

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY, APRIL 28, 1979

PRESENT: Members Abrams, Albert, Amdursky, Aspland, Barlow, Barrera, Beshar, Brearton, Brenner, Brick, Britt, Citrynell, Clabby, Clark, M. Cohen, E. Connolly, T. Connolly, Cook, Daly, Dee, DelleCese, Denton, Diamond, Dohl, Drazen, Eisenberg, Eolis, Fales, Fallon, Field, FitzPatrick, Ford, Forger, Freyer, Greenberg, Hall, Harrigan, Haskel, Hederman, Heming, Hoffman, Kahn, Keeler, Klein, Kosinski, Lagarenne, Lapp, Leinhardt, Levy, Maas, MacCrate, Meriam, Miller, Moser, Mousaw, Murnane, G.F. Murphy, Neale, O'Brien, Ostertag, Ostrow, Palermo, Patterson, Pedowitz, Peet, Pritchard, Reilly, Rosch, Russell, Seymour, Sipp, Smith, Spivack, Swett, B. Taylor, L. Taylor, Thoron, Tondel, Tucker, Vigdor, Whalen, Williams, Withrow, Wright, Yetter and Young.

1. Approval of minutes of January 26, 1979 meeting. The minutes were approved as distributed.

2. Amendment of Banking, Corporation and Business Law Section bylaws. Upon motion, the following amendments were approved:

ARTICLE III OFFICERS AND EXECUTIVE COMMITTEE

Section 1. Members of this Section, at the Annual Meeting of the Section, which shall be held during the week in which the Annual Meeting of the New York State Bar Association is held, shall elect a Chairman, two Vice-Chairmen, a Secretary, a Delegate to the House of Delegates of the Association, a Fiscal Officer and an Executive Committee.

Section 2. The Executive Committee shall consist of not less than 22 nor more than 30 members, and shall include members from each Judicial District in the State to the extent practicable. Except as provided below, the members of the Executive Committee shall be elected in as equal numbers as possible from among persons who are members of the Section's Banking Law Committee, Corporation Law Committee and Business Law Committee. Not more than five members of the Executive Committee may be members at large who need not be members of any committee of the Section.

Section 3. The Chairman, Vice-Chairmen, Secretary, Delegate to the House of Delegates of the Association and Fiscal Officer shall be elected from among the members (other than members at large) of the Executive Committee. The Executive Committee may appoint such other officers, and delegate such duties thereto consistent herewith, as the Executive Committee shall deem appropriate.

ARTICLE IV NOMINATION OF OFFICERS AND MEMBERS OF EXECUTIVE COMMITTEE.

Section 1. Prior to each Annual Meeting of the Section, the Chairman shall appoint a Nominating Committee of one member each from the Banking Law Committee, Corporation Law Committee and Business Law Committee. The Nominating Committee shall make and report nominations to the Section for the offices of Chairman, Vice-Chairmen, Secretary, Delegate to the House of Delegates of the Association, Fiscal Officer and members of the Executive Committee. Consistent with Section 2, 3 and 4 of ARTICLE III hereof, other nominations for the same offices may be made from the floor.

ARTICLE V DUTIES OF THE OFFICERS AND OF THE EXECUTIVE COMMITTEE.

Section 2. The Vice-Chairmen shall assist the Chairman in the performance of the chairman's duties when requested to do so. On the death, resignation or during the disability of the Chairman, the Vice-Chairman who was elected from the committee membership from which the office of Chairman would next be chosen as provided in Section 4 of ARTICLE III shall perform the duties of the Chairman for the remainder of the Chairman's term, except in case of the Chairman's disability, and then only for so much of the term as the disability continues. On the death, resignation, or during the disability of both the Chairman and such succeeding Vice-Chairman, the remaining Vice-Chairman shall perform the duties of the Chairman for the remainder of the Chairman's term, except in case of the disability of the Chairman and such succeeding Vice-Chairman, and then only for so much of the term as the disability of said officers continues.

Section 3. The Secretary shall be the custodian of all books, papers, documents and other property of the Section, except money, and shall keep a true record of the proceedings of all meetings of the Section and of the Executive Committee, and shall mail notices of all meetings of the Executive Committee.

Section 5. The Fiscal Officer is responsible for the financial affairs of the Section. He is to act as the Section's representative in dealing with the Association on all financial matters affecting the Section, including the budgeting process. He is also to recommend to the Chairman and the Executive Committee any changes in the financial policies of the Section.

Section 6. The Executive Committee shall have general supervision and control of the affairs of the Section subject to the Constitution and Bylaws of the New York State Bar Association and the Bylaws of this Section. It shall be responsible for the authorization of all commitments and contracts which shall entail the payment of money, for the expenditure of all monies collected by the Section or appropriated for the use and benefit of the Section.

