section 307 of the Sarbanes-Oxley Act of 2002, presented a status report on the work of the Task Force. The Task Force was appointed in November 2002 to: 1) develop the ABA's response to the proposed rules promulgated by the Securities and Exchange Commission (SEC) to implement Section 307 of the Sarbanes-Oxley Act of 2002, which sets forth minimum standards of professional conduct for lawyers appearing and practicing before the SEC; 2) participate in a "constructive" dialogue with the SEC on the formation of the rules required by Section 307 of Sarbanes-Oxley; and 3) report to the Board and make recommendations as necessary. The ABA submitted comment letters to the SEC on December 18, 2002,

and on April 2, 2003. Although the ABA expressed general support for the SEC's final "up the ladder" reporting rule in both comment letters, the ABA expressed a number of serious concerns regarding the SEC's two alternate "noisy withdrawal" proposals on the grounds that both alternatives would erode the attorney-client privilege. Mr. Moser also discussed related ABA initiatives intended to permit a greater role for lawyers in corporate governance. He specifically noted the recommendations of the ABA Task Force on Corporate Governance that were contained in three resolutions adopted by the House of Delegates in August 2003, i.e., practices to enhance the role of lawyers in corporate governance, the amendment of ABA Model Rule of Professional Conduct 1.13 (Organization as Client), and the amendment of ABA Model Rule 1.6 (Confidentiality).

ADDITIONAL ITEM

Update on Western State University College of Law

ABA General Counsel Darryl DePriest presented an update on the lawsuit filed by Western State (Western State) University College of Law. A hearing on a preliminary injunction was held in California on February 4, 2004, and the court's ruling was received on February 6. In its ruling, the court did not enjoin the ABA or the House of Delegates from calendaring and voting on the report of the Section of Legal Education and Admissions to the Bar recommending that the provisional approval of Western State be withdrawn and that Western State be removed from the list of schools approved by the ABA. The court preliminarily enjoined the ABA from implementing any final decision of the House of Delegates to withdraw Western State's provisional approval or remove Western States from the list of approved law schools and set an expedited schedule for subsequent hearings.

3. OPERATIONS AND COMMUNICATIONS COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

3.1 Requests for Bylaw Amendments

a. Section of Antitrust Law

The Board approved the request of the Section of Antitrust Law to amend its bylaws to change the title of the Secretary position to "Secretary and Communications Officer." The proposed amendments were approved by the Section's Council on November 17, 2003, and January 17, 2004.

b. Section of Labor and Employment Law

The Board approved the request of the Section of Labor and Employment Law to amend its bylaws to make the bylaws consistent with ABA policy regarding payment of dues, as recommended by the Operations and Communications Committee in November 2003.

3.2 Requests for Dues Increase

a. Health Law Section

The Board approved the request of the Health Law Section to increase its dues from \$40 to \$50 for regular members and Associates, effective September 1, 2004, subject to final approval by the Section membership at the 2004 ABA Annual Meeting.

b. Section of Intellectual Property Law

The Board approved the request of the Section of Intellectual Property Law to 1) establish a dues ceiling of \$75; and 2) increase dues from \$35 to \$55 for regular members and Associates, effective September 1, 2004. The ceiling and dues increase were approved by the Section Council on October 14, 2003.

c. Section of Public Utility, Communications and Transportation Law

The Board approved the request of the Section of Public Utility, Communications and Transportation Law to increase its dues from \$30 to \$40, effective September 1, 2005, subject to final approval by the Section membership at the 2004 ABA Annual Meeting.

3.3 Nominations

a. Organization for the Advancement of Structured Information Standards (OASIS) Legal XML Section

The Board re-elected John Messing of Tucson as the ABA's representative to the Organization for the Advancement of Structured Information Standards (OASIS) Legal XML Section, for a one-year term, to expire in June 2005.

b. ABA Journal Board of Editors

The Board 1) re-elected Carol E. Dinkins of Houston as chair and Sheila S. Hollis of Washington, DC, as a member of the Board of Editors of the *ABA Journal*; and 2) elected Rew R. Goodenow of Reno, Nevada, as a member of the Board of the *ABA Journal*, all for three-year terms to expire at the conclusion of the 2007 ABA Annual Meeting.

