

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 19, 2004**

PRESENT: Alcott; Asarch; Ashcraft; Aversa; Ayers; Barney; Bartlett; Bauman; Benedict; Berman; Bienstock; Boyers; Bracken; Buzard; Cantwell; Chambers; Cioffi; Clements; Cloonan; Copps; Cuyler; Cyrulnik; D'Angelo; Denton; Doerr; Dolin; Dominguez; J. Doyle; V. Doyle; Duffy; Edmunds; Evans; Fink; Fishberg; Flaherty; Franchina; Freedman; Gacioch; Geoghegan; Gerstman; Getnick; Gillespie; Goldenberg; Golinski; Grays; Greenberg; J. Gross; M. Gross; Grossman; Gutekunst; Haig; Hassett; Hayes; Hoffman; Hollyer; James; Kachadourian; Kamins; Karson; Katter; Matthew Kelly; Michael Kelly; Kiernan; B. King; Kossove; Krane; Kretser; Krooks; Labbe; Lau-Kee; Lawrence; Carolyn Lee; Chanwoo Lee; Lesk; Levin; Levy; Lewis; Lieberman; Lindenauer; Longo; Lynch; Lytle; MacCrate; Madigan; Marwell, McCarthy; Miklitsch; M. Miller; Millman; Minkowitz; Miranda; Monahan; Moreland; Murray; Myers; Nashak; E. Nathanson; Nizin; Norfleet; O'Leary; Ostertag; Paul; Peradotto; Perino; Perlman; Peterson; Pfalzgraf; Plevin; Plumley; Priore; Pruzansky; Reitzfeld; Rice; Richardson; Rifkin; Romero; Rothstein; Safer; Saleh; Santemma; Schraver; Seiden; Seitz; Shaw; Shulman; Silkenat; Smith; Smoley; Smolowitz; Smyk; Spellman; Standard; Stenson; Sweeny; Tell; Terranova; Tharp; Torrent;; Tyler; Tyo; Walker; S. Walsh; Warner; Weinberger; Weinstein; Witmer; Wolford.

The meeting commenced with a welcome to new members of the House. President-Elect Buzard also discussed procedures for the meeting.

1. Approval of minutes of the April 3, 2004 meeting: The minutes, as previously distributed, were approved unanimously by voice vote.
2. Installation of the President. President Standard was formally installed. The oath of office was administered by the Hon. George Bundy Smith, Associate Judge of the Court of Appeals, who delivered brief remarks. President Standard then discussed initiatives for the year ahead, including advancing diversity and opportunity for full participation in the profession and in the Association; safeguarding the rule of law and civil rights; and seeking balanced lives in the law.
3. Treasurer's report. The Treasurer, James B. Ayers, reported that the Association had received an unqualified opinion from the new auditors, Urbach Kahn & Werlin, in the report as of December 31, 2003. Total assets were \$24.2 million, up \$1.7 million from 2002, due in part to investment performance. Total liabilities equaled \$12.4 million, up \$553,000 from 2002, including accrued pension costs. Mr. Ayers noted that the Finance Committee, cognizant of future

liabilities under the defined-benefit pension plan, has replaced it with a defined contribution plan. Net assets were \$11.8 million, up from \$1.1 million, primarily from investment gains. Revenue declined by approximately \$700,000 to \$20.6 million, due mainly to a decrease in CLE revenue of \$747,000. Mr. Ayers noted that a decrease was anticipated as 50,000 fewer attorneys are required to register in odd years. Association expenses increased only about \$70,000 reflecting staff cost-containment measures. The operating deficit was \$222,000. Realized and unrealized gains on investments of \$1.3 million resulted in an increase in net assets of \$1.1 million.

Turning to the current year's financial report through May 31, 2004, Mr. Ayers advised that revenue totaled \$14.9 million, up \$490,000 from this point in 2003, with CLE income up from 2003 and membership dues at about the same level as last year. Investment gains were \$41,000, down \$385,000. Expenses totaled \$8,547,000, up \$60,000. The operating surplus was \$6.4 million, an increase of \$430,000.

