

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
APRIL 12, 1997

PRESENT: Members: Alderman; Agress; Asarch; Ayers; Baldwin; Baum; Berlin; Birmingham; Besunder; Bohner; Bracken; Branca; Cahill; Cardozo; Cioffi; Cloonan; Clune; Coffey; Coffill; Connery; Cooke; Cunha; D'Angelo; DiNardo; Denton; Doran; Dwyer; Effman; England; Epstein; Farrell; Field; Fine; Rosalind Fink; FitzGerald; Franchina; M. Freedman; Friedman; Gacioch; Gardella; Geltzer; Gerstman; Getnick; Gingold; M.R. Goldstein; P.S. Goldstein; Golinski; Gregory; Gutleber; Haig; Hall; Harris; Hassett; Hayes; Headley; Heming; Herold; Hesterberg; Hodges; Hoffman; Horowitz; Jacobowitz; Jones; Kahler; Kamins; Kelly; Kennedy; Kenney; M. Kessler; S. Kessler; Kilsch; Kougasian; Krane; Landy; Lazar; Lefkowitz; Levin; C. Levy; P. Levy; Lieberman; Lilly; Logan; M. Longo; Lucchesi; Madigan; Maldonado; Malito; Mandell; Maney; Manley; Markuson; Marsh; Marten; Martusewicz; Matthews; McClusky; Millon; Moore; Murray; Mycek; Naviasky; Netter; O'Leary; Oliver; Omansky; Palmer; Patrick; Paul; Peckham; Penzel; Peradotto; Pfalzgraf; Pfeifer; Porter; Pruzansky; Reede; Reich; Reimer; Reiniger; Reizes; Remo; Rice; Richardson; Rider; Rosenbloom; Rosner; Ross; Rothstein; Santola; Schraver; Sienko; Souther; Spellman; Standard; Taylor; Terranova; Tharp; Tippins; Tishler; Tomaselli; Torres; Tsimbinos; D. Tyler; Vigdor; M. Walsh; Whalen; Williams; Witmer; Wolinsky; Wollman.

1. Approval of minutes of January 24, meeting. The minutes were deemed accepted as distributed previously.

2. Report of Treasurer. Mr. Rice summarized the Treasurer's report covering the period January 1 - February 28, 1997. He reviewed the major income and expense items contained in the budget and stated that they were within the Finance Committee's estimates for the initial two months of the fiscal year. He noted that expenses were approximately \$196,000 higher than the comparable period in 1996, due primarily to the payment of almost all Annual Meeting expenses prior to the end of February as opposed to payment having been made later during the previous year. Mr. Rice reported that the Advisory Investment Subcommittee had met in January with U.S. Trust Company, the Association's investment advisor, and some portfolio changes had been made to enhance investment performance while maintaining security of principal. He stated that the Association remained in sound financial condition and that, as required in the Bylaws, the audited financial report for the 1996 fiscal year would be presented at the June House meeting. The report was received with thanks.

3. Election of Nominating Committee and NYSBA Delegates to ABA House of Delegates. Archibald R. Murray, Chair of the Nominating Committee, reported that the Nominating Committee had nominated G. Robert Witmer, Jr., John P. Bracken and Maxwell S. Pfeifer as members-at-large of the Nominating Committee and Mr. Witmer

as its Chair for the 1997-98 Association year. A motion was adopted electing said Chair and members. Mr. Murray then reported that the Nominating Committee had selected M. Catherine Richardson to serve as an alternate at-large member. A motion was adopted electing Ms. Richardson to that position. Mr. Murray next reported that the vice-president and elected delegates from each district had nominated the following individuals to serve as members and alternates of the Nominating Committee from their respective districts for the 1997-98 Association year:

