UNH Franklin Pierce School of Law Among the Best in the Nation

By Kathie Ragsdale

UNH Franklin Pierce School of Law’s practice of involving students in the state’s legal community while they’re still in school has at least one major pay-off:
The school ranks sixth in the nation and first in New England for securing jobs for graduates on the open market – and many of those jobs are in New Hampshire.

Among 2019 graduates, 96.7 percent were employed within 10 months of graduation, with 80 percent of that number working in jobs that require bar passage, according to the 2019 ABA Employment Summary Report. Some 86 percent completed a legal residency or had other legal work experience before graduation.

The statistics are nothing new. A total of 97.2 percent of the previous year’s graduates found work quickly, as did 95 percent of 2017 grads.

Law school Dean Megan Carpenter attributes such success to the school’s emphasis on preparing students for their careers from their first year, and its long history of partnering with practitioners in the field.

“One of the things I have come to love about the New Hampshire legal community are the strong ties between the law school and the bar and the courts,” she says. “When you think about why students go to law school, it’s to take the bar and get a job. The fact we really do excel on a nationwide level is important to me and important to us.”

“We focus a lot on how to teach people not just how to think like lawyers but also how to be lawyers,” she adds.

Carpenter points to several ways in which the law school facilitates students’ involvement in New Hampshire’s legal community, starting with curriculum.

The Career Services Office teaches a class called Introduction to the Legal Profession through which students meet a variety of attorneys at different points in their careers, develop goals for their time in law school and beyond, and work with mentors to practice interviewing and resume writing.

Students can also participate in clinics where, under supervision, they receive experience practicing law while helping underserved populations.

A fellowship offered through the school’s Warren B. Rudman Center for Justice, Leadership & Public Service provides students opportunities to do public interest work during the summer while receiving a small stipend. The program

UNH continued on page 9

From Istanbul to Bedford
The Yasan family’s Long Journey to Asylum

By Scott Merrill

What is the value of time spent waiting? For the Yasan family of Bedford, NH, it was the security of being free from political persecution by the Turkish government and the chance to one day become American citizens.

Coincidentally, it was on July 4 last month when the long wait ended for Omer Yasan, 47, his wife Cigdem, 40, and their children Saffiy and Arif, 15 and 12. After nearly 4 years, the Yasan family was granted asylum by the U.S. government.

Sitting at their home last month with ISTANBUL continued on page 14

New Hampshire Law Firms Learn to Adapt

By Scott Merrill

When Governor Sununu’s state of emergency went into effect five months ago because of the pandemic, NH law firms had to ask important questions, such as: How to keep people safe and how to provide quality services for their clients?

Firms have learned a lot in five months about how to answer these questions effectively.

While some firms have already increased their in-office staffing, others continue to keep people at home. And others, while maintaining safety protocols, haven’t changed much.

Ted Lorthstein, of Lorthstein and Guerriero, runs a two-person criminal defense firm with his partner Richard Guerrero. Their firm, which has offices in Keene and Concord, never fully closed its offices.

“We never shared a room and don’t ADAPTING continued on page 18

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Periodical Postage paid at Concord, NH 03301

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Masking, The American Spirit

By Dan Will

The hearts of both Celtics and women’s basketball fans stirred at the news of the great Kara Lawson’s elevation from the C’s assistant coach to Duke women’s Basketball head coach. The photo captured it: all the Celtics team gathered around Coach Lawson, all wearing Duke t-shirts and... masks. In a nod to the pandemic, this auspicious occasion, included masks in their fete of Coach Lawson.

Much of the reporting about masks has been negative: they don’t help; they do help but we won’t wear them; our leaders won’t wear them; how rude it is not to wear them; why can’t we wear them the right way? What the reporting misses, however, is that within each mask lies a small kernel of one or more of the core attributes that comprise our enduring national strength. Maybe the lowly mask is trying to tell us why we will work our way through this pandemic and emerge stronger.

In times like these, our instinctive first question is “how can I help?” Adversity often strengthens our bonds with our neighbors and to our communities, transcending political stripe, color, gender, age, or even Duke basketball preferences. If you haven’t been furiously sewing masks, you know someone who has. Almost every time I comment on someone’s interesting mask, I find out that their cousin or mother in law or nephew, armed with a sewing machine and their old Raggedy Anne twin bed sheets, has singlehandedly outfitted the entire neighborhood, local hospital, or nursing home. Few of us can develop a vaccine but determined home mask production manifests our desire and need to do our part.

And I mean it about the Raggedy Anne sheets. I have a mask made from leftover drapery scraps. Members of my family have flower patterned masks that came from someone’s dress project. A friend of mine has several made from old exercise t-shirts (I consider these to be high end and mine has several made from old exercise t-shirts). Today, one can spend an entire afternoon trolling the internet only to find themselves overwhelmed with mask options, from the utilitarian workhorse to the expensive designer accessory. Advertisers have also taken note: we see yellow masks bearing little green tractors at the John Deere dealer and snappy red masks with crisp white Hanford’s logos at the grocery store. I was particularly proud to recently receive a blue mask showcasing a white NHBA logo. The pandemic has literally created a new market that is flooded with our entrepreneurial spirit.

In this country, we don’t just adapt – we innovate. I have a mask from a friend, which I call First Edition, which works just fine. But not well enough for her – after First Edition, without a single dollar of federal grant money, she invested in some R&D that led to Second Edition, which she proudly produced in dark colors suitable for court. Don’t tell her, but I prefer First Edition and I am scouring Ebay and Craigslist for her vintage work. I have heard from many about the evolution of their mask designs and, yes, have been part of discussions about key mask design elements: pleats or shaped to the face; a device to clip to the nose, elastic or tie back ear straps? We instinctively strive to build a better mousetrap powered by the confidence that we can.

One of our greatest national attributes is making the best lemonade we can no matter how sour the lemons. The pandemic has taken a toll on our physical health and our collective spirit; it has brought immeasurable tragedy and economic hardship to families and communities, and it has imposed anxiety and foreboding upon all of us. Yet, our response, like always, is to band together and throw all of our creative genius, work ethic, innate community building, collaboration and competition, into how we adapt and overcome. Take a hard look at the humble mask on the kitchen counter, under the seat of your car, buried under papers on your desk, or crumpled in your purse. The American spirit is alive and well.

By Daniel E. Will
Solicitor General, NH Attorney General’s Office, Concord NH

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What has your path towards the law and the New Hampshire Bar Association been?

I went to college in the early 80’s at Holy Cross and wanted to be a doctor. Af- ter my second year of college, I found out I was expecting to have my daughter and I took a year off to have her. Then, I went back to finish my degree. By then, I figured medical school wasn’t in the cards but I thought that law school might be really interesting to get into. My parents were very happy. They were like, ‘ok, if your daugh- ter’s not going to be the doctor,’ they liked the idea of ‘my daughter the lawyer.’ And then, about six months later, I told them I’d like to be an artist and they said ‘not while we’re paying your tuition you’re not.’ So, I got my degree in English, raised my daughter mostly as a single mom, and got her through college. After that, I thought, “OK, my turn now. What’s next? Maybe law school?”

I went to Franklin Pierce Law Cen- ter, graduating in 2010, and was very fortunate to get a job just two weeks out of school. I worked for the firm for five years and then circled my way back to marketing. I’d done some marketing work after college and it was after my husband said, ‘well you’re not going to be able to prac- tice law forever,’— not realizing of course that there are some practitioners still going well into their 90’s — that I jokingly said, ‘it would be interesting and fun to do marketing for the Capitol Center for the Arts.’ A few weeks later, that job opened and I got it. I intended it to be a one-year or so sabbatical from law practice, but then the opportunity to help launch the Bank of New Hampshire Stage presented itself. I was there from 2016 un- til May of this year.

What goals do you have for the MARCOM department at the Bar Associa- tion?

The NBHA understands that its members’ needs are changing by the minute. It’s our goal to be responsive to those needs. To the extent that we can anticipate these needs, we’ll try to do that as well. The MARCOM department in particular serves as an in-house agency and creative advisor for the Bar Association’s other de- partments. We’re also responsible for communicating out to the members and gen- eral public. I hope to actively engage these audiences and spark lively discussion with timely, meaningful, and useful content.

Are there any new programs or strate- gies that MARCOM is working on at the moment?

‘Strategies’ is a more fluid concept than ever before. Right now, my team is working on a formal brand book to bet- ter standardize our communications. From that, we’ll develop a press kit to help jour- nalists writing about us. Other priorities include reinvigorating our web site and social media presences. Providing oppor- tunities for members to connect with each other, share ideas and brainstorm solutions is vital. While it’s tempting to respond re- actively to what’s happening right now in the NH legal community, we know that our members are also looking to us to provide strong leadership. For example, our CO- VID-19 resource section has already re- ceived national attention. Longer term, the department is already starting to look at the Bar Association’s 150th anniversary, com- ing up in 2023. Distancing is not disconnect- ing.

Outside of work what are some of your personal interests, hobbies and pas- sions?

Coronavirus has stolen some of my fa- vorite weekend activities, including volun- teering at Concord Hospital, taking dance lessons and attending live concerts and events. But it has left other hobbies and interests intact. I’m an avid photographer and have been photographing the effects of the pandemic almost daily since mid- March. I read up to 10-15 books a week during the stay-at-home and enjoy taking my dog Fabian Sabean for a walk along the river at Seawall Falls here in Concord. I’ve also been binge-watching some TV series, including ‘Mrs. America,’ ‘The Betty Broder- ick Story,’ Devs, and of course, Tiger King.

Are there any books you’re reading or have read recently that you’d recom- mend?

How Fungi Make Our Worlds, Change Our Minds & Shape Our Futures, by Merlin Sheldrake

Zoobiquity: The Astonishing Connection Between Human and Animal Health, by Barbara Natterson-Horowitz

The Year of the Flood, by Margaret Atwood

Meet the new MARCOM Director Lynne Sabean

I am excited to be the new Member Services Coordinator for the New Hamp- shire Bar Association. I received a B.S. in Foreign Languages and International Trade from Mississippi State University and a J.D. from Vanderbilt University. I was admitted to the NH Bar in 1991. I served as a judicial law clerk for the NH Supe- rior Court and worked as an attorney in private practice before taking a break from my legal career to focus on my family while my children were young. Subsequently, I worked for over ten years at a nonprofit organization where I enjoyed the role of program director, coordinating community outreach and educational programs, managing communications, and executing events.

Additionally, I have been involved in a variety of volunteer work over the years. Some of my favorite volunteer experiences have been di- recting drama camps at Wa- nakee, a coed youth camp in Meredith for over twenty years, and serving as a Girl Scout troop leader for thir- teen years.

I am a longtime Con- cord resident who currently resides in our lovely college city with my husband Dodd who is a practicing attor- ney, and my dog Toby who is an overly excitable rat terrier. In my free time, I enjoy reading, cooking, walking my dog, and spending time with family and friends (even if it is virtually). I love to travel and look forward to a time when we will all be able to travel freely again.

I appreciate the warm welcome from my co-workers, and I am thankful for their support. I look forward to work- ing with the members of the NBHA. I can be contacted at mgrant@nhbar. org.
By Angelika R. Wilkerson, Esq.

Now is the time to become a DOVE volunteer. Here’s why: The need is high, the training is accessible, and the limited-scope model is well suited for the scheduling uncertainty that comes with Covid-19.

For many of us, the pandemic has disrupted the daily and weekly routines we rely on to keep life moving smoothly. For many survivors of domestic violence and stalking, this disruption in routines means an increased risk to safety.

Countries across the globe have reported a rise in domestic violence during the pandemic and the DOVE Project and our DV partners have been preparing for an influx in cases. After a short lull in reporting, DOVE is starting to see the number of applications for volunteer attorneys rise. Though we haven’t yet seen the tsunami of cases we’ve prepared for, we have seen an increase in the severity of the cases, many involving serious violence and multiple lethality risk factors. It is imperative that when these clients come to us for help, we are able to provide them with the representation they need to obtain safety for themselves and their children.

With this in mind, the DOVE Project has adapted to the current needs of our Bar members to make our annual training more accessible than ever. This year’s training, Survivors Thrive with Legal Advocacy – a DOVE Project Webcast, will be held September 24th from 9AM to 12PM. The live webcast will feature a seasoned faculty of legal and advocacy professionals including the Honorable David Burns who will provide a “View from the Bench” complete with practice tips and court considerations. In addition to the live webcast, participants will be provided with DOVE’s 2020 training manual, which includes current statutes, case law, and other helpful tools.

Whether you are a new attorney looking to attend a DOVE training for the first time or an experienced volunteer looking for a refresher and update, this condensed webcast format makes attending a live DOVE training as convenient as it is informative. While Covid-19 has put some legal practice areas on hold, civil orders of protection are not among them. In the March 16, 2020 New Hampshire Supreme Court Order Suspending In-Person Court Proceedings, there was a specific exception made for civil protective order hearings. Since then, survivors of abuse and stalking have continued to file petitions and the courts have continued to hold final hearings. Many of these hearings are happening telephonically or via WebEx, meaning that attorneys can volunteer to take cases outside their normal geographic practice area. With the uncertainty surrounding the rescheduling of trials, attorneys who find themselves with some available time now can volunteer to take a DOVE case without worry that it will greatly interfere with yet unscheduled hearings. For attorneys new to practice, the opportunities to litigate cases are limited right now. DOVE provides a unique opportunity to get practical experience working with clients and appearing in court. It’s a great time to invest some time in a program that benefits you professionally as well as the clients you serve.

Disability Advocates File Lawsuit to Increase Access to Accessible Absentee Voting

Currently, blind people and other disabled voters need to go to a polling place to vote confidentially with a voting machine, something organizers say is burdensome during the pandemic.

A coalition of disability organizations has filed a lawsuit against Secretary of State William Gardner and the New Hampshire Department of State asserting discrimination against voters with disabilities who are unable to independently and privately mark an absentee paper ballot due to blindness, low vision or physical disability.

“The National Federation of the Blind has made New Hampshire’s election officials aware of their obligations to blind voters and offered our expertise and assistance, but so far to no avail,” said Mark Riccobono, president of the National Federation of the Blind. “We therefore bring this litigation to prevent the continued treatment of New Hampshire’s blind voters as second-class citizens.”

The lawsuit and request for preliminary injunction were filed by Disability Rights Center-New Hampshire (DRC-NH) and Brown, Goldstein & Levy, LLP on behalf of the National Federation of the Blind (NFB), the National Federation of the Blind of New Hampshire (NFBNH), Granite State Independent Living (GSIL), and several New Hampshire voters with disabilities, including Daniel Frye, Jean Shiner and Jeffrey Dickinson.

The lawsuit alleges the process for requesting an absentee ballot is inaccessible and that the requirement that absentee voters fill out and mail in a printed paper ballot discriminates against blind and physically disabled voters. According to the lawsuit, the current situation leaves disabled voters with two unsatisfactory choices: to have someone else fill out their ballot, forfeiting their right to vote privately and independently; or subjecting themselves and their loved ones to a life-threatening pandemic by visiting a polling place in person in order to use an accessible voting system.

The plaintiffs seek the implementation of an accessible system for electronic delivery and marking of absentee ballots by voters who are blind or who have other physical disabilities and an accessible process for voters to register to vote and request an absentee ballot.

Stephanie Patrick, executive director of DRC-NH, said that absentee voting must be accessible to everyone.

“People with disabilities have the right to vote privately and independently, even during a pandemic. Secretary Gardner must take action now, in advance of the September 8 primary, to make sure that all voters can register to vote, request an absentee ballot and vote safely at home,” Patrick said.

This lawsuit was filed in the federal court for the District of New Hampshire under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Rather than money damages, plaintiffs seek reform to the systems and practices that discriminate against voters with disabilities in time for the Sept. 8, 2020 primary election and the Nov. 3, 2020 general election.

“GSIL believes voting is a protected right afforded all Granite Staters and that the state must meet the minimum needs of voters with disabilities to avoid disenfranchising this voting block,” said Deborah Ritchey, CEO of GSIL. “The need for fully accessible absentee ballots has never been more important than during the current COVID-19 pandemic.”

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Opinions in Bar News

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

Letter to the Editor

Dear Folks,

Like the rest of you, I appreciate the letter of our Bar President and past President supporting “equal justice under law.” For some odd reason this is now seen as most exclusively in racial terms and not in terms of social class (in the USA, how much money you have), which has a far greater impact.

Also there are some inaccuracies in the letter which need correction.

“Juneteenth” is not the day slavery ended in our country. It is only the day slavery ended in Galveston, Texas. I am sure we all have the greatest respect for Galves ton, Texas. (I for one have never heard a bad word about it.) But slavery throughout the USA did not end until passage of the 13th Amendment on Dec. 6, 1865.

We might also bear in mind that four slave states fought for the Union throughout the Civil War. And every American President (until Ulysses S. Grant in 1869) taking the oath of office was also swearing to uphold the legal institution of slavery where it existed.

If we truly wish to celebrate the end of slavery, we might make a holiday of the birthday of the man who freed more slaves in the 20th century than anyone else. I reference the end of slavery in the last country where it was legal. Ethiopia. There, one human being could own another until Fascist armies liberated the country in 1936, freeing 420,000 Black slaves. This is 420,000 more than were freed by anyone who ever participated in a “black lives matter” demonstration.

Their liberator was Benito Mussolini. He was born on July 29th.

Mark M. Rufo

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AUGUST 19, 2020
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NEW HAMPSHIRE BAR NEWS
The Pursuit of Happiness
By Terri Harrington

I have been spending a great deal of time lately thinking about happiness. This is because I am taking the free Yale University online course “The Science of Wellbeing” taught by Professor Laurie Santos. When the world became housebound because of Covid-19, the popularity of this course exploded. By the first of April, 400,0000 people around the world signed up to take this course. Yale boasts that this is the most popular online course ever offered anywhere. The popularity of this course piqued my curiosity. Why is this course so popular? What is it about this moment in time that draws people from all over the globe to learn more about wellbeing?

This course came about because Professor Santos noticed an alarming trend among Yale undergraduate students. Every year the number of students suffering from clinical anxiety and depression grew. She dug deeper and learned that Americans were consuming 400x the amount of antidepressants and anti-anxiety medication than we were just 20 years ago. The National Institutes of Mental Health (NIMH) estimates that approximately 7% of the current U.S. adult population suffers from depression. That percentage jumps to approximately 11% of U.S. adults between the ages of 18 to 25, the exact age of undergraduates. The course Professor Santos designed and launched in 2018 was to understand the underpinnings of happiness through science-based practices. Further, she wanted to create a practice in which undergrad behavior could change in real time. For her, this was not an intellectual pursuit but a matter of changing and saving lives at Yale University.

You might be wondering what this has to do with lawyers in NH? First and foremost, lawyers in the United States are some of the most dissatisfied and “unhappy” people. For many practicing lawyers, this is no big surprise. The daily stress of managing growing caseloads, demanding clients, billable pressures, the adversarial nature of the legal process and the often unrealistic expectations placed on lawyers is all part of the practice of law.

Yet, to those outside the legal profession, the discontentment of our profession is often surprising. From the outside, lawyers seem to have it all. Lawyers hold an advanced professional degree. They command a certain amount of respect just by the fact they are lawyers. It is generally perceived that lawyers make a lot of money — or at least a lot more than the average person without a professional degree. Lawyers are interesting. Just look to popular TV dramas and award-winning movies to see that lawyers lead exciting and fulfilling lives. But often, reality is vastly different than what is portrayed on the screen.

According to Professor Santos, there is no correlation between what we think makes people happy and what actually makes people happy. Lawyers, by the very nature of the profession, are people who seek reward. Some seek to make a great deal of money. Other seek prestige by rising to respected heights in the profession. Still others seek to make a significant and lasting change on the system at work in the law. All these rewards can be measured, compared, and quantified. When has one made enough money to be happy? How many awards, accolades or positions of authority are enough to feel happy? Lawyers are some of the ultimate American Dream chasers. The problem is none of these things make people happy. The higher our expectations, the harder it is to manage the need for more. Usually is never enough in the elusive pursuit of happiness.

If money, success and power are not the keys to happiness, what is? The answer can be found in the results of the Grant Study, a fascinating Harvard University project that started in 1938. For 72 years, researchers followed 268 men who entered Harvard as undergraduates. They were contacted at regular and consistent intervals, allowing researchers to compile data on every imaginable aspect of their lives: marriage, divorce, career, finances, parenthood, health, as well as attitudes towards war and peace. These men were generally the elite of the elite. And yes, these men are men only. Although most subjects remain anonymous some have been publicly identified such as John F. Kennedy (whose data is sealed until 2076) and Ben Bradlee, past editor of the Washington Post.

At the conclusion of the study, Professor George E Vaillant lead a team to analyze the mountains of data. One noteworthy initial finding was that over one-third of the subjects met the criteria for mental illness by the time they reached the age of 50. However, the most significant finding was that empirical happiness can be simplified to one basic notion. Happiness is predicated on the way a given individual responds to pain, uncertainty, and ambiguity. Happiness is not dependent on genetics, childhood trauma or any outward measure of success. Happiness is predicated on the unconscious thoughts and responses to perceived adversity, their thoughts and responses then shape one’s objective reality. The Grant Study created four specific categories of ‘adaptations’ or coping styles that impact happiness. First, is the “worst” adaptation: Psychotic Adaptation. This is where a person employs the most extreme method of coping through psychosis, mega-lomania or complete withdrawal. This strategy may work for the individual, but society labels them as maladaptive, dangerous or mentally ill. The next level is Immature Adaptation. Individuals use hypochondria, passive aggression, repression and fantasy to deal with unpleasantness or stress. This type of adaptation impedes intimacy and trust in relationships. The “normal” response is the most common response: Neurotic Adaptation.

People use disassociation, intellectualization, and repression to deal with conflict or pain. The highest level of adaptation is Mature Adaptation. The challenges presented in pain or conflict is met with the use of humor, altruism, compassion, avoidance planning and sublimation.

People who have mature adaptation are the happiest of people. They are those that have the closest and most meaningful relationships with family and friends and have the highest rates of job and life satisfaction. They also have the healthiest relationship with themselves. They find many positive outlets for negative feelings.

Professor Vaillant summarized the study’s findings this way:

Much of what is labeled mental illness simply reflects ‘unwise’ deployment of defense mechanisms. If we use defenses well, we are deemed mentally healthy, conscientious, funny, creative and altruistic. If we use them badly, the psychiatrist diagnoses us ill, our neighbors label us unpleasant and society brands us mentally ill.”

