

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
NEW YORK HILTON MIDTOWN, NEW YORK, NEW YORK
JANUARY 25, 2018**

Present: Karina E. Alomar, Alyssa M. Barreiro, Jonathan B. Behrins, Earamichia Brown, Norman P. Effman, Margaret J. Finerty, Prof. Michael L. Fox, Michael W. Galligan, Sharon Stern Gerstman, Sarah E. Gold, Taa R. Grays, Henry M. Greenberg, Claire P. Gutekunst, Richard M. Gutierrez, Bryan D. Hetherington, Drew Jaglom, Scott M. Karson, Elena DeFio Kean, Stuart J. LaRose, Sherry Levin Wallach, Peter H. Levy, Michael Miller, Steven E. Millon, Domenick Napoletano, Bruce J. Prager, Sandra Rivera, William T. Russell, Jr., Carol A. Sigmond, David H. Tennant,.

Guests: James A. Barnes, Prof. Ira M. Bloom, Sheila M. Gaddis, Prof. Barbara Gillers, John H. Gross, Carrie Hartin, Hilary Jochmans, Hon. Judy Harris Kluger, David J. Lansner, William P. LaPiana, Camille Mackler, Thomas J. Maroney, Kevin Matz, Amy Schwartz-Wallace, Samuel J. Servello, Prof. Roy D. Simon, Prof. Merrill Sobie, Tucker C. Stanclift, Ann Morris Willey.

Ms. Gerstman presided over the meeting as President of the Association.

1. Approval of minutes of meetings. The minutes of the November 3, 2017 meeting were approved as distributed.
2. Consent calendar:
 - a) Proposed stated purpose of Committee on Transportation
 - b) Amendments to bylaws or Real Property Law Section
 - c) Amendments to bylaws of Health Law Section

Item 2(c) was removed from the consent calendar for discussion, and a motion to approve the remaining two consent calendar items was adopted. After discussion, a motion was adopted to approve Item 2(c) with the understanding that the section would be encouraged to change committee chairs more frequently and to engage more members in committee work.

3. Report of Treasurer. In his capacity as Treasurer, Mr. Karson reported on the 2017 operating budget, comparing the amounts to those as of December 31, 2016. He reported that through December 31, 2017, the Association's total revenue was \$22 million, a decrease of approximately \$1 million from the previous year, and total expenses were \$22 million, an increase of approximately \$449,000 from the previous year. The operating deficit prior to audit was approximately \$131,000. Mr. Karson also reviewed selected revenue and expense items, with a focus on membership dues revenue. The report was received with thanks.

4. Reports and recommendations of Trusts and Estates Law Section.
 - a) Uniform Directed Trusts Act. Prof. Ira M. Bloom and William LaPiana, co-chairs of the section's Uniform Trust Code Committee, outlined an affirmative legislative proposal that New York adopt the Uniform Directed Trust Act as a new Article 7-B of the Estates, Powers and Trusts Law. After discussion, a motion was adopted to approve the proposal.
 - b) Credit shelters. Kevin Matz, co-chair of the section's Committee on Taxation, outlined an affirmative legislative proposal to add a new EPTL §2-1.12-A to govern the interpretation of credit shelter bequests in testamentary documents. After discussion, a motion was adopted to approve the proposal.
5. Report of Task Force on School to Prison Pipeline. Sheila A. Gaddis and John H. Gross, co-chairs of the Task Force, presented an informational report on the Task Force's work to date in reviewing current practices in and law relating to school discipline, with a view to recommending policy and best practices in discipline and restorative justice. The report was received with thanks.
6. Report of President. Ms. Gerstman highlighted the information contained in her printed report, a copy of which is appended to these minutes.
7. Reports of Vice Presidents and Executive Committee liaisons. Members of the Executive Committee provided updates on the activities of sections and committees for which they serve as Executive Committee liaisons. The reports were received with thanks.
8. Report of NYSBA staff. Pamela McDevitt, Executive Director, reviewed staff changes and introduced Daniel Weiller, Managing Director of Marketing and Communications. Jason Nagel, Managing Director of Information Technology, provided an update on technology improvements. The reports were received with thanks.
9. Report and recommendations of Executive Subcommittee on Association Publications. In his capacity as chair of the subcommittee, Prof. Michael Fox presented the subcommittee's report that reviewed the current Association publications and a survey conducted in Fall 2017 to understand members' needs and assesses areas of interest. He then outlined recommendations to utilize content marketing strategies to increase the reach and value of the publications' content, promote increased readership, and build search engine optimization. Discussion ensued, during which several recommendations for changes and clarifications to the report were accepted by the subcommittee. A motion to amend the report with respect to the scope of work failed, after which a motion to approve the report and recommendations as amended was approved.
10. Report re Association advertising and sponsorships. Carrie Hartin, Chief Operating Officer of Network Media Partners, updated the Executive Committee with respect to advertising and marketing efforts on behalf of the Association. The report was received with thanks.

