

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
THE OTESAGA, COOPERSTOWN, NEW YORK  
JUNE 27, 1998

PRESENT: S. Anglehart; J. Ayers; L. Bailey; D. Baldwin; G. Bashian; M. Bass; R. Batra; E. Benesch; P. Bergen; H. Berman; S. Bernis; R. Bohner; J. Bracken; P. Brevorka; V. Buzard; J. Campanie; R. Cashman; C. Cioffi; T. Clements; W. Cloonan; P. Coffey; M. Cohen; R. Coleman; A. Cometa; N. Connery; D. Contiguglia; M. Cooper; A. Copps; R. Corcoran; C. Denton; R. DiNardo; K. Dollard; J. Dwyer; R. Eisenhauer; L. England; D. Eppers; E. Esteves; J. Farrell; M. Felder; R. Fink; G. Fishberg; E. Franchina; B. Freedman; M. Freedman; J. Gacioch; F. Galloway; R. Gardella; S. Gerstman; M. Getnick; H. Gingold; M. Glanzer; C. Glover; R. Goldstein; P. Golinski; M. Gootnick; M. Gorgos; R. Haig; G. Hall; R. Hallenbeck; R. Halpern; P. Hassett; D. Hayes; F. Headley; W. Helmer; C. Heming; G. Hesterberg; A. Hirsch; W. Hodges; S. Hoffman; J. Horan; C. Inclima; S. Jacobs; M. Jones; B. Kamins; M. Kelly; C. Kendall; J. Kenney; M. Kessler; T. Kilpatrick; D. Klein; M. Klein; P. Kougasian; S. Krane; R. Kretser; L. Lagarenne; B. Lawrence; B. Leber; T. Levin; P. Levy; E. Lieberman; T. Lilly; K. Madigan; A. Mandell; M. Maney-Kennedy; J. McCarthy; M. McDonald; J. McGlinn; M. Midonick; A. Mihalick; M. Miller; S. Millon; J. Moore; G. Nashak; M. Netter; C. Nussbaum; M. O'Connor; R. O'Keeffe; D. O'Leary; R. Ostertag; C. Patrick; M. Patterson; E. Peckham; D. Pfalzgraf; M. Pfeifer; M. Porter; J. Pruzansky; B. Reede; E. Reich; V. Reilly; L. Reizes; J. Reynolds; T. Rice; R. Rifkin; E. Robinson; E. Roper; R. Rosenbloom; S. Rosner; S. Rothenberg; L. Rothkopf; R. Schumacher; J. Schumacher; E. Sharkey; G. Snyder; E. Souther; M. Sperendi; J. Spitzmiller; K. Standard; J. Sunshine; J. Taylor; A. Terranova; L. Tharp; N. Tishler; T. Trevett; D. Tyler; J. Tyler; V. Vig; J. Vigdor; R. Vinal; G. Vitacco; M. Walsh; O. Walsh; T. Whalen; R. Witmer; J. Wolf; P. Wollman; J. Yanas, V. Vig.

In advance of the commencement of the regular business meeting of the House, Mr. Rice announced that former Association President M. Catherine Richardson's mother had passed away on June 26<sup>th</sup>, and he advised the members of the arrangements for the benefit of those wishing to attend the services.

Mr. Rice also introduced Richard Martin, who had assumed the position of Director of Marketing, replacing Janet Remiker following her relocation to Boulder, Colorado.

1. Approval of minutes of April 4, 1998 meeting. The minutes were deemed accepted as distributed previously.

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 Mr. Rice.

3. Report of Treasurer. Mr. Headley summarized the audited financial statement for the year ending December 31, 1997, and indicated that the Association had completed the previous year with a surplus of approximately \$795,000. He stated that through careful fiscal management, the Association was currently in its fourth year without a dues increase, as contrasted with the normal dues cycle of three years, and the Finance Committee was evaluating the possibility of extending the cycle for a fifth year. Mr. Headley then summarized the Treasurer's report covering the period January 1 to May 31, 1998, and reviewed the major income and expense items for the initial five months of the year. He indicated that the Association remained in sound financial condition as it neared the midpoint of the current fiscal year. He noted that there were two financial issues connected with Association membership trends: the relatively static level of Association membership and dues receipts over the past three years, and a decrease in net revenues from continuing legal education programs. Mr. Headley advised that the Association was taking a proactive approach to the membership situation, using telemarketing and advertising campaigns to reach potential new members, as well as conducting marketing surveys to determine what additional programs and services members might desire. With regard to continuing legal education, he noted that fewer programs had been offered thus far in 1998 as compared to the previous year, but this trend would change in the fall with total programs expected to exceed the 1997 total. He also outlined the Association's plans to meet the demands and competition of mandatory continuing legal education, including the provision of added products to benefit members. He indicated these plans should assist the Association in holding dues level through 1999. The report was received with thanks.

