

NEW HAMPSHIRE BAR ASSOCIATION
BOARD OF GOVERNORS MEETING
Thursday, October 14, 2010
Bar Center – Concord
3:00 P.M.

MINUTES

Present for all or part of the meeting were:

Marilyn B. McNamara	Christopher T. Regan
Jennifer L. Parent	Tanner Z. Nolin
Lawrence A. Vogelmann	Russell F. Hilliard
Peter E. Hutchins	John D. MacIntosh
Robert R. Howard, III	Judge Edwin W. Kelly
Jaye Rancourt	Judge David D. King
Lisa Wellman-Ally	Gina B. Apicelli
Eric D. Cook	Nina Gardner
Jacki A. Smith	Pat Ryan
Sheila J. Burnham (via phone)	Kelli Boyle
John G. McCormick	Jeannine L. McCoy
Quentin J. Blaine	Denice M. DeStefano
Victor W. Dahar, Jr.	Virginia A. Martin
Robert M. Shepard	Thomas W. Manter
Kenneth J. Barnes	Daniel R. Wise
Philip L. Pettis	Joanne M. Hinnendael

A meeting notice reminder was emailed October 8th. An agenda and materials were emailed October 11th. Additional information was emailed October 13th and distributed at the meeting. 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 SESSION

A. CALL TO ORDER Marilyn McNamara

The Regular Session of the October 14, 2010 Board of Governors meeting was called to order at 3:10 p.m. by Bar Association President Marilyn B. McNamara.

B. Membership Status Changes for October 2010 Jeannine McCoy

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

- C. Requests for Dues Waivers Jeannine McCoy

The Board approved the following requests:

- Waiver of the July 1 deadline date in order to resign in good standing to: [REDACTED]

- Partial waiver of dues and Court fees to [REDACTED]

- D. Minutes of July 22, August 27 and September 16, 2010 Meetings Peter Hutchins

Minutes of the July 22, August 27 and September 16, 2010 Board of Governors meetings **were approved** as presented.

PRESENTATION / DISCUSSION / ACTION ITEMS

- E. New England Bar Association Board Appointment Marilyn McNamara

The **Board approved** the appointment of Association ABA Delegate Russell F. Hilliard to a 3-year term on the New England Bar Association Board of Directors.

- F. President's Report Marilyn McNamara

❖ Report on Oct. 5th Supreme Court Bench/Bar Meeting

President Marilyn McNamara reported that the following issues were discussed at the October 5th Supreme Court Bench/Bar Meeting:

- **Concerns regarding "full-time judicial" dues category.** The Board briefly discussed issues raised in a letter from Bar member and part-time judge Albert Cirone. The Supreme Court has indicated its willingness to work with the NHBA on an equitable solution to the issues raised by Attorney Cirone.

- **Professional Liability Insurance voluntary survey for 2011**

Professional Conduct Rule 1.19 requires disclosure to the client if an attorney does not maintain at least a minimal amount of professional liability insurance coverage. The last time the membership was surveyed about whether they have professional liability insurance was in 2004. The intent is to conduct another survey on this in the next dues billing cycle in 2011.

❖ **Court Funding Support**

NHBA Vice President Lawrence Vogelmann briefly discussed the work of a small group of lawyers acting on their own, who were assembling a lawsuit against the state of NH to compel adequate funding for the courts. Board members discussed the issue, but the NHBA Board was not asked to participate in the lawsuit.

❖ **Bar News / Talking Points**

Although the Bar Association did not vote on whether it would join the lawsuit, some informal “talking points” about Court funding and the lawsuit were provided to Board members for their use, if needed.

❖ **Candidate Survey**

This year, for the first time, the *Bar News* circulated a brief survey to candidates seeking state office – the Governor’s office, Executive Council, and the NH Senate and House.

The survey sent to legislators seeks candidates’ responses on: how to balance the financial realities of a strained state budget with the need to preserve fundamental rights of access to justice; concrete suggestions on how the courts can reduce costs without impairing essential functions; the importance of a community court presence balanced against the need to control costs; whether the candidate, if elected, would be willing to vote to close a courthouse in his or her community, and if so, what circumstances would persuade them to do that.

The Governor and Executive Council candidates also were asked whether they wished to maintain the judicial selection commission process now used to screen judicial candidates, and what qualities they seek in judicial nominees.

❖ **Midyear Meeting Awards – Nominees Needed**

Board members are asked to give consideration and make suggestions to the Bar President regarding potential nominees for the following Midyear Meeting Awards:

- Vickie M. Bunnell Award for Community Service
- Distinguished Service to the Public Award
- Outstanding Service in Public Sector/Public Interest Law Award

G. Leadership Academy Update Jennifer Parent

NHBA President-elect Jennifer Parent, co-chair of the Leadership Academy Steering Committee, discussed the plans for the inaugural NHBA Leadership Academy, and the gratifying level of interest displayed by members of the Bar. The first Leadership Academy class of 15-16 members has been selected and the program for the year has been established. The class will be divided into 3 groups, with each group proposing a public service project that they will present to the BOG at the Feb. 3, 2011 BOG meeting.

