

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT WIND WATCH, HAUPPAUGE, NEW YORK
APRIL 13, 1991

PRESENT: Adler; Agress; Albert; Ange; Baker; Barnett; Barnosky; Barthold; Bergen; Berman; Besso; Besunder; Bohner; Bracken; Brand; Brevorka; Cedarbaum; Clarke; Cometa; Connolly; Cooke; Corcoran; Daly; Darche; Davidson; DelleCese; Dollard; Doyle; Dyer; Farrell; Field; Frank; Freedman; Freidel; Galloway; Garrison; Geltzer; Gershon; Gibbons; Ginsberg; Goldblum; Goldstein; Gordon; Gross; Haig; H.G. Hall; Harper; Hassett; Hawkins; Headley; Heming; Hesterberg; Hoffmann; Horan; Hyman; Jaffe; Kahn; Kennedy; J. Kenney; T. Kenney; Kessler; Klein; Koeltl; Lamb; Leinhardt; Liebschutz; Long; Luria; MacCrate; Madigan; Mahoney; Markuson; McDowell; McGoldrick; McGuirk; Meng; Mercorella; Miller; Minardo; Mitchell; A. Murray; C. Murray; Netter; Oberman; Offermann; Opotowsky; Ostertag; Palermo; Pearl; Peckham; Penzel; Perles; Perrin; Pfeifer; Pruzansky; Pulley; Raysman; Reich; B. Reilly; Reiniger; Reizes; Rice; Richardson; Rifkin; Riley; Ritholz; B. Robinson; E. Robinson; Roper; Rosiny; Rubin; Santemma; Schapiro; Schlenker; Schumacher; Smith; Spellman; Stack; Sussman; Troeger; VanBenschoten; Vigdor; Walker; Wanderman; Witmer; Yanas; Zalayet.

1. Approval of minutes of January 25, 1991 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Gershon summarized the Treasurer's report covering the period January 1 to March 31, 1991. He reviewed the major items of income and expense as set forth on the balance sheets, and noted that the Association's financial posture compared favorably with the figures for the first quarter of 1990, and that the Association remained in sound financial condition at the close of the first quarter of the fiscal year. He advised that, as required by the Association Bylaws, he would be reporting on the audited statements for the previous fiscal year at the June 1991 meeting of the House of Delegates. The report was received with thanks.

3. Election of Nominating Committee and NYSBA Delegates to ABA House of Delegates. Maryann Saccomando Freedman, Chair of the Nominating Committee, reported that the committee had nominated Henry L. King, John J. Yanas, and John A.R. Walsh as members at large of the Nominating Committee, and Mr. King as its Chair for the 1991-1992 Association year. A motion was adopted electing said Chair and members. Ms. Freedman advised that pursuant to the amendment to the Association Bylaws adopted at the January 1991 Annual Meeting, the committee had nominated Rober J. Bohner as an alternate at-large member of the Nominating Committee. A motion was approved electing Mr. Bohner to that position.

The following members from each Judicial District, as selected by the vice president and elected delegates from the respective districts, were nominated as

members and alternates of the Nominating Committee for the 1991-1992 Association year.

<u>DISTRICT</u>	<u>MEMBERS</u>	<u>ALTERNATES</u>
FIRST	Eugene P. Souther Cora Walker	Robert L. Geltzer
SECOND	Sheridan Albert John DeMaio	Roger Adler
THIRD	Fred B. Wander David S. Williams	Thomas V. Kenney, Jr.
FOURTH	Dudley M. Ferguson Paul F. Brown	Neil W. Moynihan
FIFTH	Hon. David N. Hurd George S. Deptula	Charlene V. McGraw
SIXTH	Albert C. Neimeth Richard B. Long	Leslie N. Reizes
SEVENTH	S. Gerald Davidson Justin L. Vigdor	Beth Ela Wilkens
EIGHTH	Carl L. Bucki Francis J. Offermann, Jr.	Maryann Saccomando Freedman
NINTH	Joseph F. Longo Arthur L. Pulley	Arthur L. Gellert
TENTH	Robert W. Corcoran Thomas J. Spellman, Jr.	Harvey Besunder
ELEVENTH	Guy Vitacco Wallace Leinhardt	Gary Darche
TWELFTH	Mark. B. Rubin Richard Weinberger	Alexander A. DelleCese

A motion was adopted electing said members and alternates.

Ms. Freedman reported that the Nominating Committee had nominated Angelo T. Cometa, Maryann Saccamando Freedman, Charles E. Heming, Henry L. King and Susan S. Robfogel as NYSBA delegates to the ABA House of Delegates for a two-year term commencing in August 1991. A motion was approved electing said delegates.

