

E-Court Initiative Advances Access to Justice



Newly-appointed Administrative Judge of the Circuit Court David King dispatches estate cases in minutes from his office.

By Anna Berry

The Judicial Branch initiative to increase digital access to the court system celebrated several milestones recently. As of September 4, the Trial Court Information center had answered 3 million calls since it was established in 2012. And, with Superior Court civil filings and Supreme Court appeals made electronic in the last two months, the end of the project is in sight.

"The implementation of e-filing at the Supreme Court is part of an overall plan to transform the way that New Hampshire courts do business," Chief Justice Robert J. Lynn said in a press release. "For more than 100 years, appeals have been filed on paper here at the Supreme Court.

"Our new system of electronic filing will be more convenient for filers, and will make the court's internal processes more efficient because we will no longer be handling cumbersome stacks of paper ... The development of our electronic system took significant planning and work, and I want to thank everyone involved in the project for their hard work and commitment to the project."

According to the Judicial Branch, although self-represented litigants cannot file electronically at the Supreme Court at this time, they are now required to submit only a single copy of their filing to the court. Kiosks are available in the Supreme Court lobby for filers who

need assistance and wish to file from the court. Members of the public will also be able to review case records from the kiosks.

Civil filings in the Superior Court are the fourth case type to be brought online by the New Hampshire e-Court program since its inception in 2012, following small claims, guardianships and estates. Superior Court Chief Justice Tina L. Nadeau led the switch away from paper.

"We've found that electronic filing provides huge benefits for lawyers, self-represented parties and the court system," Nadeau said in a press release. "It starts with all of the time saved by being able to file from an office or a home computer, which means fewer trips to the courthouse, and ends with cases being resolved in a shorter amount of time."

For attorneys, e-Filing means using an online application called "File & Serve" to register, and to upload their complaints and pleadings. Self-represented litigants use "TurboCourt" with a guided interview that creates and

e-COURT continued on page 8

PRACTITIONER PROFILE

Program Leader Uses Personal Experience to Provide Assistance

By Kathie Ragsdale

Terri Harrington brings the twin tools of pluck and empathy to her position as executive director of the New Hampshire Lawyers Assistance Program.

A former prosecutor and solo practitioner, Harrington took over in January as head of the organization, which has a mission to provide confidential help to lawyers and judges experiencing problems with substance abuse, mental health issues or other crises.

And, she understands from personal



Mental Health Courts Saving Money — and Lives — with Community Support

By Melanie Plenda

After nearly eight years in operation, Grafton County Mental Health Court officials have substantial evidence the alternative program has saved the county more than half a million dollars since its inception. But most importantly, the data shows a reduction in recidivism rates and lives changed for the better.

"Some of [the] numbers are quite surprising, especially the cost-savings for the taxpayers," wrote Natch Greyes, prosecutor for Littleton, Sugar Hill and Franconia and the prosecution represen-

tative on the Mental Health Court, in an email to *NH Bar News*.

Grafton County Alternative Sentencing gathers statistics for the programs by relying on actual participant data — for example, the amount of jail time not served — to calculate cost savings to the County and the rate of recidivism, he said.

And, community advocates who support the Mental Health Court argue that the services are invaluable in a state without adequate services for people with mental illness inside and outside of the

SUPPORT continued on page 19

experience how critical that support can be for legal professionals, after coping with a serious health challenge earlier in her career.

Now, she is focused on spreading the word about what the NH Lawyer Assistance Program (NHLAP) can offer to legal professionals, whose rates of



substance abuse, depression and suicide are far higher than the national average.

As many as one in five lawyers is a problem drinker, according to the American Bar Association — twice the national average. A 2016 study by the ABA and the Hazelden Betty Ford Foundation also found that 28 percent suffer with depression, which can be a precursor to suicide.

Harrington and the NHLAP aim to be a first line of defense for New Hampshire legal professionals struggling with

HARRINGTON continued on page 18

INSIDE

Opinions	4-5	Practice Area Section	28-37
NHBA News	6-21	NH Court News	38-45
NHBA•CLE	22-26	Classifieds	46-47

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THE DOCKET

Getting to Know You. Bar President David McGrath shares his vision, background, and more. **PAGE 2**

Yea or nay? Two perspectives on proposed professional conduct rule prohibiting harassment and discrimination. **PAGES 4 & 5**

In the Spotlight. Introducing the newest Leadership Academy class. **PAGE 6**

Save the Date. Bar's Midyear Meeting will take place on February 15 in Manchester. **PAGE 7**

Celebrating Success. Bar Foundation raises more than \$20,000 at annual dinner. **PAGE 10**

Pro Bono Moments. Local volunteers share the reasons they give their time to the Bar's Pro Bono Referral program. **PAGE 14**

Alternative Dispute Resolution
Learn more about bracketing, arbitration and other developments in the practice of alternative dispute resolution. **PAGES 28-37**

Court changes. Judge Kelly steps down from administrative role. **PAGE 38**

At-a-glance. Recent decisions handed down from the NH Supreme Court. **PAGES 39-42**

Get to Know Bar President David McGrath

David McGrath, of Sheehan Phinney Bass & Green, became president of the New Hampshire Bar Association in June.

McGrath is president and managing director of the firm and also maintains an active practice. He represents clients in state and federal courts, arbitration and administrative proceedings, routinely handling trade secret, non-competition, predatory hiring, discrimination, retaliation and whistleblower, wrongful termination, and healthcare related matters.

A member of Sheehan Phinney Bass & Green since 1992, McGrath also frequently helps businesses and executives navigate employment separations. He is a graduate of Cornell Law School.

McGrath recently answered questions from the *New Hampshire Bar News* to share more about his background with members of the Bar.

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

McGrath: I am originally from Massachusetts, but I have lived in New Hampshire longer than anywhere else, by a lot. I love it here. My first law job was as a litigation paralegal at a large Boston firm. My experience there was a good one and led me to apply to and attend law school.

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

I find it very rewarding to play a part in solving problems — whether that is on behalf of my law firm, clients I serve, as a mediator to parties in a dispute, or on behalf of the Bar. It is at times challenging to juggle those various roles. I think we all experience that in our lives. We like feeling productive and directed, but we also sometimes feel challenged by the amount we have to do. And, the older I get, the faster time goes; at least my perception of it.

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

I was asked to get more involved in Bar Association activities. Once I started to learn more about the substantial services the Bar provides, I got more and more interested in playing a role in all of it.

What qualities define your leadership style?

I think I lead principally by fostering a strong sense of team. I also try to focus on people's strengths. I try to promote others who do good work.

I believe that I am fair minded, even when making difficult decisions.

I do try to recognize and control for my own and others' biases; stay open to others' views; and remember that everywhere I go there are others who have better ideas than me.

What was it like to head up the selection committee for the Bar's executive director position?

It was a pleasure to be a part of the Committee. We had such a great mix of lawyers and judges on the Committee and everyone took the process seriously and worked hard. We saw some really excellent candidates, and as in any search, we saw some that had us scratching our heads: "Why would this real estate broker from Omaha be applying for this position?"

In the end, we were very fortunate to have such qualified finalists for the position, and we were thrilled that George Moore was ultimately selected to lead the Association.

What do you hope to accomplish as Bar president?

There is a part of the Court Commission report that observes — I think correctly — that it can be problematic for incoming Bar presidents to have big, multi-year agendas since it is a one year term. Over the next many months, I want to work with Bar leadership and others to get around our state to listen to members' concerns and suggestions and also to educate them about the extensive Bar programs and services.

I think a good percentage of the members do not understand all that the Association does. I encourage members to spend some time familiarizing themselves with the Bar website and member portal.

We also need to continue to examine how we operate and continue to address recommendations in the Commission Report. I think there is a broad recognition that the legal industry is changing rapidly,



and we need to keep pace.

Who personally inspires you?

A lot of people inspire me. Rather than single anyone out, I would say that I am inspired by men and women who are accomplished but who do not draw needless attention to themselves in the process. I have a cousin who plays guitar extremely well. He is also a very good artist. He is a black belt in kung fu. He is a very good golfer. He gets interested in something and then he obsesses over it — in a healthy way — to become proficient. He inspires me, although not enough apparently to stick with the guitar lessons I started but abandoned.

I am inspired by people who overcome, or endure gracefully, significant disadvantages or challenges. There is a young woman — a multi-sport athlete — who was on my younger daughter's high school soccer team who lost a leg in a terrible accident. She is now back on the lacrosse field in college with a prosthetic, and her journey, while certainly anguishing for her and her family, has been joyous to watch from afar. I am inspired by lots in nature too, but that is beyond the scope of your question.

What do you do outside of your working hours and service as president?

I like to spend time with my family first and foremost. Also, I am not happy if I am not exercising consistently, so I am often at a gym doing some form of running, jumping and lifting.

In the winter, I like to play pick-up hockey or go snowshoeing. I like to hike in the Whites. I really like to golf, but I don't seem to make time for it these days.

I also usually have a couple books going at the same time. In one of his columns, [past President] Scott Harris recommended "Just Mercy," Brian Stephenson's excellent book.

So, I'll take this opportunity to recommend a book by a local author, fellow Leadership New Hampshire Alum Ty Gagne. In "Where You'll Find Me," Ty writes ostensibly about the circumstances surrounding the death of Kate Matrosova in the White Mountains several winters ago. Ty is also CEO of Primex, and he brings that background to his examination of Ms. Matrosova's decisions from a risk assessment point of view.

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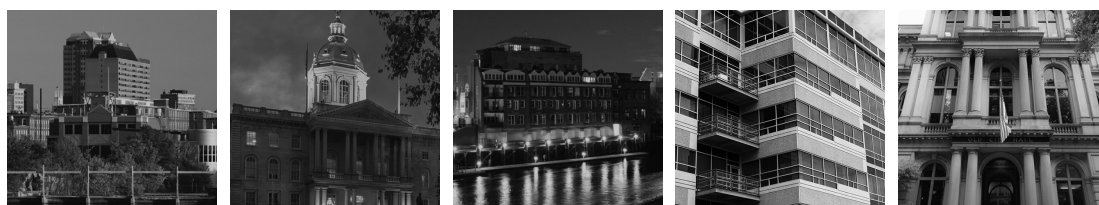
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Members of the New Hampshire Bar Association's newest Leadership Academy class were honored at a reception at the Bar Center on October 4.



Maggie O. Conway, right, received the NH Bar Association's Paralegal Professionalism Award from Bar President David McGrath at the 35th annual meeting of the Paralegal Association of New Hampshire in Manchester on September 21. Conway is a corporate and real estate paralegal at Orr & Reno.



As part of a DOVE seminar, "Justice for Victims/Survivors: Their Protection, Your Privilege," on October 4 at the Bar Center, participants watched a mock trial to learn more about representing survivors in the courtroom. The Domestic Violence Emergency (DOVE) Project is a program of the Bar Association's Pro Bono Referral Program.



In recognition of National Domestic Violence Awareness Month, DOVE staff members and volunteers turned in their wings for heels to "Walk A Mile in Her Shoes" on October 3 in Concord. The annual event supports victims of domestic violence and benefits the Crisis Center of Central NH. Below: Concord Police Officer Dana Dexter (right) and another high-heeled participant defied gravity during the walk.



Congratulations to all the players who took the field at Northeast Delta Dental Stadium in the first-ever Legal Aid Softball Classic. More than 100 people gathered at the home of the Fisher Cats in Manchester for the game on Saturday, September 22. Thanks to sponsors and supporters, the event raised nearly \$18,000 for civil legal aid for seniors and low-income families in New Hampshire. To see more photos from the game, visit <http://www.nh-cla.org/2018-nh-cla-softball-classic>.



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Adopt Professional Conduct Rule to Promote Fairness and Equality Across Bar

By Christina Ferrari

The New Hampshire Women's Bar Association (NHWBA) strongly supports the adoption of Proposed Rule of Professional Conduct 8.4(g), which the New Hampshire Supreme Court Advisory Committee on Rules recently recommended after a 12-3 vote.

Adoption of this Proposed Rule is an important first step in prohibiting pervasive harassment and discrimination based on, among other protected classes, gender, gender identity, sexual orientation, and marital status. Despite strides that have been made towards equality, recent statistics show that harassment and discrimination are still endemic in the legal profession. Such misconduct occurs in workplaces, permeating hiring, promotion, assignments, and compensation, and also in interactions with clients, colleagues, opposing counsel, witnesses, and even in our courts. It ranges from the overt to the implicit; however, regardless of the severity, the conclusion is the same. Harassment and discrimination persist and wrongly hamper the achievements of attorneys at every level.

Recent data gathered from New Hampshire Bar Association members shows that while the proportion of female attorneys in New Hampshire continues to rise (currently 37 percent), the number of female equity partners in private practice

lags well behind the number of male equity partners. (*New Hampshire Bar Association 2017 Gender Equality Survey Results*, at 1.) Although male and female attorneys work and bill similar hours per week, male attorneys have higher median salaries and billing rates. These differences still exist after accounting for age and experience. *Id.*

Further, 67 percent of respondents to this survey, including 86 percent of female respondents, feel that there is "an old boy network" in our Bar, and 81 percent of respondents, including 91 percent of female respondents, feel that it benefits male attorneys over female attorneys. *Id.* at p. 2. Even more disappointing are the figures regarding harassment and discrimination that Bar members have faced (see chart below).

These figures cannot be ignored and they must be acted upon. However, despite the undeniable statistics, people are reluctant, or unwilling, to change what they can't, don't, or won't see. But, the NHWBA sees it every day through the eyes and shared experiences of our members. This Proposed Rule shines light on the issue and is an opportunity for us to act.



Over the past few months, the NHWBA has collaborated with various groups, including those who opposed earlier versions of Proposed Rule 8.4(g), regarding the proposed language. To date, several revisions have been made to address and resolve the concerns raised, including language regarding an attorney's acceptance, declination, or withdrawal from representation, and an attorney's advocacy for a client and on matters of public policy.

The Proposed Rule's language also specifically states that it does not infringe on any constitutional right of an attorney, including the exercise of religion. Yet, despite these changes, opposition to this Proposed Rule remains, purportedly due to the absence in the Proposed Rule of a stringent definition of "harassment" and "discrimination."

Inclusion in the Proposed Rule of a definition of "harassment" and "discrimination" that strictly refers to state and federal law would be a disservice to those who are victims of such misconduct. Such stringent definitions exclude reprehensible behavior that does not qualify as unlawful discrimination or harassment as defined by federal and state law (which sets a very high threshold to be met), but that nonetheless should be prohibited in our legal profession.

Examples include the same behavior widely reported in the survey referenced above: sexist or racist jokes, use of gen-

dered or coded language, use of terms of endearment, condescending treatment, comments on apparel and appearance, comments on pregnancy and "mommy brain," comments regarding female attorneys' "emotions," and being mistaken for non-attorneys simply on the basis of one's gender or race.

"One-off" and single instances of harassing and discriminating behavior also need to be addressed under the Proposed Rule because we, as legal professionals, must hold ourselves to higher standards that promote fairness and equality among all members of the Bar. Otherwise, this Proposed Rule will have no practical effect on the irrefutable problem of harassment and discrimination in our profession.

There is no room in our Bar for harassment or discrimination. The responsibility is on all of us to take measures to prohibit such misconduct from continuing to occur. The NHWBA urges the adoption of Proposed Rule of Professional Conduct 8.4(g) without delay and asks members of the Bar to join it in supporting this Proposed Rule.

Christina A. Ferrari is President of the NHWBA Board of Directors. The NHWBA's mission is to promote and support the advancement and interests of women in our legal community through leadership, professional development, education, and the exchange of ideas.

Survey Respondants Who Observed or Experienced Inappropriate Behavior At Least Once in Past Year	Location: Outside of Court With Attorneys	In Court/Chambers With			
		Judge or Master	Attorney	Clerk or Bailiff	Law Enforcement
Sexist jokes	49%	8%	23%	10%	15%
Use of titles, terms of endearment	45%	14%	30%	15%	15%
Condescending treatment	43%	19%	33%	10%	17%
Comments on apparel/appearance	41%	9%	21%	11%	13%
Verbal advances	17%	1%	6%	3%	5%
Inappropriate touching	9%	>1%	4%	3%	4%

Source: NH Bar Association 2017 Gender Equality Survey Results, University of NH Survey Center

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I have written a book about section 199A, to be published by Wolters Kluwer. My book addresses all significant section 199A issues. Helping clients, including New Hampshire lawyers, to obtain and maximize their section 199A deductions has become

a major new focus of my practice in addition to my LLC practice.

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Watch out for Unlicensed Court Reporters

To the Editor:

It has been brought to my attention that there has been an influx of unlicensed court reporters reporting depositions in New Hampshire. Both stenographic reporters and stenomask reporters/voicewriters have mandatory licensing in New Hampshire under RSA 310-A:162 to 310-A:181. Not only does licensing ensure a minimum standard of competency for our profession, it also eliminates the possibility of cost shifting, which is a common practice of those who knowingly come to New Hampshire and violate the statute.

It should also be noted that more than likely, those individuals do not possess either a New Hampshire Notary Public (for NH residents) or a New Hampshire Commissioner of Deeds (for non-NH residents), thus they are swearing in witnesses with no authority to do so.

If you see a transcript with the designation of Professional Court Reporter, that is a red flag that the person you have hired or who is reporting the testimony of your client has no licenses or certifications. There is no such designation; it is the equivalent of an attorney calling themselves a Professional Lawyer. Not only has that individual not attained any state or national licensing or certification, they are misrepresenting their capabilities.

Under the NH RSA, Licensed Court Reporters are required to state their license number on their transcripts. Hint: It will not be a number higher than 162. If you have a question about anyone you are working with, go to <https://nhlicenses.nh.gov/verification/Search.aspx>.

It is disheartening to the LCRs who obtain and maintain their court reporting license in compliance with NH state law (including continuing education requirements and strict adherence to HIPAA requirements) to witness flagrant violations, but if you as attorneys do not choose to do anything about the practice as it is happening, there is little that law-abiding court reporters can do except report the violation to the NH Office of Professional Licensure and Certification.

Kimberly A. Smith

NH Licensed Court Reporter No. 21; Registered Diplomat Reporter; Certified Realtime Reporter; Certified Broadcast Captioner; Realtime Systems Administrator; President, New Hampshire Court Reporters Association

Sounding the Alarm on a Misguided Conduct Rule

To the Editor:

The NH Bar Ethics Committee and the Supreme Court's Advisory Committee on Rules have recently been considering a proposal to add a provision to our Rules of Professional Conduct which would punish lawyers who engage in "harassment" or "discrimination." The impetus for the proposed rule is a recent amendment by the American Bar Association to its Model Rules of Professional Responsibility. Because the deliberations surrounding this issue have pretty much been conducted under the radar of most NH Bar members, it is time to sound the alarm about this misguided proposal.

On September 7, the Supreme Court Advisory Committee on Rules voted to forward the following addition to Rule 8.4 to the whole Supreme Court for the latter's consideration:

It is professional misconduct to... (g) engage in conduct while acting as a lawyer in any context that the lawyer knew or should have known is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status, or gender identity. Statutory or regulatory exemptions, based upon the number of personnel in a law firm, shall not relieve a lawyer of the requirement to comply with this Rule. This paragraph shall not limit the ability of the lawyer to accept, decline or withdraw from representation consistent with other Rules, nor does it infringe on any Constitutional right of a lawyer, including advocacy on matters of public policy, the exercise of religion, or a lawyer's right to advocate for a client.

Whether the Advisory Committee's referral is meant to constitute a recommendation that the new rule be adopted or whether it is simply a necessary procedural step before the Supreme Court can consider the matter is not clear. See Supreme Court Rule 51. What is clear, though, is that the Supreme Court will pay heed to the views of the general membership of the Bar in making its decision. So, let this letter be your call to arms.

The overarching problem with this proposed rule is that it involves the Bar Association in matters that are far removed from what most of us assume to be the purposes of our Rules of Professional Responsibility: (a) to protect our clients from harm and (b) to promote the integrity of the judicial system. The proposed rule, however, would

subject lawyers to professional discipline for conduct that is not limited to fostering either of these goals.

Proponents of the proposed rule note that it only applies to a lawyer "while acting as a lawyer" and they argue that this language will constitute a sufficient limiting principle. One might be persuaded by such an argument if these words conveyed their normal meaning. But they apparently don't, as a review of the ABA's interpretation of its model rule illustrates. In words similar to those in the proposed NH rule, the ABA's version of the rule requires that proscribed harassing or discriminatory conduct must be "related to the practice of law." Nevertheless, reminiscent of Humpty Dumpty's statement to Alice that words mean whatever one chooses them to mean, here is what the ABA says the phrase "related to the practice of law" means:

Comment [4]. Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and in bar association, business or social activities in connection with the practice of law.

Suffice it to say that if this is how "while acting as a lawyer" is to be construed in New Hampshire (and I am told that this is accepted as a given), almost everything that a lawyer does will be sucked into the vortex of the rule. Note, for example, the inclusion of "operating or managing a law firm or law practice." Thus, claims against you for harassment or discrimination with respect to your employment and compensation decisions, personal interactions with your staff and even vendors, the architecture of your office (see the ADA), etc. would all be within the rule's ambit. And, God forbid that you enjoy the after-hours company of your fellow attorneys or other co-workers because conduct which occurs "in bar association, business or social activities in connection with the practice of law" may also give rise to claims under the rule. In other words, this rule extends the reach of the attorney discipline system into territory that has no intrinsic relationship whatsoever to the practice of law.

In addition to being directed towards lawyer misbehavior which is truly connected to the actual practice of law, our current professional misconduct rule is also focused on misbehavior which is characterized by some degree of moral turpitude, to wit: "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;" "conduct

involving dishonesty, fraud, deceit or misrepresentation;" or conduct which "states or implies an ability to influence improperly a government agency or official." Rule 8.4(a) – (d).

By way of contrast, the proposed addition to the rule proscribing conduct which constitutes "harassment" or "discrimination" may, but does not necessarily, involve any immorality.

But that is not all; the problem with making harassment and discrimination acts of professional misconduct goes deeper than just the fact that they do not inherently involve moral turpitude. The problem is that these critical terms are left undefined in the proposed rule. Yet neither are they self-defining, nor are they like pornography, something which we know when we see it. (See, e.g., *Smith v. NH Dept. of Rev. Admin.*, 141 NH 681, 693 (1997) ("Discrimination is not a self-defining term."))

Even worse, I understand that some advocates of the proposed rule have expressly resisted efforts to define these terms, such as by tethering them to how they are defined in existing federal and state criminal and civil statutes and case law. In other words, in order to assure that the rule casts as wide a net as possible, they actually want these terms to be vague. This ought to make every member of the Bar very nervous.

Proponents of the rule contend that its vagueness is counteracted by its scienter requirement, i.e., that an alleged perpetrator "knew or should have known" that his/her conduct is harassment or discrimination. They are simply wrong. As is reflected in cases which have declared vague statutes and regulations unconstitutional on due process grounds, one of the reasons that they give is that such laws grant regulators unconstrained discretion to interpret and enforce the law, *ex post facto*, in any manner they want. In this regard, I suggest

MAIL continued on page 21

Opinions in Bar News

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



Heather M. Burns



Michael S. McGrath

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NEW HAMPSHIRE BAR ASSOCIATION LEADERSHIP★ACADEMY



Congratulations to the 13 attorneys selected to participate in the New Hampshire Bar Association Leadership Academy.

"The NHBA Leadership Academy is an excellent program for lawyers to learn more about the legal and business environment in New Hampshire," Bar Executive Director George R. Moore said. "From shadowing a judge to meeting with business leaders, the Academy teaches lawyers how they can become effective leaders and advocates within the Bar Association and in their chosen practice field."

The Leadership Academy is a nine-month leadership-training program designed to foster the professional growth and enhance the leadership skills of a diverse group of attorneys. This is the sixth class to participate in the program, which includes educational modules, participation in the Association's membership meetings, and a kickoff retreat held on October 26.

Margaret M.L. Byrnes
NH Municipal Association



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McLane Middleton



Nicole A. Faille
Sheehan Phinney
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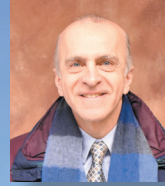
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Nominations Open for Midyear Meeting Awards

The Bar's Gender Equality Committee seeks nominations for the Philip S. Hollman Equality Award, which honors former Judge Hollman's efforts as a stalwart advocate for gender equality in the legal system. The nominee may be a Bar member, an employee of a law firm or a New Hampshire court, or an employee of a state department or agency which is part of the legal system. The award will be presented at the Gender Equality Breakfast during the 2019 Midyear Meeting on February 15 in Manchester. Nominations are due by November 14 to Lisa Boisvert: lboisvert@nhbar.org.

The Bar also seeks nominations for several other awards to be presented at the meeting: Outstanding Service in Public Sector/Public Interest Law, the Vickie M. Bunnell Award for Community Service, and the Distinguished Service to the Public Award.

Download a nomination form and find out more about the awards at <https://www.nhbar.org/bar-awards/>. Nominations can be mailed to the Bar Association office or emailed to Allison Borowy at aborowy@nhbar.org by Friday, December 14.

Wellness Tip of the Month

Set a time to check email (Example: first thing at 8:30 a.m. and again at 5 p.m.) and don't check it outside the limits you have set. Create an automatic reply that explains your email schedule. Include a line explaining that by scheduling time for email response you can give emails your full attention. If you stop constantly checking email, your stress level decreases and you can remain focused to increase overall productivity.



