

NEW HAMPSHIRE BAR ASSOCIATION
BOARD OF GOVERNORS SPECIAL MEETING
REMOTE
April 22, 2021

MINUTES

Present for all or part of the meeting were:

Daniel E. Will
Richard Guerriero
Sandra L. Cabrera
Robert R. Howard III
Edward D. Philpot, Jr.
Christine Hanisco
Cathy Shanelaris
Kristin Fields
James Shepard
Jesse Friedman
Scott J. Whitaker
Donald H. Sienkiewicz
Jonathan M. Eck
Susan Aileen Lowry
Christopher T. Regan

Geoffrey Gallagher
L. Jonathan Ross
Jennifer Parent
Hon. James Bassett
George R. Moore
Ginny Martin
Paula Lewis
Deborah Hawkins
Allison Borowy

Guests:

Brian Shaughnessy, Pro Bono Board Chair
Ryan Sheehan, Auditor, O'Connor and Drew
Kieth Goldie, Auditor, O'Connor and Drew

A meeting notice reminder, a link to the agenda and related materials were emailed to all governors on April 16th. Additional materials were added and noticed April 20th. 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

Dan Will

Dan called the meeting to order at 4:07 p.m.

Executive Director George Moore began by thanking Ryan Sheehan and Kieth Goldie, of O'Connor and Drew, the bar's auditing firm, for attending the meeting. He also introduced Brian Shaughnessy, chair of the Pro Bono Governing Board.

PRESENTATION / DISCUSSION / ACTION ITEMS

B. Proposed Amendment to the NHBA Constitution – Article II, Section 5

George Moore

Executive Director George Moore spoke to the proposed amendment and explained the bylaw provides for adjusting dues payments by the Board of Governors and this amendment clears up any potential ambiguity.

ACTION

On motion to adopt the proposed amendment to the NHBA Constitution as presented. Passed 14-0.

C. Pro Bono Merger into 603 Legal Services

1. Merger Overview Memorandum

Executive Director George Moore opened the discussion of this proposed merger. The principal purpose is to affect what we believe will be an improvement to the provision of services. This change will enhance the Pro Bono program and make the intake process much smoother.

George reviewed a PowerPoint presentation that contained the highlights of the process.

The negotiations have been completed. George shared that the group used a marketing consultant to determine the name and graphic for 603 Legal Aid, which was paid for by a donation from Delta Dental. The new organization will be subtitled – The Pro Bono Program. The Legal Advice and Referral Center (LARC) funded the hiring of an executive director, who will start in a few weeks. She has been working in this field, and is familiar with Legal Services Corporation (LSC) funding requirements. This will put all legal services in NH under one roof; both 603 Legal Aid and New Hampshire Legal Assistance (NHLA).

George stated that Pro Bono is merging into LARC because the LARC bylaws are compliant with LSC regulations. Attorneys Brad Cook and Alan Reische of Sheehan Phinney worked to guide the planning group on the best way to merge the separate entities, and it was determined this was the best approach. The critical thing that this merger accomplishes is to focus on how the organization receives the cases. Currently, there are separate entities for intake, and it can take a long while to figure out where the case should be placed. With the new organization, there will be a statewide built in screening panel with one number for those seeking services to call. It will be staffed by current Pro Bono and NHLA staff. NHLA is donating two staff to the new company. There will be a revised and updated website with a portal for people to use to request services. Those involved in this work agree that this will be a much more efficient way to provide services which will allow more people to be served by eliminating duplication of effort.

The NHLA and NHBA commitments were outlined for the board.

From NHLA:

- Financial support for call center (2/5 of personnel costs)
- In-kind support for call center (.4 FTE liaison attorney)
- Sharing costs of HR (603 Legal Aid to reimburse NHLA for .2 FTE)

From NHBA:

- Access to member database
- Access to trainings for 603 Legal Aid Pro Bono Program staff
- Access to NH Bar Association meeting space

- Communications, marketing, and IT support (limited IT support for the first year)

Today, the Board of Governors is being asked to take action and adopt the Merger Agreement and the 603 Legal Aid-NHBA Memorandum of Understanding.

The goal is to preserve the historic strengths of both LARC and PB. Recruiting of attorneys in the private bar will continue. George believes that under Brian Shaughnessy and Ginny Martin's leadership this will continue to be strong. The need is greater than ever coming out of the pandemic.

There are provisions in the merger agreement that will protect the funding of Pro Bono. There will be changes as time goes on that will be worked out by new Executive Director and Board of Directors of the new organization. It has been written into the merger agreement that the organization will need a supermajority to approve major changes and it is unlikely any will happen. This is a common practice when setting up new organizations.

