

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
JUNE 30, 2007
THE OTESAGA, COOPERSTOWN, NEW YORK**

PRESENT: Abernethy; Adler; Alcott; Alden; Anello; Ayers; Badway; Barney; Boyers; Bracken; Branda; Breen; Brown Spitzmueller; Brown, P.; Brown, T.; Buholtz; Burke, J.; Buzard; Byrne; Caffry; Cahn; Casserly; Castellano; Chambers; Chase; Christian; Cloonan; Cohen, C.; Cohen, D.; Cohn; Copps; Crespo; Cullum; Davis; Denton; Dolin; Donoghue; Doyle, J.; Doyle, V.; Draper; Duffy; Edmunds; Egan; Elder-Howell; Evans; Farley; Fernandez; Ferradino; Finerty; Fishberg; Fisher; Franchina; Frank; Gerstman; Gesinsky; Getnick; Giorgio; Goldblum; Golinski; Gordon Oliver; Gorgos; Gouz; Grays; Greeley; Greenthal; Gross, J.; Gross, M.; Gutekunst; Haig; Hassett; Hayes; Higgins; James; Kamins; Kelly; Kougasian; Krane; Kretser; Lally; Lamantia; Larose; Lawrence; Leber; Leinhardt; Levin; Levy; Lieberman; Lindenauer; Madigna; Makofsky; Manias; Margolin; Markhoff; Marris; Martin; Mettler; Meyer; Mihalick; Miller, M.; Millon; Minkowitz; Miranda; Morgan; Morril; Moy; Murray; Nashak; Netter; O'Donnell; Ostertag; Pellow; Porcellio; Priore; Purcell; Reed; Reynolds; Richardson; Rifkin; Robinson; Rodriguez; Romero; Rosenthal; Rosner; Rothstein; Salkin; Sandner; Schultz; Sconiers; Sheehan; Sigmond; Silkenat; Smith, G.; Smith, T.; Smyk; Sonberg; Standard; Stanislaus-Fung; Stansel; Starkman; Steinberg, H.; Stempel; Stenson; Sterrett; Sunshine, J.; Sunshine, N.; Szochet; Tennant; Terranova; Tesser; Tharp; Tilton; Tishler; Tyler; Vigdor; Villanueva; Wachtler; Walsh, J.; Walsh, O.; Weinberger; Williams, B.; Wimpfheimer; Witmer; Yavinsky; Younger.

Ms. Leber presided over the meeting as Chair of the House.

1. Call to order and introduction of new members. After calling the meeting to order, Ms. Leber welcomed the new members of the House.
2. Approval of minutes of March 31, 2007, meeting. A motion was unanimously adopted accepting the minutes as previously distributed.
3. Report of the Treasurer. Mr. Ayers, Treasurer, reported that that the Association had received an unqualified opinion from the Association's auditors, UHY, LLP, for the 2006 audited annual report as of December 31, 2006. With respect to the current year through May 31, 2007, he reported that total revenue is \$16.8 million, an increase of \$211,000 from the previous year, and total expense is \$10.2 million, an increase of \$320,000 over this point in 2006. Membership dues revenue had increased \$150,000 over this point in 2006, while CLE revenue had decreased by \$128,000. Mr. Ayers then provided a short-term and long-term analysis of the Association's financial condition, noting that critical factors for the Association's long-term financial condition are membership dues, CLE revenue, and other income. He described the Finance Committee's ongoing budget review, and reported that President Madigan planned to appoint a long-range financial planning committee to develop a 5-7 year strategic financial plan. The report was received with thanks.

4. Presentation of Root-Stimson Award. Paul Michael Hassett, chair of the Root-Stimson subcommittee of the Committee on Annual Award, reported that the Root-Stimson Award honors members of the profession for outstanding community service. President Madigan and Mr. Hassett presented the award to Stephen J. Dannhauser of New York City. Chairman of Weil, Gotshal & Manges LLP, he was honored for his fund-raising community service to The New York Police and Fire Widows' and Children's Benefit Fund and his work as Chairman of the Board of The Boys and Girls Harbor, Inc.
5. Report and recommendations of Finance Committee. David M. Schraver, chair of the Finance Committee, outlined the proposed restructuring of non-resident member dues, as had been recommended earlier this year by the Committee on Membership, to parallel the dues structure for resident members. He noted that increases in dues largely would be at the higher levels of membership, but still would be significantly lower than resident member dues. After discussion, a motion was adopted unanimously to approve the committee's recommendation.
6. Report and recommendations of Committee on Mass Disaster Response. Robert J. Saltzman, the committee's chair, reported on the committee's recommendation that the New York Court of Appeals adopt a court rule to govern the provision of legal services in the event of a disaster in New York or another jurisdiction. He noted that the proposed rule, based upon a model rule adopted by the American Bar Association in February 2007, had been modified to account for New York practice and procedure. After discussion, a motion was adopted unanimously to approve the following resolution:

WHEREAS, a major disaster in New York or another jurisdiction may have a significant adverse impact on the ability of lawyers to provide legal services to their clients; and

WHEREAS, in February 2007 the American Bar Association adopted a Model Rule on Provision of Legal Services Following Determination of Mass Disaster; and

WHEREAS, the New York State Bar Association Committee on Mass Disaster Response has proposed a court rule and accompanying commentary, based upon the ABA Model Rule, for adoption in New York;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby endorses the court rule and commentary proposed by the Committee on Mass Disaster Response; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such steps as they may deem necessary to pursue implementation of the recommendations contained in the report.

7. Report and recommendations of Special Committee to Ensure Quality of Mandated Representation. Vincent E. Doyle, III, chair of the Special Committee, reviewed the Special Committee's recommendation that the Association endorse the report of the Chief Judge's Commission on the Future of Indigent Defense Services, which recommended the establishment of a statewide defender office including an Indigent Defense Commission, a Chief Defender and Regional Defender and Local Defender Offices, a Deputy Defender for Appeals, and a Deputy Defender for Conflict Defense. A motion was made to approve the resolution offered by the committee, following which amendments to the resolution offered by the Suffolk County Bar Association and the New York City Bar Association were accepted as friendly amendments. After discussion, the following resolution was approved on voice vote:

WHEREAS, in June 2006 the Chief Judge's Commission on the Future of Indigent Defense Service released its final report evaluating New York's system of criminal indigent representation and recommending reform of the indigent defense system, including the establishment of a statewide, state-funded system with an independent public defense commission to oversee the quality and delivery of public defense services; and

WHEREAS, the Special Committee to Ensure Quality of Mandated Representation has reviewed the report of the Chief Judge's Commission and supports the recommendations contained therein; and

WHEREAS, the Association has previously supported several recommendations contained in the report, including the creation of an independent, statewide oversight body for defense providers; the adoption and enforcement of statewide standards for the provision of quality public defense services; and programs to provide free or low cost specialized training to those representing eligible defendants;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the report of the Special Committee on Quality of Mandated Representation and endorses the recommendations of the Chief Judge's Commission on the Future of Indigent Defense Services; and it is further

RESOLVED, that appropriate entities within the Association should be designated to develop and pursue legislation to establish an Indigent Defense Commission with broad powers to adopt standards, evaluate providers, and generally organize, supervise and assume general responsibility for the operation of New York's public defense system; and it is further

RESOLVED, that the Association specifically endorses the recommendation of the Chief Judge's Commission that the newly created Indigent Defense Commission evaluate all existing programs, and the providers of services for said programs, and contract with those providers who meet quality standards and will best serve indigent

clients within each region of the state, subject to consideration of the continuation of existing county programs that deliver representation to indigent criminal defendants through contracted providers as well as County Law 18-B assignments; and it is further

RESOLVED, that the Association recommends that in evaluating existing providers and deciding which providers should be contracted with, the Indigent Defense Commission should solicit the input of local bar associations and other interested groups; and it is further

RESOLVED, that whereas the Chief Judge's Commission identified inadequate funding as one of the root causes of the failings of the current indigent defense system, the Association expresses its strong recommendation that there must be adequate funding for all components of any new system, specifically including any retained existing providers, whose funding level must be maintained or increased to adequate levels; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such other and further steps as they may deem necessary to pursue implementation of these recommendations.

8. Installation of President. Ms. Madigan was formally installed as President. The oath of office was administered by the Hon. Thomas J. McAvoy, Senior Judge of the United States District Court for the Northern District of New York, who delivered brief remarks.
9. Report of President. Ms. Madigan announced that the theme for her term as President would be "Leadership through Service." She highlighted some of the initiatives she planned for the coming year, including the following:
 - The need to focus on the future of the Association. She announced a three-year membership challenge to increase membership by 5%, and challenged sections to increase membership by 10% during that time. She noted the need for financial stewardship and reported that she would appoint a strategic financial planning committee.
 - A "living history" project, by which past Association presidents would be invited to record their history on CD-ROM.
 - Tuning into emerging trends, with the goal of making every New York lawyer have a home within the Association.
 - A focus on law-related education, to highlight the importance of the rule of law and model law as a career.
 - Access to justice, with an emphasis on meeting the civil legal needs of the poor.

Ms. Madigan referred the delegates to the written President's Report that had been distributed, a copy of which is appended to these minutes, for a detailed presentation regarding issues and matters of interest.

10. Report and recommendations of Committee on Standards of Attorney Conduct. Steven C. Krane, chair of the committee, provided an introduction to the proposed Rules scheduled for consideration at this meeting in accordance with the scheduling resolution adopted by the House in November 2005. David M. Schraver, subcommittee chair, together with Roy D. Simon, Jr., the committee's vice chair, and Carol L. Ziegler, the committee's associate reporter, then presented the proposed Rules. Following discussion, motions were approved to adopt the following Rules: 1.7, 1.8, 1.9, and 1.10.
11. Report of Special Committee on Senior Lawyers. Justin L. Vigdor, chair of the Special Committee, updated the House with respect to the committee's activities in considering programs and services for senior lawyers, noting that more than 18,500 of the Association's members are over age 55. The committee is reviewing opportunities to utilize the services of senior lawyers, as well as to assist with providing older lawyers with programs in areas including technology and retirement planning. The report was received with thanks.
12. Report of The New York Bar Foundation. John R. Horan, President of The Foundation, presented an informational report on recent developments with respect to The Foundation, including the recent awarding of \$287,550 for law-related projects. He noted that four Association sections – Commercial and Federal Litigation, Real Property, Tax, and Business Law – had made restricted donations to The Foundation for projects. Finally, he reminded the delegates that The Foundation's third annual appeal would take place in the near future. The report was received with thanks.
13. Administrative items. Ms. Leber reported on the following:
 - a. Reappointment of special committees. Special committees are appointed initially for a fixed period of time not to exceed three years and, when that time has elapsed, House approval is required to extend the term of such committees. A motion was adopted unanimously to extend the terms of the following special committees for an additional year:
 1. Special Committee on Animals and the Law
 2. Special Committee on Court Structure and Judicial Selection
 3. Special Committee on Cyberspace Law
 4. Special Committee on Funding for Civil Legal Services
 5. Gender Equity Task Force
 6. Special Committee on Procedures for Judicial Discipline
 7. Special Committee on Quality of Mandated Representation
 8. Special Committee to Review the Code of Judicial Conduct
 9. Special Committee on Student Loan Assistance for the Public Interest
 10. Task Force on Electronic Communications

11. Special Committee on Unlawful Practice of Law

- b. Discharge of special committees. The Special Committee on Fiduciary Appointments, Special Committee on Issues Affecting Same-Sex Couples, Task Force on Cameras in the Appellate Courts, Task Force on E-Filing, and Task Force on Mandatory Retirement of Judges have been discharged with the concurrence of their respective chairs. Where appropriate, the work will be continued by existing committees and sections.
 - c. Discharge of standing committees. Pursuant to the Bylaws, House approval is required for the discharge of standing committees. A motion was adopted unanimously by voice vote to approve the discharge of the Committee on Court Operations, which had been recommended for discharge with the consent of its chair.
 - d. Nominating Committee. The Fourth Judicial District had submitted its representatives for the 2006-2007 Nominating Committee: Peter V. Coffey and Cristine Cioffi, members; and James E. Cullum, alternate. A motion was adopted unanimously by voice vote electing the representatives as submitted by the district.
14. Date and place of next meeting. Ms. Leber announced that the next meeting of the House of Delegates would take place on Saturday, November 3, 2007 at the Bar Center in Albany.
15. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Michael E. Getnick
Secretary



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June 30, 2007

To: Members of the House of Delegates

Re: President's report

Given the typical House Agenda where time is at a premium, I plan to provide the President's Report in writing at each meeting. This will enable me to highlight the significant items during brief remarks to the House and convey other developments of interest in a format that you can review at your convenience and distribute as you see fit.

