

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
JUNE 19, 2010
THE OTESAGA, COOPERSTOWN, NEW YORK**

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PRESENT: Abernethy; Adler; Alcott; Anello; Arnold; Asarch; Baker; Barnes; Block; Bonina; Bracken; Brown, E.; Brown, T.; Burns; Casserly; Castellano; Chambers; Christian; Cohen, D.; Conley; Convissar; Davidoff; DeFelice; De Fio Kean; Denton; Di Pietro; Dohn; Doyaga; Doyle; Draper; Effman; Eppler; Fennell; Fish; Fishberg; Foley; Fortino; Fox; Franchina; Freedman; Galligan; Gensini; Gerstman; Gesinsky; Getnick; Gingold; Glasheen; Goldenberg; Gorgos; Gould; Grayson; Greenthal; Gruer; Gutekunst; Gutheil; Gutierrez; Hacker; Hager; Hall; Hanks; Hanna; Harren; Hassett; Hernandez; Herrmann; Hetherington; Ho; Hoag; Hollyer; Honig; Howe; Humphrey; James, D.; James, S.; Kahler; Kahn; Kamins; Kanter; Karson; Kelly; Kennedy; Kera; Kingsley; Kobak; Kovacs; Kurland; Kurs; Laluk; Lanouette; Leber; Lee; Lesk; Levin; Lieberman; Liebman; Lindenauer; Long; Longo; Lonuzzi; Madigan; Makofsky; Manias; Martin; Marwell; Masley; Mattei; Mayer; McArdle; McAuliffe; McEntee; McNamara; Medenica; Miklitsch; Millett; Minkowitz; Miranda; Morril; Moy; Myers; Nachimson; Nizin; Ostertag; Pachman; Pellow; Perlman; Pettit; Pfeifer; Pogson; Prowda; Richardson; Robertson; Roberts-Ryba; Rodriguez; Romero; Rosenberg; Rosiny; Rothstein; Russ; Ryan; Sachs; Safer; Sanchala; Sandford; Schindel; Schraver; Schwartz; Seitz; Seymour, S.; Shulman; Sigmond; Silkenat; Singer; Stanclift; Standard; Stanislaus-Fung; Starkman; Sunshine, J.; Syracuse; Taylor; Tilton; Torrey; Tsan; Virkler; Vitacco; Wallach; Walsh; Weinberger; Witmer; Younger; and Zuchlewski.

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

1. Call to order, introduction of new members. The meeting was called to order and the Pledge of Allegiance recited, and Mr. Doyle welcomed the new members of the House.
2. Minutes of April 10, 2010 meeting. The minutes were accepted as previously distributed.
3. Report of the Treasurer. Seymour W. James, Jr., Treasurer, reported that that the Association had received an unqualified opinion from the Association's auditors, UHY, LLP, for the 2009 audited annual report as of December 31, 2009. With respect to the current year through May 31, 2010, he reported that total revenue is \$17.3 million, an increase of \$82,000 from the previous year, and total expense is \$10.2 million, a decrease of \$135,000 as compared to 2009. CLE revenue increased by \$116,000 as compared to 2009. 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 Younger and Mr. Hassett presented the award to James B. Hurlock of Greenwich,

Connecticut. Former chairman of White & Case, LLP's Management Committee, he was honored for his leadership role in international affairs and nonprofit organizations.

5. Installation of President. Mr. Younger was formally installed as President. The oath of office was administered by the Hon. Richard J. Bartlett, former Chief Administrative Judge of the State of New York and former Dean of Albany Law School. Mr. Younger then addressed the House with respect to his planned initiatives for his term as President, under the theme "Shaping the Future of Our Profession."
6. Report and recommendations of Committee to Ensure Quality of Mandated Representation. Norman P. Effman, chair of the committee, outlined the revisions made to the Standards for Providing Mandated Representation, originally adopted by the House in 2005. He reported that the committee had accepted several revisions proposed by the New York City Bar Association. After discussion, motions to amend Standards C-1 and D-1 failed on voice vote. The following resolution was then adopted:

WHEREAS, in 2005 the New York State Bar Association endorsed Standards for Providing Mandated Representation to assure high quality legal representation for every individual under a mandated representation plan; and

WHEREAS, portions of the 2005 Standards for Providing Mandated Representation require amendment to address statutory changes, the adoption of the Rules of Professional Conduct, and changed caseload standards for representation of children in Family Court proceedings; and

WHEREAS, the Committee to Ensure Quality of Mandated Representation has prepared 2010 Revised Standards for Providing Mandated Representation to address these changes;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the 2010 Revised Standards for Providing Mandated Representation; and it is further

RESOLVED, that the officers of the Association are hereby directed to transmit the Revised Standards to the Administrative Board of the Courts; to distribute and promote the Revised Standards; and to take such other and further action as they may deem appropriate to implement this resolution.

