

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY, APRIL 29, 1978

PRESENT: Members Abrams, Amdursky, Aspland, Baltimore, Barlow, Beshar, Condon, Connelly, Connolly, Corbin, Daly, Devorsetz, Diamond, C.E. Doyle, Eiber, Elwood, Erickson, Fales, Fallon, Farrell, FitzPatrick, Ford, Forger, Galante, Griffin, Guiney, Harrigan, Haskel, Haynes, Hewitt, Hickey, Hoffman, Hoyt, Iovale, Karatz, Keeler, Kelligrew, Kirsch, Klein, Lapp, Lindsay, Lombardo, Lord, MacCrate, McMahon, Meriam, Meyer, H.G. Miller, W.A. Miller, Mintz, Mousaw, G. Murphy, J.H. Murphy, Neale, Ostertag, Palermo, Palmer, Patterson, Pritchard, Reilly, Russell, Ryan, Seymour, H.J. Smith, J.V. Smith, Spivack, Stakel, Stone, B.I. Taylor, Thoron, Tondel, Tucker, Vigdor, T.J. Walsh, Williams, Withrow and Yetter.

1. Approval of minutes of January 20, 1978 meeting. The minutes were approved as distributed.

2. Amendment of Criminal Justice Section bylaws. Mr. Kelligrew summarized proposed amendments to the Criminal Justice Section bylaws. Upon motion, the following amendment was approved:

ARTICLE III  
Officers and Executive Committee

Section 2. The Executive Committee will consist of the Chairman, Vice-Chairman and Secretary of the Section, all former Section Chairmen for a period of two years after they have served as Chairman of the Section, all Committee Chairmen, the Attorney in Chief of the New York City Legal Aid Society, the Executive Director of the New York State District Attorneys' Association, the President of the New York State Defenders' Association, the President of the County Judges' Association, the President of the Supreme Court Justices' Association and, in addition thereto, one member who resides or practices law from each judicial district in the state. The Chairman may appoint five additional individuals to serve as members of the Executive Committee. All members of the Executive Committee shall be members of the New York State Bar Association and Criminal Justice Section.

3. Amendment of Trusts & Estates Law Section bylaws. Mr. Meriam summarized proposed amendments to the Trusts & Estates Law Section bylaws. Upon motion, the following amendments were approved:

ARTICLE III  
Officers and Executive Committee

Section 3. All officers, as well as members of the Executive Committee, will hold office for a term beginning on the date of the Annual Meeting of the Section at which they are elected except that the Chairman-Elect shall automatically become Chairman on the date of the Annual Meeting following his election as Chairman-Elect. Those officers and members of the Executive Committee presently in office shall remain in office until the next Annual Meeting of the Section.

ARTICLE V

Duties of the Officers and of the Executive Committee

Section 4. Treasurer. The Treasurer shall be the custodian of the fiscal records of the Section. It shall be the duty of the Treasurer to prepare the Section budget and to maintain liaison with appropriate fiscal officers of the New York State Bar Association. The Treasurer shall report upon the Section's finances at each meeting of the Executive Committee and at the Annual Meeting.

4. Election of Nominating Committee. Mr. MacCrate, chairman of the Nominating Committee, reported that the committee recommended and nominated Frank A. Barrera, Philip A. Erickson and Joseph H. Murphy as members-at-large of the nominating committee. A motion was adopted electing said members.

A further motion was adopted electing Joseph H. Murphy chairman of the Nominating Committee.

The following members from each Judicial District, as selected by the vice-president and elected delegates from each District, were nominated as members of the Nominating Committee. A motion was adopted electing said members.

- 1ST DISTRICT - Christine Beshar and Haliburton Fales 2d
- 2ND DISTRICT - Bernadette Dolan and Edwin F. Russell
- 3RD DISTRICT - Lawrence Lagarenne and David S. Williams
- 4TH DISTRICT - Bernard F. McPhillips and Joseph E. Rosch
- 5TH DISTRICT - William F. FitzPatrick and James S. Kernan, Jr.
- 6TH DISTRICT - A. Lawrence Abrams and Robert I. Williamson
- 7TH DISTRICT - Peter M. Blauvelt and Daniel G. Kennedy
- 8TH DISTRICT - John E. Adeamson, Jr. and Everett M. Barlow
- 9TH DISTRICT - Henry G. Miller and J. Henry Neale
- 10TH DISTRICT - Charles R. Carroll and James V. Fallon
- 11TH DISTRICT - John J. Clabby and Robert L. Klein

4(a). Election of Members-at-Large of the Executive Committee. Mr. MacCrate, chairman of the Nominating Committee, reported that the committee recommended and nominated the following persons as Members-at-Large of the Executive Committee, to take office for a one-year term, commencing July 1, 1978:.

