

## TechConnect Launches September 25



By George Moore  
NHBA Executive Director

The TechConnect consulting program, a new member service run and funded by the New Hampshire Bar Association, is set to go live at 8:30 a.m. on Wednesday, September 25.

This first-of-its-kind member benefit offers NH Bar members the opportunity to consult with the Affinity Consulting Group, nationally known for their legal technology expertise, about making cutting-edge legal technology work for solo practices and law firms.

As I set out last month, any member can access this service through the NHBA website and email a question or set up a one-on-one 30-minute consultation with one of our Affinity consultants.

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## Bar's Legislative Advocacy in Review

NEW HAMPSHIRE  
BAR ASSOCIATION  
LEGISLATION WATCH



By Anna Berry

Two of the bills supported by the New Hampshire Bar Association's legislative advocacy efforts were signed into law by Governor Chris Sununu in June. But the accomplishments of the 2019 legislative session have been overshadowed by the stalemate between the governor and the Democrat-controlled legislature, according to attorney John Macintosh, the Bar Association's legislative representative at the Statehouse.

"The biggest story is that Governor Sununu has vetoed more bills than any other governor in history,"

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## Ethics & the Practice of Law

Look for the annual supplement from the Ethics Committee, featuring new opinions on border law searches and insurance, in the center of this month's issue.

### PRACTITIONER PROFILE

## Annis Shines in Spotlight — On & Off Stage

By Kathie Ragsdale

Tina L. Annis finds that her professional and non-professional lives often intersect, whether she's helping a grieving family through a probate proceeding, volunteering for one of her many causes, or acting in community theater.

A partner in the Concord firm of Annis & Zellers, Annis focuses on estate planning and probate administration, and has been advising New Hampshire families for almost 20 years on matters ranging from wills to special needs trusts for the disabled.

"I've had a few probate cases where people have really experienced traumatic grief in their family and our office has been able to really help them," she says of her most memorable work. "People come in really grieving and overwhelmed after the loss of a family member and they've got all this paperwork."

"Those are some of my gladdest moments, to help a family through something like that."



Such experiences have also informed her volunteer work, including the several years she worked for the Walk to End Alzheimer's when it was held in Concord, before the event moved to Manchester.

"With so many of the families I've worked with, I've seen the effects of it, which are devastating," Annis says of the disease.

Likewise, she brings to the workplace some of her talents as a community theater actor — an avocation she says she pursues "as often as I can."

Annis worked on the fundraising committee of Concord's Red River Theatres for years, and has appeared as Mrs. Cratchit in the Hatbox Theatre's production of

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# Meet Your 2019-2020 NHBA President: Edward D. Philpot Jr.

At the Bar's Annual Meeting in June, the President's gavel was passed from David W. McGrath, of Sheehan Phinney Bass & Green, to Edward D. Philpot Jr., a solo practitioner for 27 years and former Belknap County Bar President. Philpot outlined how his term as President will focus on expanded communication of NHBA member benefits and implementing more technology assistance services for members, as well as a greater focus on Law Related Education programming. In a conversation with the *Bar News*, he shared more about his vision for the Bar, his surprising first profession, and the challenges of being a solo practitioner.

## Bar News: What was your path to the legal profession? Are you a New Hampshire native?

Philpot: I am not a New Hampshire native. I am originally from New Jersey. I left New Jersey and moved to Concord in 1984 to attend law school at Franklin Pierce Law Center.

The law is my second profession. I graduated from a military preparatory school in 1976. I had a great education, but did not have a path mapped out for myself, so I followed my father into the construction industry. I was apprenticed as a mason in 1977 and, as part of my apprenticeship, I was required to take a minimum number of college classes. In doing so, I met some inspiring teachers and fellow students and,

while working full time, I completed an Associate's degree in 1982. I then continued on to complete my Bachelor's degree in history in 1984 while still working in the building trades.

Law school was not my original intention, nor was it a conscious goal when I started in college. A combination of factors drew me there. First, my path was made easier by being close to my cousin, Jeffrey (also a New Hampshire lawyer). He was very helpful and encouraging to me when I made my decision to go on to law school. I also met professors and fellow students at Rutgers who helped shape my direction. My union involvement and involvement in politics during the late 70s and 80s was a factor as well.

Once I was in law school, my wife, Dianne, was a constant source of confidence and inspiration for me while I was working my way through school.

## How did you become involved with the board of Governors of the New Hampshire Bar Association?

I have always felt that community service and collaborative interaction with other attorneys were an extremely re-



warding aspect of my professional life. I am a past Governor of the NH Association for Justice (then known as NH Trial Lawyers Association), I have served as a school board member, County Commissioner, and on various non-profit boards. I coached several youth sports teams and have been actively involved in activities in my community since coming to New Hampshire. Being a Board member of the Bar Association fit my philosophy of giving back to my community and my profession and was a logical extension of my earlier involvement on various Bar committees.

## What do you find most rewarding and most challenging about your current practice?

My current practice is a robust trial practice, focused on civil litigation, personal injury, business law, and construction law. I also mediate and arbitrate cases around the region (mainly New Hampshire, Vermont, Maine and occasionally Massachusetts). As a solo practitioner, this keeps me pretty busy!

Of course, my biggest challenge is managing my time and my practice so that I can best serve my clients and still have time for my family and myself. The rewards are, however, manifest.

PHILPOT continued on page 6

## Call for Midyear Meeting Award Nominations

### Vickie M. Bunnell Award for Community Service

Instituted in 1998 to honor the memory of Vickie M. Bunnell, "A Country Lawyer," and to applaud the community spirit that is a hallmark of our profession, this award is presented to an attorney from a small firm (four or fewer attorneys) who has exhibited dedication and devotion to community by giving of their time and talents, legal or otherwise.

### Distinguished Service to the Public Award

This award is presented to the nominee who best exhibits service to the public on

behalf of the administration of justice.

### Outstanding Service in Public Sector/Public Interest Law Award

This award is presented to a member of the New Hampshire Bar, or an organization employing eligible members, who, at the time of the nomination, have at least five years of service, up to and including the time of the nomination, in government service, military service, law enforcement, public interest law services (including prosecution, public defense, legal advocacy in low-income communities or for individuals with disabilities at a nonprofit organization), or at an organization that is described in

section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code. Qualified individuals/organizations may be nominated more than once. The nomination form can be found at [www.nhbar.org/wp-content/uploads/Public-Sector-Award-Nomination-Form.pdf](http://www.nhbar.org/wp-content/uploads/Public-Sector-Award-Nomination-Form.pdf).

All nominations should be submitted by November 22 to: NHBA MYM Award, 2 Pillsbury Street, Suite 300, Concord, NH 03301-3502 or email Allison Borowy at [aborowy@nhbar.org](mailto:aborowy@nhbar.org). The Awards will be presented at the Midyear Membership Meeting, February 20, 2020

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Congratulations to the new members of the New Hampshire Bar Association sworn in at the NH Supreme Court on September 4.



The NH Bar Association's Environmental & Natural Resources Law Section met on September 11 at the Bar Center to hear from speaker D. Maurice Kreis, New Hampshire's Consumer Advocate. Kreis and his staff represent the interests of residential utility customers before the NH Public Utilities Commission and elsewhere. To learn more about upcoming section meetings, visit [www.nhbar.org](http://www.nhbar.org).



Department of Education attorney Diana Fenton (right) began a Backpack Drive in 2016 in order to distribute the backpacks to students in need across the Granite State. Pictured at the Department of Education last month, Commissioner Frank Edelblut (left) closed out the 4th Annual Backpack Drive by announcing that this year's drive set a new record of 600 backpacks collected.

## NHBA Thanks Wescott Law



L-R: Wescott receptionist Camie Bailey, attorney Allison Ambrose and attorney Kathrine Lacey.

On August 14, Lawline was hosted once again by Wescott Law in Laconia. Over 30 calls were taken on a variety of topics, with family law and landlord/tenant law being the most popular.

The Bar would like to thank attorneys Rod Dyer, Shawna Bentley, Kathrine Lacey, Allison Ambrose, and support staff member Camie Bailey for volunteering their time for this very important public service. Wescott Law has hosted LawLine every year for over 15 years, and their consistent participation is greatly appreciated.

The Lawyer Referral Service refers many clients to Lawline who do not have

easy access to an attorney for a quick question, and we are very thankful the volunteer Lawline attorneys are able to assist these clients. We hear from many clients the next day complimenting the attorneys for taking the time to listen to their concerns and explain the law.

We are still looking to fill dates for 2020. If you are interested in volunteering for Lawline, please contact [SVerma-cy@nhbar.org](mailto:SVerma-cy@nhbar.org). It is always held the second Wednesday of each month from 6-8 p.m. and is a great way to network and meet others in your profession! We have the months of February, March, April, October and December open in 2020.

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## Frank Lloyd Wright's Toufic H. Kalil House

This masterpiece of mid-century modern design is being offered for sale with all original furnishings and fixtures. Evaluated to be in "remarkably good condition" by the Frank Lloyd Wright Building Conservancy, the Kalil House has been held by the family since it was built in 1955. It is a pristine example of Frank Lloyd Wright's Usonian Automatic style of architecture and enjoys many classic Wright features: rich mahogany paneling, radiant concrete floors, dramatic sunken fireplace, and more. Situated on a beautifully landscaped double lot, it also includes a detached studio. Nestled in Manchester's North End, just three doors down from Wright's Zimmerman House owned by the Currier Museum, this living work of art is close to restaurants, galleries & New Hampshire's seacoast, yet less than an hour from Boston, making it a perfect residence, summer home or corporate retreat. Offered at \$850,000.

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# Assessing the MacDonald nomination fallout

*While there were legitimate concerns about the nominee, opponents' criticism was suspect*

*Editor's Note: This article was originally published by the New Hampshire Business Review on August 16 and reprinted here with permission.*

By Brad Cook

Now that a month or so has passed since the Executive Council rejected Governor Sununu's nomination of Attorney General Gordon MacDonald to be chief justice of the New Hampshire Supreme Court, I shall venture a few observations about the process.

In fairness, readers should know that I was a signatory to a letter from 100 or so New Hampshire attorneys, including past and present Supreme Court Justices, who supported MacDonald's nomination.

It was clear from the outset, and no one questioned, the integrity, education, ability or quality of the nomination, from a personal point of view. Gordon MacDonald enjoys a stellar reputation as an attorney,

and has done a fine job as attorney general. A New Hampshire native, Dartmouth College and Cornell University Law School graduate, MacDonald has represented major clients in sensitive and important cases, with distinction. He was confirmed unanimously as attorney general and has not had criticism in that role.

So why oppose his nomination? The three Democratic members of the Executive Council gave various reasons, and the buzz on the internet in opposition to MacDonald repeated the themes. He worked for Gordon Humphrey, two-term U.S. senator, accused of being an "extremist." Humphrey, elected twice to the Senate, was a conservative senator, but a young attorney working for him should not be assumed to agree with all his views for all time. Indeed, Thomas Burack, former Department of Environmental Services commissioner, often accused of being too liberal, started out working for Humphrey as well.

He represented the Roman Catholic

Church and other clients people may disagree with. (Me too!) Attorneys represent clients to the best of their abilities, and criticizing them for those whom they have represented is foolishness.

He was a delegate for Marco Rubio in the last GOP primary. This is an interesting criticism, leveled by a councilor, Andy Volinsky, who was a delegate for Bernie Sanders, who could be accused of being more extreme than Rubio. Of course, confirmation for life on the court is different from being elected to the council, but the irony still exists.

It is presumed he was nominated to take positions in line with those of the GOP, especially on abortion rights. Assum-



ing anyone knows how a nominee will vote on any issue or case that may come before the court, and voting on that assumption, is suspect. MacDonald said, as others have before him, that his job as a judge is different from other jobs he has had in the past, and he would have to respect precedent,

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## Opinions in Bar News

Unless otherwise indicated, opinions expressed in letters or commentaries published in Bar News are solely those of the authors, and do not necessarily reflect the policies of the New Hampshire Bar Association Board of Governors or the Bar Association staff.

# ABA House of Delegates Tackles Access-to-Justice Related Measures

By Russ Hilliard

The policymaking body of the American Bar Association is its House of Delegates, comprising almost 600 members from every area of the country and practice.

New Hampshire currently has four members of the House: Jennifer Parent serves as the New Hampshire Bar Association delegate; Andrew Hamilton, recently replaced by Heather Cherniske, the young lawyer delegate; Ruth Kleinfeld represents the Senior Lawyers Division; and I currently serve as the state delegate (elected by ABA members in New Hampshire).

The House meets twice a year, the most recent annual meeting being held in San Francisco last month. The session lasted a day and a half, and dealt with many proposed resolutions, a number relating to immigration law and procedures. Other policy recommendations related to marijuana law, free-speech on campus, and pay equity.

There were also three access-to-justice related measures: a resolution encouraging online providers of legal documents to

adopt the ABA Best Practice Guidelines for Online Legal Document Providers; another calling for legislation to ensure equal access to justice for Americans living in rural areas by ensuring proper broadband access throughout the United States; and a third asking courts and other stakeholders to review cell phone policies in courthouses to balance security risks with meaningful access to the judicial system, particularly for those who are self-represented or of lower income.

There was a resolution related to the definition of consent in sexual assault cases that drew intense interest from around the country, including a visit to the meeting by Mike Iacopino, a distinguished criminal defense lawyer from Manchester, on behalf of the New Hampshire Association of Criminal Defense lawyers. Ultimately, the House



decided to postpone action indefinitely on the proposed resolution to permit the interested parties to come up with a resolution that could be supported by all.

With respect to pay equity, one resolution urged employers of lawyers to implement and maintain policies and practices to close the compensation gap between similarly situated male and female lawyers, and another urged legislation to provide stronger remedies and protections against pay discrimination based on any prohibited classification.

A complete summary of all of the resolutions and actions may be found at [www.americanbar.org/content/dam/aba/administrative/house\\_of\\_delegates/daily-journals/2019-annual-daily-journal.pdf](http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/daily-journals/2019-annual-daily-journal.pdf).

Please let me know of any comments or questions.

*A member of Upton & Hatfield since 1980, Russ Hilliard is one of the state's four delegates to the American Bar Association's House of Delegates. He is a past president of the New Hampshire Bar Association and the New England Bar Association, and a past chair of the New Hampshire Bar Foundation. Hilliard can be contacted at [rhilliard@uptonhatfield.com](mailto:rhilliard@uptonhatfield.com).*

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# Sharenthood: Why We Should Think before We Talk about Our Kids Online

By Leah Plunkett



*Editor's Note: This exclusive excerpt of "Sharenthood" is provided courtesy of MIT Press to Bar News readers. All citation information for the excerpt is available online in the open access version of the book.*

Here's the basic equation for both commercial and noncommercial sharenting. Parents are inviting in a wide and uncontrollable audience whose members may lack any actual connection to the family or children.<sup>69</sup> Parents are holding out their child's actions as authentic, eliding their own role as creator. And parents are giving their child a part that bears his name, that lives in his house, and that is understood by the child to be him. At some point, he will likely become aware of the viewing public's reaction to this portrayal. Regardless of any explicit financial stakes in the commercial realm, there is likely to be a "life imitates art imitates life" cycle that develops in which the child's choices, experience of the world, and felt sense of self are filtered through the sharenting lens.

What do you think that children's and adolescents' sense of self should be worth? Would you farm your kids out to a warehouse to work for free so you could get all the DVDs you want? Clearly not. So why are you comfortable sharing their toilet-training dilemmas online to generate revenue for your sharenting enterprise or in exchange for ostensibly free access to all the social media services you could want? And why does our legal system let you make these choices?

The law provides superprotection for parents' decision-making authority over their children's lives and futures.<sup>5</sup> The assumption is that parents are in the best position to make choices for their kids and, thus, that protecting parental control protects kids too. The family unit is treated as inherently private<sup>6</sup>—a safe space where kids can be the parents of their adult selves. Parents get to decide who enters. They also get to determine (more or less) the activities kids engage in outside

of the home. And they get to decide which intimate information about what happens in the home gets shared outside the home. The law assumes that they will do a good job.<sup>7</sup>

The government gets involved in familial decision making only if the family breaks down through abuse, divorce, or similar circumstances.<sup>8</sup> Nongovernmental third parties, like private companies, are allowed into the family fold only by invitation. There aren't any realistic circumstances in which a nongovernmental third party could lawfully force entry.<sup>9</sup> Parents are supposed to stand sentry over the castles that are their homes.

But kids today no longer live in a world of brick-and-mortar places with definite boundaries. This transition marks the fundamental change of our digital world.<sup>10</sup> It may well account for some of the so-called helicopter parent phenomenon<sup>11</sup> that has developed as the privileged set tries to extend the brick-and-mortar boundaries of Tom Sawyer's America.

Wireless tech rolls right over white-washed fences. Through digital devices and services, sales promotions, opinions, and other forms of connections outside the home are a constant feature within the home.<sup>12</sup> Some are visible, like the ad on the lock screen of the Kindle before you enter your passcode to let your toddler watch Daniel Tiger's Neighborhood ("Dann-eee Tig-ee, Tig-ee, Mama, I wan' Dann-eeeeee Tig-eeeeeee NOW!").<sup>13</sup> Some are stealth: just how much audio is the Amazon Echo recording, and who is going to hear this showdown over "Dann-ee Tig-ee"?<sup>14</sup>

Today's parental gatekeepers often wind up like Nana,<sup>15</sup> the dog who is tasked with watching over the Darling children's house on the night Peter Pan takes them away. Nana tries her best but is no match for outside forces. Peter Pan is charming. What else is he: shadow or boy? The night sky beckons. Star maps promise infinity. The children don't care what Peter is. They follow.

Nana is locked up and can't be in the nursery on that fateful night. But we adults are free to move. That freedom is part of our problem. Perhaps we are just as much the Darling children as we are Nana. We are as intrigued with the digital universe as the Darlings are with Neverland.<sup>16</sup> Play a game on our smartphones where we stalk

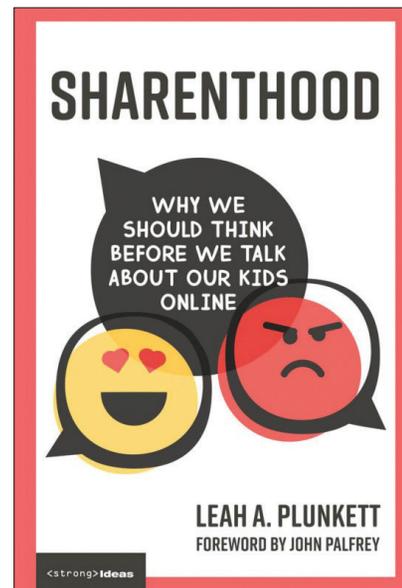
imaginary monsters in the real world? Stalk our high school boyfriend on Facebook? Post supercute pics of ourselves with our babies so our ex can see what he let get away? Yes, please!

Because we adults are still struggling to grasp the digital world, we are often lousy gatekeepers. When we use digital tech to enhance our own lives, young people's needs and preferences may take a backseat or be invisible. We prioritize our own needs, whether consciously or not. Even when we intend to use digital tech to enhance our kids' lives, we may not understand what we are doing. And our children may not want us involved in their digital lives.<sup>17</sup> But the law treats us as if we do understand and should be involved in our children's digital lives. We are our children's watchdogs-in-chief, so the law holds us responsible for making informed decisions about whether, when, and why to share our children's personal data online.<sup>18</sup> And the legal regimes around digital data privacy don't make our task easy.

Privacy law is a hodge-podge,<sup>19</sup> like the potion powders in Snape's classroom.<sup>20</sup> The law doesn't equip parents with Harry Potter's "cloak of invisibility" so that we can wrap it around our children's digital selves.<sup>21</sup> In general, we are asked to operate on a consent-based system.<sup>22</sup> We are expected to find, read, and understand the relevant privacy policies, terms of use, or other legal instruments that define what a third party wants to do with our children's digital data. Then we are asked to give informed consent to this third party's proposed actions.

Most of the time, we don't take all these steps. Could we read a bit more of the fine print? Sure, but we are largely set up for failure here. Reading and understanding all the fine print are difficult if not impossible.<sup>23</sup>

We agree to "clickwrap agreements" to join social media sites or connect a



baby monitor we want to use without reading the fine print.<sup>24</sup> Even if we try to find the fine print, we might not be able to locate it.<sup>25</sup> Even if we find the fine print and try to read it, we probably don't understand it.<sup>26</sup> Even if we understand it, we may never know if the company violates it.<sup>27</sup>

In the event we do find out about a violation, we might not care about it. After all, if we're willing to share pics of our kids in diapers with ten thousand of our closest

friends, how much do we really care if the company decides to let advertisers take a peek?

If we do care, we could turn to state tort law for potential remedies<sup>28</sup> or notify the Federal Trade Commission to encourage enforcement action for that company's violation of its own stated privacy policies or other terms of service.<sup>29</sup> Yet even if we succeed, our victory is likely to be slow and costly and still not give us a way to put the genie of information sharing completely back into the bottle.<sup>30</sup> They just don't make genies like they used to in the predigital age.

Some sectors have privacy law regimes that offer stronger built-in safeguards to keep children's private digital data under wraps. A familiar example is the federal Health Insurance Portability and Accountability Act (HIPAA), which controls information sharing about patients in the health-care system.<sup>31</sup>

A similar but likely less familiar example is the Family Educational Rights and Privacy Act (FERPA), which prohibits schools that receive federal funding (almost all schools nationwide) from sharing "personally identifiable information" (PII) in students' "education records" unless they have written parental consent or the particular form of sharing falls into one of FERPA's enumerated exceptions.<sup>32</sup> Of

SHARENTHOOD continued on page 19



Lauren S. Irwin, Heather M. Burns, Michael S. McGrath, and Brooke L. Shilo

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I feel that lawyers can make a huge difference to clients by giving their best advice and counsel (difficult as that may be at times) and help them move through the legal system as quickly and effectively as possible. Helping people — that's the best part of what we do.

**What qualities define your leadership style?**

Good leaders encourage and inspire those around them to be their best. My goal is that everyone in our organization feels that they are important and that their voice and input into the operation of our organization can be heard. This means our Board, our managers and our staff. The expectation is that we will all do our jobs at our best and highest level of energy and competence. My job is to encourage and inspire that in everyone for the good of the organization.

**What are your goals for your tenure as President?**

I have often said of the Bar that, the closer you look, the better we look. I think that we need to do a better job of reminding our members of what we do, and can do, for them. My goal in this regard is to do a better job getting our message out to members who are not fully aware of the benefits of membership, and the relevance of the Bar's activities to their personal and professional lives. The member services and advantages we offer are exceptional. Our CLE programs are outstanding, and we take pride in our service to the community.

That being said, we need to continue to demonstrate our relevance to our members, and to connect with them in as many ways as possible. Our member services are especially valuable to small firm and solo practitioners, and we need to continue to grow the variety of services that we can help them access. At the same time, we need to be looking at how our efforts and programs can better address the needs of larger firm and public sector lawyers.

**Who personally inspires you?**

More than anyone else, my wife, Dianne, personally inspires me and has since we met 36 years ago. Dianne has been my biggest supporter, coach, and partner in all that time. She is tireless in her devotion to her family, her community, and her career. Her intellect is sharp, and her wit is quick. She is constantly curious and always informed. Whether on current affairs, politics, crosswords, and the best healthy recipes to share with me and our children, she is always on top of things. As Dianne would put it, she "pays attention." Dianne never ceases to challenge and amaze me.

**What do you do outside of your working hours and service to the Bar?**

Outside of work I enjoy hiking, sailing, and woodworking. I have been sailing and racing sailboats since high school and enjoy boating with Dianne and our family. I have hiked 38 of New Hampshire's 4000-foot peaks and hope to complete the last 10 soon. I enjoy woodworking and making furniture, and I am currently teaching a woodworking class for Laconia Adult Education.

## Remembrance Service for Justice William F. Batchelder



*"There never was any heart truly great and generous, that was not also tender and compassionate."*

*~ Robert Frost*

On Thursday, September 26, at 1 p.m., there will be a memorial/remembrance service in honor of Judge Batchelder, who passed away in May. The service will be held at: The Barn on the Pemi, 341 Daniel Webster Highway in Plymouth. It is off Rte. 93 at Exit 24.

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“A Christmas Carol,” for the last three or four years, with her daughter, Paige, playing the role of Martha Cratchit. She has also worked with the Granite State Playwrights and is looking forward to next summer’s production of the comedy “The Great Atlantic and Pacific Shakespeare Company.”

“I actually find that my theater experience translates well in my professional life,” says Annis. “I present seminars on the topic of estate planning frequently at hospitals, senior centers and for professional groups and I am able to use my theatrical skills during those presentations.

“The ability to tell a story, project your voice — which is very helpful with a crowd of seniors — and present confidently before large groups of people have helped me immensely in my career.”

Andrew Pinard, founder of Concord’s Hatbox Theatre, has known Annis since she was his student back when he was teaching high school theater at Pembroke Academy.

“I’ve directed her in two shows where she played wildly different characters and her range is surprising,” he says. “She can do subtle really well and she can also do powerful really well. She played Christmas Past and was remarkably powerful, strong and icy cold, but she can also play a really loving, really compassionate Mrs. Cratchit.

“She and her family have been really great supporters of Hatbox,” he adds.

A New Hampshire native, Annis grew up in Pembroke and remembers wanting to be a lawyer since the age of 12 — despite having no family members with legal backgrounds.

“I can’t explain it,” she says. “There was never a question or a doubt that’s what I was going to do.”

While at Keene State College, Annis wrote letters to as many law firms as she could looking for summer work and ended up doing secretarial work at Beasley & Ferber in Concord all four summers of college.

“It did cement my feelings (about becoming a lawyer),” she says of the experience.

Law school at UNH School of Law followed, together with a clerkship at the New Hampshire Supreme Court, and upon graduation Annis joined the Concord firm of Ransmeier & Spellman, where she found herself drawn to estate law.

“It’s a really proactive area of the law that I like a lot,” she says. “We spend a lot of time preventing problems as opposed

to responding to problems ... When clients come to see me, they’re talking about creating a legacy. It’s a side of the law that’s much more positive.”

The hours are also more manageable, Annis says, “which is really important when you’re raising a family.” She and her husband, Josh, have two high-school-aged children.

In 2012, she and a colleague at the office, Jeff Zellers, decided to start their own firm.

“It was sort of a risky proposition at first,” Annis says, “but it has been incredibly successful and rewarding. I think estate planning really lends itself to a smaller firm because of the type of work that it is. We find clients are much more comfortable in a smaller setting.”

A former chair of the New Hampshire Bar Association’s Trust and Estate law Section, Annis is now on the board of Presidential Oaks, a nonprofit retirement community in Concord, and she also chairs the Planned Giving Committee at the South Congregational Church in Concord.

In addition, she works with the Concord Trust for the Enhancement of Public Education, which has awarded \$185,000 in grants since 1997 to Concord public school teachers and staff for innovative educational ideas.

“They really consider themselves sort

of a research and development arm of the Concord Public School System,” explains Annis, a Concord resident. “If ideas take off, the hope is they will take off throughout the school system.”

Zellers, her partner, who has now worked with Annis for some 20 years, says he appreciates her well-rounded approach to her profession and beyond.

Calling her “a very bright lawyer with high integrity and strong values,” he

says, “It has been rewarding to be able to practice law with her.”

“She understands the value of balance in life,” he adds. “She works hard and is also as dedicated to family as anyone I know.”

*Kathie Ragsdale is a freelance writer based in Chester and a frequent contributor to Bar News.*



“I actually find that my theater experience translates well in my professional life. I present seminars on the topic of estate planning frequently at hospitals, senior centers and for professional groups and I am able to use my theatrical skills during those presentations. The ability to tell a story, project your voice — which is very helpful with a crowd of seniors — and present confidently before large groups of people have helped me immensely in my career.”

— Tina Annis

*Annis (right) and her daughter, Paige (left), played Mrs. Cratchit and Martha Cratchit in a recent Hatbox Theatre production of “A Christmas Carol.” Photo: courtesy.*

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which means he, as a conservative, would apply precedent, and not personal opinion. Indeed, the constant hammering of the nominee on the *Roe v. Wade* case, one which probably never would come to the New Hampshire court, appeared to be an excuse to rev up those who are passionate on that issue.

I suspect what opponents really have in mind are the Claremont school-funding cases, and the possible overturning of them. It was ironic that just as MacDonald was being defeated, the court, with two Sununu appointees, unanimously upheld the defeat of Northern Pass, which was supported by the governor.

