NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 1, 1997

PRESENT: Members: Anglehart; Ayers; Baldwin; Bass; Bergen; Berlin; Bermingham; Bernis; Bohner; Bracken; Branca; Burgman; Cardozo; Cloonan; P. Coffey; Coleman; Cometa; Connery; Cooke; Copps; Coughlin; Cyrulnik; DiGirolomo; Dwyer; Eggleston; Embser; Farrell; Felder; Fennell; Field; Fink; FitzGerald; Franchina; B. Freedman; M. Freedman; Gacioch; Galloway; Garson; Gerstman; Getnick; Glanzer; M.R. Goldstein; Golinski; Gorgos; Grayson; Gregory; Haig; Halpern; Harris; Hassett; Hayes; Headley; Heming; Herold; Horan Horowitz; Jacobs; James; Jordan; Juliano; Kahler; Kahn; Kamins; Kelly; Kendall; M. Kennedy; Kenney; Kenny; Kessler; Kilpatrick; Klein; Kougasian; Krane; Kretser; Landy; Levin; P. Levy; Lieberman; Lilly; Logan; Madigan; Malina; Manley; Marten; McCarthy; McClusky; McDonald; Midonick; Mihalick; Miklitsch; H. Miller; M. Miller; Millon; Moore; Naviasky; Netter; Nussbaum; O' Connor; O'Keeffe; O'Leary; Oliver; Ostertag; Palermo; Pearl; Peckham; Peradotto; Perlman; Pfeifer; Porter; Pruzansky; Raylesberg; Reede; Reich; Reizes; Remo; Rice; Richardson; Richter; Rider; Rosenfeld; Rosner; Ross; Rothstein; Samel; Santola; Schraver; Schumacher; Shapiro; Spellman; Standard; Sunshine; Taylor; Terranova; Tharp; Thompson; Tippins; Tsimbinos; D. Tyler; Verhoeven; Vinal; O. Walsh; Weaver; Whalen; Williams; Witmer; Wollman.

1. Approval of minutes of June 28, 1997 meeting. The minutes were deemed accepted as distributed previously.

2. Report of Treasurer. Mr. Rice summarized the Treasurer's report covering the period January 1 to September 30, 1997, copies of which had been circulated to the members of the House. He reviewed the major elements of the income and expense budgets, and noted that based on current estimates, the Finance Committee anticipated a year-end surplus in the range of $800,000, prior to audit. He indicated that the cost reductions achieved through the cooperative efforts of the sections, committees, officers and staff, when combined with the budget surpluses attained in recent years, would enable the Association to avoid a dues increase in 1998 and possibly in 1999. Mr. Rice stated that the Association's financial condition would permit the normal three-year dues cycle to be extended for a fourth and possibly a fifth year. He 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. Memorial to Lyman M. Tondel, Jr. Evan A. Davis presented a memorial to past President Lyman M. Tondel, Jr., who had passed away earlier in the year. A moment of silence was observed out of respect for Mr. Tondel's memory and his contributions to both the Association and the legal profession. A copy of the memorial is attached to these minutes.

4. Report by Chief Administrative Judge re proposed court reform legislation. Hon. Jonathan Lippman, Chief Administrative Judge of the State of New York, summarized the court restructuring legislation under consideration by the Legislature. He indicated that the bill introduced in the Senate at the request of the Office of Court Administration would merge New York's nine trial level courts into two tiers. He explained the manner in which the expanded Supreme Court would function to provide judicial expertise in its various divisions, while removing outdated, artificial distinctions. He indicated this restructuring would enable the court system to handle its caseload more efficiently while providing the public with a more understandable system. Judge Lippman advised that in terms of judicial selection, the proposal would provide for "restructuring in place" to depoliticize matters, so that judges would continue to be elected or appointed consistent with their current method of selection. He indicated that the plan included the establishment of a Fifth Department to balance appellate caseloads, but without specifying geographic boundaries, to minimize the political debates encountered in the past. Judge Lippman also noted that the plan released by the Assembly, while having some different features, carried the same core concept as that presented in the Senate bill. He stated that the cost of the merger plan would be far less than that attached to prior reform proposals, and that savings over current administrative costs could be anticipated due to the efficiency that would be achieved. He indicated that passage by two successive Legislatures was hoped for starting in 1998 with submission to the electorate in 1999 with the reforms to take effect in 2000. He requested Association support for the OCA plan, and invited the submission of questions or comments by the members of the House. The report was received with the thanks of the House, with Mr. Moore noting that an Association position would be taken following the submission of a report by the Task Force on Court Reorganization.

5. Report and recommendations of Finance Committee.

a) Continuation of affordable dues program. Finance Committee Chair G. Robert Witmer, Jr. summarized the operation of the affordable dues program introduced on a renewable basis in 1990 to assist members who were experiencing financial hardship to remain members of the Association. He noted that refinements in the program as approved by the House in 1995 were working well to limit participation in the program to those who were experiencing true fiscal hardship. After discussion, a motion was adopted unanimously approving continuation of the affordable dues program for an additional two years.

b) Proposed 1998 income and expense budget. Mr. Witmer then summarized the major components of the Association's proposed income and expense budget for 1998. A motion was adopted unanimously approving the budget as submitted by the Finance Committee.

6. Report of Task Force on Law Guardian System. Lucia B. Whisenand, the Chair of the Task Force on Law Guardian System, summarized that group's report and recommendations with respect to the issue of privately paid law guardians. She explained the differences between publicly and privately paid law guardians, including the absence of compensation limitations for the latter, as well as the lack of specific regulatory procedures. She indicated that based on its study, the task force had concluded that privately paid law guardians should not be discontinued, as the system

is widely used, and it was felt that parents who could afford to reimburse counsel in private proceedings which they have initiated should justifiably compensate their children's attorney. Ms. Whisenand reported that the task force had concluded that privately paid law guardians should be regulated in a manner akin to that applicable to guardians ad litem and other attorneys assigned in guardianship proceedings. She then outlined the task force's recommendations to provide a reasonable level of regulation, including training, appointment procedures, compensation and payment processes, and record keeping requirements. She noted that after consideration by the Executive Committee, the recommendations relating to OCA-Legal Aid Society agreements to provide law guardians and the imposition of a six-month period of ineligibility on a law guardian who has received a fee exceeding $5,000 had been eliminated from the report. Discussion then ensued, during which concerns were raised regarding several of the recommendations, and it was noted that the matter was still under study by an OCA panel as well as various bar associations. A motion was then adopted to defer further consideration until the January meeting to allow those groups additional time to complete their review.

7. Report of President. Mr. Pruzansky advised that, as was done at the June meeting, to allow as much time as possible for the discussion of substantive items, he had furnished a detailed, written President's report to the members, and would provide only a brief oral summary of significant items. A copy of the written report is attached to these minutes. Mr. Pruzansky then reported the following matters:

a) Earlier this year, following input from the organized Bar, including the NYSBA, OCA had released its rule requiring bridge the gap continuing legal education for newly admitted attorneys, and that on October 9, 1997, Chief Judge Kaye had announced the appointment of a sixteen-member Continuing Legal Education Board. He indicated that this group, chaired by Hon. Thomas R. Sullivan, Associate Justice of the Appellate Division, Second Department, consists of attorneys, judges and academicians, with four members appointed by the Chief Judge and three each by the four Presiding Justices of the Appellate Divisions. Included among the appointees are current NYSBA Secretary Lorraine Power Tharp and Fordham University School of Law Dean John D. Feerick, who has been active with the Association.

Mr. Pruzansky noted, with regard to the general MCLE requirements applicable to all attorneys, that he anticipated release of a draft plan in the near future by OCA with an opportunity for bar associations to comment, as was the case with the bridge the gap program. He stated that the House would be kept apprised of developments in this critical area.

b) As announced in June, in cooperation with the Committee on Legislative Policy and Department of Governmental Relations, efforts were underway to strengthen the NYSBA's legislative presence. He advised that in late September, he had released to all county, local, minority and women's bar associations for their republication a "Legislative Scorecard" showing the votes by New York's members of the House of Representatives regarding funding for the Legal Services Corporation.

