

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 3, 2001**

PRESENT: Alcott; Asarch; Aydelott; Ayers; Bailey; T. Baker; Batra; Bauman; Beehm; Bing; Bohner; Bonner; Bracken; Buckley; Buzard; Castellano; Chambers; Cioffi; Clements; Clifford; Cloonan; Coffey; Cometa; Cuyler; Darche; E. Davis; Denton; Dietz; Doern; Doerr; Dorsey; Doyaga; Doyle; J. Dwyer; M. Dwyer; Edmunds; Eisman; Eppers; Eppler; Evanko; Evans; Farrell; Fedorchak; Fedrizzi; Fennell; Field; Filiberto; FitzGerald; Flink; Franchina; H. Freedman; M. Freedman; Friedberg; Friedman; Gacioch; Geoghegan; Gerstman; Getnick; Gingold; Glover; Gold; Goldenberg; Goldstein; Golinski; Graber; Gross; Grossman; Gutleber; Haig; Harper; Harren; Hassett; Headley; Hesterberg; Hirsch; Hoffman; Hoye; Jaffe; Kamins; Kelly; Kinery; Kilsch; D. Klein; M. Klein; Kougasian; Krane; Landy; Leber; Leistensnider; Levin; P. Levy; Lewis; Lieberman; Lindenauer; Longo; Mandell; Maney; Manley; Matthews; Meng; M. Miller; S. Miller; Millon; Minkowitz; Miranda; Moore; Nashak; Netter; Nizin; O'Leary; O'Mara; Ostertag; Palmer; Paul; Perlman; Pfalzgraf; Pfeifer; Pierro; Priore; Purcell; Quattlebaum; Reich; Reizes; Reynolds; Richardson; Rifkin; Rizzo; Roach; Robertson; Rosenstein; Rosner; Rothkopf; Russell; Safer; Samel; Schumacher; Seiden; Silkenat; Sloan; Smoley; Souther; Spellman; Sperendi; Sunshine; Terranova; Tharp; Tishler; Treece; Tyler; Uebelhoer; Vigdor; Walker; Wallace; O. Walsh; Williams; Witmer.

Mr. Krane led the members of the House of Delegates in the singing of "God Bless America" in reflection on the World Trade Center attack.

1. Approval of minutes of June 23, 2001 meeting. The minutes of the June 23, 2001 meeting were deemed accepted as distributed previously.
2. Report of Treasurer. Mr. Headley summarized the Treasurer's report covering the period January 1 to September 30, 2001, and reviewed the major elements of the income and expense budgets as set forth on the financial statements circulated to the House of Delegates in advance of the meeting. Income received through September 30, 2001 totaled \$17,020,676. Compared to the 2000 income, increases were reported in CLE books, and Association and Section dues revenue, while declines were experienced in income from CLE programs, reflecting increased competition in light of the development of mandatory continuing legal education. The fall semester of courses is expected to have a favorable impact. CLE is conducting a study and strategic planning to aid in program development and ensure that the service remains strong and competitive. The Finance Committee also regularly monitors CLE revenue and expenses with the Department. Income from investments also decreased, impacted by the downturn in the market. The investment portfolio is being

reviewed by the Finance Committee and its Investment Subcommittee. Expenses totaled \$13,826,876 in this period. Higher expenditures were realized this year, as planned in the budget, for membership and marketing for member needs research and development and for redesign to enhance the capabilities of the Association website. Mr. Headley stated that the Association finances are carefully managed and monitored. The report was received with thanks.

