

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 1, 2008**

.....

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

PRESENT: Abramowitz; Adler; Alcott; Alden; Asarch; Badner; Bailey; Baum; Block; Bracken; Branda; Brown Spitzmueller; Brown, T.; Burke, Patrick; Burke, Philip; Burns, H.; Buzard; Cahn; Casserly; Castellano; Chang; Chapman; Chase; Chin; Christian; Coffey; Cohen, D.; Collazo; Cooper; Crespo; DeFio Kean; Dohn; Doyle; Draper; Drayton; Duffy; Edmunds; Egan; Eppler; Fennell; Fernandez; Finerty; Fisher; Flood; Fox; Franchina; Frank; Freedman; Gann; Getnick; Gigliotti; Gingold; Goldberg; Goldenberg; Golinski; Good; Gordon Oliver; Gorgos; Gredd; Greeley; Greenthal; Gross; Gutekunst; Gutierrez; Haig; Harren; Hartnett; Hassett; Hawkins; Hayes; Hollyer; James; Kamins; Kanter; Kennedy; Kera; Kougasian; Krane; Kretser; Lagonia; Lais; Lally; Lamantia; Larose; Larson; Lau-Kee; Lawrence; Leber; Lesk; Levin; Liebman; Lomuscio; Madigan; Martin; Marwell; Masley; May; Meislahn; Meyer; Miklitsch; Millett; Miranda; Mitchell; Morgan; Morril; Moy; Nachimson; Nathanson; Netter; O'Donnell; O'Neill; Ostertag; Palermo; Park; Porcellio; Privitera; Prowda; Purcell; Quaranta; Rankin; Reed; Rice; Richardson; Rider; Robertson; Roberts-Ryba; Robinson; Rodriguez; Romero; Rosenthal; Rosner; Rothstein; Safer; Salkin; Sands; Schofield; Schraver; Sen; Sheehan; Sherwin; Sigmond; Smith, G.; Smith, T.; Spelfogel; Spiro; Standard; Stanislaus-Fung; Steinberg; Sterrett; Strauss; Sunshine, J.; Sunshine, N.; Szochet; Terranova; Tilton; Tyler; Vigdor; Virkler; Vitacco; Wachtler; Wallach; Walsh, O.; Weinberger; Williams, B.; Wilson; Wimpfheimer; Winkler; Witmer; Yavinsky; Younger; and Zulack.

1. Mr. Getnick reported that Lorraine Power Tharp, Association President in 2002-2003, had passed away on October 28. A moment of silence was observed in her memory.
2. Approval of minutes of June 21, 2008 meeting. The minutes were deemed accepted as previously distributed.
3. Report of the Treasurer. Seymour W. James, Jr., Treasurer, reported that through September 30, 2008, the Association's total revenue was \$21.7 million, an increase of approximately \$1.2 million over the previous year, and total expenses were \$17.6 million, an increase of approximately \$325,000 over 2007. The operating surplus was \$4.2 million, approximately \$967,000 more than the previous year. With respect to non-operating revenue, he reported that reserve income was \$185,000 and investment losses were \$3 million. Mr. James also provided report on the status of the long-term reserve investments, the Cromwell Fund investments, and 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, reviewed the proposed Association budget for 2009, which projects

income of \$24,741,240 and expenses of \$24,565,226, with a projected surplus of \$176,014. A motion was adopted approving the 2009 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 the addition of two seats to the House of Delegates for non-resident members of the Association. 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, Mr. Getnick 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 January 30, 2009.
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 and outlined the subjects covered in the committee's report. After discussion, the following motion was adopted:

WHEREAS, the United States Supreme Court in *Brown v. Board of Education* addressed an historic struggle for equality and redefined equality for those who long faced discriminatory treatment; and

WHEREAS, there has been significant progress since *Brown v. Board of Education* in the advancement of civil rights, including the passage of the Civil Rights Act and the Voting Rights Act, in the increase in the number of minorities who hold high political and corporate offices, and, in 2008, in the historic nomination of an African American by a major political party as its candidate for President of the United States; and

