

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 23-24, 2011**

PRESENT: Members Abernethy, Castellano, Cohen, Doyle, Edmunds, Fennell, Finerty, Franchina, Gordon-Oliver, Gorgos, Gutekunst, James, Lau-Kee, Lesk, Makofsky, Mattei, Millon, Miranda, Moy, Myers, Romero, Safer, Slezak, Wallach, Young, and Younger.

Guests: Mark H. Alcott, Gregory K. Arenson, James R. Barnes, Donald C. Doerr, Hermes Fernandez, Sharon Stern Gerstman, Ira S. Goldenberg, Taa R. Grays, Hon. Sarah L. Krauss, Michael C. Lancer, Jonathan D. Lupkin, John S. Marwell, David M. Schraver, Keisha Williams, Lawrence A. Zimmerman.

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

1. Mr. Doyle called the meeting to order, and Arlene Gordon-Oliver, Grace V. Mattei, Jay G. Safer, Rebecca A. Slezak and Oliver C. Young were welcomed as new members of the Executive Committee.
2. Approval of minutes of meeting. The minutes of the April 1, 2011 meeting and the April 29, May 11, and May 20, 2011 teleconference meetings were accepted as distributed.
3. Discussion of suggested projects and reports. Mr. Doyle asked members of the Executive Committee to provide suggestions as to projects and issues that they believed would be appropriate for consideration during the 2011-2012 Association year. Members made a variety of suggestions with respect to both substantive legal topics and Association operations. The suggestions were received with thanks.
4. Discussion of presidential initiatives and new committees. Mr. Doyle outlined initiatives he planned to pursue during his term as president, for which four new entities would be created: a Special Committee on Veterans, a Special Committee on Immigration Representation, a Task Force on Family-Friendly Issues, and a Task Force on Gideon Commemoration. After discussion, a motion was adopted to approve the creation of the four groups.
5. Consent calendar.
 - a) Approval of resolution re account signatories
 - b) Confirmation of Audit Committee appointments
 - c) Approval of stated purpose of Special Committee on Veterans
 - d) Approval of stated purpose of Special Committee on Immigration Representation
 - e) Approval of amended stated purpose of Committee to Ensure Quality of Mandated Representation
 - f) Amendments to Bylaws of the International Section

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

6. Report of the Treasurer. Ms. Gutekunst, in her capacity as Treasurer, reported that that the Association had received an unqualified opinion from the Association's auditors, UHY, LLP, for the 2010 audited annual report as of December 31, 2010. With respect to the current year through

May 31, 2011, she reported that total revenue is \$17.6 million, an increase of \$383,000 from the previous year, and total expense is \$10.6 million, an increase of \$458,000 as compared to 2010. Ms. Gutekunst then provided a review of major expense changes. The report was received with thanks.

7. Report of Lawyer Assistance Committee. Lawrence A. Zimmerman, the committee's chair, and Patricia Spataro, Director of the Lawyer Assistance Program, presented an informational report reviewing the committee's and the Program's activities during the prior year. The committee then presented an award to Stephen P. Younger for his support of the Program during his presidency. The Executive Committee commended the committee for its response to the de-funding of the state Lawyer Assistance Trust. In addition, Mr. Doyle reported on his experience at the Program's May 2011 retreat at Silver Bay and recommended that other Executive Committee members plan to attend the 2012 retreat.

Hon. Sarah L. Krauss, past chair of the Lawyer Assistance Committee, then outlined a proposal for a new Judges Assistance Committee to provide peer support for judges facing addiction or mental health issues. After discussion, a motion was adopted to endorse the creation of the committee as a standing committee of the Association.