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SAVE THE DATE



Midyear Membership Meeting

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sends completed filings to the court. It also prompts filers on how to attach and upload other documents that may be required for their cases.

Looking ahead, according to the Judicial Branch, the NH e-Court Program will “continue delivering benefits to New Hampshire citizens by expanding electronic filing in 2019,” including other civil cases in the Circuit Court and attorney filing in Superior Court criminal cases.

Information Center in Spotlight

As access has expanded across the court system, the New Hampshire Judicial Branch’s Electronic Filing and Trial Court Information centers are increasingly in demand.

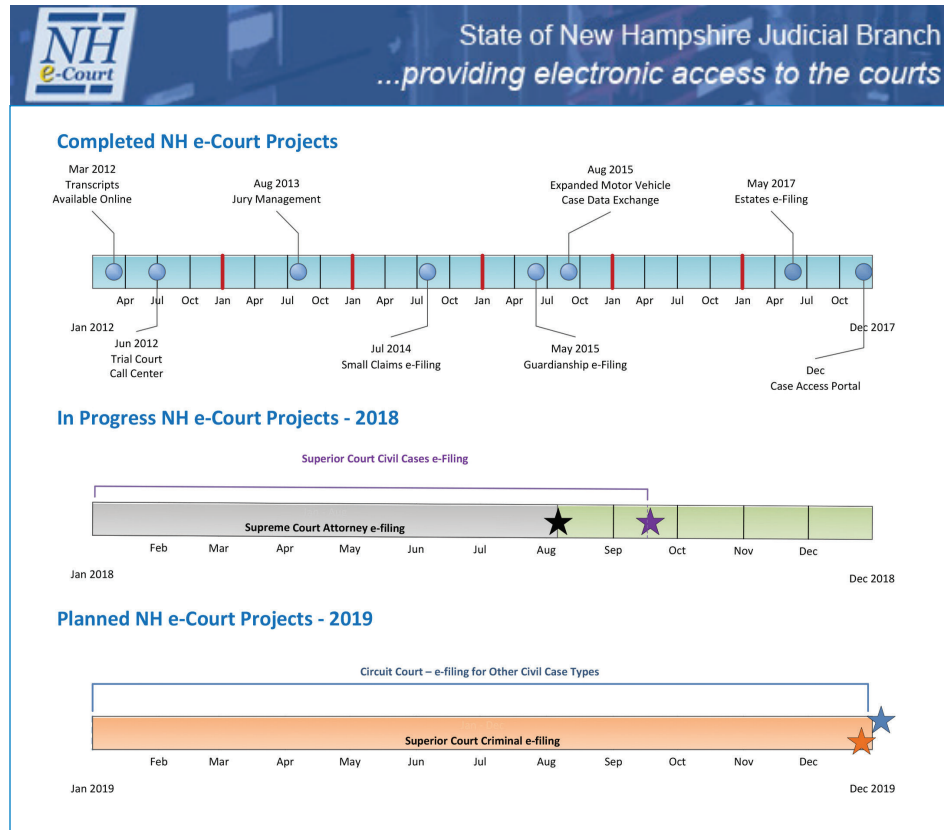
“It’s the biggest clerk’s office in the state,” Judge David D. King said.

King, the incoming administrative judge of the Circuit Court (see story on page 38), gave a tour of the Judicial Branch Administrative Offices to *NH Bar News* over the summer.

Although the centers’ offices are tucked away at the bottom of the Lincoln Financial Group building at 1 Granite Place in Concord, inside, the air waves were humming with activity. The call center receives some 35,000 to 40,000 calls per month and has 20 full-time and 16 part-time employees.

In the first half of the year alone, the number of calls to the e-Filing help queue increased from two in January to 200 in June.

But it’s not just attorneys on the oth-



er end of the line — many of the calls are from the public, such as a landlord checking a reference or someone who has questions about making a plea by mail.

When broken down by court division, the District Court has seen the highest number of calls to the Call Center this year, at more than 127,000 calls, followed by the Family Division at around 76,000 calls; the Probate and Superior courts each had more than 45,000 calls

(as of September 30).

The total in-person court staff time that’s saved by directing all inquiries to a central location is also noteworthy — 2,231 days.

The idea of having one information line for the entire state once seemed like a pipe dream. But, taking phone calls out of local courts has made the offices more efficient, King said.

“The lawyers didn’t like it at first,” King acknowledged, but added that al-

most everyone he talks to feels differently now. A lawyer can easily check on four cases from different districts at the same time, he explained.

An Initiative Years in the Making

New Hampshire has been at the forefront of the movement to digitize judicial systems. Although some states already offered e-Filing, the Granite State was one of the first to make e-Filing mandatory for self-represented parties at the time.

Although the initiative was designed to bring New Hampshire’s court system into the 21st century, it was also created to save money at a time when the state’s budget was strapped.

Following the great recession, the court system faced a \$3.1 million budget reduction in 2010. An innovation commission subsequently presented a 10-year plan to increase efficiency and access to justice. However, in 2011, the state legislature pushed for the adoption of a unified circuit court — bringing together the probate courts, district courts, and family division, and adding the centralized circuit court call center — within months, as well as significant staff cuts.

Chief Justice Lynn has described the creation of the Circuit Court as a “Herculean task” — and the most significant overhaul of the New Hampshire Judicial Branch since the early 1980s, when the legislature unified the courts under a single administrative and financial structure.

Today, New Hampshire’s Circuit Court includes 32 district, 28 family, and 10 probate court locations that handle 90 percent of all cases filed in the state court system, according to the Judicial Branch.

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In 2011, the innovation commission also recommended a five-year plan for creating a digital court system. While technical issues delayed the launch of e-Filing for the Supreme Court earlier this year, the project's goals are now within reach by the end of 2019. Ultimately, Judicial Branch leaders hope the e-Court system will deliver timely, progressive technology solutions that ensure the courts remain a relevant and viable venue for effective dispute resolution.

Inside the Digital Courtroom
Back in his office, King demonstrated how quickly he could review estate cases on his computer.

"Now, you can open an estate with one form," he said.

He had dispatched several within minutes and he said he can also process time-sensitive cases from home at night. Initially, the requirement for mandatory e-Filing for self-represented litigants was seen as potentially problematic.

"[But], we're finding exactly the opposite," King noted. "It's making it a lot easier for them ... and for us."

He reported that access to justice has increased due to the changes. The software is user-friendly, and the numbers are "pretty remarkable," he said, with disposition time down across the state.

By New Hampshire court rule, electronic filing is mandatory unless a case party requests to be excused from the requirement. King is proud that less than one percent of cases filed have included excusal requests since the start of the e-Court project.

Small claims defendants are approximately 95 percent self-represented,

according to the Judicial Branch. Of the more than 59,000 cases filed electronically since 2014, 43 percent were filed through the self-represented system. Currently, about 15 percent of all Circuit Court cases are e-Filed.

And, e-Filing has allowed for quicker processing time on average. For example, in 2013, the average time to disposition for a small claims case was 94 days. After e-Filing was implemented, the average time to disposition in 2017 was 73 days — a 22 percent decrease.

For some guardianship cases, the transition to the e-Court system cut time to disposition by more than half, from 186 days for a guardianship of minor (person and estate or estate only) case to 52 days. Guardianship of minor (person only) cases also sped up, with the average time to disposition 128 days in 2014 compared to 81 days in 2017 — even as the number of total cases in both categories increased.

Wills and estates recently finished a full year of e-Filing and have already shown decreases in processing time.

The e-Court software also allows King and other staff to quickly see how many cases are in a given queue, which case has been open longest, and other critical issues.

"[E-Filing] drastically reduces the time it takes to schedule a hearing," he said, and the local court doesn't see the cases until the day of the case.

Previously, with 10 different probate courts there were "10 different ways of doing things," King said. Now, "they all get the same attention."

"We've revolutionized the way we process cases."

Section Connection

Family Law Section Meets the Judges



On September 13, the Family Law Section held its inaugural meeting at the Common Man Restaurant in Concord, where it was joined by Judge Susan Carbon, of Manchester Circuit Court; Judge Michael Garner, of Laconia Circuit Court; Judge David Burns, of Brentwood Circuit Court; and Judge Henrietta Luneau, of Lebanon Circuit Court, for the Section's second annual "Meet the Judges" event.

The Section was privileged to have the opportunity to engage in lively dialogue with the judges, discussing a variety of legal questions, as well as issues related to "life on the bench."

The Family Law Section and the New Hampshire Bar Association extends its appreciation to each of the Judges for volunteering their time and offering their unique insights.

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SETTLEMENT \$4,250,000.00	Medical Malpractice Delayed sarcoma diagnosis results in death
SETTLEMENT \$3,750,000.00	Medical Malpractice Mismanaged labor and delivery results in birth injury
SETTLEMENT \$2,250,000.00	Medical Malpractice Improper resuscitation at birth results in neurological injury
VERDICT \$1,950,000.00	Medical Malpractice Inadequate surgical monitoring results in blindness

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NEW HAMPSHIRE

BAR FOUNDATION NEWS

Applauding Spirit, Support of Foundation



Above, left to right: Justice Joseph Nadeau poses with the Kenison award, flanked by his wife Cathy and retired Chief Justice John Broderick. Nicholas Abramson with the Kirby award poses with 2008 recipient Chuck Keefe who nominated him this year. Michelle Olivier, of Merrimack County Savings Bank, was one of several representatives from IOLTA donor institutions at the dinner.



Bottom, left to right: Justice Gary Hicks laughs with 2017 Kirby awardee, Julian Jefferson. Cathy Chesley of Catholic Charities, Immigration Legal Clinic, discusses challenges that asylum-seekers and undocumented immigrants face. Sarah Blodgett, executive director of the NH Judicial Council, was co-chair of this year's event. Stephanie Patrick, executive director of Disability Rights Center- NH, spoke about the organization's 40 years of advocacy.



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More than \$20,000 was raised for justice-related activities at the Bar Foundation's annual dinner on September 12 in Manchester. Two leaders of organizations receiving Foundation grants addressed the gathering. Cathy Chesley, who directs Immigration Legal Services for Catholic Charities of NH, spoke of its efforts to advise federal detainees at Strafford County jail. The periodic clinics that Catholic Charities conducts there provide advice to people who otherwise cannot access help.

Another speaker, Disability Rights Center-NH Executive Director Stephanie Patrick, said general support through Interest on Lawyers Trust Accounts is a crucial funding source for DRC, enabling it to address emerging needs and provide personalized representation to people with a variety of disabilities or challenges.

NH Bar Foundation Chair Jack Middleton also recognized Lynne Parker, former executive director of NH Legal Assistance, for her service to the Bar Foundation, the legal

community, and the state. Parker recently took over leadership of the Massachusetts Legal Assistance Corporation

Retired NH Supreme Court Justice Joseph P. Nadeau received the Frank Rowe Kenison award, while attorney Nicholas Abramson was presented with the Robert E. Kirby award.

Former Chief Justice John Broderick introduced his colleague, Nadeau, from the bench, and lauded the honoree's decades of volunteer work to advance judicial systems around the world.

Abramson, a former prosecutor now in private practice as a civil litigator, was nominated by Charles Keefe, who won the Kirby award in 2008. Keefe said Abramson's nomination was supported by a number of his courtroom adversaries who cited his outstanding reputation for integrity and professionalism.

The annual dinner raises funds to support the general operations of the Foundation.

Thank You

to the late Edmund J. Boutin for his
legacy gift to the Foundation's
Advancement of Justice Fund.

"For it is in the giving that we receive." - Francis of Assisi

Simoneau to Receive Pro Bono Award



Laywer Kirk C. Simoneau (above, at the 25th anniversary DOVE celebration) has been selected to receive the 2018 Bruce E. Friedman Pro Bono Award. This award is given each year by the NH Bar and the UNH School of Law to recognize a UNH Law graduate and Bar member who has made significant and exemplary contributions to the delivery of volunteer legal services to the vulnerable and needy.

Simoneau, an attorney with Nixon Vogelmann Slawsky & Simoneau of Manchester, made his debut as a DOVE volunteer with a precedent setting Supreme Court Appeal, *Hemenway v. Hemenway*, resulting in the expansion of protec-

tions available to victims of domestic violence at final protective order hearings. He takes cases as often as possible, logging hundreds of volunteer hours, all-the-while mentoring law students and freshly-minted DOVE volunteers. Simoneau has also embraced DOVE's collaboration with UNH Law to train Daniel Webster Scholar candidates through an annual miniseries, creating a significant pool of client-ready DOVE volunteers upon graduation.

The award will be presented at the 7th annual ceremony on Thursday, October 25 at 5:30 p.m. at UNH Law School in Concord. RSVP: <https://bit.ly/2QuUpAq>.

LawLine Thank You

The NHBA would like to thank Attorney Sandra Kuhn and Family Legal Services for hosting LawLine on September 12. The firm fielded 54 calls from the public, providing brief legal information and advice. Questions such as, "Do you have to be a citizen to testify in court?" and, "Do I have to move out right away when I get a notice to quit?" were answered by the volunteer attorneys. Other questions covered family law, probate law, and criminal law.

We are currently looking for more

firms to volunteer for this extremely helpful service. If you'd like to get a group of colleagues together for a short evening of fun hosting LawLine (always on the second Wednesday of the month from 6 to 8 p.m.), please contact Tom Jarvis at tjarvis@nhbar.org.

LawLine phone calls may be forwarded to any phone number and the Bar provides takeout for dinner. It's also a great group activity for county bar associations and other groups and committees.

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In the News

Coming & Going

Gallagher & Cavanaugh recently announced **Sheryl M. Bourbeau** and **Jay V. Lee** as partners in the firm. Bourbeau, with the firm since 2004, represents international, national, and small businesses, and individuals in complex civil litigation matters, including product liability, insurance, contract, and employment matters, in state and federal courts, administrative hearings, and arbitration. Lee, with the firm since 2006, counsels clients in construction, construction defect, products liability, business, and commercial real estate litigation matters.

ACLU-NH recently announced the addition of two new attorneys to the organization: **Henry Klementowicz**, staff attorney, and **SangYeob Kim**, Immigration Fellow. Klementowicz, previously spent three years working at the McLane Middleton law firm and received his J.D. from Georgetown University Law Center. Kim — a lawyer with experience in immigration detention and removal defense who has practiced in New Hampshire and New Jersey — earned his J.D. from the University of Iowa College of Law.

The New Hampshire Association for Justice recently named a new executive director, **Marissa Chase**, of Manchester. Chase has been with NHAJ since September 2016 as the association's director of government relations. As of June 2018, **Bill Woodbury** of Normandin, Cheney and O'Neil, is serving as president of the Association. Woodbury is a member of the firm's Management Committee. He practices in the areas of family law, criminal law, disability and injury law and general civil litigation.

Jessica Ecker has become a partner with at Weibrecht Law. Ecker will continue to focus her practice on representing clients on a variety of family law matters in New Hampshire and southern Maine.

Tober Law Offices welcomes back **Kelleigh Murphy**. She will focus her practice in the areas of Domestic Relations & Complex Asset Division, Small Business Law & Corporate Advisement, Civil Litigation & Personal Injury, Private Mediation, Employment Law, Professional Conduct and Misdemeanor Defense.

Community Notes

Attorney **Richard H. Hubbard** has been appointed as a full-time Assistant Professor of Criminal Justice at New England

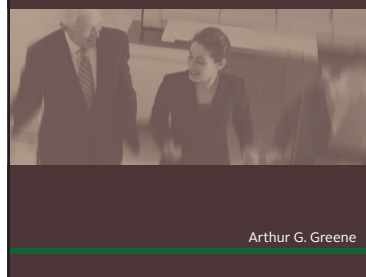
College in Henniker, New Hampshire. Hubbard has been a member of the New Hampshire Bar for more than 35 years.

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Arthur Greene's Practical Guide:

Succession Plans for Law Firms and Rewards for Retiring Lawyers targets solo practitioners and lawyers in smaller firms nearing retirement age with no exit plan in place. Written in a concise and practical style, this guide offers a complete range of the most common succession considerations.

Topics covered include the often misunderstood process of determining the value of a practice and the important methods to build value well in advance of retirement years.

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Attorney Benjamin Rattner, left, is sworn in at a ceremony on September 14.

Bar Welcomes New Members

The following members were admitted to the New Hampshire Bar Association at a swearing-in ceremony on Sept. 14 at the New Hampshire Supreme Court in Concord.

Vaughn P. Abraham, Wilmington, Mass.
 Melissa M. Barry, Worcester, Mass.
 Katherine R. Canny, Portsmouth, NH
 Michael R. Croteau, Northborough, Mass.
 Jaye A. Duncan, Brookline, NH
 Mark Dunlap, Falmouth, Maine
 Derry E. Earle, Concord, NH
 Eitan Y. Goldberg, North Andover, Mass.
 Shane D. Goulet, Manchester, NH
 Christopher I. Henry, Cranston, RI
 Jessica Hersom, Concord, NH

Melaney G. Hodge, Rockland, Mass.
 Ian C. Keefe, Boston, Mass.
 Kimberly A. Livingstone, Fort Plain, NY
 Rebecca J. McWilliams, Concord, NH
 Christopher B. O'Brien, Salem, Mass.
 Megan G. Pimentel, Somerville, Mass.
 Benjamin M. Rattner, Rye Brook, NY
 Gabrielle A. Regney, Keene, NH
 Morgan E. Saunders, South Burlington, Vt.
 Susan E. Schorr, Boston, Mass.
 Tatyanna P. Tabachnik, Dover, Mass.
 Padma Veeru-Collings, Kaysville, Utah
 M. Holly Vietzke-Lynch, North Andover, Mass.
 Laura L. Wilson, Guildhall, Vt.
 Andrea C. Zakko, Lebanon, NH

Volunteers Needed for We the People

Attorney volunteers are needed to act as judges and timers at the "We the People" District Hearings on Friday, December 8 and at the State Finals on Friday, January 5, 2019 at the Legislative Office Building in Concord.

This nationally acclaimed civic education instructional program enhances students' understanding of the institutions of American constitutional democracy while allowing students to discover the contemporary relevance of the Constitution and Bill of Rights.

The primary goal of "We the People: The Citizen and the Constitution" is to promote civic competence and responsibility among the nation's elementary and secondary students. The design of the instructional program, including the innovative culminating activity, is what makes the program a success.

The culminating activity is a simulated congressional hearing in which students "testify" before a panel of judges. At the high school level, schools participate in District and State Finals Hearings, held in December and January each year, performing units before a panel of notable governmental and political leaders. The top performing high school team is given the opportunity to attend the We the People National Finals in Washington, D.C., representing NH. High Schools from around the state have used the program for 20 or more years, motivating a number of students to pursue careers in politics and civic engagement.



District Hearings
Friday, December 7, 2018
(Snow Date: Dec. 10)

9 a.m. – noon

(Awards to follow)

State Finals
Friday, January 11, 2019
(Snow Date: Jan. 14)

9 a.m. – noon & 1 – 4 p.m.
(Awards to follow last session)

If you are interested in volunteering your time to be a part of this program, or if you'd like further information, contact LRE Coordinator Robin E. Knippers, 603-715-3259, and visit <https://www.nhbar.org/civics-education/we-the-people/>. Timers will be moved into a judging role should there be cancellations. Judges and timers receive the same info in order to be prepared.

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Charles Bauer
*Arbitration
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Samantha Elliott
Commercial Litigation

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

Dodd Griffith
*Business Organizations
 Commercial Finance Law
 Corporate Law*

Susan Hollinger
*Corporate Law
 Mergers and Acquisitions Law*

Donald Pfundstein
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 Banking and Finance Law
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Ari Pollack
*Land Use Zoning Law
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** Peter Cline - 2019 "Lawyer of the Year" Business Organizations - Concord
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Jessica Ecker



Jessica joined Weibrecht Law four years ago after spending her first eight years of practice at a large firm in Exeter & Portsmouth. As Partner, Jessica will continue to focus her practice on representing clients in a variety of family law matters and in New Hampshire and Southern Maine.

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The law firm of **Davis Steadman Ford & Mace**
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outstanding addition to
the New Hampshire
judiciary, and we
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Attorney Kelleigh Murphy is a true modern-day litigation attorney, focusing on providing comprehensive representation to individuals, small businesses and corporations. The first female Chairwoman in the history of the Bedford Town Council, she has honed her leadership and public speaking skills through years of civic and public service engagements. A trained mediator, Kelleigh recognizes that sometimes the best solutions lie outside of the courtroom. However, her extensive litigation experience allows her to fiercely advocate for her clients in court.

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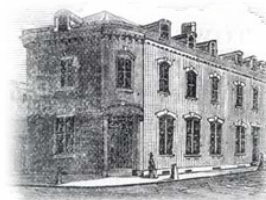
Gallagher & Cavanaugh, LLP is pleased to announce
Sheryl M. Bourbeau and Jay V. Lee
as Partners in our firm



Ms. Bourbeau has been practicing law for twenty-five years and has been with Gallagher & Cavanaugh since 2004. She represents international, national, and small businesses, and individuals in complex civil litigation matters, including product liability, insurance, contract, and employment matters, in state and federal courts, administrative hearings, and arbitration.

Mr. Lee has been practicing law for twenty years and has been with Gallagher & Cavanaugh since 2006. He practices in MA and NH state and federal courts, counseling clients in construction, construction defect, products liability, business, and commercial real estate litigation matters. Mr. Lee's clients include manufacturers, construction managers, contractors, and small business owners.

To learn more about Ms. Bourbeau and Mr. Lee, and our firm, visit www.gcattorneys.com, or stop by our offices, located in the historic Lowell Gaslight Building.



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Volunteers Recognized for Pro Bono Month

As part of the national Celebrate Pro Bono initiative, lawyers across the country are taking part in events this month to educate the public and the legal profession about pro bono legal services. Here are a few reasons why local lawyers give their time to the NH Pro Bono Referral Program.

Susan Abert

Norton & Abert, Keene

Participating in the Pro Bono Program gives my firm a chance to reach out to and help people in my community who would not normally be able to access legal services and information. The need is greater than you would imagine! Even with our practice areas limited to estate planning, estate and trust administration, and elder law, there are clients who have need of access to our services. They are usually quite grateful for our assistance, and for the respect, kindness and friendship extended to them. Our founding partner, John C. Norton, served on the Pro Bono Governing Policy Board for many years and was a strong supporter of the Pro Bono program, and we are continuing in his footsteps by saying “yes” when Pro Bono calls with a referral.



way I viewed my cases. I was going to fight for my client because she didn't have anyone else to fight for her. I believe pro bono work has a true benefit to new lawyers. If you're looking for experience, you will get that. If you're looking for the purpose of becoming a lawyer, pro bono is it.



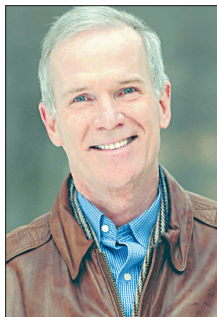
Michael Chubrich, Portsmouth

I take pro bono cases for three reasons: (1) helping clients solve important problems is what being a lawyer is all about, (2) pro bono clients show genuine gratitude for our service, and (3) I usually learn something new from my pro bono tax clients. In 1994, I took my first case from the Pro Bono Referral Program and since then I've taken about a case a year, including federal taxation and family law. Though retired from private practice, I'm now taking advantage of the Bar Association's Limited Active Membership Status so I can continue representing low-income people in need through Pro Bono.

John Garvey

UNH School of Law, Concord

I was raised in a military family. There were no lawyers, but there was a strong culture of service to others. Marian Wright Edelman, the founder of the Children's Defense Fund said that, “Service is the rent we pay to be living. It is the very purpose of life and



not something you do in your spare time.” This is why I began doing pro bono work — out of a sense of obligation. But I soon realized that it was some of the most meaningful and satisfying work in my career. I have long forgotten many paid cases but I still remember so many of my pro bono clients who have been beaten down in their lives to have low expectations and little hope. Sometimes I make a difference and the satisfaction that comes with that brings me joy. We train all Webster Scholars to be DOVE lawyers to instill in them the sense of service but to also introduce them to that sense of joy.

Kristin Sheppe

Greenblott & O'Rourke, Plymouth

I have been extremely fortunate throughout my life to always have secure housing and food, as well as a stable home and access to high-quality education. Volunteering at Pro Bono's periodic payment clinic in Plymouth and doing other pro bono work provides me with a valuable opportunity to assist those who have not been so lucky. It is gratifying to help people understand their rights and protect them from being taken advantage of. I work part-time, and doing the periodic payment clinic is a great way for me to do regular pro bono work in a predictable way for a set amount of time each month.



Gregory Silverman Preti Flaherty, Beliveau & Pachios, Concord

Younger attorneys can have the satisfaction of managing your own case, along with the chance to get in front of a judge

and put on a trial. I see these as some of the tangible rewards of handling Pro Bono cases in addition to the gratification of assisting those in need. One such case gave me the chance to conduct a jury trial, a rarity in civil litigation these days. Then there was the landlord-tenant case where a settlement allowed my client to pay off her large utility bill, removing a huge weight from her shoulders. Newer attorneys should take note of the Pro Bono Program's unseen value when it comes to professional development — or in other words, “Call the Program to take a case!”



