

Check out this month's Family Law Supplement in the center of this edition.



The N.H. Supreme Court has authorized the Board of Bar Examiners to administer a remotely proctored Uniform Bar Examination on Feb. 23-24, 2021. Details page 26.



The N.H. Supreme Court has sent the "Laurie list" case back to the lower courts. ACLU-NH says the case will rest on the public's interest in disclosure. Story on page 28.

A Smooth Election 2020 in the Granite State

By Scott Merrill

While record numbers of ballots were cast in New Hampshire's general election, the consensus amongst officials is that it was a success.

New Hampshire set a voting record on Nov. 3 with 814,092 total ballots and 261,062 absentee ballots cast. This surpassed the previous records set in 2016 of 755,850 total ballots and 75,305 absentees.

Deputy Secretary of State David Scanlan, whose office oversees elections, said there were no significant problems this year.

"Given the political climate and the pandemic, the election went very smoothly," Scanlan said.

Scanlan attributes part of the success for this year's general election to a commitment on the part of election officials to planning across the state, which included individual Zoom video meetings with town and city moderators, officials, and supervisors of the checklist, prior to the election.

Prior to March this year Scanlan said he'd never heard of Zoom but that now he's gotten to know it "very well."

"These meetings opened up a tremendous channel of communication allowing us to talk about what the issues were," he said. "Election officials communicated their concerns so that by the time we



Deputy Secretary of State David Scanlan at his office on Nov. 3. His office is responsible for overseeing elections in the state of New Hampshire. Photo/Scott Merrill

got to election day the questions people had were more procedural than anything else."

The Secretary of State's office was involved in several routine recounts the week of Nov. 9, but Scanlan said this is typical.

Planning for holding a vote during the COVID-19 pandemic began last April with Secretary of State William Gardner's creation of the Select Committee on 2020 Emergency Election Support. The committee's task was to ensure that every person who chose to vote, or work at the polls, would be able to do so despite any

obstacles.

Bradford E. Cook, the current Ballot Law Commission chair in New Hampshire, served as chair for the Secretary of State's select committee. Cook, who was counsel to the Republican State Committee in the 1970s and a campaign manager for former U.S. Senator Warren Rudman, has years of experience in non-profit law, planning and probate, and government relations.

"This committee was dealing with how we were going to vote during a pan-

ELECTION continued on page 22

PRACTITIONER PROFILE

Linda Johnson: a Portrait of Perseverance and Compassion

By Kathie Ragsdale

The theme of equality is threaded through Linda Johnson's life, from her determination to go to law school to her work with independent and boarding schools to the equal-rights advocacy that has won her multiple Bar Association awards.

A director with McLane Middleton Professional Association, Johnson grew up in Manchester and attended Memorial High School, taking a babysitting job while still a teen at a local law firm where her mother was a legal secretary.

That early brush with the legal profession proved predictive. After graduation, Johnson worked for a time for



Students at the Educate West Point school hold a sign dedicating the new building to Linda Johnson.

State Farm Insurance, for which attorney Augustine McDonough also worked, and when McDonough's legal secretary re-

tired, he invited Johnson to take her place.

The position involved estate-planning work for McDonough's insurance-defense practice, and Johnson started taking classes at Rivier College, now Rivier University, to bolster her skills. McDonough then made what Johnson calls a "life-changing" offer to all the secretaries in his office: If any of them wanted to go to college, he would pay for it.

Johnson says she was one of about eight women to take him up on the pledge, and she continued to work and go to school full time until she graduated. She resolved to go on to

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Saying Goodbye to a True Hero

By Dan Will

We have all had heroes, and, often, they disappoint. No matter how talented and prolific, their own humanity constantly fights to keep them, well, human. And yet we go back to the hero well over and over. Why? For me, and I suspect for most, it is in search of something more than just what our heroes do to make them heroic to us. It is the optimism and hope that the skill that makes them heroic roots in something deeper in their person - that they have character that approaches their accomplishments. One online source defines "hero" as "a person who is admired or idealized for courage, outstanding achievements, or noble qualities." The definition uses "or," but we desperately want it to be "and," which is where we get into hero trouble. We crave for our heroes to have outstanding achievements *and* noble qualities, and they routinely let us down.

Writing for *Psychology Today*, Dr. Saul Levine explains that, as young children, our parents usually serve as our first role models, and (mercifully I might add) that it takes years for us to see them as people with frailties - I would say about 20 years, based on my present experience of twenty-something children happily reminding me of my frailties. Later, Dr. Levine explains, children become drawn to other figures who assume hero status to them, frequently athletes, but also musicians (I've only just recently stopped my listening binge in the wake of Eddie Van Halen's passing), Hollywood types, and the like. While Levine acknowledges that some adults continue to admire heroes from their youth, more shift to admiring scientists, writers, inventors, and those who make significant and real contributions to society. Some childhood heroes, though, make significant and real contributions to society, which brings me to a profound sadness I felt at the news of Gale Sayers' passing in September.

I grew up in suburban Chicago, home of "Da Bears," within whose ranks Gale Sayers occupied hallowed ground. He was an NFL rookie a year before I was born, and his career was over by the time I was 8. Most of his athletic accomplishments occurred before I knew what a football was, but, among a storage container of accolades, he was the youngest ever to be inducted into the Pro Football Hall of Fame and the highlight reels bore that out. That was enough to stir the passion of any kid, much less this skinny French horn player trying to navigate the daunting worlds of elementary and middle school.

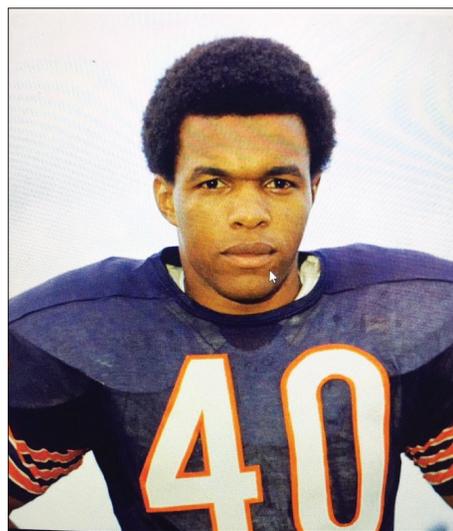
You couldn't live in Chicago in the '70s without knowing about Gale Sayers.

President's Perspective



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

In what is now an unimaginable era of just three television channels, it seemed like every Sunday's pre-game included, at some point, an NFL Film with a booming narrator replaying the Kansas Comet's greatest hits. A lot of that was lost on me, until, around age 9 or 10, I came across Sayers' autobiography, *I Am Third* (a worthy read even today), and, of course, the oft-rebroadcast television movie *Brian's Song*. Now it is true that the Brian Piccolo



Gale Sayers, running back for the Chicago Bears from 1965-71, died on Sept. 23, 2020.

story was tailor made for a Hollywood production and to put stars in the eyes of a 10-year-old-boy, and it is also true that some people view it as cliché. But stay with me here.

In the early days of Sayers' career, the Bears remained segregated when traveling to away games, meaning black and white players shared hotel rooms with only those of their perceived race. At the Bears players' request, the team changed the policy and set road trip rooming assignments by position. Only one other player occupied Sayers' position - running back - and so Sayers began to room with his backup, a white player named Brian Piccolo, Sayers'

direct competition on the team. They became close personal friends. Piccolo - who often played in Sayers' shadow - spent countless hours rehabilitating Sayers after his first knee injury, literally working against his chances of becoming a starter. Sayers devoted himself to the care of his unlikely friend a short time later, when cancer slowly consumed Piccolo at age 26.

Sayers' book became a best seller in the early '70s, and the television movie *Brian's Song* was repeatedly rebroadcast throughout that decade, a time not generally considered among our nation's best in terms of race relations. Piccolo's daughter Lori, eulogizing Sayers in the *Washington Post*, observed that "[t]hey roomed and bonded together during the civil rights movement and so much social upheaval in the late 1960s. I look at their relationship now and think how much we could learn from them." These heroics fully eclipsed anything Sayers could do on a football field.

From his lofty perch as one of the greatest football players in history, Sayers understood that true heroism is measured in something other than one's achievements and statistics. On the occasion of his induction into the Pro Football Hall of Fame, he said: "God gave me a great gift and I had a lot of help developing for this occasion. Reaching this point, however, is not as important as striving to get here. This is true in all professions and all of life's activities. There are doctors, lawyers, schoolteachers, plumbers all who strive to do their very best with their abilities." He concluded, "I hope that when we look back 25 years from now, we can see this not as a zenith of our accomplishments but as a milestone in a life of striving for excellence, striving for even more distant goals."

Through those words, in an astonishing measure of humility, Sayers descended to ordinary status - just a guy who strives - and in an equally astonishing measure of grace, raised up anyone who also strives onto his hero pedestal. Sayers pulled the notion of heroism away from some impossible and ultimately disappointing ideal to a simple formula common to us all, and something within all of our own individual control. To the extent any of us, doctors, lawyers, schoolteachers, plumbers, strives to do our very best with our abilities, we are heroes to anyone who is looking, and we can find heroes if we are looking. As a kid in the Chicago suburbs, I had no idea about any of this. As an adult I feel lucky to have continued to learn from a childhood hero who didn't let me down. RIP number 40.

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EDITOR
Scott Merrill
603-715-3234
smerrill@nhbar.org

ADVERTISING AND SPONSORSHIP
SALES COORDINATOR
Donna J. Parker
(603) 715-3263
dparker@nhbar.org

BAR PRESIDENT
Daniel E. Will, Esq.

EXECUTIVE DIRECTOR
George R. Moore, Esq.

DIRECTOR OF MARKETING,
COMMUNICATIONS & MEMBER OUTREACH
Lynne G. Sabean, Esq.
(603) 715-3250
lsabean@nhbar.org

MEMBER SERVICES COORDINATOR
Misty Griffith, Esq.
(603) 715-3227
mgriffith@nhbar.org

WEBSITE COORDINATOR
Nancy Gross
(603) 715-3253
ngross@nhbar.org

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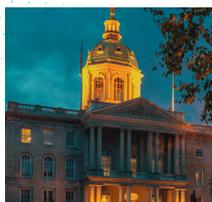
CONTACT US:
news@nhbar.org
2 Pillsbury Street, Suite 300
Concord, New Hampshire 03301
(603) 224-6942
Fax (603) 224-2910
www.nhbar.org

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In a Changing World, Al Casassa Remains Committed to His Community

By Scott Merrill

When Al Casassa graduated from law school Dwight Eisenhower was president, '57 Chevys were rolling off assembly lines, and Hampton, N.H., was a dry town.

A lot may have changed in the world since 1957 but Casassa, who turned 90 on Oct. 28, is still a practicing attorney with a passion for his community and his clients.

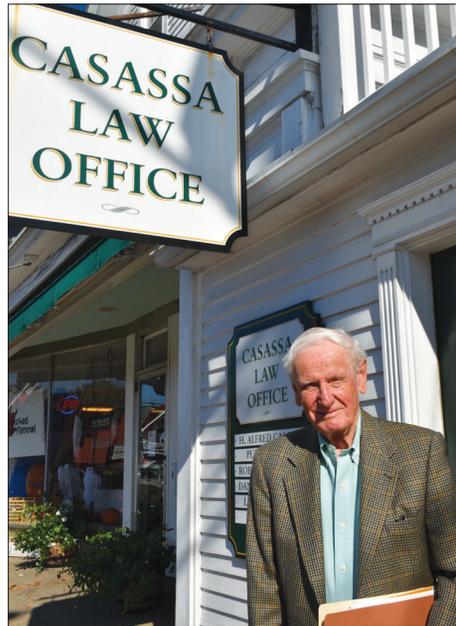
While he was not a participant in Harvard University's longitudinal study on adult development that began in 1938, Casassa's longevity and popularity on the seacoast makes him an example of that study's key finding: close relationships are crucial for health and success.

Casassa Law office manager, Kathy L. MacDowell, who has worked for several law firms over her 36-year career, says Casassa is the best attorney and boss she's ever met.

"I've worked for Al for 16 years and have thoroughly enjoyed it," MacDowell says. "We work very well as a team, in large part due to Al's professionalism, patience and deep understanding of people. He truly listens and cares about all people."

Casassa's wisdom and experience is what allows him to offer personal advice as well, MacDowell says.

"I see this every day in his interactions with clients, staff, fellow attorneys and his many friends. Even at his age, Al still works harder (every day!) and provides better advice and service than many much younger attorneys."



Al Casassa outside his office on Main Street in Hampton, N.H.. Photo/Scott Merrill

And Casassa's wealth of legal knowledge is something that generations of families in Hampton continue to rely on, MacDowell says.

"We have clients who are grandchildren of some of his early clients. That speaks volumes about him. Al is the kind of down-to-earth gentleman we don't see much anymore."

Arthur Brown, a Hampton rental property owner, is one of those clients. He says his grandparents considered Casassa their

Well-being Study

Harvard University's Study of Adult Development is a longitudinal study that has been following two groups of men over the last 80 years to identify the psychosocial predictors of healthy aging. Two groups of participants have been involved. The Grant Study that is composed of 268 Harvard graduates from the classes of 1939-1944 and the Glueck Study group that is made up of 456 men who grew up in the inner-city neighborhoods of Boston.

The study has looked at the psychosocial variables and biological processes from earlier in life that pre-

dict health and well-being in late life and is now looking at the children of the original participants in our G2 (Second Generation) study.

"The surprising finding is that our relationships and how happy we are in our relationships has a powerful influence on our health," said Robert Waldinger, director of the study, a psychiatrist at Massachusetts General Hospital and a professor of psychiatry at Harvard Medical School. "Taking care of your body is important, but tending to your relationships is a form of self-care too. That, I think, is the revelation."

attorney, along with his parents and himself.

"Our family has known Al forever," Brown says, adding that his mother, who is 90, attended school with Casassa. "I wouldn't trust anyone else with my legal business. He's a man of the highest integrity and I'm fortunate to consider him a friend."

Born in Bangor, Maine, in 1930, Casassa moved to Hampton from Winchester, Mass. when he was five. His father, a traveling salesman in the candy industry at the time, eventually went on to open Colt News, a popular business on

Main Street in Hampton and the only store in town which sold newspapers from all over the world.

"It was what you call a drugless drugstore. We sold everything that a drugstore sells except prescriptions and our business was wholesale newspapers," Casassa says, recalling the popularity in the summertime of such papers as the *Montreal Gazette*, *The Hartford Courant*, *The New York Times*, and the *Boston Post*. "For the beach people everything was in the newspapers in those days."

WELLNESS continued on page 21

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"Wellness Corner" is the *Bar News*' newest section, helping attorneys take as good care of themselves as they do their clients. You'll also see more social media posts and web articles on nhbar.org on this important subject.

To learn more about NHBA's Member Services (sorry, "Doggie Spa Day" isn't one of them), contact Misty Griffith at mgriffith@nhbar.org



Dear Editor:

I have had the opportunity to review the reports by Dr. Erin Bromage, associate professor of biology at the University of Massachusetts Dartmouth, relating to opening courthouses. I have concerns about a move toward a fast reopening of these buildings because I think it will damage the two pillars on which the court stands.

The first pillar is that everyone who walks through the courthouse doors, no matter who they are, and everyone who works inside, deserves to be treated with respect. Besides this being a value I was raised with and firmly believe in, we as attorneys are required to hold this to be true for we could not abide by our ethical obligations if we did not. While I understand the courts need to move their dockets (I have practiced for more than 30 years so know what the staffs are facing), no file on a desk is more important than someone's health or life. To require staff, attorneys, parties, bailiffs, witnesses, etc., to take a chance inside a building while a pandemic is raging shows a disregard for those individuals. It does not matter if all the precautions that are known are taken – and these can change over time as our knowledge of the virus increases – the sense is people do not matter.

The second pillar is legitimacy. The court, with its orders, are obeyed because of respect for the court. There is a danger that people will think less of the court if they are required to choose between their

health and coming to court. Because respect for institutions has diminished over the last several years, the courts must guard against that occurring with the branch of government whose main function is justice.

The reason the process for reopening courthouses should wait can be found in the reports by Dr. Bromage. The reports state what needs to be done to put people back into the buildings safely, and it is unrealistic. It recommends opening windows in the courtrooms. There are no windows in the courtrooms in Carroll County. The windows in the rest of the building do not open to the best of my knowledge. Even if that were possible, it gets pretty cold in New Hampshire during the winter. I cannot imagine working in February in full outdoor winter garments in a courtroom – or the chief justice wanting to pay the heating bills to keep the windows open. The reports say we should stay 10 feet apart from each other, that we cannot really exchange documents because the virus lives on the documents for 30 minutes to three hours (it is recommended documents sit for 24 hours), that face shields do not do as good job as wearing safety glasses, and there should be a specific filter in the air-filtration system. Who knows if we have those? These are just a few of the recommendations.

Then there are the questions that are not answered. For example, the chairs in the courtrooms are upholstered. How are those cleaned between hearings? What happened to the limit on the number of people who can be in a defined area at the

same time? What do we do about those individuals who have to use an elevator, our most vulnerable? How often are the elevators cleaned, how many people can be in an elevator at one time, and can they even be used?

I will not go through the entirety of the reports; however, they say enough to realize now is not the time to open our courthouses. The number of infections in New Hampshire is going up. We may be fortunate enough to not have the numbers of other states but that does not mean we should open courthouses and stop being careful until our numbers increase so drastically that we have to go back to what we are doing now or even have to close completely. Massachusetts, Maine and Vermont have seen significant increases. We need to be vigilant to minimize the number of citizens who become sick or die and keep our hospitals from becoming overwhelmed.

Fortunately, it is not as if we are not inventive and able to find new ways to accomplish our goals. I am a dinosaur when it comes to technology, but I have had WebEx hearings and done fine. In fact, for status hearings and dispositional hearings, the telephonic and WebEx hearings have been more efficient than being in the courtroom. They start on time and the work gets done. Surely, we can think of ways to do jury trials, etc., without having everyone sitting in a room with no windows and possibly insufficient air filtration. Sure, it is different. It is awkward. However, taking these measures shows the court respects those who have contact with it and that leads to

the court having legitimacy in the eyes of the public.

We should not rush into opening the courthouses during a winter in which the pandemic is raging through the country. We need to be patient and diligent to protect health and lives of all who have contact and business with the courts if for no other reason than it will pay dividends down the road when this virus is under control and we evaluate what values we preserved in the fight against it.

Sincerely,
Diana G. Bolander, Esq.



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NHBA's Committee on Cooperation with the Courts & Superior Court Chief Justice Nadeau present

Superior Court Updates

Mon, Nov 30 • Mon, Dec 7 • Tue, Dec 8



During these online forums, Justice Nadeau will provide a general update on the New Hampshire Superior Court system and hold an open discussion on any topics of interest to NHBA members.

All events are virtual, free, run 12:00 – 1:00 pm, and are in lieu of previously-planned, in-person luncheons cancelled due to COVID-19. All sessions will be recorded for viewing at a later date.

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Randy Reis Kimberly Kirkland

Dear Editor:

As many New Hampshire lawyers know, the Bar is comprised of a number of practice-area sections. Currently there are 18 of them, covering areas including family law, municipal & government practice, real property, and trusts & estates. To be a member of a section, Bar Association members pay a surcharge of \$40 per section above regular dues.

For at least 15 years, and until last spring, each section had a “listserv” – a well-understood group email information exchange. For many lawyers, section listservs were the primary tangible benefit of the Bar Association. Listservs promoted collegiality, enabled exchange of ideas, facilitated referrals, and functioned as informal knowledge-bases among practitioners.

The Bar Association listservs worked like all of us would expect. You started an email, and typed your inquiry. To reply, you hit reply. Most of us figured out how to sort or triage so that a busy listserv day did not dominate our email in-boxes.

On June 1st, with no known discussion, and little warning, the Bar Association listservs essentially disappeared. Apparently the Bar Association had difficulty with a vendor which no longer supported outdated software.

We understand that problem, because other organizations, whose listservs we have been members of, have had similar difficulties over the years. We are also aware, however, that all these organizations transferred to new vendors whose products – although differing in detail – work like one expects a listserv to work.

But the new “forum” system implemented by the Bar Association does not work like a listserv. It requires you to log-on to the Bar Association website, take multiple steps, and enter some sort of per-message subscription, departing from any other listserv system with which we are familiar.

Our complaints, and the litany of complaints that have been posted by New Hampshire Bar Association members include:

- Not user friendly
- Not email based
- Must log on to a website portal
- Log-on is slow
- After log-on, you get kicked off after a while, which requires a re-log-on
- Can’t tell who sent the inquiry
- Can’t discern the thread, which means there is no context to inquiries/answers

- Formatting - paragraphs run together
- Doesn’t work like a listserv
- Can’t discern subject-matters
- Not easy, not straightforward
- Can’t figure out how to navigate the system
- So messy that it is not useful
- Lots of clicks, navigation, etc, just to send an inquiry to the group
- Takes too much time/cumbersome

Consequently the Bar Association “forums” now host precipitously fewer messages than the listservs did before. Listservs were a valuable benefit of our section memberships and to our practices, but now they are effectively gone.

From the number and nature of complaints we have heard, we believe that we speak for many of our colleagues: the vendor’s software simply doesn’t meet the needs of the sections. Gentle complaints and suggestions to the Bar Association over the past four months have had little impact. Rather, the Bar Association seems to blame its members for not adapting.

But all is not lost, because the solution is to change vendors – which we know exist. We urge the Bar Association to do some thinking, perhaps convene a committee to offer suggestions, and make changes that more suit the needs of members.

Submitted by:

- Joseph Andriolo, Esq.
- Deborah Bailin, Esq.
- Ann Barber, Esq.
- Herbert Cooper, Esq.
- David Craig, Esq.
- Elizabeth Garon, Esq.
- Joshua Gordon, Esq.
- Honey Hastings, Esq.
- Robert Howard, Esq.
- Warren F. Lake, Esq.
- Deborah Mulcrone, Esq.
- Dwight Sowerby, Esq.
- David Sturm, Esq.

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.

Response to Forum Complaint Letter

NHBA Response:

About a year and a half ago, the NHBA was confronted with a serious problem. Its listserv communications between members were repeatedly being “blacklisted” by large Internet Service Providers (or “ISPs”, which are companies that provide subscribers with access to the Internet, such as Comcast, Verizon, and AT&T). These messages were also being rejected by other tech companies providing e-mail services, such as Yahoo and Google.

An organization can be blacklisted – and its email blocked from being received by its intended recipients – where its address is known or suspected of sending email spam (essentially “junk e-mail” or unsolicited bulk e-mails sent through the email system). This was a big problem for the Bar Association, because it made it all but impossible in a digital world to share e-bulletins, news about upcoming CLE, emails from the courts, or any other e-mail communications, including listserv emails.

After researching and investigating the situation - and after repeatedly having our technology consultants help get us “unblacklisted” - the source of the ongoing problem became obvious. It turned out that our section listservs used an older email-based technology that included no security-based features. Members discussing various topics between themselves, believing they were being careful, were actually leaving behind public, searchable data. Our members’ duties under law to maintain client confidentiality were possibly being compromised by out-of-date software. As soon as we realized this, we made it a top priority to update the old listserv technology to something else that met current security requirements.

Again working with our outside computer consultants, the decision was made to migrate from a listserv technology with no security to a state-of-the-art web-based technology that was securely behind our member login. We felt strongly that a single additional “click” when using the forum was a small price to pay for the added security, features, and benefits of being part of a web-based community. In Spring 2020, we launched the forum technology in many of our smaller sections and did not receive complaints. This early success made us feel comfortable about migrating our three largest sections (family law, real estate law, and trusts and estates) to a forum-based solution on Monday, June 1, 2020. If we had to do it again today, we

would not have pushed these three forums live on the exact same day that our member renewal also began. All the added data being sent and received that day slowed our computer servers, an issue we immediately addressed so that it would not be an issue going forward.

Migrating sections from listserv technology to forums is not an uncommon occurrence. In fact, such a practice is entirely consistent with the recent experiences of other bar associations. For instance, over the past couple of years alone, more than 20 state bars have moved to web-based solutions for the same reasons we did. Likewise, the ABA recently converted all its listservs to forum technology. There is simply no getting around the fact that a web-based solution will require a login, no matter who the vendor might be.

The letter makes complaints that simply aren’t supported by user experience. For instance, the letter signers complain that forum users cannot start a new topic by e-mail and that they cannot read an entire string of emails in any one place. Due to the underlying technology change, where features are accessed has changed. Both starting a topic and reading an entire email string are indeed available in the forum – the only difference is that the member has to first log in with a single added click to use them. Also, the user can control and customize how much – or how little – information they see at any one time.

