

NEW HAMPSHIRE BAR ASSOCIATION  
BOARD OF GOVERNORS MEETING  
April 21, 2022  
4:00 PM  
**Live at the Bar Center with Remote Option**  
**MINUTES**

Present for all or part of the meeting were:

Abby Sykas Karoutas  
Cathy Shanelaris  
Chrissy Hanisco  
Christopher T. Regan  
Donald H. Sienkiewicz  
Heather Cherniske  
Jason Dennis  
Jonathan M. Eck  
Kathleen M. Mahan  
Leslie C. Nixon  
Lindsay B. Courtney  
Paul B. Kleinman  
Richard Guerriero

Sandra L. Cabrera  
Scott J. Whitaker  
Vanessa Wilson  
Viktoriya A. Kovalenko  
  
Susanne Gilliam, ABA YLD  
  
George R. Moore  
Mary Jenkins  
Paula Lewis  
Lynne Sabeau  
Deborah Hawkins  
Sarah Smart

A meeting notice reminder, a link to the agenda and related materials were emailed to all governors on April 18<sup>th</sup>. Additional materials were supplied on April 19<sup>th</sup> and 20<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 Richard Guerriero called the meeting to order at 4:06 p.m.

**REGULAR BUSINESS – CONSENT ITEMS**

B. Membership Status Changes for March 2022 Paula Lewis

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

C. Minutes of March 17, 2022 Meeting Susan Aileen Lowry

**ACTION**

On motion to approve the consent agenda. Passed with one abstention, Paul Kleinman.

## **PRESENTATION / DISCUSSION / ACTION ITEMS**

- D. Proposed Appointments to the NH Public Defender Board of Directors Richard Guerriero
1. Richard Maloney
  2. John Newman

Richard summarized the request from the NH Public Defender program. He shared his knowledge of the two suggested appointees and spoke to their background and qualifications.

### **ACTION**

On motion to nominate Richard Maloney and John Newman to the NH Public Defender Board of Directors. Passed with one abstention, Richard Guerriero (He sits on the NH Public Defender Board of Directors.)

- E. Reframing and Revitalizing Committee on Cooperation with the Courts Richard Guerriero

Richard shared background on this item. A memo outlining prospective changes for the 2022-23 meeting year was distributed to the board. He asked Pam Phelan to chair the committee this year. There has been some frustration with the monthly meetings. It was hoped there would be more meaningful collaborative interaction between the courts and practitioners. Justice Hantz Marconi, who also sits on the committee worked with Chair Pam Phelan to propose a change in the committee structure and meetings that they hope will lead to more productive, interactive meetings.

There was a discussion about whether the board needs to take formal action, and it was decided that because the change is purely procedural, no Board of Governors vote is necessary. Executive Director George Moore thinks it would be a good thing to try this change out. Chair Phelan and Justice Hantz Marconi are hoping to use the upcoming Bench Bar Conference on June 10<sup>th</sup> as a jumping off point for next year's committee meetings. The board is in support of the change outlined in the memo.

- F. Ukraine Support Statement Richard Guerriero

President Richard Guerriero recently received a suggestion that the NHBA should make a statement about the situation in Ukraine. He stated that when he sent an email to the board in late March to determine if board members supported the idea, the consensus was to discuss the issue further at the next board meeting. He believes it is not too late to act. The board discussed whether they felt the NHBA should make a statement. Richard did some informal research and found that many non-mandatory bars had issued statements. He was unable to find a mandatory bar that took a position. The ABA did issue a statement, but they are not a mandatory membership organization.

There were board members that supported the idea, and others that felt it was not within the bar's purview and mission. Most of the those that disagreed with the suggestion that the NHBA make a statement did not think a mandatory bar should make such a statement as it could be seen as political. A concern was also expressed that if the bar chooses to make this statement, it should also make a statement about other human rights concerns. Others felt that a basic statement that one country should

not invade another is not political and within our purview. Likewise, those favoring the issuing of a statement, felt there would be substantial unanimity within the bar membership.

The board members agreed that the Russian invasion of the Ukraine was a terrible thing, but the point of disagreement was whether making a statement regarding the invasion falls within the stated purposes of the NHBA. The concern is not the statement itself, but that there could be questions among our membership as to whether it is our place to make a statement.

The following is the proposed statement, authored by Richard Guerriero:

The New Hampshire Bar Association joins our national leaders, the world community, and other bar associations in condemning the actions of Russian President Vladimir Putin in Ukraine. The invasion of Ukraine violates the United Nations Charter on the principles of national sovereignty, the rule of law, due process, and universal human rights.

As we often note, the New Hampshire Bar Association's motto proudly proclaims, "Equal Justice Under Law." We all have taken an oath to support the constitutions of the United States of America and of the State of New Hampshire. We have sworn to uphold the ideals of freedom, fairness, and justice. This makes it especially devastating to watch Putin's disregard for the rule of law and the human rights of those in another sovereign democratic nation. We are steadfast in our support of the Ukrainian people. Our support extends those Ukrainians living here in the United States, especially to those in New Hampshire, and within our association.

