

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 3, 2007**

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Ms. Leber presided over the meeting as Chair of the House.

PRESENT: Aaron; Abernethy; Adler; Alcott; Alden; Ayers; Badner; Barreiro; Barson; Bartlett; Bienstock; Boyers; Brady; Branda; Brown, G.; Buholtz; Bundy Smith; Buonora; Burke, J.; Burke, P.; Buzard; Byrne; Caffry; Cahn; Campos-Galvan; Cartright; Casserly; Castellano; Chambers; Chapman; Chase; Chin; Christian; Clarke; Coffey; Cohen, C.; Cohen, D.; Collazo; Crespo; Cullum; Cummings; Davidoff; Davis; Denton; Doyle, C.; Doyle, J.; Doyle, V.; Draper; Drayton; Duffy; Egan; Elder-Howell; Embser; Enea; Eppler; Ferradino; Finerty; Fink; Fisher; Fontana; Franchina; Frank; Freedman; Friedberg; Gall; Gerstman; Getnick; Gingold; Goldblum; Golinski; Good; Gorgo; Grays; Greeley; Greenberg; Greenthal; Gross, M.; Gutekunst; Haig; Hassett; Hayes; Herrmann; Higgins, J.; Hoffman; James; Kamins; Kelly; Kobak; Kougasian; Krane; Kretser; Lally; Lamantia; Larose; Larson; Lawrence; Leber; Leinhardt; Levin; Levy; Lieberman; Liebman; Lindenauer; Madigan; Makofsky; Manias; Marris; Martin; Marwell; May; McCarthy; Meislahn; Mettler; Meyer; Mihalick; Miller; Millett; Millon; Minkowitz; Miranda; Mitchell; Moreland; Morgan; Morril; Moy; Murray; Nashak; Nathanson; Netter; O'Donnell; Onderdonk; O'Neill; Ostertag; Paul; Pellow; Peterson; Porcellio; Powers; Priore; Reynolds; Richardson; Rider; Rifkin; Robinson; Rodriguez; Romero; Rosenthal; Rosner; Rothstein; Salkin; Schofield; Schraver; Schultz, K.; Selinger; Sheehan; Sherman; Sherwin; Sigmond; Smith, T.; Smolowitz; Sonberg; Standard; Stanislaus-Fung; Steinberg, H.; Stenson; Sterrett; Sunshine, J.; Sunshine, N.; Szochet; Tennant; Terranova; Tesser; Tharp; Thompson; Thornton; Tilton; Tyler; Van Scoyoc; Vigdor; Wachtler; Walsh, O.; Weinberger; Welby; Wimpfheimer; Winkler; Witmer; Yavinsky; Young; Younger.

1. Ms. Leber reported that Nicholas E. Tishler, Vice President for the Fourth Judicial District, had resigned as Vice President and the Patricia L.R. Rodriguez had been selected to replace him. A motion was adopted to approve the designation of Ms. Rodriguez as Vice President.
2. Approval of minutes of June 30, 2007 meeting. The minutes were deemed accepted as previously distributed.
3. Report of the Treasurer. Mr. Ayers reported that through September 30, 2007, the Association's total revenue was \$20.6 million, an increase of approximately \$390,000 over the previous year, and total expenses were \$17.2 million, an increase of approximately \$253,000 over 2006. The surplus before investment gains was \$3.4 million, approximately \$137,000 more than the previous year. He then provided a six-year comparison of CLE revenue. The report was received with thanks.
4. Report and recommendations of Finance Committee. David M. Schraver, chair of the Finance Committee, summarized the committee report and recommendations regarding

the following matters. It was announced that the Executive Committee had endorsed both items for favorable House action.

