

NABE NEWS – January 2011

President's Column

Dear Colleagues,

Happy New Year, and welcome to winter! I am writing this as our third major snow storm in as many weeks descends on Connecticut with nearly two feet of snow, so I am very much looking forward to our upcoming gathering in Atlanta in February.

NABE, as all of our organizations, has strengths and challenges. The strength is our membership remains strong and vibrant. Our Sections, Committees and Forums are up and running, have already put on or are planning terrific programs. This activity relies on our volunteer leaders, and one can never say Thank You enough to these busy people. The Membership Committee, chaired by Allen Kimbrough, is working with new members, renewing members, leading First Timer events at our meetings, and developing strategies to reach out to new members, especially national and specialty bar staffs.

An exciting development is the progress being made to launch the new NABE website. Target date to launch our new site (using Affiniscape 360 as our platform) is April 2011. John Sirman, Website Committee Chair, along with David Blaner, Duane Stanley and several others, have been working hard for over a year to bring this need to a reality. The new website will be the topic of a separate upcoming email, but it will feature online membership updates, registration for NABE-specific conferences (excluding Annual and Mid-Year Meetings), and expanded resources because we will have a Members Only section.

NABE has an unusual challenge this year. In a time of fiscal austerity and limited staff resources at the ABA and the Division for Bar Services, NABE has experienced growth and has expanding administrative support needs. This has presented unprecedented challenges both fiscally and with administrative support. Due to a nearly 90% increase in the 2011-12 administrative fees NABE pays to ABA-DBS annually, the NABE Board of Directors finds itself in the unenviable position of probably having to seek Requests for Proposals from outside association management services in order to get a clear fiscal picture of administrative support costs. The Board is working closely and amicably with ABA-DBS on this issue, as this long relationship is valued and respected.

In addition, NABE will implement a modest dues increase for the first time in 11 years at the beginning of the next fiscal year (starts June 1st). The increase will be clearly defined shortly, but it's something the Board wanted to announce sooner rather than later so it comes as no surprise. In addition to the dues increase, the Board continues to tighten the annual operating budget, implementing appropriate cost-cutting steps and reviewing investment strategies in order to keep the organization's fiscal health on a steady and positive course.

NABE is a wonderful, strong, close, helpful, and supportive organization. You get so much more out of it than you put in, but you have to participate. Just a little. In a section, on a forum informational conference call, on a committee. Attend a meeting – section, Small Bar Conference, Chief Staff Executives Retreat, or the traditional annual or mid-year. Add a comment to a Listserv. E-mail a colleague with a question. You will always get a response, along with a pat on the back.

Thank you for your ongoing support of this vibrant organization.

Best regards,
Carolyn Breen Witt
President

2011 Midyear Meeting in Atlanta – In just a short time, NABE will meet in Atlanta for the 2011 NABE Midyear Meeting, February 8-10. Program Committee Chair Nancy Roberson and the Program Committee are to be congratulated on all the work that they have done to bring you the quality programming planned for Atlanta. To see the full program, as well as the NCBP and NCBF programs at <http://www.abanet.org/nabe/events/midyears/2011/program.pdf>. And while you are at it, say thanks to the Sponsorship Committee, chaired by David Bohm, for the committee's efforts to support programming at this midyear and NABE efforts in general. Not registered yet? Late registration is available at <http://www.abanet.org/midyear2011>. Please note that late registrants will not appear on printed registration lists, will have to book their own hotel rooms and may be unable to obtain the group rate.

ABA Staff Members Have New E-mail Addresses - All ABA staff members' email addresses have changed effective January 18. Addresses generally have been assigned in the following format: Firstname.Lastname@AmericanBar.org. For a full list of ABA Division for Bar Services staff email addresses (along with their principal assignments), visit <http://abanet.org/barserv/roster.html>.

NABE Board Elections - Petitions are now being accepted for positions on the NABE Board of Directors for the 2011-2012 organizational year. The offices of vice president, treasurer, secretary, state bar director, local bar director, and at-large director are open. The individual elected vice president will subsequently serve as president-elect and president. According to the NABE bylaws, the office of vice president must be filled by an individual from a local bar for 2011-2012 (a rotation of vice presidents from local bars, state bars, and at-large ensures diversity of bar type in NABE leadership). The deadline for receipt of petitions for open offices is March 15. Elections will be held the last two weeks of April. To read more about the election process and to print a petition form, visit <http://www.abanet.org/nabe/about/2011boardpetition.pdf>.

