

NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY, NEW YORK  
NOVEMBER 7, 1998

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PRESENT: Alderman; Ayers; Bailey; Baldwin; Bass; Batra; Benesch; Bergen; Berman; Bohner; Bowler; Bracken; Brett; Buzard; Campanie; Cashman; Cioffi; Clements; Cloonan; Coffey; Coffill; Coleman; Cometa; Connery; Contiguglia; Cooper; Copps; Corcoran; Cunha; Cyrulnik; C. Denton; DiGirolomo; Dwyer; Eppers; Esteves; Farrell; Felder; Field; Fink; Fishberg; Flood; B. Freedman; M. Freedman; Friedberg; Gacioch; Garson; Gerstman; Getnick; Gingold; Glover; Golinski; Gregory; Gutleber; Haig; H. Hall; Hallenbeck; Harris; Hassett; Hayes; Headley; Heming; Hesterberg; Hirsch; Hoffman; Horan; Inclima; James; Juliano; Kahler; Kahn; Kamins; Kelly; Kennedy; Kenny; Kessler; Kilpatrick; Kilsch; Krane; Kretser; Lagarenne; Lawrence; Leber; Levin; Levy; Lieberman; Lilly; Loengard; J. Longo; Madigan; Mandell; McClusky; McDonald; McGlinn; Meyer; Midonick; Mihalick; Miklitsch; M. Miller; Millon; Miranda; Moore; A. Murray; K. Murray; Netter; O'Leary; Ostertag; Patrick; Peckham; Peradotto; Pfalzgraf; Pfeifer; Pruzansky; Raylesberg; Reich; Reimer; Reiniger; Reizes; Reynolds; Rice; Richardson; Rifkin; Robinson; Roper; Rosenbloom; Rosner; Rothenberg; Rothstein; Rubin; Samel; H. Schumacher; Shapiro; Sharkey; Souther; Standard; Steiner; Sunshine; Swidler; Taylor; Terranova; Tharp; Thompson; Tippins; Tishler; D. Tyler; Vinal; Vitacco; M. Walsh; O. Walsh; Williams; Witmer; Wolf; Wollman.

1. Approval of minutes of June 27, 1998 meeting. The minutes were deemed accepted as distributed previously.

2. Report of Treasurer. Mr. Headley summarized the Treasurer's report covering the period January 1 to September 30, 1998, copies of which had been circulated to the members of the House. He reviewed the major elements of the income and expense budgets, noting that membership dues revenue had increased by \$77,000 over the previous year due to the continued efforts for new members and the retention of existing members. He also noted that continuing legal education revenues and expenses had declined from 1997 by a net figure of approximately \$240,000. He indicated that to address this situation, the Continuing Legal Education Department was pursuing several initiatives and new revenue sources. Mr. Headley also indicated that overall expenses for 1998 had increased by approximately \$335,000 due largely to a rise in committee activity coupled with the acquisition of new equipment for the print shop. He advised that, depending on receipts from the fall continuing education programs, the Finance Committee anticipated a year-end deficit of approximately \$100,000. He noted that this amount was offset by accumulated surpluses of some \$2 million achieved over the preceding three years. Mr. Headley stated that this accumulated reserve would permit the Association to avoid a dues increase in 1999, this extending the normal three-year dues cycle for a fifth year. He stated that the Association remained in sound

financial condition at the close of three-quarters of the fiscal year. The report was received with thanks.

3. Report and recommendations of Finance Committee re proposed 1999 income and expense budgets. Finance Committee Chair G. Robert Witmer, Jr. summarized the major components of the Association's income and expense budget for 1999, noting that a surplus of approximately \$400,000 was being projected by the Finance Committee. He reviewed the anticipated increases in dues income, continuing legal education and Annual Meeting revenues that would generate this surplus. A motion was then adopted approving the proposed 1999 budget as submitted by the Finance Committee.

On behalf of the House, Mr. Pruzansky expressed appreciation to Mr. Witmer for his dedicated leadership of the Finance Committee and for the thorough and comprehensive financial analysis that had been made in the preparation of the budget.