The letter signers next claim that member users cannot determine who sent a particular inquiry. This is not true – the sender identity is bolded in the first line of the text. The signers also claim that forum users can’t discern the entire thread. However, if they log into the forum via the member portal, they can see the entire thread history, in the order in which comments were posted. Finally, the signers complain that forum users cannot tell the subject matter of the posts, but the topic title is actually in the second line of email, as selected by the creator of the post.

In summary, the change from listservs to web-based technology was entirely necessary due to ongoing “blacklisting” and security issues. The change was done only after a great deal of careful research and planning, to ensure that user messages remain secure and confidential. The NHBA staff has devoted significant time to making the forum technol-

RESPONSE continued on page 12



Heather M. Burns



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Ransomware: Evolving Risk Poses New Ethical Quandary for Lawyers

By Ande Smith



Ransomware attacks have changed pretty radically over the last year or so. The ransom demanded is not only for decryption of files, but also to prevent disclosure of that same information on the internet. These changes are particularly disturbing for lawyers, as they directly impinge on perhaps our most important obligation: the duty to preserve client confidences.

The basic operation of ransomware itself – malicious software that encrypts files and requires payment for restoration – hasn’t changed too much. Generally, malicious code is delivered via email, usually as a link or an attachment, which when clicked downloads and instantiates its payload. The original game was that before the automated encryption process ran, we hoped protective systems would stop it. When those failed, we would turn to our backup systems – hopefully offline and unaffected. We’d fret about how much content was lost and how long it would take to restore. In the worst cases, we’d look at paying the ransom, which was generally small dollars and successful in restoring files.

Increasingly, encryption no longer kicks off automatically – it is the last step in a process. The new first phase involves reconnaissance. After you click that link or attachment, criminals gain and expand access to your systems, identifying data and backup sources. Before encryption, they will exfiltrate as much data as possible to offshore servers, which is often unnoticed. They then will encrypt backups and only afterwards encrypt operating files, catching your attention.

This evolved approach comes with new demands: if the ransom is not paid, the criminal will threaten to publicly disclose the data theft. If shaming doesn’t work, escalating demands (and prices) threaten publishing the data on the dark web. And of course, the data left behind is encrypted. The tension for the victim can be even higher as the scope of the data exfiltration often cannot be confirmed through forensics, either in the timeframe of the ransom demand or perhaps ever. Was data really taken or is it an idle threat?

While notification of a breach is ostensibly obligated under many statutes and rules, the possibility of the data publication and its attribution creates a more dire risk to reputation. For lawyers, the quandary is even more pernicious. The possible or actual removal of files and client secrets will require difficult conversations. And there’s the possibility of sanction for breach of the

duty to reasonably protect data. Ask any company that’s been breached: regulators and litigants always assert that more reasonably should have done. No few a lawyer already has confronted the choice of paying the ransom and wondering whether disclosure was really required if exfiltration was not certain and even if so, a reasonable degree of confidence exists that the data was deleted - unread and undisclosed.

An often-asked question is, “How does one know the stolen data will be destroyed?” The short answer is that there is no guarantee. Many criminals will provide screenshots of the data being deleted as “proof,” which provides cold comfort. As a practical matter, industry experience is that there have been few attempts at re-exploitation. While there is no honor among thieves, there would likely be a negative consequence to the ransomware “industry” if the data weren’t destroyed. Particular attacks can be ascribed to specific criminal groups based on their tactics and techniques, so it would undermine their ability to collect ransoms if they failed to abide by their deal. And many cyber criminals will not want to accumulate petabytes of stolen data, creating a risk of detection.

Consider the case in May of Grubman Shire Meiselas & Sacks. A firm with an extensive roll of celebrity clients, it refused to pay a \$42 million ransom, which was up from \$21 million after the selective leaking

of stolen data apparently didn’t sway the firm. In June, that ransomware gang published an auction site to sell leaked data. In that case, the disclosure was pretty clear.

One can only imagine the debate at international firm Seyfarth Shaw. It reported on Oct. 12 a debilitating encryption attack a few days earlier. Its press release contained the tantalizing words, “We have found no evidence that any of our client or firm data were accessed or removed.” For the sake of all involved, let us hope none was. But for those who haven’t been subject to the actual pressure of a leak, it is almost a bar exam question on what to do and that dilemma could be all too real for any of us.

No cyber article and its parade of horrors would be complete without a to-do list. The reality is that they are the same items you’ve read about for years. Emphasis on training and awareness campaigns, using anti-malware products, vulnerability and configuration management hygiene, and off-line backup systems are key. A practiced incident response process and cyber insurance (which sometimes pays the ransom) are worthy investments. Also, the new entrant for strong consideration is an enterprise detection and response tool or service, which leverages machine learning, behavioral analytics, and threat intelli-

CORNER continued on page 7



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gence to look for indicia of cyber incidents and quash attacks early.

But as with any cyber risk, there is no silver bullet and it unfortunately requires a thoughtful, layered defense informed by the risks unique to your practice. If you're not sure of what those risks are and how you've addressed them through these and other security controls, then you're probably not taking those elusive "reasonable" steps.

While data theft from lawyers was once limited to the largest firms and nation-state actors, the new ransomware schemes make it a problem for us all. Happily, it's never too late to assess risks, mitigate them, and above all, fulfill our ethical duty to our clients.

A member of the New Hampshire and Maine bars, Ande Smith is president and founder of Deer Brook, an IT and cybersecurity consultancy. Deer Brook provides cybersecurity, privacy, and IT advisory services, including breach response, to many sectors of the SMB market.

By Misty Griffith and Nancy Gross

Reliable, secure technology is an absolute necessity for remote work. Your NHBA TechConnect benefit is expanding to include your entire staff.

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Free Consultations. The array of software available can be overwhelming, and it is sometimes difficult to know which technology to choose. You don't need just a technology consultant, but one that understands the ins and outs of legal technology. We've partnered with Affinity Consulting to help you leverage your technology so you can get the most value out of it. The free 30-minute consultations extend



to any member of an attorney's staff. Follow-up consultations are also free. This is not a thinly veiled marketing gimmick. It is a valuable resource for members of the NHBA and their staffs.

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It is easy to schedule a consultation. Just go to nhbar.org, click on TechConnect and then click on "schedule a consultation." From there you will see a screen that allows you to choose the time and date for your consultation and leave your contact information along with a brief explanation of

the issue you wish to discuss. It is that easy. There is not a limit on the number of free consultations, so the next time you have technology questions, have someone on your staff try a consultation. Attention Mac users: Affinity's legal-technology experts also offer includes Mac-specific recommendations, consultations, and how-tos.

Email an Expert. Perhaps you have a quick question about legal technology, or maybe you watched an Affinity video tutorial and have a follow-up question. Go to the TechConnect page and email an expert. You or one of your staff members will receive an answer within two business days.

Online Training with Affinity Insight (formerly known as Affinity University). Whether you need training on page numbering in Microsoft Word, using the typewriter tool in Adobe, creating rules in Outlook, or employing legal-specific products like Worldox, NetDocuments, PCLaw, Tabs3, Action-

TECH continued on page 8

The Bar News has launched this regular column devoted to cybersecurity and information privacy. Contact news@nhbar.org if you'd like to contribute an article on these critical issues facing the legal profession.



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Remember, whomever creates the initial account has the account management privileges for the sub accounts. (See adjacent screenshot)

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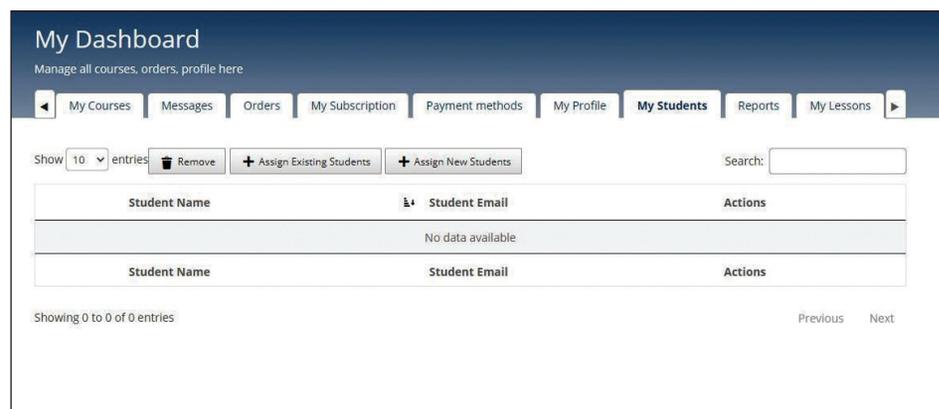
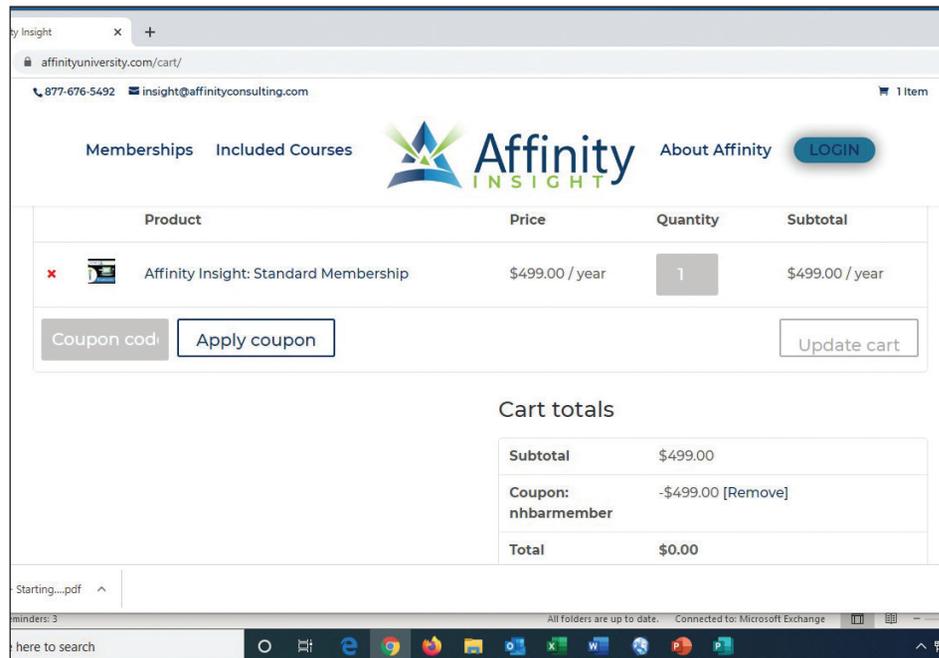
Comparison Charts. Deciding on a product is a daunting process – and while we are lucky to have many options in the market, sometimes the number of options and features ends up being a roadblock to the successful selection of a product. Go to the TechConnect page and check out a variety of comparison charts which offer great summaries of your options on many timely topics such as e-mail encryption, web meetings, and cloud document storage.

Checklists. Checklists are a great way to tackle a process that you might not be familiar with – and our partnership with Affinity gives you access to some critical advice and suggested best practices. From year-end accounting, to opening a firm, to disaster preparing – these checklists have you covered. Additionally, be sure to consult the NHBA’s Succession Planning Guide for New Hampshire Lawyers. The Succession Planning Guide is available to any members seeking assistance in planning for the future, as well as clos-

ing or passing on a practice. The guide is available in a hardcopy booklet, and online as a free resource to our members.

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Efficiently Using Section Forums – Tips from the NHBA Staff

By: Nancy Gross and Misty Griffith

Included in your section membership is access to the corresponding forum. Forums are online discussion sites where members can safely and securely converse with each other via posted messages. Discussions are organized by topic making them easy to browse. Forum users can readily access and search older topics and archives.

How to Enter Section Forum

1. Log-in using either the My NHBA Portal or the Member Login, both on the header of every page of the NHBA website.
2. Select Forums, again in the header, above the green bar.
3. Your forums will appear; select the forum you wish to enter.
4. You can only access section forums to which you have paid to belong.

How to Use Section Forums

5. Want to post a topic? Scroll below the most recent topics to the Topic Title boxes and name your topic. Type your message in the Topic Box.
6. Want to read an entire strand of a topic? Click on the topic title; the entire strand of the conversation will appear as it occurred. You can reply to any of these messages (posts or replies) by clicking on the Reply button, to the far right of the date and time stamp.
7. Mark a post as a “favorite” so it is easy to find in the future. The Favorite button is found at the top of each post page.
8. Manage your profile to take full advantage of useful features: Click on your name under My Profile on the right. A page with links to all of your Topics, Replies, Favorites and Subscriptions will appear (links to the left).

Using Forums Within Your E-Mail Program

9. E-Mails: Unless you have changed your default settings, you will receive an email as each topic or reply is posted to the Forums. To Change the default settings see: Power User Features.
10. Replies: You may reply directly through your email and it will be posted to the Forum and sent out to the entire forum.

Any questions on the forums, we welcome you to contact the friendly staff at the Bar Center. For specific questions pertaining to the technical aspects of forum usage or to join a section, please contact NHBA Sections Coordinator, Dorene Hartford at (603) 715-3257 dhartford@nhbar.org. Call the member hotline (603) 715-3279 or contact memberservices@nhbar.org.

Power User Features

1. **Copy and Paste Successfully:** if you want to copy and paste into the forum post box please toggle the tabs from “visual” to “text”. The hidden html that is formatting your copied text, email signature etc. will format correctly only when pasted into the “text” tab.
2. Add a tag (subject, descriptor) to your topic so it can be easily searched in the future (behind the firewall of course).
3. **Manage Incoming E-Mail:** If you are receiving too much Forums email, use the subscriptions link to turn off any unwanted Forums or topics. Or use the Unsubscribe link at the top of each post page, next to the black search button.
4. **Flag a Favorite:** Users can mark topics as favorites for future reference. Later, favorites can be accessed through your user profile, by clicking on your name.

The screenshot shows a forum post and a reply box. Callout 1 points to a search box at the top right. Callout 2 points to the author's name 'Diane Gaspar' in the post header. Callout 3 points to the rich text editor toolbar in the reply box. Callout 4 points to the 'Tags:' field in the reply box. Callout 5 points to the 'Favorite' and 'Subscribe' links at the top right of the post.



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

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Community Notes

The New Hampshire Pro Bono Program recognized **Jonathan Ross**, a family trial lawyer with Primmer Piper Eggleston & Cramer P.C., for lifetime achievement. Ross has spent his 52-year career doing and promoting pro bono in New Hampshire and nationally. New Hampshire Supreme Court Justice Gary Hicks describes him as “an inspired attorney who puts the law above himself.” (See article page 14)

The **Honorable Susan B. Carbon** of the 9th Circuit Court Family Division in Manchester has been named the 2020



Susan B. Carbon

judge of the year by the National Court Appointed Special Advocate/Guardian Ad Litem Association for Children. The announcement was made at the organization’s virtual Awards of Excellence ceremony on Oct. 21.

Coming & Going

Shaheen & Gordon, P.A., is happy to announce that **Emma Stilson** has joined the firm as an associate attorney in the Trusts, Estates & Guardianships practice group. She will work out of the firm’s Dover office.



Bernazzani Law welcomes **Anthony Naro** as an associate attorney. His practice will focus predominantly on criminal and family matters.

Ashlie Lynn Hooper

Ashlie Lynn Hooper passed away at home with family by her side on Oct. 22, 2020. She courageously battled metastatic breast cancer for 14½ years and never let it rule her life.



Ashlie was a kind, caring, thoughtful and humble person with a good heart and an infectious smile that she wore frequently. Despite her health challenges, Ashlie was always positive and upbeat and lived her life to the fullest. She didn’t let things get her down. She lived in the moment and appreciated all that she had.

Ashlie loved her sons, Zachary and Matthew, with all her heart. She was a wonderful mother who nurtured and prepared them for a life without her. Ashlie was a fighter who did not want to give up. She was still working within a few days of her passing. She was dedicated to her job as an Assistant County Attorney for Merrimack County, where she worked for 16 years; in that time her co-workers and colleagues were a second family to her.

Ashlie was born in Ohio and raised in the Cincinnati area. She was an outstanding student who attended a junior scholar’s program at Miami University when she was 17. Ashlie graduated high school from Ursuline Academy in 1990 and then from the University of California at San Diego in

1994, where she earned a bachelor of science degree in animal physiology and neuroscience. She went on to law school at Suffolk University in Boston and earned a J.D. in 2000 (Magna Cum Laude), the same year she was admitted to the New Hampshire Bar.

Ashlie is survived by her husband of 19 years, Mike, their sons Zachary (17) and Matthew (15), her mother, Beverly Ringel, and her father, Gregory Ringel. In lieu of flowers, donations can be made to Concord Hospital Charitable Trust or Dana Farber Cancer Institute. A celebration of life for Ashlie will take place in the future. Arrangements have been entrusted to the Cremation Society of New Hampshire. To view her online tribute or leave a message of condolence, please visit www.csnh.com.

Raymond J. DiLucci

Raymond John DiLucci, 78, of Concord, died Oct. 16, 2020, at The Birches at Concord after a period of declining health.

Ray was born the only child of Rocco and Effie (Stenfeldt) DiLucci on Dec. 31, 1941, in Newton, Mass.. He attended Wellesley, Mass., schools and graduated from Tufts University, B.S.E.E., in 1963. He later graduated from Franklin Pierce Law Center in 1990.

Ray enjoyed the Boston Bruins, New England Patriots, skiing, hiking, big dogs, cooking, bird watching and traveling. He opened his law office in Concord in 1990 and enjoyed “saving people’s homes.”

IN MEMORIAM continued on page 12

LawLine Thanks

The NH Bar Association would like to give a huge thanks to McLane and Middleton for hosting October’s LawLine on Wednesday the 14th. Attorneys Denis Dillon, Mike Quinn, and Jacqueline Leary volunteered remotely and fielded about 40-plus calls from the public. Calls were taken on a variety of legal issues, including family law, probate, and criminal law.

We are currently recruiting LawLine hosts for 2021! LawLine hosts are currently needed for the months of February, March, April, May, June,

July, October and December. 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 them for two hours. The Bar also provides a light dinner for all volunteers. For more information or to volunteer to host a Lawline event in 2021, please contact NHBA Lawline Coordinator, Linda Sutton at lsutton@nhbar.org.

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In Memoriam from page 11

He is survived by his sons, Raymond John DiLucci Jr. and Nicolas DiLucci, and his granddaughter, Jasmine DiLucci. He is also survived by his best friend and partner, Betty Seeler.

Memorial Contributions may be made to: the NH Bar Pro Bono office at 2 Pillsbury Street, Suite 300, Concord, NH 03301. Due to COVID-19, a Celebration of Life will be held at a later date.

William John McNally III

William John McNally III, of Thetford, Vt., passed away on August 25, 2020. He was 76.

He is survived by his three children, Jimmy, Catherine, and Peter, and his siblings Teri, Patrick, Ritchie, and Sue. John's family welcomes those who knew him to share memories and stories at rand-wilson.com. In lieu of flowers, the family asks that charitable donations be sent to the Coalition for Rainforest Nations. A memorial to celebrate his life will be held in 2021.

John was born on July 24, 1944, in Fredericksburg, VA. A child of a career Army officer, William John McNally, Jr., and a nurse, Jennalee "Dede" McNally (née Ritchie), he grew up in Hawaii, Japan, Arizona, and Virginia.

After completing his undergraduate degree at Duke University, where he majored in history, he served for four years as a lieutenant in the US Navy. After a year at sea, he deployed in 1968 to Vietnam, where he served in combat on a river boat and advised the South Vietnamese Navy. During this time, he was a co-founder of the Concerned Officers Movement, a group of military officers who spoke out against U.S.

involvement in the war. John then attended law school at the University of Virginia, after which he worked as a public defender and lawyer in private practice in Alexandria, Va., Washington, D.C., and the Upper Valley. He was known by colleagues for his thoughtful and effective legal acumen. A highlight of his early career came when a Fourth Amendment case he tried was brought to the US Supreme Court.

In addition to his law career, John was a prolific and innovative artist. In Washington, D.C., he published his poetry in magazines and in a personal book collection, *Northern Lights*. During this time, he co-founded the Washington Writers Publishing House and co-developed a program in Virginia schools to teach grade school students how to write poetry. He was most accomplished as a visual artist, spending decades working in oil painting, watercolor, and digital art, which included several gallery exhibitions in the Upper Valley. His art reflected the richness and color he saw in home environments and the natural world, his travels abroad, the people he loved, the hills and fields of Vermont.

John was a loving father, brother, and friend who shared his kindness, warmth, and wit with all who were close to him. He was most content in his beloved home in Thetford, where he spent many evenings sitting on his rocking chair on his porch, reading multiple books at a time, and sharing conversations at his dinner table with carefully chosen music in the background. He helped others to see beauty in the world through his art, his poetry, and his music. His wry observations and mischievous sense of humor brightened conversations and livened our days. He will be dearly missed by his family and friends, whose love for him knows no bounds.

Membership Status Changes

Presented to the Board of Governors on October 15, 2020.

Scozzaro, Victoria, West Seneca, NY (Aug. 24)
Keefe, Ian, Boston, Mass. (Sept. 30)

Active to INACTIVE

Gibson, Christie, Dallas, TX (August 20)
Maynard, Steven, Nashua, NH (Sept. 1)
Reuland, Robert, Brooklyn, NY (Aug. 25)
Nicewicz, Lindsey, Manchester, NH (Aug. 27)
Godbout, James, Nashua, NH (Aug. 31)
Cody, Leo, Billerica, Mass. (Aug. 11)
McLaughlin, Kristen, Nashua, NH (Sept. 4)
Appel, Michael, Cambridge, Mass. (Aug. 31)

Active to INACTIVE RETIRED
Bartolomei, Craig, Glen, NH (Oct. 1)
Maynor, Melanie, Berlin, NH (Sept. 28)

Inactive to ACTIVE

MacKinnon, Amanda, Winchester, Mass. (Sept. 8)
Larney, Kathleen, Portsmouth, NH (Sept. 4)
Gillies, Peter, Fitchburg, Mass. (Sept. 4)
Clifford, John, Johns Island, SC (Sept. 21)
Spottswood, Eleanor, Montpelier, Vt. (Sept. 22)
Kenison-Marvin, Nathan, Ctr. Tuftonboro, NH (Oct. 1)

Inactive to INACTIVE RETIRED

Pentz, John, Sudbury, Mass. (Sept. 2)
Sabean, Lynne, Concord, NH (July 31)
Griffith, Misty, Concord, NH (July 31)

Inactive to RESIGNED

Jones, Susan, Yarmouth, Maine (Sept. 9)
Satter, Robert, Ogunquit, Maine (Sept. 11)
Morency, Kayla, Dracut, Mass. (Sept. 30)
Sheehan, Katherine, Nashua, NH (Oct. 2)

Honorary Active to HONORARY INACTIVE

Willard, Jr., Martin, Laconia, NH (Sept. 29)

Honorary Active to DECEASED

Westergren, Gary, Sanbornton, NH (Sept. 17)

Response from page 5

ogy work as intuitively as possible. Today, more than 1,800 Bar Association members have joined sections and the forum feature is an important part of that experience. We take member service and satisfaction very seriously.

We thank the letter authors for their comments because it made us realize that we can improve the way we teach members about best practices for forum use. Consequently, the NHBA will offer free remote training sessions on two separate occasions so any member can have their questions about forum use answered and experience firsthand the many benefits of the newer technology. Watch the e-Bulletin and *Bar News* for dates and times. Can't wait that long? I encourage you to read the article in this issue concerning tips for forum usage on page nine.

