

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 21-22, 2012**

PRESENT: Members Abernethy, Brown, Christian, Doyle, Finerty, Franchina, Gaffney, Gerstman, Gorgos, Gutekunst, Gutierrez, James, Lau-Kee, Makofsky, Martin, Millon, Miranda, Myers, Romero, Schraver, Slezak, Wallach, and Young.

Guests: Mark H. Alcott, Jojo Annobil, Donald C. Doerr, Hermes Fernandez, Robert M. Harper, Jennifer F. Hillman, Robert P. Knapp, III, Henry E. Kruman, David A. Lewis, Susan B. Lindenauer, Joanne Macri, Kathryn Grant Madigan, Ronald Minkoff, and David S. Rothenberg.

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

1. Mr. James called the meeting to order, and Catherine A. Christian, Michael J. Gaffney, Sharon Stern Gerstman, Richard M. Gutierrez, Edwina Frances Martin, and David M. Schraver were welcomed as new/returning members of the Executive Committee.
2. Approval of minutes of meeting. The minutes of the March 29, 2012 meeting and the May 17, 2012 teleconference meeting were accepted as distributed.
3. Consent calendar.
 - a) Approval of amended stated purpose of Committee on Lawyers in Transition
 - b) Approval of amended stated purpose of Committee on Children and the Law
 - c) Approval of amendments to Bylaws of the Labor and Employment Law Section
 - d) Confirmation of Audit Committee appointment

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

4. Report of the Treasurer. Ms. Gutekunst, in her capacity as Treasurer, reported that total revenue through May 31, 2012 is \$19.3 million, an increase of \$1.7 million from the previous year, and total expense is \$10.6 million, an increase of \$28,000 as compared to 2011. The operating surplus is \$8.6 million, an increase of \$1.6 million from the previous year. Ms. Gutekunst then provided a review of major income and expense changes. The report was received with thanks.
5. Discussion of presidential initiatives and new committees. Mr. James outlined initiatives he planned to pursue during his term as president, for which four new entities would be created: a Task Force on Criminal Discovery Reform; a Special Committee on Voter Participation; a Special Committee on Prisoner Re-Entry; and a Special Committee on Human Trafficking. After discussion, a motion was adopted to approve the creation of the four groups.

6. Reports and recommendations of Trusts and Estates Law Section. The reports were presented by Section executive committee members Robert M. Harper and Jennifer F. Hillman.
 - (a) Proposed amendments to EPTL §11-1.7. The proposed amendments would amend the statute with respect to fiduciary exoneration clauses in inter vivos trusts. After discussion, a motion was adopted to approve this affirmative legislative proposal.
 - (b) Proposed amendments to EPTL §5-1.2. The proposed amendments would amend the statute with respect to the disqualification of spouses in cases involving decedents who married when they lacked the required mental capacity. After discussion, a motion was adopted to postpone consideration until the November 2, 2012 meeting to permit the section to confer with the Family Law Section as to whether differentiation on the basis of grounds is appropriate.
7. Report of Lawyer Assistance Committee. Henry E. Kruman, 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 report was received with thanks. The committee then presented an award to Vincent E. Doyle III for his support of the Program during his presidency.
8. 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 outlined the committee's recommendations with respect to reducing delays and the expense of litigation in federal courts. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House. An additional motion was adopted to present a resolution and report on this topic to the ABA House of Delegates.
9. Report of Task Force on Family Courts. Task Force Co-Chair Susan B. Lindenauer reported on the committee's work to date in examining the challenges faced by Family Courts and developing recommendations that would better enable the courts to meet the demands placed upon them. She noted that the Task Force plans to issue its final report for consideration by the House at its November 3, 2012 meeting. The report was received with thanks.
10. Discussion of Executive Committee liaison responsibilities and duties of Vice Presidents. Mr. James 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. James also reviewed the responsibilities of Vice Presidents, as set forth in the By-laws, 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.