Leonard H. Amdursky  
Christine Beshar

Haliburton Fales 2d  
Benjamin N. Hewitt

Lawrence Lagarenne  
Henry G. Miller.

A motion was adopted electing said persons.

5. Election of Delegates to American Bar Association House of Delegates. Mr. Neale, chairman of the ad hoc nominating committee to nominate six delegates to the American Bar Association House of Delegates for the term 1978-1980, recommended the election of the following delegates:

J. Boyd Mullan  
Joseph H. Murphy

Robert P. Patterson, Jr.  
Thomas A. Pritchard

Edwin F. Russell  
Henry J. Smith.

A motion was adopted electing said delegates.

6. Report and Resolution of Executive Committee re Executive Director.

Mr. Smith summarized the report of the Executive Committee recommending the selection of William J. Carroll to become Executive Director upon the retirement of John E. Berry on November 1, 1978, and containing a definition of the duties and responsibilities of the Executive Director. Upon motion the following resolution was unanimously adopted:

WHEREAS, the New York State Bar Association has had, in its history, only one Executive Secretary or Executive Director, the beloved JOHN E. BERRY, whose own actions, from day to day over thirty years, have provided the only basis for a description of the functions of the Executive Director; and

WHEREAS, the forthcoming retirement of JOHN E. BERRY on November 1, 1978 makes it appropriate that the procedure for selection and retention of the Executive Director and a statement of the powers and duties of the position be adopted and set down in permanent form by the House of Delegates;

NOW, THEREFORE, at a regular meeting of the House of Delegates held at the Bar Center on April 29, 1978, on motion duly made, seconded and carried, it is hereby

RESOLVED, that the Executive Director of the New York State Bar Association shall be the chief administrative official of the Association, having direct charge of all administrative and staff operations. Under the direction of the officers and the Executive Committee, the Executive Director shall be responsible for implementing the policies of the Association, as determined by the Executive Committee or the House of Delegates; shall keep the officers and others informed of developments affecting the practice of law and the legal profession and the activities of other bar associations relating to such developments, and advise the officers and others as to the establishment of Association objectives and policy; and shall interpret programs and policies to the headquarters staff and members of the Association. Without limiting the generality of the foregoing, the Executive Director's powers and duties shall include:

- (a) Exercising exclusive jurisdiction over the hiring, assignment, training and discharge of all employees of the Association, provided that the hiring of professional and support staff shall take place only when the particular positions have been authorized by the Executive Committee or the Finance Committee;
- (b) In accordance with published Rules of the Finance Committee, directing the tentative preparation of and participating in the formulation of the Association's annual budget, and administering the Association's affairs in accordance with such budget after its adoption by the House of Delegates, or as amended;

- (c) Preparation of agenda and minutes of meetings of the Association, the House of Delegates, the Executive Committee and the Finance Committee, and, on request of The New York Bar Foundation, those of The Foundation and its Board of Directors;
- (d) Advising and assisting the President of the Association in all respects toward the President's discharge of the duties of the office, and advising the President-elect on the prospective appointment of committees;
- (e) Providing staff and liaison assistance to the committees, sections and action units of the Association;
- (f) Carrying out such other, specific duties as may be directed by the Executive Committee or the House of Delegates; and it is further

RESOLVED, that, in the event of a vacancy in the position of Executive Director, an Executive Director shall be selected by the Executive Committee subject to the approval of the House of Delegates (unless the House shall otherwise specifically direct), to serve at the pleasure of the Executive Committee; and it is further

RESOLVED, that the compensation of the Executive Director shall be in an amount fixed by the Finance Committee and included in the annual budget of the Association; and it is further

RESOLVED, that the report of the Executive Committee, pursuant to the delegation of authority by this House at its meeting of January 20, 1978, designating WILLIAM J. CARROLL of Albany, New York as the Executive Director of this Association as of November 1, 1978, to serve at the pleasure of the Executive Committee, be and the same hereby is approved; and it is further

RESOLVED, that the Executive Committee is authorized, at any time hereafter, to create the position of a full-time Assistant Executive Director or to direct the designation of a member of the headquarters staff as such Assistant Executive Director in addition to his or her other duties. In the absence of an Assistant Executive Director, the Executive Director shall designate a member of the staff to act in his stead and with his authority during any periods of absence or incapacity.

