

Minutes of the NYSALJA Board Meeting March 18, 2004

Prepared by Catherine M. Bennett

Locations: 500 Federal Street, 5th Fl., Troy, New York

and

5 Penn Plaza, 6th Floor, New York, New York

The meeting was called to order by Judge Catherine Bennett from the Troy location at 5:40pm with Michael Danziger, Eric Zaidens, Marc Zylberberg, Anne Murphy, Theo Vasiloskos, and Sue Wasko in New York City and Cathy Bennett, Jim Horan and Christine Traskos in Troy.

Copies of the minutes of the last Board Meeting of December 29, 2003 were presented and distributed. One correction was made to the minutes: Where a discussion was had concerning a FOIL request by NYSALJA, the last sentence should read: “it was resolved that the *individual from* the agency that made the inquiry (OTDA) should make their own FOIL request” (correction in italics). In addition, the NYAALJ reference throughout the minutes was changed to NYSALJA in each case. Motion made by Anne Murphy to accept the minutes, seconded by Michael Danziger, as corrected; unanimously passed.

Marc Zylberberg presented the Treasurer’s Report. As of March 14, 2004, the checking account balance was \$407.10. Mint share balance is \$32.18, and Preferred Savings is \$7822.43 Total on hand is \$8261.71. Two memberships are due NAALJ less credits being worked out with Laura Bierman. Marc Zylberberg will be coordinating membership with Laura Bierman at NAALJ and when NYSALJA is entitled to take a \$15 credit for New York members who have paid \$50 to NAALJ directly.

Cathy Bennett, who is also serving on the NAALJ Board, believes when people from New York State (and any state with an affiliate organization) pay NAALJ directly that there should be better coordination with the affiliate and NAALJ with regard to the amount which NYSALJA is entitled to collect as its portion. She will raise this issue at the next NAALJ Board meeting in Toronto in June, 2004.

Next item was membership update: we have 87 members paid through either June 30, 2004 or June 30, 2005. Dues notices should go out early June 2004 for the July 1, 2004 through June 30, 2005, and will be done by Marc Zylberberg.

The ALJ Institute (June 2003) profit included expenses for CLE administration that considerably reduced the profit NYSALJA anticipated. Net profit was \$1254, and ½ was paid to NYSALJA. Since our last meeting, Cathy Bennett met with Patty Salkin of the Albany Law School Government Law Center to discuss the profit issue and the CLE cost that had not been discussed with us while planning the seminar. There is no available further profit in dollars earned from the seminar. However, the GLC is going to provide us with the seminar materials which were left over from the seminar at no cost so that NYSALJA may use them in two ways: to offer them for sale to our members who could not attend for a very reasonable fee and secondly, to use them as promotional material when introducing NYSALJA to new agencies or

groups of hearing officers and administrative law judges. In addition, Patty Salkin offered the services of her husband Howard Gross to reduce the materials to CD rom for ease of mailing and use. Cathy Bennett proposed the idea that they could be used for sale and/or promotion. GLC will not share in any profit derived from this endeavor and will not impose any cost to us for this. There would be no CLE credits available to purchasers, and this may make the purchase less attractive. Eric Zaidens spoke for IHO's who are always searching for additional sources to assist them with issues they face and believes this could be a great source. The Board agreed that Howard Gross could put his business label or business card on the CD's that he reproduces for us. There does not appear to be any ethics issue, and as to copyright matters, the GLC has the authors of the individual parts of the seminar material sign off, so that the materials can be used as the law school chooses. The Board was asked to review the ALJ Institute 2003 materials so we can come up with a reasonable price at which to offer them for sale. We will have approximately 10 hard copies and should request 50 on CD.

Michael Danziger suggested we start a library of CLE that NYSALJA has been involved with, such as Albany 2002-NAALJ Annual Meeting and the ALJ Institute. If NYSALJA ever wanted to become a CLE accredited provider, we would have to be able to show information about the programs in which we participated. It was determined we should set aside full sets of CLE materials for this purpose.

A new consortium of NYS agencies has formed to participate in providing CLE to each other. Some 17 or so agencies are supposed to have become involved. This appears to be separate and apart from anything that Albany Law School has been beginning to plan, which was described as a "New York version of the National Judicial College," an ongoing stream of course offerings. The consortium of agencies appears to be off the ground and course offerings have been recently circulated to Health Dept. employees. The agencies that are deriving a benefit from the CLE courses are also involved in making presentations. We need to clarify what CLE programs are in the works and where NYSALJA can contribute or be involved to benefit its members.

Patty Salkin suggested that for the next ALJ Institute we include a year membership in NYSALJA with the price of the conference. Problem raised that NYSALJA owes NAALJ a portion of every membership fee, it would only be solved if NAALJ was willing to waive that first year of membership in hopes of retaining the members (through the affiliate) after that first year.