4. Bylaw amendments. Miriam M. Netter, Chair of the Committee on Bylaws, presented proposed amendments drafted by the Committee consistent with the direction of the House. The measures add 12 seats to the House of Delegates for racial and ethnic diversity and 2 members-at-large to the Executive Committee also for racial and ethnic diversity; revise the formula for allocating section delegates to the House to increase such representation; and modify term limits for certain Executive Committee positions. Ms. Netter also reported that Article 11 of the Bylaws would be conformed as a technical amendment. House members subscribed to presenting the proposed amendments for vote. It was announced that a special meeting of the Association would be held for this purpose on November 6 preceding the regularly scheduled House meeting to vote on these amendments.
5. President's report. President Standard reported on the following items:
 - a. NYSBA litigation. The U.S. District Court for the District of Columbia ruled in favor of the Association's position in the litigation against the FTC, contending that the Gramm-Leach-Bliley Act privacy notice requirements are not applicable to lawyers. The House will be kept apprised as to whether the FTC appeals. The Association thanks its pro bono firm in this matter, Proskauer Rose, and two partners key to the litigation, Warren Dennis, who passed away before the decision was announced, and past President Steven C. Krane.
 - b. Study of legal issues for same-sex couples. The Special Committee on Legal Issues Affecting Same-Sex Couples is continuing work, with the goal of presenting an informational report in November, with formal action then scheduled after there is opportunity for review and comment by sections, committees, and local bars.

- c. Insurance program. Bertholon-Rowland Corporation, the administrator of the Association's insurance programs, has been acquired by U.S.I. Holdings Corporation. The change is not expected to affect the administration or services to the Association but the added resources will allow for the strengthening of the program in the future.
- d. Rockefeller drug laws. The Association continued to urge reform of the Rockefeller drug laws as a legislative priority. When a conference committee appointed by the two houses to seek resolution of differences in reform legislation came to an impasse earlier in June, the Association issued a statement endorsed by former judges and former prosecutors emphasizing the need for reform. The Association will pursue these efforts.
- e. Meeting with court officials. Along with Mr. Levin, Mr. Buzard and Executive Director Patricia K. Bucklin, he met with Chief Administrative Judge Jonathan Lippman on May 5, 2004. The session, one of the regular meetings with court officials, included discussion of the Court System's report on "The Future of Pro Bono in New York," the report of the Chief Judge's Commission on Public Access to Court Records, and the proposals of the Chief Judge's Commission on the Jury, and the Association's perspectives on these studies, as well as rules and procedures for the collection of court fees.
- f. Section leaders conference. The Section Leaders Conference was conducted on May 13, 2004, including a roundtable on legislative advocacy, review of Association and section diversity initiatives, and the examination and recommendations of the Special Committee to Review the Annual Meeting. Breakout sessions covered membership development, budgeting, meeting planning, communications and development of publications, webpages and other resources.
- g. Judicial selection commission. The Special Committee on Court Structure and Judicial Selection, chaired by the Hon. Richard Simons, will be reviewing the second report of the Chief Judge's Commission to Promote Public Confidence in Judicial Elections, chaired by John D. Feerick. As with the Commission's previous report, the Association will comment on the recommendations proposed in the report. The Committee also has an expanded mission to add judicial selection and court restructuring issues.
- h. New committees. Two new committees were established by Mr. Levin in the spring. The Special Committee on State Constitution and Governance, chaired by Michael J. Hutter, will study ways to help state government function more smoothly, particularly in relation to improving the budget and legislative process. The Special Committee to Study Student Loans,

with Scott E. Kossove as Chair, will examine and make recommendations on the development of federal legislation to amend the Internal Revenue Code to allow for the full deduction of interest paid on student loans for post-secondary education.

