Covid-19 Rental Assistance Program Launches in New Hampshire

Solving the affordable housing deficit in the Granite State remains a priority for housing advocates

By Kathie Ragsdale and Scott Merrill

One year after the Covid-19 pandemic was declared to be a public health emergency by Gov. Sununu, the rental market in New Hampshire received another dose of government assistance on March 15. But even with new relief on the way, the creation of affordable housing remains a pressing issue for the state.

The latest round of rental assistance comes from a stimulus bill passed in Jan. that dedicated $25 billion to the states. The money is part of the Coronavirus Relief Fund, run by the U.S. Department of the Treasury.

Until recently it was unclear how the $200 million which will be distributed in New Hampshire would be administered, but on Feb. 25, Governor Sununu released details on the program.

The New Hampshire Emergency Rental Assistance Program (NERAP) will be administered by New Hampshire Housing Finance Authority (NHHFA), in collaboration with GOERR. NHHFA will work with the five regional Community Action Partnerships (CAPs) that will accept and process applications and payments for the program.

“That program will open up doors of opportunity and help New Hampshire families who have struggled through this pandemic,” said Governor Chris Sununu in a statement. “We worked hard to open up as many channels of eligibility as possible so that no one struggling has to worry about making rent or keeping their lights or heat on.”

Rental assistance bill is a ‘win-win’ for landlords and tenants

Elissa Margolin, Director of Housing Action NH, an advocacy group focused on affordable housing, said the relief will provide important stabilization during a challenging time.

“When tenants cannot pay rent and landlords cannot pay mortgages, you end up with challenges not only to the economy but to people’s safety,” Margolin said. “So, having stabilization is really important when you’re making sure people have a place to live.”

Martha Stone, Executive Director of Cross Roads House in Portsmouth, N.H. Photo/Merrill

A Year of Insights and Hard Choices

Attorneys reflect on how life changed due to Covid

By Scott Merrill

A little over one year ago the coronavirus—which has now caused over 500,000 deaths in the United States—was just beginning its assault on normalcy. And on our sense of time.

As the months passed a feeling of repetition set in, comparable to the film “Groundhog Day,” where Bill Murray’s character inexplicably relives the same day over and over.

When Governor Sununu declared a state of emergency on March 13, 2020, many of those taken-for-granted aspects of practicing law for attorneys in New Hampshire, such as attending court hearings, meeting with clients, or attending in-person meetings where one can sometimes read another’s body language, were put on hold.

Last May the Bar News interviewed attorneys at small firms and other solo practices in New Hampshire to find out how they were adapting in a new environment; one year later their stories provide a snapshot of the challenges and achievement, as well as the insights, they’ve experienced.

Attorney John Riff has run a solo practice in Lancaster, N.H., for 20 years. He says life still feels a little like Groundhog Day but that his life and his business

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Gordon MacDonald

Sworn In as Chief Justice

By Scott Merrill

Former New Hampshire Attorney General Gordon MacDonald paid tribute to his mentor after being sworn in as Chief Justice of the New Hampshire Supreme Court on March 4.

“When you look at what the court needs I think what Gordon is going to add to it is to make sure that everyone who comes before this court is treated with dignity, fairness and compassion,” Gov. Sununu said at the ceremony inside the courthouse.

After being sworn in, MacDonald expressed gratitude for his friends, colleagues and family, as well as former Justices Broderick, Dalianis, Conboy and Lynn, for their council. MacDonald then singled out one of his mentors who was in attendance.

“The law is a profession that requires news and regenerates through role models and mentorship. There is no better role model than my mentor,” MacDonald said.

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PRACTITIONER PROFILE

Helen Honorow is a Model of Fairness, Generosity, and Hard Work

By Kathie Ragsdale

Helen G. Honorow was three when she became enamored with Perry Mason, the fictional TV lawyer known for his artful defense of suspects wrongfully accused of crime.

She resolved to one day become an attorney herself, and she took to heart some of the themes of the show – justice, advocacy for those without a voice, protection of the innocent.

Decades later, those impulses found expression in her work as a family law practitioner, longtime member of the state Board of Education, newly appointed member of the Nashua Housing and Redevelopment Authority and volunteer for numerous charitable groups. Last year, the Nashua Chamber of Commerce named her and her husband and law partner, William H. Barry III, the 2020 Citizens of the Year.

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Martha Stone, Executive Director of Cross Roads House in Portsmouth, N.H. Photo/Merrill

March 17, 2021
Supporting members of the legal profession and their service to the public and the justice system.
The Genius of Comic Books

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

My mother viewed comic books—similar to television—to be the source of mind rot. As a result, I had neither, until age 11 or maybe 12, when my older sister’s high school boyfriend began to feed me—one on the down low—Marvel comic books. I immediately took to Spiderman for obvious reasons: the conversion of an awkward kid into a brassy and brassy superhero, all through the serendity of a radioactive spider’s bite, gave me hope. To this day, I’m on the lookout for radioactive spiders.

That my mother could not see the literary genius emanating from the dialog bubbles within those garish pages stumped me almost as much as her inability to see the universal human truths those same dialog bubbles imparted. Like any shy kid suddenly imbued with superhuman powers, Peter Parker initially wasted his spider strengths on self-indulgence, using them primarily, to put an end to being pushed around. The wise Uncle Ben, his adoptive father, admonished Parker that with great power, there is great responsibility. But Parker ignored the responsibility part, allowing a criminal to run free...who later murdered Uncle Ben, filling Parker with regret and focusing him like a laser on for low after using his powers for the greater good.

Some refer to it as the “Peter Parker Principle,” but variants of the phrase long predate Stan Lee: “[f]rom everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked” (Luke 12:48); “the possession of great power necessarily implies great responsibility” (British Parliament Member William Lamb, 1817); “[w]here there is great power, there is great responsibility” (Winston Churchill, 1906); to name a few. Uncle Ben wasn’t even the first superhero father figure to convey the concept to his superhuman child: in the first episode of the 1948 Superman cinema serial, Clark Kent’s foster father tells the young Superman, “[b]ecause of these great powers you – your speed and strength, your x-ray vision and super sensitive hearing – you have great responsibility.” But it will always be the Peter Parker Principle to me.

Though Spiderman presented an example of responsibility and consequences, I secretly imagined myself employing my superpowers in much more pedestrian ways, such as overpowering the middle school bullies and becoming captain of the football team. Let’s face it, responsibility is a tough concept. In practice it means restraint and the denial of self-indulgence. In one fell swoop, Uncle Ben was dead, and the weight of responsibility rocketed Spiderman into an exhausting adulthood, devoid of days off, spent nabbing criminals or saving victims from burning buildings (likely arson committed by those same criminals). Even my 11-year old self felt unequal to the weight of Spiderman’s responsibility.

At some point in our childhoods, nearly all of us, responding to someone telling us to do something, said, “You can’t make me – it’s a free country.” We very early internalize freedom and liberty as unfettered personal discretion. But it is the difficult back side of liberty—the responsibility that makes freedom possible—we are less eager to embrace. Freedom, i.e., self-determination, is not just a great, but perhaps the ultimate power. Exercised without responsibility, it produces our worst selves and forecloses the pursuit of any larger ideals. The great power of freedom brings a great responsibility on each of us who wish to maintain it. Abraham Lincoln, perhaps paraphrasing Lord Acton, summed it up: “Freedom is not the right to do what we want, but what we ought.” So much for using superpowers to become prom king.

In the movie Donnie Brasco, Al Pacino plays Lefty, a low-ranking gangster who develops a relationship with, and ultimately vouches for, an undercover FBI agent (based on the true story of Agent Joe Pistone – a book worth reading). In one scene, in his disappointment over being passed over for a promotion, Lefty says to Agent Pistone, “Who am I? I’m a spoke on a wheel . . . and so are you.” Unity is a popular theme at the moment, but in a nation of more than 325 million people governed by just one president, 50 senators and 435 representatives, most of us feel like Lefty. Since we believe we can’t do, we talk. A lot. Internet and social media platforms provide infinite outlets, but also broadcast infinite voices all screaming to be heard, the more outrageous the more likely to attract attention. So, with words, we demonize our leaders, our institutions, our communities and, worse, one another. The division lives on, but what are we really doing about it?

The spring and summer of 2020 found my 24-year-old daughter working from home, literally, back in New Hampshire from her home in D.C., bringing with her an adult perspective and ideas that often diverge from my own. Like most of you, the pandemic had our family on top of each other and feeling suffocated, sometimes irrationally. I privately worried about division and alienation creeping into my own family, and wondered what I could do to stay close to one of the most important people in my life. It seemed like my family was seeing things worse. So I tried to shut my mouth, which left me no choice but to begin to listen – to try to actively understand where she was coming from and why.

I can’t say I handled myself as Spiderman would have, and I have no Polyanamish notions that I bridged a gap or fully resolved anything, but the exercise has brought me two things: a better understanding of why she feels as she does, and a reminder that we have much more in common as father and daughter than in opposition as ideological opposites. Family unity does not depend on one of us yielding ideologically, but on all of us actively

WILL continued on page 3
New Hampshire Bar Association Takes Lawyer Well-Being Pledge

By Scott Merrill

The New Hampshire Bar Association has adopted the American Bar Association’s Lawyer Well-Being Pledge in a step that Bar leaders say will help fight stigma surrounding substance misuse and mental health challenges.

The campaign, organized by the ABA Working Group to Advance Well-Being in the Legal Profession in 2018, is designed to address the profession’s troubling rates of alcohol and other substance-use disorders, as well as mental health issues.

The Well-Being Pledge Campaign transitioned leadership from the National Task Force on Lawyer Well-Being to the ABA Commission on Lawyer Assistance Programs in 2019.

According to a 2016 Journal of Addiction Medicine study examining the prevalence of substance use and mental health among American attorneys 20.6 percent of participants scored at a level consistent with problematic drinking. 25.1 percent of those were men and 15.5 percent were women.

NHBA Executive Director George R. Moore says that while the Bar Association already has an Employee Assistance Program (EAP) vendor and program, the new pledge will allow the Bar to advance their own discussion opportunities and to promote speakers on wellness topics.

“The goal is for all employees to know that we care about their health and there is no stigma attached to openly discussing their very real issues that can occur in the workplace,” Moore said. “I am thrilled the Board has adopted the Board of Governors is so supportive of this program. As an employer, we need to do everything possible to combat issues of substance abuse and mental illness and make the health and welfare of our employees a top priority.”

The ABA’s well-being pledge lays out a seven-point framework calling on firms, bar associations, and others in the legal community, to recognize the challenges that high levels of problematic substance use and mental health distress present for the legal profession.

The “Seven Points” include a pledge to providing enhanced education to attorneys and staff on topics related to well-being, mental health, and substance use disorder as well as disrupting the status quo of drinking-based events by challenging the expectation that all events include alcohol.

“The New Hampshire Lawyers Assistance Program provides assistance to New Hampshire lawyers, judges, and law students who are experiencing well-being issues related to substance misuse. NHLAP Interim Director, Cecie Hartigan, says the pledge initiative is coming at a good time because there is a greater overall awareness of lawyer well-being.

“The choice for the Bar Association to take the pledge is a good movement in the right direction especially with the effects of Covid on mental health and substance issues,” she says. “I don’t know the full extent but we have every reason to believe it has been hard on lawyers and one of the things these initiatives do is to educate people and remind them they do not need to be afraid to ask for help.”

When New Hampshire started its LAP program 10 years ago Hartigan, LAP’s first director, says the state had been aiding lawyers informally for years.

The New Hampshire Supreme Court formalized the NHLAP with the passage of Rule 58 in 2007. Chief Justice John Broderick, whose family had experienced the challenge of mental illness, championed a program that would provide confidential support and assistance to New Hampshire lawyers. Under Justice Broderick’s leadership, the Court appointed the governing Commission of the NHLAP, now the Board of Directors.

