

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 30, 1998

PRESENT: Members: Alderman; Anglehart; Asarch; Ayers; Bailey; Baldwin; Bass; Bergen; Berlin; Berman; Birmingham; Bernis; Besunder; Bohner; Bracken; Branca; Burgman; Buzard; Cardozo; Cioffi; Civilette; P. Coffey; Cohn; Colavito; Coleman; Cometa; Connery; Cooke; Copps; Corcoran; Coughlin; Cunha; Cyrulnik; DaSilva; Daubner; DeCoursey; DiGirolomo; Dollard; Dwyer; Eggleston; Eisenhauer; England; Eppler; Fales; Farrell; Felder; Fennell; Field; Finerty; Fink; Finlayson; Fishberg; FitzGerald; Flood; M. Freedman; Gacioch; Galloway; Gerstman; Getnick; M.R. Goldstein; Golinski; Grayson; Gregory; Haig; Hall; Halpern; Harris; Hayes; Headley; Herold; Hesterberg; Hodges; Horan Horowitz; Hughes; Inclima; Jacobs; James; Kahn; Kamins; Kelly; Kendall; M. Kennedy; Kenney; Kenny; Kessler; Kilpatrick; Klein; Kougasian; Krane; Kretser; Landy; Lazar; Levin; C. Levy; P. Levy; Lieberman; Lilly; Longo; Lucchesi; Madigan; Malito; Mandell; Manley; Marangos; McCarthy; McDonald; McQuade; Midonick; Mihalick; Miklitsch; M. Miller; Millon; Moore; Murray; Nachimson; Naviasky; Netter; Nussbaum; O' Connor; O'Leary; Oliver; Omansky; Ostertag; Palermo; Palmer; Patrick; Peckham; Peradotto; Perlman; Pfeifer; Porter; Pruzansky; Raylesberg; Reede; Reich; Reimer; Reiniger; Reizes; Remo; Rice; Richardson; Richter; Rider; Robinson; Rosenbloom; Rosenfeld; Rothstein; Samel; Santemma; Schumacher; Seymour; Shapiro; Sharkey; Spellman; Standard; Steiner; Stokes; Sunshine; Taylor; Terranova; Tharp; Thompson; Tippins; D. Tyler; J. Tyler; Vig; Vinal; Vitacco; Wales; M. Walsh; O. Walsh; Weaver; Whalen; Williams; Witmer; Wolinsky; Wollman; Zalayet.

In advance of the commencement of the regular business meeting of the House, Mr. Moore introduced Kristin M. O'Brien, who was assuming the position of Director of Finance, replacing Robert R. Whinnery, who would retire in April 1998 with 36 years of service to the Association. Mr. Moore then expressed appreciation on behalf of the House to Mr. Whinnery for his dedicated and faithful service.

1. Approval of minutes of November 1, 1997 meeting. The minutes were deemed accepted as distributed previously.
2. Report of Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Thomas O. Rice to the members of the House at the Annual Meeting of the Association, was received with thanks.
3. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee. G. Robert Witmer, Jr., Chair of the Nominating Committee, reported that the committee had nominated the following individuals for election as officers and members-at-large of the Executive Committee for the 1998-99 Association year:

PRESIDENT-ELECT

Thomas O. Rice, Brooklyn

SECRETARY

Lorraine Power Tharp, Albany

TREASURER

Frank M. Headley, Jr., Scarsdale

DISTRICT VICE-PRESIDENTS

FIRST:

Kenneth G. Standard, New York City

SEVENTH:

A. Vincent Buzard, Rochester

SECOND:

Gregory X. Hesterberg, Garden City

EIGHTH:

Paul Michael Hassett, Buffalo

THIRD:

Miriam M. Netter, Troy

NINTH:

H. Glen Hall, Briarcliff Manor

FOURTH:

Peter V. Coffey, Schenectady

TENTH:

A. Thomas Levin, Mineola

FIFTH:

Dennis R. Baldwin, Syracuse

ELEVENTH:

Robert J. Bohner, Rego Park

SIXTH:

Leslie N. Reizes, Ithaca

TWELFTH:

Steven E. Millon, Bronx

AT-LARGE MEMBERS OF THE EXECUTIVE COMMITTEE

James F. Dwyer, Syracuse
Margery F. Gootnick, Rochester
John J. Kenney, New York City
Steven C. Krane, New York City
Ellen Lieberman, New York City
Joseph V. McCarthy, Buffalo

There being no further nominations, a motion was made and carried that the nominations be closed. The Secretary then cast a single ballot for the officers and members-at-large of the Executive Committee.

Mr. Witmer, in his separate capacity as Chair of the Finance Committee, then acknowledged Association Controller Robert R. Whinnery's impending April retirement. He referenced Mr. Whinnery's valuable contributions to the Association, and expressed the Finance Committee's appreciation to him for his guidance and assistance throughout his career.

4. Presentation of Ruth G. Schapiro Award. Mr. Pruzansky presented the sixth annual Ruth G. Schapiro Award to the Hon. Betty Weinberg Ellerin, Associate Justice of the Appellate Division, First Department, for her many noteworthy, law-related contributions intended to address and enhance awareness of the concerns of women. Mr. Pruzansky acknowledged Justice Ellerin's extensive efforts to increase comprehension through education of the impact of domestic violence, to encourage legislation to assist victims of abuse, and to promote professional development and opportunities for women in the legal profession.

5. Report and recommendations of Task Force on Law Guardian System. Lucia B. Whisenand, Chair of the Task Force on Law Guardian System, summarized the discussion from the November 1997 House meeting with respect to that group's report and recommendations regarding the issue of privately paid law guardians. She noted that the matter had been deferred to the present meeting to permit further study by interested groups, including a relevant OCA panel, and that comments had been received from various sources and considered by the task force. She also indicated that the OCA panel would welcome the Association's recommendations to assist its evaluation of this area. Discussion then ensued regarding the task force's proposals. The New York County Lawyers' Association offered a series of suggested changes to the task force's recommendations, with action being taken as follows: Suggested change No. 1, which would permit the Chief Administrative Judge to designate law guardian panels was defeated by vote of the House, and suggested changes Nos. 2-7 were accepted by the task force. The Family Law Section then put forth three recommended revisions as follows: The first, which would permit judges to select guardians from among those on the relevant list without a requirement of rotation was accepted and approved by the House. The second proposal, which would permit judges to select attorneys not on the list, so long as the reasons for this departure were set forth in writing, was defeated by a vote of 53 to 90. The third suggested revision, to substitute the wording "attorney for the child" for "law guardian" was approved by the House. A motion was then adopted approving the task force report as revised by the House. A further motion was then adopted authorizing the task force to make editorial revisions to the language of the report to ensure uniformity in terms of style and language.

6. Report of President. Mr. Pruzansky advised that, as was done at previous meetings, to allow as much time as possible for the discussion of substantive items, he had furnished a detailed, written report to the members in the form of his President's message as printed in the Annual Meeting supplement published by the *New York Law Journal*. A copy of that message is attached to these minutes. Mr. Pruzansky indicated that in view of that written message, he would provide only a brief oral summary of significant items as follows:

a) As authorized at the November 1, 1997 House meeting, the Association on December 4, 1997 had initiated legal action against Attorney General Reno in Federal District Court for the Northern District of New York to have declared unconstitutional Section 4734 of the Balanced Budget Act of 1997, which criminalizes the advising of persons concerning lawful Medicaid asset transfers. He indicated that the challenge was based on First and Fifth Amendment grounds. He also reported that the Association was being represented on a pro bono basis by the firm of Nixon, Hargrave, Devans & Doyle, with former Association President G. Robert Witmer, Jr. as

lead counsel. He indicated that a monitoring committee for the suit had been designated consisting of John J. Kenney and himself on behalf of the Executive Committee, past Commercial and Federal Litigation Section Chair Robert L. Haig and Elder Law Section Chair Walter T. Burke. Mr. Pruzansky advised that a motion had been filed on January 27, returnable on March 9, to enjoin enforcement of the statute. He also indicated that at its upcoming meeting, the ABA House of Delegates would be considering a resolution co-sponsored by the NYSBA urging the repeal of the statute in question. He stated that the House would be kept apprised of future developments.