- George R. Moore, Esq., NHBA Executive Director

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*Snow date is Jan 11, 2021



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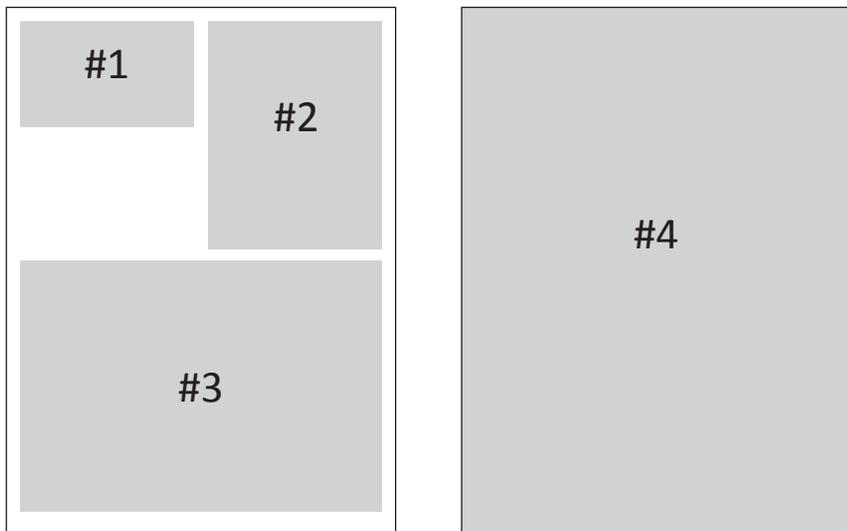
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Rates & Sizes

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MAY 2021



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J. Mitchell Lowe '22



Amber Ezzell '21

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High Praise

*"Thank you again for making it possible for Colleen Yoder to work for us
and our clients! Having law students work with us is a great benefit to
NHLA and it 'feels good' to be able to share our work with budding lawyers."*

– Ruth Heintz, Managing Attorney, Berlin Office,
New Hampshire Legal Assistance

*"J. Mitchell Lowe has done an outstanding job this summer and will
be missed!"*

– The Honorable Edward B. Tenney II, Hillsborough Family Division
Judge for the Sixth Circuit Court of New Hampshire

*"It has been a pleasure having Amber Ezzell as an intern this summer.
Ms. Ezzell (and UNH Franklin Pierce School of Law) should be proud of
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– Maricia Woodham, Supervisory Administrative Judge,
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A Virtual Celebration of Pro Bono Week

By Virginia Martin

To celebrate National Pro Bono Week this year, the Justices of the NH Hampshire Supreme Court joined the NH Pro Bono Referral Program for the first time in a virtual event October 27, which included honoring L. Jonathan Ross of Primmer, Piper, Eggleston & Cramer with a lifetime achievement award for his pro bono service and leadership. (See separate article.)

Introduced by Pro Bono Board Chair Brian Shaughnessy, Senior Associate Justice Gary Hicks thanked NH Bar members for their volunteer work, a sentiment shared in turn by each Justice. During a lighter moment following her presentation on the Domestic Violence Emergency (DOVE) Project, Justice Anna Barbara Hantz Marconi sent a message to attorneys by playing the song, “Give It A Try” by Michael Minelli.

As well as celebrating volunteer attorney efforts, several other themes emerged, from the critical need for legal assistance to the diversity of Pro Bono Program opportunities and the professional rewards of pro bono service. Ross stated when accepting his award that only about 20 per cent of legal needs of low-income people are being met. In his remarks, Justice Donovan said he would not try to tell attorneys how or that they must perform charitable service but stated, “if a majority of our Bar



Justice Anna Barbara Hantz Marconi playing “Give It A Try” for attendees at this year’s National Pro Bono Week Virtual Luncheon.

members accepted just one Pro Bono case per year, we would probably not see the backlog experienced at this time.”

When it comes to Pro Bono legal services, Justice Hicks commented the Court is “all in.” He pointed out the wide variety of options available for volunteers from criminal record annulment clinics to NH Free Legal Answers, an online virtual advice program, to the Low-Income Taxpayer and Domestic Violence Emergency Projects, among others.

Justice James Bassett amplified Justice Hicks remarks about Free legal Answers, thanking the 90 attorneys registered to provide time-limited legal advice to lower-income people throughout the state. Given the system can be accessed anywhere 24/7 with an internet connec-

tion, he said he likes to call it, “Pro Bono in your PJs.” While noting the program is a success, Justice Bassett indicated New Hampshire “needs to and can do better” to increase attorney engagement, which now stands at 24 out of 37 for the number of participating attorneys by state.

Former DOVE volunteer, Justice Anna Barbara Hantz Marconi spoke on a subject she knows well—legal services to victims of domestic violence. She remarked that

DOVE “sits and the intersection of selfless, selfish and self-serving” by simultaneously allowing attorneys to extend much needed services to vulnerable people through time-limited legal intervention that provides the chance to gain courtroom experience with exposure to judges.

Attorneys interested in taking up Justice Hantz Marconi’s challenge to “Give It A Try,” can contact Pro Bono Director Virginia Martin at gmartin@nhbar.org.

Pro Bono Program Presents Lifetime Achievement Award to L. Jonathan Ross

At its October 27 virtual luncheon with the NH Supreme Court, the NH Pro Bono Program presented L. Jonathan Ross of Primmer, Piper, Eggleston & Cramer with a lifetime achievement award for his decades of unwavering, exemplary service to those in need through individual pro bono client representation as well as zealous advocacy for access to justice in New Hampshire and across the nation.

At the luncheon, Senior Associate Justice Gary E. Hicks Justice Hicks stated Ross’s “championship of excellent legal counsel without expectation of payment for some of our most indigent citizens has been and continues to be a true measure of an inspired attorney who puts the law before himself.” Justice Hicks described Ross as his long-time mentor starting when both practiced at the Manchester firm of Wiggin & Nourie.

In presenting the award, Pro Bono Board Chair Brian Shaughnessy, Bedford, recalled receiving the L. Jonathan Ross Award for Outstanding Legal Services to the Poor in 2017 commenting, “It was the high honor of my career to receive Pro Bono’s Ross Award” and lauded Ross for his consistent, resolute efforts to find and take the time to provide direct pro bono legal services while also leading the charge to engage others in the fight for equal justice.

With Pro Bono’s highest honor already carrying Ross’s name, the program created this special award to assure he received the recognition due an icon of the pro bono movement as a doer, mentor and leader. According to Pro Bono Director Virginia Martin, Ross sets an example for others by always having at least one active family law case with a lot on the line for the client, including personal safety and financial stability for the children. He has logged hours into the thousands to make a difference for those living on the economic margins.

A champion of the online advice program NH Free Legal Answers, through which attorney volunteers provide unbundled legal services to low-income people through the state, Ross ranks as one of the top attorneys in number of questions answered. Ross was instrumental in obtaining approval for NH Free Legal Answers through his advocacy as a member of the NH Supreme Court’s Access to Justice Commission.

In accepting the award, Ross, urged attorneys to do their part “to make equal



justice under law more than a motto.” He went on to encourage all to “take this event as a challenge to do more and to encourage other members of the Bar to provide pro bono legal services—direct legal representation and advice for the most needy—now and continuing until we meet the goal of equal access to justice for all.”

Ross’s efforts to assure access to justice for the vulnerable and needy on a national scale began early in his career when serving as president of the NH Bar Association from 1985-1986. It was then that he co-funded Bar Leaders for Preservation of Legal Services for the Poor to fight to maintain funding for civil legal services and avoid imposition of rigid new requirements by the federal Legal Services Corporation.

Soon Ross took on leadership roles within the ABA, which he continues to this day, beginning with the Standing Committee on Legal Aid and Indigent Defendants in the late 1990’s, returning to chair the group from 2000-2003. He has served several terms on the Standing Committee on Pro Bono and Public Service, including chairing the committee twice and currently serving as Special Advisor. He was a member of the ABA’s Commission on Interest on Lawyers Trust Accounts from 2012-2015, followed by service on the Commission on Domestic and Sexual Violence in 2015-2016. Ross has held numerous other posts with the ABA including as a member of the Board of Governors and as a State Delegate for District 1.

Ross was previously recognized by the National Association of Pro Bono Professionals with its William Reese Smith, Jr. Special Services to Pro Bono Award for Distinguished Contributions to and Dedicated Support of Pro Bono Legal Services.

Primmer Firm Steps Up During Pandemic to Provide Pro Bono Services

It is not entirely business as usual at the New Hampshire Pro Bono Program as it responds to new legal needs stemming from the COVID-19 pandemic. When Pro Bono put out the call for attorneys to sign up for unemployment insurance appeals in collaboration with New Hampshire Legal Assistance and the Legal Advice and Referral Center, attorneys at Primmer Piper Eggleston & Cramer P.C. answered. Currently three attorneys practicing at the firm’s Manchester branch are providing representation to clients in unemployment cases—Adam Mordecai, Brendan O’Brien and Patrick Landroche.

“Jumping in to help with the influx of unemployment issues during these unprecedented times seemed like a great way to help folks struggling with problems brought about by the pandemic,” Mordecai said. “I’ve been fortunate to continue to work largely from home, but not everyone has been so lucky. When the opportunity arose to help people navigate the unemployment system, I figured it was the least I could do. We’re also fortunate to have a strong pro bono tradition at the firm, exemplified by Jon Ross, and I didn’t want to say ‘no’ when he asked for colleagues to join him in this.”

The response does not end there as demand for assistance with more traditional Pro Bono issues continues. Searching for an attorney to represent a new mother facing a lawsuit for dam-

ages in a car accident that occurred when she hit black ice on her way to work, Pro Bono was running out of time. That is until a Google search showed a new attorney at Primmer who had signed on to help with unemployment also handled insurance litigation. Despite the late hour in the case’s trajectory, John Prendergast quickly said yes and has since secured dismissal of the case. The Pro Bono client is now assured she can keep her driver’s license, which, if lost, would have jeopardized her ability to support herself and her baby.

Family law, too, remains an ongoing area of need for low-income people. Jon Ross took yet another case for a low-income client, and his Primmer colleague Gary Burt also stepped up to assist a non-English speaking client seeking a divorce. With unemployment hitting record levels, removing barriers to employability has taken on increased importance. Not quite finished with one of her criminal-record annulment cases, Primmer’s Debra DuPont agreed to help another client remove an old record to improve her job prospects.

By taking advantage of old and new Pro Bono opportunities, these attorneys, both recently admitted Bar members and more seasoned practitioners, are making people’s lives better at a time of great uncertainty and change.



New Hampshire Bar Association PRO BONO HONOR ROLL

2020 Attorney Honor Roll

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

BELKNAP

Randi Bouchard
Kathrine Lacey

CARROLL

Dennis Morgan
Alvin Nix ★

COOS

Alvin Nix ★

GRAFTON

Quentin Blaine
Robert Hunt
Mary Leahy
Roderick MacLeish ★
James Shepard ★
Aaron Simpson
Thomas Trunzo

HILLSBOROUGH (N)

Michael Atkins
Devin Bolger
Donna Brown ★

Gary Burt

Christopher Candon
Michael Croteau
Suzanne Decker
Anne Jenness
Lynnette Macomber
David Osterman
Rory Parnell

HILLSBOROUGH (S)

Jenna Bergeron
Adam Mordecai
Pamela Peterson
Lyndsay Robinson ★
Eric Sommers
Dawn Worsley

MERRIMACK

Leif Becker ★
John Brandte
John Garvey
Roderick MacLeish ★
Sabin Maxwell
Kathy Needleman

Alvin Nix ★

Thomas Reid
Charles Russell
James Shepard ★

ROCKINGHAM

Donna Brown ★
Benjamin Folsom
Vincent Marconi
Francis Quinn
David Stamatis
Peter Tamposi

STRAFFORD

Leif Becker ★
Debra DuPont
Laurie Lacoste

SULLIVAN

Patrick Landroche
Roderick MacLeish ★

Third Quarter 2020 Law Firm Honor Roll

Our thanks to the following law firms who made it possible for their attorneys to participate in Pro Bono. This list includes firms whose attorneys accepted cases from July through September 2020. This list does not include the hundreds of firms whose attorneys have ongoing cases.

BELKNAP

Wescott Law PA

CARROLL

Cooper Cargill Chant PA

GRAFTON

Baker & Hayes
Simpson & Mulligan, PLLC

HILLSBOROUGH (N)

Backus Meyer Branch LLP
Bouchard Kleinman & Wright PA
Devine Millimet & Branch PA
McLane Middleton PA
Moore Ames Law PLLC
Primmer Piper Eggleston & Cramer PC
Wadleigh Starr & Peters PLLC

HILLSBOROUGH (S)

Bernazzani Law

The Black Law Group, LLC
Smith-Weiss & Shepard, PC

MERRIMACK

Davis | Hunt Law PLLC
Laboe & Tasker PLLC
Rath Young & Pignatelli PC

ROCKINGHAM

Boynton, Waldron, Doleac, Woodman & Scott, PA
Coughlin Rainboth Murphy & Lown PA
Hoover & Flynn PLLC
Parnell Michels & McKay PLLC
Pierce Atwood LLP
Reid Law PLLC

OUT-OF-STATE

Gregg Hunt Ahern & Embry
Miller Law Group PC

Free Legal Answers Volunteers for Third Quarter Report 2020

This list represents attorneys who have answered questions on Free Legal Answers in the months of July, August and September.

Stephanie Annunziata
Daniel Bretzius
Michael Chamberlain
Martha Davidson
Craig Donais
Samuel Donlon
Julie Eastman
Judith Fairclough
Michael Fisher
Randy Gordon
Barbara Heggie
Courtney Herz

Marta Hurgin
Catherine McKay
Rory Parnell
Pamela Peterson
L. Jonathan Ross
L. Phillips Runyon III
Jane Schirch
Brian Shaughnessy
James Shepard
David Stamatis
Kelsey Sullivan
Peter Wright

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Johnson from page 1

law school.

“I just loved everything about the law,” she says. “Being a logical problem-solver and compassionate toward humanity, you can find places to practice law and feel like you’re doing good.”

But another attorney for whom Johnson had once babysat discouraged her, saying he knew her and her family, and that law was a hard profession that might not suit someone who was family-oriented.

“He was saying it with the best of intentions out of what he thought were my best interests,” Johnson says, but she couldn’t help but think he would have had no such objection had she been male.

After so many years working in law offices, says Johnson, “my reply to him was, ‘If I don’t know I want to go to law school, there’s not going to be much in life that I know.’”

A legal education at Boston University School of Law ensued, and upon graduation Johnson taught for a time at Rivier before ultimately joining McLane Middleton 28 years ago.

Initially, her area of focus was employment law, and for about 17 years she chaired the firm’s employment-law group. “We were typically on the management side, representing companies and upper-level executives for hiring, disciplinary compliance, harassment prevention, everything having to do with personnel management and the law,” she explains.

While she still does that work, more of her practice is now devoted to K-12 independent and boarding schools. That began when Jack Middleton, who was out-

side counsel for the New Hampshire Teachers Association, asked her if she’d like to do some work with him relating to schools.

“And that was it,” Johnson says. “I realized I loved this work.”

She advises clients on everything from risk management to student discipline to fiduciary and tort law to crisis response, and much of the work involves training of students, employees, administration and trustees.

Annually, she offers a training for employees on maintaining a safe school environment, mandatory reporting laws, how to maintain appropriate boundaries with students and harassment prevention.

She offers another layer of training for administrators on crisis response, including reporting obligations, how to offer counseling and support, and dealing with police as well as boards of trustees. And she offers a program called Smart Choices for students, instructing them on how to stay out of trouble and where to turn for help if they need it.

She has won the admiration of clients like R. Phillip Peck, head of the Holderness School in Holderness, for which Johnson has been lead counsel for more than 15 years.

He says Johnson “knows independent schools perhaps better than any attorney



Linda Johnson and her ‘Little Sister,’ on a trip to Paris that Johnson gave her as a graduation present.

in the county” and adds that she “always provides measured and wise counsel while also engaging us in a dialogue. I always feel like we understand the risks involved in a given situation, and then she partners with us to decide on what is the right response.”

That esteem is shared by Connie Roy-Czyzowski, vice president for human resources at Northeast Delta Dental in Concord, who describes her friend as “passionate, precise, principled, and practical.”

“I have known Linda for over 35 years both professionally and personally and have admired her involvement with civil rights, women’s rights, LGBTQ rights, and rights for individuals with disabilities,” she adds. “She’s an expert in employment law and has worked tirelessly teaching students and adults in the workplace about equality, respectful behavior and appropriate boundaries while carefully explaining the laws protecting individuals from harassment and assault.”

The case of which Johnson is most proud had nothing to do with either labor law or schools – and it is one she lost.

A 10-year-old girl named Stacey Perkins played in a boy’s recreational basketball league in Seabrook, and when her team went on to tournament play, the league refused to let her play because she was a girl. The head of the New Hampshire Human Rights Commission asked Johnson if she would take the case, and she did.

“I had my own 10-year-old daughter who was very active in sports, and I thought it would be a shame that her activities would ever be curtailed,” Johnson

recalls.

The coach of the opposing team subsequently withdrew the team from the tournament, but Johnson pursued the case, arguing it all the way up to the New Hampshire Supreme Court. She did not prevail.

“Even though we lost, it was a bit of a victory because sometime later I ran into one of the board members from that recreational league who apologized for what happened,” Johnson says. “I also think it taught Stacey lessons in life that she carries with her now... and it helped my daughter understand pursuit of rights.”

For her work on that case, Johnson was presented the New Hampshire Civil Liberties Union Foundation Jon Meyer Civil Rights Award – just one of multiple awards she has received for her equal-rights advocacy.

A former commissioner of the New Hampshire Commission on the Status of Women and current vice chairman of the New Hampshire Women’s Foundation, Johnson has also received the New Hampshire Bar Association’s Philip S. Hollman Equality Award and its President’s Award for Distinguished Service to the Association and to the Public.

In 2002, the New Hampshire Women’s Bar Association presented her with the Marilla M. Ricker Achievement Award for exemplary public service on behalf of women.

The Bar has also helped Johnson cope with personal tragedy.

In 1988, Johnson became the first woman officer of the New Hampshire Bar when she was named treasurer. Later the same month, her husband committed suicide, leaving her with a 3-year-old son and 6-month-old daughter. She decided to stay on in the position.

“The Bar Association and its members were like a wonderful support network for me during that period of incredible trauma to my family and myself,” she says.

Johnson herself has been a source of support to others. For nine years she volunteered as a big sister for Big Brothers Big Sisters of New Hampshire. When her little sister graduated, Johnson took her to Paris as a gift.

Johnson also works behind the scenes assisting with a nonprofit started by her daughter, Katie, a global health-care worker who was deeply affected by the living conditions of those in West Point, a densely populated slum in Monrovia, Liberia. The nonprofit, Educate West Point, helps provide school uniforms, backpacks, lunches and more for children living there.

It’s all part of what Johnson sees as her mission – “finding ways to make my mark trying to promote equality.”

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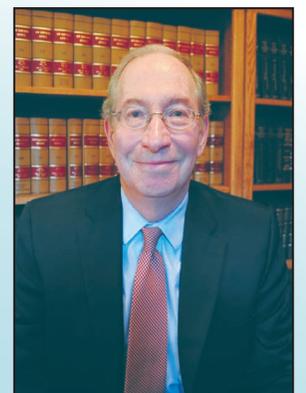
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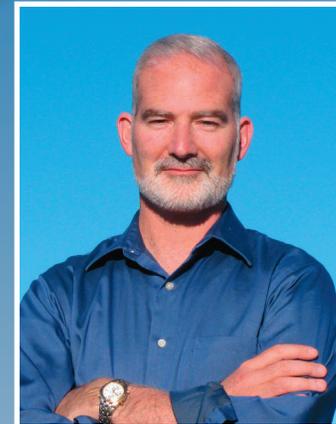


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Calendar Overview

NOVEMBER

19 Thursday • 8:30 a.m. - 11:45 a.m.
38th Annual Tax Forum - Part 1
• Webcast
• 180 min.

20 Friday • 8:30 a.m. - Noon
38th Annual Tax Forum - Part 2
• Webcast
• 180 min.

DECEMBER

3 Thursday • 9:00 a.m. - 12:15 p.m.
Right To Know Law RSA 91-A Updated
• Webcast
• 180 min.

11 Friday • Noon - 1:00 p.m.
Tips & Tricks for Remote Hearings
• Webcast
• 60 min.

JANUARY 2021

7 Thursday • Noon - 2:00 p.m.
LLC Practice: Best Practices in Drafting
Operating Agreements for New Hampshire
Multi-Member LLCs
• Webcast
• 120 min.

12 Tuesday • Noon - 1:00 p.m.
Tech Tuesdays! Cloud Computing - Pros, Cons
and Ethical Issues with Barron Henley
• Webcast
• 60 min. ethics/prof.

26 Tuesday • Noon - 1:00 p.m.
Tech Tuesdays! Electronic Document
Management for Lawyers with Paul Unger
• Webcast
• 60 min.

27 Wednesday • Noon - 1:00 p.m.
COVID and Constitutional Law
• Webcast
• 60 min.

28 Thursday • Noon - 1:00 p.m.
LLC Practice: What Every NH LLC Formation
Lawyer Should Know about the Revised New
Hampshire Limited Liability Company Act and
NH LLC Case Law
• Webcast
• 60 min.

FEBRUARY

5 Friday • TBD
NHBA Midyear Meeting

CLE HIGHLIGHT

Tips & Tricks for Remote Hearings

Friday, December 11, 2020

Noon - 1:00 p.m.
Webcast Only • 60 min.

This program will offer insight from the bench on how best to prepare and present your case in a remote hearing. The panel will discuss telephonic hearings as well as Webex hearings. The panel will also discuss what they have found to work and not work in these settings as well as offer tips and tricks for remote hearings.

Who should attend?

Practitioners participating in remote hearings in the New Hampshire Circuit Court.

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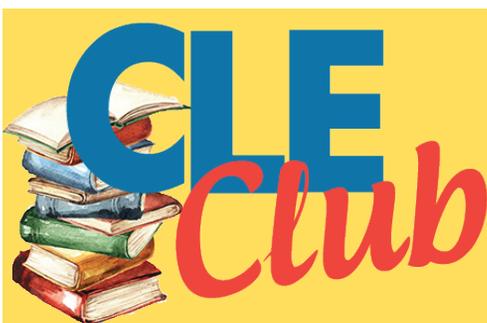
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Fairness at Heart of Postnuptial Agreement Enforceability

By R. David DePuy and Christopher R. Paul



DePuy



Paul



The drafting and execution of prenuptial agreements can be nerve-racking. It may be even more so for postnuptial agreements. Postnuptial agreements require a close look at the issues of duress, undue influence, coercion and fairness. Many such agreements are a foreshadowing of what will follow: a divorce.

In evaluating the likelihood of a postnuptial agreement being enforced, the starting point is to review the rules of prenuptial agreements. In the seminal prenuptial agreement case of *MacFarlane v. Rich*, 132 NH 608 (1989), Chief Justice David Brock frankly recounted the parties' marital breakup as follows: "In December of 1985, the parties travelled to the Cayman Islands for the purpose of spending Christmas with the defendant's son. The defendant prepared a Christmas dinner for the family and guests,

but on Christmas evening, midway through the meal, the plaintiff left the table, stating that he was going to change his clothes. To the defendant's astonishment, the plaintiff did not return that night, or ever after . . . and she did not see him again until the date of the trial in this matter." *MacFarlane*, 132 NH at 610. For Mr. MacFarlane, the handwriting was on the wall.

The *MacFarlane* Court noted that "the State has a special interest in the subject matter of antenuptial agreements, and as a result, courts tend to scrutinize these agreements more closely than ordinary commercial contracts. [citations omitted]." *Id* at 613. The same rule applies to postnuptial agreements. See, *Estate of Wilber*, 165 NH 246, 252 (2013). Despite the lack of financial disclosures or involvement of attorneys, the Supreme Court found the postnuptial agreement in *Wilber* to be valid. The Wilbers were

married for approximately 50 years. Richard owned property in New Hampshire and Josephine owned property in Maryland. They entered into a "Property Agreement" providing that Richard would make no claim on the Maryland property during his life or after his death and Josephine would make no claim against Richard's New Hampshire property during her life or after her death. Nevertheless, upon Richard's death, Josephine filed a waiver of surviving spouse, and sought her statutory share of the New Hampshire property. The Probate Court ruled the Property Agreement unenforceable. *Estate of Wilber*, 165 NH 246, 248 (2013). The New Hampshire Supreme Court, however, agreed with Richard's executor that the Property Agreement was an enforceable postnuptial agreement under the principles of New Hampshire law, noting: "The modern view is that spouses may freely enter contractual relationships,

and courts will uphold them if they satisfy the criteria of contract formation and they are otherwise fair." *Id.* at 249. The Court cited with approval the case of *Bedrick v. Bedrick*, 17 A.3d 17 (Conn. 2011), "[a] case in which the Connecticut Supreme Court opined that '[p]ostnuptial agreements are consistent with public policy because they 'realistically acknowledge the high incidence of divorce' and 'allow two mature adults to handle their own financial affairs.' *Bedrick*, 17 A.3d at 24 (quotation omitted) . . ." *Id* at 250.

The Court declared: "We find no compelling reason to depart from this trend. Postnuptial agreements give married persons the flexibility to dispose of their property and establish their rights and obligations upon death or marital dissolution, given their particular life circumstances. . . . We hold, therefore, that postnuptial agreements may be enforced in New Hampshire." *Id* at 250.

