

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 22-23, 1990

PRESENT: Adler; Agress; Ange; Aronson; Baker; Barbash; Barnett; Barthold; Baxter; Berman; Besunder; Bracken; Brand; Brenner; Brick; Brown; Bucki; Buzard; Cavanaugh; Cedarbaum; Clarke; Cometa; Connolly; Cooke; Corcoran; Cregg; Daly; Davidson; DelleCese; Dollard; Doyle; Duckworth; Dyer; Eppler; Farrell; Field; Freedman; Geltzer; Gershon; Gibbons; Gillespie; Ginsberg; Girth; Goldblum; Goldstein; Gordon; Grogan; Gross; Haig; Hall, H.G.; Harley; Harper; Hassett; Headley; Heming; Hesterberg; Hoffmann; Horan; Hurd; Hyman; Jaffe; Jones; Kenney, J.; Kenney, T.; Kessler; Klein; Koeltl; Leinhardt; Liebschutz; Long; Lowe; Luria; MacCrate; Madigan; Markuson; Marrero; McGlenn; Meng; Miller; Minardo; Mitchell; Moore; Morris; Murray, A.; Murray, C.; Neimeth; Oberman; Obold; Offermann; Ostertag; Palermo; Pearl; Peckham; Penzel; Perrin; Pfeifer; Pruzansky; Pulley; Rachlin; Raisch; Reid; Reilly, K.; Reiniger; Reizes; Rice; Richardson; Rifkin; Riley; Robfogel; Robinson, B.; Robinson, E.; Roper; Rosiny; Rybak; Santemma; Schapiro; Schlenker; Schumacher; Seward; Seymour; Small; Smith; Souther; Spellman; Stave; Stoloff; Tenney; Troeger; Van Benschoten; Vigdor; Walker; Wanderman; Weaver; Witmer; Wolf; Woodman; Yanas; Zalayet.

1. Introduction of new members. The new members of the House who had assumed office on June 1 were introduced and welcomed by Mr. Ostertag. The following is a list of the new members of the House: Lawrence J. Andolina; James A. Avery; Ellen L. Baker; Gary E. Bashian; G.S. Peter Bergen; Henry S. Berman; Harvey B. Besunder; Calvin A. Brainard; Daniel E. Brick; Paul F. Brown; William L. Burke; Bernard Cedarbaum; Peter V. Coffey; Thomas J. Costello; William J. Daly; Gary M. Darche; David M. Demarest; Frank A. Duckworth; Arthur N. Field; Kenneth K. Fisher; John Gaal; Frances C. Galloway; Marsha Garrison; Marjorie Girth; M. Robert Goldstein; Nicholas J. Greisler; Marjorie E. Gross; Gary Gutowski; John G. Hall; Conrad K. Harper; Paul M. Hassett, Jr.; Robert E. Heath; Gregory X. Hesterberg; Harry Kamen; T. Richard Kennedy; John J. Kenney; Muriel S. Kessler; Edward J. Lee; Richard B. Long; Remy Luria; David J. Mahoney; Thomas J. McDonough; Margaret H. McDowell; Joseph D. McGuire; Anthony J. Mercorella; Dennis J. Morris; Barbara Opotowsky; Eugene E. Peckham; Cindy A. Raisch; David Lee Reed; John J. Regan; Edward S. Reich; James E. Reid; Kevin M. Reilly; Anne Reiniger; Bernard M. Rifkin; Barbara Paul Robinson; Eric R. Roper; Mark B. Rubin; Dennis Schlenker; H. Richard Schumacher; Elaine Jackson Stack; Jane Stern; Richard A. Stoloff; Hon. John R. Tenney; Dale M. Thuillez; Thomas N. Trevett; Laura Valdes; David Van Benschoten; Arlene Zalayet.

2. Approval of minutes of April 6-7, 1990 meeting. The minutes were approved as distributed.

3. Report of Treasurer. Mr. Gershon reviewed the audited balance sheet for the year ending December 31, 1989 and indicated that the Association had completed the year in a surplus posture. He then summarized the Treasurer's report for the period January 1 to May 31, 1990 and noted that the Association remained in sound financial condition as it neared the midpoint of the current fiscal year. The report was received with thanks.

4. Consideration of plan drafted by Special Committee to Consider Mandatory Continuing Legal Education in New York. Mr. Ostertag summarized the action taken with respect to this item at the April 6-7, 1990 meeting of the House, including the terms of the procedural resolution adopted to govern consideration of the draft plan prepared by the Special Committee to Consider Mandatory Continuing Legal Education in New York and any proposed amendments submitted thereto.

