

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 5, 2005**

Present: Alcott; Amuso; Asarch; Ayers; Bailey; Barney; Barson; Benedict; Berman; Bienstock; Boyers; Bracken; Brown; Buholtz; Burke; Buzard; Campanaro; Campos-Galvan; Carlucci; Castellano; Chambers; Cheng; Christian; Cioffi; Clarke; Cohen; Copps; Cosgrove; Costello; Cullum; Davis; DeFio; DiGiovanna; Dixon; Doerr; Dolin; Dominguez; Doyle, C.; Doyle, J.; Doyle, V.; Duffy; Edmunds; Egan; Fernandez; Ferrara; Flaherty; Frank; Freedman; Gacioch; Gerber; Gerstman; Getnick; Glanzer; Gold; Goldblum; Gouz; Gregory; Gross, J.; Gutekunst; Hans; Harren; Harris, John; Hassett; Hayes; Hendricks; Higgins; Hoffman, R.; Horan; Jacobs, R.; Jacobs, S.; James; Kamins; Karson; Kelly, M.J.; Kelly, M; Kiernan; Kinum; Klein; Kougasian; Krane; Kranis; Kuntz; Lamantia; Lau-Kee; Lawrence; Leber; Lee, Carolyn; Lee, Chanwoo; Lee, Charlotte; Leinhardt; Levin; Lieberman; Lindenauer; Longo; Lynch; Madigan; Makofsky; Manning; Martin; Martinelli; Marwell; McAuliffe; McCarthy, Jerry; McCarthy, Joe; Meislahn; Meyer; Mihalick; Miklitsch; Millett; Minkowitz; Mitzner; Moore; Murray; Myers; Nashak; Nathanson, E.; Nathanson, M.; Netter; Ostertag; Pelagalli; Pellow; Peradotto; Price; Privitera; Purcell; Quinlan; Ramsey; Reimer; Reynolds; Richman; Rifkin; Rivera; Robertson; Romero; Rosenberg; Rothstein; Sandner; Santemma; Schultz; Seiden; Seitz; Shaw; Sherman; Sherwin; Sherwood; Shulman; Silkenat; Smith; Smoley; Smolowitz; Smyk; Sonberg; Sperendi; Spitzmueller; Stenson; Sunshine, J.; Sunshine, N.; Tell; Tharp; Tishler; Tyler; Tyre; Wachtler; Walsh, J.; Walsh, O.; Walsh, R.; Walsh, S.; Warner; Welby; Wilson; Young; Zeltner.

1. Approval of minutes of June 25, 2005 meeting. The minutes were deemed accepted as previously distributed.
2. Report of the Treasurer. Mr. Ayers reported that through September 30, 2005, the Association's total revenue was \$18.9 million, an increase of approximately \$284,000 more than the previous year, and total expenses were \$16.1 million, an increase of approximately \$1.6 million more than the previous year. The operating surplus was \$2.8 million, approximately \$1.3 million less than the previous year. He noted that the increase in revenue was attributable to increased dues and investment income; the increase in expenses was attributable to a change in timing of staff pension and post retirement benefit expenses, increased section expenses, and costs associated with higher levels of committee activity. He also provided a three-year comparison of CLE revenue, which decreases in odd-numbered years, noting that 2005 revenue has increased approximately \$140,000 over 2003 revenue. Mr. Ayers then provided an analysis of the impact of the 2005 dues adjustment on membership, concluding that the adjustment did not adversely affect overall membership renewal figures. The report was received with thanks.
3. Report and recommendations of Finance Committee. Reporting on behalf of the Finance Committee, Mr. Ayers summarized the committee report and recommendations regarding

the following matters. It was announced that the Executive Committee had endorsed both items for favorable House action.

