Report on August 2012 Annual Meeting of the ABA House of Delegates

The House of Delegates met at the conclusion of the 134th Annual Meeting of the American Bar Association (the “ABA”) held August 6-7, 2012, at the Hyatt Regency Chicago Hotel in Chicago, Illinois.

Linda Klein, Chair of the House of Delegates, discussed the obligations and responsibilities of House members to take legislative priorities to lawmakers in Washington, D.C. and asked each delegate to be part of the Grassroots Action Team and attend ABA Day on April 16-18, 2013 in Washington, D.C. She suggested that members register early, as participation requires advance planning.

In his remarks to the House, ABA President Wm. T. (Bill) Robinson III of Kentucky noted that the ABA strengthened its diversity efforts this year within the Association and in the legal profession. The Association reaffirmed its continuing commitment to law students and young lawyers and announced the creation of the ABA Task Force on the Future of Legal Education. Trumpeting the message of “No Courts, No Justice, No Freedom,” President Robinson reported on the ABA’s expanded national advocacy campaign regarding the funding crisis affecting our state Courts. That campaign included more than 50 articles and newspaper editorials, a new website, an educational video and a toolkit for state bar leaders. Despite ABA efforts thus far, President Robinson emphasized that still more needs to be done, as many states continue to decrease funding for their state courts such as his home state of Kentucky where the Courts were closed statewide for the first time in modern history on the very day he addressed the House. He further observed that we would never consider shutting down the police department or a hospital emergency room one day a week for lack of budgetary support and our Courts should be no different. An independent and adequately funded Court system is the key to our unique, representative, constitutional democracy which is the key to our freedom. President Robinson noted that our work on this very important issue will continue under the leadership of ABA President Laurel Bellows with Mr. Robinson and Steve Zack serving as Co-Chairs of the Task Force on the Preservation of Justice System for the coming ABA year.

ABA Medal Presentation: ABA President Robinson introduced Morris S. Dees, Jr. as the recipient of this year’s ABA medal for his tremendous work in fighting racism and injustice. Mr. Dees created the Southern Poverty Law Center, obtained reversal of the death sentences in the Triboro Three case, and has used civil lawsuits to secure judgments against racists and hate groups. The ABA honors Mr. Dees for his courage, leadership, and service. Mr. Dees expressed his gratitude for the honor of receiving the ABA medal and thanked those who have helped with his work over the years. He told members of the House that his life as a trial lawyer has been enriched by the judges, juries, and clients. As an illustration of the lessons he has learned, he shared the story of a civil trial where his client when asked for forgiveness by a young klansmen involved in the death of her son stated that she had already done so. His client’s words of forgiveness showed love, understanding, and mercy that were higher justice than the seven million dollar verdict returned by the jury. Noting the continued hate, injustice, and anger in the United States, Mr. Dees thanked the ABA for its commitment to the rule of law. The video of Mr. Dees’ moving speech before the House is accessible online at http://www.abanow.org/2012/08/civil-rights-icon-morris-dees-receives-aba-medal/ and an audio recording is http://www.abanow.org/2012/08/civil-rights-icon-morris-dees-receives-aba-medal/?audio.
Statement by the Treasurer: ABA Treasurer Lucian T. Pera of Tennessee reported that the finances of the Association are sound. The projected net loss for the year, noting certain categories of expenses that predominately accounted for the deficit and commenting on the shortfall in dues revenue. Treasurer Pera briefly discussed the Association’s cash flow and pension obligations. He also discussed this year’s budget process, reporting that there is a balanced budget based on appropriately conservative assumptions that looks firmly to the future; the Board decided to use the remaining funds in the dues warehouse to support the budget; and significant cuts have been made but only after careful consideration.