4. Installation of James C. Moore. Mr. Rice announced that in keeping with the duties and responsibilities of the office of President, the Association in 1993 had instituted a formal installation of the President to be conducted 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 James C. Moore by Hon. Thomas M. VanStrydonck, Justice of the Supreme Court, Seventh Judicial District.

5. Introduction of Howard F. Angione, incoming Editor-in-Chief New York State Bar Journal. Mr. Rice introduced Howard F. Angione, who had been selected to succeed Eugene C. Gerhart as Editor-in-Chief of the *New York State Bar Journal*. Mr. Angione summarized his editorial philosophy, including his goal that the *Journal* should become, in part, a forum where members could share their practice experience. He also stated that the *Journal* would reflect the current nature of legal practice beyond a mere discussion of statutes and cases. He advised that reply postcards had been distributed to the members of the House, and he invited the members to submit their ideas regarding topics for publication. The House welcomed Mr. Angione and received his report with thanks.

6. Presentation of Root/Stimson Award. Beverly Poppell, Chair of the Committee on Public Relations, presented the Root/Stimson Award to attorney William R. Brennan of Buffalo for outstanding service to the community. The award was made posthumously and was accepted by members of Mr. Brennan's family.

Mr. Rice noted that to space the presentation of awards more evenly throughout the year, the Executive Committee had shifted the Public Service Award, the Award of Valor and Award of Merit for bar associations, all normally given at the June House meeting, to other functions. He announced that the presentation of the Public Service Award and the Award of Valor would take place at the November House meeting, while the Award of Merit had been shifted to the New York State Conference of Bar Leaders.

7. Report of President. Mr. Moore advised that to allow sufficient time for the discussion of other substantive matters, he had circulated a detailed, written President's report to the members. A copy of that report is attached to these minutes.

Mr. Moore then summarized his impressions of the legal profession based on meetings with various bar groups across the state, individual attorneys, as well as national and foreign bar associations. He described their concerns regarding the effect of economic divisions, mandatory continuing legal education and advancements in technology on attorneys. He also noted areas of challenge for the legal profession where the Association could provide leadership, including the need to acknowledge and address change, encourage civil conduct in the courts and in society generally, and assure that all members of society receive competent legal services. He encouraged the members of the House to contribute \$100 to a legal services program, and to assume at least one pro bono responsibility during the current year, as well as contact the Governor and legislators to urge the restoration of adequate funding for civil legal services. He also noted that reply postcards had been distributed to the House and he urged the members to use them for submitting suggestions for improving the Association, or advising of issues that should be addressed.

Mr. Moore then expressed appreciation to Mr. Pruzansky 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 Joshua M. Pruzansky in recognition of his devoted service to the Association in successful furtherance of its ideals and in the promotion of the best interest of the profession through his service as President of the Association 1997-98.

8. Report and recommendations of Committee on Bylaws. John R. Horan, Chair of the Committee on Bylaws, summarized Bylaws amendments proposed to: a) clarify term limitations for alternate delegates to the House of Delegates and their