The Court noted that state courts take different approaches to reviewing postnuptial agreements. "Some require greater indicia of fairness than that which applies to antenuptial agreements, while others analyze both antenuptial and postnuptial contracts under the same standard." *Id* at 251. "Here, we need not decide whether postnuptial contracts must be subject to scrutiny beyond that which applies to antenuptial contracts" as Josephine's estate "failed to meet its burden to demonstrate that the Agreement was unfair to Josephine under either standard." (Emphasis added). *Id* at 252.

FAIRNESS continued on page X



Nothing is simple when it comes to family.

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Optimizing Your Virtual Family Law Case

By Jim Ferro

In-person hearings, mediations and client meetings seem like a lifetime ago. Since last February, family-law practitioners have had to adjust the way they administer needed services to their clients. Dealing with family cases during



a pandemic has challenged the traditional way we provide legal services to families. As in-person restrictions continue and COVID fatigue sets in, we are likely experiencing cases where the emotion is higher, and the tolerance is lower than usual. Managing these feelings likely elicits varied levels of frustration, exhaustion and desperation. The work we do, though, must continue. Here are five tips to do the work in a manner that may lower the temperature for both the client's and practitioner's benefit.

1. **Client Guide.** The anxiety clients feel during a divorce is likely magnified during a pandemic. Creating a specific plan of action and discussing it with the client in advance of a hearing, mediation or other event may reduce feelings of uncertainty or helplessness. Email the client a detailed step-by-step overview of the divorce process in New Hampshire and include the various parts of the process that



will require information from the client. Outline dates, timetables, or deadlines for the client to reference. Also, attach blank documents to the email such as a financial affidavit, child impact seminar notice, or Rule 1.25-A. Let the client know that this is her road map to the case and to use it as a reference guide.

2. **Advance Preparation.** Advance preparation is more critical in our virtual world. Remote hearings, mediations, or other events require the active exchange of documents, exhibits, or proposals. Many of these items need to be emailed to a Court or to opposing counsel well in advance of the event. The practitioner should follow up with the Court prior to the hearing and check that the documents have been docketed in the file. If contacting the Court before the hearing is not viable, the practitioner should ask the Court at the outset of the hearing if the docu-

ments have been received. Unfortunately, there have been cases where the emails have not been received or the documents have not been delivered to the file. Learning this at the hearing may unnecessarily increase the client's and the practitioner's angst.

3. **Remote Etiquette.** When not in person, we may forget that the rules of in-person communication etiquette and professionalism apply. This means only one person speaks at a time. In Zoom or other remote platforms, there is often a delay or freeze that affects a person's ability to gauge when to speak. The result is the annoying situation where two people start speaking over one another, then they stop, then they start again, then they say, "Oh, sorry you go," and then they start again! Pausing or taking a breath before speaking will reduce this unnerving situation. Also, advise clients to mute their microphone

when not speaking to reduce background noise, some of which may not be helpful for the Court or the other side to hear. Instruct clients to avoid having children or other persons present in the room during a proceeding. It disrupts the process and may cause unnecessary concern to the opposing side.

4. **Tips for Remote Court Hearings.** Consider the following suggestions to reduce the heightened level of energy often present before a court hearing:

- a. Bear in mind that the participants, including the judge, lawyers and parties, may be in separate locations. Consider a mechanism to speak with your client privately if the need arises. This may require muting the audio, leaving the video or calling on a separate line.
- b. Be mindful of the Court deadlines to exchange exhibits with the other side and to file them with the Court. Courts, especially now during remote proceedings, are holding to these deadlines quite seriously.
- c. Prior to the hearing starting, ask if any person not a party is present and confirm that no one, other than the Court, is recording the event. This suggestion should also apply to mediations, client meetings or other non-court virtual sessions with a party.
- d. During a hearing when the Court or attorney may be asking a party ques-

CASE continued on page XI

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Legislature Updates Adoption and Parentage Statutes to Protect Families

By Chrissy Hanisco and Chris Erchull



Hanisco



Erchull



Despite this year’s unusual legislative session, the legislature passed House Bill 1162, modernizing New Hampshire’s adoption statute and adding additional legal security for children conceived via assisted reproduction. As of January 1, 2021, New Hampshire unmarried couples finally will be able to secure legal parentage through adoption. Furthermore, non-genetic parents will have access to a court judgment of parentage and confirmatory adoption. See RSA 170-B:4 & RSA 168-B:2.

A 2019 decision of the New Hampshire Supreme Court highlighted the urgent need for this legislation. In *In re J.W.*, the Court ruled that eleven-year-old J.W., who had been raised since he was four years old by his father and stepmother, could not be adopted because the couple was unmarried. 172 N.H. 332 (2019). This result was tragic. J.W. had only one

legal parent—his father—and the only family he knew was his father, his stepmother, and his siblings born of that relationship. The Court concluded that it was constrained by the text of RSA 168-B:2, but acknowledged “the modern family has taken on many different forms” and invited the Legislature to decide if “eligibility to adopt should be expanded.” *Id.* at 340.

After several years of advocacy by New Hampshire adoption practitioners, *In re J.W.* was the case needed to catapult to legislative victory. House Bill 1162 passed with overwhelming bipartisan sup-

The bill goes further by ensuring that every family who conceives via assisted reproduction is eligible for an adjudication of parentage, either by confirmatory adoption, a court order, or both, which can be an essential tool for couples, even when married.

port, thanks in no small part to the leadership of Rep. Ed Butler and many other cosponsors.

The bill goes further by ensuring that every family who conceives via assisted reproduction is eligible for an adjudication of parentage, either by confirmatory adoption, a court order, or both, which can be an essential tool for couples, even when married. The law has long recognized the rights of non-genetic fathers, and the marital presumption applies to children born of any marriage, but confirmatory adoption provides critical additional security for parents, allowing all families who use donor gametes to strengthen the legal bonds tying their families together. The added protection of a legal judgment especially is important for same-sex parents. It was just five years ago that the right to marriage for same-sex couples was secured under the U.S. Constitution, *Obergefell v. Hodges*, 576 U.S. 644 (2015), and only ten years since it was secured by the New Hampshire legislature, RSA 457:1-a. Confirmatory adoption offers LGBTQ families security, especially in the face of the ongoing attacks on the right to marriage. See *Fulton v. City of Philadelphia*, No. 19-123, 2020 U.S. LEXIS 961 (S.Ct. Feb. 24, 2020) (allowing cert. in case determining whether a state-funded adoption agency has a constitutional right to refuse to allow same-sex couples to adopt). As the U.S. Supreme Court unanimously decided in *V.L. v. E.L.*, by virtue of the Full Faith and

ADOPTION continued on page X



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Family Law Legislation 2020– Alimony *et al*

By Honey Hastings

Senate Bill 444 to update the alimony statute by reducing the percentage formula from 30 percent to 23 percent got caught in the legislature’s COVID-plus-politics spring quagmire. After some legislative maneuvers, the Senate added it to an omnibus bill (HB 1234) in June. The governor then vetoed it. The good news is that Sen. Sharon Carson will reintroduce the bill in the 2021 session. I hope that it will be enacted by June and take effect immediately.



The percentage reduction is needed to update the alimony formula in light of the 2019 change in the Internal Revenue Code eliminating the tax deduction for alimony payments. This changed the expected after-tax outcomes for payors and payees using the New Hampshire alimony formula.

This corrective alimony legislation would also clarify that the 2018 alimony reforms apply only to divorce and legal separation petitions filed beginning January 2019. Although the 2018 bill said that the alimony reforms would apply only to new cases, some lawyers argued to apply it to brought-forward cases.

The main reason for limiting the new law to new cases is that property division and alimony are often interactive. For ex-

Practice Tips

- A. In general, deal with the impact of the tax law change now, to avoid the need to modify.
- B. In mediation and other settlement negotiations, work with the 23 percent formula and note in Uniform Alimony Order that you have done so. Also, use 23 percent on the calculation form.
- C. Or consider an automatic change in the alimony if/when the amendment takes effect. (This would be like the support step-down a year in the future when the oldest child ages out.)
- D. In litigation, use the basic “need and ability” tests and the “catch-all” special circumstance under RSA 458:19-a to justify the 23 percent or other lower-than-30 percent formula (or a higher percentage).
- E. In litigation, use projected after-tax results (including allocation of tax benefits) to support your request.
- F. Remember, if you or the court use 30 percent or any percentage over 23 percent, the alimony order will be subject to modification.

ample, a person might have agreed to “no alimony” in return for more than half the assets. Reopening the case later to seek alimony could be unfair.

After reviewing alternate formulas over a range of incomes with the help of divorce financial analysts, the Alimony Working Group concluded that 23 percent of the difference in gross incomes under the new tax law produced similar results to 30 percent of the difference under the old tax law. The key provision of the legislation is this change in percentage.

The amendment provides a window for people with alimony orders effective on or after January 2019 to request modification of the amount of alimony used in their case. The window would be open for any

orders amounting to more than 23 percent of the difference in gross incomes. Such requests for modification must be made by July 1, 2022.

This expected change in the alimony formula and its retroactivity should be considered in cases being settled or tried now. Setting your client up for another round of mediation or litigation later in 2021 or in 2022 is not in the client’s best interest.

Another provision of the amendment adds the “impact of federal tax law on the parties” to the list of special circumstances that may result in adjustment to the formula or duration limitation. The amendment also clarifies that any modifications of alimony orders may be retroactive to the date the other party received notice of the modi-

fication petition. This mirrors the provision for child support in RSA 458-C:7.

Questions? I regularly talk with lawyers about the alimony reform law, its applicability, and the pending amendment. I have designed an alimony calculation form that I share on request.

Other family law legislation in 2020 - Several bills dealing with children were consolidated into HB 1162, enacted as Chapter 26 of the Laws of 2020. Significant provisions include major changes in the adoption law [refer to that article] and amendment of the purpose section of the abuse and neglect law to replace “preserve the unity of the family” with “determine if the preservation of family unity is in the best interest of the child.”

Also in this legislation are sections on the office of the child advocate; reimbursement of court-ordered services for juveniles; the legal representation of children in the juvenile justice system; insurance coverage for children’s early intervention services; the child abuse and neglect central registry; establishing a kinship navigator program; missing children; dispositional hearings under RSA 169-B; and the rebuttable presumption of harm under the child-protection act. If you work in “children’s law” you should read this legislation.

Honey Hastings is an inactive/retired member of the Bar and a practicing Certified Family Mediator. She operates Amoskeag Continuing Education and advocates for family law reform.

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Family Law Issues with the Economic Impact Payment

By Barbara Heggie

In late March, Congress passed the CARES Act, authorizing an array of coronavirus relief measures for American individuals and businesses. One of the best-known is the “economic stimulus payment” (EIP) – up to \$1,200 for individuals and \$500 for dependents under age 17.



Although millions of people received their EIP promptly, many eligible Americans are still waiting for theirs to arrive. IRS implementation has not always gone smoothly, and the past few months have seen several challenges to the agency’s interpretations of the CARES Act. Highlighted here are a few EIP issues that may impact family law practice.

“Injured Spouse” Offsets

The EIP is an advance payment of a 2020 “recovery rebate” credit. Unlike most tax credits, it cannot be offset to pay down a person’s tax debt or student loan debt. Only if the taxpayer has a child support arrearage may the IRS keep all or a portion of that person’s EIP.

Normally, if a married couple files jointly – and if one spouse has any such debt – then the IRS will offset as much of the refund as needed to pay it down, even if the other “injured” spouse has no such debt. To avoid



this, the couple must file an “injured spouse” form with their tax return; the IRS will then issue whatever refund is attributable to the spouse without the debt.

For most couples, the EIP for each spouse is calculated based on a joint 2019 or 2018 tax return. Unfortunately, even for couples who filed an injured spouse form, the IRS has been offsetting each spouse’s EIP to pay down the child support debt of just one of them. Those who didn’t file an injured spouse form – because, for example, no refund was due anyway – have also seen both spouses’ EIPs taken.

After a few twists and turns, the IRS has determined it will resolve the problem using information it already has concerning child support arrearage and eligibility for the EIP. Injured spouses need not file anything or call anyone. Instead, they need only wait for the IRS to sort things out. How long they need to wait is still unknown, but the agency has set a goal of issuing EIPs to all injured spouses by the close of this year.

Children Claimed Wrongfully by Non-Custodial Parent

A similar issue arises if one parent illegally claims a son or daughter for the child tax credit on a 2019 or 2018 tax return. The IRS will assume this parent has the right to the \$500 dependent EIP and issue it accordingly.

Unfortunately for the other parent, the IRS does not see this as identity theft and has no plans to institute new avenues of relief. Instead, the wronged parent can make use of two existing options: (1) file a 2019 tax return by mail, claiming the child for the child tax credit, or (2) wait until the next filing season to make the claim on a 2020 tax return.

Because of the backlog of mail at the IRS now, the first option may not prove any faster than the second. Moreover, given the illegal claim already on record (and presumed legitimate), filing a paper 2019 tax return could trigger an audit for the wronged parent.

Perhaps an intrepid Circuit Court judge would consider this issue at a support hearing and issue orders addressing it. No such motion or order has come to the attention of the Bar News yet; readers are welcome to write in with information on EIP issues raised in the Family Division.

Barbara Heggie is the coordinator and staff attorney for the Low-Income Taxpayer Project at the NHBA’s Pro Bono Referral Program. Those interested in volunteering for the project can reach her at bheggie@nhbar.org or (603) 715-3215.

Separated and Divorced Couples

As discussed earlier, the IRS calculates most EIPs based on a person’s 2019 or 2018 tax return. If it was a joint return showing a refund and listing direct-deposit bank account information, the IRS will deposit the EIP for each spouse into that same account.

For couples who have separated or divorced since the filing of the return, this can pose significant problems if one spouse no longer has access to the listed bank account. If the spouse retaining control over the account won’t “share,” the IRS will not reissue the EIP to the wronged spouse, even if that spouse is a victim of domestic violence.

The IRS has declined to create mechanisms and procedures to address such circumstances. Instead, the IRS leaves it to the wronged spouse to seek redress in state court. Advocates for domestic abuse victims, including New Hampshire’s Congressional delegation, have been pressuring the IRS since May to rectify this problem. So far, however, the IRS has not budged.

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New Hampshire Divorce Law: Sex, Drugs and Divorce

By Jay Markell

The first 20 years of this century have seen major social and legal changes in terms of sex, drugs and marriage. However, the New Hampshire divorce statute, RSA 458-7 effective Jan. 1, 2000, has not kept pace.



At present, there are nine fault-based grounds, and two should be updated. RSA 458: 7 II allows a party to obtain a divorce on grounds of adultery, and RSA 458:7 VII allows a party to obtain a divorce if it can be shown that a spouse is “an habitual drunkard and has been such for 2 years together.”

a) **Notable law: Adultery, Sex, Same-Sex Marriage, Alcohol, and Drugs.**

The New Hampshire Supreme Court clarified what adultery was in the case of *In Re Blanchlower*, (2003). A divorce could not be granted on grounds of adultery where there was an extramarital same-sex involvement. The Court defined adultery as “voluntary sexual intercourse between a married man and someone other than his wife or between a married woman and someone other than her husband.”

In *Lawrence v. Texas* (2003), the United States Supreme Court invalidated laws criminalizing consensual, private same-sex acts. The Massachusetts Supreme Judicial Court



decided *Goodrich & others v. Department of Public Health* (2003), invalidating Massachusetts law banning same-sex marriage. Effective Jan. 1, 2010, New Hampshire RSA 457:46 permitted same-sex couples to marry. The United State Supreme Court decided *Obergefell v. Hodges* (2015) striking down all laws banning same-sex marriages.

In the case of *In Re Sarvela* (2006), the New Hampshire Supreme Court held that a fault-based divorce could not be granted based on habitual drunkenness to someone who abused prescription drugs because “the plain meaning of drunkard ‘referred to alcohol, not drugs.’”

Marijuana use by adults for medicinal and/or recreational use is now legal in many jurisdictions. All New England states allow marijuana possession for medicinal purposes. Maine and Massachusetts allow possession of small amounts of marijuana for recreational use. New Hampshire has decriminalized the possession of small amounts of marijuana.

Other drugs such as opioids create well-publicized problems. The Centers for Disease Control and Prevention note that marijuana use is not harmless and has intoxicating effects. According to the National Council on Alcoholism and Drug Dependence, sub-

stance abuse can lead to “dysfunction within the family system.” There is a link between substance abuse and divorce.

b) **The Divorce Statute needs to be updated to reflect changes in marriage and drug abuse.**

It would be a mistake to believe that marriage law in the United States is now sex neutral, Sally Goldfarb points out in *Divorcing Marriage from Sex: Radically Rethinking the Role of Sex in Marriage Law in the United States*. In New Hampshire, that is clearly not the case because the role of sexual intercourse in marriage has changed with the advent of same-sex marriage, but there is no corresponding cause of action for marriages not dependent on heterosexual intercourse.

Proposed legislation updates two sections of RSA 458-7 to reflect these societal changes. RSA 458-7 II (Adultery) would be revised, and create a new category called Sexual Misconduct of either party that includes adultery and defines it as voluntary sexual intercourse between a married person and someone other than a party’s legal spouse. It would add a second set of grounds, called “Other Sexual Misconduct,” defined as voluntary, physical sexual contact with a person other than a party’s legal spouse which includes, but is not limited to, oral-genital contact, anal intercourse, or the intentional touching of genitalia, anus, breasts, or buttocks that can be reasonably be construed for the purpose of sexual arousal or gratification. This definition is derived from RSA

DIVORCE LAW continued on page XI

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Collaborative Practice in a Pandemic

By Jane Schirch

We have all had to change how we do business as a result of the current COVID-19 restrictions. When the court initially restricted its operations to provide fewer opportunities for hearings and mediation, as lawyers we were forced to flex toward alternate methods of assisting client's in family law cases. As our state and the judiciary begins to open up, and more hearings are now being scheduled, there is still the likelihood that there will be significant delays in getting a matter before a judge. Once scheduled, that hearing is likely to be heard either telephonically or through wWebex, the court's video platform. Such remote hearings provide their own challenges for counsel and litigants, including difficulties communicating privately and effectively with a client during a remote hearing; ascertaining the credibility of witnesses; ensuring that the witness testifying is not being coached; and myriad other logistical and substantive hurdles.

With so much uncertainty and delay, collaborative practice becomes a very attractive alternative to resolving a divorce, parenting issue or other family law case



effectively and efficiently. Collaborative practice is a private, contractually based process of alternative dispute resolution. Collaborative practice in New Hampshire utilizes a team approach, using neutral coach/facilitators and financial professionals as needed to assist the family. Prior to entering into the collaborative process, parties and professionals sign a participation agreement that sets the expectations and parameters of the process. One of the provisions of all participation agreements used by collaborative practitioners in New Hampshire is that the process will be confidential, thus encouraging the free flow of ideas and brainstorming that is more likely

to lead to a satisfying, binding and complete resolution of all issues. While many practitioners and citizens of New Hampshire are familiar with collaborative practice, there are many more that are unfamiliar with the process and the benefits it can provide to families.

Collaborative practice in New Hampshire is self-regulated by the New Hampshire Collaborative Law Alliance, a non-profit group of practitioners committed to advancing the practice of collaborative law in the state. One benefit for NHCLA members is access to a number of practice documents and forms that can be used during a collaborative case, including a participation agreement, as well as a road map of the process.

Nationally, collaborative practitioners have sought to standardize the process and its basic tenets to create an expectation that collaborative practice means the same thing throughout the country. To accomplish this goal, a Uniform Collaborative Law Act and Rules have been created, and their passage in all 50 states is being advanced. Here in New Hampshire, the legislative committee of the NHCLA has written the New Hampshire Collaborative Law Act that is based upon the Uniform Collaborative Law Act. The Collaborative Law Act was introduced in the New Hampshire Legislature last session as Senate Bill 440. It successfully passed the Senate and was scheduled to be taken up by the House when the pandemic shut down the legislature. The bill was then included in an omnibus bill that was ultimately vetoed by the governor for reasons unrelated to this legislation.

NHCLA has approached the prior sponsors of SB 440, in the hope that this bill will again receive a favorable reception in the legislature. This piece of legislation, while based upon the Uniform Act, has been revised to suit the New Hampshire collaborative practice method.

Passage of the Collaborative Law Act will provide practitioners and citizens alike the assurances that this method of alternative dispute resolution is recognized and regulated by state law, and that if a citizen engages in collaborative practice, the process will be upheld and the terms of the participation agreement enforced by the court in the event the case fails and the parties resort to litigation. This legislation also ensures that basic provisions of a participation agreement are included in order to deem the process collaborative.

One area of concern that NHCLA has heard from practitioners is that there is no enforcement mechanism to ensure that the collaborative process remains confidential. Confidentiality is an important protection in the event that the collaborative process breaks down and the parties opt to litigate the issues. Similar to confidentiality protections provided to the mediation process, confidentiality of the collaborative process ensures that parties are open and willing to discuss and entertain different settlement offers without the risk of uncertainty that any such discussions can be used against them in subsequent litigation. Collaborative practitioners, including financial professionals and neutral coaches, would also be protected from being compelled to testify in subsequent litigation, thus preserving their role as neutral professional in the process.

NHCLA and collaborative practitioners in New Hampshire believe strongly in the benefit of the collaborative process in securing an enduring, comprehensive and satisfying outcome for parties in family law matters. Passage of the Collaborative Law Act in the next legislative session will go a long way to ensure that this process of alternative dispute resolution possesses the protections for parties and practitioners to promote confidence in the collaborative process.

Jane M. Schirch, Esq., is a partner at Shanelaris & Schirch, PLLC, in Nashua. She is past vice chair and current member of the board of directors of the New Hampshire Collaborative Law Alliance and a member of its legislative committee.



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How is Special Education Affected by COVID?

By Holly Vietzke-Lynch

With schools shutting down last spring amid the pandemic, many students were not able to receive their special-education services as required by law. And with many schools starting the current school year remotely or in a hybrid format, students are frequently losing some of their in-person services. Many students who require significant structure and one-on-one time with educators are in great danger of regressing or worse, not able to learn at all. One of the most common phone calls my office receives is, "What are my rights as a parent during this?"



The federal Individuals with Disabilities Education Act and N.H. RSA 186-C mandate that schools provide a free appropriate public education (FAPE) in the least restrictive environment to students with disabilities. Prior to the pandemic, this would mean that if a student could learn effectively only in classes of small sizes, the school could not put him or her in a regular general-education class. Conversely, a school cannot put a student in a substantially separate classroom if the student is capable of learning in a gen-



eral- education classroom.

Hearing officers responsible for ruling on special-education appeals are now trying to figure out what constitutes FAPE with regard to remote learning. Federal law provides that individualized education programs (IEPs) must still be followed, which means that, despite the pandemic, districts are still responsible for providing all special education services, even if the school is engaged in remote learning. This means that if a child was receiving one hour per day of specialized instruction before the pandemic, he or she should still receive one hour per day. How these services are delivered varies from

district to district.

Many students with IEPs or even 504 plans that schools develop to support their needs struggle to learn remotely. This is especially true for students with ADHD and executive- functioning deficits. But no matter what disability they have, when the students are unable to find, complete, or submit assignments electronically, they are not effectively accessing the curriculum. If the schools are not then finding ways that enable these students to learn the material and complete the work, then the schools are depriving these students of FAPE.

Through a governor's order issued

last May, schools were required to have held a team meeting for all students on IEPs within the first 30 days of the 2020-21 school year. It is important that parents tell the school, if their child is unable to learn remotely and requires modification of the IEP. If a child was supposed to receive services in the summer but did not, he or she may be eligible for compensatory services. If a child cannot learn remotely (and last spring and the beginning of this academic year should provide enough data to determine that), then he or she may be able to attend a public school in a nearby district that is in person.

Parents do not have to give up their rights just because a school is operating remotely. This is also true of timelines, which must still be adhered to. Districts cannot use the pandemic as a reason to not fulfill a child's IEP or deliver services. And if a parent is uneasy about a remote learning plan or modified IEP offered by the district, he or she should consult a special-education attorney prior to signing.

Holly Vietzke-Lynch, Esq., is a special-education law attorney licensed in New Hampshire and Massachusetts. Her firm, Holly Lynch Law LLC (www.hollylynchlaw.com), also provides estate planning, special-needs planning, and probate-administration services.

