

NEW HAMPSHIRE BAR ASSOCIATION  
BOARD OF GOVERNORS MEETING  
Thursday, October 21, 2021

**MINUTES**

Present for all or part of the meeting were:

Abby Sykas Karoutas  
Cathy Shanellaris  
Chrissy Hanisco  
Christopher T. Regan  
Donald H. Sienkiewicz  
Heather Cherniske  
James Shepard  
Jason B. Dennis  
Jesse W. Friedman  
Jonathan M. Eck, Vice President  
Kristin G. Fields  
Lindsay B. Courtney  
Paul B. Kleinman  
Richard Guerriero, President  
Sandra L. Cabrera, President-Elect  
Susan Aileen Lowry

Vanessa Wilson  
Viktoriya A. Kovalenko  
  
Michael J. Iacopino, ABA Assoc. Delegate  
Susanne Gilliam, ABA Assoc. Young Lawyer  
Jennifer L. Parent, ABA State Delegate  
Justice Gary Hicks, NHSC Liaison  
  
Staff:  
George R. Moore  
Mary Jenkins  
Paula Lewis  
Lynne Sabean  
Deborah Hawkins  
Allison Borowy

A meeting notice reminder, a link to the agenda and related materials were emailed to all governors on October 15th. Additional information was provided on October 19<sup>th</sup>. 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 Richard Guerriero

President Guerriero called the meeting to order at 4:04 pm.

**REGULAR BUSINESS – CONSENT ITEMS**

B. Membership Status Changes for September 2021 Paula Lewis

**ACTION**

On Motion to approve the member status changes as presented. Passed.

The status changes are attached to these minutes.

C. Minutes of September 24, 2021 Meeting Susan Aileen Lowry

**ACTION**

On Motion to approve the minutes as presented. Passed.

## PRESENTATION / DISCUSSION / ACTION ITEMS

D. Report of the NHBA Waiver Committee

Paula Lewis

Paula Lewis explained the document that shows the waivers given. Total waived column should say payment owed.

### ACTION

On Motion to approve as summarized. Passed.

E. Plans and Logistics for upcoming meetings

Richard Guerriero

Discussion – today was planned as hybrid so people could choose between attending live at the Bar Center, or from a remote zoom location. Video conferencing was always an option, but Richard thinks a live option is important. People online can see and hear with good clarity. We will continue to offer hybrid. Richard has a strong preference for hybrid as opposed to remote. George Moore added that having an in-person discussion makes for a better meeting.

F. COVID and the Courts – continued from Orientation

Richard Guerriero

1. Constituent responses to question

At the September board orientation this topic was discussed, and board members were asked to check with other lawyers about their thoughts on COVID issues. Richard asked members to weigh in. Jim Shepard expressed the opinion that we cannot suggest a course of action as we are limited by the need for substantial unanimity, much like we are limited in expressing opinion to the legislature. Paul Kleinman added that there seems to be significant differences within the members he talked to as well as to their opinion on COVID, masking and vaccine disclosure. Lindsay Courtney added there was no consensus among members, but there should be a uniform policy by the courts. Viktoriya Kovalenko checked with Grafton County, Coos County lawyers, and some public defenders – in general the feeling was that the Bar should weigh in with the courts for a uniform policy. But there was no consensus among practitioners. It seems a small percentage of people responded. Richard spoke about Tina Nadeau's explanation about building differences and different infection rates by county qualifying the decision that there cannot be a uniform policy. Executive Director George Moore shared that the Circuit Court will be going to in person proceedings only. Judges can be more efficient and process more conferences. Jesse Friedman shared that the Superior Court is much more conducive to working with the attorneys. The Circuit Court is not requiring masks and not holding remote hearings. He says we are seeing judges that have had COVID– and other staff, but no one is told. You only know due to inside information from clerks and bailiffs. He thinks people should be wearing masks. He adds that most of the clients aren't vaccinated and aren't wearing masks. It feels like everyone is burned out with COVID, and the courts don't care about that.

Richard said there was discussion at the September meeting there should be uniform protocols – social distancing and masks. Jesse said the courts said they would accommodate those that needed telephonic hearings – but that is not happening.

Richard is in favor of gathering more info and reaching out to the courts, especially the Circuit Court on the safety issues.

Chrissy Hanisco says masking is possible, but social distancing is not. She also hears Jim's point about Chapman, but she says that making a request is different than weighing in on legislation. She thinks a mask requirement is common sense and eliminates having to ask vaccine status. Heather Cherniske suggests we do a survey to all our Bar members. Use Richard's questions, have Board weigh in with other questions, and send it out to the Association. Jonathan Eck not convinced we can take a position on this. Sandra asks about policy when people test positive – is it uniform? For the other things like masking, it is harder for a uniform policy.

Possible actions – survey of members and make a recommendation to courts. Jim clarified the Circuit Court has signs everywhere - if you tested positive or feel ill, don't come in and call the court and we'll instruct you how to proceed. However, Jim explained that a client that tested positive was told by a court clerk they had to show up unless he called the other side and received assent for a continuance.

