‘The Times They Are A-Changin’ for Solo Practitioners and Small Firms Around the State

By Scott Merrill and Kathie Ragsdale

With courts closed, except for emergency orders and social distancing keeping clients from their doors, New Hampshire attorneys from north to south with solo or small practices are getting creative to cope with limits imposed by the coronavirus pandemic.

Many are working remotely, rotating in-office hours with colleagues, and turning to virtual online meetings, telephonic conferences and email to conduct business.

Some report a decline in work, especially with regard to new clients, while others say their workload is stable. Some areas, like business law, are actually seeing an increase in traffic as employers and nonprofits struggle with the ramifications of mass unemployment and the intricacies of federal stimulus plans.

All agree the times are strange and unpredictable at the moment.

“It’s really weird,” says John Riff, a solo practitioner with offices in Lancaster. “I feel like I’m stuck in ‘Groundhog Day,’” he adds, referring to the comic fantasy film in which a TV weatherman lives the same day over and over. “Every day is the same. It’s the longest Sunday ever. I miss the interaction with clients. I miss seeing my staff every day. It’s a little lonely.”

Riff’s office remains open, but the staff works in shifts. His paralegal comes in early and leaves before his arrival, and his legal assistant works while he is out to lunch. Any paper-signing that needs to be done is accomplished in the parking lot, via clipboard. Riff also plans to use the videoconferencing platform Zoom for future meetings.

Jack McCormack began his practice on Main Street in Ashland over 40 years ago. He focuses largely on real estate and has been general counsel to the Common Man Restaurants since 1977. Because of his work in commercial assets McCormack says he has not seen a slowdown in the amount of work coming into his office. The major difference so far, he says, is abiding by social distancing rules at his office as well as understanding the fears and needs of his clients.

“It’s been odd, as staff is segregated and they work different hours to the greatest extent possible,” he said. “It has affected closings and the execution of documents, as we do not allow access to the office to those other than employees.”

Asked whether his firm has suffered financially, McCormack explained that his current income is largely based on work that was being performed prior to the state of emergency.

“Our financial pain will occur later,” he said. McCormack’s primary concerns, at this time, are to take care of his staff and whether clients will return.

“I fear that many smaller clients who were not overly capitalized will not be able to weather the storm.”

Social distancing rules have also been implemented by the firm McCandless & Nicholson, in Concord. Roy McCandless, says the two paralegals, secretary, business manager and two attorneys in his office either work remotely or limit themselves to two or three in the office at one time. No in-person meetings with clients are being conducted.

Despite the lack of court hearings, “We’re certainly able to keep working on discovery and negotiating with adjusters and communicating with clients by phone or email, and keep working on cases,” he says.

While most parties are willing to hold off on in-person proceedings, he says that the firm is set up to do remote depositions if they want to do so.

At the Hopkinton firm Greenblott & O’Rourke, three attorneys work at home. Small firms continued on page 18

Tom Irwin: A Selfless Commitment to Environmental Justice

By Kathie Ragsdale

On March 24, 1989, when Tom Irwin was a student at Wesleyan University, the oil tanker Exxon Valdez struck a reef in Alaska’s Prince William Sound, spilling 11 million gallons of crude oil, despoiling 1,300 miles of coastline and killing hundreds of thousands of seabirds, otters, seals and whales.

For Irwin, an English language and literature major, the event was a life-changer.

“That motivated me to start working on environmental issues at the grass-roots level,” says Irwin, who went on to spend 12 years working for the national group Clean Water Action upon his graduation.

“In the course of that work, I realized that getting a law degree would provide me with the tools that would make me more effective on environmental issues,” he adds.

Irwin applied to Vermont Law School, known for its environmental law program, and in 1995 he earned his juris doctor and a master’s degree in environmental law and policy, both magna cum laude.

Today, he is vice president and director of the Conservation Law Foundation (CLF) New Hampshire, which he joined in 1998, and has taken on issues ranging from childhood lead poisoning in the state to the Northern Pass electric transmission project.

He credits the two years he spent at the New Hampshire Bar News, Inc. 2020 May 30, No. 12
Force Majeure

By George Moore
Executive Director

The much maligned World Health Organization has defined “Healthy” as “a state of complete physical, mental and social well-being.” Well, by that definition, I am profoundly unhealthy. I miss the social part. I miss the give and take with colleagues at work, the joyfulness of family events and visits with children and grandchildren. I also miss the encounters with Bar members at both formal and informal events. It’s not the events themselves, but the informal catching up, networking, and social interplay, that rounds out our social selves. It gives depth and understanding to our lives and the lives of those we connect with. Somehow, Zoom, GoToMeeting, WebEx, or even Facetime don’t fulfill that need. Better than nothing, but not good enough.

So, it was with some ennui that after consultation with the Bar Officers, I faced the inevitable, and moved to cancel all the events and activities planned for the 2020 Annual Meeting. From a Friday night banquet at the brand new AC Hotel in Portsmouth, to the sails on the historic Gundalow, to a Saturday night lobster bake under a tent at the Wentworth by the Sea Country Club, they all seemed from a past world.

One thing that startled me was the fact that I was using the “force majeure” clause in our contracts to get deposits returned and room blocks released. Remember that clause from Contracts 101? Nice to know about, and I understand if IISUS just took Boston, and was heading up 95 toward Portsmouth, I could use the clause to cancel contracted plans. But to actually be in the middle of an event that warranted it’s invocation? These are truly strange times.

Until we get through the pandemic, no other large gatherings are planned. We are still holding our organizational breath to keep on the books the New Hampshire Bar Foundation Annual Dinner in late September, and we will get an early start on planning for the February Mid-Year Meeting.

Let us all hope we can associate, with social distancing, by that time.

This is the first and only time the Annual Meeting, as a social event, has been cancelled since the Bar’s unification in the early 1970’s. Our Constitution and Bylaws require the organization to hold an Annual Membership Business Meeting before October 15, 2020. The Board of Governors has decided to hold that meeting, remotely, on June 19th. There will be notices published in the Bar News, website, and e-bulletin.

The Annual Business Meeting will begin with a movement to pass a handful of bylaw changes and any other business that has been noticed. At the end of the Board’s business meeting, the 2020-2021 Board of Governors will be installed, and the gavel will pass remotely, from Ed Philpot to Dan Will. Members are invited to attend, virtually, and a passcode procedure is presently being developed with the Bar’s GoToMeeting technology.

My last challenge is to find a way to have Ed virtually exit his GotoMeeting window and hand Dan the gavel in his window. If Hollywood can do it, we can do it, and folks much more adept than I are looking into it.

The specialness of the New Hampshire Bar has always been the collegiality between members and the relationships we develop and nurture over time. The coronavirus pandemic has robbed us of those opportunities right now, but let us hope that the future affords us the chances to revisit those friendships. As President Lincoln put it lyrically in his First Inaugural speech, while trying to hold the Union together, friendship is “nurtured by the mystic chords of memory.” Let us remember, and look forward to renewing our connections at the 2021 Annual Meeting!

NHBA Continues to Fulfill its Mission Amidst Change

While the Bar Center facility has been closed since March 18th this hasn’t slowed staff from maintaining its commitment to justice and to “serve its members by connecting.”

• NHBA staff continues to provide prompt responses to members about development through the NHBA Website COVID-19 resource page as well as judicial updates. Additional messaging and information continues via eBulletins and social media and the NH Bar News continues to be published, though remotely, with valuable updates and information for NHBA members.

• Staff in all departments are ready to serve via email, telephone, or through NHBA’s VPN system. The technology structure has allowed staff to immediately convert to working from home without any delay of service for members.

• Online CLE offerings have been increased and about three weeks ago CLE went ‘live’ with virtual CLEs; real time classes with ‘live’ presenters online. Cam Shilling offered a program on cybersecurity May 13th that is now available on-demand. According to Joanne Hinnendael, Director of Professional Development, “The ratings were excellent from almost everyone attending.”

• Lawyer Referral Service continues its service to members and the public from their home offices using VOIP-like phones and NHBA database.

• Lawyer Referral Service has increased its attorney panel in preparation of the uptick in cases expected as we move forward.

• Board, Committee and Section meetings continue via the GoToMeeting platform with the cooperation of NHBA staff liaisons.

• Member contact information updates, status changes and requests for good standing letters continue to be processed daily by NHBA Member Records.

• Member Services continues to assist members with questions, requests and continues to identify and implement resources for members.

• Assisting unemployed members by listing job opportunities in the classified section of the website and in the NH Bar News.

• Annual Attorney Licensure Renewal preparation has begun and support for members is available as we approach the June 1 renewal start date.

• Advocacy continues – The NHBA, in collaboration with the NH Supreme Court NHMCLE Board, gathered information from members and requested relief for those members struggling to meet the NHMCLE affidavit filing deadline during this time. This resulted in an automatic extension of time to file the NHMCLE affidavit without imposition of a delinquency assessment or fine to September 1, 2020.

• NHBA and Affiliate annual operating budgets were recently presented and approved at the respective board meetings.
2020 NHBA Board of Governors Election Results

Total ballots returned = 840
Total number of eligible voters = 5611
Percent of ballot return = 14.97%

6 more members voted in this election, but there were more eligible voters (5611 compared to 5514 last year) so the participation rate is a little lower. Last year’s participation rate (2019) was 15.13%

2018 Participation rate was 14.49%

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Vice President
Sandra Cabrera

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James Shepard
(remaining year of a 3-year term):
Christine Hanisco

Carroll County Governor
Leslie Leonard

Hillsborough North Governor
Leslie Nixon

Hillsborough South Governor
Donald Sienkiewicz

Strafford County Governor
Christopher Regan

Sullivan County Governor
Geoffrey Gallagher

ABA Association Delegate
Jennifer Parent

2020 NHBA Board of Governors Election Results

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Constitutional Issues in the Time of Coronavirus

By Joseph D. Steinfield

You shall love your neighbor as yourself (Leviticus 19:19-18)

In Schenck v. United States (1919), the Supreme Court upheld punishment for circulating flyers urging men not to register for the draft. In that case, Justice Holmes famously wrote that freedom of speech does not include falsely shouting fire in a crowded theater. He also said that “when a nation is at war” the government can impose rules that would not be allowed “in time of peace.”

Korematsu v. United States (1944) applied the same thinking to a different war. Justice Black’s opinion upheld internment of Japanese Americans on the grounds that “proper security measures” must be allowed when “we are at war.”

Schenck is still on the books, though its precedential value has not what it once was, due to an enlarged understanding of the First Amendment following the Supreme Court’s 1964 New York Times v. Sullivan ruling, affirming the right to criticize government. Thus in 1969, the First Circuit overruled the conviction of Dr. Benjamin Spock and others for signing a letter opposing the Vietnam War. And in 2018, the Court expressly overruled Korematsu in Trump v. Hawaii. We come, now, to the COVID-19 pandemic. If you look at recent governmental restrictions on everything from group gatherings to church services to road trips, you may wonder how far the Government can go. It is not a frivolous question, raising any number of constitutional questions.

The Constitution does not mention travel but, in 1866, Crandall v. Nevada held it to be a fundamental right, later defined in Williams v. Fears (1900) as “an attribute of personal liberty … secured by the Fourteenth Amendment.” In 1958, the Supreme Court decided in Daley v. Dulles that the right to international travel is part of the Fifth Amendment right to “liberty.” “Freedom of movement,” wrote Justice Douglass, “is basic to our scheme of values.” The current pandemic has tested this expansive concept of liberty. When New Yorkers and others decided it was safer elsewhere, some states, including Rhode Island, began imposing quarantines on people entering from out of state. Such “license plate profiling,” (as one legal scholar calls it), even if permissible under the First and Fifth Amendments, may yet run afoul of the Privileges and Immunities Clause, which says that you can’t treat people from other states differently than your own. According to that theory, Rhode Island would have to impose similar rules on its own citizens exiting the state.

Government is not allowed to abridge “the right of the people peaceably to assemble.” Nonetheless, many governors have limited the number of people allowed to gather in one place, starting in New York at 500 and going down in many places to ten.

In Binford v. Sununu, plaintiffs challenged Governor Sununu’s 50-person limit on “societal, spiritual and recreational activities” as a violation of their constitutional rights of assembly, worship, and free speech. Merrimack Superior Court Judge John Kissingasser dismissed the case on the grounds that the Governor acted within his power to protect public health. Relying on RSA 4:45, the judge wrote, “It would be irrational to find that the governor must wait for the health care system of New Hampshire to be overwhelmed … before he is authorized to declare a state of emergency and take preventive measures.”

Church attendance and funerals are also victims of the pandemic. Defiance hasn’t gone well, as the Hasidic community in Brooklyn found out when Mayor de Blasio, somewhat ham-handedly (pun intended) sent the police in to disperse a large crowd attending a rabbi’s funeral.

“Contact tracing” raises yet another constitutional privacy issue. In 2018 the Supreme Court held, in Carpenter v. United States, that the Fourth Amendment protects cell phone location information, at least when it comes to a criminal investigation. Today, public health officials are considering widespread testing followed by tracing the contacts of those who test positive. There are nearly 260 million smart phone users in the United States, and Bluetooth technology offers a potentially

CONSTITUTION continued on page 6

Lawyer Well-Being – It’s About Finding Balance

By Terri Harrington

The American Bar Association designated May 4-May 8 as Lawyer Well-Being Week. This could not have come at a more appropriate time. We are living through an unprecedented time in modern history. With all the advancements of the modern computer age, there is little to do during a worldwide pandemic but rely on all to practice social distancing, disinfect, wash hands and repeat. In the meantime, we wait for medical research that is needed nourishment. Balance is not living to reach the next professional milestone. It’s important to understand that balance is a record rate of depression and anxiety.

The statistics are stark. Lawyers are the most unwell licensed professionals in the United States. Most of us live life out of any type of balance that makes sense. Many of us judge our success on the amount of money we earn, the cases we win or the esteem in which we are held. Many of us use drugs and alcohol to relax or signal work time is over. Many of us excessively worry about the next deadline, closing the next client, reaching the next professional milestone. Failure to achieve quickly and often unrealistically, leads to a record rate of depression and suicide.

Lawyer well-being is not about being perfect. It is certainly not about the multi-million-dollar industry that promises a quick cure, a sure-fire recipe or a short cut to well-being. Lawyer well-being is about knowing what you need to be a reasonably happy, healthy professional, and making the changes to sustain what works. I know first-hand that this is easier said than done.

I’ve been home and isolated with my family since mid-March, just like everyone else. While at home, it struck me that I’ve had actual conversations with friends and family. These were long, unhurried conversations with pauses to reflect and to laugh. What has often passed for meaningful connection with my friends and family were quick texts, funny memes or “likes” on social media. Running to the next meeting, the next errand, the next commitment has been the focus of my life as a working mother for twenty years. Now, without places to rush to, I have found time to sit and read a book, play board games with my kids and garden outside. To my astonishment, I find that I am not thinking about what I need to do next while focused on the task at hand, something I was constantly doing. I realize that most of my life, to this point, has been spent in contemplation of what I have to do,
By Katherine Hedges

The New Lawyers Committee (“NLC”)’s mission is to support newer members of the New Hampshire Bar as they begin practice within the state. Our target audience includes both attorneys who have passed their first bar within the last few years and attorneys who have practiced for any length of time in other states but who have only recently moved to New Hampshire Bar within the last few years. The NLC focuses on providing programing, resources, and networking for newer attorneys to make them feel welcome and assist them with building a successful practice in New Hampshire. Here are a few highlights of the projects that the NLC is currently working on:

Traps for the Unwary

Traps for the Unwary is a publication of the New Lawyers Committee that provides practice tips for newer members of New Hampshire Bar. The publication covers a wide range of practice areas. The NLC updates the publication every couple of years, and the NLC is currently working on an extensive revision, which will include some new practice areas. The prior version can be found at: https://www.nhbar.org/resources/traps-for-the-unwary/. We expect to publish the new edition before the end of the Bar Year, so watch the website for the update.

Volunteer Opportunities

We believe that supporting residents of New Hampshire who are in need is an important part of being responsible members of the community. The NLC has hosted one month of Lawline for the last couple of years, of which is a service that the New Hampshire Bar Association organizes to provide community members access to anonymous legal advice for one evening each month. The NLC also regularly participates in the Walk Against Hunger to benefit Families in Transition – New Horizons, and the NLC has organized a team again this year.

I am writing to thank New Hampshire’s bigger law firms for assisting the public, employers and especially all of us small firm attorneys in their guidance with information and protocols during the COVID-19 crisis. I am most grateful for the webinars regarding COVID-19 protocols for employers, health information and the excellent speakers, including expert business attorneys, consultants and health care providers that the firms have gathered for the webinars. My firm is very small, yet we have the same concerns and need for information as the large businesses to keep ourselves, our clients safe. I watched excellent webinars from Bernstein Shur (with special thanks to my friend and colleague Kristin Mendoza), McLane Middleton and Devine Millimet.

