

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES
NEW YORK STATE BAR ASSOCIATION
ALBANY, NEW YORK
NOVEMBER 7, 1987

PRESENT: Members Albert, Amdursky, Amrod, Baldwin, Ball, Barthold, Bedell, Bermingham, Besso, Biblowit, Blatchly, Bowers, Bracht, Bracken, Brenner, Britt, Buzard, Cavanaugh, Chayt, Colish, Cometa, Condon, Connolly, Cox, Cregg, Curtis, Daly, DelleCese, Dollard, Elmer, Embser, Emerson, Esteve, Faga, Fahey, Farrell, Field, Freedman, Gershon, Gertz, Ginsberg, Giordano, Glavin, Goldblum, Hall, Halpern, Haskel, Headley, Heming, Hickey, Horan, Hyman, Ippolito, Jeram, Kaplan, Katz, Kaufman, King, F. Klein, R. Klein, Lagarenne, Lamb, Lasher, Longo, Lustgarten, Mahon, Mahony, Mann, Marangos, Markuson, McGinnis, McGlinn, McGoldrick, McGraw, McGuire, McKay, McMahon, Miller, Morris, A. Murray, C. Murray, K. Murray, Nydam, Obold, O'Brien, Offermann, Ostertag, Pachman, Pearl, Penzel, Pfeifer, Powers, Pruzansky, Pulley, Reilly, Reiter, Rhodes, Rice, Rider, Ritholz, Robfogel, Robinson, Rosiny, Rothstein, Rubin, Santemma, Shlufman, Siegel, Simberkoff, Thompson, Tondel, Vigdor, Walker, C. Walsh, J. Walsh, Wanderman, Weaver, D. Whalen, White, Williams, Witmer, Yanas, Zimmermann.

1. Approval of minutes of June 26-27, 1987 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Gershon summarized the Treasurer's report, January 1 to September 30, 1987, copies of which had been circulated to the members of the House. He reviewed the principal income and expense items contained in the budget, and the status of the Association's investment portfolio. He noted the steps being taken by the Finance Committee and its Advisory Investment Subcommittee in cooperation with U.S. Trust Company to minimize the impact of recent market fluctuations. Mr. Gershon indicated that at the three quarters point in the fiscal year, the Association remained in sound financial condition with a comfortable surplus anticipated at the close of the year. The report was received with thanks.

3. Presentation of 1988 budget. John J. Yanas, Chair of the Finance Committee, summarized the significant components of the proposed 1988 budget, and advised that the recommended amounts would maintain the sound financial condition of the Association for the ensuing year. A motion was adopted approving the 1988 income and expense budget as proposed by the Finance Committee.

4. Endorsement of candidacy of Anthony R. Palermo for Secretary of the American Bar Association. Mrs. Freedman reported that former Association President Anthony R. Palermo was an announced candidate for nomination in 1989 to the office of Secretary of the American Bar Association, and that his candidacy had been endorsed unanimously by the Executive Committee at its September 11, 1987 meeting. She noted that Mr. Palermo was absent from the meeting to avoid any influence on the discussion and vote of the House. The following resolution was then adopted unanimously on motion of the House endorsing Mr. Palermo's candidacy:

Recognizing that Anthony R. Palermo possesses personal qualities of integrity, wisdom, judgment and leadership, combined with outstanding legal skills and a sound understanding of the needs of the legal profession and the public; and

Recognizing that Anthony R. Palermo has held numerous offices in the New York State Bar Association (NYSBA), including President from 1979-80, President-Elect and Chair of the NYSBA House of Delegates from 1978-79, and has served as a member of the NYSBA House of Delegates and several active committees and sections of the NYSBA; and has held other responsible positions within the organized Bar and elsewhere, including as a Director of the American Judicature Society from 1974-78, as a member of the National Conference of Bar Presidents and the Executive Council thereof, as a Fellow of the American College of Trial Lawyers, as a Fellow of the American Bar Foundation and New York State Chairman thereof from 1980-85, as a member of the Monroe County (Rochester, New York) Bar Association and as President, Secretary and Trustee thereof; and has served as a member of the Board of Trustees of the Clients' Security Fund of the State of New York since its inception in 1981, and as Charter Chairman thereof from 1981-85; and

