

NEW HAMPSHIRE BAR ASSOCIATION
BOARD OF GOVERNORS MEETING
Thursday, January 19, 2017
Bar Center, Concord, NH

MINUTES

Present for all or part of the meeting were:

Scott H. Harris	Patrick T. O'Day
Peter E. Hutchins	Sarah Lavoie (by video conference)
Robert R. Howard III	Lanea Witkus
John A. Curran (by video conference)	Jennifer L. Parent
Edward D. Philpot, Jr.	Kathleen M. Mahan
Paul Chant	Jeannine L. McCoy (by video conference)
Christopher Marshall	Joanne Hinnendael
Kristin Fields	Paula D. Lewis
Richard C. Guerriero, Jr.	Virginia A. Martin
Sandra L. Cabrera	Jennifer Pinckney
Ora Schwartzberg	Deborah J. Hawkins
Daniel E. Will	Kristen Senz
Cathy Shanelaris	John MacIntosh
James A. Shepard	Jason Dennis
	Buzz Scherr

A meeting notice reminder, preliminary agenda and related materials were emailed January 13th. Additional materials were distributed January 18th and 19th. The Agenda is duplicated below in 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.

REGULAR BUSINESS

A. Call to Order

Scott Harris

The regular session of the January 19, 2017 Board of Governors meeting was called to order at 4:05 p.m. by President-Elect Scott Harris.

B. Welcome and introduction- Leadership Academy Participants

Board Members

Public Sector Governor, Christopher Marshall introduced Jason Dennis, one of the participants in the 2016-17 Leadership Academy.

PRESENTATION / DISCUSSION / ACTION ITEMS

- C. Review of Dashboard of status of the Bar and upcoming short, medium and long range concerns. Paula/Managers

Scott Harris explained that the intention is to return to monthly reporting on specified Bar Association metrics to help keep progress toward stated goals in front of the Board. Paula Lewis asked Board members to let her know what they would like to see. Ginny Martin added that one month's worth of data points is not an adequate measure, perhaps looking at these quarterly would be a better measure.

D. Legislation

- a. Bill re: Incarceration for non-payment- right to counsel Buzz Scherr, UNH Law

Attorney Scherr spoke about the Debtors' Prison report that was released in September 2015. The NHBA Board of Governors supported the concept at their November 2016 meeting. The rules committee proposed the idea to the Supreme Court, which supported the rules change, but said that the appointment of counsel is a matter of policy, which should be left up to the legislature. There will be a pending bill introduced during this legislative session, sponsored by Senators Feltes and Bradley. A copy was circulated to the Board. Attorney Scherr shared that the judicial council unanimously supported the bill. He is asking for the Board's support of the bill.

ACTION

On motion that the NHBA support the legislation (SB 200) as proposed. PASSED. Unanimously.

- b. Legislation Committee John MacIntosh

John MacIntosh, NHBA Lobbyist updated the Board on this year's legislative session. There are usually about 800 bills introduced, and so far approximately half are out. The legislation committee has met twice.

John began reviewing the Legislation Committee's recommendations to the Board of Governors.

ACTION

On motion to accept the Legislation Committee's recommendation to **OPPOSE** the following five bills pending in the NH Legislature – CACR 5, HB 138, HB 311, HB 345, HB 449. PASSED. Unanimously.

ACTION

On motion to accept the Legislation Committee's recommendations as follows:

- Position of **INFORMATION NEGATIVE** on the following nine bills – HB 134, HB 136, HB 137, HB 292, HB 429, HB 439, HB 445, HB 506, SB 29

- Position of **INFORMATION** on the following two bills – HB 174, HB 283
- To take **NO POSITION** on the following bills – CACR 3, CACR 4, HB 106, HB 133, HB 189, HB 284, HB 476

PASSED. Unanimously.

John also made the Board aware that there is a bill regarding electronic wills that has been introduced this session. The Legislation Committee will review and advise the Board.