The webinars have incredibly knowledgeable speakers, links to important information and kept me updated with the latest guidance on issues such as the PPP loans, health concerns and guidance as to when and how to reopen my firm. I know that these webinars take a great deal of planning and a huge donation of time and effort from the attorneys and the speakers preparing for and conducting the webinars. I want to thank those firms and their attorneys for helping me and my firm and for the dedication to assisting all of us during these unsure and difficult times.

With much gratitude,

Cathy Shanelaire
Shanelaire & Schirch, PLLC

Because of the COVID-19 pandemic, the walk has gone virtual this year but will still be occurring on May 17, 2020. While we will not be physically together this year, we invite the entire New Hampshire Bar to join us in supporting this great cause while completing a 5k walk in your neighborhood and maintaining social distancing. You can join our team by signing up at https://support.finn.org/team/289579. Watch the New Hampshire Bar Association’s social media accounts for more details.

Ongoing and Upcoming Projects

The NLC has enjoyed hosting a social after-the-Midyear Meeting for the last few years, and we are currently planning a fun virtual event for newer lawyers to connect during social distancing. We look forward to making an announcement about the event soon.

The NLC also organizes and participates in a number of activities to welcome newer attorneys to the bar. The NLC hosts small group dinners with newer lawyers and state and federal judges, which provides newer attorneys an opportunity to learn about the judiciary, get practice tips, and otherwise get to know the judges they will be appearing before. Representatives of the NLC also attend swearing-in ceremonies, and the group hosts a “Bench and Bar Meet and Greet” following the Practical Skills Course in December. This past year, we also held a successful “speed dating” style career panel that allowed attendees to directly interact with the panelists, and we plan to host a similar event again next year. Although many of these events are currently on hold due to the pandemic, we are continuing our work and look forward to resuming these activities when it is safe to do so.

The NLC invites all members of the Bar to take advantage of our resources and programs. The President of the New Hampshire Bar Association appoints members to the New Lawyers Committee in the Summer, and we are looking for a few new members that are interested in becoming more involved with the Bar. If you may be interested, watch for the announcement seeking volunteers in the Bar News in the coming months, or reach out to me to find out more about participating.

Katherine Hedges is the Chair of the New Lawyers Committee. She practices civil litigation and corporate law at Hage Hodes Professional Association in Manchester, NH.

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

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Traps for the Unwary

Letter to the Editor

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

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Our employment lawyers have extensive experience in employment litigation and are among the most respected and successful advocates in employment law in New Hampshire. We are dedicated to achieving the best possible results for our clients.
Constitution from page 4

effective way to locate and isolate carriers of this highly transmissible disease. Just download an app and your contacts can be identified.

Striking the right balance between constitutional rights and public health necessitates a factual basis for governmental intrusion. In his Binford decision, Judge Kissinger found that the Governor had satisfied this requirement and, importantly, had limited the order to 21 days. The judge added that the order remained subject to further judicial review should circumstances change. On May 7, by contrast, Massachusetts Federal Judge Douglas Woodlock overturned Governor Baker’s closing of gun shops for failure to provide a sufficient factual basis for burdening Second Amendment rights.

Judge Kissinger upheld the Governor’s order, but a judge in Illinois overruled Gov. Pritzker’s stay-at-home order, and a Virginia judge overruled Gov. Northam’s order closing an indoor gun range. Republican lawmakers in Wisconsin are suing that state’s governor over his stay-at-home order. Californians are challenging restrictions, and dozens of other cases have been brought around the country.

Attorney General Barr has commented that “the Constitution is not suspended in times of crisis,” and he has directed all U.S. Attorneys to “be on the lookout” for orders that overreach. I agree with Barr’s constitutional sentiments, though probably not with how he would apply them. In a public health crisis such as that now afflicting the country, strict judicial scrutiny (not just a “rational basis”) serves as an important limitation but not one that cripples the emergency power of states to protect public health. Most constitutional rights are not absolute and must yield to an overriding governmental interest so long as restrictions are responsive to a demonstrated need, narrow in scope, and limited in time.

Government has an important role to play, but the Book of Leviticus and the New Testament as well (Luke 6:31) remind us that public health is not just about constitutional line-drawing. How we treat each other has a lot to do with staying safe.

Joseph D. Steinfield lives in Keene and Jeffrey. He spent the first 38 years of his legal career at Hill & Barlow in Boston. After that firm dissolved in 2002, he joined Prince Lobel Tye in Boston. He has been a full-time New Hampshire resident since 2014 and maintains an office at 41 School Street in Keene. He is the Cheshire County representative to the New Hampshire Bar Association Board of Governors. He can be reached at joe@joesteinfield.com. Copyright 2020.

Well-Being from page 4

what I didn’t do or what I should have done better, rather than focusing on what I am actually doing in the present moment. The irony is that I have spent hundreds of dollars to attend workshops, trainings and retreats to hear this message over and over again. I have learned the ancient wisdom that teaches “Without balance there is suffering.” I have learned the modern wisdom that teaches “Much of anxiety is created by not realizing that this time of isolation, painful as it may be, can be at times, is actually a gift. I thought just because there was nowhere to go, it can be at times, is actually a gift. I thought that just because there was nowhere to go, I didn’t have anything to do. I now realize that much of what I viewed as primarily important was simply noise. What “fills my cup” is time spent in nature, time spent in my garden, time connecting with friends and family, walking my dogs, connecting with my children and spending time alone resting or reading. It is interesting to me that nothing on this list mentions material gain, taking on pursuits solely for the purpose of proving my worth to others or running around cramming in as much as I can humanly capable of doing in one day. Most of my time has been consumed with the latter at the expense of the former. Because I am taking better care of my real needs, I can schedule myself better, work more productively and connect meaningfully with more people. It has been quite an epiphany.

I hope that in this moment in time, all lawyers can take time to reflect and understand that lawyer well-being is vital to each of us. It is not only vital for our individual health, but to our families, our workplaces, our communities and our profession. There must be no shame, stigma, or guilt in the pursuit of lawyer well-being. Lawyer well-being should be celebrated and emulated as it makes for happier, more productive and more profitable lawyers. This is the goal of the ABA’s Lawyer Well-Being Week. My sincere hope is that at this moment in time, when the world has slowed and seemingly turned upside down, there will be individual epiphanies that lawyer well-being is essential. Only then can we have open, honest and productive conversations about creating a professional atmosphere that sustains the well-being of lawyers and judges and create the framework to make it a real and lasting priority.

Terri Harrington is the Executive Director at New Hampshire Lawyers Assistance. She can be reached at tharrington@japhb.org.

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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.

We honor referral fees. Let’s work together for your clients’ Personal Injury and Medical Malpractice claims.

THE PRACTICE FOR MALPRACTICE.

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NEW HAMPSHIRE BAR NEWS

www.nhbar.org

MAY 20, 2020

6
Cybersecurity Corner

Video Conferences – How Can We Securely Meet Remotely?

By Cameron G. Shilling

Video conferencing is critical for many lawyers and law firms to sustain our practices while working remotely during the public health crises. After the crisis ends it is likely we will continue to work remotely and use video conferencing more frequently than we did previously. As a result, this article concerning video conferencing and the next columns of the Cybersecurity Corner will address information privacy and security issues inherent in remote work.

Access Controls

“Zoombombing” is the newest neologism in our lexicons, and the most common insecurity. The term derives from a prominent video conferencing application called Zoom. To participate in a video conference (Zoom, Skype, GoToMeeting, Google Hangouts/Meet, Microsoft Teams, Cisco WebEx, etc.), the meeting organizer typically emails a link to attendees. Without proper controls, the link can be used by a hacker to access the conference and disrupt the meeting by barraging participants with offensive content. That is Zoombombing.

In addition to disrupting meetings, hackers acquire links to video conferences to steal the personal information (name and email) of participants as well as the valuable business information transmitted in the meetings. Intruders also may install malware on the computers and mobile devices of participants, permitting them to steal the information on the devices, control the device cameras and microphones, and encrypt the devices for ransom.

Most video conferencing applications have controls that can be configured to mitigate such risks. Meeting organizers should distribute invites with passwords and encryption of the recordings and hard drives used to store them, and use of strong passwords and multi-factor authentication to access clouds and server networks that contain stored recordings. Additionally, participants should be technologically required to consent to record and store audio and electronic communications. As a result, meeting organizers should integrate an appropriate notice into all video conference invitations, technologically require consent from participants whenever meetings are recorded, and obtain at least implied consent from attendees of recorded webinars.

Recorded events also should be securely stored, and the applications permit participants to distribute content and interact with each other.

Notice/Consent and Secure Retention

Video conference applications commonly either automatically record or permit recording of the event. Given the sensitive client and other information we collect and disclose using this technology, such recording raises significant privacy and security issues. Privacy laws require us to notify participants and (in some situations) obtain consent to collect, use, and disclose personal information acquired about them. State and federal wiretap laws also require consent to record and store audio and electronic communications. As a result, meeting organizers should integrate an appropriate notice into all video conference invitations, technologically require consent from participants whenever meetings are recorded, and obtain at least implied consent from attendees of recorded webinars.

Recorded events also should be securely stored, and the applications permit a variety of different retention methods. Meeting organizers should ensure that the retention method is secure, including encryption of the recordings and hard drives used to store them, and use of strong passwords and multi-factor authentication to access clouds and server networks that contain stored recordings. Additionally, participants should be technologically required to consent to record and store audio and electronic communications.

Due Diligence and Agreements

Most video conference providers publicize instructions on their websites about how to configure the privacy and security controls inherent in their applications. Before using these applications, we must do due diligence to ensure that those controls are sufficient to meet our confidentiality and security obligations, and configure them appropriately. Meeting organizers should integrate an appropriate notice into all video conference invitations, technologically require consent from participants whenever meetings are recorded, and obtain at least implied consent from attendees of recorded webinars.

Executive orders make it hard to cross borders? We can help.

In a world where it’s getting harder for your clients to move their employees from country to country, you need a global immigration partner that makes things easy. At GoffWilson, we have decades of experience getting employees exactly where you need them to go. It’s quicker, more efficient global immigration service— that just works.

Contact GoffWilson and put our team to work for your clients.
NEW HAMPSHIRE BAR ASSOCIATION
2020 Annual Business Meeting
June 19th – 2:00 PM
REMOTE
Please contact Debbie Hawkins for more information
dhawkins@nhbar.org
715-3269
President Edward D. Philpot, Jr. - Presiding

AGENDA
1. Call to Order
2. Secretary’s Report
   • Draft Minutes of the 2020 Midyear Membership Business Meeting for approval
3. Old Business
4. New Business – Vote on Proposed Bylaws Changes
   • Vote on proposed amendment to NHBA Bylaws Article IV Section 7
     (This is a housekeeping change to correct an oversight when the membership of the Finance Committee was revised in a bylaws change adopted in June of 2019.)
   • Vote on proposed amendment to NHBA Bylaws Article VI Section 4
     (This proposed change adds the Law Related Education Committee as a Standing Committee of the NHBA.)
   • Vote on proposed amendment to NHBA Bylaws Article IX Section 5 and 6
     (This is a change proposed to remedy the logistical difficulty posed by this requirement, which has not been successfully met since it was adopted.)
5. Board of Governors Recognition and Passing of the Gavel
6. Adjournment

NEW HAMPSHIRE BAR ASSOCIATION
2020 Midyear Business Meeting DRAFT Minutes
Friday, February 21, 2020
12:00 p.m.
Doubletree by Hilton Downtown Manchester, NH

1. Call to Order

   Edward D. Philpot, Jr., President

   The 2020 Midyear Business meeting was called to order at 12:15 p.m. on Friday, February 21, 2020 by Bar Association President Edward D. Philpot, Jr., who presided over the meeting.

2. Necrology

   A Few Moments of Silence

   Robert R. Howard III

   A moment of silence was observed while names were read by Bar Association Secretary Robert R. Howard III.

3. Secretary’s Report

   Robert R. Howard III

   Minutes of the Annual Business Meeting – Friday, June 28, 2019 were approved as presented.

4. Old Business

   Edward D. Philpot, Jr., President

   There was no old business to discuss.

5. New Business

   Edward D. Philpot, Jr., President

   There was no new business to discuss.

6. Adjournment

   Edward D. Philpot, Jr., President

   The February 21, 2020 business meeting was adjourned at 12:30 p.m.

Respectfully submitted,
Deborah J. Hawkins, for
Robert R. Howard, III, Secretary

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Two lawyers, Nicholas C. Rowley and Benjamin R. Novotny, are here to help you obtain justice for your clients.

Nick and Ben have demonstrated the ability to learn cases with little notice. Their involvement in severe personal injury and medical malpractice cases is proven to significantly increase claim value. Their results speak for themselves.

Combined, they have achieved well over $1.5 Billion in jury verdicts and settlements on behalf of their clients.

Call today for a free consultation or a second opinion 866-TL4J-LAW

<table>
<thead>
<tr>
<th>Offer before Nick and/or Ben Involvement</th>
<th>Case Information</th>
<th>Result*</th>
</tr>
</thead>
<tbody>
<tr>
<td>OFFER $0</td>
<td>Medical Malpractice (MA) Mother suffered stroke after giving birth</td>
<td>VERDICT $35.4 MILLION</td>
</tr>
<tr>
<td>OFFER $1.35 MILLION</td>
<td>Medical Malpractice (IA) Failure to administer Epinephrine after anaphylactic reaction to contrast dye</td>
<td>VERDICT $29.5 MILLION</td>
</tr>
<tr>
<td>OFFER $350,000</td>
<td>Medical Malpractice (IA) Unnecessary prostate surgery</td>
<td>VERDICT $12.25 MILLION</td>
</tr>
<tr>
<td>OFFER $1.75 MILLION</td>
<td>Medical Malpractice (IA) Overdose of Pitocin leads to neonatal seizures</td>
<td>SETTLEMENT $9 MILLION</td>
</tr>
<tr>
<td>OFFER $2 MILLION</td>
<td>Medical Malpractice (IA) Delay in treatment of cauda equina syndrome</td>
<td>SETTLEMENT $6.5 MILLION</td>
</tr>
<tr>
<td>OFFER $15,000</td>
<td>Medical Malpractice (IA) Vasectomy performed instead of circumcision</td>
<td>VERDICT $2 MILLION</td>
</tr>
</tbody>
</table>

*View additional verdicts and settlements at tl4j.com

Rowley and Novotny have a nationwide law practice and look forward to helping you win your case.
ARTICLE VI - SECTION 4 – PROPOSED BYLAWS REVISION

(This is a change proposed to remedy the logistical difficulty posed by this requirement, which has not been successfully met since it was adopted. The signature requirement was changed so that any active member can sign the petition, not just out of state members.)

Nomination and Election of Governors and Officers

Section 4. Out-of-State Governor. Nominations for Out-of-State Governor shall be made by Petition signed by any twenty-five (25) or more active members of the Association. Petitions shall be filed with the Association no later than March 1. Any nominee for out-of-state governor shall be Active membership status in the Association. If no valid petition is submitted, the position may remain vacant or be filled by the Board of Governors, at their option.

Adopted by NHBA Board of Governors May 4, 2020

ARTICLE IX – SECTION 5 AND 6 – PROPOSED BYLAWS REVISION

(This proposed change adds the Law Related Education Committee as a Standing Committee of the NHBA. The other items in this section were renumbered.)

Committees, Task Forces or Other Work Groups

Section 5. Standing Committees. There shall be Standing Committees on:

- Continuing Legal Education
- Cooperation with the Courts
- Dispute Resolution
- Ethics
- Finance
- Gender Equality
- Lawyer Referral Services
- Law Related Education
- Legislation
- New Lawyers

Section 6. Jurisdictions of Standing Committees. The jurisdiction and special tenures of Standing Committees shall be as follows:

- Law Related Education Committee. This committee shall oversee and take necessary action to engage lawyers and judges in activities to further civics education and information for both students and adults in New Hampshire. This shall include but not be limited to programs for students, facilitating involvement of the Bench and Bar in school programs, coordinating teacher education and involvement in civics programs, coordinating with appropriate groups and/or organizations regarding civics education, and general education of adults on civics programs.
- Legislation Committee. This committee carefully and thoroughly monitors legislative developments within the state. The Committee reviews legislation pending before the New Hampshire Legislature to determine if the proposal affects the administration of justice, the composition and operation of the courts, the practice of law or the legal profession. If a pending bill is found to fall within one of these categories, the Committee then determines if the bill is of significant interest to the Bar membership as a whole. The Committee also considers whether there is substantial unanimity within the Bar on any bill under consideration and is expected to exercise circumspection in all its deliberations prior to making any legislative recommendations to the Board of Governors.

Adopted by the NHBA Board of Governors February 20, 2020

LUBIN & MEYER’S strength lies in its demonstrated record of consistently obtaining more multi-million-dollar verdicts and settlements in the areas of medical malpractice and catastrophic personal injury law than any other law firm in the region.

