

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
APRIL 2, 2011  
BAR CENTER, ALBANY, NEW YORK**

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**PRESENT:** Aaron; Abernethy; Ayers; Baker; Barreiro; Baumann; Baynes; Behrins; Berke-Weiss; Block; Bracken; Bransten; Brown, T.; Burke, Philip; Burke, W.; Burns; Byrne; Castellano; Chambers; Chang; Christian; Denton; Di Pietro; Dohn; Dollard; Doyaga; Doyle; Draper; Edmunds; Effman; Eppler; Fedorchak; Fennell; Fernandez, Henry; Fernandez, Hermes; Finerty; Fish; Flood; Foley; Galligan; Gensini; Gerstman; Getnick; Goldberg; Goldenberg; Gould; Grayson; Greenthal; Gruer; Gutekunst; Gutenberger; Gutheil; Hall; Hanna; Harren; Hassett; Healey; Hernandez; Herrmann; Hetherington; Hollyer; Honig; Howe; Hurteau; James, S.; Kahler; Kamins; Kaplan, E.; Karabatos; Karson; Kelly; Kennedy; Kera; Kobak; Kornreich; Kurland; Kurs; Laluk; Lau-Kee; Leber; Lesk; Lewis; Lieberman; Liebman; Lindenauer; Longo; Lonuzzi; Madigan; Martin; Masley; Mattei; Mayer; McEntee; Miklitsch; Millon; Minkowitz; Miranda; Moretti; Moses; Moy; Myers; Nachimson; Nathanson; Nelson; Onderdonk; O'Neill; Ostertag; Pachman; Park; Pellow; Perlman; Pettit; Pogson; Prager; Privitera; Prowda; Quaranta; Randazzo; Rauer; Richardson; Risi; Roberts-Ryba; Romero; Rosiny; Rothstein; Russ; Sachs; Schrauer; Schwartz; Shulman; Sigmond; Singer; Slezak; Sonberg; Spiro; Standard; Starkman; Sunshine, J.; Sunshine, N.; Syracuse, D.; Syracuse, V.; Taylor; Tesser; Torrey; Tsan; Wallach; Walsh, J.; Weinberger; Weis; Yavinsky; Younger; Zuchlewski; Zuckerman; and Zulack.

Mr. Doyle 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 28, 2011 meeting. The minutes were accepted as previously distributed.
3. Report of the Treasurer. Mr. James, Treasurer, reviewed revenue and expenses for the first two months of 2011, reporting that total revenue was \$13.6 million, an increase of \$429,000 over 2010, and total expense was \$4.9 million, an increase of \$847,000 from 2010. He then reviewed the end-of-year 2010 operating budget, reporting that total revenue was \$23.4 million, an increase of \$162,000 from 2009, and total expense was \$24.2 million, an increase of \$944,000 from 2009. The operating deficit was \$809,000, an increase of \$782,000 from 2009. 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. Kathryn Grant Madigan, chair 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 2011-2012 Nominating Committee:

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

District members and alternates of the Nominating Committee: First – Stewart D. Aaron, Mark H. Alcott, Pui Chi Cheng, Catherine Christian, Marilyn J. Flood, Taa Grays, James B. Kobak, Jr., Susan B. Lindenauer, Peter J.W. Sherwin, and Hon. Michael R. Sonberg, with Fernando A. Bohorquez, Jr., First Alternate, Vincent Ted Chang, Second Alternate, Barbara Carol Moses, Third Alternate, and Alan Rothstein, Fourth Alternate; Second – Andrea E. Bonina and Ethan B. Gerber, with David J. Doyaga as Alternate; Third – Harry P. Meislahn and Hon. Rachel Kretser, with Elena DeFio Kean as Alternate; Fourth – Seth Rosner and Peter V. Coffey, with Marne L. Onderdonk as Alternate; Fifth – Stuart J. LaRose and Karen Stanislaus, with David M. Pellow as Alternate; Sixth – Christopher Denton and Richard Lewis, with Kristin Gutenberger 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 Norman P. Effman as Alternate; Ninth – John S. Marwell, Joel H. Sachs, and Forrest Strauss, with Mark T. Starkman as Alternate; Tenth – John P. Bracken, A. Thomas Levin, Peter H. Levy and Joshua M. Pruzansky, with Douglas J. Good, First Alternate and A. Craig Purcell, Second Alternate; Eleventh – Chanwoo Lee and Steven Wimpfheimer, with Leslie S. Nizin as Alternate; Twelfth – Jonathan D. Sands and Maxwell S. Pfeifer, with Richard Weinberger as Alternate; Thirteenth – Thomas J. Hall and Jonathan B. Behrins, with Michael J. Gaffney as Alternate.