- a. Affordable dues program. The committee recommended extension through 2009 of the affordable dues program that enables members who are experiencing temporary financial hardship to continue their membership through waivers of their dues at various levels. A motion was adopted to extend this program as proposed.
 - b. Proposed 2008 budget. The proposed budget for 2008 was reviewed, projecting income of \$24,288,670 and expenses of \$24,102,703, and a surplus of \$185,967. A motion was adopted to approve the proposed 2008 budget.
5. Report and recommendations of Committee on Bylaws. Hon. Cheryl M. Chambers, chair of the Committee on Bylaws, summarized the amendments proposed by the committee with respect to (1) the establishment of an Audit Committee and (2) the extension of terms of members-at-large of the Executive Committee to two years. Subscription forms were provided to the delegates to subscribe to place the proposed amendments on the agenda for action at the Annual Meeting. Following tabulation of the completed forms, Ms. Leber announced that pursuant to the Bylaws, a sufficient number of delegates had subscribed to the proposals to permit their consideration at the Annual Meeting on February 1, 2008.
 6. Report and recommendations of Special Committee on Civil Rights Agenda. Hon. George Bundy Smith, chair of the Special Committee, reported that the Special Committee had been appointed to create specific, realizable goals to break down racial barriers, increase racial diversity in the legal system and the profession, and advance the cause of civil rights. He summarized the committee's study and the report that is being prepared for consideration at a future meeting. The report was received with thanks.
 7. Report of President. Ms. Madigan provided a written report on recent initiatives, a copy of which is appended to these minutes. In addition, she reported on the following:
 - a. She announced the slate of candidates selected by the Nominating Committee the previous day. Nominated were Michael E. Getnick as President-Elect; C. Bruce Lawrence as Secretary; Seymour W. James, Jr. as Treasurer; Vincent E. Doyle, III, Timothy J. Fennell, Hermes Fernandez, Eileen Millett, David P. Miranda, Peter J.W. Sherwin, Lauren J. Wachtler, and Stephen P. Younger as members-at-large of the Executive Committee; and A. Vincent Buzard, Steven C. Krane, A. Thomas Levin, Kathryn Grant Madigan, Michael E. Getnick, and Michael L. Fox (Young Lawyer Delegate) as delegates to the ABA House of Delegates.
 - b. She announced that William J. Daly, a long-time Vice President for the Ninth Judicial District, and Eugene C. Gerhart, who served many years as the Editor-in-Chief of the *New York State Bar Journal*, had recently passed away. A moment of silence was observed in their memory.

8. Report and recommendations of Committee on Standards of Attorney Conduct. Steven C. Krane, chair of the committee, outlined concerns that had been raised with respect to Rule 5.7, which had been approved by the House at its March 31, 2007 meeting, and reported that the committee had agreed to delete a portion of Comment [5] to the rule to address these concerns. A motion was approved to amend the scheduling resolution originally adopted by the House on November 5, 2005 to permit reconsideration of the rule; after discussion, a motion to amend Rule 5.7 was approved. He then noted that consideration of Rule 1.10 had been postponed at the June 30, 2007 House meeting and reported that the issues raised at that time had been resolved. A motion to approve Rule 1.10(c) and Comment 5(c) was adopted.

Marjorie E. Gross, subcommittee chair, and Roy D. Simon, Jr., committee vice-chair, then presented the rules scheduled for consideration at this meeting. Following discussion, motions were approved to adopt the following Rules as proposed by the committee: 1.6(a), (b)(1), (b)(2), (4), (5), (6), and (c); 1.13; 1.16; 1.18; 3.3; 3.4; 4.1; Preamble, Scope, Definitions. A motion to approve Rule 1.6(b)(3) as proposed by the committee in its revised supplementary report was defeated by a vote of 55-91, following which a motion to adjourn consideration of Rule 1.6(b)(3) to the February 1, 2008 meeting was defeated. A motion to approve that version of Rule 1.6(b)(3) as contained in the committee's original September 30, 2005 report was then approved.

Mr. Krane thanked the members of the committee, the various commenting groups, and members of the House for their participation in the consideration of the report, following which the following resolution was adopted:

WHEREAS, the New York State Bar Association's Committee on Standards of Attorney Conduct on September 30, 2005 issued a report recommending that New York Rules of Professional Conduct be adopted in place of the existing Code of Professional Responsibility; and

WHEREAS, pursuant to a scheduling resolution adopted November 5, 2005, the New York State Bar Association on April 1, 2006 approved the committee's recommendation that New York adopt the format of the American Bar Association's Model Rules of Professional Conduct; and

WHEREAS, pursuant to the November 5, 2005 scheduling resolution, amendments to the proposed rules have been recommended by county and local bar associations, interested sections and committees of the Association, and other interested organizations, and the proposed rules have been debated and approved at a series of six meetings of the House of Delegates commencing in June 2006 and concluding in November 2007;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the New York Rules of Professional Conduct as amended by the House, contingent on their adoption by the Appellate Division of State Supreme Court; and it is further

RESOLVED, that the Committee on Standards of Attorney Conduct is hereby authorized to make such non-substantive, stylistic changes as might be necessary to ensure uniformity of language and format throughout the Rules; and it is further

RESOLVED, that the officers of the Association are hereby empowered and directed to transmit the Rules of Professional Conduct as amended to the Appellate Division and to take such other and further action as may be required or deemed appropriate to achieve the implementation of the recommended Rules.

