

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 4, 1995

PRESENT: Members: Abrams; Alcott; Amendola; Asarch; Ayers; ; Baldwin; Baum; Birmingham; Bernis; Bohner; Bracken; Branca; Brenner; Burgman; Buzard; Coffey; Cometa; Cooke; Corcoran; Cunha; D'Angelo; Daly; DaSilva; Davidson; Delle Cese; DiFede; Dorsey; Dwyer; Edmead; England; Eppler; Epstein; Fales; Farrell; Field; Finerty; R.S. Fink; FitzGerald; Franchina; Freedman; Friedman; Gacioch; Gardella; Geltzer; Getnick; Gingold; P.J. Goldstein; P.S. Goldstein; Gouldin; Grayson; Hall; Hansen; Harris; Hartman; Haskel; Hassett; Headley; Heming; Herold; Hesterberg; Horowitz; H. Jones; Kahler; Kelly; Kendall; Kenney; M. Kessler; S. Kessler; Kilsch; Kmiotek; Kougasian; Landy; Lascuertes; Lawrence; Lazar; Lefkowitz; Leinhardt; Levin; Lilly; Longo; Lubell; Lucchesi; Madigan; Maldonado; Malito; Mandell; Maney; Markuson; Martusewicz; McCarthy; McDonough; Meng; Miklitsch; M. Miller; Murray; Naviasky; Netter; O'Connell; O'Leary; Offermann; Oliver; Omansky; Osber; Ostertag; Palmer; Pearl; Peckham; Penzel; Pfalzgraf; Pfeifer; Pool; Porter; Pruzansky; Reizes; Remo; Rice; Richardson; B. Robinson; E. Robinson; Roper; Rosenbloom; Ross; Santemma; Scheindlin; Sharkey; Sienko; Souther; Spellman; Standard; Stave; Sunshine; Tharp; Thompson; Tishler; Torres; Tyler; VanBenschoten; Waldauer; J. Walsh; Weaver; Williams; Windstein; Witmer; Wollman; Zieselman.

1. Approval of minutes of June 24, 1995 meeting. The minutes were approved as distributed.
2. Report of Treasurer. Mr. Rice summarized the Treasurer's report covering the period January 1 to September 30, 1995, copies of which had been circulated to the members of the House. He reviewed the major elements of the income and expense budgets, noting that the Bar Center expansion loan had now been fully retired. He noted the savings achieved through the cooperative efforts undertaken by committees to curtail expenses, and noted that based on current estimates, the Finance Committee anticipated there would be a year-end surplus of approximately \$625,000. Mr. Rice indicated that the Association remained in sound financial condition at the close of three-quarters of the fiscal year. The report was received with thanks.
3. Report and recommendations of Finance Committee.
 - a) Continuation of affordable dues program. In his capacity as a member of the Finance Committee, Mr. Rice summarized the affordable dues program which had been instituted by the House of Delegates in 1989 as a two-year experiment, and had been extended for like periods in 1991 and 1993. He advised that the purpose of the program since its inception had been to assist those undergoing financial hardship to remain Association members by affording them a waiver of dues at varying levels, depending on their economic circumstances. He reviewed the utilization of the program over the past six years and reported the Finance Committee's

recommendation that it be continued for a further two-year period due to the current state of the economy. Mr. Rice indicated the Finance Committee had recommended, based on its evaluation of program usage, that it be modified to limit participation for no more than two consecutive membership years and to limit the maximum waiver to one-half of the applicable dues. Following discussion, a motion was adopted extending the affordable dues program for an additional two years with the modifications proposed by the Finance Committee.

b) Approval of proposed 1996 income and expense budget. Mr. Rice next summarized the major components of the Association's proposed income and expense budget for 1996. A motion was then adopted unanimously approving the budget as submitted by the Finance Committee.

4. Report by Review Committee on the Profession and the Courts. John J. Kenney, Chair of the Review Committee on the Profession and the Courts, reported concerning the committee's activities in monitoring and coordinating with the Committee on the Profession and the Courts appointed by the Chief Judge. He indicated that the latter group would likely be releasing its report publicly on November 9, 1995, and that it would address issues involving professionalism, client satisfaction, attorney discipline and court management. Mr. Kenney stated that specific recommendations in the report would likely include opening attorney disciplinary proceedings to the public after a prima facie case has been established; mandatory arbitration of fee disputes at the client's option; requiring use of an engagement letter when a person retains a lawyer and legal fees are \$1,000 or higher; adoption of a statute similar to Rule 11 of the Federal Rules of Civil Procedure to impose sanctions for frivolous conduct; improved ethics and practical skills training for law students and lawyers; and the implementation of mentoring and remedial training programs to supplement the existing lawyer disciplinary mechanism. Mr. Kenney stated he had requested that bar groups be given a 120 day comment period after the report is released and that a similar period be afforded after any implementing statutes or court rules are proposed. He indicated that the review committee would study the report once it was released and, if a sufficient comment period were offered, would present recommendations for consideration by the House at the January 1996 meeting. The report was received with thanks.

