

NEW HAMPSHIRE BAR ASSOCIATION
BOARD OF GOVERNORS MEETING
May 19, 2022
3:00 PM
Live at the Bar Center with Remote Option
MINUTES

Present for all or part of the meeting were:

Abby Sykas Karoutas
Chrissy Hanisco
Christopher T. Regan
James Shepard
Jonathan M. Eck
Kathleen M. Mahan
Leslie C. Nixon
Leslie Leonard
Lindsay B. Courtney
Monique Schmidt
Paul B. Kleinman
Richard Guerriero
Sandra L. Cabrera
Scott J. Whitaker

Susan Aileen Lowry
Vanessa Wilson

Michael Iacopino, ABA Association Delegate
Susanne Gilliam, ABA YLD
Jennifer Parent, ABA State Delegate

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 May 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 Sandra Cabrera

President-Elect Sandra Cabrera called the meeting to order at 3:12 p.m.

REGULAR BUSINESS – CONSENT ITEMS

B. Membership Status Changes for April 2022 Paula Lewis

ACTION

On motion to accept the member status changes as presented. Passed.

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

C. Minutes of April 21, 2022 Meeting Susan Aileen Lowry

ACTION

On motion to accept the minutes as presented. Passed with two abstentions, Susan Aileen Lowry and James Shepard.

PRESENTATION / DISCUSSION / ACTION ITEMS

- D. Treasurer's Report/FY 23 Budget Presentation and Approval **ACTION** Paula Lewis/Sandra Cabrera

President-Elect Sandra Cabrera introduced the proposed budget and spoke about the revenue and expenditures. The board received the budget and supporting materials prior to today's meeting. She outlined the reasons for the lower personnel costs- mainly staff attrition and combining positions, which decreased expenditures. She also noted that the in-person membership meetings planned for the upcoming year will lead to increased costs.

ACTION

On motion to approve the 2022-23 operating budget as proposed. Passed.

President-Elect Cabrera spoke about the capital budget next. Director of Professional Development Mary Jenkins outlined the changes planned for the LL Seminar Room. The biggest item is the two-way hybrid communication capacity for that space. Furniture upgrades are also planned which will allow staff to be able to change configurations of the room for different teaching models. It is hoped that this project can be done during the summer, but it may have to be pushed to the fall, based on availability of contractors for the installation. Director of Business Operations Paula Lewis added the remainder of the capital budget consists of regular annual upgrades that are done every year.

President Richard Guerriero, ABA Delegate Michael Iacopino and Sullivan County Governor Vanessa Wilson joined the meeting during this discussion.

The board discussed the items of the capital budget. We are waiting on estimates from some of the contractors for the LL Seminar Room project. Executive Director George Moore noted that we will come back to the board when we have firmer numbers – the vote today is an authorization to go forward with the project.

ACTION

On motion to approve the capital budget. Passed.

Director of Business Operations Paula Lewis thanked the Finance Committee for their work on this budget.

- E. Board Elections –

1. Appointment of Strafford County Governor George Moore

Executive Director George Moore explained that this was a write-in seat on the ballot, but no one received enough votes under the By-Laws to be declared a winner. Therefore, the board can appoint someone to fill the seat until the next election. At that point, the person can run for the remainder of the term. The board discussed appointing Steven Hyde, who is interested in filling the seat. Current board members Abby Sykas Karoutas and Chris Regan both know him and recommend him to fill this seat.

ACTION

On motion to appoint Steve Hyde as the Strafford County Governor until the 2022 board election. Passed.

2. Grafton County Vacancy

As of Monday, May 16, Grafton County Governor Viktoriya Kovalenko has resigned from the board due to a change in her employment. The board will need to appoint someone to fill the Grafton County seat until the 2022 board election. Executive Director George Moore stated we will reach out to Marcie Hornick, former Grafton County governor for suggestions, but if anyone else has ideas, please let him know.

F. Judicial Subcommittee Report

Sandra Cabrera

President-Elect and chair of the Judicial Subcommittee Sandra Cabrera introduced the topic. She reviewed an outline she created for this discussion. Each major change in the policy will be reviewed, with a designated individual outlining both the reasons for and against the change. The board will discuss the issue by going around the table with each member commenting.

