

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 26, 1999

PRESENT: Adler; Alcott; Anglehart; Asarch; Attea; Aydelott; Ayers; Baldwin; Batra; Bergen; Bohner; Bowler; Bracken; Brett; Buzard; Cashman; Chambers; Coffey; Cohn; Coleman; Connell; Connery; Connolly; Cooper; Copps; Corcoran; Cyrulnik; DeFritsch; Denton; DiGirolomo; DiLorenzo; Doyaga; Dwyer; Eggleston; Eppers; Evanko; Fishberg; FitzGerald; Franchina; B. Freedman; M. Freedman; Futter; Galloway; Gardella; Gerstman; Giordano; Golinski; Gozigian; Graber; Gutleber; Haig; H. Hall; Halpern; Handlin; Hassett; Headley; Higgins; Hirsch; Hodges; Hoffman; Hoye; Inclima; Jacoby; James; Kamins; Kelly; Kendall; Kennedy; Kenny; Kilpatrick; Kilsch; F. Klein; M. Klein; Krane; Kretser; Krooks; Lagarenne; Landy; Lawrence; Levin; Levy; Lieberman; Lindenauer; J. Longo; M. Longo; Lorman; Madigan; Manley; Mawhinney; McArdle; McAuliffe; McGlinn; Meng; Miklitsch; M. Miller; Millon; Minkowitz; Miranda; Moore; Morse; Nonna; O'Brien; Opotowsky; Ostertag; Palermo; Patrick; Peckham; Peradotto; Pfalzgraf; Pfeifer; Priore; Pruzansky; Rahn; Raubichcek; Rayhill; Reich; J. Reynolds; J.T. Reynolds; Rice; Richardson; Rider; Rifkin; Roper; Rosner; Rothstein; Rybak; Samel; Schraver; Shapiro; Spellman; Standard; Steinman; Stenson; Taylor; Terranova; Tharp; Trevett; Tyler; Uebelhoer; Vigdor; Vitacco; Wales; M. Walsh; Witmer; Wolf.

In advance of the commencement of the regular business meeting of the House of Delegates, Mr. Hassett noted that information had been distributed at each place concerning state legislation to provide funding for civil legal services this year and to establish a regular source of funding, to assist members in writing to lawmakers regarding the need for these measures.

Mr. Hassett also advised that copies of the Association annual report of activities for 1998-99 had been provided to delegates.

1. Approval of minutes of April 10, 1999 meeting. The minutes of the April 10, 1999 meeting were deemed accepted as previously distributed.
2. Introduction of new members. The new members of the House who assumed office June 1 were introduced and welcomed by Mr. Hassett.
3. Report of Treasurer. Mr. Headley summarized the audited financial statement for the year ending December 31, 1998, and indicated that the Association had completed the previous year with operating net income of \$23,700 and total net income, including gains and losses on investments, of \$1,026,700. He stated that through careful fiscal management, the Association was in its fifth year without a dues increase and the Finance Committee was assessing the possibility of retaining dues at present levels in the coming year.

Mr. Headley then reviewed the major expense and income items in the Treasurer's report for January 1-May 31, 1999, indicating that the overall financial position of the Association remains strong. Through May 31, receipts were \$12,597,255, or 76 percent of the overall projected income of \$16,551,380. Income increased by \$1.2 million over the same period for the last year, primarily because of dues and Continuing Legal Education revenue. Expenses through May of this year totaled \$6,753,300, or 42 percent of the overall budget, an increase in expenses of approximately \$598,000 from May 31, 1998. Net assets increased by \$1.35 million in this period. The Treasurer's report was received with appreciation.

4. Installation of Thomas O. Rice. Mr. Hassett noted that in 1993 an installation ceremony for the President was inaugurated at the June meeting of the House of Delegates, given the responsibilities of the position and the close proximity of that meeting with the commencement of the President's term on June 1. The oath of office was then administered to Mr. Rice by the Hon. Renee R. Roth, who also delivered remarks. Mr. Rice discussed the challenges affecting the profession and his plans for the coming year.

5. Presentation of Root/Stimson Award. Philip Furgang, Chair of the Committee on Public Relations, presented the Root/Stimson Award to Albany attorney Camille Siano Enders for exemplary community service.