eligibility to serve on the Nominating Committee; b) establish a date for declarations of candidacy by individuals seeking the office of President-Elect; and c) establish specific procedures for filling vacancies in the offices of Vice-President, Secretary, Treasurer, Member-at-Large of the Executive Committee and President-Elect. He noted that with respect to alternate delegates, the current Bylaws did not provide guidance regarding the computation of an individual's combined service as an alternate and a regular delegate to the House for purposes of determining eligibility for service when that person shifts between the two positions. He explained that the proposed amendment would resolve this problem and treat both categories of delegates in a uniform manner. He also advised that the proposed amendment would clarify the ineligibility of alternate delegates to serve on the Nominating Committee. With regard to candidate declarations, Mr. Horan indicated that the recommended amendment would establish a filing date for the declaration of candidacy by those seeking the office of President-Elect to assist the Nominating Committee in scheduling candidate interviews and in the publication of candidate statements in the *State Bar News*. Concerning vacancies in various offices, Mr. Horan stated that while the Bylaws presently stipulate that various vacancies be filled by the House, specific procedures have not been set forth. He advised that the proposed amendment would remedy this deficiency. Following discussion, the members of the House subscribed separately to the proposed amendments and sufficient subscriptions were filed with the Secretary to allow for consideration of the amendments at the 1999 Annual Meeting.

Mr. Horan then summarized the status of the committee's study of proposed amendments filed at the 1998 Annual Meeting by the New York County Lawyers' Association and The Association of the Bar of the City of New York to reconfigure the composition of the Nominating Committee to reflect more accurately the proportion of the membership located in the New York City area. After reviewing the nature and effect of the proposals, he indicated the committee would have a report and recommendations for discussion at the November 1998 meeting of the House so that suitable amendments could be considered at the 1999 Annual Meeting.

9. Report of Special Committee on the Future of the Profession. Robert L. Ostertag, Chair of the Special Committee on the Future of the Profession, summarized the committee's interim report with respect to major trends and issues that are likely to concern the profession in the future so that the Association can meet those developments in a pro-active manner. He described the methodology utilized by the committee in conducting its study, including a survey of NYSBA sections and committees, as well as other bar associations at both the state and national levels. He advised that the committee had formed five subcommittees to focus on the following areas: structure and composition of the profession; professionalism; court/litigation/bench-bar relations; bar/legislative relationships; and access to legal services and the justice system. Mr. Ostertag then elaborated on some of the major issues being dealt with by the subcommittees including the encroachment of non-lawyers into traditional fields of legal practice, the advent of multi-discipline groups offering legal services as part of a package of professional services, the professional and financial problems being encountered by young lawyers, and the public's

perception of attorneys. He indicated that after the committee had completed its study, a final report would be presented to the House for consideration. The interim report was received with thanks.

10. Memorial to Hon. Lewis R. Friedman. Robert L. Haig presented a memorial to Hon. Lewis R. Friedman, a past member of the House of Delegates, who had passed away earlier in the year. A moment of silence was observed out of respect for Judge Friedman's memory and his contributions to both the Association and the legal profession. A copy of the memorial is attached to these minutes.

11. Report and recommendations of Committee on Legal Education and Admission to the Bar. Ellen Lieberman, who had just completed her tenure as Chair of the Committee on Legal Education and Admission to the Bar, summarized the committee's informational report concerning amendments adopted recently by the Court of Appeals to the rules governing the admission of attorneys and the educational prerequisites for taking the bar examination. She outlined the committee's suggested improvements in this area as communicated to the Court of Appeals, as well as the nature of the changes as finally approved by the Court. She noted that the amendments generally gave greater flexibility to approved law schools to excuse minor deviations from the typical three-year full-time or four-year part-time course of study and codified what had previously been obtainable through a more cumbersome waiver process. She indicated a similar approach had been adopted for foreign applicants for bar admission or those seeking to meet the five-year requirement for admission without examination. The report was received with thanks.

Ms. Lieberman then presented the committee's separate report concerning recommendations to improve the character and fitness procedures to shorten the bar admission process in New York. She reviewed previous studies conducted by other groups in this area, and the methodology employed by the committee in performing its analysis, including surveys conducted of members of the Committees on Character and Fitness in all four departments, newly admitted attorneys, and the bar admission offices of other states. She then summarized the committee's recommendations to improve the interview process as well as the questionnaire and other paperwork required of applicants. Ms. Lieberman noted that in reviewing these proposals, the Executive Committee had recommended that the current requirement for having applicants submit two affidavits of character and fitness as well as an affidavit from legal employers be retained. She noted these two suggestions had been accepted by her on behalf of the committee. After discussion, a motion was adopted approving the report of the Committee on Legal Education and Admission to the Bar, with the two modifications made by the Executive Committee, and further authorizing its transmittal to the Court of Appeals and the Appellate Divisions.

