

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 1, 2014**

Mr. Miranda presided over the meeting as Chair of the House.

PRESENT: Abbott; Abella; Aidala; Alcott; Alden; Alomar; Arenson; Baker; Barnes; Barreiro; Barrett; Baum; Bauman; Behe; Behrins; Bloom; Bracken; Brown, C.; Brown, T.A.; Bruno; Buholtz; Burke, W.; Burns; Buzard; Calareso; Calderón; Chandrasekhar; Chang; Christian; Christopher; Clarke; Cohen, D.; Cohen, O.; Coseo; Crummey; Denton; DiLorenzo; Doyle; Effman; England; Fallek; Fay; Feinberg; Fennell; Fernandez; Ferris; Finerty; First; Fisher; Flynn; Fox, G.; Freedman, H.; Friedman; Gaffney; Gallagher; Galligan; Genoa; Gensini; Gerace; Gerbini; Gerstman; Getnick; Giordano; Gold; Goldberg; Goldenberg; Gordon-Oliver; Gross; Grossman; Gutekunst; Gutierrez; Hage; Haig; Hanson; Harper; Hetherington; Himes; Hines; Hollyer; Hutter; Jaglom; James; Jochmans; Jones; Karson; Kean; Kearns; Kerson; Kiesel; Kirby; Klass; Klein; Koch; Kretser; Kyriakopoulos; LaRose; Lau-Kee; Lawrence; Lawton-Thames; Leber; Lessard; Leventhal; Levin; Levy; Lindenauer; Lugo; Madigan; Makofsky; Mandell; Marangos; Martin, E.; Martin, T.; Marwell; McCafferty; McCarron; McDonald; McKay; McNamara; Meacham; Meislahn; Meyers; Miller, M.; Minkoff; Minkowitz; Miranda; Modica; Mulhall; Napoletano; Nathanson; Nowotny; O'Donnell; Onderdonk; Ostertag; Pajak; Prager; Protter; Prudente; Radick; Ranni; Reitzfeld; Richman; Richter, A.; Richter, R.; Rivera; Rodner; Rosiny; Rosner; Rothengerg; Rothstein; Rowe; Ryan; Safer; Samuels, V.; Samuels, W.; Schofield; Schraver; Schwartz; Sen; Shafer; Shamoan; Shautsova; Shaw; Silkenat; Simmons; Slezak; Smith, S.; Sonberg; Spiro; Spitler; Spodek; Stern; Sullivan; Sunshine; Swanson; Sweet; Tennant; Terranova; Tesser; Thaler; Tilton; Vigdor; Warshawsky; Weinberger; Welch; Wildgrube; Williams; Wimpfheimer; Winograd; Witmer; Wolk; Wood; Yeung-Ha; Young; Younger; Zuchlewski; Zuckerman.

1. Approval of minutes of June 21, 2014 meeting. The minutes were deemed accepted as previously distributed.
2. Report of Treasurer. Sharon Stern Gerstman, Treasurer, provided a financial report focusing on the Association's income, including that derived from membership dues, investment income, royalties, and the Annual Meeting. In addition, she provided an update with respect to 2014 CLE and membership dues income. The report was received with thanks.
3. Report and recommendations of Finance Committee re proposed 2015 income and expense budget. John S. Marwell, chair of the Finance Committee, reviewed the proposed budget for 2015, which projects income of \$25,310,750, expenses of \$25,180,870, and a projected surplus of \$129,880. A motion was adopted to approve the proposed 2015 budget summary with one member opposing approval.
4. Report and recommendations of Committee on Bylaws. Eileen E. Buholtz, chair of the Bylaws Committee, together with committee member Lesley Friedman Rosenthal,

presented the Committee's proposals to amend the Bylaws (a) to bring the Bylaws into compliance with the Nonprofit Revitalization Act of 2013; (b) to update provisions that are not required to be amended in order to comply but which are recommended by the committee; and (c) to make non-substantive changes to delete unnecessary provisions and clarify others. Subscription forms were provided to the delegates to subscribe to the proposed amendments in order to place the proposed amendments on the agenda for action at the Annual Meeting. Following tabulation of the completed forms, Mr. Miranda reported that the proposed amendments had received the required subscriptions to permit their consideration at the Annual Meeting.

5. Report of President. Mr. Lau-Kee highlighted the information contained in his printed report, a copy of which is appended to these minutes.