Mary Stewart, Concord

Everyone needs a little help now and then. Often those in the greatest need are those who cannot afford legal assistance. Representing pro bono clients allows me the opportunity to help someone who otherwise could not help themselves due to lack of money which is also accompanied by a lack of emotional and mental resources to navigate a complex legal system. My most satisfying legal cases are when I am standing up for a client who is not familiar with the feeling of having an advocate on their side. Pro Bono work matters. You won't receive money but you will receive payment in gratitude and in the satisfaction that goes with helping someone in need.



New Hampshire Bar Association PRO BONO HONOR ROLL

August and September 2018

The attorneys listed here each accepted one or more cases referred by the New Hampshire Pro Bono Referral Program during the months of August and September 2018. Gold stars indicate attorneys who accepted more than one Pro Bono case during the course of the month.

BELKNAP

Katherine Muzzy
Judith Roman

CHESHIRE

Gerald Neiman
Michael Racine
Christopher Seufert
Kenneth Walton

COOS

Dennis Morgan
James Shepard

GRAFTON

Quentin Blaine
Kevin Carr
Patrick Hayes
James Laffan
Alvin Nix
Charles Sheng

HILLSBOROUGH (N)

Xiorlivette Bernazzani
Linda Garey
Ellen Joseph
James O'Rourke
Olivier Sakellarios★
Richard Samuels
Ashley Scott
Kirk Simoneau★
Dana Smith
Ramey Sylvester
Dennis Thivierge

HILLSBOROUGH (S)

Kevin Collimore
Rory Parnell
Lyndsay Robinson
Brian Shaughnessy★
Tanya Spony

MERRIMACK

Biron Bedard
Ronald Bessette
John Brandte★
Joseph Conti
John Garvey★
Judith Roman
Charles Russell
Timothy Smith
Kelley Stonebraker
Dawn Whiting

ROCKINGHAM

Joanne Craighead
Richard McPartlin★
Katherine Miller
Olivier Sakellarios★
Kirk Simoneau★
Joanne Stella

STRAFFORD

Sarah Lavoie
Susan Lowry★
Kalie Lydon
Richard O'Kane
Tara Schoff
Dawn Worsley

SULLIVAN

Lisa Wellman-Ally

Pro Bono Clinics

Special thanks to attorneys providing advice at Pro Bono clinics in August and September:

Plymouth Periodic Payment Hearings
Quentin Blaine*

Nashua Record Annulment Clinic
Donna Brown*
Roger Chadwick*
Joseph Fricano*
Raymond Mello*
Joseph Prieto*
Justin Shepherd*

Concord Consumer Debt Docket
Roger Phillips*
Peter Wright*

Plymouth Consumer Debt Docket
Quentin Blaine

Pro Bono Referral Program Celebrates 40th Anniversary

On September 13 at the Manchester Country Club, the Pro Bono Referral program held a reception to celebrate and honor those who have played a key role in its success over the past 40 years.

The Pro Bono Referral Program helps unite low-income people with volunteer attorneys for free legal services in family law, bankruptcy, consumer law, criminal record annulment, housing, and income tax disputes, as well as veteran and senior citizen matters.

“For four decades, the Pro Bono Program has served to make New Hampshire a better place by giving access to those who feel helpless and hopeless,” said Associate Executive Director of Legal Services, Virginia Martin. “With a dedicated staff, steadfast attorney volunteers, and funders like the NH Bar Foundation, we are able to assure fairness and simple justice.”

The reception was well attended by



seasoned and new attorneys from across New Hampshire and was followed by the annual New Hampshire Bar Foundation dinner. The Pro Bono Referral Program has connected 40,000 people with volunteer attorneys over the past four decades,

benefitting almost 100,000 adults and children.

“The Pro Bono representation that provides access to justice for so many deserving people promotes and perpetuates the rule of law,” said New Hamp-

shire Supreme Court Associate Justice Gary E. Hicks at the reception.

Hicks took his first Pro Bono case nearly 40 years ago and continues to be a strong supporter of the program today.

Looking Back on Four Decades:1978-2018

- 1978:** The Pro Bono Referral System (aka Program) opens its doors in Manchester with a special demonstration grant from the federal Legal Services Corporation (LSC), with priorities established jointly with NHLA. Janine Gawryl, Esq. is the first director.
- 1979:** The ABA recognizes the Pro Bono Program with an Award of Merit for “single project excellence.”
- 1980:** Pro Bono moves to Concord, co-locating with the NH Bar Association at its new offices.
- 1981:** The NH Bar Association receives the Harrison Tweed Award from the ABA and the National Legal Aid and Defender Association in recognition of the Bar Association’s “outstanding leadership and support in developing and maintaining the Pro Bono Referral System for . . . indigent clients.”
- 1984:** The Pro Bono Program enters into an agreement with the NH Bar Association under which Pro Bono joined with the Bar’s other legal services programs under one director reporting to the NHBA Executive Director. All policy and oversight reside with the Pro Bono Governing Policy Board.
- 1985:** NHLA and Pro Bono develop a joint venture agreement to serve low-income people throughout New Hampshire.
- 1992:** The Domestic Violence Emergency (DOVE) Project is created to provide victims of domestic violence with expedited access to representation for final restraining order hearings.
- 1993:** Players turn out to support Pro Bono at the first Quid Pro Bono Golf Tournament.
- 1996:** Reorganization of legal services—the creation of LARC and initial downsizing of Pro Bono—in response to LSC restrictions.
- 1997:** Pro Bono responds to disabled children’s SSI terminations with special attorney training and recruitment drive.
- 1998:** Pro Bono launches the Low-Income Taxpayer Project, thanks to a successful IRS grant.
- 2001:** Pro Bono coordinates its first estate planning clinic for the Air National Guard being deployed to Afghanistan.
- 2002:** Divorce Camp, an ongoing series, makes its debut to teach newer attorneys family law practice with the goal of Pro Bono engagement.
- 2003 & 2004:** Members of the Army National Guard headed into harm’s way receive basic estate planning assistance at Pro Bono clinics.
- 2006:** Unbundled rules take effect with significant involvement of Pro Bono Program, including advocacy for limited appearances.
- 2006:** The Pro Bono Program is successful in its efforts to secure adoption of the ABA’s *pro bono public rule*, Rule 6.1.
- 2007:** Pro Bono receives the ABA’s Louis M. Brown Award for Legal Access.
- 2008:** The National Association of Pro Bono Professionals presents NHBA Pro Bono Director Ginny Martin with its Pro Bono Professional of the Year Award.
- 2009:** The DOVE Rural Access Project (formerly North Country Outreach) becomes a reality with Recovery Grant funding and is now supported by a NH Supreme Court Pro Hac Vice grant.
- 2010:** DOVE Project partners with UNH School of Law to provide Daniel Webster Scholars with educational programming and student mentorship to be client ready to accept DOVE cases upon graduation.
- 2011:** Volunteer attorneys draft wills for sailors and marines at Military Pro Bono Clinics.
- 2012:** UNH School of Law and Pro Bono collaborate to recognize UNH Law graduate and NH Bar member with first Professor Bruce E. Friedman Pro Bono Award, presented to Marilyn B. McNamara.
- 2012:** DOVE Coordinator Pamela Dodge inducted into the NH Coalition’s Hall of Fame.
- 2012:** Pro Bono and all NHBA legal services programs join NHLA and LARC in launching the Foreclosure Relief Project with National Mortgage Foreclosure Settlement funds.
- 2013:** First Foreclosure Relief Clinics held around the state.
- 2015:** Pro Bono’s Periodic Payment Clinics launched in Plymouth.
- 2016:** Pro Bono holds the first of its ongoing criminal record annulment clinics.
- 2017:** The DOVE Project expands its mission to include victims of stalking thanks to Victims of Crime Act funding.
- 2018:** Concord is the site of Pro Bono’s first Consumer Debt Docket Clinic.
- 2018:** The Pro Bono Referral Program celebrates its 40th anniversary!

Lawyers on Ice!

Fourth Annual NH Pro Bono Referral Program Benefit Hockey Game

Where?

Sullivan Arena
St. Anselm College, Goffstown

When?

Sunday, January 13, 2019
2 p.m.

Why?

Help support the
Pro Bono Referral Program
Cheer for your favorite team
Have fun!



Teams Liberty & Justice will face off on Sunday, January 13, 2019, at 2 p.m., for the fourth annual Pro Bono Referral Program Benefit Hockey Game. BANNER SPONSORSHIPS still available at \$300 each! If you are interested in sponsoring or playing, please contact Rory Parnell (rparnell@pmmlawyers.com) or the Pro Bono Program at 715-3203. Entry fee is \$150 for new players and \$100 for returning players.

Tickets Only \$5

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CN1018-37928-1119D - 2017

such issues.

The program, established by the state Supreme Court in 2007, provides confidential advice and assistance and, critically, its employees and volunteers are exempt from reporting professional misconduct.

Those who contact the organization — roughly 50 people per year — can expect to meet with Harrington, who assesses their needs and refers them for help.

About half the contacts concern alcohol abuse and the other half, anxiety, depression and burnout, she says.

The referral from NHLAP can be to a trained professional or to peer counseling, with some 25 trained volunteers available, according to Harrington. The organization also works with Lawyers Concerned for Lawyers, a 12-step-based, self-help group for lawyers. The work of the group, along with that of the Lawyers Assistance Committee of the New Hampshire Bar Association, led to establishment of the NHLAP.

“Help, hope, healing” is the mantra offered on the NHLAP website. But it can be a hard sell, according to Harrington.

“It’s not a message everyone is interested in hearing because it’s uncomfortable [and] shrouded in stigma,” she says. “[Lawyers are] are relied upon to help people in their very important decisions, so we don’t want to look weak.”

At the same time, Harrington says, many of those who contact the program express delight and relief at having “somebody to talk to, somebody to have an empathetic ear.”

“I’d like to get out there and do a lot more education,” she adds. “I think the more I talk, the more people will come

forward.”

Harrington believes her varied experiences both in and outside the courtroom aid her in her work.

Born to a New England Protestant mother and a Jewish father from New York, Harrington says she “wasn’t really raised Jewish or Christian, just raised with all these ideas.”

She grew up in a household where spirited political discussions were commonplace and discovered early that she enjoyed being “a verbal combat artist.”

A native of Westbrook, Maine, she loved hearing her New York grandparents’ passionate discussions about news of the day when they would come visit and decided as a youngster she would grow up to be a lawyer, though no one on either side of her family had attended college.

She chose the University of Maine, majoring in political science with a minor in history, then went on to graduate from the UNH School of Law, formerly Franklin Pierce Law Center, in 1993.

She worked for a time as a court-appointed defense lawyer in Maine, in both district and superior courts, and even argued a case before the Maine Supreme Court a year out of law school.

In 1997, Harrington was approached to become the domestic violence unit director for the York County district attorney’s office in Alfred, Maine. When her husband, Timothy Harrington, joined the Manchester law firm of Shaheen & Gordon, she took a position with the Rockingham County district attorney’s office at the Portsmouth police station.

Harrington was working full-time with four children at home and feeling “overwhelmed” when she started experiencing fatigue and other symptoms and

decided to take a hiatus from work.

She was eventually diagnosed with drug-induced lupus, which stemmed from a medication she was prescribed for stress-related acne. It took her a year to be able to recover enough to re-enter the workforce.

During that time, she also slipped into isolation as a stay-at-home mom.

“I missed working,” Harrington says. “I didn’t use resources as well as I could have.”

Then a neighborhood friend invited her to a hot yoga class and “it literally changed my life over the course of a year,” she says. “It quieted my mind, helped me be a better parent and helped me with [my] major health issue.”

She became hooked on yoga, and now serves as a volunteer board member for Seacoast Area Teachers of Yoga in Action (SATYA), which aims is to bring yoga to underserved populations like prison inmates, those struggling with drug addiction and people with developmental disabilities and their families.

Harrington is “a brilliant lawyer and a loyal friend,” says fellow SATYA board member Sara Curry, owner of Blaze Yoga and Pilates in Portsmouth. “She is not afraid of hard work and getting her hands dirty to get work done.

In a nutshell, she’s the type of person you want on your team.”

When Harrington did return to work, it was with the Rockingham County district attorney’s office, where she was a felony prosecutor from 2013 to 2017. She says she particularly enjoyed serving as the alternative court prosecutor for the drug court, veteran court and mental health court, where people who are criminally charged can avoid prison sentences by working with a team of professionals and going through a program to change their habits.

“It became really gratifying, especially when people turn[ed] their lives around,” she says.

Attorney Kirsten B. Wilson, who was a co-worker at the county attorney’s office, says Harrington “poured her heart into her work, including caring about her



Terri Harrington balances in standing bow pose, a result of “many, many hours on the mat,” she says. (Courtesy Photo)

cases and all those she interacted with on both a professional and personal level.”

Wilson adds that Harrington’s appointment as director of the NHLAP “is a brilliant choice in understanding the demands of a challenging profession and helping strive for integrating that career as part of a balanced life.”

It is a sentiment echoed by Deanna Campbell, a public defender who worked with Harrington on the alternate court’s drug court team.

“She has a willingness to seek justice, whether for a colleague or an adversary or a victim or a defendant,” Campbell says. “She’s just very thoughtful in putting forth the effort to do the right thing and help people help themselves. She’s a great fit for her new role.”

Harrington says she was drawn to the position because she loves helping people.

“I love making people feel less alone,” she adds. “I feel like it was sort of meant to be that I got on this path.”

Editor’s Note: As part of an expanded partnership with the NH Lawyers Assistance Program, look for a Wellness Tip each month in the Bar News and a special supplement on wellness in January 2019.

Kathie Ragsdale is a freelance writer based in Chester and a frequent contributor.

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criminal justice system.

“Mental Health Court as an alternative to jail time for people with mental illness is important because jails were never designed to be treatment for mental illness,” said Patricia Whitney, a member of the Advocates for Grafton County Mental Health Court, a non-profit organization based in North Haverhill.

Whitney said jails and prisons have become the de facto treatment for people with mental illness who have broken the law “because mental health services remain underfunded ... institutions have been closed and community-based services are plagued by inadequate budgets, long waiting lists for services, and not enough clinicians.

According to the Advocates, an estimated 2 million adults with serious mental illnesses (bipolar disorder, major depression and schizophrenia among other diagnoses) are sent to jails annually across the country. The population tends to remain incarcerated longer and is at a greater risk of re-arrest than others who do not have mental illnesses.

The Grafton County Mental Health Court is one of 15 county mental health courts in the state, which also include Cheshire, Hillsborough (North and South), Merrimack, Rockingham, and Strafford counties.

Grafton County Attorney Lara Saffo said the program was established in 2010 with the help of a \$300,000 Bureau of Justice Assistance Grant and The Criminal Justice/Mental Health Consensus Project — a bipartisan national effort coordinated by the Council of State Governments Justice Center to help local, state, and federal policymakers and criminal justice and mental health professionals improve the response to people with mental illnesses who come into contact

with the criminal justice system. They also had guidance from officials in Merrimack County who already had successfully established a mental health court.

In an interview with *NH Bar News*, Greyes explained that there are three mental health courts in Grafton County — in Littleton, Plymouth and Lebanon — that roughly correlate with the catchment area of the circuit courts. These courts accept individuals who have mental illness and face criminal charges. The vast majority of clients who enter the program are accused of misdemeanor level offenses but its flexible nature allows the court to take cases that could also be charged as felonies. Instead of a jail sentence, participants agree to a 12-to-18-month contract that includes therapy, medication, team meetings and court appearances.

Because the initial grant from the Bureau of Justice Assistance was multi-year, Saffo said officials had ample time to gather data about the program which they could then share with the county commissioners. After seeing the savings, the county agreed to fund the program after the grant expired, and the savings have continued to grow.

According to data collected by Grafton County Mental Health Court officials, between June 2012 and March 22, 2018, there were 111 participants in the program. Of those participants, 75 percent successfully completed the program.

In 2017, the program amounted to approximately 107 months of jail time not served, according to the GCMHC data. Multiplied by the \$4,478 per month it costs to incarcerate one person at the Grafton County House of Corrections, the savings equal \$479,146 for that year.

Moreover, the data also show that the county saved an additional \$62,381 in 2017 because it didn’t have to cover the \$583 per

month average costs of psychotropic medication the county would have had to administer for some mentally ill patients jailed at the Grafton County House of Corrections. That brings the total savings to the county to \$541,527 in 2017.

And, mental health court officials say the program lowers recidivism with only about 21 percent of participants reoffending within one year of successful completion of the program and only 23 percent of participants being terminated from the program, according to the data. The recidivism rate for the Grafton County House of Corrections is 38 percent.

“The other thing we noticed, too, is that people participated far past one year which is kind of fantastic, to see that transformation,” Greyes said. “They really become contributing members of society as compared to people who go through the criminal justice system.”

According to Shelly Golden, Grafton County Mental Health Court coordinator, while the data is helpful to show county officials and the public tangible outcomes of the program, Mental Health Court staff also use the statistics to help improve the program internally by assessing procedures, goals, strengths, and areas needed for improvement.

“The data we collect helps us keep an eye on the things that we can help people change to improve outcomes, for participants, for families, and the community,” Golden said.

To work toward a lower recidivism rate, Golden said risk factors for participants are tracked such as lack of health insurance, unemployment, and insecure housing. For example, according to the data, only about 34 percent of incoming participants have sufficient income. By targeting this issue, and helping participants gain employment,

the court can help reduce one of the major risk factors for recidivism. According to their numbers, 44 percent of participants gained employment in the program, 47 percent gained housing, and 26 percent gained health insurance while in the program.

“Some things we can change and so we want to target the things we can change,” Golden said. “We see people do better when they have health insurance and when they have medical care for mental illness ... some things we can’t change, like if someone has a juvenile record.”

Greyes, Saffo and Golden also pointed to the support of two civilian groups as a key factor in the Mental Health Center’s achievements: Advocates for the Grafton County Mental Health Courts and the Grafton County Treatment Court Working Group.

The Advocates have raised thousands of dollars over the last several years to provide incentives for program participants — a gas gift card or gym membership for reaching a short-term goal — and offer help with expenses such as an emergency car repair, Whitney said.

The work to champion and support the participants, however, is priceless.

“We attend sessions of mental health court, especially in the Lebanon District Court, to sit with the participants before and during court, to get to know them and to let them know that we are there for them,” she said. “We have held celebrations for each participant graduation from the program...”

“... The Advocates have helped participants achieve stability and to become self-supporting at a time when they most need this kind of encouragement.”

Melanie Plenda is a freelance writer based in Keene and a frequent contributor to Bar News.

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Membership Status Changes

Presented to the Board of Governors September 18, 2018

Active to INACTIVE:

Albright, Samantha L., Dover, NH (June 25)
Anvari, Aliza, Toms River, NJ (June 19)
Awoyungbo, Oyetutu E., Nashville, Tenn. (June 4)
Azza, Amy N., Bellingham, Mass. (June 29)
Brown, Molly J., Crownsville, MD (July 31)
Burgess, Caitlyn A., Brookline, Mass. (March 1)
Caiazza, Christina E., Merrimack, NH (June 16)
Compitello, Michael J., Smithfield, Va. (June 7)
Condon, Kelly M., New London, NH (June 6)
Corbally, Erin, K.Q., Manchester, NH (June 27)
Costanzo, John J., Bolton, Mass. (July 24)
Cross, Philip D., Concord, NH (June 21)
Davis, Miles P., Manchester, NH (June 20)
DeForest, Katherine, Wilmington, NC (July 30)
DiMaria, Joseph T., Weymouth, Mass. (August 1)
Desmarais, James R., Warwick, RI (May 31)
Dunlap, Sabrina, Hopkinton, NH (June 30)
Filkins, Elisabeth, West Lebanon, NH (June 30)
Finnegan, Timothy J., Towson, Md. (May 31)
Galluzzo Heather L., Scottsdale, Ariz. (August 7)
Gronbeck, Penelope E., Minneapolis, Minn. (July 23)
Harris, Gwendolyn W., Brooksville, Fla. (July 24)
Hart, Nancy E., Concord, NH (June 29)
Hassey, Andrew S., Boston, Mass. (July 30)
Hendricks, David M., Gahanna, Ohio (June 25)
Hillas, Camden D., Kirkland, Wash. (June 15)
Hoistad, Jon T., Melrose, Mass. (Sept. 6)
Hoysradt, Fred R., Byfield, Mass. (July 29)
Ilberg-Lamm, Stephanie M., Lenox, Mass. (June 30)
Kleister, Kevin C., Pocasset, Mass. (July 26)
Lawson, Daniel R., Winthrop, Maine (Sept. 4)
Leyva, Rademy, Barton, Mass. (July 3)
Maalouf, Molly D., Manchester, NH (July 24)
Madison, Jared J., Worcester, Mass. (June 20, 2018)
Magauran, Brendan R.H., Lexington, Mass. (July 24)

McCauley, Carolyn K., Bow, NH (June 26)
Meagher, Kevin M., Wellesley, Mass. (August 28)
Mone, Elizabeth T., Boston, Mass. (June 5)
Mousmoules, Byron G., Bedford, NH (June 21)
Piemer, Joshua S., Newton, Mass. (June 25)
Parousis Michael S., Lowell, Mass. (August 1)
Ritacco, Poppi C., Concord, NH (June 19)
Ritzenberg, Jeremy, Westwood, Mass. (July 20)
Ruggles, Matthew H., West Lebanon, NH (July 18)
Russell, Jacob H., Camden, NJ (June 28)
Shute, Rachel N., Concord, NH (June 25)
Sica, Jr., Bradley P., Canton Maine (June 26)
Van Oot, Peter D., Orleans, Mass. (June 1)
Watson, Douglas M., Topsfield, Mass. (July 24)
Wolf, Annaliese H., Kealahakua, Hawaii (June 13)

Active to INACTIVE RETIRED:

Auten, Jon S., Cornish, NH (July 24)
Baker, Alan R., North Strafford, NH (May 31)
Barradale, David E., Bedford, NH (June 30)
Boyle, Gary W., Littleton, NH (June 3)
Brick, Mary M., Brookline, NH (August 1)
Cleveland, Alan P., Manchester, NH (June 30)
Comstock, Theodore E., Lancaster, NH (July 18)
Dalterio, Maria, Concord, NH (August 1)
Donin, Robert B., Hanover, NH (June 30)
Dwyer, Maureen, Nashua, NH (June 30)
Ferguson, Diana, Manchester, NH (June 26)
Greenwood Barbara J., Cornwall, Vt. (June 30)
Johnson, Carolyn F., Derry, NH (July 1)
Kenison, Frank E., Concord, NH (July 31)
Meade, Charles A., Portsmouth, NH (July 1)
Merrill, Stephen E., Manchester, NH (June 25)
Norton, John C., Keene, NH (July 16)
O'Connor, Laurel A., Derry, NH (August 28)
Peard, Patricia A., Cumberland, Maine (August 22)
Pearson, Tracy A., West Hollywood, Calif. (July 1)
Rule, Lisa A., Concord, NH (July 1)
Sacks, Steven R., Portsmouth, NH (June 12)

Saxon, Donald R., Salt Lake City, Utah (July 21)
Scott, Catherine W., Norwich, Vt. (June 30)
Speidel, Alexander F., Hudson, NH (July 31)
Valentine, Michael G., La Grande, OR (June 19)
Werme, Paula J., Boscawen, NH (July 26)
Woodman, Scott E., Dover, NH (June 27)

Active to RESIGNED:

Camacho, Michael S., Lakeville, Mass. (July 11)
Klughart, Kevin M., Denton, Texas (June 30)
Krewson, Beth A., Paoli, Pa. (June 1)
Olmstead, Frank H., Norwich, Vt. (June 30)
Wight, Stephen W., Methuen, Mass. (July 31)
Thompson, John C., Manchester, NH (July 1)

Active to DECEASED:

Ervin, Timothy J., Chelmsford, Mass. (Feb. 21)

Active to FULL-TIME JUDICIAL:

Subers, Janet H., Effingham, NH (July 11)

Active to LIMITED ACTIVE:

Chubrich Michael E., Portsmouth, NH (June 5)

Military Active to RESIGNED:

Murray, Dawn W., Edgecomb, Maine (July 16)

Full Time Judicial to INACTIVE RETIRED:

Dalianis, Linda S., Nashua, NH (August 7)

Judicial Part Time to FULL-TIME JUDICIAL:

McIntyre, Erin B., Concord, NH (July 27)

Inactive to ACTIVE:

Barba, Heidi B., Exeter, NH (August 23)
Berard, LaTasha L., Hampton, NH (July 31)
Larney, Kathleen S., Portsmouth, NH (July 31)
Lirette, Ryan P., Exeter, NH (July 2)

THE MEANING OF RELIGIOUS LIBERTY UNDER THE UNITED STATES CONSTITUTION

A Half Day Panel Presentation
Sponsored by the New Hampshire Supreme Court Society



Date: November 15, 2018
Time: 9 a.m. until Noon
Location: UNH Law School, Concord, N.H.

Audience Invited: Lawyers, Judges, Law Students, Civics Educators, Students of all ages and the general public. Attorney CLE credit: 165 minutes.

Composition of the Panel: Participants before the Supreme Court of the United States case-*Masterpiece Cakeshop, Ltd., et al. vs. Colorado Civil Rights Commission, et al.*: including the Alliance Defending Freedom, ACLU of New Hampshire, Americans United for Separation of Church and State, the Roman Catholic Church Manchester Diocese and others from New Hampshire at the leading edge of advocacy spanning both ends of the controversy spectrum.

