

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
BAR CENTER, ALBANY, NEW YORK
APRIL 5, 2013**

PRESENT: Members Abernethy, Brown, Castellano, Christian, Doyle, Franchina, Gaffney, Gorgos, Gutekunst, Gutierrez, James, Lau-Kee, Makofsky, Martin, Millon, Miranda, Moy, Myers, Romero, Safer, Schraver, Slezak, and Wallach.

Guests: Gregory K. Arenson, James B. Ayers, James R. Barnes, David Louis Cohen, Norman P. Effman, Hermes Fernandez, Cheryl Smith Fisher, Ira S. Goldenberg, John H. Gross, Denise A. Hartman, David M. Hayes, John Eric Higgins, Adrienne May Hollender, Hon. Barry Kamins, Scott M. Karson, Bernice K. Leber, Kathryn Grant Madigan, James E. Pelzer, Sandra Rivera, Carol Robles-Roman, and Deborah A. Scalise.

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

1. Approval of minutes of meeting. The minutes of the January 24, 2013 meeting and the January 31, February 26, and March 7, 2013 telephone conferences were approved as distributed.
2. Consent Calendar:
 - a. Proposed amendments to the Bylaws of the Judicial Section.
 - b. Approval of resolutions re bank account signatories.

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 reviewed the end-of-year 2012 operating budget, reporting that total revenue was \$25.3 million, an increase of \$2 million from 2011, and total expense was \$23.3 million, a decrease of \$414,000 from 2011. The operating surplus was \$2 million, an increase of \$2.4 million from 2011. She then reviewed revenue and expenses for the first two months of 2013, reporting that total revenue was \$15 million, a decrease of \$251,000 from 2012, and total expense was \$4.9 million, an increase of \$161,000 from 2012. The report was received with thanks.
4. Report of Audit Committee. David M. Hayes, chair of the committee, updated the Executive Committee on the work of the Audit Committee, including work to assure the independence of the Association's auditor and review of internal controls. He reported that the prior day the Audit Committee had met with the Association's auditor and received a clean report. The report was received with thanks.
5. Report of Committee on Membership. Mr. Lau-Kee and Ms. Wallach, in their capacities as co-chairs, provided an update on membership data, including non-renewals. They also reported on initiatives relating to diversity, mentoring, and outreach to women lawyers. They noted that due to restrictions on lobbyists, the Association can no longer make the

dues waiver program available to public officials. Finally, they reported that as a result of the Bylaws amendments adopted in January to reclassify membership categories, the committee is undertaking a review of the dues structure and will make a recommendation to the Finance Committee. The report was received with thanks.

6. Update re legal education and bar examination matters. Mr. Schraver reported that he had met with the co-chairs of the Committee on Legal Education and Admission to the Bar as well as with the full committee. He asked the committee to broaden its focus to consider the effect of changes in legal education and admissions on the future of the legal profession. One issue of the *State Bar Journal* will be devoted to legal education issues and it will be one of the topics for the 2014 Presidential Summit. The report was received with thanks.
7. Report of Committee on Continuing Legal Education. Committee chair Deborah A. Scalise, together with H. Douglas Guevara, Senior Director of Continuing Legal Education, updated the Executive Committee with respect to the Association's continuing legal education program, including revenue and expenses, and new initiatives. The report was received with thanks.
8. Report and recommendations of Committee on Courts of Appellate Jurisdiction. Committee co-chair Denise A. Hartman, together with committee member James E. Pelzer, outlined the committee's proposed comments for submission to the Office of Court Administration, urging the court system to adopt uniform rules to govern the redaction of information from court filings. After discussion, the following motion was adopted:

The New York State Bar Association adopts the position that there should be one set of rules governing omissions and redactions of confidential and sensitive material from court records, applicable to both civil and criminal matters, in all the courts of the Unified Court System. Such uniform rules should be adopted after all stakeholder groups have the opportunity for consultation and comment. The New York State Bar Association urges that steps to develop such uniform rules be taken with due alacrity.