He reported that with the active participation of the Executive Committee, he was seeking to identify politically active lawyers in all areas of the state to expand

contact with state legislators, and that similar methods would be considered to increase Association influence at the federal level.

c) On September 30, 1997, in an historic meeting, he had assembled the deans of all fifteen law schools located in New York State to meet with him in New York City. He stated that the topics addressed included the respective roles of law schools and bar associations in preparing law students and new admittees for practice; mandatory continuing legal education; the response of law schools to the changing nature of practice; issues of diversity with respect to students and faculty; the impact of the influx of new lawyers on the profession and the quantity of law school graduates relative to the job market; student indebtedness; and increased communication between the bar and law schools. He reported further that to institutionalize this bridge between legal educators and the practicing bar, he had formed a Dean's Council, with Dean Howard A. Glickstein of Touro Law School as chair.

d) Last year, in the aftermath of the TWA Flight 800 crash, the NYSBA on an ad hoc basis had appointed a task force to assist in informing the victims' families concerning their rights with regard to legal representation and communications with insurance carriers or other interested entities. He observed that while the response team functioned effectively, given the need to act swiftly following the crash, he had put in place a permanent mechanism so the Association would be prepared for any future disasters, natural or man-made, which might occur anywhere in the state. He advised that the NYSBA had a complete contingency plan and response team in place to work with appropriate government agencies, as well as a comprehensive four-point plan to inform victims and their families regarding the functioning of the legal system, advise those in need of legal assistance how to make an informed selection of counsel, monitor the conduct of attorneys at the disaster site, and inform victims, family members and the public that personal solicitation by lawyers at the disaster site is unethical.

e) Earlier in the year, the Lawyers Fund for Client Protection had asked for views regarding its proposal that dual escrow agents (the attorneys for both parties) be required in residential real estate transactions to limit the opportunity for the misappropriation of client funds being held in escrow in connection with the sale. He indicated that the Real Property Law Section had opposed the proposal and had noted several concerns regarding the rule's impact. Mr. Pruzansky stated that an alternate proposal had been put forth by the Lawyers' Fund for Client Protection and was being reviewed by the Real Property Law Section.

f) Earlier in the year, to meet cash flow needs, the state had transferred to the general fund some $3.5 million from the attorney licensing fund, which is the repository for the biennial registration fees collected from attorneys. He indicated that the attorney licensing fund is the account from which payments are made by the Lawyers' Fund for Client Protection and is also the funding source for the lawyer grievance committees. Because of the transfer by the state, the Lawyers' Fund now lacks money to pay approved claims and the grievance committees are without funds to cover operational expenses, and legislative action will be required to restore the necessary funds. Mr. Pruzansky noted that the NYSBA has long maintained that the biennial

attorney registration fees should not be diverted to the state's general fund, but should remain earmarked for purposes connected with the legal profession, including the Lawyers' Fund and the support of the grievance process. In the past, the NYSBA unsuccessfully advocated the enactment of legislation to create a board of trustees to manage and distribute the monies contained in the attorney licensing fund. He reported that on October 31, the Executive Committee took a position urging action by the Legislature to restore the $3.5 million in transferred funds and to create the requested board of trustees to ensure the appropriate distribution of funds.

g) The State Insurance Department had proposed changes to Insurance Regulation 68, which deals with no fault automobile insurance, by reducing the time periods in which claims for no fault benefits may be filed. He advised that, specifically, the rule changes would: reduce from 90 days to 30 days the time for filing a no fault application; reduce from 180 days to 45 days the submission of proof of claims for medical, work loss and other expenses; and eliminate the follow-up requirement for persons who do not return their no fault application within 30 days. He reported that these modifications were reviewed by the Committee on Tort Reparations, Trial Lawyers Section, Torts, Insurance & Compensation Law Section, and the Task Force to Consider Tort Reform Proposals which faxed their concerns and opposition to the State Insurance Department, since the proposed time reductions, which will truncate the process for the benefit of carriers, will have the greatest adverse impact on injured members of the public who are unrepresented by counsel and lack familiarity with the requirements. He noted that as a practical matter, especially in major metropolitan areas, necessary information cannot be obtained from the police, the Department of Motor Vehicles, or medical providers within the condensed time frame, so the injured will be severely prejudiced by the changes. He assured the House that remedial action by the NYSBA was underway.

h) Efforts over the past few months to secure adequate funding for civil legal services had met with success, as the U.S. Senate had voted to appropriate $300 million for the Legal Services Corporation (LSC). He advised that in the House of Representatives, influential New York Republicans had been persuaded to urge that the $140 million proposed for the LSC by the House-Appropriations Subcommittee on Commerce, State and the Judiciary (which possesses oversight responsibility for the LSC) be increased, and the House had voted an amendment to raise its funding proposal to $250 million. He indicated that compromise negotiations between the two houses would likely result in agreement on a figure at least in the range of the present $283 million allocation for the LSC. He reported that at the state level, the budget, as adopted this past summer, provided nearly $5 million for civil legal services, together with a further $1 million under the state's welfare appropriation. He stated that the results on both the federal and state level were substantially and positively impacted by the efforts of the NYSBA.

He reported further that Chief Judge Kaye had recently appointed The Legal Services Project, a blue ribbon panel charged with formulating a comprehensive programmatic response to the lack of adequate civil legal services for the low-income, with four former Association Presidents, Alexander D. Forger, Archibald R. Murray, M. Catherine Richardson and Justin L. Vigdor, designated as members of the panel.

i) In the fall of 1996, Chief Judge Kaye had appointed two bench-bar task forces (the Task Force on Client Satisfaction and the Task Force on Attorney Professionalism and Conduct) to implement recommendations formulated by the Committee on the Profession and the Courts, known popularly as the Craco Committee. He noted that the two task forces had reported their implementation plans to the Administrative Board of the Courts and, as authorized by that body, initiatives in four areas were released in April 1997 for public comment. He advised that comments from NYSBA sections and committees were assembled and transmitted by him to OCA in June.

He reported that after considering the NYSBA's comments, as well as those from other groups, OCA in September had released its final, revised sanctions rule to become effective in 1998, as well as standards of civility for lawyers, judges and court employees, and a statement of clients' rights to be posted by attorneys in their offices.

Mr. Pruzansky stated that in connection with the statement of clients' rights, because of OCA's omission of a companion statement of client responsibilities, he had notified OCA that the NYSBA was prepared to publish and distribute such a document to every lawyer in New York with the suggestion that it be placed adjacent to the OCA issued statement of clients rights. He indicated that upon further consideration, the Administrative Board had referred the matter to its appropriate committee, to which it had appointed Grace Marie Ange, Chair of the NYSBA's Professionalism Committee, to consider preparing a statement of clients responsibilities to be posted together with the statement of clients rights.

j) In Washington Legal Foundation v. Texas Equal Access to Justice Foundation, the U.S. Fifth Circuit Court of Appeals in 1996 had declared the Texas IOLTA program unconstitutional, holding that lawyers' clients have a property right in the interest collected on lawyers' trust accounts. He stated that this case has national implications, as the Texas ruling could jeopardize IOLTA programs in other states, depriving them of funds critical to the delivery of adequate civil legal services to the indigent. He indicated that with the authorization of the Executive Committee, the NYSBA had joined 39 other state bar associations, 40 IOLTA programs and four other organizations in an amicus curiae brief supporting a certiorari petition seeking U.S. Supreme Court review of the Fifth Circuit's determination. He reported that the U.S. Supreme Court had granted certiorari in this case, now denominated Phillips v. Washington Legal Foundation, and an amicus brief is being submitted on the merits. He advised that the case will be argued and decided during the Supreme Court's current term, and that the House would be kept informed regarding the progress of this matter.

k) With the discontinuance of the Annual Dinner during the Annual Meeting week in January, there has not been an opportunity for Association members to socialize as a general group other than in the context of section functions of a more limited scope. He announced that to foster collegiality and provide an occasion for members to gather, he would be hosting a reception for NYSBA members in the late afternoon of Wednesday, January 28, 1998 from 4:30 p.m. to 6:30 p.m. at the Marriott Marquis in New York City. He stated that the timing of the reception will not affect

dinner or social plans for later in the evening, and he asked the members to reserve the date and time.

l) Following a study exceeding two years in length, the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts had released its report this past summer. The report showed differing perceptions of bias among interviewees, underrepresentation of women and minorities in quasi-judicial posts, growing numbers of women and minority law clerks and magistrate judges circuit-wide (although not uniform among the courts in the circuit), and an absence of anti-bias and anti-harassment policies in the courts. Mr. Pruzansky indicated that in response to these findings, the Task Force had called for sensitivity training for judges, court employment anti-bias policies, and greater outreach to women and minority lawyers when making court appointments for posts such as special masters and trustees. Comments by relevant committees and sections had been submitted to the Second Circuit Task Force, and he advised that the House would be kept informed regarding developments.

m) During the last legislative session, a bill had been introduced that would have affected health care providers by holding health maintenance organizations and managed care entities liable for negligence related to medical decision making regarding the provision or denial of health care. Under the proposed bill, health care organizations would be required to exercise reasonable care in selecting or influencing employees or other representatives making decisions that affect the quality of a subscriber's diagnosis, care or treatment. He stated that this measure had been studied by the Health Law Section and the Task Force to Consider Tort Reform Proposals, and had failed to gain passage by the Legislature, but would likely be reintroduced in the next term. He stated that he had reached out to the President of the New York State Medical Society and offered to collaborate in passing this legislation which affects both associations.

n) Following publication in late August of the story regarding the alleged police brutality of Abner Louima in Brooklyn, he had offered Mayor Guiliani assistance in restoring public confidence in the justice system and had commended his appointment of a Mayoral Task Force on Police Brutality. He offered to recommend members for the Task Force, furnish counsel to that body or cooperate with the Mayor's office in any way that would be useful. Mr. Pruzansky advised that he had received communication from the Mayor's office stating that as the work of the Task Force proceeds and subcommittees are formed, the Mayor will consider calling on the resources of the Association for assistance.

