

NEW HAMPSHIRE BAR ASSOCIATION
BOARD OF GOVERNORS MEETING
Monday, May 4, 2020
4:00 PM

REMOTE MEETING BY VIDEO CONFERENCE

MINUTES

Present for all or part of the meeting were:

Edward D. Philpot Jr.
Daniel E. Will
Richard Guerriero
Robert R. Howard III
Peter E. Hutchins
Jonathan M. Eck
Christine M. Hanisco
Cathy Shanelaris
Lisa M. English
Jason B. Dennis
Kristin G. Fields
James P. Cowles
Joseph D. Steinfield
Scott J. Whitaker

Marcie A. Hornick
Leslie C. Nixon
Susan Aileen Lowry
Christopher T. Regan
Geoffrey M. Gallagher
Jennifer L. Parent
Hon. James Bassett
George R. Moore
Ginny Martin
Joanne Hinnendael
Paula Lewis
Deborah Hawkins
Allison Borowy

A meeting notice reminder, a link to the preliminary agenda and related materials were emailed to all Governors on April 27th. Additional materials were provided on May 1st. The agenda is duplicated below in the order of consideration of agenda items. Unless otherwise noted, all motions reported are deemed to have been appropriately proposed, seconded and voted upon by those present.

A. Call to Order

Edward Philpot Jr.

President Ed Philpot called the remote meeting to order at 4:04. A verbal roll call was taken to determine board members on the meeting conference call.

REGULAR BUSINESS – CONSENT ITEMS

B. Membership Status Changes for April 2020

Paula Lewis

There was a question regarding the date that many members statuses changed to honorary. This is done automatically when members reach 50 years of practice. The membership changes were accepted as presented and are attached as a permanent part of these minutes.

ACTION

On motion to approve the status changes. Passed.

C. Minutes of April 4, 2020 Meeting

Robert Howard

The minutes were approved as presented.

ACTION

On motion to approve the April 4, 2020 board minutes. Passed.

PRESENTATION / DISCUSSION / ACTION ITEMS

D. Election Results

Edward Philpot, Jr.

President Philpot reviewed the election results with the board and offered congratulations to the successful candidates.

E. Merrimack County Governor John Curran resignation – vote to accept

Edward Philpot, Jr.

The board received John Curran’s letter in their materials. John was appointed to the circuit court bench and therefore resigned his board position.

ACTION

On motion to accept John Curran’s resignation letter. Passed.

F. Annual Meeting Cancellation and Alternative Plans

George Moore

1. Hold Annual Business meeting same day as June BOG meeting?

- Stay with June 19th @ 12:30 p.m. or move to first week of the month
- Bylaws Changes votes?
- Changing of gavel and BOG population
- Awards and recognition (50-year members, Judicial, President’s)

George outlined the ideas for alternatives to the annual business meeting and board transition that are usually held as part of the annual social meeting. The Association has gotten most of the money spent reserving the venues and activities refunded. He is confident that we will recoup all money from the venues. According to the NHBA Constitution, the Association has up until October 15 to hold the annual meeting, change the gavel, and install the new board.

The board decided to meet at 12:30 p.m. on June 19th, remotely, with the annual business meeting immediately following. George explained that there is a 15-day notice requirement for the annual meeting, which is typically published in the Bar News. The May issue will be published on May 20th, which will not allow for 15-day notice if the meeting is moved to the first week of June.

The lesser questions to be considered are about the changing of the gavel and the board, as well as the president’s awards, and 50-year and judicial recognition.

President Ed Philpot thought we should keep the board and annual business meetings on June 19th as scheduled. This will allow for proper notice. There was discussion about this date, which is a Friday. The consensus of the board was to hold both meetings on Friday, June 19th; the board meeting at 12:30, and the annual business meeting noticed for 2:00 p.m. It is expected that both meetings will be virtual with separate Go to Meeting log in information for each.

President Philpot advocated for recognizing the 50-year members and sending them the certificates and other materials. Retiring and newly appointed judges and Presidential award recipients will be recognized at a later time.

G. Board Vacancies – Appointment process for Out of State and Merrimack County Seats George Moore

1. Out of State Seat – no valid petition submitted in the 2020 election for remaining 2 years of the 3-year term. Appointment will be for one year, until next election, per bylaws.

The NHBA Bylaws require a member seeking the Out of State seat to be nominated by a petition signed by 25 Out of State active members. This requirement is problematic, so there was no petition submitted this year. President Philpot will call the current sitting Out of State Governor, Jason Dennis to see if he is interested in continuing to serve. If so, he will be appointed. This signature requirement is being addressed with a bylaw change to be voted on at the annual business meeting.

2. Merrimack County Seat- vacant as of 4/10/2020 due to resignation of John Curran

Executive Director George Moore asks for the board’s assistance in soliciting a member for this seat. He asked board members to email in the next week with any ideas for possible appointees. Jonathan Eck said he might be willing to serve but would step out of the way if there is a new prospect.

