

**NEW YORK STATE BAR ASSOCIATION  
ENTERTAINMENT, ARTS & SPORTS LAW SECTION**

**Executive Committee Meeting – September 11, 2019**

**Pryor Cashman  
7 Times Square  
New York, N.Y. 10036-6569**

**Minutes of EASL EC Meeting**

**Attending in Person:** Anne S. Atkinson, Jason P. Baruch, Judith B. Bass, Ethan Bordman, Marc Jacobson, Diane F. Krausz, Christine-Marie Lauture, Jill Pilgrim, Robert L. Seigel, Judah S. Shapiro, Barry Skidelsky, Carol Steinberg and Rosemarie Tully.

**Attending by Telephone:** Ronald Coleman, Cheryl Davis, Leslie Greenbaum, Kathy Kim, Richard Lewis, Bennett Liebman, Dustin Osborne, Andrew Seiden, Innes Smolansky and Simone Smith, NYSBA CLE, Kristina Maldonado, Section Liaison, Sarah Robertson

1. Welcome.

Barry Skidelsky (EASL Chair) called the meeting to order at 12:34 p.m. and welcomed everyone in attendance. He asked that those attending in person to introduce themselves and those attending by phone to confirm their attendance at today's meeting by sending an email to Kristina Maldonado (EASL's liaison at NYSBA) and to Ethan Bordman, EASL Secretary.

2. Approval of Minutes.

Barry asked Ethan to correct the incorrect start time of today's meeting on the Agenda, which Ethan said he would do; and, Barry asked if anyone had comments to the minutes of our May 20 and June 20 EASL EC meetings. Carole Steinberg, co-chair of the Fine Arts committee, said she would send Ethan a Fine Arts committee report to be inserted into the May 20 minutes. Barry then asked for approval of the May 20 minutes with that insertion, which were approved unanimously. The June 20 minutes were unanimously approved without comment. Barry also welcomed Jill Pilgrim, an EASL member, who was attending this EC meeting as the EASL representative from NYSBA's ADR section.

3. Chair's Report.

3.1 Virtual Bar Center.

Barry then spoke about NYSBA's plans for a Virtual Bar Center, which include a revamp of the association's and sections' websites among other IT changes. He also noted that at the last meeting of the Section Caucus (SC), Simeon Baum (SC Chair) asked Barry and Jay Hack (from NYSBA's Business Law Section) to form and co-chair the SC's Virtual Bar Committee,

the goal of which was to expeditiously survey other section chairs by questionnaire in order to quickly make recommendations to NYSBA as to how it should improve the websites and other IT changes proposed. A copy of the recommendations titled "Report of the Virtual Bar Center Committee of the New York State Bar Association's Sections Caucus" dated July 9, 2019 was sent to NYSBA and was included in the advance materials sent to all EASL EC members for our meeting today, along a copy of NYSBA's subsequent response. Barry noted that several members of the SC felt that the association's response meant that NYSBA will basically do what it wants (and when) in connection with the websites and IT changes, without any meaningful consultation or cooperation with the SC.

### 3.2 Membership.

Barry then asked Judah Shapiro, co-chair of the EASL Membership Committee, to create and send a letter to New York law school professors that teach EASL relevant subjects, asking the professors to inform their law students: (i) that they can join NYSBA and EASL free of charge, and (ii) that they can write and submit papers for a chance to win one of two grants in connection with EASL's Cowan Scholarship. Judah said he would do so after contacting Kristina Maldonado to obtain scholarship flyers and rules, so that they can be sent to the NY law school professors listed in our database (which is maintained by Kristina Maldonado at NYSBA).

### 3.3 Phil Cowan Memorial Scholarship.

Barry reported that Barbara Jaffe and Judith Bresler have withdrawn as co-chairs of EASL's Cowan Scholarship committee. Barry then asked Judah Shapiro to take the lead on scholarship, which Judah said he would do. Barry also reminded the EASL EC that since BMI will no longer co-sponsor the scholarship, EASL would pay for the entire \$5,000 (i.e., two \$2,500 scholarships) which had been previously approved.

