

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
APRIL 11, 1981 - BAR CENTER, ALBANY

PRESENT: Members Aspland, Barlow, Beshar, Block, Brearton, Brenner, Brick, Brickfield, Brown, Callahan, Citrynell, Cohen, Colish, Cook, Daly, Damiani, Dee, DelleCese, deSilva, Diamond, Dougherty, Drazen, Emmett, Erolis, Erickson, Fales, Fallon, Field, Fischer, Forger, Freedman, Glasheen, Gough, Grossman, Hackbarth, Hall, Haskel, Heming, Hester, Hoffmann, Hurwitz, Keigher, King, Klein, Lagarenne, Levy, Lifland, Longo, Lustgarten, Marcus, Meriam, H.G. Miller, S.W. Miller, Mitchell, G.F. Murphy, Neale, Newman, O'Brien, Ostertag, Palermo, Patterson, Pearl, Peet, Perrin, Piazza, Popkess, Potter, Pritchard, B.J. Reilly, K.C. Reilly, Ritholz, Robfogel, Rosch, Rosenthal, Rothenberg, Ruger, Santemma, Schrade, Smith, Spivack, Stakel, Sugnet, Tarnow, Taylor, Tondel, Trombley, Urbano, Vigdor, D.A. Whalen, T.M. Whalen, Williams, Williamson, Witmer, Wright, Yanas, Yetter, Young and Zimmer.

1. Approval of minutes of January 23, 1981 meeting. The minutes were approved as distributed.

2. Amendment of Section bylaws. Upon motion, the following amendments were approved:

BANKING, CORPORATION AND BUSINESS LAW SECTION.

ARTICLE III, Section 2. The Executive Committee shall consist of not less than 22 nor more than 36 members, and shall include members from each Judicial District in the State to the extent practicable. Except as provided below, and in Sections 5 and 6 of ARTICLE VI, the members of the Executive Committee shall, to the extent practicable, be elected in approximately equal numbers 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.

ARTICLE III, Section 4. All officers as well as all members of the Executive Committee will hold office for one-year terms beginning June 1, except that the term of each such officer and member who takes office in the year 1981 shall commence July 1. No officer (other than the Secretary, Delegate to the House of Delegates of the Association and Fiscal Officer) shall hold office for more than two successive terms, and the office of Chairman shall, to the extent practicable and except as provided in Sections 5 and 6 of ARTICLE VI, be rotated among members of the Executive Committee who are members of the Banking Law Committee, Corporation Law Committee and Business Law Committee.

ARTICLE IV, 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, and one or more additional members if required pursuant to Section 5 or 6 of ARTICLE VI. 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 Sections 2, 3 and 4 of ARTICLE III; other nominations for the same offices may be made from the floor.

ARTICLE V, Section 7. Consistent with Sections 2, 3 and 4 of ARTICLE III, 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 (or remainder thereof) in accordance with ARTICLE III, Section 4.

ARTICLE VI, Section 1. There shall be the following committees of the Section: Banking Law Committee; Corporation Law Committee; Business Law Committee; Membership Committee; and such other committee or committees as the Executive Committee shall from time to time appoint.

ARTICLE VI, 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 at the same time on more than one of the Banking Law, Corporation Law and Business Law Committees and any committee designated pursuant to Section 5 of this Article.

ARTICLE VI, Section 3. The Banking Law Committee, Corporation Law Committee and Business Law Committee and, unless its functions are prescribed by the Executive Committee, any other committee appointed pursuant to Section 1 of this Article, shall engage themselves in the study and improvement of laws and practices in the general areas of law denoted by their respective titles.

ARTICLE VI, Section 4. The Chairman of each of the Banking Law, Corporation Law and Business Law Committees and of any other committee designated pursuant to Section 5 of this Article 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.

FAMILY LAW SECTION

ARTICLE III, 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, Vice-Chairman, Secretary, Financial Officer, an Executive Committee, delegate to the House of Delegates of the Association, and two Delegates-at-Large.