Section 7. Consistent with Section 2, 3 and 4 of ARTICLE III hereof, the Executive Committee, during the interim between the Annual Meetings of the Section, may fill vacancies in the offices of Secretary, Vice-Chairmen, Delegate to the House of Delegates of the Association and Fiscal Officer and, in the event of a vacancy in the offices of Chairman and both Vice-Chairmen, in the office of Chairman. The Executive Committee may also fill any vacancy arising in the Executive Committee during the interim between Annual Meetings of the Section. Officers and Committee members so elected shall serve a term in accordance with ARTICLE III, Section 4.

ARTICLE VI COMMITTEES.

Section 2. At all times while a member of a committee of this Section, each committee member shall maintain in good standing membership in the New York State Bar Association and this Section. No member of the Section shall serve on more than one of the Banking Law, Corporation Law and Business Law Committees of the Section at the same time.

Section 4. The Chairman of each of the Banking Law, Corporation Law and Business Law Committees shall be appointed by the Chairman and Vice-Chairmen of the Section. The members of each of such committees shall be appointed by the Chairman of such committee, with the advice of the Chairman and Vice-Chairmen of the Section.

Section 5. In addition to the Banking Law, Corporation Law and Business Law Committees, any other committee or committees of the Section, if so designated by the Executive Committee pursuant to this Section 5, shall be included with the Banking Law, Corporation Law and Business Law Committees in and for purposes of ARTICLE III, Sections 2 and 4, ARTICLE IV, Section 1, and ARTICLE VI, Sections 2 and 4, as if named therein.

Section 6. In the case of any committee or committees other than the Banking Law, Corporation Law and Business Law Committees and any committee designated by the Executive Committee pursuant to Section 5 of this Article, the Executive Committee may, if and to the extent it deems appropriate, provide for the election of one or more members of the Executive Committee from the membership of such committee, the inclusion of such committee in the rotation provided for in ARTICLE III, Section 4, at such intervals as the Executive Committee deems appropriate, and the appointment of a member of such committee to serve on the Nominating Committee. In the discretion of the Executive Committee, any or all of the foregoing may be provided for on a regular basis or from time to time or for a temporary period, and may be changed or revoked at any time.

ARTICLE VII MEETINGS.

Section 1. The Annual Meeting of the Section shall be held at a time and place designated by the Executive Committee during the week in which the Annual Meeting of the New York State Bar Association is held. Regional meetings may be held from time to time during the interim between Annual Meetings at such times and places as may be designated by the Executive Committee.

Section 3. All binding action of the Section shall be by a majority vote of the members present.

ARTICLE VIII MISCELLANEOUS PROVISIONS.

Section 2. The Executive Committee may fix dues for membership in this Section, with the approval of the Finance Committee of the New York State Bar Association, and may make payment thereof a condition precedent for membership in the Section.

3. Amendment of Tax Section bylaws. Mr. Heming summarized the proposed amendment to the Tax Section bylaws. Upon motion, the following amendment was approved.

ARTICLE VIII, Section 4. Notwithstanding any other provisions of these bylaws, all officers and members of the Executive Committee who are elected at the Annual Meeting of the Section held in January, 1980, shall hold office for a term beginning at the close of such Annual Meeting and ending at the close of the meeting of the Executive Committee held in February, 1981, at which time the term of office of their respective successors shall commence, and the term of the Chairman of the Section and the Chairmen and members of each Standing Committee which would otherwise terminate or commence at the close of the Annual Meeting held in January, 1981, shall terminate or commence at the close of the meeting of the Executive Committee held in February, 1981.

4. Proposal for a New York State Board of Tax Appeals. Mr. Heming summarized the Tax Section's recommendations for the establishment of a New York State Board of Tax Appeals. Upon motion, the following resolution was unanimously adopted:

RESOLVED, that the proposal for a New York State Board of Tax Appeals, which was discussed in a report of the Tax Section dated March 11, 1975, approved by the House of Delegates on April 19, 1975, advocated by Joseph H. Murphy, the then president of the New York State Bar Association, in testimony on October 2, 1975, and reflected in Assembly Bill No. 8090, which passed the Assembly in 1977, be and it hereby is reaffirmed and approved, and further

RESOLVED, that this House of Delegates hereby urges the Governor, the Lieutenant Governor, the President and Members of the State Tax Commission, and the Members of the Senate and the Assembly of the State of New York to give favorable consideration to the establishment of a New York State Board of Tax Appeals; and further,

RESOLVED, that the Secretary of this Association be and he hereby is directed to furnish copies of these resolutions to the Governor, the Lieutenant Governor, the President and Members of the State Tax Commission, and the Chairman of the appropriate Committees of the Senate and Assembly of the State of New York.