Paul shared that a bailiff told him masks are optional. However, once in court, and the judge was masked, so people felt comfortable wearing a mask.

There was further discussion about doing a survey.

### **ACTION**

On Motion that we send out a survey to members and communicate results to the courts, so they know how the membership feels. Passed.

Sandra Cabrera, Chrissy Hanisco, and Richard Guerriero will come up with the questions for the survey. They will work with Lynne Sabean.

### G. Treasurer's Report

Chris Regan /Paula Lewis

Chris Regan referred to the narrative and balance sheets that were distributed as part of the board materials. He asks that members pay attention to Paula's narrative. This gives an overall answer of what is going on. Bar is in good financial position since we have budgeted conservatively. Revenue is running a little bit ahead of projections. Expenses are also budgeted conservatively. Personnel costs are always a significant factor due to the large percentage of the budget it represents.

### **ACTION**

On Motion to accept the Treasurer's Report. Passed.

### H. Reappointment of Scott Harris to the New England Bar Association (NEBA) Board of Directors for 3-year term

George Moore

Tabled until November 18, 2021.

### I. Ethics Committee Opinion #2020-22/01 – Inactive Lawyers and Referral Fees

Geoffrey Gallagher

President Richard Guerriero summarized the opinion. It states if an attorney is inactive you can't collect fee for referral, unless you did work on the case when you were still active and then went inactive.

### **ACTION**

On Motion to approve the opinion. Passed.

Ethics Committee member, Geoff Gallagher joined the meeting to discuss Rule 8.4(g). When this rule was last amended by the Supreme Court, the Court decided there would be a review in 2 years that involved the Court's Advisory Committee on Rules.

The Ethics Committee would like to offer a change:

**Rule 8.4. Misconduct**

*It is professional misconduct for a lawyer to:*

[...]

*(g) take any action, while acting as a lawyer in any context, if the lawyer knows or it is obvious that the action has ~~the a primary~~ **substantial** purpose to embarrass, harass or burden another person, including conduct motivated by animus against the other person based upon the other person's race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status or gender identity. This paragraph shall not limit the ability of the lawyer to accept, decline, or withdraw from representation consistent with other Rules of Professional Conduct, nor does it preclude a lawyer from engaging in conduct or speech or from maintaining associations that are constitutionally protected, including advocacy on matters of public policy, the exercise of religion, or a lawyer's right to advocate for a client.*

The reason they are proposing this change is that the rule that was finally adopted was not what the Ethics Committee had proposed. The Ethics Committee believes the rule change is appropriate and should be amended as presented. "Substantial" is defined in several places in the rules and "primary" is not. Also, there are allegedly issues that have arisen that should have been reported to the NH Supreme Court Attorney Discipline's Office (ADO), but were not under the current rule because of the high "primary" standard. The current language also undermines the ability to protect people. According to the ADO there has been one case reported in the last two years, but we don't know how it was resolved.

If the board doesn't agree, the Ethics Committee would ask that they empower the Ethics Committee to ask for a continuance of the hearing about the rule. The ADO supports the primary purpose requirement and is not in favor of the Ethics Committee's proposed position. Richard had reached out to Attorney Brian Moushegian at the ADO, and this was his response. The definition of substantial is vague and would be hard to enforce according to the ADO. He also heard from Carolyn Leonard at the NHWBA with concern that people are not reporting this misconduct and expressed support for this change.

Geoff spoke to why the Committee feels the change to the substantial wording is appropriate. George read the definition of substantial as defined in the rules of professional conduct. "Matter of clear and weighty importance."

**ACTION**

On Motion to approve the Ethics Committee suggestion to reduce standard from primary to substantial.

Vote was 9 – 9. Failed.

**ACTION**

On Motion that the Ethics Committee be requested to take the position that the rule as currently enacted be continued as it is. Passed.

Richard will attend the Rules Committee hearing.

Richard spoke about the decision by the board to stop using well qualified versus qualified distinction at the September 24<sup>th</sup> meeting. We have to decide on this as the board will be meeting with two candidates tomorrow.

Donald Sienkiewicz supported the continuation of keeping well qualified for the purpose of giving affirmation to those that we strongly support. Sandra Cabrera supports keeping just a position of qualified, but we can bring back the distinction if we develop criteria. Mike Iacopino spoke in support of well qualified, qualified, and not qualified, and urged use the ABA definitions and criteria as a start and then, decide if we want to add our own criteria. Others spoke in favor of developing objective criteria to support the distinctions.

**ACTION**

On Motion to maintain the distinction between qualified and well qualified recommendations. Motion passed.

**ACTION**

On Motion to adopt the ABA criteria as is, between qualified and well qualified. Failed 8 – 11.

George volunteered to draft NH criteria and have a couple people review and edit. Richard suggested that we not designate someone as well qualified unless they satisfy all the criteria. The board will discuss criteria for the recommendations at a future meeting.

**ACTION**

On Motion regarding the Board of Governor's judicial screening procedure, the Board voted to maintain the distinction between well-qualified and qualified nominees, and to amend the judicial screening procedure regarding a finding of well-qualified. Part 8(a) of the judicial screening procedure was amended to read as follows:

(a) the Board finds the nominee well-qualified based on highly favorable information with regard to all of the following factors: integrity, legal knowledge and ability, judicial temperament, diligence, financial responsibility, and public service.

