

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF EXECUTIVE COMMITTEE MEETING  
HILTON NEW YORK, NEW YORK CITY  
JANUARY 28, 2010**

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PRESENT: Members Behrins, Cohen, Fennell, Fernandez, Gerstman, Getnick, Gross, Gutekunst, Hayes, James, Kamins, Lau-Kee, Lawrence, Leber, Lindenauer, Makofsky, Marwell, Meislahn, Millett, Miranda, Rodriguez, Schraver, Wachtler and Younger.

Guests: Mark H. Alcott, Hon. Phylis S. Bamberger, A. Vincent Buzard, Prof. Patrick M. Connors, Mark W. Hamberger, Gregg H. Kanter, Sherry S. Kraus, Christopher D. Lemire, A. Thomas Levin, Prof. Gary A. Munneke, Lee Miller, Erika W. Nijenhuis, Michael J. O'Connor, David M. Oppenheim, Michael D. Patrick, Thomas M. Pitegoff, Prof. Patricia E. Salkin, Jon N. Santemma, Paul D. Sarkozi, James R. Silkenat, Charlotte Warren Smith, Hon. Joseph P. Sullivan, Vincent J. Syracuse.

Mr. Getnick presided over the meeting as President of the Association.

1. Approval of minutes of meetings. The minutes of the November 6, 2009 meeting and the December 4 and December 22, 2009 telephone conferences were approved as distributed.
2. Consent Calendar.
  - a) Proposed amendments to the Bylaws of the Dispute Resolution Section.

The consent calendar, consisting of the item listed above, was approved by voice vote. The amended Section Bylaws are appended to these minutes.

3. Report of the Treasurer. In his capacity as Treasurer, Mr. James reported on the 2009 operating budget, comparing the amounts to those as of December 31, 2008. He reported that through December 31, 2009, the Association's total revenue was \$23.3 million, a decrease of approximately \$1.6 million from the previous year, and total expenses were \$23.2 million, a decrease of approximately \$453,000 from the previous year. The operating surplus prior to audit was approximately \$54,000, a decrease of approximately \$1.1 million from the prior year. Mr. James also provided a report on the status of the long-term reserve investments and a six-year comparison of CLE revenue. The report was received with thanks.
4. Report of Committee on Membership. In her capacity as the Committee's chair, Ms. Gutekunst reported that the Association's year-end membership exceeded 77,000, a net gain of 1.4% over 2008 and a 6.9% net gain over three years. She observed that growth is slowing and that the percentage of members who are Section members has declined. She also reported on the President's Membership Challenge, liaison relationships with sections and committees, the non-resident member subcommittee, and opportunities for law students and new attorneys. The report was received with thanks.

5. Report of Committee on Continuing Legal Education. Michael E. O'Connor, chair of the Committee, updated the Executive Committee on CLE activities, including an overall review of CLE operations, plans to utilize a dedicated meeting space in New York City for CLE programs, and the Committee's work with sections in promoting CLE programming. The report was received with thanks.
6. Report and recommendations of Business Law Section. David W. Oppenheim, chair of the Section's Franchise, Distribution and Licensing Committee, and Thomas M. Pitegoff, chair of that committee's Subcommittee on Legislation, presented the Section's affirmative legislative proposal to amend the New York Franchise Act and the regulations accompanying the Act. After discussion, a motion was adopted to approve the proposal. Messrs. Miranda and Schraver and Ms. Leber abstained from participating pursuant to Rule 6.4 of the Rules of Professional Conduct.
7. Report and recommendations of Tax Section. Erika W. Nijenhuis, chair of the Section, and Section member Sherry S. Kraus, presented the Section's affirmative legislative proposal to amend the statute of limitations with respect to the collection of unpaid tax liabilities. After discussion, a motion was adopted to approve the proposal. Messrs. James, Lawrence, Meislahn, Schraver and Younger and Ms. Leber abstained from participating pursuant to Rule 6.4 of the Rules of Professional Conduct.
8. Report of President. Mr. Getnick provided a printed report, a copy of which is appended to these minutes.
9. Report and recommendations of Task Force on Wrongful Convictions. Hon. Phylis S. Bamberger, chair of the Task Force, outlined four affirmative legislative proposals prepared by the Task Force to effectuate several of the recommendations made by the Task Force in its April 2009 report and approved by the House of Delegates, dealing with DNA forensic testing; exculpatory material; identification procedures; and electronic recording of custodial interrogations. After discussion, a motion was adopted to postpone consideration of the proposals in order to permit the Task Force to prepare a comprehensive memo outlining the proposals and to respond to comments submitted by the Criminal Justice Section.
10. Report of Committee on Law, Youth and Citizenship. A. Thomas Levin, a member of the Committee, reported on the Committee's programming for educators and work to create opportunities for law-related education, including the statewide mock trial program, We The People, and Project Citizen. The report was received with thanks.
11. Report on legislative matters. Mr. Fernandez, in his capacity as chair of the Committee on Legislative Policy, reviewed the current 2010 legislative session and the Governor's proposed budget. In connection with the presentation, the Executive Committee reviewed a letter from the President's Committee on Access to Justice with respect to funding of civil legal services. After discussion, a motion was adopted to support the Judiciary's budget as a whole, to do everything to secure adequate funding for civil legal services, and to continue to work to find a permanent source of funding for civil legal ser-

vices. Mr. James and Ms. Gerstman abstained from participating pursuant to Rule 6.4 of the Rules of Professional Conduct.

