

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
NIXON PEABODY LLP, ROCHESTER
APRIL 4, 2014**

Present: Members Abernethy, Ayers, Barnes, Brown, Castellano, Cohen, Finerty, Fisher, Gaffney, Gerstman, Goldberg, Goldenberg, Gorgos, Gutierrez, James, Karson, Lau-Kee, Martin, Millon, Miranda, Moy, Myers, Romero, Schraver, Slezak, Wallach, and Young.

Guests: Alyssa M. Barreiro, Elena DeFio Kean, Cynthia F. Feathers, Hermes Fernandez, Michael W. Galligan, Denise A. Hartman, Bryan D. Hetherington, Stephen A. Hochman, Stuart J. Larose, John S. Marwell, Eileen D. Millett, Ronald C. Minkoff, Domenick Napoletano, John M. Nonna, Alan J. Pierce, Bruce J. Prager, Deborah A. Scalise, Ian Seth Weinstein, John Wilkinson.

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

The members were welcomed and Messrs. Fernandez, Galligan, Hetherington, Larose, Napoletano and Prager, as well as Ms. Barreiro and Ms. DeFio Kean, were introduced as incoming Executive Committee members for the term commencing on June 1, 2014. It was noted that Ellen G. Makofsky, who was unable to attend the meeting, will serve as Secretary of the Association effective June 1, 2014.

1. Approval of minutes of meetings. The minutes of the January 30, 2014 meeting were approved as distributed.
2. Consent calendar:
 - a. Request of Committee on Issues Affecting People with Disabilities for a name change

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

3. Report of Treasurer. In her capacity as Treasurer, Ms. Gerstman provided a financial report focusing on the Association Sections' income and expenses. Ms. Gerstman also reviewed selected revenue and expense items. The report was received with thanks.
4. Executive Committee vacancies. Mr. Lau-Kee reported on the following vacancies:
 - a. 12th District Vice President. Richard S. Weisman, who had been elected as 12th District Vice President for the term beginning June 1, 2014, had passed away suddenly and Carlos M. Calderon was selected by the district members of the House to fill the vacancy. The House will be asked to confirm the designation at the April 5, 2014 meeting.

- b. Member-at-large. T. Andrew Brown, a current member-at-large, had been elected as 7th District Vice President for the term beginning June 1, 2014. Mr. Lau-Kee recommended John S. Marwell to fill the vacancy. A motion was adopted to approve Mr. Marwell as member-at-large, subject to confirmation by the House at the April 5, 2014 meeting.
5. Report of Committee on Membership. In her capacity as chair of the Membership Committee, Ms. Wallach reported on recent membership developments, including dues income, non-renewing members dropped from membership on March 31, 2014, section roundtables, the Pathways to the Profession program, communities, and CLE webinars. The report was received with thanks.
6. Report of Audit Committee. In his capacity as chair of the Audit Committee, Mr. Karson, updated the Executive Committee on the work of the Audit Committee, including work to assure the independence of the Association's auditor and review of internal controls. He reported that the Audit Committee had met with the Association's auditor and received a clean report. The report was received with thanks.
7. 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 and new policies and initiatives. The report was received with thanks.
8. Report of President. Mr. Schraver highlighted the information contained in his printed report, a copy of which is appended to these minutes.
9. Reports of Vice Presidents. Ms. Castellano and Ms. Moy provided reports on local bar activities in their respective judicial districts. The reports were received with thanks.
10. Scheduling resolution to govern consideration of mandatory pro bono reporting. Mr. Miranda outlined a proposed resolution for consideration by the House at the April 5, 2014 meeting to govern the House's debate on mandatory pro bono reporting at its June 21, 2014 meeting. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:¹

RESOLVED, that the House of Delegates hereby adopts the following procedures to govern consideration at the June 21, 2014 meeting of the House of the Executive Committee Resolution on Mandatory Pro Bono Reporting:

1. The resolution will be circulated with other materials for the meeting to members of the House, sections and committees, county and local bar associations, and other interested parties.

¹ An amended resolution was adopted by the House at the April 5, 2014 meeting.