E. Staff introduction

Scott Harris

Scott Harris welcomed newly hired Director of Strategic Communications Jennifer Pinckney to her first Board of Governors meeting.

F. Treasurer's Report

Peter Hutchins

Peter Hutchins discussed the report distributed to the Board. The organization is doing well. He reported that the Association is \$176,000 ahead of budget through November 30th. There is a positive contribution of \$286,000. Revenue is ahead of budget as well.

Paula Lewis, Director of Finance and IT reported that the Association can now accept American Express. She was able to negotiate a favorable processing fee.

G. Strategic Planning Update

Ed Philpot

a. Non-Profit Sustainability Institute

Ed Philpot, Governor-at-Large and chair of the Strategic Planning Committee spoke about this institute. Executive Director Jeannine McCoy made a successful application and the NH Center for Nonprofits selected the NH Bar Association as one of only 10 organizations chosen to participate in this program. Its focus is how to build a model both for delivery of services and sustainability of the organization. This dovetails nicely with our strategic planning work, notes Ed. The monthly dashboards Scott spoke about will be used as strategic planning tools. The team participating in this institute are Jeannine, Paula Lewis, Jen Pinckney and Ed Philpot. The full management team will eventually be involved, and Sandra Cabrera will serve as the backup Board member. Ed also spoke about reintegrating the Strategic Planning Committee in the next few months.

b. Ed also updated the Board on two areas of continued focus.

Transitions Out of Practice – This group is working with the recent survey data to dive deeper in order to gain more insight as to why attorneys are seeking to leave the practice of law.

Continuing Professional Development/Bar Services Group – The “Learn at Lunch” sessions are up and running; they started in early January. They are basing the content on the Traps for the Unwary materials.

Jo Hinnendael, CLE director encourages the Board members to check the web site for the offerings. She will report on sales at the February Board meeting. Registration and more information about these sessions can be accessed by following the links below:

One-hour session: <http://nhbar.inreachce.com/SearchResults?searchType=1&category=7aeb27cc-8bc3-4b3c-9fbe-91bdd8a47486&sortBy=recentlyadded>

One-hour or less: <http://nhbar.inreachce.com/SearchResults?searchType=1&category=4e3a995c-890e-4a7b-8af9-302997b56a37&sortBy=recentlyadded#page-8>

The online catalog can be accessed at: <http://nhbar.inreachce.com/>
Then select the category, and one can see what is offered in the “1-hour or less” or the “learn@lunch series”.

c. Legal Services – ethics rule change progress and Virtual Pro Bono proposal Richard Guerriero

Richard Guerriero, Cheshire County governor and member of the Ethics Committee brought concerns from the Bar’s Ethics Committee to the Board. Their primary concern was the risk of conflicts arising and the ability to perform a conflict check while using the proposed Virtual Pro Bono portal. Some attorneys do not have the ability to perform a conflict check remotely, which raised concerns. It was noted that a participating attorney could take the time to do a conflict check before advising the client through the portal. Most cases are not time sensitive. Ginny Martin, Associate Executive Director for Legal Services, spoke to the current rule, which some interpret as allowing a 1-time consultation without a conflict check. It is the opinion of the majority of the Ethics Committee members that a conflict check is required under the current rule. Some Board members expressed their opinion that this should not delay the implementation of the Virtual Pro Bono project. The Virtual Pro Bono project is seen as a way to increase access to justice. Ginny Martin shared that those using the system are limited to 3 questions per year. There are currently 18 states using the Virtual Pro Bono system. The NH ethics rule is more narrow than the ABA rule. It was decided to move forward without seeking an immediate rules change.

ACTION

On motion – The NHBA adopt the Virtual Pro Bono system, limited to 1 question, 1 answer without a conflict check. PASSED. 18 – 1.

