

**Philadelphia Bar Association
Board of Governors Meeting
September 27, 2012**

The meeting was called to order at 4:03 p.m. by Chair Brandi Brice.

Chair Brice thanked the Board members for all of their recent well-wishes relating to her health.

Upon consideration by the Board, the minutes of the July 26, 2012 Board meeting were unanimously approved.

Treasurer Joseph Prim presented the Treasurers Report for the period ending August 31, 2012. He reported that revenue was under budget by approximately \$260,610, which was primarily attributed to the lack of anticipated revenue from Lawyer Profiles. Prim further reported that dues were under budget by approximately \$44,160, which he noted was a remarkable turnaround, and he complimented the staff for their strong dues collection efforts. Prim reported that LRIS revenue had been slightly reduced but has since recovered and is now back on track. Special events revenue is ahead by approximately \$54,107 as a result of sponsorships for the upcoming Bench Bar, so that figure might not be a true reflection of the eventual status. Prim noted that expenses were under budget by \$77,846 which was a reflection of the staff's capabilities to adapt to the diminished income. Prim concluded that as of August 31, 2012 the Association was under budget by approximately \$182,764.

Executive Director Ken Shear reported further on the budget. He stated that the August 2012 bottom-line figures had slightly improved over the prior months. Shear commented that membership was starting to bounce back, which he attributed to law firms generously supporting the Association following meetings with the Chancellor, Chancellor-Elect, and others. Shear concluded that the trend was optimistic. After consideration, the Treasurer's Report was unanimously accepted by the Board.

Former Chancellor Abraham Reich reported on the actions of the House of Delegates at the ABA annual meeting held in Chicago in August 2012. Reich reported that the most significant development at the meeting related to the ABA Task Force known as "Ethics 20/20," which tackled a comprehensive review of the Rules of Professional Conduct and rules relating to the practice of law to determine whether developments in the practice of law supported a need for changes to those rules. At the meeting, the Task Force offered their first recommendations that were adopted by the House of Delegates. Reich noted that there were hundreds of pages of documents that were circulated, digested, debated, presented, and passed primarily in four different areas. Reich commented that the Rules of Professional Conduct are "rules of reason" that reflect the happenings of the market place. As a result, the changes have been characterized as "evolutionary, not revolutionary." They are attributed largely to new technology and the mobility of lawyers. Reich presented at the debates and Chancellor-Elect Kathleen Wilkinson attended on behalf of Clifford Haines.

The first significant area of change related to confidentiality issues raised by new technology. This included a new comment to Rule 1.1 relating to competency; 1.4 regarding communication with clients and the obligation to promptly respond to all forms of communication including new technology; and, Rule 1.6 regarding confidentiality of information relating to the representation of a client, that requires lawyers to undertake reasonable efforts to ensure confidentiality in the face of new technology. Also addressed was Rule 4.4 relating to the rights of third persons and the receipt of inadvertent facts, to broaden the protections and obligations upon the receipt of information from all types of technology including but not limited to written communications.

The second significant category change related to technology and client development. At issue was an addition to comment to Rule 1.18 addressing internet interaction with prospective clients; a new comment 5 to Rule 7.2 dealing with advertising, now expanded to apply to online lead-generation services for client solicitation; and, a new comment to Rule 7.3 relating to solicitation of prospective clients that occurs in the technology arena.

The third significant change pertained to outsourcing and the obligation of a lawyer who outsources work to third parties or to other lawyers. Changes include a new comments 6 and 7 to Rule 1.1 dealing with competence of work referred to others, defining the scope of the engagement for work, and ensuring the client's consent; a change to comment to Rule 5.3 providing that non-lawyer assistants working under the attorney's instruction must comply with the Rules of Professional Conduct; new comments 3 and 4 to Rule 5.3 relating to the attorney obligation when dealing electronically with experts; and a comment to Rule 5.5 to clarify the attorney obligation to prevent the unauthorized practice of law.

The fourth significant change was the most controversial, and related to the lateral movement of lawyers between firms, and mergers and acquisitions, and the need to disclose the identity of clients for the purpose of checking conflicts. The broad nature of Rule 1.6, which covers the disclosure of any information relating to the representation of a client, was reviewed. 20/20 recommended a specific exception to Rule 1.6 to allow lawyers in the course of changing firms to identify their client base so long as it would not prejudice the client or breach the attorney-client privilege in some way. That recommendation was adopted.