4. Report and recommendation of Finance Committee concerning reduction of Bar Center expansion debt. Thomas A. Melfe, Chair of the Finance Committee, reported on the financial status of the Bar Center expansion project and indicated that with fund raising and construction completed, the outstanding debt owed by The New York Bar Foundation for the project was \$2.6 million. He stated that this sum was presently owed to Norstar Bank under a two-year note which would be converted to a long-term mortgage in June 1991. Mr. Melfe reported, given the relationship between the Association and Foundation, the Finance Committee had recommended that to assist The Foundation, the Association transfer \$1 million from its reserves prior to the execution of the mortgage to reduce the amount of long-term indebtedness, as well as the accompanying interest. He advised the committee had recommended, to the extent fiscally prudent, that The Foundation should be assisted in paying the mortgage balance on an accelerated basis. He noted in this regard that should it be deemed advisable to impose an assessment on the Association membership, any such proposal would be submitted to the House of Delegates for authorization. After discussion, the following resolution was adopted on motion of the House:

WHEREAS, the New York State Bar Association ("Association") and The New York Bar Foundation ("Foundation") each by separate resolution in 1986 and again in 1988 endorsed the Bar Center expansion project; and

WHEREAS, as part of said endorsement, both organizations contemplated and approved the incurrence of such loan obligations by The Foundation as were necessary to complete the Bar Center expansion; and

WHEREAS, the Bar Center expansion project was undertaken with the understanding that The Foundation lacked the resources to pay the full cost of the project and would have to rely on the Association for assistance in that regard, and

WHEREAS, the Bar Center expansion has now been completed with an outstanding debt of approximately \$2.6 million remaining, it is

RESOLVED, that the Association hereby reaffirms its commitment to support The Foundation in satisfying all outstanding financial commitments to the project and states its intent: a) to transfer before June 30, 1991 the sum of \$1 million as a contribution to The Foundation; and b) thereafter to assist The Foundation by such means as shall be approved by the House of Delegates to pay the remaining balance of the Bar Center expansion debt; and it is further

RESOLVED, that the officers of the Association are hereby authorized to undertake such steps and execute any agreements or other documents as may be necessary to effect the foregoing.

5. Report and recommendation by the Special Committee on Seniors regarding formation of a Section on Elder Law. Mortimer J. Goodstein, Chair of the Special Committee on Seniors, together with committee members Muriel S. Kessler and

Vincent J. Russo, summarized a proposal to form a Section on Elder Law within the Association. They described the committee's recent activities, including seminars and publications, and outlined the broader range of programming which section status would provide to satisfy the increased interest in the field of elder law. Eugene E. Peckham, the delegate from the Trusts and Estates Law Section, outlined that section's concerns regarding the potential for overlap between the proposed section and existing sections of the Association. After discussion, the following resolution was adopted on motion of the House:

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

RESOLVED, that the chair of the Special Committee on Seniors shall serve as chair of the steering committee appointed by the President of this Association, to take all steps necessary to implement the establishment of the Section on Elder Law; 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 the proposed bylaws of the Section on Elder Law are hereby approved.

6. Report and recommendation by the Special Committee on Patents and Trademarks and the Special Committee on Copyright Law regarding Formation of an Intellectual Property Law Section. Rory J. Radding, past Chair of the Special Committee on Patents and Trademarks, summarized the proposal submitted jointly by that committee and the Special Committee on Copyright Law to form an Intellectual Property Law Section. He reviewed the history of the two special committees, other states' bar association activities in the intellectual property area, and outlined the proposed activities and structure of the new section. After discussion, the following resolution was adopted on motion of the House:

RESOLVED, that there is hereby established an Intellectual Property Law Section within the New York State Bar Association; and it is further

RESOLVED, that the chair of the Special Committee on Patents and Trademarks shall serve as chair of the steering committee appointed by the President of this Association, to take all steps necessary to implement the establishment of the Intellectual Property Law Section; 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 the proposed bylaws of the Intellectual Property Law Section are hereby approved.

7. Tribute to Robert MacCrate as outgoing President of The New York Bar Foundation. Justin L. Vigdor, Vice-President of The New York Bar Foundation, presented a tribute to Robert MacCrate, who will conclude his service as Foundation President on May 31, 1991. On behalf of the House of Delegates, which comprises the membership of The Foundation, Mr. Vigdor expressed sincere appreciation to Mr. MacCrate for his energetic and dedicated leadership of The Foundation since 1976. He congratulated Mr. MacCrate for The Foundation's growth and accomplishments during his tenure and for the development of programs and initiatives in keeping with the highest traditions of service to the public and the profession.

