

SUMMARY OF ACTION
AMERICAN BAR ASSOCIATION
BOARD OF GOVERNORS

San Francisco Hilton
San Francisco, California
August 7-8, 2003

1. REPORTS OF OFFICERS AND THE EXECUTIVE DIRECTOR

The Board of Governors (Board) received the reports of the President, President-Elect, Chair of the House of Delegates, Secretary, Treasurer and Executive Director. The minutes of the Board's June 7, 2003, meeting were approved as presented. The minutes of the Executive Committee's June 12, June 26, and July 28, 2003, 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, with one revision, the portion of its Transmittal Report to the House of Delegates dealing with the continuation and discontinuation of special committees and commissions.

2.5 Report of Pension Review Committee

In executive session, the Board received a report from the Pension Review Committee.

2.6 ABA Presidential Commission on Access to Lawyers

The Board received the final report of the ABA Presidential Commission on Access to Lawyers. The Commission was created in June 2002 to examine and develop more comprehensive and effective concepts and approaches to how lawyers deliver legal services and how clients access those services that are available. Burnele V. Powell, Chair of the Commission, discussed several of the strategies for improving access described in the report, including a) the production by the ABA of an annual report that will identify the status of access to legal services for both poor and moderate income populations and b) the enhancement of diversity in the legal profession.

2.7 Report of the Section of Legal Education and Admissions to the Bar

E. Thomas Sullivan, Chair of the Section of Legal Education and Admissions to the Bar; Pauline A. Schneider, Section Chair-Elect; and John A. Sebert, ABA Consultant on Legal Education presented an informational report on current initiatives of the Section and the Accreditation Project, including: a) the revision of accreditation Standard 503 pertaining to the law school admission test; b) the establishment of an annual fee system to support the Accreditation Project; and c) the decision to retain the seven-year site evaluation cycle. Dean Sullivan also discussed briefly the historic significance of the United States Supreme Court's decision in *Grutter v. Bollinger*.

2.8 Report of Iraq Initiative

Stephen N. Zack, Chair of the Iraq Initiative (formerly the Post Conflict Action Team for Iraq), presented to the Board an informational status report on the Initiative that was established by the Board in April 2003 to develop an assessment plan and identify potential funding and partners to address the Rule of Law in Iraq. Recently, members of the Initiative met with high-level U.S. Government officials from the legislative and executive branches, located in Washington, DC and Baghdad, and presented to them a report that outlines both the ABA's competencies with respect to international legal technical assistance and suggestions for possible projects. The Initiative expects to continue discussions with government officials and anticipates receiving requests to provide services at a later date.

2.9 Memorial Resolutions

a. Chesterfield Smith

The Board passed a resolution recognizing the accomplishments, standards and achievements of Chesterfield Smith of Florida, President of the Association from 1973 – 1974 and a member of the Board from 1969 – 1970 and 1972 – 1975, who passed away on July 16, 2003.

b. Charles S. Rhyne

The Board passed a resolution recognizing the accomplishments, standards and achievements of Charles S. Rhyne of Virginia, President of the Association from 1957 – 1958 and a member of the Board from 1956 – 1959, who passed away on July 27, 2003.

2.10 Consent Calendar: Report of Board Committee Chairs

The Board adopted the Consent Calendar as presented by the Secretary. Action on all items contained on the Consent Calendar is set forth in items 3 through 5 of this Summary of Action relating to the reports of the Board Committees.

2.11 Advocacy for the Profession Update

Thomas Z. Hayward, Jr., Chair of the Task Force on Advocacy for the Association and the Profession, presented his final report on the Association's advocacy campaign. He discussed the overall success of the initiative's two linked components (earned media and targeted advertising) and announced that the campaign would return \$720,000 of its budgeted funds to the Association.

2.12 Standing Committee on Membership Recommendation on New FCC Regulation Regarding Unsolicited Faxes

The Board approved a policy resolution opposing a new Federal Communications Commission regulation requiring associations to obtain individual, signed consent forms in order to send unsolicited faxes to members and nonmembers. (See 3.3c below.)

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 7, 2003, meeting of the ABA/FJE Board as presented; and b) accepted the ABA/FJE restricted grants and contributions received or awarded through July 10, 2003, and not previously reported, as requested by the Association's Grant Development & Administration Office.

2.22 Executive Session

In executive session on Thursday, August 7, 2003, the Board received reports from the Special Committee on Technology Initiative and the Executive Committee regarding executive compensation and discussed other matters.

