

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES
THE OTESAGA, COOPERSTOWN
JUNE 26-27, 1987

PRESENT: Members Albert, Amdursky, Amrod, Baldwin, Ball, Barthold, Bedell, Bermingham, Blatchly, Blewett, Bohner, Bowers, Brachtel, Bracken, Brenner, Britt, Cannon, Canoni, Chayt, Clark, Colish, Cometa, Connolly, Corcoran, Cox, Curtis, Daly, DeMaio, Deptula, Dollard, Dwyer, Elwood, Embser, Emerson, Faga, Fahey, Fales, Farrell, Ferguson, Field, Fitzgerald, Forger, Freedman, Furfure, Galbraith, Garfinkel, Gershon, Ginsberg, Glasheen, Goldblum, Hall, Halpern, Hellerstein, Heming, Horan, Hyman, Jeram, Jones, Kaplan, Katz, Kaufman, King, F. Klein, R. Klein, Lagarenne, Lea, MacCrate, Mannix, Markuson, McGinnis, McGlinn, McGoldrick, McGuire, McKay, McMahon, Miller, Moreland, C. Murray, K. Murray, Nydam, Obold, Offermann, Ostertag, Palermo, Patterson, Pearl, Pfeifer, Platto, Pruzansky, Pulley, Reiter, Rhodes, Richardson, Ritholz, Robfogel, Robinson, Rosiny, Rosner, Santemma, Schiller, Schnall, Seward, Siegel, Simberkoff, Stiles, Sussman, Thompson, Tobin, VanStrydonck, Vigdor, Walker, Wanderman, Weaver, D. Whalen, T. Whalen, White, Wilkens, Williams, Witmer, Woronov, Yanas, Zimmerman, Zuckerman.

1. Introduction of new members. The new members of the House who had assumed office on June 1 were introduced and welcomed by Mr. King. The following is a list of the new members of the House: David H. Besso, Bruce D. Blatchly, Jonathan G. Blattmachr, Robert J. Bohner, Emil J. Bove Jr., A. Vincent Buzard, Stephen E. Cavanaugh, Robert J. Clune, Jerome S. Cohen, Richard G. Cohen, George W. Cregg Jr., George E. Curtis, James G. Eberz, J. Timothy Embser, Thomas C. Emerson, Antonio J. Faga, William C. Fahey, Joseph H. Farrell, John J. Fitzgerald, Marianne Furfure, John Gaal, Benjamin I. Gertz, Jerome M. Ginsberg, Kevin P. Glassheen, A. Rita Glavin, James J. Grifferty, Frank M. Headley Jr., William E. Hellerstein, Martin S. Hyman, Steven S. Katz, Robert L. Klein, Hon. Louis D. Laurino, Lola S. Lea, Lawrence B. Lennon, Colleen McMahon, Conal E. Murray, Robert Nydam, James P. O'Brien, Julia Perles, Charles Platto, Margrethe R. Powers, Arthur L. Pulley, David L. Rider, Jules Ritholz, Edward T. Robinson III, M. Andrea Ryan, Benjamin E. Selig, David R. Seward, J. Michael Shane, Thomas M. Van Strydonck, Cora T. Walker, Charles E. Walsh, Muriel D. Wanderman, Richard Weinberger, Howard J. Woronov.

2. Approval of minutes of April 11, 1987 meeting. The minutes were approved as distributed.

3. Report and recommendations of Special Committee to Review the Code of Professional Responsibility. Marjorie E. Gross, Vice-Chair of the Special Committee to Review the Code of Professional Responsibility, summarized the substance and effect of changes contained in the revised draft of proposed amendments to the Code of Professional Responsibility, as well as the process employed by the committee in reviewing comments and proposals by interested groups and individuals.

Pursuant to the procedural resolution adopted at the April 11, 1987 meeting, the House then resumed its consideration of those proposed amendments not addressed at the previous meeting. After discussion, amendments were adopted to the following provisions of the Code of Professional Responsibility: EC 1-7, DR 1-102, EC 5-

18, DR 5-101, DR 5-102, DR 5-103, DR 5-104, DR 5-105, DR 5-108, DR 5-109, DR 5-110, EC 6-4, EC 6-6, DR 6-102, EC 7-14, DR 7-103, DR 7-106, DR 7-107, EC 8-4, DR 9-101, and DR 9-102.