4. Presentation of awards.

a) Public Service Award. Beverly Poppell, Chair of the Committee on Public Relations, presented the Public Service Award to Taconic Correctional Facility Superintendent Bridget Gladwin for her efforts in improving the administration of justice. Ms. Gladwin expressed appreciation to the House for the recognition which had been given.

b) Tribute to Valor Awards. Mr. Moore and Barry Kamins, Chair of the Committee on Justice and the Community, presented Tribute to Valor Awards, which are given for bravery, leadership, dedication, commitment and exemplary service to the public, to New York State Trooper Frederick J. Andriacco and FBI Special Agent Michael Campi. Trooper Andriacco and Special Agent Campi addressed the House and expressed their gratitude for the awards.

5. Report and recommendations of Committee on Bylaws. John R. Horan, Chair of the Committee on Bylaws, summarized proposed amendments to the Bylaws that would: (a) add eight members to the Nominating Committee, increasing that body's membership to 35, utilizing a formula that would provide additional representatives to the more populous districts; and (b) add a second Vice-President from the First District to the Association's Executive Committee, increasing the committee from 23 to 24 members, and of the six members-at-large on that committee, require that a minimum of two be selected from the First District.

He explained that these proposals were prompted by the committee's study of proposed Bylaws amendments filed in January 1998 by The Association of the Bar of the City of New York and the New York County Lawyers' Association. He indicated that based on the distribution of NYSBA members in the state, those groups were concerned that the First District was underrepresented on the Nominating Committee. Mr. Horan advised that the Bylaws Committee had concluded that adopting either of the proposals filed by the other two associations would overemphasize proportional

representation and override the concern that the NYSBA give substantial voice to all parts of the state. He stated that the Bylaws Committee's proposal would provide for additional representatives from the more populous districts, but not on a strict proportional basis. He also noted that the proposed changes would also afford greater opportunities for members from the First District to serve on the Executive Committee, which body is at the core of Association governance.

Discussion then ensued during which Mr. Cooper advised that The Association of the Bar of the City of New York felt that the Bylaws Committee's proposal represented a fair approach to increase the voice of the First District without diminishing the representation of others, and that his organization would withdraw its proposed amendment filed in January 1998 if the House subscribed to the amendments recommended by the bylaws Committee. Mr. Hoffman made a similar statement on behalf of the New York County Lawyers' Association. After further discussion, the members of the House subscribed to the proposed amendments and sufficient subscriptions were filed with the Secretary to allow for consideration of the amendments at the 1999 Annual Meeting.

6. Report of Task Force to Study "Pay to Play" Concerns. A. Thomas Levin, Chair of the Task Force to Study "Pay to Play" Concerns, provided a status report with respect to the task force's study of "pay to play," which deals with issues surrounding law firms accepting municipal bond engagements if the firm or any of its attorneys make more than minimal contributions to the campaigns of public officials who award such work. After noting the studies being conducted in this area by the American Bar Association and The Association of the Bar of the City of New York. He noted the lack of empirical evidence with respect to this practice, but indicated that the body of anecdotal evidence coupled with the public perception, dictated that some remedial actions were warranted. He indicated that the task force was still involved in its study, but was considering recommendations that might include enhanced disclosure requirements, standards that might apply equally to all so that lawyers would not be unfairly limited in contributions as compared to others, or encouraging governmental entities in awarding financing work to do so on a merit basis such as that contained in the ABA's Model Procurement Code. Mr. Levin stated that the task force anticipated resolving these matters in a time frame that would permit presentation of a final report and recommendations at the next House Meeting. The interim report was received with thanks.