FIRST DISTRICT

NICOLE A. GORDON
EUGENE P. SOUTHER
MARTTIE L. THOMPSON, ALTERNATE

SECOND DISTRICT

ROSS M. BRANCA
PAUL A. GOLINSKI
ALLEN LASHLEY, ALTERNATE

THIRD DISTRICT

THOMAS P. CONNOLLY
JACOB J. EPSTEIN
SUSAN C. PICOTTE, ALTERNATE

FOURTH DISTRICT

MATTHEW J. JONES
MARK M. RIDER
NICHOLAS E. TISHLER, ALTERNATE

FIFTH DISTRICT

MICHAEL E. GETNICK
HARLAN B. GINGOLD
KIM H. MARTUSEWICZ, ALTERNATE

SIXTH DISTRICT

JAMES F. LEE
KATHRYN GRANT MADIGAN
LEONARD E. SIENKO, JR., ALTERNATE

SEVENTH DISTRICT

DAVID M. SCHRAVER
JUSTIN L. VIGDOR
RICHARD D. ROSENBLOOM, ALTERNATE

EIGHTH DISTRICT

JOSEPH D. BERMINGHAM, JR.
RAYMOND L. FINK
DANIEL A. RYBAK, ALTERNATE

NINTH DISTRICT

H. GLEN HALL
JOSEPH F. LONGO
RICHARD M. GARDELLA, ALTERNATE

TENTH DISTRICT

JOHN H. GROSS
JON N. SANTEMMA
JOHN L. JULIANO, ALTERNATE

ELEVENTH DISTRICT

JOSEPH A. BAUM
HOWARD D. STAVE
ARTHUR N. TERRANOVA, ALTERNATE

TWELFTH DISTRICT

RICHARD M. HOROWITZ
HON. JOSEPH DIFEDE
ROY J. SCHWARTZ, ALTERNATE

A motion was adopted electing the foregoing district representatives and alternates.

Mr. Murray then reported that the Nominating Committee had selected the following individuals to serve a two-year term commencing in August 1997 as delegates to the House of Delegates of the American Bar Association: Maryann Saccomando Freedman, Ralph L. Halpern, James C. Moore, M. Catherine Richardson and G. Robert Witmer, Jr. A motion was adopted electing said individuals.

Ms. Madigan noted that of the forty individuals selected for service on the Nominating Committee, there were only four women and one person of color; excluding alternates, those figures became two and zero, respectively. She indicated that the Association was committed to the advancement of both groups, and while diversity had been improved in recent years, there was a need for enhanced efforts in this regard going forward. Mr. Coffey commented that there was a need to identify women and minorities and afford them an opportunity for service so that the Association could become truly representative of all elements of its membership. Mr. Cardozo supported the prior statements concerning the need for the Nominating Committee to reflect a cross-section of the bar. He also noted the disproportionate number of delegates to the ABA drawn from upstate areas, and encouraged the Nominating Committee to be sensitive to the membership from the New York City area in making future selections.

4. Presentation of Trial Lawyers Section National Trial Advocacy Awards. In cooperation with Anthony J. DeMarco, Jr. of the Trial Lawyers Section Trial Advocacy and Scholarship Competition Committee, Ms. Richardson presented the Trial Lawyers Cup and Scholarship to Syracuse University College of Law as the law school from New York State placing highest in the National Trial Advocacy Competition. State University of New York at Buffalo Law School was recognized for its second place finish among New York schools in the competition.

5. Report of President. Ms. Richardson reported the following matters:

a) Due to reasons of ill health, Alexander A. Delle Cese had resigned as Vice-President from the Twelfth District, creating a vacancy in that office for the balance of the current Association year and for the ensuing year. She indicated that at the request of the Nominating Committee representatives from the Twelfth District, a conference call meeting of the members of the House of Delegates from that district had been convened, and Steven E. Millon, the current Chair of the Young Lawyers Section and that section's delegate to the House, had been selected to fill the vacancy. A motion was adopted electing Mr. Millon as Twelfth District Vice-President for the balance of the present Association year and the 1997-98 year.

b) In late March, Chief Judge Kaye and OCA had filed comprehensive court reform legislation that would merge New York's nine trial level courts into a two-tier system with an upper tier Supreme Court and a lower tier District Court. She indicated the measure included a Fifth Department with presently unspecified boundaries, and that the current constitutional restriction on the number of Supreme Court justices would be eliminated, with acting justices being replaced by permanent judges. Judges in the new system would be either elected or appointed in the same manner as they are selected under current law. Ms. Richardson indicated that a special task force would be appointed to study the measure and to coordinate the submission of comments by other interested sections and committees.