The following resolution was then unanimously adopted authorizing the conversion of the proposed Code as amended to gender-neutral language and further authorizing its transmittal to the Appellate Division of State Supreme Court in each of the four judicial departments:

WHEREAS, the New York State Bar Association ("NYSBA") has adopted the Code of Professional Responsibility ("Code"); and

WHEREAS, the Disciplinary Rules of the Code have been expressly incorporated into rules of court by separate orders of the Appellate Divisions of the Supreme Court in each of the four judicial departments in New York State; and

WHEREAS, amendments to the Code have been proposed following review by the Special Committee to Review the Code of Professional Responsibility, county and local bar associations, and by interested sections and committees of the NYSBA; it is

RESOLVED, that the House of Delegates of the NYSBA hereby approves the Code as amended by this House, and authorizes the Special Committee to Review the Code of Professional Responsibility to convert it as so amended to gender-neutral language, all contingent on approval from the Appellate Divisions of the Supreme Court in each of the four judicial departments in New York State, or, if the recommended Code amendments should be approved by fewer than all of the Appellate Divisions, such amendments shall apply only in the judicial departments where approval has been granted.

A further motion was then adopted designating the Special Committee to Review the Code of Professional Responsibility as a committee on style to accomplish the gender-neutral conversion and to make such other non-technical changes as might be necessary to ensure uniformity of language and format throughout the proposed Code.

4. Report of Treasurer. Mr. Gershon reviewed the audited balance sheet and statement of revenues for the year ending December 31, 1986 and indicated that the Association had completed the year with a surplus of slightly less than \$700,000 due principally to membership growth, investment income, and the performance of the continuing legal education program. He then summarized the Treasurer's report for January 1 to May 31, 1987 and indicated that the Association remained in sound financial condition at the midpoint of the fiscal year. The report was received with thanks.

5. Proposal by the Committee on International Law and the Committee on International Trade and Transactions to form an International Law and Practice Section. Lauren D. Rachlin, Co-Chair of the Special Committee to Study Establishment of International Law and Practice Section, summarized the proposal submitted jointly by

the Committee on International Law and the Committee on International Trade and Transactions to form an International Law and Practice Section. He reviewed survey results demonstrating member interest in the formation of such a section, and summarized proposed programs and publications to be undertaken by the section. After discussion, the following resolution was adopted unanimously on motion of the House.

RESOLVED, that there is hereby established an International Law and Practice Section within the New York State Bar Association; and it is further

RESOLVED, that the chairman of the International Trade and Transactions Committee shall serve as chairman of a steering committee appointed by the president of this Association, to take all steps necessary to implement the establishment of the International Law and Practice Section; and it is further

RESOLVED, that an appropriate budget be approved by the Finance Committee and that the necessary funds be allocated from the general funds of this Association to carry out the foregoing, and it is further

RESOLVED, that the proposed bylaws of the International Law and Practice Section are hereby approved.

6. Report and resolution by Special Committee on Women in the Courts.
Ruth G. Schapiro, Chair of the Special Committee on Women in the Courts, reviewed the report of the committee regarding gender bias in the profession following its evaluation of the study conducted by the State Task Force on Women in the Courts. She outlined the major areas of committee interest, including the development and communication of leadership goals by the Association; legislative proposals concerning domestic violence, equitable distribution and maintenance, child support and custody; attorneys' fees in matrimonial matters; the status of women lawyers and women court employees; the encouragement of further participation by women in the Association; educational initiatives; and coordination with other bar associations. She indicated that affirmative responses had been received from other interested sections and committees regarding the legislative proposals set forth in the report, and that the Association's Executive Committee had endorsed the report. Mrs. Schapiro noted that two of the recommendations dealing with Code of Professional Responsibility amendments and Bylaws changes would be considered separately by the House in the context of other committee reports and summarized clarifying amendments to other recommendations contained in the report. After discussion, the following resolution was adopted on motion of the House:

RESOLVED, that the House of Delegates of the New York State Bar Association hereby endorses, as modified at this meeting, the recommendations proposed by the Special Committee on Women in the Courts in its report dated March 24, 1987; 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.

7. Presentation of Root/Stimson Award, Public Service Awards, and Award of Merit. Thomas M. Whalen, III, Executive Committee liaison to the Committee on Lawyers and the Community, presented the Root/Stimson Award to attorney David M. Gouldin of Binghamton 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 Project SAFE, Counseling and Referral Services for Sexually Exploited Youths, for its outstanding contribution to the betterment of the administration of justice. The Public Service Medal was presented by Judge Gabrielli to Rosemary Kelly, Director of Criminal Justice Services Education Assistance Center of Long Island Academic Counseling and Evaluation Services Program, for demonstrating exemplary courage in protecting the integrity of governmental operations and systems of justice.

Edward J. Moses, Chair 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 Jefferson County Bar Association in recognition of distinguished professional and public service accomplished through programs administered at the local level.

