

NEW HAMPSHIRE BAR ASSOCIATION
 BOARD OF GOVERNORS MEETING AND ORIENTATION
 Monday, November 4, 2019
 Bar Center, Concord, NH

MINUTES

Present for all or part of the meeting were:

- | | |
|-------------------------------|-------------------------------|
| Edward D. Philpot, Jr. | John A. Curran |
| Dan Will | Susan Aileen Lowry |
| Richard Guerriero | Christopher T. Regan |
| Peter Hutchins | Geoffrey M. Gallagher (phone) |
| David McGrath (phone) | Jennifer Parent (phone) |
| Jonathan M. Eck | Hon. James P. Bassett |
| Christine M. Hanisco | George R. Moore |
| Lisa M. English | Jennifer Pinckney |
| Kristin G. Fields | Joanne Hinnendael |
| Joseph D. Steinfield | Ginny Martin |
| Scott Whitaker (phone) | Deborah Hawkins |
| Marcie Hornick | Allison Borowy |
| Leslie Nixon | |
| Donald H. Sienkiewicz (phone) | |

A meeting notice reminder, a link to the preliminary agenda and related materials were emailed to all Governors on October 28th. 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 meeting to order at 4:00 p.m.

REGULAR BUSINESS – CONSENT ITEMS

- B. Membership Status Changes for October 2019 Paula Lewis

The membership changes were accepted as presented and are attached as a permanent part of these minutes.

- C. Report on Dues Waiver Requests Paula Lewis

Approved waiver requests:

Bar ID #	Action	Payment Owed
██████	100% waiver of Bar dues Court fees & late fees granted	\$0.00
██████	100% waiver of Bar dues Court fees & late fees granted	\$0.00
██████	100% waiver of Bar dues Court fees & late fees granted	\$0.00

Denied waiver requests:

Bar ID #	Action	Payment Owed
████	100% waiver of Bar dues Court fees & late fees denied	\$645.00

D. Minutes of October 7, 2019 Meeting Robert Howard

The minutes were approved as presented.

ACTION

On motion to accept the consent agenda. Passed. Unanimously.

PRESENTATION / DISCUSSION / ACTION ITEMS

E. Nomination of Richard Guerriero for 2019-2020 President-Elect Edward Philpot Jr.
(As called for by NHBA Bylaws Article 6, Section 3: On or before December 31st in each year, the members of the Board of Governors shall nominate a candidate for President-elect.)

ACTION

On motion to nominate Richard Guerriero as President- Elect. Passed. Unanimously.

F. Reappointment/Appointment to the Pro Bono Policy Governing Board Edward Philpot Jr.
for the following terms (VOTE)

1. New Appointment Robert R. Moore of Manchester
2. Reappointment Brian Shaughnessy of Bedford
3. Reappointment Catherine Shanelaris of Nashua

ACTION

On motion to approve the appointment/reappointment of the above members to the Pro Bono Policy Governing Board. Passed. Unanimously.

G. Appointment of Legal Advice and Referral Center Board of Directors George Moore

1. Anne Jenness of Concord

ACTION

On motion to appoint the above member to the Legal Advice and Referral Center Board of Directors. Passed. Unanimously.

Geoffrey Gallagher, chair of the committee presented the report that was distributed to the board in advance of today's meeting. (*The report is attached as an addendum to these minutes.*) He explained the committee's work process. They began by reviewing the current system that is in place. As part of their information gathering process, they spoke with attorneys that had involvement, including former chairs of the Judicial Selection Committee and judges that are currently on the bench, and had been through the nomination process. The committee also examined the processes used by other New England states.

The committee's recommendations are detailed on pages 4 – 6 of the report. Highlights include communication with both the Governor and Executive Council members at the start of each term regarding the Bar's historic independent and non-partisan role in the process. Bar staff should continue to obtain the nominee's application as soon as possible and make it available for review by Board members prior to the interview with the nominee. The President should appoint one or more members of the Bar (not necessarily Board members) to conduct a confidential investigation of the candidate. The committee drafted a checklist, as well as criteria to be used for this investigation. They recommend that the Board continue its practice of meeting with the nominee, and generating a letter reflecting their conclusions. The committee also noted that it may be appropriate in some circumstances for the President to request an appearance before the Executive Council.

The committee was not able to agree on a format for the evaluation letter. They presented several options on pages 7 and 8 of the report.

