

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 February 2008 Board of Governors Meeting

DATE: February 21, 2008

Attached is the Summary of Action of the February 7-8, 2008, meeting of the Board of Governors held at the Hyatt Regency Century Plaza in Los Angeles, California. This Summary does not constitute official Minutes of the meeting. Minutes will be presented for Board approval at its next meeting in April 2008.

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

CC: Board of Governors

Attachment

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

**Hyatt Regency Century Plaza
Los Angeles, California
February 7-8, 2008**

1. REPORTS OF OFFICERS AND THE EXECUTIVE DIRECTOR

The Board received the reports of the President, President-elect, Chair of the House of Delegates, Secretary, Treasurer and Executive Director. The minutes of the Board's October 20, 2008, meeting in Austin, Texas, were approved as presented. The minutes of the Executive Committee's meetings of November 8 and December 6, 2007; and the Executive Committee's meetings of January 4, January 16, and February 6, 2008, 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 Membership Presentation

At the October 2007 Board meeting, the Board discussed in detail the various challenges inherent in reaching the goal of 500,000 members by the year 2010, as set forth in the Strategic Plan for Membership Growth (Plan), which was received by the Board in February 2006. Because of such challenges, the Board agreed that there is value developing fewer and shorter-term goals for membership growth. President Neukom requested that the Standing Committee on Membership and the Membership and Marketing Division identify three or four programs for membership growth that would, in the opinion of the Standing Committee, be the most successful.

Robert A. Zupkus, Chair of the Standing Committee on Membership, and Diane R. Bruhl, Director of the ABA Membership and Marketing Division, presented an update on the Standing Committee's work since the October 2007 Board meeting. They discussed certain near-term programs that would support the Plan's membership priorities of group programs, law students, section membership and young lawyers. Thereafter, the Board discussed, in considerable detail, ideas for increasing and retaining members, including the development of bold and innovative initiatives in the future.

2.3 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 October 20, 2007,

meeting of the ABA/FJE Board as presented; and b) accepted the ABA/FJE restricted grants and contributions received or awarded through January 4, 2008, and not previously reported, as requested by the Association's Grant Development & Administration Office.

2.4 Presentation Regarding ABA Mission Statement and Goals

Thomas Z. Hayward, Jr., Chair of the Long Range Planning Committee, presented a status report on the Committee's work regarding the ABA mission statement and goals. At President Neukom's request, the Committee is examining and redrafting the ABA's mission and goals to more accurately reflect the Association's core competencies and aspirations. A preliminary draft of a revised mission statement and goals was circulated to ABA entities on December 10, 2007, and comments on the draft are due by March 7, 2008. It is anticipated that the Committee will submit a Report with Recommendations to revise the Association's mission statement and goals for consideration by the House of Delegates at the August 2008 ABA Annual Meeting in New York City.

2.5 Report from the Executive Compensation Committee

In executive session, the Board received a report from the Executive Compensation Committee.

2.6 ABA Legislative and Governmental Priorities

The Board approved the following ABA Legislative and Governmental Priorities for the Second Session of the 110th Congress:

- Access to Legal Education
- Access to Legal Services
- Anti-Terrorism and Preservation of Civil Liberties
- Criminal Justice System Improvements and Protection of Rights
- Health Care Law
- Immigration
- Independence of the Judiciary
- Independence of the Legal Profession
- Rule of Law – Global
- Tax Simplification
- Youth-at-Risk

2.7 National Judicial College Nomination

The Board, sitting as the Members of the National Judicial College (NJC), elected Mark G. Tratos of Las Vegas, Nevada, to fill an unexpired term on the NJC Board of Trustees. Mr. Tratos' term will take effect immediately and conclude in July 2009.

2.8 Report of the Steering Committee of the Nominating Committee

Thomas R. Curtin, Chair of the Steering Committee of the Nominating Committee of the House of Delegates, reported to the Board on the following issues that the Steering Committee has been studying: a) Guidelines for the Election of Officers, specifically when and how a candidate starts the process of running for office; b) residency requirements for state delegates; c) the financing of state delegate campaigns; and d) the development of a template of "frequently asked questions" that would be completed by all candidates running for office.