The Grant Study has been followed up with great deal of additional research. Sonja Lyubomirsky is the vice-chair of the Department of Psychology at the University of California, Riverside. She published the bestselling book The How of Happiness: A Scientific Approach to Getting the Life You Want. She states that knowing what makes people happy is not the same thing as doing what makes people happy.

“Research shows that increasing your own wellbeing takes daily, intentional effort over long periods of time,” Lyubomirsky wrote.

She further states that the reason the pursuit of material gain cannot make people happy is because the human brain is built to adapt to pleasingly negative or positive situations. This is termed Hedonic Adaptation. Enough can never be enough because the human brain acclimates to each step up in the pursuit of material gain.

So, what does create happiness? How to people adapt to adversity using the Mature Adaptation model? Practicing consistent cognitive and vocational strategies as a part of an overall lifestyle is what study after study consistently affirms as the key to happy people. These strategies are simple: regularly setting aside time to actively cultivate a sense of gratitude, regular practice of kindness or altruism; affirming through action the most important personal values on a consistent basis; savoring positive experiences; and sustaining meaningful, supportive relationships with others are all the “keys” to happiness.

During this moment in time, life has slowed. There is a great deal of additional anxiety and uncertainty now that we are all amid a global pandemic. There is also additional time to ponder some essential questions: what is happiness and how can I be happier?

I have been in the pursuit of happiness most of my life. I think many of us are. This must be why over 2,700,000 people from all over the world have taken “The Science of Wellbeing.” I find it tremendously comforting to learn that happiness is a skill that can be cultivated. It is like a muscle that can be exercised. Happiness is an active choice to be made and not something left to fate to decide. There are daily practices that can, overtime, create a greater sense of wellbeing. I simply wish I had learned all this much sooner. Still, I believe it is never too late to cultivate happiness and the keys for doing so are all around us.

Resources:
Depression: Facts, Statistics, and You, by Brand Koski; Medically reviewed by Timothy J. Legg, PhD, PsyD, CRNP, ACNP, CHP, Healthline, 06/03/2020
Harvard Second Generation Study www.adultdevelopmentstudy.org
Sonja Lyubomirsky, Ph.D.: Profile (Including Links to Studies, Publications and Class Offering), UC Berkeley’s Greater Good Magazine, www.greatergood.berkeley.edu
The Science of Well-Being, Lecture Series by Professor Laurie Santos, Offered by Yale University through Coursera. www.coursera.org
The Secret to Happiness? Here’s Some Advice from the Longest Running Study on Happiness. By Matthew Solan, Harvard Health Publishing of Harvard Medical School. 10/05/2017
www.health.harvard.edu
Don’t Wait Until it’s Too Late: The Importance of Cybersecurity Articles

By Ryan Barton


Because, of course, it’s all rather technical. And dry. Arid, even.

It makes sense. Our minds are hard-wired by incentives. We move effortlessly towards pleasure but briskly away from pain. We are the inheritors of neural structures formed in the minds of long-distance hunters and gatherers. In their tense dance with survival and ascendancy, they learned to pursue the immediate, certain, simple, and positive.

A wise structure, and a revealing one.

For when cybersecurity feels distant, uncertain, complex, and negative, we naturally yawn, turn the page, and move on to something more interesting. Something that better lines up with our view of incentives.

Of course, this changes if we’re hacked! Then we’ll scramble towards anything that promises deliverance or salvation. A cybersecurity article suddenly reads like a Clancy novel. But normally…?

My challenge to you is this: Become an avid reader of cybersecurity articles, in normal times.

Two reasons:

First, those of us on the defensive lines know that the threat is not distant or uncertain. Without question, you are being attacked today via email, snooping your firewall, and ever-more sophisticated methods. Organizations who don’t proactively invest in ever-increasing defensive measures will be hacked. It is a sad reality, and one I sincerely wish were untrue. But this does not modify the underlying nature of the risk: it is from a threat that grows stronger with our ambivalence.

Second, I believe you specifically have a special calling to become an avid reader of cybersecurity articles.

You, the attorneys of New Hampshire.

Why?

Your profession is already built around managing risk for clients and overcoming personal resistance to material that seems dry and technical requires mental discipline. And that is what you have. It is who you are – intelligent, disciplined, risk-focused professionals.

I founded my company when I was 20 years old. I knew far less than I should about business! I originally prided myself on having no contracts at all. When that proved impolitic, I was determined our contracts would never be more than a page in length, with zero legalese.

Who changed my mind? You did. Intelligent, disciplined attorneys who took me aside and explained the difference between first-party liability and third-party liability. Who elucidated the nuances of indemnification. Who convinced me that the word “tort” does indeed belong in a small business agreement. Who made my distant, uncertain, complex, negative reality of business risk real, understandable, and manageable.

This is the kind of disciplined professional to embrace cybersecurity.

I have been delighted to work with knowledgeable, skilled attorneys in the data security space, here in New Hampshire. And, as a company, we’ve also been honored to work with wonderful professionals in some of NH’s most stalwart law firms, who prize securing their own environments and the precious client data they hold.

But I would like to see something more. I believe every company in our resilient Granite State deserves to be served by an attorney who not only peers into the future of their clients’ corporate liability, but also uses that prescience in the realm of cybersecurity.

I believe the disciplined professionals who read complex legal reviews and subscribe to law journals are exactly the ones to exercise intellectual discipline in the realm of cybersecurity. To ensure their own firm is protected, but also to lead clients in the ways of data risk mitigation.

In other words, I would like you to become the type to read cybersecurity articles! To be the one to read them, on behalf of clients who won’t.

Of course, it isn’t required that you enjoy them.

Ryan Barton is the founder and CEO of Mainstay Technologies, a holistic IT and Information Security firm. Mainstay follows the tenets of Conscious Capitalism and has received awards for its approach. He is a devoted husband, father of three (ages 2, 3, and 5), and a committed reader of more than just cybersecurity articles.
Can Gov. Sununu Make You Wear a Mask?

By John Cunningham
Granite State News Collaborative

Despite President Donald Trump’s recent about-face from skepticism to support of mask-wearing as a means to lessen the risk of coronavirus infection, there are undoubtedly tens of millions of Americans, including, perhaps many New Hampshire citizens, who believe that federal and state orders requiring them to change their behavior to lessen coronavirus risks are unconstitutional.

This raises the questions of whether Gov. Chris Sununu can constitutionally impose a mask-wearing requirement or other coronavirus-based restrictions and if so, what the accompanying legal penalties for their violation may be in New Hampshire?

The relevant restrictions may also include, for example, the prohibition of large meetings, including church services; social distancing; and limitations on the right of landlords to evict tenants and of employers to terminate employees for refusal to come to work because of coronavirus fears.

The short answer to the above question is yes. To explain:

For many decades, the U.S. Supreme Court has held that state governors have the power to regulate the behavior of their citizens to benefit the general welfare of their states. Lawyers who want to review the case law on this issue should consult, for example, Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11 (1905).

It is also true, however, that states are subject, with some exceptions, to the same amendments to the U.S. Constitution to which the federal government is subject with respect to the constitutional rights of citizens under the U.S. Constitution. These include the right of citizens to freedom of speech and religion and to due process. Thus, any claim that a coronavirus restriction is unconstitutional requires careful consideration.

However, in a very recent case called Binford v. Sununu, decided on May 29, 2020, the U.S. Supreme Court reiterated its long-standing position that the states have broad powers to protect the health of their people, and, on this ground, it held that the state of California did not violate its citizens’ First Amendment rights by prohibiting large gatherings, including even church gatherings.

What does this mean for Gov. Sununu? First of all, the New Hampshire Constitution gives New Hampshire governors very broad powers during “states of emergency,” including, clearly, health emergencies. The relevant powers include those “to perform functions, powers, and duties necessary to secure the safety of the state’s citizens.”

Furthermore, in a very recent case called Binford v. Sununu, decided on March 26, 2020, the New Hampshire Superior Court upheld, under both the New Hampshire and the U.S. constitutions, the constitutionality of a coronavirus-based order by Gov. Sununu prohibiting large gatherings.

The court ruled, in effect, that any such prohibition or other measure by the governor would be constitutional as long as he acted in good faith and on the basis of specific facts reasonably indicating the necessity of the measure. The court held that the governor’s order met these tests.

It is possible, of course, that the Binford case will be appealed and that, if it is, the New Hampshire Supreme Court will overrule it. But in my view, given the horrors of the coronavirus, its extreme contagiousness, and the traditional deference of the federal and state courts to the exercise of discretion by governors in addressing issues of health, Binford and other anti-coronavirus orders that Gov. Sununu has issued or may eventually issue will be upheld.

John Cunningham is a Concord tax and businesses lawyer and estate planner. He has published Drafting Limited Liability Company Operating Agreements and Maximizing Pass-Through Deductions under Internal Revenue Code Section 199. Both are the leading books in their fields. If you have business or tax questions you’d like addressed in this column, call John at (603) 836-7172 or e-mail him at lawjmc@comcast.net

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Chuck Douglas, Benjamin T. King, C. Kevin Leonard, Megan E. Douglass
Carolyn Baldwin Awarded 2020 NH Preservation Alliance Achievement Award

Carolyn Baldwin graduated from Franklin Pierce Law Center in 1977. Like every graduate that year, she was a pioneer. 1977 was only the second year the Law Center graduated a class of newly minted lawyers. Carolyn was also a woman making her way in a male-dominated profession and state Bar. Carolyn would become a pioneer in other ways as well. In time, she would establish a law firm, building a practice and a following in the areas of environmental law, land use, land conservation, and historic preservation. Using the specialized-knowledge she developed in these areas, Carolyn helped preserve some of our state’s historically and environmentally-significant properties. She would also build new tools and strategies for the movements in historic preservation, land use conservation and environmental protection.

The New Hampshire Preservation Alliance was pleased to announce this past May that Carolyn was awarded a Preservation Achievement Award for outstanding achievement. This program has recognized only 25 leaders in its 30-year history. The Preservation Alliance Achievement Award has also recognized major rehabilitation and restoration projects, and innovative educational and planning initiatives. Other individual honorees include exceptional philanthropists, legislators, craftspeople, and local activists. Carolyn is the first attorney.

For over forty years, those active in environmental protection, land use, land conservation, and historic preservation have turned to Carolyn Baldwin for advice. As Tom Baruck, former Commissioner of the NH DES and partner at Sheehan Phinney noted, “Carolyn Baldwin was truly present at the creation of what we now know as environmental law here in New Hampshire – first as the director of the environmental law clinic at what was then Franklin Pierce Law Center, and then as one of the state’s first full-time practitioners in this area.”

Carolyn’s contributions were made not just through her law practice, but also as an educator, volunteer, and an inspiration to an expanding group of practitioners and advocates. New Hampshire owes a tremendous debt of gratitude to her for helping to steer local and statewide practice away from demolition or short-sighted development, towards recognizing and protecting New Hampshire’s natural and historic resources. Carolyn recognized these two important resources as two sides of the same coin. She was an early advocate for investment that enhances historic and environmental assets for the good of all our communities and for our state.

Carolyn’s contribution on landmark “saves” like the Belmont Mill and Daniel Webster Farm in Franklin were significant and dramatic. They are considered pivotal accomplishments in New Hampshire’s historic preservation movement that helped shape its future.

On the municipal planning and investment front, Carolyn has been the critical leader for New Hampshire historic preservation legislation, implementation and interpretation, including historic districts and heritage commissions. One of her major legal victories was Victorian Realty Group v. City of Nashua, 130 N.H. 60 decided in 1987. The question before the Court in that case was “whether a planning board has the authority to reject a subdivision or re-subdivision proposal for property located in a lawfully designated historic district for reasons relating to the historic character and significance of the property.” The Court found that a planning board does have such authority. The Court held that “Historic preservation is, thus, a part of an overall plan to promote general community welfare.” And, planning boards “may properly consider the recommendations of the historic district commission and may deny the plaintiff’s subdivision based on factors related to the historic character and significance of the buildings at issue.” Id. 62.

The ruling remains a clear assertion that historic district commissions can help planning boards implement a community’s objective to safeguard its historic districts. Carolyn also played a key role in the establishment of new tools for historic preservation such as neighborhood heritage areas and the N.H. RSA 79-D barn tax relief program, at work in one hundred communities across the state.

Carolyn was on the 1983 Task Force for Historic Preservation in New Hampshire. The work of this Task Force would lead to the creation of Inheret New Hampshire which eventually became the New Hampshire Preservation Alliance.

Over the years, Carolyn has been a popular and effective presenter for the New Hampshire Bar Association, the New Hampshire Municipal Association, and for the New Hampshire Preservation Alliance, among many others. She has served on numerous heritage and conservation boards and committees. Carolyn has advised, helped, and led two generations of New Hampshire attorneys, volunteer boards, property owners, and advocates.

In the words of Tom Baruck, “Her patience, persistence, personal warmth and good humor won friends, admirers and adherents to her cause of working for the betterment of the Granite State through the craft and tools of lawyering and advocacy. Carolyn has served the state’s historic preservation and environmental protection movements with distinction and has helped us to see how all of the pieces connect – and just how broad and how important environmental law really is and should be.”

Carolyn’s many contributions extend to her hometown’s heritage and preservation efforts. She has helped with the preservation of Gilmanton’s First Baptist Church and Kelley Corner School. As a board member of the Gilmanton Land Trust, Carolyn helped conserve Meetinghouse Pond and adjacent farmland, as well as a rare fly fishing pond. Like many New Hampshire attorneys, Carolyn has generously given her time, talents, knowledge and experience, to help preserve the historic and environmental character of our state. She has truly been a pioneer in her fields of practice and richly deserves the New Hampshire Preservation Alliance 2020 Preservation Achievement Award.
recently expanded to include 50 students this year.

In addition, the school offers a legal residency program, an externship modeled after medical residencies, where students are embedded for a semester (or up to a year) in law firms or courts in New Hampshire or elsewhere in the country.

“So, by the time they graduate with the experiences they have had at the law school through clinics and the residency program, they will have had four or five professional experiences helping clients and working as a legal professional before they even graduate,” says Carpenter.

“It helps students build a sense of professional identity and gives them experiences that help them hit the ground running when they graduate.”

One recent graduate, Keelan Forey, said she was drawn to UNH Franklin Pierce Law School in part because of “the opportunities to be involved in the New Hampshire legal community even as a law student.”

During her first-year summer at the school, the Career Services Office organized an On-Campus Interview (OCI) process to provide students interviews for positions with New Hampshire law firms, public interest programs and judicial clerk posts.

“Ideally, if you receive and accept a position through that process for your second-year summer, the summer position will extend you a full-time position after graduation,” she says.

That was the case for her. After “a wonderful summer experience” at Devine, Millimet & Branch in Manchester, she continued working at the firm part-time in her final year of school before receiving an offer of full-time employment.

“I am grateful to the school for opening that door,” she says.

Another recent grad, Abbygale Martinen, enrolled at UNH Franklin Pierce after she took a course on the “deflategate” controversy surrounding the Patriots football team with law school Professor Michael McCann while still an undergrad at UNH. “It completely piqued my interest in sports law,” says Martinen, who subsequently received a full merit scholarship to UNH Franklin Pierce Law School.

She took an internship during the summer of her second year, which later led to a full-time job offer. She starts this month at Sheehan Phinney Bass & Green.

“The Daniel Webster Scholars Honor Program really shaped my experience at UNH Law,” she says, referring to the school’s unique program that allows students to pass a variant of the New Hampshire bar exam during their last two years of law school and be sworn into the New Hampshire bar the day before graduation.

“Taking a two-year practical bar experience and being able to graduate law school having already been admitted to the New Hampshire bar was crucial for my success in law school,” Martinen adds. “The skills that I learned and the ability to start working right away was crucial for my development as a new lawyer.”

Carpenter says the school’s success is attracting more students, and it is now welcoming the largest class in 10 years, including 113 students in the residential juris doctor program and 60 in the hybrid program, a mostly online program for working professionals which focuses on the intellectual property law courses for which the school is renowned. Last year’s entering enrollment for residential was 101 and for hybrid, 41, according to Carpenter.

She notes that the majority of students come from out of state but often get jobs in New Hampshire when they graduate. Of 2019 grads, 31 went to work in New Hampshire and 10 in Massachusetts, the second largest employment location.

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UNH Franklin Pierce Law Library Suspends Attorney Membership Program

The University of New Hampshire Franklin Pierce Law Library is suspending its Attorney Membership program until further notice. No annual renewal invoices will be sent to member firms. The Law School has been operating virtually since mid-March due to the COVID-19 crisis. All classes went online on March 16, and all non-essential employees began remote work at that time as well.

While the school does plan to re-open campus physically for classes in the Fall, social distancing safety measures will be in place, which include restrictions on the number of people allowed on campus and in campus buildings in order to protect community health.

Once it is safe to open campus more broadly, the Law Library hopes to reinstate the membership program. Current members will receive pro-rated invoices at that time. Members with questions can contact Kathy Fletcher, the Membership Coordinator, via email at Kathy.Fletcher@law.unh.edu.

As part of your membership in the New Hampshire Bar Association, you have access to Casemaker, a free legal research system offering federal and 50 state law libraries.

“The law school is really an economic engine to keep young professionals in New Hampshire,” Carpenter says. The school is ranked as one of the nation’s top 10 law schools and consistently as a top-10 school for the study of intellectual property law.
Norman H. Stahl is a federal judge on the United States Court of Appeals for the First Circuit.

Born in Manchester, Judge Stahl obtained his bachelor’s degree from Tufts University in 1952 and his law degree from Harvard Law School in 1955. After serving as a law clerk to the late Massachusetts Supreme Judicial Court Justice John V. Spalding, Judge Stahl returned to New Hampshire to what was then Devine & Millimet. He became a partner in 1960 and the firm name ultimately became Devine, Millimet, Stahl and Branch. His practice was varied, but largely business related. He was lead counsel for the State during the pendency of the bankruptcy of the Public Service Company of New Hampshire.

In 1990, on the recommendation of the late Senator Warren B. Rudman, President George H. W. Bush nominated Judge Stahl to the United States District Court for the District of New Hampshire. In 1992, following the elevation of the Hon. David H. Souter to the United States Supreme Court, Judge Stahl joined the First Circuit Court of Appeals.

He continues to regularly sit on cases with the First Circuit and serves on various court-related committees. Judge Stahl has also served on several committees for the Judicial Conference of the United States, most notably as a member and chair of the Committee on Security and Facilities. As Committee Chair, he presided over the refining of the Courthouse Design Guide and instituted a system of prioritizing the construction of new courthouses. He is particularly proud of his work in obtaining the funding for and the choosing of the architect for the Rudman Courthouse in Concord.

He has been married to his wife Sue for 62 years and they have two children, a son, Peter W. Stahl of Bow, a businessman; and a daughter Ellen E. Stahl, a career counselor at MIT and resident of the North End in Boston. Reflecting on his long career, Judge Stahl said:

“I have been an interesting 65 years. It’s like starting in a Model T and ending up in a Tesla,” he said. “New Hampshire was a different place in 1956 and I saw the state turn into a major player over that time. I’m proud to have been a part of that.”

Caroline K. Leonard is a Shareholder-Director with Gallagher, Callahan & Garrell, P.C., the firm where Bob Kirby worked before his untimely passing. She is the first recipient from GCG to receive this award.

Caroline is a business lawyer assisting large and small businesses with mergers and acquisitions, shareholder sales, reporting obligations, compliance with securities laws, and commercial litigation. She has handled multi-million dollar deals and has successfully argued at the First Circuit Court of Appeals. She is recognized as a top-rated business and corporate lawyer and litigation attorney in Concord by New England Super Lawyers® with a Rising Stars designation for 2016, 2017, 2018 and 2019.

Caroline is passionate about community involvement. She has been a board member of the New Hampshire Women’s Bar Association since 2015, and begins her term as President on September 1. She serves as Community Outreach Chair for the Webster-Batchelder American Inn of Court, Director for Concord’s Red River Theatre, and Trustee of the New Hampshire Supreme Court Society. Caroline is an alumna of the Junior Service League of Concord. She served six years on the Northern New England regional board of the American Red Cross and was awarded “Board Member of the Year” in 2019. Caroline was appointed for a second three-year term on the New Hampshire Professional Conduct Committee by the New Hampshire Supreme Court beginning January 1, 2020.

While working at GCG, Caroline has also worked as an adjunct professor at the UNH School of Law, where she taught a legal residency course for two semesters. This course placed law students directly into the legal field for a semester, typically with private firms, courts, or companies’ in-house legal departments. Through this experience, students applied the skills learned in law school in real-life legal settings before graduation.

Caroline graduated cum laude from the University of New Hampshire School of Law, where she was a Daniel Webster Scholar, and earned her bachelor of arts degree, magna cum laude, from Colby College. Caroline lives in Concord with her husband and their goldendoodle, Wendy.
Community Notes

John E. Friberg, Jr., of Hopkinton, Chief Legal Officer for SolutionHealth and Terry M. Knowles of Weare, adjunct faculty member at the UNH Carsey School of Public Policy were elected as new members to the N.H. Historical Society’s board of trustees.

The law firm of McLane Middleton, Professional Association is pleased to announce that the firm received a Band 1 ranking in Chambers’ High Net Worth Guide – Private Wealth Law section. In addition, attorneys Alexandra T. Breed, Steven M. Burke, George L. Cushing, Christopher R. Paul, Robert A. Wells, and William V.A. Zorn received individual rankings. Attorney Brian J. Bouchard, of Sheehan Phinney, has been named Chair of the Leadership Seacoast Board of Directors, a term he will hold for one year.

Berman & Simmons attorney Daniel Kagan has been honored with the Distinguished Service Award from the American Association for Justice (AAJ), the preeminent national organization for trial lawyers.

Along with the New Hampshire Society of CPAs, the NH Women’s Bar Association is hosting a fun-filled day for connecting with women on and off the golf course at Stonebridge Country Club in Goffstown on Monday, September 21 from 9 a.m. to 5 p.m. Precautions will be in place to mitigate the spread of COVID-19. Sponsorship opportunities are available. Contact info@nhwba.org for more information.

Coming & Going

Lawrence A. Vogelman bolsters the already strong litigation team of Shaheen & Gordon, P.A., joining the firm’s Personal Injury and Criminal Defense groups. Vogelman brings more than 45 years of trial experience and a reputation as a foremost criminal defense expert. He will primarily focus on civil rights, criminal defense and complex civil litigation.

The law firm of McLane Middleton, Professional Association is pleased to announce the hiring of attorney Stephanie J. Lee. Stephanie joins the firm as an associate in the Corporate Department, where she advises clients on a wide variety of business law issues, including entity formation, contract drafting, review and negotiation, mergers and acquisitions, and insolvency matters.