12. Report of Task Force to Consider Tort Reform Proposals. John P. Bracken and David M. Gouldin, Co-Chairs of the Task Force to Consider Tort Reform proposals, summarized the nature of efforts by the coalition designated the New Yorkers for Civil Justice Reform to achieve extensive reform of the state's tort system.

They described the formation of the NYSBA's task force, with a balanced plaintiff and defense membership, to provide a reasonable and fair response in this area, as well as rectify inaccuracies published by others regarding the tort system. They outlined tort reform initiatives deemed reasonable and appropriate by the task force which, in turn, were approved by the Executive Committee for transmittal to the Legislature. They stated that these measures included the repeal of Articles 50-A and 50-B of the CPLR; allowing the computation of pre-judgment interest for damages in personal injury actions; modifying Part 130 of the Uniform Rules for NYS Trial Courts with respect to frivolous litigation to impose costs for abusive conduct that causes expense and delay; opposing the expansion of Court of Claims jurisdiction to include actions against municipalities; limiting landowner liability to encourage owners of large tracts to open them for public recreational purposes; barring civil recovery for injury sustained during conduct which results in the claimant's conviction of a felony; allowing recovery of damages for emotional injury in wrongful death actions; and requiring that health care organizations may be held liable for the consequences of the wrongful denial, delay of payment, or approval of medical treatment. They indicated that during the most recent legislative session, the task force had engaged Leon D. Lazer to prepare a detailed analysis of a poll conducted by Zogby International on behalf of New Yorkers for Civil Justice Reform, as that poll had served as a key underpinning for the coalition's proposed legislation. Messrs. Gouldin and Bracken also noted that to address the information contained in the "Accident and a Dream" publication issued by Public Policy, Inc. on behalf of the Business Council, the task force would likely engage the services of an independent analyst. They stated that the task force would continue to monitor developments in this area, correct fallacies and inaccurate information released by others concerning the tort system, and present a balanced perspective to the Legislature on behalf of the Association. The report was received with thanks.

13. Presentation of Distinguished Service Award. Mr. Moore advised that during the past year, the Executive Committee, after noting the absence of an award to recognize members for extraordinary service rendered to the Association, had instituted the Distinguished Service Award to honor a member who has displayed exceptional commitment and made a significant contribution to enhancing the goals and purposes of the Association. He then presented the inaugural award to Eugene C. Gerhart of Binghamton, in recognition of the latter's thirty-seven years of dedicated service as Editor-in-Chief of the *New York State Bar Journal* and its predecessor publication, the *New York Bar Bulletin*.

14. Report of President's Committee on Access to Justice. Joseph S. Genova, Co-Chair of the President's Committee on Access to Justice, summarized the committee's report concerning the reduction in funding for civil legal services programs at both the state and federal levels. He described the loss of revenue experienced by the IOLA Fund in recent years due to decreased interest rates, as well as the impact of the Governor's budget vetoes on various legal services programs. Mr. Genova also outlined the nature and potential impact of the U.S. Supreme Court's decision regarding the Texas IOLTA program. He indicated that these developments underscored the need to uncover a supplemental funding source to support legal services, such as that

proposed by the Chief Judge's Legal Services Project. Mr. Genova and Michael A. Cooper, the Chair of the Legal Services Project, then described the project's proposal that the State establish an Access to Justice Fund under the control of the IOLA Board, with revenues to be derived from a modernized State Abandoned Property Fund. Discussion then ensued, after which the following resolution was adopted on motion of the House:

RESOLVED, that the New York State Bar Association ("NYSBA") hereby endorses in principle the recommendations regarding the Abandoned Property Fund and the General Fund contained in the May 1998 Report to the Chief Judge titled "Funding Civil Legal Services for the Poor" submitted by the Legal Services Project; and it is further

RESOLVED, that the NYSBA hereby calls upon the Legislature and the Governor promptly to implement the recommendations contained in the aforesaid Report; and it is further

RESOLVED, that the NYSBA hereby opposes increases in attorney registration or filing fees, as the obligation to provide legal services to the poor is a societal one, and the financial burden of doing so should not fall exclusively on lawyers or their clients.

