

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: Ellen F. Rosenblum
Secretary

SUBJECT: Summary of Action of the August 2004 Board of Governors Meeting

DATE: August 20, 2004

In order to keep you apprised in a timely fashion of the actions of the Board of Governors, members of the staff and I have prepared a Summary of Action of the August 5-6, 2004, meeting of the Board held at the Omni Hotel at CNN Center in Atlanta, Georgia. 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 November 2004.

If you have any questions with respect to actions taken, please feel free to contact the staff of the Policy Administration Division in Chicago.

Attachments

cc: Board of Governors

SUMMARY OF ACTION
AMERICAN BAR ASSOCIATION
BOARD OF GOVERNORS

Omni Hotel at CNN Center
Atlanta, Georgia
August 5-6, 2004

1. REPORTS OF OFFICERS AND THE EXECUTIVE DIRECTOR

The Board of Governors (Board) received the reports of the President, President-Elect, Chair of the House of Delegates, Secretary, Treasurer and Executive Director. The minutes of the Board's June 12, 2004, meeting were approved as presented. The minutes of the Executive Committee's June 24 and August 4, 2004, 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 Report of Compliance Officer on Accreditation Matters

The Board received a report from the General Counsel as the Antitrust Compliance Officer concerning law school questionnaires.

2.3 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.

2.4 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.

2.5 United States Supreme Court Justice Stephen Breyer

The Board heard a presentation from United States Supreme Court Justice Stephen G. Breyer. In his remarks, Justice Breyer discussed generally the cases heard by the Court during the previous term. He also noted that Chief Justice Rehnquist has appointed him to chair a commission to examine the implementation of the Judicial Conduct and Disability Act of 1980 (Act). Justice Breyer informed the Board that he would welcome the ABA's participation in the examination of the Act since the commission would benefit from the

opinions of lawyers who practice before the federal courts. On behalf of the Board, President Archer thanked Justice Breyer and justices Ginsburg, Kennedy and O'Connor for their active participation in the ABA and presented the Justice Breyer with a copy of the just published book, *America's Lawyer-Presidents*. The publication of the book coincides with the opening of the America's Lawyer-Presidents Exhibit at the ABA Museum of Law in September 2004.

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

Thomas Z. Hayward, Jr., Chair of the Committee on the 321 N. Clark Relocation Project, and Diana Z. Gilbert, Director-Administrative Services, presented the Committee's final report on the Association's move to its new headquarters at 321 North Clark Street, Chicago. The Board expressed its deep appreciation to Mr. Hayward, Ms. Gilbert, and the ABA Administrative Services staff for their exceptional efforts in facilitating the move on time and under budget, and presented Mr. Hayward and Ms. Gilbert with crystal gifts to commemorate their outstanding work on this project.

2.7 Memorial Resolution for James T. Jennings

The Board passed a resolution recognizing the accomplishments, standards and achievements of James Traynor Jennings of Roswell, New Mexico, a member of the Board of Governors from 1978 – 1981, who passed away on June 10, 2004.

2.9 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.

2.15 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 12, 2004, meeting of the ABA/FJE Board as presented; and b) accepted the ABA/FJE restricted grants and contributions received or awarded through July 9, 2004, and not previously reported, as requested by the Association's Grant Development & Administration Office.

2.18 National Judicial College

The Board heard a presentation from Procter R. Hug, Jr., Chair of the Board of Trustees of the National Judicial College (NJC), and NJC President William F. Dressel. Judge Hug discussed generally the history of the NJC as well as the NJC's relationship with the ABA. Judge Dressel described NJC's operations, including its work with state and federal trial judges and administrative law judges. On behalf of the Board, President Archer commended the NJC for its outstanding work in educating the judiciary.

ADDITIONAL ITEMS

Resolution of Appreciation to the Section of Public Contract Law

The Board passed a resolution expressing its appreciation to the Section of Public Contract Law for its service to the Association in reviewing the ABA's purchasing procedures and, in particular, its gratitude to the Section's Special Task Force on the ABA Purchasing System, chaired by Norman Thorpe, for its "best practices" report and recommendations that will be implemented by the Financial Services Division.