5. Repeal of Carry Over Basis Provisions Enacted as Part of the Tax Reform Act of 1976. Mr. Swett summarized the Trusts and Estates Law Section's Executive Committee's recommendation for repeal of the carry over basis provisions enacted as a part of the Tax Reform Act of 1976. Upon motion, Merrell E. Clark, Jr. abstaining, the following resolution was adopted:

RESOLVED, that the House of Delegates of the New York State Bar Association respectfully urges the Congress of the United States to repeal the "carry over basis" provisions enacted as a part of the Tax Reform Act of 1976, the effective date of which was deferred to January 1, 1980, by the Revenue Act of 1978, and thus to continue the rule that the income tax cost basis for property acquired from a decedent is its fair market value on the date of death or on the alternate valuation date.

6. Report of Treasurer. A copy of the Treasurer's report, January 1 to March 31, 1979, had been previously circulated to members of the House. The report was received and filed.

7. Election of Nominating Committee. Mr. Barlow, member of the Nominating Committee, reported that the committee recommended and nominated Charlotte Smallwood Cook, Edwin F. Russell and Henry J. Smith as members at large of the Nominating Committee. A motion was adopted electing said members.

A further motion was adopted electing Edwin F. Russell chairman of the Nominating Committee.

The following members from each Judicial District, as selected by the vice-president and elected delegates, from each Judicial District, were nominated as members of the Nominating Committee:

- 1st District Christine Beshar and Haliburton Fales 2d
- 2nd District Edward J. Connolly, Jr. and Bernadette Dolan
- 3rd District Lawrence Lagarenne and David S. Williams
- 4th District Bernard F. McPhillips and George F. Murphy
- 5th District William F. FitzPatrick and James S. Kernan
- 6th District A. Lawrence Abrams and Robert I. Williamson
- 7th District Peter M. Blauvelt and Delon Mousaw
- 8th District Everett M. Barlow and Wallace J. Stakel
- 9th District Henry G. Miller and J. Henry Neale
- 10th District James V. Fallon and Joseph L. Tobin, Jr.
- 11th District John J. Clabby and Robert L. Klein

A motion was adopted electing said members.

8. Report of Executive Committee Subcommittee to Review ABA Operational Survey of NYSBA. Mr. Palermo provided background information on the visit of the ABA survey team, and indicated that the Subcommittee report, copies of which previously had been furnished to all members of the House, summarized the major recommendations contained in the survey. He noted that the Subcommittee report addressed itself to twenty-six of the recommendations made by the ABA. He stated that some of the recommendations had been implemented and that others were undergoing study by various committees and the staff of the Association. He solicited comments on the report from members of the House and indicated that reports concerning specific recommendations would be made at a future date.

9. Proposed Court Reorganization. Mr. Fales reported that Action Unit No. 4 had met frequently during the past few months in order to begin to formulate positions on various aspects of court reorganization. He pointed out that the Governor's program bill required additional study by the Action Unit and that such study was being undertaken. He stated that a tentative position paper was being prepared which would be submitted to the membership prior to the June meeting of the House of Delegates. Mr. Fales noted that two draft position papers had been prepared and that a third draft was being developed. He indicated that the Action Unit intended to have the report and recommendation completed by the end of May, at which time it would be made available to all members of the House of Delegates, local bar associations and other interested parties.

Following presentation of the report, numerous members of the House expressed concern that the report of Action Unit No. 4 would not be circulated sufficiently in advance of the meeting at which approval would be sought. In that connection, the request was made that Action Unit No. 4 endeavor to provide an outline of the general principles and recommendations contained in the report, as soon as possible. Mr. Fales responded that he would make every effort to provide such a document, however, in view of the time constraints and the efforts of Action Unit No. 4 to complete its work on the report itself, he could not guarantee circulation of the requested document.

10. Report of Committee on Administrative Law on Over Regulation. Mr. Sullivan summarized the contents of the report, copies of which had been furnished to all members of the House. He indicated that it was the conclusion of the Committee that regulatory reform was essential in New York State and that this was a proper area for study and review by the Association. He then stated that because the areas of inquiry touched upon matters which currently fall within the purview of numerous sections and committees of the Association an Action Unit should be created to deal with these questions. The report was received with thanks, following which Mr. Palermo announced that the Executive Committee had recommended that the report be referred to the Committee on Association's Action Program. The Committee was asked to make appropriate recommendations at the June meeting of the House of Delegates.

