

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES  
SATURDAY, JUNE 21, 2003  
THE OTESAGA HOTEL, COOPERSTOWN, NEW YORK  
JUNE 21, 2003**

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PRESENT: Alcott; Alessio; Amoroso; Asarch; Aversa; Ayers; Bailey; M. Bartlett; R. Bartlett; Bauman; Beehm; Berman; Bracken; Brown; Butler; Buzard; Cantwell; Castellano; Cerchione; Christian; Cioffi; Clifford; Coffey; Cuyler; Darche; E. DeFio; K. DeFio; Denton; Diomande; Doerr; Doyle; Duffy; Dwyer; Edmunds; Eppler; Evans; Farrell; Fedrizzi; Fennell; Ferrara; Finerty; Fink; Fishberg; Fisher; Flaherty; Flink; Franchina; Gacioch; Geoghegan; Gerstman; Getnick; Goldenberg; Golinski; J. Gross; Gutekunst; Haig; Hanna; Hasset; Hayes; Heggen; Herold; Hession; Hoffman; Hollyer; Ingrassia; R. Jacobs; S. Jacobs; James; Johnson; Kamins; Karson; Kiernan; Kilsch; Klein; Kossove; Kougasian; Kretser; Lawrence; Lerose; Lesk; Levin; M. Levy; P. Levy; Lewis; Madigan; Mandell; Maney; Matalon; May; Meislahn; Michaels; Miklitsch; M. Miller; Millman; Monahan; Myers; Nizin; O'Leary; O'Mara; Ostertag; Peradotto; Perlman; Peterson; Pfalzgraf; Plumley; Potter; Privitera; Pruzansky; Purcell; Quinlan; Reed; Reich; Reimer; Richman; Robert; Rodriguez; Rothstein; Safer; Schraver; Seiden; Seitz; Shaw; Sherwin; Shive; Shulman; Smith; Smyk; Spellman; Standard; Tell; Terranova; Tharp; Tishler; Torrent; Treece; Tully; Tyler; Tyo; Vigdor; Wales; O. Walsh; S. Walsh; Warner; Wayland-Smith; Weinberger; Wimpfheimer; Witmer; Zeltner.

President-Elect Standard recognized members of the House newly taking office on June 1.

1. Approval of minutes of the April 5, 2003 meeting. The minutes were approved as distributed.
2. Report of the Treasurer. Mr. Ayers reported that the auditors have issued a clean opinion without qualification or reservation concerning the Association financial statements for the years ending December 31, 2002 and 2001, summaries of which were previously distributed to the Executive Committee. As of December 31, 2002, assets totaled \$22,529,472 and liabilities were \$11,843,336. Approximately 80% of the \$7,609,993 in current liabilities was in dues receipts for 2003 collected in November and December of 2002. Revenue, gains and other support in 2002 totaled \$20,729,265, up \$1,977,000 from 2001, primarily as a result of increases in Association and Section memberships and Continuing Legal Education (CLE) product purchases. The Association realized \$21,077,643 in expenses in 2002, including \$15,355,552 in program costs and \$5,722,091 in management and income tax expenses. The

Association sustained a loss of \$348,378, largely from a loss on investments. The operating surplus for the year was \$350,115, above the budgeted amount of \$151,486.

With respect to 2003 finances, in the first five months of the year, \$14,354,108 was received in revenue, a decrease of \$466,600 for the comparable period in 2002, reflecting a decline in CLE sales. Membership, however, showed an increase in 2003 and investment performance improved, with unrealized gains of \$425,000. The Association incurred approximately 40% of budgeted expenses, or \$8,486,523 through May 31, 2003. This level is comparable to expenditures in 2002, reflecting the ongoing efforts of the Finance Committee and staff to identify means of achieving further economic efficiencies without cutting delivery of member services. Mr. Ayers then detailed the budget process and financial status of the Association and trends affecting income and expense. Dues and CLE prices have not been increased for nine and 10 years respectively. He noted that the Association is operating with a deficit budget this year, while maintaining a strong financial health.

The Treasurer's report was accepted with appreciation.