Pursuant to the procedural resolution, the House resumed its consideration of those provisions of the plan and proposed amendments not addressed at the last meeting. After discussion, amendments were adopted to Sections 2 through 10 of the plan; and a further motion was approved to substitute "mandatory" for "minimum" in the title of the plan.

A motion was then adopted to approve the plan as amended for submission to the appropriate implementing authorities in the State of New York. It was also the sense of the House that the Special Committee to Consider Mandatory Continuing Legal Education in New York State be designated as a committee on style to make such non-technical and editorial changes as might be necessary to ensure uniformity of language and format throughout the proposed plan.

5. Report and recommendations of Special Committee on Lawyer Referral Services Regulation. Robert J. Pearl, Chair of the Special Committee on Lawyer Referral Services Regulation, summarized the committee's activities based on the request of the House that it study the various types of lawyer referral services operating in the state with the goal of determining where problems exist which warrant remedial action, and formulating appropriate recommendations to address those problems. He described the nature and the extent of the committee's study as well as its review of the work of other interested groups, including the Ad Hoc Committee on Private Lawyer Referral Services and the Association's Committee on Lawyer Referral Service. Mr. Pearl then outlined the recommendations developed by the committee, including the following: Private lawyer referral services should be permitted to operate in the state, and that minimum safeguards should be adopted to protect consumers against deception; any proposed regulatory framework should recognize the differences between for-profit and non-profit services and should not pose an undue burden on the latter; pro bono referral services should be exempted from regulation; legislation should be enacted for inclusion in the Judiciary Law defining lawyer referral services and establishing a method of regulation under rules to be promulgated by the Chief Judge and

administered by the Appellate Divisions; the relevant provisions of the Judiciary Law should be expanded to grant immunity to all non-profit providers of lawyer referral services.

Following discussion and the adoption of amendments to sections 4.1, 7.2 and 10.3 of the "Proposed Minimum Standards" set forth as Appendix B to the committee's report, the following resolution was adopted on motion of the House:

RESOLVED, the House of Delegates of the New York State Bar Association hereby approves in principle the report of the Special Committee on Lawyer Referral Services regulation dated June, 1990, as amended by this House and that the New York State Bar Association and its officers are hereby authorized to submit to the Chief Judge of the State of New York, the Presiding Justices for the Appellate Divisions and the New York State Legislature proposals which would:

(a) amend the Judiciary Law to add §499 and to amend §§479, 491(1) and 495(7), substantially in the form set forth in Appendix A to the report of the Special Committee;

(b) establish minimum guidelines for operation of lawyer referral services pursuant to §499 of the Judiciary Law, substantially in the form set forth in Appendix B to the report of the Special Committee;

(c) amend the Code of Professional Responsibility respecting lawyer participation in lawyer referral services, in the form set forth in Appendix C to the report of the Special Committee;

(d) amend §498 of the Judiciary Law to expand immunity from liability for negligent referrals granted to lawyer referral services, substantially in the form set forth in Appendix D to the report of the Special Committee; and it is further

RESOLVED, that the officers of the State Bar Association be authorized to take such other action as may be necessary to seek implementation of the recommendations contained in the report of the Special Committee.

6. Report and recommendations of Special Committee to Review the Code of Professional Responsibility. Hon. Hugh R. Jones, Chair of the Special Committee to Review the Code of Professional Responsibility, summarized the prior study by the committee and action by the House which culminated in the submission of proposed Code of Professional Responsibility Amendments to the Appellate Division in the four Judicial Departments. He reported that on April 5, 1990, the four Appellate Divisions had issued a joint order adopting revised Disciplinary Rules to the Code, effective September 1, 1990. He noted that the Disciplinary Rules adopted by the Appellate Divisions followed the Association's recommendations with limited exceptions relating to portions of DR 1-102(A)(6), DR 1-104, DR 2-100, DR 2-101, DR 2-103, DR 7-103(C), and DR 9-102. Judge Jones stated that the committee recommended the House conform the Disciplinary Rules contained in

the Association's draft to those as revised and promulgated by the Appellate Divisions, and adopt the Code as so amended to provide a single, uniform document. After discussion, the following resolution was adopted on motion of the House:

WHEREAS, the New York State Bar Association ("NYSBA") has from time to time adopted Canons of Professional Ethics and a Code of Professional Responsibility ("Code"); and

