

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 28, 2000

PRESENT: Abrams; Adler; Alcott; Anglehart; Asarch; Ayers; Bailey; Baldwin; Barasch; Batra; Bergen; Blasi; Bohner; Bowen; Bracken; Brett; Buckley; Cashman; Clements; Cloonan; Coffey; Coffill; Cohn; Coleman; Cometa; Connery; Cooper; Copps; Corcoran; Cristo; Darche; DeFritsch; DiGirolomo; DiLorenzo; Doyaga; Dwyer; Eggleston; Eppers; Evanko; Farrell; Fetter; Fink; Fishberg; FitzGerald; Flood; Franchina; B. Freedman; H. Freedman; M. Freedman; Friedman; Futter; Galloway; Gardella; Gerstman; Gingold; Giordano; Golinski; Gorgos; Gozigian; Graber; Gregory; Gutleber; Haig; J. Hall; Hallenbeck; Handlin; Hassett; Headley; Heller; Hesterberg; Hirsch; Hodges; Hoffman; Hoye; Inclima; Jacobs; Jacoby; James; Kahn; Kamins; Kelly; Kendall; Kenny; Kilpatrick; Kilsch; F. Klein; M. Klein; Krane; Kretser; Krooks; Lagarenne; Landy; Lawrence; Levin; Levy; Lieberman; Lindenauer; M. Longo; Lorman; MacCrate; Madigan; Manley; Mawhinney; McAuliffe; McCarthy; McGlinn; Mihalick; M. Miller; Millon; Minkowitz; Moore; Mosenson; Murray; Nashak; Nonna; O'Brien; Opotowsky; Ostertag; Palermo; Patrick; Paul; Peckham; Peradotto; Pfalzgraf; Pfeifer; Pickholz; Priore; Pruzansky; Purcell; Rahn; Raylesberg; Reger; Reich; Reimer; Reiniger; Reizes; J. Reynolds; Rice; Richardson; Rider; Rifkin; Roper; Rosner; Rothkopf; Rothstein; Rubin; Rybak; Schaffer; Schrauer; Schumacher; Seymour; Shapiro; Silkenat; Sloan; Souther; Spellman; Standard; Steinman; Stenson; Sunshine; Terranova; Tharp; Tippins; Tishler; Trevett; Tyler; Uebelhoer; Vigdor; Vitacco; Wales; M. Walsh; Whalen; Witmer; Wolf.

1. Approval of minutes of November 6, 1999 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 Frank M. Headley, Jr. to the members of the House at the Annual Meeting of the Association, was received with thanks.
3. Presentation of Ruth G. Schapiro Memorial Award. Mr. Rice presented the eighth annual Ruth G. Schapiro Memorial Award to Rachel Kretser of Albany, Assistant Attorney General-in-Charge of the Legal Education Bureau of the New York State Department of Law, and a past President of both the Women's Bar Association of the State of New York and the Capital District Women's Bar. She was recognized for her many noteworthy, law-related contributions to address and enhance awareness of the concerns of women through her public service and voluntary initiatives, particularly in the areas of health issues, domestic violence and child welfare. Ms. Kretser addressed the House and expressed her appreciation to the Association for being honored with the Ruth G. Schapiro Memorial Award, and encouraged heightened efforts to expand participation by women in the NYSBA, especially at the leadership level.

4. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee. M. Catherine Richardson, 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 2000-2001 Association year:

PRESIDENT-ELECT

Steven C. Krane, New York City

SECRETARY

Lorraine Power Tharp, Albany

TREASURER

Frank M. Headley, Jr., Scarsdale

DISTRICT VICE-PRESIDENTS

FIRST:

Stephen D. Hoffman, New York City
Kenneth G. Standard, New York City

SEVENTH:

A. Vincent Buzard, Rochester

SECOND:

Edward S. Reich, Brooklyn

EIGHTH:

Joseph V. McCarthy, Buffalo

THIRD:

James B. Ayers, Albany

NINTH:

Joseph P. McGlinn, Suffern

FOURTH:

Matthew J. Jones, Saratoga Springs

TENTH:

A. Thomas Levin, Mineola

FIFTH:

James F. Dwyer, Syracuse

ELEVENTH:

Robert J. Bohner, Garden City

SIXTH:

Eugene E. Peckham, Binghamton

TWELFTH:

Steven E. Millon, Bronx

AT-LARGE MEMBERS OF THE EXECUTIVE COMMITTEE

Mark H. Alcott, New York City
Sharon Stern Gerstman, Buffalo
Michael E. Getnick, Utica
Matthew J. Kelly, Albany
Bernice K. Leber, New York City
Susan B. Lindenauer, New York City

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.

5. Report and recommendations of the Special Committee on Administrative Adjudication. Mark H. Alcott, Chair of the Special Committee on Administrative Adjudication, summarized the committee's study of the manner in which administrative proceedings are conducted by five state agencies: the Departments of Motor Vehicles, Family Assistance, Health, Environmental Conservation, and the Workers' Compensation Board. He indicated that the committee's current report is a follow-up to a similar study conducted in 1988 by the Task Force on Administrative Adjudication. He stated that the 1999 report analyzes the extent to which the 1988 recommendations have been implemented, considers present conditions and concerns connected with the adjudicatory processes employed by the five agencies, and makes recommendations to promote further improvements. Mr. Alcott described the nature and purposes of the five agencies, the methodology employed by the committee in conducting its study, and outlined the major recommendations made by the committee. Discussion then ensued regarding the report and recommendations, with comments being generally supportive of the work of the committee and the conclusions it had reached. After defeat of a motion to table further consideration, the following resolution was adopted on motion of the House:

RESOLVED, that the New York State Bar Association hereby endorses the Report and recommendations of the Special Committee on Administrative Adjudication with respect to the Departments of Motor Vehicles, Family Assistance, Health, and Environmental Conservation and the Workers' Compensation Board contained in its Report dated October 21, 1999; and it is further

RESOLVED, that the officers of this Association are hereby authorized and directed to distribute the Report to such agencies, groups and individuals as may be appropriate, and to take any action required in their judgment to implement the recommendations contained in said Report and this Resolution.

Mr. Rifkin abstained from any participation in the discussion and vote regarding this matter.

6. Report and recommendations of Committee on Unlawful Practice of the Law. Frank R. Rosiny, Chair of the Committee on Unlawful Practice of the Law, summarized a report and recommendation submitted by the Ohio State Bar Association to the American Bar Association's House of Delegates with reference to unauthorized practice of the law. He noted that the recommendation was premised on the fact that the level of effectiveness in enforcing unauthorized practice statutes varies from state to state. He indicated that to protect the public, the report calls for each jurisdiction to establish and implement effective procedures for the discovery, investigation and enforcement of

violations of unauthorized practice statutes. He noted that the report also recommended that the ABA establish and support a mechanism for identifying and reporting to state and local bar associations instances of persons or organizations engaging in unauthorized practice in multiple jurisdictions. Mr. Rosiny then outlined his committee's support for the proposal as a constructive approach to dealing with unauthorized practice issues. Following discussion, a motion was adopted approving NYSBA co-sponsorship of the Ohio State Bar Association's report and recommendations.

