

SUMMARY OF ACTION
AMERICAN BAR ASSOCIATION
BOARD OF GOVERNORS

The Phoenician
Scottsdale, Arizona
November 13-15, 2003

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, Secretary, Treasurer, Immediate Past President, and Executive Director. The minutes of the Board's August 8, 2003, meeting were approved as presented, and the minutes of the Board's October 31, 2003, meeting were approved with one revision. The minutes of the Executive Committee's September 5, September 10, October 7, October 31, November 6, and November 12, 2003, meetings were received and one addition was made to the minutes of November 12.

2. MATTERS FOR DIRECT BOARD ACTION

2.1 Report of Pension Review Committee

In executive session on November 13, 2003, the Board considered the recommendations of the Pension Review Committee. Thereafter, the Board reconvened in open session and approved the following motion:

That the ABA Defined Benefit Plan be retained and modified so that the benefit determination be changed from a Final Average Pay formula to a Career Average Pay formula, effective January 31, 2004.

2.2 Fund for Justice and Education Presentation

The Board, sitting as the members of the Board of the American Bar Association Fund for Justice and Education (ABA/FJE), heard a presentation from Allan J. Tannenbaum, Chair of the Council of the ABA/FJE, and Krista D. Kauper, Director of Development, concerning the purpose and work of the FJE, the role of the FJE Council, and fundraising strategies for increasing contributions to the FJE.

2.3 ABA Museum of Law Presentation

Darrell E. Jordan, President of the Board of Directors of the ABA Museum of Law, and Norman Gross, the Museum's Director, presented to the Board an informational report on the Museum's current and future projects and programs, including: a) the America's Lawyer-Presidents Exhibit, scheduled to open in September 2004 in the ABA's new headquarters at 321 North Clark Street, Chicago; and b) a possible television documentary on America's lawyer-presidents.

2.4 Report of the Task Force on Goal VIII

The Board received the Report of the Task Force on Goal VIII. The Board created the Task Force in June 2002, at the request of then President-elect Carlton, to undertake a review of the Association's rule of law work to ensure coordination in meeting the challenge of Goal VIII and to identify processes and structures necessary to implement any findings from the examination undertaken. President Archer informed the Board that he had created an Ad Hoc Working Group on Goal VIII to consider the recommendations of the Task Force. The Working Group will be chaired by President-elect Robert J. Grey, Jr. (Board Liaison to the Special Committee on the Central European and Eurasian Law Initiative), and Armando Lasa-Ferrer (Board Liaison to the Latin America Law Initiative Council), Carolyn B. Lamm, (Board Liaison to the Asia Law Initiative Council), and Pauline A. Schneider (Board Liaison to the Africa Law Initiative Council) will serve as members. Task Force Chair William H. Neukom will serve *ex officio*.

2.5 Friends of the CEELI Institute Presentation

Homer E. Moyer, Jr., President of the Friends of the CEELI Institute (Friends), presented to the Board an informational report on the history and work of the Friends of the CEELI Institute, a 501(c)(3) organization incorporated in Washington, DC in 1999 to raise funds for and oversee the development of the CEELI Institute, an institution of higher learning located in Prague that promotes the rule of law around the world. The Institute held its grand opening in October 2003.

2.6 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.

2.7 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 August 8, 2003, meeting of the ABA/FJE Board as presented; and b) accepted the ABA/FJE restricted grants and contributions received or awarded through October 15, 2003, and not previously reported, as requested by the Association's Grant Development & Administration Office.

2.8 Section of Legal Education and Admissions to the Bar 2002-03 Report on Accreditation Actions

ABA General Counsel Darryl L. DePriest presented and the Board received the report of the Section of Legal Education and Admissions to the Bar and the Accreditation Committee regarding the significant accreditation actions of 2002-2003.

