

MEMORANDUM

To: Secretary, State Bar of Michigan
From: James C. Partridge, Chair, Litigation Section
Re: 2008-09 Litigation Section Annual Report
Date: May 31, 2009

As Chair of the Litigation Section, it is my privilege to report on our Section's Activities for the 2008-09 year. Our officers and council members are proud of our accomplishments this past year, and are confident that our Section will grow stronger into the future. I have attached a current roster of the Section's officers and council members and the minutes from our Council meetings for the year. Our Section seeks to maintain diverse representation of practice background, geographic location and minority representation.

I. Financial

Our Section continues to be very strong financially. According to the most recent treasurer's report, as of April 30, 2009, the Section has total revenues of \$53,682.50 and a balance forward of \$101,714.89, with a total cash in account of approximately \$143,857 after expenses so far this fiscal year. A copy of our Section's Budget for October 1, 2008 through September 30, 2009 is attached. The Section's projected surplus/balance, after deducting the budgeted items for the year, is approximately \$98,495. Thus, based on current projections, the Section's financial strength continues to grow as it moves into the next annual term. The Section has concentrated this year on investing its budget surplus in key areas targeted to benefit the section membership and enhance the image of the section in the legal community. To this end, the Section increased its long-standing annual contribution to the Michigan Center for Civic Education for its High School Mock Trial Program. In addition, the Section is currently considering a contribution to State Bar Foundation's Access to Justice Fund.

II. Programs

A. *Law School for Legislators*

As part of the State Bar of Michigan's Law School for Legislators held in February 2009, the Litigation Section presented a session that focused on judicial interpretation of legislation and a review of its constitutionality. The session also featured a component relating to the structure and jurisdiction of the Michigan courts, and addressed emerging issues. The goal of the Litigation Section's presentation was to provide Michigan legislators and their aides with information about how the statutes and rules they draft might be reviewed in Michigan courts. Reports indicate the program was well-received and the Section looks forward to participating in future editions of Law School for Legislator in the future.

B. *Masters in Litigation Seminar Series*

The Litigation Section has for several years partnered with ICLE to host several educational seminars targeted to experienced litigators, popularly known as the Masters in Litigation series.

These programs are frequently hosted at St. John's Conference Center in Plymouth, and this year's programs have been enjoying record and, in some cases, sell-out attendance. The Masters in Litigation programs kicked off this year with on October 14, 2008 with the program entitled "Winning Before Trial – The 10 Keys to Winning Depositions. Presented by Dominic Gianna, this session provided insights and strategies in the art and science of taking and defending depositions. This successful seminar was followed by Trials – Tips, Tactics and Practical Tales, held on March 24, 2009. Nationally recognized for his trial skills and as a master of timing and delivery, speaker Michael Cash provided attendees with proven techniques to enhance their performance at trial. These programs continue to be a great success, and our Section is proud to be a co-sponsor of these programs with ICLE. These programs are also very affordable and provide a great service to our Section members.

C. Summer Conference

Since its inception approximately fifteen years ago, the Litigation Section has developed a tradition of hosting quality summer conferences at various Michigan resorts which are consistently educational, motivational and family-friendly. They also provide a unique opportunity for litigators and Judges throughout the State of Michigan to socialize in a casual setting. Our latest summer conference, scheduled for July 31 – August 1, 2009 at Garland Resort in Lewiston, Michigan will continue this fine tradition. This year's summer conference also continues the successful relationship between the Litigation Section and ICLE.

This year's conference features Larry Pozner and Roger Dodd, who are outstanding teachers. Together, they have revolutionized the practice of cross examination. In their new, nationally acclaimed seminar, attendees will learn how to harness the power of leading questions, how to establish goal-oriented questioning sequences, and many more techniques that control testimony and persuade jurors. Our council members are proud to be partnering with ICLE to host such a wonderful program.

D. Deposition Skills Workshop

The Litigation Section again sponsored ICLE's Deposition Skills Workshop, which was presented at St. John's Conference Center in Northville, Michigan on May 3-5, 2009. With an outstanding faculty of trial lawyers, this hands-on, limited enrollment skills training helped litigators plan for and take effective depositions by actually deposing lay and expert witnesses.

E. Winning Civil Cases with Expert Testimony

On June 2, 2009, Top notch faculty, including nationally-recognized experts will share their techniques for making the best use of expert witnesses.

