

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY
APRIL 1, 2017**

PRESENT: Abbott; Aidala; Alden; Arenson; Baker; Barreiro; Behe; Block; Bonina; Bowler; Braunstein; Brown, T.; Bruno; Burke, J.; Burns, S.; Calareso; Chambers; Chang; Cheng; Christian; Christopher; Clouthier; Cohen, C.; Cohen, D.; Cohen, O.; Connery; Cooper; Dean; DeFelice; Denton; Effman; Fennell; Finerty; First; Fisher; Flynn; Fox, G.; Fox, M.; Gaddis; Gallagher; Galligan; Gayle; Genoa; Gensini; Gerbini; Gerstman; Gische; Goldberg; Goldenberg; Gonzalez; Grays; Greenberg; Grogan; Gutekunst; Hacker; Hage; Heath; Hersh; Hetherington; Himes; Hines; Hoffman; Hurteau; Hyer; Jackson; James; Karson; Kase; Kean; Keiser; Kelly; Kenneally; Kenney; King, B.; Koch; Krausz; LaRose; Lewis; Lindenauer; Makofsky; Mancuso; Marangos, D.; Martin; McCann; Miller, C.; Miller, G.; Miller, M.; Millon; Minkowitz; Moskowitz; Murphy; Napoletano; Nowotarski; O'Donnell, T.; Onderdonk; Ostertag; Owens; Poster-Zimmerman; Preston; Quist; Reitzfeld; Richman; Rivera; Rodriguez; Rosner; Russell; Ryba; Salch; Samuels; Schofield; Shafer; Shamoon; Sheehan; Sigmond; Silkenat; Silverman; Simmons; Singer; Spirer; Spitler; Standard; Starkman; Strong; Strenger; Sulimani; Sullivan; Tarver; Tennant; Thaler-Parker; Tully; Vitacco; Wallach; Walsh; Weathers; Weinberger; Westlake; Whiting; Whittingham; Wildgrube; Williams; Zuchlewski.

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

1. The meeting was called to order and the Pledge of Allegiance recited.
2. Approval of minutes of January 27, 2017 meeting. The minutes were accepted as previously distributed.
3. Report of Treasurer. Scott M. Karson, Treasurer, reported that through February 28, 2017, the Association's total revenue was \$13 million, a decrease of approximately \$126,500 over the previous year, and total expenses were \$5 million, an increase of approximately \$732,800 over 2016. Mr. Karson also provided a report on the expenses of Association committees. The report was received with thanks
4. Election of the Nominating Committee and NYSBA Delegates to the ABA House of Delegates. Seymour W. James, Jr., member-at-large of the Nominating Committee, presented the report of the Nominating Committee.
 - a. Election of members of the Nominating Committee. The following were nominated for service on the 2017-2018 Nominating Committee:

District members and alternates of the Nominating Committee: First –Peter Harvey, John Owens Jr., Lisa Stenson Desamours, Stephen P. Younger, Michael McNamara, Stephen Lessard, Adrienne Koch, Susan B. Lindenauer, and Asha Smith, with Martha Harris, First Alternate, Alan Rothstein, Second Alternate, and Megan Davis, Third Alternate; Second – Andrew M. Fallek and Hon. Cheryl E. Chambers, with Barton L. Slavin as Alternate; Third – David W. Myers and

Hermes Fernandez, with Sandra Rivera as Alternate; Fourth – Michelle H. Wildgrube and Marne Onderdonk, with Jeremiah Wood as Alternate; Fifth – Karen Stanislaus and Gioia Gensini, with Michael E. Getnick as Alternate; Sixth – Bruce J. McKeegan and Kathryn Grant Madigan, with Richard C. Lewis as Alternate; Seventh – LaMarr Jackson and Keith McCafferty, with June M. Castellano as Alternate; Eighth – Vincent E. Doyle III and Kathleen Marie Sweet, with Cheryl Smith Fisher as Alternate; Ninth – Jessica D. Thaler-Parker, Mark T. Starkman, and Hon. Arlene Gordon-Oliver, with Kelly Welch as Alternate; Tenth – Steven G. Leventhal, A. Thomas Levin, Ilene S. Cooper and Richard A. Weinblatt, with Marian C. Rice, First Alternate, and Rosemarie Tully, Second Alternate; Eleventh – Violet E. Samuels and Chanwoo Lee, with Arthur N. Terranova as Alternate; Twelfth – Carlos M. Calderón and Michael A. Marinaccio, with Samuel M. Braverman as Alternate; Thirteenth – Michael J. Gaffney and Robert A. Mulhall, with Orin J. Cohen as Alternate.

A motion to elect the foregoing was adopted.

