

MEMORANDUM

TO: Section and Committee Chairs
Presidents and Executive Directors of State and Local Bar Associations
State and Section Delegates in the House of Delegates
ABA Directors and Department Heads

FROM: Marina B. Jacks

SUBJECT: Summary of Action of the August 2009 Board of Governors Meeting

DATE: August 11, 2009

Attached is the Summary of Action of the July 30 - 31, 2009, meeting of the Board of Governors held at the Hyatt Regency Chicago in Chicago, Illinois. Please note that this Summary does not constitute official Minutes of the meeting. Minutes will be presented for Board approval at its next meeting in October 2009.

If you have any questions with respect to the action taken, please let me know.

Attachment

cc: Board of Governors

**SUMMARY OF ACTION
AMERICAN BAR ASSOCIATION
BOARD OF GOVERNORS**

**Hyatt Regency Chicago
Chicago, Illinois
July 30 and 31, 2009**

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 June 13, 2009, meeting in Napa Valley, California, were approved as presented. The minutes of the Executive Committee's July 20 and July 29, 2009, meetings 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 Continuation of Board Entities

The Board approved the continuation of entities created by the Board whose assignments were ongoing, and discontinued those that had completed their tasks.

2.3 Continuation of Special Committees and Commissions

The Board approved its recommendations to the House of Delegates regarding the continuation and discontinuation of special committees and commissions.

2.4 ALI-ABA Presentation

Thomas Z. Hayward, President of ALI-ABA Continuing Professional Education (ALI-ABA), 2005-2009; Maury B. Poscover, President of ALI-ABA, 2009-2013; and Julene Franki, ALI-ABA Executive Director, presented a report on ALI-ABA's current activities and highlighted the following: a) The ALI-ABA/Association for Continuing Legal Education (ACLEA) Critical Issues Summit "Equipping Our Lawyers: Law School Education, Continuing Legal Education, and Legal Practice in the 21st Century," will be held October 15-17, 2009, in Scottsdale, Arizona. The Summit will bring together leaders from within and outside the legal profession to discuss, debate, and develop goals for lawyer professional education and development in the 21st century and recommend practical steps for achieving these goals. b) The ALI-ABA strategic priorities established for 2006-2009: i) build markets and relationships, ii) create products and achieve maximum capacity, iii) develop human capital, and iv) achieve financial sustainability and growth. c) Much work in 2009 has centered on development of Via™,

the ALI-ABA microsite platform, launched in September 2008, to meet the needs of lawyers seeking customized CLE and professional development technology.

2.5 Report on ABA Day

Laurel G. Bellows, Chair of the Planning Committee for ABA Day in Washington 2010, recounted the success of 2009 ABA Day and encouraged all ABA members to actively participate in 2010 ABA Day. In particular, she asked Board members to advise the ABA Day Planning Committee of members of Congress they know so that appointments with these U.S. senators and representatives can be scheduled and a contact list developed. She also emphasized the importance of ABA members establishing ongoing, personal relationships with members of Congress, the Executive Branch and other governmental entities to ensure that the Association's advocacy efforts regarding those issues on which the Association has adopted policy receive the necessary attention.

2.6 Request to Elect Directors of the James O. Broadhead Corporation

The Board re-elected Carolyn B. Lamm, Alice Richmond, and the Honorable Bernice B. Donald, and elected Stephen N. Zack, to the Board of Directors of the James O. Broadhead Corporation, the entity that holds title to the ABA's building in Washington, DC.

2.7 Request to Elect Directors of the Board of Directors of the American Bar Association, an Illinois Not-for-Profit Corporation

In February 2008 the ABA Articles of Incorporation were amended to designate the members of the Board of Governors as members of the American Bar Association, an Illinois Not-for Profit Corporation. The Board of Governors, as members of the American Bar Association, an Illinois Not-for Profit Corporation, re-elected Carolyn B. Lamm and the Honorable Bernice B. Donald, and elected Stephen N. Zack, to serve as directors on the Board of Directors of the incorporated Association.

2.8 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.