So were there legitimate concerns about this nomination? Certainly, nominating someone who had never been a judge directly to chief justice would be a first and worthy of consideration. Already, three of the sitting justices, Bassett, Hantz-Marconi and Donovan, went to the Supreme Court without lower-court experience. The governor might have appointed one of the sit-

ting justices as chief, with MacDonald as an associate justice.

Tradition affords that to the senior justice, and Justice Gary Hicks is well positioned to take the job.

Also, while Governor Sununu should be saluted for the quality of the appointment, in the words of the late Ray Burton, he should have “counted to three” before making the appointment, so he was sure such an important one would be confirmed, and would not embarrass the nominee.

When defeated, Governor Sununu claimed this was a unique event. In his lifetime, maybe. For those of us with longer memories, we could cite Louis Wyman, Steve Thayer and a number of other nominees to the high court who got tied up in politics. Interestingly, when it was all over, the only one with his reputation intact in all this, was Gordon MacDonald!

*Brad Cook, a shareholder in the Manchester law firm of Sheehan Phinney Bass & Green, heads its government relations and estate planning groups. He can be reached at [bcook@sheehan.com](mailto:bcook@sheehan.com).*

## Honigberg Unanimously Approved as Superior Court Judge

*Editor's Note: This article was originally published by InDepthNH on August 14 and is reprinted here with permission.*

By Paula Tracy, InDepthNH.org

Hillsborough County Superior Court has a new judge.

Martin Honigberg of Concord will leave his post as chairman of the state's Public Utilities Commission to serve on the bench, a job he said he has always dreamed of having.

Honigberg's nomination had been held up over politics for the past month. On [August 14], Republican Gov. Chris Sununu brought forward his nomination after withdrawing it following an unrelated political battle over his nomination of Attorney General Gordon MacDonald to serve as chief justice of the state Supreme Court. The council voted along political lines, 2-3 to reject the MacDonald nomination.

After that vote in Littleton, Sununu said he would withdraw Honigberg's nomination and would take a break from bringing more nominees through that “political” process, which he said was a new low for the council.

The vote for Honigberg, former counsel to former Democratic Gov. Jeanne Shaheen, was unanimous but came as a surprise to the councilors. Councilor Debora Pignatelli of Nashua thanked the governor for bringing forth the nomination forward

and said she hoped that they could work together in the future as “a team.”

“Wonderful,” Sununu said at the meeting, but after the meeting, Sununu said that does not mean he is now ready to bring a state Supreme Court nomination or any other judicial nomination forward.

He said it was not fair to leave Honigberg's nomination in limbo.

Two weeks ago, when the governor refused to bring forward Honigberg's nomination at Pignatelli's request, Michael Conlon, Hillsborough County Attorney, said that there is a practical problem with holding up nominations.

He said the system is facing a potential for backlog with not enough judges. Defendants have a time frame where they need to be tried or they go free. Conlon said it has a ripple effect throughout the justice system.

Pignatelli agreed. “The Superior Court is crying out for justices,” she said.

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VERDICT \$131 MILLION	<b>Wrongful Death</b> Victim killed by driver over-served at a restaurant/bar
VERDICT \$74.5 MILLION	<b>Medical Malpractice</b> Victim of birth injury
VERDICT \$45 MILLION	<b>Wrongful Death</b> Mother killed by drunk driver
VERDICT \$38.6 MILLION	<b>Premises Liability</b> Traumatic brain injury due to hotel balcony fall
VERDICT \$35.4 MILLION	<b>Medical Malpractice</b> Mother suffered stroke after giving birth
VERDICT \$30+ MILLION	<b>Medical Malpractice</b> Newborn suffered permanent injury
VERDICT \$29.5 MILLION	<b>Medical Malpractice</b> Failure to administer epinephrine
VERDICT \$12.25 MILLION	<b>Medical Malpractice</b> Unnecessary prostate surgery
SETTLEMENT \$12 MILLION	<b>General Liability</b> Man lost arm due to electrical burns

\*A list of additional record-setting verdicts and settlements for injury victims and their families may be found at: [tl4j.com](http://tl4j.com)

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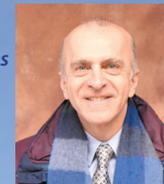
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Southern NH University



*Justin S. St. James*  
Law Office of Justin St. James



*Nicole A. Faille*  
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**Congratulations Class of 2019!**

The 2021 Leadership Academy class will be forming soon. Watch your Bar News for more information. Contact: Lisa Boisvert, Leadership Academy Coordinator at [lboisvert@nhbar.org](mailto:lboisvert@nhbar.org) or visit [nhbar.org/leadership-academy](http://nhbar.org/leadership-academy)

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<b>VERDICT</b> <b>\$8,500,00.00</b>	<b>Wrongful Death</b> Cyclist killed by tractor trailer
<b>SETTLEMENT</b> <b>\$4,250,000.00</b>	<b>Medical Malpractice</b> Delayed sarcoma diagnosis results in death
<b>SETTLEMENT</b> <b>\$3,750,000.00</b>	<b>Medical Malpractice</b> Mismanaged labor and delivery results in birth injury
<b>SETTLEMENT</b> <b>\$2,250,000.00</b>	<b>Medical Malpractice</b> Improper resuscitation at birth results in neurological injury
<b>VERDICT</b> <b>\$1,950,000.00</b>	<b>Medical Malpractice</b> Inadequate surgical monitoring results in blindness

\*The complete list of our record-setting verdicts and settlements can be viewed at: [www.lubinandmeyer.com](http://www.lubinandmeyer.com)

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## Who Receives IOLTA Funding?

The organizations we fund are proactive and responsive. They collaborate closely, using unique expertise to deliver legal services for eligible disadvantaged, disabled and vulnerable people in our state.

Listed below are grants awarded for both FY2019 and the current Fiscal Year (6/1/19-5/31/20). All activities in this report are derived from annual reports filed by IOLTA grantees. These reports in full can be found at [www.NHBarFoundation.org](http://www.NHBarFoundation.org).

Grants	FY 2019	FY 2020
Disability Rights Center	\$52,500	\$57,000
Legal Advice & Referral Center	\$39,000	\$42,000
NHBA Modest Means Legal Services	\$9,500	\$7,000
NH Legal Assistance	\$540,000	\$560,000
NH Bar Pro Bono Referral	\$198,000	\$217,000
Law School Loan Assistance Program	\$61,000	\$67,000
<b>Total</b>	<b>\$900,000</b>	<b>\$950,000</b>

Ensuring access to legal solutions not only improves outcomes for those who seek assistance, but also saves public dollars in the long term, by preventing problems like homelessness or health issues that can be extremely costly and harmful to individuals and the public. —Civil Legal Aid 101

Above and below are excerpts from the FY 2019 IOLTA Impact Report. The full report can be found at [www.nhbarfoundation.org](http://www.nhbarfoundation.org).

### Where's the Biggest Bang for Your (IOLTA) Buck?

**32** banks and credit unions accounted for **84%** of IOLTA revenue in FY 2019.



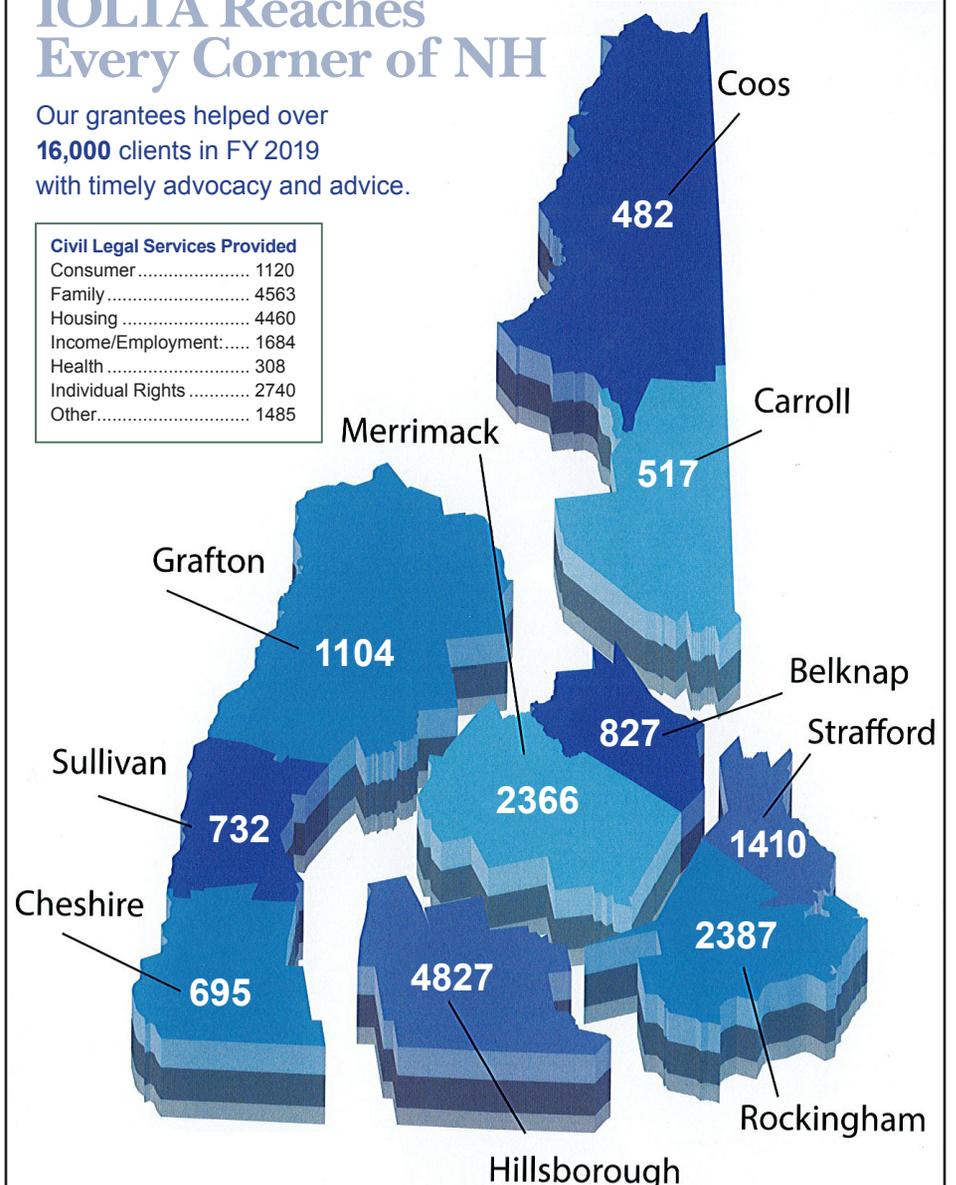
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For a complete list of participating financial institutions, please visit our website at [www.NHBarFoundation.org](http://www.NHBarFoundation.org)

### IOLTA Reaches Every Corner of NH

Our grantees helped over **16,000** clients in FY 2019 with timely advocacy and advice.

Civil Legal Services Provided	
Consumer	1120
Family	4563
Housing	4460
Income/Employment	1684
Health	308
Individual Rights	2740
Other	1485



Out of State/Unknown.....1015

## Community Notes

Attorney **Kate Morneau** was selected as the September/October Local Hero by Fiddlehead Magazine.

The New Hampshire Coalition Against Domestic and Sexual Violence announced that Strafford County Attorney **Tom Velardi** is one of the 2019 Honorees to be recognized at the nonprofit organization's upcoming Annual Celebration on October 10.

"Attorney Velardi has worked tirelessly

to improve NH's domestic violence, sexual assault, and human trafficking laws, and to ensure that victims are treated with dignity and respect in the criminal justice system," the organization said in the announcement.

The Coalition creates safe and just communities through advocacy, prevention and empowerment of anyone affected by sexual violence, domestic violence and stalking.

## Coming & Going



Steadman



Dunn



Weintraub



Wanner



Arnold



Bouchard

McLane Middleton announced the hiring of attorney **Graham W. Steadman**. He joined the firm as an associate in the Litigation Department where he represents clients in a wide variety of civil and criminal litigation matters. Immediately prior to joining McLane Middleton, Steadman was a law clerk with the New Hampshire Superior Court, primarily supporting judges in Rockingham County.

The Bishop of Manchester, announced the appointment of **Robert E. Dunn Jr.** to serve as the Diocese of Manchester's new director of public policy. He began work at the diocese on August 12. Prior to his employment at the diocese, attorney Dunn was the director of Legislative and Governmental Affairs for Devine Millimet for 19 years. Among the clients he has represented in Concord are the Roman Catholic Bishop of Manchester, New Hampshire Catholic Charities, and Catholic Medical Center.

**Jane-Holly Weintraub** announced the opening of her law office, Weintraub Law

Office, in Nashua.

Attorney **Scott Wanner**, with more than 20 years of experience in private practice and in-house counsel, has joined NormandHigham Law. He will focus in workers' compensation, injury law and business disputes.

Cleveland, Waters and Bass welcomed **Nickolas S. Arnold** as an associate to the firm, assisting in all practice areas. He graduated from the University of New Hampshire Franklin Pierce School of Law as a Daniel Webster Scholar.

Shaheen & Gordon welcomed **Michelle Bouchard** as an associate attorney with the Personal Injury/Workers' Compensation Practice Group. She will practice out of the firm's Dover office. Bouchard served most recently as a staff attorney in the Public Records Division for the Office of the Secretary of the Commonwealth of Massachusetts. Bouchard will be part of a Personal Injury/Workers' Compensation Group.

## Local, County & Specialty Bar News

The New Hampshire Women's Bar Association invites you to attend an afternoon conversation with respected mediator Charles P. Bauer, Esq. from Gallagher, Callahan & Gartrell, for an in-depth look at mediation practice.

The program will take place on Thursday, October 3 from 3 to 5 p.m. at Sulloway & Hollis in Concord.

Topics will include: Structuring a productive mediation--when, where, and how to mediate; Mediation submissions; Roles of the parties and their lawyers; Reaching a resolution--MOUs and Settlement Agreements; and The next generation of NH mediators.

To learn more, visit [www.nhwba.org](http://www.nhwba.org).

## Gilbert Joins Bar Association

The New Hampshire Bar Association recently announced the hiring of Michele Gilbert as the new member records coordinator in the business operations department.

Gilbert is a New England native, growing up primarily in New Hampshire. She received her Associate of Science degree in Criminal Justice in 2010.

She says one of her goals in life is to be active in the fight against human trafficking and slavery. Outside of work, she

also spends as much time as possible with her husband, preferably at the beach. Gilbert also likes to relax with a book, crochet project, driving, or talking to one of her three grown kids, all of whom live out-of-state.



## Nominations Sought for Hollman Equality Award

Established on the occasion of Judge Philip Hollman's retirement from the Superior Court bench in 2003, this award is designed to honor his efforts as a stalwart advocate for gender equality in the legal system.

A Hollman award recipient is someone who is dedicated to promoting respect and fair treatment toward all members of the judicial system, and is a leader, educator and role model on such issues. Last year's recipient was attorney Holly Haines.

A nominee may be a Bar member, a court or law firm employee, or an employee of a state department or agency that is part of the legal system. The award will be presented at the Gender Equality Breakfast during the 2019 Midyear Meeting, Friday, February 21, 2020.

Submit nominations with a brief description of the nominee's qualifications by November 11 to Lisa Boisvert at [lboisvert@nhbar.org](mailto:lboisvert@nhbar.org) or go to [www.nhbar.org/gec](http://www.nhbar.org/gec) to submit a nomination or to learn more.

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Jamie N. Hage was named "Lawyer of the Year" in Manchester for Intellectual Property Litigation and was also selected in the fields of Commercial Litigation, Corporate Law, Litigation and Patent Litigation

Kathleen Davidson was selected in the field of Employment Law – Individuals.

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**Nick Arnold** is a graduate of the University of Connecticut and received his J.D. from the University of New Hampshire School of Law. Nick also earned the distinction of Daniel Webster Scholar. Nick has joined Cleveland, Waters and Bass, P.A. as an associate and will be assisting in all practice areas.



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1/4 page vertical	\$400	4.92	6.75
1/2 page horizontal	\$595	10	6.75
Full page	\$1165	10	13.63

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#### Attorney Scott Wanner joins NormandHigham Law!

With over 20 years experience in private practice and in-house counsel, Scott brings his strong skills and energy to Manchester.

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Government Relations Practice  
Insurance Law

**Charles Bauer**  
Arbitration  
Mediation

**Peter Cline**  
Business Organizations  
Commercial Finance Law  
Commercial Transactions/UCC Law

**Samantha Elliott**  
Appellate Practice  
Commercial Litigation

**W. John Funk**  
Banking and Finance Law  
Financial Services Regulation Law

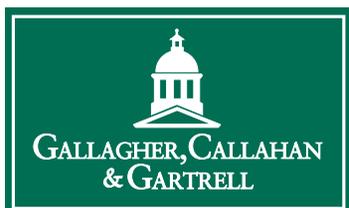
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# New Hampshire Bar Association PRO BONO HONOR ROLL

## July and August 2019 Attorney Honor Roll

The attorneys listed here each accepted one or more cases referred by the New Hampshire Pro Bono Referral Program during the month of July and August 2019. Gold stars indicate attorneys who accepted more than one Pro Bono case during this time period.

### BELKNAP

Allison Ambrose

### CARROLL

James Cowles

### CHESHIRE

Gary Apfel  
Pamela Little  
Kenneth Walton\*

### GRAFTON

Dawn DiManna\*  
Dennis Ducharme  
Robert Hunt  
James Laffan  
Theodore Lothstein  
Barbara Parker  
Stephen Samaha

James Shepard  
Thomas Trunzo

### HILLSBOROUGH (N)

Heidi Ames  
Christine Anderson  
Jacqueline Botchman\*  
Ann Butenhof  
Suzanne Decker  
Lauren Kilmister  
Melissa Kowalewski\*  
Marilyn Mahoney  
Caitlin McCurdy  
Robin Melone\*  
W.Scott O'Connell  
Dennis Thivierge\*

### HILLSBOROUGH (S)

Kathy Cellamare\*  
Paul DeCarolis  
Kelly Dowd  
Richard Follender  
Robin Melone\*  
Lyndsay Robinson\*  
Jane Schirch  
Brian Shaughnessy  
Robert Shepard  
Tanya Spony\*  
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Quinn Kelly sinks his put on the 9th hole.

## Parting Shots from the 26th Annual Quid Pro Bono Golf Tournament



Judge Arthur Bean (far left) and his team placed second in the 26th Annual Quid Pro Bono Golf Tournament on August 8 at Lake Sunapee Country Club — a victory made even more sweet considering Bean is the Bar's oldest member at 100-years-old and he has played in every tournament over the last three decades! Congratulations to Judge Bean and his team, below: (left to right) Rodney Stark, Mica Stark, Bean and Bob Mielcarz.

To see more photos, visit: [www.nhbar.org/26th-annual-golf-tournament-raises-thousands-to-support-the-pro-bono-referral-program/](http://www.nhbar.org/26th-annual-golf-tournament-raises-thousands-to-support-the-pro-bono-referral-program/)



## Pro Bono Divorce Camp Returns with Advanced Topics

Summer may be over but the Pro Bono Program's Divorce Camp will soon be in session, taking over from where Pro Bono's original divorce boot camp left off by featuring more advanced topics, including division of retirement accounts, drafting QDROs (qualified domestic relations orders) and complex parenting plans. "Divorce Camp: Beyond the Basics" is a two-part program slated for 3 p.m. to 7 p.m. on Monday, October 21 and Monday, October 28 at the NH Bar Center in Concord. Attendees must attend both sessions.

"This is a great intermediate-level class for practitioners who want to have a better understanding about the more involved issues in divorce and parenting cases, from division of assets to drafting a Decree of Divorce," commented attorney Catherine Shanellaris of Shanellaris and Schirch, Nashua, a member of the Pro Bono Board.

Shanellaris will be joined by Pro Bono Board member attorney Pamela Peterson, Devine, Millimet and attorney Jacqueline Botchman, McLane Middleton, both of Manchester, to take a deeper look at the law and provide an understanding as to how the law applies to preparing for temporary and final hearings and the preparation of necessary documents.

A graduate of a prior Divorce Camp,

Botchman credits the course with providing her with the skills and confidence needed to be client-ready. "This course is truly unique, as it combines lecture and experiential education," Botchman said. "At the end of the program, I not only felt prepared, but eager to test my new skills with a Pro Bono case."

"Working with my Pro Bono client was a rewarding experience and I am excited to see what the next course has to offer."

Space is limited to the first 25 registrants. Having an active Pro Bono family law case or accepting a new one is required to participate in the training series and attendees MUST attend both sessions.

The \$75 registration fee covers materials and light refreshments. CLE credit minutes for this live program, including ethics, are pending. Refunds only for cancellations three business days in advance of the first session.

**Register online:** [nhbar.inreachce.com](http://nhbar.inreachce.com). For more information, contact Ginny Martin at [gmartin@nhbar.org](mailto:gmartin@nhbar.org).

The Pro Bono Program is supported in part by the NH Bar Foundation's IOLTA Grants Program, the NH Bar Association and United Way Community Impact Grants.

# Lawyers on Ice!

## Fifth Annual NH Pro Bono Referral Program Benefit Hockey Game

### Where?

Sullivan Arena  
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### When?

Sunday, January 12, 2020  
3 p.m.

### Why?

Help support the  
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Teams Liberty & Justice will face off on Sunday, January 12, 2020, at 3 p.m., for the fifth annual Pro Bono Referral Program Benefit Hockey Game. BANNER SPONSORSHIPS still available at \$300 each! If you are interested in sponsoring or playing, please contact Rory Parnell ([rparnell@pmmlawyers.com](mailto:rparnell@pmmlawyers.com)) or the Pro Bono Program at 715-3203. Entry fee is \$150 for new players and \$100 for returning players.

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# History Does Not Repeat Itself, But It Rhymes

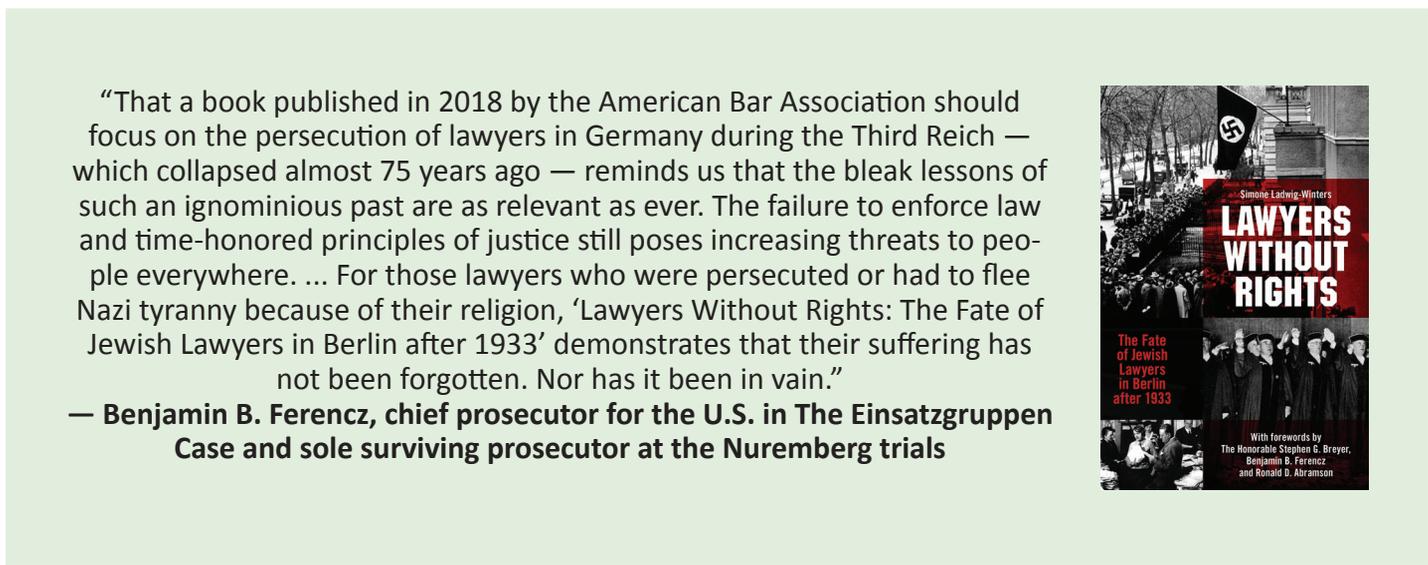
“Lawyers Without Rights: The Fate of Jewish lawyers in Berlin after 1933”  
By Simone Ladwig-Winters  
American Bar Association (2018)  
Hardcover; 475 pages

Reviewed by Eric Cook

*“History Does Not Repeat Itself,  
But It Rhymes.”  
— Attributed to Mark Twain...  
although there is some question.*

This is an imposing, sober, and somber book, *Colleagues*. The first 125 pages contain the narrative and the remaining pages are biographies of 1,807 Jewish attorneys. We are all familiar (or should be) with the broad outlines of the Holocaust. This book focuses on the fates of a relatively small group of Germans who, because of their profession, are reasonably well-documented. Because these men and women were attorneys, the Berlin Bar Association documented and tracked them as their status changed. The change in their status is horrifying as they go from respected, well-compensated professionals, to humiliated, poor, “others.”

In February 1933, in the wake of the Reichstag fire and the hysteria this fake crisis produced, Reich President von Hindenburg signed an emergency decree (their version of an Executive Order in 1933) suspending basic civil rights. He did so at the behest of Adolf Hitler.



“That a book published in 2018 by the American Bar Association should focus on the persecution of lawyers in Germany during the Third Reich — which collapsed almost 75 years ago — reminds us that the bleak lessons of such an ignominious past are as relevant as ever. The failure to enforce law and time-honored principles of justice still poses increasing threats to people everywhere. ... For those lawyers who were persecuted or had to flee Nazi tyranny because of their religion, ‘Lawyers Without Rights: The Fate of Jewish Lawyers in Berlin after 1933’ demonstrates that their suffering has not been forgotten. Nor has it been in vain.”  
— Benjamin B. Ferencz, chief prosecutor for the U.S. in The Einsatzgruppen Case and sole surviving prosecutor at the Nuremberg trials

No longer was a person’s personal freedom protected, nor was their freedom of speech; and, there was no freedom of the press — all the things that were then, and now, taken for granted.

With their growing political power, the National Socialists increased their harassment of Jewish citizens, including the attorneys. Mobs entered courthouses, forcing out those who were Jewish, or whom the mobs merely thought were Jewish.

On March 31, 1933, the Minister of Justice put out a decree that removed Jewish judges from their jobs and sharply cur-

tailed the number of Jewish attorneys who could practice.

The book continues to outline the affirmative steps taken by the German government and local bar associations to purge their ranks of Jewish professionals; leaving the once-prosperous professionals unable to earn a living and to spiral into poverty and worse.

No light read this one, dear Colleagues. But an important one to remind us, as we have to be reminded every few generations, that tyranny and prejudice are still with us. We know how this chapter of history ended. It is incumbent upon

us to remember it and remember how quickly and easily it happened. Otherwise we could easily find ourselves in the midst of a rhyming time.

*Eric Cook is an attorney in Newmarket, NH.*



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—Calvin Coolidge*

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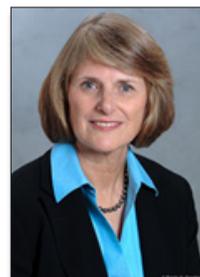
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# A “Remarkably Readable” Education in Corporate Rights

“We the Corporations: How American Businesses Won Their Civil Rights”  
By Professor Adam Winkler  
Liveright (2018)  
Hardcover; 470 Pages

Reviewed by Joseph Mattson

Most readers of this review will remember the United States Supreme Court’s 2010 opinion in *Citizens United*; many readers of this review will also recall the exchange between President Obama and Justice Alito at the 2010 State of the Union Address. The President charged that the Supreme Court had “reversed a century of law.” Justice Samuel Alito, attending the address as a spectator, shook his head and mouthed “not true.” Who was correct? This is but one of the many knotty questions UCLA Professor Adam Winkler addresses in his remarkably readable book, “We the Corporations.”

The task Professor Winkler undertook in writing “We the Corporations” was broad in scope, spanning some 500 years of Anglo-American legal history. Winkler begins his book with *Blackstone* and he ends with the strategic litigation and scholarly criticism that followed the modern day controversial opinions like *Hobby Lobby*, which addressed the ability of a closely held corporation to have religious beliefs.

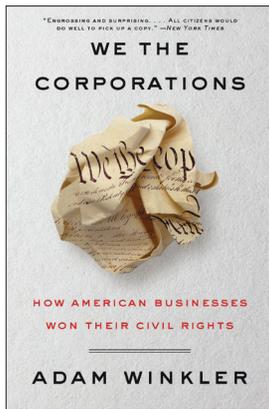
Despite its remarkable scope, Professor Winkler has produced a readable and informative account of the history of corporate rights before the Supreme Court.

