

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK - JUNE 23, 1984

PRESENT: Members Amdursky, Amrod, Ashley, Avery, Blauvelt, Blewett, Block, J.P. Bracken, Britt, Brooks, Campbell, Chayt, Cometa, Corrou, Cox, Dadey, Daily, Daly, DiLorenzo, Dolan, Emnett, Fales, Ferguson, Ferrucci, Fitzgerald, Forger, Found, Freedman, Furfure, Garaufis, Geltzer, Gershon, Gibson, Goldblum, Greisberger, Hanna, Heming, Hickey, Hoffman, Hoffmann, Horan, Iovenko, Jones, Kaplan, Lagarenne, Larson, Ledina, Lifland, Markuson, McKay, Mealey, Meriam, H.G. Miller, S.W. Miller, Moore, J.H. Murphy, O'Connor, Offermann, Ostertag, Palermo, Patterson, Pearl, Peck, Perlman, C.W. Peterson, Pfeifer, Reilly, Rice, Ritholz, Robfogel, E.T. Robinson, Rosiny, Rosner, Santemma, Simberkoff, Smith, Stave, B.I. Taylor, Thompson, Tobin, Tracy, Trombley, Tyler, Ufford, Vigdor, Webb, Whalen, Williams, Witmer, Woodford, Yanas.

1. Approval of minutes of April 27, 1984 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Yanas summarized the Treasurer's report, January 1 to May 31, 1984, copies of which had been distributed to the members of the House. He noted that while the Association was in sound financial condition as of May 31, 1984, with increased expenditures for outside computer services, additional staff for the Legislative Department, and funding for recently-established Action Unit No. 6, there would likely be a budget deficit at the close of the fiscal year. Mr. Yanas indicated that, in view of these circumstances, the Finance Committee was considering the need for a dues increase in 1985, after four years at the current level. He encouraged the officers, staff, section and committee chairs to control unnecessary expenditures to assist in minimizing the projected deficit for the current year. Mr. Yanas also expressed appreciation to Leland B. Taylor, outgoing Chairman of the Finance Committee, for his dedicated service in guiding the financial affairs of the Association. The report was received with thanks.

3. Report of President. Mr. Miller reported the following matters:

a) He had raised the subject of the Proposed Uniform Rules for the New York State Trial Courts at the quarterly Office of Court Administration - bar association meeting held June 12. He indicated that OCA would review all comments or criticisms prior to submission of the Proposed Rules to the Administrative Board of the Courts in September. In addition, amendments would be considered to those sections found

to be ineffective following implementation. Mr. Miller encouraged any committee or section desiring to submit comments, and which had not already done so, to communicate directly with Michael Colodner, OCA Counsel, regarding the matter.

(b) The Committee on Public Relations had recently conducted an excellent program for local bar associations on relevant facets of public relations. He noted that the committee, in cooperation with the Committee on Courts and the Community, would be conducting a "town meeting" program during the Association's Annual Meeting in January, 1985.

(c) A Special Committee on Association Meetings had been appointed, with Frederick Block as Chairman, to evaluate the format of the Annual Meeting, with particular emphasis on factors such as the effectiveness, structure, location and timing of the meeting. He encouraged the members to submit any views or suggestions to the committee.

(d) The Executive Committee would meet jointly in September with the Executive Committee of the Association of the Bar of the City of New York to discuss matters of mutual interest.

(e) A Special Committee on Ethics Handbook had been established, with Robert L. Ostertag as Chairman, to coordinate with interested sections and committees to prepare a publication containing articles discussing practical ethical concerns in various substantive fields.

(f) As noted in the President's Page contained in the July issue of the Journal, he had a desire to seek simplification of the legal process and procedures in those areas of the law where feasible. Mr. Miller noted that, following consideration with the Executive Committee, he would not be seeking creation of an action unit to address this matter, but would be requesting sections and committees to consider means for achieving simplification in their respective fields.

(g) In cooperation with the Membership Committee, he was seeking to increase membership from among all segments of the profession so that the Association would be representative of the entire legal profession in New York State.

(h) The legislative contact program was in the process of implementation, and participation by the House members was encouraged to ensure the effectiveness of the program.

(i) He was in the process of appointing members to the Association's standing and special committees. Mr. Miller indicated he was seeking to expand participation by women and minorities, and asked that House members contact him with suggestions regarding individuals interested in serving on any of the various committees.

4. Presentation of Root/Stimson Award, Public Service Award, and Award of Merit.

Thomas M. Whalen, III, Chairman of the Special Committee on Lawyers and the Community, presented the Root/Stimson Award to attorney Joseph J. Casey of Albany for outstanding service to the community. The award was accepted by Mr. Yanas on behalf of Mr. Casey.

Mr. Whalen presented the Public Service Award to the Victim Services Agency of New York City for that program's outstanding contribution to the betterment of the administration of justice.