Web Costs and site management: ALS would like the web update items to continue through Marc Zylberberg, or any one individual. Justina went out on maternity leave, so we will be dealing with Ginny at ALS. Patty Salkin would liked to be apprized of any web problems. Original agreement with ALS to set up the web site was a one time \$1500 payment, under a contract effective for one year, now expired. Based on the negotiations Cathy Bennett had with GLC, Patty Salkin has agreed, on behalf of ALS to continue the maintenance of our web site at no cost, providing the use of the web site as a forum to disseminate information does not become considerably more complicated. Other research, including a valuable contact given to me by one of our members, Bill Meyers, resulted in a conclusion that web management as straight forward as ours should not be more costly than \$200 per year. In addition, the web manager at NAALJ

offered assistance in maintaining our web site for a nominal fee. Also, Eric Zaidens has experience himself and a contact with a web manager that would include a \$50 set up fee and a nominal fee for web maintenance. If our situation with Albany Law School should change and/or becomes costly in the future, we should seek out other options.

NAALJ update by Cathy Bennett

NAALJ's profit from the Orlando Annual Meeting and Conference in October, 2003 was \$21,676.00. The conference was generously subsidized by the FL Bar Association and others.

NAALJ appointed an executive director for the first time who will be paid for his time. It is Judge John Hardwicke, from Maryland. A joint venture agreement has been signed with the University of Baltimore Law School and NAALJ to furnish NAALJ and John a fully furnished office and a second year law student assistant. NAALJ has a contract with John for \$15,000.00 annually, paid on a monthly basis, which commenced early this year. John will be traveling to states to promote affiliates in existence and to states without affiliate organization. The goal is growth of the organization. John will report on his activities for the year in a written document to NAALJ. John Harwicke is the former and the first Chief Administrative Law Judge of the State of Maryland, having retired in 2002. He was a leading figure in the central panel movement, he was a past president of NAALJ, holding other offices in that organization as well.

Pace Law School is the site the Legislature has set up as the judicial institute for OCA judges. Marc Zylberberg discussed with Pace having ALJs included with the OCA judges, but they have not done so to date. ALS, according to Jim Horan is attempting to have the Legislature fund it for administrative law judges. But this has not taken place.

Upcoming Conferences

Iowa ALJ Conference CLE announcement was described.

Toronto, Canada is the site for the Council of Canadian Administrative Tribunals conference in June 2004. One day rate 425 CND or \$320 US is offered.

NAALJ Annual Meeting and Conference has been set for November 3-7, 2004 in Baltimore, MD.

IHO issues

Case reported by the NY Law Journal: *Matter of Tyk v. Dept. of Education*, (January 13, 2004) which concerned due process surrounding the revocation of an IHO's authority. The Commissioner charged the IHO with using inflammatory language in decisions, not writing decision on time, failing to grant adjournments and failing to follow the sign in security rules when he arrived at schools to conduct hearings. The Article 78 challenge to the revocation of the IHO's authority is challenged on the basis that it should not have taken place merely on the written record without giving the IHO an opportunity to be heard. The court concluded that the law clearly required some forum where the IHO could be heard on the validity of the charges. The revocation was found to be arbitrary and capricious. Instead of immediate reinstatement, the Commissioner was ordered to conduct a hearing within 60 days from the date of the court decision or a time including permissible extensions by this court, otherwise reinstatement would be ordered. An important due process example.

Two matters brought to my attention by Mindy Wolman and Debra DeWan. Debra asks that NYSALJA Board takes a position with the NYS Board of Education as to the spirit of both of these complaints. The spirit is that hearing officer impartiality must be respected and preserved and wants the Board to support the complaints to the extent that the hearing officers are requesting that the SED take affirmative steps to insure the NYC Dept. of Education is not permitted to implement any procedures that adversely impact hearing officer impartiality.

The first case is a complaint which has been filed against the NYC Dept. of Education. It speaks to decisional independence where DOE was using financial means to control decisions as to items such as whether to adjourn cases, issue subpoenas, etc. and that the control was coming through with regard to payment. Eric Zaidens spoke up about this matter. He indicated that the DOE is attempting to limit and sometimes remove judicial discretion. Some examples from the complaint were described. Cathy Bennett asked the NYSALJA Board if they would read through the information concerning these complaints and discuss whether we are comfortable taking a position and, if so, how we will phrase our position. A question was raised as to the standing of these IHO's to ask for the support of NYSALJA when they are not current members. The Board would like to consider taking a position but was hesitant to serve a cause commenced and/or led by former members, when we have many other items to consider in support of our current paid membership. Cathy Bennett agreed to contact them both.

The other complaint dealt with the rotation and appointment of IHO's, ie, that the School District is unlawfully exempting itself from the rotation selection process mandated by the statute. The Board felt this was more administrative than substantive and it may not be appropriate for us to comment upon. Eric Zaidens spoke up in explanation. Cathy Bennett will provide the Board Members with each of these complaints as submitted by Mindy and Debra. The Board will commence discussion of them after having had a chance to read them.

New Business

Abigail Bernhardt provided me a notice from the Network of Bar Leaders and upcoming meetings. We discussed whether we should reconnect to the Network. There is a fee involved to join. Cathy Bennett will follow up with Abigail. Theo discussed the high profile of the Network and the prestige he believes goes with it. Cathy Bennett suggested that the president-elect, Michael Danziger, may want to take advantage as president next year with his New York City presence.

Michael Danziger would like to see NYSALJA become involved with community service projects.

A tentative date for the next meeting was set for July 12, 2004 in Troy, New York.

The meeting was adjourned approximately 7:40 pm.

