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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 October 2010 Board of Governors Meeting

DATE: November 10, 2010

Attached is the Summary of Action of the October 29-30, 2010, meeting of the Board of Governors held at the Ritz Carlton, South Beach, in Miami Beach, Florida. This Summary does not constitute official Minutes of the meeting. Minutes will be presented to the Board for approval at the next meeting, in February 2011.

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**

**Ritz Carlton, South Beach
Miami Beach, Florida
October 29-30, 2010**

1. REPORTS OF OFFICERS AND THE EXECUTIVE DIRECTOR

The Board received the reports of the President, President-elect, Chair of the House of Delegates, Immediate Past President, Secretary, Treasurer and Executive Director. The minutes of the Board's August 6, 2010, meeting in San Francisco, California, were approved as presented. The minutes of the Executive Committee's meetings of August 17 (conference call), September 21 (e-mail ballot), September 27 (e-mail ballot), September 29 (e-mail ballot), and October 28, 2010, were received.

2. MATTERS FOR DIRECT BOARD ACTION

2.1 Report and Recommendations Regarding ABA Pension Plan

In executive session, the Board considered the three alternatives regarding the ABA Defined Benefit Pension Plan prepared by Aon Hewitt and selected Alternative 2a, which reduces the Defined Benefit Plan formula so that the expected cost of future accruals is five percent of pay. In addition, the Board authorized the Association's Officers to sign the appropriate documentation to implement Alternative 2a and directed that the appropriate notice be sent to Defined Benefit Pension Plan participants.

2.2 Membership Discussion

At President Zack's request, the Board viewed a comprehensive Power Point and engaged in an extensive discussion regarding Membership at the American Bar Association. Patricia L. Refo, Chair of the Standing Committee on Membership (SCOM) and Laurel G. Bellows, Vice Chair of SCOM, led the discussion. SCOM members; Chris Gloede, the Association's new Chief Marketing Officer; SCOM staff; and representatives from Ogilvy and Mather also participated. The report and discussion focused on: a) Membership Goals and Team; b) Membership Accomplishments in FY2010; c) the Membership Landscape; d) Membership Financial Review; e) 2011 Priorities and Plans; f) a status report on Ogilvy and Mather's work on behalf of the ABA; and g) how to attract more law students to the ABA.

Following the report, and also at President Zack's request, Board members discussed how they would respond to the question "If you are permitted to join one voluntary, professional association, why should you join the ABA?"

2.3 Presentation From the Commission on Civic Education in the Nation's Schools

Paulette Brown, Co-Chair of the ABA Commission on Civic Education in the Nation's Schools, presented a status report on the Commission's work. The Commission was created by President Zack to serve as an advocate for civic education in American schools and to promote the implementation of effective and high quality educational programs. The twenty member Commission is comprised of prominent lawyers, judges, educators, organizational professionals and others with a shared commitment to civic education.

The Commission held its first meeting October 6, 2010, in Washington, DC. The Commission's planned activities include a) Civics and Law Academies, an eight-hour course for young people ages 13-19 to be launched on President's Day Weekend in 2011, and b) advocacy, a coordinated effort with state and local bar association leaders to advance ABA policy that urges policymakers at all levels of government to ensure that all students experience high quality civic learning, including the study of law, government and history.

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 August 6, 2010, meeting of the ABA/FJE Board as presented and b) accepted the ABA/FJE restricted grants and contributions received or awarded through September 2010, and not previously reported, as requested by the Association's Financial Services Division.

2.5 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.

2.6 Memorial Resolution for Eugene C. Thomas

The Board passed a memorial resolution recognizing the accomplishments, standards and achievements of Eugene C. Thomas of Idaho, President of the Association in 1986 – 1987 and Chair of the House of Delegates from 1980 – 1982, who passed away on September 13, 2010.

2.7 Request for Adoption of Policy Regarding State Sponsored Sexual Violence

The Board adopted the following policy to permit the ABA to participate in discussions regarding violence against women with the United Nations and other organizations. The policy augments the current Association policy (08A109) regarding this issue.

Resolved, That the American Bar Association urges the United Nations, the United States of America and all nations to adopt measures imposing state responsibility for state sponsored sexual violence as a weapon of war

and create a system of reparations to victims from offending states and to develop potential donors to fund medical, psychological and other needs of victims.

2.8 Report of Strategic Planning and Action Committee

Wm. T. (Bill) Robinson III, Chair of the Strategic Planning and Action Committee (SPAC), reported on the October 27-28, 2010, SPAC meeting held in Miami Beach, Florida. At the meeting, SPAC focused on development of an action based strategy, with a deadline date of December 31, 2010, to show lawyers that the American Bar Association is a vibrant organization and is not in crisis. Much of the work done by the Standing Committee on Membership (SCOM), which is based in fact and on reliable data, forms the foundation for SPAC's work. SPAC is partnering with SCOM to support the Large Law Firm Initiative and the Corporate Counsel Initiative. A "strategy list" of law firms to recruit has been created, and specific protocols for approaching and following up with firms are being developed. In addition, testimonials will be filmed.

