

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK - JUNE 25, 1983

PRESENT: Members Amdursky, Avery, Beshar, Block, J.P. Bracken, Brenner, Chayt, Citrynell, J.S. Cohen, M. Cohen, Cook, Cooke, Daly, Dee, Denten, Dolan, Edelman, Emerson, Emnett, England, Evans, Fales, Feerick, Feldman, Ferrucci, Field, H.L. Fisher, K.K. Fisher, Fitzgerald, Forger, Freedman, Geltzer, Gershon, Gibson, Goldblum, Greisberger, Hackbarth, Hall, Harvey, Heming, Hoffberg, Horan, Hughes, King, Lagarenne, Levine, Lustgarten, MacCrate, Madigan, Meriam, Meyers, H.G. Miller, S.W. Miller, Morgan, G.F. Murphy, J.H. Murphy, Newman, Nimkin, O'Connor, Offermann, Ostertag, Palermo, Patterson, Perlman, Perrin, C.W. Peterson, J.R. Peterson, Pfeifer, Reilly, Ritholz, Robfogel, Rosenthal, Rosiny, Russell, Rybicki, Schapiro, Shaffer, Smith, Stave, Taylor, Terry, Vigdor, Webb, T.M. Whalen, White, Williams, Witmer, Yanas and Young.

1. Approval of minutes of April 22, 1983. The minutes were approved as distributed.

2. Report of Treasurer. Mr. Yanas summarized the Treasurer's report, January 1 to May 31, 1983, copies of which had been previously circulated to members of the House. He indicated that the Association was in sound financial condition as of May 31, 1983, and encouraged the officers, staff, section and committee chairs to continue their cooperative efforts in controlling unnecessary expenditures to assist the Association in meeting budget projections for the balance of the year. The report was received with thanks.

3. Proposed amendments to Banking, Corporation and Business Law Section bylaws. B.W. Nimkin, delegate from the Banking, Corporation and Business Law Section, summarized the proposed amendments to the section's bylaws. Upon motion the proposed amendments were approved. Attached is copy of amended bylaws.

4. Presentation of Root/Stimson Award and Public Service Awards. Thomas M. Whalen, III, Chairman of the Special Committee on Lawyers and the Community, presented the Root/Stimson Award to attorney Arthur J. Harvey of Albany for outstanding service to the community.

Hon. Domenick L. Gabrielli, Chairman of the Special Committee on Lawyers and the Community Awards Committee, presented the Public Service Award to Angel Rodriguez, Executive Director of the Andrew Glover Youth Program, for that program's outstanding contribution to the betterment of the administration of justice.

5. Report of Special Committee to Review ABA Draft Model Rules of Professional Conduct. Frank R. Rosiny, Chairman of the Special Committee to Review ABA Draft Model Rules of Professional Conduct, summarized the present status of the ABA's consideration of the Model Rules, as well as proposed procedures governing further discussion at the August 1983 ABA Annual Meeting. He then reviewed the report of the Special Committee, including recommended amendments to the Preamble, Scope and Comments to the Model Rules. Following discussion of the conclusions and recommendations submitted by the Special Committee, a motion was adopted approving the following resolution:

The Fifth Report of the Special Committee to Review ABA Draft Model Rules of Professional Conduct having been presented to this House of Delegates of the New York State Bar Association, it is hereby

RESOLVED, that this House endorse for consideration by the House of Delegates of the American Bar Association the concerns expressed and recommendations for amendment contained in the said Report; and, it is further

RESOLVED, that unless amendments to the draft Model Rules of Professional Conduct are adopted, reasonably satisfying the concerns expressed and consistent with the recommendations for amendment contained in the said Report, this Association's delegates to the American Bar Association be, and they are hereby, instructed to vote against final adoption of the said Model Rules of Professional Conduct.

6. Report and resolution proposing changes in composition of American Bar Association Nominating Committee. Mr. Palermo, New York State Delegate to the American Bar Association House of Delegates, reported concerning a proposal to enlarge the ABA's Nominating Committee by adding section and division delegates to the existing state delegates who presently comprise the committee's membership. After discussion, the following resolution was approved upon motion of the House:

WHEREAS, certain Section and Division Delegates to the House of Delegates of the American Bar Association have sponsored a Proposed Amendment to the ABA Constitution which would alter the composition of the Nominating Committee so as to provide for the addition thereto of Section Delegates and Division Delegates; and

WHEREAS, the Proposed Amendment would substantially alter the nominating mechanism for electing the Officers and members of the Board of Governors of the ABA;

NOW, THEREFORE, it is hereby

RESOLVED, that the New York State Bar Association opposes the Proposed Amendment to the ABA Constitution which would add Section and Division delegates to the Nominating Committee of the ABA House of Delegates.

