

NEW HAMPSHIRE BAR ASSOCIATION
BOARD OF GOVERNORS MEETING
Live with Remote Option
November 18, 2021

MINUTES

Present for all or part of the meeting were:

Abby Sykas Karoutas
Cathy Shanellaris
Chrissy Hanisco
Christopher T. Regan
Donald H. Sienkiewicz
James Shepard
Jason B. Dennis
Jesse W. Friedman
Jonathan M. Eck
Kathleen M. Mahan
Kristin G. Fields
Leslie C. Nixon
Leslie M. Leonard
Lindsay B. Courtney
Paul B. Kleinman
Richard Guerriero
Sandra L. Cabrera
Scott J. Whitaker
Vanessa Wilson

Viktoriya A. Kovalenko
Michael J. Iacopino, ABA Assoc. Delegate
Hon. Gary Hicks
George R. Moore
Joanne Hinnendael
Paula Lewis
Lynne Sabean
Deborah Hawkins
Allison Borowy
Guests:
Stephanie Burnham, Chair NHBA Ethics
Committee
Peter Imse, member, NHBA Ethics Committee

A meeting notice reminder, a link to the agenda and related materials were emailed to all governors on November 15th. Additional materials were posted and governors notified November 18th. 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 Richard Guerriero called the meeting to order at 4:04 p.m.

REGULAR BUSINESS – CONSENT ITEMS

B. Minutes of October 21, 2021 Meeting Susan Aileen Lowry

The minutes were amended as follows:

Item K was edited to reflect that the board decided at the September 24, 2021 meeting to temporarily stop using the “well qualified” recommendation. This decision was reversed at the October 21st board meeting, to resume using this recommendation when specific criteria were met. It was also noted that the board would further discuss criteria at a future date.

ACTION

On motion to accept the minutes as amended. Passed with two abstentions (Paul Kleinman and Leslie Leonard).

C. Membership Status Changes for October 2021

Paula Lewis

ACTION

On motion to adopt the member status changes as presented. Passed. They are attached as a permanent part of these minutes.

PRESENTATION / DISCUSSION / ACTION ITEMS

D. President’s Report

1. COVID Survey Development

President Richard Guerriero shared background on this item. He discussed the survey that was sent out. There were a 1000 responses in 24 hours, which would seem to indicate that bar members are highly concerned about this issue. Richard went on to discuss the results.

Richard’s bottom line on the survey is that we are not in a position to advocate for any position but can share the information with the Court. He believes that we must have substantial unanimity of bar members on the question of whether we should advocate for a particular position.

The board discussed what should be done with the survey results, including publishing the survey results in the Bar News and the timing of publication.

There was also a discussion about whether substantial unanimity of our members, as it is expressed in the Chapman decision is required before the board can advocate to the courts on the issue of Covid management. It was noted that the Court has spent a lot of time with the issue of a uniform policy and not all areas of the state and courthouses are the same. There was concern that this is largely a political issue and could present issues if the bar takes a position.

President-Elect Sandra Cabrera advocated for sharing the survey results with the Court sooner rather than later, so that they understand how the NHBA members feel about his issue.

ACTION

On motion to send the results tomorrow morning (11/19) to the Supreme Court and hold off until the Executive Committee meets with court before making any statements in the Bar News or otherwise.

MOTION WITHDRAWN (see subsequent notes).

Board members expressed interest that the results be published at some point. There was further discussion about timing of the release of the results.

Governor at Large, Chrissy Hanisco feels the discussion of timing for release of the results is premature until the board decides if it can take a position on this issue. Richard agreed and asked Sandra to withdraw her motion until this issue is decided.

Sandra withdrew the above motion about sending the results of the survey.

ACTION

On motion to simply provide the results to the Supreme Court immediately. Passed.

ACTION

On motion that due to a lack of substantial unanimity in response to survey question number 1 (Should the Bar Association take any position on behalf of the membership regarding COVID-19 rules, policies and recommendations?) on the survey, the Board of Governors cannot take a position in advocating to the courts on COVID related policies. Motion passed 10 – 8.

