

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 7, 2015**

Ms. Gutekunst presided over the meeting as Chair of the House.

PRESENT: Aidala; Alcott; Arenson; Barcham; Barreiro; Barrett; Bauman; Behe; Block; Bonina; Brown, T.A.; Buholtz; Burns, S.; Calcagni; Carola; Chambers; Chandrasekhar; Christopher; Cilenti; Cohen; Connery; Crummey; Dean; Denton; Doyle; Effman; England; Fallek; Fennell; Finerty; First; Fishberg; Fisher; Flynn; Fox, G.; Fox, M.; Freedman, H.; Freedman, M.; Friedman; Gaffney; Gallagher; Galligan; Gensini; Gerace; Gerbini; Gerstman; Getnick; Glover; Gold; Goldenberg; Goldschmidt; Gordon-Oliver; Greenberg; Grogan; Gross; Grossman; Gutekunst; Gutierrez; Hage; Hall; Halpern; Heath; Hersh; Hetherington; Himes; Hines; Honig; Hyer; Jaglom; James; Jochmans; Kamins; Karson; Kase; Kean; Kenney; Kiesel; Klass; Kobak; Krausz; LaRose; Leber; Levin; Lewis; Lindenauer; Madigan; Makofsky; Mancuso; Mandell; Marangos, D.; Marangos, J.; Marinaccio; Maroney; Martin, D.; Martin, E.; Marwell; McCafferty; McKay; McKeegan; Meacham; Miller, M.; Minkowitz; Miranda; Moretti; Moskowitz; Mulhall; Napoletano; Nowotny; O'Donnell, J.; O'Donnell, T.; Ogden; Ostertag; Prager; Prudente; Ranni; Raskin; Reitzfeld; Richter; Robertson; Rodriguez; Romero; Rosiny; Rothenberg; Rothstein; Ryba; Samuels, V.; Scheinberg; Schrauer; Sciocchetti; Shafer; Sheehan; Sigmond; Silkenat; Silverman; Smith, S.; Sonberg; Spierer; Spiro; Spitler; Standard; Stanislaus; Steinhardt; Stines; Strong; Strenger; Sunshine; Terranova; Tesser; Tully; Udell; Wallach; Walsh; Weathers; Weinberger; Weinblatt; Welch; Westlake; Wicks; Wildgrube; Williams; Wimpfheimer; Winograd; Wood; Yeung-Ha; Younger.

1. Approval of minutes of June 20, 2015 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 2015 CLE and membership dues income. The report was received with thanks.
3. Report and recommendations of Finance Committee re proposed 2016 income and expense budget. John S. Marwell, chair of the Finance Committee, reviewed the proposed budget for 2016, which projects income of \$24,390,450, expenses of \$24,379,370, and a projected surplus of \$11,080. A motion was adopted to approve the proposed 2016 budget.
4. Report and recommendations of Committee on Bylaws. Eileen E. Buholtz, chair of the Bylaws Committee, presented the Committee's proposals to amend the Bylaws to provide updates and clarifications. 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, Ms.

Gutekunst reported that the proposed amendments had received the required subscriptions to permit their consideration at the Annual Meeting.

