

ENTERTAINMENT, ARTS & SPORTS LAW SECTION
Executive Committee Meeting
May 20, 2019

at PRYOR CASHMAN, LLP
7 Times Square (Broadway between West 41st and West 42nd Streets), New York, NY

Minutes of Meeting

Attending in Person: Anne Atkinson, Jason Baruch, Judith Bass, Ethan Bordman, Joan Faier, Marc Jacobson, Diane Krauz, Anne LaBarbera, Paul LiCalsi, Steven Richman, Steve Rodner, Robert Seigel, Barry Skidelsky, Rosemarie Tully, Julie Wolf

Attending by Telephone: Brian D. Caplan, Donna Frosco, Leslie M. Greenbaum, Elissa Hecker, Kathy Kim, Bennett Liebman, Stephen Rodner

1. Welcome. Barry Skidelsky (EASL Chair) called the meeting to order at 12:30pm and welcomed all attendees. Barry asked everyone in attendance to introduce themselves; and, he suggested that, in the future, Executive Committee (“EC”) members should please RSVP to Kristina Maldonado two days in advance of our EC meetings (i.e., as to whether each member then planned to attend by phone or in person). Such advance notice could make it easier to not only confirm telephone attendees, but also help with security and with ordering food and beverages for in-person attendees. Barry then welcomed Julie Wolf to the meeting, who was attending as a guest.

2. Approval of Minutes. Barry then sought comment and approval regarding the minutes for our last EC meeting held on April 3. Judy Bass asked Ethan Bordman (EASL Secretary) to add her name to those in attendance at that meeting, and she then made a motion to approve the minutes. The April 3 minutes were unanimously approved.

3. Chair’s Report. Barry Skidelsky reported that he recently attended the annual NYSBA Section Leaders Conference (SLC) held on April 12 in Albany, which was also attended by Ethan Bordman and Anne LaBarbera; and, that Barry planned to attend the next House of Delegates (HOD) meeting to be held on June 15 in Cooperstown. Barry then asked Steve Richman to report on the previous HOD meeting.

3.1 House of Delegates Meeting. Steve Richman reported that the last House of Delegates meeting addressed a number of topics, including New York State's proposal to increase the bi-annual attorney registration fee by an additional \$50 (which the House of Delegates worked to stop from being implemented). That HOD meeting also provided a review of the contributions made by, and a thank you to. NYSBA's outgoing President, Michael Miller. NYSBA's incoming President, Hank Greenberg, will be taking over from Mike in June; and, Hank will preside over the next HOD meeting. Steve also confirmed that next year’s budgets for all of the sections have not yet initially suggested by NYSBA; and, he added that NYSBA membership seems to be stabilizing.

3.2 EASL Membership and HOD Relationship. Barry reminded the EASL EC that we were previously misinformed regarding the annual “record date” by which EASL must have at least 1,500 members in order to qualify for having two delegates from our Section appointed to the Association's HOD as of the following June 1. Rather than the annual drop date of March 31 (when non-renewing members are removed from the rolls by NYSBA), and by which date in 2019 EASL would have qualified to continue having two delegates to the HOD, the record date is instead December 31. At year end in 2018 EASL had 1479 members, just 21 shy of 1500. Thus, EASL currently has only one member from the section on the HOD (Barry), whose HOD term will expire on May 31, 2019. Barry also reminded the EASL EC that his term as section Chair will expire at the 2020 annual meeting; and, that law students count as part of the 1500 members for 2 HOD seats.

3.3 Section Leaders Conference. Barry reported that the Section Leaders Conference recently held in Albany was informative, and that it focused on NYSBA's planned revamping of the Association's Information Technology (IT) infrastructure. During that conference, Barry spoke with some of the IT consultants hired by NYSBA about desired improvements to at least the EASL section of the NYSBA website, some of which he suggested might have broader applicability to other sections and the Association at large. In key part, Barry emphasized to them that registration and navigation on the websites need serious attention. Concurring, Ethan Bordman said he informed the consultants that when he tried to access EASL committee rosters, all that appeared was a blue screen.

