

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN
JUNE 21-22, 1985

PRESENT: Members Amdursky, Amrod, Ashley, Baldwin, Barthold, Beshar, Blewett, Block, Brachtel, Bracken, Brenner, Britt, Burke, Cometa, Connolly, Corrou, Cox, Dadey, Daly, DeMarco, Dolan, Dollard, Dressner, Duberstein, Fales, Feerick, Ferguson, Forger, Freedman, Galbraith, Geltzer, Gibson, Goldblum, Hackbarth, Hall, Heming, Hickey, Hoffman, Ierardi, Jones, M. Kaplan, King, Klein, Krutman, Lagarenne, Lans, Long, MacCrate, Madigan, Malone, Mannix, Markuson, McGlinn, McGraw, McKay, Meriam, H. Miller, S. Miller, Moore, Mugglin, J.E. Murphy, J.H. Murphy, A. Murray, C. Murray, Newman, Ostertag, Palermo, Patterson, Pearl, Penzel, Perlman, Perrin, Pfeifer, Pruzansky, Rice, Ritholz, Robfogel, E. Robinson, Rosch, Rosiny, Ruger, Santagata, Santemma, Schiller, Seymour, Simberkoff, Smith, Stave, Terry, Thompson, Tobin, Tondel, Trombley, Tyler, VanGraafeiland, Vigdor, Volk, Weaver, Weldon, T. Whalen, D. White, R. White, Williams, Witmer, Wolf, Yanas, Yetter, Zimmer.

1. Approval of minutes of April 13, 1985 meeting. The minutes were approved as distributed.

2. Report of Special Committee to Consider Adoption of ABA Model Rules of Professional Conduct. Ralph L. Halpern, Chair of the Special Committee to Consider Adoption of ABA Model Rules of Professional Conduct, summarized proposed amendments to the Rules of Professional Conduct which had been submitted pursuant to the resolutions adopted at the January 25, 1985 and April 13, 1985 meetings of the House. After discussion, amendments were adopted to the Rules as recommended by the committee, with the following Rules, or their related comments, being modified: Rules 1.5, 1.7, 1.8, 1.10, 1.11, 1.16, 3.4, 3.8, 5.2, 6.1, 6.3, 7.2, 7.3 and 7.4.

Mr. Heming then noted that in accordance with the resolution governing further consideration of the committee report, the Rules as amended would be circulated in August, 1985, with an opportunity for comment, before the vote is taken at the November meeting whether to recommend the proposed Rules to the Appellate Divisions for adoption.

3. Report of Treasurer. Mr. Yanas summarized the Treasurer's report, January 1 to May 31, 1985, copies of which had been distributed to the members of the House. He indicated that the Association remained in sound financial condition with

the implementation of the dues increase approved in 1984. The report was received with thanks.

4. Report of Chair. Mr. Heming 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: Sheridan Albert, Dennis Baldwin, Walter Barthold, Frank Brenner, Ifignia T. Brown, J. William Burke, Sanford Cohen, Thomas P. Connolly, Anthony J. DeMarco, Jr., James P. Dollard, Jr., Maxine K. Duberstein, Dirk A. Galbraith, Wayne L. Graff, H. Glen, Hall, Richard J. Hiegel, Ernest J. Ierardi, Edward D. Kaplan, Frank Klein, Robert Krutman, Joseph P. McGlinn, John G. McGoldrick, Thomas Moreland, Carl J. Mugglin, Cornelius D. Murray, Taylor H. Obold, Arthur L. Penzel, Susan S. Robfogel, William G. Ruger, Frank J. Santagata, Martin A. Shlufman, Helen D. Volk, Paul C. Weaver, Robert M. Weldon, Daniel Whalen, Renee A. White, George M. Zimmermann, Michael H. Zuckerman.