8. Consideration of Association position with respect to audio-visual coverage of trial court proceedings. George Freeman, Chair of the Task Force on Cameras in the Courtroom of the Special Committee on Media Law, summarized the committee's legislative proposal to make the present experimental program for audio-visual coverage of trial court proceedings permanent. He explained the manner in which the proposed legislation differed from the current experiment, including the creation of a rebuttable presumption in favor of media access as well as the elimination of restrictions against covering arraignments and suppression hearings in criminal cases. Michael S. Oberman, the delegate from the Commercial and Federal Litigation Section, outlined that section's position recommending that audio and visual coverage be made permanent under the terms and conditions currently set forth in the applicable provisions of the Judiciary Law, consistent with the proposal recommended in the recent report on the subject by the Chief Administrator of the Courts. Joseph Jaffe, the delegate from the Criminal Justice Section, outlined the section's opposition to making audio-visual coverage permanent based on the prejudicial effect such coverage could have on criminal proceedings. He indicated that at best the experimental program should be extended for a fixed period to allow for further monitoring and study to develop more definitive data. Following discussion of the relevant issues, a motion was adopted proposing continuation of the present experimental program for audio-visual coverage of trial court proceedings for an additional two years.

9. Report of President. Mr. Cometa reported the following matters:

a) On March 12, 1991 he and Mr. Ostertag had met with representatives of the Office of Court Administration to discuss matters of mutual interest. He stated that the topics addressed had included the following items:

i) Cameras in the courtroom. The Chief Judge and the Chief Administrator provided a preliminary review of the data contained in the report regarding audio-visual coverage of trial court proceedings, and noted their conclusion that a high percentage of respondents to the Office of Court Administration survey either favored or were neutral towards the presence of cameras in the trial courts.

ii) The 1991-1992 Judiciary Budget. The Chief Judge expressed his appreciation for the support which the NYSBA and other bar associations had given the Judiciary budget despite the state's fiscal crisis. Mr. Cometa advised that the resolution adopted by the House in January supporting

judicial salary increases had been communicated to the Governor and the Legislature, and that Mr. Bracken had testified in favor of the budget at recent legislative hearings.

iii) IOLA Fund. The Chief Judge was apprised of the Association's opposition to the potential use of part of the IOLA Fund to support other state programs. Mr. Cometa reported that the resolution approved by the House in January with respect to the IOLA Fund, together with two supplemental resolutions adopted subsequently by the Executive Committee, were transmitted to the appropriate governmental leaders.

iv) Caseloads and judicial resources. The Chief Judge outlined the general status of civil and criminal caseloads statewide and expressed his concern regarding the impact of the rise in felony cases in New York City. Judge Wachtler noted the need for additional judicial resources to handle this increase, but indicated that approval for any additional judges is unlikely this year given the state's fiscal condition.

v) Mandatory Continuing Legal Education. The Chief Judge advised that the Administrative Board had endorsed the concept of a mandatory continuing legal educational program based on the proposal submitted by the Association and had requested that the Legislature pass the requisite enabling legislation to allow implementation of the funding and fee aspects of the plan. Mr. Cometa indicated that the House would be kept apprised of developments in this area.

vi) Courthouse Facilities. The Chief Judge reported that New York City had requested a five-year delay in the implementation of its facilities plan because of the recession, and that other localities were considering similar requests. Mr. Cometa advised that both the Office of Court Administration and the Association will continue to monitor this situation.

b) The position taken by the House in January opposing the proposed rule to govern the sealing of trial court records had been communicated to the Office of Court Administration. Although the rule was subsequently promulgated, contrary to the recommendation of the Association, interested sections and committees will track the experience under the rule in the event that further recommendations may be warranted by the Association.

c) Because of the state's fiscal crisis, the governmental authorities were once again considering the imposition of a sales tax on legal services. Mr. Cometa advised that the Association had expressed strong opposition to the concept and would continue to do so should the Legislature decide to pursue such a regressive form of taxation.

d) The Special Committee to Review Association Publications, which is chaired by Mr. Bracken, was well along in its examination of the three major association publications, the State Bar Journal, State Bar News, and the New York State Law

Digest, and would be formulating appropriate recommendations to ensure that these publications maintain their high quality and relevance to the members.

e) In response to the ABA's adoption last year of a revised Code of Judicial Conduct, the Committee on Professional Ethics had undertaken a detailed review of the New York version of the Code to determine the extent to which amendments might be warranted in light of the ABA's action. Mr. Cometa indicated this review would be conducted in consultation with other interested sections and committees and, when completed, suitable recommendations would be presented to the Executive Committee and House of Delegates for consideration.

f) On April 23rd, he and Mr. Ostertag would be participating in the annual Section Leaders Conference at which matters involving administration, financing and programming are discussed with the current and incoming leaders of the association's sections.