The Office of the Child Advocate has relocated to the Governor Hugh J. Gallen State Office Park, Johnson Hall, 107 Pleasant Street, Concord, NH, 03301. The Office of the Child Advocate was previously located at 121 South Fruit Street in Concord. Pursuant to NH RSA 170-G:18, the Office of the Child Advocate provides independent oversight of DCYF to assure that the best interests of children are being protected.

Hon. Norman E. Champagne

Hon. Norman E. Champagne, 78, of Manchester, died peacefully at home on July 27, 2020, after a courageous battle with Parkinson’s Disease. He was born on September 15, 1941, the son of the late Laurier and Lillian (Denners) Champagne. Norman graduated from Bishop Bradley High School and St. Anselm College. After college, he began his career in the insurance industry including working for the New Hampshire Insurance Department. While working full-time, he attended Suffolk University Law School at night and graduated in 1973. He was admitted to the New Hampshire Bar that same year.

He began his legal career in his west side home with his beloved wife, Jocelyne, by his side. He soon joined with his colleagues at the New Hampshire Bar News

Stay Connected

Join Arthur and Kathy In an Informative and Interactive Discussion

Wednesday September 16, 2020 Noon-1:15 PM

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The Topic: How to Prepare for the Transition or Sale of a Law Firm

Save the Date: October 21, 2020. Topic: Essential Provisions for a Partnership Agreement

No cost – no registration required
Go to Zoom Webpage – Click Join Meeting
New Hampshire Legal Assistance (NHLA) has received a $300,000 grant from the Neil and Louise Tillotson Fund of the New Hampshire Charitable Foundation to support NHLA’s Berlin office and its commitment to providing vital civil legal aid to low-income and older residents in the North Country. The grant will allow NHLA to protect domestic violence victims, prevent illegal evictions and remove barriers to public benefits.

Since NHLA first began offering free legal services in 1971, there has been a gap between the legal needs of low-income Granite Staters and the legal services available to them. This unmet need is even greater in the North Country. In 2019, NHLA served over 330 low-income and older North Country residents. Thanks in large part to the Tillotson Fund, NHLA has the resources to support two legal advocates in our Berlin office. This is the 13th year NHLA has received assistance from the Tillotson Fund. This legacy of support allows NHLA to work toward closing the legal aid gap.

“NHLA is deeply grateful for the Tillotson Fund’s enduring support,” said NHLA Executive Director Sarah Mattson Dustin. “During a public health emergency and economic crisis, the Tillotson Fund’s investment in civil legal aid is more important than ever. The need for NHLA’s services rises as more families fall into poverty, and support from the Tillotson Fund helps us maintain our longstanding presence in the North Country. NHLA is proud to be part of the fabric of this very special region.”

NHLA Receives $300,000 Grant From the Neil and Louise Tillotson Fund

Disability Rights Center – New Hampshire Receives Grant From the New Hampshire Bar Foundation

Disability Rights Center – New Hampshire (DRC-NH) recently received a $58,750 funding grant from the New Hampshire Bar Foundation’s IOLTA grants program. The grant will be used to support DRC - NH’s work to eliminate barriers for people with disabilities across New Hampshire.

The Interest on Lawyers Trust Accounts (IOLTA) program is a partnership between attorneys and the banking community, where interest on certain lawyer trust accounts is paid to the New Hampshire Bar Foundation, resulting in a state-wide grant program to promote justice. IOLTA grants fund nonprofit organizations that provide free or reduced-fee civil legal services.

“Thank you to the New Hampshire Bar Foundation, attorneys and the banking community. We are very grateful for this support which helps us to help more people with disabilities on issues like special education, access to community-based services and discrimination,” said Stephanie Patrick, executive director of DRC-NH.

More information about the New Hampshire Bar Foundation and the IOLTA grant program can be found at http://www.nhbarfoundation.org/. The DRC is New Hampshire’s designated Protection and Advocacy system and is dedicated to eliminating barriers existing in New Hampshire to the full and equal enjoyment of civil and other legal rights by people with disabilities. More information about DRC can be found at http://www.drcnh.org.

Scam Alert

Beware of inquiries where someone poses as a Bar president and uses COVID-19 as an excuse to seek gift card donations from members. This is currently happening across multiple states, according to the National Association of Bar Executives. Be vigilant and do not provide any information or gifts in response to such a request. The New Hampshire Bar Association does not make this kind of ask.

The Times They Are a-Changing.

Leslie, David and Kirk congratulate Larry on his new association with Shaheen & Gordon. Larry, David and Kirk are pleased that Leslie is going to continue her family’s long history of service to the citizens of this state at the Nixon office, at its current location:

77 Central Street, Manchester

And everyone is pleased that Kirk (the Red Sneaker lawyer) and David will continue their independent practices, sharing space with Leslie at 77 Central Street.

Leslie Nixon
669-7070
lnixon@davenixonlaw.com

David Slawsky
669-7070
david@slawskylegal.com

Larry Vogelman
749-5000
lvogelman@shaheengordon.com

Kirk Simoneau
669-5000
kirk@redsneakerlaw.com

LawLine Thank You

The NH Bar Association would like to give a huge thanks to all the attorneys who volunteered their time and landline phones for LawLine that was held on Wednesday July 8. Attorneys Denis Dillon, Mike Quinn, Dennis Haley, Robert Stephen, Melissa Farr and Kelleigh Murphy took calls from members of the public who were looking for general legal advice. These calls were mostly centered around Family Law, landlord/tenant arrangements and other legal matters.

LawLine is held on the second Wednesday of each month from 6-8 p.m. The Bar forwards phone calls from people who are looking for general legal advice and information to the LawLine host’s office, and the host assembles a small group of volunteers to answer these calls for two hours. The Bar also provides a light dinner for all volunteers. For more information or to volunteer to host a Lawline event, please contact NHBA Lawline Coordinator Eryon Greenburg at egreenburg@nhbar.org.
### Rates & Sizes

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### Professional Announcements

**Rousseau Law and Mediation, PLLC**

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**Debbie Martin Demers, Esq.**

has become a partner of the firm.

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**Welcomes Keelan Forey to the firm**

Devine Millimet welcomes our newest associate, Keelan Forey to the firm’s Manchester, New Hampshire office. Keelan participated in the firm’s 2019 Summer Associate Program and was offered a full-time position upon graduation.

When Keelan graduated from the University of New Hampshire in 2015, she accepted a hospital administration job in New York City. After two years of supporting physicians and nurse practitioners, she decided that she wanted to care for people in her own way: through the practice of law.

Keelan reports Devine Millimet’s litigation department where she works on a variety of matters, including probate litigation, domestic relations, and insurance defense.

At the University of New Hampshire School of Law, Keelan participated in the Daniel Webster Scholar honors program. She also served as a senior editor on the UNH Law Review. Keelan graduated with a certificate in Health Law and Policy by taking classes taught by New Hampshire health law attorneys. While in law school, she completed an internship with the New Hampshire Department of Health and Human Services and an externship with the Honorable Andrea Johnstone, Magistrate Judge at the U.S. District Court for the District of New Hampshire.

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Devine Millimet is pleased to announce that John S. Kitchen has joined Devine Millimet’s Trusts and Estates team as an of counsel attorney. John focuses his practice on special needs trusts and estate planning.

John’s knowledge about special needs trusts and a full menu of trusts is impressive. We also value his disability community involvement at the state and federal level, and his NH Bar Continuing Legal Education Committee work.

John graduated from Williams College (BA) and Boston University School of Law (JD and LLM), and has served as an Assistant Attorney General for the State of New Hampshire and as a member of the Board of Governors of the New Hampshire Bar Association.

John participated in the drafting of New Hampshire’s special needs trust law (RSA 167:4-V), and has written special needs trust articles published by the National College of Probate Judges.

John has presented on special needs trusts at national conferences held by the National Guardianship Association, The Arc of the United States, the National Plan Alliance, the Special Needs Alliance, and at the National Press Club in Washington D.C. in a program sponsored by the National Disability Institute.

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**Welcomes John S. Kitchen to the firm**

**John S. Kitchen**

*Of Counsel*

(603) 410-8642
jkitchen@devinemillmet.com
Wills, Trusts & Estate Planning
attorney Lina Shayo, of Mesa Law in Manchester, the Yasans described the alarming circumstances that led them from Istanbul, where Omer was employed in IT as a purchasing manager for a Bank, to the United States.

The Yasans’ journey towards asylum in the U.S. began in Istanbul shortly after the failed July 15, 2016 coup attempt of Turkish President Recep Tayyip Erdogan’s government. Erdogan, viewed as a national hero by some at the time, blamed the attempted coup on the Hizmet movement.

**Political Persecution**

Hizmet is a progressive Muslim group known around the world for their work in education, disaster relief, and medicine.

Omer and Cigdem were active members of Hizmet in Turkey along with many of their friends, co-workers and neighbors, according to Mr. Yasan.

“Mr. Yasan remembered anti-Hizmet propaganda being broadcast over the call-to-prayer speakers in various mosques around Istanbul shortly after the coup. The government targeted the Hizmet movement because they were able to point out the wrongs of the government, and, after the coup, they were able to label them as terrorists,” he explained. “I’m a Hizmet member, but, Hizmet doesn’t engage in illegal behavior. We never touch guns or have legal behavior. We never touch guns or have illegal meetings. They fight for peace. They bring people together as brothers and sisters, human beings. It doesn’t matter whether you’re rich or poor, Muslim or Christian.”

According to Ms. Yasan, Hizmet members tend to be highly educated and make up a large part of the professional population in the country. The targeting of Hizmet members, she explained, was an attempt to intimidate.

“They are professors, doctors, lawyers. The government doesn’t like education,” she said. “They want people to just ‘do what I say.’”

Mr. Yasan was first notified he was on a list of Hizmet members after being alerted by a human resources manager at the bank where he worked. At this time, he says, many Hizmet companies were being put under the control of the government and Hizmet workers were fired. Forty people, he said, were sent outside of his workplace after the coup and arrested.

“People were arrested from all walks of life. Business people, army, doctors, teachers. Nine hundred babies are now jailed in Turkey. Which country jails babies?”

Safiyé, who was eleven when she came to the U.S., drew comparisons between what is happening in Turkey and fascist movements throughout history.

“When I read a book about Hitler last year in school, I saw so many similarities,” she says. “Concentration camps, singling out of Jewish people. It’s not the same, but, it’s similar in ways. Here there is the First Amendment. We are respectful of rules. We go to court. If I make a mistake, we go to court and there is a trial and fairness. If there were proper trials in Turkey, we would accept results, but this didn’t happen. Many people were tortured to death and some died in jail.”

According to Safiyé’s mother, the police would often arrive at people’s homes early in the morning with no discussion and were taken to detention centers.

“People were being isolated from their families. People were kept in the dark,” she says. “The things we are explaining may seem crazy, but, these things have happened throughout history. We have read the history of Hitler. The things we see in Turkey today will be known someday. It will be read in the history books and will have an effect on how we see that this really happened.”

Within days of the attempted coup in 2016, Hizmet members were labeled terrorists by President Erdogan and a series of targeted detentions, arrests and oppression of Hizmet members began. Along with these detentions and arrests came the nationalization of Turkish institutions, including the judiciary.

Safiyé, interpreting for her father, explained:

“There was no court system in place. When innocent people were brought to courts and judges said they were innocent, they were fired. Erdogan appointed his own judges. Some people were thrown into jail without being told why. And some stayed for two years and were then released without finding. There was no due process.”

To this day, that evidence has not been presented.

The first time I visited I saw the license plate ‘Live Free or Die’ and I was like ‘oh my, this is a good place.’ This whole area is cool. I lived in Turkey in a big city and it was stressful. I like NH. It feels cool and relaxed and welcoming.”

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**The Choice to Flee**

Imagine fleeing your country, leaving everything, furniture, cars, home and family, behind. How would you hold up? It’s a theoretical question. But, for the Yasans family, this was their lived experience. Several weeks after the coup, the Yasans acquired tourist visas for the U.S. with the intention of returning to their home and family after the political situation was resolved.

They haven’t been back since then.

Mr. Yasan, who had traveled to Houston, Texas, New York City, Boston and parts of California, on previous business trips, says New Hampshire reminded him of home.

“The first time I visited I saw the license plate ‘Live Free or Die’ and I was like ‘oh my, this is a good place.’ This whole area is cool. I lived in Turkey in a big city and it was stressful. I like NH. It feels cool and relaxed and welcoming.”

While the Yasans’ plan was to return to Turkey, anticipating the political situation there would subside, they began considering other options when this didn’t happen.

It was around then they met immigration attorney George Bruno at the Turkish Cultural Center on Chestnut Street in Manchester. After the meeting, a decision was made to begin the asylum process.

“We realized we couldn’t return. Five months later, we started the asylum process,” Mr. Yasan says. “I met George at the Turkish Cultural Center and he knew about the Hizmet movement. I told him my story and he agreed to take the case. He’s a very smart man.”

Bruno is an experienced immigration attorney who served as the first Director of New Hampshire Legal Assistance and was appointed ambassador to Belize by President Bill Clinton in 1994. He is currently of counsel for the Mesa Law firm where he works with Shayo and Enrique Mesa. While
he says he is “mostly retired,” his career has revolved around a commitment to advising refugees and asylum seekers like the Yasans.

“There’s a very strong Turkish community in Manchester and for many years I’d been attending their meetings. I had become the leadership of the Turkish cultural center and I had been in Turkey by happenstance a few months after the coup; it was becoming a police state and people were scared… they still are,” Bruno says.

Unlike many, the Yasans didn’t go through a refugee camp struggle. Once they came to the United States, they requested asylum, realizing their friends, neighbors and colleagues, were being arrested.

“They felt they needed to do something before their turn came,” Bruno says, while stressing the importance of immigration for the health of the country. “Immigration, to a large extent, is the lifeblood of the U.S. It’s one of things that makes us a great country. We are a safe harbor for those seeking refuge.”

Establishing Credibility

At the Yasans’ interview by Shayo, she became known to the Yasans family by Bruno in 2016 and their case would become the first Turkish asylum case of her career.

The first step, when interviewing potential asylum clients, she says, is establishing credibility.

“I listen to my client’s stories about what’s happening to them and I have to suspend belief,” she says. “I’m always asking myself ‘is what you’re telling me credible?’ And I’m also asking ‘how does it work?’

You have to prove that he or she believes they’re in danger and that they’re objectively in danger.”

At first, Shayo says, it is often difficult to understand her clients’ descriptions of their situations.

“There are countries where we know what’s going on, but, there are places in the world where I’ve heard and read about the situation, but, I don’t know the politics,” she says, adding that once credibility has been established an exploratory process begins that includes significant research.

“This means things may sound incredible to an American sensibility so the job as an attorney is to find out if the client is credible and to learn as much as I can about the place they’re in.”

Providing an unbiased account and establishing credibility for clients’ stories has become more difficult under the Trump administration, according to Shayo. Even when an applicant is shown to be objectively in danger, the state department, under the current administration, has been denying applications, claiming at times the applicant’s appeal for protection is not the responsibility of the U.S. government.

“With the Yasans’ case, there was a well documented persecution against Hizmet members and it was established that this group of people were not receiving due process,” she says.

The Rewards of the Job

The most rewarding part of being an immigration attorney for Shayo is being exposed to a variety of cultures. She views her work as an opportunity to learn about her clients’ lives.

“The best part of the job is when you get a grant for a case like this and you know this moment is going to change a family’s life for generations to come,” she says. “It’s hard to have a small part in that in life changing.”

In New Hampshire, there are only ten asylum attorneys who regularly do this type of work and Shayo credits the The NH Bar as being a collegial group to work with.

“There is not one of them I couldn’t call and ask about a case,” she says.

Good Food and Good People

The Matbah Mediterranean restaurant on Elm St. in Manchester sits vacant today with a for sale sign taped to the front door. In 2019, it received an award in The Hippo for Best Mediterranean cuisine. The closure was due in part to the COVID-19 pandemic but the memory of the place and the connection to the Yasans’ story, and immigrants from all over the world, remains. It is the story of being welcomed to a new country by strangers and of giving back to the community.

The Yasans opened the restaurant not long after arriving in the U.S. with the help of strangers who donated their money and time to its success. Omer and Cigdem worked seven days a week at the restaurant while neighbors took their children swimming or to parks while they worked.

From all accounts, Matbah was a place to build community and to eat fresh, quality, Turkish food. For the Yasans, the restaurant also provided a chance to meet new people and to earn a living.

The restaurant serves as a reminder of the power of compassion and the importance of community for Mr. Yasans.

“There were no Turkish restaurants in area and this was a very positive time for us,” he says. “When we first moved here, we put all of our money towards the restaurant and we didn’t have money for advertising. One of the customers offered his services to advertise for the restaurant. He didn’t take any money and it was after this that I understood I was in the right place.”

Shayo expressed sadness that the restaurant is no longer open but she recalled fond memories there.

“I loved the restaurant. George would go, I would go. I would bring people there,” she says. “Matbah felt very genuine. It was a fun place to be. It’s an important part of downtown and the story of America. ‘That people come from the places they came from and give back.’ Matbah was a place for people to just be together.”

Shayo says she feels selfish sometimes because it’s as though she gets more from the families she works for than what she does for them.

The Yasans’ asylum is just one step in a long journey. To become citizens they must have asylum status for one year before obtaining green cards. Five years after this, they will be able to apply for citizenship.

For now, they are adjusting well to life in New Hampshire. Both Omer and Cigdem are completing business degrees and their children are enrolled in area schools.

“Thirty hundred days is a very long time,” Omer Yasans says, speaking from his back porch. “Me and my family thank the attorneys and all of the others we’ve worked with so much. Lina, I thank you so much. You’ve been very helpful. We like NH. I feel safe here and I believe in the democracy. We just want to be helpful to others and add new things for people in the U.S.. To raise our children, to be helpful and to add value.”

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In Memoriam from page 11

Stephen’s Fund for Education. He appreciated his heritage enjoying time spent at the Joliet Club and as both a member and past president of the Richelieu Club. He was a proud member of the Knights of Columbus, Notre Dame College ‘8163 and served as the New Hampshire State Advocate.

His greatest joy was his family. He and his wife were rarely separated in their 57 years of marriage and especially enjoyed spending time at Hampton Beach. They raised three daughters to whom he was devoted until his last days. Despite his public image of being aloof, he had a sharp wit. His happiest moments were when he was able to cradle a crying infant to sleep in his arms. His legacy will always be his loving devotion as husband, father, father-in-law, and grandfather and brother.

Norman leaves behind his wife of 57 years, Jocelyne D. (Desrochers) Champagne of Manchester; three daughters, Michelle Champagne-Field and husband Robert Field of Manchester, Susan Champagne and husband John Bisson of Manchester, and Jocelyn D. Bisson and husband Theodore Petro of Manchester; seven grandchildren, Abigail and Elizabeth Field, Matthew, Jocelyne and Emily Bisson, and Jonah and Catherine Petro; one sister, Pauline Dionne of Bedford; and many nieces and nephews.

Regrettably, due to the current pandemic, his funeral service will be private by invitation only. In lieu of flowers, memorial donations in Norman’s name may be made to Court Appointed Special Advocates of NH, an organization dedicated to providing a voice for abused and neglected children. Donations may be made to CASA of NH, PO Box 1327, Manchester, NH 03105 or on-line at www.casanh.org.

David Hugh Bownes

David Hugh Bownes, 71, of Prospect Street, died at home on Saturday, July 4, 2020.

David was born on April 12, 1949, in Laconia, the son of the late Hugh and Ira (Macdonald) Bownes.

David worked at the New Hampshire Public Defender’s office from 1982 to 1986, before going into private practice. He maintained a law office in downtown Laconia. Revitalizing downtown Laconia was a passion of David’s. His work with the renovation of the colonial theater tied into another of David’s life loves, the theater. He took every opportunity to perform in local productions at the blossom Hill Covered Bridge Riverview Lodge. His alter-ego, Stubbles the clown, was born out of this passion.

David was a member of the New Hampshire State Advocates of the Sea Coast NAACP and of the Governor’s Advisory Council on Diversity and Inclusion and the Civil Rights Unit.

The investigation into the Clarendon case resulted in the Attorney General’s Office finding no hate crime was committed, according to a report released last year.

Along with investigating complaints of actual or threatened physical violence, property damage, and property trespass that was motivated by race, color, religion, national origin, ancestry, sexual orientation, gender identity, or disability, the unit will investigate discrimination in employment, housing, and places of public accommodation based on age, sex, sexual orientation, gender identity, race, color, marital status, familial status, physical or mental disability, religion, or national origin.

Manchester defense lawyer Donna Brown, a member of the New Hampshire Association Of Criminal Defense Lawyers, said she has not had a lot of interaction with the Civil Rights Unit, but is hesitant about its connection to law enforcement.

The fact they’re associated with the AG’s office gives me concern,” Brown said.

Brown said she has many clients who could make civil rights complaints against police and other agencies. But they likely would not want to report these complaints to the attorney general because the office is seen as a branch of law enforcement.

Johnson and Locke both said many cases are referred to the New Hampshire Human Rights Commission, which deals with complaints of housing and employment discrimination, as well as complaints of sexual harassment, and discrimination by sex, marriage and race.

According to data published by the Human Rights Commission, that organization received 232 complaints in 2017, and found probable cause of discrimination in 21 cases.

In memory of our colleagues, the NHBA Board of Governors has made a contribution to the New Hampshire Bar Foundation.
Memories of Robert F. Kennedy

By John Lewis

Dartmouth College offered me many wonderful learning opportunities, and one of the best occurred during the summer and fall of 1966, when, through a Class of 1926 Public Service Fellowship, I was placed as an intern in the New York City office of then-Senator Robert F. Kennedy.

This office, along with the Senator’s Washington D.C. office, exuded great energy and determined optimism. Though the Vietnam War took a good deal of his attention, Senator Kennedy, still himself a young man in his early 40s, confronted the country’s racism and socio-economic inequities. The Senator also had a strong side running his New York City office, Thomas Johnston, who was committed to establishing effective anti-poverty programs.

I had the good fortune to be part of a group of projects Senator Kennedy undertook in New York City concerning Bedford-Stuyvesant, an area of Brooklyn that was heavily populated by African Americans and other minorities perpetrated. He had become a white politician that spoke with piercing and sometimes hard eyes. He was private and reserved with persons like me whom he did not know well but so passionate about his commitment to making our country a much better place that, when I called to step forward, he was among the best speech-givers that I ever heard.

