

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF EXECUTIVE COMMITTEE MEETING  
BAR CENTER, ALBANY, NEW YORK  
APRIL 1, 2011**

---

PRESENT: Members Abernethy, Behrins, Castellano, Cohen, Doyle, Edmunds, Fennell, Fernandez, Finerty, Getnick, Gorgos, Gutekunst, James, Lau-Kee, Lesk, Makofsky, Marwell, Milton, Miranda, Moy, Myers, Romero, Wallach, Younger.

Guests: Linda Leuchter Addison, Mark H. Alcott, John P. Bracken, Hon. Eileen Bransten, T. Andrew Brown, Peter V. Coffey, Prof. Patrick M. Connors, Hon. Leland De Grasse, Ellen B. Fishman, Arlene Antoinette Gordon Oliver, Sharon Kovacs Gruer, David M. Hayes, Edward S. Kornreich, Tammy Rose Lawlor, Susan B. Lindenauer, Margaret Comard Lynch, Grace V. Mattei, Hon. Angela M. Mazzarelli, Joseph T. McLaughlin, Joseph E. Neuhaus, Amy S. O'Connor, Michael E. O'Connor, A. Craig Purcell, Rebecca A. Slezak, Hon. Joseph P. Sullivan, Oliver C. Young.

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

Mr. Younger welcomed Arlene Antoinette Gordon Oliver, Grace V. Mattei, Rebecca A. Slezak and Oliver C. Young, who will take office as members of the Executive Committee on June 1, 2011 and attended the meeting as observers.

1. Approval of minutes of meetings. The minutes of the January 27, 2011 meeting and February 23, 2011 teleconference meeting were accepted as distributed.
2. Consent Calendar.
  - a) Amendments to Bylaws of Corporate Counsel Section.
  - b) Amendments to Bylaws of Environmental Law Section.
  - c) Proposed name change and mission statement of Committee on Diversity.
  - d) Ratification of memorandum of understanding with Sao Paulo Bar Association.

The consent calendar, consisting of the items listed above, was approved by voice vote. The amended Section Bylaws are appended to these minutes. The Corporate Counsel Section will be requested to consider adding a provision to its Bylaws relating to diversity.

3. Report of the Treasurer. In his capacity as Treasurer, Mr. James reviewed revenue and expenses for the first two months of 2011, reporting that total revenue was \$13.6 million, an increase of \$429,000 over 2010, and total expense was \$4.9 million, an increase of \$847,000 from 2010. He then reviewed the end-of-year 2010 operating budget, reporting that total revenue was \$23.4 million, an increase of \$162,000 from 2009, and total expense was \$24.2 million, an increase of \$944,000 from 2009. The operating deficit was \$809,000, an increase of \$782,000 from 2009. He also provided a six-year comparison of

dues revenue and CLE revenue and expense together with a report on long-term reserve investments. The report was received with thanks.

4. Confirmation of Appointments.

- a) Presidential appointees to House of Delegates. Mr. Doyle reported that after consultation with the Committee on Leadership Development, he recommended reappointment of nine of the current 12 presidential appointees to the House, as well as the appointment of three new members. After discussion, a motion was adopted to confirm the appointments, as follows: First Department – Fernando A. Bohorquez, Jr., Earamichia N. Brown, Taa Grays (new), Diana S. Sen; Second Department – Terryl Brown, David J. Hernandez, Betty Lugo (new); Third Department – Henry A. Fernandez, Rachel Ryan; Fourth Department – LaMarr J. Jackson, Sheldon Keith Smith (new), Clifford Tsan.
- b) Non-resident delegates to House of Delegates. Mr. Doyle reported that he recommended reappointment of the current non-resident delegates to the House of Delegates for the term commencing on June 1, 2011. After discussion, a motion was adopted to confirm the reappointment of Claudia O. Torrey and Michael A. Kurs as non-resident delegates.

5. Report of Committee on Membership.

- a) Update on membership activities. In her capacity as the committee's chair, Ms. Gutekunst reported that the Association's membership as of March 31, 2011 was 81,685, but that 14,749 subsequently were dropped for non-payment of dues, a lower number than in 2010. She noted that the Membership Department would be contacting the dropped members to seek their renewals. As of this date, 95.5% of the 2011 dues goal had been realized. Ms. Gutekunst noted an increase in the use of automatic installment payment and law firm billing. She also reported on committee initiatives. Finally, she thanked members of the Executive Committee for their work in encouraging membership. The report was received with thanks.
- b) Proposed 2012 dues increase. Ms. Gutekunst and Mr. Miranda outlined a proposal for a 2012 dues increase. They observed that the proposed increase was modest and that when dues were last increased in 2005, there was no significant decrease in membership as a result. The Finance Committee has reviewed and approved the proposal. After discussion, a motion was adopted to endorse the proposed increase for favorable action by the House at the June 25, 2011 meeting.
- c) Dues Waiver Program. Ms. Gutekunst presented a proposal to drop the term "pilot" with respect to the dues waiver program and to continue the program for an additional three years, subject to continued oversight by the Finance Committee and the Committee on Membership. After discussion, a motion was adopted to endorse the proposal for favorable action by the House at the June 25, 2011 meeting.

