

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
HILTON NEW YORK, NEW YORK CITY
JANUARY 24, 2013**

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

Guests: Mark H. Alcott, Dennis R. Baldwin, Anna K. Christian, Hon. Mary Rita Connerton, Donald C. Doerr, John R. Dunne, Norman P. Effman, Cynthia Feathers, Hermes Fernandez, John H. Gross, Gerald T. Hathaway, Adrienne May Hollender, Darcy M. Katris, Prof. Eileen R. Kaufman, Daniel F. Kolb, Peter W. LaVigne, Bernice K. Leber, Susan B. Lindenauer, Eileen D. Millett, Kate Ann Mogulescu, Karen L. Murtagh, Janet Scoles Nadile, Sandra Rivera, Carol Robles-Roman, Dean Patricia E. Salkin, Deborah A. Scalise, Marvin E. Schechter, Diana Sagorika Sen, Sandra Stern, and Ian Seth Weinstein.

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

1. Approval of minutes of meeting. The minutes of the November 16, 2012 meeting and the December 11, 2012 and January 14, 2013 telephone conferences were approved as distributed.
2. Consent Calendar:
 - a. Proposed amendments to the Bylaws of the Dispute Resolution Section.

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

3. Report of the Treasurer. In her capacity as Treasurer, Ms. Gutekunst reported on the 2012 operating budget, comparing the amounts to those as of December 31, 2011. She reported that through December 31, 2012, the Association's total revenue was \$25.2 million, an increase of approximately \$2 million from the previous year, and total expenses were \$23.5 million, a decrease of approximately \$150,000 from the previous year. The operating surplus prior to audit was approximately \$1.7 million, an increase of approximately \$1.9 million 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. In their capacities as co-chairs of the committee, Mr. Lau-Kee and Ms. Wallach reviewed current membership data and updated the Executive Committee on membership activities. Together with committee member Dennis R. Baldwin, they reported that at its January 22, 2013 meeting, the committee had agreed to a proposed germane amendment to the Bylaws amendments being considered at the January 25, 2013 Annual Meeting of the Association. This proposal would permit a section of the Association to make a request to the Executive Committee for a waiver of the prohibition on an Associate member serving as a section chair. A motion was adopted to accept the recommendation of the Membership Committee to permit a waiver.

5. Reports of Vice Presidents. The reports were deferred to the April 2013 meeting.
6. Update on legislative activities. Hermes Fernandez, chair of the Committee on Legislative Policy, updated the Executive Committee with respect to legislative activities, with particular emphasis on the Association's legislative priorities. The report was received with thanks.
7. Report and recommendations of Trusts and Estates Law Section. Darcy M. Katris, co-chair of the section's Ad Hoc Committee on Impact of Marriage Equality Act, outlined proposed amendments to the Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act to account for the Marriage Equality Act enacted in 2011. After discussion, a motion was adopted to approve the legislative proposals.
8. Report and recommendations of Committee on Courts of Appellate Jurisdiction. Cynthia Feathers, co-chair of the committee, outlined the committee's proposed expansion of its pro bono appeals program to the Fourth Department. After discussion, a motion was adopted to approve the expanded program.
9. Reports and recommendations of Committee on Continuing Legal Education. The reports were presented by committee chair Deborah A. Scalise and committee member Marvin E. Schechter.
 - a. Update on CLE activities. Ms. Scalise provided an update on CLE programming, revenues, and products, as well as the electronic delivery of CLE materials. The report was received with thanks.
 - b. MCLE for newly-admitted attorneys. Ms. Scalise and Mr. Schechter outlined the committee's report recommending that the rules for mandatory continuing legal education be amended to permit newly-admitted attorneys to earn up to half their required MCLE credits through formats other than live programming. After discussion, a motion was adopted to approve the proposal.
10. Report of Special Committee on Human Trafficking. Committee co-chairs Bernice K. Leber and Sandra Rivera, together with committee members John H. Gross, Andrienne May Hollender, Kate Ann Mogulescu, and Carol Robles-Roman, provided an informational report on the committee's work to date. They reported that the committee plans to present a report for consideration at the April 2013 House of Delegates meeting. The report was received with thanks.
11. Report and recommendations of Committee on Civil Rights. Committee chair Diana Sagarika Sen and member Karen L. Murtagh outlined the committee's report recommending limits on the use of solitary confinement in New York correctional facilities. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, on October 18, 2011, the United Nations Special Rapporteur on torture, Juan E. Méndez, called on all countries to ban the use of solitary confinement of pris-

oners except in very exceptional circumstances and for as short a time as possible. Noting that such confinement can amount to torture when used as punishment or for an indefinite or prolonged period of time because of the severe mental pain or suffering it may cause, the Special Rapporteur recommended that solitary confinement in excess of 15 days should be completely prohibited.