However, the breadth of “We the Corporations” made the book into a survey course on corporate rights instead of the upper level seminar on the same topic some readers may want. For those who wish to really study the issue, “We the Corporations” is the beginning, not the end.

Although *Citizens United* increased the attention paid to the legal rights of corporations, Professor Winkler’s book makes clear that the *Citizens United* opinion was not, by any stretch, the first corporate rights case. In fact, the Supreme Court first addressed corporate personhood in 1809, 200 years before Justice Alito and President Obama’s 2010 exchange.

Unlike the first amendment generally, and election spending specifically, the first corporate rights cases were less passion-invoking; they dealt with diversity jurisdiction. Specifically, could a corporation sue and be sued in federal courts, pursuant to the constitution’s clause authorizing suits between citizens from different states? The Supreme Court answered in the affirmative — corporations possessed the ability to sue in a federal forum and likewise were subject to being sued in a federal forum.

This is the first of what I see as Professor Winkler’s two-part thesis: contrary to some popular criticism, constitutional liti-



gation concerning corporate rights is nothing new. Instead, cases like *Citizens United* and *Hobby Lobby* are branches on a tree that was planted shortly after the Constitution’s ratification. While passion-inflaming cases like *Citizens United* and *Hobby Lobby* are, to be fair, new applications of constitutional principles to the rights of corporations, the constitutional principles being applied are not, themselves, new.

Professor Winkler’s second argument undercuts another common refrain in popular media—corporations are (or aren’t, depending on whom you’re watching) people. The refrain that corporations aren’t people is typically invoked by those who oppose extension of constitutional rights to corporations. In Professor Winkler’s view, however, acknowledging that corporations aren’t people would not change too much in the Supreme Court’s jurisprudence, because most pro-corporation opinions that have been issued by the high court actually ignore corporate personhood.

For example, in his opinion upholding a corporation’s right to sue in federal court, Chief Justice Marshall ignored the corporate form and deemed it more important “to consider the character of the individuals who compose it.” Chief Justice Marshall’s decision to ignore the corporate form in

*Bank of United States v. Deveaux* was the first, but certainly not the only, decision in which not treating corporations themselves as “people” resulted in the expansion of constitutional rights to corporations. Populist-Justice Hugo Black’s approach to corporate rights was simpler: corporations are not people within the meaning of the constitution and, therefore, had no constitutional rights.

Before I read “We the Corporations,” I had read little about corporate rights beyond *Citizens United* and *Hobby Lobby*. For those readers who have a similar lack of knowledge about this area of constitutional law, I recommend this book; you will get an exhaustive history of the major cases in this field. But for those readers who have already read extensively in this area of the law, I suggest you look elsewhere.

*A member of Wadleigh, Starr & Peters, Joey Mattson’s practice focuses on defense of healthcare providers, healthcare institutions, and other professionals, including lawyers and accountants. Additionally, Mattson has defended premises and general liability matters, and has been involved in complex commercial litigation on behalf of plaintiffs and defendants.*



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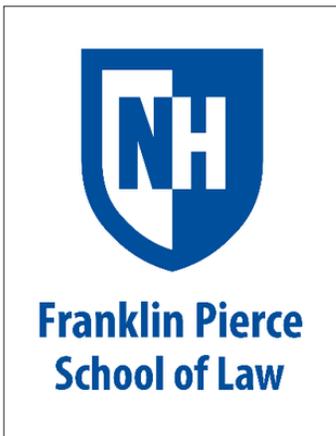
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## New School Year Brings Online Certificate in Blockchain & Cryptocurrency to UNH Law

The University of New Hampshire Franklin Pierce School of Law recently kicked off the fall term, bringing a new, first-of-its-kind online certificate in Blockchain, Cryptocurrency and Law program to the school's offerings, according to a press release from the law school. The certificate program is aimed at professionals from business, technology, finance, banking, and law.



according to the release.

A single course badge can be earned in one semester, while the two-semester professional certificate can be earned in less than one year.

"Students will learn about the intersection of the law and emerging technologies," adjunct professor and international blockchain expert Samson Williams said in the release. "They'll discover what the future

of banking, finance, compliance, technology, emerging technology, and intellectual property looks like."

UNH Law notes that the online certificate allows students to understand both the importance and impact of cryptocurrencies on the financial, political, social, and economic sectors of both developed and emerging societies, how to use tokens as a self-funding mechanism for projects within the crypto economy, and, more broadly, the economic activity surrounding the issuance of tokens, the intellectual property implications of blockchain technology, and various governmental use cases to address and solve for a host of public sector problems.

The cost of the two-semester Full Certificate cost is \$3,995. A single-semester badge is \$2,495.

"By blockchain ecosystem standards, our all-star line-up of faculty and guest experts is a tremendous list," said Tonya M. Evans, associate dean of academic affairs at UNH Franklin Pierce School of Law, who developed and now serves as coordinator of the program. "We have teamed up with world-renowned industry experts to deliver a world-class educational immersion experience in a convenient and flexible 100 percent online format."

Experts include Jimmy Song (Bitcoin Educator, Developer and Entrepreneur), Robby Greenfield (Global Social Impact Lead Consensus), Jacob Kosteki (Massive Adoption), Ed Moy (former US Mint Chair), Sandra Ro (Global Business Blockchain), David Burt (Bermudan Premier), Caitlin Long (Wyoming Blockchain Project), Meltem Demirors (CoinShares), and Hester Peirce (SEC Commissioner),

## Wellness Resources of the Month



### BOOK PICK:

**"The Noonday Demon: An Atlas of Depression"**  
by Andrew Solomon, Simon & Schuster (2001)

*"[T]he book for a generation, elegantly written, meticulously researched, empathetic, and enlightening." (Time) The author suffers from depression and wrote this book to help others understand what it is truly like to suffer from it.*

### PODCAST PICK:

**The Hilarious World of Depression by American Public Media**

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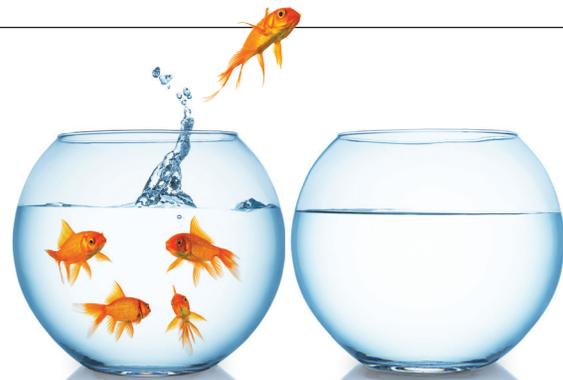
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all the federal statutory privacy regimes, FERPA comes the closest to imposing robust and comprehensive limitations on adults' sharing of children's personal digital data.

However, FERPA suffers from some of its own serious limitations. First, it was written for the brick-and-mortar world, where an apple on the teacher's desk meant a fruit, not a phone. FERPA did not anticipate today's world of ubiquitous digital tech and digital data collection. "FERPA's regulatory mechanisms rely on the assumption that it is not easy to share student [education] records without individual or institutional action," writes privacy scholar Elana Zeide; however, today "intention and knowledge are no longer required to disclose information."<sup>33</sup>

There are just too many devices and services collecting too much data for too many reasons for schools to have an easy time getting a handle on what data is being collected, by whom, and why — threshold questions for determining whether the data being collected is PII in an "education record" subject to FERPA protection. Students' data can be collected through digital devices that schools honestly don't understand to be creating "education records" with PII that are protected by FERPA — even if they technically are. These devices may include "wearable fitness devices for physical education classes"<sup>34</sup> or digital surveillance cameras.

And some data collection in schools may fall outside of or at least not clearly within FERPA's control. For instance, is metadata (data about data) an education

record? In these and many other ways, key privacy problems that arise when students' data is being shared with digital tech and service providers are not fully addressed by FERPA's requirements.<sup>35</sup>

Second, FERPA is built on a parental consent framework. Under the letter of the law, parents typically are expected to have the final say in judging the complex potential trade-offs between privacy risks and educational benefits.<sup>36</sup> This is unrealistic, even fantastical. It's difficult enough for parents to try to read and understand privacy policies and terms of use for digital tech in their homes. It's essentially impossible when parents lack easy or any access to information about the digital tech being used in their children's schools, which is often the situation parents find themselves in.<sup>37</sup>

Third, FERPA fails to rely completely on a parental consent framework. The exceptions that exist for schools to share PII without parental consent or even for parents to have the right to opt out of sharing mean that there often is a fair amount of PII sharing taking place over which parents have limited to no control.<sup>38</sup> The most frequently used exception is the "legitimate school official" exception, through which schools can share PII with a third party—as long as that party is doing something that the school otherwise would do itself, is under the control of the school, and doesn't reshare the data.<sup>39</sup>

When schools (or well-intentioned individuals within schools, like teachers looking for new resources) rely on click-wrap agreements with providers instead of negotiated contracts, these requirements are unlikely to be met — meaning that the schools are in violation of FERPA if they

have not gotten parental consent to share the PII.<sup>40</sup> More important than the technical legal violation is the actual danger: without a negotiated contract in place that is actively monitored by the school, how do schools and their staff know what these third parties are doing with students' data? Are the third parties mining it to make predictions about children for marketing or other purposes? Are they selling it to yet other third parties who will do so? Sometimes the answer to these questions is yes, which could allow PII to get into the hands of data brokers and beyond.<sup>41</sup>

FERPA has an often forgotten cousin: the Protection of Pupil Rights Act (PPRA), another federal law about student privacy that has its origins in allowing "parent access to federally funded experimental instructional materials."<sup>42</sup> PPRA was created before the digital age and amended during it.<sup>43</sup> Its amendment, although awkwardly drafted, does address today's challenge of dealing with private information about students that digitally departs from schools and winds up in the hands of third parties that may use it for noneducational purposes.

Under PPRA, public K–12 schools "must offer parents an opportunity to opt-out from having their child participate in any activity involving the collection, disclosure or use of students' personal information for the purpose of marketing or selling the information '(or otherwise providing that information to others for that purpose).'"<sup>44</sup> PPRA defines "personal information" as "individually identifiable information, including a student or parent's name, home address, telephone number or a Social Security Number."<sup>45</sup>

So before a school engages with an

ed tech provider that collects personal information, the school should determine whether the provider will use this information for marketing or related purposes and whether the provider will pass it along to data brokers or others to use for such purposes. Parents then must be given the ability to opt out. However, the right to give consent prior to any action is stronger than this opt-out right after notification of pending action. Essentially, PPRA is creating another layer of (required, if not actual) notification that may be difficult for parents to understand — if they even see the email or find the note underneath the week-old banana in their child's backpack.

Although parents are far from perfect gatekeepers with respect to their children's privacy in the digital era, the law assigns the lion's share of those guard-dog duties to them. Performing those duties grows ever more complicated when there are too many animals trying to mind the farm, which heightens the risk that no animal is really on top of the situation. Ask George Orwell: animals aren't supposed to mind the farm themselves anyway.<sup>46</sup>

*Editor's Note: All citation information is available online in the open access version of "Sharenthood," found at: <https://sharenthood.mitpress.mit.edu/>.*

*Leah Plunkett is associate professor of legal skills, and director of academic success at the University of New Hampshire School of Law. She is faculty associate at the Berkman Klein Center for Internet and Society at Harvard University.*



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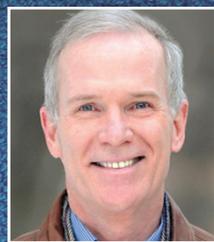
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**TechConnect** from page 1

However, it is important that members first understand what this program is *not* — do not laugh, as I have already been asked these questions:

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# Tricia Bell to be Recognized with 2019 Paralegal Professionalism Award

The New Hampshire Bar Association's 2019 Paralegal Professionalism Award will be given to Trish Bell at the Paralegal Association of New Hampshire's annual luncheon on September 20 in Concord.



Bell, a graduate of Green Mountain College, has been a paralegal with attorney James M. Callahan for more than 20 years.

"Trish has consistently displayed professionalism, integrity and incredible competence," Callahan wrote in his nomination letter. "We have a sophisticated commercial transactional practice. We represent banks and businesses. Our clients are very comfortable dealing directly with Trish and don't hesitate to reach out to her in the first instance ... She's been instrumental in helping manage IOLTA accounts, obtain fee agreements, and otherwise manage the attorney-client relationship professionally and in a considered manner."

Callahan also noted that Bell is involved extensively in the local community, including volunteer work with substance abuse prevention program at the local high school. She is currently a member of the Board of Trustees of the Contoocook Hous-

ing Trust, an organization that provides low income persons with housing, and is also active with the local board of realtors in her role as an affiliate.

Bell provides mentoring to other paralegals in the Callahan office in Peterborough, he noted, and she always strives to improve the firm's work and processes.

"Trish has promoted and embodied professionalism as a paralegal," Callahan said.

Since the late 1970s, PANH has been actively involved in promoting the paralegal profession from paralegal education to networking, and setting professional standards in the State of New Hampshire.

PANH has become a state-wide non-profit professional organization, comprised of over 100 paralegals, law firms and other organizations dedicated to the development of the paralegal profession.

# Bar News Editor Named Media Law School Fellow by University of South Carolina

New Hampshire Bar News Editor Anna Berry was selected as a 2019 Media Law School Fellow by the University of South Carolina. Berry is one of 33 Fellows from a range of print, broadcast and multimedia news outlets across 14 states who will visit the Columbia campus in September.



The 2019 Media Law School, hosted by the University of South Carolina School of Law and College of Information and Communications, and sponsored by the American Board of Trial Advocates, will provide journalists with the opportunity to develop a better understanding of the key stages of civil and criminal proceedings and to learn

more about basic law in order to report accurately on many important issues in the news.

Instructors for the two-day program, starting September 19, include USC School of Law Dean Robert M. Wilcox, Senior U.S. District Court Judge Joseph F. Anderson, Doug Heminghaus of the Federal Bureau of Investigation, and law professors Derek Black and Susan Kuo.

The Media Law School program is overseen by Dr. Carmen Maye, who holds a Ph.D. from the University of South Carolina and a J.D. from the University of South Carolina School of Law and who teaches courses in media law and advertising.

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Macintosh said. “The budget’s in flux [and] there are 50 [vetoed] bills which probably won’t be reviewed by the legislature until the end of September at the earliest.”

Macintosh is the Bar Association’s legislative representative at the statehouse in Concord. Of the 37 pieces of legislation — plus one constitutional amendment — that the Bar’s Board of Governors took a position on this year, the Board recommended support of two bills. The committee opposed three bills, all of which did not make it out of the House.

To fulfill its mission as enumerated in Article I of the Bar’s constitution (excerpted on page 23), the Bar Association maintains a legislation program. The NHBA follows the guidelines of two decisions that authorize, with some limitations, lobbying by unified bar associations.

As a unified bar, the NH Bar Association maintains a legislative program that is more likely to provide background information to broaden legislators’ understanding of law than up-or-down advocacy.

Each year, when appointing members to the NHBA Legislation Committee, the Bar president strives to include members representing all major practice areas. When the legislative session opens, the Legislation Committee must, in a very short time, sift through a large number of introduced bills to determine their relevance to the legal community and recommend to the NHBA Board of Governors whether to take an informational or advocacy role.

Both the Legislation Committee and

Bill#	Title	Position	Status
HB 0491	Relative to questioning and detaining suspects.	NO POSITION	House - Signed by Governor Sununu 07/10/2019; Chapter 171; Eff: 09/08/2019
HB 0566	Relative to the release of recordings from security cameras in civil proceedings.	INFORMATION	House - Inexpedient to Legislate
HB 0574	Relative to the emancipation of minors.	INFORMATION	House - Signed by Governor Sununu 06/21/2019; Chapter 110; Eff: 01/01/2020
HB 0583	Relative to the procedures governing guardians ad litem and relative to parental rights and responsibilities.	INFO - NEGATIVE	House - Inexpedient to Legislate:
HB 0584	Relative to the procedures governing possessory actions against tenants.	INFO - NEGATIVE	House - Inexpedient to Legislate
HB 0585	Relative to the procedure for mortgage foreclosure.	INFO - NEGATIVE	House - Inexpedient to Legislate
HB 0599	Relative to liens for labor and materials on property owned by an irrevocable trust.	INFO - NEGATIVE	House - Subcommittee Work Session: 09/17/2019
HB 0601	Establishing an assurance deed and procedures therefor.	INFO - NEGATIVE	House - Subcommittee Work Session: 09/17/2019
HB 0619	Relative to transactions exempt from consumer protection regulations.	INFO - NEGATIVE	House - Inexpedient to Legislate
SB 0034	Relative to the applicability of certain DWI prohibitions.	NO POSITION	House - Retained in Committee
SB 0036	Creating a cause of action for certain constitutional deprivations of right.	NO POSITION	House - Lay on Table (Rep. Walz): Motion Adopted
SB 0147	Relative to adoption of the Uniform Fiduciary Access to Digital Assets Act.	SUPPORT	Senate - Signed by the Governor on 06/25/2019; Chapter 0140; Effective 06/25/2019
SB 0296	Relative to live medical testimony in courts.	INFORMATION	Senate - Signed by the Governor on 07/19/2019; Chapter 288 Effective 01/01/2020
SB 0297	Extending the deadline for arraignments.	INFORMATION	Senate - Signed by the Governor on 06/25/2019; Chapter 0142; Effective 01/01/2020
SB 0298	Relative to summoning out-of-state witnesses in criminal cases.	SUPPORT	Senate - Signed by the Governor on 06/05/2019; Chapter 0065; Effective 01/01/2020
SB 0311	Relative to annulment of criminal records.	NO POSITION	House - Subcommittee Work Session: 06/11/2019

the Board of Governors evaluate the appropriateness of advocacy or opposition to a bill according to the guidelines of two court decisions that address issues regarding the unified bar and legislation.

A 1990 U.S. Supreme Court decision, *Keller v. State Bar of California*, found a legitimate public policy purpose in a state requiring attorneys to belong to a bar association and then set forth general restrictions on political or legislative activi-

ties. The NH Supreme Court, in the 1986 *Chapman* decision, set specific limits on the NH Bar’s legislative activities.

*Chapman* limits the Bar’s advocacy on legislation to issues relating to the efficient administration of the judicial system, the composition and operation of the courts, and the “education, ethics, competence, integrity and regulation, as a body, of the legal profession.”

The decision notes that “where substantial unanimity does not exist or is not known to exist within the bar as a whole, particularly with regard to issues affecting members’ economic self-interest, the Board [of Governors] shall exercise caution.”

The Legislation Committee reviews a list of bills screened by the Bar’s legislative representative, focusing on the bills of general interest to the legal community or courts. Usually, they winnow down nearly 1,000 introduced bills to about 80. On a small number of bills, the Committee recommends either opposition or support under the Chapman guidelines.

For a larger number of bills, the Committee may decide to recommend that the Association take an “information” position. On these bills, the Committee suggests that advocacy is not suitable but believes that the Bar Association can help lawmakers by noting potential unforeseen

or unintended consequences. The Legislation Committee’s recommendations are then forwarded to the NHBA Board of Governors which has final say on the recommendations. Once the legislative positions have been voted on by the Board of Governors, the Association’s representative is authorized to convey those positions to the Legislature.

In a large Legislature with many members unfamiliar with the complexities of particular areas of law, the Bar Association’s legislative representative often is consulted by committee leaders and members to determine a bill’s potential impact if it were to become law.

The two bills supported by the Bar Association were signed by the governor in June. SB 298, relative to summoning out-of-state witnesses in criminal cases, will be effective as of January 1, 2020, while SB 147, relative to the adoption of the Uniform Fiduciary Access to Digital Assets Act, was effective as of June 25.

The three bills opposed by the Bar Association were: HB 314, relative to the submission of evidence prior to hearings in divorce cases; HB 246, relative to penalties for corrupt practices; and, HB 217, relative to bonds for public employees and repealing the board of claims.

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## NHBA Legislation Watch 2019, Continued

Bill#	Title	Position	Status
CACR 0004	Relating to right to govern. Providing that the people of the state may enact local laws that protect health, safety, and welfare.	NO POSITION	House - Inexpedient to Legislate
HB 0153	Relative to circumstances under which police officer disciplinary records shall be public documents.	INFO - POSITIVE	Senate - Referred to Committee
HB 0154	Prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.	INFO - NEGATIVE	Senate - Inexpedient to Legislate, BILL KILLED
HB 0163	Relative to the definition of child abuse.	NO POSITION	House - Inexpedient to Legislate
HB 0173	Relative to requirements for residential tenants evicted for nonpayment of rent.	NHBA BOG CMTE REVIEW	House - Inexpedient to Legislate
HB 0208	Relative to the justified use of deadly force upon another person.	NO POSITION	House - Inexpedient to Legislate
HB 0210	Relative to civil actions against public officials in cities or towns.	INFO - NEGATIVE	House - Lay on Table (Rep. Baldasaro): Motion Failed Voice Vote
HB 0217	Relative to bonds for public employees and repealing the board of claims.	OPPOSE	House - Inexpedient to Legislate
HB 0235	Relative to foreclosure proceedings and pre-foreclosure notices.	NO POSITION	House - Inexpedient to Legislate
HB 0246	Relative to penalties for corrupt practices.	OPPOSE	House - Inexpedient to Legislate
HB 0256	Establishing reciprocity for notaries in abutting states.	INFORMATION	House - Signed by Governor Sununu 06/05/2019; Chapter 47; Eff: 08/04/2019
HB 0270	Relative to commencement of foreclosure by civil action.	INFORMATION	Senate - Inexpedient to Legislate, BILL KILLED
HB 0305	Relative to the duties of the registers of probate.	INFO - NEGATIVE	House - Subcommittee Work Session: 06/25/2019
HB 0309	Relative to procedures for foreclosure of a mortgage.	INFO - NEGATIVE	Senate - Inexpedient to Legislate, BILL KILLED
HB 0314	Relative to the submission of evidence prior to hearings in divorce cases.	OPPOSE	House - Lay on Table (Rep. Long): Motion Adopted Voice Vote
HB 0351	Relative to exemptions from property attachments.	NO POSITION	House - Signed by Governor Sununu 07/10/2019; Chapter 166; Eff: 09/08/2019
HB 0353	Establishing a committee to study whether non-attorney legal professionals could be licensed to engage in the limited practice of law in the family division of the circuit court while under the supervision of a licensed attorney.	INFORMATION	House - Signed by Governor Sununu 06/18/2019; Chapter 83; Eff: 06/18/2019
HB 0377	Relative to the best interests of the child under the child protection act.	NO POSITION	House - Subcommittee Work Session: 10/09/2019 10 a.m. Legislative Office Building 206
HB 0382	Relative to private practice by the Carroll county attorney.	NO POSITION	House - Law Without Signature 06/08/2019; Chapter 71; 08/07/2019
HB 0396	Relative to delay or denial of records under the right-to-know law.	INFO - POSITIVE	House - Signed by Governor Sununu 06/21/2019; Chapter 107; Eff: 01/01/2020
HB 0421	Relative to the requirements for summary judgment in a civil action.	INFORMATION	House - Inexpedient to Legislate
HB 0451	Relative to term and reimbursement alimony.	INFORMATION	House - Lay on Table (Rep. Long): Motion Adopted

### Article 1 of the Constitution of the NH Bar Association, reads:

The purposes of this Association are to improve the administration of justice; to foster and maintain high standards of conduct, integrity, competence and public service on the part of those engaged in the practice of law; to safeguard the proper professional interests of the members of the Bar; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, and the relations of the Bar to the public; to carry on a continuing program of legal research and education; and to encourage cordial relations among members of the Bar; all without regard to race, national origin, religion, creed, gender or sexual orientation, and to the end that the public responsibility of the legal profession may be more effectively discharged. The Association shall confine its activities before the General Court to those matters which are related directly to the administration of justice; the composition and operation of the courts; the practice of law and the legal profession.



### Learn More

All of the bills reviewed by the Legislation Committee, their recommendations and the Board of Governors' decisions, are available on Legislation Watch, an online bill-tracker accessible from the New Hampshire Bar Association's website on the legislation program page: [www.nhbar.org/helpful-links-for-nh-attorneys/legislation-program/](http://www.nhbar.org/helpful-links-for-nh-attorneys/legislation-program/).

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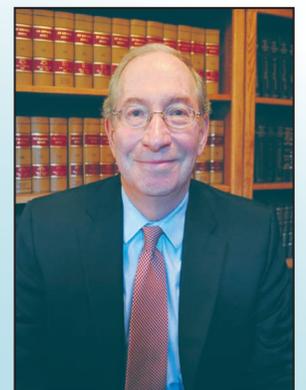
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# What Are “Waters of the United States”?

By Laura Hartz and  
Nathaniel Morse, PhD

In 1972, the federal government passed the Clean Water Act with the goals of eliminating water pollution and restoring the nation’s waters to “fishable and swimmable.” Initially, this meant reducing the discharge of industrial chemicals such as those that made the Cuyahoga River flammable, slowing the flow of raw sewage from municipal wastewater treatment systems, and controlling run-off from agricultural operations, such as animal feedlots. Arguably the most contested aspect of the Clean Water Act is its jurisdiction: the Clean Water Act expanded the scope of federal authority over the nation’s lakes, rivers, and streams beyond those waterbodies used in interstate commerce, or “navigable waters.” Instead, the Clean Water Act authorized the federal government to exercise jurisdiction over “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). Since then, stakeholders have debated the definition of “waters of the United States,” often referred to as WOTUS.

The mighty Mississippi is certainly a WOTUS and a swimming pool in your backyard is not, but is a stream that only runs when it rains or a marsh a short distance from a river? These questions drive lawsuits and rulemaking about the Environmental Protection Agency’s (EPA) and the United States Army Corps of Engineers’ (USACE) authority to require per-



mits under the Clean Water Act.

Two Supreme Court cases shape the implementation of WOTUS. In 2001, the Supreme Court held that WOTUS did not include intrastate waters used as habitat for migratory birds. *Solid Waste Agency of Northern Cook County v. USACE*, 531 U.S. 159, 171-72 (2001). In *SWANCC*, the USACE denied a permit to fill an abandoned sand and gravel pit with solid waste because portions of the pit filled with water and provided habitat for more than 121 species of migratory birds. The Supreme Court held that an intrastate, isolated, seasonal pond, even if it supported

migratory birds — which could trigger the Commerce Clause of the United States Constitution by flying between states — is not a WOTUS. *Id.* The Court explained that migratory birds were not a “significant nexus” between isolated waters and navigable waters, removing the isolated waters from WOTUS and federal jurisdiction. *Id.* at 168.

Then in 2006, the Supreme Court muddied the waters by issuing a plurality in result but a tie in rationale: Justices Scalia, Alito, Thomas, and Roberts limited WOTUS; Justice Kennedy concurred in the judgment but not the rationale;

and Justices Stevens, Souter, Ginsburg, and Breyer dissented. *Rapanos v. United States*, 547 U.S. 715 (2006). The plurality held that WOTUS was only “relatively permanent, standing or flowing bodies of water” with “continuous surface connection[s]” to traditional waters of the United States.” *Id.* at 739, 743. Justice Kennedy agreed with the result but reasoned that the plurality had misapplied the “significant nexus” standard. *Id.* at 759. The dissenting Justices argued that the plurality disregarded the significance of the Clean Water Act and that “tributaries of traditionally navigable waters” are necessarily WOTUS. *Id.* at 787. The opaque direction and wide divergence among the Justices precipitated confusion in the lower courts and agencies charged with issuing permits.

In an attempt to resolve that confusion, the Obama administration established a science-based rule that defines what is, and what is not, a WOTUS, the Clean Water Rule. The first draft was published in 2014 and received more than one million public comments. The final rule was released in 2015. Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg. 37,053 (June 29, 2015). The rule expanded the *Rapanos* definition and created six categories of waters that were jurisdictional by rule and two categories that could be jurisdictional, based on a case-by-case analysis.

WATERS continued on page 29

## Solving the Plastic Pollution Crisis: Policy Approaches

By Kelsey E. Sullivan

Today it is common knowledge that millions of tons of plastic flow into the ocean each year. Microplastics have been found in tap water, seafood, and even the air that we breathe. The United Nations Environment Programme (UNEP) reports that 127 nations have passed legislation to tackle the plastic crisis. In the U.S., five states have passed anti-plastic legislation this year, including statewide bans in Maine and Vermont. Plastic bag bans, however, are not the only means of addressing the problem. Other popular ideas include using bioplastics or imposing “Extended Producer Responsibility” (EPR) policies on plastic manufacturers. This article briefly examines the debate surrounding each of these policies.