At the outset let me express my appreciation to Mark Alcott for a stellar year at the helm of the Association and update you about the status of some of his many and varied initiatives, as well as our legislative priorities, other programs and initiatives you can expect in the year ahead.

1. Legislative Priorities. In the fall of each year, the Association's Executive Committee selects a series of key legislative priorities that become our major focus during the upcoming legislative session. This process includes consultation with our Committee on Legislative Priorities and our Committee on Legislative Policy, after an outreach to members, Sections and Committees for their input. During the 2007 session, our priorities were: judicial salary increase for our state's judges; enactment of a no-fault divorce bill; court reorganization; merit selection of judges; equity for same-sex couples; enactment of a compact for long term care; and adequate funding for civil legal services. At the close of the session, here is where those matters stood:

a) Judicial Salary Adjustment. We pulled out all the stops on this front-burner priority and will continue to do so until we have secured enactment of the long-overdue judicial salary adjustment and de-linkage of judicial and legislative salaries. While the Governor and legislative leaders all expressed public support for a well-deserved salary adjustment for our state's judges, the insertion of other issues at the Capitol produced a stalemate. We are grateful to the thousands of members who responded to our blast e-mail and contacted their legislative representatives on this issue and, when the Legislature returns in July, we will continue our efforts to make this happen.

b) No Fault Divorce. We support the enactment of true no fault divorce legislation as the only remedy that can effectively address New York's archaic divorce laws and bring us into line with virtually every other state. While the Legislature decided to focus on a three-month conversion bill, which would allow couples to obtain a divorce based upon living apart under a separation agreement for three months, rather than the year required under the current statute, that fails to address the real issue. We will continue our efforts to press for enactment of no-fault legislation.

c) Merit Selection of Judges. In the waning days of the session, Governor Spitzer submitted his program bill to allow for the merit selection of judges through the creation of judicial nominating commissions to recommend nominees to him for appointment to the Appellate Division, the Supreme Court, the Court of Claims, the County Court, the Surrogate's Court, and the Family Court, as well as establish fourteen-year terms of office for those judges. The Association has long been a proponent of merit selection, and, given the rulings by the U.S. District Court for the Eastern District and the Second Circuit Court of Appeals in the Lopez-Torres case invalidating New York's convention process for the selection of candidates for Supreme Court Justice, ultimate action in New York will likely be on hold until the U.S Supreme Court renders its decision. We will, however, continue to work with the Governor and the Legislature on this issue until passage.

d) Equity for Same-Sex Couples. In 2005, the House of Delegates, after careful consideration of the report of the Special Committee to Review Issues Affecting Same-Sex Couples, adopted a resolution calling for legislation to afford same-sex couples the ability to obtain the comprehensive set of rights and responsibilities available to opposite sex couples, whether in the form of domestic partnerships, civil unions, or an amendment to the statutory definition of marriage. It was left to the state's policy makers to determine which option they believed to be preferable. Earlier in this session, the Governor introduced his program bill to amend the Domestic Relations Law to provide same-sex couples the same opportunity as opposite sex couples to enter into civil marriages. Since this bill provides equal treatment for same-sex couples through civil marriage, we supported enactment of the bill. While the Legislature failed to take action before the end of the session, we will continue to pursue this initiative in 2008.

While this legislation is key if we are to secure equal rights for same-sex couples, there are many other issues that require further study and collaboration on behalf of lesbians, gays, bisexual and trans-gendered individuals. I am sunsetting the Special Committee with our deepest thanks, and appointing an LGBT Committee to address the more global issues to ensure that equal treatment under law is afforded to every segment of our society.

e) Compact for Long Term Care. With our aging population, the rising cost of nursing home care and limitations of the Medicaid program, our Elder Law Section has developed an innovative plan for a "compact" between those requiring longterm care services and the state. It would provide for the infusion of private dollars into the system, enable more seniors to remain in their homes, thereby retaining their independence and dignity, in a unique private-public partnership with the state. Our Compact Working Group, together with the bar

leadership, have spent a great deal of time educating our state policy makers about this approach to long term care financing, and while it is complex, we are making headway with a number of key legislative leaders. We are also working with the ABA in an effort to have the compact endorsed as a national model.

f) Court Reorganization. For many years, the Association has favored court restructuring to create a more simplified, two-tier court system that will be more efficient, save costs and provide a more “user friendly” path for litigants seeking resolution of their disputes. Our Special Committee on Court Structure and Judicial Selection, chaired by former Association President G. Robert Witmer, Jr., studied the report of the Chief Judge’s Special Commission on the Future of the New York State Courts as well as the Governor’s program bill on court consolidation. Having found both the work of the Chief Judge’s Commission and the Governor’s bill to be consistent with our longstanding position on this issue, we support enactment of the bill, which would be the first step in the lengthy process leading to adoption of a constitutional amendment. While we did not secure passage this legislative session, we will continue to pursue this issue in the year ahead. If approved in 2008, and again in 2009, the constitutional amendment will then be brought to the voters.

g) Funding for Civil Legal Services. Each year, lawyers here in New York State contribute millions of hours of pro bono civil legal services to the poor. When combined with current funding at the state and federal level, we can only meet 20% of the need. Access to justice for the poor has been and will continue to be a priority for our Association. This year, for the first time, the Governor included \$8 million in new funds for civil legal services for the poor in New York (primarily in the IOLA Fund and OCA budget lines). We will continue to work for adoption of the Equal Justice Commission’s proposal for the creation of an Access to Justice Fund as a dedicated, ongoing source of funding for civil legal services in the state budget at a level of \$50 million and the identification of a state level agency to assume responsibility for the administration and oversight of that fund. At this point, New York is one of only 7 states that lack stable funding for legal services for the poor. We can and must do better.

2. Other Access to Justice Initiatives.

a) Indigent Defense Training. In April 2005, the House of Delegates considered a Report by the Special Committee to Ensure Quality of Mandated Representation, chaired by Vincent E. Doyle, III, and approved statewide standards to help ensure the provision of quality criminal legal services to the indigent. Thereafter, the standards were widely distributed and essentially incorporated in the recommendations contained in the final report of the Chief Judge’s Commission on the Future of Indigent Defense Services, which was released in June, 2006. (Note that our Special Committee’s recommendations with respect to the Commission’s proposals are scheduled for consideration at the June 30th House meeting).

On March 26th, the State Bar hosted a “Summit on the Future of Indigent Defense in New York” which afforded an opportunity for experts in the field and distinguished members of

the profession to consider relevant issues connected with indigent defense, including the recommendations by the Chief Judge's Commission.

As a follow-up to the Summit, on June 5th the Association conducted a day-long training session on indigent defense topics at the Bar Center in Albany. This program, which was sponsored by our Special Committee, offered 6 MCLE credits, free of charge, for legal defense practitioners. The session was recorded on DVD and CD to be made available to indigent defense providers throughout the state. Kudos to Vince Doyle, the Special Committee and the bar staff for their tireless efforts to bring quality representation to those least able to afford it.

b) Empire State Counsel. One of Mark Alcott's signature Presidential initiatives was the Empire State Counsel Program, which recognized members who render 50 or more hours of free legal services to the poor. In its first year, nearly 500 members were credentialed Empire State Counsel. I plan to continue this important program and have expanded it to include the provision of pro bono services rendered to not-for-profit, governmental or public service organizations, where the legal services are designed primarily to address the needs of the poor, as well as organizations specifically designed to increase the availability of legal services to the poor. Members can self-certify for designation as Empire State Counsel at our web site at www.nysba.org. We will look forward to honoring our newly certified Empire State Counsel at our Access to Justice luncheon at the Annual Meeting in New York City in January.

c) Cy Pres Funds. In January, our Special Committee on Funding for Civil Legal Services, chaired by Barbara Finkelstein and Bruce Lawrence, published a manual promoting the use of *cy pres* in class actions or mass tort actions where payment of damages to individual class members would be impossible, impractical or inappropriate. In such cases, judges and counsel can recommend that those funds be directed to civil legal services programs. I appointed Barbara and Bruce to chair a working group to develop an effective educational and marketing strategy in cooperation with The New York Bar Foundation to promote awareness of this possibility, as *cy pres* programs in other states have, in some instances, been able to generate millions of dollars to support civil legal services.

d) Right to Counsel/Civil Gideon. In 2006, our Association endorsed an ABA Civil Gideon Resolution urging states to provide a right to counsel to the poor in matters involving shelter, sustenance, safety, health and child custody. I have appointed Andrew Scherer as chair of a working group to make recommendations with regard to right to counsel initiatives on behalf of our Association and will keep you informed as that progresses.

e) Proposed IOLA Regulations. New regulations proposed by the IOLA Board of Trustees, if adopted, will significantly boost interest rates currently paid by New York banks handling IOLA funds, resulting in considerable new revenue (some estimates are as high as \$50 million) for civil legal services for the poor. Similar efforts have been undertaken in New Jersey, Connecticut and Massachusetts. This is yet another opportunity to help close our 80% "justice gap". The public comment period ends July 15th.

3. Cameras in the Courtroom. During the recent legislative session, bills were introduced in both the Senate and Assembly to allow cameras back in the courtrooms. We have long endorsed the televising of court proceedings as a means of ensuring transparency, educating the public and dispelling myths about the court system. Our Special Committee on Cameras in the Courtroom, which was chaired by Vince Buzard before he became President, had concluded, after extensive study in 2001, that there was no discernable pattern of harm in televised cases and no substantial evidence of cameras adversely affecting litigants' rights or the outcome of trials. Our House concurred in the findings and recommendations of the Special Committee, supporting re-entry of cameras into the trial courts. Despite our committed advocacy to convey this view to the Legislature the legislation did not pass. We will continue to pursue this issue next session, as increased public access can only serve to reinforce public confidence in our system of justice.

4. Diversity Initiatives. We continue to further our commitment to diversity within our profession and the leadership of our Association. During my year as President-Elect, I met with the leaders from all of our 23 Sections, reviewing each Section's Diversity Report Card and discussing ways in which each Section could further promote diversity within its membership and leadership ranks. We are encouraging each Section to appoint a Diversity Chair in order to attract and retain greater diversity within the Sections.

