

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK, AND REMOTE MEETING
JUNE 16-17, 2022**

Present: Gregory K. Arenson, Simeon H. Baum, T. Andrew Brown, David Louis Cohen, Orin J. Cohen, Sarah E. Gold, Taa R. Grays, LaMarr J. Jackson, Elena DeFio Kean, Richard C. Lewis, Michael A. Marinaccio, Michael A. Markowitz, Thomas J. Maroney, Michael R. May, Michael J. McNamara, Ronald C. Minkoff, Mark J. Moretti, Hon. James P. Murphy, Domenick Napoletano, Christopher R. Riano, Violet E. Samuels, Mirna M. Santiago, Nancy Sciocchetti, Hon. Adam Seiden, Diana S. Sen, Lauren E. Sharkey, Kathleen M. Sweet, Sherry Levin Wallach, Kaylin L. Whittingham, Pauline Yeung-Ha

Guests: Anthony Ciolli, Donald C. Doerr, Alexandra Ferlise, Albert Feuer, Evan M. Goldberg, Jerry H. Goldfeder, Natalie Gomez-Velez, David E. Gutowski, Shawndra G. Jones, Anna Masilela, Lillian M. Moy, Leah Nowotarski, James Q. Walker

Ms. Levin Wallach presided over the meeting as President of the Association.

1. Ms. Levin Wallach called the meeting to order, and Gregory K. Arenson, Elena DeFio Kean, Michael A. Markowitz, Michael R. May, Hon. James P. Murphy, Violet E. Samuels, Kaylin L. Whittingham, and Pauline Yeung-Ha were welcomed as new members of the Executive Committee.
2. Approval of minutes of April 1, and June 1, 2022, meetings. The minutes were accepted as distributed. Judge Murphy and Ms. DeFio Kean abstained from the vote.
3. Consent Calendar
 - a) Amendment to Mission Statement of Committee on Civil Practice Law and Rules

Item 3(a) of the consent calendar was approved.

- b) Approval of Mission Statement of Task Force on the Ethics of Local Public Sector Lawyering

The Mission Statement of Item 3(b) was amended to add “the Committee on Standards of Attorney Conduct” to the listing of bar groups with which the Task Force will engage. As amended, the creation of the Task Force and its respective mission statement was approved.

4. Report of Treasurer. In his capacity as Treasurer, Mr. Napoletano reported that through April 30, 2022, the Association’s total revenue was \$11,973,929, a decrease of approximately \$888,462 from the previous year, noting the increased expenses associated with the relocation of the print shop, the April 2022 meetings of the Executive Committee and House of Delegates held in New York City, software licensing fees, and increased

health insurance premiums. Mr. Napoletano also reported on the status of the Association's investment portfolio, and reviewed larger income items including member dues, section dues, and CLE income. The report was received with thanks.

5. Report of Executive Director. Executive Director Pamela McDevitt and Associate Executive Director Gerard McAvey updated the Executive Committee with respect to the administration and operations of the Association, including logistical considerations, costs, and member preferences surrounding the scheduling of virtual and hybrid meetings, staff participation with the Strategic Planning Committee, and the status of the Bar Center. Mr. McAvey also advised on recent and planned membership initiatives including a member census, launch of an online mediator directory, a virtual career fair, outbound recruitment calls to non-members, print advertising directed at non-members, a member referral program, and a focus on member engagement with newly admitted attorneys. The report was received with thanks.
6. Report of Strategic Planning Committee. In their capacities as co-chairs of the Strategic Planning Committee, Taa R. Grays and Christopher R. Riano reported to the Executive Committee on the mandate and composition of the Strategic Planning Committee, the anticipated work of the committee, and the timeline for this work. The report was received with thanks.
7. Discussion of Executive Committee liaison responsibilities and duties of Vice Presidents. Ms. Levin Wallach reviewed the listing of Executive Committee member liaison assignments and led a discussion on liaisons' roles in facilitating communication, providing guidance on policy and procedure, and encouraging sections and committees to undertake projects. Ms. Levin Wallach reminded the members that they are *ex officio* members of their assigned groups and should abstain from all votes taken by the assigned committee or section.

Ms. Levin Wallach asked liaisons to maintain regular contact with their groups, and, as necessary, with the respective chairs and staff liaisons, and to encourage the assigned groups to submit reports for consideration by the Executive Committee and/or House of Delegates and comment on reports submitted by other groups, and to be mindful of the need for diversity at all levels of the Association.