The New Hampshire Bar Association is one of just several legal organizations in the state that have committed to the well-being pledge. Others include the firms McLane Middleton and Nixon Peabody.

“The Bar’s vote to take the pledge is a significant step, and an acknowledgement of the struggles some lawyers have with stress, time management and keeping balance in their personal lives,” Hartigan said.

For more information about NHLAP visit nhlap.org or contact Cecie Hartigan at cecieh@nhlapnh.org.
A year has passed since Governor Sununu first declared a state of emergency for the COVID-19 pandemic. While it seems hard to believe we are reaching the anniver-
sary this month, looking back I am aston-
ishted by how much has changed.

At this time last year, I sent texts to
friends postponing a spring party I had
scheduled for April 2020 to what seemed
a safe date; June 2020. I also have photos I
had taken of completely empty grocery store
shelves, a sight which before then I had only
seen in apocalyptic movies. Of course, shop-
ing itself became an entirely different expe-
rience, and I can remember the strange looks
I received last spring when I was one of the
first few to wear a mask while shopping.

I am also struck by how little we knew at
the beginning of the pandemic and likewise
how far we’ve come in learning to conduct
more isolated, but safer, lives. While we have
watched as untold suffering unfolded
across the country, we have also shared mo-
ments of community connection, provided
support for struggling friends and witnessed
the strengthening of empathy between neigh-
bors. We have been through so much togeth-
er, and while there is still more to come, with
the slow but steady distribution of a vaccine,
we now have tangible hope for a return to
normal.

With the pandemic starting to slow, we
can also take stock of the changes forced
upon us and challenges ahead.

What changes did we see in the courts
in the past year? As the pandemic gathered
upon us and challenges ahead.

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Rule 32 Should Not Be Altered

I wish I knew who the author of the opinion “ADR is a Failure” that ran in the Feb. 17, 2021 issue of Bar News, I would then have an understanding of the author’s experience.

My experience as a litigator, advocate in Mediations and Mediator in New Hampshire and around the country compels me to conclude that Mediation is a youning success in New Hampshire. Not every case will resolve through mediation; my personal experience is ninety percent plus do (sometimes with follow-up phone negotiations by the mediator). In a typical year, pre pandemic, New Hampshire conducted on average forty civil jury trials per year. An experienced Mediator can conduct more than forty mediations in two months.

Mediations are successful when sufficient time and resources are devoted to the process and the parties attend with the intent on finding a mutually acceptable resolution. If sufficient documentation has not been shared, if crucial depositions have not been taken, or if one or more parties does not see real risk, the session will not result in resolution. That is not a process problem; it is either a preparation problem or a reality that the matter is one of the forty in need of a jury trial. Parties can create impasses or see impasses to resolution; the question is can they see the need for a resolution and a path to resolution?

Mediations are intentionally confidential and non-judgmental! Public trials and judges exist for imposing resolutions. Current Superior Rule 32, is the latest iteration of the original Superior Court Rule 170 Provision, (d) (1) specifically provides for confidentiality of the process. The confidentiality is a cornerstone of the process. Parties are aware of and avail themselves of the opportunity to speak openly and candidly in search of a resolution. Requiring a report of the last offer and last demand with “a case resolution proposal” affronts the process and will guarantee parties, counsel and insurers will be less open and reticent to put forth “best offers.”

Rule 32 should not be altered as recommended by the author.

The author should explore utilizing NH Superior Court Rule 30. The Rule allows parties to request judge conducted Mediation. More to the author’s concerns, it provides for neutral evaluation. Neutral evaluation does not result in a binding evaluation, but does allow an experienced attorney to provide a concise, thoughtful analysis to all parties for their consideration.

I would be pleased to speak with any and all who believe ADR is a Failure.

William A. Mulvey, Jr., Esq.

A Proposed Change to Superior Court Rule 12(d)

I wish to propose a change to Superior Court Rule 12(d) Motions to Dismiss.

Readers may recall my piece about the absurdity of Superior Court Rule 32. Alternate Dispute Resolution (ADR), published in Opinions in the February Bar News. I suggested a change to that rule.

Litigators who choose the tactic of delay and expense create an impasse in mediation without accountability under Rule 32. The mediator cannot act beyond the impasse without consensus of all the parties. The court responsible for the case cannot review the basis of the impasse because of the silly notion that knowing why the case has not settled may bias the court.

Plaintiffs seek judicial relief from a wrong by filing a complaint for damages or for a remedy in equity such as injunctive relief. A party must not have the resources for a protracted case, so the case is either not filed or dies in process.

Rule 12(d) is abused in the same manner as the Rule 32 abuse but with one difference. The litigants who choose delay and expense as a tactic file Rule 12(d) motion to dismiss. The difference is that the court must take the time and effort to review the complaint once a motion to dismiss is filed. The court cannot examine the basis of a Rule 32 mediation impasse but must review a complaint for legal adequacy under Rule 12(d).

It matters not that a plaintiff filed a 76-page complaint laden with known facts or a two-page complaint with little more than no- tice of a claim of a wrong. The expectation is that discovery would allow development of the facts. The delay and expense litigant will file a Rule 12(d) motion to dismiss in either event.

Here’s how a Rule 12(d) motion to dismiss works. The facts set forth in the complaint are, according to New Hampshire Supreme Court case law, the facts the court must accept for disposition of the motion. What the delay and expense litigant does, however, is to argue about the facts in the complaint. The arguments include: the facts are too general or the facts are not specific enough; or the facts are not necessarily based; or that the allegations in the complaint lack sufficient gravity to constitute a claim. Such arguments are impro per weight of the evidence arguments as if the case had been tried. The court is asked to make findings of fact on the complaint without hearing witnesses and assessing credibility after cross-examination. The court has been asked to decide the case on the complaint.

Rule 12(d) does not provide express criteria for court disposition and it needs fixing. Rule 12(d) must have standards to avoid the varied, even frivolous, weight of the evidence arguments used by the delay and expense litigant.

I propose that Rule 12(d) be patterned after federal Civil Rule 12(b) as follows: “Superior Court Rule 12(d). A party may assert a defense by a motion to dismiss: (1) if the court lacks subject matter jurisdiction; (2) if venue is improper; (3) if process is insufficient to effect jurisdiction over the defendant; and, (4) if the Complaint fails to state a claim for relief recognized by law.”

Arthur B. Cunningham

Medical malpractice is a unique practice area, and our firm has the resources and expertise to handle this type of complex, expensive litigation. We employ attorneys who concentrate on malpractice litigation. We also have the negotiating experience and judgment to obtain the best possible results for our clients.
For our purposes here, frameworks are high-level descriptions of security practices, policies, procedures, and controls. Sometimes they refer to control objectives, come with their own standards, and provide the lattice on which the tactical taxonomy of cybersecurity is hung. In shorthand, they help define the what and how of cybersecurity choices, often rooted in notions of risk. There are a large number of cybersecurity choices, often rooted in regulatory regimes or in specific industries.

Frameworks. For our purposes here, frameworks are high-level descriptions of security practices, policies, procedures, and controls. Sometimes they refer to control objectives, come with their own standards, and provide the lattice on which the tactical taxonomy of cybersecurity is hung. In shorthand, they help define the what and why of cybersecurity choices, often rooted in notions of risk. There are a large number, why of cybersecurity choices, often rooted in regulatory regimes or in specific industries.

• ISO 27000 – International Organization for Standardization
• HITRUST CSF – Health Information Trust Alliance Common Security Framework
• CSA CCM – Cloud Security Alliance Cloud Controls Matrix
• NIST 800-53 – This standard, published by NIST, catalogs the universe of controls and practices to be used by the federal government in protecting its information. For example, it’s the standard used in FEDRAMP (the Federal Risk and Authorization Management Program) to certify cloud environments as secure enough for federal government use. It’s often used in the private sector as well but note that it’s typically applied selectively because of its complexity and scale.
• CIS CSC – Center for Internet Security Critical Security Controls. Formerly known as the SANS Top 20, this is a series of documents (27001, 27002, etc.) that subsume specific implementation guidance and standards. For most, an independent certification under this framework is perhaps the hardest to achieve, but it’s the strongest commercial indication of a robust security program.

Standards. For our purposes here, standards are defined as the practices, techniques, and procedures to secure information. There are an even larger number of standards that are invoked under various regulatory regimes or in specific industries. They mostly define the how of cybersecurity, typically overlap one another to varying degrees and are distinguishable mostly in their vernacular, focus and associated granularity. All can be mapped to one another generally. Here are some that are most commonly encountered in business and government:

• NIST 800-53 – This standard, published by NIST, catalogs the universe of controls and practices to be used by the federal government in protecting its information. For example, it’s the standard used in FEDRAMP (the Federal Risk and Authorization Management Program) to certify cloud environments as secure enough for federal government use. It’s often used in the private sector as well but note that it’s typically applied selectively because of its complexity and scale.
• CIS CSC – Center for Internet Security Critical Security Controls. Formerly known as the SANS Top 20, this is a series of documents (27001, 27002, etc.) that subsume specific implementation guidance and standards. For most, an independent certification under this framework is perhaps the hardest to achieve, but it’s the strongest commercial indication of a robust security program.

Alphabet Soup: A Primer on Cybersecurity Acronyms

By Ande Smith

As a Navy veteran, I scoffed a bit when I started law school and was told that I’d struggle with all the acronyms. The practice of law does have its fair share, but I still believe that the Department of Defense reigns supreme in this ignominious field – look up B2C2WG when you’ve got a spare moment – with the cybersecurity industry in the top 10. As lawyers, we’re used to mastering new things to represent our clients, but the goal line of cyber keeps moving and it’s sometimes useful to catalogue the known, even if not comprehensively.

Frameworks. For our purposes here, frameworks are high-level descriptions of security practices, policies, procedures, and controls. Sometimes they refer to control objectives, come with their own standards, and provide the lattice on which the tactical taxonomy of cybersecurity is hung. In shorthand, they help define the what and why of cybersecurity choices, often rooted in notions of risk. There are a large number, why of cybersecurity choices, often rooted in regulatory regimes or in specific industries.
By Misty Griffith

The response to the NHBA’s call for experienced attorneys willing to serve as mentors for new lawyers has been outstanding. So far more than 60 highly qualified attorneys have volunteered to mentor. These experienced mentors come from over 40 firms of all sizes from solo practitioners to our state’s largest firms, as well as nonprofit organizations and public sector attorneys. They come from over twenty towns and cities throughout the state, as well as those who have moved to NH in 2009, says DeBernardis: “I swore into the New Hampshire Bar after being licensed in Massachusetts for several years. Where I had a general understanding of the law, it was helpful to have someone to assist with procedure and to confirm the applicable law. I found the program quite helpful and was thankful to the attorneys who have taken the time to guide me through a difficult issue, answer my little questions that felt overwhelming, and remind me that it is called the practice of law because you are always learning new ways to improve your craft.”

There are many benefits to having a mentor:
1. Guidance from someone who has “been there.”
2. Increased professional competence and confidence.
3. Help avoiding rookie mistakes.
4. Impartial feedback.
5. Encouragement and support.
6. Experienced insight into the profession.

Having a mentor is not only beneficial to new attorneys, but also to attorneys who are returning to practice after several years of absence and to more experienced attorneys from out of state who are new to practicing in New Hampshire.”

MAP offers mentors for new attorneys in practice for less than three years, and attorneys returning to practice who have not practiced law for the last three consecutive years. New attorneys to NH from out of state who have practiced for more than three years elsewhere may seek a mentor for basic insights regarding the NH legal community and networking. Mentors are assigned on a rolling basis. If there is a waiting list, preference for the program will be given to attorneys who are new to the practice of law.

