

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
LAKE PLACID RESORT HOTEL, LAKE PLACID, NEW YORK
JUNE 30, 1979

PRESENT: Members Abrams, Albert, Amdursky, Aspland, Beghe, Beshar, Block, Brearton, Brick, Britt, Citrynell, Clabby, Clark, E.J. Connolly, T.P. Connolly, Daly, DelleCese, Diamond, Dohl, Dougherty, Drazen, Eolis, Fales, Fallon, Fenstermacher, Field, FitzPatrick, Forger, Frizzell, Galante, Greenberg, Haynes, Hederman, Heming, Hoffmann, Jones, Klein, Lagarenne, Lapp, Lee, Lindsay, Maas, MacCrate, Marcus, Meriam, Miller, Mitchell, Moses, Mousaw, G.F. Murphy, J.H. Murphy, Neale, Nessen, O'Brien, Ostertag, Palermo, Parker, Patterson, Peet, Potter, Pritchard, Reilly, Rosch, Rosenthal, Russell, Sipp, Smith, Stakel, Swett, L.B. Taylor, Thoron, Tucker, Vigdor, Whalen, Williams, Withrow, Witmer, Wright, Yetter, Young and Zimmer.

1. Approval of minutes of April 28, 1979 meeting. The minutes were approved as distributed.

2. Mr. Palermo opened the meeting in memory of C. Addison Keeler, former President of the Association. A moment of silence in respect to his memory followed adoption of a motion authorizing presentation of a formal memorial resolution at a future House of Delegates meeting and expression of sympathy to Mr. Keeler's family.

3. Recognition of retiring members of the House of Delegates.

Mr. Palermo recognized those delegates present who were completing their terms, expressing gratitude for their service. Remarks on behalf of the retiring members were offered by Mr. Withrow. The following is a list of the retiring members of the House:

A. Lawrence Abrams
M. Bernard Aidinoff
Renato Beghe
Allen Bentkofsky
Frederic Block
Anthony C. Bucca
Frank H. Connelly
Thomas P. Connoily
Louis A. Craco
Sidney Devorsetz
Adrian W. DeWind
Bert R. Dohl
Joseph H. Farrell
Arnold L. Fein
Theodore F. Fenstermacher
John L. Ford
Eleanor M. Fox
John M. Freyer

Joyce M. Galante
Barry H. Garfinkel
Richard F. Griffin
Robert H. Hayner
Benjamin N. Hewitt
Stephen L. Kass
Robert M. Kaufman
John R. Kelligrew
John A. Kosinski, Jr.
Edward J. Lee
George N. Lindsay
Bernard S. Meyer
Don P. Murnane
Robert L. Ostertag
Weston H. Palmer
John S. Parker
Francis R. Paternoster
Nancy T. Riseley

Sidney Schwartz
John M. Sheridan
Richard L. Sigal
Evan J. Spelfogel
Wallace J. Stakel
Solon J. Stone
Justin L. Vigdor
James R. Withrow, Jr.
Louis Young.

4. Introduction of new members. Mr. Palermo welcomed the new members of the House that were present and would be taking office with commencement of the new Association year.

5. Certification of local and county bar delegates. Mr. Palermo reported that bar associations entitled to delegates had filed their designations of delegates for the year 1979-80. On motion, said designations were approved as filed and the filed roster of members of the House approved as the official list for 1979-80.

6. Report of Treasurer. Mr. Pritchard's report, copies of which previously had been furnished to all members of the House, was received with thanks.

7. Amendment of Real Property Law Section bylaws. Mr. Connolly summarized the proposed amendment to the Real Property Law Section bylaws. Upon motion, the following amendment was approved:

Section 2. The Chairman, the First Vice-Chairman, the Second Vice-Chairman, the Secretary, Chairmen of Standing Committees and the past Chairmen of the Section shall be members of the Executive Committee (but past chairmen shall be entitled to vote only for ten years), and in addition thereto, such Committee will consist of one member from each Judicial District in the State and two members at large.

8. Presentation of Root/Stimson Award. Hon. Domenick L. Gabrielli, Chairman of the Subcommittee on Community Service Awards, presented the award to John J. McCloy of the Fund for Modern Courts for outstanding volunteer service to the community. Merrell E. Clark, Jr. accepted the award on behalf of Mr. McCloy.