7. Report of Committee on Women in the Law. June M. Castellano, Chair of the Committee on Women in the Law, summarized the committee's report with regard to the participation of women in the Association. She summarized statistical data comparing the lack of participation by women over the past ten years, noting that women constitute slightly over one quarter of the membership. She also reviewed the involvement of women in Association governance, noting the gains that had been made over the past decade. Ms. Castellano also described the involvement of women in sections and committees. She then outlined recommendations formulated by the committee to further enhance participation in the Association by women, including: suggested Bylaws

amendments to increase the number of women on the Nominating Committee; options for increasing the percentage of women service on section executive committees; the development of programs by sections to enhance opportunities for women to enter practice fields not historically chosen by female attorneys; coordination with the Committee on Attorneys in Public Service to enhance the involvement of public sector women attorneys in the NYSBA; review of the affordable dues program in light of the high percentage of women who seek dues reductions; and coordination with the Committee on Minorities in the Profession to study and advance the concerns of minority women in the Association. Ms. Castellano also explained a change in the language with respect to section executive committees appearing at page 32 of the report following consultation with interested section representatives. She also noted that the requested approval of the report would exclude the recommendations with respect to the Nominating Committee, which required review by the Bylaws Committee, and the affordable dues program, which were under study by the Membership Committee. Discussion then ensued during which it was suggested that concrete recommendations and initiatives should be developed in consultation with the Association's leadership to achieve the general goals set forth in the report. Ms. Castellano responded favorably indicated she would discuss this suggestion with Mr. Moore. A motion was then adopted unanimously approving the report in principle, to include the modified language with reference to section executive committees as outlined by Ms. Castellano, and excluding the recommendations regarding the Nominating Committee and the affordable dues program, which were under study by other relevant groups.

8. Report of President. Mr. Moore advised that, as was done at previous meetings, to allow as much time as possible for the discussion of substantive items, he had furnished a detailed, written 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. Moore then reported the following matters:

a) Accompanied by Staff Pro Bono Director Anthony P. Cassino, he had met with members of the New York congressional delegation regarding funding for the Legal Services Corporation. He indicated the NYSBA's efforts, coupled with those of other interested organization shad proved successful, as Congress had appropriated \$300 million for the Legal Services Corporation for fiscal year 1999, an increase of \$27 million over the current year's funding level.

b) On October 29, he and Mr. Rice, together with senior staff members had met with leaders of fifteen minority bar leaders in New York City. He indicated that the session had been productive with the discussion of topics including employment opportunities for minority attorneys, enhancing communication, and initiatives the NYSBA might explore to assist the minority bars.

c) He, together with Messrs. Rice and Carroll, had met with local bar leaders at various locations throughout the state. He noted that a number of common issues had surfaced at those meetings, including mandatory continuing legal education, the inadequacy of assigned counsel fees, the impact of law school debt on newer attorneys,

and the difficulties being encountered by practitioners in achieving reasonable income levels.

d) Continuing the practice initiated by Mr. Pruzansky during his presidency, he would be meeting in New York City on November 17 with the deans of New York's fifteen law schools. He indicated that likely discussion topics would include the role of law schools in preparing students for the practical aspects of practicing law, MCLE for newly admitted attorneys, the response of law schools to the changing nature of law practice, and the impact the influx of new lawyers is having on the profession.

e) In September, members of the Executive Committee and key staff persons participated in a strategic planning conference held in Rochester. He indicated that speakers included ABA President Philip S. Anderson, former Cornell Law School Dean Roger C. Cramton and Court of Appeals Judge Richard C. Wesley. Mr. Moore advised that a number of thoughtful papers had been presented by the members of the Executive Committee, and discussions had focused on initiatives the NYSBA might pursue to assist members in responding to competition both inside and outside the profession, to encourage higher standards of professionalism, and to be more responsive to the practical needs of its members. He advised that a written summary of the conference would be available later in the year.

f) He and Mr. Carroll had met with the Governor's Counsel to discuss a range of legislative issues including County Law Article 18-B panel fees for attorneys providing indigent representation, tort reform, judicial vacancies on the Appellate Divisions, and the restoration of legal services funds vetoed earlier this year by the Governor.

g) The November issue of the *New York State Bar Journal* was the first under Howard F. Angione as Editor-in-Chief. He encouraged the members to communicate with Mr. Angione to express their opinions regarding the content and format of the *Journal*, as well as submit articles for publication.