ABA President Bill Robinson passed the President’s Gavel to President-Elect Laurel G. Bellows of Illinois, who then shared her vision that the ABA continue honoring its commitments to lawyers and clients while promoting fairness and the rule of law. She reflected on the exceptionalism of American lawyers, noting that lawyers have played a unique role in the story of our country and have served as the first responders when liberty and justice are imperiled, as well as fighting for diversity and equal opportunity. Ms. Bellows emphasized that lawyers matter, stating that the ABA will tap into the exceptionalism of American lawyers to correct inadequacies in our justice system. Ms. Bellows will use the considerable expertise of the ABA to work towards ending the shameful horror of human trafficking in the United States. Approximately 100,000 U.S. citizens are forced into sex and labor for the profit of their captors, in addition to hundreds of thousands of people who are trafficked into our country. We will develop a uniform anti-trafficking law and train responders, police, prosecutors, and pro bono lawyers. We will focus on protecting our national security and the drain on our intellectual property from cyberattacks, continue to engage state legislators to fund our courts, work to retain the civil jury trial, promote workplace equity between men and women, and develop the best ways to teach our young lawyers how to practice law. We will also look inward to ensure the fiscal health of the Association and make sure that we are providing value to our members.

ABA Executive Director Jack L. Rives of Illinois summarized some recent developments, noting the loss of some $13 million in dues revenues from Fiscal Year 2008 through the amount budgeted next year, Mr. Rives highlighted some recent efforts to cut expenses and also to raise non-dues revenues. He also noted last year’s gains in membership numbers and the projection of increased gains this year. He emphasized that we need to continue to convey the value of membership to lawyers. Despite the increase in membership, our dues revenue has been decreasing. Executive Director Rives reported that the ABA has been awarded a certificate by the Department of Homeland Security for meeting rigorous standards for continuity of business -- a “first” for any association and only the second awarded to any business. A new location for the D.C. office has been identified, at 1050 Connecticut Avenue, N.W. All of the staff will be housed on the 58,000 square foot fourth floor, and a staff lounge and conference rooms will be on the fifth floor. The move to the new location is planned for May 2013. Executive Director Rives provided delegates with an update on staff diversity activities. The diversity and inclusion task force he appointed created an anonymous survey, which received an astonishing 75% response rate. The survey will be repeated in future years, with the earlier results serving as a benchmark for progress. Staff has also begun a “We are the ABA” program to show how everyone fits into the mosaic that “is” the American Bar Association.
OFFICERS OF THE ASSOCIATION for 2012-2013 include President-Elect for 2012-2013 James R. Silkenat of New York, Chair of the House of Delegates (2012-2014 Term) Robert M. Carlson of Montana. The Association’s Constitution provides that the President-Elect automatically becomes the President at the conclusion of the Annual Meeting and Laurel G. Bellows of Illinois will assume that office.

Remarks by President-Elect Nominee: President-Elect Nominee James R. Silkenat of New York thanked the members of the House for the great honor of being asked to serve the Association. He stated that he intends to build on the ABA’s strong foundation of programs, projects, and leadership. Noting the Association’s challenge of balancing the responsibilities of serving its members and protecting the justice system, Mr. Silkenat stated that the ABA must fulfill both responsibilities. We need to help our members be better at their craft, grow our membership, and work toward making sure our profession reflects the diversity of those who we represent. We also need to work to ensure a truly independent and fully functioning judiciary because it is central to everything we do as lawyers. To create meaningful jobs for lawyers and increase access to legal services, Mr. Silkenat proposed creation of a new legal job corps. In addition, Mr. Silkenat emphasized that lawyers play a special role in our society and that lawyers can lead where legislators have failed to do so, such as on important national legal issues like immigration, gun violence, the death penalty, and election law reform. Mr. Silkenat told delegates that he is proud of the Association’s work and knows that it can help to create a better and stronger America.

RESOLUTIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on resolutions brought before the House follows. The resolutions are categorized by topic areas and the number of the resolution is noted in brackets.

ACCESS TO JUSTICE

[10B] On behalf of the State Bar of South Dakota, Robert B. Frieberg of South Dakota moved Report 10B urging federal, state, territorial, tribal and local governments to support efforts to address the decline in the number of lawyers practicing in rural areas and to address access to justice issues for residents in rural America. Patrick Goetzinger of South Dakota spoke in favor of the resolution. The resolution was approved.