2.9 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 June 13, 2009, meeting of the ABA/FJE Board as presented and b) accepted the ABA/FJE restricted grants and contributions received or awarded through July 7, 2009, and not previously reported, as requested by the Association's Grants and Accounting Services office in Washington, DC.

2.12 National Judicial College

The Board, sitting as the Members of the National Judicial College (NJC), approved an amendment to Section 5.07 of the NJC bylaws regarding the procedures for removal of a Trustee from the NJC Board of Trustees.

In addition, the Board, sitting as the Members of the NJC, heard a presentation on current NJC activities from the Honorable Frederic B. Rodgers, Chair of the NJC Board of Trustees; Saul A. Wolfe, immediate past chair of the NJC Board of Trustees; and the Honorable William F. Dressel, President of the NJC. The report highlighted the following: a) Judge Rodgers is the first NJC Faculty Council Chair to be elected Chair of the NJC Board of Trustees. b) In light of the current economic situation, the NJC has created a series of Webinars to enable judges to receive training without having to incur travel costs.

Executive Session

In executive session, the Board discussed executive compensation matters.

2.25- **INFORMATIONAL REPORTS**

2.27

The Board received written informational reports from the *ABA Journal*, the Commission on Women in the Profession, and the Center for Racial and Ethnic Diversity.

3. **OPERATIONS AND COMMUNICATIONS COMMITTEE**

A. **MATTERS FOR REVIEW BY THE BOARD**

3.1 Requests for Bylaw Amendments

a. Forum on the Construction Industry

In June 2009, the Forum on the Construction Industry requested approval to amend its bylaws. The proposed amendments, which were approved by the Forum's Governing Committee on April 15, 2009, are the result of the first general review of the Forum's Bylaws since the Forum's creation in 1976. The Board deferred the Forum's June 2009 request to the July 30-31, 2009, meeting of the Board to clarify questions and concerns the Operations Committee had concerning several of the proposed bylaw amendments. Following the June Board meeting, the Forum made additional amendments to its bylaws that responded to the concerns raised by the Board in June 2009 and requested that the Board approve the revised bylaws at the July 2009 meeting of the Board.

The Board approved the Forum's revised request for bylaw amendments. In pertinent part, the amendments, as revised, i) clarify the purposes of the Forum to make the

purposes more consistent with the Forum's Mission Statement adopted in 2008, ii) clarify membership eligibility and add provisions regarding termination of membership, iii) clarify the duties of the Governing Committee and the Chair, iv) clarify how Governing Committee meetings will be scheduled and conducted, v) establish procedures for removal and replacement of Governing Committee members, vi) clarify the procedures to be followed to nominate Officers and Governing Committee members, vii) clarify the procedures to amend Forum bylaws, and viii) clarify that Officers, Governing Committee members and others may be reimbursed for certain expenses.

b. Section of Antitrust Law

The Board approved the request of the Section of Antitrust Law to amend its bylaws to add a Consumer Protection Officer position. The proposed amendments were approved by the Section Council on June 22, 2009.

c. Health Law Section

The Board approved the request of the Health Law Section to amend its bylaws to increase the number of members-at-large on the Section Council from six to nine to achieve greater diversity. The total number of Council members (including Officers, Section Delegates to the House of Delegates, and the Young Lawyers Division Representative) will increase from 15 members to 18 members. The proposed amendment was approved by the Section Council on April 27, 2009. Approval of the proposed amendment by the Board is subject to approval by the Section membership at the Section business meeting on August 1, 2009.

d. Section of Intellectual Property Law

The Board approved the request of the Section of Intellectual Property Law to amend its bylaws to create a Membership Officer position with responsibility for advancing ABA and Section membership goals. The amendments were approved by the Section Council on November 10, 2008. Approval of the proposed amendments by the Board is subject to approval by the Section Membership at the Section Business Session, held during the 2009 Annual Meeting.

e. Section of International Law

The Board approved the request of the Section of International Law to amend its bylaws. In pertinent part, the amendments i) modify the Section's purpose to conform with the Section's 2009-2014 Strategic Plan, ii) clarify Section membership categories, iii) clarify the procedure to call a special business meeting, iv) modify and clarify the duties of Section Officers, v) clarify provisions regarding Section Officer succession, vi) clarify various practices and procedures of the Section's Administration Committee, Executive Committee and Council, and vii) codify certain existing practices. The proposed amendments were approved by the Section Administration Committee on May 26, 2009. Approval of the proposed amendments by the Board is subject to approval by the Section membership at the Section's Annual Business Meeting on July 31, 2009.