2.9 Insurance Overview

The Board received a written summary of insurance coverage, updated as of October 20, 2010, prepared by TAVE Risk Management, the Association's insurance consultant.

2.25- INFORMATIONAL REPORTS

2.28

The Board received written informational reports from the Special Committee on Disaster Response and Preparedness, the Commission on Ethics 20/20, and the Center for CLE.

3. OPERATIONS AND COMMUNICATIONS COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

3.1 Requests for Bylaw Amendments

a. Judicial Division Appellate Judges Conference (AJC)

The Board approved the request of the Appellate Judges Conference (AJC) to amend its bylaws to permit the Chair of the Council of Appellate Staff Attorneys (CASA) and the Council of Appellate Lawyers (CAL) to hold AJC office and vote on AJC affairs. The proposed amendments were approved by the AJC Executive Committee on August 8, 2010. Approval of the proposed amendments by the Board is subject to approval by the AJC membership.

b. Judicial Division Appellate Judges Education Institute (AJEI)

The Board approved the request of the Appellate Judges Education Institute (AJEI) to amend its governing documents, in pertinent part, to conform to provisions of the Texas Business Organizations Code (Code). The proposed amendments were approved by the AJEI Board on August 8, 2010.

In 2003, the Board approved a Memorandum of Understanding between the ABA and the AJEI to provide for annual and periodic continuing judicial education programs for appellate judges, court staff and practitioners. The AJEI was established in 2002 and is affiliated with the Dedman School of Law at Southern Methodist University. The ABA has two representatives on the AJEI Board. Effective January 1, 2010, the AJEI became subject to the provisions of the Code. Prior to that date, the AJEI was subject to the provisions of the Texas Non-Profit Corporation Act.

c. Judicial Division National Conference of the Administrative Law Judiciary (NCALJ)

The Board approved the request of the National Conference of the Administrative Law Judiciary (NCALJ) to amend its bylaws to define the roles of the officers to conform to current NCALJ practice, clarify the budget, and clarify the committee appointment process. The proposed amendments were approved by the NCALJ membership at the 2010 Annual Meeting in San Francisco.

d. 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) include new vision and mission statements to conform to a Strategic Plan approved by the Section Council in August 2010, ii) clarify the Council's intention that all *ex-officio* members of the Council are full voting members, iii) create a Budget Committee, comprised of the members of the Section's Executive Committee, to assist the Budget Officer in preparation of a Section budget, iv) create and describe certain Section standing committees, and v) add a description of the Section's budget approval process and timeframe. The proposed amendments were approved by the Section membership in August 2010.

e. Young Lawyers Division

The Board approved the request of the Young Lawyers Division to amend its bylaws to change the succession provisions to have i) only the Assembly Clerk and Secretary-Treasurer positions elected each year, and have ii) the Assembly Clerk become the Assembly Speaker and the Secretary-Treasurer become the Chair-Elect automatically at the close of the YLD Assembly held during the ABA Annual Meeting. The proposed amendments were approved by the YLD Assembly during the 2010 Annual Meeting.

3.2 American Bar Foundation Request for Election of Representative to A-E-F-C Pension Plan Administration Committee

The Board elected David A. Collins of Michigan to a second three-year term as the American Bar Foundation's (ABF) representative to the A-E-F-C Pension Plan Administration Committee, effective as of the conclusion of the 2010 Annual Meeting through the conclusion of the 2013 Annual Meeting, as recommended by the ABF.

3.3 Requests Regarding Awards

a. Tort Trial and Insurance Practice Section (TIPS) (Two Requests)

The Board approved the following two requests from the Tort Trial and Insurance Practice Section to establish annual awards:

- i. TIPS Fidelity and Surety Law Committee Diversity Leadership Award (Annual UPBEAT Award): recognizes those individuals or entities who demonstrate tangible efforts promoting full and equal participation in the legal profession in the area of fidelity and surety through the encouragement and inclusion of minorities, persons with disabilities, and/or persons of differing sexual orientations and gender identities. The recipient will receive a plaque or award with a maximum value of \$400.00.
- ii. ABA Tort Trial and Insurance Practice Section Alternative Dispute Resolution Committee Law Student Writing Competition (Annual Award): open to any law student in good standing attending an ABA accredited law school and a member of the ABA Law Student Division. Papers must address the topic "Recent Developments in Alternative Dispute Resolution." The winner will receive \$500.00 cash and \$500.00 as reimbursement to attend an ABA-TIPS meeting (not including the ABA Annual Meeting).