ACTION

On motion that the NH Bar Board of Governors form a committee to work with the NH Bar Ethics Committee, the Attorney Discipline Office, along with any other interested constituencies, to seek to amend the Comments to Rule 6.5 of the NH Rules of Professional Conduct such that the Comments address the meaning of “one time communication” in an on-line environment such that reasonably contemporaneous communications addressed to a single subject matter fall within the scope of permissible communications under Rule 6.5. PASSED. 17 – 1 with 1 abstention (Lanea Witkus).

H. NHBA Ethics Committee Procedural rules update approval

Richard Guerriero

Richard Guerriero outlined the proposed changes in the procedural rules, which mainly address the operation of the ethics helpline. (A copy is included with these minutes.)

ACTION

On motion to approve proposed changes to Ethics Committee procedural rules as presented. PASSED. 15 – 3 with one abstention. (Lanea Witkus)

REGULAR BUSINESS-

I. President-elect’s Report

Scott Harris

Scott announced that online registration has begun for Midyear Meeting 2017, to be held on March 10, 2017, at the Radisson in Manchester. Last year was a sell out, so he encourages all to sign up soon. Scott shared his excitement about this program, featuring Dr. Henry Lee, one of the world’s foremost forensic scientists and director of the University of New Haven’s Henry C. Lee College of Criminal Justice and Forensic Sciences. The afternoon presenters are two Tufts University professors, Dr. Samuel Sommers and Dr. Keith Maddox speaking on the science of stereotyping and implicit bias.

Scott updated the Board on the June 2017 5K Road Race to be held in conjunction with the 2017 NHBA Annual Meeting at the Mountain View Grand in Whitefield, NH. The race will be held at White Mountain High School using their course. Registration will open June 1st. We are hoping for 300 - 500 participants, according to Scott.

J. State Update

Current Governor-at-Large, Ed Philpot announced that current Coos County Governor Sandra Cabrera is running for the Governor-at-Large seat that he currently holds. Ed has submitted a petition for the seat of Vice President.

REGULAR BUSINESS – CONSENT ITEMS

K. Membership Status Changes for December 2016, January 2017

Paula Lewis

The Board received Membership Status changes, which are attached as a permanent part of these minutes.

L. Dues Waiver request

Paula Lewis

The Board approved the following waiver requests:

- 100% waiver of 2016-2017 Inactive Bar dues and Court fees
- 100% waiver of 2016-2017 Inactive Bar dues, Court fees and late fees

M. Minutes of November 17, 2016 Meeting

Rob Howard

The Board accepted the minutes as presented.

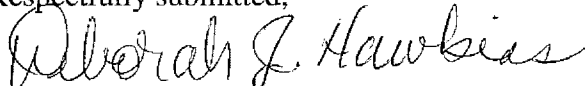
ACTION

On motion to accept the consent items. PASSED. Unanimously.

ADJOURNMENT

The January 19, 2017 Board of Governors Meeting adjourned at 6:10 p.m.

Respectfully submitted,



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

NEW HAMPSHIRE BAR ASSOCIATION

Membership Status Changes

Presented to the Board of Governors January 19, 2017

Active to **INACTIVE**

- 10517 Fienberg, Lorne M., Santa Barbara, CA (effective December 15, 2016)
- 265350 Hamory, Lucas J., Norwell, MA (effective November 14, 2016)
- 15843 Harrington, Rachel C., Pembroke, NH (effective December 21, 2016)
- 14563 Haydinger, Christine, Hopkinton, NH (effective January 3, 2017)
- 265175 Lebeck, Julian H., Haverhill, MA (effective November 21, 2016)
- 1598 Mallon, Linda, Concord, NH (effective November 22, 2016)
- 265313 O'Brien, Timothy K., Laconia, NH (effective December 18, 2016)
- 18529 Ricles, Robert E., Boston, MA (effective November 21, 2016)
- 9978 Weathersby, Patricia M., Rye, NH (effective November 25, 2016)

Active to **JUDICIAL**

- 15592 LaChance, Tracy A., Manchester, NH (effective October 16, 2016)