11. Report re legislative activities. Hilary Jochmans, chair of the Committee on Federal Legislative Priorities, updated the Executive Committee with respect to the effect of the recent shutdown of the federal government and an upcoming lobby day on February 14, which will focus on funding for the Legal Services Corporation. In her capacity as chair of the Committee on State Legislative Policy, Ms. Rivera provided an update on state activity, noting that much of this activity is a reaction to activity at the federal level. The reports were received with thanks.
12. Report of Committee on Membership. Thomas J. Maroney, chair of the Committee on Membership, reported on recent membership developments, including the planned development of regional membership groups for local focus. The report was received with thanks.
13. Executive session. In executive session, the Executive Committee discussed personnel matters.
14. Report of Committee on Continuing Legal Education. James A. Barnes, chair of the Committee on Continuing Legal Education, together with Katherine Suchocki, Senior Director of Continuing Legal Education, provided an update on the Association's continuing legal education program, including 2017 programming, attendance and revenue and 2018 initiatives. The report was received with thanks.
15. Reports and recommendations of Committee on Children and the Law. The presentations were made by David J. Lansner, chair of the committee, and committee member Prof. Merrill Sobie.
 - a) Access to forensics reports in Family Court matters. The committee presented an affirmative legislative proposal to amend the Family Court Act to strengthen its provisions with respect to sealing, expungement and confidentiality of juvenile delinquency records. After discussion, a motion was adopted to return the proposal to the committee with a request that it work with the Family Law Section and strengthen the confidentiality provisions in the proposal.
 - b) Court rules related to forensic reports. The committee presented a proposal to amend various court rules with respect to the investigation of complaints related to professionals preparing forensic reports. After discussion, a motion was adopted to approve the proposal.
 - c) Interstate Compact on the Placement of Children. The committee presented a proposal to amend Family Court Act Article 10 to clarify that compliance with the Interstate Compact on the Placement of Children is not required when a child is released into the custody of an out-of-state parent, other relative or suitable unrelated person. After discussion, a motion was adopted to approve the proposal.

16. Report and recommendations of Health Law Section. Samuel L. Servello, co-chair of the section's Committee on Medical Research and Biotechnology, together with Ann Morris Willey, outlined a proposed revision to 10 NYCRR 58.1.8 to permit research laboratories to disclose research findings that arise in an approved study to the patient and/or a health care provider designated by the study subject. After discussion, a motion was adopted to approve the proposal.
17. Report and recommendations of NYSBA/WBASNY Domestic Violence Initiative. Hon. Judy Harris Kluger and Amy Schwartz-Wallace, co-chairs of the Initiative, reviewed the Initiative's work during the past year in the areas of educating attorneys about domestic violence and the need for representation of victims and ensure access to training and education; expanding the pool of volunteer attorneys and opportunities for volunteer service to victims; considering legislation that seeks to protect domestic violence victims. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, domestic violence is ongoing, purposeful behavior aimed at exerting power and control over one's intimate partner and can be psychological, physical, sexual or economic in nature. Women and men who leave abusive relationships frequently have limited resources. Many desperately need legal assistance in seeking orders of protection against their abusers and in dealing with legal issues such as housing, child custody, support and visitation, and divorce; and