5. Report of President. Mr. Miranda highlighted the information contained in his printed report, a copy of which is appended to these minutes.
6. Report of Nominating Committee. Seymour W. James, Jr., chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2016-2017 Association year: President Elect: Sharon Stern Gerstman, Buffalo; Secretary: Ellen G. Makofsky, Garden City; Treasurer: Scott M. Karson, Melville; Vice Presidents: 1st District – Taa R. Grays, New York and Michael Miller, New York; 2nd District – Domenick Napoletano, Brooklyn; 3rd District – Henry M. Greenberg, Albany; 4th District – Matthew R. Coseo, Ballston Spa; 5th District – Stuart J. LaRose, Syracuse; 6th District – Alyssa M. Barreiro, Ithaca; 7th District – David H. Tennant, Rochester; 8th District – Cheryl Smith Fisher, Buffalo; 9th District – Sherry Levin Wallach, Mount Kisco; 10th District – Peter H. Levy, Jericho; 11th District – Karina E. Alomar, Ridgewood; 12th District – Steven E. Millon, New York; 13th District – Orin J. Cohen, Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2016: Earamichia N. Brown, New York City (Diversity Seat); Elena DeFio Kean, Albany; Bryan D. Hetherington, Rochester; Michael W. Galligan, New York City. Nominated as Section Member-at-Large was Bruce J. Prager, Mount Kisco. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2016-2018 term: Sharon Stern Gerstman, Buffalo; A. Thomas Levin, Mineola; Kathryn Grant Madigan, Binghamton; David P. Miranda, Albany; Kenneth G. Standard, New York City; and Alena Shautsova, Brooklyn (Young Lawyer Delegate). The report was received with thanks.
7. Report and recommendations of Committee on Standards of Attorney Conduct. Barbara S. Gillers, vice chair of the committee, outlined the comments prepared by the committee with respect to the Office of Court Administration's proposed court rules governing temporary practice in New York by out-of-state lawyers and licensing foreign lawyers as in-house counsel in New York. After discussion, a motion was adopted to approve the report and recommendations.
8. Report and recommendations of Committee on the New York State Constitution. Henry M. Greenberg, chair of the committee, presented the committee's report recommending that the state should establish a non-partisan preparatory Constitutional Commission as soon as possible in connection with the upcoming 2017 referendum on whether to convene a constitutional convention. After discussion, a motion was adopted to approve the report and recommendations.
9. Report and recommendations of Committee on Professional Discipline. Sarah Jo Hamilton, chair of the committee, outlined the committee's comments with respect to the report of the Chief Judge's Commission on Statewide Attorney Discipline. After discussion, a motion to amend to add a recommendation that Judiciary Law §90(10) be amended to add a requirement of due process in connection with suspensions failed, after

which a motion to amend to oppose the Commission's recommendation that a statewide coordinator of discipline was approved on a standing vote of 86-83. As amended, a motion was adopted to approve the report and recommendations. Messrs. Lau-Kee and Younger and Justice Chambers abstained.

10. Report and recommendations of Committee on Women in the Law. Ellen G. Makofsky, co-chair of the committee, together with committee member Susan L. Harper, reviewed the committee's report with respect to the Family and Medical Insurance Leave Act, which would provide paid leave for family care and medical emergencies. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, under current law workers who need to take a leave of absence from work to attend to a personal or family medical emergency or care for a newborn or adopted child are not entitled to paid leave; and

WHEREAS, federal legislation has been proposed to establish an independent trust fund to provide paid leave benefits; and

WHEREAS, the New York State Bar Association's Committee on Women in the Law has issued a report supporting the enactment of the Family and Medical Insurance Leave Act;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association supports legislation to provide paid leave benefits; and it is

FURTHER RESOLVED, that the New York State Bar Association approves the report and recommendations of the Committee on Women in the Law; and it is

FURTHER RESOLVED, that the officers of the Association are hereby authorized to take such other and further action as may be necessary to implement this resolution.

11. Report and recommendations of the New York County Lawyers' Association. Michael Miller, First District Vice President, outlined the Association's proposal for amendments to New York Retirement and Social Security Law §60 to permit state-paid judges to elect to have their beneficiaries receive a pension in lieu of regular death benefits upon their death while in office. After discussion, motions were adopted to approve the report and recommendations and the following resolution:

WHEREAS, under Section 60 of the New York State Retirement and Social Security Law, New York State judges' pensions do not fully vest until retirement; and

WHEREAS, if a New York State judge dies in office, under Section 60 of the New York State Retirement and Social Security Law, the judge's beneficiaries do not receive the proceeds of his or her pension, but rather receive only a payment of death benefits in lieu of a pension; and

WHEREAS, these death benefits are generally of significantly less value than the pension to which such a deceased judge or his or her beneficiaries would be entitled to if the judge had retired before death; and

WHEREAS, under Section 60 of the New York State Retirement and Social Security Law, a deceased judge's beneficiaries may not elect any of the benefit options available to a judge who retires; and

WHEREAS, in recent years, for non-judicial personnel of the New York State court system subject to what has been referred to as the "Death Gamble," this disparity has, to some extent, been ameliorated by the proliferation of early retirement opportunities afforded to most public employees; and

WHEREAS, New York State judges have not been able to take advantage of these early retirement opportunities because they have been excluded as a group from each of the relevant statutes and early retirement incentives; and

WHEREAS, legislation enacted in 2000 removed the "Death Gamble" for thousands of police officers, fire fighters, and teachers, but specifically excluded members of the judiciary; and

WHEREAS, it is unfair that many New York State judges, most of whom become judges later in life, must continue in service at some risk to their families' financial welfare; and

WHEREAS, not only is this grossly unfair in and of itself, it is also unfair that New York State judges, who are the cornerstone of our state's justice system, are excluded from the benefit options available to most other state employees; and

