

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
APRIL 10, 2010
BAR CENTER, ALBANY, NEW YORK**

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PRESENT: Abernethy; Abramowitz; Adler; Alden; Anello; Arnold; Ayers' Bailey; Baker; Baum; Baynes; Block; Bracken; Brown, E.; Brown, T.; Burke, Philip; Burns, S.; Buzard; Chang; Chapman; Chase; Chin; Coffey; Cohen, D.; Collazo; Costello; Cusano; DiPietro; Dohn; Draper; Effman; Farley; Fedorchak; Fernandez, Henry; Fernandez, Hermes; Finerty; Fish; Fisher; Flood; Fox; Gerstman; Gesinsky; Gingold; Glanstein; Glasheen; Goldenberg; Golinski; Good; Greeley; Greenthal; Gross; Gruer; Gutekunst; Gutenberger; Gutheil; Gutierrez; Hanna; Harren; Hassett; Hayes; Hendry; Hernandez; Ho; Hoffman; Hollyer; Howe; Humphrey; Hurteau; Jackson; James; Kaplan; Karabatos; Kelly; Kera; Kurland; Kurs; Laluk; Larose; Lau-Kee; Lawrence; Leber; Lee; Leo; Lesk; Levy; Lewis; Lieberman; Liebman; Lindenauer; Lomuscio; Long; Longo; Lonuzzi; Ludington; Lusk; Makofsky; Manias; Marwell; Masley; McInerney; McKay; Meislahn; Miklitsch; Minkowitz; Miranda; Morril; Morton; Moses; Nachimson; Nathanson; Nelson; O'Donnell; O'Neill; Ostertag; Park; Pechenik; Pogson; Privitera; Pruzansky; Rauer; Reed; Roberts-Ryba; Robinson; Rodriguez; Romero; Rosenberg; Rosenthal; Rosiny; Rosner; Rothstein; Ryan; Safer; Sands; Schneider; Schofield; Schrauer; Schwartz; Seitz; Sen; Sherwin; Sigmond; Silkenat; Slezak; Sonberg; Spiro; Standard; Stanislaus-Fung; Starkman; Stone; Strauss, B.; Strauss, F.; Terranova; Tilton; Torrey; Vanier; Vigdor; Virkler; Vitacco; Walsh, J.; Watkins; Weinberger; Witmer; Younger; Zuchlewski; and Zulack.

Mr. Younger presided over the meeting as Chair of the House.

1. The meeting was called to order and the Pledge of Allegiance recited.
2. Approval of minutes of January 29, 2010 meeting. A motion was adopted accepting the minutes as previously distributed.
3. Report of the Treasurer. Mr. James, Treasurer, reviewed revenue and expenses for the first two months of 2010, reporting that total revenue was \$13.2 million, an increase of \$56,000 over 2009, and total expense was \$4 million, a decrease of \$235,000 from 2009. He then reviewed the end-of-year 2009 operating budget, reporting that total revenue was \$23.3 million, a decrease of \$1.3 million from 2008, and total expense was \$23.3 million, a decrease of \$2.4 million from 2008. The operating deficit was \$27,000, a decrease of \$1 million from 2008. He also provided a six-year comparison of dues revenue and CLE revenue and expense together with a report on long-term reserve investments. The report was received with thanks.
4. Election of the Nominating Committee and NYSBA Delegates to the ABA House of Delegates. A. Vincent Buzard, member-at-large of the Nominating Committee, presented the report of the Nominating Committee.

- a. Election of members of the Nominating Committee. The following were nominated for service on the 2010-2011 Nominating Committee:

Members-At-Large: Kathryn Grant Madigan as Chair and Mark H. Alcott and Bernice K. Leber as members. A motion was adopted to elect the members-at-large.

District members and alternates of the Nominating Committee: First – Stewart D. Aaron, Pui C. Cheng, Ernest J. Collazo, Marilyn J. Flood, James B. Kobak, Jr., Ellen Lieberman, Susan B. Lindenauer, Edwina Frances Martin, Jay G. Safer and Janiece Brown Spitzmueller, with Vincent T. Chang, First Alternate, Hon. Michael R. Sonberg, Second Alternate, Alan Rothstein, Third Alternate, and Barbara Moses, Fourth Alternate; Second – Andrea E. Bonina and John A. Lonuzzi, with Hon. Nancy Sunshine as Alternate; Third – Hon. Rachel Kretser and James B. Ayers, with Elena DeFio Kean as Alternate; Fourth – Seth Rosner and Trinidad Martin, with Marne L. Onderdonk as Alternate; Fifth – Stuart J. LaRose and Karen Stanislaus-Fung, with David M. Pellow as Alternate; Sixth – Shirley K. Egan and Christopher Denton, with Patricia A. Cummings as Alternate; Seventh – A. Vincent Buzard and C. Bruce Lawrence, with Eileen E. Buholtz as Alternate; Eighth – Paul Michael Hassett and Sharon Stern Gerstman, with Robert N. Convissar as Alternate; Ninth – Joel H. Sachs, Arlene Antoinette Gordon Oliver, and Forrest Strauss, with Sherry Levin Wallach as Alternate; Tenth – John P. Bracken, A. Thomas Levin, Peter H. Levy and Joshua M. Pruzansky, with A. Craig Purcell, First Alternate and Second Alternate to be submitted; Eleventh – Chanwoo Lee and Arthur N. Terranova, with Leslie S. Nizin as Alternate; Twelfth – Steven C. Krane and Jonathan D. Sands, with Robert S. Summer as Alternate; Thirteenth – To be submitted.

