

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 6, 2010**

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

PRESENT: Aaron; Abernethy; Alcott; Ayers; Barreiro; Baynes; Berke-Weiss; Block; Bonina; Bracken; Brown, T.; Burns; Cassata; Castellano; Chambers; Chang; Chapman; Chase; Christian; Cohen, D.; Costello; Cusano; DeFelice; DeFio Kean; Denton; Di Pietro; Dohn; Dollard; Doyaga; Doyle; Draper; Edmunds; Effman; Eppler; Fedorchak; Fennell; Fernandez, Henry; Finerty; Fish; Flood; Foley; Fox; Franchina; Freedman; Gann; Gerstman; Gesinsky; Gigliotti; Gingold; Glanstein; Glasheen; Goldberg; Goldenberg; Good; Gorgos; Gould; Grayson; Greenthal; Gutekunst; Gutenberg; Gutheil; Gutierrez; Hager; Hall; Hanna; Harren; Hassett; Hawkins; Hernandez; Herrmann; Hetherington; Hoag; Hollyer; Honig; Humphrey; Jackson; James, S.; Kahler; Kahn; Kaplan, E.; Karabatos; Karson; Kelly; Kera; Kobak; Kornreich; Kurland; Kurs; Laluk; Larson; Lau-Kee; Leber; Lesk; Lewis; Lieberman; Liebman; Lindenauer; Ludington; Lupkin; Madigan; Makofsky; Marino; Martin; Marwell; Mattei; McArdle; McAuliffe; McEntee; McKay; Medenica; Miklitsch; Miller, M.; Millon; Minkowitz; Miranda; Moretti; Myers; Nachimson; Nathanson, E.; Nathanson, M.; Nelson; Onderdonk; O'Neill; Ostertag; Pechenik; Pellow; Perlman; Pettit; Pogson; Privitera; Quaranta; Randazzo; Rauer; Ravin; Roberts-Ryba; Romero; Rosiny; Rothstein; Russell; Ryan; Sachs; Safer; Salkin; Sandford; Schneer; Schrauer; Schultz; Schwartz; Seitz; Sen; Sigmond; Silkenat; Singer; Slezak; Sonberg; Stanislaus; Stapleton; Starkman; Stone; Sunshine, J.; Sunshine, N.; Syracuse, , D.; Syracuse, V.; Taylor; Tesser; Tilton; Torrey; Tsan; Vigdor; Vitacco; Watkins; Weinberger; Weis; Witmer; Yavinsky; and Younger.

1. Approval of minutes of June 19, 2010 meeting. The minutes were deemed accepted as previously distributed.
2. Report of the Treasurer. Mr. James reported that through September 30, 2010, the Association's total revenue was \$20.6 million, an increase of approximately \$579,000 over the previous year, and total expenses were \$17 million, a decrease of approximately \$306,000 over 2009. The operating surplus was \$3.7 million, approximately \$885,000 more than the previous year. Mr. James also provided a report on the status of the long-term reserve investments and a six-year comparison of CLE revenue. The report was received with thanks.
3. Report and recommendations of Finance Committee. David M. Schrauer, chair of the Finance Committee, summarized the committee report and recommendations regarding the proposed 2011 budget, which projects income of \$24,165,203 and expenses of \$24,165,230, with a projected surplus of \$0. A motion was adopted to approve the proposed 2011 budget.