b) On February 9, 1998 he and Mr. Moore would be meeting with Attorney General Vacco to discuss topics of mutual interest, including the encouraging of membership by the Attorney General's staff in the NYSBA and their greater involvement in Association programs; the status of the Attorney General's pro bono initiatives; coordination on appropriate legislative matters; Insurance Regulation 68; and the handling of unlawful practice of the law matters.

c) He had urged the State Medical Society to join the NYSBA in supporting legislation that would allow consumers to sue HMOs and insurance carriers if they have waited too long or been denied approval for covered medical treatment. He indicated that the bill, which had passed the Assembly last year, but not the Senate, would be introduced during the 1998 session and the Association was hopeful of securing its passage.

d) Over the past several months, he had been able to redefine and institutionalize the NYSBA's relationship with OCA. He stated that the latter had been sensitized to the negative inferences against the practicing bar that can be drawn from its statements and, since June, OCA releases have praised the professionalism and competence of the bar. Mr. Pruzansky indicated that OCA regularly seeks input from the Association regarding rule changes, and NYSBA members, including solo and small firm practitioners, have been included among the designees to various OCA study committees. He observed that at the Association's request, OCA has deferred, modified or set aside some new procedures or rules. The content of the "Client's Bill of Rights" had been modified and, at the NYSBA's request, OCA would be issuing with minor revisions a companion set of client's obligations as drafted by the Committee on Attorney Professionalism. Mr. Pruzansky also commended Chief Administrative Judge Lippman for his cooperation in creating a spirit of partnership with the NYSBA and the bar generally.

e) The Senate and the House had ultimately agreed on \$283 million in funding for the Legal Services Corporation for the 1998 fiscal year, equal to its 1997 funding. He indicated that the continuation of funding at an unreduced level was the product of concerted effort by the Association's officers, the President's Committee on Access to Justice and the Committee on Legal Aid.

f) Consistent with the action taken by the House of Delegates at the April 1997 meeting, he was continuing to press the Governor and the Legislature to increase the level of compensation paid to assigned counsel under Article 18-B of the County Law, to include assigned family law or domestic relations counsel in Family Court in that increase, and to have the 18-B mandates fully funded by the state. He

indicated that the House would be kept apprised of developments as the legislative session progresses.

g) Last year Bell Atlantic had considered shifting Yellow Pages listings for bar-sponsored lawyer referral services from the beginning of the attorneys section to the end, which would have negatively impacted the public's ability to locate referral service listings and obtain the assistance of competent counsel. He reported that the NYSBA had joined with a number of other bar groups to protest this move, and they had been successful in obtaining Bell Atlantic's agreement not to shift the current positioning of referral service listings.

h) The Committee on Public Relations had accepted an offer last year from the New York State Broadcasters Association whereby, in exchange for a \$25,000 grant from the committee, the Broadcasters Association's member stations would broadcast non-commercial sustaining announcements on the NYSBA's behalf, including airings during prime morning and evening "drive times." He stated that four radio spots were used, three of which dealt with topics in the "Know Your Rights" pamphlet series (rights of tenants and property owners, what to do in case of an auto accident, and the role of the lawyer in a real estate transaction), and a fourth that highlighted the Law, Youth and Citizenship Program's mock trial program. He indicated that as a result, the four public service advertisements were broadcast 6,557 times over a five-week period, or the equivalent of \$327,000 in air time. Mr. Pruzansky indicated that the committee would be pursuing a similar campaign in 1998.