10. Report of Chair. Mr. Ostertag reported the following matters:

a) Since there had been a number of amendments to the Association Bylaws in recent years, it was necessary to adopt conforming revisions to the Rules of the House of Delegates. In addition, he suggested it would be helpful to incorporate in the rules a provision to the effect that when non-members of the House are given the privilege of addressing that body, they should disclose any representative capacity they may have in connection with the matter under discussion. Mr. Ostertag then reviewed the proposed amendments to accomplish these purposes. Following discussion, a motion was adopted approving the revision as proposed. A copy of the Rules of the House of Delegates as amended is attached to these minutes.

b) Bar associations entitled to delegates had filed their designations of delegates for the 1991-1992 Association year. On motion said designations were approved as filed, and a further motion was adopted approving the filed roster of members of the House as the official list for 1991-1992.

c) The Special Committee on Media Law had requested authorization to shift from special to standing committee status. A motion was adopted approving the change in the status of the committee.

d) With approval having been given to form the Section on Elder Law and the Intellectual Property Law Section, the Special Committee on Seniors, the Special Committee on Patents and Trademarks and the Special Committee on Copyright Law could be discharged with such discharge to take effect when these committees are absorbed at the appropriate time into their respective new sections. A motion was adopted approving the discharge of the three committees at the time they are absorbed into the two new sections.

e) The Ad Hoc Committee on Bar Center Facilities and Space Requirements had completed its assigned responsibilities. A motion was approved discharging the committee with the thanks of the House.

f) Pursuant to the Bylaws, the terms of several special committees were due to lapse. On motion adopted by the House, the terms of the following special committees were extended for an additional year:

- AIDS and the Law
- Alternatives to Court Resolution of Disputes
- Biotechnology and the Law
- Computer Access and Retrieval of Government Records
- Group and Prepaid Legal Services Plans
- Improve Courthouse Facilities
- Medical Malpractice
- Military and Veterans Affairs
- Pension Simplification
- Procedures for Judicial Discipline
- Volunteer Lawyers

g) Because of difficulties in making travel arrangements, the Trial Lawyers Section National Trial Advocacy Competition Awards would not be presented at this meeting, as has been the past custom. Mr. Ostertag announced that the Trial Lawyers Cup and Scholarship would be presented that evening at the Albany Law School Annual Moot Court Awards Dinner, to Albany Law School as the law school from New York State placing highest in the National Trial Advocacy Competition, and that Syracuse University College of Law would be recognized for its second place finish.

h) This would be the last meeting for a number of members who were completing their term of service in the House. Mr. Ostertag expressed appreciation to the retiring members of the House for their attendance, participation and support during their tenure. He also noted that suitable recognition would be given to Mr. Cometa at the next meeting for his leadership during the past year.

11. New business. Myrna Felder, Chair of the Committee on Courts of Appellate Jurisdiction, reported that based on its evaluation of the caseload in the Appellate Division of State Supreme Court and the proposals contained in the report of the Appellate Division Task Force, the committee had recommended: a) that five additional justices should immediately be added to the Second Department so that the court can better dispose of its burgeoning workload; b) that the Second Department return to sitting in panels of five justices as soon as practicable and that any suggestion that the Appellate Divisions sit with fewer than four justices should be rejected; and c) that no further limit be placed on the right to appeal interlocutory orders to the Appellate Division. After discussion, the following resolution was adopted on motion of the House:

RESOLVED, that the New York State Bar Association urges that five additional justices should immediately be added to the Second Department so that the Court can better dispose of its burgeoning work load.

Action with respect to the latter two elements of the committee's recommendations was deferred until the June meeting to allow for the circulation and review of appropriate explanatory materials.

2. Date and place of next meeting. Mr. Ostertag announced that the next meeting of the House of Delegates was scheduled for Saturday, June 22, 1991 at The Otesaga, Cooperstown, New York.

