

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
NEW YORK HILTON MIDTOWN, NEW YORK CITY
JANUARY 26, 2018**

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PRESENT: Aaron; Abramson; Alcott; Alomar; Alvarez; Barclay; Barreiro; Bennett; Berman; Billings; Block; Bloom; Bowler; Braunstein; Brown Spitzmueller; Brown, T.A; Bruno; Buholtz; Burke, J.; Burns; Castellano; Chambers; Chandrasekhar; Chang, V.; Christensen; Christopher; Cilenti; Clarke; Cohen, C.; Cohen, D.; Cohen, O.; Cohn; Connery; Davis; Denton; DiFalco; Disare; Doxey; Eberle; Edgar; Effman; Fennell; Fernandez; Ferris; Finerty; First; Fishberg; Foley; Fox; Freedman; Frumkin; Gaddis; Gallagher; Galligan; Genoa; Gensini; Gerbini; Gerstman; Gische; Gold; Goldfarb; Goldschmidt; Grays; Greenberg; Griesemer; Grimaldi; Grogan; Gutekunst; Gutenberger Grossman; Gutierrez; Hack; Haig; Heath; Heller; Hetherington; Himes; Hoffman; Hollyer; Hyer; Jackson; Jaglom; James; Jochmans; Kamins; Karson; Kase; Kean; Kelly; Kiernan; Kiesel; King, B.; Kobak; Koch; Krausz; Lamberti; Lanouette; LaRose; Lau-Kee; Lawrence; Leber; Lessard; Levin Wallach; Levin; Levy; Madden; Madigan; Mancuso; Mandell; Margolin; Mariano; Marinaccio; Maroney; Martin; May; McCann; McGinn; McNamara, C.; McNamara, M.; Meisenheimer; Miller, C.; Miller, M.; Millett; Millon; Minkoff; Miranda; Moretti; Moskowitz; Murphy; Napoletano; Nowotarski; Onderdonk; Ostertag; Owens; Pappalardo; Perlman; Pitegoff; Poster-Zimmerman; Prager; Pruzansky; Quartaro; Richardson; Richman; Richter; Rivera; Rodriguez; Rosner; Russell; Ryan; Safer; Samuels; Santiago; Schofield; Scott; Schrauer; Schriever; Schub; Sciocchetti; Shmoon; Sharkey; Shautsova; Sigmond; Silkenat; Singer, C.; Singer, D.; Sonberg; Spicer; Sppirer; Spitler; Standard; Starkman; Steinhardt; Stieglitz; Stong; Strenger; Sullivan; Sweet; Tarver; Tennant; Tesser; Triebwasser; Tully; Udell; Vigdor; Vitacco; Weathers; Weiss; Weston; Whiting; Whittingham; Wicks; Wildgrube; Williams; Wolff; Young; Younger.

Mr. Miller presided over the meeting as Chair of the House.

The meeting was opened with a rendition of the National Anthem by Michael F. Donegan, Counsel of the Commission on Correction, and an invocation by Hon. Milton A. Tingling, Chief Clerk, Supreme Court, New York County.

1. Approval of minutes of November 4, 2017 meeting. The minutes were deemed accepted as distributed.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Scott M. Karson to members of the Association at the Annual Meeting, was received with thanks.
3. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. Glenn Lau-Kee, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2018-2019 Association year: President-Elect: Henry M. Greenberg, Albany; Secretary: Sherry Levin Wallach, White Plains; Treasurer: Scott M. Karson, Melville; and Vice Presidents: First District – Taa R. Grays and Carol A. Sigmond, New York City; Second – Aimee L. Richter, Brooklyn; Third – Robert T. Schofield IV,

Albany; Fourth – Matthew R. Coseo, Ballston Spa; Fifth – Jean Marie Westlake, East Syracuse; Sixth – Richard C. Lewis, Binghamton; Seventh – David H. Tennant, Rochester; Eighth – Norman P. Effman, Warsaw; Ninth – Michael L. Fox, Newburgh; Tenth – Peter H. Levy, Jericho; Eleventh – Karina E. Alomar, Ridgewood; Twelfth – Steven E. Millon, New York City; Thirteenth – Jonathan B. Behrins, Staten Island. Nominated as members-at-large of the Executive Committee were Mark A. Berman, New York City; Earamichia Brown, New York City; Evan M. Goldberg, New York City; Erica M. Hines, Albany; Rona G. Shamoan, New York City; and Tucker C. Stanclift, Queensbury.