WHEREAS, however, there still remains the need to make America a more inclusive society by vigilantly continuing efforts to eliminate racial barriers and to increase diversity in our society, our legal system and the legal profession and to advance the cause of civil rights; and

WHEREAS, the New York State Bar Association's Special Committee on the Civil Rights Agenda provided a comprehensive report titled "Steps Towards a More Inclusive New York and America," which identifies strategies to achieve full equality in education, juvenile justice, voting and criminal law, and proposes greater accountability and measurement of the strides thereby achieved;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association accepts, with its thanks, the report of the Special Committee on the Civil Rights Agenda; and it is further

RESOLVED, that the Association reaffirms its commitment to the goal of eliminating discrimination and advancing equal rights for all, noting, in particular, steps that can be taken to advance equality through enhancements in the fields of education, juvenile justice, voting rights, and criminal law; and it is further

RESOLVED, that the Association directs its sections and committees to advance this goal in their respective areas of concentration by identifying issues they believe should be considered priority issues, using "Steps Toward a More Inclusive New York and America" as a resource and a guide, and recommending specific action to be taken with respect to these issues; and it is further

RESOLVED, that the Association commends this report towards advancing the cause of civil rights to governmental officials and policy makers for their consideration; and it is further

RESOLVED, that the officers of the Association are hereby directed to make wide distribution of this report to sections, committees, and county, local, minority and specialty bar associations, as well as other interested parties, for their consideration in developing legislation and civil rights policies; 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 warranted to implement this resolution.

7. Report of President. Ms. Leber 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 Stephen P. Younger as President-Elect; C. Bruce Lawrence as Secretary; Seymour W. James, Jr. as Treasurer; Timothy J. Fennell, Hermes Fernandez, Glenn Lau-Kee, Ellen G. Makofsky, Eileen D. Millett, David P. Miranda, Peter J.W. Sherwin and Lauren J. Wachtler as members-at-large of the Executive Committee; and Mark H. Alcott, Bernice K. Leber, Kenneth G. Standard, and Stephen P. Younger as delegates to the American Bar Association's House of Delegates.
 - b. She thanked members of the staff who assisted in preparations for the October 31 dinner honoring Chief Judge Judith S. Kaye, together with the "Sunrise Sunset Singers" who performed at the dinner.
 - c. IOLA - The FDIC announced regulations which would provide unlimited insurance to non-interest bearing accounts, and as presently drafted the regulations would not extend such protection to IOLA accounts. The Association will submit a letter to the FDIC as well as to members of Congress to ask that the final regulations extend protection to IOLA accounts, and Ms. Leber encouraged members and county and local bar associations to submit similar letters.

