

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 4, 2000

PRESENT: PRESENT: Abrams; Adler; Alcott; Amoroso; Anglehart; Aydelott; Ayers; Bailey; Baker; Bergen; Bing; Bohner; Bowler; Buzard; Capell; Cashman; Castellano; Clements; Cloonan; Cohen; Cometa; Copps; Corcoran; Cyrulnik; Dale; Darche; DiGirolomo; Doerr; Doyaga; J. Dwyer; Eggleston; Eisman; Eppers; Eppler; Evanko; Fennell; Field; Filiberto; Fisher; FitzGerald; Flink; Flood; B. Freedman; H. Freedman; Friedberg; Futter; Gardella; Gerstman; Getnick; Gingold; Glover; Goldstein; Graber; Gross; Gutleber; Handlin; Harren; Harris; Hassett; Headley; Helmer; Heming; Herold; Higgins; R. Hoffman; S. Hoffman; Jacobs; Jacoby; Jaffe; James; M. Jones; Kachadourian; Karson; Kelly; Kennedy; Kenny; Kilsch; Krane; Kretser; Lagarenne; Landy; Lawrence; Levin; Lieberman; Lindenauer; MacCrate; Madigan; Mandell; Maney; Manley; Mawhinney; Mayer; McCarthy; Mihalick; Millon; Mosenson; Nashak; Netter; Omansky; Omara; Opotowsky; Ostertag; Palmer; Paul; Pfalzgraf; Pruzansky; Purcell; Quattlebaum; Reizes; Reynolds; Rice; Rifkin; Rothkopf; Safer; Samel; Small; Souther; Spellman; Sperendi; Standard; Steinman; Stenson; Sunshine; Terrelonge; Tharp; Tippins; Tishler; Tully; Vigdor; Walker; O. Walsh; Webb; Williams; Wimpfheimer.

1. Election to fill vacancy in office of Ninth District Vice-President. Mr. Krane reported that in August, Joseph P. McGlinn, the Vice-President from the Ninth District, had passed away. He advised that pursuant to the Bylaws, the Nominating Committee members from that district had selected Joseph F. Longo of White Plains to fill the vacancy. A motion was adopted unanimously confirming Mr. Longo's designation as Vice-President to fill the balance of the term.

2. Approval of minutes of June 24, 2000 meeting. The minutes of the June 24, 2000 meeting were deemed accepted as distributed previously.

3. Report of Treasurer. Mr. Headley summarized the Treasurer's report covering the period January 1 to September 30, 2000, and reviewed the major elements of the income and expense budgets as set forth on the financial statements circulated to the members of the House in advance of the meeting. He noted that revenues had increased by some \$1.5 million over the previous year, reflecting growth in membership and section dues as well as in CLE seminars and products due to the effect of mandatory continuing legal education. Mr. Headley noted that increased section, CLE and meetings activities had caused expenses to rise by approximately \$1.1 million over 1999 levels, but these higher costs had been anticipated and planned for by the Finance Committee. He reported further that the financial posture of the Association would permit dues to remain level for the seventh consecutive year, more than doubling the normal three-year dues cycle, and that CLE seminar prices would remain level for the ninth straight year. Mr. Headley stated that the Association remained in sound financial condition at the close of the third quarter of the fiscal year. The report was received with thanks.

4. Report and recommendations of Finance Committee regarding proposed 2001 income and expense budget. Finance Committee Chair John R. Horan summarized the major components contained in the Association's proposed income and expense budget for 2001. He noted the growth in both income and expenses generated by the rise in membership as well as by expanded CLE and section activities. He indicated that the Finance Committee projected a surplus of approximately \$725,000 for next year. Mr. Horan noted further, as has been the case in recent years, that the Association would generally follow the philosophy of using budget surplus funds to improve member services without raising dues or CLE prices. He also observed that with the expansion in staff and operations, a Special Association House Committee had been appointed to conduct advance planning for the future space needs of the Association. After discussion, a motion was adopted approving the budget as submitted by the Finance Committee.