3.2 Nominations

a. A-E-F-C Pension Plan Administration Committee

The three-year terms of three ABA representatives on the A-E-F-C Pension Plan Administration Committee ended at the conclusion of the 2009 ABA Annual Meeting. When the Administration Committee was created in 1994, the terms of elected members were staggered. However, when a fourth ABA representative was added, the term was not staggered. To ensure that the terms of Administration Committee members are in correct sequence going forward, the Board amended the term of an outgoing member of the Administration Committee to one year, to restore the balance.

The Board also elected Susan M. Serota of New York, New York, as Chair of the Administration Committee, to a one-year term; re-elected Stuart M. Lewis of Washington, DC, to a second three-year term; and elected Leslie W. Jacobs of Cleveland, Ohio, to a three-year term, all terms to begin at the conclusion of the 2009 ABA Annual Meeting.

b. Board of Elections

The Board i) elected the Honorable Annice Wagner, a member of the District of Columbia Court of Appeals, as the Chair of the Board of Elections; and ii) re-elected Louise Michaux Gonzales of Baltimore, Maryland, and Jack Middleton of Manchester, New Hampshire, as members of the Board of Elections, all for one-year terms, effective at the conclusion of the 2009 ABA Annual Meeting.

c. Standing Committee on Audit

The Board was advised that President-elect Carolyn B. Lamm will reappoint Lawrence M. Gill of Chicago, Illinois, to a third one-year term as Chair of the Standing Committee on Audit for the 2009-2010 Association year. Mr. Gill is presently serving a three-year term as a member of the Audit Committee, which will conclude in August 2010. In addition, the Board elected G. Nicholas Casey of Charleston, West Virginia, to a three-year term on the Audit Committee to begin at the conclusion of the 2009 Annual Meeting. Mr. Casey's appointment is pursuant to the action of the House of Delegates at the 2005 Annual Meeting in Chicago that revised the composition of the Audit Committee to include three members of the Board of Governors representing each of the three association years of the term of the Board.

3.3 Standing Committee on Meetings and Travel Recommendation Regarding 2016 Midyear Meeting Site

The Board approved San Diego, California, as the site of the February 4-9, 2016, Midyear Meeting.

3.4 Standing Committee on Amicus Curiae Briefs Request to Revise the Association's Amicus Curiae Briefs Procedure

The Board revised the Association's Amicus Curiae Briefs Procedure. In pertinent part, the revisions direct potential drafters of amicus briefs to contact the ABA General Counsel's Office early in the process and to consult the Standing Committee's website for information. In addition, the revisions reorganize and update much of the information contained in the current procedures.

3.5 President-elect Lamm's Request to Amend Jurisdictional Statements of Three ABA Entities and Create Special Advisor Positions for Two Entities

The Board approved the following amendments to ABA entity jurisdictional statements to allow further expertise on the entities:

- a) Task Force on Enemy Combatants - increase the number of members from five to eight.
- b) Commission on the Impact of the Economic Crisis on the Profession - i) change the Commission's name to "Commission on the Impact of the Economic Crisis on the Profession and Legal Needs," and ii) increase the number of members from 12 to 15.
- c) Commission on Ethics 20/20 - increase the number of members from 12 to 18.
- d) Standing Committee on Group and Prepaid Legal Services - create a special advisor position for the Standing Committee.
- e) Commission on the American Jury Project - create a special advisor position for the Commission.

3.6 Request to Amend Jurisdictional Statement of Non-Dues Revenue Subcommittee

The Board reconstituted the Non-Dues Revenue Subcommittee as the Non-Dues Revenue Committee, reporting to the Executive Committee. In addition, the Board increased the membership of the entity from six to eight, to include representation from each Board class, the Section Officers Conference, and the Treasurer, *ex officio*.