AND FURTHER RESOLVED, that the New York State Bar Association urges its members who may be in attendance at the ABA Annual Meeting in Atlanta to attend sessions of the General Assembly and to vote against adoption of the Proposed Amendment.

7. Report and resolution concerning American Bar Association Section of Individual Rights and Responsibilities position on Discrimination by Private Clubs. Mr. Miller reviewed the history connected with the proposal by the American Bar Association Section of Individual Rights and Responsibilities to amend Title II of the Civil Rights Act of 1964 to include private clubs within the definition of public accommodations. He further summarized prior anti-discrimination positions adopted by the Association, including endorsement given by the Executive Committee in April 1983 to legislation intended to accomplish at the state level a purpose similar to that embodied in the ABA proposal. Following discussion, a motion was adopted approving the following resolution:

RESOLVED, that the House of Delegates of the New York State Bar Association hereby endorses the resolution of the American Bar Association Section of Individual Rights and Responsibilities urging amendments to Title II of the Civil Rights Act of 1964, 42 U.S.C. Section 2000a (which prohibits discrimination in public accommodations on the basis of race, color, religion, or national origin) to:

- (1) include in the definition of the term "public accommodation" any private club or other establishment which derives a substantial portion of its income from business sources;
- (2) provide an adequate objective standard by which to measure "a substantial portion of income from business sources."

Following approval of the foregoing endorsement of the specific resolution proposed by the American Bar Association's Section of Individual Rights and Responsibilities, the following resolution was adopted:

RESOLVED, that the House of Delegates of the New York State Bar Association hereby reaffirms the prior position of this Association in opposition to discrimination on the basis of gender, and hereby urges the amendment to Title II of the Civil Rights Act of 1964, 42 U.S.C. Section 2000a to prohibit discrimination in public accommodation on the basis of sex.

8. Report of President. Mr. Fales reported the following matters:

a) The interest on lawyer trust account legislation, the filing of which was authorized at the April meeting, had been passed by the Legislature and sent to the Governor for signature.

b) Chapter 318 of the Laws of 1983 had been enacted to ameliorate the effects of the Barasch/Eaton decisions governing law office failure by granting courts discretionary authority, in the interests of justice, to excuse delay or default resulting from such failure.

c) As opposed at the April meeting upon recommendation of the Criminal Justice Section, legislation restricting the role of counsel in the voir dire process was unlikely to pass during the current session.

d) The Senate had passed four bills favoring the position on medical malpractice advocated by the New York Medical Liability Coalition, but the Assembly had passed legislation more reflective of the concerns of the Association. He advised that any compromise was unlikely this session, although it could be anticipated that the issue would recur in the future. On behalf of the officers, Mr. Fales expressed his appreciation to the members of the House for their support and cooperation in communicating the Association's views to the Legislature.

e) Affirmative legislation introduced at the request of the Trusts and Estates Law Section to amend Section 1407 of the Surrogate's Court Procedure Act to facilitate the proof of a lost or destroyed will had been passed by the Legislature and submitted to the Governor.

f) The Legislature had also passed affirmative legislation initiated at the suggestion of the Family Law Section in response to rules promulgated by the Office of Court Administration affecting financial disclosure in matrimonial matters.

g) The Executive Committee had conducted a two-day retreat in May to review Association governance, the role of the Association in regard to the profession and the public, and relations with the judiciary and the Legislature. As a result of this session, the Executive Committee was studying means for increasing effectiveness in the legislative area and developing closer communication with county and local bar associations. In addition, Mr. Fales reported that the Committee on Association's Action Program would be requested to consider the feasibility of establishing Action Unit No. 6 to examine and make recommendations for reducing the expense and delay associated with the litigation process.

h) The quarterly meeting with Chief Judge Cooke and senior members of the Office of Court Administration staff had been held June 15, 1983. A broad range of topics had been discussed, including the need for additional civil parts in the metropolitan New York area, participation in the Office of Court Administration's budget process, the potential effects of the proposed medical malpractice legislation, and the court merger proposal contained in the report issued recently by the Senate Task Force on Court Reorganization.

i) The Special Committee to Improve Courthouse Facilities had submitted preliminary conclusions to the Executive Committee that State financing is the ultimate solution to the problems of deteriorating and inadequate courthouse facilities. At its June 24, 1983 meeting, the Executive Committee had encouraged the Special Committee to pursue this avenue in developing final recommendations.

j) As part of the upcoming celebration of the bicentennial of the United States Constitution, the Executive Committee, upon recommendation of the Committee on Federal Constitution, had authorized Association co-sponsorship with the Center for Information on America in the preparation of a booklet series on the history of the Constitution and its functioning in American government and society.