Focus of the Subject Matter:

1. The immutable original principles embodied in the US Constitution.
2. Freedom of Speech.
3. Free Exercise of Religion.
4. The Establishment Clause.
5. The complex and evolving interpretation and interplay of all the above by the Supreme Court of the United States (SCOTUS).
6. A selection of past, present and pending cases decided (or being decided now) by the SCOTUS.

The Moderator: Constitutional Law Professor John Greabe who will present a beginning orientation to the subject matter and actively/interactively moderate the members of the panel. Questions will not be accepted from the audience until the last 30 minutes of the presentation, at which time such questions for the panel will be welcomed and encouraged.

Cost to Attend: Attorney Members of NH SC Society – \$75, Non-Member Attorneys- \$150; UNH Law Students – Free; All other students – \$20 (16 years and under – free); Teachers – \$35, Members of the Public – \$45. Firm members of law firm corporate sponsors of NHSCS – Free.

For registration and payment options: go to www.nhsupremecourtsociety.org/clereg; or contact John E. Laboe, Esq. 603-224-8700, Jlaboe@laboelaw.com, 6 Loudon Road, Suite 502, Concord, NH 03301.

NHMCLE does not approve or accredit CLE activities for the NH Minimum CLE requirement. The provider believes this course meets the requirements of NH Supreme Court Rule 53 and may qualify for 165 minutes toward the annual NHMCLE requirement.

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Maher, Colin, Mount Juliet, Tenn. (June 29)
 Merlo, Sarah J.W., Findlay, Ohio (August 30)
 Moriarty, Thomas O., Braintree, Mass. (June 28)
 Murphy, Kelleigh, Bedford, NH (August 1)
 Phelan, Pamela E., Concord, NH (June 19)
 Philips, Sheri L., Stratham, NH (June 21)
 Qureshi, Shahin-Parvin N., Nashua, NH (July 2)
 Siegal, Byron J., Portsmouth, NH (June 20)
 Steinert, Robert J., St. Johnsbury, Vt. (June 28)
 Velez, Elizabeth C., Concord, NH (June 1)
 Villano Kenton J., Somerville, Mass. (July 26)

Inactive to INACTIVE RETIRED:

Bunker, Steven P., Franklin, NH (June 29)
 Doerr, Ross A., Augusta, Maine (July 7)
 Griffith, Stanley N., Lexington, Mass. (August 28)
 Huey, Lindley C., Brookline, Mass. (July 23)
 MacMullin, Megan R., Concord, NH (July 16)
 Robinson Beverly C., Amherst, NH (June 29)
 Studen, Laura R., Boston, Mass. (Sept. 1)
 Vallee, Clare Mary, Milan, NH (June 7)

Inactive to RESIGNED:

Brogan, Marilyn M., New York, NY (August 22)
 Baronoff, Susan J., Boston, Mass. (July 31)
 Brown, Nathaniel G., Columbia, Conn. (July 1)
 Glennon, Stephanie M., Newburyport, Mass. (August 22)
 Grigel, George G., Spokane, Wash. (July 1)
 Hollo, Thomas A., Kalispell, Mont. (June 21)
 McClintic, Denise A., Scottsdale, Ariz. (June 15)
 Papke, Alicia A., Chester, NH (June 1)
 Porada, Mark E., Washington, DC (June 29)
 Rindler, Alan B., Kittery Pt, Maine (May 28)
 Rush, Daniel T., Kennebunk, Maine (July 20)
 Sakamoto, Naomi, Portland, Maine (July 1)
 Trakimas, Robert G., Winchester, Mass. (July 22)

Inactive Retired to RESIGNED:

Boynton, Jay C., Andover, NH (August 23)
 D'Alessandro, William A., Amherst, NH (July 31)
 Donovan, William J., Scarborough, Maine (July 1)
 Gallo, Robert J., Belfast, Maine (July 30)
 Mitchell, John W. Aiken, SC (August 20)

Morrison, Gillian K., Monroe, NH (July 31)
 Smith, Irene S., Ann Arbor, Mich. (July 21)
 Whiting, Joanne R., Portsmouth, NH (July 31)

Honorary Active to HONORARY INACTIVE:

Aeschliman Nicholas R., Portsmouth, NH (July 17)
 Lake, John F., Center Barnstead, NH (June 1)

Honorary Inactive to DECEASED:

Lighthall, John A., Bow, NH (July 21)

Inactive to DECEASED:

Girard, Nancy L., Gilmanton, NH (July 14)

Inactive Retired to DECEASED:

Adams Arthur H., Claremont, NH (July 9)

Resigned to DECEASED:

Griffin, Frederick J. Jr., Wilmot, NH (August 23)

Mail from page 5

that an arbitrary or capricious application of a vague rule is not made constitutional simply because an alleged violator “should have known” that such an application was possible.

Vagueness is especially problematical when the subject matter of a regulation is speech. Although harassment and discrimination can take many forms, they almost invariably involve speech. Accordingly, the First Amendment implications of the proposed rule are obvious. In free speech parlance, because of the mere possibility that vague rules may be applied so as to penalize speech protected under the First Amendment, they will likely have a “chilling effect” upon all speech; and, because such rules are thus “overbroad,” they are unconstitutional. Since the rule in question contains no definition whatsoever as to what constitutes harassment or discrimination – and since the penalty for a lawyer guessing wrong about what is encompassed by the rule is to put

his/her license to practice at risk — the rule most assuredly will chill our speech, including our protected speech.

Finally, lest we forget, the Bar Association is not a voluntary organization. We all have to join and we all have to pay dues. Those dues finance many things, some of which may not be supported by each of us. For better or for worse, that goes with the territory. But there are limits. At least for me, it is OK to pay dues to support a disciplinary system designed to protect clients from the dishonesty, violence or criminal malfeasance of my fellow lawyers, but is a whole other matter to require me to pay for a bureaucracy dedicated to enforcing a “code of civility” for the benefit of anyone who simply happens to come in contact with one of us.

This does not mean that harassment or discrimination should be condoned or ignored. The question, however, is whether the Bar’s disciplinary process is the appropriate forum in which to address such matters. I answer this question with a resounding “no.”

I could go on, but enough is enough. Accordingly, I

conclude by imploring each of you who is a member of the New Hampshire Bar to express your opposition to the proposal to add “harassment or discrimination” to the list of our profession’s punishable offenses. Just send a letter, however brief, to the New Hampshire Supreme Court, 1 Charles Doe Drive, Concord, N.H. 03101.

Respectfully submitted,
 Eugene M. Van Loan III

Editor’s Note: The Advisory Committee on Rules voted 12-3 to recommend that the NH Supreme Court amend Rule of Professional Conduct 8.4 with the provision cited above. According to the secretary of the committee, Carolyn Koegler, the Committee also recommended that the Supreme Court hold a hearing on the proposal; both recommendations will be included in her bi-annual report to the court on February 1, 2019. To learn more about the committee, visit www.courts.state.nh.us/committees/adviscommrules/index.htm.

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Continuing Legal Education GUIDE

**October
2018**

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nhbacle**

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

Calendar Overview

OCTOBER

- 26** Friday • 9:00 a.m. - 4:30 p.m.
Developments in the Law 2018
- In Person
 - 360 min. credit • incl. 60 ethics/prof.
 - Manchester • DoubleTree by Hilton Manchester Downtown

NOVEMBER

- 7** Wednesday • 10:00 a.m. - Noon
Emerging Insurance Risks & Business Concerns in the Sharing/Gig Economy
- In Person • Webcast
 - 120 min. credit • incl. 60 ethics/prof.
 - Concord • NHBA Seminar Room

- 8** Thursday • 9:00 a.m. - 4:00 p.m.
Developments in the Law Video Replay
- In Person • Video Replay
 - 360 min. credit • incl. 60 ethics/prof.
 - W. Lebanon • Fireside Inn

- 9** Friday • 9:00 a.m. - 4:00 p.m.
Developments in the Law Video Replay
- In Person • Video Replay
 - 360 min. credit • incl. 60 ethics/prof.
 - N. Conway • White Mountain Hotel

- 15** Thursday • 9:00 a.m. - 4:00 p.m.
Developments in the Law Video Replay
- In Person • Video Replay
 - 360 min. credit • incl. 60 ethics/prof.
 - Plymouth • Common Man Inn

- 16** Friday • 9:00 a.m. - 4:00 p.m.
Developments in the Law Video Replay
- In Person • Video Replay
 - 360 min. credit • incl. 60 ethics/prof.
 - Portsmouth • Holiday Inn

- 28** Wednesday • 8:00 a.m. - 4:15 p.m.
36th Annual Tax Forum
- In Person
 - 390 min. credit
 - Concord • Grappone Conference Center

- 30** Friday • 9:00 a.m. - 4:30 p.m.
Tax Issues in Divorce
- In Person • Video Replay
 - 360 min. credit • incl. 60 ethics/prof.
 - Concord • NHBA Seminar Room

DECEMBER

- 6** Thursday • 9:00 a.m. - 4:00 p.m.
Developments in the Law Video Replay
- In Person • Video Replay
 - 360 min. credit • incl. 60 ethics/prof.
 - Keene • Best Western

FEBRUARY

- 8** Friday • 9:00 a.m. - 4:00 p.m.
Developments in the Law Video Replay
- In Person • Video Replay
 - 360 min. credit • incl. 60 ethics/prof.
 - Concord • NHBA Seminar Room

- 15** Friday • Time TBD
2019 Midyear Meeting
- In Person
 - Credits TBD
 - Manchester • DoubleTree by Hilton Manchester Downtown

CLE HIGHLIGHT



**Virtual
Learn@Lunch
Webcast Series**

The Business of ADR
November 6, 2018 • 12-1:00 p.m.

Top 10 Tips for QDRO Preparation
November 20, 2018 • 12-1:00 p.m.

Top 10 Things Lawyers Need to Know about the New IRC Section 199A
December 4, 2018 • 12-1:00 p.m.

Stay tuned for more!

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

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

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Developments in the Law 2018

Friday
Oct 26 9:00 a.m. - 4:30 p.m.
360 min. credit.
incl 60 min. Ethics/Prof. In person



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

PROGRAM FACULTY

Hon. Mark F. Weaver, Program Chair/CLE Committee Member, 10th Circuit Court-Probate Division-Brentwood, Kingston
Christine S. Anderson, Ansell & Anderson, PA, Bedford
Thomas M. Closson, Jackson Lewis, PC, Portsmouth
Tracey G. Cote, Shaheen & Gordon, PA, Concord
Timothy A. Gudas, NH Supreme Court, Concord
Christopher M. Johnson, NH Appellate Defender Program, Concord
Thomas J. Pappas, Primmer Piper Eggleston & Cramer, PC, Manchester
William C. Saturley, Preti, Flaherty, Beliveau & Pachios, PLLP, Concord
Laura Spector-Morgan, Mitchell Municipal Group, PA, Laconia
Roy W. Tilsley, Jr., Bernstein, Shur, Sawyer & Nelson, PA, Manchester
Rue K. Toland, Preti, Flaherty, Beliveau & Pachios, PLLP, Concord

Can't make the program? As a member service, Video Replays of this program are being offered at various locations throughout the state!

Video Replay Locations:

W. Lebanon, Thursday, November 8
N. Conway, Friday, November 9
Plymouth, Thursday, November 15
Portsmouth, Friday, November 16
Keene, Thursday, December 6
Concord, Friday, February 8, 2019



Check-in & continental breakfast
DoubleTree by Hilton Manchester Downtown



New Hampshire Practice

SEMINAR (preregistered): SEMINAR FEE (pre-registered): \$219 NHBA Member; \$159 Members in practice less than 3 years; \$99 NHBA-CLE CLUB Members; \$139 Paralegals, law office staff; \$249 Other/non-NHBA affiliated. Walk-in on the day of the Program is an additional \$15.

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

Co-Sponsored by the Insurance Law Section

Emerging Insurance Risks and Business Concerns in the Sharing/Gig Economy

Wednesday
Nov 7 10:00 a.m. - 12:00 p.m.
120 min. credit.
incl 60 min. Ethics/Prof. Webcast In person



The CLE will discuss the so-called on-demand/sharing/peer-to-peer/gig economy and its practical impacts on business and insurance related issues. This emerging market impacts our daily life and includes things such as ride sharing, apartment/home lending, peer-to-peer lending, reselling, co-working, and everything in-between. This environment will be discussed from the perspective of those knowledgeable of the environment (explaining the market and relationships between the market participants); the insurance industry (identifying the risks associated with the emerging gig economy and responding to it with underwriting/new product offerings); and the lawyer (assessing the legal ramifications and potential for litigation in this space).

Who should attend?

Anyone with interest in the sharing/gig economy and its challenges, the intersection of business and insurance as this space grows, insurance coverage issues, litigation generally, and developing trends.

PROGRAM FACULTY

Russell F. Hilliard, Program Moderator/CLE Committee Member, Upton & Hatfield, LLP, Portsmouth
Tamara Smith Holtslag, Program Organizer, Insurance Law Section Chair, Peabody & Arnold, LLP, Boston, MA
Robert Brookes, Attorney at Law, Bradford
Thad Hall, Switch Benefits, Inc., New York, NY
Paula M. Pallozzi, RI Dept. of Business Regulation/Insurance Division, Cranston, RI



Check-in & continental breakfast begin at 9:30 a.m.
NH Bar Association Seminar Room, Concord

SEMINAR & WEBCAST FEE (pre-registered): \$99 NHBA Member; \$79 Insurance Law Section Members; \$65 NHBA-CLE CLUB Members; \$129 Other/non-NHBA affiliated. Walk-in on the day of the Program is an additional \$15.

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Tax Issues in Divorce

And We Will Still Talk About Alimony

Friday
Nov 30

9:00 a.m. - 4:30 p.m.
360 min. credit.
incl 60 min. Ethics/Prof.

Webcast
In person



This program will take divorce practitioners through the recent changes in the tax code that impact divorce. We will also discuss the tax aspects of the transfer of property including: basis, loss carry-forwards, residences, K-1s, encumbered property and subsequent gains as income for child support. How parents allocate children for dependency purposes on post-divorce tax returns and the issue of tax credits will be discussed. Finally, New Hampshire's new alimony statute will be covered.

Who should attend?

Attorneys that desire information about the recently passed New Hampshire statute on alimony as well as attorneys wishing to review the tax code changes that went into effect in 2018. Attorneys who want additional knowledge on the tax aspects on the transfer of property, child exemptions/deductions and tax credits as well as the revised New Hampshire Court divorce forms and language.

PROGRAM FACULTY

Pamela A. Peterson, Program Chair/CLE Committee Member, Devine, Millimet & Branch, PA, Manchester
Jill Boynton, CFP, Cornerstone Financial Planning, Newington
James V. Ferro, Jr., Ferro Law & Mediation Group, PLLC, Manchester
Michelle Goldsmith, CPA, Cummings, Lamont & McNamee, PA, Kennebunk, ME
Elizabeth S. LaRochelle, Morneau Law, Nashua
Richard J. Maloney, CPA, Maloney & Kennedy, PLLC, Auburn

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

PROGRAM PRICING

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

Price includes continental breakfast, lunch, refreshments and materials.



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Medicare Secondary Payer Act

Original Program Date September 25, 2018 • 60 General NHMCLE Minutes

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Session 1 - Build Your Practice • Session 2 - Retain Your Clients

Original Program Date September 27, 2018 • 180 Ethics/Professionalism Credits (each)

Border Searches – It's Not Just the Border Anymore

From the National Association of Criminal Defense Lawyers

Original Program Date April 19, 2018 • 45 General NHMCLE Minutes

Blockchains and Bitcoin: What Lawyers Can't Afford to Ignore

From the Jenkins Law Library

Original Program Date June 6, 2018 • 60 General NHMCLE Minutes

Autism Spectrum Disorder and Online Sexual Offenses

From the National Association of Criminal Defense Lawyers

Original Program Date November 16, 2017 • 45 General NHMCLE Minutes

Emerging Technologies: Blockchains, IOT & Artificial Intelligence

From Georgetown University

Original Program Date May 23, 2018 • 75 General NHMCLE Minutes

Dealing with Crazy in the Conference Room: Handling Family Members in a Professional Manner

From the Louisiana State Bar Association

Original Program Date September 29, 2017 • 60 NHMCLE Ethics/Professionalism Minutes

Lying, Loyalty and Lots of Ethics Rules

Original Program Date June 1, 2018 • 60 Ethics/Prof. Minutes

nhbar.inreachce.com

36th Annual Tax Forum

Wednesday

Nov 28

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

390 min. credit

In person



John E. Rich, Jr., Moderator

McLane Middleton Professional Association

Plenary Sessions:

Recent Guidance on the 2017 Tax Cuts and Jobs Act
and Impact on Choice of Entity

Update on Domestic and International Privacy and
Information Security Laws and their Impact on Tax Professionals

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



Grappone Conference Center, Concord
Check-in & continental breakfast begin at 7:30 a.m.

Breakouts:

Track I

How Does Federal Tax Reform
Affect New Hampshire Taxes?

The New Partnership Audit Rules. Again?
Really? Yes, Now It Really Matters!

Wayfair and Beyond: The Impact of
Multistate SALT Developments on New
Hampshire Businesses

Track II

Practical Tax and Estate Planning
Following the Tax Reform Act

Trustee Discretion: The Better Part of
Valor or Vulnerability?

The Latest on Trust Decanting and
Pretermitted Heirs in New Hampshire

SEMINAR FEE (pre-registered): \$249* (per registrant)

*Price includes continental breakfast, lunch, refreshments and written materials.

To Register go to **NHSCPA.org**

For more information go to nhbar.org/nhbacle

Common Bankruptcy Issues

Thursday

9:00 a.m. - 12:30 p.m.

Mar 7

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

Webcast



In person



Are you a new attorney wanting to learn about Bankruptcy or an experienced attorney changing or adding a practice area? This basic course is designed to prepare the general practitioner to handle the most common bankruptcy issues that their clients have to deal with in the ordinary course of business. The program will begin with an overview of Chapters 7, 11, and 13 of the Bankruptcy Code with a discussion on exemptions, reaffirmations, interacting with the Bankruptcy Trustee, and attorney's responsibilities.

Who should attend?

This program is designed for any attorney that handles a variety of issues for their clients or who consider themselves to be general practitioners.

FACULTY

Daniel W. Sklar, Program Chair/CLE Committee Member, Nixon Peabody, LLP, Manchester

Michael S. Askenaizer, Law Offices of Michael S. Askenaizer, PLLC, Nashua

James S. Lamontagne, Sheehan Phinney Bass & Green, PA, Manchester

Peter N. Tamposi, The Tamposi Law Group, Nashua



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

PROGRAM PRICING

SEMINAR (preregistered): \$179 NHBA Member; \$79 NHBA-CLE CLUB Members; \$219 Other/non-NHBA affiliated. Walk-in on the day of the Program is an additional \$15.

First Party Homeowners Insurance Claims

Wednesday

9:00 a.m. - 12:45 p.m.

Mar 13

210 min. credit.



Webcast



In person



This course will cover situations in which a homeowner suffers a loss and brings a claim for compensation from the homeowner's insurance company. It will discuss how the insurer handles the investigation, coverage and claim evaluation. It will also provide information on the role, if any, of the NH Insurance Department.

Who should attend?

Attorneys who might be contacted for representation involving first party insurance claims that cannot be routinely resolved. In house or retained attorneys for insurance carriers.

FACULTY

Barry M. Scotch, Program Chair/CLE Committee Member, Backus, Meyer & Branch, LLP, Manchester

Emily M. Doherty, NH Insurance Department, Concord

Mark S. Fraser, Fraser Insurance Services, Concord

Christine Friedman, Mallory & Friedman, PLLC, Concord

John B. Kenison, Kenison Law Office, PLLC, Manchester

Nicholas D. Wright, Bouchard, Kleinman & Wright, PA, Manchester



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

PROGRAM PRICING

SEMINAR (preregistered): \$179 NHBA Member; \$79 NHBA-CLE CLUB Members; \$219 Other/non-NHBA affiliated. Walk-in on the day of the Program is an additional \$15.

A Practical Guide to Evidence: *What You Need to Know in Every Court*

Friday

8:15 a.m. - 4:30 p.m.

Mar 22

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

Webcast



In person



Learn the Rules of Evidence from a practical point of view. The presenters will focus on the rules, how litigators should use them and how courts interpret them in various courts and cases, from pro se proceedings in state district court to complex litigation in federal court. The presenters have years of experience actually in court applying the rules of evidence. If you are a litigator or prepare matters for litigation, this CLE will give you a solid practical foundation to work from.

Who should attend?

Lawyers that go to court, try cases, argue motions and those that prepare cases for trials and hearings.

FACULTY

Anthony F. Sculimbrene, Program Chair/CLE Committee Member, Gottesman & Hollis, PA, Nashua

Karinne E. Brobst, Milford Police Department, Milford

James P. Harris, Sheehan Phinney Bass & Green, PA, Manchester

Todd J. Hathaway, Wadleigh, Starr & Peters, PLLC, Manchester

Hon. Joseph N. Laplante, Chief Judge, US District Court, Concord

Kirsten B. Wilson, Kirsten Wilson Law, PLLC, Portsmouth



Check-in & continental breakfast begin at 7:45 a.m.
NH Bar Association Seminar Room, Concord

NHP New Hampshire Practice

PROGRAM PRICING

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

Condominium Law 2019

Wednesday

9:00 a.m. - 1:15 p.m.

Mar 27

240 min. credit.



Webcast



In person



Do you want to learn about the condominium process, both from a technical and real world point of view? This CLE will address the types of condominiums, the process for creating and terminating them, as well as common issues which develop with the condominium form of ownership, and the interaction between the condominium laws and other land use regulations.

Who should attend?

Anyone who regularly deals with condominium issues, either as the representative of the state, town, developer or resident.

FACULTY

Laura Spector-Morgan, Program Chair/CLE Committee Member, Mitchell Municipal Group, PA, Laconia

Patricia M. Panciocco, Panciocco Law, LLC, Bedford

Sanford Roberts, Sanford Roberts, PA, Portsmouth

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Bracketing Your Way to Settlement

By Gregory S. Clayton

You either love brackets or hate them. For many years while I was representing clients in mediations, I thought bracketing was a waste of time. Now, in my role as mediator, I have come to believe that bracketing can play an important role in the negotiation process. Here's why.

What is a Bracket?

Let's take a familiar scenario where parties start far apart in a mediation. Each side thinks the other needs to "get serious" and tries to emphasize the point by making limited moves. Small moves beget smaller ones and soon the negotiation is headed nowhere. The gap between the parties seems insurmountable.

One approach to address this situation is a bracket, which is no more than a conditional offer: "We will make a significant move to X if you promise, in return, to make a significant move to Y." Movement by one side is conditioned upon movement by the other.

Bracketing in Practice

Consider the situation where the demand is \$200K and the offer is \$25K. The plaintiff might suggest moving down to \$150K if the defendant agrees to come up to \$75K, creating a proposed bracket of \$150K/\$75K. The defendant,



in turn, might reject that bracket and instead propose that the plaintiff come down to \$100K if the defense goes up to \$50K, resulting in a counter-bracket of \$100K/\$50K.

At this juncture the two brackets seem irreconcilable, but something important is occurring. The plaintiff is suggesting that the landing area for settlement is between \$150K and \$75K. The defense is suggesting, in response, that the landing area is between \$100K and \$50K.

If we compare the mid-points of the two brackets, the plaintiff might be signaling a willingness to go to \$112,500 to settle while the defendant might be signaling a willingness to go to \$75K. If we look at the mid-points (bracketing the brackets), the parties might only be \$37,500 apart.

If we consider the mid-point of the mid-points (the mid-point between \$112,500 and \$75K), is there a possibility the case might resolve at \$93,750? Perhaps.

What Can Bracketing Accomplish?

• Signaling Settlement Positions.

As seen in this example, bracketing allows the parties to signal to each other and to the mediator where they hope to end up, but under the protection of a conditional offer. It is a way to share information with the other side in the face of an impasse. Whether any bracket is accepted is less important than the protected signaling it allows.

• Ending a Stalemate.

When the parties are stalled in a pattern of reactive negotiation, where making a point seems to be more important than making progress toward settlement, bracketing breaks the pattern and changes the discussion. It can instill hope into an otherwise hopeless negotiation.

• Opening the Door to a Discussion about Settlement.

In situations where brackets are exchanged, the mediator now may have an opening to talk frankly with each side about the "end game" of the mediation. As settlement ranges become clearer, settlement becomes an easier discussion.

SETTLEMENT continued on page 36

Some Commonly Held – But Mistaken – Beliefs About Mediation

By Connie L. Rakowsky

From experience in the practices of law and mediation, I've found several mistaken beliefs about disputes and their resolution. A small sampling follows.

Mistaken Belief #1: A good mediator should advocate for the parties to settle their case.

As a mediator, I found that once I stopped advocating for settlement, many more of the cases I mediated ended up settling. When I stepped outside the advocate role, listened to the parties, stopped trying to control the outcome and promoted party self-determination, the parties' trust of the mediation process increased.

Advocating for settlement is often met with an equal and opposing reaction from the

"When parties tap into whatever emotion brought them into the case and talk about personal matters, the parties may be focusing on the underlying needs, objectives, fears and ambitions which motivate them. This attention to interests, as opposed to a party's position, is a focus that may lead to settlement."

mediation parties, who, when pressed, hold tighter to their narrative about the conflict. Parties tend to like to find their own solution, not be talked into it. Instead, the mediator — with the support of counsel — can help the parties to understand their options, including settlement options.

