

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
JUNE 20, 2009
THE OTESAGA, COOPERSTOWN, NEW YORK**

.....

PRESENT: Abernethy; Adler; Alden; Asarch; Ayers; Barnes; Barson; Baum; Baynes; Berke-Weiss; Blanchard; Block; Bonarigo; Bracken; Brown, E.; Brown, T.; Burns, S.; Chase; Cohen, D.; Convissar; Costello; Davidoff; DeFio Kean; Denton; DiPietro; Dohn; Doyaga; Draper; Dumas; Effman; Elder-Howell; Fedorchak; Fernandez, Henry; Fernandez, Hermes; Ferradino; Finerty; Fishberg; Fisher; Fox; Franchina; Freedman; Gall; Gann; Gensini; Gerstman; Gesinsky; Getnick; Gigliotti; Glasheen; Goldenberg; Golinski; Gould; Grayson; Greeley; Greenthal; Gross; Gutekunst; Gutheil; Gutierrez; Haig; Hanna; Hassett; Hayes; Hendry; Hernandez; Herrmann; Ho; Hoffman; Hollyer; Hurteau; Jackson; James, D.; James, S.; Kahler; Kamins; Kanter; Kennedy; Kera; Kovacs; Krane; Kurs; Lais; Laluk; Larose; Lau-Kee; Lawrence; Leber; Lee; Leo; Lesk; Levin; Levy, P.; Lewis; Lieberman; Liebman; Lindenauer; Lomuscio; Long; Longo; Lonuzzi; Makofsky; Manias; Martin, E.; Martin, T.; Marwell; Masley; Mattei; Mayer; McEnroe; McInerney; Meislahn; Miklitsch; Millett; Minkowitz; Miranda; Mitchell; Mulcare; Nizin; O'Donnell; O'Neill; Ostertag; Park; Peterson; Pogson; Privitera; Quaranta; Reed; Richardson; Roberts-Ryba; Rodriguez; Romero; Rosenberg; Rosenthal; Rosiny; Rosner; Rothstein; Russell; Ryan; Salkin; Sanchala; Sandford; Sands; Schindel; Schraver; Seitz; Sherwin; Sigmond; Silkenat; Smith, G.; Smith, T.; Stanclift; Stanislaus-Fung; Starkman; Sterrett; Stone; Strauss, B.; Strauss, F.; Syracuse; Terranova; Tilton; Torrey; Tsan; Tyler; Vigdor; Vitacco; Wachtler; Watkins; Weinberger; Witmer; Yavinsky; Younger; and Zuchlewski.

Mr. Younger presided over the meeting as Chair of the House.

1. Call to order and introduction of new members. After calling the meeting to order, Mr. Younger welcomed the new members of the House.
2. Approval of minutes of April 4, 2009, meeting. A motion was adopted accepting the minutes as previously distributed.
3. Report of the Treasurer. Seymour W. James, Jr., Treasurer, reported that the Association had received an unqualified opinion from the Association's auditors, UHY, LLP, for the 2008 audited annual report as of December 31, 2008. With respect to the current year through May 31, 2009, he reported that total revenue is \$17.3 million, a decrease of \$800,000 from the previous year, and total expense is \$10.3 million, an increase of \$398,000 as compared to 2008. Membership dues revenue had decreased \$82,000 over this point in 2008, while CLE revenue had decreased by \$507,000. Mr. James then provided a review of major expense changes and a four-year comparison of CLE revenue and expense. The report was received with thanks.
4. Presentation of Root-Stimson Award. Paul Michael Hassett, chair of the Root-Stimson subcommittee of the Committee on Annual Award, reported that the Root-Stimson Award honors members of the profession for outstanding community service. President

Getnick and Mr. Hassett presented the award to Thomas S. Richards of Rochester. Corporation Counsel for the City of Rochester, he was honored for his leadership role in many non-profit organizations and his contributions to the delivery of health care in Rochester.

5. Report and recommendations of Task Force on the State of Our Courthouses. Task Force Co-chairs Gregory K. Arenson, Melanie Cyganowski and Sharon M. Porcellio reviewed the Task Force's report on its survey and study of New York courthouses and the Task Force's recommendations for courthouse improvements. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, upon her installation as President in 2008, Bernice Leber created the Task Force on the State of Our Courthouses and charged it with the mission of examining the conditions that currently exist in New York State courthouses throughout the State from the viewpoint of the people who use the facilities for the purpose of providing recommendations for improvements; and

WHEREAS, the Task Force within one year has completed its study of the adequacy of New York State courthouse facilities for judges, lawyers, court personnel and the public as well as a survey of courthouse users; and

WHEREAS, the Task Force has prepared and presented its report containing specific recommendations to make courthouses more user-friendly and efficient for all the people of the State of New York, whether parties, litigants, witnesses, lawyers, jurors or jurists;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the report and recommendations of the Task Force on the State of Our Courthouses; and it is further