On June 4th, I had the privilege of participating in one of our regional diversity receptions, which was held at the Bar Center, honoring the newest Associate Judge of the Court of Appeals, Hon. Theodore T. Jones. This event was sponsored by our Committee on Diversity and Leadership Development, chaired by Past Presidents Lorraine Power Tharp and Kenneth G. Standard, and co-sponsored by our Committees on Minorities in the Profession and Women in the Law, as well as the Capital District Black and Hispanic Bar Association, Capital District Women's Bar Association, Albany County Bar Association, Rensselaer County Bar Association, Saratoga County Bar Association, and Schenectady County Bar Association. We will continue to host these regional receptions and other joint programs and initiatives with the local, women's, specialty and ethnic bar associations throughout the state, and look forward to hosting our Celebrating Diversity in the Bar Reception, together with all of our Sections, at the Annual Meeting in New York City on Monday, January 28, 2008.

5. ABA Senior Lawyer Pro Bono Award. I am delighted to announce that at its upcoming Annual Meeting in San Francisco, the ABA will be presenting its Senior Lawyer Pro Bono Award to Dennis R. Baldwin of Syracuse. Denny has long been an active member of the State Bar, with service on our Executive Committee, House of Delegates, and most recently as Chair of the Special Committee on Association Governance and Chair of the Committee on Membership. I am especially pleased to have appointed him to our Finance Committee. Please join me in congratulating Denny for this well-deserved and prestigious award.

6. Other ABA News. In addition to our efforts in the ABA with regard to the New York State Compact for Long Term Care, please note that the Report of the Special Committee on Age Discrimination in the Profession, which was approved by the House at the March 31st

meeting, is scheduled for consideration when the ABA's House of Delegates convenes at its Annual Meeting in August in San Francisco. Mark Alcott will be presenting that Report and Resolution on the floor of the ABA House.

Our "favorite son", Jim Silkenat, partner in Arent Fox in New York City and long-time NYSBA and ABA leader and Chair of the New York Delegation to the ABA House of Delegates, is a candidate for ABA President-Elect and we wish him much success in his campaign for office. If elected, Jim will become President of the ABA in 2009 and the first New Yorker since Bob MacCrate in 1987 – 1988.

7. Meeting with OCA. The State Bar leadership meets regularly with the Chief Administrative Judge to discuss matters of mutual concern and interest to the Court system and the Association. We note with pride that Jonathan Lippman, our state's longest-serving Chief Administrative Judge, was appointed Presiding Justice of the Appellate Division, First Department, and was succeeded as Chief Administrative Judge by Ann T. Pfau, his former First Deputy. On June 19th Bernice Leber, Pat Bucklin and I met with Judge Pfau to discuss a number of topical items. Our agenda included matters such as judicial salaries, court reorganization, funding for civil legal services, indigent defense, town and village court initiatives, cameras in the courtroom, mandatory retirement of judges, merit selection and e-filing. I am pleased to report that, as expected, the transition from Judge Lippman to Judge Pfau has been a seamless one, and, as in the past, our discussions were cordial, open and productive.

We will continue to meet with Judge Pfau quarterly.

8. Task Force on Town and Village Courts. I have appointed Albany Law School Professor Patricia Salkin chair of a Task Force on Town and Village Courts. The Chief Judge's Commission on the Future of the New York State Courts is holding hearings throughout the state on the efficiency and organization of the local justice system, sufficiency of training, court resources and similar matters. This is on the "fast track" with a requested report date of mid-August.

9. Section Leaders Conference. We held our annual Section Leaders Conference in New York City on May 10th with over 100 Section leaders in attendance, making it one of the best-attended conferences in recent years. Topics discussed included navigating NYSBA, public policy, successful meetings, what to do when the media calls, publications, an interactive "Hot Tips and Programs" and the 10% membership challenge. We have added a number of new tools and resources for Section officers, including periodic telephone conferences to explore issues of interest in greater depth as well as a new Section Leaders Resource page on our website. More than half of our membership belong to one or more of our 23 Sections and they truly are the lifeblood of our Association.

10. What Can You Expect in the Year Ahead? As I will note in my formal remarks to the House, and as outlined in my first President's Message in the *Bar Journal*, there could only be one theme for the year ahead, "Leadership Through Service", which speaks to what motivates so many of us in the profession -- the importance of service to others. In the year ahead, I

pledge to work with our leadership, membership and staff to secure our future as the voice of the New York lawyer.

We will be challenged to increase our membership between now and 2010, in an effort to keep pace with the growth of the profession in our state. We are indebted to Claire Gutekunst, Chair of the Membership Committee, and the members of that extraordinarily active Committee, especially Steve Younger, who has agreed to chair the subcommittee on the 2010 Membership Challenge.

We also seek to provide even greater accountability on the part of our Sections and Committees, and in order to accomplish that goal, I have created two new Committees:

Strategic Financial Planning Committee. This new Committee will be co-chaired by Bernice Leber and me and includes Past Presidents M. Catherine Richardson, Joshua Pruzansky, Steven Krane, as well as former Executive Committee member Cris Cioffi. Our goal is to recommend a strategic financial plan for the next 5 years, and beyond, to ensure the Association's long-term fiscal viability.

Committee on Committees. Chaired by Mimi Netter, this Committee will recommend metrics by which all of our standing, special and other committees and task forces can be evaluated with an eye toward ensuring that every Association Committee is active and in alignment with Association priorities. It will also develop recommendations for criteria in establishing new Committees.

We plan to continue to increase the use of developing technology to better serve our members, including the launch of our President's Blog. I have attached a copy of the Blog and recent posts to give you a flavor of this exciting new communication vehicle. Since its launch on June 1st, I have received many emails from members across the country and internationally about this innovative tool. Please spread the word and don't be shy about posting your comments. Easiest access is via the www.nysba.org website and click on "read the President's Blog".

As you can see from the preceding report on our legislative priorities and other initiatives, we wield significant influence with policy makers here in New York. We can do even more to enhance our credibility and visibility in that regard, reaching out beyond our borders, tuned into emerging trends, and sharing the expertise of our 72,000 members, helping to find solutions to the challenges we face today.

I pledge to work closely with our Law, Youth and Citizenship program, to reinvigorate our civic education programs and expand the vital services we offer to our colleagues and their families across the state through our Lawyer Assistance Program.

Access to justice is fundamental and we will not rest until every poor person facing the loss of a basic need, such as food, shelter, warmth, or health care does not lack for a lawyer/advocate.

Your President-Elect, Bernice Leber, joins me in support of this long-term view, ensuring continuity and ownership of our collective future. We are both committed to providing greater meaning, service and leadership opportunities for our diverse membership. We intend to build on the leadership of Mark Alcott, his initiatives for reform, as well as the foundation laid by the 108 NYSBA Presidents who have preceded the 3 of us.

As members of the House of Delegates, you are integral to this effort and we look forward to working with you in the years ahead.

I hope the foregoing has underscored the breadth and depth of the many issues with which the Association is engaged. It is gratifying to witness the dedication and selfless commitment of time and talent by our membership in the spirit of serving the profession and the public. That spirit of service is indeed alive across our state and I am indeed proud to be a New York lawyer, long-term member and now President of this Association. Please let me know what more I can do to support you, our Sections, Committees and our Association as we strive to "lead through service".

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathryn Grant Madigan". The signature is written in a cursive, flowing style.

Kathryn Grant Madigan

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 28-29, 2007**

PRESENT: Members Alcott, Ayers, Doyle, Edmunds, Fernandez, Gerstman, Getnick, Gross, Gutekunst, Hayes, James, Kamins, Kretser, Leber, Lindenauer, Madigan, Marwell, Miller, Miranda, Schraver, Tishler, Tyler, Wachtler and Younger.

Guests: Philip L. Burke, John Eric Higgins, John J. Kenney, Steven C. Krane, Hon. Sarah L. Krauss, Guy Patterson, Robert J. Saltzman, James R. Silkenat, Roy D. Simon, Jr., Lorraine Power Tharp, Justin L. Vigdor, Carol L. Ziegler.

Ms. Madigan presided over the meeting as President of the Association.

1. Ms. Madigan called the meeting to order, and Hermes Fernandez, John H. Gross, Claire P. Gutekunst, John S. Marwell, Michael Miller, David A. Tyler, and Stephen P. Younger were welcomed as new members of the Executive Committee.
2. Approval of minutes of meetings. The minutes of the March 30, 2007 meeting and the May 31, 2007 telephone conference were approved as distributed.
3. Consent calendar.
 - a) Proposed amendments to Bylaws of Real Property Law Section
 - b) Proposed revision to stated purpose of Committee on Civil Rights
 - c) Approval of resolutions for signatories for Association investment accounts
 - d) Proposed amendments to Bylaws of Commercial and Federal Litigation Section

Items 2(a), (c) and (d) of the consent calendar, consisting of the items listed above, were approved by voice vote. The amended Section Bylaws are appended to these minutes. Consideration of the revision to the stated purpose of the Committee on Civil Rights was postponed, and the committee will be asked to consider modifications to its proposal to be less restrictive and to specify racial discrimination as a core subject for the committee's activities.

4. Report of the Treasurer. Mr. Ayers, in his capacity as Treasurer, reported that that the Association had received an unqualified opinion from the Association's auditors, UHY, LLP, for the 2006 audited annual report as of December 31, 2006. With respect to the current year through May 31, 2007, he reported that total revenue is \$16.8 million, an increase of \$211,000 from the previous year, and total expense is \$10.2 million, an increase of \$320,000 over this point in 2006. Membership dues revenue had increased \$150,000 over this point in 2006, while CLE revenue had decreased by \$128,000. Mr. Ayers then provided a short-term and long-term analysis of the Association's financial condition, noting that critical factors for the Association's long-term financial condition are membership dues, CLE revenue, and other income. He described the Finance Committee's

ongoing budget review, and reported that President Madigan planned to appoint a long-range financial planning committee to develop a 5-7 year strategic financial plan. The report was received with thanks.

5. Report of Committee on Membership. Ms. Gutekunst, in her capacity as chair of the committee, reported that membership showed a slight increase for 2007, with dues revenue having exceeded the 2007 dues revenue budget. At the same time, the number of non-renewing members also increased in 2007. She reported on the committee's current initiatives, including the membership/CLE pricing pilot project to be implemented in Fall 2007 for the 2008 dues year, the development of a strategic plan for law student and new lawyer initiatives, and support for section leaders through periodic audio conferences that will take place on a regular basis. The report was received with thanks.
6. Discussion of emerging trends. Ms. Madigan reported that she planned to include this topic on the agendas of Executive Committee meetings to permit discussion of topics of interest, and she invited members to contact her if they have issues they would like to discuss at future meetings. She then led a discussion on the possibility of offering a stipend for the Association President in order to defray expenses incurred as a result of the lessened time for practice during the term of office. After discussion, it was the consensus of the Executive Committee that the Finance Committee should be requested to review this issue and make a recommendation at a future meeting.
7. Report of President. In addition to the information contained in her printed report, a copy of which is appended to these minutes, Ms. Madigan reported on the following initiatives:
 - a. Legislative priorities: She reported that the legislative session proved disappointing for the Association's legislative priorities, particularly with respect to judicial salary increases. She noted the emphasis the Association had placed on this topic, including a joint e-mail with the chair of the Corporate Counsel Section to ask section members to contact legislators and numerous messages to members and the public. She advised that she planned a special e-mail on this subject to the Judicial Section.
 - b. Civil legal services for the poor: Ms. Madigan noted that the state budget contained increased funding for civil legal services. In addition, planned changes in the regulations of the IOLA Fund of the State of New York are projected to increase funding through IOLA by \$45-55 million. She reported that she planned to continue the Empire State Counsel recognition program established by Mr. Alcott in 2006, but expand the criteria for participation to include pro bono services rendered by lawyers to organizations that serve the poor. Finally, she reported that a subcommittee of the President's Committee on Access to Justice is working on publicizing the need for "Civil Gideon" and that the Special Committee on Funding for Civil Legal Services is promoting the use of cy pres awards to fund civil legal services.