- d. Town and Village Courts – In September, the Chief Judge's Commission on the Future of New York State Courts issued a two-year update on the Action Plan for the Justice Courts, originally issued in 2006. The Committee on Court Structure and Judicial Selection, chaired by former president G. Robert Witmer, Jr., has been asked to review the update and report at the January 2009 meeting.
- e. Chief Judge – On December 1, the State Commission on Judicial Nomination will announce seven candidates for the position of Chief Judge of the State of New York as a result of Chief Judge Kaye's retirement on December 31. The Association's Committee to Review Judicial Nominations, chaired by former president A. Vincent Buzard, will prepare a report regarding the candidates' qualifications so that the Association can provide input to the Governor regarding his selection.
- f. Mortgage Foreclosures – Peter V. Coffey, chair of the Real Property Law Section, and Hon. George H. Lowe and Michael E. Getnick, co-chairs of the President's Committee on Access to Justice, have been requested to have their respective groups collaborate with local and minority bar associations to develop training programs for lawyers to represent property owners in connection with foreclosure proceedings. Training sessions will be offered throughout the state. Ms. Leber thanked county bar associations for their assistance with this project.
- g. Financial Downturn – Ms. Leber has asked Lauren J. Wachtler, chair of the Committee on Lawyers in Transition, and Claire P. Gutekunst, chair of the Committee on Membership, to work together to develop seminars, offer resume assistance, and develop an electronic job bank to assist lawyers who must move to new positions.
- h. Ms. Leber, President-Elect Michael E. Getnick, and Executive Director Patricia K. Bucklin recently met with the Governor's Counsel to discuss inclusion of adequate funds for civil legal services in the 2009-2010 state budget. As part of that discussion, the Governor's Counsel asked for recommendations from the Association to find ways to reallocate funds. Ms. Leber suggested that consideration be given to repealing the Rockefeller Drug Laws as a means to relieve crowded court dockets and permit a reallocation of resources; Executive Committee members David L. Cohen, Vincent E. Doyle, III and Seymour W. James, Jr. will work with the Criminal Justice Section to propose ways to accomplish this objective.
- i. Arbitration: The Dispute Resolution Section, chaired by Simeon Baum, will undertake a study of the degree to which arbitration replaces Article III judges and their ability to review arbitral awards and review whether there should be rules to ensure a party's right to a meaningful review of an award.
- j. The Hon. Judith S. Kaye Fund – The New York Bar Foundation and the Association have worked together to create a fund honoring the Chief Judge that

will assist youth courts statewide. Ms. Leber thanked the Foundation for its support of the Fund.

- k. Meeting with Minority Bar Presidents – Ms. Leber hosted a luncheon at which 17 minority bar presidents, the Chair of the Committee on Minorities in the Profession Lillian Moy, Glenn Lau-Kee, and Linda Clark, chair of the Conference of Bar Leaders, met to discuss issues of concern and ways to provide leadership opportunities in the Association. The Committee on Minorities in the Profession will create working groups to address core issues and will meet again with minority bar leaders during the January 2009 Annual Meeting.
- l. Ms. Leber recorded three non-commercial sustaining announcements for broadcast on radio stations statewide on the subjects of wrongful convictions, privacy and the attorney-client privilege, and the state of New York courthouses. The announcements were played for the House.

8. Report and recommendations of Special Committee on Senior Lawyers. Justin L. Vigdor, chair of the Special Committee, reviewed the Committee's request to become a Section of the Association, including its proposed slate of officers and planned activities. After discussion, the following resolution was adopted:

RESOLVED, that there is hereby established a Senior Lawyers Section within the New York State Bar Association; and it is further

RESOLVED, that the proposed by-laws of the Senior Lawyers Section are hereby approved; 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 a Steering Committee on the Senior Lawyers Section, to be appointed by the President, shall take all steps necessary to implement the establishment of the Section; and it is further

RESOLVED, that the Special Committee on Senior Lawyers shall be sunsetted as an Association Committee and its work pursued as part of the Section; and it is further

RESOLVED, that the initial dues of the Senior Lawyers Section shall be twenty (\$20.00) Dollars per annum.

9. Report and recommendations of President's Committee on Access to Justice. Committee co-chair Hon. George H. Lowe and committee members Andrew A. Scherer and Laura K. Abel presented the committee's report concerning the right to counsel in civil legal matters where basic human needs are at stake, including three measures to expand the right to counsel that should be adopted in the short term. A motion to amend the

committee's proposed resolution by replacing the term "vulnerable" with "low-income seniors and disabled" failed on voice vote, as did a motion to amend by deleting the term "vulnerable." After discussion, a motion was adopted to postpone debate of the third measure recommended to expand the right to counsel (i.e., provide a right to counsel in civil proceedings for people who, because of a mental or physical disability, are unable to represent themselves, and for whom appointment of a guardian ad litem would be inappropriate) and to consider the remainder of the committee's proposals. The following resolution was then adopted:

RESOLVED, that the New York State Bar Association approves the report and recommendations of the President's Committee on Access to Justice entitled, "Toward a Right to Counsel in Civil Cases in New York State; and it is