c) Based on the recommendations of its Committee on the Profession and the Courts, OCA had filed legislation to permit public access to the lawyer discipline process once formal charges are brought against an attorney. She explained the nature of the provisions contained in the bill, and noted the prior positions adopted by the House in 1985, 1992 and 1995 opposing earlier public access to disciplinary

matters. She indicated that at its April 11, 1997 meeting, the Executive Committee had reaffirmed the prior position of the House and that this view would be communicated to the Chief Judge and to the Legislature.

d) Based on the success of the experimental relaxation of the jury sequestration rules in lower level criminal cases, OCA was seeking to make the experimental changes permanent and to broaden future experimentation to include more serious felonies other than capital cases. She noted that the Association had expressed support for these initiatives as benefiting the justice system, easing the burden on jurors, and saving unnecessary costs. Ms. Richardson noted that OCA had introduced a number of other juror-related measures, most of which were supported by the NYSBA, except the Association continued to oppose any reduction in the number of peremptory challenges in criminal cases. She indicated that relevant committees and sections would continue to monitor the progress of these measures, and that the Association's views would be communicated to the appropriate authorities.

e) The Governor had acted on his executive order establishing judicial screening committees in each of the four judicial departments and had appointed their members. She indicated that the NYSBA had been allowed to designate one member to each of the four panels as follows: First Department - Renaye B. Cuyler; Second Department - John P. Bracken; Third Department - John R. Dunne; Fourth Department - David L. Hoffberg.

f) Based on concerns raised by members regarding Allstate Insurance Company's practices in approaching accident victims as Allstate customers and encouraging settlement of claims without use of an attorney, she had brought the matter to the attention of Attorney General Vacco. She stated that the Attorney General had been responsive to the Association's concerns, and had pursued Allstate, obtaining a written settlement pursuant to which Allstate agreed to correct the misstatements contained in its materials.

g) Since the experimental program for electronic recording of proceedings in Surrogate's Court, the Court of Claims, Family Court, District Court, New York City Civil Court and civil parts in upstate City Courts is due to expire this year, OCA has introduced legislation to make the experimental program permanent. She indicated that groups within the Association, such as the Trusts and Estates Law Section, as well as the Brooklyn Bar Association, had expressed concerns regarding the proposal. Ms. Richardson advised that after reviewing the matter at its April 11 meeting, the Executive Committee had advocated continued experimentation without permanency until the technology can be improved to eliminate the current problem areas.

h) In anticipation of the Legislature resuming its consideration of tort reform legislation, she had appointed a Task Force to Evaluate Tort Reform Proposals. She stated that former Association President John P. Bracken and past Torts, Insurance & Compensation Law Section Chair David M. Gouldin had been appointed-chairs of the group, with a membership intended to provide an informed and balanced perspective on the issues.

i) Through the cooperative efforts of the Committee on Courts and the Community and the court system, with grant funding provided by several groups, including The New York Bar Foundation, a new juror orientation film entitled, "Your Turn: Jury Service in New York State" had been completed. She indicated that the film was now in use, and that the project had also generated an educational guide and packet for use in schools.

j) She recently joined ABA President N. Lee Cooper and approximately 75 other state and local bar presidents in sending a letter to House Speaker Newt Gingrich expressing the organized bar's concern about efforts within Congress designed to impeach federal judges on the basis of their judicial decisions.

k) On March 13, 1997, she had attended the quarterly meeting with Chief Judge Kaye and other senior OCA officials. She indicated that the topics addressed included the Judiciary budget, OCA's legislative agenda, funding for civil legal services, jury system improvements, and the status of the two task forces (Attorney Professionalism & Conduct; Client Satisfaction) and their subcommittees designated to develop implementation plans for various of the Craco Committee recommendations as approved by the Administrative Board of the Courts. With regard to the Craco initiatives, she stated that proposals dealing with CPLR Section 130 sanctions, Code of Professional Responsibility amendments on attorney brokering, a proposed code of civility, and a statement of client rights would be released for comment by the bar. Ms. Richardson noted further that a bridge-the-gap MCLE proposal would be considered by the Administrative Board at its May meeting.

l) She expressed appreciation to the members of the House for their support, encouragement and cooperation during her tenure as President. Ms. Richardson also acknowledged the departing members of the House for their service.