3. Installation of the President. President Levin was formally installed. The oath of office was administered by the Hon. Jonathan Lippman, Chief Administrative Judge, who delivered brief remarks. President Levin then discussed initiatives for the year ahead to advance the Association's dual roles of service to the profession and guardian of the public interest. He cited enhanced efforts to foster access to justice and promote public understanding of the valuable roles lawyers in society.
4. Presentation of the Root/Stimson Award. President Levin advised that the Root/Stimson Award, created in 1974 and sponsored by the Committee on Public Relations, honors members of the profession for outstanding community service. President Levin and the Chair of the Committee on Public Relations, Past-President Paul Michael Hassett, presented the Award to Wayne D. Wisbaum of Eggertsville. A partner in the Buffalo firm of Kavinoky & Cook, he was cited for making a difference in the quality of life for Buffalo area residents and demonstrating the lawyer's civic responsibilities through his leadership and involvement in numerous cultural, ecumenical, educational and professional organizations.
5. President's report. The President reported on the following matters:
  - a. Legislative advocacy. In keeping with the strategic plan, the Association's work to heighten its legislative advocacy was evident in

its stronger presence during the last legislative session. These initiatives included coordinated communications with lawmakers and in the media through the collaborative work of the Committees on Legislative Advocacy, Legislative Policy and Public Relations, together with staff; meetings with representatives in the legislative and executive branches; editorial board meetings, news articles and opinion pieces; implementation of a key member contact program with lawmakers; designation of priority issues; and development of particular strategies to pursue action on Association positions. An example was the successful efforts in obtaining legislation for increased assigned counsel rates and the Association plans to continue work to ensure access to legal services in criminal and civil legal matters. Mr. Levin also cited the Association's development of a framework to seek resolution of differences in proposals for reform of the Rockefeller drug laws and plans to pursue action in the next session.

- b. Judicial selection. As authorized by the Executive Committee, the Association submitted an *amicus curiae* brief in the U.S. Court of Appeals for the Second Circuit in *Spargo v. Commission on Judicial Conduct* contending that the political activity provisions of the Code serve a compelling state interest to preserve due process of law, in both appearance and actuality. The brief further noted that, as guidance on interpretation and applications of the provisions of the Code also is available from precedent and a variety of other sources, analysis of whether the provisions are vague should not be undertaken in isolation, but rather by considering the breadth of resources. Past President Steven C. Krane of New York City and other pro bono counsel at Proskauer Rose prepared the brief.

The New York State Court of Appeals had issued separate decisions in *Matter of Raab* and *Matter of Watson* that while judges have some constitutional free speech rights when seeking office, they must be balanced with the public's right to a fair and unbiased judiciary. The court also observed that the New York provisions differ from the rules found unconstitutional by the U.S. Supreme Court in *Republican Party of Minnesota v. White*.

Also as planned in April Executive Committee discussions, Mr. Levin has appointed a Special Committee, chaired by Marjorie E. Gross of New York City, to review the Code provisions. The Association will provide input on the work of the Commission on Promoting Public Confidence in Judicial Elections, recently appointed by the Chief Judge.

- c. Federal judicial salaries. In the past 30 years, federal judges' salaries have declined in value by 23.5 percent for lower courts and 37.3 percent for the Supreme Court. Over the years, the Association has consistently pursued efforts to promote appropriate federal judicial compensation levels to address such concerns. The Executive Committee endorsed, for positive House action, a position urging an increase in federal judicial salaries. The House then adopted a motion unanimously by voice vote calling for an increase in federal judicial compensation.
- d. Meeting with court officials. On May 20, he and Ms. Tharp, and Executive Director Patricia K. Bucklin met with Chief Administrative Judge Jonathan Lippman to discuss issues of mutual interest. Among topics were legislative efforts to seek increased assigned counsel rates and reform of the Rockefeller drug laws; the judiciary budget; the Board of Law Examiners' proposal to increase the passing score on the bar exam and the Association position to defer such action absent further studies on the effect and need; approaches to address bench-bar concerns; and the work of the Court System's commissions on judicial elections and the jury system and the Association's plans to provide its perspectives on these issues.
- e. Same sex marriage issues. In furtherance of the resolution adopted by the House, a Special Committee on Issues Affecting Same Sex Couples has been appointed, with Michael Whiteman as Chair. The Committee is examining the issues raised in the House discussion and will prepare a report and recommendations to the House.
- f. Diversity and leadership development. He has appointed a Special Committee on Diversity and Leadership Development to foster diversity and opportunity in the Association and work with Sections and Committee in this regard, to help identify, encourage and mentor prospective future leaders of the Association, and to serve as a resource to assist the President in identifying potential members of committees and task forces. He has appointed Ms. Tharp as Chair and Association Secretary A. Vincent Buzard as Vice Chair.
- g. Awards. Association member George H. Lowe will receive the Outstanding Lawyer of the Year Award from the American Bar Association's Senior Lawyers Division. The New York County Lawyers' Association will be honored with the ABA's Harrison Tweed Award for its extensive work and pioneering litigation to