Recognizing that Anthony R. Palermo has been active in the work of the American Bar Association (ABA), having served as State Delegate from New York in the ABA House of Delegates from 1982-85 and previously having served in the ABA House of Delegates as a Delegate of the NYSBA, and now serves on the Board of Governors as a representative of the Fifteenth District, and as Chairman of the ABA Board Program Committee and as a member of the Executive Committee and Long Range Planning and Management Committee of the ABA Board, and as Board of Governors Liaison to several significant committees of the ABA, and also serves as a member of the Scope and Correlation Committee of the House of Delegates, and has previously served as a member of the ABA Standing Committee on Bar Services and Activities and as a member of the Membership Committee of the House of Delegates, and has demonstrated the capability for dedicated and responsible leadership within the ABA, and thus merits full consideration for the office of Secretary of the ABA; now, therefore, be it

RESOLVED, the House of Delegates of the NYSBA enthusiastically endorses the candidacy of Anthony R. Palermo for nomination to the office of Secretary of the ABA in 1989 and respectfully urges the Delegates of the ABA House of Delegates to support his nomination for, and election to, that office.

5. Report and recommendations of Committee on Judicial Administration.

George F. Carpinello, Chair of the Committee on Judicial Administration, summarized the committee's report with respect to the Individual Assignment System. He explained the methodology of and data derived from a twelve-county, 3,000 attorney survey conducted in cooperation with the Center on Court Management of the Rockefeller College of Public Affairs and Policy of the State University at Albany. Mr. Carpinello reviewed the conclusions reached by the committee concerning the Individual Assignment System, as well as its recommendations for possible improvements, including greater standardization of procedures, expanded use of telephone conferencing, fuller utilization of backup judges, and additional support personnel for judges.

Mr. King noted that formal consideration of the committee's recommendations would be deferred to afford an opportunity for further study and discussion with other interested sections and committees of the Association. Following discussion, the committee's findings were received as an interim report with the thanks of the House.

6. Report and recommendations of Committee on Bylaws.

G. Robert Witmer, Jr., Chair of the Committee on Bylaws, summarized Bylaws amendments proposed to modify the formula for awarding delegates to county and local bar associations, to permit the sections to establish a class of non-lawyer associate members, and to alter the Association's nominating procedures to expand the opportunities for participation in Association governance. Mr. Witmer reviewed the specific amending language being proposed with respect to the formula for awarding county bar delegates and stated that to avoid penalizing any local bar association to entitlements under the present Bylaws provisions should 1987 membership growth so warrant, the committee in January 1988 would recommend raising the proposed threshold figure for applying the revised formula and adjusting the subsequent increments accordingly. Following discussion, a motion was adopted to modify the proposed nominating process amendments by adding the elected delegates and the members-at-large of the Executive Committee to the list of offices to which members of the Nominating Committee would be ineligible for selection.

Mr. King advised that the members of the House would be afforded the opportunity to subscribe separately to the three categories of amendments. Following the tally of the subscription forms signed by the members in attendance, Mr. King reported that none of the three proposals had received the required number of subscriptions. He indicated that consistent with prior practice, the absent members would be afforded an opportunity to record their subscriptions by mail. Mr. King advised that in compliance with the request of the House, the absent members would be furnished with a summary of the points raised during discussion to permit them to make an informed decision.

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

a) At the September 21, 1987 Office of Court Administration/bar association meeting she had raised the NYSBA's concern as to the adequacy of notice and time afforded for review and comment regarding proposed revisions in the Uniform Rules for the Trial Courts and proposals to impose sanctions in civil cases. She indicated that the Office of Court Administration had been responsive to this concern and had assured her that reasonable opportunity for meaningful comment would be provided in connection with future matters.

b) To assist in monitoring the experimental televising of trial court proceedings, including coordination with local bar associations, she had appointed a five-member committee drawing on the expertise of Association groups such as the Trial Lawyers Section, Criminal Justice Section and the Special Committee on Media Law.

c) The Court of Appeals had declined to impose a moratorium on the admission of attorneys on motion from non-reciprocating states, as recommended by the Association. She indicated that the Committee on Legal Education and Admission to the Bar was undertaking a comprehensive study of the subject to include a review of the admission procedures of other jurisdictions, residency requirements, statistical data, and relevant constitutional and policy considerations.

d) The Office of Court Administration had appointed a Panel on Advisory Opinions for Judges, chaired by retired Appellate Division Judge Samuel Silverman to provide guidance to members of the judiciary concerning matters of ethics. Mrs. Freedman noted the need for such assistance had been pointed out in 1985 by the Association's Committee on Procedures for Judicial Discipline.

e) The Special Committee on Volunteer Lawyers had been commended by a number of individuals, including Chief Judge Wachtler, for its exemplary pro bono service rendered to residents of institutions such as Phoenix House and Daytop Village.

f) The Executive Committee was continuing to monitor the status of the sales tax on legal services imposed by the State of Florida, and would be prepared to take appropriate action should the need arise.