H. Executive Director’s Report Jeannine McCoy

Executive Director Jeannine McCoy reported on the following:

▪ **IOLTA Concerns re FDIC coverage**

The Regulation to implement the provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) providing unlimited coverage for non-interest-bearing transaction accounts would have a serious negative impact on NH's Interest on Lawyers Trust Account (IOLTA) program because IOLTA accounts that now receive unlimited deposit insurance coverage under the existing Transaction Account

Guarantee (TAG) program but would be excluded from that full coverage in the revised Regulation as of January 1, 2011.

To prevent these negative effects and facilitate uninterrupted full coverage for IOLTÂ accounts, the FDIC needs to delay finalization or implementation of this Regulation and the notification requirements until Congress has an opportunity to take action on this matter.

State Bar Associations and Foundations are being encouraged to send a letter to Mr. Robert E. Feldman, Executive Secretary of the FDIC to address the concerns.

ACTION

The **Board voted to approve** sending a letter to Mr. Robert E. Feldman, Executive Secretary of the FDIC to address the concerns.

- **NHMCLE Administration**

The Bar Association administers the NHMCLE requirement in NH for the Court. Changes are being made to the way NHMCLE is administered by the Association that will result in more efficiencies and a better level of member service. Please let Jeannine know if you hear comments about these changes, good or bad.

- **NH Bar Foundation**

Retired judge John Maher is working as a contract development director for the Bar Foundation and would like input from Board members on who he should be talking with about creating legacies.

The Bar Foundation Fellows Reception will be held on February 4, 2011 at the conclusion of the Bar's Midyear Meeting at the Radisson Hotel/Center of NH in Manchester.

The Bar Foundation Annual Dinner is scheduled for May 5, 2011 at the Grappone Conference Center in Concord. The NHBA Leadership Academy groups will be unveiling their projects at the dinner.

- **You Should Know Activity Update**

Board members were urged to take a few minutes to read about many of the things that go on at the NH Bar Association.

- **NEBA Annual Meeting**

Marilyn McNamara has been asked to discuss the NHBA's work with the NH Legislature, and Jennifer Parent will present on the NH Leadership Academy at the Annual Meeting of the New England Bar Association being held next weekend in Mystic, CT.

- I. Review of Audited Financials &
Opinion Letter for FY 2009-10

Kelli Boyle
Rob Howard
Tom Manter

The Board received the Consolidated Audited Financial Statements for the year ended May 31, 2010 and Audit Report as approved by the Board Committee on Administration of the NHBA.

Kelli Boyle of the CPA firm Nathan Wechsler & Company reported on the independent audit of the NHBA 2009-2010 fiscal year. Only one material audit adjustment had to be made, which Ms. Boyle noted was an excellent outcome; the interest rate swap on the office condo financing arrangement was a “contingent” \$24,000 liability that needed to be reported.

Ms. Boyle also reported that the segregation of duties for the Insurance Agency, that was an “issue” last year, has been adequately addressed and she considers this matter resolved.

The Board had an opportunity to ask questions of Ms. Boyle in Executive Session before she left the meeting. The Board will be asked to accept the Consolidated Audited Financial Statements for the year ended May 31, 2010 and Audit Report at the November 18th meeting. Should questions arise prior to the Nov. 18 meeting, Board members should feel free to contact Executive Director Jeannine McCoy or Director of Finance Tom Manter.

J. Herr Commission Preliminary Recommendations

Judge David King
Judge Edwin Kelly
Nina Gardner

Judge Ed Kelly, District & Family Court Administrative Judge, explained that the Judicial Branch Innovation Commission was established last March to identify potential additional cost-saving changes in state court operations and to consider various "strategic initiatives" that could reduce operational expenses, produce long term efficiencies and enhance services.

Under consideration is one proposal that would unify the administration of the District Court, the Family Division and the Probate Court. This reorganization would centralize services, such as case docketing, fine collections, file management, mailing, and customer services, thereby eliminating duplication of work at numerous sites and streamlining the workforce over time. Proposals also have been made to improve court service by enhancing technology. For example, the commission is considering whether all documents should be sent to one location where they could be electronically scanned. Some system changes might also be made using basic technology, such as assembling a centralized telephone bank to receive all calls related to any case in the state courts. The Commission is considering a recommendation for direct electronic filing of court documents for those who have the internet capacity to do so.

It was also reported that in the Superior Court, proposals being considered include consolidation or regionalization of some functions now carried out by staff at each of the 11 Superior Court locations around the state, including jury management, court administration and case processing. A proposal has also been made to remove felony jurisdiction from the District Court, where the early stages of felony cases are now heard, into the Superior Court, eliminating duplication of clerical work and saving valuable staff and judge time. Also under consideration is a proposal to begin electronic filing in the Superior Court which would provide the opportunity to increase service to the public and produce savings.

