

NEW HAMPSHIRE BAR ASSOCIATION
BOARD OF GOVERNORS MEETING
Live with Remote Option
January 20, 2022

MINUTES

Present for all or part of the meeting were:

Abby Sykas Karoutas
Cathy Shanelaris
Chrissy Hanisco
Christopher T. Regan
James Shepard
Jason B. Dennis
Jesse W. Friedman
Jonathan M. Eck
Kathleen M. Mahan
Kristin G. Fields
Leslie M. Leonard
Lindsay B. Courtney
Monique M. Schmidt
Paul B. Kleinman
Richard Guerriero

Sandra L. Cabrera
Scott J. Whitaker
Susan Aileen Lowry
Vanessa Wilson
Viktoriya A. Kovalenko

Michael J. Iacopino, ABA Assoc. Delegate

Justice Gary Hicks, NHSC Liaison

George R. Moore
Mary Jenkins
Paula Lewis
Lynne Sabeau
Allison Borowy

A meeting notice reminder, a link to the agenda and related materials were emailed to all governors on January 14th. 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 4:05 p.m.

REGULAR BUSINESS – CONSENT ITEMS

B. Membership Status Changes for December 2021 Paula Lewis

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

C. Minutes of December 16, 2021 Meeting Susan Aileen Lowry

ACTION

On Motion to accept the consent agenda. Passed.

PRESENTATION / DISCUSSION / ACTION ITEMS

D. Treasurer's Report

1. Financial Report

Chris Regan

Treasurer Chris Regan reported financial performance is better than forecast for the first five months of the year ending November 30, 2021. Revenue is better than expected, and expenses are less due to personnel costs and program costs being less than budgeted.

2. Approval of NHBA Audited Financials

Sandra Cabrera

President-Elect and chair of the NHBA Finance Committee, Sandra Cabrera reported that nothing was found that was significant to note. The auditors issued a qualified opinion, as they do every year, due to the fact that we do not consolidate our financial statements with the Bar Foundation. They were presented fairly in all material respects. The only other thing of note was the significant accounting transaction of forgiving the balance due from the New Hampshire Pro Bono Referral System, which is something that we have discussed and voted in favor of at previous meetings. Sandra would recommend approval.

President Richard Guerriero commented that although we have more money in part due to COVID, this is not necessarily a good thing, as it means that we aren't operating as we normally would be in terms of sending people to meetings and having live CLE programs. He is hoping we will be able to send people to events in upcoming years.

Treasurer Chris Regan added that the board's finance committee reviewed the audit material yesterday and unanimously approved and recommended sending the audit to the Board of Governors for approval. He suggested that board members review the material as it contains some interesting information about the organization. Chris added that board members will also find the 990-tax form is informative regarding the organizations activities, and the narrative is worth a read.

ACTION

Motion to approve the audited financials as presented. Passed.

E. Board Election Procedure and Openings

George Moore

Executive Director George Moore discussed the upcoming election and nomination procedure. There is a memo in the packet describing the open seats. Leslie Nixon and Donald Sienkiewicz are terming out from the board in their present positions as Hillsborough County Governors so we will need candidates for those two positions. Board members should think about possible nominees for these seats. George noted that we need to know as soon as possible which board members that are eligible to run are going to run for another term so we can plan. He asked that they email himself or Allison. We would like to get the election slate put together sooner rather than later. When people ask about a position it is better to know if we have incumbents that are running. He said board members can let Richard or George know if they have ideas for the Hillsborough County seats. George stated that it is good to have a strong board, as we will have a lot to address going forward. He added that we hope to have a live annual meeting this year.

President Richard Guerriero went through the list and named those that are eligible to run for reelection; Governor-at-Large, Kate Mahan; Belknap County, Jesse Friedman; Carrol County, Leslie Leonard; Strafford County, Abby Sykas Karoutas; Sullivan County, Vanessa Wilson; ABA Association Delegate, Michael Iacopino. He also asked that people please let us know soon because we will need to recruit. Richard urged everyone to run for reelection.

