



Karen Korematsu, speaking after the showing of *And Then They Came For Us: The Perils of Silence*. Korematsu, whose father was interred at a Japanese-American prisoner of war camp during WWII, directs the Fred T. Korematsu Institute. (Photo/Kailah Millen)

## Midyear Meeting

“Prejudice is ignorance and unless we make people accountable...unless we stop it at a young age, it’s going to continue to fester.”

—Karen Korematsu

(Full story: Page 24)

## In a Polarized World Students Find Hope

By Scott Merrill

A mandatory civics education program in every state where students learn basic constitutional rights isn’t a requirement, not yet.

Although, if those who participated in this year’s We the People program are going to be shaping the laws of the future, it certainly could be.

Nathaniel Sartel, a student at John Stark Regional High School who plans to study Civil Engineering next Fall, thinks there is a lack of civics education that leads to an uneducated voting populace and low voter turn-out.

“I did a project last year on civic education and engagement that got me thinking and I made a Bill that called for civic



Hollis-Brookline High School students Josh Ide, Lily Coody, Nathaniel Sartel, and Mary Martin. (Photo/Scott Merrill)

education. I just think more people should be educated on basic constitutional rights.”

His teacher, Trevor Duval, joked, “this is why we keep him around.”

We the People is a program of the National Center for Civic Education that has been sponsored by the New Hampshire Bar Association since 1987. According to some of the students taking the class this year, including those from Hollis-Brookline, Milford High School and John Stark Regional High School, the class has changed their perception about the role of politics and their sense of civic responsibility. It has

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## Preserving New Hampshire’s Past

By Kathie Ragsdale

Many current New Hampshire practitioners have no memory of the days when client communication was done by FAX, judges and lawyers were often golf buddies and the number of women on the bench could be counted on one hand.

But the New Hampshire Supreme Court Society is working to preserve the recollections of those who do, and to chronicle the changes that have occurred in the state’s legal profession over the past several decades.

Its Oral History Project is building a library of recorded interviews with senior members of the bar and bench to conserve their experiences and insights as a means of fostering “greater understanding of the legal system and its role as a force for good in today’s society,” according to the website devoted to the project.

Building on work started by the New Hampshire Bar Foundation, which recorded some 50 interviews with senior lawyers, judges and court staff through the 1990s, the Supreme Court Society launched the Oral



Members of the Oral History Project Committee—John Lewis, Carol Ann Conboy and Greg Smith. (Photo by Scott Merrill)

History Project in 2011, according to Gregory Smith, former New Hampshire attorney general now in private practice at McLane, Graf, Raulerson & Middleton.

Smith chairs the society’s Oral History Project Committee, which also includes former Supreme Court Justice Carol Ann Conboy, former Superior Court Justice John Lewis and Senior Assistant Attorney General Anthony Galdieri.

ORAL HISTORY continued on page 15

## PRACTITIONER PROFILE

### A Love of Community and the Law

By Kathie Ragsdale

Paul Fitzgerald is a home-grown Laconia practitioner who has spent decades combining a love of community with a love of the law.

A city resident since the age of 2, Fitzgerald has represented multiple municipalities and government entities but has also served as mayor of Laconia, chair of the Laconia Police Commission and board member of the Greater Laconia-Weirs Beach Chamber of Commerce.

He is also secretary and past president of the board of trustees of the Mount Washington Observatory and was co-founder of the Laconia Motorcycle Week Association, which helped transform the annual, once-raucous motorcycle event into the more organized celebration that it is today.

“I think it’s important,” he says of



civic participation. “Lawyers have a lot of training and a lot of experience that can help in the public service area. You can bring those ideas to bear in a positive fashion. And I think it’s important that we participate in society.”

An interest in the law came naturally to him, Fitzgerald says. His parents had many friends in Laconia who were attorneys or judges and his brother is retired Superior Court Judge Edward J. Fitzgerald III. So after graduating from St. Michael’s College in northern Vermont, where he took some

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# Midyear Meeting: A “Record Setting Success”

Our 2020 Midwinter Meeting was, by all accounts, a record-setting success. We had more than 550 participants at our CLE programs and over 640 participants at our Awards Luncheon.

At our recent Midwinter Bar meetings, we have presented programs on current, relevant topics for attorneys, and have afforded the opportunities for members of the bench and bar to meet and socialize in an environment of stimulating and topical discussions. This year was no exception. The topics were thoughtful and provocative, as well as timely, and relevant for lawyers in both public and private practice.

I have often said that I believe lawyers to be some of the hardest working, honest, diligent, and community-minded people I know. Both programs at our Midwinter Meeting highlighted the role of lawyers in situations where diligence, integrity, and a sense of community made a difference in correcting mistakes that harm individuals and our institutions, and who continue to

**President’s Perspective**



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

make a difference in the lives of individuals in support of the rule of law.

The morning program featured James Robenalt, who gave a riveting talk about the Watergate break-in and fallout. His talk centered around John Dean and his role as the President’s lawyer, with an interesting analysis of the evolution of whistleblower protection since Watergate. He featured contemporary writings, original documents,

and several of the infamous “Nixon Tapes” in his talk. The depth and breadth of his knowledge came out in an easy and informative presentation, and his understanding and analysis of ethical rules and responsibilities of lawyers with clients involved in criminal activity was provocative. Jim stayed behind after his talk and signed books and chatted with quite a few members.

In the afternoon, NHBA presented the ABA award-winning documentary, “And Then They Came For Us,” about the incarceration of 120,000 Japanese-Americans in the wake of the bombing of Pearl Harbor. The movie, and subsequent panel discussion, focused on the Coram nobis cases that overturned the convictions of Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui. Dale Minami, counsel for Fred Korematsu, was joined on the panel by Hoyt Zia, Karen Korematsu, and Mona Movafaghi. The discussion revolved around

*MYM continued on page 7*

## Board of Governors Election Starts April 1

Online balloting will begin April 1 and conclude April 15. An email containing a link and passcode will be sent from electionsonline.us on April 1. Members who have not voted by April 8 will receive an email reminder.

Because the NHBA Board of Governors ballot is sent as a bulk email message from Elections Online, it may end up in your email application’s spam filter. To ensure that you receive your ballot, please add [vote@electionsonline.com](mailto:vote@electionsonline.com) to your “safe senders” list.

If you do not receive your electronic ballot and would like to vote online please send an email to Debbie Hawkins ([dhawkins@nhbar.org](mailto:dhawkins@nhbar.org)) and she will assist you in receiving a ballot. Upon request, the Bar will provide a traditional paper ballot.

For full biographies and candidate statements, please go to [www.nhbar.org](http://www.nhbar.org).

### NHBA 2020 Board Candidates

#### President-Elect

*Nomination by Board of Governors in November*

**Richard Guerriero** of Lothstein Guerriero PLLC

#### Vice President

*Nomination by Petition for 1-year term*

**Sandra Cabrera** of Waystack Frizzell Trial Lawyers

#### Governor-at-Large

*Nomination by Petition for 3-year term (1 open positions for full three-year term)*

**James Cowles** of Walker & Varney PC  
**Steven Dutton** of McLane Middleton Professional Association  
**Kristin Fields** of Fields Law PLLC  
**James Shepard** of Law Offices of James A. Shepard

#### Governor-at-Large

*Nominated by Petition for 3-year term (1 position - the remaining 1 year of a three-year term)*

**Christine Hanisco** of The Stein Law Firm PLLC  
**Timothy Harrington** of Shaheen and Gordon PA

#### County Governors

*Nomination by Petition for 2-year term*

#### Belknap County

**Jesse Friedman** of Friedman and Bresaw PLLC

#### Carroll County

**Leslie Leonard** of Cooper Cargill and Chant

#### Hillsborough North

**Leslie Nixon** of Nixon Vogelmann Slawsky & Simoneau PA

#### Hillsborough South

**Donald Sienkiewicz** of Estate Preservation Planning Law Office

#### Strafford County

**Christopher Regan** of Bamford Dedopoulos & Regan

#### Sullivan County

**Geoffrey Gallagher** of Sullivan County Attorney’s Office

#### ABA Association Delegate

**Jennifer Parent** of McLane Middleton Professional Association

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- Government & Criminal Investigations
- Bankruptcy
- Family Law

# Sheehan Phinney Partners with Special Olympics New Hampshire

Sheehan Phinney enjoys a wonderful partnership with Special Olympics New Hampshire. Most recently, on February 2nd, a Sheehan team of intrepid plungers jumped into the Atlantic Ocean as part of the Penguin Plunge to benefit Special Olympics New Hampshire. This has become an annual event for the Firm and this year they raised more than \$15,000 in donations. The Firm encourages colleagues, friends, and clients to plunge, pay to avoid plunging, or plunge and pay! David McGrath at Sheehan encourages other New Hampshire lawyers to plunge: "Special Olympics New Hampshire is such a great organization and cause, and if you swim in Hampton or Rye in July, you already know what it means to be in our numbing coastal waters."



Kelly Trudell and SONH athlete Pam Langille after completing their triathlon.

Sheehan lawyer Ken Viscarello was the catalyst for the Firm's close alliance with Special Olympics. Ken is a two-time Past Chairman of the Board and prior Special Olympics United States Leadership Council member. McGrath notes; "Ken's love of the athletes is palpable and SONH President Mary Conroy is a gem: your answer to her is "yes" before you've even had a chance to realize what you've agreed to."

The Firm also plays a significant role in the annual state basketball tournament at which many hundreds of athletes from

all areas of New Hampshire spend the day competing, cheering for each other, and enjoying the lively atmosphere, replete with music and dancing. Each year Sheehan also partners with SONH for the Firm's holiday card contest. Special Olympics athletes send their festive artwork and the Firm selects a submission to become the Firm's holiday card that is sent to many hundreds of clients and friends of the Firm. All participants in the contest



Mary Conroy, SONH Executive Director, Kayleigh Aguiar and Lauren Hoepp, winners of the SONH/Sheehan holiday card contest and Ken Viscarello from Sheehan Phinney.

receive a prize and the winner and all past year winners enjoy a lunch at the firm with their families. McGrath observes that: "It is remarkable how artistic some of these men and women are and how heartfelt all of the submissions are; they truly capture the essence of the holiday season." Later this year, as last year, Sheehan Director of Business Development Kelly Trudell will train with SONH athlete Pam Langille for a triathlon. They successfully trained

and competed last year, side by side in the water and on the pavement with their running shoes and bikes. Kelly and Pam are just as focused this year!

Sheehan's partnership with SONH should remind us all of how lucky we are to work in New Hampshire, with such ready access to meaningful participation in our communities.

Get involved!

## Award Nominations Sought For 2020 Annual Meeting

The Bar's Annual Meeting provides an opportunity to recognize the outstanding accomplishments of members of the legal community and their contributions to the justice system and the Association.

Please be sure to note the reasons for your nomination, either with the name of the nominee, or to be submitted soon after you have submitted a nominee's name. Your inspiration for making the nomination - why you think a particular individual is especially deserving of the recognition intended by a particular award - will be of great importance as the nominees are considered and will really help the leadership's

choice(s). Often, the thoughtful assessment of a nominee by a nominator becomes the basis for wording used in presentation remarks, if not a presentation piece.

Nominations are sought for the following awards:

### Justice William A. Grimes Award For Judicial Professionalism

To honor the memory of Justice William A. Grimes this award is presented to a judge that best fits the following:

"The judges therefore should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness and attention. Their minds should

not be distracted with jarring interests; they should not be dependent upon any man or body of men."

John Adams, 1776

### Distinguished Service to the Legal Profession Award

This award is presented to the nominee who best exhibits service to the legal profession.

### E. Donald Dufresne Award for Outstanding Professionalism

To honor the memory of E. Donald Dufresne this award is presented to an attorney who best fits the following:

"A professional lawyer is an expert in the

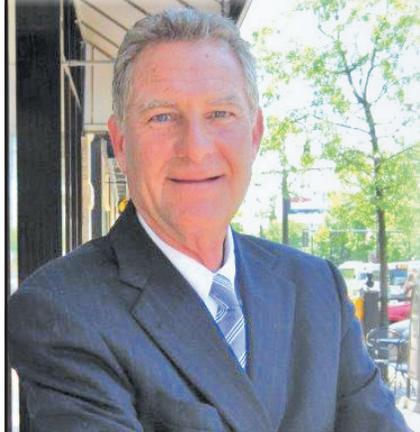
law that pursues a learned art in service to clients and in the spirit of public service, engaging in these pursuits as part of a common calling to promote justice and public good."

Nominations for any of these awards should be submitted by April 19th to:

**aborowy@nhbar.org** – or sent to:  
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*Editor's Note: The Committee Corner is a new, ongoing New Hampshire Bar News feature that will allow Bar Members to learn more about how the Bar Association's numerous committees function, and to gain information about how to access the services provided by committees, such as free dispute resolution services, legislation tracking, and more.*

## Lawyer Referral Services: Benefiting Bar Members and the Public

The Lawyer Referral Services Committee (formerly called The Delivery of Legal Services Committee) oversees Lawyer Referral Services (LRS) and the Modest Means Legal program. Both of these programs are focused on creating relationships with fee generating clients across many areas of law. In 2019 alone participating attorneys earned more than \$2 million in legal fees, with more than \$5.8 million earned in the past three years. The top five fee generating areas of law in 2019 were:

- Torts, including personal injuries and medical negligence claims: \$741,050
- Family law cases: \$325,618
- Probate matters: \$246,000
- Real estate matters: \$179,773
- Criminal law cases: \$107,042

Participating attorneys receive an average of 15 full fee referrals a year for only \$100 and 10% of net collected legal fees. Other popular areas for fee-generating refer-

als include worker's compensation cases, employment issues, business disputes and civil litigation, and consumer and administrative matters.

The LRS staff receives an average of 150 calls and online inquiries for referrals every week. Each inquiry is carefully screened to determine whether referral requirements are met and the type of potential case. Clients are then matched with member attorneys in that area of practice. In short, the LRS program generates pre-screened fee paying clients, while providing an important public service. LRS also uses the screening process to make over 2500 referrals to outside resources a year.

Just as important is the Modest Means Legal Program, which refers pre-qualified clients based on financial need to attorneys who have volunteered to accept reduced fees as a public service. This program was created several years ago to bridge the justice gap between the Pro Bono Referral program

and the full fee LRS program, by identifying modest income clients unable to pay the standard legal fees. The Modest Means Program maintains a tiered system for client fees based on household size and income with caps that range from \$80 to \$125 per hour. Attorneys, of course, may choose to charge less. More than 2200 clients have been served by the program since 2016.

The Lawyer Referral Services Committee sets the rules for these programs, assists program staff as issues arise, and addresses inquiries and concerns by members and the public. The Committee is proud to have overseen these programs as they have grown over the years to provide important service to both the public and participating members of the Bar.

For questions about these programs contact the New Hampshire Bar Association at (603) 224-6942 or Lawyer Referral Services Committee Chair, Brad Kuster at (603) 226-1919

## Letter to the Editor

I would like to thank the Bar Association for honoring me with the Distinguished Service to the Public Award at the Midyear Meeting. I know that I received this award because I have served as the Chair of the NH Coalition to Abolish the Death Penalty for the last 14 years. I am very grateful that the Bar recognized my work. However, in accepting this award I want to acknowledge that most of what I did was spearheaded by the contributions of many Bar members.

When the State filed two death penalty cases in the mid 2000's those of us who wanted to repeal the death penalty knew we had to ramp up our efforts. Our job was simple: convince 215 elected officials to vote to repeal – 201 House members, 13 Senators, and the Governor. At that time I was serving as the Legal Director of the ACLU-NH. The ACLU had been a longtime member of the Coalition to Abolish the Death Penalty along with other organizations such as the American Friends Service Committee, the Council of Churches, and Amnesty International.

It became apparent to me early on that no matter how passionate our coalition members were about repeal, no matter how many volunteer hours we put in and no matter how good our organizational skills were, we were not going to persuade those 215 officials by ourselves. The death penalty was perceived as a partisan issue back in the mid 2000's and a bunch of "bleeding

heart liberals" were not going to convince the hard death penalty believers to change their vote. We needed to develop a different constituency, well regarded and articulate, a group that had the ability to speak to the public and to the General Court in a different language, that brought personal experience to bear. That group was the New Hampshire Bench and Bar.

What better group to argue for repeal of the death penalty than those who were most intimately knowledgeable about the day to day working of the criminal justice system – judges and prosecutors. But would they be willing to risk their reputations and sacrifice their time to join our cause? The answer was a resounding yes.

We had several near misses before we finally passed a repeal bill in 2019 and many opportunities for judges and prosecutors to testify at legislative hearings, lobby legislators, and influence public opinion with OpEds and letters to the editor. I remember one hearing in particular, I think it was in 2014. It was a full day hearing held in Representatives Hall. Hundreds of people attended. On that occasion so many judges volunteered to testify that rather than have each individual offer testimony they appointed a spokesman. When that name was called all of the judges in attendance rose as a group in support of the testimony. That moment took my breath away and I know it had a profound impact on the legislators

and public spectators. I don't remember who the spokesman was or who the judges were that day. It could have been any of the members of Bench who supported and worked for repeal. Among them were: Justices John Broderick, Joseph Nadeau, and William Batchelder; as well as Judges Walter Murphy, Philip Hollman, William Groff, Jean Burling, Arthur Brennan, John Lewis, Philip Runyon and Brackett Sheffy.

The other group of Bar members who offered unique and important perspective were prosecutors. Over the years many current and former County Attorneys and former Assistant Attorney Generals (myself included) testified in favor of repeal. But none were more prominent or more persuasive than former Attorneys General Greg Smith and Philip McLaughlin. Legislators and members of the public at large take notice when two such highly regarded men, who had been charged with the responsibility of carrying out the Capital Punishment law, testify in favor of its repeal. And both Generals Smith and McLaughlin did so eloquently.

Finally, there are many more Bar members, too many to name, who gave their time, talent, and treasure to achieve repeal. To be sure, there was a smattering of Bar members who spoke in favor of retaining the death penalty, but the overwhelming number of Bar members favored repeal. It would be inconceivable for the legislators not to be

impressed and persuaded by near unanimity of attorneys in the state.

To all of the members of the Bench and Bar who worked so hard to repeal the death penalty, I offer my thanks and undying gratitude. Your efforts have made the world a better place. That is not hyperbole. While New Hampshire is one of many states, when we repealed the death penalty our Nation became, even if only a little bit, more compassionate and more just. And as our Nation tilts towards justice so does the world. Maybe we won't make a huge difference, but we have made some difference. We made the difference that we could.

I believe that is why the Bar Association gave me the Distinguished Service to the Public Award. And that is why I am pleased to accept it.

*Barbara Keshen was admitted to the Bar in 1977, making her one of the first 100 women lawyers in NH. She served for 7 years as a homicide prosecutor in the NH Attorney General's Office and for 14 years as a member of the NH Public Defender's Office. She has handled approximately 100 homicide cases, including one Capital Murder case. In 2006 she was named the first Legal Director for the ACLU-NH. She is currently chair of the NH Coalition to Abolish the Death Penalty.*

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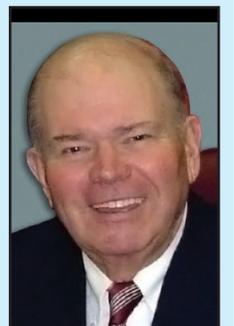
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## Fix It: How History, Sports, and Education Can Inform Diversity, Inclusion, and Equity Today

Book by Kenneth O. C. Imo

From “CHAPTER 6: Hurdles: Tradition, Homophily, and Bias,” pages 79-82

*“Hope is not blind optimism. It’s not ignoring the enormity of the task ahead or the roadblocks that stand in our path. It’s not sitting on the sidelines or shirking from a fight. Hope is that thing inside us that insists, despite all evidence to the contrary, that something better awaits us if we have the courage to reach for it, and work for it, and fight for it.”*

—President Barack Obama

Tradition and bias. Both hinder law firms’ diversity efforts. Law firms stubbornly cling to an antiquated recruiting process, working against their stated goal and best efforts to have more diverse recruiting classes. And, as several examples from a variety of contexts will show later in this chapter, unconscious bias is ubiquitous, so it should come as no surprise that it also impacts whom law firms retain and ultimately elect to their partnerships. Law firms cannot control the consequences of institutionalized inequality resulting in a lingering educational achievement gap that disqualifies many children from ever being viable law school candidates and eventually lawyers. However, firms can control how they pursue underrepresented law students and the opportunities they receive upon entering legal practice. This chapter explores both.

### A 20th-Century Recruiting Model in the 21st Century: The First Hurdle

Professor Lauren Rivera’s groundbreaking book, *Pedigree: How Elite Students Get Elite Jobs*,<sup>1</sup> argues that how law firms (and other “elite” employers) define and evaluate merit in their hiring practices advantages people from affluent

backgrounds, resulting in a class ceiling. According to Rivera, employers evaluate candidates’ social networks and intellect on their extracurricular and lei-sure activities; evaluators receive little guidance on how to systematically judge merit; and the most viable candidates attend schools with pre-existing ties to top firms (and, for the most part, applications received at diversity fairs are not taken seriously). Professor Rivera’s research examined top-tier law firms, investment banks, and consulting firms, and Professor William Henderson of Indiana University School of Law has focused specifically on the legal profession. Henderson set out to determine if heavy reliance on law school pedigree results in a better candidate pool. His research in the area brought him to this conclusion: nope.

In “Solving the Legal Profession’s Diversity Problem,”<sup>2</sup> Professor Henderson analyzes law firms’ overreliance on tradition in its recruiting practices. For generations, law firms have preferred students from the most selective law schools because students attending these schools endured a rigorous vetting process—as shown in Chapter 5, elite schools traditionally exclusively admit students with the highest undergraduate grade point averages (UGPAs) and Law School Admissions Test (LSAT) scores—and many of the people making the hiring decisions are alumni of these schools. Law firms’ overreliance on recruiting students from elite schools is misguided and hurts their long-stated goal of promoting diversity in the legal profession. Henderson describes lawyers as a “highly filtered” population because to become a practicing attorney one must obtain a four-year degree, score high enough on the LSAT to attend an American Bar Association (ABA)-accredited law school, complete law school, and pass a state bar examination. That means these people are highly motivated and smart. Or, as psychologists would say, lawyers belong to a “range-restricted” population because, compared to the general population, this is a group with high cognitive ability that has endured a rigorous weeding-out process.

Because lawyers choose a profession designed to weed people out, Henderson researched the correlation between undergraduate GPAs, LSAT scores, law school grades, and a person’s long-term success as a practicing attorney. Henderson relied on research conducted by Professors Marjorie Shultz and Sheldon Zedeck of the University of California (UC), Berkeley for empirical data.<sup>3</sup>

The Shultz-Zedeck study identified 26 lawyer effectiveness factors as provided by industrial and organizational psychology research on attorneys. The professors created a survey to measure lawyer effectiveness on each of the 26 factors on a scale of 1 to 5 and evaluated more than 1,000 UC Berkeley and UC Hastings law alumni and approximately 200 UC Berkeley law students. Shultz and Zedeck measured the participants’ scale ratings against their undergraduate GPAs, LSAT scores, and law school grades.

The results included the following findings:

- For law school graduates, there was a modest, positive correlation between grades and LSAT scores and factors such as analysis and reasoning, researching the law, writing, and problem solving.
- There was a statistically significant negative correlation between first-year grades and LSAT scores, and networking and community service. In the law student sample, there was no positive correlation between undergraduate GPA and any of the 26 effectiveness factors.
- Undergraduate GPA had a negative association with practical judgment, seeing the world through the eyes of others, developing relationships, integrity, and community service.

The Schultz-Zedeck study also assessed various job-relevant indicators of future lawyer success that cannot be captured by relying solely on academic factors. They compared the participants’ survey ratings against performance on the Hogan Personality Inventory (HPI), a widely used personality assessment tool that is deemed a better indicator for lawyer effectiveness than other tools. The HPI measures personality traits that include confidence, composure under pressure, initiative, desire for leadership roles, extraversion, tact, self-discipline, creative potential, and achievement orientation. Shultz and Zedeck identified correlations between the HPI and the survey they created that suggest law firms should

focus less on school pedigree and more on job-relevant behavior when recruiting candidates. Furthermore, their research did not reveal performance gaps based on race and gender with respect to lawyer effectiveness.

Henderson concludes the following from his research and the Shultz-Zedeck study:

- Lawyers do not need to attend elite law schools to succeed in law firms.
- The correlation between law school grades and future law firm performance has more to do with individual motivation than pedigree.
- More law school graduates have the aptitude to become high-performing partners than most law firm partners think.
- Law firms will see a more diverse and higher-performing candidate pool if they place less emphasis on academic pedigree and more on job-relevant factors.

Read more in *Fix It: How History, Sports, and Education Can Inform Diversity, Inclusion, and Equity Today*

1. Lauren A. Rivera, *Pedigree: How Elite Students Get Elite Jobs* (2015).
2. William D. Henderson, *Solving the Legal Profession’s Diversity Problem*, PD Q., Feb. 2016, at 23.
3. Kristen Holmquist, *The Shultz-Zedeck Research on Law School Admissions*, 63 J. Legal Educ. 565 (2014).