She reviewed her slide regarding time concerns vs. quality concerns with the judicial vetting process. It is hoped that the governor's office will give the board more time after seeing the revised process. There is hope we could work at opening up lines of communication. Paragraph 8f states that we let the governor know that we didn't have the time to follow full procedure, as a failsafe, as well as an acknowledgement that we won't make a rating if we don't have enough information. She also shared that Justice Hicks has been active on this committee and the Court is supportive of the change in policy and helping to increase communications between the parties.

Quality – The main question is can the ratings be done without having standards in place? Does the board have enough information to make a rating?

Question #1 – Should we set a minimum of 10 for the number of “calls” we make?

Pros – We need to be sure we have enough information and set forth a minimum standard. It is time consuming but the decision will have little meaning if we aren't able to vet these people.

Cons - We don't have a policy now. If we have a policy of 10, and only can get 9 do we have to back off making a recommendation? Can we make the recommendations without setting a standard for a number, is that adequate?

Question #2 – Should the policy ask for written summaries of each call be shared with the board 24 hours before the meeting?

Pros – dialogue will be more meaningful and have the info they need to make a determination. It will take more time (to summarize info), but the committee feels this is necessary.

Cons - timing. Sometimes we get the name so close to the public hearing that we don't have time to get the info to the board prior to the meeting.

Discussion points:

- number of 10 may be too high- maybe define number of board members rather than calls
- Undermining our credibility if we say we don't have full information, but still make a determination
- Concern with timing of getting info to board
- Question about anonymous references – no prohibition of that
- Need for transparency and consistency- should be minimum standard
- Worries about having trouble getting 10 calls
- Change language to that we aspire to call 10, but may not happen
- Concern about writing up reference information – may be difficult to do in time. Also board members may not have a chance to review the information before the meeting.
- Concern that this is much more onerous for those in the smaller counties
- Lots of timing issues
- Should change standard to 5

Question #3 - Should the policy require adverse information be presented to interviewee?

Currently there is no policy on this. The proposed policy would require notification.

Pros – It is a due process consideration for the nominee – publicly rating them, relying on negative information from an investigation, without confronting the nominee is not fair. The quality of the investigation will suffer if we do not allow the nominee to try to explain negative feedback (allowing both sides to come forward).

Cons- This is generally done now – do we need a policy about it? It is asking a lot to require board members to confront future judges with feedback. Who is expected to give this feedback? Also, what if information comes up after the candidate has left.

Discussion points:

- Concern about mechanics – execution challenging
- Is the right thing to do
- Concern about balancing anonymity of information with the nominee's right to know this information
- Do have an obligation to try and confront the nominee with negative information
- These are aspirational ideas.

#4 - Should the policy distinguish between Qualified and Well-Qualified?

Pros – Current policy has this distinction. This gives more depth to ratings. It is felt that this is important.

Cons – Judges are either qualified or not – do gradations make sense? Do we have the criteria in place to make these distinctions? Do we have enough investigation findings that we can make these fine gradations?

#5 - Should the policy remove “qualified with reservations”?

Pros – Judges are either qualified or not. The concern is whether this rating is being used instead of saying a candidate is not qualified.

Cons- The board would regret this. We’re operating at a power differential, and we are on the low side of this. It is a political process. We are involved in the process as our members expect us to be and appreciate it. No one else in the judicial selection business cares a great deal if we are involved. If we make a ruling that someone is not qualified, we are telling the Governor and Executive Council that peer review indicated that the candidate failed to have the right characteristics to be a judge. As it is a political process, the candidate may get confirmed anyway.

Discussion

- Should keep the gradations if have criteria
- Most involved in this process don’t necessarily care about our input
- With reservations is a ‘boondoggle’
- Will make a more adversarial process

#6 - Should the board adopt the suggested rating criteria?

Sandra referenced the materials supplied to the board with the criteria in areas of integrity, professional competence, and judicial temperament and how they would be applied to create the rating of the nominee.