### 3.4 Budget.

Barry then reported that EASL's proposed budget for 2020 was submitted to NYSBA, a copy of which was also among the advance materials provided for today's EC meeting. Barry explained that the annual budget process begins with NYSBA giving each section an initial proposal based on what the section spent in the prior year and what NYSBA projects that the section might spend in the coming year. Each section then reviews and revises the proposal, sending it back to NYSBA for approval. EASL's officers had approved sending NYSBA our 2020 budget, which was slightly higher than our 2019 budget and which called for using up to \$18,000 of our surplus (in part because of increased line item expenses for our Cowan Scholarship and Diversity committees). Barry also inquired about how NYSBA treats budgeted but unused surplus. Steve Richman replied that NYSBA would return any unused portion to our accumulated surplus.

Marc Jacobson then asked about possibly reducing expenses for the EASL Journal and Blog. He also asked what the cost savings would be if the section did not print and mail the EASL Journal three times a year. Steve Richman replied that NYSBA had looked into making several section and other publications electronic only, but that doing so had been

rejected. Steve added that association and section members enjoy receiving the physical publication in their mailbox, which they see as a tangible benefit of membership. He also noted that NYSBA's Environmental Law Section asked its members if they wanted to opt out of receiving hard copies of their newsletter, but only a small percentage of that section's members choose to do so. It was also reported that section members like to save printed publications on their bookshelves for possible future reference and to show to clients.

#### 4. Committees/Engagement.

##### 4.1 Pro Bono.

As Elissa Hecker was not able to attend this meeting, she asked Barry to deliver the Pro Bono committee report. Barry reported that Elissa is seeking one or more volunteers to help with the programming of future Pro Bono clinics. Currently the committee has only one program per year, and Elissa said that with help we could produce three events a year. Barry asked anyone who would be interested to please contact Elissa.

##### 4.2 Publications.

Also on behalf of Elissa but regarding EASL's publications committee, Barry reported that NYSBA currently has several changed and open positions in their staff, so there will be an unusually long delay in the printing of the next EASL Journal (which was submitted to NYSBA in time last May). Elissa (as Editor of the EASL Journal) is currently awaiting the galleys from NYSBA, which she hoped to receive in the next few days. Elissa will then review them and submit back to NYSBA for final publication. The deadline for submission to the next EASL Journal is October 4. This will be the publication that includes the Annual Meeting. Barry explained that although authors submit articles in early October, the events at the annual meeting (such as a transcript of the meeting, including the Cowan winners' articles) are added later. Barry urged anyone interested in writing for EASL's Journal or Blog to please contact Elissa.

##### 4.3 TV/Radio.

Marc Jacobson informed the EASL EC that both Pam Jones and Mary Ann Zimmer have resigned as co-chairs of our TV and Radio committee. Barry then asked for volunteers or suggestions as to who might co-chair the TVR committee.

Marc then inquired about getting more young attorneys involved with the section and its committees. Marc said that he recently spoke to several attorneys who surprisingly reported to him that the EASL section committee application asks "why" a person wants to join a certain EASL committee. Marc asked why this question was included, and Kristina Maldonado said she would look into this. Marc also said that he would draft an email inviting young lawyers to become more involved with EASL, which letter Marc will present for approval at the next EASL EC meeting.

#### 4.4 Nominating.

Barry then asked the nominating committee (chaired by Diane Krausz) to provide at the next EASL EC meeting a formal recommendation of 2020-2022 section officers and delegates, which will need to be voted on by EASL membership at our annual meeting next January. Barry's term as EASL Chair will expire on January 31, 2020; and, his term as a member of NYSBA's House of Delegates will expire on May 31, 2020. Barry also suggested that we also consider a possible revision of our Bylaws (which were last revised in 2012); and, that a reorganization of EASL committees and committee chairs was also advisable. Barry also reminded the EC that Paul Cossu is a new co-chair of the Fine Arts committee.

#### 4.5 Sports.

Barry then noted that Joe Hanna had been recently appointed as a co-chair of EASL's Sports Law Committee. In addition, Jill Pilgrim today accepted appointment as a Sports Law committee co-chair as well.

4.6 ADR. Jill Pilgrim also noted that the State of New York is working on requiring mandatory mediation for all civil litigation filed in New York State Courts. In addition, Jill suggested that attorneys should consider putting into their clients' agreements requirements for choosing an arbitrator who understands and has experience in the fields of media, entertainment, intellectual property, arts and sports, as may be appropriate.

