

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
BAR CENTER, ALBANY, NEW YORK
NOVEMBER 16, 2012**

Present: Members Brown, Christian, Doyle, Finerty, Gorgos, Gutekunst, Gutierrez, James, Lau-Kee, Makofsky, Martin, Miranda, Moy, Myers, Romero, Safer, Schraver, Slezak, Wallach, Young.

Guests: Lia M. Brooks, Michael E. Getnick, Sarah Jo Hamilton (by telephone), John Hanna, Jr., Jennifer Hillman, Robert P. Knapp III, Harry Kresky (by telephone), Michael C. Lancer, A. Thomas Levin, David A. Lewis, John S. Marwell, Sandra Rivera, Lesley Friedman Rosenthal, Deborah A. Scalise (by telephone), Stephen P. Younger

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

1. Approval of minutes of meeting. The minutes of the of June 21-22, 2012 meeting and the July 24, September 20 and October 23, 2012 telephone conferences were approved as distributed.
2. Consent calendar:
 - a) Amendments to Bylaws of Young Lawyers Section
 - b) Amendments to Bylaws of International Section

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

- c) Amendments to Bylaws of Judicial Section

The Executive Committee deferred the amendments to the bylaws of the Judicial Section and removed the above item from the consent calendar.

3. Report and recommendations of Steering Committee on Legislative Priorities.
 - a) Committee on Legislative Policy. Mr. Doyle, a member of the Committee, reported on the committee's recommendations of the following items for inclusion on the list of the Association's state legislative priorities: Integrity of New York's justice system (including adequate funding for the courts, adequate civil legal services funding, adequate funding for the Office of Indigent Legal Services, and wrongful convictions legislation including the audio and video recording of custodial interrogations), integrity of New York's juvenile justice system (including the audio and video recording of any interrogation of children and an increased age of criminal responsibility), the Business Law Section's proposal to reform the Not-for-Profit Corporation Law, support for the Legal Profession, sealing records of conviction for certain crimes, and high-priority issues relating to New York's Family Courts.

After discussion, a motion was adopted to approve these items as the Association's 2013 state legislative priorities.

- b) Committee on Federal Legislative Priorities. Sandra Rivera, a member of the Committee on Federal Legislative Priorities, presented the committee's recommendations of the following items for inclusion on the list of the Association's 2013 federal legislative priorities: Integrity of the justice system (including funding of civil legal services, protection of the attorney-client relationship and support for the rule-making process according to the Rules Enabling Act and maintaining the current Rule 11 of the Federal Rules of Civil Procedure), repeal of the Defense of Marriage Act, support for states' authority to regulate the tort system, support for legislation and funding to enhance civic education programs and support for the legal profession.

After discussion, a motion was adopted to approve these items as the Association's 2013 federal legislative priorities.

4. Report and recommendations of International Section. John Hanna, Jr. presented the International Section's request for expedited consideration of the section's request for approval of support for the ratification of the United Nations Convention on the Law of the Sea. After discussion, a motion was adopted to defer consideration of the report and recommendations in order to permit interested sections and committees to comment and consider the report during a conference call meeting of the Executive Committee.
5. 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. The report was received with thanks.
6. Report and recommendations of New York County Lawyers' Association. Harry Kresky presented the report and recommendations of the New York County Lawyers' Association, relating to the petition process required for candidates seeking to run for public office. After discussion, a motion to approve the proposal failed by a vote of 5 to 8.
7. Report of President. Mr. James highlighted the information contained in his printed report, a copy of which is appended to these minutes.
8. Report of Treasurer. Ms. Gutekunst, in her capacity as Treasurer, reported that through September 30, 2011, the Association's total revenue was \$22,703,000, an increase of \$2,151,000 from the previous year, and total expenses were \$17,622,000, an increase of \$50,000 from the previous year. The operating surplus was \$5,081,000. Ms. Gutekunst also highlighted several revenue and expense items. The report was received with thanks.

9. Report of Executive Subcommittee on CLE. Mr. Myers, in his capacity as chair of the Executive Committee's Subcommittee on CLE, provided a status report on the guidelines being developed by the subcommittee to assist sections in planning CLE programs, as well as the subcommittee's upcoming work on revenue sharing. After discussion and a request to circulate Richard Martin's memorandum addressing the need for the guidelines, the report was received with thanks.
10. 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 Task Force on the Future of the Legal Profession, including a recent meeting with law school deans, the favorable response of law schools to the Task Force's recommendations and the Association's ongoing work to strengthen its ties with law schools in New York State. The report was received with thanks.
11. Report and recommendations of Task Force on Nonlawyer Ownership. Stephen P. Younger, chair of the Task Force, David A. Lewis, vice-chair and Lia M. Brooks, secretary to the Task Force, presented the report and recommendations of the Task Force on Nonlawyer Ownership, including a discussion of the history of this issue, the recent discussion and ultimately withdrawn proposals put forth by the ABA Commission on Ethics 20/20 and the Task Force's process, observations and conclusions. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House of Delegates¹:

WHEREAS, in 2000 the New York State Bar Association approved a resolution from the Special Committee on the Law Governing Firm Structure and Operation that provided, inter alia, that "[n]o change should be made to the law that now prohibits lawyers and law firms directly or indirectly from transferring ownership or control to nonlawyers over entities practicing law"; and

WHEREAS, in December 2011 the ABA Commission on Ethics 20/20 released for comment a discussion draft proposing a limited form of nonlawyer ownership of law firms and a paper addressing the sharing of fees between or among firms with offices in jurisdictions where nonlawyer ownership is permitted; and

WHEREAS, in view of the fact that more than ten years had passed since this issue was examined by NYSBA, the Task Force on Nonlawyer Ownership was appointed to consider the nonlawyer ownership proposals, evaluate whether the proposals would advance the profession's core values of loyalty, independence and confidentiality; and

WHEREAS, in April 2012, the ABA Commission on Ethics 20/20 issued a press release indicating that it will not propose changes to ABA policy prohibiting nonlawyer ownership of law firms at this time, and thus withdrawing its

¹ A revised version of the resolution was adopted by the House of Delegates on November 17.

December 2011 discussion draft proposing a limited form of nonlawyer ownership of law firms; and

WHEREAS, the Task Force has completed a report concluding that New York should not adopt any form of nonlawyer ownership in the absence of compelling need, empirical data or pressure for change; and

WHEREAS, in September 2012 the ABA Commission on Ethics 20/20 issued a revised paper withdrawing its December 2011 proposal concerning the division of fees within a law firm, and addressing the division of fees between lawyers in different firms where one lawyer practices in a firm in a jurisdiction that prohibits nonlawyer ownership and the other practices in a firm with nonlawyer owners in a jurisdiction that permits it (the Inter Firm Fee Sharing Proposal); and

WHEREAS, in October 2012, the ABA Commission on Ethics 20/20 issued a press release indicating that it will not propose changes to ABA policy with regard to sharing of fees with law firms in jurisdictions that permit nonlawyer ownership, withdrawing its September 2012 discussion draft proposing an Inter Firm Fee Sharing Proposal and referring the issue to the ABA's Standing Committee on Ethics and Professional Responsibility; and

NOW, THEREFORE, IT IS

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

RESOLVED, that the Association reaffirms its opposition at this time to any form of nonlawyer ownership of law firms in the absence of compelling need, empirical evidence or pressure for change; and it is further

RESOLVED, that the Association refers the issue of how to implement the policy behind the Inter Firm Fee Sharing Proposal to the Association's Committee on Standards of Attorney Conduct with the request that the Committee report back to the House of Delegates; 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.

12. Report and recommendations of Trusts and Estates Law Section. Jennifer Hillman, on behalf of the Trusts and Estates Law Section, presented the section's affirmative legislative proposal to amend EPTL Section 5-1.2 with respect to the disqualification of spouses in cases involving decedents who married when they lacked the required mental capacity. After discussion, a motion was adopted to approve the proposal.

13. Report of Committee on Membership. Mr. Lau-Kee and Ms. Wallach, in their capacity as co-chairs of the Membership Committee, reported on recent membership developments. Mr. Lau-Kee provided a status report and Ms. Levin Wallach highlighted the work of the Mentoring Subcommittee and the New Lawyers Subcommittee, as well as other ongoing events and membership incentives. She also reported on the 2011-2012 President's Section Diversity Challenge and the next phase, "Reaching for the Next Level," and asked Executive Committee liaisons to sections to encourage them to submit their updated plans. The report was received with thanks.
14. Reports and recommendations of Committee on Civil Practice Law and Rules. Robert P. Knapp III presented the report and recommendations of the Committee on Civil Practice Law and Rules with regard to three affirmative legislative proposals.
 - a) CPLR 3212
 - b) CPLR 3213
 - c) CPLR 3216 and 3402

After discussion, a motion was adopted to approve each of the three proposals.

