

**Philadelphia Bar Association
Board of Governors
February Minutes**

(March 2, 2010)

The Chair called the meeting to order at 4:09 pm. Upon motion made and seconded, the minutes from the January 28, 2010 meeting were approved.

The Chair recognized Assistant Treasurer Wes Payne, who presented the Treasurer's report. Dues are a little ahead of schedule and due to LRIS revenue, the Association budget is ahead of last year. He reported that revenue is \$60,000 above budget. Upon motion made and seconded, the Treasurer's report was approved. The Board also expressed their appreciation to Association staff members Paul Kazaras and Charlie Klitsch for their work with LRIS.

Chancellor Scott Cooper made his announcements. He thanked everyone for their adjustments in rescheduling the February meeting due to snow. He reported that the Quarterly luncheon will be March 17 when former Chancellor Sayde Ladov will be honored for her service and CNN's John King will be the featured speaker. Chancellor Cooper then spoke on the issue of a sales tax on professional services, which is being proposed to fill a budget gap in Harrisburg and advised the Board that the Association has a full court press going with respect to this issue in Harrisburg and around the Commonwealth. There also was a communication to members to keep the issue front and center as part of the Association's legislative agenda.

Chancellor Cooper advised the Board that Kim Jessum and Michael Hayes will present next month on the progress of the "green" initiative. He also asked everyone to attend the March 29 program featuring the new professional soccer team, which is part of the "academy" initiative. Chancellor Cooper advised the Board that they had a terrific meeting with Temple Law School about gathering historical documents for the Historical Society and partnering with students to create a video record. He also reported that the Association was approached by the Pew Institute about work concerning their report on the criminal justice system. The Association will be in a position to attend a program on this report and publicize it.

Chancellor Cooper also advised the board that he and Chancellor-Elect Rudy Garcia will attend a meeting of the largest bar associations to co-present on two panels: how to stay relevant and globalization of the practice of law later this month in Tokyo, Japan. He assured the Board that budgetary considerations will be taken into account.

He reported that he has asked the Association's communications department to prepare an annual report which will be sent to members describing what the Association does for them each year, with reports from each committee. The Chair of the Board Richard Seidel will also be attending various committee meetings. He also reported that Treasurer Joe Prim will lead a task force looking into the issue of non-dues revenue with an eye toward the budget.

Chancellor Cooper also announced that he has been asked to make nominations of Association members to the Pennsylvania Bar Association ("PBA") House of Delegates Zone

One, which is Philadelphia. Membership in PBA by attorneys in Philadelphia has dropped in the past year, so the size of Zone One's delegation has been reduced accordingly. This year there is only room for six Chancellor's appointments. He is working through how to make the process fair and will take diversity into account. He emphasized it is important to keep our Zone active in the PBA.

Next, Chancellor Cooper recognized the Chair of the YLD, Abbie DuFrayne. She reported that YLD's first event was February 19 which was Young Lawyer boot camp. Over 125 attorneys and law students attended. Five panels were offered. She also reported that the next event will be comedy night on May 22 to benefit the Bar Foundation.

The Chair of the Board Richard Seidel then gave his remarks. Mr. Seidel stated we have lost 10 percent of our representation in the PBA House. The membership by Philadelphia attorneys has dropped such that we have gone from the largest representation in the House to maybe the second largest. The biggest drop was the result of the Wolf Block dissolution, which affected membership in both associations. There are issues in the PBA that affect us and he discussed whether we may need to have more partnerships with other area associations near our zone. Executive Director Ken Shear stated that the other side of the coin is that the Philadelphia Bar Association itself also lost membership but has held most of its market share. Zone 9 is the largest, and includes Montgomery County, which is a Unit County. Allegheny County is similar to Philadelphia County in that it is not a Unit County. He reported that Allegheny also suffered a diminution as well. There was general discussion that we must keep encouraging members to participate in both the Philadelphia and Pennsylvania Bar Association as some legislators who carry a lot of weight are not in Philadelphia and we also must consider we need support of the Supreme Court.

The Chair also stated that over the next 60 days Rich Seidel will be attending all the meetings of the committees and sections to make sure they see value in their work, give value to their resolutions, make sure they are aware the Association is going to be responsive to their leadership and that the Board will be getting reports on their activities.