5. Presentation of the Justice Award by the Committee on Justice and the Community. Mr. Hassett presented the Justice Award to New York State Trooper Edward J. Marecek. Trooper Marecek received the award, which recognizes non-lawyers for bravery, leadership, dedication, commitment, exemplary service, or personal courage by combating unlawful conduct through their professional or personal activities, for his role in the apprehension of a murder suspect under dangerous circumstances. In accepting the award, Trooper Marecek noted the dangers connected with police work and the cooperative role played by all elements of the criminal justice system in preserving public safety.

6. Report of The New York Bar Foundation. Hon. Richard J. Bartlett, President of The New York Bar Foundation, advised that The Foundation Board would be meeting in January to review its policies and procedures with respect to matters such as grant making, fundraising, and the role of the Fellows. He invited comments and suggestions from the members of the House to assist the Board in its review so that The Foundation functions in a manner that is acceptable to the House. Judge Bartlett noted that The Foundation represents the only statewide philanthropic effort by the organized Bar, and encouraged the members to support The Foundation through contributions in conjunction with payment of their annual dues. The report was received with thanks.

7. Report and recommendations of Committee on Bylaws. A. Thomas Levin, Chair of the Committee on Bylaws, summarized Bylaws amendments affecting alternate delegates to the House of Delegates and the Nominating Committee. With respect to alternate delegates, he indicated that the proposed amendments were designed to remove the present restriction against alternate delegates serving more than four consecutive terms, and to clarify potentially confusing language with reference to the computation of service as an alternate and as a regular delegate. With regard to the Nominating Committee, he explained that the proposed revisions would remove the current prohibition against members of that committee being eligible for nomination as elected delegates and also would require members of the Nominating Committee wishing to resign from that committee to be eligible for various offices to do so prior to the first meeting of the Nominating Committee in the Association year. Following

discussion, the members of the House subscribed separately to the proposed amendments and sufficient subscriptions were filed with the Secretary to permit consideration of the amendments at the 2001 Annual Meeting.

8. Consideration of Code of Professional Responsibility amendments in connection with the report of the Special Committee on the Law Governing Firm Structure and Operation. Mr. Krane reminded the members that at the June 24, 2000 meeting, the House had approved the report of the Special Committee on the Law Governing Firm Structure and Operation, but had deferred consideration of the proposed Code of Professional Responsibility amendments contained in the report to allow reasonable time for study and comment by interested parties. He outlined the process followed in August in circulating the proposed Code amendments together with a scheduling resolution to govern the submission and consideration of comments or alternative amendments. A motion was then adopted approving the following scheduling resolution as circulated previously to the members of the House:

RESOLVED, that in furtherance of the resolution adopted at its June 24, 2000 meeting in connection with its review of the report of the Special Committee on the Law Governing Firm Structure and Operation, the House of Delegates hereby adopts the following procedures to govern consideration at the November 4, 2000 meeting of the amendments to the Code of Professional Responsibility proposed by the committee:

1. Comments and Amendments: Any comments or proposed amendments to the committee's proposals must be submitted in writing to the Secretary of the Association by October 13, 2000. All proposed amendments must be in the style used by the committee, with deletions noted by strikeovers and new material by underscoring, and be accompanied by a brief explanation of the proposed changes; otherwise, they will not be considered. All amendments complying with this procedure will be distributed to the members of the House in advance of the November 4, 2000 meeting. Amendments unrelated to the substance of the committee's proposals will not be considered at this meeting.

2. Consideration of Proposals at November 4, 2000 Meeting: Consideration of the Code amendments proposed by the committee will be in the following manner:

a. The committee will be given an opportunity to provide a brief overview of its recommendations.

b. Proposed amendments to the Disciplinary Rules and their associated Ethical Considerations will be considered seriatim, with committee proposals with respect to a particular provision considered first.

c. A representative of the committee will have three minutes to present each committee amendment. The proponents of other amendments will have three minutes to present them.

d. All those wishing to speak with regard to a particular amendment may do so only once for no more than three minutes, except the sponsor of any amendment may speak a second time for two minutes, and a representative of the committee will have two minutes to close.

e. A vote on each amendment will be taken, requiring a majority vote for adoption.

f. Procedural motions will be considered out of order until debate on all substantive amendments has been concluded.

