

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NY
APRIL 13, 1996

PRESENT: Members: Abrams; Adelman; Agress; Alcott; Asarch; Ayers; Baer; Baldwin; M. Bass; Baum; Berlin; Birmingham; Branca; Brenner; Burgman; Burns; Buzard; Cioffi; Coffey; Cometa; Cooke; Corcoran; Daly; Delle Cese; Denton; Dorsey; Dwyer; England; Epstein; Farrell; Felder; Field; Finerty; R.S. Fink; FitzGerald; Franchina; Friedman; Gardella; Getnick; Gingold; Gouldin; Grayson; Hall; Harris; Hartman; Haskel; Hassett; Headley; Heming; Herold; Hesterberg; Hoffman; H. Jones; M. Jones; Juliano; Kelly; Kendall; Kennedy; Kenney; M. Kessler; S. Kessler; Kilsch; Kougasian; Landy; Lascuertes; Lawrence; Lefkowitz; Leinhardt; Levin; Lieberman; Lilly; Longo; Madigan; Maldonado; Malito; Mandell; Maney; Manley; Markuson; Marten; McGlenn; Miklitsch; M. Miller; Moore; Murray; Naviasky; Netter; Nussbaum; O'Leary; Offermann; Okin; Oliver; Omansky; Osber; Ostertag; Palmer; Peckham; Periconi; Pfalzgraf; Pfeifer; Picotte; Pool; Porter; Pruzansky; Quinlan; Reizes; Remo; Richardson; E. Robinson; Roper; Rosenbloom; Ross; Ruslander; Santola; Sharkey; Sienko; Souther; Spellman; Standard; Stave; Stokes; Sunshine; Thompson; Tishler; Tomaselli; Torres; Tsimbinos; Waldauer; Walker; J. Walsh; Weaver; Williams; Windstein; Witmer; Wollman; Yanas; Zalayet.

1. Approval of minutes of January 26, 1996 meeting. With respect to item number five, dealing with the report of the Special Committee to Review the Code of Professional Responsibility, Mr. Denton requested that his dissent be noted. With this correction, the minutes were approved.

2. Report of Treasurer. In the absence of Mr. Rice, former Association President and current Finance Committee member G. Robert Witmer, Jr. presented the Treasurer's report covering the period January 1 - February 29, 1996. He reviewed the major income and expense items contained in the budget and stated that they were within the Finance Committee's estimates for the initial two months of the fiscal year. He reported that revenues were approximately \$68,000 higher than for the comparable period in 1995, and expenses, in the aggregate, were \$199,000 less, although this figure did not yet reflect payment of all Annual Meeting expenses. He also reviewed the balance sheet, indicating that it totaled some \$475,000 more than for the same period in 1995. Mr. Witmer stated that the Association remained in sound financial condition and that, as required in the Bylaws, the audited financial report for the 1995 fiscal year would be presented at the June meeting of the House. The report was received with thanks.

3. Election of Nominating Committee and NYSBA Delegates to ABA House of Delegates. In the absence of Nominating Committee Chair John P. Bracken, Ms. Richardson presented the report of the committee. She stated that the Nominating Committee had nominated Archibald R. Murray, John P. Bracken and

G. Robert Witmer, Jr. as members-at-large of the Nominating Committee and Mr. Murray as its Chair for the 1996-97 Association year. A motion was adopted electing said Chair and members. Ms Richardson then reported that the Nominating Committee had selected Robert J. Pearl to serve as an alternate at-large member. A motion was adopted electing Mr. Pearl to that position. Ms. Richardson next reported that the vice-president and elected delegates from each district had nominated the following individuals to serve as members and alternates of the Nominating Committee from their respective districts for the 1996-97 Association year:

FIRST DISTRICT

NICOLE A. GORDON
EUGENE P. SOUTHER
MARTTIE L. THOMPSON, ALTERNATE

SECOND DISTRICT

ROSS M. BRANCA
MARK A. LONGO
JEFFREY S. SUNSHINE, ALTERNATE

THIRD DISTRICT

THOMAS P. CONNOLLY
SUSAN C. PICOTTE
NEIL D. BRESLIN, ALTERNATE

FOURTH DISTRICT

MATTHEW J. JONES
WILLIAM T. MECONI
MARK M. RIDER, ALTERNATE

FIFTH DISTRICT

ROSCOE A. EISENHAUER, JR.
HARLAN B. GINGOLD
MICHAEL E. GETNICK, ALTERNATE

SIXTH DISTRICT

CHRISTOPHER DENTON
JAMES F. LEE
RICHARD B. LONG, ALTERNATE

SEVENTH DISTRICT

MAUREEN PILATO LAMB
C. BRUCE LAWRENCE
S. GERALD DAVIDSON, ALTERNATE

EIGHTH DISTRICT

JOSEPH D. BIRMINGHAM, JR.
RAYMOND L. FINK
DANIEL A. RYBAK, ALTERNATE

NINTH DISTRICT

HENRY S. BERMAN
H. GLEN HALL
HON. SAM D. WALKER, ALTERNATE

TENTH DISTRICT

ROBERT W. CORCORAN
JOHN H. GROSS
HAROLD A. MAHONY, ALTERNATE

ELEVENTH DISTRICT

JULES J. HASKELL
HOWARD D. STAVE
ARTHUR N. TERRANOVA, ALTERNATE

TWELFTH DISTRICT

HON. JOSEPH DiFEDE
STEVEN E. MILLON
ROY J. SCHWARTZ, ALTERNATE

A motion was adopted electing the foregoing district representatives and alternates.

Ms. Richardson then reported that the Nominating Committee had selected the following individuals to serve a two-year term commencing in August 1996 as delegates to the House of Delegates of the American Bar Association: John P. Bracken, Archibald R. Murray, Robert L. Ostertag, Maxwell S. Pfeifer, and Joshua M. Pruzansky. A motion was adopted electing said individuals. Ms. Richardson then reported that the Nominating Committee had selected Brian E. Logan to serve as

young lawyer delegate to the ABA House of Delegates for a similar two-year term. A motion was adopted electing Mr. Logan.

4. Presentation of Trial Lawyers Section National Trial Advocacy Awards. In cooperation with Anthony J. DeMarco, Jr., Chair of the Trial Lawyers Section Trial Advocacy and Scholarship Competition Committee, Mr. Pfeifer and Ms. Richardson presented the Trial Lawyers Cup and Scholarship to State University of New York at Buffalo School of Law as the law school from New York State placing highest in the National Trial Advocacy Competition. Brooklyn Law School was recognized for its second place finish among New York schools in the competition.

5. Report and recommendations of Committee on Professional Ethics re Code of Judicial Conduct. Ralph L. Halpern, a member of the Committee on Professional Ethics, summarized the committee's report with respect to the Code of Judicial Conduct. He noted that in 1993, the House had approved amendments to the Code contingent upon their adoption by the Chief Administrative Judge. He indicated that effective January 1, 1996, the Chief Administrative Judge had issued Revised Rules of the Chief Administrator of the Courts which differed in some respects from the Code as given contingent approval by the House in 1993. Mr. Halpern indicated the Committee on Professional Ethics had reviewed the new Rules and had recommended revisions to the Code of Judicial Conduct to conform it to the Rules to maintain consistency between the two documents. After discussion, the following resolution was adopted by unanimous vote on motion of the House:

WHEREAS, the New York State Bar Association (NYSBA) has from time to time adopted a Code of Judicial Conduct (CJC); and

WHEREAS, the House of Delegates of the NYSBA on June 26, 1993 approved amendments to the CJC contingent upon adoption by the Chief Administrative Judge of amendments to the Rules of the Chief Administrator of the Courts consistent with the amendments approved by the House of Delegates; and

