

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 4, 2011**

PRESENT: Members Abernethy, Castellano, Doyle, Fennell, Finerty, Franchina, Getnick, Gorgos, Gutekunst, James, Lau-Kee, Lesk, Makofsky, Millon, Miranda, Moy, Myers, Romero, Saffer, Slezak, Wallach, Young, and Younger.

Guests: Hon. Cheryl E. Chambers, Richard D. Collins, Kathleen R. DeCataldo, Hon. Leland G. DeGrasse, Hermes Fernandez, Sharon Stern Gerstman, Hon. Deborah H. Karalunas, Bernice K. Leber, John M. Nonna, Lesley Freedman Rosenthal, Deborah A. Scalise, David M. Schraver, and Jay Shapiro.

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

1. Approval of minutes of meeting. The minutes of the June 23-24, 2011 meeting and the July 15, July 28, September 27 and October 27, 2011 telephone conferences were approved as distributed.

2. Consent Calendar:

a. Mission statement of Committee on Resolutions

The consent calendar, consisting of the item listed above, was approved by voice vote.

3. Report and recommendations of Special Committee on Strategic Planning. Sharon Stern Gerstman and Mr. Miranda, co-chairs of the Special Committee, reviewed the changes made to the committee's report following the June 2011 Executive Committee meeting at which the report was presented on an informational basis. Following discussion, a motion was unanimously adopted to approve the report and recommendations. Discussion then followed with respect to implementation. The four subcommittee chairs, together with Ms. Wallach, Mr. Lau-Kee and Ms. Makofsky, were appointed to work with staff to develop an implementation plan for presentation at the January 2012 meeting.

4. Report and recommendations of Committee on Diversity and Inclusion. Committee member Sharon Stern Gerstman reviewed the results of the committee's biennial survey to evaluate the level of diversity in Association and Section leadership, membership and activities as well as the committee's recommendations. After discussion, a motion was adopted to approve distribution of the report to Section chairs and to present the report and recommendations to the House at the January 2012 meeting.

5. Report of Committee on Continuing Legal Education. Deborah A. Scalise, chair of the Committee on Continuing Legal Education, together with Senior Director H. Douglas Guevara, provided an update on the Association's continuing legal education program, including revenue and expenses, new initiatives, and Section outreach. The Executive

Committee asked the committee to review the format and distribution of CLE materials and the ABA's initiative to provide free CLE to solo practitioners and small firms as a member benefit. The report was received with thanks.

6. Report and recommendations of Committee on Children and the Law. Committee member Kathleen R. DeCataldo reviewed the committee's recommendation that the Association amend its previously-adopted position with respect to the age of criminal responsibility from requesting that the Governor and Legislature appoint a commission to study raising the age to 18 to requesting that legislation be enacted to raise the age. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, there is an overwhelming national consensus recognizing that children should not, except in extraordinary circumstances, be charged criminally as adults until they attain the age of eighteen; and

WHEREAS, New York is now one of only two states in which children who are age sixteen and over are criminally prosecuted as adults; and

WHEREAS, the New York Family Court Act's establishment of age sixteen as the threshold of adult criminal jurisdiction was deemed to be "tentative" by the relevant Constitutional Convention Commission almost 50 years ago; and

WHEREAS, research has shown that the adolescent brain is not as fully developed as the adult brain, limiting youths' critical decision-making, reasoning, impulse control, ability to resist peer pressure and understanding of risk; and

WHEREAS, the U.S. Supreme Court, based in part on the foregoing adolescent brain research, has determined that the penalties accorded juveniles who commit serious crimes should be take into account their youth and ability to be rehabilitated; and

WHEREAS, children in New York age sixteen years and over could benefit greatly from the different treatment of young offenders upon which the Family Court is premised - as responsible but less blameworthy by reason of their age and to provide rehabilitation and age-appropriate services - and from the programs and services available only for children found to be delinquent in Family Court and not convicted in a criminal court; and

WHEREAS, the administrative and financial impact of raising the age of juvenile court jurisdiction on the unified court system, state and local law enforcement, probation, parole, and social services agencies; detention and placement facilities; prosecution and defense services providers; and other affected agencies, including a timetable for implementation and an appropriate funding structure should be ascertained and considered;

ACCORDINGLY, the New York State Bar Association requests that the New York State Legislature pass and the Governor of the State of New York sign legislation

raising the age of criminal responsibility and general juvenile delinquency jurisdictional age to eighteen.