ARTICLE III, Section 2. The Executive Committee will consist of the Chairman; Vice-Chairman; Secretary of the Section; the three immediate past Chairmen of the Section; all Committee Chairmen; Editor of the Family Law Review; Financial Officer; Young Lawyers Section Liaison (who must be a member of the Family Law Section); two Delegates-at-Large; and one member from each Judicial District in the state. No Delegate-at-Large or member from a Judicial District may be reelected to the same office for more than five consecutive years, nor may such Executive Committee member thereafter be elected to such office until one year shall have elapsed following such five consecutive year period. All other past chairmen of the Section shall be members ex-officio.

LABOR AND EMPLOYMENT LAW SECTION

ARTICLE III, Section 2. There shall be an Executive Committee of the Section consisting of the officers of the Section, the Chairmen of the Standing Committees, the preceding chairmen of the Section and, in addition thereto, one member from each Judicial District in the State.

TRUSTS AND ESTATES LAW SECTION

ARTICLE III, Section 1. The officers of the Section shall be a Chairman, a Chairman-elect, a Secretary and a Treasurer. The officers and members of the Executive Committee shall be elected at the Annual Meeting of the Section.

ARTICLE VII, Section 1. The Annual Meeting of the Section shall be held in conjunction with the first Section meeting of each calendar year.

YOUNG LAWYERS SECTION

ARTICLE III, Section 1. ANNUAL MEETING. The Annual Meeting of the Section shall be held during the month of March, April or May. The exact time and place of the meeting shall be determined by the Executive Committee.

3. Report of Treasurer. Mr. Pritchard summarized the Treasurer's report, January 1 to March 31, 1980, copies of which had been previously circulated to members of the House. The report was received with thanks.

4. Election of Nominating Committee. Mr. Smith, chairman of the Nominating Committee, reported that the committee recommended and nominated Charlotte Smallwood Cook, Anthony R. Palermo and Robert P. Patterson, Jr. as members-at-large of the Nominating Committee. A motion was adopted electing said members.

A further motion was adopted electing Robert P. Patterson, Jr. 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 Gordon D. Henderson
2nd district	Edward J. Connolly, Jr. and Bernadette Dolan
3rd district	James E. Brearton and Francis X. Tucker
4th district	Bernard F. McPhillips and Edward J. Trombley
5th district	William F. FitzPatrick and James S. Kernan
6th district	Thomas R. Emmett and Peter W. Mitchell
7th district	Justin L. Vigdor and G. Robert Witmer, Jr.
8th district	Benjamin N. Hewitt and Wallace J. Stakel
9th district	Henry G. Miller and Benjamin I. Taylor
10th district	James V. Fallon and Joseph L. Tobin, Jr.
11th district	Jules J. Haskel and Robert L. Klein

A motion was adopted electing said members

5. Report and Resolution of Committee on Clients' Security Fund.

Mr. Gershon, Chairman of the Committee on Clients' Security Fund, summarized the committee's report and recommendations regarding institution of a statewide clients' security program to be funded by mandatory annual contributions from all attorneys admitted to practice in the State. After discussion, the following resolution was adopted upon motion by the House:

RESOLVED, the House of Delegates hereby adopts, in principle, the recommendations of the Committee on Clients' Security Fund that a statewide Clients' Security Fund be established, with funding to be provided by a mandatory annual contribution to be paid by all attorneys admitted to practice in the State; and it is further

RESOLVED, that the officers of this Association are hereby authorized and directed to take any and all necessary action to achieve the approval by the Legislature and the Judiciary of any statutes or court rules required in their judgment to implement this statement of policy.

6. Report and Resolution of Committee on Unlawful Practice of the Law.

Robert L. Ostertag, Chairman of the Committee on Unlawful Practice of the Law, described the review conducted by the Executive Committee, its authorization of the continued issuance of advisory opinions by the Committee on Unlawful Practice of the Law, and the policy considerations underlying the proposed resolution. After discussion, the following resolution was adopted upon motion by the House:

WHEREAS, members of the public have in the past and continue to suffer financial and other loss and damage from the unlawful practice of law by those who are uneducated or otherwise untrained in the law, inexperienced, unlicensed in New York and sometimes unscrupulous, and

WHEREAS, the New York State Bar Association has among its standing committees a Committee on Unlawful Practice of the Law whose activities, among others, has been the publication of advisory opinions concerning the application of Article 15 of the Judiciary Law of the State of New York to the unlawful practice of the law, and