Edward J. Moses, member of the Committee on Lawyers and the Community, presented the Award of Merit for larger associations to the Suffolk County Bar Association, and the Award of Merit for smaller associations to the Broome County Bar Association for distinguished professional and public service accomplished through pro-bono projects designed to make legal services more available in their respective counties.

5. Report of Special Committee on Alternatives to Court Resolution of Disputes. William S. Greenawalt, Chairman of the Special Committee on Alternatives to Court Resolution of Disputes, reviewed the committee's report regarding the functioning of existing alternative programs for resolving disputes, including civil arbitration, small claims parts, community-level programs, and the use of mediation in matrimonial matters. He then outlined the committee's recommendations for improving the utilization and effectiveness of these various alternatives, as well as the modifications made in the report and recommendations made after initial presentation of the matter to the House in November, 1983. Following discussion and amendment of the recommendations submitted by the committee, a motion was adopted approving the following resolution:

RESOLVED, that the House of Delegates of the New York State Bar Association hereby endorses the recommendations proposed by the Special Committee on Alternatives to Court Resolution of Disputes, in its report dated June, 1984 as amended by this House of June 23, 1984 for distribution to such agencies, groups and individuals as may be appropriate to effectuate the recommendations presented in said report.

6. Report of Committee on Judicial Selection. Alexander D. Forger, Chairman of the Committee on Judicial Selection, summarized amendments to the "Guidelines for Evaluating Qualifications of Judicial Candidates," proposed to

clarify procedures and assist the committee in functioning efficiently within the time limits prescribed for the review and appointment of judges to the Court of Appeals. Following discussion, a motion was adopted approving the proposed revisions. A copy of the Guidelines, as amended, is annexed to these minutes.

7. Proposed amendments to the resolution governing nomination of ABA delegates. At the request of Messrs. Palermo and Geltzer, consideration of this matter was deferred to the next meeting to allow for decision by the American Bar Association at its August, 1984 Annual Meeting regarding proposals to award additional delegates to various states.

8. Report of Committee on Professional Discipline. A. Paul Goldblum, past Chairman of the Committee on Professional Discipline, reported on behalf of Harold M. Halpern, present Chairman of the committee. Mr. Goldblum summarized the committee's interim report regarding its evaluation of New York State's attorney discipline system, as well as its review of the American Bar Association study of this subject. He noted the possibilities under consideration for achieving a more uniform system within the present structure of the four judicial departments, and indicated a final report would be prepared for discussion at future meetings of the House.

9. Presentation to Raymond P. O'Keefe, Chairman, Special Committee on Lawyer Alcoholism and Drug Abuse. Mr. Miller recognized the outstanding service to the Association and profession rendered by Raymond P. O'Keefe, Chairman of the Special Committee on Lawyer Alcoholism and Drug Abuse from 1979-1984, and presented him with a clock suitably inscribed to commemorate this service.

10. Report of Chairman. Mr. Vigdor reported the following matters:

(a) The new members of the House who had assumed office on June 1 were welcomed. The following is a list of the new members of the House: John B. Amrod; George Ashley; Sheila Birnbaum; Peter M. Blauvelt; Richard N. Blewett; Philip J. Britt; James M. Brooks; Patrick Campbell; Faith Colish; Richard G. Compson; Marshall Cox; Thomas V. Dadey; Richard Morgan Daily; Robert J. Deily; Louis P. DiLorenzo; Joseph C. Dwyer; Thomas R. Elmer; Dudley M. Ferguson; Ernest M. Found; Marianne Furfure; Arthur L. Gellert; Dominick Giordano; John H. Hanna, Jr.; Jo Ann Harris; Thomas A. Hickey; Edmund J. Hoffmann, Jr.; Michael Iovenko; Emanuel Kessler; Michael W. Kessler; Deborah E. Lans; John J. Layden; Burton Ledina; A. Thomas Levin; J. Steven Long; Edward J. Malone; John C. Mannix; Gloria Markuson; J. Joseph McGowan; Robert B. McKay; Carroll J. Mealey; James C. Moore; Robert E. Netter; Paula J. Omansky; Howard E. Pachman; Raymond J. Pauley; Robert J. Pearl; Richard F. Place; Thomas O. Rice; Barbara Paul Robinson; Renee A. Rosch; Peter D. Rubinton; Craig

Schiller; Florence L. Simberkoff; Laurence A. Spelman; Richard T. Sullivan; Willard B. Taylor; Joseph L. Tobin, Jr.; Thomas F. Tracy; John R. Tyler, Jr.; Charles W. Ufford, Jr.; Charles H. Velardi; Guy R. Vitacco; John A.R. Walsh; Louis E. Wolfe; Kimba Wood; Robert H. Woodford; Charles W. Yetter.