Board discussed the above motion. Hillsborough South Governor Donald Sienkiewicz expressed the opinion that the board needs to determine if substantial unanimity only applies to the ability of the board to take legislative positions. He also spoke to the danger of setting a numerical precedent by which substantial unanimity is measured.

The board then discussed making a motion to reconsider the above motion regarding the board advocating for a position on Covid to the courts. Chris Regan adds that it could also be reconsidered later as well as today. He noted that under Roberts Rules, a motion to reconsider needs to be made by someone that voted in the majority.

ACTION

On motion to reconsider the prior vote regarding taking a position or advocating to the Court. Passed 13 – 1.

ACTION

On motion that the board rescind its vote that it will not take any position on a COVID policy now but would instead defer the vote until a later meeting either a special meeting or the December 2021 board meeting. Passed 18-0.

E. Developments with the Para-Professionals Sub-Committee

Cathy Shanellaris

Governor at Large, Cathy Shanellaris summarized the proposed legislation. It has not been assigned a bill number yet or gone to any house committee for consideration. The bill would launch a pilot program in Berlin and Manchester family division courts in the areas of family law and landlord tenant law to let a paraprofessional represent another person in various family law and landlord-tenant law areas. The real intent is to provide access to justice for low-income clients. The paraprofessional must be employed by or under the supervision of a licensed attorney and must have a bachelor's degree or associate's degree in a law- related field. There is also an amendment to the bill that would require the

paraprofessional to have at least two years of work experience in a law-related setting. The person represented has to receive written notice that the paraprofessional is a non-attorney acting under the supervision of a licensed attorney. Each attorney supervising the paraprofessional would be required to "make reasonable efforts to ensure that the paraprofessional's conduct is compatible with the professional obligations of the attorney" including compliance with the NH Rules of Professional Conduct and in particular Rule 5.3 pertaining to Responsibilities Regarding Non-Lawyer Assistance. The bill is also limited to representation of those clients who have income no greater than 300 percent of the federal poverty guidelines. The legal services organizations are supportive of the bill.

Cathy stated that the board's subcommittee, made up of herself, fellow board members Chrissy Hanisco and Kristin Fields tried to take a careful look at this proposed bill. Their first concern was that the NHBA may not be able to take a position on this legislation due to the constraints posed by the Chapman decision. The committee is also concerned that the Bar may not be able to find a substantial consensus about this bill. An additional concern was that the legislation focuses heavily on the attorney's requirement to supervise the paraprofessional and ensure compliance with the Rules of Professional Conduct along with other obligations under the rules of the Court. The bill does not intend to license the paraprofessionals as other states have done, but rather have them act under attorney supervision. The language in the proposed legislation is that the paraprofessional will be "representing" the client, which the committee interpreted as not merely assisting the client with paperwork or in the court process. Additional concerns were about the effect on malpractice insurance and liability. Cathy noted there will need to be the creation of new laws and court rules if this bill passes, as current court rules preclude this arrangement. These changes are not addressed in this proposed legislation. Several other states currently have similar laws.

Chrissy added that Washington state sunsetted their program after 10 years of being in place. She states we should look to the Minnesota system, as they have a pilot program that is doing exactly what ours is proposing. Their model is almost identical. She suggests that the board go to Mncourts.gov, or can google and review their program. Our program targets a particular socio-economic group – which also targets our legal service organizations.

There is no bill number yet. The prime sponsor is Representative Ned Gordon, and co-sponsors are Representative Marjorie Smith, Representative Kimberly Rice, Senator Harold French, and Representative Kurt Wuelper.

President Richard Guerriero asked Mike Iacopino, who serves as chair of the bar's Legislation Committee whether the committee will look at this bill. He responded that they would study the bill and recommend a position to the board. Mike suggested the committee would invite the board subcommittee to attend a legislation committee meeting to share their thoughts.

