

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
JANUARY 26, 2007
MARRIOTT MARQUIS, NEW YORK, NEW YORK**

PRESENT: Adler; Alcott; Alden; Asarch; Ayers; Badway; Barson; Bartlett; Berman; Bienstock; Borsody; Boyers; Bracken; Brown Spitzmueller; Brown; Buholtz; Buonora; Burke; Burns; Buzard; Campos-Galvan; Caraballo; Carlucci; Castellano; Castillo; Chambers; Chin; Christian; Clarke; Cloonan; Coffey; Cohen; Copps; Cullum; Cummings; Davidoff; Davis; Dietz; DiGiovanna; Dixon; Dolin; Doyle, C.; Doyle, J.; Doyle, V.; Duffy; Edmunds; Egan; Elder-Howell; Enea; England; Eppler; Farley; Fennell; Fernandez; Ferradino; Fink; Fish; Fisher; Flood; Frank; Freedman; Gacloch; Gall; Gerstman; Getnick; Giorgio; Gold; Goldblum; Golinski; Gordon Oliver; Gorgos; Gouz; Gredd; Green; Gregory; Gross; Grossman; Haelen; Haig; Harren; Harris; Hassett; Hayes; Hollyer; Horan; James; Kamins; Kelly, Matthew; Kiernan; Kinum; Kobak; Kougasian; Krane; Kretser; Kuntz; Lagonia; Lamantia; Lansner; Larose; Lau-Kee; Lawrence; Leber; Leinhardt; Leo; Lesk; Levin; Levinsohn; Levy; Lieberman; Lindenauer; Longo; Lorman; Luskin; Madigan; Makofsky; Margolin; Markhoff; Martin; Marwell; May; McAuliffe; McCarthy, Jerry; McShea; Meislahn; Meyer; Mihalick; Miklitsch; Miller; Millett; Minkowitz; Miranda; Mitchell; Moore; Moreland; Moy; Murray; Nashak; Nathanson; O'Donnell; Onderdonk; Opotowsky; Ostertag; Palermo; Paul; Pellow; Peradotto; Perino; Porcellio; Priore; Privitera; Pruzansky; Quinlan; Reed; Reynolds; Richman; Rivera; Robert; Romero; Rosenthal; Rosner; Runes; Safer; Santemma; Schofield; Schraiver; Schultz; Seiden; Seymour; Sheehan; Sherman; Sherwin; Shulman; Silkenat; Slavin; Smolowitz; Sonberg; sSperendi; Standard; Stansel; Steinberg; Stempel; Stenson; Sterrett; Sunshine; Szochet; Tell; Terranova; Tharp; Thompson; Tyre; Wachtler; Walsh, J.; Walsh, O.; Walsh, S.; Warner; Weinstein; Williams; Wimpfheimer; Witmer; Young; Younger; Zeltner.

Ms. Madigan presided over the meeting as Chair of the House.

1. Approval of minutes of November 4, 2006 meeting. In a unanimous voice vote, a motion was adopted accepting the minutes as previously distributed.
2. Report of President. Mr. Alcott reported on the following developments and initiatives, based upon the themes he had developed for his term as President:
 - a. Independence of the courts and of the bar
 - i. The Committee to Review Judicial Nominations met in December 2006 to review candidates for the vacancy in the position of Associate Judge created by the retirement of Hon. Albert M. Rosenblatt. All of the candidates were found to be "well qualified," and he had reported these findings to the Governor. On January 16, the Governor appointed Hon. Theodore T. Jones, Jr. to the position. The committee is currently in the process of reviewing candidates for the position of Chief Judge occasioned by the expiration of term of Chief Judge Judith S. Kaye.