3.7 Request to Create Identity Theft Prevention Program to Comply with FTC "Red Flags" Rule

The Board authorized the creation of an Identity Theft Prevention Program (ITPP) to comply with the "Red Flags" Rule of the Federal Trade Commission. The ITPP will be developed, implemented and administered by the ABA General Counsel's Office, with periodic reports to the appropriate Committees of the Board.

3.8 Request to Reconstitute the Ethics Officer Position into an Ethics Office

The Board reconstituted the ABA ethics functions, currently handled by the ABA Ethics Officer, into a tripartite Ethics Office, comprised and staffed by the Director of Internal

Audit, the Director of Human Resources, and the General Counsel. The Ethics Office will continue to report to both the Standing Committee on Audit and to the Executive Director.

3.9 Request Regarding World Justice Project

The Board approved the separation of the World Justice Project from the American Bar Association, effective September 1, 2009, subject to the continued oversight and approval of the General Counsel's Office.

B. MATTERS OF INDEPENDENT JURISDICTION

3.15 Requests for Co-Sponsorships

The Operations and Communications Committee approved the following co-sponsorship requests. In approving the requests, the Operations Committee understood that no additional ABA general revenue is requested or required for the activities to be co-sponsored.

a. Criminal Justice Section

The Operations and Communications Committee approved the request of the Criminal Justice Section to co-sponsor a two-day conference, "Beyond Brady's Disclosure Obligations," November 15-16, 2009, at the Benjamin J. Cardozo School of Law, Yeshiva University, in New York, New York.

b. Judicial Division National Conference of Specialized Court Judges

The Operations and Communications Committee approved the request of the Judicial Division National Conference of Specialized Court Judges (NCSCJ) to co-sponsor with the National Judicial College (NJC) a three-year project, from October 1, 2009, through September 30, 2012, that will develop a curriculum and present the program "Evidence Based Sentencing Practices for Limited Jurisdiction Judges" in each of the major regions of the United States as well as a large state (e.g., Texas, New York, Florida).

c. Section of Antitrust Law (*Two Requests*)

i. Janet D. Steiger Fellowship Project

The Operations and Communications Committee approved the request of the Section of Antitrust Law to continue the Janet D. Steiger Fellowship Project (Project) through 2010 and to solicit State Attorneys General Offices to co-sponsor the project. The Project, first approved in 2004 and subsequently continued through 2009, provides first and second year law students with an interest in public service and consumer protection with the opportunity to work at state attorneys general offices throughout the country (exact locations to be determined) for a minimum of eight weeks during the summer.

ii. Junior Scholars Workshop

The Operations and Communications Committee approved the request of the Section of Antitrust Law to co-sponsor with the Association of American Law Schools Antitrust Section, the Fordham Competition Law Institute, and the University of Florida Levin College of Law the "Junior Scholars Workshop," January 29, 2010, at Fordham University School of Law in New York, New York. The objective of the workshop is to increase the visibility of antitrust law in law schools and also increase antitrust scholarship.

d. Section of International Law

The Operations and Communications Committee approved the request of the Section of International Law to co-sponsor the "International Law Weekend" with the American Branch of the International Law Association in 2009, 2010, and 2011. The 2009 program, which will address the challenges posed by economic, political and social changes of the last decade and their impact on international law, will be held October 23-24, 2009, at the Association of the Bar of the City of New York and Fordham University School of Law, in New York, New York. The dates and locations of the 2010 and 2011 programs have not been determined.

e. Section of Real Property, Trust and Estate Law

The Operations and Communications Committee approved the request of the Section of Real Property, Trust and Estate Law to co-sponsor the annual National Estate Planning Awareness Week, to be held initially October 19 – 25, 2009, with the National Association of Estate Planners and Councils (NAEPC), the NAEPC Foundation, American Institute of Certified Public Accountants, and the Society of Financial Service Professionals. The annual event encourages multi-disciplinary cooperation to advance the estate planning client's best interests through programs that will be presented nationwide.