The committee report included several long-term recommendations for future consideration. They believe that the Bar Association, through its Board of Governors, provides a perspective that is unique from other stakeholders. One recommendation would be for the Board to conduct its hearing after the candidate has been selected, but before the selection has been made public. The committee is not recommending immediate action on these items due to the current existence of the Judicial Selection Commission but feels if a future administration chooses not to create such a commission, they feel the Bar should play a more active role.

There was discussion about whether the committee considered the question of whether the Bar should be involved at all in the judicial nomination process. The committee did not believe examination of this question was part of their charge, so they did not consider it, rather they focused on how to reconfigure the process to make the Bar's involvement more impactful.

The board discussed how to move forward on this issue. There was consensus that the NHBA, through the Board of Governors, should continue to play a role in the judicial nomination process. A major difficulty is the timing of the current process. Judicial nominees that were interviewed by the committee shared that the nomination and confirmation process is a whirlwind that they feel the process should be slowed down if possible; it is too compressed and rushed. It was noted that the Bar is the only non-partisan entity in the process that has a strong interest in a non-political judiciary, and therefore their role is important. Board members felt that the wider bar membership would want continued involvement by the NHBA in this process. Others suggested that the board should decide if the Bar's role should be informative or evaluative. Joe Steinfield pointed out that the Bar's real concern should be focused on weeding out the occasional bad nomination.

It was decided to sunset this committee and create another committee to design the process the board should follow. Interested volunteers should email George and/or Ed if interested. There was

suggestion that this new committee should talk to the Judicial Selection Commission, members of the Executive council and the Governor about what the bar's involvement can and should be. At the same time, the committee should work on developing evaluation criteria to use to articulate concerns regarding a nominee. There will be an update on the committee formation at the December board meeting.

I. Legal Services Consolidation – LARC/Pro Bono

George Moore

Executive Director George Moore shared that he has been involved for several months in negotiations to consolidate and make the delivery of legal services to the poor more efficient in New Hampshire.

He explained some of the issues with the current delivery system; there is overlap and duplication in services provided by all of the current providers, while some needs go unmet. It is felt by merging LARC and Pro Bono, the delivery system will become more efficient, and in the long run, more people can be better served with the same funding. Technology will be utilized to assist this endeavor, including a robust web interface and state-wide call center. It is expected the details will take some time to work out. This is an informational item for the board; but at the final stages it will be brought before the board for a vote.

It was also shared that the Free Legal Answers program may be transferred to the NHBA (under the Lawyer Referral Service) as part of this reorganization.

J. President's Report

Edward Philpot Jr.

1. Mid-Year Meeting Update

There are two programs planned.

The morning program "Lawyers as Whistleblowers", which will feature James D. Robenalt (who served as John Dean's lawyer.) The program explores John Dean's role as White House Counsel and the changes brought about to Model Rule 1.6 and 1.13 because of Dean's testimony. The changes were watershed moments in legal ethics, requiring lawyers to "report up" when representing an organizational client and permitting "reporting out" when crime or fraud cannot be stopped despite the best efforts of the lawyer.

The afternoon program "And then they came for us: The Perils of Silence", is on the topic of the Korematsu Coram Nobis case (concerning the reopening of the original Korematsu case regarding the legality of Japanese internment in the 1940's) in the early 1980's. President Ed Philpot will moderate a panel that includes Dale Minami, the lead counsel for this case. The panel will also include a local NH attorney, who will add perspective about recent immigration cases.

2. Ethics Committee Report

Executive Director George Moore explained that this report has been submitted to the board as a result of a meeting that President Philpot held in October with all the NHBA committee chairs, where better communication with the Board of Governors was discussed. It is expected that the committees will be submitting reports or perhaps attending board meetings from time to time updating the board on their activities.

K. Executive Director's Report

George Moore

1. Practical Skills Bench /Bar Meet and Greet –
December 11, 2019 @ 5:00 p.m. at Grappone

George asked that the board members put this event on their calendars This is a fun event with many new lawyers. This year Chief Judge Tina Nadeau will be speaking.