2.9 Standing Committee on Membership Pending Legislation Regarding Use of Commercial E-Mail and Request for Approval of New ABA Policy

The Board approved a policy resolution that the ABA: 1) supports federal legislation and regulations that would prohibit the sending of false, misleading, predatory, or abusive commercial e-mail messages, but opposes measures such as Section 106 (a) of S.877, the "CAN-SPAM Act of 2003," that would impose on law abiding entities a duty to prevent third parties from promoting the entities products or services in an improper way; 2) supports federal legislation, regulations, and other measures that would protect and strengthen the ability of associations and other tax-exempt nonprofit organizations to communicate with, or otherwise serve, their members and the public, including the sending of commercial and non-commercial e-mail messages; and 3) opposes any legislation, regulations, or other measures prohibiting or regulating commercial or non-commercial e-mail messages to the extent that such measures could interfere with the ability of associations and other tax-exempt nonprofit organizations to communicate with, or otherwise serve, their members and the public.

3. OPERATIONS AND COMMUNICATIONS COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

3.1 Requests for Bylaw Amendments

a. 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 to: 1) create an Executive Committee comprised of Section officers and the Last Retiring Chair; and 2) authorize the Executive Committee to act on behalf of the Section as long as the proposed action had first been submitted to the Section Council and had not received a negative vote. The proposed amendments were approved by the Section membership in August 2003.

b. Section of International Law and Practice

The Board approved the request of the Section of International Law and Practice to amend its bylaws to: 1) formalize the traditional division of the operational and policy functions within the Section by codifying that the Administration Committee will oversee the management of the Section and the Council will focus on policy issues; 2) establish a transition period for the changes; and 3) make various nonsubstantive changes. The Section's Council and membership approved the proposed amendments at the 2003 Annual Meeting.

c. Section of State and Local Government Law

The Board approved the request of the Section of State and Local Government Law to amend its bylaws to include a seven-member Publications Oversight Board that would

be responsible for the Section's book program. The Section's Council and membership approved the proposed amendment in August 2003.

d. Section of Family Law

The Board approved the request of the Section of Family Law to amend its bylaws to: 1) permit the Section membership to vote on bylaw amendments at any membership meeting of the Section and not only at the Section's Annual Meeting; 2) provide that notification of bylaw amendments may be given by direct mail in addition to publication; and 3) provide for a 30-day notice period for all bylaw amendments. The proposed amendments were approved by the Section Council in June 2003 and by the Section membership in August 2003.

e. Section of Labor and Employment Law

The Board 1) deferred until February 2004 the request of the Section of Labor and Employment Law to amend its bylaws to: a) specify that Section dues are payable on or before July 1st of each year; and b) give the Section's Council flexibility to waive or modify the annual Section dues requirement for various categories of Section members or potential members; and 2) sent the proposed amendments back to the Section for review in light of the recommendation of the Operations and Communications Committee and relevant Association policy.

3.2 Nominations

a. Consortium for the National Equal Justice Library Board of Directors

The Board approved the re-election of Helaine M. Barnett of New York City and the election of Thomas M. Smegal of San Francisco, both for two-year terms to begin at the conclusion of the Consortium's Annual Meeting, in fall 2003.

b. International Bar Association Secretary-General

The Board voted to support the nomination of Bernard L. (Ben) Greer of Atlanta for the office of Secretary-General of the International Bar Association.

3.3 Requests to Charge Program Fees at 2004 Midyear Meeting

a. Government and Public Sector Lawyers Division

The Board approved the request of the Government and Public Sector Lawyers Division to charge program fees of \$25 for an ethics course, \$15 for a course in public law office management, and \$10 for a program on "pathways to success" at the 2004 Midyear Meeting.

b. Section of Administrative Law and Regulatory Practice

The Board approved the request of the Section of Administrative Law and Regulatory Practice to present a minimum of three or a maximum of six CLE programs at the 2004 Midyear Meeting and charge a program fee not to exceed \$75 for each program.

3.4 Section of Labor and Employment Law Request to Establish Annual Frances Perkins Public Service Award

The Board approved the request of the Section of Labor and Employment Law to establish the annual Frances Perkins Public Service Award to recognize significant pro bono services provided by: a) a Section member; or b) a firm, government agency, or other organization having at least one Section member employed by or associated with the organization.

