Report: The 2017 Annual Meeting of the ABA House of Delegates

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By William D. Johnston, Esquire

The 2017 Annual Meeting of the American Bar Association’s House of Delegates took place August 14-17 in New York City. The Delaware Delegation to the House again included The Honorable William C. Carpenter, Jr. (member of the ABA Board of Governors), Ben Strauss (State Bar Delegate), Mary I. Akhimien (Young Lawyer State Bar Delegate), and yours truly (State Delegate). The House heard from present and future ABA leaders and others, and it considered numerous resolutions, which if adopted, would become official ABA policy.

Remarks by the President of the ABA and Others

Members of the House heard from outgoing ABA President Linda A. Klein and incoming ABA President Hilarie Bass. We also heard from ABA President-Elect Robert M. Carlson, ABA Treasurer G. Nicholas Casey, Jr., and ABA Executive Director Jack L. Rives. Guest speakers included The Honorable Sukru Say of Istanbul, Turkey, and John G. Levi, Chair of the Legal Services Corporation. Virtually all speakers emphasized the importance of defending the Rule of Law and of promoting equal access to justice. With regard to the latter, speakers stressed the importance nationwide of the work of the Legal Services Corporation (which of course includes the vitally important work of Legal Services Corporation of Delaware, Inc., headed by Doug Canfield).

Especially poignant were the remarks of Turkish Judge Say, who shared with us the complete absence of judicial independence in Turkey, and that he is indeed subject to immediate arrest upon his return to the country.

And, it was not lost on members of the House that, included in our number were delegates from Hawaii and Guam, whose citizens were continuing to live day-by-day subject to threats of attack.

Lastly, the House was meeting in the immediate aftermath of the demonstrations and counter-demonstrations in Charlottesville, Virginia, and the resulting loss of life there.

Resolutions Adopted as ABA Policy

After sometimes lively debate, the House adopted the following Resolutions, with the number of each resolution set forth in parentheses:

- Opposing the imposition of a mandatory minimum sentence in any criminal case, and urging Congress, state legislatures, and territorial legislatures to repeal laws requiring minimum sentences, and to refrain from creating criminal laws punishable by mandatory minimum sentences in the future (10B);
- Urging Congress to amend Section 287 of the Immigration and Nationality Act to expand and codify Department of Homeland Security guidelines regarding immigration enforcement actions to include courthouses as “sensitive locations” in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated supervisory official (10C);
- Urging the United States Department of State to preserve the Office of Global Criminal Justice and the role of the War Crimes Ambassador, including funding and staffing to continue the work of the office and the United States’ commitment to international criminal justice and the prevention and prosecution of atrocity crimes (10D);
- Supporting the common-interest doctrine, under which sharing of privileged communications with persons of common interest who have agreed to maintain confidentiality does not waive privilege (102C);
- Encouraging greater use and development of ombuds programs that comply with generally recognized standards of practice as an effective means of preventing, managing, and resolving individual and systemic conflicts and disputes (103);
- Reaffirming the American Bar Association’s opposition to restructuring the United States Court of Appeals for the Ninth Circuit and supporting ongoing efforts by the Ninth Circuit and other federal courts to utilize technological and procedural innovations to handle caseloads efficiently while maintaining coherent, consistent law in their respective jurisdictions (104);
- Urging Congress to enable the United States Department of Justice to ensure compliance with the Sixth Amendment right to effective assistance of counsel to: 1) pursue civil actions to obtain equitable relief where violations of that right occur and 2) recognize a cause of action for violations of that right (105);
- Urging Congress to enable the United States Department of Justice to handle caseloads efficiently while maintaining coherent, consistent law in their respective jurisdictions (106);
- Urging the bar admission authorities in each state and territory to deny bar admission to undocumented immigrants, who have met all the necessary prerequisite qualifications for...
admission in their respective jurisdictions, solely due to their immigration status (108);

- Urging national governments worldwide to adopt laws to phase out the manufacture, import, and sale of lead paint, supporting efforts to promote the phase-out of lead paint by no later than 2020, and supporting adoption of laws to phase out and eliminate lead paint through pro bono support, educational initiatives, and other appropriate measures (109B);

- Amending the black letter of Rule 7 (Roster of Lawyers) of the ABA Model Rules for Lawyer Disciplinary Enforcement to minimize instances of lawyer misappropriation of monies held in trust accounts and hold lawyers accountable when appropriate (110);

- Adopting the ABA Criminal Justice Standards Relating to Dual Jurisdiction Youth, dated August 2017, to address the unique situations for juveniles caught in two court systems at the same time and to provide guidance regarding best practices in these situations (112A);

- Urging governments to adopt policies and procedures that favor release on personal recognizance bonds or unsecured bonds, that permit cash bonds or secured bonds only upon a determination by the court that such financial conditions and no other conditions will assure appearance, and that pretrial detention should never occur due solely to an inability to pay (112C);

