

NEW HAMPSHIRE BAR ASSOCIATION
BOARD OF GOVERNORS MEETING
Thursday, June 17, 2021
REMOTE
MINUTES

Present for all or part of the meeting were:

Daniel E. Will	Christopher T. Regan
Richard Guerriero	Geoffrey Gallagher
Sandra L. Cabrera	Monique Schmidt
Peter E. Hutchins	Viktoriya Kovalenko
Robert R. Howard III	Paul Kleinman
Edward D. Philpot, Jr.	Abby Sykas Karoutas
Cathy Shanelaris	Michael Iacopino, ABA Assoc Delegate
Kathleen Mahan	Heather Cherniske, ABA Assoc YLD
James Shepard	Hon. Gary E. Hicks, NHSC Liaison
Lisa M. English	
Jason B. Dennis	
Jesse Friedman	George R. Moore
Leslie Leonard	Joanne Hinnendael
Joseph D. Steinfield	Paula Lewis
Leslie Nixon	Lynne Sabean
Donald H. Sienkiewicz	Deborah Hawkins
Jonathan M. Eck	Allison Borowy
Susan Aileen Lowry	

A meeting notice reminder, a link to the agenda and related materials were emailed to all governors on June 11th. Updated materials were sent on June 15th and 16th. 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

President Dan Will called the meeting to order at 4:03 p.m.

B. Welcome New Board Members Dan Will

President Dan Will welcomed the new board members and reminded them that their terms officially begin after the Annual Meeting on June 25th. Therefore, they are not able to vote at today's meeting.

Incoming Board members are as follows: Cheshire County, Monique M. Schmidt; Grafton County, Viktoriya A. Kovalenko; Rockingham County, Paul B. Kleinman; and Strafford County Abby Sykas Karoutas. New Public Sector Governor Lindsay Courtney was unable to attend today's meeting.

Also, in attendance was newly elected ABA Association Delegate Michael Iacopino. Newly appointed ABA Association Young Lawyer Delegate Susanne Gilliam was unable to attend today's meeting.

REGULAR BUSINESS – CONSENT ITEMS

C. Membership Status Changes for May 2021

Paula Lewis

The status changes are attached as a permanent part of these minutes.

D. Minutes of May 20 and 24, 2021 Meetings

Robert Howard

ACTION

On Motion to approve the consent agenda. Passed with the following abstentions, (Jim Shepard, Jesse Friedman, Donald Sienkiewicz, Kate Mahan, Heather Cherniske, Rob Howard, Ed Philpot, and Susan Aileen Lowry).

PRESENTATION / DISCUSSION / ACTION ITEMS

E. Treasurer’s Report

Peter Hutchins/ Paula Lewis

Director of Business Operations Paula Lewis referenced the Treasurer’s Report distributed to the board in today’s materials. She spoke about the highlights. Revenue is running a little above and expense a little lower than budget. The pandemic was a major factor in bringing down expenses; there were less travel costs, as well as lower speaker and facility costs, as many meetings were held virtually. She also updated the board on the bar’s reserves and cash held for other entities.

Paula stated that the auditors from O’Connor and Drew P.C. will begin the onsite portion of the annual audit on June 28, 2021.

The bar has seen an increase in licensure renewals. There is a slight increase in membership year over year from 2020 to 2021. The bar is gaining about 100 members a year over the prior year number. The final page of the Treasurer’s report is a snapshot of Membership Renewal Compliance as of June 14th. The number of TAC forms filed, and dues paid is about the same as last year. The reporting year for NHMCLE changed this year, and there was a focus on messaging around this change, which has resulted in a 14% increase in records filed at this point in the year. The Business Operations Department worked with Marcomm to get information to members about both reporting year changes and the availability of great CLEs. This is a huge trend, as NHMCLE reporting usually lags behind. In addition, there was outreach done through social media, as well as a former staff member being hired on a temporary basis to call members to remind them of this change, focusing on the ones that usually forget.

ACTION

On Motion to accept the Treasurer’s Report as presented. Passed.

1. Discussion/Action Item

Paula Lewis

To close the preexisting Client Indemnity Fund Account and transfer the balance of \$12,111 to the Public Protection Fund

Director of Business Operations, Paula Lewis shared the background on the Client Indemnity Fund (CIF). This fund preceded what is now known as the Public Protection Fund (PPF). The CIF was

adopted at the 1960 MYM and was effective in January of 1961 until May 31,1998. The PPF and corresponding fees were then set up by Court Rule 55 to take its place.