(b) Action Unit No. 4, in consultation with other interested groups, was in contact with the Governor and legislative leaders to achieve passage of a court merger bill consistent with the resolution adopted by the House in 1979. He indicated that a confidential draft containing features as proposed by the Action Unit was under discussion by the Governor and legislative leaders with action possible before the conclusion of the current session.

(c) Appointment of the Board of Trustees of the Interest on Lawyer Account Fund (IOLA) by the Governor had been completed, and it was likely the Legislature would pass a bill in the near future providing a \$1,000,000 loan to the IOLA Fund to aid implementation of the program.

(d) Mr. Vigdor recognized Mr. Miller, who conveyed the appreciation of the House to Mr. Young and presented him with an inscribed clock commemorating service as Secretary from 1980-1984.

Mr. Miller then expressed appreciation to Mr. Fales for his energetic and dedicated leadership as President during the past year, and presented him with a plaque inscribed as follows:

THE NEW YORK STATE BAR ASSOCIATION
PRESENTS THIS TESTIMONIAL TO HALIBURTON
FALES, 2d IN RECOGNITION OF HIS DEVOTED
SERVICE TO THE ASSOCIATION IN THE
SUCCESSFUL FURTHERANCE OF ITS IDEALS AND
IN THE PROMOTION OF THE BEST INTEREST OF
THE PROFESSION THROUGH HIS SERVICE AS
PRESIDENT OF THE ASSOCIATION 1983-1984

11. Date and place of next meeting. Mr. Vigdor announced that the next meeting of the House of Delegates will be held at the Bar Center in Albany on November 3, 1984.

**NEW YORK STATE BAR ASSOCIATION
COMMITTEE ON JUDICIAL SELECTION
GUIDELINES FOR EVALUATING QUALIFICATIONS OF JUDICIAL CANDIDATES**

A. Judicial Offices Considered

1. The Committee on Judicial Selection (hereinafter "Committee") shall consider and report to the President of the Association upon the qualifications of a candidate for appointment to the Court of Appeals of the State of New York or for Chief Judge thereof.

2. Upon request of the President of the Association, the Committee shall consider and report to the President upon the qualifications of a candidate for election or appointment to the following courts:

a) State Courts

- 1) The Appellate Division of the Supreme Court of the State of New York;
- 2) The Supreme Court of the State of New York;
- 3) The Court of Claims of the State of New York.

b) Federal Courts

- 1) The United States Court of Appeals for the Second Circuit;
- 2) The United States District Courts located in the State of New York.

3. In making such requests, the President shall give due regard to the activities of the American Bar Association and the various local bar association in New York State with respect to candidates for these courts, toward the end that there shall be cooperation between the New York State Bar Association and these other association.

B. Ratings and Criteria

1. The qualifications of a candidate shall be evaluated as provided in these guidelines and the Committee shall rate the candidates as "not qualified," "qualified" or "well qualified."

2. In rating a candidate, the Committee shall consider professional ability and experience, character, temperament and the possession of the special qualities necessary or desirable for the performance of the duties of the office for which the candidate is being considered. The higher the judicial office, the greater should be the professional qualifications considered necessary or desirable for that office. The rating "qualified" shall be reserved for candidates who have affirmatively demonstrated qualifications which are regarded by the Committee to be necessary for the performance of the duties of the office for which they are being considered. The rating "well qualified" shall be reserved for candidates who, in addition, possess pre-eminent qualifications for the performance of the duties of such office.

C. Appointment of Subcommittee

1. When consideration of a candidate's qualifications is undertaken by the Committee, the Chair shall appoint a Subcommittee charged with the duty of actively investigating a candidate's qualifications. If a candidate presently serves as a judge, it shall be the policy, unless impracticable, to appoint members to the Subcommittee who do not practice within the territorial jurisdiction of the candidate.

2. The Subcommittee, with the assistance of Association staff, shall make a complete and thorough investigation into the candidate's qualifications, which investigation shall include but not be limited to: (a) the securing of written biographical and other data from the candidate in the form which the Committee shall from time to time determine, and (b) if practicable, a personal interview with the candidate.

3. Upon completing its investigation, the Subcommittee shall report its findings to the full Committee at a meeting thereof. With its report, the Subcommittee shall submit all biographical or other materials it deems pertinent to its investigation. As part of its report, the Subcommittee may recommend whether the candidate should be rated as: (a) not qualified; (b) qualified; (c) well qualified.

D. Evaluation by Committee

1. Upon announcement by the New York State Commission on Judicial Nomination of candidates for appointment to the Court of Appeals of the State of New York, or upon request of the President of the Association with regard to vacancies in any other judicial office specified in Section A, the Chair shall call a meeting of the Committee to which the candidate or candidates who are under consideration shall be invited for purposes of personal interview. In addition, the Chair, pursuant to Section C, shall appoint a Subcommittee to investigate the qualifications of each candidate and report thereon at the meeting of the full Committee.

