

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
HYATT REGENCY-BUFFALO, NEW YORK
SEPTEMBER 27, 1986

PRESENT: Members Amdursky, Amrod, Ashley, Baldwin, Ball, Barthold, Bedell, Bermingham, E. Birnbaum, Blauvelt, Bracken, Brenner, Britt, Canoni, Chayt, P. Clark, Cometa, Daly, Deptula, Dolan, Dollard, Dranoff, J.F. Dwyer, J.C. Dwyer, Eiber, Elmer, Esteve, Field, Freedman, Goldblum, Hall, Halpern, Haskel, Heming, Hoffman, Horan, Hurwitz, Ierardi, Ippolito, S. Jones, Kane, Kaplan, Kaufman, Krieger, Lagarenne, Lasher, Levin, Longo, Mahony, Mann, Marangos, Markuson, McGinnis, McGuire, McKay, Miller, Moriello, A. Murray, K. Murray, Obold, Offermann, Ostertag, Pachman, Pearl, Pfeifer, Place, Presutti, Pruzansky, Reiter, Rhodes, Richardson, Robfogel, Rosiny, Rothstein, Rubin, Ruger, Santemma, Shlufman, Simberkoff, Solomon, Stave, Sullivan, Tobin, Tondel, Traficanti, Tyler, Tyo, Vigdor, Vitacco, J. Walsh, Warren, Weaver, D. Whalen, White, Wilkens, Witmer, Yanas, Zimmerman.

1. Approval of minutes of June 28, 1986 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Yanas summarized the Treasurer's report, January 1 to August 31, 1986, copies of which had been distributed to the members of the House. He reviewed the status of the Association's assets and noted that the Association remained in sound financial condition with a surplus anticipated for the current fiscal year. Mr. Yanas indicated that the final audited report for the 1985 fiscal year would be mailed to the members of the House as soon as questions relating to the tax treatment of the distribution from the Bertholon-Rowland Corp. had been resolved by the auditors and tax counsel for the Association. The report was received with thanks.

3. Report of the Committee on Bylaws. G. Robert Witmer, Jr., Chair of the Committee on Bylaws, reported that his committee was examining, in consultation with the Executive Committee, the growth in House of Delegates membership in recent years, and the possible need to limit future expansion to preserve the status of the House as an effective and collegial policy-making and governing body. He noted that the committee would be in contact with the various constituencies represented in the House to develop acceptable proposals for review by the Executive Committee and the House. Mr. Witmer advised that ample time would be allocated for discussion and review by all concerned, and that he did not anticipate final vote concerning appropriate Bylaws amendments until the January, 1988 Annual Meeting. The report was received with the thanks of the House.

4. Proposed resolution regarding Legal Services Corporation determination as to support center funding. Past Association President Justin L. Vigdor summarized the impact a determination by the Legal Services Corporation Board to terminate direct funding for national and state support programs would have on the ability of local legal services offices to provide effective legal assistance to the indigent. He indicated that while it was the purpose of the Legal Services Corporation Board to provide the funds directly to the local legal services offices allowing them in turn to contract with the support centers, the practical effect of such an approach would be the elimination of necessary support centers. Following discussion, the following resolution was adopted unanimously on motion of the House:

WHEREAS, national and state legal services support centers and the National Clearinghouse are critical to the effective and economical direct provision of legal services to poor people, as proven by the roles support centers have played as integral parts of this delivery system during the twenty-year history of legal services, and

WHEREAS, Legal Service program directors in the communities of New York State have repeatedly expressed their need of and reliance upon the assistance provided by the support centers.

WHEREAS, the Legal Services Corporation Board of Directors has voted 6-4 in its 1987 budget request to Congress to turn over all national and state support funding to field legal services programs with no requirement that the funds be used for support services, and

WHEREAS, this vote by the Legal Services Corporation Board, which is not based on any demonstrated factual need for such a shift of funding, will effectively destroy the entire legal services support system at a time when legal services for the poor are already suffering greatly because of lack of funding, and

WHEREAS, the legal services programs of other states in the nation and clients do not support the Legal Services Corporation Board's decision, and the level of satisfaction nationwide with the work of the national and state support centers, and the National Clearinghouse, is high,

NOW THEREFORE BE IT RESOLVED that the New York State Bar Association vigorously opposes the Legal Services Corporation Board decision to terminate direct funding for national and state support programs and the

National Clearinghouse, and urges the Legal Services Corporation Board to rescind its action, and urges members of Congress to reject the Board's recommendation in order to assure that the 1987 budget for Legal Services for the poor does not reflect such a change in funding.

5. Report of Joint Task Force on Liability Insurance Coverage. Mrs. Freedman advised that submission of the report of the Joint Task Force on Liability Insurance Coverage had been deferred to permit the Task Force to develop further data with respect to the feasibility of forming a proprietary, or captive carrier. She indicated it was anticipated the report would be presented at the January, 1987 meeting.