6. Report of Committee on Continuing Legal Education. Michael E. O'Connor, chair of the committee, updated the Executive Committee on CLE activities, including revenue and expenses, and new initiatives. In addition, he outlined three proposals from the committee with respect to marketing of Section CLE meetings, noting that an upcoming Trusts and Estates Section program would be videotaped and marketed as a pilot program. The report was received with thanks.
7. Report of President. Mr. Younger provided a written report on recent initiatives, a copy of which is appended to these minutes, and in oral remarks summarized the significant items set forth in the written statement. He also noted that Jonathan Behrins, Hermes Fernandez, Michael E. Getnick, John S. Marwell and Patricia L.R. Rodriguez are completing their terms of service on the Executive Committee as of May 31, 2011, and that this is their last meeting. He thanked them for their service and participation on the Executive Committee. Finally, he observed that this is the last meeting of the Executive Committee that he will chair, and he thanked the members of the committee for their support and participation.
8. Proposed court budget cuts. Mr. Younger outlined some of the programs of the court system being impacted by cuts in the court system's 2011-2012 budget and asked members to advise him of the impact of cuts in members' local districts. He also asked members to let him know of any suggestions that they may have for cost-saving measures that could be adopted by the court system. In addition, the Commercial and Federal Litigation Section, Trial Lawyers Section, and Torts, Insurance and Compensation Law Section will be asked to make recommendations of areas in which cuts might be made without significant adverse impact on the operation of the court system.
9. Report re technology. Richard Martin, Senior Director for Marketing and Information Systems, and John M. Nicoletta, Director of MIS, outlined a series of improvements being made to the Association's computer operations, Website, meeting facilities, and social media. They reported that they are in the process of developing applications for use with mobile devices, with an application for ethics opinions being the first in development. The report was received with thanks.
10. Presentation of resolution to Peter V. Coffey. Mr. Younger welcomed Mr. Coffey and presented him with a resolution of the Executive Committee in recognition of Mr. Coffey's representation of the Association in connection with the lease negotiations for the print shop located in Green Island.
11. Report of Audit Committee. David M. Hayes, chair of the committee, reported on the committee's activities since its appointment in 2008, with emphasis on the committee's duties to assure the independence of the Association's auditor, reviewing the Association's accounting policies and internal controls, and overseeing the accuracy of the Association's financial statements and reports. The report was received with thanks, and Mr. Younger thanked Mr. Hayes for his service as the committee's chair.

12. Report on legislative matters. Mr. Fernandez, in his capacity as chair of the Committee on Legislative Policy, reviewed the current 2011 legislative session with emphasis on medical malpractice issues, government ethics, and the Elder Law Section's concerns regarding spousal refusal legislation. The report was received with thanks.
13. Report and recommendations of Elder Law Section. Sharon Kovacs Gruer, chair of the Section, together with Section members Tammy Rose Lawlor and Amy S. O'Connor, outlined the Section's affirmative legislative proposal to amend the Public Health Law with respect to the authority of a health care agent to act outside a hospital setting. After discussion, a motion was adopted to approve the proposal. In addition, Mr. Younger thanked the Section for its work with respect to the spousal refusal issues that had been raised in the Legislature.
14. Report and recommendations of Committee on Civil Practice Law and Rules. Ellen B. Fishman, a member of the committee, outlined the committee's affirmative legislative proposal to amend CPLR 4111 with respect to itemized verdicts in wrongful death actions. After discussion, a motion was adopted to approve the proposal.
15. Report of Task Force on Family Courts. Task Force co-chair Susan B. Lindenauer updated the Executive Committee with respect to the work of the Task Force to date. She reviewed the areas being reviewed (resources for individual litigants; resources for Family Court; Family Court operations, staffing and case management; and technology) as well as specific issues to be addressed and the Task Force's work plan. The report was received with thanks.
16. Report and recommendations of Special Committee to Review the Code of Judicial Conduct. Hon. Joseph P. Sullivan, chair of the Special Committee, together with reporter Prof. Patrick M. Connors, outlined the committee's work in reviewing the 2007 ABA Model Rules of Judicial Conduct to determine whether it should be recommended for adoption in New York. After deciding to recommend that New York adopt the format of the ABA Model Rules, the committee proceeded to review individual rules to determine whether to recommend adopting the ABA rule or a New York-specific rule. On behalf of the Judicial Section, Justices Eileen Bransten, Leland De Grasse and Angela M. Mazzarelli outlined proposed amendments the Section recommended. After discussion, the Executive Committee adopted the following motions to endorse rules for favorable action by the House:
  - A motion to approve all rules for which proponents of amendments have not submitted amendments was adopted.
  - A motion was made to approve Rule 2.6 as proposed by the Special Committee, after which a motion to amend to substitute the amendment submitted by the New York City Bar failed. A motion was then adopted to approve Rule 2.6 as proposed by the Special Committee.