WHEREAS, the Chief Administrative Judge has adopted, effective January 1, 1996 revised Rules of the Chief Administrator of the Courts which differ in certain respects from the rules contained in the Canons of the CJC as approved by the NYSBA House of Delegates on June 26, 1993; it is

RESOLVED, that the House of Delegates of the NYSBA hereby amends the rules contained in the Canons of the CJC as approved conditionally on June 26, 1993 to conform same to the Rules of the Chief Administrator of the Courts as adopted by the Chief Administrative Judge effective January 1, 1996, and hereby adopts the CJC as so amended; and it is further

RESOLVED, that the Committee on Professional Ethics hereby is delegated the authority and hereby is directed to make such conforming amendments to the comments to the CJC as shall be required to

harmonize such comments with the CJC as adopted by the preceding resolution.

6. Report by Commission on Providing Access to Legal Services for Middle Income Consumers. Paul Michael Hassett, Chair of the Commission on Providing Access to Legal Services for Middle Income Consumers, summarized the commission's report and recommendations. He explained the difficulty encountered in defining with precision what constitutes a middle income consumer due to the variances in costs for basic goods and services as well as income levels among the regions of the state. He noted that to help assess the need for legal services by the middle income consumer, the commission had engaged the services of an opinion polling organization. He observed that while the survey results could not substantiate the existence of a significant gap between the need for legal services by middle income New Yorkers and their fulfillment, it did show that people did not turn to lawyers in all situations where legal assistance was needed, and that opportunities existed to furnish such services, thus providing an opportunity for increasing the client base of under-employed attorneys. Mr. Hassett then outlined recommendations formulated by the commission based on its study, including the survey results, to improve access to legal services by the middle income. He indicated these initiatives fell into two major categories: those that would improve access to the legal system (lawyer referral services, group and prepaid legal services, and public awareness initiatives); and those that would improve the civil legal process (expanding access to Small Claims Court, development of procedures for the simplified resolution of cases under \$75,000, pro se assistance, alternative dispute resolution, and the utilization of a Multi-Door Courthouse). After explaining these recommendations, Mr. Hassett advised the House that comments regarding the report would be received through early June, and that formal consideration of this matter would take place at the next meeting of the House. The report was received with thanks.

7. Report of President. Mr. Pfeifer reported the following matters:

a) In the wake of criticism of members of the judiciary by public officials and the media, he had taken several steps in support of judicial independence. He indicated he had conveyed the Association's support for the judiciary to the *New York Law Journal* and other publications, and had devoted significant space in the most recent issue of the *State Bar News* to this subject, with copies of that segment being distributed to all judges in the state. He noted that he had appointed a Special Committee on Judicial Independence, co-chaired by John R. Dunne and himself, to develop initiatives for supporting judicial independence as well as educate the public, elected officials and the media regarding this issue.

b) In January, the Executive Committee had recommended, based on input from the Criminal Justice Section, that modifications be made to the Appellate Divisions' proposed fee schedule for the compensation of counsel in capital cases to ensure that competent and experienced attorneys would be available. He noted that the Governor's office had expressed criticism of the proposed fee levels, but the Association would continue to support a fee structure that would assure the availability of effective counsel for the accused in capital cases.

c) The Executive Committee had taken a position in opposition to the Governor's proposal to levy a surcharge on judgments in civil cases and would continue to express this position during the ongoing state budget negotiations.

d) As modified by the House in January, the report of the Review Committee on the Profession and the Courts has been conveyed to the Chief Judge. He indicated that these views, as well as comments by other groups, were under review by OCA, and that the House would be kept apprised of developments.

e) In March, a State Supreme Court Justice in Monroe County had found a portion of the matrimonial rules dealing with written retainer agreements and the compulsory arbitration of fee disputes unconstitutional. Mr. Pfeifer indicated that developments with respect to this case were being monitored by the Task Force on Family Law and the Family Law Section.