To learn more about MAP or for an application visit https://www.nhbar.org/mentor-advice-program/ or contact Member Services Coordinator Misty Griffith: mgriffith@nhbar.org (603)224-6942.
Award Nominations Sought for NHBA 2021 Annual Meeting

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

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

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

Nominations are sought for the following awards:

Justice William A. Grimes Award For Judicial Professionalism
To honor the memory of Justice William A. Grimes this award is presented to a judge who best fits the following:

“The judges therefore should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man or body of men.” – John Adams, 1776

Distinguished Service to the Legal Profession Award
This award is presented to the nominee who best exhibits services to the legal profession.

E. Donald Dufresne Award for Outstanding Professionalism
To honor the memory of E. Donald Dufresne this award is presented to an attorney that best fits the following:

“A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.”

Nominations for any of these awards should be submitted by April 9th to: aborow@nhbar.org or sent to: Alison Borowy, NHBA Annual Meeting Awards, 2 Pillsbury Street, Suite 300, Concord, NH 03301-3502.

Report to NHBA re: ABA Mid-Year Meeting 2021

By Jonathan Ross

The ABA House of Delegates met virtually during the ABA Mid-Year Meeting on February 22, 2021. The New Hampshire Delegation was led by Russell Hilliard, member of the ABA Board of Governors and ABA State Delegate Jennifer Parent. The House of Delegates is the policy-making entity for the American Bar Association. Delegates were tasked with voting on a myriad of resolutions proposed by ABA committees, sections, divisions, commissions, National Conference of Commissioners On Uniform State Laws, and State and Territorial Bar Associations.

Among the resolutions adopted by the House of Delegates are the following:

105E – Urges Congress to pass legislation to prohibit the disclosure of personally identifiable information of active, senior, recalled, or retired federal judges at any level and their immediate family who share their residence, including but not necessarily limited to home addresses or other personal contact or identifying information.

111-1 – Amended House of Delegate Rules to require resolutions to identify how it advances some or more of the ABA’s Four Goals: Goal I: Serve Our Members; Goal II: Improve Our Profession; Goal III: Eliminate Bias and Enhance Diversity; Goal IV: Advance the Rule of Law.

103A – Urges protection for Special Immigrant Juvenile beneficiaries from removal from the United States while they wait for a visa to become available.

106C – Urges Congress and the Executive Branch to develop and implement programs to assist law graduates and law students experiencing financial hardship due to their student loan obligations.

107A – Urges federal, state, local, territorial and tribal governments to enact legislation that decriminalizes abortion, increases access to clinical abortion care, and protects pregnant people from any criminal prosecution for having an abortion or experiencing a miscarriage, still birth, or other adverse pregnancy outcomes.

107B – Urges states to adopt certain principles in administering elections for President of the United States and urges that if a dispute arises as to the proper re-election of the electoral votes for a state, Congress should give controlling effect to the winner of the popular vote for that state (or, if the state allocates electoral votes by congressional district, to the winner of the popular vote in each congressional district), as provided by the law in effect before the election.

The ABA Coordinating Group on Practice Forward presented two resolutions, each of which passed encouraging bar associations, legal employers, courts, and law schools to create and distribute policies and resources aimed at advancing well-being in the legal profession. The sec-

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Let Us Help You Win Your Case

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

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

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

TRIAL LAWYERS JUSTICE

*View additional verdicts and settlements at tl4j.com

Rowley and Novotny have a nationwide law practice and look forward to helping you win your case.

---

421 West Water Street, 3rd FL  •  Decorah, IA 52101  •  (563) 382-5071 main office  •  tl4j.com  •  No fee unless we win
NHBA Board of Governors Election Starts April 1

Online balloting will begin April 1 and conclude April 15. An email containing a link and passcode will be sent from elections@online.us on April 1. Members who have not voted by April 7 will receive an email reminder.

Because the NHBA Board of Governors ballot is sent as a bulk email message from ElectionsOnline, it may end up in your email application’s spam filter. To ensure that you receive your ballot, please add vote@electionsonline.com to your “safe senders” list. This address has been the same for the past several years. If you do not receive your electronic ballot and would like to vote online please send an email to Debbie Hawkins (dhawkins@nhbar.org) and she will assist you in receiving a ballot. Upon request, the Bar will provide a traditional paper ballot.

NHBA 2021 Board Candidates

For full biographical information and candidate statements, please visit www.nhbar.org.

President-Elect
Nomination by Board of Governors
Sandra Cabrera of Waystack Frizzell Trial Lawyers

Vice President
Nomination by Petition for 1-year term
Jonathan Eck of Orr & Reno PA

Treasurer
Nomination by Petition for 3-year term
Christopher Regan of Bamford Dedopulos & Regan

Secretary
Nomination by Petition for 3-year term
Susan Aileen Lowry of Upton & Hatfield LLP

Governor-at-Large
Nomination by Petition for 3-year term
Catherine Shanelaris of Shanelaris & Schirch PLLC

Christine Hanisco of The Stein Law Firm PLLC

Public Sector Governor
Nomination by Petition for 3-year term
Lindsey Courtney of NH Office of Professional Licensure and Certification

Out-of-State Governor
Nomination by Petition for 3-year term
Jason Dennis of Hastings Melia PA

County Governors
Nomination by Petition for 2-year term

Cheshire County
Monique Schmidt of NH Public Defenders Office

Coos County
Scott Whitaker of Coos County Attorney’s Office

Grafton County
Viktorya Kovalenko of Grafton County Attorney’s Office

Merrimack County
Heather Cherneske of NH Attorney General’s Office - DOJ

Rockingham County
Paul Kleinman of Bouchard Kleinman & Wright PA

ABA Association Young Lawyer Delegate
No valid petition submitted

ABA Association Delegate – 1 open seat
Charla Stevens of McLane Middleton Professional Association

Michael Iacopino of Brennan Lenehan Iacopino and Hickey

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

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

WITH A PROVEN RECORD of delivering the top results, Lubin & Meyer would welcome the opportunity to provide your client with an initial evaluation or a second opinion without cost. Lubin & Meyer works on a referral fee basis.

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Why Your IOLTA Rate Matters

IOLTA rates vary greatly from bank to bank. While some banks give generously at a rate of 2% or more some banks only give .01%

A trust account with an average balance of $50,000 will earn:
- $5 a year at .01%
- $50 a year at .1%
- $1,000 a year at 2%

A trust account with an average balance of $200,000 will earn:
- $20 a year at .01%
- $200 a year at .1%
- $4,000 a year at 2%

The banks listed to the right all provide an interest rate of 1% or more to the NH Bar Foundation. The money earned on these accounts helps fund civil legal service programs in NH. By keeping your IOLTA trust accounts at a bank with a higher interest rate, you are helping ensure that NH families are able to obtain services that otherwise might not be available.

The New Hampshire Bar Foundation, a non-profit grantmaking charitable organization:
- addresses civil legal needs of the disadvantaged and underserved,
- promotes basic understanding of the law via public education, and
- facilitates improvements to the justice system.

It is the philanthropic arm of the NHBA and is funded by business entities, the general public, and members like you.

Through the SOLACE program, NHBA members can help others in the NH legal community (including employees and families) who have suffered a significant loss, illness or injury and who need immediate assistance.

Details and submission form at nhbar.org/solace/
We are currently seeking individuals for taking part in February's LawLine on employment and criminal law. They fielded over 40 calls to up to 20 different phone numbers, including family law, probate, employment and criminal law. We are currently seeking individuals to answer LawLine calls on December 8, 2021, from 6:00 pm to 8:00 pm. The Bar forwards phone calls from people who are looking for general legal advice and information. We have the ability to forward calls to up to 20 different phone numbers, as long as they are a landline. The Bar also provides a light dinner for all volunteers. For more information or to volunteer for a LawLine event in 2021, please contact NHBA LawLine Coordinator, Linda Sutton at button@nhbar.org.

The New Hampshire Women’s Bar Association, along with NHBA’s Gender Equality Committee and New Lawyers Committee, is hosting a free virtual negotiations workshop at 5 pm on Wednesday, March 24.

The NH Bar Association would like to thank the Alfano Law Office (Attorneys Paul Alfano, Jim Soucy, Marissa Schuetz, and Melissa Farr of the Concord Office, Terrie Harman of the Exeter Office and John Hayes of the Keene Office, and staff members Anne-Marie Guertin and Jillisa Solomon) and Attorney Kirk Simoneau of the Alfano Law Office’s Concord office.

The only thing not changing with business immigration? Who you want to handle it.

The rules surrounding the coveted 85,000 H visas have changed – starting with a March 1 Lottery Registration. So count on Goff Wilson to keep your clients ahead of the game with the most timely, thorough and successful advice on business immigration.

We have decades of experience in quicker, more efficient global immigration service – that just works.

Contact Goff Wilson and put our team to work for your clients.

Goff Wilson
Immigration Law
Manchester, NH  Boston, MA  Naples, FL  Paris, France

Our focus is immigration law
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In Memoriam

Jon S. Auten

Jon S. Auten, 80, died unexpectedly at his home on Saturday, November 21, 2020. He is survived by a brother, Hanford L. Auten of South Axford, and a sister, Mary Auten of Cornish. There will be no services. Donations may be made in his memory to the Cornish Rescue Squad, P.O. Box 235, Cornish, NH 03746.

Glen E. Graper

Former Rockingham County Attorney, Glen E. Graper of Freedom, N.H., passed away at Maine Medical Center in Portland, Maine, on Friday, February 19, 2021, from complications of COVID-19. He was born Oct. 24, 1934, and was the son of Clarence and Gladys (Underwood) Graper of Schenectady, N.Y.

He graduated from Albany Military Academy, Albany, N.Y.; Middlebury College, Middlebury, Vt; and Boston University School of Law, Boston, Mass. He was a member of the New Hampshire Bar Association; admitted to practice law in the Federal District Court and the United States Supreme Court. He was a member of the DEKE fraternity. He served two terms as Rockingham County Attorney and practiced law in Portsmouth, N.H., for 56 years before retiring in 2017. He continued to do mediation for the court system.

He was instrumental in forming the Young Republicans in Portsmouth in the 1960s. He served on the Portsmouth Board of Directors of the Portsmouth Salvation Army for 25 years. He was a member of the Portsmouth Elks Lodge. He was a life member of the Portsmouth Yacht Club serving on the Board of Directors and also as Parliamentarian.

He and his wife were members of the Piscataqua Obedience Club; York County Kennel Club; and New Hampshire Club of New England. They were also involved with Newfoundland Dog Rescue. They were some of the co-founders of Newfie Fun Days which is held every September in Eliot, Maine and is now in its 26th year. The “Gentle Giants” were Glen’s pride and joy and his constant companions.

He had a passion for sailing and his Harley Davidson motorcycle. In 1976, he sailed with the “Tall Ships” from Kittery to Bermuda with a crew of three in his 26-foot ketch, Jajaba. In 1987, he and his wife took a five-week motorcycle trip across Canada camping in the National Parks. Both trips were true odysseys.

He is survived by his wife and constant companion of 39 years Mary Lou (Haug) Graper; his sons, Richard and Matthew and his wife, Elaine, all of Rochester, N.H.; daughter-in-law Roberta Graper of Portsmouth, stepson Jeffrey Trenholm of Portland, Maine; granddaughters, Eliza and A. Kramer; and grandchildren, Mary Auten of South Acworth, and a sister, Mary Auten of Cornish. There will be no services. Donations may be made in his memory to the Cornish Rescue Squad, P.O. Box 235, Cornish, NH 03746.

IN MEMORIAM continued on page 16
Membership Status Changes

Presented to the Board of Governors February 18, 2021.