15. Report of The New York Bar Foundation. Maryann Saccomando Freedman, President of The New York Bar Foundation, noted the nature of the law-related projects being supported by The Foundation and urged the House members to contribute to The Foundation by means of the check-off contained on the annual dues bill. She then introduced Anne Leary, Executive Director of Kids Voting New York. Ms. Leary then explained the role of Kids Voting New York in addressing voter apathy by educating young people about the importance of an informed electorate and the voting process to democracy. She reviewed the results of studies indicating that the program was having a positive impact on increasing knowledge of the electoral process by students and adult voter turnout in Western New York. The report was received with the thanks of the House.

16. Report of Chair. Mr. Rice reported the following matters:
- a) Pursuant to the Bylaws, the terms of several special committees were due to expire. On motion of the House, the terms of the following special committees were extended for an additional year:
    - 1) Ad Hoc Committee on the Jury System
    - 2) AIDS and the Law

- 3) Commission on Providing Access to Legal Services for Middle Income Consumers
- 4) Election Law
- 5) Group and Prepaid Legal Services Plans
- 6) Pension Simplification
- 7) Procedures for Judicial Discipline
- 8) Review the Code of Professional Responsibility
- 9) Solo and Small Firm Practitioners
- 10) Steering Committee on Commerce and Industry
- 11) Volunteer Lawyers

b) With the consent of the chairs, the following special committees were being allowed to lapse, since their work had been completed:

- 1) Special Committee to Improve the Civil Justice System
- 2) Special Committee on Lawyer Advertising
- 3) Review Committee on the Profession and the Courts

c) While consideration had been given to discharging the Committee on Tort Reparations and allowing its work to be assumed by other groups, that committee would be continued based on the recommendation of the Executive Committee, as it was perceived as having a separate purpose from other committees interested in this field.

d) The annual report covering the 1997-98 Association had been left at each member's seat. Mr. Rice commended the report to the members as presenting a concise summary of Association activities for the past year.

17. New business. Mr. Rice advised that the Committee on Judicial Selection had proposed, and the Executive Committee at its June 25-26, 1998 meeting had endorsed, an amendment to the "Guidelines for Evaluating Qualifications of Judicial Candidates." He explained that, currently, in providing for an Appellate Panel to hear appeals from determinations by the Committee on Judicial Selection, there was a limitation against appointing more than a single member from any given judicial district. He indicated that the proposed amendment would permit two members to be appointed from the same district, which would allow additional representation to be drawn from more populous districts and assist in promoting gender, ethnic and area of practice diversity on the panel. He explained that the proposed change would cause the final sentence of Paragraph F(2) of the Guidelines to read as follows: "In making such appointments, the President shall designate at least one member from each of the State's judicial departments, with no more than two appointees to be selected from the same judicial district." (new language is underscored). Mr. Rice advised that the revision needed to be adopted at this meeting if it were to be effective for the Court of Appeals vacancy to be filled this fall. A motion to table the proposal was made and defeated by vote of the House. A motion was then adopted to approve the proposed amendment. A copy of the Guidelines as revised is attached to these minutes.



18. Date and place of next meeting. Mr. Rice announced that the next meeting of the House of Delegates would be held on Saturday, November 7, 1998 at the Bar Center in Albany.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lorraine Power Tharp". The signature is written in black ink and is positioned below the typed name.

Lorraine Power Tharp  
Secretary



# LEWIS R. FRIEDMAN

1941-1998

**D**uring the early morning on February 19, before coming to court, Judge Lewis R. Friedman was exercising on a Stairmaster. He suffered a heart attack and died at the age of 56. The news of his untimely death caused shock and grief throughout the judicial and legal community in New York County. We lost a wonderful friend and an extremely talented and decent human being. I would like to tell you a little about his professional activities before I move on to his personal qualities because his professional activities offer significant insights into the kind of man he was.