H. Ethics Procedural Rules revision – action required Edward Philpot Jr.

Richard Guerriero asked President Ed Philpot to hit the high points of the revision. There was discussion about the Ethics Committee being required to obtain approval from the Board of Governors prior to publishing an opinion or amicus brief. Board approval is also required before proposing an advisory opinion to the NHSC rules committee. These are not new requirements, but they have been clarified in this revised version of the ethics procedural rules.

ACTION

On motion to approve this revised edition of the Ethics Procedural Rules. Passed.

A copy of the rules is attached to these minutes.

I. Appointment of Talesha Saint-Marc to the LARC Board of Directors for 3-year term to begin upon appointment George Moore

ACTION

On motion to approve the appointment of Talesha Saint-Marc to the LARC board for a 3-year term. Passed.

J. NH Supreme Court Advisory Committee on the Rules Edward Philpot, Jr.

1. Reappointment of Jeanne Herrick for a three-year term – 2020-2023

ACTION

On motion to approve the reappointment of Jeanne Herrick to the NH Supreme Court Advisory Committee on the Rules. Passed.

2. Appointment of a replacement for John Curran (member from the board of governors-remaining year of a three-year term that runs until October of 2021)

There was discussion about a replacement for John, who has resigned his seat due to his appointment to the bench. Any member of the board who is interested in serving should notify George and Ed, and they will discuss. George noted this committee meets quarterly.

K. Selection of member of Board of Governors to serve 1-year term on NHLAP Board George Moore

A request was received from the NHLAP board asking for one of the officers to serve on their board. The officers discussed this and noted that each of them is already assigned to other boards, and it can be pretty time consuming. They also thought this would be a great place for a member of the board to sit on. If interested in serving a one-year term, let George and Ed know. George shares that most of the people on the board are clinicians, not lawyers.

L. Bylaws Revisions George Moore

1. Article VI, Section 4 -Out of State Governor petition requirements

George spoke in support of this, given the difficulty with getting 25 signatures of out of state active members.

ACTION

On motion to approve this change to the bylaws as presented. Passed.

2. Technical correction to Art IV, Section 7 – Duties of Immediate Past President

The membership of the Finance Committee was changed in a bylaw change that was approved in June of 2019. This section should have been changed and this time and was missed.

ACTION

On motion to approve this change to the bylaws as presented. Passed.

M. Public Sector Section Proposal Edward Philpot, Jr./Lisa English

Public Sector Governor Lisa English gave background about the suggested change. All the public sector attorneys she spoke with wanted to get involved. She proposed that the fees be waived for the rest of this year and next year's section fee set at a minimal amount of 10 dollars to see if this can get the group moving.

The best scenario is that we end up with a robust section. It is a pretty diverse group. At a minimum, this is an opportunity for the Board of Governors to connect with a group that isn't connected with the Bar right now. If it fails, we can say we made the effort.

President-Elect Dan Will spoke up about his hesitation about this plan. He has talked with Lisa.

Paula commented that operationally, we won't have time to separate it out in invoicing. We would have to refund people.

President Ed Philpot is happy to defer to the board's will. But he is not enamored with the idea of reinstating the section. Other board members spoke in support of the proposal. They felt it is worth giving it a shot to try and engage them since they are a large part of the bar.

Chris Regan asked how the board will evaluate its success when it comes back for consideration next year. Sunset request is to keep it the section alive until June 30th. The board will then look at it and decide as to whether the plan will work, and the section will be kept.

Jo Hinnendael, Director of Professional Development requested that Lisa and the Public Sector section work with section coordinator to plan.

To summarize, Lisa is asking for a stay of execution for the section through June 30th. She never intended to lead the group. She wanted to bring a variety of people to this effort. Planning may not happen, prior to this date, but hopefully she will have identified committed people, that want to actively participate, have some sort of meeting and vote on leadership.

ACTION

On motion to extend the Public Sector Section termination date until June 30th, and to allow Lisa to bring back the fleshed-out proposal for operation of the section and the list of interested people to the board to vote.

Passed.

N. Request to NH Supreme Court Character and Fitness Committee regarding Mental Health Questions George Moore

Executive Director George Moore shared a letter to the NH Supreme Court Character and Fitness Committee from Senator Maggie Hassan urging removal of the mental health questions from the NH Character and Fitness questionnaire. The ABA has already taken a position in support of elimination of these types of questions. Massachusetts has already removed the questions. George thought the NHBA Board of Governors might like to add their voice to Senator Hassan and the UNH center, so is bringing it to the board for consideration.

President Ed Philpot reviewed the letter and thought that this would be a great thing for the NHBA to support. There is a ton of research that supports the chilling effect of these types of questions. Ed supports the idea that they should not be on the character and fitness questionnaire and supports the NHBA taking a stand for removal of these questions.

Joe Steinfield asked whether substance abuse issues are dealt with separately from the mental health issues. George responded that it varies depending on whether they are actively using in which case they won't necessarily honestly disclose. If it was a long time ago, they have to supply what happened in the past and defend themselves.