9. Presentation of Public Service Award. Thomas M. Whalen, III, Chairman of the Committee on Lawyers and the Community, presented the award to the Human Services Planning Council of Schenectady County for their outstanding contribution to the betterment of the administration of justice.

10. Presentation of Public Service Medal. Hon. Domenick L. Gabrielli and Thomas M. Whalen, III presented the award to Raymond H. Lindemann, Sheriff of Rockland County, for distinguished public service in his official capacity.

11. Report of Committee on Association's Action Program re establishment of Action Unit No. 5. Mr. Russell, Chairman of the Committee on Association's Action Program, summarized the background statement and report of the committee recommending the establishment of Action Unit No. 5 to consider and make recommendations concerning regulatory reform designed to alleviate over-regulation of individuals and businesses by governmental agencies in New York State. Copies of the report had been previously furnished to members of the House. Upon motion, the following resolution was unanimously adopted:

RESOLVED, that the House of Delegates hereby directs the President of the Association to establish and appoint an Action Unit No. 5 on Regulatory Reform to:

1. Consider, review and study all available information and materials (particularly the responses of the Association's sections and committees to the President's 1978 inquiry on over-regulation and the staff survey of the New York State Administrative Regulations Review Commission) relating to problems encountered with State regulatory agencies and their regulatory programs to identify those creating burdens of over-regulation for individuals and businesses in this State, and then to review those selected agencies and their procedures so that regulatory reform recommendations can be made concerning them very promptly;
2. Develop and submit recommendations for improvement of the regulatory process and for regulatory reform through the abolishment of unnecessary, duplicative or unproductive agencies, and/or by modification, revision or removal of such of their duties, responsibilities, powers, programs, rules, practices and procedures so as to improve their efficiency and productivity, decrease their costs, and eliminate or curtail to the greatest extent possible objectionable, unproductive over-regulation in New York State;
3. Cooperate with other bar associations, trade, business and industry organizations, private foundations, educational institutions, the New York State Administrative Regulations Review Commission and with others in their efforts to achieve regulatory reform and eliminate or curtail over-regulation within New York State;
4. Submit recommendations to the Executive Committee and the House of Delegates for appropriate Association action that may be necessary to generate support required to institute and carry out regulatory reform proposals.

The Action Unit No. 5 shall conduct its deliberations in close coordination with the Committee on Administrative Law and with all Sections and existing Committees of the Association, particularly those subject to the jurisdiction and authority of regulatory agencies or having cognizance in areas related to the concerns of Action Unit No. 5.

The Action Unit shall make timely reports of the progress of its deliberations to the House of Delegates and the Executive Committee. The Action Unit shall make its recommendations to the House promptly and shall conclude its work and submit its final report to the House with all reasonable dispatch, an Action Unit of this Association being what its name implies.

A further motion was unanimously adopted granting discretionary authority to the President to name non-lawyers or non-Association members to the Action Unit, if deemed desirable, including persons available from other disciplines such as economics, business and government.

12. Report of Committee on Clients' Security Fund. Mr. Gershon, Chairman of the Committee on Clients' Security Fund, summarized the report, copies of which had been previously distributed to all members of the House, and explained the need for amendment of the rules currently governing operation of the fund. Upon motion, the following resolution was adopted and the following rules and procedures were approved:

WHEREAS, the Clients' Security Fund was established by resolution of the Executive Committee, predecessor to the present House of Delegates, approved on December 7, 1962; and

WHEREAS, the aforesaid resolution and rules governing the operation of the Clients' Security Fund are in need of modification because of changes in circumstances which have rendered some sections of the aforesaid resolution and rules obsolete; and

WHEREAS, the operation and efficient administration of the Clients' Security Fund will be promoted hereby; it is

RESOLVED, that the resolution creating the Clients' Security Fund, adopted by the Executive Committee on December 7, 1962, is hereby rescinded, and it is further

RESOLVED:

1. There is hereby continued the standing committee of the Association known as the Committee on Clients' Security Fund (Committee) of the New York State Bar Association (NYSBA), whose functions are to receive, hold, manage, and distribute such funds as may from time to time be appropriated to it by the House of Delegates of the NYSBA or through voluntary contributions or otherwise, for the purpose of maintaining the integrity of the legal profession by providing some measure of indemnification and reimbursement to clients suffering losses through any dishonest conduct, consisting of defalcation, misappropriation or willful misapplication of client money, securities or other property, by any member of the NYSBA, or, upon the recommendation of the Committee and the approval of the Executive Committee of the NYSBA, by any non-member of the NYSBA who is a member of the New York Bar and who has an office for the practice of law within the State of New York.
2. The committee members shall be appointed by the President of the Association.
3. The Committee shall be authorized to consider claims for reimbursement of losses caused by the dishonest conduct of a member of the NYSBA (or, upon the recommendation of the Committee and approval of the Executive Committee, by any non-member who is a member of the New York Bar and has an office for the practice of law in New York State), where said lawyer has been a practicing member of the New York Bar maintaining an office for the practice

of law within the State of New York, and has died, is incapable of managing his or her affairs, has been convicted of a crime out of which the loss arose, has been disbarred, or against whom disciplinary action has been recommended, or against whom committee authorized by the Appellate Division of the Supreme Court. The Committee shall be authorized and empowered to honor, pay, or reject such claims in whole or in part to the extent that funds are available. All reimbursements shall be a matter of grace, not of right, and no client and no member of the public shall have any right in the Clients' Security Fund as third-party beneficiary or otherwise. No payment to any client in any year shall exceed the sum of \$5,000 or 50% of the balance of the fund, whichever amount is less, without the express approval of the Executive Committee.

4. The Committee is authorized to adopt rules and procedures, not inconsistent herewith and subject to approval thereof by the House of Delegates, for the management of its activities.
5. All sums appropriated by the House of Delegates for the use of the Committee and all contributions shall be held by the Treasurer of the Association in a separate fund known as the Clients' Security Fund (Fund), subject to the directions of the Committee. The House of Delegates shall appropriate such amounts to the Fund each year as it deems desirable.
6. The Committee may use or employ the Clients' Security Fund for any of the following purposes within the scope of the Committee's objectives as heretofore outlined:
 - (a) to make reimbursements to members of the public;
 - (b) at the discretion of the Committee, and with the approval of the Executive Committee, to purchase insurance to insure the integrity of the Clients' Security Fund, provided that such insurance is obtainable at reasonable cost and is deemed appropriate.
7. Such portions of the Fund, if any, as may not be needed currently may, in the discretion of the Committee and the Treasurer, be placed in interest-bearing accounts or otherwise invested. The income from the Fund shall be added thereto.
8. The Committee shall render reports of its activities as required by the Bylaws of the Association and shall make such other reports of its activities as the Executive Committee may authorize.
9. This resolution may be amended or rescinded and the Fund terminated and abolished at any time by action of the House of Delegates. In the event of such abolition, all assets of the Clients' Security Fund shall be and remain the property of the New York State Bar Association and usable for its general purposes by action of the House of Delegates.

CLIENTS' SECURITY FUND

RULES AND PROCEDURES

The Committee on Clients' Security Fund hereby prescribes the following rules and procedures for the management of its activities:

1. Definitions.

When used in these Rules and Procedures:

- (a) The term "Applicant" means a person who claims to have suffered a Reimbursable Loss.
- (b) The term "Association" means the New York State Bar Association.
- (c) The term "Committee" means the Committee to administer the Clients' Security Fund of the Association.
- (d) The term "Executive Committee" means the Executive Committee of the Association.
- (e) The term "Dishonest Conduct" means defalcation, misappropriation or willful misapplication of client's money, securities or other property, by any lawyer acting either as a lawyer or as a fiduciary, having been designated as such by a client, and having been so appointed or selected as a result of a client-lawyer relationship in the matter in which the loss arose.
- (f) The term "Fund" means the Clients' Security Fund of the Association.
- (g) The term "Lawyer" means a person who at the time of committing any Dishonest Conduct which caused a Reimbursable Loss was:
 - (i) a member of the Bar of the State of New York,
 - (ii) engaged in the practice of law in the State of New York, and
 - (iii) a member of the New York State Bar Association, provided, however, that requirement (iii) may be waived upon the recommendation of the Committee and approval of the Executive Committee of the Association.
- (h) The term "Reimbursable Loss" means a loss caused by the Dishonest Conduct of a Lawyer who has died, is incapable of managing his or her affairs, has been convicted of a crime out of which the loss arose, has been disbarred, or against whom disciplinary action has been recommended by any disciplinary committee authorized by the Appellate Divisions of the Supreme Court.
- (i) The term "Unqualified Applicant" means an Applicant who was at the time of the alleged Dishonest Conduct or is at the time of his or her application for reimbursement from the Fund the partner, employee or associate of the Lawyer complained of or a member of such Lawyer's immediate family or immediate household.