*In addition to his many other good qualities, Judge Friedman was a devoted member of this Association. His ties to this Association were both broad and deep. He was a member of this House from 1991 to 1993 and again from 1994 to 1997. He was a former Chair of the General Practice Section and was active in that Section for the last 16 years. He served on the Executive Committee of the Criminal Justice Section and chaired its Committee on Appellate Practice. He also served on two committees of the Real Property Section. In addition, he served on ten other committees, special committees, task forces, and commissions of this Association.*

*Judge Friedman's involvement in so many components of this Association was particularly unusual because he had been a judge for the last 13 years. He became a Housing Court Judge in 1985, was elected to the Civil Court in 1986, was designated an Acting Justice of the Supreme Court in 1988, and was elected as a Justice of the Supreme Court in 1992.*

*Prior to his judicial career, Judge Friedman had been an Assistant District Attorney for New York County, where he advanced to Chief of the Appeals Bureau and served as legal advisor and legislative consultant to District Attorney Frank S. Hogan. In addition, his legal career encompassed private practice. For more than seven years, he was a partner in the law firm of Litman, Friedman, Kaufman & Asche, where he handled civil and criminal litigation.*

*Judge Friedman was a member of the American Law Institute. He was a member of ALI's Consultative Groups in five different areas which demonstrate the breadth of his legal interests and knowledge: Complex Litigation; Compensation and Liability for Product and Process Injuries; the Law Governing Lawyers; Unfair Competition; and Products Liability. He was active on eight committees of the Association of the Bar, on seven committees of the New York County Lawyers' Association, and on three committees of the Brooklyn Bar Association.*

*In addition to all these professional activities, Judge Friedman was active in numerous religious and charitable endeavors. He was also a devoted husband to his wife Bernice and a doting father to his daughter Karen, an assistant district attorney in Queens County.*

*You can get a sense of the kind of person Judge Friedman was by listening to this brief recitation of his career and his professional activities. Judge Friedman was devoted to the law and he genuinely liked lawyers and enjoyed their company. He was an active participant in the bar association committees he served on. He relished opportunities to discuss legal issues as anyone who ever had a conversation with him will readily recall. Indeed, many members of this House probably first encountered Judge Friedman at a reception such as the one last night. Although invariably pleasant and charming, he loved discussing substantive legal questions and occasionally overwhelmed colleagues with the intensity and rigor of his legal analysis.*

*Judge Friedman was an absolutely outstanding jurist. He was an unusual combination of great ability and conviction that the rule of law was the answer to many problems. He was one of the hardest working judges I have known. He almost invariably rendered decisions on motions within two weeks and many were decided in less time. His work ethic and commitment to his work were respected by everyone he dealt with professionally.*

*Judge Friedman became a Judge of the Commercial Division of the Supreme Court on May 28, 1996. He was understandably proud of the growing reputation of the Commercial Division as the best forum in the world for the resolution of business disputes. He was also well-suited to preside in the Division because his formidable intellect allowed him to efficiently resolve complex legal issues.*

*At the time of his death, Justice Friedman was presiding in Room 228 of the New York County Supreme Court. That courtroom is better known as Courtroom 2000, the most technologically advanced courtroom in New York State. It is no coincidence that Courtroom 2000 was assigned to Justice Friedman. He was a state-of-the-art judge in a state-of-the-art courtroom. He encouraged lawyers before him to use what he often described as the "toys" in his courtroom. He was fascinated by the use of technology and science in service of the law. He was also aware and pleased that the entire New York court system will ultimately benefit from the testing of new technologies in his courtroom.*

*Judge Friedman had many strengths as a judge and no weaknesses that I am aware of. He knew the law and he knew how to apply it. His decisions were scholarly and well-reasoned. He was street-smart and practical. Although he was polite and low key, he would recognize and promptly end delaying tactics, frivolous arguments, and attempts to waste the court's time.*

*Judge Friedman was not an arrogant man but his exceptional intellectual abilities provided a firm foundation for the courage of his convictions. For example, as a young Civil Court Judge in 1988, Judge Friedman wrote an opinion about a federal statute which the United States Court of Appeals for the Second Circuit had previously construed. Judge Friedman concluded that the Second Circuit was wrong and said so politely but firmly. I quote from his opinion at 139 Misc. 2d at 817: "... the court cannot follow the conclusion of the Second Circuit for an analysis of its reasoning shows it to be flawed and based on an erroneous reading of the legislative history." Judge Friedman's decision was affirmed.*

*Judge Friedman was efficient and productive while respecting the rights and feelings of everyone in his courtroom. He was always on time and he kept cases in general and trials in particular moving along. Nevertheless, he tempered his high standards and productivity with humor, wit, and compassion. He was kind and sensitive to jurors and pro se litigants.*

