

## MEMORANDUM

TO: Section and Committee Chairs  
Presidents and Executive Directors of State and Local Bar  
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 2009 Board of Governors

DATE: February 25, 2009

Attached is the Summary of Action of the February 12-13, 2009, meeting of the Board of Governors held at the Sheraton Boston in Boston, Massachusetts. This Summary does not constitute official Minutes of the meeting. Minutes will be presented to the Board for approval at the next meeting, in June 2009.

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**

**Sheraton Boston  
Boston, Massachusetts  
February 12-13, 2009**

**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 November 1, 2008, meeting in Birmingham, Alabama, were approved as presented. The minutes of the Executive Committee's meetings of December 23, 2008; and January 13, January 27, and February 11, 2009, were received.

**2. MATTERS FOR DIRECT BOARD ACTION**

**2.1 House Reports**

The Board took no action on the Reports with Recommendations that had been submitted to the House of Delegates for consideration at the 2009 ABA Midyear Meeting.

**2.2 Presentation Regarding Final Report of Standing Committee on Pro Bono and Public Service Data Collection Study**

Mark I. Schickman, Chair of the Standing Committee on Pro Bono and Public Service, discussed with the Board the February 2009 final report of the second national pro bono data collection study, *Supporting Justice II: A Report on the Pro Bono Work of America's Lawyers*. The findings of the study show increasing levels of attorney pro bono interest and participation. Both the overall percentage of pro bono participation and the average number of pro bono hours worked are on the rise. Information about participation by various attorney demographic criteria is also provided. Further, the study presents new insights into how to recruit new pro bono attorneys and support them in their work.

Mr. Schickman also advised that the Standing Committee will co-sponsor the eleventh Equal Justice Conference with the National Legal Aid and Defender Association, May 14-16, 2009, in Orlando, Florida. At this jointly sponsored conference, important representatives from both the legal services community and the private bar, including law firm representatives, law school deans and faculty, corporate counsel and judges, explore ideas and develop strategies for meeting the civil legal needs of the poor through attorney volunteers. In addition, the Standing Committee is planning the first National Pro Bono Celebration for October 25-31, 2009. The Celebration is designed to establish a series of events across the country to send a message concerning the value of pro bono work. The goals of the Celebration are to recognize the pro bono efforts of America's lawyers, recruit more pro bono volunteers, and mobilize community support for pro bono.

On behalf of the Board, President Wells commended Mr. Shickman and the staff of the Standing Committee and the Division for Legal Services for their excellent work.

### 2.3 ABA Legislative and Governmental Priorities

The Board approved the following ABA Legislative and Governmental Priorities for the First Session of the 111<sup>th</sup> Congress:

- 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
- Legal Remedies to Eliminate Discrimination
- Promoting the International Rule of Law
- Tax Simplification

### 2.4 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 November 1, 2008, meeting of the ABA/FJE Board as presented and b) accepted the ABA/FJE restricted grants and contributions received or awarded through January 9, 2009, and not previously reported, as requested by the Association's Grants and Accounting Services office in Washington, DC.

### 2.5 Report on 2009 ABA Day in Washington

Laurel G. Bellows, Chair of the ABA Day in Washington Planning Committee, reported on the schedule of planned events for 2009 ABA Day, to be held April 21-23, 2009. The overall theme for 2009 ABA Day will be "Access to Justice" and will include issues such as immigration and funding for the Legal Services Corporation. Ms. Bellows emphasized that ABA Day presents the best opportunity for leaders of the Association to speak personally to members of Congress regarding the importance of the ABA's Legislative and Governmental Priorities. Participation in 2009 ABA Day will be enhanced through a "virtual alert" to members of the House of Delegates asking them to contact their Congressional representatives prior to ABA Day regarding issues House members would like to discuss. President Wells and Ms. Bellows encouraged all Board members to actively participate in 2009 ABA Day and, in particular, advise the ABA Day Planning Committee of members of Congress that they know so that appointments with these U.S. senators and representatives can be scheduled.

2.6 Memorial Resolution for John L. Carey

The Board passed a memorial resolution recognizing the accomplishments, standards and achievements of John L. Carey, of Vero Beach, Florida, a former ABA Treasurer and a member of the Board of Governors from 1992-1996, who passed away on January 16, 2009.