Active to INACTIVE:
Lentini, Vincent, Manhasset, NY
(Dec. 3, 2020)
Spottswood, Eleanor, Burlington, Vt.
(Dec. 30, 2020)
Doherty, Mary, Brooklyn, NY
(Jan. 20, 2021)
Macomber, Samuel, Center Harbor, NH
(Feb. 8, 2021)
Koelling, Sarah, Raleigh, NC
(Feb. 1, 2021)

Active to INACTIVE RETIRED:
Frazier, Karen, Sullivan, NH
(Jan. 11, 2021)
Oyer, Eve, Concord, NH (Jan. 31, 2021)

Inactive to INACTIVE RETIRED:

Inactive to ACTIVE:
Harrington, Terri, Durham, NH
(Jan. 20, 2021)
Hoyradt, Fred, Newburyport, Mass.
(Jan. 28, 2021)
Larkin, Benjamin, Dover, NH
(Feb. 1, 2021)
Christo, Ellen, Hampton Falls, NH
(Feb. 2, 2021)
Wohl, Elizabeth, Brattleboro, Vt.
(Feb. 8, 2021)

Inactive to ACTIVE RETIRED:
Hawthorne, Stanley, Windham, ME
(Jan. 21, 2021)
Roberts, Cathy, Falmouth, ME
(Jan. 22, 2021)
Van Loan III, Eugene, Bedford, NH
(Jan. 1, 2021)
Mulhern, J. Barry, Londonderry, NH
(Dec. 4, 2020)

Honorary Active to HONORARY INACTIVE:
Frazier, Karen, Sullivan, NH
(Jan. 11, 2021)
Oyer, Eve, Concord, NH (Jan. 31, 2021)

Honorary Active to DECEASED:
Eyet, Aline, Bernardsville, NJ
(Jan. 28, 2021)
Martineau, Jesse, Manchester, NH
(Feb. 3, 2021)
McCarthy, Brendan, Manchester, NH
(Feb. 10, 2021)
Buonamano, Brian, Naples, Fla.
(Feb. 10, 2021)

Suspended to DISBARRED:
Allen, John, Amherst, NH (Feb. 2, 2021)

Professional Announcements

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Additional $50 charge for color

Proud to Welcome Attorney Brian Quirk as Partner

Brian will focus his practice at Shaheen & Gordon on:

- Government Investigations
- White Collar Defense
- Civil Litigation
- Regulatory Matters for Individuals and Corporations

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107 Storrs Street • Concord, NH

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MARCH 17, 2021
www.nhbar.org
NEW HAMPSHIRE BAR NEWS
MORNEAU LAW WELCOMES

ROSANGELIZ TORRES
ATTORNEY

Morneau Law is proud to welcome Attorney Rosangeliz Torres! Rosangeliz understands your family is your first priority. She is focusing her practice on family law and will represent clients living in New Hampshire.

La abogada Torres está lista para apoyar a nuestros clientes de habla hispana.

www.nhbar.org  MARCH 17, 2021  13
January and February 2021 Attorney Honor Roll

The attorneys listed here each accepted one or more cases referred by the New Hampshire Pro Bono Referral Program during the month of January and February 2021. Gold stars indicate attorneys who accepted more than one Pro Bono case during the course of the month.

BELKNAP
Margaret Fulton
Allen Lucas ★

CARROLL
Robert Young

CHESHIRE
Catherine Baumann
Jonathan Evans
Kenneth Walton

GRAFTON
David Cole
Jason Crance
Eric Janson
Roderick MacLeish ★

HILLSBOROUGH (N)
Suzanne Decker
Scott Harris

HILLSBOROUGH (S)
William Barry
Penina McMahon
Anthony Naro
Lyndsay Robinson

MERRIMACK
Allison Ambrose
Leif Becker ★
Jaran Blessing
Randi Bouchard
Meredith Farrell
Stephen Martin
James Shepard

ROCKINGHAM
Leif Becker ★
Cindy Bodendorf
Elizabeth Garen
Adam Mordecai
Jane Schirch

STRAFFORD
Leif Becker ★

OUT OF STATE
Michael Lewis

Marilyn Mahoney
Abigail Martinen
H. Jon Meyer
Robert Moore
Judith Roman
Kirk Simoneau

NHBA Members on Why They Participate in the Lawyer Referral Service

and why you should, too!

Lawrence Vogelman
Shaheen & Gordon, P.A; LRS Member Since 1997

The NH Lawyer Referral Service (LRS) is working overtime to deliver quality leads and potential clients to our panel members. Choose your clients and set your own fees. Sign up today to have potential new business delivered to your inbox! But don’t just take our word for it: watch the video at vimeo.com/508539177

Learn more at (603) 715-3279 or LRSreferral@nhbar.org

ABA Commends Runyon for Extraordinary Service through Free Legal Answers

By Virginia Martin

The ABA Standing Committee on Pro Bono and Public Service recently recognized L. Phillips Runyon III of Peterborough, NH as a 2020 ABA Free Legal Answers Pro Bono Leader for responding to more than 50 inquiries from the public. In fact, he far exceeded that milestone last year by providing advice to 72 lower-income people around the Granite State.

Runyon was one of the first attorneys to register with NH Free Legal Answers when the NH Pro Bono Referral System launched the online advice portal in 2019 in partnership with the ABA. After opening his practice following 27 years on the bench as a district court judge, Runyon said he was looking for a way to help out those in need.

“I was frustrated as a judge seeing so many people come before me who were baffled by the system and didn’t have the knowledge or help to make their case,” Runyon explained. “When I left the bench, for several years I even ran ads in local papers offering free legal advice but no takers.”

For Runyon, NH Free Legal Answers has offered a welcome and effective way to meet the need he knew was there. Many of the questions concern housing matters, from evictions to foreclosures; employment and unemployment issues; debt collection and consumer problems as well as family law, from guardianships to divorce and parenting issues.

“You don’t have to spend hours researching issues and writing answers to respond to most questions,” Runyon said. “On average it takes only 10 or 15 minutes to provide the information people need, which could be as simple as explaining how to file in Small Claims Court.”

Runyon encourages other attorneys to consider volunteering with NH Free Legal Answers, calling the program “a user-friendly way to make a difference.” Currently 93 NH Bar members are signed up to answer civil legal questions posed by lower-income people in New Hampshire, which gives the state a 25th place nationwide ranking for number of participating attorneys.

More information about NH Free Legal Answers and how to register as a volunteer can be found at nh.freelegalanswers.org or by contacting Carolann Wooding, cwooding@nhbar.org or Sheila Vermacy, svermacy@nhbar.org.

For the complete national honor roll listing Runyon and other exceptional volunteers with ABA Free Legal Answers, go to 2020 FLA Pro Bono Leader recognitions.

NHBA LAW RELATED EDUCATION

Offering high-quality civics education to the public 12 months a year.

UPCOMING EVENTS

April 2021 - “We the People” National Finals
May 2021 - Law Day
July 2021 - Presidential and Congressional Academies for American History and Civics (Students and Educators)
August 2021 - “Project Citizen Research Program” Training (Educators)

For details on these and other LRE programs and events, contact Law Related Education Coordinator Robin E. Knippers at reknippers@nhbar.org or (603) 715-3259

www.nhbar.org

NEW HAMPSHIRE BAR NEWS

MARCH 17, 2021
Is it Time to Change Your 401(k) Provider?

The ABA Retirement Funds Program has just made that decision much easier.

The ABA Retirement Funds Program (“Program”) is working with plan sponsors to address many top concerns. Fiduciary protection, revenue transparency, and governance play an important role in how your firm’s plan is structured. As the retirement landscape continues to change you need a provider that strives to maximize the value of your plan, improve retirement outcomes, and help you manage your plan expenses. We have been doing just that for nearly 60 years.

The ABA Retirement Funds Program is an employer-sponsored 401(k) plan designed specifically to address the retirement needs of the legal community. The Program is structured to provide affordable pricing whether you are a sole practitioner or a large corporate firm.

Now is the time.
Contact an ABA Retirement Funds Program Regional Representative to set up a complimentary consultation and plan comparison. Call 800.826.8901 today and experience the difference.

abaretirement.com
abeth and Kristiana of Portsmouth; and
Courtney of Rochester; his beloved New-
foundland dogs, Paisley and Coal. He was
predeceased by his son Jeffrey Graper.
A graveside service will be held in the
spring. In lieu of flowers, memo-
cial contributions may be made to: Free-
dom Food Pantry, First Christian Church
of Freedom, 12 Elm St., Freedom, NH
03836 or Lake Region Humane Society,
P.O. Box 655, Ossipee, NH 03864.

For online condolences, go to jv-
woodfuneralhome.com.

Arrangements are under the direction
and care of the J. Verne Wood Funeral
Home – Buckminster Chapel.

Daniel Dorn Muller, Sr.

Daniel Dorn Muller, Sr., 76, of Bed-
ford, passed away after a brief period of
decreasing health on February 13, 2021
surrounded by his family.

Dan was born in Winchester, MA
on October 23, 1944 to G. Robert Muller
and Lucy Wheeler Muller. He grew up
in Deerfield with one brother, Robert
Muller, who was his best friend and partner in crime for ev-
every Thanksgiving clean-up. After attend-
ing New Hampton School, Dan attended
the University of New Hampshire where he
met the love of his life and wife of over
54 years, Ellen Titus Muller, his “Babes.”
After graduating from UNH, Dan attend-
ed law school at Boston University and
served in the United States Army Reserve.

Dan started practicing law in Plym-
outh with Batchelder & Murphy and later
his own firm. After a stint in Boston, he
returned to Manhattan where he became
a partner with Porter, Hollman & Muller,
Kfloury & Elliott, and finally Nixon Pea-
body. Over the course of his career, focus-
ing upon real estate and financial transac-
tions, he was known for his strong work
 ethic, often getting home minutes before a
holiday party and was dedicated to his
clients throughout his career. Dan was a
proud member of the New Hampshire Bar
Association for over 50 years.

Dan enjoyed giving back to his com-

munity. He served as a referee in the Town
soccer league. He also served on an early
board of Families in Transition. He later
served as a board member for the New
Hampshire Community Loan Fund and
remained on that board even after his re-
tirement. His generosity was not limited
to volunteerism as he was always will-
ing to give advice or other help to family,
friends and acquaintances. His generosity
touched so many lives.

Dan had many diverse interests out-
side of work. He enjoyed woodworking
and restoring antique furniture, teaching
his sons many lessons along the way. He
loved history, not only reading about it,
but visiting historical sites in his travels
with Ellen and his family. Dan also loved
sports, especially football, where he was
first a fan of the New York Giants and lat-
er the Boston/New England Patriots. After
he retired from the law, Dan also took up
building stonewalls and installing hard-
wood floors, from Dan.

Sons, Daniel D. Muller, Jr.,

Christopher D. Muller and Gregory T.
Muller proudly called Dan “Dad,” with
two following his footsteps as lawyers
and the third becoming an engineer.

No matter how busy he was, Dan
never missed a game or recital for his
sons. All three brothers learned countless
life lessons and practical skills, including
building stonewalls and installing hard-
wood floors, from Dan.

Dan is survived by his wife, Ellen
(Titus), his son, Daniel D. Muller, Jr.
and his wife, Paula, his son, Christopher
D. Muller and his wife, Joy, and his son,
Gregory T. Muller and his wife, Andrea.
He is also survived by four grandchildren,
Hannah, Caitlyn, Jackson, and Madison,
who all miss their “Grampby” dearly. Dan
was predeceased by his parents and his
brother, Robert, with whom he is un-
doubtedly sharing a laugh again. He also
leaves behind so many caring friends.

SERVICES: The family plans a small
private graveside service and then a cele-
bration of Dan’s life for family and friends
to be scheduled for the spring/early sum-
mer. In lieu of flowers, the family would
ask for donations to the New Hampshire
Community Loan Fund, 7 Wall Street,
Concord, NH 03301, www.community-
loanfund.org.