There being no further nominations, a motion was made and carried unanimously to elect the above-named individuals as officers and members-at-large of the Executive Committee.

4. Presentation of awards by Committee on Bar Leaders of New York State. Marne Onderdonk, chair of the committee, presented the Bar Leaders Innovation Awards, which recognize how bar associations adapt to the needs of their members and the community at large by introducing new programs, ideas and methodologies. The Large Bar recipient was the New York County Lawyers Association for its Pro Bono Program on Certificates of Release and the Small Bar recipient was the Greater Rochester Association for Women Attorneys for its Lawyers Coalition on Racial Justice.
5. Presentation of the Ruth G. Schapiro Memorial Award. Ms. Gerstman presented the annual Ruth G. Schapiro Award to past president Bernice K. Leber in recognition of her leadership, lifelong contributions on behalf of women, and commitment to championing equal opportunities for all.
6. Address by Hon. Janet DiFiore, Chief Judge of the State of New York. Chief Judge DiFiore addressed the House of Delegates with respect to the status of Unified Court System initiatives. She provided an update on the Excellence Initiative; the upcoming State of the Judiciary address; the Judiciary’s budget request; criminal justice reform; civil legal services; the Judicial Task Force on the New York State Constitution; uniform practice rules for the Appellate Division; and the New York Practice Committee. The report was received with the thanks of the House.
7. Report of Executive Subcommittee on Association Publications. Michael L. Fox, chair of the subcommittee, presented an informational report on Association-wide publications and recommendations to utilize content marketing strategies to increase the reach and value of the publications’ content, promote increased readership, and build search engine optimization. The report was received with thanks.
8. Report of President. Ms. Gerstman highlighted items contained in her written report, a copy of which is appended to these minutes.
9. Report and recommendations of Committee on Immigration Representation. Camille Mackler, chair of the committee, presented a report urging that the U.S. Immigration and Customs Enforcement (ICE) include courthouses as a “sensitive location” in its Sensitive Locations Policy and that Congress pass the Protecting Sensitive Locations Act and

amend the Immigration and Nationality Act to codify ICE's Sensitive Locations Policy. After discussion, the following resolution was adopted:

WHEREAS, the New York State Bar Association (NYSBA) has long supported and encouraged equal access to justice and to our courts of law for all, including immigrants residing in New York State; and

WHEREAS, in the past, NYSBA has actively promoted and participated in efforts to provide immigrants in New York with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose, as well as through partnerships with Governor Cuomo's Liberty Defense Project; and

WHEREAS, since the beginning of 2017 advocates have noticed an increase in the presence of Immigration and Customs Enforcement (ICE) agents in New York's courthouses, with a study by the Immigrant Defense Project (IDP) showing a eight-fold increase in arrests of immigrants on civil immigration charges within our State's courthouses; and

WHEREAS, the same study by IDP showed that 75% of immigration legal service providers in New York have worked with clients who have expressed fears of going to New York courts, including to resolve criminal charges against them, to act as witnesses, or to obtain orders of protection; and

WHEREAS, leading law enforcement voices in New York, including New York State Attorney General Eric Schneiderman and Kings County Acting District Attorney Eric Gonzalez have spoken of the chilling effect these tactics have had by ICE on immigrants seeking justice in our courts; and

WHEREAS, NYSBA believes that true access to justice includes the ability to appear, defend oneself, and obtain protection from our courts free from the fear of ancillary punishment;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby urges Immigration and Customs Enforcement (ICE) to include courthouses as a "sensitive location" in its Sensitive Locations Policy, which enumerates the places in which ICE will not conduct enforcement actions barring exigent circumstances.

