

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
COOPERSTOWN, NEW YORK
JUNE 24, 1995

PRESENT: Members: Abrams; Adelman; Agress; Alcott; Amendola; Asarch; Ayers; Baer; Baldwin; Bashian; M. Bass; Bohner; Bongiovanni; Bracken; Burgman; Burns; Buzard; Church; Cioffi; Civilette; Coffey; Cometa; Cooke; Corcoran; Cyrulnik; D'Angelo; Daly; Davidson; Delle Cese; Denton; Dollard; Dorsey; Drinkwater; Dwyer; England; Eppler; Epstein; Fales; Farrell; Field; R.L. Fink; FitzGerald; Franchina; Freedman; Friedman; Gacioch; Gardella; Getnick; Gingold; M.R. Goldstein; Gouldin; Grayson; Hall; Halpern; Hassett; Heming; Herold; Hesterberg; Horan; Horowitz; H. Jones; M. Jones; Juliano; Kahler; Kendall; Kenney; Kilsch; Landy; Lawrence; Lefkowitz; Leinhardt; Levin; Lilly; Longo; Lucchesi; Madigan; Maldonado; Mandell; Maney; Manley; Markuson; Marten; Martusewicz; McCarthy; McClusky; McGlinn; Meng; M. Miller; Minardo; Moore; Murray; Naviasky; Netter; O'Connell; O'Leary; Offermann; Okin; Oliver; Omansky; Osber; Ostertag; Palmer; Pearl; Peckham; Penzel; Periconi; Pfalzgraf; Pfeifer; Picotte; Pool; Pruzansky; Quinlan; Reizes; Remo; Richardson; B. Robinson; E. Robinson; Roper; Ross; Ruslander; Santola; Schlesinger; Sharkey; Sienko; Souther; Spellman; Sunshine; Tharp; Tishler; Tomaselli; Troeger; Tsimbinos; VanBenschoten; Vigdor; Waldauer; Wales; Walker; J. Walsh; Weaver; Windstein; Witmer; Wollman; Yanas; Zieselman.

1. Approval of minutes of April 8, 1995 meeting. The minutes were approved as distributed.
2. Introduction of new members. The new members of the House of Delegates who had assumed office on June 1 were introduced and welcomed by Ms. Richardson.
3. Inauguration of Maxwell S. Pfeifer. Ms. Richardson announced that in keeping with the duties and responsibilities of the office of President, the Association in 1993 had instituted a formal swearing-in of the President to be performed each year at the June meeting of the House of Delegates, given the close proximity of the Cooperstown meeting to the commencement of the President's term of office on June 1. The oath of office was then administered to Maxwell S. Pfeifer by Hon. Joseph W. Bellacosa, Associate Judge of the New York State Court of Appeals.
4. Report of Treasurer. In the absence of Mr. Rice, former Association President and current Finance Committee member G. Robert Witmer, Jr. presented the Treasurer's report. Mr. Witmer reviewed the audited balance sheet for the year ending December 31, 1994 and indicated that the Association had completed the previous year with a deficit of \$797,000. He stated that this loss was not a matter of concern, as the largest single component of this figure was depreciation in the amount of \$645,000 in connection with the installation of the new computer system, which amount was

mostly a non-funded cash item. He indicated that in addition there had been pension expenses slightly in excess of \$225,000 which also were a non-cash item. Mr. Witmer noted that absent these non-cash items, the Association had actually ended the year with a modest surplus. He then summarized the Treasurer's report covering the period January 1 to May 31, 1995. He reviewed the major income and expense items for the initial five months of 1995, and noted that through the cooperative efforts of the Association and The New York Bar Foundation, the Bar Center expansion loan had been fully paid and certain elements of depreciation had been transferred to The Foundation. Mr. Witmer indicated that the Association remained in sound financial condition as it neared the mid-point of the current fiscal year. The report was received with thanks.

5. Presentation of Root/Stimson Award, Public Service Awards and Award of Merit.
A. Vincent Buzard, Co-Chair of the Committee on Lawyers and the Community, presented the Root/Stimson Award to Hon. Richard Lee Price of New York City for outstanding service to the community.

