NEW YORK STATE BAR ASSOCIATION MINUTES OF EXECUTIVE COMMITTEE MEETING HILTON NEW YORK, NEW YORK CITY JANUARY 26, 2012

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PRESENT: Members Abernethy, Castellano, Doyle, Edmunds, Fennell, Finerty, Franchina, Gordon-Oliver, Gorgos, Gutekunst, James, Lau-Kee, Makofsky, Mattei, Millett, Millon, Miranda, Moy, Myers, Romero, Safer, Slezak, Wallach, Young, and Younger.

Guests: Jeffrey Bagner, Dennis R. Baldwin, John P. Bracken, Richard D. Collins, Norman P. Effman, Paul M. Fakler, Hermes Fernandez, Sharon Stern Gerstman, Joseph T. La Ferlita, A. Thomas Levin, Joseph E. Neuhaus, Hon. John C. Rowley, Deborah A. Scalise, Jay Shapiro, Paul H. Silverman, Mark J. Solomon.

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

1. <u>Approval of minutes of meeting</u>. The minutes of the November 4, 2011 meeting and the January 4, 2012 telephone conference were approved as distributed.

2. Consent Calendar:

- a. Proposed amendments to the Bylaws of the Corporate Counsel Section.
- b. Proposed amendments to the Bylaws of the Criminal Justice Section.
- c. Proposed amendments to the Bylaws of the General Practice Section.

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

- 3. Report of the Treasurer. In her capacity as Treasurer, Ms. Gutekunst reported on the 2011 operating budget, comparing the amounts to those as of December 31, 2010. She reported that through December 31, 2011, the Association's total revenue was \$23.2 million, a decrease of approximately \$160,000 from the previous year, and total expenses were \$23.6 million, a decrease of approximately \$689,000 from the previous year. The operating deficit prior to audit was approximately \$458,000, an increase of approximately \$280,000 from the prior year. Ms. Gutekunst also reviewed selected revenue and expense items. The report was received with thanks.
- 4. Report of Committee on Membership. The report was presented by Mr. Lau-Kee and Ms. Wallach in their capacities as co-chairs of the committee, together with committee member Dennis R. Baldwin. In addition to reviewing current membership data, they outlined a draft proposal to restructure membership categories set forth in the Association Bylaws. Mr. Doyle encouraged Executive Committee members to provide Mr. Baldwin with comments on the proposals. The report was received with thanks.
- 5. Report and recommendations of Committee on Civil Practice Law and Rules. The report was withdrawn by the committee in order to provide additional time to confer with the Committee on Courts of Appellate Jurisdiction.

- 6. <u>Reports of Vice Presidents.</u> Ms. Castellano, Ms. Franchina and Mr. Myers provided reports on local bar activities in their respective districts. The reports were received with thanks.
- 7. Report of President. Mr. Doyle highlighted the information contained in his printed report, a copy of which is appended to these minutes. In addition, he thanked Executive Committee members for their contributions to the report on the impact of budget cuts on New York State courts.
- 8. 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, new initiatives, and Section outreach. The report was received with thanks.
- 9. Report and recommendations of Judicial Wellness Committee. Hon. John C. Rowley, the committee's chair, outlined a legislative proposal to amend Judiciary Law §499 with respect to the confidentiality of communications with a judicial assistance committee. After discussion, a motion was adopted to approve the proposed legislation.
- 10. Report and recommendations of Committee on Unlawful Practice of Law. Mark J. Solomon, chair of the committee, reviewed a legislative proposal to amend the Judiciary Law to elevate certain violations from misdemeanor status to felony status. After discussion, a motion was adopted to amend the proposal by limiting felony status to those instances in which (a) a nonlawyer impersonates a lawyer and (b) a nonlawyer offers services that are clearly legal services to the public under the guise of another title (e.g., "notary"). As amended, the proposal was approved.
- 11. Report and recommendations of Committee on Standards of Attorney Conduct. Joseph E. Neuhaus, the committee's chair, outlined proposed amendments to Rule 4.2 and Rule 1.2 of the Rules of Professional Conduct. After discussion, a motion was adopted to endorse the recommendations for favorable action by the House.
- 12. Report of Special Committee on Strategic Planning. Sharon Stern Gerstman and David P. Miranda, co-chairs of the Special Committee, updated the Executive Committee with respect to implementation of the strategic plan approved by the Executive Committee at its November 4, 2011 meeting. The plan and "action steps" will be distributed to sections for study and the committee will report further at the March 30, 2012 meeting. The report was received with thanks.
- 13. <u>Update on legislative activities</u>. Hermes Fernandez, chair of the Committee on Legislative Policy, updated the Executive Committee with respect to state legislative activities, with particular emphasis on the Association's legislative priorities. Ronald F. Kennedy, Director of Government Relations, updated the Executive Committee with respect to federal legislative activity. The reports were received with thanks.
- 14. <u>Report and recommendations of Business Law Section</u>. Paul H. Silverman, the Section's chair, together with Jeffrey Bagner, chair of the section's Corporations Law Committee,

outlined a legislative proposal to amend the Business Corporation Law to permit remote attendance at shareholder meetings and to participate in proceedings and/or vote via electronic communications. After discussion, a motion was adopted to approve the proposal.