Passed 13-0 with 3 abstentions (Sandra Cabrera, Viktoriya Kovalenko, and Paul Kleinman)

1. MYM 2022 update

Planning is underway. The decision has been made that it will be virtual. There were financial considerations that forced this decision in light of COVID. Richard is working with staff and George to come up with speakers. If the board has ideas, please let George or Richard know.

2. Change in Virtual Meeting Platform

We decided to change the platform. George explained the reasons why. InReach didn't have a product last year, but do now, so we have decided to go with them instead of Cvent. Cvent was more expensive. Refer to Mary's memo in the materials.

3. Mary Jenkins' position with American Association of Law Librarians

George gave the background on this request, in order to inform the board. He thinks it is a plus for the Association to have her engaged in this role. George also explained that there is a potential issue concerning the Uniform Electronic Legal Material Act. Mary has been asked to head up the committee that will be proposing that NH adopt this Uniform Act. It was agreed that when there is actually a proposal, it will be considered by the Board of Governors. If they support, Mary will continue. If they don't support, Mary will resign from the committee.

M. President's Report

Richard Guerriero

1. Request by ED of NH Association for Justice to go to Committee on Cooperation with the Courts Meetings

Richard gave background and his opinion. Doesn't think members of the public should be allowed to do this. He is inclined to deny it. Can table if it needs a longer discussion. No one objected and there seemed to be general agreement.

2. Paralegal Legislation in NH and elsewhere

George gave a heads up that this is coming with Rep. Ned Gordan submitting bills that would try it in pilot communities. President Richard Guerriero is going to reactivate the HB 353 Study Committee that did this before Chrissy, Cathy – Richard will bow out. Kristin Fields volunteered to replace Richard. They will examine and make recommendation as to what the NHBA position should be.

3. Request from Board of Governor members for new lay member of the Judicial Conduct Committee

Richard asks the board to email a suggestion for a replacement.

**INFORMATIONAL ITEMS REQUIRING NO ACTION**

N. NHMCLE August 9, 2021 Minutes

O. Adjournment- The meeting was adjourned at 6:07 pm.

Respectfully Submitted,

*Deborah J. Hawkins*

Deborah J. Hawkins, on behalf of Susan Aileen Lowry, Secretary

**Membership Status Changes**

Presented to the Board of Governors October 21, 2021

**Active to INACTIVE:**

273289 Torres, Rosangeliz, Derry, NH (Effective September 1, 2021)

270220 Barot, Poonam, Secaucus, NJ (Effective September 4, 2021)

270204 Trevillion, Chavonne, Charlotte, NC (Effective September 13, 2021)  
12929 Orso, Gregory, York, ME (Effective September 17, 2021)  
20643 Hegarty, Terence, Westford, MA (Effective September 23, 2021)  
269914 Raque, Brian, Louisville, KY (Effective October 4, 2021)

**Active to INACTIVE RETIRED:**

1731 Mekeel, Robert, Lancaster, NH (Effective September 29, 2021)

**Active to RESIGNED:**

265669 Sullivan, Eamonn, Chelmsford, MA (Effective October 1, 2021)

**Active to SUSPENDED:**

20655 McKenna, Daniel, Derry, NH (Effective October 7, 2021)

**Active to DECEASED:**

1830 Mullen, Daniel, Concord, NH (Effective October 1, 2021)

**Inactive to ACTIVE:**

270695 Myers, Lauren, Forked River, NJ (Effective September 16, 2021)  
20402 Tran, Hong, Worcester, MA (Effective September 17, 2021)  
207 Cronmiller, Thomas, Rochester, NY (Effective September 17, 2021)  
19585 Rummler, Jeffrey, Hampton, NH (Effective September 22, 2021)  
265434 Nelluely, Asish, Roslyn Heights, NY (Effective October 4, 2021)  
267756 McLaughlin, Kristen, Chelmsford, MA (Effective October 7, 2021)

**Inactive to RESIGNED:**

16251 McMorrow, John, Worcester, MA (Effective September 16, 2021)  
9363 Ouellette, Alfred, Bradenton, FL (Effective September 21, 2021)  
268523 Loyal, Alexander, Charlotte, NC (Effective September 8, 2021)  
270653 Livingstone, Kimberly, Fort Plain, NY (Effective August 30, 2021)  
4823 Holtman, Charles, Minneapolis, MN (Effective September 23, 2021)  
20886 Ciavarra, Louis, Sutton, MA (Effective September 1, 2021)

**Inactive to DECEASED:**

20388 Vitagliano, Nicole, Orange, CT (Effective August 14, 2021)  
18509 Berryman, Bradley, Fort Worth, TX (Effective June 29, 2021)

**Honorary Active to HONORARY INACTIVE:**

498 Batchelder, Jr., Harry, Ctr. Sandwich, NH (Effective September 27, 2021)

**Full-Time Judicial to INACTIVE:**

1631 Mason, John, Savannah, GA (Effective October 1, 2021)