- ii. He reiterated support for merit selection of judges, noting his testimony before the Senate and Assembly Judiciary committees, speeches and articles, and dialogue with others interested in the issue. In addition, the Governor has indicated support for merit selection.
 - iii. An amicus curiae brief that was authorized by the Executive Committee in connection with the KPMG criminal prosecution had been prepared by Cleary Gottlieb and would be filed the following week. He noted that the government has backtracked from the positions taken originally in the Thompson Memorandum.
 - iv. He had issued a statement regarding the comments of former Deputy Secretary of Defense Charles Stimson on lawyers providing representation to Guantanamo detainees, and the Association would submit a report and resolution to the ABA House of Delegates in connection with this topic.
- b. Diversity in the profession
- i. The reception held on January 22, 2007, "Celebrating Diversity at the Bar," had been well attended and was highly successful.
 - ii. The Special Committee on the Civil Rights Agenda, chaired by Hon. George Bundy Smith, has been charged with creating specific, realizable goals that break down racial barriers, increase racial diversity in the legal system and the profession, and advance the cause of civil rights during the next five years.
 - iii. The Special Committee on Lawyers in Transition, which would report later in the meeting, is working on a variety of projects to assist lawyers with re-entry into the profession.
 - iv. In November 2006, the State Board of Law Examiners released a data showing that the five-point increase in the bar examination passing score, which had been put into place by the Board for the July 2005 exam, had a disparate and adverse effect on minorities. As a result, the Board had suspended further increases. Mr. Alcott had written to Chief Judge Kaye requesting that the suspension of future increases be rolled back and that the passing score be rolled back to its prior level of 660.
- c. Access to justice
- i. The Empire State Counsel program, initiated in June 2006, had proved extremely successful with approximately 400 members having certified that they had provided more than 50 hours of pro bono legal services in the prior year. Participants in the program were honored at the "Justice for All" luncheon held on January 25.

- ii. The Association continues to advocate for increased funding for civil legal services, as well as programs to encourage volunteer efforts to provide services.
- d. Reform
- i. The Special Committee on Age Discrimination in the Profession, appointed by Mr. Alcott and chaired by Mark C. Zauderer, had prepared a report on law firm retirement policies that would be at presented at this meeting.
 - ii. The Appellate Division in the four departments had released its final amendments to the Code of Professional Responsibility relating to lawyer advertising, with the amendments scheduled to take effect on February 1. Mr. Alcott observed that in revising the rules originally released for comments, the court had included a number of the Association's recommendations.
 - iii. The Task Force on Mandatory Retirement of Judges, appointed by Mr. Alcott and chaired by Hon. E. Leo Milonas, anticipates having a report for presentation to the Executive Committee at its next meeting.
 - iv. The Association continues to pursue no-fault divorce as one of its legislative priorities for 2007.
 - v. Despite the Association's and court system's efforts, the Legislature failed to enact a salary increase for state court judges. Salary reform remains a legislative priority of the Association for 2007, and the Association supports Chief Judge Kaye's proposal for a Quadrennial Commission to address salary adjustments in all three branches of government.
 - vi. The Association continues to support court restructuring and merger and has included it as a 2007 legislative priority. Mr. Alcott noted the Governor's and Chief Judge's support for the proposal.
 - vii. He thanked the members of the House for their continuing support.
3. 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 thanked Mr. Alcott and the Association for their commitment to the issues of judicial independence, judicial selection, and court merger. In the coming year, she stated that she planned to make families a top priority, with an emphasis on the Family Court. On March 8 and 9, New York would host a Children's Summit, to bring together state chief justices, child welfare administrators, and court personnel from across the country. She will seek continued implementation of

the recommendations of the Matrimonial Commission, as well as a legislative package including no-fault divorce and counsel fees for non-moneyed spouses, and the development of a collaborative family law center in Manhattan to encourage resolution of disputes without litigation. With respect to town and village courts, a comprehensive action plan will be published; in addition, two other reports, one on the future of the court system and the other on the future of probation, will be published shortly. Finally, she reported on three other initiatives to be pursued: summary jury trials, a "courts and the community" project, and an all-out effort for judicial pay increases. The report was received with the thanks of the House.