Ms. Levin Wallach also reviewed the responsibilities of Vice Presidents, as set forth in the Bylaws, to promote relations with local bars, affinity bars, and members in their respective districts. She encouraged the Vice Presidents to advise the Executive Committee of local bar concerns and noted her expectation that both Executive Committee liaisons and Vice Presidents will make reports to the Executive Committee with respect to the activity within their respective districts and/or their assigned groups, or on other matters of interest or concern.

8. Report of Lawyer Assistance Committee. Committee co-chair David E. Gutowski and Stacey Whiteley, director of the Lawyer Assistance Program, reported on the mandate and ongoing work of the Lawyer Assistance Committee and Lawyer Assistance Program,

including the recently-held annual retreat in Silver Bay, the launch of a mental health counseling hotline, expansion of the Lawyers Helping Lawyers network and associated local programming, and the formal creation of the Committee on Attorney Wellbeing as a standing committee of the Association. The presenters noted the continued focus on diversity initiatives within the Program. The report was received with thanks. Mr. Gutowski then presented an award to T. Andrew Brown for his support of the Lawyer Assistance Committee and Lawyer Assistance Program during his presidency.

9. Report and recommendations of Trusts and Estates Law Section. Albert Feuer and Anna Masilela, members of the section, outlined an affirmative legislative proposal in support of the New York Equity for Surviving Spouses Act (“ESSA”), including an overview of components of the proposal which to take effect would require New York City approval. After discussion, a motion was adopted to table the proposal so that the section could address concerns raised by the New York State Teachers’ Retirement System, and confer with other relevant sections of the Association, including the Elder Law and Special Needs Section, the Family Law Section, Labor and Employment Law Section, and Local and State Government Law Section, before the proposal is resubmitted for the consideration of the Executive Committee.
10. Report and recommendations of the Illinois State Bar Association seeking co-sponsorship for ABA Resolution. Mr. Lewis, on behalf of the Illinois State Bar Association, reviewed a request that the New York State Bar Association co-sponsor a resolution submitted for consideration at the August 2022 Annual Meeting of the American Bar Association in Chicago, Illinois. After discussion, a motion was adopted for the New York State Bar Association to co-sponsor the following resolution:

RESOLVED, That the American Bar Association reaffirms the following policy, adopted July 2000:

The sharing of legal fees with non-lawyers and the ownership or control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession. The law governing lawyers that prohibits lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring to non-lawyers ownership or control over entities practicing law should not be revised.

Mr. Brown abstained from the vote.

11. Report of Committee on Continuing Legal Education. Committee chair Shawndra G. Jones and senior director of CLE Katherine Suchocki updated the Executive Committee on CLE programming and revenue. Ms. Suchocki advised that the Continuing Legal Education Board had extended the exception allowing newly admitted attorney to earn Skills credits in live, non-traditional formats (i.e., CLE webinars) through December 31, 2022, and reported on pending formal action by the Continuing Legal Education Board to promulgate a new rule requiring newly admitted and experienced attorneys to complete one CLE credit in Cybersecurity, Privacy, and Data Protection per CLE reporting period. The report was received with thanks.

12. Report and recommendations of Committee on Committees. Donald C. Doerr, chair of the committee, reviewed the committee's report and recommendations with respect to the operation of thirteen committees, as well as general recommendations. After discussion, the report was acted on in three parts. First, a motion was unanimously adopted to approve recommendations 1 through 5 of the report. Second, after a motion was made to approve recommendations 7 through 16 of the report, a motion was successfully carried to amend recommendation 9 of the report to mandate that the Committee on Media Law utilize the NYSBA website and cease use of any third-party website for committee business. The main motion as to recommendations 7 through 16 was approved and the recommendations adopted as amended. Third, a motion was adopted to approve recommendation 6 of the report, that the Committee on Lawyers in Transition be merged into and become a subcommittee of the Committee on Law Practice management. Ms. Whittingham abstained from the third vote.
13. Report of President. President Levin Wallach highlighted the items contained in her written report, a copy of which is appended to these minutes. The report was received with thanks.
14. Report of Task Force on the U.S. Territories. Task Force co-chairs Natalie M. Gomez-Velez and Mirna Martinez Santiago, together with vice chair Anthony Ciolli, reported on the objectives and charge of the Task Force as the group begins its work. The report was received with thanks.
15. Report and recommendations of Task Force on Voting Rights and Democracy. Jerry H. Goldfeder, Task Force chair, outlined the recommendations contained in the report pertaining to election administration in New York State. After discussion, and a motion being made to endorse the report for favorable action by the House, a motion was made to amend two recommendations contained in the report and to add a new sixth recommendation. The motion to amend was acted on in three parts. First, a motion to amend the first recommendation to read "It should be encouraged that senior election board staff should be hired in a way consistent with best professional practices" successfully carried. Second, a motion to amend the third recommendation to delete the sentence in the paragraph that read "The United States' Carter-Baker Commission and the International Institute for Democracy and Electoral Assistance, for instance, embraced codes of conduct that would require election administrators to restrict participation in partisan political activity." successfully carried. Mr. Brown abstained from the vote on the second motion to amend. Third, a motion to amend the report to add a new sixth recommendation to read "6: Funding of the Recommendations. For any recommendation that requires funding to be implemented, the New York State Bar Association recommends that this funding be provided by New York State." successfully carried. The main motion was then approved, and the report endorsed for favorable action by the House of Delegates.
16. Reports and recommendations of Committee on Mandated Representation.
 - A) Affirmative Legislative Proposal – Amendments to Criminal Procedure Law §150.10