- Urging governmental entities to cease use of bail/bond in the juvenile justice system, and to utilize objective criteria that do not have a discriminatory or disparate impact and utilizes the least restrictive conditions of release (112D);

- Urging legislative bodies and governmental agencies to enact laws and adopt policies prohibiting the use of solitary confinement of children and youth under the age of 18 (112E);

- Urging governments to enact laws allowing individuals to petition to expunge all criminal justice records pertaining to charges or arrests that did not result in a conviction (112F);

- Urging governments to enact laws allowing for the expungement of convictions or other statutory or ordinance violations where a court enters a finding of guilt for actions performed in public spaces associated with homelessness (112G);

- Urging all legislatures to amend their guardianship statutes to require that supported decision-making be identified and fully considered as a less restrictive alternative before guardianship is imposed (113);

- Adopting policy supporting the view that proof of willfulness is not a requirement for an accounting of a defendant’s profits in trademark infringement, unfair competition, or cyber-piracy cases under Sections 32, 43(a), and 43(d) of the federal Lanham Act, 15 U.S.C. §§ 1114, 1125(a) and 1125(d) (114A);

- Adopting policy in support of a clarification of the patent laws and supporting an interpretation of those laws such that in a post-issuance proceeding at the U.S. Patent and Trademark Office (PTO) in which a previously issued patent is challenged by a third-party, the PTO may not, as a condition of accepting new claims, require the patent owner to first demonstrate the patentability of the new claims (114C);

- Supporting the appointment of counsel at federal government expense to represent all indigent persons in removal proceedings before the Executive Office for Immigration Review (in Immigration Courts and before the Board of Immigration Appeals), and if necessary to advise such individuals of their rights to appeal to the federal Circuit Courts of Appeals (115);

- Urging courts to implement plans that welcome opportunities for new lawyers to gain meaningful courtroom experience, and urging law firms and clients to take advantage of those plans (116);

- Urging all governments to adopt and implement laws, policies, and other effective measures to provide every child with equal access to elementary and secondary public schools funded at levels adequate to ensure a high-quality education (117A);

- Urging all governments to develop and implement an age-appropriate curricula designed to instill in all students a sense of the personal responsibility to cast informed votes and to teach them how to educate themselves regarding candidates and issues in elections (117B);

- Endorsing the Blueprint for Change: Education Success for Children in Foster Care (2007) and the Blueprint for Change: Education Success for Youth in the Juvenile Justice System (2016), which provide a framework to improve educational access, stability, and success for court-involved youth (117C);

- Urging governments to enact statutes, rules, or regulations authorizing courts to issue gun violence restraining orders, including ex parte orders (118B);

- Urging governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income (119A);

- Urging all legislative bodies to enact statutes and school districts to adopt policies that rigorously protect the ability of student journalists at the secondary and postsecondary levels to make the independent editorial judgments necessary to meaningfully cover issues of social and political importance without fear of retaliation or reprisal (119B);

- Recommending review and improvement of the processes by which military records are corrected, discharge status petitions are considered, and the character of one’s discharge is reviewed (120); and

- Urging all courts to develop plans of action to make de-biasing training
an important part of both initial judicial training and continuing judicial education (121).

For a detailed report of the House proceedings, please see www.americanbar.org.

Congratulations to Judge Scott

The Delaware Bar is again proud to count one of its own as Chair of the ABA Judicial Division’s National Conference of State Trial Judges. At the conclusion of the 2017 ABA Annual Meeting, The Honorable Calvin L. Scott, Jr., assumed that position.

Membership in the ABA

Those of you who currently are involved with the ABA know that ABA membership is complementary to DSBA membership in all the best ways — presenting value through top-quality CLE and other content; providing national leadership opportunities in your practice areas; and fostering business networking and lifelong friendships.

Delaware has long held the distinction of having more members of the ABA, on a lawyer per capita basis, than any other state or territory within the United States. Please help us stay in the lead, while you benefit from ABA membership and active participation! It is now more important than ever that the ABA remains a strong national voice to ensure justice for all.

Next Meeting of the House of Delegates

The House of Delegates will next meet in Vancouver, British Columbia, Canada February 5, 2018 during the ABA Midyear Meeting. If, in the meantime, you have any questions, concerns, or suggestions, please let me know at (302) 571-6679 or wjohnston@ycst.com. It continues to be my privilege and pleasure to serve as State Delegate to the House.

Annual Meeting (continued from page 35)

Bill Johnston is a partner with Young Conaway Stargatt & Taylor, LLP. He is a Past President of the Delaware State Bar Association and serves in the ABA House of Delegates as State Delegate from Delaware. As State Delegate, he is a member of the Nominating Committee of the American Bar Association.