A motion to elect the foregoing was adopted.

- b. Election of Delegates to ABA House: A motion to elect the following for a two-year term commencing in August 2010 was adopted: A. Vincent Buzard, Vincent E. Doyle, III, Michael E. Getnick, A. Thomas Levin, Kathryn Grant Madigan, and Michel L. Fox (Young Lawyer Delegate).
5. Report of the President. Mr. Getnick provided a written report on recent initiatives, a copy of which is appended to these minutes, and in oral remarks summarized the significant items set forth in the written statement. He observed that this is his last meeting as President, and thanked the members of the House, the officers and the staff for their support and participation.
6. Report of Special Committee on Solo and Small Firm Practice. Robert L. Ostertag, chair of the Special Committee, reported on the implementation of the recommendations contained in the Special Committee's report that was approved by the House of Delegates in June 2009. He noted that the Special Committee will be discharged, with its functions

being assigned to a Coordinating Council. A motion was adopted to discharge the committee.

7. Presentation of Trial Lawyers Section National Trial Advocacy Awards. Together with David S. Howe, past chair of the Trial Lawyers Section, and Prof. Travis H.D. Lewin from Syracuse University College of Law, Mr. Getnick presented the Trial Lawyers Cup and Scholarship to Syracuse University College of Law as winner of the National Trial Advocacy Competition for Region II.
8. Report and recommendations of Lawyer Assistance Committee. Lawrence A. Zimmerman, chair of the committee, outlined *the Model Policy for Law Firms/Legal Departments Addressing Impairment* developed by the committee to address impairment issues. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, the New York State Bar Association is committed to assisting persons in the legal profession who are dealing with impairment issues that affect job performance; and

WHEREAS, practice management studies have demonstrated that early intervention and treatment of law firm or legal department professionals can assist a firm or department to avoid negative consequences that can result from a failure to deal with impairment and to protect the interests of the clients; and

WHEREAS, the New York State Bar Association's Lawyer Assistance Committee has developed a "Model Policy for Law Firms/Legal Departments Addressing Impairment" ("Model Policy") to assist law firms and legal departments in addressing impairment issues;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association encourages law firms and legal departments to develop appropriate policies, tailored to their own needs and purposes and the needs and interests of the clients, to address impairment issues; and it is further

RESOLVED, that the Association hereby approves the Model Policy as a voluntary guide for law firms and legal departments to use in developing their own specific policies for legal professionals, and to encourage development of policies with respect to other employees; and it is further

RESOLVED, that the officers of the Association and the Lawyer Assistance Committee are hereby authorized to distribute and promote the Model Policy and to take such other and further action as they may deem appropriate to implement this resolution.

9. Report of Committee to Ensure Quality of Mandated Representation. Norman P. Effman, chair of the committee, reviewed the proposed revisions to the Standards for Providing Mandated Representation, originally adopted by the House of Delegates in 2005. He noted that the purpose of the revisions is to bring the Standards into line with changes in law and court rules since their original adoption. The Standards will be presented to the House for a vote in June 2010. The report was received with thanks.
10. Report of Special Committee on Standards for Pleading in Federal Litigation. Samuel F. Abernethy, chair of the Special Committee, provided an overview on the committee's draft report, which has been circulated for comment to sections and committees. After receipt of comments, the committee will issue a supplemental report and present the final report to the House at its June 2010 meeting. The report was received with thanks.
11. Report of Committee on Diversity and Leadership Development. Kenneth G. Standard, co-chair of the committee, together with committee members Hermes Fernandez, Glenn Lau-Kee and Sherry Levin Wallach, presented an informational report on the committee's 2009 survey of diversity in Section membership, leadership and activities. They reviewed the committee's recommendations, noting that the report will be the subject of further discussion at the Section Leaders' Conference to be held on May 6, 2010. The report was received with thanks.
12. Report re NYSBA proposal to ABA House of Delegates on ranking of law firms. Past President A. Vincent Buzard reviewed the report and resolution submitted by the Association to the ABA House of Delegates as authorized by the Executive Committee at its January 28, 2010 meeting, as well as the activity that took place in connection with the ABA House's consideration of the report and approval of a resolution. The report was received with thanks.
13. Update on indigent defense issues.
 - a) New York City indigent defense issues. Ann B. Lesk, president of the New York County Lawyers' Association, provided an update on the City's issuance of a request for proposals for the provision of indigent defense services that could result in reducing the role of the private bar in indigent defense. David L. Cohen, Vice President for the 11th Judicial District, updated the House with respect to the Governor's budget proposal, which would create an indigent defense commission under the Division for Criminal Justice Services and would eliminate funding for 18-B counsel. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, in 2007, NYSBA endorsed the report of the Kaye Commission on the Future of Indigent Defense Services (the "Kaye Commission Report"); and