4. Report of Task Force on Government Ethics. Prof. Patricia E. Salkin, co-chair of the Task Force, provided an informational report on the status of the Task Force's work, noting that the Task Force was reviewing four areas: attorney disclosure, municipal ethics, honest services, and due process. She reported that the Task Force planned to issue its report and recommendations in early December, with debate and vote on the report to take place at the January 2011 House of Delegates meeting. The report was received with thanks.
5. Report and recommendations of Committee on Bylaws. Hon. Cheryl E. Chambers, chair of the Committee on Bylaws, outlined the amendments proposed by the committee with respect to the operation of the Nominating Committee. Subscription forms were provided to the delegates to subscribe to the proposed amendments in order to place the proposed amendments on the agenda for action at the Annual Meeting. Following tabulation of the completed forms, Mr. Doyle reported that pursuant to the Bylaws, a sufficient number of delegates had subscribed to the proposed amendments to permit their consideration at the Annual Meeting on January 28, 2011.
6. Report of President. Mr. Younger highlighted the information contained in his printed report, a copy of which is appended to these minutes. In addition, he reported on the following:
 - a. He reported the results of the Nominating Committee's consideration of candidates for Association offices. Nominated were Seymour W. James, Jr. as President-Elect; David P. Miranda as Secretary; Claire P. Gutekunst as Treasurer; Timothy J. Fennell, Glenn Lau-Kee, Ellen G. Makofsky and Oliver C. Young as members-at-large of the Executive Committee; and Paul Michael Hassett, Seymour W. James, Jr., Bernice K. Leber, James R. Silkenat, and Stephen P. Younger as delegates to the American Bar Association's House of Delegates. The House congratulated the nominees and Mr. Younger thanked Ms. Madigan for her service as chair of the Nominating Committee.
 - b. He recorded three non-commercial sustaining announcements for broadcast on radio stations statewide on the subjects of pro bono, mortgage foreclosure, and the rising unmet need for legal representation in civil matters. The announcements were played for the House.
7. Memorial to Steven C. Krane. Former President Bernice K. Leber presented a memorial to Steven C. Krane, former President, who passed away in June 2010. A moment of silence was observed out of respect for Mr. Krane's memory and his contributions to the Association and the legal profession. A copy of the memorial is appended to these minutes.
8. Report and recommendations of Committee on Standards of Attorney Conduct. Joseph E. Neuhaus, chair of the Committee on Standards of Attorney Conduct, and committee member Barbara S. Gillers outlined the committee's recommendation that a new Part 522 of the Rules of the Court of Appeals be adopted to govern the licensing of in-house

counsel who are admitted in other jurisdictions and employed in New York. After discussion, the following resolution was adopted:

WHEREAS, New York rules do not have express provisions permitting in-house practice by lawyers admitted and in good standing in other jurisdictions who are employed by companies, businesses, non-profit organizations or other entities located within New York State; and

WHEREAS, the majority of U.S. jurisdictions have adopted rules permitting practice by out-of-state lawyers employed by an entity; and

WHEREAS, the New York State Bar Association Committee on Standards of Attorney Conduct, together with the New York City Bar Association and New York County Lawyers' Association, has prepared a report recommending the adoption of court rules to license out-of-state lawyers employed by an entity in New York, giving New York disciplinary jurisdiction and requiring such lawyers to meet CLE and other requirements;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations jointly submitted by the Committee on Standards of Attorney Conduct, the New York City Bar Association, and the New York County Lawyers' Association; and it is further

RESOLVED, that the President is hereby directed to convey these recommendations to the New York State Court of Appeals for the court's consideration; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such other and further action as may be required or deemed appropriate to achieve the implementation of these recommendations.

Messrs. Rauer and Younger abstained from participating in the discussion and vote.

9. Report and recommendation of Dispute Resolution Section. Former Section chairs Simeon H. Baum and Jonathan Honig, together with John Wilkinson, co-chair of the Section's Arbitration Committee, presented the Section's report proposing a set of guidelines for pre-hearing disclosure in international arbitration. After discussion, the following resolution was adopted:

WHEREAS, international arbitration is a substantial practice in New York with many contracts providing for the application of New York law and specifying New York as the venue for international arbitration; and

WHEREAS, the New York State Bar Association's Dispute Resolution Section has developed a report containing Guidelines regarding pre-hearing proceedings in

international arbitration to provide guidance to arbitrators in conducting international arbitrations and to provide a better understanding of international arbitration practices in New York;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the report of the Dispute Resolution Section; and it is further

RESOLVED, that the Section is authorized to distribute the report to arbitration organizations, arbitrators, and other interested parties for their information and use; and it is further