Barry also told the consultants that it would be helpful if all CLE events (both from sections and from NYSBA's CLE Department) were listed on a master (but filterable or sortable) calendar. The consultants replied that they are already working on having one such calendar for all events, both CLE and non-CLE. Barry also suggested that there should be three levels of access on each section's website: one for members (all access), one for non-members (with limited access, in part to encourage EASL membership), and one part accessible only by section EC members (e.g., the EASL EC only part of our website could *inter alia* list law school faculty contacts, so that we might have a better way to inform law students about EASL membership, EASL's Cowan Scholarship program, and other opportunities. Anne Atkinson added that that EASL has open positions at the various New York law schools for law student liaisons to EASL.

3.4 Phil Cowan Memorial Scholarship. Barry also reminded the EASL EC that BMI was no longer willing to sponsor our Cowan Scholarship (last year BMI paid \$2,000 and EASL paid \$3,000), and that going forward EASL would have to pay the full \$5,000 (i.e., \$2,500 times two scholarships) as previously discussed if a substitute sponsor could not be found. Steve Richman then raised a questions about whether that money should come from EASL's general finance account or surplus. Steve suggested that EASL should first utilize all of the money allocated to it by NYSBA (if we have not yet used all of this money); and, he said that the EC might need to formally request approval by the NYSBA Finance Committee to fund the scholarship from EASL's surplus. Barry said he would check with Kristina Maldonado (NYSBA's liaison to EASL) whether a separate formal request was necessary or whether this should simply be a line item in the 2020 budget.

4. Committee Reports. Barry stated that since the EASL Committee Engagement Guidelines were adopted (e.g., which called for quarterly events or meetings by each substantive EASL committee), most of EASL's committees regretfully have not complied with those guidelines. Barry encouraged committee co-chairs and members to do more than merely put their names on EASL committee lists. He added that, when the EASL website is updated by NYSBA, it will hopefully have a feature to better track EASL committee events and meetings (which would obviously help each committee co-chair and the EASL EC manage and follow progress on complying with the guidelines). Barry then asked for committee reports.

4.1 Theatre Law Committee. Jason Baruch reported that this year's version of the two-night CLE program co-sponsored by EASL and the Commercial Theater Institute (“CTI”) was the most successful in its history - in both attendance and income. The event generated over \$23,000 in gross proceeds, with EASL receiving a net of \$11,577. The event drew about 100 attendees, with some attending both days and others attending only one day. He noted that Kristina Maldonado had been incredibly helpful in organizing this year's event. Jason and Kathy Kim added that due to the success of past events, the Theatre Law committee will hold a non-CLE social event at a performance of “What the Constitution Means to Me” on a date to be determined.

4.2 Motion Pictures Committee. Robert Seigel stated the Motion Pictures committee held one meeting at our annual meeting, and most recently co-chaired the EASL Spring Meeting on tax incentives for film and estate planning issues in entertainment. Robert and Ethan Bordman, committee co-chairs, added that they are planning a fall event on distribution. Robert also noted that if the upcoming SWSX conference will be having a panel on motion picture distribution, then the contemplated EASL Motion Picture committee meeting will adopt another topic.

4.3 Literary Committee. Joan Faier stated that the Literary committee will be holding a brown bag lunch (from 12:30pm – 2pm) on May 31 to coincide with the end of the Book Expo to be held at the Javits Center from May 29 – 31. The committee's event will take place at Pryor Cashman, and it will discuss book publishing. Angela Bole (CEO) and Brooke Warner (Chairperson) of the Independent Book Publishers Association (IBPA) will speak about new publishing techniques, such as independent publishing, hybrid publishing and self-publishing. In light of limited seating, EASL members will have priority before registration is publicly opened to non-EASL members. The Literary committee is also planning on having an event this fall on blockchain publishing. Judy Bass thanked Pryor Cashman for letting the committee use its space for this event. Barry Skidelsky added his thanks to Pryor Cashman for hosting EC meetings here, and he asked EC members to help identify or secure additional locations for other future EASL committee meetings and events.