Chris Regan spoke up and is sympathetic, but he is wondering what the character and fitness committee thinks. We have not checked with them. He is uncomfortable taking a position without checking with them first.

Jason Dennis added that substance abuse is considered a mental health condition. He thinks this warrants more discussion. The ABA doesn't say get rid of questions altogether, but to just focus on present conduct.

Chrissy Hanisco has been involved in a lot discussion in other states and thinks this is something the board should look at in more detail.

The board consensus is that they need more information before making a decision about taking a position on this issue. George is willing to check with the NHLAP to see how they feel about this, as well as others, and will bring information back to the board. Jason suggested checking with the New Lawyers Committee.

O. Appointment from Board to serve on Dues Waiver committee (3 positions) Edward Philpot, Jr.

President Ed Philpot shared that the NH Supreme Court, NHBA and NHMCLE have been aggressively looking at what is going to happen when dues, fees and MCLE requirements are due. They have been working very hard at coming up with a solution. This is the most common issue the he has talked with members about since early March. The solution may be cumbersome but we can give our members some options. They are terrified about meeting annual licensure requirements, says Ed.

It is anticipated that there will be a larger number of requests for waivers or adjustments, so the decision has been made to increase the Dues Waiver Committee (a subcommittee of the Board of Governors) from three to five members. John Curran was on the committee, so he will need to be replaced, as well as two additional members appointed. President Philpot volunteered to serve. Governor at Large, Chrissy Hanisco volunteered as well. Jim Shepard will be rejoining the board in June, and it was suggested that he be appointed as he has served on this committee in the past. Ed will check to see whether he is interested.

P. President's Report Edward Philpot, Jr.
1. Expanded Court Closings

The Court has expanded the closings. They will be rolling out telephonic guidelines. They continue to be open for emergency situations. An order was issued today that everyone must wear a mask in courthouse including court employees and judges. Sheriffs are excepted from this rule.

The Court is dealing with a couple of options to gear back up and address their backlog. Ed said the best the Association can do is talk with our members about how to deal with remote hearings and what technology they need assistance with.

Ed has spent 50% of his days dealing with Bar member questions and getting answers for them during the month of April. Most of that was assuring lawyers that it would be okay can't pay dues or complete their MCLE requirements. Issues with other family responsibilities, such as home schooling their children, have kept people from completing these requirements.

Jo Hinnendael and the CLE department have done a great job with offering 'live' CLE by video conference.

2. Dues and Fee Waiver info to members

The Court is committed to making sure the Bar has a robust waiver process in place going forward. As noted above, it is felt there will be an increase in requests.

President Philpot thanked Justice Bassett and the Court for all their work on these issues. Justice Bassett shared that the Court supports the idea of extending the deadline for the MCLE requirements. As to the mechanics, they are largely deferring to the Bar. There will be an extension through the end of August for members to meet these requirements.

This will be a challenge to the current reporting system, but Executive Director George Moore and Business Operations Director Paula Lewis are working on the mechanics.

George added that in a short period of time there will be direct guidance to members on how the system is going to work. This is almost completed. We will then begin messaging to the members through the website, and ebulletin.

Q. Executive Director's Report
1. Operations Update

George Moore

The Bar Center remains closed to Bar members and the public but is continuing to operate. Bar News is continuing to be published, ad revenues are steady. CLE has put together some live web seminars in addition to those in the InReach catalogue. The NHBA website is updated daily. Bar staff are working hard remotely. The legal services department is anticipating a ground swell of request for services as soon as the stay at home orders are lifted, and courts are back in operation.

George reported that we are seeing a big hit to NHBF monies as IOLTA interest rates are down.

The NHBA continues to have full staff meetings telephonically every two weeks to go through what everyone is doing. George shares that he is proud of the staff. He hopes this won't be too much longer. It is tough to work remotely .

2. New dues waiver form

The board received an updated dues waiver form with their materials. The new form allows people to ask for a delay or a waiver. There used to be two forms; now there is one combined form for NHBA dues, court fees and NHMCLE requirement. The two forms confused members in the past. This will replace the current form on the web site.

R. Treasurer's Report/FY 21 Budget Presentation and Approval

Dan Will/Paula Lewis

Budget Presentation

Finance is presenting three budgets. NHBA, NH Pro Bono Referral system, and the NHBA Capital Budget.

President-Elect and chair of the Finance Committee Dan Will described the budget process. The annual budget process begins in early January with the Business Operations Financial staff preparing the budget worksheets for distribution to the directors of each department and organization. Each year, the goal is to prepare balanced/zero-based budgets.

Those directors responsible for budgets prepare detail budget sheets for each revenue and expense line in their budget, then meet with their "Budget Buddy" Groups who are members of the NHBA Finance Committee assigned in two or three person groups to review certain assigned budgets in detail along with the budget owner. Several iterations of the budget are produced prior to review by the NHBA Finance Committee as a whole.