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 2011 was adopted: Paul Michael Hassett, Seymour W. James, Jr., Bernice K. Leber, James R. Silkenat, and Stephen P. Younger. Mr. Younger abstained from participating in the vote.
5. Report and recommendations of Task Force on the Future of the Legal Profession. Linda Leuchter Addison and T. Andrew Brown, co-chairs of the Task Force, reviewed the Task Force recommendations to create a roadmap for future use of technology in the profession, to improve legal education and training, to establish a proper work/life balance for attorneys, and to reform the delivery of legal services. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, evidence shows that changes in practice, including widespread access to legal information, the routinization of legal tasks, client demands for control of legal service delivery, the increased role of technology, and an increasingly competitive marketplace, are producing a significant restructuring in the way legal services are delivered; and

WHEREAS, these changes in the practice of law require new approaches to the delivery of legal services and to the education and training of lawyers, an encouragement by employers of healthier work-life balance for their lawyers, and improved utilization of technology to enhance legal practice; and

WHEREAS, the New York State Bar Association Task Force on the Future of the Legal Profession was appointed to study these issues and has prepared a comprehensive report containing a series of recommendations to address these changes and to help shape the future of the legal profession;

Now, therefore, it is

RESOLVED, that the New York State Bar Association hereby accepts the report of the Task Force on the Future of the Legal Profession and approves in concept the recommendations contained therein; and it is further

RESOLVED, that the Association reaffirms its commitment to enhancing the quality of legal practice and the ability of lawyers to meet the needs and expectations of their clients; and it is further

RESOLVED, that the officers of the Association are hereby empowered and directed to refer the report and recommendations to an implementation group to work with appropriate Association sections and committees and local bar associations to consider the recommendations and develop proposals and programs as they deem appropriate to implement the recommendations contained in the report; and it is further

RESOLVED, that the officers of the Association are empowered to distribute the report to bar associations, law schools and other entities for their consideration and to take such other and further steps as they may deem warranted to implement this resolution.

6. Report and recommendations of Special Committee to Review the Code of Judicial Conduct. Hon. Joseph P. Sullivan, chair of the Special Committee, together with reporter Prof. Patrick M. Connors, outlined the committee's work in reviewing the 2007 ABA Model Rules of Judicial Conduct to determine whether it should be recommended for adoption in New York. After deciding to recommend that New York adopt the format of the ABA Model Rules, the committee proceeded to review individual rules to determine whether to recommend adopting the ABA rule or a New York-specific rule. The House then considered the specific rules contained in the report. After discussion, the following motions were adopted with respect to the rules:

- A motion to approve all rules for which proponents of amendments had not submitted amendments was adopted.

- A motion was made to approve Rule 2.6 as proposed by the Special Committee, after which a motion to amend to substitute the amendment submitted by the New York City Bar failed. A motion was then adopted to approve Rule 2.6 as proposed by the Special Committee.
- A motion was made to approve Rule 2.7 as proposed by the Special Committee, after which a motion to amend to substitute the amendment submitted by the New York County Lawyers' Association failed. A motion was then adopted to approve Rule 2.7 as proposed by the Special Committee.
- A motion was made to approve Rule 2.10 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 2.10 as amended.
- A motion was made to approve Rule 2.15 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the New York City Bar was approved on a standing vote of 81-57. A motion was then adopted to approve Rule 2.15 as amended.
- A motion was made to approve Rule 3.13 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 3.13 as amended. Mr. Syracuse, Ms. Wallach and Mr. James abstained from participating in the vote.
- A motion was made to approve Rule 3.14 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 3.14 as amended. Mr. Syracuse and Mr. James abstained from participating in the vote.
- A motion was made to approve Rule 3.15 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 3.15 as amended. Mr. Syracuse abstained from participating in the vote.
- A motion was made to approve Rule 4.2 as submitted by the Special Committee, after which a motion was made to amend to substitute the amendment submitted by the Judicial Section. A motion to divide the question between Rule 4.2(A) and 4.2(B) was approved, after which a motion to approve (A) as submitted by the Judicial Section was approved and a motion to approve (B) as submitted by the Judicial Section failed on a standing vote of 56-62. A motion was then adopted to approve Rule 4.2 as amended.
- Rule 4.3 was withdrawn by the Special Committee.