h) A number of committees were engaged in studies of significance to the Association including the Special Committee on Administrative Adjudication, chaired by Mark H. Alcott; the Special Committee on Grand Jury Project, chaired by Susan B. Lindenauer; the Special Committee on Ombudsman Plan, headed by John H. Gross; and the Committee on Alternative Dispute Resolution, led by Stephen P. Younger. He also noted that the Special Committee on Multi-Disciplinary Practice and the Legal Profession, chaired by Robert L. Haig, was well into its study of the complex issues posed by organizations engaging in the practice of multiple disciplines, and that an initial report to the Executive Committee was anticipated for January 1999, with a full report to be presented to the House in April. He also expressed appreciation to John R. Horan, the Chair of the Committee on Bylaws, and to the members of that committee for their insight and thoughtful proposal to resolve the governance issues that had been discussed earlier in the meeting. Mr. Moore also voiced thanks to Kathryn Grant Madigan and to A. Thomas Levin for the active leadership they had provided,

respectively to the Committee on Membership and the Task Force to Study "Pay to Play" Concerns.

i) The Nominating Committee had met on November 6, 1998 and had nominated Paul Michael Hassett for election as President-Elect at the January House meeting. He expressed appreciation to the committee for its diligent efforts in selecting an outstanding slate of nominees.

9. Recognition of William J. Carroll. Mr. Moore announced that William J. Carroll had completed twenty years as Executive Director of the NYSBA. He expressed appreciation to Mr. Carroll for his dedicated service to the Association, and Mr. Carroll's accomplishments were applauded by the House. Mr. Carroll acknowledged this recognition and the support he had received over the years from the staff, the officers, House, Executive Committee and Finance Committee in furthering the purposes of the Association.

10. Report and recommendations of Special Committee to Review the Mandatory CLE Proposal. Ellen Lieberman, Co-Chair of the Special Committee to Review the Mandatory CLE Proposal, summarized the proposed mandatory continuing legal education ("MCLE") rule applicable to all attorneys as released by the Office of Court Administration for public comment on September 16, 1998. She outlined the salient provisions of the MCLE rule, including the composition and function of a CLE Board to administer the program, the accreditation requirements for programs, the incorporation of the previously issued rule covering newly-admitted attorneys, and the requirements applicable to all other attorneys. She noted that the latter group would be required to complete 24 hours of accredited CLE in each biennial reporting cycle, with four hours dealing with ethics and professionalism, four hours of skills, and 16 hours of practice management and/or areas of professional practice. Ms. Lieberman then summarized the committee's analysis of the proposed MCLE rule including its comments and suggested modifications to sections 1500.3, 1500.4, 1500.5, 1500.12, 1500.15, 1500.22, 1500.23, 1500.25 and 1500.26. Discussion then ensued during which various members expressed concern regarding the impact of the proposed rule on smaller bar association, the application of the rule to members of the judiciary, and the manner in which speaker preparation or service on grievance committees or similar bodies would be treated. After discussion, revisions were approved the committee's recommendations relating to sections 1500.5, 1500.22 and 1500.26. A motion was then adopted approving the comments, as revised by the House, for transmittal to OCA, with a drafting committee, consisting of Mr. Moore and the co-chairs of the committee, being authorized to make stylistic and editorial revisions to the draft for the sake of style and consistency.

11. Proposed resolution endorsing candidacy of Seth Rosner for office of Chair of ABA House of Delegates. Robert L. Ostertag advised that Seth Rosner was a candidate for the office of Chair of the House of Delegates of the American Bar Association. After discussion, the following resolution was adopted unanimously on motion of the House endorsing Mr. Rosner's candidacy:

Resolution endorsing the candidacy of Seth Rosner for Chair of the ABA House of Delegates

Recognizing that Seth Rosner possesses personal qualities of integrity, intellect, experience, judgment and leadership, together with exceptional legal and "people" skills and a clear comprehension of the needs of and the challenges facing the legal profession and the public we serve; and

Recognizing that Seth Rosner has held numerous positions of responsibility in the American Bar Association (ABA), presently representing the Fifteenth District and New York State on the ABA Board of Governors, and has from time to time since 1967 represented the ABA Young Lawyers Section, the ABA General Practice Section, the NYSBA and the ABA Board of Governors in the ABA House of Delegates, and has chaired the ABA General Practice Section, the ABA Standing Committee on Professionalism, the ABA Standing Committee on Lawyer Competence and the ABA House of Delegates Committee on Scope and correlation of Work and has served as New York State Membership Chair and as a member of the ABA Standing Committees on Legal Aid to Indigent Defendants and on Ethics and Professional Responsibility; and

