

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
APRIL 4, 1998

PRESENT: Members: Agata; Anglehart; Asarch; Ayers; Baldwin; Bashian; Bass; Bergen; Berlin; Berman; Birmingham; Bernis; Bohner; Bonner; Bracken; Buzard; Cardozo; Chapman; J. Coffey; P. Coffey; Coffill; Coleman; Cooke; Copps; Corcoran; Coughlin; Cyrulnik; DeCoursey; DiGirolomo; Dollard; Eggleston; Embser; England; Farrell; Felder; Fennell; Field; Fine; Finerty; Fink; Fisher; FitzGerald; Flood; Franchina; B. Freedman; M. Freedman; Gacioch; Galloway; Gerstman; Getnick; Giordano; Glanzer; Golinski; Grayson; Gregory; Gutleber; Haig; Halpern; Harris; Hassett; Hayes; Headley; Helmer; Heming; Herold; Hesterberg; Hirschson; Horan Horowitz; Inclima; Jacobs; James; Kahler; Kamins; Kelly; Kendall; Kennedy; Kenney; Kenny; Kessler; Klein; Kougasian; Krane; Kretser; Lazar; Levin; C. Levy; P. Levy; Lieberman; Lilly; Logan; Lucchesi; Madigan; Malito; Mandell; Maney-Kennedy; Manley; Marangos; McCarthy; McClusky; McDonald; Midonick; Miklitsch; M. Miller; Millon; Miranda; Moore; Murray; Nachimson; Naviasky; Netter; Nussbaum; O' Connor; O'Leary; Oliver; Ostertag; Oswald; Patrick; Pearl; Peckham; Peradotto; Perlman; Pfeifer; Porter; Pruzansky; Reede; Reich; Reimer; Reiniger; Reizes; Remo; Rice; Richardson; Richter; Rider; Rifkind; Robinson; Rosenbloom; Rosner; Rubin; Samel; Santemma; Schraver; Schumacher; Shapiro; Spellman; Spitzmiller; Standard; Steiner; Stokes; Sunshine; Taylor; Terranova; Tharp; Thompson; Tsimbinos; D. Tyler; Vig; Vigdor; Vinal; Vinall; Vitacco; Wales; M. Walsh; O. Walsh; Weaver; Williams; Witmer; Wollman; Zalayet.

1. Approval of minutes of January 30, 1998 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, 1998. 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 indicated that the cost containment efforts by the Association were working well in terms of reducing expenses as evidenced by the surplus of approximately \$850,000 achieved in 1997. Mr. Rice observed that the Association was presently in the fourth year of its current dues cycle and the Finance Committee was hopeful of extending this for a fifth year to defer any need for a dues increase until at least the year 2000. He stated that the Association remained in sound financial condition and, as required in the Bylaws, the audited financial report for the 1997 fiscal year would be presented at the June House meeting. Mr. Rice noted that this would be his final report as Treasurer before assuming the office of President-Elect. He acknowledged the Finance Committee Chairs under whom he had been privileged to serve: Thomas A. Melfe, Richard Raysman and G. Robert Witmer, Jr., and also expressed appreciation to Robert R.

Whinnery, who had recently retired as Controller, for his support and assistance. The report was received with thanks.

3. Election of Nominating Committee and NYSBA Delegates to ABA House of Delegates. G. Robert Witmer, Jr., Chair of the Nominating Committee, reported that the committee had nominated Maxwell S. Pfeifer, John P. Bracken and M. Catherine Richardson as members-at-large of the Nominating Committee and Mr. Pfeifer as its Chair for the 1998-99 Association year. A motion was adopted electing said Chair and members. Mr. Witmer then reported that the Nominating Committee had selected Maryann Saccomando Freedman to serve as an alternate-at-large member. A motion was adopted electing Ms. Freedman to that position. Mr. Witmer 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 1998-99 Association year:

FIRST DISTRICT
SUSAN PORTER
EUGENE P. SOUTHER
MARTTIE L. THOMPSON, ALTERNATE

SEVENTH DISTRICT
JUSTIN L. VIGDOR
G. ROBERT WITMER, JR.
S. GERALD DAVIDSON, ALTERNATE

SECOND DISTRICT
STEVEN D. COHN
PAUL A. GOLINSKI
ANDREW S. FISHER, ALTERNATE

EIGHTH DISTRICT
JOSEPH D. BERMINGHAM, JR.
RAYMOND L. FINK
PAUL C. WEAVER, ALTERNATE

THIRD DISTRICT
JACOB J. EPSTEIN
MIRIAM M. NETTER
LORRIANE I. REMO, ALTERNATE

NINTH DISTRICT
JOSEPH F. LONGO
MARY ELLEN MANLEY
JOSEPH P. MCGLINN, ALTERNATE

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

TENTH DISTRICT
JOHN L. JULIANO
JON N. SANTEMMA
ROBERT W. CORCORAN, ALTERNATE

FIFTH DISTRICT
MICHAEL E. GETNICK
KIM H. MARTUSEWICZ
DAVID M. HAYES, ALTERNATE

ELEVENTH DISTRICT
JOSEPH A. BAUM
ARTHUR N. TERRANOVA
SEYMOUR W. JAMES, JR., ALTERNATE

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

TWELFTH DISTRICT
LAWRENCE R. BAILEY, JR.
RICHARD M. HOROWITZ
AUSTIN TORRES, ALTERNATE

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

Mr. Witmer then reported that the Nominating Committee had selected the following individuals to serve a two-year term commencing in August 1998 as delegates to the House of Delegates of the American Bar Association: John P. Bracken, Kay C. Murray, Maxwell S. Pfeifer, Joshua M. Pruzansky, and Thomas O. Rice. A motion was adopted electing said individuals. Mr. Witmer then reported that the Nominating Committee had selected David P. Miranda to serve as Young Lawyer Delegate to the ABA House for a similar two-year term. A motion was adopted electing Mr. Miranda.

4. Presentation of Trial Lawyers Section National Trial Advocacy Awards. In cooperation with Stephen O'Leary, Jr., Co-Chair of the Trial Lawyers Section Committee on Trial Advocacy Competition, Mr. Pruzansky presented the Trial Lawyers Cup and Scholarship to Pace University School of Law as winner of the National Trial Competition for Region II. Syracuse University College of Law was recognized for its second place finish.

5. Report of The New York Bar Foundation. Maryann Saccomando Freedman, President of The New York Bar Foundation, reported that at its January 1998 meeting, the Board of Directors of The Foundation had awarded over \$172,000 in charitable grants to worthwhile, law-related projects. She then introduced Randolph F. Treece of the Albany County Bar Association. Mr. Treece, in turn, explained the manner in which a grant from The Foundation had been utilized to develop a program and video to instruct elementary school children concerning the law. He also recognized students and teachers who had been involved with the project. Elementary students who had participated in the program then described their experiences and were warmly received by the House. The report was received with thanks.

6. Report of President. Mr. Pruzansky reported the following matters:

a) He had been contacted by the Westchester County Bar Association regarding the unwarranted and unfair criticism appearing in some publications with reference to Judge S. Barrett Hickman's handling of the lawsuit stemming from the Tawana Brawley case. Mr. Pruzansky indicated that the Committee on Judicial Independence had the matter under consideration to determine what action the Association might take in this matter.

b) On February 9, accompanied by Mr. Moore, he had met with Attorney General Vacco to discuss a variety of items of mutual interest. He noted that the Attorney General was supportive of the Association's initiative to hold health maintenance organizations and managed care entities liable for negligence related to medical decision making affecting the provision or denial of health care, and was also supportive of the Association's position on Insurance Regulation 68, which would reduce the time period for filing no-fault automobile insurance claims. He indicated that Mr. Vacco was also taking an active role with regard to investigating unlawful practice of the law matters.

c) On May 18th, the NYSBA would be conducting a town hall meeting with the Nassau County Bar Association in Mineola. He indicated that activities would include a reception for attorneys and judges, a panel program on bench-bar relations, and a discussion of issues and future directions for the organized bar.

d) He was in the process of appointing a special committee to evaluate the extent to which the recommendations made by the Task Force on Administrative Adjudication, as approved by the House of Delegates in 1988, had been implemented by the Departments of Health, Motor Vehicles, Environmental Conservation, Social Services, and the Workers' Compensation Board. He indicated that should the special committee find that a further, more thorough study is warranted, it would develop a plan and budget for this evaluation. He indicated the House would be kept apprised of developments in this area.

e) On March 9, 1998, he and Mr. Moore had met with Chief Administrative Judge Lippman. He indicated that Judge Lippman was responsive to concerns that he raised regarding extensive delays members are encountering in various courts in obtaining decisions on motions. Mr. Pruzansky indicated that the topics discussed also included the Office of Court Administration's plans for distributing the Statement of Client's Responsibilities as recommended by the NYSBA, the use of technology to make practice and access to court documents easier for attorneys, and the concept of an ombudsman program under study by the Committee on Judicial Administration to provide a mechanism for resolving non-disciplinary problems between attorneys and judges.