Lambert Funeral Home & Crematory,
Manchester is assisting the family with
arrangements.

Joseph “Digger” (DeGuglielmo)
Williams

Joseph “Digger” (DeGuglielmo) Wil-
liams of Malden, 79, peacefully passed
away of natural causes on February 22.

He was predeceased by his parents,
Joseph DeGuglielmo and Maria Assunta
(Januario) DeGuglielmo of Revere; his
siblings Victor DeGuglielmo, Carmine
DeGuglielmo, Lucy Cifuni and Jeannie
“Chickie” Carbone and wife Lana Cana-
vian Williams. He is survived by his chil-
dren: Robert DeGuglielmo, Matthew Wil-
liams, Amy Neal and grandchildren, Jake
Neal and Rebecca Neal.

Joe attended Revere High School, re-
cieved his undergraduate degree at Bos-
ton College, and graduated from Suffolk
Law School. He was a military veteran,
attorney, avid golfer, loving husband, and
father. Throughout his life he remained
close to his high school and college friends
who describe him as unselshless, generous,
gregarious, close to brilliant, unwavering,
faithful and an all-star athlete. His child-
hood dream was to play third base for the
Boston Red Sox. Joe spent many years in
Bedford, NH raising a family with Lana
while running a successful law practice.
He formed lifelong relationships with
neighbors, friends, and business partners.
At Joe’s request, no service will be held.
Donations may be made to the Revere
Beach Partnership, www.reverbepartnership.com or the American Cancer Society,
www.cancer.org. For guest book
please visit www.buonfiglio.com.

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

To submit an obituary for publication,
email news@nhbar.org. Obituaries may
be edited for length and clarity.

Three sons, Daniel D. Muller Jr.,
Christopher D. Muller and Gregory T.
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In Memoriam from page 11

or several issues of the NEW HAMPSHIRE BAR NEWS.

In Memoriam from page 11

ARNE ROSENBLATT
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In Memorium
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A Mentor in Life and Law
UNH Franklin Pierce School of Law Professor Remembered by Colleagues and Friends

By Scott Merrill

If you never had a chance to meet UNH Franklin Pierce School of Law Professor Marcus Hurn, read through the public Facebook page memorializing his life and you’ll likely wish you had.

Hurn, 68, died on Feb. 11, and since his death, stories of the lives he changed around Concord—at the law school, Ham- manos, or Castro’s Back Room, to name a few places—have been pouring in.

As someone who didn’t know Professor Hurn—just “Marcus” for most who knew him—interviewing and reading the comments of his friends and colleagues has been the next best thing. Their stories paint the picture of a colorful and unforgettable man who was deeply committed to the law and to his friends.

Hurn grew up in the Missouri Ozarks, “a culture then still showing the better traces of feudalism and anarchy,” he said, in a quote from the law school’s website.

After teaching law and practicing in Kansas City, he spent a year as a gradu- ate fellow at Yale and then came to New Hampshire, “happily avoiding the pedant- ry, status obsessions and bureaucracy of the general run of law schools.”

This was 1980, and the law school, only seven years old at the time, was the Franklin Pierce Law Center. Hurn arrived in Concord that year around the same time as Professor Emerita Ellen Musinsky, and the two became close friends.

The pair’s relationship grew out of a shared commitment to gay and lesbian rights, Musinsky says, despite their diferent philosophical and political back- grounds.

“Marcus and I were both ‘out’ and there weren’t a lot of people out in the state, especially in the legal profession in the early 1980s. It was not an easy time to be gay or lesbian and we [along with many others] cared a lot about gay and lesbian rights,” she says. “Marcus was always very business-oriented and re- mained that way. I hesitate to use the term in 2021 because he’ll probably come back to get me, and he wasn’t when he died, but in the ‘80s he was a ‘Republican’ in the traditional sense. I’ve always been a liberal Democrat from Massachusetts.”

In the 1980s Musinsky and Hurn taught a course dealing with sexuality and the law titled “Civil Rights Seminar.” The reason for not referring to the course as “Sexuality and the Law,” Musinsky explained, was due to the concern some people had at that time with displaying a controversial course name on their transcript.

“We only taught it once or twice a year,” Musinsky says. “It was very popular and over-enrolled, but it only ran for a year.”

The school no longer offers the course but Musinsky says it was important.

“These types of courses can be really good classes because they deal with such cutting-edge issues and the discussion of- ten leads into what’s going to potentially happen in the future,” she says. “I suspect when we taught it, we did not predict Obergefell—I did not see that coming.”

Obergefell v. Hodges is the 2015 U.S. Supreme Court ruling allowing same-sex couples to marry.

While Hurn was equally involved with business legislation in New Hamp- shire, some of his proudest legislative achievements, according to the law school’s website, involved his work on civil rights issues for the gay and lesbian community. He was fundamental in the formation of the Citizens’ Alliance for Gay and Lesbian Rights in the 1980s, and with the creation of civil unions which led to marriage for same sex couples.

Hurn was also actively involved in the passage of New Hampshire hate crimes legislation, along with Musinsky and then State Sen. Rick Trombley.

“New Hampshire had a very unique method of dealing with hate crimes,” Musinsky says. “Instead of writing the statutes which could be interpreted as restricting someone’s speech rights, it focused on whether a person was [moti- vated by hate] and that was designed to avoid first amendment issues. That started with the three of us sitting around a din- ing room table having discussions and I’m sure Marcus was the author of that because he was brilliant.”

Marcus Hurn lecturing in the Giles Sutherland Rich Room at the UNH Franklin Pierce School of Law, circa early 1990s.

“New Hampshire had a very unique method of dealing with hate crimes,” Musinsky says. “Instead of writing the statutes which could be interpreted as restricting someone’s speech rights, it focused on whether a person was [motivated by hate] and that was designed to avoid first amendment issues. That started with the three of us sitting around a dining room table having discussions and I’m sure Marcus was the author of that because he was brilliant.”
Hurn eventually introduced Somma socially living in New Hampshire.”

“The first time I met Marcus, I was so young and he made me feel really comfortable. He told me that he saw a lot of potential in me,” Somma says, pausing emotionally to remember that time in his life. “I was having a lot of problems with my family still and I needed someone to walk me down the aisle. I asked Marcus to do it and even to this day he would always talk about that day as one of the best honors he had,” Somma says.

While he has reconciled many of the differences with his family, Somma wishes he could be making plans to see Hurn this summer at the pool in Provincetown.

“He took care of me when no one else did and that’s what hurts the most,” he says. “He’s not there anymore. It hurts for a lot of people.”

Richard Fogal started law school in Concord in 2009. He had just come out when he arrived in Concord and his need for Hurn’s comfort and assurance was similar Somma’s experience.

“I was facing the twin unknowns of how law school was going to unfold and how that part of my personal life was going to unfold,” Fogal says. “He very much took me under his wing. I was able to ask him questions about life that I wasn’t able to ask other people.”

Fogal says he didn’t take classes with Marcus until the end of law school.

“For most of my time at UNH I just knew him as a dear friend. I was one of the privileged people who was able to spend time with him in Provincetown over the summers and in Ogunquit, Maine. I’m having a hard time … I owe him a lot. He mentored me both in life and in law.”

Musinsky describes Hurn as an introverted person who may have appeared standoffish and gruff on first encounters. But, she says, “he was as caring as a person can be.”

For law student Luke Hertzel, class of 2023, those first impressions of gruffness that Musinsky cited quickly gave way to an openness and curiosity about the young law student.

“I had only met him during contracts lectures and thought he was going to be too demanding of our class,” Hertzel says. “I was completely wrong about those expectations. In my second week, I was able to meet with Professor Hurn one on one. We sat in his office for over an hour, speaking nothing of contract law. Professor Hurn asked all about me: where I was from, did I have a particular heritage, what made me choose UNH Law, and more. His compassion was the only thing that exceeded his knowledge of the law. We all miss Professor Hurn.”

For Musinsky, it is not easy saying goodbye.

“He could see something good in everyone who came to the school and he was a very good teacher,” she says. “Marcus and I—sometimes I’d say we were good friends—sometimes I think about him as a brother. We were very close.”

UNH Franklin Pierce School of Law student Ivy Attenborough contributed to this article.

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home to stay in or to keep the economy going. The bill provides a significant amount for rent relief.”

At the beginning of December, around 12.4 million adult renters reported being behind on their rent payments, according to the Center on Budget and Policy Priorities (CBPP).

The funds for the most recent program can be used for back rent and overdue utility payments from the start of the pandemic, as well as future bills. Renters will be eligible for relief if their household income is below 80% of the area median income (which varies by county and household size), and someone living there has qualified for unemployment benefits; lost part of their income or experienced financial hardship because of the pandemic; or can show that they are at risk of losing their home.

In 2020, the area median income for one person, according to HUD’s income limit area for Merrimack County, was $87,900.

Landlords and utility companies can be paid directly by state and local governments if tenants have signed off on the application. If landlords refuse the aid, renters can apply and receive the funds and then pay their rent or utilities and the tenants’ ability to repay what they owe during the pandemic is all to the benefit of the landlord,” he said. “And the legislation allows the landlord to initiate the process. On the flip side, there have been times when any given landlord would have no desire to participate in the program. In such cases, this legislation will enable program administrators to pay the money to the tenant so the tenant can then offer a normal payment and you don’t need the landlord’s participation or consent.”

Another difference with this program is the timeframe in which the money must be used.

“The with the last program we had a short period of time initially to use the money,” Margolin said. “This $200 million we can spend over the next two years. It’s nice because we can really implement a program thoughtfully and make sure it gets out to people who need it.”

Alleviating some of the pressure on landlords and tenants prior to the distribution of rental assistance funds has been one goal for the New Hampshire Circuit Court. Through its Office of Mediation and Arbitration, the court created a pilot project to resolve landlord-tenant disputes through mediation.

The Emergency Landlord and Tenant Mediation Pilot Project, which began in Feb., will work to reduce the backlog of eviction cases caused by the COVID-19 pandemic, and provide a practical, no-cost alternative to resolving these cases in court. Working with a trained mediator, landlords and tenants who have filed an appearance with the court will have the opportunity to work out their eviction disputes in an informal setting. The mediation process is entirely voluntary, and agreements reached through mediation may eliminate the need for the parties involved having to appear in court.

“The Circuit Courts have managed an enormous number of cases during the pandemic, but landlord and tenant cases continue to be a concern,” Administrative Judge David King, said. “With the help of trained mediators, we feel both parties will find equitable outcomes and a more timely access to court decisions than is currently possible.”

**Affordable Housing Incentives**

Incentives for affordable housing production are not contained in the emergency rental fund but are found in a provision within the bill that fixes the non-competitive four percent tax credit.

Experts in New Hampshire agree that this tax credit is the number one resource for helping to create affordable housing production.

Ben Frost, Managing Director of Policy & Public Affairs at New Hampshire Housing, said fixing the tax credit at four percent is a significant improvement to the existing program which had allowed the credit percentage to float in the past.

“It will depend on developers, to the extent they’re interested in doing this. To the extent that Congress is considering improvements to the tax credit, then increasing the allocations to states would be helpful because we’ve seen with corporate tax returns, there is less of an appetite for tax credits among investors. So increasing the allocation would help to cover the decreasing investment interest. To the extent homeowners and renters have additional resources to pay bills, it will help.”

**Affordable housing setback**

A separate affordable housing bill was tabled on Feb. 25 by New Hampshire House members. HB 586, supported by Gov. Chris Sununu and affordable housing advocates, contained proposals encouraging town zoning boards to build up affordable housing stock.

The House narrowly moved to table the bill with a margin of 175-172.

Rep. Marjorie Porter, a Hillsborough Democrat, expressed disappointment over the tabling in a statement.

