

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 7, 2015**

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

PRESENT: Aidala; Alcott; Arenson; Barcham; Barreiro; Barrett; Bauman; Behe; Block; Bonina; Brown, T.A.; Buholtz; Burns, S.; Calcagni; Carola; Chambers; Chandrasekhar; Christopher; Cilenti; Cohen; Connery; Crummey; Dean; Denton; Doyle; Effman; England; Fallek; Fennell; Finerty; First; Fishberg; Fisher; Flynn; Fox, G.; Fox, M.; Freedman, H.; Freedman, M.; Friedman; Gaffney; Gallagher; Galligan; Gensini; Gerace; Gerbini; Gerstman; Getnick; Glover; Gold; Goldenberg; Goldschmidt; Gordon-Oliver; Greenberg; Grogan; Gross; Grossman; Gutekunst; Gutierrez; Hage; Hall; Halpern; Heath; Hersh; Hetherington; Himes; Hines; Honig; Hyer; Jaglom; James; Jochmans; Kamins; Karson; Kase; Kean; Kenney; Kiesel; Klass; Kobak; Krausz; LaRose; Leber; Levin; Lewis; Lindenauer; Madigan; Makofsky; Mancuso; Mandell; Marangos, D.; Marangos, J.; Marinaccio; Maroney; Martin, D.; Martin, E.; Marwell; McCafferty; McKay; McKeegan; Meacham; Miller, M.; Minkowitz; Miranda; Moretti; Moskowitz; Mulhall; Napoletano; Nowotny; O'Donnell, J.; O'Donnell, T.; Ogden; Ostertag; Prager; Prudente; Ranni; Raskin; Reitzfeld; Richter; Robertson; Rodriguez; Romero; Rosiny; Rothenberg; Rothstein; Ryba; Samuels, V.; Scheinberg; Schrauer; Sciocchetti; Shafer; Sheehan; Sigmond; Silkenat; Silverman; Smith, S.; Sonberg; Spirer; Spiro; Spitler; Standard; Stanislaus; Steinhardt; Stines; Strong; Strenger; Sunshine; Terranova; Tesser; Tully; Udell; Wallach; Walsh; Weathers; Weinberger; Weinblatt; Welch; Westlake; Wicks; Wildgrube; Williams; Wimpfheimer; Winograd; Wood; Yeung-Ha; Younger.

1. Approval of minutes of June 20, 2015 meeting. The minutes were deemed accepted as previously distributed.
2. Report of Treasurer. Sharon Stern Gerstman, Treasurer, provided a financial report focusing on the Association's income, including that derived from membership dues, investment income, royalties, and the Annual Meeting. In addition, she provided an update with respect to 2015 CLE and membership dues income. The report was received with thanks.
3. Report and recommendations of Finance Committee re proposed 2016 income and expense budget. John S. Marwell, chair of the Finance Committee, reviewed the proposed budget for 2016, which projects income of \$24,390,450, expenses of \$24,379,370, and a projected surplus of \$11,080. A motion was adopted to approve the proposed 2016 budget.
4. Report and recommendations of Committee on Bylaws. Eileen E. Buholtz, chair of the Bylaws Committee, presented the Committee's proposals to amend the Bylaws to provide updates and clarifications. 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, Ms.

Gutekunst reported that the proposed amendments had received the required subscriptions to permit their consideration at the Annual Meeting.

5. Report of President. Mr. Miranda highlighted the information contained in his printed report, a copy of which is appended to these minutes.
6. Report of Nominating Committee. Seymour W. James, Jr., chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2016-2017 Association year: President Elect: Sharon Stern Gerstman, Buffalo; Secretary: Ellen G. Makofsky, Garden City; Treasurer: Scott M. Karson, Melville; Vice Presidents: 1st District – Taa R. Grays, New York and Michael Miller, New York; 2nd District – Domenick Napoletano, Brooklyn; 3rd District – Henry M. Greenberg, Albany; 4th District – Matthew R. Coseo, Ballston Spa; 5th District – Stuart J. LaRose, Syracuse; 6th District – Alyssa M. Barreiro, Ithaca; 7th District – David H. Tennant, Rochester; 8th District – Cheryl Smith Fisher, Buffalo; 9th District – Sherry Levin Wallach, Mount Kisco; 10th District – Peter H. Levy, Jericho; 11th District – Karina E. Alomar, Ridgewood; 12th District – Steven E. Millon, New York; 13th District – Orin J. Cohen, Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2016: Earamichia N. Brown, New York City (Diversity Seat); Elena DeFio Kean, Albany; Bryan D. Hetherington, Rochester; Michael W. Galligan, New York City. Nominated as Section Member-at-Large was Bruce J. Prager, Mount Kisco. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2016-2018 term: Sharon Stern Gerstman, Buffalo; A. Thomas Levin, Mineola; Kathryn Grant Madigan, Binghamton; David P. Miranda, Albany; Kenneth G. Standard, New York City; and Alena Shautsova, Brooklyn (Young Lawyer Delegate). The report was received with thanks.
7. Report and recommendations of Committee on Standards of Attorney Conduct. Barbara S. Gillers, vice chair of the committee, outlined the comments prepared by the committee with respect to the Office of Court Administration's proposed court rules governing temporary practice in New York by out-of-state lawyers and licensing foreign lawyers as in-house counsel in New York. After discussion, a motion was adopted to approve the report and recommendations.
8. Report and recommendations of Committee on the New York State Constitution. Henry M. Greenberg, chair of the committee, presented the committee's report recommending that the state should establish a non-partisan preparatory Constitutional Commission as soon as possible in connection with the upcoming 2017 referendum on whether to convene a constitutional convention. After discussion, a motion was adopted to approve the report and recommendations.
9. Report and recommendations of Committee on Professional Discipline. Sarah Jo Hamilton, chair of the committee, outlined the committee's comments with respect to the report of the Chief Judge's Commission on Statewide Attorney Discipline. After discussion, a motion to amend to add a recommendation that Judiciary Law §90(10) be amended to add a requirement of due process in connection with suspensions failed, after

which a motion to amend to oppose the Commission's recommendation that a statewide coordinator of discipline was approved on a standing vote of 86-83. As amended, a motion was adopted to approve the report and recommendations. Messrs. Lau-Kee and Younger and Justice Chambers abstained.