Members Kamins and Sunshine abstained from participating in the discussion and vote.

7. Report of President. Mr. Younger highlighted the information contained in his printed report, a copy of which is appended to these minutes.
8. Report of ABA State Delegate. Mark H. Alcott, ABA State Delegate, updated the House on ABA activity and reviewed the agenda for the upcoming August 2010 House of

Delegates meeting. He encouraged members to consider developing resolutions that can be brought to the ABA House. The report was received with thanks.

9. Report and recommendations of Special Committee on Standards for Pleading in Federal Litigation. Samuel F. Abernethy, chair of the special committee, reviewed the committee's report and recommendations regarding amendment of Rule 8(a)(2) of the Federal Rules of Civil Procedure. He noted that the portion of the report relating to the Supreme Court's role in rulemaking would be deleted. After discussion, the following resolution was adopted:

WHEREAS, the United States Supreme Court decisions in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* and legislative proposals recently introduced in Congress have raised questions regarding pleading standards under Rule 8(a)(2) of the Federal Rules of Civil Procedure; and

WHEREAS, the New York State Bar Association's Special Committee on Standards for Pleading in Federal Litigation was appointed to examine and report on issues raised by the decisions in *Twombly* and *Iqbal* and the legislative proposals in Congress; and

WHEREAS, the Special Committee has completed a report examining *Twombly* and *Iqbal*, prior cases, Congressional proposals, the history of Rule 8(a)(2), New York and other states' pleading requirements, and the process for amending the Federal Rules of Civil Procedure; and

WHEREAS, the Special Committee has concluded that Rule 8(a)(2) should be amended to require that a well pled statement of claim contain "a short and plain non-conclusory statement of grounds sufficient to provide notice of (a) the claim and (b) the relief sought" and that the promulgation of this standard should be accomplished through the process of review and consideration under the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Special Committee on Standards for Pleading in Federal Litigation with the exception of that portion relating to modification of the Supreme Court's role in the rule-making process; and it is further

RESOLVED, that the officers of the Association are hereby authorized to transmit the report and recommendations to the Advisory Committee on Federal Rules of Civil Procedure of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States and to take such other and further action as they may deem appropriate to implement this resolution.

10. Report re legislative activity. John P. Bracken, a member of the Committee on Legislative Policy, updated the House on progress in pursuing the Association's legislative priorities: integrity of the justice system, support for the legal profession, same-sex marriage, the Uniform Mediation Act, and the Compact for long-term care. He also noted that a former priority, the Family Health Care Decisions Act, was signed into law earlier in the year and that another former priority, no-fault divorce, had passed the State Senate. The report was received with thanks.
11. Report of New York State Conference of Bar Leaders. Earamichia Nake Brown, chair of the Conference, presented an overview of the Conference's operations and updated the House on the Conference's recent activities. The report was received with thanks.
12. 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 and encouraged members of the House to use their 2011 dues notices to donate to The Foundation. The report was received with thanks.
13. Administrative items. Mr. Doyle 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. Review the Code of Judicial Conduct
 2. Student Loan Assistance for the Public Interest
 - b. Nominating Committee. The Thirteenth Judicial District had submitted its representatives for the 2009-2010 Nominating Committee: George Sieghardt and Grace Mattei, members; and Michael J. Gaffney, alternate. In addition, the Tenth Judicial District had submitted Douglas J. Good as the district's alternate representative. A motion was adopted electing the representatives as submitted by the districts.
 - c. Immediately following the meeting, an orientation would be held for new members of the House, and all members were encouraged to attend.
 - d. Softball Game. A softball game will be held at the Clark Sports Center at 2:00 p.m.
14. New Business.
 - a. Memorial to Robert J. Saltzman. House member Hon. Barry Kamins presented a memorial to Robert J. Saltzman, former chair of the Committee on Mass Disaster Response, who passed away in May 2010. A moment of silence was observed out

of respect for Mr. Saltzman's memory and his contributions to the Association and the legal profession. A copy of the memorial is appended to these minutes.

- b. A request was made that the Association review Federal legislation that would regulate attorney conduct in financial services practices. Mr. Younger advised that the Association has contacted legislators with respect to this legislation.
- 15. Date and place of next meeting. Mr. Doyle announced that the next meeting of the House of Delegates would take place on Saturday, November 6, 2010 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,

A handwritten signature in black ink, appearing to read "David P. Miranda". The signature is fluid and cursive, with a large initial "D" and "M".

David P. Miranda
Secretary