“Our constituents across the state were already struggling to find affordable housing, and the economic shocks caused by the pandemic have only intensified this problem,” Porter said. “It is extremely disappointing that House Republicans would buck the governor, their own caucus members, and most importantly their constituents to sideline this bill.”

HB 586 was part of the New Hampshire Council on Housing Stability Council’s Report and Action Plan recommendations to the Governor last December.

“The bill represents years of engagement, education, and compromise,” Margolin said in a statement from Housing Action NH. “Governor Sununu’s housing task force crafted proposals that would help in-

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centitize the market while respecting local control. Opponents today claimed that the bill needed work, but a long list of commissions, task forces, and legislative subcommittees have already worked the proposals in this bill for a decade.”

Stephanie Savard, Chief External Relations Office for Families in Transition and Director of the New Hampshire Coalition to End Homelessness, in Concord, agrees that while a rental relief program is crucial to ensure people won’t lose their homes, the long-term goal is affordable housing.

The tabling of HB586 while in the midst of a housing crisis, Savard says, causes a “significant delay of such important tools to incentivize developers and regions to bring new housing solutions to our communities.”

“We need affordable housing. We don’t want people to live in survival mode, but to live comfortably so they can afford child care, health care, food, instead of worrying about that, or their rent,” the governor’s Council on Housing Stability, the policy recommendations and program recommendations—I feel he put that together because he wants to hear what the changes are that we can make, both easy and long-term.”

The costs of keeping people sheltered and safe

Martha Stone, executive director of Crossroads, member of the Governor’s Council for Housing Stability, and part of Housing Action New Hampshire, says the emergency rental relief program provides a generous amount of funding. But she, like Savard, has serious concerns with the cost of affordable housing in the state.

“We can provide safe emergency shelter. We can provide case management. We are skilled at connecting people to the supports they need, not just housing. But once we’ve helped someone stabilize, the biggest challenge we face is the lack of affordable housing to have them move into. Even people who are employed cannot typically afford a market-rate apartment.”

In Portsmouth, where Crossroads is located, there is a one percent vacancy rate, and Stone says a healthy rate is five percent.

The median cost of a two-bedroom apartment in Rockingham County is $1623, according to a 2020 report by the New Hampshire Housing Finance Authority. This represents a 28 percent increase in cost since 2015.

Across the state, there is a shortage of rental homes that are affordable and available to extremely low-income households (ELI). These include households whose incomes are at or below the poverty guideline or 30% of their area median income (AMI).

Many of these households are severely cost burdened, spending more than half of their income on housing.

According to the National Low Income Housing Coalition’s website there is a deficit of 23,983 rental units affordable and available for extremely low income renters, of which there are 39,925.

Crossroads owns their own shelter property plus one apartment building with 12 units of affordable housing.

Helping those with rental assistance, Stone says, involves more than providing them with money. Many tenants become intimidated by the process itself, which involves gathering the required documentation. One way to alleviate this difficulty is through case management.

“I think it’s fair to say some people could be intimidated by the process of having to gather the required documentation. Having someone to guide them is useful.”

Yet, with the high prices of rental units in New Hampshire, combined with a low occupancy rate, Stone says trying to assist someone to get a rental unit—especially when they have a poor rental history—is extraordinarily difficult.

And this lack of affordable housing affects the ability to house those in immediate need of shelter for shelters like Crossroads House that are running at or near operating capacity.

“This (stimulus money) is helpful in helping people if they’re already housed. But we need to create more affordable housing because that is also connected to the backlog in the emergency shelter system,” Stone said. “We could free up more shelter beds if we could more quickly move people into permanent housing.”

Most shelters today, Stone says, are already operating at less than capacity because of the pandemic. Typically, Crossroads serves more people in the winter months. Last year they served 120 in March while this year they are only able to serve 85.

“To meet CDC guidelines, we had to change. We had to keep people safe, but we’re serving fewer people.”

Being homeless, she says, “is a huge risk to one’s health.”

The Housing Partnership is a non-profit organization that provides rental housing to low-income households in the Seacoast region of New Hampshire and Southern Maine. While the organization’s mission is to provide high-quality housing for families who can’t afford market rent, they are also an organization, like Crossroads, that maintains properties.

Executive Director, Marty Chapman, said many of the residents work in sectors of the economy—food service, retail, hospitality—that were frozen by the pandemic.

“While The Housing Partnership’s mission as a non-profit is to provide high-quality housing to families who can’t afford market rents, we also of course must be able to maintain our properties in sound financial condition for the benefit of all residents. The decline in rental revenue caused by the pandemic has created economic uncertainty for both our housing portfolio and the organization as a whole.”

Chapman said the number and length of delinquent lease payments has increased steadily during the pandemic along with a corresponding number of residents seeking financial assistance or forbearance.

“While the various forms of federal and state assistance have provided a temporary measure of support, we see clear anecdotal evidence that the restructuring of the pandemic economy is having a long-term impact on the low-income households we serve,” he said.

Chapman referred to Governor Sununu’s announcement of the New Hampshire Emergency Rental Assistance Program (“NHERAP”) as “welcome news.”

“The fact that the program will provide assistance for both past and future obligations is particularly important, because it removes the immediate threat of housing instability while also providing a runway for families to adapt to employment challenges in a post-pandemic economy,” he said.

For a list of CAP agencies serving local communities in New Hampshire visit: https://www.capnh.org/cap-lookup.
Nashua Rotary West, her role in education enriches many lives, from her leadership in Gateways, describes Honorow as “an in
credible valued board member” who “en-
joyed our having someone who understood the landscape and personal support for individuals
with disabilities to have opportunities to live meaningful lives in our community.”

When her husband opened his own Nashua office, she eventually joined him, thinking that “it would be a good
to manage both components of our lives, pro-
fessional and personal.”

She gave up her work on education lit-
igation when she became a member of the
New Hampshire Bar Association Committee for 14 years, and says she “absolutely cherishes” the experience of working with educators, parents and students on issues affecting public education.

Hearing from so many people, I learned so much about what the issues are, how we can help, how we can offer the
best we can,” she says. “Every month was a
new ‘wow.’”

“I’ve seen how Helen prioritized giving back to the community while balancing an extremely busy practice. She is the
first in line to congratulate and celebrate others on their accomplishments.”

Katherine J. Morneau

Northeast Delta Dental president and CEO Tom Raffio chaired the board during Honorow’s tenure and says “the
quality of Helen’s 14 years was the gold
standard for being a strategic SBOE mem-
ber.”

Always super prepared, posing the
right questions, always visionary, I admire
and relied on Helen’s robust contributions as chair of the SBOE. Always attentive to the vision of the SBOE in terms of
student-centered learning, Helen used her many legal talents and experience, coupled with her passion for education, to do what’s best for public education in New Hampshire. I have never met a more professional, pre-
pared and collegial board member and law-
yer.”

Honorow sees a connection between that work and her family law practice.

“A family is a system,” she says.

“There are a lot of crossover issues – kids in a divorce and the uncertainty they may
be feeling about where am I going to live, where am I going to go to school, who are my friends going to be. I think about edu-
cators and all the things they deal with –

observed all those years ago. Fairness, impartiality, fidelity to the law, diligence, hard work, respect compassion, humility and complete integrity. I will always try very best to apply those qualities to the
duties and responsibilities to the position that I’m now so honored to hold.”

MacDonald is the third Sununu ap-
pointee to the Court without experience as a judge and only the second attorney general to go directly from that position to serve on the highest court. The other, Chief Justice Kenison, moved directly from his position as attorney general to the court in 1946.
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Calendar Overview

**MARCH**

18 Thursday • Noon - 1:00 p.m.
What to Watch Out for in a Post-COVID World w/Stuart Teicher
- Webcast
- 60 min. ethics/prof.

23 Tuesday • Noon - 1:00 p.m.
Tech Tuesdays! Document Assembly Technology: What it Can Do for Your Practice & How to Evaluate the Players with Baron Henley
- Webcast
- 60 min.

25 Thursday • Noon - 1:00 p.m.
Semicolons are Stupid, and Other Legal Writing Myths with Stuart Teicher
- Webcast
- 60 min.

**APRIL**

1 Thursday • Noon - 1:00 p.m.
Federal & NH Tax Provisions Useful or Required in the Operating Agreements of LLCs Taxable as Partnerships & S Corporations with Stuart Teicher
- Webcast
- 60 min.

**MAY**

13 Tuesday • Noon - 1:00 p.m.
Microsoft Word Power Tips for Legal Users with Baron Henley
- Webcast
- 60 min.

14 Wednesday • Noon - 1:00 p.m.
Traps for the Unwary: An Introduction to the Divorce Process in NH with Baron Henley
- Webcast
- 60 min.

27 Tuesday • Noon - 1:00 p.m.
Dropbox for Legal Professionals with Paul Unger
- Webcast
- 60 min.

30 Friday • Noon - 1:00 p.m.
Renewable Energy Facility Siting
- Webcast
- 60 min.

**Tech Tuesdays with Barron Henley & Paul Unger**

Join us for Tech Tuesdays with Barron Henley and Paul Unger from Affinity Consulting! These vital programs will take a deep dive into technology for the law office. All programs run from Noon to 1:00 p.m.

- Document Assembly Technology – What It Can Do For Your Practice and How to Evaluate the Players - Barron Henley 4/13/21
- Microsoft Word Power Tips for Legal Users - Barron Henley 4/27/21
- Dropbox for Legal Professionals – How to use it Safely, and is it Right for your Organization? - Paul Unger 4/27/21
- Communication Breakdown – It’s Always The Same (But It’s Avoidable) - Barron Henley 5/11/21
- How to Protect Yourself and Preserve Confidentiality When Negotiating Instruments - Barron Henley 5/25/21
- Avoiding Malpractice: The Good, the Bad and the Ugly of Legal Technology - Paul Unger 6/8/21
- What Every Lawyer Should Know About Developing a Cybersecurity Plan - Paul Unger 6/22/21

**Renewable Energy Facility Siting**

Friday, April 30, 2021
Noon-1:00 p.m.
Webcast Only • 60 min.

Provides a general overview of state and local requirements for siting renewable energy facilities in New Hampshire and demonstrates permitting paths through case studies of recently approved solar energy projects.

**Who should attend?**
Energy and environmental practitioners who represent energy developers or abutters involved in energy facility siting; transactional/real estate lawyers; municipal and other public sector lawyers representing local and state interests in energy facility siting proceedings.

**Faculty**
Maureen D. Smith, Moderator/CLE Committee Member, Orr & Reno, PA, Concord
Susan S. Geiger, Orr & Reno, PA, Concord
Amy Manzelli, BCM Environmental & Land Law, PLLC, Concord

**CLE HIGHLIGHT**

This CLE program meets the annual 120 minute NHMCLE Requirement for Ethics/Professionalism!

**15th Annual Ethics CLE**
Friday, May 28, 2021
8:30 – 10:30 a.m.
Webcast Only • 120 min. ethics/prof. credit

This annual ethics update will review developing issues for all attorneys in practice.

**Faculty and Topics:**
- Stephanie K. Burnham, Chair, Ethics Committee, Hage Hodes, PA, Manchester - effective client communications in the time of COVID and Zoom
- Mark P. Cornell, NH Supreme Court Attorney Discipline Office, Concord - what you need to know to make sure your IOLTA is being properly handled.
- Russell F. Hilliard, CLE Committee Member, Upton & Hatfield, LLP, Portsmouth - recent ABA opinions of interest to the NH practitioner
- Mitchell M. Simon, Ethics Committee Member, Devine Millimet & Branch, PA, Manchester - obligations of a firm and a departing lawyer with regard to the client, firm and lawyer
- Richard Guerriero, Program Chair/ President-Elect, Board of Governors, Lothstein Guerriero, PLLC, Keene - confidentiality and the prospective client who already has an attorney

More faculty to be announced

**How to Register**
All registrations must be made online at www.nhbar.org/nhbacle

If you missed any of the previous held programs, they are now available ON-DEMAND.

