

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
NEW YORK HILTON MIDTOWN, NEW YORK CITY
JANUARY 30, 2014**

Present: Members Abernethy, Ayers, Barnes, Brown, Castellano, Christian, Cohen, Finerty, Fisher, Gaffney, Gerstman, Goldberg, Goldenberg, Gordon-Oliver, Gorgos, Gutierrez, James, Karson, Lau-Kee, Martin, Miranda, Moy, Myers, Romero, Safer, Schraver, Slezak, Wallach, and Young.

Guests: Mark H. Alcott, Paul H. Aloe, Richard W. Bader, James Beha, Carol A. Buckler, Hermes Fernandez, Robert M. Harper, Jennifer Hillman, Stephen A. Hochman, Robert P. Knapp, III, A. Thomas Levin, Kenneth A. Manning, Thomas J. Maroney, Eileen D. Millett, Ronald C. Minkoff, John P. Nonna, Deborah A. Scalise, David C. Singer, David H. Tennant, John Wilkinson, Stephen P. Younger.

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

1. Approval of minutes of meetings. The minutes of the November 1, 2013 meeting and the November 22, 2013 and January 17, 2014 telephone conferences were approved as distributed.
2. Consent calendar:
 - a. Amendments to Bylaws of Elder Law Section
 - b. Amendments to Bylaws of Family Law Section

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

3. Report of Treasurer. In her capacity as Treasurer, Ms. Gerstman reported on the 2013 operating budget, comparing the amounts to those as of December 31, 2012. She reported that through December 31, 2013, the Association's total revenue was \$25.3 million, a decrease of approximately \$400,000 from the previous year, and total expenses were \$23.3 million, an increase of approximately \$700,000 from the previous year. The operating surplus prior to audit was approximately \$2 million, an increase of approximately \$300,000 from the prior year. Ms. Gerstman also reviewed selected revenue and expense items. The report was received with thanks.
4. Report and recommendations of subcommittee on mandatory pro bono reporting. Mr. Karson, a member of the subcommittee, reviewed a proposed resolution prepared by the subcommittee to express the Association's opposition to mandatory reporting of pro bono service and financial contributions and to urge the repeal of amendments to Part 118 of the Rules of the Chief Administrative Judge. After discussion, a motion to postpone consideration to the June 2014 meeting failed, after which a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, the Appellate Divisions of the Supreme Court amended Rule 6.1(a)(1) of the New York Rules of Professional Conduct by increasing the aspirational number of pro bono hours to be provided annually by all lawyers from 20 to 50, effective May 1, 2013; and

WHEREAS, the Appellate Divisions of the Supreme Court amended Rule 6.1(a)(2) of the New York Rules of Professional Conduct by providing that lawyers should aspire to make annual financial contributions to organizations that provide legal services to poor persons in an amount at least equivalent to: (i) the amount typically billed by the lawyer (or the firm with which the lawyer is associated) for one hour of time, effective May 1, 2013; and

WHEREAS, concurrent with the amendments to Rule 6.1 as set forth above, section 118.1(e)(14) of the Rules of the Chief Administrator was enacted, effective May 1, 2013, requiring lawyers to report the following information on their biennial registration forms: (a) the number of hours that the lawyer voluntarily spent providing unpaid legal services to poor and underserved clients during the previous biennial registration period; and (b) the amount of voluntary financial contributions the lawyer made to organizations primarily or substantially engaged in providing legal services to the poor and underserved during the previous biennial registration period; and

WHEREAS, the Committee on Standards of Attorney Conduct (“COSAC”) of the New York State Bar Association (the “Association”) has proposed an amendment to the Comment to Rule 6.1 which would make the Comment consistent with the black letter text of Rule 6.1 as amended by the Appellate Divisions, to reflect the increase from 20 hours to 50 hours; and