b. Judicial Division Lawyers Conference (Annual Award):

The Board approved the request of the Lawyers Conference to continue to present the annual Burnham "Hod" Greeley Award. In 2006, the Board established the award at the request of the Coalition of Justice to recognize individuals and organizations dedicated to promoting increased public awareness of the need for a fair and impartial judiciary. The award is named in honor of the late Burnham "Hod" Greeley of Hawaii. The Coalition was sunset in August 2010 and its responsibilities are being assumed by the Judicial Division Lawyers Conference.

c. Section of Environment, Energy, and Resources:

The Board approved the request of the Section of Environment, Energy, and Resources to co-sponsor with the University of Mississippi School of Law a one-time "Environmental Justice Student Writing Competition," to be held in conjunction with the Environmental Justice Symposium the Section is co-sponsoring with the University on April 1, 2011. Students currently enrolled in law school (in the U.S. or abroad, J.D. or LL.M. programs) are eligible, including students who will graduate in the spring or summer of 2010. The authors of the winning papers will receive a paper certificate. The first place winner will receive \$1,000.00 and publication in a special issue of the *Mississippi Law Journal*

together with other articles and materials from the Symposium. The competition will also award a second place prize of \$500.00 and third place prize of \$250.00. The first, second, and third place papers will be published on the Section website. The Section will fund travel expenses to the Symposium for the winning students if they are from outside the University of Mississippi area.

3.4 Request to Amend New Special Advisor Reimbursement Policy

In August 2010, the Board adopted a policy that new special advisors to entities will not be reimbursed for expenses related to the work of the entity. At President Zack's request, the Board amended the special advisor reimbursement policy to permit the reimbursement of special advisors to be at the discretion of the entity chair, based on the availability of funds in the entity budget. If sufficient funds are not available, then the entity may choose to raise outside funds to cover the additional expense.

3.5 Section of Environment, Energy, and Resources Request to Co-sponsor and Contribute Section Funds to Three Programs

The Board approved the request of the Section of Environment, Energy, and Resources to co-sponsor and make financial contributions from Section funds for the following three programs. No ABA general revenue is requested or required for the programs.

- a. Sixteenth Annual Tulane Law School Summit on Environmental Law and Policy: request to co-sponsor the April 2011, 2012, and 2013 programs and contribute a maximum of \$1,000.00 each year. The Section may assist in promoting the program and identifying speakers.
- b. Fifteenth Annual International Environmental Moot Court Competition: request to co-sponsor the March 17-20, 2011, program at the University of Maryland School of Law, as well as the 2012 and 2013 programs (locations to be determined) and contribute a maximum of \$2,000.00 each year. The Moot Court Competition is coordinated by Stetson University Law School. Section representatives will participate in a career panel discussion that would provide an opportunity to showcase the Section.
- c. Rocky Mountain Mineral Law Foundation's (RMMLF) Natural Resources Law Teachers Institute: request to co-sponsor the 2011 program and contribute a maximum of \$6,500.00. The RMMLF seeks the Section's assistance in balancing the topics presented between environment and natural resources law. In addition, many of the speakers are ABA/Section members and hold leadership roles as committee chairs, vice chairs and former Council members. The Section will also assist in program promotion.

3.6 Requests to Charge Fees for CLE Programs Presented During 2011 Midyear Meeting

- a. Section of State and Local Government Law

The Board approved the request of the Section of State and Local Government Law to charge a \$10.00 registration fee for a "Hot Topics in Diversity" CLE program the Section

will co-sponsor with the Georgia State University College of Law, the Georgia African American Attorneys Alliance, Atlanta Stonewall Bar Association (LGBT), the Georgia Association of Women Lawyers, and the South Asian Bar Association of Georgia, February 10, 2011, during the Midyear Meeting in Atlanta. The fee is intended to help defray costs associated with the program.

b. Government and Public Sector Lawyers Division

The Board approved the request of the Government and Public Sector Lawyers Division to charge a registration fee of no more than \$35.00 each for two CLE programs (on ethics and e-discovery) that will be offered by the Division for government lawyers during the 2011 Midyear Meeting in Atlanta, Georgia. The fee is intended to recoup the costs of presenting the programs while maintaining a reasonable registration fee for government lawyers.