*Despite these outstanding professional qualities, Judge Friedman's most distinguishing traits were his character and his essential decency as a human being. He had a passion for justice, an extraordinary sense of fairness, and a true commitment to the rule of law. Judge Friedman loved the law and he loved life. He was a good friend of this Association and of all of us. He made the world a better place and he enriched our lives during the too brief time he spent with us.*





**NEW YORK STATE BAR ASSOCIATION  
COMMITTEE ON JUDICIAL SELECTION  
GUIDELINES FOR EVALUATING QUALIFICATIONS OF JUDICIAL CANDIDATES**

(As amended by House of Delegates 6/27/98)

**A. Judicial Offices Considered**

1. The Committee on Judicial Selection (hereinafter "Committee") shall consider and report to the President of the Association upon the qualifications of a candidate for appointment to the Court of Appeals of the State of New York or for Chief Judge thereof.
2. Upon request of the President of the Association, the Committee shall consider and report to the President upon the qualifications of a candidate for election or appointment to the following courts:
  - a. State Courts
    1. The Appellate Division of the Supreme Court of the State of New York;
    2. The Supreme Court of the State of New York;
    3. The Court of Claims of the State of New York.
  - b. Federal Courts
    1. The United States Court of Appeals for the Second Circuit;
    2. The United States District Courts located in the State of New York.
3. In making such requests, the President shall give due regard to the activities of the American Bar Association and the various local bar associations in New York State with respect to candidates for these courts, toward the end that there shall be cooperation between the New York State Bar Association and these other associations

**B. Ratings and Criteria**

1. The qualifications of a candidate shall be evaluated as provided in these guidelines and the Committee shall rate the candidates as "not qualified," "qualified" or "well qualified."
2. In rating a candidate, the Committee shall consider professional ability and experience, character, temperament and the possession of the special qualities necessary or desirable for the performance of the duties of the office for which the candidate is being considered. The higher the judicial office, the greater should be the professional qualifications considered necessary or desirable for that office. The rating "qualified" shall be reserved for candidates who have affirmatively demonstrated qualifications which are regarded by the Committee to be necessary for the performance of the duties of the office for which they are being considered. The rating "well qualified" shall be reserved for candidates who, in addition, possess pre-eminent qualifications for the performance of the duties of such office.

**C. Appointment of Subcommittee**

1. When consideration of a candidate's qualifications is undertaken by the Committee, the Chair shall appoint a Subcommittee charged with the duty of actively investigating a candidate's qualifications. If a candidate presently serves as a judge, it shall be the policy, unless impracticable, to appoint members to the Subcommittee who do not practice within the territorial jurisdiction of the candidate.
2. The Subcommittee, with the assistance of Association staff, shall make a complete and thorough investigation into the candidate's qualifications, which investigation shall include but not be limited to: (a) the securing of written biographical and other data from the candidate in the form which the Committee shall from time to time determine, and (b) if practicable, a personal interview with the candidate.
3. Upon completing its investigation, the Subcommittee shall report its findings to the full Committee at a meeting thereof. With its report, the Subcommittee shall submit all biographical or other materials it deems pertinent to its investigation. As part of its report, the Subcommittee may recommend whether the candidate should be rated as: (a) not qualified; (b) qualified; (c) well qualified.

**D. Evaluation by Committee**

1. Upon announcement by the New York State Commission on Judicial Nomination of candidates for appointment to the Court of Appeals of the State of New York, or upon request of the President of the Association with regard to vacancies in any other judicial office specified in Section A, the Chair shall call a meeting of the Committee to which the candidate or candidates who are under consideration shall be invited for purposes of personal interview. In addition, the Chair, pursuant to Section C, shall appoint a Subcommittee to investigate the qualifications of each candidate and report thereon at the meeting of the full Committee.
2. The President and President-Elect of the Association shall be ex officio non-voting members of the Committee. No member of the Appellate Panel of the Executive Committee may be a member of this Committee.
3. In addition to the regular members of the Committee, the President, at the commencement of each Association year in June, shall appoint five alternate members, with at least one alternate from each of the State's judicial departments. Should any regular member be unable to attend the meeting of the Committee or otherwise participate in its activities, the President, in consultation with the Chair, may designate an appropriate alternate who shall substitute in all respects for the regular member.
4. At the meeting of the Committee, a majority of the regular members, including any alternates designated to substitute for regular members, shall constitute a quorum. Following receipt of the Subcommittee reports and personal interview of candidates, the Chair shall poll the Committee members present by secret written ballot to determine whether the candidates shall be rated as not qualified, qualified, or well qualified, and any of the ratings shall require concurrence of the lesser of two-thirds of the entire Committee or three-quarters of those Committee members in attendance, provided a quorum is present. Committee members must be present in person to vote and may not cast a vote by proxy. The vote shall be taken with only the Committee members and assigned Association staff present.
5. The Chair shall report the results to the President of the Association, together with such explanatory comment and recommendations as the Committee may desire to furnish. Except as hereinafter set forth, the Executive Committee shall take no part in the rating of candidates.
6. There shall be no right of appeal from the finding of the Committee, except as set forth in Section F.