Committee chair Leah Nowotarski reviewed the committee’s affirmative legislative proposal to amend Criminal Procedure Law §150.10 to require A) that appearance tickets include language advising defendants of their right to counsel, the availability of assigned counsel should defendant be unable to afford counsel, and the contact information for local criminal defense providers, and B) that the police officer or other public servant issuing the appearance ticket file a copy of the appearance ticket with the court and with local criminal defense providers. After discussion, and a motion being made to approve the proposal, a motion was successfully carried to amend the proposed language of subsection “1” of Criminal Procedure Law §150.10 to read:

An appearance ticket is a written notice issued and subscribed by a police officer or other public servant authorized by state law or local law enacted pursuant to the provisions of the municipal home rule law to issue the same, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his alleged commission of a designated offense. *An appearance ticket shall include on its face, printed or typewritten in a conspicuous font or manner, language advising the recipient of the right to counsel, and the right to assigned counsel if unable to afford counsel. This notice shall also include contact information for the local criminal defense provider or, in those jurisdictions with multiple providers, contact information for each provider, and the contact information for any bar association lawyer referral service that covers that county.* A notice conforming to such definition constitutes an appearance ticket regardless of whether it is referred to in some other provisions of law as a summons or by any other name of title.

[Emphasis in original].

The main motion was then approved, and the proposal adopted as amended.

B) Affirmative Legislative Proposal – Support for Bill A4558-B/S2832-B on Procedures for Issuing, Reviewing, and Challenging Orders of Protection

Committee member Alexandra Ferlise outlined the committee’s proposal in support of the PromPT Stability Act, Bill A4558-B/S2832-B, which would authorize courts to hold evidentiary hearings for a temporary order of protection in certain circumstances and grants superior court judges the authority to issue a temporary order of protection when an action is pending in a local criminal court in certain circumstances. After discussion, and a motion being made to approve the proposal, a motion was successfully carried to amend the proposal to include a disclaimer that “NYSBA supports the intent and language contained in Senate Bill S2832-B and Assembly Bill A4558-B introduced in the 2021-2022 legislative session.” The main motion was then approved, and the proposal adopted as amended.

17. Report and recommendations of Committee on Standards of Attorney Conduct.
In his capacity as a member of the committee, Mr. Minkoff, together with committee vice-chair James Q. Walker, reviewed the committee’s proposal to add new comments to Rules

1.4 and 5.6 of the New York Rules of Professional Conduct concerning the obligations of departing lawyers and law firms to notify clients when a lawyer with primary or substantial responsibility for specific matters or clients intends to leave a law firm to join a different firm. After discussion, the report was acted on in two parts. First, a motion was adopted to endorse the recommendation on new comments to Rule 1.4 for favorable action by the House. Second, a motion was adopted to endorse the recommendations on new comments to Rule 5.6 for favorable action by the House. Ms. Whittingham abstained from the second vote.

