

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
NOVEMBER 4, 2006
STATE BAR CENTER, ALBANY, NEW YORK**

PRESENT: Alcott; Alden; Asarch; Ayers; Barson; Bartlett; Berman; Borsody; Brady; Branda; Buholtz; Buonora; Burke; Burns; Buzard; Caffry; Campanaro; Carlucci; Cartright; Castellano; Castillo; Chambers; Cheng; Christian; Clarke; Cloonan; Coffey; Cohen; Copps; Costello; Dietz; DiGiovanna; Dixon; Doyle, V.; Duffy; Edmunds; Egan; Elder-Howell; Epstein; Fennell; Fernandez; Ferradino; Fink; Fisher; Flood; Freedman; Fries; Gacioch; Gall; Getnick; Giorgio; Glanzer; Goldblum; Golinski; Gorgos; Gouz; Gredd; Greeley; Green; Greenberg; Gross; Grossman; Haelen; Haig; Harren; Harris; Hayes; Higgins; Hollyer; Horan; James; Kamins; Kelly, Matthew; Kelly, Michael; Kiernan; Kinum; Kobak; Kougasian; Kranis; Kuntz; Lagonia; Lamantia; Lansner; Larose; Lau-Kee; Lawrence; Leber; Leinhardt; Leo; Levin; Levinsohn; Levy; Lieberman; Lindenauer; Longo; Longstreet; Madigan; Makofsky; Margolin; Martin; Marwell; May; McAuliffe; McCarthy, Joseph; McCarthy, M.; McQueary Smith; Meislahn; Meyer; Mihalick; Miklitsch; Miller; M.; Minkowitz; Mitchell, R.; Moy; Murray; Nashak; Nathanson, E.; Nathanson, M.; Netter; O'Donnell; Onderdonk; Opotowsky; Ostertag; Palermo; Paul; Pellow; Peradotto; Porcellio; Priore; Privitera; Quinlan; Reynolds; Richman; Rider; Rifkin; Robert; Robertson; Romero; Rosenthal; Rosner; Runes; Sandner; Sands; Schofield; Schraver; Schultz, J.; Schultz, K.; Seiden; Shaw; Sheehan; Sherman; Sherwin; Shulman; Silkenat; Slavin; Smith; Smolowitz; Smyk; Sonberg; Sperendi; Spitzmueller; Standard; Stansel; Stenson; Sterrett; Sunshine; Tell; Terranova; Tharp; Thompson; Tishler; Tyre; Wachtler; Walsh, J.; Walsh, O.; Walsh, S.; Warner; Weinstein; Welby; Wilson; Wimpfheimer; Winkler; Witmer; Young; Zeltner

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

1. Approval of minutes of June 24, 2006, meeting. A motion was unanimously adopted accepting the minutes as previously distributed.
2. Report and recommendations of Elder Law Section and Trusts and Estates Law Section. Ellen G. Makofsky, chair of the Elder Law Section, and Colleen F. Carew, chair of the Trusts and Estates Law Section, outlined the sections' affirmative legislative proposal to amend article 29-C of the Public Health Law to permit individuals to execute living wills, by which a person can document his or her wishes regarding end-of-life treatment. They noted that the proposed legislation represents a codification of existing case law and is intended to clarify the availability of living wills in New York State. Speaking on behalf of the Health Law Section, past section chairs Lynn F. Stansel and Robert N. Swidler reported the section's opposition to the proposal as being not only unnecessary but possibly harmful. After discussion, a motion to postpone debate to the January 26, 2007 meeting in order to permit additional time for comment by sections, committees, bar associations and other interested parties was adopted on voice vote.
3. Report of President. Mr. Alcott reported on the following developments and initiatives, based upon the themes he had developed for his term as President:

a. Independence of the Courts and the Bar.