7. Report of President. Mr. Rice observed 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, and would provide only a brief oral summary of selected items. A copy of the written report is attached to these minutes. Mr. Rice then reported the following matters:

a) On behalf of the officers and House of Delegates, he expressed appreciation to the staff for the planning, organization and effort which had enabled the Annual Meeting to proceed smoothly.

b) The General Practice Section was celebrating its twentieth anniversary this year. He offered congratulations to the past and present officers of the section for the innovative programs and materials that had made the group a vital and active component of the Association.

c) The Committee on Attorneys in Public Service had issued a new publication, the Government, Law and Policy Journal, produced in cooperation with the Government Law Center of Albany Law School, to address the interests of publicly-employed attorneys. Mr. Rice noted that to celebrate the release of the premier issue, the committee had hosted a reception at the Bar Center on November 18, 1999, with Hon. Richard C. Wesley, Associate Judge of the Court of Appeals, as the featured speaker.

d) In 2002, the Association will be commemorating its 125th anniversary. He indicated that a committee was being appointed to plan appropriate events to mark the occasion and that the House would be kept informed regarding events and activities.

e) Consistent with the Association's goal of being representative of attorneys engaged in all areas of practice and from all regions of the state, consideration was being given to the establishment of a satellite office in New York City to help address the needs of downstate members. He indicated that he had appointed a special committee with Steven C. Krane as chair to study this issue, and that the committee would also address future space requirements in Albany as well as the needs of members in western New York. Mr. Rice indicated that matters were at a preliminary stage and that the House would be kept informed regarding developments.

f) Chief Judge Kaye was continuing her efforts to secure an increase in 18-B panel fees paid to attorneys who provide indigent representation. He indicated she was

seeking to transfer part of the financial burden from localities to the state by shifting some \$70 million in general fund revenues derived from court-generated fees from surcharges and fines to assigned counsel programs. He stated that the Association would remain supportive in this area and continue to lobby for increases in the statutory rates in spite of opposition expressed by the Governor. Mr. Rice also noted that suit had been filed in federal court by an attorney in Nassau County challenging the low 18-B panel fees on constitutional grounds.

g) In response to reports of alleged political favoritism in the awarding of court assignments by New York City judges, Chief Judge Kaye had announced she will appoint a Special Inspector General for Fiduciary Appointments in the Unified Court System; ask administrative judges to review the practices in their respective districts and propose any necessary changes; and appoint a blue-ribbon panel to examine the fiduciary appointment process for purposes of recommending reforms. Mr. Rice indicated the Association would monitor these initiatives and seek to work cooperatively with the judiciary in this area.

h) In December, the judiciary had submitted a 2000-2001 budget request of \$1.44 billion, exclusive of pay raises for court employees. He noted that the budget contained expanded funding for drug treatment courts, domestic violence courts and community courts. He stated that the Association, as in the past, would support the budget through the legislative process, and had submitted written comments to the Legislature earlier in the week.

i) He had met earlier in the month with Chief Administrative Judge Lippman to discuss a number of matters of mutual interest, including a proposal by the NYSBA's Committee on Courts of Appellate Jurisdiction that a legislative commission be created to study issues with respect to court reporters' fees; mandatory continuing legal education; the ongoing status of the Chief Judge's Comprehensive Civil Justice Program; the Grand Jury Project; the Committee to Promote Public Trust and Confidence; 18-B panel fees; "pay to play"; and court reform.

j) The National Conference of Bar Presidents would be presenting a bar/law school forum in conjunction with the upcoming American Bar Association meeting in February 2000. Mr. Rice indicated he had been in contact with the deans of New York's law schools regarding this program, and that it might serve as a basis for convening an annual session in New York, with participation by law school deans, bar leaders and OCA officials to discuss issues involving legal education.

8. Report and recommendations of Commission on Providing Legal Services for the Middle Income Consumers. Mr. Headley, in his capacity as Chair of the Commission on Providing Legal Services for the Middle Income Consumers, summarized an affirmative legislative proposal to provide a procedure for the simplified resolution of cases under \$75,000. He described the major features of the plan, which seeks to furnish a fair and voluntary means for resolving cases with the assistance of counsel which could not be litigated economically by means of normal civil trial procedures. Mr. Headley noted that,

as he had reported at the November meeting, the proposal had been revised based on the issues raised when it had been considered by the House in January 1999. He indicated that, based on more recent comments, further improvements had been incorporated following the presentation at the last meeting. He stated that the modifications were intended to address concerns expressed about the adequacy of notice, the taking of testimony by video deposition, the lack of a sufficient record on which to base an appeal, the grounds for permitting an appeal as of right, and the absence of a sunset provision. Discussion then ensued, during which some members noted that the commission had made substantial improvements based on the concerns which had been raised to arrive at a fair and balanced approach. Others expressed reservations about the mechanics of the proposed process and its departure from the traditional elements of the litigation process. Following this discussion, a motion was adopted by a 98 to 45 margin approving the filing of the proposed legislation.