o) In October, the Administrative Board of the Courts released three jury reform rules for public comment within 60 days. The rules would: give judges discretion to permit jurors to take notes in civil and criminal cases when warranted by the length of the trial and the complexity of the issues; give judges discretion to provide a written copy of their charge to deliberating juries in civil cases when the judge finds it would assist the deliberation; and on consent of the parties in both civil and criminal cases, delay the designation of regular and alternate jurors until after the jury has been charged. He observed that these rules were proposed initially in the 1994 report of The Jury Project and were also contained in Chief Judge Kaye's 1997 legislative

proposals for continuing jury reform, but were not enacted. Since the proposals had been in existence for some three years, he indicated that OCA was planning on issuing the rules without allowing for comment. Mr. Pruzansky noted that at the NYSBA's request, OCA agreed to permit a 60-day comment period, and that the three rules were under review by interested sections and committees.

p) Earlier this year, based on a recommendation by The Association of the Bar of the City of New York, the American Bar Association's House of Delegates took a position condemning "pay to play," a practice whereby attorneys contribute to political campaigns in order to receive municipal finance work. He noted that the ABA had formed a task force to study the ethics issues generated by this situation. He also advised that in New York, the Administrative Board was considering a proposal by The Association of the Bar to curtail "pay to play." Mr. Pruzansky advised that this initiative was under review by the NYSBA's Municipal Law Section and the Committees on Professional Ethics, Election Law and Professional Discipline, and that the matter would be presented for House consideration following completion of their review.

8. Report of Task Force to Consider Tort Reform Proposals. John P. Bracken, Co-Chair of the Task Force to Consider Tort Reform Proposals, summarized the status of efforts by the coalition designated the New Yorkers for Civil Justice Reform to achieve extensive reform of the state's tort system. He described the formation of the NYSBA's task force, with a balanced mixture of plaintiff and defense attorneys, to provide a reasonable and fair response in this area, as well as rectify inaccuracies published by others regarding the tort system. He outlined tort reform initiatives deemed reasonable and appropriate by the task force which, in turn, were approved by the Executive Committee for transmittal to the Legislature. He stated that these measures included the repeal of Articles 50-A and 50-B of the CPLR; allowing the computation of pre-judgment interest for damages in personal injury actions; modifying Part 130 of the Uniform Rules for NYS Trial Courts with respect to frivolous litigation to impose costs for abusive conduct that causes expense and delay; opposing the expansion of Court of Claims jurisdiction to include actions against municipalities; limiting landowner liability to encourage owners of large tracts to open them for public recreational purposes; barring civil recovery for injury sustained during conduct which results in the claimant's conviction of a felony; allowing recovery of damages for emotional injury in wrongful death actions; and requiring that health care organizations may be held liable for the consequences of the wrongful denial, delay of payment, or approval of medical treatment. Mr. Bracken indicated that during the upcoming legislative session, the task force would continue to monitor developments in this area, correct fallacies and inaccurate information released by others concerning the tort system, and present a balanced perspective to the Legislature on behalf of the Association. The report was received with thanks.

9. Consideration of proposed amendments to the Rules of the House of Delegates for the filing of *Amicus Curiae* Briefs. Mr. Pruzansky summarized proposed amendments to the "Rules for the Filing of *Amicus Curiae* Briefs on Behalf of the New York State Bar Association." He explained that the revisions, which had been endorsed by the Executive Committee, would permit the NYSBA to file a brief in the highest court of another state, thus providing the Association with the flexibility to address issues confronting the organized bar that are multi-state in nature. He noted

that to provide a mechanism for screening brief applications, same would have to be filed with the Executive Committee by the President or the Chair of the House of Delegates, so that those officers would have an opportunity to review any invitations to file briefs which may be received from organizations in other jurisdictions. After discussion, a motion was adopted approving the revisions as proposed. A copy of the Rules as amended is attached to these minutes.

10. Consideration of litigation-related matters:

a) Proposed Guidelines for Commencement of Litigation on Behalf of the New York State Bar Association. Mr. Pruzansky summarized proposed "Guidelines for Commencement of Litigation on Behalf of the New York State Bar Association, noting that they were based on the "Rules of the House of Delegates for the Filing of *Amicus Curiae* Briefs on Behalf of the New York State Bar Association." He indicated there was a need for such guidelines as there had been several occasions in recent years when the NYSBA had been asked to consider initiating or participating in litigation. He outlined the conditions under which litigation might be authorized as those where: (1) the issues presented were of unique significance to the Association, were consistent with Association policy, or were supported by a majority of the membership; (2) the interests sought to be protected were germane to the Association's purposes; and (3) individual members would have standing to commence litigation, but the participation of individual members would not be required. Mr. Pruzansky then reviewed the process that would govern the approval and monitoring of litigation. He also presented a revision recommended by the Executive Committee to Paragraph D(5) of the proposed guidelines that would require a two-thirds vote of Executive Committee members present at a meeting, but no less than a majority of the full committee to approve the commencement of litigation. Discussion then ensued during which an amendment was offered and defeated that would have reduced the vote required of the Executive Committee to approve litigation to a majority of that body. The proposed revision to Paragraph D(5) by the Executive Committee to require a two-thirds vote of that body was then accepted by the House, as was a suggestion to change the term "Guidelines" in the title to "Rules" to maintain consistency with the Rules for the Filing of *Amicus Curiae* Briefs. With those revisions, a motion was then adopted to approve the Rules. A copy of the Rules as approved is attached to these minutes.

b) Report and recommendations of Elder Law Section re Medicaid criminalization provisions of the Health Insurance Portability and Accountability Act. Elder Law Section Chair Walter T. Burke and Kathryn Grant Madigan, Chair-Elect of the section and the Chair of the section's Litigation Task Force, summarized the section's report regarding the impact of federal statutes on those who counsel individuals to transfer assets in order to qualify for Medicaid benefits. They noted that initially Section 217 of the Health Insurance and Portability Act had imposed criminal penalties on individuals disposing of assets resulting in a Medicaid transfer penalty. They advised that Section 4734 of the Balanced Budget Act of 1997 had amended the earlier provision by shifting criminal liability to paid advisors, including attorneys. They noted that criminal liability was being attached to actions that were not themselves illegal, and that the statute in effect placed a gag order on an attorney's right to legally counsel a client, was violative of the First Amendment's free speech protection, as well as being an unduly broad and vague proscription. They then explained the breadth of

the issues involved as extending beyond the counseling of the elderly and affecting attorneys generally. They reviewed the comments received from other interested groups within the Association, as well as the manner in which any litigation would comply with the newly adopted "Rules for Commencement of Litigation on Behalf of the New York State Bar Association." Mr. Burke and Ms. Madigan then presented the section's requests that the Association support the immediate repeal of Section 4734 of the Balanced Budget Act of 1997 and authorize the commencement of litigation challenging the constitutionality and enforcement of this provision. After discussion, the following motions were approved by separate vote of the House:

1. The New York State Bar Association supports the immediate repeal of §4734 of the Balanced Budget Act of 1997, amending §217 of the Health Insurance Portability and Accountability Act of 1996, which violates established First Amendment protections in that it creates the threat of legal liability for all persons including attorneys who counsel or assist clients in medical assistance planning, which conduct, in and of itself, is presently lawful under both state and federal laws.

2. The New York State Bar Association shall hereby be authorized to commence and/or join in an action to enjoin the enforcement of, and to declare the unconstitutionality of, §4734 of the Balanced Budget Act of 1997, and to seek such other relief as may be appropriate, and to allocate reasonable funds to retain counsel to represent the Association in said action, and to use best efforts to have other interested groups join in the litigation.

The members of the state and federal judiciary who are also members of the House abstained from any participation in the discussion and vote regarding this item.

11. Report and recommendations of Committee on Civil Rights. Leroy Wilson, Jr., Chair of the Committee on Civil Rights, summarized the committee's report requesting that the Association support efforts to have the U.S. Courthouse located at Foley Square in New York City named for Hon. Thurgood Marshall. He outlined the salient accomplishments of Justice Marshall as an attorney and jurist, and noted his role as Circuit Justice for the United States Court of Appeals for the Second Circuit. Discussion then ensued during which an amendment was accepted to the resolution proposed by the committee to clarify that the courthouse in question was the one located at 40 Centre Street. As amended, the following resolution was then approved unanimously on motion of the House:

WHEREAS Thurgood Marshall was one of the greatest trial and appellate lawyers in the history of this Nation; and

WHEREAS in September, 1961 President John F. Kennedy appointed Thurgood Marshall as the first African American to sit as a Judge on the United States Court of Appeals for the Second Circuit; and

WHEREAS in July, 1965 President Lyndon B. Johnson appointed Thurgood Marshall as the first African American to serve as United States Solicitor General; and

WHEREAS on June 13, 1967 President Lyndon B. Johnson appointed Thurgood Marshall as the first African American to sit as an Associate Justice of the Supreme Court of the United States of America beginning October 2, 1967; and

WHEREAS during his tenure as Associate Justice of the Supreme Court of the United States of America Justice Thurgood Marshall also served as the Circuit Justice for the United States Court of Appeals for the Second Circuit; now, therefore, be it

RESOLVED that the New York State Bar Association hereby urges the appropriate public officials to take the appropriate steps to name the United States Federal Courthouse at 40 Centre Street, Foley Square in New York City, New York, the "Thurgood Marshall United States Courthouse," and that they place a suitable statue and/or plaque in front of this Courthouse in honor of Thurgood Marshall.

