

Commission on Law Enforcement Accountability, Community and Transparency

Meeting Minutes for August 18, 2020

Meeting held via videoconference at the Attorney General's Office in Concord, NH.

Deputy Attorney General Jane Young called the meeting to order at 9:35 a.m. and reminded participants that the meeting was being recorded.

Members were then asked to introduce themselves and state their present location for the record.

Deputy Attorney General Jane Young - from the Department of Justice with Kim Schmidt, Annie Gagne, and Nicole Clay

Robert Quinn, DOS Commissioner - Concord, NH

Ahni Malachi, Executive Director, NH Commission for Human Rights – Penacook, NH

John Scippa, Director of Police Standards and Training Council – Concord, NH

Rogers Johnson, Chair of the Governor's Advisory Council on Diversity and Inclusion – Stratham, NH

James McKim, President of NH NAACP - Goffstown, NH

Sawako Gardner, Justice of the NH Circuit Court – Greenwich, CT

Mark Morrison, New Hampshire Police Association – Londonderry PD

Charlie Dennis, NH Chief Association – Hanover, NH

Ken Norton, Executive Director of NAMI – Great Cranberry Island, ME

Gilles Bissonnette, NH ACLU representative – Concord, NH

Julian Jefferson, Criminal Defense Representative – Manchester, NH

Ronelle Tshiela, public member and BLM organizer – Durham, NH

Eddie Edwards, public member – Dover, NH

The Deputy Attorney General requested the approval of the August 14th, 2020 minutes and August 17th, 2020. A motion to approve the minutes as amended by Director John Scippa, seconded by Lt. Morrison. A roll call vote was taken and the votes were recorded as follows:

Deputy Attorney General Jane Young – Y

Commissioner Robert Quinn – Y

Director Ahni Malachi – Y

Director John Scippa – Y

Chairman Rogers Johnson – Y

President James McKim – Y

Justice Sawako Gardner – abstain (14th), Y (17th)

Lt. Mark Morrison – Y

Chief Charlie Dennis – Y

Director Ken Norton – Y
Gilles Bissonnette – abstain
Attorney Julian Jefferson – Y
Mr. Eddie Edwards – Y
Ms. Ronelle Tshiela – Y

Director Ahni Malachi addressed the Commission regarding her thoughts and feelings about our meetings and how members and the public approach these conversations.

The Deputy Attorney General covered the list of participants today. We will start with Attorney Brian Moushegian, Attorney Gilles Bissonnette and then Attorney Jake Krupski.

**Brian Moushegian - General Counsel, New Hampshire Attorney Discipline Office
(testimony is on website)**

Purpose of office is the protection of public and legal system. Rules 37 and 37a. Professional conduct, hearings, complaints screening, attorney discipline offices.

- Director Scippa – who makes the appointments to the different levels and how long do they serve
 - o NH Supreme Court appoints, some are 2 year and some 3 year period
- Director Scippa – how do they identify volunteers for these positions
 - o Professional conduct (8 lawyers, 4 citizens), learn through word of mouth, advertisement
- Director Scippa – how often do they meet
 - o Varies
- Director Scippa – to what degree does 91A apply, are they public hearings
 - o We follow AGO guidelines
- Jane Young – how many complaints do you get a month
 - o 200 a year, so 18-20 per month
- Jane Young – what is the review process
 - o When we first receive, we review. General counsel handles receipt and review, make sure it meets certain criteria. 2 year statute of limitations.
- Jane Young – does grievance become public
 - o 30 days after the letter is sent
- Jane Young – if you have a complaint that comes in with a criminal component, what do you do in those cases
 - o Under Rule 37, there are rules laid out
- Gilles Bissonnette – right to say complaints that don't meet docketing that are available for public
 - o Yes.
- Gilles Bissonnette – finding of misconduct, how does public access
 - o Decisions of disbarment and reprimands, available on website

- Gilles Bissonnette – duty to report attorneys by other attorneys
 - o Yes, important rule, called referrals
- Julian Jefferson – due process for attorneys in this process
 - o As robust as possible. Various levels of due process, it's considerable.
- Julian Jefferson – speak to instances where committees disagree
 - o Yes, they disagree. Important to have non-lawyers on committees.
- Julian Jefferson – if you worked at a firm and a complaint comes in from that firm, how do you handle
 - o Automatically recuses self from case
- Director Scippa – no penalty for attorney to report other attorney
 - o Attorneys have to know conduct occurred, doesn't know of an attorney being prosecuted for non-report
- Director Scippa – doesn't this process entertain anonymous complaints
 - o No, need to be submitted under oath
- Jane Young – you get anonymous complaint, does that become public
 - o Don't think there would be an issue, we may make determination to redact
- Lt. Morrison – how many licensed attorneys in NH
 - o 7,000+ (5,500 active)
- Lt. Morrison – of dismissed grievances requested for second review, how many move forward
 - o About 1-3%
- Eddie Edwards – are you able to describe the vetting process that an attorney goes through before being admitted to the Bar
 - o That is a separate office, Character and Fitness
- Eddie Edwards – non-docketed complaints
 - o Are not indexed but are available to the public upon request
- Eddie Edwards – early warning system in place
 - o Every year we will see instances in which an attorney comes to attention more and more often (i.e. not showing up for hearings or getting back to clients)
- Ken Norton – Is the ADO adequately resourced
 - o Small staff of a few attorney's and support staff
- Ken Norton – Of note, the contrast of ADO 9.5 FTE's for 5,500 attorneys compared to two PT positions at PSTC to monitor 4,200 police officers
- Ken Norton – If a professional conduct rule for prosecutors were passed requiring prosecutors to report police misconduct, whether that would prevent any challenges/barriers for ADO to enforce
 - o That wouldn't affect us here, but wouldn't see any barriers to investigating that
- Chief Dennis – citizens who serve on committees, what type of screening used for citizens
 - o Pretty significant vetting process
- Chief Dennis – funding cost, if we were to expand to LEOs, what would that look like
 - o Can only speak to the attorneys we deal with, there's a lot we do beyond the 200 complaints

