

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY  
APRIL 6, 2002**

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**PRESENT:** Alcott; Alderman; Alsante; Asarch; Aydelott; Ayers; Bailey; Baker; Barasch; Batra; Bauman; Bing; Bonner; Bracken; Buckley; Cashman; Castellano; Chambers; Christian; Cioffi; Clements; Clifford; Coffey; Cometa; Connolly; Darche; E. Davis; Dietz; Doern; Doerr; Dollard; Dorsey; Doyle; J. Dwyer; Edmunds; Eisman; Eppers; Eppler; Evanko; Evans; Farrell; Fedorchak; Fennell; Filiberto; Finerty; FitzGerald; Flink; Franchina; H. Freedman; Gardella; Gerstman; Getnick; Gingold; Glover; Goldenberg; Goldstein; Golinski; Gross; Gutleber; Haig; Harper; Harren; Hassett; Headley; Herold; Hoye; Jacoby; Kelly; Keniry; F. Klein; M. Klein; Kogut; Kougasian; Krane; Kranis; Landy; Lawrence; Leber; K. Lester; Levin; M. Levy; P. Levy; Lewis; Lindenauer; Longo; Mandell; Maney; Manley; Michaels; Mihalick; M. Miller; S. Miller; Minkowitz; Miranda; Monahan; Moore; Nashak; Netter; Nizin; O'Donnell; O'Leary; O'Mara; Ostertag; Paul; Perlman; Peterson; Plotsky; Porcillio; Priore; Pruzansky; Purcell; Quattlebaum; Reich; Reizes; Reynolds; Rice; Richardson; Rifkin; Riley; Roach; Robertson; Rosner; Rothkopf; Safer; Samel; Schumacher; Silkenat; Spellman; Sperendi; Stenson; Terranova; Tharp; Tippins; Tishler; Torrent; Treece; Tully; Uebelhoer; Vigdor; O. Walsh; Wimpfheimer; Witmer; Yates.

1. Approval of minutes of the January 25, 2002 meeting: The minutes were approved as distributed.
2. Report of the Treasurer. The Association Treasurer, Frank M. Headley Jr., summarized the Treasurer's report covering the period January 1 to February 28, 2002, noting that a written report of the financial statements had been distributed to members of the House of Delegates. He also advised that the audited report for 2001 would be presented at the House meeting in June 2002. He said that in 2001 the Association had an operating deficit of \$170,000 and a total deficit of \$1,171,000, including unrealized gains of \$23,500 and unrealized losses of \$1,239,000 on investments. A surplus of \$700,000 had been budgeted but adjustments of some \$600,000 had been made during the year for certain projects and services, including the reconstruction and amplification of the Association website and various committee projects.

In a review of the major elements of income and expense for 2002 through February 28, Mr. Headley reported that revenue was \$9,789,500, up \$415,000. An increase was realized in Association and Section membership and in CLE. Attendance increased at the Annual Meeting, resulting in more revenue but also more expense. Final figures for the Annual Meeting were not available as credit card processing and budget allocations had not yet been completed. Association expenses through this period totaled \$3,826,900, below the expense level in 2001 by approximately \$17,500.

Mr. Headley also discussed the status of investments, reporting that the losses do not directly impact on the operating budget but reflect a change in the market value of long-term reserves. Approximately \$226,700 net unrealized losses have occurred in 2002, compared to \$513,600 at that time last year. A special committee of the Finance Committee, with representatives of The New York Bar Foundation, is examining the investment performance.

The report was received with appreciation. Mr. Headley, who is concluding his term as Treasurer at the end of May, thanked the House for its support and for the opportunity to serve the Association in this position.

3. Report of the Nominating Committee. James C. Moore, Chair of the Nominating Committee, reported on the Committee's nominations for members of the Nominating Committee and Delegates to the American Bar Association House of Delegates for 2002-2003.