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### Opinions in Bar News

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

### Write for Bar News

Send us your Letters to the Editor, Lessons Learned, and opinion pieces. Email: [news@nhbar.org](mailto:news@nhbar.org).



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

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# Cybersecurity Corner



## Expanding The Cyber Regulations Landscape – How Can We Keep Up?

By Cameron G. Shilling

Lawyers and law firms face a multiplicity of laws governing information privacy and security, and the regulatory landscape expands continuously. Addressing each applicable law and responding to each emerging regulation is not operationally feasible or cost effective. We need a strategy that gets us and keeps us ahead of the regulatory curve.

Cyber regulations have expanded in two ways: (1) the scope of information covered; and (2) the types of obligations imposed. Early widespread cyber laws covered limited information, known as personally identifiable information (PII). PII consisted of an individual's name in combination with social security, financial account or governmental identification number. Most such laws imposed only an obligation to notify regulators and affected individuals of a breach.

Initial regulatory expansion imposed obligations on businesses to affirmatively identify their cyber vulnerabilities, implement measures appropriate to the business to mitigate or eliminate the risks, adopt

an information security policy, and train employees. Massachusetts and California led with such laws, which impacted New Hampshire and other States, since the regulations apply to any business that has covered information about residents of Massachusetts and California. At the same time, federal regulations expanded to encompass many businesses that handle protected health information (PHI) for HIPAA covered entities.

### Changes in Scope

Recent regulatory expansion has dramatically increased the scope of covered information. At first, such laws encompassed additional categories, like genetics, biometrics, geolocation, and social media information. However, now, regulations have grown to cover all information that is identifiable to an individual, including information as basic as name, address, and email, which is simply called personal information (PI). One example of such a law is New York's artfully named Stop Hacks and Improve Electronic Data Security (NY SHIELD) Act.

### Changes in Obligation

Recent regulations also dramatically expanded the obligations imposed on businesses with respect to the privacy of PI. Such laws require a business to notify individuals about what PI it collects and how it uses the PI, obtain consent from individuals before using certain sensitive PI, and honor rights that individuals have with respect to their PI, such as requiring the business to correct inaccurate PI, give a copy of their PI to individuals and other businesses in a usable format, restrict use of their PI, and delete all PI that the business has about them.

These broad privacy regulations initially emanated from the European Union General Data Privacy Regulation (GDPR) and Canadian Personal Information Protection and Electronic Documents Act (PIPEDA). However, California adopted a similar law called the California Consumer Privacy Act (CCPA) effective January 1 this year, and many other States (including New Hampshire and Massachusetts) have such privacy bills pending in their legislatures. These laws apply

extra-territorially to businesses that have PI about residents of those jurisdictions and who engage in business either with those individuals or in those jurisdictions.

Adding to this landscape, lawyers and law firms are ethically required to implement reasonable measures to safeguard client information. Those ethical obligations were discussed in the article Information Security Is Our Ethical Duty, N.H. Bar News (Feb. 20, 2019).

### Addressing the Complexity of Regulation

Getting ahead of the regulatory curve requires lawyers and law firms to address both security and privacy for all PI. Doing so means, first, conducting a comprehensive assessment to identify what information the business has, how it is used, and what risks exist to the confidentiality, integrity, and availability of it. Given the complexity of regulations and the lack of experience most lawyers and firms have in this area, it is critical to retain a knowledgeable professional to

CYBERSECURITY continued on page 7



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## Super Lawyers

Abramson, Brown & Dugan is pleased to announce that three of its attorneys were recently selected for inclusion in the 2019 edition of New England Super Lawyers Magazine. Super Lawyers is a "rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The patented selection process includes independent research, peer nominations and peer evaluations. A designation of top-rated practicing attorneys selected through extensive evaluation."

Abramson, Brown & Dugan is the only law firm in New Hampshire with lawyers selected as New England Super Lawyers in the practice areas of Personal Injury – Medical Malpractice on behalf of injured plaintiffs. Attorneys Mark Abramson, Kevin Dugan, and Holly Haines were each recognized for their work in these practice areas and are the only three attorneys to have been recognized in New Hampshire.

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**Cybersecurity** from page 6

guide you through the process and select an appropriate compliance regime for the business.

Based on that assessment, you must then implement measures that remediate the risks, adopt policies that comprehensively address current and forward-looking privacy and security issues (including existing and likely forthcoming regulations), and train employees about information privacy and security. While this can seem daunting, lawyers and law firms that commit to the process can and do achieve compliance with information privacy and security regulations.

*Cameron Shilling chairs McLane Middleton's Information Privacy and Security Practice Group. Founded in 2009, the firm's team of three attorneys and a technology paralegal assist businesses and private clients to improve upon their information privacy and security compliance, and address any security breach or incident that may arise.*



To kickoff the new decade, the *Bar News* has launched this regular column devoted to cybersecurity and information privacy. Contact [news@nhbar.org](mailto:news@nhbar.org) if you'd like to contribute an article on these critical issues facing the profession.

**President** from page 2

developments in the law from Korematsu to Trump v. Hawaii, as well as present day border and immigration issues. We were thrilled to still have a full room at the end of the day for these exceptional discussions.

Feedback on the program has been terrific, and we are grateful to everyone who

helped with the Midwinter Meeting. We are proud of all of our award winners, and we are especially grateful to our speakers. We can't forget a big shout out to the team at the Bar Association who, through their hard work and dedication, made it all look easy.

We are already looking forward to another record-setting event at the annual meeting in Portsmouth this summer! Stay tuned!

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also allowed them, they agree, to grapple with issues of constitutional democracy in an increasingly polarized political climate and to see first-hand how the constitution continues to shape American culture.

Because of the recent New Hampshire primary and the looming presidential election, questions of what candidate to vote for, what party to chose, and whether one's vote makes a difference, are on the minds of many first time voters. While Sartel's peers agree that voting is a privilege and an important responsibility it is more important, they agree, to be educated.

"I wouldn't necessarily want someone to be voting without being educated on the issues just because they feel like they need to be voting," said Josh Ide, a Hollis-Brookline senior on the student council who plans to study Economics in college. "I just wish everyone could have a chance to learn what we've learned. Take a step back from all the political polarization we see today and realize what our country is."

Mary Martin, a senior from Hollis-Brookline who voted for the first time in the February primary, agreed with Ides. Martin will be attending Boston College where she will study Hispanic Studies and Political Science.

"People seem turned off by politics today. They think it's a dirty game, but you have to remember government runs this country, it's not about what it has turned into, so I agree with Josh, being civically engaged doesn't just mean just voting. It means being educated on the issues."

"It's a dangerous game," Lily Coady, who plans to study political science next Fall, added. "Because both sides want dramatic action. I spoke with someone the other day who said they would either vote for Trump or



John Stark Regional High School Senior Jessica Nitzschke.

Bernie Sanders because they would at least create dramatic action. And I think that there are a lot of things that need to be done but it's dangerous when those things are so opposite to each other. We can only decrease it by communication. Getting down with someone who you don't want to have a conversation with. It humanizes the issues that you might disagree with."

Being from New Hampshire provides a unique experience for students to become civically and politically engaged and for Martin and many of her peers this has meant meeting candidates and canvassing in her hometown.

"A lot of people think it doesn't matter for me to vote or know the issues. I'm the only one really politically engaged in my house," Martin said, describing a conversation with her older brother she had recently. "He told me he didn't vote and I asked him why. He said 'well, it doesn't effect me,' and I said, 'everything effects everyone,' the class experience reminded me of that."

Coady, who said she has canvassed for



From Left: Milford High School Seniors Andrew Burns, Elizabeth Roadcap, Lauren Augher and Kat Raiano.

Sanders, believes the We the People course has taught her a lot about the foundations of government and the ways it is connected to everyday life in the United States.

"In terms of politics, this is general, because I'm talking about the whole population in the country, but I think we're moving towards a more politically involved group in the country, but as far as constitutional principles and what's written down in law this is something that's really important."

Principal Rick Barns commended the program as an authentic learning experience for students.

"From an administrators point of view this is the best example I can think of real competency based learning. This was their midterm. That type of experience allowed them to demonstrate what they learned. Very bright kids. I think other schools should be doing this."

Hollis-Brookline took first place in this year's We the People competition which also included Milford High School and John Stark

Regional High School.

Teachers Dan Marcus, John Stark Regional High School, along with Trevor Duvall, Hollis Brookline and Dave Alcox, Milford, are the teachers in this year's classes.

Marcus, who teaches AP History and Civics at John Stark Regional High School, has also been involved with the We the People class for fifteen years. Only three schools participated in this year's event and Marcus attributed this to both a decrease in federal dollars being spent on these programs and the need for teachers around the state to become involved.

"There are fewer federal dollars being spent but the Bar is amazing," he said, speaking about the organization and its commitment to civics education. "They put together a great competition. Kids that do this program have a deep understanding of government and the constitution and they're more likely to vote. For me it feels good to see understanding emerge. Kids expect it to be like math but they see that it involves interpretation."

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John Stark student Jessica Nitzschke, who turned 18 in time to vote in the February Primary and who plans to study law and environmental science next Fall, said it's a privilege to vote. She credits her awareness and confidence in Marcus's class which maintained a rich engagement with current events, as providing valuable lessons.

"This is a responsibility that a lot of countries don't have," Nitzschke said, adding that voting for the first time was a little stressful at first. "I wanted to be safe so I actually went the Thursday before to register. I wasn't sure if I had the proper ID. I also had to ask my Dad if I could vote for people from each party and he said, 'nope.' I felt like I did what I needed to do though."

Dave Alcox's student's at Milford High School emphasized many of the same themes of their peers at Hollis-Brookline and John Stark Regional High School. Andrew Burns, who will be joining the Army this summer, said he is the lone republican in a house of democrats. Burn's father is a democrat serving as a representative in the New Hampshire state legislature.

Party affiliation isn't a problem, Burns explained, because he feels that his education has allowed him to talk about the issues and not simply his party.

"Everything is defined by parties," Burns said, adding that kids he knows often either don't care about politics or they simply pick a party based on their parent's beliefs. "We don't get enough civic education. Kids see things on the internet and they believe this or that but they don't know why."

Classmates Kat Raiano and Lauren Auger agree.

"We have so much information at the touch of a button that we don't often take the time to learn more," Raiano said.

"Kids don't think they can make a difference. But they can go out and do something,"

Auger added.

Dave Alcox, who will be retiring after this year, would like to see students given more responsibility. For him this involves education as well as active participation in the political process.

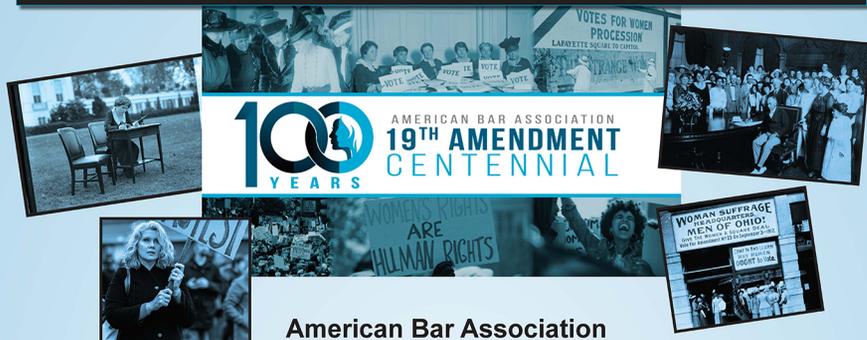
"If they're 17 at the time of the primary they should be allowed to vote," Alcox said. "If they're already out canvassing, why not?"

Last April Alcox took some of his students on a trip to Washington D.C. where Burns and classmate Elizabeth Roadcap had the opportunity to attend a social media course at Georgetown. Burns said the trip was inspiring. "To sit on the steps of the Capital eating Ben and Jerries was pretty cool."

Roadcap, who voted for the first time in February's primary, said she watched the debates and listened to various candidate speeches. She is excited about voting in November and concerned about the polarization in politics today. One of her insights was similar to that made by the philosopher, Socrates, over 2000 years ago in the world's first democracy in Athens, Greece. Socrates made his living and his name in history by questioning those around him who were more concerned with winning arguments than the truth. In the year 2020, Roadcap said this means, "being interested in what's best for our country instead of just winning popular arguments." Her hope is that, "people will begin to come together."

Students in the We the People classes agree that civic education is necessary for citizens to make wise voting choices. With the one hundredth anniversary of the ratification of the 19th Amendment coming up in August, following a decade long struggle for women's suffrage, young voters like Roadcap are looking back and finding wisdom in the process and the struggles of a democracy to maintain justice throughout history.

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Surgical error settlement	\$5,000,000.00
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## Announcing 2020 Justice Grant Awards

The NH Bar Foundation's Board of Directors has approved \$86,095 in Justice Grants to thirteen programs and organizations. Funded by your contributions, endowments and legacy gifts, the Justice Grant program supports the rule of law, access to justice and civic education projects across the state. Justice Funds are managed by the NH Charitable Foundation with a current value of over \$1.3 million. Grants are awarded every two years. This year twenty-one applications totaling \$163,220 were received. A Committee of three Board Directors and one Justice Society Member reviewed each application and made their recommendations for awards based on program merits, sustainability and funds available.



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**NHBA - Law Related Education – Beyond High School:  
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*Hon. William F. Batchelder Fund*

**NHBA- Law Related Education –  
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**NHBA- Law Related Education – We The People:  
The Citizen and The Constitution – \$6,000**

to fund training of teachers in the curriculum and teacher/student support.

*Advancement of Justice Fund*

**NH Historical Society – The Democracy Project:  
Renewing History and Civics in NH Schools – \$10,000**

to fund underwriting the completion of two units of curriculum to be used in New Hampshire schools - "Establishing Government ("State and Federal Constitutions" and "Modern Civics").)

*Judge Richard F. Cooper Fund / Richard P. Dunfey Fund /  
Frederic K. Upton Fund / Arthur & Esther Nighswander Justice Fund*

**NH Legal Assistance – Civil Legal Needs  
Assessment Project – \$10,000**

to fund a civil legal needs assessment for the State of NH that will help guide priority-setting and resource allocation by the Access to Justice Commission and the legal services programs.

*Vickie Bunnell Memorial Fund / Advancement of Justice Fund*

**NH Legal Assistance – Increasing Access to  
Property Tax Relief program – \$7,075**

to fund outreach and improvement of tax relief notices to the public

*J. Albert and Mildred E. Lynch Fund*

**NH Legal Assistance – Tri-State Conference on  
Elder Financial Exploitation – \$6,750**

to fund a conference to include attorneys in Vermont, New Hampshire and Maine about best practices and develop effective coordinated responses to elder financial exploitation

*A.J. McDonough Family Fund*

**NH Pro Bono Referral System –  
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to fund development and trainings for Pro Bono and Modest Means panel members on working with clients who have mental illness disabilities.

*AJ McDonough Family Fund / William A. Baker Fund*

**NH Public Radio – Civics 101 – \$7,500**

to support production of the Civics 101 podcast and audience engagement.

*Advancement of Justice Restricted Fund / The McLane Fund*

**NH Public Radio – Prison and Justice Reporting – \$7,000**

to fund production of two episodes continuing *Supervision*, a program produced in 2019 on a released inmate and his struggles to transition to a new life.

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For more information on the Foundation's grant programs, visit [www.nhbarfoundation.org](http://www.nhbarfoundation.org).

# Coming & Going

**Ashley D. Taylor** joined Pastori Krans as an associate. Taylor will focus her practice on employment law, family law, and complex commercial litigation.

**Alysia M. Cassotis** has become a member of the Wadleigh Starr & Peters law firm. Cassotis will focus her practice on the defense of health care professionals and institutions in medical malpractice litigation.

BCM Environmental & Land Law announces their merger with The Law Office

of Thomas R. Hanna. **Tom Hanna** and **Barry Faulkner** will continue to practice in the Keene office and can be reached by using BCM's main line (603) 225-2585.

**Debbie Martin Demers** has joined Rousseau Law and Mediation.

NHLAP is now located at 125 Airport Road, Suite 5B, Concord, NH in the NH Hospital Association Building.

**Nathan R. Deleault** has joined Stebbins Bradley in its trusts and estates practice.

## LawLine Thank You

The NH Bar Association would like to thank the New Lawyers Committee for hosting LawLine on Wednesday, February 12th. Attorneys Susanne Gillman, Katherine Hedges, Andrea (AJ) Schweitzer, and Keri Welch fielded about 43 calls from the public. A variety of questions were answered but most centered around landlord/tenant, criminal, debt collections, and family law.

When asked about their experience hosting LawLine Susanne Gillman said that, "My first time being a LawLine host was fun, just as I'd been told, and was not beyond my capabilities. When I arrived, there was a printed sheet of state resources, and the more experienced attorneys clued me in to a few helpful things - small claims court is up to \$10,000 and tenants get 30 days notice of eviction unless it is for non-payment. The time went quickly and I got dinner before we even started."

LawLine is held on the second Wednesday of each month from 6:00 pm to 8:00 pm. The Bar forwards phone calls from people who are looking for general legal advice and information to the LawLine host's office, and the host



assembles a small group of volunteers to answer them for two hours. The Bar also provides a light dinner for all volunteers. For more information or to volunteer to host a Lawline event, please contact NHBA Lawline Coordinator Eryon Greenburg at [egreenburg@nhbar.org](mailto:egreenburg@nhbar.org).

## Send us Your News

Send us your Community Notes. Have you joined a firm, opened a new office, became a shareholder or partner. Share your news in Coming and Going. Email: [news@nhbar.org](mailto:news@nhbar.org).



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### Hon. Arthur E. Bean, Jr.

On Armistice Day, November 11, 1918, the Honorable Arthur E. Bean, Jr., was born in Concord, NH, where his monumental legacy serving his country and state began. The son of Arthur E. and Beulah (Sargent) Bean, Sr., Bean graduated from Concord High School in 1936, went on to attend UNH, then enlisted with the United States Army Air Corps as a flying cadet in the 1940s, serving active duty for seven years.



During World War II, he led the 8th Air Force on a raid of Berlin, Germany and due to his bravery, was decorated four times with the Air Medal, two Distinguished Flying Crosses, the Coeur de Guer, and five battle stars, after flying a total of 29 missions altogether. As a bomber pilot, he frequently encountered horrific situations but nonetheless, considered himself, among other survivors, the fortunate ones. He went off active duty as a Lieutenant Colonel and was promoted to full Colonel during his service in the reserves where he remained until 1970.

Judge Bean continued his education at the Boston University School of Law, and the National Judicial College located at the University of Nevada, Reno. As an adjunct to his budding career, Bean also opened the historic Robin's Nest Restaurant in northern

New Hampshire with his father while attending law school.

He was admitted to the New Hampshire Bar in 1951, and from then until 1957, he served in the New Hampshire Attorney General's Office under Attorney Generals Gordan Tiffany and Louis Wyman. In 1957, he opened the Manchester law firm, Wyman and Bean, and continued there for twenty years. During that time, he served as the chair of the State of New Hampshire Personnel Commission, appointed by former Governor Walter Peterson. He also served as a member and chairman of the Eminent Domain Commission.

His aspirations for the legal system broadened, and he was appointed by then Governor Meldrim Thompson to the bench on July 15, 1977, where he was revered for his fairness and integrity as a Superior Court Judge until his retirement in 1988. As such, he served on various committees including the Judicial Conduct Committee, appointed by the New Hampshire Supreme Court.

After his retirement, Judge Bean acted as a judicial referee within the court system and in private practice. As a mediator and arbitrator, he provided parties with his vast legal knowledge and downright common sense on over 700 cases. He was a member and Honorary Fellow of the New Hampshire Bar Association and held membership in the Manchester Bar Association and the American Bar Association.

Judge Bean was an avid golfer and if not actively playing, he was critiquing the game on television with his ever-judicious

IN MEMORIAM continued on page 16

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pre-law classes, he decided to enter what was then the new Franklin Pierce Law Center (now the UNH Franklin Pierce School of Law).

Upon graduation, he and classmate James Sessler founded their own Laconia firm, Fitzgerald and Sessler, and were together for some 30 years. When their interests diverged, Fitzgerald took over the Laconia practice and Sessler set up shop in Franklin.

Fitzgerald is now with the Wescott law firm, focusing on the municipal law work he has done since he was hired as city attorney for Franklin shortly after he became a lawyer. He has helped clients from municipalities to school districts deal with such issues as land use, public employment, taxation, cell tower regulation and labor contracts.

"I find it fascinating," he says of the work. "There's so much stuff you wouldn't think would fit into the practice of law. I represented the Laconia Airport Authority so I had to learn a little bit about aviation. It's remarkable the sweep of the subject matter."

Longtime friend Jack B. Middleton, senior member of the litigation department at the Manchester-based McLane Middleton law firm, recalls trying a case involving the Wolfeboro Airport along with Fitzgerald and several other lawyers.

Their team represented the owner of the airport, who had decided to sell it and then changed his mind. The state wanted to proceed with the sale anyway, Middleton says, and "we fought the state for an extended period of time and won."

"Paul was very knowledgeable about airports and a very good lawyer in that area," Middleton says. "He kind of guided the rest of us through a lot of this stuff... He is really an expert in the area of municipal law."

Another friend of 30 years, fellow Laconia attorney Edward D. Philpot Jr., current president of the New Hampshire Bar Association, calls Fitzgerald both a colleague and a friend and says they have worked on cases where they have been on opposite sides as well as cases where they have been on the same side.

"He always works in the best interests of his clients,"



Philpot says. "He's a good, decent, honest, hard-working professional."

One of Fitzgerald's most memorable cases had nothing to do with municipal law – and everything to do with how the law was practiced four decades ago.

He was court-assigned to represent a defendant in a first-degree murder case when he'd been practicing only two years – part of what was then akin to an apprenticeship system in the legal community. He associated with a more experienced practitioner, and their client accepted a plea deal on a lesser offense.

"That system provided a wealth of experience that I don't think is available to young attorneys today," Fitzgerald says. "It was invaluable."

"There used to be a certain collegiality you would develop under the old system," he adds. "You'd watch one another, learn from one another. Now it's much more common to be specialized."

Fitzgerald has faced some tough cases outside of the courtroom, as well.

He was elected mayor in 1991 and served four years when "it was a very tumultuous time here in Laconia," he says. "There was an effort on the part of the Weirs Beach community to secede. A great deal of time and effort went into stopping the effort and healing some of the divisions that led to it."

That was in addition to Laconia's efforts to keep the

state from opening a state prison at a former state school in town. Though the state succeeded in establishing the prison, it closed 18 years later.

That's not to mention Fitzgerald's involvement in refashioning the city's famous/infamous Motorcycle Week – an event which once featured motorcycle gangs all but taking over the town, riders calling out to women to bare their breasts and police having to break up a riot in 1965. Stricter law enforcement was eventually added and the number of events – but also the number of participants – declined, until local businesses sought to reinvent the rally in the early 1990s.

The Laconia Motorcycle Week Association was founded in the early to mid '90s, according to Fitzgerald, himself a motorcycle aficionado and owner of a Harley Davidson Dyna Glyde.

"The idea was to take the event, which had some issues and problems with it, and do away with any unsavory elements," he says. "We wanted to take the best of it and do away with some of the worst of it."

Fitzgerald attended another nationally known motorcycle rally, in Sturgis, South Dakota, a couple of times to observe "the general tone of the rally and the degree of cooperation and camaraderie between the community and the rally attendees, as opposed to what had been here – and us versus them mentality."

After the changes that were made to the Laconia rally, "there are a lot more actual events instead of a free-form party," Fitzgerald says. "There are organized rides. It's a much more positive and organized event than it once was."

Fitzgerald and his wife, Cherylann, enjoy taking out the Harley a few times a week in warm weather and Fitzgerald also likes climbing in the White Mountains. He is a proud member of the 4,000 Footers Club, popular among trekkers who have climbed all the region's mountains higher than 4,000 feet.

But he says he never forgets the people he has met during his long legal career.

The City of Franklin that hired him as city attorney when he was just starting out?

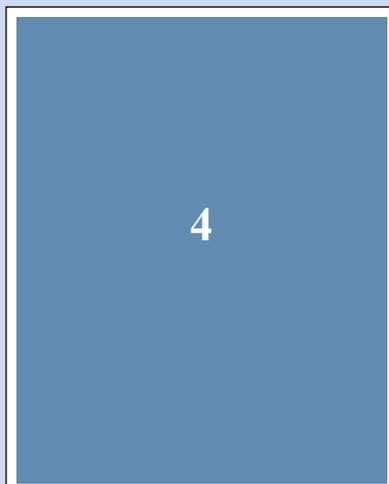
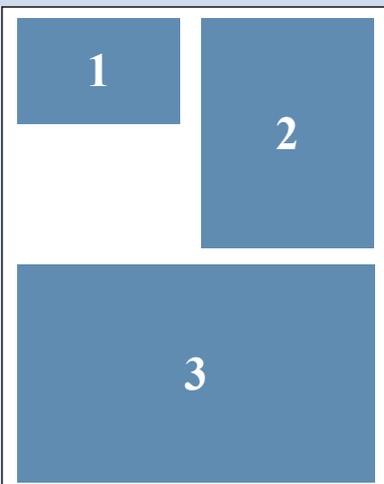
"They're still a client 44 years later," Fitzgerald says.