George talked about the Vice President position. Every year we have this opening, as this is the first step to the four-year rotating job, from Vice President to President-Elect, President, and finally Immediate Past President. He added that it is important to understand what's involved in this role. George urged board members talk to Richard or George about it, if they know of someone, or if they are interested. It is a significant undertaking, especially in the presidential year, but a lot of fun and very satisfying, says George. He served as Bar President in 2000.

F. Status of COVID Court operations and article George Moore

Executive Director George Moore reviewed the background and spoke about the status of this communication. He reminded the board that the bar completed a member covid survey. The officers and Court had a meeting where they discussed that perhaps the best thing would be messaging from the Court about their limitations around COVID precautions and all that they have done. The Court doesn't own some of the buildings that the courts are housed in, and the ventilation systems are all different. Security personnel that work in the courts are not under their control, as they are not employees of the courts. These factors make it difficult to implement system-wide uniform guidelines. Recently we received a summary from Dianne Miller, the new chief administrator of the court system, about the mitigation measures that the Judicial Branch has put in place while trying to still dispatch with judicial business. George also shared that at a recent Committee on Cooperation with the Courts meeting, Superior Court Judge Temple described the significant help they are getting with taking care of the backlogs and cutting down caseloads from many former judges. The document sent earlier today is Diane Martin's summary. There was discussion about sharing the summary through one of the bar's publications. George will check with Dianne about publishing her summary and get this out within the next few days. George plans to do a short forward to introduce the subject and then quote the substance of Dianne's letter. WE will see about publication through the e-bulletin and the Bar News.

President Richard Guerriero added that from personal observation and speaking with other attorneys, the level of anxiety and concern about this subject remains high. We are trying to work together to create good solutions, but it continues to add a lot of stress to the work of all of our attorneys. He feels we must acknowledge this, continue to pay attention and do everything we can to help.

G. Judicial Council request for NHBA to support increase in assigned council rates (amended Supreme Court rule 47) Richard Guerriero

President Richard Guerriero explained this request. The current assigned council rate for criminal cases is \$60 per hour, which has been the rate for decades. There is a proposal drafted by the Judicial Council's Indigent Defense Subcommittee to amend Supreme Court Rule 47 to address this issue, supported by Nina Gardner, and Sarah Blodgett. This proposal would

increase the rate for the small category of serious felonies and Supreme Court appeals from \$100 to \$125/hour and the rate for all other cases from \$60 to \$90/hour. It also increases the current fee caps and paralegal fees. Maximum fee caps for misdemeanors would increase from \$1400 to \$2000, maximum fee caps for the \$100 to \$125 cases would increase from \$8000 to \$12,500. Fee caps for all other felonies would increase from \$4100 to \$5500, and lastly, fee caps for Supreme Court appeals would increase from \$2000 to \$10,000. The rate for paralegal services would increase from \$35 to \$40.

These are still very low rates, but it is a start and better than nothing, said Richard. His opinion is that the fair administration of justice requires that defense counsel in criminal cases be fairly compensated. He is asking the board to authorize him to speak the Supreme Court if the Judicial Council so requests, and wherever else he needs to, in support of this request.

The board discussed this request. Richard shared information clarifying the types of indigent defense cases available in New Hampshire. There is the public defender office, contract attorneys and assigned counsel. Contract cases and assigned counsel matters are paid by the case. This rule change would apply to assigned counsel, but not for contract cases yet. The Judicial Council is also talking with the legislature. They are looking at compensation in all areas. Richard said the Judicial Council looked at where do they most need to have an increase and where do they have money in their budget to support it. They had to choose where in the system to address the problem. The Judicial Council is funded through the general fund of the state budget.

Executive Director George Moore added that access to justice is affected by these low rates, as assigned counsel won't take cases at the current low fees. This has a direct effect on the indigent defense crisis. He understands that a good number of firms in the private bar have stepped up to help to alleviate a backlog with these cases, after being directly asked by the Supreme Court. However, that is not a permanent solution to the problem.

The board discussed possible conflict of interest issues on Richard's part as he accepts these cases. They agreed that as long as he is transparent about this with whomever he is speaking, there would be no conflict.