2. Presentation of Claims.

(a) Time

An Applicant may apply for reimbursement from the Fund no later than one year from the date of the final event making the loss for which reimbursement is sought a Reimbursable Loss, unless such event was not discovered by and could not reasonably have been discovered by Applicant on the date of its occurrence, in which case the period within which to present Applicant's claim shall commence as of the earlier of the date of discovery or the date when the occurrence could reasonably have been discovered.

(b) Form and Contents of Application

- (i) An application for reimbursement from the Fund must be verified. In all other respects, the application may be in any form convenient to the Applicant.
- (ii) Applications shall be addressed to the Fund at the office of the Association and shall forthwith be transmitted to the Chairman of the Committee.
- (iii) An application shall contain the following minimum information:
 - 1. The name of the Lawyer who is alleged to have committed the Dishonest Conduct resulting in the loss for which reimbursement is being sought (Reimbursable Loss); where he or she maintained an office for the practice of law in the State of New York, when the Lawyer died, was declared incapable of managing his or her affairs, or was disbarred, or when disciplinary action was recommended by any disciplinary committee authorized by the Appellate Divisions of the Supreme Court;
 - 2. The amount of the alleged Reimbursable Loss;
 - 3. A recitation of all the facts which are pertinent to a clear understanding of the alleged Dishonest Conduct, including the date on, or period of time during which the alleged Reimbursable Loss was incurred;
 - 4. The date on which the final event establishing the Reimbursable Loss occurred and a description of such event;
 - 5. A statement of what steps the Applicant has taken to recover the alleged Reimbursable Loss from other sources, including a statement as to whether any application for reimbursement with regard to the alleged Reimbursable Loss, or any other loss attributed to the Lawyer, has been submitted to any other bar association or other entity; and

6. An acknowledgement by the Applicant that any reimbursement shall be a matter of grace, not right, that he or she has no right in the Fund as third party beneficiary or otherwise, and that the Committee's decision on the Applicant's application for reimbursement is not subject to review by any court or other instrumentality. The application shall also contain any other information requested by or on behalf of the Committee.

3. Processing of Claims

- (a) The Chairman of the Committee shall refer each application received by the Association within the time limits specified in paragraph 2(a) hereof to a member of the Committee. Such member thereafter shall investigate the application which has been referred or shall cause another member or members of the Association to conduct or assist in such investigation.
- (b) Upon the completion of such investigation, the member of the Committee to whom the application has been referred shall prepare a report which shall be distributed among the members of the Committee. Such report shall contain a statement of the facts which the investigation determined, the views of the reporting member as to whether a Reimbursable Loss has been established, and the recommendation and views of the reporting member on the extent, if any, to which the Applicant shall be reimbursed from the Fund. The reports of each member shall be distributed to the remainder of the Committee at least one (1) month prior to the date of any meeting called to consider applications for reimbursement.
- (c) A quorum of the Committee shall consist of a majority of the members of the Committee. The Committee may conduct a hearing on any application of which the Applicant, the Lawyer and all other interested persons as determined by the Committee shall receive reasonable notice. The Committee shall determine by majority vote of the members present at any meeting at which a quorum is present, whether the Applicant has suffered a Reimbursable Loss and the amount, if any, to be paid. In making such decision, the Committee shall consider, inter alia, the extent to which the Reimbursable Loss is attributable to action of the Applicant, the comparative hardship suffered by the Applicant, the total number of Reimbursable Losses determined to be caused by the Dishonest Conduct of any one Lawyer and the total number of Reimbursable Losses determined to have occurred during the period for which claims have been processed. In no event shall the Applicant be reimbursed for a Reimbursable Loss in an amount greater than \$5,000.00 or 50% of the balance of the Fund, whichever is less, without the approval of the Executive Committee.