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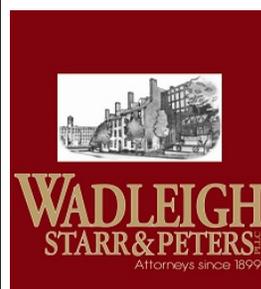
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# New Hampshire Bar Association PRO BONO HONOR ROLL

## January and February 2020 Attorney Honor Roll

The attorneys listed here each accepted one or more cases referred by the New Hampshire Pro Bono Referral Program during the months of January and February 2020. Gold stars indicate attorneys who accepted more than one Pro Bono case during the course of the month.

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Paul Maggiotto

### CARROLL

Anne Barber  
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### CHESHIRE

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Theodore Parent

### GRAFTON

Quentin Blaine  
Dennis Ducharme ★  
Michael Fisher ★  
James Laffan  
John Loftus ★  
Roderick MacLeish

Robert Moore ★  
James Shepard

### HILLSBOROUGH (N)

Xiorlivette Bernazzani  
Cindy Bodendorf  
Daniel Bourque  
Michael Croteau  
Marilyn Mahoney ★  
Jonathan Shirley  
Ross Terrio

### HILLSBOROUGH (S)

Stephen Bennett  
Kathy Cellamare ★  
John Hughes  
Robin Melone ★  
Lyndsay Robinson ★  
Kierstan Schultz  
Catherine Shanelaris  
Robert Shepard  
Emma Stilson

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William Gillen  
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Bryan Clickner  
Peter Hutchins  
Marilyn Mahoney ★  
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Robert Moore ★  
Rory Parnell  
Katherine Stearns

### STRAFFORD

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Beth Fowler  
Ronald Indorf  
William Phipps  
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## Oral History from page 1

The group is both interviewing additional bar/bench members for its video library, and arranging for restoration of many older videotapes, some of which were made on VHS cassettes and need to be digitized for longer durability.

Between the Bar Foundation's old tapes and the new ones made by the committee, some 90 interviews have been recorded, with at least 30 of them posted on the group's website, <https://www.nhsupremecourtsociety.org/special-projects/oral-histories/>. The site has been updated for easy access to the interviews. Additional ones will be posted as old tapes are restored and new ones processed.

Interviewees are people who "are easily recognized in the profession," according to Smith, and include judges and attorneys with diverse practice areas in different geographical areas of the state.

"We ask them to make a recommendation as to who they think would be a good person to do the interview, and we almost always follow that recommendation," he adds. "The objective is to find someone who knows them so the chemistry in the interview will be there."

"The central theme is biographical – how people came to this profession, what their experiences were during their career and how much the practice of law changed over time," Smith says.

One example is the recording of retired Supreme Court Chief Justice Linda Dalianis, who reflects on topics ranging from her most memorable cases to her experiences as one of the first women to sit on a trial court bench.

During the interview, Dalianis recounts the time she was assigned to a new court, took her appointed parking spot in the courthouse lot and started making her way toward the building when a bailiff ran out and started shouting,



The Hon. Carol Ann Conboy interviews the late Charles A. DeGrandpre, Esq., in 2017 as part of The New Hampshire Supreme Court Society's Oral History Project.

"You can't park there! You can't park there, dear!"

"That would be Judge Dear," Dalianis remembers saying to the chastened bailiff.

The interview with the late federal appeals court judge Hugh H. Bownes discusses his ascent from the Bronx-born child of Irish immigrants through his near-death in World War II to his days sitting on the United States Court of Appeals for the First Circuit, where he gained renown for his opinions favoring free speech and individual rights.

Another World War II veteran, the late Stanley M. Brown, shares memories of growing up as a lumberman's son, attending Dartmouth College and Cornell Law School and going on to become a prominent trial attorney, legislator, president of the New Hampshire Bar and founding director of the New Hampshire Bar Foundation. He also describes how, decades ago, court rules could be contained in a pamphlet rather than the double volumes that came later.

Technological advances are a common thread in many of the interviews, according to

Doreen Connor, chair of the New Hampshire Supreme Court Society and a shareholder at Primmer Piper Eggleston & Cramer.

Several interviewees refer to "changes in technology and the pace of law and how law is delivered," she says, "FAX machines as opposed to email or, worse yet, 'I haven't gotten that because it hasn't come in the mail.' Now everything is immediate, which is both good and bad. It allows you to respond to your client in real time but there's also no line between work and home."

Cultural changes are another theme, notes Smith.

Many of those interviewed in the 1950s and '60s, when the pool of those in the legal profession was smaller, recalled that "people in the bar and on the bench knew each other," he says. "They may have played golf together or their families socialized. They described it as an advantage."

Conboy – herself the subject of one of the profiles – has conducted a half-dozen interviews of fellow members of the bar and bench.

Her approach is painstaking. She schedules a meeting with the person – often a lunchtime appointment – a week or so before the recording date, requests a resume, asks about major issues or cases in which the interviewee has been involved, reviews some of the topics that might be discussed and indicates she'll ask a broad question at the end to signal the interview is nearing a close.

During the interview, "I might say, 'could you discuss your experiences with the changing technology?'" she says. "That's all I have to do and they're off to the races."

Interviews usually begin with biographical background, she adds, then move on to the person's experiences as a young lawyer, then on to memorable cases and broader topics.

"For me, it's a great experience because I get to spend time with these marvelous New Hampshire lawyers and judges and the preparation itself is so enjoyable," she says.

Work on the Oral History Project has been largely voluntary, but Smith notes that both the Supreme Court Society and the Bar Foundation have been supportive and a \$6,000 grant in 2018 from the Bar Foundation's Stanley and Thalia Brown Fund helped accelerate conversion of the old library and allowed for an increase in the number of interviews conducted.

Additional funding would further advance those activities, he adds.

The Supreme Court Society is also seeking to raise awareness of the project, and will be posting links to new interviews in the Bar's e-Bulletin. Smith emphasizes that the interviews might be of interest to those outside the profession, including students, historians and members of the general public.

"It truly is an effort to document, in an informal way, what it's like and continues to be like to practice law in New Hampshire," says Conboy. "I think this is a wonderful contribution to our history and people ought to be able to get to it easily."



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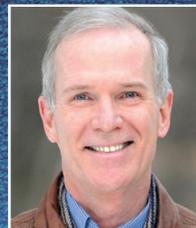
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**In Memoriam** from page 11

eye. During his lifetime, he was a member of the Concord Country Club, the Wonnalancet Club, and a current member of the Manchester Country Club, whose worn red cap with the club's insignia, he wore daily. Just last year, Judge Bean attended the 26th annual Quid Pro Bono Tournament at Sunapee Country Club among 96 other players on the course. As the Bar's oldest living member at 100 years of age, his team placed second!

In 2019, Judge Bean was the recipient of the UNH Granite State Award traditionally presented during commencement. Provost Wayne Jones Jr., however, took the honor to Bean at his home and at the same time, presented him with a long-overdue honorary degree - a moment which made the judge very proud. Judge Bean was ageless in so many ways and was an active member of Planet Fitness through much of 2019. Several days per week, he could be found at the gym pedaling contentedly on a bike or lifting free weights while other members looked on in utter amazement.

Bean's closest friends and family agree that his optimism and zest for life are the traits that garnered his many successes. When asked once what his secret to longevity was, Judge Bean was quoted as saying, "The only thing you have got to be is lucky. I think I was lucky."

After an illustrious lifetime, Judge Bean passed away from natural causes on Sunday, February 23, 2020, with his faithful wife, Gail, by his side. Just days before his death, with eyes that struggled to see and hands that trembled, he wrote these loving words inside a sentimental Valentine's Day card to her. "My darling Gail, the words above explain, or try to, but no words could ever

know my feelings when I see you returning. Our love overflowed and Darling, this can't be all, but if it is then there is no bigger love than mine for you. It was bigger than my work as a pilot, a lawyer or a judge."

As Gail held the card closely, she said, "He was my best friend who stood patiently by my side through so much. He was truly the wind beneath my wings."

The Honorable Arthur E. Bean, Jr. was right. He was lucky, as was Gail, and the rest of us who had the privilege to have known and loved a man who was destined for greatness in so many ways.

Besides his wife, he leaves behind a son, David Bean and his wife Penny of Concord, NH, two granddaughters, Gretchen Bean and Roxanne Dombrowski, a son-in-law, Stan Dombroski, and three great-granddaughters; a stepson, Rocco Boulay of Manchester, a stepdaughter, Gina White of Chester, and several step-grandchildren and close friends who will miss him dearly.

A Memorial service with Military honors was held on Friday, March 6 at the New Hampshire Veterans Cemetery. Please visit [www.goodwinfh.com](http://www.goodwinfh.com) to sign the online guestbook.

**Charles DeGrandpre**

Mr. Charles Allyson DeGrandpre, a native of Jaffrey N.H., and longtime member of the Manchester, and then Portsmouth, N.H. communities, passed away in his sleep, on Wednesday, Feb. 12, 2020, in his winter home in Tarpon Springs, Fla. He had been living independently, and continuing to work right up until December 2019. He was 83.

Charlie was born July 7, 1936, in Manchester, N.H., to Andrea (L'Etoile) and Arthur DeGrandpre. He was raised in Jaf-

frey N.H., with his older brother Gerald, and sisters Collette and Andrea (Mitzie). Charlie grew up during the wake of the Great Depression, but his father was fortunate enough to maintain steady employment at the WW Cross Shoe Tack factory in Jaffrey, so the family had things a little better than some. Hard work and the importance of a good education was strongly encouraged in the DeGrandpre household, and all four children went on to develop successful careers in banking, law, nursing, and education.



The DeGrandpre family was Catholic, and Charlie had extremely fond memories of his altar boy years. His priest, Father Frank became a real mentor to Charlie by introducing him to educational field trips, and secular stories of his travels. Charlie spoke so appreciatively of Father Frank for the rest of his life, crediting him with opening up a whole world of potential opportunities to him.

In 1954 Charlie went off to college at Clark University in Worcester, Mass. on a full scholarship, where he received his B.A. with honors in history in 1958. He was then accepted to the University of Michigan School of Law, and received his J.D. in 1961. He was admitted to practice before the Supreme Court of New Hampshire in 1961, the U.S. District Court for the District of New Hampshire in 1964, the U.S. District Court of Appeals for the First circuit in 1968 and the U.S. Supreme Court in 1969.

While attending Clark University, Charlie met his future wife Helga Moe. In

1961 they married, and moved to Manchester where Charlie began his legal career with the McLane, Graf, Raulerson and Middleton Law Firm, of Manchester, N.H.

Charlie served in the U.S. Army Reserve from 1962 to 1968, and was honorably discharged as a First Lieutenant in 1968.

In 1968 Charlie was accepted as a senior partner in the McLane firm. In the same year Charlie and Helga adopted their first baby, Sarah, then in 1970 a second child, David. 1968 was also the year Charlie started a long-running quarterly column entitled, "Lex Loci," for the New Hampshire Bar Journal. Charlie was the author of a legal treatise entitled, Wills, Trusts, and Gifts, and was co-author of a three volume treatise on New Hampshire Probate Law entitled, New Hampshire Probate Law and Procedure.

Charlie's first marriage ended, and he moved back to Manchester in 1978 where two years later he married his second wife Patricia Fielding. She had two children from a prior marriage, Lizabeth and Peter Fielding. Over the years, Lizabeth (Fielding) Giordano, became a close daughter to Charlie as well. Later, Charlie met and eventually married Marcia Makris, of Bath, Maine, with whom he shared the last 17 years, until her death in 2018. Marcia had a PhD in education, and loved to learn, and travel with Charlie. The two would read poetry, walk on the beach, compete over the New York Times Crossword Puzzles, and to Charlie's sheer delight, Marcia became his one and only formidable enemy at Scrabble whom he tirelessly tried to beat! Many of us would say, he found his soulmate in Marcia.

In 1985, Charlie was elected a Fellow of The American College of Trust and Estate Counsel, and in 1989, he became the senior director of the McLane firm's Portsmouth office. Charlie was former Chair of the New

**IN MEMORIAM**



**Charles A. DeGrandpre**  
July 7, 1936 - February 12, 2020

McLane Middleton extends its deepest sympathies to the family and friends of our dear colleague Charles DeGrandpre on his recent passing.

Charlie was not only a cherished member of the McLane Middleton family but also a leader in the community.



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Hampshire Bar Foundation, former Chair of the Lou and Lutza Smith Foundation, former Vice Chair of the Board of Trustees of Strawberry Banke, former Chair of the Board of Trustees of Canterbury Shaker Village, and a former director of the University of New Hampshire Foundation. He was named to Woodward's Best Lawyers in America, and was selected as the New Hampshire Bar Foundation 2006 Honorary Fellow. In 1982 Mr. DeGrandpre was the recipient of the New Hampshire "Volunteer of the Year" award from Governor Hugh Gallen, and twice received the President's Award of the New Hampshire Bar Association for his service to the community and to the Association.

Charlie was a man who lived life to the fullest and mentored his family and friends to do the same. He loved gardening, hiking, travel, reading, opera, card games, crosswords, poetry, art, woodworking, competing in ... anything ... and experiencing anything new or exotic. Charlie did have one true love, however. Fishing. To say that Charlie loved fly fishing, would be a monumental understatement. Fishing was the one thing woven intricately throughout his entire life, from growing up fishing for hornpout with his father on Cheshire pond, to teaching his own nephews and children to fish at his camp on Gilmore Pond; from his yearly legal partner's fishing trip for landlocked salmon in Forrest City, Canada, to bonefishing in Belize, and South Carolina, and salmon fishing in Norway, Ireland or Alaska with close friends and family. He spent countless hours fishing alone as well, or with Bob Sullivan, his closest friend, just casting off the beach at his home in Portsmouth. Charlie was a student of life, a respected attorney, a loyal friend, a teacher, a writer, a leader, a mentor, a tenacious social

advocate, a lifelong fisherman, a ruthless master of Monopoly, an amazing family organizer, and a devoted father. He touched and inspired so many people in his lifetime, and he will so deeply be missed.

Charlie is survived by his two sisters Andrea and Collette DeGrandpre of Cypress Calif.; his three children Sarah Nargi, David DeGrandpre, and Libby Giordano; and 10 grandchildren.

A memorial service was held on March 16 at Wentworth by the Sea Hotel, New Castle, N.H.

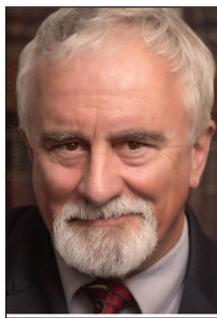
In lieu of flowers, please consider a memorial donation to one of the charities that meant so much to Charlie: Make a Wish Foundation, 814 Elm St., #300, Manchester, NH 03101 ([nh.wish.org](http://nh.wish.org)); Waypoint, Child and Family Services of NH, Chestnut St., Manchester, NH 03105 ([waypointnh.org](http://waypointnh.org)); Black Heritage Trail of NH, 222 Court St., Portsmouth, NH ([blackheritagetrailnh.org](http://blackheritagetrailnh.org)).

### William B. Parnell

William B. "Bill" Parnell (aka "Cap'n Bill") passed away on Feb. 21, 2020, surrounded by family.

He was the son of William Parnell and Patricia Parnell and raised primarily in Falls Church, Va.

He attended Boston University where he graduated in 1971 with a bachelor's degree. He went on to attend law school in Boston at New England School of Law (now New England Law-Boston), where he graduated with a Juris Doctor in 1976. He passed the



bar exams in both Massachusetts and New Hampshire, and has been a practicing litigation attorney up until the time of his passing.

Bill moved to Derry in the late 1970s where he raised his three boys: Brad, Rory and Michael.

Family members include his wife, Bernadette N. Parnell; his three sons, Brad, Rory and Michael; his former wife, Jeanne Parnell; his seven grandchildren, Meaghan, Abigail, Gabriella, Elsie, Lincoln, Cadence and Sebastian; his three stepchildren, Christina, Erin and Ryan, and their children; and his brothers, Larry, Ed and Howard and their children and grandchildren.

Known locally as "Cap'n Bill" for his love of fishing and his former role as a charter captain, he was deeply invested in the Derry/Londonderry and Lincoln/Woodstock communities. He served as coach of flag football teams, basketball teams, and soccer teams. He served in coaching and leadership roles in the Derry Soccer Club, Southern New Hampshire Youth Soccer League, and the New Hampshire Soccer Association. He was even the East Derry Fire Commissioner before stepping down because of family commitments. He also served as past Derry/Londonderry Chamber of Commerce and Derry Main Street Corporation president and in board roles. He was honored for his service to the community

of Derry/Londonderry when he was named Citizen of the Year in 2016.

In Lincoln/Woodstock, he was an active Rotarian and past president of the Linwood Rotary Club, and was an active skier and former part-time ski instructor at Loon Mountain. He also played a significant role in the formation and creation of The Bridge Project, a 501c3 charity in the Lincoln/Woodstock area that helps those in need find necessary resources to assist in their recoveries. The Bridge Project remains one of his favorite charities, and he hopes everyone can remember him by continuing to support their mission and development.

Bill was the founding member of the Law Offices of Parnell & McKay, and was integral in the merger of the firm now known as Parnell, Michels & McKay in Londonderry. He was an active and well-respected litigator, having served as past president of the New Hampshire Trial Lawyers Association.

A memorial service was held on March 11 at Southern New Hampshire University. A celebration of life was held March 12 at the Woodstock Inn Brewery, North Woodstock. Memorial donations may be made to The Bridge Project (<http://thebridgeprojectnh.org>). Donations can be mailed to The Bridge Project, P.O. Box 598, North Woodstock, N.H. 03262.

*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.*



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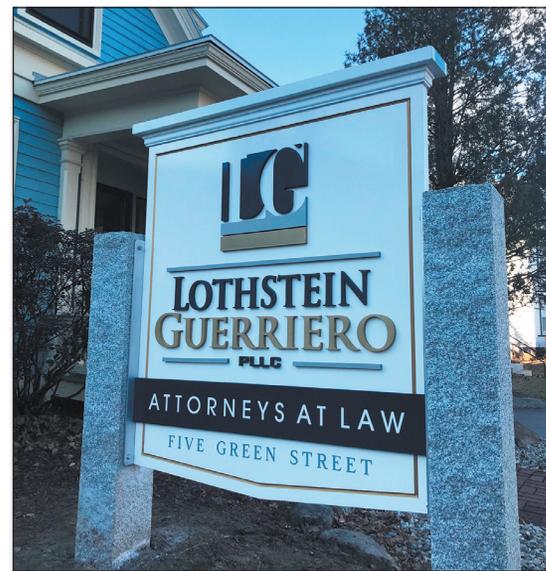


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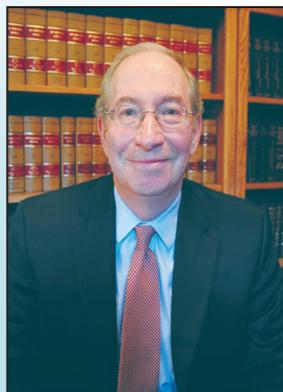
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Anxiety, Worry, Panic	Anger
Difficulty Concentrating	Hyper-vigilance to Your Health
Feeling of Helplessness	Social Withdrawal

**DON'T PANIC.** AT THIS TIME THERE IS LITTLE IMMEDIATE RISK OF EXPOSURE TO COVID-19. This situation is manageable with common sense precautions. Limit agitation and worry by limiting time spent reviewing news coverage of this outbreak.

**IF YOU ARE FEELING OVERWHELMED, DEPRESSED OR SUFFERING FROM PANIC ATTACKS DUE TO THIS ISSUE, PLEASE SEEK ADDITIONAL HELP THROUGH YOUR REGULAR HEALTH CARE PROVIDER OR WITH NHLAP.**

**SYMPTOMS OF COVID-19:** Fever, Cough, Shortness of Breath

Contact your health care provider if you have these symptoms *AND* you have been in close contact with a person who has COVID-19 *OR* you have recently traveled to an area with a widespread breakout of COVID-19.

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Stay at home for 14 days from the time you left an area with high risk of COVID-19 and practice social distancing. Do not go to work, school. Do not take public transportation or ride-sharing services. Avoid crowded areas such as movie theaters, shopping centers, concerts or fair grounds. Keep a distance 6 feet from others.

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# *In Re Guardianship of L.N.* and Removal of Life Support

By Elizabeth Brown

On February 19, 2020, the New Hampshire Supreme Court issued an important decision in *In Re Guardianship of L.N.*, for estate planning and elder law attorneys who routinely assist with guardianships and the preparation of New Hampshire Advanced Directives. The Supreme Court considered, as a matter of first impression, whether a Guardian under RSA 464-A:25 has authority to terminate life support without Court approval. The Supreme Court's decision not only settles the question of authority of a court-appointed guardian, but also highlights assisting clients with preparation of Advanced Directives that specifically authorize agents to remove life support when medically appropriate.

*In Re Guardianship of L.N.* involved L.N., who was an active and independent 69-year old, suffered a serious stroke that resulted in her life being sustained by a ventilator and a nasal gastric tube for nutrition and hydration. L.N. did not have any living relatives who sought to serve as guardians and a close friend and a co-worker both petitioned for guardianship.

In considering the guardianship petitions, the Probate Court found beyond a reasonable doubt that L.N. was incapacitated and in need of a guardian over the person and the estate pursuant to RSA 464-A:9, III. The petitioners had requested a decision on whether the guardian should be granted authority to remove life-sustaining treatment from L.N. The Probate Court deferred the ruling for additional information. The evidence before the court was that L.N. did not show signs of "higher cortical functions, awareness," and doctors testified that she did not have any realistic possibility of meaningful recovery. After further consideration of additional medical records, the Probate Court issued an order concluding that the authority granted by statute to a guardian does not "include the authority to remove a ward from life support without court approval."

On appeal, the Supreme Court specifically considered whether the guardian had authority to withdraw life-sustaining treatment without court approval. The Supreme Court concluded that pursuant to RSA 464-A:25, a guardian of an incapacitated person had the powers and duties except for four specific powers: "psychosurgery, electric-convulsive therapy, sterilization, or



"For practitioners who routinely practice in this area, the Supreme Court's decision serves as an important reminder to draft Advanced Directives and Living Wills that include clear authority to remove life support for clients who do not want their life sustained by medical technology."

experimental treatment of any kind unless the procedure is first approved by order of the probate court." The Supreme Court determined that the Probate Court erred when it determined "the statutory authority granted to the guardian over the person... does not include the authority to remove a ward from life support without Court approval." The Supreme Court concluded that RSA 464-A:25, I(d) does not contemplate a separate and explicit authorization for this medical treatment or procedural issue. The guardianship statute simply means that once the court has found the ward incapacitated,

the guardian has the general authority to make decisions.

The Supreme Court then examined whether the general authority included authority to terminate life support. The Supreme Court concluded that right was included within the general grant of authority. In making this determination, the Supreme Court considered situations whereby the individual executed an Advance Directive. The Supreme Court concluded that in situations where a ward had a valid living will under RSA 137-J, a "guardian shall be bound by the terms of such document, pro-

vided that the court may hold a hearing to interpret any ambiguity of such document. If a ward has previously executed a valid, durable power of attorney for health care, RSA 137-J shall apply." RSA 464-A:25, I(e). The Supreme Court found it persuasive that the agent under a valid durable power of attorney was bound to the ward's wishes.

Consequently, the Supreme Court concluded that RSA 464-A:25, I(e) implies that the guardian has the authority to make decisions on behalf of the ward. For those reasons, the Supreme Court concluded the general power to give or withhold consent of medical treatment under RSA 464-A:25, I(d) includes the power to withdraw life-sustaining treatment in appropriate circumstances.

The Supreme Court also concluded that RSA 464-A:25 did not require a guardian seek prior court approval to authorize the withdrawal of life support. The Supreme Court noted that the legislature's specific requirement that a guardian seek prior court approval for four specific types of treatment (psychosurgery, electro-convulsive therapy, sterilization or experimental treatment) "strongly indicates" that the legislature did not intend to require prior approval for the withdrawal of life support. The Supreme Court concluded that the award of guardianship would include the power to remove life support.

For practitioners who routinely practice in this area, the Supreme Court's decision serves as an important reminder to draft Advanced Directives and Living Wills that include clear authority to remove life support for clients who do not want their life sustained by medical technology. Furthermore, this case highlights the importance of estate planning practitioners in educating the public that individuals can easily complete a NH Advanced Directive and designate for themselves who should make health care and end of life decisions on their behalf. End of life decisions are deeply personal decisions that courts are ill-suited to determine.