9. Report and recommendations of Committee on Standards of Attorney Conduct. Prof. Steven Wechsler, one of the committee's reporters, presented the committee's proposed Ethical Considerations for addition to the current Code of Professional Responsibility to provide guidance to lawyers with respect to lawyer advertising. He noted that the proposed Ethical Considerations address the amended Disciplinary Rules adopted by the Appellate Division effective February 1, 2007 that are not affected by *Alexander v. Cahill*, currently under review by the United States District Court for the Second Circuit. After discussion, a motion was adopted approving the proposed Ethical Considerations for addition to the Code of Professional Responsibility.
10. Report of Task Force on Town and Village Justice Courts. Prof. Patricia E. Salkin, chair of the Task Force, reviewed the Task Force's work with respect to methods to encourage lawyers to consider positions as justices, noting existing barriers: ethics limits, salary, lack of administrative support, and geography. She noted that the Task Force would review reports being developed by the New York City Bar Association and the Bar Association of Nassau County and would report further at the February 1, 2008 meeting. The report was received with thanks.
11. Report of Task Force on Eminent Domain. Prof. Salkin, chair of the Task Force, reported that the Task Force had prepared a supplemental report with additional recommendations aimed at providing transparency in eminent domain procedure. She noted that the Environmental Law Section was in the process of reviewing the report and the Task Force would present the report for a vote by the House at its February 1, 2008 meeting. The report was received with thanks.
12. Report and recommendations of Committee on Minorities in the Profession. John Eric Higgins, the committee's chair, outlined the committee's report and recommendations for the collection of demographic/employment data in order to track changes in minority lawyers' employment. After discussion, the following resolution was adopted by the House:

WHEREAS, in 2004 the American Bar Association called upon state bar associations to "take the lead in promoting research on minority lawyers and improving the reporting of such data"; and

WHEREAS, the New York State Bar Association's Committee on Minorities in the Profession has issued a report entitled "Miles to Go: Measuring Racial and Ethnic Diversity among New York Lawyers" to analyze existing demographic and employment data on New York lawyers and to identify strategies for improved data collection; and

WHEREAS, the Committee has concluded that existing data is insufficient to measure the progress of minorities in the profession in New York;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Committee on Minorities in the Profession with respect to the collection and reporting of demographic data (encompassing gender, race, color, ethnic origin, national origin, sexual orientation, age and disability) and employment data statewide, within the Association's membership, and among Association leaders; and it is further

RESOLVED, that the officers of the Association are hereby directed to convey the report and recommendations to the New York State Office of Court Administration for review and discussion with respect to the recommendation that demographic and employment data be requested through the biennial registration statement required of all lawyers; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such other and further steps as they may deem necessary to pursue implementation of these recommendations.

13. Report re Medical Malpractice Liability Task Force. Lucille A. Fontana, the Association's representative on the Governor's Task Force, reported on the Task Force's activities and hearings. She noted that participants on the Task Force include insurance carriers, hospitals, physicians, and consumers/lawyers and that the group is co-chaired by the Commissioner of Health and the Commissioner of Insurance. It is anticipated that the Task Force will propose legislation with respect to malpractice liability issues by January 2008. The report was received with thanks.
14. Report of The New York Bar Foundation. Robert L. Haig, past president of The Foundation, updated the House on The Foundation's activities, noting that the Annual Appeal mailing had been sent, and urged members to give generously. He also reported on Association sections' creation of restricted funds with The Foundation. The report was received with thanks.

15. Administrative items. Ms. Leber reported on the following items:
- a. She noted that the House of Delegates dinner will be held on Thursday, January 31, 2008 at Tavern on the Green in New York City and encouraged members to attend.
 - b. She reported that immediately following the meeting, the Committee on Diversity and Leadership Development would host a seminar, open to all House members interested in increasing their level of activity in the Association, on "NYSBA Leadership Opportunities: Reaching Your Goals."
 - c. She noted that brochures containing information about merchandise with the Association's logo have been distributed to the delegates, and a display of some of these items is available near the reception desk.
16. New business. Mark. H. Alcott, Immediate Past President, reported he had received information that earlier in the day, the President of Pakistan had suspended that country's constitution and that the Chief Justice of the Pakistani Supreme Court had been ousted and the president of the bar association arrested. The House adopted the following resolution:
- RESOLVED, that in view of the imposition of emergency rule and suspension of the constitution in Pakistan on November 3, 2007, the New York State Bar Association expresses its solidarity with and support for the Pakistani bar and urges the prompt restoration of the rule of law in Pakistan.
17. Date and place of next meeting. Ms. Leber announced that the next meeting of the House of Delegates would take place on Friday, February 1, 2008 at the New York Marriott Marquis, New York City.
18. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Michael E. Getnick
Secretary



New York State Bar Association

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November 3, 2007

To: Members of the House of Delegates

Re: President's report

Similar to the June House meeting, I am providing you with a written President's report for review at your convenience and distribution to others as you deem appropriate. This allows me to highlight significant matters during my brief remarks at the meeting while freeing as much time as possible for consideration of the substantive reports on our agenda.