7. Follow-up re suggested reports and projects. Mr. Doyle reviewed the topics suggested by members at the June 2011 Executive Committee meeting and how they are being addressed by various Association entities. He asked that a new item be made a part of the Executive Committee agendas: reports from the Vice Presidents on activities in their districts. Messrs. Myers and Safer, Ms. Lesk, and Ms. Franchina volunteered to present reports at the January 2012 meeting.
8. Update on court system budget. Ms. Finerty provided an update on the collection of information from districts and sections with respect to the impact of budget cuts on the court system, noting that in addition questionnaires have been sent to House members. The information will be utilized in connection with the Presidential Summit at the Annual Meeting. The report was received with thanks.
9. Report of President. Mr. Doyle highlighted the information contained in his printed report, a copy of which is appended to these minutes.
10. Report and recommendations of the Committee on Court Structure and Operations. Mr. Younger, in his capacity as co-chair of the committee, outlined the committee's recommendations that the Association make court reorganization a priority in the upcoming legislative session, working with other interested organizations. Hon. Deborah H. Karalunas, presiding member of the Judicial Section, presented the section's opposition to the proposal and asked that, at a minimum, consideration of the proposal be deferred to allow additional time for review. After discussion, a motion to postpone consideration failed on a vote of 6-14, after which a motion was adopted to approve the following resolution:

WHEREAS, the Committee on Court Structure & Operations ("Committee") is charged with reviewing issues and proposals regarding the structure and operation of the state court system and submitting reports and recommendations on that topic for consideration by the Association, as directed by the President;

WHEREAS, the Committee has studied the issue of re-organization of the courts of New York State;

WHEREAS, the Committee has concluded that New York's current court structure creates inefficiencies that waste time and money for judges, lawyers and litigants;

WHEREAS, the effort to re-organize the courts will be a major endeavor, and therefore must have the support of state government leaders;

WHEREAS, to make the case for reform to the Governor, the Chief Judge, the Legislature, and the Public, it will be important to provide concrete information about the impact that re-organization will have on the State;

RESOLVED, that the New York State Bar Association hereby re-affirms the policy regarding court re-organization established in April 1998 and supports, in principle, the reorganization of New York State's court system including:

- a) The nine major trial courts should be consolidated into a two-tiered system, with the Supreme Court, Court of Claims, County Court, Family Court and Surrogate's Court merged into Supreme Court, and the New York City Civil Court, New York City Criminal Court, City Court, and District Court merged into a statewide District Court.
- b) Instead of a constitutional provision mandating separate divisions of Supreme Court, any merger plan should provide for the Chief Judge and the Office of Court Administration to establish such divisions as are necessary, including a commercial division, criminal division, family division, public claims division, probate division, tort division, and a civil division to cover other matters.
- c) All judges affected by the court reorganization should continue to be elected or appointed as they are under existing law, unless and until such law shall be changed to designate a different selection system for such judges, in which case the new system shall apply.
- d) The population cap limiting the number of Supreme Court Justices per judicial district should be abolished, and it is further

RESOLVED, that the officers of this Association are hereby authorized and directed to take any and all necessary action to achieve the approval of the Legislature and the electorate of any statutes or constitutional amendments required in their judgment to implement this statement of policy.

Mr. James abstained from participating in the discussion and vote.

11. Request of Judicial Section for additional delegate to the House of Delegates. Hon. Deborah H. Karalunas, presiding member of the Judicial Section, and Hon. Leland G. DeGrasse, immediate past presiding member of the Section, outlined the Section's request for a Bylaws amendment to allot an additional delegate to the House for the Section. After discussion, a motion was adopted to approve the section's request and refer it to the Bylaws Committee, with the understanding that the Section would be permitted a maximum of two delegates.
12. Report and recommendations of Steering Committee on Legislative Priorities.
 - a. State Legislative Priorities. Hermes Fernandez, chair of the Committee on Legislative Policy and a member of the Steering Committee, reported on the latter committee's recommendations of the following items for inclusion on the list of the Association's 2012 state legislative priorities: Integrity of New York's Justice System (including adequate civil legal services funding, adequate funding for the Office of Indigent Legal Services, wrongful convictions legislation, audio and

video recording of interrogations of children and an increase in the age of criminal responsibility), reform of the Not-for-Profit Corporation Law, reorganization of the state court system, and Support for the Legal Profession.

After discussion, a motion was adopted to approve these items as the Association's 2012 state legislative priorities.

- b. Federal Legislative Priorities. John M. Nonna, co-chair of the Committee on Federal Legislative Priorities, presented the committee's recommendations of the following items for inclusion on the list of the Association's 2012 federal legislative priorities: Integrity of the justice system (including funding of civil legal services, protection of the attorney-client relationship, and support for the rule-making process according to the Rules Enabling Act and maintaining the current Rule 11 of the Federal Rules of Civil Procedure), repeal of the Defense of Marriage Act, support for states' authority to regulate the tort system, support for legislation and funding to enhance civic education programs, and support for the legal profession.