3. Final Vote: A final vote will be taken at the conclusion of debate on all amendments to approve the Code, as amended, for transmittal to the Appellate Division.

Robert MacCrate, Chair of the Special Committee on the Law Governing Firm Structure and Operation, then provided an overview regarding the approval of the Special Committee's report at the June 2000 meeting of the House and the adoption the following month of a resolution by the American Bar Association's House of Delegates supporting the principles set forth in the Special Committee's report and directing the ABA's Standing Committee on Ethics and Professional Responsibility to develop amendments to the Model Rules of Professional Conduct consistent with those principles.

Mr. MacCrate then reviewed the process used by the Special Committee in considering comments submitted by interested parties and in preparing the revised draft of proposed Code amendments presently before the House, noting that this draft reflected modifications suggested in those comments. He indicated that to facilitate their consideration, he would make separate motions to approve the proposed Code amendments in three parts: DR 1-106 and its related Ethical Considerations; DR 1-107 and its related Ethical Considerations; and DR 2-101, DR 2-102, DR 2-103 and EC 2-10.

Following discussion, a motion was adopted approving DR 1-106 and EC 1-9, EC 1-10, EC 1-11 and EC 1-12 as revised by the Executive Committee on November 3, 2000 and submitted to the House.

Mr. MacCrate made a second motion to approve DR 1-107 and EC 1-13, EC 1-14, EC 1-15, EC 1-16, EC 1-17 and EC 1-18 as modified by the Executive Committee on November 3. Discussion then ensued during which motions to amend the language of DR 1-107 were made and defeated by voice vote. The motion to

approve DR 1-107 and its related Ethical Considerations as revised by the Executive Committee was then adopted.

Mr. MacCrate then made a third motion to approve the proposed amendments to DR 2-101, DR 2-102, DR 2-103 and EC 2-10. Following discussion, the motion was approved by the House. A motion to reconsider this item was defeated by a 45 to 74 margin.

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

WHEREAS, the New York State Bar Association ("NYSBA") has adopted the Code of Professional Responsibility ("Code"); and

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

WHEREAS, pursuant to a scheduling resolution adopted on this date, amendments to the Code have been proposed following review by the Special Committee on the Law Governing Firm Structure and Operation, county and local bar associations, interested sections and committees of the NYSBA and other interested organizations; it is

RESOLVED, that the House of Delegates of the NYSBA hereby approves the Code as amended by this House, contingent upon adoption by the Appellate Division of the Disciplinary Rules therein contained; and it is further

RESOLVED, that the Special Committee on the Law Governing Firm Structure and Operation is hereby authorized to make such non-substantive, stylistic changes as might be necessary to ensure uniformity of language and format throughout the Code; and it is further

RESOLVED, that the officers of the Association are hereby empowered and directed to transmit the Code as amended to the Appellate Division and to take such other and further action as may be required or deemed appropriate to achieve the implementation of the recommended Code amendments.

9. Memorial to Joseph P. McGlinn. Mr. Headley presented a memorial to Joseph P. McGlinn, Vice-President from the Ninth Judicial District, who had passed away in August. In his remarks, Mr. Headley cited Mr. McGlinn's accomplishments and his contributions to the law, as well as his dedication to improving the legal profession and assisting other practitioners. A moment of silence was observed out of respect for Mr. McGlinn's memory. A copy of the memorial is attached to these minutes.