f. Section of Dispute Resolution

The Operations and Communications Committee approved the request of the Section of Dispute Resolution to co-sponsor the National Summit on Business to Business Arbitration with the College of Commercial Arbitrators (the primary co-sponsor), the American Arbitration Association, the International Institute for Conflict Prevention & Resolution, and JAMS Dispute Resolution Services, October 30, 2009, in Washington, DC. The purpose of the Summit is to elicit best practices from providers and end users of dispute resolution services.

g. Section of Administrative Law and Regulatory Practice

The Operations and Communications Committee approved the request of the Section of Administrative Law and Regulatory Practice to co-sponsor the conference "The Impact

of Lobbying and Ethics Reform” with the Center for American Progress and the Center for Congressional and Presidential Studies, September 14, 2009, in Washington, DC.

3.16 Section of Antitrust Law Request for Approval of Brown Bag Programs Co-sponsored with Certain Outside Entities in 2009-2010

The Operations and Communications Committee approved the request of the Section of Antitrust Law to co-sponsor Brown Bag programs with all state and local bar associations and 83 additional outside entities (listed in the request) as potential co-sponsors in 2009-2010.

4. PROGRAM, EVALUATION AND PLANNING COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

5.2 Request to Create the Rosner & Rosner Justice Fund and the Rosner & Rosner Lawyers Professionalism Award

The Board approved the creation of the Rosner & Rosner Justice Fund and the establishment of the Rosner & Rosner Young Lawyers Professionalism Award. It is expected that the first recipient of the award will be recognized at the 2010 Annual Meeting.

B. MATTERS OF INDEPENDENT JURISDICTION

Senior Lawyers Division Program on Intergenerational Debate on Social Security, Medicare and Medicaid

The Program, Evaluation and Planning Committee approved the request of the Senior Lawyers Division for revision of its Program on Intergenerational Debate on Social Security, Medicare and Medicaid to add a consultant to organize and manage “student journalists” who will cover the debate and write practice articles as a classroom assignment.

ABA Enterprise Fund

The Program, Evaluation and Planning Committee approved the requests of four Enterprise Fund project teams for no cost extensions to complete their work, as follows:

- a. Legal Assistance and Education for Lesbian, Gay, Bisexual and Transgender Victims of Domestic Violence, through December 31, 2009
- b. Mediation in Criminal Matters, through October 31, 2009.

- c. National Leadership and Training to Provide Civil Legal Assistance to Victims of Trafficking Project, through December 31, 2009.
- d. Aiding Substance Abusing Youth and Their Families, through March 31, 2010.

5. FINANCE COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

5.1 Approval of FY 2010 Budget

a. General Revenue Operating Budget

The Board approved the FY 2010 General Revenue Operating Budget in the amount of \$107,371,000.

b. Capital Budget

The Board approved the FY 2010 Capital Budget in the amount of \$2,849,079.

5.2 Request to Create the Rosner & Rosner Justice Fund and the Rosner & Rosner Lawyers Professionalism Award

See Program, Evaluation and Planning Committee above.

5.3 Request to Approve Section/Division/Forum Principles and Guidelines on Reserve Funds

The Board approved "Section/Division/Forum Reserve Fund: Principles and Guidelines." In addition, the Board removed the cap on the reserves of the Section of Legal Education and Admissions to the Bar.

5.4 A-E-F-C Pension Plan Administration Committee Recommendation for Contribution to Pension Plan

The Board approved an A-E-F-C Pension Plan contribution for the Pension Year 2008 in the amount of \$6,809,783.

5.5 Standing Committee on Audit Request to Approve FY 2010 Internal Audit Plan

The Board approved the FY 2010 Internal Audit Plan for business areas, information systems, and administrative activities.

5.6 New Business - Grants Policy Resolution

The Board adopted the following resolution regarding grants:

RESOLVED that until such time as the ABA Board of Governors adopts a new policy for the acceptance of grants, any grant application to be submitted to a government entity, foundation or other organization for which the indirect cost recovery rate is less than the ABA's standard negotiated indirect cost recovery rate must be approved by the Executive Committee of the ABA Board of Governors before submission of the grant application.

B. MATTERS OF INDEPENDENT JURISDICTION

None for Consideration.