#7 - Should the policy notify the nominee of the Board of Governors’ recommendation before others?

Pros- To avoid blindsiding the member, particularly in the instance of a not qualified rating, to allow them the opportunity to withdraw. Also, this is professional courtesy to a member of the bar.

Cons – If going with a due process model stick to it. Notify the interested parties – we don’t notify one of the parties in advance.

Discussion

- Due process and courtesy are not mutually exclusive
- Is a matter of professional courtesy

ACTION

On Motion to adopt the policy as presented: Motion fails. 5 – 7

The board decided to have the subcommittee revisit the policy and make changes per today’s discussion. The board will meet on Wednesday 5/26 @ 4:30 for an hour to review and act on the revised policy. A Zoom calendar invitation will be sent.

G. Executive Director’s Report

George Moore

1. Federal District Court of Nevada Subpoena for member database

George stated the NHBA has been served with this subpoena for our member database. This is related to a class action case by present and former inmates of prisons run by a private company. We have hired counsel to represent the bar and met with the NH Supreme Court on this issue as we keep the member database information for them. He is hopeful that the negotiation is going to limit the info we release. The Supreme Court has asked to review any agreement in advance of our commitment to it. George is hopeful we will have a resolution within a week or so.

2. Bench/Bar Retreat June 10th

The agenda was shared in the board materials. Please let George know if you would like to attend.

3. Economics of Law Survey – this summer

The survey has been completed with just under 1500 people responding. The bar has requested a more in-depth analysis, which is currently in process. This will delay the publication of the results.

4. Next BOG meeting in Whitefield – Annual Meeting

The next board meeting is a luncheon meeting at 11:30 a.m. on Friday, June 17th at the Mountain View Grand Resort, in conjunction with the bar's annual meeting.

- H. 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

- Chris Regan announced that the Lawyer Assistance Program was preparing to engage in drafting a Strategic Plan and had hired Lisa Deane to facilitate that project with the LAP Board.

He also mentioned that some of members of the BOG might be contacted as a part of the Strategic Planning process, whether as board members/bar leaders or in connection with various firm sizes or types of practice.

I. **Items for Review requiring No Action**

April 4, 2022 NHMCLE Minutes

J. Adjournment

The meeting was adjourned at 6:06 p.m.

Respectfully Submitted,

Deborah J. Hawkins

Deborah J. Hawkins for Susan Aileen Lowry, Secretary

Membership Status Changes
Presented to the Board of Governors May 19, 2022

Active to INACTIVE:

18400 Pedley, David, Greenwood Village, CO (Effective April 20, 2022)
913 Gearreald, Mark, Dover, NH (Effective April 24, 2022)
8566 MacMillan, Douglas, Salem, NH (Effective May 2, 2022) 2
73120 Vautour, Alice, South Windsor, CT (Effective May 2, 2022)
21263 Stark, Andrea, Saco, ME (Effective May 2, 2022)
21265 Thorlin, John, Alexandria, VA (Effective May 5, 2022)

Active to INACTIVE RETIRED:

1794 Moquin, Richard, Bedford, NH (Effective April 6, 2022)
429 Cole, David, Grantham, NH (Effective April 17, 2022)
14906 Jacques, Martha, Hudson, FL (Effective April 15, 2022)
4804 Dial, Jr., Edward, Goffstown, NH (Effective April 30, 2022)
9956 Bradshaw, Barbara, Durham, NH (Effective May 3, 2022)

Active to FULL-TIME JUDICIAL:

17685 Elliott, Samantha, Concord, NH (Effective May 3, 2022)

Active to RESIGNED:

19507 Marlin, Jeffrey, Wellesley, MA (Effective April 22, 2022)
4121 Rossing, Margaret, Nashua, NH (Effective May 5, 2022)

Inactive to ACTIVE:

10229 Fahey, Todd, Bow, NH (Effective April 25, 2022)
273885 Braman, Nancy, Revere, MA (Effective April 25, 2022)

Inactive to RESIGNED:

5619 Nutile, Maria, Las Vegas, NV (Effective April 15, 2022)