In just the first 10 months of 2019, Lubin & Meyer achieved over $150 million on behalf of its clients in Massachusetts, New Hampshire and Rhode Island.

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IN 2019
$150M+ RECOVERED

Notable Highlights of 2019

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

View more case results at lubinandmeyer.com
Bar Foundation Urges Support During Hard Times

By Scott Harris

The New Hampshire Bar Foundation, along with the rest of the Bar, has weathered economic crises in the past. With your help, the Bar Foundation will emerge and continue to provide essential leadership and funding for legal aid in New Hampshire.

Since its founding, the Bar Foundation has been the philanthropic choice for so many New Hampshire lawyers and law firms. Key to our work, the Bar Foundation has been a steward of the Interest on Lawyers’ Trust Accounts program (IOLTA). The sustained effort of our Bar Foundation has generated just short of $38 million in financial support for legal services and other charitable projects in New Hampshire. At present, there are more than 50 banks and credit unions holding over 1,200 accounts that participate in IOLTA. In the six years beginning in 2010 and continuing through 2015, these financial institutions paid $4.8 million more than market rate interest. The Bar Foundation, with an active and engaged Board and strong community presence, worked to foster this result. In fact, New Hampshire led the region in the number paying above-market interest at a time when interest rates were falling.

Civil legal aid is a lifeline for low-income families facing civil legal problems. Their work focuses on basic human needs such as access to shelter, nutrition, or healthcare, and provides critical help to navigate the web of complex local, state, and federal programs intended to help lift low-income families out of poverty. Those receiving civil legal aid include veterans improperly denied benefits, families facing a wrongful eviction, victims of domestic abuse seeking civil protection orders, neglected and abused children impacted by the opioid crisis, as well as seniors who have fallen victim to financial exploitation. With the highest unemployment on record since the Great Depression, individuals required to shelter at home, parks and schools closed, and no definite end in sight, this lifeline has never been more important.

Taking 2015 as a sample year, the Bar Foundation granted $562,000 to New Hampshire Legal Assistance that, in turn, was able to serve almost 7,100 low income individuals and their families. The Foundation contributed $192,000 to the New Hampshire Bar Association’s Pro Bono Program that then enabled 1,786 attorneys to provide legal representation to those who would otherwise have had to attempt to fend for their legal rights and those of their families on their own. The Bar Foundation also provided grants to the Disability Rights Center to advocate for children’s emotional and behavioral health, the Legal Advice and Referral Center, the Domestic Violence Emergency Project and the Reduced-Fee Referral Program to facilitate their critical services.

With the current economic crisis caused by Covid-19 pandemic, the financial institutions’ ability to continue to pay interest at above-market rates thereby enabling crucial increased IOLTA funding has been imperiled. The Bar Foundation is working closely with these financial institutions to encourage them to keep their vital community support in place. This likely will not be enough. While we understand that lawyers have been hit by this pandemic as hard as any sector, for those who are able, we urge you to support the Bar Foundation so that together we can continue to support the much-needed civil legal services. We hope you can help.

Until we can come together again in person, please know the New Hampshire Bar Foundation continues to work on behalf of all New Hampshire lawyers and will do all we can to be a careful steward of these essential IOLTA resources. As always, if any of you have ideas or want to help in our effort, please reach out. Stay safe and be well.

Scott Harris is a director at McLane Middleton’s Litigation Department. He has tried cases in state and federal courts for over fifteen years.

NH Bar Foundation 2020 Annual Appeal

You Make the Difference

“The New Hampshire Bar Foundation remains committed to funding vital programs providing access to justice to our most vulnerable New Hampshire citizens during COVID-19. With most of our upcoming fundraising events postponed, there will be a gap in funding for the important grants we typically offer to necessary community programs.

Now more than ever, New Hampshire citizens need your support. The New Hampshire legal community is one that can overcome great challenges and obstacles together, and your generous support during these challenging times is vital.”

Your donation directly impacts the lives of NH residents.

Donations can be made online at nhbarfoundation.org or call us at 603-715-3210

Budgeting your Support Just Got Easier.

Become a Sustaining Donor for as little as the cost of a cup of coffee each day and help us strengthen access to justice for the most vulnerable in our communities.

When you sign up to make a monthly donation straight from your debit or credit card, we will send you an official credit card, we will send you an official NHBF “Mug Club” gift.

With a donation of between $10 to $99 a month, you will receive a ceramic mug emblazoned with the NH Bar Foundation logo and a fun cartoon.

Or, with a donation of $100 or more a month, you will receive a stunning Simon Pearce coffee mug etched with the NH Bar Foundation logo.

Join the Mug Club today and take your morning cup of coffee from satisfying to fulfilling.

“Injustice anywhere is a threat to justice everywhere.” — Martin Luther King Jr.
In Memoriam

John V. Daly
August 15, 1945 - February 7, 2020

John was born in New York, New York in 1945. A 1967 graduate of Niagra- ra University, he received his Juris Doc- tor degree from St. John’s University School of Law in 1971. While in law school, he worked as a legal researcher and writing teaching assistant, and as an editor for the St. John’s Law Review. He was awarded the St. Thomas More scholarship for academic achievement in 1970-1971.

John was admitted to the New York Bar in 1972 and the New Hampshire Bar in 1980.

After graduating from law school, he served as an officer in the United States Army and then was associated with the New York law firm of Cole & Deitz. From 1977 to 1979, he was the assistant counsel for Baracks, Inc. in New York.

John moved to New Hampshire in 1979 with his wife Virginia and his daugh- ter Sara to manage the Campton, New Hampshire office for Sanders and McDermott. They later relocated to Exeter, and in 1981 his daughter Kathleen was born.

He became a shareholder and director of Sanders and McDermott in 1982, served on the firm’s Executive Committee, and eventually became Managing Partner.

John felt strongly about volunteering in his community and in particular worked hard to make affordable housing available in the Seacoast, New Hampshire area. While at Sanders and McDermott, he repre- sented the Housing Partnership Pro Bono for 12 years. In 1993, John was honored with the Housing Partnership’s Community Service Award from Director Anne Rugg.

During this time, he also chaired the New Hampshire Bar Association Lawyer-to-Lawyer Dispute Resolution Committee, a forum for resolving disputes between Bar members. He was also a Director of the Board for Hampton Economic Development Corporation. And most recently, John was Chair of the Zone 3, which will be a memorial for the town of Exeter.

John began his private practice in Exeter in 2011, where he worked and remained active in his East and Exeter Kingston communities until the end of his life.

Throughout his career, John belonged to and remained involved with the New Hampshire Bar Association, the Rocking- ham County Bar Association, The New York State Bar Association, the American Bar Association, and the Association of the Bar of the City of New York.

John is survived by his wife of 50 years Virginia, daughter Dr. Kathleen Lau- ra Daly of Providence, Rhode Island, and Sara Mary Daly and her partner Benjamin Sutch of Etchingham, UK.

His living family includes nieces Bar- bara Lozano of North Brunswick, New Jer- sey, and her husband and daughter Chrissy and Shaya Bar of North Brunswick, New Jersey; Virginia Romano of Hilton Head, South Carolina; and her children Avery and Anthony; and niece Theresa Passetti of New York.

He was predeceased by his parents Jo- seph and Marcella Daly, and sisters Mary, Evelyn, and Eileen Daly.

Visiting hours were held at Stock- bridge Funeral Home, Epping Road, Ex- eter, New Hampshire on Thursday, Febru- ary 13.

In Lieu of flowers, donations may be made to Dana Farber Cancer Institute or Rockingham County VNS and Hospice.

Nancy A. Papademas, Esq.
(Sep. 10 1951 - Aug. 14 2019)

Lyme, NH: Nancy A. Papademas, 67, passed quickly, in her husband’s arms, at their home in Lyme, NH, after a long illness.

She was born in Nashua, NH, and raised by eight par- ents, George and Mary Papademas, and her many aunts.

She moved to Lebanon, NH at the age of 5. She gradu- ated from Lebanon High School in 1969. She then attended Dartmouth College in the initial years of them going co-ed, though she received her degree in Archeology from the University of Vermont. She went on to get her Juris Doctor from the Vermont Law School.

She then practiced law in Lebanon, NH, taking over her father’s law practice. She was among the first 200 women to prac- tice law in the state of New Hampshire. She is survived by her daughter, Calla Mae Papademas, her husband, Tim Odell, her two sisters, Diana Papademas and Linda Papademas, and her sponsored child from Dominica, Macy Riviere.

Nancy was a very loving and generous soul. She was known and adored by many. None that met her ever forgot her. She sang for many years with the Thetford Chamber Singers, and aloud quite often, wherever she was. She was never afraid to speak her mind, and came to the aid of anyone, regardless of their social, financial or reli- gious beliefs.

She enjoyed traveling, meeting new people and having deep conversations about everything and nothing. She enjoyed traveling to the Caribbean and fell in love with the island of Dominica.

There will be a memorial at the First Congregational Church in Thetford, VT on Saturday, September 14th at 11:00 AM. A reception will be held at her home in Lyme, NH following the service until 6:00 PM. In lieu of flowers, donations to the Martha Washington Inn. Many of the siblings’ best anecdotes recalled their days working long hours at the inn and their frivo- lous father joking, “I raised my own help.”

David continued his education at Bab- son College and Boston University Law School. He practiced law with the Leonard and Leonard firm in Nashua, sat as Nashua District Court Judge, and was president of the Nashua Bar Association. He was a founder of the Colonial Trust Company and chair of the board of directors of Rivier College.

David then switched gears, joining with client and friend John Stable to create a successful real estate development part- nership in southern NH.

In addition to his professional career, David took on the mission of getting per- secuted Jews out of Russia. Through a chance meeting, David enlisted the assis- tance of a NY Congressman and facilitated the challenging process of bringing dozens of families to New Hampshire. He and his brother Earl, along with volunteers from Nashua’s Temple Beth Abraham, found them jobs, housing, transportation, educa- tion, and health services.

Later on, lured by the promise of balmy breezes and beautiful beaches, Da- vid and his wife Marjorie moved to Na- ples, where he soon began his mediation practice, Mediation Resolution. David’s late-in-life career may have been his most satisfying. He loved mediation; working with outstanding colleagues on memorable cases. Considered fair-minded, and highly regarded by members of the legal community, David mediated over 5,000 cases throughout Florida.

David enjoyed his many travels with friends, but none more so than with his grandchildren, Alex and Cameron. To- gether with Marjorie, the foursome shared adventures throughout the world.

David always lived life fully. He cher- ished his family and wide circle of friends. He loved meeting people. We remember his warmth and charm, generous spirit, in- telligence, and especially, his tan.

He will be mourned and missed by Marjorie; son Andrew Prolman and daugh- ter-in-law Peg of Manchester, NH; daugh- ter Susan Prolman of Washington, DC; son Charles of Brookline, MA; grandson Alex Prolman of Durham, NC and Cam- eron Prolman and partner Sara Stackpole of Somerville, MA; brother Norman Prol- man and wife Karin of Framingham, MA; brother Earl Prolman and partner Barbara Drukman of Naples and Nashua; brother-in-law Fred McM anus and wife Linda of Naples; and many cousins, nieces, and nephews. He was predeceased by sister Arlene Oppenheim of Barnstable, MA and sister-in-law Marilyn Prolman of Nashua.

Due to the Coronavirus pandemic, a memorial will be held at McSorley’s Old Ale House a later time. Donation in Da- vid’s name may be made to the Alzheim- er’s Support Network, 660 Tamiami Trail North #21, Naples, Florida 34102 (http://www.alzsupport.net/Donate.html).

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

Stay Connected

Join Our Virtual Discussions

Arthur and Kathy will be hosting informal Zoom discussions monthly on topics of interest to small and midsize law firms.

Wednesday, June 3, noon-1PM

The Effects of the Coronavirus on Law Firms

Feel free to check it out and come and go as you please.

For access: Zoom ID 543-794-7568 password: Connect2020

Or contact us for an invitation: kwf@arthurgreene.com

Kathy Fortin and Arthur Greene

Many of us are looking for ways to brainstorm with trusted colleagues and/or just relax with professional friends.

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**Membership Status Changes**

Presented to the Board of Governors April 6, 2020. The following changes are effective in 2020 unless otherwise noted.

**Active to INACTIVE**
- White, Tania, Quincy, Mass. (Feb. 12)
- Carroll, Robert, Lutherville Timonium, Md. (Feb. 27)
- McChare, James, Middleburg, Va. (Feb. 25)
- Belli, Mollie, Georgetown, Mass. (March 5)

**Active to INACTIVE RETIRED**
- Rundles, Janice, Lee, NH (Feb. 11)
- Beyk, William, Antrim, NH (Feb. 14)
- Lehman, Michael, Boulder, Colo. (March 1)

**Active to DECEASED**
- Parnell, William, Palm City, Fla. (Feb. 21)
- Newman, John, White River Jct, Vt. (March 15)

**Active to INACTIVE**
- Hassey, Andrew, Boston, Mass. (Feb. 5)
- Foor, Jennifer, Concord, NH (Feb. 10)
- Lawrence, Malinda, Edgewater, MD (Feb. 19)
- Wilschek, Jostyn, Montpelier, Vt. (March 12)
- Hendrick, Deirdre, Annapolis, Md. (March 13)
- Tine, Andrew, Barrington, RI (March 23)

**Inactive Retired to ACTIVE**
- Bunker, Steve, Franklin, NH (Feb. 27)

**Honorary Active to DECEASED**
- DeGrandpre, Charles, Portsmouth, NH (Feb. 12)

**Honorary Inactive to DECEASED**
- Williams, Edward, Exeter, NH (June 29)
- Bean, Arthur, Deerfield, NH (Feb. 23)
- Barto, Sr, John, Pittsfield, NH (Feb. 2)

**Suspension to ACTIVE**
- Fitzgerald, Desmond, Newton, Mass. (Feb. 12)
- Nicolai, Paul, Springfield, Mass. (March 10)

**Suspension to INACTIVE**
- Fay, Melissa, Newburyport, Mass. (Dec. 19, 2019)
- Hanson, Jennifer, Wakefield, Mass. (Dec. 20, 2019)

**Suspended to RESIGNED**
- Perry, Donna, Tampa, Fla. (Feb. 5)
- Rinden, Paul, Concord, NH (Feb. 21)

**Suspended to DECEASED**
- Presented to the Board of Governors May 4, 2020. The following changes are effective in 2020 unless otherwise noted.

**Active to INACTIVE**
- Weiland, Kasey, Bow, NH (March 13)

*Active to HONORARY ACTIVE*
- Boosch, William, Portsmouth, NH (April 22)
- Castaldo, Neil, Hanover, NH (April 22)
- Craig, Thomas, Manchester, NH (April 22)
- Dale, Henry, Concord, Mass. (April 22)
- DePuy, R. David, Manchester, NH (April 22)
- Jette, Ernest, Nashua, NH (April 22)
- Leahy, Mary, Portsmouth, NH (April 22)
- Little, Jr., Curtis, Manchester, NH (April 22)
- Mitchell, Walter, Laconia, NH (April 22)
- Murray, Jr., Vincent, Milton, Mass. (April 22)
- Pancoast, Thomas, Littleton, NH (April 22)
- Schelfly, Brackett, Bradford, NH (April 22)
- Scott, William, Portsmouth, NH (April 22)
- Silber, Norman, Gilford, NH (April 22)
- Westergen, Gary, Laconia, NH (April 22)
- Fink, Peter, Boston, Mass. (April 22)

**Active to INACTIVE RETIRED**
- Sherwood, Daniel, Melissa, TX (March 27)
- Rodier, James, Hampton, NH (March 31)
- Haller, Martin, Boston, Mass. (April 15)

**Inactive to ACTIVE**
- Fay, Melissa, Newburyport, Mass. (April 1)
- Volpe, Richard, Enfield, Conn. (April 10)

*Inactive to HONORARY INACTIVE*
- Belli, Mollie, Georgetown, Mass. (April 22)
- Conti, Samuel, Frenchtown, NJ (April 22)
- Houde, Paul, Nashua, NH (April 22)

Swenson, Kurt, Hopkinton, NH (April 22)
- Cullen, R. Laurence, Freeport, Maine (April 22)

*Inactive to INACTIVE RETIRED*
- Goddard, Jr., Claude, Meredith, NH (April 15)

*Inactive to DECEASED*
- Papademas, Nancy, Lyme, NH (Aug. 14, 2019)

*Inactive to RESIGNED*
- Votta, Joseph, Providence, RI (April 6)

*Inactive Retired to HONORARY INACTIVE*
- Burling, Peter, Cornish, NH (April 22)
- Crean, Daniel, Pembroke, NH (April 22)
- Dye, Christopher, Plainfield, NH (April 22)
- Farrington, Samuel, Chocora, NH (April 22)
- Hammond, Thomas, Manchester, NH (April 22)
- Mullaney, Stanley, Durham, NH (April 22)
- Muller, Daniel, Bedford, NH (April 22)
- Murphy, Edmund, Manchester, NH (April 22)
- O’Shaughnessy, Daniel, Manchester, NH (April 22)
- Richardson, Gary, Hopkinton, NH (April 22)
- Platts, Charles, New York, NY (April 22)
- Therrien, Richard, Pembroke, NH (April 22)
- Tower, David, Rindge, NH (April 22)
- Galway, Richard, Bedford, NH (April 22)
- Townley-Tilson, W. H., Concord, NH (April 22)
- Vaughn, Mark, Bedford, NH (April 22)
- Ryan, John, Silver Spring, Md. (April 22)
- Kerr, III, Thomas, Pittsburgh, Pa. (April 22)

**Judicial to HONORARY ACTIVE**
- Cyr, John, Littleton, NH (April 22)

**Suspended to INACTIVE**
- Caiazza, Christina, Wilmington, Mass. (March 30)
- McMahon, Jeannie, Barrington, RI (March 30)
- Votta, Joseph, Providence, RI (March 30)

*Those members that have reached their 50th Anniversary of their first admission to the Bar of this or any other state become an Honorary Active or Honorary Inactive Member of the Association.*

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**Lawline Thanks**

The NH Bar Association would like to give a huge thanks to all the attorneys who volunteered their services and their landline phones for our Lawline event on April 8th, 2020. Attorneys L. Phillips Runyon III, Gena Lavallee, Holly Vietzke-Lynch, Teresa Mahoney Mullen, Cathy McKay, David Semantis, Sarah Paris, Emma Stilson, and Kate Morneau all volunteered remotely and fielded about 35 calls from the public. Calls were taken on a variety of legal issues, including family law, probate, debt collections, and landlord/tenant.