There was also discussion about the Office of Cost Containment, and whether it collects reimbursement from clients for these monies. In New Hampshire, when a client gets a court-appointed lawyer, they have an obligation to repay the state for these monies. It was noted that currently, most of these are being waived, as the clients have no way to pay.

Richard encourages board members to email their questions for him to follow up with Nina Gardner and Sarah Blodgett. According to Nina, the NHBA Board of Governors was proactive about increasing these fees in 1992, which was the last time the fees were raised. Richard also added the federal court rate for appointed counsel is \$152/hour and this gets raised at least once a year, sometimes more often, and they provide a higher rate for paralegals and other non-legal assistants.

ACTION

On Motion to approve President Richard Guerriero acting in support of this amendment to Supreme Court Rule 47. Passed.

- H. Request by 603 Legal Aid to alter attorney renewal form to include check off box to volunteer for Pro Bono Richard Guerriero

President Richard Guerriero shared that Emma Sisti is the new Pro Bono director and has been working with NHBA Director of Business Operations, Paula Lewis to add a check box to the NHBA Attorney License renewal process. Attorneys can just check a box when they renew their license if they want to either volunteer to do pro bono work, be part of the NHBA Lawyer Referral Service panel, or Free Legal Answers. The NHBA would send the list over to 603 Legal Aid and their coordinator would keep track and contact these attorneys in order to get them assigned to Pro Bono cases. Richard supports the idea and thinks this is a great way to address access to justice issues. He is asking for approval from the board.

Executive Director George Moore stated this was a subject that was brought up during the working committee meetings to form 603 Legal Aid, as a way to enlarge the Pro Bono program. It was on the to do list once 603 Legal Aid was formed and Pro Bono had left the NHBA. We have always had the check box to donate money to Pro Bono, but this proposal would enable attorneys to give of their time. This is one of the few tools that we have that the Supreme Court has been interested in looking into, to improve the participation of the private bar in pro bono or at least enlarge the lists that we work off of for the Lawyer Referral Service, the Modest Means program, Pro Bono, as well as Free Legal Answers, the ABA internet-based legal inquiry program. There are a number of things people could choose depending on what they are interested in. There is no downside, according to George, to adding this checkbox.

Director of Marketing, Communication and Member Services, Lynne Sabean shared that the rates for our Modest Means program are consistent with the assigned counsel rates.

ACTION

On Motion to authorize NHBA to add a check this box function to be part of the NHBA Lawyer Referral Service panel, the NHBA Modest Means program, 603 Legal Aid Pro Bono or Free Legal Answers programs. Passed unanimously with one abstention, Cathy Shanelaris.

- I. Executive Director's Report George Moore
1. MYM Planning

George spoke about the upcoming program. Several of the speakers plan to be available to do a live Q and A. He recommends watching the Netflix series Worth, starring Michael Keaton which gives you a feel of how Ken Feinberg worked to compensate the victims of 9/11, as well as all the other funds he has worked through. The most recent work he has done is compensating victims of the Boeing 737 Max disasters. Registration is open. The \$95 cost is a bargain for these CLE credits.

- J. President's Report Richard Guerriero
1. Legislation Testimony

Richard thanked everyone for their input last week to oppose CACR 27. On Tuesday, January 11th, the Board of Governors was asked via email to give their assent in opposing this bill. They voted unanimously by email to authorize Richard to oppose this legislation on behalf of the bar. This proposed CACR would provide that all state court judges shall be subject to recall and removal by petition and vote of registered voters pursuant to provisions established by the legislature. Richard testified in opposition to this bill at the hearing on Wednesday, January 12th.

The other legislation matter of note is the bill to repeal the legislation that we supported last year regarding adding an express exemption for the attorney/client work product to the right to know law. There is currently a bill that has been introduced to repeal this protection – to do away with what the board supported last summer. Richard submitted written testimony regarding this year’s bill. This legislation is still under consideration, so if members have thoughts that we should change our position, please speak up or let Richard know. He offered to send the link to the bills or the materials.