Mr. Buzard next presented the Public Service Award to Scott W. Gehl, Executive Director of Housing Opportunities Made Equal, Inc., for his significant contribution to enhancing the administration of justice.

Peter H. Levy, Co-Chair of the Committee on Lawyers and the Community, then presented the Award of Merit for small bar associations to the Capital District Women's Bar Association, and the Award of Merit for large bar associations to the Association of the Bar of the City of New York and the Suffolk County Bar Association in recognition of their outstanding service to the public and the profession through programs administered at the local level.

6. Report and recommendation of Ad Hoc Committee on Non-Lawyer Practice.
Robert J. Pearl, Chair of the Ad Hoc Committee on Non-Lawyer Practice, summarized that committee's report with respect to non-lawyer practice. He outlined the nature of non-lawyer practice in New York State, noting the function performed by traditional paralegals in assisting attorneys to deliver high quality legal services to clients at an affordable cost. He also described the increase in other types of unsupervised legal technicians, and the nature of New York's regulatory mechanism in this area. Mr. Pearl also reviewed the activities of the ABA's Commission on Nonlawyer Practice in analyzing the problems in this field. He further summarized the unmet legal needs of the poor and lower middle class which are causing people of moderate means to seek lower cost alternatives to retaining an attorney. Mr. Pearl then reviewed the committee's recommendations in support of the expanded use of the traditional paralegal, the continued study of the regulation of non-lawyers, the active enforcement of unlawful practice of law statutes, and the consideration of alternative delivery systems for lawyers' services. After discussion, the following resolution was adopted unanimously on motion of the House:

RESOLVED, that the New York State Bar Association hereby endorses in principle the Report and Recommendations of the Ad Hoc Committee on Non-Lawyer Practice; and it is further

RESOLVED, that the aforesaid report and recommendations of the Ad Hoc Committee on Non-Lawyer Practice be conveyed to appropriate constituent groups within the Association as well as to the ABA Commission on Nonlawyer Practice, as well as other appropriate entities outside the Association; and it is further

RESOLVED, that in pursuing implementation of the recommendation by the Ad Hoc Committee on Non-Lawyer Practice that there be active enforcement of the unlawful practice of law statutes, the Association's former Unlawful Practice of the Law Committee be reconstituted to its former active role including the issuance of advisory opinions, subject to such constraints and safeguards as may be appropriate; and it is further

RESOLVED, that the appropriate committees and sections of the Association are hereby encouraged to develop such further recommendations and programs as may aid in the implementation of the aforesaid report of the Ad Hoc Committee on Non-Lawyer Practice for consideration by the Association's Executive Committee; and it is further

RESOLVED, that the officers of this Association are hereby empowered and directed to take such other and further action as may be required or deemed appropriate to achieve the implementation of the recommendations contained in the aforesaid report.

7. Report of President. Mr. Pfeifer reported the following matters:

a) At its meeting the previous day, the Executive Committee had discussed the status of the study being conducted by the Committee on the Profession and the Courts appointed by the Chief Judge. He indicated concern was expressed that the organized bar be given a reasonable opportunity to comment on the draft of that committee's report before it is put in final form for submission to the Chief Judge. Mr. Pfeifer indicated a resolution to that effect had been approved by the Executive Committee. After discussion, the following resolution was adopted unanimously on motion of the House:

RESOLVED, that in furtherance of ongoing participation by the organized Bar in the deliberations of the Committee on the Profession and the Courts (hereinafter "Craco Committee"), the New York State Bar Association hereby requests that the Craco Committee issue its report and recommendations in a non-final draft form to allow the governing boards of the New York State Bar Association and local bar associations a reasonable and certain time period to comment on that draft before it is put in final form by the Craco Committee for submission to the Chief Judge for her consideration.

b) The Legislature had passed a \$911.5 million General Fund appropriation for the Judiciary, which represented virtually the full budget amount sought by Chief Judge Kaye and the Office of Court Administration. He indicated this figure equated to slightly less than a 2.5 percent increase in the Judiciary budget from the previous year.

