

**LOUISIANA STATE BAR ASSOCIATION
BOARD OF GOVERNORS
August 25, 2007**

*** M I N U T E S ***

President S. Guy deLaup called to order the meeting of the Board of Governors of the Louisiana State Bar Association at 9.15 a.m., Saturday, August 25, 2007 in New Orleans. Business was conducted in accordance with the agenda below.

Agenda Item 1. Roll Call

Present were:

President, S. Guy deLaup
President-Elect, Elizabeth Erny Foote
Secretary, Mark A. Cunningham
Treasurer, James R. Nieset
Immediate Past President, Marta-Ann Schnabel
Chair, Young Lawyers Section, Karleen Joseph Green
First Board District Representative, Ronald J. Sholes
First Board District Representative, Beth E. Abramson
Second Board District Representative, Joseph A. Conino
Third Board District Representative, Steven G. Durio
Fourth Board District Representative, John F. Robichaux
Fifth Board District Representative, James E. Boren
Sixth Board District Representative, W. Jay Luneau
Seventh Board District Representative, Carrick B. Inabnett
Eighth Board District Representative, Donald R. Miller
At-Large Member, Shannan L. Hicks
At-Large Member, Kelly M. Legier
At-Large Member, Walter M. Sanchez
From the Faculty of Loyola University School of Law, Dane S. Ciolino
From the Faculty of Southern University School of Law, Russell L. Jones
From the Louisiana State Law Institute, James J. Davidson III
House of Delegates Liaison Chair, Richard L. Becker
House of Delegates Liaison Member, Jeffrey A. Riggs
House of Delegates Liaison Member, Jack K. Whitehead, Jr.

Also present were:

Executive Director, Loretta Larsen, CAE
Access to Justice Director, Monte T. Mollere
Communications Director, Brooke E. Monaco
Director of Professional Programs, Cheri Cotogno Grodsky
Practice Assistance Counsel, William N. King
Deputy Practice Assistance Counsel, Eric K. Barefield
Ethics Counsel, Richard P. Lemmler, Jr.

Board of Governors Minutes

August 25, 2007

Page 2

Executive Assistant, Ramona K. Meyers
Leadership LSBA Class Member, Lottie L. Bash
Leadership LSBA Class Member, Ashley Smith Burch
Leadership LSBA Class Member, Loren Marino
Leadership LSBA Class Member, Henry Clay Walker V
Rules of Professional Conduct Committee Chair, Richard C. Stanley
Louisiana Bar Foundation President, Elwood F. Cahill, Jr. (via conference call for only Agenda Item 10b discussion on rate comparability)

Consent Calendar

The following items were included on the Consent Calendar and moved for approval without discussion and/or debate and unanimously approved.

2. Minutes.
The Minutes of the June 8 meetings of the 2006/2007 and 2007/2008 Boards, held in Sandestin, Florida.
3. House of Delegates Appointments.
Appointment of Celia R. Cangelosi, 19th Judicial District, to fill the unexpired term of James E. Boren following his election to the Board of Governors.

Agenda Item 4. Professionalism Center Proposal

Ms. Foote recommended that discussion on the creation and funding of a professionalism center be postponed until the strategic planning session in September.

Agenda Item 5. Antitrust Avoidance Policy

In Mr. Cunningham's absence, the Board postponed consideration of the proposal to amend the Antitrust Avoidance Policy.

Agenda Item 6. Organizational Review

President deLaup urged the Board to review the Executive Summary of the Bar Association Organizational Survey and announced that a special meeting of the Board of Governors to review the survey would be held at 2 p.m., Friday, November 9 in Lake Charles.

Agenda Item 7. Lawyer Advertising

The Board discussed the August 10 letter received from the Federal Trade Commission regarding LSBA lawyer advertising proposals being considered by the Louisiana Supreme Court. It was the consensus of the Board that no communication to the Court on this issue was necessary.

Agenda Item 8. Consideration of Any Item Removed from Consent Calendar

No items were removed from the Consent Calendar for further discussion/debate.

Agenda Item 9. LSBA Staff

- a. Introduction of New Staff Members.
Ms. Larsen introduced Corey E. Carter, Sr., Operations Coordinator, and Jessica G. Cassioppi, Program Coordinator.
- b. Professional Programs Department Presentation.
Cheri Cotogno Grodsky, Director of Professional Programs, and members of her staff presented a brief PowerPoint program on the scope and functions of the department.