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Attorney Hall was awarded the Congressional Angel in Adoption Award 2009

Fairness from page II

The Court stated that it would “look, however, to principles governing antenuptial agreements for guidance.” *Id* at 251. The Court stated that “an antenuptial contract ‘carries with it a presumption of validity,’” referencing the *Yannalfo* and *MacFarlane* cases. The Court then stated: “As a result, the parties seeking invalidation of the agreement must prove that: (1) the agreement was obtained through fraud, duress or mistake, or through misrepresentation or nondisclosure of a material fact; (2) the agreement is unconscionable; or (3) the facts and circumstances have so changed since the agreement was executed as to make the agreement unenforceable.” (citing *Yannalfo* and *MacFarlane*). “Because of the fiduciary nature of the marital relationship, ‘the parties must exercise the highest degree of good faith, candor and sincerity in all matters bearing on the terms and execution of the proposed agreement, with fairness being the ultimate measure.’ *In Re Estate of Hollett*, 150 NH at 42-43 [citation omitted, emphasis in original].” *Estate of Wilber* at 251-252.

Parties seeking postnuptial agreements often fall into one of three categories: (1) Elderly couples who have suffered the loss of a spouse and have remarried late in life with children they wish to benefit upon their death. (2) Couples whose marriage is on the rocks and one spouse has raised the issue of divorce and the other wishes to remain married. The unhappy spouse has the leverage. (3) Situations where events may have occurred such as an inheritance, the change in the structure of a business, the success of one of the par-

ties’ enterprises or a desire by one of the parties to ensure that assets pass to their children.

Likely, those cases most susceptible to invalidity are those where the marriage is shaky and a subservient spouse “gives in” to the other spouse’s demands with the hope of saving the marriage. Counsel representing the submissive spouse should warn the client that the agreement may very likely become a divorce decree. Counsel representing the controlling spouse should warn that the agreement may be set aside for duress, undue influence or coercion.

Food for thought: In New Hampshire there is a statute authorizing prenuptial agreements and a presumption they are valid. No such statute exists for postnuptial agreements.

Part of the consideration for prenuptial agreements is the marriage itself; not so for postnuptial agreements.

For prenuptial agreements the motivation often is marriage. For postnuptial agreements the motivation often is divorce or its avoidance.

Postnuptial agreements may require a “greater indicia of fairness” than prenuptial agreements.

One thing is clear: predicting the enforceability of postnuptial agreements is no sure thing.

R. David DePuy is a director in McLane Middleton’s Litigation Department. He can be reached at (603) 625-1345 or david.depuy@mclane.com. Christopher R. Paul is a director in McLane Middleton’s Trusts & Estates Department. He can be reached at (603) 628-1335 or christopher.paul@mclane.com.

Adoption from page IV

Credit Clause of the United States Constitution “[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.” 577 U.S. ___, 136 S.Ct. 1017 (2016)(per curiam). Accordingly, NH orders of adoption and parentage must be given full force and effect in all 50 states and territories, providing legal security for children and families.

In enacting HB 1162, the legislature recognized that more than ever Americans are choosing to delay or bypass marriage. As of 2016, a record 18 million Americans were living with an unmarried partner, up 29% since 2007, (Christina Cauterucci, *More Unmarried Americans Than Ever Are Cohabiting*, *Slate* (Apr. 7, 2017), <https://slate.com/human-interest/2017/04/more-unmarried-americans-than-ever-are-cohabiting.html>), and with same-sex couples less likely than different-sex couples to choose marriage (Cara Buckley, *Gay Couples, Choosing to Say ‘I Don’t’*, *New York Times* (Oct. 25, 2013), <https://www.nytimes.com/2013/10/27/style/gay-couples-choosing-to-say-i-dont.html>).

With so many nonmarital families forming nationwide, it is imperative that the law adapt to protect the children of these relationships. The updates to RSA 168-B make adoption available to these families.

Further, the legislature acknowledged that in recent years the opioid crisis increased the number of children being

cared for by grandparents or other family members who are not married but who are teaming up to care for children. In passing HB 1162, the legislature made clear that children deserve first and foremost the security of a family, and parents do not need to be married or even a traditional couple. This will provide the ability for more family members to come forward to provide permanency for children in crisis.

This legislation added common-sense access to protections for children across the state. While there is always more to do—including ensuring expanded access to the key administrative route to parentage, Voluntary Acknowledgments—this bill is a meaningful, positive step forward for New Hampshire’s children and a reminder of the power of attorneys to identify and correct gaps in statutory protections.

Chrissy Hanisco is an Attorney at The Stein Law Firm, PLLC in Concord, NH where she focuses her practice on third-party family formation through adoption and assisted reproductive technology in both NH and MA. Presently she is serving on the NHBA Board of Governors as an At Large Member. She can be reached at cmhanisco@steinlawpllc.com.

Chris Erchull is a Staff Attorney with GLBTQ Legal Advocates & Defenders (GLAD), based in Boston. He is licensed to practice in NH and MA. Chris can be reached at cerchull@glad.org.



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Case from page III

- tions, ask whether the party is referring to any documents or other material to ensure that such information has been exchanged prior to the hearing.
- e. The time used during a remote proceeding appears to move more quickly than an in-person proceeding. There are often delays resulting from technology issues, an inability to hear the positions clearly, or regular interruptions by one or both sides. Be prepared to manage this time issue and consider asking the Court for additional time to respond after the other side presents. Asking for a few minutes to respond allows the practitioner to feel less rushed during his presentation and less inclined to interrupt the other side.
5. Tips for Remote Mediation. Consider the following practice pointers for a more productive, less emotionally charged session:
- a. See Suggestion 4c above.
 - b. Prior to the mediation, notify the mediator if separate virtual rooms are necessary from the outset of the case to avoid all parties and counsel joining virtually on the same screen.
 - c. Prepare proposed settlement documents in Word or another format that can be easily shared with the mediator and the other side for use during the mediation or at the conclusion if settlement is reached. Review the proposals and the areas to which parties will need to agree upon with the client before mediation. While this suggestion holds true even during in-person mediations, doing so for the virtual mediation will help reduce stress. Incredible energy is used when arriving at a settlement. Both sides are often drained after a long mediation. Having proposals outlined and ready to go substantially reduces the uncertainty associated with seeing agreements raw at the end of mediation. Moreover, significant time may be saved when documents are already prepared in draft form.
 - d. The traditional process of drafting, reviewing and signing settlement documents is more of a challenge during a virtual session than an in-person session. For now, gone are the days where counsel and the mediator can sit together in person at a computer to prepare the settlement documents, and then easily share a hard copy with the clients. When parties and

counsel are in separate locations, managing the drafting, editing, sending and ultimate signing of documents may become a friction point to settlement and increase the emotion. Practitioners may consider using a shared screen, another breakout room, or perhaps a new mediation session in order to draft documents. Also, a discussion ahead of mediation on how to best administer the drafting, reviewing and signing of documents may help reduce the confusion that arises when parties agree in principle but have not yet signed. How best to close and bind a deal has taken on a new dimension with virtual mediations.

- e. Some levity. Is it me or do we all seem to speak louder at a screen than in person? Why do we lean so incredibly close to the screen/camera when speaking? When on Zoom, I have come to appreciate the sensitivity of my computer microphone. I do not need to yell as if I need the parties to hear me through the walls of my office from their location. More importantly, I can mediate from an appreciable distance from the screen.

We are working in uncharted times, and we are managing cases riddled with uncertainty, distrust, and turmoil. When these two concepts are combined, frustration is easily magnified. As we plow forward in this virtual reality, take a moment to consider ways to lower the energy and to ease the process. Advocating virtually does not require amplified tactics. Rather, strong advocacy may be better achieved through focused preparation and an acknowledgment that Courts, practitioners, and litigants likely enter the process with higher emotion and lower tolerance.

James V. Ferro, Jr. is an attorney and certified marital mediator. He is the owner of Ferro Law & Mediation Group, PLLC in Manchester, NH where he concentrates his practice on family law and private mediation for cases involving domestic relations, probate, real estate, personal injury and small business. He earned his B.A. from the University of Vermont in 1989 and his J.D. from UNH School of Law in 1994. Jim is a member of the NHBA's Family Law and Alternative Dispute Resolution Sections, as well as the Rhode Island Bar Association. He is a trustee for the Granite YMCA. Jim co-authored the mediation section of MCLE's A Practical Guide to Divorce in NH and regularly teaches at the mediation certification program required for new mediators.

Divorce Law from page VII

632-A:3.

Other sexual conduct that undermines marriage but does not allow a cause of action for divorce denies true marriage equality. An adultery-only fault ground denies same-sex couples fault-based divorces who may have the same issues with intimacy and fidelity in marriage and need relief from marital sexual misconduct.

Other states recognize that sexual misconduct in marriage (and not only adultery) is a cause of action. For example, New Jersey's Permanent Statute Title § 2A:34:2 h (2007) recognizes that "deviant sexual conduct voluntarily performed by the defendant without consent of the plaintiff" constitutes grounds for divorce. Exactly what constitutes deviant sexual conduct in New Jersey is an open question.

RSA 458:7 VII is revised so that a court may grant a divorce in the event an innocent party proves the other party "habitually abuses alcohol or drugs and has been doing so for two years together." The term abuse can be defined as "to use wrongly or improperly," or "to use something to bad effect or bad purpose."

Other states recognize that substance abuse is a serious problem that undermines marriage. For example, Massachusetts General Law chapter 208:1 permits divorce for "gross and confirmed habits of intoxication caused by voluntary and excessive use of intoxicating liquor, opium, or other drugs."

Moreover, RSA 458-7a, i.e., the no-fault statute, which includes irreconcilable differences, does not provide a remedy because incidences of marital misconduct cannot be admitted unless parenting rights and responsibilities are implicated and there is evidence such conduct is detrimental to the child. Thus, even if admissible, the grounds for divorce are still irreconcilable differences, which is no-fault.

c) Conclusion

Society has seen significant changes in the last 20 years, and the New Hampshire divorce statute has not been revised to reflect those changes. The New Hampshire divorce statute should be updated to provide relief for parties who wish to plead their cases based on fault grounds.

Jay Markell is a Senior Attorney at Family Legal Services of Concord and has drafted pending legislation proposing the changes to the divorce statute proposed in this article.

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McWhirter is a nationally and internationally known speaker and author on trial advocacy, immigration law, and the history of the Bill of Rights. He is a frequent guest on Arizona Horizon and KJZZ as a Constitutional expert and historian. He is a Certified Specialist in Criminal Law with the State Bar of Arizona.



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Barron Henley



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New Hampshire LLC Formation Practice Series

Are you forming an LLC Practice or are you looking for more information on the ins and outs of LLC Practice in NH? Look no further! These programs cover all the issues you need to know.

- I. **Best Practices in Drafting Operating Agreements for New Hampshire Multi-Member LLCs** - January 7, 2021 Noon - 2:00 p.m. ~120 min.
- II. **What Every NH LLC Formation Lawyer Should Know about the Revised New Hampshire Limited Liability Company Act and NH LLC Case Law** - January 28, 2021 Noon - 1:00 p.m. ~60 min.
- III. **Operating Agreements for NH Single-Member LLCs Whose Members are Individuals & for Those Whose Members are Entities** - February 18, 2021 Noon - 1:00 p.m. ~60 min.
- IV. **LLC Formation Practice-Risks Under the NH Rules of Prof. Conduct & Under NH Malpractice Law** - March 11, 2021 Noon - 1:00 p.m. 60 min. ethics/prof.
- V. **Federal & NH Tax Provisions Useful or Required in the Operating Agreements of LLCs Taxable as Partnerships & S Corporations** - April 1, 2021 Noon - 1:00 p.m. ~60 min.

Faculty

- John M. Cunningham**, Law Office of John M. Cunningham, PLLC, Concord
- Amanda L. Nelson**, Artium Amore, PLLC, Dover



For more information go to nhbar.org/nhbacle

Local Health Club Owner to Help NHBA Members Balance Work-life Challenges

By Crystal Reynolds

Mom, high school teacher, adjunct professor, manager, coach, waitress, housekeeper, nanny, Jasper at Chuck E. Cheese, and local newspaper columnist—these are just a few of the jobs I have had in my life.

For as long as I can remember I have always felt the desire to help people in a meaningful way. Most times my expertise is sought after and welcomed, and other times — well, I’ve offered up my unsolicited healthful suggestions anyway. For the past 1,009 days I have been fortunate to live my dream job, as owner/operator of 43 Degrees North Athletic Club right here in Concord!

Being a new business owner I have learned a lot in a short amount of time —mostly as a baptism by fire. As ready as I hoped to have been, nothing had prepared me for the challenges that come with a start-up. I have been blessed with a patient and energetic growing membership as I mastered the art of “on the job training.” I am awestruck at the raw honesty of the personal trials and tribulations of our diverse community becoming more healthful. More importantly I have been humbled by the success stories and the role my passionate team at 43 Degrees has played. Although we have had our



Crystal Reynolds hiking the Kinsman Range in the White Mountains of New Hampshire.

challenges with COVID, we have pivoted, reinvented the ways we do some things, and overall it has brought our community closer together.

One of my personal goals has always been to share what I have learned with anyone who will listen. When asked a few years ago to contribute to the *Concord Insider* I was equal parts excited and nervous. The more I wrote, the more I found that people read and listened. I have enjoyed it when readers reach out to make real connections and inspire people to make changes. Although health and wellness is my

passion and hobby, I recognize it is not always at the forefront of everyone’s mind. I feel grateful to be able to share my knowledge with the NH Bar Association readership.

By now you’re thinking what could I possibly learn from this human? What qualifies me? So, here’s my elevator speech. Officially, I have undergraduate degrees in biology and chemistry, and a master’s in education administration and supervision. I’m a graduate of the Institute of Integrative Nutrition, a health and wellness coach, and have a boatload of teaching experience. More

recently my time has been spent providing workshops and wellness initiatives in a corporate setting.

But realistically, I am just a mom of two teenagers, face a daily struggle with sugar addiction, try to stay abreast of every trend imaginable to bring my A-game for my clients, and give life a good faith effort. I aspire to make becoming healthy simple for busy people and improve their quality of life. I will use this forum to provide useful information and small changes that yield results, as well as answering your burning fitness, health, and nutrition questions the best way I can. Please send any questions, ideas or topics you’d like to read about to creynolds@43northnh.com.

For now, I will leave you with this. Start with something achievable. Something small. Hydrate, hydrate, hydrate! Challenge yourself to increase your daily intake of water (coffee is not the same thing as water). Fill a reusable water bottle before you go to bed and leave it in the fridge ready to grab in the morning. Try to drink the entire bottle before lunch break.

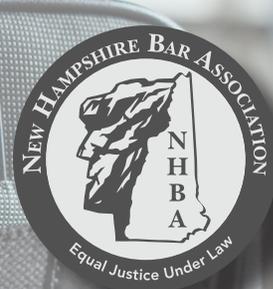
Reynolds will be contributing her insights and expertise on healthy living in coming editions of the Bar News. We look forward to reading her contributions and hope that you do as well!

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We’re building a repository for generations to come and we want your stories, observations, tips, and photos on how COVID-19 has affected your practice.

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Bob Casassa and Al Casassa (standing, left) with staff at the Casassa law firm in Hampton. Kathy MacDowell is seated (bottom right).

Wellness from page 3

As a child working at Colt News Casassa learned how to build relationships with the people in his community that he would one day go on to serve as an attorney and in many other roles.

Casassa grew up on Dearborn Avenue in Hampton, the same street that Gov. Stephen Merrill lived on as a child. Casassa recalls the late Governor attending town meetings as a high school student.

"I'd moved out by that time but his (Merrill's) family ran a lumber business in town. When he was in high school—I was the town moderator for Hampton in those days—and Merrill would come to the town meetings. He was so interested, there he was, in high school. How many kids in high school attend town meetings? So, that was Steve Merrill. Great guy."

After graduating from high school in 1948, at a time when Winnacunnet High School's graduating class had only 48 students, Casassa attended Boston College where he majored in business administration. During the last two years of college the Korean War had begun and Casassa eventually joined the Naval Reserve in his first year of law school at Boston University. He returned there to complete his J.D. in 1957.

While in his final year of law school he served as a law clerk for the U.S. Army Corp. of Engineers in Boston and later a Lieutenant Senior Grade in the U.S. Coast Guard Reserve.

"After law school I needed to get to work. We had one child and my wife was not able to continue working as a teacher," Casassa says.

So, after graduation in 1957 he became a federal estate tax examiner for the IRS stationed in Portsmouth, but crisscrossing the state from Keene to Claremont and Berlin for two years.

Casassa's goal, he says, was to practice law, and in 1960 his father influenced him to open his own office.

"It was a one-man office back then. I didn't have a secretary and I rented a typewriter," Casassa says, adding that in those early days he worked weekends in the newspaper business while serving as a commissioned officer in the Coast Guard reserve. "I was very motivated to keep things going and my wife and I worked hard. She was very supportive."

Bob Casassa, Casassa's son, has been practicing law with his father for over 30 years. He recalled some "trepidation" about working with his father after honing

his skills at Wadleigh, Starr and Peters in the 1980s, but it was a decision he's never regretted.

"I have seen relatives not working well together and I'm fortunate that has never been a part of our dynamic," Bob Casassa, whose son Matthew recently graduated from Columbia Law School, says. "We always got along good before working together and it's been great. Working together has allowed my relationship with him to grow even more and I'm grateful for that."

Casassa expressed pride in his son Bob and his grandson Matthew, and when asked how long he will continue practicing, he says he will do it as long as he can.

"I've enjoyed working with Bob for the past 32 years and I'm so pleased he chose to become a part of the firm."

Bob, who serves as moderator for the town of Hampton, recently accepted a proclamation on his father's behalf presented by town selectmen expressing community affection.

"Growing up I always had a sense that everyone knew him. As I went through life I've been very fortunate to have a father who was well regarded," he says.

David Hamilton, who has worked with Casassa as a trustee for Hampton Academy, says he has known Casassa his entire life.

"My father was a clerk of the court when Casassa was judge at Hampton district court in the 1970s," Hamilton says. "He's an icon of this town. Al has always been about the community and not for Al."

Bob Casassa agrees with this sentiment. He says his father's interests have always been grounded in the community he has served for over 60 years.

"He didn't like to be out of town and when he had to go away he was always calling back to the office," Bob Casassa says. "This is a reflection of how much he loved the people in the community he grew up in. It was never, 'I can't wait to get away.' He would always be on the phone wanting to know what's going on. He had a genuine affection for the community and it was reciprocal."

In 2018 Casassa received the New Hampshire Bar Association's Vickie Bunnell Award. Instituted in 1998, the award honors the memory of Vickie M. Bunnell, a country lawyer. The award is presented to an attorney from a small firm who has exhibited dedication and devotion to community by giving of their time and talents, legal or otherwise.



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Election from page 1

demic,” Cook said. “We started out with an assignment to advise Secretary of State Gardner’s office on how to spend the federal money that came for this purpose as part of the CARES Act and we had to examine all parts of the voting process.”

Cook explained the planning process was all done through Zoom calls and like Scanlan, he was impressed with the high level of engagement by officials around the state.

“What impressed me the most was the total dedication of election officials. We had as many as 470 people on these calls at times and they were all engaged,” Cook said. “In the planning process people started thinking about how they were going to do it in their individual towns and the creativity about how people were going to vote by absentee ballot was tremendously impressive.”

One major concern during the meetings, according to Cook, was that the fear of COVID-19 would suppress the vote, making it unrepresentative.

“We wanted to make sure that everyone who wanted to vote could vote and we met for two months in the spring and put out a report on how people could vote safely,” he said. “In terms of process it was an outstanding election in New Hampshire.”

While there are always glitches during an election, Cook said, mentioning as an example the failure of voting machine software in Londonderry that was solved by the end of the day, the biggest concern this year was the high number of absentee ballots because of a legislative change that allowed “no excuse” absentee voting amid the pandemic. Still, all ballots were counted by election night.

“New Hampshire elections went as perfectly as usual and as smoothly as usual under the watchful eye of Secretary Gardner, who is a steady hand at the tiller,” Cook said. “It was incredible.”

On a national level Cook said he believes the country knows who the president-elect is and that this isn’t going to change. He disagrees with the idea that Supreme Court judges are going to “vote with the guys that appointed them,” and that this is “insulting to the Supreme Court.”

And in New Hampshire he said he finds the political aspect of this year’s election fascinating.

“It’s Democrats, Democrats, Democrats at the top,” he said. “But from the governor and south of that it’s Republican majorities. It’s a fascinating schizophrenia among voters.”

He attributes this to the voters in New Hampshire invoking a referendum on the president, and the experience of Jeanne Shaheen in the Senate, and Chris Pappas and Annie Kuster in the House.

But at the state level he said it comes down to people voting on the coattails of Governor Chris Sununu, who many support as doing a good job.

“When a president who is in power is not reelected it’s a referendum on the president and I think that was probably the key to the top of the ticket,” Cook said. “President-elect Biden is an outstanding man. I’ve had some personal experiences with him and I think he’s what this country needs but I don’t think that’s why he got elected. I think it was a [referendum] on Donald Trump.”

“What you see happening south of there is that I think Gov. Sununu had pretty long coattails and people said, ‘Well if we like the governor so much we want to support him.’”

The U.S. election system is run state by state and community by community. What we’re going to see on a national level, according to Cook, are recounts in some states and a certification process that will be completed by Dec. 8. The electoral college votes on Dec. 14.

“Typically in recounts very few votes get changed. Recounts don’t result in major changes because the process is so mechanized,” he said. “After recounts each state certifies results. And after this if the candidate feels there was an error of law, in the process, they can appeal. But there has to be some specific basis to an appeal. You don’t appeal an election directly to the Supreme Court. The Trump people have brought a lot of legal action so far that hasn’t amounted to much.”

According to Scanlan the only voting issues this year in New Hampshire were common ones. The next steps, he said, will be to finish the few recounts his office is doing and to submit any appeals to the Ballot Law Commission.

Once the official numbers are in, he said, letters are



Jim McConahy of Concord stands in the cold outside the Abbot Downing School. Photo/Scott Merrill

then sent to the legislators who won calling them to take their seats on organization day, which is the first Wednesday in December.

“There’s not too much of a story and that’s the way we like it,” he said. “New Hampshire has good elections with very few issues typically and it comes as a big relief that this was no different than years past.”

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Scenes from Election 2020



From top left, clockwise: Attorney Adam Pignatelli of Rath, Young, Pignatelli outside the Abbot-Downing School in Concord, Ward 7; A pick-up truck on Green Street in Concord displaying support for President Trump; Steven Whitley of Drummond Woodsum at Ward 6 in Concord holding a sign for his wife Becky Whitley who won her bid for state senate; PSU Professor George Matthews on the common in Plymouth, N.H.

Photos/Scott Merrill

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An Intimate Portrait of Justice Ruth Bader Ginsburg

Ruth Bader Ginsburg: A Life
Jane Sherron De Hart
Vintage Books, 2018
Hardcover; 752 pages

Reviewed by Esther C. Haley Walker

Coffee mugs? T-shirts? Tumblr? Has a U.S. Supreme Court justice ever elicited a response from such a broad swath of the American public before? Numerous articles, books, and films aim to distill Justice Ruth Bader Ginsburg's contributions. Honestly, I have felt a little overwhelmed with all the information and commentary following her recent passing. What, as a lawyer, should I take away from all this?

Very few of us have the bandwidth to tackle books over 500 pages right now, but what we can do is home in on what topics might have the greatest impact for us at this particular moment in our careers. Ignore the page count above: you don't need to read the whole book in order to acquire useful insights. I've listed a few topics below that might pique your interest, and included some suggested page ranges that will allow you to dip efficiently into this exceptionally researched text.

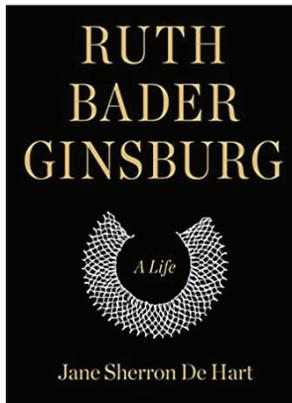
Childhood

The formidable woman with the lace jabot on her black robe was nicknamed "Kiki" as a child. De Hart draws extensively on her personal interviews with Justice Ginsburg to paint a portrait of a driven

young woman who still had time for fun. She left Brooklyn's Flatbush neighborhood for summer camp in the Adirondacks from 1937-1951. She was part of an elite honor society and on the twirling squad in high school. She played Chopin. She dated. Her childhood, however, was colored by the loss of her six-year-old sister when Ruth was a toddler and the loss of her mother two days before her high school graduation. (Pages 4-29)

Mentoring: "Why are you still working for that jerk?"