18. Report and recommendations of Committee on Diversity, Equity, and Inclusion. In her capacity as immediate past chair of the committee, Ms. Santiago, together with committee member Lillian M. Moy, outlined the committee's recommendation to remove the sunset clauses from Bylaws provisions V.3.H. and VII.1.F.1., thereby permanently providing for the diversity delegates and diversity members-at-large positions. After discussion, a motion was made to endorse the resolution for favorable action by the House, after which a motion to amend the resolution to extend the sunset provisions for an additional ten years through May 31, 2034, failed. The main motion was then approved, with Messrs. O. Cohen and Marinaccio abstaining from the vote, and the resolution endorsed as follows:

NOW THEREFORE, IT IS

RESOLVED, that the New York State Bar Association reaffirms its unwavering and longstanding commitment to increase racial and ethnic diversity within its leadership ranks based upon its firm belief that diversity, equity, and inclusion must be fostered within the legal community and in society at large.

FURTHER RESOLVED, that the mission of the New York State Bar Association's Committee on Diversity, Equity and Inclusion is to promote the full and equal participation of attorneys of color and other diverse attorneys in the Association and in all sectors and at every level of the legal profession.

FURTHER RESOLVED, that the Association is made stronger and more capable of implementing change through the law when its membership reflects the diversity of the individuals and communities served by the legal profession.

FURTHER RESOLVED, that the subject bylaws provisions institutes a deliberate and thoughtful process to identify and recruit diverse members whose perspectives help inform and strengthen the Association's decisions and policies.

FURTHER RESOLVED, that the increased participation of attorneys of color in leadership positions also helps foster a welcoming environment for and serves as an incentive to diverse lawyers considering membership within the Association.

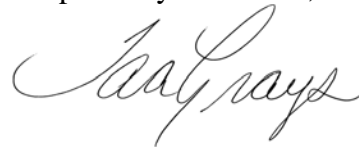
FURTHER RESOLVED, that the subject bylaws provisions promote the objectives approved by the Association in its adoption of the 2020 Diversity Plan which commits the Association to require diversity as an emphasis in all leadership

nomination processes, including diversity among the decision-makers on the Nominating Committee.

RESOLVED, that consistent with these stated principles and commitments, the Association hereby approves the continuation of the bylaws provisions, without any sunset clause, to ensure that at least 12 members of the Association will be appointed by the President from underrepresented racial and ethnic groups to serve in the House of Delegates and that two members-at-large of the Executive Committee of the Association shall be selected to further ethnic and racial diversity.

19. Report of Task Force on Racism, Social Equity, and the Law. In her capacity as Task Force co-chair, Taa R. Grays, together with co-chair Lillian M. Moy, updated the Executive Committee on the Task Force's ongoing work in anticipation of submission of a final report for consideration at the November 2022 meeting of the House of Delegates. The report was received with thanks.
20. Report of Committee on Legislative Policy. Committee chair Evan M. Goldberg, together with director of policy Hilary F. Jochmans and associate director of Government Relations Cheyenne Burke, reviewed advocacy activity undertaken by the Association during the 2022 legislative session, with emphasis on the status of the Association's legislative priorities. Ms. Jochmans reported on ongoing federal activity surrounding proposed gun control legislation. The report was received with thanks.
21. Date and place of next meeting. The next meeting of the Executive Committee will take place on Friday, November 4, 2022, at the Bar Center in Albany.
22. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



Taa R. Grays
Secretary

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
REMOTE MEETING
JULY 19, 2022**

Present: Simeon H. Baum, T. Andrew Brown, David Louis Cohen, Orin J. Cohen, Sarah E. Gold, Taa R. Grays, LaMarr J. Jackson, Elena DeFio Kean, Richard C. Lewis, Michael A. Marinaccio, Michael A. Markowitz, Thomas J. Maroney, Michael R. May, Michael J. McNamara, Mark J. Moretti, Hon. James P. Murphy, Domenick Napoletano, Christopher R. Riano, Violet E. Samuels, Mirna M. Santiago, Nancy Sciocchetti, Hon. Adam Seiden, Diana S. Sen, Lauren E. Sharkey, Kathleen M. Sweet, Sherry Levin Wallach, Kaylin L. Whittingham, Pauline Yeung-Ha

Guests: Anthony Ciolli, Azish Filabi, Natalie Gomez-Velez, Serhiy Hoshovsky, Scott M. Karson, Neil Weare, Gonzalo Zeballos

Ms. Levin Wallach presided over the meeting as President of the Association.

1. Ms. Levin Wallach called the meeting to order.
2. Consent Calendar
 - a) Amendment to Mission Statement of Committee To Review Judicial Nominations

The consent calendar, consisting of the item above, was unanimously approved.

