

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
MARRIOTT MARQUIS, NEW YORK CITY
JANUARY 19, 1990**

PRESENT: Adler, Agress, Amrod, Ange, Baker, Barbash, Barnett, Barnosky, Barthold, Basch, Beckerman, Bermingham, Birnbaum, Bohner, Bracken, Brand, Brenner, Brevorka, Bucki, Buzard, Cavanaugh, Colish, Cometa, Cooke, Corcoran, Cox, Cregg, Davidson, DelleCese, DeMaio, Dollard, Doyle, Dranoff, Dunne, Dwyer, Dyer, Eiber, Elmer, Emerson, Epstein, Esteve, Farrell, Ferguson, Fitzgerald, Forger, Frank, Freedman, Freidel, Geltzer, Gershon, Gertz, Gibbons, Ginsberg, Goldblum, Gordon, Grobosky, Grogan, Haig, Hall, Halpern, Harley, Hart, Headley, Heming, Horan, Hyman, Jaffe, Kahn, Kaufman, Kenney, King, Klein, Lamb, Leinhardt, Liebschutz, Lowe, Luther, MacCrate, Madigan, Mannix, Markuson, Marrero, Martusewicz, McDonald, McGlinn, McGoldrick, McGraw, McGuirk, McKay, McMahan, Meng, Mercorella, Miller, Millon, Minardo, Mitchell, Moore, Morris, A. Murray, C. Murray, K. Murray, Neimeth, Netter, Oberman, Obold, O'Brien, Offermann, Oliensis, Ostertag, Palermo, Pearl, Penzel, Perles, Perrin, Pfeifer, Platto, Porter, Pruzansky, Pugh, Pulley, Rachlin, Raubicheck, Reilly, Reizes, Rice, Richardson, Riley, Ritholz, Robinson, Rosiny, Rybak, Sampson, Santagata, Santemma, Schapiro, Schell, Schiller, Schnall, Scott, Seward, Seymour, Sherwood, Simberkoff, Small, Souther, Spellman, Stark, Stave, Stiles, Sussman, Tetenbaum, Tondel, Troeger, Van Strydonck, Vigdor, Vitacco, Wagner, C. Walsh, Wanderman, Weaver, Weinberger, Williams, Witmer, Wolf, Yanas, Zinni.

1. Approval of minutes of October 28, 1989 meeting. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Gershon's report, which previously had been presented to the members of the House at the Annual Meeting of the Association, was received with thanks.

3. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee. Charles E. Heming, Chair of the Nominating Committee, reported that the committee had nominated the following individuals for election to the respective offices as indicated:

PRESIDENT-ELECT

Robert L. Ostertag, Poughkeepsie

SECRETARY

Archibald R. Murray, New York City

TREASURER

Richard M. Gershon, Albany

DISTRICT VICE-PRESIDENTS

FIRST:

John R. Horan, New York City

SECOND:

Thomas O. Rice, Brooklyn

THIRD:

Thomas P. Connolly, Albany

FOURTH:

David R. Seward, Gloversville

FIFTH:

M. Catherine Richardson, Syracuse

SIXTH:

Kathryn Grant Madigan, Binghamton

SEVENTH:

Robert J. Pearl, Rochester

EIGHTH:

Francis J. Offermann, Jr., Buffalo

NINTH:

William J. Daly, Ossining

TENTH:

John P. Bracken, Islandia

ELEVENTH:

A. Paul Goldblum, Brooklyn

TWELFTH:

Maxwell S. Pfeifer, Bronx

AT-LARGE MEMBERS OF THE EXECUTIVE COMMITTEE

Grace Marie Ange, Buffalo

Nicole A. Gordon, New York City

Frank M. Headley, Jr., Bronxville

Frank R. Rosiny, New York City

Howard D. Stave, Forest Hills

G. Robert Witmer, Jr., Rochester

There being no further nominations, a motion was made and carried that the nominations be closed. The Secretary then cast a single ballot for the officers and members-at-large of the Executive Committee.