12. Report of Chair. Mr. Moore noted that in continuation of past practice, he had circulated a written report as Chair to allow additional time at meetings for the discussion of substantive items. A copy of the report is attached to these minutes. In addition, Mr. Moore made the following announcements:

a) John F. Mahon, a past chair of the Trial Lawyers Section, and that section's delegate to the House in 1986 and 1987, had passed away in September.

b) Materials had been circulated to permit members of the House to enroll in the mentor program for the Young Lawyers Section to enable younger and newer lawyers in that section to obtain guidance from more experienced practitioners. The members of the House were encouraged to participate in the program.

c) The Nominating Committee had met on October 31, 1997 and, among other offices, had nominated Thomas O. Rice for election in January as President-Elect, Lorraine Power Tharp as Secretary, Frank M. Headley, Jr. as Treasurer, and James F. Dwyer, Margery F. Gootnick, John J. Kenney, Steven C. Krane, Ellen Lieberman and Joseph V. McCarthy as members-at-large of the Executive Committee. The House offered congratulations to the named candidates.

13. Memorial to Alexander Delle Cese. Past President Maxwell S. Pfeifer presented a memorial to former Twelfth District Vice-President Alexander Delle Cese, who had passed away earlier in the year. A moment of silence was observed out of respect for Mr. Delle Cese's memory and his contributions to the Association and the legal profession. A copy of the memorial is attached to these minutes.

14. Report of The New York Bar Foundation. Maryann Saccomando Freedman, President of The New York Bar Foundation, summarized the activities of The Foundation in furtherance of its charitable purposes, and introduced Matthew J. Kelly.

Mr. Kelly, in turn, described the beneficial services provided through a pro se matrimonial program operated in Albany County which had received financial assistance from The Foundation. The report was received with thanks.

15. Date and place of next meeting. Mr. Moore announced that the next meeting of the House of Delegates would be held on Friday, January 30, 1998 at the Marriott Marquis in New York City.

16. Adjournment. The meeting was then adjourned in memory of Messrs. Tondel and Delle Cese.

Respectfully submitted,

Lorraine Power Tharp

Lorraine Power Tharp
Secretary

NEW YORK STATE BAR ASSOCIATION

In Memoriam

Lyman M. Tondel, Jr.

MEMORIAL

to

LYMAN M. TONDEL, JR.

Presented by

Evan A. Davis, Esq.

New York State Bar Association

at the

House of Delegates Meeting

November 1, 1997

Albany, New York

LYMAN M. TONDEL, JR.

1912-1997

Lyman Tondel is a person whose life is worthy of being honored, certainly, but even more rare, it is a life worthy of being savored.

Somerset Maugham compared the living of life to the weaving of an oriental carpet. Lyman wove a carpet of great beauty and intricacy with, as the art critics say, so much going on in it.

It is appropriate to start with Lyman's leadership of the New York State Bar Association. After serving as the first Chairman of the Committee on Professional Responsibility and Chairman of the Executive Committee, Lyman led the New York State Bar Association as its President from June 1968 to June 1969.

These were unusual and unsettled times: the death of Martin Luther King and Robert Kennedy, the Detroit riots, student demonstrations at Columbia and Harvard, the escalation of the war in Vietnam, the escalation of the anti-war mobilization.

As one of his first acts Lyman established the Marden Committee on Law in a Changing Society to study how lawyers could help keep the law abreast of the times and make the public more clearly aware that a society without law is, in Lyman's words, like a ship without compass or stars. This dual mission — to reform the law while insisting unequivocally on the authority of the law — is a mission at the core of our profession.

Lyman gave energetic attention not only to the values of the profession, but also to the practical concerns of the profession and this Association. For example in his term as President, the Association raised almost sixty percent of the cost of the Bar Center in which we meet today. Lyman proposed and in his term, and after, worked for the creation of this House of Delegates so as to better involve the local bar associations in the work of the State Bar. As the father of this body, he would be moved that you have taken time from your work to honor him today.

Lyman also had enough confidence to be able to admit lack of success. In his first President's Page in the Bar Journal he noted that the major challenge at the moment was how best to help in the selection of well, qualified people to fill 125 new judgeships that had recently been created. Apparently all did not go well and in his Fifth President's Page we find a strong attack on "the continuance of the practice of treating judgeships as particularly choice political tools." This is a problem that continues today excluding from the bench many highly qualified applicants who lack the necessary political entree for nomination.

A very important motif in Lyman's life is international law. It is useful to remember the role that Lyman's vision of international law played in his activities as a bar leader. He chaired the International Law Section of the ABA, the ABA Committee to Study the Respective War Powers of the President and the Congress, the City Bar's Committee on the Role of Lawyers in the Search for Peace. He was active in world peace through the Law Center and organized the Hamerskjold Forums on the role of law in the settlement of international disputes.

Lyman believed in the rule of law and believed that the role of law could and should be extended internationally. He saw the role of law as the compass, or the stars, to guide not only one particular society but also interaction between people, business and governments in the world as a whole.

In the 50's Lyman led the ABA's successful fight against the Bricker Amendment which was aimed at blocking the direct enforcement of treaties by United States Courts. Human Rights treaties were the particular target of Senator Bricker and his supporters. In the 1960's Lyman organized and led the fight for the repeal of the Connelley Reservation which gives the United States the unilateral right to decide whether a matter is domestic and therefore not within the jurisdiction of the International Court of Justice. His position on this matter was contrary to the position of the leadership of the ABA, but in the end Lyman's view prevailed in the ABA.

It was on the Fifth Ballot that Lyman Tondel lost his bid to become ABA President. New Yorkers have a bit of an obstacle to overcome in the ABA, and I personally believe that while New York State's internationalism and diversity is a great strength and benefit to prosperity in our profession, in the past at least, it has not been a great asset for candidates for ABA President.

Another key part of the work of craftsmanship that is Lyman Tondel's life was his legal practice and the building of his law firm. For many years Lyman was the hiring partner. He played a key role in building Cleary, Gottlieb. He also kept up and strengthened important firm values relating to active partner responsibility for the quality of a young lawyer's professional development. Professionally he had the intellectual strength to be both a leading expert on railroad organization and one of the early leading experts on environmental law. He was a scholar who wrote over thirty articles. He argued an important case in the World Court.

Lyman was tireless. In addition to the themes already discussed, Lyman also served as President of the Institute of Judicial Administration, was a long-time Council member of the American Law Institute and Chaired the ABA's Commission on Medical Professional Liability.

Balance is a buzz word today. It refers as we all know to the balancing of professional and family life. I should not fail to mention, therefore, that Lyman was a believer in balance and threw

himself into it the way he did everything else. For example, he paved an area at his home to be a basketball court and lit it so that he could play basketball with his children day and night. He was an avid tennis player. He was a senior warden at his Church. When his children were at public school he was Chairman of the School Board. When his daughter went to private school, he became Chairman of its Board of Trustees.

Is there an overall pattern to all this? I think so, and I think it was captured by my partner Walter Rothschild in something he wrote for the issue of the Cleargolaw News that was recently dedicated to Lyman.

> *"Lyman's outstanding characteristic was his deep interest in and caring for people. He liked all kinds of people—his partners and associates, the Firm's staff people, his clients, judges, fellow alumni, bar association colleagues. It didn't seem to matter to him, he just took a deep interest in everybody. He took an interest in their spouses and children, what they were thinking and doing, where they were going. He remembered their names and faces for years. It was really quite remarkable."*

Lyman, while he came from a small lumber town in the State of Washington, became a first-class example of the best in New York lawyers. His love of people, his global thinking, his feisty views on matters of principle, his energy and capacity for hard

work, his readiness to take charge, his ability to juggle many responsibilities, these are traits we like to identify with the New York Bar. We value our independence. We thank Lyman for his important contribution to our reputation as members of the New York Bar and to the reputation of this Association.

New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200

NYSBA

JOSHUA M. PRUZANSKY
President
Greshin, Ziegler & Pruzansky
199 East Main Street
PO Box 829
Smithtown, NY 11787-2899
516/265-2550
FAX 516/265-2832
pruzansk@villagenet.com

October 30, 1997

To: Members of the House of Delegates

Re President's report in connection with November 1, 1997 meeting:

Continuing the practice begun at the June meeting of the House, I am providing this written President's report in order to condense my remarks at the upcoming meeting. This will free as much time as possible for substantive discussion at our November 1 session. I submit the following summary of significant items for your review, reflecting the scope of subjects with which the Association is involved.