3. Report and resolution of Task Force on the U.S. Territories. In her capacity as co-chair of the Task Force on the U.S. Territories, Ms. Santiago, together with co-chair Natalie Gomez-Velez, vice chair Anthony Ciolli, and Task Force member Neil Weare, reviewed a request that the New York State Bar Association, with the Virgin Islands Bar Association, co-sponsor a resolution to be submitted for consideration at the August 2022 Annual Meeting of the American Bar Association in Chicago, Illinois. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, it is the mission of the New York State Bar Association to promote equal access to justice for all both within the State of New York and throughout the United States; and

WHEREAS, consistent with its mission, the New York State Bar Association established the Task Force on the U.S. Territories, and vested it with the mission, among other things, to evaluate and study judicial decisions, including the Insular Cases, affecting the individual rights and liberties of the people of the U.S. Territories; and

WHEREAS, the New York State Bar Association has established a chapter within the U.S. Virgin Islands, and executed a memorandum of understanding with the Virgin Islands Bar Association in which among other things the New York State

Bar Association and the Virgin Islands Bar Association mutually recognized the need to develop and improve understanding of the law in both of their jurisdictions, including human rights laws; and

WHEREAS, the relationship between the federal government and the five inhabited United States territories—the U.S. Virgin Islands, Puerto Rico, Guam, the Northern Mariana Islands, and American Samoa—continues to be governed by the Insular Cases, a series of early 20th century decisions in which the Supreme Court of the United States held that the United States Constitution and its Bill of Rights did not extend *ex proprio vigore* to these territories because they were “inhabited by alien races, differing from us in religion, customs, ... and modes of thought”, making it impossible to govern “according to Anglo-Saxon principles;” and

WHEREAS, the Insular Cases and the doctrine of territorial incorporation that they established rest on racial views and stereotypes from the era of *Plessy v. Ferguson*,¹⁶³ U.S. 537 (1896) that have long been rejected and cannot be reconciled with basic constitutional and democratic principles or the values of the legal profession; and

WHEREAS, sitting justices of the Supreme Court of the United States, including Justices Neil Gorsuch and Sonia Sotomayor, have called for overruling the Insular Cases in an appropriate case, with Justice Gorsuch identifying the decision of the United States Court of Appeals for Tenth Circuit in *Fitisemanu v. United States*,¹ F.4th 862 (2021) as an appropriate vehicle to consider that issue; and

WHEREAS, a petition for writ of certiorari was filed with the Supreme Court of the United States in the *Fitisemanu* matter on April 27, 2022, with the respondents’ brief due on or before July 29, 2022; and

WHEREAS, if no further extensions of time are granted, it is likely that the Supreme Court of the United States will consider the *Fitisemanu* certiorari petition at an October 2022 conference and, if certiorari is granted, issue a briefing schedule in which the petitioner’s brief and any *amicus curiae* briefs in support of the petitioner would be due in November or December 2022; and

WHEREAS, because the next meeting of the New York State Bar Association House of Delegates will not occur until November 5, 2022, approval of the Executive Committee is needed to permit the New York State Bar Association to file an *amicus curiae* brief in support of the petitioner in the *Fitisemanu* matter;

WHEREAS, the American Bar Association House of Delegates will meet on August 8-9, 2022, and state and territorial bar associations may submit a resolution for consideration at that meeting on or before August 6, 2022; and

WHEREAS, the American Bar Association has filed *amicus curiae* briefs in support of equal rights for the people of the U.S. territories in other cases before

the Supreme Court of the United States, such as *United States v. Vaello-Madero*, but has no policy directly urging that the *Insular Cases* be overruled; and

WHEREAS, the Virgin Islands Bar Association has asked that the New York State Bar Association co-sponsor a resolution for the August 8-9, 2022 meeting of the American Bar Association House of Delegates which, if adopted, would establish policy urging the overruling of the *Insular Cases* and permit the American Bar Association to file an *amicus curiae* brief in the *Fitisemanu* matter if certiorari is granted; and

WHEREAS, if such a resolution is not submitted for and approved at the August 8-9, 2022, meeting, the American Bar Association will not be able to file an *amicus curiae* brief in the *Fitisemanu* matter, given that the next meeting of the American Bar Association House of Delegates would not be until February 6, 2023, well after briefing has concluded; and

WHEREAS, the New York State Bar Association Task Force on U.S. Territories has collaborated with the Virgin Islands Bar Association to draft such a resolution and report for consideration by the American Bar Association House of Delegates at its August 8-9, 2022, meeting, approved a draft resolution and report after its July 11, 2022, meeting; and

