

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
MARRIOTT MARQUIS, NEW YORK, NEW YORK  
JANUARY 30, 2009**

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**PRESENT:** Aaron; Abernethy; Abramowitz; Adler; Alcott; Alden; Anello; Asarch; Austin; Badner; Badway; Bartlett; Baum; Berke-Weiss; Borsody; Bracken; Brady; Brown, G; Brown, T.; Buholtz; Burke, J.; Burns, H.; Burns, S.; Buzard; Cahn; Castellano; Chang; Chapman; Chase; Chin; Christian; Clarke; Coffey; Cohen, C.; Cohen, D.; Cohn; Collazo; Convissar; Cullum; Davis; DeFio Kean; Dohn; Doyle; Draper; Drayton; Edmunds; Elder-Howell; Eppler; Fennell; Fernandez; Finerty; Fishberg; Fisher; Flood; Fontana; Fortino; Fox; Franchina; Freedman; Gall; Gesinsky; Getnick; Gigliotti; Gingold; Goldenberg; Golinski; Good; Gorgos; Gredd; Greeley; Greenthal; Gutekunst; Gutierrez; Haig; Harren; Hassett; Hawkins; Hayes; Hernandez; Higgins, J.; Higgins, P.; Hollyer; Howe; James, D.; James, S.; Kamins; Kanter; Kennedy; Kera; King; Kobak; Kougasian; Krane; Kretser; Kurland; Lagonia; Lais; Lally; Lamantia; Larose; Larson; Lau-Kee; Lawrence; Leber; Leo; Lesk; Levin; Levy; Liebman; Lindenauer; Lomuscio; Lonuzzi; Ludington; Lusk; MacCrate; Madigan; Makofsky; Martin; Marwell; Masley; Lay; Meislahn; Meyer; Mihalick; Miklitsch; Miller, D.; Miller, H.; Miller, M.; Millett; Miranda; Morril; Morton; Moy; Netter; Nizin; O'Donnell; O'Neill; O'Reilly; Ostertag; Park; Perlman; Plevan; Porcellio; Powers; Privitera; Prowda; Pruzansky; Purcell; Quaranta; Reed; Richardson; Robertson; Roberts-Ryba; Robinson; Rodriguez; Romero; Rosenthal; Rosner; Rothstein; Safer; Sanchala; Sands; Schneider; Schofield; Schraver; Sconiers; Sen; Sheehan; Sigmond; Silkenat; Smith, G.; Smith, T.; Spelfogel; Spiro; Standard; Stanislaus-Fung; Stempel; Sterrett; Strauss; Subjack; Sunshine, J.; Szochet; Terranova; Tilton; Tyler; Vigdor; Wachtler; Wallach; Walsh, O.; Weinschel; Welby; Wimpfheimer; Winkler; Witmer; Yates; Young; Younger.

Mr. Getnick 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 November 1, 2008 meeting. A motion was adopted accepting the minutes as previously distributed.
3. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Seymour W. James, Jr. to members of the House at the Annual Meeting, was received with thanks.
4. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. A. Vincent Buzard, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2009-2010 Association year: President-Elect: Stephen P. Younger, New York City; Secretary: C. Bruce Lawrence, Rochester; Treasurer: Seymour W. James, Jr., New York City; and Vice Presidents: First District – Claire P. Gutekunst and Susan B. Lindenauer, New York City; Second – Hon. Barry M. Kamins, Brooklyn; Third – Harry P. Meislahn, Albany; Fourth – Patricia L.R. Rodriguez, Schenectady; Fifth – David M. Hayes, Syracuse; Sixth – David A. Tyler, Ithaca; Seventh – David M. Schraver, Rochester; Eighth – Sharon Stern Gerstman, Buffalo; Ninth – John S. Marwell,

Mount Kisco; Tenth – John H. Gross, Hauppauge; Eleventh – David Louis Cohen, Kew Gardens; Twelfth – Lawrence R. Bailey, Jr., New York City. Nominated as members-at-large of the Executive Committee were Timothy J. Fennell, Oswego; Hermes Fernandez, Albany; Glenn Lau-Kee, New York City; Ellen G. Makofsky, Garden City; Eileen D. Millett, New York City; David P. Miranda, Albany; Peter J.W. Sherwin, New York City; and Lauren J. Wachtler, New York City.

There being no further nominations, a motion was made and carried unanimously to elect the above-named individuals as officers and members-at-large of the Executive Committee.