2. The President and President-Elect of the Association shall be ex officio non-voting members of the Committee. Members of the Association's Executive Committee may not sit as members of the Committee.

3. In addition to the regular members of the Committee, the President, at the commencement of each Association year in June, shall appoint five alternate members, with at least one alternate designated from each of the State's judicial departments. Should any regular member be unable to attend the meeting of the Committee or otherwise participate in its activities, the President, in consultation with the Chair, may designate an appropriate alternate who shall substitute in all respect for the regular member.

4. At the meeting of the Committee, a majority of the regular members, including any alternates designated to substitute for regular members, shall constitute a quorum. Following receipt of Subcommittee reports and personal interview of candidates, the Chair shall poll the Committee members present by secret written ballot to determine whether the candidates shall be rated as not qualified, qualified, or well qualified, and any of the ratings shall require concurrence of the lesser of two-thirds of the entire Committee or three-quarters of those Committee members in attendance, provided a quorum is present. Committee members must be present in person to vote and may not cast a vote by proxy. The vote shall be taken with only the Committee members and assigned Association staff present.

5. The Chair shall report the results to the President of the Association, together with such explanatory comment and recommendations as the Committee may desire to furnish. Except as hereinafter set forth, the Executive Committee shall take no part in the rating of candidates.

6. There shall be no right of appeal from the finding of the Committee, except as set forth in Section F.

E. Action by President

1. Upon receipt of the report and findings of the Committee, if all candidates have been found well qualified, the President of the Association shall transmit such findings together with a copy of these Guidelines to the appropriate governmental authorities. The candidates shall be given written notification of such action and be furnished with a copy of these Guidelines.

2. In the event a candidate receives a rating other than a well qualified, the President shall by express mail or other similar written communication promptly notify the candidate of such determination, furnishing a summary of the reasons for such action and a copy of these Guidelines. In those instances where one or more of several candidates has received a rating of less than well qualified, the timing of the transmission of findings to governmental authorities with respect to those candidates found well qualified shall rest in the discretion of the President of the Association, giving due consideration to any appeals by candidates found less than well qualified and the statutory time limits within which action must be taken by the appropriate governmental bodies.

F. Appeals

1. A candidate may appeal a rating of unqualified or qualified to an Appellate Panel of

the Executive Committee (hereinafter "Appellate Panel") by filing written notice within two days of the receipt of such rating with the President of the Association at the Association's offices in Albany. In such event, the report of the Committee, insofar as it pertains to appellant, shall not be transmitted to governmental authorities, or otherwise be made public, until determination of the appeal. If an appeal is not taken within the prescribed period, the President shall transmit the findings of the committee with respect to such candidate to appropriate governmental authorities.

2. The Appellate Panel shall consist of the President, the President-Elect, and seven members of the Executive Committee appointed annually by the President following commencement of the Association year on June 1. In making such appointments, the President shall designate at least one member from each of the State's judicial departments, with no two appointees to be selected from the same judicial district.

3. The Appellate Panel shall have authority to establish such additional procedures for the hearing of appeals as it may deem appropriate, so long as such are not inconsistent with those set forth herein. The appellant shall be entitled to an oral hearing of the appeal by the Appellate Panel, if requested, and to the assistance of counsel. At least two days' written notice of the time and place of the scheduled hearing shall be given to the appellant by the Appellate Panel.

4. The Chair of the Committee or a Committee member designated by the Chair, shall be invited to attend the hearing of the appeal for the purpose of discussing in camera the basis for the Committee's action. The Chair or the Chair's designee shall not otherwise take part in the proceeding before the Appellate Panel unless expressly requested by the Appellate Panel to do so.

5. In hearing an appeal, the Appellate Panel shall generally be limited to a review of the proceedings before the Committee, but may, for good cause shown, accept information not considered previously by the Committee.

6. The Appellate Panel may approve, modify or reject the action of the Committee.

7. The finding of the Appellate Panel shall then be transmitted to the appropriate governmental authorities and to the appellant by the President of the Association.

8. No further appeal shall be permitted beyond the Appellate Panel.

G. Confidentiality

1. The work of the Committee shall be completely confidential; and, in no event, shall the Committee, any of its members, or the Association staff, make public reports, proceedings or findings as to any candidate. No member of the Committee shall serve as a member of a committee supporting the election or appointment of any candidate for judicial office within the jurisdiction of the Committee nor shall any member otherwise sponsor such candidacy.

2. Sources of confidential information shall not be disclosed at any stage of the proceeding.

3. Any announcement concerning the findings of the Committee shall be made by the President of the Association, but the Committee may include as part of its report any recommendations as to the information to be released to the public in the event a candidate runs in a primary election or becomes a nominee.