### **ACTION**

On motion to approve the above statement with the caveat that it will be shared with the NH Supreme Court to give them notice prior to its release, and if they have major concerns, the issue will be brought back to the board. Failed, 7-9.

#### **G. Treasurer's Report**

Chris Regan/Paula Lewis

Treasurer Chris Regan referenced the materials sent to the board. He suggested members read the narrative report prepared by Director of Business Operations, Paula Lewis. The NHBA continues to be in a strong financial position. Chris invited the board to ask questions if they would like clarification, in preparation for the May meeting, where they will be asked to approve next year's budget. Paula added that members should read through the narrative.

(Board members Scott Whitaker and Kate Mahan left the meeting at 5 p.m.)

#### **H. Inactive Retired Members on Standing Committees**

George Moore

Executive Director Moore summarized the issue. We are looking for a consensus as to whether we should change the bylaws to allow inactive retired members to serve on committees. Currently active and inactive members can serve. George discussed the difference in the two inactive statuses (inactive and inactive retired). He thinks the board should consider a couple of things in making their decision. Once someone has a status of inactive retired, they are not actively practicing law anywhere any longer. Also, the amount of people that apply for committee memberships for some committees exceed the

number of slots available. George is against this change as he thinks we have many active members that want to serve on committees, and they should be given first priority. He doesn't think there is a huge number of retired members that will want to serve.

President Richard Guerriero stated his view. Committee membership is determined by the president with input from the committee chairs, and the NHBA staff. He says that active members will be chosen first. He feels that the President should be able to appoint retired members if appropriate.

Executive Assistant Debbie Hawkins, who coordinates the committee appointment process shared information about the current process. She added that there is not a huge number of inactive retired members clamoring to be on committees; this came about as the ethics liaison noticed there were retired members currently sitting on her committee.

The board decided to leave the current committee appointment process as is, but they may revisit later. The board voted to take no action, and leave it to the President's discretion.

#### I. Judicial Subcommittee Report

Richard Guerriero

President-Elect Sandra Cabrera gave background on the creation of the subcommittee, which she chairs. The other members of the committee are Treasurer Chris Regan, Governor at Large Jim Shepard, Public Sector Governor Lindsay Courtney, and NH Supreme Court Liaison to the Board, Justice Gary Hicks. She is presenting the draft process this month so that members can discuss it and have time to consider it prior to voting at the May 19<sup>th</sup> board meeting.

Sandra shared the subcommittee's approach. They looked at the quality of the investigation of the nominee; how and what is done through the current process. It is a peer review process that is impartial and unbiased. The board does not investigate financial responsibility or competence outside a peer-review context. The board's reason for carrying out this process is to improve the administration of justice and focus on the quality of the judiciary. There are other entities that look at the qualifications of those nominated to the bench, but the bar can do an unbiased assessment, and it makes some of the information public.

(Merrimack County Governor Heather Cherniske joined the meeting during this discussion.)

Sandra outlined the suggested new process. It sets the standard for how many reference interviews (10, 3 of which can be board members) should be conducted. This hasn't been the case in the past; there has been a lot of variation. It also requires that these interviews should be summarized and shared at least 24 hours in advance if possible, with the Board of Governors; currently this sharing of information happens at the meeting itself. There is no proposed change with PCC/JCC request. She states the plan is to continue with the same nominee interview meeting procedure. In addition, if there are adverse comments the board has uncovered, they will be shared without identifying the source with the nominee and the process will give them a chance to respond. Sandra also outlined the historical rating categories used in the current process. The ratings were refined in October 2021 to the choices of Well Qualified; Qualified, which may include reservations; and Not Qualified. These choices led to some recent debate as there wasn't quantitative guidance to distinguish between the categories. This subcommittee also reviewed the notes from the last subcommittee, which met in 2021. This subcommittee is

recommending ratings of Well Qualified, Qualified and Not Qualified and has added more guidance for the board as to how to distinguish between the ratings. The ABA has a standing committee that is responsible for judicial vetting. The ABA doesn't have a Qualified with Reservations category – Sandra thinks this is because it was felt nominees either meet the minimum qualifications or they don't. The subcommittee felt that some nominees exceed the qualifications so that there is a need for the Well Qualified rating. Sandra also spoke about the steps of due process to be taken regarding any adverse information regarding the nominees. Lastly, Sandra spoke to the concerns with time constraints of the process and how they plan to address these. The plan is to seek increased communications with the Governor's office, have the President designate other board members to assist, stating in the rating letter if any vetting procedures could not be followed, and if there is insufficient time/information to conduct the process as stated, no rating will be made.

There was a discussion as to why the process is being revisited at this time. Various reasons were given. Some felt that criteria for the Well Qualified rating is needed. After a recent letter with the rating of Qualified with Reservations there were a lot of comments received. President Guerriero shared that the NH Supreme Court was concerned about the opportunity for the nominee to respond confidentially to the rating before it becomes public.

