

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY, NEW YORK  
NOVEMBER 5, 2016**

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

**PRESENT:** Abbott; Alomar; Alsina; Baker; Barreiro; Bauman; Behe; Berman; Block; Bonina; Braunstein; Brown Spitzmueller; Brown, E.; Brown, T.; Burke, J.; Burns, S.; Calareso; Calcagni; Chambers; Chandrasekhar; Cheng; Christensen; Christian; Christopher; Cilenti; Clouthier; Coffey; Cohen, O.; Connery; Cooper; Davis; DeFelice; Denton; Disare; Doyle; Effman; England; Fay; Fennell; Ferguson; Finerty; First; Fisher; Fox; Gaal; Gaddis; Gallagher; Galligan; Gensini; Gerbini; Gerstman; Getnick; Goldberg; Goldenberg; Goldfarb; Gordon Oliver; Grays; Greenberg; Grossman; Gutekunst; Haig; Halpern; Heath; Hersh; Hetherington; Hillman; Himes; Hines; Hoffman; Hollyer; Hurteau; Hyer; James; Jochmans; Karson; Kean; Kelly; Kenneally; Kenney; Kiernan, P.; Kiesel; Koch; Krausz; LaRose; Lau-Kee; Lazarin; Leber; Lee; Levin; Levy; Lewis; Lindenauer; Madden; Makofsky; Mancuso; Mandell, Andrew; Marangos, D.; Maroney; Martin; McCann; McGinn; McKeegan; McNamara; Miller, C.; Miller, G.; Miller, H.; Miller, M.; Millon; Minkowitz; Miranda; Moretti; Moses; Moskowitz; Murphy; Napoletano; Nowotarski; O'Donnell, T.; Onderdonk; Ostertag; Owens; Poster-Zimmerman; Prager; Richman; Richter; Rivera; Rodriguez; Rosiny; Rosner; Russell; Ryba; Samuels; Scheinberg; Schofield; Schrauer; Schwenker; Sciocchetti; Shafer; Shamoon; Sharkey; Sheehan; Sigmond; Silkenat; Singer; Sonberg; Spirer; Spiro; Spitler; Standard; Starkman; Steinhardt; Strenger; Sulimani; Tarver; Tennant; Thaler-Parker; Tully; Ventura; Vitacco; Wallach; Walsh; Weathers; Weinberger; Weis; Welch; Westlake; Weston; Whiting; Whittingham; Wicks; Wildgrube; Williams; Younger.

1. Approval of minutes of June 18, 2016 meeting. The minutes were deemed accepted as previously distributed.
2. Report of Treasurer. Scott M. Karson, Treasurer, reported that through September 30, 2016, the Association's total revenue was \$20.7 million, an increase of approximately \$250,000 over the previous year, and total expenses were \$17 million, a decrease of approximately \$330,000 over 2015. Mr. Karson also provided a report on the status of the long-term reserve investments. The report was received with thanks.
3. Report and recommendations of Finance Committee re proposed 2016 income and expense budget. T. Andrew Brown, chair of the Finance Committee, reviewed the proposed budget for 2017, which projects income of \$24,348,950, expenses of \$24,313,075, and a projected surplus of \$35,875. A motion was adopted to approve the proposed 2017 budget.
4. Report of President. Ms. Gutekunst highlighted the information contained in her printed report, a copy of which is appended to these minutes. In addition, she reported that Executive Director David R. Watson would leave the Association at the end of the year to take the position of Executive Director of the Institute for Continuing Legal Education at

the University of Michigan, and she asked Mr. Watson to address the House. The House expressed its appreciation for Mr. Watson's service.