WHEREAS, such opinions have always been advisory in nature, unenforceable, and without any regulatory power or effect upon the public at large or upon members of the legal profession, and

WHEREAS, it is the policy of the Association that opinions which conclude that particular conduct may be unlawful under the provisions of Article 15 of the Judiciary Law of the State of New York shall be released only with the prior approval of the Executive Committee

NOW, THEREFORE, BE IT RESOLVED, that it is the continuing policy of the Association that all opinions issued by the Committee on Unlawful Practice of the Law are advisory in nature, without legal force or effect, non-binding upon the parties and the legal profession; and it is further

RESOLVED, that the Committee on Unlawful Practice of the Law is hereby authorized to continue, in accordance with the Bylaws of the Association, the issuance of advisory opinions in response to inquiries whether particular conduct may be unlawful under the provisions of Article 15 of the Judiciary Law of the State of New York, provided that all such opinions shall be submitted to, and approved by the Executive Committee prior to release or publication, and any such approval by the Executive Committee shall not alter their advisory nature; and it is further

RESOLVED, that an appropriate statement shall be added to all opinions issued by the Committee on Unlawful Practice of the Law expressly stating the advisory nature of such opinions, their unenforceability and lack of legal or regulatory effect upon the public or legal profession.

7. Report and Resolution of Committee on Professional Discipline.

Mr. Lagarenne, member of the Committee on Professional Discipline, summarized the report of the committee and the basis for the recommendations concerning solicitation by attorneys proposed for submission to the Appellate Division in each Judicial Department. Following discussion, the following resolution was adopted upon motion by the House.

RESOLVED, that the House of Delegates of the New York State Bar Association hereby adopts the recommendation of the Committee on Professional Discipline, concurred in by the Committee on Professional Ethics, that the proposed amendment to the Rules Governing the Conduct of Attorneys, together with a copy of this resolution and the report upon which it is based, be forwarded to the Appellate Division of Supreme Court in each of the four Judicial Departments, with a request that said proposed amendment be considered for adoption in each such Judicial Department as part of the appropriate rule governing advertising and publicity by attorneys.

8. Report of Committee on Judicial Administration. Mr. Horan, Chairman of the Committee on Judicial Administration, summarized the committee's report analyzing the impact during 1980 of the judicial transfer plan conducted by the Office of Court Administration and presenting suggestions for alleviating the long-term problems associated with court congestion and delay.

Mr. Forger commended the efforts of the Committee on Judicial Administration as an independent and objective comment upon the effects of the judicial transfer plan, and encouraged the committee to continue its recent efforts in this area. The report was received with thanks.

9. Report of Chairman. Mr. Williams requested that Action Unit No. 1 be discharged, as it had completed its assigned tasks regarding judicial selection, a subject now under consideration by Action Unit No. 4. A motion was adopted discharging Action Unit No. 1 with the thanks of the Association.

In honor of the approaching ⁷⁷seventy-fifth anniversary of the Broome County Bar Association on April 23, 1981, a congratulatory resolution commemorating its service to the profession was adopted. Mr. Williams then presented a plaque to Charles W. Yetter, accepting on behalf of the Broome County Bar Association, inscribed as follows:

PRESENTED BY THE HOUSE OF DELEGATES TO THE BROOME COUNTY
BAR ASSOCIATION FOR 75 YEARS OF DISTINGUISHED SERVICE IN
FACILITATING THE IMPROVEMENT OF JUDICIAL ADMINISTRATION,
MAINTAINING THE INTEGRITY OF THE PROFESSION AND ACTIVELY
SERVING THE NEEDS OF ITS MEMBERSHIP - APRIL 11, 1981.