ADMINISTRATIVE LAW

[109A] On behalf of the Section of Administrative Law and Regulatory Practice, John M. Vittone of Maryland withdrew Resolution 109A urging Congress to mandate disclosure
of all political expenditures and contributions by non-profit organizations exempt under 501(c)(4) and political organizations exempt under 527 of the Internal Revenue Code.

[109B] On behalf of the Section of Administrative Law and Regulatory Practice, Randolph J. May of Maryland moved Revised Resolution 109B urging federal agencies to pursue regulatory cooperation with relevant foreign authorities where appropriate and consistent with their legal authority, statutory mandates and regulatory missions. The resolution was approved as revised.

[109C] On behalf of the Section of Administrative Law and Regulatory Practice, John M. Vittone of Maryland withdrew Resolution 109C urging the Federal Acquisition Regulatory Council to promulgate model contract language for use in contracts posing a high risk of either personal conflicts of interest or misuse of certain non-public information, which would subject contractor employees to new restrictions analogous to those that apply to federal employees.

ANIMAL RIGHTS

[100] On behalf of the Tort Trial and Insurance Practice Section, Timothy W. Bouch of South Carolina moved Resolution 100 urging legislative bodies and governmental agencies to adopt comprehensive breed-neutral dangerous dog laws based on behavior and to repeal any breed discriminatory or breed specific provisions. Elise Van Kavage of Illinois spoke in favor of the resolution. The resolution was approved.

ARCHIVING

[400A] The House approved by consent Resolution 400A recommending that certain Association policies that pertain to public issues and are 10 years old or older be archived, after Item No. 14 was removed from the archival list.

[400B] The House approved by consent Resolution 400B recommending that certain Association policies that pertain to public issues that were adopted between 1950 and
1985 be archived, after the following items were removed from the archival list: 12, 45, 58, 61, 67, 68, 75, 87, 102, 114, 120, 121, 145, 146, 147, 148, 160, 162, 166, 167, 168, 170, and 171.

ARMED FORCES LAW

[114] On behalf of the Standing Committee on Armed Forces Law, John D. Altenberg, Jr. of the District of Columbia withdrew Resolution 114 urging the Department of Defense to strengthen further its efforts to prevent and eliminate sexual assault within the military and opposing the enactment of H.R. 3435, 112th Congress, the Sexual Assault Training Oversight and Prevention Act or similar legislation.

ASSOCIATION’S CONSTITUTION, BYLAWS AND HOUSE RULES OF PROCEDURE

[11-1] Edward Haskins Jacobs of the Virgin Islands presented Report 11-1 amending §1.2 of the Association’s Constitution to include the following language as one of the purposes of the Association: “to defend the right to life of all innocent human beings, including all those conceived but not yet born.” Stephen J. Curley of Connecticut, Chair of the Standing Committee on Constitution and Bylaws, reported the action of the standing committee. Daniel A. Schwartz of Connecticut moved to postpone indefinitely consideration of the proposal. The proposal was postponed indefinitely.

[11-2] Barbara J. Howard of Ohio moved Revised Report 11-2 amending Article 3 of the Association’s Constitution, and Article 21 and §31.7 of the Bylaws regarding membership issues. Stephen J. Curley of Connecticut, Chair of the Standing Committee on Constitution and Bylaws, reported the action of the standing committee. The proposal was approved as revised.

[11-3] The House approved by consent Report 11-3 amending §6.2(a)(5), §6.7(g) and §10.1(a) of the Association’s Constitution, to change the name of the General Practice,
Solo and Small Firm Division to the Solo, Small Firm and General Practice Division.

[11-4] Min K. Cho of Florida moved Report 11-4 amending §6.4(a) of the Association’s Constitution to change the requirement that if the bar associations of a state are entitled to four or more delegates, at least one delegate must have been admitted to practice in his or her first bar within the past five years, or must be less than 36 years old. Stephen J. Curley of Connecticut, Chair of the Standing Committee on Constitution and Bylaws, reported the action of the standing committee. The proposal was approved.