- 15. Reports of Executive Committee liaisons. Written and/or oral presentations were made by Mr. Fennell, Ms. Franchina, Ms. Gutekunst and Ms. Slezak with respect to the sections and committees for which they serve as Executive Committee liaison. The reports were received with thanks.
- 16. Request of Intellectual Property Law Section to join another organization. Paul M. Fakler, the section's chair, outlined the section's request to join the State Intellectual Property Office/US Bar Liaison Council. After discussion, a motion was adopted to approve the request.
- 17. Report of Criminal Justice Section. Marvin E. Schechter, chair of the section, together with Richard D. Collins and Jay Shapiro, co-chairs of the section's Committee on Sealing/Expungement, reviewed the section's report recommending that New York adopt a sealing statute. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, in 2006 the House of Delegates approved the report and recommendations of the Special Committee on Collateral Consequences of Criminal Proceedings; and

WHEREAS, the Special Committee found that a criminal conviction can have a serious effect on the ability of a person to obtain employment, and many New York occupational licenses and certifications are not available to a person with a criminal conviction, and accordingly recommended, *inter alia*, that New York should create a new sealing provision to seal, upon application, certain felony and misdemeanor convictions after a certain period; and

WHEREAS, the Criminal Justice Section has completed a review of proposed sealing statutes in New York, the sealing provisions in effect in New Jersey, and has identified a variety of factors upon which a sealing law should be based; and

WHEREAS, the Section has proposed the addition of a new Section 160.65 to the Criminal Procedure Law and the amendment of Section 296 of the Executive Law to provide a vehicle to seal a record of conviction or adjudication;

Now, therefore, it is

RESOLVED, that the New York State Bar Association hereby approves the report of the Criminal Justice Section; and it is further

RESOLVED, that the New York State Bar Association supports the amendment of the Criminal Procedure Law, the Executive Law, and any other necessary state statutes to provide a vehicle to seal a record of conviction or adjudication upon application; and it is further RESOLVED, that the officers of the Association are empowered to draft and/or support specific legislation to accomplish the purposes set out herein, and to take such other and further steps as they may deem warranted to implement this resolution.

Mr. Abernethy abstained from participating in the discussion and vote.

- 18. <u>Report re ABA matters</u>. Mr. Doyle presented the reports.
 - a. <u>Update on ABA activities</u>. Mr. Doyle updated the Executive Committee on ABA matters, including the candidacy of James R. Silkenat for ABA President-Elect (with his term as President beginning in August 2013), and reviewed the agenda for the upcoming Midyear Meeting in New Orleans. The report was received with thanks.
 - b. Consideration of co-sponsorship of reports for ABA House of Delegates. Mr. Doyle reviewed a number of resolutions for which NYSBA co-sponsorship had been proposed. After discussion, motions were adopted to approve co-sponsorship of the following resolutions: 101B (discovery procedures relating to laboratories), 101C (factors for presenting expert testimony to a jury), 101D (factors in formulating jury *voir dire* in cases where forensic scientific evidence is contested), 101F (immigration consequences for noncitizen defendants), 103 (foreign data protection and privacy laws), 108 (rules to accommodate military spouse attorneys), and 114 (expansion of definition of rape).
- 19. Report of Committee to Ensure Quality of Mandated Representation. Norman P. Effman, the committee's chair, presented an informational report on the committee's recommendations with respect to methods of sharing resources between providers of mandated representation, legal impediments to sharing resources, model agreements and programs, and efforts to promote the sharing of resources. The committee will present a report for action at the March 2012 Executive Committee and House meetings. The report was received with thanks.
- 20. <u>Discussion of proposed Cuba trip</u>. In executive session, the Executive Committee discussed a request from the International Section that the Association apply for approval to conduct one or more trips to Cuba. By a vote of 13 to 8, a motion was adopted to allow the section to present a proposed application and itinerary to the Executive Committee.
- 21. Report and recommendations of Trusts and Estates Law Section. Joseph T. La Ferlita, chair of the section's Subcommittee on Effect of Power to Adjust Trustee Commissions, presented a legislative proposal to amend the Estates Powers and Trusts Law with respect to the calculation of trustee's commissions. After discussion, a motion was adopted to approve the proposed legislation.
- 22. <u>Report of Committee on Resolutions</u>. In his capacity as chair of the committee, Mr. Miranda provided an update on the implementation of the recommendations of the Task Force on the Future of the Legal Profession and the Task Force on New York Law in International Matters. The report was received with thanks.

23. Report and recommendations of Committee on Annual Award. John P. Bracken, chair of the committee, presented the committee's recommendation that the Award for Outstanding Non-Resident Member be presented posthumously to Rajpattie Persaud-Billette. After discussion, a motion was adopted unanimously to approve the award.

24. New Business.

a. <u>Resolution from President's Committee on Access to Justice</u>. Bryan D. Hetherington, a member of the committee, presented a proposed resolution with respect to funding for foreclosure prevention services. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, statewide, counselors and legal services providers have collectively saved more than 14,000 homes from foreclosure, averted more than \$3.4 billion on lost taxes and costs; and

WHEREAS, there are more than 250,000 in or facing foreclosure today, which if allowed to go to foreclosure would result in total costs of \$61 billion;

NOW, THEREFORE IT IS

RESOLVED, that the New York State Bar Association supports restoration of adequate funding for foreclosure prevention services in the 2012-2013 executive budget to support housing counseling and civil legal services to prevent foreclosures. The restoration of this funding must be in addition to existing proposed funding for civil legal services in the Judiciary budget; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such further steps as may be necessary to implement this resolution.

- b. <u>Support for the Judiciary budget</u>. Mr. Younger moved that the Association support the proposed 2012-2013 budget offered by the Judiciary. A motion to that effect was adopted unanimously.
- 25. <u>Date and place of next meeting</u>. Mr. Doyle announced that the next meeting would be held on Friday, March 30, 2012 at the Buffalo Club in Buffalo.
- 26. <u>Adjournment</u>. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

Juse Minula

David P. Miranda

Secretary