10. Report of President. Mr. Forger reported the following matters:

a) He had testified before a joint session of the Senate and Assembly Judiciary Committees concerning judicial compensation, the need for additional judges, the financing of court facilities, effects of the judicial transfer plan, and the televising of court proceedings.

b) Chief Judge Feinberg of the Second Circuit had recently contacted the Association concerning the number of vacancies on the federal bench in New York State. A motion was adopted expressing the concern of the Association regarding this situation and urging those charged with the responsibility for filling such vacancies to take notice and remedy this unfortunate circumstance.

c) No appointments had yet been made to the Temporary State Commission on Judicial Compensation. The following resolution was adopted upon motion of the House

WHEREAS, the New York State Legislature in 1980 made provision for the appointment of a Temporary State Commission on Judicial Compensation (hereinafter "Commission"), which measure was signed into law by the Governor as Chapter 881 of the Laws of 1980; and

WHEREAS, said Commission was created for the specific purpose of examining and making recommendations no later than September 1, 1982 with respect to the parity of compensation between judges and justices in the unified court system, and was further charged with determining adequate levels of compensation for such judges and justices; and

WHEREAS, the aforesaid enactment provides that the Commission shall consist of seven members: three members to be appointed by the Governor, and two each by the Temporary President of the Senate and the Speaker of the Assembly; and

WHEREAS, the inadequacies and disparities existing in present levels of judicial compensation cause the judiciary to suffer substantial financial hardship and constitute a matter of utmost concern to the organized Bar; and

WHEREAS, many months have elapsed since the creation of the Commission without any appointments having been made thereto, it is

RESOLVED, that the New York State Bar Association hereby urges the Governor, the Temporary President of the Senate and the Speaker of the Assembly to act with utmost dispatch in appointing the members of the Temporary State Commission on Judicial Compensation in order that the Commission may promptly undertake the discharge of the important responsibilities to which it was assigned, and which are of vital concern both to the judiciary and the public at large.

d) The Executive Committee has supported the continued existence of the Legal Services Corporation at adequate levels of funding, and that he had presented this position in testimony before the House of Representatives Subcommittee on Courts, Civil Liberties and the Administration of Justice. The following motion was passed endorsing and ratifying the actions of the President and the Executive Committee:

RESOLVED, that this Association reaffirms its support of the Legal Services Corporation and urges that it be preserved and funded adequately to continue its programs of legal services to the indigent.

e) Lyman M. Tondel, Jr. had communicated his gratitude to the members of the Association for their support and encouragement in his unsuccessful campaign for the presidency of the American Bar Association.

f) The Executive Committee had determined that an amicus curiae brief should be filed in Matter of Greene, a case involving lawyer solicitation pending before the Court of Appeals. He indicated that the position taken by the Association would be similar to that submitted in Matter of Koffler.

g) Following introduction of the Governor's court merger and judicial selection bill, Action Unit No. 4 was considering the available options for securing legislative implementation of the resolution adopted by the House of Delegates in September, 1979.

h) Legislation permitting insurance carriers to participate in open panel group and prepaid legal services plans had been filed in the Senate and Assembly, and was pending before the Insurance Committee in both houses.

i) A motion was adopted authorizing the President on behalf of the Association to convey suitable congratulatory wishes to Governor and Mrs. Carey upon the occasion of their marriage.

j) The Lawyer Referral and Information Service had completed its first month of operation successfully, and suitable advertising was being undertaken to publicize the Service in those areas it is intended to serve.

11. New business.

a) William V. Gough, Trial Lawyers Section Delegate, advised that the Executive Committee of the Section had received inquiries from the American Bar Association and other national organizations on the subject of specialization, and that the Section was communicating with these groups within the limitations of the action taken by the House of Delegates in June, 1979.

12. Mr. Williams closed the meeting in memory of Edwin J. Freedman. A moment of silence was observed in respect to his memory, and the following resolution was adopted upon motion of the House:

WHEREAS, Edwin J. Freedman was respected as a lawyer and scholar of outstanding ability and as a man of the highest integrity; and

WHEREAS, Edwin J. Freedman served his community and his profession with distinction and earned the respect and love of all who were privileged to have known him; and

WHEREAS, Edwin J. Freedman, by virtue of his knowledge and dedication to the welfare of society, has made a great contribution to the work of this Association,

NOW, THEREFORE, BE IT RESOLVED, that this House of Delegates of the New York State Bar Association does hereby express its sorrow at the death of Edwin J. Freedman and does extend its sympathy to his wife and family, and

BE IT FURTHER RESOLVED, that this House of Delegates of the New York State Bar Association stands adjourned in memory of its distinguished former member, Edwin J. Freedman.

13. Date and place of next meeting. The next meeting of the House of Delegates will be held on Saturday, June 27, 1981 at 9:30 a.m. at The Otesaga, Cooperstown, New York.