4.4 Diversity Committee. Anne Atkinson reported that the Diversity committee held an event on May 16th from 6-8pm titled “Disrupting Implicit Bias in Entertainment, Arts and Sports Industries with a Focus on the Legal Profession.” Anne Atkinson reported that 40 people attended the program, which was organized by the Diversity Committee in conjunction with NYSBA’s Committee on Diversity and Inclusion. Anne added that Minika Udoko of

NYSBA had been very helpful in organizing the event. Speakers included Josh Zuckerberg of Pryor Cashman, EASL's Cheryl Davis (moderator), Carla Miller of the Universal Music Group, Deborah Robinson of Viacom, and Jill Pilgrim of Pilgrim Associates (who also has a background in sports). Anne also said that Rosemarie Tully would like to duplicate this program for the annual Music Conference this Fall. In addition, the Diversity committee plans to hold an event on "Activist Art" this September. The Diversity committee has had three in-person meetings this year, which drew particular commendation from EASL's Chair.

4.5 NYSBA CLE Committee. Steve Rodner asked about the approval by or other involvement of NYSBA's CLE Department in EASL events. Rosemary Tully said there is some question as to who may video record CLE events put on by the sections and have the rights to later broadcast them. Diane Krauz & Rosemary Tully, who are both on the NYSBA CLE committee, are looking into questions regarding approval and recording, among other CLE Department related questions raised by EASL members. Steve Richman mentioned NYSBA's plans for an all access CLE pass, whereby an Association member would pay a flat fee and be allowed to take all the CLE that he or she would like. Rosemary mentioned that, in the past, CLE planning was done as follows: the sections planned their own CLE event, NYSBA planned their own CLE events, and the NYSBA meetings department would be responsible for destination CLE events.

4.6 Legislative Committee. Marc Jacobson began the report by discussing the legislative proposal that would exempt attorneys from registering as talent agents in regard to negotiating employment agreements for clients. He recently sent an email to Ron Kennedy, NYSBA Director of Governmental Relations, and is awaiting a response. Steve Richman stated that when the New York legislature is out of session EASL should talk to the chairpersons of the committee introducing the bill. Steve said the EASL section faces two barriers in having the exemption: 1) attorneys are not viewed in a positive light and 2) talent agencies will oppose the exemption. Anne Atkinson mentioned the recent dispute between the WGA (Writers Guild of America) and the ATA (Association of Talent Agents) regarding writers finding work. This could affect other talent as New York State law states that being an agent entails "negotiating contracts." Marc said that current state law exempts talent managers but not attorneys. Judy Bass mentioned this is a very timely topic and should be considered as a topic for an EASL CLE event. Steve Richman stated that the state labor department does not want to get involved with this issue. He said a CLE event or a NYSBA Journal article would be a great opportunity to get attention toward gaining support of EASL's view on the proposed legislation.

4.7 EASL Journal. Elissa Hecker stated the Spring/Summer 2019 EASL Journal contains about 10 articles and will be published soon. She said contributions to the Journal are always welcomed and appreciated.

4.8 Pro Bono Committee. Elissa also said that she working on holding a Pro Bono clinic over the summer, requesting that she be contacted by any EASL member who has ideas for topics or who otherwise might want to be involved.

5. Spring Meeting (2019). Barry Skidelsky stated about 60 people attended EASL's Spring Meeting, which was held on May 15th at the Bracewell law firm. The event was well

received by the attendees, and in a possible first every attendee was an EASL member (Barry asked for a show of hands at the event if any attendees were not EASL members, and no one raised his or her hand). The meeting began with Stan Soocher providing his annual entertainment litigation year-in-review. Then the first panel featured Michelle Alexander (a tax attorney at Bracewell) and Fred Seigel (a CPA enlisted by Bob Seigel, no relation) provided an overview and discussion of the latest tax law changes relevant to the media and entertainment industries, as well as updates on New York State tax incentives relevant to film. A second panel followed, which featured Tracy Landauer (a tax & estate attorney with Culhane Meadows) who spoke on trusts and estates matters including practical tips regarding estate planning, Marc Jacobson (attorney with Marc Jacobson PC and EASL member) who spoke on copyright terminations, and Jeremy Sheff (a professor at St. Johns Law School) who gave an update on recently proposed legislative changes to New York's right of publicity statutes.

6. Programs & Events, Currently Scheduled.

6.1 Music Business and Law Conference. EASL's next annual Music Business and Law Conference is scheduled for November 15th. Program Co-Chairs are currently working on choosing the topics and contacting individuals to speak.

6.2 Annual Meeting. EASL's Annual Meeting for 2020 will most likely be held on Tuesday January 28th. NYSBA has not yet confirmed the exact dates and times for section meetings and events.