- a. Affordable dues program. The committee recommended extension through 2007 of the affordable dues program that enables members who are experiencing temporary financial hardship to continue their membership through waivers of their dues at various levels. A motion was adopted by voice vote extending this program as proposed.
 - b. Proposed 2006 budget. The proposed budget for 2006 was reviewed, which projects income of \$22,237,499 and expenses of \$22,233,161, and a surplus of \$4,338. A motion was adopted by voice vote approving the proposed 2006 budget.
4. Report and recommendations of Committee on Bylaws. Miriam M. Netter, chair of the Committee on Bylaws, summarized the amendment proposed by the committee to designate persons to serve as members-at-large of the Nominating Committee and to provide a process for filling a vacancy in one of those positions. Forms were provided to the delegates to subscribe to place the proposed amendment on the agenda for action at the Annual Meeting. Following tabulation of the completed forms, Mr. Alcott announced that pursuant to the Bylaws, a sufficient number of delegates had subscribed to the proposal to permit its consideration at the Annual Meeting in January 2006.
5. Report of President. Mr. Buzard reported on the following matters:
- a. He thanked the House members who were able to attend the dinner held the evening before and advised that a dinner would be scheduled in conjunction with the April 2006 meeting.
 - b. The House directory has been completed, and printed copies would be distributed at the conclusion of the meeting.
 - c. He reported on his attendance at bar functions, both outside and within New York State, and noted that he would welcome the opportunity to address members at local bar events.
 - d. With respect to public outreach, he reported that an "Ask a Lawyer" column had been developed with the assistance of several sections and that several newspapers had expressed an interest in publishing the columns. The "People's Law School" program would take place in November and December and would be taped for future distribution. Finally, he had recorded four public service announcements that will be broadcast on radio stations during the month of November, designed to educate the public as to the misconception that more lawsuits are being filed than ever before; the importance of the constitution as a cornerstone of our free society; and the proliferation of lawyer advertising. The announcements were played for the House.

- e. He reported on the appointment of several new committees, including the Special Committee on Cameras in the Appellate Courts, a Task Force on Eminent Domain, a Task Force on Attorney-Client Privilege, Special Committee on Sarbanes-Oxley Issues, and a Special Committee on Civil Legal Services Funding.
- f. He thanked the Task Force on Lawyer Advertising for meeting the tight deadline he had set for submission of its report. He noted that he has spoken to the Presiding Justices of the Appellate Division regarding the report and is eager to work with the Appellate Division in addressing this topic. In addition, with respect to the report of the Committee on Standards of Attorney Conduct, he reported that committee chair Steven C. Krane would be in contact with the Presiding Justices to discuss the report.
- g. In cooperation with The New York Bar Foundation, the Association had established the Hurricane Katrina Relief Fund to help restore legal services in storm-ravaged areas. He reported that as of this date, The Foundation had received over \$36,000 in contributions and that a \$10,000 grant had been awarded to the Southeast Louisiana Legal Services Association. Other grants are pending.
- h. Given that Congress is increasingly taking up matters that are of concern to the legal profession, he is seeking expansion of the Association's legislative contact program, which previously focused on the State Legislature, to include the Congress.
- i. After learning that the Office of Court Administration was reviewing court security in light of several well-publicized security breaches in other states, he polled Association members with respect to security issues in New York courts and forwarded the results of that poll to OCA. He reported that OCA had recently issued a report containing a number of recommendations with regard to court security.
- j. A recently completed member satisfaction survey indicated that members are highly interested in receiving instant updates with respect to their areas of practice. He reported that the Electronic Communications Task Force, CLE Committee and staff were considering initiatives to develop such an update program.
- k. Executive Committee member Jay Safer is coordinating meetings with county and local bar associations across the state, beginning in Binghamton on November 30. The meetings will enable both Association members and nonmembers to learn more about the Association and foster closer ties with members and local bars throughout the state.

1. He reported that the Association had received the American Bar Association's 2005 Harrison Tweed Award in recognition of the standards created by the Special Committee to Ensure Quality of Mandated Representation to guarantee that the indigent, including criminal defendants and adults and children in Family Court, receive meaningful and effective representation.

6. Report and recommendations of Committee on Standards of Attorney Conduct. Steven C. Krane, chair of the committee, addressed the proposed procedure for consideration of the committee's report by the House. He reported that the committee was divided into three subcommittees and that the proposed schedule would enable each subcommittee to make presentations at two meetings beginning in June 2006 through November 2007. Before consideration of the substance of the report, the committee recommended that the House consider the issue of whether the Model Rules format should be adopted in New York; consequently, the scheduling resolution being offered by the committee calls for a vote on the format change in April 2006. If the format change is approved, the House would proceed to consideration of the substantive rules. After discussion, the following resolution governing procedure was adopted unanimously:

RESOLVED, that the House of Delegates hereby adopts the following procedure to govern consideration at the January 27, 2006 and subsequent meetings of the report of the Committee on Standards of Attorney Conduct:

1. **Presentation of report.** At the January 27, 2006 meeting, the committee shall present an overview of its report on an informational basis only. Thereafter, at the April 1, 2006 meeting, there shall be formal consideration and vote on the committee's recommendation that New York adopt the format of the Model Rules of Professional Conduct. If that recommendation is approved, the committee shall present its report in the following segments, corresponding to the proposed rules:

June 24, 2006: Rules 1.1, 1.2, 1.3, 1.4, 3.1, 3.2, 3.5, 3.6, 3.7, 3.8, 3.9, 8.1, 8.2, 8.3, 8.4.

November 4, 2006: Rules 1.15, 1.17, 5.1, 5.2, 5.3, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6.

January 26, 2007: Rules 1.11, 1.12, 2.1, 2.3, 2.4, 4.2, 4.3, 4.4, 6.1, 6.2, 6.3, 6.4, 6.5.

March 31, 2007: Rules 1.5, 1.14, 5.4, 5.5, 5.6, 5.7, 5.8, 8.5.

June 23, 2007: Rules 1.7, 1.8, 1.9, 1.10.

November 3, 2007: Rules 1.6, 1.13, 1.16, 1.18, 3.3, 3.4, 4.1, 1.0, Preamble, Scope.

2. **Comments on recommendation regarding format change.** Any comments regarding the recommendation that New York adopt the format of the Model Rules of Professional Conduct must be submitted in writing to the Secretary of the Association no later than March 1, 2006. All comments submitted by this deadline shall be distributed to the members of the House in advance of the April 1, 2006 meeting.

3. **Consideration of report at April 1, 2006 meeting.** Consideration of the recommendation that New York adopt the format of the Model Rules of Professional Conduct shall take place in the following manner:
 - a. The committee shall be given an opportunity to present its recommendation.
 - b. All those wishing to speak with regard to the recommendation may do so only once for no more than three minutes.
 - c. The 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 recommendation will be taken at the conclusion of the debate.

If the recommendation is approved, the House shall consider the proposed rules as set forth in Paragraph 1.

4. **Amendments.** Any amendments to the committee's proposed rules must be submitted in writing to the Secretary of the Association in accordance with the following schedule:

Meeting Date	Comment Deadline
June 24, 2006	May 26, 2006
November 4, 2006	October 6, 2006
January 26, 2007	December 29, 2006
March 31, 2007	March 1, 2007
June 23, 2007	May 25, 2007
November 3, 2007	October 5, 2007

- a. All amendments must be in the style used by the committee with deletions noted by strikeouts and new material by underscoring, and be accompanied by a brief explanation of the proposed changes; otherwise they shall not be considered. All amendments

complying with this procedure shall be distributed to the members of the House in advance of the meeting at which they are to be considered.

- b. Only one level of amendment will be permitted. Thus, if an amendment to a proposed rule is pending, no amendment of that proposed amendment is in order.
- c. No amendments will be permitted from the floor of the House.
- d. In advance of each meeting, the committee may review comments and amendments submitted in accordance with this paragraph and amend its proposals in response to such comments and amendments.

5. Consideration of report at June 24, 2006 and subsequent meetings. Consideration of the proposed rules, as scheduled in Paragraph 1 above, shall be considered in the following manner:

- a. A representative of the committee shall have three minutes to present each rule. The proponents of any amendments shall have three minutes to present them.
 - b. All those wishing to speak with regard to a particular rule/amendment may do so only once for no more than three minutes, except the sponsor of any amendment may speak a second time for two minutes, and a representative of the committee shall have two minutes to close.
 - c. A vote on each rule shall be taken, requiring a majority vote for adoption.
 - d. Procedural motions shall be considered out of order until debate on all substantive amendments has been concluded.
6. Upon conclusion of debate and vote on the complete set of rules, a vote will be taken to authorize the committee and officers to make any necessary stylistic changes that may be necessary for the sake of uniformity and to authorize transmittal of the rules, as they may have been amended, to the Appellate Division in the four Judicial Departments.

