

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 6, 2004**

PRESENT: Alcott; Alessio; Asarch; Ashcraft; Ayers; Bailey; Barney; Bartlett; Bauman; Berman; Bienstock; Boyers; Bracken; Buzard; Campos-Galvan; Cantwell; Cheng; Cioffi; Clements; Coffey; D'Angelo; Diaz; Dixon; Dominguez; J. Doyle; V. Doyle; Duffy; Edmunds; Enea; Engel; Fedorchak; Fedrizzi; Fink; Fish; Flaherty; Flood; Franchina; Freedman; Gacioch; Geoghegan; Gerstman; Getnick; Goldenberg; Golinski; Grays; Green; Greenberg; Gregory; J. Gross; Grossman; Gutekunst; Haig; Harren; Harris; Hassett; Hayes; Hendricks; Hoffman; Hollyer; Horan; Ingrassia; R. Jacobs; S. Jacobs; James; Kamins; Karson; Matthew Kelly; Kiernan; B. King; Kinum; Kossove; Krane; Kretser; Labbe; Lau-Kee; Lawrence; Carolyn Lee; Chanwoo Lee; Lerosé; Levin; P. Levy; Lieberman; Lindenauer; Longo; Lynch; Lytle; Madigan; Marwell; Matalon; McCarthy; Meislahn; Mihalick; Miklitsch; M. Miller; Millman; Minkowitz; Miranda; Mitzner; Moore; Moreland; Murray; Myers; Nashak; E. Nathanson; M. Nathanson; Nizin; Ostertag; Paul; Pello; Peradotto; Perlman; Peterson; Pfalzgraf; Plotsky; Price; Priore; Purcell; Quinlan; Reimer; Reynolds; Richman; Rifkin; Romero; Rosenthal; Rosner; Rothstein; Saleh; Santemma; Schrauer; Seiden; Seitz; Shaw; Sherman; Sherwin; Shulman; Smith; Smoley; Smolowitz; Smyk; Sonberg; Spellman; Sperendi; Standard; Stenson; Sunshine; Sweeny; Tell; Terranova; Tharp; Thornton; Tishler; Treece; Tyler; Vigdor; Wales; S. Walsh; Warner; Weinberger; and Zeltner.

1. Approval of minutes: The minutes of the June 19, 2004 meeting was approved unanimously by voice vote.
2. Treasurer's report. Mr. Ayers, Treasurer, updated the House of Delegates on income and expenses for 2004 through September 30. Revenue totaled \$18,499,000, an increase of \$1,031,000 from September 30, 2003; expenses were \$14,523,000, up \$73,000; and the operating surplus equaled \$3,976,000, an increase of \$958,000 from 2003. With regard to income, Mr. Ayers reported that dues collections are slightly below those in 2003. CLE revenue was up, reflecting the fact that 50,000 more attorneys must register with the Court System in even years, but this income was less than recorded in 2002. He also reported that total net unrealized and realized gains had decreased. As to the \$73,000 increase in expenses, increases were experienced in CLE; in administrative expenses in connection with the fees paid to institute the change in 2004 to shift from a defined benefit pension plan for staff to a defined contribution plan; and in salary and benefits because of a change to accrual methods throughout the year. Section expenses declined because of savings realized with respect to Annual Meeting events. The Treasurer's report was accepted with the thanks of the House.

3. Report and recommendations of the Finance Committee. Mr. Headley, as Chair of the Finance Committee, presented the Committee's report and recommendations for an increase and adjustment in dues levels and the proposed income and expenses budget for 2005.

He described the cost efficiencies instituted that enabled the Association to hold dues at their present levels for 10 years while enhancing services to meet members' needs. Based on an analysis of current expenses and future projections, the Finance Committee determined that an adjustment in dues levels should be recommended, effective in 2005, so as not to incur deficits that would materially jeopardize the quality of programs and services offered to members. Under the proposal, dues would increase by \$15 for in-state attorneys admitted nine years or more, as well as for those in the seven to eight-year category, and by \$10 for those admitted five to six years. Dues would decrease \$20 for two to four-year admittees in New York State. For attorneys outside New York State, dues would increase \$10 for those admitted six years or more and decrease by \$20 for those in the two to five-year category. Membership would remain free in the first year for new admittees and law student membership would continue to be \$10, for those located in New York and outside the state.

