

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
JANUARY 27, 2006  
MARRIOTT MARQUIS, NEW YORK, NEW YORK**

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PRESENT: Alcott; Amuso; Asarch; Ashcraft; Ayers; Badway; Barney; Barson; Bartlett; Benedict; Berman; Bienstock; Borsody; Boyers; Bracken; Brady; Brett; Brown; Buholtz; Burke; Buzard; Campanaro; Campos-Galvan; Carlucci; Carmen; Castellano; Castillo; Chambers; Chavez; Christian; Cioffi; Clarke; Cloonan; Cohen; Copps; Cosgrove; Cullum; Cummings; Cyrulnik; D'Angelo; Davis; DeFio; Dietz; DiGiovanna; Dixon; Doerr; Doyle J.; Doyle V.; Duffy; Eppler; Fales; Fernandez; Ferrara; Fish; Flaherty; Flood; Frank; Gacioch; Gerstman; Getnick; Giorgio; Glanzer; Goldblum; Gordon-Oliver; Gorgos; Gouz; Grays; Green; Greenberg; Gregory; Gross J.; Gross M.; Gutekunst; Harren; Harris, Joel; Harris, John; Haskel; Hasset; Hayes; Hendricks; Hoffman; Hollyer; Horan; Jacobs, R.; Jacobs, S.; James; Kamins; Karson; Kelly, Matthew; Kelly, Michael; Kessler; Kiernan; King, B.; Kinum; Kossove; Kougasian; Krane; Kretser; Lagonia; Lamantia; Lau-Kee; Lawrence; Leber; Lee, Charlotte; Lee, Chi; Leinhardt; Lesk; Levin; Levinsohn; Lieberman; Lindenauer; Longo; Luskin; Lynch; MacCrate; Madigan; Margolin; Markhoff; Martinelli; Marwell; May; McAuliffe; McCarthy, Jerry; McQueary-Smith; McShea; Meislahn; Meyer; Miklitsch; Milito; Millett; Millman; Minkowitz; Mitchell; Mitzner; Moore; Moy; Murray; Myers; Nashak; Nathanson, E.; Nathanson, M.; Netter; Ostertag; Palermo; Paul; Pellow; Perino; Plevan; Porcellio; Potter; Price; Priore; Privitera; Pruzansky; Purcell; Reimer; Reitzfeld; Reynolds; Richardson; Rich; Richman; Rifkin; Rivera; Robertson; Romero; Rothstein; Ruderman; Runes; Safer; Schraver; Schultz; Seiden; Sheehan; Sherman; Sherwin; Sherwood; Shulman; Silkenat; Smoley; Smolowitz; Sonberg; Sperendi; Spitzmueller; Standard; Stenson; Sunshine, J.; Sunshine, N.; Tharp; Thompson; Tishler; Tyler; Tyre; Vigdor; Wachtler; Wales; Walsh, O.; Walsh, S.; Warner; Weinstein; Welby; Williams, B.; Wilson; Witmer; Young; Zeltner.

Mr. Alcott presided over the meeting as Chair of the House.

1. Approval of minutes of November 5, 2005 meeting. In a unanimous voice vote, a motion was adopted accepting the minutes as previously distributed.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer James B. Ayers 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. Lorraine Power Tharp, Chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2006-2007 Association year: President-Elect: Kathryn Grant Madigan, Binghamton; Secretary: Michael E. Getnick, Utica; Treasurer: James B. Ayers, Albany; and Vice-Presidents: First District – Bernice K. Leber and Susan B. Lindenauer, New York City; Second District – Barry M. Kamins, Brooklyn; Third District – Hon. Rachel Kretser, Albany; Fourth District – Nicholas E. Tishler, Niskayuna; Fifth District –

David M. Hayes, Syracuse; Sixth District – James C. Gacloch, Binghamton; Seventh District – C. Bruce Lawrence, Rochester; Eighth District – Sharon Stern Gerstman, Buffalo; Ninth District – Henry S. Berman, White Plains; Tenth District – Hon. Joel K. Asarch, Hempstead; Eleventh District – Seymour W. James, Jr., Kew Gardens; and Twelfth District – Lawrence R. Bailey, Jr., New York City. Nominated as members-at-large of the Executive Committee were Vincent E. Doyle, III, Buffalo; David L. Edmunds, Jr., Buffalo; Timothy J. Fennell, Oswego; Glenn Lau-Kee, White Plains; David P. Miranda, Albany; David M. Schraver, Rochester; Peter J.W. Sherwin, New York City; and Lauren J. Wachtler, New York City.