Agenda Item 10. Proposed Changes to Supreme Court Rules

- a. Amendments to Supreme Court Rule XVII.
After reviewing comments from the Rules of Professional Conduct Committee and following lengthy discussion, the Board approved a number of motions to submit recommendations to the Court for its consideration as follows:
 - The Board is greatly concerned by the Committee on Bar Admissions (COBA) recommendation that all references to the Louisiana State Bar Association be removed from Supreme Court Rule XVII. The Board believes that the LSBA, as the state's mandatory bar association and the official representative of the lawyers of this state, should be afforded both the courtesy and the responsibility of continued participation in the admissions process. In particular, the Board strenuously objects to the elimination of LSBA participation in the Committee appointment process. LSBA participation will ensure that our members have a policy voice in matters which are of great import to the regulation of the profession. The Board approved motions to recommend the following language for the indicated sections of Rule XVII:
 1. Section 1(A), first paragraph
(A) Composition and Terms. The Committee shall consist of fifteen (15) members of the Bar appointed by the Court on recommendation of the Louisiana State Bar Association. ~~Every~~ Each member of the Committee shall have been admitted to the Bar of this state for a minimum of five years and shall be a member in good standing during ~~their~~ his or her term in office. ~~The members~~ A member of the Committee shall be appointed for a term of five years, and may be reappointed for one additional term of five years. No member of the Committee may serve for more than ten years, whether or not such years are consecutive. ~~Subject to~~ Notwithstanding this limitation, each member of the Committee shall continue to serve after the expiration of his or her term until a successor has been appointed.
 2. Section 5(E)(3)
(3) Making or procuring any false or misleading statement or omission of relevant information including any false or misleading statement or omission ~~on~~

during the application process for admission to the Louisiana State Bar Association or any amendment or in any testimony or any statement submitted to the Committee, or the Bar of any other state.

3. Appendix, Part A, first paragraph*

Part A. Bar Admission Fees

The following fees relating to admission to the Louisiana State Bar Association are hereby approved:

**We note that this language was retained by the Court in its own Order, effective August 1, 2007.*

The Board voted to recommend the following language for the COBA's Internal Operating Procedures:

1. for Section II(C), first paragraph

(C) Levels of Investigation. The information supplied by the applicant in the NCBE questionnaire, the information revealed by the NCBE's investigation and information supplied by third parties shall provide the basis for the level of investigation that the Panel must conduct before an applicant can be certified for admission to the Louisiana State Bar Association. All applications shall be classified based upon the level of investigation required. After the initial designation, information may be revealed during the investigation of a matter that may require re-designation of the level of investigation.

2. Section IV, second paragraph

~~Application~~ Concurrent Character and Fitness Applications. An applicant who is required to seek an equivalency determination under Louisiana Supreme Court Rule XVII, Section 3(D) may, ~~in~~ at his or her discretion option, concurrently apply for both an equivalency determination and apply by the Equivalency Determination Panel, and a determination by the Character and Fitness Panel regarding whether he or she possesses the requisite good moral character and fitness for admission to the Louisiana State Bar Association. In such event, the applicant, in addition to complying with Rule XVII, Section 6, shall submit to the NCBE a Request for the Preparation of a Character Report, along with payment to the NCBE for the applicable fee.

- Members of the Rules of Professional Conduct Committee, many of whom are involved in ethics education at Louisiana law schools, expressed the hope that this revision of the Rule might afford the opportunity to alter an aspect of the admissions process which troubles them. Believing that the MPRE does not adequately test and prepare applicants for admission to the bar, the Committee proposes that COBA develop a Louisiana-specific exam which tests for ethics, professionalism and disciplinary procedures. The Board of Governors wholeheartedly endorses this proposal and offers its assistance to the Court and COBA for the implementation of this additional exam.
- That Section 1(F), "Immunity" be deleted in its entirety;
- That Section 1(G), "Confidentiality" be amended as follows:

(G) Confidentiality. Except as to the applicant, the records of applicants for admission and the proceedings of the Committee concerning an application for admission shall be kept confidential, except as otherwise provided in this Rule or by order of the Court. The Office of Disciplinary Counsel shall be allowed access to the records of applicants in order to carry out its duties as described in this Rule, in Rule XIX, or as assigned by the Court or the Committee. Upon request, the Committee may release information which would otherwise be confidential to the disciplinary agencies of any jurisdiction. Disclosure may be made to the Lawyer's Assistance Program and to any other person or entity to the extent deemed necessary by the Committee for the purpose of investigating and evaluating the character and fitness of applicants. Statistical information not identified with any particular applicant and information relating to whether and when an applicant has taken the written Bar examination, applied for admission or been admitted to the Bar is not confidential and may be publicized or released to any person.

- That Section 5(F), "Disqualification; Prior Felony Conviction" be amended as follows:

~~(DF) Disqualification~~Presumption; Prior Felony Conviction; Relationship to Lawyer Disciplinary Standards. An applicant who has been convicted of or plead guilty or "no contest" to a felony shall be ~~conclusively deemed~~ presumed to lack the requisite moral character and fitness to practice law in this state, ~~and shall not be eligible for admission to the Bar of this state~~ which presumption shall be rebuttable only by the applicant's submission of clear and convincing evidence to the contrary. Appendix E of Rule XIX of these Rules is illustrative of the types of conduct that may result in the applicant being deemed ineligible for admission to the Bar of this state.

