

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK - APRIL 11, 1987

PRESENT: Members Amdursky, Amrod, Ashley, Baldwin, Ball, Barthold, Bermingham, Blewett, Bracht, Bracken, Bradt, Brenner, Britt, Cannon, Canoni, C. Clark, Cometa, Compson, Condon, Connolly, Corcoran, Cox, Curtis, Daly, DelleCese, DeMarco, Deptula, Dollard, Driscoll, J.F. Dwyer, Eiber, Elmer, Elwood, Feerick, Ferguson, Field, Floyd, Forger, Freedman, Garfinkel, Geltzer, Gershon, Giordano, Glavin, Goldblum, Hall, Halpern, Hart, Haskel, Heming, Hoffman, Horan, Ierardi, Iovenko, Ippolito, H. Jones, Kane, Kaplan, Kaufman, King, Klein, Krieger, Lagarenne, Lasher, Lustgarten, MacCrate, Mahony, Mann, Marangos, Markuson, McGinnis, McGlinn, McGoldrick, McGraw, Montalbano, Morgan, Morris, Murphy, A. Murray, K. Murray, Obold, Offermann, Omansky, Ostertag, Pearl, Pfeifer, Pruzansky, Reiter, Rhodes, Rice, Richardson, Rosiny, Rosner, Rothstein, Rubin, Ruger, Santagata, Santemma, Schiller, Shlufman, Siegel, Simberkoff, Stave, Stiles, Sussman, Tobin, Tyler, Vigdor, J. Walsh, D. Whalen, T. Whalen, Wilkens, Williams, Witmer, Yanas, Yetter, Zimmer, Zimmerman, Zuckerman.

1. Approval of minutes of January 30, 1987 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Yanas summarized the Treasurer's report, January 1 to March 31, 1987, including the status of the major components of the Association budget. He indicated that as of the close of the first quarter of the fiscal year, the Association was in sound financial condition. The report was received with thanks.

3. Election of Nominating Committee. On behalf of Nominating Committee Chair Haliburton Fales, 2d, Mrs. Freedman reported that the committee had nominated Henry G. Miller, Susan S. Robfogel, and Justin L. Vigdor as members-at-large of the Nominating Committee and Mr. Miller as its Chair for the 1987-88 Association year. A motion was adopted electing said chair and members.

The following members from each judicial district, as selected by the vice-president and elected delegates from the respective districts, were nominated as members of the Nominating Committee for the 1987-88 Association year:

1st District	Angelo T. Cometa and John D. Feerick
2nd District	Maurice Chayt and John E. Murphy
3rd District	Lawrence E. Lagarenne and Thomas M. Whalen, III
4th District	Richard M. Gershon and Edward J. Trombley
5th District	Dennis R. Baldwin and Hugh R. Jones
6th District	John J. Fitzgerald and William G. Ruger
7th District	Robert J. Pearl and John A.R. Walsh
8th District	Thomas R. Elmer and Francis J. Offermann, Jr.
9th District	William J. Daly and Robert L. Ostertag
10th District	Harold A. Mahony and Joshua M. Pruzansky
11th District	Jules J. Haskel and Howard D. Stave
12th District	Maxwell S. Pfeifer and Mark R. Rubin

A motion was adopted electing said members.

4. Report of Special Committee on Lawyers in Public Service. John G. McGoldrick, member of the Special Committee on Lawyers in Public Service, summarized the activities of the committee subsequent to the presentation at the January, 1987 House of Delegates meeting of the report entitled "Conflict-of-Interest Proposals", including the committee's evaluation of the "Ethics in Government Act" recently passed by the Legislature. Following discussion of the recommendations proposed by the committee to limit the potential for abuse of official positions, conflicts-of-interest in public office, and appearances of impropriety created by lawyer-legislators representing private clients before state agencies, the following resolution was adopted on motion of the House:

RESOLVED, that the New York State Bar Association urges the development of legislation which would limit opportunities for abuse of official positions and eliminate any appearance of undue influence or illegal profit-taking by executive officers, legislative officers, elected officials, party officers, and candidates for office, and, in particular, to impose further restrictions on appearances before state agencies by lawyer-legislators on behalf of private clients. We also believe that the following areas, among others, merit further study and consideration: extension of the restrictions on state agency appearances by lawyer-legislators to their partners and associates; and restrictions on agency dealings, public contracts, and non-elective public officeholding by county and state political party chairpersons and senior campaign officials for candidates for statewide office.

Public trust and confidence in elected and appointed public officials are fundamental and necessary conditions for a strong and stable democratic government.