WHEREAS, the "Death Gamble" may be yet another disincentive for many to undertake judicial service; and

WHEREAS, the New York County Lawyers Association issued a report and resolution on June 8, 2015 calling for an amendment to Section 60 of New York's retirement and Social Security Law, to alleviate the effects of this unfair situation;

NOW, THEREFORE, IT IS

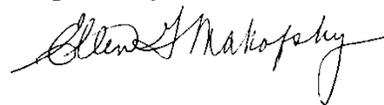
RESOLVED, that the New York State Bar Association urges an amendment to Section 60 of New York's Retirement and Social Security Law, to permit state-paid judges and justices of the Unified Court System to elect to have their beneficiaries receive a pension in lieu of the regular death benefit, upon their death while in service; and it is further

RESOLVED, that the amendment to New York's Retirement and Social Security Law should also provide that if a judge did not make the aforementioned election

prior to death, the designated beneficiary of the judge's death benefit be authorized to make the election for the deceased judge posthumously and to choose the pension payment options contained in Section 90 of New York's Retirement and Social Security Law.

12. Report of The New York Bar Foundation. Lesley Friedman Rosenthal, Vice President of The New York Bar Foundation, presented a report on some of The Foundation's grantees and The Foundation's efforts to increase participation. She observed that at present The Foundation can fund only one-third of the grant applications it receives. The report was received with thanks.
13. Administrative items. Ms. Gutekunst reported on the following items:
 - a. Delegates had at their places a notice regarding the 2015-2016 Leadership Directory and she asked that delegates who wish to receive a printed copy of the directory to complete the card and turn it in to the staff.
 - b. She announced that the House of Delegates Dinner will take place on Thursday, January 28, 2016 at the Metropolitan Club, 1 East 60th Street, New York City.
 - c. She announced that the Committee on Leadership Development would host a luncheon immediately following the meeting to discuss leadership opportunities.
 - d. Past President Haliburton Fales II had passed away on November 2, 2015, and she noted that a formal memorial would be presented in his honor at the January 29, 2016 meeting. The delegates observed a moment of silence in his memory.
14. Date and place of next meeting. Ms. Gutekunst announced that the next meeting of the House of Delegates would take place on Friday, January 29, 2016 at the New York Hilton Midtown, New York City.
15. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully submitted,



Ellen G. Makofsky
Secretary



DAVID P. MIRANDA

President, New York State Bar Association

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November 7, 2015

**November 2015
President's Report to the
House of Delegates**

1. PRESIDENT'S INITIATIVES

Pro Bono

Our Association is in a unique position to help reduce the number of unrepresented litigants in New York. Working in partnership with The New York Bar Foundation and its President, John H. Gross, we have created a joint committee to raise funds to support legal services initiatives. The Joint Committee will be co-chaired by Hon. Barry Kamins and Marion Hancock Fish. This additional funding will enable us to enlarge the pool of pro bono volunteers through collaboration with legal services providers and the Office of Court Administration to create a statewide database through which pro bono volunteers can sign up for pro bono clinics and other volunteer activities in their local communities. In addition, we will be partnering with the American Bar Association to offer pro bono volunteers an e-mail based pro bono service, by which volunteers can review questions from clients sorted by practice area and respond via e-mail with answers and solutions.

Earlier this fall, President-Elect Claire Gutekunst and I served on hearing panels in each of the four Judicial Departments around the state as part of Chief Judge Jonathan Lippman's sixth annual public hearings to evaluate the unmet civil legal services needs around New York State. We heard testimony from local governmental officials, representatives of legal services providers, bar leaders, and clients about the benefits that the provision of civil legal services to low income New Yorkers gives to both clients and society.

New York State Constitution

In July, I appointed the Committee on the New York State Constitution to serve as a resource to the profession and the public with respect to the 2017 referendum on whether to have a constitutional convention to review the state Constitution. Chaired by Henry M. Greenberg of Albany, the committee plans to present periodic reports to the House of Delegates, including one at this meeting that our state government appoint a planning commission in advance of the referendum.

Judiciary Law §470

In April of this year, in response to a question certified to the court by the U.S. Court of Appeals for the Second Circuit, the New York State Court of Appeals held that Judiciary Law §470 requires nonresident attorneys to maintain a physical office in New York State. The Second Circuit is expected shortly to issue a decision as to the constitutionality of section 470. In anticipation of that decision, I have appointed a working group to consider the impact of the court's decision on the profession and whether legislation is required to address issues such as service of process. The working group is chaired by Past President David M. Schraver.