- a. Election of members of the Nominating Committee. Nominated for service on the 2002-2003 Nominating Committee were the following individuals:

- Members-At-Large: Thomas O. Rice as Chair; Maryann Saccomando Freedman and Paul Michael Hassett as Members
- Alternate Member-At-Large: Maxwell S. Pfeifer

A motion was adopted electing the nominated chair and the members-at-large. The nominee for alternate member-at-large was elected by the adoption of a separate motion.

Mr. Moore then presented the Committee's nominations for district members of the Nominating Committee, as listed below. It was announced that the nominations for the Fourth District would be forthcoming.

**FIRST DISTRICT****Members:**

Evan A. Davis  
 Rosalind S. Fink  
 Peter M. Kougasian  
 Craig A. Landy  
 Michael Miller  
 Elizabeth D. Moore  
 Gerald G. Paul  
 Norman L. Reimer  
 Edwin D. Robertson

**Alternates:**

Alan Rothstein, First  
 Sue C. Jacobs, Second  
 John J. Kenney, Third

**SECOND DISTRICT****Members:**

David J. Doyaga  
 Nancy T. Sunshine

**Alternate:**

Gregory T. Cerchione

**THIRD DISTRICT****Members:**

Matthew J. Kelly  
 Miriam M. Netter

**Alternate:**

Madeline Maney Kennedy

**FOURTH DISTRICT**

Forthcoming

**FIFTH DISTRICT****Members:**

Nicolas S. Priore  
 M. Catherine Richardson

**Alternate:**

Timothy J. Fennell

**SIXTH DISTRICT****Members:**

Leslie N. Reizes  
 David A. Tyler

**Alternate:**

Clover M. Drinkwater

**SEVENTH DISTRICT****Members:**

June M. Castellano  
 G. Robert Witner Jr.

**Alternate:**

Charles P. Inclima

**EIGHTH DISTRICT****Members:**

Joseph V. McCarthy  
 Erin M. Peradotto

**Alternate:**

David L. Edmunds

**NINTH DISTRICT****Members:**

Henry S. Berman  
 Mary Ellen Manley  
 Robert L. Ostertag

**Alternate:**

Hon. Sam D. Walker

**TENTH DISTRICT****Members:**

John P. Bracken  
 Robert W. Corcoran  
 Emily F. Franchina  
 Joshua M. Pruzansky

**Alternate:**

Scott M. Karson, First  
 Owen B. Walsh, Second

**ELEVENTH DISTRICT****Members:**

Catherine R. Glover  
 Seymour W. James Jr.

**Alternate:**

George J. Nashak Jr.

**TWELFTH DISTRICT****Members:**

Steven E. Millon  
 Roy J. Schwartz

**Alternate:**

Robert S. Summer

A motion was adopted electing the nominated district members.

- b. Election of Delegates to the ABA House. The report of the Nominating Committee for Delegates to the American Bar Association House of Delegates was given by Mr. Moore for the six positions up for election. He advised that the Delegates would serve two-year terms, commencing at the close of the ABA's Annual Meeting in August 2002. The NYSBA's 11 Delegates serve staggered terms. A motion was adopted electing the nominated delegates: Tyrone Butler of Troy, Steven C. Krane of New York City, A. Thomas Levin of Mineola, Maxwell S. Pfeifer of the Bronx, and Thomas O. Rice of Garden City. A separate motion was adopted electing the nominated Young Lawyer Delegate: Jonathan L. Bing of New York City.

Mr. Moore expressed appreciation to the 2001-2002 Nominating Committee for its work.

4. Report and recommendations of the Special Committee on Fiduciary Appointments. Joshua M. Pruzansky, Chair, described the study and recommendations of the Special Committee on Fiduciary Appointments concerning the appointment process of guardians under Article 81 of the Mental Hygiene Law, guardians ad litem, receivers and referees. The Committee examined the proposals of the Chief Judge's Commission on Fiduciary Appointments, the findings of the Special Inspector General, and appointment data, and contacted members of the bench and bar to gain their experience and perspectives on procedures and concerns in the fiduciary appointment process. President-Elect Lorraine Power Tharp reported that on April 5, 2002, the Executive Committee had given the report unanimous endorsement for positive House action.