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

a) On September 12, 2000 he had met with Chief Administrative Judge Lippman to discuss a number of topics of mutual interest, including court restructuring, the court system's plans to host a nationwide summit on the jury system in late January 2001, preparations for "A Convocation on the Face of the Profession" to be presented in Albany on November 13-14, 2000 by the New York State Judicial Institute on Professionalism in the Law in cooperation with the Association, and the 2001-2002 Judiciary budget. With respect to the jury system summit, Mr. Hassett noted that the program, which will be held in New York City from January 31 through February 3, 2001, will be a joint presentation by OCA and the National Center for State Courts, and is intended to draw participants from other states to share their experiences and exchange ideas for improving the system. He advised that Charles F. Crimi, Jr., who chairs the Ad hoc Committee on the Jury System, serves as a member of the planning group for the event. In connection with the Judiciary budget, Mr. Hassett indicated that OCA had departed from its traditional practice of holding separate upstate and downstate budget hearings, and had held a single, statewide hearing at Pace University Law School to permit administrative judges from across the state to share their budgetary concerns as a group.

b) On October 19, 2000, the Committee on Judicial Selection had interviewed the seven candidates under consideration for appointment to the New York Court of Appeals. Mr. Hassett advised that the NYSBA had rated all seven as "well qualified" and had reported these findings to Governor Pataki. He noted that the Governor had appointed Hon. Victoria A. Graffeo, Associate Justice of the Appellate Division, Third Department, to fill the position.

c) Earlier in the fall, he had written to the State Insurance Department to express the Association's ongoing concern over regulations proposed by the department that will place increased restrictions on no-fault claimants. He indicated that the proposed changes, which will shorten claim filing periods, will work an unfairness on claimants, many of whom are unrepresented by counsel. Mr. Hassett advised that the House would be kept informed about developments in this area.

d) The NYSBA had formed a Special Committee on Cyberspace Law, chaired by Madeleine Schachter of New York City. Mr. Hassett noted that the committee, which is intended to assist attorneys as they counsel clients who distribute goods, services and content via the Internet, had already met twice during the fall and was scheduled to meet again in December. He observed that as part of its activities, the committee would be reviewing relevant caselaw, legislation and regulations that relate to cyberspace law.

e) OCA had announced that it would not be reviving its suspended program where all major cases against public officials filed in Manhattan had been assigned to one of five Appellate Term justices. Mr. Hassett stated that the program had proved unpopular, which had led to it being discontinued.

f) Negotiations were ongoing in Congress with respect to the Commerce, Justice, State appropriations bill that is the source of funding for the Legal Services Corporation. Mr. Hassett reported that efforts were being made to raise LSC funding above the current \$305 million level. On October 26, the House Appropriations Committee had raised the fiscal year 2001 amount to \$330 million, a \$25 million increase over fiscal 2000. He stated that approval by the full House and the Senate still remained.

g) In 1999, the Executive Committee had approved a report by the Committee on Pension Simplification calling for the creation of a commission to overhaul and simplify the pension laws. Mr. Hassett advised that legislation to implement this recommendation had been introduced by Senator Bingaman of New Mexico and would be supported by the Association.

h) In August, The New York Times had published an article entitled "Legal Firms Cutting Back on Free Services for Poor" describing what the authors felt was a definite decline in pro bono services being provided by law firms. Mr. Hassett stated that he had responded to the *Times* expressing the Association's strong support for voluntary pro bono service and summarizing the NYSBA's advertising campaigns and educational efforts to promote pro bono among the members of the legal profession. He noted that his response had also cited efforts to secure adequate funding for civil legal services programs and emphasized the more than two million hours of pro bono donated by New York's lawyers each year.

i) In view of Mr. Carroll's planned retirement in June 2001, after 23 years of dedicated service as Executive Director, Mr. Hassett had appointed a Special Executive Director Search Committee to locate a suitable replacement. He advised that the committee had placed advertisements for the position at both state and national levels to develop a pool of highly qualified applicants from which to make the selection.