WHEREAS, to help address the scourge of domestic violence in New York State, in the summer of 2016 the then-Presidents of the New York State Bar Association (NYSBA) and the Women's Bar Association of the State of New York (WBASNY) created a joint NYSBA/WBASNY Domestic Violence Initiative (the Initiative) to enhance access to legal services by victims of domestic violence in our state; and

WHEREAS, high-quality civil legal assistance plays a vital role in protecting the health and well-being of victims and their children. Research has shown that access to legal services is one of the most effective interrupters of domestic violence, even more effective than access to shelters, hotlines, or counseling. Legal services are the most expensive support services for domestic violence victims, and the services to which the fewest victims have access, yet they are essential to ending the cycle of violence and making a victim whole. Despite tremendous efforts by legal services lawyers and pro bono volunteers, the need dwarfs the available resources. To increase access to justice for domestic violence victims, the Initiative worked with legal service providers, courts, law schools, governmental agencies, local bar associations and pro bono attorneys to educate, recruit and train additional volunteer attorneys; and

WHEREAS, in broad terms, the mission of the Initiative was to help educate attorneys around the state about domestic violence and the need for pro bono representation of victims, expand the existing pool of volunteer attorneys and opportunities for volunteer service to victims of domestic violence; and examine and

make recommendations concerning pending or proposed legislation that seeks to protect domestic violence victims; and

WHEREAS, in its final report, the Initiative has made specific recommendations with respect to: 1) education and training, 2) expanding pro bono opportunities and resources for attorneys and bar associations, and 3) legislative advocacy, all in order to better protect and serve victims of domestic violence; and

WHEREAS, recognizing the importance of institutionalizing NYSBA's efforts to continue the work of the Initiative, then-President Gutekunst and leaders of NYSBA's Family Law Section collaborated to create a Domestic Violence Committee within the Section; and

WHEREAS, the Initiative has requested that the New York State Bar Association approve its final report and recommendations;

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the New York State Bar Association hereby approves the final report and recommendations of the Domestic Violence Initiative; and it is further

RESOLVED, that the officers of the Association are hereby authorized to take such action as they may deem appropriate to publicize the final report and recommendations and to implement the recommendations.

18. Report and recommendations of Committee on Immigration Representation. Camille Mackler, chair of the committee, presented a report urging that the U.S. Immigration and Customs Enforcement (ICE) include courthouses as a "sensitive location" in its Sensitive Locations Policy and that Congress pass the Protecting Sensitive Locations Act and amend the Immigration and Nationality Act to codify ICE's Sensitive Locations Policy. 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) has long supported and encouraged equal access to justice and to our courts of law for all, including immigrants residing in New York State; and

WHEREAS, in the past, NYSBA has actively promoted and participated in efforts to provide immigrants in New York with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose, as well as through partnerships with Governor Cuomo's Liberty Defense Project; and

WHEREAS, since the beginning of 2017 advocates have noticed an increase in the presence of Immigration and Customs Enforcement (ICE) agents in New York's courthouses, with a study by the Immigrant Defense Project (IDP) showing a eight-

fold increase in arrests of immigrants on civil immigration charges within our State's courthouses; and

WHEREAS, the same study by IDP showed that 75% of immigration legal service providers in New York have worked with clients who have expressed fears of going to New York courts, including to resolve criminal charges against them, to act as witnesses, or to obtain orders of protection; and

WHEREAS, leading law enforcement voices in New York, including New York State Attorney General Eric Schneiderman and Kings County Acting District Attorney Eric Gonzalez have spoken of the chilling effect these tactics have had by ICE on immigrants seeking justice in our courts; and

WHEREAS, NYSBA believes that true access to justice includes the ability to appear, defend oneself, and obtain protection from our courts free from the fear of ancillary punishment;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby urges Immigration and Customs Enforcement (ICE) to include courthouses as a "sensitive location" in its Sensitive Locations Policy, which enumerates the places in which ICE will not conduct enforcement actions barring exigent circumstances.

RESOLVED, that the New York State Bar Association also urges Congress to pass the "Protecting Sensitive Locations Act" and to amend Section 287 of the Immigration and Nationality Act to codify the Sensitive Locations Policy and to include courthouses as a sensitive location therein.