We are mentored and we are mentors; if we are lucky, we can experience that duality, with one informing the other throughout our careers. Justice Ginsburg had several memorable mentors. For example, even after tying for first in her class at Columbia Law School, she was unable to secure employment. Her federal courts professor, Gerald Gunther, took it upon himself to help secure a clerkship for her; the story of his efforts on her behalf is notable in part because she was unaware of his efforts at the time. While she would later build a legal strategy aimed at enhancing Americans' civil liberties, her career is an illustration of the fact that no effort at systemic change can be effective without in-



dividuals, like Gunther, who take concrete steps in their daily lives to effect change.

After a successful clerkship, Justice Ginsburg's path led her to mentor numerous law students (without regard to their gender) as a professor at Rutgers Law School and Columbia Law School. Years after graduating, one former student recalled receiving a one-line note from her: "Why are you still working for that jerk?" We may not all be emboldened to be as terse as Justice Ginsburg, but offering timely (and sometimes unsolicited) observations can be significant. (Pages 78-103, 161-165)

Building a Legal Strategy to Effect Systemic Change

Know the law and know your audience. De Hart provides useful insight into Justice Ginsburg's strategy for choosing cases to litigate and increasing her chances of a favorable ruling. Seeking inspiration? (Pages 169-176)

Why Did She Argue It Like That?

If you are interested in not just the doctrinal points associated with some of the foundational cases on which Justice Ginsburg worked during her time at the

ACLU, you will be thrilled to discover a thorough summary (including some pictures) of the personalities involved and the circumstances facing her clients. (Pages 180-273)

Judge and Justice

How are lawyers elevated to the bench? Obviously, every story is unique. De Hart paints a vivid picture of the nomination process while simultaneously providing a window into the positive role a life partner can play in one's career. Justice Ginsburg's biggest supporter on the path to both her nominations was her husband, Marty. (Pages 277-326)

Key Cases

From *United States v. Virginia* (aka the Virginia Military Institute case) to *Bush v. Gore*, Justice Ginsburg's participation and influence in numerous cases will continue to impact the law for years. De Hart offers descriptions of some of the cases, opinion structuring, and historical context. (Pages 327-528)

Esther Walker is an attorney who lives and practices law in Hanover, New Hampshire.



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The Benefits of Legal Experience Prior to Law School

By Ivy Attenborough and Niki Camateros-Mann

A good lawyer does not just win cases, they also develop connections with their community, colleagues and clients. This is a lesson that we and many of our peers have learned through our legal experience prior to law school, and it is a perspective that motivates us to approach our legal studies, and future careers, with optimism and excitement.

Before law school, Niki worked as a patent classifier for a USPTO subcontractor and now as a legal coordinator for an intellectual property specialty firm, while Ivy worked as a director of marketing for a personal injury law firm.

One of the ways we have learned about the impact of connecting with the community is through pro bono work.

Niki was invited to travel to Zambia on behalf of the firm she worked for with three colleagues to distribute 150 bicycles to communities in need with World Bicycle Relief. During this trip, Niki had the opportunity to witness how owning a bicycle could change the lives of Zambians. Before owning a bicycle, many teenage women often dropped out of school to focus on their chores. With a bicycle, women were able to complete their chores and travel long distances to school in enough time to continue their education.

In addition to visiting schools, Niki also delivered bicycles to a medical center allowing medics to visit more patients each day. Niki experienced a feeling of gratitude and generosity from those she worked with and she aims to carry this attitude throughout her career.

Being involved in pro bono projects while working in the legal field is just one important way we have been able to see first-hand how a law degree can create a positive impact for others.

In addition to connecting with the community, we have also learned the importance of connecting with our colleagues. The demanding workloads that come with working for a law firm require teams to operate with composure and positive attitudes. All too often, urgent matters would pop up at once for our clients, and we helped manage a stressful environment by building personal relationships. The extra hours became much easier when we took breaks to look at our colleague's cute family Halloween costume or to listen to how our other colleague's rock-climbing hobby is going, for example. The lesson we have taken from these experiences is to continue being ourselves rather than becoming our jobs. This insight has helped us continue our hobbies during law school by reminding us of the importance of healthy relationships and that we are not simply law students.

Working in administrative roles can help incoming law students learn how to connect with colleagues throughout different departments in a firm. Students that work in administrative roles learn the structure of law firms and how each department plays an essential role. In this way, they often gain an appreciation for the amount of work and expectations that are required of each department.

Jacob Rocchi, a fellow 1L student, worked as a legal assistant for an intellectual property law firm on the administrative side. He says he recognized his administrative role was vital to ensure the firm's records remained current and accu-



Camateros-Mann



Ivy Attenborough

rate, which is an appreciation he will carry with him after graduating from law school. Ivy also learned to appreciate the value of understanding other people's jobs in order to help the firm function better as a team. In her position, she assisted in any job that needed to be completed, from touring billboards to covering the reception desk. No one was above doing other jobs and this allowed the entire law firm to function as one.

Our positions also required constant client communication. We learned how to effectively communicate with clients by simplifying otherwise complicated legal concepts. Most importantly, we learned that clients value quick responses and thorough communication. Because we have experienced supporting our own clients, we feel confident about receiving our own clients as attorneys.

Coda Campbell, a 1L student, says she feels more comfortable about beginning her career as a lawyer because she had the opportunity to learn from newly hired attorneys that were recent law school graduates. Prior to beginning law school Campbell worked as a legal assistant at a firm that primarily handles family law.

"I saw where they struggled and where they excelled. So I feel better prepared to face those obstacles as well," she says.

Campbell also says she appreciates the connection between her work experiences and the content of her classes so far.

"Being able to relate a lot of what I am learning now to things I am familiar with—I cannot express how grateful I am for that—I am so thankful to have had this solid baseline understanding before diving into this."

1L student, Arash Sayyah, observes that his previous legal work has aided in his understanding of course material. Through his experience as a Technology Specialist/Scientist at an intellectual property law firm, he learned research and writing skills that he recognizes from lectures in Legal Research and Information Literacy and Legal Analysis and Writing.

Experience in the legal field prior to law school can help diminish the anxieties of the unknown and allow students to focus better during the 1L year. From specific hard skills, to a general increased confidence and optimism towards their careers, any experience inside the legal field before committing to law school is a valuable asset to bring.

Niki Camateros-Mann is a first-year law student at UNH Law and a Legal Coordinator at Sterne, Kessler, Goldstein & Fox P.L.L.C.

Ivy Attenborough is a first-year law student at UNH Law and a monthly contributor to Bar News.

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New Hampshire Superior Court Limits Livestream of Jury Trials

Cases involving victims' testimony will not be livestreamed

The New Hampshire Superior Court announced Oct. 21 that it will not automatically livestream cases involving the testimony of victims. On July 14, the New Hampshire Supreme Court authorized the resumption of jury trials pursuant to a carefully crafted plan to address the health and safety concerns created by the COVID-19 pandemic. The first jury trial under this trial plan occurred in August. Since then the court has continued to modify and refine the process. To that end, court staff has worked with prosecutors, members of the NH Coalition Against Domestic & Sexual Violence, and the defense bar to revise the jury plan template to prevent the testimony of victims from being broadcast by the court over the internet without their consent. In those cases, the court will reserve a number of spaces in the courtroom for public access.

If a victim does not object to livestreaming, the court will permit individuals who have requested access to watch the proceedings by video. Courts may continue to livestream other court proceedings that do not involve victim testimony when the trial judge deems it appropriate.

priate.

"The Judicial Branch has worked during these unprecedented times of the COVID-19 pandemic to develop a plan that allows us to resume criminal jury trials in a safe manner while making sure we provide constitutionally sufficient public access to our courts," said Chief Justice of the Superior Court Tina Nadeau. "We continue to learn and revise the jury trial plan as we gain experience and adapt to the constant challenges this pandemic presents.

"In this regard, we appreciate the concerns raised by victims' rights advocates. We have determined this revised policy would better ensure an appropriate balance between the defendant's and public's right to observe jury trials during the COVID-19 pandemic and victims' rights to prevent their identity from being spread across the internet."

Access to justice in the court system is central to the courts' mission, and this move is intended to assure that victims of crime are protected as much as possible during public hearings, while also respecting the rights of defendants in the courtroom.

A Second Chance for Families

New Family Treatment Court to be established in Circuit Courts within Sullivan County

On Oct. 16, the Department of Justice (DOJ) awarded the New Hampshire Judicial Branch \$1.75 million to establish a new family drug court program. As one of a handful of states not to have a family drug court, New Hampshire applied for and will now pilot a Family Treatment Court (FTC) in the 5th Circuit Courts—Claremont and Newport Family Divisions—in Sullivan County.

The FTC will help enhance access to services for children experiencing abuse and neglect due to substance use disorder and/or mental illness. It will also connect parents, caregivers, and others involved in the case to services. Led by an interdisciplinary team, the FTC will deliver services, regularly reinforce positive behaviors, and hold participants accountable for harmful behaviors.

"The Circuit Court welcomes the opportunity to begin a pilot Family Treatment Court in Sullivan County," noted Deputy Administrative Judge Susan Ashley. "This area of the state has a disproportionately high number of cases involving child abuse and neglect, and children born substance ex-

posed. The grant will allow the courts to work with parents in instances where substance misuse, mental illness, poverty, housing instability and disparate education are significant challenges to families trying to correct conditions of neglect."

The Sullivan County FTC will also serve as a pilot program and will assist the statewide FTC team in developing best practices for potential FTCs in other counties and for family and criminal cases involving parents with substance abuse disorder in Circuit Courts (child protection, divorce/parenting, misdemeanor, mental health courts) and Superior Courts (felony cases, adult drug courts) statewide.

"Families who've been struggling with substance abuse are often at risk of becoming disconnected from the community," said Circuit Court Administrator Heather Kulp. "We hope the new FTC will offer these families the support and resources they need to overcome the challenges they face and for all members, parents as well as children, to thrive."

Former Portsmouth Police Commissioner's Case Brought to NH Supreme Court

By Scott Merrill

The New Hampshire Supreme Court heard oral arguments Oct. 28 in the case of former Portsmouth Police Commissioner Brenna Cavanaugh. Arguments focused primarily on the question of whether the trial court acted within its discretion when it declined to provide a self-defense instruction to the jury during Cavanaugh's August 2019 trial.

Cavanaugh was convicted in Rockingham County Superior Court of acting as an accomplice to first-degree assault and accomplice to criminal mischief for a shooting incident that happened in August 2018 outside her home at 140 Summer St. in Portsmouth.

Cavanaugh faces at least four months in jail and 200 hours of community service pending her appeal.

The incident occurred after a miscommunication about the location of a party between then 16-year-old Oscar LaLime and Cavanaugh's daughter, according to previous testimony. LaLime entered the Cavanaugh residence, where he believed the party was taking place, through an unlocked door shortly after 3 a.m, he testified.

After LaLime exited the home, Cavanaugh and her partner, Mark Gray, pursued the alleged intruder and Gray admittedly fired six gunshots at a pickup truck LaLime was driving. Cavanaugh was accused of telling Gray to "get your gun" while inside their home, which she testified was true.

What followed is where things become muddled. According to LaLime he was driving away, but according to Cavanaugh and Gray he was driving toward them.

A civil lawsuit LaLime filed in January in which he accused Cavanaugh and Gray of negligently inflicting emotional distress in connection with what the suit describes as a "near-death experience" states:

"Mark Gray ran out of the house carrying something in his hand. Brenna Cavanaugh began shouting words to the effect of 'shoot' and 'shoot him.' Mr. Gray then approached Oscar LaLime and while standing across the street discharged his gun at the front of the vehicle. At this point, Oscar realized that the object Mr. Gray was carrying a handgun and that his truck had been struck."

LaLime's suit came shortly after Gray was found not guilty of felony attempted first-degree assault, two counts of reckless conduct with a deadly weapon, criminal threatening with a deadly weapon, and

criminal mischief. Cavanaugh denied telling Gray to 'shoot' or 'shoot him' at her trial.

Mark Zaino, Cavanaugh's attorney, argued to the Supreme Court that the trial court that found his client guilty should have given the jury a self-defense instruction. (The jury that acquitted Gray in his subsequent trial received such an instruction.)

"Failure to instruct the jury regarding self-defense is a structural error and pure offense that must be disproved by the state beyond a reasonable doubt," Zaino said.

Zaino argued that people are justified to defend themselves if they perceive someone is about to use unlawful deadly force against them.

According to Assistant Attorney General Elizabeth Woodcock, this is not what happened in the Cavanaugh case.

"He (LaLime) was terrified. He realized he went to the wrong house and he ran out as soon as he heard people moving upstairs and he jumped into his truck and tried to take off," Woodcock said. "She (Cavanaugh) followed him out of the house, she had left her phone somewhere in the house and when she made the 911 call she didn't sound upset at all. If that fact pattern had been different, if the 16-year-old boy had stayed in the house and not fled, it would have been a different matter entirely but he was terrified. He ran out, jumped into his truck and tried to take off."

Cavanaugh and Gray testified separately that they believed the teen was driving toward them after he backed up into a telephone pole and then accelerated forward.

"What you're saying sounds more like a closing argument as opposed to an evidentiary argument," Justice Gary E. Hicks asserted to Woodcock.

"If she's chasing him out of the house calling to her boyfriend 'shoot shoot' that's not self-defense," Woodcock responded. "The person has left, the danger is gone, where is the self-defense?"

"Not if you're in real fear of getting run over by a truck," Justice James P. Bassett countered.

"I understand the court's point but if you put yourself in danger ... Take a look at the 911 call. She had an idea of who this person was," Woodcock said. "She said it was some blonde-haired kid. When she testified at trial she said she didn't know if this was some homicidal rapist or serial rapist. That's not what she told the dispatcher. It was a blond-haired kid and he'd left the house and he was trying to get away."

Uniform Bar Exams to be Administered Remotely in February

Upon consideration of the public health concerns arising from the COVID-19 pandemic, and after consultation with the Chair of the New Hampshire Board of Bar Examiners, the Supreme Court adopts the recommendation of the General Counsel to the Office of Bar Admissions and authorizes the Board of Bar Examiners to administer a remotely proctored Uniform Bar Examination on Feb. 23-24, 2021, in place of an in-person exami-

nation on those dates. The remotely proctored Uniform Bar Examination, which shall be prepared by the National Conference of Bar Examiners, satisfies the requirements of Supreme Court Rule 42, IV(a)(3)(A) and VII(a).

As soon as practicable, the Office of Bar Admissions will provide information to applicants concerning the remotely proctored Uniform Bar Examination on February 23 and 24, 2021.

New Hampshire Supreme Court Advisory Committee On Rules Public Hearing Notice

The public hearing previously scheduled for December 4, 2020 before the New Hampshire Supreme Court Advisory Committee on Rules has been rescheduled for December 18, 2020 – the Committee will hold a PUBLIC HEARING at 12:30 p.m. on Friday, December 18, 2020, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on Superior Court Civil Rule 12(g), which relates to Motions for Summary Judgment.

In April 2019, the New Hampshire Supreme Court ordered that Superior Court Civil Rule 12(g) would take effect on July 1, 2019. The Court further ordered that in June 2020, the Advisory Committee on Rules should begin “to evaluate how the rule has worked in practice and as soon as possible thereafter, . . . recommend whether the rule should remain in effect or should be amended further.”

Comments addressing how Rule 12(g) has worked in practice, whether the rule should remain in effect, and whether the rule should be amended further may be submitted in writing to the secretary of the Committee at any time on or before December 17, 2020 or may be submitted at the hearing on December 18, 2020. Comments may be e-mailed to the Committee on or before December 17, 2020 at: rulescomment@courts.state.nh.us.

Comments may also be mailed or delivered to the Committee at the following address: N.H. Supreme Court, Advisory Committee on Rules, 1 Charles Doe Drive, Concord, NH 03301.

Any suggestions for rules changes unrelated to Superior Court Civil Rule 12(g) may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

Superior Court Civil Rule 12(g) provides as follows:

(g) Motions for Summary Judgment.

(1) Motion for Summary Judgment. Motions for summary judgment shall be filed, defended and disposed of in accordance with the provisions of RSA 491:8-a as amended. Such motions and responses thereto shall provide specific page, paragraph, and line references to any pleadings, exhibits, answers to interrogatories, depositions, admissions, and affidavits filed with the court in support of or in opposition to the Motion for Summary Judgment. Only such materials as are essential

and specifically cited and referenced in the Motion for Summary Judgment, responses, and supporting memoranda shall be filed with the court. In addition, except by permission of the court received in advance of filing the memoranda, no such motion, response, or supporting memorandum of law shall exceed 20 double-spaced pages. The purpose of this rule is to avoid unnecessary and duplicative filing of materials with the court. Excerpts of documents and discovery materials shall be used whenever possible.

(2) Statement of Material Facts.

(a) Content. Every motion for summary judgment shall be accompanied by a separate statement of the material facts as to which the moving party contends there is no genuine issue to be tried, set forth in consecutively numbered paragraphs, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Failure to include the foregoing statement shall constitute grounds for denial of the motion.

(b) Additional Service of Electronic Form of Statement of Material Facts to other Parties. At the time the motion and separate statement of material facts are filed with the court, the statement of material facts shall also be contemporaneously sent in electronic form by email to all parties against whom summary judgment is sought in order to facilitate the requirements of the following paragraph. The statement of material facts in electronic form shall be sent as an attachment to an email and shall be in a Microsoft Word document (or a document convertible to Word) unless the parties agree to use another word processing format. The requirement to email the statement of material facts to the opposing party does not alter the date or method of service. The requirement for transmission by email of the statement of material facts in electronic form shall be excused if (A) the moving or any opposing party is appearing pro se, (B) the attorney for the moving party certifies in an affidavit that he or she does not have access to email, (C) the attorney for the moving party certifies in an affidavit that an opposing party’s attorney has no email address or has not disclosed his or her email address, or (D) the parties believe that the process outlined herein will be unworkable due to particular circumstances in their case and receive advance

approval from the Court for filing separate documents.

(3) The Non-Moving Party.

(a) Response to the Motion and the Statement of Material Facts. The non-moving party shall have 30 days after filing to object to a motion for summary judgment, unless another deadline is established by order of the court. An objection to a motion for summary judgment shall include a response to the moving party’s statement identifying the facts the moving party contends are material and undisputed. In its response, the nonmoving party shall indicate which, if any, of the purported undisputed facts identified in the moving party’s statement the nonmoving party contends are in dispute. The form of the nonmoving party’s response shall be consistent with the requirements of paragraph b. For purposes of summary judgment, any fact set forth in the moving party’s statement of material facts shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(b) Filing a Single Document Containing all Parties’ Positions. To permit the court to have in hand a single document containing the parties’ positions as to material facts in easily comprehensible form, the opposing party shall save the moving party’s statement of material facts as a new document and shall set forth a response to each directly below the appropriate numbered paragraph, including, if the response relies on opposing evidence, page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Where the obligation to send the statement of material facts in electronic form has been excused, the response to the statement of material facts may be in a separate document.

(c) Statement of Additional Material Facts. Along with its response to the moving party’s statement of facts, the nonmoving party may assert an additional statement of material facts with respect to the claims on which the moving party seeks summary judgment, each to be supported with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.

(d) Filing a Single Document with Additional Material Facts. Such an additional statement shall be a continuation of the opposing party’s response described in Paragraph (g) (3)(a), with an appropriate heading, and shall not be a separate document. Where the party opposing summary judgment includes such

an additional statement in its response, the response, including the additional statement, also shall be sent in electronic form by email to the moving party, unless excused as provided in Paragraph (g)(2).

(4) The Moving Party’s Reply to Additional Material Facts. The moving party shall reply to the opposing party’s additional statement of material facts within 20 days of filing and in the manner required by Paragraph (g)(3), resulting in a final, single consolidated document for the court’s consideration, unless the obligation to send the additional statement of material facts in electronic form has been excused. For purposes of summary judgment, any fact set forth in the opposing party’s additional statement of material facts shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(5) Page Limits. Neither the statement of material facts as to which there is no genuine issue to be tried nor the response thereto shall be subject to the 20-page limitation in paragraph (g)(1) of this rule.

(6) Cross-Motions. Cross-motions for summary judgment and oppositions thereto shall comply with the requirements of Paragraph (g)(3), with the result that there shall be a single consolidated document for both motions for summary judgment (multiple documents may only be filed with advance leave of court) containing the respective statements of material facts and responses thereto, unless excused as provided in Paragraph (g)(2).

(7) Partial Summary Judgment. Where a plaintiff successfully moves for summary judgment on the issue of liability or a defendant concedes liability and the case proceeds to trial by jury, the parties must provide the trial judge with a statement of agreed facts sufficient to explain the case to the jury and place it in a proper context so that the jurors might more readily understand what they will be hearing in the remaining portion of the trial. The court shall present the jury with the agreed statement of facts. Absent such an agreement on facts, the court shall provide such a statement.

(8) Sanctions for Noncompliance. The court need not consider any motion or opposition that fails to comply with the requirements of this rule and may deny or grant a motion for summary judgment based on the failure of the moving party or the non-moving party to comply with this rule.

New Hampshire Supreme Court
Advisory Committee on Rules
By: Patrick E. Donovan, Chairperson
and Lorrie Platt, Secretary
November 6, 2020

New Hampshire Superior Court Cancels Strafford Jury Trial Due to COVID Concerns

Trials in other counties will continue as scheduled

In light of rapidly rising COVID-19 infection rates and limited air circulation in the Strafford County courthouse, Chief Justice of the Superior Court Tina Nadeau has made the decision to cancel the jury trial in Strafford County currently scheduled to begin with evidence on Thursday, November 12, 2020. The infection rate in Strafford County is 16.8 cases per 100,000 as of November 10.

“We considered the current infection rate, and evaluated whether the air filtration and ventilation system in the Strafford County courthouse would make it prudent to continue with the trial,” noted Chief Justice Nadeau. “After further consultation with the Judicial Branch expert, Dr. Erin Bromage, the decision was made to cancel the trial. This is a difficult decision and it was made to ensure the continued health and safety of court staff, jurors, and parties

to the case.”

Nadeau noted, however, that the decision to cancel the trial in Strafford due to COVID concerns held only for this particular trial in this select county. Trials scheduled to take place this month in Rockingham County, Hillsborough County Northern District and Merrimack County will continue as scheduled until further notice. Trials in Strafford will likely resume when infection rates in the county subside.

“The infection rates in other counties where trials are scheduled are lower than Strafford County, and given that the building filtration systems in those counties are strong, our expert has indicated that trials can occur safely. Nonetheless, we will re-examine this decision on a daily basis.”

For more information on jury trials in New Hampshire, see the NHJB website.

Need to schedule a Mediation?

FEBRUARY 2020

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Fast-track scheduling at www.NHMediators.org

Supreme Court Sends Laurie List Case Back to the Lower Courts

ACLU-NH Says the Case Will Rest on the Public's Interest in Disclosure

By Scott Merrill

The state's Exculpatory Evidence Schedule, better known as the "Laurie list," may have moved one step closer to being made fully public with the New Hampshire Supreme Court's Oct. 30 opinion. But its ultimate fate will now rest, once again, with the lower courts.

The Court's opinion comes after oral arguments in September on a public-records case for the release of the list originally filed in 2018 by the New Hampshire Center for Public Interest Journalism, Telegraph of Nashua, Union Leader Corporation, Newspapers of New England Inc. (through its New Hampshire properties), Seacoast Newspapers Inc., Keene Publishing Corporation, and the American Civil Liberties Union of New Hampshire.

In 2019 Superior Court Judge Charles Temple ruled that the full unredacted list – which contains the names of New Hampshire police officers who have engaged in sustained misconduct – is a public record. Attorney General Gordon MacDonald appealed the ruling to the state Supreme Court, arguing that Temple erred.

The Supreme Court's opinion states: "We uphold the trial court's determinations that the EES is neither 'confidential' under RSA 105:13-b nor exempt from disclosure under the Right-to-Know Law as an 'internal personnel practice' or a 'personnel file.'"

However, on the issue of whether disclosure of the list may constitute an invasion of privacy in some situations, the Court vacated the trial court's decision and remanded it to determine whether "the ESS constitutes an 'other file' whose disclosure would constitute invasion of privacy."

This remaining exemption is what will be sent back to Superior Court according to ACLU-NH legal director Gilles Bissonnette, who is representing the majority of plaintiffs in the case. The focus there, he explained, will be on public-interest balancing.

"It's going to be about the public's interest in disclosure balanced against any governmental or privacy interests in non-disclosure," Bissonnette said, adding that supplemental briefings will like-

ly be filed with the Superior Court within several months on this issue. "The short of this is that we won on all the legal issues that the Superior Court ruled on and the case has been sent back regarding a remaining issue the court didn't address."

Asked what might constitute an "other file" in terms of invasion of privacy, Bissonnette said that it could be anything that doesn't constitute a personnel file. An example might include something involving a confidential informant in a document or a victim's telephone number or address in a document that's not personnel related where there would be a privacy interest.