Recognizing that Seth Rosner has held numerous positions of responsibility in the New York State Bar Association (NYSBA), including membership in the NYSBA House of Delegates, chair of the NYSBA General Practice Section, the NYSBA Task Force on Simplification of the Law, and vice-chair of the NYSBA Task Force on the Profession; and

Recognizing that Seth Rosner has devoted many years of his professional life to the elaboration and enhancement of the highest standards of ethical and professional performance of lawyers and judges, having served on numerous committees and commissions of the ABA, the NYSBA, The Association of the Bar of the City of New York and the New York County Lawyers' Association devoted to legal ethics, professionalism and professional responsibility, being a founding member, founding director and a past president of the Association of Professional Responsibility Lawyers, and having for many years written extensively and spoken nationally on ethics and professional responsibility subjects; and

Recognizing that Seth Rosner has dedicated many years to legal education having been Adjunct Professor of Law at New York University School of Law for 28 years, visiting lecturer at Cornell and Fordham Law Schools and having served as a member of the Professional Education Project of the Chief Judge of the New York Court of Appeals; and

Recognizing that Seth Rosner's demonstrated commitment to the profession and the public and his dedicated and responsible leadership within the ABA merit his full consideration for the office of Chair of its House of Delegates; now, therefore be it

RESOLVED, that the House of Delegates of the New York State Bar Association enthusiastically endorses the candidacy of Seth Rosner for nomination to the office of Chair of the House of Delegates of the American Bar Association for the two-year term commencing at the conclusion of the Annual Meeting in 2000 and respectfully urges the members of the ABA House of Delegates to support his nomination and election to that office; and it is further

RESOLVED, the officers of the NYSBA are authorized to distribute this Resolution to each member of the ABA House of Delegates and to such other individuals as may be deemed appropriate.

12. Proposal to convert the Special Committee on Attorneys in Public Service to standing committee status. Membership Committee Chair Kathryn Grant Madigan reported that in June 1998, the Executive Committee had authorized the establishment of a Special Committee on Attorneys in Public Service based on a recommendation by the Committee on Membership. She indicated that the special committee was intended to meet the unique needs of publicly-employed attorneys by developing targeted services and events and to coordinate with appropriate sections of the Association in this endeavor. She reported on activities undertaken by the special committee since June, including the hosting of a reception for government lawyers at the Bar Center during the fall and planning for an Annual Meeting program on government ethics to be conducted jointly with the Committee on Professional Ethics and the Municipal Law Section. She described the ongoing nature of the special committee's work and requested that it be granted standing committee status. A motion was adopted unanimously approving the change from special to standing committee status.

13. Report of The New York Bar Foundation. Maryann Saccomando Freedman, President of The New York Bar Foundation, described the nature of the law-related projects being supported by The Foundation, acknowledged the receipt of donations to assist that work, and urged the House members to contribute to The Foundation by means of the check-off contained on the annual dues bill. She then introduced Patricia W. Johnson, co-chair of the planning committee for the cable television series produced by the Committee on Issues Affecting People with Disabilities. Ms. Johnson then spoke concerning the committee's Disability and the Law video series and its role in educating the public concerning various disability issues. The report was received with the thanks of the House.

14. Report of Chair. Mr. Rice reported the following matters:

a) The Special Committee on Mass Disaster Response had requested to change its status from special to standing committee due to the expanded nature of its



mission, and this change had been endorsed by the Executive Committee. A motion was adopted unanimously approving the requested change in status.

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 Corporate Counsel Section had recently published a brochure entitled, "How Companies can Prevent Legal Problems and Save Expenses". He indicated this publication intended to educate small and medium size companies regarding the dangers of operating without the guidance of legal counsel and further outlines the benefits of having access to legal counsel on a regular basis. Mr. Rice stated that the pamphlet was distributed to the CEOs of some 3500 companies in New York State, and was the first time such a brochure had been produced by a major bar group.

