

Statement by Past Presidents of the New Hampshire Bar Association

We, Past Presidents of the New Hampshire Bar Association, write to express our concern and urge the Executive Council to reconsider its recent decision denying confirmation of Dorothy Graham to the Superior Court bench. We understand the important role of the Executive Council in confirming judges for every court in our State. However, in this instance, the published reasons given by some for voting against the confirmation of Attorney Graham, namely that she has worked as a public defender, raise serious concerns regarding the fundamental principles upon which our justice system is based. It is for this reason that we write to express our disagreement with the rationale for the Executive Council's decision.

Our judicial system, and particularly its criminal justice process, is based upon the premise that every individual brought before a Court in this State is afforded certain rights. These rights are spelled out in the New Hampshire Constitution and the United States Constitution. Among those rights, for those individuals that face the possibility of incarceration, is the right to legal counsel at every stage of the proceeding. It is for this reason that we have a vibrant, well-trained group of attorneys, the New Hampshire Public Defender Program, to afford New Hampshire citizens the benefit of those Constitutional guarantees, regardless of their ability to pay. In order for our system to function, and to meet its Constitutional mandates, our government provides both prosecutors to prosecute crimes and criminal defense attorneys to defend those accused. This is a bedrock principle of our justice system, and allows it to function fairly and lawfully. The notion that each side in a criminal matter must be fairly represented by competent

counsel is such an essential element of our justice system the United States of America has encouraged this system as a model for other societies around the world.

From the founding of our country, having an independent and impartial judiciary has been a pre-eminent principle in the development of democracy. Getting individuals on the bench who are fair, knowledgeable, and impartial is critically important. Under New Hampshire's Constitution, the role of the Executive Council in vetting nominees could not be more important.

In New Hampshire, the nominees come to the Governor from a non-partisan judicial selection commission made up of lawyers from many diverse areas of practice, as well as non-lawyer citizens representing a cross-section of the community. This Commission spends a great deal of time winnowing down the list so as to give the Governor the individuals best suited to become impartial judges.

This is not to say that the Commission could not make a mistake, or the Governor a poor selection. That is for the Executive Council to consider based not on what type of job that candidate previously held, but on the personal attributes of intellect, demeanor, and fairness exhibited by the nominee and those with firsthand knowledge of her work.

The Past Presidents of the New Hampshire Bar Association are a varied group of current and former attorneys and members of the judiciary. Many of us hailed from careers as prosecutors. Some of us were once public defenders. We have always respected each other, and the roles that we each play in the criminal justice system. Each is important, and each is vital. However, one role is particularly challenging

because it can be incredibly unpopular. It is not an easy task to stand in a courtroom and rise to defend those who are accused of, and some who have committed, heinous criminal acts. In fact, often times a public defender is the only one left to stand up and defend that person. For some, there are no family members willing to lend support. There are no friends, colleagues, co-workers, or employers willing to step forward. There is one person standing in a courtroom fighting for that individual's Constitutional rights, and ensuring that our system of justice works within the protections our forefathers created. For their willingness to serve that role, we should not condemn them.

Each player in our criminal justice system, whether they be prosecutors or defense counsel, should be considered for service as members of our judiciary based not upon the role they may have served within our justice system but upon the content of their character and their abilities to be good jurists. The judiciary needs to come from diverse backgrounds. This enhances the public's perception that the talisman of the system shall be fairness.

It is for these reasons that we have chosen to speak out against the Executive Council's actions. Not because we consider ourselves better equipped at determining who should and should not serve as members of our judiciary, but because the reasons stated for denying confirmation to Attorney Graham are against the fundamental principles of our justice system, and demonstrate a lack of understanding of the role criminal defense attorneys play in that system.

We respectfully request that the Executive Council reconsider its decision and set a hearing to review Attorney Graham's nomination.

Signed,

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