6. Report of President. Mr. Heming reported the following matters:

a) As part of its study, the Joint Task Force on Liability Insurance Coverage was examining not only the rate aspects associated with the formation of a proprietary carrier, but also other benefits that might accompany the presence of a captive, such as the availability of coverage, competition, and rate stability.

b) The Executive Committee, at the request of the Committee on International Law, had adopted a resolution authorizing the Association President to write letters on behalf of foreign lawyers facing persecution because of their professional activities.

c) Based on a recommendation by the Association Task Force on Simplification, the Executive Committee has endorsed the goal of revising the Election Law to eliminate those portions where form is emphasized over substance while preserving those protections deemed essential to the elective process.

d) The Executive Committee had approved an increase from nine to eleven members in the Board of Editors of the New York State Bar Journal, and the appointment of Emlyn I. Griffith and Paul S. Hoffman to fill the newly-established positions.

e) The Executive Committee had ratified and endorsed the Bar Center expansion project, including the specific resolution adopted by the House of Delegates at the June, 1986 meeting. Mr. Heming indicated that on September 28, the Ad Hoc Committee on Bar Center Facilities and Space Requirements would be meeting jointly with the Board of Directors of The New York Bar Foundation to proceed with the planning process.

f) The Executive Committee had authorized the Committee on Media Law to submit a resolution to the House of Delegates at the January, 1987 meeting requesting reconsideration of the prior Association position regarding the audio-visual

coverage of court proceedings to delete the requirement that the consent of the parties be obtained. Mr. Heming noted that in authorizing reconsideration, the Executive Committee had declined to endorse the proposed resolution at this time.

g) Interested sections, committees and members of the House were encouraged to submit comments concerning the proposed amendments to the Code of Professional Responsibility drafted by the Special Committee to Review the Code of Professional Responsibility in advance of the January 1, 1987 deadline fixed by the House. He indicated that consideration of the committee's final recommendations would take place at the April, 1987 meeting of the House.

h) At the request of the Committee on Legal Education and Admission to the Bar, the Executive Committee had approved a resolution encouraging Association members and their respective firms to provide financial support to law schools. Mr. Heming advised that the committee was also attempting to resolve the lack of reciprocity by New Jersey for New York attorneys seeking admission in that state.

i) A Special Committee on Pension Simplification was being formed with Alvin D. Lurie as chair to study and make appropriate recommendations to simplify procedures under ERISA and other federal statutes applicable to pension administration.

j) The report of the ABA's Commission on Professionalism was being reviewed by interested Association committees and sections which would submit recommendations to the Executive Committee regarding possible areas of Association involvement.

k) He and Mrs. Freedman had met on September 23 with Chief Judge Wachtler and senior Office of Court Administration officials. He indicated that the areas of common concern which had been discussed had included the Individual Assignment System, the improvement of courthouse facilities and transcript delays. Mr. Heming noted that the Committee on Judicial Administration would be evaluating the Individual Assignment System, and to aid its analysis, would be seeking comments from the local bar associations as well as interested NYSBA sections and committees.

7. Report and proposed resolution concerning media advertising of tobacco products. Henry G. Miller summarized a proposal, presented initially at the June meeting, that the Association oppose any form of media advertising of tobacco products by initiating and supporting appropriate legislation to accomplish this purpose, and urging the American Bar Association to adopt a similar position. At the outset of discussion, Mrs. Freedman noted, as requested at the previous meeting, that Mr. Miller and the Special Committee on Media Law had submitted materials with respect to the first amendment aspects of the issue. Following consideration of the merits of the proposal, a

point of order was raised whether the resolution was outside the purposes of the Association. Mrs. Freedman ruled, and was sustained by vote of the House, that the resolution was consistent with the enabling act under which the Association had been founded and the organization's purposes as set forth in the Bylaws. The following resolution was then adopted by the House:

RESOLVED, that the New York State Bar Association oppose any form of media advertising of tobacco products by initiating and supporting legislation prohibiting such advertising, and it is further

RESOLVED, that the New York State Bar Association urge the American Bar Association to adopt a similar resolution.

8. Report of Chair. Mrs. Freedman noted that the instant fall General Meeting was the initial effort by the Association to enhance contact with its constituents in different parts of the State and encourage increased levels of interest and participation. She extended appreciation to the Erie County Bar Association and the Special Committee on Association Meetings for their cooperation in planning and conducting a successful meeting.

Mrs. Freedman noted that a number of issues of concern to the legal profession had been addressed by the Legislature during the 1986 session, including court merger, creation of a New York State tax tribunal, medical malpractice, liability insurance and exposure to toxic substances. She indicated that Mr. Barletta would present a report on behalf of the Committee on Legislative Policy concerning matters of interest which were likely to be addressed during the 1987 session.

9. Legislative report. On behalf of the Committee on Legislative Policy, C. Thomas Barletta, Director of the Department of Governmental Relations, summarized the activities of the Association in the legislative area, and reviewed the major affirmative proposals successfully supported by the Association in 1986. He indicated that during the 1987 session, the Legislature would likely consider a number of significant matters including health care decisions legislation, improvement of courthouse facilities, court merger, the creation of additional Court of Claims judgeships, and the audio-visual coverage of court proceedings.

10. Date and place of next meeting. Mrs. Freedman announced that the next meeting of the House of Delegates will be held on Friday, January 30, 1987 at the Marriott Marquis in New York City.