1. Mandatory continuing legal education. Earlier this year, following input from the organized Bar, including the NYSBA, OCA released its rule requiring bridge the gap continuing legal education for newly admitted attorneys. That rule specified the appointment of a Continuing Legal Education Board to oversee the program and its accreditation process. On October 9, 1997, Chief Judge Kaye announced the appointment of a sixteen-member Continuing Legal Education Board. This group consists of attorneys, judges and academicians, with four members appointed by the Chief Judge and three each by the four Presiding Justices of the Appellate Divisions. Included among the appointees are current NYSBA Secretary Lorraine Power Tharp and Fordham University School of Law Dean John D. Feerick, who has been active with our Association. The panel is chaired by Hon. Thomas R. Sullivan, Associate Justice of the Appellate Division, Second Department. According to Judge Kaye's announcement, the board will oversee both the current bridge the gap program and the general CLE program for all attorneys that likely will be established in 1998.

With regard to the general MCLE plan, we anticipate release of a draft in the near future by OCA with an opportunity for bar associations to comment, as was the case with the bridge the gap program. We will keep you apprised of developments in this critical area.

2. Legislative program. In June, I announced that, in cooperation with our Committee on Legislative Policy and Department of Governmental Relations, we would be seeking to strengthen our legislative presence. Efforts in this area are now underway. In late September, we released to all county, local, minority and women's bar associations for their republication a "Legislative Scorecard" showing the votes by New York's members of the House of Representatives regarding funding for the Legal

Services Corporation. We intend to do the same with other issues affecting the practicing bar.

With the active participation of the Executive Committee, we are identifying politically active lawyers in all areas of the state and expanding our contact with all state legislators. This approach is intended to reach legislators of all political affiliations and to sensitize them to the NYSBA's concerns. We are utilizing similar methods to increase our influence at the federal level.

3. Meeting with law school deans. On September 30, 1997, we convened an historic meeting in New York City with the deans of all fifteen law schools located in New York State. This is the first time the deans have met under the aegis of the NYSBA. Our discussions included the respective roles of law schools and bar associations in preparing law students and new admittees for practice; mandatory continuing legal education; the response of law schools to the changing nature of practice; issues of diversity with respect to students and faculty; the impact of the influx of new lawyers on the profession and the quantity of law school graduates relative to the job market; student indebtedness; and increased communication between the bar and law schools. To institutionalize this valuable bridge between legal educators and the practicing bar, I am pleased to announce the formation of a Dean's Council, which Dean Howard A. Glickstein of Touro Law School has agreed to chair. I am confident that the Council will provide a vehicle for closer contact than we have ever had previously, and will permit us to forge a closer working relationship with our state's law schools.

4. Mass disaster response plan. Last year, in the aftermath of the TWA Flight 800 crash, the NYSBA on an ad hoc basis appointed a task force to assist in informing the victims' families concerning their rights with regard to legal representation and communications with insurance carriers or other interested entities. This assistance was furnished pro bono with the understanding that team members would neither accept any fee-generating matters from their contacts with victims' families nor make referrals to another attorney. While our response team functioned effectively, especially given the need to act swiftly following the crash, we have put in place a permanent mechanism so that we are prepared for any future disasters, natural or man-made, which might occur anywhere in this state. Chaired by Louis J. Castellano, Jr. of Mineola, we now have a complete contingency plan and response team in place which will work with appropriate government agencies. A comprehensive four-point plan will inform victims and their families regarding the functioning of the legal system, advise those in need of legal assistance how to make an informed selection of counsel, monitor the conduct of attorneys at the disaster site, and inform victims, family members and the public that personal solicitation by lawyers at the disaster site is unethical. I sincerely hope we never have to activate the plan.

5. Dual escrow agents. Earlier this summer, the Lawyers Fund for Client Protection asked for our views regarding its proposal that dual escrow agents (the attorneys for both parties) be required in residential real estate transactions to limit the opportunity for misappropriation of clients funds being held in escrow in connection with the sale. Our Real Property Law Section vigorously opposed the proposal and noted: the potential for increased post-closing litigation resulting from disagreements

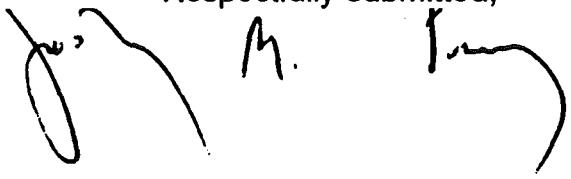
Health Law Section and our Task Force to Consider Tort Reform Proposals, and failed to gain passage by the Legislature, but is being reintroduced in the next term. I have reached out to the President of the New York State Medical Society and offered to collaborate in passing this legislation which affects our respective associations.

15. Police brutality allegations. Following publication in late August of the story regarding the alleged police brutality of Abner Louima in Brooklyn, we acted swiftly to offer Mayor Guiliani assistance in restoring public confidence in the justice system and commended his appointment of a Mayoral Task Force on Police Brutality. We offered to recommend members for the Task Force, furnish counsel to that body or work with the Mayor's office in any way that would be useful. I have received communication from the Mayor's office stating that as the work of the Task Force proceeds and subcommittees are formed, they will, at that time, consider calling on the resources of this Association for assistance.

16. Jury reform rules. On October 20, 1997, the Administrative Board of the Courts released three jury reform rules for public comment within 60 days. The rules would: (a) give judges discretion to permit jurors to take notes in civil and criminal cases when warranted by the length of the trial and the complexity of the issues; (b) give judges discretion to provide a written copy of their charge to deliberating juries in civil cases when the judge finds it would assist the deliberation; and (c) on consent of the parties in both civil and criminal cases, delay the designation of regular and alternate jurors until after the jury has been charged. These rules were proposed initially in the 1994 report of The Jury Project and were also contained in Chief Judge Kaye's 1997 legislative proposals for continuing jury reform, but were not enacted. Since the proposals had been in existence for some three years, OCA was planning on issuing the rules without allowing for comment. However, at our request OCA agreed to permit a 60-day comment period. The three rules are under review by interested sections and committees and their views will be collected and forwarded to OCA.

The preceding items provide some measure of the scope of matters with which the Association is involved. However, no brief report can capture the full range of our activities on behalf of the profession and the public. The commitment and enthusiasm of our members is a constant source of inspiration.

Respectfully submitted,



Joshua M. Pruzansky

11. Annual Meeting reception. Since we have discontinued the Annual Dinner during the Annual Meeting week in January, there has not been an opportunity for Association members to socialize as a general group other than in the context of section functions of more limited scope. Consequently, "to foster a spirit of collegiality among the members of the Association" (one of our stated purposes in the Association Bylaws), we will be hosting a reception for NYSBA members in the late afternoon of Wednesday, January 28, 1998 from 4:30 p.m. to 6:30 p.m. at the Marriott Marquis in New York City. We have purposely timed the event so that the reception will not affect dinner or social plans for later in the evening. Please reserve the date and time, as it promises to be an enjoyable affair. No speeches; no testimonials; no karaoke. More detailed information will follow.

12. Bias issues in the federal courts. Following a study exceeding two years in length, the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts released its report this past summer. The report showed differing perceptions of bias among interviewees, underrepresentation of women and minorities in quasi-judicial posts, growing numbers of women and minority law clerks and magistrate judges circuit-wide (although not uniform among the courts in the circuit), and an absence of anti-bias and anti-harassment policies in the courts. In response to these findings, the Task Force called for sensitivity training for judges, court employment anti-bias policies, and greater outreach to women and minority lawyers when making court appointments for posts such as special masters and trustees. Due to the timing of the report and the short comment period, there was no opportunity for the Executive Committee to act. This report was, however, provided to our relevant committees and sections, including the Committees on Civil Rights, Minorities in the Profession, and Women in the Law and the Commercial and Federal Litigation Section. Their comments were submitted to the Second Circuit Task Force, and we will keep you informed regarding developments.

13. Discharge of committees. Two of our special committees, the Continuing Legal Education Review Committee (which conducted an in-depth evaluation of our entire CLE program as we prepare to meet the anticipated demands of MCLE in New York) and the Task Force on Family Law (which reviewed OCA's legislative program for family justice and its various initiatives for improving the court system's handling of family matters) have completed their work and are being discharged. On behalf of the Executive Committee, I extend our appreciation to the respective chairs of both groups, Mark H. Alcott of New York City and Timothy M. Tippins of Troy, for their able leadership. The discharge of these two special committees reflects our continuing policy of sunsetting groups once they have completed their assigned tasks to save on expenses and to provide the resources to meet new challenges and developments as they arise.