Mr. Headley advised that the needs and membership of public sector attorneys are being reviewed by relevant entities and will be discussed at the April Executive Committee. It was announced that the Executive Committee had endorsed the dues adjustment for positive House action by voice vote. Also in a voice vote, the House adopted a motion approving the dues increase and adjustment.

Mr. Headley discussed the major income and expense components of the 2005 budget proposal submitted by the Finance Committee, which projects income of \$21,543,000 and expense of \$21,492,000, leaving a projected surplus of \$51,000. Income is projected to be \$891,000 more than budgeted in 2004, with increases expected in membership dues, Annual Meeting revenue to cover the increased costs associated with the meeting, publications, and Sections as a result of increased activities and services. The CLE income is projected to be below that of 2004, because approximately 50,000 fewer attorneys must register with the Court System in odd years. With respect to expenditures, increases are expected in staff salaries and cost of benefits, Bar Center operations, Annual Meeting costs because of additional events, CLE costs to reflect expansion of CDs and other product lines to facilitate member access and use, committee expenses as a result of additional studies and activities, and section costs because of program plans and other initiatives.

It was announced that the Executive Committee had unanimously endorsed the budget proposal for positive House action. The House adopted a motion unanimously by voice vote approving the 2005 budget.

4. Report of the Committee on Public Relations. Mr. Hassett, Chair of the Committee on Public Relations, described the Association's media communications and public education initiatives in pursuit of the strategic plan. Among these initiatives were public service announcements prepared by the Committee focusing on lawyers as trusted advisers, as part of the Association's work to educate New Yorkers about the role of lawyers. These noncommercial sustaining announcements were aired in cooperation with the New York State Broadcasters Association in prime listening time.
5. Report and recommendations of the Special Committee to Study Issues Affecting Same-Sex Couples. An informational presentation was given on the report of the Special Committee to Study Issues Affecting Same-Sex Couples.

Mr. Whiteman, Co-Chair, said that the extensive report reviewed the legal treatment of married and same-sex couples, a history of marriage and legal history of same-sex couples in the U.S. and elsewhere and analyzed constitutional issues at the state and federal levels, followed by the Committee's findings and recommendations. He reported that nine members concluded that, because of the differences in how the law treats same-sex and opposite-sex couples and the inability of same-sex couples to remedy those differences, the state Legislature should enact comprehensive legislation to extend to same-sex couples the rights now extended to opposite-sex couples; of the nine, five concluded the failure to provide such rights violates the State and Federal Constitutions and endorsed adoption of legislation expressly authorizing same-sex couples to marry under New York's civil marriage statute. Mr. Ayers reported for the other four within the majority, who contended that selection of a particular option (domestic partnership, civil union or marriage) is a matter of public policy and should be considered by the Legislature. Mr. Levin, Co-Chair, spoke on behalf of three members of the Committee who dissented, stating that the Association historically has avoided taking positions on questions of social or public policy and should not do so here; rather, the Association should call upon the Legislature to determine the appropriate public policy with respect to whether and to what extent such relationships should have legal recognition.

It was announced that the Executive Committee had unanimously endorsed, for positive House action, the proposed scheduling resolution for consideration of the report. In a review by the House, a friendly amendment was accepted to change the due date for submission of comments and proposed amendments to March 1, 2005. The scheduling resolution was then approved in a motion adopted by voice vote, as follows:

RESOLVED, that the House of Delegates hereby adopts the following procedures to govern consideration at the January 28 and April 2, 2005 meetings of the House, and any subsequent meetings as may be necessary, of the report of the Special Committee to Study Issues Affecting Same-Sex Couples ("Special Committee"):