3.5 Standing Committee on Meetings and Travel

a. Recommendation Regarding 2010 and 2011 Midyear Meeting Sites

The Board approved 1) Orlando, Florida, as the site of the 2010 Midyear Meeting, to be held February 3-9, 2010; and 2) Atlanta, Georgia, as the site of the 2011 Midyear Meeting, to be held February 9-15, 2011, as recommended by the Standing Committee on Meetings and Travel.

b. Recommendation Regarding Adoption of Midyear and Annual Meeting Policy

The Board adopted a policy, which clarifies that all entities participating in the Midyear and Annual Meetings, whether they are Association entities or affiliated organizations, must abide by policies governing these meetings, other than reimbursement policies, that have been adopted by the Board of Governors or House of Delegates, except in those instances where agreements reached prior to adoption of this policy or prevailing conditions make adherence prohibitive. In these situations the affected entity will confer with the Standing Committee on Meetings and Travel to reach an accommodation.

c. Recommendation Regarding 2004 Annual Meeting Fee Structure and Name Change

The Board approved the recommended fee structure for the 2004 Annual Meeting in Atlanta. The Board deferred approval of the proposed name change for the Association's Annual Meeting to permit the ABA Division for Media Relations and the ABA Membership and Marketing Division to consider the proposal and provide advice concerning the impact of the proposed name change on Annual Meeting attendance.

3.6 Standing Committee on Membership

a. Recommendation Regarding E-mail Policy Change

The Board approved the request of the Standing Committee on Membership to revise the ABA's current policy on the use of member e-mail addresses to: 1) clarify the language of the policy; and 2) require that a disclaimer (in the form of a privacy notice) be included in all listings of member contact information that are available to outside parties. The Board requested that the Standing Committee on Membership confer with the Standing Committee on Technology and Information Systems to clarify the application of the policy to communications between committee chairs and their members.

b. Recommendation Regarding Dues Structure Pilot

The Board approved the request of the Standing Committee on Membership 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 is not required.

3.7 Request for Creation of ABA Commission on the American Jury and ABA Special Working Group on Jury Standards

The Board approved the request of President-elect Robert J. Grey, Jr. for: a) the creation of an ABA Commission on the American Jury, comprised of 11 members plus a chair, to provide leadership and strategic direction to the ABA in advocating, promoting, and improving the jury system in America; b) the creation of an ABA Special Working Group on Jury Standards, comprised of not more than 15 members plus a chair, that would examine and recommend a single set of ABA standards and report to the Commission; and c) approval to appoint members to both entities. No general revenue is requested during the 2003-2004 ABA Year.

3.8 Justice Center Coordinating Council Request for ABA Support for Passage of John Marshall Commemorative Coin Bill

The Board approved the request of the Justice Center Coordinating Council that the ABA support passage of the John Marshall Commemorative Coin Bill, promoted by the Supreme Court Historical Society and currently pending before Congress, which would commemorate the contributions of former United States Supreme Court Chief Justice John Marshall and also provide support for the Historical Society through sales of the coin.

3.9 Request to Amend Directors, Officers and Employees Indemnification Policy

On November 12, 2003, the Executive Committee: 1) approved adding the AEFC Pension Committee to the ABA's fiduciary liability policy, retroactive to the inception of the policy, and authorized an emergency supplemental appropriation of \$4,800 for this

purpose; and 2) approved amending the Association's indemnification policy, with language to be supplied by the Association's General Counsel.

**B. MATTERS OF INDEPENDENT JURISDICTION
(Committee action is reported to the Board.)**

3.15 Requests for Co-Sponsorships

a. Section of Business Law

The Operations and Communications Committee approved the request of the Section of Business Law to co-sponsor *Internet Jurisdiction and Regulatory Compliance Challenges: A Global Survey* with the International Chamber of Commerce and the Internet Law and Policy Forum. Financial support for the project would be absorbed by the Section, and the ABA would not be exposed to unanticipated expenses.

b. Section of Environment, Energy, and Resources

The Operations and Communications Committee approved the request of the Section of Environment, Energy, and Resources to co-sponsor the National Environmental Law Moot Court Competition on February 19-21, 2004, at Pace University School of Law in White Plains, New York. The Section plans to contribute a total of \$5,000 from Section funds to the program and would not be exposed to liability for unanticipated expenses and/or net losses.

c. Special Committee on Bioethics and the Law (Three Requests)

1) The Operations and Communications Committee approved the request of the Special Committee on Bioethics and the Law to co-sponsor a conference on the ethical and legal implications of DNA research with the Center for Law, Science and Technology (Center) at the Arizona State University College of Law in Tempe, Arizona, in January 2004. The Center is responsible for all funding for the conference.