[11-5] J. Anthony Patterson, Jr. of Montana moved Report 11-5 amending §31.7 of the Association’s Bylaws to eliminate the Standing Committee on Substance Abuse. Stephen J. Curley of Connecticut, Chair of the Standing Committee on Constitution and Bylaws, reported the action of the standing committee. The proposal was approved.

[11-6] The House approved by consent Report 11-6 amending §42.6 of the Rules of Procedure of the House of Delegates to provide that the 11th Edition of Robert’s Rules of Order Newly Revised shall govern the House in parliamentary situations that are not covered by the Constitution, the Bylaws or the House Rules.

CIVIL RIGHTS

[116] On behalf of the Section of Individual Rights and Responsibilities, Mark I. Schickman of California moved Resolution 116 amending the 2008 policy regarding racial and ethnic profiling to include religious profiling and characteristics indicative of religious affiliation. The resolution was approved.

[115] On behalf of the Forum on Communications Law, Charles D. Tobin of the District of Columbia moved Resolution 115 urging legislatures to enact legislation to protect individuals and organizations who choose to speak on matters of public concern from meritless litigation designed to suppress such speech, commonly known as SLAPPs (Strategic Lawsuits Against Public Participation). The resolution was approved.
[301] On behalf of the Section of Individual Rights and Responsibilities, Estelle H. Rogers moved Revised Resolution 301 urging Congress to strengthen tribal jurisdiction to address crimes of domestic violence, dating violence, sexual assault, stalking, and sex trafficking committed on tribal lands in the reauthorization of the Violence Against Women Act. Mary L. Smith of Illinois spoke in favor of the resolution. The resolution was approved as revised.

CRIMINAL JUSTICE

[107A] On behalf of the Criminal Justice Section, Mathias H. Heck, Jr. of Ohio moved Revised Resolution 107A urging governments to review child sexual abuse criminal statutes of limitations to determine whether extending the statute of limitations is warranted. Estelle H. Rogers of the District of Columbia spoke in favor of the resolution. The resolution was approved as revised.

[107B] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Revised Resolution 107B urging prosecutors to fulfill their traditional prosecutorial functions and further protect the public through the use of a broad spectrum of strategies to discharge that duty and urging increased funding for prosecutors to achieve these objectives. The resolution was approved as revised.

[107C] On behalf of the Criminal Justice Section, Cynthia H. Orr of Texas moved Resolution 107C urging defender organizations and criminal defense lawyers to address clients’ inter-related criminal, civil and non-legal problems and urging funding for these purposes. The resolution was approved.

[107D] On behalf of the Criminal Justice Section, William N. Shepherd of Florida moved Revised Report 107D urging Congress to amend 28 U.S.C. § 2254(d) to require a federal district court to review de novo, based on the record made in the federal court, claims of ineffective assistance of counsel by petitioners under sentence of death. The
resolution was approved as revised.

ETHICS AND PROFESSIONAL RESPONSIBILITY

[10A] On behalf of the Illinois State Bar Association, John E. Thies of Illinois moved Report 10A reaffirming policy adopted July 2000 that the sharing of legal fees with nonlawyers and the ownership or control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession and the law governing lawyers that prohibits lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring to non-lawyers ownership or control over entities practicing law should not be revised. David B. Wolfe of New Jersey and Lawrence J. Fox of Pennsylvania spoke in favor of the resolution. Frederic Ury of Connecticut and H. Thomas Wells Jr. of Alabama spoke against the resolution. Maury B. Poscover of Missouri moved to postpone indefinitely consideration of the resolution. Cheryl I. Niro of Illinois spoke in favor of the motion to postpone indefinitely. Marjorie A. O’Connell of the District of Columbia and David W. Clark of Mississippi spoke against the motion to postpone indefinitely. The resolution was postponed indefinitely. (see video tape of debate)

[105A] On behalf of the Commission on Ethics 20/20, Jamie S. Gorelick of the District of Columbia and Michael Traynor of California gave an overview of Resolutions 105A-F. Cheryl I. Niro of Illinois moved Revised Resolution 105A amending the black letter and Comments to Model Rules 1.0, 1.6 and 4.4, and the Comments to Model Rules 1.1 and 1.4 of the ABA Model Rules of Professional Conduct dated August 2012, to provide guidance regarding lawyers’ use of technology and confidentiality. Ellen J. Flannery of the District Columbia moved an amendment, which was approved. The resolution was approved as revised and amended.