RESOLVED, that the New York State Bar Association also urges Congress to pass the "Protecting Sensitive Locations Act" and to amend Section 287 of the Immigration and Nationality Act to codify the Sensitive Locations Policy and to include courthouses as a sensitive location therein.

10. Report of Task Force on School to Prison Pipeline. Sheila A. Gaddis and John H. Gross, co-chairs of the Task Force, presented an informational report on the Task Force's work to date in reviewing current practices in and law relating to school discipline, with a view

to recommending policy and best practices in discipline and restorative justice. The report was received with thanks.

11. Report of Committee on Membership. Thomas J. Maroney, chair of the Committee on Membership, reported on recent membership developments, including automatic membership renewal via credit card and the planned development of regional membership groups for local focus. The report was received with thanks.
12. Report and recommendations of NYSBA/WBASNY Domestic Violence Initiative. Amy Schwartz-Wallace, co-chair of the Initiative, reviewed the Initiative's work during the past year in the areas of educating attorneys about domestic violence, the need for representation of victims and ensure access to training and education; expanding the pool of volunteer attorneys and opportunities for volunteer service to victims; considering legislation that seeks to protect domestic violence victims. After discussion, the following resolution was adopted:

WHEREAS, domestic violence is ongoing, purposeful behavior aimed at exerting power and control over one's intimate partner and can be psychological, physical, sexual or economic in nature. Women and men who leave abusive relationships frequently have limited resources. Many desperately need legal assistance in seeking orders of protection against their abusers and in dealing with legal issues such as housing, child custody, support and visitation, and divorce; and

WHEREAS, to help address the scourge of domestic violence in New York State, in the summer of 2016 the then-Presidents of the New York State Bar Association (NYSBA) and the Women's Bar Association of the State of New York (WBASNY) created a joint NYSBA/WBASNY Domestic Violence Initiative (the Initiative) to enhance access to legal services by victims of domestic violence in our state; and

WHEREAS, high-quality civil legal assistance plays a vital role in protecting the health and well-being of victims and their children. Research has shown that access to legal services is one of the most effective interrupters of domestic violence, even more effective than access to shelters, hotlines, or counseling. Legal services are the most expensive support services for domestic violence victims, and the services to which the fewest victims have access, yet they are essential to ending the cycle of violence and making a victim whole. Despite tremendous efforts by legal services lawyers and pro bono volunteers, the need dwarfs the available resources. To increase access to justice for domestic violence victims, the Initiative worked with legal service providers, courts, law schools, governmental agencies, local bar associations and pro bono attorneys to educate, recruit and train additional volunteer attorneys; and

WHEREAS, in broad terms, the mission of the Initiative was to help educate attorneys around the state about domestic violence and the need for pro bono representation of victims, expand the existing pool of volunteer attorneys and opportunities for volunteer service to victims of domestic violence; and examine and make recommendations concerning pending or proposed legislation that seeks to protect domestic violence victims; and

WHEREAS, in its final report, the Initiative has made specific recommendations with respect to: 1) education and training, 2) expanding pro bono opportunities and resources for attorneys and bar associations, and 3) legislative advocacy, all in order to better protect and serve victims of domestic violence; and

WHEREAS, recognizing the importance of institutionalizing NYSBA's efforts to continue the work of the Initiative, then-President Gutekunst and leaders of NYSBA's Family Law Section collaborated to create a Domestic Violence Committee within the Section; and

WHEREAS, the Initiative has requested that the New York State Bar Association approve its final report and recommendations;

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the New York State Bar Association hereby approves the final report and recommendations of the Domestic Violence Initiative; and it is further

RESOLVED, that the officers of the Association are hereby authorized to take such action as they may deem appropriate to publicize the final report and recommendations and to implement the recommendations.