Live Programs • Timely Topics • Great Faculty • Online CLE • CLEtoGo™ • DVDs • CDs • Webcasts • Video Replays • and more!
Traps for the Unwary
Brought to you by the NHBA's New Lawyers Committee

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

- April 14, 2021- An Introduction to the Divorce Process in NH
  • Katerina Kalabokis
- May 12, 2021 - Landlord Tenant • Laurie Young/Katherine Hedges
- June 2, 2021 - Automobile Accidents • Stephanie Tymula/Nicole Perreault
- June 16, 2021 - Workers’ Compensation • Laurie Young/Lance Tillinghast

Thank you to the NHBA’s New Lawyers Committee for organizing these programs for NH Bar members!

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.

- 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

Business Litigation
May 2021

Petition to Partition
May 2021

Sentencing
June 2021

Basic Construction Law:
The Revenge of Hammer and Nails

Wednesday, May 5, 2021
9:00 a.m.- 4:30 p.m.
Webcast Only • 390 min. incl. 30 ethics/prof.

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

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

Faculty
Kelly J. Gagliuso, Program Chair, Bernstein Shur, Manchester
Richard G. Gagliuso, Bernstein Shur, Manchester
Matthew R. Johnson, Devine, Millimet & Branch, PA, Manchester
Edward D. Philpot, Jr., CLE Committee Member, Edward D. Philpot, Jr., PLLC, Laconia
Hilary H. Rheaume, Bernstein Shur, Manchester
Frank P. Spinella, Jr., Wadleigh, Starr & Peters, PLLC, Manchester

Insurance Law 2021

Thursday, May 6, 2021
9:00 a.m.- 4:00 p.m.
Webcast Only • 360 min. incl. 60 ethics/prof.

This program features a faculty of some of the most experienced insurance law practitioners and civil litigators in the state, and will cover topics from auto and uninsured motorist coverage to homeowners and commercial liability policies and everything in between.

Faculty
Peter E. Hutchins, Program Chair/CLE Committee Member, Law Offices of Peter E. Hutchins, PLLC, Manchester
Doreen F. Connor, Primmer Piper Eggleston & Cramer, PC, Manchester
Christine Friedman, Maggiotto Friedman Feeney & Fraas, PLLC, Concord
Todd J. Hathaway, Wadleigh, Starr & Peters, PLLC, Manchester
Russell F. Hilliard, Upton & Hatfield, LLP, Portsmouth
Tamara Smith Holtslag, Peabody & Arnold, LLP, Boston
Elizabeth L. Hurley, Getman, Schulthess, Steere & Poulin, PA, Manchester
Christopher F. McGown, Wadleigh, Starr & Peters, PLLC, Manchester
Adam R. Mordecai, Primmer Piper Eggleston & Cramer, PC, Manchester
Roger D. Turgeon, Turgeon & Associates, Haverhill, MA
By Eric Tausig

This is part two of three articles exploring the use of executive authority during pandemics.

POST SPANISH FLU DEVELOPMENTS

In post-World War I government promulgated a list of “dangerous contagious diseases” which, if present at a ship’s port of origin, would require scrutiny by quarantine inspectors. The “dangerous contagious diseases” listed during this time included: yellow fever, smallpox, plague, cholera, leprosy, anthrax, and typhus. In 1924, Congress provided for a system of overseas medical inspection of immigrants prior to their departure for the United States. The Act of 1924 required that immigrants get clearance from a physician attesting to their health.

Regulations promulgated by the Department of Agriculture have kept the Public Health Service’s quarantine powers limited to human diseases and some animal diseases that can be transmitted to humans. The Plant Quarantine Act of 1912 authorized the Department of Agriculture to “establish and maintain quarantine districts for plant diseases and insect pests; to permit and regulate the movement of fruits, plants, and vegetables therefrom...”

World War II impacted the PHS as officers were tasked with contagious disease control necessitated by war. The Public Health Service Act of 1944 (PHS Act) created little new law; consolidating the 1878 Act and others. The Surgeon General could promulgate regulations regardless of state or local regulations. Sections 361(b) and (c) clarified the detention and apprehension powers involved in medical inspections of people coming from other countries. Prior to passage of the 1944 PHS Act, persons suspected of having dangerous communicable diseases were detained at the point of entry, but whether they might be released on certain conditions remained unresolved. Subsections (b) and (c) provided for the release of detainees on meeting requirements that ensured that the disease not spread. This provision was needed due to increased air travel. In 1967 the Division of Quarantine Control was transferred to the Center for Disease control (CDC). With the disappearance of smallpox, health inspections and quarantines disappeared from US airports.

The current version of Section 361 of the PHS Act does not differ. However, the implementation differs. Implementation changes involved both a diminished federal public health presence and increased level of responsibility delegated to the states.

COVID Concerns

Though public health policymakers do not embrace the quarantine inspection of the past, authorities have cast the communicable disease threats as national security concerns. Even before 9/11 and the anthrax scare, the National Intelligence Council (a division of the CIA) reported to Congress that “new and re-emerging infectious diseases will pose a rising – and in the worst case, catastrophic – global health threat that will complicate U.S. and global security over the next twenty years.”

Since diseases that never reach the US threaten security, and despite the impossibility of keeping infectious diseases out of the country, the current approach is to detect diseases and stop them before they gain momentum. In 1999, Surgeon General Satcher articulated this view:

“The health of the American people cannot be fully protected unless efforts are focused on maintaining a system of worldwide health surveillance. It is startling to think that in under thirty-six hours... an individual, a disease, or a product can travel from any one point on the globe to another, and thereby pose a serious threat to the health of the entire world.”

Thus, President Trump had the authority to limit admissions to the US based on a COVID-19 threat. Of course, whether the limits on admissions had any effect is questionable as the US has now the largest number of COVID cases and deaths in the world. Even though COVID originated in Wuhan, the US excluding travelers from Wuhan or other parts of China had little if any effect as the two earliest points of infection were in Seattle and New York City, with the virus spreading from Europe to NY. The jet age has limited the efficacy of exclusionary policies.

With state mandatory lock downs and orders to shelter in place, but with far more exceptions than in other countries, came many issues including the need to allow for certain essential functions such as the purchase of food, etc. and allowing breaking quarantine for exercise, etc. Initially urban areas became the center of COVID infections and restrictions within the New York area becoming the center for initial COVID spread. Immediately after restrictions were imposed, questions arose about constitutional and statutory rights from the right to free speech, religion, travel, etc. Statutes such as HIPPA, the ADA and limitations on freedoms became issues for state and the federal government. As many state governors declared “States of Emergency”, there were limitations on freedom of travel, worship and other rights.

Quarantine & Tracing

As a practical matter, most state executive emergency orders to “Shelter in Place” relied on voluntary cooperation, but there were many violations and for the most part a lack of enforcement. As described earlier, the Kingston NY barber who cut hair from the rear of his home of essential workers such as police and firemen, only ultimately to come down with COVID and be hospitalized, cooperation was nonexistent. Tracing became impossible due to his lack of cooperation and even though the Ulster County District Attorney indicated that he might prosecute, no follow-up occurred. After leaving the hospital, Lalima said:

“I am aggrieved to the nines...I'm Cuesto the [Governor] going to pay me? Is he going to make up the difference? Is he going to pay my taxes? Is he going to pay the heat and electric? Is he going to feed my family, he asked? During the pandemic, businesses were compelled by executive order to close, and even some considered essential did not open for fear of contagion. As phases reopening proceeded, many businesses requested immunity from liability. The Trump Administration’s “Cares Act” relief provided broad immunity from customer and employee lawsuits for contracting COVID.

Complicating matters is that most workplace safety is regulated by the state though there are some federal laws on employment issues, including imposing a duty on employers to have safe workplaces (OSHA). Each state has its own workers’ compensation for employees who are injured at work, and lawsuits by customers who accuse a business of negligence are generally brought in state courts under a patchwork of standards.

Even states lauded for their enforced “shelter in place” edicts agreed to broad immunity for healthcare workers and hospitals and surprisingly nursing homes, which despite the frequency of fatalities of COVID deaths, were granted immunity. Contact tracing has been used as a tool for hundreds of years to contain diseases like tuberculosis, yellow fever and Ebola. A rudimentary form was even used to track the route of a syphilis outbreak in the 17th century. Initially, South Korea, Ireland and New Zealand used the method to successfully control the spread of COVID. The methodology of contact tracing for COVID-19 is to reach individuals who have spent more than 15 minutes within six feet of an infected person and ask them to quarantine for two weeks even if they test negative, monitoring themselves for symptoms during that period. Unfortunately, few locations have reported success, and from the beginning of the US epidemic, states and cities have struggled to find carriers of COVID due to inadequate testing and unaccountable delays in obtaining test results.

In contrast, contact tracing in both Eu-
In Germany where privacy is a national religion, Germans casually hand over their name, address, etc. Unfortunately in the US contact tracing is failing due to inadequate tracing and the reluctance of carriers to work. In China, the approach is to issue a COVID Clean Passport. China adopted a patchwork system of colored health codes to download onto one’s mobile phone. They are a type of digital health certificate that turns green if you’re healthy and you are cleared to work and can travel. It turns red if you have been in direct contact with someone who’s sick or you got COVID. If you get COVID you are quarantined and have an electronic sensor attached at your wrist, door or on your phone to ensure you remain home. But with privacy and anonymity, France is using mobile phone Bluetooth instead of geo-localization. It is not about where an individual has been, but rather have they come into contact with for a certain period. It works on codes and numbers, not people’s identities. If you or someone became infected, authorities have a phone number you automatically receive an alert, but you would not know who it was from. It is ironic that many Americans will give up privacy with GPS apps to report traffic jams, but not for a demonstrable health hazard.

The issue of cyberbullying has arisen in South Korea where contact tracing and individual identification is publicly accessible. Authorities using digital devices to contact traced enough information about locations and events where COVID carriers were present to allow trolls to identify these carriers by name, age, gender, etc., and then harass, and in some instances defame them. Thus, restaurants visited by identified carriers are viewed as cursed and then boycotted. In the US the issue is “snitching,” particularly with college students. For example, an incident at Cornell, students posted a Snapchat picture of mask-less students at a party. Within days, an online petition was created demanding that those students’ admission to Cornell be revoked.

Legal Issues

Although contact tracing has legal issues, they are not as onerous as they appear. While employers in the US and internationally have increasingly more data privacy regulations to pay attention to such as the General Data Protection Regulation in the EU, the Family Educational Rights and Privacy Act and Illinois Biometric Privacy Act, the data privacy legal environment for government entities has less restrictive rules. There is also a lack of understanding of what Health Insurance Portability and Accountability Act (HIPAA) is. HIPAA was designed to facilitate the portability and interoperability of health care records for healthcare providers, not for data privacy. HIPAA data is considered health information and is limited to covered entities like hospitals and doctors’ offices. For instance, a patient’s email address is considered health information under HIPAA, but outside the health system, an email address is not considered as such and does not get HIPAA protection. HIPAA also does not apply to anonymous non-identifiable data, the data remaining after being stripped of personally identifiable information.

