

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 25, 2005**

PRESENT: Alcott; Amuso; Asarch; Ayers; Badway; Borsody; Barney; Barson; Berman; Borsody; Brady; Brett; Brown-Spitzmueller; Burke; Buzard; Cantwell; Campanella; Carlucci; Castellano; Chambers; Christian; Cioffi; Clarke; Cohen; Cullum; Cummings; Davidoff; Davis; Dietz; DiGiovanna; Dixon; Doerr; Dolin; Doyle, C.; Doyle, J.; Doyle, V.; Duffy; Edmunds; Egan; Eppler; Fernandez; Fish; Flaherty; Gacioch; Gerstman; Getnick; Giorgio; Goldblum; Gordon-Oliver; Gouz; Grays; Greenberg; Gross, J.; Gross, M.; Gutekunst; Haig; Harren; Hassett; Hayes; Hoffman, R.; Hoffman, S.; Hollyer; Horan; Jacobs, S.; Jacobs, R.; James; Kamins; Karson; Kelly; Kiernan; King; Kinum; Kossove; Kougasian; Krane; Kretser; Lamantia; Lashley; Lau-Kee; Lawrence; Leber; Levin; Lieberman; Lindenauer; Longo; Luskin; MacCrate; Madigan; Manning; Markhoff; Martin; Martinelli; Marwell; May; McAuliffe; McCarthy; McShea; Meislahn; Meyer; Mihalick; Miklitsch; Millman; Minkowitz; Mitzner; Moy; Murray; Myers; Nashak; Netter; Pellow; Peterson; Plevan; Potter; Priore; Quinlan; Reimer; Reitzfeld; Reynolds; Richardson; Richman; Rifkin; Rivera; Rosenthal; Rothstein; Safer; Schofield; Schrauer; Schultz; Seiden; Shaw; Sheehan; Sherwin; Shulman; Silkenat; Smoley; Smolowitz; Standard; Stenson; Sunshine, J.; Sunshine, N.; Tharp; Thompson; Tully; Tyler; Tyo; Vigdor; Wachtler; Wales; Walsh, J.; Walsh, O.; Walsh, R.; Walsh, S.; Weinberger; Welby; Williams; Wilson; Witmer; Wolford; Young; Zeltner

1. Introduction of new members and remarks of the Chair. The meeting commenced with a welcome to new members of the House. President-Elect Alcott discussed procedures for the meeting.
2. Approval of the minutes of the April 2, 2005 meeting. The minutes, as previously distributed, were approved unanimously by voice vote.
3. Installation of the President. President Buzard was formally installed. The oath of office was administered by the Hon. Judith S. Kaye, Chief Judge of the Court of Appeals, who delivered brief remarks, expressing appreciation to the Association for its ongoing support for the judiciary with respect to important issues, particularly in regard to efforts to secure a judicial salary increase.
4. Report of the President. President Buzard discussed initiatives for the year ahead in advancing the missions of the Association. He described multi-faceted initiatives to enhance public understanding of the legal process and the work of the bench and bar, including rapid response in providing the Association perspectives on law-related issues in the news, such as the recent court ruling on audio-visual coverage of trial court proceedings; expanded efforts to speak out for judicial independence and to debunk myths about the legal system; the development of People's Law School programs and materials across the state on

basic legal topics, rights and responsibilities; initiation, in cooperation with the New York State Publishers Association, of an Ask-a-Lawyer newspaper column; and establishment of a task force, chaired by Carolyn G. Nussbaum, to address issues involving cameras in the courtroom and in particular to enhance awareness of opportunities for broadcasters to cover appellate proceedings. In addition, he has requested a compilation of successful local bar projects as a resource to be shared among bar associations and has designated Jay G. Safer to coordinate meetings of Association leaders with members of the bar in various areas of the state to hear concerns and perspectives, and to discuss Association actions.

Mr. Buzard emphasized the need for the Association to respond to attacks on the judicial system to maintain public acceptance of court decisions as well as overall confidence in the legal system. Among other initiatives Mr. Buzard is establishing a task force on lawyer advertising, chaired by Bernice K. Leber, charged with presenting recommendations on rules, means of enforcement, and related measures within constraints imposed by the First Amendment. He has designated Kathryn Grant Madigan to work with sections in coordination of enhanced programs and services. In conjunction with the sections, the Association is looking into means to provide developments in various practice areas electronically to members. He has appointed Kenneth G. Standard to co-chair the Committee on Diversity and Leadership Development, joining Lorraine Power Tharp, in continuing the work to broaden diversity and opportunities for participation in Association activities and governance.