7. Report of Committee on Continuing Legal Education re MCLE. John F. King, Chair of the Committee on Continuing Legal Education, outlined the salient elements of the rule adopted in 1997 by the Administrative Board of the Courts that would impose a mandatory continuing legal education requirement on newly admitted attorneys. He advised that within 24 months of their admission, attorneys admitted after October 1, 1997 would be required to complete 32 hours of accredited transitional education in the areas of ethics and professionalism, skills, and practice management, as well as various substantive fields. Mr. King reviewed the status of the committee's preparations, in cooperation with the substantive law sections, to deliver this transitional training, as well as plans to meet the demands of the anticipated general MCLE rule that would be applicable to all attorneys in the future. He also reviewed the nature of the committee's efforts to develop CD-ROM and Internet products with the assistance of an outside vendor so as to provide a broader array of educational materials to Association members. The report was received with thanks.

8. Report and recommendations of Committee on Legislative Policy. John R. Dunne, Chair of the Committee on Legislative Policy, summarized the status of activities by the Judicial Salary Commission appointed by Chief Judge Kaye. He noted that the commission had been given a twofold charge to formulate recommendations concerning a current salary increase and the creation of a permanent mechanism for evaluating judicial salaries on an ongoing basis. He indicated that the commission had completed the first phase, which was reflected by the incorporation of a 19.4 percent increase in the 1998 Judiciary budget proposal. He advised that a resolution was being presented by his committee which would endorse a suitable salary increase, so that the Association's position would not be

directly linked to the Chief Judge's specific budget request. He also noted that no position was being put forth at this time concerning the establishment of a permanent mechanism for the review of judicial salaries to allow the commission to complete its study in this area. After discussion, the following resolution was adopted on motion of the House:

RESOLVED, that the New York State Bar Association hereby urges the Governor and the Legislature during the current legislative session to enact an appropriate salary increase for all judges in the Unified Court System.

9. Report and recommendations of Committee on Lawyer Referral Service. James F. Dwyer, Chair of the Committee on Lawyer Referral Service, summarized the nature and purpose of amendments proposed by the committee to the Association's Lawyer Referral and Information Service Plan. He noted that the amendments to the "Objectives" section of the plan were ministerial, while those to the "Service" portion of the plan were substantive in nature. He noted that under the latter, the Association's service would not make referrals in those areas where a comparable local or regional referral service was in operation, *i.e.*, one that, to the extent practicable, was in substantial compliance with the ABA's Model Rules for a Lawyer Referral Service. Given the non-controversial nature of the proposed amendments to the plan "Objectives," Mr. Moore suggested that they be voted on separately, and the House consented to this division of the question. A motion was then adopted approving the amendments to the "Objectives" of the Lawyer Referral and Information Service Plan. Discussion then ensued regarding the "service" related amendments, during which delegates from some smaller bar associations expressed concern over their ability to comply with the ABA standards. Mr. Dwyer explained the committee's interpretation of substantial compliance, and also noted that where the NYSBA is forwarding callers to a local bar referral panel, there was a need to ensure that the local panel was prepared to handle such matters. Following discussion and defeat of a motion to table the matter, the House approved the proposed amendments to the "Service" portion of the plan. A copy of the Lawyer Referral and Information Service Plan as amended is attached to these minutes.

10. Report of Committee on Lawyer Alcoholism and Drug Abuse. Eugene J. O'Brien, Chair of the Committee on Lawyer Alcoholism and Drug Abuse, outlined the activities of the committee in assisting attorneys, judges and law students afflicted with substance abuse problems. He indicated that the 52 members of the committee, assisted by 300 statewide volunteers, had assisted some 1600 lawyers and judges since the program's inception in 1990, and had conducted educational programs before bar groups, judicial seminars and law schools to inform attendees regarding the dangers of drug and alcohol abuse. Mr. O'Brien expressed appreciation to Radames Lopez, the staff director for the Lawyer Assistance Program, for his support and dedicated service to the committee. The report was received with thanks.