- A motion was made to approve Rule 2.7 as proposed by the Special Committee, after which a motion to amend to substitute the amendment submitted by the New York County Lawyers' Association failed. A motion was then adopted to approve Rule 2.7 as proposed by the Special Committee.
  - A motion was made to approve Rule 2.10 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 2.10 as amended.
  - A motion was made to approve Rule 2.15 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the New York City Bar was approved. A motion was then adopted to approve Rule 2.15 as amended.
  - A motion was made to approve Rule 3.13 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 3.13 as amended. Ms. Wallach and Mr. James abstained from participating in the vote.
  - A motion was made to approve Rule 3.14 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 3.14 as amended. Mr. James abstained from participating in the vote.
  - A motion was made to approve Rule 3.15 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 3.15 as amended.
  - A motion was made to approve Rule 4.2 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 4.2 as amended. Messrs. Abernethy and James abstained from participating in the vote.
  - A motion was made to approve Rule 4.3 as submitted by the Special Committee, after which a motion to amend to substitute the amendment submitted by the Judicial Section was approved. A motion was then adopted to approve Rule 4.3 as amended.
17. Report of Task Force on New York Law in International Matters. Task Force co-chair Joseph T. McLaughlin provided an informational report on the work of the Task Force to date in reviewing ways to encourage the use of New York law in international transactions and New York as a forum for the resolution of disputes in international transactions. He noted that the Task Force planned to release its report for comment on April 15 and would present the report to the House for debate and vote at the June meeting. The report was received with thanks.
18. Report and recommendations of Committee on Standards of Attorney Conduct and Task Force on Lawyer Advertising. Joseph E. Neuhaus, chair of the Committee on Standards

of Attorney Conduct, reviewed the report prepared jointly with the Task Force on Lawyer Advertising to recommend amendments to Rule 7.1 of the Rules of Professional Conduct to align the rule with the Second Circuit's decision in *Alexander v. Cahill*. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House. Mr. Getnick abstained from participating in the discussion and vote.

19. Report and recommendations of Task Force on the Future of the Legal Profession. Linda Leuchter Addison and T. Andrew Brown, co-chairs of the Task Force, reviewed the Task Force recommendations to create a roadmap for future use of technology in the profession, to improve legal education and training, to establish a proper work/life balance for attorneys, and the delivery of legal services. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, evidence shows that changes in practice, including widespread access to legal information, the routinization of legal tasks, client demands for control of legal service delivery, the increased role of technology, and an increasingly competitive marketplace, are producing a significant restructuring in the way legal services are delivered; and

WHEREAS, these changes in the practice of law require new approaches to the delivery of legal services and to the education and training of lawyers, an encouragement by employers of healthier work-life balance for their lawyers, and improved utilization of technology to enhance legal practice; and

WHEREAS, the New York State Bar Association Task Force on the Future of the Legal Profession was appointed to study these issues and has prepared a comprehensive report containing a series of recommendations to address these changes and to help shape the future of the legal profession;

Now, therefore, it is

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

RESOLVED, that the Association reaffirms its commitment to enhancing the quality of legal practice and the ability of lawyers to meet the needs and expectations of their clients; 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.