2.9 Memorial Resolution: Former Governor Daniel W. Hildebrand

The Board passed a memorial resolution recognizing the accomplishments, standards and achievements of Daniel W. Hildebrand, a member of the Board of Governors from 2003-2006, who passed away on December 31, 2007.

2.10 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.

2.25- INFORMATIONAL REPORTS

2.31

The Board received written informational reports and heard presentations from the Commission on Mental and Physical Disability Law, the Center for Racial and Ethnic Diversity, the Commission on Sexual Orientation and Gender Identity, the Commission on Women in the Profession, and the *ABA Journal*. In addition, the Standing Committee on the Law Library of Congress and the ABA Webstore Project Team submitted written informational reports to the Board.

3. OPERATIONS AND COMMUNICATIONS COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

3.1 Requests for Bylaw Amendments

a. Judicial Division

The Board approved the request of the Judicial Division to amend its bylaws to rename the Division's Strategic Planning Committee the "Strategic Planning and Communications Committee." The Division's Chair-elect and Vice-Chair will serve, respectively as the Committee's Chair and Vice Chair. Members of the Committee will be the chairs-elect and vice-chairs of each Judicial Division conference. The proposed

amendments were approved by the Judicial Division's Council by e-mail vote on December 6, 2007.

b. National Conference of Specialized Court Judges

The Board approved the request of the National Conference of Specialized Court Judges to amend its bylaws to i) add to the duties of the Conference Secretary the responsibility of serving as Conference Membership Committee Chair; ii) eliminate the position of Budget Officer; iii) update the list of conference standing committees; and iv) broaden the charge and change the name of the Flaschner Award Committee to the "Awards Committee" to facilitate the coordination of all annual awards presented by the Conference. The proposed amendments were approved by the Conference in September 2007.

c. Section of Administrative Law and Regulatory Practice

The Board approved the request of the Section of Administrative Law and Regulatory Practice to amend its bylaws, in pertinent part, to i) add the word "international" in two places to reflect the Section's increasing activity in international administrative law issues; ii) clarify that an *ex officio* Council member is to be appointed from each branch of the Federal Government; and iii) clarify that the Section's last retiring chair is a voting member of the Section Council. The proposed amendments were approved at the Annual Meeting of the Section Membership in August 2007.

d. Law Practice Management Section

The Board approved the request of the Law Practice Management Section to amend its bylaws to add one non-U.S. lawyer position to the Section Council. The proposed amendment was approved by the Section Council on February 6, 2006, and by the Section Membership on August 6, 2006. (NOTE: This amendment required approval by the House of Delegates of a corresponding amendment to the ABA Bylaws. The House approved the corresponding amendment to ABA Bylaw Section 30.5 at the 2007 Annual Meeting.)

3.2 Requests Regarding Dues

a. Section of Public Utility, Communications and Transportation Law
Request to Lower Dues of Section Members who Join Joint Dues
Program of Government and Public Sector Lawyers Division

The Board approved the request of the Section of Public Utility, Communications and Transportation Law to lower from \$40.00 to \$30.00 the dues of Section members who join the Joint Dues Program of the Government and Public Sector Lawyers Division. The Section Council approved the decrease by e-mail vote in mid-December 2007.

b. Section of Real Property, Trust and Estate Law Request to Increase Dues

The Board approved the request of the Section of Real Property, Trust and Estate Law to increase its annual dues for Lawyer members and Associates from \$50.00 to \$55.00, effective September 1, 2008. The Section Council approved the proposed increase on January 14, 2008.

c. Criminal Justice Section Request to Increase Dues

The Board approved the request of the Criminal Justice Section to increase its annual dues for Lawyer members from \$40.00 to \$45.00, effective September 1, 2008. In January 2007, the Section Council approved an increase of \$10.00 over a two year period. The first five dollar increase was approved by the Board's Executive Committee in March 2007 and became effective on September 1, 2007.