9. Report of Chairman. Mr. Miller reported the following matters:

a) The new members of the House who had assumed office on June 1 were welcomed by Mr. Miller. The following is a list of the new members of the House:

Richard A. Anthony
James A. Avery
Ralph A. Boniello, III
Lawrence J. Bracken
Thomas W. Brown
Angelo T. Cometa
Edward M. Cooke
Vincent R. Corrou, Jr.
Joseph M. Costello
Francis H. Culkin
Nicholas A. DiCerbo
Paul S. Edelman
Thomas C. Emerson
Thomas R. Emmett
Thomas W. Evans
Albie S. Ferrucci
Gustave Fishel, III
James A. Gabriel
Sylvester J. Garamella

David Greenberg
John L. Greisberger
Robert J. Hughes, Jr.
Patricia M. Hynes
Marshall G. Kaplan
Judith S. Kaye
Donald F. Larson
Leon M. Layden
Ira Lustgarten
Kathryn Grant Madigan
Harold A. Mahony
J. Roger Mentz
Robert F. Meyers
James W. Morgan
Michael O'Connor
Francis J. Offermann, Jr.
John Oliver
Raymond J. Pauley
Irving Perlman

Carl W. Peterson, Jr.
Jean Ripton Peterson
Paul Roberts
Edward T. Robinson, III
Nicholas A. Robinson
Frank R. Rosiny
Thomas S. Rybicki
Andrew M. Schnier
Fern Schair
Benjamin I. Taylor
Walter L. Terry, III
Paul V. Webb, Jr.
Donald J. White
G. Robert Witmer, Jr.
John A. Wolf

b) The New York State Conference of Bar Leaders had met earlier in the day, and past Conference Chairman Frederic Block had presented an award to J. Coyne O'Brien honoring him for his distinguished service as Chairman during the past year.

c) Mr. Miller recognized Mr. Fales, who expressed appreciation to Mr. Reilly for his energetic and dedicated leadership as President during the past year, and presented him with a plaque inscribed as follows:

THE NEW YORK STATE BAR ASSOCIATION
PRESENTS THIS TESTIMONIAL TO
BERNARD J. REILLY IN RECOGNITION OF
HIS DEVOTED SERVICE TO THE ASSOCIATION
IN THE SUCCESSFUL FURTHERANCE OF ITS
IDEALS AND IN THE PROMOTION OF THE BEST
INTEREST OF THE PROFESSION THROUGH HIS
SERVICE AS PRESIDENT OF THE ASSOCIATION
1982-1983

10. Date and place of next meeting. Mr. Miller announced that the next meeting of the House of Delegates will be held at the Bar Center in Albany on November 5, 1983.

New York State Bar Association

**PROPOSED AMENDMENTS TO THE BYLAWS OF THE BANKING, CORPORATION
AND BUSINESS LAW SECTION**

(as amended by the BCBL Section, April 21, 1983)

ARTICLE I

Name and Purpose

Section 1. This Section shall be known as the Banking, Corporation and Business Law Section of the New York State Bar Association.

Section 2. The purpose of this Section shall be to bring together for furtherance of their mutual interests such members of the New York State Bar Association as are interested in Banking, Corporation and Business Law.

ARTICLE II

Membership

Section 1. Any member of the New York State Bar Association shall be eligible for membership in this Section, and shall be enrolled as a member of the Section upon application to the Section Secretary and payment of such annual dues as shall be determined by the Executive Committee of this Section.

ARTICLE III

Officers and Executive Committee

Section 1. Members of this Section, at the Annual Meeting of the Section, shall elect a Chairman, two Vice-Chairmen, one of whom shall be designated First Vice-Chairman and the other Second Vice-Chairman, a Secretary, a Delegate to the House of Delegates of the Association, a Fiscal Officer and an Executive Committee. Two or more offices may be held by the same individual, except that no individual may hold two or more of the offices of Chairman, First and Second Vice-Chairman and Secretary.

Section 2. The Executive Committee shall consist of not less than 22 nor more than 36 members, shall include the elected officers and shall have members drawn from each of the standing committees of the Section and, to the extent practicable, from each Judicial District in the State.

Section 3. The Executive Committee may appoint such other officers, and delegate such duties to them consistent herewith, as the Executive Committee shall deem appropriate.

Section 4. All officers and all members of the Executive Committee shall hold office for one-year terms beginning June 1. No officer (other than the Secretary, Delegate to the House of Delegates of the Association and Fiscal Officer) shall hold office for more than two successive terms, and the Chairman and the two Vice-Chairmen shall, to the extent practicable be selected with a view to rotating these offices among the memberships of the standing committees.

Section 5. A quorum of the Executive Committee shall consist of at least eight members.