3. Report and recommendations of Finance Committee regarding affordable dues program and proposed 2002 income and expense budget.

a. Proposal on affordable dues program. Mr. Headley reported that the Finance Committee has recommended extension of the affordable dues program for an additional two years. First approved by the House of Delegates in 1989, the program is intended to enable members experiencing temporary financial hardship to remain Association members by providing a waiver of dues ranging from 25-50 percent, depending on their circumstances. Participation is limited to two consecutive membership years, absent special situations. A report on use of the program was provided. A motion was adopted unanimously approving the continuation of the affordable dues program through 2003.

b. Proposed 2002 budget. Mr. Headley reviewed the major income and expense components of the proposed 2002 budget as recommended by the Finance Committee. Income of \$20,381,917 and expenses of \$20,012,708 are projected, providing a surplus of \$254,836. Dues levels and CLE prices are retained at their current levels. Mr. Headley advised that while a dramatic increase in CLE program revenues occurred when MCLE was instituted, income has leveled off, a situation experienced in other states when MCLE was introduced. In recognition, the 2002 budget provides a decrease in CLE revenue and in expenses. He discussed the steps being taken for development of the CLE program going forward, as described above. Increases in expenses are budgeted for further membership and marketing initiatives in recruitment, retention and review of member needs, and for additional Section activities. Increases are projected in Association membership and Section income. After discussion, a motion was adopted unanimously approving the budget as submitted by the Finance Committee.

4. Presentation of the Justice Award by Committee on Justice and Community and Committee on Mass Disaster Response. Mr. Krane, together with Mr. Hesterberg, as Chair of the Committee on Justice and the Community, and David H. Tennant, Chair of the Committee on Mass Disaster Response, presented the Justice Award posthumously in honor of Port Authority Inspector Anthony Infante who died assisting others in the World Trade Center attack. Inspector Infante had served as an advisor in the development and work of the Committee on Mass Disaster Response. He was cited for his bravery, service to

the community and nation, and the assistance and guidance that he gave to the Association. Accepting the award on behalf of the Infante family was the Inspector's brother, Fred.

5. Memorial to Archibald R. Murray. Ms. Lindenauer and the Hon. Richard J. Bartlett presented a memorial to Archibald R. Murray, past President of the Association and former member of the Board of Directors of The New York Bar Foundation. The memorial honored Mr. Murray's service to the profession and Association, extensive public service, dedication to ensuring access to justice, and work to foster diversity and opportunity in the profession. Mr. Murray's wife and former Delegate to the House, Kay C. Murray, expressed appreciation for the memorial and letters and reminiscences. A moment of silence was observed out of respect for Mr. Murray's memory. A copy of the memorial is attached to these minutes.

6. Report of Special Committee on Unlawful Practice. Mark J. Solomon, Chair of the Special Committee on Unlawful Practice, presented an informational report and update on the Committee's development of recommendations to clarify provisions of the Judiciary Law concerning the practice of law. The report is expected to be considered at the January 2002 Executive Committee and House meetings. Mr. Solomon said that the Committee is receiving comments from Sections and Committees on its proposed amendments to Section 478 providing a definition of the practice of law, prohibitions of unauthorized practice and exceptions to the prohibitions and related amendments to Section 484 prohibiting a nonlawyer from using the title of attorney. He said that, in its study, the Committee reviewed provisions and experience of other jurisdictions. He noted that pro se litigants are not addressed in this report as it focuses on representation of others. In discussion by the Delegates, questions were raised relating to the application of the proposed provisions, including work performed by paralegals and other nonlawyers, and the assistance given by court personnel in providing information and helping individuals to complete forms. The report was received with thanks.

7. Report and recommendations of Committee on Attorney Professionalism. John Stuart Smith, Chair of the Committee on Attorney Professionalism, summarized the Committee's review and recommendations of court rules proposed by the Administrative Board of the Courts to require letters of engagement for matters expected to involve fees of \$1,000 or more. Mr. Smith advised that the Committee favored the proposal but recommended certain modifications for practical use, including clarification that the requirement would not apply to ongoing attorney-client relationships, that the scope of representation set out in the letter would be as anticipated, and that the letter would be provided at the commencement of the representation or as soon as practicable to recognize situations that do not permit immediate presentation. He said that upon review, the Committee favored the proposed \$1,000 threshold, rather than calling for a higher level.

Ms. Tharp advised that, upon review of the report and recommendations on November 2, the Executive Committee adopted a motion recommending to the House (1) opposition to the proposed letters of engagement requirement at any threshold and (2) reaffirmation of the Association position that advises use of letters of engagement as desirable practice under EC-2-19 of the Code.