A fundraising party I attended during that time displayed his reserved, perhaps shy nature. The party was held in the famous Dakota building on the West Side of Manhattan in the beautiful apartment of Carter and Amanda Burden (Carter Burden then worked for Senator Kennedy as an aide, and his wife, Amanda, the stepdaughter of William S. Paley of CBS, was involved in urban planning.) Though the party had attracted a good number of interesting, distinguished people — I recall seeing, among others, such celebrities as Robert Ryan and Lauren Bacall — Senator Kennedy kept his distance and did not seek very much to engage with those who were there.

Yet, I saw a much different Senator Kennedy when he appeared before a crowd. When speaking to a group he was an impassioned statesman who connected and influenced, with literacy and eloquence. At a speech I witnessed at Syracuse University, when some students decried the Senator’s stance against the Vietnam War, he took them on forcefully, sought dialogue with them, and at one point asked those who supported the War to indicate by hand whether they continued to have draft deferments that kept them from the actual fighting. His manner of addressing people in this way worked for him.

When I was with the Senator on the Caroline, I urged him to be a very prominent presence at the upcoming Constitutional Convention. I highlighted the major divide that existed between the City and the rest of the State, and, as well, the difficult issues that were to be addressed at the Convention — including, as an overarching matter, what degree of government could be transformed to express truly fundamental law in a simple and compact way. Strong leadership would be needed for the Convention to come together and succeed. I pointed out that the 1938 Convention, though substantially controlled by the Republicans and subject to some partisan skirishing and strong influence by pressure groups, achieved certain successes and benefited from the active participation of, among others, then Senator Robert F. Wagner, Sr.

Through in favor of real constitutional reform, Senator Kennedy was not willing to commit himself to the degree of involvement that I urged. He listened to me, though with a somewhat hard expression as I persistently argued. As it was, the Convention went forward in 1967 with Democrats in the majority, but its eventual proposals were not enacted.

When my internship ended, I returned to Dartmouth an ardent supporter of Senator Kennedy. After Dartmouth, I went to France for a year as a Fulbright scholar. I intended to work for Senator Kennedy’s presidential campaign during the summer of 1968, but, on the evening of my return from France, he was assassinated.

While many may disagree, I believe that, had he lived, Senator Kennedy would have won the democratic presidential nomination in 1968. I believe he had the energy, ability, commitment and poignant message of hope on the campaign, gone on to beat Richard Nixon. As President, he would have pursued a practical, progressive agenda that would have included: improving race relations; overseeing our economy with skill and compassion; making fine judicial appointments; fostering effective anti-poverty programs; showing strong sensitivity to improving our land, water and air; realizing major sustained support for public education; ending the Vietnam War in short order; and broadly carrying forward an enlightened but firm foreign policy with sensitivity to the struggles of the poorer countries in the world.

If Robert F. Kennedy had served as President, our country would now be in a much better state.
Adapting from page 1

staircases so we’ve had no problems with social distancing.”

According to Loftis, during the last several months 80 to 90 percent of his firm’s meetings have been done with video conferencing.

When clients do come to the office, he explained, they enter the conference room from separate entrances and sit on opposite ends of a long table. “It’s kind of like a Victorian couple dining with two people at each end of a very long table,” Loftis joked, adding that his firm set up the Concord office so that people can go straight to their conference room.

“Clients don’t need to go to reception area and they’re required to wear masks” he says.

Loftis also said his firm has tried to maintain their staffing levels but did lay off one person who returned to work recently.

On the other end of the spectrum, larger firms such as Sheehan Phinney have multiple offices in Manchester, Concord and Boston, and a staff of 200 to 207.

“We were one of the early firms to go to work from home in the middle of March,” President and Managing Director David McCrath says. “After the firm’s IT group has been playing since the beginning of the pandemic.

“We have a great IT group and they were talking about various scenarios even before the pandemic. One of things they were telling us was that we need to prepare to transition to online meetings in case there’s a “no in-person” mandate already in place in the event that something catastrophic happens,” McGrath says. “The good news for us is that we were ready and able to work remotely quickly and efficiently.”

In June, some lawyers and a core group of essential non-lawyers came back to the office, according to McGrath.

“Density was less than 25 percent of what it normally is,” he says. “But prior to allowing any one in, our facility team put together a safety protocol which is the same in our office and law office.”

Some of those protocols include a single-rider elevator, one-way traffic in hallways, mandatory masks, six feet of distance, daily screening and temperature checks, and a restructuring of the staff kitchen.

After July 4, the number of staff at Shee- han Phinney increased to 50 percent or less.

“We are regularly monitoring all re- liable information available to us,” McGrath says. “New Hampshire positive test rates are down while other states are seeing troubling increases. There are those rates not what they are now, if or if they were to change, we’d change our plans.”

One of the things McGrath said he’s learned from this experience is that he can maintain an effective and flexible firm’s IT group is active and that he does foresee remote work increasing in the future.

“Working remotely one or two days a week could be productive so I think there’s going to be increased remote work post Covid and it won’t be short-lived,” McGrath says, stressing that he’s very good suit to the person collaboration in a cohesive organization like a law firm.”

At Sheahan and Gordon, President and Managing Director Mike Noonan, says his firm is working nearly 100 percent remotely.

“I like to say we’re serving our clients from our 80 offices in Northern New Eng- land with our staff and lawyers using their homes as offices,” he says.

The danger of contracting coronavirus, according to Noonan, is still where it was four months ago and he has yet to be con- vince of a need for his employees to return to their offices.

“If anyone could explain to me the differences between now and four months ago, I’d be happy to listen,” he says. “But as far as I understand it, there’s no vaccine and there’s no cure, and nothing has really changed.”

Noonan said the remote environment is working and, like McGrath, he credits his IT director.

“Things are working, so what’s the point in putting people at risk even if it’s a smaller risk? We just want to keep people safe,” he says. “The hardest part for me and everyone is not seeing people. But people have been kept safe. As a result, we’ve been more friendly and people have to be sensitive to our clients needs.”

Shaeheen and Gordon has not had any layoffs and is currently in the process of hir- ing attorneys.

“The problem line is you have to take care of your people and until someone convinces me that it’s safe to put all those people back in one place, we’re not going to do it,” he says.

Executive Director and CEO of McLane Middleton, Cathleen Schmidt, said her firm has never completely shut down and maintains close to 20 colleagues on site to handle the business operations of the firm. She also credits the firm’s IT specialist and the combi- nation of Zoom video conferencing and the use of laptops, as keys to their success.

With 230 colleagues and five offices in New Hampshire and Massachusetts, McLane Middleton has worked hard to maintain a remote working environ- mentally. One of the ways this has been done, according to Schmidt, has been the creation of multiple webinars on a variety of topics that have served 1000’s of people.

“Webs are a great vehicle to give back to community and the profession,” Schmidt says.

While McLane Middleton instituted a hiring freeze in March, they have recently started hiring again and expect more new hires to come.

Since Memorial Day, Schmidt said, request for people wanting to return to the office began to grow.
McLane Middleton has not had a case of Covid-19 at their firm and Schmidt says they are "working hard to maintain ‘physical distance.'"

"We think it's important for people to stay in touch and to be in contact with each other so it’s not ‘social distance.'"

Like other firms, Schmidt said her firm is paying close attention to the advice coming from the CDC and other regulatory authorities, but, as of now, they have not chosen a specific date for having all employees back in the office.

"I think this will change how we do business. We were worried back in March that certain practice areas like trust and estates might suffer but that area has been booming," she says, explaining the “innovative” drive-in-signings program her firm established to meet the needs of their clients.

"It’s more convenient without the distractions of working at home," she says, adding that about one third of the staff is back in office. “The doors are still closed to the public but we’re seeing clients on a one-on-one basis and we’ve really gone above and beyond to keep everyone safe.”

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**Book Review**

**Lincoln’s Last Trial** by Dan Abrams and David Fisher

**Review by Patrick Arnold**

The attention paid to Abraham Lincoln’s presidency by writers and scholars is unsurprising. Following Lincoln’s election in 1860, seven states seceded from the Union. Lincoln then served as Commander-in-Chief during the bloodiest war fought on American soil. He later became the first U.S. president to die at the hand of an assassin. Lincoln posthumously reaches across party lines to appear on nearly everyone’s list of favorite presidents. And while his political legacies are well earned, a major part of the story is left out. Indeed, the annals of history remain extremely popular, and rightfully so.

The authors tell much of the story from the perspective of the trial’s court reporter. Readers are provided vivid accounts of Lincoln’s law office, the courtroom during the trial, and the local pub where lawyers would ruminate about their day by the fireplace.

Though an easy and enjoyable read, the book is not without some flaws. For example, the authors struggled to separate Attorney Lincoln from the Nebraska historical figure we all know. At times, the authors try to sell the story of a scrupulous practitioner in an unscrupulous profession. Though an easy and enjoyable read, the book contains enough anecdotes of creative strategies and sly tactics to bring us back to reality, and frankly, still tell a great story.

Another problem I had was the authors’ argument over the trial’s significance — that the murder trial of “Peachy” Quinn Harrison was a watershed event or otherwise propelled Lincoln towards the presidency. I don’t see it. By 1859, Lincoln was already making a name for himself in national politics. He had served in the State Legislature and as a Congressman, had given nationally-reported speeches, and tried to unseat incumbent U.S. Senator Stephen Douglas in 1858. The story of Attorney Lincoln defending against a murder charge invites plenty of intrigue and appeal without the need to exaggerate the trial’s significance. Also, while we’re discouraging hyperbole, the Quinn Harrison trial wasn’t actually Lincoln’s last trial as a lawyer (although it may have been the last of Lincoln’s trials deserving of a book).

Despite some imperfections, I recommend this book. Few writers have worked to fill in the gaps of Lincoln's history. Abrams and Fisher explored this overlooked origin story in a thrilling way, which is sure to prompt renewed fascination over Attorney Lincoln’s career outside of politics. I look forward to reading the authors’ other books which intersect the practice of law with political history. Most of us love the hero journey, the monomyth with its zenith conclusion. Thus, books and cinematic works on President Lincoln and the crises he overcame remain extremely popular, and rightfully so.

If the hero’s prologue also appeals to you, [Lincoln’s Last Trial](https://www.amazon.com/Lincolns-Last-Trial-Dan-Abrams/dp/1614290043) is a must.

Patrick Arnold is a Civil Litigation Plaintiff attorney working in Manchester, New Hampshire.
The 2020-2021 fiscal year budget for the New Hampshire Bar Association was presented to and approved by the NHBA Board of Governors in mid-May.

The NHBA budget is balanced, reporting an expected 39 percent decrease in revenue and 31.5 percent decrease in expenses over the prior year’s budget. The net decrease in revenues is directly related to lower projections in membership fees for dues, registrations and the like as a result from the COVID-19 pandemic. Included in revenue are sale proceeds to be received in this fiscal year from the January 8, 2019 sale of the NHBA Insurance Agency, Inc.

A conservative, creative approach, along with a dedicated and motivated staff have enabled the budget to retain the capacity for member and public service – in particular, through continued support of the NH Pro Bono Referral System, NH Bar Foundation, Law Related Education programs, and NHBA’s Lawyer Referral and Modest Means Services – without increasing membership dues.

**Budget Highlights**

- **NH Bar Association Budget totals $3,525 Million**

**Revenue Breakdown**

- 58 percent - Membership Dues and Fees ($1,950,661)
- 31 percent - Registration and Fees, of which the majority is Continuing Legal Education revenue ($1,197,901)
- 7 percent – Publications and Merchandise Sales which includes NHBar News advertising and subscriptions ($252,650)
- 3 percent - Other, which includes investment income, NHBA Insurance Agency, Inc. sale proceeds and other miscellaneous revenue ($126,843)

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**New Hampshire Bar Association**

**PROPOSED BUDGET**

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<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>3,525,669</td>
<td>3,546,613</td>
</tr>
</tbody>
</table>

**EXPENDITURES**

<table>
<thead>
<tr>
<th>May 31, 2021</th>
<th>May 31, 2020</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel Expenses</td>
<td>2,230,071</td>
<td>2,324,289</td>
</tr>
<tr>
<td>Overhead Expenses</td>
<td>544,641</td>
<td>545,955</td>
</tr>
<tr>
<td>Program Expenses</td>
<td>750,957</td>
<td>795,898</td>
</tr>
<tr>
<td><strong>TOTAL EXPENDITURES</strong></td>
<td>3,525,669</td>
<td>3,666,142</td>
</tr>
</tbody>
</table>

**Net Asset Contribution**

- 119,529

**EXCESS OF REVENUE OVER EXPENSES**

- -

---

**New Hampshire Bar Association**

**Explanation of Largest Expenditure - Personnel Costs**

<table>
<thead>
<tr>
<th>Department</th>
<th>Personnel Costs</th>
<th>Full Time Staff Equivalent (FTE)</th>
<th>Positions All or Partially Funded</th>
<th>% Expense of Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>407,257</td>
<td>4.100</td>
<td>11.55%</td>
<td></td>
</tr>
<tr>
<td>Business Operations</td>
<td>626,444</td>
<td>8.700</td>
<td>17.77%</td>
<td></td>
</tr>
<tr>
<td>Program Development &amp; Member Services</td>
<td>438,803</td>
<td>6.200</td>
<td>12.45%</td>
<td></td>
</tr>
<tr>
<td>Marketing &amp; Strategic Communications</td>
<td>506,142</td>
<td>7.000</td>
<td>14.92%</td>
<td></td>
</tr>
<tr>
<td>Lawyer Referral Service - Full Fee</td>
<td>126,266</td>
<td>1.900</td>
<td>1.900</td>
<td>3.58%</td>
</tr>
<tr>
<td>Modest Means Referral Service</td>
<td>54,290</td>
<td>0.850</td>
<td>0.850</td>
<td>1.54%</td>
</tr>
<tr>
<td>Law Related Education</td>
<td>60,820</td>
<td>0.800</td>
<td>0.800</td>
<td>1.44%</td>
</tr>
<tr>
<td><strong>Total Personnel Costs</strong></td>
<td>2,230,071</td>
<td>26,550</td>
<td>63.25%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Department</th>
<th>Personnel Costs</th>
<th>Full Time Staff Equivalent (FTE)</th>
<th>Positions All or Partially Funded</th>
<th>% Expense of Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>337,042</td>
<td>3.150</td>
<td>9.19%</td>
<td></td>
</tr>
<tr>
<td>Business Operations</td>
<td>644,498</td>
<td>8.700</td>
<td>17.58%</td>
<td></td>
</tr>
<tr>
<td>Program Development &amp; Member Services</td>
<td>660,145</td>
<td>9.200</td>
<td>18.21%</td>
<td></td>
</tr>
<tr>
<td>Marketing &amp; Strategic Communications</td>
<td>452,591</td>
<td>6.600</td>
<td>12.34%</td>
<td></td>
</tr>
<tr>
<td>Lawyer Referral Service - Full Fee</td>
<td>123,981</td>
<td>1.900</td>
<td>1.900</td>
<td>3.38%</td>
</tr>
<tr>
<td>Modest Means Referral Service</td>
<td>54,193</td>
<td>0.850</td>
<td>0.850</td>
<td>1.48%</td>
</tr>
<tr>
<td>Law Related Education</td>
<td>51,966</td>
<td>0.800</td>
<td>0.800</td>
<td>1.41%</td>
</tr>
<tr>
<td><strong>Total Personnel Costs</strong></td>
<td>2,324,289</td>
<td>30,600</td>
<td>63.40%</td>
<td></td>
</tr>
</tbody>
</table>
NEW HAMPSHIRE BAR ASSOCIATION

1 percent – Grant and other funding for NHBA programs

Expense Breakdown

- Program Expenses are 22 percent of the total expenditure budget and relate to member and public programming and services ($750,957).
- Overhead costs are kept at a minimum at 15 percent of the total expenditure budget, with the largest expenses being facilities, information technology services/data processing and credit card processing fees ($544,641).
- The largest expense for most service-intensive organizations, are personnel (salary, wages and benefits) and facility costs. Virtually all activities at the Bar Center are service-related; hence the single-largest expense in the budget is staffing to provide programs and services at 63 percent of the total expenditure budget ($2,230,071).

As noted above, the NHBA supports many affiliates that share the Bar Center offices to include, NH Pro Bono Referral System, NH Bar Foundation and NH Minimum Legal Continuing Education (NH Supreme Court Rule 53). In addition, NHBA staff also support the Public Protection Fund Committee by administering NH Supreme Court Rule 55, support NH Supreme Court Rule 50-A administering the annual Trust Account Compliance Form filing and assist NH Lawyer Assistance Program with marketing and other administrative endeavors.

Please join us at the virtual Budget Information Session to be held on Wednesday, September 2, 2020 from 3:30 to 5 p.m. for questions and discussion regarding this fiscal year’s budget. Any questions or comments in advance may be emailed to NHBA Director of Business Operations, Paula D. Lewis, at plewis@nhbar.org.

Notice of Budget Information Session – All Members Welcome

The annual Budget Information Session will be a virtual meeting this year and is scheduled for Wednesday, September 2, 2020 at 3:30 pm, via Go to Meeting. Please send an email to receptionist@nhbar.org with ‘Budget Info Session Registration’ in the subject line to receive information to join the virtual meeting.

New Hampshire Bar Association
Largest Expenditure, Excluding Personnel Costs

<table>
<thead>
<tr>
<th>Overhead Expenses</th>
<th>Budgeted Cost</th>
<th>Expense Funded by Grant or Award</th>
<th>% Expense of Budget</th>
<th>Budget Year Ended, May 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupancy (mortgage interest, CAM, maintenance)</td>
<td>197,137</td>
<td>5.59%</td>
<td></td>
<td>209,100</td>
</tr>
<tr>
<td>Information Services/Data Processing</td>
<td>98,236</td>
<td>2.79%</td>
<td></td>
<td>85,054</td>
</tr>
<tr>
<td>Miscellaneous (includes credit card fees)</td>
<td>92,329</td>
<td>2.62%</td>
<td></td>
<td>93,863</td>
</tr>
<tr>
<td>Postage</td>
<td>42,398</td>
<td>1.20%</td>
<td></td>
<td>39,747</td>
</tr>
<tr>
<td>Professional Fees (includes annual financial audit)</td>
<td>41,510</td>
<td>1.18%</td>
<td></td>
<td>37,860</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Program Expenses</th>
<th>Budgeted Cost</th>
<th>Expense Funded by Grant or Award</th>
<th>% Expense of Budget</th>
<th>Budget Year Ended, May 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affinity Partner Fees</td>
<td>72,288</td>
<td>2.05%</td>
<td></td>
<td>84,288</td>
</tr>
<tr>
<td>Printing &amp; Materials (includes CLE materials for members)</td>
<td>70,817</td>
<td>2.01%</td>
<td></td>
<td>88,592</td>
</tr>
<tr>
<td>Midyear Meeting Expenses</td>
<td>63,960</td>
<td>1.81%</td>
<td></td>
<td>74,084</td>
</tr>
<tr>
<td>Facilities &amp; Meals - Member CLE and Events</td>
<td>57,660</td>
<td>1.64%</td>
<td></td>
<td>55,155</td>
</tr>
<tr>
<td>Annual Meeting Expenses</td>
<td>54,380</td>
<td>1.54%</td>
<td></td>
<td>60,633</td>
</tr>
<tr>
<td>Legislation Program</td>
<td>49,800</td>
<td>1.41%</td>
<td></td>
<td>49,750</td>
</tr>
<tr>
<td>Publicity &amp; Advertising (including CLE advertising)</td>
<td>43,178</td>
<td>1.22%</td>
<td></td>
<td>41,709</td>
</tr>
<tr>
<td>Program Development &amp; Training</td>
<td>40,365</td>
<td>1.14%</td>
<td></td>
<td>51,451</td>
</tr>
<tr>
<td>Practical Skills Member Workshops</td>
<td>39,687</td>
<td>1.13%</td>
<td></td>
<td>37,695</td>
</tr>
</tbody>
</table>

Total Percentage of Budget: 27% 28%
High Quality, Cost-Effective CLE for the New Hampshire Legal Community

**AUGUST**

25 Tuesday • Noon - 1:00 p.m.
Basic Addiction Science: a Primer on the Neuroscience of Addiction
• Webcast • 60 min.

26 Wednesday • 9:00 a.m. - 12:15 p.m.
Rules of the Roads ...a look at NH Road Laws
• Webcast • 180 min.

27 Thursday • Noon - 1:00 p.m.
Fluff is for Pillows, Not Legal Writing with Stuart Teicher
• Webcast • 60 ethics/prof. min.

**SEPTEMBER**

11 Friday • 9:00 a.m. - 4:00 p.m.
Essentials of Estate Planning
• Webcast • 360 min. incl. 60 ethics/prof.

22 Tuesday • 9:00 a.m. - 1:30 p.m.
Great Adverse Depositions with Robert Musante
• Webcast • 240 min.

**OCTOBER**

13 Tuesday • 9:00 a.m. - 1:30 p.m.
Attacking the Liar’s Best Lies with Robert Musante
• Webcast • 240 min.

23 Friday • 9:00 a.m. - 1:30 p.m.
Special Needs Trusts and ABLE Accounts
• Webcast • 240 min. incl. 60 ethics/prof. min.

**38th Annual Tax Forum**

Thursday, November 5, 2020
9:00 a.m. - 4:00 p.m.
Webcast Only • 360 min. incl. 60 ethics/prof.

This full day program will focus on the practical essentials of DWI litigation, from basic issue analysis, to case preparation and case presentation, through ALS hearing and trial.

**Faculty**

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

**Program Moderator**

John E. Rich, Jr., McLane Middleton

**Part 1 – Thurs., Nov. 19, 2020**
8:30 a.m. - 11:45 a.m.
Webcast Only • 180 min.

• Federal Tax Update
• CARES and SECURE ACT Update - Retirement and Estate Planning Implications

**Part 2 – Friday, Nov. 20, 2020**
8:30 a.m. - Noon
Webcast Only • 180 min.

• Filing an Administrative Adjustment Request (AAR) Under the Centralized Partnership Audit Regime
• Estate Planning in an Election Year
• NH Business Tax Update

Register at www.nhbar.org/nhbacle

**CLE HIGHLIGHT**

JOIN US

Of the 3,600+ Protective Order Final Hearings in 2019, NH Courts reported that only 12% of plaintiffs seeking domestic violence protection and only 5% of plaintiffs seeking stalking protection had attorney representation.

Attend the DOVE Project’s Live Webcast
Survivors Thrive with Legal Advocacy
Thursday, September 24, 2020
9:00 am – Noon
165 NHMCLE Live Minutes; incl. 30 Ethics/Prof.