WHEREAS, on October 2, 2012, the New York Civil Liberties Union issued a 64-page report titled, “*Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*” on the use of solitary confinement in New York State’s prisons. The report, based on a year of study and analysis, explored the history that led to the use of solitary confinement in New York State and compared New York’s use of solitary confinement with that of other states. It analyzed both whether the use of solitary confinement violates current legal standards, and whether reforming solitary confinement in New York State would adversely impact prison or public safety. The report concluded that New York’s use of solitary confinement is arbitrary and unjustified, harms prisons and corrections staff and negatively impacts prison and community safety.

WHEREAS, according to the report, last year alone, New York issued more than 13,500 extreme isolation sentences; about one for every four people incarcerated. Just over eight percent of New York’s prison population is in isolation at any given time - the vast majority for non-violent offenses. Only 16 percent of isolation sentences from 2007 to 2011 were for assault or weapons. About half of the 4,500 prisoners in solitary confinement spend 23 hours a day in an isolation cell completely alone. The other half are confined in an isolation cell the size of a parking spot with another prisoner, a practice that forces two strangers into intimate, constant proximity for weeks, months and even years on end. A 2003 report by the Correctional Association of New York found that the average sentence in disciplinary segregation was 5.3 months but hundreds of inmates spent an average of three years in isolation and several prisoners in administrative segregation have been isolated for more than 20 years.

Whereas, extreme isolation is different than prisoner separation, which has long been an accepted corrections practice. Corrections officials can separate and remove violent or vulnerable prisoners from the general prison population without subjecting them to the punishing physical and psychological deprivation of extreme isolation - a point of consensus among corrections officials in other states, legal scholars and international human rights bodies.

WHEREAS, based upon the recommendations of the United Nations Special Rapporteur, the comprehensive report of the New York Civil Liberties Union and the plethora of historic and scientific evidence set forth in this report, all of which demonstrate the damage caused by prolonged solitary confinement and the ability to ensure prison and public safety without resorting to its use.

WHEREAS, the Committee on Civil Rights has prepared a report analyzing the use of solitary confinement and recommending that the use of solitary confinement be profoundly restricted; it is therefore

RESOLVED, that the New York State Bar Association hereby approves the report and recommendations of the Committee on Civil Rights.

FURTHER RESOLVED, that the New York State Bar Association calls upon all governmental officials charged with the operation of prisons and jails throughout New York State to profoundly restrict the use of long-term solitary confinement, by adopting clear and objective standards to ensure that prisoners are separated from the general prison population only in very limited and very legitimate circumstances and only for the briefest period and under the least restrictive conditions practicable.

FURTHER RESOLVED, that the New York State Bar Association calls upon such officials to adopt stringent criteria, protocols and safeguards for separating violent or vulnerable prisoners, including clear and objective standards to ensure that prisoners are placed in solitary confinement only in limited and legitimate circumstances for the briefest period and under the least restrictive conditions practicable; and auditing the current population in extreme isolation to identify people who should not be in the Special Housing Unit, transitioning them back to the general prison population, and reducing the number of Special Housing Unit beds accordingly.

FURTHER RESOLVED, that the New York State Bar Association urges that the imposition of long-term solitary confinement on persons in custody beyond 15 days be proscribed.

FURTHER RESOLVED, that the New York State Bar Association calls upon the State Legislature to hold public hearings to inquire into the harmful effects of long-term solitary confinement and to solicit both professional and academic commentary on the matter and comments from persons who have been placed in long-term solitary confinement, and to otherwise conduct these hearings in a manner that will best inform lawmakers and the public at large regarding the effects of long-term isolation and to adopt appropriate legislation to address the use of solitary confinement in New York facilities.

FURTHER RESOLVED, that the officers of the Association are hereby empowered to take such other and further action as may be required to implement this resolution.

12. Report and recommendations of Committee on Committees. Donald C. Doerr, chair of the committee, reviewed the committee's report and recommendations with respect to the operation of seven Association committees, as well as recommendations regarding the development of a central repository for committee mission statements and adding definitions of entities in the Association Bylaws. After discussion, a motion was adopted to approve the report and recommendations.
13. Reports of Executive Committee liaisons. Written reports were presented by Ms. Martin with respect to the Young Lawyers Section and the Steven C. Krane Special Committee on Student Loan Assistance for the Public Interest. The remaining liaison reports were deferred to the April 2013 meeting.

14. Report and recommendations of Special Committee on Voter Participation. Committee co-chairs John R. Dunne and Daniel F. Kolb reviewed the committee's recommendations with respect to increasing voter registration and improving the voting process. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, the right to vote is a fundamental right of citizens of the United States, but the rate of voter participation in New York State is among the lowest in the country; and

WHEREAS, the New York State Bar Association's Special Committee on Voter Participation was appointed to recommend ways to remove barriers to registration and voting while maintaining the integrity of the process; and

WHEREAS, the Special Committee has completed a report containing a number of recommendations with respect to the registration process and the voting process, as well as increased penalties for deliberate and misleading conduct;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Special Committee on Voter Participation; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such other and further steps as they may deem warranted to implement this resolution.