*Elizabeth A. Brown is an attorney with the Manchester office of Primmer Piper Eggleston & Cramer PC. She has over 20 years of experience representing individual and business clients in a wide range of legal issues, including estate planning, business succession planning, business formations, and corporate governance issues.*

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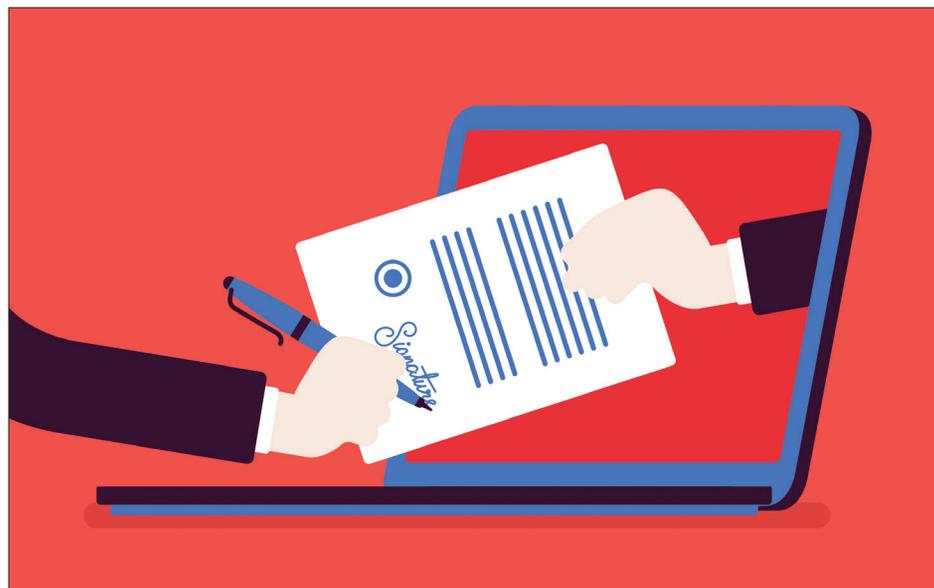
# Electronic Wills – Here They Come

By Linda R. Garey and Christina Krakoff

In January 2017, SB 40 was introduced to the New Hampshire Senate to enact legislation allowing electronic wills, which at the time, generated much interest and controversy. The bill moved through the Senate, but died in the House in May 2017 and has not (yet) been reintroduced. But that day is almost certainly not far off.

At that time, Nevada was the only state to have adopted a statute providing for electronic wills. Since then, however, Indiana, Florida and Arizona have all adopted statutes in various forms permitting digital signatures on, and storage of, an electronic will. While these issues are a relatively recent topic of debate among estate practitioners around the country, the electronic execution and storage of documents is the preferred method for many commercial transactions. In recognition of this trend, the Uniform Law Commission approved the Uniform Electronic Wills Act (the “Act”) in July 2019.

At the recent Heckerling Institute on Estate Planning Conference, a consensus that emerged was, at a minimum, that practitioners had better be ready to adapt and embrace this trend, because as Forbes Magazine columnist Bob Carlson observed, “. . . slowly, but surely, estate planning is catching up to modern technology.” Many attendees felt that adoption of electronic wills in some form is inevitable, particularly



now that a Uniform Act dealing with this issue has been approved. Many states will soon be considering updating their probate codes to incorporate electronic wills and New Hampshire is likely no exception.

### Rationale and Momentum

The practice of electronically signing and storing documents for commercial transactions is widely practiced and accepted. Financial institutions also allow clients to make beneficiary designations electronically online. Despite technological advances in other areas, the execution of many estate planning documents has re-

mained embedded in paper and pen. While the reasons for the rituals of executing paper estate planning documents are widely understood, limiting the execution of wills to traditional methods misses an opportunity to join the wave of technological innovation and client convenience.

### New Hampshire Law Today

In September 2001, New Hampshire enacted the Uniform Electronic Transactions Act which permits transactions to be conducted between parties via electronic records of legal documents and electronic signatures. RSA 294-E et seq. The Uniform

Electronic Transaction Act, however, specifically does not apply to any law governing the “creation and execution of wills, codicils or testamentary trusts”. RSA 294-E:3 II(a). Today, New Hampshire law requires that a valid will be (1) in writing (2) signed by a qualified testator, and (3) signed by two or more uninterested witnesses. RSA 551:2. However, it is important to note that under RSA 551:5, a will made out of state that is valid according to the laws of that jurisdiction is effective in New Hampshire.

### The Act— Key elements

The Act is designed to apply to wills and codicils, but not trusts (other than testamentary trusts). An electronic will is a will that is readable as text at the time the testator electronically signs the document.

The testator’s signature must be witnessed by two people who add their own electronic signatures. The Act provides two options for witnessing: the first requires witnesses to be physically present in the same location as the testator when signing the electronic will (similar to Indiana’s approach); the second only requires the witnesses to be “electronically present” through electronic means with the ability to see and hear the Testator in real time (similar to Florida’s statute). The Act also

WILLS continued on page 29

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# Selling Real Property in Probate – the Process and Potential Pitfalls

By Joyce M. Hills

Working with a client who is selling the real property of a decedent presents an added layer of complexity in a real estate closing. It is important to be aware of the process and pitfalls to ensure a smooth sale and timely closing.

This article will use the example of a daughter handling the settlement of her father's affairs. It will make the following assumptions: the father was a resident of New Hampshire; a widower; had a will; the daughter was nominated as executor in her father's will; and has contacted you to assist with the sale of her father's home.

## The Process

**Identifying the Client.** The first step, as always, is to identify the client and make sure that she has the proper authority to sell the property. In our example, record title to the property may be in the names of both parents, in just dad's name, or in a trust. If title is in dad's name alone, then the executor of his estate would be the client. If title is in the names of both parents, you will need to determine how the title was held between the parents to ascertain the client. If the title was held joint with rights of survivorship, the property would have passed to dad upon mom's death by operation of law. If the title was held as tenants in common, then you will need to confirm that a probate estate was opened for mom to ensure you have clear title. Either way, daughter would still be client for dad's estate but you may have



another party involved for mom's interest. If the probate records for mom's estate indicate that dad acquired mom's interest, then title is in dad's name alone and no other party need be involved. Finally, if title is in the name of a trust, then the trustee, not the executor, would be the client.

**Certificate of Appointment.** Assuming you have confirmed that dad alone is the sole title holder, daughter will need to be formally appointed as executor by the court before she has authority to list or sell the home on behalf of dad's estate. Just being named in a will as executor is not enough. To be appointed, daughter must file a Petition for Estate Administration along with other required documents, and in some instances a bond, with the Circuit Court Probate Divi-

sion. Once the court approves the petition, the court will issue a Certificate of Appointment, also referred to as Letter of Appointment, and the daughter will then have the authority to list and sell the house on behalf of the estate, subject to the consent of the beneficiaries as outlined below.

**Fiduciary Deed.** An executor selling real estate out of an estate is acting as a fiduciary on behalf of the estate. As such, the executor should only sign a Fiduciary Deed (as opposed to a Warranty or Quitclaim Deed). It is important to reflect this in the purchase agreement.

**Timing and Details.** While the formal steps of the probate process are outside the scope of this article, it is important to note the administration process will last a minimum of

six months but may last much longer. Buyers, or their lenders, may require an inventory listing the property be filed with the court prior to the closing. Once the property is sold from the estate, the proceeds should be paid to the estate and not to the beneficiaries of the estate. The estate's taxpayer identification number (and not the executor's social security number) should be used on all closing documents.

## Potential Pitfalls

**Disclosures.** When completing the Property Disclosure, if daughter did not live at the property, then she would not have personal knowledge of things such as the maintenance of the septic tank or the installation of the water supply system. It is important that she not make any statements that cannot be verified. For example, the NHAR Standard Form for Residential Property Disclosure specifically states that it is to be completed to the best of the seller's knowledge. If the executor does not know the correct answer, it is best for her to answer "unknown."

**Getting Everyone to Agree.** The executor must sign the deed in her capacity as fiduciary of the estate. Additionally, where title to the property vests in the beneficiaries entitled to the real estate at the moment of the decedent's death, certain beneficiaries will need to provide written consent to the sale of the property. It is important to identify these individuals and confirm that they are all available prior the closing and do in fact consent to the sale in order to avoid any unnecessary delay.

**Confirming clear title.** As soon as possible, **REAL PROPERTY** continued on page 29



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# Antemortem Statutes and No-Contest Provisions

By David P. Eby

## New Hampshire's Antemortem Probate Statutes

Challenges to wills and trusts are not uncommon. Historically, such challenges take place after the death of a testator. To assist in these claims, New Hampshire has an established body of case law regarding undue influence, testamentary capacity, no-contest provisions, burden of proof, and the quantum of evidence needed. New Hampshire also allows validity proceedings before death. In fact, New Hampshire is one of only six states with a so-called antemortem probate statute. Other states with antemortem probate statutes are: Alaska, Arkansas, North Carolina, North Dakota, and Ohio.

Since 2014, individuals may bring their wills or trusts before the Probate Division with an approval request. RSA 552:18 provides for a proof of a will during lifetime and RSA 564-B:4-406 provides for a judicial proceeding to determine the validity of a trust during lifetime. The statutes require notice to "interested persons," including a spouse, heirs, legatees and devisees under the estate planning documents, and others. The burden of proof and presumptions are the same as in an after-death proceeding. After a hearing, the court must declare whether the will or trust is valid or invalid, and a finding of validity constitutes a conclusive determination that cannot be challenged after death.

## No-Contest Provisions

New Hampshire also recognizes the enforce-



ability of no-contest provisions in wills and trusts. RSA 551:22, II (wills) and RSA 564-B:10-1014(b) (trusts) provide that no-contest clauses shall be enforceable according to the express terms of the provision. No-contest provisions, also known as in terrorem clauses, can be draconian, resulting in complete disinheritance after even an indirect challenge. As such, any will or trust challenger must carefully consider these clauses and the ramifications of a challenge.

## No-Contest Provisions in Antemortem Cases

Although statutory provisions provide a specific mechanism for a beneficiary to seek guidance as to whether a pending or proposed legal action will trigger a no-contest provision (see RSA 551:22, III(c) (wills) and RSA 564-B:10-1014(c) (trusts)), the New Hampshire Supreme Court has not yet ruled whether in terrorem clauses are enforceable in the context of the antemortem paradigm.

Case law from the other jurisdictions with antemortem statutes shed little light on this issue. So, should a court enforce no-contest provisions in an antemortem proceeding?

An argument can be made that New Hampshire law requires the enforcement of no-contest provisions in antemortem cases. Given the broad application and statutory authority of enforcement, they should be enforced whether the validity proceeding is before or after death. Indeed, the purpose of a no-contest provision is to discourage destructive and expensive litigation that has the potential of draining resources. Application of a no-contest provision in antemortem proceedings would discourage unfounded claims and would assist in effectuating the intent of the testator or settlor. Testamentary freedom and absolute testamentary intent should be the goal.

However, antemortem proceedings are inherently different from their post-death cousins. A will becomes irrevocable and final

only at death. Traditionally, once submitted to the court, a will is routinely "approved" (often with "self-proving" will language), thus becoming the controlling estate document. Only then may a disgruntled beneficiary or heir commence a challenge. The challenger asks the court to rule that the already-approved will was the product of undue influence or that the testator lacked testamentary capacity at the time of signing. If an action violates an in terrorem clause of the now-approved will, the challenger is indeed subject to disinheritance. In stark contrast to the traditional will contest, in antemortem proceedings the court has not yet approved the will and it is not yet the governing document for disposition of the testator's estate at death. In fact, the whole purpose of the proceeding is to determine document validity. Therefore, the language of the yet-to-be-approved will, including its no-contest provision, should not govern the parties at all. In other words, the court should not and cannot enforce a provision of a will that does not yet exist as the final governing document. The application of a no-contest provision is premature.

Antemortem proceedings differ from traditional will contest cases in another important way. In a traditional will challenge, the challenger initiates the claim, creating the adverse proceeding. By contrast, in an antemortem setting, the testator initiates the adverse proceeding, and asks the court to adjudicate the validity of the documents presented, requiring an evidentiary hearing. Because of the requirement of notice and the opportunity

PROBATE continued on page 29

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# SECURE Act Complicates Trust Planning for Inherited IRAs

By Audrey G. Young

Planning for a marital trust to hold retirement account assets has always required carefully drafted distribution and administrative trust provisions, especially when planning for spouses married for a second time. The SECURE Act, signed into law by President Trump on December 20, 2019, makes dramatic changes to the distribution rules for retirement accounts upon the death of the account owner. Currently, the general rule is that retirement accounts must be distributed to designated beneficiaries within ten years of the death of the account owner. Surviving spouses are one of five exceptions to the general rule (such beneficiaries are called “Eligible Designated Beneficiaries” in the statute) and still can qualify for a lifetime, or stretch, payout.

The SECURE Act layers on additional hoops for estate planners to jump through in order to ensure that a marital trust is eligible for the life-expectancy payout. This article will describe the existing rules for marital trusts holding retirement plan assets as well as the new rules under the SECURE Act relevant to marital trust planning. The article will also review options for distribution of any remaining retirement assets held in the marital trust upon the death of the surviving spouse as the applicable rules for distributions to successor beneficiaries were also updated by the new legislation.

The surviving spouse of the account owner can rollover an inherited IRA just as under prior law. Under the new law, the



required minimum distributions (“RMDs”) would need to begin in the year the deceased spouse would have attained age 72. While a spousal rollover does minimize the income tax liability of the survivor, it does not protect the assets from creditors beyond the spouse’s lifetime or necessarily preserve the remaining balance of the account for children. Especially in second marriage situations, many attorneys advise their clients to transfer retirement account assets to a QTIP Marital Trust where the surviving spouse is the only beneficiary during his or her lifetime but the remainder is earmarked for heirs.

In order for the QTIP trust to utilize the

lifetime payout option, it must be drafted as a “Conduit Trust.” A “Conduit Trust” is a trust with a provision governing retirement account distributions that requires the trustee to distribute to the individual beneficiary each distribution the trustee receives from the retirement plan. The IRS Regulations provide that the beneficiary of a Conduit Trust is the sole designated beneficiary of the trust as well as the retirement account and therefore that individual’s life expectancy may be used to determine the RMD. The IRS has ruled that the surviving spouse must receive not only all of the income of a QTIP marital trust but also all of the income of any retirement account payable to the

trust. It is important that marital trusts state this explicitly to avoid IRS scrutiny. Many attorneys provide in their marital trust agreements that the trustee shall distribute to the surviving spouse the greater of the income of the retirement plan or the RMD each year and this language will continue to satisfy the IRS rules for a QTIP Conduit Trust.

A Conduit Trust is the only marital trust that will qualify the surviving spouse as an EDB and allow for a lifetime payout of the IRA to the surviving spouse. The IRS does not consider the beneficiary of an income only marital trust an EDB and thus the trustee of such a trust would have to withdraw the account within ten years of the account owner’s death.

The conference report of the SECURE Act notes explicitly, nonetheless, that upon the death of the surviving spouse the ten-year payout rule will kick in for the successor beneficiaries unless such beneficiaries are otherwise EDBs. Depending on the ages of the successor beneficiaries and size of the retirement account, this new rule could cause large distributions to the successor beneficiaries. Not only could this be problematic if beneficiaries with little or no financial acumen are given a large lump sum distribution, but also such distributions would likely trigger a large tax liability. Depending on the ages of the successor beneficiaries, one solution is to provide for an Accumulation Trust. An Accumulation

IRAs continued on page 30

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# Midyear Meeting 2020: The Struggle for Justice is Alive and Well

Nearly 600 attorneys and guests attended the NH Bar Association's Midyear Meeting on Friday, February 21st, at the DoubleTree by Hilton in Manchester NH to participate in a day of educational sessions, award presentations and networking.

The title of this year's meeting, "Speaking Up: Power, Peril and Politics," examined the historical events that shaped the legal and moral compass of our nation, encouraging participants to reflect on how these events are relevant today.

"The NHBA is thrilled to have produced cutting edge MYM programs touching on legal ethics that effect everyday Americans. That's exemplified by lawyers' roles in Watergate and overcoming the Japanese-American internments during WWII," remarked George R. Moore, Executive Director of the New Hampshire Bar Association.

President of the League of Women Voters of New Hampshire, Liz Tentarelli, began the day at the Gender Equality Breakfast. Tentarelli spoke to an audience of nearly one hundred about the history of women's suffrage. She provided a thoughtful historical timeline of the struggle for the right to vote, reminding attendees that calls for women's equality came long before the suffrage movement in the 19th century.

"Long before the women's suffrage movement there were calls for women's equality," Tentarelli began, citing Mary

Wollstonecroft's "A Vindication for the Rights of Women," published in 1792.

After taking her audience through a lengthy history of over one hundred years of activism by such groups as the Lowell and Dover Mill Girls, Tentarelli brought the conversation back to the present.

Voting rights, she explained, did not spring, "fullblown from any particular event," but were part of a much larger "striving for equality," that she said continues today in the form of the Equal Rights Amendment, recently given an extension by the House of Representatives.

"Just like the suffrage fight, women are certainly in this fight for equal rights for the long haul."

Christina Ferrari of Bernstein Shur Sawyer & Nelson, P.A. in Manchester, accepted the Philip S. Hollman Award for Gender Equality this year.

Ferrari, a member of the Litigation and Dispute Resolution, Business, and Healthcare Practice Groups, represents individuals and businesses in complex litigation matters and appeals. She is President of the New Hampshire Women's Bar Association (NHWBA), and has been on the Board of the NHWBA since 2011.

Ferrari's speech began by thanking the New Hampshire Bar Association and the Gender Equality Committee, her colleagues, and her husband, Tim Yarnall.

The theme of her speech was courage in the face of inequality and inequities.

"When inequity persists, and it does in our profession, despite the real strides that have been made, sitting on the fence is not enough, she said, adding, "We must get comfortable with being uncomfortable and not accepting the status quo."

In the first educational session of the day, James D. Robenalt presented *Lawyers as Whistleblowers*, a look at the intrinsic details of the role that John Dean played as White House counsel during Watergate. The series of events that unfolded during Watergate brought about fundamental changes in legal ethics, requiring lawyers to "report up" and "report out" when crime or fraud cannot be stopped despite the best efforts of the lawyer.

Afternoon participants had a chance to view the American Bar Association's Silver Gavel Award-Winning documentary, *And Then They Came for Us: The Perils of Silence*. Narrated by George Takei and others who were among the 120,000 Japanese Americans incarcerated during WWII, the story follows Japanese American activists as they speak out today against the Muslim registry and travel ban.

A discussion group, moderated by NHBA Board of Governors' President, Edward D. Philpot, Jr. followed the film.

Participants fielded questions and

reflected on the importance of protecting civil liberties. Echoing the sentiment of the other participants on stage, Mona Movafaghi of Drummond Woodsum & MacMahon in Manchester, said "We need to speak in a civil way and get out of the boxing ring." Movafaghi, who has also worked on the United States' border with Mexico, quoted Laura Bush, who has said that the detainment of children taking place there is as bad as the Japanese-American situation during WWII.

Carol Ann Conboy, who was in attendance, praised both of the afternoon programs.

"Both programs were thought provoking. There were a lot of insights and variety as well as fascinating parallels to today's legal climate. They caused me to think about the realities, about what it means to be American." She added that, "Our country's ideals were sorely misused. To the extent that we think it can't happen to us. It can happen to us. The fear that was unsupported by evidence caused the suffering. Fear over evidence."

Pleased with the turnout, NHBA President of the Board of Governor's, Edward D. Philpot, Jr. noted, "This program has been extremely well received and we have really captured everyone's attention delivering a terrific and top notch program for members of the bar."



James D. Robenalt presents "Lawyers as Whistleblowers," a look at the intrinsic details of the role that John Dean played as White House counsel during Watergate.



Discussion panel following a showing of *And Then They Came For Us: The Perils of Silence*, documenting the incarceration of Japanese Americans during WWII. Left to Right: Hoyt Zia, Esq., Dale Minami, Esq., Founder of the Fred T. Korematsu Institute, Dr. Karen Koramatsu, PhD., NH Supreme Court Associate Justice (Retired) Carol Ann Conboy, Mona Movafaghi, Esq., and NH Bar President Edward D. Philpot, Jr., Esq.

## The Midyear Meeting Social



Left to right: Trevor Brown and John Curran. Curran sits on the NH Bar Foundation board. The Midyear Meeting Social was hosted by the New Lawyers Committee.



Left to right: Valerie Snow, Sean Davidson and Stephanie Tymula. Tymula sits on the NH Bar New Lawyers Committee.



Left to right: Laura Keeler, Bar Association Member Services & Law Practice Management Coordinator and Taylor Gailliot.



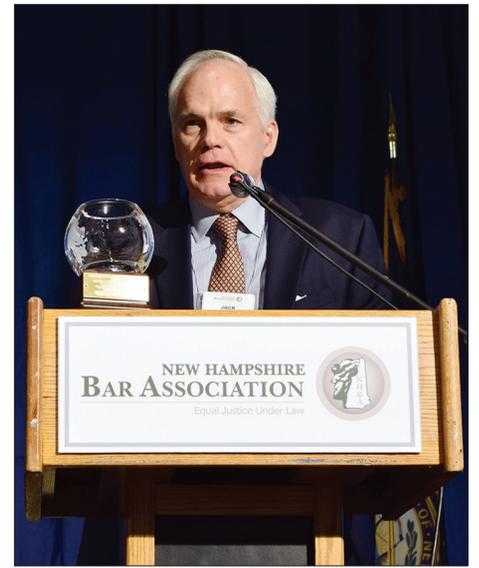
Barbara R. Keshen was recognized with the Distinguished Service to the Public Award.



Kay E. Drought of NH Legal Assistance was recognized for Outstanding Service in Public Sector/Public Interest Law Award.



Lisa L. Wolford of the NH Attorney General's Office Department of Justice was recognized for Outstanding Service/Public Interest Law Award.



Jack P. Crisp of the Crisp Law Firm was recognized with the Vickie Bunnell Award for Community Service.



Jacqueline A. Leary of McLane Middleton accepted her Pro Bono Rising Star Award.



Donna J. Brown of Wadleigh, Starr & Peters accepts her Pro Bono Distinguished Service Award from Brian C. Shaughnessy of Shaughnessy Raiche (left) and NH Bar President Edward D. Philpot, Jr.



Roger B. Phillips of Phillips Law Office accepted the L. Jonathan Ross Award for Outstanding Legal Services to the Poor.



Christina A. Ferrari of Bernstein Shur Sawyer & Nelson received the 2020 Philip S. Hollman Award.



Gender Equality Committee Breakfast Speaker Liz Tentarelli, President of the League of Women Voters of NH.



Cindy M. Bodendorf accepted her Pro Bono Distinguished Service Award.

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# The SECURE Act's New "Death Tax"

By Michael T. Jordan, Esq. and Susan R. Abert, Esq.

The Setting Every Community Up for Retirement Enhancement Act of 2019, better known as the SECURE Act, or simply, "the Act," greatly changes the rules for inherited retirement plan assets such as individual retirement accounts ("IRAs") owned by persons dying on or after January 1, 2020. Under the Act, most non-spouse beneficiaries of inherited IRAs can no longer elect to receive distributions over their life expectancies, after the death of the original account owner. Instead, in most cases, distributions must be made within ten years of the account owner's date of death. Because IRA distributions are considered taxable income (unless made from nontaxable Roth IRAs), this compression of the permitted distribution period will increase the income tax owed by many beneficiaries of inherited IRAs.

## Prior to the SECURE Act

Prior to the Act, inherited IRA accounts were subject to annual Required Minimum Distribution ("RMD") rules, which in many cases permitted a designated beneficiary (generally, an individual person or "pass-through" trust) to stretch distributions out over the beneficiary's life expectancy. This inherited IRA feature could result in years of additional tax-free growth of undistributed assets within the IRA account, after the original account owner's death. Although



the complete rules for determining RMDs for inherited IRAs prior to the SECURE Act are not within the scope of this article, the availability of what was known as the "stretch IRA" was a helpful tool for estate planners.

An extended "stretch" RMD period for inherited IRAs could be obtained if an estate planning revocable trust was named as a beneficiary of the IRA, if it was structured as a "pass-through" trust, in which the life expectancy of a beneficiary could be used to determine the RMDs to the trust. These were (and can still be) useful with significant retirement plan assets, if any of the account owner's beneficiaries have money manage-

ment, marital, or substance abuse issues, or are minors or fairly young.

The two types of "pass-through" trusts are conduit trusts, where all annual RMDs (and any additional discretionary distributions) from the IRA must be distributed to the beneficiary; and accumulation trusts, where IRA withdrawals may be accumulated within the trust. Accumulation trusts may be combined with "special needs trust" (SNT) provisions for disabled persons who require need-based public assistance programs, although in cases where the retirement account balance is modest, the costs of establishing and administering an accumulation trust are often not warranted,

especially if there are non-retirement plan assets that could provide for this individual.

## Changes Under the SECURE Act

The Act creates five categories of individuals who are considered "eligible designated beneficiaries." Individuals in these categories can still stretch inherited IRA distributions over their life expectancies. They include: the surviving spouse; minor child (though the 10-year rule applies when the minor attains age 18); disabled individual; chronically ill individual; or an individual who is no more than 10 years younger than the original account owner. All other designated beneficiaries, including adult children of the account owner, must now withdraw the entire inherited account balance within 10 years after the original account owner's death. There is no longer a calculated yearly RMD. The account must simply be fully distributed within 10 years. This greatly accelerates payment of income taxes on the underlying account balance and reduces the amount of time these assets can be invested.