4. Presentation of the Ruth G. Schapiro Memorial Award. Mr. Alcott presented the annual Ruth G. Schapiro Award to Professor Rhonda Copelon, the co-founder and director of CUNY's International Women's Human Rights Clinic, which focuses on access to justice and protecting the rights of the poor. Dean Michelle J. Anderson of CUNY School of Law accepted the award on Professor Copelon's behalf.
5. 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.
6. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. A. Thomas Levin, Chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2007-2008 Association year: President-Elect: Bernice K. Leber, New York City; Secretary: Michael E. Getnick, Utica; Treasurer: James B. Ayers, Albany; and Vice-Presidents: First District – Claire P. Gutekunst 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 – David A. Tyler, Ithaca; Seventh District – David M. Schraver, Rochester; Eighth District – Sharon Stern Gerstman, Buffalo; Ninth District – John S. Marwell, Mount Kisco; Tenth District – John H. Gross, Hauppauge; Eleventh District – Seymour W. James, Jr., New York City; and Twelfth District – Steven E. Millon, Bronx. Nominated as members-at-large of the Executive Committee were Vincent E. Doyle, III, Buffalo; David L. Edmunds, Jr., Buffalo; Hermes Fernandez, Albany; Michael Miller, New York City; David P. Miranda, Albany; Peter J.W. Sherwin, New York City; Lauren J. Wachtler, New York City and Stephen P. Younger, 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.

7. Report of Special Committee on Age Discrimination in the Profession. Mark C. Zauderer, chair of the Special Committee, outlined his committee's report and recommendations with respect to law firm mandatory age-based retirement policies. The committee concluded that mandatory age-based retirement is inconsistent with accepted

employment practices and is not in the best interest of firms or their clients. Instead, the committee has recommended that firms adopt a “best practices” approach, by which firms would evaluate the partner’s contributions to the firm and compensate accordingly. Formal consideration of the report will take place at the House’s March 31, 2007 meeting. The report was received with thanks.

8. Report of Task Force on Lawyer Advertising. Bernice K. Leber, the Task Force’s chair, reviewed the amendments to the Code of Professional Responsibility adopted by the Appellate Division in the four departments with respect to advertising and solicitation, including the changes made to the court’s original proposals in response to comments received from the Association and other interested parties. She noted that two members of the Task Force had agreed to staff a “hotline” to respond to questions regarding the rules, and the Task Force would work with the Committee on Standards of Attorney Conduct to draft Ethical Considerations that will provide additional guidance. The report was received with thanks.
9. Report and recommendations of Elder Law Section and Trusts and Estates Law Section. Ellen G. Makofsky, chair of the Elder Law Section, and Colleen F. Carew, immediate past chair of the Trusts and Estates Law Section, outlined the sections’ affirmative legislative proposal to amend article 29-C of the Public Health Law to permit individuals to execute living wills, by which a person can document his or her wishes regarding end-of-life treatment. They noted that the proposed legislation represents a codification of existing case law and is intended to clarify the availability of living wills in New York State. Speaking on behalf of the Health Law Section, section chair Mark Barnes and past section chair Lynn F. Stansel reported the section’s opposition to the proposal as being not only unnecessary but possibly harmful. After a motion to approve the report was moved and seconded, a motion was made to amend the proposed legislation by adding a mandatory witness requirement and requiring that a living will be executed in the same manner as a health care proxy; the motion to amend failed on voice vote, following which the main motion was approved on a standing vote of 136-48. Members Asarch and Kretser abstained from participating in the discussion and vote.
10. Report and recommendations of Business Law Section. Samuel F. Abernethy, immediate past chair of the Section, together with Daniel R. Alcott, Frederick G. Attea and Michael J. Cooney, members of the section’s Corporations Law Committee, presented the section’s report recommending a substantial revision of the New York Not-For-Profit Corporation Law to more closely mirror the Business Corporation Law and to compare favorably with other jurisdictions’ statutes. They reported that the intent of the revision is to simplify the law while preserving state scrutiny of non-profits and encouraging stepped-up enforcement. They noted that several issues remain open for resolution and therefore the section proposed that the report be approved in principle, subject to approval of final statutory language by the Executive Committee. After discussion, the House adopted the following resolution by unanimous voice vote:

WHEREAS, New York's current Not-For-Profit Corporation Law differs in significant respects from corresponding statutes in other jurisdictions and places an undue burden on New York nonprofit corporations; and

WHEREAS, the Business Law Section has proposed a comprehensive revision of the current Not-For-Profit Corporation Law to compare favorably with other jurisdictions' states and encourage nonprofit organizations to incorporate in New York;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves in principle the report and recommendations of the Business Law Section that New York State adopt a comprehensive revision of the current Not-For-Profit Corporation Law, provided that the Executive Committee may make changes in the proposed statutory language to reflect resolution of the items raised in correspondence between the City Bar Association and the Business Law Section, with such process to be completed within 60 days from adoption of this resolution; and it is further

RESOLVED, that following approval of the proposed statutory language by the Executive Committee, the officers of the Association are hereby empowered to take such steps as they deem necessary to pursue implementation of the proposed statute.