15. Report of ABA State Delegate. Mark H. Alcott, ABA State Delegate, updated the Executive Committee on ABA activity and reviewed the agenda for the upcoming February 2013 House of Delegates meeting. In addition, he reviewed ABA activity with Congress, the upcoming presentation of the ABA Spirit of Excellence Award to Prof. Jenny Rivera from CUNY School of Law, and the activities of ABA President-elect James R. Silkenat. The report was received with thanks.
16. Report and recommendations of Labor and Employment Law Section and Commercial and Federal Litigation Section. Gerald T. Hathaway, co-chair of the Commercial and Federal Litigation Section's Committee on Employment and Labor Relations, outlined an affirmative legislative proposal to amend the New York WARN Act, which requires businesses to give early notice of closings and layoffs. After discussion, a motion was adopted to approve the proposal.
17. Report and recommendations of Business Law Section. Peter W. LaVigne, chair of the section's Legislative Affairs Committee, together with Janet Scoles Nadile of the New York City Bar Association and Sandra Stern, a past chair of the Business Law Section, presented an affirmative legislative proposal to amend the Uniform Commercial Code, repealing Articles 1, 3, 4 and 7 of the Uniform Commercial Code (UCC) and amending Articles 2, 2A, 4A, 5, 8 and 9. After discussion, it was agreed to defer consideration of the report to permit additional time for review; it will be scheduled for a conference call meeting.

18. Report and recommendations of Committee on Legal Education and Admission to the Bar. Committee co-chairs Eileen D. Millett and Prof. Eileen R. Kaufman, together with committee members Dean Patricia E. Salkin and Ian Seth Weinstein, reviewed the committee's report recommending ways to implement the recommendations of the Special Committee to Study the Bar Examination and Other Means of Measuring Lawyer Competence. The recommendations include the creation of a task force to provide input to the State Board of Law Examiners regarding streamlining the bar examination; consideration of a point boost on the examination for participation in a clinical program; a pilot project for a public service alternative to the bar examination; and a study of "speededness" – *i.e.*, the effect of a timed examination. After discussion, a motion was adopted to authorize Mr. Schraver to work with the committee to develop more specific proposals, bring together the different constituencies, and report back to the Executive Committee at the April 2013 meeting. Ms. Gerstman abstained from participating in the vote.
19. Report and recommendations of Task Force on Family Courts. Task Force co-chairs Hon. Mary Rita Connerton and Susan B. Lindenauer reported on the committee's work to date in examining the challenges faced by Family Courts and developing recommendations that would better enable the courts to meet the demands placed upon them. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, Family Court plays a vital and unique role in addressing the personal and serious issues faced by New York's children and families; and

WHEREAS, Family Court judges and their staff work hard under demanding conditions to have a positive impact on families, children and their communities; and

WHEREAS, the Task Force on Family Court was appointed to examine the challenges faced by Family Court and recommend measures that would better enable Family Court to meet the demands placed on it; and

WHEREAS, the Task Force examined resources for litigants; resources for the courts; court operations, case management, and staffing; and technology; held hearings in each of the state's four judicial departments and consulted experts in New York and other states to obtain a full picture of the problems that Family Court faces as well as solutions to these problems; and

WHEREAS, the Task Force has completed a comprehensive report containing major recommendations to significantly strengthen Family Court by establishing as its highest priority the addition of more judges, as well as recommendations to improve court operations, increase resources for individual litigants, increase the use of technology, and improve the overall capacity of the court;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Task Force on Family Court; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such other and further steps as they may deem warranted to implement this resolution.

20. Report and recommendations of Committee to Ensure Quality of Mandated Representation. Norman P. Effman, chair of the committee, reviewed the adoption by the House in 2005 of the Standards for Providing Mandated Representation and the subsequent amendment of the Standards in 2010. He reported that in 2012, the Office of Indigent Legal Services approved conflict defender standards, which are based on the NYSBA Standards, and that the committee recommends that they be incorporated into the NYSBA Standards. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, in 2005 the New York State Bar Association endorsed Standards for Providing Mandated Representation (NYSBA Standards), revised in 2010, to assure high quality legal representation for every individual under a mandated representation plan; and

WHEREAS, in 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 NYSBA Standards and are consistent with the NYSBA Standards;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association approves the incorporation of the Conflict Defender Standards into the NYSBA Standards; and it is further

REQOLVED, that the Committee to Ensure Quality of Mandated Representation is hereby authorized to prepare a post-incorporation document for presentation to the House of Delegates.

21. Report and recommendations of Committee on Lawyer Referral Service. Anna K. Christian, chair of the committee, outlined proposed amendments to the plan that governs the operation of the Association's Lawyer Referral and Information Service to provide for a more formalized process to address the reinstatement or continued suspension of a panel member. After discussion, a motion was adopted to recommend approval of the amendments by the House.
22. Report of Committee on Resolutions. In his capacity as chair of the committee, Mr. Miranda updated the Executive Committee with respect to the implementation of the recommendations of the Special Committee on Veterans, the Special Committee on Immigration Representation, and the Task Force on Nonlawyer Ownership. The report was received with thanks.
23. Date and place of next meeting. Mr. James announced that the next meeting would be held on Friday, April 5, 2013 at the Bar Center in Albany.

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