- b. Election of Delegates to ABA House: A motion was adopted to elect the following for a two-year term commencing in August 2017: Claire P. Gutekunst, Seymour W. James, Jr., Glenn Lau-Kee, Michael Miller, and Stephen P. Younger.
5. Report of re Membership Challenge. Michelle H. Wildgrube, co-chair of the Challenge, updated the House on the Challenge's results to date, including section best practices and partnerships with county bars. The report was received with thanks.
6. Report of the President. Ms. Gutekunst highlighted the items contained in her written report, a copy of which is appended to these minutes. She observed that this meeting is her last as President and thanked the members for the opportunity to serve. She also thanked Ms. Gerstman and the other officers, section and committee chairs, and the staff for their assistance during her term. She thanked the members of the House for their service. The House gave Ms. Gutekunst a standing ovation.
7. Discussion re Special Prosecutors and the Role of the Executive. Richard J. Davis, who served on as Assistant Special Prosecutor on the Watergate Special Prosecution Force from 1973 to 1975, and Alvin L. Bragg, Jr., Executive Deputy Attorney General for Social Justice of the State of New York, led a discussion of the appointment of special prosecutors at the federal and state levels. The presentation was received with thanks.
8. Report of NYSBA/WBASNY Domestic Violence Initiative. Amy E. Schwartz-Wallace, co-chair of the Initiative, updated the Executive Committee with respect to the Initiative's work in the area of legislation, education and training, and pro bono service. The report was received with thanks.
9. Report of Environmental Law Section. Lawrence P. Schnapf, chair of the section, reported on the section's work in updating the 2009 report of the Task Force on Global Warming, outlining the recommendations being made by the section. How noted that the

report will be presented to the House for debate and vote at the June 17, 2017 meeting. The report was received with thanks.

10. Report of The New York Bar Foundation. John H. Gross, President of The New York Bar Foundation, updated the House on The Foundation's work, noting that The Foundation awarded \$650,000 in grants last year as well as \$1 million in cy pres funds it administers. He reported that the Catalyst Fund for supporting summer internships for law students in public service is now being administered by The Foundation. Finally, he presented a check in the amount of \$40,000 in support of the joint Association/Foundation initiative to connect pro bono volunteers with legal services groups serving immigrants. The report was received with thanks.
11. Report of Executive Director. Pamela M. McDevitt, Executive Director, reported on opportunities to increase non-dues revenue and the development of services that will help lawyers improve their practices. The report was received with thanks.
12. Administrative items. Ms. Gerstman reported on the following:
 - a. Motions to approve the designation of delegates filed by the county and local bar associations for the 2017-2018 Association year and to approve the filed roster of the members of the House for the 2017-2018 year were requested and approved.
 - b. She announced that immediately following the meeting, the Committee on Leadership Development would host a meeting for members interested in exploring leadership opportunities in the Association.
 - c. She noted that this meeting represents her last as Chair of the House and thanked the House for the opportunity to serve. She thanked the departing members of the Executive Committee and the House for their service and thanked the staff for their support. She introduced Mr. Miller as the next Chair of the House and presented her with the House's gavel.
13. New Business.
 - a. Mr. Weinberger encouraged the House to promote the Lawyers' Fund for Client Protection and the OCA Attorney-Client Fee Dispute Resolution Program to senior citizens who might be unaware of these programs.
14. Date and place of next meeting. Ms. Gutekunst announced that the next meeting of the House of Delegates would take place on Saturday, June 17, 2017 at The Otesaga in Cooperstown.
15. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

A handwritten signature in black ink, reading "Ellen G. Makofsky". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Ellen G. Makofsky
Secretary



CLAIRE P. GUTEKUNST
President, New York State Bar Association

917-734-5458
cgutekunst@gutekunstadr.com

April 1, 2017

April 2017
President's Report to the
House of Delegates

1 PRESIDENT'S INITIATIVES

Immigration Representation

The Association is addressing the recent rise in the need for representation and training on matters related to immigration. A New York Bar Foundation grant along with an equal commitment from the Association will focus on developing an online portal for pro bono volunteers, mentors, and service providers to get connected with each other and to valuable resources. Working through the Committee on Immigration Representation we will be sponsoring introductory and train the trainer events to increase the number of volunteer lawyers equipped to volunteer their services to address the immigrant communities' legal needs. To staff this initiative we are creating a one-year immigration pro bono fellowship.

Legal.io

In February 2017 the Association formally launched its online referral platform for people seeking an attorney, partnering with Legal.io. The online service is available 24 hours a day; if an individual wishes, however, he or she can continue to use the Lawyer Referral and Information Service (LRIS) toll-free telephone line. A person using the online service completes a confidential questionnaire describing their legal issue and location. A LRIS staff member will review the questionnaire and match the person with a lawyer in the same or a nearby community. If the person is in a county with a locally-operated lawyer referral service, LRIS will forward the request to that local service. The referral itself is free; if the person consults with the lawyer, there is a \$35 fee for a 30-minute consultation, with exceptions made for personal injury, social security, veterans or military law, unemployment, or workers' compensation.