3.4 Section of Public Utility, Communications and Transportation Law Request to Establish Writing Competition

The Board approved the request of the Section of Public Utility, Communications and Transportation Law to establish an annual Law Student Writing Competition to encourage and reward student writings on legal subjects within the scope of the Section and of general and current interest. The winner will receive a cash prize of \$2,500, a free Section membership for one year after graduation, and airfare and hotel

accommodations to attend the Section's Fall Council Meeting. All funding for the competition will come from Section funds.

3.5 Standing Committee on Armed Forces Law Request to Establish Award

The Board approved the request of the Standing Committee on Armed Forces Law to establish the annual "ABA Standing Committee on Armed Forces Law Outstanding Military Service Career Judge Advocate Award" to honor career armed service attorneys who are at least 36 years of age in active, reserve or national guard service, from each of the five armed services. A maximum of five awards will be given each year the award is presented. Each of the award winners will receive a plaque with a maximum value of \$35 and an invitation to the ABA Annual Meeting for formal announcement and presentation of the award. All expenses for the award will be covered by the Standing Committee's approved annual budget.

3.6 Standing Committee on Publishing Oversight Request for Exception to Guidelines for Distribution and Sale of Publications from Non-Profit Organizations

The Board approved the request of the Standing Committee on Publishing Oversight (SCOPO) for an exception to the "Guidelines for Distribution and Sale of Publications from Non-Profit Organizations," adopted by the Board in 1986, to allow ABA Publishing to distribute hard copy and electronic versions of Merriam-Webster's dictionary to ABA members at a discount and receive from Merriam-Webster a portion of the revenues.

3.7 Center for Human Rights Request for Creation of Advisory Council

The Board approved the creation of a Human Rights Advisory Council of up to 25 members to increase the Center for Human Rights' personal network of human rights professionals and activists.

3.8 National Conference of State Trial Judges Request to Co-sponsor Program at 2004 Annual Meeting and Charge a Program Fee

The Board approved the request of the National Conference of State Trial Judges to a) co-sponsor a CLE program tentatively titled "Current Trends in Corporate and Commercial Litigation" with the National Judicial College and Lexis-Nexis on August 5, 2004, in Atlanta; and b) charge a \$25 program fee. The program will be marketed only to those persons attending the 2004 ABA Annual Meeting.

3.9 Standing Committee on Membership Request to Reconsider Exclusion of Telemarketing Cells in Dues Structure Pilot

At the request of the Standing Committee on Membership (SCOM), the Board reconsidered its November 2003 decision approving SCOM's request to conduct a pilot study of 14,000 ABA members prior to the next dues increase cycle to test the viability of including the cost of one Section membership with base ABA dues, with the understanding that telemarketing would not be required. Upon reconsideration, the

Board a) approved telemarketing in the pilot project contingent on Finance Committee approval at its April 2004 meeting after receipt of the analysis presented on expenses and revenues regarding outside lists; and b) approved telemarketing to dropped members up to \$130,000.

3.10 Task Force on the Lawyers Center for Personal Legal Services and Client Development Request for Continuation of Task Force

The Board approved the continuation of the Task Force on the Lawyers Center for Personal Legal Services and Client Development to enable the Task Force to a) complete its work; and b) submit its business plan to the Board at the 2004 Annual Meeting, with the understanding that no general revenue is requested.

3.11 Request to Create Task Force on Tax Shelter Issues

The Board approved the request of the sections of Business Law and Taxation to create a Task Force on Tax Shelter Issues, with a maximum of nine members, three from the Section of Business Law, three from the Section of Taxation, and one from the Standing Committee on Ethics and Professional Responsibility, with a member of the Section of Taxation serving as chair. The Task Force shall study and make recommendations, as appropriate, to monitor and initiate responses to federal legislation and/give administrative guidance affecting members engaged in tax shelter representation. Each entity represented on the Task Force shall be responsible for the expenses of its representatives and no general revenue is requested.