The Commission is also considering a recommendation to have the Judicial Branch request the legislature to transfer all speeding and other minor motor vehicle cases out of the court system and into the state Department of Motor Vehicles, where administrative hearings procedures are already in place.

K. Draft Legislation Proposal Re: RSA 397-A

John MacIntosh

NHBA Legislative Representative John MacIntosh reported that he has met with the Real Property Law Section about possible amendments to RSA 397-A (the S.A.F.E. Act).

John noted that the timeframe for submitting amendments is November 15th to December 3rd. John expects to have a draft to submit within the required timeframe and is also working to find sponsors for the proposal.

NHBA Director for Legal Services Ginny Martin noted that RSA 397-A has had a chilling effect on attorney panel participation in the Pro Bono Mortgage Foreclosure project. Unfortunately people are being turned away on a daily basis.

L. Rules Committee Issues Update

Jennifer Parent

President-elect and NHBA representative to the Courts Advisory Committee on Rules, Jennifer Parent reported on the following:

➤ **Proposed Amendment to Rule 1.10 of the Rules of Professional Conduct**

The NHBA Ethics Committee submitted a proposed amendment to Rule 1.10, that focuses on the application of Rule 1.10's firm-wide imputation rule to conflicts of interest that can arise when a lawyer ("migrating lawyer") leaves one firm to take employment with another. The proposal allows for "screening" of the migrating lawyer as a means of resolving conflicts that might otherwise arise due to the attorney's possession of confidential information regarding clients at his or her former firm. The Rules Committee is seeking comments to this proposal, and many others, by November 30th. If Board members have questions on this proposal they should feel free to contact either Jennifer or Pat Quigley, Chair of the Ethics Committee.

➤ **NHSC Rule 50 & ABA Model Rule Recommendation**

The ABA House of Delegates, at their August 9, 2010 meeting, adopted Model Rules for Client Trust Account Records to replace the Model Rule on Financial Recordkeeping. The ABA Standing Committee on Client Protection is strongly urging NH, through a letter to Chief Justice Broderick, to consider adopting the new Model Rules.

ACTION

The **Board voted to refer this matter** to the NHBA Ethics Committee for review and recommendation to the Board of Governors; approved.

➤ **Proposed Rules Tracking Chart for Members**

A new, unofficial "rules tracking" chart (developed by Bar staff) provides a quick glance at recently adopted and proposed rules for the NH courts and attempts to clarify the status of a particular rule in the rule-making process.

ADJOURNMENT

The October 14, 2010 Board of Governors Meeting adjourned at 5:45 p.m.

Respectfully submitted,

Denice M. DeStefano, for
Peter E. Hutchins, Secretary

NEW HAMPSHIRE BAR ASSOCIATION

Membership Status Changes

Presented to the Board of Governors October 14, 2010

Paid Inactive to **FULL TIME JUDICIAL**

Geiger, Nancy J., Concord, NH (effective September 13, 2010)

Paid Inactive to **ACTIVE**

Kolocotronis, Nancy T., Los Angeles, CA (effective September 20, 2010)

Roundy Knights, Stephani J., Exeter, NH (effective September 24, 2010)

Subers, Janet H., Hancock, NH (effective September 22, 2010)

Voyik, Erin M., Manchester, NH (effective September 20, 2010)

Wallner, Jonathan R., Rochester Hills, MI (effective September 27, 2010)

Walls, Michael J., Concord, NH (effective September 28, 2010)

Active to **FULL TIME JUDICIAL**

Lemire, Hon. Jennifer A., Manchester, NH (effective September 13, 2010)

Active to **INACTIVE**

Massey, Derek M., Hunt Valley, MD (effective June 1, 2010)

Pawloski, Melissa A., Falmouth, ME (effective July 14, 2010)

Paid Active to **INACTIVE**

Mousseau, Cynthia M., Tyngsboro, MA (effective September 21, 2010)

Turner, Carolyn M., Woburn, MA (effective October 1, 2010)

Paid Full Time Judicial to **INACTIVE**

Brown, Hon. Kenneth C., Manchester, NH (effective October 1, 2010)

Full Time Judicial to **MILITARY INACTIVE**

Coughlin, John J., Amherst, NH (effective October 1, 2010)

Paid Active to **MILITARY INACTIVE**

Dennehy, James W., Salisbury, NH (effective September 13, 2010)

Active to **RESIGNED**

White, Jonathan M., Medford, MA (effective June 1, 2010)

Inactive to **RESIGNED**

Albertsen, Ryan D., Gilbert, AZ (effective June 1, 2010)

Riggs, Jennifer W., Manchester, NH (effective June 1, 2010)

Taylor, Richard A. S., Bethel, ME (effective June 1, 2010)

Paid Inactive Retired to **RESIGNED**

O'Neill, Luke S., Manchester, NH (effective October 5, 2010)