Domestic Violence Initiative

The NYSBA/WBASNY Domestic Violence Initiative has three very active subcommittees. The Legislation Subcommittee has prepared memoranda in support of three bills: a revision to the Victim's Rights Notice to make it more understandable to victims in crisis; the establishment of a right for tenants to call for police or emergency assistance without fear of losing housing; and permitting Family Court to award temporary spousal support when issuing temporary orders of protection. These memoranda were presented to the Executive Committee on March 31.

On April 4, the Education and Training Subcommittee will record a day-long training program to educate lawyers on domestic violence issues. Topics will include orders of protection; domestic violence in later life; the impact of domestic violence on children and behavior; immigration; and trauma centered lawyers. The program will be available online for replay.

Finally, the Pro Bono Subcommittee is working to identify gaps in the provision of legal services to domestic violence victims in order to develop strategies to address these gaps in service.

Membership Challenge

As you know, the goal of the Membership Challenge is to increase membership by 2% in 2017 and an additional 3% in 2018. In addition to working with the sections to identify ways to increase membership within sections and the Association, the Membership Committee has asked committees to identify the ways in which they serve members. The committee also has undertaken efforts to encourage members to become Sustaining members of the Association.

FreeLegalAnswers.org

As I previously reported, NYSBA launched New York's Free Legal Answers site in August 2016, as part of the ABA's national Free Legal Answers project. Free Legal Answers is a virtual legal advice clinic where low-income individuals post their civil legal questions and volunteer attorneys respond on a limited scope representation basis. Any member of the New York bar who is registered and in good standing with the Office of Court Administration may volunteer for Free Legal Answers after watching a brief video on the ethics of limited scope representation developed by Judge Fern Fisher. The project is managed by NYSBA's Pro Bono Services Department. A number of NYSBA members have signed up to volunteer and have already answered more than 150 questions. However, the project would benefit from having additional volunteers with knowledge of various legal areas. Please join! To learn more about Free Legal Answers and to sign up as a volunteer, go to ny.freelegalanswers.org.

2. LEGISLATIVE ACTIVITIES

State Legislative Activity

On March 21, I was joined by Sharon Stern Gerstman and Michael Miller, for a series of meetings with key state legislators and staff in Albany, regarding the proposed 2017-18 state budget. As I reported to you in January, the Governor proposed a \$50 increase of the Biennial Attorney Registration Fee, in order to provide revenue for improving indigent criminal defense services in New York State. This item was at the top of our agenda.

We expressed support for proposed statewide extension of the *Hurrell-Harring* settlement, in order to improve indigent defense throughout the state. Nevertheless, we expressed our strong opposition to funding the proposals, in part, by increasing the Biennial Attorney Registration Fee. Providing the indigent with criminal defense services is a societal, constitutional obligation, the expense of which is properly funded by the State's General Fund. We commended the Senate for eliminating this fee increase in its one-house budget proposal. Further, we called on the Assembly and Governor to join with the Senate in eliminating this surcharge on the legal profession to pay for the State's constitutional, societal obligation, which should be funded out of the General Fund.

We also focused our efforts by speaking with lawyer-legislators, many of whom were unfamiliar with the details of this proposal.

In addition to State Bar leaders meeting personally with state legislators advocating against this fee increase, last week, we again activated our members to contact their state representatives to urge opposition to this fee increase. We then shared our online advocacy tool with local and specialty bar associations throughout the state, to ensure that as many lawyers as possible could express their opposition even if they are not members of this Association.

Further, I coordinated an effort with several presidents of county bar associations to send letters to legislators expressing opposition by both the State Bar Association and the county bar associations.

I, along with Ms. Stern Gerstman, Mr. Miller, and NYSBA's Governmental Relations staff continued our efforts on this issue throughout the budget process.

Our Leaders have heard from members throughout the state that they oppose this fee increase and we have focused on that issue. However that focus has not been exclusive. We have other budget priorities for which we have advocated with state policymakers. We have shared our support for Raising the Age of Criminal Responsibility, Wrongful Conviction Reform, ensuring that the state provides a constitutionally sustainable level of criminal indigent defense services, and the Judiciary Budget.

At the time my President's Report went to print the state budget process was still underway. I will provide an oral update as appropriate.

Federal Legislative Activity

On February 15, Ms. Stern Gerstman, Mr. Miller and I had a series of meetings on Capitol Hill in Washington, DC to facilitate the in-person delivery of NYSBA's message to specific Members of Congress, regarding the Association's 2017 federal legislative priorities.