[Image of attorneys volunteering]

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.

[Image of attorneys volunteering]
Leading With Empathy in Times of Transition

By Jack Newton

COVID-19 has initiated massive waves of change across daily life as we know it, leaving a deep and lasting impact on virtually every industry. Lawyers and legal professionals that had hesitated to adopt technology in the past were suddenly forced to rapidly adapt to this new reality, or be faced with irrelevance or failure. A transformation of the legal industry we might have expected to take place over the next five to ten years is now taking place over the course of the coming weeks and months.

Law firms that have found ways of adapting to this new reality are well-positioned to navigate the forthcoming transformation of the legal market and the broader economy. For firms that haven’t yet switched to a solution that lets them work from home and in a fully distributed fashion, it’s not too late: Change is still entirely possible.

No matter what stage your law firm is currently at, there are a myriad of personal and professional challenges those in our community are currently facing. And with more ahead, it’s more important than ever to lead with empathy—for ourselves, for our clients, and for our colleagues.

This has been a key theme across many of the interviews I’ve conducted for Clio’s Daily Matters podcast. Multiple guests, including Mike Whelan of Lawyer Forward and Katy Goshtasbi of Paris Consulting, spoke about the importance of focusing on the human side of law as we continue to grapple with COVID-19. Staying human, vulnerable, and above all, connected during this time will help us to adapt and move forward as an industry. No where was this more poignant than in my recent interview with David Lat, Founding Editor of Above the Law, Managing Director at Lateral Link, and recent survivor of an extremely serious case of COVID-19. Staying human, vulnerable, and above all, connected during this time will help us to adapt and move forward as an industry. No where was this more poignant than in my recent interview with David Lat, Founding Editor of Above the Law, Managing Director at Lateral Link, and recent survivor of an extremely serious case of COVID-19.

Leading with empathy will yield concrete benefits that will help your law firm during this time. For example, empathy will help law firms get laser-focused on what clients actually want out of their legal experiences, so that they’re not wasting precious time or money on anything else. Stop asking clients for checks and spending time chasing down payments when it’s simpler and safer for your clients to pay their bills online via credit card.

At the same time, an empathetic approach will help law firms do what’s right for the health and financial wellbeing of their families, staff. Now more than ever, law firms must remember that taking a client-centered approach does not mean taking a client first approach—your business must be taken care of so that you can serve clients and keep law firms running.

Perhaps this means you ask your clients to top up their retainers sooner than you normally would to keep cash flow protected at your firm, as Erin Levine of Levine Family Law and Hello Divorce shared she’d done in Episode 2 of Daily Matters. Certainly, many of your clients are likely facing their own financial difficulties during this time. But you won’t know what’s possible until you ask; many consumers and businesses are happy to find ways of supporting those in need.

For those in the legal industry who have already adopted cloud-based technology and have adapted well to working from home: this is your moment to lead with empathy for your less technologically inclined counterparts. COVID-19 triggered a mass migration to the cloud for law firms, and while it’s clear that the legal industry needs the adaptability provided by the cloud long term, this transition will happen more smoothly for some than for others. The faster we can get each other up and running, the better.

This is the time to encourage those moving to the cloud for the first time. Maybe this means you share your successes online so that others can learn from them. Be bold, as knowing it can work may be the encouragement your colleagues need. Take care of yourself first, but if you’re able, consider meeting with another lawyer you know who’s struggling to answer some of their technology questions—you just might make a significant difference in the health of their law firm long term.

Finally, if your law firm is struggling to adapt to a distributed work reality, lead with empathy for yourself. The best time to adopt cloud-based technology at your law firm was several years ago, but the second best time is today. Focus on the future. It certainly won’t happen overnight, but stay determined and persistent, and you’ll be positioned to have an efficient, distributed practice in less time than you think.

The technology is available now to enable lawyers to work from anywhere. New technologies allow us to collaborate in new and innovative ways, and open up the possibility of delivering an experience to your clients that’s superior to what you might have been able to in a traditional office space. For lawyers and legal professionals that have not yet moved their practices to the cloud, there’s no time like the present, and we’re here for you. Listen to our Daily Matters podcast at clio.com/daily-matters for key learnings to help law firms adapt to this ever-changing environment.

NH Bar Members receive a 10% lifetime discount on Clio products!
Pro Bono Remains Open for Business; Responsive to Covid-19 Issue

Working remotely, Pro Bono staff members are navigating the new pandemic landscape, keeping up with and getting the word out about changes impacting clients, responding to requests for legal help, and, as always, enlisting volunteer attorneys to pitch in. While requests for assistance overall have slowed down given stay-at-home orders and other emergency measures, Pro Bono and its legal services partners know a surge in demand is just around the corner, especially with evictions, foreclosures and domestic violence.

CARES Act and Tax Issues
Along with its usual work representing needy people facing IRS controversies, Pro Bono’s Low-Income Taxpayer Project (LITP) is playing a leading role in helping to maximize the number of low-income Granite State residents receiving the “economic impact” stimulus payments authorized by the Coronavirus Aid, Relief & Economic Security Act. As well as fielding numerous calls from New Hampshire residents searching for information and assistance concerning the stimulus payments, the tax clinic has been conducting a vigorous outreach campaign on social media and keeping its legal and social services partners up to date on the details of stimulus eligibility and claim procedure. The following statistics give a sense of the LITP’s engagement on this pressing issue:

- 81 calls concerning the stimulus payments between April 21 and May 1
- 77 from Social Security retirement or disability recipients
- 38 from households with children
- Approximately 65 attendees on informational conference calls
- Almost 5,800 people reached via clinic’s Facebook posts from March 18 through May 4.

NH Free Legal Answers
Covid-related inquiries about housing, parenting rights and employment are populating the questions’ queue of NH Free Legal Answers these days, the website where low-to-middle-income people can post their non-criminal legal queries for volunteer attorneys to answer. In response to the public’s need for legal guidance during the pandemic, the Pro Bono Board, which oversees the online system, raised the income eligibility guidelines to 400% of poverty. While close to 100 attorneys have joined Free Legal Answers, many are questions about employment and unemployment law are needed. It is easy for attorneys to join by going to nh.freelegalanswers.org.

Domestic Violence and DOVE
Beginning with the Court’s March 27 Orders, the DOVE Project has adapted to the evolving legal landscape, first with volunteers handling in-person protective order hearings and now making themselves available for telephonic hearings. With geography less of an issue, multiple attorneys have generously agreed to expand their representation to clients outside of their local communities. In addition, two experienced DOVE volunteer attorneys participated in a planning session, knowledge about to address issues and challenges related to telephonic protective order hearings. Though referral numbers are down, DOVE staff is preparing for an influx of cases to come in as stay-at-home orders are relaxed, as has been seen in other countries.

Attorney volunteer recruitment remains a high priority and planning is in the works to expand training opportunities for DOVE volunteers with the help of DOVE’s UNH Franklin Pierce School of Law Summer Intern.

Wills and End-of-Life Planning
Basic estate planning is foremost in the minds of many seniors right now. Attorneys are responding to Pro Bono’s requests to help with wills and powers of attorney, making the necessary arrangements in light of Covid-19 challenges. More volunteers are needed to meet the demand. Contact Carolann Wooding, cwooding@nhbar.org, to find out how you can help.

The Coming Wave: Evictions, Foreclosures, Debt Collection and Unemployment Claims
Pro Bono and its legal services partners, New Hampshire Legal Assistance and the Legal Advice and Referral Center, anticipate a flood of cases in these areas in the next few months as moratoriums are lifted and violations of CARES Act protections come to light, in addition to the facts of income/job loss. Pro Bono anticipates recruitment drives to engage volunteer attorneys to represent low-income tenants, homeowners and consumers, workers, and more. For more information, contact Ginny Martin, gmartin@nhbar.org.

DOVE Project Receives Award
From UNH Law Students

The NH Pro Bono Referral System’s DOVE Project is the recipient of a $500 gift from graduating UNH Franklin Pierce School of Law Daniel Webster Scholars for their dedication to the DOVE Project. Garvey has pledged to match their gift. The Domestic Violence Emergency or DOVE Project links survivors of domestic violence with volunteer attorneys for representation at final protective order hearings.

New Hampshire Bar Association
PRO BONO HONOR ROLL

First Quarter 2020 Law Firm Honor Roll

This list represents attorneys who have answered questions on Free Legal Answers in the month of March and April.

BELKNAP
Lawson Persson & Chisholm

CHESIRE
Ward Legal Group

GRAFTON
Branwen & Loftus

HILLSBOROUGH (N)
Backus Meyer Branch
Brennan Lenehan
Harvey, Mahoney & Bakis
McLane Middleton
Moore Ames Law

Nixon Peabody
Nixon Vogelman Slawsky & Simonova
Sakellarios & Associates
Shaughnessy Raiche
Sheehan Phinney Bass & Green
Wadleigh Starr & Peters

HILLSBOROUGH (S)
Bernazzani Law
Black Vitelli Pennock
CullenCollimore

MERRIMACK
Laboe & Tasker
Maggiotto, Friedman, Feeney & Fras

ROCKINGHAM
Coughlin Rainboth Murphy & Lown
ParnellMichells & McKay

STRAFFORD
Barford Dedopoulos & Regan
Cochecho Elder Law Associates
Wyskew Boc Tillinghast & Bolduc

SULLIVAN
Elliot Jasper Auten & Sklar

OUT-OF-STATE
Gregg Hunt Ahern & Embry

Free Legal Answers
Volunteers for March and April

Stephanie Annunziata
Catherine Baumann
Martha Davidson
Michael DiRusso
Michael Fisher
Barbara Heggie
Robert Howard
Abigail Kline
David McGrath
Catherine McKay
Rory Parrnell
Christopher Regan
Jonathan Ross
Jane Schirch
Brian Shaughnessy
James Shepard
Kelsey Sullivan
L. Phillips Runyon III
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- Earn CLE credit
- Shadow a judge
- Participate in NHBA events and committees
- Learn valuable professional and leadership skills
- Build relationships that last throughout your career

The NHBA Leadership Academy is nine months of leadership training. After graduation, you select a NHBA committee or project of your choice to fulfill two years of service to the NH Bar.

No more than eighteen applicants will be selected. This leadership program is designed with curriculum most meaningful for those in practice between three and 10 years.

“[Leadership Academy] is a great springboard and gives you a broader view of the law than what you just get from your technical area of practice.”

— Donald H. Sienkiewicz, Class of 2011, Board of Governors

Visit nhbar.org for more information!

NEW HAMPSHIRE BAR ASSOCIATION

LEADERSHIP ACADEMY

Supported in part by the New Hampshire Bar Foundation
Devine Millimet before joining CLF with providing “a lot of first-hand litigation experience” that serves him well in his present position.

CLF has participated in such high-profile cases as the effort to block a four-lane highway through Franconia Notch to stopping construction of a second unit at the Seabrook Nuclear Power Station. But it’s not strictly in the courtroom where it wages its battles. Much of its work is legislative, or behind-the-scenes negotiating and collaborating with both public and private entities.

The fight against childhood lead poisoning is an example.

“New Hampshire’s laws just didn’t have enough strength to protect children from the ongoing threat of lead poisoning,” Irwin explains.

Through legislative advocacy, CLF and others helped strengthen those laws, with the result that now all 1- and 2-year-old children must be tested for lead, the state Department of Health and Human Services’ standard for acceptable blood lead levels has been reduced and all schools and child care centers must test their water for the presence of lead.

“If we’re screening more kids and DHHS is applying a more protective standard, it means a lot more kids are being helped and a lot more unsafe properties are being made safe,” says Ir

Irwin sees two additional issues he deems critical to address – climate change and environmental justice.

“New Hampshire has a number of PFAS ‘hot spots,’” including the former Pease Air Force Base, and the state last year passed legislation making it the first in the nation to require local water systems, landfills and wastewater plants to regularly test and treat for four chemicals classified as PFAS.

Those protective standards are now being challenged by the 3M Corporation, according to Irwin, in a case pending before the state Supreme Court. “We plan to engage in that as an amicus curiae,” he says.

Irwin enjoys spending time on the very waters he helps remediate.

“When I was in school,” he recalls, “we went from lakes and rivers to the oceans. Now I often see communities of color.” CLF recently hired a staff person to work exclusively on environmental justice issues in Manchester and Irwin says the work is especially timely.

“The tragic consequences of the coronavirus, by disproportionately affecting people of color, is exposing significant inequities that need to be addressed,” says Irwin, who participated in the Endowment for Health’s Leadership Learning Exchange on Race and Equity in 2017.

His dedication has won the admiration of other agency heads who work with Ir

“Tom has a rare combination of commitment, determination, and the ability to effectively tailor his message to whatever forum he is working in,” says Elliott Berry, managing attorney for the Manchester office of New Hampshire Legal Assistance.

Moreover, in the five or six years during which I have worked with him, I have never seen him let ego affect strategy or tactics—even though he is usually leading the effort,” Berry adds. “I know of no better advocate for protecting and enhancing the health of New Hampshire families.”
Do you know why thousands of law firms see their retirement plan in a different light?

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CN700696_0121
Elderly clients sometimes lack internet, says. “We are seeing clients via Zoom and it actually works pretty well,” she says. “It’s kind of like water building up behind a weak dam,” says Riff. “Once this thing gets ready to go, I think we’re going to be inundated with stuff... I do a lot of evictions and foreclosures and a lot of evictions have been stayed. I think there’s going to be a flood of evictions and foreclosures.”

For some, the pandemic is already boosting business. “I would say we’re as busy as we ever are,” says Greenblott. “There may be a drop-off in new clients but our existing clients have needed a lot of help navigating all this. Estate clients suddenly want to get that done now. Business clients need help.”

However, McCandless has seen a decline in personal injury work. “I do a lot of work with nonprofits and I’m getting a lot of calls regarding the funding available to help them stay afloat in the meantime,” he says. “A lot of folks involved in nonprofits also have small businesses that otherwise wouldn’t qualify for things like unemployment so they are turning to us.”

Churches, religious organizations and independent contractors who previously were ineligible for unemployment are among others reaching out for help, he adds. “For Jesse Friedman and John Bresaw, who opened their firm, Friedman & Bresaw, PLLC in December of 2019 in Meredith, video conferencing and electronic filings are ‘sincere inquiries’ about how he is dealing with a backlog, but with a flood of business cases, things normalize.”

The collegiality is really encouraging, he says. “It has confirmed the decision whether business will return, some practitioners anticipate that lawyers may not only be dealing with a backlog, but with a flood of business cases. There’s a lot of things that are going to take some time to get their footing back.”

Like McCormac’s concern about whether business will return, some practitioners anticipate that lawyers may not only be dealing with a backlog, but with a flood of business cases. There’s a lot of things that are going to take some time to get their footing back. The question of how things get re-scheduled by the courts is really on a lot of lawyers’ minds, says Greenblott. “There may be a flood of evictions and foreclosures.”

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How can adults make choices about children’s digital lives in a way that both protects and encourages growth? This question is the primary dilemma posed by Leah Plunkett’s Sharenthood. The term “Sharenting” may be new to you (it certainly was to me) but the issues the term encompasses are familiar topics of debate today. A “Sharent,” according to Plunkett, is an adult who shares, retains, or uses private information about a child in their care through digital means.

