

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 25, 2002**

PRESENT: Abrams; Alcott; Asarch; Ayers; Bailey; Barasch; Bartlett; Batra; Bauman; Beehm; Bing; Bleakley; Bohner; Bonner; Bracken; Buckley; Buzard; Cashman; Castellano; Chakansky; Chambers; Christian; Cioffi; Clements; Clifford; Cloonan; Coffee; Cometa; Connolly; Cuyler; Darche; E. Davis; Dietz; Doerr; Dollard; Doyaga; Doyle; J. Dwyer; M. Dwyer; Edmunds; Eisman; Eppers; Eppler; Evans; Fales; Farrell; Fedorchak; Fedrizzi; Fennell; Fetter; Field; Filiberto; Fink; FitzGerald; Flink; Franchina; H. Freedman; M. Freedman; Futter; Gacloch; Gardella; Geoghegan; Getnick; Glover; Gold; Goldenberg; Goldstein; Golinski; Graber; Grossman; Gutleber; Haig; Handlin; Harren; Harris; Hassett; Headley; Heming; Herold; Hesterberg; Hirsch; Hoffman; Horowitz; Hoye; Jacoby; Jaffe; Kamins; Kelly; M. Kessler; S. Kessler; Kilsch; D. Klein; F. Klein; M. Klein; Kogut; Kougasian; Kramer; Krane; Landy; Lawrence; Leber; Leistensnider; A. Levin; M. Levy; P. Levy; Lewis; Lieberman; Lindenauer; Longo; Mandell; Maney; Manley; Mayer; McCarthy; Meng; Mihalick; M. Miller; S. Miller; Minkowitz; Mohun; Monahan; Moore; Morse; Nashak; Netter; Nizin; O'Connor; O'Leary; Omansky; O'Mara; Opotowsky; Ostertag; Palermo; Palmer; Paul; Peckham; Perlman; Pfalzgraf; Pfeifer; Porcillio; Priore; Pruzansky; Purcell; Quattlebaum; Rayhill; Reich; Reizes; Renzi; Reynolds; Rice; Richardson; Rifkin; Riley; Rizzo; Roach; Robertson; Rosner; Rothkopf; Schumacher; Seymour; Silkenat; Sloan; Souther; Spellman; Stenson; Sunshine; Terranova; Tharp; Tishler; Treece; Tully; Uebelhoer; Vigdor; Vitacco; Walker; O. Walsh; Wimpfheimer; and Witmer.

1. Approval of minutes of November 3, 2001 meeting. The minutes were deemed accepted as distributed previously.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Frank M. Headley Jr. to members of the House at the Annual Meeting, was received with thanks.
3. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. James C. Moore, Chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2002-2003 Association year:

PRESIDENT-ELECT

A. Thomas Levin of Mineola

TREASURER

Kenneth G. Standard of New York City

SECRETARY

A. Vincent Buzard of Rochester

DISTRICT VICE-PRESIDENTS

FIRST

Mark H. Alcott, New York City
Stephen D. Hoffman, New York City

SEVENTH

C. Bruce Lawrence, Rochester

SECOND

Edward S. Reich, Brooklyn

EIGHTH

Joseph V. McCarthy, Buffalo

THIRD

James B. Ayers, Albany

NINTH

Joseph F. Longo, White Plains

FOURTH

Peter D. FitzGerald, Glens Falls

TENTH

A. Craig Purcell, Hauppauge

FIFTH

James F. Dwyer, Syracuse

ELEVENTH

Gary M. Darche, Flushing

SIXTH

Kathryn Grant Madigan,
Binghamton

TWELFTH

Lawrence R. Bailey Jr.,
New York City

MEMBERS-AT-LARGE OF THE EXECUTIVE COMMITTEE

Michael E. Getnick of Utica
Matthew J. Kelly of Albany
Gunther H. Kilsch, New York City
Bernice K. Leber, New York City
Susan B. Lindenauer, New York City
David R. Pfalzgraf, 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.