3.7 Requests to Enter into Memoranda of Understanding or Cooperating Agreements with Outside Organizations

a. Section of International Law

The Board approved the request of the Section of International Law to enter into cooperating agreements with the following international legal organizations, subject to review and approval of the agreements by the Office of the ABA General Counsel: Association Internationale des Jeunes Avocats (AIJA); Barra Mexicana; Canadian Bar Association (National Section on International Law); German Bar (International Committee); Hispanic National Bar Association; Inter-Pacific Bar Association (IPBA); International Law Students Association (ILSA); Law Council of Australia (International Law Section); Law Society of England and Wales; Korean Bar Association; Nigerian Bar Association; and Union Internationale des Avocats (UIA). The agreements are proposed to memorialize collaborative intentions and strengthen the Section's, and therefore the ABA's, connection to the international legal community. The agreements will be signed for a period of two to three years.

b. Tort Trial and Insurance Practice Section (TIPS)

The Board approved the request of the Tort, Trial and Insurance Practice Section (TIPS) to enter into a memorandum of understanding (MOU) with the Union Internationale des Avocats (UIA), subject to review and approval of the MOU by the Office of the ABA General Counsel, to coordinate activities in order to increase member awareness and promote professional cooperation (e.g., attendance and participation in meetings, program development and exchange of publications.) The ABA has four representatives to the UIA who are elected by the Board for three-year terms.

c. Commission on Immigration

The Board approved the request of the Commission on Immigration to enter into a memorandum of understanding (MOU) with the American Immigration Lawyers Association (AILA), an ABA affiliated organization, to collaborate resources, website,

and advocacy efforts regarding “notario” or immigration consultant fraud, subject to review and approval of the MOU by the Office of the ABA General Counsel.

3.8 Report and Recommendation From the ABA Washington, DC and Chicago Office Space Committee

The Board approved the following recommendation regarding the ABA office space at 321 North Clark Street, Chicago, Illinois, as presented by the ABA Washington, DC and Chicago Space Committee: a) restructure the lease using future expansion, contraction and termination terms as leverage; b) contract one floor, reducing office space requirements by 24,851 square feet; c) extend the lease term by five years; d) reduce the rental rate or achieve rent abatements for an expected range of savings of \$6 -10 million over the extended lease term; and d) execute an agreement with the ABA real estate advisor (Studley) and begin negotiations with the landlord (Hines).

3.9 Section of International Law Request for Exception to the Annual Meeting Registration Policy

The Board a) granted the Section of International Law a one time exception to the policy that requires all attorneys attending the ABA Annual Meeting to be registered for the meeting to permit the Section to use its 2011 Annual Meeting headquarter hotel, the Metropolitan, for its 2011 Leadership Retreat, which will be held August 2-4, 2011, in Toronto, b) directed that a list of 2011 Leadership Retreat attendees be provided to the ABA Meetings and Travel Department prior to the start of the Leadership Retreat, and c) specified that if any Leadership Retreat attendees stay beyond August 5, 2011, they must register for the 2011 ABA Annual Meeting and pay the annual meeting registration fee.

3.10 Section of Public Contract Law and Section of State and Local Government Law Request for Extension of Authority to Comment on State and Local Procurement Matters

The Board granted the sections of Public Contract Law and State and Local Government Law an extension of authority, for a three-year period expiring on December 31, 2013, to submit comments to state and local governments on proposed procurement policies and practices based on the ABA Model Procurement Code.

3.11 Special Committee on Bioethics and the Law Request to Develop a Partnership With the Health Law Institute of DePaul University College of Law

The Board approved the request of the Special Committee on Bioethics and the Law to develop a partnership with the Health Law Institute of DePaul University College of Law to a) conduct a series of teleconferences to be held throughout the 2010-2011 Association year, b) hold a symposium in Spring 2011, and c) re-institute the Special Committee's *Bioethics Bulletin*, as an electronic publication, with the Health Law Institute.

3.12 Request for Support of American Civil Bar Roundtable Resolution Regarding Increased State Court Funding

The Board approved the request for the ABA to join in a proposed resolution of The American Civil Trial Roundtable (Roundtable) supporting adequate funding for state courts.

The Roundtable was formed from a 1997 initiative by the American Board of Trial Advocates to bring together a group of respected trial practitioners representing diverse viewpoints in the civil trial bar to assess the state of the civil trial system and make recommendations. The mission of the Roundtable is to “foster and encourage frank and open discussion and dialogue on the status of the U.S. civil justice system.” The Roundtable is presently comprised of 12 civil trial bar organizations. The ABA, represented by ABA leadership and the Governmental Affairs Office, has been a member since its inception, and the ABA Section of Litigation and the Tort Trial and Insurance Practice Section are also members.

