

## ENTERTAINMENT, ARTS & SPORTS LAW SECTION

Executive Committee Meeting – April 7, 2021, 12:30 –2:20pm

### Minutes of EASL EC Meeting

**Attending by Virtual Conference/Telephone:** Andrew Seiden, Anne Atkinson, Arlen Appelbaum, Barry Werbin, Bob Seigel, Carol Steinberg, Christine-Marie Lauture, Dana Alamia, Donna Frosco, Elissa D. Hecker, Ethan Bordman, Innes Smolansky, Isaro Carter, Jared Leibowitz, Jason Baruch, Jeff Aber, Jill Pilgrim, Joan Faier, Judah Shapiro, Judith Prowda, Kathy Kim, Les Greenbaum, Louise Carron, Marc Jacobson, Mariam Chubinidze, Olivera Medenica, Paul Cossu, Paul LiCalsi, Rosemarie Tully, Sarah Robertson, Simone Smith, Steve Rodner, Steven H. Richman

1. Welcome and Approval of March 2021 Meeting Minutes – Barry Werbin, Chair; Isaro Carter, Secretary; Carol Steinberg, Ass't Secretary.

Barry Werbin (EASL Chair) called the Zoom virtual meeting to order at 12:35 pm and welcomed everyone in attendance. The March 2021 EC minutes, as most recently revised, were approved by the EC. Dana Alamia will submit them and have them posted on the EASL website.

2. NYSBA Finance Committee Memo (April 6, 2021): NYSBA to share certain CLE fees with Sections plus discounted CLE fees for members.

#### 2.1. Recurring Events.

The Chair addressed his receipt of a NYSBA Finance Committee memo dated April 6, 2021, advising that NYSBA will share a portion of CLE fees with the different NYSBA Sections with respect to major recurring events. Dana Alamia, liaison, confirmed that EASL's annual meeting, the spring and fall meetings, and the MBLC, would qualify. Dana also confirmed that if we hold our annual theatre program, that will also qualify.

Dana confirmed that for these events, EASL would get 25% of the CLE fees generated. Sponsorship income would continue to be retained in full, as the Chair mentioned.

The Chair also mentioned that monthly meetings the Section chairs have been having with Gerard McAvey at NYSBA helped facilitate this outcome. The Sections were all in agreement that they have all been largely impacted, financially, by COVID.

Jason Baruch asked a question to clarify the percentage of revenue retained by EASL for the theatre program. His understanding was that previously, we could retain 100% of the revenue generated through registration fees. Dana clarified that

the Sections didn't retain any income from programs last year and that this 25% CLE sharing is allowing the Sections to get some fees for annual recurring programs that, historically, would have been 100% retained by the Sections but are now processed through the NYSBA CLE department (because everything has been virtual under Covid). This will now be the case as opposed to in 2020, when all registration fees were going straight to NYSBA. Dana further clarified that when the Sections can go back to in-person programs, things will go back to the way they were.

## 2.2 Non-Recurring Events

Bob Seigel asked whether the revenue generated for non-recurring events would not be going to NYSBA. He also noted the lack of incentive to do a CLE event in such cases because there aren't, currently, any costs really associated with putting on a non-CLE event.

Steven Richman noted that NYSBA takes the fees because they do the record-keeping to issue the credits, and make sure the materials are there to meet the requirements of the CLE board. He mentioned that everything NYSBA's CLE department had to do for a live meeting they've been doing for virtual meetings. The only thing that changes is the Sections are not paying for any courses, but do not have any meeting venue or rental costs.

Dana stated that she believes NYSBA's CLE department would also retain the income for non-recurring, virtual CLE programs because they are still facilitating them.

### 3. NYSBA event planning grid update - Dana Alamia.

Dana mentioned the event planning grid. She said that the planning grid was for NYSBA's marketing department to create a comprehensive guide of what programs EASL is contemplating so they can start to plan out ahead of time.

Dana also mentioned that all liaisons were asked for Q2 events to be confirmed as soon as possible. She asked that everyone look at the planning grid and make sure that all proposed events be reflected on the planning grid. She also noted that we're not bound to what's put in the grid (it can always be revised) and that once the grid is updated, she'll circulate it to the EC. Dana will pass along the deadlines for the Q3 and Q4 grid deadlines as well.

