

**Minutes of the  
Executive Committee Meeting  
Marriott Marquis Hotel, New York City  
January 26, 2007  
3:30- 4:57 p.m.**

**Attendees:**

|                   |                     |                     |
|-------------------|---------------------|---------------------|
| Louis Alexander   | John Hanna, Jr.     | Walter Mugdan       |
| Mike Altieri      | Kevin Healy         | Rosemary Nichols    |
| Karin Antin       | Ragna Henrichs      | James Periconi      |
| Terresa M. Bakner | Ernie Ierardi       | Gail S. Port        |
| Lisa Bataille     | Bob Kafin           | James Rigano        |
| Kevin Bernstein   | Alan Knauf          | Virginia Robbins    |
| Lisa Bromberg     | Barry Kogut         | Kevin G. Ryan       |
| Jeanne Compitello | Maureen Leary       | Chris Saporita      |
| Janice Dean       | Michael Lesser      | Laurie Silberfeld   |
| Philip H. Dixon   | Neal Madden         | E. Gail Suchman     |
| Louis A. Evans    | Edward Malley       | Howard Tollin       |
| William Fahey     | Luis G. Martinez    | Peter Trimarchi     |
| David Freeman     | Joan Leary Matthews | Robert Tyson        |
| John French       | Jean M. McCarroll   | Mariam E. Villani   |
| Andrew Gershon    | Flaire Hope Mills   | Philip Weinberg     |
| John Greenthal    | Dorothy M. Miner    | Marla E. Wieder     |
| Jennifer Hairie   | Daniel Morrison     | Thomas A. Ulasewicz |

1. **Call to Order/Opening Remarks.** Walter Mugdan greeted those in attendance and requested that all identify themselves for purposes of the later discussion. Walter thanked the co-chairs (Dave Freeman, Larry Schnapf and George Rusk) for the early morning (8 AM) CLE presentation on the final Part 375 Regulations and the co-chairs (Dan Reisel, Shannon Martin LaFrance and George Rusk) for the main CLE program on Environmental International Law.
2. **Presentation by Bar Foundation Representative.** Glenn Lau-Kee, a representative of the NYSBA Foundation, gave an overview of the work of the Foundation. He noted that the Foundation is responsible for providing financial support for programs that are designed to facilitate delivery of legal services and promote public understanding of the law. Mr. Lau-Kee identified specific Foundation projects such as its support for the high school moot court competition. He also commended those in the Section that serve as Foundation fellows, including Jim Periconi and Doreen Simmons. He encouraged gifts to the Foundation and noted that they could be made in the memory of a loved one.

Roseanne M. VanHeertum, the Director of Development at the Foundation, suggested that when Sections members renew their Bar membership, they support the Foundation

by checking the line on the renewal form that provides for a \$25 donation to the Foundation.

3. **Approval of Minutes from October 15, 2006 Executive Committee (EC) Meeting.** Walter Mugdan submitted for approval the draft Minutes from the October 2006 Fall Section EC meeting that were in the EC document packet that was provided by Lisa Bataille. There being no additional comments, a motion was duly made and seconded for approval of the draft Minutes and the motion unanimously carried.
4. **Treasurer's Report.** Alan Knauf commented that the Treasurer's Report which was included in the EC packet was as of November 30, 2006. As of that date, the Section was \$13,000 in the black and Alan reported that he hoped to close out the year with an additional positive balance to add to the existing surplus. There being no additional comments, a motion was duly made and seconded for approval of the Treasurer's Report and the motion unanimously carried.
5. **Minority Fellowship Program.** Walter Mugdan inquired whether any Section members would be willing to serve as a mentor to any of the Section's Minority Fellowship winners. He asked that those willing to serve so advise one of the co-chairs of the Section's Environmental Justice Committee - Peter Casper, Luis Guarionex Martinez or Jean McCarroll.
6. **Committee Appointments and Agendas.** Walter Mugdan referenced the following recent EC appointments: (a) Peter Trimarchi has been selected to serve as a third co-chair of the Committee on Air Quality and (b) Marla Wieder of EPA has assumed a position as Co-chair of the Solid Waste Committee.

Walter also noted that he had received a number of updated Section Committee agendas and asked those Committees who had not yet prepared an updated agenda to forward one to him as soon as they could. The updated agendas will appear on the Section's website.

7. **Advocacy Issues.**

A. **Wetlands Legislation.** Walter Mugdan commented that this was a resumption of the discussion which took place at the Fall Section EC meeting in Cooperstown on the issue of whether the Section would be willing to support legislation that would expand New York's current wetlands jurisdiction. Walter noted that he has been advocating an increase in the scope of the State's wetlands jurisdiction from 12.4 acres to 1 acre because of his concern that recent Supreme Court cases have significantly narrowed the scope of federal wetlands jurisdiction, leaving important wetland areas unprotected.

Walter restated the wetlands discussion at the Fall Section meeting and noted that a motion was approved at that meeting whereby the Section's Coastal and Wetland Resources Committee was directed to come up with a consensus position on how to improve the current state of New York State wetlands jurisdiction.