Mr. Pruzansky advised that the Committee determined that providing for the best possible service must be the primary concern in the selection of the fiduciary and in the fiduciary's work in meeting these responsibilities. The Committee formulated its recommendations on this basis. The Committee further concluded that the fiduciary must have the requisite skills and experience to address the particular circumstances of the case and the court must have the ability to appoint the appropriate individual to handle these responsibilities. The report found that changes in the fiduciary system are needed, not only to avoid inappropriate conduct and appearances of impropriety, but also to ensure that quality fiduciary service is functionally available to those in need and to enhance the administration of the system. Updating of the presently inaccurate and outdated fiduciary lists, improving reporting and monitoring by streamlining cumbersome procedures, and making the information readily accessible to the public through publication of appointments were cited by the

Committee as vital steps and the most effective forms of accountability. While endorsing many of the fundamental measures proposed by the Commission, the Committee recommended that the Court System move beyond the proposals in a number of areas.

In discussion of these measures, a motion was adopted to modify the Committee report concerning the eligibility of former judges to receive appointments. Rather than the Committee's concurrence with the Commission proposal to bar former judges and their relatives within six degrees of separation from fiduciary appointment for two years after leaving the bench, the House moved, by voice vote, to oppose such a prohibition. Another motion to modify the Committee report by opposing a similar prohibition on appointment of state and county political leaders, their immediate relatives and law firms was defeated in a voice vote and included one abstention. Among other recommendations, the Committee opposed the Commission's proposed compensation limits, instead calling for a \$25,000 reporting requirement for fiduciaries. In the House review of this measure, a motion was disapproved that urged the Committee to consider proposing a finite limitation on the number of appointments of compensation in total that an individual may receive.

In a voice vote, a motion was then adopted endorsing the Committee report as modified. Appreciation was expressed to the Committee.

5. Report of the Electronic Communications Task Force. David P. Miranda, Chair of the Task Force, updated the House on the reconstruction and amplification of the Association website. Noting the constant changes in technology and its impact on the practice of law, he said that the project was intended to improve ease of access and increase the amount of information on substantive developments in the law, legal research, and Association resources and news. To pursue the project, the Association surveyed members as to their needs and interests. The new website, slated to be launched May 1, 2002, will include opportunities for members to list preferences as to subject matter they wish to receive on developments, products and events. The site also will provide private areas and e-communities for interaction and discussion. The site is content-driven, including caselaw feeds from Loislaw. Sections have an increased involvement in providing information and resources for the site. Mr. Miranda said that the Association is meeting with Section representatives to enhance development of these areas, using the new tools available on the site. Mr. Miranda cited the assistance of staff, and he invited input from Delegates.
6. President's report. President Krane reported on the following matters:

- a. Barcelona Bar Association medal. On behalf of the Association, he received a medal from the Barcelona Bar Association for the disaster relief efforts of the Association and its members in the wake of the World Trade Center attack and in memory of the lawyers who died in that tragedy. The award, presented February 1 in Barcelona, reflected the tremendous outpouring of support received from bar associations throughout the world and the bond of lawyers that transcends international borders.
- b. Multidisciplinary practice. To see if a joint report could be developed for presentation at the ABA Annual Meeting in August, the NYSBA withdrew its proposal at the ABA Mid-Year Meeting in February which calls for New York's multidisciplinary rules to be incorporated into the ABA Model Rules and the ABA Standing Committee on Ethics and Professional Responsibility withdrew its proposal on the subject. He said that the NYSBA House would be kept apprised of developments.
- c. Judicial campaign conduct. The Special Committee on Judicial Campaign Conduct, chaired by Michael A. Klein, has prepared a model plan to educate candidates for judicial office as to their ethical obligations and to assist in monitoring campaign conduct to ensure compliance with those obligations. At a meeting on February 13, 2002 at the Bar Center, the Committee presented the plan to local bar associations for review and comment as a resource in their campaign conduct initiatives.
- d. Testimony on judiciary budget. He testified at a joint legislative hearing on the judiciary budget, expressing support for the Court System proposal and urging the Legislature to act to increase assigned counsel rates but opposing court filing fee hikes for this purpose. He further urged passage of legislation to: create an Access to Justice Fund for civil legal services for the poor, to be derived from a revamped Abandoned Property Law; reorganize the state's trial-level courts; and reform the mandatory drug sentencing laws.
- e. Assigned counsel. The assigned counsel crisis worsens as hourly compensation levels remain stagnant. The Association and Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman have urged higher rates. On March 19, 2002, the Criminal Justice Section, with 40 other bar associations, criminal defense and public interest organizations, joined the Gideon Coalition to ask lawmakers to raise fees in criminal matters. It is possible that the Legislature may seek a compromise approach.