[105B] On behalf of the Commission on Ethics 20/20, H. Thomas Wells, Jr. of Alabama
moved Resolution 105B amending the black letter and Comments to Model Rules 1.18 and 7.3, and the Comments to Model Rules 7.1, 7.2 and 5.5 of the ABA Model Rules of Professional Conduct dated August 2012, to provide guidance regarding lawyers’ use of technology and client development. The resolution was approved.

[105C] On behalf of the Commission on Ethics 20/20, Neal R. Sonnett of Florida moved Resolution 105C amending the Comments to Model Rules 1.1, 5.3 and 5.5 of the ABA Model Rules of Professional Conduct dated August 2012, to provide guidance regarding the ethical implications of retaining lawyers and nonlawyers outside the firm to work on client matters (i.e. outsourcing). The resolution was approved.

[105D] On behalf of the Commission on Ethics 20/20, Wayne J. Positan of New Jersey moved Resolution 105D adopting the Model Rule on Practice Pending Admission, and amending the black letter and Comment to Rule 5.5 of the ABA Model Rules of Professional Conduct, dated August 2012, to enable lawyers to practice in a new jurisdiction while the lawyer actively pursues admission through one of the procedures that the jurisdiction authorizes. Stephen Gillers of New York, John T. Berry of Florida and Myles V. Lynk of Arizona, spoke in favor of the resolution. Jequita H. Napoli of Oklahoma spoke against the resolution. The resolution was approved.

[105E] On behalf of the Commission on Ethics 20/20, Stephen A. Saltzburg of the District of Columbia moved Resolution 105E amending the ABA Model Rule for Admission by Motion dated August 2012, to allow lawyers to qualify for admission by motion at an earlier point in their careers than the current Rule allows. Paula E. Boggs of Washington and Judith A. Miller of Maryland spoke in favor of the resolution. The resolution was approved.

[105F] On behalf of the Commission on Ethics 20/20, Barbara Mendel Mayden of Tennessee moved Revised Resolution 105F amending the black letter and Comments
to Model Rule 1.6, and the Comments to Model Rule 1.17 of the ABA Model Rules of Professional Conduct dated August 2012, to provide guidance regarding the detection of conflicts of interest when lawyers move from one firm to another, firms merge or there is a sale of a law practice. Abraham C. Reich of Pennsylvania spoke in favor of the resolution. Lawrence J. Fox of Pennsylvania spoke against the resolution. Salvador Mungia of Washington moved an amendment. Arthur D. Burger of the District of Columbia, Roberta D. Liebenberg of Pennsylvania, and Lucian T. Pera of Tennessee spoke against the proposed amendment. The amendment was defeated. The resolution was approved as revised.

GUN VIOLENCE

[111] On behalf of the Standing Committee on Gun Violence, William D. Missouri of Maryland moved Resolution 111 opposing governmental actions and policies that limit the rights of physicians and other health care providers to inquire of their patients whether they possess guns and how they are secured in the home or to counsel their patients about the dangers of guns in the home and safe practices to avoid those dangers. Mr. Missouri also moved an amendment. The resolution was approved as amended.

IMMIGRATION


INTELLECTUAL PROPERTY

[104] On behalf of the Section of Intellectual Property Law, Susan B. Montgomery of
Massachusetts withdrew Resolution 104 adopting policy relating to determinations of patent infringement in cases with patent claims for methods or processes that require multiple steps and multiple participants to complete.

INTERNATIONAL LAW

[113] On behalf of the Section of International Law, Michael H. Byowitz of New York moved Resolution 113 urging the Department of Homeland Security to create a Haitian Family Reunification Parole Program and immediately begin paroling into the United States already-approved Haitian beneficiaries of family-based visa petitions. The resolution was approved.