In response to the EC directive, Walter noted that the Committee has submitted for EC consideration a proposal to have New York State assume the federal wetlands protection program. A copy of that proposal was included with supporting material in the EC packet provided by Lisa Bataille for the meeting

Committee Co-Chair, Terresa Bakner, spoke in favor of the Committee's proposal. She noted that the proposal picked up on the suggestion made by Glen Bruening at the Fall Section meeting that the Section try to make progress on the issue of expanding the wetlands protection program by re-focusing the debate.

Terresa noted that the State's assumption of the federal wetlands program would not only expand the scope of wetlands protection, but avoid the time and expense associated with the oftentimes duplicative federal and state regulatory programs. Terresa commented that there is precedent in New York for such a step insofar as New York has already been delegated responsibility for implementing the federal programs in water, air and hazardous waste.

The concern of Committee Co-Chair, Drayton Grant, is that acceptance of the Committee's proposal would require the abandonment of Article 24 of the Environmental Conservation Law. However, in the interest of moving the debate forward, Drayton supported the proposal to assume the federal wetlands program.

Walter indicated he was still interested in pushing his proposal to expand the scope of state wetlands protection down to 1 acre. He was concerned that the proposed assumption may be confusing insofar as the federal program was tied to the reach of scope of "navigable waters." Drayton said that she agreed with Walter, but wanted to provide an approach that would be more likely to gain the approval required for gaining additional wetlands protection. Drayton also noted that she believes that additional staff will be needed to support the proposed expansion and she presented estimates of the required expansion in the DEC work force.

Walter indicated that he wanted to propose for EC consideration a motion to increase the scope of wetlands protection from 12.4 acres to 1 acre with two additional provisos - (a) as to the issue of wetlands buffer, the legislature look at the need to provide either a sliding scale or no buffer for smaller wetlands in lieu of the 100 foot buffer now in place for currently protected wetlands in New York and (b) there be adequate resources to appropriately support the expansion of jurisdiction.

Maureen Leary asked what the experience has been with other States that have assumed responsibility for the federal wetlands program. Walter noted there were two states of which he was aware, New Jersey and Michigan, that have taken over the federal program. He commented that EPA was generally happy with New Jersey's work under the program and that he was not familiar with the Michigan experience.

Maureen also asked whether DEC was thinking about an expansion in wetlands protection such as this. In response, Lou Alexander noted that for the last two years, the

Governor's budget proposed expansion of the state's wetlands protection program, including increased wetlands staffing, but did not receive the required legislative support.

Phil Weinberg noted that the assumption alternative will take a long time to come together. Given the fact that he believes that we are losing important wetlands every day, Phil thought that it made more sense to move quickly and simply expand the scope of wetlands protection by reducing the size of wetlands within the state program. Drayton commented that she understood Phil's point. However, she said that she wanted to take a position that appealed to as many people as possible in the effort to move the debate forward and thought that the idea of assumption presented the best opportunity for widespread support.

Neal Madden commented that he did not share Walter's concern that the recent Supreme Court cases were resulting in a loss of significant wetlands and that he was particularly concerned about the possibility of adoption of the buffer that exists with currently regulated state wetlands to smaller wetlands. Neal indicated that he was in favor of the proposed state assumption of the federal wetlands program because it would allow permit applicants to go to only one regulatory body.

Mike Lesser spoke on the reason why he felt it appropriate for him to abstain in matters such as this. He noted that in his role of DEC attorney, he is often asked how legislative proposals may impact enforcement. Given that, he felt that he must withhold his personal opinion to avoid possible inconsistency with a legal opinion that he may later need to give to his DEC client.

Drayton Grant underscored that the proposed assumption of the federal wetlands program was not intended to change the existing 100 foot buffer for currently regulated state wetlands. She also commented that if the State were to assume the federal program, its jurisdiction would expand to cover activities that would impact less than one acre of wetlands.

Walter then made the following motion for EC consideration:

**Motion # 1- That the Environmental Law Section:**

- a. support a legislative expansion of New York State's freshwater wetlands jurisdiction from 12.4 acres down to 1 acre of fill; and, in the context of such expansion –**
- b. urge the legislature to review whether a 100-foot "adjacent area" buffer zone is necessary for fill areas as small as one acre, or whether a sliding scale for such buffer zones may be appropriate, with smaller buffers for smaller areas of fill; and**

- c. **request that the legislature and the administration ensure that NYSDEC has adequate resources to administer such an expanded freshwater wetlands program.**

Upon motion made and duly second, the EC voted and there were 20 votes in favor of the proposal and 24 against. There were 5 abstentions - M. Lesser, J. Hairie, L. Alexander, J. McCarroll and T. Ulasewicz. As the required plurality was not achieved, the motion was defeated.