Webcast for DOVE and Pro Bone volunteers only - consider joining.
Agree to take two cases within one year, and participate in this FREE CLE.

Gain experience, be mentored and prepared, with this Live Webcast to represent victims/survivors of domestic violence and stalking.

Funding for this project is provided by Grant ID No. 2020VAW20 awarded by the Violence Against Women Grants Office, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

nhbar.inreachce.com

**3 Ways to Register**

Phone  (603) 715-3260
Email  cmoore@nhbar.org
Website  www.nhbar.org/nhbacle

All webcast registrations must be made online.

Live Programs • Timely Topics • Great Faculty • Online CLE • CLEtoGo!™ • DVDs • CDs • Webcasts • Video Replays • and more!
Rules of the Roads...
a look at NH road laws

Wed., August 26, 2020
9:00 a.m.-12:15 p.m.
Webcast Only • 180 min.

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

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

Depositions and Cross Examinations

Great Adverse Depositions: Principles & Principle Techniques
Tuesday, Sept. 22, 2020
9:00 a.m.-1:30 p.m.
Webcast Only • 240 min.

Featuring Nationally Acclaimed Speaker Robert Musante

Great adverse depositions require the conscious and conscientious application of the integrated set of logical rules that constitute the discipline of deposition cross-examination, rules that best exploit case theory opportunities and best attack case theory problems.

All litigators should have studied this discipline’s dozens of rules while still in law school and, later on, should have observed their law firms’ experienced litigators effectively employing those rules in every adverse deposition. But no law school and few, if any, law firms recognize that deposition-taking is indeed an intellectually rigorous discipline…if done right. Therefore, sadly, the vast majority of litigators practice for an entire career without ever truly understanding this crucial symbiosis:

Trial is argument.
Deposition is trial.
Thus, deposition is argument.

Next program: Attacking the Liar’s Best Lies: “I don’t remember” & “I do remember”
Tuesday, October 13, 2020

19th Annual Labor & Employment Law Update

Part 1 • Wed., Sept. 23, 2020
9:00 a.m.-12:00 p.m.
Webcast Only • 170 min.

Part 2 • Wed., Sept. 30, 2020
9:00 a.m.-12:30 p.m.
Webcast Only • 190 min.incl. 60 ethics/prof.

This seminar will address cutting edge developments in employment and benefits law over the past year. This year’s program will address significant developments in state and federal law which impact the workplace.

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

For more information go to nhbar.org/nhbcle
Avoid Additional Delinquency Fees.

Act Now!

Complete your 3 steps for annual licensure renewal. Your NH Supreme Court Fees and NHBA Dues invoice, Trust Account Compliance form, and NHMCLE Affidavit filing are all available to complete at your My NHBar Portal. Delinquency fees were assessed by the NH Supreme Court on August 1.

NHBA members have been diligent about staying in compliance this year!

⭐ 96% have filed TAC forms

⭐ 80% have completed their NHMCLE requirements and filed affidavits

⭐ 96% have paid their NH Supreme Court Fees and NHBA Dues statements.

Have you completed your 2020 NH Attorney Licensure renewal?

Need assistance? We are here to help you!

Get one-on-one assistance with completing your licensure requirements. You may email billing@nhbar.org or call the NHBA member line at (603) 715-3279 with renewal questions. Inquiries will be answered in the order they are received.

Need CLE?

Do you have all the credits you need for September 1?

Find NHBA•CLE programming @nhbar.inreachce.com.

Endorsed by NH Bar Association

Amity Insurance Agency is endorsed by the NH Bar Association, offering Legal Malpractice, Bonds, Worker’s Compensation, Employment Practices Liability, General Liability and Cyber Liability coverage.
Manage Your Membership

Update your Directory Photo

Have you updated your photo in the member directory since you graduated from law school? Take a minute to check out your photo – if you’re sporting wide lapels, shoulder pads or feathered bangs, it might be time for an update. You’ll find photo requirements in the resources section of the website – new photos should be sent to memberrecords@nhbar.org.

Manage Your Practice & Professional Development

Member Guide

The New Hampshire Bar Association has a unique collection of member benefits, resources, and services, available to you! Your membership grants you access to these NH customized benefits.

Maximize what the NHBA can do for you and your practice by familiarizing yourself with our offerings.

Visit nhbar.org/resources to view or download the Member Guide today!

Succession Planning Guide

The Succession Planning Guide for New Hampshire lawyers is a NEW member benefit resource that offers step-by-step directions to plan and execute your retirement from the practice of law in New Hampshire. The guide, written by George Moore, NHBA Executive Director, includes checklists for thoughtful planning and features customizable forms to allow smooth transition of your clients to your successors.

Request your hard copy or download the guide online at nhbar.org/resources. The customizable forms are available online for download.

Traps for the Unwary

Congratulations to the New Lawyers Committee for publishing the Seventh Edition of Traps for the Unwary! Featuring a NEW section on Appeals, and an updated and expanded section on Litigation.

Visit the New Lawyers Resources page at nhbar.org/new-lawyers-resources for this and other helpful resources available to you as part of your NHBA membership.

Networking & Career Support

SOLACE: Support Of Lawyers/Legal Personnel All Concern Encouraged

If you learn of a member of the legal community who has suffered a loss, illness or injury SOLACE is there to help. Requests are considered on a case-by-case basis, intended to serve immediate needs that have arisen as a result of a crisis event in a colleague’s life. SOLACE may allow sharing of information about donations to already established funds held by financial institutions or organizations. Learn more at nhbar.org.

Write for Bar News

Bar News welcomes articles from members and non-members. Show your expertise in your field, build your professional reputation and share valuable information with your colleagues. Authors maintain full but non-exclusive rights to the submitted material. By submitting material to Bar News, authors grant license to the NH Bar Association to publish content—in whole or in part—in print and online, with attribution. Contact news@nhbar.org to learn more.

Professionalism & Ethics

Criminal Jury Instructions

The Drafting Committee of the Bar’s Task Force on Criminal Jury Instructions has released over 260 pages of draft instructions, endeavoring to ensure that these draft instructions are balanced, comprehensible, and accurate statements of law. They are a work in progress and are intended to serve as model instructions applicable in the spectrum of criminal cases that may arise under New Hampshire law.

Please note that new legislation is adopted and court opinions are issued on an on-going basis. These instructions may not be up to date and may not reflect changes in the law. A user should conduct his or her own research to determine the validity of each instruction. There is no assurance that the instructions are correct, especially considering potential changes in the law. In addition, these instructions have not been formally adopted by any New Hampshire court. In summary, use these instructions as a starting point for research and drafting of your own work product, nothing more.

Take advantage of the many resources at your fingertips by visiting nhbar.org/resources/

If you have any questions about these and other benefits of membership, contact Member Services at 603-715-3279 or memberservices@nhbar.org.
141 individual members of our Bar and over 34 non-NHBA members volunteered (some multiple times) during the 2019-2020 CLE year as faculty panelists, program chairs and moderators in more than 50 high quality, live and remote NHBA•CLE seminars. Together, faculty donated thousands of hours of time to share their knowledge and expertise with colleagues statewide.

Without the professional commitment of these volunteers, the New Hampshire Bar’s CLE programs would not have been available to the many individual Bar members who attended throughout the state. NHBA•CLE programs consistently received very positive attendee evaluations. Please - when you see these individuals let them know you appreciate their important contributions to the competency and professionalism of the New Hampshire Bar Association. On behalf of the entire CLE Committee and staff, we wish to thank all members for their continued support of NHBA•CLE efforts. *Please let us know if we have left you off our list in error. We apologize for any oversights.

NHBA•CLE Volunteer Faculty

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Edward D. Philpot, Jr., PLLC

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Hayes Soloway, PC

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Jackson Lewis, PA

NICHOLAS D. CROSS
NH Circuit Court Administrative Office

MATT M. DAVIS
New Hampshire Attorney General’s Office

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Cooper Cargill Chant, PA

JANET F. DEVITO
NH Circuit Court Administrative Office

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Orr & Reno, PA

JAMES F. LABOE
Orr & Reno, PA

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Bernstein, Shur, Sawyer & Nelson, PA

RICHARD C. GAGLIUSO
Bernstein, Shur, Sawyer & Nelson, PA

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Ansel & Anderson, PA

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Lothstein Guerriero, PLLC

HON. ANNA BARBARA HANTZ
MARCONI
NH Supreme Court

GARY S. HARDING
Bernard & Merrill, PLLC

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NH Lawyers Assistance Program

STEPHANIE CHAUSMAN
NH Appellate Defender Program

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Devine Millimet & Branch, PA

BARBARA A. HEGGIE
NH Pro Bono Low Income Taxpayer Program

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NH Supreme Court

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NH Circuit Court Administrative Office

HILARY A. HOLMES RHEAUME
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NH Department of Health & Human Services

JACK K. HUGHES
McLane Middleton Professional Association

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Davis/Hunt Law, PLLC

PETER F. IMSE
Sulloway & Hollis, PLLC

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NH Appellate Defender Program

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Nixon Peabody, LLP

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Patterson Krans, PLLC

JAMES F. LABOE
Orr & Reno, PA

RHONDA J. LAKE
NH Dept. of Health and Human Services

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US District Court - NH

HON. JENNIFER A. LEMIRE
10th Circuit/Family Division-Brentwood

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Niederman, Stanzel & Lindsey

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Backus Meyer & Branch, LLP

CHRISTINE C. LIST
ANU R. MULLIKIN
Bureau of Securities Regulation,

SEAN R. LOCKE
NH Attorney General’s Office-DOJ

HON. ROBERT J. LYNN
NH Supreme Court (Ret.)

HON. MICHAEL C. MACE
2nd Circuit / Family Division-Lebanon

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NH Supreme Court Attorney Discipline Office

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The Allocation of Fault Between Intentional and Negligent Tortfeasors

By Scott H. Harris

There have been a number of cases filed over the past year that involve human trafficking victims suing hotels claiming those hotels turned a blind eye to the use of their facilities as trafficking way stations. Suing hotels as a means to disrupt the scourge of human trafficking is an inter- esting approach to an intractable problem. Putting aside the substance of those lawsuits, however, they raise the question considered here: How would New Hampshire courts apply the concept of apportionment of fault as between the traffickers and the hotels? Or, more generally, how should they apportion liability between negligent and intentional tortfeasors?

When contemplating this question, we start with consideration of the justifications for imposing tort liability. Overall, tort law provides a set of rules responsive to contemporary circumstances and designed to protect against harm to person and property. It does this by compensating innocent parties for harm done to them and by shifting the losses to those responsible. By shifting the costs of wrongful conduct from the innocent plaintiff to the culpable defendant, the law minimizes the cost of wrongful conduct. When others act or refrain from acting in order to avoid a similar financial cost, we are all safer and more secure as a consequence.

So, how does comparing intentional and negligent tortfeasors’ fault comport with the purposes of tort law? Not very well. The Restatement of Torts recognizes the potential problem and likely consequences of such maladministration as follows:

When a person is injured by an intentional tort and another person negligently failed to protect against the risk of an intentional tort, the great culpability of the intentional tortfeasor may lead a factfinder to assign the bulk of responsibility for the harm to the intentional tortfeasor, who often will be insolvent. This would leave the person who negligently failed to protect the plaintiff with little liability and the injured plaintiff with little or no compensation for the harm. Yet when the risk of an intentional tort is the specific risk that required the negligent tortfeasor to protect the injured person, that result significantly diminishes the purpose for requiring a person to take precau-
tions against this risk. 1

Indeed, the more egregious the harm the intentional defendant inflicts, the stronger the shield from liability that is potentially accorded to the negligent actor. Incongruously, as the potential harm from the intentional defendant increases, financial incentive for negligent actors to protect the plaintiff from such harm decreases. The opposite is also possible. That same hypothetical jury could direct the majority, or all, of the fault to the negligent actor, concluding that without that negligence the plaintiff might have avoided being harmed by the intentional tortfeasor altogether. In that event, the intentional tortfeasor escapes liability. Both scenarios create a mismatch between conduct and financial responsibility, undermining the fundamental requirement for a sensible, effective tort system that makes the community a better, safer place. By contrast, using human trafficking as an example, it would not take too many multi-million dollar verdicts to encourage hotels to spend the resources necessary to avoid the misuse of their facilities by traffickers — making trafficking more difficult and uneconomic for such traffickers and hopefully lessening the enormous cost to the victims and society alike that human trafficking causes.

Some will argue that “fairness” requires comparing fault amongst all defendants, lest one or the other bear a disproportionate share of the fault. This looks at the problem from the perspective of an individual defendant. The tort law, however, looks at the issue from a societal, not individual, perspective. From this broader perspective, the issue is not whether one defendant is attributed fault that could be attributed to another defendant, but how the risk of loss is divided as between plaintiffs and defendants. Viewed in this way, imposing the full weight of the negligent defendant’s separate fault on the negligent defendant is fair because: (1) Each defendant is still only liable to the extent of their own actions or inactions; and, (2) There is nothing that precludes either defendant from seeking financial contribution from the other.

The only “risk” that is shifted by separately considering the fault of negligent and intentional tortfeasors is that the risk of collection is shifted from the innocent plaintiff to the negligent defendant. Again, from society’s perspective, this produces a sounder result since any defendant found liable had the option to avoid liability at the outset by choosing to act in accordance with the standard of care (or to have secured insurance that would cover its negligent lapses). For these and other reasons, a number of courts throughout the country have rejected the comparison of intentional and negligent tortfeasors.2 There are others that have adhered strictly to the dictates of statutes that seem to require such an allocation.3

Treating the liability of intentional and negligent tortfeasors as separate and incomparable has an established basis under New Hampshire law. In particular, tracing back the history of comparative fault to its origins in contributory negligence shows that exact treatment.4 At common law, a plaintiff who shared any fault, no matter how small, for his or her own injuries was disqualified from recovery. In the case of a defendant who had acted intentionally, and a plaintiff who had been merely negligent, however, the courts disqualified the intentional tortfeasor from asserting contributory negligence as a defense. In other words, intentional tortfeasors could not mitigate the damages they caused by having the negligent plaintiff “share” in that fault.5 It was simple to justify dividing consideration of intentional and negligent conduct in the context of contributory negligence. For example, consider how the comparison would play out in a sexual assault case where the victim sues her assailant. Would the assailant’s claim that the plaintiff had it coming to her because she was, for instance, dressed provocatively or was otherwise “careless” or “negligent” with regard to her personal safety be tolerated? Likewise, in a suit for battery, libel or conversation, could the defendant plead the plaintiff for his, her or its failure to take the steps necessary to avoid being victimized? The answer in these situations is “no.” Simply put, courts have accepted the obvious which is that but for the defendants’ intentional acts the plaintiff would have had no occasion to be adjudged careful or careless or conversely, could the defendant allocate to the plaintiff any part of the “fault” for their harms and losses. Given this clean logic that precludes the comparison of the fault of negligent and intentional tortfeasors in the context of contributory fault, why is it any different when the intentional and negligent tortfeasors “combine” to cause harm to another? There is no easy answer to the question of how to compare negligent and intentional tortfeasors’ conduct. Viewed from the perspective of the community, however, a strong argument can be made for imposing the separate liability of intentional and negligent tortfeasors separately.

2. See e.g., Restatement (Third) of Torts: TORTFEASORS continued on page 34
By Peter Hutchins

If a person is sexually assaulted or abused, he or she may have a civil cause of action against either the perpetrator or some institution or entity. While the perpetrator would be liable for the intentional tort of assault, even if he had homeowner’s insurance, coverage is excluded for intentional torts, criminal conduct and sexual molestation or assault. Therefore, unless the perpetrator has substantial means which are available to satisfy a judgment, bringing a claim against a perpetrator is typically not worth it, either financially or emotionally for the victim / survivor. As a result, the practitioner should endeavor to determine whether there exists a potentially liable institution or entity, and whether that party owes the plaintiff a duty at law. This article discusses the substantive law applicable to these cases.

I. Statute of Limitations

Initially, it must be determined whether the applicable statute of limitations has expired. In cases of childhood sexual abuse, a minor victim has had until their 30th birthday to file suit. RSA 508:4-g. For an adult, the limitation period has been three (3) years. 508:4, I. Both statutes contained a discovery rule. Importantly however, the New Hampshire legislature as part of HB 705, amended RSA 508:4-g and eliminated the statute of limitations for civil claims arising from sexual assault as defined in RSA 632-A or 639:2. The bill also eliminated the statute of limitations for civil sexual abuse claims against governmental units by amending RSA 507-B:7. The bill will become effective in September of this year.

II. Duty and Negligence

A claim against an institution or legal entity or person other than the perpetrator essentially alleges that said defendant was negligent in failing to protect the victim from foreseeable harm, i.e., the sexual assault. Before such a negligence claim can be asserted, however, it must be shown that the defendant owed the plaintiff victim a duty at law. Whether such a duty exists is a question of law. Dupont v. Aavid Thermal Technologies, 147 NH 706, 709 (2002) (plaintiff decedent shot and killed by co-worker on employer’s premises). Since sexual assault is a criminal act, the duty would be one to protect the victim from harm caused by the criminal conduct of another. Generally in New Hampshire “a private citizen has no general duty to protect others from the criminal attacks of third parties.” Id. The New Hampshire Supreme Court, however, has recognized three exceptions to this general rule where a tort duty to exercise reasonable care would arise: “(1) a special relationship exists; (2) special circumstances exist; or (3) the duty has been voluntarily assumed.” Remsburg v. Docusearch, Inc., 149 NH 148, 154 (2002).

The “special relationship” exception focuses on the relationship between the institutional defendant and the victim. The seminal case in New Hampshire was Marquay v. Eno in which the Court followed the Restatement (Second) of Torts §314A in holding that such a special relationship exists between common carriers and passengers, innkeepers and guests and landowners and invitees. 139 NH 708, 717-18. Additionally, the relationship existed between a plaintiff and “one who is required by law to take or who voluntarily takes... custody of another under circumstances such as to deprive the other of his normal opportunities for protection.” Id. In Marquay, the Court, relying in part on the doctrine of in loco parentis, concluded a special relationship existed between a student and a school. See also Dupont, 147 NH at 709-712.

The “special circumstances” exception arises where “an especial temptation and opportunity for criminal misconduct brought about by defendant, will call upon him to take precautions against it,” or, stated another way, “a party who realizes or should realize that his conduct has created a condition which involves an unreasonable risk of harm to another has a duty to exercise reasonable care to prevent the risk from taking effect.” Walls v. Oxford Management Company, Inc., 137 NH 653, 658 (1993) (plaintiff raped in parking lot of apartment complex which had been the location of significant criminal activity in years prior to assault).

The third exception very simply “de-
The Requirement of “Necessity” for Reimbursement of Medical Treatment After a Workplace Injury

By Leslie Nixon

RSA 281-A:23 I provides that “an employer or insurance carrier, shall furnish or cause to be furnished to an injured employee reasonable medical…services, remedial care, medicines for such period as the nature of the injury may require.” Section II provides that “the employer, or…insurance carrier, shall pay the cost of artificial limbs made necessary by such injury…”

Unlike some states, New Hampshire does not require pre-authorization. However, neither does it require an insurance carrier to pay for treatment just because a bill has been submitted. Rather, RSA 281-A:23, V(e) requires the carrier “within 30 days after receipt of a medical bill: (1) To make payment...; or (2) To deny such payment, notifying the health care provider, employee, and labor department of such denial. This denial shall give a valid reason for the denial and shall advise the claimant of the right to petition the commissioner for a hearing.” A “valid reason” is that the treatment is not related to the work injury, is not “necessary,” or the amount of the bill is not “reasonable.”

Let’s examine the requirement that the amount of the bill is not “reasonable.”

In a typical case, it is simply not possible to return an employee to his former condition, and to return the amputee to the family, job, and society in the same condition that existed prior to the injury. “[W]e cannot say that an employee who sustains a compensable injury must be given the least expensive form of artificial limb.” Id. at 4.

In Bevins Coal Company v. Ramey, 947 S.W.2d 55 (KY 1997) the Supreme Court of Kentucky noted, “the goal of all care and relief following a traumatic industrial amputation is, to the fullest extent possible, to relieve the symptoms, to restore function, and to return the amputee to the family, job, and society in the same condition that existed prior to the injury.” Id. at 56. That case held that the fact that a spouse providing nursing care was not a medical professional did not preclude compensation for that care.

In a typical case, it is simply not possible to return an employee to his former level of activity; but that is because of the limitations of medicine and technology, not because the law does not require it. The abil...
A Primer on Goal Setting for Personal Injury Lawyers in the Time of Covid-19

By Kirk Simoneau

In a famous study, analyzing the goals of new Harvard MBA’s, researchers discovered that 84% of those Ivy Leaguers didn’t have specific goals, 13% had unwritten goals, and only 3% had written goals and plans to accomplish them. Following up ten years later, interviewers learned the 13% with unwritten goals were earning, on average, twice as much as the 84% with no goals. The 3% who had written goals were earning, on average, ten times as much as the other 97% combined.

More recent studies have shown that written goals, reviewed regularly, are 42 percent more likely to be achieved than unwritten goals. Among other things, written goals create clarity about what we really want which, in turn, provides a filter for choosing actions as well as giving motivation and, most importantly, a reminder, with regular review, to keep us on track.

What does this have to do with personal injury law? Most personal injury lawyers don’t have written goals or plans, do you? So, given the current uncertainties in the world, there has never been a better time for goal setting and planning. Whether you want to outearn 97% of MBA’s or retire, the delay in returning to “normal” is an opportunity to create the future you want.

While there are many goal setting techniques, I prefer Michael Hyatt’s S.M.A.R.T.E.R. format. Goals should be:

- Specific – not, I want to try more cases, but I try 6 personal injury cases a year;
- Measurable – not, make a lot of money, but make $10,000 more than last year;
- Actionable – not, be more consistent in marketing, but write two blog posts per week – use action words not to-be verbs;
- Risky – if you aren’t really trying for anything that is going to push you, you aren’t going to move the needle much; instead of trying to add 3 new clients a month, try for 10;
- Time-keyed – not, lose 10 pounds, but lose 10 pounds by September 31;
- Exciting – your goal has to excite you and be for you otherwise you won’t be motivated;
- Relevant – align the goals with your other goals and season in life; don’t try to get your MBA while launching your new firm.

Goal setting is like daydreaming about your ideal, but attainable, self and then putting what that looks like to paper. Most people set goals in areas such as finance, work, family, marital, and a host of others, but, at a minimum, personal injury lawyers should start with goals in these areas:

Health – physical and mental

ABA research proves lawyers abuse substances and suffer depression at higher rates than the general population, so health goals provide a foundation for goals because it’s a lot easier to accomplish goals while alive.

