

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
NEW YORK HILTON MIDTOWN, NEW YORK CITY  
JANUARY 27, 2017**

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**PRESENT:** Aidala; Alcott; Alsina; Alvarez; Arenson; Baker; Barrett; Bauman; Behe; Berman; Block; Bloom; Bonina; Braverman; Brown, E.; Brown, J.; Brown, T.A.; Bruno; Burns, S.; Buzard; Calcagni; Carola; Cassidy; Castellano; Chambers; Chandrasekhar; Chang; Cheng; Christenson; Christian; Christopher; Cilenti; Clarke; Cogen, D.; Cohen, O.; Cooper; Corbin; Dean; DeFelice; Denton; Disare; Edgar; Effman; England; Ferrara; Finerty; First; Fisher; Flanagan; Flynn; Fox, G.; Fox, M.; Franchina; Freedman; Gaal; Gaddis; Gailliard; Gallagher; Galligan; Gayle; Genoa; Gingold; Gische; Glover; Goldberg Velzaquez; Goldenberg; Goldfarb; Goldschmidt; Gonzalez; Grays; Greenberg; Grogan; Grossman; Gutekunst; Haig; Halpern; Heath; Hetherington; Himes; Hines; Hoffman; Hollyer; Hurteau; Hyer; Jackson; James; Jochmans; Karson; Kase; Kelly; Kiernan, P.; Kiesel; King, B.; Kobak; Koch; Krausz; LaRose; Lau-Kee; Lee; Levy; Lewis; Lindenauer; Madden; Madigan; Makofsky; Mancuso; Mandell, Adam; Maroney; Martin; Masucci; McCann; McKeegan; McNamara; Meisenheimer; Meyers; Miller, C.; Miller, G.; Miller, M.; Millon; Miranda; Moore; Moretti; Moses; Moskowit; Napoletano; Nathanson; O'Donnell, T.; Ogden; Onderdonk; Owens; Prager; Radding; Ranni; reitzfeld; Richman; Richter; Rivera; Rosner; Russell; Samuels; Schofield; Schraver; Schwenker; Sciocchetti; Seddio; Shafer; Shamoan; Shautsova; Sheehan; Silkenat; Silverman; Simmons; Singer; Smith; Sonberg; Spirer; Spiro; Spitler; Standard; Starkman; Steinhardt; Strenger; Sullivan; Sunshine; Tennant; Thaler-Parker; Tully; Udell; Ventura; Vigdor; Vitacco; Wallach; Wasmund; Weathers; Welch; Westlake; Weston; Whittingham; Wildgrube; Williams; Witmer; Younger; Zuchlewski.

Ms. Gutekunst presided over the meeting as Chair of the House in the absence of Ms. Gerstman.

1. Approval of minutes of November 5, 2016 meeting. The minutes were deemed accepted as distributed.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Scott M. Karson to members of the Association at the Annual Meeting, was received with thanks.
3. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. David M. Schraver, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2017-2018 Association year: President-Elect: Michael Miller, New York City; Secretary: Sherry Levin Wallach, Cross River; Treasurer: Scott M. Karson, Melville; and Vice Presidents: First District – Taa R. Grays, New York City; Second – Domenick Napoletano, Brooklyn; Third – Henry M. Greenberg, Albany; Fourth – Matthew R. Coseo, Ballston Spa; Fifth – Stuart J. LaRose, Syracuse; Sixth – Alyssa M. Barreiro, Binghamton; Seventh – David H. Tennant, Rochester; Eighth – Norman P. Effman, Warsaw; Ninth – Michael L. Fox, Huguenot; Tenth – Peter H. Levy, Jericho; Eleventh – Karina E. Alomar, Ridgewood; Twelfth – Steven E. Millon, New York City; Thirteenth – Jonathan B. Behrins, Staten Island. Nominated as members-at-large of the

Executive Committee were Margaret J. Finerty, New York City; William T. Russell, Jr., New York City; Richard M. Gutierrez, Forest Hills; Andre R. Jaglom, New York City; and Sarah E. Gold, Albany.

Ms. Gutekunst reported that a nomination by petition had been submitted on behalf of Carol A. Sigmund, New York City, for the position of Vice President, First District.

There being no further nominations, a motion was made and carried unanimously to elect the above-named individuals as officers and members-at-large of the Executive Committee.