The use of a "pass-through" trust (conduit or accumulation) is still permitted. However, in many cases they may create unintended large income tax burdens. Most pass-through trusts must now receive distribution of all plan assets within the 10-year period; only a conduit trust for an eligible designated beneficiary, or an accu-

DEATH TAX continued on page 30

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## Estate Planning After the SECURE Act

By, Michael P. Panebianco

In the final weeks of 2019, the federal budget bill was passed by Congress and signed by President Trump. The budget bill included changes to the federal tax code that were originally included in the SECURE Act (H.R. 1994) and which went into effect January 1, 2020. The changes affect retirement plans, such as IRAs and qualified retirement plans, e.g., a 401(k), both during lifetime and the way assets in those plans (“retirement assets”) may be distributed to beneficiaries after death. Accordingly, estate planning with retirement assets going forward will require an understanding of these changes and knowledge of available options in light of the new legal landscape.

Under prior law, most people were required to begin taking Required Minimum Distributions (“RMDs”) from their qualified plans or traditional (non-Roth) IRAs once they reached age 70½. Under the SECURE Act, the age was increased to 72 for those who were not yet required to take distributions under the old law. This means if you turned 70½ in 2019, the prior law applies and you must begin taking RMDs by April 1, 2020. Otherwise you can, but are not required, to take distributions once you are age 59½ without penalty, but must begin taking RMDs once you are 72. Although RMDs do not begin until age 72 under the new law, you can still cause distributions of up to \$100,000 a year to pass directly to charity once you have reached age 70½. In



addition, the new law removes the age cap for funding traditional (non-Roth) IRAs and deductible plans, so individuals over age 70½ are now permitted to make contributions to a traditional IRA, provided they have earned income, and there is a new exception to the 10% excise tax on withdrawals prior to age 59½: up to \$5,000 for child birth or adoption expenses may be withdrawn.

Some non-retirement plan changes include the ability to use 529 Plans to pay for student loan repayments of up to \$10,000, and also certain apprenticeship programs, including fees, books, supplies, and equipment. In addition, the “Kiddie Tax” reverts

back to prior law so that the parent’s tax rate will apply to the child’s unearned income, rather than applying trust and estate tax brackets.

With respect to estate planning, arguably the most significant changes brought about by the SECURE Act relate to how retirement assets are distributed and taxed after death to avoid penalties.

Under prior law, it was possible to stretch the distribution of retirement plan assets over the life expectancy of a beneficiary, if that beneficiary met the requirements of a “designated beneficiary” under the law. This ability to stretch out the distributions offered

potential advantages in terms of income tax free growth of the retirement assets during the beneficiary’s life, the cumulative amount of income tax paid on distributions from the retirement account, and protection of the retirement assets from the beneficiary’s creditors, or even from a beneficiary who might not have the ability to handle significant amounts of money at one time. The law also permitted these advantages for retirement assets left in a trust, as long as the trust was structured to meet certain requirements.

The SECURE Act changed these rules so that most designated beneficiaries of retirement plans will be required to receive the full amount of an inherited qualified plan or IRA within 10 years after the death of the person who funded the plan or IRA. The exceptions to this general rule include the retirement plan owner’s surviving spouse, minor children of the owner (but not their grandchildren or someone else’s children), beneficiaries who are disabled or chronically ill, and individuals who are not more than 10 years younger than the plan owner. The excepted classes of beneficiaries are still permitted to take distributions over their expected lifetimes, as under prior law, though children who are minors at the time of the owner’s death must now take the full distribution within 10 years after reaching the legal age of adulthood, which is age 18 in New Hampshire and most other states. It is important to note that the beneficiary can

ESTATE *continued on page 32*

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# Prenuptial and Postnuptial Agreements: Who Should Draft Them?

By Sarah Paris

Prenuptial agreements, with the authority outlined in RSA 460:2-a, and postnuptial agreements now deemed valid after the case *In re Estate of Wilber*, are valid estate planning tools in New Hampshire. Prenuptial agreements and postnuptial agreements are very similar in that they are both contracts to outline the rights of each spouse in the event of divorce or death. Given the contract involves two practice areas, family law and estate planning, it is imperative that the attorney drafting the agreement have knowledge of both. Attorneys have an ethical duty of competence, and in order to be considered competent the attorney must have knowledge of the legal rights each party would have in the event no such contract exists. Despite prenuptial and postnuptial agreements being described as estate planning tools, both estate planning and family law attorneys draft these agreements. In New Hampshire, if you are looking for an attorney to draft a prenuptial or postnuptial agreement it will likely be done by a family law attorney. Who is better poised to draft these agreements, family law or estate planning attorneys?

The best attorney to draft these agreements is someone who practices in both areas. Given the need for competence, you need to have a working knowledge of the impact a prenuptial or postnuptial agreement will have on each of the parties with regard to both estate planning and rights of spouses in the case of a divorce.



A family law attorney has the knowledge to draft the provisions in the contract related to the rights of each spouse in the case of divorce. A family law attorney will also have the knowledge that the agreement cannot contain provisions that will “abrogate the statutory or common law rights of minor children of the contemplated marriage.” Both family law and estate planning attorneys have the ability to help the parties determine property divisions as it is standard protocol for both attorneys to investigate the assets owned by each party.

An estate planning attorney is better poised to advise their Clients concerning rules of probate regarding statutory shares, intestacy rules, and homestead rights. This knowledge is paramount, as a very

common reason for Clients to pursue a prenuptial or postnuptial agreement is to protect the inheritance rights of children from a prior marriage. An estate planning attorney has the knowledge that one of the only ways to defeat a spouse’s right to their statutory share is through one of these agreements. Family law practitioners in this state are commonly employed to draft prenuptial and postnuptial agreements, but it is imperative that they have a working knowledge of the statutes and case law surrounding a spouse’s inheritance rights. As long as the family law attorney has gained this knowledge, usually by conferring with someone who practices estate planning, they are competent to draft and execute these agreements.

An estate planning attorney can become equally as competent as the family law attorney at drafting prenuptial and postnuptial agreements. Learning the rules surrounding the rights of spouses on the dissolution of their marriage puts the estate planning attorney in the same position as the family law attorney with regard to drafting these contracts. Given the fact that protection of assets for a spouse’s children from another marriage is one of the most common reasons for executing these contracts, it really makes sense for more estate planning attorneys to take on these contracts. It is important that the parties involved in executing a prenuptial or a postnuptial agreement also execute an estate plan that considers the provisions of the contract. If a proper estate plan is not in place, the parties may not end up accomplishing their true intentions, so it makes sense to do these documents contemporaneously with each other.

A prenuptial or a postnuptial agreement has the potential to be a difficult conversation for a client to have with his or her partner. As attorneys who frequently deal with family dynamics, both estate planning and family law practitioners will have the tools necessary to explain these documents to clients with tact. Both family law practitioners and estate planning practitioners will be able to recognize what areas may be sensitive for clients and will be able to diffuse any tension. Often, a collaborative

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**Wills** from page 20

includes language for self-proving wills that fits into the Revised Uniform Law on Notarial Acts of 2018 or similar laws that permit electronic, online notarization.

**What issues are raised by electronic wills?**

One of the most controversial issues is the effect of having witnesses appear remotely. By having at least two witnesses appear in person, the ritual of the document signing signals to the Testator that executing their will is an important legal act. Second, witnesses are able to testify in the future if the will is challenged for undue influence or lack of capacity. There is concern that will contests may become more common with witnesses appearing remotely via telephone and/or video. Florida has adopted involved and lengthy processes under its notarial acts statute requiring the Notary to ask the testator a number of questions to determine if the testator is a “vulnerable person” under Florida law, which would require witnesses to be physically present at the time of signing. FSA 117.285.

Revocation of a typical will is accomplished by a subsequent document or some affirmative destructive act. Under the Act, a subsequent document may revoke an electronic will. However, is deletion of one electronic copy the same as the revocation of all electronic copies? How can beneficiaries be sure the testator revoked the document and not some other party?

Estate planning attorneys often hold the

original signed documents for their clients, but who is responsible for the electronic will? While the Uniform Act is silent, statutes in Arizona, Nevada, Indiana and Florida all define a qualified “custodian” authorized to hold and maintain the electronic will. In some cases this qualified custodian is not the testator or attorney. With data breaches and other security concerns, these states and New Hampshire will need to be prepared for a growing need for secure maintenance of estate planning documents.

**Conclusion**

The need for New Hampshire practitioners to deal with electronic wills appears inevitable. Many of our clients are “snow birds” who spend time in states with electronic will statutes. New Hampshire probate courts will begin to see electronic wills being offered for probate. Though electronic wills may well provide convenience for our tech-savvy or elderly clients, there are plenty of issues regarding revocation, remote witnessing and notarization, and fraud prevention that need to be carefully considered for New Hampshire’s own electronic wills statute.

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**Real Property** from page 21

sible, the executor should obtain a title exam to confirm that the real estate is owned solely by the estate and there are no old encumbrances that need to be addressed. It is best to identify any potential problems in advance to avoid confusion and delay when a closing date is near.

*Insolvent Estate.* In New Hampshire, an executor does not need to obtain court approval to sell real estate unless the estate is insolvent. If an estate is insolvent, meaning the estate owes more to its creditors than the total value of the estate assets, then the executor will need to obtain a License to Sell from the court that is overseeing the probate administration of the estate.

*Out of State Considerations.* There are additional complications if the decedent was not a resident of New Hampshire or if the property is located out of state. The probate process and related requirements to sell real estate differ from state-to-state. For example, when selling a New Hampshire property on behalf of an executor of a non-New Hampshire resident’s estate, the client will need to open a second probate estate in New Hampshire even if she has been appointed in the state of the decedent’s domicile.

Lastly, it is important to communicate with your client about the process and pitfalls and to set proper expectations.

*Joyce M. Hillis is an attorney at Devine, Millimet & Branch. She focuses her practice solely in the area of trusts and estates. She can be reached at jhillis@devinemillimet.com.*

**Probate** from page 22

to be heard, the testator effectively invites heirs and beneficiaries to join in the fight. In order to determine the testator’s intent, the court must take relevant evidence and evaluate undue influence and testamentary capacity. Arguably, the testator, the very person to initiate the case and the very person asking the court to determine intent and validity, should not be allowed to nonetheless limit the court’s role as the fact-finder. The testator should not limit the ability of interested parties to bring forward appropriate evidence for the court’s review. The application of a no-contest provision unfairly interferes with exactly what the testator has asked the court to do: declare the will valid, which can only be determined where interested parties have the opportunity to participate and to present all relevant evidence.

Antemortem proceedings are not a common occurrence. However, as they become more prevalent, our Probate Division will need to work through these difficult issues. Until our Supreme Court provides definitive guidance on the application of no-contest provisions in the pre-death context, counsel may want to raise these issues for the court’s consideration in antemortem proceedings.

*David P. Eby is a Shareholder at Devine, Millimet & Branch, PA in Manchester, New Hampshire. David chairs the Probate Litigation Practice group at the firm and routinely handles probate litigation matters before the Probate Division and the Trust Docket. He can be reached at (603) 695-8518 or debby@devinemillimet.com.*

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**Death Tax** from page 26

mulation trust for a disabled or chronically ill individual, will qualify for a “stretch” distribution. An accumulation trust will be subject to a significant income tax assessment on amounts distributed within 10 years of the owner’s death and retained in the trust (noting that it takes only \$12,950 of income retained to become subject to the top federal income tax rate of 37%). Conduit trusts for

a non-eligible designated beneficiaries are no longer as attractive, because the entire retirement plan balance must be distributed to the beneficiary within 10 years.

**Planning Post SECURE Act.**

When viewed as a whole, the Act seems to have been passed in order to greatly increase tax revenue by eliminating one of the two major estate planning techniques most often used by the middle class (the other being the stepped-up basis). Planning practices

**IRAs** from page 23

Trust gives the trustee the discretion to either retain or pass out distributions to fulfill the goals of the trustor and minimize taxes. For example, it may make sense to withdraw the account over years seven, eight, nine and ten or to make distributions over the entire ten-year period to take advantage of a beneficiary’s lower tax bracket. Under this tax strategy, the trustee would make distributions of as much of the income and principal of the account each year up to the top of the beneficiary’s tax bracket but not so much as the beneficiary is then pushed into a higher tax bracket. This will require coordination between the beneficiary, trustee and accountant.

If the successor beneficiary were a minor, then he or she too would be an EDB for so long as the beneficiary is under age 18, or 21, depending on state law. It’s unclear at this point, whether the IRS will recognize

separate shares for minor children such that each minor child would separately qualify as an EDB and as each child reached majority, the ten-year payout would be triggered solely for his or her share of the retirement account. The IRS Regulations prior to the SECURE Act had looked at the oldest trust beneficiary to set the measuring age but it is hoped that the IRS will effectuate the policy of protecting minor’s assets and permit each child to be separately treated as an EDB.

The SECURE Act creates a new hierarchy of winners and losers for inherited IRAs. Attorneys will need to understand the new law and work with their clients to create flexible trust provisions that ensure the best result possible.

*Audrey Young is a member of McLane Middleton’s Trusts & Estates Department. Admitted in Massachusetts and Illinois, she can be reached at (781) 904-2721 or audrey.young@mclane.com.*

going forward will not be as attractive as pre-Act options, and are better classified as guidelines. The following important items are worth noting with regard to your clients:

1. The Act creates a category of “eligible designated beneficiaries,” for whom the rules regarding inherited retirement accounts really have not changed.
2. For designated beneficiaries of inherited IRAs, the most efficient use of the 10-year distribution period is crucial. Because RMDs are no longer required, the beneficiary should work closely with a financial planner, attorney, and accountant. Distributions should be taken in years where other taxable income is lower. Delaying distributions until retirement may be beneficial, or taking inherited IRA distributions while deferring Social Security, as a strategy to increase one’s Social Security benefit.
3. Single account owners who do not have children should consider designating IRA beneficiaries who are no more than 10 years younger than the owner (such as a partner or sibling) who will be considered eligible designated beneficiaries.
4. Reviewing the terms of any existing pass-through trusts established for the beneficiaries of now-living account owners is critical. For example, the Act eliminates the yearly RMD for such trusts, and provides that the retirement account must be fully distributed within 10 years after the account owner’s death, unless the primary beneficiary is an eligible designated beneficiary. Conduit trusts

for anyone other than eligible designated beneficiaries should allow the trustee to make discretionary IRA withdrawals, providing the Trustee with the flexibility needed to make distributions to the beneficiary at any time within the 10-year period.

5. Disabled individuals are eligible designated beneficiaries, and therefore can use the old “stretch” rules under the Act. To maintain eligibility for benefit programs, an accumulation trust which also meets the requirements of an SNT can still be used. An accumulation trust for a disabled person may make the most sense when the retirement plan account is large and the person is relatively young, thereby maximizing the time the underlying account can be invested tax-free. However, in situations with a modest retirement account and a shorter life expectancy, the expense and income tax liability may not be warranted.

*Michael T. Jordan and Susan R. Abert are attorneys at Norton & Abert, P.C. in Keene. They have over 25 combined years of experience in their practice areas of Estate Planning, Estate and Trust Administration, Special Needs Planning, and Elder Law. More information is available at their website, www.nortonabertlaw.com.*

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**Agreements** from page 28

approach to drafting these documents will yield better results, as the goal is to have two clients who still want to get married, or stay married, at the end of representation.

In a perfect world, the drafter of a prenuptial or postnuptial agreement would practice in both estate planning and family law. The trend in New Hampshire is for family law practitioners to draft these contracts, but there is great potential for estate planning attorneys to enter this arena. Although these contracts almost always contain provisions regarding the property rights of a spouse in the event of

divorce, they are also considered an estate planning tool, as the inheritance rights of the spouse are also determined in these contracts. Given the collegial atmosphere that surrounds the New Hampshire Bar, it would be an easy task for an estate planning attorney to reach out to a family law practitioner and gain the knowledge needed to become competent in drafting these documents. In the end, family law and estate planning attorneys are equally poised to handle the drafting of prenuptial and postnuptial agreements.

*Sarah Paris is an attorney practicing at Morneau Law in Nashua, NH where she focuses on estate planning.*

**Estate** from page 27

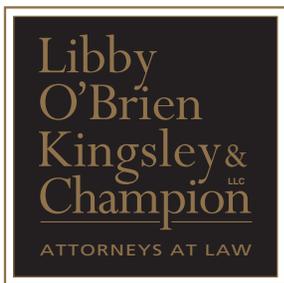
wait until just before the expiration of the 10 year period and take it all out at once. There is no requirement that distributions occur annually throughout the 10 year period. As under prior law, if the surviving spouse is the beneficiary of the retirement plan, he or she can withdraw over their life expectancy, but, upon the spouse's death, the next beneficiary, if not in a qualified group, must take the payout within ten years of the surviving spouse's death.

The SECURE Act does not change the method of designating a beneficiary or beneficiaries to receive inherited retirement assets. Accordingly, if you have existing beneficiary designations in place, those designations are still valid. However, the desired result for your client may no longer be achieved unless the estate plan is revised. For example, the current estate plan may be structured so that, after death, the client's retirement assets are given to a trust commonly referred to as a "conduit trust." The basic idea of this plan is that the conduit trust, not the individual who is the beneficiary of the trust, is the owner of the retirement plan and the retirement assets paid to the conduit trust will pass immediately from the trustee to the beneficiary. This has been a commonly used technique because the distributions would be stretched over the expected lifetime of the trust beneficiary while ensuring the beneficiary would not prematurely withdraw all the assets from the retirement plan. However, under the SECURE Act, that same conduit trust may now require distribution of the retirement assets to the beneficiary within 10

years after the death of the plan participant or plan owner, or when the minor child reaches adulthood – which may be contrary to your client's desire. One alternative is what is known as an "accumulation trust." Like a conduit trust, an accumulation trust would be the owner of the retirement plan after the plan owner's death, except retirement assets paid to the accumulation trust do not have to pass immediately from the trustee to the beneficiary as it would with a conduit trust. This allows the retirement plan assets to be protected by the terms of the trust rather than going outright to the beneficiary, which may be the client's primary objective. Another potential option, in the right situation, is having a charitable remainder unitrust receive the retirement assets upon death, where payments would be made to the beneficiary over the course of their lifetime with the remainder distributed to charity upon the beneficiary's death.

The specific changes brought about by the SECURE Act, and potential planning strategies related to the changes, are too extensive to cover in depth here, but all lawyers that do estate planning should familiarize themselves with the changes, and various planning options in light of the changes, some of which may present new opportunities for current clients.

*Michael Panebianco is an attorney at Sheehan and Phinney in Manchester. He advises and represents individuals and families on their estate planning, probate, and trust administration needs. He can be reached at (603) 627-8239 or mpanebianco@sheehan.com.*



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# Sitting Down with the Justices

By Scott Merrill

The Supreme Court of New Hampshire has a rich history dating back to the Colony of New Hampshire in 1776. Today, it is the court of last resort and for some it is shrouded in mystique. Justices decide on hundreds of cases every year but spend the majority of their time behind closed doors in conference, reading cases, and hearing oral arguments.

Lately, however, they've added road trips to their schedule.

The road trips, which include stops at various courts around the state, are one way the justices are responding to a 2019 Judicial Branch Commission report citing concerns that judicial branch leadership are not communicating effectively with employees. The goal moving forward, the justices agree, is to share information between the various levels of the court system and to inform people about the Court's mission.

"The question people want to know is 'who are you,'" Justice Marconi said. "We're going out to circuit courts and superior courts and maintaining connections with trial courts as well. I started taking clerks to see how cases resolve. There are fifty landlord tenant cases scheduled for March."

On a cold and rainy day in early February the justices gathered around a large oak table in the David Hackett Souter Judicial Conference Room at the Supreme Court. In the center of the table was a silver water pitcher which reflected the light of the chan-



The New Hampshire Supreme Court Justices. (From Left, Clockwise:) Justices Barbara Hantz-Marconi, Gary E. Hicks, James P. Bassett, Patrick E. Donovan. (Photo/Scott Merrill)

deliers above.

Dedicated in honor of Justice Souter in 2008, the room's aesthetic is of colonial America and is decorated with various paintings from the Currier museum. Other features include a Tall Clock made by Jacob Jones in Pittsfield, NH in 1787 and given to the Supreme Court by the late Superior Court Judge Arthur E. Bean Jr., as well as a White

Mountain Art era painting titled "Mt Lafayette" by Henry Ferguson from the 1870's that was recently dedicated to the court.

An American flag and a state of New Hampshire flag stand on each side of a fireplace which crackled as the justices went back and forth, discussing their roles at the court, hopes for the future, their recent road trips, and a ritual involving that pitcher.

Justice Bassett described the commission report in 2019 as a wake up and a template for a lot of what the justices have been doing. "Based on the report we thought we should be reaching out more to branch employees," he said.

Justice Hicks, the longest sitting justice

JUSTICES continued on page 35

# Veterans Track Court: Helping Heal the "Invisible Wounds"

By Kathie Ragsdale

Judge James H. Leary likes to tell the story of a young veteran who appeared before him on a drug possession charge about three years ago.

"He was this big, strapping, very handsome Marine, the picture boy for the Marine Corps," recalls Leary, now a senior active status judge with the 9th Circuit Court in Nashua.

"I bring him up to the front of the courtroom and we're talking and I say, 'What's going on?' and he keeps his head down. Most of them look you in the eye. "I said, 'Is there something wrong?' and he said, 'Yea.'"

"I asked him what was wrong and he started crying and he said, 'I don't know who I am anymore.'"

The young Marine, Leary says, was exactly the sort of defendant who stood to benefit from something called the Veterans Behavioral Health Track, or Veterans Track – a program that allows veterans suffering from service-related issues like PTSD or substance abuse to avoid traditional court proceedings after being accused of a crime by agreeing to treatment, monitoring and other conditions.

Leary helped launch the first Veterans Track in Nashua in 2014 and the program is now offered in Manchester Circuit Court, Rockingham County Superior Court, and in Grafton County, where separate reviews are held for veterans following sessions of the county's three Mental Health Courts.

"They know there's a problem and they know they need help but they don't have a clue what to do," Leary says of veterans with issues related to their service. "What these programs do is provide them some direction so they can see what to do."

That Marine went into in-patient treatment and graduated from the program two years ago, Leary says, is now working for the federal government at the Portsmouth Naval Shipyard and is "doing phenomenally."

Veterans Track programs have won the backing of



Jim and his dog Tank await their final day in Veterans Court at the Rockingham County Superior Court in Brentwood. (Photo/Scott Merrill)

judges, prosecutors, public defenders and others in the courts where they are offered and success stories like that of the young Marine are legion.

But hard data – such as recidivism rates -- to back up those positive reports is hard to come by, and Veterans Track has not gained as much traction in New Hampshire or nationally as other treatment-based alternative programs like Drug Court or Mental Health Court.

A 2019 Marshall Project report found that most of the 3,000-plus counties in the country have specialized courts for drug addicts and the mentally ill, but fewer than 500 have opened veterans courts since the first one started in

Buffalo, New York in 2008. Meanwhile, more than 180,000 U.S. veterans remain incarcerated, according to the Bureau of Justice Statistics.

New Hampshire's programs suffer from a lack of statewide coordination or "ownership," according to Jill O'Brien, co-chair of the interdisciplinary Justice Involved Veterans Task Force and associate director of community support services at the Greater Nashua Mental Health Center. She and her group are seeking to address the paucity of statewide data about Veterans Track graduates in the hope of increasing funding and expanding the program to other counties.

Veterans Track advocates say "invisible wounds" like PTSD, or post-traumatic stress disorder, and drug addiction – sometimes acquired while in combat – are predictable, and deserving of attention and redress when veterans leave military service.

"The criminal behavior is the symptom and not the problem," says James Reis, a Portsmouth attorney who serves on the Veterans Track team in Rockingham County Superior Court and who helped start the program while serving as a public defender in early 2017. "We spend boatloads of money in training these folks and very little resources are expended when they come back."

Referring to one veteran in the program, he adds, "He watched half his platoon get obliterated, he described picking up body parts, and then you come back to working at the Home Depot?"

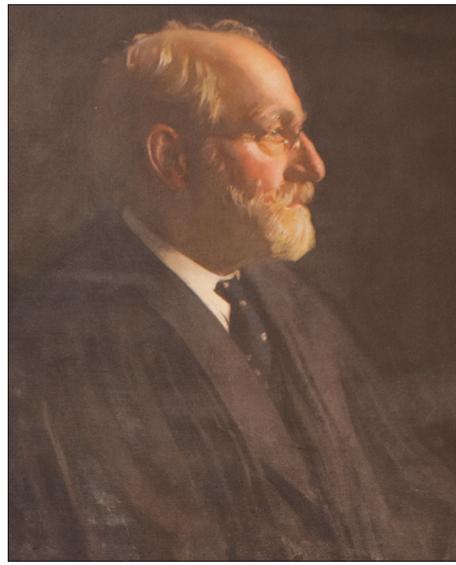
Manchester attorney Lawrence A. Vogelmann, who was then co-chair of the Justice Involved Veterans Task Force that started the first Veterans Tracks in the state, offers similar thoughts.

"One thing I feel strongly is, we sent them there, they got screwed up doing service to our country and I think we owe them something," says Vogelmann, who also runs a statewide practice offering free law services to veterans.

COURT continued on page 35



The Peaslee Pitcher, used by the Justices to decide who reads cases.



Robert James Peaslee, (1864-1936), served as Chief Justice for the New Hampshire Supreme Court from 1924-1934.



Henry Ferguson's "Mt. Lafayette," painted in the 1870's, is a recent gift from the Van Loan family that hangs above the fireplace in the David Souter room.