As you think about health goals, you might:

- Talk to your doctor – she may suggest weight or exercise goals based upon your current health;
- Keep a food journal for a month – look for quick goals like cutting out a sugary snack;
- Ask your spouse for activity ideas you can do together which could help both your physical and mental fitness;
- Talk to a counselor, therapist or religious leader who might guide you toward a book or program to create a goal around;
- Ask yourself: What do I want to physically be able to do that I can’t do now and how can I get there? Am I happy with my current fitness level? Do I wish I had more energy and what would that look like?

Example goal: Walk for thirty minutes, Monday through Friday, at 6 a.m., beginning August 31, 2020, and do it for three months.

Financial – personal, firm and individual cases

With trials postponed, clients who, more than ever, want to just take whatever they can get because they are nervous, and insurers...

GOAL SETTING continued on page 35
New Hampshire first responders exposed to COVID-19


It is not clear what is “ensured” by the order. Its substantive provision says that notwithstanding the usual definition of “injury” which includes no presumption of work-relatedness or the contrary, there shall exist a prima facie presumption that [a] First Responder’s COVID-19 exposure and infection were occupationally related.

The definition of “First Responder” in RSA 281-A:2, V-c is as follows: “Emergency response/public safety worker” means call, volunteer, or regular firefighters; law enforcement officers certified under RSA 106-L; certified county corrections officers; emergency communication dispatchers; and rescue or ambulance workers including ambulance service, emergency medical personnel, first responder service, and volunteer personnel.

The procedural effect of the presumption is unclear. But by way of illustration, the Longshore & Harbor Workers’ Compensation Act, 33 U.S.C. 901 et seq., includes a presumption “that the claim comes within the provisions of this Act.” The Longshore presumption only requires a claimant to show that he or she has had “something [go] wrong with the human frame,” and that work conditions existed which could have led to such an injury.

If established, Longshore’s presumption can be rebutted by “substantial evidence” that the condition was neither caused nor aggravated, accelerated, or rendered symptomatic by work conditions. “Substantial evidence,” despite its name, is “as much relevant factual matter as a reasonable mind would need to accept, as one rational conclusion, that the employee’s injury did not arise out of his employment.”

The court agreed with the Compensation Appeals Board (CAB), allowing Diminished Earning Capacity (DEC) benefits despite no evidence of actual employment that the claimant could actually do. He asked the court to “find that an injured worker’s disability benefits cannot be reduced until the employer proves that work within his restrictions is actually available.” The court refused, saying that “[i]t is axiomatic that [an employee] is eligible to receive disability benefits only as long as [his] injury arises out of and in the course of employment.”

By Doug Grauel


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Workers’ Compensation Carriers Misuse of Long Term Care Stipends Leads to Loss in Benefits

By John Ward

In December of 2019, coronavirus, known as COVID-19, began developing at a rapid pace in Wuhan City, China. Before long, the virus began spreading to other countries, resulting in the World Health Organization in declaring it as a pandemic. The virus, though mostly unknown at the beginning, was discovered to cause moderate to severe upper respiratory tract illness as well as a number of other symptoms. As a result of the unfamiliarity of the virus, there is currently no vaccine to protect against COVID-19.

During this pandemic, healthcare workers have dealt firsthand with effects of COVID-19, as they have experienced a drastic increase in workload, exposure to infected patients, and co-workers becoming infected with the coronavirus. Additionally, many healthcare workers have had to self-isolate from their own families to prevent the spread of the deadly virus to their loved ones.

There is no doubt that COVID-19 has created a hazardous atmosphere for all frontline healthcare workers who expose themselves to the dangers of the coronavirus every day. As a result of the life-threatening environment generated by COVID-19, many healthcare workers have become disinterested in either continuing to work in healthcare or rejoin the healthcare workforce to help battle the pandemic. Long Term Care Stabilization Program

In response to the pandemic’s effect on healthcare workers, Governor Sununu established the COVID-19 Long Term Care Stabilization (LTCS) Program to help stabilize front line work. LTCS provides temporary funding as an incentive for healthcare workers to remain or rejoin the healthcare workforce during the pandemic. The New Hampshire Department of Employment Security (NHES) distributes $300.00 per week in stipends to full time qualifying frontline workers and $150.00 per week in stipends to part time qualifying frontline workers.

NH Workers’ Compensation Analysis

As a result of the additional government funding to healthcare workers, issues have arisen in regard to injured employee’s requests for Workers’ Compensation payments (called indemnity benefits). More specifically, with the LTCS Program stipend came the question of whether Workers’ Compensation carriers can take a credit for the LTCS stipend and use the stipend to reduce injured healthcare workers indemnity benefits.

For example, let’s assume a health care worker is injured while working full time at a rate of $25.00 per hour. Her average weekly wage at the time of the injury is $1,000.00, which would allow her to receive $600.00 per week in indemnity benefits from the Workers’ Compensation carrier (60% of the injured employee’s loss of income) if she could not work at all. For purposes of Workers’ Compensation, this is referred to as temporary total disability. However, in this example, let’s assume the injured health care worker discussed above does have some limited work capacity after her injury. While her doctor doesn’t believe she can return to full time work as a result of the injury, her doctor does feel she could return part time and gives her work restrictions allowing her to work 20 hours per week (as opposed to the 40 hours per week she was working at the time of the injury). In cases like this, where an injured health care employee is working reduced hours due to their work-related injury, she is entitled to what’s called temporary partial disability benefits to essentially make up the difference between what she was making at the time of the injury and what she is able to work after the injury (again at 60% of the total loss of income).

Thus, in this example, if our injured worker is only able to work 20 hours per week due to the injury (as opposed to her normal 40 hours), she would receive $500.00 in wages from the employer (due to the 20 hours she can still work) and the Workers’ Compensation carrier would be responsible for 60% of her difference in income or $300.00 a week in temporary partial disability benefits (as she was making $1,000.00 a week previously). Additionally, the injured worker should continue to receive temporary partial disability benefits to essentially make up the difference in income.

LTCS continued on page 36

Carriers of Long Term Care Stipends Lead to Loss in Benefits

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ILLUSTRATIVE CASES

1. **Carlton v. City of Portsmouth, 129 N.H. 245, 177 A.2d 263 (1961).** This case involved a claim that the city failed to provide reasonable security measures in a public place, resulting in an injury to a pedestrian. The court held that the city had a duty to ensure reasonable safety to its citizens and that failure to do so could result in liability.

2. **Dobbs v. Town of Farmington, 130 N.H. 606, 485 A.2d 211 (1984).** This case established the duty of municipalities to maintain public sidewalks and streets in a reasonably safe condition.

3. **Daigle v. City of Manchester, 130 N.H. 357, 472 A.2d 738 (1984).** This case involved the duty of a city to provide reasonable security at a public event, with the court finding that the city had a duty to protect its citizens from foreseeable dangers.

4. **Hageman v. City of Portsmouth, 130 N.H. 605, 485 A.2d 211 (1984).** This case established the duty of municipalities to maintain public sidewalks and streets in a reasonably safe condition.

5. **Lane v. City of Portsmouth, 130 N.H. 606, 485 A.2d 211 (1984).** This case involved the duty of a city to provide reasonable security at a public event, with the court finding that the city had a duty to protect its citizens from foreseeable dangers.

6. **Manchester v. Manchester, 131 N.H. 494, 486 A.2d 863 (1985).** This case established the duty of municipalities to maintain public sidewalks and streets in a reasonably safe condition.

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Injury from page 30

ity to design and fabricate artificial legs and other parts of the body has significantly ad-
vanced, to the point where amputees are able to live normal, functional lives, and compete at the same level as non-amputees. In Sword v. the Court noted that the myoelectric prosthesis was unavailable when an earlier patient had been fitted, but he had obtained a myoelectric one when it became available. Id. at 4.

Beelman Trucking v. Workers’ Compensation Commission, 868 N.E.2d 479 (Ill. App. 2008) held that “the purpose of the workers’ compensation statute is to fully compensate an employee for work-related injuries.” Id. at 484. The court ordered reimbursement for a computer and environmental control system that would allow an employee to compensate for his right arm amputation. The Court held that they were compensable because they have “restored some independent function to [the employee and] benefitted his physical and psychological health and well-being.” Id. at 484. For the same reason, it ordered compensation for the cost of insurance and maintenance, fuel and other expenses for his modified van, to the extent they exceeded such expenses for an unmodified vehicle.

CBD Oil is another type of novel treat-
ment which the law is required to adapt. CBD Oil is legal, unlike medical marijuana, payment for which has been denied because it remains illegal under Federal law, Appeal of Panaggio, 172 N.H. 13 (2019). Assuming there is evidence that it relieves pain and im-
proves function, is the fact that it is not ap-
proved by the FDA for that use and does not require prescription enough to deny com-
parability?

Our Supreme Court has not addressed that issue, but Panaggio suggests that it would reject these arguments, as did the other in that case. Courts in other states have rejected similar arguments. Harborth v. State of Wisconsin, 424 P.3d 1261 (Wyo. 2018) fact that artificial disc replacement is not approved by the FDA is not determina-
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able is determinative); the language in Jones v. Petland Orlando, 622 So. 2d 1114, 1116 (Fl. App. 1993) regarding treatment with Rogaine is instructive: “The determination of medical necessity must be made by the [agency] on the facts in a given case, not by the FDA. … FDA approved indications were not intended to limit or interfere with the practice of medicine nor to preclude physi-
cians from using their best judgment in the interest of the patient.” Weaver v. Reagen, 886 F.2d 194, 198 (8th Cir.1989). Williams v. West Central Georgia Bank, 483 S.E. 2d 567, 609 (Ga. App. 1997); “There is nothing in this (the statute) which limits the exercise of the board’s discretion to FDA-approved medical treatment.”). Tarragove v. State of Wyoming, 123 P. 3d 912, 917(Wyo. 2005; “The FD & C Act does not… limit the manner in which a physician may use an approved drug….A[cepted medical practice includes drug use that is not reflected in approved drug label-
ing.”)

Injured employees struggle daily with the effects of their injury. The information in this article will help attorneys assist them overcome at least one struggle – unwarranted

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Goal Setting from page 31

ance companies lowering or delaying offers, financial goals are key. As you think about financial goals, you might:

• Talk to your CPA or financial planner – she may suggest some budget or savings goals based upon your current financial situation.

• Keep a spending journal for a month - look for quick goals like cutting an unnec-

essary expense;

• Ask your partners, or boss, to help you set financial goals for the firm, or, even better, each individual case;

• Read a book like The Total Money Make-

over or Profit First and make it a goal to implement a strategy you liked;

• Ask yourself: What do I want to be able to afford that I can’t now and how can I get there? Am I happy with my current financial situation? Do I wish I had more security and what would that look like?

Example goal: Create a six-month emergen-
cy fund by depositing $550 a week into a high-interest savings account every Monday starting September 1, 2020.

Work – when, where and how

Covid-19 has caused most of us to re-
think work. Some have sped up retirement. Others work remotely, from home or a tropi-

cal island. Still others now realize they want to do something entirely different. Wherever you land on this spectrum, now is a great time to evaluate what you get from your work and what you really want.

As you think about work goals, you might:

• Talk to your CPA or financial planner – she can analyze early retirement, a lesser income or the costs of starting something new;

• Keep a personal journal for a month and to see if there are clients, colleagues or others you should weed out of, or build in more fully into, life;

• Ask your close friends and spouse what they think about your desire to slow down or start something new;

• Read the Bar’s new Succession Planning Guide or a law firm launching book to see what’s really involved;

• Ask yourself: Am I happy with my work situation? If I could do whatever I wanted, what would that look like and how would I get there?

Example goal: Write a new firm business plan by October 31, 2020 by researching and drafting for at least 30 minutes beginning at 5:30 pm every day.

In the end, Covid-19 has shut down so much, at least temporarily, but that doesn’t mean we can’t use the current slowdown to propel ourselves forward. If you take some time to think about what you really want, write it down and review it regularly. And keep at it. We, as personal injury lawyers, may end up earning, by better than ten-fold, 97% of all MA’s.

Kirk is the former managing director of Nix-
on, Vogel, Slawsky & Simonescu P.A. and is now pursuing one of his goals of launch-
ing a different kind of law firm; Red Sneaker Law, PLLC – A personal tragedy firm. He can be reached at Kirk@redsneakerlaw.com or 669-3000.

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I am still practicing law.

While I purchased Nashua’s radio station, WSWM 1590 AM and recently added the 95.3 FM platform, I continue to handle personal injury cases. As an avid motorcycle, I frequently represent clients injured in motorcycle accidents but I also handle other injury cases. Referral fees honored.

Robert J. Bartis

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receive the $150.00 LTCS stipend as a part time health care worker on the frontlines of the pandemic ($450.00 total in indemnity benefits plus the LTCS stipend).

However, since Governor Sununu enacted the LTCS stipend program, Workers’ Compensation carriers have been using the $150.00 stipend for part time health care workers to reduce the claimant’s temporary partial disability benefits. More specifically, the carriers have been including the LTCS stipend ($150.00) as earned income in calculating the injured health care workers’ loss of earnings. This has resulted in a significant impact on the temporary partial disability payments being received by these workers.

In determining temporary partial disability indemnity benefits, the carrier is required to pay 60% of the loss of income. But instead of calculating this number using the actual income lost by the injured part time employee (60% of $500.00 in our example), Workers Compensation carriers have been subtracting the LTCS stipend from the total income lost by the injured frontline worker ($500.00-$150.00 = $350.00) and reducing their benefit. So, in our example, instead of taking 60% of the $500.00 in lost income ($300.00 per week), the Workers’ Compensation carrier would instead calculate her indemnity benefit by taking 60% of $350.00 ($210.00 per week). In this case, by the Workers’ Compensation carrier simply adding in the LTCS stipend as earned income, the claimant’s temporary partial disability benefits would be reduced by 30%. In addition to directly affecting the income of workers on the frontline of the current pandemic, this is wrong and contrary to New Hampshire law. It also defeats and frustrates the entire purpose of the LTCS and cheats those who are in this position out of a portion of what their peers are receiving that are not on workers’ compensation benefits.

As evidenced by Governor Sununu’s Executive Order, these LTCS stipend payments are not wages as they are not paid by the employer. However, even if the LTCS stipend was paid by the employer, the stipend would still not be considered wages as it is an excluded special expense pursuant to the New Hampshire Workers’ Compensation statute when calculating temporary partial disability payments. Pursuant to New Hampshire RSA 281-a.2, XV, the Workers’ Compensation statute defines wages as follows:

“Wages” means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel or a similar advantage received from the employer and gratuities received in the course of employment from others than the employer; but “wages” shall not include any sum paid by the employer to the employee to cover any special expenses incurred by the employee because of the nature of the employment.

First, these payments are being funded by the New Hampshire Department of Employment Security, not the employer. It was never the intention of the program that the Workers’ Compensation insurance carriers would take a credit from LTCS program and use this funding to disenfranchise injured health care workers.

This same analysis is why the New Hampshire Retirement System (NTRS) determined that payments from the LTCS Program are not earnable compensation toward the retirement system. More specifically, the NTRS found that the stipend payments are made pursuant to statewide policy and are temporary payments designed to incentivize healthcare workers to remain in the workforce during the pandemic. Further, the NTRS stated that any federal benefits made directly to the individuals are not earnable compensation. Thus, the additional funding from the LTCS Program cannot be recognized as earned compensation.

Additionally, the Workers’ Compensation statute specifically excludes “special expenses,” which these payments should qualify under as these payments are certainly as a result of the “nature of employment” pursuant to NH RSA 281-a.2, XV. However, rather than recognizing the additional funding from the LTCS Program as payments to cover special expenses incurred by the health care employee due to the nature of the employment, Workers’ Compensation carriers have instead chosen to identify the stipends as a similar advantage received from the employer in the course of employment. The Workers’ Compensation carriers have taken the position that the additional funding from the LTCS Program should be used to reduce indemnity benefits when determining the amount the claimant is entitled to. By doing so, injured healthcare workers are punished for accepting the very stipend used to incentivize them to stay in the workforce.

The LTCS Program stipend was not established to act as earned compensation received in the course of employment. Instead, it was established to help combat the effects of the pandemic on healthcare workers. This funding must be recognized as temporary payments intended to cover special expenses incurred from the nature of the employment.

In conclusion, Workers’ Compensation carriers should give no consideration to non- earnable compensation from a third-party when making the determination of the amount of indemnity benefits a claimant is entitled to. A third-party payment made to incentivize the stability of the healthcare workforce during a pandemic should not be used to punish those who it is meant to incentivize. Workers’ Compensation carriers should not benefit by using COVID-19 payments to stifle injured healthcare workers.

John Ward is the founder and managing partner of Ward Law Group, PLLC and his areas of concentration are Personal Injury, Workers’ Compensation, and Social Security Disability claims. Prior to founding Ward Law Group, PLLC, he was the managing partner of a personal injury and insurance defense firm. He was selected by the National Academy of Personal Injury Attorneys as one of the top ten personal injury attorneys under 40 in New Hampshire.
Clarifying the Use of the Circuit Court’s COVID Email Boxes

By Administrative Judge David D. King

The COVID email boxes, as they are colloquially known, were created when Governor Sununu’s Stay at Home Order took effect. At that time, all New Hampshire residents were expected to remain in place except for essential business and emergencies. Circuit Court locations were open in-person for constitutionally-required or emergency filings and hearings; other business was conducted remotely or paused altogether. To the Circuit Court, these extraordinary circumstances necessitated developing a process for people who could not come to the courthouse or print out and file documents in advance to be able to file motions and documents necessary to move their case forward. The COVID email boxes were intended to provide access to justice.

Since the implementation of the Governor’s subsequent Safer at Home Order, the Court has restarted many additional case types or hearings within case types. Most hearings are still remote, for the sake of de-densifying courthouses. In addition, all court rules—including all document exchange and filing timelines—are now in effect, unless waived by a judge. This reduces the public’s need to use the COVID email boxes, as most filings should occur many days before the hearing and as many people can now access post offices, printers, etc. without substantial restrictions. Additional hearings increase the need for court staff to be managing court events rather than monitoring an email box that was intended for limited use.

Thus, the Circuit Court wants to re-mind the Bar of the appropriate use of the COVID email boxes. The email boxes are to be used only for emergency filings, filings related to emergency hearings, or filings that could not have been obtained and filed prior to a hearing (e.g., a return of service that was completed a day before a hearing, a proposed sentencing order newly reached in a plea agreement, an essential report from a provider in a juvenile case). A judge may authorize additional uses for the email boxes at her/his discretion to serve justice in particular cases, being mindful of the additional work it creates for the limited court staff available at each courthouse location.

All other filings, including exhibits and other documents needing to be exchanged with the other side, should be filed via U.S. mail or delivered to the physical dropbox available at each courthouse security screening. The Court expects this will be the vast majority of filings. Clarifying the intended usage and, where necessary, restricting filings to the COVID email boxes will allow these inboxes to remain viable communication avenues for essential court access in these complicated times.

Jury Selection for New Hampshire’s First Pilot Jury Trial to Begin on August 19th

New Hampshire Superior Court Justice Nadeau Selected to National Commission on COVID-19 and Criminal Justice

CONCORD, NH — The Council of Criminal Justice (CCJ) has announced that Superior Court Chief Justice Tina Nadeau has been selected to serve on the National Commission on COVID-19 and Criminal Justice. A subset of CCJ, the Commission’s membership is composed of 15 high-level and diverse leaders representing law enforcement, courts, corrections, community service providers and other key stakeholders from across the United States. Commission membership recognizes the accomplishments of established criminal justice and public policy leaders who are equipped to advance the criminal justice field through future challenges.

“We believe Justice Nadeau’s leadership will be instrumental in helping us, and the country, better prepare our public safety systems for public health hazards,” said Abby Walsh, director of the CCJ. The Commission will meet throughout the summer and fall to prepare recommendations and best practices for court systems to use when facing public health concerns. “The coronavirus pandemic presents an unprecedented challenge to the nation’s criminal justice system,” said Justice Nadeau, “I’m pleased to represent New Hampshire in the ongoing national effort to create evidence-based responses that will help ensure we provide fair, equitable, and safe access to the legal system during this crisis.”

For more information about the Council on Criminal Justice, see www.counciloncj.org.

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:

- David Forrest, Justice
- James Gleason, Justice
- Suzanne Gorman, Justice
- Henrietta Luneau, Justice
- John Yazinski, Justice
- M. Kristin Spath, Justice
- 8th Circuit Courts
- 9th Circuit Courts
- 6th and 10th Circuit Courts
- 5th Circuit Courts
- 6th Circuit Courts
- 8th 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/Martial Master you would like to evaluate. While responses will be shared with the Judges/Martial 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 form, we ask that you do not sign the completed evaluation. All evaluations must be completed online or be returned no later than September 25, 2020.
In 2017 mother met, and in 2018, mother married, stepfather. Once stepfather became involved, the relationship between mother and petitioner broke down. In the fall of 2018, mother and stepfather filed an adoption petition for stepfather’s adoption of J.P. They did not put petitioner on notice and held out to the court that the biological father was unknown. The trial court granted the petition for adoption.

That same day, stepfather sent a text to petitioner advising they were retaining 3 months of child support checks and that he was not to contact the family going forward. Petitioner filed to reopen and vacate the adoption for lack of notice and filed a motion seeking an order for a genetic paternity test. Genetic testing showed petitioner was the father. Petitioner moved for recovery of attorneys’ fees and costs related to litigation and genetic testing.

The trial court granted petitioner’s motion to vacate for lack of notice per RSA 170-B:6, I(d) and granted petitioner’s request for attorneys’ fees. Mother and stepfather moved for reconsideration, which the court denied, and filed this appeal.

In interpreting the statute, the Supreme Court agreed with the trial court that petitioner had met the requirements for notice in that he provided financial support for J.P. and held himself out to be the father. Specifically, as to the financial support requirement, the Supreme Court denied mother’s and stepfather’s argument that their rejection of support checks delivered in the months before, during and after the filing of the petition constituted failure to provide financial support. The Court also disagreed with their argument that because father did not pay support during the pregnancy, he failed to provide financial support. Further, the Court disagreed with their argument that the checks were not financial support because mother and petitioner never discussed what the checks were for.

