

## Using Data Analytics Tools to Predict Litigation Outcomes

By Chantalle R. Forgues, attorney and associate professor of business law, Plymouth State University; and Daniel S. Lee, professor of economics, PSU

Can the presence of certain words in a Complaint predict the outcome of a case? Could a combination of case variables provide a litigation forecast? What data might project wins and losses, or even monetary awards in court? These are just a few of the questions that big data analytics tools could answer as the field of data science expands into the law.

Specifically, when lawyers consult with data scientists, we can learn how to identify and calculate pertinent data and use them as litigation predictors and game changers. We can further quantify the risks and benefits attendant to the different legal tactics we might pursue in our cases and thereby improve our legal strategy. We can then use these calculations to advise our clients with measurable certainty and make categorical data-supported legal decisions.

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## Inside: 2019 Cybersecurity Supplement



### Join us at the NHBA 2020 Midyear Meeting!

"Those who cannot remember  
the past are condemned  
to repeat it."

—George Santayana

**Speaking Up:**  
Power, Peril and Politics

**SEE  
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NEW HAMPSHIRE BAR ASSOCIATION  
**2020 Midyear Meeting**  
February 21, 2020 ★ 8:45 a.m. – 5:00 p.m.  
DoubleTree by Hilton Manchester Downtown

## Morin is Enriching Nashua From the Roots Up

By Kathie Ragsdale

Andrew Morin's connection with the land dates back to his Nashua childhood, when his father set up a small farm stand for him to operate as a means of encouraging him to eat his vegetables. His great-grandparents had purchased property at what was then a large farm at the edge of town.

Today, Morin's West Hollis Street law office in Nashua is in the house his great-uncle built for his grandmother.

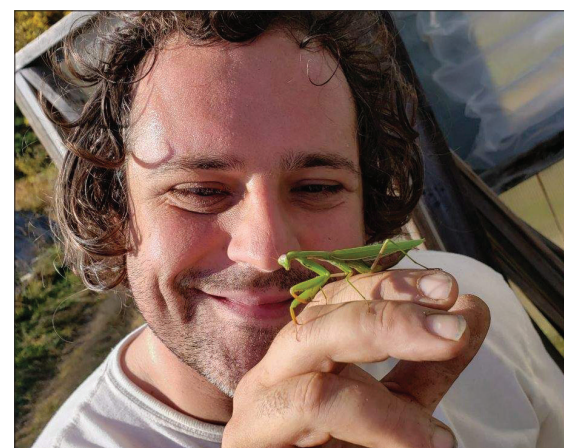
A sole practitioner with a focus on estate planning, Morin is also executive director of the ReGenerative Roots Association, a Nashua nonprofit devoted to sustainable agriculture, education, youth development and community events.

He's all about enriching what's around him — whether it's the soil, the community, or individuals seeking legal advice.

"I really feel I can add value to clients' lives," he says of his estate law practice.

While still attending Nashua High, Morin participated in a summer program about the law at Brown University, planting the seed that a later legal career "could be an option," Morin recalls.

But post-graduation found him enrolled in business school at the University of New Hampshire, where he received a business administration degree in the hopes of



Andrew Morin studies a praying mantis at Sullivan Farm.

achieving financial success.

He worked briefly at two investment firms after graduation, and opened and managed a painting company, A & K Painting LLC, before the tug of law school prevailed. He enrolled at Suffolk University Law School, graduating in 2011.

Morin worked briefly at Marcotte Law Firm in Lowell, Massachusetts before starting up a solo practice in his

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# Midyear Meeting to Explore Modern Justice

Over the years we have had some amazing programs at our Midyear Meeting. This will be no exception. The NHBA's 2020 Midyear Meeting — "Speaking Up: Power, Peril and Politics" — will be at the DoubleTree by Hilton Manchester Downtown on February 21, 2020.

Our morning will again kick off with the Gender Equality Committee Breakfast at 7:30 a.m. The Breakfast will feature the presentation of the prestigious Philip S. Hollman Award for Gender Equality to Attorney Christina Ferrari (see below for more information). Tickets to the Breakfast go quickly, so get yours now.

The first session of the morning will feature James Robenalt, who has been speaking and teaching about lawyers as whistleblowers, and the legacy of Watergate. Robenalt will explore John Dean's role as White House counsel and the changes brought about in rules of professional conduct, as well as the development of whistleblower protections for public sector lawyers.

This year's theme will carry over to the

## Board Perspective



**By Edward Philpot**  
Edward D. Philpot, Jr.,  
PLLC  
Laconia, NH

afternoon program. I'm especially thrilled to present a panel discussion with speakers Dale Minami, lead counsel for Fred Korematsu in the Korematsu coram nobis case; Karen Korematsu, founder and executive director of the Fred T. Korematsu Institute in San Francisco; Hoyt Zia, founder of the National Asian Pacific American Bar Association; and Mona Movafaghi of Drummond Woodsum. Their discussion will follow a screening of "And Then They Came For Us: The Perils of Silence." The

documentary film was the 2019 ABA Silver Gavel Award winner and is a powerful look at the incarceration of 110,000 Japanese Americans, by executive order in the wake of the attack on Pearl Harbor in 1941.

The banishment of these Americans of Japanese descent, and the subsequent affirmation of the government's actions in the infamous Supreme Court decisions of *Hirabayashi v. United States* and *Korematsu v. United States* accepting the unsubstantiated assertions of "military necessity" by the government, continues to resonate. Many government lawyers tried to prevent this miscarriage of justice, and many lost their jobs and careers for doing the right thing.

Our panelists will explore the issues which present challenges to lawyers and the legal system and how lawyers can, and have, risen to the challenge of defending the rule of law. You can learn more about these sessions, as well as the Honors and Awards luncheon that is the centerpiece

PHILPOT continued on page 16

# Attorney Ferrari to Receive Hollman Award

The Gender Equality Committee of the NH Bar Association has announced the recipient of the 2020 Philip S. Hollman Award for Gender Equality: attorney Christina Ferrari.

Ferrari is a shareholder of Bernstein Shur, where she is a member of the Litigation and Dispute Resolution, Business, and Healthcare Practice Groups. She represents individuals and businesses in complex litigation matters and appeals in state and federal courts, before administrative agencies, and in the dispute resolution process. She is president of the New Hampshire Women's Bar Association (NHWBA), and has been on the Board of the NHWBA since 2011.

The NHWBA nominated Ferrari for the honor, writing that: "Notably, Christina's efforts in getting New Hampshire Professional Conduct Rule 8.4(g) implemented demonstrate: (1) her dedication to promoting respect and fair treatment of all members of the judicial system; and (2) her promotion of gender equality through leadership and education on the issues."

The nomination, submitted by NHW-



"I look forward to continuing the discussion at this year's Gender Equality Breakfast about how we can all work together to move the needle forward on gender equity in our profession, an issue of paramount importance."

— Christina Ferrari

BA Vice President Caroline K. Leonard on behalf of the board, continued: "Her initiative and leadership in getting Rule 8.4(g) passed made her a role model for the entire New Hampshire Bar. Because of this, the NHWBA Board believes that Christina deserves special recognition for her work championing Rule 8.4(g)'s implementation."

Colleague Talesha Saint-Marc also nominated Ferrari, describing her as embodying the legacy of Judge Hollman.

"Christina's advocacy for fair treatment of all goes beyond her efforts with regard to Rule 8.4(g)," Saint-Marc wrote. "She is a passionate advocate and community leader,

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**Above:** The NHBA New Lawyers' Committee recently hosted a discussion on career paths in the legal profession with a number of distinguished panelists sharing their experiences: Henry Klementowicz, ACLU (not pictured); (left to right) Jaclyn Fisher, Preti Flaherty; Joseph Young, Shumaker Sieffert; Shauna L. Segelke, The Nagler Group; Jenna Bergeron, Miller Law Group; Caitlin McCurdy, McLane Middleton; and Hon. Andrea K. Johnstone, U.S. District Court. **Below:** Young speaks with an attendee and Laura Keeler, NHBA member services and LPM coordinator.



McLane Middleton donated 100 cases of water to Pease Greeters as part of its year-long Centennial celebration. The delivery to Pease Greeters was made by Michael J. Quinn, the managing director of the firm's Portsmouth office and a director in the firm's Administrative Law Department and Whitney A. Gagnon, an associate in the firm's Trusts & Estates Department.

## NH Bar Thanks November LawLine Host



Left to right: Pam Barker, Legal Assistant; Dennis Morgan, Partner; Chris Meier, Partner; Leslie Leonard, Partner, Andy Dean, Attorney; Tracy Grisez, Attorney.

Thank you to Cooper, Cargill, Chant, which hosted LawLine on November 13 as they have once a year, every year for more than a decade! Attorneys Dennis Morgan, Chris Meier, Leslie Leonard, Andy Dean, Tracy Grisez, Deborah Fauver, and Legal Assistant Pam Barker fielded more than 45 calls from the public, providing brief legal advice and information.

When asked what she would say to attorneys considering hosting this valuable public service, attorney Leslie Leonard said:

"Every year we look forward to our LawLine night, where we can spend time offering advice to people throughout our state who otherwise haven't gotten answers to their legal questions. We hear of issues throughout the state, which allows us an opportunity to see

that, although we here in Carroll County may be less populated, the legal issues our state faces are very similar, whether you are in the most populated county or the least. LawLine also gives our lawyers an opportunity to enjoy a meal, have a chat, and then get down to the fun business of taking calls from all over the state for two hours."

**Reserve your 2020 LawLine event now! Open dates are Wednesday, February 12, April 8, October 14 and December 9.**

**You gather a handful of volunteers at your office to answer phones, and the NH Bar provides the pizza and the callers.**

**For more information or to sign up contact Sheila Vermacy at [svermacy@nhbar.org](mailto:svermacy@nhbar.org) or call 603.715.3235.**

## New Hampshire Bar Admits New Members

The New Hampshire Bar admitted 28 new members at a swearing-in ceremony on December 4 at the New Hampshire Supreme Court.

Blaesser, Brian W., Boston, Mass.  
Chew, Nancy E., Harvard, Mass.  
Courtney, Craig W., Montgomery, Ala.  
Crapo, Shawn R., Rye Beach, NH  
Doyon, Elizabeth J., Boston, Mass.  
Duffy, James W., Boston, Mass.  
Ebacher, Jason R., Amesbury, Mass.  
Fischette, Charles J., Manchester, NH  
Gerber, Kaitlyn Keating, Washington, DC  
Heiner, Michael J., North Andover, Mass.  
Jacobson, Amanda K., North Haverhill, NH  
Keller, Duran L., Lafayette, Ind.

Loscocco, Paul J., Boston, Mass.  
Mandelcorn, Howard M., Wellsley, Mass.  
Martucci, Megan C., Stratham, NH  
Michalski, Sean M., Alexandria, Va.  
Montufar, Nikole M., Seattle, Wash.  
Netburn, Peter C., Boston, Mass.  
Pastinen, Hanni H., Portland, Maine  
Patel, Hetan, Boston, Mass.  
Reardon, John J., Hingham, Mass.  
Squillace, Scott E., Boston, Mass.  
Stefanelli, Regina M., Dummerston, Vt.  
Thomason, Danielle A., Fitchburg, Mass.  
Tirrell, Richard S., Andover, Mass.  
Vital, Ryan J., South Easton, Mass.  
Weiland, Kasey A., Concord, NH  
Wright, Ronald F., Jr., Rochester, NY

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## Restrictive Covenants in a Border State

By Christopher T. Vrontas

Businesses in New Hampshire should be careful to comply not only with their own state's laws but also, at least when it comes to their employees, Massachusetts laws for their workers who live across the border. This is especially true with covenants not to compete.

Why should a New Hampshire employer care about Massachusetts law? We live in a border state. The recent Massachusetts reform statute from 2018, which added significant requirements in order for covenants not to compete to be enforceable, explicitly bars enforcement of choice of law provisions that would avoid the protective effect of that statute. The law also explicitly covers any employee who lives in Massachusetts regardless of where their employer is based, including any employee who may have initially lived in New Hampshire and later moved

to Massachusetts at least 30 days before termination of employment.

So, your New Hampshire employee signs today in 2019, moves across the border to Massachusetts and lives there for just 30 days? Your covenant not to compete must comply with Massachusetts law in order for it to be enforceable against that employee.

Some provisions in the reform law are not surprising. For example, the new Massachusetts law requires covenants not to compete, in order to be enforceable, 1) to be designed to protect a legitimate business interest, 2) with a time restriction no greater than 12 months, 3) and a geographic scope no greater than the area where the employee actually provided service or had a material presence, 4) restricting only those activities and services the employee provided over the last two years of work, and 5) be consistent with public policy.

There are other requirements, however, that may surprise the unsuspecting employer in New Hampshire. For example, the new law requires any covenant not to compete to be supported by a "garden leave clause" to be enforceable, which means the employee must be paid at least 50 percent of his or her base salary (or some other agreed upon consideration) during the period of the restriction. Also, if the restrictive covenant is presented at the commencement of employment, it must be shown either before the formal offer or 10 days before commencement of employment, whichever occurs earlier. If presented during employment, it must be supported by



fair and reasonable consideration and the employee must have 10 days' notice. On top of all that, Massachusetts bans these agreements with nonexempt/hourly workers, student interns, underage employees, and any employee terminated without cause.

COVENANTS continued on page 5

### 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 NHBA staff.

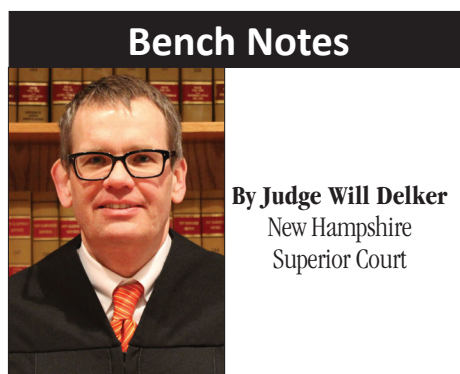
## Bench Notes

### Exeter High Schoolers Learn First-Hand the Power of Language in the Law

On October 31, 2019, 36 Exeter High School students gathered at the American Independence Museum's historic Folsom Tavern to study the United States Constitution. However, they weren't there to study its history, but rather how the framers' choice of wording can dictate an outcome where the language is specific or give courts wide discretion where rights are described in broad concepts.

The day-long interactive civics lesson was part of a semester-long course designed by two Exeter High School social studies teachers, museum leadership, and me. The course challenged students to write and adopt their own version of the Fourth Amendment in a mock constitutional convention. It was more powerful than we had hoped and an experience that members of the bench and bar should share with students throughout the state.

The kernel of an idea for a civics lesson began when I visited the American Independence Museum in Exeter, which is home to some of the most important documents from our country's beginnings. They include the Dunlap Broadside Decla-



### Bench Notes

By Judge Will Delker  
New Hampshire  
Superior Court

ration of Independence, which was delivered to the citizens of the newly independent State of New Hampshire on July 14, 1776, and the original handwritten notes of two of the members of the Constitutional Convention of 1787.

The project came together quickly. I reached out to Emma Stratton, the museum's executive director and Abigail Pi-etran-tonio, education manager, in the fall of 2018 to discuss how we could build a civics education program around these pivotal documents. Coincidentally, the

museum, which already had a robust education program for younger students, was looking to offer learning opportunities to high schoolers. The New Hampshire Institute for Civics Education put us in touch with Exeter High School social studies teachers Adam Krauss and Heather Saluto.

Our conversation focused on the power of the written word in the age of Twitter and texting, where speed and brevity, not thoughtful word choice, matters most. This mode of communication is a far cry from the deliberate process used to craft the text of the Constitution. The contrast in language within the working drafts of the Constitution from two delegates to the 1787 Constitutional Convention was especially valuable.

In the version belonging to Nicholas Gilman Jr., an Exeter resident, New Hampshire delegate and member of the Committee on Detail, the preamble focused on the role of individual states in the formation of a new nation. In contrast, the delegate from Massachusetts, Rufus King, focused on a national identity through the collective sovereignty of the people, en-

shrined in the opening lines to our founding document: "We, the People of the United States. . ."

Mrs. Saluto and Mr. Krauss were confident they could design a curriculum for their 11th graders around the importance of language, embodied by these examples. The Exeter students spent time in class learning the fundamental history about how the United States Constitution was formed. Beyond that, however, we felt that the best way to teach the students the importance of the words chosen by the Framers was to provide the students a first-hand experience with the art of crafting constitutional language.

Our idea was to give the students an opportunity to distill their own values into written text by updating the language of the Fourth Amendment. The museum offered the Folsom Tavern, where George Washington stopped during his visit to New Hampshire shortly after his election in 1789. We all agreed it was the perfect historical venue for this project.

BENCH NOTES continued on page 5



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## Covenants from page 4

New Hampshire has gone some distance down this path. Recently, the Governor signed a law banning non-competes that would restrict hourly workers making just two times the federal minimum wage or less. Also, like Massachusetts, an employer must present a restrictive covenant to a new hire prior to an offer of employment. But, while New Hampshire does not have a “garden leave clause” requirement, a covenant without such a clause will fail against an employee residing in Massachusetts, even if the remainder of the agreement is otherwise reasonable in time and scope.

There are many permutations in the laws of both states this article cannot cover in the space allowed here. For one thing, recent New Hampshire case law suggests that courts will likely only enforce covenants not to compete to the extent they serve as covenants not to solicit customers or employees or vendors, at least when the business interest to be protected is merely “good will.”

By contrast, Massachusetts has been more willing to enforce restrictive covenants on a territorial basis, and the new Massachusetts statute does not affect covenants restricting only solicitation of customers, vendors or employees. Nevertheless, the new protections could trip up the unwary. Businesses with any kind of cross border employee population should model agreements with an eye to ensuring enforceability wherever they may be litigated.

*Chris Vrontas is the president and a founding shareholder of Vrontas, Ayer & Chandler, an innovative boutique law practice based in Manchester and Boston. For nearly 30 years he has represented businesses and executives in employment discrimination claims, wage and hour disputes, covenant not to compete claims, trade secret and intellectual property matters, shareholder actions and other complex business disputes.*

*For a different perspective on this subject, see the practice area section on page 18.*

## Award from page 2

and an excellent candidate for this award.”

Ferrari previously served as the NHWBA’s Treasurer and Vice-President. She is also a member of the Manchester Business Council, appointed by Mayor Joyce Craig, and a member of the New Hampshire Tech Alliance’s BioMedTech Committee and Government Affairs Committee.

She has also served as a Board member of the Equality Health Center and a member of the New Hampshire Bar Association’s Gender Equality Committee (2012-2014).

“I am deeply honored to receive this year’s Philip S. Hollman Award, named after Judge Hollman and in recognition of his important advocacy for gender equality in the legal system,” Ferrari said after the announcement. “I look forward to continuing the discussion at this year’s Gender Equal-

ity Breakfast about how we can all work together to move the needle forward on gender equity in our profession, an issue of paramount importance.”

In 2017, Christina graduated from the Leadership Greater Manchester (LGM) Program through the Greater Manchester Chamber of Commerce. She earned her J.D. from the University of New Hampshire School of Law, where she was a Daniel Webster Scholar and sworn into the New Hampshire Bar prior to graduation, and her M.A. in Medical Science, with Thesis Honors, from Boston University School of Medicine.

Established on the occasion of the Honorable Philip S. Hollman’s retirement from the Superior Court bench in 2003, the Gender Equality award is designed to honor Judge Hollman’s efforts in advocating for gender equality in the NH legal system.

### Midyear Meeting 2020 Gender Equality Breakfast

Date: Friday, February 21, 2020

Time: 7:15 a.m. to 8:30 a.m.

Register: [www.nhbar.org/GEC](http://www.nhbar.org/GEC)

## Bench Notes from page 4

One week before the mock convention, I gave the students a tutorial on the constitutional principles underlying the law of search and seizure. I used two cases to illustrate how courts could reach opposite conclusions on whether the police need a warrant to search trash left on the curb for disposal. In *California v. Greenwood*, the United States Supreme Court held that no warrant was necessary under the Fourth Amendment. In *State v. Goss*, the New Hampshire Supreme Court relied on similar language in the state constitution to reach the opposite conclusion.

After this primer on constitutional principles, Mrs. Saluto and Mr. Krauss divided the students into groups. Half the students were tasked with brainstorming values important to preserving liberty, while the other half collated values important to promoting public security. With these ideas in hand, the students gathered on the morning of October 31 in the museum’s historic rooms to begin the challenging task of putting concepts into workable text.

The students initially worked in eight teams of four to five students, putting their

ideas on paper. The working groups then debated their drafts with one another until the liberty and security committees each came up with competing versions of a new Fourth Amendment. Finally, all of the students met as a Committee of the Whole to debate and vote on a final amendment.

The challenge was word choice. Committee members debated what language would best address concerns about racial profiling, either through specific reference to the problem or by maintaining the all-encompassing language embodied in the existing Fourth Amendment. At one point, the students were poised to expressly eliminate the exclusionary rule, a judicially created doctrine that keeps most evidence seized in violation of the Fourth Amendment out of a criminal trial. Ultimately, they compromised by retaining the exclusionary rule unless the evidence relates to conduct that poses an imminent threat to the public. The final language of their proposed amendment read:

*“The right of the people to be secure in their property and possessions that are not intended for distribution or disposal, including personal devices, digital imprint, and electronic data, shall not be infringed except as authorized by this amendment. Warrants specifying the lo-*



Judge Delker works with Exeter High students to create a modified Fourth Amendment. (Courtesy)

*cation and objective of the search can be issued with probable cause by a court of law. Should an enforcer violate this right, the evidence shall be expunged unless it poses an imminent threat to society, and the police department that found the unjust evidence will be held accountable based on the severity of the violation.”*

Students were given the chance for a hands-on interaction with the Constitution. Learning through doing can be a far

more powerful tool to teach our children the value of our constitutional democracy. This model is easily adaptable to share with other schools, and we are happy to share our approach with lawyers, judges, educators and others. Civics education does not need to be a passive learning experience.

*Hon. N. William Delker is an associate justice for the NH Superior Court.*



Heather M. Burns



Michael S. McGrath

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# Catching up with Leadership Academy Graduates

In 2011, the New Hampshire Bar Association launched a new program meant to expose a select group of lawyers to knowledge and experiences that would help them attain leadership roles in the legal community and beyond.

Since then, the NHBA Leadership Academy has annually chosen up to 18 Bar members with 10 or fewer years of experience for a program year in which they participate in modules focusing on business, public interest and nonprofit entities, the media and all three branches of government.

Shadowing judges and interaction with leaders in each of those fields — including governors, legislators, CEOs, authors, educators and other leaders in the state — is part of the experience.

Now that the Leadership Academy has graduated six classes, the *Bar News* reached out to three of those graduates to ask what they learned from the program, how it has helped them in the service of others and what other new attorneys might expect to gain by applying for the Leadership Academy. Here's what they had to say.

*Interviews and story by  
writer Kathie Ragsdale*

## Donald H. Sienkiewicz, Class of 2011 (inaugural class)

**Question:**  
What has transpired in your career since graduating Leadership Academy?

When I was in the Leadership Academy, I was still trying to find my footing. I had recently been laid off from a Concord law firm where I was doing commercial real estate. The great recession had just begun and the real estate market had collapsed. I was doing some litigation and I felt like my second career in the law was starting so I needed to strike out and get some broader exposure...

Estate planning is really complicated. I've been at it for 10 years now. I like breaking down complicated stuff for people. I really like the counseling and often therapeutic aspect of the work. It grew on me quickly.