j) Related to the topic of multidisciplinary practice, which had been the subject of intense study by the NYSBA over the past several months, was the issue of multijurisdictional practice. Mr. Hassett observed that with an increasing number of law firms and corporations conducting business on a national scale, issues were emerging about attorneys practicing law in multiple jurisdictions, including states where they may not be admitted to practice. He indicated that this development raises concerns about the current state-based system of attorney discipline and the regulation of unauthorized practice of law, and these issues were under study by the American Bar Association. Mr. Hassett advised that a subcommittee of the Special Committee on the Law Governing Firm Structure and Operation was in the process of examining various aspects of multijurisdictional practice, and that the House would be kept informed concerning developments.

k) At the June meeting of the House, the Committee on Solo and Small Firm Practitioners had been discharged as its role was being assumed by the General

Practice Section. Mr. Hassett reported that on November 3, the Executive Committee had approved a change in title for the General Practice Section, renaming it the "General Practice, Solo & Small Firm Section". He stated that this name change reflects the expanded role for the section as it seeks to develop broadened programming and enhance materials to serve the needs of the NYSBA's solo and small firm members.

l) Anthony Perez Cassino, the Association's Director of Pro Bono Affairs, had left the staff to take a position with a private law firm in New York City. He indicated that, in cooperation with the President's Committee on Access to Justice and the Committee on Legal Aid, Mr. Carroll was in the process of seeking a suitable replacement.

m) The Nominating Committee had met on November 3, 2000 and had nominated for election at the January House meeting Lorraine Power Tharp as President-Elect, Frank M. Headley, Jr. as Treasurer, and A. Thomas Levin as Secretary. He expressed appreciation to the committee for its diligent efforts in selecting an outstanding slate of nominees.

11. Report of Special Committee on Public Trust and Confidence in the Legal System. Ellen Lieberman, Chair of the Special Committee on Public Trust and Confidence in the Legal System, summarized the background regarding the formation of the Special Committee and the methodology employed in conducting its study and developing the recommendations contained in its report. She outlined the manner in which the Special Committee had coordinated with the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System and reviewed that body's recommendations. Ms. Lieberman explained that the recommendations had been divided into five topical areas as follows: a) bias and prejudice and access to justice; b) need for a comprehensible user-friendly court system and addressing delays in justice; c) jury system experience and adequate funding for court facilities; d) legal and judicial ethics, and e) public understanding and media portrayal of the legal system. She then outlined the major recommendations in each of those areas, noting those that the Special Committee deemed to be priorities, as well as those where the Special Committee differed from the approach advocated by the Chief Judge's group. Ms. Lieberman encouraged the members to review the report and engage in thoughtful dialogue to facilitate an informed discussion at the January meeting. The report was received with thanks.

12. Report and recommendations of Committee on Lawyer Referral Service. Timothy J. Fennell, Chair of the Committee on Lawyer Referral Service, reviewed the functioning of the referral service in the thirty-nine counties of the state where local bar services are not in operation. He then summarized proposed amendments to the Lawyer Referral and Information Service Plan. He explained that these modifications were designed to clarify the circumstances under which a participating attorney may be removed from the referral panel and to ensure the provision of due process in connection with any removal. After discussion, a motion was adopted unanimously

approving the proposed amendments. A copy of the plan as amended is attached to these minutes.

13. Report of Chair. Mr. Krane reported the following matters:

a) Information had been circulated with reference to enrollment in the mentor program for the Young Lawyers Section so that younger and newer lawyers in that section might have access to guidance from more experienced practitioners. The members of the House were encouraged to participate in the program.

b) The Young Lawyers Section had also distributed information concerning the Outstanding Young Lawyer Award and was soliciting nominations of worthy recipients.

14. Date and place of next meeting. Mr. Krane announced that the next meeting of the House of Delegates would be held on Friday, January 26, 2001 at the Marriott Marquis in New York City.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lorraine Power Tharp". The signature is written in black ink and is positioned above the printed name.