Status Report on Work of the ABA Standing Committee on Federal Judiciary

At the request of President Archer, Thomas Z. Hayward, Jr., Chair of the Standing Committee on Federal Judiciary, presented a status report on the Standing Committee's work during the past year. The Standing Committee has completed 44 investigations of nominees, each in a 30-40 day time period. Mr. Hayward expressed his gratitude for the confidence the Board places in the Standing Committee.

Southern Africa Black Lawyers Association Commercial Law Education Project Inc.

The Board received the final report of the South Africa Black Lawyers Association Commercial Law Education Project (SABLA Project) and passed a resolution commending the participants in the SABLA Project for the success of the project. The SABLA Project was an eight-week course of lectures in commercial law offered to members of the SABLA in May-June 2004 at Witwatersrand Law School in Johannesburg to enhance their skills as business lawyers. The Board's Executive Committee approved the request of the Senior Lawyers Division to cosponsor the SABLA Project with the International Senior Lawyers Project, the SABLA, and several law firms in September 2003. The Senior Lawyers Division's participation involved development of a curriculum and identification and selection of lawyers to teach the courses. Principal funding for the SABLA Project was provided by the Southern Africa Legal Services and Legal Education Project Inc.

OPERATIONS AND COMMUNICATIONS COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

3.1 Requests for Bylaw Amendments

a. Section of Real Property, Probate and Trust Law

Subject to final approval by the membership of the Section of Real Property, Probate and Trust Law at the 2004 Annual Meeting, the Board approved, the request of the Section to amend its bylaws to: 1) provide for a Section Standing Committee on Community Outreach;

2) permit the appointment of committee group chairs and vice chairs for the two divisions (Real Property Division and Probate and Trust Division) of the Section; and 3) permit the appointment of an Assistant Finance and Corporate Sponsorship Officer to serve during the last year of service of the Section's Finance and Corporate Sponsorship Officer. The Assistant Finance and Corporate Sponsorship Officer would serve *ex officio* without vote. The Section's Council approved the proposed changes on May 15, 2004.

b. Health Law Section

Subject to final approval by the membership of the Health Law Section at the 2004 Annual Meeting, the Board approved the request of the Section to amend its bylaws to: 1) make editorial and clarifying revisions; 2) specify that Section dues increases must be approved by the Board of Governors as well as the Section Council; 3) clarify procedures for filling vacancies on the Section Council; 4) provide that the Section Vice-Chair automatically succeeds to the position of Chair-elect; 5) specify procedures for filling vacancies in officer positions; 6) set forth the responsibilities of the Immediate Past Chair; 7) set forth the composition and designation of the Nominating Committee; and 8) establish more specific election procedures for Council members and officers. The Section's Council approved the proposed changes on July 12, 2004.

c. Section of Litigation

Subject to final approval by the membership of the Section of Litigation at the 2004 Annual Meeting, the Board approved the request of the Section to amend its bylaws to: 1) authorize the Section Chair to appoint Council members to committees of the Council; 2) stagger the terms of the Budget Officer and Revenue Officer; and 3) make various ministerial changes. The Section Council approved the proposed changes at the Section's Spring 2004 Leadership Meeting.

d. Section of Taxation

The Board approved the request of the Section of Taxation to amend its bylaws to: 1) increase its dues ceiling from \$50 to \$75; 2) permit Section business to be conducted by posting to the Section's Website; 3) accommodate any future changes in the number of Section Delegates to the House of Delegates allocated to the Section; 4) eliminate the requirement for an October or November Council meeting to provide that the Section Chair shall designate additional meetings of the Council; 5) permit Council business to be conducted via e-mail; 6) change the date to file petitions for officer or Council nominations; 7) provide that the Section Council, rather than the Section Nominating Committee, elects Section Delegates to the House of Delegates; and 8) require bylaw amendments to be presented for Section vote at a meeting attended by at least 100 members of the Section. The proposed changes were approved by the Section membership on May 8, 2004.