## Justices from page 34

on the court, nominated by Governor Lynch in 2006, explained that in years past, "the idea of getting to know your staff would have been scoffed at."

"We're planning a Connecticut River Valley trip that could take us all the way to Colebrook," Hicks added.

"Unlike others who have sat on the supreme court we've all been making close relationships with the trial courts," Justice Donovan, who was recently at court in Hillsborough, said.

"We're also more involved with the Bar than others have been," Basset said. "Each of us sits on one committee."

At some point in the conversation Justice Hicks, who refers to himself as "the

old guy" of the court, gestured towards the pitcher in the center of the table. "You probably don't know the history of that pitcher. It belonged to Justice Peaslee. We use it to decide who reads cases," he said, explaining that "Some judges pick cases that they want to read but we do it by drawing them out of that pitcher."

The silver pitcher the judges draw from was a wedding gift to former New Hamp-

shire Supreme Court Judge Robert James Peaslee, (1864-1936), born in East Weare, and was donated by his widow Nellie in 1912. Justice Peaslee served as a Chief Justice of the NH Supreme Court from 1924-1934 and as a Justice of the Supreme Court from 1898-1901, and 1908-1924. He also served as a judge of the NH Superior Court from 1901-1907.

## Court from page 34

Veterans eligible to participate must have a condition thought to be related to their military service. The veteran's attorney and the prosecutor agree that he or she would benefit from the program and the veteran signs a contract agreeing to treatment and monitoring by the court, generally for a year, during which time the state agrees to postpone judgment.

If the veteran graduates from the program, prosecution is avoided and, depending on the court, charges may be dropped altogether. But if the contract is broken, prosecution may ensue.

Veterans Track court sessions are held monthly or weekly, depending on the court, with team members that can include a probation officer; representatives from the Veterans Administration, which provides treatment to V.A.-eligible service members; a prosecutor; judge; and public defenders.

"It's very different from a real court. It's not adversarial at all," notes Vogelmann.

That sentiment was echoed by "Jim" who waited outside the courtroom at Rockingham County Superior Court with his service dog "Tank" in early February. The dog, a black lab mix, is used to alert Jim when he may have an episode of tachycardia, a condition that can cause heart failure.

Jim (who chose not to provide a last name) is a former Army Medic and bomb technician who has been on 3 deployments to Afghanistan and Iraq during his career. He plead into the program one year ago and was excited to be graduating soon.

"This program is about what benefits the veteran. It's not one side versus the other," Jim explained, adding that "in the military you have a job to do, you need to get a job done. The military mindset is hard to get rid of. Here we get the tools and support we need. We're the most functional dysfunctional family you'll come across."

Participants in the program receive a mental health assessment and some form of mental health treatment, often with concurrent treatment for substance abuse, found in some 80 percent of cases, according to Leary.

Not all veterans are eligible for the array of services – ranging from out-of-state inpatient treatment to housing – that the V.A. provides. The criteria for being V.A.-eligible are myriad, according to Diane Levesque, veterans justice outreach coordinator at the Manchester V.A. Medical Center, but among them is the veteran cannot have been less than honorably discharged.



Attorney Jim Reis helped to start the Veterans Track program in 2017 while working as a public defender.

That eliminates many veterans who were dishonorably discharged because of substance abuse, for example, though sometimes such dishonorable discharges have been reversed after participation in a Veterans Track program.

Until recently, Easter Seals was offering treatment options for those in the program who were not V.A.-eligible, but the expiration of a grant brought an end to that service. Many of the professionals who work with Veterans Track say one factor working in favor of participants is military camaraderie. Where defendants in other courts are often discouraged from associating with their friends for fear they will lapse into old patterns, those in Veterans Track often piggyback on each other's successes, team members say.

"Veterans are a group that pretty strongly identify with other veterans so, while in Drug Court or Mental Health Court it would be unheard of for two criminal defendants to get together between court sessions and socialize, the people in Veterans Track become almost a community and support each other," says Vogelmann.

Prosecutor Aaron Dristiliaris from the Rockingham County Attorney's Office remembers one participant who, upon learning a fellow member of the group with mental health problems had been arrested that day, asked if he could go talk to the man. While he wasn't allowed in the cell block, Dristiliaris says, "it shows the level of camaraderie." Participants are not the only ones who feel that communal investment.

Sherry Bisson, clerk of the Nashua District Court, assisted Leary in getting the Veterans Track established there, says watching the judge interact with participants and following their successes is "the best part of my week."

"He really develops a relationship with them and they get to know him," she says of Leary. "By the end, it's usually a year, they trust him. He shares in their joys, their struggles, because they've built that relationship over that time and he wants them to succeed, as well."

Still, challenges remain for Veterans Tracks in New Hampshire.

Buy-ins from county attorneys is critical to the program's success and "more therapeutic or treatment-related sanctions are often not viewed as appropriate by individual prosecutors," says Reis. "The culture of the county definitely dictates how successful treatment-oriented programs are."

Judges who hear cases do so in addition to their usual responsibilities, and many others who work for the program are volunteers. Coordination among Veterans Tracks is so minimal that no one knows for certain how many dozens of veterans have participated in the program statewide – though O'Neill is trying to gather that information.

"We have a very well-developed program for the Drug Court – legislation, a Drug Court in every county, funding," she says. "When it comes to Mental Health Court or Veterans Court (Track), these programs are operating standing alone... Where we really fall short is ownership, who's responsible? Who's ensuring that data is collected and reviewed?"

The current focus of the Justice Involved Veterans Task Force, she adds, is to bring stakeholders together and accumulate that statewide data "to help advance the conversation about pursuing grant funding or fiscal legislation to support the non-V.A. eligible."

Legislation is now pending to expand Mental Health Court, O'Neill says, and if a statewide Mental Health Court coordinator were to be appointed, perhaps that person's responsibilities could be expanded to include Veterans Track.

"I've seen people go through the program and see the enormous improvement and the need," she says. "We're working in an environment where there's not enough judges, even to sustain the current programs. I want to be at the point where we're expanding into different counties."

Some advocates are also pressing for more awareness about the program, so more veterans can reap its benefits.

Leary recommends that Bar members representing people in criminal cases ask whether they or their family members have ever served in the military.

"If the answer is yes, they're eligible for these services," the judge says. "Make that part of your initial meeting with your client. Ask the question."

February 2020

## Civil Procedure

**In Re D.O., No. 2019-0369**  
**February 13, 2020**  
*Reversed and remanded.*

- Whether the Superior Court lacked subject matter jurisdiction over respondent's appeal of an adverse abuse and neglect ruling that was filed after the thirty-day statutory deadline
- Whether the respondent demonstrated "good cause" for filing a late appeal of an adverse abuse and neglect ruling

The circuit court determined that the respondent had neglected his daughter. Although the appeal period for an abuse and neglect ruling under the Child Protection Act is thirty days after the court's final dispositional hearing, the respondent waited ninety-two days before he moved for permission to file a late appeal. The Superior Court denied the respondent's motion, finding no "good cause" to allow a late appeal.

The respondent appealed the Superior Court's denial, arguing that he was not required to show "good cause" for a late appeal. According to the respondent, the standard the Superior Court should have considered was whether the petitioner, the Division for Children, Youth and Families (DCYF), would have been prejudiced by a late appeal.

The petitioner disagreed, contending that the respondent was required to show "good cause" for a late appeal in this case, and further argued that the Superior Court lacked subject matter jurisdiction over the appeal because he failed to file it within the prescribed deadline.

The Supreme Court held that the respondent's failure to comply with the thirty-day appeal deadline did not deprive the superior court of subject matter jurisdiction. In its ruling, the Court distinguished its line of cases holding

that compliance with a statutory deadline for filing an appeal of an administrative order is a necessary prerequisite to vesting jurisdiction in the appellate body. The Court found apposite a different line of case law that concerned statutory time limits for court hearings. This precedent recognized that not every mandatory time limit imposed by statute is intended to be jurisdictional, meaning that time limits do not vest a court with jurisdiction simply because they are mandatory.

In discussing the latter precedent, the Court teased out analysis of the two types of time limits on court hearings: those that involve a liberty interest and those that involve a general interest in hastening adjudicative dispositions. Ultimately, the Court found that the purpose of the Child Protection Act was to protect the rights of all parties involved in abuse or neglect proceedings and construed the statutory time limit liberally to effect this purpose.

Perhaps in recognition of its wrangled logic, the Court explained that its prior decisions regarding other statutory appeal periods remain good law. The Court further suggested to the legislature that it should indicate whether it intends for any existing and future statutory appeal periods to be jurisdictional.

In reversing the Superior Court's ruling, the Court did not decide whether the standard for considering a late appeal required the respondent to show good cause for the tardiness, or on the other hand, required the DCYF to show prejudice to defeat the appeal. The Court found that the respondent prevailed under either standard. DCYF did not argue that the respondent's failure to comply with the thirty-day appeal period caused it any prejudice. The Court ruled that as a matter of law there was also "good cause" to grant the respondent's motion to file his late appeal because: the respondent filed the motion before the parties had ever appeared in Superior Court; the respondent did not file his appeal earlier because his attorney was on maternity leave when the



dispositional order was entered and there was a misunderstanding about the filing; the attorney for the mother involved in this case, and importantly, the attorney for the child assented to the respondent's motion; and the Superior Court noted that the parties preferred that the respondent's and the mother's related abuse and neglect cases be tried together.

*Gordon J. MacDonald, attorney general (Laura E. B. Lombardi, senior assistant attorney general, on the memorandum of law), for the State. Tanya L. Spony (on the brief) of Smith-Weiss Shepard, for the respondent.*

## Criminal Law

**State of New Hampshire v. Brian Eldridge, No. 2018-0551**  
**February 19, 2020**  
**Affirmed in part and vacated in part.**

- Whether the immunity afforded to a person who is the subject of a request for medical assistance under RSA 318-B:28-b applies to the offense of possession with intent to sell a controlled drug
- Whether the defendant was required to waive the statutory immunity provided in RSA 318-B:28-b before he could instruct the jury on the lesser included offense of possession
- Whether law enforcement's initial warrantless entry into the defendant's apartment was justified by the emergency aid exception to the warrant requirement

Police and emergency personnel were dispatched to the defendant's apartment in response to a 911 call reporting that the defendant may have overdosed, and as a result was unconscious and not breathing. At some point while the defendant was being treated, emergency personnel gave law enforcement some drug paraphernalia they had found. Law enforcement obtained a warrant to search the apartment during which they found a firearm, other deadly weapons, a significant quantity of fentanyl, and other paraphernalia indicating that defendant had intended to sell fentanyl. The defendant was convicted of being a felon in possession of a firearm, and the lesser-included offense of drug possession instead of possession with intent to sell a drug.

On appeal, the defendant first argued that RSA 318-B:28-b, which provides immunity from prosecution for drug possession to people who are the subject of a request for medical assistance related to a drug overdose, also applies to people charged with the greater offense of drug possession with intent to sell. The Supreme Court, however, agreed with the trial court, finding that the statute intentionally enumerated the offenses for which such immunity applies, and did not include a provision for possession with the intent to sell. Had the legislature desired the immunity to apply to possession with intent to sell, it would have explicitly enumerated it in the statute.

At trial, the defendant requested that the jury be instructed on both the charge for

possession with intent to sell and the lesser-included charge of possession. The trial court ruled that the defendant could offer the jury instruction on the lesser-included offense, but only if he waived the immunity for it under RSA 318-B:28-b. According to the trial court, the rationality of the jury process would be compromised if it instructed the jury on an offense for which the defendant was immunized.

The Supreme Court recognized that this is an issue of first impression in New Hampshire, and vacated the defendant's conviction for possession based on the statutory immunity for it. The Court relied on authority from a foreign jurisdiction when vacating the defendant's conviction, and held that a defendant is entitled to the benefit of a jury instruction on the lesser-included offense of simple possession and statutory immunity under RSA 318-B:28-b when: (1) a defendant is tried on the offense of possession of a controlled drug with intent to sell; (2) it is appropriate to the case to instruct the jury on the lesser-included offense of simple possession; and, (3) RSA 318-B:28-b applies to the situation.

Finally, the Supreme Court upheld the trial court's determination that law enforcement's entry into the defendant's apartment was justified under the emergency aid exception to the warrant requirement. The defendant did not dispute that there was an emergency in this case. Further, based on the 911 call, the police officers could have reasonably believed that their entry would be necessary to save the defendant's life by assisting in providing cardiopulmonary resuscitation, for example, even though medical personnel were also on scene. Evidence that the police officers did not carry Narcan and did not provide any medical treatment to the defendant did not prove that law enforcement was primarily motivated by an intent to search for a crime when entering the defendant's residence.

*Gordon J. MacDonald, attorney general (Danielle H. Sakowski, senior assistant attorney general, on the brief and orally), for the State. Christopher M. Johnson, chief appellate defender (on the brief and orally), for the defendant.*

**State of New Hampshire v. Paulson Papillon, No. 2018-0355**  
**February 13, 2020**  
**Affirmed.**

- Whether the defendant knowingly, intelligently, and voluntarily waived his right to counsel
- Whether the trial court admitted evidence in violation of New Hampshire Rule of Evidence 404(b) concerning his offer to facilitate a murder of a police informant in a similar manner to the offenses for which he was presently charged
- Whether the evidence was sufficient to support the defendant's convictions

The defendant was convicted of conspiracy to commit murder and as an accomplice to reckless second-degree murder associated with a "hit" he ordered on someone whom he suspected of snitching on his drug sales. The defendant appealed his convictions on the grounds that: (1) he did not knowingly, intelligently, and voluntarily waive his right to counsel when he asked to represent himself; (2) the trial court erred in admitting witness testimony that he had offered to kill another suspected police informant in a similar manner to the offenses for which had been charged; and (3) the evidence was not sufficient to support his convictions.

The facts of this case are very interesting, but too intensive to be stated fully here. The

## Superior Court Judicial Evaluation Notice

The Chief Justice of the Superior Court is currently in the process of conducting judicial evaluations in accordance with Supreme Court Rule 56 and RSA 490:32 and invites you to participate in this process. The following Justices are presently being evaluated:

Hon. David A. Anderson	Hillsborough County Superior Court-Northern District
Hon. Peter H. Bornstein	Grafton and Coos County Superior Courts
Hon. N. William Delker	Rockingham County Superior Court
Hon. Martin P. Honigberg	Rockingham County Superior Court
Hon. Lawrence A. MacLeod, Jr.	Grafton County Superior Court
Hon. Diane M. Nicolosi	Hillsborough County Superior Court-Northern District
Hon. Daniel I. St. Hilaire	Rockingham County Superior Court
Hon. Charles S. Temple	Hillsborough County Superior Court-Southern District
Hon. Brian T. Tucker	Sullivan and Merrimack County Superior Courts

An evaluation may be completed online at [www.courts.state.nh.us](http://www.courts.state.nh.us) until MAY 29, 2020. On the Judicial Branch website, look to the left side of the page under Resources and you will see a link for Judicial Performance Evaluations. Click on the Current Superior Court Evaluations link and choose the specific Judge you would like to evaluate. While responses will be shared with the judges being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous.

If you do not have access to the Internet or would prefer to have a hard copy of the evaluation mailed to you, please contact my office by calling (603) 271-2030 and request that one be mailed to you. As stated above, while responses will be shared with the Justices being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous. In fact, if you request a hard copy of the evaluation form, we ask that you do not sign the completed evaluation.

Your help with this evaluation process is invaluable and we greatly appreciate your taking the time to help us with this endeavor.

trial must have been interesting as well, particularly because after two days, the defendant asked the trial court for permission to represent himself. The trial court cautioned the defendant against self-representation, but after engaging in a colloquy with him, the trial court approved his request and appointed standby counsel for him. On appeal, the defendant first argued that he did not knowingly, intelligently, and voluntarily waive his right to counsel because the trial court failed to inquire into his ability to represent himself, which should have included inquiry into his education, training, legal experience, and mental health, among other things.

The New Hampshire Supreme Court rejected the defendant's argument, finding that no precise inquiry is required in a colloquy on a defendant's request to represent himself. It is sufficient that, by the totality of circumstances, the record reflects that the defendant was aware of the dangers and disadvantages of self-representation and made a knowing, intelligent, and voluntary waiver of his right to counsel. Contrary to the defendant's assertion, a criminal defendant's ability to represent himself has no bearing upon his competence to choose self-representation. A defendant has a constitutional right to represent himself, whether or not that representation will be to his detriment.

The Court then found that the testimony regarding the defendant's offer to kill another police informant unrelated to his case was admitted in error, but that the error was harmless. According to the Court, the trial court erred in concluding that this evidence was intrinsic to the offenses and therefore admissible. The Court found that the evidence was extrinsic because it was not necessary to complete the story of the defendant's conspiracy to murder or his liability as an accomplice to murder. In addition, the defendant's offer to kill a different police informant for the benefit of an acquaintance was not part of the same criminal episode as in this case, and it was not part of a sequence of events leading to the instant charge. As such, this evidence is governed by Rule 404(b) of the New Hampshire Rules of Evidence and should not have been admitted. Nevertheless, there was overwhelming evidence of the defendant's guilt as a co-conspirator and as an accomplice to the murder in this case, and therefore the evidence concerning the defendant's offer to kill another snitch was inconsequential. In a footnote, the Court observed that this case presents a rare instance of a harmless Rule 404(b) error.

The defendant raised multiple arguments based on the sufficiency of the evidence grounded in contractual principles for the conspiracy charge, and accomplice liability in general. The Supreme Court, however, found ample evidence of the defendant's guilt on both charges. The Court also explained that the defendant's conviction for conspiracy to commit murder was not logically inconsistent with his conviction as an accomplice to reckless second-degree murder. There was substantial evidence from which the jury could have rationally found that the defendant was guilty beyond a reasonable doubt as a conspirator and as an accomplice to reckless second-degree murder.

*Gordon J. MacDonald, attorney general (Peter Hinckley, senior assistant attorney general, on the brief and orally), for the State. Kelly E. Dowd (on the brief and orally) of the Law Offices of Kelly E. Dowd, for the defendant.*

## Family Law

**In the Matter of Sean Braunstein and Jericka Braunstein, No. 2019-0065**  
February 13, 2020  
*Affirmed.*

- Whether the petitioner's federal veterans'

disability benefits count as income for child support purposes

The petitioner asserted that his monthly federal veterans' disability benefits did not qualify for inclusion as income for child support purposes pursuant to federal law, which, according to the petitioner, preempted state law. In support of his argument, the petitioner cited a federal statute that provided, "payments of benefits . . . under any law administered by the Veterans' Administration . . . shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." 38 U.S.C. § 3101(a) (2012).

The trial court rejected the petitioner's argument, determining that veterans' and disability benefits are specifically enumerated in the statutory definition of income in RSA 458-C:2, IV, which is not preempted by federal law. In upholding the trial court's decision, the New Hampshire Supreme Court cited *Rose v. Arkansas State Police* (1986), in which the United States Supreme Court determined that federal law did not preclude a state court from treating a veteran's disability benefits as income for child support purposes. The Court recognized an exception in the context of child support to the statutory prohibition against attachment, levy, or seizure of a veteran's benefits because federal veterans' disability benefits are intended to support the veteran's family and not just the veteran.

*Sean Braunstein (on the brief), self-represented petitioner. Anthony Santoro (on the brief) of Granite State Legal Resources, for the respondent.*

## Professional Conduct

**Mesmer's Case, No. LD-2019-0001**  
February 21, 2020  
**Adopted the Professional Conduct Committee's Recommended Sanction.**

- Whether an attorney with sleep apnea was able to form the "knowing" state of mind necessary to commit a professional conduct violation
- Whether the attorney's sleep apnea should be a mitigating factor in determining his sanction for professional conduct violations

The respondent in this case made several misrepresentations to the court, failed to make timely filings, engaged in a pattern of neglect of his client, billed his client for services he did not perform, pressured his client into paying unreasonable fees, and regularly lied to the client over a period of nearly a year to give her the false impression that he was working hard for her, among other indiscretions. Opposing counsel made a referral regarding the respondent to the Attorney Discipline Office, and a hearing panel held an evidentiary hearing on the matter.

At the hearing, the respondent acknowledged violating Rules 1.1, 1.2, 1.3, 1.4, 1.5, 8.4(a), and 8.4(c) of the New Hampshire Rules of Professional Conduct, but disputed that he violated Rule 3.3(a), which proscribes knowingly making a false statement to a tribunal. The respondent contended that because sleep apnea severely impaired his judgment and memory, his false statements to the court were not made "knowingly." The hearing panel found that the respondent had violated all of the aforementioned Rules of Professional Conduct, explaining that even the respondent's medical expert testified that the link between the respondent's sleep apnea and his conduct was tenuous.

The Professional Conduct Committee (PCC) adopted the hearing panel's findings of fact and underscored extensive circumstantial evidence that the respondent "knowingly" made misrepresentations to the court. The

PCC found that the baseline sanction for the respondent's violation was disbarment, and after weighing both mitigating and aggravating factors relative to the respondent's conduct, recommended that the respondent be suspended for three years. The PCC recommended that eighteen months of the suspension be stayed provided that the respondent engage in no professional misconduct during the entire suspension period and pay for the costs of the investigation and prosecution of the matter.

The New Hampshire Supreme Court agreed with the PCC, finding that the respondent violated duties to the client, the public, the legal system, and the legal profession. The Court noted that the respondent's sleep apnea was a personal problem rather than a disability, and did not cause or negate his dishonesty to his client and the court. The Court, however, considered as mitigating factors the respondent's struggles with his health during the events at issue, the respondent's representations that he had successfully addressed his health problems after the matter, and that he was able to handle the serious responsibilities associated with the practice of law after addressing his health issues. A three-year suspension with eighteen months stayed is consistent with prior cases in which attorneys with no prior disciplinary history have been sanctioned for misconduct involving dishonesty. The Court adopted the PCC's recommendation accordingly.

*Sara S. Greene, disciplinary counsel (on the brief and orally), for the Attorney Discipline Office. Russell F. Hilliard (orally) and Brooke Lovett Shiloh (on the brief) of Upton & Hatfield, for the respondent.*

## Real Property

**Town of Dunbarton v. Michael Guiney, & a., No. 2018-0591**  
February 5, 2020  
**Reversed in part, vacated in part, and affirmed in part.**

- Whether an area of land had become part of a public highway by prescription
- Whether a property line was fixed by the doctrine of boundary by acquiescence
- Whether the appellant was estopped from denying a right of way by virtue of the doctrine of recitals in instruments

Michael Guiney appealed a trial court's determination that part of his land (the "disputed area") had become a public highway by prescription, that certain boundary lines existed on his land pursuant to the doctrine of boundary by acquiescence, and that appellees had a fifty-foot wide right of way (the "ROW") over his land pursuant to the doctrine of recitals in instruments. This is a fact-intensive case with detailed evidence relative to the land use that

anyone interested in the subject of real property should read.

The Court first reversed the trial court's ruling that the disputed area became part of a public highway by prescription. To establish a highway by prescription, it must appear that the general public used the disputed area continuously without interruption for a period of twenty years prior to 1968 before the pertinent law changed. The public use must also have been adverse, meaning that the public used the area under a claim of right without the owner's permission.

The maps the appellees presented were independently sufficient to support an inference of public use of the disputed area during the prescriptive period, but there was no secondary indicia, such as stone walls lining a way, from which the Court could infer that the public used the land under a claim of right without the owner's permission. Moreover, the town's act of incidentally plowing the disputed area for the purpose of finding a safe turnaround location was not performed under a claim of right that would make the use adverse. Because the public use of the area was not adverse, the Court vacated the trial court's finding that the public road continued onto the disputed area.

The Court next upheld the trial court's sua sponte finding that Guiney's property line with appellees was established by the doctrine of boundary by acquiescence. Boundaries may be established by acquiescence where parties have recognized a certain boundary as being true and have occupied their respective lots accordingly for at least twenty years. The Court found abundant evidence of boundary acquiescence in this case, including witness testimony about the landowners' prior knowledge of the boundary line, Guiney's acquiescent behavior, five officially recorded affirmations of the boundary lines, and the occupation and adherence to the respective property line for over thirty years.

Finally, the Court rejected the trial court's ruling that Guiney was estopped from denying the existence of the ROW by the doctrine of recitals in instruments because his deed has notice of the ROW. Estoppel by instruments requires a showing of detrimental reliance, and while the appellees relied on the ROW to access their property, there was no evidence that the appellees relied on the ROW being fifty-foot wide as they claimed. Judicial estoppel, however, did apply in this instance. The Court held that Guiney was judicially estopped from denying the existence of a fifty-foot ROW as claimed in all areas except the disputed area by virtue of positions he took in prior litigation.

*Steven M. Whitley (on the memorandum of law and orally) of Mitchell Municipal Group, for the Town. Michael J. Tierney (on the brief and orally) of Wadleigh, Starr & Peters, for the appellees. Patricia M. Panciocco (on the brief and orally) of Panciocco Law, for appellant.*

Need to schedule a Mediation?

FEBRUARY 2019

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21		23
24	25	26	27	28		

Fast-track scheduling at [www.NHMediators.org](http://www.NHMediators.org)

## Supreme Court Orders

### LD-2019-0009, *In the Matter of Mark S. Moeller, Esquire*

Attorney Mark S. Moeller's assented-to motion to vacate interim suspension is granted. Accordingly, the interim suspension of Attorney Moeller, as ordered by the court on September 18, 2019, is vacated, effective immediately.