- c. Diversity initiatives: She reported that she had met with section leaders regarding diversity and encouraged each section to appoint a diversity committee. On June 4, 2007, a regional diversity reception, co-sponsored by local and minority bars, was held at the Bar Center in Albany
 - d. Committee on Committees: Ms. Madigan announced that she had appointed Miriam M. Netter to chair a committee to review the stated purposes and activities of the Association's various committees and task forces to determine whether groups should be discontinued or consolidated or whether resources dedicated to committees should be reallocated.
 - e. Technology: She reported that she had initiated a President's Blog and that the circulation of the President's Daily Briefing – an e-mail containing news items of interest – had been expanded to include the members of the Executive Committee.
 - f. Civic education: Ms. Madigan reported on the activities of the Law Youth and Citizenship program and the re-vitalization of the "Lawyer in the Classroom" outreach effort. In particular, she noted the need to have minority lawyers make presentations to middle school-age students to encourage them to consider law as a career.
 - g. Lawyer Assistance Program: She reported that she had attended the Program's annual retreat at Silver Bay. The Program is taking steps to develop regional programs in order to reach out to more attorneys.
 - h. Personnel matters: She announced that a subcommittee of the Executive Committee, consisting of Messrs. Ayers and Schraver, Ms. Leber, and herself, would review personnel issues including the development of a more meaningful evaluation process, better use of the Executive Director's resources, succession plans, and compensation.
8. Discussion of Executive Committee liaison responsibilities and duties of Vice Presidents. Ms. Madigan led a discussion of liaisons' roles in facilitating communication, providing guidance on policy and procedure, and encouraging sections and committees to undertake projects. She asked liaisons to maintain regular contact with their groups, encourage them to submit reports for consideration by the Executive Committee and/or House of Delegates and comment on reports submitted by other groups, and to be mindful of the need for diversity. She outlined the reimbursement policy for liaisons attending section and committee meetings and noted that she will request reports from liaisons from time to time.

Ms. Madigan also reviewed the responsibilities of Vice Presidents, as set forth in the By-laws, to promote relations with local bars and members in their respective districts. She noted the importance of informing local bar leaders, including those of minority and specialty bars, of Association initiatives and encouraged them to advise the Association of

local bar concerns. She noted that both Ms. Leber and she were willing to attend meetings as requested.

9. Report of Lawyer Assistance Committee. Hon. Sarah L. Krauss, the committee's chair, and Patricia Spataro, Director of the Lawyer Assistance Program, presented an informational report reviewing the committee's and the Program's activities during the prior year, particularly with respect to the committee's expanded mission to assist attorneys suffering from stress, depression, or mental illness. The committee then presented an award to Mark H. Alcott for his support during his presidency.
10. Report and recommendations of Committee on Children and the Law. Ms. Kretser, in her capacity as the committee's Executive Committee liaison, presented the committee's report containing revised "Standards for Attorneys Representing Children in New York Child Protective, Foster Care, and Termination of Parental Rights Proceedings." She noted that the revised Standards are intended to provide more uniformity, emphasize the lawyer's role as a counselor, and stress the importance of attorney-client confidentiality. Questions were raised concerning the lack of uniformity of some terminology used in the report; after discussion, and an agreement to communicate that concern to the committee, a motion was adopted unanimously to approve the amended Standards.
11. Report and recommendations of Special Committee to Ensure Quality of Mandated Representation. Mr. Doyle, in his capacity as chair of the Special Committee, reviewed the Special Committee's recommendation that the Association endorse the report of the Chief Judge's Commission on the Future of Indigent Defense Services, which recommended the establishment of a statewide defender office including an Indigent Defense Commission, a Chief Defender and Regional Defender and Local Defender Offices, a Deputy Defender for Appeals, and a Deputy Defender for Conflict Defense. Concerns were raised as to placing additional emphasis on the continuation of current providers and programs that provide quality representation as well as the need to ensure adequate funding statewide. After discussion, a motion was adopted with one dissent to endorse the following resolution for favorable action by the House:

WHEREAS, in June 2006 the Chief Judge's Commission on the Future of Indigent Defense Service released its final report evaluating New York's system of criminal indigent representation and recommending reform of the indigent defense system, including the establishment of a statewide, state-funded system with an independent public defense commission to oversee the quality and delivery of public defense services; and

WHEREAS, the Special Committee to Ensure Quality of Mandated Representation has reviewed the report of the Chief Judge's Commission and supports the recommendations contained therein; and

WHEREAS, the Association has previously supported several recommendations contained in the report, including the creation of an independent, statewide oversight body for defense providers; the adoption and enforcement of statewide standards for

the provision of quality public defense services; and programs to provide free or low cost specialized training to those representing eligible defendants;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the report of the Special Committee on Quality of Mandated Representation and endorses the recommendations of the Chief Judge's Commission on the Future of Indigent Defense Services; and it is further

RESOLVED, that appropriate entities within the Association should be designated to develop and pursue legislation to establish an Indigent Defense Commission with broad powers to adopt standards, evaluate providers, and generally organize, supervise and assume general responsibility for the operation of New York's public defense system; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such other and further steps as they may deem necessary to pursue implementation of these recommendations.*

12. Report and recommendations of Committee on Mass Disaster Response. Robert J. Saltzman, the committee's chair, reported on the committee's recommendation that the New York Court of Appeals adopt a court rule to govern the provision of legal services in the event of a disaster in New York or another jurisdiction. He noted that the proposed rule, based upon a model rule adopted by the American Bar Association in February 2007, had been modified to account for New York practice and procedure. After discussion, a motion was adopted unanimously to endorse the following resolution for favorable action by the House:

WHEREAS, a major disaster in New York or another jurisdiction may have a significant adverse impact on the ability of lawyers to provide legal services to their clients; and

WHEREAS, in February 2007 the American Bar Association adopted a Model Rule on Provision of Legal Services Following Determination of Mass Disaster; and

WHEREAS, the New York State Bar Association Committee on Mass Disaster Response has proposed a court rule and accompanying commentary, based upon the ABA Model Rule, for adoption in New York;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby endorses the court rule and commentary proposed by the Committee on Mass Disaster Response; and it is further

* A revised resolution was adopted by the House on June 30, 2007.

RESOLVED, that the officers of the Association are hereby empowered to take such steps as they may deem necessary to pursue implementation of the recommendations contained in the report.

13. Report and recommendations of Executive Subcommittee to Review Association Publications. In her capacity as subcommittee chair, Ms. Madigan reported that the terms of three members of the Journal Board of Editors had expired, and one member was not eligible for reappointment. After reviewing the credentials of candidates who responded to the notice of vacancies on the Board, the subcommittee recommended the reappointment of Philip H. Dixon and John B. Nesbitt and the appointment of Sharon L. Wick to fill the vacancies. A motion to that effect was approved unanimously on voice vote. In addition, a new Executive Subcommittee was appointed, consisting of Messrs. Fernandez, Marwell and Miller and Ms. Gerstman.
14. Report of Committee on Diversity and Leadership Development. Lorraine Power Tharp, co-chair of the committee, and committee member John Eric Higgins outlined proposed revisions to the Association's Equal Employment Opportunity Policy, Bid Policy, and Requests for Proposals in order to bring these policies in line with the Association's diversity policy. A motion was made to approve the committee's recommendations following which a motion to amend the recommendations to retain marital status and FMLA leave among the non-discrimination categories in the EEOC Policy was accepted as a friendly amendment. A further amendment to reference the employee complaint procedure in the EEOC Policy was accepted as a friendly amendment. As amended, the motion to approve the committee's recommendations was approved unanimously.
15. Report of Committee on Minorities in the Profession. John Eric Higgins, chair of the committee, reviewed the committee's recommendation that demographic/employment data be collected in order to track changes in minority attorneys' employment. It was suggested that the committee contact the Committee on Legal Education and Admission to the Bar and the Special Committee to Study the Bar Exam and Other Means of Measuring Lawyer Competency, as both committees have reviewed the topic of collecting demographic data. The report was received with thanks.
16. Report of ABA State Delegate. James R. Silkenat, ABA State Delegate, reviewed the preliminary agenda for the ABA Annual Meeting taking place in August in San Francisco. He noted that the New York delegates to the ABA House would meet in advance of the meeting to review issues coming before the House. Finally, he thanked the Association for its support of his candidacy for ABA President-Elect. The report was received with thanks.
17. Report of Special Committee to Study the Bar Exam and Other Means of Measuring Lawyer Competency. John J. Kenney, chair of the Special Committee, updated the Executive Committee on the committee's work to date. He reported that the committee's report, which is currently being drafted, will make recommendations for innovations and pilot projects, including the use of interactive computer-based exams. The committee

plans to present its report at the November 2007 meeting. The report was received with thanks.

18. Report and recommendations of Finance Committee. In his capacity as chair of the Finance Committee, Mr. Schraver outlined the proposed restructuring of non-resident member dues, as had been recommended earlier this year by the Committee on Membership. He noted that increases in dues largely would be at the higher levels of membership, but still would be significantly lower than resident member dues. After discussion, a motion was adopted unanimously to endorse the committee's recommendation for favorable action by the House.
19. Report on legislative matters. Mr. Fernandez, in his capacity as chair of the Committee on Legislative Policy, and Ronald F. Kennedy, Director of Governmental Relations, reviewed the 2007 legislative session with emphasis on the Association's legislative priorities. With respect to judicial salary increases, they noted that the issue may yet be resolved in 2007; however, while there is support for the increases, the proposal is linked to other issues. The Governor issued a program bill to implement merit selection of judges, and the Association has supported the bill; it has not been introduced to date. With respect to civil legal services, the 2007-08 state budget contained increased funding; coupled with the proposed amendments to the IOLA regulations, the end result is significantly more funding than anticipated. With respect to equal rights for same-sex couples, a bill that would provide marriage rights passed the Assembly, making faster progress than anticipated. With respect to court reorganization, a bill was introduced in the Senate. With respect to no-fault divorce, while the Assembly passed a three-month conversion bill, the Senate did not take up the bill. Finally, with respect to the compact for long-term care, the Senate passed a bill; however, the Division of Budget must analyze the impact of the bill before there is further progress. The report was received with thanks.
20. Report of Task Force on Attorney-Client Privilege. Ms. Wachtler, in her capacity as a member of the Task Force, updated the Executive Committee with respect to the Federal legislation proposed by Senator Spector, which addresses the issues raised in the Task Force's report adopted by the House in June 2006. The Task Force is in the process of preparing a report that would endorse the bill with some modifications and expects to submit its report for consideration at a future meeting. The report was received with thanks.
21. Report and recommendations of Committee on Association Insurance Programs. Mr. Hayes, in his capacity as Executive Committee liaison to the committee, and Guy Patterson, Vice President of USI Affinity, presented the committee's report recommending endorsement of a dental insurance program to be offered to Association members as part of the sponsored insurance program. After discussion, a motion was adopted unanimously to endorse the proposed dental insurance program.
22. Report of President's Committee on Access to Justice. Ms. Leber, in her capacity as co-chair of the committee, outlined the proposed amendments to the regulations governing

the IOLA Fund of the State of New York that would require banks to pay increased interest rates on IOLA accounts. She reviewed the comments prepared by the Committee on Legal Aid and reported that the President's Committee endorses the comments. After discussion, a motion was adopted unanimously to endorse the comments of the Committee on Legal Aid as the position of the Association.