The restrictions on appearance by lawyer-legislators are in keeping with the long-standing ban against agency practice by members of Congress, the restrictions on practice in 32 other states, and the need for increased public confidence in the integrity of government.

Further, we support an ongoing, thorough and adequately funded independent investigation of potentials for corruption in government.

5. Report of Special Committee on Women in the Courts. Ruth G. Schapiro, Chair of the Special Committee on Women in the Courts, summarized the report and recommendations of the committee with respect to gender bias in the legal profession following evaluation of the work of the State Task Force on Women in the Courts. She reviewed the principal areas on which the committee had focused, including the development and communication of leadership goals by the Association; legislative proposals concerning domestic violence, equitable distribution and maintenance, child support and custody; attorneys' fees in matrimonial matters, the status of women lawyers and women court employees; the encouragement of further participation by women in the Association; educational initiatives; and coordination with other bar associations. She noted that a number of the recommendations dealing with the development of leadership goals by the Association, the encouragement of further participation by women, and equal employment opportunity, had been approved by the Executive Committee, and that legislative proposals had been forwarded to appropriate sections and committees for study and comment. The report was received with the thanks of the House.

6. Report of President. Mr. Heming reported the following matters:

a) At its meeting on April 10, the Executive Committee had taken action with respect to the following significant items: (1) Based on the report of the Special Committee on Lawyers in Public Service, it had recommended that the Legislature recall the "Ethics in Government Act" due to major defects in the legislation to allow for review and revision of its contents, and it further recommended that if not recalled, the proposed legislation should be vetoed by the Governor; (2) Following a recommendation by the Trusts and Estates Law Section, the Executive Committee had approved the filing of an amicus curiae brief in the Second Circuit Court of Appeals in U.S. v. White to support a District Court ruling that the IRS may not challenge and disallow the deductibility of attorneys' fees for services rendered to decedents' estates and approved by the Surrogate's Court; (3) After considering the report of the Special Committee on Women in the Courts, the Executive Committee had endorsed a number of the recommendations to keep the Association in the forefront of efforts to eliminate gender bias in the profession; (4) Based on the report of the Committee on Legal Aid, the Executive Committee had approved the formation of a special committee or task force to aid in training and recruiting lawyers to assist aliens affected by the Immigration Reform and Control Act of 1986.

b) The resolution approved at the September 1986 meeting of the House with regard to the media advertising of tobacco products had been presented to the ABA House of Delegates in February 1987 by former President Henry G. Miller. While the measure had not passed, it had gained considerable acceptability.

c) He, as well as Messrs. Horan and Whalen, had testified in favor of trial court merger at recent legislative hearings.

d) He had communicated to all members of the New York congressional delegation the Executive Committee's support for higher judicial salaries and opposition to the procedure used by Congress earlier this year to link judicial salaries to other federal salaries.

e) At the quarterly OCA/bar association meeting held in March, matters of mutual concern had been addressed, including the functioning of the Individual Assignment System, transcript delays, courthouse facilities, court merger, plans to commemorate the bicentennial of the Constitution, and the lack of reciprocity by New Jersey in admission practices for New York attorneys.

f) He had met recently with Evan A. Davis, the Governor's Counsel, to discuss legislation of concern to the Association.

g) Following the recommendation of the Joint Task Force on Liability Insurance Coverage, a six-member steering committee, co-chaired by James C. Moore and Mendes Hershman, had been appointed to evaluate the feasibility of a captive insurance carrier.

h) He and Mrs. Freedman would be meeting with the various section leaders on April 23 to review policies and administrative matters affecting the sections.

i) An Executive Committee transition and planning retreat would be held May 14-16, and the items scheduled for consideration included the nominating process, professionalism, and the expansion of opportunities for member participation in Association activities.

j) In cooperation with the Rockefeller Institute, the Committee on Judicial Administration was preparing a detailed survey to measure the impact statewide of the Individual Assignment System.

k) The Ad Hoc Committee on Bar Center Facilities and Space Requirements was continuing with the development of plans for the expansion of the Bar Center, with fund-raising scheduled to begin in the near future. Mr. Heming noted that the members of the House would be kept apprised of all significant developments in this area.