### Solution 1: Bans on Single-Use Plastic Bags

Despite the surging popularity of plastic bag bans, several organizations and news sources — including NPR, National Geographic, the BBC, and the World Resources Institute — have recently run articles calling into question the effectiveness of such policies. These articles cite many of the same studies, which have found that bans on single-use bags cause consumers to buy more garbage bags, which are made of a thicker plastic. The result is that the reduction in plastic waste can be offset by as much as 30 percent. Consumers will also use more paper bags, which some studies have found to be more environmentally damaging than single-use plastic bags in terms of energy

“In terms of policy, legislators could promote bioplastics by establishing grant programs for research and development, or by offering certain tax and fiscal incentives for bioplastic products.”

and resource use.

The production of reusable cloth bags can be even more energy- and resource-intensive. One controversial study published by the Danish Environmental Protection Agency, for example, found that an organic cotton bag would have to be used 20,000 times before it would provide the same environmental performance of re-using an average plastic grocery bag. Importantly, however, many of these studies do not take into account the impact of plastic litter. Policy-makers should therefore not be quick to conclude that plastic bag bans are necessarily bad for the environment. Instead, these contentious reports highlight the need for further study on the impacts of plastic bag bans, so that any negative environmental consequences can be more fully understood, and ultimately minimized.

### Solution 2: Bioplastics

Carrying groceries is one thing, but for some tasks — such as lining trash bins or picking up animal waste — reusable bags do not seem like a feasible solution. Bioplastic products may be able to fill the gap. Bioplastics are made from biological material instead of petroleum, and therefore

have the potential to reduce petroleum use. Some bioplastics manufacturers also claim that their products are compostable or biodegradable (although the veracity of these claims is hotly debated).

The actual environmental benefits of bioplastics remain uncertain. Bioplastics produced with food crops like corn or rice pose environmental challenges such as intensive water use, fertilizer pollution and land diverted from food production. Furthermore, contrary to popular belief, bioplastics do not offer a clear advantage when it comes to disposal. Bioplastics will break down in the intense heat of an industrial composter, but they do not degrade significantly faster in the natural environment. As litter, they pose the same dangers to wildlife as regular plastic, and will similarly break into microplastic debris.

Still, bioplastics may have an important role to play in solving the plastic crisis. Industrial composting is a young industry, and with further development, it could help to make the disposal of bioplastics truly advantageous over the disposal of regular plastic. There are also emerging products that use biological materials other than food crops — such as fungi, algae, and sea-

weed — that could avoid the problems of conventional bioplastics. In terms of policy, legislators could promote bioplastics by establishing grant programs for research and development, or by offering certain tax and fiscal incentives for bioplastic products.

### Solution 3: Extended Producer Responsibility (EPR)

Neither of the two solutions above, however, address the underlying problem that many plastic products are simply not designed to be easily recycled. Extended Producer Responsibility or “EPR” policies could help to change that. EPR is defined by the Organisation for Economic Co-operation and Development (OECD) as “a policy approach in which a producer’s responsibility for a product is extended to the post-consumer stage of a product’s life cycle.” EPR policies focus on shifting the responsibility of recycling — physically and/or economically — upstream to producers and away from municipalities and consumers. Proponents tout EPR as a tool to move away from a linear, one-way flow of materials and resources and toward a “circular economy,” in which materials are designed to be continuously returned to manufacturers and recycled into other products.

The challenge of implementing EPR is its complexity, and the risk that manufacturers will flee from a state that imposes EPR regulations. Widespread implementation would likely require action at the federal level, which may soon be a possibility. On

CRISIS continued on page 30

## Electric Vehicle Supply Equipment Deployment: Considerations for Least-Cost Planning

By Brian Buckley

Since the early days of our electric distribution system, utilities have been able to rely on persistent load growth, a growing customer-base, and economies of scale to keep rates from rising as quickly as they otherwise would. The underlying logic here is that if utilities can spread the costs of the system over more users and kWhs (kilowatt hours), then those users might see a downward pressure on rates, all else being equal. More recently, as a result of efforts at the state and federal level to encourage investments in energy efficiency, demand management, and distributed generation, those same utilities are facing declining loads on a system-wide basis. These declining loads, when combined with localized pockets of growth and the continued need to maintain and replace existing system infrastructure, place an upward pressure on electric distribution rates as the costs of our system are spread over fewer kWhs.

Newly dispatchable end uses, including electric vehicles, have the potential to reverse this trend if deployed prudently. As suggested by Eversource's Director of Strategic Development, Charlotte Ancel, on the August 7, 2019 edition of NHPR's "The Exchange," New Hampshire's largest utility expects that "electric vehicles are going to explode in terms of mainstream adoption in the next 5-10 years... [and] will be re-growing some of the [declining] electric sales." As regulators, utilities, advocates, and rate-



payers work together to ensure these loads are deployed in a way that maximizes their value to the distribution system, stakeholders will need to navigate a number of critical issues, including those relating to charging station ownership, peak load implications, and decoupling.

### Charging Station Ownership

Throughout the country, states are debating whether distribution utilities should be able to own distributed energy resources, including electric vehicle supply equipment (EVSE). Private market actors argue that

EVSE is not part of the distribution utility's natural "poles and wires" monopoly and that allowing utilities to recover investments in EVSE would be both economically inefficient and displace an opportunity for market actors who, unlike utilities, do not recover costs of an investment from captive ratepayers.

In some states, utilities have successfully argued that the chicken-or-the-egg dilemma necessitates regulated investments in EVSE, particularly in underserved markets like the multi-family housing sector. Still in other states, utilities and private ac-

tors have settled on a "make ready" model, where utilities invest in all of the infrastructure leading to the charger, but leave that investment in the charger itself to the private market.

This strategy, of course, raises questions relating to whether such investments are used and useful for the purposes of rate recovery in cases where the economics of the charger alone do not incentivize private actors to make use of the utility's "make ready" investment. Our industry will continue to grapple with questions relating to charging station ownership and management as we strive to deliver energy services such as electric vehicle charging at the least-cost to ratepayers.

### Peak Load Implications

To maximize the net value of EVSE investments, it is important to consider the locational and temporal implications of EVSE deployment for the purposes of distribution system planning. When targeting deployment of high capacity EVSE, least-cost distribution system planning would require considering a number of factors, including where the equipment will experience the most usage, and which circuits of the electric grid can handle usage increases during peak hours without requiring a capacity related upgrade.

Least-cost distribution system planning would also suggest incentivizing customer

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## Environmental Law Updates: Water & Air

By Amy Manzelli & Kelsey Peterson

Along with the changes to the New Hampshire wetlands rules, changes to federal energy policy, and renewal of the federal MS4 permit for New Hampshire, among others, three major changes to law or policy have emerged in the last year relevant to the application of federal or state environmental law in New Hampshire.

### Federal Clean Water Act: Proposed Change to Definition of “Waters of the United States”

Defining the term “Waters of the United States” is critical to interpreting the reach of federal regulation under the federal Clean Water Act. Since 2001, the U.S. Supreme Court has issued two major opinions on interpretation of “Waters of the United States.” In *Solid Waste Agency of Northern Cook County (SWANCC) v. United States*, et al., 531 U.S. 159 (2001), the Court held that Section 404 (related to discharge of fill materials) of the Clean Water Act did not apply to “isolated waters” because the term “navigable” showed Congressional intent to limit federal regulatory authority to “waters that were or have been navigable in act or which could reasonably be so made.” In *Rapanos et ux. et al. v. United States*, 547 U.S. 715 (2006), the Court issued two opinions: Justice Kennedy’s opinion required a “significant nexus” between a wetland and a navigable river or the sea for federal ju-



isdiction; Justice Scalia’s opinion more narrowly limited jurisdiction to “navigable waters” and non-navigable waters that are “relatively permanent, standing or flowing bodies of water.”

In 2017, President Trump issued Executive Order 13778, ordering the EPA and the Army Corps of Engineers to review their rulemakings to adopt Justice Scalia’s opinion in *Rapanos*, departing from then-current EPA interpretation more aligned with Justice Kennedy’s opinion. The EPA announced a proposed rule in December 2018 that would “interpret the term ‘waters of

the United States’ to encompass: traditional navigable waters, including the territorial seas; tributaries that contribute perennial or intermittent flow to such waters; certain ditches; certain lakes and ponds; impoundments of otherwise jurisdictional waters; and wetlands adjacent to other jurisdictional waters.” See <https://www.federalregister.gov/d/2019-00791/p-60>. This definition more closely conforms with the narrower Scalia interpretation than the Kennedy “significant nexus” interpretation.

The Federal Register also makes it clear that, under the proposed definition, “wa-

ters of the United States” will not include groundwater, intermittent streams, irrigated fields, artificial lakes and ponds, stormwater control features, waste treatment systems, and certain ditches. This removes from federal jurisdiction many water features that may not connect on the surface to navigable waters but still connect hydrologically to navigable waters.

As of August 20, 2019, the final rule has not been promulgated. Limiting the reach of the federal regulatory agencies has been a priority of the Trump Administration and the proposed rule will accomplish that purpose by limiting the ability for the federal government to regulate depositing “fill material” under Section 404 of the Clean Water Act.

### Federal Clean Air Act: Change to Policy and Interpretation of Regulation of Major Sources of Air Pollutants

On June 25, 2019, the EPA proposed a rule that would allow a “major source” of hazardous air pollutants to be reclassified as an “area source” after reducing its emissions to fall below the definitional limits of a “major source.” Since 1995, the EPA has followed a “once in, always in” interpretation of the Clean Air Act section 112(a), keeping any initially “major source” subject to stricter regulations, even if it took steps that reduced its emissions to less than the

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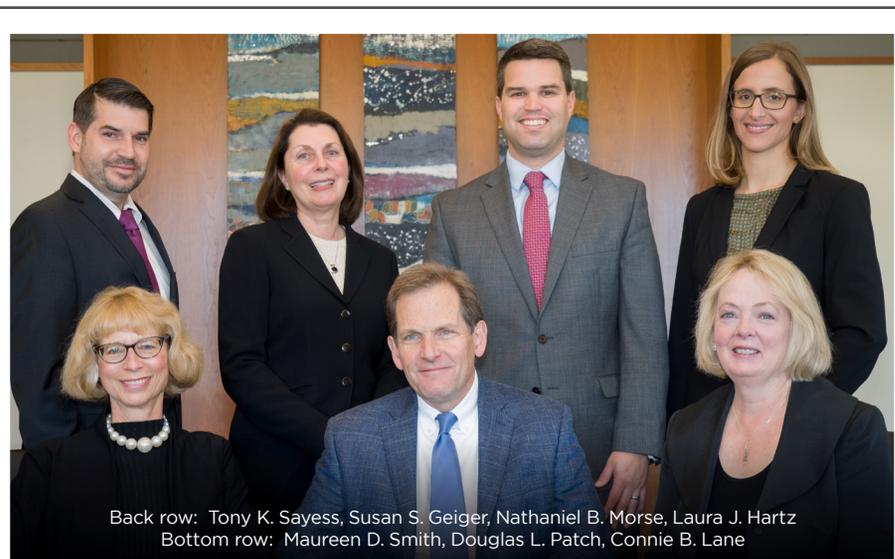
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# Contaminants of Emerging Concern and Environmental Due Diligence Issues

By Michael Quinn and Adam Dumville

Practitioners performing environmental due diligence have grown accustomed to the now routine use of Phase I Environmental Site Assessments (ESA). However, the adoption of new regulatory standards raises the possibility that standard ASTM-compliant ESAs may be insufficient to identify potential environmental risks. Specifically, so called contaminants of emerging concern (CECs), which include chemicals found in firefighting foam, water proof fabrics, pharmaceuticals, personal care goods and many more products have only very recently become regulated. However, CECs are not currently classified as “hazardous” under federal law, and therefore, are not regulated under the variety of environmental statutes and accordingly, are not assessed by standard Phase I ESAs.

## The PFAS Issue

The class of CECs currently receiving the most attention are poly- and perfluoroalkyl substances (PFAS), man-made chemicals that include PFOA, PFOS, and GenX. The Environmental Protection Agency (EPA) explains that PFASs can be found in: food packaged in PFAS-containing materials, processed with equipment that used PFAS, or grown in soil or water containing PFAS compounds; household products, such as water and stain repellent fabrics, non-



stick products, polishes, waxes, paints, cleaning products; certain fire-fighting foams; and at facilities that engaged in chrome plating, electronics manufacturing or oil recovery (<https://www.epa.gov/pfas/basic-information-pfas>).

## The Regulatory Landscape

As of September 30, 2019, New Hampshire will enforce Maximum Contaminant Limits (MCL) for ambient groundwater quality criteria for four PFAS substances at levels ranging from 11 ppt to 18 ppt. *See* N.H. Code. Ad-

min. R. Env-Or 603.03(b)–(c). *See also* Env-Dw 705.06 (establishing MCLs and Maximum Contaminant Level Goals (MCLGs) for PFAS in drinking water); Env-Wq 402, *et seq.* (modifying groundwater discharge permit criteria for PFAS). The Department has an entire webpage (<https://www4.des.state.nh.us/nh-pfas-investigation/>) devoted to its efforts with regard to PFAS which includes a sampling map that identifies those properties where PFAS testing has been done. These rules will affect municipalities as well as private entities. New

Hampshire regulators estimate communities will need to spend \$190 million on landfills, wastewater treatment plants and drinking water supplies to comply with the PFAS criteria.

A growing number of other states, including Massachusetts, Maine, New York, Vermont, Michigan, Pennsylvania, Connecticut, Wisconsin, California, and Alaska are in varying stages of regulating and/or assessing historical releases of PFAS. On the national level, EPA has recommended that people not drink water containing a total concentration of PFOS and PFOA above 0.07 ug/L (70 parts per trillion (ppt)) and is working on establishing a MCLs for certain PFAS chemicals. What is important about this, for purposes of transactional, environmental due diligence, is that inconsistent standards may be adopted for PFAS nationwide in the very near future.

The potential costs associated with the study and remediation of PFAS could well be enormous. New Jersey issued PFAS-focused orders (<https://www.nj.gov/dep/docs/statewide-pfas-directive-20190325.pdf>) to “Responsible Parties” and filed multiple lawsuits in 2019 against manufacturers and sellers of products that included PFAS. These administrative and judicial actions seek relief ranging from past costs incurred by the government, to costs of future invest-

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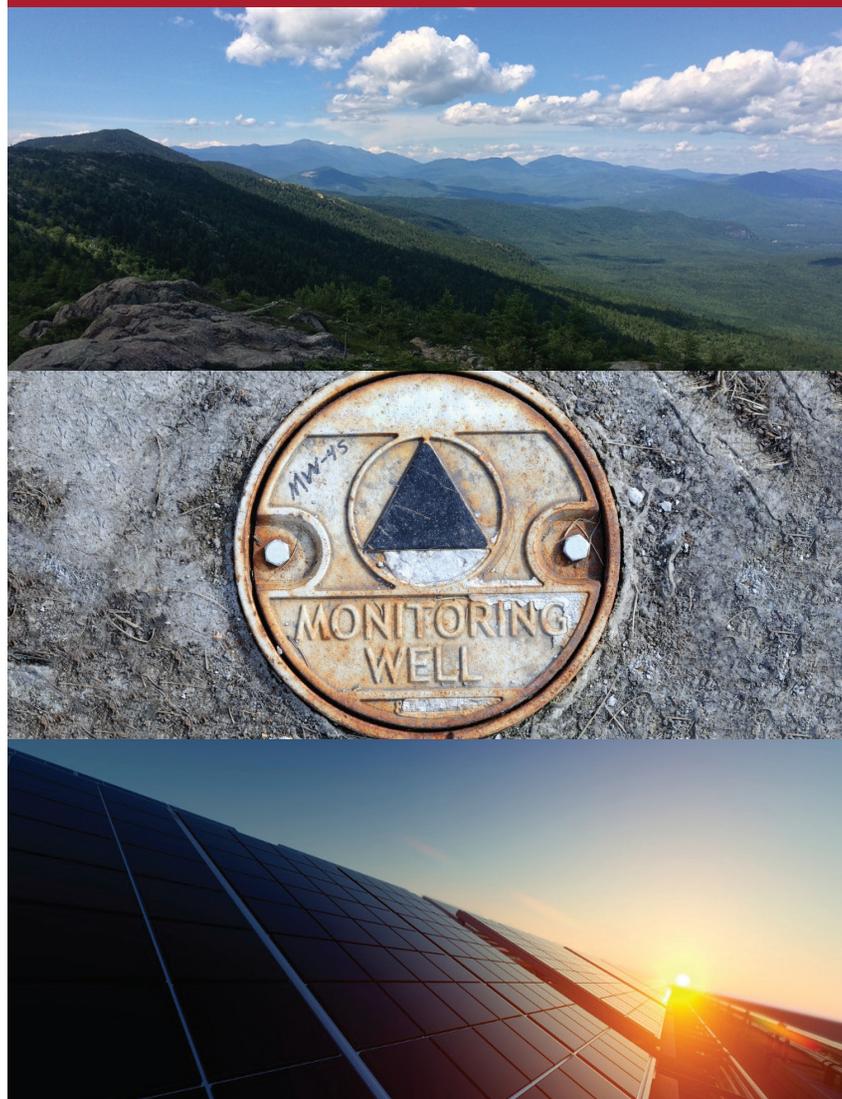
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## Setback For 5G Deployment

By Will Dodge

The D.C. Circuit recently dealt a setback to the Federal Communications Commission (FCC) effort to accelerate small cell technology deployment nationwide. *United Keetoowah Band of Cherokee Indians in Oklahoma v. FCC*, \_\_\_ F.3d \_\_\_, 2019 WL 375673 (D.D.C., Aug. 9, 2019). The Court held that the FCC, in promulgating regulations to exempt “small cell” sites from environmental and cultural resource review, had acted arbitrarily and capriciously, failing to “adequately address possible harms of deregulation and benefits of environmental and historical review.” The decision, though likely to be appealed, has implications for wireless in New Hampshire and beyond. The Court’s decision provides a thorough exploration of two important “cooperative federalism” laws affecting wireless — the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act of 1966 (NHPA).

### Background on Small Cell Technology

For years, the public has been hearing about the coming of cutting-edge 5G wireless tech. 5G speeds for wireless access to the internet are expected to range between 10x and 20x that of current 4G LTE offered by most carriers. Once unleashed, this new wave promises to connect an unlimited number of wireless devices — vehicles, home appliances, wearable devices, and more — to the internet, making us even more interconnected in our professional and personal lives.

The key to nationwide 5G involves mass deployment of small cell facilities — essentially “microsites” where small antennas, operating equipment, and utility connections are mounted on utility poles, streetlights, and building walls. The conventional “macro site” used in NH today provides broad coverage and/or network capacity to a defined geographic area from towers and other tall structures using three-sided arrays of between six and twelve ±8’ tall antennas per carrier. By contrast, small cells amplify the signal strengths from macrosites using multiple 1’ to 2’ tall antennas distributed throughout a high-traffic area, allowing for a “densification” of the network so that more users — people and machines — can use devices simul-



taneously without experiencing slowness. Even before 5G technology is rolled out, small cells are being introduced in cities, and at ski areas, public parks, and other areas with high wireless traffic usage.

### The FCC’s Second Order

In its so-called “Second Order,” the FCC attempted to remove for 5G deployment certain legal barriers that it concluded had slowed deployment of previous generations of wireless technology. *In the Matter of Accelerating wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (Second Order), 2018 WL 1559856 (F.C.C. March 30, 2018). Recognizing the promise of 5G for the consumer wireless experience (e.g., “our country finds itself at the brink of another technological revolution”), and noting the hundred-thousands of sites needed to satisfy the “seemingly insatiable consumer demand for increased coverage and capacity for data services,” the FCC created a new regulation to exempt small cells from being considered a federal “undertaking” under NHPA, or a “major Federal action” under NEPA. 47 C.F.R. 1.1312(e)(2) (2018).

The exemption effectively meant that new small cells would not be reviewed by state or tribal historical preservation officers, nor would consultants need to assess impacts to wetlands, floodplains, protected species, and other resources before new microsites are installed. To qualify for the

exemption, each facility had to consist of antennas of no greater than three cubic feet, and operating equipment no greater than 28 cubic feet, mounted on (i) poles of 50 feet or less in height, (ii) new structures no more than 10 percent taller than adjacent structures, or (iii) an extension on an existing structure of no more than 10 percent of the structure’s existing height.

Central to the FCC’s rationale was its conviction that “the world of small wireless facility deployment is materially different from the deployment of macrocells in terms of the size of the facility, the importance of densification, and the lower likelihood of impact on surrounding areas.” Rather than producing a detailed factual record, the FCC relied upon written comments from carriers, industry groups, consumer advocates, and municipal/state/tribal officials. Commissioner Jessica Rosenworcel dissented, noting the potential “policy and legal frailties” associated with an exemption-based approach to NHPA / NEPA.

Shortly after issuance, several Native American tribal organizations, together with the Natural Resources Defense Council, challenged the Second Order.

### D.C. Circuit Decision

The D.C. Circuit began with a thorough review of NHPA and NEPA, the import of those acts for wireless facilities, and the importance of nationwide programmatic agreements along with the electronic Tower Construction Notification System in ensuring that state and tribal governments review and comment on new installations. For tribes, this includes facilities located in areas of the country outside of reservations where they may have longstanding land claims. (For instance, the Rhode Island-based Narragansett Tribe frequently reviews new sites in New Hampshire.)

The Court then recited a legal standard of review that seems obvious in hindsight, but may have been ignored in creating the Second Order: i.e., that no deference is owed to the FCC in interpreting NHPA or NEPA. Those acts impose obligations on the FCC directly and indirectly in assessing impacts on licensees building new facilities. Moreover, the FCC is charged with following rules and guidelines established by the Advisory Council on Historic Preservation (for NHPA) and the Council on Environmental Quality (for NEPA) for administering the public airwaves. The

Councils must then coordinate with state and tribal agencies on how federal actions are reviewed (i.e., cooperative federalism).

Having reviewed the analytical framework, the Court proceeded to excoriate the FCC for the exemption, raising the following arguments:

- The scale of small-cell deployment nationwide — with potentially 800,000 new sites by 2026 — made it “impossible on this record to credit the claim that ... [deployment] would leave little to no environmental footprint.”
- The Second Order — in including new structures requiring new ground disturbances, as well as extensions on tall structures — went far beyond established processes, affording none of the limited protections existing in NHPA programmatic agreements for review of macrosite installations on or in historically-significant buildings.
- The FCC failed to thoughtfully respond to comments that “spiritual and cultural traditions of Tribal Nations frequently involve the uninterrupted view of a particular landscape, mountain range, or other view shed,” all of which small cells hold the potential to disrupt.
- The FCC dismissed the benefits of cultural and environmental reviews as “generalized” or *de minimis* as a percentage of overall deployments, without accounting for instances where a site is moved or cancelled as a result of adverse comments, and without recognizing the alleged cultural and environmental impacts in those few instances where site locations are successfully challenged.

The Court held that “the FCC’s conclusion that small cells are inherently unlikely to trigger concerns is arbitrary and capricious,” and remanded the case for reconsideration of its approach to deregulation.

### Effect on New Hampshire Wireless Deployment

New Hampshire has not seen widespread small cell deployment as of the date of this article; however, it is poised to see these facilities before long. Following passage of SB101 in 2013, state law exempts from local land use permitting the installation of wireless facilities on “utility poles,” a term which covers structures owned and operated by utilities, municipalities, and co-ops designed specifically for and used to carry lines, cables or wires for telephone, cable TV, electrical lines, or lighting. RSA 12-K:2,XXVI; RSA 12-K:10,IV. Infrastructure providers must follow the Public Utilities Commission rules for pole attachments, and may need to engage with municipalities and/or NHDOT for access to public rights-of-way. For now, the D.C. Circuit’s decision on the Second Order also requires providers to conduct NEPA/NHPA reviews of small cells by adhering to the current programmatic agreements for tower- and collocation-based macrosites as closely as possible.

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**Waters** from page 24

Opponents immediately challenged it. The day before the rule was to take effect, a North Dakota federal court issued an injunction of the rule to 13 states, reasoning that the rule would unlawfully deprive them of sovereignty over intrastate waters. *North Dakota v. EPA*, 127 F.Supp. 1047 (D.N.D. 2015). The Sixth Circuit Court of Appeals issued a nationwide stay of the rule shortly thereafter. *See in re EPA*, 803 F.3d 804, 807 (6th Cir. 2015); but see *National Ass'n of Mfrs. v. U.S. Dep't of Defense*, 138 S.Ct. 617 (2018) (holding that these challenges needed to be decided in federal district courts).

In 2017, President Trump issued an Executive Order directing the EPA to scrap the Obama-era rule and to apply Justice Scalia's plurality opinion in *Rapanos*. Exec. Order No. 13,778; 82 Fed. Reg. 12,497 (Mar. 3, 2017). Executive Order 13,778 rejected the science-based and significant nexus concepts, restricting WOTUS to "relatively permanent, standing or flowing bodies of water" with "a continuous surface connection" with a WOTUS. Then the Trump administration's USACE and EPA issued another rule, delaying the implementation of the Clean Water Rule to 2020 Delay Rule. Definition of "Waters of the United States"—Addition of an Applicability Date to 2015 Clean Water Rule, 83 Fed. Reg. 5,200 (Feb. 6, 2018) [hereinafter the Delay Rule].

Environmentalists argued that the

Trump administration's rulemaking procedures for the Delay Rule failed to comply with the Administrative Procedure Act, and that, therefore, the Clean Water Rule should still be in effect. A South Carolina federal court recently agreed. *South Carolina Coastal Conservation League v. Pruitt*, 318 F.Supp.3d 959 (D.S.C. 2018). This holding undid President Trump's limitation of WOTUS and reinstated the Obama-era Clean Water Rule in 26 states, including New Hampshire.

So, what is a "water of the United States?" It depends. The rules defining a WOTUS in New Hampshire are not the same as the rules defining a WOTUS in New Mexico. The injunctions—whether of the Obama-era Clean Water Rule or the Trump-era WOTUS delay—created a patchwork of definitions. As the administrative process and the various lawsuits continue simultaneously, these definitions will only continue to shift. In 1972, the hardest part about the Clean Water Act was deciding how to clean up polluted waters. Today, the hardest part is choosing which waters to protect.

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**Planning** from page 25

behavior to encourage charging during off-peak times, particularly for those who might otherwise charge when they arrive home at 6 or 7 p.m., the time at which the New England Grid and many distribution circuits see their daily peaks. A key to unlocking latent ratepayer value associated with electric vehicles and other dispatchable loads will be to use the existing capacity on the electrical grid, but to use it more fully by using price signals or load control to discourage charging during system peaks and encourage charging during times of lower system demand.

**Decoupling**

Decoupling is a form of revenue regulation which attempts to alleviate the throughput incentive inherent in traditional cost of service ratemaking. Under traditional cost of service ratemaking, a utility's revenue requirement is set during a rate case, but between rate cases prices are held constant and the actual revenues collected fluctuate according to sales variations associated with weather, macro-economic trends, and other factors. Decoupling differs from the traditional model in that between rate cases, prices are adjusted periodically based on variations in sales to ensure that the utility collects its target revenues, no more, no less. Regulators and utilities throughout New England have embraced decoupling to encourage achievement of certain public policy goals — such as increased investments in

energy efficiency — by providing revenue assurance to utilities that would otherwise face declining revenues due to declining sales, resulting in a diminished likelihood of collecting the target revenue requirement between rate cases.

In a world where we may soon see a proliferation of newly electrified end uses like electric vehicles, the flip side of this bargain is also true. A decoupled electric utility experiencing load growth—and associated revenue growth—would still only be able to collect its pre-determined revenue requirement, no more, no less, and would return any revenues above that requirement to its ratepayers.

However, a non-decoupled electric utility collecting surplus revenues due to load growth is under no obligation to return those revenues to ratepayers in between rate cases, and can instead either invest them in system upkeep or remit them to shareholders.

Unlocking the latent ratepayer value associated with electric vehicles and other newly electrified end uses will require careful attention to the regulatory framework and any associated incentive structure within which electric utilities operate, including the impacts of decoupling, peak load, and charging station ownership.