Delegates shared their perspectives and those of other Committees and Sections. Upon discussion, a motion was adopted approving the following substitute resolution, based on the position of the Executive Committee:

RESOLVED, that the New York State Bar Association endorses and reaffirms its position recommending the use of written engagement letters, as stated in EC 2-19, as a best practice; and it is further

RESOLVED, that the NYSBA House of Delegates recommends that the rule on letters of engagement proposed by the Administrative Board not be adopted; and it is further

RESOLVED, that the House of Delegates expresses gratitude to the Committee on Attorney Professionalism and commends the Committee for its extensive and insightful study of this issue.

Mr. Krane said that he would communicate this position to court officials.

8. Report and recommendations of Special Committee on Public Trust and Confidence in the Legal System. In her capacity as Chair of the Special Committee on Public Trust and Confidence in the Legal System, Ms. Lieberman presented an informational report on the Committee's recommendation to allow limited public access, with conditions precedent, at an earlier point in attorney disciplinary proceedings. The proposal would amend Judiciary Law Sec. 90(10) to open the proceedings to the public once a *prima facie* case has been established, provided that the Appellate Divisions have uniform provisions for the establishment of a *prima facie* case and public access and an Appellate Division Justice makes the determination both as to *prima facie* case and public access. The disciplinary proceedings of 37 states are opened at or prior to the point of a determination to bring formal charges. Observing that secrecy engenders distrust, Ms. Lieberman said that the proposal is intended to promote public trust and demonstrate that the legal profession is not a closed group concerned with self-protection but, instead, is open with integrity and accountability. She reviewed the questions and answers on the issues, as contained in the Committee report, and advised that the Committee will circulate the proposal to Sections, relevant Committees and members of the House for comment prior to the matter's consideration at the January 25, 2002 meeting of the House. The report was received with thanks.

9. Report of President. Mr. Krane reported on the following matters:
- a. The Association undertook multi-faceted efforts to assist members of the public and profession affected by the World Trade Center attack. The Association coordinated with The Association of the Bar of the City of New York, New York County Lawyers' Association, other bar associations, the courts, government agencies and relief organizations. NYSBA efforts included a special toll-free telephone number, e-mail address and webpage to enable those impacted to identify their needs and receive information, and to provide opportunity for attorneys to volunteer and indicate their skills. In addition, Sections and Committees drafted frequently asked questions and answers for posting on the webpage and aided in identifying and obtaining modifications in laws and procedures to address circumstances of the disaster. These included development, through the Trusts and Estates Law Section, of an expedited death certificate process. The Association provided assistance to lawyers in rebuilding their offices and practices, organizing donations of equipment and collaborating with vendors and law office consultants who volunteered their services.
 - b. Standards and Guidelines for the newly established New York State Attorney-Client Fee Dispute Resolution Program have been prepared by the Program Board of Governors and approved by the Presiding Justices of the Appellate Division. The provisions, issued in October 2001, implement Part 137 of the Rules of the Chief Administrator and set out the approval process for and responsibilities of local programs, qualifications and training of neutrals, and related procedures.
 - c. This summer, the Administrative Board of the Courts pursued steps to guide judicial candidates and promote appropriate campaign conduct, calling for candidates to comply with relevant provisions in the Lawyer's Code of Professional Responsibility and the Code of Judicial Conduct and seeking local bar involvement in issuing educational information and advisory opinions and monitoring campaign conduct complaints. In October, the Association hosted a statewide planning forum for court and local bar association representatives concerning the development of such programs. Mr. Krane also is forming a Special Committee on Judicial Campaign Conduct that will publish guidelines and a model plan and otherwise assist local bar associations.
 - d. He wrote to the Governor to urge adequate funding for civil and criminal legal assistance for low-income persons;
 - e. He reported that work is under way by several new Committees:
 1. Association Governance, chaired by Dennis R. Baldwin;