### 4. "Meet & Greets." - Dana Alamia.

Dana noted that while Meet & Greets aren't required, they've been good for educating people who are interested in a Section but are not yet a current Section member. She mentioned that in the past, these have just been one hour to 90 minute "cocktail hours" where a few people from the EC are there to introduce themselves and explain more about the opportunities of the Section. Although EASL members

are more than welcome, the idea is to meet new people and engage them to join EASL.

Dana noted that the Meet & Greet events could be themed, but that is also not required. Dana mentioned that she had been in conversation with NYSBA corporate counsel about our first event—a new member Meet & Greet at the end of April. She also suggested that we do these events every two to three months.

Anne Atkinson suggested that we say this first Meet & Greet is for EASL members with a special invitation for new EASL members. The Chair agreed. He also mentioned that we still need to pick a date, ask someone to volunteer to host the event (he volunteered himself), and then have the officers present and other EC members, especially our longstanding members and the prior Chairs of the section.

Carol Steinberg suggested that we use the planning grid to not schedule meetings at the same time as other groups like the Copyright Society so that people don't have to choose which meeting they're going to attend. The Chair noted that this was a good idea, and that while that might be hard to do at times, we should try to avoid overlapping with other organizations where possible.

5. Journal status - *Elissa Hecker*.

Elissa stated that the Journal is over 150 pages. She stated that she's waiting on updates because the Supreme Court came down with a decision on one of the articles. When that's done, she says, the galleys are back in, edited, and hopefully, the electronic version will be out within two weeks, and the print publication will come out right after that.

Elissa also announced that the updated deadline for the Summer issue is April 30<sup>th</sup>.

6. EASL Spring Meeting – Three virtual programs planned based on responses:

The Chair mentioned that in addition to Prof. Stan Soocher's annual entertainment law in review program, two other proposed programs have been proposed: the Olympics program from the Sports Committee (Jill Pilgrim and Jeff Aber, Co-Chairs) and the Lawful Return of Patrons/Fans to Venues in NYS in accordance with COVID -19 Protocols. The Chair noted that we need to figure out is the timing for the Spring Meeting and whether it's too much to do in one afternoon session as opposed to splitting it over two or more days.

Steven Richman mentioned that the State and Local government Section is splitting its program across two days and that we can register for each program separately. He also mentioned that this Section is allowing its dues-paying members to attend a CLE program at no cost and that this, along with the timing, are things that EASL should consider.

The Chair mentioned that he received a memo from NYSBA finance advising there would be a 20% discount between Section members and non-members. He also said that it might not be possible for us to do what Steve Richman suggested. Dana clarified that the State and Local Government Section might have been able to do that because of a certain decision made as an exception for them.

The Chair asked if it would be possible to split up the programs over a couple of days like the Copyright Society did with its mid-winter program. Dana responded that it would likely be possible to do this and name them “EASL Spring Program 2021 – Panel One” and so on. Steve mentioned that the State and Local Government Section is doing one program a month. The Chair noted that breaking up the programs in some fashion would make it easier on the planners and make the programs easier to administer. He also suggested that we do three separate programs on three separate afternoons or evenings.

Jill Pilgrim touched on another possible reason why the State and Local Government Section obtained an exception, as they tend to make less money from their programs. Jill endorsed the idea of having the programs held over several afternoons. She suggested that we keep it within a tight frame since it’s a Spring Meeting. She also noted that she would like to focus on May 27th, June 2nd, and June 3rd as possible dates for the Sports Committee program.

Ethan Bordman mentioned (because dates were brought up) that the Motion Picture and TV Committee are planning an event on May 13<sup>th</sup> that would be a an hour and a half lunch event. The Chair noted that this event would be two weeks before the Spring Meeting timetable, so there should be enough separation. Bob Seigel confirmed that the Motion Picture and TV Committee program was on the planning grid, but the date needs to be updated. The Chair asked Dana if we could have the planning grid posted on the EASL website for EC members. Dana confirmed that this is possible and that she would have to replace it each time the grid is updated. She also noted that she could email it to everyone separately.

6.1. *Stan Soocher’s Entertainment Law Year in Review (Stephen Rodner coordinating)*

The Chair mentioned that Stan Soocher’s availability for the meeting is flexible, giving us a range from the end of May to the beginning of June.

6. 2. *Sports Law Committee program on “Olympics 2020 in 2021: On Your Mark, Get Set, Go... hopefully” (Jill Pilgrim/Jeff Aber coordinating)*

The Chair asked Jill to email him and Dana her preferred dates and

times. Jill mentioned that she would prefer a midday start time for her committee's program, and she would be reaching back out to panelists.