There being no further nominations, a motion was made and carried unanimously to elect the above-named individuals as officers and members-at-large of the Executive Committee.

4. Address by Hon. Judith S. Kaye, Chief Judge of the State of New York. Chief Judge Kaye addressed the House of Delegates on the status of Unified Court System programs and plans for new and expanded initiatives. She provided an update on the work of the commissions that had been appointed to examine issues affecting the bench and bar. She thanked the Association for its support of legislation to provide judicial pay raises and described new initiatives to promote civil pro bono legal services; focus groups to be convened on topics of interest such as the jury system and litigation delays; a planned recommendation from the Commission on the Future of Indigent Defense Services that there be a single statewide system for the delivery of indigent defense services; a colloquium to discuss the collateral consequences of criminal convictions; and a program for civic education and outreach through a center for courts and the community.
5. Presentation of the Ruth G. Schapiro Memorial Award. Mr. Buzard presented the annual Ruth G. Schapiro Award to Catherine J. Douglass, the founder and executive director of inMotion, a non-profit organization providing free legal services to indigent and working poor women, and co-founder and co-chair of the Lawyers Committee Against Domestic Violence. Ms. Douglass was cited for her efforts in assisting vulnerable women to receive free legal representation and other services to improve their families' quality of life.
6. Remarks of the Chair. Mr. Alcott observed that at the Annual Meeting of the Association in January 1943, Judge Irving Lehman addressed the House of Delegates on the topic of judicial independence in light of the German occupation of European countries. The judge noted that in many of these countries, judges refused to submit to the occupiers' orders. Today, Mr. Alcott stated, the threats to judicial independence are less obvious but still present, and the Association has an important role to play in preserving the independence of the judiciary.

With respect to administrative matters, Mr. Alcott reported that at the April 1, 2006 meeting, the House would be requested to elect six of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: A. Thomas Levin, Mineola; Steven C. Krane, New

York City; Robert L. Ostertag, Poughkeepsie; Kathryn Grant Madigan, Binghamton; A. Vincent Buzard, Rochester; and, as the Young Lawyer Delegate, Manuel Campos-Galvan, New York City.

7. Report and Recommendations of Special Committee to Ensure Quality of Mandated Representation. Vincent E. Doyle, III, chair of the Special Committee, outlined his committee's report that follows up on the statewide standards for ensuring quality of mandated representation that were adopted by the House at its April 2, 2005 meeting. The follow-up report calls for widely publicizing the standards; creating an award to recognize outstanding mandated representation; advocating for the creation of an independent public defense oversight mechanism; monitoring the Indigent Legal Services Fund and the Task Force designated to review assigned counsel rates; appointing an ad hoc committee to explore the provision of low-cost CLE training to providers of mandated representation; and holding a summit on indigent representation after the release of the report of the Chief Judge's Commission on the Future of Indigent Defense. After discussion, a motion was unanimously adopted to approve the following resolution:

WHEREAS, the NYSBA Special Committee to Ensure Quality of Mandated Representation was appointed to study the means by which New York counties provide mandated legal representation and recommend steps to ensure that such representation meets constitutional standards; and

WHEREAS, in April 2005 the New York State Bar Association endorsed the Special Committee's Standards for Providing Mandated Representation; and

WHEREAS, the Special Committee has issued a follow-up report setting forth an action plan for the Association to implement the Standards and promote quality mandated representation;

Now, therefore, it is

RESOLVED, that the New York State Bar Association endorses the report of the Special Committee to Ensure Quality of Mandated Representation dated October 17, 2005; and it is further

RESOLVED, that the NYSBA hereby calls for the creation of an independent public defense oversight mechanism in this state empowered to provide oversight, quality assurance, support, and resources to providers of mandated representation and to advocate for funding and reform when appropriate; and it is further

RESOLVED, that the officers of the Association are hereby authorized take such steps as they may deem warranted to implement this resolution.