WHEREAS, the City of New York (the "City") has attempted to terminate unilaterally a 45-year old agreement concerning the provision of indigent

defense services among the City, the Association of the Bar of the City of New York, New York County Lawyers' Association, the Queens County Bar Association, the Brooklyn Bar Association, the Bronx County Bar Association, the Richmond County Bar Association and the First and Second Departments of the Appellate Division; and

WHEREAS, the City has issued a request for proposals concerning the provision of indigent defense services without consultation with the county bar associations or other stakeholders in the indigent defense system that may well have the effect of reducing the role of the private bar in indigent defense; it is hereby

RESOLVED, that NYSBA reaffirms its support for the Kaye Commission Report, and expresses concern with the effect the changes contemplated by the City's request for proposals may have on two important policies of NYSBA: first, that indigent defense services must meet constitutionally mandated standards, and second, that substantial involvement of the private bar is a desirable goal that should be embraced, not just tolerated, in any public defense reform process; and it is further

RESOLVED, that NYSBA renews its commitment to support quality and effective delivery of the constitutionally mandated right to effective assistance of counsel under the Sixth Amendment to the United States Constitution, including but not limited to adequate funding for every kind of provider, assigned private counsel as well as institutional providers, to meet that constitutional obligation; and it is further

RESOLVED, that NYSBA believes that changes in any indigent defense provider system should be proposed only after careful study and consideration of the impact that those changes will have on the quality and effective delivery of representation provided, and such changes should only be undertaken if they will improve the quality and effective delivery of representation.

Mr. James abstained from participation pursuant to Rule 6.4 of the Rules of Professional Conduct.

- b) Hurrell-Haring v. State of New York. President-Elect Designate Vincent E. Doyle, III, and delegate Norman P. Effman reviewed the issues raised in this case, the *amicus* brief filed on behalf of the Association and other organizations, and the oral argument which took place on March 23, 2010. The report was received with thanks.
14. Report of The New York Bar Foundation. Paul Michael Hassett, Treasurer of The New York Bar Foundation, reported that a new fund in honor of Mark H. Alcott had been established at the initiation of Mark's wife, Susan Alcott, and his firm, Paul, Weiss,

Rifkind, Wharton & Garrison LLP. In addition, he reported on the disbursement of cy pres funds for which The Foundation serves as administrator and the funding of 57 projects that had been approved at The Foundation's January 2010 board meeting. The report was received with thanks.

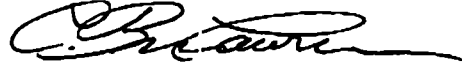
15. Administrative Items. Mr. Getnick reported on the following:

- a. Mr. Younger advised that in order to permit additional time for comment, consideration of the report of the Special Committee to Review the Code of Judicial Conduct would be deferred to the November 6, 2010 meeting, with comments on the proposals being due no later than October 1, 2010. A motion was adopted to amend the scheduling resolution previously adopted by the House at its November 7, 2009 meeting to include these new deadlines. A copy of the amended scheduling resolution is appended to these minutes.
- b. A motion to ratify the Executive Committee's confirmation of the reappointment of Lesley Friedman Rosenthal and Richard P. Wallace as members of the Association's Audit Committee was requested and approved.
- c. He announced that in order to permit greater focus on its two missions – promoting diversity and developing Association leaders – the Committee on Diversity and Leadership Development will be discharged, with its diversity mission to be assumed by the Committee on Minorities in the Profession (which will be renamed the Committee on Diversity) and its leadership development mission to be assumed by a new Committee on Leadership Development. Motions were requested and approved to (1) discharge the Committee on Diversity and Leadership Development, (2) rename the Committee on Minorities in the Profession as the Committee on Diversity, and (3) create the Committee on Leadership Development.
- d. Motions to approve the designation of delegates filed by the county and local bar associations for the 2010-2011 Association year and to approve the filed roster of the members of the House for the 2010-2011 year were requested and approved.
- e. He observed that this meeting represents the last House meeting of the Association year and noted that a number of House members were completing their terms, expressing appreciation for their service. He also expressed appreciation to Mr. Getnick for his leadership as President of the Association. Finally, he noted that this meeting represents his last as Chair of the House and thanked the House for the opportunity to serve.

18. Date and place of next meeting. Mr. Younger announced that the next meeting of the House of Delegates would take place on Saturday, June 19, 2010 at The Otesaga in Cooperstown.

19. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "C. Bruce Lawrence", with a long, sweeping horizontal line extending to the right.

C. Bruce Lawrence
Secretary