1. Following the November 6, 2004 meeting, the report of the Special Committee and resolution(s) offered by the Special Committee will be circulated to members of the House, sections and committees, county and local bar associations, and other interested parties.
 2. At the January 28, 2005 meeting, the Special Committee will make an informational presentation of its report, including separate and dissenting views, and respond to any questions or comments that may be posed by members of the House. An opportunity will then be afforded the House to discuss the report, but without any formal action.
 3. Comments or amendments/substitute resolutions: Written comments on the Special Committee's report and any proposed amendments or substitute resolutions must be submitted to the Secretary of the Association at the Bar Center by March 1, 2005; otherwise they shall not be considered. All comments or proposed amendments or substitute resolutions complying with this procedure shall be distributed to the members of the House in advance of the April 2, 2005 meeting.
 4. Consideration of report at April 2, 2005 and any subsequent meetings: The report and all amendments or substitute resolutions will be scheduled for formal debate and vote at the April 2, 2005 meeting. Immediately prior to the committee's presentation at the April meeting, the House will adopt a resolution to govern the structure of the debate and vote, based upon submissions received in accordance with paragraph 3 above.
6. Report and recommendations of the Committee on Legal Education and Admission to the Bar. On behalf of the Committee on Legal Education and Admission to the Bar, Ellen Lieberman discussed the Board of Law Examiners' announcement in September of plans to raise the passing score of the bar examination by 15 points phased in over a three-year period. She noted the position previously taken by the House of Delegates to oppose such an increase until relevant impact studies are conducted. The Committee proposed, as unanimously recommended by the Executive Committee, that the Association: (1) reaffirm its opposition to an increase in the passing score on the New York State bar examination until the studies that were previously recommended are completed; (2) insist that the Board make public the record that it generated in support of and opposition to its recommendations and distribute a report responding to the objections to its recommendations; (3) request that the Court of Appeals review the matter and work with the Board to ensure that it meets these requirements before an increased passing score is implemented; and (4) urge that, in the event the Board implements its increased passing score, the Board

carefully study the impact of the higher passing score on the diversity and competence of the bar and, in particular, generate and maintain sufficient information to study whether the increase in passing score has had a disparate impact on protected classes of candidates, subject to law.

By a standing vote of 57 to 87 and one abstention, a substitute amendment failed that would direct that the Association take all such action necessary to enjoin or reverse any increase in the passing score until such studies are undertaken. A motion to table failed in a voice vote. The original resolution, as follows was then adopted by voice vote with Rachel Kretser, Richard Rifkin and members of the judiciary abstaining:

RESOLVED that the New York State Bar Association 1) reaffirms its opposition to an increase in the passing score on the New York State bar examination until the studies that were previously recommended are completed; (2) insists that the Board make public the record that it generated in support of and opposition to its recommendations and distribute a report responding to the objections to its recommendations; (3) requests that the Court of Appeals review the matter and work with the Board to ensure that it meets these requirements before an increased passing score is implemented; and (4) urges that, in the event the Board implements its increased passing score, the Board carefully study the impact of the higher passing score on the diversity and competence of the bar and, in particular, generate and maintain sufficient information to study whether the increase in passing score has had a disparate impact on protected classes of candidates, subject to law.

7. Recommendations of the Working Group on the definition of pro bono service. In an informational report, A. Thomas Levin, Chair of the Working Group, presented its proposal to expand the definition of pro bono service to reflect the broad range of essential legal services contributed by attorneys for the public good. The initiative pursued the direction of the House in April 2004 following its review of the Court System's report on "The Future of Pro Bono Service in New York," which included a definition of pro bono service. The Working Group recommended a two-tier approach: (1) to continue the aspirational goal previously suggested by the Court System and the Association for 20 hours of free legal services for those of limited means and non-profit organizations that serve such persons and (2) to recognize pro bono legal services provided to other non-profit organizations that serve the public good, activities to improve the law or legal system, and financial contributions to nonprofits that aid persons of limited means. The proposal was scheduled for formal consideration by the House at the January 28, 2005 meeting and is being circulated to sections, committees, and local bar associations, with comments on the definition due in writing by January 7.

