

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
JUNE 24, 2006  
THE OTESAGA, COOPERSTOWN, NEW YORK**

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PRESENT: Adler; Alcott; Ayers; Badway; Barney; Barreiro; Barson; Benedict; Berman; Branda; Brett; Buholtz; Burns; Buzard; Caffry; Caraballo; Carlucci; Casey; Castellano; Chambers; Chavez; Clarke; Cloonan; Coffey; Cohen; Cohn; Copps; Crespo; Cullum; Cummings; Dietz; DiGiovanna; DiLorenzo; Dolin; Doyle, J.; Doyle, V.; Duffy; Edmunds; Egan; England; Eppler; Farley; Fennell; Fernandez; Frank; Freedman; Fries; Gacioch; Gall; Gerstman; Getnick; Gingold; Golinski; Gouz; Greeley; Greenberg; Gross; Grossman; Haelen; Haig; Hassett; Hayes; Higgins; Horan; James; Julian; Kamins; Kelly, Michael; Kelly, Matthew; Kiernan; Kossove; Kougasian; Krane; Kretser; Lamantia; Lansner; Lau-Kee; Lawrence; Leber; Leo; Lesk; Levin; Levy; Lieberman; Lindenauer; Lomuscio; Longo; Lorman; Madigan; Makofsky; Margolin; Markhoff; Martin; Martinelli; McAuliffe; McCarthy, Jeremiah; McShea; Meislahn; Meyer; Mihalick; Miklitsch; Miller, M.; Miranda; Mitchell, R.; Moreland; Moy; Murray; Nashak; Nathanson; Netter; Nizin; O'Donnell; Ostertag; Paul; Pellow; Perino; Pfeifer; Porcellio; Priore; Privitera; Pruzansky; Reed; Reynolds; Richardson; Richman; Rifkin; Rivera; Robertson; Romero; Rosenthal; Rosner; Sandner; Sands; Santemma; Schofield; Schrauer; Schultz, J.; Schultz, K.; Seiden; Shaw; Sherwin; Shulman; Silkenat; Slavin; Smith Fisher; Smolowitz; Smyk; Spitzmueller; Standard; Stempel; Sunshine; Szochet; Terranova; Tishler; Tully; Vigdor; Wachtler; Walsh, J.; Walsh, O.; Williams, B.; Wilson; Wimpfheimer; Witmer; Young.

Ms. Madigan presided over the meeting as Chair of the House.

1. Call to order and introduction of new members. After calling the House to order, Ms. Madigan welcomed the new members of the House.
2. Approval of minutes of April 1, 2006, meeting. A motion was unanimously adopted accepting the minutes as previously distributed.
3. Report of the Treasurer. Mr. Ayers, Treasurer, reported that the Association had received an unqualified opinion from the Association auditors, UHY, LLP, for the 2005 audited annual report as of December 31, 2005. Total assets were \$28.5 million, up \$2.4 million from 2004, and total liabilities were \$15.5 million, an increase of \$2.6 million from 2004. Total revenue was \$21.8 million, up \$57,000 from 2004, and total expense was \$22.6 million, an increase of \$1 million from 2004, resulting in an operating deficit of \$800,000. With respect to the current year through May 31, 2006, he reported that total revenue is \$16.6 million, an increase of \$913,000 from the previous year, and total expense is \$9.9 million, an increase of \$715,000 over this point in 2005. Membership dues revenue had increased \$160,000 and CLE revenue had increased \$240,000 over this point in 2005. Mr. Ayers then provided a six-year comparison of CLE income and expense. The report was received with thanks.
4. Report and recommendations of Committee on Standards of Attorney Conduct. Steven C. Krane, chair of the committee, provided an introduction to the proposed Rules

scheduled for consideration at this meeting in accordance with the scheduling resolution adopted by the House in November 2005. He noted that based on the comments received, the committee recommended deferring consideration of proposed Rule 3.8 to the November 2006 meeting; a motion to amend the scheduling resolution to that effect was unanimously adopted. Marjorie E. Gross, subcommittee chair, and Roger C. Cramton, the committee's associate reporter, then presented the proposed Rules. Following discussion, motions were approved to adopt the following Rules: 1.1, 1.2, 1.3, 1.4, 3.1, 3.2, 3.5, 3.6, 3.7, 3.9, 8.1, 8.2, 8.3, and 8.4.