c) Legislation had been enacted which would restore some \$13.8 million in aid for public defenders. He indicated this measure had been supported by the Executive Committee earlier in the year.

d) The Legislature had enacted a bill which would end mandatory sequestration of jurors in criminal cases with the exception of Class A felonies or Class B or C violent felonies. Mr. Pfeifer noted that the ending of mandatory sequestration was consistent with a recommendation made by Action Unit No. 7 and endorsed by the Executive Committee in 1987.

e) The Legislature had approved the continuation for an additional two years of the program to allow the electronic recording of court proceedings. He stated that the legislation had also expanded the program beyond the Court of Claims and Surrogate's Court to include civil cases in City and District Courts, New York City Civil Court, and non-criminal matters in Family Court.

f) The Legislature had passed a bill repealing statutory exemptions from jury duty, which was consistent with the position taken on this issue by the House of Delegates in 1991.

g) The Legislature had approved a measure which would modify the sentencing laws in criminal cases to increase the penalties for all violent felons. Mr. Pfeifer indicated this could have a significant impact on the functioning of the criminal justice system, and that this would be a matter of critical interest to the Criminal Justice Section during the coming months.

h) Legislation had been enacted amending the Surrogate's Court Procedure Act with reference to the commissions of attorney-executors to cure abuses which had occurred with respect to fees and commissions when lawyers serve in the dual capacity of attorney and executor for an estate. He observed that this legislation was consistent with the position advocated by the Ad Hoc Committee on Fiduciary Compensation and endorsed by the House of Delegates in 1994.

i) Legislation had been passed providing some \$90,000 for the Law Revision Commission instead of abolishing the agency as recommended by the Governor.

j) Continuing Governor Cuomo's practice, Governor Pataki had issued executive orders designating judicial screening panels for each of the state's four departments, plus a temporary statewide committee to function on an interim basis while the departmental committees were being formed. He indicated that the Association had been given one appointment to each panel, and the designees were as follows: temporary statewide panel: G. Robert Witmer, Jr.; First Department: Renaye B. Cuyler; Second Department: John P. Bracken; Third Department: John R. Dunne; Fourth Department: David L. Hoffberg.

k) As stated in a recent *New York Law Journal* article, he would be pursuing the adoption of an amendment to the Lawyer's Code of Professional Responsibility to permit the sale of a law practice. Mr. Pfeifer stated that he had conferred with

Steven C. Krane, Chair of the Committee to Review the Code of Professional Responsibility, and the committee planned to have a suitable amendment prepared for consideration by the House of Delegates at the November 1995 meeting.

l) As approved by the Executive Committee last year, the Young Lawyers Section was implementing a mentor program to enable younger attorneys to confer with more experienced members of the bar on practice-related questions. He indicated that the program was still in a developmental stage, with a mailing having been sent last month to various sections and committees seeking volunteers to serve as mentors. He advised that a directory of mentors would then be provided later in the year to the Young Lawyers Section. He asked House members interested in serving as mentors to contact Terry Scheid at the Bar Headquarters.

m) The Finance Committee was making a concerted effort to reduce the Association's expense budget next year to hold dues at the current level for as long as possible as one means of assisting members in these difficult fiscal times. Mr. Pfeifer announced that as part of this process, committees would be asked to set their 1996 expense budgets at five percent below 1995 levels. He indicated that in conjunction with the appointment of committee chairs for the 1995-96 Association year, he had eliminated some twelve committees which had fulfilled their function. He indicated that this discharge of committees, when combined with other changes in the scope of committee activities, would save the Association approximately \$100,000 annually.

n) In May, together with Ms. Richardson and Mr. Witmer, he had met with the section leaders to discuss a variety of issues of mutual interest. He advised that these matters had included the Association's strategic planning process; communication and coordination among sections; membership development; publicity among the public and profession; communication and input on issues being addressed by the Association; financing section activities; and the transition process for section officers.