A motion was then adopted to approve the following resolution with respect to the overall report:

WHEREAS, the New York State Bar Association's Special Committee to Review the Code of Judicial Conduct has issued a report recommending that New York adopt a new set of Rules of Judicial Conduct, based upon the format of the 2007 ABA Model Rules of Judicial Conduct; and

WHEREAS, pursuant to a scheduling resolution adopted November 7, 2009 (subsequently amended in November 2010), amendments to the proposed rules have been recommended by county and local bar associations, interested sections and committees of the Association, and other interested organizations, and the proposed rules have been debated by the House of Delegates;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the New York Rules of Judicial Conduct as amended by the House, contingent on their adoption by the Chief Administrative Judge of the State of New York; and it is further

RESOLVED, that the Special Committee to Review the Code of Judicial Conduct is hereby authorized to make such non-substantive, stylistic changes as might be necessary to ensure uniformity of language and format throughout the Rules; and it is further

RESOLVED, that the officers of the Association are hereby empowered and directed to transmit the Rules of Judicial Conduct as amended to the Chief Administrative Judge and to take such other and further action as may be required or deemed appropriate to achieve the implementation of the recommended Rules.

Mr. Denton abstained from participating in the vote.

7. Report of Task Force on New York Law in International Matters. Task Force co-chair Joseph T. McLaughlin provided an informational report on the work of the Task Force to date in reviewing ways to encourage the use of New York law in international transactions and New York as a forum for the resolution of disputes in international transactions. He noted that the Task Force planned to release its report for comment on April 15 and would present the report to the House for debate and vote at the June meeting. The report was received with thanks.
8. Report and recommendations of Committee on the Tort System. Committee co-chairs Margaret Comard Lynch and A. Craig Purcell reviewed the committee's March 18, 2011 memorandum in opposition and April 1, 2011 supplemental memorandum in opposition with respect to budget proposals dealing with medical malpractice that would impact the civil justice system. After discussion, a motion was adopted to approve the memoranda of the Committee on the Tort System. Mr. Abernethy, Mr. Kurs and Judge Kamins abstained from participating in the vote.

9. Report of the President. Mr. Younger 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.
10. Report and recommendations of Committee on Court Structure and Judicial Selection. John P. Bracken, a member of the Committee, outlined the committee's report commenting on the proposed new Part 151 of the Rules of the Chief Administrator, which would prohibit the assignment of a case to a judge with a "campaign contribution conflict." After discussion, a motion was adopted to approve the committee's report and recommendations. Judge Kamins abstained from participating in the vote.
11. Report and recommendations of Committee on Standards of Attorney Conduct and Task Force on Lawyer Advertising. Joseph E. Neuhaus, chair of the Committee on Standards of Attorney Conduct, and Ellen Lieberman, chair of the Task Force on Lawyer Advertising, reviewed the report prepared jointly by the two groups to recommend amendments to Rule 7.1 of the Rules of Professional Conduct to align the rule with the Second Circuit's decision in *Alexander v. Cahill*. After discussion, a motion was adopted to approve the report and recommendations. Mr. Getnick abstained from participating in the vote.
12. Memorial to S. Hazard Gillespie. Former President Michael E. Getnick presented a memorial to S. Hazard Gillespie, former President, who passed away in March 2011. A moment of silence was observed out of respect for Mr. Gillespie's memory and his contributions to the Association and the legal profession.
13. Report and recommendations of ABA State Delegate. Mark H. Alcott, New York State Delegate to the ABA, advised that in January 2011 NYSBA member James R. Silkenat had announced his candidacy for ABA President, noting that not since 1987-88 has a lawyer from New York served as ABA President. After discussion, the following motion was adopted to endorse Mr. Silkenat's candidacy:

Recognizing that James R. Silkenat possesses personal qualities of integrity, wisdom, judgment and leadership, combined with outstanding legal skills and a sound understanding of the needs of the legal profession and the public; and