4. Address by Hon. Janet DiFiore, Chief Judge of the State of New York. Chief Judge DiFiore addressed the House of Delegates with respect to the status of Unified Court System initiatives. She provided an update on the Excellence Initiative; the upcoming State of the Judiciary address; the Judiciary's budget request; criminal justice reform; civil legal services; the Task Force on the New York State Constitution; proposed uniform practice rules for the Appellate Division; the Judicial Advisory Committee on Evidence; and the Justice Task Force. The report was received with the thanks of the House.
5. Presentation of the Ruth G. Schapiro Memorial Award. Ms. Gutekunst presented the annual Ruth G. Schapiro Award to Chief Judge Janet DiFiore in recognition of her work as a role model and mentor to women in the legal profession through her scholarship, service, and in her community.
6. Report and recommendations of Committee on the New York State Constitution. Henry M. Greenberg, chair of the committee, together with subcommittee chair Stephen P. Younger, outlined the committee's report and recommendations with respect to Article VI of the State Constitution, the Judiciary Article. They noted that a number of the issues discussed in the report are controversial and have been the subject of prior Association reports. This report, however, is intended to identify the issues and provide education; it is not intended to re-assess the issues. After discussion, a motion was adopted to approve the report and recommendations.
7. Report of President. Ms. Gutekunst highlighted items contained in her written report, a copy of which is appended to these minutes. In addition, she reported that the Association would oppose a proposal contained in the Governor's budget to raise the biennial registration fee by \$50 to provide increased funding for indigent defense services, noting that indigent defense is the responsibility of the State, and that the Association would advocate for the restoration of funds for mortgage foreclosure prevention services. With respect to Federal legislative matters, she reported concerns about the potential restriction of tort law through the repeal of the Affordable Care Act, the Lawsuit Abuse Reduction Act, and funding for the Legal Services Corporation.
8. Report and recommendations of Committee on Continuing Legal Education. Ellen G. Makofsky, chair of the committee, together with committee member Mirna M. Santiago, outlined the committee's report recommending that the rules governing mandatory continuing legal education be amended to provide for one credit hour of diversity CLE

credit as part of the 24 credit hours required of experienced attorneys. They noted that the Office of Court Administration had released a proposal from the Continuing Legal Education Board for 60-day review and comment. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, the New York State Bar Association long has encouraged and promoted diversity and inclusion and the elimination of bias in the legal profession and in society; and

WHEREAS, in February 2016 the American Bar Association adopted a resolution calling for regulatory authorities that require mandatory continuing legal education to include, as a separate required credit, programs regarding diversity and inclusion in the legal profession; and

WHEREAS, in December 2016 the Unified Court System published a request for comment on a proposed amendment of the rule addressing mandatory continuing legal education for attorneys in the State of New York that would impose a one-credit requirement in CLE for experienced attorneys (admitted to the New York Bar for more than two years) addressing the subject of diversity, inclusion, and the elimination of bias to be included within, and would not add to, the current requirement of 24 credit hours of accredited CLE in each attorney biennial reporting cycle; and

WHEREAS, the New York State Bar Association Committee on Continuing Legal Education has reviewed this topic and has issued a report recommending that a mandatory diversity and inclusion component be included as part of New York lawyers' continuing legal education obligations, with providers being encouraged to create a wide variety of programs;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the recommendations of the Committee on Continuing Legal Education; and it is further

RESOLVED, that the officers of the Association are hereby authorized to communicate the Association's position to the Unified Court System and to take such other and further action as may be necessary to implement this resolution.

9. Administrative items. Ms. Gutekunst reported on the following:

- a. NYSBA delegates to ABA House of Delegates. At the April 1, 2017 meeting, the House would be requested to elect five of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: Claire P. Gutekunst, Seymour W. James, Jr., Glenn Lau-Kee, Stephen P. Younger, and Michael Miller.

10. Date and place of next meeting. Ms. Gutekunst announced that the next meeting of the House of Delegates would take place on Saturday, April 1, 2017 at the Bar Center in Albany.
11. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ellen G. Makofsky". The signature is written in a cursive style with a long, sweeping underline.

Ellen G. Makofsky  
Secretary



**CLAIRE P. GUTEKUNST**  
President, New York State Bar Association

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January 27, 2017

**January 2017  
President's Report to the  
House of Delegates**

**1. PRESIDENT'S INITIATIVES**

**Domestic Violence Initiative**

The President's Domestic Violence Initiative has been actively working on several different fronts. The Legislation subcommittee of the Joint Domestic Violence Initiative has been reviewing several pieces of legislation of interest to the domestic violence community. It is currently working on prioritizing and recommending legislation it would like to have included in the Association's advocacy efforts.

The Education and Training subcommittee is developing trainings to be done in-person, by webcast and recorded to post on the NYSBA and WBASNY websites. Their goal is to create free and reduced fee CLEs for providers that will address the various issues faced by domestic violence survivors. They hope to offer trainings to all attorneys, especially those that do not practice in areas of law specific to domestic violence.

Finally, the Pro Bono subcommittee has undertaken the task of identifying and surveying the domestic violence civil legal service providers throughout the state. This information will be used to identify gaps of service in the state with the goal of developing recommendations and strategies that will address and alleviate these gaps of service.