23. Affirmative legislative proposals by Trusts and Estates Law Section. Two proposals were presented by Section Chair Philip L. Burke:

- a. Proposed Section 5-1.5 of Estates Powers and Trusts Law would provide for the automatic revocation of a former spouse as the beneficiary of non-testamentary assets. After discussion, it was the consensus of the Executive Committee that the Section should propose specific legislation, consult with the Tax Section, and submit the proposal to the Executive Committee in November.
- b. Proposed Section 4-1.3 of the Estates, Powers and Trusts Law would confer inheritance rights upon posthumously conceived children. It was noted that under the proposal, the father would have to consent in writing to the use of his genetic material and the child must be conceived within two years of the father's death and born within three years of the father's death. After discussion, a motion to approve this affirmative legislative proposal was adopted unanimously.

24. Report and recommendations of Committee on Standards of Attorney Conduct. Committee chair Steven C. Krane, together with vice chair Roy D. Simon, Jr., subcommittee chair David M. Schraver and associate reporter Prof. Carol L. Ziegler, reviewed the rules scheduled for consideration by the House, the comments received with respect to those rules, and the committee's actions with respect to those comments. Separate motions were then approved to endorse the committee's proposals as amended for favorable action by the House.

25. Report of Special Committee on Senior Lawyers. Justin L. Vigdor, chair of the Special Committee, updated the Executive Committee with respect to the committee's activities in considering programs and services for senior lawyers. He reported that the ABA Senior Lawyers Division has issued a report and resolution for consideration at the August 2007 ABA Annual Meeting on law practice continuity and he requested the State Bar's co-sponsorship of the resolution. After discussion, a motion was adopted unanimously to authorize the Association's co-sponsorship of the resolution. In addition, Mr. Vigdor requested Executive Committee endorsement of a new Senior Pro Bono Lawyer award to be presented in conjunction with the Association's annual pro bono service awards; a motion was adopted unanimously to authorize the award.

26. New Business.

- a. Cameras in the Courtroom: The Executive Committee reviewed correspondence received from John R. Dunne requesting reconsideration of the Association's support for proposed legislation that would permit audiovisual coverage in court-

rooms in view of the fact that the legislation does not match in all respects the recommendations contained in the report of the Association's Special Committee on Cameras in the Courtroom, adopted by the House in 2001. Ms. Madigan noted that there are many instances in which proposed legislation does not exactly match Association policy; in this instance, Mr. Alcott had contacted A. Vincent Buzard, who had chaired the Special Committee, and Mr. Buzard indicated that the differences were not of a nature that would preclude the Association from supporting the bill. Consequently, in consultation with the Committee on Legislative Policy and the officers, the decision was made to support the proposed bill. After discussion, it was a consensus of the Executive Committee that the President should communicate to Mr. Dunne that the Executive Committee had reviewed the matter and believed that support was appropriate, but that in pursuing the measure in the next legislative session, the Association would seek enactment of a bill containing conditions as close as possible to those proposed by the Special Committee in 2001 and endorsed by the House.

27. Date and place of next meeting. Ms. Madigan announced that the next meeting would be held on Friday, November 2, 2007 at the Bar Center in Albany.
28. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



Michael E. Getnick
Secretary

**NEW YORK STATE BAR ASSOCIATION
BYLAWS OF THE REAL PROPERTY SECTION
(AS AMENDED JUNE 28, 2007)**

**ARTICLE I
Name and Purpose**

Section 1. This Section shall be known as the Real Property Law Section (the "Section") of the New York State Bar Association (the "Association").

Section 2. The purpose of this Section shall be to bring together for furtherance of their mutual interest such members of the Association as are interested in the law relating to interests in real property, title thereto and transactions therein, and of the possibilities of increased uniformity in such law, and of improvements and reforms in such law and in title and recording practices, through legislation, title standards or otherwise; to examine pending legislation and promote or oppose the same in the name of the Section (or one of its committees) and whenever, in its judgment, action thereon is required to initiate legislation; and to promote the interests and welfare of the public and members of the Association in real property law and to furnish a constant and active service organization for the maintenance and protection of jurisprudence, and the principles in connection with real property, as well as the professional development of the bar in matters relating to interests in real property.

**ARTICLE II
Membership**

Section 1. Any member of the Association shall be eligible for membership in the Section, and shall be enrolled as a member of the Section upon application to the Section Secretary and payment of such annual dues as shall be determined by the Executive Committee of the Section.

**ARTICLE III
Officers and Executive Committee**

Section 1. Officers. The officers of the Section shall be the Chair, First Vice-Chair, Second Vice-Chair and Secretary. Only the Secretary shall be elected at the Section's Annual Meeting. The First Vice-Chair, upon completion of his or her term, shall automatically become Chair of the Section. The Second Vice-Chair, upon completion of his or her term, shall automatically become First Vice-Chair. The Secretary, upon completion of his or her term, shall automatically become Second Vice-Chair.

Section 2. Chairs of Standing Committees. The Chairs of the Standing Committees shall be appointed by the Chair.

Section 3. District Representatives. One District Representative shall be elected from each Judicial District in the State. In the event of a vacancy, the Chair may appoint a District

Representative to serve until the beginning of the next yearly term under Section 6 of this Article.

Section 4. Delegates to the House of Delegates. The Section's Delegates to the House of Delegates shall be appointed and any vacancies in such offices filled in accordance with rules established by the Executive Committee from time to time.

Section 5. Members of the Executive Committee. The Chair, the First Vice-Chair, the Second Vice-Chair, the Secretary, Chairs of Standing Committees, the past Chairs of the Section, the Section's delegates to the House of Delegates, Members-at-Large, District Representatives, and Administrative Officers and Chairs of Administrative Committees designated as such by the Chair shall comprise the Executive Committee.

Section 6. Ad Hoc Committees and Task Forces. The chairs and members of ad hoc committees and task forces shall be appointed by, and shall serve at the pleasure of, the Chair. The chairs of such ad hoc committees and task forces shall not be considered members of the Executive Committee solely by reason of such positions.

Section 7. Terms of Office. All members of the Executive Committee will hold office for a term beginning June 1 and ending the following May 31. Chairs of Standing Committees, District Representatives, Members-at-Large and delegate(s) to the House of Delegates shall not serve as such for more than five consecutive one-year terms. In circumstances where it is to the benefit of the Section, Chairs of Standing Committees may be permitted to serve more than five consecutive one-year terms, but not, in any case, more than seven consecutive one-year terms.

Section 8. Members-at-Large. Up to six Members-at-Large shall be appointed by the Chair. In the event of a vacancy, the Chair may appoint a Member-at-Large to serve until the beginning of the next yearly term under Section 6 of this Article.

Section 9. Administrative Officers and Committees. The Chair may appoint up to a total of six Administrative Officers and Administrative Committee Chairs as the Chair sees fit (such as Budget Officer, Technology Officer and Membership Officer), who shall serve at the pleasure of the Chair. Such officers and chairs of Administrative Committee may be designated as members of the Executive Committee.

ARTICLE IV Nomination of Officers

Section 1. The Nominating Committee shall consist of the following five members: the Nominating Committee Chair, who shall be the immediate past chair of the Section, the two past chairs prior to the immediate past chair, and two additional members appointed by the current Section Chair prior to the Annual Meeting of the Section. The committee shall make and report nominations to the Section for the office of Secretary and the District Representatives. The report of the Nominating Committee shall be circulated to the members of the Section not less than 20 days prior to the date of the Annual Meeting of the Section. Additional nominations may

be made upon a petition made by 50 members of the Section and such nominations, if filed with the Secretary at least 10 days before the date of the Annual Meeting of the Section, shall be voted upon.

ARTICLE V

Duties of the Officers and of the Executive Committee

Section 1. Chair: The Chair shall preside at all meetings of the Section and of the Executive Committee, and shall perform such duties and acts as usually pertain to the office of Chair.

Section 2. Vice-Chairs: The First Vice-Chair and the Second Vice-Chair shall assist the Chair in the performance of his or her duties when requested to do so.

Section 3. Secretary: The Secretary shall be the custodian of all books, papers, documents and other property of the Section, except money. The Secretary shall keep a true record of the proceedings at all meetings of the Section and of the Executive Committee, and shall mail or cause to be mailed notices of all meetings of the Executive Committee. Each Chair of a Standing Committee shall mail or cause to be mailed notices of all meetings of such Standing Committee.

Section 4. Executive Committee: The Executive Committee shall have general supervision and control of the affairs of the Section subject to the Bylaws of the Association and the Bylaws of the Section. It shall be responsible for the authorization of all commitments and contracts which shall entail the payment of monies, for the expenditure of all monies collected by the Section or appropriated for the use and benefit of the Section. The Executive Committee shall have the right to authorize one or more members of the Executive Committee to act on its behalf and to take action within specified parameters which shall be deemed to constitute the action of the Executive Committee itself. The Executive Committee shall adopt its own rules of procedure, including rules as to the number of its members who shall constitute a quorum, the time and place of its meetings, and notices of meetings to be given to its members; it may adopt rules declaring vacancies to exist in its Executive Committee upon failure of elected members to attend meetings.

Section 5. Officers: During the periods between meetings of the Executive Committee, the Officers, by majority vote, shall have the power to act on those matters which the Officers reasonably determine should be addressed prior to the next scheduled meeting of the Executive Committee.

Section 6. Vacancies: (a) On the death, resignation or during the disability of the Chair, the First Vice-Chair shall perform the duties of the Chair for the remainder of the First Vice-Chair's term, except in the case of the Chair's disability, and then only for so much of the term as the disability continues. On the death, resignation or during the disability of the First Vice-Chair, the Second Vice-Chair shall perform the duties of the First Vice-Chair for the remainder of the First Vice-Chair's term, except in the case of the First Vice-Chair's disability, and then only for so much of the term as the disability continues. On the death, resignation or during the disability of the Second Vice-Chair, the Secretary shall perform the duties of the Second Vice-Chair for the

remainder of the Second Vice-Chair's term, except in the case of the Second Vice-Chair's disability, and then only for so much of the term as the disability continues. During such period, the Secretary shall also continue to perform the duties of Secretary as well as those of the Second Vice-Chair.

(b) In the event that more than one vacancy has occurred, the method of filling vacancies set forth in Section 6(a), above, shall operate to have the remaining officers move to the higher offices, so that the offices of Chair and as many of the other officers as possible shall be filled. In such case, the Executive Committee, during the interim between the Annual Meetings of the Section, may fill any remaining vacancies in the various offices for the remainder of the current term only. In such event, the Nominating Committee shall nominate the Secretary and as many other officers as shall be required to complete the ranks of the officers for the following year.

(c) Except for those positions appointed by the Chair, the Executive Committee may also fill any vacancy arising in the Committee during the interim between Annual Meetings of the Section. Officers and Executive Committee members so elected shall serve the remaining portion of the current term only.

Section 7. Removal: The Executive Committee shall have the power to remove any of its members for any cause which a two-thirds majority of the Committee determines to be in the best interest of the Section or by majority vote for violation of such other rules as the Executive Committee shall establish from time to time.

ARTICLE VI Committees

Section 1. The Chair of the Section shall create such Standing Committees, ad hoc committees and task forces in the Section as shall from time to time be determined, subject, however, to the right of the Executive Committee to rescind any such committee or task force. The Chair shall have the power to appoint members of the Section to serve on committees to perform the different phases of the work to be handled by each committee. Chairs of the Standing Committees shall also have the right to appoint members of their committees, subject to the Chair's approval of such appointments. The committees shall make recommendations to the Executive Committee for action. No action of a committee is effective unless approved by the Executive Committee.