5. Report and recommendations 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, summarized the committee's proposed amendments to the Code of Professional Responsibility to permit a lawyer or law firm to sell a law practice, including the goodwill of the practice. He noted that the proposal was patterned on the pertinent ABA Model Rule, but reflected modifications to afford greater protection for client confidentiality, to provide a mechanism for detecting conflicts of interest at an early stage of the sale, to protect clients against unilateral fee increases, and to allow lawyers to sell a severable portion of a law practice. Discussion then ensued during which concerns were raised as to the obligation of a selling attorney to determine the buyer's competence to handle the types of matters being sold; the implications of being able to sell discrete portions of a practice; the propriety of a non-retiring lawyer selling a practice; and whether it would be appropriate to track the ABA Model Rule more closely to promote a uniform

national standard in this area. Given the expression of these concerns and the request by some interested groups that they be given more time to study the matter, a motion was adopted to table the proposal until the January 26, 1996 meeting of the House.

6. Report of Ad Hoc Committee on the Jury System. Arthur Norman Field, Chair of the Ad Hoc Committee on the Jury System, summarized developments since his last report at the June 1995 House meeting with respect to the Civil Voir Dire Pilot Project instituted by the Office of Court Administration based on the report of the Jury Project Committee appointed by the Chief Judge. He reviewed the cooperative efforts by the court system and the organized bar with respect to the experimental voir dire programs conducted in four separate areas of the state by the Office of Court Administration. Mr. Field stated that based on the results of those experiments, the Administrative Board of the Courts had issued voir dire rules which would take effect on January 1, 1996, and which would be reviewed after six months of operation. He indicated the committee's belief that the rules struck an appropriate balance among the relevant considerations. He further noted that the committee would gather comments during the six-month review period so that informed comment could then be expressed to OCA. Hon. Jonathan Lippman, OCA's Deputy Chief Administrative Judge, then reviewed the particular elements of the new voir dire rules, and stressed that they were intended to provide flexibility and reasonable discretion to judges to accommodate the differences among the various regions of the state. He explained the manner in which the rules would function with respect to the presence of judges at voir dire, time limitations on voir dire, jury selection methods to be used, pre-voir dire settlement conferences, and the use of non-designated alternates. After Judge Lippman had completed his remarks, the following resolution was adopted unanimously on motion of the House:

WHEREAS, through the cooperative efforts of the Association, the Office of Court Administration and others, a comprehensive study of the voir dire process has been conducted and that study is the basis of the Rules proposed by the Administrative Board; and

WHEREAS, the Administrative Board has adopted Rule 202.33 relating to the conduct of civil voir dire to be effective January 1, 1996; and has provided for a six-month review of such Rules; and

WHEREAS, the Pilot Project and the Rules have clarified the various voir dire methods available; and

WHEREAS, the Rules are designed to require limited judicial management of a process that has in some situations been managed only by counsel conducting the voir dire; and

WHEREAS, the Rules continue to allow judges to exercise their discretion having due regard for the case at hand and for local practices; and

WHEREAS, the Rules should improve the operation of the jury system at least in those areas that are experiencing extreme stress; and

WHEREAS, the Rules provide for additional settlement conferences and for encouragement of the use of non-designated alternate jurors;

NOW THEREFORE, be it hereby

RESOLVED, that the new Civil Voir Dire Rules are a part of a continuing effort of the Courts to improve the jury system; and

RESOLVED, that the new Civil Voir Dire Rules by continuing to respect the need for discretion exercised by the trial judge in each case, while at the same time requiring limited judicial management of the voir dire process, appear to strike a workable and positive balancing of the interests of the public, jurors, the judicial system, lawyers, and judges; and

RESOLVED, that the Ad Hoc Committee on the Jury System with Action Unit #6 should undertake to gather comments from lawyers and judges across the state on the operation of the new Rules during the six-month study period following implementation of the Rules and should then report to the House.