RESOLVED, that the President shall take steps through the Task Force or through the appointment of a Special Committee on New York State Courthouses to encourage compliance with and support of the recommendations made by the Task Force and to report in three years on changes in the conditions highlighted in the Task Force's report; and it is further

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

6. Report and recommendations of Special Committee on Solo and Small Firm Practice. Special Committee chair Robert L. Ostertag and committee member David C. Wilkes outlined the committee's final report, which reviews the March 2009 interim report of the Chief Judge's Commission to Examine Solo/Small Firm Practice and makes a series of

short-term, mid-term and long-term recommendations for Association action with respect to solo and small firm practitioners. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, the New York State Bar Association Special Committee on Solo and Small Firm Practice was appointed to conduct a comprehensive study of the issues and challenges confronting solo and small firm practitioners; to review Association programs that are designed to assist solo and small firm practitioners; and to recommend ways by which the Association, alone or in collaboration with other entities, might better assist solo and small firm practitioners in meeting practice and lifestyle challenges; and

WHEREAS, the Special Committee has completed a report containing a series of recommendations divided into short-term, mid-term and long-term objectives intended to enhance the professional and personal lives of solo and small firm practitioners and to ensure that the Association continues to be a vital resource for these practitioners;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the report and recommendations of the Special Committee on Solo and Small Firm Practice; and it is further

RESOLVED, that the officers of the Association are hereby authorized to distribute the report and to take such other and further action as they may deem appropriate to implement its recommendations.

7. Installation of President. Mr. Getnick was formally installed as President. The oath of office was administered by the Hon. Anthony T. Kane, Associate Justice of the Supreme Court, Appellate Division, Third Department. Mr. Getnick then addressed the House with respect to his planned initiatives for his term as President, under the theme “Lawyers Helping Lawyers.”
8. Report on Same-Sex Marriage Rights. Michele Kahn, chair of the Special Committee, accompanied by committee members Hunter T. Carter and Prof. Elizabeth B. Cooper, outlined the Special Committee’s report, which focused on developments in the law since the issuance of a report in 2004 by the Special Committee to Study Issues Affecting Same-Sex Couples. The report concluded that alternatives to marriage rights – civil unions and domestic partnerships – have not proven to be effective alternatives to extend equal legal rights to same-sex couples and that the only viable way to provide those rights is to extend marriage rights to same-sex couples. On behalf of the Trusts and Estates Law Section, Barbara Levitan, a member of the Section’s Executive Committee, reported on the Section’s independent conclusion that the Domestic Relations Law should be amended to extend marriage rights to same-sex couples. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, the House of Delegates adopted a resolution on January 24, 2003 providing for the appointment of a Special Committee to study legal issues affecting same-sex couples and directing it “to explore legislative or private legal solutions to the problems raised by the Association of the Bar of the City of New York report [entitled ‘Marriage Rights of Same-Sex Couples in New York’]...and report back to the House of Delegates with concrete recommendations;”

WHEREAS, the Special Committee on Legal Issues Affecting Same-Sex Couples issued its report to the Association in 2004, which identified numerous instances of disparate treatment of same-sex couples under the law and recommended that legislation be enacted to afford same-sex couples the ability to obtain the comprehensive set of rights and responsibilities now afforded opposite-sex couples;

WHEREAS, on April 2, 2005, the House of Delegates endorsed the recommendation of the Special Committee and resolved that “the New York State Legislature should enact legislation that will afford same-sex couples the ability to obtain the comprehensive set of rights and responsibilities now afforded opposite-sex couples...in the form of a statute creating a domestic partnership registry, a civil union, statute, or an amendment to the statutory definition of marriage to include same-sex couples”;

WHEREAS, since the 2005 resolution of the House of Delegates, there have been significant legal developments with respect to same-sex marriage, civil unions and domestic partnerships, including without limitation, the adoption of same-sex marriage by five states and five foreign jurisdictions, several of which border New York State; and

WHEREAS, since the 2005 resolution, the marriages of same-sex couples whose marriages were performed outside of the State have been recognized within the State under, inter alia, the recent decision in *Martinez v. Monroe County*, 850 N.Y.S.2d 740 (4th Dep’t 2008);

WHEREAS, since the 2005 resolution, several other states that have instituted domestic partnership or civil union laws have determined that these statuses confer inferior statuses than does marriage, lead to confusion, and do not offer equal legal rights to same sex couples and families;

WHEREAS, on June 19, 2007, with a bi-partisan vote of 85 to 61, the New York State Assembly passed Assembly Bill 8590, which provides for an amendment to the Domestic Relations Law to provide equal treatment relating to marriage regardless of whether the parties to the marriage are of the same or opposite sex, but the bill did not pass in the State Senate; and