3.2 Nominations

a. Inter-American Bar Association

The Board elected A. Joshua Markus of Miami, Florida, as the ABA representative to the Council of the Inter-American Bar Association (IABA), to serve from the fall 2004 IABA Council meeting through the conclusion of the fall 2007 IABA Council meeting, as recommended by the Section of International Law.

b. Board of Elections

The Board 1) elected Justice Elizabeth B. Lacy of Richmond, Virginia, as the Chair of the Board of Elections; and 2) elected Robert P. Young of Detroit, Michigan, and Ann C. Williams of Chicago, Illinois, as members of the Board of Elections, all for one-year terms to begin at the conclusion of the 2004 Annual Meeting, as recommended by President-elect Grey.

c. Standing Committee on Audit

The Board 1) reappointed John A. Krsul of Sawyer, Michigan, to a three-year term as a member of the Standing Committee on Audit; and 2) appointed Lawrence M. Gill of Chicago, Illinois, to a three-year term as a member of the Standing Committee, both terms to begin at the conclusion of the 2004 Annual Meeting, as requested by President-elect Grey. In addition, the Board appointed Renie Yoshida Grohl of Washington, DC, to the Standing Committee to fill the unexpired term of Wm. T. Robinson III who assumed the office of ABA Treasurer-elect at the conclusion of the 2004 Annual Meeting, as recommended by President-elect Grey. Ms. Grohl will serve on the Standing Committee through the conclusion of the 2005 Annual Meeting. The Board was also informed that the President-elect reappointed John A. Krsul, Jr. of Sawyer, Michigan, as Chair of the Standing Committee for the 2004-2005 Association Year.

d. CEELI

The Board 1) reelected Homer E. Moyer, Jr. of Washington, DC; and 2) elected C. Boyden Gray of Washington, DC, as members of the Board of Directors of the Friends of the CEELI Institute, for three-year terms to begin at the conclusion of the 2004 ABA Annual Meeting, as recommended by the Special Committee on Central European and Eurasian Law Initiative.

3.3 Appellate Judges Conference Request to Establish Distinguished Contribution to Appellate Law Awards

The Board approved the request of the Council of Appellate Lawyers (CAL) of the Appellate Judges Conference to establish the annual "Distinguished Contribution to Appellate Law Award" with four categories: Distinguished Lifetime Achievement, Distinguished Appellate Jurist, Distinguished Appellate Advocate, and Distinguished Service to CAL. The award will

be in the form of a certificate accompanied by a plaque or crystal award valued at approximately \$100.

3.4 Standing Committee on Publishing Oversight

a. Request for Approval of Guidelines for Distribution and Sale of Publications from For-Profit Organizations

The Board approved Guidelines for the Distribution and Sale of Publications from For-Profit Organizations, as requested by the Standing Committee on Publishing Oversight.

b. Request for Approval of Publishing Alliance with Member Benefit

The Board approved the request of the Standing Committee on Publishing Oversight to form a joint publishing alliance between ABA Publishing and Harvard Business School Publishing (HBSP), a wholly owned, not-for-profit subsidiary of Harvard Business School, in which ABA Publishing will distribute existing HBSP newsletters, books, and the *Harvard Business Review* to ABA members at a discount. In addition, the ABA will receive \$20.00 from HBSP for each paid subscription.

3.5 Standing Committee on Professionalism Request to Cosponsor Award and Conference and Request for Exception to Award Guidelines

The Board approved the request of the Standing Committee on Professionalism: a) to cosponsor with the W. Lee Burge Endowment for Law and Ethics at Georgia State University and the Conference of Chief Justices an annual "National Award for Innovation and Excellence in Teaching Professionalism" (National Award); b) for an exception to the ABA award guideline which requires that if awards are cosponsored, final selection of the award winner must rest with the ABA; and c) to cosponsor, with the Stein Center for Law and Ethics at Fordham University and the National Association for Law Placement Foundation for Law Career Research and Education, the conference "Professionalism Challenges in Large Firm Practice" on April 15, 2005, at the Louis Stein Center in conjunction with the presentation of the National Award. No ABA general revenues were requested or will be used in cosponsoring the National Award or the conference.

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

The Board continued the Task Force on the Lawyers Center for Personal Legal Services and Client Development through the 2005 ABA Midyear Meeting to permit the Task Force to complete its report for presentation at the 2005 Midyear Meeting. No general revenues were requested.

3.7 Request to Create a Special Advisor Position to the Africa Law Initiative Council

The Board created a special advisor position to the Africa Law Initiative Council, as requested by President-elect Grey. No general revenues were requested.

