

NEW YORK STATE BAR ASSOCIATION
 MINUTES OF HOUSE OF DELEGATES MEETING
 MARRIOTT MARQUIS, NEW YORK CITY
 JANUARY 17, 1986

PRESENT: Members Amdursky, Amrod, Ashley, Baldwin, Barthold, Blauvelt, Blewett, Brachtel, Bracken, Brenner, Britt, Brooks, Burke, Chayt, Colish, Cometa, Condon, Connolly, Corrou, Dadey, Daly, DiLorenzo, Dolan, Dressner, Duberstein, J.F. Dwyer, Elmer, Fales, Feerick, Ferguson, Forger, Freedman, Garamella, Gellert, Geltzer, Gershon, Gibson, Giordano, Goldblum, Graff, Hackbarth, Hall, Harris, Haskel, Headley, Heming, Hickey, Hoffman, Horan, Ierardi, Iovenko, Jones, M.G. Kaplan, King, Klein, Krieger, Krutman, Lagarenne, Levin, Lustgarten, Mahony, Malone, Markuson, McDowell, McGlinn, McGraw, McKay, Meriam, H. Miller, S. Miller, Moore, Morgan, J.E. Murphy, A.R. Murray, Newman, Obold, Offermann, Omansky, Ostertag, Pachman, Patterson, Pearl, Perlman, Perrin, Pfeifer, Plunkett Pruzansky, Reilly, Rice, Ritholz, Robfogel, B. Robinson, E. Robinson, Rosiny, Rubin, Rubinton, Santagata, Santemma, Schair, Schiller, Schnall, Scott, Seymour, Shlufman, Spelman, Stave, Sullivan, Thompson, Tondel, Traficanti, Trombley, Tyler, Valdes, Velardi, Vigdor, Vitacco, Volk, J. Walsh, Weaver, Weldon, D. Whalen, T. Whalen, D. White, R. White, Wilkens, Williams, Witmer, Wolf, Yanas, Yetter, Zimmer, Zimmerman, Zuckerman.

1. Approval of minutes of November 2, 1985 meeting.

The minutes were approved as distributed.

2. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee.

Bernard J. Reilly, Chair of the Nominating Committee, reported that the Nominating Committee had nominated the following persons for election to the respective offices indicated:

President-Elect	Maryann S. Freedman, Buffalo
Secretary	Angelo T. Cometa, New York City
Treasurer	John J. Yanas, Albany
Vice-President, First Dist.	Henry L. King, New York City
Vice-President, Second Dist.	Thomas O. Rice, Brooklyn
Vice-President, Third Dist.	Thomas M. Whalen, III, Albany
Vice-President, Fourth Dist.	Richard M. Gershon, Schenectady
Vice-President, Fifth Dist.	Philip J. Britt, Liverpool
Vice-President, Sixth Dist.	William G. Ruger, Watkins Glen
Vice-President, Seventh Dist.	G. Robert Witmer, Jr., Rochester
Vice-President, Eighth Dist.	Francis J. Offermann, Buffalo
Vice-President, Ninth Dist.	William J. Daly, Ossining
Vice-President, Tenth Dist.	Jon N. Santemma, Mineola
Vice-President, Eleventh Dist.	Howard D. Stave, Forest Hills
Vice-President, Twelfth Dist.	Maxwell S. Pfeifer, Bronx

Member of the Executive Comm.	John P. Bracken, East Setauket
Member of the Executive Comm.	John D. Feerick, New York City
Member of the Executive Comm.	Jules J. Haskel, Garden City
Member of the Executive Comm.	John R. Horan, New York City
Member of the Executive Comm.	Lawrence E. Lagarenne, Monticello
Member of the Executive Comm.	Robert L. Ostertag, Poughkeepsie

There being no further nominations, a motion was made and carried that the nominations be closed. The Secretary then cast one ballot for the election of the officers and members of the Executive Committee.

3. Report of Treasurer. Mr. Yanas' report, which previously had been presented to the members of the House at the Annual Meeting of the Association, was received with thanks.