Finally, the draft budgets are presented to the NHBA Finance Committee as a whole. Discussions, questions and suggestions are made during the meetings until the Finance Committee is comfortable with the continued costs, assumptions, projections and estimates used to produce the budget.

What the board has is the product of this process. Dan noted that these budgets are subject to a lot of consideration, particularly this year.

The elephant in the room is the impact of COVID 19 on Bar Association finances. The committee accounted for this, however nothing draconian was done. These budgets are conservative and based on what we know now. The Finance Committee spent a lot of time talking about what would be done if things get worse. The plan is to reconvene in the fall, probably September to see what, if any adjustments are needed. The committee will continue to engage the board in this process.

President-Elect Will gave a shout out to the Finance Committee members as well as the senior bar staff, George, Paula, Ginny and Jo.

Ed had a question about the Law Related Education budget. He asked for clarification about the funding.

Dan responded that there was a lot of discussion about this budget. Executive Director George Moore added that the numbers in the budget are in addition to the grants. Line number 8 – miscellaneous grants total is sum of line 5 to 7. Line #1 is the allocation from NHBA dues that will be put into this program, an increase of \$8400. Ed asks what this is allocated to- program expenses line 32 – 41.

George echoed Dan's comments that the committee really doesn't know what our revenue hit is going to be, so they want to get back together in the fall. Right now, CLE has decreased revenues. He is hoping this won't be too bad, but unlike 2008 recession, this has shut down the practice of law. The effects of this remain unknown.

Treasurer's Report

Paula Lewis, Business Operations Director, added a brief treasurer's report. This is usually a high period for live CLE, but we won't have those revenues. We have been able to convert quickly to online by adding our 1 hour live online virtual webinars. There has been a good response to the virtual offerings, but the organization will show a loss in live CLE revenue.

We have also looked at the advertising revenue closely and are only down \$3,000 for April from last year.

The organization's March bottom line is almost identical; the impact has not been too bad. Finances at the end of year (May 31st) should look pretty good based on current indicators. All in all, things are looking solid. We have an unrestricted cash reserve which we can fall back on if needed.

The organization's financial health will depend on how long this continues into the new fiscal year. This will dictate whether we have to make any changes.

ACTION

On motion to approve all three budgets as presented. Passed.

S. New Business, if any

Cathy Shanellaris said the Access to Justice commission met and will be looking at the issue of court navigators. She offered to share this information at a future meeting. President Ed Philpot asked that this be put on the June agenda for an update.

Board members are asked to report on issues of concern or interest for Association members that should be brought to the attention of the Board of Governors

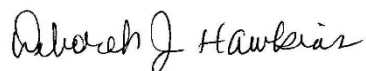
- Ginny reminded the board about Free Legal Answers. They are seeing an uptick in requests about COVID related issues, especially employment issues. Currently Dave McGrath is the only volunteer to cover employment questions. We could use more attorneys with expertise in this area. George adds that the ABA has loosened income guidelines for Free Legal Answers, so there is increased demand. Ginny added that they are working with CLE on a seminar on unemployment and rules. There was discussion about the Free Legal Answers platform. Attorneys can sign up for alerts when questions get posted in their area of expertise.
- Chris Regan asked for an update about the activities of the legislature. Debbie will send out an update from John Macintosh.

U. Adjournment

Adjournment

The May 4, 2020 Board of Governors Meeting adjourned at 6:21 p.m.

Respectfully submitted,



Deborah J. Hawkins, for
Robert R. Howard, III, Secretary

Membership Status Changes

Presented to the Board of Governors May 4, 2020

Active to INACTIVE:

272495 Weiland, Kasey, Bow, NH (Effective March 13, 2020)

***Active to HONORARY ACTIVE:**

13734 Boesch, William, Portsmouth, NH (Effective April 22, 2020)

245 Castaldo, Neil, Hanover, NH (Effective April 22, 2020)

526 Craig, Thomas, Manchester, NH (Effective April 22, 2020)

18514 Dane, Henry, Concord, MA (Effective April 22, 2020)

603 DePuy, R. David, Manchester, NH (Effective April 22, 2020)

1267 Jette, Ernest, Nashua, NH (Effective April 22, 2020)

1453 Leahy, Mary, Portsmouth, NH (Effective April 22, 2020)

1493 Little, Jr., Curtis, Manchester, NH (Effective April 22, 2020)

1778 Mitchell, Walter, Laconia, NH (Effective April 22, 2020)

- 16948 Murray, Jr., Vincent, Milton, MA (Effective April 22, 2020)
- 1958 Pancoast, Thomas, Littleton, NH (Effective April 22, 2020)
- 2267 Scheffy, Brackett, Bradford, NH (Effective April 22, 2020)
- 2287 Scott, William, Portsmouth, NH (Effective April 22, 2020)
- 18355 Silber, Norman, Gilford, NH (Effective April 22, 2020)
- 1574 Westergren, Gary, Laconia, NH (Effective April 22, 2020)
- 19751 Fink, Peter, Boston, MA (Effective April 22, 2020)