L. State Update

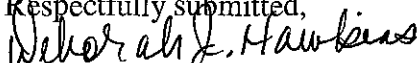
All Board Members

- Susan Aileen Lowry shared that the Rockingham County Bar Association will be having its holiday gathering on December 9th at the Smutty nose Brewery. Watch for the notice.
- Jim Cowles shared that the Carrol County Bar Association will be gathering at the Hobbes Brewery on November 6th.
- Marcie Hornick updated the board on the Grafton County courthouse reconfiguration.
- There was discussion about continued issues with implementation of criminal e-filing. Ed encourages board members to ask members to bring their concerns/complaints to the NHBA Committee on Cooperation with the Courts, rather than just complaining, so they can be addressed and communicated to the courts.
- Jonathan Eck, Chair of the Committee on Cooperation with the Courts shared that Superior Court Justice Tina Nadeau is working on setting up brown bag lunches around the state. These will be forums for general discussions about court issues. She is reaching out to local county bars for assistance. Jonathan suggests that board members may want to attend, and to reach out to him if they would like to be involved.
- Chrissy Hanisco noted that Merrimack began e-filing in August, and there have been glitches with the system.
- John Curran shared that Next Gen system will be rolled out next week in federal court (in case everyone didn't get the notice).
- Jennifer Parent shared that the regional New England Bar Association annual meeting took place October 24 – 26th in Portsmouth. NHBA's host year has just completed, and she complemented the NHBA staff for their hard work in putting on this event.

M. Adjournment

Adjournment

The November 4, 2019 Board of Governors Meeting adjourned at 5:47 p.m.

Respectfully submitted,

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

Membership Status Changes
Presented to the Board of Governors November 4, 2019

Active to Inactive:

267627 Ragone, Kristina, Boston, MA (Effective September 25, 2019)
17109 Graham, Lee, Londonderry, NH (Effective October 2, 2019)
17283 Ciccanesi, Susan, Peabody, MA (Effective October 7, 2019)

Active to Inactive Retired:

266844 Drapos, Philip, Boston, MA (Effective September 3, 2019)
18508 Lasker, Andrea, Charlestown, MA (Effective October 1, 2019)
20118 Martignetti, Eric, Melrose, MA (Effective October 28, 2019)

Active to Military Active:

269653 Stillings, Tessa, Alexandria, VA (Effective October 18, 2019)

Active to DECEASED:

2237 Sakellarios, Jean-Claude, Nashua, NH (Effective October 7, 2019)

Inactive to ACTIVE:

18325 Quinn, Laretta, Minneapolis, MN (Effective October 3, 2019)
266267 Subach, Serge, Boston, MA (Effective October 3, 2019)
266211 Loftus, Katherine, Milton, MA (Effective October 11, 2019)
266166 Bistany, Anthony, Methuen, MA (Effective October 23, 2019)

Inactive to Inactive Retired:

2506 Perreault, Cynthia, Manchester, NH (Effective October 1, 2019)

Inactive to RESIGNED:

265310 Clauson, Kevin, Hanover, NH (Effective October 1, 2018)

Inactive Retired to RESIGNED:

9040 Earnshaw, Kathleen, Fort Myers, FL (Effective September 30, 2019)

Military Active to Military Inactive:

272216 Lantos-Swett, Atticus, Bow, NH (Effective October 12, 2019)

The New Hampshire Board of Bar Governors

Report of Subcommittee for the Review of the Judicial Evaluation Process

Dated November 3, 2019

Subcommittee Members:

Geoffrey M. Gallagher

Lisa English

Christopher Regan

Donald Sienkiewicz

Joseph Steinfield

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I. The Current NHBA Judicial Evaluation Process

Judicial selection in New Hampshire begins with the Governor's appointments to the Judicial Selection Commission ("JSC"). That body investigates the applicant's background, conducts interviews, and submits recommendations to the Governor. The Governor then decides whom to nominate to fill the vacancy and announces that choice publicly. The Executive Council then schedules a hearing to take public testimony in support of or against the candidate. Subsequently, at a meeting of the Governor and Executive Council, the Executive Council votes on whether to confirm the nominee.

Before presenting our recommendations for the future, we will outline what we understand to be the New Hampshire Board of Bar Governor's ("Board") current role in the judicial appointment process, which begins after the nominee is publicly identified. The Board then invites the nominee to attend a special meeting of the Board. Such meetings ordinarily take place on short notice, since by that time the nomination process has already moved to an advanced stage. Before the special meeting, some members of the Board are tasked with contacting lawyers, and others where appropriate, who reside in the nominee's county or who may be familiar with the nominee by reason of engaging in the same practice area as the nominee.

Members of the Board are notified of the meeting date, and at the meeting they are provided with copies of the judicial application submitted to the JSC, which they review at the Bar Center before the interview begins. This gives the members very little time, perhaps ten minutes or so, to review the JSC application before the nominee enters the room. In addition, the person(s) who conducted the investigation of the nominee reports what he or she has learned.