13. Report of Committee on Standards of Attorney Conduct. Profs. Roy D. Simon and Barbara S. Gillers, co-chairs of the committee, provided an update on the committee's comprehensive review of the New York Rules of Professional Conduct. They noted that the proposed changes will fall into three categories: rules changes requiring Appellate Division approval; commentary changes that are contingent on Appellate Division approval of rules changes; and commentary changes that are independent of rules changes. It is anticipated that the committee's report will be presented to the House in November 2018 and/or January 2019. The report was received with thanks.
14. Administrative items. Mr. Miller reported on the following:
 - a. NYSBA delegates to ABA House of Delegates. At the April 14, 2018 meeting, the House would be requested to elect six of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: Sharon Stern Gerstman, Buffalo; Henry M. Greenberg, Albany; Kathryn Grant Madigan, Binghamton; David P. Miranda, Albany; Kenneth G. Standard, New York City; and Natasha Shishov, Garden City (Young Lawyer Delegate).
15. New Business.

Report and recommendations of Criminal Justice Section. Tucker C. Stanclift, chair of the section, reviewed a proposed resolution to address bail/pretrial detention reform.

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

WHEREAS, more than 60 percent of people in state jails in 2016 were pretrial defendants; and

WHEREAS, cash bail has created a two-tiered criminal justice system that puts an unfair burden on the economically disadvantaged; and

WHEREAS, variations in court practices across the state have resulted in a bail system where the location of an arrest often defines whether or not a person is released pre-trial; and

WHEREAS, New York Governor Andrew Cuomo recently released a framework for a bail reform package¹ that would:

- Create a presumption that defendants facing misdemeanor and non-violent felony charges be released without cash bail, either on their own recognizance (R.O.R.) or with non-monetary conditions imposed by the court, such as supervised release monitored by a pretrial services agency, absent of a record of bench warrants for non-appearance;
- Allow monetary bail, but does not require its use, in remaining cases, after an individualized assessment of the nature of the case and the defendant's personal and financial circumstances;
- Require the court, in cases when bail is set, to give the defendant a choice between cash or bail industry bonds and an alternative form of bail that the judge will set, such as an unsecured or partially secured bond;
- Allow the court, in cases involving domestic violence or other serious violence, or if, while on pretrial release, a defendant commits a crime or willfully fails to come to court, to order a defendant to be held in jail pretrial if the court finds, after due process, that the defendant poses a high risk of not returning to court or poses a current threat to the physical safety of a reasonably identifiable person or persons; and

WHEREAS, the Criminal Justice Section recognizes that many courts rely solely on cash bail or insurance company bond to secure a defendant's future appearances despite the availability of multiple alternatives set forth in the Criminal Procedure Law; and

WHEREAS, the Governor's proposal balances the need to keep our communities safe while minimizing financial hardship;

BE IT THEREFORE RESOLVED, the Office of Court Administration and the Chief Administrator of the Courts are urged to enhance and increase the training and

¹ Governor Andrew Cuomo, *State of the State Book* (2018), pp. 59-60, available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2018-stateofthestatebook.pdf>.

education of judges and courtroom personnel and the Bar to the availability of alternatives to cash bail including, but not limited to unsecured and partially secured bonds, as well as (i) simplify and make available forms compliant with the Criminal Procedure Law facilitating secured, partially secured and unsecured (non-financial) release, and (ii) suggest that judges not impose financial conditions unless the arrested person is charged with a crime of violence or there is a likely risk that the arrested person will not appear in court; and be it further

RESOLVED, Supervised Release should be added to Article 530 of the Criminal Procedure Law as a recognized form of recognizance for the release of an arrested person; and be it further

RESOLVED, the Criminal Procedure Law should be amended to provide that the court may not impose financial conditions upon a defendant in a criminal action or proceeding unless the defendant is charged with a crime of violence or there is a likely risk that the defendant will not appear in court; and be it further

RESOLVED, Section 500.17(b) of the Criminal Procedure Law, requiring the “double valuing” of real estate posted to secure release, should be amended to require that the value of posted real estate be at least the amount as the total undertaking (addressing *People ex. Rel. Hardy v. Seiff*, 79 N.Y.2d 618, 620-21 [1992]); and be it further

RESOLVED, Section 70.25(2)b of the Penal Law should be amended to add the term, “supervised release”; and be it further

RESOLVED, the Criminal Justice Section urges the State Bar to support the Governor’s 2018 framework for bail reform proposal and to work with the Governor and the State Legislature to pass reform based on these principles.