8. Report of President. Mr. Doyle highlighted the information contained in his printed report, a copy of which is appended to these minutes.
9. Report of Special Committee on Strategic Planning. Committee co-chairs Sharon Stern Gerstman and Mr. Miranda updated the Executive Committee on the committee's work since the March 31, 2011 strategic planning session. It was agreed that a two-hour Executive Committee session on strategic planning would be scheduled for Thursday afternoon, November 3, at the Bar Center in Albany. The report was received with thanks.
10. Report of the Secretary. In his capacity as Secretary, Mr. Miranda reported that a newly-constituted Committee on Resolutions would oversee the implementation of and follow-up on reports and resolutions adopted by the Executive Committee and/or House of Delegates. He also highlighted the information contained in his printed report, a copy of which is appended to these minutes. With respect to the report and recommendations of the Task Force on the Future of the Legal Profession, approved by the House of Delegates in April 2011, he outlined the committee's recommendations as to which sections and committees should be asked to assume responsibility for further action. After discussion, a motion was adopted to approve the committee's recommendations.
11. Report and recommendations of Committee on Unlawful Practice of Law. The report was withdrawn and will be rescheduled for consideration at a future meeting.
12. Report and recommendations of Special Committee on Committees. Donald C. Doerr, chair of the committee, presented the committee's report regarding the status of a number of Association committees as well as recommendations previously approved by the Executive Committee that are still to be implemented. After discussion, a motion was adopted to endorse for favorable action by the House the committee's recommendations that itself and the Special Committee on LGBT People and the Law become standing committees and to approve the remainder of the recommendations contained in the committee's report.
13. Discussion of Executive Committee liaison responsibilities and duties of Vice Presidents. Mr. Doyle led a discussion of liaisons' roles in facilitating communication, providing guidance on

policy and procedure, and encouraging sections and committees to undertake projects. He asked liaisons to maintain regular contact with their groups, encourage them 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. He outlined the reimbursement policy for liaisons attending section and committee meetings.

Mr. Doyle also reviewed the responsibilities of Vice Presidents, as set forth in the Bylaws, to promote relations with local bars and members in their respective districts. He noted the importance of informing local bar leaders, including those of minority and specialty bars, of Association initiatives and encouraged them to advise the Association of local bar concerns.

14. Reports of Executive Committee Liaisons. Written reports from Messrs. Cohen, Gorgos and Miranda and Ms. Finerty regarding the activities of the sections and committees to which they are assigned as liaison were received with thanks.
15. Report of Working Group on Judicial Compensation Commission. John S. Marwell, chair of the Working Group, updated the Executive Committee with respect to the appointment of Commission members and the Commission's statutory charge. He reported that the Working Group is monitoring developments with respect to the Commission and has retained an expert to assist the Working Group with its recommendations. The report was received with thanks.
16. Resolution honoring Robert MacCrate. Mr. Doyle advised that Mr. MacCrate will turn 90 years old this summer and, in addition, this year marks the 40th anniversary of his NYSBA presidency, the 25th anniversary of his ABA presidency, and the 20th anniversary of the "MacCrate report" on legal education in the United States. The following resolution was adopted in his honor:

WHEREAS, Robert MacCrate joined the firm of Sullivan and Cromwell in 1948, became partner in 1956 and has served there for over 60 years, currently as Senior Counsel, and has worked on a variety of international litigated matters;

WHEREAS, Mr. MacCrate served as Counsel to Governor Nelson D. Rockefeller from 1959 to 1962 and as Special Counsel to the Department of the Army from 1969 to 1970;

WHEREAS, Mr. MacCrate has, throughout his career, demonstrated unparalleled devotion to his clients, his profession, and his community;

WHEREAS, Mr. MacCrate has been a member of the New York State Bar Association for over 50 years and served as President of the Association from 1972 to 1973, during which time the first meeting of the House of Delegates, designed to be a "representative, responsive statewide council of lawyers," was convened;

WHEREAS, Mr. MacCrate was the 1999 recipient of the New York State Bar Association's Gold Medal, which is presented annually to a distinguished member of the bench or bar and represents the Association's highest honor;

WHEREAS, Mr. MacCrate served as President of the American Bar Association from 1987 to 1988, using his term to promote efforts to benefit the profession and to ensure judicial independence;