Mistaken Belief #2: There is no need to consider mediation until suit is filed, the

settlor of the trust has died, the contract has been breached, or the restrictive covenant has been violated.

Resolving conflicts before they accelerate into litigation helps parties get back to business and back to their families and lives. Often non-litigation counsel attempt resolution before a conflict is turned over to the litigator. Those attempts often fail. That may be because the same people and the same hard-

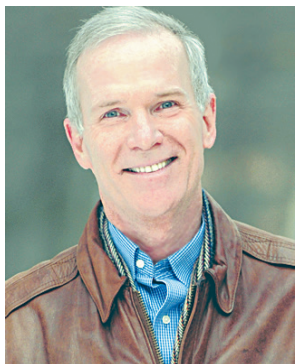
ened perspectives are discussed and, not surprisingly met with the same result: stalemate.

If the conflict proceeds to suit, the allegations in the pleadings add an additional offense against the defendants that is another hurdle to be overcome in settlement negotiations. With party communication ceasing post suit, the parties assume the worst of one another and the conflict escalates further. If a neutral were introduced earlier, conflicts could be averted earlier.

Mistaken Belief #3: Counsel's declaration that, "this is our final offer and we're leaving if it is not accepted" should be believed.

Experience has taught me not to believe counsel in a mediation who give me "final offers." The reasons the statement is not believ-

MEDIATION continued on page 36



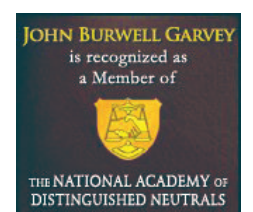
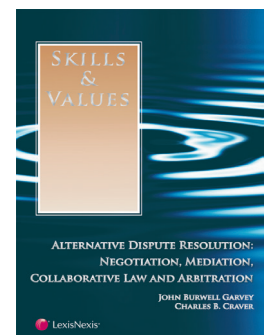
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Arbitration Provisions for Cross Border Contracts

By Michael B. Tule

There are as many opinions on alternative dispute resolution and arbitration as there are lawyers, most of them strongly held. As a general rule, I tend to favor judges and courts as the forum for deciding disputes and as a business lawyer the contracts I draft tend to reflect this bias. There are exceptions to this preference, and the most compelling exception for me is the use of arbitration for international commercial contracts. For the reasons stated below, all international commercial contracts should, as a matter of course, have a dispute resolution clause that includes an effective agreement to arbitrate.

Why Arbitrate?

Like litigation in courts, arbitration is expensive, time consuming, and distracting for clients. But for most international disputes, there is no satisfactory substitute. There are two major reasons for this.

First, agreeing to arbitrate assures that your client's dispute will be heard in a neutral forum, instead of the other party's home court, where you may face a biased judge and an unfamiliar language.

Second, with arbitration you have a far better chance at having a judgment or award enforced. Enforcing the judgment of a court (even a U.S. court) in another country isn't a sure thing. International arbitration is different. Under a multinational treaty known as the "New York Conven-

tion," 142 signatory countries have agreed to recognize and enforce foreign arbitration awards. There is no comparable treaty governing the judgments of U.S. or foreign courts.

Therefore, it is almost always to your client's advantage to agree to arbitration when contracting with an overseas party, provided that each party is located in a country, or has assets in a country, which is a signatory to the New York Convention. If you are dealing with a party who is not located in a country that has signed the New York Convention, you must proceed with extreme caution and take additional measures to protect your client.



Arbitration Agreement Essentials

Most arbitration organizations provide simple, one-paragraph provisions to insert in a contract committing the parties to binding arbitration. While these provisions represent good starting points, I urge you to give the provision more than just passing thought. You must craft the arbitration clause to fit your client's business objectives and accommodate the unique circumstances of your client's particular deal. Poorly drafted arbitration clauses pose many dangers, and clever defendants can exploit an imprecise arbitration clause to delay or completely avoid arbitration.

With that in mind, there are several essentials of any well-drafted arbitration

agreement. These essentials include defining the scope of the dispute, exclusivity, number of arbitrators, language of the arbitration (English, if at all possible), availability of equitable relief and applicable substantive law, among others.

In addition, every arbitration clause should contain a provision referring to and incorporating the rules of a specific arbitration organization to govern the arbitration. There are perhaps a half-dozen pre-eminent arbitration organizations in the world. They include the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the International Centre for Dispute Resolution (ICDR), the Stockholm Chamber of Commerce (SCC) and the Singapore International Arbitration Centre (SIAC), among others. All of these organizations are reputable, but experienced lawyers often recommend using the ICC as the arbitration administrator in international disputes.

It is generally believed that the ICC, although expensive, is the most widely recognized organization and has the best panel of arbitrators to choose from. In some situations, you may want to use an organization like the LCIA or the ICDR, which charge a fixed fee for the arbitration versus a percentage of the claim, like the ICC. It is possible to draft an "ad hoc" arbitration clause, which calls for the arbitration to be held privately between the parties, without

CONTRACTS continued on page 37



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Common Uses of Alternative Dispute Resolution

By Susanne Gilliam

Attorneys are ethically bound to zealously advocate for their client. It is all too easy to reduce this obligation to "... in a trial" and to forget that Section 2 of the New Hampshire Rules of Professional Conduct are aimed at the lawyer's role as a counselor. This list starts with Rule 2.1, "Advisor."

One area where a lawyer might be more of an advisor is in various kinds of Alternative Dispute Resolution (ADR). Many people associate the concept of ADR with mediation. But that is only one of the possibilities, and you can better advise your client if you are familiar with an array of ADR techniques.

Mediation

A third-party neutral helps the parties arrive at a resolution that is acceptable to all. The main reasons cited for using mediation include quicker scheduling and resolution, the confidentiality that is core to the method, and the flexibility of the outcome.

The mediator is an expert in difficult conversations and is also good at recognizing communication patterns that might be getting in the way of a solution. Some mediators are lawyers and some are not. The parties may have individual lawyers who can help prepare them for the process and help them focus on what is most important to them. Depending on the specifics, the lawyer might also attend the mediation with the client. In that case, the lawyer and client

"There is a broad array of other ADR approaches, and it is not necessary to use just one approach within a particular case."

should decide ahead of time who will speak for the client's interests.

In cases requiring an enforceable agreement, lawyers for each side should write and review the final agreement, before submitting it to the court. In other cases, it may be sufficient to have the mediator write up the final agreement, and have it signed off on by all parties.

Arbitration

Many people think about professional sports when they hear the word "arbitration." Binding arbitration is indeed often used during lock outs and other high-profile disputes. But it is also used extensively for disputes involving unions, for franchise disagreements, and to avoid court costs and publicity for disputes involving car-rental agreements, nursing home issues, and consumer banking issues.

The individual that conducts the arbitration usually has extensive knowledge of the area. The arbitrator will hear the information presented by each side and will decide which side "wins." If it is "binding arbitration," then all parties have agreed in advance to accept the decision of the arbitrator.

This form of ADR is more like going to court than mediation usually is, and lawyers

are usually involved on both sides. The lawyers provide the arbitrator with all required information and prepare the client for the arbitration.

Like mediation, the actual process of arbitration is private — only those involved are present during the proceedings. Unlike mediation, the results, and information about the proceedings provided by those that were there, may or may not be confidential. The other similarity with mediation is flexibility; the arbitrator has freedom to craft an outcome that is not possible in a traditional court setting.

Collaborative Law

This form of ADR is most often used in divorce and custody cases, and it takes a team approach. Each party usually has its own lawyer, and those lawyers have agreed that if the process breaks down and a court case is desired, the lawyers who have worked collaboratively will not take on the court case. Note that the same lawyer may go to court for other cases, but once they have agreed to a collaborative approach, they will not switch roles.

A case manager keeps the process moving forward and recommends other specialists that can help in the process. The most common additional team members are fi-

nancial specialists and specialists that can speak to the needs of any affected children.

The team approach means that a collaborative law approach may be more expensive than a mediated approach for the same case. However, both methods are aimed at getting the parties working together towards a private, confidential solution that meets the needs of all parties.

Summary

There is a broad array of other ADR approaches, and it is not necessary to use just one approach within a particular case. For example, using a collaborative approach for custody and financial decisions in a divorce case, while using mediation in division of personal property and a parenting plan. Once the issues have been decided, the agreement would then be written up and submitted to the court.

The techniques used in mediation and collaborative law can be useful to any lawyer because we all work in high conflict situations at least some of the time. And for lawyers that may feel burned out by too much conflict, serving as a mediator or a collaborative law practitioner might be a refreshing change.

Susanne Gilliam is an elder law and mediation solo practitioner, licensed in New Hampshire and Massachusetts. Her pro bono work at the border was the subject of an article in the New Hampshire Bar News in September 2018.

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Facilitating Difficult Family Discussions in Family & Probate Law

By Deborah Kane Rein and
Frank Kenison

Both probate and family law are areas where managing clients' emotions sometimes can be as important as the legal advice lawyers give them. Moreover, in these same practice areas, attorneys advising their client to deal directly with the emotions present in their inter-family dynamics can avoid future costly confrontations. Encouraging family members to engage in difficult discussions not ordinarily encompassed within the attorney-client relationship should be considered a best practice in these emotionally-fraught areas of law practice. One way of assisting clients in this regard is to recommend a facilitator to help adult family members have difficult conversations about implications for the family of divorce, remarriage, estate planning, medical and end-of-life issues.

These discussions can occur either (a) to assist the client in making decisions that will have an impact on other family members or (b) to follow up and explain decisions that have already been made. They offer an opportunity to include the entire family in discussing issues that will affect them in some way. The discussions do not require a waiver of attorney-client privilege, yet allow family members to have substantive discussions about important family matters, to educate and prepare them for the future.

Many family law practitioners have seen cases where adult children take sides with one parent or another, where they in-

"Rather than having the attorney-client relationship hampered by insidious family dynamics, it may be in the client's interest for the lawyer to refer the family to a mediator, who can facilitate a discussion among all involved family members."

sert themselves in decisions that need to be made by their parents as they terminate their marriage, or where a parent's concern about adult children influences the decisions they make about their own future. This intervention — directly or indirectly — can be the result of years of certain family dynamics, grief over losing a familiar and comforting family structure, concern for a parent's well-being, or anxiety about their role in a parent's post-divorce life.

Estate planners face similar dilemmas and, while they can prepare estate plans which articulate the intent of the parents, those plans often fail to explain unequal distributions of estate assets or the appointment of some but not all children in fiduciary roles. The intentions of the parents are often frustrated or contested by protective or fearful adult children. And the persons most capable of addressing the children's anxieties — the parents — are deceased.

Rather than having the attorney-client relationship hampered by insidious family dynamics, it may be in the client's interest for the lawyer to refer the family to a mediator, who can facilitate a discussion among all involved family members. If done prior to final divorce decisions being made, or an estate

plan being finalized, the process can help the clients make better decisions for themselves. For example, after such a discussion, it may be revealed that the children are not as attached to the family camp in Pittsburgh, NH as previously thought, making easier the decision to sell the real estate to provide cash for the marital estate, or to avoid it as a potential probate asset.

Likewise, if the discussion occurs after decisions are made, especially in an uncontested divorce or in an estate plan, the parents can explain to their adult children why certain decisions were made and affirm that these are their decisions, which they wish the children to respect, thereby, perhaps, relieving some of the grief and anxiety that can lead to costly and time-consuming litigation. (RSA 552:18 allows individuals to bring an action to establish the validity of their wills during their lifetimes. While this process may defeat will contests, commenced after the testator's death, it still requires an action to be commenced in the Circuit Court, interested parties must be served and the proponent of the will must satisfy the requisite burden of proof to establish the validity of the instrument. A facilitated discussion on the other hand, may not defeat post-death actions challenging an

estate plan, but it may reduce the risk of such actions in a more expeditious, efficient and cost-effective manner.)

Having discussions with adult children before and/or after a remarriage can be crucial toward supporting a successful remarriage and avoiding future conflict. Likewise, advising adult children of your estate planning decisions and the reasons for them may alleviate the surprise and resentment which may arise subsequently and drive family members to court. The same reasoning applies to the execution of advanced directives by parents. Including adult children in these conversations may avert the subsequent will-contest action and may facilitate a consensus by family members over the use of an advanced directive to make end-of-life decisions and provide support to the agent implementing these actions.

Open communication is a powerful tool in avoiding unnecessary conflict for families. Knowledge and lack of surprise can temper unproductive emotional responses. In order to offer peace of mind to clients and protect against future litigation, an attorney working with clients on family-related issues would be well-advised to recommend facilitated family discussions on difficult issues.

Deborah Kane Rein is a mediator with Hess Gehris Solutions, specializing in family law disputes. Frank Kenison, also a mediator with Hess Gehris Solutions, focuses on probate matters.

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Negotiating Strategies for Mediation

By John Burwell Garvey

Editor's Note: This article has been modified, in part, from the book, "Alternative Dispute Resolution: Negotiation, Mediation, Collaborative Law, and Arbitration," (LexisNexis 2013) by John Burwell Garvey and Charles Craver.

Over 90 percent of all lawsuits settle. Because a large number of those settle during mediation, you should view mediation as a critically important part of the whole process and not just something the court requires. Your skill and preparation often have a direct effect on the mediation result. From my experience on the "inside" as a neutral mediator, I've seen lawyers leave money on the table and other lawyers pay more than they needed to. I've seen lawyers try cases that could have been settled. Here are a few important strategies that can consistently improve your results:

1. Have a thorough understanding of what you think your case is worth.

What is the trier of fact likely to do with this case? Where are your external benchmarks for value? Many lawyers and insurance professionals will try to pick a likely verdict amount using verdict and settlement research and then pick the likelihood of a favorable verdict. If they think the likely verdict is \$100,000 and the likelihood of a verdict is 50 percent, they then say the settle-



ment value is \$50,000.

Statisticians would approach the same problem by calculating "expected value." In this approach, you try to calculate the likelihood of each event along a continuum (with all predictions adding up to 100 percent) and then add those values to arrive at the expected value. There is not sufficient space in this article to explain this approach in detail but there is a good explanation at: <https://www.wikihow.com/Calculate-an-Expected-Value>.

2. After you determine value, develop your aspirational goal and your bottom line.

In a case where the settlement terms primarily involve money, your aspirational goal is the most/least you can hope to obtain/pay in a settlement on your best day. Your bottom line is the line at which point you think it makes sense to try the case.

For example, the plaintiff may decide that the best possible outcome in settlement would be \$100,000 (aspirational goal) and if the offer is less than \$50,000 (bottom line) then she will reject the offer. Likewise, the defense may aspire to a settlement of \$30,000 but would be willing to go as high as \$55,000 to settle. *Notice that both sides do their case evaluation and usually arrive at*

different numbers. This is discussed further in number 7, below, "Do not fall in love with your case."

3. Make sure your opening offer/demand is based on your aspirational goal and not your bottom line.

If the plaintiff aspires to settle at \$100,000 the opening demand must exceed it by enough to have some chance of getting there. And if the defense aspires to settle for \$30,000 the opening offer must leave room to move. Generally, the demand should be the most the plaintiff can ask for with a straight face and the offer should be the lowest the defendant can offer without jeopardizing continued negotiations.

4. Move in increments that do not clearly convey the midpoint as a destination.

Many mediations quickly fall into a rhythm where everyone is looking at the midpoint. Although you must show progress to keep it moving, "midpoint negotiations" often give away too much information and focus on moving the midpoint up or down. Less transparent moves often inject an uncertainty that allows you to test the resolve of the other party.

5. Be aware of the power of anchoring.

Some lawyers begin by making modest demands or generous offers, hoping to gen-

STRATEGIES continued on page 37

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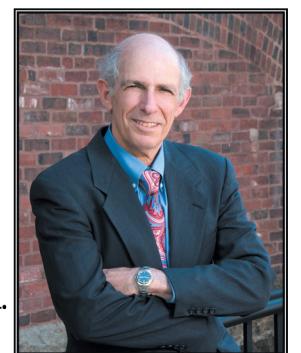
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Pre-Mediation Conferences, An Underutilized Tool

By Dennis Ducharme

The vast majority of mediations proceed in four familiar steps: scheduling, sending a summary to the mediator with a copy to the opposing party(s), preparing the client, and showing up. In rare cases, a pre-mediation conference, usually initiated by the mediator, occur. A mediator might suggest such a conference to clarify something in a mediation summary, check on the availability and involvement of a non-party stakeholder such as a lien-holder or to inquire about insurance coverage or if the status of settlement discussions is not clear.

Counsel representing parties in mediation should consider taking the initiative to contact the mediator, either on an *ex parte* basis or jointly with opposing counsel to address topics such as those already mentioned. In addition, they should consider doing so to address any other topic which might be taken up prior to the mediation for purposes of reaching agreement on issues with opposing counsel or to educate the mediator about nuances of a client's position that will assist the mediator in achieving resolution.

Clearly there are no ethical concerns with joint conferences with the mediator. To the extent counsel is concerned about the propriety of *ex parte* discussions, they should consider that such communications are an inherent part of the mediation process once the session begins. A pre-mediation conversation is substantively the same as a confidential discussion during a mediation caucus.

"To the extent counsel is concerned about the propriety of ex parte discussions, they should consider that such communications are an inherent part of the mediation process once the session begins."

While there is no clear guidance under New Hampshire law, commentators from California and Illinois have addressed the issue and reached the same conclusion. (See *Mediation Ethics*, presented by Steve Cerveris, Esq., State Bar of Cal. Annual Mtg., 10/7/2016; *Pre-Mediation Telephone Conference with a Mediator-an Important Tool for Counsel*, Ill. Assoc. of Defense Trial Counsel, IDC quarterly, Vol. 24, No.3.)

Topics for Joint Discussion

1. Clarifying past settlement positions and reaching consensus about where the negotiations will start.
2. Resolving disputes over insurance adjuster availability and manner of involvement.
3. Addressing situations involving personal animosity between the parties that could affect the ability to conduct a civil and productive joint session. New Hampshire practice has traditionally been to hold a joint session with all counsel and decision makers present. If dynamics between the parties create a risk of the joint session being a negative rather than a positive deviating from that practice may be a wise

decision. Doing so requires balancing the value of using the session to allow the parties to hear each other's position and perspective directly against the concerns calling for not having that session.

4. Discussing issues counsel agree on but where counsel has not been able to "sell" the value of agreeing to their clients.
5. Any topic which counsel can agree on to allow a greater degree of focus on disputed issues when the mediation takes place.

Topics for Ex Parte Discussion

1. Status of discussions with lien holders or those holding subrogation claims.
2. Insights into the client's mindset and goals heading into the mediation; especially those areas in which counsel is having trouble getting the client to heed advice and anticipates needing "help" from the mediator.
3. Issues which have arisen between counsel that could affect the process. An effective mediator may be able to smooth ruffled feathers between counsel depending upon past relationships and the nature of the difficulties. Counsel are sometimes better at

advising clients to "not take it personally" than they are at doing so themselves. Recognizing that peripheral issues with opposing counsel could get in the way and asking for assistance in preventing that from happening can help avoid needless distractions.

4. A true lack of understanding of the oppositions legal or factual positions.

Fewer things left to chance increases the prospects for a successful mediation. Just as making sure the mediation is occurring at an appropriate stage in the case, careful client preparation and the preparation of a thorough non-boilerplate mediation summary can help minimize wheel spinning and wasted time; spending a few minutes laying groundwork on issues such as those listed above can help the actual mediation session move much more smoothly.

These lists are illustrative and by no means exhaustive. Counsel should not hesitate to engage the mediator in the lead up to mediation, either through a joint or *ex parte* consultation. Doing so can improve settlement prospects and resolve cases more quickly and efficiently.

Dennis Ducharme has been a trial lawyer since 1985 and a mediator since the inception of New Hampshire's Superior Court ADR program. He is the principal of Ducharme Resolutions and is a member of The National Association of Distinguished Neutrals.

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In Search Of The Reasonable Plaintiff (In Mediation)

By Blake Sutton

When I attended law school, in the distant past, the “reasonable man” was the gold standard of behavior; no “reasonable woman” need apply. Times have changed; now we have the “reasonable person.” That is certainly progress, but still, one must ask the question: who really wants to be included among the ranks of the reasonable persons? Because, it must be said, the reasonable person is a bit of a nerd. The kind of person who never jaywalks, who brushes and flosses after every meal, and who never cuts the labels off pillows.

If we might have doubts about the reasonable person as the star of the movie, or as the spouse of one’s sibling, such a person still can be useful and desirable. Your accountant. Your banker. And one more: the plaintiff in a personal injury mediation. If the case is going to settle at mediation, there must be a reasonable person present to sign the release. But finding the inner reasonable person in the average plaintiff can sometimes take a lot of time and effort — effort well spent.

Plaintiffs, for good or ill, often arrive at mediation feeling anything but reasonable. They have been damaged, they believe, by some fool’s carelessness. The ensuing litigation process has been lengthy, frustrating, embarrassing, even humiliating. Their most private affairs have been pawed over by a bunch of strangers — not only strangers but lawyers. As a result of all that, they may be angry, bitter,



judgmental, distraught, embarrassed, depressed, or raging at the unfairness of the legal system.

Whatever those feelings are, they may need to be aired and acknowledged before fruitful negotiations can proceed at mediation. But sooner or later, if the case is going to settle, the feelings have to be set aside, at least temporarily. The reasonable person must prevail. Finding that reasonable person in the room will be much easier if both counsel involved help out with the expedition.

For plaintiff’s counsel, the search for the plaintiff’s inner reasonable person begins at the very onset of the case. The client needs to be informed from the beginning what to expect from litigation:

the process is not fun, and the end result will be not a pot of gold but a jury award or settlement which hardly makes up for the losses the plaintiff has suffered — but does reflect the tough times for plaintiffs in today’s world. This is reality, a reality which plaintiff needs to hear about long before any attempt at settlement is made.

As the litigation goes along, counsel will do well to keep his or her client up to date on all the developments, including the arguments and strategies of opposing counsel. Plaintiffs, like the rest of us, do not take well to surprises at the eleventh hour. If the plaintiff only hears about the defense position just days before a mediation — or at the mediation itself — how likely is it that he or she will make a rea-

sonable response: listen, take in, and understand what risks that position presents? All mammals know that the unfamiliar is dangerous. Plaintiffs are not different. Last minute surprises may well provoke a mammal’s default response to danger: flight or fight. Neither reaction helps settle cases.

As for the mediation process itself, counsel should thoroughly explain what is likely to happen — and why. The plaintiff should not go into the meeting thinking it will take no more than an hour or that nothing uncomfortable will be said. The English philosopher, Thomas Hobbes, long ago wrote that “Life in the state of nature is solitary, poor, nasty, brutish, and short.” He might as well have been writing about mediation — except for the part about short. No sensible person wants to sit around in a bare conference room for hours, with arguing lawyers. Plaintiffs need to be warned and prepared, because that is what is going to happen.

Defense counsel, if they want to settle the case, also have a strong vested interest in playing to the plaintiff’s inner reasonable person. On the assumption that plaintiff will read their mediation memorandum, they would do well to couch it in normal language, not legalese. Specialist language, whether coming from doctors or lawyers, is often resented by everyday people. The mediation summary and the opening statement, are best expressed in

PLAINTIFF continued on page 37



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Got Conflict? Learn How To Resolve It!

By Kathleen Marquis

We've all dealt with, at one time or another, combative clients, a jam with the judge, a beef with your boss, or a pugnacious partner. Just as common is an argumentative associate, frequent fighting of foes, or a tug-of-war with our own team. So how do you fix it? *Conflict resolution training is the solution!*

Consider the wise words of Dr. Maya Angelou, "Do the best you can, until you know better. Then when you know better, do better." Education is everything. Leaders are learners. Attorneys that learn and use core mediation principles and specific conflict resolution skills based on social scientific research findings and leading studies from industry experts can turn stress into success.

Conflict is costly in terms of time, money, energy and stress. When you know how to tame toxic behavior and de-escalate, de-fuse, and de-compress conflict-filled situations, you can help decrease discord and increase productivity, profitability, and peace in your practice.

Working smarter, not harder is a great strategy. Having a plan and a skillset when it comes to conflict can put a lawyer miles ahead of the competition. When you are empowered and equipped with the right tips and techniques, you can be the lawyer of tomorrow, today. You become a value-added service provider to your clients and problem-solver for your practice. Thrive, don't just survive in the legal industry! Knowing

"When you know how to tame toxic behavior and de-escalate, de-fuse, and de-compress conflict-filled situations, you can help decrease discord and increase productivity, profitability, and peace in your practice."

and using core mediation, conflict resolution, and emotionally intelligent techniques to solve disputes can help your business boom.

Where there is no peace, there is no power.

The great lawyer and activist, Mahatma Gandhi, once said, "My joy was boundless ... I realized that the true function of a lawyer is to unite parties riven asunder." If you know how to dissolve, solve and resolve conflict, your business grows. Increased client satisfaction, client retention, and attracting new clients is the goal of successful lawyers. Every astute advocate should have core mediation and dispute resolution tools in their toolbox.

"The entire legal profession has become so mesmerized with the courtroom contest that we tend to forget that we ought to be healers of conflict," U.S. Chief Justice Warren Burger once noted.

Conflict is unavoidable in the legal profession. What is avoidable is wasting time, money and energy dealing with it the wrong way. Learning strategies and skills to effectively communicate, negotiate and create win-win outcomes in this business

is a game-changer. Attorneys with sharp, conflict resolution and core mediation skills can press the re-set button before heated encounters escalate. Knowing when to call a professional mediator to resolve conflict, can also help end a war before it begins.