The following are items that you should find of interest and representative of the broad array of critical issues with which the Association is involved.

Internal planning and oversight. As our Association grows and becomes ever more complex - - today the Finance Committee is asking us to approve a \$24 million budget covering a myriad of programs and initiatives, as well as operational needs with a staff of nearly 120 - - it is critical that we provide greater accountability so that our members may be assured that we are exercising responsible stewardship over the funds and other resources of this Association. I am pleased to report that three new committees will enable us to make significant strides in this regard.

- a) **Audit Committee.** At the March meeting, the House approved a significant portion of the report of the Special Committee on Sarbanes-Oxley Issues. One key element of that report was the recommendation that the Association establish an Audit Committee separate and apart from the Finance Committee to provide an independent oversight mechanism. Over the course of the summer and early fall, the Committee on Bylaws, ably led by Hon. Cheryl E. Chambers, has drafted the necessary Bylaws amendments and detailed Duties and Responsibilities for the proposed Audit Committee. Those amendments are being offered to you today for subscription, which will then allow for their consideration at the upcoming Annual Meeting on February 1, 2008. Assuming their approval, I will act promptly to appoint the members of that committee, subject to Executive Committee confirmation and your ratification, so that we may have the Audit Committee in place as quickly as possible.
- b) **Strategic Financial Planning Committee.** Bernice Leber and I are co-chairing this Committee, and we are joined by Past Presidents M. Catherine Richardson, Joshua Pruzansky, Steven Krane, and former Executive Committee member Cris Cioffi. Our goal is to develop a sound financial plan for the next 5 to 10 years that will provide a blueprint for our

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future as an Association, as well as a strategy to sustain the Association's financial growth and future non-dues sources of revenue. We will keep you advised regarding the committee's progress.

- c) Committee on Committees. Chaired by Mimi Netter, the Committee on Committees is charged with formulating metrics by which all of our standing and special committees and task forces can be evaluated to ensure that they remain active and aligned with Association priorities. It will also be developing recommendations for criteria to govern the establishment of new committees. This new committee is also off to a productive start, having met earlier this fall, and presented the methodology for the assessment of our committees and task forces (other than Nominating, Finance and Bylaws) for approval by the Executive Committee at yesterday's meeting.

Membership Challenge. We are rolling out the 2010 Membership Challenge, recognizing that we must be proactive in membership recruitment and retention if we are to keep pace with the growth of the profession in our state. While January 1, 2008 is the official "kick off" of the first year of our three year Membership Challenge, we have already begun our outreach to Sections and Law Schools. Our goal is to increase the Association's membership by a minimum of 5% by December 31, 2010, grow each of our Sections by 10% during that time period and increase law student membership by 10% each year between now and 2010. To meet this challenge, I am calling on our staff and bar leaders at all levels to assist us in ensuring that we have a stable and growing membership base. Our Membership Committee is undertaking a lead role in this vital initiative and we are indebted to Committee Chair Claire Gutekunst, and the rest of her dedicated group, and in particular Steve Younger, who is chairing the Subcommittee on the 2010 Membership Challenge.

I am also challenging each member of the House of Delegates to recruit one new member, each year, between now and 2010. If anyone can attest to the value and relevance of NYSBA membership, it is our leadership. Do let us know if you need any assistance from our Membership Committee in making the case for why every lawyer in New York should belong to NYSBA.

Diversity. Closely allied to membership growth is our commitment to achieving diversity within our profession and the leadership of our Association. As President-Elect, I met with leaders from each of our 23 sections to review the status of their diversity efforts and to discuss ways in which they could further promote diversity within both their leadership and membership ranks. Building on those meetings, I have asked our Committee on Diversity and Leadership Development, co-chaired by Past Presidents Lorraine Power Tharp and Kenneth G. Standard, to work closely with our Sections to update their Section Diversity Report Cards and discuss initiatives to enhance diversity within the Sections. This process is on-going.