3.3 Requests Regarding Awards

a. Commission on Women in the Profession

The Board approved the request of the Commission on Women in the Profession to establish a one-time "20th Anniversary Legal Essay and Video Competition." The competition is open to law students attending an ABA-approved law school and lawyers who have been out of law school for less than five years. First place awards for each medium (written essay and video) will be presented during the 2009 Midyear Meeting to the winning law student and lawyer. Each award will include a \$500.00 honorarium that will be funded through the Commission's program support fund.

b. Tort Trial and Insurance Practice Section

The Board approved the request of the Tort Trial and Insurance Practice Section to establish the annual "TIPS Liberty Achievement Award" to be presented to a lawyer or a judge who demonstrates leadership in promoting diversity in the legal profession through career choices and work in the public or private sector. The recipient will receive a plaque with a maximum value of \$500.00. The cost of the award will be paid for with Section funds.

c. Section of Administrative Law and Regulatory Practice (Two Award Requests)

i) Chair's Award for Outstanding Service

The Board approved the request of the Section of Administrative Law and Regulatory Practice to establish the annual "Chair's Award for Outstanding Service" to be presented to a Section member who has provided outstanding service to the Section through activities such as participation in CLE programming, work on publications, pro bono service and participation in Section events co-sponsored with other ABA entities. The

recipient will receive a plaque with an approximate value of \$100.00. The cost of the plaque will be paid for with Section funds.

ii) The Gellhorn-Sargentich Law Student Essay Contest

The Board approved the request of the Section of Administrative Law and Regulatory Practice to establish "The (annual) Gellhorn-Sargentich Law Student Essay Contest" for law student members of the Section. The essay contest is named in memory of two Section members who were nationally recognized scholars in the field of administrative law. The winner of the contest will receive a \$500.00 cash award, a framed certificate (estimated value of \$50.00), as well as paid airfare, paid lodging and complimentary registration for the Section's Administrative Law Conference, held annually in fall in Washington, DC. All costs associated with the contest will be paid for with Section funds.

3.4 Standing Committee on Membership

a. Dues Pilot Recommendations for 2008-09 Membership Year

Pursuant to the resolution adopted by the House of Delegates in February 2006, pilot tests of new dues pricing concepts may be considered. To date, the Board has approved six pilots. At the February 2008 meeting the Board approved the request of the Standing Committee on Membership to conduct the following two additional pilots for the 2008-2009 membership year:

i) Extended Free Dues Period for New Bar Admittees:

The Board approved the Standing Committee on Membership's request for a dues pilot test that offers an extended free dues period for new bar admittees. Participation will include only new bar admittees enrolled in the ABA during the summer of 2008. ABA dues pricing for the first year after the free period will be \$125.00. In subsequent years, dues pricing will revert to standard pricing based on years since bar admission. The projected sample size is 7,500.

ii) 50 Percent First Year Promotional Pricing for New Members:

The Board approved the Standing Committee on Membership's request for a dues pilot test in which potential members will be offered a 50 percent discount for the first year of membership. The projected sample size is 5,000.

b. Request for Member Benefit Program with Toshiba America Information Systems

The board approved the request of the Standing Committee on Membership to develop a member benefit technology equipment program with Toshiba America Information Systems, Inc. as a three-year pilot to test the concept, pricing, product delivery and program execution. The program will offer ABA members discounts of seven to 25

percent off the ToshibaDirect website price on Toshiba mobile products such as notebooks, projectors, TVs and DVD players. First year royalties from the program are expected to be nominal. However, it is estimated that revenues from the program will exceed \$70,000.00 by the third year.

3.5 Request to Revise Jurisdictional Statements of the ABA Rule of Law Initiative and the Five ABA International Councils

The Board approved the request of the ABA Rule of Law Initiative (ROLI) to revise the jurisdictional statements of the board of ROLI and the councils of the Africa Law Initiative, the Asia Law Initiative, the Central European and Eurasian Law Initiative, the Latin America and Caribbean Law Initiative, and the Middle East and North Africa Initiative to more accurately reflect the coordinated purpose and function of the ROLI board and each of the five councils.