F. Litigation Boot Camp Series

The Litigation Section's award-winning program, Litigation Boot Camp, took a short sabbatical, but it is slated to return beginning in September 2009. In 9 two-hour sessions, Litigation Boot Camp I will provide new litigators the foundation to become successful from using pleadings strategically to developing a discovery plan; from persuasive legal writing to effective motion practice advocacy; and from taking and defending depositions to dealing with "Rambo"

litigators. As in years' past, each session will be presented by a different expert, first in Grand Rapids, then in Metro Detroit.

III. Publications

The Litigation Section puts out seasonal newsletters of consistent quality to our Section members. The Section began with its Winter 2009 newsletter, which featured articles about a New Federal Rule of Evidence aimed at protecting and preserving the attorney-client privilege in this age of electronic discovery, and recent amendments to MCR 2.306, which prohibits speaking objections and conferring with deponents while a question is pending. The Winter 2009 newsletter also contained an informing article offering useful advice to companies on Rule 26 preservation obligations. Next season, the Litigation Section published its Spring 2009 newsletter, containing three helpful and informative articles on a variety of topics, such as "the Death of Boilerplate: New Wrinkles in Arbitration Demand More Thought and Better Drafting" and "Michigan's New Discovery Rules: Early Involvement Can Reeducate Risks and Costs of e-Discovery." The Spring 2009 Newsletter also contained an article analyzing the Accrual of Latent Diseases Claims under *Trentadue v. Buckler Lawn Sprinkler Co.* The newsletter also provides a useful means of notifying section members of upcoming activities.

IV. Rules and Legislative Committee

The Litigation Section has continued to review recent developments in court rules and legislation of interest to litigators. The Council has devoted a portion of its bi-monthly meetings to a robust discussion of various proposed court rule changes and legislation. This is a key area which the Section would like to see grow within its Council and Section efforts.

V. Partnering With Other Sections

This year the Litigation Section has continued to explore and develop partnerships with other sections. It is our hope that these partnerships will serve both as networking opportunities for our members while simultaneously providing enhanced learning opportunities for our members. Partnerships are being explored with the Alternative Dispute Resolution, Insurance Law and Negligence Sections for possible joint programming at future Annual Meetings.

Finally, I wish to thank my Executive Committee: Bonnie Sawusch, Chair-Elect, Thomas Cavalier Secretary, and David Centner, Treasurer. Their hard work this year was essential to the Section's accomplishments, and it has been a privilege to have served with them.

/s/ James C. Partridge
James C. Partridge
Chairperson

**State Bar of Michigan
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2008-2009**

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2007-2008**

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Last updated: July 20, 2009

MEMORANDUM

TO: Litigation Section Council

FROM: Thomas F. Cavalier

RE: Minutes of November 5, 2008 State Bar of Michigan Litigation
Section Council Meeting Conference Call

DATE: November 5, 2008

Council members present: James Partridge, Bonnie Sawusch, Tom Cavalier, David Centner, Edward Perdue, Dari Bargy, Steve Fox, James VandeWyngearde, Michelle Czapski, Valerie Simmons and Kyle Gutherie. A quorum was obtained.

Ex-Officios present: Sue Keener and John Mucha

Guests present: Michael Cooney, Brittany Schultz and Shel Stark

Council members absent: Charles Ash, Matthew Lager, Rita Lauer

- I. **Call to Order.** The meeting was called to order at 5:35 p.m.
- II. **Approval of Minutes.** A motion was made and seconded to approve the minutes of the May 15, 2008 meeting of the Litigation Section Council. The motion carried. Another motion was made and seconded to approve the minutes of the September 19, 2008 meeting of the Litigation Section Council. The motion was carried.
- III. **Financial Report.** Tom Cavalier discussed the Section's latest Financial Report, which covered the entire fiscal year. He pointed out that the Section's fund balance at the end of FY2008 was \$101,615.86.
- IV. **Chair's Report.** James Partridge reported that the State Bar of Michigan ("SBM") has asked the Section to participate in the "Law School of Legislators" program to be offered by the SBM to Michigan State Legislators next year. The SBM has also notified the Section that it should comply with its by-laws by increasing the membership of the council to 18 and enforcing the attendance requirement for council members which is that a member is deemed to have resigned if he or she has missed three consecutive council meetings. James indicated that the council would begin enforcing the attendance requirement. Further discussion of increasing council membership as well as the Law School for Legislators program was deferred until later in the meeting.