7. Report and recommendations of Special Committee to Review the Code of Professional Responsibility. Hon. Hugh R. Jones, Chair of the Special Committee to Review the Code of Professional Responsibility, summarized the process utilized by the committee in considering comments submitted by interested individuals and groups and in preparing the revised draft of proposed amendments to the Code of Professional Responsibility presently before the House. After discussion, the following resolution previously circulated was adopted on motion of the House to govern consideration of the committee's report and recommendations and all amendments proposed to the Code:

RESOLVED, that the House of Delegates hereby adopts the following procedures to govern consideration at the April 11, 1987 meeting of the report of the Special Committee to Review the Code of Professional Responsibility ("Committee") and amendments proposed to the Code of Professional Responsibility ("Code"):

1. Any amendments to the Committee proposals or to the Code must be submitted in writing to the Secretary of the Association at Bar Headquarters on or before April 6, 1987 and be in the style used by the Committee with deletions denoted by strikeovers and new material by underscoring, and be accompanied by a brief explanation of the proposed change. All amendments shall be distributed to the members of the House at the April 11 meeting.

2. At the April 11 meeting, consideration of amendments proposed by the Committee and others shall be as follows:

a) The Committee will be given the opportunity to provide a brief overview of its report and recommendations.

b) Proposed amendments to the Code provisions shall be considered seriatim, with Committee proposals with respect to a particular provision considered first.

c) A Committee representative shall have three minutes to present each Committee amendment. The proponents of other amendments shall have three minutes to present them.

d) All those wishing to speak with regard to a particular amendment may do so only once for no more than three minutes, except the sponsor of any amendment may speak a second time for two minutes, and a representative of the Committee will have two minutes to close.

e) A vote on each proposed amendment will then be taken, requiring a majority vote for adoption.

- f) The foregoing procedure will be repeated with respect to each proposed amendment.
- g) Procedural motions will be considered out of order until debate on all substantive amendments has been concluded.
- h) A final vote will be taken to approve the Code, as amended, and to convert the Code to gender-neutral language for transmittal to the Appellate Divisions.

Pursuant to the foregoing resolution and after discussion, amendments were adopted to the following provisions of the Code of Professional Responsibility: Definitions, Preliminary Statement, EC 1-4, EC 1-7, DR 1-103, DR 1-104, EC 2-22, EC 2-25, EC 2-27, DR 2-100, DR 2-101, DR 2-102, DR 2-103, DR 2-104, DR 2-106, DR 2-107, DR 2-108, DR 2-110, EC 4-7, DR 4-101, EC 5-4, EC 5-8, EC 5-24, and EC 5-18, with consideration at the next meeting to resume with the discussion of the substantive aspects of EC 5-18. Based on recommendations by the Special Committee on Minorities in the Profession and the Special Committee on Women in the Courts, the Special Committee to Review the Code of Professional Responsibility was requested to draft for consideration at the June meeting an appropriate provision for incorporation in Canon 1 to address problems of discrimination in the legal profession. In anticipation of the change in part of its membership as of June 1, the House then adopted separate motions to suspend temporarily the foregoing procedural resolution and to approve the Code as amended through EC 5-24, with the exception of EC 5-18, which will be discussed at the next meeting.

8. Report of Chair. Mrs. Freedman reported the following matters:

- a) Planning was in progress to appoint a Task Force on Administrative Adjudication Proceedings to provide a broadly based body to study problems in the administrative law system, through a review of the operations of representative departments of state government, for the purpose of recommending improvements.
- b) Plans were also being made to appoint a Special Committee on Biotechnology and Law, to be chaired by Grace Marie Ange, to study the legal issues arising from in vitro fertilization, surrogate parenting, prenatal diagnosis, embryo freezing, reproductive cell donation, embryo experimentation, embryo/zygote destruction, disposition of excess fertilized eggs, genetic modification, and other related technology.
- c) In cooperation with the Albany County Bar Association, the next General Membership Meeting was being planned for November 5-8, 1987 in Albany.
- d) She would welcome recommendations from House members for appointees to Association committees for the 1987-88 year.

9. Presentation of Trial Lawyers Section National Trial Advocacy Competition Awards. In cooperation with Anthony J. DeMarco, Jr., Chair of the Trial Lawyers Section Trial Advocacy and Scholarship Competition Committee, Mr. Heming and Mrs. Freedman presented the Trial Lawyers Cup and Scholarship to Benjamin Cardozo School of Law of Yeshiva University as the law school placing highest in the regional eliminations for the National Trial Advocacy Competition. Syracuse University College of Law was recognized for its second place finish in the regional competition.

10. Date and place of next meeting. Mrs. Freedman announced that the next meeting of the House of Delegates will be held on Friday, June 26 and Saturday, June 27, 1987 at The Otesaga in Cooperstown.