**Question: Why did you apply for Leadership Academy?**

I wanted to see if I could serve my profession but I really didn't have any idea of how I could serve my profession. But I also wanted to figure out how my profession could help me support myself, my wife and four kids. I just wanted to meet people and get some exposure



to other areas of law and other ways of thinking about the law as a professional. This was a new opportunity the Bar Association had just created.

**Question: How has it impacted your career?**

I met a couple attorneys I've stayed in touch with, have done a little referral work back and forth. I sit on the board of governors for the Bar Association. It's a pleasure to come back and see some of the people I knew from the Leadership Academy. One of the people I knew in the academy recommended I get on the board of governors. I'm finding it pretty interesting.

**Question: What were you surprised by?**

I was surprised by how much work had been put into it. I felt like they brought in very busy and powerful people to talk to our class and I felt at that point that I was kind of a nameless sole practitioner and I had exposure to some pretty powerful people who knew the inner workings of government and politics and industry and I thought that was pretty cool.

**Question: Why would you recommend this program to others?**

It's a great springboard and gives you a broader view of the law than what you just get from doing your technical area of practice.

**Question: What was your biggest takeaway from the Judicial Module?**

I got to shadow the district court judge in Goffstown and the police prosecutor. I was so impressed with the volume

of cases that they handled and disposed of in just the morning and the way the judge and the cop and the police prosecutor and the public defenders collaborated to get people a fair shake in front of the man in the black robe and protect the public and serve justice and keep things moving.

The thing I walked away with was, wow, the cops and the district courts now the circuit courts, these people are the front line in keeping civil society together.

## Jim Cowles, Class of 2015

**Question: What has transpired in your career since graduating Leadership Academy?**

I think I was already on a number of nonprofit boards but the Leadership Academy would have been the final notch to do more locally. I am on the board of the Appalachian Mountain Teen Project, which helps kids get a sense of community.

I'm on the board of The Nick in Wolfeboro, which manages ballfields and track fields. The town doesn't own recreation fields so I'm on the board that helps manage that.

I'm also on the board (as governor) of



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the Carroll County Bar Association which gets together two times a year. It was defunct for a while, then myself and Leslie Leonard of Cooper Cargill restarted it a few years ago, around the same time as the Leadership Academy.

**Question: Why did you apply for Leadership Academy?**

For me, I joined because it was a great networking opportunity. That was the main thing. You wouldn't necessarily get exposed to the people you met who don't practice locally. That's important to continuing to have a very collegial Bar like we do.

**Question: How has it impacted your career?**

I would have started joining [non-profit] boards anyway but [Supreme Court] Justice Bassett talked about being on his local conservation commission.

Another module I enjoyed was meeting people from local media. You do a project at the end of it. I think ours has to do with technology and the courtroom. You break into smaller groups of four or five to do the project.

**Question: Why would you recommend this program to others?**

It's a good way to meet other attorneys and get yourself out there and get involved in doing things locally.

**Question: What was your biggest takeaway from the Judicial Module?**

I shadowed Judge (Jacalyn) Colburn in Nashua and was impressed with just the breadth of different topics they are making decisions about on a daily basis.

There was nothing surprising, but it was interesting to see it in practice.

## Susan Lowry, Class of 2015

**Question: What has transpired in your career since graduating Leadership Academy?**

I am now working at a different law firm. I was a lawyer at Boynton Waldron Doleac, Woodman & Scott. Now I'm at Upton & Hatfield. I'm generally doing the same type of things. I'm a litigator.

**Question: Why did you apply for Leadership Academy?**

One of the reasons I was interested in the Leadership Academy was to learn more about different areas of law and how they interplay with each other across the state. Being a seacoast attorney I really didn't get into the middle of the state or beyond, ever. Every month at the Leadership Academy was a different focus.

**Question: How has it impacted your career?**

Something I really wanted to do was expand my connections and knowledge. In that way it has helped me tremendously, not only the people you meet for the monthly programs but the people you're in the Academy with. Now I have people I can call on, refer cases to and generally interact with that I really appreciate.

I do attribute one thing to the Leadership Academy. I've been on the New Hampshire Bar Association board of governors, going into my third year as



NEW HAMPSHIRE  
BAR ASSOCIATION  
**LEADERSHIP Academy**



Rockingham County representative. Just being in the Leadership Academy caused another attorney to come up and say, I think you'd be really good in this capacity. I hadn't considered it and it's been a really good experience for me.

I do appreciate the resources the Leadership Academy has given me — the people I know I can call up, the connections I made through that program.

It's also provided a broader foundation for me to draw from when I'm working on my own cases.

**Question: What were you surprised by?**

I went in expecting to get a certain amount of knowledge and exposure and it far exceeded my expectations... I love living on the seacoast, working out of Rockingham County. But it really was great to meet other people from different parts of the state and see what other lawyers are facing in different parts of the state.

You've got people who are solo practitioners in the North Country or the southwest and that's a really different experience from someone in a larger firm in Manchester. I went for diversity and exposure and definitely got more than I expected to

**Question: Why would you recommend this program to others?**

It does involve some work. You are taking time out of your regular work schedule to do that. People should be aware that you get out what you put in. But it's one of the best things you could do.

**Question: What was your biggest takeaway from the Judicial Module?**

I shadowed with Judge Delker in Rockingham County. I really enjoyed shadowing with him, getting his perspective on what he thought of practicing law versus sitting on the bench. That was really impactful for me.

The NHBA Leadership Academy is nine months of leadership training and two years of service to the NH Bar. Enhance your personal development and build leadership skills through interactive programs. For any questions about the program, contact Lisa Boisvert at [lboisvert@nhbar.org](mailto:lboisvert@nhbar.org). The application for Leadership Academy becomes available in early 2020; more information coming soon!

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# Save the Date: May 1, 2020 is Law Day

## NHBA Law Related Education to Celebrate the Centennial of the 19th Amendment



Looking ahead to 2020, the New Hampshire Bar Association Law Related Education Program will be celebrating the Centennial of the 19th Amendment.

But, “A Lawyer and Judge in Every School” begins now! Speak to students about the importance of voting! Do NH students know that the right to vote was not always a right for all NH citizens?

Sign up now to visit a classroom or visit a high school senior class to bring the gift of the “Beyond High School: A guide to Your Rights and Responsibilities” book to high schools all over the state. In a 2018-19 survey of high school seniors, when asked which right is most important to them when they turn 18, most state, “the Right to Vote.”



The American Bar Association is leading efforts across the country to celebrate and honor the 100th anniversary of the passage of the 19th Amendment.

The national Law Day 2020 theme is “Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100.” In 2019-2020, the United States is commemorating the centennial of the transformative constitutional amendment that guaranteed the right of citizens to vote would not be denied or abridged by the United States or any state on account of sex. American women fought for, and won, the vote through their

voice and action.

Next year, the NH Bar will also be hosting the American Bar Association’s traveling exhibit on the 19th Amendment, called “100 Years after the 19th Amendment: Their Legacy, and Our Future.” The exhibit, organized by the ABA’s Standing Committee on the Law Library of Congress, will be displayed in Concord from April 27 to May 11, 2020.



For more than seven decades, the NH Bar Association has organized and sponsored programming designed to increase civics knowledge among New Hampshire students, with help of volunteer attorneys.

The NH Bar Association is committed to improving civics instruction in schools through its Law Related Education programs. Students need civics and social studies instruction to better prepare them for participation as citizens.

*To learn more about the Bar’s Law Related Education programs and how to volunteer, visit [www.nhbar.org/law-related-education/](http://www.nhbar.org/law-related-education/).*



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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 a 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)



## MEMBER BENEFIT SPOTLIGHT

### New Benefit: NHBA Insurance Agency/Amity Insurance Offers Lawyers Cyber Insurance Program



In response to the ever-evolving cyber marketplace and the explosive financial impact to mitigate losses caused by cyber attacks launched at law firms, the NHBA Insurance Agency (Amity Insurance) and Federal Insurance Co. (CHUBB Group of Ins.) are offering members of the NHBA an exclusive solution.

Amity has exclusively endorsed Chubb's cyber policy. The policy features an array of coverages to protect your firm's assets, client sensitive data, and proprietary information. This program is available to all firms' 1-50 attorneys — with premiums starting at \$1,000 and deductibles of \$2,500 and higher.

Existing Lawyers Professional Liability policies provide little to no coverage for Cyber Liability. LPL policies are not created nor geared to handle cyber losses. The pitfalls in LPL policy limits, exclusions, and coverage gap weakness create a significant need for this new cyber offering to all NHBA members.

Coming soon, in Edition 2, will be specific program details, including, limits, deductible, endorsements, premiums, coverage highlight, claims scenarios and further examples on "why buy" solutions. A couple of Basic Concerns for Law Firms:

1) **Cybersecurity:** 55% of law firms had either not implemented email encryption or were unaware if their email server encrypted data. Only 39% used two-factor authentication, and just 45% used an intrusion detection system.

- 2) **Vendor and subcontractor HIPAA compliance:** Only 6 of 10 law firms had a current Business Associate Agreement in place with sub-contractors ensuring they have proper training on the handling of PHI. Only 58% said their off-site data backups complied with HIPAA regulations. Under the Omnibus Rule business associates will be held responsible for the actions of their vendors and sub-contractors.
- 3) **Personal Healthcare Information access controls:** Just under half of the law firms said they kept PHI access logs. Only 46% reviewed and maintained PHI logs on remote devices and ensured data was securely erased

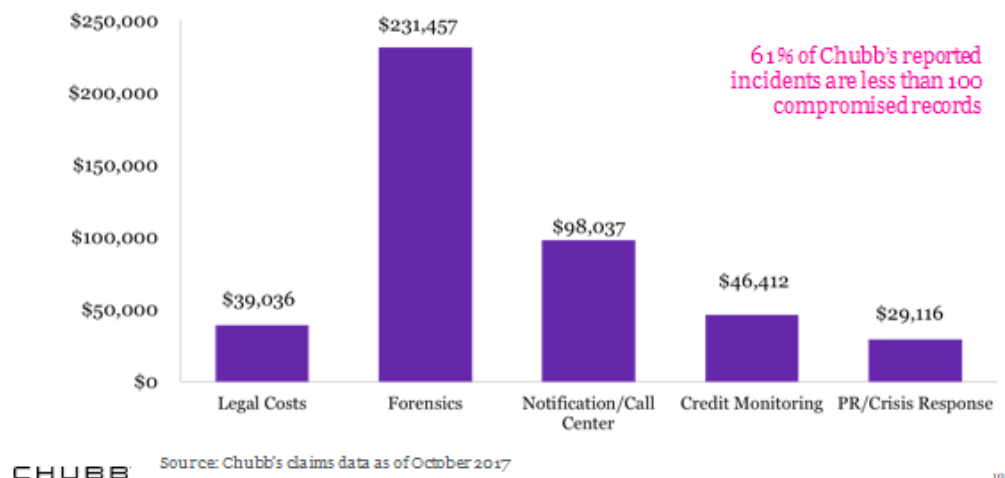
when no longer needed. Without knowing where and when PHI is accessed, firms cannot conduct the appropriate risk analysis required under the rules.

*Above information on HIPPA was prepared by Peter J. Rossi, Esq. of Cipriani & Werner.*

#### More Information:

Please contact Chris Willis (617)510-9908 and or Sue Morand, smorand@amityins.com or by phone (603)715-3204.

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#### Notable Highlights of 2019

Wrongful death settlement	\$12,000,000.00
Radiology error verdict	\$11,500,000.00
Post-surgical infection verdict	\$10,700,000.00
Product liability settlement	\$8,900,000.00
Birth injury settlement	\$7,500,000.00
Surgical error settlement	\$5,100,000.00
Surgical error settlement	\$5,000,000.00
Post-surgical infection settlement	\$4,000,000.00
Wrongful death verdict	\$3,750,000.00
Neurological birth injury settlement	\$3,500,000.00

*View more case results at [lubinandmeyer.com](http://lubinandmeyer.com)*





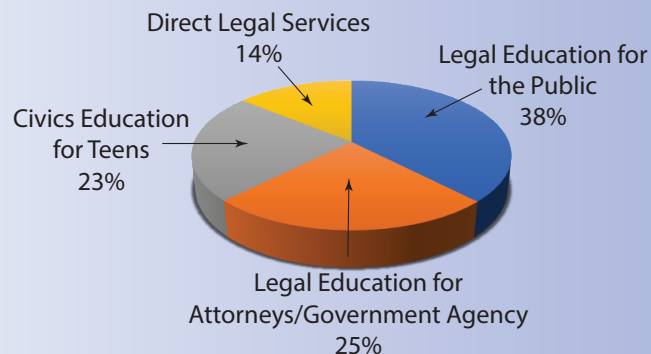
## Preparing for the FY 2020 Justice Grants

Every two years, the NH Bar Foundation awards Grants from the proceeds of fourteen Justice Funds that are invested and managed by the NH Charitable Foundation. These endowment funds were created by attorneys, judges and other legal supporters to increase the reach of the Bar Foundation to encourage innovation in the administration of justice, provide community education about the law and improve access to the legal system. Generally, the grants are awarded for start-up costs, planning and research or to help stabilize new programs to New Hampshire non-profit organizations.

The Justice Fund program started in 1992, granting out \$6,000 in its first year. The Board of Directors established the **Advancement of Justice Fund** to be used for “the support of civil legal services to the disadvantaged, for public education relating to the courts and legal matters, to advance the science of jurisprudence and to improve and promote the administration of Justice.” This fund was financed by memorial gifts to the Foundation. To this day, upon the death of every member, the NH Bar Association donates \$100 to the Advancement of Justice Fund.

In 1997, then-Foundation Chair Charles DeGrandpre established the Justice Society as a way to support and expand the Justice Fund program. Members of the Society either donated a large amount to the already established Funds or pledged to include the Foundation in their estate planning. In a short time, DeGrandpre was able to raise over

### 2018 Justice Grant Distribution \$91,075



\$300,000 in Legacy pledges.

In 1998, three new funds were created to honor prominent lawyers in our community; William A. Baker, J. Albert Lynch and William F. Batchelder. Over the years, donations were added to the funds from friends, colleagues and other supporters of legal services. Upon his death earlier this year, nearly \$10,000 was donated in honor of Judge William F. Batchelder. The most recent fund was established by a generous donation made by Attorney George Findell, Jr. Cur-

rently, the total value of all Justice Funds is over \$1.2 million.

While many of the funds were created to broadly support the mission of the Foundation, there are several restricted funds that concentrate on specific points of the law that were important to the fund's namesake — such as the **A.J. McDonough Family Fund** that supports efforts to address the legal needs of NH's senior citizens and the **Frederic K. Upton Fund** that promotes and supports law related education.

Over the past 27 years, the Justice Fund program has awarded nearly \$800,000 to organizations across the state. A committee of Board Directors and donors review each application to determine eligibility and funding. Their recommendations are then presented to the full Board of Directors for final approval. The FY 2018 grant cycle awarded \$91,075 to seventeen organizations and programs across the state. The average award was for \$5,300. Past recipients of the Justice Grants include UNH Law- Warren B. Rudman Center, Hope on Haven Hill, NH Legal Assistance, and the NH Institute for Civics Education, to just name a few.

The Foundation will be accepting applications for the FY2020 Justice Grants January 1, 2020 through February 14, 2020. \$95,000 has been budgeted for this year's awards. The guidelines and application are available on our website at [www.NHBarFoundation.org](http://www.NHBarFoundation.org). If you have any questions, contact the Foundation at 603-715-3210.

## NHBF Justice Grantee Spotlight: We The People: The Citizen & The Constitution

A premier Law Related Education program of the NH Bar Association



On Friday, December 6, three high school teams simulated congressional hearings by testifying before a panel of volunteer judges on different points of the Constitution in New Hampshire's District Hearings. They will all return in January for the State Finals. The top performing team will then attend the National Finals in Washington DC representing New Hampshire. Justice Grant funds were used to purchase books for students, teacher training and support and to host the culminating events. For more information on the **We The People** program, visit [nhbar.org/law-related-education/](http://nhbar.org/law-related-education/).



## Community Notes

The law firm of McLane Middleton recently announced that attorney **Christina M. Denbow** has been admitted to the New Hampshire State Bar. She is an associate in the Litigation Department.

Smith-Weiss Shepard announced it is becoming Smith-Weiss Shepard & Spony. **Tanya Spony** joined the firm in 2011 and focuses her practice on family law, personal injury and civil litigation.

Jackson Lewis announced that **K. Joshua Scott** will become a principal of the firm effective January 1, 2020. He will continue to focus his practice in the areas of employment law and litigation in both

state and federal courts and administrative agencies.

President Donald J. Trump appointed attorney **Rick St. Hilaire** to be a member of the Cultural Property Advisory Committee. St. Hilaire is recognized worldwide for his ongoing work to protect cultural and religious heritage from looting and smuggling. In 2013, he founded the New Hampshire-based nonprofit Red Arch Cultural Heritage Law & Policy Research. His professional practice today focuses on commercial litigation and business counsel in his capacity as Deputy General Counsel for the Knights of Columbus.

## Coming & Going

Ansell & Anderson welcomed **Jaran R. Blessing** as a new associate of the firm. He graduated with honors from Emory University School of Law in 2019. Blessing will focus his practice on estate planning, probate, and trust administration.

Jackson Lewis announced that **Samuel H. Martin** has become an associate of the firm. His practice encompasses all aspects of employment litigation, including state and federal courts and administrative agencies.

Devine Millimet recently welcomed several new employees. **Nicole Bodoh** joined the firm's corporate team as an Of Counsel attorney. She has over a decade of experience in transactional, M&A, tax and regulatory compliance work.

**Lynette Macomber** participated in the

2018 Summer Associate Program and was offered a full-time position in the Litigation Team upon graduation from the University of New Hampshire Franklin Pierce School of Law as a Daniel Webster Scholar.

**Seamus Ovitt** participated in Devine Millimet's 2018 Summer Associate Program and was offered a full-time position in the Corporate Team upon graduation from William & Mary Law School.

**Ashley Theodore** joins the firm's Litigation Team as an associate with experience in a variety of civil litigation matters in the areas of hospital and medical malpractice, professional malpractice, construction litigation, commercial litigation, products liability, aviation, contract disputes, and negligence defense cases.

### Richard P. Brouillard

Attorney Richard P. Brouillard died at his home in Meredith on Dec. 3, 2019, surrounded by his loving family, after a period of declining health. He was born in Laconia on Jan. 1, 1928, son of the late Euclide and Aurore (Nadeau) Brouillard.

He attended Sacred Heart Elementary School, graduating in 1942; graduated from Laconia High School in 1946; from the University of New Hampshire with a Bachelor of Arts degree in 1950; and from Georgetown University Law School, Washington, D.C., with a J.D. degree in 1953.

He was admitted to practice law in New Hampshire in 1953, and practiced law in Laconia until he retired from the New Hampshire Bar on July 1, 2019, except for 2½ years while on active duty as an officer of the Judge Advocate General Corps., U.S. Army Reserves, having attained rank of captain.

He returned to Laconia in summer of 1956 to begin his practice of law. He was appointed Laconia City Solicitor in 1958 and, in 1960, was elected to his first of three two-year terms as Belknap County Attorney. Attorney Brouillard prosecuted hundreds of defendants in the Weirs Beach Riot of 1965.




He is an Honorary Member of the American Bar and New Hampshire Bar Associations, and also a member of Belknap County Bar Association, having served as president of the latter organization. He is also a lifetime member of the Belknap County Law Enforcement Association.

He is survived by his wife, Eleanor Dalmass Brouillard, and his three children, Attorney Philip A. Brouillard, of Laconia, with whom he practiced law, daughter Michele Brouillard Flynn and her husband, Terrence J. Flynn, of Chapel Hill, North Carolina, and son, Damien P. Brouillard and his husband, Kevin J. Bliss, of Washington, D.C. He is also survived by his four grandchildren, Benjamin Philip Brouillard, Marc Eric Brouillard, Michael Richard Flynn, and Megan Gloria Flynn; as well as by nephews Robert A. Brouillard and William R. Davis and nieces Diane Brouillard Morse and Catherine Rein. Also surviving him are his step-children, Michele Villabos, Cheryl Miller, Lauren Moriarity, Brian Dalmass, Christopher Dalmass, and Julie Hazard; and 17 step-grandchildren.

In addition to his first wife, Carmen Houle, who died on Oct. 27, 1989, he was predeceased by his parents; his brothers, Norman R. Brouillard in 2014 and Raymond E. Brouillard in 1981; and by a niece, Lynn Ann Brouillard, in 1983.

He was active politically, as chairman of the Belknap County Republican Committee from 1967 until 1970; elected as delegate-at-large to the Republican National

IN MEMORIAM continued on page 16



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# Membership Status Changes

Presented to the Board of Governors December 2, 2019

**Active to Inactive:**

Rice, Ann, Concord, NH (Oct. 30)  
Wilson, Sara, Revere, Mass. (Oct. 31)  
Loyal, Alexander, Charlotte, NC (Oct. 28)  
Sullivan, John, Vero Beach, Fla. (Nov. 15)

**Active to Inactive Retired:**

Springer, Karen, Wolfeboro, NH (Oct. 24, 2019)

**Active to Military Active:**

Harris, Samuel, Ridgefield, Conn. (Nov. 1)  
Connolly, Casey, Washington, DC (Oct. 11)  
Goss, Jennifer, Moultonboro, NH (Oct. 11)

**Active to SUSPENDED:**

Buonamano, Brian, Naples, Fla. (Nov. 7)  
Dean, Sarah, Merrimack, NH (Nov. 7)

Behman, Scott, Nashua, NH (Nov. 7)  
Morse, MaryEllen, Portsmouth, NH (Nov. 13)  
Allen, John, Manchester, NH (Oct. 9)

**Active to DECEASED:**

Collins, Joseph, Topsfield, Mass. (Oct. 2)  
Quinlan, Joseph, Swampscott, Mass. (Aug. 28)  
Lazos, Nicholas, Manchester, NH (Nov. 8)  
Connolly, Kelly, Washington, DC (Feb. 18)

**Inactive to ACTIVE:**

Cahill III, James, Cape Neddick, Maine (Oct. 25)  
Harrington, Rachel, Pembroke, NH (Oct. 28)  
Van Roy, Jantra, New York, NY (Nov. 4)  
Dubois, Roland, Contoocook, NH (Nov. 8)  
Horwitz, Allison, Lansing, MI (Oct. 31)

**Inactive to RESIGNED:**

Burgess, Caitlyn, East Boston, Mass. (Nov. 1)  
Perry, Alan, Norway, Maine (Oct. 28)

**Inactive to SUSPENDED:**

Hanson, Jennifer, Wakefield, Mass. (Nov. 7)  
Rangulong, Merlene, Lowell, Mass. (Nov. 13)  
Votta, Joseph, Providence, RI (Nov. 14)

**Inactive Retired to DECEASED:**

Veiga, Robert, Concord, NH (July 7)

**Inactive Retired to SUSPENDED:**

Madge, Leslie, Littleton, Mass. (Nov. 12)  
Lavallee, Adrienne, Deerfield Beach, Fla. (Nov. 12)

**Suspended to ACTIVE:**

Mahoney, John E, Andover, Mass. (Sept. 27)

**Honorary Inactive Retired to DECEASED:**

Grillo, Peter, Haverhill, Mass. (May 5, 2018)  
Kelly, E. Paul, Saco, Maine (Dec.2, 2016)

## PUBLIC NOTICE NOTICE OF OFFICE CLOSURE Morse Law Offices, P.C.

After 43 years of practicing, Attorney Thomas W. Morse is in process of retiring and advises the closing of the above office effective December 31, 2019. Attorney Morse has been associated with the following firms:

Hall, Morse, Gallagher & Anderson                      Hall, Morse, Anderson & Spinella, P.C.,  
Hall, Morse, Anderson, Bauer and Miller, P.C.,       Morse Law Offices, P.C.  
Hall, Morse, Anderson, Miller & Spinella, P.C.,

Attorney Morse has possession of original Wills and Estate Planning Documents prepared by him as well as original Wills or Estate Planning Documents prepared by: Attorneys Robert E.K. Morrill, Frederick S. Hall, Charles T. Gallagher, William S. Hall, Mayland H. Morse, Jr, and G. Wells Anderson all formerly of one or more of the above firms, in Concord, NH.