4. Payment of Claims

If the Committee shall determine that an Applicant shall be reimbursed from the Fund, the Committee shall, after execution of an agreement between the Applicant and the Association pursuant to which the Association is subrogated to the Applicant's rights against the Lawyer in an amount equal to the amount of reimbursement determined by the Committee, direct the Treasurer of the Association in writing forthwith to pay such amount to the Applicant. The Association may, after receiving the recommendation of the Committee bring such action as it deems advisable against the Lawyer, his or her assets or his or her estate, in the name of one or more of the following: The Association, the reimbursed Applicant or the Committee with the consent of its members. The Association shall advise such a reimbursed Applicant at his or her last known address, or cause him or her to be advised, of the commencement of any such action, so that he or she may join to press any claim he or she may have in excess of the amount of reimbursement received from the Fund. Any amounts received by the Association in any such action shall be added to the Fund.

5. Management of the Fund

The Fund shall be held by the Treasurer of the Association, subject to the written directions of the Committee. Such portion of the Fund, if any, as may not be needed currently, may, in the discretion of the Committee and the Treasurer of the Association, be placed in interest-bearing securities or otherwise invested. Any income therefrom shall be added to the Fund. The Committee may draw upon the Fund only to reimburse Applicants. In addition, the Committee may with the approval of the Executive Committee purchase insurance to insure the integrity of the Fund, provided that such insurance is obtainable at reasonable costs and is deemed appropriate.

6. Management of the Committee's Affairs

- (a) The Committee shall meet from time to time upon call of the Chairman of the Committee. Such meetings shall be called at such times as shall seem desirable to the Chairman and at the request of any two members of the Committee.
- (b) The Committee shall be the final interpreter of these Rules and Procedures, provided, however, that the Executive Committee of the Association may prospectively alter any interpretation by the Committee on its own initiative or upon the request of any member of the Committee. No Applicant may contest the Committee's interpretation of these Rules and Procedures, to the Executive Committee of the Association or otherwise.
- (c) The Committee shall render reports of its activities as required by the Bylaws of the Association. The Committee shall not make any other reports or cause any other publicity to be given to its activities unless authorized to do so by the Executive Committee of the Association.
- (d) These Rules may be amended at any time by majority vote of the Committee or upon recommendation by the Executive Committee of the Association, subject in either case to the prior approval of the House of Delegates.

13. Report of Action Unit No. 4 on Court Reorganization. Mr. Fales, Chairman of Action Unit No. 4, summarized the content of the Action Unit's report, copies of which had previously been furnished to all members of the House, and outlined the recommendations contained therein concerning trial court merger and judicial selection. He also expressed the gratitude of the Association to Robert H. Iseman of Albany for his contribution to the research and preparation of the report. Mr. Palermo advised that the matter would be placed on the September agenda for further consideration and vote, or, if necessary, a special meeting would be scheduled later in the year for such purpose. Following discussion, it was the consensus that trial court merger and judicial selection be considered as separate proposals when presented for a vote.

14. Report of Special Committee on Specialization in the Law. Mr. Fromson, Chairman of the Special Committee on Specialization in the Law, summarized the report, copies of which had previously been furnished to all members of the House. He reviewed the committee's recommendation for establishment of a "pilot" program for certification of specialists, and noted the varying viewpoints concerning its adoption which had been expressed at regional meetings conducted across the state. Following discussion, the proposed resolution to establish a "pilot" program for certification of specialists was defeated. A resolution was then offered to authorize the Association and the President to continue studying the subject of specialization and related issues affecting the interests of the profession and the public. A motion to table the resolution as unnecessary was adopted inasmuch as the powers of Association committees and officers were defined by the Constitution and Bylaws.

15. Report of President. Mr. Patterson reported the following matters:

(a) A conference had been held on June 15, 1979 with representatives of local bar associations to discuss lawyer referral services and prepaid group legal services plans. He stated that the financial implications of such programs, including the availability of government funding, were being explored, and that the group and prepaid legal services bill was still pending before the Legislature.

(b) Bi-annual conferences of section leaders had been instituted, and that a productive first session had been held at the Bar Center on June 1, at which coordination of Association activities and staff liaison had been discussed.

(c) The Association had been active in the legislative field during the past year and, among other measures, 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.

(d) With regard to the Federal Trade Commission investigation of the legal profession, he and Henry L. King had met with FTC officials in May and had advised them of the Association's views on the matter. He further noted that the FTC was re-evaluating the proposed questionnaire and considering possible alternatives.