**Motion # 2- That the Environmental Law Section request that the NYS legislature pass legislation that would allow for the State to assume the federal program for the protection of wetlands in New York.**

Upon motion made and duly second, the EC voted and there were 36 in favor and 1 opposed. There were 7 abstentions – G. Suchman, M. Lesser, J. Hairie, L. Alexander, Joan Leary Matthews, M. Altieri and A. Gershon. The motion passed and Walter will consult with Teresa and Drayton on preparing the appropriate transmittal to the appropriate NYS governmental representatives.

**B. Additional Potential Advocacy Proposals.** Walter commented on other possible legislative proposals, which he had forwarded on to the various Section committees for consideration. These included regulation of emissions from wood boilers, a ban on open burning of solid waste in barrels (which takes place primarily in rural communities) and a bigger, better bottle bill to expand the existing bottle bill to include bottles currently not covered such as bottles of water and tea.

- 8. **Government Agency Reports.** For the DEC Report, Walter noted simply that Governor Spitzer has proposed the appointment of Peter Grannis as the new DEC Commissioner. There was no report from the New York State Attorney General’s Office or the USEPA.
- 9. **Section Journal.** Walter indicated that if one has an idea for an article, contact should be made with Kevin Reilly.
- 10. **House of Delegates (Phil Dixon).** Phil noted that there was discussion on efforts for a permanent fix to the issue of the appropriate level of judicial salaries and noted that there are changes in lawyer advertising that will become effective in February 2007. The most significant issue raised in the House of Delegates meeting earlier in the day was the question of whether there should be a codification of living wills.

The NYSBA is doing well financially, but a deficit is projected because of a projected drop in CLE revenues. Phil also noted that the Association is working on amendments of the ethic rules that will have New York follow the model rules that are currently in effect in essentially every other state. Kate Madigan will assume the presidency of the NYSBA on June 1, 2007.

11. **Committee Reports.** For the Pollution Prevention Committee, Shannon Martin LaFrance noted that her new co-chair is Kristin Kelly Wilson. Shannon then commented that she would like to have John Nolan's article on Environmental and Land Use Law placed on the Section web site. Walter agreed that this was something that could be done for Mr. Nolan who was given a Section award at the Section luncheon earlier in the day.

Shannon added that she would like to see the legal outlines in future CLE programs provided in CD format rather than in a bound booklet. Walter said that the Cabinet would consider this, but he thought there would be logistical issues too difficult to overcome. Essentially, the outlines would likely come in too late to allow for CD formatting.

Bob McLaughlin spoke on behalf of the Internet Committee and commented that the Section's internet web page is underused. He would like to have folks contact him with thoughts as to the additional content that they would like to see available on the site.

Walter noted that steps had been taken by the Cabinet to require that the Section receive copies of the CLE materials for conferences that it co-sponsors and these materials will be placed on the web site after the particular conference has been held. Among the affected CLE conferences are one on Global Climate Change in December and a Solid Waste program at the City Bar.

12. **Legislative Forum and Government Attorneys Luncheon.** Mike Lesser commented that the Legislative Forum will be held on April 18, 2007 on the new legislative agenda and contacts will be made over the next several weeks to confirm the speakers. Mike noted that Walter may want a luncheon speaker. Walter confirmed that was true and indicated he would work with the Legislation Committee in this regard.
13. **2007 Section Fall Meeting.** Lou Alexander noted that the Fall Section Meeting in 2007 will be held on October 12-14 in Saratoga and that the CLE program will showcase the environmental programs of the new administration.
14. **2008 Section Fall Meeting.** Joan Leary Matthews noted that the location will be on Eastern Long Island and the CLE program will focus on Long Island issues. There is a concern over difficulty in getting out to Long Island for a Saturday morning program. It may be too difficult as a practical matter to hold the program at Montauk Point and review of alternative locations is underway.
15. **Co-Sponsored Programs.** Chris Saporita spoke on behalf of the New York City Environmental Law & Leadership Institute. Chris thanked everyone for their support. He noted that almost a full complement of 15 attorneys have been recruited to attend the initial training program and that they cover the range of private, non-profit and public attorneys. Walter congratulated Chris on his efforts.

Phil Weinberg advised that a Section sponsored program on SEQRA issues will be held at St. John's University on February 2, 2007. He noted that Judge Hancock, who dissented in the *Society of Plastics* case, will be a guest speaker.

16. **Old Business / New Business.** Rosemary Nichols asked for the status of the planning for a possible CLE program in the U.S. Virgin Islands. Barry Kogut commented that planning continues, but that there is a need to work more closely with the Bar office to make the required progress in making this conference a reality. Efforts will be made to contact local practitioners to urge their participation and/or involvement in the planning of the program. A possible co-chair of the program has also been identified.

Finally, Walter noted that Stan Alpert, one of the co-chairs of the Section's Toxic Tort Committee, has had a book published that reports on Stan's 1998 kidnapping and the related bizarre circumstances.

On motion duly made and seconded, the meeting was adjourned at approximately 4:57 p.m.

Respectfully Submitted,

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Barry R. Kogut  
Secretary