8. Report of President. Mrs. Freedman reported the following matters:

a) At the quarterly OCA/bar association meeting held in June, significant matters had been discussed, including the improvement of courthouse facilities, court merger, and legislation to permit audio-visual coverage of trial court proceedings. With respect to the latter item, she noted that the Chief Judge had been receptive to the Association conducting an independent monitoring of the experimental program. She indicated she would be contacting interested sections and committees to undertake such an evaluation.

b) The Committee on Judicial Administration, with the assistance of the Rockefeller College of the State University, was in the process of conducting a twelve-county survey of 3,000 attorneys to measure the impact and functioning of the Individual Assignment System.

c) The Executive Committee had conducted a transition and planning retreat in May, and had considered a number of topical items including professionalism and the expansion of opportunities for member participation in Association activities.

d) A Special Committee on Biotechnology and Law, with Grace Marie Ange as Chair, had been appointed to study the legal issues connected with in vitro fertilization, surrogate parenting, prenatal diagnosis, embryo freezing, reproductive cell donation, embryo experimentation, embryo/zygote destruction, disposition of excess fertilized eggs, genetic modification, and other related technology.

e) She was in the process of appointing a Task Force on Administrative Adjudication Proceedings to be chaired by Hon. Matthew J. Jasen, to study problems in the administrative law system for the purpose of recommending improvements.

f) A Special Committee on Election Law Reform, with Angelo T. Cometa as Chair, had been formed to evaluate the Election Law for the purpose of eliminating hyper-technical requirements which impede ballot access.

g) Robert L. Ostertag would be undertaking the establishment of a mentor program in the Association to assist younger attorneys.

h) The Executive Committee was considering appropriate means for improving its liaison with county and local bar associations, as well as sections and committees of the Association.

i) Robert L. Haig had been appointed as the Association's representative on the screening panel of the Judiciary Committees of the New York County Democratic Committee and the New York County Democratic Committee and the New York County New Democratic Coalition to consider candidates for the office of Justice of the Supreme Court, First Judicial District.

j) In April, the State of Florida had enacted legislation which, with certain exceptions, imposes a five percent tax on legal services. Mrs. Freedman noted that the Florida Bar has filed suit challenging the statute on constitutional grounds. She advised that she had requested past President Charles E. Heming to monitor the situation as the Association might wish to consider filing an amicus curiae brief at an appropriate stage of the proceedings.

k) With the approval of the Executive Committee, the Committee on Legal Aid was involved in the development of programs to aid in the training and recruiting of lawyers to assist aliens affected by the Immigration Reform and Control Act of 1986.

l) With the authorization of the Executive Committee, agreements had been executed and LEXIS and WESTLAW group electronic legal research programs were being offered to the members. She noted that the response of the members had been positive, with 104 enrolled in the programs in the short time since their inception.

m) As it had done last year, the Committee on Minorities in the Profession, was sponsoring the Take-a-Chance Program, a law student intern program designed to match Black, Hispanic and Asian law students with lawyers and law firms affiliated with the Association. Mrs. Freedman urged the members and their firms to support the program and to contact committee chair Gail J. Wright for details.

n) Plans were proceeding smoothly for the Association General Meeting to be held November 5-7, 1987 in Albany, New York. Mrs. Freedman noted that the local bar associations in the Albany area were involved in program planning, and she invited the attendance and active support of the members of the House.

Mrs. Freedman expressed appreciation to Mr. Heming 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 Charles E. Heming 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 1986-87.

9. Report of Chair. Mr. King reported the following matters:

a) Bar associations entitled to delegates had filed their designations of delegates for the year 1987, that said designations had been approved as filed, and that the filed roster of members of the House had been approved as the official list for 1987-1988.

b) Pursuant to the Bylaws, the terms of several special committees were due to lapse. On motion adopted by the House, the terms of the following special committees were extended for an additional year:

Alternatives to Court Resolution of Disputes

Association Meetings

Task Force on Simplification

Copyright Law

Group and Prepaid Legal Services Plans

Improve Courthouse Facilities

Interest on Lawyer Account (IOLA) Advisory Committee

Military and Veterans Affairs

Patents and Trademarks

Procedures for Judicial Discipline

Public Access to Information and Proceedings

Volunteer Lawyers

10. Status report on Bar Center expansion. Henry G. Miller, Chair of the Executive Steering Committee for the Bar Center Campaign reported on the status of plans for the Bar Center expansion to provide the Association and The New York Bar Foundation with the facilities required to meet their needs into the twenty-first century. He noted that with the guidance of the Ad Hoc Committee on Bar Center Facilities and Space Requirements, construction plans were nearing completion, and the steering committee was preparing to undertake a statewide fund-raising effort, with major gifts being sought during the summer and a general membership solicitation to take place in the fall. Mr. Miller encouraged support and participation of the members of the House to ensure the success of the campaign.

11. Date and place of next meeting. Mr. King announced that the next meeting of the House of Delegates will be held in Albany on Saturday November 7, 1987.