7. Report of Executive Subcommittee on Judicial Salaries. Mr. Forger summarized the report which recommended an increase in the level of compensation of judges in the State. He noted that the report also recommended that the State Commission on Legislative and Judicial Salaries undertake an active review of judicial salaries. A motion was unanimously adopted approving the report and recommendations

8. Report and Resolution of Committee on Judicial Administration. Mr. Whalen summarized the report, noting that the committee recommended as a general principle, a Unified Court System; a provision for the Office of Court Administration to assign judicial and non-judicial personnel to meet the needs that arise in the administration of justice; provisions within the Unified Court System for litigants to make the State of New York a party so as to afford a complete resolution of all litigation in the one court. The report was accepted and a motion adopted referring the matter of a Unified Court System to the Committee on Association's Action Program.

9. Report and Resolution of Action Unit No. 3. Mr. Palermo stated that a uniform rule on lawyer advertising and publicity had been adopted in the four departments and that the proposed new Canon 2 of the Code of Professional Responsibility had been redrafted to reflect this rule. He then summarized the major proposed changes to Canon 2 and the reasons therefor. An amendment changing subparagraphs "1" through "5" of DR 2-104 into paragraphs "B" through "F" was adopted. A motion was adopted approving Action Unit No. 3's recommended changes to the Code of Professional Responsibility, as amended. The following resolution was also adopted:

WHEREAS, the New York State Bar Association ("NYSBA") by prior resolution approved the Code of Professional Responsibility ("Code"), including Canon 2 and the Ethical Considerations and Disciplinary Rules following said Canon 2, effective January 1, 1970; and

WHEREAS, the Disciplinary Rules of the Code, and in particular those following Canon 2, have been expressly incorporated into rules of court by separate orders of the appellate divisions of the Supreme Court in each of the four judicial departments in New York State; and

WHEREAS, the United States Supreme Court decided the case of *Bates and O'Steen v. State Bar of Arizona* on June 27, 1977; and

WHEREAS, the appellate divisions of the Supreme Court in the four judicial departments in New York State have separately adopted court rules concerning lawyer advertising, effective March 1, 1978 in the Second, Third and Fourth Departments, and March 13, 1978 in the First Department, which rules are numbered differently in each department but contain uniform language, as set forth in Sppendix A; and

WHEREAS, the NYSBA has been requested by the Appellate Division Coordinating Committee on Lawyer Advertising to submit proposed changes in Canon 2 of the Code to conform the same to the new court rules on lawyer advertising; it is

RESOLVED, that the Ethical Considerations and Disciplinary Rules following Canon 2 of the Code, previously adopted by the NYSBA effective January 1, 1970, are repealed, contingent upon approval from the appellate divisions of the Supreme Court in each of the four judicial departments in New York State, and it is further

RESOLVED, that the proposed Ethical Considerations and Disciplinary Rules following Canon 2 of the Code, as provided in the recommended changes set forth in Appendix B, are adopted, contingent upon approval from the appellate divisions of the Supreme Court in each of the four judicial departments in New York State, or, if the recommended Code should be approved by fewer than all of the said appellate divisions, the said recommended Code shall apply only in the judicial departments in which the same shall be approved.

AND FURTHER RESOLVED, that the resolution approved by the House of Delegates at its meeting of November 5, 1977, is hereby modified to conform same to this resolution.

10. Report and Resolution of Committee on Federal Courts. Mr. Quinlan summarized the report of the committee regarding proposed changes in the jurisdiction of the federal courts. He noted that the House of Representatives had passed bill H.R. 9622 which would abolish diversity of citizenship as a basis of jurisdiction by suits between citizens of the United States and reviewed the basis for the committee's recommendation to the adoption of such bill. After discussion the following amended resolution was adopted:

WHEREAS, the U.S. House of Representatives has passed bill H.R. 9622 which would abolish diversity of citizenship in the federal courts under 28 U.S.C. 1332 for citizens of the United States while retaining such jurisdiction for suits between aliens or foreign states vis a vis citizens of the United States when the amount in controversy exceeds \$25,000; and