In addition, Mr. Miranda was asked to chair a working group consisting of himself, Mr. Myers, and Ms. Gerstman to examine prior Association reports to determine whether a specific proposal for redaction should be included in the comments.

9. Report of Committee on Resolutions. In his capacity as chair of the committee, Mr. Miranda provided an update on the implementation of the recommendations of the Committee on Immigration Representation and the Committee on Veterans. In addition, he noted that the committee is in the process of developing the proposed implementation of the recommendations of the Committee on Civil Rights, the Special Committee on Voter Participation, and the Task Force on Family Court. The report was received with thanks.
10. Reports of Executive Committee liaisons. Written and/or oral presentations were made by Messrs. Doyle, Millon and Myers and Ms. Makofsky with respect to the sections and

committees for which they serve as Executive Committee liaisons. The reports were received with thanks.

11. Discussion of methods to encourage production of reports for House of Delegates and Executive Committee. Mr. James led a discussion of how sections and committees might be encouraged to develop reports for consideration by the House and the Executive Committee. Suggestions included having conversations with section leaders at summer section meetings; asking sections to prepare reports on specific topics, rather than appointing special committees; asking sections to appoint a committee to oversee report development; and preparing an online program for sections and committees to use in preparing reports on legislation.
12. Report re legislative matters. 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. The report was received with thanks.
13. Report and recommendations of Commercial and Federal Litigation Section. Section vice-chair Gregory K. Arenson reviewed the section's report on best practices in e-discovery, noting that the section had consulted with the New York County Lawyers' Association with respect to the comments submitted by the association and that the section had agreed to modification of its report to take into account those comments. After discussion, a motion was adopted to approve the report as modified.
14. Reports of Vice Presidents. Ms. Franchina, Mr. Gaffney and Mr. Gutierrez provided reports on local bar activities in their respective districts. The reports were received with thanks.
15. Report and recommendations of Executive Subcommittee on Journal Board of Editors. Subcommittee chair Kathryn Grant Madigan reported that the subcommittee recommended that John R. McCarron, Jr. be appointed to the Board to fill the vacancy created by the passing of Prof. Gary A. Munneke and that Marvin N. Bagwell, Brian J. Barney, and Sharon L. Wick be reappointed for an additional term as members of the Board. After discussion, a motion was adopted to approve the subcommittee's recommendations.
16. Report of Committee on Diversity and Inclusion. Committee member John Eric Higgins outlined the history of the Bylaws provisions for two members-at-large of the Executive Committee and twelve House members to further racial and ethnic diversity, noting that the provisions will expire in November 2014 and that the committee had been requested to re-examine the provisions to determine whether they are still needed. The committee will present its report and recommendations at the June House meeting. The report was received with thanks.
17. Discussion re mission of Committee on Unlawful Practice of Law. Mr. Schraver reported on issues relating to the function of the committee, noting that it has been difficult to define a mission given the limitations placed upon the Association under antitrust law.

After discussion, Mr. Schraver asked members with specific ideas for a mission for the committee to contact him.

18. Report and recommendations of Committee to Ensure Quality of Mandated Representation. Norman P. Effman, the committee's chair, presented the committee's proposed revisions to the *Standards for Providing Mandated Representation*, adopted by the House in 2005 and last revised in 2010. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, the Committee to Ensure Quality of Mandated Representation (CEQMR), pursuant to its mission to assure high quality legal representation for every individual under a mandated representation plan, drafted *Standards for Providing Mandated Representation*, and subsequently drafted *Revised Standards for Providing Mandatory Representation* (Revised NYSBA Standards); and

WHEREAS, in 2005 the New York State Bar Association endorsed the *Standards for Providing Mandated Representation*, and in 2010 adopted the *Revised NYSBA Standards*; and