We are also pleased to see the report by our Committee on Minorities in the Profession, chaired by Dolly Caraballo and John Higgins, which recommends steps that can be taken both by the Association and the Office of Court Administration to develop better and more comprehensive data concerning levels of racial and ethnic diversity within the NYSBA and the legal profession. This report is before the House for consideration today and, if approved, we will immediately pursue whatever steps may be necessary to effectuate the committee's recommendations.

I also want to remind everyone that, as we have done in recent years, we will be hosting our Celebrating Diversity in the Bar Reception, including participation by all our Sections, on Monday, January 28, 2008 during the Annual Meeting week in New York City.

Please note that we have three upcoming programs of particular interest to our women members. On Tuesday, January 29, 2008, as part of the Annual Meeting programming at the Marriott Marquis, we will be hosting the Fourth Annual Edith I. Spivack Symposium ("Rules of Engagement: How to Earn Respect, Take Control and Get the Corner Office"). During that same week, on Friday, February 1, 2008, we will be presenting the Ruth G. Shapiro Award at the House of Delegates meeting, followed by a reception to honor the recipient. The third event will take place on April 9, 2008 at the Syracuse Sheraton University Hotel and Conference Center in Syracuse and continues our signature and highly acclaimed Women on the Move Program.

Technology. The Presidential Blog is an important part of our efforts to use technological advances to better serve and communicate with members. Please spread the word and feel free to post your comments. The easiest access to the Blog is via our Web site at www.nysba.org, and then click on "read the President's Blog."

On a related front, and in the interest of "going green" by conserving paper and reducing mailing costs, I am proposing that we explore the greater use of e-mail and the Web site to provide you with the agenda and background materials for House meetings. Presently, you receive a "hard copy" mailing of all the materials; however, they are also posted on our Web site to allow for earlier access prior to receipt of the mailings, and you are given e-mail notice of their availability.

I suspect that there are many of you who would be comfortable with the electronic receipt of reports and for whom we could dispense with the "hard copy" mailings. I will be asking our staff to survey you to determine your preferences and to give you an opportunity to opt out of receiving the "hard copy" mailings. In this way, we can accommodate everyone's preference and save on reproduction and mailing expenses. As part of this approach, we would still plan to provide physical copies of larger reports so that we are not unduly burdening you by asking you to download and print copies of lengthy documents.

Section and Local Bar Meetings. Bernice Leber and I have made a concerted effort to attend the Summer and Fall Meetings of as many of our Sections as practicable.

With more than half of our members belonging to one or more Sections, that outreach is essential. I had the opportunity and privilege of attending meetings held by the following Sections: Business Law, Elder Law, Intellectual Property, International Law and Practice, Trial Lawyers and Trusts and Estates. Bernice attended meetings of Corporate Counsel, Family Law, Labor & Employment, Real Property Law and Tax.

Of particular note was the fall meeting of our International Law and Practice Section held in Lima and Cusco, Peru. We not only had the opportunity to meet and exchange ideas with international bar leaders and policy makers on the future of international trade and the rule of law, but the Section, with Finance Committee authorization, made a \$10,000 donation to the Lima Bar Association to help provide legal services for the victims of the earthquake which devastated parts of Peru in late summer. This selfless act on the part of our section shows the Association at its best – helping lawyers and their communities in times of crisis.

I have also had the pleasure of participating in quite a few local and specialty bar association meetings and events this year, including Bronx, Queens, Nassau, Suffolk, Brooklyn and Westchester Bar Associations and the Network of Bar Leaders in NYC. Upstate county bar events have included Franklin, Monroe, Erie and the Albany regional LAP meeting. I'll be attending events at New York County Lawyers Association, the Brooklyn Bar as well as Nassau (with Suffolk), Jefferson, Onondaga and Dutchess counties in the next two months. This past week I met with the leadership of the Hispanic National Bar Association, as well as the NY Regional HNBA and look forward to partnering with them, as well as other ethnic and specialty bars on programs and initiatives (and there are many) of common interest.

Lawyers' Fund for Client Protection. I had the honor of delivering welcoming remarks at a reception held on October 15th at the Bar Center to celebrate the 25th anniversary of the Lawyers' Fund for Client Protection. In 1981 the Association had been instrumental in collaborating with the Judicial, Legislative and Executive Branches to establish the Fund (known originally as the Clients' Security Fund) to reimburse clients whose funds had been misappropriated by their attorneys. While the number of such attorneys is miniscule in comparison to the number of attorneys admitted in New York, the damage that these few do to the reputation of all lawyers is disproportionately large. The Lawyers' Fund, however, not only helps to correct a terrible wrong, but serves to repair the damage to our collective professional image. It was a pleasure to be a part of this recent ceremony as it only serves to reinforce the good that we have done and continue to do as an organization.

