

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE BAR CENTER, ALBANY, NEW YORK
NOVEMBER 2, 2002**

PRESENT: Alcott; Amoroso; Asarch; Aydelott; Ayers; Baker; R. Bartlett; Bauman; Beehm; Bracken; Brown; Butler; Buzard; Carreras; Castellano; Cioffi; Clifford; Coffey; Cuyler; Cyrulnik; Darche; Doerr; Doyle; J. Dwyer; Edmunds; Eisman; Evans; Farrell; Fennell; Fink; Fisher; FitzGerald; Flaherty; Flink; Franchina; H. Freedman; M. Freedman; Futter; Gacioch; Geoghegan; Gerstman; Getnick; Goldenberg; Golinski; Gordon; J. Gross; M. Gross; Grossman; Guiney; Gutekunst; Haig; Handlin; Harren; J. Harris; Hartman; Hassett; Hayes; Heggen; Herold; Hesterberg; Hoffman; Horowitz; Hoye; Ingrassia; S. Jacobs; Jacoby; Jaffe; Kamins; Karson; Katzman; Kelly; Keniry; Kilsch; King; Kougasian; Krane; Landy; Lawrence; Leber; Lee; Levin; Lewis; Lieberman; Longo; MacCrate; Madigan; Mandell; Maney; Manley; Matthews; Mayer McAuliffe; McCarthy; M. Miller; Milonas; Minkowitz; Miranda; Myers; Nashak; Nizin; O'Connor; O'Donnell; O'Leary; O'Mara; Optowsky; Ostertag; Paul; Perlman; Peterson; Pfalzgraf; Plotsky; Priore; Purcell; Reich; Reimer; Reynolds; Rice; M. Richardson; T. Richardson; Rider; Rifkin; Riley; Rizzo; Robertson; Rodriguez; Rosner; Russo; Safer; Schraver; Schumacher; Sconiers; Seiter; Seitz; Sherwin; Silkenat; Sloan; Standard; Stenson; J. Sunshine; N. Sunshine; Terranova; Tharp; Treece; Tyler; Tyo; O. Walsh; R. Walsh; Williams; Wimpfheimer; Witmer.

1. Approval of minutes of the June 22, 2002 meeting. The minutes of the June 22, 2002 meeting were approved as distributed.
2. Report and recommendations of the Finance Committee regarding the 2003 income and expense budget. The 2003 income and expense budget recommended by the Finance Committee was presented by John R. Horan, as Chair of the Committee, as previously distributed. He summarized the major components of the budget, that projects income of \$21,160,694 and expenses of \$20,978,410. No Association dues increase is planned for 2003, which will be the ninth year keeping dues at the same level, tripling the Association's traditional three-year dues cycle. CLE seminar fees also will be unchanged, the 10th year without an increase. Mr. Horan advised that the Association, through an independent consultant, has undertaken a study to evaluate and aid in determining a dues structure and CLE pricing level appropriate to conditions going forward.

Income is projected to be approximately \$779,000 higher than the budgeted amount in 2002, including increases in Association membership and Sections, both of which are expected to exceed the 2002 budgeted amounts by year-end. He advised that continuing legal education also experienced growth beyond projections for 2002 but a lower amount has been budgeted for 2003, given the increasing number of educational providers since the introduction of mandatory continuing legal education in the state. While CLE program revenue remained level in 2002, audio and video sales increased.

Total expenses for the 2003 budget are \$747,979 higher than the amount budgeted in 2002. Increases are planned in staff salaries and benefits, including mandatory FICA and pension costs; Bar Center operations, including insurance; and CLE, including on-line costs and sales tax because of growth in audio and video sales. Plant and equipment expenses also are higher from increased depreciation, with depreciation funded monthly by transfers to fixed asset reserve accounts. Section expenses are expected to be slightly less than the 2002 budget, based on lower costs in program site selections and other projects.

It was announced that the Executive Committee had unanimously adopted a motion endorsing the proposed budget for positive House action. Following this report, a motion was adopted unanimously by voice vote approving the 2003 budget.

3. Report of the Treasurer. The Treasurer, Kenneth G. Standard, reviewed the report of income and expenses for 2002 through September 30, which had been circulated with the agenda. Income was \$17,643,114, up from \$15,548,445 in 2002, with significant growth realized in CLE. The net realized and unrealized losses on investments were \$1,188,341, a decrease of \$445,756 from last year. Expenses totaled \$14,656,048 or 73 percent of budget, compared to \$13,826,876 or 69 percent of budget in 2001. A net surplus of approximately \$90,000 is expected by the close of the year.