Military Active to **ACTIVE**

- 18897 Alexander, Jonathan W., Arlington, VA (effective December 20, 2016)

Active to **INACTIVE RETIRED**

472 Bamford, David K., Dover NH (effective December 30, 2016)
173 Buffum, Paul, Wilton, NH (effective November 8, 2016)
9030 Callen, Jed Z, New Boston, NH (effective December 1, 2016)
857 Freund, George R., The Villages, FL (effective December 23, 2016)
916 Geiger, Glenn G., Concord NH (effective December 31, 2016)
4119 Rogier, Bridget R.J., Epping, NH (effective December 30, 2016)
9380 Shealy, Heidi E., Stratham, NH (effective January 4, 2017)
4394 Soldati, Lincoln T., Portsmouth, NH (effective December 31, 2016)
4121 Souther, Albert E., Dover, NH (effective November 3, 2016)
2793 Woodward, Robert P., Concord, NH (effective December 1, 2016)

Active to **DECEASED**

4061 Giarrusso, Mark A., Kingston, NH (effective December 10, 2016)
14573 Lamont, Joseph L., Barnstead, NH (effective October 30, 2016)

Honorary Active to **HONORARY INACTIVE**

1189 Hoover, Arthur W., New Durham NH (effective December 31, 2016)

Honorary Inactive to **RESIGNED**

1990 Pearson, Richard N., New London, NH (effective January 1, 2017)

Judicial to **INACTIVE RETIRED**

2616 Vaughan, Timothy J., Littleton, NH (effective January 2, 2017)

Inactive to **ACTIVE**

10472 Allen, Peter J., Meredith, NH (effective November 18, 2016)
5520 Coro, Marc A., Milford, NH (effective November 16, 2016)
267682 Crisostomo, Natalia D., Lawrence, MA (effective December 27, 2016)
268166 Desmet, Julianne M., Nashua, NH (effective December 22, 2016)
6853 Johnston, Kathryn B., Vero Beach, FL (effective January 5, 2017)
16867 O'Brien, William L., Mont Vernon, NH (effective December 22, 2016)
266307 Ritacco, Poppi C., Sutton, NH (effective January 9, 2017)
266262 Seavey, Ross P., Vineyard Haven, MA (effective November 30, 2016)
21029 Wagner, Todd A., Hampton Falls, NH (effective December 2, 2016)

Inactive to **INACTIVE RETIRED**

12133 Nichols, Raymond E., Milford, NH (effective November 22, 2016)

Inactive to **RESIGNED**

17443 Brownson, Jenna K., Littleton, NH (effective December 15, 2016)

17280 Bryan, Sonia A., N Easton, MA (effective November 14, 2016)

20623 Jubinville, Robert L., Milton, MA (effective December 1, 2016)

4094 McCarty, Marie L., Fritz Creek, AK (effective December 1, 2016)

Inactive Retired to **DECEASED**

1621 Marshall, Susan E., Philadelphia, PA (effective November 8, 2016)

2310 Shapiro, Leonard P., Nashua, NH (effective September 22, 2016)

Suspended to **INACTIVE**

17149 Pearson, Michael T., Dover, NH (effective January 3, 2017)

Suspended to **INACTIVE**

12133 Nichols, Raymond E., Milford, NH (effective November 21, 2016)

14267 Willson, Charles F., E Hartford, CT (effective November 21, 2016)

Ethics Committee Procedural Rules

1. The Committee has three functions. The primary function of the Committee 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. As a secondary function, the Committee proposes amendments to the New Hampshire Rules of Professional Conduct. 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 members of the Bar. Individual Committee members may also respond to Helpline inquiries as described in Rule 14.

A. Opinions and Articles

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. Subject to the provisions of Rule 10, Opinions will be published in the *New Hampshire Bar News*.

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

B. Amendments to Rules of Professional Conduct

The Committee may, where appropriate, adopt and submit to the Board of Governors proposed amendments to the New Hampshire Rules of Professional Conduct.