You may recall that in 2005, the House of Delegates, at the request of the Committee on Law Practice Continuity, endorsed proposed "Caretaker Rules" for transmittal to the Chief Administrative judge and the Appellate Division in the four departments to provide for a caretaker attorney to be designated on a temporary basis for the management, sale or closure of a practice on behalf of an attorney who is unable to continue his or her practice. Chief Administrative Judge Ann T. Pfau has advised that she and the

Presiding Justices of the Appellate Divisions are considering rules to implement our proposal. We will keep you informed as to developments.

Meetings with OCA. As I have reported previously, the State Bar Leadership continues to meet regularly with the Chief Administrative Judge to discuss matters of mutual concern and interest to the Court System and the Association. Our most recent meeting occurred on September 18th when Bernice Leber, Pat Bucklin and I met with Chief Administrative Judge Ann T. Pfau to discuss a number of topical items. Our agenda included matters such as funding for civil legal services, lawyer advertising, town and village court initiatives, housing court issues, cameras in the courtroom, indigent defense service initiatives and judicial salaries. As part of this process, Judge Pfau agreed to establish a Guardianship Advisory Committee, with appointments from NYSBA as well as Judge Pfau, to address operational and other issues related to Mental Hygiene Article 81 Guardianship matters across the state. As has been the case in the past, our discussions were cordial, open and productive. We will continue to meet with Judge Pfau quarterly.

Judicial salary increase. This remains an ongoing issue. Throughout the year, this has been our front burner issue, and we have exerted an all-out effort to secure a long-overdue judicial salary adjustment for our state's judges and to "de-link" it from legislative pay increases. Unfortunately, the impact of other issues at the Capitol continues to produce a stalemate, despite the expression of public support by the Governor and legislative leaders for a judicial salary adjustment. We are grateful to the thousands of our members who responded earlier this year and contacted their legislative representatives on this issue. Although the stalemate persists, we will continue our efforts to secure this well-deserved adjustment for the members of the judiciary.

Funding for legal services. Each year New York lawyers contribute thousands of hours of pro bono civil legal services to the poor. When combined with current funding at the state and federal level, we can still only meet about 20% of the need. Access to justice for the poor will continue to be a priority for our Association. This year, the Governor included \$8 million in new funds for civil legal services for the poor in New York (primarily in the IOLA Fund and OCA budget lines). We will continue to pursue adoption of the Equal Justice Commission's proposal for the creation of an Access to Justice Fund as a dedicated ongoing source of funding for civil legal services in the state budget and the identification of a state level agency to assume responsibility for the administration and oversight of that fund. At this point, New York is one of only seven states lacking stable funding for legal services for the poor. It is essential that we work with the Governor and the Legislature to secure the minimum level, i.e., \$50 million, in stable state support.

In a related legislative development at the federal level, the Senate Appropriations Committee recently moved to increase funding for the Legal Services Corporation in the Commerce, Justice and Science appropriations bill. However, an amendment was proposed to reduce LSC funding by \$20 million. I wrote to our state's Senators urging

them to oppose the funding reduction and am pleased to report that our efforts, coupled with those of the ABA and other bar associations, have resulted in the successful tabling of the funding reduction amendment. We will continue to monitor the situation and oppose any further efforts to reduce LSC funding.

Effective August 15th, New York banks are required to pay interest rates on IOLA accounts commensurate with rates they pay their best customers with similar accounts. If 75% to 85% of the estimated \$3.1 billion in IOLA accounts receive interest of 2.75%, instead of the .57% 2006 average, we can anticipate a range of \$45 million and \$55 million in increased annual IOLA revenue. This is a huge shot in the arm for civil legal services across the state.

Our Subcommittee on Civil Gideon, chaired by Andrew Scherer, has been most active in educating the consumer, as well as policy makers, on the importance of providing a civil right to counsel when basic human needs are at stake. A statewide Civil Gideon Conference is planned for March 7, 2008 at Touro Law School. Our Subcommittee on *Cy Pres* is moving forward with educational outreach to the federal bench and bar on the use of such awards in mass tort actions to support civil legal services. We are also indebted to the co-chairs of the President's Committee on Access to Justice, Hon. George Lowe and Bernice Leber, for their leadership. We extend a warm welcome to our new Director of Pro Bono Affairs, Gloria Herron Arthur.