Every warrior-lawyer knows that a truly skilled warrior subdues enemy troops without raising arms and captures cities without laying siege. You can stand on your own feet, without stepping on another's toes. You can win someone over without winning over them. You can win-win without giving in. Conflict resolution training is the solution.

What are you waiting for?

With the right training, education, and resources, attorneys can reduce the high cost of conflict, by changing the way we manage it. Get the information you need to succeed. There is an art and a science to resolving conflict effectively. Social scientific research studies teach us emotionally intelligent ways to resolve disagreements. Neurolinguistic programming and behavioral science studies provide effective performance enhancement tools when faced with intractable conflict. Unlocking the

intuitive and counterintuitive psychology behind conflict resolution, guides business leaders and industry professionals to move past disagreement and on to collaboration. When you understand and practice these principles, you can change the way you manage and resolve conflict.

Conflict prevention, management, and resolution training can make your legal practice more prosperous and benefit you, your colleagues and your clients. You can be a hero to your firm and the clients you serve, by knowing how to resolve disputes quickly and efficiently. Learn the psychology behind successful bargaining, dispute resolution and negotiating.

Stop letting constant conflict disrupt your life and your law practice. Learn how to resolve conflict like a professional with conflict resolution and core mediation skills training. You can put rivals on a course towards mutual gain. You can make your practice more prosperous. Re-define resolution and transform conflict with the right education, training and resources.

When you know better, you do better. Learn and use core mediation and conflict resolution principles. It's a winning strategy!

Kathleen ("Kat") Marquis is an attorney, mediator, and the principal of the dispute resolution company, Marquis Mediation. Marquis is a national and international lecturer and trainer on conflict resolution, negotiation, and core mediation skills, with over 25 certified courses.

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Settlement from page 28

- **Speeding up the Negotiation.** There are times when a bracket proposed by one side is accepted by the other without modification or with a modest revision. This moves the case closer to resolution without a pattern of smaller and smaller moves, saving time and expediting resolution.
- **Keeping Parties at the Table.** When parties to mediation get frustrated by smaller and smaller moves by the other side, they tend to get angry and talk about leaving the negotiation. Bracketing allows everyone to re-engage in the settlement process, diffusing anger and encouraging a sense of hope. All of this may allow a skilled mediator to find a path to resolution.

A Mathematical Trick

To use brackets effectively you have to be able to calculate mid-points quickly in your head. It took me a long time to figure out the simplest way to do this.

To find a mid-point, you add the two numbers together and divide the total by half. With a \$150K/\$75K bracket, the two numbers add to \$225K and half of that is the mid-point of \$112,500. With a \$100K/50K bracket, the two add to \$150K and half of that is \$75K. While this may be obvious to many, it certainly wasn't to me.

Conclusion

Brackets are not suited to every negotiation and they are not suited to all negotiators. However, they can be an important tool for moving a mediation forward and helping a stalled negotiation get back on track.

A member of the National Academy of Distinguished Neutrals and a Fellow of the American College of Trial Lawyers, Gregory S. Clayton mediates cases throughout Maine, New Hampshire and Vermont. He may be reached at gclayton@primmer.com or (207) 618-6070.

Mediation from page 28

able include: counsel does not know that his or her client will really walk away no matter what the counteroffer may be. People are unpredictable. What if they counter with a term close to the "final offer" with their "final offer?" Will the parties really walk away when the negotiation has brought them very close to resolution? What if the counteroffer terms take an alternate course altogether (i.e. something else of value like a contract for other business as opposed to cash settlement); will the client prefer the different course and want to counter to that? The final offer statement boxes the speaker into taking some dramatic step that they may not want to make when pressed — or risk losing credibility.

The same message can be conveyed with an instruction to the mediator to tell the other side that you are frustrated and very close to the end of the negotiation.

Mistaken Belief #4: Cases won't settle unless the mediator evaluates the parties' cases.

Mediator evaluations can be problematic because once the mediator comes down on one side or the other, the losing party no longer sees the mediator as neutral and must negotiate from a position of weakness. The winner may take an overly strong position in negotiations with the formerly neutral party agreeing with the winner. This new strength may leave the loser in the evaluation in a more defensive posture, including defensive against the mediator.

Another practice is for the mediator to encourage counsel for each party in separate caucus to explain their strengths and weaknesses, commenting but not specifically opining, about the outcome.

Mistaken Belief #5: Mediation will never work because this case will never settle.

Most parties that take their cases to mediation are skeptical that it will work. It is no wonder that surprise is a common reaction to settlement agreements in mediation. The vast majority of cases that mediate will settle either that same day or soon thereafter.

Mistaken Belief #6: Counsel should shut down personal, emotional and irrelevant comments by the client in mediation.

When parties tap into whatever emotion brought them into the case and talk about personal matters, the parties may be focusing on the underlying needs, objectives, fears and ambitions which motivate them. This attention to interests, as opposed to a party's position, is a focus that may lead

to settlement.

An interests-focused discussion can lead to developing options for mutually agreeable solutions — or not — if the parties are willing to alternate between listening to the explanation of the other side's views and expressing their own.

Mistaken Belief #7: Litigators and mediators have the same set of skills

Many litigators are good mediators but not all litigation skills apply to mediating. For example, both litigators and mediators should be articulate. Both are able to sense good arguments from losers, and to have a general understanding of law, process and legal strategy. A litigator needs to be persuasive but need not be able to develop personal connections with people other than the litigator's client. These trustworthy and people skills are key for a mediator. The mediator needs to understand both parties' interests through patient listening and accepting (for purposes of understanding) their interests. The litigator needs to listen to understand the opponent's strategy for purposes of countering it. The pairing of the litigator's understanding of strengths and weaknesses of the case with the mediator's perceptions is a match that can make the process hum.

Connie Rakowsky truly enjoys mediating any kind of dispute. She has the most experience in probate, and a variety of civil matters. She is a former shareholder of Orr & Reno and Executive Director of LARC.



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Contracts from page 29

the rules or administrative oversight of an arbitral organization, but this is generally not recommended.

One of the most important decisions to make is designating the place of arbitration. Generally speaking, the parties should try to pick a place that is neutral. You should take care to choose a country that has a well-developed body of arbitration law and a modern arbitration statute.

The most reliable (and popular) places of arbitration are London, Paris, Geneva, Zurich, Stockholm, the Hague, New York, Los Angeles, Toronto, Rome, Brussels, and Singapore. For U.S. clients, English speaking countries with common law courts are going to be most familiar, especially if the arbitrators refer a particular issue to the local courts as part of the arbitration, or a party attempts to bring an action outside the arbitration. This is not uncommon in a high stakes international arbitration.

There are other provisions you may consider other than the essentials listed above. In deciding whether to include such provisions, you and your client should give a great deal of thought to whether such provisions are necessary and/or whether they may provide strategic advantage in the context of your deal.

Examples of such other provisions include designating special qualifications of the arbitrators, nationality of the arbitrators, special discovery procedures, limitations on types of damages, deadlines and time limits, special summary disposition procedures, shifting costs and expenses to the losing party, and assessing costs to collect a judgment.

Conclusion

In every international commercial contract, a carefully crafted arbitration clause is a necessary part of any process for resolving international disputes. Putting an effective and carefully drawn arbitration provision in the agreement will give your client the best chance of achieving a good result and enforcing an award should a dispute arise.

Michael Tule is a director in the Corporate Department of McLane, Middleton, Professional Association. He can be reached at mtule@mclane.com or (603) 628-1290.

Plaintiff from page 34

the kind of language we try to use with juries — common language, which expresses respect for the way ordinary people talk and think. If the object is to be heard and understood — and not to annoy or confuse — ordinary simple language is best.

It never fails to puzzle me that counsel regularly address their opening remarks to me, the mediator, rather than to the opposing decision maker — the adjuster or the plaintiff. At a jury trial, would any lawyer address the opening and closing statements to the judge, and not to the jury? Nobody does that; why act differently in a mediation? A plaintiff who hears the opening remarks addressed to the mediator may feel ignored or condescended to, like a child who must sit at the dinner table silent, while the adults talk to each other. A person who feels condescended to or ignored is less likely to take up the role of reasonable adult.

Finally, at the mediation session it can be very helpful for defense counsel to express regret that the plaintiff has been injured. This costs nothing — but can somewhat turn down the temperature in the room and make the plaintiff more amenable to listening to the business end of the deal. Thus, the message to the plaintiff can be: “We are all people here, and we can all feel bad that something very unpleasant and painful has happened to you. Now we must figure out a reasonable way to deal with just one little part of that — the money.”

The reality of civil litigation is that no reasonable person takes on the slings and arrows of a jury trial unless there is no reasonable alternative. Most of the time, there is a reasonable alternative: a settlement. That requires an agreement between two reasonable sides. But that settlement will be very difficult to achieve if the party least likely to have a reasonable attitude — the plaintiff — cannot play their reasonable part in the discussion. The reasonable plaintiff, therefore, must appear at the mediation. All the lawyers involved have a stake in making that happening.

Blake Sutton is a civil trial lawyer, mediator and arbitrator. His office is in Rhode Island.

Strategies from page 32

erate reciprocal moves from their opponents. But research shows that overly generous early demands and offers are likely to have the opposite effect because of the psychological phenomenon known as “anchoring.” When people receive better offers than they expected, they tend to question their own preliminary assessments and *increase* their aspirational levels. Make demands and offers that show sincere settlement interest but not weakness.

6. Be patient.

When the mediation gets to a point where you can “feel” the likelihood of settlement, there is a tendency to relax and to “move to the middle.” I can often see this in the body language of the lawyers and/or clients. This usually happens after the demand/offer is within the “aspirational - bottom line” range you calculated so you see any additional concessions as gravy. Avoid that feeling!

With patience, this is the time where you can often make the biggest difference. You can test the other side’s resolve by remaining friendly but firm. You do not want to blow up the settlement but you do want to get as close to the other side’s bottom line as possible.

7. Do not fall in love with your case.

Studies have shown that lawyers tend to

be overly optimistic about the likelihood of winning and the likely verdict amount. Even if you have carefully calculated (see number 1, above) your chances of success and the likely verdict amount, remember that all of those calculations are made based upon assumptions you have made.

Your assumptions are based upon judgment (and often undue optimism), but not hard science. Your opponent has usually made different assumptions. If there is overlap in your “bottom lines” then settlement usually occurs within that range. (In the example in 2, above, the overlap would be between \$50,000 and \$55,000.)

But if there is no overlap, you must decide if it makes sense to adjust your “bottom line.” If you do not settle, your case will be decided by a jury or other fact finder that will be unique. Unlike a coin toss, there are no established odds that you can calculate as to how that particular jury will decide. A penny is a penny but all juries are different.

As you mediate, remain open to new information, new arguments and new observations. Never let your emotion be a factor. If you fall in love with a case it may well break your heart.

John Garvey has been an active mediator and arbitrator for over 25 years. He is a professor of law and the director of the Daniel Webster Scholar Honors Program at UNH School of Law.

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Please contact Editor Anna Berry at aberry@nhbar.org or (603) 715-3234 about contributing to the sections listed above.

Kelly Steps Down as Administrative Judge of Circuit Court

Supreme Court Appoints King as Replacement

The Judicial Branch recently announced that Judge Edwin W. Kelly stepped down as the administrative judge of the Circuit Court system as of October 1.

The Supreme Court appointed Judge David D. King, the former administrative judge of the Probate Court system and currently the deputy administrative judge of the Circuit Court, to succeed Kelly.

Kelly will remain on the bench hearing cases until his mandatory retirement at 70 years old in December 2021.

Expressing the Supreme Court's gratitude for Kelly's many years of service, Chief Justice Robert J. Lynn noted in a press release that Kelly has been on the bench for 33 years, starting in 1985, making him currently the state's longest serving jurist. While Lynn said that losing an administrative judge of Kelly's caliber is always difficult, he understands Kelly's desire to make a change after serving as administrative judge since 1991.

"Judge Kelly embodies all of the qualities that you look for in a great judge," Lynn said. "He's fair, he knows the law, he has always shown excellent judicial temperament, and he has been a first-rate administrator."

"I cannot say enough about Ed's outstanding service to the Judicial Branch both on the bench and as an administra-



tor. I am delighted that he will be staying on to hear cases for three more years."

Lynn added that the highlight of Kelly's tenure was his leadership — together with Judge King — in establishing the state's Circuit Court system starting in 2011.

"To have had the privilege of helping guide the growth of the Circuit Court and its predecessor courts over these last three decades has been an honor, the likes of which I could not have imagined 40 years ago when I arrived in New Hampshire as a new lawyer," Kelly said in the release. "I look forward to returning to work as a trial judge which is how I began back in 1985 in Plymouth District Court."

King was appointed by the Supreme Court for a five-year term as the new administrative judge of the Circuit Court.

"Judge King is a most worthy successor to Judge Kelly on the Circuit Court," Lynn said. "David, who has been on the bench since 1990, is smart, hard-working, fair-minded, and has a wealth of judicial and administrative experience. I have no doubt that he will do an outstanding job in his new position."

Before becoming an administrative judge, King served as a Coos County Probate Judge for many years. He is a graduate of Franklin Pierce Law School, now known as the University of New Hampshire School of Law.

As for King's previous position of deputy administrative judge, Lynn said the position is currently under review as part of a reassessment of the Circuit Court's management structure.

New Legislation Produces Child Support Contempt Mediation Program

By Heather Scheiwe Kulp

In the 2018 legislative cycle, Senate Bill 496 proposed to amend RSA 461-A:14, XVIII, to include a mediation option when a parent files a Motion for Contempt claiming non-compliance with a child support order, resulting in a child support arrearage of an amount equal to or greater than 8 weeks of child support. The Bill passed, with amendments, and took effect in August. The Circuit Court and the Judicial Branch Office of Mediation and Arbitration chose to pilot the program in a court where parties often had to wait a few weeks for a contempt hearing: the Brentwood Family Division.

When a parent (not the Bureau of Child Support Services) files a Motion for Contempt, the parent receives two dates — a Notice for Mediation and Notice for Hearing — in the service packet. The mediation is scheduled a few weeks prior to the hearing, so parties can complete mediation and cancel the hearing if a full agreement is reached or complete mediation and proceed to an already-scheduled hearing if not. The mediation is focused on the child support arrearage amount and cannot result in a one-sided modification of the child support order moving forward. The Office of Mediation and Arbitration is monitoring the pilot program and will make changes as needed before expanding the program. Parties may request mediation in any divorce or parenting case, including child support cases, statewide.

Heather Scheiwe Kulp is the ADR coordinator for the New Hampshire Judicial Branch.

Circuit Court Gains Two New Judges

The Executive Council recently confirmed two local attorneys to be justice of the New Hampshire Circuit Court: Michael C. Mace, of New London, and Mark S. Derby, of Merrimack.

Previously of Davis Steadman Ford & Mace in White River Junction, Vermont, Mace joined the New Hampshire Bar in 2010. He has nearly two decades of extensive litigation and mediation experience. Prior to his tenure in the Upper Valley, Mace spent more than a decade representing his clients at trial and on appeal throughout



Mace



Derby

the nation. He previously served as a law clerk to the District of Columbia Court of Appeals and the Alaska Trial Courts.

Before joining the bench, Derby was a director of Cleveland, Waters and Bass. He is a graduate of the Boston University School of Law and joined the

New Hampshire Bar in 1998. Derby has extensive litigation experience in state and federal courts and before state and federal administrative tribunals and agencies. He also served as a law clerk to the Justices of the Massachusetts Superior Court.

NH e-Court Program Update

e-Filing in NH Reaches a Major Milestone

e-Filing in All NH Courts

As of September 18, 2018, all courts in NH have implemented mandatory e-filing of selected case types:

- NH Supreme Court — Attorneys only — after an order has been issued notifying the parties and counsel that the case has been docketed — 8/6/2018
- NH Superior Court Civil Cases — 9/18/18
- NH Circuit Court:
 - o Estate Cases — 2017
 - o Guardianship Cases — 2015
 - o Small Claims Cases — 2014

e-Filing Assistance Available

Supreme Court filers requiring assistance should call the Court's dedicated e-Court phone number at 603-229-3759. Staff is available from 8:30 AM until 4:30 PM Monday through Friday. Online resources are available 24 x 7 at the NHJB Electronic Services website: <https://www.courts.state.nh.us/nh-e-court-project/supreme.htm>

All trial court filers can contact the NHJB Information Center at 855-212-1234 or online at the NHJB Electronic Services

website (<https://www.courts.state.nh.us/nh-e-court-project/electronic-services.htm>) for assistance with e-filing.

File & Serve and TurboCourt

To e-file in the Circuit or Superior courts, attorneys use an efficient, streamlined online application called File & Serve to register, provide e-Service contact information, and to upload their complaints and pleadings to court. Attorney focused training and assistance is also available on their e-Filing portal.

Self-represented litigants use TurboCourt to follow an easy-to-use guided interview that creates and sends completed filings to the Court. It also prompts filers on how to attach and upload other documents that may be required for their case. Online help is built directly into the system that provides added guidance throughout the process.

e-Filing Benefits

The File & Serve and TurboCourt applications have been used by the NH Circuit Court for four years and are proven to be very beneficial in helping all filers prepare and file their case documents successfully. For this reason, the same e-filing applications were adopted by the Superior Court and modified for filing their civil cases.

E-Filing also brings other benefits:

- Fewer/no trips to the courthouse;
- Reduce/eliminate postage, paper, and other costs associated with paper filings;
- 24 x 7 x 365 online convenience
- Decreased time to disposition:
 - o Small Claims: 22% decrease
 - o Guardianship
 - Of Minor (person only): 37% decrease
 - Of Minor (Person + Estate or Estate Only): 72% decrease
 - Of Incapacitated Individual: 9% decrease
 - o Wills/Estates: 8% decrease (preliminary results)
- Case Party Access is an online portal available to all registered parties on a case that provides access to case summary information, pleadings, and other public documents filed in their case.

Looking ahead, the NH e-Court Program will continue delivering benefits to NH citizens by expanding electronic filing in 2019. Plans include other civil cases in the Circuit Court and attorney filing in Superior Court criminal cases. Stay tuned to the *NH Bar News* and *NHBA e-Bulletin* for regular updates.

2012

Online Transcripts

2013

Trial Court Call Center

2014

Jury Management

2015

Small Claims e-Filing

2016

Guardianship e-Filing

2017

MV Data Exchange

2018

Estates e-Filing

2019

Case Access Portal

Supreme Court e-Filing

Source: NH Judicial Branch

September 2018

Administrative Law

Appeal from New Hampshire Department of Employment Security Appeal of FairPoint Logistics, Inc. &a., No. 2017-0362, September 28, 2018 Reversed and reinstated in part.

- Whether an employee strike alone constitutes a “stoppage of work” such that it disqualifies employees from unemployment benefits.

Petitioners, Northern New England Telephone Operations, LLC and FairPoint Logistics (collectively “FairPoint”), constitute a regulated telecommunications company providing services to residential, commercial and wholesale customers. FairPoint and Claimants, represented by two unions, attempted to negotiate a new agreement when their collective bargaining agreements expired. The parties were unsuccessful and FairPoint instituted its final proposed terms and conditions upon Claimants, which resulted in approximately 650 New Hampshire union workers striking for a period of approximately four months. During this time, certain union workers received strike pay.

As a result of the strike, Claimants applied for unemployment benefits. Claimants’ applications originally were denied by NHES on the grounds that the unemployment was due to a “stoppage at work” resulting from a labor dispute; such a stoppage of work resulted in disqualification for unemployment benefits. RSA 282-A:36. Claimants appealed to the NHES appeal tribunal.

The appeal tribunal agreed that Claimants were not entitled to benefits due to the stoppage of work and provided alternative bases for its decision. First, it considered Claimants’ election to stop working itself sufficient to establish a “stoppage of work” pursuant to RSA 282-A:36 and alternatively, even if “stoppage of work” required substantial negative impact on the employer’s business, then the strike in this case satisfied such a requirement. The tribunal also found the strike pay to be deductible wages resulting in a statutory reduction in benefits.

Claimants moved the NHES commissioner to reopen the case and pursuant to the commissioner’s review, he found there to be mistakes of law in the tribunal’s decision and allowed the case to be reopened and reviewed *de novo* by a second tribunal. The second tribunal found that the strike did not result in a “stoppage of work” and so Claimants were entitled to benefits, but still that the

strike pay constituted deductible wages.

FairPoint and Claimants appealed to the appellate board, which concluded that the commissioner properly reopened the first tribunal’s decision based on a mistake of law regarding the definition of “stoppage of work,” agreed that FairPoint failed to establish that the strike caused a “stoppage of work,” and reversed the decision regarding the deductibility of the strike pay. FairPoint appealed this final decision of the NHES.

On appeal, the court found that the commissioner erred in reopening the first tribunal’s decision because, although the strike itself did not constitute a “stoppage of work,” the tribunal’s alternative consideration of the impact of the strike on FairPoint’s business did reach the proper conclusion that there was a “stoppage of work.” The court rejected FairPoint’s argument that the commissioner could only reopen a case where there was a mistake of fact, not a mistake of law. Instead, the court determined that the first tribunal’s ruling did not constitute a mistake of law because the “substantial curtailment of operations standard” is the correct standard to determine whether or not there is a “stoppage of work.” The court agreed with the tribunal that FairPoint met this standard by showing that the strike had a significant impact on its business.

As a result, the court concluded that Claimants engaged in a stoppage of work that disqualified them from receiving unemployment benefits. Finally, since Claimants were not entitled to benefits, the court did not need to consider whether the strike pay constituted deductible wages. The court reversed the appellate board’s decision and reinstated the first appeal tribunal’s decision in part.

Daniel E. Will, Arthur Telegen and Timothy J. Buckley, Devine, Millimet & Branch, Manchester, for petitioners; Peter J. Perroni, Nolan Perroni, North Chelmsford, Massachusetts, for Claimants represented by International Brotherhood of Electrical Workers, Local 2320, AFL-CIO, James A.W. Shaw, Segal Roitman, Boston, Massachusetts, for Claimants represented by Communications Workers of America, Local 1400, Gordon J. MacDonald, attorney general, Laura E.B. Lombard, senior assistant attorney general, for the New Hampshire Department of Employment Security.

Appeal from the Personnel Appeals Board Appeal of New Hampshire Division of State Police, No. 2017-0449, September 7, 2018 Affirmed.

At-a-Glance Contributor



Bethany M. Whitmarsh

LeClairRyan
Providence, R.I.
Experienced litigator
representing clients
in a wide range of
financial service and
real estate litigation.

- Whether the decision of the New Hampshire Personnel Appeals Board to reinstate a State Trooper after termination by the New Hampshire Division of State Policy was unreasonable and unjust.

The respondent, New Hampshire Division of State Police (Division), appealed a decision from the New Hampshire Personnel Appeals Board (PAB) to reinstate a State Trooper after termination by the Division.

Petitioner, a New Hampshire State Trooper was terminated following the Division’s findings that he violated numerous administrative rules and standards of professional conduct. Petitioner’s termination stemmed from an incident in which he prematurely left an extra-duty assignment escorting a truck to the Massachusetts border in Plaistow. Petitioner claimed he was concerned about his ability to arrive timely to begin his regular-duty shift and, after attempting to contact a supervisor for advice, he ceased escorting the truck and drove to Troop F, located in northern New Hampshire, to begin his regular-duty shift. Due to the abandonment of his extra-duty shift, the Division terminated Petitioner after determining that he engaged in terminable offenses. Petitioner appealed his termination to the PAB.

The PAB concluded that the termination was unjust in light of mitigating factors, including attempts to reach a supervisor about the truck’s late departure and his concern for being able to reach his regular-duty assignment on time. The PAB reinstated the Trooper. The Division appealed the PAB’s decision on grounds that (1) the PAB improperly substituted its own judgment for the Division’s and (2) the PAB failed to consider facts relied upon by the Division and Petitioner’s prior disciplinary history.

On appeal, the court noted that the PAB’s findings of fact were *prima facie* lawful and reasonable, and the Division had the burden to show that the PAB’s decision was “clearly unreasonable or unlawful.” RSA 541:13. The court reviews PAB decisions under a preponderance of the evidence standard and only for errors of law.

The court determined that the PAB had broad authority to reinstate Petitioner and relied on the language in the applicable statute, which provides that “[i]n all cases, the [PAB] may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just.” RSA 21-I:58, I. Thus, the PAB had authority to reinstate Petitioner, and it can do so even if it appears that a petitioner committed a terminable offense. Further, the PAB is not required to consider facts relied upon by the Division as it has discretion over which factors to consider. (N.H. Admin. R., Per 1002.03.) In further noting that the PAB conducted a proper review and issued extensive findings, the court concluded that the Division failed to carry its burden of showing that the PAB’s decision was unjust or unreasonable.

John S. Krupski, Milner & Krupski, Concord, for the petitioner; David Appleby, Gordon J. MacDonald, attorney general and

AT-A-GLANCE continued on page 40

NH Circuit Court Judicial Evaluation Notice

In accordance with Supreme Court Rule 56 and RSA 490:32, the New Hampshire Judicial Branch Circuit Court Administrative Judge routinely conducts judicial evaluations and invites you to participate in this process. The following Judges/Masters are presently being evaluated:

John Boyle, Justice	1st Circuit Courts
Susan Carbon, Justice	9th Circuit Courts
Barbara Maloney, Justice	10th Circuit Courts
Melissa Vetanze, Justice	2nd, 3rd and 7th Circuit Courts

An evaluation may be completed online at www.courts.state.nh.us. On the Judicial Branch website, look to the left side of the page under Resources and you will see a link for Judicial Performance Evaluations. Click on the link for Current Circuit Court Evaluations and then choose the Judge/Marital Master you would like to evaluate. While responses will be shared with the Judges/Marital Masters being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous.