6. Report of President. Mr. Rice reported on the following matters:

a) On June 2, 1999, he spoke at a press conference organized by Chief Judge Judith S. Kaye at the Court of Appeals in Albany to call for legislation to increase 18-B assigned counsel fees. The Association will continue to press for this legislation.

b) The report of the Special Committee to Review the Court System's Comprehensive Civil Justice Program had been submitted to court officials. The Committee was composed of representatives from the Committees on Alternative Dispute Resolution, CPLR, and Judicial Administration, the Ad Hoc Committee on the Jury System, the Task Force on the Law Guardian System, and the Commercial and Federal Litigation, Family Law, Torts Insurance and Compensation Law, and Trial Lawyers Sections. The 60-day comment period necessitated submission prior to the Executive Committee and House meetings. The report was included in the House agenda materials for the information of delegates.

c) Mr. Rice attended the National Conference on Building Public Trust and Confidence in the Judicial System, conducted by the Conference of Chief Judges, Conference of State Court Administrators and the American Bar Association in May in Washington, D.C. Immediate past President James C. Moore was a member of the New York delegation. In preparation for the conference, the Chief Judge formed a Committee to Promote Public Trust and Confidence in the Legal System which issued a

report and recommended strategies. The report was distributed to members of the House for their information and is being reviewed by the Association leadership for possible action.

d) He and Mr. Hassett met with Section leaders to discuss projects, issues and procedures relating to meeting planning, the impact of mandatory continuing legal education, marketing, legislative action, and other issues.

e) In April, he and Mr. Moore participated in the Mid-Year Meeting of the National Bar Association in Brooklyn as part of the Association's efforts to enhance outreach to minority attorneys and minority bar associations. He also has been visiting local bar associations.

f) Accompanied by Messrs. Moore and Hassett, he had met with Chief Administrative Judge Jonathan Lippman on May 26 to discuss issues of mutual concern, including mandatory continuing legal education rules, mandatory fee arbitration, pay-to-play concerns in campaign financing, and legislative proposals for reorganization of the trial courts, reform of drug sentencing laws, funding for civil legal services, and changes in the tort system.

g) The Association will continue to pursue adequate funding for the Legal Services Corporation which is requesting \$340 million for fiscal year 2000, up from \$300 million this year. Mr. Rice cited Messrs. Moore and Pruzansky for their work in communicating with lawmakers on this need.

h) The Governor and legislative leaders were informed of the position taken by the House on April 10 opposing the tort system modification bill excepting one provision. Lawmakers also were advised of the Association's willingness to engage in dialogue to consider fair and balanced improvements in the tort process.

On behalf of the Association, Mr. Rice then expressed gratitude to Mr. Moore for his insight 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 James C. Moore 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 1998-99.

7. Recommendations of Special Committee on Multi-Disciplinary Practice and the Legal Profession. Robert L. Haig, Chair of the Special Committee on Multi-Disciplinary Practice and the Legal Profession, summarized the report and recommendations of the Special Committee in calling for additional study, in view

of the complexity of the issue. By motion, the resolution as modified and approved by the Executive Committee on June 25, 1999 was presented for action by the House. It was noted that this resolution, not the Special Committee's report, was the subject of the House's consideration. Appreciation was expressed to the Special Committee for its extensive work. Upon discussion and further amendment, a motion was adopted approving the following resolution:

WHEREAS, the Special Committee on Multi-Disciplinary Practice and the Legal Profession ("Special Committee") was appointed to study the impact on the legal profession of accounting firms and other multi-disciplinary practice ("MDP") groups providing legal services, including the issues raised by such forms of practice and the effect of MDPs on clients, society, and the legal profession, and to formulate recommendations as to actions, if any, which the New York State Bar Association ("NYSBA") should take to address these issues; and

WHEREAS, the NYSBA is concerned that changing existing legal and ethical rules to permit lawyers to practice law in MDPs will adversely and irreparably affect the independence and other fundamental principles of the legal profession; and

WHEREAS, to assist the NYSBA in coming to an informed judgment regarding MDPs, the Special Committee has recommended further studies; it is

RESOLVED, that the NYSBA hereby urges that studies such as those recommended by the Special Committee be undertaken by appropriate groups within the Association, and further authorizes the officers to take such steps as they deem warranted to facilitate such studies; and it is further

RESOLVED, that the NYSBA opposes any changes in existing regulations prohibiting attorneys from practicing law in MDPs, in the absence of a sufficient demonstration that such changes are in the best interest of clients and society and do not undermine or dilute the integrity of the delivery of legal services by the legal profession.