4. Status report concerning Bar Center expansion and fund-raising campaign. Robert MacCrate, Co-Chair of the Ad Hoc Committee on Bar Center Facilities and Space Requirements, summarized the status of the Bar Center renovation and expansion, as well as the fund-raising campaign undertaken in connection with the project. He reported that the campaign was entering its stretch drive to expand the circle of support and to increase the level of giving of those who had already contributed. Mr. MacCrate noted that the initial returns for this phase were promising, and he encouraged the members of the House to participate in this effort to assist in realizing the \$6.8 million needed to meet the costs of the expansion project. The report was received with the thanks of the House.

5. Consideration of Association position regarding concept of mandatory continuing legal education. Robert B. MacKay, Chair of the Special Committee to Consider Mandatory Continuing Legal Education in New York, summarized the position in

favor of the concept of mandatory continuing legal education as a means of enhancing and encouraging professional competence in New York. Alexander C. Cordes, Co-Chair of the Special Committee on Attorney Professionalism, outlined the arguments in opposition to a mandated approach, stressing instead the benefits of a voluntary program. Following discussion, a motion was adopted, by a 92-63 vote, approving the following resolution:

RESOLVED, that the House of Delegates hereby endorses the concept of mandatory continuing legal education, with a specific plan for implementation thereof to be considered at the April 1990 meeting of the House.

6. Presentation of award by Freedoms Foundation at Valley Forge. Arnold Burns, a member of the Board of Directors of the Freedoms Foundation at Valley Forge, presented the George Washington Honor Medal to The New York Bar Foundation for its 1988 publication, "Bicentennial Minutes: New York's Role in the Ratification of the U.S. Constitution." Accepting the award were Foundation President Robert MacCrate and Board member Maryann Saccomando Freedman.

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

a) He had been advised by past Association President Justin L. Vigdor, who chairs the Interest on Lawyer Account Fund of the State of New York, that the State Office of Budget has under consideration a proposal to change the thrust of IOLA to allow funds to be distributed to the providers of criminal legal services to the poor. He noted that at present IOLA funds can be used only in support of civil legal services, and that the Board of the IOLA Fund opposes any change in purpose as detrimental to the original objective of the IOLA concept. After discussion, the following resolution was adopted on motion of the House:

WHEREAS, the purpose of the Interest on Lawyer Account Fund is to provide funding for providers of civil legal services in order to ensure effective access to the judicial system for all citizens of the State and to provide stable, economical and high quality delivery of civil legal services to the poor throughout the State; and

WHEREAS, the New York State Bar Association originally proposed the creation of the Interest on Lawyer Account Fund in New York State, supported its conversion to a comprehensive program, and was instrumental in persuading the Legislature to enact section 497 of the judiciary law; and

WHEREAS, there is a profound and ongoing need for funding for civil legal services for the poor as found in the Spangenburg Group report recently commissioned by this Association and for programs for the improvement of the administration of justice in New York State.

THEREFORE, IT IS RESOLVED that the New York State Bar Association hereby affirms its continued support for the Interest on Lawyer Account Fund and opposes any changes or

reductions in IOLA funding for civil legal services for the poor and programs for the improvement of the administration of justice in New York State.

b) The 1990-91 Judiciary Budget contained a proposed salary increase for the judges of the New York State Courts. He indicated that the increase was fair and would provide judges with a reasonable level of compensation. After discussion, a motion was adopted approving the following resolution:

WHEREAS, the proposed 1990-1991 Judiciary Budget contains a salary increase for the judges of the New York State Courts; and

WHEREAS, such proposed pay increase is both reasonable and warranted to provide a fair level of compensation to the state judiciary; and