WHEREAS, this amendment to the Comment to Rule 6.1 is ministerial only, and does not in any way constitute or reflect support, endorsement or approval by the Association of the amendments to Rule 6.1 of the New York Rules of Professional Conduct, nor of section 118.1 of the Rules of the Chief Administrator, which were promulgated without consultation with the Association and, to the extent they require mandatory reporting of pro bono services and mandatory reporting of financial contributions to organizations engaged in providing legal services to the poor and underserved, are contrary to established policy of the Association; it is therefore

RESOLVED, that the amendment to the Comment to Rule 6.1 proposed by COSAC be and hereby is adopted: and it is further

RESOLVED, that the Association reiterates and reaffirms its opposition to mandatory reporting of pro bono services and mandatory reporting of financial contributions to organizations engaged in providing legal services to the poor and underserved; and it is further

RESOLVED, that the Association shall continue to express its opposition to such mandatory reporting to the Chief Judge of the State of New York and the Presiding Justices of the Appellate Divisions of the Supreme Court of the State of New York, and shall pursue such other and further actions as may be appropriate, for the purpose of achieving the repeal of Rule 118.1(e)(14) of the Rules of the Chief Administrator; and it is further

RESOLVED, that, while the Association reaffirms its opposition to mandatory pro bono services, nothing contained herein shall be construed as diminishing the Association's support for voluntary pro bono services by its members to poor and underserved clients, and for adequate public funding of organizations engaged in providing legal services to poor and underserved clients.¹

Mr. Myers, in his capacity as a member of the subcommittee, reviewed a series of action items developed by the subcommittee as possible responses to the amendments to Part 118. After discussion, a motion was adopted to direct the President to undertake the following measures: (1) retain private counsel to provide opinions on the validity of the mandatory reporting rules, the financial reporting portion, related privacy issues, and the possibilities of a NYSBA civil action and/or attorneys' class action to declare the mandatory reporting rules and/or possible mandatory pro bono service rules invalid with incidental injunctive relief, and to pursue possible legislative action; (2) encourage NYSBA members to write to the Chief Judge, Administrative Board, Presiding Justices, and any others of their choice in support of NYSBA policy opposing mandatory pro bono, mandatory reporting, and/or the mandatory reporting rules; and (3) work with other bar associations to achieve these objectives.

A motion was made to advance the House agenda item relating to mandatory pro bono reporting ahead of the address by the Chief Judge at the January 31, 2014 meeting; the motion failed. Mr. Lau-Kee abstained.

Messrs. Lau-Kee and Young abstained from participating in the discussion and vote with respect to both the resolution and the action items.

5. Report of Chief Technology Officer. The report was deferred to a future meeting.
6. Update on legislative activities. Hermes Fernandez, chair of the Committee on Legislative Policy, and John M. Nonna, chair of the Committee on Federal Legislative Priorities, updated the Executive Committee on legislative activity, particularly with respect to the 2014-2015 state budget process; the federal budget, including funding for the judiciary and the Legal Services Corporation; and proposed amendments to the Voting Rights Act. The report was received with thanks.
7. Reports of Executive Committee liaisons. Written and/or oral presentations were made by Messrs. Goldberg, James, Myers, and Ms. Gerstman with respect to the sections and

¹ At its January 31, 2014 meeting, the House of Delegates voted to postpone consideration of the resolution to the June 21, 2014 meeting.

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

8. Report and recommendations of Committee on Law, Youth and Citizenship. Richard W. Bader, chair of the Committee, together with committee member A. Thomas Levin, presented the Committee's report and resolution calling upon NYSBA to formally adopt a policy on civic education to address a decade of dramatic decline in civic education and knowledge on a state and national level. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, the New York State Bar Association ("NYSBA") established the Law, Youth and Citizenship (LYC) Program in 1974 to promote citizenship and law-related education in schools throughout New York State, by assisting educators in creating opportunities for students to become effective citizens able to participate fully in our democratic society;

WHEREAS, the LYC program has, to date, successfully been able to carry out its mission by directly reaching over 5,000 students a year through *We The People*, *Project Citizen*, its statewide Mock Trial Competition and Mock Trial Summer Institute, as well as thousands more indirectly through its training of hundreds of teachers each year;