- Commissioner Quinn – what type of vetting process is there (ex. LEO have polygraph, background checks, etc.)
 - o More a question for character and fitness, Supreme Court also lays out rules for bar admission
- James McKim – ethics, where does discipline come in
 - o No jerk rule, not a violation of professional conduct, need separation between acting ethically and professional misconduct
- James McKim – how would a case like *Ernest Jones* impact
 - o Only jurisdiction over rules of professional conduct
- James McKim – is there someone that will testify that can address the *Ernest Jones* case
 - o Prosecutors have separate rules
- Julian Jefferson – if Supreme Court said to take anonymous complaints, the office could do it
 - o Yes, we could

Gilles Bissonnette, Director of NH ACLU (testimony on website)

Statewide system for reporting, investigating, adjudicating police misconduct. Independent agency to do this. We don't need EES if we are more transparent. Pretextual stops should be banned. Qualified immunity should not exist as defense for claims. Make police files public under RTK. Laurie List should be public. Require all police personnel records to be retained for 20 years like all other employees, as opposed to being subjected to collective bargaining agreements.

- Jane Young – do you ever see an instance when a pretextual stop is investigative and assist LEOs
 - o I get that it's viewed as a valuable tool, from civil liberties perspective it's a problem
- Director Scippa – qualified immunity would increase relationships with community
 - o That's part of it and hold people accountable
- Director Scippa – if take out, could have a negative effect, reduce LEO proactively seeking out to arrest, stop, etc.
 - o Police can police without qualified immunity, originated in late 60s and full force in mid-80s, removal of qualified immunity creates opportunity of more reflection
- Julian Jefferson – if you make a rule that defense can have disciplinary file of officer, we don't know how something gets into the file
 - o Agrees completely
- Julian Jefferson – why are police personnel records not subject to 20 year retention
 - o Don't know the answer
- Ronelle Tsheila – do you believe there are specific ways than regular citizens under the law
 - o Qualified immunity, access to public records

- Ronelle Tsheila – how do you think all these issues (qualified immunity, pretextual stops, etc.) affects relationships with communities they serve
 - o All tied together, they hurt confidence and faith
- James McKim – how do we balance discrimination against civil liberties and pretextual stops
 - o On the side of civil liberties and transparency
- James McKim – removing qualified immunity would remove the situations
 - o Removing would still allow plaintiff to sue officer for constitutional violation
- James McKim – Are you 100% sure that everyone agrees that officers would be indemnified if qualified immunity did not exist
 - o Yes, officers would be indemnified if the act was done within the scope of employment and was not done in a wanton or reckless manner
 - o Jane Young – Could there be a scenario where a verdict exceeded the money in small towns which might not have insurance such that if qualified immunity did not exist, officers would be held liable
 - o Gilles Bissonnette – I don't think it has ever happened
- Lt. Morrison – do you think that motor vehicle stops are a reasonable disruption in peoples lives
 - o If that is the purpose of the stop and not to extend a persons liberty
- Jane Young – Judge Schulman is a Superior Court Judge out of Rockingham. Was a public defender, went to a private firm, back to public defender's office and then Getman, Schulthess & Steere, PA before becoming a judge. Case is from a year ago about a motor vehicle stop. Trial court orders have no precedential value but are good guidance.
- Rogers Johnson – young black and brown children aren't adequately educated, personal background was of good education and so no dealings with police departments
 - o I don't disagree on policing accountability and transparency. Biases creep into policing decisions
- Director Malachi – percentages on testimony, are you saying all these are problems, what's the problem
 - o Racial disparities in state prison, root causes are complicated
- Director Malachi – sentencing project is non-profit, why so many experts and not legal cases as opposed to journalism who can right what they want
 - o Not sure to answer beyond that's the data they collected

Attorney Krupski has agreed to come back tomorrow so we will finished with Attorney Gilles Bissonnette, then Attorney Krupski and then the AG's Office. Any public members wishing to testify should contact LEACT@doj.nh.gov and provide written testimony ahead of time. Public testimony will be heard Thursday starting at 9:30 a.m.

Recommendations will be due Monday by noon and then we will begin Tuesday at 9:30 a.m. Rogers and Ronelle will be absent tomorrow, August 19, 2020.

The Deputy Attorney General requested a motion to adjourn. So moved by Gilles Bissonnette and seconded by Director Ahni Malachi. A roll call vote was taken on the motion to adjourn and the votes were recorded as follows:

Deputy Attorney General Jane Young – Y
Commissioner Robert Quinn – Y
Director Ahni Malachi – Y
Director John Scippa – Y
Chairman Rogers Johnson – Y
President James McKim – Y
Justice Sawako Gardner – Y
Lt. Mark Morrison – Y
Chief Charlie Dennis – Y
Director Ken Norton – Y
Attorney Gilles Bissonnette – Y
Attorney Julian Jefferson – Y
Mr. Eddie Edwards – Y
Ms. Ronelle Tshiela – Y

The meeting was adjourned at 1:33 p.m.