Paul Kazaras was recognized to discuss the Conflict of Interest form which was adopted and is part of the Association bylaws. Each member of the Board is required to sign the form. He also brought to the Board's attention the Pro Bono form which needs to be signed each year certifying that each Board member has met the pro bono requirements for Board members.

Lou Rulli was recognized to present on the topic of the Legal Services Corporation (LSC) Board of Directors appointment. Mr. Rulli explained that the LSC was designed to provide free legal services to the poor with the goal to ensure the delivery of legal services without regard to political motivations. On December 17, 2009, the President appointed three nominees, including Sharon L. Brown, whose nomination is very controversial. She has opposed the use of bar dues to support assistance to the poor, IOLTA account monies being used, and other issues which call into question her ability to serve on the Board of an agency which funds legal services to the poor. The American Bar Association ("ABA") has criteria for the appointment and is opposing her nomination. National Bar Association, Lawyers Guild, and other groups are also opposed. The Public Interest Section has raised a question as to whether the Association should oppose this nomination. This Association has not adopted criteria for vetting nominees to the LSC

Board and has never taken a position on this. This Association has long been on record and has passed resolutions for increased funding for LSC. Mr. Rulli reported that it was the view of Public Interest Section and Delivery of Legal Services Committee, after looking at past resolutions, to have the Chancellor communicate the Association's position that we support legal services, that the ABA has determined Ms. Brown does not meet the requirements and that this Association would call on a close review of all nominees and to vote against a nominee who does not have a deep commitment to the principles of increased funding to LSC. The sense of the Board was to have Chancellor Scott Cooper send a letter stating our position.

Paul Kazaras was recognized to introduce a Resolution from the Pension Committee to Adopt Technical Amendments (Plan Amendment No. 3) required by recent changes in federal law. The Amendment deals with the rights of participants who serve in the military (effective 1/1/2007) as well as the elimination of the Required Minimum Distribution for 2009. Mr. Kazaras noted that retroactive adoption of resolutions and amendments was standard, but noted that the Plan has been acting in accord with the amendment since required by law. Upon motion made, and seconded the Resolution was approved unanimously.

The Chair recognized Marsha Cohen and Joseph Sullivan from the Delivery of Legal Services Committee to present a Resolution regarding SSI payments. Joseph Sullivan first presented a Resolution Opposing Cuts to State Supplemental Payments (SSP) for Vulnerable Pennsylvanians. SSI is for the poorest population in Pennsylvania. There are 345,000 Pennsylvanians, including 67,000 children currently relying upon SSI. The SSI grant is not enough to enable recipients to live on. There has not been a cost of living adjustment since 1976. The impact of proposed further cuts would be very harsh on those living below the guidelines. Persons may not get to the doctor's office and not get treatment they need. Mr. Sullivan reported that according to his research the Association has expressed its views on financial cutbacks which would impact the poor, historically. Marsha Cohen added that the effect of this is that a drop of \$5 means a missed meal, missed medicine. Some cuts hurt more than others, but these cuts hurt the disabled and this particular cut is unduly harsh and affects the most vulnerable. Upon motion made and seconded, the Resolution was approved unanimously.

Brian Sims was recognized to present a Resolution from the LGBT Rights Committee concerning HB 745, the PA Hate Crimes Bill, which provides an extra penalty if the crime is committed with particular animosity. He gave the history of the Bill. Representative Shapiro has introduced a bill to include adding classes of people to this law. He reported that the Women's Rights Committee, Public Interest Section and the Legal Rights of Persons With Disabilities Committee were all are in favor of the Resolution. Upon motion made and seconded, the Resolution was approved unanimously.

Dan Blickman was recognized from the Tax Section to discuss the idea of filing an Amicus Brief in the *Ace Insurance* case, which involved an issue of deferred compensation and how it is taxed in Philadelphia. He reported that employees of Ace were given the option before the start of the next calendar year to have some of their income paid in the next calendar year. According to Mr. Blickman, federal law is constructive receipt based and a worker would not be taxed until he/she receives the income. He further reported that the City's position on the principle of constructive receipt does not follow the federal rules and they have their own rules. Mr. Blickman discussed that the Tax Section does not like to get involved in policy issues.

However, from a tax standpoint, and recognizing the conflicting pronouncements as to what constructive receipt is, the Section believes that everything is taxed based on the federal law interpretation of receipt.