Overall, Bissonnette expressed relief with the Court's opinion that the Laurie List is not exempt from disclosure as a personnel document. But he also expressed disappointment.

"We and the communities we represent are disappointed that the Court did not order the immediate release of the list, and instead sent the case back to the lower court for further proceedings to address the public interest in disclosing the list," Bissonnette said. "Police officers who are named on the list are there because they have engaged in sustained misconduct concerning credibility or truthfulness. The public has a clear right to know this information. In this historic moment, there is a demand for immediate transparency concerning the police. While the Court has temporarily delayed this transparency concerning the list, we will continue to fight for this information."

Governor Sununu expressed support for the disclosure of the Laurie List in a news release, saying:

"I support the LEACT Commission's recommendation that the Laurie List be made public after steps are taken to ensure that those on the list receive due process. We will work to achieve this goal through the legislature."

Sununu established the Commission on Law Enforcement Accountability, Community and Transparency by executive order in June. The Attorney General's office did not have a statement regarding the Supreme Court ruling prepared at the time this article was written.

Supreme Court At-a-Glance

October 2020

Criminal Law

The State of New Hampshire v. Stephen Girard, No. 2018-0608
October 16, 2020

Affirmed in part; and remanded

- Whether the trial court unsustainably exercised its discretion when it denied defendant's motion to sever computer-related indictments from indecent exposure indictments.
- Whether the trial court erred in declining to disclose portions of family counseling records after in camera review.

The defendant was convicted following a bench trial on two counts of indecent exposure and two counts of misuse of a computer or network. On appeal, the defendant argued that the trial court erred by: (1) determining that the charges of indecent exposure and misuse of a computer or network were logically and factually connected; and (2) determining that portions of privileged family counseling records were confidential.

Addressing the joinder issue, the Court found that the trial court did not unsustainably exercise its discretion. Applying the five factors from *State v. Brown* (2009), the Court concluded that the trial court's reliance on the fifth factor, relating to the duplication of witnesses, testimony and other evidence, was reasonable.

Relating to the review of privileged counseling records, the Court emphasized that in this case the records were not in the custody of either party. The Court stated that it appeared that the trial court did not consider whether the records contained general credibility evidence during its review, and did not consider whether the same was material and relevant. In balancing the defendant's interest in obtaining material helpful to his defense and the interests relating to the psychotherapist-patient privilege, the Court clarified the scope of the trial court's review under the "essential and reasonably necessary" standard in *State v. Gagne* (1992). The Court held that the trial court must evaluate records for general credibility evidence when determining whether or not material and relevant evidence is in fact contained in the reviewed record. The Court affirmed the convictions relating to misuse of a computer or network, and remanded the convictions relating to indecent exposure to the trial court for further in camera review of the privileged records under the clarified standard.

At-a-Glance Contributor



Eric Wind
Attorney at the
NH Public Utilities
Commission
in Concord, N.H.

Gordon J. MacDonald, attorney general (Sean R. Locke, assistant attorney general, on the brief and orally), for the State. Thomas Barnard, senior assistant appellate defender, of Concord, on the brief, and Christopher M. Johnson, chief appellate defender, orally, for the defendant.

Land Use - Easements

Richard D. Arell, Jr., & a. v. Henry M. Palmer & a., No. 2019-0553

October 30, 2020

Reversed and remanded

- Whether the trial court correctly found that a deed's language relating to an easement for a well was ambiguous.
- Whether the trial court properly applied the rule of reason in directing the defendant to take steps to develop another water source.

Plaintiff petitioned for a declaratory judgment and injunctive relief, asserting that the defendant's temporary easement to maintain a well on the plaintiff's property required the defendants to develop their own water source. The trial court's order on cross-motions for summary judgment directed the defendants to investigate the cost and feasibility developing a new well on their own property, and if possible, to install such a well within three years.

The relevant deed language granted the defendants a "temporary easement ... until such a time as the grantees shall have another source of water available." In interpreting this language, the trial court found that the word "temporary" was ambiguous, and cited the rule of reason in ordering the defendants investigate and, unless unreasonable, construct a new well on their own property.

The Court found the deed language to be unambiguous, imposing no duty on the defendant to obtain another water source. Based on the words "until such time," the

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Court concluded that the deed created a determinable easement, which terminates only upon the occurrence of a stated event. The Court noted that if the stated event does not occur, the easement could potentially last forever.

The plaintiffs argued that notwithstanding the deed's language, the rule of reason still required the defendant to develop an independent water supply. The Court held that in the first instance, as a rule of interpretation, the rule of reason was inapplicable given its findings. The Court further noted that the plaintiffs had not presented evidence that the easement was overburdened, therefore the rule of reason could not be applied to determine whether a particular use of the easement would be unreasonably burdensome.

The Court concluded that the trial court erred in granting the plaintiffs' motion for summary judgment, reversed that order, and remanded the case.

Shaheen & Gordon, P.A., of Concord (Karyn P. Forbes and Alexander W. Campbell on the brief, and Ms. Forbes orally), for the plaintiffs. Cleveland, Waters and Bass, P.A., of Concord (Timothy E. Britain and Jeffrey C. Christensen on the brief, and Mr. Christensen orally), for the defendants.

Premises Liability and Waiver

Theresa A. Ladue v. Pla-Fit Health, No. 2019-0354

October 30, 2020

Affirmed

- Whether the trial court correctly found that plaintiff's negligence claim was barred by a release of liability provision in her membership agreement.

The plaintiff brought a negligence claim after injuring her arm on an uncovered and unprotected bolt after tripping and falling on an irregular and uneven walkway at defendant's gym. The trial court granted defendant's motion for summary judgment, ruling that plaintiff's claim was barred by a liability release in her membership agreement.

Plaintiff raised two primary arguments: 1) that the liability release was unenforceable because a special relationship exists between her and the defendant, resulting in the waiver violating public policy; and 2) even if the release does not violate public policy, it is still unenforceable because a reasonable person would not have understood it to apply to the injury she suffered.

The Court found that a special relationship did not exist between the parties because the defendant is not a common carrier, innkeeper, public utility, or an entity that provides a service of great importance or practical necessity to the public. The court specifically declined to hold that the recreational use of a private gym is of such great importance or necessity that it creates a special relationship, such that the liability release would be prohibited as against public policy.

Next, the Court rejected the plaintiff's alternate theories that the release violates public policy on public safety grounds. Plaintiff argued that because she was not exercising at the time of the accident, that her injury was not related to her use of the gym facilities; and that because her injury was not a direct result of her use of the facilities, this case implicates a broad issue of whether a business may absolve itself of maintaining reasonably safe conditions. The Court found that the plaintiff's use of the gym at the time of her injury was related to her use of the gym's facilities to exercise, and that the plaintiff's remaining policy arguments were unconvincing or inapposite.

The Court went on to find that the language of the liability release is broad and not obstructed by qualifications. Therefore, the Court concluded that a reasonable person would have contemplated that the release applied to any negligence, not just negligence inherent in the active use of exercise equipment.

Follender Law Offices, P.L.L.C., of Nashua (Richard C. Follender on the brief and orally), for the plaintiff. Wadleigh, Starr & Peters, P.L.L.C., of Manchester (Michael R. Mortimer and Michael G. Eaton on the brief, and Mr. Eaton orally), for the defendant.

Right-to-Know

New Hampshire Center for Public Interest Journalism & a. v. New Hampshire Department of Justice, No. 2019-0279

October 30, 2020

Affirmed in part; vacated and remanded

- Whether the trial court correctly found that the Exculpatory Evidence Schedule (f.k.a. the "Laurie List") is not confidential or otherwise exempted from disclosure.

The Department of Justice appealed an order of the Superior Court denying its motion to dismiss the plaintiffs' petition seeking a declaration that the Exculpatory Evidence Schedule ("EES"), excluding the names of police officers with pending requests to be removed from the list, must be made public pursuant to the Right-to-Know Law, RSA chapter 91-A, and Part I, Article 8 of the New Hampshire Constitution.

The Court upheld the trial court's finding that the EES is not confidential under RSA 105:13-b, and is not exempted from disclosure under RSA 91-A:5, IV's "internal personnel practices" or "personnel file" exemptions. The Court held that RSA 105:13-b's disclosure exemption applies only to information actually maintained in a police officer's personnel file, not to records maintained elsewhere. Applying *Seacoast Newspapers, Inc. v. City of Portsmouth*, (decided May 29, 2020) and *Union Leader Corp. v. Town of Salem*, (decided May 29, 2020), the Court also determined that the EES is not exempted from disclosure as an "internal personnel practice" or "personnel file" under RSA 91-A:5, IV. The Court remanded the case to the Superior Court to determine in the first instance whether the EES may be exempted from disclosure as an "other file[]" whose disclosure would constitute invasion of privacy" pursuant to RSA 91-A:5, IV.

American Civil Liberties Union of New Hampshire, of Concord (Gilles R. Bissonnette and Henry R. Klementowicz on the brief, and Mr. Bissonnette orally), and Moir & Rabinowitz, PLLC, of Concord (James H. Moir on the brief), for plaintiffs New Hampshire Center for Public Interest Journalism, The Telegraph of Nashua, Newspapers of New England, Inc., Seacoast Newspapers, Inc., Keene Publishing Corporation, and American Civil Liberties Union of New Hampshire. Malloy & Sullivan, Lawyers Professional Corporation, of Hingham, Massachusetts (Gregory V. Sullivan on the brief and orally), and Douglas, Leonard & Garvey, P.C., of Concord (Charles G. Douglas, III on the brief), for plaintiff Union Leader Corporation. Gordon J. MacDonald, attorney general (Daniel E. Will, solicitor general, on the brief and orally), for the New Hampshire Department of Justice.

ADM-2012-0042, In the Matter of Gordon L. Mathews, Esquire

On August 16, 2012, Attorney Gordon L. Mathews was suspended from the practice of law in New Hampshire for nonpayment of his 2011/2012 bar dues.

On June 22, 2020, Attorney Mathews filed a petition for reinstatement to the New Hampshire Bar. Upon review of the petition and Attorney Mathews's supplemental filing on September 29, 2020, the court grants the petition.

Accordingly, Attorney Mathews is reinstated to the practice of law in New Hampshire, effective immediately.

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

ISSUED: October 16, 2020

ATTEST: Timothy A. Gudas, Clerk

The Supreme Court of New Hampshire hereby reappoints the following attorneys to the Board of Bar Examiners:

Megan C. Carrier
Jeremy G. Clemans
Frederick J. Coolbroth
Jennifer S. Moeckel
Terri L. Pastori

These members are reappointed to serve three-year terms commencing November 1, 2020, and expiring October 31, 2023.

Issued: October 27, 2020

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

Upon consideration of the public health concerns arising from the COVID-19 pandemic, and after consultation with the Chair of the New Hampshire Board of Bar Examiners, the Supreme Court adopts the recommendation of the General Counsel to the Office of Bar Admissions and authorizes the Board of Bar Examiners to administer a remotely proctored Uniform Bar Examination on February 23 and 24, 2021, in place of an in-person examination on those dates. The remotely proctored Uniform Bar Examination, which shall be prepared by the National Conference of Bar Examiners, satisfies the requirements of Supreme Court Rule 42, IV(a)(3)(A) and VII(a).

As soon as practicable, the Office of Bar Admissions will provide information to applicants concerning the remotely proctored Uniform Bar Examination on February 23 and 24, 2021.

Issued: October 29, 2020

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

Pursuant to RSA 494:1, IX, the Supreme Court reappoints Attorney Richard E. Samdperil, a member of the New Hampshire Bar Association, to the Judicial Council. Attorney Samdperil is reappointed to serve a three-year term commencing on January 1, 2021, and expiring on December 31, 2023.

Issued: November 13, 2020

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

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CIVIL; PLEADING REQUIREMENTS FOR FRAUD-BASED CLAIMS

10/2/20 Langlais v. Brenner-Currier, et al. Case No. 20-cv-234-JL, Opinion No. 2020 DNH 175*

The plaintiff sold his interest in two companies, Montcalm Golf, LLC and Enfield Land Company, LLC, to Kristen E. Brenner-Currier. The plaintiff claimed, among other things, that he assigned his interest in Enfield Land Company to Brenner-Currier; Brenner-Currier did not pay him; and Brenner-Currier transferred the interest in Enfield Land Company to her husband without consideration. The plaintiff brought breach of contract, fraudulent misrepresentation, and fraudulent conveyance claims against both Brenner-Currier and Enfield Land Company. The defendants moved to dismiss all of the claims against both of them, except the breach of contract claim against Brenner-Currier. The court granted the motion with respect to the claims against Enfield Land Company because the plaintiff did not plead facts to support the basic elements of the claims, and the plaintiff did not dispute the insufficiency of the allegations. The court denied the motion with respect to the claims against Brenner-Currier, finding that the plaintiff adequately pleaded fraudulent intent as to both fraud-based claims and pleaded the facts concerning the fraudulent misrepresentation claim with particularity, as required under Federal Rule of Civil Procedure 9(b).

COMPASSIONATE RELEASE

10/1/20 United States v. German Case No. 15-cr-3-2-PB, Opinion No. 2020 DNH 172

The court denied the defendant's motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). The court found that the defendant did not meet his burden of demonstrating that extraordinary and compelling reasons exist that would render him eligible for compassionate release. Although the defendant's obesity somewhat increased his relative risk of COVID-19-related complications, it did not put him at so elevated a risk of harm as to justify his release. In any event, the sentencing factors weighed against reducing the defendant's sentence, which was imposed as a result of his involvement in prostituting a minor for profit and a drug offense. The court found that his sentence remains no greater than necessary to achieve the purposes of the sentencing statute. 9 pages. Judge Paul Barbadoro.

10/26/20 United States v. Delano Nelson Case No. 12-cr-111-1-PB, Opinion No. 2020 DNH 186*

Defendant moved for compassionate release based on several medical conditions, including diabetes mellitus type 2, and his age. Defendant met his burden demonstrating that "extraordinary and compelling reasons" exist that would render him eligible for compassionate release. However, after

considering the sentencing factors under 18 U.S.C. § 3553(a), the court concluded that a reduction in his sentence was not warranted. His convictions for two robberies of two different jewelry stores were committed months after his release from prison after a long sentence for yet another jewelry store robbery. The robberies in question involved a gun and a store clerk was injured during one of the robberies. Although the defendant has made commendable progress while in prison, the court concluded that the Section 3553(a) factors weigh against his immediate release. 10 pages. Judge Paul Barbadoro.

CRIMINAL LAW

10/05/20 James Grey v. United States Case No. 20-cv-474-PB, Opinion No. 2020 DNH 176*

Defendant challenged his conviction for a § 922(g) charge, which he pleaded guilty to before the Supreme Court handed down its decision in Rehaif v. United States, 139 S. Ct. 2191, 2194 (2019). The Court held in Rehaif that, "To convict a defendant [under 18 U.S.C. § 922(g)], the Government . . . must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status [as a convicted felon] when he possessed it." Defendant argued that the court lacked jurisdiction to accept his guilty plea because his indictment failed to allege that he knew he was a convicted felon when he committed the offense. This claim is unavailable because he waived jurisdictional challenges when he pleaded guilty. Defendant also argued that his counsel and the court both failed to advise him of the Rehaif requirement during his guilty plea. Defendant argued that the error was structural and therefore requires no showing of prejudice. However, this outcome would conflict with the First Circuit's decision in United States v. Burghardt, 939 F.3d 397, 402 (1st Cir. 2019), where the court rejected a Rehaif claim because the defendant failed to prove prejudice. 4 pages. Judge Paul Barbadoro.

EMPLOYMENT; WRONGFUL TERMINATION

10/30/20 Hidalgo-Semlek v. Hansa Medical Case No. 19-cv-436-JL, Opinion No. 2020 DNH 190*

In this wrongful termination and statutory whistleblower case, the court denied the defendant's motion for summary judgment, concluding that there were material factual

disputes about whether the plaintiff engaged in protected conduct for purposes of both her claims, whether there was a causal connection between her protected conduct and her termination, and whether the defendant's reasons for terminating the plaintiff were pretextual and motivated by bad faith, malice, and retaliation. All of these questions were central to the plaintiff's claims. Furthermore, the court rejected the defendant's arguments that the plaintiff's actions did not implicate any public policies as a matter of law and that her actions could not be considered protected acts under the New Hampshire Whistleblowers' Protection Statute, RSA 275-E, as a matter of law. 58 pages. Judge Joseph N. Laplante.

PERSONAL JURISDICTION, RICO, RECONSIDERATION

10/2/20 Ayasli v. Korkmaz, et al. Case No. 19-cv-183-JL, Opinion No. 2020 DNH 171*

In a previous order, and after finding that it lacked personal jurisdiction over five of the defendants, the court granted the plaintiff's motion to transfer his claims against those defendants to the United States District Court for the Central District of California under 28 U.S.C. § 1631. On reconsideration, the court granted the plaintiff's motion to also transfer his claims against two defaulted parties to the same district under 28 U.S.C. § 1404(a). 6 pages. Judge Joseph N. Laplante.

SOCIAL SECURITY

10/1/20 Stafford v. US Social Security Administration Case No. 19-cv-752-JL, Opinion No. 2020 DNH 173*

On appeal from the Social Security Administration's denial of the claimant's application for a period of disability and disability insurance benefits, the court denied the claimant's motion to reverse the decision of the Administrative Law Judge ("ALJ"). The court concluded that the ALJ did not err by limiting review of the evidence to that dated within 12 months of the claimant's date last insured where the ALJ clearly considered evidence outside of that time period but that reflected the claimant's alleged impairments during that relevant period. The ALJ further did not err in considering the claimant's testimony or in weighing the opinions of her treating physicians. 20 pages. Judge Joseph N. Laplante.

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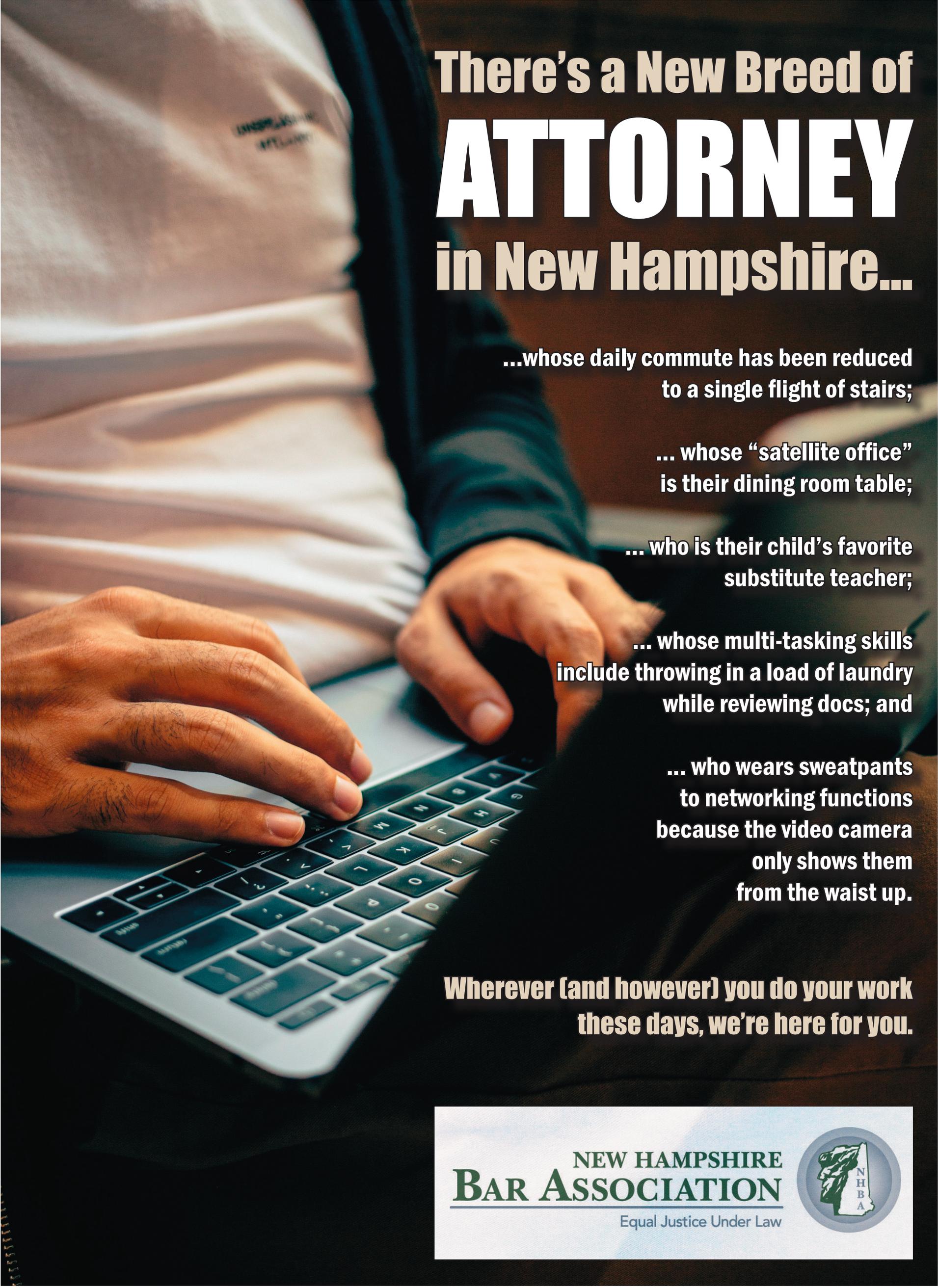


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Issue Date	Ad Reservation Deadline	Final Ad Copy Due
Dec. 16, 2020	Nov. 30, 2020	Dec. 7, 2020
January 20, 2021	January 4, 2021	January 11, 2021
Feb. 17, 2021	Feb. 1, 2021	Feb. 8, 2021
March 17, 2021	March 1, 2021	March 8, 2021
April 21, 2021	April 5, 2021	April 12, 2021
May 19, 2021	May 3, 2021	May 10, 2021
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REQUEST FOR PROPOSALS Lobbying Services

OBJECTIVE:

The Board of Governors of the New Hampshire Bar Association is seeking to enter into an independent contractor relationship with an individual or organization to provide lobbying services for the 2020-21 legislative year.

BACKGROUND:

The New Hampshire Bar Association is a unified bar with 8,317 total members, both active and inactive and practicing in-state and out-of-state. The number of active attorneys in the State of New Hampshire totals 3,478, practicing in firms of varying size.

As an integral part of its mission, the Bar Association reviews proposed legislation pertaining to the administration of justice, and after review by the Bar's Legislation Committee, either lobbies for support or opposes certain bills. The bar's activities before the legislature are governed by the restrictions found in the NH Supreme Court decision, *Petition of Chapman*.

For the past several years, the Bar Association has engaged the services of John MacIntosh, Esq. as its lobbyist. Unfortunately, Attorney MacIntosh has announced his retirement from lobbying activities and will therefore not be available to continue as the Bar's lobbyist this year.

SERVICES:

Responsibilities of the Lobbyist: The Lobbyist shall work with representatives of the Bar, including the Bar President, Board of Governors and Legislation Committee to represent the interests of the Bar before the New Hampshire Legislature during the 2020-2021 session. Specifically, the Lobbyist shall advocate for, provide information about and oppose selected bills which are introduced during the session. The positions advanced by the Bar Lobbyist shall be determined after consultation with the Legislation Committee and Board of Governors. The Bar Lobbyist shall carry out their responsibilities consistent with the purpose of the Bar and principles established in *Petition of Chapman*, 128 N.H. 24 (1984), as well as other legislative rules governing the conduct of lobbyists in New Hampshire. From time to time, the Bar Lobbyist will highlight for the Officers and Board of Governors of the Bar particularly important or noteworthy bills.

It is further expected that, when necessary, the Bar Lobbyist will be physically present at the legislature to attend hearings, discuss bills with legislative members, and testify on pending matters. Periodically, the Bar Lobbyist will report on activities to the Board of Governors.

Being a member of the Bar is a positive benefit, but not a requirement of submitting a proposal to this RFP.

CONTENT OF PROPOSAL:

In responding to this Request for Proposal (RFP) we request the following information:

- (1) Detail of your experience with legislative matters and advocating before the House and/or Senate for pending bills
- (2) Describe your knowledge with regard to matters involving the administration of justice, Court Rules and procedures, criminal justice, and family law matters.
- (3) Set forth your fee proposal for the 2020/21 legislative year, including any caps, limitations or increases for the next three (3) years.
- (4) Identify the person or persons who will be actively working on the Bar Association account.
- (5) Provide the name and addresses of all other entities or individuals who have engaged you to lobby for them at present or at any time for the past five (5) years. To the extent you consider this information to be confidential, the Bar Association is willing to execute a non-disclosure agreement.