- f. Court restructuring. The Chief Judge is continuing to pursue restructuring of the trial court system by seeking to codify the Court System's Integrated Domestic Violence Court, which would bring domestic violence matters, now in various courts, within Supreme Court jurisdiction. The Association remains supportive of efforts to secure reorganization of the trial courts.
- g. Federal judicial vacancies. In March, he wrote to New York's U.S. Senators, urging them to work to end partisan-based delays in the judicial confirmation process and to support raises for federal judges. He noted in the letter that in 2001, 28 judges were confirmed while 94 posts remained vacant, an impediment to judicial efficiency as caseloads increase. He further urged creation of two additional seats on the Second Circuit Court of Appeals, which has remained at the same size for 18 years while case filings grew 58 percent.
- h. Anti-terrorism. Since the Department of Defense has just issued regulations on the use of military tribunals, the Association's Coordinating Committee on Anti-terrorism Measures, chaired by John C. Maloney Jr., deferred presentation of its report to the House at this meeting to have time to study the new provisions. Depending on further developments and the outcome of the study, the Committee may make its report at the June meeting of the House.
- i. Law practice continuity. He is establishing a Special Committee on Law Practice Continuity on the handling of practices of solo and small firm lawyers who die or become incapacitated. He has appointed David R. Pfalzgraf to Chair the Committee. The Committee will build on the work of the Committee on Attorney Professionalism which issued an Interim Report on the Project Concerning Issues Raised by the Death, Disability or Disappearance of a Sole Practitioner and surveyed the laws of other states. That report called for further examination of this issue in conjunction with other Association entities. The new Committee also will study the issue of reconstructing practices after disaster.
- j. Campaign finance reform. President Bush has signed into law campaign finance reform legislation consistent with the resolution approved by the House of Delegates in June 2001 calling for prohibitions on use of soft money and issue advertisements. The new law is being challenged in at least two lawsuits.
- k. Privacy notice. Pursuing another NYSBA House resolution approved in June 2001, he and ABA representatives met in

February and March with Federal Trade Commission officials to seek an exemption for lawyers and legal services from the privacy notice requirements stemming from the Gramm-Leach-Bliley Act. Meetings also were held with lawmakers to discuss this position. In these meetings and correspondence, he pointed out that lawyers should be deemed in compliance with the Act because ethics rules require client confidentiality. The Commission then advised that it does not believe it has the express authority to grant such an exemption.

As to possible options for Association action in light of this statement, consideration was given to additional lobbying but it appears that legislative remedy would not be likely for the next several years. In accordance with the Association policy adopted by the House in 1997, the Executive Committee approved commencement of litigation by the Association against the FTC seeking a declaratory judgment that the Act does not apply to lawyers or law firms. His firm, Proskauer Rose, will undertake the matter on a pro bono basis, with the litigation expected to be commenced in the next few weeks.