4. Report of the President. Mr. Krane reported on the following matters:

- a. Annual Meeting: The Annual Meeting has generated well-attended, successful programs providing wide-ranging information on substantive law developments, practice, procedure and technology and offering opportunities for informal discussions among members.
- b. State of the State. He and President-Elect Tharp attended the Governor's State of the State address on January 9, 2002. The Governor renewed his call for reform of the drug sentencing laws; sought elimination of the statute of limitations for terrorist acts and for rape and sexual assault; favored elimination of parole for all convicted felons; urged campaign finance reform; called for an initiative and referendum system to enable citizens to place proposals on the general election ballot; and advised in this tight economic year that he will be seeking to reduce the general funding. Assigned counsel fees, court reorganization and the judiciary budget were not discussed by the Governor.
- c. State of the Judiciary. The Chief Judge's State of the Judiciary address was held on January 14, 2002 at the Court of Appeals followed by a luncheon hosted by the Association at the Bar Center. He and President-Elect Tharp attended the address at which uniformed court officers were cited for their bravery in the World Trade Center disaster and Chief Judge Judith S. Kaye presented new and expanded initiatives. In the address, the Chief Judge renewed her call for legislation for increased assigned counsel fees and announced that: an Office of Volunteers in the Courts will be established to coordinate existing programs and identify new opportunities for lawyer and nonlawyer volunteers; the Integrated Domestic Violence Court initiative will be advanced by bringing within Supreme Court jurisdiction felony domestic violence cases and domestic violence matters now handled in New York City Criminal Court and City, District and Justice Courts in the state; a Commission on Public Access to Court Records is being formed to provide guidance on right of access and privacy considerations with regard to electronic access to case records; a summit will be held in New York City on "The Courts in the Aftermath of September 11"; the drug courts will be expanded and mental health courts implemented beginning in Brooklyn; and an Access to Justice Center will be created to identify new ways to meet the civil legal services needs of the poor.

Also in the address, the Chief Judge advised that the Administrative Board had promulgated a rule, effective in March 2002, to require letters of engagement for matters expected to involve fees of \$3,000 or more. The original proposal called for a threshold of \$1,000. The letters are to be provided within a reasonable time upon commencement of the engagement. The measure will not be contained in the Disciplinary Rules. The Association House had opposed the institution of a mandate and instead had recommended use of letters as good practice. However, the new rule contains a number of provisions that had been proposed by the Association Committee on Attorney Professionalism, and accepted by the Office of Court Administration, if such requirements were to be pursued.

- d. Meeting with Chief Administrative Judge. Together with President-Elect Tharp and Executive Director Patricia K. Bucklin, he met with Chief Administrative Judge Joanathan Lippman on December 13, 2001 to discuss matters of concern to the Court System and the Association. Among topics were efforts to seek legislation for increased assigned counsel rates and court restructuring; the 2002-2003 judiciary budget; proposals of the Committee on Unlawful Practice of the Law for amendments to the Judiciary Law; and the study under way by the Association's Special Committee on Multijurisdictional Practice. Judge Lippman advised that the Administrative Board had declined to approve the Association's proposed uniform Appellate Division rule on reinstatement of disbarred or suspended attorneys, deciding to retain the departmental approach to address specific needs.

- e. Fiduciary appointment system. He appointed a Special Committee on Fiduciary Appointments in November 2001, with past President Joshua M. Pruzansky as Chair, to examine the reports of the Special Inspector General and the Chief Judge's Commission on Fiduciary Appointments and related issues concerning appointments in Article 81 proceedings, guardians ad litem, receivers and referees. The report and recommendations are expected to be presented at the April 5-6, 2002 meetings of the Executive Committee and House.

- f. Association anniversary. Projects are proceeding to celebrate the Association's 125th anniversary, under the direction of a special committee chaired by John Hanna Jr. Work is under way with American Heritage on a book describing the Association's history and related developments. A dinner and reception will be held in the spring to mark the incorporation of the Association by legislation. A commemorative logo is being used on letterhead and other materials. An exhibit of some of the major accomplishments and events has been on display during the Annual Meeting.
- g. Judiciary budget. Reflecting the impact of the World Trade Center disaster on the state economy, the judiciary budget includes a 15-month hiring freeze, cuts in many areas other than security, and keeps spending at minimal levels while retaining the Chief Judge's key initiatives, as described above in the State of the Judiciary address. President Krane plans to present testimony to the Legislature in February in support of the judiciary budget as reasonable and necessary.
- h. Attorney General memorandum. He cited Attorney General Eliot Spitzer for issuing an administrative memorandum to his staff supporting and encouraging participation in pro bono and bar association activities.
- i. Judicial campaigns. The Association hosted a symposium in October at the Bar Center on judicial election campaign practices. The program included the Chief Judge, Chief Administrative Judge and local bar representatives. Following that program, President Krane appointed a Special Committee on Judicial Campaign Conduct, chaired by Michael A. Klein, to examine ways of providing guidance, promoting appropriate conduct, and giving an effective oversight mechanism to resolve problems that may arise. The Committee plans to meet with local bar associations on February 13 at the Bar Center to continue this dialog.
- j. World Trade Center disaster relief. He expressed appreciation for all those who gave of their talent, time and resources in the Association's disaster relief work in the wake of the World Trade Center attack. He observed that the disaster demonstrated the Bar at its very best in very difficult times, generating considerable positive media coverage of the Association and volunteer efforts. He advised that the Barcelona Bar Association will present an award in February to the NYSBA for its disaster relief assistance. He will represent the Association at the ceremonies.