5. Memorial to Lorraine Power Tharp. Immediate Past President Kathryn Grant Madigan and House member Miriam M. Netter presented a memorial to Lorraine Power Tharp, president of the Association in 2002-2003, who passed away in October 2008. A moment of silence was observed out of respect for Ms. Tharp's memory and her contributions to the Association and the legal profession. A copy of the memorial is appended to these minutes.
6. Presentation of the Ruth G. Schapiro Memorial Award. Ms. Leber presented the annual Ruth G. Schapiro Award to Karen DeCrow, president of the National Organization of Women from 1974 to 1977.
7. Report of the President. In addition to the information contained in her printed report, a copy of which is appended to these minutes, Ms. Leber reported on the following:
  - a. Over 4300 lawyers attended the 2009 Annual Meeting, an increase over 2008. More than 400 attended the President's Summit on January 28.
  - b. A "calculator" prepared by Columbia Law School to advise of the collateral consequences impacted in immigration matters is being tested during the Annual Meeting in the Cyber Café.
  - c. A program designed to educate lawyers, the courts and the public about the mortgage foreclosure process had been recorded and distributed to courthouses throughout New York. In addition, a segment on foreclosures has been added to the "People's Law School" library available on the Association's website.
  - d. Hon. Jonathan Lippman was nominated as Chief Judge of the State of New York by the Governor on January 13, 2009. Ms. Leber reported that she met with Senator John L. Sampson, the new chair of the Senate Judiciary Committee, regarding the confirmation process as well as the process by which the State Commission on Judicial Nomination selects candidates for the Court of Appeals. A subcommittee of the Association's Committee on Court Structure and Judicial Selection will review the selection process for the Court of Appeals as well as the Appellate Division. A meeting with the Governor is planned to discuss increasing diversity on the bench.

- e. As of December 31, 2008, the Association had 76,184 members, an increase of 3% over the previous year. She thanked the Committee on Membership for its work in promoting Association membership.
  - f. In response to the crash landing of U.S. Airways Flight 1549, Robert J. Saltzman, chair of the Association's Committee on Mass Disaster Response, had met with passengers and their families to provide basic information. In addition, a press release was issued to caution lawyers about improper solicitation.
  - g. Oral arguments in *Alexander v. Cahill*, relating to the rules governing lawyer advertising, were heard by the Second Circuit on January 22. Ms. Leber argued on behalf of the Association as *amicus curiae*.
  - h. She had recorded non-commercial sustaining announcements for broadcast on radio stations statewide on the Association's Lawyer Referral and Information Service.
  - k. Only \$1 million has been included in the proposed 2009-2010 state budget for civil legal services, and IOLA revenue for 2009 is projected at \$1.5 million to 4 million. She will continue to advocate for increased funding.
  - l. An Executive Subcommittee consisting of Messrs. Cohen, Doyle and James is developing a proposal for reform of the Rockefeller drug laws as a method of reducing the costs of incarceration and making funds available for civil legal services.
8. Report and recommendations of Task Force on Privacy. Alison Arden Besunder and Kelly M. Slavitt, co-chairs of the Task Force, reviewed the Task Force's report addressing six core areas in which privacy is impacted: intellectual property, health, employment, criminal, business, and litigation. They reported that the Task Force has reached out to sections and committees for feedback and plan to conduct roundtable discussions among interested groups, after which the Task Force will present an updated report to the House of Delegates. After discussion, the following resolution was adopted by the House:

WHEREAS, the mission of the Privacy Task Force (consisting of attorneys practicing in the areas of Business Law, Health Law, Intellectual Property Law, Criminal Law, Employment Law, and Litigation) is to identify privacy issues impacting lawyers and their clients in certain areas and to educate members of the profession and the public on the current status of the law as well as the available remedies prescribed for violations of those laws; and

WHEREAS, members of the Privacy Task Force have dedicated substantial time to review and consider these privacy-related issues; and

WHEREAS, the Privacy Task Force has prepared a report that identifies certain issues in the existing state of the law on privacy, including the identification of certain statutes and rules affecting lawyers and their clients' privacy, and has

preliminarily identified certain areas worthy of further study to determine whether procedural and substantive changes, if any, are warranted;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association acknowledges receipt of the Report of the Task Force on Privacy as an interim report and thanks the Task Force and its members for their work in preparing it; and it is further

RESOLVED, that the Association reaffirms its commitment to the goal of ensuring lawyer and client privacy with respect to attorney-client communications as well as the individual privacy interests of clients to the full extent accorded by law; and it is further

RESOLVED, that the members of the Task Force shall complete the study of the issues and further investigate, analyze, discuss and debate the issues raised in the report with the goal of identifying suggestions for reform, if any; and it is further