**E. Action by President**

1. Upon receipt of the report and findings of the Committee, if all candidates have been found well qualified, the President of the Association shall transmit such findings together with a copy of these Guidelines to the appropriate governmental authorities. The candidates shall be given written notification of such action and be furnished with a copy of these Guidelines.
2. In the event a candidate receives a rating other than a well qualified, the president shall by express mail or other similar written communication promptly notify the candidate of such determination, furnishing a summary of the reasons for such action and a copy of these Guidelines. In those instances where one or more of several candidates has received a rating of less than well qualified, the timing of the transmission of findings to governmental authorities with respect to those candidates found well qualified shall rest in the discretion of the President of the Association, giving due consideration to any appeals by candidates found less than well qualified and the statutory time limits within which action must be taken by the appropriate governmental bodies.

**F. Appeals**

1. A candidate may appeal a rating of not qualified or qualified to an Appellate Panel of the Executive Committee (hereinafter "Appellate Panel") by filing written notice within two days of the receipt of such rating with the President of the Association at the Association's offices in Albany. In such event, the report of the Committee, insofar as it pertains to the appellant, shall not be transmitted to governmental authorities, or otherwise made public, until determination of the appeal. If an appeal is not taken within the prescribed period, the President shall transmit the findings of the Committee with respect to such candidate to appropriate governmental authorities.
2. The Appellate Panel shall consist of the President, the President-Elect, and seven members of the Executive Committee appointed annually by the President following commencement of the Association year on June 1. In making such appointments, the President shall designate at least one member from each of the State's judicial departments, with no more than two appointees to be selected from the same judicial district.
3. The Appellate Panel shall have authority to establish such additional procedures for the hearing of appeals as it may deem appropriate so long as such are not inconsistent with those set forth herein. The appellant shall be entitled to an oral hearing of the appeal by the Appellate Panel, if requested, and to the assistance of counsel. At least two days' written notice of the time and place of the scheduled hearing shall be given to the appellant by the Appellate Panel.
4. The Chair of the Committee or a Committee member designated by the Chair shall be invited to attend the hearing of the appeal for the purpose of discussing in camera the basis for the Committee's action. The Chair or the Chair's designee shall not otherwise take part in the proceeding before the Appellate Panel unless expressly requested by the Appellate Panel to do so.
5. In hearing an appeal. The Appellate Panel shall generally be limited to a review of the proceedings before the Committee, but may, for good cause shown, accept information not considered previously by the Committee.
6. The Appellate Panel may approve, modify, or reject the action of the Committee.
7. The finding of the Appellate Panel shall then be transmitted to the appropriate governmental authorities and to the appellant by the President of the Association.
8. No further appeal shall be permitted beyond the Appellate Panel.

**G. Confidentiality**

1. The work of the Committee shall be completely confidential; and, in no event, shall the Committee, any of its members, or the Association staff, make public reports, proceedings or findings as to any candidate. No member of the Committee shall serve as a member of a committee supporting the election or appointment of any candidate for judicial office within the jurisdiction of the Committee nor shall any member otherwise sponsor such candidacy.
2. Sources of confidential information shall not be disclosed at any stage of the proceeding.
3. Any announcement concerning the findings of the Committee shall be made by the President of the Association, but the Committee may include as part of its report any recommendations as to the information to be released to the public in the event a candidate runs in a primary election or becomes a nominee.