14. Health care provider legislation. During the last legislative session, a bill was introduced that would have affected health care providers by holding health maintenance organizations and managed care entities liable for negligence related to medical decision making regarding the provision or denial of health care. Health care organizations would be required to exercise reasonable care in selecting or influencing employees or other representatives making decisions that affect the quality of a subscriber's diagnosis, care or treatment. This measure was studied by our

a) The adoption of an aspirational code of civility for the legal profession - Since the OCA product is modeled heavily on the civility guidelines drafted by our Commercial and Federal Litigation Section and approved by the House, we endorsed the OCA proposal with some clarifying modifications recommended by our section.

b) Statement of client rights - Again we endorsed this proposal (and note that this Association approved a similar statement of clients rights in 1995), but with a number of clarifications advanced by our sections and committee.

c) Amendment of DR 2-103 to prohibit undisclosed brokering (the House had previously endorsed an antibrokering provision as part of its comprehensive package of Code of Professional Responsibility amendments) - we endorsed the objective and most of the substance of the OCA proposal.

d) Amendment of CPLR Part 130 regarding sanctions - Based on past action by the House, we indicated opposition to that portion of Part 130 that would impose a certification requirement on attorneys, and expressed concern as to the provisions that would impose sanctions for unjustified failure to attend a court appearance.

After considering our comments as well as those from other groups, OCA in September released its final, revised sanctions rule effective January 1, 1998, as well as standards of civility for lawyers, judges and court employees, and a statement of clients' rights to be posted by attorneys in their offices.

With regard to the statement of clients' rights, we noted OCA's omission of a companion statement of client responsibilities and notified OCA that we were prepared to draft, publish and distribute this document to every lawyer in this state with the suggestion that it be placed adjacent to the OCA issued statement of clients rights. Upon further consideration, the Administrative Board referred the matter to its appropriate committee to which it appointed Grace Marie Ange, Chair of our Professionalism Committee, and will prepare a statement of clients responsibilities to be posted together with the statement of clients rights.

10. Amicus curiae brief. As part of my report to you in June, I mentioned the case of Washington Legal Foundation v. Texas Equal Access to Justice foundation, in which the U.S. Fifth Circuit Court of Appeals in 1996 had declared the Texas IOLTA program unconstitutional, holding that lawyers' clients have a property right in the interest collected on lawyers' trust accounts. This case has national implications, as the Texas ruling could jeopardize IOLTA programs in other states, depriving them of funds critical to the delivery of adequate civil legal services to the indigent. With the authorization of the Executive Committee, the NYSBA joined 39 other state bar associations, 40 IOLTA programs and four other organizations in an amicus curiae brief supporting a certiorari petition seeking U.S. Supreme Court review of the Fifth Circuit's determination. The U.S. Supreme Court has granted certiorari in this case, now denominated Phillips v. Washington Legal Foundation, and an amicus brief is being submitted on the merits. The case will be argued and decided during the Supreme Court's current term. As with the preceding items, we will keep you informed regarding the progress of this matter.

employed in the process. I can assure you that remedial action by NYSBA is already underway. I am grateful to the Suffolk County Bar Association for having provided a "heads up" on this one. I am also appreciative of the prompt cooperation of the respective committees and sections involved, which were able to produce reports and letters within hours. Our rapid response system works.

8. Funding for civil legal services. As I have stated on numerous occasions, obtaining adequate funding for civil legal services remains a key priority for the Association. I am pleased to report that our efforts over the past few months are paying dividends. The U.S. Senate voted to appropriate $300 million for the Legal Services Corporation (LSC). On the House side, we were able to persuade influential New York Republicans to urge that the $140 million proposed for the LSC by the House Appropriations Subcommittee on Commerce, State and the Judiciary (which possesses oversight responsibility for the LSC) be increased. The House voted an amendment to raise its funding proposal to $250 million. This makes it likely that in compromise negotiations between the two houses, they will settle on a figure at least in the range of the present $283 million allocation for the LSC. At the state level, the budget, as adopted this past summer, provided nearly $5 million (nearly double last year's figure) for civil legal services, together with a further $1 million under the state's welfare appropriation. The results on both the federal and state level were substantially impacted by the efforts of NYSBA, and several key opponents of previous efforts to fund legal services were persuaded to support the effort this year. Our President's Committee on Access to Justice, chaired by Joseph S. Genova of New York City, and our Committee on Legal Aid, led by Thomas Maligno of Long Island, continue to cooperate with a coalition of bar associations and other groups interested in preserving legal services in New York, but with the proviso that funding of legal services not come from increased filing or registration fees.

I also note that Chief Judge Kaye recently announced the appointment of The Legal Services Project, a blue ribbon panel charged with formulating a comprehensive programmatic response to the lack of adequate civil legal services for the low-income. We are pleased that four former Presidents of this Association, Alexander D. Forger, Archibald R. Murray, M. Catherine Richardson and Justin L. Vigdor, have been designated as members of the panel. The Administrative Board of the Courts continues to encourage attorneys to provide at least 20 hours service each year, and will be surveying New York attorneys to measure current levels of pro bono work. As in the past, we will continue to oppose mandatory pro bono or mandatory reporting of pro bono services. We will keep you advised concerning developments in this area.

9. Implementation of the Program on the Profession and the Courts. In the fall of 1996, Chief Judge Kaye appointed two bench-bar task forces (the Task Force on Client Satisfaction and the Task Force on Attorney Professionalism and Conduct to implement recommendations formulated by the Committee on the Profession and the Courts, known popularly as the Craco Committee. The two task forces reported their implementation plans to the Administrative Board of the Courts and, as authorized by that body, initiatives in four areas were released in April 1997 for public comment. Comments from our sections and committees were assembled and transmitted to OCA by me in June. Our comments with respect to the four initiatives were as follows:

between the escrow agents; the administrative burdens connected with opening a separate escrow account for each closing; and related questions concerning responsibility for the reporting of interest income earned by the account. An alternate proposal has been put forth by the Lawyers' Fund for Client Protection which is currently being reviewed by the Real Property Law Section.

6. Lawyers' Fund for Client Protection budget. Recent newspaper articles reported that, earlier in the year, to meet cash flow needs, the state had transferred to the general fund some $3.5 million from the attorney licensing fund, which is the repository for the biennial registration fees collected from attorneys. The attorney licensing fund is the account from which payments are made by the Lawyers' Fund for Client Protection to clients who have had money misappropriated by their attorney. It is also the funding source for the lawyer grievance committees. Because of the transfer by the state, the Lawyers' Fund now lacks money to pay approved claims and the grievance committees are without funds to cover operational expenses. As a further complication, the state shifted the money during the last fiscal year, so legislative action will be required to restore the necessary funds. The NYSBA has long maintained that the biennial attorney registration fees should not be diverted to the state's general fund, but should remain earmarked for purposes connected with the legal profession, including the Lawyers' Fund and the support of the grievance process. In the past, we have unsuccessfully advocated the enactment of legislation to create a board of trustees-consisting of the Chief Judge, the four Presiding Justices of the Appellate Division, and five members of the bar - to manage and distribute the monies contained in the attorney licensing fund. On October 31, the Executive Committee will be asked to approve a resolution urging immediate action by the Legislature to restore the $3.5 million in transferred funds and to create the requested board of trustees to ensure the appropriate distribution of funds. You will be kept informed regarding future developments regarding this item.

7. Proposed changes to Insurance Regulation 68. The State Insurance Department has, with almost no notice, proposed changes to Insurance Regulation 68, which deals with no fault automobile insurance, by reducing the time periods in which claims for no fault benefits may be filed. Specifically, the rule changes would: (a) reduce from 90 days to 30 days the time for filing a no fault application; (b) reduce from 180 days to 45 days the submission of proof of claims for medical, work loss and other expenses; and (c) eliminate the follow-up requirement for persons who do not return their no fault application within 30 days. These modifications have been reviewed by the Committee on Tort Reparations, Trial Lawyers Section, Torts, Insurance & Compensation Law Section, and the Task Force to Consider Tort Reform Proposals which have faxed our concerns and opposition to the State Insurance Department. These time reductions, which will truncate the process for the benefit of carriers, will have the greatest adverse impact on injured members of the public who are unrepresented by counsel and are thus unfamiliar with the requirements. As a practical matter, especially in major metropolitan areas, necessary information cannot be obtained from the police, the Department of Motor Vehicles, or medical providers within the condensed time frame, so the injured will be severely prejudiced by the changes. Our committees and sections have concluded that this is a matter that directly affects the public, rather than attorneys, and have vehemently opposed the changes proposed by the Insurance Department as well as the stealth method

NYSBA

RULES FOR THE FILING OF AMICUS CURIAE BRIEFS ON BEHALF OF THE NEW YORK STATE BAR ASSOCIATION

Adopted by the NYSBA
House of Delegates on June 28, 1975
As Amended November 1, 1997

A. POLICY

1. No Section or Committee shall file an *amicus curiae* brief. All *amicus curiae* briefs shall be filed in the name of the Association upon the approval of the Executive Committee and shall show as counsel, in addition to the person or persons actually preparing the brief, the President of the Association.