15. Reports of Executive Committee liaisons. Written and/or oral presentations were made by Messrs. Lau-Kee, Schraver and Young with respect to the sections and committees for which they serve as Executive Committee liaisons. Mr. Doyle's report was deferred until January. The reports were received with thanks.
16. Report and recommendations of Special Committee on Veterans. Michael C. Lancer, as co-chair of the Special Committee on Veterans, presented the report and recommendations of that Special Committee, including its support for veterans' treatment courts, improved legal training for lawyers seeking to assist veterans and improved access to legal services, and asked the Executive Committee to consider granting standing committee status. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House of Delegates:

WHEREAS, the NYSBA expresses its appreciation to veterans of the armed forces for their service to our country; and

WHEREAS, veterans of service in the armed forces often have the need for specialized legal services, tailored to military service and culture; and

WHEREAS, the New York State Bar Association's Special Committee on Veterans was appointed to focus on the unique legal needs of military veterans and service members; and

WHEREAS, the Special Committee has completed a report recommending the expansion of veterans courts throughout New York State; ongoing training opportunities for attorneys who want to provide civil legal services to veterans; the establishment of local bar committees to address military law and veterans'

issues; and the development of legal referral services to veterans by the New York State Bar Association's Lawyer Referral and Information Service any by local bar lawyer referral services;

NOW, THEREFORE, IT IS

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

RESOLVED, that the Committee on Committees is directed to conduct a review of the Special Committee on Veterans and recommend whether it should be designated as a standing committee of the Association; 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.

17. Reports of Vice Presidents. Mr. Romero provided a report on local bar activities in the 2nd Judicial District and Ms. Gerstman submitted a written report with respect to 8th Judicial District local bar activities. The reports were received with thanks.
18. Request of Committee on Professional Discipline to establish an award. Sarah Jo Hamilton, chair of the Committee on Professional Discipline, presented the committee's proposed award to be named in honor of Robert Saltzman. After discussion, a motion was adopted to approve the establishment of the award.
19. Report re Charity Corps. Lesley Friedman Rosenthal provided an informational report on the progress of the Association's Charity Corps initiative, undertaken in association with the New York State Attorney General's Charities Bureau. She discussed the success of the program and its positive results and reported that it will continue its work in the coming year with a goal of matching 75 charities with volunteer attorneys to assist them with legal needs related to governance and fundraising. The report was received with thanks.
20. Report and recommendations of Finance Committee re 2013 proposed income and expense budget. Finance Committee chair John Marwell reviewed the proposed budget for 2013, which projects income of \$25,920,450, expenses of \$25,439,155, with a projected surplus of \$481,295. A motion was adopted to endorse the proposed budget for favorable action by the House of Delegates.
21. Report and recommendations of Committee on Bylaws. A. Thomas Levin, a member of the Bylaws Committee, presented the Committee's proposals to amend the Bylaws (a) to add an additional delegate from the Judicial Section to the House of Delegates and (b) to reclassify membership categories.

- a) After discussion, a motion was adopted to recommend subscription of the amendment adding a Judicial Section Delegate to the House of Delegates.
 - b) After discussion, a motion was adopted to recommend subscription of the amendment reclassifying membership categories to the House of Delegates.
22. Report of Nominating Committee. Michael E. Getnick, chair of the Nominating Committee, reported the Committee had nominated the following individuals for election to the indicated offices for the 2012-2013 Association year: President Elect: Glenn Lau-Kee, New York; Secretary: David P. Miranda, Albany; Treasurer: Sharon Stern Gerstman, Buffalo; Vice Presidents: 1st District – Catherine A. Christian, New York and Jay G. Safer, New York; 2nd District – Manuel A. Romero, Brooklyn; 3rd District – Lillian M. Moy, Albany; 4th District – Rebecca A. Slezak, Amsterdam; 5th District – Thomas E. Myers, Syracuse; 6th District – Mark S. Gorgos, Binghamton; 7th District – June M. Castellano, Rochester; 8th District – Cheryl Smith Fisher, Buffalo; 9th District – Hon. Arlene Gordon-Oliver, Harrison; 10th District – Scott M. Karson, Melville; 11th District – Richard M. Gutierrez, Forest Hills; 12th District – Steven E. Millon, Bronx; 13th District – Michael J. Gaffney, Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2013: T. Andrew Brown, Rochester; David Louis Cohen, Kew Gardens; Evan M. Goldberg, New York; Oliver C. Young, Buffalo. Nominated as Section Representatives to the Executive Committee were Ira S. Goldenberg, White Plains (2-year term (June 1, 2013 – May 31, 2015)) and James B. Ayers, Albany (1-year term (June 1, 2013 – May 31, 2014)), and James R. Barnes was nominated as Young Lawyers Section Representative to the Executive Committee. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2013-2015 term: Seymour W. James, Jr., New York; Glenn Lau-Kee, New York; Bernice K. Leber, New York; A. Thomas Levin, Garden City; Stephen P. Younger, New York.
23. New business
24. Date and place of next meeting.
Thursday, January 24, 2013
Hilton New York, New York City
25. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



David P. Miranda
Secretary