11. Report of The New York Bar Foundation. Maryann Saccomando Freedman, President of The New York Bar Foundation, noted that The Foundation's 1997 annual report had been distributed to the House, and she commended it to the members as a concise summary of the organization's activities and charitable grants for the previous

year. She then introduced Henry A. Freedman, the Executive Director of the Welfare Law Center in New York City. Mr. Freedman, in turn, explained the role of the Welfare Law Center in providing legal assistance to low income individuals in connection with welfare issues, and the value of financial assistance provided by The Foundation following reductions in government funding. Ms. Freedman then urged the members of the House to inform others concerning the work being done by The Foundation and requested their financial support to enable The Foundation to expand its charitable grants.

12. Report of Chair. Mr. Moore noted that in continuation of past practice, he had circulated a written report as Chair to allow additional time at meetings for the discussion of substantive items. A copy of the report is attached to these minutes. In addition, Mr. Moore made the following announcements:

a) At the April meeting, the House would be requested to elect six of the NYSBA's eleven delegates to the American Bar Association's House of Delegates. He stated that the Nominating Committee had reported the following nominees for those positions: John P. Bracken, David P. Miranda (Young Lawyer Delegate), Kay C. Murray, Maxwell S. Pfeifer, Joshua M. Pruzansky and Thomas O. Rice.

b) The Committee on Justice and the Community, which had assumed the combined functions of the now discharged Committee on Courts and the Community and the Committee on Lawyers and the Community, had requested that its status be converted from special to standing committee. A motion was adopted unanimously approving this change in status.

c) After reviewing concerns expressed by several bar associations regarding the manner in which the Governor had acted in appointing a new Presiding Justice for the First Department, including modifications made in the judicial screening process, and in failing to designate the retiring Presiding Justice for further service, the Executive Committee had proposed a resolution expressing the Association's support for judicial independence and encouraging public officials who possess the power of judicial appointment at the national, state or local level to appoint or reappoint judges based on merit. Discussion then ensued regarding the proposed resolution, during which a number of members expressed concern that the suggested language was too broad, failed to place in context the specific events in question, and was not strong enough in its support for judicial independence. On behalf of the Committee on Judicial Independence, Mr. Pfeifer then offered the following resolution, which was substituted by action of the House for that offered by the Executive Committee. A motion was then adopted approving the following resolution:

WHEREAS, an independent Judiciary is a fundamental right of a free people, a cornerstone of American democracy, and essential to the just resolution of disputes and the maintenance of public trust in the judicial system; and

WHEREAS, in keeping with this fundamental principle of judicial independence, judges should be appointed or reappointed based on their intellect, judgment, temperament, character, experience and ability

to judge fairly and impartially, and not on political factors extraneous to those essential qualities; and

WHEREAS, Governor George Pataki has established judicial screening panels to assist him in the selection of candidates of the highest quality as he exercises his constitutional responsibility to appoint various judicial officers through a process that is fair and free from ideological tests or political influence; and

WHEREAS, departures from the use of established judicial screening panels by the appointing public officials create an appearance of potential influence and compromise the independence of the Judiciary; it is

RESOLVED, that the New York State Bar Association expresses its grave concern to the Governor concerning the danger to judicial independence inherent in the use of ideological tests for the reappointment of a sitting judge; and be it further

RESOLVED, that the Association, recognizing the need to maintain both the quality of and public confidence in the Judiciary and the valuable role of broad-based local screening committees in meeting these needs, urges the Governor to utilize these local committees for all judicial appointments and reappointments in their respective geographical jurisdictions.

13. Date and place of next meeting. Mr. Moore announced that the next meeting of the House of Delegates was scheduled for Saturday, April 4, 1998 at the Bar Center in Albany, New York.

Respectfully submitted,

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

Lorraine Power Tharp
Secretary