5. Presentation of the Ruth G. Schapiro Memorial Award. Mr. Krane presented the tenth annual Ruth G. Schapiro Memorial Award to City University of New York Law School Dean Kristin Booth Glen and posthumously to the late Chief Judge Lawrence H. Cooke for their exemplary contributions in improving the legal process for women and opportunities for women in the profession. Dean Glen thanked the House for the honors, citing advances made and the need for continued efforts. The award honoring Judge Cooke was accepted by his son Edward, who expressed gratitude to the Association for this recognition of his father's efforts to further gender equity and equal treatment of women in the courts.

6. Report and recommendations of the Special Committee on Public Trust and Confidence in the Legal System. The Chair of the Special Committee on Public Trust and Confidence in the Legal System, Ellen Lieberman, summarized the report and recommendations. The Committee proposal would amend Judiciary Law Sec. 90(10) to open attorney disciplinary proceedings to the public once a *prima facie* case has been established, provided (1) the Appellate Divisions have uniform provisions for the establishment of a *prima facie* case and public access and (2) an Appellate Division Justice makes the determination both as to *prima facie* case and public access. She advised that the proposal, with safeguards to protect the rights of the attorney, is intended to promote public trust by providing for a more open process to demonstrate the integrity and accountability of the profession. She described experience in other states, noting that 37 states open disciplinary proceedings at or prior to the point a determination to bring formal charges has been made. President-Elect Tharp advised that a motion to endorse the Committee proposal did not prevail, by a vote of 10-12.

Extensive discussion followed, with Delegates expressing views on the effect of the proposal in regard to the attorney, media coverage, and public perception and the position previously taken by the House for greater use of existing interim suspension provisions in appropriate cases.

A motion was then adopted by a vote of 108-40 to substitute a resolution of the Executive Committee. Following discussion, a motion was adopted by voice vote approving the resolution, as set forth below.

WHEREAS, the House of Delegates has received the report and recommendations of the New York State Bar Association's Special Committee on Public Trust and Confidence in the Legal System with respect to public access to the attorney disciplinary process; and

WHEREAS, the interests of the public and the Association are the same in those instances where misconduct is determined to have occurred and/or suspension of the right to practice law is determined to be appropriate; it is hereby

RESOLVED, that the Association recommends that to safeguard the public, the Appellate Divisions utilize existing statutory provisions to intervene in all appropriate disciplinary cases and to consider interim suspension with attendant public disclosure in cases where misconduct has been determined; and it is further

RESOLVED, that to expedite the disciplinary process the Association urges the Legislature to provide adequate funding from the current registration fees paid by attorneys; and it is further

RESOLVED, that the Association recommends the adoption of uniform procedures and standards for disciplinary proceedings assuring due process in the four Judicial Departments; and it is further

RESOLVED, that the officers and appropriate committees of the Association are encouraged to coordinate with the Appellate Divisions and the various attorney disciplinary committees to implement the foregoing principles.

Appreciation was expressed to the Special Committee for its work on this issue. It was noted that numerous recommendations of the Committee on other issues of public trust in the legal system were previously approved by the House.

7. Presentation of the Hon. Hugh R. Jones Defender of Freedom Award. President Krane reported that the newly inaugurated Hon. Hugh R. Jones Defender of Freedom Award was presented to Governor George E. Pataki for his leadership in the aftermath of the disaster at the House dinner on January 24 with some members of the Jones family in attendance. President Krane advised that the award also will be given to former New York City Mayor Rudolph Giuliani.