The Client Indemnity Fund has held the balance in the CIF account at Mascoma bank since then. The PPF committee voted to close the Mascoma bank fund and move the balance into the PPF, feeling that enough time has passed so it would be very unlikely a claim would come about that would be associated with the CIF. The committee asked Paula to bring this request to the board and combine these moneys into the PPF Bank of NH account.

The board asked Paula to explain the Public Protection Fund. She stated the PPF was established by Court Rule 55, and fees to fund it are collected as part of annual membership renewal. It exists to compensate members of the public who may have been wronged by a defalcation of an attorney. There is a process in place where they can file a claim. It is the claim of last resort, i.e. all other avenues of compensation from the attorney must be exhausted. There is a committee of 9 members made up of both attorneys and other members of the public that review the claims. In order for payment to be made, there has to be a finding of defalcation. The current balance in the fund is 1.4 million dollars. There are ceilings for payment proscribed by the rule. The overall ceiling is 1 million dollars per year. There is also a payment per attorney ceiling. Paula adds that there are annual reports posted on the NHBA website of the claims.

Paula notes that any potential claims on the CIF have timed out – so any current claims would be made to the PPF. There is currently a three-year time limit for any claim to be filed. There was a discussion about the CIF, and it was clarified that if a claim came about it would not be able to be acted on due to the expiration of the time limit.

It was also suggested that this proposal be run by the NH Supreme Court for approval. Paula will contact Clerk Gudas to arrange this.

ACTION

On Motion to close the preexisting Client Indemnity Fund Account and transfer the balance of \$12,111 to the Public Protection Fund. Passed with one abstention. (Geoffrey Gallagher.)

F. NHBA Gender Equality Committee – Parental Leave Policy **ACTION** Dan Will

President Dan Will reviewed the discussion and actions on this item at the May board meeting, where the GEC presented a form parental leave policy for approval. The board had a robust discussion and recognized the need, but acknowledged they didn't feel qualified to vet the policy, so they decided to have the bar's employment counsel review it. Dave McGrath and Karen Whitley at Sheehan Phinney reviewed the policy and spoke to the officer group about it. The revised policy is the version sent to the board in their materials. This is the version that the officers recommend for approval. It was also shared with the GEC and they concur with the changes.

Vice President Sandra Cabrera stated this policy template is a really good idea and gives smaller firms a starting place when drafting their policies. The bar is providing it as a resource to practitioners as part of member services.

ACTION

On Motion to approve this template policy as presented and to post to website as a resource. Passed with one abstention. (Jason Dennis)

G. Hampstead School Board vs. SAU #55 Case - reconsideration discussion Richard Guerriero

It is noted for the minutes that NH Supreme Court Liaison Justice Hicks left meeting for this portion of the agenda.

President Elect Richard Guerriero continues to lead the discussion on this subject due to President Dan Will's involvement in the litigation. Richard shared the background on this case and the issues raised regarding attorney-client privilege. The original ruling indicated that public records law R.S.A. 91A waived attorney client privilege in certain circumstances surrounding municipal hearings. The NH Supreme Court has now vacated the original opinion and is ordering rebriefing on this issue. HB 108 has now been amended to add attorney-client discussions and work product to the exemptions in the right to know law (R.S.A. 91A). As of today's meeting, the General Court's committee on conference has signed off on the bill as amended. Both the House and Senate will then need to vote on the bill, and then the Governor has to sign off. This provision would be effective on passage. This action may moot out the issue at the Court.

It is noted for the minutes that Justice Hicks returned to the meeting at the conclusion of this discussion.

H. Post Judgement Period and Closing of Case Jason Dennis

Out of State Governor Jason Dennis spoke to this issue. He shared that he doesn't file any motions within a 30-day period after an order or default judgement as he wants to see if the decision will be appealed within the 30-day window. Recently, the court closed such a case on the 30th day, resulting in the necessity of payment of a new filing fee to reopen the case. Jason wonders if this is an access to justice issue as it results in higher attorney fees for the client. He questions whether there should be a time frame after the trial court decision that allows for the filing of a new motion without a new fee for filing. This issue is important for the collection activities on judgements.