Continuing his informational reports on policy and procedure, Mr. Standard then discussed the relationship between the Association and the Sections with respect to budgeting, program planning and related administrative and cost considerations, allocation of program income and expenses, and the financial impact of the Annual Meeting on the Association. Steps also have been taken to enhance staff support for Sections, coordination, communication and services, including provision of resources through the Association's newly reconstructed and redesigned website. He also explained services covered by membership dues, including publications, Committee work, electronic communications, development of reports, actions on issues of concern to the profession, and pursuit of changes in the law and other provisions.

This informational report was received with thanks.

4. Report of The Association of the Bar of the City of New York concerning equity of marriage. The House of Delegates heard an informational report prepared by The Association of the Bar of the City of New York's Committee on Lesbian and Gay Rights, Committee on Sex and the Law, and Committee on Civil Rights endorsing marriage rights for same-sex couples in New York State. Leslie Rubin of the Sex and Law Committee and Jay Weiser of the Lesbian and Gay Rights Committee summarized the report, which concludes that same-sex couples should not be excluded from exercising the right to marry in the state and calls for New York to recognize same-sex marriages and civil unions entered into in other jurisdictions. In an analysis of state and federal law, the Committees reported that the state Domestic Relations Law is gender-neutral with respect to marriage, court

decisions have afforded certain protections to same-sex couples, and executive orders have provided benefits to same-sex domestic partners of state employees. While concluding that same-sex marriage is not precluded under state law, the report seeks adoption of legislation to provide full marriage rights or, at least, civil unions. The speakers also reviewed pending state legislation that would recognize marriage without regard to whether the parties are of the same or different sex.

It was announced that the report has been circulated for comment to relevant Sections and Committees and will be scheduled for formal consideration by the House at the January 24, 2003 meeting.

5. Presentation of the Justice Award by the Committee on Justice and Community. The Justice Award of the Committee on Justice and Community was presented by President Lorraine Power Tharp and the Chair of the Committee, Renaye B. Cuyler, to Safe Horizon, a non-profit organization serving survivors of violent crime and domestic violence. Safe Horizon provides services to prevent abuse and protect victims and their families, maintains mental health clinics, a child advocacy center for child sexual abuse victims, and more than 30 court-based programs offering safety and advocacy help for crime victims and witnesses. Following the World Trade Center attack, the organization provided crisis counseling, referrals, financial assistance, and 24-hour hotline support to more than 40,000 victims and family members. Safe Horizon's Chief Program Officer, Jane Barker, accepted the award with appreciation on behalf of the organization.
6. Report of the Committee on Tort System. In an informational presentation, John P. Bracken, Co-Chair of the Committee on Tort System, updated the House regarding the Association's efforts to preserve a tort process fair to all concerned, seek constructive improvements, and oppose proposals at the federal and state levels for wholesale dismantling of the system.

He reported that in the wake of the economic downturn, it is expected that efforts for extensive revision of the tort system will be pursued vigorously by some industry, insurance and local elected officials. Proposals for medical malpractice changes also have been urged by doctors, including \$250,000 caps on pain and suffering, a reduction in the threshold of lump-sum payments of judgments from \$250,000 to \$50,000, and use of a no-fault system for infant childbirth claims.

Also described was a recent bill passed in the House of Representatives which, among other measures, would place caps on attorneys fees, cap punitive damages at \$250,000, provide in the aggregate a cap of \$250,000 for non-economic damages, pre-empt more protective state laws, eliminate joint and several liability for all damages, include certain product liability limitations, and set a one-year statute of limitations.

The Committee, along with other relevant Committees and Sections, is analyzing state and federal legislation. The Association's increased legislative advocacy, media and public communications will be used to address these issues and present

facts and figures on use of the tort system. The report was received with appreciation.