f) Proposals by the Governor and the Legislature to reform the Workers' Compensation Law were under review by relevant sections and committees of the Association and that the House would be kept advised concerning developments with respect to this issue.

g) He had written to members of Congress conveying the Association's support for the continued funding of the Legal Services Corporation at reasonable levels, and that the Committee on Legal Aid, the President's Committee on Access to Justice, and the New York Steering Committee to Preserve the Legal Services Corporation would continue efforts in this area during the federal budget negotiations.

h) On February 26, 1996, he had met with Chief Judge Kaye and other senior OCA officials to discuss a number of subjects as follows: OCA's budget and related legislative initiatives; support for an independent judiciary; the status of OCA's efforts to implement a computerized case tracking system in major metropolitan areas to allow attorneys to access court information via computer; and the status of various OCA studies, including the State Court ADR Project, implementation of the Jury Project recommendations, the Legal Education Project, the Committee on the Profession and the Courts, and the joint lawyer/judge monitoring committee on the matrimonial rules.

i) The proposed Code of Professional Responsibility amendment to allow the sale of a law practice, as approved by the House in January, had been submitted to the Appellate Division Coordinating Committee on the Code, and the proposal was under active review by the four departments. He indicated that he anticipated their approval would be given in the near future.

j) He expressed appreciation to the members of the House for their support, encouragement and cooperation during his term as President.

8. Report of Special Committee to Review the Code of Professional Responsibility. Steven C. Krane, Chair of the Special Committee to Review the Code of Professional Responsibility, provided an overview of the committee's study and proposed amendments to the Code of Professional Responsibility. He indicated that the

proposed amendments could be classified into two major categories: technical amendments, which were intended to remove internal inconsistencies or clarify text; and substantive revisions, which were designed to incorporate changes in standards caused by developments in the ethics field, court decisions and advisory opinions released by various ethics committees. He also reviewed the proposed procedure for considering the Code amendments, which would extend the process over the next three House meetings, with the Definitions and Canons 1 and 2 to be taken up at the June House meeting, Cannons 3, 4 and 5 in November, and Canons 6 through 9 in January. Mr. Krane advised that this approach would allow for the submission of comments on a staggered schedule by interested sections, committees and bar groups. After discussion, the following scheduling resolution was adopted by unanimous vote of the House:

RESOLVED, that the House of Delegates hereby adopts the following procedures to govern consideration at the June 29, 1996 and subsequent meetings of the reports of the Special Committee to Review the Code of Professional Responsibility (Code Committee) and the Special Committee on Lawyer Advertising and Referral Services (Advertising Committee):

1. Presentation of reports:

- (a) The Code Committee shall present its report in the following segments, corresponding to the Code of Professional Responsibility: Definitions and Canons 1 and 2 at the June 29, 1996 meeting; Canons 3, 4 and 5 at the November 2, 1996 meeting; and Canons 6, 7, 8 and 9 at the January 24, 1997 meeting.
- (b) The Advertising Committee shall present its report in its entirety at the June 29, 1996 meeting.

2. Amendments: Any amendments to the committees' proposals or to the Code must be submitted in writing to the Secretary of the Association in accordance with the following schedule: Definitions and Canons 1 and 2 by June 3, 1996; Canons 3, 4 and 5, by October 11, 1996; and Canons 6, 7, 8 and 9 by January 3, 1997. All proposed amendments must be in the style used by the committees with deletions noted by strikeouts and new material by underscoring, and be accompanied by a brief explanation of the proposed changes; otherwise, they shall not be considered. All amendments complying with this procedure shall be distributed to the members of the House in advance of the meeting at which they are to be considered.