If you are looking for an original Will or Estate Planning Documents prepared by any of the above individuals or firms, please inquire in writing to:

Thomas W. Morse, Morse Law Offices, P.C., PO Box 2289, Concord, NH 03302-2289. Mr. Morse continues presently of counsel at Upton & Hatfield LLP, 10 Centre St., Concord NH 03301.

## Professional Announcements

### Professional Announcements Rates and Sizes for June 2019-May 2020

Size Ad	Price	Width	Height
1/8 page horizontal	\$230	4.92	3.25
1/4 page vertical	\$400	4.92	6.75
1/2 page horizontal	\$595	10	6.75
Full page	\$1165	10	13.63

**Additional \$50 charge for color**

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## Welcomes

*Nicole Bodoh, Ashley Theodore, and our newest associates, Lynnette Macomber and Seamus Ovitt.*

**Nicole Bodoh, Of Counsel**

*nbodoh@devinemillimet.com | (603) 695-8546*



Nicole joins Devine Millimet's corporate team as an Of Counsel attorney and brings well over a decade of experience in transactional, M&A, tax and regulatory compliance work. Nicole assists clients with a variety of transactional matters including both stock and asset purchases, conversions, redemptions, recapitalizations, and tax-free reorganizations. Her practice includes a diverse group of clients such as financial institutions, regional and national companies, and local businesses.

Nicole is a graduate of the University of Pittsburgh School of Law (J.D.) and Temple University Beasley School of Law (LL.M.), and has affiliations with the NH Estate Planning Council and the NH Bar Association. Nicole is admitted to practice in New Hampshire, Vermont, Massachusetts and Pennsylvania.

Nicole is a member of the New Hampshire Historical Society, the Music Hall, Strawberry Banke, the New Hampshire Charitable Foundation and various other charitable organizations.

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**Ashley Theodore, Associate**

*atheodore@devinemillimet.com | (603) 695-8720*



Ashley joins Devine Millimet's Litigation team as an Associate with experience in a variety of civil litigation matters in the areas of hospital and medical malpractice, professional malpractice, construction litigation, commercial litigation, products liability, aviation, contract disputes, and negligence defense cases.

Ashley graduated from Boston University with a B.S. in Business Administration, received her law degree from Suffolk University, and is admitted to practice in New Hampshire, Massachusetts, Vermont, and Connecticut.

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Legal Malpractice & Professional Conduct | Municipal Liability  
Personal Injury & Property Damage | Physician Practices**

**Seamus Ovitt, Associate**

*sovitt@devinemillimet.com | (603) 695-8634*



Seamus participated in Devine Millimet's 2018 Summer Associate Program and was offered a full-time position upon graduation. He received his undergraduate degree from Westfield State University and his law degree from William & Mary Law School with honors.

Seamus rejoins Devine Millimet as an Associate and is now part of the firm's Corporate department. As a part of the Corporate Team, Seamus works with clients of all types, including businesses, both for profit and non-profit, and assists clients with a variety of real estate and ESOP matters.

Seamus has affiliations with the New Hampshire Bar Association, and throughout his legal studies was exposed to vastly different areas of the law, including employment discrimination law, while working in the United States Senate, in the Office of the Chief Counsel for Employment, and in a private Virginia law firm, which specialized in estate litigation and homeowner's association representation.

*Devine Millimet's Summer Associate Program is designed to expose law students to a variety of legal practices, where they have the opportunity to participate in all aspects of working in a law firm - from client meetings to attending trials. Summer Associates are eligible to receive a full-time offer of employment upon graduation and passing the bar.*

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**Lynnette Macomber, Associate**

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Lynnette participated in Devine Millimet's 2018 Summer Associate Program and was offered a full-time position upon graduation. She received both her Bachelor's and law degree from the University of New Hampshire, and is a graduate of the Daniel Webster Scholars Program.

Lynnette rejoins Devine Millimet as part of the firm's Litigation Team. Practicing in civil litigation, both personal and commercial, Lynnette collaborates with a number of practice groups in the firm's litigation department. She handles matters including property disputes, insurance defense, personal injury, breach of contract, alternative dispute resolution, probate litigation, criminal defense, and appellate advocacy.

Lynnette has a background in Marketing, is a member of the New Hampshire Bar Association, was a mentor for the Merrimack County Teen Court juvenile diversion program, and continues to be involved in the community.

*Devine Millimet's Summer Associate Program is designed to expose law students to a variety of legal practices, where they have the opportunity to participate in all aspects of working in a law firm - from client meetings to attending trials. Summer Associates are eligible to receive a full-time offer of employment upon graduation and passing the bar.*

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Ansell & Anderson, P.A. is pleased to  
welcome Jaran R. Blessing  
as a new associate of the firm.



Jaran graduated with  
honors from Emory  
University School of Law  
in 2019. While at Emory,  
Jaran interned at the Atlanta  
Legal Aid Society's Senior  
Citizens Law Project, as  
well as a number of private  
estate planning firms. Jaran  
will focus his practice on  
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federal courts and administrative agencies. Josh is  
admitted in both New Hampshire and Maine.

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Jackson Lewis P.C.  
is pleased to announce that  
**SAMUEL H. MARTIN**  
has become an Associate of the firm

Sam's practice encompasses all aspects of  
employment litigation, including state and federal courts  
and administrative agencies. Sam received his B.A. from  
Fordham University and his J.D. from Boston College Law  
School. Sam is admitted in Massachusetts.

[Samuel.Martin@jacksonlewis.com](mailto:Samuel.Martin@jacksonlewis.com)

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# Inspiration for Fixing a Societal Problem

## “Nobody’s Victim: Fighting Psychos, Stalkers, Pervs, and Trolls”

By Carrie Goldberg  
Penguin Publishing Group (2019)  
Hardcover; 304 pages

Reviewed by Michael G. Anderson

Carrie Goldberg’s memoir, “Nobody’s Victim: Fighting Psychos, Stalkers, Pervs, and Trolls,” explains her law practice as a victim’s rights lawyer, using both her own story of being victimized by an ex-boyfriend and stories of her clients. What makes her practice unique, and this book important and timely, is that her clients are victimized over the internet by men — it is almost exclusively men who are the victimizers — aided by outdated criminal laws that have not kept pace with technology.

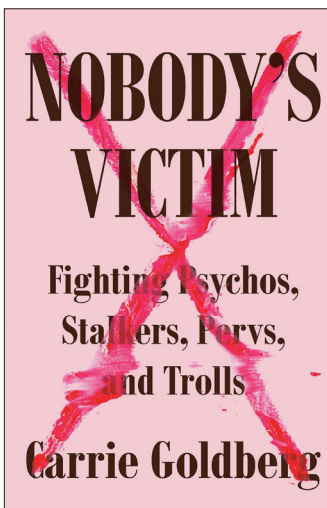
Ms. Goldberg started her practice after experiencing a traumatizing relationship. Her ex-boyfriend was extremely controlling. He filed a police report claiming she assaulted him and threatened to post intimate photos of her online. Shortly after ending the relationship, Ms. Goldberg became the strong advocate she wished she had for other women and men experiencing similarly traumatic experiences.

In this memoir, Ms. Goldberg writes about her clients to show the variation of what should be crimes, but are often difficult to fit into anachronistic criminal codes. In her experience, she has found that the victimizers fit into four categories: “psychos, who obsessively stalk,

threaten, and intimidate their prey; assholes, who exploit or mistreat victims out of willful ignorance or arrogance or for their own financial gain; trolls, who terrorize victims under the cloak of internet anonymity; and pervs, who get off on overpowering victims into sex acts against their will.” Using this rubric, Ms. Goldberg shows how each victimizer attacks their target.

For example, an ex-boyfriend of one of her male clients harassed her client by impersonating him on the dating app Grindr, posting the client’s contact information and asking strangers to go to his apartment for rough sex. In escalating the terror, the ex-boyfriend stated that if the client refused, it was only part of the fantasy. Another client, Francesca, was harassed by her current boyfriend pretending to be an old fling, using intimate images to extract control over her. The harasser used Francesca’s fear of the old fling to manipulate her into trusting him, relying on him for her safety.

Reading this memoir, Ms. Goldberg’s voice is present throughout. She is strong, clear, and passionate about her clients and her advocacy. She understands their problems in a way many lawyers cannot and can relate to her clients not only with her experience as a victim, but also in her



knowledge of the internet landscape where many are being victimized.

Her clients should be able to go to their local police for assistance. But local and state police are often ill-equipped to deal with internet harassment. First, some police do not see these actions as crimes, and may even blame the victims for taking the photos used to extort them.

Second, it is complicated and expensive to investigate crimes that can take place over multiple

jurisdictions.

Third, the existing laws were made before the internet and are often written in such a way that makes prosecution hard.

For example, websites and apps (Facebook, chief among them) where the harassment takes place refuse to help. Laws like Section 230 of the Communication Decency Act, passed in 1996, insulating websites from liability for its users’ posts, has led to these companies simply turning a blind eye to any wrongdoing on their sites for fear that any action would risk their safe haven. When Ms. Goldberg’s male client was being impersonated on Grindr, the app refused to help. It refused to block the IP address of the victimizer or take down the offending profiles.

So what can be done? As Ms. Gold-

berg states, what’s needed is “a federal law criminalizing the distribution of nonconsensual porn. This would cover victims in states where no revenge porn laws exists, and allow law enforcement to harness the full power of the FBI and the Department of Justice, arguably the agencies best equipped, staffed, and trained to investigate these crimes.”

At the end of the book, you can’t help but be inspired by Ms. Goldberg’s passion. Giving advice to an aspiring lawyer, Ms. Goldberg said: “Find your biggest obstacle, that thing that makes you feel powerless, and ask yourself, ‘How do I fix this?’ That’s the fight you should devote your life to.”

Ms. Goldberg did just this. She saw the societal problem — men harass past or prospective sexual partners, and are able to do significant damage due to lax laws and disinterested internet companies — and has devoted her life to fixing it. Ultimately, Ms. Goldberg is the tireless advocate we attorneys should aspire to be.

Michael G. Anderson is an attorney for the federal government. Originally from Laconia, he now lives in Alexandria, Virginia.



## Lawyers on Ice!

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

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Sullivan Arena  
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#### When?

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3 p.m.

#### Why?

Help support the  
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Teams Liberty & Justice will face off on Sunday, January 12, 2020, at 2 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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## Morin from page 1

home town of Nashua.

Meanwhile, thoughts of starting a nonprofit — something he had dreamed about even while in law school — started dominating his thoughts.

Thus, he launched the ReGenerative Roots Association five years ago, and started on a path toward creating a community farm, encouraging agricultural studies in local high schools and giving young, would-be farmers a boost in pursuit of their goals.

Morin estimates he now spends about 20 hours a week at his legal practice and 30 working for ReGen Roots, as he abbreviates the nonprofit.

But there is crossover.

Morin says much of the project management at ReGen Roots depends on the kind of critical analytical thinking he learned in law school, and that same background helped with securing a conservation easement on the Sullivan Farm, Nashua's last operating farm, where ReGen Roots utilizes about two acres. Writing skills he learned in law school also help with grant writing for the nonprofit, he says.

His efforts are paying off, as ReGen Roots is growing — literally.

In the community garden ReGen Roots operates at Sullivan Farm, families —many of them immigrants working toward self-sufficiency — grow their own produce, with the understanding that 10 percent of their harvest must be donated to a local food pantry.

In 2017, 4,000 square feet was cultivated, according to Morin, and in the growing seasons since, three-quarters of an acre has been dedicated to programming with another three-quarters of an acre available for community gardening.

Over the past two years, participating families have grown more than 5,000 pounds of produce for their own consumption, “and they have the ability to interact with their neighbors” as they work, Morin says.

For the past three years, ReGen Roots has also sponsored a summer internship program for local high school students, who can now receive two credits while learning about growing vegetables, hydroponics, bee-keeping, community-supported agriculture and more.

Kylie Braunius, who signed up to be an intern in 2016 and worked on both the community garden and a school garden, calls Morin “the heartbeat” of the program.

“As a friend, he has inspired me to love the earth, to laugh hard, and to be patient,” she says. “I have come to appreciate the incredible kind of beauty that comes

from the rewards of harvest.

“As a mentor, Andrew is hard-working and incredibly open to being wrong and learning new things. These qualities have allowed him and our team to make so many improvements to our agricultural efforts in just a few years.”

Braunius is now the principal operator and owner of Banyan Branch Farm, one of two young farming programs that currently use ReGen Roots' incubator program. The program provides young farming entrepreneurs with start-up capital, land and business guidance.

ReGen Roots has also developed a Farm-to-School program to encourage healthy eating among students through hands-on learning experiences, community involvement and classroom activities.

Morin himself assists at meetings of the Green Club, an after-school student organization at Nashua High North which has repaired an old greenhouse on campus and started a raised-bed garden that produced food for both students and local food pantries.

Noting that Sullivan Farm is running out of room for further agricultural enterprises, Morin says ReGen Roots is now looking for a parcel of at least one acre in or around the Nashua area for purchase or long-term lease, and he is hoping his Bar colleagues or others might have suggestions.

“We want to set up a place to use as a community farm for generations to come,” he explains.

It's the kind of ambition that has inspired Morin's best friend since the age of 15, Anthony McMullen, who runs an insurance and investment company and is also director of communications for ReGen Roots.

“He has a great work ethic,” McMullen says of Morin. “Where we are in the world today and how to impact change is something we've talked openly about. He's a close friend. But a mentor, too.”

Morin's love of the earth extends to a love of the White Mountains, “one of my favorite places,” where he has climbed roughly 10 of the 4,000-footers in the range.

He also writes poetry, and is planning to finish a chap book of 70 original poems next year.

“It's a way for me to refine my thoughts and add positively to the world, to make people think critically beyond our narrow lives when it comes to material capitalism,” he says.

“I'm just a simple person trying to live a good life.”

*Kathie Ragsdale is a freelance writer based in Chester.*

Right: Morin shows students roots submerged in water at the aquaponics system ReGenerative Roots built last year at Nashua High North. (Courtesy)



Above: Andrew Morin and members of the Green Club pose last June before a tomato plant grown in the aquaponics system (courtesy).

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## In Memoriam from page 11

al Convention in 1972; and served as fiscal agent for Governor Walter Peterson's last gubernatorial election campaign.

Attorney Brouillard was elected to the New Hampshire General Court in 1974 and appointed Assistant Republican Majority Whip, Vice-Chair of the Executive Departments and Administration Committee, and Chair of the Sub-Committee on Elections. Also on a state level, he served as a member of New Hampshire Health & Welfare Advisory Commission, Chairman of the Health and Welfare Appeals Board, Belknap Area Law Enforcement Planning Council of The Governor's Commission of Crime and Delinquency, and on The Governor's Commission on Laws Affecting Children.

Locally, he served as trustee and president of the Lakes Region General Hospital, The Taylor Home, for more than 20 years as trustee and also as president, Grand Knight, Laconia Council 428, Knights of Columbus, Faithful Navigator, Monsignor Sliney Assembly, Fourth Degree Knights of Columbus; and on the first Sacred Heart Parish Council.

Attorney Brouillard was an active alumnus of the University of New Hampshire, having served as president of his UNH class since 1967, and leading in the formation of the Lakes Region Alumni Chapter. In 1992, the University of New Hampshire recognized his loyal service as an alumnus by awarding him the Alumni Meritorious Service Medal.

A lifetime communicant of Sacred Heart Church of Saint Andre Bessette Parish, he was appointed by the Vatican a Knight of the Equestrian Order of the Holy Sepulchre of Jerusalem on June 11, 1998, in recognition of his service as a Catholic layperson, and his civic activities.

Despite his many accomplishments, he was most satisfied assisting his many clients in their legal service needs throughout a 65-plus-year career. He was a lawyer's lawyer and a people's lawyer. His integrity, thoroughness, geniality, and consummate professionalism endeared him to friend and foe alike and inspired amazing devotion between his clients and himself, spanning decades and generations.

For more information and to view an online memorial, go to [www.wilkinson-beane.com](http://www.wilkinson-beane.com).

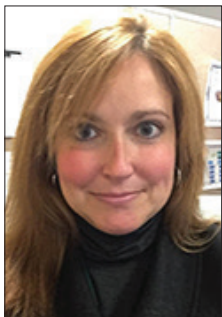
### Kelly Elizabeth Connolly

Kelly Elizabeth Connolly, age 44, beloved daughter of R. Kenneth Connolly of Easton, passed away from complications of pneumonia on February 18, 2019 at George Washington University Hospital.

Born on August 15, 1974, in Arlington, MA, and spending her formative years in Fairfield/Easton, Kelly was a resident of Washington, D.C. She graduated from Joel Barlow High School, Redding, top ten in her class and a member of the National Honor Society.

She received her B.A. from Colgate University where she was peer-selected to join the 26-member Konosioni Senior Honor Society, Masters from Tufts University, and J.D. from Vermont Law School.

Kelly practiced law, specializing in FOIA (Freedom of Information Act). Kelly volunteered her time as a member of the Junior League and was an avid supporter of 'her' Camp Hi-Rock. She was also an ad-



vocate for animal rights. She loved her cats and was always happy to hear of another 'rescued' animal finding a home.

Kelly enjoyed reading and kayaking, and was able to relish both in the fresh mountain air at her favorite little lake in New Hampshire. Most especially, she loved her family. Family time at the lake, home, Florida, Hamilton, Hi-Rock, Denver, Harts, Jolly Acres, Harris Hill, West Virginia, PB and other venues were certainly made special by "Auntie Kelly's" infectious laughter and spirit.

In addition to her father, survivors include brothers Christopher K. Connolly (Elizabeth) of Easton, and R. Kevin Connolly (Ashley) of Denver, CO; cherished niece Shannon K. Connolly, nephews Sean K. Connolly and F. Kane Connolly. She was predeceased by her mother, Sandra Seem Connolly, and a sister, Kristin Michelle Connolly.

In lieu of flowers, memorial contributions may be made to YMCA Camp Hi-Rock, 162 East Street, Mount Washington, MA 01258 ([camphirock.org](http://camphirock.org)), where Kelly was a camper/counselor/proud alumni or Conway Area Humane Society, P.O. Box 260, Conway, NH 03818 ([conwayshester.org](http://conwayshester.org)), where Kelly volunteered. For information, please visit [www.SpearFuneralHome.com](http://www.SpearFuneralHome.com)

### Nicholas John Lazos

Nicholas John Lazos, 66, of Manchester, New Hampshire, passed away on November 8, 2019.

Nick was born on March 25, 1953 in Zouzouli, Greece, the son of John and Eudoxia Lazos, and his family emigrated to the United States in 1956. He grew up in Manchester as the middle of three sons, graduating as the Valedictorian from Manchester Memorial High School. Nick went on to earn a Bachelor's degree in English and Economics, Summa Cum Laude from Dartmouth College and Juris Doctorate, Cum Laude from Harvard Law School, before returning to Manchester to build his career and home.

He co-founded the real estate and corporate law firm Stebbins Lazos & Van Der Beken, through which he had a part in many important local developments. Repeatedly named as one of New Hampshire's Best Lawyers in New Hampshire Magazine's annual review, Nick retired in early 2019. Nick also had a broad impact beyond his work as Chair of the former New Hampshire Rail Transit Authority Advisory Committee, board member of the Manchester City Library, and volunteer with Manchester Connects.

He was inducted alongside his brothers into the Hall of Fame at Manchester Memorial High School in 2015, where he was honored in the White Division for Distinguished Alumni who have attained outstanding prominence through their contributions to society.

Nick is survived by his beloved wife of 37 years Susan Ashooh Lazos; the loves of his life, his two sons Stephen Nicholas Lazos and his wife Christina of Chicago, IL, and Michael Philip Lazos of Seattle, WA; his mother Eudoxia Lazos of Manchester; his brothers Harry (Marylou) of Derry and Sterg (Laura) of Peterborough; and loving nieces, nephew, grandnephews, and extended family. Nick was a loving son, husband, father, friend, and colleague. His greatest joy and pride was felt spending time with his sons and traveling with his family, recently to Seattle, Chicago, Flori-



da, and Greece. He will be greatly missed by all who knew and loved him.

Memorial donations may be made to the Sisters of the Precious Blood Monastery, 700 Bridge Street, Manchester, NH 03104; the Sisters of the Holy Cross, 377 Island Pond Road, Manchester, NH 03109; or to the charity of your choice. Lambert Funeral Home & Crematory, Manchester, is assisting with arrangements. To send an online message of condolence, please go to [www.lambertfuneralhome.com](http://www.lambertfuneralhome.com).

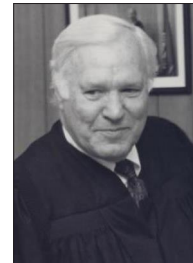
### Hon. J. Albert Lynch

The Honorable J. Albert Lynch of Pelham, N.H., died Monday, Nov. 18, 2019, after a brief illness. Born March 28, 1922, in Lowell, Mass., he was the eldest son of Edward J. and Maria Albert Lynch.

Judge Lynch graduated from Keith Academy in Lowell, Mass., and earned his B.S. from St. Francis Xavier in Nova Scotia and LLD from Boston College. He served his country during World War II in the U.S. Navy as a medic aboard the USS Salerno Bay.

After graduating from law school, he married the former Mildred E. Sullivan of Lowell, Mass., who predeceased him in November 2012. They raised five children on their farm in Pelham, Maryfarm, where they resided for the next 61 years. They pursued many hobbies, raising beagles, honey bees and Polled Herefords. He was most proud of his decision to invest in a young, unproven bull, ACE Broker, who went on to become Grand National Champion.

Weekends were always spent with his family, climbing and skiing in the New Hampshire White Mountains. Judge Lynch enjoyed many sports throughout his life, none being more important than his love of skiing. He was an enthusiastic supporter of the UNH Ski Team for many years, sharing his place at his beloved Waterville Valley with the racers. At 70, he revisited his youthful enthusiasm for golf and shot a hole-in-one at the age of 90, at Waterville Valley.



He was an active citizen of Pelham, serving as a charter member of the Pelham Historical Society, chairman of the Pelham Planning Board and Town Counsel. He was very happy to honor his longtime law clerk Joyce Mason by ensuring that her prized photo collection of old Pelham was preserved for future generations at the historical society. He enjoyed a long and close relationship with Pelham Bank and Trust President, Louis Fineman. Together they assisted in acquiring the Mills property for the future benefit of the town.

Judge Lynch was appointed Municipal Court Judge by Gov. Lane Dwinell in 1955. He served the town of Pelham in that capacity for 37 years, enjoying his weekly court nights immensely. At his 1992 retirement, he was distinguished as the longest sitting judge in New Hampshire history. Gov. Dwinell wrote, "your appointment set the tone for those that followed in terms of competence integrity, public confidence and fairness." In the 1990 Pelham Annual Report dedicated to his service, it was said that he "brandished his gavel with common sense, wit, and down on the farm wisdom."