WHEREAS, Mr. MacCrate chaired the American Bar Association's Task Force on Law Schools and the Profession from 1989 to 1992, the report of which, formally titled *Legal Ed-*

ucation and Professional Development: An Educational Continuum, is known widely as “The MacCrate Report” and remains an important reference with respect to legal education in the United States;

WHEREAS, Mr. MacCrate was the recipient of the 2001 ABA Medal, which is presented to individuals who have given notable service to the cause of American jurisprudence;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association recognizes the extraordinary accomplishments and legal legacy of Robert MacCrate; and it is further

RESOLVED, that the New York State Bar Association expresses its sincere appreciation to Mr. MacCrate for his many years of dedicated service to the New York State Bar Association, the American Bar Association, and the profession; and it is further

RESOLVED, that the New York State Bar Association honors Mr. MacCrate on the occasion of his 90th birthday; the 40th anniversary of his presidency of the New York State Bar Association; the 25th Anniversary of his presidency of the American Bar Association; and the 20th anniversary of the publication of “The MacCrate Report.”

17. Report of Committee on Membership. Mr. Lau-Kee and Ms. Wallach, co-chairs of the committee, updated the Executive Committee on the status of Association membership and the committee’s current initiatives, including subcommittees on membership planning, new lawyers and law students, non-resident members, sections, and a website advisory group. The report was received with thanks.
18. Report and recommendations of Special Committee on Discovery and Case Management in Federal Litigation. In his capacity as chair of the Special Committee, Mr. Abernethy, together with committee member Gregory K. Arenson, reviewed the committee’s report and recommendations regarding preservation and spoliation of electronically stored information. They noted that this topic is one of a number of topics planned for inclusion in the committee’s full report on discovery and case management, anticipated to be completed in the fall; however, the Civil Rules Advisory Committee of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States plans to conduct a “mini-conference” on discovery and spoliation in September 2011, after which it will consider proposed rules at its November 2011 meeting. Consequently, the committee has prepared this interim report to address these specific issues. The report was received with thanks.
19. Report of Special Committee on Veterans. Michael C. Lancer, co-chair of the committee, outlined issues the committee plans to address, including the use of veterans’ courts for nonviolent offenses, recruiting lawyers with experience in representing veterans, and training lawyers to assist veterans. The report was received with thanks.
20. Report and recommendations of Committee on Women in the Law. Taa R. Grays, past chair of the committee, outlined the committee’s recommendation that the Association support legislation to enact the New York Fair Pay Act. After discussion, a motion was adopted to approve the legislative proposal.
21. Report and recommendations of Task Force on New York Law in International Matters. Joseph T. McLaughlin, co-chair of the Task Force, reviewed the Task Force’s recommendations to en-

courage the use of New York law as an international standard and New York as a forum for dispute resolution. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, review and analysis by the New York State Bar Association Task Force on New York Law in International Matters shows that the use of New York law in international agreements is widespread in the global business community due to its stability, predictability, neutrality, and consistent application by New York courts and arbitrators; and

WHEREAS, a significant number of New York bar association sections and committees with highly knowledgeable and experienced international practitioners are constantly at work examining issues related to New York law and New York as a forum for international dispute resolution and preparing thoughtful memoranda and internal reports on pertinent topics; and

WHEREAS, there should be greater familiarity with the advantages of New York law and New York as a forum for international dispute resolution among lawyers drafting or advising on governing law clauses and dispute resolution provisions in international agreements, particularly given the presence in New York of thousands of experienced international lawyers, arbitrators, and mediators and the overwhelming support by New York state and federal courts for international arbitration at every stage from the enforcement of the arbitration agreement to the recognition of the arbitral award;

Now, therefore, it is

RESOLVED, that the New York State Bar Association hereby accepts the report of the Task Force on New York Law in International Matters and approves in concept the recommendations contained therein; and it is further

RESOLVED, that the Association reaffirms its commitment to encourage and mobilize the intellectual and professional resources of experienced New York attorneys, arbitrators, and judges to assist in the continued development and use of New York law and New York as a forum; and it is further

RESOLVED, that the officers of the Association are hereby empowered and directed to refer the report and recommendations to an implementation group to work with appropriate Association sections and committees and local bar associations to consider the recommendations and develop proposals and programs as they deem appropriate to implement the recommendations contained in the report; and it is further

RESOLVED, that the officers of the Association are empowered to distribute the report to bar associations, law schools, and other entities for their consideration and to take such other and further steps as they may deem warranted to implement this resolution.