Our Empire State Counsel program, one of Mark Alcott's signature initiatives, has been expanded to include not only 50 hours of free legal services to individuals of limited means, but also for not for profit, governmental or public services organizations, where the services are designed primarily to address the legal and other basic needs of the poor, or organizations specifically designed to primarily increase the availability of legal services to the poor. We look forward to honoring the 2007 class of Empire State Counsel at our "Justice for All" luncheon at the Annual Meeting on January 30, 2008.

Bernice Leber, Mark Alcott, Pat Bucklin and I recently returned from a Mid Atlantic States Conference in Wilmington, Delaware, hosted by the Delaware State Bar Association. At the Conference we highlighted our "Justice for All" initiatives, including our newest round of NCSA (non-commercial sustaining announcements a/k/a PSAs), two of which focused on Civil Gideon/Civil Right to Counsel, and one each on New York lawyers doing the public good and on the importance of pre-planning with a health care proxy, which can be downloaded from our website. These NCSAs have aired on radio stations across the state throughout the month of October.

Town and Village Courts. In June, I reported that I had appointed Albany Law School professor Patricia Salkin as Chair of our Task Force on Town and Village Justice Courts to address issues connected with the efficiency and organization of the local justice system and the remedial measures which have been proposed in the report of the Chief Judge's Commission on the Future of the New York State Courts. Our Task Force undertook its assignment on a "fast track" basis and has submitted its report for initial presentation at this meeting. While formal consideration will not take place until the

February 1, 2008 House meeting to allow interested groups an opportunity to comment and submit their views, I want to thank the Task Force for completing its work in expedited fashion. Please also note that on September 11th, I testified regarding the study by our Task Force at a public hearing conducted by the Commission on the Future of the New York State Courts.

Judicial Selection. As reported in June, near the close of the legislative session, the Governor submitted a program bill to allow for the merit selection of judges through the creation of judicial nominating commissions to recommend nominees to him for appointment to the Appellate Division, the Supreme Court, the Court of Claims, the County Court, the Surrogate's Court, and the Family Court, as well as establish fourteen-year terms of office for those judges. Given the rulings by the U.S. District Court for the Eastern District and the Second Circuit Court of Appeals in the Lopez-Torres case invalidating New York's convention process for the selection of candidates for Supreme Court Justice, ultimate action in New York will likely be on hold until the U.S. Supreme Court renders its decision. In July, this Association submitted to the U.S. Supreme Court an *amicus curiae* brief jointly with the New York City Bar, the Fund for Modern Courts, and the City of New York arguing that New York State's current judicial nominating system is unconstitutional. The case was argued before the Supreme Court on October 3rd and we can expect the decision sometime next spring.

Lawyer Advertising. In January 2006, the House, based on recommendations by the Task Force on Lawyer Advertising, had proposed modifications in the rules governing lawyer advertising. Our proposals were considered by the Appellate Division and, after some modifications, were adopted by the four departments. In a subsequent challenge to those rules, in Alexander v. Cahill, the U.S. District Court for the Northern District of New York found five of the provisions unconstitutional. The court system has appealed to the Court of Appeals for the Second Circuit. Given our interest and involvement in the process, the Association considered the filing of an *amicus curiae* brief with the Second Circuit. The Executive Committee approved the filing of the brief at our meeting on October 29, 2007. The brief is being prepared on a pro bono basis by Arent Fox, Bernice Leber's firm. We extend our appreciation to Bernice and Arent Fox for undertaking this task, and we will keep you posted regarding developments.

Age discrimination in the profession. During Mark Alcott's term as President, the NYSBA adopted a resolution calling on law firms to discontinue the policy of mandatory, age-based retirement of partners. This resolution was based on a report prepared by the Association's Special Committee on Age Discrimination in the Profession. Following unanimous approval by our Executive Committee and House of Delegates, we brought the report to the American Bar Association's House of Delegates. At the ABA's Annual Meeting this past August, the ABA adopted our recommendation that law firms discontinue the policy of compelling partners to retire solely on the basis of age and, instead, evaluate older partners individually, just as they evaluate younger partners, on the basis of the firm's performance criteria. We are now pursuing adoption of this policy on a voluntary basis by law firms. In conjunction with the Special Committee on Age

Discrimination in the Profession, we wrote to the managing partners of over 400 law firms throughout the state to advise them of this policy and seek their favorable response. As an incentive, we plan to give favorable recognition to firms that do not have a mandatory, age-based retirement policy, or intend to adopt our more progressive approach, through the establishment of a law firm Honor Roll. A number of firms have already responded favorably and we will keep you informed regarding our progress.