Action is being taken to increase the Association member services in law practice management, and he has appointed Francis H. Musselman to chair that committee. Sharon Stern Gerstman and Wallace L. Leinhardt have agreed to co-chair a new committee on electronic filing in the courts. The Special Committee on Unlawful Practice, newly chaired by Harvey Besunder, has been asked to prepare a report and recommendations on issues of unlawful practice of law, rules and means of enforcement to protect the public from the adverse effects of unauthorized practice.

Work is being pursued to facilitate access to legal services. Initiatives are being undertaken to encourage the involvement of in-house counsel and senior lawyers in pro bono service. He has asked for a report in November from the Special Committee on Funding for Civil Legal Services, which is exploring means for a sustained effort by the private bar, the state attorney general, and the state and federal judiciary to obtain funding for legal services programs through unclaimed funds or undistributed funds earmarked for charitable purposes. The Special Committee is co-chaired by C. Bruce Lawrence and Barbara D. Finkelstein. Mr. Buzard has asked the Special Committee on Issues Affecting Same-Sex Couples to undertake an initiative to increase awareness of the importance of legal counsel for same-sex couples on financial and other planning.

Mr. Buzard noted that to ensure adequate time for discussion of the substantive agenda items, he had submitted a written update concerning a number of issues with which the Association is engaged. A copy of that summary is attached to these minutes.

5. Report of the Treasurer. The Treasurer, James B. Ayers, reported that the Association had received an unqualified opinion from the Association auditors, UHY, LLP., in the report as of December 31, 2004. Total assets were \$26.0 million, up \$1.9 million from 2003, reflecting positive investment performance. Mr. Ayers noted that accrued pension costs decreased because of the freezing of the defined benefit plan. He advised that post-retirement medical benefit accrual has increased substantially and a subcommittee of the Finance Committee has been established to examine ways of reducing this exposure. Continuing his review of the audit, Mr. Ayers reported that revenue totaled \$21.8 million, up \$1.2 million from the previous year, due primarily to an increase in CLE income of \$913,000 and Section revenue, which was up \$216,000. Membership dues in this period were relatively flat. Total expenses were \$21.8 million, up \$826,000, reflecting higher costs in CLE because of the increased activity in this even year when more members of the bar are registered and report their mandatory CLE credits. Increases also were seen in salaries and fringe benefits from post-retirement benefit costs as noted above; in consultations associated with the freezing of the pension plan; and in paper stock prices. The operating surplus was \$168,000 for 2004, compared to a deficit of \$222,000 in 2003. Realized and unrealized gains on investments of \$904,000 and the gain from the curtailment of the defined benefit plan resulted in an increase in net assets of \$1.4 million.

Turning to the financial statements for 2005 through May 31, Mr. Ayers reported that revenue totaled \$15.7 million, up \$800,000 from 2004 at this point in the year, as a result of the 2005 dues increase approved by the House of Delegates in a number of membership categories; the increase in dues of several sections; and initiation of the Annual Meeting general registration fee. CLE revenue was lower than 2004, however, following the trend in odd-number years when, as discussed above, fewer attorneys need to report their MCLE credits. In a comparison to 2003, CLE revenue was up \$271,000 in the first four months of 2005, with increased attendance and the addition of advanced-level programs. Expenses equaled \$9.2 million, an increase of \$686,000 over last year, reflecting greater use of accrual procedures, increased CLE program and committee activity, and accruals. Mr. Ayers also analyzed the impact of the 2005 dues adjustment on membership numbers and revenue in each category, concluding that the dues increase did not affect overall membership renewals and resulted in an increase in dues revenue by more than \$400,000.

6. Presentation of the 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. The award was presented to Michael P. Leone of Rochester by Mr. Hassett and President Buzard for his extensive community service and his ability to build bridges between groups and people of differing viewpoints in the Rochester area and, through Rotary International, where he participated in National Immunization Days, administering polio vaccines in Nigeria. Mr. Leone gave acceptance remarks in appreciation of this honor and the satisfaction to be derived from performing community and public services.

7. Report of the Committee on Standards of Attorney Conduct. Steven C. Krane, Chair of the Committee on Standards of Attorney Conduct, discussed the Committee's examination of the American Bar Association Model Rules of Professional Conduct and its recommendation to adopt the Model Rules format in New York. In addition to format, the Committee reviewed the New York Code of Professional Responsibility and is recommending modification of certain provisions to address practice concerns and to incorporate other beneficial concepts. Mr. Krane then discussed plans for presentation of the Committee's report and recommendations to the House over a number meetings, with staggered comment periods on the different topics. He advised that a scheduling resolution for this purpose is being prepared for presentation to the House in November.