#### 4.7 Right of Publicity Legislation.

Judy Bass (co-chair of EASL's literary committee) reported that NYSBA's Media Law committee (on which she also serves) is working on submitting a proposal for the New York State Legislature to consider relating to statutory changes regarding New York's right of publicity. Mike Gianaris, a state senator, has taken charge of the latest relevant bill; and, he has given those interested until May 2020 to submit their comments or drafts.

Judy said that there are three main issues to be addressed – 1) the right of privacy, 2) exceptions to the right of privacy and 3) the right of publicity. A separate bill regarding digital replicas is also planned to be addressed. The issue of so-called deep fakes is now off the table, as New York is waiting for action on a similar bill pending in California. The various bills in both California and New York will only apply in circumstances involving advertising or trade. Judy explained that part of the new law will become part of NY's Labor Law, as it essentially deals with performers' labor rights.

Definitions from the latest draft bill include the following. "Right of Privacy" means a personal right, which protects against the unauthorized use of a living individual's name, portrait or picture, voice, or signature for advertising purposes or purposes of trade without written consent, which right would be extinguished upon death. "Right of Publicity" means a property right, derived from and independent of the right of privacy, which protects against the unauthorized use of a deceased individual's name, portrait or picture, voice, or signature for

advertising purposes or purposes of trade without written consent. The right of publicity would last for 25 years after death.

The overall approach was to separate the legislation into: (i) a lifetime right of privacy right that remains as it has existed for 100 years (but including statutory and common law exceptions); (ii) a descendible post-mortem-only ROP right (with comparable exceptions), and (iii) a separate new statute addressing lifetime digital replicas, to be part of the NYS Labor Law. At the same time, efforts were made to retain as much as possible from the structure and language in the amended Senate/Assembly bills from last June, while also trying to bring in proposed improvements from the NYSBA Media Law Committee's suggested revision and the digital avatar language which SAG-AFTRA had proposed a couple of years ago.

State Senator Gianaris has organized a meeting to discuss the right of publicity legislation next week with representatives of the MPAA and SAG-AFTRA. These proposed bills will be presented then for discussion. Judy Bass will continue to monitor these developments and will continue to provide the EASL EC with updates from NYSBA's Media Law Committee.

#### 4.8 Talent Agency Legislation.

Marc Jacobson reported that he had submitted to the New York State Legislature recommendations that attorneys should be exempted under the state's Talent Agency Law. He stated the submission was noted as a "priority" when sent to the legislature. Robert Seigel also gave an update on the current WGA issues with talent agents and managers.

#### 4.9 Motion Pictures.

Robert Seigel also said that the Motion Pictures committee will be holding a meeting next month featuring motion picture streaming, on a date to be determined based on speakers' availability. Robert has already reached out to Larry Sapan from Film Rise as a potential speaker. At Barry's suggestion, Robert and Ethan Bordman (Motion Pictures committee co-chairs), said that they would be interested in working on an all-day CLE featuring motion pictures and/or TV, similar to EASL's annual theatre and music law programs..

#### 4.10 Music.

Judah Shapiro announced that the Music Committee will be having a non-CLE meeting in mid-October. Matt Greenberg of Rotholz Levy Fields will be speaking on digital media in music. Barry reminded all EASL committee chairs to coordinate with Kristina, in part to promote their meetings or events through the EASL website and blog (among other channels).

#### 4.11 Theater.

Jason Baruch announced that the annual CTI Theater Producing event will be held April 1-2, 2020. This event, which features a "deep dive" into theatrical producing, has been a great success. The theater law committee will also be holding several non-CLE events this fall, including a "Broadway Breakfast." Details will be announced soon.

## 5. Programs and Events (Currently Scheduled).

5.1. EASL's Annual Music and Business Law Conference. Rosemarie Tully reported on EASL's Annual Music and Business Law Conference (MBLC), which is scheduled for Friday November 15. She inquired if EASL EC members had received a recent post card mailing on the event. Many members said they received it yesterday. She stated that we were fortunate to have already lined up over 35 outstanding speakers, including Luncheon Keynote Speakers, including: Monte Lipman, Co-Founder and CEO of Republic Records; Avery Lipman, Co-Founder and President of Republic Record; Steve Gawley, Eq., EVP Business/Legal, Universal Music Group, East Coast Labels; Daniel Getz, Esq., SVP Business/Legal, Universal Music Group, Republic Records, and Larry Miller, a professor at NYU Steinhardt (among other relevant credentials), as moderator. She also noted that the MBLC will provide professional CE credit for attending CPAs.

