

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
REMOTE MEETING
JUNE 11, 2021**

PRESENT: Simeon H. Baum, Mark A. Berman, T. Andrew Brown, Orin J. Cohen, David Louis Cohen, Norman P. Effman, Donna England, Jean F. Gerbini, Sarah E. Gold, Taa R. Grays, LaMarr J. Jackson, Scott M. Karson, Sherry Levin Wallach, Richard C. Lewis, Michael A. Marinaccio, Thomas J. Maroney, Michael J. McNamara, Ronald C. Minkoff, Mark J. Moretti, Domenick Napoletano, Aimee L. Richter, Mirna M. Santiago, Robert T. Schofield, IV, Nancy Sciocchetti, Hon. Adam Seiden, Diana S. Sen, Lauren E. Sharkey, Kathleen M. Sweet, Jean Marie Westlake.

Guests: Cynthia S. Arato, June M. Castellano, Robert S. Dean, Hermes Fernandez, Sharon Stern Gerstman, Matthew J. Kelly, Andrew Kossover, Joanne Macri, David E. McCraw, David P. Miranda, Michael Miller, Sandra Rivera, Hon. Alan D. Scheinkman, Prof. Roy D. Simon, Prof. Ellen Yaroshefsky.

Mr. Brown presided over the meeting as President of the Association.

1. Mr. Brown called the meeting to order, and Simeon H. Baum, Orin J. Cohen, Taa R. Grays, LaMarr J. Jackson, Thomas J. Maroney, Michael J. McNamara, Sandra Rivera, Lauren E. Sharkey, and Kathleen M. Sweet were welcomed as new members of the Executive Committee.
2. Approval of minutes of meeting. The minutes of the April 9, 2021 and May 18, 2021 meetings were accepted as distributed.
3. Consent Calendar.
 - a. Approval of presidential appointments to House of Delegates
 - b. Amendments of bylaws of Environmental and Energy Law Section

The consent calendar, consisting of the items listed above, was approved by voice vote.

4. Report of the Treasurer. In his capacity as Treasurer, Mr. Napoletano provided an update with respect to the results of operations for the first four months of 2021. Items covered included dues revenue of \$8,996,000; CLE net revenue of \$709,300; and Annual Meeting net revenue of \$466,000. The report was received with thanks.
5. Report and recommendation of Lease Negotiation Committee and Finance Committee. David P. Miranda, chair of the Lease Negotiation Committee, and Finance Committee member Michael Miller reported on the negotiations between the Association and The New York Bar Foundation with respect to a potential transfer of One Elk Street from The Foundation to the Association. They reported that a Memorandum of Understanding

(MOU) between the parties had been executed, by which ownership of One Elk will be transferred from the Foundation to the Association; the Association would provide office space for Foundation staff and in-kind services to the Foundation; the Association would bear responsibility for renovation and maintenance costs of One Elk; and the Association and Foundation would work closely in joint fundraising in order to meet common goals. The MOU is contingent upon approval of the Association's House, the Foundation's Board, and the New York State Attorney General. After discussion, a motion to adopt the following resolution was endorsed for favorable action by the House:

Whereas, the New York State Bar Association and The New York Bar Foundation are parties to a lease, as tenant and landlord respectively, for property at One Elk Street, Albany, New York, that ends on December 31, 2021; and

Whereas, the Association and Foundation have concluded negotiations regarding future use of One Elk Street; and

Whereas, the Association President signed a Memorandum of Understanding with the Foundation on May 20, 2021 calling for the transfer of One Elk Street from the Foundation to the Association subject to, inter alia, the approval of the Association's House of Delegates;

Now, therefore, it is

Resolved, that the House of Delegates hereby approves the May 20, 2021 Memorandum of Understanding, subject to the terms and conditions set forth therein and the provisions of this Resolution:

Further resolved, that the Association President is authorized to conduct necessary due diligence, including but not limited to obtaining the written opinions of counsel regarding any tax implications, fundraising matters, and approval of the Attorney General concerning the proposed transaction;

Further resolved, that the Association President is authorized to enter into a final agreement regarding the property transfer as outlined in the Memorandum of Understanding.

6. Report of President. Mr. Brown highlighted the information contained in his printed report, a copy of which is appended to these minutes.
7. Report and recommendations of Task Force on Racial Injustice and Police Reform. In their capacities as co-chairs of the Task Force, Mr. Brown and Ms. Grays outlined the Task Force's recommendations with respect to 21st century policing; improving policing at key stages; and additional accountability within the criminal justice system. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House.