ARTICLE VII Meetings of the Real Property Law Section

Section 1. The Annual Meeting of the Section shall be held during the week in which the Annual Meeting of the Association is held. Regional meetings may be held from time to time during the interim between Annual Meetings at such times and places as may be designated by the Chair.

Section 2. The members of the Section present at any meeting shall constitute a quorum for the transaction of business.

Section 3. All binding action of the Section shall be by majority vote of the members present.

ARTICLE VIII
Meetings of the Executive Committee

Section 1. Regular meetings of the Executive Committee shall take place at the Annual Meeting of the Association and at the additional meeting of the Section which is typically held in the summer or fall.

Section 2. Additional meetings of the Executive Committee shall take place as scheduled by the Chair, with a minimum of three (3) additional meetings to take place each year.

ARTICLE IX
Meetings and Notices by Telephonic or Communications Equipment

Section 1. The Officers and any committee, including the Executive Committee, upon not less than 24 hours' notice, may conduct a meeting by means of a conference telephone, other communications equipment or other means allowing all members participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. A written record of all action taken at such meetings shall be maintained.

Section 2. Notices to be mailed may also be sent by facsimile, electronic mail or any other type of electronic communication which is in common use for business communications in the State of New York.

ARTICLE X
Miscellaneous Provisions

Section 1. Any action taken by this Section must be approved by the New York State Bar Association, if then required by such Association, before the same is given publicity or becomes effective as the action of the New York State Bar Association.

Section 2. Notices: Notices to the Officers and any committee, including the Executive Committee, may be given in such manner as the Executive Committee shall determine from time to time.

Section 3. The Executive Committee shall fix dues for membership in this Section, with the approval of the Finance Committee of the New York State Bar Association, if then required by such Association, and make payment of such amount a condition precedent for membership in the Section. After the Executive Committee fixes an amount to be charged as dues such dues shall be payable to the Treasurer of the New York State Bar Association to be expended only by approval of the Executive Committee of this Section.

Section 4. These Bylaws may be amended by a majority vote of the members of the Section present at a meeting of the Section, provided that no amendment shall be effective until approved by the Executive Committee of the New York State Bar Association.

NEW YORK STATE BAR ASSOCIATION
BYLAWS
of the
COMMERCIAL AND FEDERAL LITIGATION SECTION
October 29, 1988
(As Amended June 28, 2007)

ARTICLE I
Name and Purpose

Section 1. Name. The Section shall be known as the Commercial and Federal Litigation Section of the New York State Bar Association.

Section 2. Purpose. The purpose of the Section is to improve the quality of representation of clients, provide a forum for the improvement of law and procedure and enhance the administration of justice in the areas of commercial and federal litigation. These purposes are met by:

- (a) Developing relationships and sharing practice experiences with fellow commercial and federal litigators, state and federal judges, and regulatory and administrative bodies;
- (b) Establishing committees for the purpose of promoting research and discussion on relevant current issues affecting commercial and federal litigation;
- (c) Influencing and proposing legislation affecting commercial and federal litigation;
- (d) Developing continuing legal education programs on topics relevant to commercial and federal litigation; and
- (e) Providing networking opportunities for its members.

Section 3. Section Committees. Committees of the Section serve the Section's purpose by:

- (a) Focusing on a specific area of commercial and/or federal law or procedure or related issues or work of the Section;
- (b) Discussing, researching, and proposing legislation, sponsoring and participating in CLE Programs and reporting to fellow litigators on topics of interest relating to commercial and federal litigation;
- (c) Developing relationships with the judiciary and administrative bodies and providing networking opportunities for its members;
- (d) Elevating the quality and credibility of representation of clients in the fields of commercial and federal litigation; and

(e) Enhancing the quality of the administration of justice in the fields of commercial and federal litigation.

ARTICLE II Membership

Section 1. Membership. Any member of the New York State Bar Association ("the Association") shall be eligible for membership in the Section and shall be enrolled as a member of the Section upon application to the Association and payment of such dues as shall be determined by the Executive Committee in accordance with Article VIII, Section 2 of these Bylaws.

Section 2. Adjunct Members. Law students may be non-voting members of the Section and may serve as adjunct members of Section committees to the extent that each committee chair shall determine.

ARTICLE III Officers, Executive Committee, Members And Section Delegate to House of Delegates

Section 1. Elected Officers. The elected officers of the Section shall be a Chair, a Chair Elect, a Vice-Chair, a Treasurer and a Secretary, who, except as hereinafter provided in the Section and in Article V, Section 6(c) of these Bylaws, shall serve terms of one year commencing June 1 of each year. The elected officers of the Section shall be elected by its membership at each annual meeting of the Section, the date and time of which meeting shall be set by the Section's Executive Committee each year. Upon completion of the current Chair's term of office or a vacancy occurring in such office, subject to review and consultation of the Executive Committee, the Chair Elect automatically shall succeed to the office of Chair, and each succeeding Chair Elect automatically shall succeed to the office of Chair upon completion of the Chair's term of office or a vacancy occurring in such office. In a like manner, the Vice-Chair shall succeed to the office of Chair-Elect.

Section 2. Additional Officers. The Secretary of the Section shall also be an officer of the Section and shall be nominated by the incoming Chair and elected at the Annual Meeting. The Executive Committee may appoint such additional officers as it may determine to be necessary to the proper functioning of the Section. Such additional officers shall have such authority, shall serve for such term and shall perform such duties as the Executive Committee may from time to time determine.

Section 3. Executive Committee. There shall be an Executive Committee of the Section (the "Executive Committee"), consisting of its officers, the Section Delegate to the House of Delegates, as hereinafter defined in Article III, Section 5 of these Bylaws, and such other members as the Executive Committee shall appoint ("Appointed Members"). Each member of the Executive Committee must be a member in good standing of the Section and the Association.

All past Chairs of the Section, if they are not otherwise serving on the Executive Committee, shall be non-voting honorary members of the Executive Committee.

Section 4. Appointed Members. The number of Appointed Members shall be fixed from time to time by the Executive Committee but shall not be less than fifteen. The Appointed Members shall include at least one representative from each county or judicial district in which a branch of the Commercial Division of the Supreme Court of the State of New York is located.

Section 5. Terms of Appointed Members. All Appointed Members of the Executive Committee shall serve for a two-year term commencing June 1 after such appointment. Appointed Members may be reappointed for additional terms. To the extent feasible, efforts should be made to divide Appointed Members of the Executive Committee into two classes of relatively even size and with staggered terms.

Section 6. Section Delegate. The immediate past Chair shall serve as the Section Delegate to the Association's House of Delegates. If the immediate past Chair is unable or unwilling to serve as the Section's Delegate to the House of Delegates at any time during his or her term, the Executive Committee shall appoint such Delegate.

ARTICLE IV Nominating of Officers

Section 1. Nominating Committee. Not fewer than ninety days nor more than one hundred and twenty days prior to each annual meeting of the Section, the Chair shall appoint a Nominating Committee of five members of the Section, which committee shall make, and report to the Secretary not less than forty-five days prior to the annual meeting of the Section, its nominations for the following term for the offices of Chair-Elect, Vice-Chair and Treasurer.

Section 2. Report and Additional Nominations. The report of the Nominating Committee shall be read at the annual meeting, and in addition to the nominations contained in the report, members may proffer nominations immediately after such report is read.

ARTICLE V Duties of Officers and the Executive Committee

Section 1. Chair. The Chair shall be the chief executive officer of the Section, shall preside at all duly called meetings of the Section and the Executive Committee and shall be an *ex officio* member of all Section committees. The Chair shall implement such policy directives as may be adopted by the Executive Committee, and may submit to it, from time to time, such recommendations as the Chair may deem appropriate in promoting the purposes of the Section. In addition, the Chair shall perform such other and related duties as ordinarily are incident to the

office of Chair, including but not limited to proposing new members of the Executive Committee as provided for in Article III, Section 3.

Section 2. Chair-Elect. In the absence of or during the disability of the Chair, the Chair-Elect shall preside at duly called meetings of the Section and the Executive Committee, and shall perform the duties of the Chair. The Chair-Elect shall have responsibility for program development for the Section. The Chair-Elect shall assist the Chair in the discharge of the Chair's responsibilities and shall perform such other and related duties as may be assigned to the Chair-Elect by the Chair, and as ordinarily are incident to the office of Chair-Elect.

Section 3. Vice-Chair. The Vice-Chair shall have such responsibilities as are assigned to the Vice Chair by the Chair.

Section 4. Secretary. The Secretary shall prepare the minutes of all of the meetings of the Section and the Executive Committee, prepare, forward and receive appropriate notices and correspondence, and collect and maintain such other non-financial records, papers and data as may be necessary or appropriate from time to time. The Secretary shall serve as administrative assistant to the Chair and shall assist the Chair and the Chair-Elect in the discharge of their responsibilities. In addition, the Secretary shall perform such other and related duties as may be assigned to the Secretary by the Chair and as are ordinarily incident to the office of Secretary. Immediately upon being succeeded in office, the Secretary shall deliver all records, correspondence and other property of the Section in the Secretary's possession or control to the Secretary's successor.

Section 5. Treasurer. The Treasurer shall be the custodian of all financial records of the Section. Such records shall be available during regular business hours for inspection by any member of the Executive Committee, and by the Association's officers, Executive Committee and financial staff. The Treasurer shall prepare the Section's annual budget for approval by the Association's Executive Committee. The Treasurer shall maintain liaison with appropriate fiscal officers of the Association and shall report upon the Section's finances at each meeting of the Executive Committee, at the Section's annual meeting and at such other times as the Chair, the Executive Committee or the President of the Association shall direct. In addition, the Treasurer shall perform such other and related duties as may be assigned to the Treasurer by the Chair and as are ordinarily incident to the office of Treasurer. Immediately upon being succeeded in office, the Treasurer shall deliver all records, correspondence and other property of the Section in the Treasurer's possession or control to the Treasurer's successor.

Section 6. Executive Committee. (a) The Executive Committee shall be responsible for: (i) the general supervision and control over the affairs and activities of the Section, subject to any conditions prescribed in the Association's Bylaws and the Bylaws of the Section; the authorization of all commitments and contracts, and the expenditure of all monies collected by the Section or appropriated for its use and purposes. The Officers may adopt rules of procedure for the Executive Committee, including rules as to the number of its members who shall constitute a quorum, the time and place of its meetings, and the manner of providing notices to its members. The Chair shall advise the members of the Executive Committee of such rules as and when they are adopted.

(b) The Executive Committee may remove any member thereof by a two-thirds vote of the members of the Executive Committee in attendance at a duly constituted meeting, provided that 30 days prior written notice of the removal request is given to the affected member and to the Executive Committee.

(c) Members of the Executive Committee may attend meetings thereof by teleconferencing, video conferencing, or similar electronic means that enable persons not physically present at the meeting to hear or see and hear the members physically present at the meeting, when such means are available and utilizable. Participation by such electronic or similar means shall constitute presence in person at a meeting for the purpose of constituting a quorum.

(d) During the period between annual meetings of the Section, the Executive Committee may fill vacancies in the offices of the Section, its own membership and the position of Section Delegate to the House of Delegates. Any officer who shall fill a vacancy in an office pursuant to Article III, Section 1 of these Bylaws shall serve until the following June 1.

ARTICLE VI Committees

Section 1. Committees. The Executive Committee of the Section may create such standing committees as it deems appropriate. The Chair may create and appoint members to such other committees as the Chair may deem appropriate. The chair of each committee shall be appointed by the Chair with the approval of the Executive Committee. Section committees shall from time to time make recommendations to the Chair or the Executive Committee for such actions as they may deem appropriate, but shall never take action or transmit their views publicly as representative of the views of the Section without the approval of the Executive Committee. Each committee may establish subcommittees thereof.

