ILLINOIS STATE
BAR ASSOCIATION

Board of Governor Meeting
March 10, 2017

Action Agenda Item #1
Minutes
(101416)

Board of Governors Meeting
ISBA Chicago Regional Office
20 South Clark Street, Chicago
October 14, 2016

MINUTES

Board Members Present: Cornelius, Hartigan, McCluskey, Sosin, Davi, Davis, Doherty, Duignan, Durkin, Fruehling, Gaertner, George Stewart, Karno, Komie, Krolikowska, Lynch, Menaker, O'Brien, Orsey, Porter, Saeedi; Wawrzynek, Weiler, Williams, and Wright.

Board Members Absent: Gill, Rochford

Others Present: Flannell, JA Polls; Gamrath, Assembly Agenda Committee; Moran, Futures Task Force; McKillip, JA Polls; Nyuli, Futures Task Force; Schoenbeck, ISBA Young Lawyers Division; Thies, Legal Education, Admissions, and Competence.

Staff Present: Craghead, Executive Director; Archer, Director Administration and Finance; Covington, Director of Legislative Affairs; Cunningham, Assistant Counsel; Northrup, General Counsel; and Weaver, Assistant to the Executive Director.

President Cornelius called the meeting to order and presided throughout.

1. Minutes

Motion duly made, and seconded to approve the Minutes of the June 18, 2016. After two corrections noted, motion to approve minutes as revised carried.

3. President's Report

President Cornelius welcomed the Board members. He expressed his appreciation for all the encouragement he has received during his presidential year. He noted that he has been very busy with many Association activities since the Annual meeting. He singled out a few highlights since becoming president: his participation at the first meeting of the ISBA Council of Law School Deans, where issues such as the Uniform Bar Exam, experiential learning, 711's, and many others were discussed; participation at an IBF Fellows event in Collinsville; presentations during law school orientations at SIU, NIU, and U of I; participation at the ABA Annual Meeting in San Francisco; a very well attended diversity luncheon in Peoria where he was the keynote speaker; and testifying before the Illinois Supreme Court Rules Committee in support of a proposal to prohibit juvenile shackling in courtrooms.

5. Budget and Audit

President Cornelius called upon First-Vice President, and Board Budget Committee Chair, Hartigan, Executive Director Craghead, and Director of Finance Archer to address the Board on budget issues.

Executive Director Craghead noted that at this time the budget was approximately $204,000 better than budget. In addition, a budgeted $170,000 contribution from long term reserves had not been used. He then brought the Board's attention to the Annual meeting held in Rosemont. He noted that there was a significant variance between the budgeted costs for the Annual meeting and what had been expended. This was in large part due to increased expenses at the Rosemont location (in contrast to a Wisconsin location). However, he noted a number of positive aspects of the Annual meeting including: this was the first Annual meeting held in Illinois in 30 years; higher registrations and section council meeting attendance, the absence hotel guest room of attrition fees; increased sponsorship revenue, and less section council and committee member reimbursements.

Director Archer then addressed the Board and reported that FY 2015-2016 ended with a net operating surplus of $190,690 (and, after taking into account market loss on long term investments, a net surplus of $78,654). He discussed a number of variance items, including positive results from a new member campaign and better than expected electronic CLE sales. He highlighted lower than expected advertising revenue and continuing decreases in income from live CLE events.

Board members raised a number of questions, mostly centered on CLE revenue and expenses, and the significant trend of members accessing substantially more online CLE, both free and paid. Issues concerning IBC real estate taxes were also raised.

Director Archer then provided the Board with an update on construction at the Illinois Bar Center. He noted that the project was proceeding with a slight delay and was anticipated to exceed the original estimated total project cost by approximately $45,000. The additional time and expense were attributed to the discovery of additional asbestos as well as unforeseen plumbing and electrical work.

Motion made, seconded and carried to approve the budget report.

6. Scope and Correlation

President Cornelius called upon Second Vice President McCluskey to address the Board.

Second Vice-President McCluskey updated the Board with respect to several Scope Committee matters including: reorganization of the Association's diversity organizational structure, participation of Association officers at ABA meetings, the status of efforts to revise S. Ct. Rule 23, and the status of the Association's efforts with respect to futures, lead generation, and collaborative law.