There was a brief discussion about the elimination of the rating Qualified with Reservations as there are board members that disagree that it should be eliminated. Subcommittee member Chris Regan has written a minority report on the proposed changes and will send his report to be shared with the board for the May meeting. The only point that the subcommittee wasn't unanimous on the elimination of the Qualified with Reservations rating.

Another board member asked about the timing of the notice given to the nominee of the board's finding. She felt that the nominee should be notified before the Governor, if the rating is less than favorable, so they have an opportunity to withdraw their nomination.

This item will be on the agenda for action at the May meeting, and the start time has been changed to 3:00 p.m. to allow ample time for consideration of the FY 23 Budget, as well as this revised judicial selection process. Sandra encourages people to read the suggested revisions and the criteria for rating, and draft letters prior to the May meeting.

## J. Executive Director's Report

George Moore

### 1. Board Election Results

The results were as expected for those nominated by petition. Paul Chant is the newly elected Vice President. He has been involved in many bar committees and formerly sat on the Board of Governors.

There were no petitions submitted for the Hillsborough North and Strafford County seats. These seats were put on the ballot as write in. Kyle Robidas, a public defender prevailed for the Hillsboro North Seat. Richard has spoken with him, and he is very interested in serving. No one won a plurality for the Strafford County seat. An interested party has reached out. We will contact them and request a letter of interest for the board's review and action at the May meeting.

2. Committee on Cooperation with the Courts - Bench Bar Conference Plans - June 10, 2022

George spoke about this upcoming conference. The program is currently being finalized. There will be breakout sessions for circuit court, civil trial, and criminal procedure and it is anticipated there will be many judges involved. The planning committee is finalizing the program and the invitee list. They are working to achieve geographic, age and practice area diversity. It is hoped that this will be a jumping off place for the work of the Committee on Cooperation with the Courts for the upcoming year.

K. President's Report

Richard Guerriero

Richard requested the board go into executive session so he may discuss a matter with the board.

O. Adjournment

The regular board meeting adjourned at 5:55 p.m. The board then went into executive session. The executive sessions ended at 6:20 p.m. and no motions came out of the session.

Respectfully Submitted,

*Deborah J. Hawkins*

Deborah J. Hawkins for Susan Aileen Lowry, Secretary

Membership Status Changes	
Presented to the Board of Governors April 21, 2022	
<b><u>Active to INACTIVE:</u></b>	
275031	Pluviose, Fritz, Wakefield, MA (Effective March 21, 2022)
275034	Wendel, John, Worcester, MA (Effective March 18, 2022)
274999	Roy, Lyndsay, Londonderry, NH (Effective March 16, 2022)
9065	McCann, Ellen, Salem, NH (Effective April 4, 2022)
<b><u>Active to INACTIVE RETIRED:</u></b>	
6821	Dolcino, Chiara, Concord, NH (Effective March 26, 2022)
17832	Keeler, Dennis, Falmouth, ME (Effective March 30, 2022)
4851	Salafia, Paul, Concord, NH (Effective March 27, 2022)
<b><u>Active to FULL-TIME JUDICIAL:</u></b>	
2776	Wolf, Karen, Portland, ME (Effective April 3, 2022)
14614	Smith, Jacki, Concord, NH (Effective April 7, 2022)

<b><u>Active to RESIGNED:</u></b>	
266106	Bland, Zachary, New York, NY (Effective February 21, 2022)
<b><u>Inactive to ACTIVE:</u></b>	
265663	O'Shaughnessy, Audrey, Watertown, MA (Effective March 15, 2022)
17679	Domini, Karolyn, Needham, MA (Effective March 21, 2022)
<b><u>Inactive to INACTIVE RETIRED:</u></b>	
18324	Merrigan, Sarah, Nashua, NH (Effective March 7, 2022)
267684	de Leon, Nathaniel, Seymour, CT (Effective April 1, 2022)
845	Franek, David, Riverforest, IL (Effective April 1, 2022)
<b><u>Inactive to RESIGNED:</u></b>	
270833	Robinson, Charlotte, Gloucestershire, UK (Effective March 23, 2022)
<b><u>Inactive to DECEASED:</u></b>	
1648	Maynard, Steven, Portsmouth, NH (Effective April 2, 2022)
<b><u>Suspended to ACTIVE:</u></b>	
21194	Munyon, Laura, Loudon, NH (Effective March 14, 2022)
<b><u>Honorary Active to HONORARY INACTIVE:</u></b>	
149	Brown, Peter, Boston, MA (Effective March 23, 2022)
603	DePuy, R. David, Candia, NH (Effective April 1, 2022)
<b><u>Honorary Inactive to DECEASED:</u></b>	
637	DiClerico, Jr., Joseph, Hon., New London, NH (Effective April 2, 2022)
1113	Hastings, Peter, Fryeburg, ME (Effective March 5, 2022)
<b><u>Honorary Active to DECEASED:</u></b>	
13	Cyr, John, Littleton, NH (Effective March 9, 2022)
2721	Wheat, James, Hopkinton, NH (Effective April 6, 2022)