In a related development, in October, Sidley Austin agreed to pay a \$27.5 million settlement to end the age discrimination suit brought by the U.S. Equal Employment Opportunity Commission on behalf of 32 former partners who had been demoted to counsel status by the law firm. The case had been brought in U.S. District Court for the Northern District of Illinois, with the EEOC contending that the partners were employees subject to anti-discrimination laws rather than employers, who are exempt from the laws. According to the consent decree, Sidley Austin agreed that the affected partners were employees subject to the ADEA only for purposes of resolving this particular case, but the decree was not deemed to constitute a finding on the merits nor did it require the firm to admit any wrongdoing. While the settlement is limited in terms of its application, we believe that its size and public nature underscore the soundness of the approach we are recommending to law firms to end retirement policies based solely on age.

ABA Detainee Resolution. In addition to the successful passage of the recommendations in our Report on Mandatory Retirement at the ABA meeting in August, our Association co-sponsored a New York City Bar Association Resolution on the government's treatment of detainees and the safety of captured US troops. That Resolution, adopted by the ABA House of Delegates, calls upon Congress to enact legislation to supersede President Bush's July 20th Executive Order that prohibited torture and inhumane treatment in CIA interrogations but which did not specify which methods would be allowed (such as water boarding), which is inconsistent with the United States' obligations under Common Article 3 of the Geneva Conventions. Check out my blog for further details.

Legislation and Lobbying. In response to requests from Section and Committee leaders for more formal legislative training beyond that provided during our annual Section Leaders Conference each spring, we will be sponsoring a half day workshop at Arent Fox in New York City on November 14, 2007 to provide representatives from our interested Sections and Committees with the tools required to advance legislative initiatives in Albany and Washington, DC.

I am also committed to working collaboratively with our local bars, including the Association of the Bar of the City of New York and New York County Lawyers' Association, on federal legislative initiatives of mutual interest. NYSBA participates in ABA Lobby Day in Washington, DC each spring and we plan to add another day to our schedule to enable us to meet with our Senate and Congressional leaders on matters of particular importance to New York lawyers.

Medical Malpractice Liability Task Force. Recently, the Governor appointed a Medical Malpractice Liability Task Force to examine the myriad issues connected with the cost of medical malpractice insurance for physicians, the nature and size of claims and their impact on health care and the tort system. Our Association has had a long-standing interest in this area given the potential impact any major modifications could have on the legal system and the rights of all concerned, including physicians, hospitals, patients and insurance carriers. In the past, we have advocated for an even-handed and balanced approach to the issues to promote a fair result for all sides. We were fortunate to secure an appointment to the Task Force, and I have designated Lucille A. Fontana, who is Co-Chair of our Committee on the Tort System, as our representative. Lucille will report at this meeting concerning the initial steps being taken by the Task Force and the likely future course of its studies.

Committee to Review Judicial Nominations. At the end of this year, Hon. Carmen Beauchamp Ciparick will be completing her fourteen-year term on the Court of Appeals, but is eligible to be renominated. On October 12, the State Commission on Judicial Nomination released the names of its nominees for the position. In addition to Judge Ciparick, the Commission also named Hon. Helen E. Freedman, a Manhattan Supreme Court Justice, and attorneys George P. Carpinello, Jeremy G. Epstein and Past Association President Steven C. Krane. These names were forwarded to Governor Spitzer, who must make his selection within thirty days. As it has done in the past, our Committee to Review Judicial Nominations has reviewed the qualifications of the five nominees and has found all to be well qualified to fill the vacancy. We forwarded these findings to Governor Spitzer to aid his selection of the final nominee. We are most grateful to our Committee and its Chair, Past President Max Pfeiffer, for their important work.

Americans with Disabilities Act Update. I am pleased to announce that we now have male and female rest-room facilities outside the Peck Room that are ADA compliant.

As I enter my 6th month as your acting President, I continue to revel in the extraordinary depth and breadth of the programs, issues and initiatives undertaken by our Association and our membership on behalf of our profession and the justice system. There are so many unheralded heroes and heroines among us to whom I want to express our deepest gratitude. Your dedication and leadership through service, making a difference in large ways and small, are inspiring others to follow by doing the public good. In the months ahead I pledge to do all that I can to support our membership, leadership, management and staff in furthering the vital work of our Association.

Respectfully submitted,