F. Update on Rule 8.4 (g)

Stephanie Burnham

Ethics Committee Chair Stephanie Burnham updated the board on the Ethics Committee proposal for potential improvement to Rule 8.4(g) and actions that occurred since the board's October meeting. The Ethics Committee has since had the opportunity to meet with members of the Attorney Discipline Office (ADO). That meeting was productive and has resulted in the Ethics Committee and Attorney Discipline Office agreeing to work together to draft a potential rule amendment that would add a definition clarifying

the meaning of “primary” as it relates to the use of “primary purpose” as a standard in the rules. This would not affect the body of Rule 8.4(g), which would be recommended to remain as is. The two were not that far apart, only differing in how they thought the rule would be interpreted.

The ADO suggested that Ethics Committee work with them to define the term “primary purpose”. The Ethics Committee is hoping to work together with the ADO on this definition and hope to propose a change to Rule 1.0, the definitions, where they further explain what this term would mean and also develop a comment on 8.4 (g). They have not come to a consensus on what this definition might be as yet. They are hoping to inform the Supreme Court Rules committee at their next meeting on December 10th of this effort.

It is unlikely they will have anything to them by the December 10th meeting, or for the board at their December 16th meeting. It is expected that this work will go into next year.

G. Treasurer’s Report

Chris Regan /Paula Lewis

Chris Regan commented. Not much change from last month.

H. Report of the NHBA Attorney Renewal Program and Supreme Court Hearings

Paula Lewis

Paula spoke about this. Annual renewal begins on June 1st each year, and the due date to complete the three obligations, payment of dues and fees, filing of the trust account compliance form, and filing of the NHMCLE affidavit is July 1. Delinquency fees are charged on August 1. Final action must be made before September 1st to avoid receiving a hearing notice from the NH Supreme Court. Hearings were held on October 26 and November 17. The association started out with sending 71 names to the Court on 9/1. Four hearings were held, live and virtual, two on each day. As of today, five attorneys are recommended for suspension, but there may be more as one of the hearings was just yesterday. Others have come into compliance. Justice Hantz Marconi presides over the hearings, and all hearings have finished. She considers renewal season to now be closed. It runs from March, when the reminders begin, and extends through the court hearings in November. This is a long season with a lot of effort put forth by bar staff and the Court.

I. Executive Director’s Report

George Moore

1. Foundation Projects update

George updated the board on current projects of the Bar Foundation, the charitable arm of the Association. It has taken on larger projects this year.

One project funded by the NHBF was the development of the website and call center for 603 Legal Aid. This was completely funded at \$32,000 through a grant to 603 Legal Aid. The call center technology is state of the art, especially for call backs to those seeking services. The website will include useful functions for both Pro Bono lawyers and a portal for the public seeking services.

The second project was the funding and development of a Diversity and Inclusion survey. The results are within a week of being in. There have been a couple of meetings with the survey company, and the data was tremendous as far as response to the survey. There were many conclusions reached by the survey company about how the bar might increase diversity and be

more welcoming. The bar's Diversity and Inclusion Committee will use this information in its work. A briefing on the survey results has been scheduled with the NHSC.

2. Practical Skills Remote Program

Mary Jenkins

George shared that this program has been difficult to produce during the pandemic, but the Court is allowing us to hold it virtually in December, which is technologically challenging due to the different course options offered. He asked Mary Jenkins, Director of Professional Development to describe the upcoming virtual program that will occur on December 13th and 14th. It will be offered using the InReach platform described in the memo distributed to the board last month. The program will be a mix of prerecorded and live CLE webcasts with 540 minutes available, with 360 required. Mary shared that we have focused registration outreach on the over 400 attorneys required to take course by June of 2022. There are 165 registered after registration opened a day and half ago. She described some of the programs that make up part of the program, including speakers from the NHLAP, NHBA Committees and NHBA staff offering a taste of the bar. Mary noted that this will provide an excellent opportunity for staff to prepare for Midyear Meeting, which will be taking place on the same virtual platform.

J. Indigent Defense Crisis

Richard Guerriero/ George Moore

President Richard Guerriero reported on this. There has recently been a lot of publicity on this problem. Everyone is working together to try and address the problem. The main problems are caseloads and attrition, and the solution to this is money, which is the problem. Richard met with the Judicial Council at their invitation, which also involved the Public Defender staff. This problem ultimately will go to the Legislature to address. It is possible that they would ask Richard to come to the legislature and speak on behalf of the bar association. He would talk to the board of governors and get their guidance on whether and how to do this.