3.13 Section of Taxation Request to Submit Technical Comments to the Department of Health and Human Services Pursuant to the Association's Blanket Authority Procedure and Requests to Serve As Reviewing Entities

- a. The Board approved the request of the Section of Taxation to submit technical comments to the Department of Health and Human Services pursuant to the Association's Blanket Authority Procedure, for a three-year period, effective October 2010 through October 2013. The technical comments will pertain to the taxation of employee benefits and other health care issues, including administrative regulations on grandfathering, pre-existing conditions, annual limit rules, and the Patient Protection and Affordable Care Act of 2010.
- b. The Board approved the requests of the following Sections to serve as reviewing entities for technical comments submitted by the Section of Taxation to the Department of Health and Human Services, each for a three-year period, effective October 2010 through October 2013: i) Health Law Section; ii) Section of Labor and Employment Law; and iii) Section of International Law.

B. MATTERS OF INDEPENDENT JURISDICTION

3.15 Requests for Co-Sponsorships

The Operations and Communications Committee approved co-sponsorship requests from the following entities. No additional ABA general revenue is requested or required for the co-sponsorships.

- a. Commission on Mental and Physical Disability Law: to co-sponsor the 2011 Jacobus tenBrock Disability Law Symposium: "Bridging the Gap Between the Civil Rights Movements and the Disability Rights Movement" with the National Federation of the Blind Jernigan Institute and the American Association of People with Disabilities, April 14-15, 2011, in Baltimore, Maryland.

- b. Judicial Division Lawyers Conference: to co-sponsor the Forum *Perceptions of Justice: A Town Hall Dialogue on Race, Ethnicity and the Courts* with the Georgia State University College of Law during the 2011 Annual Meeting (date and time to be determined) and to solicit the additional organizations listed in the request as potential co-sponsors of the event.
- c. Section of International Law (Two Requests)
 - i. to co-sponsor the International Law Weekend West Symposium 2021: *International Law Ten Years From Now* with the Southwestern Journal of International Law, February 25-26, 2011, in Los Angeles, California.
 - ii. to add the Embassy of Canada as a co-sponsor of a program the Section's Export Controls and Economics Sanctions Committee is conducting November 17, 2010, regarding proposed amendments to the International Traffic in Arms Regulations (ITAR).
- d. Section of Litigation: request for the Section's Special Committee on Haiti Project to conduct legal training sessions for Haitian lawyers with the International Senior Lawyers Project in Port au Prince, Haiti, in spring 2011. The Section has formally notified the ABA Rule of Law Initiative (ROLI) of this collaboration as required by the jurisdictional statements of ROLI and its individual councils. (See also Exhibit 4.4 below.)
- e. Section of Antitrust Law: to co-sponsor women's networking events with the law firms Gibson Dunn and Alston & Bird, in January and February 2011.

4. PROGRAM, EVALUATION AND PLANNING COMMITTEE SCHICKMAM

(for Wolfe)

A. MATTERS FOR REVIEW BY THE BOARD

4.1 Standing Committee on Armed Forces Law Request for Approval of Program Support Fund

The Board approved the request of the Standing Committee on Armed Forces Law (SCAFL) to create a program support fund to provide program and meeting resources for SCAFL activities that are unable to be funded through general revenues.

4.2 Council of the Fund for Justice and Education Request to Select ABA Entity to Conduct Program Using Funds in Haiti Legal Development Fund

The Board approved the request of the Council of the Fund for Justice and Education (FJE Council) to authorize the FJE Council to select an ABA entity to conduct a program using the funds raised in the Haiti Legal Development Fund (Fund). The ABA Executive Committee established the Fund within the FJE shortly after the Haiti Earthquakes struck to provide support in rebuilding the Haitian legal and judicial sector. However, contributions to the Fund were minimal. The FJE Council is of the opinion that, due to its small size, the Fund will be most effective if it is allocated to one program.

4.3 Standing Committee on Environmental Law Request to Seek Outside Funding for Conference in London, England

The Board approved the request of the Standing Committee on Environmental Law to solicit outside funding for a conference the Standing Committee plans to co-sponsor with the London School of Economics and Political Science in May 2011 in London, England.

4.4 Section of Litigation Request to Seek Outside Funding for Special Project in Haiti

The Board approved the request of the Section of Litigation to solicit outside funding for a special project in Haiti. The Section has formally notified the ABA Rule of Law Initiative (ROLI) of this project as required by the jurisdictional statements of ROLI and its individual councils. (See also Exhibit 3.15d above.)

4.5 Request for Adoption of New Grant Approval Process

The Board adopted a new policy regarding the grant approval process, as requested by the Subcommittee on Grants. (See Attachment 1.)

4.6 Program, Evaluation and Planning Committee Subcommittee on the Enterprise Fund Recommendation Regarding FY2009-2010 Fourth Quarter Report

The Board approved the Program, Evaluation and Planning Committee's recommendations for no-cost extensions for the following Enterprise Fund Projects:

- Helping Ensure That Immigration Detainees Know Their Rights: to March 31, 2011.
- Juvenile Mistakes: How Long To Pay The Price: to May 30, 2011.