**FreeLegalAnswers.org**

Free Legal Answers continues to gain traction with more than 60 volunteer lawyers from around the state currently answering questions posed by the public through the site. There have been more than 100 questions posted at this time. The majority of the questions have been regarding family law matters, with housing issues a close second. Feedback has been positive, from both the attorneys and from the public. Training and promotion will continue throughout 2017, including hands on educational clinics being planned with law schools. Free Legal Answers could always use more volunteer attorneys. You can sign up at the informational table near member registration. Look for a staff member wearing an "Ask Me About Free Legal Answers" button to show you how.

## **Legal.io**

NYSBA's Lawyer Referral and Information Service has partnered with Legal.io to develop and launch an online referral platform for people seeking an attorney. The platform places the LRIS into the online marketplace, providing the potential clients with the ability to request a referral at their convenience. Additionally, the platform automates many of the back-end administrative features of the LRIS and will provide participating attorneys with consistent reporting, up to date data, and ease of paying fees that are owed. Staff will vet all online referrals before they are assigned to a panel attorney, adding an additional level of review that the current system does not provide. The exposure of the LRIS online referral platform in online searches will drive more potential clients to the site and to the services LRIS panel attorneys provide. During Annual Meeting week, the LRIS is waiving panel application fees for 2017, so attorneys can sign up and try out the new platform. You can visit the LRIS and legal.io team's informational table near registration for more information and to join.

## **Membership Challenge**

The Association's Sections have submitted plans to the Membership Committee identifying ways in which they will work throughout the year to increase membership both within their Sections and within the Association. Our goal is to increase membership by 2% this year and an additional 3% next year. Throughout the Annual Meeting challenge co-chairs Tom Maroney and Michelle Wildgrube have visited with Section executive committee meetings to encourage their efforts.

The Association's committees have been enlisted in this endeavor. Committees have been asked to identify the ways in which they serve members and report back to the Membership Committee. Committee members are serving as membership ambassadors carrying the message of the value of the Association.

One of the goals of the challenge is ensure that we are creating a welcoming environment. Ambassadors are stationed throughout the Annual Meeting to serve as welcome wagon for members. These ambassadors include members of the Executive Committee, Membership Committee, Committee and Section leaders, and law students.

## **2. LEGISLATIVE ACTIVITIES**

This report will provide an update on activities that have taken place since the House meeting in November.

### **State Legislative Policy**

#### Indigent Criminal Defense Services – NYSBA Legislative Priority

The Association has long been a leader in advocating for the provision of legal services for the poor and otherwise disadvantaged.

In 2006, the State Commission on the Future of Indigent Defense Services, chaired by then Chief Judge Judith S. Kaye, examined New York State's county-based indigent criminal defense system, and

made the alarming finding that there is “a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it.”

In 2010, the state created the Office of Indigent Legal Services (“Office”). The State Bar Association viewed the creation of that Office as a significant step toward establishment of an independent indigent defense commission with broad powers to adopt standards, evaluate existing programs and service providers, and generally supervise the operation of New York’s public defense system.

In the fall of 2014, the state agreed to settle a class-action lawsuit (*Hurrell-Harring v. State*) that accused New York State of failing to provide adequate legal defense for the poor in five counties (Suffolk County on Long Island and four upstate counties: Ontario, Onondaga, Schuyler and Washington). The settlement committed the state to paying for improvements to the indigent defense systems in those counties.

Throughout the 2016 legislative session, the Association urged the Legislature and the Governor take another important step by enacting legislation to provide appropriate state funding and ensure rules and standards for the provision of indigent criminal defense services throughout New York. In June the Legislature passed such legislation sponsored by Senator John DeFrancisco and Assembly Member Patricia Fahy.

Although the Governor has expressed support for the goal of improving New York’s public defense system, he vetoed the bill on December 31.

I look forward to working during 2017 on this legislative priority with the Legislature and the Governor to accomplish enactment of a law ensuring that New York’s public criminal defense system provides meaningful legal representation to indigent criminal defendants.

#### Revisions to the Non-Profit Revitalization Act

The Non-Profit Revitalization Act (“NPRO”) was one of the Association’s legislative priorities in 2013 and was enacted in that year. The Committee on Not-For-Profit Corporations Law of the Business Law Section was integrally involved with that advocacy effort in 2013. The Committee has been active this year and strongly supports current legislation that would enhance compliance by not-for-profit corporations with the NPRO and thereby further improve governance and accountability in the not-for-profit sector. With the experience of the years since enactment of the NPRO, it has become apparent that there is ambiguity in provisions of the law as to what constitutes compliance in certain situations. This has unintentionally hindered the goal of full and effective board oversight.

Legislation to revise and enhance provisions of the 2013 law was signed by the Governor on November 28 as Chapter 466 of the Laws of 2016.