2. **Comments on or amendments to resolution:** Any comments on the resolution, or any proposed amendments to the resolution, shall be submitted in writing to the Secretary of the Association at the Bar Center by June 9, 2014. All comments and proposed amendments complying with this procedure shall be distributed to the members of the House in advance of the June 21, 2014 meeting.
3. **Speaking on the resolution:** Those members of the House intending to speak on the resolution are requested to provide notice to the Secretary and whether they intend to speak for, or against, the resolution by June 9, 2014. This notice is a courtesy for scheduling purposes and will not prevent the chair from recognizing speakers on the issue who fail to provide such notice.
4. **Consideration of the resolution at the June 21, 2014 meeting and any subsequent meetings:** The resolution will be scheduled for formal debate and vote at the June 21, 2014 meeting and considered in the following manner:
 - a. A representative of the Executive Committee shall be given an opportunity to present the resolution.
 - b. All those wishing to speak with regard to the resolution may do so only once for no more than three minutes.
 - c. The Executive Committee representative may respond to questions and comments as appropriate.
 - d. Procedural motions shall be considered out of order until debate on substantive issues is concluded.

It was noted that at the January House meeting, House member Robert L. Haig had made a motion to amend the Executive Committee's resolution which was approved by the House prior to the postponement of consideration of the resolution. In order to clarify the status of the resolution, a motion was adopted to conform the resolution in accordance with Mr. Haig's amendment, with the resolution now appearing as follows:

WHEREAS, the New York State Bar Association strongly supports and encourages voluntary pro bono services by its members to poor and underserved clients, and for adequate public funding of organizations engaged in providing legal services to poor and underserved clients; and

WHEREAS, the Appellate Divisions of the Supreme Court amended Rule 6.1(a)(1) of the New York Rules of Professional Conduct by increasing the aspirational number of pro bono hours to be provided annually by all lawyers from 20 to 50, effective May 1, 2013; and

WHEREAS, the Appellate Divisions of the Supreme Court amended Rule 6.1(a)(2) of the New York Rules of Professional Conduct by providing that lawyers should aspire to make annual financial contributions to organizations that provide legal services to poor persons in an amount at least equivalent to: (i) the amount typically billed by the lawyer (or the firm with which the lawyer is associated) for one hour of time, effective May 1, 2013; and

WHEREAS, concurrent with the amendments to Rule 6.1 as set forth above, section 118.1(e)(14) of the Rules of the Chief Administrator was enacted, effective May 1, 2013, requiring lawyers to report the following information on their biennial registration forms: (a) the number of hours that the lawyer voluntarily spent providing unpaid legal services to poor and underserved clients during the previous biennial registration period; and (b) the amount of voluntary financial contributions the lawyer made to organizations primarily or substantially engaged in providing legal services to the poor and underserved during the previous biennial registration period; and

WHEREAS, the Committee on Standards of Attorney Conduct (“COSAC”) of the New York State Bar Association (the “Association”) has proposed an amendment to the Comment to Rule 6.1 which would make the Comment consistent with the black letter text of Rule 6.1 as amended by the Appellate Divisions, to reflect the increase from 20 hours to 50 hours; and

WHEREAS, this amendment to the Comment to Rule 6.1 is ministerial only, and does not in any way constitute or reflect support, endorsement or approval by the Association of the amendments to Rule 6.1 of the New York Rules of Professional Conduct, nor of section 118.1 of the Rules of the Chief Administrator, which were promulgated without consultation with the Association and, to the extent they require mandatory reporting of pro bono services and mandatory reporting of financial contributions to organizations engaged in providing legal services to the poor and underserved, are contrary to established policy of the Association; it is therefore

RESOLVED, that the amendment to the Comment to Rule 6.1 proposed by COSAC be and hereby is adopted: and it is further

RESOLVED, that the Association reiterates and reaffirms its opposition to mandatory reporting of pro bono services and mandatory reporting of financial contributions to organizations engaged in providing legal services to the poor and underserved; and it is further

RESOLVED, that the Association shall continue to express its opposition to such mandatory reporting to the Chief Judge of the State of New York and the Presiding Justices of the Appellate Divisions of the Supreme Court of the State of New York, and shall pursue such other and further actions as may be appropriate,

for the purpose of achieving the repeal of Rule 118.1(e)(14) of the Rules of the Chief Administrator.