7. Report and recommendations concerning Federal habeas corpus legislation. Jean T. Walsh, vice chair of the Criminal Justice Section, and Norman L. Reimer, president of the New York County Lawyers' Association, outlined the proposed Streamlined Procedures Act of 2005, which would severely restrict the availability of habeas corpus

relief to state prisoners. They noted that the right to habeas relief was limited in 1996 and that there was no demonstrable need for further restrictions. After discussion, the following resolution was adopted unanimously:

WHEREAS, federal *habeas corpus* review of both capital and non-capital convictions is an established part of the legal structure of our nation and a considerable body of law concerning this process has developed in the United States Supreme Court, the lower federal courts and the state courts; and

WHEREAS, in 1996, the United States Congress adopted the Federal Antiterrorism and Effective Death Penalty Act (AEDPA) in order to improve the fair and timely review of state court judgments by the federal courts; and

WHEREAS, only recently the interpretation and effect of AEDPA have begun to be settled after years of legal challenges and litigation; and

WHEREAS, affording those claiming to be wrongfully convicted or convicted by virtue of a deprivation of fundamental constitutional protections an opportunity to obtain reasonable and timely review of their convictions, and providing victims and their families with the fair and timely resolution of charges and punishment of those found to have violated their rights are integral to our system of justice; and

WHEREAS, in S. 1088 and H.R. 3035, Congress presently is considering far-reaching changes to AEDPA and the traditional right to seek *habeas corpus* in the federal courts; and

WHEREAS, the changes contemplated in these measures may preclude state defendants in both capital and non-capital matters from seeking *habeas corpus* relief in the federal courts, and may deprive the federal courts of jurisdiction in the vast majority of these matters, all with unknown consequences for the state courts and for the administration of justice;

NOW, THEREFORE, BE IT RESOLVED that the New York State Bar Association opposes amending AEDPA or otherwise changing the existing statutes affecting the filing and processing of habeas corpus petitions in the federal courts, as contemplated in H.R. 3035 and S. 1088, presently pending before the United States Congress; and

BE IT FURTHER RESOLVED that the New York State Bar Association urges that additional study and analysis be undertaken to evaluate the impact of AEDPA to date and to avoid depriving the federal courts of their traditional jurisdiction without more supporting evidence.

8. Report of Special Committee to Ensure Quality of Mandated Representation. Vincent E. Doyle, III, chair of the special committee, outlined his committee's report that follows up on the statewide standards for ensuring quality of mandated representation that were

adopted by the House at the April 2, 2005 meeting. He noted that the report is being circulated for comment, and offered a scheduling resolution to govern the House's consideration of the report at the January 27, 2006 meeting. The following resolution was adopted unanimously by the House:

RESOLVED, that the House of Delegates hereby adopts the following procedures to govern consideration at the January 27, 2006 meeting of the report of the Special Committee to Ensure Quality of Mandated Representation:

1. At the November 5, 2005 meeting, the Special Committee shall make a preliminary presentation of this report and respond to any questions or comments which may be posed by members of the House.
2. Any written comments on or amendments to the Special Committee's recommendations must be submitted in writing to the Secretary of the Association on or before December 16, 2005; otherwise, they shall not be considered. All written comments and amendments shall be distributed to the members of the House prior to the January 27, 2006 meeting.
3. In advance of the January 27, 2006 meeting, the Special Committee may review comments and amendments submitted in accordance with this resolution and amend its recommendations in response to such comments and amendments.
4. Consideration of the Special Committee's report at the January 27, 2006 meeting shall take place 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 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.
9. Report and recommendations of Commercial and Federal Litigation Section. Lewis M. Smoley, a past chair of the section, and Gregory K. Arenson, chair of the section's Committee on Federal Procedure, presented the section's report opposing the enactment of the Lawsuit Abuse Reduction Act of 2005, which would impose mandatory sanctions

for violations of Rule 11 of the Federal Rules of Civil Procedure, require the suspension of an attorney found to have violated Rule 11 three times, require the application of Rule 11 to state court actions found to substantially affect interstate commerce, create a rebuttable presumption that Rule 11 has been violated where there is an attempt to litigate an issue that has been lost on three consecutive prior occasions, limit venue for personal injury claims, and require mandatory sanctions for document destruction in certain federal and state actions. After discussion, the following resolution was adopted unanimously by the House:

WHEREAS, the Lawsuit Abuse Reduction Act of 2005, currently pending in Congress, would significantly amend Rule 11 of the Federal Rules of Civil Procedure to make sanctions, including a reasonable attorney's fee, mandatory for a violation; would extend Rule 11 to state court actions found to substantially affect interstate commerce; would restrict possible venues for federal and state personal injury actions; and would require sanctions for document destruction in certain matters; and

WHEREAS, the Association's Commercial and Federal Litigation Section has issued a report concluding that enactment of the Act would (1) largely abrogate the American Rule that parties bear their own legal fees, (2) result in increased collateral litigation, (3) compromise principles of federalism, and (4) encroach upon judicial rule-making authority;

NOW, THEREFORE IT IS

RESOLVED, that the New York State Bar Association approves the report of the Commercial and Federal Litigation Section and opposes the enactment of the Lawsuit Abuse Reduction Act of 2005; and it is further

RESOLVED, that the officers of the Association are hereby authorized to transmit the report to appropriate governmental officials and are empowered to take such other and further steps as they may deem warranted to implement this resolution.

10. Report and recommendations of Committee on Media Law. The report was withdrawn from consideration in order to permit time for additional review and comment.
11. Report of Task Force on Lawyer Advertising. Bernice K. Leber, chair of the task force, reported that the task force was appointed to recommend changes to the rules governing advertising, changes in the manner in which these rules are enforced, and a program for peer review of advertising. She outlined the committee's report, which recommends amendment of the rules governing lawyer advertising to provide greater guidance and clarity; the adoption of guidelines for advertising, to be used to educate lawyers as to appropriate advertising and to educate the public on selecting a lawyer; and require advertisements to be filed in a central location and that the Administrative Board appoint an entity to review such advertisements on a random basis. She invited members of the

House to forward any comments to her prior to the House's formal consideration of the report at the January 27, 2006 meeting. The report was received with thanks.

12. Report of The New York Bar Foundation. Robert L. Haig, president of The Foundation, updated the House on the Hurricane Katrina Relief Fund, which was established through the collaboration of The Foundation and the Association to assist in restoring legal services to areas affected by the hurricane. He reported that to date \$37,000 had been contributed and that a grant in the amount of \$10,000 had been awarded to the Southeast Louisiana Legal Services Association; two additional grants had been awarded at the Foundation meeting earlier in the day.
13. Report of Special Committee on Funding for Civil Legal Services. C. Bruce Lawrence, co-chair of the special committee, provided background information on other states' use of cy pres awards – the residuary of funds not claimed by beneficiaries of class action lawsuits – to fund civil legal services, and reported that his committee is reviewing the possible use of cy pres awards in New York State. A draft report has been prepared and is under review by the committee, and the committee plans to submit its report to the House of Delegates for consideration in January 2006.
14. Administrative items. Mr. Alcott reported on the following items:
 - a. He reminded members to pick up a copy of the House of Delegates directory when leaving the meeting and noted the availability of a photographer to take members' pictures for the Website directory.
 - b. He noted that the House of Delegates dinner will be held on Thursday, January 26, 2006 at Tavern on the Green in New York City and encouraged members to attend the dinner.
 - c. He congratulated Barry Kamins, Vice President for the Second Judicial District, for having been nominated as the next president of the New York City Bar Association.
 - d. He announced the slate of candidates for Association office selected by the Nominating Committee the previous day. Nominated were Kathryn Grant Madigan as President-Elect; Michael E. Getnick as Secretary; James B. Ayers as Treasurer; Vince E. Doyle, III, David M. Schraver, Timothy J. Fennell, David P. Miranda, Peter J.W. Sherwin, Lauren J. Wachtler, Glenn Lau-Kee and David L. Edmunds, Jr. as members-at-large of the Executive Committee; and A. Thomas Levin, Steven C. Krane, Robert L. Ostertag, Kathryn Grant Madigan, A. Vincent Buzard, and Manuel Campos-Galvan as delegates to the American Bar Association's House of Delegates.
15. New business. Claire P. Gutekunst, vice-chair of the Committee on Membership, reminded members to renew their Association membership and to consider becoming sustaining members.

16. Date and place of next meeting. Mr. Alcott announced that the next meeting of the House of Delegates would take place on Friday, January 27, 2006 at the New York Marriott Marquis, New York City.
17. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Kathryn Grant Madigan
Secretary