**NEW YORK STATE BAR ASSOCIATION
RULES OF THE HOUSE OF DELEGATES
ADOPTED JANUARY 24, 1973; AMENDED APRIL 13, 1991**

1. Presiding Officer

- (a) The Chairman shall preside at all meetings of the House. In the absence of the Chairman, one of the attending delegates shall be chosen to preside by a majority vote of those delegates present at the meeting. the President shall preside, and in the absence of the President and President-Elect, the Vice-President with seniority of membership shall preside. In the absence of the President, the President-Elect and all Vice-Presidents, the senior member of the House of Delegates shall preside.
- (b) The presiding officer shall:
 - (1) Insure that meetings are conducted in an orderly manner.
 - (2) Decide questions of order and procedure.

2. Meetings of the House of Delegates

- (a) Unless otherwise ordered by the House, regular meetings shall be held at the time and place designated by the Chairman, but in no event less than four times in each year including one meeting to be held in conjunction with the Annual Meeting of the Association.
- (b) A special meeting of the House of Delegates may be called at any time by:
 - (1) The Chairman of the House
 - (2) The President
 - (3) The Executive Committee
- (c) A special meeting of the House of Delegates shall be called by the Chairman or the President upon the request in writing of at least 25% of the delegates; provided, however, that the Chairman or President shall not be required to call a special meeting to consider any matter which was considered and acted upon at the last previous meeting of the House.
- (d) Except in case of emergency, notification of any regular or special meeting of the House of Delegates shall be sent by the Secretary of the Association not less than 15 days prior to the time fixed for such meeting. Notice of any meeting shall be deemed to be sufficiently given when written notice of the time and place thereof is mailed by the Secretary to each member of the House of Delegates on or before the 15th day prior to such meeting. In case the Chairman of the House, the President, or the Executive Committee determines there is an emergency, a special meeting of the House may be called upon six days prior notice given by mail, or four days prior notice given by telegraph or telephone to each member of the House of Delegates.

3. Order of Business

- (a) The Chairman, or in his absence, the presiding officer shall determine the order and priority of business at a meeting. Except in case of emergency, a written agenda shall be mailed by the Secretary of the Association to each delegate not less than 15 days prior to the time fixed for the meeting, but additions or deletions may be made in the agenda by the Chairman of the House, the President, or the Executive Committee.
- (b) Unless permitted by the presiding officer, no resolution may be proposed by a delegate for action at a meeting unless such resolution has been submitted, in writing to the Chairman and the delegates, at least 15 days prior to such meeting.
- (c) With the exceptions noted below, no delegate shall speak more than ten minutes at one time or more than once at the same session upon the same question unless such member obtains the consent of the presiding officer or the majority of the delegates present at the meeting. The person presenting the matter under discussion shall have the right to close the debate on that matter. The Chairman may impose further limitations upon the length of time for making oral presentations if in his judgment the conduct of the business of the House so requires, but such limitations may be removed by majority vote of the delegates present at the meeting.
- (d) Without limitation on the other powers of the House, the House may by vote refer any matter coming before it to the Executive Committee or another committee, section or action unit of the Association for further consideration.
- (e) Voting shall be by voice vote unless the presiding officer directs a division or a written ballot.
- (f) Roberts Rules of Order Revised shall govern meetings of the House, except as otherwise provided in these Rules or the Bylaws.

4. Membership

- (a) Delegates to the House of Delegates shall be determined in accordance with Article V, Sections 3 and 4 of the Bylaws.
- (b) Section delegates, as set forth in Article V, Section 3, paragraph D of the Bylaws, shall be chosen according to procedures established by the sections and may, but need not be officers of their respective sections.
- (c) Delegates from those judicial districts in which there are two or more county bar associations in counties having less than 100 members each of the New York State Bar Association, as set forth in Article V, Section 3, paragraph E, subparagraph 5 of the Bylaws, shall be chosen by the governing bodies of such county bar associations in a manner mutually agreed upon by such bar associations. In the absence of such mutual agreement, the House of Delegates shall determine the manner in which the delegates shall be chosen.

5. Persons in attendance at meetings of the House of Delegates

Meetings of the House shall be open to attendance by members of the Association unless the Executive Committee or the delegates vote to exclude non-delegates from a specified meeting. The presiding officer of the meeting in his or her discretion may permit attendance at meetings of the House of Delegates by members of the press or members of the public. No non-delegate shall be heard by the House unless requested to speak by the presiding officer of the meeting or upon the vote of two-thirds of the delegates present at the meeting, provided that such non-delegate shall first disclose the representative nature of his or her appearance, including the name of any client or principal whose interests the non-delegate may represent.

6. Amendments

The Rules of the House of Delegates may be amended at any meeting of the House by a vote of two-thirds of those present, provided that 15 days previous notice in writing of the proposed amendment shall have been given to the delegates.