11. 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.
12. Report of Executive Subcommittee on Continuing Legal Education. Mr. Myers, Chair of the subcommittee, reviewed a draft set of guidelines for section and committee CLE programming. Several recommendations for amendments were made by members, and a revised draft will be reviewed by the Executive Committee during a conference call meeting.
13. Report and recommendation of Committee on Committees. Donald C. Doerr, Chair of the committee, reviewed the committee's report and recommendations with respect to the operation of five Association committees, as well as recommendations that a central repository be developed for committee mission statements and that its previous recommendation to define entities in the Association Bylaws should be forwarded to the Bylaws Committee for action. After discussion, a motion was adopted to approve the report and recommendations.
14. Discussion of Chief Judge's Pro Bono Initiative. Mr. Schraver reported that a Working Group comprised of representatives of interested sections and committees, as well as a law student representative, had prepared a report identifying issues raised by the initiative and how they might be addressed. After discussion, including the appropriate definition of "pro bono" and an agreement that the effective date of implementation of the initiative should be delayed to permit sufficient time for careful consideration of all the issues, it was agreed that the Working Group's recommendations should be sent to the Chief Judge's Advisory Committee on Pro Bono Admission Requirements in the form of a letter from Mr. James.
15. Report of the Secretary. Mr. Miranda reviewed progress in addressing the recommendations contained in the reports of the Task Force on the Future of the Legal Profession and the Task Force on New York Law in International Matters, identifying several recommendations that are not being pursued. It was agreed that as several of these recommendations relate to law schools, the schools should be contacted as to their activities with respect to these recommendations.
16. Reports of Executive Committee Liaisons. Reports from Messrs. Millon and Miranda and Ms. Finerty and Ms. Wallach regarding the activities of the sections and committees to which they are assigned as liaison were received with thanks.

17. Report of Committee on Membership.
- (a) Update on committee activities. 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, and thanked the Executive Committee members for their outreach to lapsed members. The report was received with thanks.
 - (b) Proposed Bylaws amendments re membership categories. Mr. Lau-Kee and Ms. Wallach reviewed the committee's recommendations to amend the Bylaws with respect to membership categories. After discussion, a motion was adopted to approve the report and refer the recommendations to the Committee on Bylaws.
18. Report and recommendations of the Corporate Counsel Section. David S. Rothenberg, the Section's chair, outlined proposed amendments to Part 522 of the Rules of the Court of Appeals to permit pro bono service by attorneys admitted to work as in-house counsel pursuant to Part 522. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House.
19. Report and recommendations of Special Committee on Immigration Representation. Committee Co-Chairs Jojo Annobil and Joanne Macri outlined the committee's recommendations with respect to standards and quality of immigration representation and meeting the unmet representation needs of the upstate immigrant population. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, research indisputably demonstrates that there is an urgent need for quality and affordable representation in immigration removal proceedings;

WHEREAS, respondents in immigration proceedings face mandatory detention, deportation and, often times, permanent expulsion from the United States with no constitutional right to government-appointed legal representation;

WHEREAS, the stakes in removal proceedings are high and success in avoiding the dire consequences of removal depends upon whether an individual has competent counsel and adequate legal representation;

WHEREAS, there is a dearth of adequate legal representation in U.S. immigration matters available to respond to the dramatic and rapid escalation in immigration enforcement and an exponential increase in the detention, removal and expulsion of immigrants from the United States resulting in the separation from United States citizen and lawful permanent resident family members, loss of income and, in some cases, possible persecution in the receiving country;

WHEREAS, the Executive Office for Immigration Review's Recognized Organizations and Accredited Representatives program, in its current state, cannot begin to adequately address the urgent need for increased representation until it can build a ca-

dre of adequately trained and supervised accredited representatives available to assist in meeting the legal needs of indigent immigrants;

WHEREAS, the New York State Bar Association Special Committee on Immigration Representation was appointed to study these issues and has prepared a comprehensive report containing proposed standards for representation and other recommendations to address access to justice for immigrants in removal proceedings concerns;

Now, therefore, it is,

RESOLVED, that the New York State Bar Association hereby accepts the report of the Special Committee on Immigration Representation, approves the proposed Standards for Quality of Representation of Clients in Immigration Cases contained therein, and approves in concept the Special Committee's other recommendations; and it is further

RESOLVED, that the Association reaffirms its commitment to enhancing the quality and availability of legal representation; 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, legal services providers and other entities for their consideration and to take such other and further steps as they may deem warranted to implement this resolution.