Active to INACTIVE RETIRED:

- 16018 Sherwood, Daniel, Melissa, TX (Effective March 27, 2020)
- 8583 Rodier, James, Hampton, NH (Effective March 31, 2020)
- 1065 Haller, Martin, Boston, MA (Effective April 15, 2020)

Inactive to ACTIVE:

- 11284 Fay, Melissa, Newburyport, MA (Effective April 1, 2020)
- 19398 Volpe, Richard, Enfield, CT (Effective April 10, 2020)

***Inactive to HONORARY INACTIVE:**

- 20963 Bull, Nick, Center Lovell, ME (Effective April 22, 2020)
- 144 Conti, Samuel, Frenchtown, NJ (Effective April 22, 2020)
- 1202 Houde, Paul, Nashua, NH (Effective April 22, 2020)
- 2501 Swenson, Kurt, Hopkinton, NH (Effective April 22, 2020)
- 549 Cullen, R. Laurence, Freeport, ME (Effective April 22, 2020)

Inactive to INACTIVE RETIRED:

- 945 Goddard, Jr., Claude, Meredith, NH (Effective April 15, 2020)

Inactive to DECEASED:

- 1962 Papademas, Nancy, Lyme, NH (Effective August 14, 2019)

Inactive to Resigned:

- 8599 Votta, Joseph, Providence, RI (Effective April 6, 2020)

***Inactive Retired to HONORARY INACTIVE:**

- 190 Burling, Peter, Cornish, NH (Effective April 22, 2020)
- 541 Crean, Daniel, Pembroke, NH (Effective April 22, 2020)
- 716 Dye, Christopher, Plainfield, NH (Effective April 22, 2020)
- 777 Farrington, Samuel, Chocorua, NH (Effective April 22, 2020)
- 1075 Hammond, Thomas, Manchester, NH (Effective April 22, 2020)
- 1829 Mullaney, Stanley, Durham, NH (Effective April 22, 2020)
- 1832 Muller, Daniel, Bedford, NH (Effective April 22, 2020)
- 1839 Murphy, Edmund, Manchester, NH (Effective April 22, 2020)
- 1924 O'Shaughnessy, Daniel, Manchester, NH (Effective April 22, 2020)

- 2148 Richardson, Gary, Hopkinton, NH (Effective April 22, 2020)
- 9104 Platto, Charles, New York, NY (Effective April 22, 2020)
- 2539 Therrien, Richard, Pembroke, NH (Effective April 22, 2020)
- 2563 Tower, David, Rindge, NH (Effective April 22, 2020)
- 887 Galway, Richard, Bedford, NH (Effective April 22, 2020)
- 2564 Townley-Tilson, W. H., Concord, NH (Effective April 22, 2020)
- 2617 Vaughn, Mark, Bedford, NH (Effective April 22, 2020)
- 2226 Ryan, John, Silver Spring, MD (Effective April 22, 2020)
- 1357 Kerr, III, Thomas, Pittsburgh, PA (Effective April 22, 2020)

***Judicial to HONORARY ACTIVE:**

- 13 Cyr, John, Littleton, NH (Effective April 22, 2020)

Suspended to INACTIVE:

- 266243 Caiazza, Christina, Wilmington, MA (Effective March 30, 2020)
- 11327 McConaghy, Jeanine, Barrington, RI (Effective March 30, 2020)
- 8599 Votta, Joseph, Providence, RI (Effective March 30, 2020)

***Those members that have reached their 50th Anniversary of their first admission to the Bar of this or any other state become an Honorary Active or Honorary Inactive Member of the Association.**

Ethics Committee Procedural Rules

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100 – Organizational Rules

101 – Statement of Purpose and Jurisdiction

The New Hampshire Bar Association Ethics Committee (“Committee”) has three functions. The primary function is to render opinions and publish articles to provide guidance to the members of the New Hampshire Bar Association (“Bar”) in interpreting the New Hampshire Rules of Professional Conduct (“RPC”). As a secondary function, the Committee proposes amendments and comments to the RPC. A tertiary function of the Committee is to respond to court inquiries, and to comment on, or participate in, the review of ethical issues of concern to the members of the Bar. Individual Committee members may also respond to Helpline inquiries.

102 – Composition of Committee

The Committee shall be composed of members of the Bar appointed at the discretion of the President of the Bar. The Committee shall be governed by a Chair and Vice Chair.

Voting membership shall be limited to active members of the Bar, or inactive members of the Bar otherwise in good standing.

103 – Committee Chair

The Committee may recommend to the President of the Bar one of its members to serve as Chair. The President of the Bar shall appoint a Chair of the Committee. The Chair shall preside at all meetings of the Committee and, when necessary, speak on behalf of the Committee. The Chair of the Committee shall have the option to appoint, from time to time, members of the Committee to an ad-hoc subcommittee for any special project.