He began his law practice with George Nelson in Milford, N.H., eventually partnering as Nelson & Lynch in Nashua. Later, he was a founding partner in Winer, Lynch & Pillsbury, in Nashua, where he practiced for many years.

Judge Lynch is survived by his children, J. Albert Lynch Jr., Meredith Tamposi and his son-in-law, Jim Tamposi, Edward Lynch, Dierdre Lynch, David Lynch and grandchildren, Caitlin, Caroline and Jack Tamposi. He is also survived by his brothers, Thomas and Edward Lynch of Princeton, Mass., sister-in-law Greta Lynch of Litchfield and many nieces and nephews. In addition to his wife, he was predeceased by his sister Patricia Moylan, his brother Arthur, sisters-in-law Joan Keefe and Joan Lynch.

E-condolences at [www.pelhamfuneralhome.com](http://www.pelhamfuneralhome.com). Those wishing may make contributions in his memory to the Pelham Historical Society, c/o Mrs. William Hayes, 9 Pinewood Dr., Pelham, NH 03076. Arrangements by Funeral Director James F. O'Donnell, Jr. (603) 635-3333.

In memory of our colleagues, the NHBA Board of Governors has made a contribution to the NH Bar Foundation.

To submit an obituary for publication, email [news@nhbar.org](mailto:news@nhbar.org). Obituaries may be edited for length and clarity.

## Philpot from page 2

of the day, on the Bar's website at [www.nhbar.org/calendar/bar-events/](http://www.nhbar.org/calendar/bar-events/) or see the ad on page 17.

Looking ahead to other Bar programs, 2020 is the 100th anniversary of the passing of the 19th Amendment. Our Law Related Education Committee is working to bring the 19th Amendment celebration to schools and the public through our Lawyer in Every School and Law Day — May 1, 2020 — events. Our events will culminate with the display of the ABA's 19th Amendment

display and presentations at the State House, the State Library, and the State Historical Society.

To find out more about the Bar's Law Related Education programs and how to volunteer, visit [www.nhbar.org/law-related-education/](http://www.nhbar.org/law-related-education/).

We hope that you will all enjoy these exciting events in the coming year. Finally, I personally want to wish everyone a happy and healthy holiday season.



# Join us at the NHBA 2020 Midyear Meeting!

"Those who cannot remember the past are condemned to repeat it."

—George Santayana

## Speaking Up: Power, Peril and Politics



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*Vickie M. Bunnell Award for Community Service*

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

*Distinguished Pro Bono Service Awards*

*Pro Bono Rising Star Awards*

**New Lawyers Social** Join the NHBA New Lawyers Committee immediately following Midyear Meeting for a social at Strange Brew Tavern.

The lower-level has been reserved for this popular event. There is a cash bar and appetizers will be provided. Get to know your colleagues, relax in an informal setting, share your successes and your stories, and discover the collegiality that the NH Bar is known for.

## Modern Justice: The Final Line of Defense

Learn about key events in US history that have shaped modern legal ethics and rules governing the practice of law.

What is the duty of attorneys in ensuring the Rule of Law by speaking out and shining a light on truth and justice? Especially when speaking out comes at great personal risk, such as pointing out an unpopular truth in a political environment fraught with fear and misinformation. Learn about the fundamental changes in lawyers' ethical obligations post-Watergate to "report up" and "report out" under the Rules of Professional Conduct. See how jurisprudence and legislation over the past few decades has moved to protect whistleblowers who dare to speak out. Attendees will explore historical topics, such as the incarceration of Japanese-Americans during WWII and the Watergate scandal that forever changed how Americans view government, and examine how these events relate to current events. This MYM program showcases the immense power a person or group has, by speaking up, that can correct the moral compass of a nation. Whether swift or protracted, time and history are on the side of the just and justice will prevail when we dare to look history square in the face.

### DISTINGUISHED SPEAKERS INCLUDE:

**James D. Robenalt**, Thompson Hine LLP, Cleveland, OH

**Dale Minami**, Minami Tamaki LLP, San Francisco, CA and Lead Counsel for Fred Korematsu in the Korematsu Coram Nobis Case

**Karen Korematsu**, Founder and Executive Director of the Fred T. Korematsu Institute, San Francisco, CA

**Hoyt Zia**, retired as Senior VP, General Counsel and Corporate Secretary for Hawaiian Airlines, founding president of National Asian Pacific American Bar Association (NAPABA)

**Mona T. Movafaghi**, Drummond Woodsum & MacMahon, Manchester, NH

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She is President of the New Hampshire Women's Bar Association (NHWBA), and has been on the Board of the NHWBA since 2011. She previously served as the NHWBA's Treasurer and Vice-President. Christina is also a member of the Manchester Business Council, appointed by Mayor Craig, and a member of the New Hampshire Tech Alliance's BioMedTech Committee and Government Affairs Committee.

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# The Civil Jury Trial Right in NH – A Relic of the Past or a Right to be Exercised in the Future?

By Brian Quirk and Nathan Fennessy

While the legal community waits to see who will become the next chief justice of the New Hampshire Supreme Court, much of the talk has been about how the new chief justice will impact a variety of hot-button legal and political issues. One critical issue nobody seems to be talking about is the potential impact of the future chief justice on one of the most fundamental and sacred rights in our democracy — the civil jury trial right.

Part I, Article 20 of the New Hampshire Constitution guarantees litigants the right to trial by jury “in all suits between two or more persons except those in which another practice is and has been customary and except those in which the value in controversy does not exceed \$1,500.” In determining whether the right applies in an individual case, the NH Supreme Court has traditionally looked to the nature of the case and the relief sought, and determined whether the customary practice included a trial by jury at the time the New Hampshire Constitution was adopted. *See, e.g., Gilman v. Lake Sunapee Properties, LLC*, 159 N.H. 26, 30-31 (2009).

In one of the few 3-2 decisions this



year, Chief Justice Lynn writing for the majority in *Ridlon v. New Hampshire Bureau of Securities Regulation*, No. 2018-0035 (July 24, 2019) found that a citizen had no jury trial right when the Government sought over \$6 million in penalties through an administrative action. In a sharp dissent joined by Justice Donovan, Justice Hantz Marconi criticized the majority’s analytic framework — which focused on the comprehensiveness of the statutory scheme rather than performing the traditional historical analysis — and invited future liti-

gants to challenge the court’s previous decision in *Hair Excitement, Inc. v. L’Oreal U.S.A., Inc.*, 158 N.H. 363 (2009) which rejected the civil jury trial right in actions brought by private litigants under the Consumer Protection Act (RSA 358-A). With the current court divided 2-2 on the proper framework to analyze this constitutional right, the next chief justice will have a tremendous impact on whether the civil jury trial right continues to be a sacred right or simply a relic of the past.

The *Ridlon* case began as an adminis-

trative enforcement action brought by the Bureau of Securities against Curtis Ridlon, then an investment advisor, alleging that he had engaged in a scheme to defraud his clients of millions of dollars in violation of the Securities Act. Ridlon filed an action in superior court to enjoin the administrative proceeding on the ground that it deprived him of his constitutional right to a jury trial.

The trial court granted the injunction requested by Ridlon in a 21-page opinion outlining the historic importance of the civil jury trial right in actions brought by the government against individuals. The Bureau then appealed.

In writing for the majority in *Ridlon*, Chief Justice Lynn eschewed the traditional test and instead focused on the comprehensiveness of the statutory scheme to determine whether a jury trial existed. He concluded that even if the relief sought might “bear certain similarities” to a common law claim entitling a defendant to a jury trial, “the overall statutory scheme fashioned by the Securities Act persuades us that the administrative enforcement mechanism it created was unknown to the

RIGHT continued on page 23

## Immigration Considerations in Business Transactions

By Ramey Sylvester

Immigration considerations are often overlooked in business transactions.

U.S. immigration law is currently a popular topic. The state of the border wall, the fate of asylum seekers, a continuous stream of executive actions, and litigation challenging those actions, are never far from the headlines. Business lawyers may consider immigration issues as wholly outside the realm of their practice. That would be a mistake. Immigration laws frequently impact routine business transactions.

All U.S. employers are required to ensure that their employees are authorized to work in the U.S. and liability for non-compliance can be unwittingly assumed in business transactions.

Every employee hired in the United States after November 6, 1986, is impacted

“Liability arising from IRCA [Immigration Reform and Control Act of 1986] non-compliance may unwittingly be assumed in a merger, acquisition, or reorganization transaction.”

by the Immigration Reform and Control Act of 1986 (IRCA). IRCA prohibits U.S. employers from knowingly hiring, or continuing to employ, workers who are not authorized to work in the United States. In order to confirm a person’s work eligibility, employers are required to complete and maintain I-9 forms for all employees. U.S. Immigration and Customs Enforcement (ICE) is charged with ensuring compliance with IRCA. ICE audits are disruptive and fines and penalties for violations have increased in recent years.

Liability arising from IRCA non-compliance may unwittingly be assumed in a merger, acquisition, or reorganization transaction. Where a business transaction results in a transfer of employees, for IRCA compliance purposes, the acquiring or surviving entity (successor in interest) may elect to treat the transferred employees as newly hired and verify their work authorization by completing new I-9s for each employee. However, due to the size of a workforce, this may not be possible or practical. In such cases, the successor in

interest may elect to treat the employees as continuing in employment and retain the original I-9 records. In doing so, the successor in interest also assumes the liability for IRCA compliance inherent in the original I-9s and risks an ICE audit, fines, and penalties.

Merger, acquisition, and reorganization transactions may require additional filings and steps to acquire or retain foreign employees.

The parties to a merger or target of an acquisition may employ foreign nationals that the successor in interest desires to retain. Similarly, in a reorganization, key foreign national employees may be transferred to an affiliate entity. Such foreign nationals may be authorized to work in the United States pursuant to an immigration

TRANSACTIONS continued on page 23



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# Increasing Effectiveness of Patents in Patent Litigation

By Peter A. Nieves

Patent litigation is quite costly. While patents can be used for many purposes including, for example, cross-licensing, negotiating partnerships to enter new markets, increasing recognition in the market, and so much more, the use most hear of is enforcement to stop others from making, using, selling or importing a technology/method.

With patent litigation being so costly, it is beneficial to increase chances of success prior to filing the complaint. Unfortunately, many patent litigation plaintiffs do not put in the due diligence prior to filing suit, resulting in painful and embarrassing patent invalidity proceedings and ending of cases with an early motion to dismiss or motion for summary judgement, and associated hearing, demonstrating there to be no chance of patent infringement. Over the last seven years or so, the scales in patent litigation have tipped a bit more in the defendant's favor with defensive weapons such as the Post Grant Review (PGR), Inter Partes Review (IPR), and Ex Partes Reexaminations, all of which are challenges to an issued patent. As a result, patent litigation plaintiffs need to be well prepared prior to asserting legal rights.

Imagine a way to modify issued patent claims to increase chances of patent infringement, or simply to increase the chances of maintaining patent validity after assertion of a patent against another party. One such way is by using the Reissue pro-

**"Over the last seven years or so, the scales in patent litigation have tipped a bit more in the defendant's favor with defensive weapons such as the Post Grant Review (PGR), Inter Partes Review (IPR), and Ex Partes Reexaminations, all of which are challenges to an issued patent."**

cedure before the United States Patent and Trademark Office (USPTO). Of course, there are a number of other ways to increase chances of success, however, this article covers one potential ingredient in the recipe for successful patent litigation planning.

Simplified for brevity, the Reissue procedure allows a patent owner to correct errors within an issued patent, as well as allowing for modifying of patent claims to define over newly obtained prior art that could be used to invalidate the issued patent after assertion. As an example, if the claims of an issued patent cover A, B, and C, however, a product of a potential infringer of the patent contains A, B, and D, which falls just out of reach of A, B, and C, the result likely will be a decision of non-infringement. Of course, this is a simplified example, because a patent claim construction hearing (i.e., Markman Hearing) may result in a patent claim being interpreted to have broader meaning than it should or a different meaning, a jury may believe there to be patent infringement when it should not, and so much more.

However, keeping this example simple,

let us assume that asserting the patent for alleged infringement by the product of the potential infringer containing A, B, and D would result in non-infringement. If A, B, and D is described within the specification (or description) of the patent, but is just didn't make it into the claims, the patent owner could file for a Reissue proceeding before the USPTO and modify the claims to ensure that A, B, and D is within the claims, and should the patent owner be successful, the chances of winning in patent litigation would go up exponentially.

In addition, if the patent owner becomes aware of prior art publications that likely would result in invalidation of its patent in an invalidation procedure, but knows that patent claims can be rewritten to define around the prior art based on disclosure within the specification (disclosure), the patent owner can file for a Reissue proceeding, disclosing the prior art known and submitting new claims for the patent that define around the known prior art, yet still result in potential infringement by a known third party, thereby exponentially decreas-

ing chances of that prior art being used to invalidate the patent during patent litigation and increasing chances of successful patent enforcement.

The patent Reissue proceeding does have certain strict requirements that must be followed. The patent owner must specify at least one error in the patent for a patent Reissue proceeding to take place. In addition, if a patent owner is attempting to broaden patent claim coverage, a request for patent Reissue must be filed prior to two years after patent issuance. Further, claim scope previously surrendered during patent prosecution to obtain the issued patent, cannot be recaptured.

Of course, this tactic does not just have to be used to sharpen the sword for patent litigation, but can also be used to increase chances of negotiating licenses and other agreements with potential infringers. On the defensive side, one of the early actions that should take place when a party is threatened with patent infringement is determining if there is patent infringement based on the claims within the patent, as well as performing a patent invalidity search to see if there is prior art to invalidate the patent.

While most patent litigation plaintiffs know that proving non-infringement of a patent will likely be a very costly venture, and invalidation of a patent in court is something that typically cannot be asserted until the parties are a good ¾ into the patent liti-

LITIGATION continued on page 22



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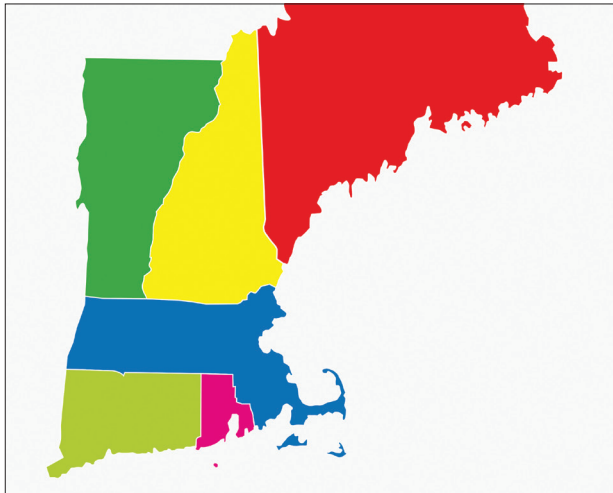
# The Changing Landscape of Restrictive Covenants

By Douglas M. Mansfield

Business clients frequently seek to protect the goodwill they have created through customer and employee relationships. Restrictive covenants such as non-compete agreements, non-solicitation agreements, and confidentiality/non-disclosure agreements are the legal means (among others) for protecting a business's hard-earned goodwill. What follows is a brief discussion of recent changes the landscape of non-compete agreements.

Of the three restrictive covenants, New Hampshire Courts typically are the most restrictive when it comes to interpreting and enforcing non-compete agreements. For example, New Hampshire Courts will generally not enforce a non-compete agreement that prohibits a prior employee from competing for new customers. Such restrictions must be limited, not just in duration and geographic scope, but also to those customers that the employee has established goodwill or about whom confidential information was gained while employed by the company. The scope of such restrictions was spelled out in the case of *Merrimack Valley Wood Products, Inc. v. Glen Near*, 152 NH 192 (2005).

In 2014, New Hampshire enacted RSA 275:70, establishing a disclosure obligation on the part of an employer seeking to implement a non-compete agreement with a new employee. This law requires that the employer provide a copy of a non-compete agreement to a potential new employee prior to the employee's acceptance of an offer of employment. Failure to comply with this requirement would render the non-compete agreement unenforceable, although all other provisions concerning employment, confidentiality non-disclosure, trade secret, or intellectual property assignment would remain in full force and effect.



Two years later in 2016, New Hampshire enacted a further restriction on the use of non-compete agreements — his time as they relate to use with physicians. RSA 329:31-a makes unenforceable contracts that impose post-employment geographic restrictions on where a New Hampshire physician may practice medicine. This restriction applies to terms of a partnership, employment, or any other form of professional relationship with a physician. The remaining provisions of the agreement unrelated to the post employment restriction, however, would remain unaffected by this law.

This growing trend to restrict the use of restrictive covenants in the employment context can also be seen in the adjacent states of Maine and Massachusetts. Both states have recently enacted restrictions on the use of non-compete agreements. In 2018, the Massachusetts Non-Competition Agreement Act was signed into law, which among other things prohibits enforcement of non-

compete agreements against employees who are classified as non-exempt under the Fair Labor Standards Act, employees who have been terminated without cause or laid off, and those employees who are 18 years of age or younger. In addition, this law requires an employer to follow various procedural and consideration requirements before implementing a non-compete agreement with eligible employees.

In June of this year, Maine also enacted a law restricting the use of non-compete agreements. The Maine law, which applies to contracts entered into or renewed after September 18, 2019, put in place various restrictions on employment type agreements, including: banning the use of non-compete agreements with lower wage employees; mandating disclosure of non-compete agreements by employers (at least three business days before the employer requires the agreement to be signed); and prohibiting no-poach clauses of employees in agreements between employers. The law authorizes the Maine Department of Labor to impose monetary civil fines of "not less than \$5,000" on employers who enter into non-compliant agreements.

New Hampshire has also enacted a law this year prohibiting non-compete agreements for lower-wage workers. The New Hampshire law (RSA 275:70-a) took effect on September 10, 2019. This law prohibits an employer from entering into a non-compete agreement with a low-wage employee and renders any such non-compete agreement void and unenforceable. A low-wage employee is defined as an employee who earns an hourly rate of less than or equal to 200 percent of the federal minimum wage. (Presently that equates to \$30,160/year ~ \$7.25/hr. x 2080 hours, which is 40 hrs./week x 52 weeks/year.)

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# As the Budding Cannabis Industry Expands in New England, Businesses Need to Evaluate Their Appetite for the Risks Associated with Cannabis-Related Businesses

By Nathan Fennessy and Sara Moppin

It has now been a year since recreational cannabis sales began in Massachusetts. Maine expects recreational sales to commence in spring 2020. And New Hampshire's small medical-cannabis market continues to expand. As a result, businesses of all kinds are increasingly coming into contact with cannabis-related businesses ("CRBs") — whether they know it or not. Businesses, particularly financial institutions, need to consider implementing policies to define their risk tolerances with respect to CRBs and setup due diligence programs to systematically address the potential risks associated with CRBs.

## It is still illegal under federal law to possess or distribute marijuana (but not hemp).

The Controlled Substance Act of 1970 lists marijuana as a Schedule I drug and makes it illegal under federal law to possess or distribute marijuana. As a result, the federal government has the power to seize personal and real property used in the cultivation, manufacture, sale and distribution of marijuana, even if such activities are legal under state law.

There is some movement afoot at the federal level to reconsider whether certain cannabis products are appropriately listed as Schedule I drugs. In December 2018, Con-



gress passed and the president signed into law the Hemp Farming Act as part of the Farm Bill. This law removed certain hemp-derived products from Schedule I provided that hemp is produced in compliance with USDA guidelines and has a THC content of 0.3 percent or less.

## Federal agencies have provided some guidance regarding their enforcement priorities.

Medical marijuana is now legal in 34 states and 11 states have legalized recreational marijuana. But financial transactions involving proceeds generated by marijuana-related conduct can still form the basis for federal prosecution under money laundering statutes and the Bank Secrecy Act.

Given the increasing divergence between federal and state law, federal agencies have attempted to provide some comfort to CRBs operating legally pursuant to state law (and those doing business with them) that federal agencies will not infringe on their activities provided they observe certain practices.

The first effort to provide guidance was a memorandum issued by the U.S. Department of Justice (DOJ) in 2013, which became known as the "Cole Memo." The Cole Memo (actually multiple memoranda) set forth the DOJ's enforcement priorities with respect to marijuana. While the Cole Memo provided some level of certainty to financial institutions dealing with CRBs, in January 2018, former U.S. Attorney General Jeff Sessions rescinded the Cole Memo and directed all United States Attorneys to use

"previously established prosecutorial principles" in determining whether to pursue marijuana enforcement.

The principles set forth in the Cole Memo, however, continue to be applicable to financial institutions as they were incorporated into the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") guidance that was issued in February 2014 ("FinCEN Guidance"). The FinCEN Guidance advises financial institutions that they need to conduct an internal assessment to evaluate the risks associated with working with CRBs and its "capacity to manage those risks effectively." The Guidance identifies customer due diligence as a "critical aspect of making this assessment" and then provides a number of best practices for performing this type of due diligence.

## The Rohrabacher Amendment and SAFE Banking Act.

While most of the action in Washington has been at the agency level, Congress has attempted to provide some level of comfort to CRBs and those working with them that they will not be subject to federal prosecution.

Since 2014 (for the 2015 fiscal year), the Rohrabacher Amendment has been adopted as part of the budget resolution fund-

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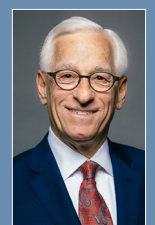
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# Looking Ahead to Chapter 11 Changes under the Small Business Recovery Act

By Richard K. McPartlin

On August 23, 2019, President Trump signed the bi-partisan Small Business Recovery Act of 2019 (SBRA) into law. The SBRA will become effective on February 19, 2020. The SBRA is an amendment to the Bankruptcy Code which adds an entirely new Subchapter V to Chapter 11. *11 U.S.C. §1181 et. seq.* While the Bankruptcy Code serves a valuable role in our economic and legal system, its provisions have not served small businesses facing financial crisis well. The SBRA is an attempt to remedy that situation.

Small Businesses utilize Chapter 11 rarely and success rates when they do are poor. The primary reasons are Chapter 11's effect on the ownership structure and the costs of the process. Faced with an expensive and time-consuming procedure that will most likely divest them of control, most small business owners make the rational decision to file into Chapter 7 or simply close up shop. The new Subchapter V is intended to remove many of these obstacles and provide a workable solution for a financially troubled small business to reorganize.

## A new means of maintaining ownership

Under the Absolute Priority Rule of existing Chapter 11, equity owners may not retain an interest in a reorganized company unless one of three criteria is met: (1) the creditors are paid in full; (2) all of the credi-

"Small Businesses utilize Chapter 11 rarely and success rates when they do are poor. ... The new Subchapter V is intended to remove many of these obstacles and provide a workable solution for a financially troubled small business to reorganize."

tors consent to the retention of equity; or (3) equity contributes substantial new equity. For somewhat obvious reasons, few businesses, large or small, are able to satisfy the first two criteria. Unfortunately, the third criteria is rarely a viable alternative for small businesses. The owners have often already invested all of their resources into the business and have frequently tapped out any available friends and family sources too. Small businesses by nature are unlikely to attract alternative equity investment and often face prohibitive costs even when they do. The filing of a traditional Chapter 11 likely divests its owner of their interest in the company.

Subchapter V removes the absolute priority rule, allowing the small business owner to maintain control of the business provided the Chapter 11 Plan (a) dedicates three to five years of income to the creditors or makes a payment of the equivalent in cash or property and (b) is in the best interest of the creditors. Under bankruptcy law, a plan is generally viewed as being in the best interest of creditors when it yields a better return to creditors than they would receive in a Chapter 7.