*Brian Buckley is a Staff Attorney with the New Hampshire Public Utilities Commission. Any views expressed herein are his own, and do not reflect the views of the Public Utilities Commission.*

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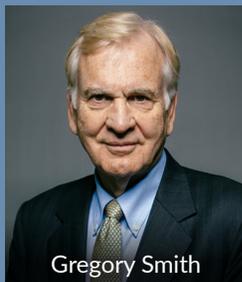
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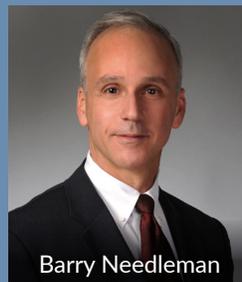
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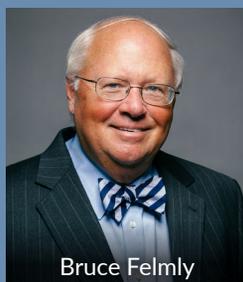
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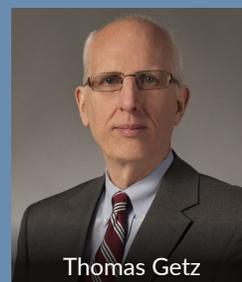
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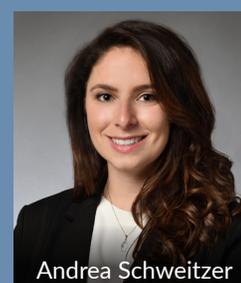
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major source thresholds.

The Clean Air Act defines “major source” as a source that emits, or has the potential to emit, 10 tons per year of any single hazardous air pollutant, or 25 tons per year or more of a combination of the classified hazardous air pollutants. Sources below these thresholds are considered “area sources” and are subject to different, less stringent regulations than major sources.

In a January 2018 guidance memo, the EPA stated that it now believed that it had no authority to prevent a major source from becoming an area source when it reduced emissions outside the major source thresholds. EPA estimates that “nearly half” of the estimated 7,920 major sources could be reclassified as area sources.

Public comment on this rule closes on September 24, 2019, 60 days from publication of the proposed rule on July 26, 2019 in the Federal Register at 84 FR 36304.

**State Environmental Law:  
Adoption of Drinking Water  
Standards for PFAS**

On July 18, 2019, the New Hampshire Joint Legislative Committee on Administrative Rules approved regulations for four per- and polyfluoroalkyl substances (PFAS). These new rules make New Hampshire the first state in the country to require local water systems to routinely test and treat for the four listed substances, collectively known as PFAS. The rules are scheduled to become effective on October 1, 2019.

The new rules establish Maximum Contaminant Levels (MCLs) (drinking wa-

ter standards) and Ambient Groundwater Quality Standards (AGQSs) for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorononanoic acid (PFNA) and perfluorohexanesulfonic acid (PFHxS). Under the rules, the MCLs and ACQs for the listed substances are 12 ppt for PFOA, 15 ppt for PFOS, 18 ppt for PFHxS, and 11 ppt for PFNA.

The rules apply to non-transient public water systems — water systems serving the same 25 people for more than 6 months per year. The rules do not apply to private well owners, although they are encouraged to test and treat their water. In 2016, NHDES adopted EPA’s health advisory for PFOA and PFOS as an AGQS at 70 parts per trillion (ppt) individually or combined. See <https://www.des.nh.gov/media/pr/2019/20190628-pfas-standards.htm>. The new rules’ levels are similar to non-binding health advisory limits in other states like Vermont but are the first binding standards at these levels.

Beginning in October 2019, local water systems will have to sample quarterly for PFAS in their water sent for consumption or discharge. Failure to meet the standards will trigger a process for systems to plan to come into compliance. The compliance period may be flexible, given the system’s ability to treat, funding for additional treatment, and other factors.

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tigations and remediation, and payment of Natural Resource Damages. In addition, New Jersey has threatened to seek treble damages. Using the threat of treble damages in an environmental enforcement will look very familiar to those who previously dealt with similar EPA “106 Orders” at Superfund sites.

**The Phase 1 ESA**

Environmental due diligence in accordance with established commercial and legal standards is well-recognized as a critical element of almost every transaction involving real property. An ESA incorporating “all appropriate inquires” by a qualified environmental professional, should be performed to determine whether there are conditions indicating past or current releases of petroleum or hazardous substances. An ESA is conducted according to ASTM standards, and must include, for example:

- A review of historical records;
- A review of government environmental records;
- Interviews with current and past property occupants; and
- A physical site inspection

At the conclusion of a properly conducted ESA, one may qualify for certain liability protections as an innocent landowner or a Bona Fide Perspective Purchaser. See EPA Common Elements Guidance (<https://www.epa.gov/enforcement/common-elements-guidance>). These legal protections may insulate a new owner from liability for pre-existing contamination if certain precautions were taken. The performance of an ESA is an effective means of identifying potential environmental problems — except, perhaps, CECs.

Parties engaged in transactions that involve the acquisition of real estate — and that take the prudent step of obtaining a pre-closing ESA — will want to be aware of the potential presence of CECs, including PFAS, that the standard Phase I ESA may not address.

**What Should the Practitioner Do?**

Unless/until the ASTM standard is revised to include PFAS, and perhaps other CECs, there are steps that a prudent practitioner should take during the ESA process.

First, become knowledgeable about

CECs generally. This is not easy. There are innumerable substances that may “emerge” in the future. Simply understanding the risk, however, is important.

Second, be informed about substances that are under consideration for regulation. EPA publishes technical fact sheets (<https://www.epa.gov/fedfac/emerging-contaminants-and-federal-facility-contaminants-concern>), that provide a summary of information on CECs that are being considered for new, or expanded regulation.

Third, retain an experienced Environmental Professional to conduct the ESA and evaluate the potential CEC issues before the ESA begins. Practitioners should pay attention to the section of the ESA relating to the historic use of the site as well as adjacent property. Was a fire reported at the site or nearby, with the potential that firefighting foams containing PFASs were used? Were there ever fire-resistant aviation hydraulic fluids, photography and film products present at the site, or was PFAS used in a manufacturing process, to name a few? If the site history shows the potential presence of CECs, further analysis is warranted.

Lastly, practitioners should be aware that a Phase I ESA still might not adequately address CECs under state law. There will likely be more variability among CEC standards than for more traditional compounds. It is essential to determine in addition to federal environmental law, which State laws apply.

As new compounds are developed each year, and the universe of CECs expands, risks identified in environmental due diligence inquiries will develop apace. Look for this to be an evolving issue that must be constantly reevaluated.

*Michael J. Quinn is a director practicing in the Administrative Law and Litigation Departments of McLane Middleton and serves as managing director of the Portsmouth office. He can be reached at 603-334-6925 or by email at [mike.quinn@mclane.com](mailto:mike.quinn@mclane.com). Adam M. Dumville is an associate in the Administrative Law Department and can be reached at 603-230-4414 or via email at [adam.dumville@mclane.com](mailto:adam.dumville@mclane.com).*

**Crisis** from page 24

July 18, 2019, U.S. Senator Tom Udall and U.S. Representative Alan Lowenthal announced that they plan to introduce comprehensive legislation this fall to tackle the plastic crisis, with a proposal that includes “a mix” of plastic bans, fees, and EPR policies. The Congressmen welcome comments on the proposed legislation, which can be submitted to [plastic@tomudall.senate.gov](mailto:plastic@tomudall.senate.gov) and [plastic@mail.house.gov](mailto:plastic@mail.house.gov).

**Conclusion**

Plastic bag bans, bioplastics, and EPR are all imperfect solutions to the plastic pollution crisis. However, a combination

of these policies — or “a mix,” as Senator Udall and Representative Lowenthal call for — might be the right answer. Through focused study and experimentation, policymakers can develop a more full understanding of how these policies and technologies play out in the real world and, eventually, how they might be deployed to complement each other in a comprehensive waste management system that optimizes efficiencies, minimizes environmental impact, and keeps our oceans healthy and free of plastic waste.

*Kelsey Sullivan is an Associate at Rath, Young & Pignatelli focusing on renewable energy and corporate law.*



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# Court Adds “Primary Purpose” to Amended Misconduct Rule

By Anna Berry

The two-year debate on a proposed amendment to the state’s professional conduct rules for attorneys came to a close recently with a decision by the New Hampshire Supreme Court to adopt an version of the amendment drafted by the Attorney Discipline Office instead of one proposed by the Advisory Committee on Rules.

And, although Ethics Committee members who put together the original amendment questioned the “primary purpose” requirement added by the Court, they praised the Court’s “first step in the right direction.”

One year ago this month, the Advisory Committee on Rules voted 12-3 to recommend that the NH Supreme Court amend Rule of Professional Conduct 8.4, which would make it professional misconduct for a lawyer to: “(g) engage in conduct while acting as a lawyer in any context that the lawyer knew or reasonably should have known is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status, or gender identity. Statutory or regulatory exemptions, based upon the number of personnel in a law firm, shall not relieve a lawyer of the requirement to comply with this Rule.”

However, members of the Advisory Committee, including former Chief Justice Robert Lynn, were also adamant that the Supreme Court should hold a rare public hearing on the proposal before making a decision.

The final version of the amendment adopted by the Supreme Court in July makes it professional misconduct for a lawyer to “(g) take any action, while acting as a lawyer in any context, if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, harass or burden another person, including conduct motivated by animus against the other person based upon the other person’s race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status or gender identity.”

Both versions closed by noting that the paragraph “shall not limit the ability of the lawyer to accept, decline, or withdraw from representation consistent with other Rules” and not infringe on the lawyer’s constitutional rights.

The Supreme Court also added the

## Advisory Committee on Rules-Approved Amendment

“It is professional misconduct for a lawyer to ... (g) engage in conduct while acting as a lawyer in any context that the lawyer knew or reasonably should have known is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status, or gender identity. Statutory or regulatory exemptions, based upon the number of personnel in a law firm, shall not relieve a lawyer of the requirement to comply with this Rule.”

comment: “Subsection (g) is intended to govern the conduct of lawyers in any context in which they are acting as lawyers. ... The rule does not prohibit conduct that lacks this primary purpose, even if the conduct incidentally produces, or has the effect or impact of producing, the described result.”

In the decision, the Supreme Court noted the “high level of interest” in the issue since March 2017, when the Ethics Committee first considered whether to recommend the adoption of the American Bar Association’s Model Rule 8.4(g).

“Model Rule 8.4(g) is of relatively recent origin, and a majority of jurisdictions have not yet considered whether to adopt it,” the justices wrote in the July 15 order. “Of those jurisdictions that have considered adopting Model Rule 8.4(g), several have declined to do so.

“As of this writing, only one state, Vermont, has adopted a rule that is nearly identical to the model rule. Maine has adopted a rule that is similar, but is not nearly identical, to Model Rule 8.4(g). As of this writing, Model Rule 8.4(g) remains under consideration in a number of jurisdictions. In light of the nascent and ongoing discussion regarding the model rule, the court declines to adopt the rule proposed by the Advisory Committee on Rules. The amendment to Rule 8.4 that the court adopts today

## Supreme Court-Ordered Amendment

“It is professional misconduct for a lawyer to ... (g) take any action, while acting as a lawyer in any context, if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, harass or burden another person, including conduct motivated by animus against the other person based upon the other person’s race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status or gender identity.”

is similar to that proposed by the Attorney Discipline Office in a March 25, 2019 letter submitted prior to the April 12 hearing on the Committee’s proposal.”

While the Supreme Court recommended a review of the new rule by the Advisory Committee after two years, some advocates for the original amendment were not satisfied with the rule as approved by the Court.

“While the NHWBA appreciates the time that the Court has given to this issue and the Court’s efforts, the NHWBA is disappointed with the resulting changes to our Rules of Professional Conduct,” said Christina Ferrari, president of the New Hampshire Women’s Bar Association, in a statement to the *Bar News*. “Harassment and discrimination are barriers in our profession that we must lead the way in removing, not just reducing.

“It is evident that despite the recent changes to our Rules of Professional Conduct, it is crucial that we, as a Bar collectively, continue to raise our voices against inequality of all kinds. The NHWBA hopes that over the next two years, the discussion regarding Rule of Professional Conduct 8.4(g) will continue, and the Bar will work together to refine it for the betterment of all.”

Since the Ethics Committee recommended the change two years ago, its

members have explained that when New Hampshire adopted the ABA’s model rules in 1986, language prohibiting action prejudicial to the administration of justice — a phrase that came to include harassment and discrimination — was not approved.

However, leaders of the ADO opposed the amendment when the proposal came up for a public hearing in front of the Advisory Committee last year and they outlined two alternative amendments — to Rule 8.4(g) and to Rule 4.4, “Respect for Rights of Third Persons” — in subsequent testimony and written comments to the Court.

The subcommittee of the Bar’s Ethics Committee that shaped the original amendment, including attorneys Maureen Smith, Rolf Goodwin, Peter Imse, and Jim Allmendinger, said they remained hopeful that the discussion would continue.

“The Ethics Committee’s Rule 8.4(g) Subcommittee appreciates the Court’s recognition that the prohibited conduct — harassment and discrimination — is a real problem in the New Hampshire Bar,” the subcommittee said in a statement to the *Bar News*. “The Subcommittee already voiced support for the Court’s taking this first step in the right direction.

“The Subcommittee now remains hopeful that, when the Advisory Committee on Rules conducts its Court-ordered review of the rule’s operation two years from now, the Court will decide to remove the ‘primary purpose’ requirement as an unnecessarily high bar to enforcement of a rule that is not being abused.”

Two dozen members of NHWBA and other female attorneys attended the public hearing in April to voice their support for the original amendment, and many shared personal experiences with harassment and discrimination on the job.

Ferrari said the months of debate highlighted the ongoing challenges in advancing equality across the Bar.

“The discussion shed light on the fact that discrimination and harassment, often exhibited through instances of systemic explicit and implicit bias, are endemic issues in the legal profession as a whole and in our Bar,” she said. “The NHWBA was proud and moved to see and hear from the female attorneys who testified in person and in writing, and who so bravely shared their experiences (often recent) with harassment and discrimination in our Bar.”

## E-Filing Expands to Criminal Cases

Following the success of its civil filings online, Superior Court criminal cases are also going electronic. The Judicial Branch announced August 14 that Phase One of the program began in Rockingham County Superior Court in early August with a state wide rollout planned for the fall. Following the roll out, e-Filing will be required in all cases, both civil and criminal, across all eleven superior courts.

In 2018, some 16,500 cases were filed in New Hampshire’s superior courts, and of those, approximately 10,000 were criminal. In order for all active cases to be subject to e-Filing going forward, an estimated 8,000 “paper cases” had to be scanned. This process took place over a five-week period with temporary employees working 1,650 hours to complete the job.

“The conversion to electronic filing for Superior Court criminal cases is the culmination of a year-long effort that included Court staff and many representatives from the legal community,” said Tina L. Nadeau, chief justice of the Superior Court. “The collaborative exchange among the Court, Public Defenders, and County Attorneys has enabled this project to reach its goals in a timely manner.”

Nadeau added, “Although there is always some anxiety when change occurs, the overall feedback on moving to electronic filing for criminal cases is very positive. All agree that cases will be easier, faster, and more efficient to manage when a lot less paper is involved. Citizens across New Hampshire have come to expect that government should work online, just as other

service organizations do. Transitioning to electronic filing, simplifying processes, and reducing paper in the Superior Court is now the way we work.”

Jackie Waters, NH e-Court Program Director, noted that laptops will also play a significant role in criminal cases going forward. She explained, “In order to facilitate filings in criminal cases while they are in a courtroom, attorneys will need to bring their own laptop. Loaner laptops will be available through the clerk’s office to the occasional attorney who may not have one, but their clients will not have direct access to these devices. Once issued, all laptops will be secured in their location, such as a counsel table or conference room table.”

Additionally, all courthouses in the state are now equipped with public kiosks that

are located in a central lobby area. Public access to non-confidential criminal case documents will be available, as with all e-filed cases, at all kiosks. Access to documents on the Internet for the general public is under review by the Judicial Branch.

The NH e-Court Program was launched in 2014. The superior court civil and criminal on-line filings now join small claims and guardianships, plus wills and estates cases that are already electronic at the circuit court level. As of June 30 of this year, over 82,000 cases have been electronically filed in New Hampshire courts.

— Press release from the New Hampshire Judicial Branch

August 2019

## Statute of Repose

**John C. Rankin v. South Street Downtown Holdings, Inc.; South Street Downtown Holdings, Inc. v. Truexcullins and Partners Architects & a., No. 2018-0604**  
**August 6, 2019**  
*Interlocutory Transfer Without Ruling By Trial Court*

- Whether RSA 508:4-b, the statute of repose, applies to and bars a third party action by a defendant property owner for indemnity and/or contribution against architects involved in the design of a premises that the first party plaintiff alleged was dangerous and caused him injury.

In March of 2017, the plaintiff fell and was injured on property owned by the defendant, and third-party plaintiff, South Street Downtown Holdings, Inc. (“South Street”). The plaintiff sued South Street for negligence and alleged that the property was dangerous and did not meet the applicable building code. South Street in turn sued the third-party defendants — the project and landscape architects for the subject property — seeking indemnity and contribution. South Street had hired the architects to serve as design professionals for renovations at the subject property. South Street claimed the plaintiff was injured in the area the architects designed. The architects substantially completed the renovations by January 2009. There was no dispute that South Street commenced its action against the third-party defendants more than 8 years after the date of substantial completion.

On interlocutory appeal, the third-party defendants asserted that South Street’s claims were barred by the statute of repose. RSA 508:4-b—the statute of repose—holds, in relevant part, that “all actions to recover damages for ... economic loss arising out of any deficiency in the creation of an improvement to real property ... shall be brought within 8 years from the date of substantial completion...”

South Street argued that the statute of repose did not apply to claims for indemnity or contribution. Conversely, the third-party defendants asserted that indemnity and contribution claims attributable to deficiencies in the property are barred by the statute of repose because they are actions to recover economic loss arising out of such deficiencies. The Court agreed with the third-party defendants and held that the phrase “economic loss,” when defined by its plain and ordinary meaning, meant loss that is financial, fiscal, or monetary in nature. In doing so, the Court concluded that South Street’s third-party action for indemnity and contribution fell within the meaning of “economic loss” as set forth in the statute of repose. Furthermore, the Court broadly interpreted the phrase “economic loss arising out of any deficiency” to include indirect actions such as those for indemnity and contribution.

*Shaheen & Gordon, P.A., of Dover, for the plaintiffs, John C. Rankin and MaryAnne Rankin, filed no brief. Devine, Millimet & Branch, Professional Association, of Manchester (Andrew D. Dunn and Tavish M. Brown on the brief, and Mr. Dunn orally) for the defendant/third-party plaintiff, South Street Downtown Holdings, Inc. Lewis Brisbois Bisgaard & Smith LLP, of Boston, Massachusetts (Kenneth B. Walton and Elena M. Brander on the brief, and Mr. Walton orally), for third-party defendant, Truex-*

*Cullins and Partners Architects. Morrison Mahoney LLP, of Manchester (William A. Staar and Nicholas Meunier on the brief, and Mr. Staar orally) for third-party defendant, Wagner Hodgson, Inc.*

## Juvenile Delinquency/Statutory Interpretation

**Petition of The State of New Hampshire, No. 2018-0601**  
**August 6, 2019**  
*Affirmed*

- Whether the trial court erred in determining that the Office of the Attorney General’s investigatory records pertaining to a juvenile delinquency proceeding brought under RSA 169-B are subject to the confidentiality provisions contained therein.

In 2017, the Office of the Attorney General (AGO), along with various other agencies, investigated an incident involving minors. The Sullivan County Attorney filed a delinquency petition in the circuit court against one of the minors. The AGO then sought to disclose the details of its investigation due to the intense public scrutiny surrounding the investigation. The circuit court denied the AGO’s request, finding that all case records relative to delinquencies are confidential pursuant to RSA 169-B:35. Nevertheless, the circuit court determined that a limited release of information regarding the AGO’s investigation would assist in the juvenile’s rehabilitation. The AGO subsequently released a draft report containing the scope of its investigation, its factual findings, and its conclusion. The AGO then renewed its request to release approximately 400 pages of its underlying investigative records, including interviews and medical records, which was denied.

The State filed an appeal asserting, among other things, that the AGO’s investigative materials did not constitute “court” records within the meaning of RSA 169-B (which governs court proceedings involving delinquent juveniles) and, even if they did, such information was a matter of public import. Because no definition of “court” records is provided by the statute, the State asserted that when interpreted in the context of the entire statutory provision the legislature intended to maintain confidentiality only over records concerning the adjudication of the juvenile delinquency case. The State argued that because the AGO’s investigation occurred before the juvenile proceeding and were only presented to the court as part of the AGO’s motion to release its investigatory records, they were not court records or files.

The Supreme Court interpreted RSA 169-B liberally in order to effectuate its board restrictions on access to juvenile case and court records and to rehabilitate delinquent minors. In doing so, the Court held that “it is reasonable to conclude that the legislature intended that investigative records compiled by the AGO concerning a juvenile subject to the provisions of RSA chapter 169-B be confidential.” This was especially true when much of the information compiled by the AGO would likely become part of any court record and largely contained the same facts used to form the basis for the juvenile prosecution before the lower court.

*Gordon J. MacDonald, attorney general (Daniel E. Will, solicitor general, on the brief and orally), for the State. Stephanie Hausman, deputy chief appellate defender,*

## At-a-Glance Contributor



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*of Concord, on the brief and orally, for the juvenile. Malloy & Sullivan Lawyers Professional Corporation, of Hingham, Massachusetts (Kathleen C. Sullivan on the brief), for the Union Leader Corporation, as amicus curiae.*

## DeBenedetto

**James M. Virgin v. Fireworks of Tilton, LLC & a., No. 2018-0526**  
**August 6, 2019**  
*Interlocutory Appeal Without Ruling By Trial Court*

- Whether RSA 507:7-E (2010) applies to claims for personal injuries that allege a breach of the implied warranty of merchantability under RSA 382-A:2-314 (2011), thus permitting a named defendant to apportion fault to a non-litigant.

The plaintiff filed an action against the seller and distributor of fireworks for, among other things, breach of the implied warranty of merchantability. The defendants made a DeBenedetto disclosure identifying a Chinese company as the manufacturer of the fireworks that allegedly caused the plaintiff’s injuries. The plaintiff moved to strike the disclosure arguing that apportionment of fault did not apply to breach of warranty claims. The defendants argued that the phrase “in all actions” contained within RSA 507:7-e, I was intended to cover all actions and not just those sounding in tort. The plaintiff argued that the statute was intended to cover only tort actions.

The Supreme Court held that when interpreting RSA 507:7-e as a whole, the apportionment of fault principles only applied to tort actions. In doing so, the Court pointed out that in the fault-based tort context, liability is predicated upon the culpable conduct of each person responsible for an injury. Conversely, warranties established under

the Uniform Commercial Code establish liability on the part of all parties involved in the commercial sale of the defective product that causes injury without regard to fault and to ensure that an injured consumer has the ability to secure compensation for his or her injuries from whichever entity in the chain of distribution can most conveniently be held accountable. As a result, the Court held that DeBenedetto apportionment of liability does not apply to breach of warranty action between persons or entities in the supply chain of a product for liability predicated on the same warranty. It is noteworthy that the Court’s decision was rendered “under the circumstances presented” of the case and therefore likely has a narrow application. The Court stated that its decision did not address whether defendants in the supply chain of a product may seek to apportion liability for an injury to some third-party outside of the supply chain where the conduct is alleged to have wholly or partially contributed to cause a plaintiff’s injuries or to a third party within the supply chain whose liability is predicated on a basis other than the sale of an unmerchantable product.

*Hamblett & Kerrigan, P.A., of Nashua (J. Daniel Marr and Andrew J. Piela on the brief, and Mr. Marr orally), for the plaintiff. Wadleigh, Starr & Peters, PLLC, of Manchester (Joseph G. Mattson and Stephen Zaharias on the brief, and Mr. Zaharias orally), for the defendant, Fireworks of Tilton, LLC. Devine, Millimet & Branch, P.A., of Manchester (Jonathan M. Eck on the brief), and Brooke | Stevens, P.C., of Muncie, Indiana (John H. Brook and John Stevens on the brief, and Mr. Brooke orally), for defendant Foursquare Imports, LLC d/b/a AAH Fireworks, LLC.*

## Parenting Plan

**In The Matter of Steven Summers And Christine Summers, No. 2018-0264**  
**August 6, 2019**  
*Affirmed*

- Whether Circuit Court properly modified parents’ parenting plan.

Mother and Father filed for divorce in January 2014. The court entered a temporary parenting plan, which awarded the parties joint decision-making responsibility for their children with roughly equal parenting time. Father filed emergency motions to suspend Mother’s parenting time based on

AT-A-GLANCE continued on page 34

## Need to schedule a Mediation?

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her alcoholism. The court entered an order granting Father the temporary sole decision-making and residential responsibility for the children. In October 2016, the trial court entered a final decree in the parties' divorce and a final parenting plan, granting the parties joint decision-making responsibility and granting Father primary residential responsibility for the children. The court also stated that while the parenting plan was "final," it would be subject to review in six months to determine if the parenting schedule would be modified to allow shared or equal parenting time. The narrative continued by stating that any change or modification to the parenting plan would be subject to the mother addressing her alcoholism in a meaningful way.

Father then filed a third motion to suspend Mother's parenting time. The court entered a new ruling in February 2017, modifying the October 2016 parenting plan, in which it eliminated certain periods of time during which Mother could spend with the children. Mother filed a motion to modify the residential responsibilities of the parties for their children. Thereafter, the court modified the time during which Mother could spend with her children, essentially reinstating the October 2016 parenting plan. Mother appealed and Father cross-appealed the court's modification of the parties' parenting plan. Mother argued that the court unreasonably failed to grant her equal parenting time after finding that she was sober and had complied with the court's prior orders. Father argued that the court lacked statutory authority to modify the parties' prior parenting plan.

The Supreme Court held that to the extent the trial court modified the February 2017 parenting plan by merely reinstating the October 2016 parenting plan, it could do so without requiring the mother to plead and prove a statutory ground for modification because the February 2017 parenting plan was a temporary order. RSA 461 A:8 (2018) authorizes a court to issue temporary orders that provide for the "temporary allocation of parental rights and responsibilities of any minor child as provided in RSA 461-A:6." The Supreme Court assumed without deciding that the trial court could issue a temporary order after the court had issued its permanent order. Therefore, the February 2017 order was a temporary change to the allocation of parental rights and responsibilities set forth in the court's October 2016 parenting plan. As a result, requirements for issuing an order modifying a permanent order concerning parental rights and responsibilities did not apply. The Supreme Court also held that to allow equal parenting time for Mother was not in the best interest of

the children. Further, the lower court could modify the supervision requirements in the parenting plan based on the child's best interest because the supervision requirement was not a change to the parenting schedule.

*Smith-Weiss Shepard, P.C., of Nashua (Robert M. Shepard on the brief and orally), for the petitioner. Solomon Professional Association, of Londonderry (Elaine M. Kennedy on the brief and orally), for the respondents.*

### Suppression/Armed Career Criminal Statute

**The State of New Hampshire v. Jonathan Folds, No. 2018-0029**

**August 8, 2019**

*Affirmed in part; reversed in part; and remanded*

- Whether the trial court erred by granting the defendant's motion to suppress evidence of a firearm and a motion to dismiss two indictments that alleged he violated the armed career criminal statute.

The police obtained a search warrant for the defendant's residence in order to search for drugs. During the execution of the warrant, an officer began searching a closet in which he discovered a box. When the officer looked inside the box, he saw a tightly rolled shirt but could not identify what was inside of the shirt. The officer then removed the shirt from the box and unfurled it, and as he did a firearm fell out of the shirt and onto the floor.

Based on the discovery of the firearm, the State charged the defendant with violation of the armed career criminal statute, RSA 159:3-A (2014), which prohibits persons with certain types of felony convictions from owning deadly weapons. The State charged the defendant based on underlying felony convictions relating to three convictions for drug offenses that arose from a single criminal episode. The trial court granted the defendant's motion to suppress evidence of the firearm and the indictments pertaining to the armed career criminal statute. On appeal, the State argued that the firearm seizure satisfied the requirements of the plain view exception to the warrant requirement. The State also argued that the armed career criminal Statute does not require the defendant's qualifying felony convictions to arise from at least three separate criminal episodes.

The Supreme Court reversed the trial court's ruling on the suppression of the firearm and affirmed its ruling regarding the armed career criminal indictments. With regard to the suppression issue, the Supreme Court held that, generally speaking, the

plain view exception permits law enforcement officers to seize clearly incriminating evidence or contraband without a warrant if such evidence is inadvertently discovered during lawful police activity. The Supreme Court held that it was reasonable to believe that the closet, the box, and the rolled-up shirt could conceal drugs such as heroin and therefore the officer did not violate the Constitution in arriving at the place from which he viewed the firearm. Similarly, the Court concluded that the officer had a lawful right to access the firearm because the police were lawfully searching the defendant's residence for drugs pursuant to a warrant and the officer discovered the firearm while he was searching any place where drugs could reasonably have been found. Lastly, the Supreme Court held that the "immediately apparent" requirement only required whether the items incriminating nature was evident at the time of the seizure and that the seizure, for purposes of the plain view doctrine, was not until after the firearm fell out of the shirt and came into plain view.