Lorraine Power Tharp
Secretary

NEW YORK STATE BAR ASSOCIATION

In Memoriam

Joseph P. McGlinn

MEMORIAL
to
JOSEPH P. McGLINN

*Presented at the
New York State Bar Association
House of Delegates Meeting
November 4, 2000
Albany, New York*

JOSEPH P. McGLINN

1942-2000

Joseph P. McGlinn, who served us for all too short a time as vice-president representing the 9th Judicial District, passed away in August. Death came on an early Wednesday morning as Joe was about to work on some files that were spread out on his dining room table. He was 58 years old.

Joe grew up in Pelham, NY, one of six children. His father was a lawyer. He was the only one of the six to follow in his father's path. Joe graduated from Stepinac High School. He received his undergraduate degree from Manhattan College and earned his law degree from Fordham University School of Law.

Joe was a past president of the Rockland County Bar Association, a member of the National Alumni Council of Manhattan College, former law secretary to the Rockland County Surrogate and had served at one time as a judge for the village of Harriman.

Above all, Joe McGlinn honored our profession by his steadfast adherence to the belief that the law was about assisting real life people who had real life concerns. He loved his profession and the practice of law, especially in trusts and estates work, where he concentrated his practice.

While he possessed a keen intellect and a life-long love of learning, he understood early on in his career that the law was more than a battle of wits, or a measure of one's mental acumen, but rather a profession where men and women used all the skills and experience at their disposal in service to their clients. Practical, common sense judgment, steeped, of course, in a world of learning and experience, was Joe's hallmark.

Joe loved the practice of law. He looked forward to getting up each day and getting to his work. Saturday mornings, or very early week-day mornings, when he could be alone with his cases, these times were particularly precious to him.

Joe was a mentor to other attorneys long before the practice was fashionable or organized. He never sought credit for the guidance he gave to others, just the satisfaction that he had helped a colleague learn, that he had helped raise the standards of our profession, and above all else, had helped to render proficient counsel to a client.

He was the "genuine article," a man without pretense or guile both in his professional and personal life. He had an exacting sense of decency - a sense of what a lawyer should and should not be. He did not preach nor did he ever hold himself out as morally superior to others. Rather, he sought by word and deed to communicate to others the importance of absolute integrity.

Joe was a devoted husband and father who will be missed in his home (his wife, Mary, and children, Timothy, Matthew, Claire, and Ellen), his community, his office, his profession, and in this Association.

**NEW YORK STATE BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION SERVICE PLAN**

PREAMBLE. The New York State Bar Association believes that an important means for the legal profession to fulfill its responsibility to make legal counsel available to members of the public is through an effective lawyer referral service. Several local bar associations operate well-organized lawyer referral services on a local or regional basis. Many areas of New York State, however, do not have the benefit of an operating lawyer referral service. The New York State Bar Association wishes to create and operate a statewide lawyer referral and information service to serve these areas and to assist and cooperate with local bar association lawyer referral programs.

I. There is hereby created the New York State Bar Association Lawyer Referral and Information Service (“the Service”).

II. OBJECTIVES. The purposes and objectives of the Service are:

A. to serve the public by administering a coordinated lawyer referral and information system throughout New York State;

B. to operate a service by which any person may be referred to a lawyer who is able to render the needed legal services;

C. through advertising, to provide information to the public about lawyers and the availability of legal services;

D. to supplement but not to duplicate local and regional lawyer referral services presently operating in the State; and

E. to provide information to the public about community and legal services available, including local bar referral services, legal aid societies, legal service programs, public interest law organizations and other appropriate service providers throughout the State of New York.

III. THE COMMITTEE. The Committee on Lawyer Referral Service (“the Committee”) shall be charged with the operation and administration of the Service. The Committee shall be composed of not fewer than six members nor more than twenty-one members, appointed by the Association’s president. The term for each member shall be for not less than one year nor more than three years. Appointments shall be staggered so the composition of the Committee shall be

divided, insofar as is practicable, into equal numbers of one, two and three year members. A chairperson will be selected annually by the Association's president.