Due to an ever-growing number of technological advancements, today’s children are being exposed to the outside world in ways society never anticipated. Sharenthood addresses how this exposure and new technology can help build children up and provide access to social support and equal education in ways like never before. However, it also raises serious concerns and provides shocking real-life examples of potential dangers, including children’s increasing exposure to identity theft and exploitation by predators, while their opportunities to play and make mistakes in a safe space is being compromised, all due to the constant access to their personal lives that sharenting provides. As Plunkett elaborates, “We don’t let our kids go outside, and we don’t let our kids do anything, change their diet, change their school, and beyond. These points are not new, often useful, and usually complex tools that have come into our lives. Despite being the most common villainized tool in this debate, social media is not the only culprit, as I initially thought. In fact, there are a shocking number of varied ways that the digital world can influence our youth. A child’s life can be built and shared digitally from before conception (think fertility apps), through birth announcements sharing height and weight (something no adults would ever share about themselves), to smart toys that record development progress, software tracking academic performance in grade school, and beyond. These points are not meant to frighten, but rather to enlighten and to empower readers to take appropriate action to protect themselves and their children.

In her aim to educate her readers on sharenting, Plunkett, a former legal aid attorney turned academic, lays out her information as though it were a case study. With the help of many pop culture references we all know and love from our own childhood, and a dash of humor at the right moments, Sharenthood educates its readers about the unending ways in which adults are releasing children’s information to the world. Challenging questions, with no clear right answers, are posed to encourage readers to engage with the material and apply it in a personal way. A surprisingly large number of details regarding current privacy laws, methods of data mining and sharing, and real life stories are included, especially if you make use of the footnotes (like the way you claimed you did in law school). I often found myself sidetracked, googling the articles cited in the back of the book, and becoming absorbed in the shocking true stories to which they lead, such as the article about a London teenager wooed into a relationship through social media into a relationship which ensnared her in a criminal syndicate and becoming absorbed in the shocking true stories to which they lead, such as the article about a London teenager wooed into a relationship through social media into a relationship which ensnared her in a criminal syndicate and becoming absorbed in the shocking true stories to which they lead, such as the article about a London teenager wooed into a relationship through social media into a relationship which ensnared her in a criminal syndicate.
Stay in Compliance

Your Guide to Easy License Renewal Deadline: Wednesday, July 1

1. Update Member Info
Members are encouraged to check the accuracy of their contact information on My NHBar Portal, nhbar.org. Updated photos may be sent to memberrecords@nhbar.org.

2. ART Appreciation
The Attorney Reporting Tool (ART) found at My NHBar Portal, nhbar.org, enables attorneys to keep track of their legal education credits. CLE credit minutes taken from NH Bar Association programs automatically appear in ART; external program credit minutes must be entered into ART by the attorney attending the class.

3. Make Way for Email
Starting at the end of May, watch for an email from billing@nhbar.org. Designate that email address as a safe-sender to be sure you receive the licensure renewal notice and other NHBA-related notifications.

4. Payment Made Easy
The June 1 email will contain a link directly to the renewal invoice with a payment function. Pay online with a credit card (VISA, MC, Discover or American Express) or if unable to pay online you may send a check via U.S. Mail.

5. Check the Box
NH Pro Bono Referral System programs need your support — as federal and state funding sources diminish, your contribution is needed now more than ever. Be part of a program that gives people in New Hampshire communities the opportunity for greater stability, more hope, and a second chance in our mission of justice for all.

6. Assume TAC Form Is Required
Most active-status Bar members must e-file the Trust Account Compliance certificate, even if they are not actively practicing or do not have trust accounts. The online form asks eligibility questions and only requires members to fill in the necessary answers.

7. Be Prepared
Make sure to have bank account information handy before starting to fill out the online Trust Account Compliance certificate. The online filing system does not save information if you exit without completing the form.

8. Help Is Available
If you have questions about how much you owe, whether you filled out the trust accounting certificate correctly, or about NHMCLE reporting, there are resources to help. Look first to the NHBA’s website at nhbar.org to see if there are resources, found under the Resources tab, that can answer your question.

9. Go for Green by July 1
Login to your MY NHBar Portal and go to the compliance portion. Members will see colored bars in the middle of the page — for NHMCLE, Trust Account Compliance, Annual NH Supreme Court fees and NHBA dues. Each of these boxes will be RED until payments and/or forms are processed. Three GREEN boxes mean a member has completed the necessary licensure renewal steps. A fourth box will appear after August 1 if you owe any delinquency fees assessed by the NH Supreme Court for late payment and/or filings.

10. Check Your Messages
Correspondence from billing@nhbar.org will be retrievable from the “Messages” tab in the Member Portal, in case you have a question about what you have been asked to provide. The Licensure Renewal Dashboard will be available online starting June 1.

Getting it all done before July 1 saves time and energy!
Licensure Renewal is Fast Approaching

TAKE ACTION TODAY

New Hampshire Supreme Court

NHMCLE Board
Minimum Continuing Legal Education

Members: Get Ready for the End of the NHMCLE 2019-2020 Reporting Year

New: The 2019-2020 reporting year ends on June 30, 2020. The Affidavit of Compliance must be filed on or before July 1, 2020. In the past, one extra day to file the affidavit was allowed for the lawyers who took a NHBA CLE, to accommodate the time it takes for the NHBA CLE to be entered into the My Record page. Beginning with this 2019-2020 reporting year, that will no longer be the case. Courses must be attended by June 29, 2020. If you plan on taking a last minute NHBA CLE, please be sure to attend by June 29, 2020 at the very latest. The June 29th NHBA CLE will be added to your record on June 30 so you may file your affidavit before midnight on July 1, 2020.

NHMCLE Compliance Steps:
The reporting year begins on July 1 and ends on June 30 of any given year.

Compliance requires two steps:

1. Meet or exceed the minimum requirements per Rule 53.1(B)(1), 720 total minutes with at least 120 of those minutes in ethics.

2. E-file the affidavit of compliance per Rule 53.2(A)(1). The affidavit tab is located on the toolbar of the My Record page and will be activated on June 1 and after the minimum requirement has been met.

Your ART file will be locked after filing the Affidavit:

Keep in mind that once the affidavit has been filed, the My Record page is locked, and no changes may be made once affirmation has been completed. For this reason, be sure to enter all CLE taken into ART prior to filing the affidavit.

A brief overview of the My Record page:

- Section A is a statement of where the account stood on midnight of June 30, 2019 when the prior year ended. If the number is positive, that is excess minutes to carry forward and if the number is negative, that is how much is still owed for the prior year. Section A is a statement of fact, the numbers do not change during the year.

- Section B shows any courses that were attended and entered between July 1, 2019 and after the minimum requirement has been met.

- Section C ethics + Section B ethics only = Section C ethics

Reminder: The NH Supreme Court made some changes to Rule 53 that went into effect on July 1, 2016. An important change, especially now as we deal with the COVID-19 pandemic, is that the Live requirement is no longer tied to compliance. The Live category still shows on the My Record page just as an FYI field for our out-of-state members who need the information to report their NH CLE’s back to their home state.

The Total and the Ethics categories both show a minimum quantity in parentheses. The Live category does not have a minimum quantity associated with it because it is no longer a requirement in New Hampshire.

NHMCLE Filing Extension Available: As per NH Supreme Court Order recently filed, in light of the ongoing COVID-19 pandemic, a member who fails to file the certification of NHMCLE compliance on or before July 1, 2020, will receive an automatic extension of time to September 1, 2020, to file that certification, without imposition of a delinquency assessment or fine. Those affidavits filed after September 1 will be assessed a $300 delinquency fee payable on or before October 1, 2020. All other licensure renewal requirement deadlines and assessments remain unchanged.

NHBA Open Doors or Virtual Open Doors events will be scheduled in June and July to assist members with completing their 311 Licensure Renewal Requirements.
Dear Bar Members,

As chair of the NHBA’s CLE Committee, the coronavirus limitations that have been established by the Governor, have forced us to revisit how we could continue presenting CLE programming to our members.

We quickly had to come up with a plan to postpone all live programs and offer many online webcasts as fast as possible. With the help of Joanne and our dedicated Bar Staff, our online partner, InReach, and the volunteerism of our Committee members and friends, we have been able to produce a number of remote live webcasts.

As we continue to schedule more programs, I want to thank those volunteers who stepped-up, worked with the Bar Staff, and learned to present from their homes with Anne coordinating it all from her home.

Obviously, we prefer to see a room full of faces, but for the time being, we’ll just have to connect online. Thank you for your support and for the following people who have presented so far.

Very truly yours,

Jack P. Crisp

Elliott Berry  
NH Legal Assistance

Nat Boughton  
StrategyMD

Sara B. Crisp  
The Crisp Law Firm, PLLC

Hon. Philip D. Cross  
NH Circuit Court

Jennifer A. Eber  
Orr & Reno, PA

Lenne Espenschied  
7th Circuit Court

Hon. Robert J. Foley  
Orr & Reno, PA

Kelly J. Gagliuso  
Bernstein, Shur, Sawyer & Nelson, PA

Richard C. Gagliuso  
Bernstein, Shur, Sawyer & Nelson, PA

Dennis J. Haley, Jr.  
McLane Middleton Prof. Association

Gary S. Harding  
Bernard & Merrill, PLLC

John E. Hughes  
McLane Middleton Prof. Association

James F. Laboe  
Orr & Reno, PA

Hon. Jennifer A. Lemire  
10th Circuit Court

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Commercial Frustration: A Novel Tool for the Novel Virus

By Helen Holden Slottje

The repercussions from the novel coronavirus on the commercial real estate market are still unfolding, and likely will not be fully understood and appreciated for some time. Nonetheless, at the time of this writing, many businesses across New Hampshire are shuttered or operating unprofitably at greatly reduced capacity, many with no clear path to a sustainable reopening.

As a result, many of these businesses are looking for advice on what legal relief might be available to address their inability to pay rent, which is one of their two largest expenses.

Advice commonly given to many of these tenants is that a review of the lease contract’s force majeure provisions should be undertaken.

This is valid advice as far as it goes, and controversy may take place to find the helpful language, depending on the precise terminology of the clause – after all, the text of each force majeure clause is different – but the typical commercial lease explicitly excludes payment obligations from the contractual undertakings that are described as excused by force majeure.

Other common advice recommends that the tenant should begin by asking its landlord for some sort of rent deferral, in return for an extension of the lease on some terms. This tactic seems to be taken directly out of the playbook used by many in the wake of the 2008 recession.

But unlike many past economic disruptions, the impact of the coronavirus seems likely to be ushering in not merely a (relatively) short-term disruption in asset values, but rather a long-term, wholesale change in how America (and indeed the world) shops, travels and works. Specific impacts will of course vary by market and segment, but for many commercial tenants the outlook is challenging.

Debtor seeking reorganization for restaurant, retail, and entertainment-related properties, for example, may depend first, on how long and how frequently social distancing measures are in effect. The second concern is whether and when the public again begins to feel comfortable congregating in groups. Third, is that the impact diminished stock market values may have on consumer spending. Office properties, on the other hand, may recover sooner than entertainment-related properties, but, even so, significant questions exist whether the office market will have been materially and permanently altered by virtue of (for example) an accelerated shift to remote work or the perceived dangers of close working quarters.

I believe a legal tool exists that is particularly well-suited to address the plight of commercial tenants who are caught up in the coronavirus threat’s unprecedented impact on commerce and disruption and re-ordering of how Americans go about living their lives.

That legal tool is the doctrine of commercial frustration, which (depending on the specific lease language in question) may be asserted toward the goal of achieving a temporary abatement of rent, or even a termination of the lease in question.

Whether by judicial decision or by statute (such as the U.C.C.), many states (including New Hampshire) consider (many if not all) commercial agreements to contain an implied covenant of good faith and fair dealing.

In a similar vein, the doctrine of commercial frustration considers that contracts (including leases) are “subject to the implied condition that the parties shall be excused in such case, before breach, in the performance of the contract ceases to exist without default of either of the parties.” This doctrine thus excuses performance under a contract, even if literal performance is possible, in situations where “such events have essentially destroyed the purpose for which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary.” (Restat. 2d of Contracts, § 261, emphasis added.)

In a commercial real estate lease, the fundamental nature of the bargain struck is that the landlord is to provide space for the tenant to operate its business in exchange for the payment of rent.

Indeed, in a typical lease situation, whether or not explicitly stated, the fundamental assumption by both parties is that the source of the cash flow anticipated to be used to make required rent payments is directly or indirectly the business operations that the parties expected the tenant to be able to conduct from the leased space in question.

But, of course this underlying, fundamental expectation has been upended by the

FRUSTRATION continued on page 32

New Relief for Some Real Estate Companies Under the Bankruptcy Code

By Terrie Harman

In this age of COVID-19, the Small Business Reorganization Act (SBRA) is a game changer: Introducing Subchapter V. Help is here for our small and midsize businesses. Effective mid-February 2020, prior to the COVID-19 crisis, small businesses with debt of $2,752,625 could take advantage of Subchapter V of Chapter 11 of the Bankruptcy Code. In response to COVID-19, Congress expanded the debt ceiling to $7,500,000 for one year.

Until now, because of prohibitive administrative costs, it was impossible for many debtors to take advantage of the bankruptcy reorganization process. Subchapter V (Sub V) has changed that.

Take our hypothetical New Hampshire business with $1 million in unsecured debt, secured debt of $1,500,000, assets of $1,500,000, now confronting a lawsuit with a contingent liability of unknown proportions. The business has run out of cash, and considers the situation a Chapter 11 filing. It is, however, stopped in its tracks because of the hefty administrative costs including legal fees, filing fee, and quarterly fees.

Whether we call Sub V a “mini 11” or call it a “hybrid Chapter 13,” in some respects, it is both.

Sub V acts as a “mini Chapter 11” but is less expensive and more streamlined. The debtor retains more control, and more entities are eligible to file. A Chapter 13 debtor seeking reorganization must be an individual, but now, Sub V permits the small business debtor to be an individual or a business entity.

Sub V debtor may have no more than $7,500,000 in total debt, with at least 50% of such debt arising from business activities. The aggregate debt includes non-contingent liquidated secured and unsecured liabilities, but other than debts owed to affiliates or insiders. Also, the SBRA left intact the prohibition against a “single asset real estate” case but clarified that a Sub V debtor is eligible where its primary activity is owning or operating multiple real properties.

Sub V is similar to a Chapter 13 in that the plan period of time is three to five years, and makes clear that a mortgage debt secured by the debtor’s home may be modified if it was not used primarily to acquire the residence and that the money from the loan was used primarily in the business of the debtor. Query: what happens if the debtor borrows funds to purchase real estate with an upstairs apartment where the debtor lives and a downstairs unit where he operates a business? Can that mortgage be modified – or can a portion of it be modified? Look for judicial decision in this area.

As opposed to traditional Chapter 11, the Sub V debtor has exclusivity to file its own plan of re-organization, and must do so within 90 days of the filing date. The court is required to conduct a status conference within 60 days, but may extend either of these deadlines upon a finding that such extension is “attributable to circumstances for which the debtor should not justly be held accountable.” Expect that debtors will seek not to be justly accountable because of COVID-19, and won’t all debtors seek the same thing?

In a departure from traditional Chapter 11, within 14 days before the status conference, the debtor must file a report detailing its progress and efforts toward finalizing a consensual plan. Expect debtors’ counsel and creditors to communicate actively in the ongoing Sub V process. Also, instead of the traditional Chapter 11 debtor in possession administration, where the debtor in possession remains in control and manages its own bankruptcy administration, the Sub V debtor’s responsibilities include assistance in developing and monitoring plan distributions. In short, the Sub V trustee’s purpose is to assist the debtor in resolving creditor issues and keeping the debtor on track toward its plan of reorganization.

Attorney Jim Lamontagne of Manchester has been appointed as the Sub V trustee for New Hampshire.

NEW RELIEF continued on page 32
Real Property Law

The Real Estate Industry Rises to New Challenges

By Jennifer Shea

It would be difficult to find any aspect of our lives that the COVID-19 pandemic has not impacted and the practice of real estate law in New Hampshire is no excep-
tion. Just as the pandemic has been unpre-
ceded, so too has the response by industry
stakeholders who have managed the critical
need to keep closings on schedule, all while
ensuring the safety of their employees, co-
workers, and clients.

In early March, as reports of the number of
individuals contracting the virus began to
increase, the reality that the impact would
not be limited to metropolitan areas was
clear. The effects would reach into northern
New England starting with the inevitable
shutdown of businesses and governmental
services. We saw town hall and courtroom
access change, adjustments to open meeting
rules, the tolling of various limitations peri-
ods, and moratoriums on evictions and fore-
closures – all of which impact the real estate
industry.