8. Report of the President: President Standard reported on the following issues:
- a. Meeting with court officials. He and President-Elect A. Vincent Buzard and Executive Director Patricia K. Bucklin met in October with Chief Administrative Judge Jonathan Lippman to discuss issues of mutual interest. Among topics were the Board of Law Examiners' proposal to raise the passing score of the bar examination, the recommendations of the Commission to Promote Public Confidence in Judicial Elections, the status of the work of the Commission on Fiduciary Appointments and the Commission on the Jury System, and the related initiatives of the Association in these areas, as well as matters relating to the 2005 judiciary budget, pro bono services, fee arbitration, representation of the indigent, and key legislative issues.
 - b. Judicial selection. The Administrative Board and the Court of Appeals are discussing the recommendations of the Court System's Commission to Promote Public Confidence in Judicial Elections, chaired by John D. Feerick, relating to candidate selection. Given this development, the Special Committee on Court Structure and Judicial Selection, chaired by the Hon. Richard D. Simons, wrote to the Chief Judge to express its general concurrence with these measures and its concerns in two areas. With regard to the proposal for district-level screening committees, the Special Committee emphasized the need for due process provisions to give candidates who receive unsatisfactory ratings the opportunity to appeal. The Special Committee also expressed concern about the impact of state-sponsored district screening committees on existing county bar screening programs and whether the local bars would be afforded reasonable representation on those committees. President Standard advised that the Special Committee expects to make a report to the Executive Committee and House.
 - c. FTC litigation. The Federal Trade Commission is appealing the decision of the U.S. District Court for the District of Columbia, which, in granting summary judgment, found in favor of the Association and the other bar associations that subsequently pursued the litigation concerning the FTC's application to attorneys of the Gramm-Leach-Bliley Act privacy notice requirements for financial institutions. The Association contended that the FTC acted arbitrarily and capriciously in refusing to exempt attorneys, who are already bound by stricter standards of professional responsibility, and that the measure violates states' rights under the Tenth Amendment. The firm of Proskauer Rose will continue to represent the Association pro bono in the matter and Morgan Lewis & Bockius will coordinate, also pro bono, with the American Bar Association in the preparation of an *amicus curiae* brief of bar associations.

- d. Balanced lives in the law study. He has established a Special Committee on Balanced Lives in the Law to conduct a study of lawyers' lives in the various work settings and practices and to make recommendations on means of fostering balance in personal and professional pursuits and opportunity to participate in volunteer work and other professional endeavors. He has appointed past President M. Catherine Richardson of Syracuse as Chair. He urged members to share their experiences and suggestions with the Committee.
- e. Legal assistance to the military. The Committee on Lawyer Referral, together with lawyer referral panel members from Schenectady County and other volunteers, provided pro bono assistance at the Reserve Center in Schenectady, answering questions about wills and other matters to assist military personnel who are facing deployment.
- f. Bar Center security. Security has been strengthened at the Bar Center including electronic locking systems and monitoring at entrances to aid in ensuring the safety of members, staff and others.
- g. Youth education. Noting the importance of encouraging young people as early as possible, he is forming a committee to explore how the Association and the legal profession can assist in fostering educational opportunities for young people, particularly in poorer communities. This project will coordinate with, but differ from the Association's Law Youth & Citizenship Program, by focusing on promoting opportunity for youths to reach their full potential in life, emphasizing the importance of academic achievement and cultural interests. The committee will work in coordination with the YMCA of Greater New York, Bank Street College of Education, Eugenio María de Hostos Community College of the City University of New York, and other entities.
- h. Collateral consequences of criminal proceedings. He has established a Special Committee on Collateral Consequences of Criminal Proceedings to examine and make recommendations on the effect of legal barriers and related exclusions experienced by criminal defendants, people with criminal records, those returning to their communities after incarceration, and their families. The study will include review of the original purpose and intent of these consequences, their effectiveness as a societal sanction, and their impact on the ability of formerly incarcerated persons to reintegrate successfully into society, including concerns relating to employment, disenfranchisement, immigration status, housing, and family reunification. Peter J.W. Sherwin of New York City has been appointed to chair the new committee.
- i. Legislative priorities. By unanimous voice vote, on November 5, the Executive Committee approved the recommendations of the Steering

Committee on Legislative Priorities for the 2005 session. Continued as priorities were reforming the mandatory sentencing laws in drug cases (the Rockefeller drug laws) and ensuring access to the tort system and access to the civil justice system for both low-income and middle-income consumers. Two measures were added to the list – (1) to provide for no-fault divorce that would add a ground of irretrievable breakdown of a marriage, and (2) to require videotaping of custodial interrogations by law enforcement authorities. In June, the House approved a joint resolution of the Criminal Justice Section and the New York County Lawyers' Association for the taping of police interrogations and the Executive Committee approved an affirmative legislative proposal of the Family Law Section for the additional ground for divorce.