8. Report of Emergency Task Force on Solo and Small Firm Practitioners. Mr. Napoletano and June M. Castellano, co-chairs of the Task Force, presented an informational report on the Task Force and its work to date to prepare a report to act as a blueprint for solo and small firm practitioners. The report and recommendations will be presented at the November meeting. The report was received with thanks.
9. Report of Task Force on the Uniform Rules. In his capacity as chair of the Task Force, Mr. Lewis, together with members Sharon Stern Gerstman and Matthew J. Kelly, provided an informational report on the Task Force's work to date, including four hearings it had held on the impact of the rules. The report was received with thanks.
10. Report and recommendations of Task Force on Free Expression in the Digital Age. Cynthia S. Arato and David E. McCraw, co-chairs of the Task Force, reviewed the Task Force's recommendations on (a) amendment of the Freedom of Information Law (FOIL); (b) the advancement of government transparency outside of FOIL; (c) the growth of non-profit journalism; and (d) the expansion of legal services for news organizations. After discussion, a motion was made to endorse the report and recommendations for favorable action by the House. One member abstained.
11. Report and recommendations of Task Force on the New York Bar Examination. Hon. Alan D. Scheinkman, chair of the Task Force, outlined the Task Force's report on the remote administration of the exam and the long-term future of the New York bar examination, together with its recommendation that New York replace the Uniform Bar Examination with its own examination. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House. One member abstained.
12. Report and recommendations of Committee on Standards of Attorney Conduct. Prof. Roy D. Simon, chair of the committee, together with committee member Prof. Ellen Yaroshefsky reviewed proposed amendments to Rule 8.4 of the Rules of Professional Conduct with respect to discrimination in the practice of law to prohibit improper behavior in the practice of law; expand the protected classes to conform to New York anti-discrimination law; define and prohibit "harassment"; and eliminate the requirement to exhaust administrative remedies. After discussion, a motion was made to endorse the report and recommendations for favorable action by the House. Two members abstained.
13. Report and recommendations of Task Force on Nursing Homes and Long-Term Care. Hermes Fernandez and Sandra Rivera, co-chairs of the Task Force, reviewed the Task Force's report on the effect of the pandemic on the long-term care sector and its recommendations for protecting public health; preparing for emergencies; providing clear guidance; preventing the spread of communicable diseases; collecting and disseminating information; and allocating resources. After discussion, a motion was made to endorse the report and recommendations for favorable action by the House.

14. Report and recommendations of Committee on Mandated Representation. Committee chair Robert S. Dean, together with past chair Andrew Kossover, outlined a legislative proposal to amend the Criminal Procedure Law with respect to arraignments. Under this proposal, (1) fingerprints would be transmitted electronically rather than via mail; (2) a report prepared by the Division of Criminal Justice services would be referred to as a criminal history report; (3) require the court to provide a defendant or counsel with basic information including the criminal history report, the arrest report, a copy of the charging instrument and all referenced attachments prior to defense counsel's interview of the accused person at arraignment; and (4) require courts to provide defendants and their counsel ample opportunity to confer and review all the materials required to be disclosed by the court to the defendant. After discussion, a motion was adopted to approve the report and recommendations.
15. Report and recommendations of Committee on Immigration Representation and Committee on Mandated Representation. Ms. Wallach, on behalf of the Committee on Mandated Representation, and Joanne Macri, past chair of the Committee on Immigration Representation, presented a report recommending amendments to the Model Plea Colloquy under the New York Criminal Jury Instructions. After discussion, a motion was adopted to approve the report and recommendations.
16. Reports and recommendations of Committee on Courts of Appellate Jurisdiction. The reports were presented by committee member Robert S. Dean.
 - a. Assigned appellate counsel for indigent defendants. The committee's affirmative legislative proposal would add a new subsection two to section 380.55 of the Criminal Procedure Law to allow an additional mechanism for requesting the appellate court to assign appellate counsel. After discussion, a motion was adopted to approve the report and recommendations.
 - b. Criminal appeal delays. The committee's report and recommendations addresses delays in perfecting intermediate appeals focusing on three areas: gathering a complete set of documents filed with the court, locating the exhibits, and obtaining the transcript. The report makes several recommendations for remedying these issues. After discussion, a motion was adopted to approve the report and recommendations.
17. New Business. Orin noted that courts have instituted credit card fees of 3% and asked that this issue be raised with the Chief Judge.
18. Date and place of next meeting. The next meeting of the Executive Committee will be held on Friday, October 29 at the Otesaga in Cooperstown.
19. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Taa R. Grays', written in a cursive style.

Taa R. Grays
Secretary