

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 6, 2015**

Present: Alyssa M. Barreiro, T. Andrew Brown, David Louis Cohen, Hermes Fernandez, Cheryl Smith Fisher, Michael L. Fox, Michael J. Gaffney, Michael W. Galligan, Sharon Stern Gerstman, Ira S. Goldenberg, Claire P. Gutekunst, Richard M. Gutierrez, Bryan D. Hetherington, Scott M. Karson, Elena DeFio Kean, Stuart J. LaRose, Glenn Lau-Kee, Ellen G. Makofsky, Edwina Frances Martin, John S. Marwell, Michael Miller, Steven E. Millon, David P. Miranda, Domenick Napoletano, Bruce J. Prager, Sheldon Keith Smith, Sherry Levin Wallach.

Guests: Alex C. Brownstein, Eileen E. Buholtz, A. Vincent Buzard (by telephone), Barbara S. Gillers, Henry M. Greenberg, Sarah Jo Hamilton, Deborah L. Harper, Susan L. Harper, Diane M. Herrmann, Martin Hersh, John Eric Higgins, Robert I. Kantowitz, Brian John Malkin, John M. Nonna (by telephone), Andrew L. Oringer, Deborah A. Scalise (by telephone), David C. Singer, Richard A. Weinblatt, Karl Gerard Williams.

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

1. Approval of minutes of meetings. The minutes of the June 18-19, 2015 meeting and the July 23 and August 26, 2015 telephone conferences were approved as distributed.
2. Consent calendar:
 - a) Amendments to operating rules of the Section Delegates Caucus
 - b) Amendments to Bylaws of the Senior Lawyers Section
 - c) Amendments to Bylaws of the Elder Law and Special Needs Section
 - d) Amendments to Bylaws of the Family Law Section

The consent calendar, consisting of the four above items, was approved by voice vote.

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 2015 CLE and membership dues income. The report was received with thanks.
4. Report and recommendations of Finance Committee re 2016 proposed income and expense budget. In his capacity as chair of the Finance Committee, Mr. Marwell 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 endorse the proposed budget for favorable action by the House.

5. Report and recommendations of Committee on Attorney Professionalism. Robert I. Kantowitz and Andrew J. Oringer, members of the Committee on Attorney Professionalism, outlined the committee's report concerning the use of attorney rating services. They reviewed changes being made to the report in response to comments the committee had received to make clear that the committee is not endorsing rankings or ratings. After discussion, a motion was adopted to accept the committee's report, authorize the committee to publish the report in its own name with a disclaimer that the report is solely that of the committee and does not represent the position of the Association, and ask the committee to make the agreed-upon changes and submit the report to the President for review prior to publication.
6. Report of Committee on Membership. Sherry Levin Wallach, chair of the Membership Committee, reported on recent membership developments, including the current Membership focus on different member "personas." She demonstrated the new "Membership in a Box" kit that will be distributed to all Executive Committee members with a request that each member recruit 25 new members. The report was received with thanks.
7. Report of Executive Director. David R. Watson, Executive Director, together with Associate Executive Director Elizabeth Derrico and Chief Technology Officer David L. Adkins, reviewed benchmarks and goals for member outreach; content management and delivery; and the development of a "practice hub" to assist members in practice management. The report was received with thanks.
8. Report of President. Mr. Miranda highlighted the information contained in his printed report, a copy of which is appended to these minutes. In addition, he welcomed members of the Young Lawyers Section, who joined the Executive Committee for lunch.
9. Report of Committee on Diversity and Inclusion. Committee member John Eric Higgins reviewed the results of the committee's biennial survey to evaluate the level of diversity in Association and Section leadership, membership and activities as well as the committee's recommendations. Concerns were expressed about leaders who decline to provide needed information, and the committee will consider ways to convey the need for this information. The report was received with thanks.
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 and recommendations of Food, Drug and Cosmetic Law Section. Brian John Malkin, chair of the section, together with Karl Gerard Williams, co-chair of the section's Biologics Law Committee, and Alex C. Brownstein, co-chair of the Health law Section's Committee on Medical Research and Biotechnology, outlined an affirmative legislative proposal to amend the New York Pharmacy Law to permit the automatic substitution of

interchangeable biosimilar products for their biological counterparts. After discussion, a motion was adopted to approve the proposal.

12. Report re legislative activities. John M. Nonna, chair of the Committee on Federal Legislative Priorities, updated the Executive Committee with respect to Federal legislative activities, including a September 2015 trip to Washington D.C. to meet with New York legislators. The report was received with thanks.

13. 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; increased voter participation; and support for the legal profession.

After discussion, a motion was adopted to approve these items as the Association's 2016 state legislative priorities. Mr. Cohen abstained from participating in the discussion and vote.

- 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 2016 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; support for the legal profession and support for criminal justice reform.

After discussion, a motion was adopted to approve these items as the Association's 2016 federal legislative priorities.

14. 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 endorse the report and recommendations for favorable action by the House.

15. Report and recommendations of the New York County Lawyers' Association. Michael Miller, First District Vice President, outlined the Association's proposal for an 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, a motion was adopted to endorse the report and recommendations for favorable action by the House.

16. Report and recommendations of the Dispute Resolution Section. Section chair David C. Singer presented the section’s recommendation that the court system adopt rules with respect to a court-annexed mediation program. He outlined revisions made in response to concerns expressed with respect to previous proposals the section had made. After discussion, a motion was adopted to approve the report and recommendations.
17. 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 endorse the report and recommendations for favorable action by the House, subject to the removal of the sentence on page 10 beginning “If the court wishes....”
18. Report and recommendations of Committee on Women in the Law. In her capacity as committee co-chair, Ms. Makofsky, together with committee member Susan L. Harper, reviewed the committee’s report on 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 endorse the following resolution for favorable action by the House:

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.

19. Proposal of NYS Conference of Bar Leaders to become a committee of the Association. Diane M. Herrmann, chair of the Conference, together with Deborah L. Martin, vice

chair, outlined a proposal by which the Conference would become a committee of the Association to improve and expand communication between bar associations in New York. After discussion, a motion was adopted to approve the proposal.

20. 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. 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.
21. Report re proposed amendments to court rules governing the use of cameras in courtrooms. In response to a request for comments on proposed amendments to the court rules, the Criminal Justice Section and the Committee on Media Law submitted memoranda to the Executive Committee. Ms. Wallach and Mr. Cohen reviewed the Criminal Justice Section's comments. Past President A. Vincent Buzard, who chaired the Special Committee on Cameras in the Courtroom which issued a report adopted by the House of Delegates in 2000, participated in the discussion to recommend that neither memorandum be approved. After discussion, a motion was adopted to submit a letter, together with the 2000 report, to the Office of Court Administration declining to comment on the proposed amendments and highlighting the conditions and limitations recommended in the report.
22. 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 was adopted to endorse the report and recommendations for favorable action by the House. Messrs. Lau-Kee and Smith abstained.
23. Report and recommendations of Elder Law and Special Needs Section. Richard A. Weinblatt, section delegate to the House of Delegates, and Martin Hersh, the section's vice chair, outlined the section's affirmative legislative proposal to amend EPTL 5-1.1-A(e)(1) to permit a surviving spouse to waive his or her right of election in the estate of his or her deceased spouse. After discussion, a motion was adopted to approve the proposal.
24. 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).

25. Date and place of next meeting.

Thursday, January 28, 2016
Hilton Midtown New York, New York City

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

Respectfully submitted,



Ellen G. Makofsky
Secretary