

ENTERTAINMENT, ARTS & SPORTS LAW SECTION,  
Executive Committee Annual Meeting – **January 23, 2018**

**New York Hilton Midtown**  
1335 Avenue of the Americas  
New York City

Minutes of Meeting

**Attending in Person:** Anne Atkinson, Jason Aylesworth, Alan Barson, Jason Baruch, Judy Bass, Ethan Bordman, Judith Bresler, Brian D. Caplan, Cheryl Davis, Joyce Dollinger, Joan Faier, David Faux, David S. Fogel, Donna Frosco, Kristin Garris, Beth Gould, Les Greenbaum, Elissa D. Hecker, Marc Jacobson, Pamela Jones, Kathy Kim, Diane Krausz, Anne LaBarbera, Paul LiCalsi, Bennett Liebman, Michael Nachman, Judith Prowda, Steven H. Richman, Steve Rodner, Andy Seiden, Robert L. Siegel, Barry Skidelsky, Carol Steinberg, Irina Tarsis, Rosemarie Tully, Lisa Willis, Mary Ann Zimmer

**Attending by Telephone:** Shannon Zhu

1. Welcome. Diane Krausz called the meeting to order and welcomed all, noting that it was her last meeting as Chair, and saying it was so good to see so many in person.
2. Minutes. Diane asked if there were any comments on the minutes for the October 27 and the December 11, 2017 meetings. After two modest corrections to the December minutes, both sets of minutes were approved.
3. Nominating Committee Report; Election of Officers and Delegates. Steve Rodner stated that every two years, the Nominating Committee, comprised of the immediate past chair and all the other past chairs who are still active, nominate the officers and delegates for the coming two-year term. (The list of nominees is attached to these minutes.) He stated that the nominees were a wonderful group of people, well known to the Executive Committee. He asked if there were any nominations from the floor; there were none. Upon motion duly made and seconded, the candidates proposed by the Nominating Committee were unanimously endorsed for election by the entire section. Steve announced that these persons would be presented at the Section's annual meeting of the section for their actual election, immediately preceding the Annual Meeting CLE.
4. Treasurer's Report. Jason Aylesworth reported that because of sponsorships, the Section did not need to dip into its surplus, although using portions of the surplus had been planned. A brief discussion of some particular charges in the budget ensued.
5. Phil Cowan Memoria/BMI Scholarship. Judith Bressler reported that this year, there were 12 submissions from six law schools: Brooklyn (4), Buffalo (3), Cardozo (1), Columbia (1), St. Johns (1), and Syracuse (2). The winning entries were from Sean P. McGrath of St. Johns ("The Light at the End of the Runway: Clarification of the Conceptual Separability Test May Help Correctly Shift the Balance of Copyright Protection in Favor of Fashion Designers") and

David Manella of Columbia, ("Anything Goes": Regulating the Conduct of Money-Bundling Co-Producers"). Judith stated that the new chair of BMI had graciously agreed to continue to sponsor this year. Barry Skidelsky stated that he would arrange a meeting with BMI to explore on-going support. Beth Gould noted that in the past, BMI has funded both scholarships (\$2500 each).

6. 2018 Upcoming Events.

6.1. Pro-Bono. Elissa Hecker mentioned that on February 25 the Pro Bono Committee would hold a clinic for artists held at the Gibney Dance Center, with sponsorship by Dance NYC. Emails announcing specifics will be sent and there are materials in the packet sent to Executive Committee attendees (a copy is attached to these minutes). Included in those materials is a request for volunteers for certain topics.

6.2. Commercial Theater Institute/EASL Seminar. Jason Baruch announced that this year's seminar will be held on March 27 – 28<sup>th</sup> at the Actor's Temple from 6 – 9:30 PM each night (registration is at 5:30). There are interesting topics to be presented by esteemed speakers, including top entertainment lawyers and theater producers and managers

6.3. Spring Meeting. Mary Ann Zimmer stated that this year's Spring Meeting is to be held in May, and Stan Soocher will be participating again with his always well-received annual update. A second panel is being planned regarding using true stories as the basis for film and television programs. The panel, which will address life rights, rights of privacy/publicity, and the newsworthiness exception, is being planned by Pamela Jones, Ethan Bordman and herself. This panel may include discussions of the Christopher Porco story, and the outrage of the families of both Reeva Steenkamp and Oscar Pistorius (and Pistorius's family's threat of legal action) over alleged misrepresentation in a Lifetime film that aired in November 2017.