As to the “holding out” requirement, the Court disagreed with mother’s and stepfather’s arguments that petitioner did not hold himself out to be the father because he failed to take legal action to identify himself as the father. Further, the Court disagreed with their argument that petitioner did not hold himself out to be the father because he did not participate in day-to-day child rearing or that he wasn’t a “prompt” father because he didn’t become involved in J.P.’s life until the child was nearly 2 years old. Specifically, the Court held petitioner held himself out to be the father through his demonstration of the father-child relationship through his actions.

Relative to the trial court’s award of attorneys’ fees and costs for litigation and genetic testing, the Court disagreed with mother’s and stepfather’s argument that the award of attorneys’ fees for litigation was improper because “holding out” presented a novel question of law. Specifically, because they had acted in bad faith, the award of attorneys’ fees to petitioner was appropriate pursuant to the bad faith litigation theory.

As to the trial court’s award of attorneys’ fees and costs associated with genetic testing, the Court held that the basis articulated for the trial court for awarding attorneys’ fees and costs was an unreasonable exercise of discretion and vacated the award with remand for the trial court to determine if there was a proper basis for the award.

Defendant was convicted following a jury trial in Superior Court on four counts of aggravated felonious sexual assault and five counts of felonious sexual assault involving a minor. On appeal, defendant argued the trial court erred by denying his motions for a mistrial based on testimony about similar, uncharged acts and allegations of prosecutorial misconduct during closing arguments, and whether the trial court erred in denying defendant’s motion for a new trial based on the trial court’s closure of the courtroom during closing arguments.

As to defendant’s motion for mistrial based on testimony about similar, uncharged acts, while on the stand, the detective responded to a question by defense counsel that it was her understanding she could not mention defendant confessing to similar acts committed outside of Hillsborough County. Defense moved for a mistrial arguing that the jury knew that defendant admitted to similar, uncharged acts committed in other jurisdictions. The trial court denied the motion for mistrial and instructed the jury to strike that portion of the detective’s testimony. The Supreme Court affirmed the lower court’s ruling holding that the lower court’s curative instructions to the jury were sufficient and the court’s denial of the defendant’s motion for mistrial was proper.

July 2020
ADUPTION
In Re J.P.
No. 2019-0743
July 31, 2020
Affirmed in part; vacated in part; and remanded.

• Issue: Whether petitioner met the requirements for stepfather’s adoption of J.P. due to lack of notice and awarding attorneys’ fees and costs to the petitioner. The Supreme Court affirmed the trial court’s decision to vacate the adoption, affirmed its award of attorneys’ fees and costs related to the petition to vacate and for genetic testing were unsustainable exercises of discretion.

The respondents, the mother and stepfather of J.P., appealed orders vacating stepfather’s adoption of J.P. for lack of notice and awarding attorneys’ fees and costs to the petitioner. The Supreme Court affirmed the trial court’s decision to vacate the adoption, affirmed its award of attorneys’ fees and costs related to the petition to vacate and for genetic testing.

In 2013, mother and petitioner had an intimate relationship. Mother became pregnant. She informed petitioner and subsequently gave birth. Mother did not name petitioner on the birth certificate and mother and petitioner did not have contact for nearly two years. Subsequently, mother informed petitioner’s parents that J.P. was their grandson and invited them to be involved in his life. Later, petitioner contacted mother to become involved in J.P.’s life. Going forward, petitioner was actively involved in J.P.’s life, including the payment of child support.

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That same day, stepfather sent a text to petitioner advising they were retaining 3 months of child support checks and that he was not to contact the family going forward. Petitioner filed to reopen and vacate the adoption for lack of notice and filed a motion seeking an order for a genetic paternity test. Genetic testing showed petitioner was the father. Petitioner moved for recovery of attorneys’ fees and costs related to litigation and genetic testing.

The trial court granted petitioner’s motion to vacate for lack of notice per RSA 170-B:6, I(d) and granted petitioner’s request for attorneys’ fees. Mother and stepfather moved for reconsideration, which the court denied, and filed this appeal.

In interpreting the statute, the Supreme Court agreed with the trial court that petitioner had met the requirements for notice in that he provided financial support for J.P. and held himself out to be the father. Specifically, as to the financial support requirement, the Supreme Court denied mother’s and stepfather’s argument that their rejection of support checks delivered in the months before, during and after the filing of the petition constituted failure to provide financial support. The Court also disagreed with their argument that because father did not pay support during the pregnancy, he failed to provide financial support. Further, the Court disagreed with their argument that the checks were not financial support because mother and petitioner never discussed what the checks were for.

As to the “holding out” requirement, the Court disagreed with mother’s and stepfather’s arguments that petitioner did not hold himself out to be the father because he failed to take legal action to identify himself as the father. Further, the Court disagreed with their argument that petitioner did not hold himself out to be the father because he did not participate in day-to-day child rearing or that he wasn’t a “prompt” father because he didn’t become involved in J.P.’s life until the child was nearly 2 years old. Specifically, the Court held petitioner held himself out to be the father through his demonstration of the father-child relationship through his actions.

Relative to the trial court’s award of attorneys’ fees and costs for litigation and genetic testing, the Court disagreed with mother’s and stepfather’s argument that the award of attorneys’ fees for litigation was improper because “holding out” presented a novel question of law. Specifically, because they had acted in bad faith, the award of attorneys’ fees to petitioner was appropriate pursuant to the bad faith litigation theory.

As to the trial court’s award of attorneys’ fees and costs associated with genetic testing, the Court held that the basis articulated for the trial court for awarding attorneys’ fees and costs was an unreasonable exercise of discretion and vacated the award with remand for the trial court to determine if there was a proper basis for the award.

McLane Middleton, Professional Association, of Manchester (Ralph F. Holmes and Jacqueline A. Leary on the brief, and Ms. Leary orally) for petitioner. Law Office of Joshua L. Gordon, of Concord (Joshua L. Gordon on the brief and orally) for the respondents.

Criminal
State v. Turcotte
No. 2017-0336; 2019-0071
July 1, 2020
Affirmed

• Issue: Whether the trial court erred in denying defendant’s motions for mistrial based on testimony about similar, uncharged acts and alleged prosecutorial misconduct during closing arguments, and whether the trial court erred in denying defendant’s motion for a new trial based on the trial court’s closure of the courtroom during closing arguments.

Defendant was convicted following a jury trial in Superior Court on four counts of aggravates felonious sexual assault and five counts of felonious sexual assault involving a minor. On appeal, defendant argued the trial court erred by denying his motions for a mistrial based on testimony about similar, uncharged acts and allegations of prosecutorial misconduct during closing arguments, and by denying his motion for a new trial based on the trial court’s closure of the courtroom during closing arguments.

As to defendant’s motion for mistrial based on testimony about similar, uncharged acts, while on the stand, the detective responded to a question by defense counsel that it was her understanding she could not mention defendant confessing to similar acts committed outside of Hillsborough County. Defense moved for a mistrial arguing that the jury knew that defendant admitted to similar, uncharged acts committed in other jurisdictions. The trial court denied the motion for mistrial and instructed the jury to strike that portion of the detective’s testimony. The Supreme Court affirmed the lower court’s ruling holding that the lower court’s curative instructions to the jury were sufficient and the court’s denial of the defendant’s motion for mistrial was proper.

Jennifer Codding
Florida real estate attorney with the law firm Massey Law Group, P.A. in St. Petersburg, FL.

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As to defendant’s motion for mistrial for prosecutorial misconduct, in his clos- ing argument, the prosecutor used language that suggested the defense had some burden of proof and the prosecutor injected his per- sonal opinion into the argument. In response to defendant’s objection, the trial court in- structed the jury to strike the prosecutor’s suggestion regarding a burden of proof and the prosecutor’s personal opinion. On appeal, defendant argued that the prosecu- tor’s “multiple improper arguments” sug- gested “deliberate misconduct” and that it was proper for the Supreme Court to order a mistrial. The Supreme Court affirmed the lower court’s ruling and held that a prose- cutor has great latitude in closing argument and that a mistrial was not proper because the objectionable language was curable by jury instructions.

As to defendant’s motion for a new trial, defendant argued that the trial court’s locking of the courtroom during closing arguments violated his right to a public trial under the Federal Constitution and NH Constitution. The Supreme Court held that under the Waller four-prong test, the trial court’s locking of the courtroom for a por- tion of closing arguments was too trivial to undermine the public nature of defendant’s trial and therefore defendant was not enti- tled to a new trial. In dicta, the Supreme Court instructed that trial courts should only lock courtroom doors on rare occa- sions, preferably with the reason for doing so stated on the record.

Gordon J. MacDonald, attorney general (Elizabeth A. Lahey, assistant attorney gen- eral, on the brief, and Bryan J. Townsend, II, assistant attorney general, orally), for the State. Stephanie Hausman, deputy chief appellate defender, of Concord, on the brief.

FAMILY LAW

In the Matter of Matthew Kamil and Robin Kamil
No. 2018-0700
July 19, 2020
Affirmed in part, reversed in part, vacated in part, and remanded.

• Issues: Whether the non-contempora- neous notation of Husband’s signa- ture on a prenuptual agreement rendered the agreement invalid; whether the trial court erred in admitting and relying upon incomplete and untimely produced medical records of Wife, in awarding permanent alimony to Wife, in ordering Husband to be responsible for the costs of the therapeutic reunification process, in awarding Wife no parenting time, in failing to bifurcate the divorce and is- sues temporary parenting orders and/or in failing to make findings or provide rational for its orders on the issues Wife was appealing; whether trial court’s giv- ing of sole discretion to a court-ordered parenting coordinator to determine when and if the parties would resume follow- ing the supervised visit plan constituted an impermissible delegation of judicial authority on a private citizen.

Matthew Kamil (Husband) and Robin Kamil (Wife) filed for divorce in 2013. The trial court awarded Husband temporary pri- mary residential responsibility for the chil- dren and awarded Wife supervised visit- ation. The court also appointed a parenting coordinator. After four sessions, the par- enting coordinator cancelled Wife’s super- vised visitation with the children based on comments made by Wife. Meanwhile, the trial court held a series of hearings regard- ing the validity of a prenuptual agreement and ultimately found it unenforceable. Fi- nally, on October 31, 2018, the court issued a final divorce decree dividing the assets and ordering permanent alimony. Husband appealed and Wife cross-appealed.

In the Husband’s appeal, he first ar- gued that the trial court’s invalidation of the parties’ prenuptual agreement signed in New York was improper. Specifically, the trial court found that Husband’s signature was not contemporaneous to the notary’s acknowledgment and therefore, under NY law, the agreement was invalid. Husband argued that NY law does not require execu- tion to take place in the notary’s presence. Because there was an absence of definitive ruling in NY, the NH Supreme Court ap- plied NY law to predict how NY would rule if faced with the same issue. The Court ul- timately held that “contemporaneous” does not mean “simultaneous” and therefore the fact that the notary acknowledged the agreement five days after Husband signed did not render it invalid. In addition, the Court held that the time lag between signa- ture and acknowledgement did not render the agreement an “option” agreement and that the minor discrepancy in the dating of the acknowledgment was not a basis to set aside the agreement. Thus, the Court re- versed the trial court’s ruling as to the inva- lidity of the agreement, vacated the proper- ty division portion of the trial court’s order and remanded for a new property division.

Husband’s second argument was that the trial court erred in admitting and relying upon incomplete and untimely produced medical records of Wife. Using the unsus- tainable exercise of discretion standard as to admissibility of evidence, the Court held that Husband failed to demonstrate that the trial court unsustainably exercised its dis- cretion to the prejudice of his case by ad- mitting the records.

Husband next argued that the trial court erred in its award of permanent alimi- nory to Wife. Husband argued that it was improper for the trial court to award Wife permanent alimony because Wife failed to submit requisite financial documentation and offered no proof of medical limita- tions on employment. The Court held that because it vacated the property division, it also was vacating the alimony award and remanding for recalculation of alimony.

In Husband’s final argument, he ar- gued that the trial court erred when it or- dered him to be responsible for the costs of the therapeutic reunification process for Wife. Specifically, he argued that Wife’s obstructionist actions caused the failure of two reunification efforts and that she need- ed to have a financial stake in the process for it to succeed. The Court held that Hus- band failed to meet his appellate burden of demonstrating reversible error because he was asking the Court to rule differently than the trial court, which is not the role of the appellate court.

On cross-appeal, Wife argued that the trial court erred in awarding her no par- enting time with the children. The Court upheld the trial court’s ruling because the trial court’s determination was one that could have reasonably be made based on Wife’s behavior. Wife also challenged the court-ordered parenting coordinator. Spe- cifically, Wife argued that the trial court’s giving of sole discretion to the coordinator to determine when and if the parties would

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Reversed and remanded.

July 24, 2020

No. 2019-0328

Salem (David W. Sayward on the brief and orally), for the petitioner. Soule, Leslie, Law Offices of F. Michael Keefe, PLLC, of Salem (David W. Sayward on the brief and orally), for the respondent.

Law Offices of F. Michael Keefe, PLLC, of Manchester (F. Michael Keefe on the brief and orally), for the petitioner. T. Soule on the brief); Keker, Van Nest & Peters, LLP, of San Francisco, California (Terri Stapleton, Leslie Kiddie, Sayward & Loughman, PLLC, of Salem); James A. O'Shaughnessy, of Manchester (James A. O'Shaughnessy and Mr. Demetrio F. Aspiras on the brief, and Mr. J. Drummond Woodsum & McMonagle, of Manchester (James A. O’Shaughnessy and Dmitri E. Aspiras on the brief, and Mr. O’Shaughnessy orally), for the defendant.

INTELLECTUAL PROPERTY

Teatotaller, LLC v. Facebook, Inc. No. 2019-0328

July 24, 2020

Reversed and remanded.

• Issue: Whether the trial court erred in dismissing Plaintiff’s small claim complaint in ruling that Plaintiff failed to state a cause of action for breach of contract and in determining that Plaintiff’s claim was barred by Section 230(c)(1) of the Communications Decency Act.

Plaintiff Teatotaller, LLC appealed an order of the Circuit Court dismissing its small claim complaint against defendant Facebook, Inc. The Supreme Court reversed and remanded.

Teatotaller alleged Facebook deleted its Instagram account without notice. Teatotaller argued that Facebook had a duty of care to prevent algorithmic deletion and that Teatotaller suffered financial loss from Facebook’s negligence. Facebook moved to dismiss arguing Teatotaller’s claims were barred under Section 230(c)(1) of the Communications Decency Act (CDA) and for lack of personal jurisdiction. Teatotaller objected, urging the trial court to not accept Facebook’s CDA defense and asserted personal jurisdiction pursuant to Instagram’s Terms of Use agreement. Facebook countered that under the Terms and Use, Facebook had no liability. The trial court held that the Terms of Use gave the defendant personal jurisdiction and precluded Teatotaller’s claims. Teatotaller moved for reconsideration. In response, the trial court stated that Facebook is entitled to immunity under the CDA. Specifically, the court held that given the language in the Terms of Use, Teatotaller cannot state a claim or demonstrate breach of contract.

Teatotaller appealed arguing that the trial court erred by: (1) ruling that Teatotaller failed to state a cause of action for breach of contract; and (2) determining that its claim is barred by the CDA. As to breach of contract, the Court held that in reading the Terms of Use as a whole, Teatotaller’s action was not precluded. Specifically, the Court held that Teatotaller’s allegations that it entered into the Terms of Use with Facebook in exchange for Facebook’s promise that Facebook deleted Teatotaller’s account and that as a result Teatotaller lost business and customers was sufficient in the context of a small claim action to state a cause of action for breach of contract.

As to Facebook’s claim of immunity under the CDA, the Court held that because the CDA’s barrier to Teatotaller’s breach of contract claim was not evident from the face of the complaint, dismissal on that ground was improper. In coming to this holding, the Court applied the CDA’s immunity test as to state law claims, which holds that subsection (c)(1) only protects from liability (1) a provider or user of an interactive computer service (2) that has made available to the public or has provided access to information provided by another (3) if the service is provided in good faith, through no knowledge that the content of the information is illegal, and (4) that the service is not required to remove content.

Next, Wife argued that the trial court erred in dismissing the final decree dealing with Wife’s visitation rights. The Court agreed with Wife, vacating the portion of the final decree that constituted an impermissible delegation of judgment.

Conclusion

On appeal, Association argued that the CDA’s barrier to Teatotaller’s breach of contract claim was based upon specific promises that Facebook made in its Terms of Use, the Court held that Teatotaller’s claim may not require the court to treat Facebook as a publisher. Accordingly, because it was not clear if the second prong was met, the Court held that the trial court erred in dismissing Teatotaller’s breach of contract claim and reversed and remanded.

Emmett Soldati, non-lawyer representative appearing by approval of the Supreme Court under Rule 33(2), on the brief and orally, for the plaintiff. Paul Frank & Collins P.C., of Burlington, Vermont (Stephen J. Fournier on the brief); Keker, Van Nest & Peters, LLP, of San Francisco, California (Matan Shacham and Victor Chiu on the brief); and Primer, Piper, Eggleston & Cramer, P.C., of Manchester (Doreen F. Connor orally), for the defendant.

SCHOOL LAW


July 8, 2020

Reversed and remanded.

• Issue: Whether the trial court erred in granting the District’s cross-motion for summary judgment, and denying the Association’s, on the basis that the funds at issue lapsed pursuant to RSA 32:7.

Defendant Monadnock School District Education Association, NEA-NH (the Association) appealed a superior court order granting summary judgment to plaintiff Monadnock Regional School District (the District) by dismissing the Association’s cross-motion for summary judgment. The superior court ruled that $392,381 in unexpended appropriations set aside over a period of years pursuant to the Association’s collective bargaining agreement had lapsed. The Supreme Court reversed and

remanded.

District and Association were parties to a collective bargaining agreement (CBA) that was in effect from July 1, 2012 to June 30, 2016. Under the CBA, the District established a “pool” wherein money not expended would be distributed among employees. In the first, second and third fiscal years, the District reserved $2,309 and $154,633 were placed in the pool. In June 2016, the District voted to reimburse employees for 2015-2016 premium payments, but not for prior years’ payments. This brought the balance of the pool to $392,381. The parties submitted to non-binding arbitration. The arbitrator found for Association awarding $2,309 in reimbursements of premium payments of pool funds to the Association. The District filed for declaratory judgment arguing it was unlawful to transfer the pool funds for prior years because they lapsed pursuant to RSA 32:7, which says that a school district cannot carry unexpended appropriations from one fiscal year into the next unless the voters authorize a “further appropriation” or an exception applies. The trial court determined the only exception would be RSA 32:7,1, but found that the exception did not apply to the District’s argument. The Association moved to appeal, and held that the CBA provided for a legally enforceable obligation in regard to the pool funds, but the obligation did not arise as the result of the District’s argument. To the extent that the cost of premiums from the pool funds, Association moved for reconsideration, which was denied, and then filed this appeal.

On appeal, Association argued that the District fatally lapsed the pool fund, and was ordered to pay the pool fund. Association argued that the RSA 32:7,1 exemption prevented the lapse of unexpended premium pool funds at the end of each fiscal year. The Court agreed, provided two conditions: premium funds must be used in furtherance of the District’s obligation to pool and distribute the funds. Further, because each year’s unexpended health insurance premium was required to be used in the place of the premium, and the pool funds, and the obligation must be used for the fund before the end of the fiscal year for which they were appropriated.

The Court determined that the use of mandatory language in the CBA created an obligation to pool and distribute the funds. Furthermore, because each year’s unexpended health insurance premium was required to be used in the place of the premium, and the pool funds, and the obligation must be used for the fund before the end of the fiscal year for which they were appropriated.

The Court disagreed with an argument by the District that the funds lapsed because the Association never requested access to the pool funds. The Court also disagreed with the District’s argument that because Association had some amount of discretion over implementing mandatory distributions did not mean the distributions were not mandatory. Further, the Court disagreed with the District’s argument that RSA 32:7,1, required the funds saved from lapse to be expended before the end of the next fiscal year and the District’s alternative argument that even if the funds did not lapse, the District could not lawfully provide them to the Association because the legislative body was never put on notice that the pool fund would not lapse at the end of each fiscal year.

Doomrud Woodsum & MacMahon, of Manchester (James A. O’Shaughnessy and Dmitri E. Aspiras on the brief, and Mr. O’Shaughnessy orally), for the plaintiff. NEA-New Hampshire, of Concord (Lincoln Snow Chadwick and Esther Kane Dickin on the brief, and Mr. Chadwick orally, for the defendant.)
In accordance with Supreme Court Rule 37(3)(d), the Supreme Court appoints Sandra Cabera, the Vice President of the New Hampshire Bar Association, to serve as the Board of Governors’ representative on the Professional Conduct Committee, for a term commencing August 1, 2020, and expiring July 31, 2021.

Issued: July 9, 2020

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

In accordance with Supreme Court Rule 53.5A(1), Attorney Richard C. Guerrero, Jr., the President-Elect of the New Hampshire Bar Association, is appointed to serve as an ex officio member of the Minimum Continuing Legal Education Board.

Issued: July 9, 2020
ATTTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

The Committee on the Judiciary and the Media was established by the New Hampshire Supreme Court in 2002 to foster positive communication between the judicial branch and the media and to provide a forum for addressing important issues regarding media coverage of judicial proceedings. The Supreme Court did so in recognition of the important role of the press in safeguarding free speech and freedom in our State.

Part I, Article 22 of the New Hampshire Constitution provides that:

Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved.

The Supreme Court set forth the membership, mission, and responsibilities of the committee by order dated November 7, 2014. Since its inception, the mission and the membership of the committee have evolved to reflect changes in technology and the media environment. This order supercedes the 2014 order to reflect those changes.

Duties of the Committee

The New Hampshire Committee on the Judiciary and the Media will:

1. Encourage a positive relationship between the judicial branch and the media through the committee whose membership includes, but is not limited to, judges from the trial and appellate levels, court clerks, representatives from print and electronic media, court security, attorneys specializing in First Amendment law, and the judicial branch communications manager;

2. Resolve media-related issues that are beyond the normal scope of inquiries dealt with by the judicial branch communications office on a regular basis;

3. Support and evaluate policies that respect judicial proceedings while reducing barriers for the media to gain access to court proceedings or documents, and to gather and distribute news concerning the courts; and

4. Sponsor and support programs for members of the media to provide information on how to cover judicial proceedings in New Hampshire courts.

Membership of the Committee

The Committee on the Judiciary and the Media shall consist of the following members, who shall be appointed by the New Hampshire Supreme Court.