5. Report of Nominating Committee. David M. Schraver, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2017-2018 Association year: President Elect: Michael Miller, New York City; Secretary: Sherry Levin Wallach, Mount Kisco; Treasurer: Scott M. Karson, Melville; Vice Presidents: 1st District – Taa R. Grays, 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 – Norman P. Effman, Warsaw; 9th District – Michael L. Fox, Newburgh; 10th District – Peter H. Levy, Jericho; 11th District – Karina E. Alomar, Ridgewood; 12th District – Steven E. Millon, New York; 13th District – Jonathan B. Behrins, Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2017: Margaret J. Finerty, New York City; William T. Russell, Jr., New York City; and Richard M. Gutierrez, Forest Hills (Diversity Seat). Nominated as Section Member-at-Large was Andre R. Jaglom, New York City. Nominated as Young Lawyer Member-at-Large was Sarah E. Gold, Albany. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2017-2019 term: Claire P. Gutekunst, Yonkers; Seymour W. James, Jr., New York City; Glenn Lau-Kee, New York City; Michael Miller, New York City; and Stephen P. Younger, New York City. The report was received with thanks.
6. Report and recommendations of Committee on the New York State Constitution. Henry M. Greenberg, chair of the committee, presented the committee's report on issues a constitutional convention might address with respect to Article XIV of the State Constitution, the conservation article. After discussion, a motion was adopted to approve the report and recommendations.
7. Membership Challenge update. Thomas J. Maroney, chair of the Membership Committee, together with committee member Michelle Wildgrube, outlined the goals for the challenge (a 2% membership increase in 2017 and a 3% increase in 2018) and the committee's plans to achieve these goals. The report was received with thanks.
8. Report and recommendations of President's Committee on Access to Justice. William T. Russell, Jr., co-chair of the President's Committee on Access to Justice, together with committee member Michael Miller, reviewed the committee's report recommending Association support for the concept and utilization of limited scope representation for low and moderate income persons. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, the New York State Bar Association has long supported and encouraged access to justice for all, including for low and moderate income persons who are not able to pay for conventional legal services; and

WHEREAS, as the late New York State Chief Judge Judith S. Kaye noted in 1999: “Access to the legal system is an inherent right of citizenship, yet far too many New Yorkers are currently denied this right because they lack economic resources;” and

WHEREAS, over the past several years, the organized bar, academic institutions and courts have been experimenting with models of legal practice that permit attorneys to provide limited scope representation to clients who want or need to limit their expenses, and may be able to effectively handle the other aspects of their cases on their own; and

WHEREAS, although criminal defendants who cannot afford an attorney have a constitutional right to counsel, there is no such right in most civil matters; and

WHEREAS, it is estimated that 1.8 million New Yorkers, including mostly low income persons, appear unrepresented by counsel in family court, housing court, consumer debt matters, foreclosures and other civil matters in New York State Courts;

WHEREAS, a growing number of New Yorkers are falling into the category of the “working poor” or “modest means” and are living from pay check to pay check and cannot afford traditional legal assistance, and

WHEREAS, this lack of counsel can often mean an outcome that is less favorable for the litigants than it might be were there affordable counsel available and can result in greater strains on both our judicial system and social welfare programs; and

WHEREAS, in recent years, the New York State Court system has been confronted with significant budgetary challenges and an influx of self-represented individuals into the judicial system; and

WHEREAS, the President’s Committee on Access to Justice of the New York State Bar Association has submitted a report calling upon the Association to support the concept and encourage the utilization of limited scope representation for low and moderate income persons in civil matters,

NOW THEREFORE, IT IS

RESOLVED, that the New York State Bar Association adopts the report of the President’s Committee on Access to Justice and supports the concept and encourages the utilization of limited scope representation for low and moderate income persons in civil matters; and it is further

RESOLVED, that the officers of the association are authorized to take such actions as may be necessary to further explore, and where appropriate, implement and expand programs of limited scope representation for low and moderate income persons in civil matters.

9. Point/Counterpoint. Ms. Gerstman reported that she had asked members Kevin W. Goering and Lillian M. Moy to debate the topic of speech restrictions on college campuses. The presentation was received with thanks.
10. Report and recommendations of Committee on Continuing Legal Education. Committee chair Ellen G. Makofsky, together with committee member Mirna M. Santiago, outlined the committee's report recommending that the rules governing mandatory continuing legal education be amended to provide for one credit hour of diversity CLE credit as part of the 32 credit hours required for new attorneys and as part of the 24 credit hours required of experienced attorneys. After discussion, a motion was adopted to approve the following resolution to govern consideration and debate at the January 27, 2017 House meeting for favorable action by the House:

**RESOLVED**, that the House of Delegates hereby adopts the following procedures to govern consideration at the January 27, 2017 meeting of the House, and any subsequent meetings as may be necessary, of the report and recommendations of the Committee on Continuing Legal Education:

1. The report and recommendations of the Committee was circulated to members of the House, sections and committees, county and local bar associations, via the Reports Community on October 20, 2016.
2. **Comments on report and recommendations:** Any comments on or amendments to the Committee's report or particular recommendations contained therein must be submitted in writing to the Secretary of the Association at the Bar Center by January 13, 2017; otherwise they shall not be considered. All comments complying with this procedure shall be distributed to the members of the House in advance of the January 27, 2017 meeting.
3. **Consideration of the report and recommendations at the January 27, 2017 meeting and any subsequent meetings:** The report and recommendations will be scheduled for formal debate and vote at the January 27, 2017 meeting and considered in the following manner:
  - a. The Committee shall be given an opportunity to present its report and recommendations.
  - b. All those wishing to speak with regard to the report and recommendations may do so only once for no more than three minutes.
  - c. The Committee may respond to questions and comments as appropriate.
  - d. Procedural motions shall be considered out of order until debate on substantive issues is concluded.
  - e. A vote on the report and recommendations shall be taken at the conclusion of the debate.