During the interview, the lines of inquiry vary depending on the nominee, the particular court, and the extent to which the nominee's background and qualifications are already known. Following the interview, the Board discusses the nominee and votes to find the nominee "Qualified," "Qualified with Reservations," or "Not Qualified." (In the past twelve years, we understand that only one nominee has received a "Qualified with Reservations," and no one has been deemed "Not Qualified.") The President then notifies the nominee and the Governor of the Board's judgment.

II. Subcommittee's Process Recommendations

This report assumes that the Bar can and should play a role in the process of judicial appointments. However, at least in recent times, the Board has come into the process so late in the day that it has been unable to contribute meaningfully. This has had several unfortunate results.

One is that with insufficient time to do a thorough review, the Board almost always gives the nominee a "Qualified" rating, even where there may be some reservations on the part of the Board. We have no way of knowing whether that will change under a different system, but a more thorough evaluation, and a timely communication with the executive branch, can only enhance the process.

Because it is independent and nonpartisan, the Board is uniquely situated to perform a useful role in the judicial nominating process. Ideally, it would do so with the approval and participation of the Governor. But whether or not such cooperation exists, the Board should do what it can to engage in a careful and thorough evaluation of judicial nominees and present its conclusions to the Governor, the Executive Council and, when appropriate, to the public at large.

Recommended Process

1. The Board should engage in communication with the Governor's office early in the Governor's term, advocating for the role that the Board believes it should play in the judicial appointment process. The earlier the Board becomes involved, the more value it can provide to the process.
2. The Board should also communicate with the Executive Council at the beginning of each term.

3. These communications should stress the Bar's historic independent and nonpartisan role.
4. The Board's staff should continue their current practice of regularly reviewing the New Hampshire Executive Council's agenda and requesting a copy of the JSC application as soon as possible.
5. Once the Board's staff have obtained a copy of the nominee's JSC application, it should be made available to members of the Board for review at the Bar Center.
6. The President should appoint one or more member of the Bar, who may but need not be on the Board, to conduct a confidential investigation of the candidate. This should include a review of the nominee's writings, opinions in any cases (including, in the case of someone who is already a judge, his or her principal opinions), and conversations with lawyers and others who are familiar with the nominee's integrity, professional competence, and temperament. The investigation may also include an interview of the nominee, either in person or by phone.
7. We have drafted a proposed "checklist" to assist the person(s) conducting the investigation. A copy of the proposed "checklist" is in the Appendix to this Report. Whenever possible, the results of the investigation should be provided to the Board in advance of the interview with the nominee. If the investigator produces any written product, it should be available to the members of the Board as soon as practicable.
8. The Board interviews the Nominee.
9. Immediately following the interview, the Board engages in a discussion and (unless a majority of members vote to adjourn and resume the discussion at a later time) votes on the Board's evaluation of the nominee.
10. The President then prepares a letter reflecting the Board's conclusions. If the Board does not find the nominee "Qualified," then, whenever practicable, it should provide a

copy of the letter to the nominee at least 24 hours before submitting it to the Governor and the Executive Council. (We recommend this as a matter of common courtesy, not to invite the nominee to engage in a “rehearing” or “reconsideration” process, although there might be circumstances where this would be warranted, e.g. a factual error or misunderstanding by the Board).

11. Depending on the circumstances, it may be appropriate for the President, or his or her designee, to request an appearance before the Executive Council.

III. The Subcommittee Evaluation Letter Proposals

The Subcommittee was unable to agree on a singular evaluation letter format to recommend to the Board. Unless the Board becomes involved in the judicial selection process before the Governor publicly announces a nominee, the New Hampshire Executive Council is the main entity that will be using the evaluation. Providing the basis for the evaluation will help make it more useful in their deliberative process. To that end, the Subcommittee provides the following proposals:

A. Standardized Letter with Three Options.

First, the Board could continue to use a letter similar to what it has used in the past with three "ratings" and a standard template for each. Even if this were the preferred method, we recommend that the Board explain to the membership that the underlying evaluation is designed to be more robust and comprehensive.

B. Letter with Two Options and Explanation.

The Board could provide a letter of qualified or not qualified. But this is not designed to be a binary choice. Rather, for those it finds qualified, the Board would prepare a short description of the nominee's strengths as well as areas the nominee has not had the opportunity to practice in. This proposed letter would note the fact that no nominee for the bench ever checks off all of the boxes of experience that the Board reviews as part of its evaluation. For a nominee found not to be qualified, the Board would prepare a letter outlining the basis for that conclusion.