WHEREAS, the Disciplinary Rules of the Code have been expressly incorporated into Rules of Court by the Appellate Division of the Supreme Court ("Appellate Division") in each of the four Judicial Departments in New York State; and

WHEREAS, the House of Delegates of the NYSBA on June 26-27, 1987 approved amendments to the Code, contingent on approval from the four Appellate Divisions; and

WHEREAS, the four Appellate Divisions by joint order dated April 5, 1990 have adopted, effective September 1, 1990, revised Disciplinary Rules to the Code which differ in certain respects from those contained in the amended Code as approved by the NYSBA House of Delegates on June 26-27, 1987; it is

RESOLVED, that the House of Delegates of the NYSBA hereby amends the Disciplinary Rules contained in the Code as approved conditionally on June 26-27, 1987 to conform same to the Disciplinary Rules as adopted by the four Appellate Divisions by joint order dated April 5, 1990, and hereby approves the Code as so amended.

A further motion was then approved discharging the committee with the thanks of the House.

7. Presentation of Root/Stimson Award, Public Service Award and Award of Merit. Hon. Domenick L. Gabrielli, a member of the Committee on Lawyers and the Community, presented the Root/Stimson Award in absentia to Hon. Edward W. Pattison of Troy for outstanding service to the community.

Kathryn G. Madigan, a member of the Association's Executive Committee, presented the Public Service Award to Rev. Gary Kuhns of Binghamton for his outstanding contribution to enhancing the administration of justice.

Joseph D. Bermingham, Jr., Chair of the Committee on Lawyers and the Community, presented the Award of Merit for larger bar associations to The Association of the Bar of the City of New York and the Award of Merit for smaller bar associations to the New York Women's Bar Association in recognition of outstanding service to the public and the profession accomplished through programs administered at the local level.

8. Report and recommendations of Family Law Section with respect to irreconcilable differences legislation. Henry S. Berman, immediate past Chair of the Family Law Section, and Timothy M. Tippins, Co-Chair of the section's Committee on Equitable Distribution, summarized pending legislation to amend the Domestic Relations Law and the Family Court Act. They advised that the amendments would accomplish four purposes: a) establish irreconcilable differences as a ground for divorce; b) create a presumption in favor of equal distribution of marital property in marriages of at least five years duration; c) provide for the award of attorney's fees at a fixed rate to the economically weaker spouse; d) provide for the awarding of permanent maintenance in an amount sufficient to eliminate disparity in the post-divorce standard of living of the parties in certain situations. Messrs. Berman and Tippins then summarized the Family Law Section's objections to the bill noting, among other reasons, that the no-fault provisions would remove accountability for misconduct from both the grounds for divorce and property distribution, that the separate cohabitation requirement could adversely affect child custody claims, that a presumption of equal property division would be unnecessary and inadvisable, and that the maintenance provisions could result in an inappropriate redistribution of the parties' assets to ensure an equalized post-divorce standard of living.

Following discussion and the deletion of page six from the report submitted by the Family Law Section, a motion was approved adopting the position of the section as that of the Association for transmittal to the Legislature.

9. Report and recommendations of Commercial and Federal Litigation Section re: a) uniform format for Appellate Division rules and b) filling Federal Judicial vacancies. Mark L. Davies, a member of the Committee on Appellate Practice of the Commercial and Federal Litigation Section, outlined the section's proposal that the four Appellate Divisions adopt a uniform format for rules governing the perfection of civil appeals to that court. He noted that the section was not seeking uniform substantive provisions but a uniform format whereby the rules governing appeals would be structured such that similar items would be grouped into a single section or cross-referenced to other relevant sections if groupings were not feasible. He indicated this approach would enable attorneys engaged in multi-department practice to identify more readily the differences which exist among the procedures applicable in the four departments.

Following discussion, a motion was adopted unanimously endorsing the proposal of the section for submission by the Association to the four Appellate Divisions. It was also the sense of the House that a similar recommendation for a uniform rules format should be developed for the rules governing appeals to the Appellate Term.