FURTHER RESOLVED, that in view of the New York State Bar Association's commitment to the goal of a civil right to counsel in legal matters affecting basic human needs, the New York State Bar Association urges the New York State Legislature to expand the civil right to counsel in New York by enacting legislation providing the following protections:

1. Provide a right to counsel for vulnerable low income people who face eviction or foreclosure from their homes.
2. Extend the existing right to counsel for unemployment insurance claimants – those who have received a favorable decision from the Unemployment Insurance Appeal Board and are defending that decision in an appeal to the Appellate Division or Court of Appeals brought by another party – to claimants who have received a favorable determination from an administrative law judge and are defending against an appeal before the Unemployment Insurance Appeal Board. Additionally, the existing \$500 cap on reimbursement for appointed counsel should be raised to a level high enough to ensure that attorneys will accept the cases.

FURTHER RESOLVED, that in the longer term, the legislature should work towards adopting the other measures discussed in the Report of the New York State Bar Association titled, "Toward a Right to Counsel in Civil Cases in New York State," to ensure that litigants are able to fully participate in civil cases concerning their basic human needs; 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 warranted to implement this resolution.

10. Report of Special Committee on Mandatory Continuing Legal Education. Ellen Lieberman, co-chair of the Special Committee, reviewed the status of mandatory continuing legal education (MCLE) ten years after its inception as set forth in the Special Committee's written report, including a history of MCLE, other states' MCLE

requirements, and the results of a survey and two roundtable discussions conducted by the Special Committee. She outlined findings and suggestions developed by the Special Committee for informational purposes as a result of the survey and roundtable, noting that the Special Committee would be discharged and that responsibility for continued work in this area would rest with the Committee on Continuing Legal Education. It was noted that a subcommittee of the Executive Committee had been requested to review several issues raised by the report, including the ability of newly-admitted attorneys to take more advanced courses, and that the subcommittee would report in January 2009. The report was received with thanks.

11. Report of Task Force on Privacy. Kelly Slavitt, co-chair of the Task Force, provided an overview of the Task Force's development of a report that will address six core areas in which privacy is impacted: intellectual property, health, employment, criminal, business, and litigation. The Task Force plans to prepare a report for consideration at a future meeting and anticipates that additional reports will be needed, given the changing area of the law with respect to privacy. The report was received with thanks.
12. Report of The New York Bar Foundation. John R. Horan, President of The Foundation, updated the House on The Foundation's activities, noting that The Foundation had awarded grants in excess of \$250,000 during 2008. He also noted a gift received from the Elder Law Section to support a scholarship; a memorial fellowship fund in memory of Joan Ellenbogen; the Judith S. Kaye Youth Court Fund to become effective January 1, 2009; and a general endowment fund in memory of Lorraine Power Tharp. The report was received with thanks.
13. Administrative items. Mr. Getnick reported on the following items:
 - a. Creation of standing committees. The Special Committee on Animals and the Law, the Special Committee on Court Structure and Judicial Selection, the Special Committee on Lawyers in Transition, the Special Committee on Quality of Mandated Representation, and the Electronic Communications Task Force have been recommended for standing committee status by the Special Committee on Committees. A motion was adopted approving the creation of these standing committees.
 - b. Discharge of standing committee. Pursuant to the Bylaws, House approval is required for the discharge of standing committees. A motion was adopted unanimously by voice vote to approve the discharge of the Committee on Public Utility Law, which had been recommended for discharge with the consent of its chair.
 - c. Section name change. He reported that at its October 31 meeting, the Executive Committee approved an amendment to the Bylaws of the International Law and Practice Section to approve the change of its name to the International Section.

- d. January dinner. He noted that the House of Delegates dinner will be held on Thursday, January 29, 2009 at Tavern on the Green in New York City and encouraged members to attend.
14. Date and place of next meeting. Mr. Getnick announced that the next meeting of the House of Delegates would take place on Friday, January 30, 2009 at the New York Marriott Marquis, New York City.
15. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



C. Bruce Lawrence
Secretary