- i. Diversity initiatives. The NYSBA has been selected to receive the American Bar Association's Partnership Award for its multi-faceted diversity initiatives. The award will be presented on August 6 at the joint awards luncheon of the National Conference of Bar Presidents, the National Association of Bar Executives, and the National Conference of Bar Foundations. The Association, together with the Committee on Diversity and Leadership Development and the sections, are continuing efforts to expand diversity in membership, all activities and governance and to enhance opportunities for active involvement.
- j. Law practice management department. The Association has hired a new Director of Law Practice Management, Cynthia J. Cornaire who previously practiced in the Capital District. She was scheduled to join the staff in July.
- k. Student loan legislation. A bill had been introduced in the Assembly to amend the State Finance Law and the Judiciary Law to establish a special fund and program to reimburse attorneys who work for public sector institutions, such as civil legal services or district attorneys offices, under certain criteria, for loans incurred for their legal education. The Executive Committee, at its June 18 meeting, adopted a motion unanimously to express support for the concept embodied in the bill of establishing a program to assist law graduates in the repayment of their student loans and to attract more young attorneys to the public sector, particularly to increase the number of lawyers involved with legal services programs, but opposing the funding mechanism contained in the bill, which would provide for fee increases for bar applicants or out-of-state admittees as the source of the necessary money. In taking this position, the Committee observed that provision of legal services is a societal obligation and one that the legal profession or one segment of the profession should not be expected to bear.

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

6. Police interrogations. Michael Miller and Susan J. Walsh of the New York County Lawyers' Association and Jack T. Littman of the NYSBA Criminal Justice Section presented a joint resolution of NYCLA and the Section that calls for taping of police interrogations as follows:

WHEREAS, it is critical that appropriate steps be taken within the criminal justice system to prevent false denials by the accused and false claims that confessions are the product of coercion and intimidation; and

WHEREAS, the electronic recording of custodial interrogations has been shown to be a useful tool in assisting the fact-finder in assessing the existence, voluntariness and accuracy of confessions and in reducing claims of involuntary confessions; and

WHEREAS, the electronic recording of custodial interrogations has been shown to be a useful tool in training law enforcement officers in effective interrogation techniques; and

WHEREAS, electronic recording of the entirety of custodial interrogations is valuable and should be applicable to all levels of crime, we recognize that fiscal and practical considerations render that goal unworkable at the present time;

NOW, THEREFORE, BE IT RESOLVED, that the New York State Bar Association urges all law enforcement agencies to videotape the entirety of custodial interrogations of crime suspects in the most serious cases at police precincts, courthouses, detention centers, or other buildings where suspects are held for questioning; and be it

FURTHER RESOLVED, that the New York State Bar Association urges the New York State Legislature to enact laws requiring the videotaping of the entirety of custodial interrogations of crime suspects in the most serious cases at police precincts, courthouses, detention centers, or other buildings where suspects are held for questioning, or where videotaping is impractical, to require the audio-taping of the entirety of such custodial interrogations, and to provide appropriate remedies for non-compliance, and to appropriate funds to implement this legislation.

NYCLA representatives also presented its study of police interrogations, which observed that taping of confessions has been shown to be a useful tool in assisting factfinders and in training law enforcement officers on interrogation techniques.

It was announced that the Executive Committee had endorsed the resolution for positive House action. A motion to modify the resolution to change "most serious cases" to "all cases" was not approved in a voice vote. The presenters of the joint resolution noted that the resolution focused on serious cases out of recognition that fiscal difficulties and practical considerations would render a broader

requirement unworkable at this time. The motion to adopt the joint resolution as originally presented was then adopted unanimously by voice vote.

7. Fiduciary appointment system. Joshua M. Pruzansky, Chair of the Special Committee on Fiduciary Appointments, summarized the Committee's work, at the Association's request, to monitor the functioning of the new court rules concerning court appointments, training requirements and limitations on eligibility for fiduciaries, and related provisions. In conducting the study and developing recommendations, the Committee sought the input of members of the bench and bar from across the state. It was announced that the Executive Committee had endorsed the report for positive House action.