12. Reports and recommendations of Commercial and Federal Litigation Section.

- a. Immigration appeals in the Second Circuit. Section chair Vincent J. Syracuse, together with Michael D. Patrick and Charlotte Warren Smith, co-chairs of the Section's Committee on Immigration Litigation, reviewed the Section's proposals to improve the processing of immigration appeals in the Second Circuit and to provide increased legal representation for immigrants. On behalf of the New York County Lawyers' Association, Gregg H. Kanter presented additional recommendations made by the association, which were accepted by the Commercial and Federal Litigation Section. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, the Commercial and Federal litigation Section of the New York State Bar Association (the "Section") has completed a report examining the current state of immigration appeals in the Second Circuit (the "NYSBA Report"); and

WHEREAS, the Section recommends greater case review at administrative levels, including expanding the Board of Immigration Appeals and the number of immigration judges and support staff; and

WHEREAS, the Section further recommends measures to improve the quality of legal representation provided to immigrants, including the establishment of a training and mentorship program, increasing the sanctioning power of the Board of Immigration Appeals and immigration judges, and increased pro bono representation or funding for government-appointed attorneys for the indigent; and

WHEREAS, the Committee on the Federal Courts of the New York County Lawyers' Association (the "Committee") has issued a report (the "NYCLA Report") endorsing the NYSBA Report and its recommendations, and making additional recommendations to promote the efficient and just resolution of immigration appeals in the Second Circuit; and

WHEREAS, the Committee recommends that the Second Circuit adopt a liberal remand policy for decisions lacking appropriate clarity, discourage opposition to motions to stay, and expand its Pro Bono Panel Plan to permit more attorneys to engage in pro bono representation; and

WHEREAS, the Committee further recommends that decisions by the Board of Immigration Appeals should be made publicly available, joint motions to reopen removal proceedings should be encouraged, and affirmances without opinion by the Board of Immigration Appeals should be discouraged; and

WHEREAS, the Section endorses the NYCLA Report and its recommendations;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby approves the NYSBA Report and recommendations of the Commercial and Federal Litigation Section; and it is further

RESOLVED, that the New York State Bar Association approves the recommendations of the Committee on the Federal Courts contained in the NYCLA Report, incorporates them in the NYSBA Report, and directs that a copy of the NYCLA Report shall be appended to the NYSBA Report; and it is further

RESOLVED, that the officers of the Association are hereby authorized to distribute the NYSBA Report and to take such other and further action as they may deem appropriate to implement its recommendations and those of the NYCLA Report.

- b. Sealing documents in business litigation. Mr. Syracuse, together with Section treasurer Paul D. Sarkozi, outlined the Section's recommendations regarding sealing documents in business litigation to strike an appropriate balance between an open judicial system and the need to protect litigants against those who would misuse information when that information is not germane to determining the merits of a case and does not affect public health and safety. The Section agreed to make changes to the report to clarify that these recommendations apply only to business disputes and not to other types of litigation. After discussion, a motion was adopted to approve the report and recommendations.
13. Report and recommendations of Special Committee on Government Ethics. Special Committee chair Prof. Patricia E. Salkin reviewed the committee's work with respect to government ethics reform and its development of four guiding principles it recommended to promote integrity in government: independence, transparency, due process, and full participation of lawyers in government. After discussion, a motion was adopted to accept the committee's report and adopt the recommended principles. Mr. Cohen abstained from participating pursuant to Rule 6.4 of the Rules of Professional Conduct.
14. Reports of Executive Committee liaisons. Mr. Behrins reported on the activities of the Committee on Issues Affecting People With Disabilities and the Food, Drug and Cosmetic Law Section. Mr. James reported on the work of the Committee on Continuing Legal Education, the Committee on Diversity and Leadership Development, and the Committee to Ensure Quality of Mandated Representation. Mr. Lau-Kee reported on the activities of the Task Force on Privacy, the Committee on Professional Discipline, and the Committee on Volunteer Lawyers. Ms. Leber reported on the work of the International Section. Ms. Makofsky reported on the activities of the Elder Law Section and the

Committee on Federal Legislative Activities. Mr. Meislahn reported on the work of the Business Law Section, the Committee on Attorneys in Public Service, and the Committee on Animals and the Law.