**B. MATTERS OF INDEPENDENT JURISDICTION OF THE OPERATIONS AND COMMUNICATIONS COMMITTEE
(Committee action and notifications to the Committee are reported to the Board)**

3.15 Requests for Co-Sponsorships

a. Commission on Racial and Ethnic Diversity in the Profession

The Operations and Communications Committee approved the request of the Commission on Racial and Ethnic Diversity in the Profession to co-sponsor a conference titled "Breaking Barriers, Building Bridges" with the Chicago Bar Association and various local specialty bar associations in Chicago in June 2004. The Chicago Bar Association will handle all financial aspects of the program, and the ABA will have no financial responsibility or obligations.

b. Commission on Racial and Ethnic Diversity in the Profession, Section of Individual Rights and Responsibilities, and Criminal Justice Section

The Operations and Communications Committee approved the request of the Commission on Racial and Ethnic Diversity in the Profession, the Section of Individual Rights and Responsibilities, and the Criminal Justice Section to co-sponsor a one-day conference and video project tentatively titled "Culture in the Courtroom" with George Washington University Law School in Washington, DC, in September or October 2004. The Commission has allocated funds in its approved FY 2003-2004 budget for the conference, and conference attendees will be required to pay a registration fee. In addition, the Commission and the Sections will secure sponsors to cover expenses and ensure that the project stays within budget. The ABA will not be exposed to liability for any expenses and/or net losses.

c. Commission on Women in the Profession

The Operations and Communications Committee approved the request of the Commission on Women in the Profession to solicit co-sponsors for the Commission's Women in Law Leadership Academy in April 2004. The Commission has allocated funds in its approved FY 2003-2004 budget for the conference, and conference attendees will be required to pay a registration fee. The ABA will not be exposed to liability for any expenses and/or net losses.

d. National Conference on the Administrative Law Judiciary

The Operations and Communications Committee approved the request of the National Conference of the Administrative Law Judiciary to co-sponsor with the National Judicial College (NJC), the National Association of Administrative Law Judges, and the Lyndon Baines Johnson School of Public Affairs at the University of Texas at Austin a research project to identify the categories of administrative law adjudicators and their roles and responsibilities. The NJC is seeking a grant to fund this project, and no general revenue is requested.

e. Section of Individual Rights and Responsibilities

The Operations and Communications Committee approved the request of the Section of Individual Rights and Responsibilities to co-sponsor a symposium with the Academy on Human Rights and Humanitarian Law of the American University Washington College of Law titled "Human Rights Month in 2004." Human Rights Month is a series of events that includes conferences, lectures, panels, and site visits. The American University Washington College of Law is responsible for all of the costs associated with the symposium. The ABA will not be exposed to liability for expenses and/or net losses.

f. Section of Dispute Resolution

The Operations and Communications Committee approved the request of the Section of Dispute Resolution to co-sponsor a mediation training program titled "Separation and

Connection in Jerusalem: Implications for Israeli-Palestinian Mediation” with the Jerusalem Arbitration and Mediation Center (Center) on March 18-19, 2004, in Israel. The Center is a joint project of the Jerusalem Institute of Israeli Studies and the International Peace and Co-Operation Center. The Operations Committee’s approval was 1) subject to a review of the Section’s request by the ABA General Counsel’s Office for determination of any potential liabilities and the provision of appropriate safeguards to protect the ABA from any potential liabilities identified; and 2) with the understanding that no ABA general revenue will be used for the program.

g. Section of Antitrust Law

The Operations and Communications Committee approved the request of the Section of Antitrust Law, on behalf of its Computer and Internet Committee, to co-sponsor a “brown bag” program titled “Anticompetitive Uses of Patent Litigation” with the Stanford Law School-Stanford Center for E-Commerce on April 21, 2004, in California. With the exception of the cost of mailings to Section members, which is covered in the budget of the Computer and Internet Committee, neither the Section nor the ABA will have financial obligations for the program.

3.16 Meetings Outside the United States

a. Standing Committee on Lawyer Referral and Information Service

The Operations and Communications Committee approved the request of the Standing Committee on Lawyer Referral and Information Service to hold a regular business meeting in Alberta, Canada, in June 2004.

b. Standing Committee on Paralegals

The Operations and Communications Committee approved the request of the Standing Committee on Paralegals to hold a regular business meeting in Vancouver, British Columbia, Canada, on June 4-5, 2004.

c. Standing Committee on Specialization

The Operations and Communications Committee approved the request of the Standing Committee on Specialization to hold a regular business meeting in Quebec, Canada, on July 16-17, 2004.

d. Section of Business Law

The Operations and Communications Committee was notified that the Section of Business Law plans to co-sponsor a one-day program with the Paris Bar Association in Paris on June 25, 2004. The program will explore how the European Union will affect international business with the U.S. and how to deal with the effect of the expansion on business law issues.

e. Section of Taxation

The Operations and Communications Committee was notified that the Section of Taxation plans to co-sponsor the *Fourth Annual U.S.-European Tax Strategies for the Multinationals* CLE program with the International Bar Association and Section of Business Law, Committee N (Taxes) on March 5-6, 2004, in Zurich.