3. OPERATIONS AND COMMUNICATIONS COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

3.1 Requests for Bylaw Amendments

a. Judicial Division

The Board approved the request of the Judicial Division to amend its bylaws to: 1) create a Strategic Planning Committee; and 2) designate the Committee on the Traffic Court Program, which has provided educational programs to judges and lawyers since 1943, an official committee of the Judicial Division, thus making the Committee subject to the Division's bylaws.

b. National Conference of Administrative Law Judges

The Board approved, contingent upon the approval of the membership of the National Conference of Administrative Law Judges (NCALJ) at the 2003 Annual Meeting, the request of the NCALJ to amend its bylaws to, in pertinent part: 1) change the name of the NCALJ to the "National Conference of the Administrative Law Judiciary"; 2) have one membership standard for all NCALJ members; 3) reduce the size of the NCALJ Executive Committee; 4) provide for different ways to give notice to the membership, including e-mail; 5) provide for secret ballots in all contested elections; and 6) create and elect the "Fellows of the Conference," to honor individuals who have made extraordinary contributions to the administrative judiciary.

3.2 Nominations

a. AEFC Pension Plan Administration Committee

The Board 1) elected Kay H. Hodge of Boston, Massachusetts, as Chair of the AEFC Pension Plan Administration Committee; and 2) Susan Serota of New York City and Phyllis C. Borzi of Washington, DC, as members of the Committee, all for three-year terms to expire at the conclusion of the 2006 ABA Annual Meeting.

b. Friends of the CEELI Institute

The Board 1) re-elected Talbot (Sandy) D'Alemberte of Florida and William Lytton of New York City; and 2) elected Norman R. Thorpe of Detroit, as members of the Board of Directors of the Friends of the CEELI Institute, all for three-year terms to expire at the conclusion of the 2006 ABA Annual Meeting.

c. International Criminal Bar

The Board elected David P. Stoelting of New York City to serve as the ABA's representative on the Council of the International Criminal Bar.

d. Museum of Law

The Board elected 1) Daniel G. McIntosh of Los Angeles to fill the at-large seat on the ABA Museum of Law Board of Directors for a three-year term to expire at the conclusion of the 2006 ABA Annual Meeting; and 2) William Pope of Columbia, South Carolina, to fill the vacancy on the Museum of Law Board created by the resignation of Hon. John M. Vittone.

e. Appellate Judges Education Institute

The Board elected Wm. T. Robinson III of Covington, Kentucky, and Hon. John M. Vittone of Washington, DC, to serve as the ABA's two representatives on the Board of Directors of the Appellate Judges Education Institute.

3.3 Standing Committee on Membership

a. Request for Policy Regarding Use of ABA Member Benefit Providers

The Board approved a policy providing that the ABA consider the use of ABA Member Benefit program services and products whenever appropriate, given comparable pricing and quality.

b. Request for Dues Relief for U.S. Armed Forces Personnel Serving in a Combat Zone

The Board approved the recommendation of the Standing Committee on Membership for a dues waiver for ABA members serving in a combat zone during future military conflicts, with amendments that 1) the request for the dues waiver may be requested by the member or by an individual authorized by the member and 2) membership dues would be re-activated upon the member's release from duty in the combat zone.

c. Recommendation on New FCC Regulation Regarding Unsolicited Faxes

The Operations and Communications Committee received an informational report and presentation from the Standing Committee on Membership regarding the potential financial impact and compliance issues resulting from the new Federal Communications Commission regulation requiring associations to obtain individual signed consent forms, which include the recipient's fax number, in order to send unsolicited faxes to members and nonmembers.

At its meeting on August 8, 2003, the Board considered and approved a proposed policy resolution opposing the FCC regulation. (See 2.12 above.)

3.4 Requests to Revise Jurisdictional Statement

a. Council of the Fund for Justice and Education

The Board approved the request of the Council of the Fund for Justice and Education to: 1) decrease the number of members on the Council from 30 to 12; 2) eliminate advisor positions on the Council; and 3) provide that beginning with the 2003-2004 Association year, the Chair of the House of Delegates and the President of the American Bar Foundation shall represent the *ex officio* positions on the FJE Council.

b. Steering Committee on the Unmet Legal Needs of Children

The Board approved the request of the Steering Committee on the Unmet Legal Needs of Children to: 1) reduce its membership from 16 to 13; and 2) appoint a Special Advisor.

c. Coalition for Justice

The Board approved the request of the Coalition for Justice to decrease the size of the Coalition from 18 members to 12 members.

d. President-elect Archer's Requests to Revise Certain Jurisdictional Statements

The Board approved President-elect Archer's requests to increase the size of the following entities that were continued by the Board at its August 2003 meeting to ensure that appropriate diversity is created and maintained among the current entity membership. No general revenue will be available to support the increase in the size of these entities.