15. Report of ABA State Delegate.

- a. ABA Items of Interest. Mark H. Alcott, ABA State Delegate, updated the Executive Committee on ABA activity, including upcoming elections and the formation of a search committee for a new ABA executive director, and reviewed the agenda for the upcoming February 2010 House of Delegates meeting. He encouraged members to consider developing resolutions that can be brought to the ABA House. The report was received with thanks.
- b. Discussion of co-sponsorship of ABA resolutions. Mr. Alcott reviewed a number of resolutions scheduled for presentation to the ABA House that the Executive Committee might consider for co-sponsorship. After discussion, motions were adopted to approve NYSBA co-sponsorship of the following resolutions: 102D, 102H (relating to wrongful convictions); 114B-D (immigration appeals); and 115 (re-authorization of the Violence Against Women Act).

16. Request for co-sponsorship from ABA Commission on Women in the Profession. James R. Silkenat, a member of the commission, outlined the commission's report and resolution calling for Congress to enact legislation to provide more effective remedies, procedures and protections for those subjected to pay discrimination. After discussion, a motion was adopted to approve NYSBA co-sponsorship. Messrs. Getnick, Gross, Hayes, Meislahn, Schraver and Younger and Ms. Gutekunst abstained from participating pursuant to Rule 6.4 of the Rules of Professional Conduct.

17. Report of Nominating Committee. In his capacity as chair of the Nominating Committee, Mr. Alcott reviewed the committee's concerns about procedures and the committee's request that the Executive Committee refer these issues to the Bylaws Committee for development of appropriate Bylaws amendments. After discussion, a motion was adopted to table consideration of the report, with a request that the President appoint a subcommittee of the Executive Committee to review the report and recommend those issues that would be appropriate for Bylaws amendments.

18. Report and recommendations of Committee on Civil Practice Law and Rules. In her capacity as the committee's Executive Committee liaison, Ms. Gerstman presented the committee's affirmative legislative proposal to amend CPLR 7503 with respect to applications to compel or stay arbitration. After discussion, a motion was adopted to approve the committee's recommendation.

19. Report and recommendations of Real Property Law Section. Section members Jon N. Santemma and Lee Miller outlined the Section's affirmative legislative proposal to amend the New York Highway Law to bring the Highway Law into conformity with the

Eminent Domain Procedure Law. After discussion, a motion was adopted to approve the Section's recommendation. Messrs. Marwell and Schraver abstained from participating pursuant to Rule 6.4 of the Rules of Professional Conduct.

20. Report and recommendations of Torts, Insurance and Compensation Law Section. Christopher D. Lemire, chair of the Section's Workers Compensation Division, and Division member Mark W. Hamberger reviewed concerns regarding the Workers' Compensation Board adjudication process, with a planned diversion of cases from administrative law judges' hearing calendars to desk decisions, and presented a resolution that had been adopted by the Section's Executive Committee on January 27, 2010. After discussion, a motion was adopted to approve the following resolution:

RESOLVED, that the New York State Bar Association opposes the Workers' Compensation Board's Business Process Improvement Initiative, and hereby endorses the longstanding and historic principle that the due process rights of both injured New Yorkers and employers require and demand that the Workers' Compensation Board continue its charge in conducting hearings before a Law Judge to resolve questions of fact and law, legal and medical issues, and other disputes that arise between the parties, scheduled without delay upon the request of a party, or upon the Board's receipt of any information indicating a substantive dispute.

21. Report of Special Committee to Review the Code of Judicial Conduct. Special Committee chair Hon. Joseph P. Sullivan, together with committee reporter Prof. Patrick M. Connors, reviewed a number of the committee's significant recommendations for changes to the Code of Judicial Conduct, particularly those that would change the current New York rule or which are contained in the ABA Model CJC but which were rejected by the committee. The report was received with thanks.
22. Report of Committee on Law Practice Management. Prof. Gary A. Munneke, the committee's chair, outlined several challenges confronting the committee, including marketing, budget, programming, and relations with local bars. He noted that Pamela McDevitt, Director of Law Practice Management, has accepted a position as Director of the Law Practice Management Section of the ABA. Members observed that Ms. McDevitt had performed excellent work for NYSBA and wished her well in her new position.
23. New Business.
  - a. Proposed report for ABA House of Delegates re ranking of law firms. Past President A. Vincent Buzard, a NYSBA delegate to the ABA House of Delegates, presented a proposed report and resolution for submission to the ABA House regarding a planned publication of law firm rankings by *U.S. News and World Report*. He outlined concerns raised by this plan, including how the rankings would be made and how best to ensure that any ranking system serves both the profession and clients, and reported that the resolution would call upon the ABA President to appoint a task force to study these issues. After discussion, a motion was adopted to approve the report and resolution in concept.

- b. Report for co-sponsorship from ABA Section on Litigation. Mr. Silkenat presented a proposal from the ABA Section on Litigation calling for an amendment to the formula by which annual cost-of-living adjustments are made to Federal judges' salaries. After discussion, a motion was adopted to authorize co-sponsorship of the resolution.
  
- 24. Date and place of next meeting. Mr. Getnick announced that the next meeting would be held on Friday, April 9, 2010 at the Bar Center in Albany.
  
- 25. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



C. Bruce Lawrence  
Secretary