2. Legislative Advocacy, chaired by A. Vincent Buzard;
3. Student Loan Assistance for the Public Interest, chaired by Henry M. Greenberg, which is developing a plan and financing method to aid students who are willing to serve a specified time in public service or those who are pursuing a career in public interest law;
4. Multijurisdictional Practice, chaired by Klaus Eppler, which is examining issues involved in practice in multiple states and will review the report expected to be issued by the American Bar Association next year;
5. Commemorate the Association's 125th Anniversary, chaired by John Hanna Jr., which is developing a book, with American Heritage, on the history of the Association and achievements of New York lawyers in addressing societal issues, and is planning an event in the spring to commemorate the work of the bar and the Association; the Association logo has been redesigned to mark the 125th anniversary;
6. Fiduciary Appointments, chaired by Joshua M. Pruzansky, which will review the reports of the Special Inspector General and the Commission on Fiduciary Appointments that are expected to be released shortly;
7. Judicial Campaign Conduct, chaired by Michael A. Klein, described above.

f. The federal courthouse at Foley Square was renamed in honor of the late Supreme Court Justice Thurgood Marshall. President Bush signed the measure into law on August 20, 2001. The Committee on Civil Rights proposed the renaming, which was endorsed by the Executive Committee as part of the Association legislative agenda.

g. The Federal Trade Commission responded to his letter, which, consistent with Executive Committee action in June 2001, called on the FTC to exempt lawyers from privacy notice requirements for financial service providers. The letter pointed out that lawyers are currently subject to greater client confidence protections. The FTC is considering a solution to the issues raised. The NYSBA and the ABA are continuing communication with the Commission. With respect to the question of the public's awareness of the lawyer conduct provisions, Mr. Krane observed that New York lawyers, under court rule, provide a Statement of Client's Rights.

h. He advised that the Association position in pursuit of campaign finance reform, approved by the House at the June 2001 meeting, was communicated to lawmakers in Washington. The legislation, however, did not prevail in Congress.

i. The Legal Services Corporation responded favorably to his letter requesting that the LSC defer pursuit of reconfiguration of legal service areas, that had been intended in its state planning review, because of the impact of the World Trade Center disaster.

j. The President's Committee on Access to Justice held a two-day retreat at the Bar Center in October 2001 to discuss the status of legal services to low-income New Yorkers, the availability of resources, and initiatives to promote the access to legal services. The Committee also inaugurated a new version of the Association logo to promote attorney volunteer service, "Honor America - Do the Public Good - Volunteer for Pro Bono."

k. The Nominating Committee nominated for election at the January 2002 meetings Mr. Levin as President-Elect, Kenneth G. Standard as Treasurer, and A. Vincent Buzard as Secretary. He indicated that Ms. Leber, Ms. Lindenauer, and Messrs. Kelly and Kilsch had been renominated as Members-at-Large and that David R. Pfalzgraf had been newly nominated to that position. Kathryn Grant Madigan was newly nominated as Vice President for the Sixth District and the current Vice Presidents in the other Districts had been renominated. He congratulated those candidates and expressed appreciation to the Nominating Committee.

l. He thanked Sections and Committees for their work in undertaking and presenting reports and recommendations on issues of concern and encouraged the continued development of studies and proposals for consideration by the Executive Committee and House.

10. Report and recommendation of Elder Law Section. Mr. Pierro, as Chair of the Elder Law Section, and Joan L. Robert, Secretary of the Section, summarized the report and recommendations contained in the resolution of the Elder Law Section to enhance the effectiveness of the guardianship appointment process and related procedures under Article 81 of the Mental Hygiene Law. Ms. Tharp reported that the Executive Committee endorsed the report and resolution, with several modifications - the Section proposal to designate a statewide administrative judge to coordinate Article 81 proceedings was deleted; the proposal for designation of a principal law secretary in each county, to serve as a resource in Article 81 proceedings, was modified to call for a court attorney in each county or judicial district, in recognition that less-populated counties may not have sufficient Article 81 caseloads; and the proposed establishment of

uniform guidelines for determining compensation of court-appointed fiduciaries was modified to clarify that the guidelines are to be applied by the judge in his or her discretion.

