

MINUTES
HAWAII STATE BAR ASSOCIATION
BOARD MEETING

1100 Alakea Street, Suite 1000
Honolulu, HI 96813

Thursday, November 21, 2013

A. **CALL TO ORDER**

President Craig Wagnild called the meeting to order at 12:03 p.m. with a quorum present. The following persons were present for all or part of the meeting:

Officers Present

Craig Wagnild
Calvin Young
Alika Piper
Ronette Kawakami

Directors Present

Nadine Ando
Russ Awakuni
Cecelia Chang
Steven Chow
David Farmer
Rhonda Griswold
Geraldine Hasegawa
Carol Kitaoka
Derek Kobayashi
Laurel Loo
Timothy McNulty
Mark Murakami
Stephanie Rezens
Suzanne Terada
Malcolm Barcarse

Board Members Absent

Vladimir Devens
Gregory Markham

Others Present

Catherine Betts
Damien Elefante
Cynthia Johiro
James Kawachika
Jesse Souki
John Yamano

HSBA Staff

Patricia Mau-Shimizu
Iris Ito
Debra White
Levi Ho'okano
Angela Sablan Tenorio

*H. **INFORMATION**

4. **HSBA Committee Chair Reports** - The following chairs/co-chairs attended the Board meeting to present their respective committee's activity reports for the year:

- John Yamano, Professional Responsibility and Risk Management
- Cathy Betts, Diversity, Equality, and Access to the Law
- Steve Chow (committee member), Judicial Administration
- Damien Elefante, Technology
- Cynthia Johiro, Publications
- Jesse Souki, Continuing Legal Education

Other committees are expected to submit their written activity reports.

- B. **APPROVAL OF MINUTES** - A motion was made, seconded, and carried without opposition to approve the minutes of the October 24, 2013 board meeting.
- C. **TREASURER'S REPORT** - Treasurer Alika Piper reported that as of October 30, 2013, dues income was slightly higher than budgeted; income from royalties were lower than budgeted due to Lexis-Nexis discontinuing its relationship with HSBA; property taxes have increased due to a rise in assessment values; and savings were realized in licensing fees due to the migration from Casemaker to Fastcase.
- D. **EXECUTIVE DIRECTOR'S REPORT** - Executive Director Patricia Mau-Shimizu reported that the five remaining issues with the migration to the new association management software discussed at last month's Board meeting were resolved to HSBA's satisfaction with the assistance of Martin Hsia. Agreements were signed on November 15, 2013 with ASI, the membership system developer; TSC, the customization consultant; and Informz, the email service provider. Ms. Mau-Shimizu also reported that the staff is preparing for the annual attorney renewal/registration process.
- E. **YLD PRESIDENT'S REPORT** - YLD President Malcolm Barcarse reported that the remaining YLD project for 2013 is ActionLine with KHON-TV. Volunteers are needed on November 26 and 27 to answer the ActionLine phones.

F. **UNFINISHED BUSINESS**

1. **Proposed Amendment to Hawaii Rules of Professional Conduct Rule 1.5** - A subcommittee of the Board (Derek Kobayashi, David Farmer, and Ronette Kawakami) studied the proposed amendment, which seeks to clarify the manner in which attorney fees are earned, and made a recommendation to the Board.

With respect to the flat fee, Mr. Kobayashi stated that the subcommittee recommends that the flat fee provision include commentary setting forth "benchmarks" or "milestones," agreed upon by the client, when met by the lawyer, would allow the lawyer to draw upon the portion of the fee that was earned.

*Item taken out of order due to the presence of guests.

Mr. Kobayashi explained that with regard to the availability fee, the subcommittee agreed that the proposed amendment goes against the principle of not receiving a fee from the client until after it is earned. James Kawachika, a past president and former Disciplinary Board member, stated that an availability fee is a true retainer fee, a fee agreed upon for the attorney to be available for whatever legal work the client may need. The Board noted the difficulty of enforcing such a rule.

Action taken: After further discussion, a motion was made, seconded, and carried without opposition to submit comments to the Hawaii Supreme Court on proposed amendment to Rule 1.5 of the Hawaii Rules of Professional Conduct expressing concern over the “flat fee” provision and that it should be clarified to specify that the lawyer may draw upon the flat fee as “milestones,” previously agreed upon by the client and lawyer, have been met. The Board also voted not to support the adoption of the “availability fee” proposal at this time as further study and review should be undertaken.

G. **NEW BUSINESS**

2. **Proposed Amendments to Board Policy Manual** - President-elect Calvin Young highlighted the following proposed amendments to the Board Policy Manual:

- clarification of the relationship between the HSBA and the HSBF 501(c)(3) in the planning, coordination, and sponsorship of the Annual Dinner Fundraiser
- creation of a Board Strategic Planning Committee for more permanence in assisting and guiding the Board on long term issues and planning
- abolishment of the Practice Management Committee and Member Benefits Committee (tasks will be subsumed by other committees or staff)
- clarification that reimbursement requests to the HSBA should be submitted no later than December 31st
- deletion of the listing of categories of mailing label/list purchasers due to lack of demand for purchasing labels/list

Non-substantive technical revisions were also made for formatting and purposes of consistency and clarity.

Action taken: A motion was made, seconded, and carried without opposition to adopt the recommendation of the Executive Committee to approve the proposed amendments to the HSBA Board Policy Manual.

3. **Board Vacancies**

a. **Access to Justice Commission**

Action taken: A motion was made, seconded, and carried without opposition to adopt the recommendation of the HSBA Nominating Committee to reappoint Derek Kobayashi and newly appoint Tracy Jones for 3-year terms beginning January 1, 2014 to the Hawaii Access to Justice Commission as HSBA representatives. Director Derek Kobayashi abstained from voting.

b. **Hawaii State Bar Foundation**

Action taken: A motion was made, seconded, and carried without opposition to adopt the recommendation of the HSBA Nominating Committee to reappoint Carol Tom and newly appoint Jodene Arakaki and Caryn Okinaga for 3-year terms beginning January 1, 2014 to the Board of the Hawaii State Bar Foundation.

c. **Hawaii State Board of CLE**

Action taken: A motion was made, seconded, and carried without opposition to adopt the recommendation of the HSBA Nominating Committee to appoint Diane Sherman for the remainder of an unexpired 3-year term beginning December 1, 2013 and ending October 1, 2015 to the Hawaii State Board of CLE.

H. **ADJOURNMENT**

The meeting adjourned at 1:51 p.m.

Submitted by:



Patricia Mau-Shimizu
HSBA Executive Director

Approved by:



Ronette M. Kawakami
HSBA Secretary