7. President's report. President Tharp reported on the following matters:

- a. Communications. Enhancing communication is a priority of her presidency. She has reorganized the Committee on Public Relations with Past-President Paul Michael Hassett appointed as Chair; a new public relations firm has been engaged; and plans are being developed to maximize opportunity to communicate to the media and public about legal issues and the Association's initiatives to address them, as well as coordinating with the legislative action program.
- b. Mid-Atlantic Bar Conference. With Past-President Steven C. Krane and Executive Director Patricia K. Bucklin, she represented the NYSBA at the Mid-Atlantic Bar Conference, composed of New Jersey, Delaware, District of Columbia, Maryland and Pennsylvania, in addition to New York. The NYSBA, with the District of Columbia Bar, discussed issues and initiatives to foster access to justice. Other Conference subjects included legislative advocacy, IOLA and IOLTA programs, and insurance programs.
- c. Meeting with court officials. She, President-Elect A. Thomas Levin and Executive Director Bucklin met with Chief Administrative Judge Jonathan Lippman and Deputy Chief Administrative Judge Ann T. Pfau to discuss issues of mutual concern. Among topics covered were efforts to seek legislation to increase assigned counsel rates, courthouse security issues, the Court System's parental education initiative, the status of use of recorders in Family Court, and projects of the Association's Committee on Judicial Campaign Conduct.
- d. Pro bono convocation. She addressed the Pro Bono Convocation, convened by the Unified Court System in Albany in October. In her presentation, she emphasized the importance of continuing the public-private bar partnerships forged by the State and local bar associations with legal services offices, to advocate for adequately funded government-funded programs, supplemented by volunteer pro bono efforts. She further advised that access to justice, including securing sufficient and regularized funding sources for civil legal services and legislation for increased assigned counsel rates, is a priority of the Association. The convocations, which were being held at several locations across the state, were undertaken by the Court System to develop ideas and strategies to increase pro bono service in New York.
- e. Sections and Committees. She and President-Elect Levin are attending meetings of Sections and Committees to discuss projects and procedures and opportunities for coordination. Work is under way in the new entities that she has established, including the Task Force on Gender Equity, the

Task Force on Increasing Diversity in the Judiciary, and the Special Committee on Animals and the Law.

- f. Access to justice. The Association is continuing to pursue legislation for increased rates for assigned counsel and for a regularized funding source for civil legal services. The Committee on Legislative Policy is monitoring developments and plans are being undertaken to strengthen the Association's voice in seeking action on these and other issues of priority. She advised that the Senate is expected to return in December to handle certain issues.
- g. Meeting With Deans. She and President-Elect Levin had scheduled a meeting with the Deans of the law schools in the state in December to discuss matters affecting legal education and the profession and opportunity for cooperative efforts.
- h. Presidential summit. She is convening a first-time plenary presidential summit on January 22, 2003 at the Annual Meeting in New York City, which will feature high-profile panels on issues of corporate responsibility. The program titled "A Matter of Corporate Responsibility: Where Are We Going From Here?" will be co-sponsored by the Commercial and Federal Litigation, Business Law, and Corporate Counsel Sections. Panelists will examine practical and ethical issues in responsible communications in financial fraud cases and the roles of lawyers, corporate officers and directors, accountants and government.
- i. Website. The Association's reconstructed and redesigned website is being well received. Substantial content has been added and members are utilizing the interactive features. The site is receiving 4.5-5 million hits per month.
- j. History project. An author has been engaged to work with the Special Committee to Commemorate the 125th Anniversary of the Association that will describe the Association's evolution and initiatives in service to the profession and public and related developments in the profession.
- k. NYSBA strategic planning. The Executive Committee has finalized work on the reports and initiatives developed at its strategic planning retreat held in Saratoga Springs in September. The retreat focused on strengthening legislative advocacy; speaking out in the media, providing public information, and creating comprehensive strategies on priority issues utilizing these multi-faceted methods of communication; increasing membership development, opportunities for involvement and diversity; and enhancing practice management and other resources to aid members. The special three-day session featured speakers active in Association projects and others with extensive experience in these fields, and roundtable discussions. Past-President Justin L. Vigdor of Rochester served as facilitator. Following the retreat, Subcommittees met to

continue development of the initiatives in the four major areas. At its October 31, 2002 meeting, the Executive Committee adopted each Subcommittee report. The reports will be distributed to relevant Sections and Committees for input and creation of action plans to implement the initiatives.