Section 2. Standing Committees. The members of each standing committee shall be appointed by the Chair. Each member of a committee of the Section must maintain membership in good standing in the Association, the Section, and the Committee.

Section 3. Task Forces; Special Committees. From time to time as the Chair deems appropriate, with the advice of the Executive Committee, the Chair shall form Special Committees and Task Forces as the Chair deems necessary to further the purposes of the Section.

(a) Task Forces may be formed to address a particular issue or issues and to prepare a report of their findings. Task Forces shall automatically dissolve once they have delivered their report and fulfilled any follow-up assignments relating to the report.

(b) Special Committees may be formed for any other reason or duration as the Chair deems appropriate.

ARTICLE VII
Meetings

Section 1. Section Meetings. The Annual Meeting of the Section shall be held during the week in which the Annual Meeting of the Association is held, at a time and place designated by the Executive Committee. Other meetings may be held from time to time at such times and places as designated by the Chair.

Section 2. Quorum. At all meetings of the Section, a quorum shall be 30 members. All Section members shall have the right to vote at the annual meeting for officers of the Section to be elected thereat as provided in Article III, Section 1.

Section 3. Executive Committee Meetings. Meetings of The Executive Committee may be held upon the call of the Chair or any four members of the Executive Committee. A quorum for the transaction of business at Executive Committee meetings shall be fifteen members thereof.

Section 4. Binding Action. All binding action of the Section shall be by a majority vote of its members present. Any action of the Section must be approved by the Association before it becomes effective as, or is publicly released as, an action of the Association.

ARTICLE VIII
Miscellaneous Provisions

Section 1. Bylaws. These Bylaws may be amended by the Executive Committee with the approval of the Executive Committee of the Association.

Section 2. Dues. The Executive Committee of the Section shall fix the dues for membership in the Section, subject to approval by the Association's Finance Committees. Dues shall be payable to the Association's Treasurer, to be held by the Association's Treasurer for the use and purposes of the Section.

Section 3. Review of Committees. The Officers shall review at least annually the performance of each Committee and shall determine, in their discretion, whether any changes are necessary, including to eliminate any such committee or to remove any such committee chair and to appoint a new Committee chair or co-chair. Grounds for removal of a committee chair shall include, but not be limited to, failure to convene committee meetings, insufficient activity, or lack of participation in committee activity.



NEW YORK STATE BAR ASSOCIATION

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June 30, 2007

To: Members of the House of Delegates

Re: President's report

Given the typical House Agenda where time is at a premium, I plan to provide the President's Report in writing at each meeting. This will enable me to highlight the significant items during brief remarks to the House and convey other developments of interest in a format that you can review at your convenience and distribute as you see fit.

At the outset let me express my appreciation to Mark Alcott for a stellar year at the helm of the Association and update you about the status of some of his many and varied initiatives, as well as our legislative priorities, other programs and initiatives you can expect in the year ahead.

1. Legislative Priorities. In the fall of each year, the Association's Executive Committee selects a series of key legislative priorities that become our major focus during the upcoming legislative session. This process includes consultation with our Committee on Legislative Priorities and our Committee on Legislative Policy, after an outreach to members, Sections and Committees for their input. During the 2007 session, our priorities were: judicial salary increase for our state's judges; enactment of a no-fault divorce bill; court reorganization; merit selection of judges; equity for same-sex couples; enactment of a compact for long term care; and adequate funding for civil legal services. At the close of the session, here is where those matters stood:

a) Judicial Salary Adjustment. We pulled out all the stops on this front-burner priority and will continue to do so until we have secured enactment of the long-overdue judicial salary adjustment and de-linkage of judicial and legislative salaries. While the Governor and legislative leaders all expressed public support for a well-deserved salary adjustment for our state's judges, the insertion of other issues at the Capitol produced a stalemate. We are grateful to the thousands of members who responded to our blast e-mail and contacted their legislative representatives on this issue and, when the Legislature returns in July, we will continue our efforts to make this happen.

b) No Fault Divorce. We support the enactment of true no fault divorce legislation as the only remedy that can effectively address New York's archaic divorce laws and bring us into line with virtually every other state. While the Legislature decided to focus on a three-month conversion bill, which would allow couples to obtain a divorce based upon living apart under a separation agreement for three months, rather than the year required under the current statute, that fails to address the real issue. We will continue our efforts to press for enactment of no-fault legislation.

c) Merit Selection of Judges. In the waning days of the session, Governor Spitzer submitted his program bill to allow for the merit selection of judges through the creation of judicial nominating commissions to recommend nominees to him for appointment to the Appellate Division, the Supreme Court, the Court of Claims, the County Court, the Surrogate's Court, and the Family Court, as well as establish fourteen-year terms of office for those judges. The Association has long been a proponent of merit selection, and, given the rulings by the U.S. District Court for the Eastern District and the Second Circuit Court of Appeals in the Lopez-Torres case invalidating New York's convention process for the selection of candidates for Supreme Court Justice, ultimate action in New York will likely be on hold until the U.S Supreme Court renders its decision. We will, however, continue to work with the Governor and the Legislature on this issue until passage.

d) Equity for Same-Sex Couples. In 2005, the House of Delegates, after careful consideration of the report of the Special Committee to Review Issues Affecting Same-Sex Couples, adopted a resolution calling for legislation to afford same-sex couples the ability to obtain the comprehensive set of rights and responsibilities available to opposite sex couples, whether in the form of domestic partnerships, civil unions, or an amendment to the statutory definition of marriage. It was left to the state's policy makers to determine which option they believed to be preferable. Earlier in this session, the Governor introduced his program bill to amend the Domestic Relations Law to provide same-sex couples the same opportunity as opposite sex couples to enter into civil marriages. Since this bill provides equal treatment for same-sex couples through civil marriage, we supported enactment of the bill. While the Legislature failed to take action before the end of the session, we will continue to pursue this initiative in 2008.

While this legislation is key if we are to secure equal rights for same-sex couples, there are many other issues that require further study and collaboration on behalf of lesbians, gays, bisexual and trans-gendered individuals. I am sunseting the Special Committee with our deepest thanks, and appointing an LGBT Committee to address the more global issues to ensure that equal treatment under law is afforded to every segment of our society.

e) Compact for Long Term Care. With our aging population, the rising cost of nursing home care and limitations of the Medicaid program, our Elder Law Section has developed an innovative plan for a "compact" between those requiring longterm care services and the state. It would provide for the infusion of private dollars into the system, enable more seniors to remain in their homes, thereby retaining their independence and dignity, in a unique private-public partnership with the state. Our Compact Working Group, together with the bar

leadership, have spent a great deal of time educating our state policy makers about this approach to long term care financing, and while it is complex, we are making headway with a number of key legislative leaders. We are also working with the ABA in an effort to have the compact endorsed as a national model.

f) Court Reorganization. For many years, the Association has favored court restructuring to create a more simplified, two-tier court system that will be more efficient, save costs and provide a more "user friendly" path for litigants seeking resolution of their disputes. Our Special Committee on Court Structure and Judicial Selection, chaired by former Association President G. Robert Witmer, Jr., studied the report of the Chief Judge's Special Commission on the Future of the New York State Courts as well as the Governor's program bill on court consolidation. Having found both the work of the Chief Judge's Commission and the Governor's bill to be consistent with our longstanding position on this issue, we support enactment of the bill, which would be the first step in the lengthy process leading to adoption of a constitutional amendment. While we did not secure passage this legislative session, we will continue to pursue this issue in the year ahead. If approved in 2008, and again in 2009, the constitutional amendment will then be brought to the voters.

g) Funding for Civil Legal Services. Each year, lawyers here in New York State contribute millions of hours of pro bono civil legal services to the poor. When combined with current funding at the state and federal level, we can only meet 20% of the need. Access to justice for the poor has been and will continue to be a priority for our Association. This year, for the first time, the Governor included \$8 million in new funds for civil legal services for the poor in New York (primarily in the IOLA Fund and OCA budget lines). We will continue to work for adoption of the Equal Justice Commission's proposal for the creation of an Access to Justice Fund as a dedicated, ongoing source of funding for civil legal services in the state budget at a level of \$50 million and the identification of a state level agency to assume responsibility for the administration and oversight of that fund. At this point, New York is one of only 7 states that lack stable funding for legal services for the poor. We can and must do better.

2. Other Access to Justice Initiatives.

a) Indigent Defense Training. In April 2005, the House of Delegates considered a Report by the Special Committee to Ensure Quality of Mandated Representation, chaired by Vincent E. Doyle, III, and approved statewide standards to help ensure the provision of quality criminal legal services to the indigent. Thereafter, the standards were widely distributed and essentially incorporated in the recommendations contained in the final report of the Chief Judge's Commission on the Future of Indigent Defense Services, which was released in June, 2006. (Note that our Special Committee's recommendations with respect to the Commission's proposals are scheduled for consideration at the June 30th House meeting).

On March 26th, the State Bar hosted a "Summit on the Future of Indigent Defense in New York" which afforded an opportunity for experts in the field and distinguished members of

the profession to consider relevant issues connected with indigent defense, including the recommendations by the Chief Judge's Commission.

As a follow-up to the Summit, on June 5th the Association conducted a day-long training session on indigent defense topics at the Bar Center in Albany. This program, which was sponsored by our Special Committee, offered 6 MCLE credits, free of charge, for legal defense practitioners. The session was recorded on DVD and CD to be made available to indigent defense providers throughout the state. Kudos to Vince Doyle, the Special Committee and the bar staff for their tireless efforts to bring quality representation to those least able to afford it.

b) Empire State Counsel. One of Mark Alcott's signature Presidential initiatives was the Empire State Counsel Program, which recognized members who render 50 or more hours of free legal services to the poor. In its first year, nearly 500 members were credentialed Empire State Counsel. I plan to continue this important program and have expanded it to include the provision of pro bono services rendered to not-for-profit, governmental or public service organizations, where the legal services are designed primarily to address the needs of the poor, as well as organizations specifically designed to increase the availability of legal services to the poor. Members can self-certify for designation as Empire State Counsel at our web site at www.nysba.org. We will look forward to honoring our newly certified Empire State Counsel at our Access to Justice luncheon at the Annual Meeting in New York City in January.

c) Cy Pres Funds. In January, our Special Committee on Funding for Civil Legal Services, chaired by Barbara Finkelstein and Bruce Lawrence, published a manual promoting the use of *cy pres* in class actions or mass tort actions where payment of damages to individual class members would be impossible, impractical or inappropriate. In such cases, judges and counsel can recommend that those funds be directed to civil legal services programs. I appointed Barbara and Bruce to chair a working group to develop an effective educational and marketing strategy in cooperation with The New York Bar Foundation to promote awareness of this possibility, as *cy pres* programs in other states have, in some instances, been able to generate millions of dollars to support civil legal services.

d) Right to Counsel/Civil Gideon. In 2006, our Association endorsed an ABA Civil Gideon Resolution urging states to provide a right to counsel to the poor in matters involving shelter, sustenance, safety, health and child custody. I have appointed Andrew Scherer as chair of a working group to make recommendations with regard to right to counsel initiatives on behalf of our Association and will keep you informed as that progresses.

e) Proposed IOLA Regulations. New regulations proposed by the IOLA Board of Trustees, if adopted, will significantly boost interest rates currently paid by New York banks handling IOLA funds, resulting in considerable new revenue (some estimates are as high as \$50 million) for civil legal services for the poor. Similar efforts have been undertaken in New Jersey, Connecticut and Massachusetts. This is yet another opportunity to help close our 80% "justice gap". The public comment period ends July 15th.