2) The Operations and Communications Committee approved the request of the Special Committee to co-sponsor a conference titled *The Genomics Revolution? Science, Law and Policy* with the Paul M. Herbert Law Center at Louisiana State University, the Pennington Biomedical Research Center at Louisiana State University, and the Public Law Research Centre at the University of Montreal, to be held in Baton Rouge, Louisiana, on February 4-6, 2004. The Paul M. Herbert Law Center is responsible for all funding for the conference.

3) The Operations and Communications Committee approved the request of the Special Committee to co-sponsor a public health law initiative, consisting of three separate components, regarding the role of the lawyer in a public health emergency with the Centers for Disease Control and Prevention (CDC). The CDC is responsible for all financial aspects of the initiative.

d. Standing Committee on Pro Bono and Public Service

The Operations and Communications Committee approved the request of the Standing Committee on Pro Bono and Public Service to co-sponsor the 2004 and 2005 Equal Justice Conferences with the National Legal Aid and Defender Association (NLADA). Expenses and revenue from the conferences would be shared equally between the Standing Committee and the NLADA, and the ABA would not be exposed to unanticipated expenses and/or net losses.

e. Section of Public Contract Law

The Operations and Communications Committee approved the request of the Section of Public Contract Law to co-sponsor its annual Federal Procurement Institute (FPI) with the National Contract Management Association (NCMA) on February 26-27, 2004. Section funds would be used to fund the Institute, and the ABA would not be exposed to unanticipated expenses and/or net losses

PROGRAM AND PLANNING COMMITTEE

ANDERSON

A. MATTERS FOR REVIEW BY THE BOARD

4.1 Standing Committee on Substance Abuse Request to Create Grant Funded Project

The Board approved the request of the Standing Committee on Substance Abuse for approval: a) of a study entitled "State Fiscal Crisis and Adult Drug Courts" to identify issues regarding the effect of state budget crises on the operation of drug courts and develop "best practice" strategies for funding drug court programs; and b) to seek outside funding for the project, with the understanding that the Standing Committee will work in collaboration with the Justice Center and the Judicial Division on the study.

4.2 Commission on Women in the Profession Request to Create Oral/Video History Project and Solicit Outside Funding

The Board approved the request of the Commission on Women in the Profession: a) to create the "Oral/Video History Project" to record, transcribe, and videotape the oral histories of women leaders in the legal profession nationwide, compile existing histories, and make the collected histories widely available; and b) to seek outside funding (\$50,000 for the first year) for the project, with certain conditions.

4.3 Standing Committee on Pro Bono and Public Service Request for Reallocation of Funds

The Board approved the request of the Standing Committee on Pro Bono and Public Service to reallocate \$19,000, or any portion thereof of its Fiscal Year 2003-2004 funds
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not subject to final agreement with the Law Firm Pro Bono Project, to conduct a national pro bono data collection study.

**B. MATTERS OF INDEPENDENT JURISDICTION
(Committee action is reported to the Board.)**

4.4 Iraq Initiative Request for Emergency Supplemental Funds

The Program and Planning Committee approved the request of the Iraq Initiative for emergency supplemental funding in the amount of \$14,000 to commence several grant funded projects currently under development.

FINANCE COMMITTEE

BELLOWS

A. MATTERS FOR REVIEW BY THE BOARD

5.1 Section of Labor and Employment Law Request for Approval of Program Support Fund Account to Encourage and Enhance Diversity

The Board approved the request of the Section of Labor and Employment Law for the creation of the "Diversity Program Support Fund", to be maintained within the Fund for Justice and Education, for the deposit and disbursement of funds to support and encourage the participation of minorities, women, law school students, and young lawyers in the outreach and pro bono activities and educational programs of the Section and its committees.