8. Report of The New York Bar Foundation. Mrs. Freedman, as President of The New York Bar Foundation, reported that District Chairs of The Fellows had been appointed. The Chairs are conducting district meetings to discuss the activities of The Foundation and Fellows and assist in identifying candidates for The Fellows and possible grant applicants. Mrs. Freedman further announced that The Foundation received a bequest from the late Lillian M. Vernon of Remsenburg in memory of Weston Vernon, Jr., a past President of the Association and The Foundation. She noted the various opportunities to make

contributions in support of The Foundation. She then introduced Mr. Cooper, President of the Association of the Bar of the City of New York, who cited the value of The Foundation's grant in the creation of the Association of the Bar's new lawyer assistance program to aid members of the profession with problems of substance abuse. The report was received by the House with thanks.

9. Report and recommendation of Committee on Alternative Dispute Resolution. The report, recommendations and proposed resolution of the Committee on Alternative Dispute Resolution were summarized by the Chair, Stephen P. Younger. He noted that the report focuses on use of non-binding forms of ADR in appropriate cases. After discussion, a motion was adopted approving the following resolution:

WHEREAS, Alternative Dispute Resolution ("ADR") is a growing method of resolving legal disputes in the State of New York;

WHEREAS, in appropriate cases, ADR offers many benefits including a wide range of solutions to clients' problems, speedy resolution of disputes and reduction of legal costs;

WHEREAS, the New York State Bar Association has reviewed the current status and future direction of ADR in the State of New York;

NOW THEREFORE, BE IT

RESOLVED, that the New York State Bar Association endorses ADR as an effective technique for resolving disputes in appropriate cases; and it is further

RESOLVED, that the New York State Bar Association should serve as a clearinghouse for information on ADR for the Bar and public and the officers, Executive and Finance Committees of the Association shall have discretion to review and determine whether to form the proposed ADR Section and create a staff ADR coordinator position in furtherance of this purpose, consistent with the Association's resources, needs and priorities; and it is further

RESOLVED, that the New York State Bar Association hereby urges the judiciary, lawyers, local bars and law schools to promote further educational efforts regarding ADR; and it is further

RESOLVED, that the New York State Bar Association hereby urges the Unified Court System to expand its existing court-annexed and court-referred non-binding ADR programs and to develop a set of minimum education, training and ethical standards for neutrals who serve in those programs; and it is further

RESOLVED, that the New York State Bar Association hereby urges the Legislature to adopt legislation recognizing a privilege protecting the confidentiality of communications made in confidential non-binding ADR processes and confirming the immunity of third-party neutrals in court-annexed or court-referred ADR processes.

10. Report of the Chair. Mr. Hassett reported on 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 special committees listed below were extended for an additional year:

1. Ad Hoc Committee on Jury System
2. Special Committee on AIDS and the Law
3. Commission on Providing Access to Legal Services for Middle-Income Consumers
4. Special Committee on Group and Prepaid Legal Services Plans
5. Special Committee on Judicial Independence
6. Special Committee on Pension Simplification
7. Special Committee on Procedures for Judicial Discipline
8. Special Committee on Solo and Small Firm Practitioners
9. Steering Committee on Commerce and Industry
10. Special Committee on Unlawful Practice of the Law
11. Special Committee on Volunteer Lawyers

b) The Task Force on the Law Guardian System was being discharged, with the consent of the Chair, as the Task Force has completed its mission.

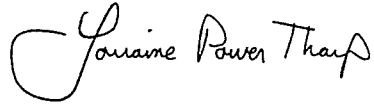
c) A request has been made by the Special Committee on Standards of Attorney Conduct to be designated as a standing committee, given the ongoing nature of Code amendments and work in addressing standards of conduct. The House adopted a motion to make this change.

d) Robert L. Klein, a past member of the House and the Executive Committee, had passed away. A moment of silence was observed by the House in Mr. Klein's memory.

11. New business. No new business was presented.

12. Date and place of next meeting. Mr. Hassett announced that the next meeting of the House would be held on Saturday, November 6, 1999 at the Bar Center in Albany, N.Y. The meeting was adjourned in Mr. Klein's memory.

Respectfully submitted,



Lorraine Power Tharp
Secretary