6. Report and recommendations of Task Force on Family Law. The House resumed its consideration from the January 24, 1997 meeting of the report submitted by the Task Force on Family Law. Continuing the process begun at the previous meeting, Task Force Chair Timothy M. Tippins summarized the group's recommendations with respect to the subjects of domestic violence, judicial case management of domestic relations cases, pre-trial disclosure, calendar practice and expert witnesses. He also reviewed the process utilized by the Task Force in considering comments or proposed amendments received from other interested parties. Separate motions were adopted approving the Task Force's recommendations in the foregoing areas with the following exceptions: a) The domestic violence proposal was revised and amended by the House to reflect support for legislation to provide an evidentiary hearing within five days following the issuance of an ex parte order if a hearing is requested or, if a hearing is deferred, no longer than 30 days from the issuance of an ex parte order, such recommendation to substitute for all of the recommendations by the Task Force regarding domestic violence. b) The recommendation with respect to pre-trial disclosure was amended by removing the clause to the effect that there should be a right to an oral deposition of such witnesses from the request that the Legislature amend the appropriate statutes to ensure that family law litigants enjoy full disclosure with respect to all expert witnesses. c) The calendar practice recommendation that the matrimonial courts should bifurcate issues

of divorce grounds and child custody was revised by inserting the qualifying term "bonafide" before "issues". d) The court-annexed ADR recommendation was revised to read as follows: "Court-annexed ADR programs should be subjected to strict safeguards to ensure that they are wholly voluntary, that all parties are independently represented, and that any 'neutral' party utilized by the process be knowledgeable and experienced in the field of matrimonial law."

Following completion of action with respect to the various proposals, Mr. Pruzansky expressed the appreciation of the House to Mr. Tippins and the members of the Task Force for their comprehensive and thoughtful work.

7. Report and recommendations of the New York County Lawyers' Association. Norman L. Reimer, Co-Chair of the Task Force on the Representation of the Indigent of the New York County Lawyers' Association, and Jack S. Hoffinger, Chair of that Task Force's Committee on Assigned Counsel Compensation, outlined the history of compensation levels paid to assigned counsel pursuant to Article 18-B of the County Law, noting that rates had remained static and were significantly lower than those paid to attorneys retained by state and local governments to handle civil matters, or rates paid to assigned counsel in the federal system. They then summarized a proposal to increase fees for felonies with a potential for life imprisonment to \$100 per hour, for all other felonies to \$75 per hour, and for misdemeanors to \$50 per hour, with the same level to apply to both in-court and out-of-court work. After discussion, the proposal was amended to include representation by assigned family law or domestic relations counsel in Family Court at the \$75 per hour level, and to clarify that rates be set based on the level of offense at the time changes are filed, and not the level at the time the case is concluded.

As amended, the report and proposed fee levels were approved by unanimous vote of the House.

Based on concerns expressed regarding the functioning of the assigned counsel system, it was the sense of the House, concurred in by Mr. Reimer, that it would be appropriate for the NYSBA to designate an appropriate group to conduct a study of the funding and the quality of representation provided to the indigent.

Concerns were also voiced regarding the impact that increases in County Law Article 18-B rates would have on the finances of local governments in some counties and the possible elimination of panels as a result. To address these concerns, the House approved a motion that the Legislature be urged to adequately and fully fund the 18-B mandates or, in the alternative, fund the amount by which local costs would be increased by virtue of the proposed increase in rates.

8. Report of Chair. Mr. Pruzansky advised, as he had done previously, that to allow as much time as possible at meetings for the discussion of substantive items, he had distributed his report as Chair in a written format in advance of the meeting. A copy of that report is attached to these minutes. Consistent with the information set forth in that report, Mr. Pruzansky announced:

a) Bar associations entitled to delegates to the House of Delegates had filed their designations of delegates for the 1997-98 Association year. On motion, said

designations were approved as filed, and a further motion was adopted approving the filed roster of members of the House as the official list for 1997-98.

b) As had been done at previous meetings, a survey form had been distributed to assist in enhancing communication between the members of the House and the bar leadership. He reminded the members to complete and return the forms, and to note their preferences with respect to continuing the June meeting at Cooperstown and utilizing the Omni Hotel for overnight accommodations in conjunction with House meetings held at the Bar Center.