Reich summarized that it was likely that 20/20 will respond with further changes to the Rules. The changes are now being considered for recommendation by the Association's Professional Responsibility Committee and the PBA Legal Ethics and Professional Responsibility Committee. Reich suspects that the changes could be implemented in Pennsylvania within the year, and encouraged a reading of the proposed changes since they offer worthwhile guidance. Wilkinson noted the interesting debate at the meeting between Reich and Professor Lawrence Fox on the issue of confidentiality.

Chancellor John Savoth thanked everyone for the outpouring of support, sympathy and love shown to himself, his wife Nancy, and his family following the recent passing of his mother. He stated that the overwhelming support was greatly appreciated and empowering, and reflects the close relationship of the Board Members to each other.

Chancellor Savoth reported that he attended the ABA Annual meeting in Chicago, which he found to be a wonderful, beautiful city. At the meeting, Savoth and Shear met with a leader of the Montreal Bar Association and discussed, with the involvement of the International Law Committee, the formation of an agreement between the two Bar Associations that could involve travel between the two cities and offer benefits to the Philadelphia Bar Association and its members. Additionally, Savoth reported that the Association's Cabinet became involved in mid-August with an amicus issue that would be addressed later at this meeting. Savoth met with Senator Anthony Williams about the Association including the type of issues the Association deals with and the goal of the Association becoming more involved on a proactive basis on issues in Harrisburg.

Savoth noted that the co-chairs of the City Policy Committee, David Hyman and Denise Smyler, actively involve and educate the Association on certain City and State issues, and facilitate the Association to offer its expertise on those areas when called upon by the legislatures in Philadelphia or Harrisburg. Savoth congratulated Rachel Branson for being elevated as President of the Barristers' Association in September 2012, and acknowledged and congratulated Kevin Mincey for his wonderful year as Immediate Past President of that organization. Savoth noted that the Barristers' Association is a vital organization to our City, community, and practice, and the Bar Association looks forward to working with the Barristers' Association on vital issues that relate to both associations.

Further, Savoth reported that, on Constitution Day at the National Constitution Center, he was privileged to speak at the naturalization ceremony where Judge Rufe presided over approximately one hundred new U.S. citizens, which was a powerful experience. The ceremony was followed by a public reading of the Constitution by high school students with explanations and commentary provided by various members of the Philadelphia and PA Bar Associations, an event that was arranged by David Trevaskis. Savoth also reported that he and Wilkinson attended a session of the Pennsylvania Superior Court, and the two recorded commentary about the arguments at the request of President Judge Stevens.

Scott Sigman reported on an event at the Union League in celebration of the 65th birthday of the Air Force, that featured the appearance of Major General William Bender, who is Commander, U.S. Air Force Expeditionary Center, Joint Base McGuire-Dix-Lakehurst, N.J. At that time, Savoth was recognized for his efforts on behalf of Veterans, and was presented with a "challenge coin" depicting each branch of the Armed Services as a showing of gratitude. Savoth responded that the military affairs program is doing well and there is likely to be a report to the Board in October 2012 on progress and possible programs.

Savoth introduced Executive Director Shear who made two announcements. The first was the birth of his grandson on August 15, 2012. The second was that he would be stepping down as Executive Director of the Bar Association after 37 years on December 31, 2013. Shear commented that the Bar Association is the greatest in the country, and the programs, policies, and publications are emulated throughout the country. The Association's traditions are envied and its history cannot be duplicated by any other group of lawyers in the world. He is proud to be a part of the Association that has dedicated itself to the expansion of civil and human rights worldwide, and help to assure access to justice to all citizens. It is a great organization, and even greater days are ahead. Shear noted that it is a new era, which requires a new Bar Association. Shear concluded that the Philadelphia Bar Association is the greatest Bar Association in the country, and it has been his honor to have made some small contribution to its greatness. Savoth noted the tremendous work that Shear has done for the Bar Association, and announced the appointment of Former Chancellor Alan Feldman as Chair of a Search Committee for the position, who will be reporting back to the Board.