Issues at the top of our agenda were as follows:

- **Support for adequate funding for the Legal Services Corporation.** The Legal Services Corporation (LSC), formed in 1974 with bipartisan Congressional support, was created to ensure that all Americans have access to a lawyer and the justice system for civil legal issues regardless of their ability to pay. The LSC provides funding to independent local legal services programs through a competitive grant process. LSC clients include the working poor, veterans, family farmers and people with disabilities. Family law matters (including domestic violence and child custody) and housing issues are the largest categories of cases handled by LSC-funded programs. New York has seven LSC grantees: Legal Aid Society of Mid-New York, Legal Aid Society of Northeastern New York, Legal Assistance of Western New York, Legal Services NYC, Legal Services of the Hudson Valley, Nassau/Suffolk Law Services Committee, and Neighborhood Legal Services. The state currently receives \$20,890,565 in federal funding for LSC;
- **Support for states' authority to regulate the Tort System.** Laws covering the area of civil justice are truly the province of state legislatures, the judiciary, and voters. For over 200 years the authority to promulgate "tort law", including law relating to liability for

medical errors, has rested with the states, which have the experience and expertise with these matters. The federal government should leave it to the states to determine how best to provide access to the courts for the injured to exercise their right to seek compensation for their injuries and to make reasonable adjustments to the system; and,

- **Oppose Lawsuit Abuse Reduction Act (LARA).** The bill would amend Rule 11 of the Federal Rules of Civil Procedure (“FRCP”) -- via a process that is inconsistent with the Rules Enabling Act, 28 USC sections 2072-74 -- to reinstate a mandatory sanctions provision that was deleted from the FRCP in 1993. If enacted, this bill would significantly multiply satellite litigation, substantially degrade the efficiency of the courts, and greatly increase the cost of litigation. Changing Rule 11, as this bill proposes, would poison the relationships between parties and their attorneys, making cases more difficult to settle.

We met with all New York’s Members of Congress in the Majority Republican Caucus in the House of Representatives, several key Members of the House Minority Democrat Caucus, Counsel for Senator Schumer and Senator Gillibrand, and with newly-elected Members of Congress from New York State.

Our meetings took place prior to the release of the Trump Administration’s proposed budget for Fiscal Year 2018, which commences on October 1, 2017. The proposed budget would eliminate funding for LSC.

We are planning to return to Washington for ABA Day, April 25-27, at which time funding for LSC will again be at the top of our agenda. Moreover, John Nonna and the Committee on Federal Legislative Priorities will develop a strategy for continued advocacy on this issue throughout the federal budget process.

3. NEWS, ACTIVITIES AND EVENTS

ABA Midyear Meeting

In February, I, together with the other members of the New York delegation, attended the ABA Midyear Meeting in Miami. We are proud that former President Kenneth G. Standard received the Spirit of Excellence Award from the ABA Commission on Racial Diversity in the Profession in recognition of his commitment to racial and ethnic diversity. In addition, longtime NYSBA member Helaine Barnett received the Outstanding Service Award from the Fellows of the American Bar Foundation.

State of the Judiciary

Also in February, I attended Chief Judge Janet DiFiore’s first State of the Judiciary address at the Bronx Hall of Justice. Among other topics, the Chief Judge reported on advances made in the court system since the start of her Excellence Initiative; the expansion of the mission of the Justice Task Force, which was formed to identify and eliminate the causes of wrongful conviction; criminal justice reform; and the Task Force on the New York State Constitution.

Meeting with the Chief Judge

Executive Director Pamela McDevitt and I met with the Chief Judge and Chief Administrative Judge Lawrence D. Marks on February 27. We had an opportunity to discuss issues of mutual concern to our Association and the court system.

Events

On February 8, I attended the Albany County Bar Association's annual Court of Appeals Dinner, and on February 27 I attended the Richmond County Bar Association's Annual Dinner. On March 2, the Bar Center hosted "Dinner with a Lawyer," a program designed to bring together law students and lawyers to provide an opportunity for discussion and mentoring.

On March 10, the Committee on Media Law and the New York Fair Trial/Free Press Conference co-sponsored a program at the Bar Center. The Conference employed a hypothetical case as a platform to encourage frank discussion, reveal all sides of an issue and air the pitfalls of certain types of reactions and conduct, and centered on the issues of a fair trial, First Amendment rights and the effect of social media on the dissemination of information.

On March 21, I hosted the first of three Women's Bench and Bar Receptions at the Bar Center in Albany. A special thanks to the members of the Court of Appeals for attending. Future receptions will take place in Yonkers on April 29 and in Rochester on May 2.

June Meeting of the House of Delegates

Our next Executive Committee and House of Delegates meetings will be held on Thursday June 15th, Friday June 16th, and Saturday June 17th in Cooperstown, New York. I hope you will join us.

Sincerely,

Claire P. Gutekunst