6. Report of Nominating Committee. Vincent E. Doyle III, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2015-2016 Association year: President Elect: Claire P. Gutekunst, Yonkers; Secretary: Ellen G. Makofsky, Garden City; Treasurer: Sharon Stern Gerstman, Buffalo; Vice Presidents: 1st District – Taa R. Grays, New York and Michael Miller, New York; 2nd District – Domenick Napoletano, Brooklyn; 3rd District – Hermes Fernandez, Albany; 4th District – Matthew R. Coseo, Ballston Spa; 5th District – Stuart J. Larose, Syracuse; 6th District – Alyssa M. Barreiro, Binghamton; 7th District – T. Andrew Brown, Rochester; 8th District – Cheryl Smith Fisher, Buffalo; 9th District – Sherry Levin Wallach, Mount Kisco; 10th District – Scott M. Karson, Melville; 11th District – Richard M. Gutierrez, Forest Hills; 12th District – Steven E. Millon, New York; 13th District – Michael J. Gaffney, Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2015: David Louis Cohen, Kew Gardens; Evan M. Goldberg, New York; John S. Marwell, White Plains; and Sheldon K. Smith, Buffalo (Diversity Seat). Nominated as Section Member-at-Large was Ira S. Goldenberg, White Plains. Nominated as Young Lawyers Section Member-at-Large was Michael L. Fox, Walden. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2015-2017 term: Claire P. Gutekunst, Yonkers; Seymour W. James, Jr., New York; Glenn Lau-Kee, New York; Bernice K. Leber, New York; and Stephen P. Younger, New York. The report was received with thanks.

6. Executive Committee resolution re mandatory pro bono reporting. Mr. Lau-Kee reviewed his and President-Elect David P. Miranda's discussions with Chief Administrative Judge A. Gail Prudenti and Helaine Barnett, chair of the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York, regarding the rule requiring attorneys to report pro bono hours and contributions on their biennial registration form. He reported that there was an agreement in principle to anonymous reporting; reporting in the aggregate; the expansion of pro bono definitions; and maintaining information already submitted as confidential. David P. Miranda, William T. Russell, Jr., and Barbara Carol Moses would serve as a subcommittee to review the implementation of these items. He then reviewed the resolutions he had submitted – one seeking amendment of the mandatory pro bono reporting rule and one to amend Comment 2 to Rule 6.1 of the Rules of Professional Conduct. A motion was adopted to

substitute these resolutions for the Executive Committee resolution then pending. A motion was made to approve the resolution seeking amendment of the rule, after which a motion to amend by adding the phrase “and their clients’ privilege of confidentiality” failed on voice vote. After discussion, the following resolution was approved on voice vote:

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

WHEREAS, 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 New York State Bar Association, which was not consulted in advance about such rule, seeks to amend the rule (a) to maintain the truly voluntary nature of pro bono service, (b) to protect the privacy of attorneys, and (c) to recognize the breadth and scope of ways in which attorneys voluntarily contribute to society and to their communities;

NOW, THEREFORE, IT IS

RESOLVED, that the President of the Association is hereby authorized and directed to request that the Administrative Board of the Courts amend section 118.1 of the Rules of the Chief Administrator to (a) provide for reporting of pro bono hours and financial contributions to the Office of Court Administration by attorneys on an anonymous basis only; (b) provide for reporting of pro bono hours and financial contributions by attorneys to the public on an aggregate basis only; and (c) provide for additional categories of reportable hours and financial contributions given by attorneys towards pro bono work and other public service; and it is further

RESOLVED, that the President of the Association is hereby authorized and directed to request that the Office of Court Administration (a) designate any information regarding pro bono hours and financial contributions by attorneys submitted since May 1, 2013, in connection with attorney registration forms as confidential, and (b) not release any such information to the public except on an aggregate basis only.

A motion was made to approve the resolution amending Comment 2 to Rule 6.1 of the Rules of Professional Conduct. After discussion, the following resolution was adopted on voice vote:

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 New York State Bar Association's Committee on Standards of Attorney Conduct has proposed an amendment to Comment [2] of Rule 6.1 to change the aspirational number of hours of pro bono service from 20 to 50, thereby conforming the language of the Comment to that of the Rule;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the recommendation of the Committee on Standards of Attorney Conduct to amend Comment [2] to Rule 6.1 to change the aspirational number of hours of pro bono service from 20 to 50 in order to conform to the amendment adopted by the Appellate Division.

House member Steven H. Richman then moved the adoption of the following resolution:

RESOLVED, *that in accordance with its established policy, the New York State Bar Association* adopt as one of its highest legislative priorities for 2014 and 2015, the enactment of an amendment to Section 468-a(3) of the Judiciary Law, explicitly prohibiting the Administrative Board of the Courts and/or the Chief Administrator from promulgating any Rule requiring attorneys to report on the pro bono service the attorney provides or the financial contributions by an attorney to organizations engaged in providing legal services to the poor and underserved.