104 – Committee Vice Chair

The Committee may recommend to the President of the Bar one of its members to serve as Vice Chair. The President of the Bar shall appoint a Vice Chair of the Committee. The Vice Chair shall act as Chair in the absence of the Chair or if the Chair is disqualified from presiding with respect to any issues or matter. The Vice Chair shall, upon the resignation or removal of the Chair, become Chair for the remainder of the term of the Committee, subject to the discretion of the President of the Bar.

105 – Nomination and Voting Process

- a. Each person wishing to be considered for the position of Chair and/or Vice Chair shall submit a request to the Bar staff liaison at least ten (10) days prior to the April meeting of the Committee year.
- b. The names of each candidate shall be listed on the agenda of the April meeting of the Committee year. During the April meeting of the Committee year, the Committee shall vote for each nominee for each office.
- c. The vote shall be by secret ballot. The candidate who receives the most votes for each office shall be recommended to the President of the Bar for consideration. In the event of a tie, the Chair shall require a revote by secret ballot. In the event a tie persists, both nominees shall be presented to the

President of the Bar for consideration.

106 – Appointment and Removal of Committee Members

The President of the Bar shall appoint members of the Bar to sit on the Committee at his or her discretion. The term of each member shall last from the time of appointment by the President through the adjournment of the next Bar Annual Meeting or until a new Committee is appointed. The President of the Bar shall have the authority to remove or replace any Committee member at his or her discretion.

107 – Scheduling of Committee Meetings

- a. The annual term of the Committee shall run from September to June of each year.
- b. The Chair shall set the time and place of each meeting. Each meeting shall be noticed to Committee members through the Chair's provision of a written schedule of meetings to the Committee members at the beginning of each Committee term.
- c. A meeting may be called at any time by the written request of three or more members.

108 – Quorum

A majority of the members of the Committee shall constitute a quorum for the purpose of conducting Committee business.

109– Attendance at Committee Meetings

Regular attendance by all members is vital to the Committee's work. Accordingly, if any member shall fail without excuse to attend three (3) regularly scheduled meetings of the Committee, the Chair may request the President of the Bar to remove and/or replace the absent member, unless the absences are excused or due to extraordinary circumstances as determined in the discretion of the Chair, subject to reconsideration by majority vote of the entire membership of the Committee.

110 – Conduct of Committee Meetings

- a. The Committee shall act by a majority vote of those members present and voting at a duly noticed meeting.
- b. The Chair shall preserve order and shall decide all questions of order subject to an appeal to the Committee by motion duly seconded. No other business shall be in order until the question raised by the appeal has been decided.
- c. All agenda items shall be identified by title or subject matter.
- d. The order of business shall be as follows:
 - (1) Call to order by the Chair;
 - (2) Bar staff liaison shall record the attendance;

- (3) Approval of minutes of prior meetings;
- (4) Chair apprises Committee of matters scheduled before the Committee;
- (5) Committee addresses each item on the agenda, and takes action as the Committee deems appropriate; and
- (6) Adjournment.

e. The Committee may conduct business via e-mail between regularly scheduled Committee meetings according to the following procedure:

- (1) The Chair shall provide the entire Committee with the exact text of the proposed article or action on which the vote is to be taken;
- (2) The Chair shall dictate whether the vote shall be taken:
 - i. Through a majority vote of the entire Committee membership. In this case the vote shall be effective as soon as a majority of Committee members have voted, regardless of whether some Committee members have not yet voted; or
 - ii. By a deadline decided by the Chair. In this case the vote of the majority of respondents by the deadline shall be considered effective so long as a quorum of the Committee membership has cast votes by the deadline. If a quorum of the Committee membership has not voted by the deadline, the item shall be added to the agenda of the next Committee meeting for consideration by the Committee in accordance with 110(a).
- (3) The Chair shall present the result of the vote to the Committee at its next regularly scheduled meeting following the vote. The result of the vote shall be noted in the agenda and minutes of that meeting.

111 – Confidentiality

Members shall treat all Committee business, matters, deliberations, decisions, discussions, files, and records as confidential unless otherwise ordered by compulsory legal process or as otherwise provided by these rules.

112 – Amendment of Committee Rules

These rules may be amended following the procedures set forth in this rules regarding the adoption and issuance of opinions.

200 – Committee Opinions

201 – Authority to Issue Opinions

- a. The Committee may prepare and issue opinions in response to inquiries submitted by members of the Bar, or with respect to ethical issues identified by the Committee as being relevant to the Bar, all as set forth in these rules.

b. The principal authorities upon which the Committee will rely in preparing opinions are the opinions of the New Hampshire Supreme Court, the applicable rules of the New Hampshire Supreme Court, including the RPC, as amended from time to time, the applicable New Hampshire Comments to the RPC, and any other New Hampshire rule or statutory provision governing the practice of law by any member of the Bar.

c. Other sources, including prior opinions and articles issued by the Committee, American Bar Association formal and informal opinions, American Bar Association Comments to the RPC, and opinions rendered by courts or bodies similar to the Committee in other jurisdictions, may be cited in opinions for their persuasive value but shall not otherwise be binding upon the Committee.