8. Report and recommendations of the Special Committee on Legislative Advocacy.
A. Vincent Buzard, Chair of the Special Committee on Legislative Advocacy, described the study and resulting recommendations of the Committee to strengthen the Association voice and effectiveness in furthering its positions on state legislation. The Committee reviewed procedures and experience of other bar associations in the country and spoke with lawmakers to obtain their perspectives. He cited the importance of a sustained effort of education and advocacy, involving members meeting at the district level as well as in Albany. The Committee surveyed members as to their acquaintance with lawmakers.

The Committee recommended establishment of a key contact program that would involve members meeting several times in the year with legislators including in their districts, beginning with legislative leaders and members of key legislative committees; formation of a steering committee, composed of representatives from the Executive Committee, Special Committee on Legislative Advocacy and Committee on Legislative Policy, to identify major issues for advocacy; development of background material on these matters and training for use by the member contacts; and pursuit of the legislative action program year-round and on a long-term basis. The Committee considered such other initiatives as lobbying days, receptions and formation of a political action committee but determined that these means were not cost-effective.

A motion was adopted approving the report and recommendations by unanimous voice vote.

9. Report and recommendations of the Committee on Unlawful Practice of Law.
The report and recommendations of the Committee on Unlawful Practice of Law to clarify practice of law provisions and prohibitions were summarized by the Chair, Mark J. Solomon. The Committee recommended amendments to Judiciary Law Sec. 478 to provide a definition of the practice of law, prohibit unauthorized practice and enumerate exceptions to the prohibitions and Sec. 484 to prohibit a nonlawyer from using the title of attorney.

He advised that several modifications had been made in the report in response to comments received, including clarification that a paralegal or other nonlawyer employee working under the supervision and direction of an attorney is not engaged in the practice of law when performing properly designated tasks; that authorized and supervised court personnel may provide general information to the public; and that out-of-state attorneys may use the title of attorney in communications to members of the public in New York if their jurisdictional limitations are clearly stated.

Mr. Solomon observed that clarifying the provisions as to what constitutes and does not constitute the practice of law provides valuable guidance to attorneys, particularly in these changing times in the profession and in light of Code of Professional Responsibility amendments to address multidisciplinary practice and related issues arising in contemporary practice situations. He said that these measures also will aid in enforcement, benefiting the bar and the public, by defining the scope of practice and prohibitions. President-Elect Tharp reported that the Executive Committee had endorsed the report for positive House action.

In discussion, a number of Delegates expressed the view that the measures would provide more guidance and facilitate enforcement; others indicated that provisions on unauthorized conduct may be overly broad in certain aspects and that the study should be deferred until the issuance of the study on multijurisdictional practice. A motion to recommit the report to the Committee for further review was approved by a vote of 55-36.

10. Report of Coordinating Committee on Federal Anti-terrorism Measures. President-Elect Tharp advised that presentation of the report of the Coordinating Committee on Federal Anti-terrorism Measures would be deferred until the April 6, 2002 House meeting.
11. Report of the Chair.
 - a. Nomination of delegates to ABA House: Ms. Tharp announced that the House, at the April 6, 2002 meeting, would be asked to elect six of the NYSBA's 11 delegates to the American Bar Association House of Delegates. She reported that the Nominating Committee had nominated the following individuals for those positions: Tyrone Butler of Troy, Steven C. Krane of New York City, A. Thomas Levin of Mineola, Maxwell S. Pfeifer of the Bronx, Thomas O. Rice of Garden City, and, as the Young Lawyer Delegate, Jonathan L. Bing of New York City.
 - b. Change of Committee name: Ms. Tharp advised that the Committee on Law Office Economics and Management had requested a change in name to the Committee on Law Practice Management to better reflect its current work and modern terminology. She noted that as this is a standing committee, House approval would be necessary to make the change. A motion was adopted unanimously approving the request.

12. Date and place of the next meeting. Ms. Tharp announced that the next meeting of the House of Delegates was scheduled for Saturday, April 6, 2002 at the Bar Center in Albany, New York.

Respectfully, submitted,

A handwritten signature in black ink, appearing to read "A. Thomas Levin". The signature is stylized with a large initial "A" and a long, sweeping horizontal line that extends to the right.

A. Thomas Levin