Michael S. Oberman, the Commercial and Federal Litigation Section's delegate to the House, reported the section's concern that six vacancies existed among the U.S. District Courts in the Southern, Eastern and Western Districts of New York, and that those officials engaged in the judicial selection, nomination and confirmation process be encouraged to act promptly to fill those vacancies to alleviate case backlogs and to ensure the proper administration of justice. After

discussion, the following resolution was adopted unanimously on motion of the House:

WHEREAS, the United States District Court for the Southern District of New York currently has four judicial vacancies, two of which have existed since 1988; and

WHEREAS, the United States District Court for the Eastern District of New York currently has one judicial vacancy which has existed since 1988; and

WHEREAS, the United States District Court for the Western District of New York currently has one judicial vacancy which has existed since July, 1989; and

WHEREAS, the aforesaid vacancies have contributed to a backlog of cases in the United States District Courts for the Southern, Eastern and Western Districts of New York, especially civil cases; and

WHEREAS, the vacant judgeships have made it more difficult for the judges in the United States District Courts for the Southern, Eastern and Western Districts of New York and have also raised concerns that the administration of justice has been adversely affected; and

WHEREAS, the Commercial and Federal Litigation Section of the New York State Bar Association believes that a constructive approach to eliminating the backlog of cases and ensuring that the administration of justice is not adversely affected is for existing judicial vacancies to be filled as expeditiously as possible;

NOW, THEREFORE, BE IT RESOLVED, that it is important for bar associations, judges, politicians, and other interested parties to continue to propose and debate long term solutions for the problem of federal judicial vacancies. In the meantime, however, there are currently six vacancies in the United States District Courts for the Southern, Eastern and Western Districts of New York, the oldest of which now dates back over two years. With respect to these vacancies, Senators D'Amato and Moynihan, and all others involved in the judicial selection, nomination and confirmation process are urged to take immediate action to fill these vacancies, and all future vacancies, and help alleviate what has become a severe problem affecting the administration of justice in the federal courts in the State of New York.

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

a) The expansion and renovation of the Bar Center was proceeding on schedule and construction would be completed in time for the formal rededication of the building in conjunction with the November 1990 meeting of the House. He noted that he and Robert MacCrate, President of The New York Bar Foundation,

were forming a planning committee to prepare an appropriate program and related activities for the rededication.

b) The New York State Supreme Court will be celebrating its tricentennial in 1991, and on behalf of the Association, he was participating in the planning for this event in cooperation with the Chief Judge's committee and the New York Historical Society.

c) On June 12, 1990, he and Mr. Ostertag had met with representatives of the Office of Court Administration to discuss matters of mutual interest. He indicated that the topics addressed had included the following items:

i) The 1990 Judiciary budget. Chief Judge Wachtler had advised that the reductions made in the 1990-1991 Judiciary budget had not caused the closing of courtrooms or any decrease in essential services as had been forecast earlier in the year. The Chief Judge did caution that the anticipated worsening of the state's financial condition could have an adverse impact on next year's Judiciary budget.

ii) Additional judges. Chief Judge Wachtler reported that the budget did provide for the thirty-two additional judges which had been promised for the various courts throughout the state, and that these positions would be phased in during the course of the current fiscal year.

iii) Judicial salary increases. The Chief Judge advised that the requested Judicial salary increase had not been included in the final 1990-1991 Judiciary budget and, given the state's financial situation, was not likely to be enacted in the immediate future.

iv) Sanctions for frivolous litigation. The Chief Judge had reviewed the report of the Special Committee to Consider Sanctions for Frivolous Litigation, as approved by the House at the April meeting, and would place the recommendations before the Administrative Board for consideration. If there is interest on the part of the Administrative Board, public hearings would then be conducted to determine whether Part 130 of the Uniform Rules for the New York State Trial Courts should be amended in accordance with the Association's proposal.

v) Pro bono service. The Chief Judge was apprised of the status of the Association's efforts to enhance voluntary pro bono legal services on behalf of the indigent. Judge Wachtler reiterated the comment contained in his Law Day address that he would delay a decision on mandatory pro bono for two years to allow time for the Association to demonstrate the effectiveness of a voluntary approach. He noted his appointment of a committee to monitor developments during that period, and that the committee would be contacting bar associations to obtain its own data independently of that being compiled by other groups. The Chief Judge was also receptive to requests by the Association's President's Committee on Access to Justice that the Office of Court Administration waive the biennial registration fee for attorneys wishing to engage solely in pro bono work,

that the present poor person application requirements be simplified for indigent litigants, and that judges become involved in efforts to encourage greater pro bono participation by bar associations.

d) He had met recently with various local bar groups, including the Rockland County Bar Association and The Association of the Bar of the City of New York, to discuss topical issues such as enhancing opportunities for minority attorneys, pro bono efforts, and distributing information regarding the recent changes in the Code of Professional Responsibility.

e) Association members with expertise in the Code of Professional Responsibility would be offering their services to local bar groups and to the attorney discipline committees to aid in educating the Bar concerning the recent amendments to the Code of Professional Responsibility. Mr. Cometa stated that further details regarding the nature and scope of this assistance would be circulated during the next few weeks.

f) Mr. Cometa expressed appreciation to Mr. Yanas 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 John J. Yanas 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 1989-90.