Valerie Simmons offered her resignation from the council. James Partridge expressed his appreciation for Valerie's service to the Section. Valerie offered to help in the future in another capacity. Valerie also offered to propose individuals whom the council should consider to fill the vacancy left by her resignation.

James Partridge introduced Brittany Schultz and Michael Cooney to the council. Both are attorneys at Dykema and both have applied for membership on the council.

A motion to approve their applications was made and seconded. The motion carried, and James Partridge welcomed Brittany and Michael to the council.

V. Committee Reports.

- A. Summer Conference Committee.** Tom Cavalier reported that the 2009 Summer Conference will be held on July 31 and August 1, 2009 at the Garland Resort, near Gaylord. The presenters will be Pozner and Dodd, who will be speaking on cross-examination techniques.

James Partridge raised the subject of entering into a multi-year contract with a single venue for future Summer Conferences. That approach would free up more time to work on the Conference's programs. James has received a 3-year proposal from Crystal Mountain Resort. The proposal allows the Section to opt out after one year if it is dissatisfied with its experience at Crystal Mountain. Several council members supported the concept of a multi-year contract, but no action was taken on the Crystal Mountain proposal.

Shel Stark pointed out that ICLE's litigation advisory board had commented that it is difficult to get away to an ICLE program during a summer weekend. They suggested that as an alternative the council should consider holding the event in the fall on a non-football weekend in Ann Arbor, tying it to a cultural event.

- B. Programs Committee.** There are currently no members on this committee. Shel, who works closely with the Committee, indicated that ICLE's Kay Holsinger would like to meet with it later this month or in early December to plan next year's Masters in Litigation Program. Shel reported that the October seminar with Dominic Gianna drew 150 people and received a great rating: 6.71 out of 7 points. Shel also indicated that the March 2009 seminar, featuring Michael Cash, already has 58 registrants.

Shel informed the council that ICLE is considering reviving its Litigation Bootcamp and hands-on trial advocacy programs. ICLE is surveying firms to determine the level of interest. Shel asked if the Section would sponsor these programs. Both Brittany and Steve expressed satisfaction with the programs that they had attended. Shel said that ICLE intends to decide by the end of the year whether it will offer the programs and further indicated that the Section or council members would be welcome to participate in putting on the programs. The Section will decide on sponsorship after ICLE informs the Section of its decision.

- C. Newsletter/Publications Committee.** Dari Bargy reported that the Summer Newsletter was sent out. That issue was supposed to include articles by Justice Marilyn Kelly and by Marcia Proctor. When those articles were not ready for the Summer issue, they were re-scheduled for the Winter issue. However, they are still not ready. Articles on the 2008 Summer Conference, FRE 502, and litigation hold as well as the Chair's letter will be ready to be published in the Winter issue. The council agreed that the Winter issue should go forward with these pieces rather than delay publication in order to get more time to obtain more articles.

- D. Legislative/Rules Committee.** There was no report.

E. Nominating/Membership Committee. There was no report.

VI. Old Business.

A. Nominating/Appointments. The admission of Brittany Schultz and Michael Cooney to the council was covered during the Chair's Report.

VII. New Business.

A. Law School for Legislators. James Partridge explained the program. He indicated that Abe Singer had expressed an interest in participating. Steve Fox suggested that the program should cover rules of statutory construction and offered to work on that aspect of the program. Tom Cavalier volunteered to help prepare the Section's "class" for legislators.

B. Committees. James Partridge emphasized the need to fill the committees created by the Section's By-Laws. He asked each council member to email him with his or her two choices for Committee assignments. If no choices are made by a member, then they will be assigned to a committee.

C. Membership. The council needs three new members. James Partridge asked each member to provide suggestions for new additions to the council.

VII. Next Meeting: February 4, 2009 at 5:30 pm via conference call.

The permanent call-in number: 1-800-270-1153

The permanent pass code: 120544#

VIII. The Meeting was adjourned at 6:39 p.m.

MEMORANDUM

TO: Litigation Section Council
FROM: Thomas F. Cavalier
RE: Minutes of February 4, 2009 Litigation Section Council Meeting
DATE: February 4, 2009

Council members present: Bonnie Sawusch, Tom Cavalier, David Centner, Rita Lauer and Brittany Schultz. A quorum was not present.