(b) In the ensuing months a number of significant issues were likely to come before the House, including the proposed Rules of Professional Conduct, a pilot plan of specialization drafted by the Special Committee on Specialization, and the report of the Task Force on Simplification. To assist the members of the House, he indicated that a list of important items under consideration by Association committees and sections would be forwarded to them, together with a copy of the Rules of the House.

5. Report of Action Unit No. 6. Hon. Emilio Nunez, Chair of Action Unit No. 6, and George F. Carpinello, its Reporter, summarized the report prepared by the Action Unit regarding the improvement of the process of civil litigation. They outlined the major recommendations presented including the adoption of a more active system of case management by the civil courts, implementation of an individual calendar system, the fixing of time limits for pretrial activities, utilization of case management conferences, and modification of the discovery process. After discussion of the Action Unit's recommendations, the following resolution was adopted upon motion of the House:

RESOLVED, that the House of Delegates of the New York State Bar Association hereby endorses the recommendations proposed by Action Unit No. 6, in its report dated April, 1985; and it is further.

RESOLVED, that the House of Delegates of the New York State Bar Association recognizes that the implementation of an individual assignment system may not be practical, necessary or cost-efficient in many of the

upstate counties. The House of Delegates of the New York State Bar Association suggests that the Chief Judge consider the particular problems of the upstate counties in implementing the plan; and it is further

RESOLVED, that the officers of this Association are hereby authorized and directed to distribute the report to such agencies, groups and individuals as may be appropriate, and to take any other necessary action required in their judgment to implement the recommendations contained in said report and this resolution.

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

Thomas M. Whalen, III, immediate past Chair of the Committee on Lawyers and the Community, presented the Root/Stimson Award to attorney John J. Gartland, Jr. of Poughkeepsie for outstanding service to the community

Hon. Domenick L. Gabrielli, Chair of the Committee on Lawyers and the Community Awards Committee, presented the Public Service Award to Sgt. Richard A. Pelliccio of the Tarrytown Police Department in recognition of his outstanding contribution to the betterment of the administration of justice.

Edward J. Moses, Chair of the Committee on Lawyers and the Community, presented the Award of Merit for smaller associations to the Broome County Bar Association, and the Award of Merit for larger associations to the Nassau County Bar Association in recognition of distinguished professional and public service accomplished through programs administered at the local level.

7. Report of Committee on Professional Discipline.

Harold M. Halpern, Chair of the Committee on Professional Discipline, reviewed the committee's report and comprehensive study of New York State's attorney discipline system, and summarized recommendations for achieving a more uniform system within the structure of the four judicial departments. Following discussion, a motion was adopted to delete those portions of the report which would have permitted the use for up to three years of closed disciplinary files against an attorney on the issue of credibility in subsequent matters involving similar charges. After further consideration, the following resolution was adopted upon motion of the House:

RESOLVED, that the House of Delegates of the New York State Bar Association hereby endorses the recommendations proposed by the

Committee on Professional Discipline, in its report dated March, 1985, and it is further

RESOLVED, that the House of Delegates of the New York State Bar Association does not approve that portion of the report which recommends amendment to Section 90 of the Judiciary Law to permit limited public access to disciplinary proceedings prior to the imposition of final discipline by the Appellate Division on the ground that the public's need to know is served by publication of the findings where misconduct is determined to have occurred, and confidentiality protects the innocent; and it is further

RESOLVED, that the officers of this Association are hereby authorized and directed to distribute the report to such agencies, groups and individuals as may be appropriate, and to take any other necessary action required in their judgment to implement the recommendations presented in said report and this resolution.