8. Report of the President. Mr. Buzard updated the House on the following developments and initiatives:

- a. Four live sessions of the "People's Law School" were held in Albany and were taped for distribution, along with an updated handbook. Four more programs will be held in the Spring of 2006.
- b. Fifteen newspapers have begun carrying the "Ask-a-Lawyer" column, which features an introduction by Mr. Buzard, a topical discussion, and an invitation for questions from readers. In addition, several business newspapers have expressed an interest in a column that focuses on small businesses.
- c. The public service announcements prepared last fall were broadcast in 3900 spots, with 1900 taking place at drive time. These announcements represented \$684,000 in advertising value and were favorably received.
- d. The Task Force on Cameras in the Appellate Courts, chaired by Carolyn G. Nussbaum of Rochester, presented an interim report to the Executive Committee on January 26 that outlines initiatives to increase television coverage of appellate court proceedings, and is expected to issue its final report in June.
- e. The Task Force on Lawyer Advertising would present its report at this meeting; in view of the upcoming meeting of the Administrative Board of the Courts, at which this issue is scheduled for discussion, there is a need to act on the Task Force's recommendations expeditiously.
- f. A "best projects" book was distributed to bar leaders earlier in the day to encourage bar leaders to develop community outreach projects.
- g. There is a continuing need for education regarding eminent domain issues in the wake of the *Kelo* decision, and the Task Force on Eminent Domain plans to issue a report in February or March.
- h. He met with Senator Schumer's staff regarding the Association's concerns about pending legislation on habeas corpus restrictions and the Lawsuit Abuse Reduction Act (LARA). With respect to habeas corpus, the proposed legislation (now contained in the Patriot Act) has been amended in such a manner as to have little effect on New York matters; with respect to LARA, Senator Schumer's staff had reported that the issue currently is not being considered by the Senate. The Association will continue its efforts with respect to both issues; he had sent a letter to Section chairs to encourage Section members to contact their legislators regarding these measures.
- i. Over 250 members have volunteered to participate in the Association's Federal "key contact" program, indicating that they have a relationship with a U.S. Senator or member of Congress. He invited House members who had not already submitted a form to volunteer to do so, and noted that information was available at the delegates' seats.

- j. The U.S. Court of Appeals for the District of Columbia Circuit upheld the District Court's decision in the Association's challenge of the Federal Trade Commission's interpretation of the Gramm-Leach-Bliley Act. He thanked past president Steven C. Krane and his firm, Proskauer Rose LLP, for their pro bono work on the case.
  - k. A record crowd attended the Presidential Summit on January 25, which discussed the increased requests for waivers of attorney-client privilege and the Supreme Court confirmation process. He thanked the program chairs for their work and reported that the Task Force on Attorney-Client Privilege, chaired by Stephen D. Hoffman, planned to issue an interim report in March.
  - l. He reported on the legislative priorities that the Association would be pursuing during the current legislative session: enactment of the Family Health Care Decisions Act; no-fault divorce; access to civil legal services; judicial salary reform; equal legal treatment of same-sex couples; and videotape recording of custodial interrogations.
  - m. The Committee on Media Law was scheduled to present its report on the proposed Federal shield law later in the meeting and hoped the House would act favorably.
  - n. Staff continues to review potential methods for providing members with instant updates on developments in their areas of practice.
  - o. Paul C. Saunders, a member of the New York State Judicial Institute on Professionalism in the Law, had agreed to chair a CLE program on professionalism in the Spring of 2006.
  - p. The reconstituted Committee on Law Practice Management, with new Director of Law Practice Management Pamela McDevitt, had sponsored a number of very successful programs on practice management during the past week.
  - q. Over 140 lawyers attended a regional meeting in Binghamton, with members attending from as far away as Oneonta and Elmira. A similar regional meeting is being planned for Glens Falls in Spring 2006, and consideration is being given to an event in New York City as well. He also noted that the use of e-mail messages has proven important in member outreach.
  - r. Given the success of the dinner held in Albany the evening before the November House meeting, a similar dinner will be held in conjunction with the April meeting.
9. Report and Recommendations of Task Force on Lawyer Advertising. Bernice K. Leber, the Task Force's chair, outlined the Task Force's proposals for changes in the rules governing lawyer advertising, changes in enforcement, and the development of a peer