seek appropriate assigned counsel rates in New York County. The NYSBA was among the nominators of NYCLA.

- h. Federal courthouse. On April 14, the U.S. courthouse at Foley Square in Manhattan was dedicated as the Thurgood Marshall Federal Courthouse. The Association and its Committee on Civil Rights had advocated for this designation.
- i. Tort system issues. Following House action, the Association's positions concerning collateral sources, motor vehicle vicarious liability, and codification of the recalcitrant worker defense in "scaffolding" cases and its ongoing opposition to proposed caps on non-economic damages and elimination of joint and several liability were conveyed to the Legislature. Responding to developments on the issue of unintended high malpractice awards against hospitals, the Association also reiterated its longstanding support for legislation to repeal Civil Practice Law and Rules Articles 50-A and 50-B.

Following his report, Mr. Levin then presented immediate Past President Tharp with a plaque and a gift of appreciation for her dedicated leadership and service. Ms. Tharp expressed thanks for the opportunity to serve as President and received the gratitude of the House.

6. Presentation of the Distinguished Service Award. Recently retired Association Executive Director William J. Carroll of Delmar was presented with the Association's Distinguished Service Award. The Award, given once previously, recognizes outstanding commitment and contributions to the purposes of the Association. In his 23 years as Executive Director, the Association achieved major growth in membership, services and initiatives in addressing issues of concern to the profession. President Levin announced that the Executive Committee has renamed this honor as the William J. Carroll Distinguished Service Award, hereinafter.
7. Report of The New York Bar Foundation. Mr. Haig, as President of The New York Bar Foundation, updated the House on initiatives of the Board of Directors to facilitate grantmaking to law-related projects, enhance The Fellows program, and increase opportunities for support and involvement in The Foundation.
8. Report and recommendations of the Special Committee on Multijurisdictional Practice. Mr. Standard noted the House's adoption in April of a scheduling resolution for consideration of the report of the Special Committee on Multijurisdictional Practice on its recommended amendments to the New York Lawyer's Code of Professional Responsibility to address issues of multijurisdictional practice. It was

noted that the Executive Committee had endorsed the report for positive House action. The Chair of the Committee, Klaus Eppler, summarized developments in New York and with respect the ABA initiatives. He highlighted comments received from other Committees and local bar associations and advised that the Committee accepts the suggested modifications. A motion was adopted unanimously by voice vote to approve the recommendations as modified. A second motion was adopted, also unanimously by voice vote, to transmit the recommended amendments to the Disciplinary Rules Appellate Divisions for consideration.

9. Report and recommendations of the Special Committee on Association Governance. The House commenced consideration of the report and recommendations of the Special Committee on Association Governance following the presentation of the report in April and the adoption of a procedural outline. The Chair, Dennis R. Baldwin, highlighted the issues for discussion and the Committee's review of comments from other Committees, Sections, and local bar associations.

The delegates then discussed particular recommendations:

- a. Implementing a series of initiatives to aid the Association in improving all facets of its communications, particularly those between the Association and its Sections and Committees, as well as among those groups, between the Association and its members, and between the Association and county, local and other bar groups;
  - The House adopted a motion by unanimous voice vote approving the recommendation.
- b. Encouraging the Executive Committee to add a meeting each year that could be rotated among the various regions of the state;
  - The House adopted a motion by unanimous voice vote approving the recommendation.
- c. Adding two seats to the House for the Chair of the New York delegation to the ABA House (also designated as the ABA State Delegate from New York) and the New York representative on the ABA's Board of Governors.
  - The House adopted a motion by unanimous voice vote approving the recommendation.
- d. Shifting the start of terms for Association officers, Committee Chairs, Section officers, Executive Committee members and the House of Delegates to February 1 of each year.