To be submitted to the Board of Governors, amendments must be approved by a majority vote of the entire Committee.

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

Any proposed amendment adopted by the Committee shall be transmitted to the Board of Governors of the Bar. The Board of Governors shall decide whether to file a petition for adoption of a proposed amendment by the New Hampshire Supreme Court. The Committee shall provide appropriate assistance to the Board of Governors in the petition process.

The Chair of the Committee shall have the option to appoint, from time to time, members of the Committee to an ad-hoc subcommittee on a proposed amendment or group of amendments.

C. Communications and Litigation

The Committee may also 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.

2. The principal authorities upon which the Committee will rely in preparing Opinions and Articles are opinions of the New Hampshire Supreme Court, the applicable rules of the New Hampshire Supreme

Court, including the New Hampshire Rules of Professional Conduct, as amended from time to time, the applicable New Hampshire Comments to the Rules, and any other New Hampshire rule or statutory provision governing the practice of law by any member of the Bar. Other sources, including prior Opinions and Articles issued by the Committee, American Bar Association Formal and Informal Opinions, American Bar Association Comments to the Rules, 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.

3. 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. 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.
4. The Committee will accept for consideration written inquiries by members of the Bar. All requests for Opinions shall be directed to the Chair of the Ethics Committee or to the Bar office and shall thereafter be forwarded to all members of the Committee. In addition, 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.
5. Except as noted below, 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.
6. The Committee will not render Opinions involving past conduct. The Committee may decline to render an Opinion as to the proposed conduct of someone other than the inquirer.
7. 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 members assigned to the Committee, unless otherwise ordered by compulsory legal process. Further, subject to the provisions of Rule 1, all discussions, deliberations, files and records of the Committee, to the extent they may disclose the identity of a member of the Bar who has requested an Opinion on his or her own behalf, shall not be voluntarily disclosed to any person other than the current members of the Committee and the Bar staff members assigned to the Committee, unless otherwise ordered by compulsory legal process, or unless the requesting member waives the protections of this rule in writing. Since 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.
8. A majority of the members of the Committee shall constitute a quorum for the purpose of conducting its business. Unless otherwise provided in these Rules, the Committee shall act by a majority vote of those members present and voting at a duly noticed meeting.
9. 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. A majority vote of the full membership of the Committee shall be necessary for adoption.

Draft Articles shall be submitted to the Committee for consideration, and may be approved for publication only by a majority vote of the full membership of the Committee.

Actions taken pursuant to Rule 1.C shall be approved following the same procedures as set forth in these Rules for the adoption of Opinions.

10. The Board of Governors of the Bar shall be provided with copies of all Opinions, Articles and other documents formally adopted and approved by the Committee (the latter category to include 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 of the Committee shall consult with the proper officers of the Bar concerning the same.

The primary purpose of Board review is to provide the Board with advance notice of the content of the document. The Ethics Committee will consider any comments the Board or a member of the Board may have relating to a submission prior to its release. However, the Board submission process is not intended to imply or require Board approval of or agreement with the merits of a submission. The Board need not take any vote or formal action in response to such submission.

11. 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.
12. The President of the Bar shall appoint a Chair and Vice Chair of the Committee. The Chair shall preside at all meetings of the Committee and, when necessary, speak on behalf 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 issue 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.
13. Regular attendance by all members is vital to the Committee's work. Accordingly, if any Member shall fail to attend three (3) consecutive regularly scheduled meetings of the Committee, the Chair may request the President of the Bar to remove and/or replace the absent member, unless that absence is 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.
14. Members of the Bar seeking immediate or informal advice from attorneys with knowledge of the Rules of Professional Conduct may call the designated Bar staff member for a "Helpline" referral to members of the Committee. 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". 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.
15. These Rules may be amended following the procedures set forth in Rules 9 and 10 regarding the adoption and issuance of Opinions.



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.