15. Date and place of next meeting. Mr. Rice announced that the next meeting of the House of Delegates would be held on Friday, January 29, 1999 at the Marriott Marquis in New York City.

Respectfully submitted,



Lorraine Power Tharp  
Secretary



# New York State Bar Association

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October 27, 1998

To: Members of the House of Delegates

Re: President's report - November 7, 1998 meeting

I respectfully submit for your consideration this written report of my activities as President covering the period July through October, 1998.

1. Section Meetings. I attended meetings of the Family Law, Elder Law, Municipal and International Law sections in several very pleasant settings. I have met with members of the executive committees and spoke at each of the section meetings. I have also tried to listen with care to the concerns expressed by NYSBA members who attended those meetings. In general, those concerns have included: the new MCLE requirement, accountants practicing law and competition within the profession.

2. Meetings with Corporate Counsel. I have participated in meetings with several groups of in-house counsel to discuss their concerns. During those sessions, I heard complaints about frivolous lawsuits, the costs of litigation, the need to change tort laws, and the perception that the legal system tends to inhibit the growth of business in New York. At the request of the Corporate Counsel Section, one of its members has been added to the Tort Reform Task Force. We have also added corporate representatives to our new Special Committee on Multi-Disciplinary Practice and the Legal Profession.

3. Meetings with Boards of Editors. I also met with representatives of the boards of editors of the *Rochester Democrat & Chronicle*, the *Albany Times Union*, the *Binghamton Press and Sun Bulletin*, the *New York Times*, the *Westchester Gannet* newspapers, and the *Washington Post*. Those meetings have been surprisingly passive and non-confrontational. Although I have typically presented a summary of the concerns facing the legal profession to the editors, there has been no consistent theme to the issues which have interested them. Interestingly, most found New York's tort laws to be realistic. There were few complaints about lawyers. Nor was there any outcry over the cost of legal services. Some editors did express interest in HMO liability, while others showed interest in the profession's attempt to provide legal services for the poor. Additional meetings with representatives of *Newsday* and the Buffalo papers are scheduled.

4. Meetings with Judicial Leaders. We have continued our periodic meetings with Chief Administrative Judge Lippman to address matters of concern to the bar. Most recently, on October 8, 1998, Tom Rice, Bill Carroll and I met with Chief Judge Kaye, Judge Lippman and Judge Ann Pfau. We found them receptive to our concerns and were able to have useful discussion regarding a number of items:

a) MCLE. The judges conceded that they have received considerable criticism of the proposed MCLE rule from attorneys, and are working to resolve those concerns so the rule will function smoothly when it becomes operational the end of this year. Two major questions that have been raised deal with auditing and the impact of the rule on non-resident attorneys. As to the former, Judges Kaye and Lippman do not anticipate extensive auditing, but enough to provide some assurance as to compliance. As to non-residents, OCA has been responding to questions so that attorneys from other jurisdictions who are also registered in New York will have a clear understanding of their obligations. In addition, depending on the action taken by the House on November 7th with respect to the report of our Special Committee to Review the Mandatory CLE Proposal, we will convey our recommendations to OCA to help make the system as workable as possible.

b) Code of Professional Responsibility. Judge Lippman advised us that the Appellate Divisions are nearing completion of their review of the Code of Professional Responsibility amendments as recommended by the House of Delegates in January 1997. Evidently, two of the departments had questions which have now been resolved, and approval of the revised Code is expected to occur by December of this year.

c) Funding for Legal Services. Judge Kaye concurs with our position that County Law Article 18-B panel fees for attorneys providing indigent representation are painfully inadequate and need to be increased by the Legislature. She is contemplating the formation of a blue ribbon commission composed of influential bar leaders, judges and legislators which could then exert the pressure necessary to secure the fee increase. In a related vein, Judge Lippman noted that the state is unlikely to restore the \$6.8 million for legal services that was vetoed this year by the Governor.

d) Pro Bono Survey. We were advised that the new pro bono survey, which is based on a sampling of roughly ten percent of the profession, revealed that approximately 47 percent of the respondents had engaged in some form of pro bono activity during the past year. Moreover, the average gift per attorney to legal services averaged \$82.