1. A justice of the supreme court or designee;

2. A judge from the superior court or designee;

3. A judge from the circuit court or designee;

4. A clerk of court from a superior court or designee;

5. A clerk of court from a circuit court or designee;

6. The clerk or deputy clerk from the U.S. District Court for the District of New Hampshire, or designee;

7. The Attorney General of New Hampshire or designee;

8. The New Hampshire Judicial Branch communications manager or designee;

9. The Manager of Security of the New Hampshire Judicial Branch or designee; and

10. A New Hampshire County Sheriff or designee.

The Supreme Court shall appoint two co-chairs of the committee, one of whom shall be a representative of the judiciary, and the other of whom shall be a representative of the media.

The co-chairs of the committee shall make recommendations to the New Hampshire Supreme Court to add or remove members with the goal of having representation from the following groups:

1. Two attorneys specializing in media law;

2. Up to ten members of the New Hampshire news media, representing print, television, radio, still photographers, and a wire service, or their designees; and

3. Up to six “at-large” delegates, which may include a representative from the University of New Hampshire School of Law, the Editor of the New Hampshire Bar Association’s “Bar News”, and the Executive Director of the Nackey S. Loeb School of Communications, or their designees.

Meetings

The committee shall hold meetings either in-person or via video or teleconference, on a schedule to be determined by the co-chairs. All meetings shall be open to the public.

Issued: July 16, 2020
ATTTEST: Timothy Gudas, Clerk
Supreme Court of New Hampshire

In accordance with New Hampshire Supreme Court order dated July 16, 2020, the Court hereby appoints the following members to the Committee on the Judiciary and the Media for a term expiring on December 31, 2021.

Membership of the Committee

Justice of the Supreme Court; Associate Justice James P. Bassett

Judge from the Superior Court; Superior Court Chief Justice Tina L. Nadeau

Judge from the Circuit Court; Administrative Judge David D. King

Clerk of the Superior Court; Kimberly T. Myers, Esq.

Clerk of the Circuit Court; Larry S. Kane, Esq.

Clerk or deputy clerk from the U.S. District Court for the District of New Hampshire; Daniel J. Lynch, Esq.

Attorney General of New Hampshire;

Deputy Attorney General Jane Young

Director of Litigation: New Hampshire Public Defender Office; David M. Rothstein, Esq. (designee)

New Hampshire Judicial Branch Communications Manager; Susan Warner

Manager of Security of the New Hampshire Judicial Branch; Jason R. Jordanzah

New Hampshire County Sheriff; Sheriff Dominic M. Richardi

Attorneys specializing in media law:

Jeremy D. Eggleton, Esq., Orr & Reno, PA
Gregory V. Sullivan, Esq., Malloy & Sullivan, LPC

Members of the New Hampshire news media:

John P. Gregg, News Editor, Valley News
Daniel Barrick, News Director, New Hampshire Public Radio
Timothy Kelly, Executive Editor, New Hampshire Union Leader
Jason Schreiber, News Correspondent
Alyssa M. Dandrea, News Reporter, Concord Monitor
Michael Casey, Journalist, Associated Press
Andy Hershberger, News Reporter, WMUR
James Cole, New Hampshire Photo Journalists Association
Howard Altschiller, Executive Editor and General Manager, Seacoast Media Group

At-large delegates:

Ashlyn J. Lembree, Esq., University of New Hampshire School of Law;

Scott Merrill, Publications Editor of the New Hampshire Bar News;

Laura Simoes, Executive Director of the Nackey S. Loeb School of Communications, and

William L. Chapman, Esq., Orr & Reno, PA

Committee Co-Chairs

Representative of the judiciary

Associate Justice James P. Bassett

Representative of the media

Howard Altschiller, Executive Editor and General Manager, Seacoast Media Group

Issued: July 16, 2020
ATTTEST: Timothy Gudas, Clerk
Supreme Court of New Hampshire

1D-2020-00053, In the Matter of Richard E. Clark, Esquire

On April 28, 2020, the Professional Conduct Committee (PCC) filed a recommendation that Attorney Richard E. Clark be suspended from the practice of law for a period of one year, with the suspension stayed for one year on the condition that Attorney Clark comply with certain requirements. The PCC also recommended that Attorney Clark be ordered to pay the costs associated with the investigation and enforcement of the disciplinary matter. The PCC’s recommendation approved a stipulation signed by Attorney Clark and the Attorney Discipline Office’s assistant disciplinary counsel in which Attorney Clark agreed that he had violated several Rules of Professional Conduct and further agreed that the appropriate sanction for these violations was a one-year suspension, with the suspension conditionally stayed for one year. Attorney Clark expressly waived his right to a hearing before the court. In accordance with Rule 37(16), because this matter was resolved by a dispositive stipulation, the court may consider this matter without further notice and hearing.

Based on the parties’ stipulation, the PCC found that Attorney Clark violated the following Rules of Professional Conduct:

1. Rule 1.1, which requires a lawyer to provide competent and diligent representation to a client;

2. Rule 1.5, which prohibits a lawyer from receiving compensation for charging, or collecting an unreasonable fee;

3. Rule 1.8(a), which prohibits a lawyer from entering into a business arrangement with a client that is not about advising a client of the desirability of seeking independent legal advice and without obtaining the client’s informed consent;

4. Rule 1.15, which requires a lawyer to safeguard client property and to maintain records relating to client funds in the lawyer’s possession;

5. Rule 3.3(a), which prohibits a lawyer from making a false statement of fact or law to a tribunal; and

6. Rule 8.4(a), which makes it misconduct to violate the Rules of Professional Conduct.

The court has reviewed the PCC’s findings, rulings and conclusions that they are supported by the record. The court accepts the PCC’s recommendation for the appropriate sanction for this misconduct, and concludes that a one-year suspension from the practice of law, with the suspension conditionally stayed for one year, is warranted. The court approves the conditions of the stay, which are set forth in the stipulation and in a separate agreement to maintain communications and procedure for alleged violation of conditions (agreement to mandatory conditions). The stipulation and agreement to mandatory conditions also set forth a procedure to be followed if it is alleged that Attorney Clark has not complied with a condition or conditions.

Accordingly, having approved the PCC’s findings, rulings and recommended sanction, the court orders as follows:

(1) Attorney Richard E. Clark is suspended from the practice of law in New Hampshire for a period of one year, with the suspension stayed for one year on the condition that Attorney Clark comply with the requirements set forth in the stipulation and the agreement to mandatory conditions; and

(2) Attorney Clark is ordered to reimburse the Attorney Discipline Office for all costs and expenses incurred by the attorney discipline system in the investigation and prosecution of this matter.

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

DATE: August 5, 2020
ATTTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire
Civil Procedure; Statute of Limitations

6/30/20 Lassman v. Master Case No. 20-cv-53-JL

In this bankruptcy-related case, the court denied the defendant’s motion to dismiss the action as time-barred. The plaintiff, trustee for the bankruptcy estate of the defendant’s former spouse, aims to enforce a property settlement incorporated in a divorce decree issued by a New Hampshire court in 2012. The defendant argued that New Hampshire’s general three-year statute of limitations applied, but the plaintiff contended that New Hampshire’s 20-year statute of limitations for “actions of debt upon judgments” or Massachusetts statutes of limitations governed. The court found that, if a New Hampshire statute of limitation applied, it was the 20-year statute. As the defendant did not argue that the 20-year statute or any potentially applicable Massachusetts statute of limitation barred the case, the court did not need to resolve that choice of law question. 9 pages. Judge Joseph N. Laplante.

Criminal Law; Compassionate Release

6/30/20 United States v. Anthony Burnett Case No. 06-cr-00034-PB-2, Opinion No. 2020 DNH 110

Defendant moved for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), as amended by Section 603(b)(1) of the First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239. The court agreed with the parties' shared assessment that the defendant met the “extraordinary and compelling circumstances” requirement for compassionate release. The court then assessed whether defendant posed a danger to the community and weighed the Section 3553(a) sentencing factors. It concluded that the balance of factors weighed in favor of releasing the defendant to a one-year period of home detention with electronic monitoring, followed by a five-year period of supervised release. 8 pages. Judge Paul J. Barbadoro.

Criminal Procedure; Speedy Trial Act

6/12/20 United States v. Inyemar Manuel Case No. 20-mj-00778-MO, Opinion No. 2020 DNH 101

Defendant filed an emergency motion to dismiss his criminal complaint and for immediate release from detention, arguing that the government violated his right to a speedy indictment under the Speedy Trial Act, 18 U.S.C. § 3161 et seq., and the Fifth Amendment. The court found that the defendant’s standing orders postponing grand jury proceedings in light of the COVID-19 pandemic violated his speedy trial rights by excluding time, pursuant to 18 U.S.C. § 3161(h)(7)(A), from his thirty-day, time-to-indict clock without the court first making on-the-record findings particularized to his case. The court found that this argument was inapposite because his indictment clock had not yet run, and the standing orders had not excluded time in his case. Defendant challenged this conclusion by arguing that the court improperly excluded twenty-nine days during which the magistrate judge was resolving his bail motion. His principal argument was that the time expended on the motion was not excusable because the filing and resolution of the motion did not actually delay the indictment. In the alternative, he argued that the time when the magistrate judge had the motion under advisement could not be excused because she did not resolve the motion promptly as required by 18 U.S.C. § 3161(h)(1)(D). The court found that neither argument had merit. First, based on the plain language of the statute and controlling First Circuit precedent, the delay for a pending motion is automatically excluded regardless of whether it causes an actual delay. Second, the prompt disposition requirement in Section 3161(h)(1)(D) does not apply when a judge holds a hearing on a motion and then takes it under advisement. Under those circumstances, Section 3161(h) (1)(H) excludes up to thirty days that the judge has the motion under advisement. The magistrate judge had the motion under advisement for twenty-two days, all of which were properly excluded. The emergency motion to dismiss the criminal complaint and for immediate release from detention was denied. 11 pages. Judge Paul J. Barbadoro.

Civil Rights; Due Process


Joel Mateo was involved in an alleged on-campus theft while enrolled as a law student at the University of New Hampshire School of Law (“UNH Law”). If proven true, the theft would have constituted a violation of UNH Law’s Conduct Code. Rather than confront the charge, Mateo took a leave of absence and waited more than a year before seeking to have the charge formally adjudicated. By that point, school policy required him to reapply and be readmitted before he could have a hearing. Mateo reapplied, and UNH Law denied his application. Mateo sued the University System of New Hampshire and the former Assistant Dean of Students, alleging violations of his due process rights under the Fourteenth Amendment, as well as state law claims of intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, and breach of contract. On summary judgment, the court found that Mateo’s due process claim failed because he had not been deprived of any liberty or property interest. Additionally, his state law tort claims failed because defendants were entitled to immunity under Section 507-B of the New Hampshire Revised Statutes Annotated. Finally, Mateo abandoned his breach of contract claim. 27 pages. Judge Paul J. Barbadoro.

Civil Rights; Employment Discrimination

7/22/20 Felicia Giordano v. Public Service Company of New Hampshire d/b/a Eversource Energy Case No. 19-cv-1231-PB, Opinion No. 2020 DNH 130

After her initial complaint was dismissed, plaintiff sought leave to amend and asked the court to reconsider its earlier judgment to the extent necessary to reinstate her claims of age, sex, and disability discrimination against her former employer. The court reviewed the proposed amended complaint and concluded that plaintiff had failed to cure the deficiencies that had led to the dismissal of her former complaint. Specifically, she failed to allege sufficient facts to support her conclusory allegations that she had suffered an adverse employment action. The amended complaint, therefore, failed to state a claim upon which relief could be granted, so the court denied the motion for leave to amend as futile. Because the plaintiff only sought reconsideration to the extent necessary to allow her amendment, the court denied her motion for reconsideration as well. 9 pages. Judge Paul J. Barbadoro.

First Amendment; Preliminary Injunction


The plaintiffs—the Libertarian Party of New Hampshire and its candidates for state and federal office—moved for a preliminary injunction declaring that New Hampshire’s signature requirement for appearing on the general-election ballot this November, as applied during the COVID-19 pandemic, violated their First Amendment rights. The plaintiffs alleged they have been unable to collect the requisite number of nomination signatures given the health risks posed by the COVID-19 pandemic, social distancing concerns, and the Governor’s emergency orders instructing residents to stay at home when possible and to not engage in close physical contact outside of residents’ family groups. The State, represented by the N.H. Attorney General’s Office, opposed the request, arguing that the no state action had impacted the plaintiffs’ ability to meet the signature requirement, and that any burden was of the plaintiffs’ making. After a two-day evidentiary hearing held via videoconference, the court concluded, based on the hearing’s evidence, that the State’s interest in enforcing its ballot-access laws requiring a set number of signed nomination papers did not outweigh the significant burden that those requirements imposed on the plaintiffs’
Fraudulent Misrepresentation

Case No. 19-cv-866-PB Opinion No. 2020 DNH 135

Pro se plaintiffs sued their mortgage lender over alleged conduct surrounding the lender’s refinancing of plaintiffs’ home mortgage. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). The court construed the pro se complaint as alleging one count of fraudulent misrepresentation and one count of forgery. In support of the fraudulent misrepresentation claim, plaintiffs alleged that defendant lender’s representative had told one of the plaintiffs that he was, in fact, arranging a $124,000 home equity loan for them when he had, in fact, arranged a $214,000 re- finance of their mortgage. In their forgery count, plaintiffs alleged that defendants had added zeroes to the loan amount on the loan documents. The court found that plaintiffs had adequately alleged the elements of fraudulent misrepresentation and denied defendants’ motion to dismiss with respect to their fraudulent misrepresentation claim. It further found that the loan documents, which were fairly incorporated into the complaint, foreclosed any claim that the lender had added zeroes to the loan amount and dismissed plaintiffs’ claim of forgery.

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Access to the ballot under the conditions created by the COVID-19 pandemic, including those instituted by the Governor’s Stay-at-Home Orders and Executive Orders. The court thus granted the plaintiffs’ motion for a preliminary injunction and ordered a 35% reduction in the number of nominating Libertarian Party candidates to appear on the general election ballot. 51 pages. Judge Joseph N. Laplante.

43/AUGUST 19, 2020

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Dependent was arrested on a criminal complaint in the District of New Hampshire on February 11, 2020 after previously being detained intermittently in the Civil No. 18-cr-3415(JL) related charges. The magistrate judge ordered detention pending indictment. Defendant filed a motion to revoke the detention order pursuant to 18 U.S.C. § 3145(b). He asserted that lowing arguments in support of revocation of the order: first, that the magistrate judge should not have relied upon the no-contact order violation that resulted in his pretrial detention; second, that he should be released because of the COVID-19 pandemic; and third, that he otherwise has no criminal record, had been detained for a prolonged period of time in his related Maine case, and that he is being improperly housed with sentenced prisoners. The court reviewed the defendant’s order and record de novo and considered the bail factors in 18 U.S.C. § 3142(g) before concluding that the magistrate judge correctly determined that defendant must be detained because no conditions or combination of conditions could reasonably assure the safety of the community. Addressing defendant’s arguments, the court concluded that the defendant did not provide any persuasive reasons to revoke the magistrate judge’s detention order and grant his release. The motion, therefore, was denied. 9 pages. Judge Paul J. Barbadoro.

Revocation of Magistrate Judge’s Detention Order

7/10/20 United States v. Suazo
Case No. 20-mj-37-DL-1, Opinion No. 2020 DNH 120

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The types of questions we are looking for guidance/guidelines include:

• Can a minor seek counseling with consent of parent/s? What ages?
• What about if they access their parents’ insurance for payment?
• Are there laws about providing birth control?
• Do we need to tell parents if their child talks about suicidal thoughts (not actively suicidal)?
• What if the minor discloses that they are doing self-harm (non-suicidal)?
• What about if the minor is vaping, drinking or using marijuana?

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Please contact the Clinical Consultant for Connections for Health, Director of Behavioral Health Medicine, Elizabeth Tracy at drtracy@resilienceandhope.com.

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Rockingham County

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

ESSENTIAL JOB FUNCTIONS:
- Acts as counsel for the State of New Hampshire in criminal matters.
- Works closely with Victim/Witness Coordinators to ensure that all witnesses/victims are properly informed, prepared and supported throughout the prosecution process.
- Presents investigations and cases to the Grand Jury.

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

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Corporate/Commercial Attorney | Lebanon, NH

Downs Rachlin Martin PLLC seeks an experienced corporate/commercial attorney to join its Lebanon office. The ideal candidate will be licensed to practice in New Hampshire, have a portable book of business with compatible clients and have a minimum of ten years of experience in corporate/commercial law.

Most eligible people have already received their stimulus payment under the CARES Act, but many of the most vulnerable are still waiting. You can help your elderly, disabled, and other low-income neighbors through this unique volunteer opportunity from the NH Pro Bono Low-Income Taxpayer Project. Cases typically take about 2-3 hours over the course of a month, and no tax practice experience is needed. The tax clinic will provide training and materials.

Please contact tax clinic coordinator and staff attorney, Barbara Heggie, for details: bheggie@nhbar.org or (603) 715-3288.

Health Law Volunteer Needed

We are looking for a health law attorney who might be willing to speak via video, for 30 minutes, to a group of Integrative Behavioral Health Clinicians about the NH laws regarding minors. These clinician’s practice primarily with Medicaid patients in primary care practices.

The types of questions we are looking for guidance/guidelines include:

• Can a minor seek counseling with consent of parent/s? What ages?
• What about if they access their parents’ insurance for payment?
• Are there laws about providing birth control?
• Do we need to tell parents if their child talks about suicidal thoughts (not actively suicidal)?
• What if the minor discloses that they are doing self-harm (non-suicidal)?
• What about if the minor is vaping, drinking or using marijuana?

We will be grateful for any assistance you can provide.

Please contact the Clinical Consultant for Connections for Health, Director of Behavioral Health Medicine, Elizabeth Tracy at drtracy@resilienceandhope.com.
Business Litigation Associate

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

To learn more about our firm, visit our website at www.clrm.com. To apply, please send your resume to Lisa Roy, Hiring Coordinator, at l.roy@clrm.com.

Submit resumes to the firm’s consultant: Kathy Fortin at kwf@arthurgreene.com or by calling the consulting office in Bedford, NH at 603.471.0606.

Litigation Paralegal Position in Methuen

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

Submit resumes to the firm’s consultant: Kathy Fortin at kwf@arthurgreene.com or inquire by calling the consulting office in Bedford, NH at 603.471.0606.

Senior Contracts Administrator

Work in a fast paced and dynamic environment as an integral member of a professional Contracts team. Review, draft, negotiate, and administer all manner of Creare contracts with outside entities (government agencies, industry, consultants, subcontractors, professional service providers, vendors, etc.). Identify contractual risks to Creare management and take necessary actions to mitigate. Effectively and tactfully communicate, negotiate, and coordinate with internal staff and external entities to meet overall contract objectives and ensure favorable terms and conditions are established. Prepare subcontracts and related agreements, ensure proposal compliance and accurate cost proposal preparation, administer contracts and subcontracts (cradle to grave), and more. Excellent communication and organization skills are required. Expedient problem identification and resolution, critical thinking, attention to detail, and multi-tasking are necessary skills. Strong working knowledge and capability with Microsoft Word, Excel, Internet, e-mail are required; Government contracting experience (including familiarity with the FAR) database management, query-writing, report development experience, or familiarity with ERP systems is a plus. Bachelor’s degree and 5 years of relevant experience (or equivalent) is required.

Contracts Administrator

Work in a fast paced and dynamic environment as a key member of a professional Contracts team. Administer Creare contracts and related agreements for a wide spectrum of government and commercial clients, including: review of prime contract terms and conditions; preparation of subcontracts and related agreements; proposal compliance and cost proposal preparation; administration of contracts and subcontracts (cradle to grave); management of government property; and other associated contractual concerns. Excellent communication and organization skills are required for successful teaming with Senior Management, Project Managers, and external Contract Administrators/clients. Expedient problem identification and resolution, critical thinking, excellent written and verbal skills, attention to detail, accuracy, timeliness, multi-tasking skills, and effective utilization and management of resources are necessary attributes. Strong working knowledge and skills with Microsoft Word, Excel, Internet, e-mail are required; database management, query-writing, report development experience is preferred; familiarity with ERP systems is a plus. Associate’s degree and a minimum of 3-5 years of relevant experience (or equivalent) is required. Government contracting experience is a plus, including familiarity with the FAR.

Creare offers challenging work in a broad range of technology areas. Staff deepen their skills through professional development and are competitively compensated. Mutual respect, teamwork, and the ability to do the highest quality work define our staff and work environment.

To apply, visit Careers at www.creare.com. For assistance, email careers@creare.com.

Attorney - Corporate Practice Group

Do you like working with entrepreneurs? Are you interested in joining a collaborative and innovative legal practice? Cook, Little, Rosenblatt & Manson, p.l.l.c. is a highly-regarded boutique business law firm with an opening in its corporate practice group. Our ideal candidate has strong academic credentials and 2-4 years of sophisticated corporate experience. We offer competitive compensation, as well as a platform for you to develop client relationships, become involved with local organizations, work with high-growth businesses, and build your practice in a supportive and collegial environment.

To learn more about the firm, visit our website at www.clrm.com. To apply, please send your resume to Lisa Roy, Hiring Coordinator, at l.roy@clrm.com.

Visit Careers at www.creare.com to apply.
Estate Planning and Probate Attorney (Dover NH)

Shaheen & Gordon, P.A., Attorneys at Law, is seeking an energetic and self-motivated attorney to join our busy and growing Elder Law, Estate Planning, Probate, and Trust Group in our Dover, New Hampshire office. The candidate must be licensed to practice law in New Hampshire and have relevant experience and coursework in the areas of elder law, estate planning, and/or probate. Admission in Maine is a plus. The ideal candidate will have 3 or more years of experience. This role offers the candidate the opportunity to work collaboratively with experienced practitioners and directly with clients.

Candidates must be able to work independently, have strong written and oral communication skills, and be extremely organized. We look forward to welcoming an attorney who is hard-working, committed to excellence in his or her practice, and dedicated to client service. This is an outstanding opportunity for a new or experienced lawyer to grow his or her career and practice in a collaborative, supportive, fast-paced environment.

Shaheen & Gordon is a non-smoking workplace. We offer a competitive salary and a generous benefits package including health insurance, flexible spending account, health reimbursement, long term disability, life insurance, profit sharing, and 401(k) with employer match. Tenacity, Creativity & Results—these are the principles that guide Shaheen & Gordon’s team. If you want to contribute to a premier and growing law firm, then we want to hear from you. Successful employers at Shaheen & Gordon are confident, respectful, and team-oriented with a high degree of integrity. Interested applicants please forward resumes and salary requirements to recruiting@shaheengordon.com.
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