In discussion by members of the House, the Section accepted a recommendation to amend the resolution's proposal for mandatory annual training of judges and clerks to instead call for mandatory training prior to handling their initial Article 81 proceedings, with further periodic training to be provided as deemed appropriate. Also accepted by the Section was the addition of a provision in the resolution urging expansion, through certified training courses, of the numbers and diversity of qualified fiduciary appointments. A motion to delete the Section proposal for a statewide administrative judge was adopted, consistent with the Executive Committee position. A motion was then adopted approving the following resolution:

WHEREAS, Article 81 of the Mental Hygiene Law was enacted to require courts to expeditiously consider the needs and rights of incapacitated persons;

WHEREAS, legal issues raised in Article 81 proceedings may be complex and require knowledge of diverse areas of the law;

WHEREAS, Chief Judge Judith S. Kaye created a Statewide Commission on Fiduciary Appointments charged with reviewing court appointments in Article 81 proceedings, among others;

WHEREAS, recent changes to the court system have resulted in an increased number of judges hearing Article 81 cases in many counties; and

WHEREAS, these changes have resulted in:

- (1) different procedures being followed both intra- and inter-county;
- (2) disregard of statutory procedural requirements of Article 81;
- (3) the appointment of judges who are not familiar with the mandates of Article 81;
- (4) the appointment of fiduciaries who are not experienced with Article 81 proceedings and the substantive legal issues involved; and
- (5) delay in the resolution of cases.

NOW, THEREFORE, in an effort to improve the Article 81 process for incapacitated persons, IT IS HEREBY RESOLVED that the New York State Bar Association supports:

- (1) the mandatory training of judges and clerks handling Article 81 cases;
- (2) the appointment of fiduciaries competent to handle the complexities of the case; and
- (3) increased communication between the private bar and the guardianship parts in each county.

In order to implement the above resolution, the New York State Bar Association supports the following:

- (1) the designation of a Court Attorney in each county or judicial district to serve as a resource in Article 81 proceedings;
- (2) the establishment of a dedicated Clerk's Part in each county with sufficient Article 81 caseload;
- (3) mandatory training for judges prior to hearing their initial Article 81 proceeding, concerning the procedural and substantive areas of the statute, with further periodic training as deemed appropriate;
- (4) mandatory training for clerks prior to handling their initial Article 81 proceeding, concerning the procedural areas of the statute, with further periodic training as deemed appropriate;
- (5) multiple appointments to experienced attorneys willing and able to handle complex cases;
- (6) appointment of attorneys with a background of public service so long as the appointment is made based upon the merit of the attorney;
- (7) the establishment of a NYSBA Guardianship Mentorship Program to solicit participation from attorneys experienced in Article 81 proceedings to assist an appointee on his/her first Article 81 cases so that the appointing judge may assign an experienced volunteer for each inexperienced attorney appointed to a first case or novel issue;
- (8) revision of the fiduciary appointment list so that attorneys experienced in various substantive areas of Article 81 proceedings may present credentials to the court and advise of their availability and willingness to serve in complex cases;
- (9) increased communication between the private bar and administrative judge and guardianship parts so that the bar may comment on proposed changes within the guardianship parts;
- (10) the establishment of uniform guidelines to be applied by the judge in his or her discretion in determining compensation of court-appointed fiduciaries in Article 81 proceedings;

- (11) mandatory filing of UCS 830 by all court-appointed fiduciaries in Article 81 proceedings, regardless of fees received, if any; and
- (12) expanding through certified training courses the numbers and diversity of qualified fiduciary appointments.

11. Report of Special Committee on the Law Governing Firm Structure and Operation. Mr. Krane, in his capacity as Vice-Chair of the Special Committee on the Law Governing Firm Structure and Operation, provided an update on developments in addressing issues of multidisciplinary practice in the Lawyer's Code of Professional Responsibility and seeking similar provisions in the American Bar Association Model Rules of Professional Conduct. He reported that the Appellate Divisions adopted the proposed Disciplinary Rules of the Code, with some minor modification, in July 2001. The effective date of these provisions was November 1, 2001. The Committee made conforming amendments to the related Ethical Considerations. Consistent with previous House direction, on July 30, 2001, the Executive Committee authorized a submission to the ABA to seek similar changes in the Model Rules. With the provisions adopted by the Appellate Divisions now in hand, on November 2, the Executive Committee unanimously adopted a motion approving filing of the proposed Model Rules amendments, as modified. The issue is anticipated to be discussed at the ABA Mid-Year Meeting in February 2002.