WHEREAS, the state of civic education and civic knowledge in elementary and secondary school students in both New York State and throughout the nation has so dramatically declined that NYSBA then-President Vincent E. Doyle III "sounded the alarm" about the diminishment of civics education in New York, and the NYSBA publicly announced that "civics education is a top legislative priority for the New York State Bar Association" (NYSBA June 15, 2011 Press Release);

WHEREAS, the NYSBA has stated that "The State Bar Association is concerned about what appears to be a trend toward the weakening of New York's commitment to educating all students about civics" (NYSBA June 15, 2011 Press Release);

WHEREAS, in 2011 NYSBA then-President Vincent E. Doyle III cogently stated that: "A vibrant democracy needs engaged citizens who understand the rights and responsibilities of being an American" (NYSBA June 15, 2011 Press Release);

WHEREAS, the NYSBA firmly believes that an educated citizenry and understanding of basic civic principles adopted by the Founders of this nation is fundamental to the preservation of democracy and good government;

WHEREAS, NYSBA further concludes that civic education in elementary, middle and secondary schools is fundamental to the continued success of our form of self-government and to the preservation of the Rule of Law; and

WHEREAS, in 2011, with the support of the NYSBA, the ABA adopted its Policy on Civic Education incorporating several of the following resolutions;

NOW THEREFORE IT IS

RESOLVED, that the NYSBA shall encourage lawyers and judges to be personally and actively engaged in civic education in their communities and schools and to consider it part of their fundamental responsibility to ensure that all students experience high quality civic learning, including the study of law, government, and history in New York State; and it is

FURTHER RESOLVED, that the NYSBA shall urge lawyers and judges to work to increase Americans' understanding of the role of fundamental principles in our constitutional democracy; and it is

FURTHER RESOLVED, that the NYSBA urges policymakers at all levels of government, including but not limited to the Governor, the New York State Legislature, the New York State Board of Regents, the Commissioner of Education and the New York State Department of Education, to ensure that all students experience high quality civic learning— including study of law, government, and history--- and that students' civic learning is regularly and appropriately assessed; and that civic learning is accorded state educational priority on a par with reading and mathematics, by enacting statutes and regulations to require civic education in all grades for all elementary, middle and secondary students in the public schools of the nation and this State, and to provide appropriate funding for such programs as may be necessary to fulfill such requirements; and it is

FURTHER RESOLVED, that the NYSBA urges the legal profession to seek support of policymakers, educators, the media, and the general public to ensure that subject matter to advance the civic mission of schools, including study of law, is included in the core K-12 curriculum and reflected in all standards, instruction, professional development, school funding decisions, and evaluation.

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

9. 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, as well as coordination of programming with Sections. The report was received with thanks.
10. Report and recommendations of Committee on Court Structure and Operations. Stephen P. Younger, chair of the committee, together with committee member Kenneth A. Manning, reviewed the committee's recommendations with respect to proposed amendments to Part 151 of the Rules of the Chief Administrator, which addresses potential conflicts of interest created when a judge is assigned to a case in which the

parties, their attorneys, or their attorneys' law firms have made contributions to the judge's campaign, prohibiting the assignment of a matter to a judge when certain conflict criteria are met. After discussion, a motion was adopted to approve the report and recommendations.