Additional Item: National Judicial College Presentation

The Board heard a presentation from Saul A. Wolfe, Chair of the National Judicial College (NJC) Board of Trustees, and NJC President, the Honorable William F. Dressel. Mr. Wolfe expressed his appreciation for the ABA's continued support of the NJC's activities and also discussed briefly some of the cost reduction initiatives taken by NJC in light of the current economic situation. Mr. Wolfe introduced the Honorable Frederic B. Rodgers who will succeed him as Chair of the NJC Board. On behalf of the Board, President Wells thanked Mr. Wolfe and Judge Dressel for the outstanding work done by the NJC.

2.7 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**

**2.28**

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

**3. OPERATIONS AND COMMUNICATIONS COMMITTEE**

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

3.1 Forum on the Entertainment and Sports Industries Request for Bylaw Amendments

The Board deferred the request of the Forum on the Entertainment and Sports Industries to amend its bylaws to permit the Forum to correct the following inconsistencies in a) proposed Bylaw Section 5A.2(c) regarding Forum Division vice chairs' attendance at Forum Governing Committee meetings as non-voting members, b) proposed Bylaw Section 5A.3 regarding the terms of Division chairs, and c) proposed Bylaw Section 8.3 regarding certain reimbursement procedures.

3.2 Nominations

a. ABA Journal Board of Editors

The Board elected Raymond L. Ocampo, Jr. of San Mateo, California, and re-elected Honorable Bernice B. Donald of Memphis, Tennessee, and Laura V. Farber of Pasadena, California, to the ABA *Journal* Board of Editors, all for three-year terms that will begin at the conclusion of the 2009 ABA Annual Meeting and end at the conclusion of the 2012 ABA Annual Meeting.

b. National College of District Attorneys Board of Regents  
(Criminal Justice Section)

The Board elected Stephen A. Saltzburg of Washington, DC, as an ABA regent on the Board of Regents of the National College of District Attorneys, for a three-year term effective as of January 2009 through December 31, 2011.

c. Organization for the Advancement of Structured Information Standards (OASIS)  
Legal XML Section (Standing Committee on Technology and Information  
Systems)

The Board elected Rolly L. Chambers of Charlotte, North Carolina, as the ABA representative to the Organization for the Advancement of Structured Information Standards Legal XML Section for a second three-year term, effective June 1, 2009 through May 31, 2012.

3.3 Requests Regarding Awards

a. Section of Dispute Resolution

The Board approved the request of the Section of Dispute Resolution to establish the annual *Award for Outstanding Service* to recognize members of the Section who have contributed significantly to the advancement of the Section. The award, a plaque valued at approximately \$150.00, will be presented to the winner at the Section's Spring Conference.

b. Section of Labor and Employment Law

The Board approved the request of the Section of Labor and Employment Law to establish the annual *Arvid Anderson Public Sector Labor and Employment Attorney of the Year Award* to recognize attorneys who have devoted substantially all of their careers to the development and advancement of public sector labor and employment law at the state and local level. The award, a plaque with a maximum value of \$500.00, will be presented at the annual Fall Continuing Legal Education Conference sponsored by the Section.

3.4 Commission on Youth at Risk Request for Creation of Advisory Committee

The Board approved the creation of an Advisory Committee to the Commission on Youth at Risk, comprised of a maximum of 12 members including a chair, selected from various disciplines, to provide advice and support for Commission activities.

3.5 Standing Committee on Membership

a. Recommendations Regarding i) Dues Rate for Student Associate Membership Category and ii) Establishment of Trial Program to Allow Implementation of Student Associate Category by Sections

The Board approved the recommendation of the Standing Committee on Membership that dues for the Student Associate category, approved by the House of Delegates in August 2008, be established at \$25.00. Further, the Board approved the Standing Committee's recommendation for the creation of a trial program, to run from February 2009 through April 2010, to permit the immediate implementation of the Student Associate category for Sections.

b. Recommendation Regarding Implementation of Section-Included Membership for Class 1A Members in Fiscal Year 2010

The Board approved the recommendation of the Standing Committee on Membership for the implementation of the Section-included dues program for Class 1A members in 2009-2010. Class 1A members are those persons receiving their first ABA dues bill for lawyer membership.