Effectively, Subchapter V allows the business owner to "buy" the business out of the bankruptcy over time. By allowing the use of future income to fund the plan, the small business owner is relieved of the difficult, if not impossible task of obtaining or providing a new cash investment to maintain control of the business.

## Process cost reductions and improvements

The costs and complexity of existing Chapter 11 proceedings further discourage small businesses from seeking reorganization. Currently, a debtor must undertake the multi-step process of drafting both a disclosures statement and a plan of reorganization. The disclosure statement is subject to notice and hearing with Court approval required. Creditors can, and do, object to the contents of both the disclosure statement and the plan. In even the best cases, a debtor typically faces multiple disclosure statement approval hearings. Once approved, the disclosure statement must be distributed to all creditors who must then vote on the plan. The voting process is both time consuming and cumbersome. Plan approval is subject to yet another hearing after votes have been collected. Each of these steps comes with attendant costs and the potential for creditor resistance. Finally, U.S. Trustee fees are charged on all disbursements made while the Debtor remains in Chapter 11. These fees can add up quickly and further erode the modest financial capabilities of small businesses.

To reduce costs and disruption to the small business, Subchapter V dispenses with the disclosure statement requirement, eliminates US Trustee fees and imposes shorter action timelines (the Court will hold a status meeting 60 days after the filing and the Debt-

or has 90 days from filing to file the proposed plan). Additionally, a Chapter 11 Trustee will automatically be appointed to facilitate case administration. The Subchapter V Trustee will not serve in the operating trustee role provided for under current Chapter 11 law.

## Relief for the small business as creditor

The Bankruptcy Code amendment also provides changes to preference law that should prove particularly beneficial to small businesses. It is not uncommon for Chapter 11 Debtors to file, or threaten to file, preference actions against essentially all entities paid by a debtor in the 90 days prior to its bankruptcy petition. Under current law, these cases are filed in the District in which the case is pending, often Delaware or the Southern District of New York. The economics of litigating the preference claim in a distant court often forces small businesses to settle even where they have meritorious defenses.

The Bankruptcy Code will now require the filing of preference actions seeking the recovery of amounts under \$25,000 in the defendant's home district (up from the current \$10,000 threshold). Further, the law makes clear that prior to filing a complaint, the plaintiff will need to complete "reasonable due diligence taking into account discernible defenses." Often a plaintiff's own records will establish that a defendant is entitled to normal course of business or subsequent new value defenses and is therefore not liable in a preference action. The change in the law is an effort to add some weight to the existing Rule 11 requirements with the aim of reducing the dubious demand and litigation practices which have arisen in some cases.

As with any new law, the impact of Subchapter V remains to be seen. However, the changes put in place by this law have the potential to be productive tools a small business can use to survive financial difficulties and return to fiscal health.

*Richard McPartlin is an attorney with Ford, McDonald, McPartlin & Borden in Portsmouth, NH focusing on bankruptcy representation of trustees, creditors and debtors, corporate law and commercial litigation.*



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## Litigation from page 19

gation, and therefore deep into costs, a solid prior art reference can scare a patent owner with multiple licenses to his or her patent away due to the threat of losing a royalty stream. In addition, a solid prior art reference can be used to file an early IPR or Ex Parte Reexamination followed by a Motion to Stay the litigation with institution of either.

In summary, in patent litigation, prior to firing the rocket by filing the law suit, it is a good idea to make sure that the rocket is fully fueled so that it can make it to the destination by decreasing chances of invalidation, and to make sure that the rocket's trajectory is on course by making sure that the patent claims are directly on point for patent infringement. The little-known Patent Reissue procedure can increase chances of success.

*Peter A. Nieves is a shareholder and the head of the Patent Law and Intellectual*

*Property and Technology Groups at Sheehan Phinney Bass & Green in Manchester, NH. He provides strategic guidance in the procurement, assertion and defense of intellectual property for clients throughout the world. Nieves is an experienced patent attorney, whose practice focuses on many aspects of intellectual property, including patent litigation, domestic and foreign preparation and prosecution of patents and trademarks, licensing, intellectual property legal opinions, and disputes concerning patents, trademarks, and copyrights. His prosecution experience encompasses a vast range of electrical and electromechanical technologies, mechanical technologies, medical devices, business methods, and functionality associated with software. Nieves has prepared and prosecuted hundreds of patents on many technologies and has offensively and defensively litigated patents in New Hampshire, Massachusetts, the Eastern District of Texas, the Southern District of California, and the Middle District of Florida.*



## Right from page 18

common law in 1784 and is not compatible with trial by jury.” In other words, the majority found that the comprehensiveness of the modern statutory scheme created by the legislature trumped any constitutional right that a civil litigant might have. In particular, the majority opinion found it was bound by the precedent set in *Hair Excitement* that adopted a similar analytical framework in concluding that the civil jury trial right did not apply to actions under the Consumer Protection Act because of the comprehensiveness of the statutory scheme.

The dissent criticized the majority’s failure to engage in the traditional historical analysis: “[t]he comprehensiveness of the statutory scheme is not germane to the considerations we have identified as relevant to our inquiry under Part I, Article 20.” The dissent found that “available historical evidence supports Ridlon’s position that the Bureau’s action to recover civil penalties against him pursuant to the Act renders this an action in debt, for which there was a right to a jury trial at common.”

Of particular importance to the dissent’s analysis was the fact that “[t]he Bureau has not identified any authority that suggests the common law right to a jury trial for actions in debt changed prior to the adoption of the New Hampshire Constitution.” Accordingly, the dissent concluded the Security Act’s “failure to provide for a jury trial under such circumstances contravenes the protections afforded by our State Constitution.”

The most noteworthy aspect of the dissent, however, may be the last paragraph where Justice Hantz Marconi invited future litigants to challenge *Hair Excitement*: “parties in future cases would be wise to address how our analysis of the fraud argument in *Hair Excitement* can be reconciled with the historical inquiry required under Part I, Article 20 of our State Constitution.”

The *Hair Excitement* case, however, presents a number of important differences from Ridlon. *Hair Excitement* was not a government enforcement action for civil penalties; it involved two private individuals and the plaintiff claiming an entitlement to the jury trial right. Unlike Ridlon, the analysis in *Hair Excitement* turned on whether the Consumer Protection Act was the equivalent of a common law fraud action.

In short, there are a number of additional challenges to a litigant who seeks to overturn *Hair Excitement* analysis with respect to the Consumer Protection Act. The alternative to tackling *Hair Excitement*, however, may be a world in which the constitutional civil jury trial right becomes a relic of the past subject to the whims of the legislature in enacting “comprehensive” statutory schemes.

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## Transactions from page 18

classification that may be based on certain qualifying relationships. If the transaction changes the relationships, the foreign employee may lose his or her work eligibility and even authority to remain in the U.S.

H-1B status, for example, allows U.S. employers to hire foreign national workers in specialty occupations requiring a bachelor’s degree or its equivalent. The employer will petition to employ the foreign national and must obtain clearance from the U.S. Department of Labor (DOL) by attesting to the wage, geographic location, role, and prevailing wage rate to be paid to the foreign employee. The employer will also be required to maintain a public access file on the employer’s premises containing such information.

If a transaction results in a change in the employer or the employee’s job role, duties, or pay, at a minimum, the successor in interest may be required to update the public access file maintained for the H-1B employee. The successor in interest may also need to file a new or amended petition in order to continue employing the H-1B worker.

L-1 status permits U.S. employers to transfer executives, managers, or workers with specialized knowledge from a foreign affiliate to a U.S. location. This status requires a qualifying relationship between the U.S. employer and the foreign affiliate. A merger, acquisition, or reorganization may result in a change in ownership and sever the qualifying relationship with the foreign affiliate. The transaction may result

in the loss of the foreign national’s work authorization and status, and require the successor in interest to petition for a new immigration status for the foreign national. Until the petition is approved, the foreign national may not be able to remain in the U.S. or work for the employer.

Other, seemingly innocuous, business activities may be impacted by immigration laws.

Office relocations, name changes, layoffs, and other ordinary business activities may trigger immigration requirements with respect to foreign national employees. For example, U.S. employers can sponsor foreign national employees for employment-based permanent residency. Often this is a lengthy and costly process requiring the U.S. employer to demonstrate that no U.S. workers are qualified and available to fill a position to be offered to a foreign national. During the process the employer will need to obtain a determination from the DOL regarding the prevailing wage that should be paid for the position, advertise for the position within the metropolitan statistical area where the employee will work, and obtain certification from the DOL prior to applying to sponsor the foreign national.

The name of the employer listed on the prevailing wage application should be consistent with the name of the employer that is listed in advertising for the position and in the labor certification application. If the employer changes its name or adopts a trade name during the process, the employer may be subject to a DOL audit.

A change in headquarters or office location can similarly impact employment-based permanent resident cases. The prevailing wage application and advertisements will be tied to the metropolitan statistical area where the position will be based. If the office where the employee will work changes to a location outside of the metropolitan statistical area previously indicated, a new prevailing wage will need to be obtained and new advertising will need to be completed for the new location.

Due to the myriad of immigration compliance requirements that may impact a client and the client’s ability to retain key foreign employees, business attorneys should take care to remember immigration compliance in their business transactions.

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## Businesses from page 21

ing the federal government. The amendment prohibits DOJ from using any of the funds appropriated by Congress to prevent states with medical marijuana “from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” It was last renewed in February of 2019 as part of the spending bill signed by President Trump, and will need to be renewed for the fiscal year 2020 budget. Importantly, the Rohrabacher Amendment applies solely to medical marijuana, and does not apply to recreational use in those states that have legalized it.

This year the Secure and Fair Enforcement (SAFE) Banking Act passed out of the House with overwhelming bipartisan support 321-103. This bill prevents federal banking regulators from punishing banks for working with CRBs that are obeying state laws. The bill also protects ancillary businesses working with businesses in the legal cannabis industry from being charged with money laundering and other financial crimes. The bill still faces an uphill battle in the Senate where the Chairman of the Senate Banking Committee, Sen. Mike Crapo (R-ID), has expressed reservations about the bill.

### With all this uncertainty at the federal level, what are businesses doing?

Given the continued uncertainty at the federal level, financial institutions and other businesses providing services to CRBs have begun implementing their own internal policies to systematically address the potential risks associated with CRBs. This starts with

defining what constitutes a CRB. Generally, the industry has defined a CRB as any business receiving compensation from or participating in any way in the growth, manufacture, distribution, dispensing, transportation, or sale of cannabis.

CRBs are then split into two categories: direct CRBs and indirect CRBs. A direct CRB is a business that is involved in the “seed to sale process” (e.g. growers, dispensaries). An indirect CRB is a business that accepts marijuana proceeds as payment for their products/services (e.g. the electrician installing wiring for lamps at growing facility).

Businesses then need to evaluate their appetite for risk in systematic way. Perhaps they are comfortable doing business with an indirect CRB like a landlord collecting rental payments from recreational cannabis dispensary. They may be less comfortable with processing the payroll for the same recreational cannabis dispensary. But these decisions should be reflected in a policy that can then be applied systematically as new opportunities arise. And customer due diligence — initially and on a regular basis — will be required to mitigate the risks involved.

*Nathan Fennessy is a Director and Sara Moppin is Of Counsel at Preti Flaherty. They regularly advise clients on cannabis-related issues and contribute to the firm’s Cannabis Law and Policy Report Blog: <https://cannabislawandpolicyupdate.blogspot.com/>.*

**Learn more at the NHBA CLE program, “Clearing the Haze,” on February 13. See details on page 37 and register at <https://nhbar.inreachce.com>.**

## Covenants from page 20

The statute defines a “non-compete agreement” as an agreement that restricts such a low-wage employee from performing work for another employer for a specified period of time; working in a specified geographic area; or working for another employer that is similar to the work done by the employee for the employer who is a party to the non-compete agreement. This definition is broad in its scope, providing alternative definitions, capturing a breadth of agreements however varied they may be in their drafting.

With the varied limitations that have been enacted regarding the use of restrictive covenants, attorneys should consider counseling their business clients on reviewing on-boarding procedures in implementing non-compete agreements, reviewing the organization’s use of separation packages with exiting employees and consider revising multi-state agreements to ensure they are in compliance with jurisdictions for which they may be used.

*A member of Donahue, Tucker & Cianella, PLLC, Attorney Douglas Mansfield’s practice focus on corporate/business and employment law. Additionally, Attorney Mansfield’s practice includes data privacy issues.*

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## Outcomes from page 1

### Win, Lose or Draw

By way of example, we compared 40 litigation variables and mined the text of Complaints from recent civil cases in Hillsborough North Superior Court, Belknap Superior Court, and Merrimack Superior Court, including the Business and Commercial Dispute docket. In this limited data set consisting of an average of three years of cases, we were able to identify variables that help predict wins, losses, and settlements.

Case outcomes for specific causes of action across the three jurisdictions are found in Table 1. It is apparent that a large number of cases settle across the jurisdictions. This is unsurprising. The cases in which plaintiffs win at trial or summary disposition, however, provide interesting observations. In general, plaintiffs are more likely to win with a contract claim, real property claim, or declaratory judgment action than with a negligence claim. Plaintiffs are even more likely to win in Belknap County, where, with the exception of negligence cases, plaintiffs win more claims than expected by chance. By drilling further into this data point, a calculation of the Pearson residual correlation demonstrates that Belknap County, as a variable, contributes more to a plaintiff's win than all of the other variables examined with the exception of cases in which there is a *pro se* defendant as a variable. In this limited data set, the p-value (probability value) for plaintiffs winning in Belknap County is high, such that it is unlikely to be random.

Merrimack County presents an even distribution of wins and losses for the parties, and further calculation reveals that case outcomes are independent in that jurisdiction. There were insufficient data from Hillsborough County North to determine whether independence holds there, particularly in negligence and real property cases where data were collected only from claims that settled.

It is also informative to examine the disposition of cases by the type of defendant involved, including whether the defendant is a business entity, a governmental entity, or an individual, and whether the defendant is a *pro se* party. While it is not necessarily noteworthy that 75 percent of cases settle when the defendant is a business entity, the Pearson residual correlation value for this variable illustrates that this settlement percentage is greater than what the expected value should be. This has a very strong prediction value as indicated in blue in Table 2. Curiously, a similar calculation reveals that businesses are less inclined to settle, and more likely to win, when they are a plaintiff in a civil superior court case.

In the same vein, when the defendant is a *pro se* party, the plaintiff is extraordinarily likely to win. While this was foreseeable, the large number of *pro se* defendants in this cross section of court cases was unexpected. A logistic regression calculation for when a defendant is a *pro se* party reveals that a plaintiff is about 22 percent more likely to win in such cases, which are litigated more than most would assume.

Table 1: Judgment by Case Type and Jurisdiction

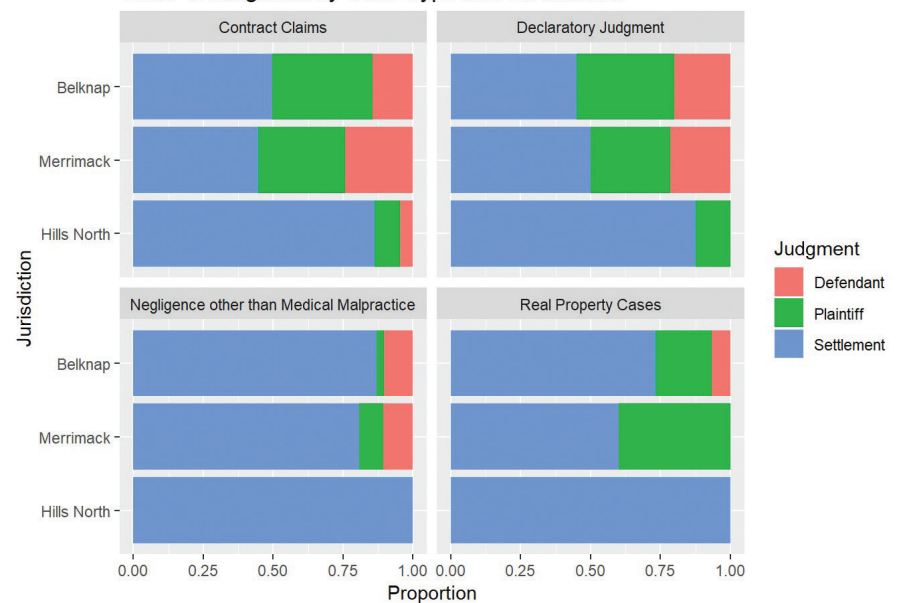
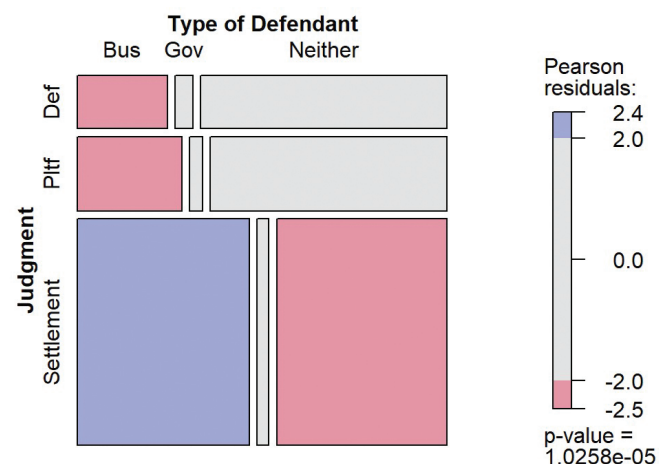


Table 2: Correlation of Outcome with Type of Defendant



### Show Me the Money

In about half of the cases examined, plaintiffs asserted a specific monetary request in their Complaints. In cases where plaintiffs won, the amount requested had a very strong 1:1 relationship with the amount of money awarded. Plaintiffs are getting what they ask for when they win; no more, no less. On average, successful plaintiffs requested half the amount of damages as unsuccessful plaintiffs. The horizontal bar on Table 3 represents the median amount of damages plaintiffs requested in all jurisdictions: \$7,170 in winning cases and \$14,963

in losing cases. These two correlations suggest that plaintiffs who fail to present a measured amount of damages in their cases are unlikely to be awarded the amount requested, and might compromise their win probability.

Monetary awards in this data set range from \$1,000 to greater than \$1,000,000. About half of the awards were less than \$14,000. Predictably, awards over \$100,000 were almost exclusively against defendants that are business entities.

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Table 3: Effect of Monetary Request on Outcome and Award

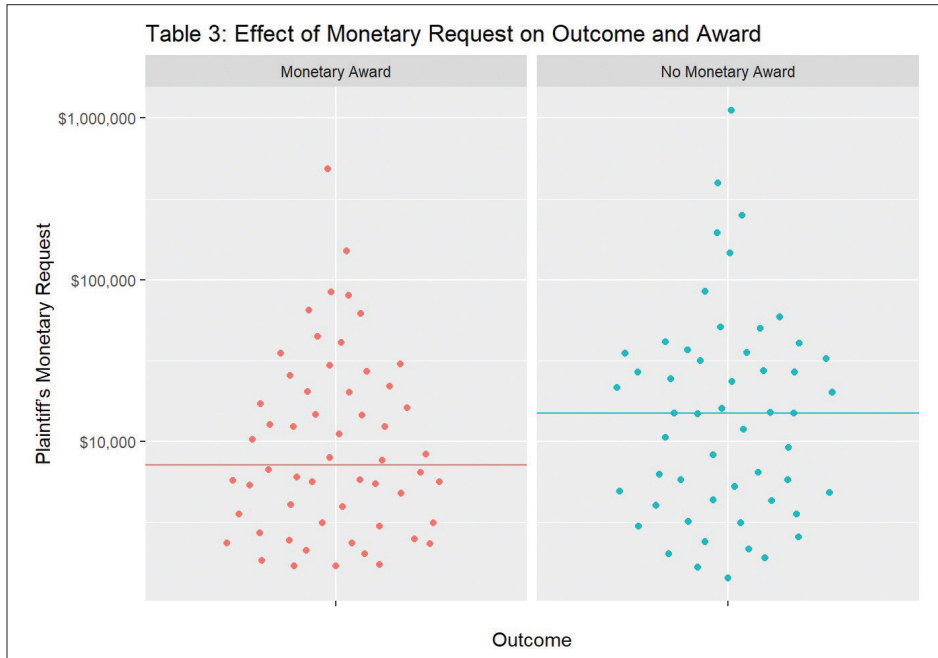
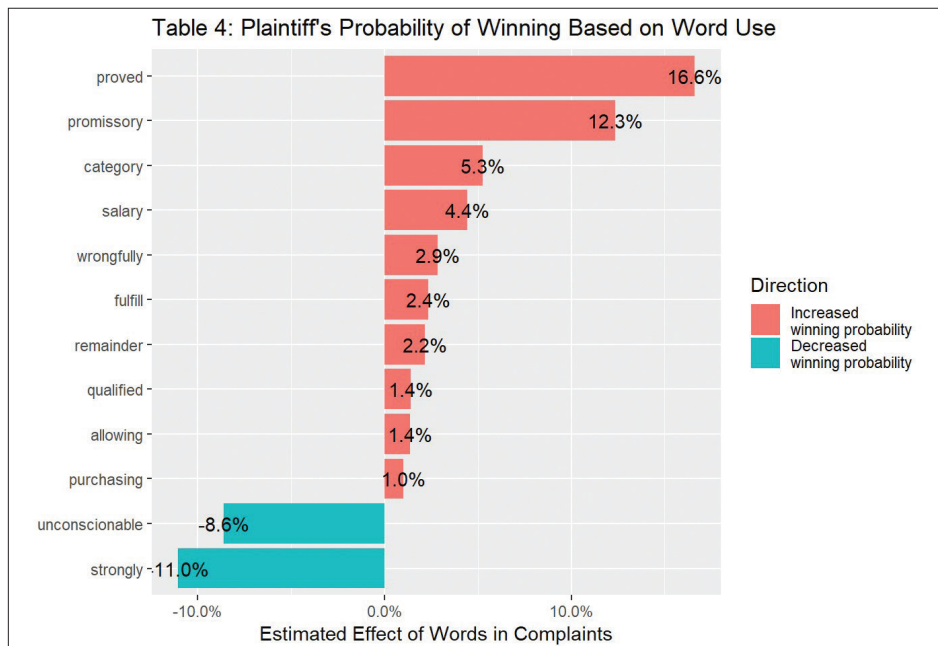


Table 4: Plaintiffs Probability of Winning Based on Word Use



## You Don't Say

Text analytics of plaintiffs' Complaints are fascinating. Complaints have thousands of frequently occurring words and multicollinearity of predictive words. Accordingly, we used a Least Absolute Shrinkage and Select Operator (LASSO) regression model to select the optimal combination of predictive words to reduce the mean squared error of the prediction while avoiding overfitting the text data. Because there is a large amount of routine legal terminology found in Complaints, we used a strict standard with a Term Frequency — Inverse Document

Frequency algorithm. This algorithm measures the number of times a word appears in a document and offsets that frequency by the number of documents in the data set that contain the words.

This advanced regression analysis in Table 4 shows words associated with increased or decreased chances of a litigation win and loss. The words that increase a plaintiff's likelihood of winning are intriguing. For example, a Complaint that uses the word "proved" or "promissory" is much more likely to be a winner. Superficial analysis indicates that plaintiffs who

claim they have "proved" something in their Complaints increase their probability of winning by approximately 16.6 percent, meaning she has a higher chance of winning notwithstanding other variables. This makes sense, and perhaps plaintiffs should look to procure and include this type of support in their claims early on in order to garner better odds of winning.