3. Consideration of reports at June 29, 1996 meeting: Consideration of the report of the Advertising Committee and amendments to DR 2-101 through 2-105 proposed by the Code Committee shall be considered initially, in the following manner:

- (a) Each committee will be given an opportunity to provide a brief overview of its recommendations.
 - (b) Proposed amendments to the Code will be considered seriatim, with committee proposals with respect to a particular provision considered first.
 - (c) A representative of each committee shall have three minutes to present each committee amendment. The proponents of other amendments shall have three minutes to present them.
 - (d) All those wishing to speak with regard to a particular 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 each committee will have two minutes to close.
 - (e) A vote on each amendment will be taken, requiring a majority vote for adoption.
 - (f) Procedural motions will be considered out of order until debate on all substantive amendments has been concluded.
 - (g) Following consideration of amendments to DR 2-101 through 2-105, the Advertising Committee may present an overview of that portion of its report recommending the establishment of a Commission on Advertising. All those wishing to speak with regard to this issue may do so only once for no more than three minutes. A vote on the recommendation will then be taken, requiring a majority vote for adoption.
 - (h) Following consideration of the recommendation regarding the Commission on Advertising, consideration of amendments to the Definitions, Canon 1 and the balance of Canon 2 recommended by the Code Committee shall take place in the manner set forth in paragraphs 3(a) through (f) above.
- 4. Consideration of Code Committee report at November 2, 1996 and January 24, 1997 meetings:**
- (a) Consideration of the balance of the Code Committee's report, as scheduled in paragraphs 1 and 2 above, shall be considered according to the procedure set forth in paragraphs 3(a) through (f) above at the November 2, 1996 and January 24, 1997 meetings.
- 5. A final vote will be taken at the January 24, 1997 meeting to approve the Code, as amended, for transmittal to the Appellate Division.**

Ms. Richardson noted that in view of the anticipated time likely needed to address the first segment of the Code amendments together with the report of the Special Committee on Lawyer Advertising and Referral Services, plans were being made for a two-day session of the House in Cooperstown on Friday afternoon, June 28 and Saturday, June 29, 1996.

9. Report of New York Law/Net Subcommittee of the Committee on Law Office Economics and Management. Joseph D. Bermingham, Jr., Chair of the New York Law/Net Subcommittee of the Committee on Law Office Economics and Management, summarized the committee's activities to establish an electronic network for Association members, including a home page presence on the Internet. He indicated that when fully implemented, this communications enhancement would be geared towards utilizing advancements in technology to enable members to practice law more efficiently by facilitating access to court records and other governmental information via computer. Mr. Bermingham reviewed the current status of the Association's Internet home page, and indicated plans were in progress to provide for a committee and section presence on the Internet so that members might communicate and conduct section or committee activities via computer to save travel and meeting expenses. He indicated that it was also a goal of the project to provide services and materials to the members via the Internet and, at the same time, promote public understanding of the law and the Association. He noted that this development process was ongoing and would likely entail costs for sections in order to help defray necessary expenses connected with Internet participation. He indicated that the House would be kept apprised of developments in this area. The report was received with thanks.

10. Report of Chair. Ms. Richardson reported the following matters:

a) Bar associations entitled to delegates to the House of Delegates had filed their designations of delegates for the 1996-1997 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 1996-1997.

b) She noted that this was the final meeting for the current House before the close of the Association year. Ms. Richardson expressed appreciation to the outgoing members of the House for their participation, as well as for the support and cooperation which had been extended to her during her tenure as Chair.

c) W. Haywood Burns, a member of the House and former Dean of City University of New York's School of Law, had perished in an automobile accident outside Cape Town, South Africa on April 2, 1996. She noted that Prof. Burns had been active in the Association for a number of years and was an Elected Delegate from the Eleventh District at the time of his death. Ms. Richardson advised that a memorial to Prof. Burns would be offered at the June House meeting. A moment of silence was observed out of respect for him and the meeting was adjourned in honor of his memory.

11. Date and place of next meeting. Ms. Richardson announced that the next meeting of the House of Delegates was scheduled for the afternoon of Friday, June 28 and Saturday, June 29, 1996 at the Otesaga, Cooperstown, New York.