6.3. “The Lawful Return of Patrons/Fans to Venues in NYS in accordance with COVID -19 Protocols” (Steven Richman coordinating).

The Chair asked Steven Richman if he could spearhead planning this program and he said he could, and he would just need someone to help him.

As far as panelists/speakers, Steven suggested getting people from the theater industry, sports industry, venues, etc. He also mentioned trying to get speakers from Empire State Development and possibly from the Health Department. The Chair also asked if we can get people from the Governor's and the Mayor's Office. Steven responded by saying that's why he'd like a speaker from Empire State Development leading the reopening process for the Governor. The Chair acknowledged this and then urged the EC to volunteer to help Steven with this endeavor.

The Chair moved on to confirm that the EC agreed on having the three programs on three separate days. He also asked Dana to follow up with NYSBA to see if we can price each program separately and collectively. Dana confirmed that she'd try to make sure that we can do the three programs, that people can sign up for the three programs separately, and then ask if there is any way we can do a discount if registrants sign up for all three.

Steve Rodner asked if we could have the kind of registration fees we did for the music program for the Spring Meeting, or whether it would be more money. Dana responded that she believes it would be a bit more for the Spring Program and that it will be what's reflected on the financial memo (dependent on CLE credit hours) but, it will not be a lot more than the music program. She elaborated that for .5-1.5 credits, an EASL member would pay \$40, a non-EASL NYSBA member would pay \$50, and a non-NYSBA member would pay \$100.

7. Fashion Law Committee report: March 25 “Fashion Luminary” program (Olivera Medenica).

Olivera reported that for this virtual event, Jeffrey Helman, the assistant GC at PVH Corp., was interviewed by two younger members of the Fashion Law Committee. The main topic was mergers and acquisitions in the fashion industry; he also spoke about his career, the current landscape of the fashion industry, and how COVID has impacted the fashion industry. Both attendance and audience engagement was good, and she said she is hoping to plan another one but, the timing may be hard.

The Chair asked Dana if she had the attendance stats on this program. Dana confirmed that there were 64 people registered for the event. The Chair also

confirmed that Olivera hoped to make the Fashion Luminary program a three-part series, and she confirmed. Olivera also mentioned that she might be able to plan the second event before the summer, and the speaker she has in mind may be available.

8. Pro Bono Clinic at Dance/NYC Symposium report. Elissa Hecker.

Elissa reported that the clinic had 18 attorneys, many clients, not enough clients for attorneys at all times, but the attorneys were amazing. She reported that everybody wanted to have a follow-up. There was a follow-up networking session because attendees couldn't all meet in person. She mentioned that she wanted to have 3 of these events every year and is hoping to do one at the end of the year in person.

For now, Elissa announced that July 22<sup>nd</sup> from 10am-1pm would be the next virtual clinic and that it's being done through NYFA. She also reported that there were many volunteer attorneys from all over the country and that even some of Diane's clients were present and couldn't stop talking about how great she was.

Finally, Elissa reported that everyone was very happy and relieved that virtual clinics work.

9. MBLC Planning Status for Fall 2021. (Rosemarie Tully, Marc Jacobson, Stephen Rodner, Diane Krausz, Paul LiCalsi, Christopher Hull, Joyce Dollinger, Jared Liebowitz, Anne Atkinson, Cheryl Davis). Diversity panel to be included.

Rosemarie Tully opened with a quick update. She noted that we're beginning the planning early and that the MBLC is a program scheduled for November. She reported it was decided that the program will continue to be done over four sessions, two hours each, starting the last week in October and continuing for the three weeks into November.

Rosemarie also mentioned that aside from the format, the planning committee has not yet narrowed down topics or considered whether to do a teaser session in September or October. She shared that the planning committee discussed whether or not to do the last panel live and in-person. The outcome of that discussion was that the planning committee decided that the entire conference would be virtual, but that may be subject to change as the world changes. She also shared that Anne Atkinson and Cheryl Davis would be heading the diversity session and that there will be a litigation update with Paul LiCalsi, which will last 2 hours.

On behalf of the diversity program, Anne Atkinson stated that they hope to make the session similar to the publishing one and that she will need help from EC members with connections to people at music publishing companies and other music-related institutions.