f) On March 3, 1998, he had met with James F. McGuire, Counsel to Governor Pataki. He indicated that the session was cordial and geared towards maintaining open lines of communication so that the Association might convey its views on matters of interest, particularly regarding legislative matters.

g) In connection with the lawsuit instituted by the Association challenging the constitutionality of Section 4734 of the Balanced Budget Act of 1997, which criminalizes the advising of persons about lawful Medicaid asset transfers, the NYSBA had filed a motion in Federal District Court for the Northern District of New York seeking a preliminary injunction to prevent the Attorney General from enforcing the statute. Mr. Pruzansky indicated that in responding papers, Attorney General Reno had stated she would not defend the constitutionality of the statute or seek to enforce it. He advised that arguments on the motion had been heard on March 27th and the judge had reserved decision. He indicated that the House would be kept apprised of developments, and he acknowledged the assistance provided thus far by the firm of Nixon, Hargrave, Devans & Doyle, and former President G. Robert Witmer, Jr., David M. Schraver and Daniel J. Hurteau in particular, for representing the Association on a pro bono basis.

h) The New Yorkers for Civil Justice Reform, a coalition of business, medical and insurance interests, had filed a bill in the Legislature that presented an all-encompassing reform package touching various areas of tort law. He noted that the NYSBA's Task Force to Consider Tort Reform Proposals, which has a balance of plaintiff and defense representatives, has been preparing for this development so that it can serve as a voice of reason in the upcoming legislative debate. He indicated that the Task Force had engaged Leon D. Lazer to conduct a detailed analysis of the poll conducted by Zogby International on behalf of New Yorkers for Civil Justice Reform, as that poll is a key underpinning for the proposed legislation. Mr. Pruzansky indicated that the Lazer analysis questioned many of the assumptions contained in the Zogby poll. He stated that the NYSBA had issued a press release stressing the balanced approach to tort reform.

ch the Association is taking, and that informational materials had been provided to the Legislature. He also indicated that the Association's public relations consultant was preparing an informational campaign to deal with future developments. He encouraged county and local bar associations to coordinate with the NYSBA and not to act prematurely on this issue.

i) He expressed appreciation to the members of the House for their support, encouragement and cooperation during his tenure as President.

7. Report and Recommendations of Task Force on Court Reorganization. Hon. Richard D. Simons, Chair of the Task Force on Court Reorganization, summarized the report of the task force regarding court restructuring and the methodology employed in studying the Office of Court Administration/Senate and Assembly proposals in this area. He noted the comments which had been received from interested sections, committees and other bar groups and the manner in which they had been factored into the task force's analysis. Judge Simons advised that the task force was generally supportive of the OCA proposal, as it would simplify a complex system and achieve economy in resources and money. He then explained the task force's major recommendations: (a) endorsing the consolidation of the nine major trial courts into a two-tiered system; (b) removing the constitutional provision mandating separate divisions of Supreme Court and providing instead that the Chief Judge and OCA establish such divisions as may be necessary; (c) supporting the proposition that all judges affected by court reorganization continue to be elected or appointed as they are under existing law; (d) abolishing the population cap limiting the number of Supreme Court Justices per judicial district; (e) supporting the establishment of a Fifth Department; and (f) supporting the provision of adequate funding for civil legal services and increased rates for assigned counsel in Criminal and Family Court matters.

Task Force member John J. Barnosky then summarized the minority position on the task force opposing inclusion of the Surrogate's Court in the newly formed Supreme Court as proposed in the Senate and Assembly reorganization plans. Richard S. Rothberg, Chair of the Trusts and Estates Law Section, expressed that section's endorsement of the minority position.

Appearing on behalf of the Supreme Court Justices Association, Hon. John T. Buckley noted that group's concerns with respect to the budgetary implications of the court reorganization plan and questioned the need for a constitutional amendment to accomplish necessary improvements in the court system.

Debate then ensued regarding the issues presented by the court reorganization proposals and the task force's report. A motion to amend the task force position to keep the Surrogate's Court as a separate court in counties with a population of 200,000 or more failed by a vote of 40 to 86. After further discussion, a motion was then adopted approving the following resolution:

RESOLVED, that the New York State Bar Association hereby supports, in principle, the reorganization of New York State's court system as follows:

a) The nine major trial courts should be consolidated into a two-tiered system with the present Supreme Court, Court of Claims, County Court,

Family Court and Surrogate's Court to be merged into Supreme Court and the New York City Civil Court, New York City Criminal Court, City Court, and District Court to be merged into a statewide District Court.