19. Report of Committee on Standards of Attorney Conduct. Profs. Roy D. Simon and Barbara S. Gillers, co-chairs of the committee, provided an update on the committee's comprehensive review of the New York Rules of Professional Conduct. They noted that the proposed changes will fall into three categories: rules changes requiring Appellate Division approval; commentary changes that are contingent on Appellate Division approval of rules changes; and commentary changes that are independent of rules changes. It is anticipated that the committee's report will be presented to the House in November 2018 and/or January 2019. The report was received with thanks.
20. Report and recommendations of Criminal Justice Section. Tucker C. Stanclift, chair of the section, reviewed a proposed resolution to address bail/pretrial detention reform. After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, more than 60 percent of people in state jails in 2016 were pretrial defendants; and

WHEREAS, cash bail has created a two-tiered criminal justice system that puts an unfair burden on the economically disadvantaged; and

WHEREAS, variations in court practices across the state have resulted in a bail system where the location of an arrest often defines whether or not a person is released pre-trial; and

WHEREAS, New York Governor Andrew Cuomo recently released a framework for a bail reform package¹ that would:

- Create a presumption that defendants facing misdemeanor and non-violent felony charges be released without cash bail, either on their own recognizance (R.O.R.) or with non-monetary conditions imposed by the court, such as supervised release monitored by a pretrial services agency, absent of a record of bench warrants for non-appearance;
- Allow monetary bail, but does not require its use, in remaining cases, after an individualized assessment of the nature of the case and the defendant's personal and financial circumstances;
- Require the court, in cases when bail is set, to give the defendant a choice between cash or bail industry bonds and an alternative form of bail that the judge will set, such as an unsecured or partially secured bond;
- Allow the court, in cases involving domestic violence or other serious violence, or if, while on pretrial release, a defendant commits a crime or willfully fails to come to court, to order a defendant to be held in jail pretrial if the court finds, after due process, that the defendant poses a high risk of not returning to court or poses a current threat to the physical safety of a reasonably identifiable person or persons; and

WHEREAS, the Criminal Justice Section recognizes that many courts rely solely on cash bail or insurance company bond to secure a defendant's future appearances despite the availability of multiple alternatives set forth in the Criminal Procedure Law; and

WHEREAS, the Governor's proposal balances the need to keep our communities safe while minimizing financial hardship;

BE IT THEREFORE RESOLVED, the Office of Court Administration and the Chief Administrator of the Courts are urged to enhance and increase the training and education of judges and courtroom personnel and the Bar to the availability of alternatives to cash bail including, but not limited to unsecured and partially secured bonds, as well as (i) simplify and make available forms compliant with the Criminal Procedure Law facilitating secured, partially secured and unsecured (non-financial) release, and (ii) suggest that judges not impose financial conditions unless the

¹ Governor Andrew Cuomo, *State of the State Book* (2018), pp. 59-60, available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2018-stateofthestatebook.pdf>.

arrested person is charged with a crime of violence or there is a likely risk that the arrested person will not appear in court; and be it further

RESOLVED, Supervised Release should be added to Article 530 of the Criminal Procedure Law as a recognized form of recognizance for the release of an arrested person; and be it further

RESOLVED, the Criminal Procedure Law should be amended to provide that the court may not impose financial conditions upon a defendant in a criminal action or proceeding unless the defendant is charged with a crime of violence or there is a likely risk that the defendant will not appear in court; and be it further

RESOLVED, Section 500.17(b) of the Criminal Procedure Law, requiring the “double valuing” of real estate posted to secure release, should be amended to require that the value of posted real estate be at least the amount as the total undertaking (addressing *People ex. Rel. Hardy v. Seiff*, 79 N.Y.2d 618, 620-21 [1992]); and be it further

RESOLVED, Section 70.25(2)b of the Penal Law should be amended to add the term, “supervised release”; and be it further

RESOLVED, the Criminal Justice Section urges the State Bar to support the Governor’s 2018 framework for bail reform proposal and to work with the Governor and the State Legislature to pass reform based on these principles.

Ms. Kean abstained from participating in the debate and vote.

21. Date and place of next meeting.
Friday, April 13, 2018
Bar Center, Albany, New York
22. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



Sherry Levin Wallach
Secretary