RESOLVED, that the Task Force shall report back to the House of Delegates concerning the sufficiency of existing law to protect and properly safeguard personal data of lawyers and their clients in all substantive areas of law including, but not limited to, criminal law, health law, intellectual property, employment law, financial laws and regulations; and it is further

RESOLVED, that the Association also directs the Task Force to continue to advance these goals by reporting as appropriate on additional developments in the law on privacy as it affects lawyers and their clients; and it is further

RESOLVED, that the officers of the Association are hereby directed to distribute this Report to Association Sections, Committees, and county, local, minority and specialty bar associations, as well as other interested persons and professionals (including by not limited to local, county and state government agencies) as the Task Force may deem appropriate, for their consideration and input in developing legislation and policies governing the use and protection of individual and business information; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such other and further steps as they may deem warranted to implement this resolution.

9. Report of Task Force on Wrongful Convictions. Hon. Barry Kamins, the Task Force's chair, reviewed the Task Force's study of 53 cases identified as having been determined to involve wrongful convictions, identifying six root causes for wrongful convictions. He noted that in only rare cases did only one factor result in a wrongful conviction. He then reviewed the Task Force's recommendations and reported that the Task Force would hold two hearings on its report in February 2009 before presenting a final report to the House of Delegates at the April 2009 meeting. The report was received with thanks.

10. Report and recommendations of the Committee on Court Structure and Judicial Selection. Committee chair G. Robert Witmer, Jr. and committee member Michael J.D. Sweeney outlined the work of the Chief Judge's Special Commission on the Future of New York Courts and the committee's evaluation of the Commission's recommendations, noting that the committee supported a majority of the recommendations. The committee did not agree with the Commission's recommendation that criminal defendants appearing before a non-lawyer judge be given the opportunity to have the matter heard by a lawyer-judge, believing that this "opt-out" would create delay, raise jurisdictional issues, and encourage judge-shopping. Committee member Norman L. Greene outlined his dissent with the committee's recommendation as to this issue. After discussion, the following motion was adopted by the House:

WHEREAS, in September 2008 the Chief Judge's Special Commission on the Future of New York State Courts released a report entitled *Justice Most Local: The Future of Town and Village Courts in New York State*, which offered recommendations for reforming New York town and village courts; and

WHEREAS, the Committee on Court Structure and Judicial Selection has reviewed the Commission's report and has developed a proposed response for submission to the Unified Court System;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the report and recommendations of the Committee on Court Structure and Judicial Selection, with the exception of the recommendation contained in section 3(D) of the report; and it is further

RESOLVED, that the New York State Bar Association endorses the Special Commission's recommendation of an "opt-out" provision as an interim measure; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such steps as they may deem warranted to implement this resolution.

Mr. Buzard abstained from participating in the discussion and vote.

11. Report of Task Force on Global Warming. Michael B. Gerrard, chair of the Task Force, reviewed the Task Force's report, including a review of climate change in New York, the current use of energy and future trends, and current New York initiatives. He then outlined the recommendations made by the Task Force in the areas of buildings and energy, land use, vehicles and transportation, and other initiatives. The report will be presented for a vote at the April 2009 meetings. The report was received with thanks.
12. Report of Special Committee on Federal Legislative Priorities. Stephen P. Younger, chair of the Special Committee, reviewed the committee's activities to date, including a series of meetings with members of Congress. He noted that the committee is reviewing three main priorities as the focus for the Association's activities: legal services

funding/restrictions on advocacy, attorney-client privilege, and the Federal shield law. The committee will present a report for the House's consideration at the April 4, 2009 meeting. The report was received with thanks.

13. Administrative items. Mr. Getnick reported on the following:

- a. At the April 4, 2009 meeting, the House would be requested to elect five of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: Mark H. Alcott, New York City; Bernice K. Leber, New York City; Kenneth G. Standard, New York City; and Stephen P. Younger, New York City.
- b. He announced that David S. Williams, President of the Association in 1981-82, had passed away in November 2008 and that a formal memorial would be offered at the April 3, 2009 House meeting. A moment of silence was observed in his memory.

14. New Business.

Report of Committee on Lawyers in Transition. Lauren J. Wachtler, chair of the Committee, provided the House with an update as to the Committee's activities in providing programming and resources for lawyers seeking new employment, including the committee's "ambassador" program, blog, Web resources, and career development initiatives. The report was received with thanks.

15. Date and place of next meeting. Mr. Getnick announced that the next meeting of the House of Delegates would take place on Saturday, April 4, 2009 at the Bar Center in Albany.

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

Respectfully Submitted,



C. Bruce Lawrence  
Secretary