1. Nominating Committee report. The Nominating Committee has prepared its slate for action at the Annual Meeting and House in January, including officers, members-at-large of the Executive Committee, and Elected Delegates to the House of Delegates. Nominees include Kenneth G. Standard of New York City, President-Elect; James B. Ayers of Albany, Treasurer; A. Vincent Buzard of Rochester, Secretary; and Donald C. Doerr of Syracuse, John H. Gross of Northport, Claire P. Gutekunst of New York City, Gunther H. Kilsch of New York City, David R. Pfalzgraf of Buffalo, and Jay G. Safer of New York City, Executive Committee Members-at-Large. The slate chosen for District Vice Presidents consists of: First, Mark H. Alcott and Stephen D. Hoffman, New York City; Second, Edward S. Reich of Brooklyn; Third, Rachel Kretser of Albany; Fourth, Cristine Cioffi of Niskayuna; Fifth, James F. Dwyer of Syracuse; Sixth, Kathryn Grant Madigan of Binghamton; Seventh, C. Bruce Lawrence of Rochester; Eighth, Sharon Stern Gerstman of Buffalo; Ninth, Joseph F. Longo of White Plains; Tenth, A. Craig Purcell of Hauppauge; Eleventh, Gary M. Darche of Flushing; and Twelfth, Lawrence R. Bailey Jr. of New York City.

8. Report and recommendations of the Committee on Legal Education and Admission to the Bar on the proposed increase in the bar examination passing standard. Richard Matasar spoke on behalf of the Committee on Legal Education and Admission to the Bar concerning its review of a proposal of the Board of Law Examiners to increase the passing score on the state bar examination.

The Board has recommended increasing the passing score from 660 to 675. The proposal was made following the Board's review of whether the current passing level is appropriate, including the commissioning of a study and an evaluation of the study's methodology. New York scales its exam scores to the Multistate Bar Exam to achieve consistency and reliability. The Board also reviewed passing standards in other states, observing that neighboring states and those with similar commercial and industrial elements have higher levels. New York candidates' performance on the MBE is below average. The Board has proposed delaying implementation for one year to allow current students to prepare to meet this standard and to enable the Board to compile baseline data to evaluate the impact of the proposed standard before and after the standards would go into effect. The Board has agreed to extend the comment period on the proposal until the House next meets on January 24.

Dean Matasar advised that the Committee on Legal Education and Admission to the Bar opposes the proposal until further studies are conducted as to the need and effect of the increase and also recommends that the Board conduct public hearings

on the issue. The Committee urges that validation studies be undertaken concerning the relationship between an increased passing score and protection of the public and an assessment of the impact on minority candidates. President-Elect Levin reported that the Executive Committee had endorsed the Legal Education Committee report for positive action of the House of Delegates and recommended that the Board take no action on increasing the passing score pending the recommended studies and hearings.

Members of the House then discussed whether additional study should be undertaken on the proposal and the elements and objectives of such studies. In a voice vote, a motion did not prevail that would have opposed the Board proposal, as lacking evidence that the increased passing score would improve the quality of legal services, and would have called on the Board to devote further research to proposals aimed at making the bar examination more reflective of the practice of law.

The House then adopted a motion by voice vote to table the matter for consideration in January with the Board, as well as the Committee, invited to make presentations at that time.

9. Report of The New York Bar Foundation. Hon. Richard J. Bartlett, President of The Foundation, updated the House on the plans of the Board of Directors to enhance the service of The Foundation as a statewide law-related charitable organization. He described the grant-making program, further development of The Fellows membership, and opportunities for support of The Foundation's initiatives. He thanked members for their contributions and advised that designation of The Foundation in their estate planning is another way to support the organization.
10. Report of the Business Law Section. The work of the Business Law Section, including the development of a diversity plan, was described in an informational presentation given by Raymond H. Seitz, a past Chair of the Section. The diversity plan provides steps for implementation woven into the various Section activities. The Section also is enhancing its programming and work on projects in cooperation with the Corporate Counsel Section and other Sections.
11. Report of the Chair. President-Elect A. Thomas Levin advised that two items had been withdrawn from the House agenda for this meeting by the proposing entities. The Committee on Legal Education and Admission to the Bar had received considerable comments on its report for an alternative to the bar examination and wished to have opportunity to review this input. The Commission on Providing Legal Services to Middle-Income Consumers also requested additional time to consider comments on its report on unbundling of certain legal services.
10. Date and place of the next meeting. President-Elect Levin announced that the next meeting of the House would be held on Friday, January 24, 2003 at the Marriott Marquis, New York City, preceded that morning by the Association's Annual Meeting.

There being no further business to come before the House, the meeting was adjourned.

Respectfully submitted,

A. Vincent Buzard

A. Vincent Buzard