If you do not have access to the Internet or would prefer a hard copy of the evaluation mailed to you, please e-mail the Circuit Court Administrative Office at Lcammatt@courts.state.nh.us or call 271-6418 and one will be mailed to you. Please include the name(s) of the judge/master you would like to evaluate as well as your name and address. As stated above, while responses will be shared with the Judges/Marital Masters being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous. In fact, if you request a hard copy of the evaluation form, we ask that you do not sign the completed evaluation.

All evaluations must be completed online or be returned no later than November 16, 2018.

Need to schedule a Mediation?

OCTOBER 2018						
Sun	Mon	Tue	Wed	Thurs	Fri	Sat
			1	2	3	
	6	7	8	9	10	
	13	14	15	16	17	
	20	21	22	23	24	
	27	28	29	30	31	

Fast-track scheduling at www.NHMediators.org

Karen A. Schlitzer, senior assistant attorney general, for the respondent New Hampshire Division of State Police.

Rochester City Council v. Rochester Zoning Board of Adjustment
Strafford, No. 2017-0501, September 7, 2018
Affirmed.

- Whether the trial court improperly denied a motion to expand the record on appeal from an administrative decision and erred in affirming the decision to grant a variance by the Zoning Board of Adjustment.

Defendants owned a manufactured housing park in Rochester and acquired an additional parcel adjacent to the park with the intention to expand its manufactured housing park. Prior to the purchase of the parcel, the Rochester City Council (Council) passed a zoning ordinance eliminating manufactured housing parks as permitted uses within Rochester. Defendants requested, and obtained, a variance from the Zoning Board of Adjustment (ZBA) over the Council's objection. The Council filed a motion for rehearing with the ZBA, which was denied and the Council appealed to the trial court.

The trial court affirmed the ZBA's decision and the Council appealed on two grounds, the trial court: (1) erred in its affirmation of ZBA's decision to grant the variance and (2) unsustainably exercised its discretion in its denial of the Council's motion to expand the record on appeal to the trial court.

The court found that the Council's efforts to expand the record constituted a new issue not raised below, which was improper. The Council attempted to include evidence that the ZBA's chairman exhibited a potential conflict of interest or bias through comments he made at the ZBA hearing. The court noted the well-established principle that unless there is good cause, the superior court cannot consider any ground for appeal that was not presented to the ZBA in a motion for rehearing. As the Council did not raise the issue regarding bias before the ZBA, which it had ample opportunity to do, it could not be raised for the first time on appeal and therefore the Council's motion to expand the record was denied properly.

The Council also directly challenged the ZBA's decision in approving the variance based primarily on the ZBA's failure to issue findings relative to the unnecessary hardship requirement, which must be satisfied to obtain approval for a variance.

In affirming the lower court's conclusion that the ZBA's failure to make specific findings of fact on hardship was not errone-

ous, the court agreed that the act of granting the variance by the ZBA established that the ZBA implicitly found the requisite unnecessary hardship. The fact that the ZBA did not address the requirement in its written decision did not mean that it was not considered or that the decision was not proper. Further, this was especially true where the Council did not request specific findings of fact. Thus, the trial court's assumption that the ZBA made a finding of unnecessary hardship, which was required to support its decision to grant a variance, was proper.

Terence M. O'Rourke, city attorney, Rochester, for the plaintiff; Donald F. Whittum, Donald F. Whittum Law Office, Rochester, for the defendants, Donald and Bonnie Toy.

The Marist Brothers of New Hampshire v. Town of Effingham
Carroll, No. 2017-0187, September 14, 2018
Reversed.

- Whether the trial court properly upheld the Town of Effingham's denial of organization's request for a charitable tax exemption.

The Marist Brothers of New Hampshire (MBNH) operates Camp Marist (Camp), which is a religious residential youth summer camp on property it purchased from the Town of Effingham (Town) in 1949 (Property). The Camp attracts applicants nationally and internationally and charges tuition based on the length of stay and activities. The stated objectives of the Camp include provision of religious, educational, and charitable services with the opportunity to meet the spiritual, cultural, and physical needs of youth. In the off-season, the Property is rented, with no restrictions on who can rent or how the Property is used, to defray some costs. After the collection of tuition, fees, and rent, and paying costs, essentially no net income is received from the Property. MBNH requested a charitable tax exemption for real property in 2015 and the Town denied the request. MBNH sought review in the Superior Court and the Superior Court upheld the denial of a charitable tax exemption. MBNH appealed.

The court considered the four-factor test for evaluation of whether an organization should be granted an exemption. The test includes: (1) whether the organization is established for charitable purposes, (2) the organization is obliged to enact its stated purpose as to the public rather than solely to the members of the organization, (3) the land is not only owned by the organization but occupied by it and used for its stated purpose, and (4) any income or profit is used for the organization's stated purpose.

In finding that MBNH met all of these factors, the court first noted that there was

no question that MBNH was established for a charitable purpose in providing religious, educational, and recreational opportunities to youth. Second, the court rejected the Town's argument that the Camp only benefited a small class of financially capable youth rather than the public because of the tuition expense. The court noted that the imposition of a tuition cost to defray costs does not alter an organization's standing as a charity and also found that MBNH's purpose and the performance of that purpose was directed at the public as campers were drawn from across the United States, including New Hampshire, and around the world. The court further determined that use of the Property was for MBNH's stated purpose and the off-season rentals were incidental to the operation and purpose of the Camp such that it did not preclude MBNH's entitlement to a full tax exemption. Finally, the court rejected the Town's argument that MBNH's annual payment, required by its by-laws, to U.S. Province prevented satisfaction of the final prong of the test. The court reasoned that there was no evidence that payments to U.S. Province ministries did not help the ministries, including MBNH and the Camp, from pursuing its stated purpose.

As all of the prongs of the test were satisfied by MBNH, the court ruled that MBNH was entitled to a charitable tax exemption.

Jonathan A. Block and Michele E. Kenney, Pierce Atwood, Portsmouth, for plaintiff; Mathew R. Serge and Demetrio F. Aspiras, Drummond Woodsum & MacMahon, Manchester, for defendant.

Civil Law - Immunity

Anthony W. Franciosa, III f/n/f Vaneesa S. Francisosa v. Hidden Pond Farm, Inc. & a.
Rockingham, No. 2017-0153, September 21, 2018
Affirmed.

- Whether immunity from a suit for injuries resulting from an accident while engaged in equine activities existed.

Plaintiff appealed the Superior Court order granting summary judgment in favor of Defendants in which the trial court determined that Defendants were entitled to immunity from liability pursuant to RSA 508:19 (2010) for injuries sustained while horseback riding.

Plaintiff's daughter, Vaneesa, was thirteen years old and an experienced horseback rider, having ridden for eight years prior to the accident, when she was severely injured at Defendants' farm. Vaneesa had been receiving weekly lessons at the farm from the co-Defendant, an expert equestrian, and almost weekly went on a "free ride" where she was unsupervised. On one such free ride, where co-Defendant was not at the farm, Vaneesa rode a horse she had ridden twice before without incident, however, as she was trying to dismount Vaneesa fell and was severely injured when the horse stepped on her. Plaintiff sued for damages.

The trial court held that RSA 508:19, which limits the liability of persons engaged in equine activities resulting from the inherent risks of such activities, found that Vaneesa's injuries resulted from the inherent risk associated with equine activities and thus Defendants were immune from suit.

RSA 508:19 defines "[i]nherent risks of equine activities" as "dangers and conditions which are an integral part of equine activities," which include a number of risks associated with riding horses. The statute further provides that each participant in equine activities expressly assumes the risk associated with participation and the legal responsibility for injury resulting from participation.

The immunity of an equine activity sponsor or professional is limited if there is a failure "to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity[]" or there is a "willful or wanton disregard for the safety of the participant" and that disregard caused the injury.

Plaintiff argued that the trial court erred in granting summary judgment by finding (1) there was immunity, (2) Vaneesa's injuries were the result of the inherent risks of equine activity, and (3) Defendant's conduct did not come within the exceptions to immunity.

The court noted the statute's intent, as determined from the legislature's statement of intent and the statute itself, as having a clear purpose to protect individuals engaged in equine activity from claims relating to the inherent risks of participating in equine activity with the participant's ability to maintain an action for damages under a limited set of circumstances, i.e. the willful and wanton disregard for safety.

Plaintiff argued that because the co-Defendant instructor was not present at the time of the accident, her conduct came within an exception to immunity because the instructor could not make corrective measures such that the equine activity was not within the inherently risky parameter. (RSA 508:19, I(f)(5)) The court rejected the argument because it could only succeed when the participant acted negligently and where that negligence could be foreseen by the instructor. In this case, there was no evidence to suggest Vaneesa acted negligently or that the injury could have been foreseen.

Finally, in considering Plaintiff's argument that Defendants' conduct was willful or wanton, the court noted that willful or wanton disregard for safety rises above ordinary negligence. The court found that Defendants' failure to supervise Vaneesa or enforce the instructor's rule not to allow minors to ride without adult supervision, did not amount to willful or wanton disregard for Vaneesa's safety, i.e. that Defendants acted with malicious or unreasonable disregard for safety with indifference as to the consequences. Thus, Defendants' conduct did not come within the exception to immunity and the suit was properly dismissed.

John D. Colliander and David S. Brown, Colliander & Brown, Portsmouth, for plaintiff; Gary M. Burt, Primmer piper Eggleston & Cramer, Manchester, for defendants.

Civil Law - Property

Dwight K. Stowell, Jr. v. Jeffrey Andrews & a.
Merrimack, No. 2017-0151, September 14, 2018
Affirmed in part; vacated in part; and remanded.

- Whether a deeded easement could be extinguished based on its original purpose.

The original owners of a portion of Great Island located in Newbury, subdivided a portion of the island and subsequently conveyed lots along the shore to various individuals with deeds that provided for an easement for the grantee, and assigns, across the other lots to reach the wharf or wharves that may be established and reserving an easement for the grantors, and assigns, across the conveyed lot. Great Island lies partially in Newbury and partially in Sunapee. The footpaths over Great Island are used to travel on the island because there are no public roads. One such footpath is the Circle Trail, which traverses the perimeter of the island, and it crosses Plaintiff's property, which lies partially in Newbury and partially in Sunapee.



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In the trial court, there were cross-motions for summary judgment and the trial court ruled that the Newbury defendants had deeded easements for the portion of the Circle Trail located in Newbury. After a bench trial, the trial court ruled that (1) the Newbury defendants who testified had prescriptive easements for the portion of the Circle Trail on Plaintiff's property located in Sunapee, (2) only the sole Sunapee defendant who testified had a prescriptive easement for the Circle Trail on Plaintiff's property both in Newbury and Sunapee, and (3) Plaintiff had the unilateral right to relocate the Newbury defendants' deeded easements from the front of his property to the back.

In first considering the trial court's decision on the summary judgment motions, the court agreed with the trial court that the language in the deeded easement did not create a limitation that the easement could only be used to reach wharves. Plaintiff argued that the "impossibility of purpose" doctrine extinguished the easements because the use for which the easement was granted was no longer possible. The court rejected this argument noting its agreement with the trial court that the easements did not require users to traverse the easement only to board a steamboat and did not limit what could be done by the user once he or she reached the wharves. The court found that the easements were intended to convey rights for the footpaths to be used for multiple purposes and merely described a location, rather than an intent to limit use for the sole purpose of reaching wharves. Thus, the easements were not extinguished and remain to allow for transit to the sites of the former steamboat wharves. Summary judgment on this point was affirmed.

Defendants also appealed on the grounds that the trial court erred in deter-

mining that only those who testified at trial had a prescriptive easement and that Plaintiff could relocate the deeded easements unilaterally.

The court vacated the trial court's ruling as to those with prescriptive easements and remanded for a determination of whether the easements were appurtenant or in gross. The court explained that an appurtenant easement creates two distinct estates, that which is dominant, i.e. land that benefits from the easement, and that which is servient, i.e. land that is burdened by the easement. Thus, an appurtenant prescriptive easement can be used only in conjunction with the ownership or occupancy of a particular parcel. Conversely, an easement in gross is owned by an individual, but is not connected with ownership of any other property interest. The court further noted that if the easements are appurtenant, then it would not be necessary for every owner to testify to establish the factors for a prescriptive easement.

With regard to the unilateral relocation of the deeded easements, the court rejected Plaintiff's attempt to have it adopt the Restatement that would allow the servient estate to make reasonable changes in the location of an easement, at its own expense, so long as they did not lessen the utility of the easement, increase burdens on the dominant estate, or frustrate the purpose for which the easement was created. Restatement (Third) of Property: Servitudes, §4.8(3), at 559. The court found this to be in direct contradiction with New Hampshire's default rule precluding unilateral relocation of an easement and inconsistent with New Hampshire's general principle of the importance of individual private property rights. As the court could not determine whether the trial court considered the Restatement in its decision, the court

vacated the decision allowing the unilateral relocation of the deeded easements and remanded for further proceedings.

Kathleen M. Mahan, Cook, Little, Rosenblatt & Manson, Manchester, and Nicholas M. O'Donnell, Sullivan & Worcester, Boston, for plaintiff; Barry C. Schuster, Schuster, Buttrey & Wing, Lebanon, for defendants.

Contract Law

Grand Summit Hotel Condominium Unit Owners' Association v. L.B.O. Holding, Inc., d/b/a Attitash Mountain Resort Carroll, No. 2017-0673, September 18, 2018
Affirmed and remanded.

- Whether a contractual provision provided for mandatory arbitration for all claims arising under the contract.
- The court considered the interlocutory appeal of L.B.O. Holding, Inc. d/b/a Attitash Mountain Resort (Attitash) from the trial court's denial of its motion to dismiss the complaint of Grand Summit Hotel Condominium Unit Owners' Association (Association).
- The Association contracted with Attitash to perform management functions for the Association, including negotiating and arranging equipment maintenance. In its role as manager, Attitash retained a commercial heating and cooling contractor to, in part, winterize the cooling tower each year beginning in 2011. In 2013, Attitash failed to arrange the winterization of the cooling tower and the tower sustained damage as a result. In 2014, Attitash rented a temporary cooling tower and in 2015, Attitash had the damaged cooling tower repaired. Attitash incurred

more than \$200,000 in costs, which the Association paid as "Actual Costs" pursuant to its contract with Attitash.

Subsequently, the Association filed a complaint against Attitash for its failure to arrange for the maintenance of the cooling tower. The Association asserted claims for breach of contract, breach of the covenant of good faith and fair dealing, negligence and violation of the Consumer Protection Act. Attitash moved to dismiss the Association's complaint based on a purported arbitration clause in the parties' contract that provided for an independent public accountant review of a challenge to the "nature, amount or method" of an amount charged by Attitash. The trial court denied the motion to dismiss and approved Attitash's interlocutory appeal.

The court agreed with the trial court's conclusion that the purported arbitration clause did not require mandatory arbitration for all matters that lead to the incurrence of actual costs. As an initial matter, Attitash argued for the first time on appeal that the Federal Arbitration Act (FAA) should apply. The court avoided determination of whether or not the choice of law issue properly was before the court by assuming that it was since the FAA and the New Hampshire arbitration statute were the same with regard to the issues on appeal and both provide for the presumption of arbitrability to apply to arbitration clauses.

The court further assumed that the subject provision was an arbitration clause, but found that the Association's claims did not come within the scope of the provision and so arbitration was not mandatory. The court agreed with the Association that its claims did "not challenge the nature, amount or

AT-A-GLANCE continued on page 42

NH Superior Court Judicial Assignments: Oct. – Dec. 2018

COURT	HILLS NO		HILLS SO	ROCKINGHAM		MERRIMACK	STRAFFORD	CHESHIRE	BELKNAP	SULLIVAN	CARROLL	COOS/GRAFTON
MO/WK	<i>Judges</i>		<i>Judges</i>	<i>Judges</i>		<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>
10/22/18	+Brown Abramson	Messer Nicolosi	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+ Tucker	+Ignatius	+Bornstein MacLeod
10/29/18	+Brown Abramson	Messer Nicolosi	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
11/5/18	+Brown Abramson	Messer Nicolosi	+Colburn Temple Nadeau	+Delker Wageling	Anderson Schulman	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
11/12/18	+Brown Abramson	Messer Nicolosi	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
11/19/18	+Brown Abramson	Messer Nicolosi	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
11/26/18	+Brown Abramson	Messer Nicolosi	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
12/3/18	+Brown Messer	Nicolosi	+Colburn Temple Nadeau	+Delker Wageling	Anderson Schulman	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
12/10/18	+Brown Messer	Nicolosi Neadeau	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
12/17/18	+Brown Messer	Nicolosi Neadeau	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+ Tucker	+Ignatius	+Bornstein MacLeod
12/24/18	+Brown Messer	Nicolosi	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
12/31/18	+Brown Messer	Nicolosi	+Colburn Temple	+Delker Wageling	Anderson Schulman	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod

+Supervisory Justice
Schedule is subject to change.
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At-A-Glance from page 41

method” of the calculation of the actual costs related to the cooling tower, but rather were based on the misconduct of Attitash in not properly maintaining the tower, and its later misrepresentations regarding the cause of the damage. The court found the purported arbitration clause to be narrow in scope based on the language in the provision, and the presumption of arbitrability does not override the intention of the parties as expressed in the agreement.

Michael D. Ramsdell, Ramsdell Law Firm, Concord, for the plaintiff; Thomas Quarles, Jr. and Brendan P. Mitchell, Devine, Millimet & Branch, Manchester, for defendant.

Edward White v. State of New Hampshire Hillsborough-northern judicial district, No. 2017-0381, September 18, 2018
Affirmed.

- Whether the trial court properly denied petitioner’s request to be relieved of the obligation to register as a sex offender in New Hampshire.

In 1985, Petitioner was convicted of two counts of indecent assault and battery of an eight-year-old girl in Massachusetts. Petitioner served three years in prison before being paroled and during his parole, he successfully completed a sex offender treatment program. Petitioner subsequently moved to New Hampshire and he became subject to lifetime registration as a sex offender for his Massachusetts convictions; he later was classified as a Tier III offender.

As a Tier II offender whose convictions pre-dated the establishment of the sex-offender registry, Petitioner could only be subject to the registration requirement if he

was afforded the opportunity for a hearing at which he could present argument demonstrating that he did not pose a risk sufficient to justify continued registration. This process’s requirements are set forth in RSA 651-B:6, which allows an offender who has completed all terms and conditions of his or her sentence to file a petition to be relieved of the registration requirements and to have a hearing. Such petition must be accompanied by a risk assessment by a qualified psychiatrist or psychologist indicating that the petitioner is no longer a danger or poses a risk sufficient to justify continued registration.

Petitioner filed a petition to be relieved of the registration requirements and presented a risk assessment. In considering the risk assessment, which had two components, the trial court concluded that the results were problematic and that Petitioner failed to carry his burden to demonstrate that he was no longer a danger to the public and no longer posed a risk sufficient to justify continued registration. The trial court denied the petition and Petitioner appealed.

The court reviewed the decision to deny the Petitioner’s request pursuant to an unreasonable exercise of discretion standard and determined that the trial court properly exercised its discretion to deny the petition. Petitioner argued that the trial court erred by (1) failing to weigh properly the proffered expert testimony, (2) substituting its own unqualified judgment for that of the expert, and (3) finding the assessment results to be somewhat problematic. In discounting these arguments, the court noted that the trial court could accept or reject any portion of the expert’s testimony and was not required to accept or reject the testimony as a whole. The court found that a reasonable person could have resolved the conflicting evidence presented by the expert as the trial court did and

upheld its decision.

Michael J. Iacopino and Jenna M. Bergeron, Brennan, Lenehan, Iacopino & Hickey, Manchester, for petitioner; Gordon J. MacDonald, attorney general, and Dianne Martin, assistant attorney general, for the State.

State v. John T. Brawley
Rockingham, No. 2017-0403, September 18, 2018
Reversed and remanded.

- Whether RSA 604-A:2-f providing for recoupment for State costs in defending indigent defendants applies to acquitted defendants.

Defendant was charged with two criminal offenses in the Circuit Court that were transferred to the Superior Court for a jury trial where the court appointed a public defender to represent Defendant due to his indigence. At the time of the appointment, the trial court ordered Defendant to reimburse the New Hampshire Division of Administrative Services, Office of Cost Containment (OCC) for costs and expenses associated with his defense and directed Defendant to contact the OCC within five days of the court’s order. Defendant was acquitted of both charges following the jury trial.

The OCC attempted to contact Defendant for reimbursement of costs as ordered without success. Subsequently, the OCC filed a motion alleging that Defendant failed to comply with his payment obligations and failed to provide any cause for his noncompliance. The trial court scheduled a show-cause hearing at which Defendant failed to appear. The trial court issued an arrest warrant and set bail at \$50. Defendant was arrested and paid the \$50 bail as a condition of his release. The OCC requested a further show cause hearing alleging that other than the \$50 bail payment, which had been remitted to the OCC, no payment had been made. The trial court scheduled a second show-cause hearing at which Defendant again failed to appear. The OCC requested an arrest warrant with bail to be set at the full amount of the costs being sought to be reimbursed.

The trial court denied the OCC’s second motion concluding that it no longer had jurisdiction because Defendant had been acquitted. The trial court further noted that the controversy was a civil one between creditor and debtor. The State appealed.

In reversing the trial court’s decision, the court recognized that the State is constitutionally and statutorily obligated to provide court-appointed legal representation

in cases such as Defendant’s, but cited its prior ruling that repayment obligations are not extinguished by the dismissal of a defendant’s charges and that the State’s interest in recouping costs is constitutional. The court relied on the express language in the subject statute as supporting its purpose of having those defendants receiving services from the State be responsible for reimbursing the State if they are financially able to do so. The language and purpose applies regardless of the nature of the disposition, and thus includes cases in which there is an acquittal.

Gordon J. MacDonald, attorney general, and John J. Conforti, assistant attorney general, and Laura E.B. Lombardi, senior assistant attorney general, for the State; John T. Brawley, self-represented, Gilles R. Bissonnette, American Civil Liberties Union of New Hampshire, Concord, Elliot Berry, New Hampshire Legal Assistance, Manchester, and Albert E. Scherr, Concord, as amici curiae.

Criminal Law - Evidence

State v. Shawn Plantamuro
Strafford, No. 2016-0426, September 7, 2018
Affirmed.

- Whether the trial court properly excluded evidence not initially offered by the defendant and proffered character testimony as to his sexual activity.

Defendant appealed his convictions on multiple counts of sexual assault and misconduct involving a child under the age of seven. Defendant argued that the trial court erred in excluding two pieces of evidence: (1) the circumstances surrounding the victim’s conversation with her mother, wherein the victim notified her mother of the sexual abuse and (2) the testimony of Defendant’s ex-wife that he was attracted to women and not children.

Defendant lived with his mother in the same neighborhood as the victim and her mother. The victim often would visit Defendant and his mother at Defendant’s home and during that time Defendant sexually abused the victim on a number of occasions. In early 2014, the victim and her mother moved away from the neighborhood and in mid-2014, the victim disclosed the sexual abuse to her mother.

In applying the standard of review that the court will not disturb evidentiary rulings absent an unsustainable exercise of discretion, the court upheld the trial court’s eviden-

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US Bankruptcy Court Opinion Summaries

Note: The full text of the opinions below will be available on the Bankruptcy Court’s website at www.nhb.uscourts.gov.

Browne v. Lombard (In re Lombard), 2018 BNH 007, issued Aug. 31, 2018 (Harwood, C.J.) (unpublished) (finding that the plaintiffs lacked standing pursuant to 11 U.S.C. § 727(c) to maintain their claims to deny the debtor’s discharge per 11 U.S.C. § 727(a)(4)(A), and, alternatively, finding the § 727(a)(4)(A) claims were without merit).

Browne v. Lombard (In re Lombard), 2018 BNH 008, issued Aug. 31, 2018 (Harwood, C.J.) (unpublished) (after a trial on the merits on the plaintiff’s 11 U.S.C. § 727(a)(4)(A) claims determining that (1) claim preclusion barred the relitigation of certain aspects of the claims, (2) that the plaintiff’s claims lacked merit on substantive grounds, and (3) that the plaintiff’s post-trial motion to conform the pleadings to the evidence presented at trial had to be denied because the defendant had not implicitly consented to the litigation of an unpleaded claim, pursuant to Fed. R. Civ. P. 15(b)(2)).

In re Vertullo, 2018 BNH 009, issued Oct. 1, 2018 (Harwood, C.J.) (unpublished) (holding that chapter 13 debtors may cure defaults under a mortgage and maintain payments pursuant to 11 U.S.C. § 1322(c)(1), where a mortgagee has conducted a foreclosure auction prepetition but has failed to complete the foreclosure sale by recording a deed before the debtor files chapter 13 bankruptcy, continuing to follow Judge Deasy’s decision in *In re Beeman*, 235 B.R. 519 (Bankr. D.N.H. 1999), and declining to follow the BAP’s decision in *TD Bank, N.A. v. LaPointe (In re LaPointe)*, 505 B.R. 589 (B.A.P. 1st Cir. 2014)).

tiary rulings.