11. Acquisition of No. 6 Elk Street. Mr. Williams reported that the Association had exercised its option to purchase No. 5 Elk Street, in accordance with the resolution adopted by the House at its January 26, 1979 meeting. He noted that since that time No. 6 Elk Street had become available and that the Executive Committee had recommended purchase of No. 6 Elk Street

in order to insure adequate facilities for the future growth of the Association. Upon motion, the following resolution was unanimously adopted:

RESOLVED, that the officers and other appropriate agents of the New York State Bar Association be authorized to negotiate a contract to purchase real property located at No. 6 Elk Street, Albany, New York on such terms and conditions as they deem acceptable in their discretion.

12. Interim Report on Special Committee on Specialization in the Law.

Mr. Patterson, reporting for Mr. Fromson, stated that the committee was in the process of conducting meetings throughout the state to discuss the proposed New York Plan of Specialization in the Law. He indicated that the committee would be meeting on May 11th, to review the questions raised at the various meetings concerning the plan, and to discuss the feasibility of revising the plan prior to its submission to the House of Delegates at the June meeting. Mr. Patterson stated that if the committee approved revisions in the plan, the revised plan would be distributed to all members of the House, local bar associations and other interested parties sufficiently in advance of the June meeting to permit study and review.

13. Report of Committee on Judicial Selection.

Mr. Klein provided background information on the procedures followed by the committee in connection with the appointment of the Chief Judge and the nomination of an Associate Judge to the Court of Appeals. He stated that subsequent to the release of the names of nominees for Chief Judge, the committee interviewed all candidates and submitted a report to the Governor. A similar procedure was followed in connection with the nomination of Associate Judge. Mr. Klein noted that in view of the fact that these were the first two vacancies on the Court of Appeals to be filled on the basis of merit selection, and because the committee had no official standing, it acted in both cases in an advisory capacity. Mr. Klein concluded by stating that in his judgment the selection process worked extremely well, but encouraged members of the House to submit suggestions for improvements in the selection process to his committee.

14. Report of Committee on Association Insurance Programs.

Mr. Patterson, reporting for Mr. Read, stated that because of competition in the professional liability insurance field, the 1979 rate schedule would be lower than the 1978 schedule, which was the first evidence of stability in rates since the inception of the program in 1974. He did note, however, that in some categories, primarily in the two-man firm, the premium would not necessarily be lower than that offered by the competition. He then announced plans for a loss prevention course which was being designed by the Association in cooperation with Shand-Morahan & Co. and Bertholon-Rowland Corp. The course would be designed to discuss those areas which give rise to the greatest number of professional liability claims, and suggest solutions to these problems. Persons taking this program and subsequently passing an open book written test would be entitled to a discount on their annual premium. He concluded by indicating that a new policy for large firms was in effect which contained features making the policy competitive with that currently being offered to large firms by other insurance carriers.

15. Report of President. Mr. Patterson reported that:

a) Action Unit No. 3, in furtherance of its objectives to improve the delivery of legal services in New York, would be in contact with local bar associations to explore the possibility of such associations adopting the ABA model lawyer referral program and the open panel group legal services plan. He indicated that the establishment of such programs would provide competition to the closed panels plans presently in existence in various parts of the state. He stated that it was necessary to know which associations were interested in obtaining information and assistance to implement these plans and asked the representatives of the county bar associations to contact him should there be interest in pursuing these programs. He then indicated that if sufficient interest on the part of local bar associations was not expressed, there was a possibility of the Association establishing regional plans. He also noted that if successful in establishing these plans throughout the state, the Association would undertake to conduct a public relations campaign including public service announcements on radio and television to indicate the availability of these services.

b) Charles Yetter had been appointed Chairman of the Membership Committee, which would be reviewing the present membership program and formulating recommendations for an on-going Association membership program.

c) He had been in contact with various legislators and the Superintendent of Insurance in connection with the group and prepaid legal services bill. The future of the bill was uncertain, but he would continue his efforts to urge its passage.

d) That the Association had supported the pay increases for the judiciary, minimum pay recommendations for county and municipal judges in upstate localities, and recommended restoration of \$11,000,000 in the judiciary budget.

e) To date there had been twenty affirmative legislative proposals, the status of which was indicated on the chart which had been distributed to all members of the House. In that connection, he reported that the State Bar News would publish a summary of the status of legislation of interest to lawyers, including the affirmative legislative proposals of the Association.

f) Various bills were pending in the Legislature to amend Section 90 of the Judiciary Law to ameliorate the effect of the CHU decision, and that the Executive Committee had approved support of Assembly Bill 6252.

g) He had testified before the Senate Judiciary Committee on the subject of court reorganization, and indicated to the committee that Action Unit No. 4 was studying the various questions involved, and anticipated that the House of Delegates would act on the proposals of Action Unit No. 4 at its meeting in June.

h) The Federal Trade Commission investigation of the legal profession had been temporarily halted. However, efforts were continuing to explore available options for resolution of this matter.



i) The following special committees had been created:

Special Committee on Military and Veterans Affairs, to be chaired by Bruce Bean.