ARTICLE IV

Nomination of Officers and Members of Executive Committee

Section 1. Prior to each Annual Meeting of the Section, the Chairman shall appoint a Nominating Committee of one member from each of the standing committees and such additional members, if any, as the Chairman with the approval of the Executive Committee may determine. The Nominating Committee shall make and report to the Section nominations for the offices of Chairman, Vice-Chairmen, Secretary, Delegate to the House of Delegates of the Association, Fiscal Officer and members of the Executive Committee. Consistent with Sections 2 and 4 of ARTICLE III, other nominations for the same offices may be made from the floor.

ARTICLE V

Duties of Officers and of the Executive Committee

Section 1. The Chairman shall preside at all meetings of the Section and of the Executive Committee, and shall perform such other duties and acts as usually pertain to the office of Chairman.

Section 2. The Vice-Chairmen shall assist the Chairman in the performance of the Chairman's duties when requested to do so. On the death, resignation or during the disability of the Chairman, the First Vice-Chairman shall perform the duties of the Chairman for the remainder of the Chairman's term, except in case of the Chairman's disability, and then only for so much of the term as the disability continues. On the death, resignation or during the disability of both the Chairman and the First Vice-Chairman, the Second Vice-Chairman shall perform the duties of the Chairman for the remainder of the Chairman's term, except in case of the disability of the Chairman and the First Vice-Chairman, and then only for so much of the term as the disability of said officers continues.

Section 3. The Secretary shall be the custodian of all books, papers, documents and other property of the Section, except money, shall keep a true record of the proceedings of all meetings of the Section and of the Executive Committee, and shall mail notices of all meetings of the Executive Committee.

Section 4. The Delegate to the House of Delegates of the Association shall have the duties and serve in accordance with applicable provisions of the Constitution of the Association.

Section 5. The Fiscal Officer is responsible for the financial affairs of the Section. He is to act as the Section's representative in dealing with the Association on all financial matters affecting the Section, including the budgeting process. He is also to recommend to the Chairman and the Executive Committee any changes in the financial policies of the Section.

Section 6. The Executive Committee shall have general supervision and control of the affairs of the Section subject to the Constitution and By-laws of the New York State Bar Association and the By-laws of this Section. It shall be responsible for the authorization of all commitments and contracts which shall entail the payment of money, and for the expenditure of all monies collected by the Section or appropriated for the use and benefit of the Section.

Section 7. Consistent with Sections 2 and 4 of ARTICLE III, the Executive Committee, during the interim between the Annual Meetings of the Section, may fill vacancies in the offices of Secretary, Vice-Chairmen, Delegate to the House of Delegates of the Association and Fiscal Officer and, in the event of a vacancy in the offices of Chairman and both Vice-Chairmen, in the office of Chairman. The Executive Committee may also fill any vacancy existing or arising in the Executive Committee during the interim between Annual Meetings of the Section. Officers and Committee members so elected shall serve a term (or remainder thereof) in accordance with ARTICLE III, Section 4.

ARTICLE VI Committees

Section 1. There shall be the following standing committees of the Section: Banking Law Committee; Corporation Law Committee; Business Law Committee; Securities Regulation Committee; Bankruptcy Law Committee; and such other standing committees as the Executive Committee may from time to time designate as standing committees. There shall also be a Membership Committee and such other continuing or special committees as the Executive Committee may from time to time appoint.

Section 2. Each member of a committee of this Section shall maintain in good standing membership in the New York State Bar Association and this Section. No member of the Section shall serve at the same time on more than one standing committee, except with the approval of the Executive Committee.

Section 3. The standing committees shall engage themselves in the study and improvement of laws and practices in the general areas of law denoted by their respective titles.

Section 4. The Chairman of each standing committee shall be appointed by the Chairman of the Section with the approval of the Vice-Chairmen and Secretary of the Section. The members of each of such committees shall be appointed by the Chairman of such committee, with the advice of the Chairman and Vice-Chairmen of the Section.

ARTICLE VII Meetings

Section 1. The Annual Meeting of the Section shall be held at a time and place designated by the Executive Committee during the week in which the Annual Meeting of the New York State Bar Association is held. Regional meetings may be held from time to time during the interim between Annual Meetings at such times and places as may be designated by the Executive Committee.

Section 2. The members of the Section present at any meeting shall constitute a quorum for the transaction of business.

Section 3. All binding action of the Section shall be by a majority vote of the members present.

ARTICLE VIII Miscellaneous Provisions.

Section 1. Any action taken by this Section must be approved by the New York State Bar Association before the same is given publicity or becomes effective as the action of the New York State Bar Association.

Section 2. The Executive Committee may fix dues for membership in this Section, with the approval of the Finance Committee of the New York State Bar Association, and may make payment thereof a condition precedent for membership in the Section.

Section 3. These By-laws may be amended at any Annual Meeting of the Section by a majority vote of the members of the Section present, provided that no amendment shall be effective until approved by the House of Delegates of the New York State Bar Association.