2011 CSE Retreat - The Chief Staff Executives (CSE) Retreat is scheduled for March 8-9, 2011, in Chicago, immediately preceding the ABA Bar Leadership Institute. Early registration closes January 28, so register by today to receive the discounted registration price of \$250. After January 28, registration increases to \$300. The final registration deadline is February 23. To see the program preview and to download and print a registration form, visit <http://www.abanet.org/nabe/events/csere retreat/2011/cseregform.pdf>. For housing (and to register for the BLI if applicable), visit <http://www.abanet.org/barserv/bli.html>. The deadline for housing is February 22.

2011 Small Bar Conference – The Small Bar Conference, geared for bar executives from organizations with limited staffing, budgets of \$300,000 or less, and fewer than 1,500 members, is scheduled for June 24-25, 2011, in Orlando. Chaired by Nancy Gallego, the Small Bar Committee has planning well in hand. The Orange County Bar Association, led by Brant Bittner, will host the two-day event. Look for Small Bar Conference registration information at <http://www.nabenet.org> in Spring 2011. NABE members are encouraged to share Small Bar Conference information with any colleagues from small associations who may not be NABE members.

NABE Awards – Do you know a NABE colleague who epitomizes the highest traditions of professional excellence? How about an individual who has provided noteworthy service to NABE in the last year? Has your association implemented an outstanding public service project or educational program in the last year? If you answered yes to any of the above, you are strongly encouraged to submit a nomination for the Bolton Award, the Peer Excellence Award, and/or the NABE/LexisNexis Community & Educational Outreach Awards. Nominations will be accepted for these awards beginning February 15 and must be received by April 15. Nominations will be considered by the NABE Board of Directors at its May 13 meeting. Unsuccessful prior nominations submitted in the last two years for the Bolton Award also will be considered by the board. To read about each award's criteria and to print nomination forms, visit <http://www.abanet.org/nabe/awards/2011awardnomform.pdf>.

Report from NABE Delegate to the ABA House of Delegates - NABE's delegate to the ABA House of Delegates, William Weisenberg, has prepared a synopsis of the items that will be before the house at the upcoming Midyear Meeting. In addition, Bill has provided a report on the collaborative effort of the ABA and state and local bars to address court and justice system funding issues and to support civic education. Read more on the pages that follow. Thanks to Bill for his thorough report and for representing NABE in the house in stellar fashion.

ABA Delegate Report

William K. Weisenberg, NABE Delegate to the ABA House of Delegates

The ABA House of Delegates is scheduled to meet on February 14, 2011 (Valentine's Day) at the midyear meeting in Atlanta, Georgia.

A complete agenda and executive summaries, as well as the preliminary agenda, can be found at www.abanet.org/leadership/2011/midyear. This is updated periodically in January as the midyear meeting approaches. You may want to check it from time to time.

In addition to the House of Delegates information, part two of my report will focus on two major initiatives of ABA President Stephen N. Zack that will involve active participation and collaboration with state and local bar associations.

The ABA House of Delegates agenda items below are excerpted from material provided by the House of Delegates, Division for Policy Administration.

- 100A SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR**
Reaffirms support for the principles of law school self-governance and academic freedom, as well as ethical independence of law school clinical programs consistent with the ABA Model Rules of Professional Conduct; and opposes improper attempts by persons or institutions outside law schools to interfere in the ongoing activities of law school clinical programs and courses.
- 100B SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR**
Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments to Standard 509 (Basic Consumer Information); Rule 10 (Appeal of an Adverse Decision of the Council); Rule 22 (Teach Out Plan and Agreement and Closure of a Law School); and Rule 24 (Complaints Concerning Law School Non- Compliance with the Standards) of the ABA Standards and Rules of Procedure for Approval of Law Schools, dated February 2011.
- 100C SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
STANDING COMMITTEE ON CLIENT PROTECTION**
Amends the Model Rule for Admission by Motion, dated February 2011, to eliminate provisions that prohibit in-house counsel and judicial law clerks from qualifying on the basis of practice performed in the jurisdiction where admission on motion is being sought.
- 101 SECTION OF TAXATION**
Adopts the Model Transactional Tax Overpayment Act, dated February 2011 and recommends its adoption by appropriate legislative bodies.
- 102 STANDING COMMITTEE ON SPECIALIZATION**
Grants accreditation of the Pretrial Practice specialty program of the National Board of Legal Specialty Certification of Wrentham, Massachusetts until the adjournment of the House of Delegates meeting in February 2016.