Savoth announced that certain members of the Philadelphia Bar Association have been approved by the Philadelphia Lawyer Editorial Board to serve a three-year term on the magazine's Editorial Board. Those members are James Backstrom, April Byrd, Michael Carroll, Hal Cohen, Richard Freeman, John Gregory, David Grunfeld, Justine Gudenas, Emmanuel Iheukwumere, Niki Ingram, Stephen Lacheen, May Mon Post, Steven Sher, Daniel Siegel, Jennifer Snyder, Peter Vaira, Deborah Weinstein, and Herman Fala. *See Philadelphia Lawyer Editorial Board list, distributed.* The appointments require Board of Governors approval under the Association Bylaws Article X, Section 1001. Upon consideration, the appointments were unanimously approved.

Brice introduced Vice Chair Marc Zucker to deliver a report on the Philadelphia Bar Association's Amicus Brief filing *In Re: Thirty-Third Statewide Investigating Grand Jury: Petition of the Pennsylvania Turnpike Commission*. Zucker reported on a joint amicus brief filed with the Pennsylvania Supreme Court on September 18, 2012 on behalf of the Association and the Pennsylvania Bar Association in the pending case of *In re Thirty Third Statewide Investigating Grand Jury*. The brief, principally prepared by James Sargent of the Lamb McErlane firm with input from the two Associations, addressed the importance of considering the attorney-client privilege in reviewing the trial court's decision to grant the PA Attorney General unfettered access to communications between the Pennsylvania Turnpike Commission, an independent agency of the Commonwealth, and the commission's own attorneys in the context of a grand jury investigation of the commission. Because of time constraints and concerns about taking sides in a dispute between a state prosecutor and agency defendant, the Association's Cabinet initially declined to support the drafting of an amicus brief. The Cabinet later agreed to do so when additional time was granted, on the understanding that the brief would steer clear of taking sides on the ultimate application of the law of privilege to the particular facts of the case. Savoth appointed Professor Louis Rulli and Zucker to oversee the review and editing of several drafts of the brief on an expedited basis and to insure that the limited focus of the brief as envisioned by the Cabinet would be carried out. Savoth also reviewed the drafts, as did Charlie Klitsch. The brief, in its

final form, met the goals outlined by the Cabinet and was one which the Association could be proud to sign. It addressed, among other things, the sacred nature of the privilege, the impact of the Court's landmark decision in *Gillard v. AIG*, the impact of statutory construction of the Commonwealth Attorneys Act and the need to balance the benefit of transparency in government, on the one hand, with the potential chilling effect on intra-agency legal advice that could arise if the privilege were ignored or eroded. Zucker expressed gratitude for Rulli's thoughtful input in the process. After Zucker's report, Rulli complemented Zucker's efforts on this issue of paramount importance. Any Board member may obtain a copy of the brief by contacting Klitsch.

Chair Brice introduced Philadelphia Bar Foundation President Wendy Beetlestone to present the report on the proposed Civil Justice Center. Beetlestone reported on the concept and history relating to the development of the proposed Civil Justice Center. *See Philadelphia Civil Justice Center Executive Summary*. Beetlestone stated that the Bar Foundation implemented a strategic plan five years prior that included the goal to consider the possibility of a Civil Justice Center, which would be a building in a central location where the grantees could gather. Beetlestone, as President Elect of the Foundation, spoke with every director to inquire about the level of interest, which was shared by most. Following those preliminary discussions, a Steering Committee was formed to address each component. A questionnaire was developed to gather relevant information from the grantees including their level of interest, space requirements, rent payments, personnel, the length of their current lease, and general current successes, failures, and concerns. The Foundation determined that there was a high level of interest in a Civil Justice Center. The Committee began exploring opportunities including two buildings. The Foundation realized that in order to move forward with a Civil Justice Center there would need to be millions in funds to buy or renovate a property or buy one over time. The Foundation concluded that it did not have such funds, but did have an income stream from the rents of legal services organizations. The Foundation further concluded that no organization would be required to pay more than they were currently paying. The Foundation determined that the location would need to be between 20th Street (West), 8th Street (East), Locust Street (South), and Vine Street (North). The Foundation, including Richard Cantor and Glenn Blumenfeld, worked with Mark Schwartz of the Regional Housing Legal Services Board and reached out to Pennrose Properties, who responded that it could meet the Foundation's criteria. As a result, the Foundation prepared a Memorandum of Understanding between the Foundation, Pennrose, and Project Home as a third party beneficiary. That Memorandum requires the Foundation to get a non-binding commitment from the legal services organizations within ninety day of signing to engage in discussions and to provide their space requirements.

To date, the Foundation has spoken with five Boards, and acquired their first commitment on September 27, 2012. Beetlestone reported that the Foundation has engaged in discussions with the Bar Association and there has been some level of interest and noted that the main issue has been the location.