5. Report of Task Force on Lawyer Advertising. Bernice K. Leber, chair of the Task Force, presented an informational report on the proposed amendments to the Code of Professional Responsibility and Rules of the Chief Administrator announced by the Unified Court System on June 15 for 90-day comment. She reviewed the Association's recommendations to the Appellate Division and compared them to the proposals that were published for comment. Ms. Leber invited members of the House, sections, and committees to send comments to her by July 24, 2006 to assist the Task Force in preparing comments for submission in accordance with the Unified Court System's deadline. The report was received with thanks.
6. Report of Business Law Section. Samuel F. Abernethy, chair of the Section, and Lauren E. Breen, a member of the section's Corporation Law Committee, presented a report recommending a substantial revision of the New York Not-For-Profit Corporation Law to more closely mirror the Business Corporation Law and to compare favorably with other jurisdictions' statutes. They stated that although the report originally was scheduled for debate and vote at this meeting, it was being presented on an informational basis only at this meeting in order to permit additional time for interested groups to review and comment, and it would be scheduled for a vote at a future House meeting. The report was received with thanks.
7. Administrative items. Ms. Madigan reported on the following:
  - a. Reappointment of special committees. Special committees are appointed initially for a fixed period of time not to exceed three years and, when that time has elapsed, House approval is required to extend the term of such committees. A motion was adopted unanimously to extend the terms of the following special committees for an additional year:
    1. Special Committee on Animals and the Law
    2. Special Committee on Cyberspace Law
    3. Special Committee on Fiduciary Appointments
    4. Gender Equity Task Force
    5. Special Committee to Study Issues Affecting Same-Sex Couples
    6. Special Committee on Procedures for Judicial Discipline
    7. Special Committee to Review the Code of Judicial Conduct
    8. Special Committee on Student Loan Assistance for the Public Interest
    9. Task Force on Electronic Communications

10. Special Committee on Unlawful Practice of Law

- b. Discharge of special committees. The Special Committee on Multi-Jurisdictional Practice, Special Committee on Judicial Campaign Monitoring, Special Committee to Study Student Loans, and the Task Force on Terrorism Legislation have been discharged with the concurrence of their respective chairs. Where appropriate, the work will be continued by existing committees and sections.
  - c. Discharge of standing committees. Pursuant to the Bylaws, House approval is required for the discharge of standing committees. A motion was adopted unanimously by voice vote to approve the discharge of the Committee on Public Relations and the Committee on the Jury System, both of which had been recommended for discharge with the consent of their respective chairs.
  - d. Change of committee name. The Committee on Lawyer Alcoholism and Drug Abuse had recommended the change of its name to Lawyer Assistance Committee to better reflect its expanded mission dealing with stress, depression, and mental health issues. A motion was adopted unanimously by voice vote approving the name change.
  - e. Nominating Committee. The Fourth Judicial District had submitted its representatives for the 2006-2007 Nominating Committee: Peter V. Coffey and Cristine Cioffi, members; and James E. Cullum, alternate. A motion was adopted unanimously by voice vote electing the representatives as submitted by the district.
  - f. Annual report. The annual report of the Association was distributed to the delegates for their information.
8. Installation of President. Mr. Alcott was formally installed as President. The oath of office was administered by the Hon. Judith S. Kaye, Chief Judge of the State of New York, who delivered brief remarks expressing appreciation to the Association for its ongoing support of the court system.
9. Address to the Association. Mr. Alcott noted the challenges that face the legal profession, including those confronting lawyers just entering practice, and observed that in the face of these pressures there is the opportunity to strengthen the profession's core values: independence of the courts, independence of the bar, diversity in the profession, and access to justice. He further noted opportunities for reform in the following areas:
- Judicial selection. In the face of the court's decision in *Lopez Torres*, the Association will continue to champion merit selection as the more desirable method of selecting judges. In addition, the Association's Committee to Review Judicial Nominations will review the qualifications of candidates for the upcoming vacancies on the New York Court of Appeals.