#### Sealing of Criminal Convictions

On December 19, 2016, leaders of the Criminal Justice Section attended lobbying meetings with key policy makers in both the Legislature and the Executive. Their advocacy will advance key recommendations of the Criminal Justice Section’s Sealing Report approved by the

Association's House of Delegates in 2012. Consistent with our proposal, the bill would allow for the sealing of certain non-violent criminal convictions.

### Lobbying in Albany on January 18, 2017

On January 18, I along with Sharon Stern Gerstman and staff had a series of meetings with policymakers in Albany, in order to promote NYSBA's position regarding budget-related priorities and to highlight some non-budget priorities. Our agenda included state funding and oversight of the public criminal defense system, the judiciary budget, raising the age of criminal responsibility, wrongful convictions, and expanding veterans treatment courts throughout the state.

### **Federal Legislative Advocacy**

The Association's team, including myself, Sharon Stern Gerstman, Michael Miller, and John Nonna, will soon meet in Washington, D.C. with key members of New York's Congressional Delegation. The agenda will include the following:

**Tort Laws.** Congress is seriously considering possible replacement of the Affordable Care Act. The current debate has revealed many different views as to how health care should be provided to the citizens of this country. However, what has not been seriously debated is the operation of the civil justice system. Yet, some of the health care proposals have included, without much notice, civil justice reform as part of a package of changes. Language has been included in some proposals without valid, empirical justification and serious consideration of the issues involved in what is a complex area of law. We will continue to urge that the states remain fully responsible for governing the field of tort law, including medical malpractice.

**Lawsuit Abuse Reduction Act (LARA).** This bill would amend Rule 11 of the Federal Rules of Civil Procedure ("FRCP") -- via a process that is inconsistent with the Rules Enabling Act, 28 USC sections 2072-74 -- to reinstate a mandatory sanctions provision that was deleted from the FRCP in 1993. The Rules Enabling Act provides that procedural rules should be drafted by the Judicial Conference of the United States, submitted to the U. S. Supreme Court for consideration and promulgation, and then transmitted by the Court to the Congress for its consideration before the rules take effect. That process respects the power of the judicial branch and recognizes the expertise and perspective of judges regarding the FRCP. We will carry the message to New York's Congressional Delegation that circumventing the rule-making process of courts under the Rules Enabling Act would be poor precedent.

**Support for the Legal Services Corporation (LSC).** LSC formed in 1974 with bipartisan Congressional support, was created to ensure that all Americans have access to a lawyer and the justice system for civil legal issues regardless of their ability to pay. The LSC provides funding to independent local legal services programs through a competitive grant process. LSC clients include the working poor, veterans, family farmers and people with disabilities. Family law matters (including domestic violence and child custody) and housing issues are the largest categories of cases handled by LSC-funded programs. We will continue to promote the Association long-standing, strong support for providing adequate funding for LSC.

### **3. NEWS, ACTIVITIES AND EVENTS**

#### **New York State Court of Appeals**

On January 16, Governor Cuomo nominated Rowan D. Wilson as Associate Judge of the Court of Appeals. Our Association, through its Committee to Review Judicial Nominations, has found Mr. Wilson to be “Well Qualified” for appointment to the court, and we will communicate that rating to the State Senate in connection with its confirmation hearing of Mr. Wilson.

#### **Immigration Legal Defense Project**

Also this month, the Governor announced a public-private legal defense project to ensure all New Yorkers have access to legal representation and due process, regardless of their citizenship status. We are proud to be a participant in this initiative. Our Association long has called for providing immigrants who cannot afford a lawyer with representation in immigration proceedings, and we regularly sponsor continuing legal education programs to train lawyers in immigration law.

#### **Section Events**

In November, the Commercial and Federal Litigation Section presented its first annual Shira A. Scheindlin Excellence in the Courtroom Award to Carrie H. Cohen and announced the first recipients of its Hon. Judith S. Kaye Commercial and Federal Litigation Scholarship. That same week, I also attended the Dispute Resolution Section’s Arbitration Competition and the meeting of the Council of Judicial Associations.

#### **Bar Association Events**

During the past months I have attended a number of bar association events, including the Women’s Bar Association of Sullivan and Rockland Counties Annual Judicial reception; the Committee for Bar Leaders of New York State program and reception; the Brooklyn Bar Association Foundation Annual Dinner; the Dutchess County Bar Association luncheon and meeting; the New York County Lawyers’ Association 102<sup>nd</sup> Annual Dinner; and the Puerto Rican Bar Association swearing in ceremony.

The next meeting of the House of Delegates will be on Saturday, April 1, 2017 at the Bar Center in Albany. I look forward to seeing you at that meeting.

*Claire P. Gutekunst*