- i. He had recorded three public service announcements that will be broadcast in the metropolitan New York area for a month beginning the week after Election Day, designed to educate the public about what lawyers do to assist people with legal problems and protect fundamental rights. The announcements were played for the House.
- ii. He attended the fall meeting of the International Law and Practice Section in Shanghai, China, where he spoke about the importance of the independence of the courts and the bar as applied to the United States.
- iii. All of his speeches and President's Messages will be available on the Association's Website at the President's Page.
- iv. This past summer, the Committee to Review Judicial Nominations reviewed the qualifications of the seven candidates named to fill the vacancy on the Court of Appeals created by the expiration of the term of Hon. George Bundy Smith. Six of the seven candidates, including Hon. Eugene F. Pigott, Jr., who was subsequently appointed by the Governor, were found "well qualified" by the committee, and one was found "qualified."
- v. At the ABA meeting in Honolulu this past August, he presented to the ABA House of Delegates the report on attorney-client privilege that had been approved by our Association's House in June 2006. The ABA task force joined in this position, and the ABA condemned the practices outlined in the report as an unconstitutional interference with the right to counsel.
- vi. The Commercial and Federal Litigation Section held a "Hail to the Chiefs" event to honor five new chief judges of the federal courts: Hon. Dennis Jacobs, Chief U.S. Circuit Judge, U.S. Court of Appeals for the Second Circuit; Hon. Kimba Wood, Chief U.S. District Judge for the Southern District of New York; Hon. Norman A. Mordue, Chief U.S. District Judge for the Northern District of New York; Hon. Lisa Margaret Smith, Chief U.S. Magistrate Judge for the Southern District of New York; and Hon. Melanie Cyganowski, Chief U.S. Bankruptcy Judge for the U.S. Bankruptcy Court of the Eastern District of New York.

b. Diversity of the profession.

- i. The Special Committee on Lawyers in Transition, chaired by Lauren J. Wachtler, is studying the challenges that confront lawyers who have left the workplace because of family or other obligations and are now seeking to return. The committee will develop initiatives to help lawyers remain

connected to other lawyers and the profession during a career interruption and to ease their future re-entry into the workforce.

ii. He announced the creation of a Special Committee on the Civil Rights Agenda, to be chaired by Hon. George Bundy Smith, whose term on the Court of Appeals expired earlier this year. The committee will explore goals to be established in order to advance the cause of civil rights in the 21st century.

iii. He participated in two recent events to encourage minority participation in the profession. The Corporate Counsel Section hosted a reception for minority interns participating in the Kenneth G. Standard Internship, through which interns are placed in corporate legal departments. In addition, the Committee on Youth Outreach, chaired by Past President Standard, held a program at Fordham Law School to encourage inner-city youth to consider legal careers.

c. Access to justice.

i. The Empire State Counsel program that he launched on June 1, 2006 has attracted wide attention and encouraged other states to establish similar programs. Approximately 100 New York lawyers have qualified for this recognition; they will be honored during the 2007 Annual Meeting.

d. Promoting reform.

i. As a result of the Second Circuit decision in *Lopez-Torres v. New York State Board of Elections*, there is renewed interest in merit selection of judges, which the Association has long supported. He will testify at a November 15, 2006 hearing of the Assembly Judiciary Committee to advocate for the Association's merit selection plan as the ultimate goal of reform. As an interim measure, he will speak in favor of the Association's recommendations regarding convention system improvements, as approved by the House of Delegates, until merit selection can be successfully implemented.

ii. The newly-appointed special committees on Age Discrimination in the Profession, Senior Lawyers, and Mandatory Retirement of Judges expect to present reports to the Executive Committee and House in 2007.

iii. As a result of the Court of Appeals decision in *Hernandez v. Robles* in July 2006, the issue of equal legal rights for same-sex couples is now before the State Legislature. Our Association will advocate the position adopted by the House in April 2005 that the Legislature adopt a comprehensive set of rights from among the options of civil unions, domestic partnerships or marriage.

iv. He noted the legislative priorities that would be pursued by the Association during the 2007 legislative session – in addition to merit selection and equal

rights for same-sex couples, the priorities are judicial salary reform, no-fault divorce, the "compact" for financing of long-term care, and access to the civil justice system.

- v. Together with President-Elect Madigan and Executive Director Patricia Bucklin, he met with Chief Administrative Judge Jonathan Lippman and First Deputy Chief Administrative Judge Ann Pfau on September 29, 2006. A wide range of issues were discussed, including merit selection of judges; OCA's legislative priorities; Association reports and recommendations of interest to OCA; and initiatives relating to town and village courts to address concerns that have been raised.
- vi. Following the floods that affected many residents in upstate communities, a number of panel members from the Association's Lawyer Referral and Information Service volunteered to provide free consultations to disaster victims. A recent meeting convened by President-Elect Madigan reviewed the operation of this relief effort to assist in preparing for future disasters.
- vii. The newly revised House of Delegates and Leadership directories are now available. Printed copies are being mailed, and online directories are available as well.
- viii. The Association is in the process of negotiating a new lease for the Bar Center, which is owned by The New York Bar Foundation. Joshua Stein of Latham & Watkins is representing the Association pro bono in this regard.
- ix. He had spoken at a number of meetings and programs and welcomed the opportunity to speak at meetings.