A Complaint that presumptively references a promissory note increases a plaintiff's probability of winning by approximately 12.3 percent. It may be the case that a plaintiff is more likely to succeed in a contract claim when she can cite a supporting promissory note. Interestingly, plaintiffs who cite a "salary" in their Complaints increase their probability of winning by approximately 4.4 percent. Employers of salaried employees take note!

On the other hand, "unconscionable" and "strongly" are associated with losing Complaints, which probably indicates that the type of claims associated with these words tend to be unsuccessful. Complaints that use these terms decrease their probability of winning by 8.6 percent and 11 percent respectively.

Further analysis is needed to determine the context of the predictive words discovered by the LASSO regression. With additional regression and other analysis, it is possible to identify other words, and word groupings, with which the identified words are correlated, but such is beyond the scope of this article. And, while it may be impossible to avoid terms such as "unconscionable," and "strongly" in a Complaint, word correlation and similar analysis would re-

veal how to position the terminology more favorably.

## The Forecast

By analyzing case variables and drilling into the context of statistically significant correlations, it is possible to provide a litigation forecast for superior court cases in New Hampshire. Beyond predicting winners, settlers, losers, and monetary awards, legal analytics can be used to identify winning lawyers and law firms, and provide judicial profiles. What an exciting future for the law!

The analysis presented here was performed on a limited data set and is intended for demonstration purposes only. With this methodology, however, one can confirm or refute these conclusions simply by adding more data to the pertinent algorithms. Such would realize the predictions and provide actionable insights for litigation. Anyone with interest in the topic is encouraged to contact Chantalle R. Forgues at [crforgues@plymouth.edu](mailto:crforgues@plymouth.edu).

*Chantalle R. Forgues is an attorney and associate professor of business law at Plymouth State University. Her legal background includes a judicial clerkship, a Congressional internship, and litigation and transactional experience at both large and small law firms. She is currently pursuing micro-credentialing in data science. Daniel S. Lee is a data scientist, economist, and educator. He is currently a professor of economics at PSU. He was the State of New Hampshire's tourism economist from 2012 to 2016, and was appointed by former Governor Hassan to the NH Economic Development Advisory Council in 2014.*

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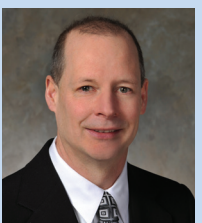
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# Circuit Court Judicial Scheduling for 2020

By David D. King, New Hampshire Circuit Court Administrative Judge

In an effort to limit the number of courts to which judges are assigned next year, the circuit court has adopted a different method of assigning judicial officers, which will take effect on January 1, 2020. Although statutorily authorized for 45 full time judges, the court currently operates with 32 full time judges, 2 full time marital masters, and more than 25 part time judges, retired judges and referees, covering 35 locations around the state. Since its creation in 2011, circuit court judicial scheduling has been a centralized function. Beginning next year, the state has been divided into 4 “Regions” to which a specific number of judges are assigned, based on the weighted caseload of the courts in that region. Scheduling decisions will be made by 4 presiding judges, Judge Michael Garner (Region A), Judge Kris Spath (Region B), Judge Mark Weaver (Region C) and Judge Patricia Quigley (Region D). The goal of this change is to have most judges assigned to no more than 2 locations, doing a wider variety of cases across the divisions. By regional-

izing the process, the local judges and clerks will have more flexibility to move resources to the courts with the most need throughout the year. For five years, the circuit court has run a pilot complex family docket in an effort to provide dedicated staff and judicial resources to the most complex divorce/parenting cases in the family division. It was modeled after the complex trust docket, which has been operating in the probate division for many years. Judge Robert Foley has carried a case load of up to 50 cases from around the state. Judge Foley, who has done a remarkable job managing some of the most challenging litigation in this court, will reach mandatory retirement next year and has elected to step down from the complex docket. The pilot project has demonstrated that there are far too many complex family cases for one judge to manage. For 2020, the decision whether to dedicate limited judicial resources to handle only complex marital cases was left to the regional presiding judges. Region C, comprised of the 7th and 10th circuits (Strafford and Rockingham counties) will assign Judge Jennifer Lemire to a complex marital docket for

that region, in the Brentwood location. The remaining regions have elected to spread the complex marital cases among their more experienced family division judges. All cases currently pending on the complex docket, not originating from Region C, will be returned to their courts of origin. A number of factors went into these decisions. As we move forward, with hopefully some new judicial appoint-

ments, scheduling changes may occur. At the same time we are making these changes, three new family division sites will be opening, in Candia, Milford, and Hampton. We are in the process of making all of the necessary changes including staffing, IT, moving of files and fixtures. Please bear with us as we approach 2020 and implement so many changes at once.

## CIRCUIT COURT

Regions and Presiding Judges  
*Beginning January 1, 2020*

- Region A: Presiding Judge Michael Garner - Circuits 1, 2, 3, 4, and Franklin
- Region B: Presiding Judge Kristin Spath - Circuits 5, 6 ( not Franklin) and 8
- Region C: Presiding Judge Mark Weaver - Circuits 7 and 10
- Region D: Presiding Judge Patricia Quigley - Circuit 9

## REMINDER: New Family Division Courts Opening on January 2, 2020

Three new Family Division locations will open on January 2, 2020 in Milford, Candia and Hampton. Hearing notices in existing cases transferring to the new locations will begin going out in November. Starting on January 2nd, new family cases from the following towns will be filed in the following new locations:

- The towns of Amherst, Lyndeborough, Mont Vernon, Milford, Brookline, Mason and Wilton will go to the Milford Family Division.
- The towns of Auburn, Candia, Deerfield, Northwood, Nottingham, and Raymond will go to the Candia Family Division.
- The towns of Hampton, North Hampton, South Hampton, Hampton Falls and Seabrook will go to the Hampton Family Division.

Additionally, as part of the shift of cases to the three new Family Division locations, and pursuant to SB 127 signed by Governor Sununu on July 12, 2019, cases

from the following towns will be filed in the Brentwood Family Division beginning January 2, 2020: Newfield, Newmarket, and Stratham. Hearing notices in existing cases transferring to Brentwood Family Division began going out in November.

## NH e-Court Program Update

- The Circuit Court is on track to move several case types to the electronic world in February 2020. New cases in the following case types will be filed electronically:
- Civil Complaints (currently Civil Writs)
  - Registration of Foreign Judgments
  - Writs of Replevin
  - Other District Division Civil matters
  - Name Changes

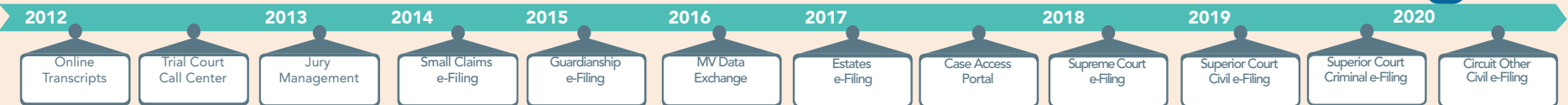
The targeted implementation date is February 12, 2020. As in the past in the Circuit Court, only new cases of these case types will be electronic and electronic filing is mandatory for attorneys and self-represented litigants. Existing cases in progress will complete in paper. Commenting on this newest e-filing initiative, NH Circuit Court Administrative Judge, David King said: “The Court is looking forward to once again improving court operations and expanding access to justice by leveraging technology. As has been the case for more than 85,000 electronically filed cases to date, the Circuit Court is committed to providing online services in order to meet the expectation of the majority of filers.” Any attorney not already familiar with electronic filing should sign up to attend an E-Filing Familiarization Session at the NH Bar Center this coming February and March.

## Circuit Court Announces February 2020 Roll Out of Next E-Filing Cases

As with all other electronic case types in the NH courts, the Court will post case specific information on the NH Judicial Branch website as the February Go Live date approaches. In the meantime, anyone requiring information on e-filing can find it online at NHJB Electronic Services: <https://www.courts.state.nh.us/nh-e-court-project/electronic-services.htm>.

### Circuit Court e-Filing Attorney Familiarization Sessions

- February 6, 2020 (1-3 PM) at the NH Bar Center
  - March 5, 2020 (1-3 PM) at the NH Bar Center
- Please register with **Kim Brackett** [kbrackett@courts.state.nh.us](mailto:kbrackett@courts.state.nh.us).



Source: NH Judicial Branch



November 2019

## Criminal Law/Constitutional Law

**State v. Carnevale**  
**Appeal from Sullivan County, No. 2018-0292**  
**Nov. 26, 2019**  
**Affirmed.**

- Whether the trial court erred in holding the evidence against defendant was sufficient to support the jury conviction that he operated his SUV recklessly and as a deadly weapon thereby denying defendant's JNOV.
- Whether the trial court erred in ruling that counsel's assistance was not ineffective and thereby denying defendant's motion for new trial.

The defendant allegedly tailgated, swerved in and out of lanes, and cut so close in front of the victim vehicle that it hit his SUV and swerved at highway speeds into the guard rail. Defendant also allegedly thereafter left the scene. Based on video evidence from the victim vehicle, the jury convicted the defendant of felony reckless conduct with a deadly weapon. Among other arguments, the defendant argued that the evidence was insufficient to establish a reckless *mens rea* or that he operated his vehicle as a deadly weapon. The defendant further requested a new trial, arguing that he had ineffective assistance by counsel because his counsel had not sought out additional expert testimony when the first consulting expert was unable to give favorable opinions.

The Court held that the evidence was sufficient upon which "a rational trier of facts could have found, beyond a reasonable doubt, that the defendant was aware of, [but] consciously disregarded, the substantial and unjustifiable risk" created by his conduct. The issue of Defendant's *mens rea*, a subjective inquiry, was necessarily based on circumstantial evidence. The Court rejected defendant's argument that the victim vehicle's accident was not foreseeable and noted also that the defendant's statements denying knowledge of the accident were not in evidence. The Court found, instead, that the defendant failed to demonstrate that the circumstantial evidence pertaining to his *mens rea* "did not exclude all reasonable conclusions except guilt." Additionally, the Court held that the evidence was sufficient with respect to the use of defendant's vehicle in "a manner of use that is 'known to be capable of producing death or serious bodily injury[]'" and, thus, as a deadly weapon.

With respect to ineffective assistance of counsel, decided under the federal constitution, the Court addressed an issue of first impression in New Hampshire: whether counsel is required to consult with additional experts after investigating the facts and consulting with an expert who could not offer favorable opinions. The Court answered this in the negative and upheld the denial of defendant's request for a new trial. The Court found that the defendant had waived all other arguments. Accordingly, the Court affirmed.

*Gordon J. MacDonald, attorney general, with Susan P. McGinnis, senior assistant attorney general (on the brief and orally), for the State.*

*Elliot Jasper Auten Shklar & Ranson, LLP of Newport (Michael C. Shklar on the brief and orally) for the defendant.*

**State v. Barr**  
**An appeal from Carroll County No. 2018-0464**  
**Nov. 22, 2019**  
**Affirmed.**

- Whether application of and conviction under RSA 649-A under the presented circumstances violated the defendant's First Amendment of the United States Constitution protections of freedom of speech.
- Whether the state "opened the door" in opening statements to certain cross-examination, and whether the trial court's denial of the defendant's request for such cross-examination was an unsustainable exercise of discretion.

The defendant argued that conviction under RSA 649-A for counts of manufacturing and possessing child sexual abuse images (photographs and videos of a 16-year-old minor engaged in legal consensual sexual conduct with the defendant that he had not distributed) violated his right to free speech under the First Amendment of the United States Constitution and under Part I, Article 22 of the New Hampshire State Constitution. The defendant further argued that the trial court erred in denying him an ability to cross-examine the minor to introduce statements that she had been involved in two prior sexual relationships and had previously photographed such activity.

After finding that the defendant waived his State Constitutional arguments, the Court held that the images at issue, made with an actual child, were not protected by the First Amendment of the federal constitution because they were in a category "which historically have been unprotected by the First

## At-a-Glance Contributor



**Shenanne Tucker**

Practiced law in New Hampshire and Maine since 2002, and currently is predominantly privately employed working in insurance.

Amendment." The Court agreed with the defendant that the child pornography exception to the First Amendment "must bear a close causal connection to criminal activity." But, that criminal activity is the production of the images themselves. Neither a violation of a separate statute or distribution of the images is required to establish that the defendant's actions were "intrinsically related to the production of child pornography with an actual minor" and thus "implicated the interests of an actual minor."

Finding that remarks in opening statements "may trigger the 'opening the door' doctrine," the Court held that the defendant nevertheless failed to demonstrate that the court's ruling against cross-examination was clearly untenable or unreasonable to the prejudice of his case. New Hampshire has only ever applied the "specific contradiction doctrine" to counteract a misleading advantage by the party opening the door. But, while both doctrines require different showings and allow admission of varying evidence, under these facts, neither the "curative admissibility doctrine" nor the "specific contradiction doctrine" compelled the requested cross-examination into the minor's prior sexual history.

The Court accordingly upheld the convictions.

*Gordon J. MacDonald, attorney general, with Elizabeth A. Lahey, assistant attorney general (on the brief) and Susan P. McGinnis, senior assistant attorney general (orally), for the State.*

*Thomas Barnard, senior assistant appellate defender, of Concord (on the brief and orally), for defendant.*

## Mental Health Law

**In re R.M.**  
**An appeal from the 10th Circuit Court-Brentwood Probate Division No. 2019-0283**  
**Nov. 22, 2019**  
**Affirmed.**

- Whether the trial court erred in renewing the respondent's conditional discharge mental health treatment plan

The respondent appealed an order granting a petition for involuntary admission to New Hampshire hospital so that his conditional discharge plan could continue. The petition had been filed before expiration of the existing conditional discharge and, after hearing, the trial court granted renewal for another five year term.

On appeal, the Court held that the petitioner met its burden of demonstrating that "the respondent is currently in such condition, as a result of mental illness, that 'a prescribed regimen of medical, psychiatric, or psychological care or treatment is necessary to prevent...a potentially serious likelihood of danger to himself or to others...'" The Court further explained that, contrary to initial involuntary admission proceedings, renewal "may be based on a pattern of prior action and testimony relating to the question whether or not any cure...has been effectuated." No showing of "current dangerousness" or of a "recent dangerous act" is required in a renewal proceeding as the focus is on future dangerousness.

Based on testimony of two mental health professionals, testimony regarding the defendant taking himself off his medications and not believing that he needed them, and the defendant devolving into assaultive and delusional behavior when not medicated, there was sufficient evidence upon which a reasonable trier of facts could find by clear and convincing evidence that the standard for renewal of the conditional discharge orders was met. Though the trial court's application of the standard for initial involuntary admission was not correct for these proceedings, the Court found it could uphold the order based on alternative grounds because the standard applicable to the renewal proceedings was supported by the evidence. Without holding that the respondent was entitled to application of the least restrictive treatment option, the Court also found, nevertheless, that the evidence sufficiently supported the five year renewal period.

Accordingly, the Court upheld the order renewing the respondent's conditional discharge.

*Boynton Waldron Boleac Woodman & Scott, P.A. of Portsmouth (Christine W. Casa on the brief), for the petitioner.*  
*Casassa Law Office of Hampton (Lisa J. Belanti on the brief), for the respondent.*

AT-A-GLANCE continued on page 28



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**Professional Licensing/  
Regulation of Trades**

**New England Backflow, Inc., et al. v Gagne**  
**An appeal from Merrimack County Superior Court No. 2018-0537**  
**Nov. 13, 2019**  
**Affirmed.**

- Whether the trial court erred in finding that plaintiffs' declaratory judgment claims were, respectively, inconsistent with governing statute and moot.
- Whether the trial court erred in dismissing plaintiffs' unconstitutional taking, malicious prosecution, and abuse of process claims.

The plaintiff-business and its principal, certified in water system operation but not plumbing, installed and repaired backflow preventers since 1992. Plaintiffs sued New Hampshire Office of the Fire Marshall, the chief inspector, and a reporting plumber on several counts related to the investigation of its business activities, an order to cease and desist certain activities, and the arrest of an employee who capped a pipe for a customer who did not want a backflow preventer reinstalled. After dismissal of these counts by the trial court, the Plaintiffs appealed.

Rejecting plaintiffs' arguments, the Court on appeal found that RSA 485:11 and RSA 153:36, IV unambiguously provided an exception only for backflow meters required to be installed by DES. Whereas DES only required backflow meters at the connection to the public water source, the exception was likewise limited. Further, the statute

limited permissible work on DES-required backflow meters to "inspection and testing, maintenance, repair or replacement, and installation..." The Court further agreed with the trial court that the completion of the work subject to the cease and desist order rendered the plaintiffs' remaining declaratory judgment claims moot; and plaintiffs' request for damages, enhanced damages, and attorney's fees as a result of the order were not within the scope of a DJ petition.

The Court then turned to Part I, Article 12 of the New Hampshire Constitution to address plaintiffs' taking claims. Assuming, without deciding, that enforcement of an economic regulation restricting activities previously authorized could constitute a taking, the Court determined that versions of the statute in effect throughout plaintiffs' business operations had not authorized activities that the 2014 amendment took away. Plaintiffs therefore failed to establish any vested right eroded by the amendment and had no viable takings claim.

Plaintiffs' malicious prosecution claim failed because the activity for which the plaintiffs' employee was arrested did not fall into the statutory exception for plumbing licensure. Plaintiffs' abuse of process claim required an examination into whether the defendants misused the warrant after it was issued. The Court noted that plaintiffs' complaint may have adequately alleged the first prong of the test, that the defendants had ulterior intentions, but failed to allege that the arrest warrant was used "for an improper purpose to gain 'a collateral advantage, not properly involved in the proceeding itself[.]'" Plaintiffs thus failed to allege the second prong.

Accordingly, the Court affirmed with one justice concurring specially.

*Orr & Reno, P.A. of Concord (Jeremy D. Eggleston on the brief and orally), for the plaintiffs.*

*Gordon J. MacDonald, attorney general, with Emily C. Goering, assistant attorney general (on the brief and orally), for the defendants.*

**Property Law-Leases**

**Lane v. Barletta**  
**An appeal from the 6th Circuit Court-Hillsborough District Division No. 2018-0141**  
**Nov. 22, 2019**  
**Vacated and remanded.**

- Whether the failure to repair a tenant's heating system violated RSA 540-A:3, I and RSA 358-A:10 when the tenant notified the landlord multiple times that the unit was not working but the landlord supplied an alternative heat source.

The defendant sought appeal after being ordered to pay \$66,000 in damages to his tenant under RSA 540-A:3, I and RSA 358-A:10, I regarding an alleged no-heat situation. The plaintiff cross-appealed the denial of her motion to reconsider the calculation period.

On appeal, the Court reviewed to determine "whether the evidence presented to the trial court reasonably support[ed] its findings, and then whether the court's decision is consonant with applicable law." The Court noted similarities with the facts in *Randall v. Abounaja*, 164 N.H. 506 (2013), namely, that the plaintiff had notified the defendant of the no heat situation beginning in September 2016 and had advised on many occasions that the condition persisted. Nevertheless, the no heat situation continued unremedied at the time of the November 3, 2017 temporary order on the plaintiff's RSA 540-A petition, and up to

plaintiff's move out on January 1, 2018. The defendant's maintenance personnel had come out in November 2016 without fixing the issue so the defendant supplied a space heater for use by the plaintiff. The defendant believed that the system just needed propane which was to be supplied by the plaintiff until, in December 2018, the defendant consulted with a technician in December 2018 who found the system was inoperable. Holding that "a landlord's willful failure to repair a tenant's utility service after being put on notice of a defective service is sufficient to constitute 'willful interruption' of that service under RSA 540-A:3, I," the Court also noted that the defendant's willful failure to repair the original heat source may not mean that he willfully interrupted the tenant's heat. Instead, the determination into whether the defendant willfully interrupted the plaintiff's heat in violation of RSA 540-A:3, I required an examination into whether or not "the space heater [the defendant] provided was an adequate alternative source of heat." The Court did not reach the issue of enhanced damages other than to confirm that enhanced damages must be supported by a willful or knowing violation of the consumer protection act itself, and did not reach the plaintiff's cross-appeal as it was rendered moot by the Court's remand.

Accordingly, the Court vacated the trial court's damage award and remanded for further determinations.

*Law Office of Kyle McDonald, Esq. P.L.L.C. of Concord (Kyle McDonald on the brief and orally), for the plaintiff.*

*Courteous Law, PC of Henniker (Deb Bess Urbaitis on the brief and orally), for the defendant.*

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### **ADM-2019-0015, *In the Matter of Scott R. Behman, Esquire***

Attorney Scott R. Behman was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why he should not be suspended for the following:

1. Bar Dues and Court Fees – Attorney Behman has not paid his 2019/2020 bar dues and court fees and has not paid the delinquency fees of \$100 assessed for non-payment. See Supreme Court Rule 42A.

2. Trust Accounting Certification – Attorney Behman has not completed an annual trust accounting certification, as required by Supreme Court Rule 50-A, and has not paid the delinquency fees of \$300 assessed for non-compliance.

Attorney Behman did not respond to the order or appear for the October 31, 2019 hearing. Justice Hantz Marconi recommended to the court that Attorney Behman be suspended from the practice of law in New Hampshire.

Attorney Scott R. Behman is hereby suspended from the practice of law in New Hampshire for the reasons stated above, and for his failure to appear for the October 31, 2019 hearing. Attorney Behman is ordered to notify his clients in writing that he has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by December 9, 2019 that he has completed this task. On or before December 19, 2019, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Behman's files and to take action to protect the interests of his clients.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 7, 2019  
ATTEST: Eileen Fox, Clerk

### **ADM-2019-0016, *In the Matter of Brian W. Buonamano, Esquire***

Attorney Brian W. Buonamano was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why he should not be suspended for the following:

1. Trust Accounting Certification – Attorney Buonamano has not completed an annual trust accounting certification, as required by Supreme Court Rule 50-A, and has not paid the delinquency fees of \$300 assessed for non-compliance.

2. NHMCLE Certification – Attorney Buonamano has not fulfilled NHMCLE requirements of Supreme Court Rule 53 for the reporting year ending June 30, 2019, and has not paid the delinquency fees of \$300 assessed for non-compliance.

Attorney Buonamano did not respond to the order or appear for the October 31, 2019 hearing. Justice Hantz Marconi recommended to the court that Attorney Buonamano be suspended from the practice of law in New Hampshire.

Attorney Brian Buonamano is hereby suspended from the practice of law in New Hampshire for failure to complete the requirements listed above, and for his failure to appear for the October 31, 2019. Attorney Buonamano is ordered to notify his clients in writing that he has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by December 9, 2019 that he has completed

this task. On or before December 19, 2019, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Buonamano's files and to take action to protect the interests of his clients.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 7, 2019  
ATTEST: Eileen Fox, Clerk

### **ADM-2019-0018, *In the Matter of Sarah E. Dean, Esquire***

Attorney Sarah E. Dean was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why she should not be suspended for failing to pay her 2019/2020 bar dues and court fees, and for failing to pay the delinquency fees of \$100.00 assessed for late payment of her bar dues and court fees. See Supreme Court Rule 42A. Attorney Dean did not respond to the order or appear for the hearing. Justice Hantz Marconi recommended to the court that Attorney Dean be suspended from the practice of law in New Hampshire.