b) Instead of a constitutional provision mandating separate divisions of Supreme Court, any merger plan should provide that the Chief Judge and the Office of Court Administration establish such divisions as are necessary, to include a commercial division, criminal division, family division, public claims division, probate division, tort division, and a civil division to cover other matters.

c) All judges affected by the court reorganization should continue to be elected or appointed as they are under existing law.

d) The population cap limiting the number of Supreme Court Justices per judicial district should be abolished.

e) A Fifth Department should be established consistent with prior positions adopted by this Association.

f) Adequate funding should be provided to support civil legal services for the indigent and increased rates for assigned counsel in criminal and Family Court matters, consistent with prior positions adopted by this Association; and it is further

RESOLVED, that the officers of this Association are hereby authorized and directed to take any and all necessary action to achieve the approval of the Legislature and the electorate of any statutes or constitutional amendments required in their judgment to implement this statement of policy.

8. Report of Chair. Mr. Moore noted that continuing past practice, he had circulated a written Chair's report to allow additional time at the meeting for the discussion of substantive items. Consistent with the information set forth in that report, Mr. Moore announced:

a) Bar associations entitled to delegates to the House of Delegates had filed their designations of delegates for the 1998-99 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 1998-99.

b) 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 Executive Committee and House members who were completing their terms and thanked them for their dedicated service.

c) He noted that Hon. Lewis R. Friedman, who had been active in the Association in a variety of capacities and had been a member of the House, had passed away recently. A moment of silence was observed out of respect for Judge Friedman's memory and his contributions to the Association and the legal profession.

9. Consideration of Association Position Re Reports on "Pay to Play" in Municipal Financing. Mr. Pruzansky reported that the Office of Court Administration had invited comment by the NYSBA and other interested groups with respect to a proposal by The Association of the Bar of the City of New York for adoption of a court rule that would prohibit a law firm from accepting municipal bond engagements if the firm or any of its lawyers made more than minimal contributions to the campaigns of public officials who award such work, a practice referred to as "pay to play."

House delegate and Association of the Bar President Michael A. Cardozo then summarized the proposal's background and the manner in which the recommended rule would function. In support of the proposal, he noted the findings of the New York State Commission on Governmental Integrity, regulations adopted in the securities industry, and actions taken by the American Bar Association, including the formation of a task force to study the issue and possible solutions.

Discussion then ensued during which some members expressed concerns about the extent to which "pay to play" may exist while others observed that the proposal focused on a single, narrow facet of the bond industry, and that any regulation should encompass potential abuses in other areas. Other members questioned whether the proposed restrictions would be adequate as there might be means, such as contributions by family members, to circumvent the intended purpose of the rules. Concerns were also raised regarding the impact the proposed limitations might have on attorneys in large firms being able to have a meaningful role in the political process by limiting their contributions to candidates whom they wished to support.

Some members expressed support for a resolution proposed by the Executive Committee that would note the inappropriateness of "pay to play", but would decline specific endorsement of the Association of the Bar's proposal and would urge further study of the relevant issues.

Still other members questioned the adequacy of the Executive Committee's proposed resolution and urged that a stronger statement be passed clearly condemning the practice of "pay to play" and urging the adoption of rules to prevent it.

Following discussion, a substitute resolution proposed by Mr. Cardozo to parallel that adopted by the ABA was tabled by a vote of 90-30. The position proposed by the Executive Committee was then amended and the following resolution was adopted on motion of the House:

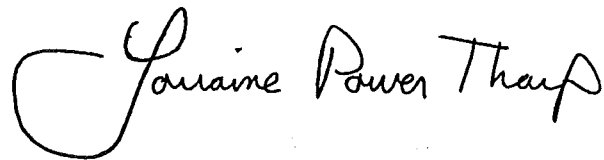
WHEREAS, the New York State Bar Association recognizes that there is a perception that lawyers are expected to make political contributions to, or solicit political contributions for, public officials in return for being considered eligible by public agencies to perform professional services ("pay to play"); it is hereby

RESOLVED, to the extent that the practice of "pay to play" may exist, such conduct is wrong and should be prohibited; and it is further

RESOLVED, that a Task Force be appointed by the President to conduct a study of the relevant issues associated with "pay to play," including the extent to which it may exist and appropriate solutions, to consult with other appropriate entities, and to make appropriate recommendations to the House of Delegates by November, 1998.

10. Date and place of next meeting. Mr. Moore announced that the next meeting of the House of Delegates was scheduled for Saturday, June 27, 1998 at The Otesaga, Cooperstown, New York.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lorraine Power Tharp". The signature is written in black ink and is positioned above the printed name and title.

Lorraine Power Tharp
Secretary