202 – Limitations on Opinions

a. Except as noted elsewhere in these rules, the Committee will not render opinions pertaining to conduct which is an issue of pending litigation or disciplinary action. However, if an issue of pending litigation presents an ethical issue of widespread interest and importance to the Bar, the Committee may, by majority vote, suspend this rule and answer the inquiry reframed as a hypothetical.

b. The Committee will not render opinions involving past conduct.

c. The Committee may decline to render an opinion as to the proposed conduct of someone other than the inquirer.

203 – Effectiveness of Opinions

a. New Hampshire opinions rendered prior to the date of establishment of this Committee (June 20, 1976) shall remain in effect to the extent that they are not inconsistent with a subsequent opinion.

b. In all instances, a later opinion will take precedence over earlier opinions or articles as well as any American Bar Association formal and informal opinions with which it is inconsistent.

204 – Requests for Opinions

a. The Committee will accept for consideration written inquiries by members of the Bar.

b. All requests for opinions shall be directed to the Chair of the Committee or to the Bar office and shall thereafter be forwarded to all members of the Committee.

c. The Committee may prepare and issue opinions based upon fact patterns created by the Committee for the purpose of addressing ethical issues of importance to the members of the Bar.

d. The identity of a member of the Bar requesting an opinion on his or her own behalf, as opposed to a request on behalf of the Bar or the New Hampshire Supreme Court or a committee thereof, shall not be voluntarily disclosed to any person other than the current members of this Committee and the Bar staff liaison unless otherwise ordered by compulsory legal process or unless the requesting member waives the protections of this rule in writing.

e. As there is no attorney-client relationship between the inquiring attorney and the Committee, or its members, there is no confidentiality or privilege with respect to such communications in the legal sense.

205 – Adoption of Opinions by Committee

a. Opinions shall be considered for adoption only after submission of the opinion request to the Committee and submission of a draft opinion to the Committee.

b. Opinions shall be adopted pursuant to Rule 110(a).

206 – Review and Comment on Opinions by the Board of Governors

The Board of Governors of the Bar (“Board”) shall be provided with copies of all opinions. No opinion shall be published, filed, or released until the Board has at its next regular meeting thereafter had an opportunity to review and comment upon the same unless the exigencies of the particular situation so require, in which case the Chair shall consult with the proper officers of the Bar concerning the same.

207 – Publication and Formatting of Opinions

a. Opinions will be published in the *New Hampshire Bar News* and on the Bar website subject to the provisions of these rules.

b. All Opinions shall be typed in font Times New Roman size 12 throughout.

c. All Opinions shall be formatted for publication in accordance with the following guidelines:

NEW HAMPSHIRE BAR ASSOCIATION

Ethics Committee Advisory Opinion #20XX-XX/XX [Title]

**ABSTRACT: ANNOTATIONS: [BODY OF
OPINION]**

NH RULES OF PROFESSIONAL CONDUCT:

NH ETHICS COMMITTEE OPINIONS AND ARTICLES: SUBJECTS:

By the NHBA Ethics Committee

This Opinion was submitted for publication to the NHBA Board of Governors at its [Month, Day, Year] meeting.

d. The Committee shall submit the full opinion for publication on the Bar Website. The Bar may also publish the opinion on its Facebook page, on Twitter, on LinkedIn and on the eBulletin, as well as any other social media or other communications platform that the Bar is using to reach membership.

e. The Committee shall submit the abstract of the opinion for publication in the *New Hampshire Bar News*, and the full opinion if there is sufficient space. For all abstracts submitted to the *New Hampshire Bar News*, following language will accompany the abstract:

The Ethics Committee has published an Opinion Titled #20xx-xx/xx [Opinion title]. The Abstract of that Opinion is below. A full copy of the Opinion can be found on the New Hampshire Bar Website at <https://www.nhbar.org/resources/ethics/>. The full Opinion will be included in the Ethics Supplement.

ABSTRACT

For more information and the full Opinion, please see <https://www.nhbar.org/resources/ethics/>

208 – Reconsideration of Opinions

Any member of the Bar, the New Hampshire Superior Court, the New Hampshire Supreme Court or its Committee on Professional Conduct, or the U.S. District Court for the District of New Hampshire may request the Committee to reconsider any opinion it has rendered.

300 – Publications

301 – Authority to Issue Publications

The Committee may, from time to time, prepare articles of general interest concerning ethics for publication in the *New Hampshire Bar News*.

302 – Consideration and Approval of Publications

Draft publications shall be submitted to the Committee for consideration, and may be approved for publication pursuant to Rule 110(a).