16. Date and place of next meeting. Mr. Miller announced that the next meeting of the House of Delegates would take place on Saturday, April 14, 2018 at the Bar Center in Albany.
17. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Sherry Levin Wallach
Secretary

Sharon Stern Gerstman

President, New York State Bar Association

716-856-3500

sgerstman@magavern.com

**REPORT OF THE PRESIDENT
TO THE HOUSE OF DELEGATES
January 26, 2018**

CONSTITUTIONAL CONVENTION

We were disappointed that New York will not hold a constitutional convention to make badly needed changes to the State Constitution. However, we will take advantage of the momentum created by advocating for issues that could have been addressed by a convention to support discrete amendments to the Constitution. Areas for consideration include lifting barriers to voter participation; reform of New York's court structure; addressing the balance between local and state government decision-making; and government ethics. Our Committee on the New York State Constitution will continue its work in identifying amendments to address these crucial issues.

SEXUAL HARASSMENT AND WOMEN IN THE LEGAL PROFESSION

The #MeToo movement has brought to the fore the prevalence of sexual harassment in a number of professions. Sadly, the legal profession has not been immune, as evidenced by the case of a Federal judge who stepped down after a number of accusations of harassment from former clerks and others with whom he interacted in the courts. An increasing number of members of the profession are recognizing the need for more women in positions of power in law firms and in the courts. The report of our Commercial and Federal Litigation Section on achieving equality for women attorneys in the courtroom and alternate dispute resolutions settings, approved by our House of Delegates in November 2017 and which will be presented to the ABA House of Delegates in February 2018, sets forth steps that law firms, judges, and ADR providers can take to ensure that women have an increased presence in litigation and in ADR.

LEGISLATIVE INITIATIVES

As we enter 2018, we are actively advocating on the Association's state and federal legislative priorities. Those activities included meeting with the new Chair of the Assembly Judiciary Committee, Jeffrey Dinowitz, and a full day of meetings with legislators and staff on January 17 to highlight the Association's budget priorities. Further, we have been involved with continuing

efforts, including discussions with the New York Bankers Association, to reform the law on Power of Attorney. As you know, in June the Assembly passed the Association's legislation by a vote of 141 – 0.

The proposed 2018-2019 Executive Budget was released on January 16. As was the case with last year's proposal, one issue could adversely affect every lawyer admitted to practice in New York – a proposal to increase the Biennial Attorney Registration Fee by \$50. Again this year, the proposed increase would link additional state funding for indigent defense services and implementation of the settlement of *Hurrell-Harring v. State of New York*, in order to bring the services up to a constitutional level statewide.

We have for many years advocated in support of an improved public criminal defense system. However, we strongly object to this proposed increase, and we have communicated that position to key legislators and the Governor's office. Providing indigent criminal defense is a constitutional mandate. It is a state obligation and a societal responsibility, and it should be paid from the General Fund, not by a surcharge on lawyers. Immediately after the proposed budget was released I wrote to the NYSBA membership, urging the use of the Association's advocacy web page to contact their individual legislators and oppose the linkage of the registration fee with funding to implement *Hurrell-Harring*. In addition, I have reached out to county bar association presidents across the state and asked that they join our effort by co-signing with me a letter to legislators from their county.

As the state legislative and budget process continues, we will maintain strong advocacy on this and our other priorities.

At the federal level, we are planning meetings in February with the New York Congressional Delegation, and I will report to you more fully on that in April.

OTHER ACTIVITIES

I have continued our outreach to county and local bar associations. In November, the Bar Association of Nassau County and the Suffolk County Bar Association held a joint meeting which I attended as a guest. Earlier this month, I attended a meeting of the presidents of the county bars in New York City. In addition, I attended formal dinners hosted by the Brooklyn Bar Association Foundation and the New York County Lawyers' Association.

The next meeting of the House of Delegates will take place on Saturday, April 14, 2018 at the Bar Center in Albany. I look forward to seeing you there.

A handwritten signature in black ink, appearing to be 'John J. ...', written in a cursive style.