Motion made, seconded, and carried to approve the Scope recommendations with respect to the reorganization of the Association's diversity organizational structure.

10. Professional Ethics Opinions

President Cornelius called upon General Counsel Northrup to discuss four recommended ethics opinions.

General Counsel Northrup provided background information on the Professional Conduct Committee's recommended four ethics opinions: 16-04 (Facebook prizes); 16-05 (conflict of interest involving law firm employee on city council); 16-06 (use of cloud based services); and 16-07 (of counsel relationships).

The Board discussed the proposed opinions, particularly 16-04 and the possibility that providing prizes for Facebook designations was potentially distasteful and subject to being misunderstood by the public.

Motion made, seconded and carried to approve opinions 16-05, 16-06, and 16-07.

Motion made, seconded and carried to reject opinion 16-04.

President Cornelius then called upon David Morgans of the Professional Conduct Committee to address proposed opinion 16-08.

Mr. Morgans addressed the Board and provided background information on opinion 16-08 related to conflicts of interest and disclosure requirements when a criminal defense lawyer is actively campaigning against a State's Attorney.

After extensive discussion, including concerns about the impact of the opinion on a lawyer's speech rights and the lawyer client relationship, motion made, seconded and carried to refer the opinion back to the Professional Conduct Committee for further consideration.

11. Elections

President Cornelius noted that the Illinois Bar Foundation was making recommendations to fill six seats on its Board for two year terms. The recommendations were: Sharon Eiseman (First Appellate District), Mark Karno (First Appellate District), Mary Petruchius (Second Appellate District), Tim Bertschy (Third Appellate District), Don Tracy (Fourth Appellate District), and Jennifer Shaw (Fifth Appellate District).

Motion made, seconded and carried to accept the IBF recommendation.

58. Young Lawyers Division

President Cornelius called upon George Schoenbeck, Chair of the Young Lawyers Division to update the Board on its activities.

Chair Schoenbeck thanked President Cornelius for the opportunity to address the Board and tell it about the Young Lawyers Division's goals and activities. Chair Schoenbeck referenced the new Committee on New Lawyers that has been tasked with implementing many of the recommendations made over the past several years concerning new and young lawyers. He also noted YLD's outreach to different parts of the state through a number of "speed networking" events in locations like Collinsville and central Illinois. He also described the YLD's traditional events such as the Winter Wine event, a Day at the Races in Arlington Heights, the Bean Bag tournament in Champaign, and the Holiday Party. He also noted YLD efforts to reprogram CLE in formats that appeal to younger and new lawyers, and efforts to reintegrate the YLD back into the larger Association structure, particularly by scheduling events in coordination with larger Association events such as the Mid-Year meeting. Finally, he noted the YLD's intent on reaching out to law students by, in part, sponsoring ISBA days at each of the Illinois law schools.

The Board commented on a number of the YLD efforts, and President Cornelius specifically thanked the YLD for its creativity an innovation in bringing interest to the Association.

71. Judicial Advisory Polls

President Cornelius called upon Judges McKillip and Flannell to present a request from the Judicial Advisory Poll Committee that the Board reconsider its prior action with respect to the publication of JA Poll results.

Judges McKillip and Flannell discussed the February, 2016 Board action to amend the JA Poll Manual to make public all associate judgeship polls (with an opportunity for applicants to withdraw prior to publication). They both expressed a number of concerns concerning the publication of all JA Poll results, particularly the potential negative impact on applicants' professional reputation and on the number of lawyers willing to be applicants for associate judge positions, especially in rural circuits.

After debate, motion made, seconded and carried to rescind the Board's action of February 26, 2016, concerning paragraph 6.02 of the JA Poll Manual and the public release of all JA Poll results.

Motion made, seconded and carried to amend section 6.02 of the JA Poll manual by replacing the current section with the following language:

The Chief Judge shall inform the ISBA at the time of the request of the poll if the poll results are to be released to the public. If the poll is to be made public, the applicants shall have the ability to withdraw their applications within forty-eight hours after an email is sent to the applicant containing the bar poll results, which will be sent to each applicant's email address. If an applicant withdraws his/her application, those bar poll results as to that candidate will not be made public by any source. Once the forty-eight hour time period had passed, the ISBA will release the bar poll results by posting those results on the ISBA website.