- i. Young Lawyer Pro Bono Award. The Young Lawyer Pro Bono Award has been named in memory of Hanna S. Cohn, for her long-standing commitment to legal services. The recipient of the Young Lawyers Section's Outstanding Young Lawyer of the Year Award, she served as Executive Director of the Volunteer Legal Services Project in Rochester and was active in the Association, including the House.
- m. Technology summit. He convened a summit on technology and the legal profession on March 14, 2002 at Cornell Law School. Association officers, members and staff met to discuss technologies that lawyers need now and in the future, related issues, and the Association's role in helping lawyers to utilize emerging technologies. Five goals were set: To assist every lawyer in having a computer with e-mail and Internet access by June 2004; to expand resources to assist members in going on-line; to increase use of technology in conducting Association business; to have the Association website become the on-line "community" for New York law practice; and to broaden use of electronic networks and the Internet in providing more information to the public. The Electronic Communications Task Force and other relevant committees will be considering means of implementing these goals.



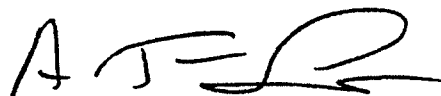
- n. Central Bar of Iran. A letter of sympathy was received by the Association from the Central Bar of Iran concerning the World Trade Center attack. This resulted in an exchange of correspondence and discussion of an exchange of visits by bar representatives. A small delegation of Association members hopes to visit the Central Bar of Iran in the near future.
- o. New York Law Journal advertisement. The *New York Law Journal* conducted a radio advertising campaign with offensive parodies on lawyer billing. He wrote to the *Journal* urging recognition that the campaign is misguided and in poor taste and calling for its curtailment.
- p. Association anniversary. As part of the Association's 125<sup>th</sup> anniversary initiatives, American Heritage has been engaged to prepare a history of the Association, the lawyers and developments in the legal profession during the past century and a quarter. The Special Committee to Commemorate the Association's 125<sup>th</sup> Anniversary, chaired by John Hanna Jr., is overseeing this project. The exhibit of Association milestones, which debuted at the Annual Meeting, is now on display at the Bar Center. A reception and dinner will be held on April 30 at the Bar Center to mark the chartering of the Association by the Legislature on May 2, 1877.

President Krane expressed appreciation for the honor of serving as President and thanked Association officers, the Executive Committee, House, Committee and Section Chairs, and staff members for their efforts and support during the past year.

- 7. Report of the Special Committee on Multijurisdictional Practice. Klaus Eppler, Chair of the Special Committee on Multijurisdictional Practice, provided an interim report on the work of the Committee, including the issues under examination and approaches being pursued. He described the Committee's review of proposals of the ABA Commission on Multijurisdictional Practice and the Committee's testimony at the ABA Commission hearing. Several proposals, such as the Model Admission on Motion and the foreign legal consultant provisions, are similar to existing New York measures. The Committee identified concerns with regard to proposals on choice of law/disciplinary authority and safe harbor provisions. The Committee expects to report to the House in June to aid the Association in providing input on the ABA Commission report that is anticipated to be on the ABA House agenda in August.
- 8. Report of the Chair. President-Elect Tharp presented the following matters:

- a. Designation of NYSBA House roster. A motion was adopted designating the delegates named by local bar associations and filing the roster of the House for 2002-2003.
  - b. In memory of House members. A moment of silence was observed in memory of three members who served on the House: Hanna S. Cohn, Lynn R. Terrelonge and Thomas M. Whalen III. President-Elect Tharp announced that a memorial donation will be made by the Association to The New York Bar Foundation.
  - c. Appreciation for service. Appreciation was expressed to President Krane and to retiring members of the Executive Committee and House for their service and leadership.
9. Date and place of the next meeting. Ms. Tharp announced that the next meeting of the House of Delegates was scheduled for Saturday, June 22, 2002 at The Otesaga Hotel in Cooperstown, New York.

Respectfully, submitted,

A handwritten signature in black ink, appearing to read 'A. Thomas Levin'. The signature is stylized with a large 'A' and a long, sweeping underline.

A. Thomas Levin