With regard to the armed career criminal statute, the Court found the statute ambiguous, turned to its legislative history, and determined that the legislature's purpose in enacting the statute was to target repeat offenders, not individuals who have acquired three or more convictions as a result of a single criminal episode.

*Gordon J. McDonald, attorney general (Susan P. McGinnis, senior assistant attorney general, on the brief and orally), for the State. Thomas Barnard, senior assistant appellate defender, of Concord, on the brief and orally, for the defendant.*

### Defamation

**James G. Boyle, Individually And As Trustee & a. v. Mary Christine Dwyer, No. 2018-0517**

**August 16, 2019**

*Affirmed*

- Whether the trial court properly dismissed the plaintiff's claims for defamation at the motion to dismiss stage.

The plaintiff alleged the defendant, who was running for re-election to the Portsmouth City Council, made defamatory statements about the plaintiff in response to a candidate survey that was subsequently published on a website. The survey questions, and responses thereto, pertained to ongoing litigation between the plaintiff and the City of Portsmouth arising out of the City's sale of land to the plaintiff. The defendant moved to dismiss, arguing that the statements made in response to the questionnaire were not actionable defamation as they were either statements of fact that were substantially true, did not convey a defamatory meaning, or were statements of opinion.

The Supreme Court held that whether a statement is a verifiable fact or an opinion is a question of law to be determined by the trial court in the first instance. Furthermore, the Court held that whether a statement of fact is substantially true may be determined as a matter of law when the underlying facts as to the "gist or sting" of a statement are undisputed. Lastly, whether statements are capable of communicating a defamatory meaning are questions of law for the court.

The Supreme Court found that the trial court did not err in determining that the alleged defamatory statements were not actionable. The defendant's statements pertaining to the ongoing litigation between the plaintiff and the City, as well as the subject of disputed property, were not capable of bearing a defamatory meaning because they did

not subject the plaintiff to contempt, hatred, scorn, or ridicule. The Supreme Court also concluded that the defendant's statement that the plaintiff made a "mistake" with regard to the purchase of the subject property from the City and was "wrongfully" suing the City were opinions based on fully disclosed facts and not otherwise objectively verifiable because it did not imply the existence of undisclosed defamatory facts concerning a sufficiently objective standard of conduct. The Court reasoned that when the facts underlying a statement of opinion are disclosed, readers will understand that they are getting the author's interpretation of the facts presented and therefore are unlikely to construe the statement as insinuating the existence of additional undisclosed facts. The Supreme Court also held that the defendant's statements that the plaintiff had been trying to get the City taxpayers to pay for his apparent mistakes by filing various lawsuits were not actionable for defamation because the "gist or sting" of the facts asserted were undisputed by the plaintiffs and, therefore, were substantially true. In sum, the Supreme Court affirmed the trial court's order because the plaintiff failed to allege facts that would show that the defendant's statements were actionable for defamation.

*Law Offices of John Kuzinevich, of Duxbury, Massachusetts (John Kuzinevich on the brief and orally), for the plaintiffs. Gallagher, Callahan & Gartrell, P.C., of Concord (Charles P. Bauer and Weston R. Sager on the brief, and Mr. Bauer orally), for the defendant.*

### Defamation

**Automated Transactions, LLC & a. v. American Bankers Association & a., No. 2018-0198**

**August 16, 2019**

*Affirmed*

- Whether the trial court properly dismissed the plaintiff's claims for defamation at the motion to dismiss stage.

The plaintiff received an ATM-related patent in 2005. He subsequently formed a company to serve as the exclusive licensor of his patent. The plaintiff began offering patent licenses and bringing infringement litigation against various entities. In the wake of the plaintiff's successful infringement litigation and licensing revenues, the plaintiff alleged that the defendants made statements referring to the plaintiff as a "patent troll" as well as characterizing the plaintiff's licensing efforts as extortive or being a "shakedown." The trial court granted the defendants' motion to dismiss because the subject statements were not actionable as they were only expressions of opinion. With regard to statements referring to the plaintiff's activity as extortive or being a shakedown, the trial court found them to be rhetorical hyperbole and not assertions of fact. The plaintiff appealed the trial court's order dismissing the defamation claims against the defendants arguing that the trial court erred because it could not determine at the motion to dismiss stage that the statements were nonactionable.

The Supreme Court affirmed and held that the defendants' statement that the plaintiff was a patent troll was not actionable because it was merely an opinion based upon disclosed facts. In doing so, the Supreme Court determined that although the term "patent troll" is generally intended to be disparaging, its meaning is sufficiently elusive and "quintessentially subject." The Supreme Court held that the statement accusing the plaintiff of being "a well-known patent troll" was one of opinion rather than fact because

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“patent troll” is a statement with a definition that itself does not have a precise meaning such that it is capable of verification and cannot be objectively verified. Furthermore, the Supreme Court found that the statements did not imply the existence of undisclosed defamatory facts because the facts about the plaintiff upon which the statements were based were clearly stated by the defendants.

The Supreme Court also determined that statements referring to the plaintiff’s actions as extortive or being a “shakedown” were mere rhetorical hyperbole because no reasonable listener would understand the reference to “extortion” or “shakedown” to amount to an accusation that the plaintiff committed a literal crime. Similarly, statements that the plaintiff’s efforts cost it only the postage and paper that the licensing demand letter was written on was also mere rhetorical hyperbole because no reasonable listener would have understood that the plaintiff’s efforts were in fact virtually costless.

*Shaheen & Gordon, P.A., of Concord (Steve M. Gordon, Timothy J. McLaughlin, and Stephanie K. Annunziata on the brief, and Mr. Gordon orally), for the plaintiffs. Devine, Millimet & Branch, P.A. of Manchester (Jonathan Shirley and Joshua M. Wyatt on the brief, and Mr. Wyatt orally, for the defendant American Bankers Association. Litchfield Cavo, LLP, of Lynnfield, Massachusetts (Mark A. Darling and Bethany P. Minich on the brief, and Mr. Darling orally), for the defendant Credit Union National Association. Desmarais Law Group, PLLC, of Manchester (Debra L. Mayotte on the brief and orally), for the defendants Robert H. Stier and Pierce Atwood, LLP. Gilles R. Bissonnette, of Concord, on the brief, for American Civil Liberties Union of New Hampshire and Electronic Frontier Foundation, as amicus curiae.*

### Sufficiency of Evidence/ Sentencing

**The State of New Hampshire v. James Castine, No. 2018-0441**  
**August 21, 2019**  
**Affirmed**

A confidential informant made three controlled buys of drugs at the defendant’s premises. The plaintiff was subsequently arrested, charged, and found guilty on three drug charges. The defendant was sentenced to two consecutive sentences of 7½ to 15 years on the first two drug convictions and a consecutive suspended sentence of 7½ to 15 years on the third drug conviction.

The defendant appealed the convictions and sentencing. He challenged the sufficiency of the evidence to support his convictions and the trial court’s consideration at sentencing of evidence that he was the leader of a drug enterprise.

The Supreme Court concluded that given the evidence and all reasonable inferences drawn therefrom in the light most favorable to the State, the evidence was sufficient for a rational trier of fact to have found, beyond a reasonable doubt, that the defendant was guilty of selling a controlled drug on three occasions. Specifically, the jury heard evidence that on three occasions the confidential informant requested heroin from the defendant and that law enforcement provided the confidential informant with money to purchase the heroin. The confidential informant testified that on three occasions he met with the defendant to complete the drug purchases and on those occasions the defendant gave the confidential informant drugs in exchange for money supplied to the confidential informant by law enforcement. Finally, a criminalist testified that the drugs

purchased from the defendant tested positive for Fentanyl and cocaine. Based on this evidence, a rational trier of fact could have found that the defendant sold a controlled drug to the confidential informant on three occasions.

The Supreme Court also concluded that evidence of other criminal conduct considered by the trial court at sentencing must at least rise to the level of probability. The Supreme Court noted that at the time of sentencing, the defendant had been indicted on drug enterprise charges and that a grand jury’s decision to indict conclusively determined the existence of probable cause to believe that the defendant committed the crime with which it charged him. As a result, probable cause is more than speculation or innuendo such that evidence regarding the defendant’s involvement in a drug enterprise was sufficiently trustworthy information to warrant a reasonable person to believe that the defendant committed a crime. The trial court therefore had a reliable basis upon which to conclude that the defendant was involved in a drug enterprise that extended beyond the three drug buys made by the confidential informant.

*Gordon J. McDonald, attorney general (Sean R. Locke, assistant attorney general, on the brief), for the State. David M. Rothstein, deputy director public defender, of Concord, on the brief, for the defendant.*

### New Hampshire Department of Labor

**Appeal of Wayne Preve (New Hampshire Department of Labor), No. 2018-0675**  
**August 22, 2019**  
**Affirmed**

The petitioner filed a complaint against an attorney arising out of an alleged incident between the attorney and the town police department. The complaint included, among other things, unredacted data relating to the attorney and his family in the police department’s computer database such as Social Security numbers, addresses, and birthdates. Subsequently, the town disciplined the petitioner by suspending him for one week without pay and requiring him to attend training. The petitioner filed a complaint with New Hampshire Department of Labor (DOL) arguing that the town wrongfully retaliated against him for reporting the attorney in violation of the Whistleblowers’ Protection Act. The petitioner appealed the DOL’s decision that he failed to prove that the town violated the New Hampshire Whistleblowers’ Protection Act. The petitioner argued that the DOL erred by failing to acknowledge that he produced direct evidence of retaliation, and that had the DOL correctly found that he produced such evidence, the petitioner argues it would have been required to apply the mixed motive analysis to his claim rather than the pretext analysis, which it actually applied.

The Supreme Court held that the DOL did not err by applying the pretext analysis nor in ruling that the petitioner failed to prove that the town violated the Whistleblowers’ Protection Act. Under the “pretext” analysis, the employee bears the initial burden to make a prima facie showing of unlawful conduct for retaliation which then creates a presumption that the employer unlawfully retaliated against the employee. If the employer satisfies its burden of production, the presumption raised by the prima facie case is rebutted and the employee then has the opportunity to show by either direct or indirect evidence that the employer’s proffered reason was not the true reason for the adverse employment action. The employee retains the ultimate burden of persuasion

that he or she was the victim of unlawful retaliation. If the employee produces direct evidence that retaliation played a substantial role in a particular employment decision, then the “mixed motive” approach applies. If the fact finder believes the employee’s direct evidence, the burden of persuasion shifts to the employer to show that despite the retaliatory animus, it would have made the same adverse employment decision for legitimate reasons. Evidence is considered to be direct if it consists of statements by a decision maker that directly reflect the alleged animus and bears squarely on the contested employment decision. Thus, so long as the employee can meet the evidentiary burden required by the “mixed motive” approach, the burden of persuasion remains with the employer.

The Supreme Court held that the threshold question was whether there was direct evidence that retaliation played a substantial role in the challenged discipline. The DOL found the petitioner had not produced evidence, direct or otherwise, that the intent to retaliate against the petitioner played a substantial role in the town’s decision to discipline him. Instead, the DOL found that the town’s concerns regarding the potential impropriety of the petitioner’s inclusion of private information obtained from the town’s confidential database with the complaint was the primary motivation for the discipline.

*Rath, Young and Pignatelli, PC, of Concord (Michael S. Lewis on the brief and orally), for the petitioner. Getman, Schulthess, Steere & Poulin, P.A., of Manchester (Stephen J. Schulthess on the brief and orally), for the respondent.*

### Planning Board

**Denis Girard & a. v. Town of Plymouth, No. 2018-0495**  
**August 30, 2019**  
**Affirmed**

- Whether the trial court correctly upheld the town planning board’s decision denying the plaintiffs’ application.

The plaintiffs owned an undeveloped parcel of land with four co-owners. The plaintiffs sought to subdivide the property in to a southerly 50-acre parcel with an existing access way, to which the plaintiffs would take title, and a northerly 199-acre parcel, to which the co-owners would take title. The northerly parcel of land did not have an existing access way. The parties submitted a subdivision plan to the planning board, which included a map with a proposed new access way to the 199-acre parcel of property. The co-owners, and others, raised con-

cerns about the proposed new access way’s impact on nearby wetlands. The planning board conducted a site visit and received a letter from a wetlands scientist who determined that the proposed access way was not suitable for a driveway and, also, proposed an alternative access way. The plaintiffs would not agree to allow the co-owners to use the access road to the southerly parcel, relocate parcel boundary lines to allow for a different access way, or allow a right of way over the southerly parcel’s existing access way. The planning board denied the parties’ application citing concerns regarding nearby wetlands, the wetlands scientist’s letter, the plaintiffs’ refusal to agree to other alternatives, and certain town subdivision regulations. The plaintiffs appealed.

The Supreme Court affirmed the trial court’s ruling upholding the planning board’s decision to deny the parties’ application. The Supreme Court concluded that the planning board did not err by relying on town subdivision regulations that allowed the planning board to impose requirements upon the plaintiffs in order to preserve and protect existing “natural resources.” In doing so, the Supreme Court stated that the specifically enumerated natural resources contained in the regulation were similar in nature to wetlands, such that the regulation applied and provided notice to subdivision applicants. The Supreme Court further concluded that state law did not preempt municipalities from regulating wetlands because the town ordinance at issue was not contrary to, and did not frustrate the purpose of, the state statute governing wetlands. Additionally, the Supreme Court concluded that the trial court did not improperly rely upon the wetland scientist’s letter to uphold the planning board’s decision denying the application where there was no evidence the board actually considered the letter because it was relevant to and supported the board’s stated concern regarding the access way’s impact on wetlands. The Court also found the trial court’s decision reasonable because it was undisputed that the proposed access way would tarnish some portion of the wetlands. Finally, the Court concluded that trial court’s ruling that the planning board’s informal discussions about the proposed access way, without notice to the plaintiffs, did not seriously impair the plaintiffs’ rights to participate in the planning board’s consideration of the application.

*Cleveland, Waters and Bass, P.A., of Concord (William B. Pribis on the brief and orally), for the plaintiffs. Donahue, Tucker & Ciandella, PLLC, of Exeter (John J. Rattigan and Brendan Avery O’Donnell on the memorandum of law, and Mr. O’Donnell orally), for the defendant.*



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## **R-2019-0005, In re July 18, 2019 Report of the Advisory Committee on Rules**

The New Hampshire Supreme Court Advisory Committee on Rules (committee) has reported a number of proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. On or before September 30, 2019, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments on any of the proposed rule amendments. An original and one copy of all comments shall be filed. Comments may also be emailed to the court at: [rulescomment@courts.state.nh.us](mailto:rulescomment@courts.state.nh.us).

To see the language of the proposed rules changes and background regarding the proposals, please see the July 18, 2019 Advisory Committee on Rules Report, which is available at <http://www.courts.state.nh.us/committees/advis-commrules/reports/index.htm>. Copies of the July 18, 2019 Advisory Committee on Rules Report are also available upon request to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The current rules of the New Hampshire state courts are available on the Internet at: <http://www.courts.state.nh.us/rules/index.htm>.

A summary of the proposals made in the July 18, 2019 Advisory Committee on Rules Report is set forth below.

### **I. Supreme Court Rules 12-D and 20. Non-Precedential Status of Orders.**

2019-001. This proposal would amend Supreme Court Rules 12-D(3) and 20(2) to make clear that orders issued in confidential cases should not be cited or referenced in pleadings or rulings.

The language of the proposed change to Supreme Court Rule 12(D)(3) is set forth in Appendix A of the July 18, 2019 Advisory Committee on Rules Report. The language of the proposed change to Supreme Court Rule 20(2) is set forth in Appendix B of the July 18, 2019 Advisory Committee on Rules Report.

### **II. Supreme Court Rule 37. Attorney Discipline System. Access to Confidential Records.**

2017-018. This proposal would add subsection (c) to Supreme Court Rule 37(8), setting out a new procedure detailing when, and in what manner, the Attorney Discipline Office may access confidential court files.

The language of the proposed rule change is set forth in Appendix C of the July 18, 2019 Advisory Committee on Rules Report.

### **III. Supreme Court Rule 40. Procedural Rules of Committee on Judicial Conduct.**

2017-016. This proposal would amend the definition of "judge" in Supreme Court Rule 40 to make clear that a member of court staff is included in the definition of "judge" only when he or she performs an adjudicatory function.

The language of the proposed rule change is set forth in Appendix D of the July 18, 2019 Advisory Committee on Rules Report.

### **IV. Supreme Court Rule 48-B. Family Mediator Fees.**

2019-005. This proposal would delete and replace Supreme Court Rule 48-B.

The language of the proposed rule change is set forth in Appendix E of the July 18, 2019 Advisory Committee on Rules Report.

### **V. Supreme Court Rule 57-A. Custody and Return of Documents Filed in Camera in Trial Courts.**

2018-012. This proposal would amend Supreme Court Rule 57-A to provide that in cases in which a defendant has not been convicted on any charge, a person with interest may request that records filed in camera be destroyed.

The language of the proposed rule change is set forth in Appendix F of the July 18, 2019 Advisory Committee on Rules Report.

### **VI. New Hampshire Rule of Criminal Procedure 50. Confidential Documents and Confidential Information.**

2018-010 and 2018-011. These proposals would: (1) amend New Hampshire Rule of Criminal Procedure 50 to make applicable to criminal cases in Circuit Court the rules delineating the procedure for filing documents which are confidential in their entirety or contain confidential information, and for seeking access to documents or information that have been determined to be confidential; and (2) adopt the rule, applicable in both Circuit and Superior Courts, on a permanent basis.

The language of the proposed rule change is set forth in Appendix G of the July 18, 2019 Advisory Committee on Rules Report.

### **VII. Circuit Court Rules. Civil Process Amendments Designed to Facilitate Electronic Filing.**

2019-002. This proposal would amend Circuit Court Rules to make the Circuit Court civil filing process consistent with the Superior Court civil filing process in order to facilitate the implementation of electronic filing in civil cases filed in the Circuit Court.

The language of the proposed rule changes is set forth in Appendices H-W of the July 18, 2019 Advisory Committee on Rules Report.

Date: August 14, 2019  
ATTEST: Eileen Fox, Clerk  
Supreme Court of New Hampshire

### **ADM-2018-0012, In the Matter of Alyson K. Bisceglia, Esquire**

Rule 42, XIII(a) requires that each attorney admitted to the bar take the Practical Skills course within two years of admission. Attorney Alyson Bisceglia was admitted to the New Hampshire bar on June 1, 2017. On October 30, 2018, Attorney Alyson Bisceglia requested an exemption from the Practical Skills requirement. The court denied her request for an exemption on November 13, 2018.

In accordance with the rule, Attorney Bisceglia was required to complete the Practical Skills course by June 2019. The New Hampshire Bar Association recently reported that Attorney Bisceglia did not complete the Practical Skills course as required. On July 10, 2019, this court issued an order requiring Attorney Bisceglia to show cause why she should not

be suspended from the practice of law in New Hampshire for failure to attend the required Practical Skills course. Attorney Bisceglia did not respond to the show cause order.

In accordance with Rule 42, XIII (a), Attorney Alyson K. Bisceglia is hereby suspended from the practice of law in New Hampshire.

Lynn, C.J., and Hicks, Bassett, Hantz Marconi and Donovan, JJ., concurred.

Issued: August 15, 2019  
ATTEST: Eileen Fox, Clerk



### **LD-2019-0006, In the Matter of John E. Mahoney, Esquire**

On May 16, 2019, the Attorney Discipline Office (ADO) filed a certified copy of an order of the Massachusetts Supreme Judicial Court, suspending Attorney John E. Mahoney from the practice of law for a period of three months but staying execution of the suspension for a period of one year subject to probationary conditions.

The Massachusetts disciplinary matter arose out of three matters. After reviewing the record of the Board of Bar Overseers, the Supreme Judicial Court found that Attorney Mahoney violated the following Rules of Professional Conduct:

1. Rule of Professional Conduct 1.8(c) prohibits a lawyer from preparing an instrument for a client that gives the lawyer a substantial gift, unless the lawyer is related to the client. The court found that Attorney Mahoney violated this rule by preparing two trust instruments under which he received substantial bequests from a person to whom he was not related.

2. Rule of Professional Conduct 1.4(a) requires a lawyer to keep a client reasonably informed of the status of a matter and to promptly comply with reasonable requests for information. Rule 1.15(d)(1) requires a lawyer to provide a full written account upon final distribution of trust property or upon request by a client or third person on whose behalf the lawyer holds trust property. The court found that Attorney Mahoney violated these rules by failing to deliver accounts for three trusts for which he served as trustee and by failing to render an annual accounting to beneficiaries. It also found that Attorney Mahoney violated this rule by failing to maintain reasonable communications with a client concerning the client's trust funds.

3. Rule of Professional Conduct 1.15(f)(1) establishes record-keeping requirements for lawyers who hold trust property in connection with a representation. The court found that Attorney Mahoney violated subparagraph B of the rule by failing to maintain check registers for each trust account; that he violated subparagraph C of the rule by failing to maintain individual client ledgers and by disbursing funds from his trust account on a client's behalf without funds to cover the disbursements thereby creating a negative balance in that client's funds; that he violated subparagraph D of the rule by failing to maintain a ledger of bank fees and expenses; and that he violated subparagraph E of the rule by failing to perform three-way reconciliations.

4. With limited exceptions, Rule 1.15(b)(2) prohibits a lawyer from depositing or retaining personal funds in a trust account. The court found that Attorney Mahoney violated this rule by retaining

earned fees in his trust account.

5. Rule of Professional Conduct 1.15(e)(4), prohibits certain types of transactions involving a trust account. The court found that Attorney Mahoney violated this rule by making cash withdrawals from his trust account.

The Supreme Judicial Court imposed a three-month suspension, but stayed execution of the suspension for one year, subject to Attorney Mahoney's compliance with probationary conditions.

After receiving notice of the action of the Supreme Judicial Court, this court ordered that a copy of the Supreme Judicial Court order be served on Attorney Mahoney in accordance with Supreme Court Rule 37(12)(b). It ordered Attorney Mahoney and the ADO to inform the court if they contended that the imposition of identical or substantially similar discipline was unwarranted. Attorney Mahoney did not respond to the order. The ADO notified the court that, in its view, a three-month suspension, stayed for a period of one year subject to compliance with probationary conditions, would constitute substantially similar discipline.

Rule 37(12)(d) provides for the imposition of reciprocal discipline by this court unless the respondent attorney or the ADO demonstrates, or the court finds, based upon the face of the record from which the discipline is predicated, that: (1) the procedure followed by the jurisdiction imposing discipline was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) the imposition of the same or substantially similar discipline by the court would result in grave injustice; or (3) the misconduct established warrants substantially different discipline in New Hampshire.

Having reviewed the order of the Supreme Judicial Court, the court concludes that none of these factors are present. It appears from the order that Attorney Mahoney participated fully in the Supreme Judicial Court proceeding. Considering the nature and extent of Attorney Mahoney's misconduct, the court does not find that the imposition of the same discipline would result in grave injustice or that his misconduct would warrant substantially different discipline in New Hampshire. Accordingly, the court concludes that a reciprocal suspension of three months, stayed for a period of one year, on the condition that he comply with the probationary conditions imposed by the Supreme Judicial Court, should be imposed.

Therefore, the court suspends Attorney Mahoney for a period of three month, with execution of the suspension stayed for a period of one year on the condition that Attorney Mahoney comply with the conditions imposed by the Supreme Judicial Court.

Attorney Mahoney is hereby assessed all expenses incurred by the Attorney Discipline Office and Professional Conduct Committee in the investigation and prosecution of this matter. See Rule 37(19).

Lynn, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: August 19, 2019  
ATTEST: Eileen Fox, Clerk



ORDERS continued on page 37

August 2019

\* Published

## Employment Law; Title VII

8/16/19 Reyes-Caparrros v. Barr  
Case No. 15-cv-2229-JNL, Opinion No. 2019 DNH 132

This opinion and order replaces the court's April 25, 2019 order denying the defendant's motion for judgment as a matter of law or a new trial. Relying on a transcript that was recently discovered to be incomplete, the court had ruled that the defendant had failed to object to certain jury instructions during a three-week trial. After conferring with the court staff and court reporter, the court determined that the original trial transcript omitted a courtroom hearing on the jury instruction and the jury charge from the trial's final day transcript. At the court's urging, the audio recording of those proceedings was located, transcribed, and added to the record of this case. The new order now reflects certain objections that were in fact preserved during these newly transcribed proceedings, but still finds that the court accurately instructed the jury, properly permitted an advisory verdict on an issue reserved for the court, and correctly denied the defendant's interpretation of the national-security exception to employment law claims.

77 pages. Judge Joseph Laplante.

## Immigration

8/7/19 United States v. Herrera-Fuentes  
Case No. 18-cv-126-1-PB, Opinion No. 2019 DNH 125

In his motions to dismiss a charge of illegal entry under 8 U.S.C. § 1326(a), defendant collaterally attacked the underlying immigration court order upon which the government relied to prove that he had previously been removed. Defendant argued (1) that under *Pereira v. Sessions*, 139 S. Ct. 2105 (2018), the immigration court lacked jurisdiction over him because his original

Notice to Appear did not specify the date and time of his removal hearing as required by 8 U.S.C. § 1229(a); and (2) that the immigration judge's failure to adequately advise him of his appellate rights rendered his removal fundamentally unfair in violation of 8 U.S.C. § 1326(d). The court denied the motions to dismiss, holding that (1) the failure by an immigration court to specify the date and time of a hearing in its initial order is neither a jurisdictional error nor, in this case, did defendant timely object or show actual prejudice; and (2) the removal was not fundamentally unfair because the immigration judge had adequately advised defendant of his right to appeal.

11 pages. Judge Paul Barbadoro.

## New Hampshire Judicial Retirement Statute

8/14/19 Coffey v. N.H. Judicial Retirement Plan  
Case No. 18-cv-503-PB, Opinion No. 2019 DNH 126

The New Hampshire Judicial Retirement Plan permits a judge in active service to retire with a pension if she has at least 15 years of creditable service and is at least 60 years of age. The issue this case presented is whether a former judge with sufficient creditable service has a right to a pension even though she resigned before she reached the minimum retirement age. The court found that Section 100-C:5 of the New Hampshire Revised Statutes unambiguously requires a judge to remain on the bench until she satisfies both the age and years of service requirement in order to qualify for a service retirement allowance. Because the plaintiff resigned from service prior to reaching retirement age, she was not entitled to retire under the Plan.

14 pages. Judge Paul Barbadoro.

## Social Security

8/1/19 Kelly v. U.S. Social Security Administration  
Case No. 18-cv-662-PB, Opinion No. 2019 DNH 120

Claimant challenged the denial of her application for Disability Insurance Benefits and Supplemental Security Income pursuant to 42 U.S.C. § 405(g). She argued that the Administrative Law Judge ("ALJ") erred at steps four and five when conducting the five-step analysis required under 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). The court denied the motion submitted by the Commissioner of the Social Security Administration to affirm the ALJ's ruling and granted claimant's motion for an order reversing the Commissioner's decision. The court concluded that the ALJ committed two legal errors: (1) at step four, the ALJ did not support with substantial evidence his conclusion that claimant's residual functional capacity allowed her to return to work when the evidence supported the opposite conclusion; and (2) at step five, when the ALJ determined that the claimant was not disabled, failure to consider a post-hearing affidavit offered by the claimant on a material issue constituted non-harmless error.

10 pages. Judge Paul Barbadoro.

8/15/19 Byron v. U.S. Social Security Administration  
Case No. 18-cv-684-PB, Opinion No. 2019 DNH 131

Claimant challenged the denial of his application for disability insurance benefits pursuant to 42 U.S.C. § 405(g). He contended that the Administrative Law Judge ("ALJ") committed reversible errors at steps three through five of the sequential analysis required by 20 C.F.R. § 404.1520. The court denied the claimant's motion and affirmed the Commissioner's decision. The court determined that the ALJ (1) properly determined at step three of the sequential analysis that the claimant's right upper extremity impairment did not meet or equal a listed impairment; (2) adequately evaluated the claimant's subjective complaints; (3) properly relied on a state agency physician's opinion; and (4) committed a harmless error at steps four and five in failing to include in the claimant's residual functional capacity an alleged limitation that was not necessary to perform the jobs identified by the vocational expert.

20 pages. Judge Paul Barbadoro.