Judicial Salaries

Every four years, New York State officials are required to appoint a commission to review judicial salaries for judges in courts ranging from New York City civil and criminal courts to the State Court of Appeals and determine whether salaries should be increased. Such a commission is scheduled to be appointed this year. When a commission was last appointed four years ago, our Association retained an economist as a consultant to advise us as to developing recommendations to the commission. This year, I have appointed a working group on judicial salaries to develop similar recommendations. The working group is in the process of identifying and retaining an expert to review economic data relating to judicial salaries.

Third-Party Legal Services

For many years, our Association has opposed efforts to allow non-lawyers to own or control law firms. We believe such practices would jeopardize our profession's core values confidentiality, the exercise of independent professional judgment, and loyalty to clients. In 2000 our House approved the report and recommendations of our Special Committee on the Law Governing Firm Structure and Operation which concluded that no changes should be made to the existing prohibitions on non-lawyer ownership of law firms. In 2012, the House reaffirmed this position with its approval of the report and recommendations of the Special Committee on Nonlawyer Ownership. There are also concerns impacting our profession regarding rankings, ratings and legal form services. I have therefore established a Working Group on Third Party Legal Services to review these current concerns and recommend an Association response.

2. LEGISLATIVE ACTIVITIES

Federal Advocacy

Sequestration

The Association has been active in urging Congress to avoid re-implementation of the Sequester, which so badly damaged our justice system in 2013. As the September 30 end of federal fiscal year (FY) 2015 approached, President-Elect Claire Gutkunst and I led a team in Washington to meet with key members and staff of the New York Congressional Delegation. After our meetings on Capitol Hill, Congress approved a continuing resolution to keep the government operating through December 11.

In addition to our meetings in Washington, our multi-pronged advocacy efforts included:

- A NYSBA News Release on September 2, with a letter to the New York Congressional Delegation signed by other bar association leaders from across the state;
- A news article in the September 2 issue of the *Daily Record*;
- An Op-Ed, published in the September 18 issue of Newsday and in *Crain's New York* on October 27.

A “bipartisan budget deal” that would stretch over two fiscal years was unveiled by House Republican leaders just before midnight Monday, October 26, along with an increase in the government's borrowing authority needed to avert a catastrophic default. The measure reportedly would raise the discretionary spending caps by \$50 billion in fiscal 2016 and \$30 billion in 2017. We will monitor these developments and continue our advocacy efforts to urge adequate funding for the federal courts and to prevent re-implementation broad, automatic cuts to the Judiciary's Budget.

Opposition to the Lawsuit Abuse Reduction Act (LARA)

In a press statement on September 24, we called on the U.S. Senate to reject the Lawsuit Abuse Reduction Act (LARA), which the House of Representatives had passed. The bill's supporters claim that it will discourage the filing of “frivolous lawsuits.” However, after enacting a similar provision three decades ago, policymakers were persuaded to repeal it because it resulted in additional unnecessary legal motion practice and costs. Enactment of this legislation constitutes bad public policy. It restores a system in effect from 1983 to 1993, which previously was tried and rejected because it did not allow for remedial action by the courts. Under the prior law, federal lawsuits often became entangled with unnecessary litigation over sanctions -- curtailing the efficiency of the courts, adding to litigation costs and delaying the resolution of cases. This bill would reinstitute these counterproductive practices.

Filling Federal Judicial Vacancies

On September 23, I urged the U.S. Senate to swiftly hold confirmation votes on 13 pending judicial nominees, including three for federal courts in New York. Each of the 13 nominees has been reported by the Senate Judiciary Committee. While there is no known controversy surrounding the individual nominees, there have been extensive and deliberate delays in scheduling confirmation votes by the full Senate. (Note: On October 20, Ann Donnelly was confirmed by the full Senate as District Judge for the Eastern District of New York. On October 26, Lawrence J. Vilardo was confirmed by the full Senate as District Judge for the Western District of New York.) We appreciate the efforts of Senator Charles E. Schumer to move these critical nominations to the Senate floor for a confirmation vote. These delays undermine access to justice as well as the nation's economy. In New York, the vacancies have an especially significant impact as individuals and corporations must wait longer to have their day in court. All four of the state's federal district courts are categorized as “congested courts,” meaning that their caseload numbers exceed the average of those in the entire federal system.