7. Report and recommendations of Committee on Bylaws. Joshua M. Pruzansky, Chair of the Committee on Bylaws, summarized Bylaws amendments proposed to: a) make provision for alternate delegates to the House of Delegates, and b) add the immediate past President to the Finance Committee for a one-year term. He explained that the former amendment had been prepared at the request of several bar associations and sections represented in the House so that they might have full delegations present at House meetings, especially when major issues were scheduled for discussion. He also noted that the proposal before the House reflected technical improvements recommended by the Executive Committee at its November 3, 1995 meeting. Mr. Pruzansky stated that the latter amendment was intended to retain the knowledge and experience of the immediate past President on the Finance Committee for an additional year, and had been recommended by the Finance Committee. Following discussion, the members of the House subscribed separately to the two proposed amendments, and Ms. Richardson announced that both amendments had received the required number of subscriptions for filing with the Secretary to allow consideration at the January 1996 Annual Meeting.

8. Report of President. Mr. Pfeifer reported the following matters:
a) On November 6, 1995 he would be meeting with Chief Judge Kaye and senior OCA officials to discuss matters of mutual interest. He indicated that the topics he planned to raise for discussion included the 1996-1997 Judiciary budget; the status of OCA's efforts to implement a computerized case tracking system in Manhattan to allow attorneys to access court records and related information via computer; the activities of the Committee on the Profession and the Courts; the status of OCA's Alternative Dispute Resolution Committee; and the status of OCA's joint lawyer/judge committee appointed to monitor compliance with the new matrimonial rules governing the attorney-client relationship and the impact of those rules on case management.

b) As covered in greater detail earlier in the meeting, he had appointed a Review Committee on the Profession and the Courts to monitor the progress of the Chief Judge's Committee on the Profession and the Courts, and to coordinate with the latter group, as well as present the Association's views on the major issues under consideration.

c) To further the Finance Committee's goal of reducing expenses to maintain dues at their current level for as long as possible, he had eliminated some twelve committees which had fulfilled their function. He reported that, in addition, he had contacted committee chairs and asked them to hold meetings at the offices of a committee member to save on the expense of meeting at private clubs or hotels. Mr. Pfeifer noted that these measures were projected to save in excess of \$100,000 annually.

d) On November 15, 1996, he would be convening a special meeting of section chairs to discuss a number of topics, including the improvement of communication between the Association and the sections, as well as among the various sections; advancing Association and section objectives in areas such as the NYSBA's strategic planning process; and enhancing section services. He noted the meeting would enable the Association leaders to obtain the perspective of the section leaders on these and other issues.

e) Last year, the Association officers had initiated a strategic planning process to formulate a set of attainable objectives to guide the NYSBA's future direction. He indicated that the Executive Committee had been the principal entity involved in this process, but it had been supplemented by selected invitees from other committees, section leaders and individuals with a breadth of bar experience to assure the formulation of a diverse set of recommendations. Mr. Pfeifer stated that the retreat process had resulted in the formulation of some 21 major objectives and numerous specific action steps to achieve those goals. He indicated that a Strategic Planning Advisory Committee had been designated, with Claire P. Gutekunst of New York City as Chair, to refine and prioritize the objectives, and to suggest a limited number of goals which could be attained within the next year. Mr. Pfeifer noted that the Strategic Planning Advisory Committee had presented its recommendations to the Executive Committee the previous day, and planned to make a report to the House at the January 1996 meeting.

f) On October 13 and 14, 1995, the New York State Conference of Bar Leaders held its fall meeting in Albany, with some 75 bar leaders in attendance. He indicated that the major program topic was an update by Louis A. Craco, Chair of the Committee on the Profession and the Courts, combined with a presentation by the NYSBA's Review Committee on the Profession and the Courts concerning the impact of the Craco Committee's work on the organized bar.

g) The Office of Court Administration was expanding the program, begun three years ago in Manhattan, under which judges are assigned exclusively to commercial cases. He indicated an additional judge had been designated for this purpose in New York City and a similar designation had been made in the Fourth Department. He stated that the commercial division of State Supreme Court was

intended to provide an improved level of service to the business community commensurate with New York's commercial status, and was an initiative supported by the Association's Commercial and Federal Litigation Section.

h) The Association, through 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, was continuing its efforts in support of adequate and reasonable funding for the Legal Services Corporation. He asked for the cooperation of the members of the House in contacting their members of Congress at the local level when called on to do so by either the President's Committee on Access to Justice or the Steering committee.

i) In late October he had attended the Mid-Atlantic Bar Conference held in Wilmington, Delaware. He noted that lawyer discipline was among the issues discussed, particularly public access to disciplinary proceedings, as well as the feasibility of diversion, monitoring or educational programs to help reduce the number of claims made against attorneys.