New Hampshire Registrars of Deeds
implemented continuity plans under the ex-
pectation that, at best, their normal course of
business was going to be disrupted. As coun-
yty offices began to shut down, the registries
established protocols to reduce person-to-
person contact by closing or limiting walk-in
service for delivery of documents that could
not be electronically recorded. Some loca-
tions required documents be left in a drop
box or delivered by commercial mail car-
rier while others made additional provisions
allow for remote access to their indexing
software, should the staff ultimately be dis-
allowed physical access to their office. With
the situation being fluid, and sometimes
changing hourly, what was clear was that
our Registrars were prepared to make every
effort to facilitate recording and continued
indexing of documents.

The efforts of our Registrars during this
time cannot be overstated. However, because
the real estate industry relies on the ability
to timely search and record documents, the
potential for a complete shutdown needed to be
considered. Title Insurance underwriters
hurriedly worked to develop protocols to in-
sure transactions in a “gap,” whereby the ul-
timate recordation date of title documents in
the land records could not be known at time of
closing. Thankfully, as of the writing of this
article, it appears that a complete shut-
down of our registries of deeds is unlikely
due to diligent business continuity planning
and execution. This is not the case in some
states.

Amid the concerns regarding a shut-
down of recording offices, worries regarding
personal contact began to grow. The cus-
tomy closing ceremony, in which multiple
parties including sellers, buyers, realtors,
and closing agents gather in one place, pre-
sented a tangible safety concern. In response
to this, on March 18 we saw U.S. Senators
Kevin Cramer (R-ND) and Mark Warner
(D-VA) introduce S. 3533, the “Securing
and Enabling Commerce Using Remote and
Electronic (SECURE) Notarization Act of
2020.” If enacted, this bipartisan legislation
would permit nationwide use of Remote On-
line Notarization (RON), a type of electronic
notarization in which the notary and signer
are in different physical locations but appear
gether via an online program and gener-
ates all electronic documents.

In recognition of the need to facilitate
the safe execution of important documents at
the state level, on March 23 Governor Chris-
topher Sununu issued Emergency Order
#11 pursuant to Executive Order 2020-04 in
connection with the COVID-19 pandemic
captioned, "Temporary authority to perform
secure remote online notarization." While
keeping with the spirit of S. 3533, the Order
allows for the notarization of critical docu-
ments when signed during a secure audio-va-
sual webcast in which the notary is not in the
physical presence of the signer. Emergency
Order #11, however, provides for a printing
and “wet” signing of documents during the
audio-visual conference. The signer must
then deliver the signed documents to the no-
tarial officer for certification and execution
with the notarial officer’s signature and of-
icial stamp or seal. The original document
with the “wet” signatures of both the signer
and the notarial officer are then submitted
to the registry for a recording in the usual man-
er. When combined with e-recording, this
method provides a bridge between evolving technology and customary
signing and recording methods.

With each new challenge came an op-
portunity for real estate practitioners to
undertake a critical analysis and to raise
important questions involving a number of
factors. Questions such as whether profes-
sional liability insurance excluded coverage
where registration of deeds was under-
taken remotely, during an audio-visual clos-
ing ceremony, and under what conditions
and with what technology would clients,
 lenders and title insurance carriers authorize
such closing practices, were addressed. In
the residential real estate sector, there were
significant complexities involving Federal
National Mortgage Association and Fed-
eral Home Loan Mortgage Corporation desc-
scriptions.

Can New Hampshire Owners of Rental Real Estate Obtain Twenty Percent Federal Tax Deductions From Their Rental Income?

By John M. Cunningham

Internal Revenue Code section 199A
became effective on January 1, 2018. It pro-
vides annual federal income tax deductions
to owners of pass-through businesses of up
to 20% of their net business income. Pass-
through businesses consist of sole propri-
eterships or (including single-member LLCs
whose members are individuals and which
are “disregarded entities”), entities taxable
as S corporations, and entities taxable as
partnerships (including multi-member LLCs).
In addition, most closely-held busi-
nesses taxable as C corporations can easily
be restructured as pass-through businesses.

Many hundreds and possibly thou-
sands of New Hampshire residents use
pass-through businesses to purchase and
hold commercial or residential real property
in order to obtain rental income from them
and, when the time is right, to sell them at
profit. I’ll refer to these businesses in this
article as rental real estate enterprises. Ob-
viously, these owners would like to max-
imize their section 199A pass-through de-
ductions on their real estate rental income.

However, these owners cannot qual-
ify for section 199A pass-through deduc-
tions unless their businesses are “trades or
businesses” within the meaning of section
199A, and regulations under section 199A
provide, in general, that a pass-through
business is a “trade or business” under the
section only if its owners, their employees,
their agents and their independent contrac-
tors devote continuous, regular and sig-
nificant time to it within the meaning of
Commissioner v. Groetzinger, 480 U.S. 23

On September 24, 2019, in an admin-
istrative ruling (the “Ruling”) designated
Rev. Proc. 2019-38, the IRS provided owners
of rental real estate enterprises with a trade
or business “safe harbor.” Every New
 Hampshire lawyer who represents owners of
rental real estate enterprises should have at
least a general understanding of the Rul-
ing, since:

• The Ruling may be of great potential
importance to these clients; but

• As discussed below, the safe harbor pro-
vided by the Ruling is likely to be not
only useless but even misleading both to
the owners themselves if they are aware
of it and even to their tax accountants un-
less they have a detailed knowledge of
the relevant federal case law.

Briefly, the Ruling provides that, in
order for their rental real estate enterprises
to qualify as section 199A trades or busi-
nesses:

• The owners of these enterprises must
maintain separate books and records for
each property held by them;

• The owners, their employees, their
agents and their independent contrac-
tors must, in the aggregate, devote at
least 250 hours to “real estate rental ser-
dices” during each relevant taxable year
(which, for most owners, will be the cal-
endar year);

• The owners must prepare and maintain
contemporaneous written records con-
dering the time they devote to the enter-
prise, the nature of each relevant rental
income, the date of performance of each
service, and the identity of the provider of
each service; and

• The owners’ federal tax returns must in-
clude a detailed rental real estate
enterprise statements.

The Ruling sets forth a non-exclusive
list of eight types of services that will qual-
ify as real estate rental services for section
199A purposes.

As will be obvious, the Ruling will
be useless to many and perhaps most New
 Hampshire owners of rental real estate,
since, for so many of them, their business
are purely a side business; they hold only
a small number of properties—often just
one or two; they devote far fewer than 250
hours to these properties; and they have nei-
ther the time nor the ability to compile and
maintain the detailed records required by
the Ruling. Further, they may assume that
because they cannot comply with the Rul-
ing, they cannot qualify for section 199A
deductions from their real estate rental in-
come.

There is no case directly on point on
the issue whether a rental real estate enter-
prise qualifies as a trade or business under
section 199A. However, the Ruling itself
provides the framework on the relevant
facts, rental real estate enterprises may
file claims for the benefits of section 199A,
and all owners of rental real estate enter-
prises within New Hampshire are encouraged
to explore their options.

INCOME continued on page 32
Impacts of Proposed Amendments to Workforce Housing Law - HB 1629 and HB 1632

By Christopher Swiniarski

Significant amendments to encourage workforce and residential housing development are working their way through the NH House. HB 1632, as written as of March 11, 2020 seeks to expand financial incentives under RSA 162-K to workforce housing development, and is currently in the House Ways and Means Committee. It is offered in connection with HB 1629, which has the more imminent status of “Ought to Pass with Amendment.” While HB 1629 is held out as a bill “Relative to training and procedures for zoning and planning boards,” a closer look reveals that the Bill’s provisions reach much farther.

Indeed, for new planning or zoning board members only, the Bill now mandates the formerly optional Office of Strategic Initiatives (OSI) training for municipal boards described in RSA 673:3-a. The Bill also tasks the OSI with developing a test for new members. But many planning and zoning boards do not have high turnover, so the odds of having a voting majority of new members is usually quite low. As such, the Bill’s stated purpose of “training,” by applying it only to new board members, is likely to take years to be fully effective in many towns.

One of the Bill’s far-reaching provisions applies not only to workforce housing, but to “all types of housing development.” Note that this far-reaching provision applies to RSA 674:21, II, the so-called Innovative Land Use Controls statute. The Bill seeks to mandate that any density, lot size, or other dimensional incentives afforded to “housing for older persons” shall automatically be afforded and “deemed applicable to all types of housing development.” Note that this far-reaching provision applies not only to workforce housing, but to “all types of housing.” In a time when residential development is the most profitable type in our state, this type of amendment could have significant implications for municipalities. It may be that, if the legislature extends these benefits or relaxed standards to housing across the board, some municipalities will not have the time or means to provide the additional infrastructure that increased housing requires.

Housing for older persons typically has far less of an impact on municipal resources (schools, first responders, sanitation, etc.) than typical residential development. While housing can be built in mere months, the municipal infrastructure usually takes much longer to implement, assuming a municipality can figure out how to pay for it.

Another provision of the Bill amends RSA 674:21, IV(a) by allowing Planning Boards the ability to waive regulations in municipal “Inclusionary Zoning” ordinances if the same would make a low- or moderate-income housing development less profitable. The intent is to support affordable housing by permitting waiver of economically cumbersome provisions. But as written, the Bill may have the effect of creating the possibility of appealing a denial that is otherwise validly grounded in noncompliance with municipal law, simply because compliance negatively affects profitability.

Perhaps the most broad-reaching effects of the Bill may arise from the proposed amendments to RSA 674:33 with respect to ZBA decisions, and proposed amendments to RSA 676:4 with respect to Planning Board decisions. It seems the proponents of the Bill took inspiration from our Commonwealth neighbor to the south in seeking to impose a 90-day deadline on ZBA decisions and tightening Planning Board deadlines, along with an additional requirement for a written decision backing up any denial. Conversely though, the Bill contains no requirement for a written decision supporting an approval. The new deadlines reduce delays which often impose significant costs and unpredictability on developments. The written decision requirement adds transparency and accountability to decrease the likelihood of boards making arbitrary or capricious denials (or approvals). One potential problem, however, lies in the proposed amendments to RSA 676:4 with respect to Planning Board decisions. The Bill proposes a timeline of 30 days for the superior court to act on infractions of the above referenced planning board deadline, and requires the court to fast track the claim. These provisions lack the proverbial “or what” substance, likely because the legislature may be reluctant to step on judiciary toes.

Last, the Bill attempts to provide the Court with authority to award attorneys’ fees to a prevailing party in any appeal on the matters described above, subject to the limitation that attorneys’ fees against a municipality would only be recoverable in instances of bad faith, gross negligence, or malice. This provision encourages transparency and accountability by providing a penalty for municipalities intentionally delaying decisions or denying approvals without good cause.

While the Bill may fail to recognize the impacts of forcing residential development on any given community, it does make significant advances in eliminating never-ending delays and arbitrary decisions. This effect alone can have a dramatic positive impact on all economic development in NH, be it commercial or residential.

Christopher Swiniarski is an attorney in the Real Estate and Corporate Department at McLane Middleton, Professional Association. He can be reached at (603) 628-1322 or christopherswiniarski@mclane.com.


By John Willis

The purpose of recording a lis pendens with a registry of deeds is “to give notice to third parties that any interest they may acquire in the property is subject to the outcome of litigation.” Topjian Plumbing & Heating, Inc. v. Bruce Topjian, Inc. (N.H. 1987). “[R]ecording a lis pendens gives notice but does not create an attachment or perfect a lien.” Id.; N.H. Title Standard 9-30.

New Hampshire permits a lis pendens to be recorded with a registry of deeds in only two situations: (1) “[i]n equity cases for specific performance of an agreement to transfer land” and (2) “to perfect a labor and materials lien under RSA 447.” RSA 511-A:8, III. In those two situations, that statute “permits the filing of a writ in the form of a lis pendens without prior court application or approval.”

New Hampshire statutes do not permit a lis pendens to be recorded in other lawsuits affecting title to real estate, such as quiet title actions. See FHLMC v. Desmet (D.N.H. 2013).

In that case, the court rejected the plaintiff’s motion for approval of a lis pendens in actions to quiet title, see, e.g., Mass. Gen. Laws (“MGL”) ch. 184, § 15, New Hampshire does not appear to have done so.” Id.

As indicated in Desmet, there is a sharp contrast between the Massachusetts and New Hampshire lis pendens statutes. In Massachusetts, recording a lis pendens in quiet title actions “prevents further disputes and resulting claims and litigation from those parties who …lacked notice of its prior involvement in litigation. The prevention of such unnecessary conflict and compounding lawsuits furnishes a strong practical purpose for the lis pendens.” Powell v. Stevens (Mass. App. Ct. 2007).

The Massachusetts lis pendens statute serves “to remedy a harsh common-law lis pendens rule by ensuring that prospective buyers have the benefit of recorded notice of certain lawsuits.” Wolfe v. Gormaly, (Mass. 2004). A lis pendens “does nothing that a conscientious seller of property would not do as a matter of course…Considerations of fairness would ordinarily prompt the seller of property that is the subject of a legal dispute to inform potential buyers or mortgagees of the existence of that dispute.” Debral Realty, Inc. v. Dichiara (Mass. 1981).

Unlike in Massachusetts, where the lis pendens statute generally prevents constructive notice of lawsuits by other means, in New Hampshire an affidavit might be effective in providing constructive notice of a lawsuit. Under New Hampshire Title Standard 3-1, reliance upon affidavits “is acceptable practice.” See also Title Standard 3-2 (Affidavits “should state facts, rather than conclusions, and disclose the basis of the maker’s knowledge.”); C F Investments, Inc. v. Option One Mortg. Corp. (N.H. 2012) (“The goal of a prospective bona fide purchaser is to make sure he or she will obtain an interest in a property free and clear of encumbrances… Because properly recorded instruments are deemed to give notice to prospective purchasers of any outstanding claims against property, a proper search of public records should reveal whether the grantor has clear and marketable title to the property with the right to convey it.”).

John Willis is a member of the New Hampshire and Massachusetts bars. As an attorney at Fidelity National Law Group in Boston, he handles real estate title litigation in both states. He graduated from Tulane Law School in 1989.

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MAY 20, 2020
Solar Energy – We Are Still Getting Used to the Change

By Robert L. Best & Michael Redding

The allure of free, clean, unlimited energy from the sun has always been tantalizing. Seemingly for decades, we have been on the cusp of the big breakthrough that would remake our energy industry. From a policy perspective, New Hampshire has been getting ready for it for more than 40 years.

Since 1975, New Hampshire has permitted municipalities to adopt tax exemptions under RSA 72.61 for solar-thermal installations. Not metering under RSA 362-A began in 1978. New Hampshire created real estate rights in “Solar Sky Space Easements” in 1985 through RSA 477:49-51, and encouraged their use in real estate development through municipal planning and zoning (RSA 672 and RSA 674). Since 2002, encouragement of solar energy development has been required in municipal planning regulations and zoning ordinances adopted under RSA 674. Beginning in 2010, municipalities could adopt “Energy Efficiency and Clean Energy Districts” under RSA 53-F. Solar energy was incorporated into the state’s renewable energy standards (RSA 362-F) beginning in 2013. Starting this year, RSA 362-F encourages the development of solar installations that benefit low to moderate income families and municipalities are authorized to adopt tax exemptions under newly amended RSA 72:61 for solar-electric installations.

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New Hampshire Bar News
Constitutional Challenges Loom Amidst Shutdown

By Ian Huyett

During the 2008 crisis, some resilient New Hampshire businesses thrived. Others were able to launch in the wake of the downturn. Yet, as COVID-19 drugs on suppression measures now threaten to permanently destroy many of these businesses.

Murphy’s Taproom opened in 2007 and rapidly became profitable, remaining untouched by the downturn in 2008. “The recession in 2008 and 9 didn’t hit us,” says Keith Murphy, owner of Murphy’s and a former state representative. In contrast, the current shutdown is “disastrous – there’s no other word for it. It’s catastrophic.”

If the shutdown is not lifted soon, Murphy warns of an ominous future for New Hampshire restaurants. “If we are allowed to reopen on May 4, which I think is doubtful, I think 15% of restaurants are already out of business,” said Murphy. “Into June, we’re looking at half. I’ve done the models, and once we get to the third week of June, it’s all over.”

The shutdown is not only threatening to destroy restaurants and bars. When Matt Pearson and his wife Kelly first opened Cowabunga’s, a family entertainment center, their property was helping to revitalize a beaten-down former Walmart plaza in Hooksett. Now Cowabunga’s has two locations, both closed by the shutdown. “We had tremendous business; we were really excited and had a lot of plans to grow the store,” Matt Pearson said. Soon, however, family entertainment will “simply not be a solvent business.”

If businesses like Murphy’s or Cowabunga’s were to be destroyed by protracted shutdown orders, could there be constitutional implications? The Fifth Amendment provides that private property shall not be “taken for public use, without just compensation.” The New Hampshire Bill of Rights adds an additional restriction: “no part of a man’s property shall be taken from him, or applied to public uses… [without the consent of] the representative body of the people.” These provisions are often thought of as permitting property to be taken without compensation if the taking is for a “public use.” In fact, as the text of the Fifth Amendment shows, a “public use” is simply the threshold requirement for a taking, which then requires “just compensation.”