e) Court Reorganization. Judge Kaye was disappointed by the Legislature's failure to give first passage to legislation to put before the voters a constitutional amendment to restructure New York's court system. However, she plans to pursue the Legislature on this matter during the upcoming session, and I have assured her of our continuing support.

f) Matrimonial Cases. Judges Kaye and Lippman are well aware of recent news features criticizing the manner in which matrimonial matters are processed by the courts. While pointing out the exaggerations and inaccuracies contained in the

reports, they acknowledged there is much room for improvement. Judge Kaye said that she expects to propose rules to place social workers in the courts to address custody and visitation issues at an early stage of matrimonial proceedings; develop programs to educate parents about the impact of divorce on children; employ neutral evaluations of cases with greater frequency; provide for interim orders upon commencement of matrimonial actions to preclude the divestiture or movement of property by the parties; and furnish additional training for judges handling matrimonial proceedings. Judge Kaye assured us that the NYSBA will be consulted about such rules before they are promulgated.

g) Commercial Courts. Judge Kaye advised that the business community has widely endorsed the commercial divisions of Supreme Court currently operating in Monroe and New York counties. She is contemplating the expansion of the program to the counties of Erie, Westchester and Nassau.

h) Town Courts. Judge Lippman told us that next year OCA will present a proposal to upgrade the quality of training for individuals serving in town courts.

5. Visits to Legal Service Offices. I have continued to visit the offices of legal service providers. In September, I met with representatives of the Legal Services offices for the elderly in New York City and with three legal service providers in Albany. In addition, in October, I also visited the Housing Works Legal Aid office in New York and the Harlem Legal Service. I continue to marvel at the dedication of the staff and *pro bono* attorneys who provide services through these offices and applaud their efforts in this vital area. I continue to be awestruck by the size of the unmet need which exists. In mid-October, I spoke to members of the National Press Club in Washington about legal services for the poor in a speech entitled: *"Legal Services for the Poor: An Unfulfilled Responsibility of an Affluent Society"*.

6. ByLaws. During the summer and fall, I continued to stay in touch with John Horan, who chairs the NYSBA's Bylaws Committee, as its members sought to fashion bylaws amendments to provide Association members in the First District with a greater presence on both the Nominating and Executive Committees. The committee is presenting a thoughtful package of recommendations at the November 7 meeting, and I am confident that with continued good faith and tolerance, a satisfactory resolution of this issue can be achieved.

7. Meetings with Local Bar Leaders. Bill Carroll, Tom Rice and I have been meeting (ably assisted by Terry Scheid, our staff Bar Services Coordinator) with local bar leaders at various locations throughout the state. There has been a surprising consistency with respect to the issues raised by the bar leaders at those sessions. The issues discussed have included: the costs (both financial and time) of complying with the new MCLE requirement, the painfully low level of indigent defense fees, the continuing struggle of lawyers outside of New York City to achieve economic success, the consequences of high law school debt, governance of the Association, and widespread approval for the Association's successful (so far) lawsuit against Attorney General Reno.

8. Strategic Planning Conference. As many of you know, members of the Executive Committee and key staff persons met in Rochester for one and a half days in September to address changes in the practice of law and to speculate as to how the Association might better help its members to respond to those changes. The group heard from ABA President Philip S. Anderson, former Cornell Law School Dean Roger C. Cramton, and Court of Appeals Associate Judge Richard C. Wesley. In addition, several thoughtful and provocative papers were presented by members of the group on subjects as diverse as professionalism, stress, advertising and technology. Ultimately, the discussions focused around the need for the Association to find ways to help its members respond to competition both within and from outside the profession, to encourage higher standards of professionalism, and to develop means by which the Association can be responsive to the practical needs of its members. A summary of those deliberations will be available by the end of the year.

9. Mid-Atlantic Bar Conference. From October 8-10, 1998, the NYSBA hosted the Mid-Atlantic Bar Conference in New York City. This yearly meeting affords an opportunity for the Presidents, Presidents-Elect, immediate past Presidents and Executive Directors from Delaware, Maryland, New Jersey, Pennsylvania, Washington, D.C. and New York to share their perspectives regarding issues common to state level bar groups in our region. The topics addressed included the impact of technology on the legal profession, preparing for the future, relating to the judiciary, ensuring access to justice, competition with accountants, and enhancing professionalism.