- i. Task Force on Implementation of Section 307 of Sarbanes-Oxley Act of 2002: Increased from a maximum of eight to a maximum of nine members.
- ii. Task Force on Gramm-Leach Bliley: Increased from a maximum of nine to a maximum of ten members.
- iii. Iraq Initiative: Increased from seven to nine members.
- iv. Task Force on GATT Negotiations Regarding Trade and Services Applicable to the Legal Profession: Increased from six to seven members.
- v. Task Force on Gatekeeper Regulation and the Profession: Increased from a maximum of 12 to a maximum of 13 members.

3.5 Section of Family Law Request to Create Advisory Commission for PARTNERS Program

The Board approved the request of the Section of Family Law to form a nine-member, multi-disciplinary Advisory Commission to provide oversight and leadership to the Section's PARTNERS program.

3.6 Unified Family Courts Coordinating Council Request for Continuation

The Board continued the Unified Family Courts Coordinating Council for one year to permit the Council to complete its work.

3.7 Request to Create Governance Commission and Approval of Jurisdictional Statement

The Board: 1) approved the creation of a Commission on Governance of not more than 15 members, plus liaisons from the Board and the Law Student Division, to conduct a review of the governance needs of the Association, including a review of the House of Delegates, the Board, and the Nominating Committee; and 2) approved a jurisdictional statement for the Commission.

3.8 Proposed Amendment to *Amicus Curiae* Briefs Procedure to Accommodate Filing *Amicus Curiae* Briefs in the Court of Last Resort for the European Union

The Board amended the Association's *Amicus Curiae* Briefs Procedure to accommodate the request to file *amicus curiae* briefs in the court of last resort for the European Union, by means of a written statement of intervention in the Court of Justice of the European Communities.

3.9 Report and Recommendation of Operations and Communications Committee Blanket Authority Subcommittee

The Board approved revisions to the Association's Blanket Authority Procedure to be forwarded to the House of Delegates for consideration at a future meeting.

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

3.15 Requests for Co-Sponsorships

a. Section of International Law and Practice

The Operations and Communications Committee (Operations Committee) approved the request of the Section of International Law and Practice to co-sponsor a one and one-half day program entitled "Foreign Trials of an Intellectual Property Case" with the Section of Intellectual Property Law and the U.S. Group

of the International Association for the Protection of Intellectual Property on October 3-4, 2003, at Fordham Law School in New York City.

b. Forum on Franchising

The Operations Committee approved the request of the Forum on Franchising to co-sponsor a four-hour children's activities event with the I. Lorraine Thomas Children's Emergency Home on October 25, 2003, in Ft. Lauderdale, Florida, during the Forum's 2003 Annual Meeting.

c. National Conference of Administrative Law Judges

The Operations Committee approved the request of the National Conference of Administrative Law Judges to co-sponsor a program entitled "Bringing Administrative Justice to the People of the World" with the Council of Canadian Administrative Tribunals and the National Association of Administrative Law Judges on June 20-23, 2004, in Toronto, Ontario, Canada.

3.16 Section of Antitrust Law Request for Blanket Approval of Brown Bag Programs Co-sponsored with Certain Outside Entities in 2003-2004

The Operations Committee approved the request of the Section of Antitrust Law for blanket approval of "Brown Bag" programs that will be co-sponsored with 25 outside entities during the 2003-2004 Association Year.

3.17 Meetings Outside the United States

a. Section of Labor and Employment Law

The Operations Committee was notified that five committees of the Section of Labor and Employment Law plan to hold meetings outside the U.S. in 2004. The Committee noted that the dates of two of the meetings conflict with the dates of the 2004 Midyear Meeting. The Operations Committee approved the request with the recommendation that in the future the Section committees be encouraged to meet at the ABA Midyear Meeting.

b. Senior Lawyers Division

The Operations Committee approved sixteen travel programs for Senior Lawyers Division members during Association Year 2003-2004.

c. Standing Committee on Continuing Education of the Bar

The Operations Committee approved the request of the Standing Committee on Continuing Education of the Bar to hold its fall 2003 business meeting on October 9-12, 2003, in Montreal, Quebec, Canada.

**C. MATTERS FOR COMMITTEE CONSIDERATION ONLY
(Committee action is not reported to the Board.)**

3.21 Report of General Counsel and Counsel Fees

In executive session, the Operations Committee received a report on pending litigation matters from the General Counsel. The Operations Committee also approved certain counsel fee statements.