Savoth thanked Beetlestone for the report and the work that has gone into this effort, and echoed the Association's concern about the location. Gordon Wase inquired

how many entities would be needed to move forward, and Beetlestone responded that only the top three entities would be needed to meet the financial needs. She related that the Committee was working on a potential location that could not currently be revealed. Savoth responded that the location would need to be disclosed and discussed if the issue reaches the Board for resolution. Beetlestone replied that they would know more about the viability and location within ninety days. Savoth inquired whether the project could survive without the Bar Association and Beetlestone responded that it could. Vice Chancellor William Fedullo commented that the location would need to be between 11th or 12th Street and 15th, 16th, or 17th Street. Treasurer Prim inquired when the structure would be anticipated and Beetlestone responded that Pennrose believes that the project could be up and running in 2015. Prim further inquired about the ownership of the building and Beetlestone replied that a real estate deal would need to be negotiated.

Wilkinson introduced four interns from France that were present at the meeting in furtherance of the relationship between the Lyon Bar Association and the Philadelphia Bar Association, and announced that they will be celebrating the 15th anniversary of that relationship at the upcoming Bench Bar.

Gina Furia Rubel announced The Justinian Society of Philadelphia 2012 Fall Luncheon with Justice Antonin Scalia of the U.S. Supreme Court on October 15, 2012 at the Union League of Philadelphia.

Judy Stouffer announced The Philadelphia Association of Paralegals will be holding an Education Conference on October 19, 2012 at the Loews Hotel in Philadelphia. Scott Reid will be the keynote speaker and 16 classes will be offered.

Gordon Wase noted that the Probate and Trust Law Section has granted \$2,500 to the Senior Law Center to support an intern who will assist in probate and will-drafting assignments for seniors, and an additional \$2,500 to Philadelphia VIP to fund the training of attorneys in efforts to assist low-income Philadelphians with tangled title and estates matters.

Melanie Taylor announced that the Young Lawyers Division Executive Committee election nominations are due by October 9, 2012, and the nominating forms are available on the Bar Association website. Additionally, the Board Observer program is also accepting nominations until October 15, 2012. It was the inaugural year of the program which resulted in 19 young lawyers sitting on non-profit boards, and the Division has received excellent feedback from the participating organizations.

Vice Chancellor Fedullo announced the upcoming Philadelphia Trial Lawyers Association Justice Michael A. Musmanno Award Dinner being held on October 4, 2012, this year honoring Edward Chacker.

Past Chancellor Rudolph Garcia, in his capacity as Chair of the Bar Association Elections Committee, announced the deadline for candidate nominations on October 5, 2012.

Naomi McLaurin announced a memorial service to honor Judge Louis Pollak on September 28, 2012 in the ceremonial courtroom of the U.S. Courthouse.

There being no further business, the meeting was adjourned at 5:20 p.m.

Respectfully submitted,
Jacqueline G. Segal
Assistant Secretary

Attendance
September 27, 2012

Voting Members:

Present:

John E. Savoth
Kathleen D. Wilkinson
William P. Fedullo
Jacqueline G. Segal
Joseph A. Prim, Jr.
Brandi Brice
Marc J. Zucker
Scott P. Sigman
H. Marc Tepper
Kimberly M. Ruch-Alegant
Scott Reid
John Encarnacion
Gina Rubel
Aneesh Mehta

Jennifer Coatsworth
Ourania Papademetriou
James Rocco
Eric Weitz
Kay Yu
Hon. A. Michael Snyder
Brad V. Shuttleworth
Michael Burtin
Brad J. Begelman
Robert T. Szostak
Melanie Taylor
Rudolph Garcia
Regina M. Foley
Gordon Wase

Absent:

Sophia Lee
Brian S. Chacker
Pedro Ramos
Wesley Payne
Rachel Branson

Nikki Johnson-Huston
Stacy Tees
Wanda Flowers
Larry Felzer
George Nagle

Non-Voting Members:

Present:

Lawrence J. Beaser
Louis S. Rulli
Judy Stouffer

Abraham Reich
Kenneth Shear
Wendy Beetlestone

Absent:

Justine Gudenas
Scott F. Cooper
Heather Austin
Daniel J. Siegel
Andrea Malone

Flora Yarnall
Cheryl A. Disch
A. Michael Pratt
Sayde J. Ladov