Recognizing that James R. Silkenat has been a leader as a member of the New York State Bar Association (NYSBA), serving as a delegate to the House of Delegates and as a member of the NYSBA Membership Committee, the Special Committee on Association Governance, the Nominating Committee, and the International Section; and has held other responsible positions within the organized Bar and elsewhere, including the Association of the Bar of the City of New York, the International Bar Association and the American Law Institute, and as a Life Fellow of the American Bar Foundation and Chair of the Fellows thereof in 2004-2005; and

Recognizing that James R. Silkenat has demonstrated commitment to the profession and the public, including his service as Chair of the Commission on the World Justice Project, member of the Council on Foreign Relations, Chair/Co-Chair of the Lawyers Committee for International Human Rights, Co-Chair of the United Nations Development Programme and Chinese Ministry of Foreign Trade and Economic Cooperation's Study Group on Securities and Futures Trading in China, Chair of the Council of New York Law Associates, member of the Board of Directors of the ABA/UNDP International Legal Resource Center, member of the National Committee on U.S.-China Relations, member of the Board of Directors of the Internet Bar Organization, and Co-Chair of the People-to-People Lawyers Delegation to Russia; and

Recognizing that James R. Silkenat has been active in the work of the American Bar Association (ABA), having served as a member of the Board of Governors and its Executive Committee, State Delegate and Chair of the New York Delegation in the House of Delegates, Chair of the Section Officers Conference, Chair of the Section of International Law, Vice Chair of the Section of Individual Rights and Responsibilities, Chair of the Standing Committee on Membership, Chair of the Standing Committee on Constitution and Bylaws, Chair of the Latin American Legal Initiatives Council, Chair of the Museum of Law, Representative to the United Nations Economic and Social Council, Co-Founder of the Solo and Small Firm Leadership Coalition, Chair of the Delegations to Mexico, the Common Market and China, Chair of the Legal Opportunity Scholarship Fund for Minority Law Students Fundraising Committee; and as a member of the Section of Business Law, the Senior Lawyers Division, the Government and Public Sector Lawyers Division, the Solo and Small Firm Caucus, and the Committee on Women in the Profession;

NOW, THEREFORE, IT IS

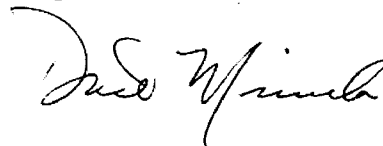
RESOLVED, that the House of Delegates of the NYSBA enthusiastically endorses the candidacy of James R. Silkenat for the office of President-Elect of the ABA in 2012 and respectfully urges the ABA Nominating Committee to support his nomination for, and election to, that office; and it is further

RESOLVED, that the officers of the NYSBA are authorized to distribute this Resolution to each member of the ABA Nominating Committee and to such other individuals as may be deemed appropriate.

14. Report of The New York Bar Foundation. M. Catherine Richardson, President of The New York Bar Foundation, reported on grant applications approved by The Foundation's Board (68 awards totaling approximately \$400,000) and on its administration of cy pres funds. The report was received with thanks.
15. Administrative Items. Mr. Doyle reported on the following:

- a. He announced that the Committee on Diversity had requested that its name be changed to the Committee on Diversity and Inclusion. A motion was requested and approved to rename the committee.
  - b. A motion to approve the designation of delegates filed by the county and local bar associations for the 2011-2012 Association year and to approve the filed roster of the members of the House for the 2011-2012 year was requested and approved.
  - c. He noted that at the January 2011 meeting, the House had approved the recommendations of the Special Committee on Rules for Consideration of Reports to establish revised rules for the submission of and comment on reports that are being considered by the Executive Committee and/or House of Delegates. Since the rules become effective with the June 2011 meetings, he reminded the House that the deadline for submission of reports for the June meetings is April 11, 2011.
  - d. 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. Younger for his leadership as President of the Association. He noted that this meeting represents his last as Chair of the House and thanked the House for the opportunity to serve. Finally, he introduced Mr. James as the next Chair of the House and presented him with the House's gavel.
16. Date and place of next meeting. Mr. Doyle announced that the next meeting of the House of Delegates would take place on Saturday, June 25, 2011 at The Otesaga in Cooperstown.
17. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



David P. Miranda  
Secretary