- That Section 5(M), "Costs" be amended as follows:

(M) Costs. All costs associated with the investigation shall be borne by the applicant. However, in any case in which costs are sought pursuant to this rule, the assessment of any or all such costs may be waived where it appears in the interest of justice to do so.

- That Section 9(E)(14) "Denial and Reapplication" be amended as follows:

(14) Denial and Reapplication. In the event that the Court issues an order finding that an applicant lacks the requisite good moral character and fitness to be admitted to the Bar, absent a statement from the Court regarding a longer or shorter period, an applicant is precluded from seeking admission for a period of ~~five~~ two years from the date of the Court's order.

b. Amendments to Rule 1.15 of the Rules of Professional Conduct (IOLTA Rules)

After some discussion on this issue, the decision was made to invite Louisiana Bar Foundation President Elwood F. Cahill, Jr. to participate via conference call during this part of the meeting. Mr. Cahill agreed to participate to provide information and field questions regarding the Louisiana Bar Foundation's proposal to the Louisiana Supreme Court to amend Rule 1.15 of the Rules of Professional Conduct (which would allow for

the implementation of IOLTA rate comparability). Mr. Cahill engaged in a lengthy discussion with Board members, after which time he was thanked for making himself available on such short notice.

At the conclusion of the discussion with Mr. Cahill, the Board further discussed the issue of rate comparability and ultimately voted to express to the Supreme Court its support of the concept of rate comparability but its concern with specific language of the proposed rules as follows:

- That expansion of the types of accounts permissible under the rule could allow a possible reduction in the principle due to market fluctuation;
- That the proposed rules impose an ethical obligation upon individual lawyers to obtain or negotiate rate compliant accounts, potentially exposing lawyers to disciplinary action for unintentional ethical violations. The Board voted to suggest instead that responsibility for obtaining comparable rates be placed on the Louisiana Bar Foundation;
- That insistence on obtaining higher interest rates could result in an assessment of bank fees, the liability for which would rest on the attorney;
- That the proposed amendment would restrict the banks with which a lawyer could do business, possibly favoring larger institutions over smaller local banks; and,
- That the regulation of what interest rate a lawyer must obtain on client trust accounts might go beyond the scope of the authority of the Court to regulate the practice of law.

Agenda Item 11. Louisiana Client Assistance Foundation

The Board of Governors unanimously approved appointment of the following to serve on the Board of Directors of the Louisiana Client Assistance Foundation:

President – Frank X. Neuner, Jr.

Vice President – Elizabeth Erny Foote

Secretary-Treasurer – Charles B. Plattsmier

Trustees – Drew A. Ranier, Louisiana Outside Counsel Health and Ethics Foundation

S. Guy deLaup

David W. Leefe

Terrel J. Broussard

A. Anderson Hartiens, Non-Lawyer

Sibal S. Holt, Non-Lawyer

Agenda Item 12. Local Bar Outreach

Mr. deLaup reported on the Board of Governors' initiative to engage in outreach to constituents and reviewed the form for reporting such activity. Mr. Robichaux requested Board members be notified of officer visits in their areas and that Board members be invited to participate in these meetings.

As a component of local bar outreach, Mr. deLaup reported on a series of free CLE seminars sponsored by the LSBA and the Louisiana Attorney Disciplinary Board. The seminars will be held during September, October and November in Kenner, Shreveport, Monroe, Lafayette and Baton Rouge.

Agenda Item 13. Strategic Planning Retreat

Mr. deLaup presented preliminary plans for the Board's retreat scheduled September 15 and 16 in Springfield, Louisiana and discussed Board members' roles in this process.

Agenda Item 14. Access to Justice Committee

The Board unanimously approved a request from the Access to Justice Committee that pro bono awards be presented in Louisiana in advance of the Annual Meeting to allow more recipients to attend the ceremony.

Agenda Item 15. *GGVP v. Weitz & Luxenberg*

Recommendations regarding pending litigation against an out-of-state law firm were discussed. Those recommendations are subject to the lawyer/client privilege and have been redacted.

Agenda Item 16. Membership Cards

Discussion concerning the possible annual issuance of LSBA membership cards was deferred to a later meeting.

Agenda Item 17. Nominating Committee

The Nominating Committee met on Friday, August 24, and nominated Kim M. Boyle of New Orleans as President-Elect for 2008-2009 and Jack K. Whitehead, Jr. of Baton Rouge as Treasurer for 2008-2010. Ms. Larsen reported that notice of the nominations as well as information regarding self-qualifying by petition will be sent to all members of the Association on Monday, September 24, 2007.