10. Minority Bar Leaders Meeting. On October 29, 1998, Tom Rice and I, together with key staff members, will meet in New York City with leaders and representatives of minority bar groups. We anticipate discussing issues such as: hiring of minority lawyers, the Supreme Court's record of minority hiring, and how the NYSBA can be helpful to minority bars.

11. Deans' Meeting. In 1997, Josh Pruzansky convened a meeting of the deans of New York's fifteen law schools to discuss critical issues, including the role of law schools in preparing students for the practical aspects of practicing law, MCLE for newly-admitted attorneys, the response of law schools to the changing nature of law practice, and the impact the influx of new lawyers is having on the profession. Last year's session was productive and informative, and we are therefore conducting a second meeting on November 17 in New York City. We anticipate being able to build on last year's excellent beginning as we seek to forge closer relationships with our state's law schools.

12. Allstate Insurance Company. Two years ago, we apprised Attorney General Vacco of Allstate Insurance Company's practice of communicating with potential claimants and providing information that might tend to discourage them from seeking legal representation regarding their claims. As a result of the Attorney General's investigation of this practice, Allstate entered an Assurance of Discontinuance in which it agreed to revise the information being provided to potential claimants. We thought matters had been resolved satisfactorily. Allstate had, in fact, changed its informational pieces to conform to the agreement with the Attorney General. However, it now appears that in new letters Allstate is advising accident victims that in cases where the victim is a minor and a settlement requires court

approval, Allstate will provide an attorney at no cost to the claimant to secure that approval. We have brought this latest development to the Attorney General's attention, pointing out both the statutory and ethical issues which are involved. We will keep you informed regarding developments.

13. Swissair Disaster. In the wake of the tragic crash of Swissair Flight 111, outbound from Kennedy International Airport, our Association offered its "Legal Guide for Victims of Mass Disasters" to family members of the crash victims. This guide, which provides general advice to persons faced with a tragic occurrence, is part of a recently developed disaster plan prepared by our Special Committee on Mass Disaster Response. Through our committee, we have a volunteer response team ready to proceed directly to the site of a mass disaster and offer legal information and advice, without charge, to victims or family members when called on by the Red Cross or state and federal agencies. Team members are prohibited from furnishing legal representation. While actual involvement of our team was not required in the Flight 111 crash due to its occurrence off the coast of Nova Scotia, I am confident, should the need arise, that we have a competent group ready to assist.

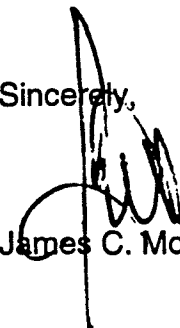
14. "Granny's Advisor Goes to Jail" Law. As you are probably aware, the Association commenced a lawsuit against Attorney General Reno challenging the constitutionality of Section 4734 of the Balanced Budget Act of 1997, which criminalized the advising of persons about lawful Medicaid asset transfers. Last spring, the Federal District Court for the Northern District of New York granted a preliminary injunction preventing the Attorney General from enforcing the statute. I am pleased to report that after oral argument in September, the court granted a permanent injunction and further declared the statute, which is contained in Section 1128B(a)(6) of the Social Security Act, 42 U.S.C. 1320a-7b(a)(6), unconstitutional. Whether or not the government will appeal is not yet known. Our sincere appreciation is extended to former President G. Robert Witmer, Jr., Daniel J. Hurteau, and David M. Schraver of the firm of Nixon, Hargrave, Devans & Doyle for their excellent representation of the Association provided on a pro bono basis.

This continues to be both a challenging and exciting time for members of the legal profession. While the problems facing each of us are manifold, the opportunities to help our fellow citizens navigate through their chaotic lives are extraordinary.

I am grateful to all of you for the privilege which you have accorded me of serving as president of your Association at this time.

With kind regards to all, I am

Sincerely,



James C. Moore