WHEREAS, because the next meeting of the New York State Bar Association House of Delegates will not occur until November 5, 2022, approval of the Executive Committee is needed to permit the New York State Bar Association to co-sponsor such a resolution with the Virgin Islands Bar Association for the August 8-9, 2022, meeting of the American Bar Association House of Delegates; and

WHEREAS, the Task Force on U.S. Territories has requested that the Executive Committee authorize the New York State Bar Association to support and work on efforts to overrule the *Insular Cases*, which may include, but are not necessarily limited to, the filing of an *amicus curiae* brief in the *Fitisemanu* matter and co-sponsor a resolution and report with the Virgin Islands Bar Association for consideration by the American Bar Association House of Delegates;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association supports efforts to overrule the *Insular Cases* and the territorial incorporation doctrine and dismantle the colonial framework they establish, including but not limited through the filing of *amicus curiae* briefs in appropriate litigation; and it is further

RESOLVED, that the New York State Bar Association is authorized to co-sponsor with the Virgin Islands Bar Association the draft resolution and report attached as “Exhibit 1” to this resolution for consideration at the August 8-9, 2022 meeting of the American Bar Association House of Delegates; and it is further

RESOLVED, that the President of the Association is authorized to take such other and further action as may be required to implement this resolution including agreeing to any changes in language or form to the draft resolution and report suggested by the American Bar Association House of Delegates Committee on Rules and Calendar or other entities represented in the American Bar Association House of Delegates.

Three members abstained from the vote.

4. Report and resolution of International Section. Scott M. Karson, co-chair of the International Section Ukraine Task Force, together with International Section chair Azish Filabi, International Section chair-elect Gonzalo Zeballos, and Serhiy Hoshovsky, co-chair of the International Section Ukraine Chapter and Ukraine Task Force, reviewed the Section's report and resolution entitled "Regarding Investigation and Prosecution of the Russian Federation and its Culpable Officials Arising from Its Illegal Military Invasion of Ukraine." After discussion, a motion was unanimously adopted to approve the following resolution:

WHEREAS, NYSBA, the nation's largest voluntary state bar association, has a long, consistent and proud tradition of defending the rule of law, both domestically and internationally; and

WHEREAS, NYSBA's defense of the rule of law has included support for the establishment of the Permanent Court for Arbitration at The Hague and the ICC; and

WHEREAS, Russia's unlawful invasion of Ukraine is a direct attack on the rule of law, in that it violates the prohibition of the use of force against the territorial integrity and political independence of another state as proscribed by Article 2(4) of the Charter of the United Nations and most fundamental peremptory norms of international law, and is contradictory to the mission of the United Nations to end war and promote peace; and

WHEREAS, the actions by Russia in launching its prolonged armed attack on Ukraine constitutes a direct violation of the 1994 Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, whereby Russia reaffirmed its obligation to refrain from the threat or use of force against the territorial integrity and political independence of Ukraine, and also agreed to refrain from any form of economic coercion designed to subordinate to its own interest the exercise by Ukraine of the rights inherent in Ukraine's sovereignty and thus to secure advantages of any kind at Ukraine's expense; and

WHEREAS, the invasion of Ukraine by Russia constitutes an "act of aggression" and, by virtue of its sustained military presence and offensive within the borders of

Ukraine, “a war of aggression” and, therefore, a “crime against peace,” all as defined in the Declaration of the United Nations General Assembly on Principles of International Law Concerning Friendly Relations and Cooperation Among States (Resolution 2625 (XXV) and the General Assembly’s Resolution 3314 (XXIX) on the Definition of Aggression; and

WHEREAS, the reported actions by Russia, including, wantonly attacking and decimating cities, towns and villages of Ukraine; in targeting civilian institutions, buildings, and property, resulting in the deaths of thousands of civilians; deporting civilians to the Russian territory, imposing Russian political control over occupied parts of Ukraine, among other acts, which if proven, would constitute war crimes and crimes against humanity committed in connection with the crime of a war of aggression, and therefore are worthy of investigation, prosecution, and upon conviction, punishment under the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal; and

WHEREAS, these reported actions of Russia, while it calls into question Ukraine’s legitimacy and its inherent right to independence and sovereignty, would constitute genocide within the meaning of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, which is also a crime against international law and punishable thereunder; and