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

- Mr. Rauer abstained from participating in the discussion and vote.
10. Report of New York County Lawyers' Association. James B. Kobak, President of the New York County Lawyers' Association, and Klaus Eppler, co-chair of the NYCLA Task Force on Judicial Independence's subcommittee on the Commission on Judicial Conduct, outlined a report recommending proposed amendments to the statutory and regulatory framework governing the State Commission on Judicial Conduct as well as changes to the Commission's policies. The report was presented on an informational basis and will be scheduled for debate and vote at the House's January 28, 2011 meeting. The report was received with thanks.
 11. Report of Special Committee on Rules for Consideration of Reports. Claire P. Gutekunst and Ann B. Lesk, co-chairs of the Special Committee, outlined the committee's work in reviewing the procedures used to circulate reports and solicit comments from interested groups prior to their presentation to the House and the Executive Committee. They reported that the committee plans to release its report recommending changes to these procedures in December, after which they will be presented to the House for debate and vote at the January 28, 2011 meeting. The report was received with thanks.
 12. Report of The New York Bar Foundation. Emily F. Franchina, a member of The Foundation's Board of Directors, updated the House on The Foundation's activities, including the work of the cy pres subcommittee and the Board's review of grant requests. She reminded the members that donations in honor or in memory of a person are encouraged. The report was received with thanks. In addition, Board member Sharon Stern Gerstman conducted an auction of a golfing trip to Scotland in memory of Miriam M. Netter, who passed away in October. Mr. Younger placed the winning bid of \$1200.
 13. Administrative items. Mr. Doyle reported on the following items:
 - a. Consideration of the report and recommendations of the Special Committee to Review the Code of Judicial Conduct is being deferred to the April 2011 meeting

in order to permit members of the Special Committee to meet with interested groups and review the changes that had been made to the report. Because consideration of this report is governed by a scheduling resolution, an amended resolution is required to place this before the House in April 2011. The following resolution was then adopted:

WHEREAS, at its November 7, 2009 meeting the House of Delegates received an informational report from the Special Committee to Review the Code of Judicial Conduct and adopted a resolution to govern consideration of the Special Committee's report and recommendations; and

WHEREAS, pursuant to that resolution (as subsequently amended by the House at its April 10, 2010 meeting) all comments and proposed amendments to the report were required to be submitted no later than October 1, 2010;


NOW, THEREFORE, IT IS

RESOLVED, that the House of Delegates hereby adopts the following revised procedures to govern consideration at the April 2, 2011 meeting of the House, and any subsequent meetings as may be necessary, of the report and recommendations of the Special Committee to Review the Code of Judicial Conduct:

1. In advance of the meeting, representatives of the Special Committee may consult with commenters and other interested groups with respect to the committee's report. If the Special Committee concludes that additional revisions to its report are appropriate, such revisions shall be completed no later than February 28, 2011.
2. All proposed amendments from interested groups submitted by the October 1, 2010 deadline shall be distributed to members of the House in advance of the April 2, 2011 meeting with an indication as to whether or not each has been accepted by the Special Committee.
3. Representatives of the Special Committee will present an overview of its report, including its consideration of comments and amendments submitted by the October 1, 2010 deadline and changes to the report subsequently made by the Special Committee.
4. Consideration of the proposed rules shall take place in the following manner:
 - a. A representative of the Special Committee shall have three minutes to present each rule. The proponents of any amendments shall have three minutes to present them.

- b. All those wishing to speak with regard to a particular rule/amendment may do so only once for no more than three minutes, except the sponsor of any amendment may speak a second time for two minutes, and a representative of the committee shall have two minutes to close.
 - c. Only one level of amendment shall be permitted. Thus, if an amendment to a proposed rule is pending, no amendment of that proposed amendment is in order.
 - d. No amendments shall be permitted from the floor of the House except with respect to modifications made by the Special Committee subsequent to October 1, 2010.
 - e. A vote on each rule shall be taken, requiring a majority vote for adoption.
 - f. Procedural motions shall be considered out of order until debate on all substantive amendments has been concluded.
5. Upon conclusion of debate and vote on the complete set of rules, a vote shall be taken to authorize the committee and officers to make any necessary stylistic changes that may be necessary for the sake of uniformity and to authorize transmittal of the rules, as they may have been amended, to the Chief Administrative Judge.
- b. President Younger had appointed Cathi A. Hession and Scott M. Karson as members of the Audit Committee. Under the Bylaws, the House is required to ratify appointments to the Audit Committee. A motion was adopted to ratify the appointments.
 - c. He noted that the House of Delegates dinner will be held on Thursday, January 27, 2011 at the Metropolitan Club in New York City and encouraged members to attend.
 - d. He announced that the April 2012 meeting of the House would take place in Buffalo.
14. Date and place of next meeting. Mr. Doyle announced that the next meeting of the House of Delegates would take place on Friday, January 28, 2011 at the New York Hilton, New York City.
15. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David P. Miranda". The signature is fluid and cursive, with the first name "David" and last name "Miranda" clearly distinguishable.

David P. Miranda
Secretary