o) Consistent with the resolution adopted at the April Executive Committee meeting, the Association was continuing its efforts in support of adequate funding for the Legal Services Corporation. He indicated these initiatives included the submission of a letter signed by past NYSBA Presidents to government officials; ongoing contact with members of Congress; the issuance of press releases; and meetings, in conjunction with other state and local bar leaders, with Republican House members to encourage their support for the Legal Services Corporation.

p) The Executive Committee in recent months had been engaged in a strategic planning process geared towards establishing priorities and building a consensus for the future direction of the Association. He indicated participants had included the current and incoming members of the Executive Committee, members of the Finance Committee, selected section and committee chairs, former Presidents, those with experience in various other bar groups, and key staff members to ensure a broad-based evaluation of the Association and its needs. Mr. Pfeifer stated that the retreat had led to the development of general strategic objectives in the areas of professionalism, the legal system, communications and membership, as well as action steps to implement those objectives. He advised that a Strategic Planning Advisory

Committee had been appointed with Claire P. Gutekunst as Chair to assist the Executive Committee in pursuing the retreat initiatives.

q) In May, the Executive Committee had approved a policy setting forth a procedure for dealing with sexual harassment complaints brought by staff against members. He stated that this procedure was based on one already in place for complaints involving other staff members or outside vendors. Mr. Pfeifer noted that the policy recognized the unique relationship between the Association's staff and its members, and provided for informal procedures, mediation and, if necessary, the use of an investigator, who would be an Association member appointed by the President, to investigate the allegations of harassment. He indicated that the President, was empowered to take appropriate action based on the results of the investigation and the circumstances involved. He advised that copies of the policy could be obtained from Association Counsel Kathleen R. Mulligan Baxter at Bar Headquarters.

r) Mr. Pfeifer expressed appreciation to Mr. Witmer for his energetic and dedicated leadership as President during the past year, and presented him with a plaque inscribed as follows:

The New York State Bar Association presents this testimonial to G. Robert Witmer, Jr. in recognition of his devoted service to the Association in the successful furtherance of its ideals and in the promotion of the best interest of the profession through his service as President of the Association 1994-95.

8. Report and resolution by Ad Hoc Committee on the Jury System. Arthur Norman Field, Chair of the Ad Hoc Committee on the Jury System, summarized the nature and status of the Civil Voir Dire Pilot Project instituted by the Office of Court Administration based on the report of the Jury Project Committee appointed by the Chief Judge. He reported that the voire dire experiments had been limited to four locations: Erie County, the Fourth Judicial District in the Third Department, Nassau County, and New York County. Mr. Field also described the Ad Hoc Committee's discussions with the Office of Court Administration regarding the pilot project to assure that the experiment was both fair and effective. He noted the recent release by the Office of Court Administration of its report concerning the pilot project as well as the Ad Hoc Committee's observations with respect to the matter. He advised that the Ad Hoc Committee had concluded, given regional differences which are significant to the jury selection process, the pilot project should be continued and extended statewide to afford a broader opportunity for judges and attorneys to be exposed to the various experimental procedures. He indicated that extension of the project would help develop additional data concerning the functioning of the various selection methods in different regions of the state. Hon. Geoffrey W. O'Connell, past Chair of the Judicial Section, explained that section's support for the resolution being proposed by the Ad Hoc Committee, as extended experimentation would permit more informed evaluation and comment by the Judiciary. After discussion, the following resolution was adopted unanimously on motion of the House:

WHEREAS, the Pilot Projects established by the Chief Judge and administered by the Office of Court Administration (OCA) arising out of the Jury Project (McMahon Report) were completed on May 19; and

WHEREAS, OCA worked closely with this Association in the design of significant aspects of the Pilot Projects; and

WHEREAS, the Pilot Projects became an important educational experience for judges and lawyers involving experimentation to better utilize jurors and in general to improve the process of picking a jury; and

WHEREAS, particularly in view of the diversity of this State, the lawyers and judges of the State would benefit from exposure to the new options examined in the Pilot Projects; now, therefore, be it

RESOLVED, that this Association expresses its appreciation to the Chief Judge and to OCA for the careful and thoughtful conduct of the Pilot Projects; and

RESOLVED, that this Association urges the Chief Judge to extend the experimentation begun by the Pilot Projects on a statewide basis so that judges and lawyers across the state can benefit from this useful process; and

RESOLVED, that such extension program be informal for a period long enough to involve most judges, perhaps six months; and

RESOLVED, that at the conclusion of the extension programs and before any action by the Administrative Board: (a) the local Administrative Judges across the state provide the Chief Judge with their comments and (b) the Chief Judge in cooperation with the State Bar elicit views of lawyers and judges across the state on the new options examined in the extension program.