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

DATE: February 13, 2020

ATTEST: Timothy A. Gudas, Clerk  
Supreme Court of New Hampshire

◆  
In accordance with Rule 58.2(A), the court appoints Circuit Court Judge James Leary, a current member of the Lawyers Assistance Program (LAP) Commission, to serve as chair of the LAP Commission upon the expiration of the term of Attorney Russell F. Hilliard as member and chair on March 1, 2020. In accordance with Rule 58.2(A) and (B), the court appoints Attorney Sean R. List to the LAP Commission, to serve a three-year term commencing March 2, 2020 and expiring March 1, 2023.

Issued: February 13, 2020

ATTEST: Timothy A. Gudas, Clerk  
Supreme Court of New Hampshire

◆  
In accordance with Rule 58.2(A), the court appoints Circuit Court Judge James Leary, a current member of the Lawyers Assistance Program (LAP) Commission, to serve as chair of the LAP Commission upon the expiration of the term of Attorney Russell F. Hilliard as member and chair on March 1, 2020. In accordance with Rule 58.2(A) and (B), the court appoints Attorney Sean R. List to the LAP Commission, to serve a three-year term commencing March 2, 2020 and expiring March 1, 2023.

Issued: February 13, 2020

ATTEST: Timothy A. Gudas, 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.

### Court Fees -- Reissued Summons

*(These amendments clarify that the \$25 fee for reissued orders of notice in the*

*district and probate divisions also applies to reissued summons and correct a typographical error relating to the pro hac vice application fee.)*

1. Amend Circuit Court – District Division Rule 1.28(I)(B), as set forth in Appendix A.

2. Amend Circuit Court – Probate Division Rule 169(IV), as set forth in Appendix B.

### Effective Date

The amendments shall take effect on February 24, 2020.

Date: February 20, 2020

ATTEST: Timothy A. Gudas, Clerk  
Supreme Court of New Hampshire

◆  
Pursuant to Supreme Court Rule 37(4) (a), the Supreme Court appoints the following members to the Hearings Committee of the Attorney Discipline System:  
Ms. Sarah J. Claus  
Ms. Elizabeth C. Courant  
Ms. Virginia A. Joslyn  
Attorney Mark T. Knights

These members are appointed to serve three-year terms commencing on April 1, 2020, and expiring on March 31, 2023.

Issued: March 10, 2020

ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

### ADM-2019-0034, *In the Matter of Paul P. Nicolai, Esquire*

On December 17, 2019, Attorney Paul P. Nicolai was suspended from the practice of law for his failure to complete an annual trust accounting certification, as required by Supreme Court Rule 50-A, and for his failure to respond to show-cause notices and/or appear at show-cause hearings on October 31, 2019, and on November 21, 2019.

Attorney Nicolai has now completed the annual trust accounting certification and paid all delinquency fees. He is reinstated to the practice of law in New Hampshire, effective immediately.

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

ISSUED: March 10, 2020

ATTEST: Timothy A. Gudas, Clerk  
Supreme Court of New Hampshire

## US District Court Decision Listing

### January and February 2020

\* Published

### CLASS ACTION; PRELIMINARY APPROVAL OF SETTLEMENT

01/29/2020 Rapuano, et al. v. Trustees of Dartmouth College  
Case No. 18-cv-1070-LM, Opinion No. 2020 DNH 013

Plaintiffs filed this class action on behalf of themselves and other current and former female graduate and undergraduate students in the Psychological and Brain Sciences Department at Dartmouth College. They bring claims under Title IX and New Hampshire common law, alleging that Dartmouth was aware that three professors in that Department created a sexually hostile education environment for female students and that Dartmouth took inadequate action to protect the students or stop the professors' misconduct. The parties reached a proposed class action settlement agreement and submitted it to the court for preliminary approval under Federal Rule of Civil Procedure 23(e). The court found that it would likely be able to certify the proposed class for the purposes of settlement under Rule 23(a) and Rule 23(b)(3) and that it would likely find, at the final approval stage, that the proposed settlement is fair, adequate, and reasonable as required by Rule 23(e). Consequently, the court granted plaintiffs' motion for preliminary approval of the class action settlement, ordered class counsel to direct notice of the class action settlement to the class, and scheduled a final approval hearing. 43 pages. Chief Judge Landya McCafferty.

### EMPLOYMENT LAW

2/28/20 Reyes-Caparros v. Barr

Case No. 15-cv-2229-JNL (PR), Opinion No. 2019 DNH 029

After a three-week trial resulting in a plaintiff's verdict in this employment action, the plaintiff sought equitable remedies in the form of front pay and back pay for an alleged constructive discharge. The court denied this request for relief in light of the plaintiff's failure to bring a constructive discharge claim separate from his claim for retaliation under Title VII and, further, because the plaintiff failed to prove that he was constructively discharged. 29 pages. Judge Joseph N. Laplante.

### EMTALA; MEDICAL MALPRACTICE

01/27/20 Foord v. Capital Region Health Care Corp., et al.  
Case No. 17-cv-596-AJ, Opinion No. 2020 DNH 011

Plaintiff brought action under the Emergency Medical Treatment and Active Labor Act (EMTALA) and state law based on allegedly inadequate medical care provided to his deceased wife. The defendant hospital moved for summary judgment. The court granted the defendant's motion, finding that the hospital had provided appropriate screening and had not failed to stabilize the patient before discharging her. The court also declined to exercise supplemental jurisdiction over the remaining state law claims. 18 pages. Magistrate Judge Andrea K. Johnstone.

### EXHAUSTION OF ADMINISTRATIVE REMEDIES UNDER NHLAD

01/27/20 Barrows v. The State Employees' Association of New Hampshire  
Case No. 19-cv-1048-LM, Opinion No. 2020 DNH 012  
Plaintiff sued her former employers for

## US Bankruptcy Court Opinion Summary

Note: the full text of the opinion will be available on the Bankruptcy Court's website at [www.nhb.uscourts.gov](http://www.nhb.uscourts.gov).

*In re Lally*, 2020 BNH 001, issued February 28, 2020 (Harwood, C.J.) (holding that under 11 U.S.C. § 330(a)(7), the graduated percentage commission of § 326 is presumptively reasonable compensation for the chapter 7 trustee; commission base does not include distributions of property that is not property of the estate; in reviewing fee applications for counsel to trustees, court will take particular care to ensure that counsel does not seek reimbursement for non-delegable tasks of the chapter 7 trustee.

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gender discrimination and harassment under both Title VII and New Hampshire's Law Against Discrimination. Defendants moved to dismiss plaintiff's state-law claims only, for failure to exhaust administrative remedies. Defendants specifically argued that plaintiff had not timely filed her charge of discrimination with the appropriate state agency. The court found that it was not clear on the face of plaintiff's complaint that plaintiff's charge of discrimination had been untimely filed, and on that basis denied the motion to dismiss. 7 pages. Judge Landya McCafferty.

#### HABEAS CORPUS

2/19/20 Sarmiento v. Barr, et al.  
Case No. 20-cv-251-PB, Opinion No. 2020 DNH 024

Petitioner filed a writ of habeas corpus challenging his detention by Immigration and Customs Enforcement ("ICE") at the Strafford County Department of Corrections ("SCDC"). The court concluded that the petition stated facially valid claims and ordered service to be effected upon the respondents. The court further noted that its earlier order that had (1) scheduled a status conference, (2) specified a response deadline for the federal respondents, (3) deferred SCDC's duty to respond, and (4) prohibited the transport of the petitioner outside of the court's jurisdiction remains in full effect. Respondents were directed to provide the court with at least 48 hours'

notice of any scheduled removal or transfer of petitioner out of the court's jurisdiction. 3 pages. Judge Paul Barbadoro.

#### INTELLECTUAL PROPERTY; COPYRIGHT AND TRADEMARK INFRINGEMENT

01/06/2020 D'Pergo Custom Guitars, Inc. v. Sweetwater Sound, Inc.  
Case No. 17-cv-747-LM, Opinion No. 2020 DNH 003

D'Pergo alleges that Sweetwater used a copyrighted photograph of D'Pergo's trademarked guitar necks and headstock on Sweetwater's website to promote and sell Sweetwater products. Based on these allegations, D'Pergo brings claims of copyright infringement, trademark infringement, and violation of the New Hampshire Consumer Protection Act ("CPA"). Sweetwater moved for summary judgment on all D'Pergo's claims and D'Pergo moved for summary judgment on its copyright infringement claim.

The court granted summary judgment to Sweetwater on the trademark infringement claims. It reasoned that D'Pergo's guitar headstock design was not a protectable "trademark," but rather a "trade dress" and D'Pergo had previously waived any claim based on trade dress infringement. The court otherwise denied Sweetwater's motion for summary judgment. It rejected Sweetwater's argument that the CPA claims

should be dismissed because the trademark infringement claims were dismissed. The court explained that even though Sweetwater's conduct did not amount to trademark infringement, it might still violate the CPA because that statute sweeps more broadly than the Lanham Act. Finally, as to the copyright infringement claim, the court denied Sweetwater's motion for summary judgment and granted D'Pergo's cross-motion. It found that the undisputed record established Sweetwater's liability for copyright infringement and that the question of whether and to what extent D'Pergo is entitled to damages would be left for the jury. 20 pages. Chief Judge Landya McCafferty.

#### SOCIAL SECURITY

2/10/20 Crowley v. Saul  
Case No. 19-cv-560-JL, Opinion No 2020 DNH 018

Claimant appealed the Social Security Administration's denial of his applications for a period of disability and disability insurance benefits. He argued that the ALJ erred by concluding that he retained the residual functional capacity to perform a limited range of light work. The court found no merit in claimant's arguments and denied his motion to reverse. Specifically, the court concluded that the ALJ supportably discounted the opinions of claimant's treating providers, supportably gave substantial weight to the opinion of a state agency physician, properly evaluated claimant's

subjective complaints, and did not misconstrue evidence in the record. 24 pages. Judge Joseph Laplante.

2/20/20 Giles v. Saul  
Case No. 17-cv-659-PB, Opinion No. 2020 DNH 025

Counsel for claimant filed a motion for attorney's fees under 42 U.S.C. § 406(b) ("Section 406(b)") following his successful representation of the claimant. The Commissioner of the Social Security Administration ("SSA") filed a reply, noting (1) that the fee agreement upon which counsel based his claim for fees was similar to an agreement that the court had, in another case, found to provide no basis for awarding fees under Section 406(b); and (2) counsel's reported hours and hourly rates differed substantially from the hours and rates he had reported earlier to the SSA when seeking payment under the Equal Access to Justice Act. The court determined that the fee agreement did not authorize the award of attorney's fees under Section 406(b), but that counsel was nevertheless entitled to fees under the principles expressed in *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002). Because counsel amended his reported hours and rates to conform with the earlier reported figures, the court found it unnecessary to address the discrepancy. 13 pages. Judge Paul Barbadoro.

## Classifieds

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  - Understand and evaluate complex coverage issues
  - Implement and integrate those skills to impact the course of litigation

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

**POSITIONS AVAILABLE**

**ASSOCIATE ATTORNEY** – McDonald & Kanyuk, PLLC, with offices in Concord, New Hampshire and Wellesley, Massachusetts is currently seeking a full time associate attorney. The candidate must be willing to spend 60% of his or her time in the Concord, New Hampshire office. The ideal candidate should have at least 2 years of experience in trusts and estates law, strong writing skills, a desire to learn advanced estate and tax planning techniques and must be admitted to the Bar in NH (or eligible to waive in or willing to take the Bar in NH). Bar license in MA is a plus but not required. The successful candidate will work with inbound trusts looking to take advantage of NH's progressive Trust Code and the opportunities that it and its favorable trust income tax environment creates. Please contact Laurie McDonald, Office Manager at [lmcdonald@mckan.com](mailto:lmcdonald@mckan.com).

**LITIGATION ASSOCIATE:** Alfano Law Office, PLLC, seeks a litigation associate with 3+ years' experience to join our practice in Concord, NH. Please send a cover letter and resume to [Paul@alfanolawoffice.com](mailto:Paul@alfanolawoffice.com).

**ASSOCIATE ATTORNEY** – Successful family law firm seeks self-motivated, organized, energetic individual for dynamic associate attorney level position in expanding family law practice located in the north end of Manchester, NH. Successful candidate must possess strong organizational and word processing skills as well as be a team oriented "people person" comfortable interacting with a wide variety of clients and situations. Some experience is a plus, but willing to train the right person interested in helping individuals with all of their family law needs. Please forward your resume, writing sample, references and salary requirements to Dorothy Darby, Office Manager, [Dorothy@shaunnabrownelaw.com](mailto:Dorothy@shaunnabrownelaw.com), The Law Office of Shauna L. Browne, PLLC, 102 Bay Street, Manchester, NH 03104.

**ASSOCIATE ATTORNEY** – Maggiotto, Friedman, Feeney & Fraas, PLLC, is currently seeking a full time Associate Attorney for their office in Concord, NH. The ideal candidate should have 3-5 years of litigation experience including depositions, motion practice, and case file management. Must be admitted to the bar in NH, and either ME or MA. Please send resume and references to [dfeeney@mfflaw.com](mailto:dfeeney@mfflaw.com).

**ASSOCIATE ATTORNEY** – Donahue, Tucker & Ciandella, one of New Hampshire's leading law firms, with offices in Exeter, Meredith & Portsmouth, NH is currently seeking a full time Associate Attorney. The ideal candidate will have a minimum of 1-year 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, writing sample and references to Amy Bertolino at [abertolino@dtclawyers.com](mailto:abertolino@dtclawyers.com).

**LITIGATION ASSOCIATE** – Patch & FitzGerald seeks an energetic, organized litigation associate to join a seasoned team of practitioners. The successful candidate will have 5+ years of experience in workers compensation and/or personal injury work, be a member in good standing of the NH bar and have excellent interpersonal skills. Statewide travel required. Excellent salary and benefits package, flex time during summer. Founded in 1997, Patch & FitzGerald is a statewide boutique specialty firm focusing on workers compensation and personal injury law. For confidential consideration, please direct resumes to Diana Gauthier ([dgauthier@patchfitz.com](mailto:dgauthier@patchfitz.com)).

**ASSOCIATE ATTORNEY** - Part time. Small Manchester law firm looking for associate for criminal defense. Job entails phone intake through case completion. Travel throughout the State. Must have excellent client relations including ability to retain clients. Email interest & resume to: [AttorneyNH@gmail.com](mailto:AttorneyNH@gmail.com).

**PARALEGAL** – Busy Manchester law firm is accepting resumes for a family law paralegal. Candidates MUST have prior NH family law experience and be organized, detail-oriented, and able to work in a fast-paced environment. We offer a competitive salary and benefits package. Please forward a resume and salary requirements to: Rebecca F. Brockelman, Esq., Clark Law PLLC, 694 Pine St., Manchester, NH 03104 or [rebecca@cindycklaw.com](mailto:rebecca@cindycklaw.com).

**LEGAL ASSISTANT** – Casassa Law Office of Hampton, New Hampshire is seeking to fill a full-time legal assistant position. Applicants should possess excellent word processing skills. Attention to detail is a must. Salary based on experience. Please send resume to [rcasassa@casassalegal.com](mailto:rcasassa@casassalegal.com).

**PARALEGAL** – An excellent opportunity awaits a paralegal eager to work in the area of family law. We are searching for a candidate with experience in this field who is looking to work with our team of attorneys who provide quality representation to our clients. If you have a background or interest in divorce, parenting and visitation plans, alimony, child support, grandparents' rights, or other areas of family law practice, we may be a good fit for you. Join our dedicated team and help continue our tradition of providing meaningful and effective representation to our clients. Qualified candidates please send a resume and writing sample (i.e. Pleading, Motion or other family law related document) to [mrousseau@rousseau-law.com](mailto:mrousseau@rousseau-law.com).

**SEEKING PART-TIME PARALEGAL** – The Ward Law Group is seeking a part-time paralegal knowledgeable in the fields of workers' compensation and personal injury claims for our Manchester, New Hampshire office. The hours are flexible and a minimum of two years of experience is required. The Ward Law Group is a growing firm based in Manchester, New Hampshire. The position offers competitive compensation commensurate with qualifications. Qualified candidates please send a cover letter and resume to: [ljustzak@wardlawnh.com](mailto:ljustzak@wardlawnh.com).

## 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](http://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](mailto:l.roy@clrm.com).



**LITIGATION ATTORNEY** – Hage Hodes PA is expanding and is seeking a full-time litigation attorney to add to our litigation practice group. Applicants must be admitted to the New Hampshire Bar or eligible for immediate admission. The ideal candidate will have strong written and oral advocacy skills. We offer a competitive salary and benefits package commensurate with experience.

Please submit cover letter, writing sample, and resume by e-mail to [HR@hagehodes.com](mailto:HR@hagehodes.com). All inquiries kept confidential.

## CORPORATE ATTORNEY

Orr & Reno, PA is seeking a corporate attorney with 1-5 years of relevant experience to join our growing corporate practice team. The ideal candidate will have at least 1 year of transactional and corporate law experience, a strong academic background, and a demonstrated commitment to living and practicing in Northern New England. Orr & Reno offers a collegial and team-oriented working environment with competitive compensation and benefits. Please send a cover letter, resume, transcript, and writing sample to:

Orr & Reno PA  
PO Box 3550  
Concord, NH 03302  
Email: [resumes@orr-reno.com](mailto:resumes@orr-reno.com)

## Corporate Associate

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

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



CLASSIFIEDS continued on page 42

Rockingham County

### ASSISTANT COUNTY ATTORNEY

**SCOPE OF POSITION:**  
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.
- Presents investigations and cases to the Grand Jury

**REQUIRED EDUCATION AND EXPERIENCE:**

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

**SALARY RANGE:** \$2,261.60 - \$3,279.20 Dependent upon experience  
**STATUS:** Full Time / Exempt  
**SUBMISSION REQUIREMENTS:**  
 Employment application and resume required.  
 Apply online: [Careers@co.rockingham.nh.us](mailto:Careers@co.rockingham.nh.us)  
 Walk-in / Mail Applications: 111 North Rd, Brentwood, NH 03833  
*Equal employment Opportunity*

## RATH YOUNG PIGNATELLI

### TAX AND TRANSACTIONAL ATTORNEY

Rath, Young and Pignatelli, P.C., a mid-sized general practice law firm in Concord, New Hampshire, is seeking an associate with 2-6 years of federal tax and transactional experience to join our growing national practice. The associate hired will become part of a team handling a broad range of transactional matters, including debt and equity financings, mergers and acquisitions, and tax structuring. Experience with renewable energy projects is a plus. The ideal candidate will possess excellent academic credentials and have significant transactional experience with a large national or regional law firm. This is a rare opportunity to work with a team of experienced tax and transactional lawyers on transactions throughout the United States, all while living in a family-friendly community an hour from both city life in Boston and skiing and hiking in the White Mountains. Send resume, letter

[www.rathlaw.com](http://www.rathlaw.com)

Concord  
(603) 226-2600

Nashua  
(603) 889-9952

Boston, MA  
(617) 523-8080

Montpelier, VT.  
(802) 229-8050



## Associate Manchester, NH Office

PRIMMER PIPER EGGLESTON & CRAMER PC, a full service law firm with offices in Vermont, New Hampshire, and D.C., seeks an attorney to join its business law/real estate team in our Manchester, NH, office.

Qualified candidates will have 2-3 years' experience with business law and real estate matters. This position requires strong academic and excellent research, writing and analytical skills.

**Job Type:** Full-time

**Experience:**

- 2-3 years' experience with business law and real estate matters (Required)
- Experience with Microsoft Office Suite (Required)

**Benefits offered:**

- Paid time off
- Health insurance
- Parental leave
- Dental insurance
- Healthcare/dependent care flexible spending or reimbursement accounts
- Other types of insurance
- Retirement benefits or accounts

We offer a competitive salary commensurate with demonstrated skills and experience, and a great work environment. Qualified candidates may submit letter of interest, resume and writing sample to [careers@primmer.com](mailto:careers@primmer.com). All inquiries are held in the strictest confidence.



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

Alfano Law Office seeks an experienced, Concord area 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:

[Paul@alfanolawoffice.com](mailto:Paul@alfanolawoffice.com)  
603-226-1188

## Arthur G. Greene CONSULTING, LLC

supporting & advising the legal community

### Litigation Paralegal Position in Methuen

Personal injury law firm seeks an experienced paralegal with excellent communication and organizational skills. Will be responsible for case preparation and litigation, including client contact, medical record reviews, discovery, and trial preparation.

Submit resumes to the firm's consultant:

Kathy Fortin at [kwf@arthurgreene.com](mailto:kwf@arthurgreene.com) or inquire by calling the consulting office in Bedford, NH at 603.471.0606.

## NORMANDIN, CHENEY & O'NEIL, PLLC Help Wanted for Busy Law Office:

Grab this exciting opportunity to join our team! **Legal Secretary/Paralegal** wanted for fast paced law firm. Both full and part-time candidates will be considered. Position requires excellent computer, communication, and organizational skills, attention to detail, and ability to assume responsibility. Education and/or legal experience in personal injury litigation and workers' compensation are a plus. Competitive salary and benefits available for full-time positions.

Qualified candidates should forward resume to [aogden@nco-law.com](mailto:aogden@nco-law.com), or mail to:

Normandin, Cheney & O'Neil, Attn: Employment,  
P.O. Box 575 Laconia, NH 03247

## DCYF – Attorney II & Legal Secretary II Positions

In the latest State Budget, the N.H. Division for Children, Youth and Families' Legal Services received additional attorney and legal secretary positions to support the important work done by DCYF. Under the supervision of the N.H. Department of Justice, DCYF Legal Services has openings for attorney and legal secretary positions:

**ATTORNEY II positions - Salary Range \$57,954.00-\$68,952.00:** #44561 (Keene); #44560 (Concord); #40092 & 43485 (Nashua); #11677 (Laconia); #40091 (Conway).

**LEGAL SECRETARY II positions - Salary Range \$29,152.50-\$33,871.50:** #44559 (Rochester & Portsmouth); #44558 (Littleton & Berlin); #44557 (Nashua); #44556 (Keene).

Duties and responsibilities for the Attorney II and Legal Secretary II positions can be found at: <http://das.nh.gov/jobsearch/employment.aspx>.

A paper application may be sent to: New Hampshire Dept. of Health and Human Services, 129 Pleasant Street, Concord, NH 03301. **Please reference the position number that you are applying for in your application.**

For questions about these positions please contact Attorney Deanna Baker, DCYF Legal Director at (603) 271-1220.

## RATH YOUNG PIGNATELLI

### ENVIRONMENTAL ATTORNEY

Rath, Young and Pignatelli, P.C., a mid-sized general practice law firm in Concord, New Hampshire, is seeking an attorney with 10+ years of experience in environmental and administrative law, including environmental due diligence, compliance, permits and approvals, and administrative advocacy. The candidate should have substantial experience with administrative environmental actions brought by State and federal agencies. Experience with Clean Water Act and NPDES permits a plus. Send resume, letter of interest and writing sample to Diane Vlahos, Director of Operations, at [djv@rathlaw.com](mailto:djv@rathlaw.com).

[www.rathlaw.com](http://www.rathlaw.com)

Concord  
(603) 226-2600

Nashua  
(603) 889-9952

Boston, MA  
(617) 523-8080

Montpelier, VT.  
(802) 229-8050



## North Conway NEW HAMPSHIRE

Cooper Cargill Chant, northern NH's largest law firm, serving clients in New Hampshire and Maine, is looking for two attorneys to join our vibrant firm. Our firm distinguishes itself by providing sophisticated counsel to a growing local, regional, and national client base, while balancing lifestyle opportunities afforded by our location in the White Mountains. Our lawyers are active members of the communities in which we live, serving on numerous state and local Bar Associations, municipal, and non-profit Boards. We offer a competitive compensation and benefits package.

**CORPORATE ATTORNEY:** Cooper Cargill Chant seeks an associate attorney with 1-3 years of corporate and transactional experience to provide counsel to closely held businesses, lenders, and the resort community. The ideal candidate will have strong credentials and an ability to work effectively with clients, colleagues, and the community.

**LITIGATION ATTORNEY:** Cooper Cargill Chant seeks an associate attorney with 0-3 years experience to provide counsel to businesses and individuals in diverse practice areas, including commercial, land use, probate, domestic and personal injury litigation. Ideal candidate will possess strong credentials, an ability to work effectively with clients, colleagues, and the community, and work experience evidencing a strong interest in litigation.

Please send letter of interest and resume to Hiring Partner  
Leslie Leonard at [lleonard@coopercargillchant.com](mailto:lleonard@coopercargillchant.com).  
For further information, visit [www.coopercargillchant.com](http://www.coopercargillchant.com)

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE  
www.nhb.uscourts.gov

CASE ADMINISTRATOR  
2020-01B



The United States Bankruptcy Court for the District of New Hampshire is accepting applications for a full-time, permanent Case Administrator. Case Administrators perform various functions and are primarily responsible for maintaining and processing case information and managing the progression of cases from opening to final disposition in accordance with approved internal controls, procedures and rules. Full benefits are available with a starting salary range of CPS CL 24 \$42,645 to \$69,371, depending upon qualifications and experience, with promotion potential to CPS CL 26. Qualified applicants should submit a letter of interest, a resume, and a salary history for the past ten years in one PDF document to Thomas Van Beaver at: [tom\\_vanbeaver@nhd.uscourts.gov](mailto:tom_vanbeaver@nhd.uscourts.gov). Position is open until filled. Preference will be given to applications received by Friday, March 27, 2020. Applicants deemed most qualified will be invited to participate in a personal interview at their own expense. EOE.