Special Committee on Senior Volunteer Attorneys, to be chaired by Honorable Edward Thompson.

Special Committee on Juvenile Justice, to be chaired by Honorable Howard A. Levine.

16. Report of Chairman. Mr. Palermo announced the following dates for meetings of the House of Delegates:

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| September 29, 1979 | Albany        |
| January 26, 1980   | New York City |
| April 26, 1980     | Albany        |
| June 21, 1980      | Cooperstown.  |

He next reported that he had met with the Executive Board of the Suffolk County Bar Association and discussed a wide range of subjects of common interest. He then reported that he had attended the mid-year meeting of the American Bar Association in Atlanta and had attended a National Conference of Bar Leaders in Chicago under the auspices of the American Bar Association. He concluded by stating that he also had attended numerous Association committee meetings and Executive Committee meetings of various sections.

17. Procedures for the Nomination and Election of NYSBA Delegates to the American Bar Association House of Delegates. Mr. Patterson reported that no formal procedure existed for the nomination and election of NYSBA delegates to the American Bar Association House of Delegates. Such a procedure had been developed and was approved by the Executive Committee. A motion was unanimously adopted approving the following resolution:

WHEREAS, The American Bar Association (ABA), in August 1978, amended its Constitution to require state bar associations entitled to five or more delegates in its House of Delegates to have at least one young lawyer representing the state association to be less than thirty-five years of age at the beginning of his or her term, such provision to take effect at the conclusion of the annual meeting of the ABA in August 1980;

WHEREAS, the New York State Bar Association (NYSBA) will be entitled to six delegates to the ABA House of Delegates, including such young lawyer delegate; and

WHEREAS, the young lawyer delegate to be selected should be a person who, by past service to the organized bar in general and to the NYSBA in particular, has demonstrated the willingness and the capacity to represent the NYSBA in the ABA House of Delegates; it is

RESOLVED, that delegates to the ABA House of Delegates shall be nominated and elected pursuant to the procedures hereinafter set forth:

- (1) Six delegates to the ABA House of Delegates shall be elected, each for a term of two years commencing at the adjournment of the 1980 Annual Meeting of the ABA House of Delegates, in accordance with the appropriate provisions of the ABA Constitution and Bylaws. One delegate so elected shall be a young lawyer less than thirty-five years of age at the beginning of his or her term. Thereafter, six successor delegates including a young lawyer delegate shall be elected every second year for two year terms to commence at the conclusion of the Annual Meeting of the ABA House of Delegates in the appropriate year.
- (2) The six delegates shall be elected at the Spring meeting of the NYSBA House of Delegates occurring in the calendar year during which their terms shall commence.
- (3) The Nominating Committee is hereby designated as the nominating body for the six delegates to the ABA House of Delegates and shall report its nominations at the meeting of the House of Delegates preceding that at which the election is to be held.
- (4) The Nominating Committee shall choose its nominee for young lawyer delegate after consultation with the Young Lawyers Section of the Association and the Executive Committee of the Association. Any member of the NYSBA House of Delegates, chairperson of the Association's sections and committees, the various local bar associations represented in the NYSBA House of Delegates shall forward the names of any suggested nominees to the Secretary by July 1 of the year preceding that in which the election is to be held.
- (5) In addition to the nominees of the Nominating Committee, one or more additional nominations may be made by petition signed by not less than ten members of the NYSBA House of Delegates and filed with the Secretary of the Association not later than twenty-five days before the meeting at which the election is to be held.
- (6) Nominations not made in accordance with the procedures set forth hereinabove shall not be considered or voted upon.
- (7) At the meeting of the NYSBA House of Delegates at which the election is held, the young lawyer delegate shall be voted upon separately from the other five delegate positions, and the young lawyer nominee receiving the most votes of members of the House of Delegates present shall be elected. By separate vote, those five nominees for the remaining delegate positions receiving the most votes of those members of the House of Delegates present shall be elected.
- (8) Vacancies in any of the six delegate positions arising from any cause shall be filled by the Executive Committee until the next meeting of the NYSBA House of Delegates at which meeting such delegate position shall be filled.

This resolution shall become effective immediately.