After discussion, the motion failed on voice vote.

Hon. Rosalyn Richter, Hon. Jeffrey Sunshine and Hon. Ellen Spodek abstained from participating in the discussion and votes with respect to this agenda item.

8. Report and recommendations of Committee on Legal Education and Admission to the Bar. Committee co-chairs Eileen D. Millett and Dean Patricia E. Salkin outlined the committee's report regarding a proposal of the State Board of Law Examiners to administer the Uniform Bar Examination (UBE) in July 2015. They noted that while the UBE offers potential benefits for test-takers, the committee believed that the proposal requires additional study and recommended that implementation of the UBE be delayed until such studies could take place. A motion was made to approve the resolution submitted by the committee, after which a motion to amend to add the phrase "and is authorized to take such other and further action as necessary to prevent implementation in July 2015" to the final "Resolved" clause was approved by a standing vote of 105-75 (Mr. Lau-Kee abstained). After discussion, the following resolution was approved on voice vote:

WHEREAS, on October 6, 2014 the New York Court of Appeals issued a Request for Comment on a proposal of the State Board of Law Examiners to replace the current New York bar examination with the Uniform Bar Examination for the administration of the July 2015 administration of the bar examination, with a comment deadline of November 7, 2014; and

WHEREAS, the New York State Bar Association's Committee on Legal Education and Admission to the Bar undertook a [peripheral](#) review of the proposal, the use of the Uniform Bar Examination in other states, and the possible benefits of the Uniform Bar Examination; and

WHEREAS, concerns have been expressed with respect to the too-short comment period; the advantages and disadvantages to New York State residents, the New York Legal profession and their clients of such a change; the lack of New York-specific studies; the lack of a disparate impact analysis of the effect on the profession and the public; the impact on test-takers of the requirement of passage of both the Uniform Bar Examination and the New York Law Exam; the lack of pre-testing of the questions that would appear on the New York Law Exam; and the fact that many current law students have selected curricula and bar review courses based upon the current examination; and

WHEREAS, the Committee has concluded that the proposal requires a fair and reasonable time for study and discussion of the impact associated with a dramatic change to the bar examination and recommends that a decision on the implementation of the Uniform Bar Examination in New York be delayed until further study as to disparate impact, bar pass rates and costs can be completed;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Committee on Legal Education and Admission to the Bar; and it is further

RESOLVED, that the Association urges that the Uniform Bar Examination not be administered in July 2015; and it is further

RESOLVED, that the Association urges that this proposal be reviewed to address the concerns expressed above and that there be an additional comment period to allow sufficient time to address the comments in the Association's report with notice being given to all interested bar associations, including minority bar associations; and it is further

RESOLVED, that if after appropriate review and consultation it is determined to implement the Uniform Bar Examination, such implementation not take place until adequate notice of a minimum of two years is provided to enable law schools and then-current law students to prepare for the bar examination; and it is further

RESOLVED, that the President of the Association is directed to submit the report and recommendations to the Court of Appeals as the Association's comments in accordance with the Request for Comment and to urge the Board of Law Examiners to review the concerns expressed and conduct the needed studies, and is authorized to take such other and further action as necessary to prevent implementation in July 2015.

Hon. Rosalyn Richter abstained from participating in the discussion and vote with respect to this agenda item.

9. Proposed amendment to Rules of the House of Delegates. House member Steven H. Richman moved the adoption of a proposed amendment to the House rules that would prohibit a non-House member employed by the Unified Court System from addressing the House or the Association unless he or she consents to respond to questions from members for a time at least equal to the amount of time of his or her remarks. After discussion, the motion failed on voice vote.
9. Report of Executive Director. David R. Watson, Executive Director, provided his assessment of the Association's status, strengths and challenges. The report was received with thanks.
10. Report of The New York Bar Foundation. Cristine Cioffi, President of The New York Bar Foundation, presented an update with regard to recent developments, highlighting fellowship recipient Hannah Carmel; a Foundation fundraiser held by the Young Lawyers Section; an award booklet to be distributed at Annual Meeting; and the upcoming Fellows' Dinner in January 2015. The report was received with thanks.
11. Administrative items. Mr. Miranda reported on the following items:
 - a. He announced that the House of Delegates Dinner will take place on Thursday, January 29, 2015 at the Metropolitan Club.
 - b. He announced that the Committee on Leadership Development would host a luncheon immediately following the meeting to discuss leadership opportunities.
12. Date and place of next meeting. Mr. Miranda announced that the next meeting of the House of Delegates would take place on Friday, January 30, 2015 at the Hilton New York, New York City.
13. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully submitted,



Ellen G. Makofsky
Secretary