9. Report of the Special Committee on the Law Governing Firm Structure and Operation. Robert MacCrate, Chair of the Special Committee on the Law Governing Firm Structure and Operation, reported on the status of the committee's studies stemming from the resolution adopted by the House of Delegates in June 1999 with respect to multi-disciplinary practice. He noted that at the November meeting, he had reported concerning the six study projects the committee had undertaken in the first phase of its work to provide a factual predicate for the committee's ultimate product. He indicated that these studies represented the initial phase of the committee's work and would provide a comprehensive view of where the American legal profession stands in relation to multi-disciplinary practice and to the legal profession in other countries. Mr. MacCrate advised that the committee was beginning a second phase to systematically analyze and make recommendations regarding the issues raised by various proposals to amend the law governing lawyers to authorize multidisciplinary practice structures and control by non-lawyers. He explained that this second phase would explore, among other issues, the professional responsibilities of lawyers and law firms and the role of an independent legal profession in maintaining the rule of law; the professional responsibilities of American lawyers who practice outside the United States and of those lawyers who work for organizations providing consulting services and financial products to the public; how the unauthorized practice of law should be defined; and what, if any, changes should be made to existing ethical standards in the public interest. Mr. MacCrate stated that the committee was on schedule to have its report completed for presentation to the Executive Committee in late April and to the House in June. The report was received with the thanks of the House.

10. Report of The New York Bar Foundation. Maryann Saccomando Freedman, President of The New York Bar Foundation, commended the annual report of The Foundation to the members as a concise and descriptive summary of the organization's worthwhile activities for the past year. She noted the various law-related projects being supported by The Foundation, and encouraged the members to utilize the pledge cards available at the entrance to contribute to the annual fund campaign. Ms. Freedman then introduced Joseph V. McCarthy who spoke about a video on the proper handling of

lawyer trust accounts produced by the Bar Association of Erie County with the financial assistance of The Foundation. The report was received with the thanks of the House.

11. Report of Chair. Mr. Hassett announced the following matters:

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, Steven C. Krane, Maxwell S. Pfeifer, Joshua M. Pruzansky, Thomas O. Rice, and Jonathan I. Bing (young lawyer delegate).

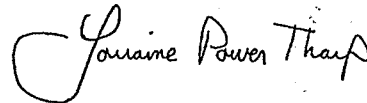
b) Hon. M. Dolores Denman, Presiding Justice of the Appellate Division, Fourth Department, had passed away on January 17, 2000. He noted that Justice Denman, a past recipient of the Ruth G. Schapiro Memorial Award, had been a member of the House in 1997. Mr. Hassett advised that a memorial to her would be presented at the April House meeting. A moment of silence was then observed out of respect for Justice Denman's memory and her contributions to the legal profession.

Ms. Freedman then offered the following resolution which was adopted by unanimous vote of the House:

RESOLVED, that the House of Delegates of the New York State Bar Association adjourns in memory of M. Dolores Denman, Presiding Justice of the Appellate Division of the Supreme Court, Fourth Department, in memory of and in gratitude for her outstanding contribution to the law and the legal profession and in recognition of her consummate humanity.

13, Date and place of next meeting. Mr. Hassett announced that the next meeting of the House of Delegates was scheduled for Saturday, April 8, 2000 at the Bar Center in Albany, New York.

Respectfully submitted,



Lorraine Power Tharp
Secretary