IV. THE SERVICE. The Service will be operated from The Bar Center in Albany, utilizing members of the Association's staff, under the general supervision of the Committee. A person seeking a lawyer who contacts the Service will be interviewed by a staff member and a referral will be made to a participant-member of the Service on a rotating basis. The Committee may require that referrals be on the condition that the prospective client agree to pay an initial fee to be determined by the Committee for an initial office consultation of one-half hour, provided that this fee may be waived by the referral attorney. The Service shall cooperate with and assist local and regional lawyer referral services. The Service shall not make referrals to lawyers in any geographic area of the state where a comparable lawyer referral service exists; in such cases referrals will be made directly to the existing referral service. A comparable service shall be defined as one that, to the extent practicable, substantially complies with the American Bar Association Model Rules For a Lawyer Referral Service. A determination that a local or regional lawyer referral service is not comparable shall be made by the NYSBA Executive Committee upon recommendation of the Committee on Lawyer Referral Service.

V. THE PARTICIPATING ATTORNEY PANEL.

A. Any attorney who is duly admitted to practice, who is a member of the Bar of New York State in good standing, and who maintains an office in a geographic area not served by any referral service sponsored by or affiliated with any local bar association, may qualify as a participating attorney on the Service panel.

B. Applications for membership shall be in such form as may be approved by the Committee and shall be grouped by county and placed in alphabetical order with other participating attorneys in that county.

C. In submitting the application for membership on the panel, the attorney-applicant shall affirm that the attorney is a member in good standing of the Bar New York State and may list those areas of legal practice in which the attorney desires and is qualified to accept referrals. The Committee may make professional liability insurance in a minimum amount to be established by the Committee a condition for membership on the panel.

D. A participating attorney, in filing the application to become a member of the Service panel agrees that:

- (1) The attorney will grant an initial consultation of one-half hour at a standard fee to be set by the Committee, provided that this fee may be waived by the attorney.
- (2) Any charge for services beyond the initial consultation will be as agreed between the attorney and client, and in keeping with the stated objectives of the Service and the client's ability to pay. This fee will be fixed as clearly as possible during the initial office consultation.
- (3) The attorney will permit any dispute concerning fees arising from a referral to be submitted to binding arbitration if the client so petitions.
- (4) The attorney will grant every client referred by the Service an appointment as soon as practicable after a request is made.
- (5) The attorney will abide by all rules of the Service and will in no event hold or claim to hold the New York State Bar Association, the Service, or any of their officers, members or employees liable in connection with the operation of the Service or the use of information contained in any application or report furnished to the Service.
- (6) The attorney will proceed with due diligence and will not neglect any matter referred by the Service.

VI. FEES FOR MEMBERSHIP. Each participating attorney of the Service will pay the Service a non-refundable annual membership fee to be determined by majority vote of the Committee with the approval of the Finance Committee. The Committee may establish a higher registration fee for attorneys who are not members of the New York State Bar Association. With the approval of the Association's Executive Committee, the Service may assess additional fees as necessary to support the operation of the program, including, but not limited to, a percentage of the fees generated by referrals made to participating attorneys. All fees will be used to defray the costs of operation of the Service. Participating attorneys shall not increase their fees for legal services to clients by any cost of participation in the Service.

VII. WITHDRAWAL FROM MEMBERSHIP. A participating attorney may at any time withdraw from participation in the Service upon five days written notice to the Lawyer Referral Service Committee addressed to The New York State Bar Association.

VIII. OPERATION OF THE PANEL.

A. Referrals will be made to members of the panel in rotation in the geographic area closest to the client's home or business. A participating attorney who rejects initial referrals without good cause will be moved to the bottom of the referral list.

B. Participating attorneys will accept any referral client for an initial interview in those areas of the law with respect to which they have indicated in their applications they are willing and competent. However, should any referral give rise to a conflict of interest, the participating attorney will contact the Service, obtain a new reference for the client and cooperate in assisting the referred client to obtain legal consultation concerning the problem. Nothing in the Plan will be construed to obligate a panel member to accept employment beyond the initial consultation.