4.7 Recommendation Regarding Funding For FY2011-2012 Enterprise Fund

The Board took no action regarding the Program, Evaluation and Planning Committee's recommendation to reinstate funding in the amount of \$250,000.00 for the FY2011-2012 Enterprise Fund.

B. MATTERS OF INDEPENDENT JURISDICTION

None for consideration.

5. FINANCE COMMITTEE

CASEY

A. MATTERS FOR REVIEW BY THE BOARD

2.1 Pension Presentation and Report of Pension Subcommittee

See Page # 1 of this Summary of Action above.

5.1 Requests to Contribute Funds to Outside Organizations

a. Section of Intellectual Property Law

The Board approved the request of the Section of Intellectual Property Law to contribute \$500.00 from Section funds to the tenth anniversary celebration of the John Marshall Review of Intellectual Property Law, November 6, 2010, in Chicago, Illinois.

b. Forum on the Construction Industry (*Two Requests*)

i. ACE Mentor Program

The Board approved the request of the Forum on the Construction Industry to contribute a total of \$100,000.00 from Section funds (\$50,000.00 per year in 2011 and 2012) to the ACE Mentor Program of America, a not-for-profit organization that serves high school youth who are exploring careers in architecture, construction, or engineering.

ii. National September 11 Memorial and Museum at the World Trade Center Foundation, Inc.

The Board approved the request of the Forum on the Construction Industry to contribute \$1,000.00 from Forum funds to the National September 11 Memorial and Museum at the World Trade Center Foundation, Inc., a 501(c) (3) organization whose mission is to remember and honor those who perished in the attacks of February 26, 1993, and September 11, 2001.

c. Section of Dispute Resolution

The Board approved the request of the Section of Dispute Resolution to contribute \$3,000.00 from Section funds to support the publication of *The College of Commercial Arbitrators (CCA) Protocols for Expedious, Cost Effective Commercial Arbitration (Protocols)*. In 2009 the Board approved the Section's request to co-sponsor with the CCA and several other organizations involved in commercial arbitration a National Summit on Business-to Business Arbitration. The Protocols are the written product of the Summit.

5.2 Request for Approval of FY2011 Capital Budget

The Board approved the FY2011 Capital Budget in the amount of \$12,304,318.00, with the understanding that a) Capital Budget funds used for the Oracle Applications and Website Redesign projects must be approved by the Treasurer-elect, on behalf of the Finance Committee before they are spent, and b) the Finance Committee shall receive regular status reports regarding the Capital Budget.

B. MATTERS OF INDEPENDENT JURISDICTION

New Matters

a. The Finance Committee approved FY2012 Reasonably Anticipated General Revenue in the amount of \$93,262,000.00, with the understanding that this amount does not include the anticipated revenue of \$2,050,000.00 from Accreditation Fees. Further, the Board directed that it be clearly communicated that this is a preliminary number only.

b. The Finance Committee directed the Financial Services staff to present for the 2011 Midyear Meeting a preliminary budget that balances expenses to the anticipated general revenue and to identify four categories of information: a) most recent available investment income; b) best projection of the amounts which may be transferred from the dues warehouse and reserves; c) most recent available levels of reserves in the Association and, particularly, identify the amount of general revenue reserves as noted in the ABA Funds and Related Policies, revised April 18, 2008, under the General Fund portion; and d) the most recent available revenue and expenses related to the ABA's accreditation services.

c. The Finance Committee voted to recommend that a salary increase be considered for inclusion in the FY2012 budget.

d. The Finance Committee gave authority to the Deputy Executive Director and Chief Financial Officer, in consultation with the ABA's Treasurer and investment advisor, to liquidate Long Term investments for the liquidation of assets in an amount not to exceed \$3,426,733.00, whether or not in connection with borrowing of additional funds and to use such funds for Association purposes.

THE ABA FUND FOR JUSTICE AND EDUCATION

The ABA Fund for Justice and Education (FJE) was created in 1961, as the Fund for Public Education, to allow the Association to solicit and accept tax-exempt gifts and grants in support of law-related public service and educational programs of the Association. Support for the FJE comes from the Association, the American Bar Endowment, individual lawyers and law firms, corporations, foundations and government agencies.

The FJE qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code and is of the type described in Section 509(a)(3). Gifts and contributions to the FJE are tax deductible to the full extent allowed by law and may be used only for charitable and educational purposes. (The American Bar Association is a Section 501(c)(6) professional association and although exempt from federal taxes, contributions to the Association are not tax deductible as charitable contributions.)