8/27/19 Fortin v. US Social Security Administration  
Case No. 18-cv-636-JL, Opinion No. 2019 DNH 136

On appeal from the Social Security Administration's denial of the claimant's application for a period of disability and disability insurance benefits, the court denied the claimant's motion to reverse the

decision of the Administrative Law Judge ("ALJ"). The court concluded that substantial evidence supported the ALJ's finding that the claimant did not have a severe impairment or combination of impairments. Although the ALJ made a factual error in assessing a medical opinion, the court found that the error did not prejudice the claimant.

10 pages. Judge Joseph N. Laplante.

8/27/19 Debaker v. US Social Security Administration  
Case No. 19-cv-107-JL, Opinion No. 2019 DNH 137

Claimant appealed the denial of his application for disability benefits. At step three of the established five-step evaluation process, an Administrative Law Judge found that the claimant's mental impairments affecting his speech, language, anxiety, attention, and learning did not meet or clear the severity thresholds of Listings 12.05 and 12.11. See 20 C.F.R. part 404, subpart P, App. 1 § 12.04(B) and 12.06(B). The claimant identified 11 factual findings that he believed were not supported by substantial evidence in the record or that were made in error. The court found that (i) several of the claimant's arguments were perfunctory and thus, insufficiently developed; (ii) the ALJ did in fact consider certain records that the claimant asserted were missing from the ALJ's analysis; (iii) certain factual errors by the ALJ were harmless; (iv) the ALJ properly resolved evidentiary conflicts in the record; (v) the ALJ's key findings were reasonably supported by record evidence; (vi) the ALJ could not be faulted for discounting the testimony of the claimant's mother, to the extent it conflicted with other expert testimony and objective evidence in the record.

19 pages. Judge Joseph Laplante.

## Voting Rights

8/29/19 Casey v. NH Sec. of State, et al.  
Civil No. 19-cv-149-JL

In this voting rights case, the state moved to dismiss, arguing that the individual plaintiffs failed to allege an injury-in-fact, all plaintiffs lacked standing against the Secretary of State, and all plaintiffs failed to state any claims. The court denied the motion, finding that the individual plaintiffs alleged an injury-in-fact, all plaintiffs adequately pled standing to seek relief against the Secretary of State, and all plaintiffs, at this preliminary stage, stated claims under the First, Fourteenth, Twenty-Fourth, and Twenty-Sixth Amendment.

22 pages. Judge Joseph N. Laplante.

## Orders from page 36

In a July 18, 2019 order, this court amended the New Hampshire Rules of Criminal Procedure and Supplemental Rules of Superior Court for Electronic Filing. The amendments are designed to implement electronic filing in criminal cases and took effect in Rockingham County on August 6, 2019, when electronic filing in criminal cases was implemented there. The July 18, 2019 order provides that electronic filing in criminal cases shall become effective in the remaining superior courts upon order of this court. Accordingly, the court hereby orders that the rule amendments set forth in that order will take effect in the remaining superior courts when electronic filing is implemented on the following dates:

Hillsborough County Superior Court - Northern Division	September 18, 2019
Hillsborough County Superior Court - Southern Division	September 25, 2019
Merrimack County Superior Court	October 2, 2019
Belknap County Superior Court	October 8, 2019
Grafton County Superior Court	October 16, 2019
Strafford County Superior Court	October 23, 2019
Cheshire County Superior Court	November 5, 2019
Sullivan County Superior Court	November 5, 2019
Carroll County Superior Court	November 13, 2019
Coos County Superior Court	November 13, 2019

Issued: September 9, 2019  
ATTEST: Eileen Fox, Clerk of Court  
Supreme Court of New Hampshire

## 2019-2020 Bar News Ad Deadlines

Issue Date	Ad Reservation Deadline	Final Ad Copy Due
Oct. 16, 2019	Sept. 20, 2019	Oct. 7, 2019
Nov. 20, 2019	Nov. 4, 2019	Nov. 11, 2019
Dec. 18, 2019	Dec. 2, 2019	Dec. 9, 2019
Jan. 15, 2020	Jan. 2, 2020	Jan. 6, 2020
Feb. 19, 2020	Feb. 3, 2020	Feb. 10, 2020
March 18, 2020	March 2, 2020	March 9, 2020
April 15, 2020	March 30, 2020	April 6, 2020

## Drummond Woodsum Municipal Practice Seeks 2 Attorneys

Drummond Woodsum, a regional law firm with offices in New Hampshire and Maine, seeks two attorneys to join the firm's municipal law practice in our Manchester or Lebanon, New Hampshire, offices. The firm is seeking an experienced municipal lawyer with at least five years of relevant practice experience; laterals with additional years of experience are strongly encouraged to apply. The firm is also seeking an entry level associate attorney to join our growing municipal practice.

Attorneys hired will represent municipalities in a broad range of legal matters, including land use and real estate, contracts, regulatory issues, governance, taxation, litigation, and all other general municipal matters. The ideal candidates will have strong legal and educational credentials, excellent research, writing and analytical skills, and will want to be part of a growing team of attorneys committed to providing local governments throughout New Hampshire with the highest level of legal services.

Drummond Woodsum is committed to providing resources for professional growth and development. We offer mentorship and training, a collegial work environment, competitive salary and comprehensive benefits, family friendly policies and generous retirement benefits.

To apply, please direct your letter of interest and resume to Darnell Filleul at [dfilleul@dwmlaw.com](mailto:dfilleul@dwmlaw.com). All inquiries held in the strictest confidence. No phone calls, please.

## RATH YOUNG PIGNATELLI

### CORPORATE TRANSACTIONAL PARALEGAL

Rath, Young and Pignatelli, P.C. located in Concord, New Hampshire is seeking a full time corporate transactional paralegal with a minimum of 2 years of experience in a law firm setting. The ability to support attorneys in a wide range of corporate transactional matters including assistance with closings, filing of corporate and real estate documents, formation of entities, and maintenance of corporate records, is required. May also be asked to perform general administrative tasks, such as drafting correspondence, filing, copying, etc. The ideal candidate should have excellent interpersonal and communication skills, be a team player, and be able to manage under occasional pressure situations. Skill sets should include advanced knowledge of Word, Excel, PowerPoint, Outlook and Adobe Pro software. Bachelor's degree or paralegal certification preferred. Send resume and letter of interest to Diane J. Vlahos, Director of Operations, Rath, Young and Pignatelli, P.C., at [djv@rathlaw.com](mailto:djv@rathlaw.com). The firm will not accept the submission of candidate resumes from search firms without a signed fee agreement with Rath, Young and Pignatelli, P.C.

**National Impact. Uniquely New Hampshire.**

Rath, Young and Pignatelli, P.C.  
www.rathlaw.com  
Concord | Nashua | Boston | Montpelier

## Daniel Webster Scholar Honors Program Director University of New Hampshire School of Law

UNH Law is seeking a full-time, year-round Director for its Daniel Webster Scholar Honors Program (DWS) to begin in July of 2020. DWS, a nationally recognized bar alternative program, is the only one of its kind in the country.

Now in its fifteenth year, DWS program provides an intensive client-ready legal education. Successful Webster Scholars pass a variant of the New Hampshire Bar exam during their last two years of law school and are sworn into the New Hampshire bar the day before graduation. They are also eligible to sit for the bar exam in any jurisdiction outside New Hampshire for which they would qualify having graduated from an ABA-accredited law school. Alumni of the program have been admitted to more than a dozen other bars throughout the country. As a bar-licensing program, DWS is also overseen and regulated by the NH Supreme Court.

The director is a full-time member of the law faculty who participates in faculty governance, and reports to both the UNH Law administration and the NH Supreme Court. The position demands administrative and communication skills necessary to run and promote a program that involves numerous constituents, including students, judges, lawyers, court reporters, standardized clients and bar examiners. In addition, the director teaches a full academic course load within the program, most of which is intensive law practice simulation. The director also serves as an advisor and mentor for the 40+ (up to 24 2-L and 24 3-L) DWS students in the program.

UNH Law actively creates and nurtures a dynamic learning environment in which qualified individuals of differing perspectives, life experiences and cultural backgrounds pursue goals with mutual respect and a shared spirit of inquiry. Salary will be commensurate with qualifications.

#### Required qualifications:

- J.D. from an accredited law school;
- Admitted to the NH Bar (or eligible for admission on motion);
- Full-time legal practice experience;
- Teaching experience, and a demonstrated ability to provide meaningful feedback;
- Demonstrated skill at working collaboratively;
- Demonstrated administrative leadership skills.

#### Preferred qualifications include:

- Experience teaching legal skills, including through simulation;
- Demonstrated professionalism in the bar, including state and national involvement.

For more information and to apply: <https://jobs.usnh.edu/postings/33720>

**Job Number:** PF0285FY20

*UNH Law is situated in Concord, the capital of New Hampshire. Concord is approximately an hour's drive from Boston, the beautiful New Hampshire seacoast, and the White Mountains. It is part of the University of New Hampshire – a major research institution providing comprehensive, high-quality undergraduate programs and graduate programs of distinction. UNH's main campus is located in Durham on a 188-acre campus, 60 miles north of Boston and 8 miles from the Atlantic coast. UNH has a student enrollment of 13,000 students, with more than 600 full-time faculty, and offers 90 undergraduate and more than 70 graduate programs.*

*The University of New Hampshire is an Equal Opportunity/Equal Access/Affirmative Action institution.*

## Classifieds

### POSITIONS AVAILABLE

**MULTIPLE OPENINGS** at our Manchester, Stratham and Hampton NH locations for attorneys as lateral hires with a book of business and/or with at least 3 years of experience in Family Law, Real Estate, Business, Estate Planning or Criminal Defense are encouraged to apply. Competitive compensation package offered! Please email cover letter and resume to [jmiles@sklawyers.net](mailto:jmiles@sklawyers.net).

**SEEKING FULL-TIME ASSOCIATE ATTORNEY** – Law firm in Lakes Region seeks an associate attorney primarily for criminal matters and domestic relations, with 0-3 years experience. Associate must be admitted to practice in NH, have exemplary academic credentials, be self-motivated, ambitious and ready to assume responsibility. All replies held in strictest confidence. Send confidential resume and salary requirements to: [resumed22@gmail.com](mailto:resumed22@gmail.com).

**ASSOCIATE ATTORNEY** – Donahue, Tucker & Ciandella, one of New Hampshire's leading law firms, with offices in Exeter, Meredith & Portsmouth, NH is currently seeking a full time Associate Attorney. The ideal candidate will have 1-3 years' experience and be admitted or intends to be admitted to the NH Bar. Admission to the MA and/or ME bar a plus. We offer competitive compensation and a pleasant work environment. If interested, please send your resume to Amy Bertolino at [abertolino@dtclawyers.com](mailto:abertolino@dtclawyers.com).

**ATTORNEY** – Manchester firm seeks attorney for permanent position with partnership potential. We are an established firm providing a variety of services to our long term corporate and government clients. Our attorneys are expected to consult with clients directly on corporate, business and real estate matters. Our attorneys occasionally appear in state courts and bankruptcy court for limited hearings. Our attorneys are expected to have excellent interpersonal skills to be successful in a small office setting. Please reply in confidence to: [attorney42019@gmail.com](mailto:attorney42019@gmail.com).

**ATTORNEY** – Marsicovetere & Levine Law Group, P.C. is seeking an attorney with 0-4 years of experience to handle criminal and select civil litigation in their White River Junction office. The ideal candidate will be licensed to practice law in Vermont, have a strong academic background, and a demonstrated interest in public interest law. Salary is dependent on experience. Please send cover letter, resume, writing sample, and references to Adam Hescocock, Esq. ([ahescocock@rivercitylawyers.com](mailto:ahescocock@rivercitylawyers.com)). All inquiries will be confidential.

**ATTORNEY** – This is an opportunity for an attorney who is looking to collaborate with others and work in an established elder law/estate planning law firm. Qualifications include high self-motivation, strong work ethic and excellent communication skills. Our environment promotes balance and flexibility. Salary and benefits will be discussed at interview. Please e-mail resume: [jholmes@curtinlawoffice.com](mailto:jholmes@curtinlawoffice.com).

**ASSISTANT COUNTY ATTORNEY** – The Office of the Merrimack County Attorney is seeking a highly motivated attorney to fill a full time Assistant County Attorney position. Applicant must have Juris Doctor from an accredited law school and be a member in good standing with the NH Bar Association. Candidate should have at least 5 years experience litigating criminal cases in Superior and/or Circuit Courts. Felony cases preferred. Please send resumes to: Donna Barnett, Office Manager, Office of the Merrimack County Attorney, 4 Court Street, Concord NH 03301, [dbarnett@mcao.net](mailto:dbarnett@mcao.net).

**ESTATE PLANNING/PROBATE LEGAL ASSISTANT** – Upton & Hatfield has an opening for an experienced legal assistant with a primary focus on estate planning, trust and probate administration. Excellent organizational, communication, and writing skills are essential, along with experience using Microsoft Office. The successful candidate will be professional, flexible, and able to prioritize and work with multiple people. A minimum of 5 – 7 years of experience as a legal assistant is required. This is a full-time position. Upton & Hatfield benefits include annual leave time, medical insurance, short and long-term disability insurance and a retirement plan. Please email resume with cover letter and salary requirements to Pam Woodworth, Administrator at: [hr@uptonhatfield.com](mailto:hr@uptonhatfield.com).

We are looking for a **PART-TIME LEGAL SECRETARY/PARALEGAL** for a small, friendly, bustling law office in Nashua. Our practice consists of commercial litigation, bankruptcy and other business matters. Responsibilities include drafting correspondence, typical receptionist duties, docketing, scanning, drafting simple pleadings and generally keeping the lawyers in line. We are looking for someone with enthusiasm, a great attitude, willingness to learn new skills and attention to detail. Position requires Microsoft skills (word and outlook). Knowledge of Pacer electronic filing and BestCase a plus, but not necessary as long as you're willing to learn. Hours are flexible, but ideally 25 hours a week (such as MWF). Pay commensurate with your experience. Please reply to [peter@tlgnh.com](mailto:peter@tlgnh.com).

**LEGAL ASSISTANT** – Small firm in Concord area with focus on Trusts & Estates law seeks legal assistant. Responsibilities include reception and office administration. Bookkeeping knowledge helpful. Potential for flexible hours. 401K Plan. Please reply to: [law603nh@gmail.com](mailto:law603nh@gmail.com).

## W&B

### Winer and Bennett, LLP

#### Attorneys at Law

**ATTORNEY** – For over sixty years, Winer and Bennett of Nashua has been a full-service law firm supporting and advocating for New Hampshire and Massachusetts businesses and individuals. To help carry the legacy forward, we seek a lawyer with at least three years of experience to join our team. If you are looking to serve an existing client base while also being encouraged and supported in developing your own practice, Winer and Bennett may be the place for you.

Winer and Bennett offers competitive salary, benefits and a collegial work environment that allows for work/life balance and supports your professional growth. Please submit any inquiries you may have as well as a resume to [pliamos@winerbennett.com](mailto:pliamos@winerbennett.com).

## Assistant County Attorney

Salary Range: \$2,380.80 – \$3,248.77

#### Purpose/Scope:

Seeks justice with professionalism, excellence and pride, consistent with the New Hampshire Rules of Professional Conduct, American Bar Association and National District Attorney's Association guidelines, as a criminal prosecutor with a concentration in Superior Court.

#### Essential Job Functions:

- Acts as counsel for the State of New Hampshire in criminal matters.
- Works closely with Victim/Witness Coordinators to ensure that all witnesses/victims are properly informed, prepared and supported throughout the prosecution process.
- Drafts indictments, complaints and pleadings.
- Researches pertinent case law, decisions and legislation.
- Presents investigations and cases to the Grand Jury;

conducts Bench trials, Jury trials and all required hearings related to the assigned caseload.

#### Knowledge, Skills, and Abilities Required:

Juris Doctor from accredited law school. 3 years of experience in criminal prosecution, preferred. Must be admitted into the New Hampshire Bar Association.

**Submission Requirements:** Employment application, resume and cover letter required.

**Apply to:** Department of Human Resources  
Email: [careers@co.rockingham.nh.us](mailto:careers@co.rockingham.nh.us)

**Mail or Drop off Applications to:** Rockingham County Human Resources Department, 111 North Road, Brentwood, NH 03833. Applications can be found online at: [rockinghamcountynh.org/careers](http://rockinghamcountynh.org/careers).

## CORPORATE ATTORNEY

Devine Millimet, one of Northern New England's largest and most dynamic business and litigation law firms, is seeking a Corporate Attorney to join our Corporate Practice Group located in Manchester, New Hampshire. This attorney will work with a collegial and high-performing team of lawyers and other professionals to provide our business, non-profit and individual clients with innovative counsel and representation in a wide range of business matters.

The ideal candidate will have 4+ years of transactional and M&A experience, as well as general corporate law experience, and admission to the NH Bar. Admission to the MA Bar and/or an LLM in taxation or CPA a plus.

Devine Millimet offers competitive salaries and attractive growth opportunities, along with a comprehensive benefits package.

Since our founding in 1947, we have been about service – service to our clients, service to our community, service to each other, and service to our profession. If you are as passionate about service as we are, we invite you to apply directly. We are an equal opportunity employer.

### Requirements

- Superior writing skills
- Strong interpersonal skills
- Effective analytical and problem solving skills
- Confident negotiating skills

**DEVINE  
MILLIMET**

ATTORNEYS AT LAW

To apply please visit [www.devinemillimet.com/careers/current-openings](http://www.devinemillimet.com/careers/current-openings)



## Niederman, Stanzel & Lindsey PLLC

### ATTORNEY

We are a successful, busy law office located in Manchester, New Hampshire specializing in collections, insurance subrogation and related civil matters. One of our partners is preparing to retire and we are looking for an attorney to cover a portion of his responsibilities. The position will involve in-house review of case files and pleadings as well as appearances at court for pretrial conferences, payment hearings, motions and related proceedings. Initially, we are considering hiring a part-time associate with the possibility of transitioning into full-time employment. This is an excellent opportunity for a new attorney to become associated with a law firm that has long been recognized throughout the State as a leader in the fields we practice.

Letters of interest including a resume should be emailed to [nsl@nslnh.com](mailto:nsl@nslnh.com).

## Business Attorney

Opportunity to join thriving Corporate and Commercial Practice with a medium-sized, 100-year old firm in the heart of the Lakes Region. Prefer minimum of 3-5 years Business Practice experience. Additional experience in Litigation, Real Estate or Estates and Trusts a plus.

Work with attorney of 40 years experience.

Please forward resume and letter of interest to  
Normandin, Cheney & O'Neil, PLLC  
P.O. Box 575  
Laconia, NH 03247-0575

or email to Amy Ogden, Comptroller, at [aogden@nco-law.com](mailto:aogden@nco-law.com)

## Immigration Attorney

We are a regional and national immigration law practice located in Manchester, NH, with a global presence and a substantial client base. We are seeking an attorney with 3 to 5 years experience. Although prior immigration experience is preferred, it is not required. The ideal candidate should have experience in a broad range of business visas and a track record of superior client relations. This is an excellent opportunity for a motivated attorney who wants to be part of a dynamic team while growing his or her own immigration practice. Compensation based on experience and portfolio. If you want to practice immigration law with people excited about what they do, please send resume and letter of interest in confidence to [hiring@goffwilson.com](mailto:hiring@goffwilson.com).

Manchester, NH  
Boston, MA  
Naples, FL  
Paris, France

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*Immigration Law*



800.717.8472 [goffwilson.com](http://goffwilson.com)

## NH INSURANCE DEPARTMENT ATTORNEY IV (HEALTH LAW AND POLICY LEGAL COUNSEL)

US:NH:CONCORD

Labor Grade 32

Position #44144

Salary Range: \$69,088.50 - \$98,962.50

Typical Starting Salary Not to Exceed Step 5, \$82,894.50

This position is responsible for achieving major medical insurance and managed care regulatory objectives of the Department by determining appropriate legislative and regulatory responses to changing market conditions and emerging regulatory issues. This position coordinates with federal regulatory bodies relating to health insurance coverage and provides legal counsel to all Department staff, including Consumer Services, Health Market Conduct, Tax, Financial Examinations, Licensing, Data Analytics, and Enforcement on all matters involving the regulation of health insurance and managed care. This counsel represents the Department before the General Court, on special boards and commissions, at meetings of the National Association of Insurance Commissioners, and in other public forums.

**QUALIFICATIONS:** J.D. from an American Bar Association recognized law school and six years' experience in the active practice of law.

**License/Certification:** Valid driver's license and/or access to transportation for statewide travel.

**SPECIAL QUALIFICATION:** Must be an active member of the New Hampshire Bar Association and in Good Standing.

Apply on line at: <http://das.nh.gov/jobsearch/Employment.aspx>

For further information please contact:

**Hannah Woolsey**  
Human Resources Technician  
[Ins-Careers@Ins.nh.gov](mailto:Ins-Careers@Ins.nh.gov)  
603-271-4047  
EOE

## DCYF – Attorney II

NH Department of Health & Human Services  
Position Number #40088 – Concord District Office

Starting Salary Range: \$57,954.00 to \$68,952.00

The N.H. Department of Health and Human Services, under the supervision of the N.H. Department of Justice, currently has an attorney position available representing the Division for Children Youth and Families. This position is located in the Concord District Office.

**Duties include:** Representation of the Division for Children, Youth and Families in litigation involving the Division's child protection program. Litigation activities include drafting pleadings and motions, conducting discovery, legal research and writing, preparing witnesses for trial, negotiating settlements, and presenting evidence and oral argument at court hearings and trials.

**Requirements:** J.D. from a recognized law school, N.H. Bar membership, a driver's license and/or access to transportation for statewide travel and four years' experience in the practice of law, preferably in the area of abuse and neglect or family law.

**How to a APPLY:** Please go to the following website to submit your application electronically through NH 1st: <http://das.nh.gov/jobsearch/employment.aspx>. A paper application may be sent to: New Hampshire Dept. of Health and Human Services, 129 Pleasant Street, Concord, NH 03301. Please reference the position number that you are applying for: #40088 Attorney II. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

For questions about this position please contact Deanna Baker, Legal Director at (603) 271-1220.

## Litigation Associate

Pastori | Krans, PLLC, an expanding law firm in Concord, NH, is seeking an associate to join our team of litigators. The successful candidate will have excellent oral and written communication skills, a strong work ethic, and enjoy working with a dynamic team in a fast-paced environment. The position requires NH bar admission and at least 1 to 2 years of experience.

Pastori | Krans is committed to investing in our team's professional growth and development, and provides excellent mentorship, training, and opportunities to work on sophisticated and challenging legal matters. We offer competitive compensation, employer-sponsored health insurance, a generous 401(k) match, cutting-edge technology, and a collegial work environment.

Submit cover letter and resume to [bfratus@pastorikrans.com](mailto:bfratus@pastorikrans.com). All inquiries are held in strict confidence.

## Corporate Associate

Do you like working with entrepreneurs? Are you interested in joining a collaborative and innovative legal practice? Cook, Little, Rosenblatt & Manson, p.l.l.c. is a highly-regarded boutique business law firm with an opening in its corporate practice group. Our ideal candidate has strong academic credentials and 2 - 5 years of sophisticated corporate experience. We offer competitive compensation, as well as a platform for you to develop client relationships, become involved with local organizations, work with high-growth businesses, and build your practice in a supportive and collegial environment.

To learn more about the firm, visit our website at [www.clrm.com](http://www.clrm.com). To apply, please send your resume to Lisa Roy, Hiring Coordinator, at [l.roy@clrm.com](mailto:l.roy@clrm.com).



PRIMMER PIPER  
EGGLESTON &  
CRAMER PC

## Associate Attorney

Littleton Office

PRIMMER PIPER EGGLESTON & CRAMER PC, a regional law firm with offices in New Hampshire, Vermont, and Washington, DC, seeks an associate with 0-4 years' experience to join the firm's expanding business practice in our Littleton, NH, office.

The associate will represent local and regional business clients, nonprofit organizations, health care providers, institutions and other enterprises in a broad range of legal matters from business formation and acquisitions, counseling and general business matters, to financing, securities and lease transactions. The ideal candidate will have strong legal and educational credentials and a demonstrated ability to market his/her law practice.

We offer a competitive salary, comprehensive benefits and a dynamic work environment. Qualified candidates may submit letter of interest and resume by e-mail to [careers@primmer.com](mailto:careers@primmer.com). All inquiries are held in the strictest confidence.



PRIMMER PIPER  
EGGLESTON &  
CRAMER PC

## Associate Attorney

Manchester Office

PRIMMER PIPER EGGLESTON & CRAMER PC, a regional law firm with offices in New Hampshire, Vermont, and Washington, DC, seeks an attorney to join the legal team in its Manchester, New Hampshire office. The position requires 1 to 2 years' litigation experience and will involve drafting discovery and motions, taking and defending depositions, and arguing motions before federal and state courts. We are seeking candidates with strong academic credentials and excellent research, writing and analytical skills.

We offer a competitive salary, comprehensive benefits and a great work environment. Qualified candidates may submit letter of interest and resume by e-mail to [careers@primmer.com](mailto:careers@primmer.com).

All inquiries are held in the strictest confidence.



## Patent Law Associate | Burlington, VT

This is a unique opportunity to work with and learn from a team of sophisticated intellectual property professionals in Burlington, consistently ranked among the best places to live in the U.S. by numerous publications and polls. Burlington provides a vibrant cultural environment, a thriving downtown, a welcoming community, easy access to mountains and lakes, and short commutes. Our intellectual property lawyers have worked at some of the largest firms, IP boutiques, and corporations in the U.S., but choose to live in Burlington because lifestyle is a priority. DRM serves a wide range of local, regional, national, and international clients.

Work for this Associate will include an initial emphasis on patent preparation and prosecution, with immediate and long term opportunities for client counseling, intellectual property transactional work, and intellectual property litigation.

We have a strong preference for candidates who have:

- Chemistry background – BS or advanced degree in chemistry, biochemistry, or chemical engineering, or equivalent
- Three to five years of patent experience, including preparing and prosecuting patent applications in chemical/biochemical arts, or a former U.S. patent examiner in a chemical/biochemical art unit, with at least one year of patent experience outside of the U.S. Patent and Trademark Office;
- Experience with or willingness to prepare and prosecute patent applications in other arts, including software arts, medical-device arts, and electromechanical-device arts;
- Strong organizational and interpersonal skills and a high level of attention to detail;
- Excellent analytical and writing skills;
- Superb academic credentials; and
- Desire to work in a dynamic collegial environment.

DRM is committed to investing in our attorneys' professional growth and development. We offer excellent mentorship, and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including industry-leading paid parental leave and two generous retirement plans. Apply here: [https://www.appone.com/MainInfoReq.asp?R\\_ID=1492773&B\\_ID=83&fid=1&Adid=0&ssbgcolor=17143A&SearchScreenID=2521&CountryID=3&LanguageID=2](https://www.appone.com/MainInfoReq.asp?R_ID=1492773&B_ID=83&fid=1&Adid=0&ssbgcolor=17143A&SearchScreenID=2521&CountryID=3&LanguageID=2)



## Tax Associate | Burlington, VT

Downs Rachlin Martin is seeking an attorney with at least 3 years of experience to join its tax practice at its Burlington, Vermont office. Qualified candidates should have substantial experience addressing complex commercial transactions, with a strong background in partnership and corporate tax matters. Experience should include structuring mergers and acquisitions, business formations, debt and equity financings, workouts, private equity and venture capital transactions. Experience with executive compensation, New Markets and other tax credit issues would be valuable in this position. Our practice includes controversy representation across a wide range of state and local tax matters necessitating excellent research, writing and verbal skills.

DRM is committed to client service and providing resources for professional growth and development. We offer excellent mentorship and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including industry-leading paid parental leave and two exceptional retirement plans.

Please submit a cover letter and transcript along with resume for consideration. To apply, please visit [DownsRachlinMartinPLLC.appone.com](http://DownsRachlinMartinPLLC.appone.com).



## Labor & Employment Law Associate | Brattleboro, VT

Downs Rachlin Martin – one of Northern New England's largest business law firms – has a great opportunity for a labor and employment attorney in its Brattleboro, Vermont office. The ideal candidate would have experience representing clients before administrative agencies in employment-related claims, litigating on behalf of management, counseling on employment matters and representing management in traditional labor matters. From its rural offices in Vermont and New Hampshire, DRM's labor and employment law group has a sophisticated regional employment practice and a national labor practice. The ideal candidate has 1 to 3 years of relevant experience, and wants to be part of a team of attorneys committed to delivering top-quality service to growing and successful businesses.

DRM is committed to investing in our attorneys' professional growth and development. We offer excellent mentorship, and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including industry-leading paid parental leave and two generous retirement plans.