3.6 Standing Committee on Pro Bono and Public Service

a. Request to Approve Revisions to ABA Staff Policy Relating to the ABA Volunteer Lawyer Program

The Board approved the request of the Standing Committee on Pro Bono and Public Service for revisions to the ABA staff policy relating to the American Bar Association's Volunteer Lawyers Program (VLP). In pertinent part, the changes ensure consistency between the way the project operates in Washington DC and Chicago and clarify those activities that qualify as pro bono activities. The VLP was created in 1986 to further the objectives of ABA policy regarding pro bono embodied in Rule 6.1 of the ABA Model Rules of Professional Conduct. The VLP has enabled the ABA's lawyer staff to fulfill their professional responsibility to perform pro bono service.

b. Request to Utilize Pro Bono Net to Host the National Pro Bono Celebration Website

The Board approved the request of the Standing Committee on Pro Bono and Public Service to utilize the Pro Bono Net web framework and hosting capabilities for the

National Pro Bono Celebration (Celebration) website to i) place ABA-owned data relating to the Celebration on Pro Bono Net servers, with the ABA required website elements as the site's design, ii) formally publish on the web and elsewhere that Pro Bono Net is the host of the site, and iii) permit the display of the ABA and Pro Bono Net logos on their respective websites relative to the Celebration.

3.7 Request for ABA Participation in National Conference of Commissioners on Uniform State Laws Study Committees

The Board approved the request of the National Conference of Commissioners on Uniform State Laws (NCCUSL) for the ABA's participation in NCCUSL's study committee process. NCCUSL study committees review an assigned area of law according to defined criteria and recommend whether NCCUSL should draft model legislation on that subject

3.8 Section of Antitrust Law Request to Continue the Antitrust Fellowship Program

The Board approved the request of the Section of Antitrust Law to continue in Fiscal Year 2009 and Fiscal Year 2010 the Antitrust Fellowship Program, which was first approved in January 2008. The Fellowship Program was created to increase the Section's profile to prospective members and demonstrate the Section's commitment to public service by providing law students with internships at institutions that advance the study of antitrust, enforcement or competition law and providing these students with mentors. Five fellowship recipients will be selected each year. Each recipient will receive an annual stipend, to be paid from Section funds.

3.9 Standing Committee on Meetings and Travel Recommendation Regarding 2015 Midyear Meeting Site

The Board approved Houston, Texas, as the site of the February 3-9, 2015, ABA Midyear Meeting.

3.10 Section of Administrative Law and Regulatory Practice Request to Serve as Reviewing Entity for Technical Comments Submitted by the Section of Labor and Employment Law Under the Association's Blanket Authority Procedure

The Board approved the request of the Section of Administrative Law and Regulatory Practice to serve as a reviewing entity for technical comments submitted by the Section of Labor and Employment Law under the Association's Blanket Authority Procedure, effective February 2009 through October 2011.

3.11 Request to Ratify December 15, 2008, Action of Operations and Communications Committee Approving Section of Administrative Law and Regulatory Practice Request to Charge Fees for CLE Programming at 2009 Midyear Meeting

The Board ratified the December 15, 2008, action of the Operations and Communications Committee that approved, on an expedited basis, the request of the Section of Administrative Law and Regulatory Practice to charge fees for CLE programming the Section will present at the 2009 Midyear Meeting in Boston, Massachusetts. The fees will defray the printing and CLE costs for the programs.

3.12 Senior Lawyers Division Membership Request

The Board deferred the request of the Senior Lawyers Division for approval, as a three-year pilot program, of an opt-out membership proposal and implementation plan to retain ABA members age 60 and over to permit consideration of the proposal and implementation plan by the Standing Committee on Membership.

3.13 Requests to Contribute Funds for Co-sponsorship of CLE Programs

The Board approved requests from the following Sections to contribute Section funds to support CLE programs that they will co-sponsor. The Sections are submitting requests to co-sponsor the CLE programs to the Standing Committee on Continuing Legal Education.

a. Section of Science and Technology Law

The Section of Science and Technology Law will contribute Section funds to support a CLE conference that the Section is co-sponsoring on the topic "Forensic Science for the 21<sup>st</sup> Century: The National Academy of Sciences Report and Beyond." The conference is being presented by ASU Sandra Day O'Connor College of Law's Center for the Study of Law, Science, & Technology.

b. Section of Environment, Energy and Resources

The Section of Environment, Energy, and Resources will contribute Section funds to support an alternative energy CLE program the Section will co-sponsor with the University of Michigan Law School -The Institute of Continuing Legal Education (ICLE).