9. Report and recommendations of Committee on Professional Discipline and the Task Force on the Profession regarding attorney discipline. Frank R. Rosiny, Chair of the Committee on Professional Discipline, and Haliburton Fales, 2d, Chair of the Task Force on the Profession, summarized the reports of their respective groups with reference to the attorney discipline system. They then elaborated on the differing views of the two groups with respect to the development of a model mediation project for the referral of appropriate matters by attorney disciplinary committees; the development of model diversion programs to which low-level complaints might be referred by disciplinary committees; full grievance committee consideration of the dismissal of complaints, issuance of letters of caution or admonition, or referrals of matters for the institution of formal disciplinary proceedings; the utilization of special referees rather than hearing panels for the conduct of disciplinary hearings; opening of disciplinary proceedings to the public; and the adoption of uniform disciplinary procedures to govern grievance committees in the four departments. Following

extensive discussion and separate votes with respect to the foregoing issues, the following resolution was adopted on motion of the House:

WHEREAS, this Association's Committee on Professional Discipline and Task Force on the Profession have conducted reviews of New York's disciplinary system and have made recommendations for the improvement of that system, and those recommendations having been circulated to interested sections and committees of the Association and to the various county and local bar associations for their review, and the House of Delegates having had the benefit of those comments which have been submitted pursuant to its resolution adopted April 8, 1995, it is hereby

RESOLVED, that the Association supports mediation of complaints as and to the extent recommended in the report of its Committee on Professional Discipline, recognizing that it is inappropriate to retain within the disciplinary system disputes which do not involve misconduct; and it is further

RESOLVED, that the Association should develop model diversion programs which address such matters as substance abuse while recognizing the need to assure confidentiality as well as the inappropriateness of compelling participation in such programs for behavior that does not constitute professional misconduct; and it is further

RESOLVED, that the Association approves that portion of the Committee on Professional Discipline's report which proposes that full grievance committee consideration take place for dismissal of complaints, issuance of letters of caution or admonition, or referrals of matters to court for institution of formal disciplinary proceedings; and it is further

RESOLVED, that the Association does not approve that portion of the Committee on Professional Discipline's report which proposes that grievance committees utilize special referees, rather than hearing panels, to conduct disciplinary hearings; and it is further

RESOLVED, that to safeguard the public, the Association urges the Appellate Divisions to use existing statutory provisions to intervene in all appropriate disciplinary cases and to consider at an early stage interim suspension and attendant public disclosure; 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 does not endorse the adoption by the four departments of the Appellate Division of uniform disciplinary procedures to govern grievance committees, but encourages review of

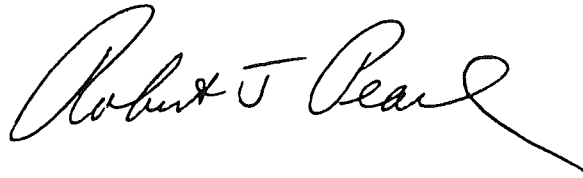
existing procedures by the departments in order to promote consistency in the imposition of sanctions throughout the state.

10. Report of Task Force on the Profession regarding legal education. Consideration of this item was deferred until the November 1995 meeting to allow additional time for discussion among the interested groups.

11. Report of Chair. To allow as much time as possible for consideration of the other agenda items, Ms. Richardson postponed presentation of her report until the next meeting.

12. Date and place of next meeting. Ms. Richardson announced that the next meeting of the House of Delegates was scheduled for Saturday, November 4, 1995 at the Bar Center in Albany, New York.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert J. Pearl". The signature is written in black ink and is positioned above the typed name and title.

Robert J. Pearl
Secretary