For additional information on the position and the application process please visit: <https://www.nhb.uscourts.gov/employment-opportunities>

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE  
www.nhb.uscourts.gov

ADMINISTRATIVE SUPPORT CLERK  
2020-02B



The United States Bankruptcy Court for the District of New Hampshire is accepting applications for a full-time, permanent Administrative Support Clerk. This position provides a variety of administrative support services to the Office of the Clerk of Court including but not limited to clerical duties, filing, copying, research, special projects as assigned, data entry, records management, inventory, procurement, processing financial transactions, and creating and assembling a variety of reports. Full benefits are available with a starting salary range of CPS CL 24 \$42,645 to \$69,371, depending upon qualifications and experience, with promotion potential to CPS CL 26. Qualified applicants should submit a letter of interest, a resume, and a salary history for the past ten years in one PDF document to Thomas Van Beaver at: [tom\\_vanbeaver@nhd.uscourts.gov](mailto:tom_vanbeaver@nhd.uscourts.gov). Position is open until filled. Preference will be given to applications received by Friday, March 27, 2020. Applicants deemed most qualified will be invited to participate in a personal interview at their own expense. EOE.

For additional information on the position and the application process please visit: <https://www.nhb.uscourts.gov/employment-opportunities>

DIRECTOR FOR SPORTS BETTING  
ADMINISTRATOR IV - POSITION # 44598

The New Hampshire Lottery Commission has an opening for a full-time position to administer and direct the Sports Betting Programs.

**Duties Include:** Overseeing the sports betting initiative by ensuring compliance with financial goals and conformance with applicable laws and regulations. Actively reviews and manages contract obligations are being fulfilled; resolves disputes relating to the sports betting agent and assesses, evaluates, and makes recommendations. Serves as the liaison for all areas of sports wagering, including local and state elected officials. Acts as an agency resource in viewing contracts, legal support, testifying, and interpreting laws.

**Requirements:** Master's or Law degree and

eight years' experience in accounting, law, law enforcement or auditing work, five years of which must have been in a management level position involving administrative or supervisory duties concerned with program administration, or Bachelor's degree and nine years' experience in the in accounting, law, law enforcement or auditing work; four years of which must have been in a management level position involving administrative. How to apply: You can apply on-line by clicking on the following link: <http-s://www.nh.gov/glance/working.htm>. This position is open until filled. EOE

For further information on the responsibilities for this position, contact Sharda Rao, HR Coordinator II at (603) 271-7132 or email @ [Sharda.Rao@lottery.nh.gov](mailto:Sharda.Rao@lottery.nh.gov).

HEARINGS OFFICER

The N.H. Department of Labor, Hearings Bureau seeks a part time Hearings Officer. This position is conducts adjudicatory hearings and renders decisions in accordance with State laws and regulations for the Labor Department located Hugh Gallon Office Park..

**Duties include:** As a representative of the Department, will conduct formal hearings, collect evidence, and evaluate, analyze and write a decision based on the claim, facts, and the law.

**Requirements:** Bachelor's Degree from a recognized college with major in pre-law, economics, business administration or public administration, a driver's license and five years' experience in the conducting hearings, preferably in the area of Workers' Compensation, Wage and Hour, Managed care, or Self-Insurance.

**How to apply:** Please go to the following website to submit your application electronically through NH FIRST: <http://das.nh.gov/jobsearch/employment.aspx>. Please reference the position number that you are applying for: 18085 and 19279. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

For questions about these positions please contact Sarah Fuller, Hearings Administrator at (603) 419-9092.

Classifieds from page 40

**PARALEGAL** – Alfano Law Office, PLLC, seeks an experienced paralegal to assist with our real estate, estate planning and litigation practices. Please send a cover letter and resume to [Paul@alfanolawoffice.com](mailto:Paul@alfanolawoffice.com).

**OFFICE ADMINISTRATOR/OFFICE MANAGER** – Cook, Little, Rosenblatt & Manson is seeking an office administrator with law office or professional services firm experience preferred. The duties include overseeing all aspects of the operation of the firm including payroll, accounts receivable, accounts payable, IT services management, human resources and benefits, marketing and building services. Hours and salary are negotiable. Please send your resume to Lisa Roy at Cook, Little, Rosenblatt & Manson, p.l.l.c., 1000 Elm Street, 20th Floor, Manchester, NH 03101 or [l.roy@clrm.com](mailto:l.roy@clrm.com).

**PROSECUTOR/HEARINGS EXAMINER** – Labor Grade 31. Job ID #17474. Salary Range: \$65,949-\$79,170. Typical Starting Salary Not to Exceed Step 4, \$75,601. The Department of Safety is seeking a NH admitted attorney to serve as a full time Prosecutor for the Office of Commissioner – Hearings Bureau based out of the Concord office. This candidate will prosecute DWI cases for the State Police in the Troop F court region. This is a grant position subject to continued funding. Minimum qualifications: Member of the NH Bar and five years' experience as an attorney involved with criminal/administrative law. To submit your application go to: <http://das.nh.gov/jobsearch/employment.aspx>.

REQUEST FOR PROPOSALS

**LOT 2020-03 LEGAL SERVICES - New Hampshire Lottery Commission/Tri-State Lotto Commission. Request for Proposal for Legal Consulting Services Issued March 9, 2020.** The New Hampshire Lottery Commission ("NHLC") and Tri-State Lotto Commission ("TSLC"), in partnership with the Department of Justice ("DOJ") is soliciting proposals from qualified intellectual property attorneys and/or law firms ("Proposers") for assistance and counsel by a legal consultant(s) that possesses extensive experience in patents, copyright and trademark matters. Litigation support in those areas is desirable. Proposals must be submitted to the lottery no later than 4:00 pm April 24, 2020. The RFP may be found at: [https://nhlottery.com/Files/PDFs/Legal\\_Consulting\\_Services\\_2020.aspx](https://nhlottery.com/Files/PDFs/Legal_Consulting_Services_2020.aspx).

OFFICE SPACE

**MANCHESTER:** Solo or satellite offices near downtown courts, shared reception, conference room, furnishings, parking and utilities. [rj911@myfairpoint.net](mailto:rj911@myfairpoint.net).

**MANCHESTER LAW BUILDING:** 1-3 Offices in shared legal environment. Wi-Fi, referrals, etc. available. Budget price based on need. On-site parking and walking distance to courts. Contact Anna at 603-624-5566 or [aalexandre@nhattorney.com](mailto:aalexandre@nhattorney.com).

Have you heard the latest...?

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Landlocked?

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Who Owns It?



Paul J. Alfano  
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[paul@alfanolawoffice.com](mailto:paul@alfanolawoffice.com)

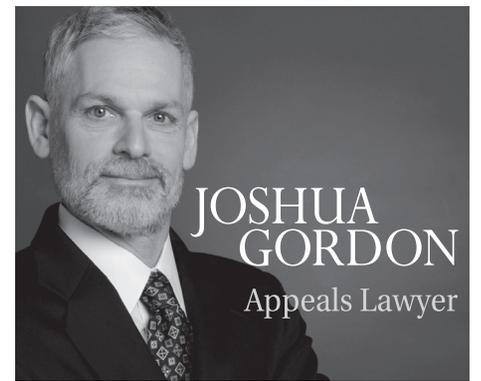
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Caroline R. Lefebure, ESQ  
(603) 715-2824

[mrousseau@rousseauawnh.com](mailto:mrousseau@rousseauawnh.com)  
[www.rousseauawnh.com](http://www.rousseauawnh.com)

1 Horseshoe Pond Lane, Concord, NH 03301

Doreen Connor

[dconnor@primmer.com](mailto:dconnor@primmer.com)

Member of  
American  
Academy  
of Appellate  
Lawyers

603.626.3304



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ATTORNEYS  
AT LAW

Earning Capacity Evaluations  
Life Care Plans



RSA  
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# Continuing Legal Education GUIDE

March  
2020

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

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

## Calendar Overview

### MARCH

**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

**LIVE WEBCAST**  
**The Secure Act**  
**Tuesday, March 31**  
**Noon to 1:00 p.m.**

### 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 • 8:30 a.m. - 10:30 a.m.  
**Best Practices for Closing a Legal Practice**  
• In Person • Webcast  
• 120 min. ethics/prof.  
• 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 • 9:00 a.m. - 2:00 p.m.  
**Business Split-Ups: Issues Arising from Corporate and Limited Liability Company Fractures**  
• In Person • Webcast  
• 240 min. including 30 min. ethics/prof.  
• 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

**14** Thursday • 9:00 a.m. - 4:30 p.m.  
**Basic Construction Law 2020: The Revenge of Hammer and Nails**

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

**20** Wednesday • 9:00 a.m. - 4:30 p.m.  
**Signposts on the Tax Road**

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

**21** Thursday • 9:00 a.m. - 12:15 p.m.  
**Rules of the Roads ... a look at NH road laws**

- In Person • Webcast
- 180 min.
- Concord • NHBA Seminar Room

**28** Thursday • 9:00 a.m. - 4:30 p.m.  
**Elder Abuse**

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

### JUNE

**19&20** Fri. & Sat.  
**NHBA Annual Meeting**  
• In Person  
• Credits TBD  
• Portsmouth • AC Hotel by Marriott Portsmouth

**17** Wednesday • 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

## CLE HIGHLIGHT



### Virtual Learn@Lunch Webcast Series

#### The Secure Act

March 31, 2020

12-1:00 p.m.

This program will review the highlights of the SECURE Act and provide guidance on trust planning for IRAs, including marital trust issues and disclaimer opportunities, in the post-SECURE world.

**Robert A. Wells**  
CLE Committee Member

**Edward F. Vinheiro**  
and

**Audrey G. Young**  
from McLane Middleton Professional  
Association

*Stay tuned for more!*

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

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

[nhbar.inreachce.com](http://nhbar.inreachce.com)

## 4 Ways to Register

**Mail** NHBA • CLE  
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Suite 300  
Concord, NH 03301

**Phone** (603) 715-EASY (3279)

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

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

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Sign up for in person attendance for the March 20 & March 25 programs and receive a discount at check out. See [nhbar.inreachce.com](http://nhbar.inreachce.com) for details.

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

Friday  
**Mar 20** 9:00 a.m. - 4:30 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. This year's program will address significant developments in state and federal law which impact the workplace.

### Faculty

**Debra Dyleski-Najjar**, Program Chair/CLE, Committee Member, Najjar Employment Law Group, PC, North Andover, MA  
**Eric P. Bernard**, Bernard & Merrill, PLLC, Manchester  
**Heather M. Burns**, Upton & Hatfield, LLP, Concord  
**Lauren Simon Irwin**, Upton & Hatfield, LLP, Concord  
**Jennifer Shea Moeckel**, Cook, Little, Rosenblatt & Manson, pllc, Manchester  
**Richard C. Nelson**, Devine, Millimet & Branch, PA, Manchester  
**Jennifer L. Parent**, McLane Middleton Professional Association, Manchester  
**James P. Reidy**, Sheehan, Phinney Bass & Green, PA, Manchester  
**Nancy Richards-Stower**, Law Offices of Nancy Richards-Stower, Merrimack  
**Marcie E. Vaughan**, Employment Practices Group, Wellesley, MA  
**John R. Wilson**, GoffWilson, PA, Manchester

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

NHP New Hampshire Practice

## ★ Workers' Compensation

Wednesday  
**Mar 25** 9:00 a.m. - 4:00 p.m.  
360 min. credit  
incl. 60 min. Ethics/Prof. Webcast In person



This program will offer input from experienced claimants and defense counsel 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.

### Faculty

**Corey M. Belobrow**, Program Co-Chair/CLE Committee Member, Maggiotto, Friedman, Feeney & Fraas, PLLC, Concord  
**Margaret P. Sack**, Program Co-Chair, Bernard & Merrill, PLLC, Manchester  
**Danielle N. Albert**, NH Dept of Labor, Concord  
**Joseph D. Becher**, Bernard & Merrill, PLLC, Manchester  
**Heather V. Menezes**, McDowell & Morrissette, PA, Manchester  
**Jared P. O'Connor**, Shaheen & Gordon, PA, Manchester  
**Anne M. Rice**, Rice Law Office, PLLC, Laconia  
**Paul L. Salafia**, Devine, Millimet & Branch, PA, Concord

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

Sign up for in person attendance for the March 27 & April 8 programs and receive a discount at check out. See [nhbar.inreachce.com](http://nhbar.inreachce.com) for details.

## ★ 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



This program 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.

### 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  
**Deanna L. Campbell**, NH Public Defenders in Rockingham County, Stratham  
**Hon. Kimberly A. Chabot**, 9th Circuit Family Division-Manchester  
**Roger C. Chadwick**, Chadwick Fricano & Weber, PLLC, Nashua  
**Hon. N. William Delker**, NH Superior Court, Concord  
**Jennifer M. Hagg**, Rockingham County Superior Court, Kingston  
**Jeremy A. Harmon**, Manchester City Solicitor's Office, Manchester  
**Theodore M. Lothstein**, Lothstein Guerriero, PLLC, Concord  
**Marianne P. Ouellet**, Merrimack County Attorney's Office, Concord

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

NHP New Hampshire Practice

## ★ DWI Litigation: Back to Basics

Wednesday  
**Apr 8** 9:00 a.m. - 4:30 p.m.  
360 min. credit  
incl. 60 min. Ethics/Prof. Webcast In person



This full day program will focus on the practical essentials of DWI litigation, from basic issue analysis, to case preparation and case presentation, through ALS hearing and trial. The faculty includes prosecutors, defense lawyers, hearings officers from the Department of Safety, and the NH State Police Forensic Laboratory.

### Faculty

**Theodore M. Lothstein**, Program Chair/CLE Committee Member, Lothstein Guerriero, PLLC, Concord  
**Allison M. Ambrose**, Wescott Law, PA, Laconia  
**Jared J. Bedrick**, Douglas Leonard & Garvey, PC, Concord  
**John E. Durkin**, Burns, Bryant, Cox, Rockefeller & Durkin, PA, Dover  
**Anthony P. Estee**, Law Office of Anthony Estee, Candia  
**Lisa Johnston**, NH State Police Forensic Laboratory, Concord  
**Michael P. King**, NH Dept of Safety Bureau of Hearings, Concord  
**Mark M. Seymour**, NH Dept of Safety Bureau of Hearings, Concord

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

NHP New Hampshire Practice

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

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



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. 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, Wellesley, 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

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.

## Best Practices for Closing a Law Practice

Friday  
**Apr 3**

8:30 a.m. - 10:30 a.m.



120 min. Ethics/Prof.



Webcast



In person



Do you know how to close your practice when the time comes? What are best business practices for operating your firm today to enable an effective firm succession/closure? Learn what you need to do today to ensure successful closure or succession of your practice.

### Discover:

- ✦ Your ethical responsibilities when closing your practice
- ✦ What you can do now in your practice to help prepare for retirement – no matter if you are 20 years away from retirement or only months away
- ✦ Real-world practice management techniques to implement now to make closing your practice easier
- ✦ Best practices – electronic and non-electronic methods
- ✦ Specific steps and tips you'll need to close your practice

### Who should attend?

Solo and small firm practitioners.

### Faculty

**Russell F. Hilliard**, Program Chair/CLE Committee Member, Upton & Hatfield, LLP, Portsmouth

**Gary W. Boyle (ret.)**, Littleton

**Stephanie K. Burnham**, Hage Hodes Professional Association, Manchester

**Mark P. Cornell**, Deputy General Counsel, Attorney Discipline Office, Concord

Check-in & full breakfast begin at 8:00 a.m.  
NH Bar Association Seminar Room, Concord

New Hampshire Practice

### PROGRAM PRICING

**SEMINAR FEE** (pre-registered): \$99 NHBA Member; \$65 NHBA-CLE CLUB Members; \$149 Other/non-NHBA affiliated. Walk-in on the day of the program is an additional \$15.

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

## Business Split-Ups *Issues Arising from Corporate and Limited Liability Company Fractures*

Thursday 9:00 a.m. - 2:00 p.m.  Webcast  
**May 7**  240 min. credit  
 incl. 30 min. Ethics/Prof.  In person 

When a corporation or limited liability company dissolves and there is a dispute among the owners, there are a myriad of legal considerations and ramifications. This informative and insightful program will feature a panel of experienced practitioners discussing the legal issues that attorneys must help clients address during the dissolution of a business. The seminar will also look at resolving disputes among business owners that arise after an acquisition, merger or some other change of ownership.

### Who should attend?

Lawyers who represent and advise businesses, engage in business litigation, and/or practice corporate law, should attend this program.

### Faculty

- Arnold Rosenblatt**, Program Chair/CLE Committee Member, Cook, Little, Rosenblatt & Manson, PLLC, Manchester  
**Samantha D. Elliott**, Gallagher, Callahan & Gartrell, PC, Concord  
**Scott W. Ellison**, Cook, Little, Rosenblatt & Manson, pllc, Manchester  
**Jamie N. Hage**, Hage Hodes Professional Association, Manchester  
**James P. Harris**, Sheehan, Phinney, Bass & Green, PA, Manchester  
**Richard J. Maloney**, Maloney & Kennedy, PLLC, Auburn

 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): \$169 NHBA Member; \$85 NHBA •CLE Club Members; \$219 Other/non-NHBA affiliated.

Walk-in on the day of the program is an additional \$15.

## Basic Construction Law 2020: *The Revenge of Hammer and Nails*

Thursday 9:00 a.m. - 4:30 p.m.  Webcast  
**May 14**  360 min. credit  
 incl. 30 min. Ethics/Prof.  In person 

From the same knowledgeable faculty who brought you Beyond Hammer and Nails I, II and the Next Chapter, this program is packed with essential knowledge and practical advice on basic construction law concepts. Be prepared, this lively crew is anything but boring. This year, our censors are ready. Topics will include:

- ◆ Project Delivery Methods
- ◆ Contracting Options
- ◆ Critical Contract Clauses
- ◆ Building Codes and Standards
- ◆ Residential Considerations
- ◆ Indemnity and Insurance
- ◆ Delay, Disruption and Acceleration
- ◆ Dispute Resolution

Join us and benefit from the experience of six New Hampshire attorneys with decades of combined experience handling complex construction cases.

### Who should attend?

Attorneys, Engineers, Architects, Contractors and Construction Project Managers.

### Faculty

- Kelly J. Gagliuso**, Program Chair, Bernstein, Shur, Sawyer & Nelson, PA, Manchester  
**Richard C. Gagliuso**, Bernstein, Shur, Sawyer & Nelson, PA, Manchester  
**Matthew R. Johnson**, Devine, Millimet & Branch, PA, Manchester  
**Edward D. Philpot, Jr.**, CLE Committee Member, Edward D. Philpot, Jr. Law Office, PLLC, Laconia  
**Hilary H. Rheume**, Bernstein, Shur, Sawyer & Nelson, PA, Manchester  
**Frank P. Spinella, Jr.**, Wadleigh, Starr & Peters, PLLC, Manchester

 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.

## Signposts on the Tax Road

Wednesday 9:00 a.m. - 4:30 p.m.  Webcast  
**May 20**  360 min. credit  
 incl. 60 min. Ethics/Prof.  In person 

### Have you ever wondered what lurking tax issues might trip you up in your practice?

Review common tax issues that could arise in general practice, including issues in: transfers of real estate, leasing of real estate, formation of business entities, advising business entities, divorce proceedings, estate planning considerations, estate and trust administration concerns and strategies, personal injury rewards and damages, personal injury settlements, and bankruptcy proceedings. Learn the basic tax issues that may arise in specific practice areas, be able to spot more complex tax issues, and acquire tools to recognize how to handle the issue. Discuss the ethical rules regarding competency, as well as how to avoid being "sideswiped" by a tax issue.

### Who should attend?

Attorneys who would like more familiarity with the basic tax concepts involved in general practice areas or who would like to know the "red flags" to look for that indicate tax issues outside of their competency.

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

### Faculty

- Lucy S. Rooney**, Program Chair/CLE Committee Member, Connolly Law Offices, PLLC, New London  
**Daniel J. Connolly**, Connolly Law Offices, PLLC, New London  
**Amy E. Drake**, McLane Middleton Professional Association, Manchester  
**Beth L. Fowler**, McLane Middleton Professional Association, Manchester  
**Anu R. Mullikin**, Devine, Millimet & Branch, PA, Manchester  
**Kristin A. Ross**, Van Dorn, Curtiss, Rousseau & Ross, PLLC, Orford  
**Gregory T. Uliasz**, Feniger & Uliasz, LLP, Manchester

### PROGRAM PRICING

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



## Rules of the Roads ...a look at NH road laws

Thursday 9:00 a.m. - 12:15 p.m. Webcast  
**May 21** 180 min. credit In person

This program will speak to various aspects of roads, both private and public, from the perspective of different stakeholders: municipality, landowner, surveyor and title attorney. How are roads created, relocated, discontinued and what is the difference between private and public roads? What about maintenance of the road? Who owns the road or some part thereof? How are they located and planned physically? What impact do these various issues have on the ability to obtain a building permit? Who regulates the various aspects of roads?

### Who should attend?

Practitioners who seek a fuller understanding of NH roads from diverse perspectives: the types, creation, discontinuance, ownership, regulation, private roads, use and access, and maintenance, from the eyes of the municipality, property owner, surveyor and title practitioner.

### Faculty

- Carol E. Willoughby**, Program Co-Chair/CLE Committee Member, First American Title Insurance Company, Concord
- Laura Spector-Morgan**, Program Co-Chair/CLE Committee Member, Mitchell Municipal Group, PA, Laconia
- Paul J. Alfano**, Alfano Law Office, PLLC, Concord
- Michael B. Bemis**, Steven J. Smith & Associates, Inc., Gilford
- Christopher L. Boldt**, Donahue, Tucker & Ciandella, PLLC, Meredith
- Timothy A. Boucher**, First American Title Insurance Company, Concord

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

New Hampshire Practice

### PROGRAM PRICING

**SEMINAR** (preregistered): \$169 NHBA Member; \$85 NHBA-CLE CLUB Members; \$219 Other/non-NHBA affiliated. Walk-in on the day of the program is an additional \$15.

NEW DATE!



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

Wednesday 9:00 a.m. - 4:30 p.m. Webcast  
**Jun 17** 360 min. credit.  
incl 45 min. Ethics/Prof. 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.

### 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.

### PROGRAM FACULTY

- Debra Dyleski-Najjar**, Program Chair/CLE Committee Member, Najjar Employment Law Group, PC, North Andover, MA
- Ted Dawson**, Advantage Drug Testing, North Andover, MA
- Jennifer A. Eber**, Orr & Reno, PA, Concord
- Debra W. Ford**, Jackson Lewis, PC, Portsmouth
- Kate Frey**, New Futures, Concord
- Christopher D. Hawkins**, Devine Millimet & Branch, PA, Manchester
- Michael D. Holt**, NH Department of Health & Human Services, Concord
- Eric A. Ivanov**, Stonyfield, Londonderry
- James P. Reidy**, Sheehan Phinney Bass & Green, PA, Manchester
- Kenji Saito, MD**, MaineGeneral Health, Augusta, ME
- Patricia Tilley**, NH Department of Health & Human Services, Concord

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

New Hampshire Practice

### PROGRAM PRICING

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## Elder Abuse

Thursday 9:00 a.m. - 4:30 p.m. Webcast  
**May 28** 360 min. credit  
incl. 60 min. Ethics/Prof. In person

**Elder abuse is now recognized as a common factor for our citizens who are isolated, marginalized, elderly and dependent on others.**

This diverse and experienced faculty includes not only panelists from state resources, but investment houses as well. Attendees will,

- ✦ **Learn** what the reporting requirements are when there is a suspicion of elder abuse. This could include financial and physical abuse, selfneglect, and what results from such abuse.
- ✦ **Discover** programs that identify victims and how we can assist them to overcome the consequences of abuse, whatever the form.

### Who should attend?

Lawyers, paralegals, trust officers, social workers, investment advisors, brokers, and real estate agents; and anyone who may encounter an elder who could be the subject to financial or physical abuse or self-neglect.

### Faculty

- Robert A. Wells**, Program Chair/CLE Committee Member, McLane Middleton Professional Association, Manchester
- Rachel G. Lakin**, Bureau of Elder and Adult Services, NH Department of Health & Human Services, Concord
- Kevin B. Moquin**, NH Department of State Bureau of Securities Regulation, Concord
- Debbie Noury**, Fidelity Investment, Elder Financial Exploitation Investigations, Merrimack
- Sunniva (Sunny) Mulligan Shea**, NH Attorney General's Office, Concord
- Cheryl S. Steinberg**, NH Legal Assistance Senior Project, Concord
- Bryan J. Townsend, II**, NH Attorney General's Office, Concord

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.

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