Certain activities are appropriately housed in the FJE as charitable and educational activities. These include public education, the instruction and training of individuals for the purpose of improving or developing their capabilities, and the promotion of social welfare, among others. Some activities pursued by the ABA as a professional Association are not appropriate for consideration as FJE activities. Lobbying activities, attempts to influence legislation, and participating or intervening in any political campaign can never be supported by FJE funds.

The FJE functions under its own bylaws. The Board of the FJE is composed of the members of the Association's Board of Governors (ABA Board). The President, President-Elect, Secretary and Treasurer of the Association serve respectively as President, Vice-President, Secretary and Treasurer of the FJE. All activities sponsored by the FJE and all charitable fundraising must be certified as 501(c)(3) eligible by the General Counsel.

Under the bylaws of the FJE, its assets are to be kept separate from the general assets of the Association and are not to be used in any manner for the general purposes of the Association. Separate books and records are maintained for the FJE apart from the books and records of the Association. The financial statements of the FJE are audited as part of the audit of the consolidated financial statements of the ABA. The consolidated financial statements of the ABA and a separate A-133 audit are available from the Financial Services Division.

A. The Office of the FJE

The charge of the Office of the FJE ("FJE Office") is the cultivation and solicitation of gifts from the profession for the general support of FJE general revenue funded activities. Development and fundraising initiatives address annual, major, endowment and planned gifts. The FJE Office maintains current and historical records on all donors to the FJE and implements an annual program of donor recognition.

The FJE Office provides guidance and assistance to ABA entities seeking to raise outside funds to support FJE programs. The FJE Office advises entities on program development and prospect research and identification. The FJE Office also provides assistance with the development and implementation of fundraising strategies for FJE programs. The FJE Office

provides guidance on seeking outside funding from individuals, law firms, corporations, foundations and government entities.

The Council of the FJE (formerly Resource Development Council) was created by the ABA Board of Governors in 1962. Policies regarding the FJE are established by the ABA Board of Governors upon the recommendation of the Council. The Council is charged with oversight of and fundraising for the FJE, reporting to the Board on the operations and charitable, educational and public service projects of the FJE, and providing leadership and counsel to the FJE Office.

B. Financial Services DC

Financial Services DC provides centralized oversight and technical assistance in the development and implementation of FJE grant proposals, to insure adherence to 501(c)(3) expenditure requirements, to provide assistance in meeting the Association's and outside grantor's reporting requirements and to maintain auditable financial records.

C. Qualified FJE Projects

The ABA recognizes the importance of charitable contributions and grant income to its work. The ABA encourages entities to seek grants, under terms that do not create material risks to the Association, financial or otherwise. Such grants allow the Association to perform important work that would be otherwise impossible. An entity may not seek nor accept outside funds (gifts, grants, cooperative agreements or contracts) for a project, however, unless the project is a "qualified project" under this paragraph and is duly approved by the ABA Board of Governors in accordance with the procedures outlined in paragraph D below.

1. Qualified Projects. A "qualified project" is one that: (1) satisfies the purposes and requirements of the FJE and qualifies, as determined by the General Counsel on a timely basis, as a 501(c)(3) activity; (2) is consistent with one of the core purposes of the ABA entity and fits within the mission, goals and strategic plan of the ABA; (3) follows best practices as established from time to time by the FJE and approved by the ABA Board of Governors; and (4) otherwise complies with applicable ABA and grantor or donor policies.

2. Development of Qualified Projects. When an ABA entity opts to pursue an FJE project, it must designate member volunteers and entity staff to oversee and guide the project from its early stages through completion, and must secure the approval of the entity's governing body to undertake the project.

Entity staff should work with the FJE Office and Financial Services DC as necessary from project identification through funding. Entity staff are encouraged to work with other ABA staff with relevant expertise in the area. The FJE Office will work with entity staff to develop programs, research and identify prospects, prepare proposals, develop and implement fundraising strategies, and develop "best practices" for grant performance and administration.

D. Board Approval of Qualified Projects

Approval from the ABA Board of Governors is required for an entity to seek or accept funds from sources outside of the ABA to support the qualified project. Approval by the Board occurs upon the recommendation of the Program, Evaluation and Planning Committee or as

otherwise provided below. Approval of the qualified project is subject to budget approval by the Finance Committee when it entails a new general revenue request. Where possible, approval should be obtained as part of the annual planning and budgeting process. Requests, however, may be made at any time during the year.

1. Approval as Part of Annual Planning and Budgeting Process

To the extent that any entity intends to undertake qualified projects, such entity shall so advise the Program, Evaluation and Planning Committee, using the annual planning form(s) provided to do so.

Any allocation of additional general revenue to support a qualified project will be reviewed and approved as part of the Association's annual budget process, including the review and approval of an annual budget by the Finance Committee.