Immediate Past President Ed Philpot shared that he had that same discussion with a clerk's office, and it was corrected. Ed stated that the Superior Court manual states that the case is supposed to be left open, but in his experience, one needs to address this issue with the court clerk. Other board members thought this might be related to the e-filing conversion; perhaps the system is programmed to automatically close the cases on the 30th day. There was discussion about contacting the Administrative Office of the Courts regarding this issue. Jason says he never got the relief that Ed was successful in achieving. It was also suggested this issue be referred to the Committee on Cooperation with the Courts. Executive Director George Moore suggests that Judge David King (Circuit Court administrative judge) is open to hearing about problems and is quite willing to listen to constructive suggestions. George will put Jason in touch with administrative Judges King, and Ashley, and also reach out to Chief Justice Nadeau of the Superior Court regarding this issue.

I. Ethics committee Opinion #2020-21/03 – Dealing with a Deceased or Incapacitated Solo Practitioner’s Practice George Moore

Executive Director George Moore apologized for the lateness of this submission to the board, but the Ethics Committee didn’t have quorum at their last meeting, so they had to approve the opinion by email, prior to submitting to the board for approval before publishing.

President Elect Richard Guerriero commented that he believes this is a good opinion and asked Sullivan County Governor and Ethics committee member Geoff Gallagher to comment on it. Geoff shared that the committee completed multiple drafts and it was discussed at multiple meetings, as there are some complicated issues involved. Geoff outlined the highlights of the opinion for the board. He stated that this opinion arose out of a real situation that happened and came to the committee as a request for guidance from a member. The committee decided that an opinion was warranted, and they spent a fair amount of time crafting it. There was a suggestion from the committee that there might be something for the bar to do to assist in these instances. George pointed out that he wrote a 40-page booklet on the subject in a broader context last year and it is in print and on the website.

The board discussed the opinion and made a correction to some language (appointing attorney is incorrect phrase – it should be court appointed attorney). Geoff will communicate the changes to the committee and liaison.

ACTION

On Motion to adopt Ethics Committee Opinion #2020-21/03 with the correction noted. Passed.

J. Executive Director’s Report George Moore
1. Legal Services update

George reported that Pro Bono has officially moved over to 603 Legal Aid. He shared that the Bar Association is storing some of their items until they have moved into the new building, due to present LARC space constraints. The staff are currently working out of LARC’s space at 15 Green Street. 603 Legal Aid has just finished the protocol for the statewide call center. He notes this is a big change and people are excited about it. The NHBA is doing some accounting adjustments but are getting to where things can be closed out in a few months. There are a few other administrative odds and ends such as the transition of Pro Bono information to the 603 Legal Aid website that needs to be completed.

2. Annual Meeting update

The details for the meeting are just about all set. It looks like, although “virtual”, it will be an interesting meeting with a great interactive CLE. The awards are terrific, including a special lifetime achievement award to Ginny Martin that includes remarks by all of the justices of the NH Supreme Court. He encourages the board to sign up.

3. Diversity, Equality, and Inclusion Survey

George reminded the board that we have a Diversity committee and the Bar Foundation is working on deploying a survey. It should be out within a week.

K. President Report

Dan Will

1. Recognition of Outgoing Board Members

Dan spoke about the outgoing members and expressed his sincere appreciation for their service. He reviewed those changing positions; Jonathan Eck is the incoming Vice President, Susan Aileen Lowry, the incoming Secretary, and Chris Regan, the incoming Treasurer. In addition, Heather Cherniske, who is stepping down as the ABA Young Lawyer Delegate, is the incoming Merrimack County governor. He expressed his thanks to all. He held up the plaques given to the outgoing members of the board, as well as those changing positions, and read the inscriptions.

Dan thanked those members leaving the board completely; Public Sector Governor Lisa English, whose legacy is rejuvenating the public sector section, Cheshire County Governor Joe Steinfield, and Grafton County Governor Marcie Hornick.

Dan thanked Immediate Past President, Ed Philpot, who is also leaving the board. Dan shared that the first time he (Dan) ran for the board, he lost to Ed, but this was a blessing as he then had the privilege to serve as President-Elect under Ed. He thanked Ed for his work in rejuvenating the Law Related Education program. Dan read the framed calligraphy certificate that Ed will receive.