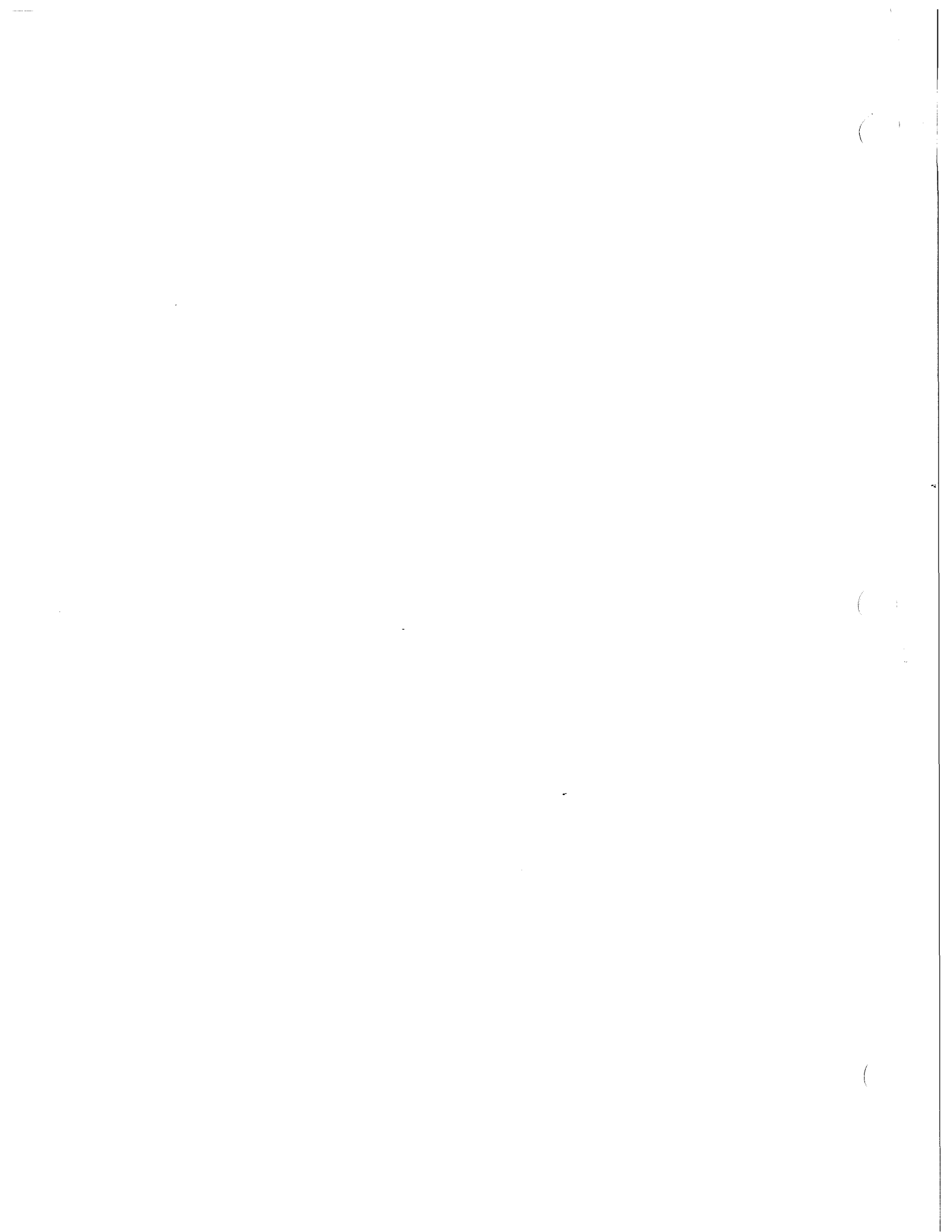
c) He expressed appreciation to the members of the House for their support, collegiality and civility in addressing difficult issues during the past year. He also acknowledged those House members who were completing their terms and thanked them for their dedicated service.