After discussion, a motion was adopted to approve these items as the Association's 2012 federal legislative priorities.

13. Report of the Treasurer. Ms. Gutekunst, in her capacity as Treasurer, reported that through September 30, 2011, the Association's total revenue was \$20.6 million, a decrease of approximately \$146,000 from the previous year, and total expenses were \$17.5 million, an increase of approximately \$590,000 over 2010. The operating surplus was \$3 million, approximately \$715,000 less than the previous year. Ms. Gutekunst also highlighted several revenue and expense items. The report was received with thanks.
14. Report and recommendations of Finance Committee. David M. Schraver, chair of the Finance Committee, reviewed the proposed budget for 2012, which projects income of \$25,351,875 and expenses of \$24,964,810, with a projected surplus of \$387,065. A motion was adopted to endorse the proposed budget for favorable action by the House of Delegates.
15. Discussion of policy re co-sponsorship of ABA resolutions. Mr. Doyle observed that there have been occasions when, in the days leading up to an ABA House of Delegates meeting, new resolutions are proposed or changes are requested to existing resolutions and there is insufficient time for the NYSBA Executive Committee to consider these proposals. Consequently, it was felt that it would be helpful to clarify the circumstances under which NYSBA could address these types of situations in the absence of Executive Committee consideration. After discussion, a motion was adopted to approve the following resolution:

The New York State Bar Association (NYSBA) has an active role in initiating and co-sponsoring resolutions coming before the American Bar Association (ABA) House of Delegates, with such resolutions and co-sponsorships approved by the

NYSBA Executive Committee. However, recognizing that on some occasions time does not permit such consideration and approval by the Executive Committee or new information about the resolution is received after the Executive Committee meeting, it is

RESOLVED, that the NYSBA President, in consultation with the NYSBA delegates to the ABA House of Delegates, (1) may agree to amendments to resolutions sponsored or co-sponsored by NYSBA, in the absence of NYSBA Executive Committee approval of such amendments, provided that such amended resolutions remain consistent with previously-approved NYSBA policy; (2) may agree to NYSBA co-sponsorship of resolutions being submitted to the ABA House of Delegates, in the absence of NYSBA Executive Committee approval, provided that such resolutions are consistent with previously-approved NYSBA policy; and (3) may agree to withdrawal of a NYSBA resolution or NYSBA's co-sponsorship of a resolution.

16. Report and recommendations of Committee on Bylaws. Hon. Cheryl E. Chambers, chair of the committee, outlined the proposed bylaws amendments to add two members-at-large from sections and one member-at-large from the Young Lawyers Section to the Executive Committee. After discussion, a motion was adopted to endorse the proposed amendments for subscription by the House.
17. Report of Criminal Justice Section. Richard D. Collins and Jay Shapiro, co-chairs of the section's Committee on Sealing/Expungement, reviewed the section's report recommending that New York adopt a sealing statute. They noted that the section will focus on the definition of "sealing," factors the court should consider in determining whether sealing is appropriate, and procedures, and would present a more detailed report for consideration at the January 2012 meeting. The report was received with thanks.
18. Report of Committee on Membership. The reports were presented by Mr. Lau-Kee and Ms. Wallach in their capacities as co-chairs of the committee.
 - a. Update on committee activities. Mr. Lau-Kee and Ms. Wallach provided an update on the committee's activities, including the President's Diversity Challenge, law school outreach, renewal outreach, and implementation of the strategic plan. The report was received with thanks.
 - b. Proposed award for non-resident member who has made contributions to NYSBA. Mr. Lau-Kee and Ms. Wallach outlined a proposed award to be presented from time to time to non-resident members who have made outstanding contributions through service in the House of Delegates or in sections or committees, with the selection of nominees to be made by the Committee on Annual Award in consultation with the Membership Committee's Subcommittee on Non-Resident Members. After discussion, a motion was adopted to approve the award.
19. Reports of Executive Committee Liaisons. Written and/or oral presentations were made by Messrs. James, Lau-Kee, Young and Younger, Ms. Makofsky, and Ms. Moy with re-

spect to the sections and committees for which they serve as Executive Committee liaison. The reports were received with thanks.