7. Programs & Events, Planned & Proposed.

7.1 Upstate; Sports, etc. Barry Skidelsky reported that he recently met in Albany with Bob McLaughlin, former general counsel of the New York State Lottery, who will be speaking this August at the Saratoga Hilton during a race track and gambling law program organized by EASL's Ben Liebman (currently with Albany Law School). Barry suggested that Mr. McLaughlin could help organize an EASL CLE event in Albany (and perhaps another in Buffalo with Les Greenberg, EASL EC member there) for later this year. Marc Jacobson said that he liked the idea of more sports related programs, and that he would reach out to a sports attorney in Albany to help with that event. Steve Richman stated that EASL should also contact sports attorney Jill Pilgrim to speak at the event, and Anne Atkinson said that she would reach out to Jill. Ben Leibman stated that getting people to talk about sports gambling is a very timely topic due to recent legislation passed. Julie Wolf inquired about EASL's sports law committee and mentioned that she has a background in sports business affairs. Julie said she would work on a list of potential speakers.

7.2 AIMP Summit. Barry reported that Joyce Dollinger (co-chair of EASL's Music Law Committee) asked him to inform EASL members that they are eligible to receive a discounted registration in connection with the upcoming Association of Independent Music Publishers event being held June 11th – 12th.

7.3 EASL Fall Meeting. Barry Skidelsky said that he recently met with Barry Werbin, to discuss *inter alia* an EASL Fall Meeting program addressing financing and securities

laws in various entertainment and media sectors. Jason Baruch said that he would like to assist in the area of financing theatre productions. Plans call for a 3 CLE credit afternoon program, followed by a networking reception. Private placements and key deal terms will be among the topics discussed.

7.4 Introduction to Entertainment Law. Robert Seigel suggested that, if and when EASL next presents an "Introduction to Entertainment Law" (which has usually been held in June of alternating years), the event should consider having half focus on film and half on television. Barry added that at least one of the panels should also include streaming and mobile as a focus. He also noted that this event could be a great opportunity to attract new EASL members, in particular young lawyers.

8. Right of Publicity Legislation Update.

Judy Bass gave an update on the long proposed rewrite of New York's Right of Publicity (NYS Civil Rights Law sections 50 and 51). Judy said that the current bill version is now being handled in the NYS Assembly by Jeffrey Dinowitz, representative for Assembly District 81. Mr. Dinowitz and Sandy Barron (NYSBA Media Law Committee Chair) had dinner recently, during which the bill was discussed, and Mr. Dinowitz noted that the assembly's vote against last year's bill allowed time for the bill to be re-written. Senator Diane Savino is still involved on the NYS Senate side of this matter.

The new bill, which provides for both a right of publicity and a personal right of descendibility, is favored by The Screen Actors Guild (SAG) in part due to concerns about "deep faking" (i.e., using computer generated imagery to allow an actor's image to be inserted into sexually explicit or other content). The Motion Picture Association of America (MPAA) is on the opposite side of the table, having pointed out that the bill could make production of docudramas more difficult.

The NYSBA Media Law Committee (of which Judy Bass is also a member) recently reissued a report on the bill – which mirrors the report previously made by the committee in connection with the bill's prior version. Steve Richman said there are 12 opportunities for opposition to the bill over the next 3 weeks before the current NYS legislative session ends. Thus, Steve was doubtful that the bill will pass now. He added that it will most likely be negotiated for the bill to pass into next winter's legislative session. Steve also noted that there is no requirement of a public hearing, but public notice of the bill must be provided to allow for public comment.

9. Other Business. Steve Richman also reported that Hank Greenberg (the incoming NYSBA President) has announced that he will be cancelling the annual invitation-only NYSBA President Dinner. The cost of the annual meeting event had previously been paid for by NYSBA, but next January's event will be open to and paid by individuals or law firms that may wish to attend. NYSBA would like sections to underwrite (or buy 10 tickets) for a table. The EASL EC would take that under advisement.

10. Adjournment. There being no further business, upon motion duly made and

seconded, the meeting was adjourned at 1:59pm, with the next EASL EC meeting to be held on June 20 at Pryor Cashman.

Respectfully submitted,
Ethan Bordman, EASL Secretary