9. Date and place of next meeting. Mr. Pruzansky announced that the next meeting of the House of Delegates was scheduled for Saturday, June 28, 1997 at the Otesaga, Cooperstown, New York.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kathryn Grant Madigan". The signature is written in black ink and is positioned above the printed name.

Kathryn Grant Madigan
Secretary



New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200



April 7, 1997

To: Members of the House of Delegates

Re: Report of Chair

I am, once again, dispensing with the formal report of the Chair to allow maximum time for the discussion of substantive agenda topics. President Richardson will be reporting on major policy issues affecting the Association.

There are two "housekeeping" items to be dealt with:

1. Each year, those county and local bar associations entitled to delegates in the House of Delegates are asked to file designations of delegates. Those bar associations have filed their designations for the 1997-1998 Association year. At the meeting you will be asked to approve the designations as filed.

2. At the April meeting, the House of Delegates is also requested to approve the filed roster of House members as the official list for the 1997-1998 Association year. I shall ask for your approval of this item at the meeting.

Last June, we initiated a survey at each session of the House to ascertain your level of satisfaction with various aspects of the House meeting. Attached are the survey results from January, which parallel those from June and November in indicating overall satisfaction with the format and content of the background materials we have provided.

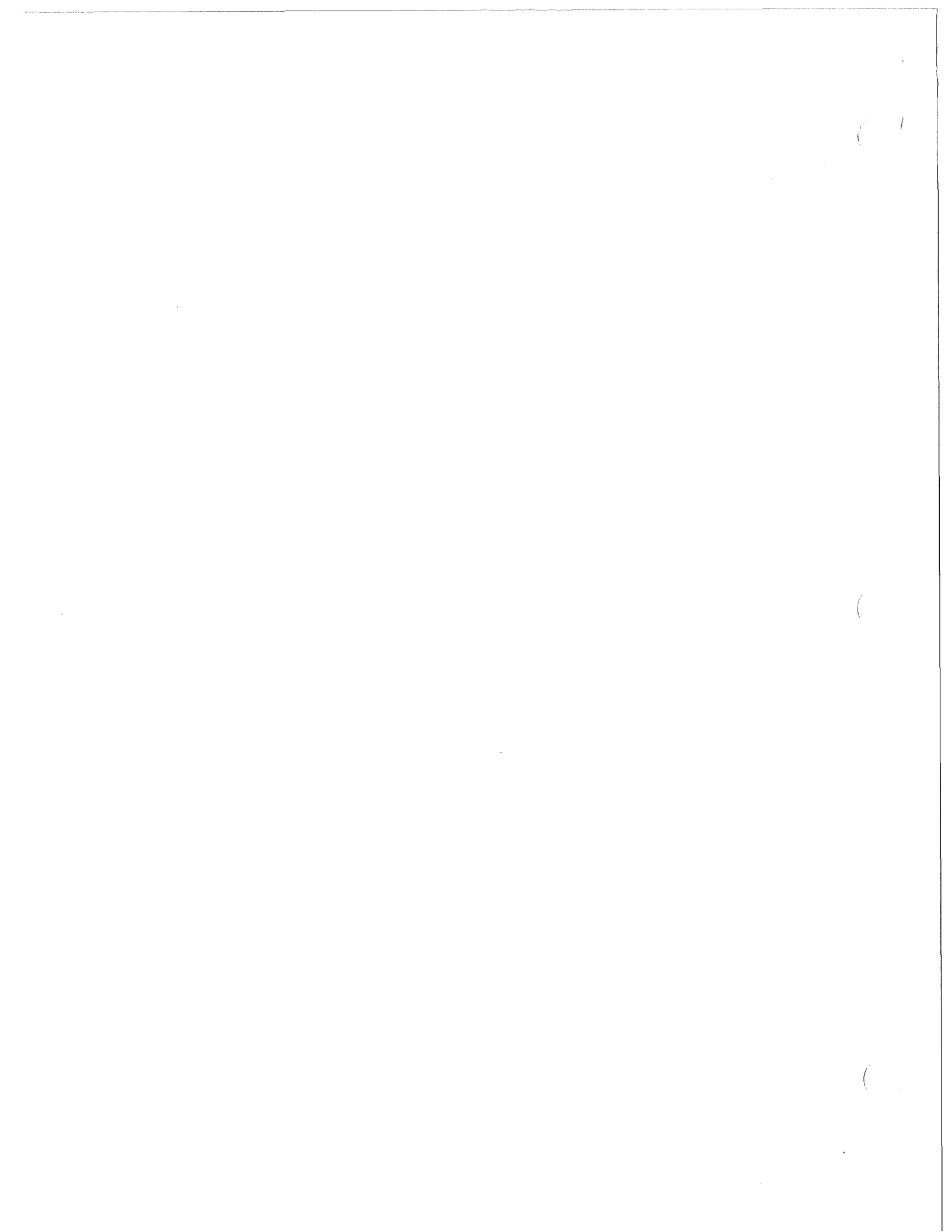
A survey form will be distributed on April 12. Please take a few moments to complete and return the form to a staff member. Your views will assist us in structuring future meetings.