Takings Clause litigation over coronavirus shutdown orders is still in its early stages. One ongoing Texas case alleging a so-called “regulatory taking,” brought by Tobacco and Wine, Inc., has not yet been resolved on the merits. The complaint in a New Hampshire lawsuit, Binford, et al. v. Sanamu, also made a tenuous allegation of an uncompensated taking. That suit was dismissed on March 20. According to a March 20 Union Leader article, Judge John Kissinger appeared to note that the orders were limited in time. “The judge said the emergency restrictions are ‘narrowly tailored’ and will expire on May 3rd unless the governor extends them,” the Union Leader reported. Yet business owners like Keith Murphy fear that closure orders will prove increasingly indefinite. Matt Pearson added that “we’re really dependent on figuring out what the new normal will be.”

As takings litigation around shutdown orders develops, it will likely revolve around the concept of a “regulatory taking.” In determining whether a taking requires compensation, the famous Pennsylvania Central decision says that the court will look to the “extent to which the regulation has interfered with distinct, property-backed expectations.” To New Hampshire business owners, the phrase “interfered with” would be an understatement. “Having the shutdown eliminates 99.9% of our business,” said Pearson.

This raises the possibility that, in the coming months, business owners may allege so-called “total regulatory” takings. This compensable taking occurs when a regulation eliminates all economically viable uses of an owner’s real property. The Supreme Court’s language in Lucas v. South Carolina Coastal Council so startlingly relevant: “when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.”

Murphy says this language describes, not only his own situation, but that of most New Hampshire restaurants. “A lot of places tried takeout,” he said. “It worked out for a couple weeks, but we were treading water.” Murphy said that, if a judge asked him whether he could put his properties to any other viable use, “I would say that’s impossible.”

Other constitutional challenges against business closures are also beginning to develop. In Binford, plaintiffs’ counsel suggested that, by prohibiting his clients from visiting restaurants and markets, the Governor was denying his clients’ right to assemble. This raises another relevant aspect of the shutdown orders: the fact that they make most in-person community impossible.

Substantive due process, wrote Justice Powell in Moore v. East Cleveland, protects institutions that are “deeply root- ed in this Nation’s history and tradition.” New Hampshire business owners say that the family and community gatherings in their businesses form a central part of American society. Pearson said that Cowabunga’s is “a place that people want to celebrate and congregate to.” He added that “without having a space to do that, it would leave just a big void in the community.”

Murphy argued that few things are more deeply rooted in American history than gathering socially in pubs. “The American Revolution began in pubs. That’s a lot to be said about the role of restaurants and pubs in neighborhoods and socializing people.”

Pearson and Murphy are in good company. Alexis de Tocqueville, for example, described the United States as brimming with thousands of neighborhood communities, which he said allowed American democracy to operate. The more the government makes community impossible, he warned, the more it promotes dependence upon the government and the abuse of power.

If the shutdown orders prove increasingly unlimited, courts may soon be asked to consider these and other questions. For his part, Keith Murphy stated that the current measures have already been in place for too long, and that New Hampshire should be leading the way in allowing businesses to reopen. “We have an executive council to stop things like this from happening, and here we are,” he stated. “We need to get open to save what we have left to save.”

Ian B. Huyett is an Associate at the firm, PretiFlaherty and a member of the Litigation Practice Group. He practices from the Concord office where he counsels individuals and companies on a diverse range of legal matters, including contract negotiations, government affairs, and international law. He offers clients broad experience in trial research, argument preparation, appellate advocacy, and general litigation issues. Attorney Huyett can be reached at huyett@preti.com or 603.410.1500.

Laboe & Tasker, PLLC has comprehensive experience in residential and commercial real estate transactions and associated litigation. Assistance is available for attorneys and their clients.

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Common Title Defects and How to Cure Part 1
Legal Description Errors

By Kenneth Murphy

This article will address a common title defect relating to mortgage legal description errors and how to cure those defects through litigation. Additionally, this article will not address any issues of title insurance coverage. Subsequent articles will address statute of limitations issues and equitable subrogation, homestead and other title defects. In addition, the assumption made here is that the legal description in the mortgage is defective and court relief is needed in order for a lender to foreclose. Where a description is clear enough to denote a particular lot of land it is not essential that it should contain a statement of its boundaries its geographical location or other descriptions. Jessen v. Aurelio, 106 N.H. 529, 532 (1965). A deed, for example, need not in or by itself fully describe the property if it provides information by which identification is possible. N.H. Bar Assoc. Title Examination Standards Sect. 5-50 (2016).


One of the first issues that must be addressed is standing. In New Hampshire, the parties must have personal legal or equitable rights that are adverse to one another with regard to an actual, not hypothetical, dispute. Duncan v. State, 166 NH 630, 642 (2014). In most cases involving a mortgage, the current holder of the mortgage will have standing. Attaching the most current recorded assignment to the complaint will suffice. As assignee to the original mortgage, the successor lender stands in the shoes of the original mortgage holder and obtains all rights of the original lender. YTT Corp. v. Gazida, 145 N.H. 53, 61 (2000). The issue of who holds the note is typically not relevant to the issue of reform of the mortgage.

Prior to filing any court action, a certified letter to the borrower should be sent requesting execution of a confirmatory mortgage to cure the legal description error. Typically, as part of the closing, borrowers are required to sign a compliance agreement or an errors and omissions document by which the borrowers agreed to cooperate in fixing errors in the loan documents.

The method to cure a legal description error is a Complaint to Reform the Mortgage claiming mutual mistake filed in the Superior Court in the county where the property is located. In most cases, legal description errors in mortgages are mutual mistakes. Unilateral mistakes are not addressed in this article. The Supreme Court has noted that for a unilateral mistake the remedy is rescission, not reformation. Car- ran Company v. State, 106 N.H. 558, 215 A.2d 702 (1965). Reformation of an instrument for mutual mistake requires that the party seeking reformation demonstrate by clear and convincing evidence that: (1) there was an actual agreement between the parties; (2) there was an agreement to put the agreement in writing; and (3) there is a variance between the prior agreement and the writing. A.J. Cameron Seed Farms v. Continental Ins. Co., 142 N.H. 275, 283 (1997). These elements are satisfied when the mortgage contains an incorrect legal description based on the records from the closing.

In a reformation complaint, it is prudent to name the current owners and or borrowers as Defendants and any subsequent parties with any interest in the property (recorded mortgages, judgments or other recorded interests) so that any final order is binding on those parties. “The necessary parties to any proceeding, . . . are those . . . who have an interest in the subject-matter of the suit and whose rights may be concluded by the judgment.” Jones v. Herbert, 77 N.H. 282, 284 (1914). A necessary party, who has not been named a party to the action, is not bound by the judgment.

The complaint should also request that the relief be granted retroactively to the date the original mortgage was recorded to effectuate lien priority.

Copies of the loan application, Compliance Agreement (Errors & Omissions), and appraisal from the closing file should be attached to the complaint as evidence of the intent of the parties to encumber a specific property by the Mortgage.

The complaint should also assert an equitable lien claim as an alternative remedy. If for some reason the reformation claim is denied, the plaintiff can still obtain relief based on the fact that the borrower benefited from the loan proceeds (either to purchase or refinance the property) and therefore a lien should be granted to secure the loan independent of the legal description of the mortgage. An equitable lien may not allow foreclosure, but it grants some security to the lender.

Assuming that the defendants are defaulted in the litigation, a Motion for Entry of Final Judgment along with a Proposed Decree with the specific reformation request (for example, correct legal description of the mortgage with book and page reference of the mortgage being reformed). Once that motion is granted and the decree approved, a certified copy of the order from the court should be recorded at the registry. If a borrower does reply to the complaint, a summary judgment motion should be filed asserting that there is no material dispute as to the error in the legal description. If the Borrower has executed a compliance agreement and then failed to cooperate with curing the defect in the mortgage, a request for attorney’s fees is warranted.

If the Court grants reformation of the mortgage, the next issue is whether such reformation will apply retroactively unless the rights of a bona fide purchaser are prejudiced. A judgment creditor or prejudgment attaching creditor is not considered a bona fide purchaser. In re Mellor, 734 F.2d 1396, 1401 (9th Cir. 1984).

Kenneth Murphy is Managing partner at Coughlin, Rainboth, Murphy, and Lown where he handles real estate litigation, including title claims. He has been a member of the NH Bar since 1986.
Blinded by the Dark? (A Blatantly Brief and Basic Introduction to the Dark Story Theory of Commercial Property Valuation)

By Jason B. Dennis

Dark Store Theory— it sounds like it could be an episode of The Twilight Zone, or perhaps the name of an angsty rock band (maybe the band would have a song entitled, “My Heart is Vacant, What’s It Worth to Ya?”). What Dark Store Theory actually is—at least in the world of property tax assessment—is a strategy that several large chain retailers (such as Walmart, Target, Home Depot, Lowes, etc.) have recently started to employ. The purpose of the strategy is to challenge local property tax valuations, reduce assessments, and, thereby, reduce the retailers’ tax bills.

The certainly oversimplified crux of the Dark Store Theory/argument is that the buildings owned by large chain retailers are not worth their assessed values on the open market because if the large buildings were to be listed for sale, there would be no open market because if the large buildings are not worth their assessed values on the open market, taxes will be reduced. The argument contends that the buildings owned by large chain retailers (such as WalMart, Target, Home Depot, Lowes, etc.) have recently started to employ. The purpose of the strategy is to challenge local property tax valuations, reduce assessments, and, thereby, reduce the retailers’ tax bills.

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precedent and unforeseen coronavirus threat, as well as by certain efforts suggested or mandated by civil authorities to contain its spread. Applying the doctrine of commercial frustration to the circumstances created by the threat presented by the coronavirus may seem novel, but then so is this particular virus. But there is no question courts have inherent authority to mold the common law to address new circumstances.6

Attorneys advising tenants whose business operations have been materially and negatively impacted by the coronavirus threat generally, or by Governor Sununu’s shutdown order specifically, should consider possible application of the doctrine of commercial frustration to the tenant’s situation, and whether the tenant might be entitled (at a minimum) to an abatement of rent during the period of the shutdown order, or (depending upon the circumstances) even an outright termination of the lease.

2. The New Hampshire Supreme Court has noted that while some authorities have taken the position that the doctrine of commercial frustration does not apply to leases, this is a minority view which it does not follow. Perry v. Champlain Oil Co., 101 N.H. 97, 99 (1957).


4. Id.


6. The New Hampshire Supreme Court from page 2

New Relief from page 24

Additional financial benefits of Sub V include not requiring the appointment of a committee of creditors unless ordered by the court for causes that are not the paying payment of quarterly U.S. trustee fees.

Two separate, creditor-friendly amendments will deter bankruptcy estates from their former ability to recover preference transfers. First, before commencing preference litigation, the plaintiff must conduct “reasonable due diligence in the circumstances of the case and also must predict and evaluate the defendant’s potential affirmative defenses.” Second, plaintiff may not automatically file preference litigation in the court where the bankruptcy is pending. With the new legislation, the plaintiff must commence preference litigation in the defendant’s jurisdiction where claims are less than $25,000. Here is an opportunity for creditors to keep their preference transfers more readily than prior to the amendment.

We may find debtors who are otherwise financially healthy suddenly confronted with the COVID-19 world and being thrust into financial uncertainty and reversal. Usually, Chapter 11 is not entered into lightly. With these times, however, the Sub V proceeding could give debtors an opportunity to pause, catch a breath, and with the help of the Sub V trustee, confirm a plan to exit the COVID-19 world of financial uncertainty. So too, bankruptcy avoidance is possible where creditors and debtors meet to discuss a consensual informal Chapter 11, making unnecessary an actual bankruptcy filing.

Attorney Terrie Harman practices at Alfano Law Office, PLLC. Her practice areas include foreclosure avoidance, bankruptcy litigation, bankruptcy avoidance and non-bankruptcy financial workout. She also represents clients in IRS and state taxation issues including disputes, litigation, and workout. She can be reached at (603) 856-8411 or Tharman@alfanolawoffice.com.

We refer to Jennifer Slottie as Of Counsel with Cook, Little, Rosenblatt & Manson, plc. in Manchester, NH. She is admitted in NH, MA, and NY. Her practice focuses on both complex and routine commercial transactions, and she has more than 25 years’ experience counseling tenants, landlords, and lenders regarding commercial real estate financing and acquisitions, leasing, and restructuring/workout matters.

Challenges from page 25

While some practitioners opted to adopt new technology and their closings online utilizing the provisions of Emergency Order #11, others elected to manage the many variables at play in other ways. Many practitioners conducted closings under pop-up tents in the open air, masked and gloved, with parties passing documents through the cracked windows of cars or sitting outside at picnic tables.

Working through the COVID-19 pandemic has been transformative in so many respects. Our practices, like so many others, have had to adjust. Perhaps, even as we flatten the curve, some of what we have experienced will be adopted as new local custom. Perhaps we will see the New Hampshire legislature move forward to adopt the Remote Notarization Bill that is currently proposed for study committee. However, what has become apparent is the effort and sheer determination of Registrars, abstractors, processors, attorneys and other industry stakeholders to keep the New Hampshire real estate practice healthy.

Jennifer joined First American Title Insurance Company in 2018 and currently serves as an underwriter for the New Hampshire region. She earned her jurisprudence degree from the University of New Hampshire School of Law in Concord, New Hampshire and her bachelor’s degree with a major in finance from Boston College. Prior to joining First American Title, Jennifer counseled clients in private practice where her work focused on real estate transactions, estate planning and general civil litigation. Jennifer’s experience also includes ownership of a property and casualty insurance company where she specialized in insuring construction-related risk. She currently serves as Vice Chair of the New Hampshire Bar Association Real Property Law Section. She is a frequent contributor to various newsletters and has authored and presented classes to industry professionals including Realtors and attorneys. She can be reached at JSheah@FirstAm.com.
When the coronavirus (COVID-19) pandemic struck in early March, court proceedings were seriously upended. Following social distance guidelines, in-person courthouse access was limited to emergency filings and hearings only. Case processing slowed throughout the system. The courts quickly realized they would have to adjust to ensure continued access to justice and the New Hampshire Judicial Branch ramped up their use of alternative technologies using e-filing and telephonic and video hearings as a means to keep the courts open and operating.

Oral arguments before the Supreme Court were a particular challenge, and fourteen cases scheduled to take place in late March and early April had been postponed. At issue were the two choices the Court faced: either to delay oral arguments until public-health conditions allow for a resumption of in-person proceedings, or to dispense with oral arguments entirely, with just written briefs exchanged and a decision rendered. A hearing would allow the justices to benefit from the live and direct presentation of both parties, and thus would provide the court with a more complete understanding of the case. The justices and the advocates of the benefits that come from the question-and-answer aspects of oral arguments.

The court looked for other solutions. Building on experience livestreaming in-person oral arguments from the courthouse, the Supreme Court contemplated a giant leap forward: hearing oral arguments remotely, with each judge and the advocates in different socially distant locations brought together virtually via Cisco’s Webex. They “were concerned at first if the technology could effectively simulate an in-person oral argument for the justices and the advocates,” said NHSCCT Clerk Tim Gudas, “but the justices all felt it was worth a try.”

The justices decided to go remote for the first time in late April, with the goal of hearing oral arguments on June 1 and June 2. On June 1, the justices heard both oral arguments by videoconference on the same day. On June 2, the justices heard both oral arguments by videoconference on the same day.

Mindful of the challenges, the Supreme Court decided to “go remote” for the first time in late April, with the goal of hearing oral arguments by videoconference on June 1 and June 2. On June 1, the justices heard both oral arguments by videoconference on the same day. On June 2, the justices heard both oral arguments by videoconference on the same day.

By using videoconferencing technology in coordination with livestreaming, we aim to maintain the benefits of oral argument, while minimizing delay, and continuing to offer New Hampshire citizens a real-time glimpse into the workings of the court system.

The first remotely held oral arguments before the Supreme Court took place on Wednesday, April 29 with the case, State of New Hampshire v. Murphy. The hearing went live shortly after 10 a.m. with Christopher Johnson representing the plaintiff and Elizabeth Woodcock representing the State.

COURT continued on page 34
fendants’ rights was voluntary. Post-Miranda confessions that follow earlier confessions given in violation of the Miranda protections are scrutinized to ensure that the defective confession does not taint the later one. The Court clarified that time between confessions, defendant’s opportunity for contact with fam-
ily and friends during that time; the degree of police influence exerted over the defendant, and how defendant was advised as to whether his prior confession could be used against him are all factors the courts consider in determin-
ing the validity of such confessions, see State v. Fleetwood, 149 N.H. 396, 405-06 (2003), but they are not the only factors that a trial court may consider.

