

Minutes of NYSALJA Board Meeting held on April 22, 2003

Prepared by: Anne W. Murphy (from tape)

Location of meeting: Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy NY

Copy of previously distributed minutes of January 22, 2003 meeting distributed.  
Motion made to accept minutes unanimously passed.

President-elect Catherine Bennett presented the Treasurer's Report. The balance of the organization's three accounts is \$7514.31. On the second page of a distributed package, there is a breakdown which shows \$7606.19 as the balance less \$91.82, for the noted \$7514.31. The third page reflects the expenditure for the reception held in New York City.

The first matter discussed was an update of the organization's membership. Judge Bennett reported that as of the meeting, there were 121 members which included members who paid dues for the 02/03 period, as well as those who were new members for 04. The fiscal year starts July 1<sup>st</sup>. 46 of the members are IHOs. The new application will be mailed to members. NYSALJA members will have a discount at the upcoming meeting, which almost covers the fee. The information will be available on the website.

Discussion was had with respect to national and state membership. It was noted that if current New York membership numbers are correct, we would represent one fifth of national organization. Apparently it has been the practice in some states for the State to pay ALJ dues, and it was speculated that fiscal crises at the state level (particularly in the South) might explain low membership.

There was some discussion of the fact that Federal ALJs have their own organization, but some are also active in the National organization, and it was noted that NYSALJA does not specifically recruit federal ALJs.

Problems with obtaining information about State agency attorneys, from both the agencies and the union, PEF were discussed. PEF informed the group that while they would not provide membership information, they would do a targeted mailing for a fee.

The next topic of discussion was the upcoming CLE program to take place at Albany Law School Government Law Center in June. Mailing from the Government Law Center had apparently been sent to most, but not all members as of the date of the meeting. Judge Bennett indicated that she would speak with Holly Steuerwald at the Government Law Center, to ensure that all members are notified. The conference is scheduled from June 17-19, 2003 from 9:00 to 5:00. The mailing will outline the courses being offered and the combination of courses available. NYSALJA will receive fifty percent of the profits from the conference.

Judge Bennett suggested recruiting an accountant to address independent contractor tax issues for presentation at the conference.

Discussion with respect to whether and to what extent agencies will permit attendance and pay for the CLE courses. Apparently individuals with the DMV are working to have the agency permit time-off and possibly pay for the courses. Judge Bennett told the group that she received an on-line bulletin from PEF that professional development/professional education refunds (PSTP voucher program) have been suspended. The Education Department may also have withdrawn its payment of these kind of courses. It was noted that the program is really very inexpensive

The group was informed that the website is current as of the meeting date, with agenda and minutes. The Conference information is on the site. Members are encouraged to make use of this resource. John suggested that the meetings be linked to Mapquest, etc. to facilitate attendance.

The reception held in New York City on March 25, 2003 was attended by more than twenty persons. New contacts were made and it was a opportunity to showcase the organization. While Judge Zylberberg wished there could have been more, others viewed it as a unqualified success. It was suggested that perhaps the event could take place in the western part of the State in the future.

With Board approval, a committee was appointed to perform a salary study. Anne Murphy was appointed as Chair, Jim Hinds, Nancy Lederman, Sue Novick Wasko. Responsibilities include presenting to the Board on or before July 30, 2004, a report regarding various salaries paid to ALJs, hearing officers or other individuals who conduct administrative hearings, write formal decisions based on administrative hearings, or supervise or review such hearings or decisions. The report should also include information regarding the duties performed by these individuals. There has been an interest in reviewing the salaries and moving toward an upgrade. The NAALJ salary survey will be a starting point. Motion to appoint the committee made, seconded and passed.

A preliminary report of the Nominating Committee was presented. Three Board member positions must be filled: Vice President/ President-Elect, Treasurer and Secretary. Who will remain and who will move on from these positions was discussed. Members were asked whether they were interested in any of these positions, and those whose Board terms were ending (2-year terms) were asked whether they will stay on the Board. General consensus was that people would stay on the Board and names were solicited for the specific positions.

**IHO Update.** IHOs would like feedback on a situation presenting itself to IHOs. the Commissioner is responsible for disciplining IHOs. Recently as a result of pressure to comply with federal time-frames, the Commissioner has become aggressive in reviewing complaints about IHOs. More important, recently the Commissioner has started hearing the complaints before the specific hearing is concluded. If this occurs, most IHOs felt they had to recuse themselves from the administrative proceeding, on the basis that he or she felt she could not remain impartial if being investigated. Investigators are not attorneys, while IHOs are. Questions: (1) Is it appropriate for non-attorneys to be investigating attorneys? (2) Is it appropriate for a separate complaint process which does not impact on the on-going hearing to be initiated before the hearing is completed.

Answers: No, No. What to do? Perhaps complain to the grievance committee of the specific Department, because this is close to lawyer discipline. It was mentioned that it was inappropriate also for Commissioner/non-lawyer to do this. The question was posed that this should maybe be taken to OCA, though there was discussion about jurisdiction of OCA.

The initial complaints go to the Commissioner. They are generally made with respect to complying with imposed time limits, and perhaps with respect to other individual problems. There is little outcome of these proceedings, and the procedures are in the process of being developed. Only one has made it through the process so far, since it takes several months to complete. Initially the IHO is informed of the complaint and asked to respond, but nothing much happens after that. Its so new, no one has a real sense of what should be done, or how, including appeals.

There was discussion that having non-lawyers in certain review positions was not unusual, though problematic. It was noted that it is important to keep up the pressure to ensure that attorneys be reviewing ALJ/IHO complaints.

Ideally, IHOs would like the opportunity to address the complaint, to have a record for a determination, to permit parties to raise these issues on the record and preserve their objections for appeal should it affect the outcome of the case. They would also prefer that these proceedings be brought after the administrative hearing. How to initiate these separate hearings outside of the administrative hearing, to prevent the recusal situation. It was suggested that if the number of these proceedings increases, a report to the Board would be welcomed.

Other new business was discussed. There was a suggestion to put information concerning nominations on the website, including soliciting nominations. It was also requested that a website link to OCA would be helpful. It was recommended and agreed that a table representing the organization be set up at the June Conference, for an hour a day. Finally, NYSALJA has been asked to be a sponsor of the Fall ABA Government Law Center program, and we have agreed to do this.

Several Board members suggested that the next Board meeting be held at the Conference, perhaps in conjunction with a reception. It was subsequently agreed that the meeting would be held June 17<sup>th</sup> at 5:30 at Albany Law School. The NYSALJA annual meeting will be on September 23, 2003, to be held in New York City, at 5:30PM. The location will be decided.

At 6:47 p.m. Jim Hinds and Chris Traskos moved that the meeting be adjourned, and upon the seconding of several members, it was.