- j. Solo/small firm honors. Past President Robert L. Ostertag of Poughkeepsie has received the Donald C. Rikli Lifetime Achievement Award from the American Bar Association's General Practice Solo and Small Firm Section.
 - k. Report of the Nominating Committee. The slate of candidates selected by the Nominating Committee, chaired by Steven C. Krane, includes the following: President-Elect: Mark H. Alcott of New York City; Secretary: Kathryn Grant Madigan of Binghamton; Treasurer: James B. Ayers, Albany; and Vice-Presidents: First District - Stephen D. Hoffman and Bernice K. Leber, New York City; Second District - Barry M. Kamins, Brooklyn; Third District - Rachel Kretser, Albany; Fourth District - Cristine Cioffi, Niskayuna; Fifth District - Michael E. Getnick, Utica; Sixth District - James C. Gacioch, Binghamton; Seventh District - C. Bruce Lawrence, Rochester; Eighth District - Sharon Stern Gerstman, Buffalo; Ninth District - Henry S. Berman, White Plains; Tenth District - Hon. Joel K. Asarch, Hempstead; Eleventh District - Seymour W. James Jr., Kew Gardens; and Twelfth District: Lawrence R. Bailey Jr., New York City. For Member-at-Large of the Executive Committee, the slate included: Donald C. Doerr, Syracuse; Vincent E. Doyle III, Buffalo; John H. Gross, Northport; Claire P. Gutekunst, New York City; Jay G. Safer, New York City; David M. Schraver, Rochester; and for the two newly added at-large positions under the Bylaw amendment approved in the Association special meeting, David L. Edmunds Jr. of Buffalo and Glenn Lau-Kee of White Plains.
9. Judges' disqualifying economic interests. Norman Reimer, Susan B. Lindenauer and Rita Warner summarized the report and recommendations of the New York County Lawyers' Association Task Force on Judicial Selection concerning judges' disqualifying economic interests. They advised that, in keeping with the request of the Executive Committee, they had agreed to postpone action until January on the report to allow additional time for comment by sections and committees.

Subsequent to the issuance of this report, the Code of Judicial Conduct was amended in September to adopt a *de minimis* standard for determining disqualifying interests, as was urged by the Task Force. The report also recommended including a comment to provide guidance for judges in determining whether an interest is *de minimis*; requiring the parties to file a disclosure of any publicly owned parent company or affiliate; providing conflict software in clerks' offices and establishing an Office of Conflict Counsel in the Court System to assist judges in the conflict checking process; and considering any necessary amendments to permit judges to exclude from disqualifying interests those investments made and managed in blind trusts.

10. Report of The New York Bar Foundation. Robert L. Haig, President of The New York Bar Foundation, updated the House on Foundation initiatives, including the growth of its grantmaking program, the institution of a new pro bono Fellows program whereby Fellows give guidance to grant organizations, and the expansion of opportunities for support, including proposed amendments to The Fellows Bylaws to add new levels of giving.
11. Chair's report. Mr. Buzard presented the following items:
 - a. Committee name change. The Committee on Citizenship Education had requested a change in its name to the Committee on Law, Youth & Citizenship to better reflect its work in coordination with the Law, Youth & Citizenship Program. As this is a standing committee, House action is required for such a change. A motion was adopted unanimously by voice vote approving the renaming of the Committee.
 - b. Key contact program. A questionnaire is being circulated to members to enhance the Association's key contact program as part of its communication with lawmakers.
 - c. House dinner. Pursuant to member interest and the recommendation of the Special Committee to Review the Annual Meeting, the House of Delegates dinner has been rejuvenated and would be held on January 27 at the 2005 Annual Meeting as a more meaningful format to give recognition and provide opportunity for section and committee chairs and delegates to become acquainted with one another. He urged delegates to participate.
 - d. Hearings on solo and small firm practice. The Chief Judge's Commission on Solo and Small Firm Practitioners is conducting regional hearings in December 2004 and January 2005 on the needs of practitioners. He urged members to submit comments.

- e. Unlawful practice of law. He is hearing concerns regarding the unlawful practice of law and is considering means of addressing these issues. He welcomes input.
12. Adjournment. There being no further business, the meeting of the House of Delegates was adjourned.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kathryn Grant Madigan". The signature is written in black ink and is positioned to the left of a vertical line.

Kathryn Grant Madigan
Secretary