2. The costs of printing and filing an authorized *amicus curiae* brief shall be paid by the Association, but no fee shall be paid by it to any person for the preparation or review of such a brief.

3. Proposals to submit *amicus curiae* briefs shall not be publicized without the specific approval of the President or the Chair of the House of Delegates.

B. APPROPRIATE CASES

1. *Amicus curiae* briefs shall be addressed to issues of law alone and not to questions of fact. They shall be filed only in the appellate courts of the New York State or Federal judicial system or in the highest appellate court of another state.

2. An *amicus curiae* brief shall be authorized only when the proposed brief may be expected to make a significant contribution to the determination of the legal issues involved.

3. Except in cases where the court has specifically requested the views of the Association, the basis for filing of an *amicus curiae* brief should be that the position proposed to be taken in the brief is:

   (a) Consistent with previously stated policy of the Association; or

(b) Plainly one which would be supported by a large majority of the membership as a policy to be adopted by the Association; or

(c) Of peculiar importance to the Association or to lawyers generally.

C. APPLICATION TO THE EXECUTIVE COMMITTEE

1. Any Section or Committee of the Association, or any member of the Association, may apply to the Executive Committee, through the Executive Director of the Association, for approval of the filing of a proposed *amicus curiae* brief in the name of the Association. In the instance of a request to file a brief in the highest appellate court of another state, the application must be made by the President or the Chair of the House of Delegates. The Executive Director shall furnish copies of such application to the Executive Committee and to any Section or Committee appearing to have an interest in the subject matter, with a request that prompt and appropriate comment be made to the Executive Committee as to such application by any interested Section or Committee.

2. Unless the extraordinary procedures set forth in paragraph E shall be invoked, the application of an individual, Section or Committee shall be accompanied by:

   (a) A copy of the complete brief, in final form as proposed for filing;

   (b) A concise statement of the facts of the controversy, the status of the litigation, and the applicant's reasons for believing the case to be one calling for the Association's taking of the position proposed;

   (c) In the case of an application by a Section or Committee, a statement showing how and when the application was authorized by the particular body, including a discussion of any dissenting views;

   (d) A full disclosure of any personal or professional interest in the particular litigation or in the establishment of the position proposed to be taken in the brief, as to any individual application or as to any member of the governing body of a Section or Committee making an application.

D. ACTION OF THE EXECUTIVE COMMITTEE

1. No *amicus curiae* brief shall be filed in the name of the Association without the prior, specific authorization of the Executive Committee.

2. If, in the opinion of the President of the Association, an application made to the Executive Committee stands no substantial chance of approval, the President may direct the Executive Director to canvass the Executive Committee by mail as to a recommendation that the application be denied. Unless three or more members of the Executive Committee shall respond by recommendation that the application be considered at a meeting of the Executive Committee, the application shall be considered as disapproved by the Executive Committee.

3. When a meeting is called for under the provisions of the preceding paragraph, and in all cases other than those governed by the extraordinary procedures of paragraph E, an application for authorization of an *amicus curiae* brief shall be considered at a regular or special meeting of the Executive Committee, held within a reasonable time after the circulation of the application to the Committee and the request for comment by an interested Section or Committee. If, in the judgment of the President, the meeting should be held before an interested Section or Committee can report formally on the application, the President may, at his or her option, either receive and convey to the Executive Committee any informal statement of the Chair of such Section or Committee or invite the Section or Committee Chair to appear, in person or by a representative, at the meeting of the Executive Committee and present a consensus of the views of such Section or Committee.

4. A majority vote of those present at a meeting of the Executive Committee shall be necessary for approval of an application for the filing of an *amicus curiae* brief. If the Executive Committee shall so approve an application in general or in principle, with the condition that additions or changes be made to the proposed brief submitted with the application, the President shall appoint a subcommittee of one or more members of the Executive Committee in this respect. Such subcommittee shall have authority to give or withhold final approval of the filing of the *amicus curiae* brief in the name of the Association, depending upon the compliance with the requirements of the Executive Committee for additions or changes.

E. EXTRAORDINARY PROCEDURES

1. If, in the opinion of the President of the Association, a complete and sufficient application under the requirements of paragraph C is obviously meritorious and an expedited decision is required, the President may direct the Executive Director to canvass the Executive Committee by telephone, electronic mail or fax, after circulating the application and without awaiting the comments or reports of Sections or Committees, as to authorization of the proposed *amicus curiae* brief. An affirmative vote by a majority of the Executive Committee shall be required to authorize

the filing of a brief by this procedure, PROVIDED HOWEVER: if three or more members of the Executive Committee shall respond by requesting that the application be considered at a meeting, the application shall be referred to a regular or special meeting of the Executive Committee.

2. Under unusual and compelling circumstances, the President may cause the application of a Section or Committee of the Association for authorization of an *amicus curiae* brief to be brought on before a regular or special meeting of the Executive Committee without the submission of a proposed brief in final form. The application shall otherwise comply as nearly as practicable with the other requirements of paragraph C: the application shall be circulated in advance to the Executive Committee and reasonable efforts shall be made to obtain the comments of other interested Sections or Committees. The Section or Committee making the application shall present a draft or synopsis of its proposed *amicus curiae* brief at the meeting of the Executive Committee if a copy of the proposed brief in final form is not then available. A majority vote of the members of the Executive Committee present at the meeting shall be required for authorization of the filing of an *amicus curiae* brief under this procedure and, if the proposed brief in final form is not approved at the meeting, the President shall appoint a subcommittee of one or more members of the Executive Committee to review any brief thereafter presented under the terms of approval thereof in principle. Such subcommittee shall have authority to give or withhold approval of the filing of the *amicus curiae* brief in its final form, depending on compliance with the standards or any terms stated by the Executive Committee. Such subcommittee shall also be charged with requiring that any brief thereafter prepared shall be of high professional quality and shall contain a fair representation of any policy position of the Association.

F. MISCELLANEOUS

1. Any reference herein to authorization of the filing of an *amicus curiae* brief in the name of the Association shall include the execution and submission of appropriate requests or motion papers in the name of the Association for permission to file the same in any court.

2. These rules shall supersede the "Rules on Filing *Amicus Curiae* Briefs on Behalf of the Association" adopted by resolution of the House of Delegates on December 1, 1972, and shall take effect immediately. These rules shall be subject to amendment or revocation by any subsequent resolution of the House of Delegates provided that timely notice of the subject matter is given in advance of the meeting at which such resolution is adopted.

Rules for Commencement of Litigation on Behalf of the New York State Bar Association

Adopted by the NYSBA
House of Delegates on November 1, 1997

A. Policy

1. These Rules govern the commencement of litigation by the New York State Bar Association in those instances in which the Association may be considered an appropriate entity to act on behalf of its members. These Rules do not govern litigation commenced in the normal course of business to which the Association may be a party.

2. No Section or Committee is authorized to commence litigation on its own behalf or on behalf of the Association. All litigation commenced pursuant to these Rules shall be conducted in the name of the Association upon the approval of the Association's Executive Committee.

3. Proposals for commencement of litigation shall not be publicized without the specific prior approval of the President or the Chair of the House of Delegates.

B. Appropriate Cases

1. Litigation shall be commenced solely in New York State or Federal courts.

2. The basis for commencing litigation in the name of the Association should be the following:

   a. The issues presented are of unique significance to the Association or to lawyers generally; consistent with previously stated policy of the Association; or likely would be supported by a large majority of the membership.

   b. The interests sought to be protected are germane to the Association's purposes as stated in its Bylaws.

c. Individual members of the Association would have standing to commence the litigation, but neither the claim presented nor the relief requested require the participation of individual members.

C. Application to the Executive Committee

1. Any Association Section or Committee, individual Association member, or head of a New York State governmental authority, may apply to the Executive Committee, through the President, for approval to commence litigation in the name of the Association. Copies of such application shall be furnished to the Executive Committee and to any Section or Committee likely to have an interest in the subject matter, with a request that prompt and appropriate comment be made to the Executive Committee.

2. The application of an individual, Section, Committee or government official shall consist of the following:

   a. A concise statement of the facts of the controversy, the applicant's reasons for believing the controversy to be one calling for the Association to take legal action, the basis on which the Association would have standing to commence litigation, and the relief to be sought by the Association.

   b. In the case of an application by a Section or Committee, a statement showing how and when the application was authorized by the particular body, including a discussion of any dissenting views.

   c. A full disclosure of any personal or professional interest in the proposed litigation by the individual or entity making the application.

D. Action of the Executive Committee

1. No litigation shall be commenced in the name of the Association without the prior, specific authorization of the Executive Committee.

2. If, in the opinion of the President and the Chair of the House of Delegates, an application to the Executive Committee stands no substantial chance of approval, they may disapprove the application and shall so advise the submitting individual or group.