WHEREAS, the New York State Bar Association has consistently supported salary increases for members of the judiciary; it is hereby

c) Accompanied by representatives of the Committee on Judicial Selection, he had met with Evan Davis, the Governor's Counsel, concerning the Association's interest in the judicial screening process. He reported that Mr. Davis was willing to consider expanding the four departmental screening committees for Appellate Division applicants to include a representation designated by the Association. Mr. Yanas stated that he would pursue implementation of this item to secure greater involvement for the Association in the selection of Appellate Division justices.

d) The quarterly meeting with Chief Judge Wachtler and other officials of the Office of Court Administration had been held on December 7, 1989. He indicated that the topics discussed had included the 1990-91 Judiciary budget, the status of plans to improve courthouse facilities, pro bono legal services for the indigent and the study being conducted by the Task Force on the Appellate Divisions.

e) In furtherance of the resolution adopted at the October 1989 House meeting in favor of enhanced voluntary pro bono civil legal assistance to the indigent, he had designated Joseph S. Genova to chair a new special committee which will be charged with implementing the State Bar Plan as approved by the House. Mr. Yanas indicated that the balance of the committee's membership would be appointed in the near future to permit the commencement of a full-scale effort in this area.

f) As authorized by the Executive Committee, the Special Committee on Patents and Trademarks and the Special Committee on Copyright Law had conducted a survey to determine if sufficient interest existed among the members to warrant the formation of an Intellectual Property Law Section. He advised that preliminary survey responses indicated only a limited interest in such a section, so that it was likely the matter would not be pursued.

g) In recent weeks, the New York Law Journal had published a series of articles concerning the problem of attorneys who fail to register with the Office of Court Administration, as well as the separate problem of unlicensed individuals or

paralegals practicing law, in some instances with large firms or governmental agencies. He advised that it was likely that relevant facets of these problems would be examined by the Committee on Legal Education and Admission to the Bar, the Committee on Professional Discipline and the Committee on Unlawful Practice of the Law.

h) It was his understanding that the four Appellate Divisions were nearing completion of their joint review of the proposed amendments to the Code of Professional Responsibility and that a formal response would be submitted to the Association in the near future.

i) The Special Committee to Consider Sanctions for Frivolous Litigation in New York State Courts would be holding public hearings on the subject in early February and anticipated having a report prepared for submission to the House at the April 1990 meeting.

RESOLVED, that the New York State Bar Association hereby reaffirms its prior position generally favoring judicial salary increases and in particular the proposed judicial salary increase proposed in the 1990-1991 Judiciary Budget.

e) In furtherance of the resolution adopted at the October 1989 House meeting in favor of enhanced voluntary pro bono civil legal assistance to the indigent, he had designated Joseph S. Genova to chair a new special committee which will be charged with implementing the State Bar Plan as approved by the House. Mr. Yanas indicated that the balance of the committee's membership would be appointed in the near future to permit the commencement of a full-scale effort in this area.

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h) It was his understanding that the four Appellate Divisions were nearing completion of their joint review of the proposed amendments to the Code of Professional Responsibility and that a formal response should be submitted to the Association within the reasonably near future.

i) The Special Committee to Consider Sanctions for Frivolous Litigation in New York State Courts would be holding public hearings on the subject in early February and anticipated having a report prepared for submission to the House at the April 1990 meeting.

8. **Report of Chair.** Mr. Cometa advised that the Nominating Committee had nominated the following individuals for election at the April 1990 meeting to a two-year term as delegates to the American Bar Association House of Delegates: T. Richard Kennedy, Henry G. Miller, Archibald R. Murray, Robert L. Ostertag, David Lee Reed and Justin L. Vigdor. He reported also that Susan S. Robfogel had been nominated to fill the second year of Ralph L. Halpern's term as he was ineligible to serve the final year due to the Bylaws provisions limiting the number of consecutive years a member may serve in the House.

9. **Date and place of next meeting.** Mr. Cometa announced that the next meeting of the House of Delegates will be held in Albany on Saturday, April 7, 1990.