Ex-Officios present: Sue Keener and John Mucha

Guests present: Shel Stark

Council members absent: James Partridge, Edward Perdue, Dari Bargy, Steve Fox, James VandeWyngearde, Michelle Czapski, Kyle Guthrie and Michael Cooney

- I. **Call to Order.** The meeting was called to order by Tom Cavalier, substituting for James Partridge who was unable to attend due to a work emergency.
- II. **Approval of Minutes.** There were no comments on the November 5, 2008 council meeting minutes. The minutes were not approved due to the lack of a quorum. As a result, approval of the minutes was deferred to the next council meeting.
- III. **Financial Report.** David Centner discussed the proposed budget. Dave pointed out that, according to ICLE's estimate, the 2009 Summer Conference is likely to cost \$18,500. Shel suggested that the Section's usual donation of \$1,000 for the reception at each Masters in Litigation program should appear as a separate line item on the budget. John Mucha proposed that the Section consider making a donation to Access for Justice, and suggested including an amount for such donation in the budget. John's suggestion was well-received. He will follow up with Candace Crowley, Greg Conyers or other State Bar officials about the appropriate way to make a donation to Access to Justice.
- IV. **Committee Reports.**
 - A. **Summer Conference Committee.** Tom Cavalier reported that there was no change in the Summer Conference since the last council meeting.
 - B. **Programs Committee.** Shel indicated that the March 24, 2009 Masters program with Michael Cash is proving to be very popular - 175 people have registered so far. Turning to the 2009-2010 program, Shel reported that Todd Winegar's "Trials of the Century" is scheduled for October 13, 2009 and the Cybersleuth program is scheduled for March 9, 2010. Due to lack of a quorum, the council was not able to take action on these recommendations.

- C. Newsletter/Publications Committee.** In Dari's absence, Tom reported that the newsletter was at the printer and should be delivered next month. He also pointed out that James sent an email to Section members soliciting articles for the Spring issue of the Newsletter. The deadline for submission is February 27, 2009.

V. New Business.

- A. High School Mock Trial Tournament.** Dave reported that this program had requested a \$3,500 donation from the Section. The Section has supported this program in the past. The group consensus favored making the donation. but, lacking a quorum, no action could be taken on the requests at the meeting. The Mock Trial Tournament, however, needs an answer before the next council meeting. Rita suggested that we take a vote by email and offered to prepare one stating her motion to approve the contribution. Rita followed up the next day with the email motion, which was unanimously supported. We intend to ratify this action at the next council meeting where there is a quorum.
- B. ICLE's Large Firm Survey.** Shel reported that, according to ICLE's Large Firm Survey, there is considerable interest in bringing back the Litigation Bootcamp program. Shel asked the Section to co-sponsor the program and to pay for a gift for the graduates and the reception at the Grand Rapids and Plymouth locations. The projected costs are as follows:

Grand Rapids Reception	\$1,000
Plymouth Reception	\$1,100
Gifts	\$1,800

Due to lack of a quorum, the council was unable to take action on these requests. As a result, they are deferred to the next meeting.

VI. Old Business.

- A. Law School for Legislators.** Tom reported that he and Abe Singer were scheduled to put on a class on the courts on February 5, 2009 as part of the State Bar's Law School for Legislators program.
- B. Crystal Mountain Contract.** Tom reported that the Section was considering entering into a three-year contract with the Crystal Mountain Resort as the location for the Summer Conference. He explained that the primary reason for a long-term contract was to relieve summer conference planners of the responsibility of locating a new venue each year, thus freeing up more time to work on the program itself. Several concerns were expressed about the proposal. First, it was unclear whether a multi-year contract would produce cost savings, and it was suggested that we quantify any savings. Second, holding the conference at the same location three years in a row may result in venue "fatigue" by the third year. It was suggested that two years might be better. Finally, it was pointed out that it is difficult to predict what we may want in three years for a conference location. No action was taken on this item.

- VII. Next Meeting:** The council will next convene for a dinner meeting at P.F. Changs in Lansing on March 11, 2009 at 5:30 p.m.
- VIII.** The Meeting was adjourned at 6:30 p.m.