IX. REFERRAL PROCEDURES.

A. Procedures will be maintained to assure that each referral is made in a fair and impartial manner to all panel members. Procedures shall be designed to respond to all known circumstances of the client, including the subject of the legal problem presented, geographical convenience of the client, language needs, and ability to pay for desired services.

B. The referral client, to the extent feasible, shall be informed of the rules of the Service applicable to the client's case, including information about the initial consultation and the fee therefor.

X. ACKNOWLEDGMENT AND REPORT OF REFERRALS. The participating attorney shall complete and return a referral report, forwarded by the Service, within thirty days after each referral. Nothing in this Plan will require any attorney to violate the attorney-client privilege.

XI. ADDITIONAL PANELS. The Committee may establish such separate panels and subpanels, including reduced fee and no-fee panels, as it decides are appropriate and consistent with the purposed and objectives of the Service.

XII. RECORDS AND REVIEW. The Service will keep on file a confidential record of all referrals and reports of participating attorneys which will be subject to examination and inspection by the Committee and officers of the Association.

XIII. PUBLICITY. The Service will be publicized in such manner and to such extent as will fulfill its purposes and objectives, consistent with the Code of Professional Responsibility.

XIV. PANEL MEMBERSHIP DENIAL, SUSPENSION OR REMOVAL.

A. An applicant will be denied participation in the Service and a participating panel attorney will be automatically suspended or removed from the Service panel under the following circumstances:

- (1) Suspension or disbarment from practice;
- (2) Conviction of a felony in any jurisdiction;
- (3) Failure to maintain professional liability insurance in the minimum amount as may be established by the Committee; or
- (4) Failure to pay the annual LRIS membership fee.

B. An applicant may be denied participation in the Service and a participating panel attorney may be suspended or removed from the Service panel under any of the following circumstances:

- (1) Repeated rejections of referrals by the attorney without good cause;
- (2) Institution of criminal charges against the attorney involving moral turpitude, theft, embezzlement or fraudulent appropriation of property;
- (3) Submission of an application or report or furnishing of information by the attorney to the Service which is false in any material respect;
- (4) Failure to cooperate with the Committee in the investigation and resolution of a client complaint;
- (5) Imposition of disciplinary action of censure or its equivalent by an Appellate Division of the State of New York Supreme Court or disciplinary body of another state for violations of applicable rules governing professional conduct;
- (6) Engaging in conduct harmful or injurious to the objectives, reputation or interests of the Service and profession;
- (7) Repeated client complaints;

- (8) Failure to file timely reports and summaries required by the Service;
- (9) Failure to timely pay percentage fees due the Service; or
- (10) Failure otherwise to comply with the Rules of the Service or other good cause as determined by the Committee.

- C. (1) The Service shall be empowered to temporarily suspend a participating panel attorney for a violation enumerated under subdivision B of this section, provided that notification of such action and the applicable violation is provided to the attorney in writing within 48 hours of the suspension. For purposes of this section, notice shall be by: (a) overnight express mail or certified mail, return receipt requested, and (b) regular mail.
- (2) The participating attorney shall have the opportunity to respond to the Committee in writing, with such response to be submitted within 15 days of the receipt of notice from the Committee, and to present argument at a regularly scheduled or special meeting of the Committee.
- (3) The temporary suspension shall remain in effect until, where applicable, the disposition of charges by the lawful authorities, or until the next regularly scheduled or special meeting of the Committee at which the matter is considered, following which a decision shall be made within 30 days whether to reinstate or remove the participating attorney. In no event shall a temporary suspension exceed 120 days without a final decision being rendered by the Committee.
- (4) The participating attorney may appeal the determination of the Committee to the Executive Committee of the New York State Bar Association.

XV. AMENDMENT. The rules and procedures for the Service set forth in this Plan may be amended by majority vote of the Committee as long as any amendment is consistent with the purposes and objectives of the Service, or upon recommendation of the Executive Committee of the New York State Bar Association, subject in either case to the prior approval of the House of Delegates.