Here the Court found that the trial court properly looked at the totality of the circum-
stances, including the Fleetwood factors, to find that the State failed to adequately prove the second confession was voluntary. De-
spite an 11 hour period between confessions, during which defendant was home with his father, the Court agreed with the trial court that the interviewing detectives immediate use of defendant’s prior, improperly obtained statements into his questioning at the second interview, weighed heavily in favor of a find-
ing of involuntariness.

Gordon J. MacDonald, attorney general (Sean R. Locke, assistant attorney general, on the brief and orally), for the State. Stephanie Hausman, deputy chief appellate defender, of Concord, on the brief and orally, for the defendant.

CONSTITUTIONAL LAW / TAKINGS

Richard Polonsky V. Town of Bedford
No. 2019-0339
April 24, 2020
Affirmed

• Whether the trial court erred in finding RSA 80:89, VII unconstitutional to the extent it purports to extinguish a municip-
ality’s duty to provide excess proceeds of a tax sale to the former owner after three years from the date of recording of the tax deed.

Plaintiff failed to pay taxes on property he owned for 2008, 2009, and 2010. The Town imposed liens against the property for the un-
paid taxes. After the plaintiff failed to redeem the property by paying off the liens, the tax collector issued a tax deed to the Town.

Plaintiff entered into negotiations with the Town seeking a reduction of the fines and penalties assessed as part of the tax lien, but the Plaintiff failed to provided financial infor-
mation requested by the Town and the Town ultimately declined to reduce the amount required to redeem the liens on the property. More than three years after the recording of the tax deed, the Town gave notice of its intent to sell the property at auction unless the taxes were redeemed. At that time, the redemption amount for all taxes, interest, costs and penalties was about $94,000 on property assessed by the Town to have a value of $369,900.

Plaintiff filed suit challenging the statu-
tory tax deed scheme as a violation of the New Hampshire Constitution to the extent that plaintiff’s equity in the property was being taken without just compensation. The trial court agreed and entered an order requiring the Town to pay over to plaintiff any excess proceeds realized on the sale of the property in excess of the amounts due for taxes, interest, etc.

The Town appealed arguing that RSA 80:89 provides a mechanism for plaintiff to preserve his equity in the property that plaintiff failed to avail himself of and, that, moreover, RSA 80:89 provided a three year statute of limitations for plaintiff to have asserted any claims to his excess process and plaintiff failed to timely assert those claims.

The Court affirmed the trial court, ruling that the tax sale scheme set forth at RSA 80:89 unconstitutionally permits takings without just compensation to the extent it attempted to limit the time for towns to pay excess proceeds on tax sales to three years after the date of the tax deed. Rather than view unconstitutional taking of a property owner’s equity on a tax sale, a town must provide the owner with any excess proceeds the town receives on the ultimate sale of the property—whenever that may be.

Afzano Law Office, PLLC, of Concord (John F. Hayes on the brief and orally), for the plaintiff. Upham & Hatfield, LLP, of Concord (Barton L. Mayer and Michael P. Courtney on the brief, and Mr. Mayer orally), for the defendant. Beamont & Campbell, Prof. Ass’n, of Salem (Bernard H. Campbell on the brief), for New Hampshire Tax Collectors’ Associa-
tion, as amicus curiae. Stephen C. Buckley, of Concord, for New Hampshire Municipal Association, by brief, as amicus curiae. New Hampshire Legal Assistance (Beth Heintz and Steven Towner on the brief), as amicus curiae. Pacific Legal Foundation, of Palm Beach Gardens, Florida (Christina Martin on the brief) and Bernstein, Shure, Sawyer & Nebak-
P.A., of Concord (Osride M. Lamontagne on the brief), for Pacific Legal Foundation, as amicus curiae.

CRIMINAL LAW / BURDEN OF PROOF

The State of New Hampshire v. Jami Castine
No. 2018-0341
April 7, 2020
Reversed and Remanded

• Whether the trial court erred in convicting and sentencing defendant on two separate counts of assault where there was only cir-
cumstantial evidence of possible multiple acts of violence.

Defendant was tried on two counts of first degree assault against a minor victim, for whom she was hired to provide child care services. There were no witnesses to the alleged assault(s) to provide any direct evidence of the possibility that the defendant had assaulted the victim. The State’s case was supported entirely by circumstantial evidence: timing of injuries in relation to time of defendant’s care of the victim; the victim’s observed fear of the defendant; defendant’s implausible alternative explanations for the injuries sustained. The basis for the two counts of assault were two categories of injuries to the victim—bleeding in the victim’s brain and retinal hemorrhaging/ detachment—which the State attributed to at least two separate blows by defendant.

The Court agreed, reiterating the standard that circumstantial evidence “must exclude all reasonable conclusions except guilt” in order to be sufficient to sustain a conviction. See State v. Woodbury, 172 N.H. 358, 363 (2019). Although the State’s experts testified that the injuries “could” have been the result of two separate incidents, they could not rule out the possibility that the injuries occurred from the same blow. Additionally, the state failed to demonstrate that the victim was afraid of defendant—as a victim of repeated assault might be—did not rule out the possibility that the victim was afraid as a result of a single incident.

Gordon J. MacDonald, attorney general (Elizabeth C. Woodcock, assistant attorney general, and Melinda K. Killeen, of Manchester (Matthew R. Johnson and Devin K. Bolger on the brief, and Mr. Johnson orally), for the plaintiff. Boyle | Shaughnessy, PA, of Manchester (Peter L. Bowes and Jonathan P. Killeen on the brief, and Mr. Killeen orally), for the defendant.

CIVIL PROCEDURE / RES JUDICATA

Alexander J. Walker, Jr. v. Aaron Day
No. 2019-0236
April 14, 2020
Vacated and Remanded

“Of the benefits of hearing arguments remotely is that I can pull up and refer-
ence cases we’re discussing,” noted Asso-
ciate Justice James P. Bassett as he reached for a volume of New Hampshire Reports while seated in his chambers.

“We’re committed to keeping oral ar-
guments open and accessible to the public and the media,” said Justice Hicks. “This process, while more complex, allows us to do that in real-time with justices and staff located remotely. Along with everything else the COVID-19 pandemic experience has taught us about adjusting our proce-
dures, remote videoconferencing will likely become yet another tool we’ll all be taking for granted in the future.”

I’m hoping we’ll all be back to in-person oral arguments soon, I’m just glad it’s available, and working, right now.”

J Court from page 33

Despite the court’s initial concerns about the videoconferencing process, the attorneys were able to field questions from the four justices throughout their arguments. Justice Hicks thanked Woodcock and Johnson for going first with the remote oral arguments. “We appreciate your participation in this exploratory effort and I encourage you to reach out with any suggestions for improve-
mament now that you have.”

Members of the media and interested citizens were also able to watch and listen to a real-time livestream of the oral argu-
ments on the Supreme Court webpage as well as before and after the arguments. “We appreciate the participation of the justices being in separate locations. For the justices, there were other unexpected advan-
tages.

“One of the benefits of hearing arguments remotely is that I can pull up and refer-
nance cases we’re discussing,” noted Asso-
ciate Justice James P. Bassett as he reached for a volume of New Hampshire Reports while seated in his chambers.

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guments open and accessible to the public and the media,” said Justice Hicks. “This process, while more complex, allows us to do that in real-time with justices and staff located remotely. Along with everything else the COVID-19 pandemic experience has taught us about adjusting our proce-
dures, remote videoconferencing will likely become yet another tool we’ll all be taking for granted in the future.”

“I’m hoping we’ll all be back to in-person oral arguments soon, I’m just glad it’s available, and working, right now.”
Upon consideration of the public health concerns arising from the COVID-19 pandemic, and given the recent cancellation of the July 2020 bar examination by the highest courts of several states throughout the nation, including Massachusetts, Vermont, and New York, and after consultation with the New Hampshire Board of Bar Examiners, the Supreme Court adopts the recommendation of the New Hampshire Board of Bar Examiners and orders that the New Hampshire bar examination not be administered on July 28 and 29, 2020, as previously scheduled. The examination will be administered in the fall of 2020 on dates yet to be determined.

As soon as practicable, the Office of Bar Admissions will provide information concerning the dates of the rescheduled examination, any changes to the application deadline, and any related matters. The information will be made available on the New Hampshire Bar Admissions general information page on the Judicial Branch website at https://www.courts.state.nh.us/nhbar/index.htm.

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**Administrative Order 2020-04**

**Holiday Schedule for Calendar Year 2021**

Pursuant to its rule making authority and RSA 490:4, the Supreme Court promulgates the following holidays during calendar year 2021:

1. New Year’s Day
2. Martin Luther King, Jr. Civil Rights Day
3. Washington’s Birthday
4. Memorial Day
5. Independence Day (observed)
6. Labor Day
7. Columbus Day
8. Veteran’s Day
9. Thanksgiving Day
10. Day after Thanksgiving
11. Christmas Day (observed)
12. New Year’s Day (observed)

Courts shall be open for the purpose of conducting arraignments, pursuant to RSA 594:20-a, and for the purpose of conducting Gerstein hearings, pursuant to District Court Administrative Order 91-01, on Friday, November 26, 2021.

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Pursuant to its constitutional authority and powers of general supervision over the New Hampshire Bar Association and its members, and pursuant to Supreme Court Rule 58, the New Hampshire Supreme Court assess each dues-paying member of the association as of June 1, 2020, as follows, for the purpose of funding the Lawyers Assistance Program (LAP).

<table>
<thead>
<tr>
<th>Membership category</th>
<th>Assessment</th>
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<tbody>
<tr>
<td>Active over three years</td>
<td>$205</td>
</tr>
<tr>
<td>Inactive</td>
<td>$10</td>
</tr>
<tr>
<td>Active Military and Active Honorary</td>
<td>$0</td>
</tr>
<tr>
<td>Inactive Retired, Inactive Military and Inactive Honorary</td>
<td>$0</td>
</tr>
<tr>
<td>Full-time Judicial</td>
<td>$0</td>
</tr>
<tr>
<td>Part-time Judicial</td>
<td>$0</td>
</tr>
<tr>
<td>Pro bono Active</td>
<td>$0</td>
</tr>
</tbody>
</table>

These assessments are due and payable on or before July 1, 2020. The New Hampshire Bar Association shall collect the assessment for the account of the Professional Conduct Committee and shall report to the court on or about September 15, 2020, the names of members who have not fully paid. If the Board of Governors of the New Hampshire Bar Association grants a member’s request for abatement of bar dues, it may grant a waiver of this fee.

Issued: May 5, 2020
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

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Pursuant to its constitutional authority and powers of general supervision over the New Hampshire Bar Association and its members, and pursuant to Supreme Court Rule 55, the New Hampshire Supreme Court assess each dues-paying member of the association as of June 1, 2020, as follows, for the purpose of funding the Public Protection Fund (PPF).

<table>
<thead>
<tr>
<th>Membership category</th>
<th>PPF Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active over three years</td>
<td>$20</td>
</tr>
<tr>
<td>Inactive</td>
<td>$20</td>
</tr>
<tr>
<td>Inactive retired</td>
<td>$5</td>
</tr>
<tr>
<td>Pro bono active</td>
<td>$0</td>
</tr>
</tbody>
</table>

The New Hampshire Bar Association shall collect the assessment for the account of the Public Protection Fund and the Lawyers Assistance Program.

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Trademark Law

**Common Law**

“State Registration”

“Federal Registration”

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Robert R. Deteault
Robert B. Mesmer, Jr.
Santa L. Pickett
### NH Superior Court Judicial Assignments: May – June 2020

<table>
<thead>
<tr>
<th>COURT</th>
<th>HILLS NO</th>
<th>ROCKINGHAM</th>
<th>MERRIMACK</th>
<th>STRAFFORD</th>
<th>CHESHIRE</th>
<th>BELKNAP</th>
<th>SULLIVAN</th>
<th>CARROLL</th>
<th>COOS/GRAFTON</th>
</tr>
</thead>
</table>
In this fraud in the inducement and breach of contract case, the court denied the parties’ cross-motions for summary judgment. The plaintiffs’ father established trusts for the plaintiffs’ benefit owning interests in a business. The plaintiffs alleged that the defendants fraudulently induced them to sell these interests by concealing a third-party’s desire to purchase the business. The defendant counterclaimed for breach of contract based on covenants not to sue signed by the trustee of the plaintiffs’ trusts. The court determined that genuine disputes regarding material factual issues remained regarding the misrepresentation and reliance elements of the fraud claim and the contract element of the counterclaim. 4 pages. Judge Joseph N. Laplante.

**DISABILITY DISCRIMINATION**


The court granted the defendants’ motions to dismiss in this disability discrimination case because the plaintiffs’ claims were barred by the Rooker-Feldman doctrine and judicial immunity. The plaintiff sought alimony in a divorce case, but the New Hampshire Circuit Court denied the request. He filed suit against the State of New Hampshire, the Attorney General, and the Circuit Court judge, alleging that New Hampshire jurisprudence regarding alimony discrimination based on disability violates the Americans with Disabilities Act and the Rehabilitation Act. After oral argument, the court granted the defendants’ motions to dismiss from the bench because the plaintiff was entitled to judicial immunity, and all of the plaintiff’s claims were barred by the Rooker-Feldman doctrine. Judge Joseph N. Laplante.

**ENVIRONMENTAL LAW**

04/06/20 Conservation Law Found. v. W.D.N.H. 067

Plaintiffs brought this action under the citizen suit provision of the Clean Water Act (“CWA”), alleging violations of the National Pollution Discharge Elimination System (“NPDES”) permit for a fish hatchery operated by defendants. On cross-motions for summary judgment, the court divided plaintiff’s claims into two categories: “Direct Discharge” claims arising out of the present and ongoing outflows from the hatchery, and “Indirect Discharge” claims arising out of pollutants from past discharges, which have settled into sediment in the receiving waters. The court determined that the Direct Discharge claims were likely to be mooted by the imminent issuance of a new NPDES permit and dismissed those claims without prejudice. Additionally, the court anticipated that the U.S. Supreme Court’s forthcoming opinion in County of Maui v. Hav. Wildlife Fund, ___ U.S. ___, 139 S. Ct. 1164, 1164, 203 L. Ed. 2d 196 (2019) (granting certiorari) might affect its reasoning on the Indirect Discharge claims. Accordingly, the parties were directed to provide supplemental briefing on the effect, if any, that County of Maui was likely to have on the Indirect Discharge claims. 11 pages. Judge Paul Barbadoro.

03/28/20 Chavis v. FCI Berlin, Warden Case No. 19-cv-488-LM, Opinion No. 2020 DNH 038

The petitioner, a federal inmate, claimed that prison officials had taken away his good conduct time because a court had ordered him to return the cellphone’s contents at his request, in violation of prison protection rights, when the petitioner alone had stated that the phone belonged to that defendant. The court concluded that there was “some evidence” sufficient to support the hearing officer’s de discrimination finding or remanding the Social Security Administration’s decision to deny her application for disability insurance benefits. First, the plaintiff denied that the Administrative Law Judge gave too much weight to a state agency physician opinion issued three years before the ALJ’s final decision, which opined that the plaintiff had no physical limitations beyond those incorporated into the ALJ’s residual functional capacity assessment. Although an ALJ generally may not rely on the opinion of experts who have not reviewed the record, the court concluded that the ARB was not prejudiced by the ALJ to rely on this older opinion because the additional treatment notes admitted to the record up until the final decision did not materially affect the bases for the physician’s otherwise reliable medical opinion. In addition, the plaintiff argued that the Appeals Council egregiously erred by denying review after she submitted new opinion evidence—a pre-printed medical questionnaire completed by her treating provider—detailed functional limitations imposed by her fibromyalgia. But the plaintiff never explained how he checked the questionnaire, providing little discussion or analysis, would have materially impacted the ALJ’s findings on the plaintiff’s physical work limitations, especially when the ALJ considered the plaintiff’s identified, but undiagnosed fibromyalgia symptoms in assessing the RFC. The SSA’s decision was therefore affirmed. Judge Joseph N. Laplante. 17 pages.
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DCFY – 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 DCFY. Under the supervision of the N.H. Department of Justice, DCFY Legal Services has openings for attorney and legal secretarial positions:

ATTORNEY II positions - Salary Range $57,954.00-$68,952.00: #40092 (Nashua); #11677 (Laconia); and #40091 (Conway).

LEGAL SECRETARY II positions - Salary Range $29,152.50-$33,871.50: #44557 (Nashua); and #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, DCFY Legal Director at (603) 271-1220.

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

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- Evaluate complex coverage and liability issues that impact the litigation
- Identify potential exposures to the company and report to senior-level management on significant pending matters
- Devise and implement creative strategies aimed at improving long-term results for all stakeholders, including policyholders, affiliate insurers, and injured claimants
- Receive individualized training to:
  - Develop claim specific skills and knowledge
  - Understand and evaluate complex coverage issues
  - Implement and integrate those skills to impact the course of litigation

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**NEW HAMPSHIRE BAR NEWS**

**Classifieds**

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**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 trusts and estates law, strong writing skills, a desire to learn

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