WHEREAS, the said bill abolishes the amount in controversy requirement in all federal question cases arising under 28 U.S.C. 1331; and

WHEREAS, the abolition of diversity of citizenship jurisdiction for suits between United States citizens would abrogate a substantial right of citizens of the United States, namely, the right of a citizen to litigate in a forum of his choice;

BE IT RESOLVED that the House of Delegates of the New York State Bar Association is opposed to the adoption of law of those portions of H.R. 9622 that would abolish diversity of citizenship as a basis of jurisdiction by or between citizens of the United States;

BE IT FURTHER RESOLVED that the House of Delegates of the New York State Bar Association does not oppose those sections of the H.R. 9622 which would abolish the \$10,000 amount in controversy provision in federal question cases; nor does it oppose those sections of the bill that would increase the amount in controversy provision in diversity of citizenship cases from \$10,000 to \$25,000.

11. Report of President. Mr. Smith announced that (a) the most significant development since the last meeting of the House was adoption of a uniform rule on lawyer advertising and publicity in the four departments; (b) the resolution and revised Canon 2, adopted by the House, would be sent to the Appellate Division Coordinating Committee on Lawyer Advertising; (c) the chairman of the Committee on Professional Ethics had expressed the belief that the committee could handle all inquiries and requests for opinions concerning lawyer advertising for the foreseeable future, and there was no need to appoint a special committee for that purpose; (d) an *amicus curiae* brief had been filed in the Court of Appeals in opposition to the challenge to the three court reform amendments; (e) the legislative procedures were working extremely well, due in large measure to the excellent cooperation of the sections and committees; (f) there will be an evaluation of the headquarters' staff and operation conducted by an ABA survey team in June; (g) an evaluation of Association staff, space and financial operations is being made by the Finance Committee and the Sections have been asked to provide information concerning their needs and the services provided by the staff; (h) Executive Committee had approved a joint project of the Labor Law Section and the Committee on Civil Rights to study the operations of the Human Rights Division; (i) he had attended meetings of the ABA and the National Conference of Bar Presidents and addressed a number of county bar associations; (j) a Special Committee on the Annual Meeting had been appointed to study all aspects of the meeting, including the possibility of changing the time of year the meeting is held.

12. Report of Chairman. Mr. Patterson announced that it was necessary to fix a date certain for a membership count to determine the number of delegates to which county and other bar associations are entitled, for a one-year term commencing July 1, 1978, and that the officers of the Association chose April 11, 1978 as such date. A motion was adopted ratifying the action of the officers.

He then reported the death of Carl O. Bachman, elected delegate from the Fifth Judicial District.

Mr. Patterson then presented a resolution endorsing Lyman M. Tondel, Jr. as president-elect in 1981 of the American Bar Association. Upon motion the following resolution was adopted:

WHEREAS, Lyman M. Tondel, Jr. of New York, by virtue of outstanding service to the legal profession and to the public as a member of the Board of Governors of the American Bar Association, and of its House of Delegates, its many Sections and Committees, and particularly through his chairmanship of several of its committees, through his leadership as President of this Association and his activities in The Association of the Bar of the City of New York, the New York County Lawyers' Association, the American Bar Foundation, the American Law Institute and the Institute of Judicial Administration, and through participation in writing and speaking to the profession and the public, through a well-deserved reputation for excellence as an attorney and through civic and other activities contributing to the public good and in the public interest, has proved himself a leader of the Bar by bearing such responsibilities in the finest tradition and thus merits full consideration for the presidency of the American Bar Association; and

WHEREAS, Lyman M. Tondel, Jr. possesses the personal qualities of wisdom, acumen and integrity, has shown an ability to understand the needs of the profession and the public, and demonstrated the capability for responsible leadership of the American Bar Association,

RESOLVED, the House of Delegates of the New York State Bar Association unanimously endorses the candidacy of Lyman M. Tondel, Jr. for the office of President-elect nominee in 1981 of the American Bar Association, and respectfully urges the Delegates of the American Bar Association to support his nomination for, and election to, that office.

13. New Business. Mr. Amdursky, Vice-President, Fifth Judicial District, announced that he and the remaining elected delegates had elected Frederic S. Kendall to fill the vacancy created by the death of Carl O. Bachman. Mr. Kendall's term will end June 30, 1979.

14. Date and place of next meeting. The next meeting of the House of Delegates will be June 24, 1978 at The Otesaga, Cooperstown.