76. Legal Education, Admission and Competence

President Cornelius called upon Daniel Thies, Chair of the Legal Education, Admission & Competence Committee to present its proposal on the adoption of the Uniform Bar Exam in Illinois.

Chair Thies addressed the Board and indicated the Committee's "Final Report on the Adoption of the Uniform Bar Exam" was unanimously supported by the LEAC Committee. He noted adoption of the UBE would create a more flexible job market, lower the cost of bar admission, and enhance the bar exam's focus on making new lawyers practice ready. He noted that 87% of the current bar exam would remain the same and that the only difference would be the replacement of three Illinois specific essay questions with the multistate performance test. He noted that the states were free to add additional state specific requirements as well.

After discussion, motion made, seconded and carried to recommend that the Assembly approve the recommendations of LEAC's "Final Report on the Adoption of the Uniform Bar Exam."

78. Legislation

President Cornelius called upon Director of Legislative Affairs Covington to address a number of legislative proposals for the upcoming legislative session.

Four legislative proposals were presented and included amendments to: (1) the Illinois Marriage and Dissolution of Marriage Act to prohibit life insurance benefits from being paid to a former spouse after a judgment of dissolution of marriage unless there was a specific reference in the judgment to the contrary; (2) various criminal sentencing laws concerning monetary credit against fines for time served prior to sentencing, including the cost of incarceration in presentence reports, and court procedures regarding ensuring court consideration of a defendant's compliance with terms and conditions of supervision or probation; and (3) the Code of Criminal Procedure establishing consequences for a court's failure to give a defendant the already required admonition about immigration consequences of a plea.

After discussion, motion made, seconded, and carried to support in concept the amendments to the Illinois Marriage and Dissolution of Marriage Act and the Code of Criminal of Procedure, and to support the various sentencing related amendments.

Director Covington then discussed the fourth legislative proposal before the Board, a proposal to amend the Code of Civil Procedure regarding the striking of affirmative defenses. Director Covington noted that the Legislation Committee voted 11-8 to oppose the proposal. He also noted a split of positions from several section councils.

After discussion, motion made, seconded, and carried to postpone consideration of the proposal.

98. Task Force on the Unauthorized Practice of Law

Motion made, seconded and carried to go into executive session.

99. Collaborative Law

President Cornelius called upon Board member Anna Krolikowska, as a member of the Special Committee on Review of the Collaborative Law Process, to present a legislative proposal on the collaborative process.

Board member Krolikowska provided background on the Special Committee, including its members, deliberations, and work product. Specifically, she described the Special Committee's draft legislation and accompanying Supreme Court rule proposal. She noted that 15 US jurisdictions have adopted collaborative process legislation.

The Board discussed a number of aspects of the proposal. It was confirmed that the proposal is only applicable to family law. In addition, several Board members questioned the necessity of mandatory withdrawal when the collaborative process fails. Proponents of the proposal noted that the mandatory withdrawal was a central feature of collaborative process designed, in part, to ensure the parties (and their lawyers') commitment to the process.

Motion made, seconded and carried to recommend that the Assembly approve the proposal of the Special Committee.

107. Task Force on the Future of Legal Services

President Cornelius called upon Chair Tim Moran, and Vice-Chair Lisa Nyuli, of the Task Force on the Future of Legal Services.

Chair Moran discussed the establishment of the Task Force and the nature of its work that culminated in the Report and Recommendations before the Board. He noted that the genesis of the Task Force was the "Limited License Legal Technician" program established in Washington State, but explained the Task Force worked with a much broader scope. Chair Moran discussed the data-driven focus of the Report, the various forces impacting the delivery of legal services, various market and regulatory forces minimizing the role of lawyers, and the overriding need for the bar to recognize the changing legal environment and to adapt to it. He touched on many activities currently being implemented by the Association, as well as the need to establish a Standing Committee on the Future of Legal Services.

After discussion, motion made, seconded and carried to recommend that the Assembly approve the Task Force's Report and Recommendations.

There being no other further business, motion made, seconded, and carried to adjourn the meeting.

Respectfully submitted,

Al Durkin, Secretary