4. Report of Joint Task Force on Liability Insurance Coverage. Thomas A. Harnett, Chair of the Joint Task Force on Liability Insurance Coverage, summarized the circumstances surrounding the formation of the Joint Task Force in cooperation with the Association of the Bar of the City of New York. He noted the widespread concern regarding the limited availability and rising cost of professional liability coverage, especially for those involved in fields such as entertainment law, real estate, securities, and joint ventures. Mr. Harnett indicated that the Task Force had been divided into four subcommittees to address in detail the four major aspects of the liability insurance problem: availability and pricing of insurance, rate-making, the impact of the civil justice system, and the feasibility of forming a proprietary carrier. He advised that preliminary subcommittee findings suggested a need for improved risk management, as well as the adoption by law firms of measures to minimize the possibility of error. Mr. Harnett reported improvements such as these would contribute to the alleviation of the problems. He indicated that the Task Force anticipated submission of a complete written report in the near future.

5. Report of Special Committee on Medical Malpractice. Philip H. Magner, Chair of the Special Committee on Medical Malpractice, summarized the status of the committee's efforts to ensure that the Governor and Legislature examined the medical malpractice situation from a balanced perspective which respects the rights of the public to recover for injuries arising from malpractice. He reviewed the significant features of remedial legislation enacted in 1985, including structured settlements, a reduction in contingency fees, the imposition of costs for frivolous suits, and improved supervision of practitioners by the medical community. Mr. Magner also noted further changes under consideration by the Legislature, such as maximum limitations on total liability and awards for pain and suffering, greater utilization of arbitration, and the provision of future medical care for malpractice victims. He then summarized affirmative proposals developed by the committee to provide a balanced, yet effective resolution of the problem,

including mandatory use of claims-made policies, utilization of voluntary arbitration, the reduction of defense costs through early settlement practices, Insurance Law revisions affecting solvency, enhancement of medical discipline procedures, and the requirement of mandatory second opinions for non-emergency surgery. Mr. Magner indicated his committee would continue its active involvement in this matter, and would provide the members of the House with information regarding all significant developments.

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

a) Further consideration of the report of the Special Committee on Specialization in the Law had been deferred until the April 1986 meeting of the House to afford delegates and local Bar associations additional time to review the recommendations submitted by the committee.

b) The Ad Hoc Committee on Bar Center Facilities and Space Requirements would present a report at the April meeting concerning its recommendations for expansion of the Bar Center in Albany to provide adequate meeting and office space.

c) Based on the discussion of the proposed Rules of Professional Conduct at the November meeting, a Special Committee to Review the Code of Professional Responsibility had been appointed, with Hon. Hugh R. Jones as Chair. Mr. Heming indicated that the committee anticipated having a preliminary report for presentation to the House later in the year.

d) To assist in examining the tort liability problem, the Governor had appointed an Advisory Commission to Make Findings and Recommendations about Problems Relating to Liability Insurance, chaired by Hon. Hugh R. Jones, with Association President Justin L. Vigdor as a member.

e) Due to the local orientation of the May 1 Law Day program, planning responsibility was being assumed by the Executive Council of the New York Conference of Bar Leaders, obviating the need for the Committee on Law Day which had discharged this responsibility previously. A motion was adopted discharging the Committee on Law Day with the thanks of the House.

f) The Nominating Committee had met and nominated the following individuals as delegates to the American Bar Association House of Delegates for election at the April 1986 meeting: Maryann S. Freedman, Edward J. Hart, Charles E. Heming, Henry L. King, Charlene McGraw (young lawyer delegate), Henry G. Miller, Archibald R. Murray, Robert L. Ostertag, Seth Rosner, and Justin L. Vigdor.

7. Report of President. Mr. Vigdor reported the following matters:

a) The Special Committee to Improve Courthouse Facilities was coordinating with other interested groups to develop support, in principle, for the recent proposal by Chief Judge Wachtler and Chief Administrative Judge Bellacosa to fund courthouse repairs and new construction.

b) The Committee on Judicial Administration would be monitoring the operation of the Individual Assignment System and the Uniform Rules for the New York State Trial Courts, and would forward any concerns or comments to the Office of Court Administration to assist in the smooth and effective functioning of both initiatives.

c) In cooperation with the Executive Committee, Action Unit No. 6 was in the process of developing legislative measures to implement various facets of the report as approved by the House of Delegates in June 1985. Areas involved included motion practice, interlocutory appeals, sanctions for frivolous suits, and pretrial discovery procedures.

d) Action Unit No. 7 was in the process of organizing its resources to focus on significant aspects of the criminal justice system, similar to the function performed by Action Unit No. 6 on the civil process.

e) The Trusts and Estates Law Section had submitted comments with respect to the new rules adopted by the Administrative Board of the Courts regulating the appointment of fiduciaries, and would continue to monitor their implementation.