WHEREAS, in July 2012 the Indigent Legal Services Board approved *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest* (Conflict Defender Standards), as mandated by statute, that are based on the Revised NYSBA Standards and are consistent with the Revised NYSBA Standards; and

WHEREAS, in January 2013, the Office of Indigent Legal Services resolved that the Conflict Defender Standards would be applicable to *all* trial court representation in criminal matters; and

WHEREAS, the CEQMR has proposed that the Revised NYSBA Standards be further revised to incorporate language from the Conflict Defender Standards that amplifies and supplements the Revised NYSBA Standards;

NOW, THEREFORE IT IS

RESOLVED, that the New York State Bar Association approves the modification of the Revised NYSBA Standards as proposed by the CEQMR (*2013 Revised NYSBA Standards*); and it is further

RESOLVED, that the officers of the Association are hereby directed to transmit the *2013 Revised NYSBA Standards* to the Administrative Board of the Courts; to distribute and promote the *2013 Revised NYSBA Standards*; and to take such other and further action as they may deem appropriate to implement this resolution.

19. Confirmation of presidential appointees.

- a) Presidential appointees to House of Delegates. Mr. Schraver reported that after consultation with the Committee on Leadership Development, he recommended reappointment of nine of the current 12 presidential appointees to the House, as well as the appointment of three new members, as follows: First Department – Rosevelie Marquez Morales (reappointment), Deborah Martin (reappointment), and Diana Sen (new); Second Department – Terry Brown, Betty Lugo, Pauline Yeung-Ha, Abayomi Ajaiyeoba (all reappointments); Third Department – John Higgins, Sandra Rivera (both reappointments); Fourth Department – Hon. E. Jeannette Ogden (new), Sheldon Keith Smith (reappointment), Jose Perez (new).
- b) Non-resident delegates to House of Delegates. Mr. Schraver reported that he recommended the appointment of Dr. Heidi Keschenat and John B. Sheehan as non-resident delegates to the House of Delegates for the term commencing on June 1, 2013.

After discussion, motions were adopted to confirm these appointments and reappointments.

20. Report of Special Committee on Human Trafficking. Committee co-chairs Bernice K. Leber and Sandra Rivera, together with committee members John H. Gross, Adrienne May Hollender, Hon. Barry Kamins, and Carol Robles-Roman, provided an informational report on the committee's work to date, highlighting the work being done by subcommittees on labor, sex trafficking, and child trafficking. The report was received with thanks.
21. New Business.
 - a. Report of Committee on Membership. In their capacity as committee co-chairs, Mr. Lau-Kee and Ms. Wallach provided an overview of Higher Logic, a program that would provide a private online community allowing interaction among members. The committee plans to make a recommendation to the Finance Committee with respect to the program. The report was received with thanks.
 - b. Report of Electronic Communications Committee. In his capacity as co-chair of the committee, Mr. Gorgos provided an update on the committee's activities, including the implementation of the new content management system for the Association's website. The report was received with thanks.
 - c. Report of Committee on Annual Award. In her capacity as a member of the committee, Ms. Moy presented the committee's recommendation for the recipient of the 2014 Association Gold Medal. After discussion, a motion was adopted to approve the recommendation.
 - d. Fourth Department access. Mr. Doyle reported that the Fourth Department has discontinued accepting attorney identification cards for building entry for security

reasons. Mr. Schraver advised that he would discuss the matter with Presiding Justice Scudder.

22. Date and place of next meeting. Mr. James observed that this is the last meeting for Mr. Doyle, Ms. Franchina, Ms. Gutekunst and Ms. Makofsky, and he thanked them for their service on the Executive Committee. He announced that the next meeting would be held on Thursday, June 20, 2013 and Friday, June 21, 2013 at The Otesaga in Cooperstown.
23. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "David P. Miranda". The signature is written in black ink and is positioned above the printed name and title.

David P. Miranda
Secretary