2. Recognition of Service of Peter Hutchins and Robert Howard

Dan spoke about two long-serving members of the board, Rob Howard and Peter Hutchins, who are also leaving the board. They were both given clocks with inscriptions noting their years of service. Peter shared his history on the board including his time as president. He served on the board 20 years. Rob also spoke about his 33 years of service on the board. Dan thanked both for their dedicated service to the board and the Bar Association.

L. President-Elect Report

Richard Guerriero

Richard stated he appreciates everyone who sought a position for the upcoming year, and he recognizes the time commitment. He feels the bar has an important role to play over the next year during this challenging time of emerging from the pandemic. He has never seen anything like it in his 34 years of practice. The bar can try to provide additional resources as we determine they are needed. He asks that the board members reach out to him with ideas over the next couple of months if they think there are things that the bar could assist members with.

He also shared that two new judicial nominees were named by the Governor at yesterday's Executive Council meeting. The vetting process comes up quickly and he asks that people be available over the summer. We will conduct these meetings by Zoom.

1. 2021-22 Board Meeting Schedule

Richard stated that he decided to stay with the Thursday afternoon schedule, since Friday is often a light day for some attorneys. We plan to meet in person and will retain the option to meet remotely.

2. Fall Board Orientation Date and Place

Due to post-pandemic challenges, we have had difficulty finding a site for the orientation. It will be held on September 17th at the Hotel Concord. Richard thought Concord would be a good location as it is fairly central.

3. Appointment of Committee on Cooperation with the Courts Chair

Richard feels this is a very important committee. Jonathan Eck is stepping down as chair. Richard has selected someone to chair the committee, Pam Phelan, who is litigation director at the Disability Rights Center, and she has agreed to serve. He shared information about her background. She has civil, criminal and court experience. Richard thinks it is important to have a practicing attorney to chair the committee to represent the bar's membership.

Other committee positions will be addressed over summer. He asks the board to contact him with info and thoughts.

Richard states that he is looking forward to meetings next year and being president. Dan thanked Richard for stepping up over the past year when Dan had conflicts with his schedule or his position as Solicitor General.

M. State Update

All Board Members

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

Geoff Gallagher shared that Superior Court in Sullivan County is back to normal.

Dan Will says he will have to step off the board as he moves to bench. He will not serve the board as immediate past president. He thanked everyone for their time and attention during this unusual year.

Richard added his thanks to Dan for his time as president.

N. Adjournment

The meeting adjourned at 5:36 p.m.

Respectfully Submitted,

Deborah J. Hawkins

Deborah J. Hawkins for Robert R. Howard, Secretary

Membership Status Changes	
Presented to the Board of Governors June 17, 2021	
<u>Active to INACTIVE:</u>	
273574	Arey, Brandon, Woburn, MA (Effective May 5, 2021)
274083	Hyde, Maria, Concord, NH (Effective May 21, 2021)
274075	Cox, Cameron, Manchester, NH (Effective May 21, 2021)
274095	Yoder, Colleen, Reno, NV (Effective May 21, 2021)
269648	Van Leeuwen, Diana, Boston, MA (Effective April 29, 2021)
272961	Girgoryan, David, Elkins, NH (Effective May 10, 2021)
19498	Samuel, Alex, Derry, NH (Effective May 4, 2021)
4835	Maloney, William, Lawrence, MA (Effective May 13, 2021)
20987	Haggart, Jennifer, Kingston, NH (Effective May 12, 2021)
11860	Connell, Lise, Westford, MA (Effective May 31, 2021)
2730	Whitelaw, Judith, Concord, NH (Effective May 26, 2021)
271947	Saxe, Victoria, Austin, TX (Effective May 21, 2021)
20428	Brogna, Denise, Boxford, MA (Effective May 21, 2021)
269527	Villegas, Alfonso, South Burlington, VT (Effective May 31, 2021)
264832	Duggan, Theresa, Tiverton, RI (Effective May 18, 2021)
2867	Oliveira, Linda, Fairhaven, MA (Effective May 19, 2021)
14592	North, Sarah, Strafford, VT (Effective June 1, 2021)
12913	McDonough, Suzanne, Reading, MA (Effective June 1, 2021)
2115	Reardon, Neil, Hampstead, NH (Effective June 1, 2021)
425	Arnold, III, Thomas, Merrimack, NH (Effective June 1, 2021)
274085	Llangari, Katherine, Belleville, NJ (Effective May 21, 2021)
1867	Nelson, Richard, Savannah, GA (Effective May 25, 2021)
268572	Crocco, Jr., David, Wilder, VT (Effective June 1, 2021)
16497	Stern, Eric, Durham, NH (Effective May 31, 2021)
19577	Paquin, Nicole, Newton, MA (Effective May 31, 2021)