3. When a meeting is called for under the provisions of the preceding paragraph, and in all cases other than those governed by the

extraordinary procedures of paragraph G, an application for the authorization of litigation shall be considered at a regular or special meeting of the Executive Committee, held within a reasonable time after the circulation of the application and the request for comment by interested Sections or Committees. If, in the judgment of the President, the meeting should be held before an interested Section or Committee can report formally on the application, the President has the option to either receive and convey to the Executive Committee any informal statement of the chair of such Section or Committee or invite the Section or Committee chair to appear, in person or by a representative, at the meeting of the Executive Committee and present the views of such Section or Committee.

4. The individual applicant, government official or representative of the Section or Committee making application for commencement of litigation shall appear before the Executive Committee in the course of the committee's consideration of the application.

5. A two-thirds vote of those present at a meeting, but no less than a majority of the full Executive Committee, shall be necessary for approval of an application for commencement of litigation. In appropriate circumstances, the Executive Committee may forward the application to the House of Delegates for consideration and approval.

E. Appointment of Subcommittee

1. If the Executive Committee approves an application for commencement of litigation, the President shall appoint a subcommittee consisting of two or more members of the Executive Committee, including the President, to oversee the litigation process. The subcommittee shall have the authority to make decisions regarding the retention of outside counsel to represent the Association and the conduct of the litigation.

2. The President shall report the Executive Committee's authorization of litigation to the House of Delegates, and thereafter shall report to the Executive Committee and the House of Delegates on a regular basis regarding the status of the litigation.

F. Retention of Outside Counsel

1. The Association shall enter into a written retainer agreement with any outside counsel selected by the appointed subcommittee of the Executive Committee, specifying the scope of services to be rendered,

the scope of the Association's involvement in the conduct of litigation, and the terms of counsel's compensation and the reimbursement of expenses. The retainer shall set forth the names of the subcommittee members empowered to make decisions on behalf of the Association regarding the conduct of the litigation.

2. In making decisions regarding the retention of outside counsel, the subcommittee shall require that papers submitted on behalf of the Association shall be of high professional quality and contain a fair and accurate representation of relevant policy positions of the Association.

G. Extraordinary Procedures

If, in the opinion of the President of the Association, unusual and compelling circumstances exist to warrant expedited consideration of an application by the Executive Committee, the President may direct the Executive Director to circulate the application to the Executive Committee without awaiting the comments or reports from other Sections or Committees. A meeting of the Executive Committee shall be held as soon as practicable following the circulation of the application.

H. Effective Date

These rules shall take effect immediately. Nothing in these rules shall supersede or affect the "Rules on Filing *Amicus Curiae* Briefs on Behalf of the Association," adopted by the House of Delegates on June 28, 1975 and as subsequently may be amended. These rules shall be subject to amendment or revocation by any subsequent resolution of the House of Delegates provided that timely notice of the subject matter is given in advance of the meeting at which such resolution is to be considered.

New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200

NYSBA

JAMES C. MOORE
President-Elect
Harter, Secrest & Emery
700 Midtown Tower
Rochester, NY 14604-2006
716/232-6500
FAX 716/232-2152
jmoore@hselaw.com

November 1, 1997

To: Members of the House of Delegates

Re: Report of Chair

As at our June meeting, in this report I will seek to dispense with as much as possible of the Chair's oral report to the House to preserve our time for discussion of the substantive agenda topics.

Please note the materials at your places which will permit you to enroll in the mentor program of the Young Lawyers Section. This program was approved by the Executive Committee in 1994 to enable younger and newer lawyers in that section to obtain guidance from more experienced practitioners. The program has proven helpful, and the section is now seeking individuals to volunteer as mentors for next year. Mentors are drawn from our substantive law sections as well as the House of Delegates. I encourage you to participate in the program and either complete the form at the meeting and give it to any of our staff members, or mail it to the Bar Center if you prefer to complete the application later.

I would also like to report to you concerning my participation, together with that of Catherine Richardson and Bill Carroll, in the Mid-Atlantic Bar Conference which was held in New Jersey from October 16-18, 1997. Josh was unable to participate in the conference as he was meeting with the International Law and Practice Section in Hong Kong.

The conference includes leaders of the state bar associations of New York, New Jersey, Pennsylvania, Delaware and Maryland and the District of Columbia Bar. Our sessions enable us to gather as a regional group to address issues of mutual concern, exchange ideas and to learn from each other.

The topics discussed at this year's meeting included the role of bar associations in aiding the judiciary to secure adequate funding; effective advocacy on behalf of the profession with the legislative and executive branches of government; assisting lawyers in improving their quality of life; services or approaches which bar associations can use to attract and retain members; enhancement of *pro bono* opportunities for lawyers; responding to attacks on the judiciary and the legal profession by the press or government entities; making bar associations relevant to young lawyers; providing technological and management services for members; and initiatives for serving a geographically and socially diverse membership.

Within each of these topic areas, we had the opportunity to learn how other bars are approaching common problems, and to share some of our experiences with them. For example, in the technology area, we saw that the interest of members in other states equals that of our own, and we considered ways of providing our members guidance in this field, as well as making the best use of developments such as the Internet and video conferencing.

With regard to membership, everyone at the conference agreed that bar associations must focus on member and non-member needs if they are to remain relevant and retain and attract members. One state, Pennsylvania, is engaged in a three-year membership drive. All states see a vital CLE program and high quality publications as essential to a strong membership. I believe that New York is well ahead of the curve on the issue of membership; through member and non-member surveys we have had a clear understanding of what this state's lawyers seek from their Association -- quality CLE, opportunities to meet and share common concerns, and a strong and credible voice for the profession. With the effective assistance of our membership director, Pat Wood, and our marketing director, Janet Remiker, we hope to stay ahead of the curve on this issue.

In the legislative field, the other states shared with us their approaches for becoming more effective. One state has formed a PAC, while others hold informational gatherings for legislators. All agreed that, with fewer lawyers in state legislatures, significant efforts to convey our messages to legislators are of vital importance. Josh Pruzansky's actions and those of our Elder Law Section on the Medicaid fraud issue were noted with approval.

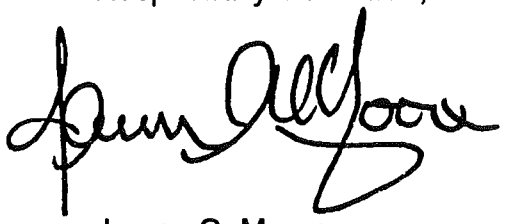
Other states are currently involved in efforts to respond to criticism of the judiciary and the bar from outside sources. This is a concern experienced by all states and one which is not easily solved; nevertheless, we exchanged views on how we might be more effective in this area.

Please see Bill, Cathy or me if you would like more information on any of these issues.

Lastly, I remind you that the House will meet next in New York City on Friday, January 30, 1998 at 9:30 a.m.

This constitutes my report as Chair.

Respectfully submitted,



James C. Moore
Chair of the House

NEW YORK STATE BAR ASSOCIATION

In Memoriam

Alexander A. Delle Cese, Jr.

MEMORIAL

to

ALEXANDER A. DELLE CESE, JR.

Presented by

Maxwell S. Pfeifer, Esq.

Former President

New York State Bar Association

at the

House of Delegates Meeting

November 1, 1997

Bar Center, Albany, New York

ALEXANDER A. DELLE CESE, JR.

1919-1997

Alex Delle Cese was born in Utica, New York. His family moved to the Bronx while Alex was still a child. He attended public elementary and high schools and, thereafter, Fordham University, where he obtained his bachelor's degree.

His education was interrupted by World War II service in the United States Coast Guard, where he attained the rank of Lieutenant, Senior Grade. He resumed his studies after discharge, graduating from Fordham Law School and being admitted to the Bar in 1949.

He married the former Frances Trader, a nurse he met while in the service, raised four children, their first child being born while Alex was studying for the Bar exam, which he passed despite the vicissitudes of the moment.

Alex practiced law in the Bronx and was involved as well in many civic and community activities. He became a judge of the Civil Court of the City of New York in 1984. He was elected, having run successfully against the regular Democrat organiza-

tion candidate. This victory was no small feat, as those who are acquainted with Bronx politics will attest. He was able to prevail in large part due to the respect, regard and affection his neighbors, friends in the community and colleagues at the Bar had for him.

He thereafter served with distinction as an acting Supreme Court Justice until the age of seventy when he reached mandatory retirement age.

During his years at the Bar, he served his profession and the community nobly. He was one of my predecessors as President of the Bronx County Bar Association. He was an official of the New York State Bar in various capacities from 1978 on, having been a Delegate to this House and Vice President for the 12th Judicial District. He was also a member of the Nominating Committee and several other bodies.

He became "Of Counsel" to our firm shortly after he left the Bench and was associated with us since that time. As well, he served as a Judicial Hearing Officer, regularly called upon by the Administrative Judges in the First Judicial Department to preside over demanding and complex matters.

He was a very private person. Despite the untimely and tragic loss of his wife several years ago and, thereafter, one of his children, he never permitted his grief to affect his positive outlook on life. He continued to be that generous, kind and understanding human being we all came to love.