10. Theatre and Performing Arts Committee Program on Live Capture. (Jason Baruch, Diane Krausz, and Kathy Kim)

Jason Baruch mentioned that he was still discussing the annual theatre program with CTI, although CTI has not been active during this time. He also mentioned that he isn't sure what position his contact at CTI will be in come September when the committee will start thinking about whether they'll be putting on the theatre event. Jason mentioned that he was still trying to work out whether the committee will have to revisit the event next year or still go on as a joint program with CTI.

Jason mentioned that he, Kathy, and Diane are talking about doing a virtual event on live capture, specifically covering areas defining what a live capture is versus other audiovisual adaptations of plays and musicals. The event would also dive into distribution platforms like streaming versus the Broadway ON-Demand platforms, the deals made, the legal issues, and the financial issues between authors and rights holders and other members of the creative teams involved in the productions.

Jason mentions that they would also discuss subsidiary issues and the future of live capture through this period of COVID and whether it will survive beyond the pandemic. He ended by saying that they're in the preliminary stages of planning this event, but they'd like to do it as quickly as possible. Kathy Kim stated that it would be hard to tell when they'll be able to put on the event, especially because they're trying to have a diverse collection of voices weighing in, and that would take time to plan.

11. Legislation Committee - Status of EASL submission to NYSBA of the proposal to exempt attorneys from licensing requirements of the NY Talent Agency Act (theatrical employment agencies). Previously approved by EASL's Executive Committee and NYSBA Executive Committee. A copy of the proposal as submitted to NYSBA is attached. (Steven Richman, Marc Jacobson)

The Chair gave a brief background on the purpose of the recommended revision of the NY Law. He noted that a few years back, the EC approved a proposal that was submitted to NYSBA, urging revisions to a provision in the New York State theatrical employment agency registration law, which can trap many lawyers (who aren't registered as a talent agent) giving employment advice to their clients. The Chair noted that Marc Jacobson raised an even bigger issue, namely, that outside of the talent agency scope, the existing law puts attorneys at risk who are advising potential employees on negotiating their employment agreements.

Steven Richman noted that the Legislative Committee had a meeting on March 17<sup>th</sup>, and they agreed that it was important to continue to try to pursue this legislation. They drafted the bill in response to the ruling by California administrative agencies and a CLE program where the New York City Department

of Consumer Affairs, which administers the law in the City, indicated that they believe that if attorneys engaged in these practices, they would at least be investigated.

Steven went on to say that in January 2018, he and Marc made a very brief presentation to the state bar's Executive Committee, which approved the proposal unanimously. They then drafted the bill, and the state bar submitted it. Since then, there has been a lot of turnover at the state bar's office, and they little or no record of this history, but Steven reports that he and Marc forwarded their copies of the prior approvals and such.

Steven reports that he assumes once the budget gets done over the next week, he'll give them a few days and then see if the new executives had any success moving this forward because the legislature will still be in session, at least through June.

The Chair noted the importance of this legislation because lawyers are not required to be licensed in order to act as real estate agents. He states that it should be no different for those of us in entertainment who have the experience.

Marc mentioned that the definition of "employment agency" implies that lawyers who negotiate for a fee any employment agreement are subject to the same sanctions by the Department of Consumer Affairs. He also mentioned that he contacted Miriam and Rachel, who run the Law Student Committee, and asked if they could give the Legislative Committee some cases about people who might have violated the employment agency law. Marc stated that this might allow the committee to expand the request for changes in the legislation to address this issue.

Marc also shared that when he was at the CLE panel that Steven referenced, there was a lawyer from the Department of Consumer Affairs, and they laid out the fact pattern that from *Solis v. Blancarte* and asked the lawyer what she would do if that happened in NY. Marc noted the lawyer responded that she would *absolutely* investigate whether the lawyer acted as an agent, without a license. He notes that at present it is, in some sense, a theoretical problem, but we shouldn't wait until it becomes a real problem to fix it.

The Chair asked if the committee has been in touch with other interest groups like SAG. Marc responded that they have not been in touch with any groups like SAG or the Writer's Guild—he stated that he believes it would be better to get some traction in the legislation before they contacted anyone else. He also stated that he believes the best way to get this traction is to make it clear to the Labor and Employment section that they're at risk under the current definition (but not before there is a memo setting out that they are at risk).

Steven also noted that he would still let the state bar figure out what they're going to do with the existing approved proposal because if there's a new proposal to



expand that, it would still have to go through the same bureaucratic process of state bar and executive committee approvals again, even if both Sections agree on it. He also mentioned the option of getting the state bar to do something to allow our Section to reach out and get the bill introduced. The legislature on its own may then be able to amend it to deal with the other issues once there's a bill actually on somebody's desk.