3.14 President-elect Lamm's Request for Approval of 2009-2010 Board of Governors Meeting Dates and Locations

The Board approved the following dates and locations for the 2009-2010 meetings of the Board:

February 4-5, 2010 (in conjunction with ABA Midyear Meeting)	Walt Disney World Dolphin Hotel Orlando, Florida
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June 3-6, 2010	Ritz Carlton Hotel Washington, DC
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August 5-6, 2010 (in conjunction with ABA Annual Meeting)	San Francisco Marriott Hotel San Francisco, California
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(Please note: The October 29-November 1, 2009, meeting of the Board at the Equinox Resort in Manchester Village, Vermont, was approved in September 2008 by the Executive Committee due to time constraints in signing the hotel contract.)

3.18 Request for Funding – Membership

The Board approved the request of the Standing Committee on Membership and the Executive Director to further supplement the Fiscal Year 2009 budget to fund the services of Leo Burnett as the Association's outside marketing consultant. The funds for this budget item will be offset by savings in other Membership consulting services.

In October 2008, the Board approved the request of the Standing Committee and the Executive Director to supplement the Fiscal Year 2009 budget with funds for a new membership initiative. The new membership initiative includes a comprehensive plan for membership development and the services of a major advertising firm to assist in Association membership efforts.

**B. MATTERS OF INDEPENDENT JURISDICTION**

3.15 Requests for Co-Sponsorships

a. Judicial Division National Conference of Federal Trial Judges and Lawyers Conference

The Operations and Communications Committee approved the request of the Judicial Division National Conference of Federal Trial Judges and Lawyers Conference to co-sponsor with the Administrative Office of the Illinois Courts the program "Judicial Decision Making in a Democratic Society" to be held June 15-16, 2009, at the University of Illinois. ABA members, including ABA Secretary, the Honorable Bernice Donald, will

speak at the program. In approving the request, the Operations Committee understood that no additional ABA general revenue is requested or required.

b. Commission on Mental and Physical Disability Law

The Operations and Communications Committee approved the request of the Commission on Mental and Physical Disability Law to solicit 31 additional entities (listed in the request) to co-sponsor the ABA National Conference on the Employment of Lawyers with Disabilities, which will be held June 15-16, 2009, in Washington, DC. The role of each of the co-sponsors will be limited to publicizing the conference to their members and sending at least one representative to the conference. In approving the request, the Operations Committee understood that no additional ABA general revenue is requested or required.

c. Section of International Law

The Operations and Communications Committee approved the request of the Section of International Law to co-sponsor the program "Building a More Effective United Nations: Opportunities for the Obama Administration" with the United Nations Association of the National Capital Area on April 23, 2009, in Washington, DC. In approving the request, the Operations Committee understood that no ABA general revenue is requested or required.

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 "Equal Justice Conference" with the National Legal Aid and Defender Association (NLADA) in 2009 (May 14-16 - Orlando, Florida), 2010 (May 13-15 - Phoenix, Arizona), and 2011 (dates and location to be determined). In approving the request, the Operations Committee understood that i) as was done for past Equal Justice conferences, a Memorandum of Understanding (MOU), which guides the development and implementation of the event, will be prepared each year and will be submitted to the ABA General Counsel's Office for review and approval, and ii) no additional ABA general revenue is requested or required.

3.16 Meetings Outside the United States

The Operations and Communications Committee received the following notifications regarding meetings outside the U. S.:

a. Section of Public Utility, Communications and Transportation Law

The Section of Public Utility, Communications and Transportation Law plans to hold its 2010 Spring Council Meeting April 28-May 1, 2010, at the Fairmont Southampton in Bermuda.

b. Section of Taxation

The Section of Taxation plans to hold its 9<sup>th</sup> Annual Tax Planning Strategies – U.S. and Europe Conference, a co-sponsored CLE program, on April 2-3, 2009, in Amsterdam, the Netherlands. A request to co-sponsor the CLE program has been sent to the Standing Committee on Continuing Legal Education for approval.

c. Section of International Law (Two Notifications of co-sponsored CLE programs)

- i. Vienna, Austria – June 4-5, 2009
- ii. Hamburg, Germany – June 19-20, 2009

Requests to co-sponsor the CLE programs are being sent to the Standing Committee on Continuing Legal Education for approval.

3.17 Section of Antitrust Law Request for Approval of Additional Law Schools as Potential Co-sponsors of Brown Bag Programs Held in 2008-2009

The Operations and Communications Committee approved the request of the Section of Antitrust Law to add ten additional law schools as potential co-sponsors of “Brown Bag” programs regarding state enforcement that the Section will hold in 2008-2009.