Mr. Krane further advised that the ABA Ethics 2000 report and recommendations would likely be issued for discussion, comment and consideration in 2002.

12. Report of Chair. Ms. Tharp presented the following matters for House consideration

- a. A proposal to designate the Special Committee on Volunteer Lawyers as a standing committee;
- b. A proposal to change the name of the Task Force to Consider Tort Reform Proposals to the Committee on Tort System and designate it as a standing committee.

By separate motions, both measures were approved unanimously.

13. Date and place of next meeting. Mr. Krane announced that the next meeting of the House of Delegates would be held on Friday, January 25, 2002 at the Marriott Marquis in New York City.

14. Adjournment. The meeting was adjourned in memory of colleagues affected by the World Trade Center disaster.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. T. Levin', with a stylized flourish at the end.

A. Thomas Levin
Secretary

MEMORIAL
to
ARCHIBALD R. MURRAY

Presented by
Susan B. Lindenauer
New York State Bar Association
at the
House of Delegates Meeting
November 3, 2001
Albany, New York

ARCHIBALD R. MURRAY

1933-2001

I am deeply honored to participate in this tribute to Archibald R. Murray. As most of you know, I am a member-at-large of the New York State Bar Association's Executive Committee. For more than thirty years my professional affiliation has been with The Legal Aid Society in New York City. For eighteen of those years, from 1977 to 1994, I served as Arch's counsel. When Arch became Chair of the Society late in 1994, I continued to work closely with him on a number of outreach and funding issues until he retired in 1998.

He was my boss, my mentor, my colleague and my friend. He gave me the opportunity to grow professionally, he encouraged my bar work and my involvement in the community. And I was but one of the very many whose professional growth he encouraged and supported. Whether at The Legal Aid Society; in his bar work with the New York State Bar Association or other bar associations, including The Association of the Bar of the City of New York, the New York County Lawyers' Association, the Metropolitan Black Bar Association and the American Bar Association; in his service to his alma mater, Fordham Law School; in his work on the boards of Fordham University and

Columbia University; in his service to his church, St. Philip's, and to the Episcopal Diocese of New York; or in his many other community and professional activities he always took the time to counsel others and to mentor.

Mayors of New York City, Governors of New York State, Chief Judges of this State, members of Congress and of the State Legislature as well as various Administrations in Washington DC sought his wise advice and appointed him to a variety of commissions, councils and task forces whose missions were to improve some facet of the justice system or the effectiveness of some aspect of government.

His commitment to improving access to justice for the poor was evident in his leadership of The Legal Aid Society. The Society greatly expanded in its size and services and achieved national recognition for high quality and innovative representation of poor clients while Arch was at the helm. His commitment to increased diversity at the Society was equally evident.

When Arch became President of the New York State Bar Association in June of 1993, he stated that his goals as President were to enhance the inclusiveness of the Association and to expand active participation in the Association by minority members of the profession and by lawyers who serve the poor. During his term as President, Arch furthered these goals by initiating a Minority Counsel Project; by increasing the Association's involvement with minority bar associations; by

appointing women and minority lawyers as Committee Chairs or Vice Chairs; by establishing annual Civil Legal Services and Defender Staff Awards; and by working on many other fronts to make the Association more inclusive.

Arch's roles as a lawyer and a bar and community leader were encouraged and supported by his wife, Kay Crawford Murray, who joins us today. She too is an exemplar of the bar. I value her friendship and insight.

A little over a year ago at the June 2000 meeting of the House of Delegates, this Association presented the Root Stimson Award to Arch Murray. The award was presented for his outstanding commitment to community and volunteer service and to the improvement of the justice system. This was only one of dozens of awards presented to Arch during his life of service. We all benefitted greatly from his commitment to justice, his leadership, his integrity, his intelligence, his vision and his compassion. He made the world a better place. It is now up to all of us to carry on in his memory.