Among recommendations, the Committee urged that the Office of Court Administration allocate appropriate resources and consider oversight mechanisms to eliminate and prevent future backlogs in obtaining court review of final accountings required under Article 81. The Committee also called for ongoing training of judges on Article 81 matters and for the elimination of the random rotation of judges assigned to these cases. Observing that restrictions on appointments and other requirements are decreasing the availability of experienced guardians, the Committee recommended waivers on restrictions where appropriate. Noting that cumbersome filing requirements for appointees who waive fees discourages such pro bono service, the Committee urged development of a procedure for fee waiver earlier in the process and for a reduction in paperwork in such situations. Responding to concerns of some practitioners about accessibility and the cost of training programs, the Committee recommended a review to ensure adequate availability. An additional recommendation was made for upgrading of the website on fiduciary appointments to ensure that the information is current and to expand the online search capability.

A motion was adopted by voice vote approving the report, with the Hon. Joel K. Asarch abstaining.

Mr. Pruzansky advised that the Committee will continue to monitor the rules and invites further comments from members of the bench and bar, sections, committees and other entities concerning Article 81 guardians, GALs, receivers and referees.

8. Law practice continuity. David R. Pfalzgraf, Chair of the Special Committee on Law Practice Continuity, gave an informational presentation to the House on its comprehensive study and development of practical resources and recommendations to assist attorneys, "Planning Ahead: Establish an Advance Exit Plan to Protect Your Clients' Interests in the Event of Your Disability, Retirement or Death." Information also is included to aid attorneys who may be assuming responsibility for another lawyer's practice in such situations. Mr. Pfalzgraf said that the project is expected to be of particular interest to solo and small firm

practitioners, but also provides useful guidance for those in other practice settings. In its final report, the Committee will present a comprehensive approach for the handling of unplanned law practice closings in situations of suspension, disbarment and disappearance. This report will propose a court rule, for adoption by the four Appellate Divisions, for appointment of a caretaker attorney in such circumstances. The proposal provides for local bar involvement. The report, which is being distributed for comment by interested sections, committees and others, will be presented to the Executive Committee and House at subsequent meetings.

9. Report of The New York Bar Foundation. Robert L. Haig, President of The New York Bar Foundation, updated the House on the development work of The Foundation, enhancement of opportunities to support its charitable work, and the engagement of a Director of Development funded by The Foundation Board.
10. Root/Stimson Award. Paul Michael Hassett, Chair of the Committee on Public Relations, informed the House that the Root/Stimson Award was created in 1974 to honor members of the profession for outstanding community service. The Committee sponsors the award. He reported that no award would be presented this year as the submissions did not focus directly on community service but instead described exemplary pro bono work and other service. He indicated that the criteria for the award would be clarified to facilitate appropriate submissions in the future.
11. Chair's report. President-Elect Buzard presented the following items:
 - a. Reappointment of 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 Multi-Jurisdictional Practice
 4. Special Committee on Public Trust and Confidence in the Legal System
 5. Special Committee on Student Loan Assistance in the Public Interest
 6. Task Force on Electronic Communications
 7. 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.

- b. Discharge of special committees. Mr. Buzard also informed the House that the Special Committee on Association Governance, the Special Committee to Commemorate the Association's 125th Anniversary, the Special Committee on Pension Simplification, and the Task Force on

Court Reorganization have been discharged with the concurrence of the respective chairs, as the committees have completed their missions. Where appropriate, the work will be continued by existing committees and sections.

- c. Discharge of standing committee. House approval is required for the discharge of standing committees. As the work of the Committee on Justice and the Community is being undertaken by other entities, the House was requested to discharge the Committee with appreciation. A motion was adopted unanimously by voice vote to discharge the Committee with thanks.
 - d. Nominating Committee. The Fourth Judicial District has submitted its representatives for the Nominating Committee as follows: Peter V. Coffey and the Hon. William H. Keniry, members, and Peter D. FitzGerald, alternate. The House adopted a motion unanimously by voice vote electing the representatives as submitted by the District.
12. Date and place of the next meeting. Mr. Buzard announced that the next meeting of the House of Delegates would be held Saturday, November 6, 2004 at the Bar Center in Albany, New York, preceded by the special meeting of the Association.

There being no further business to come before the House of Delegates, the meeting was adjourned in memory of Anne B. Keenan, Senior Vice President of Bertholon-Rowland Corporation who died from injuries suffered in an automobile accident on June 4, 2004.

Respectfully submitted,



Kathryn Grant Madigan
Secretary