11. Report of The New York Bar Foundation. John H. Gross, President of The New York Bar Foundation, presented a report on some of The Foundation's initiatives, including the establishment of a disaster relief fund for people impacted by flooding in Louisiana; a Cause Award received from New York Nonprofit Media; the Amazon Smile fundraiser; a law firm challenge; a veterans program; and an awards booklet for distribution at the 2017 Annual Meeting. The report was received with thanks.
12. Administrative items. Ms. Gerstman reported on the following items:
  - a. She announced that the House of Delegates Dinner will take place on Thursday, January 26, 2017 at the Metropolitan Club, 1 East 60<sup>th</sup> Street, New York City.
  - b. She announced that the Committee on Leadership Development would host a luncheon immediately following the meeting to discuss leadership opportunities.
13. Date and place of next meeting. Ms. Gerstman announced that the next meeting of the House of Delegates would take place on Friday, January 27, 2017 at the New York Hilton Midtown, New York City.
14. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully submitted,



Ellen G. Makofsky  
Secretary



**CLAIRE P. GUTEKUNST**

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November 5, 2016

**November 2016  
President's Report to the  
House of Delegates**

**1. PRESIDENT'S INITIATIVES**

**Domestic Violence Initiative**

In September, our Association and the Women's Bar Association of the State of New York announced a joint Initiative to enhance access to legal services by victims of domestic violence. The Domestic Violence Initiative will work with providers of legal services, county and local bar associations, and pro bono organizations to raise awareness of domestic violence; educate and train attorneys to provide services to domestic violence victims; develop pro bono programs that might be adopted in areas in New York that are currently underserved; and recommend possible legislation to strengthen protections for victims. The Initiative held its first meeting last week.

**Membership Challenge**

The President's Membership Challenge will run through the 2018 membership year. Our goal is a 2% increase for 2017 with an additional 3% the following year.

Membership Committee subcommittees are working in concert with our specialized membership staff teams to make this ambitious goal a reality. Each Section has been asked to submit a plan geared toward not only growing membership in their Section but developing new opportunities to better engage members in Section activities. Efforts are particularly focused on increasing young lawyer and diverse lawyer participation.

**NY.FreeLegalAnswers.org**

The Pro Bono Services Department rolled out NY.freelegalanswers.org at the end of August and has been happy to see more low-income New Yorkers from across the state start to receive the legal advice they need, at no cost, from volunteer attorneys. This new pro bono service is part of a national project conducted by the American Bar Association; NYSBA is the host organization for New York's participation in the project.

Free Legal Answers is an online platform for New York attorneys to provide limited scope legal advice to low-income New Yorkers. All attorneys and low-income individuals who meet the project's income eligibility standards may utilize this service in New York.

As of October 4, 2016, New York was one of 21 states actively participating in the national project. As of October 19, 2016, the program had received 23 questions and had 53 volunteer attorneys; these numbers are steadily growing. We launched our official public marketing campaign – to attorneys and the public – in October.

## **2. LEGISLATIVE ACTIVITIES**

### **STATE LEGISLATIVE ADVOCACY**

I am pleased to report that the Association’s Legislative Program had success in a number of areas during the 2016 Regular Legislative Session. Set forth below are summaries of the legislation passed by the Legislature that NYSBA has supported, and the status of the bills as of the time that this report was printed.

#### **Indigent Criminal Defense Services – NYSBA Legislative Priority**

The Association’s top legislative priority for 2016 involved improving the state’s indigent criminal defense system. In the closing hours of the Regular Legislative Session, the Legislature passed a bill that would enhance the quality of public defense by providing sufficient resources to providers of mandated representation and appropriate state oversight of the indigent defense system.

In 2006, the State Commission on the Future of Indigent Defense Services, created by then-Chief Judge Judith S. Kaye, examined New York State’s county-based indigent criminal defense system, and made the alarming finding that there is “a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it.”