10. Report and recommendations of Committee on Women in the Law. Ellen G. Makofsky, co-chair of the committee, together with committee member Susan L. Harper, reviewed the committee's report with respect to the Family and Medical Insurance Leave Act, which would provide paid leave for family care and medical emergencies. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, under current law workers who need to take a leave of absence from work to attend to a personal or family medical emergency or care for a newborn or adopted child are not entitled to paid leave; and

WHEREAS, federal legislation has been proposed to establish an independent trust fund to provide paid leave benefits; and

WHEREAS, the New York State Bar Association's Committee on Women in the Law has issued a report supporting the enactment of the Family and Medical Insurance Leave Act;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association supports legislation to provide paid leave benefits; and it is

FURTHER RESOLVED, that the New York State Bar Association approves the report and recommendations of the Committee on Women in the Law; and it is

FURTHER RESOLVED, that the officers of the Association are hereby authorized to take such other and further action as may be necessary to implement this resolution.

11. Report and recommendations of the New York County Lawyers' Association. Michael Miller, First District Vice President, outlined the Association's proposal for amendments to New York Retirement and Social Security Law §60 to permit state-paid judges to elect to have their beneficiaries receive a pension in lieu of regular death benefits upon their death while in office. After discussion, motions were adopted to approve the report and recommendations and the following resolution:

WHEREAS, under Section 60 of the New York State Retirement and Social Security Law, New York State judges' pensions do not fully vest until retirement; and

WHEREAS, if a New York State judge dies in office, under Section 60 of the New York State Retirement and Social Security Law, the judge's beneficiaries do not receive the proceeds of his or her pension, but rather receive only a payment of death benefits in lieu of a pension; and

WHEREAS, these death benefits are generally of significantly less value than the pension to which such a deceased judge or his or her beneficiaries would be entitled to if the judge had retired before death; and

WHEREAS, under Section 60 of the New York State Retirement and Social Security Law, a deceased judge's beneficiaries may not elect any of the benefit options available to a judge who retires; and

WHEREAS, in recent years, for non-judicial personnel of the New York State court system subject to what has been referred to as the "Death Gamble," this disparity has, to some extent, been ameliorated by the proliferation of early retirement opportunities afforded to most public employees; and

WHEREAS, New York State judges have not been able to take advantage of these early retirement opportunities because they have been excluded as a group from each of the relevant statutes and early retirement incentives; and

WHEREAS, legislation enacted in 2000 removed the "Death Gamble" for thousands of police officers, fire fighters, and teachers, but specifically excluded members of the judiciary; and

WHEREAS, it is unfair that many New York State judges, most of whom become judges later in life, must continue in service at some risk to their families' financial welfare; and

WHEREAS, not only is this grossly unfair in and of itself, it is also unfair that New York State judges, who are the cornerstone of our state's justice system, are excluded from the benefit options available to most other state employees; and

WHEREAS, the "Death Gamble" may be yet another disincentive for many to undertake judicial service; and

WHEREAS, the New York County Lawyers Association issued a report and resolution on June 8, 2015 calling for an amendment to Section 60 of New York's retirement and Social Security Law, to alleviate the effects of this unfair situation;

NOW, THEREFORE, IT IS

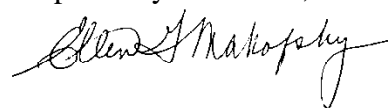
RESOLVED, that the New York State Bar Association urges an amendment to Section 60 of New York's Retirement and Social Security Law, to permit state-paid judges and justices of the Unified Court System to elect to have their beneficiaries receive a pension in lieu of the regular death benefit, upon their death while in service; and it is further

RESOLVED, that the amendment to New York's Retirement and Social Security Law should also provide that if a judge did not make the aforementioned election

prior to death, the designated beneficiary of the judge's death benefit be authorized to make the election for the deceased judge posthumously and to choose the pension payment options contained in Section 90 of New York's Retirement and Social Security Law.

12. Report of The New York Bar Foundation. Lesley Friedman Rosenthal, Vice President of The New York Bar Foundation, presented a report on some of The Foundation's grantees and The Foundation's efforts to increase participation. She observed that at present The Foundation can fund only one-third of the grant applications it receives. The report was received with thanks.
13. Administrative items. Ms. Gutekunst reported on the following items:
 - a. Delegates had at their places a notice regarding the 2015-2016 Leadership Directory and she asked that delegates who wish to receive a printed copy of the directory to complete the card and turn it in to the staff.
 - b. She announced that the House of Delegates Dinner will take place on Thursday, January 28, 2016 at the Metropolitan Club, 1 East 60th Street, New York City.
 - c. She announced that the Committee on Leadership Development would host a luncheon immediately following the meeting to discuss leadership opportunities.
 - d. Past President Haliburton Fales II had passed away on November 2, 2015, and she noted that a formal memorial would be presented in his honor at the January 29, 2016 meeting. The delegates observed a moment of silence in his memory.
14. Date and place of next meeting. Ms. Gutekunst announced that the next meeting of the House of Delegates would take place on Friday, January 29, 2016 at the New York Hilton Midtown, New York City.
15. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully submitted,



Ellen G. Makofsky
Secretary