Board members asked who is advocating for this legislation. Richard explained the argument is as follows; citizens pay taxes, and a city attorney is working public money, so the public has an interest in these documents. Proponents believe that because the attorney is a public employee, the attorney/client privilege should be narrower because they are public officials, it is public money, and the citizens have a right to know.

The board also questioned who is wanting to recall judges. Richard said most of these come out of domestic relations /family law cases, where there was an aggrieved party.

2. Appointment of judicial candidate screening evaluation committee

Richard explained he has appointed a committee made up of Justice Hicks, Sandra Cabrera, Chris Regan, Lindsey Courtney and Jim Shepard to further study these issues. He has asked them to report back in March regarding the issues the board had questions about- the timing of the notice to the nominee of the recommendation, use of the “well-qualified” distinction, whether to allow a nominee to respond to a recommendation prior to it becoming final, and whether the bar should coordinate with the Governor’s Judicial Selection Commission.

K. New Business

Executive Director George Moore told the board that the association is preparing to do an Economics of Law Practice survey, which hasn’t been done since 2014. The plan is to update the questions to include the pandemic, firms of different sizes, and different practice areas. The UNH survey center will be hired to complete the survey. The goal is to get this out soon, and he asks for board member support to encourage their colleagues to participate and complete the survey. George said he would like to have the results reportable before the summer meeting in June.

George also reminded the board of the midyear business meeting on February 17th at 3:00 p.m. This is an important meeting where the constitution and bylaws amendments will be voted on.

L. State Update

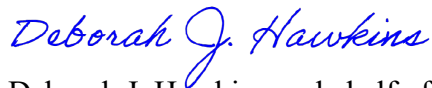
All Board Members

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 Governors

- ABA Association Delegate Michael Iacopino reported as ABA delegate. He was scheduled to be in Seattle, to attend the ABA Midyear Meeting, but at the last minute they changed to a completely virtual meeting and cut the House of Delegates session to one day, on the 14th. He will be attending. There are 26 resolutions they will be considering. He invites board members to let him know if interested in reviewing the materials. The exec summary is 90 pages. The proposed resolutions run the gamut. He hasn't read them all yet but will before the meeting. It's a pretty wide-ranging set of resolutions. They are vetted by ABA committees first before being brought to the ABA House of Delegates.

M. Adjournment – The meeting was adjourned at 5:00 p.m.

Respectfully submitted,



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

Membership Status Changes

Presented to the Board of Governors January 20, 2022

Active to INACTIVE:

- 267604 Pisan, Robin, Fairfax, VA (Effective December 6, 2021)
- 17314 Shannon, Francis, Fort Lauderdale, FL (Effective November 30, 2021)

Active to INACTIVE RETIRED:

- 2292 Seaton, Michael, Durham, NH (Effective December 31, 2021)
- 10480 Bersak, Robert, Whitehouse Station, NJ (Effective December 27, 2021)
- 868 Funk, W. John, Concord, NH (Effective January 1, 2022)
- 9360 Ogorchock, James, Merrimack, NH (Effective December 31, 2021)

Active to SUSPENDED:

- 19792 Fojo, Robert, Bedford, NH (Effective December 21, 2021)

Active to RESIGNED:

- 1616 Marsh, Peter, Concord, NH (Effective December 31, 2021)

Inactive to ACTIVE:

16854 Klark, Scott, West Danville, VT (Effective December 14, 2021)
269585 Corrado, Angelo, Pepperell, MA (Effective December 15, 2021)
13037 Olshan, Adam, Glastonbury, CT (Effective January 6, 2022)

Inactive to RESIGNED:

270212 Foley, Patrick, Philadelphia, PA (Effective December 13, 2021)
270834 Resnick, Paige, Washington, DC (Effective January 7, 2022)

Suspended to ACTIVE:

265434 Nelluvely, Asish, Roslyn Heights, NY (Effective December 16, 2021)
15603 Morse, MaryEllen, Rye, NH (Effective December 16, 2021)
18107 Tchao, Amy, Falmouth, ME (Effective December 17, 2021)

Honorary Active to HONORARY INACTIVE:

2455 Stock, Otto, Dayton, OH (Effective November 3, 2021)