WHEREAS, on or about April 2009, the Governor of the State of New York introduced a bill to the Legislature to enact marriage equality for same-sex couples;

WHEREAS, on May 12, 2009, with a bi-partisan vote of 89 to 52, the New York State Assembly passed Assembly Bill 7732, which provides for an amendment to the Domestic Relations Law to provide marriage equality for same-sex couples; and

WHEREAS, in April, 2009, the Special Committee on LGBT People and the Law issued its Report and Recommendation on Marriage Rights for Same Sex Couples documenting recent developments in New York, nationally, and internationally on marriage rights for same-sex couples, which reveal numerous reasons why providing same-sex couples with access to marriage is the only viable way to establish marriage equality;

NOW THEREFORE, be it

RESOLVED that the Association hereby endorses and supports the introduction and enactment of legislation that amends the Domestic Relations Law to allow same-sex couples to marry and to recognize marriages if contracted elsewhere as the Association believes only marriage can grant full equality to same-sex couples and their families, and that such legislation shall exempt clergy from the obligation to perform any marriage to which they object; and it is

FURTHER RESOLVED, that to the extent it is inconsistent with this resolution, the resolution adopted by the House of Delegates on April 2, 2005 with respect to the report of the Special Committee to Study Issues Affecting Same-Sex Couples is hereby rescinded and is replaced by this resolution; and it is

FURTHER RESOLVED, that the officers of the New York State Bar Association are hereby authorized to transmit this Resolution to the New York State Legislature and are directed to take such action as is appropriate to support and advance this Resolution.

Five members of the House abstained from participating in the vote.

9. Report of President. Mr. Getnick highlighted the information contained in his printed report, a copy of which is appended to these minutes.
10. Report and recommendations of Special Committee on Sarbanes-Oxley Issues. James B. Ayers, chair of the Special Committee, and committee member Glenn Lau-Kee presented the committee's recommendations with respect to a Code of Conduct for Association leaders. After discussion, a motion was made to approve the resolution offered by the committee, following which a motion to amend by deleting section (E) of the Code failed. The following resolution was then adopted:

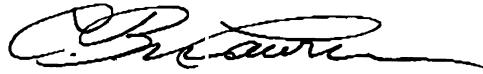
RESOLVED, that the New York State Bar Association hereby adopts the Code of Conduct as submitted to the House of Delegates by the Special Committee on Sarbanes-Oxley Issues, to become effective on September 18, 2009; and it is further

RESOLVED, that the officers of the Association are hereby authorized to distribute the Code as necessary and to take such other and further action as they may deem appropriate to implement the Code.

11. Report of The New York Bar Foundation. M. Catherine Richardson, President of The Foundation, presented an informational report on recent developments with respect to The Foundation, including grants awarded year to date, the Judith S. Kaye Youth Court Fund, a cy pres award in the amount of \$1.2 million to be administered by The Foundation, and scholarship funds. The report was received with thanks.
12. Administrative items. Mr. Younger reported on the following:
 - a. Reappointment of special committees. Special committees are appointed initially for a fixed period of time not to exceed three years and, when that time has elapsed, House approval is required to extend the term of such committees. A motion was adopted unanimously to extend the terms of the following special committees for an additional year:
 1. Procedures for Judicial Discipline
 2. Review the Code of Judicial Conduct
 3. Sarbanes-Oxley Issues
 4. Student Loan Assistance for the Public Interest
 5. Study the Bar Exam and other Means of Measuring Lawyer Competency
 6. Unlawful Practice of Law
 - b. Discharge of special committees. The Special Committees on Cross-Border Legal Practice, Law Practice Continuity and Legal Specialization have been discharged with the concurrence of their respective chairs. Where appropriate, the work will be continued by existing committees and sections.
 - c. Nominating Committee. The Thirteenth Judicial District had submitted its representatives for the 2009-2010 Nominating Committee: John P. Connors, Jr. and Grace Mattei, members; and George Sieghardt, alternate. A motion was adopted electing the representatives as submitted by the district.
 - d. Softball Game. A softball game will be held at the Clark Sports Center at 2:00 p.m.; the team captains were introduced.
 - e. ABA Annual Meeting. The Association will host a non-resident member reception at the ABA Annual Meeting in Chicago on August 2.
13. New Business.

- a. A request was made that the Association consider electronic delivery of materials for House of Delegates meetings.
 - b. A suggestion was made that the Association consider appointing a committee to review issues involving ethics in government.
14. Date and place of next meeting. Mr. Younger announced that the next meeting of the House of Delegates would take place on Saturday, November 7, 2009 at the Bar Center in Albany.
15. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "C. Bruce Lawrence", with a stylized flourish at the end.

C. Bruce Lawrence
Secretary