2. Packet A – Documents that don't affect the NHBA directly
 - a) NHLA/603 Legal Aid MOU
 - b) Bylaws for 603 Legal Services
 - c) Joint Fundraising Agreement

George spoke about the NHLA Memorandum of Understanding with 603 Legal Aid. The plan is to not have us competing against each other for funding. Costs will be shared. He noted there will be a joint fundraising agreement that places Pro Bono as part of the new 603 Legal Aid under the fundraising umbrella of the Campaign for Legal Services, which it is not under now. The Campaign for Legal Services will be overseen by a joint NHLA-603 Legal Aid Campaign steering committee.

Ginny Martin, Associate Director for Legal Services spoke about fundraising plans. This year the proceeds from the dues check-off on the NHBA dues invoices will be forwarded to the Campaign for Legal Services (CLS) with the understanding that the funds will be spent on Pro Bono activities. Future plans for the check-off may change and will be discussed with the Campaign. Ginny shared that there will be no annual golf tournament this summer but going forward, the event will resume and the name will still be the Pro Bono Golf Tournament, even though the funds may be dealt with differently through the CLS.

3. Packet B – Documents that directly impact the NHBA
 - a) NHBA/603 Legal Aid MOU

George shared that the numbers in this document were based on historical numbers.

ACTION

On Motion: That the Board of Governors hereby approves and consents to the Memorandum of Understanding between 603 Legal Aid and the New Hampshire Bar Association, Inc., as set forth in the Board meeting materials; that the President, Daniel E. Will, be and hereby is authorized to agree to such minor revisions to the MOU as may be required to effectuate it; and that the President, Daniel E. Will, and the Executive Director, George R. Moore, or either of them acting alone, be and hereby are

authorized to sign this and such other documents and do all things required to effect the purpose of this vote.

Passed 15-0.

b) Merger Agreement

George pointed out that Section 2.1.3 of merger carves out the historical accumulated reimbursement balance due from Pro Bono to the NHBA from the debt going across to 603 Legal Aid. He explained that because of the timing of grant funds being received, the New Hampshire Bar Association (NHBA), historically has advanced operating funds to Pro Bono Referral System (NHPB) to be reimbursed when grant funds became available. While most of the advanced funds were repaid, there have been years where the NHBA has budgeted for and/or funded NHPB operating costs due to NHPB cash shortages. This general support was in the yearly budget approved by the Board of Governors. For the past couple of decades, the Due To/ From account balances have increased and decreased with the cumulative support from the NHBA being carried on the books of both organizations. This obligation is one that the NHBA did not intend to fully collect as part of its commitment and support of NHPB and its programs.

Costs in the Due To/From account include all shared cost such as occupancy, data processing, telephone, professional fees, supplies and the like. Because all the staff at the NH Bar Center are NHBA employees, personnel costs are charged to NHBA and then the personnel costs for the seven or so NHPB staff are reimbursed to the NHBA. As transactions are recorded daily, the balance of the Due To/From account changes daily. This historical support account needs to be written off, but NHBA will be fully reimbursed for all advances in the current grant cycle. Post-merger, any and all funds received by 603 Legal Aid for current year grant costs experienced prior to June 1, 2021 will be reimbursed to NHBA. Our auditors suggested that we write off this amount.

George invited Pro Bono Governing Board Chair Brian Shaughnessy to speak about the merger. Brian shared his view of the big picture. There has been a continuous desire for one ask through the CLS ever since he came on board, and to have one legal services organization. They were separate due to the LSC restrictions which would restrict NHBA in the services they could provide. So LARC was born for funding purposes. This model has become disfavored by the LSC, who reached out a few years ago to make LARC aware of this.

There was a group made up of people from the three organizations that started looking at changing the model. 603 Legal Aid will be the new receiver of funding. This merger is bringing the strength of the Pro Bono program into the LARC model. Brian is excited about the ability to create this organization with one number and one intake process, so there is clarity for the public on where to go when seeking services. The NH Supreme Court has been very supportive, as has the Access to Justice Commission. He is supportive of increasing the number of members providing services with access to significant funding through the federal government (upwards of \$900,00).

Brian's concern is that Pro Bono will no longer be a part of the NHBA. He has some comfort level that Pro Bono will not be forgotten. He expressed his thanks to George for all his hard work and support. Ginny and George have involved been from the beginning of the process.

Ginny Martin, Associate Executive Director of Legal Services, who has overseen Pro Bono shared her thoughts. Everyone has been there to advocate for Pro Bono being an equal partner in this. NHBA Executive Director George Moore, Pro Bono Board Member and NHBA Board of Governor member Cathy Shanellaris, and Pro Bono Board Chair Brian Shaughnessy have done yeoman's work, which has not been easy. This new organization offers a lot of opportunities. There have been some challenges as well. Due to LSC funding restrictions, 603 Legal Aid will be unable to take some types of cases, for example, those for undocumented people. Ginny thinks it is important to note that nothing happens without the staff and would like to see the board consider some kind of recognition for the staff. She also notes that it is important that the Pro Bono staff are not worse off financially at the new organization.