PROGRAM AND PLANNING COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

4.1 ABA Career Resource Center Requests to Establish 100% Externally Funded Projects

a. Annual Career Presentations at Major City Law Schools for Students and Alumni/ae

The Board approved the request of the ABA Career Resource Center to 1) establish a series of five annual "Career Talks" at major city law schools to provide law students and alumni/ae with career information; and 2) seek outside funding for the project, with the suggestion that the Career Center coordinate its law school programs with Sections, Divisions and Forums which already have such regional law school sessions.

b. Pre-Law Tool Kit

The Board approved the request of the ABA Career Resource Center to 1) hire a marketing expert to promote the Career Resource Center's Pre-Law Tool Kit nationally in public schools to assist underserved youth and young adults with career goals and ultimately enhance the diversity of the legal profession. The Tool Kit is an online resource designed for school counselors, teachers and students; and 2) seek outside funding for the project.

4.2 Commission on Homelessness and Poverty Request to Co-sponsor Program with an Outside Organization and Seek Outside Funding

The Board approved the request of the Commission on Homelessness and Poverty to a) co-sponsor a conference on homeless courts with the Joan B. Kroc Institute for Peace and Justice at the University of San Diego in October 2004; and b) seek outside funding to offset costs associated with the program.

4.3 Recommendation of the Ad Hoc Working Group on Goal VIII

The Board approved the following recommendations of the Ad Hoc Working Group on Goal VIII (to advance the rule of law in the world) relating to the report of the Task Force on Association Goal VIII: 1) concur with the Executive Director's consolidation plan for

the staff of the four regional councils (Africa Law Initiative Council, Asia Law Initiative Council, Central European and Eurasian Law Initiative, and Latin America Law Initiative Council); 2) approve a General Director position to oversee the consolidated administration and an Executive Assistant position to assist the General Director; 3) approve a Strategic Council on the Rule of Law (tentative title for the overarching entity) comprised of the chairs of the four regional councils and three at-large members; and 4) request that the Strategic Council provide a progress report to the Board of Governors, including any recommendations for adjustments, one year from its formation. The Board's approval of the aforementioned recommendations is with the understanding that the approval does not reflect approval of any additional general revenue funding at this time.

B. MATTERS OF INDEPENDENT JURISDICTION OF THE PROGRAM AND PLANNING COMMITTEE

4.15 Standing Committee on Public Education Request for Emergency Supplemental Funding

The Program and Planning Committee declined to approve the request of the Standing Committee on Public Education for an emergency supplemental appropriation of \$10,000.

4.16 THREE-YEAR PLANNING REVIEW

The Program and Planning Committee reviewed each of the entity three-year plans under its jurisdiction and developed responses, providing advice to the individual entity Chairs on preparing their budgets.

FINANCE COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

5.1 Section of Taxation Request to Contribute Section Funds to American Tax Policy Institute

The Board approved the request of the Section of Taxation to contribute \$50,000 of the Section's funds during FY 2003-2004 to the American Tax Policy Institute (Institute) to be used, in pertinent part, to help complete certain Institute projects and fund new Institute projects in development.

Summary of Action
February 2003 Board of Governors Meeting
Page Twelve

5.2 Commission on Governance Request for Emergency/Supplemental Funding

The Board approved the request of the Commission on Governance for an emergency supplemental appropriation of \$25,000 to support the activities of the Commission for the remainder of the 2003-2004 Association Year.

NEW BUSINESS

The Board approved the consolidated audited financial statements for the American Bar Association, the American Bar Association Fund for Justice and Education, The James O. Broadhead Corporation, and the ABA Museum of Law for the year ended August 31, 2003.