

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
BAR CENTER, ALBANY, NEW YORK
OCTOBER 31, 2014**

Present: Members Barnes, Barreiro, Brown, Calderón, Christian, Cohen, Fernandez, Fisher, Gaffney, Galligan, Gerstman, Goldberg, Goldenberg, Gordon-Oliver, Gutierrez, Hetherington, Karson, Kean, Larose, Lau-Kee, Makofsky, Martin, Marwell, Miranda, Napoletano, Prager, Safer, Schraver, and Young.

Guests: Eileen E. Buholtz, Vincent E. Doyle III, Eileen D. Millett, John M. Nonna (by telephone), Lesley Friedman Rosenthal, Dean Patricia E. Salkin (by telephone), Deborah A. Scalise (by telephone), Hon. Edward O. Spain, Sherry Levin Wallach.

Mr. Lau-Kee presided over the meeting as President of the Association.

1. Approval of minutes of meetings. The minutes of the June 19-20, 2014 meeting and the September 17, 2014 telephone conference were approved as distributed.
2. Consent calendar:
 - a) Amendment to Bylaws of Judicial Section
 - b) Amendment to Bylaws of NYS Conference of Bar Leaders

The amendment to the Bylaws of the Judicial Section was approved by voice vote. The amendment to the Bylaws of the NYS Conference of Bar Leaders was removed from the consent calendar and a motion was adopted to ask the Conference to reconsider the proposal.

3. Report of Treasurer. In her capacity as Treasurer, Ms. Gerstman 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.
4. Report of President. Mr. Lau-Kee highlighted the information contained in his printed report, a copy of which is appended to these minutes. In addition, he introduced Elizabeth Derrico as the Association's new Associate Executive Director of Strategic Member Engagement.
5. Report of Committee on Membership. Sherry Levin Wallach, chair of the Membership Committee, reported on recent membership developments, including the committee's focus on the Pathways to the Profession program, a new student loan consolidation program, and the development of website Communities for law schools. She also reported that in promoting group faculty memberships for law schools as was approved at

the June Executive Committee meeting, the committee found that many law schools believed they could not require faculty members to join the Association. She requested Executive Committee approval to eliminate the requirement that all faculty members join in order to qualify for the reduced dues, and a motion to that effect was approved. The remainder of the report was received with thanks.

6. 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.
7. Reports of Executive Committee liaisons. Mr. Schraver and Ms. Makofsky provided reports with respect to the sections for which they serve as Executive Committee liaisons. The reports were received with thanks.
8. Reports of Vice Presidents. Messrs. Brown and Fernandez provided reports on local bar activities in their respective Judicial Districts. The reports were received with thanks.
9. Report and recommendations of Steering Committee on Legislative Priorities.
 - a) Committee on Legislative Policy. Hermes Fernandez, chair of the Committee on Legislative Policy, reported on the committee's recommendations of the following items for inclusion on the list of the Association's state legislative priorities: integrity of New York's justice system; wrongful conviction reform; increase the age of criminal responsibility; sealing records of conviction of certain crimes; the Franchise Act; increased voter participation; and support for the legal profession.

After discussion, a motion was adopted to approve these items as the Association's 2015 state legislative priorities.
 - b) Committee on Federal Legislative Priorities. John M. Nonna, 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 2015 federal legislative priorities: integrity of the justice system; the Paycheck Fairness Act; support for increased voter participation; support for legislation to address immigration representation; support for states' authority to regulate the tort system; and support for the legal profession.

After discussion, a motion was adopted to approve these items as the Association's 2015 federal legislative priorities.
10. 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.

11. Report of Special Committee on CLE. Mr. Miranda, in his capacity as chair of the committee, outlined the work of the committee to date, noting that the committee is in the process of preparing a report with the goal of developing recommendations for consideration by the Executive Committee. The report was received with thanks.
12. 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. He reviewed proposed resolutions he had submitted for the House's consideration and advised that he would move to substitute these resolutions for the Executive Committee resolution that was pending. After discussion, a motion was adopted to endorse the substitution of Mr. Lau-Kee's resolutions for favorable action by the House. A second motion was adopted to approve Mr. Lau-Kee's motion for favorable action by the House. A third motion was adopted to disapprove all other resolutions submitted in connection with this issue if substitution is approved by the House and if not withdrawn by the proponents. Ms. Kean abstained from voting on the final motion.
13. Report and recommendations of Finance Committee re 2014 proposed income and expense budget. In his capacity as chair of the Finance Committee, Mr. Marwell 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 endorse the proposed budget for favorable action by the House.
14. 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. After discussion, a motion was adopted to recommend that the House subscribe to the amendments in order to permit them to be brought before the membership at the Annual Meeting. Mr. Young abstained from participating in the vote.
15. Report and recommendations of Committee on Children and the Law. Hon. Edward O. Spain, a past chair of the committee, reviewed proposed standards for attorneys representing children in the areas adoption proceedings; persons in need of supervision proceedings; child protective, foster care, destitute child, and termination of parental rights proceedings; custody, visitation, and guardianship proceedings; and juvenile delinquency proceedings. After discussion, it was agreed that the standards should be

reviewed by the Criminal Justice and Family Law sections before approval. The report was received with thanks.

16. 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. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:¹

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 lack of New York-specific studies; the lack of a disparate impact analysis; 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

¹ An amended resolution was adopted by the House on November 1, 2014.

RESOLVED, that the Association urges that this proposal be reviewed to address the concerns expressed above; 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.

17. Report re technology. Mr. Adkins agreed to forward his written report to the members of the Executive Committee after the meeting.
18. Proposed amendments to Rules of the House of Delegates. In his capacity as chair of the House, Mr. Miranda outlined a proposed amendment to the House rules submitted by House member Steven H. Richman. The proposed amendment 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, a motion was adopted to recommend that the House not adopt the proposed amendment.
19. 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.

20. New Business. Vincent E. Doyle III, as chair of the Nominating Committee, requested that the Executive Committee designate Jessica Thaler as a member of the Nominating Committee from the Ninth Judicial District. A motion was adopted to designate Ms. Thaler, *nunc pro tunc*, as a member.
21. Date and place of next meeting.
Thursday, January 29, 2015
Hilton Midtown New York, New York City
22. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ellen G. Makofsky". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Ellen G. Makofsky
Secretary