Cathy Shanellaris added that Pro Bono appreciates the board's time today. The program has been award-winning. George, Brian and Ginny have done herculean work in making sure the new organization will be better. There are still issues to be worked through. Brian and Cathy will make sure they are looking out for the interests of the Pro Bono staff as members of the new 603 board.

The board discussed whether the requirement of a supermajority necessary for removal of an Executive Director is common in these types of documents. George responded yes, particularly with a new organization, in order to avoid destabilization and to keep things together during the first year or so. There was also discussion about any expected staff attrition, and none is anticipated, other than the NHLA restructuring that will result in 2 staff who will now work for 603 Legal Aid Call Center instead of NHLA.

The board also discussed how LRS and Modest Means will be managed, as these programs have been housed in the Legal Services department of the NHBA. These are staying with the association. Oversight has been transferred to the Marcomm/Member Services department. These programs are having a banner year and are 40% ahead of last year. It is expected there may be some confusion between this program and the 603 Legal Aid services, but the call center will be able to identify the difference in requests. Any calls that come to LRS and are appropriate for referral to 603 Legal Aid will be transferred to the new call center. Ginny Martin also spoke about this transition and said there will be more dialogue than there has been in the past between LARC and LRS and Modest Means. She expects closer connections, greater understanding and feels this should work well.

The Free Legal Answers program, currently managed at the NHBA as part of the current NH Pro Bono Referral System is a remaining unresolved issue. If it cannot be transferred to 603 Legal Aid, it will be run and grow at the NHBA. Sheila Vermacy, current LRS/Modest Means Coordinator will manage it if it stays with the association. The group is gathering more info to see if LSC rules will allow it to operate out of 603 Legal Aid. There is a close connection between Pro Bono and Free Legal Answers and many attorneys participate in both programs. This decision is controlled by the LSC answer.

Strafford County Governor Chris Regan stated that there doesn't seem to be a carve out in the joint fundraising agreement for the dues check off for this year. He understood that was supposed to be in the agreement.

George pointed out the dues check off provision is found in the NHBA/MOU. Chris also shared that it looks like there is a three-year review called for in the agreements. He advocated for a 6-month and

one-year review as well. He suggests that the board write a letter raising concerns with some of the unresolved issues, so they are voiced. NHBA Executive Director George Moore responded that the newly hired 603 Legal Aid Executive Director will be on board in a few weeks and will be making some of these decisions. He expects they will be negotiated between now and June 1st.

Sullivan County Governor Geoff Gallagher expressed concerns about a plan to handle case areas such as class action lawsuits and cases regarding undocumented individuals that can't be addressed by 603 Legal Aid due to LSC regulations. Ginny Martin responded that there is a plan; NHLA can do some of this work. For undocumented folks there are some LSC provisions that can cover some – if clients are victims of domestic violence for example. There are some downsides to the merger, but the pluses outweigh those. Plans need to be in place for these instances, as well as volunteer attorneys with conflicts of interest and these are being worked on. They are hoping NHLA can pick up these cases. LARC and PB have the same data base that is used for checking conflicts, and they are working at building a bridge between the two, which will take some time. For now, both staffs will continue to use separate databases. It would never be a good idea to have just one legal services program, as there will always be conflicts. That is the reason that the planning group decided to go with the merger between LARC and Pro Bono, and leave NHLA as a separate organization.

ACTION

On motion that the Board of Governors hereby approves and consents to the Merger of the New Hampshire Pro Bono Referral System, Inc. into Legal Advice and Referral Center, Inc., with the resulting merged corporation being known as “603 Legal Aid”, as set forth in the Board meeting materials; that the President of the Association, Daniel E. Will, be and hereby is authorized to agree and consent to such minor revisions to the agreements as may be required to effectuate the Merger Agreement.

Passed. 15-0

Executive Director George Moore suggests the board looks at this as supporting Pro Bono in this opportunity for change. He is committed to this, which is the biggest change in the provision of legal services in 20 years. The NHBA needs to keep Pro Bono in their mind and think about ways to actively recruit volunteer attorneys and support Pro Bono as they move forward.

It is important to make sure Ginny gives the board periodic updates and lets us know ways that the NHBA can help out. It is an important for a unified bar to engage ourselves in these programs.

A letter will be drafted and sent to the planning group pointing out some of the problem areas as Chris suggested.

D. Adjournment

The meeting was adjourned at 5:25 p.m.