3. Cameras in the Courtroom. During the recent legislative session, bills were introduced in both the Senate and Assembly to allow cameras back in the courtrooms. We have long endorsed the televising of court proceedings as a means of ensuring transparency, educating the public and dispelling myths about the court system. Our Special Committee on Cameras in the Courtroom, which was chaired by Vince Buzard before he became President, had concluded, after extensive study in 2001, that there was no discernable pattern of harm in televised cases and no substantial evidence of cameras adversely affecting litigants' rights or the outcome of trials. Our House concurred in the findings and recommendations of the Special Committee, supporting re-entry of cameras into the trial courts. Despite our committed advocacy to convey this view to the Legislature the legislation did not pass. We will continue to pursue this issue next session, as increased public access can only serve to reinforce public confidence in our system of justice.

4. Diversity Initiatives. We continue to further our commitment to diversity within our profession and the leadership of our Association. During my year as President-Elect, I met with the leaders from all of our 23 Sections, reviewing each Section's Diversity Report Card and discussing ways in which each Section could further promote diversity within its membership and leadership ranks. We are encouraging each Section to appoint a Diversity Chair in order to attract and retain greater diversity within the Sections.

On June 4th, I had the privilege of participating in one of our regional diversity receptions, which was held at the Bar Center, honoring the newest Associate Judge of the Court of Appeals, Hon. Theodore T. Jones. This event was sponsored by our Committee on Diversity and Leadership Development, chaired by Past Presidents Lorraine Power Tharp and Kenneth G. Standard, and co-sponsored by our Committees on Minorities in the Profession and Women in the Law, as well as the Capital District Black and Hispanic Bar Association, Capital District Women's Bar Association, Albany County Bar Association, Rensselaer County Bar Association, Saratoga County Bar Association, and Schenectady County Bar Association. We will continue to host these regional receptions and other joint programs and initiatives with the local, women's, specialty and ethnic bar associations throughout the state, and look forward to hosting our Celebrating Diversity in the Bar Reception, together with all of our Sections, at the Annual Meeting in New York City on Monday, January 28, 2008.

5. ABA Senior Lawyer Pro Bono Award. I am delighted to announce that at its upcoming Annual Meeting in San Francisco, the ABA will be presenting its Senior Lawyer Pro Bono Award to Dennis R. Baldwin of Syracuse. Denny has long been an active member of the State Bar, with service on our Executive Committee, House of Delegates, and most recently as Chair of the Special Committee on Association Governance and Chair of the Committee on Membership. I am especially pleased to have appointed him to our Finance Committee. Please join me in congratulating Denny for this well-deserved and prestigious award.

6. Other ABA News. In addition to our efforts in the ABA with regard to the New York State Compact for Long Term Care, please note that the Report of the Special Committee on Age Discrimination in the Profession, which was approved by the House at the March 31st

meeting, is scheduled for consideration when the ABA's House of Delegates convenes at its Annual Meeting in August in San Francisco. Mark Alcott will be presenting that Report and Resolution on the floor of the ABA House.

Our "favorite son", Jim Silkenat, partner in Arent Fox in New York City and long-time NYSBA and ABA leader and Chair of the New York Delegation to the ABA House of Delegates, is a candidate for ABA President-Elect and we wish him much success in his campaign for office. If elected, Jim will become President of the ABA in 2009 and the first New Yorker since Bob MacCrate in 1987 – 1988.

7. Meeting with OCA. The State Bar leadership meets regularly with the Chief Administrative Judge to discuss matters of mutual concern and interest to the Court system and the Association. We note with pride that Jonathan Lippman, our state's longest-serving Chief Administrative Judge, was appointed Presiding Justice of the Appellate Division, First Department, and was succeeded as Chief Administrative Judge by Ann T. Pfau, his former First Deputy. On June 19th Bernice Leber, Pat Bucklin and I met with Judge Pfau to discuss a number of topical items. Our agenda included matters such as judicial salaries, court reorganization, funding for civil legal services, indigent defense, town and village court initiatives, cameras in the courtroom, mandatory retirement of judges, merit selection and e-filing. I am pleased to report that, as expected, the transition from Judge Lippman to Judge Pfau has been a seamless one, and, as in the past, our discussions were cordial, open and productive.

We will continue to meet with Judge Pfau quarterly.

8. Task Force on Town and Village Courts. I have appointed Albany Law School Professor Patricia Salkin chair of a Task Force on Town and Village Courts. The Chief Judge's Commission on the Future of the New York State Courts is holding hearings throughout the state on the efficiency and organization of the local justice system, sufficiency of training, court resources and similar matters. This is on the "fast track" with a requested report date of mid-August.

9. Section Leaders Conference. We held our annual Section Leaders Conference in New York City on May 10th with over 100 Section leaders in attendance, making it one of the best-attended conferences in recent years. Topics discussed included navigating NYSBA, public policy, successful meetings, what to do when the media calls, publications, an interactive "Hot Tips and Programs" and the 10% membership challenge. We have added a number of new tools and resources for Section officers, including periodic telephone conferences to explore issues of interest in greater depth as well as a new Section Leaders Resource page on our website. More than half of our membership belong to one or more of our 23 Sections and they truly are the lifeblood of our Association.

10. What Can You Expect in the Year Ahead? As I will note in my formal remarks to the House, and as outlined in my first President's Message in the *Bar Journal*, there could only be one theme for the year ahead, "Leadership Through Service", which speaks to what motivates so many of us in the profession -- the importance of service to others. In the year ahead, I

pledge to work with our leadership, membership and staff to secure our future as the voice of the New York lawyer.

We will be challenged to increase our membership between now and 2010, in an effort to keep pace with the growth of the profession in our state. We are indebted to Claire Gutekunst, Chair of the Membership Committee, and the members of that extraordinarily active Committee, especially Steve Younger, who has agreed to chair the subcommittee on the 2010 Membership Challenge.

We also seek to provide even greater accountability on the part of our Sections and Committees, and in order to accomplish that goal, I have created two new Committees:

Strategic Financial Planning Committee. This new Committee will be co-chaired by Bernice Leber and me and includes Past Presidents M. Catherine Richardson, Joshua Pruzansky, Steven Krane, as well as former Executive Committee member Cris Cioffi. Our goal is to recommend a strategic financial plan for the next 5 years, and beyond, to ensure the Association's long-term fiscal viability.

Committee on Committees. Chaired by Mimi Netter, this Committee will recommend metrics by which all of our standing, special and other committees and task forces can be evaluated with an eye toward ensuring that every Association Committee is active and in alignment with Association priorities. It will also develop recommendations for criteria in establishing new Committees.

We plan to continue to increase the use of developing technology to better serve our members, including the launch of our President's Blog. I have attached a copy of the Blog and recent posts to give you a flavor of this exciting new communication vehicle. Since its launch on June 1st, I have received many emails from members across the country and internationally about this innovative tool. Please spread the word and don't be shy about posting your comments. Easiest access is via the www.nysba.org website and click on "read the President's Blog".

As you can see from the preceding report on our legislative priorities and other initiatives, we wield significant influence with policy makers here in New York. We can do even more to enhance our credibility and visibility in that regard, reaching out beyond our borders, tuned into emerging trends, and sharing the expertise of our 72,000 members, helping to find solutions to the challenges we face today.

I pledge to work closely with our Law, Youth and Citizenship program, to reinvigorate our civic education programs and expand the vital services we offer to our colleagues and their families across the state through our Lawyer Assistance Program.

Access to justice is fundamental and we will not rest until every poor person facing the loss of a basic need, such as food, shelter, warmth, or health care does not lack for a lawyer/advocate.

Your President-Elect, Bernice Leber, joins me in support of this long-term view, ensuring continuity and ownership of our collective future. We are both committed to providing greater meaning, service and leadership opportunities for our diverse membership. We intend to build on the leadership of Mark Alcott, his initiatives for reform, as well as the foundation laid by the 108 NYSBA Presidents who have preceded the 3 of us.

As members of the House of Delegates, you are integral to this effort and we look forward to working with you in the years ahead.

I hope the foregoing has underscored the breadth and depth of the many issues with which the Association is engaged. It is gratifying to witness the dedication and selfless commitment of time and talent by our membership in the spirit of serving the profession and the public. That spirit of service is indeed alive across our state and I am indeed proud to be a New York lawyer, long-term member and now President of this Association. Please let me know what more I can do to support you, our Sections, Committees and our Association as we strive to "lead through service".

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kathryn Grant Madigan".

Kathryn Grant Madigan

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE
CONFERENCE CALL MEETING
July 27, 2007**

Members Participating: Ayers, Doyle, Fernandez, Gerstman, Getnick, Hayes, Leber, Lindenauer, Madigan, Marwell, Millon, Miranda, Schraver, Sherwin, Tishler, Tyler, Wachtler, Younger.

Guests: Gary A. Cusano, Daniel W. Gerber, Evan M. Goldberg, Hon. Kristen Booth Glen.

Ms. Madigan presided as President of the Association.

1. Proposed revisions to CPLR and Insurance Law regarding declaratory judgments and “no prejudice” rule. Gary A Cusano, chair of the Torts, Insurance and Compensation Law Section, and Daniel W. Gerber, a member of the Section’s Executive Committee, outlined the section’s opposition to that portion of the legislation that would prohibit an insurer from denying coverage solely on the basis of late notice unless the insurer can show material prejudice, describing the proposal as placing an undue hardship on insurers. Evan M. Goldberg, chair of the Trial Lawyers Section, presented that section’s report in support of the proposal, noting that courts have shifted away from the “no prejudice” rule. After discussion, a motion was adopted unanimously to support the proposal. Given the concerns raised by the Torts, Insurance and Compensation Law Section regarding Insurance Law §3420, it was noted that the section should be advised it may develop appropriate amendments for review by the Executive Committee.
2. Proposed ABA resolution regarding treatment of detainees. Ms. Madigan reported that a proposed report and recommendation is being developed for presentation to the ABA House of Delegates regarding the treatment of detainees under United States control. She advised that the proposal would be circulated to the Executive Committee for consideration of co-sponsorship.
3. Report of Committee on Legal Education and Admission to the Bar. Hon. Kristin Booth Glen, chair of the committee, outlined a proposed amendment of Standard 301(a) from the Standards Committee of the ABA’s Section of Legal Education and Admission to the Bar, which requires law schools to maintain an educational program that prepares students for admission to the bar. She noted the committee’s opposition to the amendment on the basis that it would have an adverse impact on the diversity of the bar. After discussion, the Executive Committee amended the proposed resolution to include reference to the economically disadvantaged in the initial “whereas” clause, to shift reference to the Association’s prior opposition to an increase in the bar examination passing score from the initial “resolved” clause to a “whereas” clause, and to clarify language in other parts of the resolution. A motion was adopted unanimously to approve the committee’s report and resolution as amended.

4. Judicial Pay Increases: Ms. Madigan updated the Executive Committee regarding the status of this issue, expressing optimism that the Legislature would take action with respect to increases during the current calendar year.
5. Alexander v. Cahill. Ms. Leber reported on the District Court decision with respect to the constitutionality of the lawyer advertising rules, noting that the Association would contact Chief Administrative Judge Ann Pfau regarding the court system's response to the decision. Whether the Association should consider filing an amicus curiae brief will depend on the court system's actions and the nature of any issues raised on appeal. The report was received with thanks.

There being no further business to come before the Executive Committee, the meeting was adjourned.

Respectfully Submitted,

A handwritten signature in black ink that reads "Michael E. Getnick". The signature is written in a cursive style with a large initial "M".

Michael E. Getnick
Secretary