2. Approval Outside Annual Planning and Budgeting Process

An entity that identifies a qualified project outside of the annual planning process must advise the Program, Evaluation and Planning Committee of its intent to undertake the project by completing the form(s) provided.

Any requests for additional general revenue in the same fiscal year to cover costs associated with a qualified project are considered emergency supplemental requests and will be considered by the ABA Board of Governors as such.

3. Additional Requirements for Entities Seeking Grant Funding for Qualified Projects

In addition to the approval steps outlined in paragraphs 1 and 2 above, entities seeking grant funding for qualified projects must comply with the requirements outlined below.

a. *Approval as Part of Annual Budgeting Process*

As part of their annual budget submissions, entities receiving grant funding to support their qualified projects must include a summary of projected expenses, revenues and indirect cost recovery for qualified projects for which the entity has already-funded grants that carry forward to the next fiscal year.

For multi-year projects requiring additional general revenue funds, an estimate of future general revenue requests also must be provided.

During the annual budgeting process, any entity that has ongoing grants or plans to apply for grants will prepare an overall indirect cost recovery estimate for the next fiscal year. This estimate shall include the following categories: (1) ongoing grants, which includes already funded grants that continue into the next fiscal year; (2) likely grants, which includes grants that are expected to be extended or grants for which a request for proposals has been issued or the entity has been encouraged to apply; and (3) unknown grants, which includes contemplated grants for which potential donors have not been identified and specific requests for proposals have not been issued. In preparing this

estimate, the entity should use the negotiated indirect rate agreement then in effect with the U.S. government, the contemplated funder's established indirect rate policy or any other reasonable good faith estimate. The overall indirect cost recovery estimates will assist the Executive Director in preparing the indirect cost recovery figure used in the revenue forecast for the next fiscal year and will be submitted for review to the Finance and Program, Evaluation and Planning Committees.

b. *Approval Outside Annual Planning and Budgeting Process*

If the project does not require additional budget appropriations during that same fiscal year, and all associated costs to the Association are covered by the existing budget for that year, further approval beyond that given by the Program, Evaluation and Planning Committee is not required if the new project:

1. Allows the performance, expansion or extension of important program activities that would not be able to be performed absent the grant funding; and
2. Does not place any burden on ABA resources or services that lead to material unrecovered indirect costs or for which indirect costs are paid by the grantor at the NICRA rate or higher.

A staff member with responsibility for, and the Chair (or its designee) of, the submitting entity will certify each of the above criteria, with appropriate explanations. Such certification must include a discussion of any material issues implicated by acceptance of the grant, or which create any material risk to the entity, the Association or its members.

New qualified projects that are first identified by an entity during the course of a fiscal year and which do not satisfy the above requirements, shall require the approval of a Grants Approval Committee of the Board, which shall utilize the criteria set forth above and act as expeditiously as possible. The Grants Approval Committee shall include the Treasurer, the Chair of the Finance Committee (or the Chair's designee), the Chair of the Program, Evaluation and Planning Committee (or the Chair's designee), the Chair of the Operations and Communications Committee (or the Chair's designee) and the President or the President's designee.

E. Grant Application Submission and Administration

The FJE Office and/or the Director of Financial Services DC provide help with budget development and provide requested supporting materials, such as grant application forms, certifications of 501(c)(3) eligibility, indirect cost agreements, and audited financial statements.

The Director and/or the Assistant Director of Financial Services DC review every proposal before it is submitted to the external agency. The Director of Financial Services DC must sign all application forms in response to government requests for proposals (RFP's). For each proposal, Financial Services DC reviews with the entity the grant applications and administration policies of potential grantors, Association policies and project financial requirements. The ABA has adopted a detailed protocol, available from Financial Services DC, for reviewing and accepting grant awards.

Financial Services DC will create a budget account for the project and provide financial reports to project staff. Throughout the life of the project, Financial Services DC works with the entity to meet grantor conditions, including restrictions and requirements for program and financial reporting.

F. Charitable Contributions

Any entity seeking charitable contributions from individuals, law firms and/or corporations must obtain approval of the qualified project from the ABA Board of Governors as outlined in paragraph D above. An entity seeking charitable contributions to support a qualified project must coordinate its efforts with the FJE Office.

Contributions from individuals, law firms and corporations are administered by the FJE Office and Financial Services DC. Letters acknowledging contributions as 501(c)(3) eligible are prepared and distributed by the FJE Office and Financial Services DC. The FJE Office works with each entity to determine its needs for reporting the contributions.

The FJE Office recognizes charitable contributions in an annual report and occasionally in other publications. The FJE Office works with entities to ensure accurate and appropriate recognition of contributors.

The ABA Board of Governors has established separate procedures for the solicitation of non-charitable contributions. Please refer to Chapter 9.