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

a) Bar associations entitled to delegates had filed their designations of delegates for the 1990-91 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 1990-91.

b) 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:

Ad Hoc Committee on Bar Center Facilities and Space Requirements
Alternatives to Court Resolution of Disputes
Task Force on Simplification
Biotechnology and the Law
Computer Access and Retrieval of Government Records
Copyright Law
Group and Prepaid Legal Services Plans
Improve Courthouse Facilities
Interest on Lawyer Account (IOLA) Advisory Committee
Media Law
Medical Malpractice

Military and Veterans Affairs
Patents and Trademarks
Pension Simplification
Procedures for Judicial Discipline
Seniors
Volunteer Lawyers

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

12. Memorial to Leonard H. Amdursky. Mr. Ostertag presented a memorial to Leonard H. Amdursky, a former member of the House of Delegates, who had passed away recently. A moment of silence was observed out of respect for his memory and his contributions to the Association and the legal profession. A copy of the memorial is attached to these minutes.

13. Date and place of next meeting. Mr. Ostertag announced that the next meeting of the House of Delegates will be held on Saturday, November 10, 1990 at the Bar Center in Albany, in conjunction with the rededication of the expanded and renovated facilities.

MEMORIAL
TO
LEONARD H. AMDURSKY

Presented at New York State Bar Association
House of Delegates Meeting
June 23, 1990
Cooperstown, New York

LEONARD H. AMDURSKY

For many, many years Leonard H. Amdursky was a member of this House of Delegates and very actively involved with the New York State Bar Association. Mr. Amdursky passed away earlier this month. For those of you who have been in the House for a long time and were not aware, I am sure that this news will come as a sad surprise. I would like to read just a few things about Mr. Amdursky and I would like to close the meeting in his honor and have a moment of silence for him.

Mr. Amdursky was 86 years old when he died. He was a resident of Syracuse, New York; he was a practicing attorney for 62 years, and was a partner in the Oswego law firm of Amdursky, Pelky, Fennell & Wallen. A native of Syracuse, Mr. Amdursky was raised in Fulton New York. He was a 1925 cum laude graduate of Syracuse University and a 1927 graduate of Syracuse University College of Law, where he was first in his class.

He started his career in 1927 with the Oswego law firm of Francis H. Culkin. He later became a partner in the firm and continued the partnership until Mr. Culkin died in 1943.

Mr. Amdursky was appointed a special assistant district attorney for Oswego County in 1944 and served as corporation counsel for the city of Oswego from 1944 to 1947.

He was a member of the American Bar Association, New York State Bar Association and the Oswego County Bar Association. He was president of the Oswego County Bar Association in 1952, and in 1968 and for some years thereafter, chaired this Association's committee which addressed compensation of parties injured in automobile accidents.

Mr. Amdursky was a fellow of the American College of Trial Lawyers, a member of the International Association of Insurance Counsel, and a member of the American Bar Foundation and The New York Bar Foundation.

He served since 1975 on the Governor's Judicial Nomination Committee for the Fourth Department and on the Oswego County Charter Revision Commission.

He received the 50 Year Lawyer Award from this Association on January 20, 1989, just a year and a half ago at the Association's 112th annual dinner meeting in New York City. He also received the John Leach Award for service and distinguished contribution to the legal profession in 1978.

Surviving are his wife, Bernice; a daughter, Joy Perlow; a stepdaughter; 13 grandchildren; four great-grandchildren; and a cousin.

Mr. Amdursky for very many years was involved with this Association and this House at which he spoke on numerous occasions. I am sure those of you who knew him will never forget his voice and will never forget his ability to make presentations. I think you will agree he had a certain way of getting to the heart of an issue and getting his point across. He almost always was in the majority because almost always he was right.

We can all take justifiable pride in Mr. Amdursky's contributions to this House, this Association, and the legal profession which was so dear to him.

I would like to ask this House to stand for a moment in honor of his memory.