3.6 Requests Regarding Blanket Authority – Technical Comments

a. Section of Intellectual Property Law Request to Submit Technical Comments to Internal Revenue Service

The Board approved the request of the Section of Intellectual Property Law to submit to the Internal Revenue Service technical comments on matters relating to taxation and tax administration concerning intellectual property.

b. Request of Section of Real Property, Trust and Estate Law to Serve as Reviewing Entity for Technical Comments Submitted by Section of Intellectual Property Law to the Internal Revenue Service

The Board approved the request of the Section of Real Property, Trust and Estate Law to serve as a reviewing entity for technical comments submitted by the Section of Intellectual Property Law to the Internal Revenue Service (See 3.6a. above).

c. Request of Section of Taxation to Serve as Reviewing Entity for Technical Comments Submitted by Section of Intellectual Property Law to the Internal Revenue Service

The Board approved the request of the Section of Taxation to serve as a reviewing entity for technical comments submitted by the Section of Intellectual Property Law to the Internal Revenue Service (See 3.6a. above).

d. Section of Intellectual Property Law Request to Serve as Reviewing Entity for Technical Comments Submitted by the Section of Real Property, Trust and Estate Law and the Section of Taxation to the Internal Revenue Service

The Board approved the request of the Section of Intellectual Property Law to serve as a reviewing entity for comments submitted by the Section of Real Property, Trust and Estate Law and the Section of Taxation to the Internal Revenue Service.

3.7 Request from the ABE Board of Directors for an Exception to the ABA E-Mail Policy

The Board of Directors of the American Bar Endowment (ABE) requested an exception to the ABA's member e-mail contact policy, which precludes the use of member e-mail addresses by non-ABA-entities, to permit the ABE to send to ABA members who "opt-in" a yearly e-mail informing ABA members of an opportunity for charitable giving to the profession through participation in the ABE's donor advised fund, known as the "ABE Charitable Gift Fund."

This item was withdrawn.

3.8 Request to Update Articles of Incorporation

The Board approved a recommendation which amends the Association's Articles of Incorporation to a) conform with the governance changes resulting from amendments to the ABA Constitution and Bylaws which eliminated the Assembly, and b) change the address of its principle place of business and registered agent.

Specifically, the recommendation amends the articles as follows: a) Changes the name of the Association's registered agent to R. Thomas Howell, Jr. and the Association's registered office to 321 N. Clark Street, Chicago, IL; b) designates the members of the Board of Governors as the members of the incorporated Association; c) specifies that at any annual meeting the Articles may be amended upon vote of at least two-thirds of the members present and voting in the House of Delegates; and d) specifies that the Association may be dissolved upon adoption of a resolution of dissolution by a vote of at least two-thirds of the members present and voting in the House. ¹

B. MATTERS OF INDEPENDENT JURISDICTION

3.15 Requests for Co-Sponsorships

a. Commission on Homelessness and Poverty

The Operations and Communications Committee **approved** the request of the Commission on Homelessness and Poverty to co-sponsor with the National Coalition for Homeless Veterans (NCVH) a one-year initiative to provide educational resources and technical assistance to lawyers and advocates as they create homeless court programs at "Stand Down" events for homeless veterans. In approving the request, the Operations Committee understood that i) the initiative will be funded by a portion of a technical assistance grant from the United States Department of Labor to NCVH, ii) the

¹ Thereafter, Exhibit 3.8, as approved by the Board, was submitted for consideration by the House of Delegates at the 2008 Midyear Meeting as Resolution 177C. Resolution 177C was approved by the House of Delegates as presented.

grant provides funding for one year with the possibility of renewal for two years, and
iii) no additional ABA general revenue is requested or required.