MEMORANDUM

TO: Litigation Section Council
FROM: Thomas F. Cavalier
RE: Minutes of March 11, 2009 Litigation Section Council Meeting
DATE: March 11, 2009

Council members present: James Partridge, Bonnie Sawusch, Tom Cavalier, David Centner, Kyle Guthrie, Steve Fox, Brittany Schultz, Mike Cooney, Michelle Czapski, and James VandeWyngearde.

Ex-Officios present: Sue Keener

Guests present: Shel Stark, Doug Koenig, Linda Rexer

Council members absent: Dari Bargy, Rita Lauer

- I. **Call to Order.** The meeting was called to order by Bonnie Sawusch, substituting for James Partridge who was available only by telephone due to work obligations.
- II. **Approval of Minutes.** The minutes of the February 4, 2009 Council Meeting were approved.
- III. **Financial Report.** Dave gave the financial report for the Section. A motion to donate \$3,500 to the Mock Trial Tournament was carried. Another motion to approve \$1,800 for the upcoming Leadership Conference was carried.
- IV. **New Business.**
 - A. **Vacant Council Seats.** There was a discussion of the need to recruit new members to the Council. Suggestions included placing an announcement of open seats in an email sent to the Section's listserv and each council member recruiting another member. Dave stressed the council should include people from across the spectrum of our profession: sole practitioners, small firms and large firms. Steve Fox volunteered to head an effort to recruit more Council members. All agreed the Ex-Officios would be especially helpful in this effort, and Sue Keener volunteered to assist.
 - B. **New Chair of Programs/Summer Conference Committee.** James announced that Mike Cooney has become the chair of the Programs/Summer Conference Committee.
 - C. **Law Student Section Presentation.** Doug Koenig made a presentation to the group. Doug is the incoming chair of the Law Student Section. His goals for the next year are (1) to increase pro bono work; and (2) to increase the availability of State Bar Section members to law schools. We encouraged Doug to keep in touch with our Section when he becomes chair of the Law Student Section.

- D. State Bar Foundation Presentation.** Linda Rexer made a presentation to the group. Linda is the Executive Director of the State Bar Foundation. She noted that the Access to Justice Fund is a 3-way partnership for providing legal services to the poor: State Bar of Michigan, Legal Aid providers and the State Bar Foundation. She indicated that the ATJ Fund's endowment has a huge need for additional contributions. The Fund supports 40 programs in Michigan. So far \$9 million has been raised. The Section made a donation in 1999, and, in 2001, the Section made three donations totaling \$8,000. The Section is currently considering making a donation in the current fiscal year.
- E. Summer Conference 2010 and Beyond.** The 3-year contract with Crystal Mountain was discussed. Mike Cooney will look into the contract further and report back to the Council. Shel offered an alternative to a three-year contract with a single venue: enter into contracts with different venues for each of three successive years. For example, this year we could contract with Grand Traverse Resort for 2010, Inn at Bay Harbor for 2011 and the Book Cadillac Hotel for 2012. This proposal will be considered by Mike and the Executive Committee.
- V. Next Meeting.** The next meeting is May 6, 2009 at 5:30 p.m. via teleconference.
- VI. Adjourn.** The Meeting was adjourned at 6:30 p.m.

MEMORANDUM

TO: Litigation Section Council
FROM: Thomas F. Cavalier, Secretary
RE: Minutes of May 6, 2009 Litigation Section Council Meeting
DATE: May 6, 2009

Council members present: James Partridge, Bonnie Sawusch, Tom Cavalier, David Centner, Steve Fox, Mike Cooney, Brittany Schultz, and James VandeWyngearde.