Attorney Sarah E. Dean is hereby suspended from the practice of law in New Hampshire due to her failure to pay 2019/2020 bar dues and court fees, her failure to pay delinquency fees and her failure to appear for the October 31, 2019 hearing. Attorney Dean is ordered to notify her clients in writing that she has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by December 9, 2019 that she has completed this task. On or before December 19, 2019, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Dean's files and to take action to protect the interests of her clients.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 7, 2019  
ATTEST: Eileen Fox, Clerk

### **ADM-2019-0019, *In the Matter of Jennifer L. Hanson, Esquire***

Attorney Jennifer L. Hanson was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why she should not be suspended for failing to pay her 2019/2020 bar dues and court fees, and for failing to pay the delinquency fees of \$100.00 assessed for late payment of her bar dues and court fees. See Supreme Court Rule 42A. Attorney Hanson did not respond to the order or appear for the hearing. Justice Hantz Marconi recommended to the court that Attorney Hanson be suspended from the practice of law in New Hampshire.

Attorney Jennifer L. Hanson is hereby suspended from the practice of law in New Hampshire due to her failure to pay 2019/2020 bar dues and court fees, her failure to pay delinquency fees and her failure to appear for the October 31, 2019 hearing. Attorney Hanson is ordered to notify her clients in writing that she has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by December 9, 2019 that she has completed this task. On or before December 19, 2019,

the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Hanson's files and to take action to protect the interests of her clients.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 7, 2019  
ATTEST: Eileen Fox, Clerk

### **ADM-2019-0020, *In the Matter of Adrienne C. Lavallee, Esquire***

Attorney Adrienne C. Lavallee was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why she should not be suspended for failing to pay her 2019/2020 bar dues and court fees, and for failing to pay the delinquency fees of \$100.00 assessed for late payment of her bar dues and court fees. See Supreme Court Rule 42A. Attorney Lavallee did not respond to the order or appear for the hearing. Justice Hantz Marconi recommended to the court that Attorney Lavallee be suspended from the practice of law in New Hampshire.

Attorney Adrienne C. Lavallee is hereby suspended from the practice of law in New Hampshire due to her failure to pay 2019/2020 bar dues and court fees, her failure to pay delinquency fees, and her failure to appear for the October 31, 2019 hearing. Attorney Lavallee is ordered to notify her clients in writing that she has been suspended from the practice of law in New Hampshire and to notify the Attorney

Discipline Office by December 12, 2019 that she has completed this task. On or before December 23, 2019, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Lavallee's files and to take action to protect the interests of her clients.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 12, 2019  
ATTEST: Eileen Fox, Clerk

### **ADM-2019-0021, *In the Matter of Leslie S. Madge, Esquire***

Attorney Leslie S. Madge was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why she should not be suspended for failing to fulfill her NHMCLE requirements of Supreme Court Rule 53 for the reporting year ending June 30, 2019, and for failing to pay the delinquency fees of \$300.00 assessed for non-compliance. See Supreme Court Rule 53. Attorney Madge did not respond to the order or appear for the hearing. Justice Hantz Marconi recommended to the court that Attorney Madge be suspended from the practice of law in New Hampshire.

Attorney Leslie S. Madge is hereby suspended from the practice of law in New Hampshire due to her failure to fulfill NHMCLE requirements for reporting year

ORDERS continued on page 30



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ending June 30, 2019, her failure to pay delinquency fees, and her failure to appear for the October 31, 2019 hearing. Attorney Madge is ordered to notify her clients in writing that she has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by December 12, 2019 that she has completed this task. On or before December 23, 2019, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Madge files and to take action to protect the interests of her clients.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 12, 2019  
ATTEST: Eileen Fox, Clerk



**ADM-2019-0022, In the Matter of MaryEllen W. Morse, Esquire**

Attorney MaryEllen W. Morse was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why she should not be suspended for the following:

1. Bar Dues and Court Fees - Attorney Morse has not paid the \$100 delinquency fees associated with late payment of her 2019/2020 bar dues and court fees. See Supreme Court Rule 42A.

2. Trust Accounting Certification - Attorney Morse has not paid the \$50 delinquency fee associated with late filing of her annual trust accounting certification, as required by Supreme Court Rule 50-A.

3. NHMCLE Certification - Attorney Morse has not fulfilled NHMCLE requirements of Supreme Court Rule 53 for the reporting year ending June 30, 2019, and has not paid the delinquency fees of \$300 assessed for non-compliance.

Attorney Morse did not respond to the order or appear for the October 31, 2019. Justice Hantz Marconi recommended to the court that Attorney Morse be suspended from the practice of law in New Hampshire.

Attorney MaryEllen W. Morse is hereby suspended from the practice of law in New Hampshire for failure to complete the requirements listed above, and for her failure to appear for the October 31, 2019 hearing. Attorney Morse is ordered to notify her clients in writing that she has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by December 13, 2019 that she has completed this task. On or before December 23, 2019, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Morse's files and to take action to protect the interests of her clients.

Hicks, Bassett, Hantz Marconi, and

Donovan, JJ., concurred.

ISSUED: November 13, 2019  
ATTEST: Eileen Fox, Clerk



**ADM-2019-0023, In the Matter of Merlene J. Rangulong, Esquire**

Attorney Merlene J. Rangulong was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why she should not be suspended for failing to pay her 2019/2020 bar dues and court fees, and for failing to pay the delinquency fees of \$100.00 assessed for late payment of her bar dues and court fees. See Supreme Court Rule 42A. Attorney Rangulong did not respond to the order or appear for the hearing. Justice Hantz Marconi recommended to the court that Attorney Rangulong be suspended from the practice of law in New Hampshire.

Attorney Merlene J. Rangulong is hereby suspended from the practice of law in New Hampshire due to her failure to pay 2019/2020 bar dues and court fees, her failure to pay delinquency fees, and her failure to appear for the October 31, 2019 hearing. Attorney Rangulong is ordered to notify her clients in writing that she has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by December 13, 2019 that she has completed this task. On or before December 23, 2019, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Rangulong's files and to take action to protect the interests of her clients.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 13, 2019  
ATTEST: Eileen Fox, Clerk



**ADM-2019-0026, In the Matter of Joseph S. Votta, Jr., Esquire**

Attorney Joseph S. Votta, Jr. was ordered to appear at the New Hampshire Supreme Court on October 31, 2019, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why he should not be suspended for failing to pay his 2019/2020 bar dues and court fees, and for failing to pay the delinquency fees of \$100.00 assessed for late payment of his bar dues and court fees. See Supreme Court Rule 42A. Attorney Votta did not respond to the order or appear for the hearing. Justice Hantz Marconi recommended to the court that Attorney Votta be suspended from the practice of law in New Hampshire.

Attorney Joseph S. Votta, Jr. is hereby suspended from the practice of law in New Hampshire due to his failure to pay 2019/2020 bar dues and court fees, his fail-

ure to pay delinquency fees, and his failure to appear for the October 31, 2019 hearing. Attorney Votta is ordered to notify his clients in writing that he has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by December 16, 2019 that he has completed this task. On or before December 26, 2019, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Votta's files and to take action to protect the interests of his clients.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 14, 2019  
ATTEST: Eileen Fox, Clerk



**ADM-2018-0024, In the Matter of Gregory C. Wade, Esquire**

Attorney Gregory C. Wade's petition for reinstatement is granted. Attorney Wade is reinstated to the practice of law effective immediately.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: November 22, 2019  
ATTEST: Eileen Fox, Clerk



Pursuant to Supreme Court Rule 51(d) (1), the court reappoints the following persons to the Advisory Committee on Rules, to serve three-year terms commencing January 1, 2020 and expiring December 31, 2022: Superior Court Judge N. William Delker; Circuit Court Administrator Pat W. Ryan; and Mr. Ari Richter, a non-attorney.

Pursuant to Rule 51(d)(1), the court appoints Attorney Charles Keefe to the Advisory Committee on Rules, to serve a three-year term commencing January 1, 2020 and expiring December 31, 2022. Attorney Keefe is appointed to replace Attorney Joshua Gordon, whose term has expired.

Issued: November 25, 2019  
ATTEST: Eileen Fox, Clerk of Court  
Supreme Court of New Hampshire



Pursuant to Supreme Court Rule 37(4), the Supreme Court reappoints the following members of the Hearings Committee of the Attorney Discipline System:  
Attorney Barbara Abbott  
Mr. Robert Dabrowski  
Mr. Leonard Gerzon  
Attorney Wilbur A. Glahn, III  
Attorney Christopher J. Pyles  
Ms. Marilyn E. Watson

These members are appointed to serve three-year terms commencing on January 1, 2020, and expiring on December 31, 2022.

Issued: November 26, 2019  
ATTEST: Eileen Fox, Clerk of Court  
Supreme Court of New Hampshire



**AMENDED ORDER**

In accordance with the authority granted in RSA 490-D:4 and :5, the Supreme Court orders that the judicial branch family division of the New Hampshire Circuit Court, 10th Circuit – Candia shall be operational in Candia effective January 1, 2020, at the building which houses the New Hampshire Circuit Court District Division, located at 110 Raymond Road in Candia.

The geographic jurisdiction of the family division in Candia shall include the towns of Auburn, Candia, Deerfield, Northwood, Nottingham, and Raymond. See also RSA 490-F:3 and :4, and RSA 502-A:1.

In accordance with the authority granted in RSA 490-D:4 and :5, the Supreme Court orders that the judicial branch family division of the New Hampshire Circuit Court, 9th Circuit – Milford shall be operational in Milford effective January 1, 2020, at the building which houses the New Hampshire Circuit Court District Division, located at 4 Meadowbrook Drive in Milford. The geographic jurisdiction of the family division in Milford shall include the towns of Milford, Brookline, Amherst, Mason, Wilton, Lyndeborough, and Mont Vernon. See also RSA 490-F:3 and :4, and RSA 502-A:1.

In accordance with the authority granted in RSA 490-D:4 and :5, the Supreme Court orders that the judicial branch family division of the New Hampshire Circuit Court, 10th Circuit – Hampton shall be operational in Hampton effective January 1, 2020, at the building which houses the New Hampshire Circuit Court District Division, located at 3 Timber Swamp Road in Hampton. The geographic jurisdiction of the family division in Hampton shall include the towns of Hampton, Hampton Falls, North Hampton, South Hampton, and Seabrook. See also RSA 490-F:3 and :4, and RSA 502-A:1.

In accordance with RSA 490-D:4, IV, matters within the jurisdiction of the family division which arise in the towns of Newfields, Newmarket and Stratham and which are filed on or after January 1, 2020, shall be heard by the New Hampshire Circuit Court, 10th Circuit – Brentwood, located at 10 Route 125 in Brentwood.

Pursuant to RSA 490-F:2, and in keeping with the goal of judicial officer continuity found in RSA 490-D:1, the Administrative Judge of the Circuit Court, in his discretion, shall assign existing cases to the Candia, Milford, Hampton or Brentwood family divisions as justice or efficiency may require. Court scheduling notices shall be deemed sufficient notice to the parties that an existing case has been transferred to another family division location. All other existing cases shall be continue to be assigned to the family division in which they are pending. Nothing in this order prohibits any party from requesting a case transfer as the interests of justice or efficiency may so require.

November 27, 2019  
ATTEST: Eileen Fox, Clerk  
Supreme Court of New Hampshire



Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

**I. Rule of Criminal Procedure 50. Confidential Documents and Confidential Information.**

(This amendment clarifies that this rule applies to the filing of confidential documents and documents containing confidential information regardless of whether those documents are filed conventionally or electronically.)


1. Amend New Hampshire Rule of Criminal Procedure 50(a), amended on October 29, 2019, effective January 1, 2020, as set forth in Appendix A.

**II. Superior Court Rule 13B. Confi-**

ORDERS continued on page 31

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## Civil Procedure; Third-Party Practice

11/18/2019 Begley v. Windsor Surry Company et al.  
Case No. 17-cv-317-LM, Opinion No. 2019 DNH 191

Plaintiff initiated this putative class action against defendants alleging that defendants defectively designed and manufactured one of their wood trim products such that the product is not suited for exterior use and prematurely rots. Under Federal Rule of Civil Procedure 14(a), defendants sought to implead the person and company that installed their wood trim product on plaintiff's home. Defendants asserted that these third parties could be held secondarily liable to them for indemnification and contribution based on the third parties' negligent installation of the trim board on plaintiff's home. The court denied defendants' motion for leave to file the third-party complaint. The court found that defendants had failed to articulate a viable legal theory for transferring their liability for defective design of the trim board to third parties who did not participate in the design or manufacture of the trim board, but who merely installed the product. 9 pages. Chief Judge Landya McCafferty.

## Civil Rights

11/20/19 Rogers v. Town of New Hampton, et al.  
Case No. 19-cv-118-JL, no written order – endorsed order.

One defendant in this wrongful arrest case moved for judgment on the pleadings. After oral argument, the court granted the motion in part and denied the motion in part from the bench. It found that the *pro se* plaintiff's complaint stated a conspiracy claim under Section 1983 against the defendant, but did not state claims for intentional infliction of emotional distress or witness intimidation. Judge Joseph N. Laplante.

## Employment Law

11/8/19 Cooper, et al. v. Greater Providence Y.M.C.A., et al.  
D.R.I.

Case No. 17-cv-601-JNL, written order, no opinion number.

The defendants in this Rhode Island employment discrimination case moved for summary judgment. The court largely denied the motion. The plaintiffs alleged that their supervisor discriminated against them based on their gender, creating a hostile work environment, and that both the supervisor and the employer retaliated against them after they brought complaints, resulting in constructive discharge. Viewing the facts and drawing all inferences in favor of the plaintiffs, the court found that genuine disputes of material fact remained regarding the plaintiffs' discrimination and retaliation claims. The court denied summary judgment on those claims and granted summary judgment on defamation claims that the plaintiffs no longer pressed. 34 pages. Judge Joseph N. Laplante.

## Habeas Petitions

11/14/19 Hopkins v. NH State Prison  
Case No. 18-cv-653-JL, oral order from the bench.

A civilly committed petitioner in custody at the New Hampshire State Prison for Men requested that he be released from custody or be transferred to a hospital because the prison had allegedly subjected him to solitary confinement and electric shock treatments, denied his basic hygiene and grooming requests, and left him naked in his cell, all in violation of the 8th Amendment. The petitioner did not dispute that he did not exhaust his federal claims in state court because he believed doing so would have been futile. After probing the basis for these serious allegations, the court dismissed the petition for failing to exhaust state remedies. Oral ruling. Judge Joseph Laplante.

## Mortgage Foreclosure

11/12/19 Moody v. PennyMac Loan Servs.  
Case No. 16-cv-21-JL, written order, no opinion number.

A mortgage servicer moved for summary judgment as to a *pro se* plaintiff's state and federal real estate, consumer protection, and debt collection claims, all arising from a foreclosure on the plaintiff's home. The court emphasized that while courts must construe *pro se* allegations liberally,

the federal pleading rules, which bind represented and *pro se* plaintiffs alike, bar plaintiffs from asserting new and unpled theories of liability at the summary judgment stage, even if those theories may be supported by documents submitted in the course of the litigation. Nevertheless, the court found that genuine disputes persisted as to key questions in the litigation, including whether the mortgage servicer, who acquired the plaintiff's mortgage while it was in default, constituted a debt collector under federal and state debt collection laws. It therefore granted in part and denied in part the summary judgment motion. 25 pages. Judge Joseph Laplante.

## Preemption

11/19/2019 David Burrill v. XPO Logistics Freight, Inc.  
Case No. 19-cv-765-LM, Opinion No. 2019 DNH 194

Plaintiff, a snowmobile dealer, brought both state and federal law claims against defendant, a freight company, after defendant failed to deliver the entirety of the plaintiff's order. The defendant moved to dismiss, arguing the state law claims were preempted by the Carmack Amendment, 9 U.S.C. § 14706. The Carmack Amendment preempts state law claims where liability stems from the damage or loss of goods, the claims process, or is related to the payment of claims. The court held the plaintiff's state law claims related to the loss of goods and the claims process, and granted defendant's motion to dismiss. 10 pages. Chief Judge Landya McCafferty.

## Social Security

11/13/19 Smith v. U.S. Social Security Administration  
Case No. 18-cv-1086-PB, Opinion No. 2019 DNH 193

Claimant challenged the denial of her application Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") pursuant to 42 U.S.C. § 405(g). She argued that the Administrative Law Judge ("ALJ") erred by (1) failing to properly analyze her mental impairments at step two and thereafter; (2) failing to follow the Social Security Administration's ("SSA") Ruling on the Evaluation of Fibromyalgia, SSR 12-2p; and (3) im-

properly giving greater weight to non-examining state agency consultants than to claimant's treating and examining medical sources. The court concluded that the ALJ committed reversible error as to claimant's first argument and remanded the case. Specifically, when determining the claimant's residual functional capacity ("RFC"), the ALJ had failed to consider her non-severe mental impairments in combination with her severe fibromyalgia. 16 pages. Judge Paul Barbadoro.

## Statutory Interpretation

11/27/19 Casey, et al. v. NH Secretary of State, et al.  
Civil No. 19-cv-487-JL, Opinion No. 2019 DNH 199\*

In this voting rights case, the court certified five questions of New Hampshire interpretation to the New Hampshire Supreme Court. The plaintiffs allege that recent changes to New Hampshire's statutory definitions of "resident" and "residency" were intended to burden the right to vote by making voter registration an effective declaration of residency that triggers obligations and fees for drivers and vehicle owners under New Hampshire's Motor Vehicle Code. The court certified five questions of New Hampshire statutory interpretation that could determine whether, and to what degree, the recent statutory changes impact motor vehicle obligations. 16 pages. Judge Joseph N. Laplante.

## Voting Rights

11/27/19 Casey, et al. v. NH Secretary of State, et al.  
Civil No. 19-cv-487-JL, written order, no opinion number.

In this voting rights case, the plaintiffs moved for a preliminary injunction. They limited their motion to their claims that recent changes to New Hampshire's statutory definitions of "resident" and "residency" along with State officials' guidance concerning those changes are generating voter confusion that burdens the right to vote. The court denied the motion and found that the plaintiffs did not carry their burden to show that they were likely to succeed on the merits of these confusion claims. 31 pages. Judge Joseph N. Laplante.

## Orders from page 30

### Confidential Documents and Confidential Information.

(This amendment clarifies that this rule applies to the filing of confidential documents and documents containing confidential information regardless of whether those documents are filed conventionally or electronically.)

1. Amend New Hampshire Superior Court Rule 13B(a), as set forth in Appendix B.

### Effective Date

These amendments shall take effect on January 1, 2020.

Date: December 5, 2019  
ATTEST: Eileen Fox, Clerk  
Supreme Court of New Hampshire

### APPENDIX A

Amend New Hampshire Rule of Criminal Procedure 50(a), which was amended on October 29, 2019, effective January 1, 2020 (deletions are in ~~strikethrough~~), as follows:

(a) *Access to Documents.*

(1) *General Rule.* Except as otherwise provided by statute or court rule, all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as "documents") shall be available for public inspection. This rule shall not ap-

ply to confidential or privileged documents submitted to the court for *in camera* review as required by court rule, statute or case law.

(2) *Burden of Proof.* The burden of proving that a document or a portion of a document should be confidential rests with the party or person seeking confidentiality.

(3) The following provisions govern a party's obligations when electronically filing a "confidential document" or documents containing "confidential information" as defined in this rule.

### APPENDIX B

Amend New Hampshire Superior Court Rule 13B(a) (deletions are in ~~strikethrough~~), as follows:

(a) *Access to Documents.*

(1) *General Rule.* Except as otherwise provided by statute or court rule, all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as "documents") shall be available for public inspection. This rule shall not apply to confidential or privileged documents submitted to the court for *in camera* review as required by court rule, statute or case law.

(2) *Burden of Proof.* The burden of proving that a document or a portion of a document should be confidential rests with the party or person seeking confidentiality.

(3) The following provisions govern a party's obligations when electronically filing a "confidential document" or documents containing "confidential information" as defined in this rule.





### Looking for a change? Thinking of doing something different?

Alfano Law Office, in the Concord area, seeks an experienced corporate/commercial attorney who desires to assist in the management of the law firm while continuing his or her practice on a more limited scale. A minimum of ten years' experience in business formations and transactions is required. A working knowledge of federal and state employment laws would be highly valued.

Qualified candidates should call or send a resume and cover letter to:

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603-226-1188

### School Law Attorney - Manchester, New Hampshire

Drummond Woodsum & MacMahon, a regional New England law firm with offices in New Hampshire and Maine, is seeking an attorney with at least 5 years of experience to join the firm's education and school law practice in New Hampshire.

The attorney will provide representation to public school districts throughout the state on a broad range of legal matters, including student rights and student discipline, public employment and labor, policy development, litigation, school safety, and compliance with state and federal laws and regulations. The ideal candidate will have strong legal and educational credentials, excellent research, writing and analytical skills, and a desire to be part of a team of attorneys committed to providing public school boards and administrators with the highest level of legal services.

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

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603-271-4047  
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## Classifieds

### POSITIONS AVAILABLE

**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**.

**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**.

**ASSOCIATE ATTORNEY** – Rousseau Law and Mediation is looking to expand with the addition of an associate attorney. Candidates must have three to five years of experience in family law and possess excellent writing and negotiation skills. Applicants must also have an understanding of the importance of being responsive to clients and the sensitive nature of family law matters. Salary and benefits to be discussed at an interview. Please send a letter of introduction, resume and writing sample to Managing Partner, Rousseau Law and Mediation, PLLC, 1 Horseshoe Pond Lane, Concord, NH 03301.

**LOOKING TO WIND DOWN YOUR PRACTICE? NO SUCCESSION PLAN? TIRED OF THE ADMIN WORK?** Ward Law Group NH is a statewide practice based in Manchester, New Hampshire with five offices throughout the state. We are looking to team up with attorneys who are looking to wind down or slow down their practice. If this is something that you may be interested in, please contact Attorney John Ward at (603) 232-5220 or **jward@wardlawnh.com** to discuss this further.



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Represent the State of NH in criminal matters in the Manchester or Nashua office of the County Attorney. Effectively prepare and prosecute felony caseload. Must have working knowledge of principles and rules of criminal law and the New Hampshire criminal justice system. Must be a member in good standing of the New Hampshire Bar Association, or able to waive in. Salary based on experience. Excellent benefits package. Mandatory criminal record check for new employees.

Please send resume and cover letter to Office Manager Linda Vallee via email at **lvallee@hcnh.org** or visit our website at <http://www.hcnh.org/> to apply online. EEO.

## Business Litigation Associate

Cook, Little, Rosenblatt & Manson is looking to add to its business litigation practice. We are a highly-regarded boutique firm with a sophisticated commercial practice with an emphasis on entrepreneurial enterprises and a wide array of business and intellectual property litigation. An ideal candidate would have 1-3 years litigation or clerking experience, strong academic credentials as well as excellent research, writing and analytical skills. We offer competitive compensation and benefits, as well as a platform for you to develop client relationships, become involved with local organizations, and build your practice in a supportive and collegial environment while working on a variety of business issues in varying industries.

To learn more about our firm, visit our website at **www.clrm.com**. To apply, please send your resume to Lisa Roy, Hiring Coordinator, Cook, Little, Rosenblatt & Manson, p.l.l.c., 1000 Elm Street, Manchester, NH 03101 or e-mail at **l.roy@clrm.com**.



## Clean Energy and Climate Attorneys (MA & NH)

Conservation Law Foundation (CLF) is seeking two (2) full-time attorneys to join our advocates working to protect New England's environment for all people. The attorneys will both work in the organization's clean energy and climate change program. One of these positions is based in CLF's Boston office and the other in CLF's New Hampshire office, and both will be part of a dynamic group of advocates located in five offices throughout New England.

### What you'll do

The attorneys will work independently and as part of state-based and regional teams and coalitions advocating for a just and clean energy future. In this role, the attorneys will both lead and support high-impact, cutting-edge advocacy efforts in the energy, transportation and buildings sectors as part of an over-arching strategy to tackle the climate crisis.