9. Report and recommendation of Task Force on the Profession regarding legal education. Haliburton Fales, 2d, Chair of the Task Force on the Profession, summarized two recommendations made by the task force with regard to the New York State Board of Law Examiners and the bar examination to the effect that the NYSBA should vigorously urge changes in the size, term and role of the Board of Law Examiners, and that the NYSBA should vigorously urge changes in the bar examination to include a demonstration of competence in lawyering skills. He noted that in January 1995, the House had endorsed a number of other recommendations, including some pertinent to legal education, but had deferred action regarding the instant two suggestions to permit further study by interested groups, including the Court of Appeals and the Board of Law Examiners. Mr. Fales then summarized the response received from the latter. Following discussion, a motion was made and defeated, by a 52-61 margin, to delete recommendation 1(c) that membership on the Board should terminate at age 70, consistent with the provisions of the Judiciary Law. A motion was then adopted approving the two recommendations as submitted by the Task Force on the Profession.

10. Report and recommendation concerning formation of a Health Law Section. Barry A. Gold, Chair of the Steering Committee on Proposed Health Law Section, summarized the proposal to form a Section on Health Law to continue and expand on the work of the committees currently engaged in this field of law. He outlined the increasing number of health-related legal issues which have arisen in recent years, and noted the value that a section in this area would have for members in terms of programs, publications and legislative action, as well as facilitating the exchange of information on various topics. Mr. Gold also outlined the expanded opportunities for member participation that a section would provide. He reviewed the positive response to a survey of member interest in the proposed section, and noted the existing committees to be incorporated in the new entity. Steven L. Kessler, Chair of the Special Committee on AIDS and the Law, reviewed that committee's desire to remain separate from the section in view of the committee's broad scope encompassing

issues beyond those relating directly to health law. After discussion, the following resolution was adopted on motion of the House:

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

RESOLVED, that the Steering Committee on the Proposed Section on Health Law, appointed by the President, shall take all steps necessary to implement the establishment of the Section on Health 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 Health Law are hereby approved; and it is further

RESOLVED, that the Committee on Health Law, the Committee to Confer With the Committee of the Medical Society of the State of New York and the Special Committee on Biotechnology and the Law shall be sunsetted as Association Committees and their work pursued as part of the Section; and it is further

RESOLVED, that the Special Committee on AIDS and the Law and the Committee on Mental and Physical Disability shall remain as Association Committees.

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

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

- AIDS and the Law
- Alternative Dispute Resolution
- Election Law
- Group and Prepaid Legal Services Plans
- Improve Courthouse Facilities
- Pension Simplification
- Procedures for Judicial Discipline
- Solo and Small Firm Practitioners
- Volunteer Lawyers

b) With the consent of the chairs, the following special committees were being allowed to lapse, since their work had been completed:

- Task Force on Administrative Adjudication
- Biotechnology and the Law (to become part of new Section on Health Law)
- Committee on Lawyers to Evaluate Action for Reform
- Consider Mandatory Continuing Legal Education in New York
- Long-Range Planning

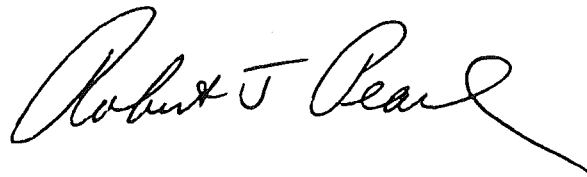
Implement Merit Selection
New York Law/Net (merged into Committee on Law Office Economics and
Management)
Judicial System
Review the Proposed Code of Evidence for the State of New York
Medical Malpractice
Military and Veterans Affairs

c) With the consent of the chairs, two standing committees were being discharged. A motion was adopted discharging the Committee on Administrative Law and the Committee on Federal Constitution. Ms. Richardson noted that the latter committee had been merged with the Committee on Federal Legislation, with the combined group being designated the Committee on Federal Constitution and Legislation.

12. New business. Mr. Buzard noted that Mr. Walsh had returned to the House after undergoing major surgery. A motion was adopted in recognition of Mr. Walsh's courageous recovery and dedicated participation in the House.

13. Date and place of next meeting. Ms. Richardson announced that the next meeting of the House of Delegates would be held on Friday, January 26, 1996 at the Marriott Marquis in New York City.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert J. Pearl". The signature is written in black ink and is positioned above the typed name and title.

Robert J. Pearl
Secretary