Ex-Officios present: Rick Paul, John Mucha

Guests present: Shel Stark

Council members absent: Dari Bargy, Rita Lauer, Michelle Czapski, Kyle Guthrie

Quorum: None was attained

- I. **Call to Order.** The meeting was called to order at 5:40 pm by James Partridge.
- II. **Approval of Minutes.** The minutes of the March 11, 2009 Litigation Section Council Meeting were presented for approval. Since a quorum was not present, no action was taken to approve the minutes.
- III. **Financial Report.** Dave presented the Section's Treasurer's Report. There were no unusual expenses, and actual expenditures were within the budget.
- IV. **Chair's Report.** James reported that the Section's Annual Report was due by the end of May. He will circulate a draft prior to the filing deadline.
- V. **Committee Reports.**
 - A. **Summer Conference.** Shel and Tom made this report. The brochure had been mailed. There will be email notices to Section members before the conference. It was pointed out that the rate for ICLE Partners was lower than the rate for Section members. Several people said that Section members should be getting a rate lower than or at least equal to the ICLE Partnership rate. Shel was asked if that adjustment could be made. Shel expressed concern that changing the rate now would cause ICLE significant difficulty. After much discussion, it was decided to leave the rates as they are for the 2009 conference, but to discuss the rate structure for the 2010 conference at the next meeting.
 - B. **Programs Committee.** Shel described the drop-off in registrants for two ICLE programs co-sponsored by the Section: Deposition Skills and Litigation Bootcamp. Shel said that the Deposition Skills workshop, which has room for only 48 participants, usually has a waiting list. This year, however, there were only 28 people signed up a few weeks before the program was to start. To fill

the remaining slots, ICLE offered scholarships to various governmental attorneys and eventually filled the class. Shel asked whether the Section would be willing to provide scholarships for the Deposition Skills workshop. Since there was no quorum, no action could be taken on the request. It will be placed on the agenda for the next meeting. Litigation Bootcamp is expected to have similar attendance problems. ICLE surveyed the level of interest and, based on the results, decided to keep the program. Two firms have suggested moving the start date from September to January, which would also shorten the program from 9 to 4 months.

Mike discussed the potential long-term contract with Crystal Mountain for the Summer Conference. The resort will guarantee rates for three years and will lengthen the time to cancel. Mike pointed out that once the Section locks in for three years, most good weekends are taken. Mike will talk to Shel about other venue options for the Summer Conference.

- C. **Newsletter/Publications.** There was no report, since Dari was not present at the meeting.

VI. **Old Business.**

- A. **Access to Justice.** John Mucha spoke about the benefits of the Section making a donation to Access to Justice. In this economic environment, legal services organizations need funding. A donation furthers the purpose of the Section and will give it favorable publicity. John spoke to Janet Welch, who is eager for the Section to make a donation and said that the Section will get recognition for it. Whether there are any legal/ethical obstacles to the Section making a donation was raised. John agreed to ask the State Bar if any such obstacles exist and to report back.
- B. **Recruiting.** Steve reported on recruiting efforts. About 30-35 people have contacted him expressing an interest in joining the council. Steve will follow up with each one with a letter asking them to explain their background and why they are interested in joining the council. Steve will then review the responses, interview the applicants over the phone, meet with Sue Keener, and, together, they will recommend a slate of candidates for the council's consideration. The candidates will be invited to attend the Summer Conference.

- VII. **New Business.** Tom proposed that the Section pay the expenses of the Chair in attending the Summer Conference, and suggested that the council approve reimbursement up to \$1,800. Many supported the recommendation, and none opposed it. Because there was no quorum, no action could be taken on this item. It was decided that this should be put to a vote by email on a motion by Tom to approve \$1,800 to cover the Chair's expenses in attending the 2009 Summer Conference. The email was to be sent by James to the council.

- VIII. **Next Meeting.** The next meeting is August 1, 2009 at 5:30 p.m. via teleconference.

- IX. **Adjourn.** The Meeting was adjourned at 7:17 p.m.

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Litigation Section FY 2008-2009 Proposed Budget

REVENUES

Member Dues	\$53,000.00
Student/Affiliate Dues	\$500.00
Other	\$0.00
TOTAL REVENUES	\$53,500.00
Cash Balance Forwarded	\$101,714.89
TOTAL INCOME	\$155,214.89

EXPENSES

Summer Program	\$23,000.00
Masters Program	\$20,000.00
Annual Meeting	\$500.00
Newsletter	\$5,000.00
Mock Trial	\$3,500.00
Litigation Boot camp	\$4,000.00
State Bar Leadership Conference	\$1,800.00
Postage	\$1,500.00
Listserv	\$420.00
Council Meetings	\$500.00
Telephone	\$500.00
Other	\$0.00
TOTAL EXPENSES	\$60,720.00
YEAR END BALANCE	\$98,494.89