Mr. Alcott also announced the slate of candidates selected by the Nominating Committee the previous day. Nominated were Bernice K. Leber as President-Elect; Michael E. Getnick as Secretary; James B. Ayers as Treasurer; Vincent E. Doyle, III, David L. Edmunds, Jr., Hermes Fernandez, Michael Miller, David P. Miranda, Peter J.W. Sherwin, Lauren J. Wachtler, and Stephen P. Younger as members-at-large of the Executive Committee; and Mark H. Alcott, Bernice K. Leber, M. Catherine Richardson, Kenneth G. Standard, and Lorraine Power Tharp as delegates to the American Bar Association's House of Delegates.

- 4. Report of the Treasurer. Mr. Ayers, Treasurer, reported that through September 30, 2006, total revenue for 2006 was \$20 million, an increase of \$1.2 million over the previous year, and total expenses were \$17 million, an increase of approximately \$850,000 over the previous year. The surplus before investment gains was \$3.2 million, an increase of approximately \$440,000 over the previous year. He provided a five-year comparison of CLE revenue and expenses, observing that even-year CLE revenue (which traditionally has been higher than odd-year revenue due to the larger number of attorneys who renew their registration in even years) is trending downward, from \$4.7 million in

2002 to \$4.45 million in 2004 to \$4.3 million in 2006. At the same time, expenses have increased over that same period of time. He noted that this trend will be closely monitored. The report was received with thanks.

5. Report and recommendations of Finance Committee. Reporting on behalf of the Finance Committee, Mr. Ayers summarized the committee report and recommendations regarding the proposed budget for 2007, which projects income of \$23,158,667 and expenses of \$22,851,802, with a projected surplus of \$306,865. A motion was adopted by voice vote to approve the 2007 budget.
6. Report of Task Force on Gender Equity. Carla M. Palumbo, chair of the Task Force, reported that the Task Force had developed a self-audit and best practices guide for use by legal employers in promoting gender equity in the workplace. She noted that the self-audit/best practices are intended to be a voluntary tool by which employers can consider how their policies and procedures impact gender equity. The audit also invites employers to submit their own best practices to the Task Force for inclusion in a compilation. The report was received with thanks.
7. Report and recommendations of Special Committee on Collateral Consequences of Criminal Proceedings. Peter J.W. Sherwin, chair of the Special Committee, presented the committee's report recommending reforms to increase the chances for a successful reentry into society of persons incarcerated for, convicted of, or charged with a crime. He reviewed eight areas in which criminal proceedings have an impact and the recommendations made by the committee with respect to each: employment, education, benefits, financial penalties, housing, family, civil participation, and immigration. The resolution offered by the committee was moved and seconded. After discussion, a motion to amend the resolution to add a clause, directing the committee to propose to the Office of Court Administration recommendations to further the purposes of the report, was accepted as a friendly amendment. A motion to strike that portion of the report and resolution relating to child support arrears carried on voice vote. The House then adopted the following resolution on voice vote:

WHEREAS, the New York State Bar Association has had a long history of addressing issues and concerns arising out of the operations of the criminal justice system;

WHEREAS, almost six million New Yorkers currently have criminal history records maintained by the State of New York;

WHEREAS, the successful re-entry into society of individuals who have been involved in the criminal justice system will increase public safety by reducing recidivism;

WHEREAS, in 2004, the NYSBA established a Special Committee on Collateral Consequences of Criminal Proceedings (the "Committee") to examine the impact of "collateral consequences," *i.e.*, the consequences of criminal charges, convictions, or punishment that are not specifically delineated in the sentencing statutes;

WHEREAS, the Committee issued a Report in May 2006 entitled Reentry and Reintegration: The Road to Public Safety (Report), which provides a detailed discussion of eight subject areas in which the increasing number of collateral consequences have a significant and negative impact on the ability of individuals to reintegrate successfully with society: employment, education, benefits, financial consequences, housing, family, civic participation, and immigration;

WHEREAS, the Report includes both the Committee's overarching Recommendations and also specific Recommendations addressed to the above eight subject areas;

WHEREAS, the Report's overarching Recommendations include recommendations intended to eliminate the unwarranted negative impact of collateral consequences through wider availability and more consistent use of Certificates of Relief from Disability, Certificates of Good Conduct and sealing statutes, and also intended to provide all within the criminal justice system with timely and complete information about existing collateral consequences; and

WHEREAS, the Report's specific Recommendations include recommendations to:

- (1) enhance the employment opportunities of individuals who have been involved in the criminal justice system by improving the accuracy of criminal records, expanding the protections and enforcement of the Human Rights Law, providing an affirmative defense to negligent hiring claims for employers who follow existing anti-discrimination laws, and reviewing licensing requirements;
- (2) ensure that educational programs that enable inmates to obtain a GED are available to all inmates and that vocational training offered in correctional institutions are market-related, and enhance post-secondary opportunities for both inmates and individuals who have prior records;
- (3) implement a system where persons who are receiving health coverage through Medicaid have those benefits suspended while incarcerated rather than terminated, and establish procedures to ensure that health coverage and other benefits are available immediately upon release;
- (4) consolidate all financial penalties into one fee and require that a re-entry impact statement be prepared before imposing additional financial penalties;
- (5) protect persons with criminal histories from unjust housing discrimination and ineligibility;
- (6) enhance opportunities for contact between incarcerated parents and their children, and consider the altering of time limits under the Adoption and Safe Families Act for incarcerated parents;

(7) grant individuals on parole the right to vote and repeal the lifetime bar on jury service that currently exists for people with a felony conviction; and

(8) educate the trial bench and bar on immigration-related consequences of criminal convictions and require the court to advise defendants of the immigration consequences of pleas.

NOW THEREFORE, IT IS

RESOLVED that the New York State Bar Association approves the Report of the Special Committee on Collateral Consequences of Criminal Proceedings and the Recommendations therein; and it is further

RESOLVED that the officers of the Association are hereby authorized to transmit the Report to appropriate judicial and government officials and other interested groups, facilities and individuals; and it is further

RESOLVED that the officers of the Association are empowered to take such other and further steps as are necessary to further the Recommendations contained in the Report, including supporting legislative proposals consistent with the Recommendations; and it is further

RESOLVED, that the Special Committee is directed to propose to the Office of Court Administration such further recommendations, rules and procedures that will further the purposes of this report.


Justice Asarch abstained from participating in the discussion and vote.

8. Report and recommendations of Committee on Standards of Attorney Conduct. Marjorie E. Gross and M. David Tell, subcommittee chairs, and Steven Wechsler, the subcommittee's associate reporter, presented the proposed Rules scheduled for consideration at this meeting in accordance with the scheduling resolution adopted by the House in November 2005. Following discussion, motions were approved to adopt the following Rules as proposed by the committee: 1.15, 1.17, 3.8, 5.2, 5.3, and 7.6. A motion to amend Rule 5.1 by eliminating the words "per se" from Comment 6 was approved on voice vote, and the rule as amended was then adopted on voice vote. A motion to amend Rule 7.4 to include the disclaimer currently contained in DR 2-105 failed by a vote of 54-74, and the rule as proposed with revisions by the Executive Committee was adopted on voice vote. Mr. Rifkin abstained from participating in the discussion and vote with respect to Rule 3.8.
9. Status Report by Task Force on Lawyer Advertising. Bernice K. Leber, chair of the Task Force, presented an informational report on the status of the proposed amendments to the Code of Professional Responsibility and Rules of the Chief Administrator announced by the Unified Court System on June 15 and scheduled to go into effect on January 15, 2007. She reviewed the Association's comments that had been submitted to the Presiding

Justices in August 2006 and that thereafter, accompanied by President Alcott and Task Force members A. Vincent Buzard, James F. Dwyer, James C. Gacioch and Robert J. Saltzman, she met individually with the Presiding Justices to discuss the proposed rules and the Association's comments. The report was received with thanks.

10. Report of Task Force on E-Filing. Wallace L. Leinhardt, co-chair of the Task Force, outlined the Task Force's work to date to address implementation of e-filing in state courts, with a view to recommending a system that works well for both the court system and lawyers. The Task Force studied e-filing experiences in other states and conducted three surveys in New York to determine readiness for e-filing and steps needed to implement e-filing: (1) chief clerks of the Surrogate's Court, (2) elected/appointed county clerks, and (3) New York lawyers. They reported that the Task Force is expected to release its report in late December, make an informational report and offer a scheduling resolution to the House of Delegates on January 26, 2007, and present the report for a vote at the March 31, 2007 House meeting. The report was received with thanks.
11. 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. The report was received with thanks.
12. Administrative items. Ms. Madigan reported on the following matters:
 - a. She reminded the delegates that the deadline is December 29, 2006 for submission of comments with respect to the rules proposed by the Committee on Standards of Attorney Conduct scheduled for consideration at the January 2007 House meeting.
 - b. She noted that the House of Delegates dinner will take place on Thursday, January 25, 2007 at Tavern on the Green in New York City, and she encouraged members to attend.
13. Date and place of next meeting. Ms. Madigan announced that the next meeting of the House of Delegates would take place on Friday, January 26, 2007 at the Marriott Marquis in New York City.
14. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Michael E. Getnick
Secretary