7. Legislative Update: Proposed Change to NY Privacy Law. Steve Richman noted that the NYSBA Committee on Media Law issued a report in late December regarding the proposed right of publicity bill that makes drastic changes to Sections 50 and 51 of the NY Civil Rights Law.. The December draft report by NYSBA's Media Law Committee (included with the materials for this meeting) expressed concern both as to the content of the bill and that the Legislature has acted without the benefit of extensive comment. Steve noted that the last time this issue came up, the Executive Committee could not reach consensus and thus decided not to take a position. He reported that the bill is not yet calendared at the Assembly. Assembly Majority Leader Joe Morelle introduced the bill on his own last spring, and the Committee on Ways and Means had not brought it to the floor, but rather had sent it back to committee, where amendments may be introduced. He observed that the bill is still on the Assembly calendar, and that the bill would not "go away."

Judy Bass stated that she had followed this proposed legislation and report as a liaison to the Media Law Committee, and said that it was important for EASL to look into this and possibly take a position, even if there is not unanimity. The legislature is looking for input from the various media we represent, especially theater producers, partly because of the December 8 Right of Publicity Roundtable program on this topic at St. John's with Barry Werbin and Ned

Rosenthal in which several New York State Senate and Assembly members also participated. She noted that the bill was still on the table at the State Assembly. Pam Jones observed that this bill is central to what many of us do, and it is important to be involved.

Barry Skidelsky suggested that we establish a subcommittee to report at our March meeting so we could get back to the Media Law Committee, as they have requested. He noted that the subcommittee could merely recommend and that there not be a rush to pass an important law without sufficient study. Marc Jacobson observed that “slow and steady” may be the way to go because it is unlikely that EASL would reach a consensus.

Steve Richman stated that other sections may likewise be studying the legislation. For example, there could be tax implications because licensing can generate revenue. He noted the need for consultation, if the State Bar is to take a position, and Sections may take inconsistent positions and the NYSBA President has to coordinate if that occurs. Judy Bass reported that NYSBA may be looking for input on the bill from the Trusts & Estates and Tax Sections as well.

Barry asked Judy Bass to chair the subcommittee. The following people volunteered to serve on the sub-committee – Cheryl Davis, Elissa Hecker, Pamela Jones, Anne LaBarbera, Steve Richman, Robert Seigel, Carol Steinberg and Mary Ann Zimmer. Judy also said she would reach out to Barry Werbin, Ned Rosenthal and others who worked on the December 8 program to get their input. Upon motion duly made, seconded and unanimously passed, the EC authorized the establishment of the subcommittee, chaired by Judy Bass.

In response to a question, Steve Richman explained that Sections can comment on pending legislation, but must submit the proposed comments to the NYSBA President to ensure that there is no conflict. The President can withhold distribution and engage in consultation. The guidelines regarding proposed legislation is being discussed by the Sections Caucus.

## 8. Future Programs.

8.1. Possible Programs on Legislative Proposals. Steve Richman noted that Marc Richman would like to hold additional events to discuss relevant legislative proposals, such as legalizing marijuana and sports gambling. Regarding legalizing marijuana, Bennett Liebman noted that he knew the point guy for the movement, and that there are 10<sup>th</sup> Amendment implications for sanctuary cities and legalizing marijuana. (The 10<sup>th</sup> Amendment reserves to the States the rights not delegated to the United States or prohibited to the States.) Steve noted that there is a US Supreme Court case pending regarding the constitutionality of banning sports gambling everywhere other than Nevada. Barry Skidelsky observed that he wanted to do more with sports, and that this was a great topic. Steve said that they would need a location and a date possibly in May, although no one can say when the Supreme Court ruling will be made, noting that many major decisions are made in June at the end of the term.

Barry suggested establishing an intranet with a calendar for planning purposes.

8.2. Additional Topics. Carol Steinberg reported that the Fine Arts committee had a productive meeting prior to this meeting, and they have many ideas for programs. She suggested

adding ethics components to EASL's CLE programs due to lawyer interest and the need for such credits. Elissa Hecker suggested a program on sexual harassment and on ethics in sports, both for inside and outside counsel. Lisa Willis noted that this is one of the topics (as it relates to fashion law) for the Fashion Law Institute's annual program to be held in April.

8.3. CLE for the "Big Bar." Diane Krauss stated that EASL would hold its annual CLE for NYSBA in June; the topic has not yet been chosen. Steve Rodner and she will plan the program. Since it will be a full day program, and they will need help.

8.4 Annual Music Conference. Rosemary Tully reported that EASL's annual music conference will be held in November. The planning committee meeting held immediately prior to this meeting was helpful. Rosemarie thanked Diane for providing the opportunity. The planning is moving along well; a great team is helping.

9. EASL Committee Meetings. Diane Krausz noted that the following committees took advantage of the opportunity to meet in person prior to this meeting:

- Copyright and Trademark
- Fashion Law
- Fine Arts
- Literary Works
- Motion Picture
- Music Business and Law Conference
- Television and Radio
- Theater and the Performing Arts.

10. Adjournment. There being no further business, upon motion duly made and seconded, the meeting was adjourned.

Respectfully submitted,

Anne S. Atkinson