Please note that we are seeking your views regarding future siting of the June meeting in Cooperstown. As the size of the House grows, and the Otesaga becomes more popular for other functions, we are encountering increasing difficulty in obtaining space for our members and activities. We would appreciate your opinions as to either remaining in Cooperstown or exploring other venues.

This constitutes my final report as Chair. I want to thank all of you for your cooperation, support and encouragement during the past year, as well as for the collegial manner in which you participated in debates.

Respectfully submitted,

Joshua M. Pruzansky
Chair of the House



HOUSE OF DELEGATES

QUESTIONNAIRE - JANUARY 24, 1997

25 RESPONSES REC'D

As Chair of the House of Delegates, and on behalf of President Richardson, I would like to welcome you to our Annual Meeting in New York City.

As stated to you on the questionnaires distributed at the January meeting, among the goals of the present leadership is the enhancement of communications with members of this House as well as making our meetings as substantive and productive as possible. This can only be accomplished by your commitment to the process. Towards that end, you are invited and encouraged to share your thoughts and suggestions and you will, accordingly, find the address, phone and fax number for Catherine and me at the end of this document. If you so wish, you may use this questionnaire which may, upon completion, be given to any of the Association's staff.

It is our intention to distribute a similar questionnaire at the remaining House meetings this Association year.

1. Were the agenda background materials provided to you:
2 Too Detailed Insufficiently Detailed 22 About Right

2. Were the agenda materials supplied to you sufficiently in advance of the meeting to allow adequate time for review:
20 Yes 4 No

3. As to the following agenda items, was the amount of time allocated to discussion:
 - a) Report of the Special Committee to Review the Code of Professional Responsibility (agenda item #8):
 1 Too Much Too Little 24 About Right

 - b) Report of the Task Force on Family Law (agenda item #9):
 2 Too Much 11 Too Little 12 About Right

4. Was the position of the Executive Committee on the agenda items of value to your deliberation and ultimate decision:
10 Yes 7 No 7 Somewhat

5. Did this agenda contain sufficient substantive issues to make your attendance worthwhile:

23 Yes ___ No 2 Somewhat

6. What items would you like to see included on the agenda of further meetings?

7. What was your opinion about the length of the meeting:

2 Too Long 3 Too Short 20 About Right

8. Is it your opinion that four (4) House meetings per year are:

___ Too Many 1 Too Few 24 About Right

9. Additional Comments:

Should you wish to communicate with the President or President-Elect regarding this agenda meeting or anything having to do with the House of Delegates or the NYSBA, you can do so at the following addresses:

M. CATHERINE RICHARDSON
President
Bond Schoeneck & King, LLP
One Lincoln Center
Syracuse, NY 13202-1355
Tel: (315)422-0121
Fax: (315)422-3598

JOSHUA M. PRUZANSKY
President-Elect
Greshin Ziegler & Pruzansky
199 East Main Street, P.O. Box 829
Smithtown, NY 11787-2899
Tel: (516)265-2550
Fax: (516)265-2832