20. Report and recommendations of Committee on Court Structure and Judicial Selection. John P. Bracken, a member of the Committee, outlined the committee's report commenting on the proposed new Part 151 of the Rules of the Chief Administrator, which would prohibit the assignment of a case to a judge with a "campaign contribution conflict." After discussion, a motion was adopted to endorse the committee's report and recommendations for favorable action by the House.
21. Report and recommendations of ABA State Delegate. Mark H. Alcott, New York State Delegate to the ABA, advised that in January 2011 NYSBA member James R. Silkenat had announced his candidacy for ABA President, noting that not since 1987-88 has a lawyer from New York served as ABA President. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

Recognizing that James R. Silkenat possesses personal qualities of integrity, wisdom, judgment and leadership, combined with outstanding legal skills and a sound understanding of the needs of the legal profession and the public; and

Recognizing that James R. Silkenat has been a leader as a member of the New York State Bar Association (NYSBA), serving as a delegate to the House of Delegates and as a member of the NYSBA Membership Committee, the Special Committee on Association Governance, the Nominating Committee, and the International Section; and has held other responsible positions within the organized Bar and elsewhere, including the Association of the Bar of the City of New York, the International Bar Association and the American Law Institute, and as a Life Fellow of the American Bar Foundation and Chair of the Fellows thereof in 2004-2005; and

Recognizing that James R. Silkenat has demonstrated commitment to the profession and the public, including his service as Chair of the Commission on the World Justice Project, member of the Council on Foreign Relations, Chair/Co-Chair of the Lawyers Committee for International Human Rights, Co-Chair of the United Nations Development Programme and Chinese Ministry of Foreign Trade and Economic Cooperation's Study Group on Securities and Futures Trading in China, Chair of the Council of New York Law Associates, member of the Board of Directors of the ABA/UNDP International Legal Resource Center, member of the National Committee on U.S.-China Relations, member of the Board of Directors of the Internet Bar Organization, and Co-Chair of the People-to-People Lawyers Delegation to Russia; and

Recognizing that James R. Silkenat has been active in the work of the American Bar Association (ABA), having served as a member of the Board of Governors and its Executive Committee, State Delegate and Chair of the New York Delegation in the House of Delegates, Chair of the Section Officers Conference, Chair of the Section of

International Law, Vice Chair of the Section of Individual Rights and Responsibilities, Chair of the Standing Committee on Membership, Chair of the Standing Committee on Constitution and Bylaws, Chair of the Latin American Legal Initiatives Council, Chair of the Museum of Law, Representative to the United Nations Economic and Social Council, Co-Founder of the Solo and Small Firm Leadership Coalition, Chair of the Delegations to Mexico, the Common Market and China, Chair of the Legal Opportunity Scholarship Fund for Minority Law Students Fundraising Committee; and as a member of the Section of Business Law, the Senior Lawyers Division, the Government and Public Sector Lawyers Division, the Solo and Small Firm Caucus, and the Committee on Women in the Profession;

NOW, THEREFORE, IT IS

RESOLVED, that the House of Delegates of the NYSBA enthusiastically endorses the candidacy of James R. Silkenat for the office of President-Elect of the ABA in 2012 and respectfully urges the ABA Nominating Committee to support his nomination for, and election to, that office; and it is further

RESOLVED, that the officers of the NYSBA are authorized to distribute this Resolution to each member of the ABA Nominating Committee and to such other individuals as may be deemed appropriate.

22. Report and recommendations of Committee on the Tort System. Committee co-chairs Margaret Comard Lynch and A. Craig Purcell reviewed the committee's March 18, 2011 memorandum in opposition and April 1, 2011 supplemental memorandum in opposition with respect to budget proposals with respect to medical malpractice that would impact the civil justice system. Edward S. Kornreich, a past chair of the Health Law Section, expressed the Section's concerns that the current medical liability system is flawed and that increased health care costs are not sustainable, and that the proposals contained in the budget would begin to address this situation. After discussion, a motion to table discussion failed, after which a motion to endorse the memoranda of the Committee on the Tort System for favorable action by the House was approved. Mr. Abernethy, Ms. Castellano, and Ms. Gutekunst abstained from participating in the vote.
23. New Business.
  - a) Working Group on Judicial Compensation Commission. In his capacity as chair of the Working Group, Mr. Marwell reported that although members of the Judicial Compensation Commission were to have been appointed by April 1, 2011, several appointing authorities had yet to make their appointments. The working group is encouraging these authorities to complete the appointment process. In addition, the Working Group is attempting to identify an expert to assist in the evaluation process. The report was received with thanks.
  - b) Special Committee on Discovery and Case Management in Federal Litigation. In his capacity as chair of the Special Committee, Mr. Abernethy reported that the

committee is expanding the work of the former Special Committee on Standards for Pleading in Federal Litigation, reviewing federal discovery. The committee anticipates issuing a report by the end of summer 2011 and will present its report in November 2011. The report was received with thanks.

24. Date and place of next meeting. Mr. Younger announced that the next meeting would be held on Thursday, June 23 and Friday, June 24, 2011 at The Otesaga in Cooperstown.
25. 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 "David P. Miranda".

David P. Miranda  
Secretary