8. Report and recommendations of the New York County Lawyers' Association. Norman L. Reimer, President of the New York County Lawyers' Association, described the report and recommendations of that Association concerning resolutions proposed in the United States Senate and House of Representatives that contend that judicial decisions on the meaning of the U.S. Constitution should not be based in whole or part on foreign judgments, laws or pronouncements unless they inform an understanding of the original meaning of the Constitution. The report contended that the resolutions are based on the incorrect premise that federal courts have relied inappropriately on foreign judgments, noting that there was no such reliance in any of the Supreme Court cases cited in the resolutions. The report further concluded that the proposed resolutions, while non-binding, could have a chilling effect on judicial independence and undermine the separation of powers and, if enacted, could serve as a justification for impeachment attempts based on the content of the judges' opinions. The New York County Lawyers' Association's proposed resolution and related provisions of the report were reconfigured as that of the New York State Bar Association with the concurrence of NYCLA. It was announced that the Executive Committee had unanimously endorsed, for positive House action, the report and recommendations and resolution, as reconfigured. The House then adopted a motion, unanimously by voice vote, approving the report, recommendations and the resolutions, as follows:

RESOLVED, that the New York State Bar Association hereby approves the report and recommendations by the New York County Lawyers' Association with respect to Congressional resolutions affecting judicial independence and opposes the adoption of U.S. House Resolution 97 and Senate Resolution 92; and it is further

RESOLVED, that consistent with this approval, the report of the New York County Lawyers' Association shall be reconfigured as that of the New York State Bar Association; and it is further

RESOLVED, that the officers of the New York State Bar Association are hereby authorized to transmit the report to the appropriate Congressional and Governmental officials and to pursue such other and appropriate steps to effectuate the purposes of the report.

9. Report of The New York Bar Foundation. Robert L. Haig, President, and James B. Ayers and A. Thomas Levin, Directors, of The New York Bar Foundation described the restricted fund program of The Foundation. They noted opportunities available to law firms, corporations and others through The Foundation to establish and contribute to such funds dedicated to a particular interest of the firm or corporation. They cited examples of recently created funds by two law firms.

10. Report and recommendations of the Special Committee on Law Practice Continuity. David R. Pfalzgraf, Chair of the Special Committee on Law Practice Continuity, and Committee member Sarah Diane McShea presented the Committee's report and recommendations, which proposes a uniform court rule to designate a caretaker attorney on a temporary basis for management, sale or closure of a practice on behalf of an attorney who is unable to continue to practice law. The proposal is part of the Committee's work to ensure coverage of practices and to assist lawyers in planning for practice continuity. The rule would cover attorneys who: (1) have suffered unforeseen health problems or accidents or have suddenly died; (2) have been suspended, disbarred or have resigned from practice; or (3) are under investigation by a grievance committee and have abandoned their practices. The rule sets forth procedures for the designation of the caretaker attorney and envisions the involvement of local bar associations by recruiting volunteers for these roles and maintaining lists of attorneys for consideration by the court in appointing caretakers. Mr. Pfalzgraf noted that the Committee reviewed comments on the proposed rule from sections and committees and, as a result, made several modifications, including the addition of a definition of caretaker attorney, provisions to seek an accounting from the caretaker, procedures for discharge of the caretaker, and procedures for notice when the caretaker makes a fee application to the court. It was announced that the Executive Committee had unanimously endorsed, for positive House action, the report, recommendations and resolution, with the modification accepted by Mr. Pfalzgraf to refer to provisions for a stay in appeals. The proposed rule would be submitted for adoption by the four departments of the Appellate Division.

Upon discussion, a motion was adopted unanimously by voice vote approving the resolution, as follows:

WHEREAS, the Special Committee on Law Practice Continuity was appointed in April 2002 to address the practical, legal and ethical issues raised by the death, disability or disappearance of solo practitioners and small firm lawyers; and

WHEREAS, the Special Committee has issued a report proposing (1) a uniform court rule to govern the appointment of a caretaker attorney for the practice of an attorney who has died or otherwise become unable to practice law; (2) consideration of an amendment to the Civil Practice Law and Rules to provide a stay in court proceedings when a caretaker attorney has been appointed; and (3) designation of the Special Committee as a standing committee;

Now, therefore, it is

RESOLVED, that the New York State Bar Association approves the recommendation of the Special Committee with respect to the adoption of a uniform court rule to govern the appointment of caretaker attorneys; and it is

FURTHER RESOLVED, that the NYSBA Committee on Civil Practice Law and Rules is hereby designated to evaluate and draft appropriate statutory amendments to provide a stay in court proceedings or appeals when a caretaker attorney has been appointed; and it is

FURTHER RESOLVED, that the Special Committee on Law Practice Continuity is hereby established as a standing committee of the Association, and is charged with (1) continued educational efforts to assist solo practitioners and small firm attorneys to plan ahead for the possibility of sudden absence from practice and (2) to serve as a source for volunteer caretaker attorneys in those instances in which a local bar association is not available to provide volunteers; and it is

FURTHER RESOLVED, that the officers of the New York State Bar Association are hereby empowered to take such other and further steps as they may deem warranted to implement this resolution.