f) He had written to President Reagan expressing the Association's concern over the delay in the filling of the federal judicial vacancies in New York.

g) With the authorization of the Executive Committee, he would urge Congress to remedy the tax law anomaly which penalized federal judges in senior status who elected to remain active and hear cases.

h) The Executive Committee had adopted a resolution reaffirming the 1983 position of the House of Delegates which endorsed the renomination of qualified incumbent judges.

i) Action Unit No. 4 was continuing its efforts to secure court merger, consistent with the resolution adopted by the House in 1979, and was reviewing the most recent report on the subject released by Sen. Dunne.

j) The Association was actively involved in many of the significant areas cited by Governor Cuomo in his State of the State Message, including court reform, medical malpractice, liability insurance, and toxic torts.

k) The Association's membership program was functioning well, with a total membership of 45,000, reflecting a growth rate of 37 percent during the past five years. To further enhance member services, consideration was being given the establishment of sections for senior lawyers and those interested in law office economics.

l) The Committee on Association Insurance Programs was coordinating with the Bertholon-Rowland Corp. to improve the sponsored insurance program.

m) The IOLA program had approximately 6,000 attorneys and 70 banking institutions enrolled, producing approximately \$1.5 million annually to assist civil legal services programs. Mr. Vigdor noted that the IOLA Advisory Committee was studying means to enhance participation by lawyers in New York.

n) With the approval by the Executive Committee, the Committee on Unlawful Practice of the Law was discussing the formation of an advisory committee to assist the Attorney General in formulating policies to protect consumers from unlawful practice.

o) The Committee on Group and Prepaid Legal Services Plans was involved in national efforts to secure re-enactment of section 120 of the Internal Revenue Code to afford legal services plans equal tax treatment with other employee fringe benefits.

p) The Committee on Legal Education and Admission to the Bar was attempting to resolve the problem surrounding the lack of reciprocity for New York attorneys seeking admission to practice in New Jersey.

q) The Special Committee on Association Meetings was proceeding with plans for the fall 1986 meeting of the Association in Buffalo.

r) The formation of a Council on Law and Society was in progress, with contemplated programs to include an annual symposium on subjects affecting the concerns of the legal system and the public.

s) Several Association committees, including the Committee on Federal Constitution and the Committee on Public Relations, were coordinating preparations for the bicentennial of the Constitution, and were seeking funds to produce a film on the ratification process in New York.

t) The Executive Committee had endorsed a proposal by the Trusts and Estates Law Section that legislation be enacted to permit the formation of a Temporary State Commission to Study the Law of Estates, with a primary focus on the statutes governing intestacy and rights of election.

8. New business. Terrence M. Connors, Secretary of the Criminal Justice Section, summarized potential problems which may arise when prosecutors summon attorneys before grand juries to testify regarding client matters. He described the effect this practice may have on the attorneys' obligations with respect to privileged information and the need for remedial measures to minimize abuses in this area. Mr. Connors noted that on January 16, 1986, the Association Executive Committee had endorsed a resolution supporting the implementation of corrective measures. After discussion, a motion was adopted unanimously approving the following resolution:

BE IT RESOLVED THAT a prosecuting attorney shall not call an attorney before a grand jury without judicial approval in circumstances where the prosecutor seeks to compel the attorney/witness to provide evidence concerning a person who is or was represented by the attorney/witness; and

BE IT FURTHER RESOLVED, that judicial approval shall be withheld unless the court, at an evidentiary hearing, finds by clear and convincing evidence:

1. The information sought is not protected from disclosure by the attorney-client privilege or work product doctrine;
2. The evidence sought is relevant to a investigation within the jurisdiction of the grand jury;
3. The purpose of the subpoena is not to harass the attorney/witness or his or her client;
4. There is no other feasible alternative to obtain the information sought; and
5. The enforcement of the subpoena does not otherwise violate the law.

BE IT FURTHER RESOLVED, that these principles should be implemented by State and Federal authorities by appropriate means such as rules of court, statutes, and case law; and

BE IT FURTHER RESOLVED, that the House of
Delegates of the New York State Bar Association
urges the creation of rules of professional
conduct to implement this resolution.

9. Date and place of next meeting. Mr. Heming announced
that the next meeting of the House of Delegates will be held at
the Bar Center in Albany on Saturday, April 19, 1986.