- Mandatory retirement of judges. Mr. Alcott is appointing a Task Force on Mandatory Retirement, to be chaired by Hon. E. Leo Milonas.
  - Age discrimination. A Task Force on Age Discrimination in the Profession, to be chaired by Mark C. Zauderer, will study and address practices that adversely affect senior lawyers.
  - Emeritus lawyers. A Special Committee on Emeritus Lawyers, to be chaired by Past President Justin L. Vigdor, will review the needs of and opportunities for older lawyers to continue in service to the public and the profession.
10. Report of the President. Mr. Alcott updated the House on the following developments and initiatives:
- a. Together with Immediate Past President A. Vincent Buzard and Executive Director Patricia K. Bucklin, he met on April 20, 2006 with Chief Administrative Judge Jonathan Lippman and Deputy Chief Judge Ann Pfau to discuss a number of issues, including the Association's legislative priorities and OCA legislative priorities that the State Bar supports; Association reports and recommendations that have been submitted to OCA, including Standards of Attorney Conduct, Lawyer Advertising, Unlawful Practice of Law, Mandated Representation, E-Filing and Law Practice Continuity; OCA reports on which the Association will comment, including the reports of the Matrimonial Commission and Solo/Small Firms Commission. He noted that the Association has an open, frank and constructive relationship with OCA with continuous access beyond quarterly meetings.
  - b. During the past several weeks, he had devoted considerable attention to the appointment of committee chairs and members for 2006-2007. Following a practice instituted by Mr. Buzard last year, he had invited members to submit expressions of interest in committee service via *State Bar News* and e-mail; 280 members responded, and he had attempted to accommodate member preferences whenever possible. In all, he had appointed 69 chairs and 1650 members, and engaged in extensive communications with chairs about their agendas.
  - c. In recent weeks, he had attended the annual meetings of the Brooklyn, Queens, Bronx, Monroe, Erie and Suffolk county bar associations, as well as the New York County Lawyers' Association and the New York City Bar; the Federated Bars of the Fourth Judicial District; the Commercial and Federal Litigation Section's Leadership Conference and Spring Meeting; Executive Committee meetings of the Judicial Section and the International Law and Practice Section; and the Conference of Bar Leaders.
  - d. The annual Section Leaders Conference was held in Manhattan on May 11 and was attended by 65 present, former and future section chairs, with the purpose of training section leaders, informing them of Association policies and practices,

allowing them to share experiences, and allowing Association leadership to address their concerns. The conference was highly successful, and he received very good feedback regarding the conference.

- e. With respect to the State Legislature, he reported on the following advances in pursuing the Association's legislative priorities:
- Family Health Care Decisions Act – The bill passed in the Assembly, with amendments including a priority list of persons who would be authorized to make decisions for incapacitated patients (as suggested by the Trusts and Estates Law Section). The Association is pursuing efforts in the Senate with respect to the bill.
  - No-fault divorce legislation – Given the variety of groups and positions being lobbied on this topic, it has proven difficult to secure passage of a true “no-fault” bill. However, there is interest in the Legislature to pass a bill to reduce the waiting period for a conversion divorce from one year to three months. The Association has issued a memorandum in support of the bill as a step toward achieving true no-fault, and is working with other groups to see if common ground can be found to aid the legislative process.
  - Videotape recording of custodial interrogations – The Legislature approved, and then overrode the Governor's veto of, funding for a pilot project in which two county District Attorneys would voluntarily coordinate with local law enforcement agencies. Mr. Alcott has appointed a special committee chaired by Vincent E. Doyle, III to help select the participating District Attorneys and establish protocols and deadlines to facilitate implementation of the pilot program.
  - Judicial salary increases – Funds were included in the Judiciary budget for salary increases; however, further legislation is necessary to appropriate the money for the increase. This will likely occur in a special session of the Legislature held after the fall elections. The Association will continue efforts in support of salary increases.
  - Equal legal rights for same-sex couples – The Legislature is waiting for a ruling from the Court of Appeals before considering legislative action. The cases were argued at the end of May; once the court issues its decision, the Association will continue to pursue the enactment of equal rights for same-sex couples consistent with the position the House has taken.
- f. The 2006-2007 Judiciary budget of \$2.9 billion was left intact by the Legislature during the budget process and was not vetoed by the Governor. The Association testified in support of the budget.