11. Report and recommendations of the Committee on Bylaws. Miriam M. Netter, Chair of the Committee on Bylaws, summarized the six amendments proposed by the Committee: elimination of archaic references to the former Executive Committee in Article IV; exemption of the Association's delegates to the ABA House from the consecutive term limit applicable to State Bar House members in Article V; revision of the deadline for filing reports by district members of the Nominating Committee in Article VIII; incorporation of reference to the Nominating Committee rules in Article VIII; revision of the Annual Meeting notice process in Article XII; and clarification of the amendment process in Article XVII. Forms were provided to the delegates to the House to subscribe to place the proposed amendments on the agenda for action at the Annual Meeting. Following circulation of the subscription forms, President-Elect Alcott informed the House that, pursuant to the Bylaws, a sufficient number of delegates had subscribed to each of the six proposals to permit their consideration at the Annual Meeting in January 2006.
12. Report of the Executive Committee Subcommittee to Review Association Publications. Kathryn Grant Madigan, Chair of the Executive Committee Subcommittee to Review Association Publications, summarized the findings of the Subcommittee's member survey concerning the content, format and delivery mechanism of the *New York State Bar Journal*, *New York State Law Digest*, and *State Bar News*. The research was intended to learn the types of information Association members want; their perception of the Association as a source of this information; preferred modes of delivery; their views of these three publications;

and reactions to initiatives that the Association could take to enhance them. The Subcommittee's recommendations, which have been approved unanimously by the Executive Committee, include increasing the substantive legal content in the *Journal* and *State Bar News*; making more content available on-line, as well as continuing to publish these periodicals in printed form; redesigning *State Bar News* to make it more visually appealing; experimenting with options such as printing summaries with the full text on-line, providing monthly e-mails with web links, and e-mailing time-sensitive legislative information; providing ethics opinion columns regularly in *State Bar News*; and deferring any consideration of combining the *Journal* and *State Bar News* for at least 18 months pending the redesign of *State Bar News* and opportunity for changes under way in content and design of the *Journal*. Ms. Madigan reported that these steps are being pursued and welcomed comments from members.

13. Report of the Electronic Communications Task Force. A presentation on the redesigned Association website was given by David P. Miranda, Chair of the Electronic Communications Task Force. He described the enhanced content and features of the site for members, public information resources available, and the changes in structure to facilitate ease in access to these elements. He noted that efforts are ongoing to add resources and he welcomed suggestions from members.
14. Administrative items. President-Elect Alcott 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 Animals and the Law
 2. Special Committee on Cyberspace Law
 3. Special Committee on Fiduciary Appointments
 4. Special Committee on Multi-Jurisdictional Practice
 5. Special Committee on Procedures for Judicial Discipline
 6. Special Committee on Student Loan Assistance in the Public Interest
 7. Task Force on Electronic Communications
 8. 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. The Special Committee on Judicial Independence, Special Committee on Multi-Disciplinary Practice, Special Committee on Public Trust and Confidence in the Legal System, Special Committee to Review the Annual Meeting, Special Committee on State Constitution and Governance, and Special Committee to Review Attorney Fee Regulation have been discharged with the concurrence of the respective chairs. Where appropriate, the work will be continued by existing committees and sections.

- c. Nominating Committee. The Fourth and Ninth judicial districts have submitted their representatives for the Nominating Committee as follows: In the Fourth District, Lori A. Cantwell and Peter D. FitzGerald, members, and the Hon. William H. Keniry, alternate; in the Ninth District, Frank M. Headley Jr., Catherine M. Miklitsch, and the Hon. Sam D. Walker, members, and Ira S. Goldenberg, alternate. The House adopted a motion unanimously by voice vote electing the representatives as submitted by the two districts.
- d. Annual report. The annual report of the Association was distributed to the delegates for their information.
15. Date and place of the next meeting. President-Elect Alcott announced that the next meeting of the House of Delegates would be held Saturday, November 5, 2005 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,



Kathryn Grant Madigan
Secretary