- 103** **STANDING COMMITTEE ON ARMED FORCES LAW CRIMINAL JUSTICE SECTION**
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
YOUNG LAWYERS DIVISION
Urges states and territories to adopt the Model State Code of Military Justice and the Model Manual for Courts-Martial to provide an updated body of law for military forces not subject to the Uniform Code of Military Justice when military forces are serving under the exclusive jurisdiction of Chapter 47 of Title 10, United States Code.
- 104A** **CRIMINAL JUSTICE SECTION**
COMMISSION ON DOMESTIC VIOLENCE
Urges bodies of federal, state, territorial, tribal and local courts to adopt a procedure whereby a criminal trial court shall disseminate to the prosecution and defense a written checklist delineating in detail the general disclosure obligations of the prosecution under *Brady v. Maryland*, 373 U.S. 83 (1963), its progeny and applicable ethical standards.
- 104B** **CRIMINAL JUSTICE SECTION**
COMMISSION ON IMMIGRATION
Urges Congress to amend 28 U.S.C. §§ 2241(d) and 2255(f)(1) to provide equitable tolling of the one-year statute of limitations for filing for postconviction relief when the prisoner who has an attorney has timely requested post-conviction counsel to file a §2254 petition or a §2255 motion.
- 104C** **CRIMINAL JUSTICE SECTION**
Urges the U.S. Sentencing Commission to assess current federal policy regarding sentences for economic crimes and, based on that assessment, to reconsider its approach to ensure that the guidelines are proportional to offense severity by reducing emphasis on monetary loss and combinations of multiple specific offense characteristics that overstate the seriousness of the offense.
- 104D** **CRIMINAL JUSTICE SECTION**
Urges federal, state, local and territorial governments to use electronic monitoring and home detention at government expense for juvenile offenders who require detention but whose risk of flight or further offending does not require secure pre-trial detention or incarceration.
- 105** **SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW**
COMMISSION ON LAW AND AGING
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
STANDING COMMITTEE ON ARMED FORCES LAW
Urges Congress to enact legislation amending Title 10, United States Code, to permit the payment of military Survivor Benefit Plan benefits to a special needs trust for the benefit of a disabled beneficiary.
- 106** **STANDING COMMITTEE ON PARALEGALS**
Grants approval and reapproval to several paralegal education programs, withdraws the approval of two programs at the requests of the institutions, and extends the term of approval to several paralegal education programs.

- 107A** **COMMISSION ON YOUTH AT RISK**
COALITION ON RACIAL AND ETHNIC JUSTICE
COMMISSION ON WOMEN IN THE PROFESSION
SECTION OF FAMILY LAW
Urges federal, state, territorial and local officials to prevent and remediate the existence and dangers of bullying, including cyberbullying and youth-to-youth sexual and physical harassment, by developing education programs to assist teachers, parents and children in identifying victims of these acts and enhancing appropriate interventions.
- 107B** **COMMISSION ON YOUTH AT RISK**
COALITION ON RACIAL AND ETHNIC JUSTICE
COMMISSION ON WOMEN IN THE PROFESSION
SECTION OF FAMILY LAW
Urges federal, state, territorial, tribal and local governments to provide appropriate support for Youth or Teen Courts that will divert youth from the formal consequences of juvenile court petitions, proceedings, adjudications or juvenile justice sanctions.
- 108A** **TORT TRIAL AND INSURANCE PRACTICE SECTION**
Urges Congress to amend the Medicare Secondary Payer Act to provide clear, predictable, and consistent procedures for the submission, uniform determination and timely approval of third party medical set aside settlement proposals submitted to the Centers for Medicare & Medicaid Services.
- 108B** **TORT TRIAL AND INSURANCE PRACTICE SECTION**
Urges federal, state, territorial and local legislative bodies and governmental agencies to enact laws and implement policies to ensure the humane treatment and disposition of seized animals in a timely manner.
- 109A** **NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM**
STATE LAWS
Approves the Uniform Partition of Heirs Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
- 109B** **NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM**
STATE LAWS
Approves the Uniform Faithful Presidential Electors Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
- 109C** **NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM**
STATE LAWS
Approves the Uniform Electronic Recordation of Custodial Interrogations Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