- g. The New York Bar Foundation is the owner of the Bar Center in Albany, and the Association rents the center from the Foundation. The current lease expires at the end of 2006, and he has appointed Joshua Stein, the immediate past chair of the Real Property Law Section, to act as special counsel to the Association in connection with the lease negotiations. In addition, he has appointed a Lease Negotiation Working Group in connection with this process. He noted that since both Treasurer James W. Ayers and Finance Committee Chair Frank M. Headley, Jr. are members of the Foundation Board, they will not participate in the negotiations.
- h. With respect to the American Bar Association, he had attended and participated in the Bar Leaders Institute in Chicago in March, UN Day at the United Nations in Manhattan in April, and meetings with the leaders of the Ministry of Justice in China touring New York under ABA auspices. In addition, Mr. Buzard represented the Association at ABA Day in Washington in May. The Association will be represented at the ABA Annual Meeting in Honolulu in August.
- i. On June 1, 2006, the Association and his firm co-hosted a reception in the Supreme Court Rotunda at 60 Centre Street in Manhattan to mark the commencement of his term as President. It was attended by over 175 members of the judiciary and Association members.
- j. The Legal Assistance Partnership Conference was held in Albany June 5-7. Sponsored by the Committee on Legal Aid and the Department of Pro Bono Affairs, this biennial event brought together more than 400 legal services lawyers, funders, agencies, volunteers and other advocates from across the state for 44 CLE-accredited workshops, panels and lectures.
- k. During May and June, the Elder Law Section hosted Decision Making Day programs at over 120 sites statewide to provide citizens with the information and tools necessary to make informed decisions about their affairs.
- l. He is continuing the pictorial House of Delegates directory instituted last year; members will be contacted to provide or update information. In addition, the existing Leadership Directory will be upgraded to a similar format.
- m. In accordance with the Bylaws amendments adopted in 2004, he had appointed the following members to the House of Delegates to promote racial and ethnic diversity: Geraldine Reed Brown, Dolly Caraballo, Tracee E. Davis, and Bryan R. Williams, First Department; Nelson A. Castillo, Manuel A. Romero, and Leroy Wilson, Jr., Second Department; Hermes Fernandez, John Eric Higgins, and Lillian M. Moy, Third Department; and Ramon E. Rivera and Oliver C. Young, Fourth Department.

11. Report and recommendations of Special Committee on Court Structure and Judicial Selection. G. Robert Witmer, Jr., chair of the Special Committee, presented a report regarding the judicial nominating convention process, commenting upon the *Lopez Torres* decision and the final report of the Chief Judge's Commission to Promote Public Confidence in Judicial Elections (Feerick Report), which recommended changes in the operation of judicial nominating conventions. He noted one area of disagreement with the Feerick Report: rather than permit candidates to announce their candidacies up to the date of the convention, the Special Committee recommended that announcements be required no less than 60 days in advance of the convention. After a motion to approve the report was made, a motion to amend was made to disapprove that portion of the report recommending the 60-day cutoff for announcements of candidacies; the motion failed on voice vote. The main motion was then approved on voice vote.
12. Report of Task Force on Attorney-Client Privilege. Lauren J. Wachtler, a member of the Task Force (reporting on behalf of Task Force chair Stephen D. Hoffman), presented a report proposed for submission to the American Bar Association House of Delegates on governmental interference with the right to counsel in corporate investigations. After discussion, the following resolution was adopted on voice vote:

RESOLVED, that prosecutors and other enforcement authorities should not directly or indirectly pressure, request or encourage an entity to refuse to advance, reimburse or indemnify legal fees and expenses of a current or former director, officer, employee or agent of the entity; and

FURTHER RESOLVED, that prosecutors and other enforcement authorities should not directly or indirectly pressure, request or encourage an entity to categorically refuse to provide documents and other information to counsel for a current or former director, officer, employee or agent of the entity; and

FURTHER RESOLVED, that prosecutors and other enforcement authorities should not directly or indirectly pressure, request or encourage an entity to discipline, sanction or terminate any current or former director, officer, employee or agent of the entity because of a decision to exercise his or her Fifth Amendment privilege against self-incrimination.

Hon. Rachel Kretser abstained from participation in the discussion and vote.

13. Report of Special Committee on Collateral Consequences of Criminal Proceedings. Peter J.W. Sherwin, chair of the Special Committee, made an informational presentation of the committee's report, which addresses consequences of criminal convictions – i.e., consequences that are indirect to the actual sentence imposed upon a conviction – in the areas of education, employment, benefits, finance, housing, family, civic participation, and immigration, and previewed a number of the Special Committee's recommendations. After his presentation, the following scheduling resolution to govern the House's future consideration of the report was adopted unanimously by voice vote:

RESOLVED, that the House of Delegates hereby adopts the following procedures to govern consideration at the November 4, 2006 meeting of the House, and any subsequent meetings as may be necessary, of the report and recommendations of the Special Committee on Collateral Consequences of Criminal Convictions:

1. The report and recommendations of the Special Committee will be circulated to members of the House, sections and committees, county and local bar associations, and other interested parties immediately following this meeting.
2. **Comments on report and recommendations:** Any comments on the Special Committee's report or particular recommendations contained therein must be submitted in writing to the Secretary of the Association at the Bar Center by September 15, 2006; otherwise they shall not be considered. All comments complying with this procedure shall be distributed to the members of the House in advance of the November 4, 2006 meeting.
3. **Consideration of the report and recommendations at the November 4, 2006 meeting and any subsequent meetings:** The report and recommendations will be scheduled for formal debate and vote at the November 4, 2006 meeting and considered in the following manner:
  - a. The Special Committee shall be given an opportunity to present its report and recommendations.
  - b. All those wishing to speak with regard to the report and recommendations may do so only once for no more than three minutes.
  - c. The Special Committee may respond to questions and comments as appropriate.
  - d. Procedural motions shall be considered out of order until debate on substantive issues is concluded.
  - e. A vote on the report and recommendations shall be taken at the conclusion of the debate.
14. Presentation of Root-Stimson Award. Paul Michael Hassett, chair of the Committee on Public Relations, reported that the Root-Stimson Award, created in 1974 and sponsored by the committee, honors members of the profession for outstanding community service. President Alcott and Mr. Hassett presented the award to Arnold B. Gardner of Buffalo. A member of Kavinoky Cook LLP, he was honored as a champion of public education, on the local level as a member and president of the Buffalo Board of Education, and on the state level as chairman of the State Education Department's Task Force on Teacher



Education and Licensing, a Trustee of the State University of New York, and a member of the State Board of Regents.

15. Report of The New York Bar Foundation. John R. Horan, President of the Foundation, presented an informational report on recent developments with respect to the Foundation, Finally, he announced the Foundation's new Website: [www.tnybf.org](http://www.tnybf.org). The report was received with thanks.
16. Date and place of next meeting. Ms. Madigan announced that the next meeting of the House of Delegates would take place on Saturday, November 4, 2006 at the Bar Center in Albany.
17. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Michael E. Getnick  
Secretary