- The House opposed this recommendation on a voice vote motion.
- e. Establishing a Committee on Leadership Development to identify, encourage and mentor future leaders of the Association, to make recommendations concerning individuals to fill elective or appointive positions, and to further the goals of greater diversity and greater representation of former Section leaders among the leadership of the Association.
- In a voice vote, the House adopted a motion deleting, from the Committee's responsibilities, making recommendations to the Nominating Committee for nominations to the Executive Committee.
  - A motion was adopted unanimously by voice vote to table the portion of the Committee's responsibilities to make recommendations of a pool of persons for presidential appointment to the Executive Committee and Nominating Committee, pending discussion of additional proposals concerning the composition of these committees.
  - Another motion was adopted by voice vote to modify criteria for committee membership to delete the provision that past presidents have served in that capacity during the past seven years.
  - A motion to add a representative from the Young Lawyers Section was not approved in a voice vote.
  - A further amendment was approved by motion in a voice vote to retain the provision to establish a standing Committee on Leadership Development; delete the specific criteria of the composition of the committee that follows; and retain the recommended responsibilities as revised by the House.
  - The motion to approve establishment of the committee, as modified, was approved by a vote of 99-28.

Plans were made to continue consideration of other recommendations in the governance study at the November meeting:

10. Chair's report. Mr. Standard reported on the following matters:
- a. In memoriam. A memorial will be presented at a future meeting for Past President Charles E. Heming who passed away on June 6. A moment of silence was observed in his memory.
  - b. Special committees. The terms of the following special committees are due to expire and may be extended by the House:
    1. Special Committee on Cyberspace Law

2. Special Committee on Judicial Independence
3. Special Committee on Pension Simplification
4. Special Committee on Procedures for Judicial Discipline
5. Task Force on Court Reorganization
6. Special Committee on Unlawful Practice of Law

A motion was adopted unanimously by voice vote extending the terms of each of the Committees listed above for an additional year.

Mr. Standard also informed the House that the Special Committee on Cameras in the Courtroom, the Commission on Providing Access to Legal Services for Middle Income Consumers, the Special Committee on Legislative Advocacy, and the Steering Committee on Commerce and Industry been discharged, with the concurrence of the respective chairs and with the Committees' work to be pursued by existing Association entities.

- c. Renaming of special committee. The Special Committee on the Law Governing Firm Structure and Operation has been renamed Special Committee on Multidisciplinary Practice. No House action was needed.
- d. Renaming of standing committee. House approval is required for the renaming of standing committees. To better reflect the work of the Committee on Judicial Administration, the House was requested to rename the committee as the Committee on Court Operations. A motion was adopted unanimously by voice vote to rename the committee.
- e. Designation of standing committees. Given the ongoing nature of the work of several special committees, the House was requested to designate the following committees as standing committees:
  1. The Ad Hoc Committee on the Jury System and the Special Committee on the Grand Jury Project are being discharged and their work pursued by the newly established Special Committee on the Jury System. Given the ongoing nature of these issues, the House was requested to designate the Special Committee as a standing committee.
  2. Special Committee to Review the Mandatory CLE Proposal, renamed the Committee on Mandatory Continuing Legal Education.
  3. Special Committee on Diversity and Leadership Development.

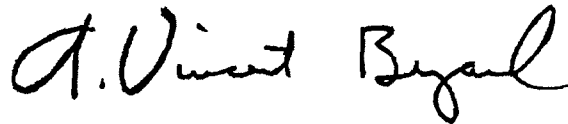


Motions were adopted separately by unanimous voice vote making these changes

11. Date and place of the next meeting. Mr. Standard announced that the next meeting of the House of Delegates would be held Saturday, November 8, 2003 at the Bar Center in Albany, New York

There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink that reads "A. Vincent Buzard". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

A. Vincent Buzard  
Secretary