b. Commission on Immigration (Two Requests)

i) 2009-2011 Conferences on Unaccompanied Immigrant Children

The Operations and Communications Committee **approved** the request of the Commission on Immigration to co-sponsor the Annual Conference on Unaccompanied Immigrant Children, with the entities listed in the request, in 2009, 2010, and 2011. Conference dates and locations for 2009-2011 have not yet been identified. It is anticipated that the Commission will participate in the conferences by developing the agendas for panels and other conference events, providing suggestions for training materials and speakers, and providing publicity for the conferences. In approving the request, the Operations Committee understood that no additional ABA general revenue is requested or required for the conferences.

ii) MOU for Immigration Advocates Network

The Operations and Communications Committee **approved** the request of the Commission on Immigration to participate as a member of the Working Group of the Immigration Advocates Network (IAN), a collaborative pilot project created to improve the sharing of resources and communication among immigration services organizations. In approving the request, the Operations Committee understood that any expenses for the project will be paid from the Commission's approved 2007-2008 budget and no additional ABA general revenue is requested or required.

In August 2007, the Operations Committee approved the Commission on Immigration's participation as an observer in the work of the Steering Committee, or "Working Group" of IAN. However, the Operations Committee deferred taking action on the Commission's request to join as a member of the Working Group until the Memorandum of Understanding (MOU) for the Working Group received final approval by the Office of the ABA General Counsel (OGC) and was reviewed and approved by the Operations Committee. The OGC approved the MOU on December 27, 2007.

c. Section of Dispute Resolution and Section of Environment, Energy, and Resources

The Operations and Communications Committee **approved** the request of the Section of Dispute Resolution and the Section of Environment, Energy, and Resources (SEER), on behalf of their respective Environment and Natural Resources ADR and Alternative Dispute Resolution committees, to co-sponsor with the Alternative Dispute Resolution Committee of the Energy Bar Association an "Energy and Environmental Conflict Resolution and Prevention Speakers Bureau" during the 2007-2008, 2008-2009 and 2009-2010 ABA years. The sections will participate in the speakers bureau by providing a listing of speakers to be included in a pamphlet and on SEER's Website. In approving

the request, the Operations Committee understood that no ABA general revenue is requested or required for the project.

d. Section of Intellectual Property Law

The Operations and Communications Committee **approved** the request of the Section of Intellectual Property Law to co-sponsor with the U.S Patent & Trademark Office (USPTO), the American Intellectual Property Law Association, and the Intellectual Property Owners Association the "U.S. Patent & Trademark Office Design Patent Day" on April 14, 2008, at the USPTO headquarters in Alexandria, Virginia. The Section will provide a panel of speakers for the program, which is being developed in coordination with the co-chairs of the Section's Industrial Design Committee. In approving the request, the Operations Committee understood that the Section will contribute \$500.00 from Section funds to cover the cost of refreshments for the program, and no ABA general revenue is requested or required.

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 with The Lawyers' Committee for Civil Rights Under Law and the Heirs Property Retention Coalition, a resource center for the delivery of legal services to people impacted by tenancy in common land loss, in a pilot resource center in three counties in North Carolina. The resource center will continue the work of the Section's Property Preservation Task Force, which was created in 2002 to identify possible solutions to the loss of tenancy in common property. The Section plans to promote the participation of transactional lawyers in private firms to work on individual land loss cases and also develop educational materials for dissemination within targeted communities. In approving the request, the Operations Committee understood that the Section will provide \$45,000.00 in Section funds per year for three years toward the project, and no ABA general revenue is requested or required.

f. 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 the Lawyers' Committee for Civil Rights Under Law's voting rights project, the "*Election Protection Program*." The National Bar Association and the National Association for the Advancement of Colored People will also co-sponsor the project. The program, which is designed to encourage voter participation and protect the rights of citizens to vote in 23 states with large minority communities, is a non-partisan, nationwide effort to recruit volunteer lawyers and students to staff a voter protection hotline, serve as mobile field attorneys to support Election Protection's non-legal volunteer program, operate Legal Command Centers to handle major election issues throughout the country, and engage in an ongoing dialogue with state and local election officials to manage election administration issues. The Section will work with the Lawyers' Committee in the planning and implementation of the project by identifying volunteer lawyers and law students to carry out the project,

developing and updating voter education materials, planning CLE/training programs for volunteers, and assisting in publicizing project activities.