In 2010, the state created the Office of Indigent Legal Services (“Office”). The New York State Bar Association viewed the creation of that Office as a significant step toward establishment of an independent indigent defense commission with broad powers to adopt standards, evaluate existing programs and service providers, and generally supervise the operation of New York’s public defense system.

In the fall of 2014, the state agreed to settle a class-action lawsuit (*Hurrell-Harring v. State*) that accused New York State of failing to provide adequate legal defense for the poor in five counties (Suffolk County on Long Island and four upstate counties: Ontario, Onondaga, Schuyler and Washington). The settlement committed the state to paying for improvements to the indigent defense systems in those counties.

Throughout the 2016 legislative session, the Association urged the Legislature and the Governor to take another important step by enacting legislation to provide appropriate state funding. The bill passed by both houses would provide for state funding of public-defense services in all of New York’s counties, phased-in over seven years. The Association has submitted to the Governor a Memorandum urging that he approve the legislation – S.8114.

In an opinion-editorial published in September in the Syracuse Post-Standard, I wrote that with passage of the bill, New York State has begun to take steps to assume responsibility for meeting the constitutional mandate. Because of this year’s action by the Legislature, the governor is in a position to take the next critical step forward in resolving the systemic difficulties that have arisen since 1965.

The bill has not yet been delivered to the Governor for his consideration.

## **NYSBA Affirmative Legislative Proposals**

### *Trusts and Estates Law Section*

As a result of the efforts of the Trusts and Estates Law Section, two of the Association's Affirmative Legislative Proposals drafted by the Section were enacted into law this year:

- Chapter 262 of the Laws of 2016 amended Civil Practice Law and Rules 4503(b), to extend the statute's exception to the general protection of privileged communications in probate contests to contests concerning revocable trusts.
- Chapter 198 of the Laws of 2016 amended Article 17-A of the Surrogates Court Procedure Act to update and clarify the statute, replacing the term "Mental Retardation" with the term "Intellectual Disability."

### *Judicial Wellness*

The Association's Judicial Wellness Committee developed a proposal that will enhance the essential work of the judicial wellness and assistance committees operated by bar associations throughout New York State.

Section 499 of the Judiciary Law currently provides that communications between lawyers and members of lawyer assistance committees are privileged, and that the members of such committees are immune from liability when acting in good faith in related matters. This provision, which was enacted in 1993 based on a proposal by the New York State Bar Association, has been critically important to the success of the Association's Lawyer Assistance Program and similar programs of other bar associations.

The Association has been concerned that the members of its Judicial Wellness Committee are not adequately covered by current provisions of the Judiciary Law applicable to lawyer assistance committees. This proposal provides that the protection now covering lawyers being assisted by lawyer assistance committees would apply to judges seeking or obtaining help from judicial wellness or assistance committees throughout the state. One important difference between section 499 and the proposed new Article 22-A is that the privilege does not apply when a judge in the program may commit a substantial violation of the rules governing judicial conduct. This provision was included to protect the public.

This legislation was enacted as Chapter 356 of the Laws of 2016.

### *Revisions to the Non-Profit Revitalization Act*

The Non-Profit Revitalization Act ("NPRA") was one of the Association's legislative priorities in 2013 and was enacted in that year. The Committee on Not-For-Profit Corporations Law of the Business Law Section was integrally involved with that advocacy effort in 2013. The Committee has been active this year and strongly supported current legislation that would enhance compliance by not-for-profit corporations with the NPRA and thereby further improve governance and accountability in the not-for-profit sector. With the experience of the years since enactment of the NPRA, it has become apparent that there is ambiguity in provisions of the law as to what constitutes compliance in certain situations. This has unintentionally hindered the goal of full and effective board oversight.

Legislation to revise and enhance provisions of the 2013 law has passed both houses of the Legislature, but has not yet been delivered to the Governor for his consideration.



## **FEDERAL LEGISLATIVE ACTIVITY**

In my June report to you regarding the Association's advocacy efforts at the federal level, I provided details on several issues, including, funding for the federal judiciary, criminal justice reform, the "Dickey Amendment" and collection of gun-violence information, the so-called Lawsuit Abuse Reduction Act that would impair the courts' ability to manage cases before them, and functioning of the Supreme Court that the vacancy resulting from the death of Justice Antonin Scalia. The Association was very active on these and other issues during the period before Congress adjourned for its summer recess.