3.8 Request to Create the Racial and Ethnic Diversity Center Strategic Planning Committee

The Board created a Strategic Planning Committee within the ABA Center for Racial and Ethnic Diversity to conduct an assessment and make recommendations for better coordination of diversity efforts of the Association, as requested by President-elect Grey. Funding for the Strategic Planning Committee will come from the presidential initiatives budget and no additional general revenues were requested.

B. MATTERS OF INDEPENDENT JURISDICTION

3.15 Requests for Co-sponsorships

a. Standing Committee on Professionalism

The Operations and Communications Committee approved the request of the Standing Committee on Professionalism to cosponsor with the Appalachian School of Law the conference "New Directions in Professionalism" on April 28-29, 2005, at the law school. In approving the request, the Operations Committee understood that the Appalachian School of Law will cover all costs of the conference.

b. Section of Individual Rights and Responsibilities (*Two Requests*)

i. The Operations and Communications Committee approved the request of the Section of Individual Rights and Responsibilities to cosponsor a three-year pilot project with Howard University School of Law (Howard) to foster the education of young lawyers of color interested in environmental justice law. The Section and Howard will, in part, develop a curriculum on environmental law and establish mentoring/internship programs. The ABA Standing Committee on Environmental Law and ABA Section of Environment, Energy, and Resources will be invited to participate. In approving the request, the Operations Committee understood that student stipends for internships will be covered by private donor contributions to the Section, and Howard will be responsible for project expenses.

ii. The Operations and Communications Committee also approved the Section's request to cosponsor the Lawyers' Committee for Civil Rights Under Law's (Lawyers' Committee) voting rights project to educate minority communities about the electoral process, serve as a resource for voters at the polls, and encourage greater minority participation in the 2004 election. The Section will work with the Lawyers' Committee in the planning and implementation of the project, in part, by identifying volunteer lawyers and law students, developing voter registration materials, and assisting in publicizing the project. In approving

the request, the Operations Committee understood that the Lawyers' Committee and its network of law firms will be responsible for any project expenses.

c. Health Law Section

The Operations and Communications Committee approved the request of the Health Law Section to form a partnership with the federal Centers for Disease Control and Prevention to produce a manual and sponsor local legal workshops on the legal role of public health agencies and healthcare organizations during public health emergencies. In approving the request, the Operations Committee understood that the Section will seek Board approval for any future initiatives that result from the partnership, and no general revenues were requested for the partnership activities.

3.16 Section of Antitrust Law Request for Blanket Approval of Brown Bag Programs Co-sponsored with Certain Outside Entities in 2004-2005

The Operations and Communications Committee approved the request of the Section of Antitrust Law for blanket approval of "Brown Bag" programs that will be cosponsored with 33 outside entities during the 2004-2005 Association Year.

PROGRAM AND PLANNING COMMITTEE

ANDERSON

A. MATTERS FOR REVIEW BY THE BOARD

4.1 Approval of Annual Budget FY 2004-2005

The Board approved the Fiscal Year 2004-2005 Annual Budget in the amount of \$92,058,000.

a.-g. Requests for Budget Reconsideration

The Board declined to approve requests to reconsider the preliminary budget decisions regarding the Standing Committee on Medical Professional Liability, the Standing Committee on Solo and Small Firm Practitioners, the Standing Committee on Strategic Communication, the Standing Committee on Gavel Awards, the National Conference on Lawyers and Representatives of the Media, the Commission on Racial and Ethnic Diversity in the Profession, and the Criminal Justice Section.

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4.2 Consideration of Standing Committee on Scope and Correlation of Work
Recommendation to Sunset Consortium on Legal Services and the Public

The Board concurred with the recommendation of the Standing Committee on Scope and Correlation of Work to sunset the Consortium on Legal Services and the Public at the conclusion of the 2004 ABA Annual Meeting.

B. MATTERS OF INDEPENDENT JURISDICTION

None for consideration.

FINANCE COMMITTEE

BELLOWS

A. MATTERS FOR REVIEW BY THE BOARD

5.1 Standing Committee on Audit Request to Approve Revised Business Conduct
Standards

The Board approved revised ABA *Business Conduct Standards*, as recommended by the Standing Committee on Audit.

B. MATTERS OF INDEPENDENT JURISDICTION

None for consideration.