He stated that the *Ace* case is about withholding tax put on the employer, which has been assessed \$500,000 with interest and penalties close to \$1.5 million. To the Tax Section, this is an “unannounced position.” If the City wants to do this, there should be a regulation or some new authority this position is being taken to give proper notice. Under current law, the Tax Section does not believe this position is supportable. In the City’s brief, they say they did follow federal law in the past but decided not to follow the federal position at some point in time. The Tax Section thinks this is important enough of an issue to the Association because not only is this unfair to *Ace* and could affect not only companies such as *Ace* but could affect others and that overall this simply is not fair. The Tax Section is asking the Association for approval for the Association to file an amicus. A motion was made and seconded followed by much discussion.

The Chair recognized Brandi Brice, a member of the Board. Ms. Brice stated she is a tax attorney with the City with the unit handling this appeal. She stated that all resolutions should show both views when they are proposed. Next she stated there must be a compelling issue to the legal community or for advancement of the position for the Association, which this request does not meet. Ms. Brice clarified that when it comes time to vote on the decision whether the Association should authorize the filing of an Amicus Brief, that she will recuse herself from voting. While in the past some resolutions supporting amicus briefs have not reflected opposing views, she wants us to make sure we consider this as well.

Dawn Schmidt was recognized to state the position of the City given her position as a Deputy City Solicitor. She explained that the City taxes all employees when the income is received, including wage taxes being received on pension plans. In this case, *Ace* allowed highly paid employees (three of these individuals are attorneys) to take advantage of certain tax benefits by deferring compensation and that some of these employees are now located out of the Commonwealth. The City does not have the power of the federal government. The City cannot by law take a collection action against those who do not reside in Pennsylvania. She reported that the years include 1999 to 2002 and that there is \$1.6 million owed for interest and penalties. She reported that in her view, the Tax Review board correctly held income is taxable when the employee received the money. The decision was affirmed by Judge DiVito. What this means is that these individuals will not have to pay taxes when they are in deferred compensation plans, whereas secretaries and other employees would have to.

There followed discussion, including whether the same issue has been presented in other cities. There was discussion on how this got vetted through the Tax Section and whether all sides were heard. Mr. Blickman stated that he sent notice to the Business Law Section, Labor and Employment Group, and Tax Section. Because the Tax Section Executive Committee has authority to speak on behalf of the Tax Section, an entire vote of the Section was not needed. It was further discussed that no briefing schedule has been set since the court has not issued an opinion yet.

Chancellor Cooper suggested that since the court has not yet issued its opinion, perhaps the request could be tabled until a later meeting. At that point Pedro Ramos, former City

Solicitor, and Secretary Kathleen Wilkinson recused for business reasons from participation or voting.

There was further discussion such as what we have to gain by getting involved in this as a Board, whether this discussion was premature since there is no opinion yet and it is difficult at this stage to determine what is in the best interest of the Association.

Chancellor Cooper made a motion to table the matter. Upon motion made and seconded, with three abstentions, the motion to table was approved.

The Chair recognized Andre Dennis who suggested the ABA report be presented at the next meeting in view of the lateness of the hour. The meeting was adjourned at 5:59pm.

Respectfully submitted,

Kathleen D. Wilkinson
Secretary

**Board of Governors
Attendance
January 28, 2010**

Present:

Scott Cooper
Kathleen Wilkinson
Larry Beaser

Rudolph Garcia
Wesley Payne

Richard Seidel
John Savoth

Michael Berkowitz
Sean Sullivan
Kimberly Ruch-Alegant
Albertine DuFrayne
Lee Applebaum
Angus Love
Hon. A. Michael Snyder
Michael Schaffer

Maria Feeley
Brandi Brice
Sayde Ladov
Carolyn Chopko
Daniel Blickman
Scott Reid
Ken Shear

Danielle Banks
Pedro Ramos
Scott Sigman
Richard Harris
Judith Stein
Tom Wilkinson
Lou Rulli

Absent:

Sophia Lee
Joseph Prim
Regina Foley
Jacqueline Segal
Karen Detamore
Jeffrey Gross
Mehrin Masud-Elias
Jeffrey Campolongo
Stacy Tees

H. Marc Tepper
Gaetan Alfano
Mary Platt
Peter Berson
Shanese Johnson
Alfred Fuscaldo
A. Michael Pratt