WHEREAS, Russia’s war of aggression has caused untold damage to the people and property of Ukraine, resulting in immense economic loss and privation, for which Russia has state responsibility as a matter of customary international law as most recently articulated in the Articles proposed by the International Law Commission on Responsibility of States for Internationally Wrongful Acts, for which Ukraine is entitled to reparation by Russia in the form of restitution, compensation and satisfaction; and

WHEREAS, NYSBA is encouraged that democratic nations around the world are standing together to assist Ukraine in fighting Russia’s aggression and taking appropriate legal actions to support Ukraine; and

WHEREAS, NYSBA is also encouraged that, among other organizations, the Council of Europe Parliamentary Assembly and the Parliament of the European Union have condemned Russia’s War Crimes, including the crime of aggression, committed in and against Ukraine, and have called for appropriate legal actions to support Ukraine; and

WHEREAS, NYSBA supports the United Nations General Assembly’s condemnation of the invasion of Ukraine by Russia and Russia’s alleged violations of international law; and

WHEREAS, there already exists strong legal and diplomatic precedent, supported by well settled jurisprudence, for the establishment of a justice mechanism to

investigate, indict, and prosecute the leadership of Russia and its armed forces and agents for violations of international law such as the crime of aggression, crimes against the peace, crimes against humanity, and acts constituting genocide; and

WHEREAS, the jurisdiction of the ICC over Russia for the crime of aggression is uncertain but, nevertheless, Russia's aggression against Ukraine must be fully investigated and prosecuted by the international community through some other appropriate tribunal in accordance with the rule of law; and

WHEREAS, the United Nations General Assembly, in its very first session, in the aftermath of World War II, in Resolution 3, called on member and non-member states to take all necessary measures to cause the arrest of those war criminals who have been responsible for or taken a consenting part in such crimes and to cause them to be returned to the countries where they committed their crimes "that they may be and punished according to the law of those countries"; and

WHEREAS, the United Nations General Assembly, in Resolution 3074, enunciated Principles of International Cooperation in the Detection, Arrest, Extradition & Punishment of Persons Guilty of War Crimes & Crimes Against Humanity, including that States shall cooperate with each other in the collection of information and evidence which would help to bring to trial persons against whom there is evidence that they have committed international crimes; and

WHEREAS, the United Nations General Assembly, has played a leading role in establishing judicial mechanisms and commissions to investigate and prosecute criminal violations of international law, including Resolutions 52/135 and 57/228 calling for the formation of the Extraordinary Chambers of the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, and in Resolution 63/19, endorsing the International Commission Against Impunity in Guatemala;

IT IS THEREFORE RESOLVED THAT:

NYSBA hereby deplores and condemns Russia's unlawful invasion of Ukraine, causing untold harm to the people of Ukraine; and it is further resolved that

NYSBA hereby supports any and all international and domestic efforts to investigate, prosecute, and hold Russia's armed forces and officials accountable for acts committed by Russia, its military and its agents, in the prosecution of its unlawful war of aggression; and it is further resolved that

NYSBA hereby calls upon those members of the international community with deep, actual experience in the investigation and prosecution of war crimes, to investigate, prosecute, and bring to justice Russia and its culpable officials, its military and its agents; and it is further resolved that

NYSBA calls upon the United Nations General Assembly to take action by authorizing the Secretary General of the United Nations to establish, at an appropriate time and place, such tribunals – e.g., a hybrid international war crimes tribunal involving Ukraine, similar to those established to investigate and prosecute war crimes in Sierra Leone, Rwanda, and Cambodia – as he shall deem appropriate to exercise jurisdiction and hear and determine whether Russia and its culpable officials violated international law, including but not limited to the crime of aggression against Ukraine, and hold to account those responsible.

5. Approval of Service Agreement and Property Transfer for One Elk Street. Ms. Levin Wallach reported that, pursuant to the resolution adopted by the House of Delegates on June 12, 2021, the approval of the Executive Committee was sought to authorize her as president to enter into a final agreement regarding the property transfer of One Elk Street from The New York Bar Foundation to the New York State Bar Association. After discussion, a motion was adopted to approve the following resolution:

Whereas, on June 12, 2021, the House of Delegates adopted a resolution approving the transfer of One Elk Street from The New York Bar Foundation to the New York State Bar Association.

Whereas, the Association and Foundation have concluded negotiations regarding the property at One Elk Street.