SELECTION PROCESS:

All Proposals (RFPs) will be evaluated by the Executive Director of the New Hampshire Bar Association and the Board of Governors. They reserve the right to accept or reject any proposal, for any reason they believe to be in the best interest of the New Hampshire Bar Association.

TIMING:

All proposals under this Request for Proposal (RFP) should be submitted no later than 5 p.m. on Friday, December 4th to:

George R. Moore, Esq.
Executive Director
New Hampshire Bar Association
2 Pillsbury Street, Suite 300
Concord, NH 03301

OR

gmoore@nhbar.org

Legal Assistant

Shaheen
& Gordon

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a Legal Assistant responsible for supporting a trial attorney with a diverse personal injury practice for their Manchester, NH office. This is a part-time position, working 25-28 hours per week. The ideal candidate will have at least 5 years of experience. To be successful in this role, the candidate must demonstrate the ability to work as a member of a team, in addition to working independently.

The ideal candidate must have experience with the following job responsibilities, which include, but are not limited to:

- Requesting, reviewing, and organization of medical records
- Preparing medical evidence for hearings and trial
- Scheduling of depositions, mediations, and independent medical examinations
- Management of personal injury files
- Preparation of correspondence, motions, and objections
- Knowledge of court rules and discovery deadlines
- Assistance with discovery and document management

- Proficiency with electronic filing systems in state and federal courts and the ability to file pleadings in both state and federal courts
- Strong computer skills, including Microsoft Office, Outlook, Excel, Adobe, scanning and maintaining electronic files
- Excellent communication skills with clients, court staff, claims adjusters, and opposing counsel

The ideal candidate must be organized and have the ability to multi-task and work under pressure. Attention to detail and proofreading skills are a must have. We look forward to welcoming someone who takes pride in their work, is enthusiastic, and who will thrive in a fast-paced environment.

Shaheen & Gordon presents a pleasant, supportive, challenging, non-smoking work environment. Salary and benefits commensurate with experience. Please forward your cover letter, resume, and salary requirements to recruiting@shaheengordon.com.

EOE

ASSISTANT COOS COUNTY ATTORNEY

The Office of the Coos County Attorney currently has an opening for a full-time Assistant County Attorney. The position entails representing the State in the prosecution of felony and misdemeanor crimes in Superior Court. The position may also involve administering a federal grant, discussing legal aspects of cases with staff and police, and counseling law enforcement on legal matters. Trial or jury trial experience is preferred, and experience working with victims of crime is a plus. Other responsibilities may include being available to take calls and to provide advice and guidance to local law enforcement during nonoffice hours.

Minimum Qualifications: Juris Doctor degree and membership in good standing with the New Hampshire Bar Association.

Application Process: Please send a resume and cover letter to: John G. McCormick, Coos County Attorney, 55 School Street, Suite 141, Lancaster, NH 03584. 603-788-5560 (fax). sue.corrow@cooscountynh.us.

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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.

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COUNSEL

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New Hampshire Employment Security is recruiting for a full-time Counsel position in the Department's Legal Section in Concord. The responsibilities of the position include some or all of the following: representing the Department in court as well as in administrative appeals; drafting, reviewing and overseeing RFPs and contracts; drafting administrative decisions; collecting debts owed to the Department; providing legal analysis on a broad range of unemployment compensation issues; and drafting administrative rules and legislative proposals. Candidates for Counsel must have a minimum of three years of legal practice experience. The position

requires a JD and membership in the NH Bar Association or eligibility to waive in. Interested persons should forward a completed resume or State Employment application to:

Karen A. Levchuk, General Counsel
New Hampshire Employment Security
45 South Fruit Street
Concord, NH 03301

Karen.A.Levchuk@nhes.nh.gov
603-228-4070

www.nh.gov/hr/employment.html

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EOE

Classifieds

POSITIONS AVAILABLE

ATTORNEY – ESTATE PLANNING – PRIMMER PIPER EGGLESTON & CRAMER PC seeks an estate planning attorney with 4 or more years of active estate planning experience. This is an excellent opportunity for an experienced attorney to join a thriving, high-end estate planning practice in our New Hampshire offices. Applicants must be interested in pursuing a career as an estate planning attorney handling wills, trusts, business succession and probate matters. Interested applicants should submit a cover letter, resume and writing sample to careers@primmer.com. All inquiries are held in the strictest confidence.

ASSOCIATE – Robinson, Boesch, Sennott & Daly P.A., of Portsmouth, seeks a full time Associate to join our Estate Planning, Elder Law, Probate and Trust practice. The candidate must be licensed in New Hampshire and have 3 or more years experience in estate planning. Preference for Maine license as well. Unique opportunity to join a small established boutique law firm with partnership potential. Interested applicants please forward resumes to Karen Lindbom, Office Manager at klindbom@nhprobate.com.

ASSOCIATE – An established Concord, New Hampshire boutique law firm seeks an experienced full-time attorney to join its Estate Planning, Trusts & Estates practice. Candidates must be licensed in NH and have 3-8 years of experience in the drafting of all estate planning documents, as well as administering probate and trust estates. The ideal candidate will have excellent client interpersonal skills and possess a sincere willingness to work as part of a team. This is an excellent opportunity for someone who is looking for personal growth and future partnership potential. Please forward a cover letter, resume, and writing sample to nhlegalposition@gmail.com.

LATERAL ATTORNEY – We seek an attorney with 5+ years' experience. The ideal candidate will have experience in some of the following areas: criminal defense, civil litigation and personal injury. We are also interested in candidates who have developed a successful practice in other practice areas to bring your unique perspective and client base to our firm. Please submit resume and writing sample to mail@nhlawoffice.com or Hiring Partner, Douglas, Leonard & Garvey, P.C., 14 South Street, Concord, NH 03301. All inquiries will be held in strict confidence.

ASSOCIATE – Cohen & Winters is a small firm based in Concord. We seek an associate with 0 to 5 years experience to focus on the areas of family and criminal law. Salary commensurate with experience. Willing to consider an established lawyer with portables. Please submit a cover letter and resume by email to jobs@cohenwinters.com.

LEGAL ASSISTANT – Concord, New Hampshire boutique law firm with a busy estate planning, business, and litigation practice seeks an experienced Legal Assistant to provide support to two attorneys. Applicant should be motivated, detail-oriented, organized, able to prioritize, and work as a team player. Excellent communication and writing skills, and experience with Microsoft Office are required. A minimum of 3 years of recent legal experience is required. Preference will be given to applicants with experience in multiple practice areas as well as familiarity with the NH Courts' e-filing system. Full and part-time options possible. Please email your resume with cover letter to nhlegalposition@gmail.com.

PARALEGAL – Getman, Schulthess, Steere & Poulin, P.A. a Manchester, NH law firm seeks a full time Paralegal with 3-5 years' litigation experience. Must be detail-oriented and have the ability to work independently. We offer a competitive salary and benefits which include medical, dental, disability and life insurance, 401 (k), paid vacation, sick leave, and holidays. Potential for remote work options. Send resume via email to law@gssp-lawyers.com.

LEGAL ASSISTANT – Getman, Schulthess, Steere & Poulin, P.A. a Manchester, NH law firm seeks a full time Legal Assistant with 3-5 years' litigation experience preferred. Must be detail-oriented and have the ability to work independently. We offer a competitive salary and benefits which include medical, dental, disability and life insurance, 401 (k), paid vacation, sick leave, and holidays. Potential for remote work options. Send resume via email to law@gssp-lawyers.com.

PROBATE PARALEGAL – Upton & Hatfield, LLP, seeks a full-time paralegal to assist with trust/probate administration. Applicant should have a proven work history including experience with probate, account administration, estates, trusts, including statement reconciliations, financial reporting, preparation of tax information for outside tax preparer. Experience dealing with residential real estate work is a plus. Excellent organizational, communication, and writing skills are essential, along with experience using Microsoft Office. The successful candidate will be professional, flexible, and able to prioritize and work with multiple people. A minimum of 5 – 7 years of experience as a legal assistant is required. This is a full-time position. Upton & Hatfield's benefits include annual leave time, medical insurance, short and long-term disability insurance and a retirement plan. Please email resume with cover letter and salary requirements to Pam Woodworth, Administrator at: hr@uptonhatfield.com.

FULL-TIME PERSONAL INJURY/CRIMINAL PARALEGAL – Small Rochester firm seeks energetic/experienced paralegal/legal assistant. Positive work culture. Prioritization, multi-tasking, strong written and spoken communication skills required, comfortable speaking with clients/third parties. 3-5 years legal, 2 years personal injury/criminal law, Microsoft Office skills, Clio preferred. E-mail: bookkeeper@brown-lawnh.com.

LEGAL ADMINISTRATIVE ASSISTANT – General Practice Law Firm in Nashua, New Hampshire seeks a professional, reliable nonsmoking team player as a Legal Administrative Assistant. We are seeking a mature individual with a positive attitude and strong office skills who is seeking a long-term position. The ideal candidate will possess attention to detail with strong communication, phone, and computer skills; interest in the legal field and the willingness to learn new skills and able to multitask and prioritize; willing to cross train; and proficiency in MS Office and Windows/general working knowledge of computer software and machinery. Minimum one year experience in an office setting (administrative/legal) required. High School diploma or equivalent required. Interested parties please email resume and cover letter to bill@barrylawoffice.com.

PART-TIME LEGAL SECRETARY/RECEPTIONIST – Experience in family law preferred. Must be organized, detail-oriented, and able to work in a fast-paced environment. Send resume to Clark Law PLLC, 694 Pine St., Manchester, NH 03104 or e-mail to rebecca@cindyclarklaw.com.

EXECUTIVE DIRECTOR – The Vermont Labor Relations Board is seeking a full time Executive Director. A law degree is required and experience in labor relations is strongly preferred. The hiring salary range is \$80,041 to \$100,048. Health insurance, annual and sick leave, and other state employee benefits are provided. To apply, please email cover letter, resume and writing sample that best reflects your ability for the position to melinda.moz-knight@vermont.gov by December 11, 2020. For complete job posting and job description, visit our website at: <https://vlrb.vermont.gov>.

POSITIONS SOUGHT

JEFFREY GARRETT TYNES CLASS OF 2020 – Seeking position to fully utilize focus in various intellectual property, privacy, and entertainment law. Primary interest in trademark prosecution and transactional litigation. Looking for junior position that can grow into the firm's senior staff. Please reply to: jeffrey.tynes@gmail.com.

CLASSIFIEDS *continued on page 35*



WARD LAW GROUP
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Looking for a change of pace?

Associate Attorney | Littleton & North Conway

Ward Law Group is seeking an associate attorney in our Littleton and N. Conway offices. The ideal candidate will have at least 3 years of experience, be proficient in civil, criminal, and family law or demonstrate a willingness to learn. The associate attorney will be working with experienced attorneys in each office with established practices who are winding down their caseload. The ideal candidate will demonstrate appropriate leadership skills to take over the management of these offices over the next 1-2 years. This is an excellent opportunity for someone who wants to enter an established practice and take on a management role in the near future.

The position offers competitive compensation and benefits commensurate with qualifications. Qualified candidates please send a cover letter and resume to: ljustzak@wardlawnh.com.

Associate Attorney | Manchester

Ward Law Group is seeking an experienced injury attorney to join our busy Personal Injury and Workers' Compensation Practice in our Manchester office. The ideal candidate is a NH licensed attorney with trial/hearing experience and willingness to oversee case development, discovery, negotiation, settlement and case closure.

This is an exceptional opportunity to work with a dynamic, collegial team of injury professionals. The position offers competitive compensation and benefits commensurate with qualifications and portables. Qualified candidates please send a cover letter and resume to: ljustzak@wardlawnh.com.



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North Conway NEW HAMPSHIRE

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

CORPORATE ATTORNEY:

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

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Please send letter of interest and resume to Hiring Partner Leslie Leonard at lleonard@coopercargillchant.com. For further information, visit www.coopercargillchant.com

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ASSOCIATE ATTORNEY

Well-known and respected law firm located in Conway, NH seeking an experienced and passionate attorney. Excellent opportunity for associate to be considered for Partnership track in a firm with an existing client base in Maine and New Hampshire. Law firm focuses include personal injury, estate planning, business and corporate law, real estate, Municipal law, probate law and litigation, and civil and criminal litigation. The firm encourages a healthy work/life balance, competitive compensation, and benefits commensurate with experience and job performance.

Please, provide a resume and cover letter with expression of interest to ewhitaker@dewhurstlaw.com.

DewhurstLaw.com

Litigation Associate | Burlington, VT

Downs Rachlin Martin – one of Northern New England’s largest law firms - has a great opportunity for a litigation associate in its Burlington office. The ideal candidate would have excellent academic credentials and strong research and writing skills. DRM’s litigation group is engaged in white collar defense and criminal and civil government enforcement matters, internal investigations, complex litigation including antitrust, securities and class actions, health care fraud, medical malpractice defense and professional licensing and in a wide variety of sophisticated commercial litigation. The ideal candidate has 1-3 years of relevant experience, and wants to be part of a team of attorneys committed to delivering top-quality service to individuals, institutions and growing and successful businesses.

Patent Attorney | Burlington, VT or Lebanon, NH

DRM is seeking an experienced patent attorney having a portable book of business and a strong background in chemical/biochemical arts to join our Intellectual Property Group in either our Burlington, Vermont, or our Lebanon, New Hampshire Office. The ideal candidate will have the following: Six or more years of patent experience, including preparing and prosecuting patent applications in chemical/biochemical arts or electrical arts, or a former U.S. patent examiner in a chemical/biochemical art unit or an electrical art unit, with at least one year of patent experience outside of the U.S. Patent and Trademark Office. The ideal candidate will have a book of business, and be eager to develop new client relationships, and become part of a team of attorneys committed to delivering top-quality service to growing and successful businesses.

This is a unique opportunity to work with a team of sophisticated intellectual property professionals. Burlington is consistently ranked among the best places to live in the U.S. by numerous publications and polls. It provides a vibrant cultural environment, a thriving downtown, a welcoming community, easy access to mountains and lakes, and short commutes. Lebanon is located in the Upper Valley, a region along the New Hampshire-Vermont border that includes Dartmouth College, the Dartmouth-Hitchcock Medical Center, and over 120 tech companies, including biotech, medical tech, and software companies, among others, and provides ready access to the college town of Hanover and a wide variety of outdoor activities.

Senior Corporate/Commercial Attorney | Burlington, VT

Downs Rachlin Martin – Northern New England’s largest business law firm - has a significant opportunity for a corporate/commercial attorney to practice within its dynamic business law group in its Burlington, Vermont office. The ideal candidate will have over six (6) years of relevant experience working with colleagues and clients on matters involving venture capital transactions (entity formation, seed financings, capitalization tables, portfolio management), mergers and acquisitions (asset and stock purchases, mergers, due diligence) and debt and equity financings (mortgages, Uniform Commercial Code, promissory notes and loan agreements). The firm’s business law group is engaged in a wide variety of transactions locally, nationally and internationally. The ideal candidate will have a partial book of business, and be eager to develop new client relationships. The ideal candidate will become part of a team of attorneys committed to delivering top-quality service to growing and successful businesses.

Litigation Attorney | Lebanon, NH

Downs Rachlin Martin — one of Northern New England’s largest law firms – has an exciting opportunity for a litigation attorney in its Lebanon office. The ideal candidate will have demonstrated experience litigating in New Hampshire courts and an interest in sophisticated commercial litigation, including but not limited to trust and estates litigation and creditors’ rights litigation.

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. The ideal candidate will also be active in the New Hampshire business and civic community and be committed to growing DRM’s regional presence. Relevant experience would include the formation of corporations, limited liability companies and other business organizations, commercial loan transactions, equity financings (including private equity and venture capital) and mergers and acquisitions (including sales of stock and assets, management buyouts, recapitalizations and reorganizations). Experience with ESOPs, B-corps or other focused practices would be highly valued.

DRM serves a wide range of local, regional, national, and international clients. Our intellectual property lawyers have worked at some of the largest firms, IP boutiques, and corporations in the U.S., and are now at DRM because they have found they can continue to have sophisticated practices while enjoying the many benefits of living in the Vermont-New Hampshire region.

DRM is committed to investing in our attorneys’ professional growth and development. We offer excellent mentorship and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including industry-leading paid parental leave and two generous retirement plans.

Apply here: <https://www.drm.com/careers/attorney-job-openings>.

**CITY OF NASHUA
NOTICE OF VACANCY**

POSITION: Attorney/Right-to-Know Coordinator
DEPARTMENT: Legal
HOURS WORKED: Monday-Friday, 8:00am-5:00pm (other as necessary)
AFFILIATION: Unaffiliated
STARTING SALARY: Grade 15, wage dependent upon experience

PRIMARY DUTIES:

The incumbent, an attorney, serves as a member of the City’s legal team available to assist on all legal matters and is the City’s expert on New Hampshire RSA 91-A (Access to Governmental Records and Meetings), RSA 33-A (Disposition of Municipal Records), and RSA 294-E (Uniform Electronic Transactions Act). Responsible for City-wide compliance with aforementioned statutes and responding to information requests made pursuant to 91-A. Works with all City departments and agencies to perform extensive document searches, review records, and develop responses to ensure that record requests are responded to in a timely manner and in accordance with the law. Advises the City Clerk in administration of Nashua’s Records Management program. Advises all City departments to ensure that public and non-public meetings (notices, minutes, quorums etc.) of all City boards and commissions routinely comply with the law. Advises the Information Technology Department to ensure compliance with 33-A and 294-E.

QUALIFICATIONS:

Attorney admitted to New Hampshire Bar with relevant education or experience necessary to assume responsibility for interpreting and fulfilling legal requirements related to public records management. Administrative experience and sufficient computer literacy to perform the requirements of the position. Solid writing and correspondence skills. Knowledge/training in the use of contemporary office equipment including high level of experience with Microsoft Office. Discretion and confidentiality required.

APPLICATION PROCEDURE:

Submit application, resume, and a professional writing sample at: <http://applitrack.com/nashua/onlineapp/>

EQUAL OPPORTUNITY EMPLOYER - Recruiting practices shall be consistent with State and Federal Law (10/7/2020)

**C&S WHOLESALE GROCERS
Staff Attorney**

Job Summary

As the Staff Attorney, you will provide advice and general counsel for drafting, review and negotiation of contracts ranging from internal not for resale contracts, professional service agreements, warehouse and IT service agreements. Provide regulatory support, advice and counsel.

Description

- Review and negotiate not-for resale and support the Strategic Sourcing Department in all aspects of the contracting process in developing RFPs, RFLs and negotiations and contracting on behalf of the entire enterprise. Serve as the lead information technology counsel in support of the IS team in all aspects of technology procurement for the enterprise.
- Understand government agencies’ regulatory requirements, develop strategies, identify and obtain data and evidence required to support strategies, draft advice and opinions for clients and/or agency for the purposes of bringing identified product(s) into compliance. Develop, promote and monitor the company’s compliance with applicable laws and regulations.
- Will work extensively with all company departments in assessing risks, proposing process improvements, and conducting training respective to various contractual issues and compliance initiatives and manage the enterprise document management program.
- Provide counsel to HR and IS on state and federal privacy laws and associated regulations and counsel to Facilities on construction agreements.
- Serve as the primary in-house counsel to ES3 on the negotiation of all partner agreements.
- Serve as a key member of the enterprise due diligence team on potential enterprise acquisitions with respect to regulatory compliance, permitting and licensing issues.
- Provide legal advice to the Procurement Department and negotiate master purchase order agreements with “for resale” vendors.

Qualifications:

- Juris Doctor required
- 2-5 years of relevant experience in legal or regulatory compliance setting or managing a contracting or sourcing function

Apply online via link – https://cswg.wd1.myworkdayjobs.com/CS_Careers/job/Keene-NH/Staff-Attorney_R-226923

Classifieds

Classifieds from page 33

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Please send your cover letter and resume to: Office Manager, Hage Hodes, PA, 1855 Elm St, Manchester, NH 03104 or HR@hagehodes.com. No phone calls please.

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Kathy Fortin at kwf@arthurgreene.com or by calling the consulting office in Bedford, NH at 603.471.0606.

Grafton County
Employment Opportunity

ASSISTANT COUNTY ATTORNEY (COUNTY ATTORNEY'S OFFICE)

The Office of the Grafton County Attorney currently has a full time position available for a highly motivated attorney. The Assistant County Attorney is responsible for discussing legal aspects of criminal cases with police, program development, law enforcement training, and community relations, although the primary responsibility is the prosecution of cases in the Superior Court. Applicant must have Juris Doctor degree and be a member in good standing of the NH Bar and interested in joining a great team. Salary range \$60,985-\$84,427. Please send resume and cover letter to:

Grafton County Human Resources
3855 Dartmouth College Hwy., Box 3
North Haverhill, NH 03774

(Apply online, visit: www.co.grafton.nh.us/employment-opportunities)

E-mail: hr@co.grafton.nh.us

Deadline to Apply is November 23, 2020

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- Devise and implement creative strategies aimed at improving long-term results for all stakeholders, including policyholders, affiliate insurers, and injured claimants
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 - Develop claim specific skills and knowledge
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 - Implement and integrate those skills to impact the course of litigation

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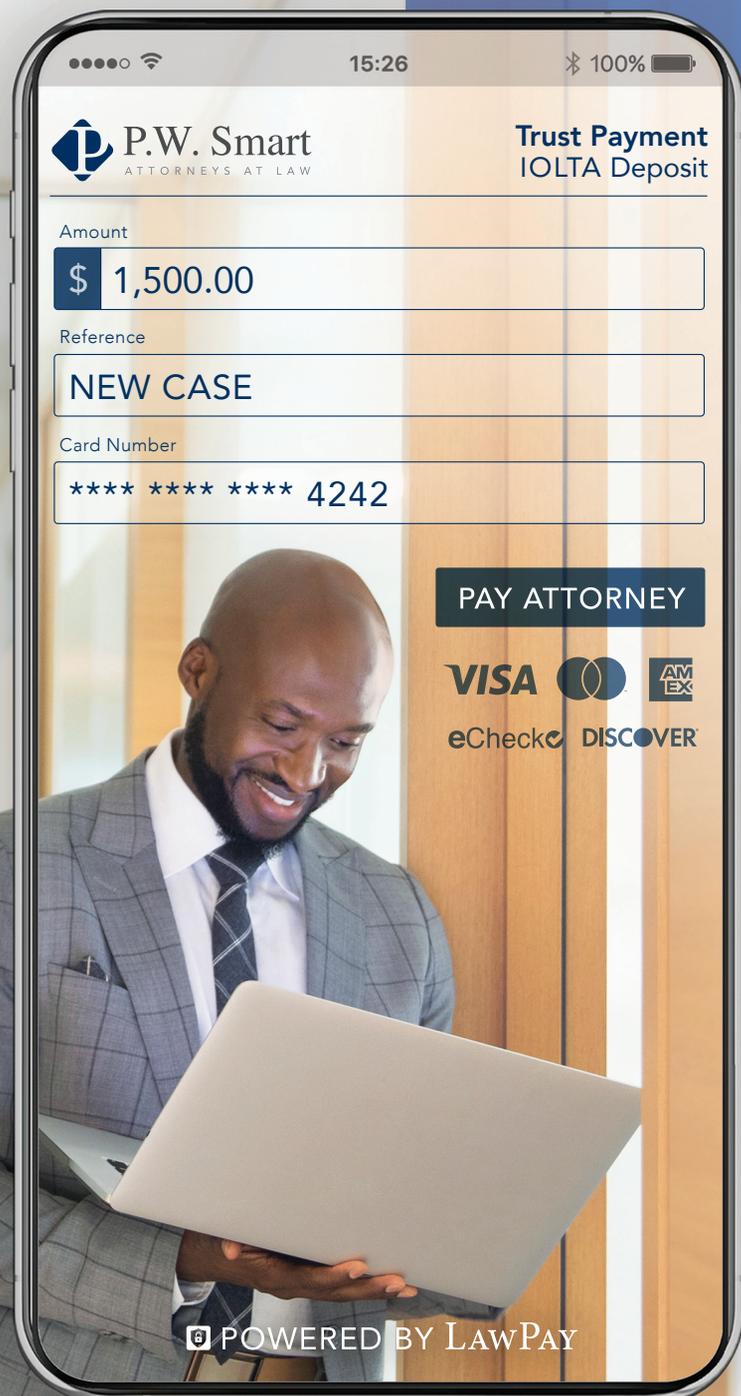
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