20. Reports of Committee on Resolutions. The reports were presented by Mr. Miranda in his capacity as chair of the committee.
 - a. Follow-up on Task Force on the Future of the Legal Profession. Mr. Miranda presented an informational report on the implementation of the Task Force's recommendations by Association sections and committees. The report was received with thanks.
 - b. Follow-up on Task Force on New York Law in International Matters. Mr. Miranda outlined the committee's recommendations for implementation of the Task Force's report. After discussion, a motion was adopted to approve the recommendations. A working group consisting of representatives from the Commercial and Federal Litigation, International, Dispute Resolution, and Business Law Sections will be designated to coordinate implementation.
21. Discussion of Association policy re social media. Mr. Miranda led a discussion of a proposed policy to govern sections' and committees' use of social media to ensure clear, consistent use of the Association's brand. After discussion, it was agreed that the draft policy should be posted on the Reports Page on the website and comments should be requested from sections and committees prior to consideration at the January 2012 Executive Committee meeting.
22. Proposed resolution honoring Hon. Ann T. Pfau. Mr. Doyle reported that Judge Pfau will leave her current position as Chief Administrative Judge on December 1. The following resolution was adopted in her honor:

WHEREAS, in 2007, Ann Pfau was appointed by Chief Judge Judith S. Kaye to the position of Chief Administrative Judge of the New York State Unified Court System;

WHEREAS, the Chief Administrative Judge is charged in the New York State Constitution with supervising the administration and operation of the unified court system;

WHEREAS, the Chief Administrative Judge oversees a court system that handles 4.7 million cases each year, with 3,600 judges and 15,000 non-judicial employees in over 300 locations across New York State and has a \$2 billion budget;

WHEREAS, Chief Administrative Judge Pfau was the first woman ever to serve in that role, which she held until 2011, and was the only Chief Administrative Judge to serve under more than one Chief Judge;

WHEREAS, Chief Administrative Judge Pfau demonstrated a tireless devotion to her duties and expertly guided the New York State court system through a variety of challenges during her tenure;

WHEREAS, Chief Administrative Judge Pfau demonstrated particular leadership in her stewardship of the court system through the financial crisis of the last few years that has increased the workload of the courts while necessitating extraordinarily challenging reductions in court funding;

WHEREAS, Chief Administrative Judge Pfau worked as a steadfast advocate for the first increase in judicial salaries in 12 years and played an instrumental role in establishing the Judicial Compensation Commission, thereby assuring review of judicial salaries on an ongoing basis;

WHEREAS, throughout her tenure, Chief Administrative Judge Pfau increased the efficiency and accessibility of New York's courts by expanding electronic filing, enhancing the availability of alternative dispute resolution options, focusing on the special role of Family Courts and undertaking other initiatives to streamline the administration of New York's court system;

WHEREAS, Chief Administrative Judge Pfau has so aptly carried out these critical duties while maintaining an extraordinarily open, collaborative relationship with the New York State Bar Association, welcoming input and seeking practitioners' perspectives on matters affecting the courts.

NOW, THEREFORE, IT IS

RESOLVED, that it is with tremendous gratitude that the New York State Bar Association recognizes Chief Administrative Judge Pfau's extraordinary contributions to the justice system in New York State and her work to ensure access to justice; and it is further

RESOLVED, that, as Chief Administrative Judge Pfau takes on her new position as Coordinating Judge for the New York State Medical Malpractice Program, the New York State Bar Association extends its best wishes and expresses its confidence that she will guide this important program as aptly as she has guided our state's courts; and it is further

RESOLVED, that the New York State Bar Association expresses its sincere appreciation for Chief Administrative Judge Pfau's dedicated service to the people of New York State and her many contributions to the New York State Bar Association.

The resolution will be presented to Judge Pfau at the January 2012 House of Delegates meeting.

23. Report of Nominating Committee. Bernice K. Leber, chair of the Nominating Committee, reported the results of the committee's consideration of candidates for Association offices. Nominated were David M. Schraver as President-Elect; David P. Miranda as Secretary; Claire P. Gutekunst as Treasurer; Samuel F. Abernethy, Hon. Margaret J. Finerty, Sherry Levin Wallach and Edwina Frances Martin as members-at-large of the Executive Committee; and A. Vincent Buzard, Vincent E. Doyle III, Michael E. Getnick, Kathryn Grant Madigan, David M. Schraver and Michael L. Fox (Young Lawyer Delegate) as delegates to the American Bar Association's House of Delegates. The Executive Committee congratulated the nominees.
24. New Business. Lesley Freedman Rosenthal provided an update on "Charity Corps," a pro bono initiative to provide charities with access to counsel. She reported that Charity Corps hopes to serve 50 organizations in 2012, starting with legal services organizations. The report was received with thanks.
25. Date and place of next meeting. Mr. Doyle announced that the next meeting would be held on Thursday, January 26, 2012 at the Hilton New York in New York City.
26. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "David P. Miranda". The signature is written in black ink and is positioned above the printed name and title.

David P. Miranda
Secretary