The Steering Committee on Legislative Priorities discussed possible advocacy efforts when the Congress reconvened in September after the recess. However, enactment of a Continuing Resolution to continue funding the US government after September 30 and election-year issues dominated the debate in Congress. Therefore, the Steering Committee decided to assess opportunities for the Association's advocacy activity after the elections in November.

### **3. ACTIVITIES AND EVENTS**

#### **ABA Annual Meeting**

The ABA held its Annual Meeting in San Francisco this past August. The ABA's House of Delegates addressed a number of issues of importance to our Association. Among these was an amendment to the Model Rules of Professional Conduct to prohibit lawyers, while participating in their practice, from knowingly engaging in harassment or discrimination. I have asked our Committee on Standards of Attorney Conduct to review this amendment and make a recommendation with respect to amending the New York Rules of Professional Conduct in this regard. A second resolution adopted by the House, co-sponsored by our Association, urges that communications between those contacting a referral service seeking a lawyer and the service be confidential.

Also at the Annual Meeting, the ABA Judicial Section presented retired Chief Judge Jonathan Lippman with the John Marshall Award, which recognizes individuals responsible for extraordinary improvement to the administration of justice in the categories of judicial independence, justice system reform or public awareness about the justice system.

#### **Mid-Atlantic Bar Conference**

Our Association was pleased to host this annual conference, which is attended by bar leaders from Delaware, the District of Columbia, Maryland, New Jersey, New York and Pennsylvania, at The Otesaga in Cooperstown. This conference provides an excellent opportunity to gather with bar leaders from neighboring states to exchange ideas and learn about other bar associations' work on issues of common interest.

#### **Partnership Conference**

Every other year, our Committee on Legal Aid hosts the Legal Assistance Partnership Conference in Albany. This conference brings together lawyers working in the public interest sector and pro bono service providers for continuing legal education programs and networking opportunities. This year's conference, titled "Justice Rising," was attended by over 550 lawyers and paralegals from across the state.

#### **Civil Legal Services Hearing**

In September, Chief Judge Janet DiFiore hosted a statewide public hearing at the Court of Appeals in Albany to evaluate the continuing unmet needs for civil legal services. I was honored to serve on the

hearing panel together with Chief Judge DiFiore, the four Presiding Justices of the Appellate Divisions, and Chief Administrative Judge Lawrence K. Marks.

### **Joint NYSBA/TNYBF Fundraising Effort**

In August, the Association and The Foundation established a fund to provide legal services for residents of flood-ravaged Louisiana, to assist them with issues such as insurance, landlord-tenant disputes, and qualifying for government assistance. To date the fund has raised over \$7,000 and the Foundation has sent these funds to the Louisiana Bar Foundation for flood relief efforts.

### **Section Meetings**

Many of our Sections have multi-day meetings in the summer and the fall, bringing together colleagues for educational programs and social gatherings. I was pleased to be able to attend the Family Law Section summer meeting in Manchester, Vermont; the Real Property Law Section summer meeting in Boston, Massachusetts; the Labor and Employment Law Section fall meeting in Washington, D.C.; the joint fall meeting of the Torts, Insurance and Compensation Law Section and the Trial Lawyers Section in New Orleans, Louisiana; and the International Section seasonal meeting in Paris, France. With respect to the latter, I was privileged to sign a Memorandum of Understanding between the Association and the Union Internationale des Avocats and international non-governmental organization.

### **Bar Association Events**

During the past months I have attended a number of bar association events, including the Schoharie County Bar Association Annual Meeting and Luncheon; the Ulster County Bar Association Dinner; the Women's Bar Association of the State of New York Western New York Chapter Installation Dinner; the Dominican Bar Association 13<sup>th</sup> Annual Scholarship Gala; the South Asian Bar Association of New York 10<sup>th</sup> Annual Leadership Awards Gala; the New York Magistrates Association Dinner; the Bronx County Bar Association 114<sup>th</sup> Officer Installation Dinner; the Puerto Rican Bar Association Scholarship Fund Gala; and the Onondaga County Bar Association Annual Dinner. In addition, together with Executive Director David Watson, I met with the leaders of The New York Bar Foundation, the New York City Bar Association, and the New York County Lawyers Association to discuss issues of mutual concern.

### **Annual Meeting**

The Association's Annual Meeting will take place January 23-28, 2017 at the New York Hilton Midtown in New York City. The Executive Committee will meet on Thursday, January 26 and the House of Delegates will meet on Friday, January 27. I look forward to seeing you there.

*Claire P. Gutekunst*