C. Letter with Three Options and Explanation.

The Board could provide a letter with three different ratings. For all nominees, the Board would provide an explanation for its rating. This could include the nominee's strengths and growth areas. The content of each letter would be individualized to each nominee and the judicial vacancy.

IV. Long-Term Recommendations

As part of its inquiry, the Subcommittee reviewed and discussed many other alternative processes to that currently used in New Hampshire. Some of these proposed processes are more appropriate for consideration in the future. The Subcommittee believes that the Bar, through the Board, can provide a perspective on nominees that is different from other stakeholders, even were the Governor creates a Judicial Selection Commission that engages in a robust vetting process.

One challenge for the Board is that its involvement in the process does not typically begin until after a Governor has publicly announced the selection of the nominee. That context necessarily means the Board's evaluation of the candidate is part of a public – and sometimes politically contentious – process. Thus, in order to allow the Board a real role in the process where it can provide substantive input on the qualifications of a candidate, without politicizing that input, we recommend the Board look for avenues to be involved earlier in the process.

One possibility would be for the Board to conduct its hearing after the candidate has been selected but before the selection has been made public. That would allow the Board to provide a full and frank summary of its evaluation. The Governor could then move forward with his or her plan to make the nomination, or to choose an alternate candidate. This would be a dramatic change to the current process (which is similar to prior administrations) where the candidate often learns of his or her selection a few days or even hours before a public announcement is made. The subcommittee does not recommend pursuing this alternative at this time, given the current public debate over judicial nominations.

To the extent the Board wishes to advocate for earlier involvement in the process, it could do so by way of a request to the Governor. If unsuccessful, the Board could advocate for earlier involvement by approaching gubernatorial candidates. The Board could also approach the Governor and Executive Council to discuss ways in which the Board could add value to the evaluation process.

While we are not recommending these actions now, that is in part due to the existence of the Judicial Selection Commission – a process that is purely voluntary on the part of the Governor. Should a future administration choose not to create a Judicial Selection Commission, we believe the Bar should play a more active role in evaluating judicial nominees, whether that input is solicited or not.

APPENDIX

I. Judicial/Litigation Experience

A. For Nominees who are Already Judges

1. Court and Year Appointed

2. Noteworthy Cases

3. Participation in Judicial Administration

4. Complaints (and outcome)

5. Pre-judgeship law practice or other legal experience (teaching, government, etc.)

Use the following section.

B. For All Nominees

<u>Litigation Experience</u>	<u>None</u>	<u>Some</u>	<u>A Lot</u>	<u>Interviewer comments</u>
Civil Cases <ul style="list-style-type: none"> • Jury Trials • Bench Trials • Arbitration Hearings • Administrative 				Including court, name of presiding judge, name of opposing counsel
Criminal Experience <ul style="list-style-type: none"> • Jury Trials • Bench Trials • Other 				Same
Family Law/Probate Disputes Divorce & Custody				Same

Trusts & Estates				
Other				
Appeals Court Argued (or second chair)				Names and citations of cases
Arbitration (as arbitrator) Mediation experience (as mediator)				Identify counsel

II. Government Service (other than judicial)

Position Years Elected or Appointed Comments

III. Bar Association, Pro Bono Cases and Community Activities

A. If the nominee has been involved in bar association activities, obtain full information, including nature of activity and when.

B. If the nominee has handled cases pro bono:

Type of case(s) Year Comments

<u>Type of case(s)</u>	<u>Year</u>	<u>Comments</u>

C. If the nominee has been involved in non-legal community activities:

Community Position Year Comments

<u>Community</u>	<u>Position</u>	<u>Year</u>	<u>Comments</u>

IV. Teaching, Writing, Lectures & Public Appearances

A. If the nominee has taught at any level, or published any writings::

Courses Taught Years School/CLE/
Adult ed'n Comments

B. If the nominee has published any teaching:

Type of Writing Publication Date Subject Comments
(articles, books, etc)

C. If the nominee has delivered lectures, participated in symposiums or panels, or made media appearances (radio, TV):

When Where Details

V. Personal Background and Education

Place of Birth	
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<p>Education: Undergraduate</p> <p>College Major</p> <p>Year of grad'n Degree</p> <p>Honors</p>	
<p>Law School</p> <p>Year of grad'n</p> <p>Honors</p>	
<p>Other post-college education</p>	
<p>Clerkship</p> <p>Judge</p> <p>Court</p> <p>When</p>	