11. Report of Committee on Legal Education and Admission to the Bar. Committee co-chair Eileen D. Millett, together with committee members James Beha and Carol A. Buckler, presented an informational report on the committee's work to date to address the challenges presented to law schools and law students, outlining proposals with respect to early administration of the bar examination and requiring skills training for admission to the bar. The report was received with thanks.
12. Executive Session. The executive session was deferred to a future meeting.
13. Report of ABA State Delegate.
 - a. Update on ABA Activities. Mark H. Alcott, ABA State Delegate, updated the Executive Committee on ABA activity and reviewed the agenda for the upcoming February 2014 House of Delegates meeting. In addition, he reviewed ABA activity with respect to ABA Day in Washington, ABA Day at the United Nations, and the activities of ABA President James R. Silkenat. The report was received with thanks.
 - b. Consideration of co-sponsorship of resolutions for ABA House of Delegates. Richard Rifkin, Special Counsel, reviewed three proposed resolutions relating to labor trafficking, effective appellate representation for juveniles, and simplification of verification of signatures in differing jurisdictions. Motions were adopted to approve co-sponsorship of these resolutions at the February 2014 ABA House of Delegates meeting.
14. Report of President. Mr. Schraver referred members to the information contained in his printed report, a copy of which is appended to these minutes.
15. Report and recommendations of Committee on Civil Practice Law and Rules. Robert P. Knapp, III, the committee's chair, together with committee member Paul H. Aloe, outlined proposed amendments to CPLR 4547 to conform the rule to Rule 408 of the Federal Rules of Evidence. After discussion, a motion was adopted to defer consideration of the proposal to the April 2014 meeting in order to allow time to determine whether it is possible to reconcile the proposal with concerns raised by the Criminal Justice Section and the Commercial and Federal Litigation Section.
16. Report of Task Force on Gun Violence. David H. Tennant, co-chair of the Task Force, presented an informational report on the Task Force's work to date, including the development of a scholarly analysis of Second Amendment law; an analysis of firearm injury data; an analysis of gun tracing data; and possible legislation with respect to interstate trafficking and straw purchasers. A draft report will be circulated for comment,

with a final report being presented at the June 2014 meeting. The report was received with thanks.

17. Report and recommendations of Committee on Membership.
 - a. Update on committee activities. Ms. Wallach, in her capacity as chair of the Membership Committee, reported on recent membership developments. The report was received with thanks.
 - b. Proposed pilot project re law student members. Ms. Wallach, together with committee vice chair Thomas J. Maroney and Associate Executive Director Richard J. Martin, outlined a proposed pilot project entitled “Pathway to the Profession” to be introduced in five law schools and, if successful, to be expanded to other law schools. After discussion, a motion was adopted to approve the proposal.
18. Request of Dispute Resolution Section. John Wilkinson, chair of the Dispute Resolution Section, together with Section Vice Chair David C. Singer and Stephen A. Hochman, co-chair of the Section’s Committee on ADR in the Courts, outlined proposed court rules to provide for court-annexed mediation. After discussion, the Section agreed to clarify its proposal to address concerns raised by members of the Executive Committee and present a revised proposal at a future meeting.
19. Reports and recommendations of Trusts and Estates Law Section. Robert M. Harper and Jennifer Hillman, members of the Section’s Executive Committee, outlined affirmative legislative proposals to amend Mental Hygiene Law §81.2(c) and Surrogate’s Court Procedure Act §1724. After discussion, a motion was adopted to approve the proposals.
20. Reports of Vice Presidents. Mr. Romero, Mr. Karson, and Ms. Fisher provided reports on local bar activities in their respective judicial districts. The reports were received with thanks.
21. Report of Secretary/Committee on Resolutions. Mr. Miranda, in his capacity as Secretary of the Association, reported on recent developments related to implementing the recommendations of the Special Committee on Human Trafficking and the Special Committee on Discovery and Case Management in Federal Litigation. The report was received with thanks.
22. New Business. Ronald C. Minkoff, a member of the House of Delegates, outlined a proposed *amicus curiae* brief to be filed with the New York State Court of Appeals in *In re Thelen and Development Specialists Inc. v. Akin Gump*, addressing the question of whether the “unfinished business” rule in New York’s Partnership Law applies to the proceeds of hourly matters completed at law firm partners’ new firms post-dissolution. After discussion, a motion was adopted to approve the preparation of a brief. Messrs. Abernethy and Karson and Mr. Fisher agreed to serve as a subcommittee to review the brief before filing. Mr. Schraver abstained from participating in the discussion and vote.

23. Date and place of next meeting.
Friday, April 4, 2014
Nixon Peabody LLP, Rochester
24. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David P. Miranda".

David P. Miranda
Secretary