Rosemarie also reported that she recently attended the Hudson Valley Music Conference (HVMC) in Kingston, New York, adding that she enjoyed the well-attended event which included performances and educational panels. The conference founder spoke to Rosemarie about getting involved with EASL, and she recommended we do a CLE event with the HVMC. Rosemarie sought approval of this idea, and the EASL EC approved it. Barry noted that it was important for us to try to provide events for all New York State EASL members, as both EASL and other NYSBA sections often focus only on events for members who work or live in or near New York City.

### 5.2 Fall Meeting.

Barry reported that details of EASL's Fall Meeting on Entertainment Finance (including venue and speakers) are expected to be finalized soon. Currently scheduled for October 17, the CLE program will run from 2pm to 5pm and be followed by a networking reception from 5pm to 6pm. Barry reported that Ezra Doner has agreed to be a speaker and has otherwise been very helpful, but that finding available space has been problematic. Anne Atkinson suggested Cardozo Law School, as EASL has done several events with that school in the past, and as many student committees there are required to hold a certain number of events per year. Barry said that Cardozo had no available dates, but that he was looking into New York Law School among other possibilities. Barry also noted that some local law schools may want to be co-sponsors only if their law students can attend at no charge (just as certain large law firms may only be willing to provide space if their law firms can have several speakers involved).

### 5.3 Annual Meeting

Barry also reminded the EC that NYSBA has asked us to now provide a title and brief description for the EASL annual meeting, with a formal Agenda due by November 1. EASL's annual meeting will be held on Tuesday January 28, 2020 at the Hilton, to be followed by our third consecutive joint networking reception with NYSBA's Intellectual Property section. Barry asked EASL EC members for suggestions as to annual meeting topics.

Anne Atkinson suggested streaming, as evolving revenue sharing models are among the topics that should be considered. Jill Pilgrim suggested we also cover YouTube's revenue sharing with influencers. Judy Bass suggested we include discussion about podcasts, a topic that Barry said he would also like to be involved.

After some further discussion, the EASL EC settled on a tentative annual meeting title of "Legal and Business Issues in Digital Distribution." Judy Bass also suggested that of the total CLE credits to be offered, one hour or so should concern ethical issues affecting agents, managers, and lawyers. Barry said that he would submit this information to NYSBA, and he asked to be contacted by anyone who wanted to serve as an annual meeting program co-chair. Further details regarding EASL's 2020 annual meeting will be discussed at the next EASL EC meeting.

#### 5.4 Activist Art Program Series.

Carole Steinberg reported that there will be a three-part series on Art and Activism, titled "Working Along the Lines of Activism and Artistic Expression." The series will be produced collaboratively by the National Art Club (NAC) and EASL's Diversity and Fine Arts committees. The first event, titled "Activist Art: An Artists Perspective", will be held at 6pm on September 26 at NAC, including Ming Smith, Adrienne Fields and Zoe Buckman as speakers. The second event, titled "Activist Art: Institutional Considerations", will held on November 15 at NAC. That event will explore the institutional world of activist art through a conversation with curators and museum directors who have worked to present activist art, as well as those who have experienced public protest. The third event on "Activist Art: Digital Issues" will be held on January 15 at NAC.

#### 6. Program and Events (Planned or Proposed)

Due to time constraints, Barry tabled to the next EASL EC Meeting further discussion of other possible programs and events, including a possible new annual CLE program on film/tv.

#### 7. Other Initiatives and New Business.

Rosemarie Tully asked EC members to look into "Girls Rule The Law," an organization that donates business clothes to law students to be worn to job interviews. She recommended that EC members look at the organization's website and consider donating clothing. All other initiatives and new business were also tabled to the next EASL EC meeting due to time constraints.

8. Adjournment. Upon motion unanimously approved, the EC meeting was adjourned at 2:10 pm. The date of the next EASL EC meeting will be held on Wednesday **October 23** at Pryor Cashman from 12:15pm – 2pm.

Respectfully submitted,

Ethan Bordman, EASL Secretary