State Advocacy

On October 21, Governor Cuomo signed into law multiple pieces of legislation designed to protect and further women's equality in New York State. Among that legislation were the following two bills on which the Association has policy and actively supported:

- **Pay Equity:** This bill (S.1/A.6075) would strengthen the law to prohibit employers from paying women less for performing the same work. The bill eliminates a loophole in the current law that allows employers to prohibit employees from discussing their salaries under threat of termination or suspension. This is an achievement for which the Committee on Women and the Law should be congratulated. The Committee has been very actively supporting this bill for several years.
- **Strengthen Human Trafficking Laws:** This bill (S.7/A.506) strengthens existing law in New York State to combat human trafficking. It eliminates the requirement that coercion be proven in a sex trafficking prosecution when the victims are minors, increases penalties for the crime, and creates an affirmative defense in prostitution prosecutions if the defendant was a trafficking victim. In addition, the new law makes it easier for victims of human trafficking to receive support services, and requires training for law enforcement to adequately address human trafficking crimes. We were pleased to be able to support this bill, which contained several key recommendations contained in the report of the Task Force on Human Trafficking.

Trusts and Estates Law Section

I am pleased to congratulate the Trusts and Estates Law Section in its continued success with its legislation program. On September 25, Governor Cuomo signed into law one of their proposals making technical corrections to the Mental Hygiene Law to address an anomaly in the law dealing with the process of appointing a guardian for property management purposes.

***Amicus Curiae* Briefs**

Our Association recently filed *amicus curiae* briefs in two cases. The first was filed in *Disabled American Veterans v. McDonald*, a case pending before the United States Court of Appeals for the Federal Circuit challenging amendments to Veterans Administrations regulations with respect to submission of disability claims. These amendments have a significant adverse impact on elderly and homeless veterans. I would like to thank Timothy J. Fennell, chair of our Committee on Veterans, and committee member Thomas J. Kniffen for bringing this case to our attention and preparing the brief on our behalf.

The second brief was filed in *Fisher v. University of Texas*, a case pending before the U.S. Supreme Court which relates to the use of race as a factor in college admission policies. Our brief focuses on the importance of diversity in law schools and the profession. I would like to thank David H. Tennant and his firm, Nixon Peabody LLP, for preparing and filing this brief.

3. ACTIVITIES AND EVENTS

CLE Programming

In June, the U.S. Supreme Court issued its decision in *Obergefell v. Hodges*, which struck down laws prohibiting same-sex marriage. In September, our Association sponsored a continuing legal education program entitled “Representing LGBT Clients after *Obergefell*” to help lawyers represent LGBT clients with respect to family law, employment law, and estate planning. In

addition, one panel examined developing legal issues affecting the transgender community. One hundred twenty attorneys participated in the program, 82 in person and 38 via webcast.

Pathways to the Profession

Our Pathways to the Profession program is designed to support and prepare law students in their transition to practice, providing a bridge between law school and the profession. Students at all New York law schools are eligible for free membership in the Association as part of this program. In August, we published *Pathway to the Profession: From Law School to Lawyer*, a 430-page book focusing on topics such as starting a practice, attorney professionalism, technology, legal writing, and marketing.

Section Events

Last month, I was privileged to join our International Section at its 2015 Seasonal Meeting in São Paulo, Brazil. The meeting was filled with many educational programs relating to international law and practice, as well as wonderful social events. We were honored that Dr. Fábio Prieto de Souza, President of the Federal Court of Appeals, and Marcus Vinicus Furtado Coêlho, President of the Brazilian Bar Association, participated in the meeting.

In addition to attending our International Section's meeting, I attended the summer meetings of the Real Property Law Section in Vergennes, Vermont and the Trial Lawyers Section in Newport, Rhode Island, as well as the joint fall meeting of the Labor and Employment Law Section and the Municipal Section in Saratoga and the fall meeting of the Trusts and Estates Law Section in Verona.

I am pleased to note that in order to better serve our government attorney members, our Municipal Law Section has changed its name to the Local and State Government Law Section. This section's focus is to serve, educate and provide a common meeting ground for lawyers in both the public and private sector who deal with issues in local or state government law.

Annual Meeting

The Association's 2016 Annual Meeting will take place January 25-30 at the New York Hilton Midtown in New York City. The Executive Committee will meet on Thursday, January 28 and the House of Delegates will meet on Friday, January 29. I look forward to seeing you there.

A handwritten signature in black ink, appearing to read "David Minola". The signature is written in a cursive, flowing style with a large initial "D".