**4. PROGRAM AND PLANNING COMMITTEE**

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

4.1 Request for Approval to Seek Outside Funding from a) Commission on Immigration (two projects), b) Center on Children and the Law, and c) Section of Individual Rights and Responsibilities

The Board approved requests to seek outside funding from the Commission on Immigration (for two projects), the Center on Children and the Law, and the Section of Individual Rights and Responsibilities with the understanding that approval of the Section of Individual Rights and Responsibilities Death Penalty Moratorium Project is contingent on no new general revenue being allocated for a match.

**B. MATTERS OF INDEPENDENT JURISDICTION**

None for consideration.

## **FINANCE COMMITTEE**

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

#### **5.1 Requests to Contribute Funds to Outside Organizations**

The Board approved exceptions to the ABA policy that states “(i)t is generally not appropriate for the Association or any of its entities to contribute funds to other organizations” to permit the following entities to make contributions to outside organizations:

##### **a. Forum on the Construction Industry**

The Board approved the request of the Forum on the Construction Industry to contribute Forum funds to the ACE Mentor Program of America (ACE) in 2009 and 2010. ACE, a non-profit organization that serves high school youth who are exploring careers in architecture, construction or engineering, provides selected students the opportunity to work under the guidance of professionals from leading design and construction firms.

##### **b. Section of Business Law**

The Board approved the request of the Section of Business Law to contribute Section funds to the Judicial Education Program (JEP) at Northwestern University School of Law in Chicago, Illinois. The contribution will fund the expenses of Section members who are also members of the American College of Business Court Judges (ACBCJ) to attend the ACBCJ Annual Meeting. The ACBCJ is a program under the auspices of the JEP and is dedicated to promoting the development of specialized business courts through educational programs and outreach.

#### **5.2 Judicial Division Appellate Judges Conference Request to Use Appellate Judges Seminar (Spencer-Grimes) Funds to Help Underwrite Costs of Annual Summit for Appellate Judges, Lawyers and Staff Attorneys**

The Board approved the request of the Judicial Division Appellate Judges Conference (AJC) to spend, subject to the written approval of the AJC Chair and AJC Budget Officer, the annual allotment of appellate judges seminar (Spencer-Grimes) funds to help underwrite the cost of the Annual Summit for Appellate Judges, Lawyers and Staff Attorneys (Summit) conducted by the AJC under the auspices of its professional development arm, the Appellate Judges Education Institute (AJEI). The funds would defray the expenses of ABA member judges who attend the Summit and also reimburse AJEI for costs directly related to the Summit (e.g., audio-visual expenses).

5.3 A-E-F-C Pension Plan Administration Committee Request to Amend Pension Plan

The Board approved the request of the A-E-F-C Pension Plan Administration Committee for the Third Amendment to the A-E-F-C Pension Plan (Plan) which will update the Plan to reflect technical changes pursuant to the final Code Section 415 Treasury regulations (26 CFR §415) regarding the limitations on the amount of benefits that may be provided under the Plan to a participant.

5.4 Standing Committee on Audit Report

a. Acceptance and Approval of Annual Audited Consolidated Financial Statements

The Board accepted and approved the audited Consolidated Financial Statements of the American Bar Association for the year ended August 31, 2008.

b. Acceptance and Approval of Single Audit Report (A -133 Audit)

The Board accepted and approved the Single Audit Report (A-133 Audit) of the American Bar Association for the year ended August 31, 2008.

c. August 31, 2008, Audit Management Letter and Response

The Board received the management letter and response to internal control issues identified in the audit of the financial statements of the American Bar Association for the year ended August 31, 2008.

5.5 President Wells' Request for Funding for Task Force on Preemption

The Board approved an emergency supplemental appropriation to fund the Task Force on Preemption. The Task Force, which was created by the Executive Committee on January 26, 2009, will be comprised of a maximum of 15 members and will review existing ABA policy regarding federal preemption of state product liability tort laws and recommend an update or amendment to ABA policy, if necessary.

5.6 Request for Transfer of Funds to Dues Warehouse

The Board approved the transfer of funds to the dues warehouse that represent the Fiscal Year 2008 year-end excess of revenue over expenses in General Revenue Operations.

**B. MATTERS OF INDEPENDENT JURISDICTION**

None for consideration.