Please visit our web site to learn more about these exciting opportunities.

### To Apply

If one or both of these exciting opportunities appeals to you, please send your resume titled "your last name-first initial-resume" (e.g. "SMITH J RESUME") and a thoughtful cover letter titled "your last name-first initial-cover" (e.g. "SMITH J COVER") to **careers@clf.org**. One of these positions will be based in NH and one in MA. Applicants should state clearly whether they are applying to one location only or whether they have no location preference. Please make "Clean Energy and Climate Attorney (NH or MA)" the subject of your e-mail. No phone calls please. Resumes will be reviewed on a rolling basis.

CLF embraces diversity and equal opportunity in a serious way. We are dedicated to forming a team that represents a variety of backgrounds, perspectives, and skills. The more inclusive we are, the better our work will be. People of color are strongly encouraged to apply.



**LEGAL ASSISTANT.** Small litigation firm in Concord seeks a full-time, experienced legal assistant. Excellent organizational, communication and writing skills are essential. Must be able to work with multiple individuals and be able to prioritize work flow. The successful candidate should have a minimum of 2-3 years' experience, preferably in a litigation firm, as well as experience working with Microsoft Office and law office billing systems. Please send resume to: [law225nh@gmail.com](mailto:law225nh@gmail.com).

**FAMILY LAW PARALEGAL** – Russman Law Offices - Exeter law firm seeks an experienced full-time family law paralegal to join our team immediately. The ideal candidate should have the ability to multi-task in a fast-paced and growing environment, and has familiarity in both the family law practice and with billable hours. Please forward your resume and cover letter to [kphinney@russmanlaw.com](mailto:kphinney@russmanlaw.com). Salary commensurate with experience.

**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).

**LITIGATION PARALEGAL** – Lakes Region law firm seeks experienced litigation paralegal for busy workers' compensation and employment practice. Successful candidate will be professional, flexible, detail oriented, organized, have strong writing and communications skills. Benefits and compensation commensurate with experience. Resume to [HRLakesRegionLaw@gmail.com](mailto:HRLakesRegionLaw@gmail.com).

**MANAGER, PUBLIC AFFAIRS** – New Hampshire Housing seeks a full time Manager, Public Affairs, responsible for providing technical advice and related services to senior staff pertaining to housing and land use policy. The successful candidate has the ability to interact with governmental officials and entities and monitor all legislation related to housing, land development, and the like. Ideal candidate has experience drafting legislation, conducting research, preparing reports, delivering presentations, strong business writing skills and knowledge of housing programs. A Juris Doctorate, Master's in Public Administration, or related degree and three years relevant experience, or equivalent combination of both is required. EOE offering a competitive salary and benefits. Please inquire at: [nhhfa.org/about/careers](http://nhhfa.org/about/careers).

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We are also seeking an experienced litigator to support and enhance our present team.

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We are invested in the success of all our associates and will provide training, mentoring, and resources to support your development as a labor and employment practitioner. We strive to create a friendly, professional environment and provide competitive salary and benefits commensurate with experience.

We invite interested applicants to learn more about our firm's culture and practice areas by visiting our website, [www.dwmlaw.com](http://www.dwmlaw.com), and to submit a cover letter, resume, professional references, and writing sample to [dfilleul@dwmlaw.com](mailto:dfilleul@dwmlaw.com). All inquiries held in the strictest confidence. No phone calls, please.

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We offer competitive salaries commensurate with experience, an excellent benefits package, and a cohesive team atmosphere.

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## COMMITTEE ATTORNEY

Office of Legislative Services  
Administrative Rules

**DUTIES.** Serves in the Administrative Rules section of the Office of Legislative Services (OLS) as a staff attorney to the Joint Legislative Committee on Administrative Rules (JLCAR). Works with other JLCAR legal staff in reviewing and analyzing proposed state agency administrative rules for potential bases for JLCAR objection and other action in the administrative rulemaking process under the N. H. Administrative Procedure Act, RSA 541-A. Prepares written and oral comment for JLCAR members and agencies relative to proposed rules and testifies in JLCAR meetings. Performs other tasks as necessary to assist the JLCAR in its oversight role under RSA 541-A.

**MINIMUM QUALIFICATIONS.** Member of the N. H. Bar. At least one year of experience in administrative law at the state or federal level, especially with issues involving administrative rulemaking. Strong research, analytical,

verbal, and writing skills necessary, including experience with Microsoft Word.

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Send resume and cover letter to:

Scott F. Eaton  
Administrative Rules Director  
Room 219, State House Annex  
25 Capitol Street  
Concord, NH 03301

or via email to: [olsjobs@leg.state.nh.us](mailto:olsjobs@leg.state.nh.us)



## Assistant County Attorney

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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).

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# Continuing Legal Education GUIDE

**December  
2019**

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## Calendar Overview

### JANUARY

**16** Thursday • 9:00 a.m. - 4:00 p.m.  
**Drafting Wills & Trusts 101 Video Replay**

- In Person
- 360 min. including 30 min. ethics/prof.
- Concord • NHBA Seminar Room

**23** Thursday • 9:00 a.m. - 4:30 p.m.  
**Real World Tech Solutions for the Busy Law Firm Video Replay**

- In Person
- 405 min. including 60 min. ethics/prof.
- Concord • NHBA Seminar Room

**30** Thursday • 9:00 a.m. - 4:00 p.m.  
**Issues in Advanced Personal Injury Litigation Video Replay**

- In Person
- 360 min. including 60 min. ethics/prof.
- Concord • NHBA Seminar Room

### FEBRUARY

**7** Friday • 9:00 a.m. - 4:00 p.m.  
**Developments in the Law Video Replay**

- In Person
- 360 min. including 60 min. ethics/prof.
- Concord • NHBA Seminar Room

**13** Thursday • 9:00 a.m. - 4:30 p.m.  
**Clearing the Haze: Cannabis & CBD in the Workplace - Legal Issues, Ethical Issues, and Medical Update**

- In Person • Webcast
- 360 min. including 45 min. ethics/prof.
- Concord • NHBA Seminar Room

**21** Friday • TBD  
**2020 Midyear Meeting**

- In Person
- Credits TBD
- Manchester • DoubleTree by Hilton Manchester

### MARCH

**12** Thursday • 9:00 a.m. - 12:15 p.m.  
**Basics of International Law: Toolbox for the Non-Specialist**

- In Person • Webcast
- 180 min. including 30 min. ethics/prof.
- Concord • NHBA Seminar Room

**20** Friday • 9:00 a.m. - 4:30 p.m.  
**19th Annual Labor & Employment Law**

- In Person
- 360 min. including 60 min. ethics/prof.
- Concord • Grappone Conference Center

**25** Wednesday • 9:00 a.m. - 4:00 p.m.  
**Workers' Compensation**

- In Person • Webcast
- 360 min. including 60 min. ethics/prof.
- Concord • NHBA Seminar Room

**27** Friday • 9:00 a.m. - 4:30 p.m.  
**Nuts & Bolts of Criminal Law**

- In Person • Webcast
- 360 min. including 60 min. ethics/prof.
- Concord • NHBA Seminar Room

### APRIL

**2** Thursday • 9:00 a.m. - 3:30 p.m.  
**In-House Counsel Essentials**

- In Person • Webcast
- 325 min. including 75 min. ethics/prof.
- Concord • NHBA Seminar Room

**3** Friday • TBD  
**Closing a Law Practice**

- In Person • Webcast
- Credit TBD
- Concord • NHBA Seminar Room

**8** Wednesday • 9:00 a.m. - 4:30 p.m.  
**DWI Litigation: Back to Basics**

- In Person • Webcast
- 360 min. including 60 min. ethics/prof.
- Concord • NHBA Seminar Room

### MAY

**7** Thursday • TBD  
**Business Split-ups**

- In Person • Webcast
- Credit TBD
- Concord • NHBA Seminar Room

**13** Wednesday • 9:00 a.m. - 4:00 p.m.  
**19th Annual Labor & Employment Law Video Replay**

- In Person
- 360 min. including 60 min. ethics/prof.
- Concord • NHBA Seminar Room

### CLE HIGHLIGHT



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# In Person Video Replays

## Developments in the Law 2019

Friday  
**Feb 7** 9:00 a.m. - 4:00 p.m.  
360 min. credit.  
incl 60 min. Ethics/Prof. In person

Did you miss the live program?  
You can still earn live credit!

This popular 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.

**Just 1 Video Replay Location Left:**

NH Bar Association, Concord, Friday, February 7, 2020

## 19<sup>th</sup> Annual Labor & Employment Law Update

Wednesday  
**May 13** 9:00 a.m. - 4:00 p.m.  
360 min. credit.  
incl 60 min. Ethics/Prof. In person

This full day seminar will address cutting edge developments in employment and benefits law over the past year.

## Drafting Wills & Trusts 101 *Video Replay*

Thursday  
**Jan 16** 9:00 a.m. - 4:00 p.m.  
360 min. credit.  
incl 60 min. Ethics/Prof. In person

Topics include: what you need to know to start drafting; choosing and drafting trustee powers; drafting distribution clauses; accounting and tax provisions; and trust clauses for special assets, such as retirement assets, real estate, reproductive material, and more.

## Real World Tech Solutions for the Busy Law Firm *Video Replay*

Thursday  
**Jan 23** 9:00 a.m. - 4:30 p.m.  
405 min. credit.  
incl 60 min. Ethics/Prof. In person

Get an insider's look at developments in legal technology including tips for using MS Word for complex formatting of legal documents, and how to maximize the use of MS Outlook with shortcuts, quick steps, rules, integrated tasks, calendar, contacts, notes, and much much more!

## Issues in Advanced Personal Injury Litigation *Video Replay*

Thursday  
**Jan 30** 9:00 a.m. - 4:00 p.m.  
360 min. credit.  
incl 60 min. Ethics/Prof. In person

Take a deep dive into the complex but critical issues that frequently arise in personal injury cases and which can make the difference between a successful result and one fraught with problems and unpleasant ramifications for the attorney and client alike.

### PROGRAM PRICING

**VIDEO REPLAY** (pre-registered): \$195 Registration; \$99 NHBA•CLE CLUB Member.



Check-in & continental breakfast begin at 8:30 a.m.  
NH Bar Association Seminar Room, Concord

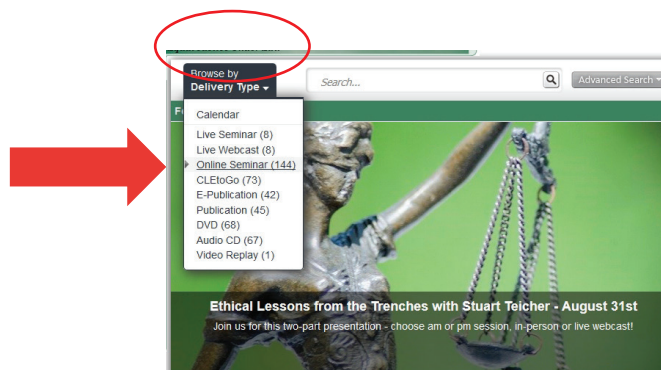


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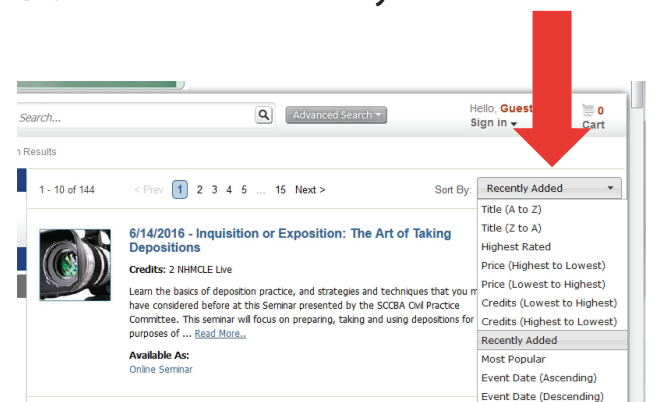
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# ATTENTION

## Labor & Employment and Workers' Compensation Lawyers

Sign up for **LIVE** attendance at one of the 3 programs on this page and receive a huge discount on the 2<sup>nd</sup> and 3<sup>rd</sup>.

*(Only applies to Live attendance for programs on this page)*

## Workers' Compensation

Wednesday 9:00 a.m. - 4:00 p.m.

**Mar 25**



360 min. credit  
incl. 60 min. Ethics/Prof.



Webcast



In person



This program will offer input from experienced claimants and defense counsel on the following topics:

1. The Status of Medical Marijuana in WC claims, including Ethical Conundrums in Advising Claimant and Defense Clients;
2. Lump Sum Settlement Evaluations;
3. The Impact of Employment Issues on Worker's Comp Claims, Including for Settlement;
4. Legal Update Including on First Responders and Fire Fighters Presumptions
5. The DEC Rate and Partial Disability – Criteria/Factors to Consider;
6. Ethics Roundtable;
7. Investigating and Preparing Cases for Hearing;
8. Subpoenas & Discovery in Compensation Cases – A New Look.

### Who should attend?

Attorneys of any experience level who practice workers' compensation in New Hampshire, as the program will cover a wide range of topics at various levels of expertise.



Check-in & continental breakfast begin at 8:30 a.m.  
NH Bar Association Seminar Room, Concord



New Hampshire Practice

### PROGRAM PRICING

**SEMINAR FEE** (pre-registered): \$209 NHBA Member; \$159 Members in practice less than 3 years; \$99 NHBA-CLE CLUB Members; \$139 Paralegals, law office staff; \$249 Other/non-NHBA affiliated. Walk-in on the day of the program is an additional \$15.

## 19<sup>th</sup> Annual Labor & Employment Law Update

Friday 9:00 a.m. - 4:30 p.m.

**Mar 20**



360 min. credit  
incl. 60 min. Ethics/Prof.



In person



This full day seminar will address cutting edge developments in employment and benefits law over the past year. This year's program will address significant developments in state and federal law which impact the workplace. Topics include a Supreme Court update, developments in discrimination law, developments in New Hampshire wage and hour and workers' compensation law, and the current status of the FLSA White Collar Exemptions and other regulatory developments at the USDOL. The program will also address legislation, regulations and cases on the horizon. All faculty members have extensive practical and teaching experience in the labor, employment and benefits law fields and are members of the New Hampshire Bar. The program will include a networking luncheon as well as an ethics update on cyber security for law firms.

### Who should attend?

This fast paced advanced program is designed as an update for attorneys with knowledge of labor, employment and benefits law. It will address recent updates in the law over the prior year.



Check-in & continental breakfast begin at 8:30 a.m.  
Grappone Conference Center, Concord



New Hampshire Practice

### PROGRAM PRICING

**SEMINAR FEE** (pre-registered): \$219 NHBA Member; \$159 Members admitted after 3/2017; \$184 NHBA Labor and Employment Law Section Members; \$139 Paralegal, law office staff; \$99 NHBA-CLE Club Members; \$249 Other/non-NHBA affiliated. Walk-in on the day of the program is an additional \$15.

## Clearing the Haze: Cannabis and CBD in the Workplace - Legal Issues, Ethical Issues, and Medical Update

Thursday 9:00 a.m. - 4:30 p.m.

**Feb 13**



360 min. credit  
incl 45 min. Ethics/Prof.



Webcast



In person



This program will discuss employer's options for dealing with employee use of marijuana and its derivatives, drug testing and "reasonable" accommodation, workplace "impairment," as well as a discussion of worker's compensation issues and whether insurance carriers are required to pay for medical marijuana and its derivatives. The program also will include an ethics update for attorneys and lawyers relating to representation of clients in connection with marijuana and related products.

### Who should attend?

Program is intended for all attorneys dealing with workplace drug policies, drug testing, and assessing "impairment" in the workplace who want a current understanding of recent developments in state and federal law, as well as in the medical literature with the increased potency of weed available today.



Check-in & continental breakfast begin at 8:30 a.m.  
NH Bar Association Seminar Room, Concord



New Hampshire Practice

### PROGRAM PRICING

**SEMINAR FEE** (pre-registered): \$209 NHBA Member; \$159 Members in practice less than 3 years; \$99 NHBA-CLE CLUB Members; \$139 Paralegals, law office staff; \$249 Other/non-NHBA affiliated. Walk-in on the day of the program is an additional \$15.

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



International Law

Basics of International Law:  
A Toolbox for the Non-Specialist

Thursday  
**Mar 12**

9:00 a.m. - 12:15 p.m.  
180 min. credit  
incl. 30 min. Ethics/Prof.

Webcast  
In person



This program is intended for attorneys who seek an introduction to legal considerations of international business or those with business clients who are considering or are in the process of expanding sales, operations or marketing outside the US. The program will provide an overview of the vehicles for international business (direct sales, foreign sales agents, distribution, branch/ liaison offices, subsidiaries, and joint ventures) with discussion of the risks and benefits of each. The program will cover significant intellectual property issues associated with international expansions. Specific topics will include the UN Convention on International Sales of Goods and INCOTERMS; the US Foreign Corrupt Practices Act and Boycott regulations; EU distribution and the EU's new General Data Protection Regulation.

Who should attend?

Attorneys interested in expanding expertise in outbound international business; general practitioners with business clients considering international expansions.

Faculty

**Dennis J. Haley, Jr.**, Program Chair/CLE Committee Member, McLane Middleton Professional Association, Manchester

Additional faculty to be announded.

Check-in & continental breakfast begin at 8:30 a.m.  
NH Bar Association Seminar Room, Concord

PROGRAM PRICING

SEMINAR (preregistered): \$169 NHBA Member; \$99 NHBA-CLE CLUB Members; \$219 Other/ non-NHBA affiliated. Walk-in on the day of the program is an additional \$15.



Check out these recently added online seminars, now available in our catalog:

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Original Program 10/30/19  
360 NHMCLE General Minutes, incl. 120 Ethics/Professionalism Minutes

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Original Program 10/18/19  
360 NHMCLE General Minutes

**Revised Uniform Fiduciary Access to Digital Assets Act**  
Original Program 10/15/19  
60 NHMCLE General Minutes

**How to Help an Impaired Colleague: Navigating Rule 8.3**  
Original Program 10/1/19  
60 NHMCLE Ethics Minutes

**Writing and Speaking to Win – Two Sessions**  
Original Program 9/27/19  
180 NHMCLE General Minutes incl. 60 Ethics/Prof. Minutes-Writing to Win  
180 NHMCLE General Minutes for Speaking to Win

**Masters in Litigation – Two Sessions**  
Original Program 9/13/19  
180 NHMCLE General Minutes each

**Carrying A Firearm in NH: The Basics**  
Original Program 9/10/19  
60 NHMCLE Ethics Minutes

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(please complete one form for each registrant)

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



Attention Criminal Law Practitioners!

# Nuts and Bolts of Criminal Law

Friday  
**Mar 27**  
9:00 a.m. - 4:30 p.m.  
360 min. credit  
incl. 60 min. Ethics/Prof.  
Webcast  
In person  
NHMCLE  
REPORTED

This course will provide the newer attorney, or an attorney new to the field, with an overview of criminal law practice in New Hampshire. It will outline the basic concepts of criminal law practice, including the analysis of criminal cases, preparation for trial, sentencing and collateral consequences. Focus will be on areas of law that are most commonly seen both in District Court and Superior Court, including Domestic Violence cases, major motor vehicle offenses, and drug charges. This course may also be helpful as a refresher course for those criminal law practitioners getting back into the field, as there have been many changes to the criminal justice system in New Hampshire in recent years.

## Who should attend?

Attorneys who are new to the profession who plan on practicing in the area of criminal law, or attorneys who are changing the focus of their practice and are new or returning to the criminal law field.

## Faculty

**Kathleen A. Broderick**, Program Co-Chair, Manchester City Solicitor's Office, Manchester  
**Patricia M. LaFrance**, Program Co-Chair/CLE Committee Member, The Black Law Group, LLC, Nashua  
**Ronald L. Abramson**, Shaheen & Gordon, PA, Manchester  
**Donald L. Blaszk**, Germaine and Blaszk, PA, Derry  
**Hon. Kimberly A. Chabot**, 9th Circuit Family Division-Manchester  
**Roger C. Chadwick**, Chadwick Fricano & Weber, PLLC, Nashua  
**Jeremy A. Harmon**, Manchester City Solicitor's Office, Manchester  
**Brett J. Harpster**, Hillsborough County Attorney's Office South, Nashua  
**Theodore M. Lothstein**, Lothstein Guerriero, PLLC, Concord  
**Marianne P. Ouellet**, Merrimack County Attorney's Office, Concord  
**Hon. David W. Ruoff**, NH Superior Court Center, Concord

Check-in & continental breakfast begin at 8:30 a.m.  
NH Bar Association Seminar Room, Concord

NHP New Hampshire Practice

## PROGRAM PRICING

**SEMINAR FEE** (pre-registered): \$209 NHBA Member; \$159 Members in practice less than 3 years; \$99 NHBA-CLE CLUB Members; \$139 Paralegals, law office staff; \$249 Other/non-NHBA affiliated. Walk-in on the day of the program is an additional \$15.

In-House Counsel Practitioners!

# In-House Counsel Essentials

Thursday  
**Apr 2**  
9:00 a.m. - 3:30 p.m.  
325 min. credit  
incl. 75 min. Ethics/Prof.  
Webcast  
In person  
NHMCLE  
REPORTED

This program will enable members of the NH Bar (as well as foreign jurisdictions) who practice in-house or have corporate clients to better understand the issues that are dealt with on a daily basis as well as gain insight into topics that may not be on everyone's agenda but can reap many benefits in the long run.

## Who should attend?

This is an essential for any in-house counsel attorney who is looking to learn what issues their colleagues are facing today and how to effectively run an in-house department. Attorneys that have corporate clients will also benefit from the program to better understand the issues that their clients face and how best to navigate them through complicated scenarios.

## Faculty

**Eric A. Ivanov**, Program Co-Chair/CLE Committee Member, Lactalis US Yogurt Division, Londonderry  
**Arnold Rosenblatt**, Program Co-Chair/CLE Committee Member, Cook, Little Rosenblatt & Manson, pllc, Manchester  
**Andrew J. Burke**, General Counsel - Barton & Associates, Inc., Peabody, MA  
**Steven J. Grossman**, Grossman, Tucker, Perreault & Pflieger, PLLC, Manchester  
**Caroline K. Leonard**, Gallagher, Callahan & Gartrell, PC, Concord  
**Jennifer Shea Moeckel**, Cook, Little, Rosenblatt & Manson, pllc, Manchester  
**Julie A. Moore**, CLE Committee Member, Employment Practices Group, Wellsley, MA  
**Edward J. Sackman**, CLE Committee Member, Bernstein, Shur, Sawyer & Nelson, PA, Manchester

Check-in & continental breakfast begin at 8:30 a.m.  
NH Bar Association Seminar Room, Concord

NHP New Hampshire Practice

## PROGRAM PRICING

**SEMINAR FEE** (pre-registered): \$209 NHBA Member; \$159 Members in practice less than 3 years; \$99 NHBA-CLE CLUB Members; \$139 Paralegals, law office staff; \$249 Other/non-NHBA affiliated. Walk-in on the day of the program is an additional \$15.

## Upcoming NHBA•CLE Programs

**NHBA Midyear Meeting**  
February 21, 2020

**Closing a Law Practice**  
April 3, 2020

**DWI**  
April 8, 2020

**Business Split-Ups**  
May 7, 2020

**Construction Law**  
May 14, 2020

**Signposts on the Tax Road**  
May 20, 2020

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