11. Report of Task Force on E-Filing. Sharon Stern Gerstman and Wallace L. Leinhardt, co-chairs of the Task Force, reviewed the recommendations contained in the Task Force's report, highlighting the need for adequate funding and training, uniform access throughout the state, and a lengthy transition period after which e-filing would become mandatory. They requested the House's adoption of a scheduling resolution to govern submission of comments and debate at the March 31, 2007 House meeting. After discussion, a motion to adopt the following resolution was approved unanimously on voice vote:

RESOLVED, that the House of Delegates hereby adopts the following procedures to govern consideration at the March 31, 2007 meeting of the House, and any subsequent meetings as may be necessary, of the report and recommendations of the Task Force on E-Filing:

1. The report and recommendations of the Task Force will be circulated to members of the House, sections and committees, county and local bar associations, and other interested parties.
2. **Comments on report and recommendations:** Any comments on the Task Force's report or particular recommendations contained therein must be submitted in writing to the Secretary of the Association at the Bar

Center by March 5, 2007; otherwise they shall not be considered. All comments complying with this procedure shall be distributed to the members of the House in advance of the March 31, 2007 meeting.

3. Consideration of the report and recommendations at the March 31, 2007 meeting and any subsequent meetings: The report and recommendations will be scheduled for formal debate and vote at the March 31, 2007 meeting and considered in the following manner:

- a. The Task Force shall be given an opportunity to present its report and recommendations.
- b. All those wishing to speak with regard to the report and recommendations may do so only once for no more than three minutes.
- c. The Task Force may respond to questions and comments as appropriate.
- d. Procedural motions shall be considered out of order until debate on substantive issues is concluded.
- e. A vote on the report and recommendations shall be taken at the conclusion of the debate.

12. Report and Recommendations of Committee on Standards of Attorney Conduct. Steven C. Krane, chair of the committee, accompanied by vice chair Roy D. Simon, Jr., subcommittee chair David M. Schraver and associate reporter Carol L. Ziegler, presented the proposed Rules scheduled for consideration at this meeting in accordance with the scheduling resolution adopted by the House in November 2005. Following discussion, motions were approved to adopt the following Rules as proposed by the committee: 1.11, 1.12, 2.1, 2.3, 2.4, 4.2, 4.3, 4.4, 6.1, 6.2, 6.3, 6.4, and 6.5. A motion to amend proposed rule 4.4 failed on voice vote.

13. Report of Special Committee on Lawyers in Transition. Lauren J. Wachtler, chair of the Special Committee, presented an informational report on the committee's work to date, highlighting items that are under consideration. She reported that the committee is developing a website as a resource, a blog, a "frequently asked questions" resource, and an "Ambassador Program" to provide mentoring. She asked sections to designate members to serve as mentors to those who are re-entering the workforce full-time. The report was received with thanks.

14. Administrative items. Ms. Madigan reported that at the March 31, 2007 meeting, the House would be requested to elect five of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: Mark H. Alcott, New York City; Bernice K. Leber, New York

City; M. Catherine Richardson, Syracuse; Kenneth G. Standard, New York City; Lorraine Power Tharp, Albany.

15. New business. Sharon Stern Gerstman, Vice President for the Eighth District, offered congratulations to delegates Hon. Erin M. Peradotto for her appointment to the Appellate Division, Fourth Department, and Jeremiah J. McCarthy for his appointment as federal magistrate judge in the Western District of New York.
16. Date and place of next meeting. Ms. Madigan announced that the next meeting of the House of Delegates would take place on Saturday, March 31, 2007 at the Bar Center in Albany.
17. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

Michael E. Getnick
Secretary