g) A gender-neutral version of the Code of Professional Responsibility, incorporating the proposed amendments approved at the April and June meetings of the House, had been forwarded to the four Appellate Divisions for consideration.

h) She had testified at legislative hearings in support of the need to increase mandatory minimum limits for automobile liability insurance.

i) The Association would continue its active efforts to improve the Ethics in Government Act including, as appropriate, participation in forums being conducted by the State Commission on Government Integrity.

j) The Association Task Force on Administrative Adjudication had held a public hearing in Buffalo, and would be conducting similar sessions in Albany and New York City. Mrs. Freedman invited interested members to participate in these hearings or, in the alternative, to submit written comments to the task force to aid its deliberations.

k) The International Law and Practice Section, which had been organized following House approval at the June meeting, was progressing well in its formative stages, with a membership approaching 800 and plans under way for an exchange of lawyer delegations with China.

l) Under the supervision of the Committee on Federal Constitution, production of the film "An Empire of Reason", commemorating the ratification of the U.S. Constitution in New York, was proceeding on schedule with release anticipated for the spring of 1988.

m) The Executive Committee had requested the Committee on Juvenile Justice and Child Welfare and the Special Committee on Women in the Courts to examine the problem of child abuse and make appropriate recommendations.

n) The present fall General Meeting had been successful, with registrations exceeding 500 and several programs attracting significant numbers of participants. She extended appreciation to the Albany County Bar Association, as well as other neighboring bar groups, for their cooperation in planning and conducting the meeting. Mrs. Freedman indicated that plans were in progress for the 1988 General Meeting scheduled for Syracuse.

o) The Executive Committee was considering a request that the Association file an amicus curiae brief in a case involving the subrogation rights of the Clients' Security Fund of the State of New York against the partner of an attorney who had misappropriated client funds.

p) Based on the recommendation of the Committee on Legal Aid, the Executive Committee had taken a position in opposition to proposed amendments to Legal Services Corporation regulations which would mandate procedures for the appointment by state bar associations of members of the boards of directors of legal services providers.

q) The Committee on Professional Discipline had testified at hearings conducted by the Assembly Judiciary Committee concerning the random audit of attorney trust accounts and proposals to create a single, statewide attorney discipline system. Mrs. Freedman indicated that the Legislature had been apprised of the position adopted in 1985 by the House opposing a statewide discipline system, and that the random audit concept was presently under study by the Association.

r) The members of the Executive Committee were continuing their liaison efforts with county and local bar associations, as well as with committees and sections within the Association, to promote communication and coordinated effort with regard to matters of mutual interest.

s) The proposal by the Office of Court Administration to utilize special masters to relieve calendar and motion congestion was under review by interested sections and committees of the Association.

t) Mr. Carroll had been elected President-Elect of the National Association of Bar Executives. The members of the House offered their congratulations to Mr. Carroll in honor of his election.

8. Status report on Bar Center expansion. Henry G. Miller, Chair of the Executive Steering Committee for the Bar Center Campaign, summarized the status of the fund-raising effort to obtain the funds necessary to undertake the expansion of the Bar Center. He reported that the statewide solicitation was in progress and that there

had been several significant law firm gifts as well as individual contributions from members throughout the state. Mr. Miller emphasized the leadership responsibility of the House of Delegates in this endeavor, and encouraged the support of the House members to achieve success.

9. Report of Action Unit No. 4. John R. Horan, Chair of Action Unit No. 4, reported concerning recent meetings regarding court reform, and the interest of the Governor in addressing court merger and merit selection of judges during the upcoming legislative session. Mr. Horan advised that the action unit would pursue these issues consistent with the position adopted previously by the House of Delegates, and, when the specifics of any proposals by the Governor or Legislature were released, that these would be reported to the Executive Committee and the House.

10. New business.

a) Robert L. Ostertag, Chair of the Special Committee to Improve Courthouse Facilities, reported that the committee was monitoring the implementation of the court facilities improvement legislation enacted during the last session of the Legislature. He advised that the committee had expressed concern to the Office of Court Administration regarding the requirements stipulated for payment of the \$200 filing fee for records on appeal. Mr. Ostertag encouraged House members sharing this concern to contact the Office of Court Administration with their views.

b) Mr. Hall advised that Richard Markuson, husband of Gloria C. Markuson, had passed away. A moment of silence was observed in memory of Mr. Markuson.

11. Date and place of next meeting. Mr. King announced that the next meeting of the House of Delegates will be held on Friday, January 29, 1988 at the Marriott Marquis in New York City.