303 – Review and Comment on Publications by the Board of Governors

The Board shall be provided with copies of all publications. No publication shall be published, filed, or released until the Board has at its next regular meeting thereafter had an opportunity to review and comment upon the same unless the exigencies of the particular situation so require, in which case the Chair shall consult with the proper officers of the Bar concerning the same.

304 – Publication and Formatting of Articles

- a. Articles will be published in the *New Hampshire Bar News* and on the Bar website subject to the provisions of these rules.
- b. Articles shall be formatted for publication in accordance with the following guidelines:

Title

Ethics Committee Article

Publication Date ARTICLE TEXT

The Ethics Committee provides general guidance on the New Hampshire Rules of Professional Conduct and publishes brief commentaries in the *New Hampshire Bar News*. New Hampshire lawyers may contact the

Committee for confidential and informal guidance on their own prospective conduct or to suggest topics for Ethics Corner commentaries by emailing, [Bar staff liaison].

305 – Publication and Formatting of Ethics Corners

- a. The Committee may, from time to time, prepare short topics of general interest called Ethics Corners for publication on the Bar website and in the *New Hampshire Bar News*.
- b. Draft Ethics Corners shall be submitted to the Committee for consideration, and may be approved for publication only by a majority vote of the members of the Committee present at the time the Ethics Corner is proposed for approval of publication. In the event that the Ethics Corner is being proposed for approval of publication through email, rather than at an ordinary meeting, the Ethics Corner may be approved for publication by a majority vote of the full membership of the Committee.
- c. Ethics Corners shall be formatted in accordance with the following guidelines:

Title

Ethics Corner Article

Publication Date

“Dear Ethics Committee:” QUESTION PRESENTED ANSWER TEXT

The Ethics Committee provides general guidance on the New Hampshire Rules of Professional Conduct and publishes brief commentaries in the *New Hampshire Bar News*. New Hampshire lawyers may contact the Committee for informal guidance on their own prospective conduct or to suggest topics for Ethics Corner commentaries by emailing [Bar staff liaison].

400 – Amendments and Committee Comments to the Rules of Professional Conduct

401 – Authority to Propose Amendments and Comments

The Committee may, where appropriate, adopt and submit to the Board proposed amendments and Committee comments to the RPC.

402 – Consideration and Approval of Proposed Amendments and Comments

To be submitted to the Board, proposed amendments and Committee comments must be approved by the Committee pursuant to Rule 110(a).

403 – Solicitation of Comment on Proposed Amendments and Comments

The Committee may solicit comments on proposed amendments and Committee comments from the Courts and/or the Bar or any appropriate division thereof.

404 – Review and Approval by the Board of Governors

- a. Any proposed amendments or Committee comments adopted by the Committee shall be transmitted to the Board.
- b. The Board shall decide whether to file a petition for adoption of a proposed amendment or Committee comment by the New Hampshire Supreme Court.
- c. The Committee shall provide appropriate assistance to the Board in the petition process.

500 – Communications and Litigation

501 – Litigation and Amicus Curiae Briefs

The Committee may respond to court requests for information or comments and may recommend that the Bar participate in pending litigation involving ethical issues that are of interest to members of the Bar as an *amicus curiae*, or otherwise. No action shall be taken or recommendation made until the Board has at its next regular meeting thereafter had an opportunity to review and comment upon the same unless the exigencies of the particular situation so require, in which case the Chair shall consult with the proper officers of the Bar concerning the same.

502 – Review and Comment on Documents by the Board of Governors

The Board shall be provided with copies of all documents formally adopted and approved by the Committee, including *amicus curiae* briefs, official Committee communications with officials and tribunals, and similar items. No such document shall be published, filed, or released until the Board has at its next regular meeting thereafter had an opportunity to review and comment upon the same unless the exigencies of the particular situation so require, in which case the Chair shall consult with the proper officers of the Bar concerning the same.

503 – Helpline Referrals

- a. Members of the Bar seeking immediate or informal advice from attorneys with knowledge of the RPC may call the designated Bar staff liaison for a “Helpline” referral to members of the Committee.
- b. Committee members who receive such calls may discuss the inquiry with the inquiring attorney following the Committee’s “Protocols for Handling Helpline Inquiries to Ethics Committee members”.
- c. The comments and guidance offered by Committee members during these calls do not constitute the opinions of the Committee or legal advice from individual Committee members.

Adopted unanimously February 9, 1987 Revised by the Ethics Committee April 9, 1992

Approved by the Board of Governors April 16, 1992 Revised by the Ethics Committee November 12, 1997 Approved by the Board of Governors November 20, 1997 Revised by the Ethics Committee October 13, 1999 Approved by the Board of Governors October 21, 1999 Revised by the Ethics Committee May 14, 2008 Approved by the

*Board of Governors June 20, 2008 Revised by the Ethics
Committee December 11, 2013 Approved by the Board of Governors
January 16, 2014 Revised by the Ethics Committee January 11, 2017
Approved by the Board of Governors January 19, 2017
By the Ethics Committee March 11, 2020 Approved
By the Board of Governors May 4, 2020*