An additional motion was adopted to present a resolution and report on this topic to the ABA House of Delegates.

20. Report and recommendations of Committee on Civil Practice Law and Rules. Robert P. Knapp, III, chair of the committee, outlined the committee's affirmative legislative proposal to amend the CPLR with respect to appeals from final judgments. He noted that the committee had conferred with the Committee on Courts of Appellate Jurisdiction and that the original proposal had been amended to meet the concerns of the latter committee. After discussion, a motion was adopted to approve the report and recommendations.
21. Reports and recommendations of Committee on Standards of Attorney Conduct. The reports and recommendations were presented by committee member Ronald Minkoff.
 - (a) Amendments to Statement of Client's Rights and Statement of Client's Responsibilities. Mr. Minkoff reviewed proposed amendments to these documents, noting that the changes were intended to update the documents to reference the Rules of Professional Conduct rather than the Code of Professional Responsibility and to

account for new technology. He also advised that since the Statement of Client's Rights is contained in the Appellate Division Rules, it will be necessary to submit that document to the court for its consideration. After discussion, a motion was adopted to endorse the amendments for favorable action by the House.

- (b) Proposed rule re temporary practice in New York. Mr. Minkoff outlined a proposed Part 523 of the Rules of the Court of Appeals to permit lawyers admitted in other jurisdictions to provide temporary legal services in New York under limited circumstances. After discussion, a motion was approved to divide the question, with separate votes on the proposal regarding temporary practice and the proposal regarding practice pending admission. Motions were then adopted to endorse both for favorable action by the House.
- 22. Report of President. Mr. James highlighted the information contained in his printed report, a copy of which is appended to these minutes.
- 23. Report of Task Force on Nonlawyer Ownership. Task Force Chair Stephen P. Younger and Vice Chair David A. Lewis reviewed the work of the Task Force to date, including its review of the work of the ABA Commission on Ethics 20/20 and the results of a survey of the membership with respect to nonlawyer ownership, and reported that the Task Force had concluded that there should be no changes in the rules relating to nonlawyer ownership at this time. The Task Force will present its report to the House of Delegates at the November 3, 2012 meeting. The report was received with thanks.
- 24. Report on legislative matters. Hermes Fernandez, chair of the Committee on Legislative Policy, updated the Executive Committee on the 2012 legislative session, particularly with respect to the Association's legislative priorities. The report was received with thanks.
- 25. 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 2012 House of Delegates meeting. The report was received with thanks.
- 26. Discussion of co-sponsorship of ABA resolutions. This item was withdrawn and will be considered during a teleconference meeting.
- 27. Reports of Vice Presidents. Reports were received with thanks from Ms. Slezak as Fourth District Vice President, Mr. Myers as Fifth District Vice President, and Mr. Gorgos as Sixth District Vice President.
- 28. Report and recommendations of Executive Subcommittee to Review Association Publications. Kathryn Grant Madigan, chair of the subcommittee, reported that the subcommittee recommended that Hon. Jonathan Lippman, Gary A. Munneke, Thomas E. Myers and Gary D. Spivey be reappointed for an additional term as a member of the Journal Board of Editors and that Hon. Barry Kamins be appointed to fill the vacancy created by the expiration of the term of Mary Grace Conneely. After discussion, a motion was adopted to approve the subcommittee's recommendations.

29. New Business.

Report and recommendations of Committee on Annual Award. Mr. James reported on the committee's recommendation regarding the presentation of the 2013 Association Gold Medal. After discussion, a motion was adopted to approve the committee's recommendation.

30. 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 "David P. Miranda". The signature is written in a cursive style with a large initial "D".

David P. Miranda
Secretary