K. President's Report

Richard Guerriero

1. MYM 2022 Update

Richard states we have been working hard on planning. Three speakers are booked and we will probably book one more. Richard spoke about the planned program. Speakers include Ken Feinberg, administrator of the 9/11 Fund. Ellie Krug is another, who speaks about inclusivity. This is in response to comments he has received about implicit bias denial. She deals with this issue like a trial lawyer rather than a social worker. Lisa Braganca is the third, who will discuss payment by clients in Crypto currency. Richard thinks this is an issue that we will be forced to deal with in the near future. He wants to have a long-range plan and ask the Ethics Committee to address and propose rule changes to NHSC. Some other states have addressed it. We will not be able to avoid this issues, he states.

He asks board members to suggest other speakers, as he is looking for a few other speakers as well. He has tried to go beyond his normal thinking and reach out to those that think differently than him for ideas.

2. ED Evaluation Process

Most non-profits are supposed to evaluate the executive director every year, according to guidelines from the attorney general's office. We will conduct an evaluation this year. It hasn't always been done routinely. Hopefully the process will be in place from here forward. It will be done through the officer group and be a short process.

3. Leadership Academy Program

Richard shared that he did speak at the kickoff retreat held in late October. It looks like a great program. He asked Out of State Governor Jason Dennis, an alumni of the program to comment. Jason shared his reflections on the program. He feels it is an excellent program overall. There are varied modules that NH attorneys find helpful, including the judicial module, where the participants get to shadow a judge. Jason noted that it is an unparalleled experience if you want to be more of a leader within the bar. He suggests that board members pitch the program to others, or perhaps board members that have been in practice between 3 and 5 years would be interested in participating in the program.

L. 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 Governor

Richard gave board members a chance to report from their area.

Governor at Large, Kristen Fields, brought up a concern with the backlog in the court in Laconia. She assumes this is the same everywhere. She has been waiting for three months for a divorce decree. She has been told that the order is done, but the clerks are backlogged getting documents out- they have 4 shelves of orders to get out.

Richard Guerriero responded that CCWC is discussing. Chris Regan added that it is eye opening. He shared that he was waiting in Rochester for ex parte order, and he was surprised at the amount of time the court staff spends dealing with self-represented parties.

Governor at Large Cathy Shanelaris shared that the Nashua bar is having an in-person Christmas party December 9th at the public defender's office.

Hillsborough South Governor Leslie Nixon reported there will be an NHAJ in person Christmas party, held outdoors at the beer garden in Merrimack at Anheuser-Busch.

Public Sector Governor Lindsay Courtney added that the public sector is hemorrhaging attorneys. There is a significant work force issue statewide. She shared that the AG's office has over 20 vacancies currently compared to 1 or 2 several years ago.

M. Adjournment- The meeting was adjourned at 6 pm.

Respectfully Submitted,

Deborah J. Hawkins

Deborah J. Hawkins for Susan Aileen Lowry, Secretary

<u>Inactive to RESIGNED:</u>	
9345	Martin, Melissa, Lebanon, NH (Effective October 16, 2021)
15847	Vivo, Meghan, Mission Viejo, CA (Effective October 26, 2021)
8803	Klein, Gary, Medford, MA (Effective October 15, 2021)
<u>Resigned to ACTIVE:</u>	
268621	Hemmerich, Amanda, Milford, NH (Effective October 22, 2021)
<u>Inactive Retired to ACTIVE:</u>	
10598	Slamon, Linda, York, ME (Effective November 8, 2021)
<u>Inactive Retired to DECEASED:</u>	
1591	Maire, Susan, Naples, FL (Effective September 10, 2021)
1465	Lemieux, Donald, Palm Coast, FL (Effective August 23, 2021)
<u>Honorary Active to HONORARY INACTIVE:</u>	
8790	Harison, Richard, Narragansett, RI (Effective October 18, 2021)
<u>Honorary Inactive to DECEASED:</u>	
1189	Hoover, Arthur, Durham, NH (Effective September 6, 2021)