As an initial matter, the court agreed with the State's position that Defendant failed to raise the first evidentiary issue at trial and could not raise it on appeal. The State initially sought to introduce the conversation wherein the victim disclosed the abuse to her mother and the trial court excluded it as impermissible hearsay. The trial court further excluded evidence concerning the circumstances of the conversation as irrelevant based on the inadmissibility of the conversation itself.

On appeal, Defendant argues that the trial court's exclusion of the evidence, i.e. the conversation and the circumstances surrounding the conversation, was in error and that he would offer the conversation not for the truth of it such that it would not be hearsay. The court found that because Defendant did not seek to introduce the evidence in the trial court, he failed to preserve his arguments on appeal by failing to make an offer of proof to the trial court regarding the specific nature of the evidence and why it was admissible. The court further agreed with the trial court that since the conversation was excluded properly, the circumstances of the conversation were irrelevant.

Finally, Defendant's proffer of character testimony that he was attracted to women and not children, was excluded properly. A character witness's opinion testimony must be confined to the nature and extent of observation and acquaintance upon which the opinion is based. As sexual activity is necessarily private, then any character testimony regarding the activity is without basis.

Gordon J. MacDonald, attorney general, and Sean R. Locke, assistant attorney general, for the State; Christopher M. Johnson, chief appellate defender, Concord, for the defendant.

Criminal Law - Sentencing

State v. Daniel Allain
Cheshire, No. 2016-0530, September 11, 2018

Reversed and remanded.

- Whether the trial court properly denied the defendant's request for pretrial confinement credit toward suspended sentence.

In 2011, Defendant pled guilty to receiving stolen property and was sentenced to four to 14 years in state prison, suspended for 15 years, with the condition that Defendant be of good behavior. On October 10, 2015, Defendant was arrested for an August 31, 2015 burglary and he was unable to post bail so remained in prison pending resolution of the charges. On July 8, 2016, the State moved to impose Defendant's 2011 suspended sentence based on the violation of the good behavior condition because of the commission of the 2015 burglary. On August 24, 2016, the trial court imposed three to six years of the 2011 sentence.

Defendant moved for pretrial confinement credit pursuant to RSA 651:3 and RSA 651-A:23 on the basis that he had remained in prison solely due to his indigence and had he not been indigent, and posted bail, then he would have been released on bail until the August 24, 2016 finding entered.

The trial court denied Defendant's motion on the grounds that Defendant was being held pursuant to the new charges and he would receive pretrial credit on any sentence he received if convicted of those charges. Defendant appealed arguing that he would serve nearly an additional year over the imposition of the suspended sentence due to his indigency and such constituted impermissible discrimination intended to be prohibited by the presentence confinement statute.

Noting the purpose of the presentence confinement credit statutes to be prevention of an indigent defendant from serving a different amount of time from an otherwise identically situated defendant with the ability to furnish bail, the court interpreted the statutes to allow Defendant to receive credit for time served prior to imposition of the suspended sentence. The court explained that the trial court conducted the equivalent of a trial regarding Defendant's violation of the good behavior condition of his 2011 sentence and found that Defendant's presentence confinement related to the 2011 "criminal episode" because the sentence was imposed based on the 2011 suspended sentence.

The court remanded with instructions for the trial court to grant pretrial credit toward the 2011 suspended sentence.

Gordon J. MacDonald, attorney general, and Elizabeth C. Woodcock, assistant attorney general, for the State; Christine C. List, assistant appellate defender, for the defendant.

Probate Law

In Re Teresa E. Craig Living Trust
6th Circuit Court – Concord Probate Division, No. 2017-0532, September 7, 2018
Remanded.

- Whether the pretermitted heir statute was incorporated as a rule of construction for trusts.

The court ruled that the pretermitted heir statute was not incorporated as a rule of construction for trusts and held that a later-enacted statute providing that rules of construction for wills also apply to trusts, did not incorporate New Hampshire's pretermitted heir statute.

Petitioners were the grandchildren of the decedent who had excluded Petitioner's father both from her will and the subject trust. Petitioners argued that they were pretermitted heirs pursuant to RSA 564-B:1-112 because it incorporated RSA 551:10, New Hampshire's pretermitted heir statute, as a rule of construction applicable to trusts.

RSA 551:10 provides that a child born after the testator, and a child or issue of a child not named or referred to in the testator's will, is entitled to the same portion of the estate as he or she would be if the deceased were intestate.

The court focused on the language in RSA 551:10 as clearly applicable to the context of a will rather than a trust. Relying in part on its prior decision in *Robbins v. Johnson*, which held that RSA 551:10 did not apply to a trust, the Court again declined to apply to RSA 551:10 to trusts. In considering the impact of the later-enacted RSA 564-B:1-112, which provides that rules of construction applying to the interpretation of and disposition of property by will also apply to trusts. The court concluded that RSA 551:10 is a rule of law, not a rule of construction in that the pretermitted heir statute is conclusive and does not provide for guidance based on circumstances as does a rule of construction.

While the case was pending, the legislature amended 564-B:1-112 to provide specifically that RSA 551:10 does not apply to any trust.

Pamela J. Newkirk, Barradale, O'Connell, Newkirk & Dwyer, Bedford, for petitioners; Ralph F. Holmes and Jacqueline A. Botchman, McLane Middleton, Manchester, for respondent, Glenn A. Perlow and Todd D. Mayo, NH Trust Council, Manchester, as amicus curiae.

Supreme Court Orders

Administrative Order 2018-03

Revised Holiday Schedule for Calendar Year 2019

This order replaces Administrative Order 2018-02, which was issued on July 5, 2018. Pursuant to its rule making authority and RSA 490:4, the Supreme Court promulgates the following holidays during calendar year 2019:

1. New Year's Day	Tuesday	January 1, 2019
2. Martin Luther King, Jr. Civil Rights Day	Monday	January 21, 2019
3. Washington's Birthday	Monday	February 18, 2019
4. Memorial Day	Monday	May 27, 2019
5. Independence Day	Thursday	July 4, 2019
6. Labor Day	Monday	September 2, 2019
7. Columbus Day	Monday	October 14, 2019
8. Veteran's Day	Monday	November 11, 2019
9. Thanksgiving Day	Thursday	November 28, 2019
10. Day after Thanksgiving	Friday	November 29, 2019
11. Day before Christmas	Tuesday	December 24, 2019
12. Christmas Day	Wednesday	December 25, 2019

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 29, 2019, and on Tuesday, December 24, 2019.

Issued: September 17, 2018
Attest: Eileen Fox, Clerk
Supreme Court of New Hampshire



In accordance with Rule 58.2(A) and (C), the Supreme Court reappoints Superior Court Judge Jacalyn A. Colburn, Attorney Andrea Daly, Attorney David Tencza, and Dr. Sally Garhart to the LAP Commission. Judge Colburn, Attorney Daly, Attorney Tencza, and Dr. Garhart, are reappointed to serve terms expiring on March 1, 2021.

Issued: September 17, 2018
ATTEST: Eileen Fox, Clerk of Court
Supreme Court of New Hampshire



In accordance with Supreme Court Rule 53.8, the Supreme Court appoints the following members of the Minimum Continuing Legal Education (MCLE) Board:

- In accordance with Rule 53.5A(1), Attorney Edward D. Philpot, Jr., the President-Elect of the New Hampshire Bar Association, is appointed to serve as an ex officio member of the board;
- In accordance with Rule 53.5A(2), Supreme Court Associate Justice Patrick E. Donovan is appointed to serve the remainder of a three year term expiring on February 14, 2019, replacing Associate Justice Anna Barbara Hantz Marconi.

Issued: September 18, 2018
ATTEST: Eileen Fox, Clerk of Court
Supreme Court of New Hampshire



ADM-2018-0006, In the Matter of Kathleen E. Banaszak, Esquire

Attorney Kathleen E. Banaszak was admitted to the New Hampshire bar on May 24, 2016. In accordance with Rule 42 XIII, (a), Attorney Banaszak was required to complete the Practical Skills course within two years of admission. The New Hampshire Bar Association reported to the court that Attorney Banaszak did not take the Practical Skills course as required. On July 25, 2018, this court issued an order requiring Attorney Banaszak to show cause why she should not be suspended from the practice of law in New Hampshire for failure to attend a Practical Skills course within two years of the date of his admission to the bar. Attor-

ney Banaszak did not respond to the show cause order.

In accordance with Rule 42, XIII (a), Attorney Kathleen E. Banaszak is hereby suspended from the practice of law in New Hampshire.

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

Issued: September 18, 2018
ATTEST: Eileen Fox, Clerk



ADM-2018-0009, In the Matter of Russell L. Hall, Esquire

Attorney Russell L. Hall was admitted to the New Hampshire bar on November 6, 2013. In accordance with Rule 42 XIII, (a), Attorney Hall was required to complete the Practical Skills course within two years of admission. The New Hampshire Bar Association reported to the court that Attorney Hall did not take the Practical Skills course as required. On July 20, 2018, this court issued an order requiring Attorney Hall to show cause why he should not be suspended from the practice of law in New Hampshire for failure to attend a Practical Skills course within two years of the date of his admission to the bar. Attorney Hall did not respond to the show cause order.

In accordance with Rule 42, XIII (a), Attorney Russell L. Hall is hereby suspended from the practice of law in New Hampshire.

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

Issued: September 18, 2018
ATTEST: Eileen Fox, Clerk



In accordance with the provisions of RSA 100-C:11, II, Supreme Court Chief Justice Robert J. Lynn, with the advice and consent of Superior Court Chief Justice Tina L. Nadeau, Circuit Court Administrative Judge Edwin W. Kelly, Circuit Court Deputy Administrative Judge David D. King, and Director of the Administrative Office of the Court Christopher Keating, reappoints retired District Division Judge

ORDERS continued on page 44

Edward Gordon to the Board of Trustees of the Judicial Retirement Plan, to serve a three-year term commencing September 25, 2018, expiring September 25, 2021.

Issued: September 19, 2018
ATTEST: Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

In accordance with Rule 42(II)(a), the court reappoints Attorney Willard Martin, a member of the Board of Bar Examiners, to the Committee on Character and Fitness, to serve a term expiring on October 1, 2021.

Issued: September 26, 2018
ATTEST: Eileen Fox, Clerk
Supreme Court of New Hampshire

The Supreme Court of New Hampshire reappoints Attorney Abigail Albee, Attorney Matthew J. Fossum, Attorney Willard G. Martin, Jr., Attorney Edward Sackman, and Attorney Jon N. Strasburger, to the Board of Bar Examiners, to serve three-year terms commencing November 1, 2018, and expiring November 1, 2021.

Issued: September 26, 2018
ATTEST: Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

**JD-2018-0001, In the Matter of
Paul S. Moore**

On June 26, 2018, the Judicial Conduct Committee (JCC) filed a summary report of its proceedings, findings, and recommendations in JC-17-042-C, In re: Paul S. Moore. It also filed a certified copy of the record of its proceedings.

According to the JCC’s summary report, former judge Paul S. Moore (Moore), who resigned from office on April 10, 2018, admitted that he violated a number of provisions of the Code of Judicial Conduct, as alleged in the JCC’s Statement of Formal Charges, Amended Statement of Formal Charges, and Second Amended Statement of Formal Charges. The JCC’s record includes a copy of the Answer, Stipulation and Agreement signed by Moore in which he admitted violating specific violations of the Code of Judicial Conduct, acknowledged that he understood that the JCC would enter findings that he had violated those provisions, and waived his right to a de novo hearing on the charges. Moore also acknowledged that he is responsible for reimbursing the Administrative Office of the Courts (AOC) for attorney’s fees and expenses that the JCC incurred to investigate and prosecute the matter.

The JCC reviewed the Answer, Stipulation and Agreement, and entered findings that Moore violated the following provisions of the Code of Judicial Conduct:

Canon 1, Rule 1.1, which provides: “A judge shall comply with the law, including the Code of Judicial Conduct.”

Canon 1, Rule 1.2, which provides: “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety

and the appearance of impropriety.”

Canon 1, Rule 1.3, which provides: “A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”

Canon 2, Rule 2.4, which provides in part: “(A) A judge shall not be swayed by public clamor or fear of criticism. (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”

Canon 2, Rule 2.16, which provides in part: “A judge shall cooperate and be candid and honest with judicial and law-
yer disciplinary agencies.”

In the summary report of its findings, the JCC noted that Moore had resigned from office before the report was submitted. It stated that because Moore had taken this action, it made no additional recommendations for sanctions.

In accordance with Rule 40(12) and (13), when the JCC determines that a judge has violated the Code of Judicial Conduct and determines that the violations warrant formal disciplinary action by this court, the judge may request a de novo hearing, after which the court will schedule briefing and oral argument. In this case, Moore has waived his right to a de novo hearing, and he notified the court, through counsel, that he does not seek the opportunity to file a brief or present oral argument.

The court determines that the JCC’s findings as to the violations of the Code of Judicial Conduct are supported by the JCC’s record. See Rule 40(13). In light of Moore’s resignation as a judge, the court concludes that no additional disciplinary action is required. Moore is ordered to reimburse the AOC for the expenses incurred by the JCC investigating and prosecuting this matter.

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

DATE: September 28, 2018
ATTEST: Eileen Fox, Clerk

**LD-2018-0006, In the Matter of
Stephen Males, Jr., Esquire**

On May 20, 2004, the Attorney Discipline Office (ADO) notified the court that the respondent, Attorney Stephen Males, Jr., had been convicted of 11 counts of wire fraud in the United States District Court for the Southern District of New York. The court suspended the respondent from the practice of law on an interim basis on May 21, 2004, and he has remained suspended since that time.

On May 17, 2018, the ADO notified the court that the respondent’s convictions had been affirmed on appeal. It asked the court to institute a formal disciplinary proceeding in accordance with Rule 37(9)(d).

The respondent’s conviction for wire fraud constitutes a “serious crime,” as that term is defined in Supreme Court Rule 37(9)(b). Subparagraph 9(d) of Rule 37 provides that “[u]pon the receipt of a certificate of conviction of an attorney for a ‘serious crime,’ the court may, and shall if suspension has been ordered pursuant to subsection (a) above, institute a formal disciplinary proceeding by issuing an order to the attorney to show cause why the attorney should not be disbarred as result of the conviction.”

In accordance with this rule, the court issued an order on June 11, 2018, requiring the respondent to show cause why he should not be disbarred as a result of the

conviction. Copies of the order were sent by first class and certified mail to the address that the respondent had provided to the New Hampshire Bar Association. Both copies of the order were returned as undeliverable. The respondent has not filed a response to the court’s show cause order.

Rule 42E(c) requires an attorney admitted to practice in New Hampshire to notify the New Hampshire Bar Association of his office address, residential address, and email address. It provides that notice sent to an address provided by the attorney shall be deemed sufficient notice of court action. In accordance with Rule 42E(c), the respondent is deemed to have notice of this proceeding.

In light of the seriousness of the respondent’s misconduct, the court concludes that the respondent should be disbarred. THEREFORE, the court orders that Stephen Males, Jr. be disbarred from the practice of law in New Hampshire. He is hereby assessed all expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

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

DATE: September 28, 2018
ATTEST: Eileen Fox, Clerk

Pursuant to Supreme Court Rule 54(2), the Supreme Court hereby appoints the Honorable David D. King to the position of administrative judge for the circuit court, effective October 1, 2018, the Honorable Edwin W. Kelly having resigned on that date from the position of administrative judge for the circuit court. The term of the Honorable David D. King shall be for five years, and shall expire on October 2, 2023.

Issued: October 3, 2018
ATTEST: Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

The Access to Justice Commission was established by Supreme Court order dated January 12, 2007. The court reappoints the following persons to the commission, to serve three-year terms beginning September 1, 2018, and expiring on August 31, 2021:

Honorable Joseph LaPlante
Honorable James P. Bassett
Attorney Mark Rouvalis
Ms. Nina Gardner
Attorney Paula Hurley
Honorable Edwin Kelly
Honorable James Leary
Attorney Jaye Rancourt
Honorable Deborah Kane Rein
Attorney Deborah Schachter

The following persons are appointed to the commission, to serve three year terms beginning September 1, 2018, and expiring on August 31, 2021:

Attorney Heather Kulp
Attorney George Moore
Attorney Pamela Phelan

The court has been notified that Lynn Parker and Stephanie Patrick have resigned from the commission.

Issued: October 9, 2018
ATTEST: Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

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September 2018

* Published

FEDERAL COMMON LAW; PRODUCTS LIABILITY

9/5/18 Cheryl Turgeon, et al. v. Trinity Industries, Inc., et al.*
Case No. 15-cv-288-PB, Opinion No. 2018 DNH 179* Published

In this negligence and product liability suit sounding in design defect, the defendant-manufacturer of a highway-guardrail end terminal (Trinity) moved for summary judgment on Plaintiffs' claims, arguing that the federal government contractor defense recognized in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988) should be extended to shield it from liability as a matter of federal common law. Although Trinity acted as a state subcontractor in selling its product to the State of New Hampshire for installation on state highways, it invoked the defense because the federal government ultimately reimbursed the state for the cost of the end terminal at issue. The funding was provided under a federal-aid program covering improvements to the National Highway System (NHS) and administered by the Federal Highway Administration (FHWA), which reviewed and approved Trinity's product for compliance with federal testing standards during its development. The court declined Trinity's invitation to extend the federal common law doctrine to protect state contractors under these circumstances, as no court had previously done. It held that under the *Boyle* framework, displacement of state tort law is unwarranted in the absence of either a "uniquely federal interest" directly affected by the suit or an actual conflict between state and federally-imposed duties. The court determined that both were absent in this case. First, it held that the interest in maintaining safe highways is not "uniquely federal" because it is shared with the states. Second, it held that, because the relevant federal testing standards only imposed minimum safety performance criteria, there was no conflict between the duty to test to those standards and the state-imposed duty to design a reasonably safe product. 57 pages. Judge Paul Barbadoro.

FEDERAL QUESTION

9/11/18 Robert Every v. Town of Littleton, NH; et al.
Case No. 18-cv-43-SM, Opinion No. 2018 DNH 183

Pro se plaintiff, Robert Every, filed suit against the Town of Littleton, New Hampshire, and several town officials, advancing claims for violations of his Fourth, Fifth, Sixth and Fourteenth Amendment rights under the federal constitution, as well as state law claims for false arrest, malicious prosecution, and libel. Plaintiff's claims generally arose out of three events: (1) the search of a building owned by plaintiff's corporation; (2) the filing of criminal charges against plaintiff for violation of a town ordinance; and (3) plaintiff's Right to Know Law requests for town records. Defendants moved to dismiss all claims against them. First, the court determined that it lacked subject matter jurisdiction under the Rooker-Feldman doc-

trine to consider plaintiff's claims relating to the request for town records (which had been adjudicated in previous state court proceedings), the court dismissed those claims with prejudice. Second, the court dismissed claims arising out of the search of the building for lack of standing, but allowed plaintiff leave to amend. Finally, the court dismissed plaintiff's federal malicious prosecution and equal protection claims relating to the criminal charges filed against him for failure to plausibly state a viable claim, but allowed plaintiff leave to amend those claims, as well. 32 pages. Judge Steven J. McAuliffe.

FRAUD/FORECLOSURE

9/17/18 Goodman v. Wells Fargo Bank, N.A.
Case No. 17-cv-199-JL, Opinion No. 2018 DNH 189

Plaintiff sued lender claiming that mortgage loans on two properties were the product of fraud and were therefore void and unenforceable. Court granted defendants' motions to dismiss, finding that claims were barred by res judicata and collateral estoppel because state court litigation resolved legitimacy of the mortgages in the lenders' favor. In the alternative, the court found that plaintiff's claims based on the 2007 transactions were barred by the statute of limitations. 23 pages. Judge Joseph N. Laplante.

PRODUCTS LIABILITY

9/11/18 Scully v. Osseon Therapeutics
Case No. 18-cv-479-JL, No written opinion. Decision issued from bench.

The court granted in part and denied in part the defendants' motion to dismiss the complaint in this products-liability action from the bench. Upon the plaintiffs' agreement, the court dismissed their claims for breach of an express warranty and violations of New Hampshire's Consumer Protection Act. It denied the defendants' motion as to the remaining products-liability claims. Judge Joseph N. Laplante.

SOCIAL SECURITY

8/3/18 Andrea Silva v. US Social Security Administration, Acting Commissioner
Case No. 17-cv-368-PB, Opinion No. 2018 DNH 156

Claimant appealed the Social Security Administration's decision denying her application for Social Security disability insurance benefits. She argued that the ALJ erred by failing to adequately develop the record in considering her reported back pain and for failing to consider certain reasons why claimant "sought minimal treatment" during the period in question. Claimant also argued that the ALJ's determination that claimant's polysubstance abuse was a contributing material factor to her disability was unsupported by substantial evidence. The court rejected claimant's arguments and affirmed the Acting Commissioner's decision, finding that the challenged determinations were all supported by substantial evidence. 32 pages. Judge Paul Barbadoro.

9/4/18 Christian Lambert v. US Social Security Administration, Acting Commissioner
Case No. 17-cv-341-PB, Opinion No. 2018 DNH 178

Claimant appealed the Social Security Administration's decision to deny his claim for Social Security disability insurance benefits. He argued that the ALJ erred in formulating his residual functional capacity (RFC) because the ALJ failed to fully incorporate certain manipulative limitations and because it was not supported by substantial evidence. He also argued that the ALJ erred in relying on vocational-expert testimony to support his conclusion that Claimant could perform jobs available in significant numbers in the national economy, because he failed to resolve a conflict between that testimony and information contained in the Dictionary of Occupational Titles (DOT). The court rejected claimant's arguments and affirmed the Acting Commissioner's decision. The court determined that the ALJ adequately considered all relevant medical records and his RFC determination was supported by substantial evidence. The court also determined that although the ALJ erred in failing to resolve an apparent conflict between vocational-expert testimony and the DOT at step five, the error was harmless because other portions of that testimony sufficiently supported the ALJ's "not disabled" determination. 28 pages. Judge Paul Barbadoro.

9/5/18 Veronica Moffitt v. U.S. Social Security Administration
Case No. 17-cv-280-JL, Opinion No. 2018 DNH 177

In this appeal from an adverse decision on claims for Social Security disability insurance benefits and supplemental security income, the Acting Commissioner's decision was affirmed over claims that the Administrative Law Judge erred in determining the claimant's residual functional capacity by failing to consider the combined effects of her medically determinable impairments and by erroneously evaluating the testimony she gave regarding her symptoms and limitations. 15 pages. Judge Joseph N. Laplante.

9/6/18 Gelinas v. U.S. Soc. Sec. Admin. Comm'r
Case No. 17-cv-362-JL, Opinion No. 2018 DNH 180

On appeal from the Social Security Administration's denial of the claimant's application for a period of disability and disability insurance benefits, the court denied the claimant's motion to reverse the decision of the Administrative Law Judge (ALJ). The court concluded, among other things, that the ALJ's decision determining the onset date of Gelinas's disability was supported by substantial evidence in the record. 13 pages. Judge Joseph N. Laplante.

9/11/18 Brian Zackowski v. US Social Security Administration, Acting Commissioner
Case No. 17-cv-709-SM, Opinion No.

2018 DNH 184

Claimant moved to reverse or vacate the Acting Commissioner's decision denying his application for benefits, asserting that the ALJ erred by failing to properly weigh the medical opinions in the record, improperly assessing claimant's testimony concerning his symptoms and limitations, and failing to incorporate all non-exertional limitations from his RFC findings into the hypothetical posed to the vocational expert. The court disagreed, concluding that the ALJ's decision was supported by substantial evidence and, therefore, it denied claimant's motion. 26 pages. Judge Steven J. McAuliffe.

9/12/18 Hastings v. Berryhill, Acting SSA Commissioner
Case No. 17-cv-84-JL, Opinion No. 2018 DNH 185

After claimant's case was previously remanded, an ALJ reversed his previous finding that the claimant's carpal tunnel syndrome was a severe impairment. The ALJ therefore did not include any related limitations into his residual functional capacity determination. On appeal, the court held that the ALJ's review was exceeded the scope of the prior remand order, and again remanded the case. 13 pages. Judge Joseph N. Laplante.

9/12/18 Sanford v. Berryhill, Acting SSA Commissioner
Case No. 17-cv-246-JL, Opinion No. 2018 DNH 186

In this appeal from an adverse decision on a claim for Social Security disability insurance benefits, the matter was remanded because the ALJ erroneously gave little weight to the medical opinion of an examining source on grounds that it was not supported by relevant evidence and failed to give good reasons for discounting the medical opinion of a treating source. 23 pages. Judge Joseph N. Laplante.

9/19/18 Marino v. Wylder v. U.S. Soc. Sec. Admin. Comm'r
Case No. 17-cv-179-JL, Opinion No. 2018 DNH 191

On appeal from the Social Security Administration's denial of the claimant's application for a period of disability and disability insurance benefits, the court denied the claimant's motion to reverse the decision of the Administrative Law Judge (ALJ). The court concluded that the ALJ did not err in declining to admit the claimant's late-filed evidence. Nor did the ALJ err when he adequately explained his reliance on a medical opinion in his RFC determination despite medical developments subsequent to the opinion, or in considering. The ALJ also did not fail to consider certain impairments in the RFC determination, despite the claimant's arguments to the contrary. 20 pages. Judge Joseph N. Laplante.



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