22. Report re Section initiatives. Mr. Doyle updated the Executive Committee on initiatives to foster the Sections' relationships with the overall Association, including a new Department of Section Services, CLE programming, and interaction with the Section Delegates Caucus. The report was received with thanks.
23. Report of Committee on Continuing Legal Education. H. Douglas Guevara, Senior Director of Continuing Legal Education, provided an update on the Association's continuing legal education

- program, including revenue and expenses, new initiatives, and Section outreach. The report was received with thanks.
24. Report and recommendations of Committee on Standards of Attorney Conduct. David M. Schraver, a member of the committee, reviewed the committee's recommendations to add 12 new comments and seven amended comments to the Rules of Professional Conduct. After discussion, a motion was adopted to endorse the new and amended comments for favorable action by the House.
 25. Report and recommendations of Commercial and Federal Litigation Section. Jonathan D. Lupkin, immediate past chair of the section, outlined the section's recommendations for an amendment to the uniform court rules of the Commercial Division to govern expert disclosure. After discussion, including a recommendation that the report clarify the phrase "end of fact discovery," a motion was adopted to approve the section's report and recommendations.
 26. Report and recommendations of Committee on Legal Aid. Keisha Williams, a member of the committee, reported on the committee's recommendation that the Association support legislation that would repeal Social Services Law §153(8), which currently imposes a 45-day wait on receipt of certain public assistance, and require local services districts to act on applications for public assistance within 30 days. She noted that this recommendation is consistent with a recommendation made by the Special Committee on Collateral Consequences of Criminal Proceedings, approved by the House in 2006. After discussion, a motion was adopted to approve the proposal.
 27. Report of ABA State Delegate. Mark H. Alcott, ABA State Delegate, updated the Executive Committee on ABA activity and reviewed the agenda for the upcoming August 2011 House of Delegates meeting. The report was received with thanks.
 28. Discussion of co-sponsorship of ABA resolution. Mr. Doyle advised that the Association had been requested to co-sponsor a resolution at the August 2011 ABA House of Delegates meeting with respect to the adoption of Standards for Language Access in Courts. After discussion, a motion was adopted to approve co-sponsorship of the resolution.
 29. Report on legislative matters. Hermes Fernandez, chair of the Committee on Legislative Policy, updated the Executive Committee on the 2011 legislative session, particularly with respect to the Association's legislative priorities. The report was received with thanks.
 30. Request of Section Delegates Caucus. Ira S. Goldenberg, chair of the Section Delegates Caucus, and James R. Barnes, chair of the Young Lawyers Section, outlined the respective requests of the Caucus and the Section for Bylaws amendments adding two members-at-large of the Executive Committee to represent the interests of sections generally and one member-at-large to represent the interests of young lawyers. After discussion, a motion was adopted to authorize the Bylaws Committee to draft amendments to the Bylaws providing for the nomination by the Nominating Committee, in consultation with the Section Delegates Caucus, of two members-at-large of the Executive Committee to represent the interests of Association sections. A second motion was adopted to authorize the Bylaws Committee to draft amendments to the Bylaws providing for the nomination by the Nominating Committee, in consultation with the Young Lawyers Section, of one member-at-large of the Executive Committee to represent the interests of young lawyers. A subcommittee consisting of Messrs. Abernethy, Fennell, Millon, Miranda, Myers and Younger, Ms. Makofsky, and Ms. Wallach was appointed to work with the Bylaws Committee to develop appropriate amendments.

31. 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.

David P. Miranda
Secretary