Whereas, in accordance with the resolution as adopted by the House of Delegates, the Executive Committee is now asked to approve the final agreement regarding the property transfer of One Elk Street from The New York Bar Foundation to the New York State Bar Association.

Now, therefore, it is resolved, that the Association President is authorized to enter into a final agreement regarding the property transfer of One Elk Street from The New York Bar Foundation to the New York State Bar Association as outlined in the Memorandum of Understanding.

Mr. Orin Cohen, Judge Murphy, Ms. Santiago, and Ms. Sharkey abstained from the vote.

6. Request for Assistance from the Vice-Presidents to Compile Contact Information for Bar Associations and Bar Leaders from the Judicial Districts. Ms. Levin Wallach requested that the Vice-Presidents, in the context of their duties as set forth in the Bylaws to promote relations with local bars, affinity bars, and members in their respective districts, reach out to bar associations from within their judicial districts to ensure that the contact information for these associations on file with NYSBA is updated and accurate. A listing with contact information for statewide bar associations and bar leaders was then circulated for the review and attention of the Vice-Presidents.
7. Date and place of next meeting. The next meeting of the Executive Committee will take place on Friday, November 4, 2022, at the Bar Center in Albany.

8. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Taa R. Grays".

Taa R. Grays
Secretary

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
REMOTE MEETING
OCTOBER 25, 2022**

Present: Gregory K. Arenson, David Louis Cohen, Sarah E. Gold, Taa R. Grays, LaMarr J. Jackson, Elena DeFio Kean, Richard C. Lewis, Michael A. Marinaccio, Michael A. Markowitz, Thomas J. Maroney, Michael R. May, Domenick Napoletano, Violet E. Samuels, Nancy Sciocchetti, Hon. Adam Seiden, Diana S. Sen, Lauren E. Sharkey, Kathleen M. Sweet, Sherry Levin Wallach, Kaylin L. Whittingham, Pauline Yeung-Ha

Guests: Rezwanul Islam, Edwina Frances Martin

Ms. Levin Wallach presided over the meeting as President of the Association.

1. Ms. Levin Wallach called the meeting to order.
2. Application to Commence Litigation Against the State of New York Regarding Assigned Counsel Rates. Ms. Levin Wallach reviewed an application for the approval of the commencement of litigation against the State of New York regarding assigned counsel rates, addressing, per the Rules of the Commencement of Litigation on Behalf of the New York State Bar Association, the basis on which the Association would have standing to commence litigation and the relief to be sought by the Association should the commencement of litigation be authorized. Ms. Levin Wallach reported that Michael J. Dell, Esq., of Kramer Levin Naftalis & Frankel LLP had agreed to represent the Association in this case *pro bono*. After discussion, a motion was adopted to authorize the Association to commence litigation.

Kaylin L. Whittingham abstained from the vote.

3. Report and recommendations of Committee on Legal Aid and President's Committee on Access to Justice. Rezwanul Islam, co-chair of the President's Committee on Access to Justice, and Hon. Edwina F. Martin, immediate past co-chair of the President's Committee on Access to Justice, reported on the work of the committees' joint Working Group on Access to Justice During the COVID-19 Pandemic and surveyed the recommendations contained in the Working Group's report. After discussion, a motion was unanimously adopted to endorse the report for favorable action by the House of Delegates.
4. Approval of Reinstatement of Committee on Court Rules and Practice. In his capacity as chair of the former Task Force on Uniform Rules, Mr. Lewis outlined a request that the Executive Committee approve reinstatement of the above-named task force as a committee of the Association. Mr. Lewis reviewed the proposed mission statement of the Committee, reading that "The Committee on Court Rules and Practice shall monitor and review proposed amendments to court rules and practice in New York State." After discussion, a motion was adopted to approve reinstatement of the Committee.

5. New Business. Ms. Levin Wallach advised that the Friday, November 4, 2022, meeting of the Executive Committee would be held in person at the Bar Center in Albany and urged members to make travel arrangements as needed. Ms. Levin Wallach noted that member renewal for 2023 had begun and encouraged members to refer their colleagues and associates to join the Association. Ms. Levin Wallach also reported that registration would soon open for the 2023 Annual Meeting, with in-person events scheduled for Wednesday, January 18, 2023, through Saturday, January 21, 2023, at the New York Hilton Midtown in Manhattan.
6. Date and place of next meeting. The next meeting of the Executive Committee will take place on Friday, November 4, 2022, at the Bar Center in Albany.
7. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Taa R. Grays".

Taa R. Grays
Secretary