Marc agreed with Steven but suggested that the first thing that should be done is to get out the memo mentioned above. He mentioned tapping the Law Student Committee, and the Chair mentioned that he might be able to get an associate from Herrick to do it for EASL.

12. Fine Arts Committee – status of “Estates Issues for Artists” with the Artists’ Rights Society (ARS) program May 12 and for Pro Bono. (Carol Steinberg, Judith Prowda, Paul Cossu)

12.1. Fine Arts - “Estates Issues for Artists”

Carol Steinberg noted that for the estates issues program on May 12<sup>th</sup>, she, Paul, and Judith have been working with Adrienne Fields, General Counsel for Artists Rights Society (ARS). It will be a lunch program on Zoom from 12-1:30pm. She noted that this program will not only be individuals talking. They’re going to try to curate it so that everyone gives practice tips as well. Carol also mentioned that they're going to curate some questions.

As for speakers, Carol reports that they'll have Barbara Hoffman, an art lawyer who has written and done a lot of work on estates and many other issues for the nuts and bolts presentation. They’ll also have a gallerist, Dorian Bergen, from ACA gallery to talk about licensing issues, Michael Herman, from The Andy Warhol Foundation, and Kathy Batista, Judith’s colleague at Sotheby's, who will speak about legacy issues. They’re currently looking for one more panelist for diversity.

12.2. Pro Bono.

Carol Steinberg announced that the Pro Bono Committee is partnering with NYFA again for a webinar on May 13<sup>th</sup> at noon. It will be an introduction to artists' rights, which will incorporate videos that Carol prepared on basic copyright, basic moral rights, and fair use introduction. The program is for artists or anyone who doesn't know anything about these issues, and she'll be using cases to illustrate each issue.

Carol also mentioned that in the second half of June (date TBD), the committee will put on a program about rights of privacy and publicity.

They'll discuss using images of other people. Judy Bass and Carol will do this presentation at NYFA. Carol will present on the evolution of the law, and Judy will talk about the new NYS law. Carol noted that Judy also wrote an article about the new law and praised it, as did Elissa Hecker and the Chair.

13. NYSBA CLE requested possible programs for 2021: basics of entertainment; representing sports agents; and representing galleries. (Dana and Chair)

The Chair announced that NYSBA has requested that EASL host a series of basic programs between now and the end of the year. They don't have to be CLE, but they can just be basics in entertainment, representing sports agencies, representing galleries, etc. He stated that they could also be CLE programs, but, again, they don't have to be.

The Chair asks that the co-chairs of the different committees think about this for a series of these programs in the fall. He notes that these programs are often very attractive to young lawyers, new lawyers, and general practitioners who come across these issues and want to have at least some basic working knowledge.

Steve Rodner mentioned that EASL used to do these programs in June. Rosemarie Tully responded that we did this in the past. The Chair noted that the section has a lot going on in May and June right now, so that this series of programs would be best suited for the fall.

14. Other Committee Updates (ad hoc).

Respecting an event that the TV and motion picture committee is going to put on, Ethan Bordman noted that one of the speakers was open to the event being either CLE or non-CLE.

Bob Seigel reported that the event will be a discussion about the future upside of streaming entertainment. It's a joint effort of the Motion Picture and The Digital Entertainment Television Radio Committee. It will be called " Film and TV Profit Participations: The Future Upside For Streaming Entertainment." The panel will consist of a television producer, royalty auditor, a business affairs executive, and an industry consultant discussing how to deal with the changing landscape for back-end participations in streaming entertainment, particularly the new scenarios of buyouts and bonuses and what lawyers can do with that. It's scheduled for May 13<sup>th</sup> on Zoom from 12:30-2pm.

The Chair asked if Dana had that information, and Dana confirmed that she did but that Simone was spearheading this. Simone mentioned that she had just spoken with Ezra Doner, who will be moderating the discussion, but that the event has been confirmed and should be in the CLE calendar by the end of the week.

The Chair also mentioned that in planning this event, the committees should try to find sponsors because we would get to keep the money, and it's good PR exposure for any potential sponsors.

15. Adjournment.

Upon motion unanimously approved, the EC meeting was adjourned at 1:58 pm.

*The next EASL EC meeting is scheduled for Wednesday, May 5<sup>th</sup>, 2021, at 12:30 pm.*

Respectfully submitted,

Isaro L. Carter, EASL Secretary