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

a) The Executive Committee had reviewed proposed legislation which would increase the biennial attorney registration fee from \$50 to \$100, and would impose stricter registration requirements. He noted that the Executive Committee had endorsed a \$25 increase with the full amount to be allocated to the Clients' Security Fund of the State of New York, but had disapproved any payment to the general revenues of the State, and had expressed further concern as to the effect of the proposed registration requirements. He indicated that this position had been communicated to the legislative leaders and would be transmitted to the Governor.

b) The Association had supported efforts to increase the compulsory automobile liability insurance limits, but this legislation was not expected to be passed during the current session.

c) Legislation endorsed by the Association to increase assigned counsel fees had been passed by the Legislature and would be sent to the Governor for signature.

d) Court merger legislation compatible with the position adopted by the Association might be considered by the Legislature at a fall 1985 special session.

e) Legislation had been enacted which would affect the voir dire process in criminal trials.

f) The Legislature had under consideration bills which would affect the jurisdiction of the Court of Appeals, principally by restricting appeals as of right.

g) In approving reauthorization bills for the Federal Trade Commission, the House and Senate Commerce Committees had deleted language which would have authorized the FTC to preempt state regulation of the legal profession.

h) The Senate Commerce, Science and Transportation Committee had disapproved legislation which would have preempted state product liability laws and established a uniform standard at the federal level.

i) The Legislature had reached agreement on compromise medical malpractice legislation. Mr. Vigdor outlined the efforts by the Association to moderate the various proposals which had been presented so as to minimize any adverse impact on the rights of the public to recover for acts of malpractice. He summarized the major features of the bill, including structured settlements, reduction in contingency fees, imposition of costs for frivolous suits, better supervision of practitioners by the medical community, and changes in procedures connected with the handling of malpractice cases, such as disclosure of information relating to expert testimony. He indicated that the Association would continue its involvement to ensure as fair a resolution as possible of the malpractice problem.

j) He and Mr. Heming, together with other bar leaders, had met on June 19 with Chief Judge Wachtler and senior Office of Court Administration officials. Mr. Vigdor advised that topics discussed included the proposed individual assignment system, the Uniform Rules for the New York State Trial Courts, improvement of court facilities, and possible expansion of the current arbitration system.

k) Because of recent increases in premiums for professional liability insurance for attorneys, and a declining availability of coverage, the Executive Committee, in the interest of the members, had recommended that all reasonable steps be taken in cooperation with the Bertholon-Rowland Corp. to alleviate the problem, including the formation of a special task force to address the matter.

l) The Executive Committee had endorsed a report, prepared jointly by the Committees on Legal Education and Admission to the Bar of the NYSBA and the Association of the Bar of the City of New York, which set forth recommendations for improvement of the bar admission process.

m) The Committee on State Constitution had been authorized by the Executive Committee to study the issues connected with gubernatorial succession.

n) The Committee on Bylaws and the Executive Committee were considering proposals to increase section representation in the House of Delegates, as well as related matters of Association governance.

o) The Special Committee on Association Meetings was studying means of modifying the structure of current meetings to broaden local bar participation and expand the geographical presence of the Association.

p) Study groups were being appointed to study the feasibility of establishing sections for public practitioners and those interested in law office economics and management. Mr. Vigdor also noted that a Special Committee on Media Law had been appointed and that a committee was being formed to consider the feasibility of computerizing county clerks' records.

q) The Ad Hoc Committee on Bar Center Facilities and Space Requirements was obtaining conceptual proposals for the renovation of Nos. 5 and 6 Elk Street adjacent to the Bar Center in order to ensure the availability of adequate facilities for Association needs, including meetings of the House of Delegates.

r) The Executive Committee had endorsed opposition by the Tax Section to proposals by the Treasury Department to require service businesses, including law firms, which either gross more than \$5 million or use accrual accounts for internal purposes to use the accrual basis for tax reporting.

s) Implementation of the Interest on Lawyer Account (IOLA) program was still in progress. Mr. Vigdor encouraged participation by all members of the House and their respective firms.

Mr. Vigdor expressed appreciation to Mr. Miller 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 HENRY G. MILLER 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 1984-
1985

9. Date And Place of Next Meeting. Mr. Heming announced that the next meeting of the House of Delegates will be held at the Waldorf=Astoria, New York City, on November 2, 1985.