In approving the request, the Operations Committee understood that the Lawyers' Committee and its network of law firms will be responsible for any costs associated with the project, and no ABA general revenue is requested or required.

g. Standing Committee on Judicial Independence

The Operations and Communications Committee **approved** the request of the Standing Committee on Judicial Independence to co-sponsor a Sandra Day O'Connor Project program "Enhancing Judicial Independence, Accountability, and Selection for the State Court Judiciary: A Program for Reform" with the Sandra Day O'Connor Project on the State of the Judiciary at Georgetown University Law Center, and Georgetown University Law Center. The program will be held at Fordham University School of Law in New York on April 8, 2008. The Standing Committee will assist in identifying speakers and developing topics for the program. In approving the request, the Operations Committee understood that no additional ABA general revenue is requested or required for the program.

3.16 Meetings Outside the United States

a. Forum on Air and Space Law

The Operations and Communications Committee received notification that the Forum on Air and Space Law plans to hold its Annual Meeting and Conference, "Are the Skies Brightening," on September 18-20, 2008, at the Marriott Chateau Champlain in Montreal, Quebec, Canada. The Conference, which will be co-sponsored by the Forum and the McGill University Institute of Air and Space Law, will qualify for CLE credit and has been approved by the Standing Committee on Continuing Legal Education.

b. Section of Business Law

The Operations and Communications Committee received notification that the Section of Business Law plans to hold the first Global Business Law Meeting on May 28-30, 2008, at the Westin Grand in Frankfurt, Germany.

4. PROGRAM AND PLANNING COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

4.1 Section of Administrative Law and Regulatory Practice Request to Establish Program Support Fund

The Board approved the request of the Section of Administrative Law and Regulatory Practice to establish a Program Support Fund to be maintained within the Fund for Justice and Education, for the deposit and disbursement of charitable contributions raised in support of the public service initiatives of the Section, with the understanding that a) the Fund will be comprised of charitable contributions only, b) the request will be reviewed and approved by the ABA Office of the General Counsel to ensure the Fund is 501(c) (3) compliant, and c) the Section will comply with future requirements and will complete any resulting forms pertaining to program support funds to be developed by an ad hoc committee of the Board consisting of members of the Operations and Communications, Program and Planning, and Finance committees.

4.2 Center for Racial and Ethnic Diversity Request to Amend Jurisdictional Statement

The Board approved the request of the Center for Racial and Ethnic Diversity (Center) to amend its jurisdictional statement to provide that the Center a) shall review all proposed programs of its entities before the program proposal is submitted to the Board and b) provide its recommendations on each proposed program to the requesting entity and to the Board when the proposal is submitted.

4.3 Approval of Requests to Seek Outside Funding

The Board approved the ten requests from eight ABA entities to seek outside funding that were presented for approval as part of the Fiscal Year 2008-2009 planning process.

4.4 Commission on Immigration Request for Emergency Supplemental Funding for Member Travel and Meeting Expenses

The Board approved the request of the Commission on Immigration for emergency supplemental funding and an increase in general revenue support to permit the Commission to conduct one and one-half day meetings, rather than one day meetings, for the remainder of Fiscal Year 2007-2008 and in future years.

NEW ITEM

4.5 Request for Emergency Supplemental Funding for Legal Education Summit

The Board approved the request of President William H. Neukom for emergency supplemental funding to hold a Legal Education Summit during Fiscal Year 2007-2008.

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Law school deans, general counsels and managing partners will be invited to the Summit.

B. MATTERS OF INDEPENDENT JURISDICTION

None for consideration.

FINANCE COMMITTEE

MATHEWS

A. MATTERS FOR REVIEW BY THE BOARD

5.1 Standing Committee on Audit Report: Acceptance of August 31, 2007, Audited Financial Statements

The Board accepted the audited financial statements for the year ended August 31, 2007.

B. MATTERS OF INDEPENDENT JURISDICTION

None for consideration.