LAW AND AGING

[106A] On behalf of the Commission on Law and Aging, David M. English of Missouri moved Revised Resolution 106A urging Congress to amend the Patient-Self Determination Act provisions of the Medicare and Medicaid law regarding advance care planning. The resolution was approved as revised.

[106B] On behalf of the Commission on Law and Aging, David M. English of Missouri moved Resolution 106B adopting the Third National Guardianship Summit Standards and Recommendations, dated August 2012, and urging courts and policy making bodies to implement them. The resolution was approved.

[106C] On behalf of the Commission on Law and Aging, David M. English of Missouri moved Revised Resolution 106C urging courts and community organizations to collaborate in establishing court-focused elder abuse initiatives that serve victims or potential victims of elder abuse through either a court or a court-based program or a program conducted in partnership with a court. The resolution was approved as revised.

LEGAL EDUCATION
[103] On behalf of the Section of Legal Education and Admissions to the Bar, Ruth V. McGregor of Arizona moved Resolution 103 concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2012, to Standard 509 and Rule 16 of the ABA Standards and Rules of Procedure for Approval of Law Schools. The resolution was approved.

[108] On behalf of the Standing Committee on Paralegals, Deborah Winfrey Keene of Michigan moved Resolution 108 granting approval and reapproval to several paralegal education programs, withdrawing the approval of two programs at the request of the institutions, and extending the term of approval to several paralegal education programs. On behalf of John Zimmerman, Stephen A. Saltzburg of the District of Columbia moved to postpone indefinitely consideration of the resolution. Mr. Zimmerman spoke in favor of motion to postpone indefinitely. Larry C. Hunter of Idaho spoke against the motion to postpone indefinitely. The motion to postpone indefinitely was defeated. The resolution was approved.

LITIGATION


SPECIALIZATION
The House approved by consent Resolution 110 as submitted by the Standing Committee on Specialization amending the Accreditation Standards for Specialty Certification Programs for Lawyers by the addition of provisions to Sections 4.06(F) and 4.08, and the addition of Section 4.10, dated August 2012.

YOUTH AT RISK

On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Resolution 112A urging lawyers, judges, child welfare agency administrators, legislators, educators and educator regulatory bodies to support the enrollment in and successful completion of postsecondary education by youth in foster care, or those who have been in foster care. The resolution was approved.

On behalf of the Commission on Youth at Risk, Lynn M. Allingham of Alaska moved Resolution 112B urging attorneys and judges, state and local bar associations and law school clinical programs to help identify and respond effectively to Fetal Alcohol Spectrum Disorders (FASD) in children and adults through training to enhance awareness of FASD and its impact on individuals in the child welfare, juvenile justice, and adult criminal justice systems, and the value of collaboration with medical, mental health and disability experts. The resolution was approved.

Passing of the Chair’s Gavel

At the conclusion of the meeting of the House on Tuesday, August 7, Chair Klein commented on how much had been accomplished in the past two days and how the resolutions can affect millions of people. She shared that she had recently received a letter from a retired ambassador thanking us for a resolution passed by the House last year that promoted secured lending in developing countries. The ABA’s policy gave credibility to lawyers in South America lobbying for secured lending.

Chair Klein thanked all of the House Committees and staff and highlighted their
accomplishments over the last 2 years. She also thanked the members of the House for the courtesies shown to her and for the privilege of serving them.

Linda A. Klein introduced Robert M. Carlson of Montana as new chair of the House of Delegates. Mr. Carlson thanked Ms. Klein for her distinguished service as Chair of the House.

Closing Business
The Texas Delegation was recognized to make a presentation to delegates regarding the 2013 Dallas Midyear Meeting.

Nathaniel Cade, Jr. of Wisconsin moved a resolution in appreciation of the Chicago lawyers and judges, for their work in hosting the meeting. The motion was approved.

Chair Carlson recognized Palmer Gene Vance II of Kentucky who then moved that the House adjourn sine die. The motion was approved.

Respectfully submitted,

Ben Griffith, Member, House of Delegates