To apply, please visit: <https://www.drm.com/careers/attorney-job-openings>

**Junior Business Law Associate | Burlington, VT**

We are searching for a junior associate to work in its dynamic corporate practice in its Burlington, Vermont office. The ideal candidate would have a strong interest and aptitude in business transactions. DRM's business law group is engaged in wide a variety of transactions locally, nationally and internationally, including debt and equity financing transactions, sales of businesses, acquisitions, intellectual property transactions and joint ventures. The ideal candidate has 2 to 4 years of experience in a corporate or commercial law practice, and wants to be part of a team of attorneys committed to delivering top-quality service to growing and successful businesses.

DRM is committed to investing in our attorneys' professional growth and development. We offer excellent mentorship, and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including industry-leading paid parental leave and two generous retirement plans. Apply here: <https://bit.ly/31rsx6x>

**Corporate/Commercial Attorney | Lebanon, NH**

Downs Rachlin Martin PLLC seeks an experienced corporate/commercial attorney to join its Lebanon office. The ideal candidate will be licensed to practice in New Hampshire, have a portable book of business with compatible clients and have a minimum of ten years of experience in corporate/commercial law. The ideal candidate will also be active in the New Hampshire business and civic community and be committed to growing DRM's regional presence. Relevant experience would include the formation of corporations, limited liability companies and other business organizations, commercial loan transactions, equity financings (including private equity and venture capital) and mergers and acquisitions (including sales of stock and assets, management buyouts, recapitalizations and reorganizations). Experience with ESOPs, B-corps or other focused practices would be highly valued.

DRM is committed to client service and providing resources for professional growth and development. We offer excellent mentorship and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including industry-leading paid parental leave and two exceptional retirement plans. To apply, please visit [DownsRachlinMartinPLLC.appone.com](http://DownsRachlinMartinPLLC.appone.com).

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RiverStone, a global insurance industry leader specializing in the acquisition and management of insurance portfolios, has created an Asbestos team tasked with changing the future of the national asbestos litigation through thoughtful, creative claim handling, litigation strategies, and system-wide initiatives. RiverStone is looking for a Claims Analyst to join its Asbestos team.

**Prospective teammates should:**

- Be creative, effective advocates with excellent oral and written communication skills
- Be comfortable challenging the status quo for the better
- prefer to work in a collaborative, multidisciplinary team toward a common goal

**Successful candidates will:**

- Negotiate directly with attorneys, policyholders, and co-carrier representatives
- Observe and participate in court proceedings with defense attorneys
- Analyze and use data to drive better results
- Evaluate complex coverage and liability issues that impact asbestos litigation
- Identify potential exposures to the company and report to senior-level management on significant pending matters
- Devise and implement creative strategies aimed at improving long-term results for all stakeholders, including policyholders, affiliate insurers, and injured claimants
- Receive individualized training to:
  - Develop skills and knowledge of the asbestos industry
  - Understand and evaluate complex coverage issues
  - Implement and integrate those skills to impact the course of asbestos litigation

Experience in mass tort litigation or insurance coverage is preferred but not required. RiverStone offers an exceptional health benefits program, paid maternity leave, company matching 401K, tuition reimbursement, employee stock purchase plan and additional site specific perks (on site gym, yoga classes, personal trainer and more). For additional information, and to apply online, please visit [www.trg.com/join-us](http://www.trg.com/join-us).

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highway?**

**Paper street?**



**Paul J. Alfano**  
603-226-1188  
[paul@alfanolawoffice.com](mailto:paul@alfanolawoffice.com)



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# GUIDE

[nhbar.org/nhbaclc](http://nhbar.org/nhbaclc)

## High Quality, Cost-Effective CLE for the New Hampshire Legal Community

### Calendar Overview

#### SEPTEMBER

**27** Friday = 9:30 a.m. - 4:15 p.m.  
**Willingness to Negotiate With the Other Side**  
 - In Person - Virtual  
 - 90 min. including 45 min. self-paced  
 - Co-sponsor - NHBA Sponsor Fee

#### OCTOBER

**10** Thursday = 9:30 a.m. - 4:30 p.m.  
**Employment Law III**  
**HR 15: Calling a Time Out for Dispute Resolution**  
 - In Person - Virtual  
 - 90 min. including 45 min. self-paced  
 - Co-sponsor - NHBA Sponsor Fee

**18** Friday = 9:30 a.m. - 4:30 p.m.  
**Administrative Law: Drafting Petitions**  
**Licensing and Certification Disputes**  
 - In Person - Virtual  
 - 90 min. self-paced  
 - Co-sponsor - NHBA Sponsor Fee

**25** Friday = 9:30 a.m. - 4:30 p.m.  
**Developments in the Law 2019**  
 - In Person  
 - 90 min. including 45 min. self-paced  
 - Sponsor - [www.nhbar.org](http://www.nhbar.org)

**28** Wednesday = 9:30 a.m. - 4:30 p.m.  
**Appellate Advocacy 2019**  
 - In Person - Virtual  
 - 90 min. including 45 min. self-paced  
 - Co-sponsor - NHBA Sponsor Fee

#### NOVEMBER

**7** Thursday = 9:30 a.m. - 4:30 p.m.  
**Developments in the Law: Ethics Update**  
 - In Person - Video Replay  
 - 90 min. including 45 min. self-paced  
 - CE Sponsor - Pricing Fee

**8** Friday = 9:30 a.m. - 4:30 p.m.  
**Developments in the Law: Ethics Update**  
 - In Person - Video Replay  
 - 90 min. including 45 min. self-paced  
 - CE Sponsor - Pricing Fee

**14** Thursday = 9:30 a.m. - 4:30 p.m.  
**Developments in the Law: Ethics Update**  
 - In Person - Video Replay  
 - 90 min. including 45 min. self-paced  
 - Sponsor - Co-sponsor Fee

**15** Friday = 9:30 a.m. - 4:30 p.m.  
**Developments in the Law: Ethics Update**  
 - In Person - Video Replay  
 - 90 min. including 45 min. self-paced  
 - Sponsor - Pricing Fee

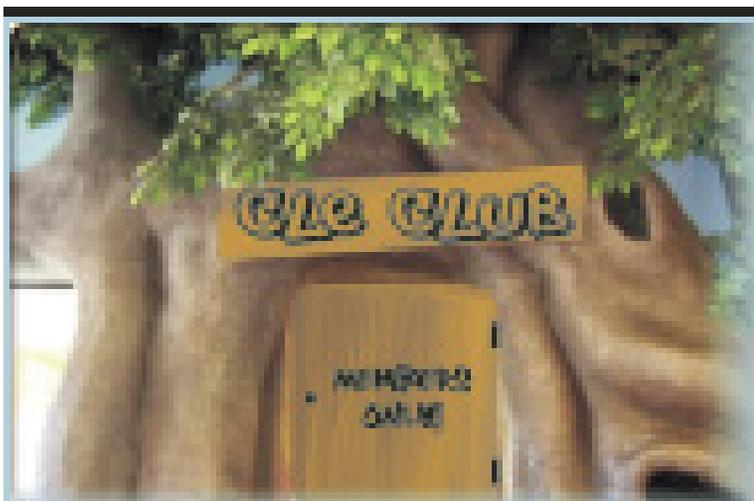
### CLE HIGHLIGHT



Online CLE through NHBA+CLE allows you to take CLE whenever and wherever you have access to the internet. Our most popular seminars are delivered right to your desktop in streaming audio and video formats. Convenience, quality programs and cost savings perfectly fulfill your late night CLE cravings.

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- **\$625** fee for full-day seminars, including materials and lunch.
- **\$325** fee for half-day and **\$65** fee for breakfast seminars including materials and refreshments.
- Special bar membership conference topics

For more information contact Cheryl Moore  
 (603) 715-3260 or email [cmoore@nhbar.org](mailto:cmoore@nhbar.org)

### 4 Ways to Register

**Mail** NHBA+CLE  
 2 Pillsbury St.  
 Suite 300  
 Concord, NH 03301

**Phone** (603) 715-3260 (ext 77)

**Email** [cmoore@nhbar.org](mailto:cmoore@nhbar.org)

**Website** [www.nhbar.org/nhbaclc](http://www.nhbar.org/nhbaclc)

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## Writing & Speaking to Win



Friday  
Sep 27

9:00 a.m. - 4:15 p.m.  
360 min. Credit  
(all 360 min. eligible)

Webcast  
In person



### WRITING TO WIN

Morning Program - 9:00 a.m. - 12:15 p.m.

### SPEAKING TO WIN

Afternoon Program - 1:30 - 4:15 p.m.

For more information and details go to [nhbar.org/nhback](http://nhbar.org/nhback)



All attendees will receive a copy of Steven Stark's book on **Writing to Win**.

(For information on the structure and outline.)

Continuing Educational Credit (CLE) at 360 min.  
NH Bar Association Seminar/Forum, Concord

#### PROGRAM PRICING

Proposed after August 30, 2019:  
Morning Only Live Webcast (LW): \$100; Afternoon Only Live Webcast (LW): \$100; Both half day webcast (LW): \$150.  
Virtual includes continued throughout, local, registration and materials.

## Administrative Law Handling Professional Licensing and Certification Disputes

Friday  
Oct 18

9:00 a.m. - 4:30 p.m.  
360 min. Credit

Webcast  
In person



This program will include an overview of the Administrative Procedures Act and the Right to Know Law as they pertain to the boards and agencies that make up the Office of Professional Licensure and Certification such as the Boards of Nursing, Medicine, Dentistry, Mental Health Practice, Pharmacy, Psychology, Alcohol and Drug Use, Accounting, Architecture, Gardener Ad Licens, Land Surveyors, Family Mediators, Professional Engineers, and others. The seminar will also provide an insight into the prosecution and defense of professionals whose license or certification is threatened or denied.

#### Who should attend?

Anyone who represents persons requiring licenses or certifications, including their businesses.

#### Faculty

Jack R. Craig, Jr., Program Chair/CLE Committee Member, The Craig Law Firm, Concord

John F. Brown, NH Attorney General's Office, Concord

Robert S. Carey, Orr & Bero, PA, Concord

Matthew G. Moore-Jorgens, NH Attorney General's Office, Concord

Jill A. Perlow, NH Attorney General's Office, Concord

Additional faculty to be named

Continuing Educational Credit (CLE) at 360 min.  
NH Bar Association Seminar/Forum, Concord

New Hampshire Practice

#### PROGRAM PRICING

RENEWAL (pre-approved): (200+ min. member, 120+ members in practice) \$200 (plus 1-hour or less membership, 1-hour in-person, fee after staff); (120+ min. member) \$250 (plus 1-hour or less membership, 1-hour in-person, fee after staff); (120+ min. member) \$300 (plus 1-hour or less membership, 1-hour in-person, fee after staff).

## Employment Law 101 The Life Cycle of a New Hampshire Employee

Thursday  
Oct 10

9:00 a.m. - 4:30 p.m.  
360 min. Credit  
(all 360 min. eligible)

Webcast  
In person



The basics of employment law will be covered in this information-packed program, covering hiring to firing of employees. Our experienced faculty will address issues of absence, including the ADA and FMLA; wage, hour and payroll issues at the NH Dept. of Labor; discrimination, harassment, retaliation, and process and procedures at the NH Commission for Human Rights; performance management; and internal investigations. The ethical issues of proposed NH Rule-off Professional Conduct 8.4, representing multiple parties, fee agreements, and settlement considerations will be addressed. This program is designed for the general practitioner and less experienced employment and corporate attorneys dealing with the non-unionized, private-sector workplace.

#### Who should attend?

General practitioners, corporate attorneys, in-house counsel, less-experienced employment attorneys, any lawyer new to employment law or a experienced practitioner looking to brush up on the basics and pick up new practice tips.

#### Faculty

Julie A. Moore, Program Co-Chair/CLE Committee Member, Employment Practitioner Group, Wellesley, MA

Daniel R. Schwanz, Program Co-Chair/CLE Committee Member, Jackson Lewis, PC, Portsmouth

Sarah E. Berke-Gibson, NH Human Rights Commission, Concord

Ahndi M. Lahti, NH Human Rights Commission, Concord

Marie S. McKean, St. Anselm College, Manchester

Jennifer Shea Woodard, Cook, Little, Rosenblatt & Monaco, p/c, Manchester

Rudolph W. Ogden, III, NH Department of Labor, Concord

Continuing Educational Credit (CLE) at 360 min.  
NH Bar Association Seminar/Forum, Concord

New Hampshire Practice

#### PROGRAM PRICING

RENEWAL (pre-approved): (200+ min. member, 120+ members in practice) \$200 (plus 1-hour or less membership, 1-hour in-person, fee after staff); (120+ min. member) \$250 (plus 1-hour or less membership, 1-hour in-person, fee after staff); (120+ min. member) \$300 (plus 1-hour or less membership, 1-hour in-person, fee after staff).



## Virtual Learn@Lunch Webcast Series

Tune in on Tuesdays for our one-hour webcasts.

How to Help an Impaired Colleague - Navigating Rule 8.5  
October 1 • 12-1:00 p.m.

Revised Uniform Fiduciary Access to Digital Assets Act  
October 15 • 12-1:00 p.m.

and more!

Be sure to visit our catalog for upcoming archived Learn@Lunch or 1-Hour or Less Programs.

(Browse by Subject Matter from the CLE catalog home page.)

For more information go to [nhbar.org/nhback](http://nhbar.org/nhback)

# Developments in the Law 2019

Our most popular program is back!

Friday 9:00 a.m. - 4:30 p.m.  
**Oct 25** 360 min. credit  
 (includes breakfast)

In person 

This annual CLE seminar is a must for all practicing New Hampshire attorneys. In a convenient one-day program format, this program offers a complete survey of important legal developments affecting NH practice.

### PROGRAM FACULTY

- Cory M. Balobrow, Program Chair/CLE Committee Member, Magglio, Friedman, Feeney & Frase, PLLC, Concord
- Christine S. Anderson, Ansell & Anderson, PA, Bedford
- Thomas M. Crosson, Jackson Lewis, PC, Portsmouth
- Tracey G. Cole, Shaheen & Gordon, PA, Concord
- Timothy A. Gudas, NH Supreme Court, Concord
- Christopher M. Johnson, NH Appellate Defender Program, Concord
- Gregory A. Moffatt, Fred, Riherty, Belliveau & Pacheco, PLLP, Concord
- Thomas J. Pappas, Palmer Piper Eggleston & Connor, Manchester (retired)
- William C. Sarantey, Fred, Faherty, Belliveau & Pacheco, PLLP, Concord
- Laura Spector-Morgan, Mitchell Municipal Group, PA, Laconia
- Roy W. Thibault, Barnhill's, Shatt, Sawyer & Nelson, PA, Manchester

 Breakfast continental breakfast beginning 8:30 a.m.  
 Credit from NHBA CLE Committee, Manchester  
 New Hampshire Practice

Can't make the live program?  
 We will be coming to a location near you!  
 As a member service, Video Replays of this program are being offered at various locations throughout the state!

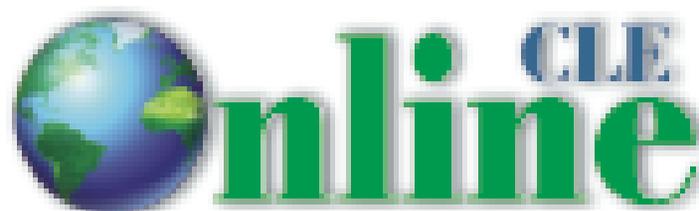
### Video Replay Locations

- Fireside Inn, McLebanon  
Thursday, November 7
- White Mountain Hotel, N. Conway  
Friday, November 8
- Common Hall Inn, Plymouth  
Thursday, November 14
- Holiday Inn, Portsmouth  
Friday, November 15
- East Western, Keene  
Thursday, December 5
- NH Bar Association, Concord  
Friday, February 7, 2020

VIDEO REPLAY (pre-registered): \$195 Registration; \$99 NHBA-CLE/QUI Member

### PROGRAM FEES

\$195 (pre-registered), \$275 (non-member), \$175 (member in good standing 1 year), \$145 (NHBA-CLE/QUI member), \$115 (multiple, bar office staff), \$25 (other non-credit related, walk-in or 1 day of the program is additional fee).



Check out these programs from our online partners, recently added to our online catalog:

#### From the National Association of Criminal Defense Lawyers:

- Casecenter Electronics and the IoT (Internet of Things): The Next Wave of Digital Evidence in Criminal Cases*  
 Original Program: 4/25/2019 - 45 NHRACLE Minutes
- Advocacy in Opiate Courts Using Policy Arguments, Mitigating Factors, and Treatment Alternatives at Sentencing*  
 Original Program: 10/10/2018 - 45 NHRACLE Self Study Minutes

#### From the Maryland State Bar Association:

- Identifying and Addressing Mental Health Issues in Clients*  
 Original Program: 2/7/2019 - 35 NHRACLE Minutes

#### From the Florida Bar Association:

- A 35-Minute Review of the Most Important Entertainment Cases in 2018*  
 Original Program: 1/11/2019 - 35 NHRACLE Minutes

#### From Georgetown Law CLE:

- Contract Year Ahead (From the 2019 International Trade Update)*  
 Original Program: 3/18/2019 - 60 NHRACLE Minutes
- Dark Web Investigations and Discovery*  
 Original Program: 11/14/2018 - 60 NHRACLE Minutes

#### From the Bar Association of San Francisco:

- Constitutional Law/Corporate Rights: What Clients Should Ask*  
 Original Program: 5/3/2019 - 70 NHRACLE Minutes
- Civil Litigation of Several Discovery Cases in the #MeToo Era*  
 Original Program: 5/3/2019 - 70 NHRACLE Minutes

These programs and much more can be found at [nhbar.inreachce.com](http://nhbar.inreachce.com).

For more information go to [nhbar.org/nhbaclc](http://nhbar.org/nhbaclc)



# APPELLATE ADVOCACY 2019

Wednesday 9:00 a.m. - 4:30 p.m.  
**Oct 30** 90 min. credit  
 not for CE credit

Webcast  
 In person



**Special Bonus:**  
 Attendees will receive copies of the newly revised Appellate Practice Manual prepared by NHBA - CLE.

Whether you regularly appear before the NH Supreme Court, or only occasionally handle an appeal in that court, this is a must-see seminar. Hear the latest insights on brief writing, oral argument, motions practice, electronic filing, and preservation issues from faculty members who, together, have briefed and argued hundreds of appeals, along with the clerk and deputy clerk of the Supreme Court.

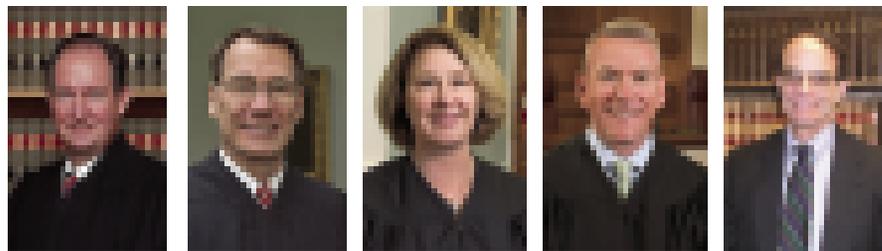
A special discussion and Q&A panel with the entire NH Supreme Court, including recently retired NH Chief Justice Robert J. Lynn, Justices James F. Bassett, Patrick E. Donovan, Anna Barbara Hartz Marconi, and Gary E. Hicks will also be of importance to all practitioners.

### Who Should Attend

Attorneys in civil or criminal practice who regularly appear before the NH Supreme Court or only occasionally handle appeals will benefit. Even litigators who don't do appeals will benefit from insights into best practices for preservation of issues. This program is not offered annually – it was last presented in 2015 – so don't miss this rare opportunity.

### FACULTY

Debra A. Connor, program co-chair, minimal representation & crime, Manchester  
 Theodore M. Lohstein, program co-chair, appellate questions, rule, Concord  
 William A. Clark, NH Supreme Court, Concord  
 Timothy A. Adams, deputy clerk, NH Supreme Court, Concord  
 Stephen R. Kaufman, NH Appellate Calendar program, Concord  
 Christopher A. Johnson, NH Appellate Calendar program, Concord  
 Daniel L. Will, NH Attorney General's Office, Dept. of Justice, Concord  
 Additional faculty to be announced.



### NH SUPREME COURT

- Hon. Gary E. Hicks, Senior Associate Justice
- Hon. James F. Bassett, Associate Justice
- Hon. Anna Barbara Hartz Marconi, Associate Justice
- Hon. Patrick E. Donovan, Associate Justice
- Hon. Robert J. Lynn, Chief Justice (Retired)

Check for a conflict of interest at [nhbar.org](http://nhbar.org).  
 NH Bar Association, Executive Board, Concord  
 New Hampshire Practice

**PROGRAM PRICES**  
 MEMBERS (going alone): \$100 for members, \$120 for members in practice less than 1 year, \$140 for non-member attorneys, \$160 for non-member law officials (your attorney may be affiliated). Walk-in on the day of the program is an additional \$75.

## ATTENTION DO NOT REACT AND PRO BONO VOLUNTEER LAWYERS

# Cultural Humility + Professional Interpreters = Improved Access to Justice



Wednesday 9:00 a.m. - 1:00 p.m.  
**Sep 25** 2.0 hrs. credit  
 not for CE credit

In person



NH's cultural demographics are changing as is Pro Bono's client base. Join us to build your cultural humility, learn how easy it is to access interpreters, and hone your communications skills when working through an interpreter.

There is no charge for the program however registration is limited to DOME Project and Pro Bono Program volunteers. Please contact Pean Dodgson at [pdodgson@nhbar.org](mailto:pdodgson@nhbar.org) or Angelika Wilkerson at [wilkerson@nhbar.org](mailto:wilkerson@nhbar.org) with any questions or to inquire about joining the Pro Bono or DOME Project panels.

### Faculty

- Adriana Cozz, U NH Franklin Pierce School of Law
- Alexandra Bauer, MM, CIM-Spanish, Language Bank
- Angelika Wilkerson, Esq., DOME Project Assistant Coordinator
- Eric Scamman, Esq., Bedford, NH
- Ulana Hennings, New Hampshire Legal Assistance
- Paula Geneva Steady, MEd., case file experience

This program is partially funded by NHBA - CLE, provided by the Office of Science Special Policy, U.S. Department of Justice. The opinions and conclusions expressed herein are those of the author(s) and do not necessarily reflect those of the Department of Justice, Office of Science Special Policy, U.S. Department of Justice, or NHBA - CLE. For more information, please contact the author(s) or the program coordinator at [pdodgson@nhbar.org](mailto:pdodgson@nhbar.org).

Check for a conflict of interest at [nhbar.org](http://nhbar.org).  
 NH Bar Association, Executive Board, Concord

For more information go to [nhbar.org/nhbaacle](http://nhbar.org/nhbaacle)

Co-sponsored by the NH Bar Association and the NH Society of CPAs

# 37<sup>th</sup> Annual Tax Forum

Wednesday 8:00 a.m. - 4:15 p.m.

Nov 20

4.5 hrs. Credit

In person



**John E. Rich, Jr., Moderator**  
McLane Middleton Professional Association

### Plenary Sessions:

Federal Tax Update

Hot Topics in Mergers & Acquisitions

Blockchain and Cryptocurrency

### Breakout Sessions:

#### Track I

Foreign Reporting

#### Track II

Gift & Sales to Intentionally  
Defective Grantor Trusts



A continuing education seminar for CPAs and attorneys sponsored by the New Hampshire Society of CPAs and the New Hampshire Bar Association.

Continuing education credit begins at 7:45 a.m.  
Registration Center, Concord

#### PROGRAM PRICING

\$250/HR (per registered) / \$100 (per registered)

This includes continental breakfast, lunch, all materials and an informational.

To Register go to [NHSCPA.org](http://NHSCPA.org)

# 19<sup>th</sup> Superior Court Judicial Forum

Friday

9:00 a.m. - 1:00 p.m.

Webcast

Dec 6

1.50 hrs. Credit  
incl. 30 min. Ethical

In person



The Superior Court Judicial Forum has proved to be an outstanding opportunity for judges and lawyers to communicate directly on a wide range of issues affecting litigation practice.

The forum features presentations and moderated discussion by a panel of judges and YOU.

#### Why you need to attend!

This program offers a chance to speak with judges and get candid responses! Great give and take atmosphere! Offers opportunity for questions on specific issues; lively and interactive; Real insights into thoughts and concerns of the bench; A pleasure to hear the judges' perspective.

#### Faculty

- Paul H. Hillard, Program Chair/CLE Committee Member, Upton & Hatfield, LLC Portsmouth
- Hon. David A. Anderson, NH Superior Court Justice, Hillsborough County Superior Court-North, Manchester
- Hon. Anna Barbara Hunt Marconi, NH Supreme Court Associate Justice, NH Supreme Court, Concord
- Hon. Lawrence A. MacLeod, Jr., NH Superior Court Justice, NH Superior Court Center, Concord
- Hon. Andrew B. Schreiner, NH Superior Court Justice, NH Superior Court Center, Concord

Continuing education credit begins at 8:45 a.m.  
NHBA Registration Center/Room, Concord

Free Registration Fee!

#### PROGRAM PRICING

NHBA is pre-registered, if we were member, if we were CLE credit member, if we were not we were affiliated, with-in on the day of the program is an additional fee.

## NHBA • CLE REGISTRATION FORM

(fees will be paid by NHBA-CLE, a Friday event, 9:00 AM, Concord, NH 03301)  
(please complete this form for registration)

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Check box if NHBA-CLE CLE Member

Session Title	Date of Live Attendance	Delivery	CLE Package	CLE Package	Fee

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– Randy Reis  
Reis & Kirkland

“A great way to let all my fellow Bar members know the type of work I do, and my willingness to work with them on cases. I would strongly advise using the *Bar News* to reach fellow lawyers both here in New Hampshire and throughout the region.”

– Peter Hutchins  
Hutchins Law Offices



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Download the new members-only media kit at:

<https://www.nhbar.org/wp-content/uploads/2019/06/2019-Media-Kit-for-Members-1.pdf>



For pricing and additional information, please contact:

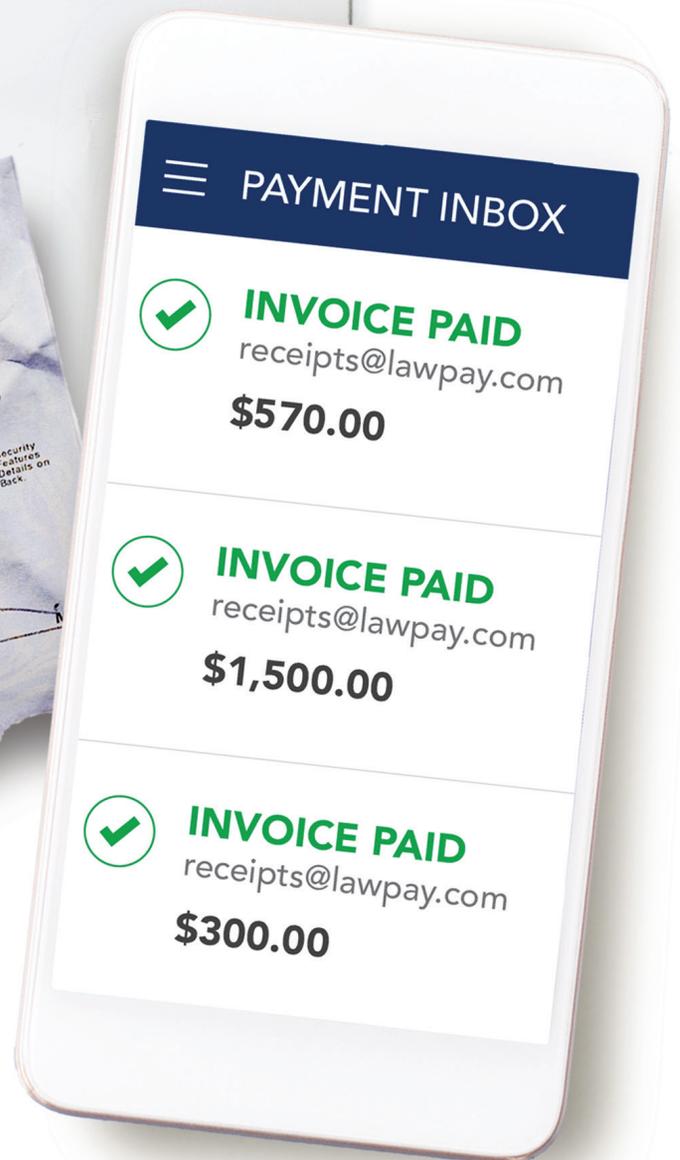


**DONNA J. PARKER**  
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