review program for advertising. She noted that the Task Force had consulted with the groups that had submitted comments and that many of the differences between the Task Force and the groups that commented had been settled. She reported that an Executive Committee proposal to delete the phrase “to existing or former clients” from Comment 3C had been accepted by the Task Force. In addition, she reported that the Task Force had withdrawn proposed Rule 7.4 with respect to solicitation, with this proposal to be considered in connection with the report of the Committee on Standards of Attorney Conduct in November 2006. After a motion to approve the report, the following motions to amend were made:

- A motion to amend proposed Rule 7.1(b)(3) by adding to the beginning, “if such advertisement contains any contact information (including, without limitation, street or postal box address, telephone number, or e-mail address), it...” carried on voice vote.
- A motion to amend Comment 3C by adding “depending on the audience for and character, content and purpose of the communication” was accepted as a friendly amendment.
- A motion to move the provision regarding the use of actors from proposed Rule 7.1(b)(4) to the Commentary failed on voice vote.
- A motion to move the definition of “advertising” from the Commentary to the beginning of proposed Rule 7.1(b) failed on voice vote.
- A motion to amend proposed Rule 7.1(b)(1) to state, “a copy of [i] each foreign language advertisement, together with an English translation, and [ii] all television, radio, billboard and placard advertising shall be filed according to court rule, and copies of all advertisements shall be retained...” was accepted as a friendly amendment.
- A motion to amend proposed Rule 7.1(b)(6) to require e-mail advertisements to include “Attorney Advertisement” in the subject line of the e-mail was accepted as a friendly amendment.
- A motion to amend Rule 7.1(b)(7) to include the phrase, “or such period as mandated by applicable Federal law” was accepted as a friendly amendment.
- A motion to delete proposed Rule 7.1(b)(7) failed on voice vote.
- A motion to add to proposed Rule 7.3(a)(1)(i) the language, “or persons who regularly retain lawyers to provide services of the type being solicited by the lawyer” failed on a standing vote of 46-52.

The main motion, as amended above, was then approved on voice vote. Mr. Krane abstained from participating in the discussion or vote.

10. Report and Recommendations of Committee on Standards of Attorney Conduct. In accordance with the scheduling resolution adopted by the House at the November 2005 meeting, Steven C. Krane, the committee's chair, provided a brief informational report on the committee's recommendation that New York adopt the format of the Model Rules of Professional Conduct. He noted that this recommendation will be debated at the April 1, 2006 House meeting, with any comments on the format change being due March 1. The Committee on Professional Ethics and Committee on Professional Discipline had already submitted comments supporting the format change. Mr. Krane noted that he or representatives of the committee would be available to meet with interested groups to discuss the format change, if desired. The report was received with thanks.
11. Report and Recommendations of Committee on Media Law. Mr. Alcott reported that consideration of the report would be deferred to the April 1, 2006 meeting.
12. Report and Recommendations of Special Committee on Funding for Civil Legal Services. Mr. Alcott reported that consideration of the report would be deferred to the April 1, 2006 meeting.
13. Date and place of next meeting. Mr. Alcott announced that the next meeting of the House of Delegates would take place on Saturday, April 1, 2006 at the Bar Center in Albany.
14. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Kathryn Grant Madigan  
Secretary