11. Report of Secretary/Committee on Resolutions. In his capacity as Secretary of the Association, Mr. Miranda highlighted the items contained in his written report, a copy of which is appended to these minutes. The report was received with thanks.
12. Reports of Executive Committee liaisons. Written and/or oral presentations were made by Messrs. Ayers, Barnes, Goldenberg and Young and Ms. Martin with respect to the sections and committees for which they serve as Executive Committee liaisons. The reports were received with thanks.
13. Executive Session. In executive session, the Executive Committee discussed personnel matters.
14. Update on legislative activities. Hermes Fernandez, chair of the Committee on Legislative Policy, updated the Executive Committee on legislative activity, particularly with respect to the 2014-2015 state budget process. The report was received with thanks.
15. Report and recommendations of Committee on Federal Legislative Priorities. John M. Nonna, chair of the committee, reviewed the committee's recommendations with respect to support for the amendment of the Voting Rights Act to address issues raised by the Supreme Court in striking down portions of the Act in 2013. After discussion, a motion was adopted to approve the report and recommendations of the Committee on Federal Legislative Priorities (with the deletion of the work "ideal" appearing at page 10) and to make as a priority the passage of an amendment to the Voting Rights Act to address the issues raised by *Shelby County v. Holder*, consistent with Association policy.
16. Reports and recommendations of Committee on Courts of Appellate Jurisdiction.
 - a. Proposed uniform Appellate Division rules. Denise A. Hartman, co-chair of the committee, outlined the committee's report recommending amendments to the rules of the four Appellate Division departments to provide greater uniformity. The committee agreed to a proposed amendment to the report to delete a reference to the Office of Court Administration and to clarify that "uniformity" refers to the Appellate Divisions, not other courts. After discussion, a motion was adopted to approve the report and recommendations.
 - b. Appellate Term manual. Cynthia F. Feathers, co-chair of the committee, reviewed a manual prepared by the committee to assist practitioners who handle cases in the Appellate Terms, which the committee plans to publish and make available to the courts and to lawyers. The report was received with thanks.
 - c. Proposed moot court program. Alan J. Pierce, a member of the committee, outlined a program the committee plans to institute to provide a moot court opportunity for lawyers with cases scheduled to be heard by the State Court of

Appeals. He noted that once the program is operational, it could be expanded to include Appellate Division cases. The report was received with thanks.

17. Report of Task Force on Family Court. Susan B. Lindenauer, co-chair of the Task Force, updated the Executive Committee with respect to the implementation of the recommendations contained in the Task Force's report that was approved by the House in January 2013. The report was received with thanks.
18. Report re strategic planning. Mr. Schraver reviewed the development several years ago of a staff strategic plan that was not presented to the Executive Committee; the Association strategic plan approved by the Executive Committee in November 2011 that focused on enhancing member value and investing in technology; and a technology-focused strategic plan prepared by the Association's Chief Technology Officer. He reported that there should be an integrated strategic plan for the Association, and he had appointed a working group of Executive Committee members to work with staff in preparing such a plan. The report was received with thanks.
19. Report of Chief Technology Officer. David Adkins, Chief Technology Officer, updated the Executive Committee with respect to technological advances taking place during the past year, technology metrics, and the technology strategic plan. The report was received with thanks.
20. Request of Dispute Resolution Section. John Wilkinson, chair of the Dispute Resolution Section, together with Stephen A. Hochman, co-chair of the Section's Committee on ADR in the Courts, outlined proposed court rules to provide for court-annexed mediation, highlighting the changes made to the proposal in response to comments received at the January 2014 Executive Committee meeting. After discussion, a motion was adopted not to approve the report.
21. Report of Committee on Legal Education and Admission to the Bar. Committee co-chairs Eileen D. Millett and Ian Seth Weinstein presented a report recommending the adoption of rules to permit early administration of the bar examination. After discussion, a motion was adopted to postpone consideration of the report until the June meeting in order to permit additional time for review and comment.
22. Report of President's Committee on Access to Justice and Committee on Legal Aid. Ms. Martin, in her capacity as co-chair of the Committee on Legal Aid, updated the Executive Committee with respect to the committees' study of mandatory pro bono reporting in other jurisdictions. The committees plan to analyze the results and prepare recommendations, with a report being published in late April. The report was received with thanks.
23. Report and recommendations of Committee on Law Practice Management. Mr. Gorgos, in his capacity as the committee's Executive Committee liaison, reviewed the committee's report recommending that the Association oppose that portion of the Tax Reform Act of 2013 that would require law firms with revenue in excess of \$10 million

to use the accrual method of accounting in place of the cash method of accounting. After discussion, a motion was adopted to approve the committee's report.

24. New Business.

- a. Mr. Schraver observed that Messrs. James, Romero, Myers, Gorgos, Millon, Abernethy and Ayers, as well as Ms. Moy, Ms. Castellano, Ms. Finerty, and Ms. Wallach, are rotating off the Executive Committee and that this is their last meeting. He thanked them for their service and their participation.
- b. A motion was adopted to thank Mr. Schraver for his service as President and chair of the Executive Committee for the year.

25. Date and place of next meeting.

Thursday and Friday, June 19-20, 2014

The Otesaga, Cooperstown

26. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



David P. Miranda
Secretary