- 109D NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS**
Approves the 2010 Amendments to Article 9 of the Uniform Commercial Code, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as appropriate amendments to Article 9 for those states desiring to adopt the specific substantive law suggested therein.
- 109E NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS**
Approves the Uniform Military and Overseas Voters Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
- 109F NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS**
Approves the Uniform Collaborative Law Rules/Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
- 110 STANDING COMMITTEE ON LAW LIBRARY OF CONGRESS**
Supports efforts by the Law Library of Congress and the Library of Congress to create and continue programs that (1) develop, maintain and enhance the Law Library's services, facilities, operations and staff, and the acquisition of materials and their preservation and care, and (2) utilize the best technologies and methods available to make the Law Library's vast and growing collections accessible.
- 111 SECTION OF INTELLECTUAL PROPERTY LAW**
Supports evaluation of inventions relating to DNA technology by the same uniform standards that apply in evaluating patent eligibility of inventions relating to other natural materials or subject matter, and opposes new exclusionary rules for DNA that go beyond the long-standing exceptions to patent eligibility recognized by the U.S. Supreme Court.
- 112 NATIONAL CONFERENCE OF THE ADMINISTRATIVE LAW JUDICIARY**
Reaffirms the recommended authority of Central Panel Judges in the Model Act Creating a State Central Hearing Agency, adopted by the House of Delegates in February 1997.
- 113 STANDING COMMITTEE ON MEDICAL PROFESSIONAL LIABILITY**
Supports the development and use of evidence-based, clinical or medical practice guidelines or standards regarding patient care and safety created by independent experts.
- 114 SECTION OF STATE AND LOCAL GOVERNMENT LAW**
Endorses the Recommendations for an Effective National Mitigation Effort, a white paper on national mitigation prepared by the Association of the Directors of Emergency Management of the U.S. states, territories and the District of Columbia.
- 115 STANDING COMMITTEE ON JUDICIAL INDEPENDENCE**
Urges states to establish clearly articulated procedures for disqualification determinations and review of denials of requests to disqualify judges.

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**SECTION OF PUBLIC CONTRACT LAW
SECTION OF ADMINISTRATIVE LAW AND REGULATORY
PRACTICE**

Opposes the adoption of legislation by Congress that would mandate suspension or debarment of a single entity or class to bid on or receive federal government contracts and grants without reliance on the existing regulatory framework that provides for agency discretion in suspension and debarment determinations.

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**SECTION OF ADMINISTRATIVE LAW AND REGULATORY
PRACTICE
CRIMINAL JUSTICE SECTION**

Urges Congress to amend subsection 13(p) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m (p)) to define a person subject to the requirements of that subsection as “an issuer with securities registered under section 12 of the Exchange Act.”

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SECTION OF ENVIRONMENT, ENERGY AND RESOURCES

Urges Congress to enact legislation to reform the Toxic Substances Control Act.

Part 2, Weisenberg Report: Role of State and Local Bar Associations

The ABA, through ABA President Stephen Zack and ABA President-elect Bill Robinson, acknowledges regularly the very important role state and local bar associations play in developing and effectuating ABA policy. Two major initiatives of President Zack, to be perpetuated by President-elect Robinson, are stellar examples of how this will be accomplished in a collaborative and cooperative manner.

We are all too familiar with the funding/resource crisis facing our state courts brought on by the recent recession. We highlighted this in a plenary session at the 2009 midyear NCBP meeting. State courts have instituted hiring freezes, furloughs of court staff, reduced hours and in some instances have closed courthouse doors a day or two a month. The increase in pro se litigants is having a significant impact on court operations as things tend to slow down in order for the courts to address the concerns of our citizens unable to afford counsel. President Zack's column in the November, 2010 *ABA Journal* addresses this issue. I recommend his column as a resource for you.

To address this critical problem, President Zack has created a Task Force on the Preservation of the Justice System co-chaired by noted attorneys David Boies and Ted Olson. President Zack stated in his column that "the task force will partner with state and local bar associations to highlight the debilitating impact of underfunding on the American justice system." I participated in the initial meeting of the task force in November and will strive to continue to emphasize the important role of state and local bars in this initiative. The work of the Task Force will continue long into the future through the work of the Justice is the Business Task Force, created to implement recommendation from the May, 2009 Summit on Justice is the Business of Government convened by former AB President Tommy Wells and the National Center for State Courts. This task force, created through the ABA Board of Governors in September, 2009 is coordinated through the ABA Standing Committee on Judicial Independence that I am privileged to chair. You will be hearing more about these efforts at midyear in Atlanta.

One quick example of what state and local bars are doing to address the funding/resource problem is a request from the president of the Virginia State Bar to his members to provide examples of how a shortage of judges may be affecting clients or other business at courthouses throughout the state. You may soon be asked to gather information in your state demonstrating the impact of the crisis on citizens' access to our justice system.

A second initiative of President Zack addresses an issue we have discussed for years – civic education. Again I recommend for your reading Steve's column in the December, 2010 issues of the *ABA Journal* wherein he announces the creation by the ABA Board of Governors of the "Commission on Civic Education in the Nation's Schools." For additional information on this subject, I commend for your reading an article in the Fall, 2010 *Bar Leader* magazine (page 17) entitled "Civic Education: How Your Bar Can Get Involved Today." State and local bar associations have been addressing this important subject for years and President Zack has noted this on many occasions.

What does all this point to? Very simple – a collaborative effort of the ABA and state and local bar associations to address funding/resources for the courts and our justice system, and civic education to have a more informed public about our courts and basic principles that serve as the foundation for a free and democratic society.

These are exciting times and together we can make a difference. You will continue to hear from me and I will have more to report in Atlanta.