360	Bessette, Ronald, Concord, NH (Effective June 3, 2021)
<u>Active to INACTIVE RETIRED:</u>	
21152	DeMarco, Timothy, Pittsfield, MA (Effective May 13, 2021)
20443	Kleger, Joan, Andover, MA (Effective May 17, 2021)
267597	Newman, Margot, Weare, NH (Effective May 18, 2021)
1013	Gregoire, Daniel, North Hampton, NH (Effective May 12, 2021)
15128	Dame, Cynthia, Alton, NH (Effective May 12, 2021)
10025	Mayo, Todd, Boston, MA (Effective May 6, 2021)
10259	Moses, Robert, Concord, NH (Effective May 31, 2021)
6567	Law, David, Concord, NH (Effective June 1, 2021)
1933	Olson, Robert, Hopkinton, NH (Effective June 1, 2021)
19392	Smith, Gary, Boston, MA (Effective May 28, 2021)
9684	Wright, Michael, Boscawen, NH (Effective May 31, 2021)
9047	Grabler, Edrea, Manchester, NH (Effective June 1, 2021)
6813	Calloway, Marcia, Norwich, VT (Effective June 1, 2021)
<u>Active to FULL-TIME JUDICIAL:</u>	
9072	Joseph, Ellen, Merrimack, NH (Effective April 19, 2021)
<u>Active to RESIGNED:</u>	
272494	Blaesser, Brian, Weston, MA (Effective May 31, 2021)
266516	Zajchowski, Joseph, Rochester, MI (Effective June 1, 2021)
<u>Active to SUSPENDED:</u>	
8156	Dunn, David, Manchester, NH (Effective June 4, 2021)
<u>Inactive to ACTIVE:</u>	
19913	Bassi, Joseph, Warwick, RI (Effective June 1, 2021)
17689	Feltes, Daniel, Concord, NH (Effective June 1, 2021)
11326	McCarthy, Thomas, York, ME (Effective June 1, 2021)
267514	Lenti, Gregory, Bedford, NH (Effective June 3, 2021)
<u>Inactive to INACTIVE RETIRED:</u>	

272801	Gillespie, William, Yarmouth Port, MA (Effective May 18, 2021)
16643	Hamilton, William, Billerica, MA (Effective May 10, 2021)
2092	Raiche-Casinghino, Denise, Manchester, NH (Effective May 31, 2021)
1582	Macfarlane, Charles, Piedmont, CA (Effective June 1, 2021)
1724	McNutt, Douglas, Concord, NH (Effective June 1, 2021)
350	Ayres, Sharon, Concord, NH (Effective May 26, 2021)
15038	Hunt, Patricia, North Easton, MA (Effective May 22, 2021)
<u>Inactive to RESIGNED:</u>	
2163	Ritzo, James, Portsmouth, NH (Effective May 31, 2021)
<u>Inactive to JUDICIARY:</u>	
11306	Kissinger, Beth, Hopkinton, NH (Effective May 10, 2021)
8225	Ryan, Patrick, Swanzey, NH (Effective March 26, 2021)
<u>Inactive Retired to RESIGNED:</u>	
9953	Boone, Susan, Brunswick, GA (Effective May 28, 2021)
16483	Newsom, Susanna, Hopkinton, NH (Effective May 20, 2021)
<u>Inactive Retired to DECEASED:</u>	
12167	Tropp, Annick, Middleton, MA (Effective May 6, 2021)
<u>Inactive Retired to HONORARY INACTIVE:</u>	
1782	Mohl, Bruce, Meredith, NH (Effective May 13, 2021)
<u>Judicial to HONORARY ACTIVE:</u>	
199	Cassavechia, Gary, Rochester, NH (Effective May 13, 2021)
<u>Suspended to ACTIVE:</u>	
268530	Mott Hesse, Christina, Boise, ID (Effective May 12, 2021)
<u>Judicial to INACTIVE RETIRED:</u>	
4873	Sadler, Lucinda, Verona, VA (Effective May 31, 2021)

<u>Pro Bono Active to INACTIVE RETIRED:</u>	
7876	Castelli, Mary, Chichester, NH (Effective June 1, 2021)