Agenda Item 18. Public Access and Consumer Protection Committee

Mr. Durio informed the Board that the *Carr* case was set for trial in October.

Agenda Item 19. Budget Committee Report

Mr. Nieset informed the Board that the Budget Committee had no recommendations for amendments to FY 2007/2008 budget. Mr. Nieset did note that the Annual Meeting budget suffered a net loss of \$11,852.70.

Agenda Item 20. Report of the President

- a. Law School Professionalism Programs.
President deLaup reported professionalism orientations were held at each of the four law schools beginning on August 10 and ending on August 17. Additionally, a 3L professionalism program is scheduled at LSU Law School on September 14.
- b. Leadership LSBA 2007/2008 Class Orientation.
President deLaup introduced the class to the Board and reported on the Class orientation held Friday, August 24.
- c. January 2008 Midyear Meeting in New Orleans.
President deLaup reported on preliminary plans for the Midyear Meeting to be held January 11 and 12, 2008 at the Hotel Monteleone in New Orleans.
- d. 2008 Annual Meeting in Sandestin, Florida.
President deLaup announced that the Summer School for Lawyers would be held June 8-11 and that the Annual Meeting would be held June 11-13, 2008, at Sandestin Golf and Beach Resort.
- e. Declaration of Collaboration with the Quebec Bar.
The Board unanimously adopted a motion to establish a more formal relationship between the LSBA and the Quebec Bar in light of a common legal tradition based on Civil Law.

Agenda Item 21. Report of the President-Elect

- a. 2009 Annual Meeting Site Selection.
Ms. Foote stated that she would be communicating with members of the Supreme Court to solicit their opinions on possible sites for the 2009 Annual Meeting, indicating the possibility that the meeting could be held in Louisiana

Agenda Item 22. Report of the Secretary.

Mr. Cunningham offered no report at this time.

Agenda Item 23. Report of the Treasurer

Mr. Nieset referred the Board to a printed report from Waters Parkerson & Co., Inc. on the status of LSBA investments and offered to answer any questions.

Agenda Item 24. Report of the Immediate Past President

- a. Travelers Insurance Dispute.
Ms. Schnabel reported that outside counsel had been retained on this matter.

b. Diversity Committee Report.

Ms. Schnabel reported briefly on plans to hold a statewide diversity conclave in spring 2008.

Agenda Item 25. Report of the Young Lawyers Section Chair

Ms. Green reported on the High School Mock Trial program, requesting assistance from Board members in Lake Charles, Monroe and Alexandria where participation in the program is lacking. She stated that 200 young lawyers signed up to participate in the Barristers for Boards' program and the YLS is working to match each attorney with a non-profit board. Ms. Green indicated that implementation of the Wills for Heroes program was postponed when it was brought to the attention of the Section that offering free wills is a violation of ethics for first responders, as this is considered a "gift." An opinion on the issue is being sought from the Attorney General. Ms. Green reported that the Section will be hosting a diversity conference/luncheon in conjunction with the LSBA Midyear Meeting in January, in addition to its annual professional development seminar. In concluding her report, Ms. Green stated that the YLS Council also serves as the Nominating Committee and has nominated Melanie Mabile Mulcahy of Metairie as Chair-Elect for 2008-2009 and Alainna R. Mire of Alexandria as Secretary for 2008-2009.

Agenda Item 26. Report of the Executive Director

Ms. Larsen briefly reviewed the general makeup of the staff and referred the Board to her comprehensive printed report contained in the bound meeting materials.

Agenda Item 27. Other Matters

a. Discussion of Items to be added to agenda:

1. ABA YLD Spring 2009 Meeting.

Ms. Abramson informed the Board that in order for the ABA YLD to consider holding its spring 2009 meeting in New Orleans, the host YLS is required to raise \$25,000 in sponsorships to offset costs. Ms. Abramson moved that the LSBA guarantee the \$25,000 donation necessary to secure the spring 2009 ABA YLD meeting in New Orleans and that the \$25,000 guarantee include a \$5,000 donation from the LSBA. Ms. Abramson stated the YLS would seek additional sponsorships to cover the remaining \$20,000 guarantee. The motion was unanimously adopted.

2. Attorney's Desk Book.

The Board deferred discussion of reintroducing the Attorney's Desk Book for new admittees until the September Strategic Planning session.

b. Dates of Upcoming Meetings:

Strategic Planning Retreat – September 14-16 in Springfield, Louisiana;
Operational Survey Report Review – 2 p.m., November 9 in Lake Charles;
Fall Board Meeting – 9 a.m., November 10 in Lake Charles.

Agenda Item 28. Executive Session

Due to the late hour, consideration of Executive Director goals for 2007/2008 was postponed.

Adjournment

There being no further business to discuss, the meeting was adjourned at 12:45 p.m.

Respectfully Submitted:

Mark A. Cunningham, Secretary

Date