3.22 Special Member List and Extension of Disability Dues Waiver

The Operations Committee approved the transfer of 51 Association members to the list of Special Members and approved the extension of the disability dues waiver for 458 members.

4. PROGRAM AND PLANNING COMMITTEE

A. MATTERS FOR REVIEW BY THE BOARD

4.1 Approval of Annual Budget FY 2003-2004

The Board approved the Fiscal Year 2003-2004 Annual Budget in the amount of \$94,916,000.

a. – e. Requests for Reconsideration

The Board took the following actions regarding requests for reconsideration of preliminary budget decisions:

- Continued the Consortium on Legal Services and the Public without funding and recommended that the Consortium operate in a similar fashion to the Center for Professional Responsibility, which brings together at one meeting all of the Center's Committees, or to the Justice Center Oversight Committee, which works and meets without general revenue funding;
- Continued the "Legal Services Assistance Network" project (SPAN) for the next fiscal year but declined to approve the request of the Standing Committee on Legal Aid and Indigent Defendants to restore \$20,500 to the project; and
- Declined to approve the requests for reconsideration of the preliminary budget decisions regarding the Young Lawyers Division, the Law Student Division, and the Commission on Racial and Ethnic Diversity in the Profession.

4.2 Section of Administrative Law and Regulatory Practice Request to Create the European Union Administrative Law Project and Solicit Outside Funding

The Board approved the request of the Section of Administrative Law and Regulatory Practice for: a) 501(c)(3) status approval of a Section project to study the administrative and regulatory laws of the European Union; and b) approval to solicit outside funds for the project that would be administered through the ABA Fund for Justice and Education. The Board's approval was with the understanding that the Section would involve other substantive sections in the sectoral analysis portion of the project.

5. **FINANCE COMMITTEE**

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

4.1 Approval of Annual Budget FY 2003-2004

Requests for Budget Reconsideration

g. Section Service Charge

The Board declined to approve the request of the Section Officers Conference for reconsideration of the recommendation regarding the Section Service Charge.

h. ABA Connection

The Board declined to approve the request of the Standing Committee on Continuing Education of the Bar and the Standing Committee on Solo and Small Firm Practitioners for reconsideration of the proposal regarding ABA Connection programs.

5.1 Fiscal Year 2003-2004 Capital Budget Recommendation

The Board approved management's proposal for a Fiscal Year 2003-2004 Capital Budget in the amount of \$4,279,500, with the understanding that the Finance Committee will review the Capital Budget for Fiscal Year 2004-2005 in June of 2004.

5.2 Tort Trial and Insurance Practice Section Request to Establish a 501(c)(3) National Trial Academy Scholarship Fund

The Board approved the request of the Tort Trial and Insurance Practice Section to establish a 501(c)(3) Public Interest/Diversity Scholarship Fund for the Section's National Trial Academy, an educational program held annually to give young lawyers "hands on" instruction in trial practice from experts in the field. The purpose of the Fund is to broaden participation in the Trial Academy of those Section members who are unable to attend because of financial reasons and also to increase the diversity of participants. The Fund will be financed by contributions from individual supporters of the

Section and the Trial Academy, and no general revenue will be available to support the Fund.

5.3 Commission on Immigration Policy, Practice and Pro Bono Request to Create Program Support Fund

The Board approved the request of the Commission on Immigration Policy, Practice and Pro Bono for the creation of the "Immigration Projects Support Fund," to be maintained within the Fund for Justice and Education, for the deposit and disbursement of funds to support 501(c)(3) programs and activities directed under the auspices of the Commission. No general revenue will be available to support the Fund.

5.4 Council of the Fund for Justice and Education Request to Create the John P. and Elizabeth P. Bracken Justice Fund

The Board approved the request of the Council of the Fund for Justice and Education for the creation of the John P. and Elizabeth P. Bracken Justice Fund to be used for the development of a 501(c)(3) program or programs to educate young lawyers about the problems municipal authorities face and to urge young lawyers to participate in community service as advisors to or as members of such elected bodies. The ABA Young Lawyers Division would develop and maintain the program(s) that would benefit from the Fund.

5.5 Consideration of Financial Impact of House Report 11-3 (Senior Lawyers Division)

Because of the significant financial implications on dues revenue, the Board recommended that the House of Delegates not approve the Senior Lawyers Division recommendation for an amendment to Section 21.6 of the Association Bylaws that would extend the waiver and reduction of dues for senior lawyers.

NEW BUSINESS

Standing Committee on Audit Request for Approval of Proposed Revised Internal Audit Policy Statement

The Board approved a revised Internal Audit Policy Statement with two addendums.