So if tracing is done without identification and the data remains anonymous, there is no HIPAA issue even for medical sleuths to trace potential carriers. Further, anonymous data is fair game, legally. “There is no regulation of ‘anonymized’ data. It can be sold to anyone and used for any purpose. Once data is scrubbed, nothing is used to identify an individual and therefore is safe for sale, analysis and use,” noted “Re-Identification of ‘Anonymized’ Data,” a 2017 Georgetown Law Technology Review article. 14

Few are aware of the Genetic Information Non-Discrimination Act (GINA) or the privacy protections it provides. “GINA is quite protective in the employment arena. It is the sense that employers of more than 15 employees are not allowed to use genetic information to discriminate, so they can’t make hiring, firing, promotion, wage decisions based on genetic information,” which includes family medical history, genetic test results and COVID testing. Legislatures have been enacting legislation to allow tracing. A bill regulating the use of contact tracing has moved its way through the NY legislature. Senate Bill S5845C regulates all information that includes or can reveal the identity of any individual and any COVID-19 related information or test results. New York established this initiative to control the pandemic. Senate Bill S5845C applies to every entity employed or under contract with either the state and/or local government, engaged in contact tracing. The permissible purposes are disclosures to appropriate health care providers for clinical diagnosis, care, treatment and record keeping.

In August, 2020, U.S. Medicare issued a blanket email to covered participants that stated: “If you’ve been in close contact with someone who tested positive for COVID-19, you may be contacted by a contact tracer or public health worker from your state or local health department in an effort to help slow the spread of the disease. Here is what to know if you get a call:

- A contact tracer may call to let you know you may have been exposed to someone with COVID-19. All information you share with a contact tracer, like who you’ve been in contact with and your recent whereabouts, is confidential.
- You may be asked to self-quarantine for 14 days. This means staying home, monitoring your health, and maintaining social distance from others at all times.
- You may be asked to monitor your health and watch for symptoms of COVID-19.

Notify your doctor if you develop symptoms and seek medical care if your symptoms worsen or become severe.

Sincerely, The Medicare Team

Medicare does not explain what is “confidential,” but accepts the concept of contact tracing, involuntary quarantine and disclosure.

In the educational arena the limited applicability of HIPAA is supplemented by the Clery Act of 1990 (20 U.S.C. § 1092(f)) requiring schools that receive federal funds to disclose threats to immediate safety, which of course, COVID presents, as well as the Family and Educational Rights and Privacy Act. While the Clery Act was directed at controlling crime to provide transparency in criminal crime statistics, it is worked in such a way as to require educational institution attention to the pandemic and requirements for reporting, etc. as it requires immediate notification of significant dangers to the health or safety (e.g. weather, disease outbreak).

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g: 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to schools that receive funds from the 100% Federal match of Education and may well be of significant concern for school and college student COVID tracing, as it limits its disclosure of certain information without the consent of the student. Usually, student medical treatment records remain under the protection of FERPA, not HIPAA. This is due to the “FERPA Exception” written within HIPAA.

1. “An Act to Limit the Immigration of Aliens”, Public Law 68-139
2. The Plant Quarantine Act”, Act of August 20, 1912 (as amended through Public Law 106-170, Dec. 17, 1999)
4. 42 U.S.C. 264. “Regulations to control communicable diseases”(a) Promulgation and enforcement by Surgeon General. The Surgeon General, with the approval of the Administrator [Secretary], is authorized to make and enforce such regulations as his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions…
7. 187,360 as of September 4, 2020
Change from page 1

has become more normalized as time goes on.

Like a lot of attorneys, he says he has adapted to changing circumstances by holding a lot of Zoom meetings and by creating a “system for handling mortgage closings in the parking lot, depending on the weather.”

“When it comes to loan closings, the banks have all of the documents, and that isn’t practical,” he says. “Luckily we had another entrance where we could bring people in and stabilize the space between appointments.”

As smooth as some of the systems are for keeping his business running efficiently, Riff says he misses engaging with people face to face.

“We’re all struggling with having hearings on the phone. I was just on Webex and was having a heck of a time hearing. Everybody is on the same page,” he says.

Riff employs one paralegal and a secretary, and he says one of the biggest challenges over the past year has been maintaining normal office rhythm when school shutdowns forced one of his employees to begin work at 3 am so she could be home by 9:30am to homeschool her children.

“Thankfully that’s not challenging. I’m not sure officials appreciate that when they make a decision to shut things down they’re not just affecting the students,” he says.

“They are affecting parents and employers. But everyone’s doing their thing and we get used to it.”

Riff says he has been doing a lot work in the last few months.

“The real estate market has been crazy,” he says. “The big issue we’re having is not having access to probate records. A lot of my corporate clients are trying to close on probate records and attorneys haven’t been able to get into court for months now. So that’s holding up some transactions.”

Riff says he has restricted most of his travel, other than short trips to the Depot for various projects.

“I don’t travel to court anymore and it’s just weird. I feel like it’s an adventure just going to the next town over sometime.”

He takes an optimistic tone when it comes to the lingering situation, saying that many things that need to be done during the day simply take longer now.

“You’d think with computers that it would speed things up but a lot of times you have to stop and remember a lot of things. It takes a lot of time. And normally I’d have clients come in and go over documents and now you end up going back and forth,” he says.

Like Riff, Seth Greenblott, of Greenblott and O’Rourke, says he misses the personal interaction with clients and that a lot of his business is driven by these daily encounters.

“One of the things I really enjoyed with my estate planning clients was getting to know them and helping them understand issues. I’ve done all of that via Zoom. I haven’t met a new client in person since March 16, 2020,” he says.

Much of the firm’s strategy over the past year, Greenblott says, has involved figuring out how to replace “sweat equity marketing” and “relationship-based marketing.”

“We’ve spent a lot of time strengthening existing relationships so that when things go back to normal we’re positioned to take advantage of it.”

One big challenge for his firm has been finding an administrative assistant.

“A lot of my corporate clients all say the same thing, ‘it’s very hard to hire people right now.’”

One reason for this difficulty echoes the side effects of the pandemic Riff described with his paralegal’s need to work around her childcare responsibilities.

“People have had to make difficult economic choices to take care of their family,” Greenblott says. “A lot of people normally in the labor market just aren’t out there.”

Another side effect, Greenblott says, has been the ways in which dealing with personal issues and stress throughout the day has shaped our sense of productivity.

“Everyone is just fried from getting their bandwidth eaten up by what’s going on in the world. In a way you may have less work to do at times, but it doesn’t feel like that. I’ve noticed with colleagues over past several months, everyone is pretty exhausted. I don’t think our brains are designed to be at that high of a stress level for that long and there are consequences to that.”

Tom Pancoast, a solo practitioner in Littleton who recently turned 76, is not interested at this point in his life to add more stress. He says that while he has no current plans to close his practice, he also isn’t looking to build it up.

“In fact, the pandemic has proved to be a timely tool for continuing to wind it down, which has been my strategy for several years now,” he says. “I think when you were doing your article last year you asked about my plans to reopen when the pandemic was over (I) replied that some thing to the effect that the issue for me was not how to reopen, but whether to bother.”

Pancoast says he is satisfied dealing with his legacy clients.

“My diet continues to be the folks I have represented for decades, for generations. It’s tough to tell them to take a hike. Occasionally I will take on someone they refer. But I am not marketing myself and have no interest in trying to gin things up.”

“Gone, he says, are those ‘pleasurable breaks that you take with others that are both like a break and like being productive while at work.’”

Handling several closings and negotiations on his veranda overlooking the mountains during the warm weather last summer was a pleasant experience, Pancoast says.

“Aside from a few or three masked attorneys (sounds like the Lone Ranger!) coming in for a moment to drop off or pick up some papers, I have had no one inside since last March 12th,” he says.

Pancoast is hoping to visit with his grandchildren and says he expects to spend a good bit of time on the trails very soon.

In Concord, Marianne Rosseau’s firm, Rousseau Law & Mediation, has been much busier than usual. The firm, which handles a variety of family law related matters, has held all of its meetings and mediations via Zoom, and court hearings with WebEx, or telephonically.

“Our client base has increased in comparison with prior years, and we are very busy. We do not allow clients to come into our building unless some documents need to be executed,” Rousseau says. “I almost prefer this as it saves a lot of time on travel, and this also saves clients’ money and they do not need to travel to court, wait to be called, and deal with the stress.”

One of her biggest challenges, she says, is not being paid in a timely manner due to a lack of employment for some clients.

While Zoom meetings, WebEx, and all of the other adaptations made over the past year have allowed him to serve his client’s needs, Greenblott says he hopes the type of “transactional” culture that has been created doesn’t replace the intangible moments of personal interaction as we move into the future.

“I’m grateful to have all of this technology but at the same time the joy of interacting with individuals and helping them solve problems becomes transactional,” he says. “This interview would be a lot more fun if we could have a cup of coffee and get to know one another.”

Gone, he says, are those “pleasurable breaks that you take with others that are both like a break and like being productive while at work.”

“They don’t exist right now and I miss being in court and seeing the other lawyers I know- often you miss business opportunities too. These are things that have plugged up formally but not necessarily anymore.”

For Rousseau, likely speaking for many, she says she is looking forward to the warmer weather, despite the difficulty presented by still not knowing what’s around the corner.

“I think the warmer weather is going to boost everyone’s mood.”

SRO Article from page 5

Shire schools. In 2017, Hispanic and Latino students comprised 6.3% of students at Portsmouth High School yet constituted 19.3% of in-school suspensions. U.S. Dept. of Education, Civil Rights Data, available at https://mlcro.1d.gov/ (citation applies to all data cited below). In that same year, at Central High School in Manchester, Black students made up 12.5% of the student population and Hispanic and Latino students 21.5%. Yet Black students made up 33% of in-school suspensions, 16.1% of out-of-school suspensions, Hispanic and Latino students were 38.3% of those receiving out-of-school suspensions.

In Concord, while Black students made up 12.5% of those receiving out-of-school suspensions, 30.6% of out-of-school suspensions, and 33.3% of referrals to law enforcement. At Concord, Black students comprised 18.6% of referrals to law enforcement.

In 2015, Concord referred an astonishing number of students of all races—208— to law enforcement. Each of these high schools has at least one school resource officer.

Students with disabilities fared no better. At Portsmouth in 2017, students with disabilities under the Individuals with Disabilities Education Act (IDEA) comprised 16% of the student population but 38.5% of in-school suspensions, 30.6% of out-of-school suspensions, and 33.3% of referrals to law enforcement. At Central, the outcomes were the same—students with IDEA disabilities comprised 14.3% of the population but 10% of in-school suspensions, 23.2% of out-of-school suspensions, and 27.2% of referrals to law enforcement.

Why does this matter? The permanent presence of law enforcement in schools leads to more discipline and overcriminalization of student behavior in schools. The majority of students forced out of schools with harsh punishments are often children who are at risk. These children disproportionately end up in the juvenile justice system and the adult criminal justice system. New Hampshire cities and towns must recognize these outcomes and disparities. It is time that we shift our focus away from policing students toward new treatment based approaches and social emotional learning that has proven to reduce school discipline and build healthy, safe communities. Critically, personnel must reflect the breadth of identities reflected in our student and community populations.

After all, a primary theme of the Bar News article is that the majority of “young offenders” and “juvenile suspects”—we like to call them children—are students who need guidance in “good decision-making.” We must provide our schools with the teaching and education-based counseling resources to discharge their obligations to prepare children of all races, abilities, and backgrounds to lead productive, fulfilling lives as adults. And we must bear in mind the data on disparate treatment of historically marginalized groups when we discuss this issue of law enforcement in our schools.

Anna Elbroch, Stephanie Hausman, Marta Hurgin, Elizabeth Lahey, Lisa Wolford, Kate Vaughn are New Hampshire lawyers with expertise in prosecution, special education, juvenile justice, civil rights, indigent criminal defense, and school board matters and litigation. Several are also the parents of school-aged children.
You've been through a lot this past year or so.

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Legislative Update

By Michael P. Pancebianco

A busy legislative session includes the following that are likely to be of interest to estate planning attorneys.

Advance Directives for Health Care Decisions
The current statutes for written directives for medical decision making for adults without capacity to make health care decisions are found in RSA 137-J. Such written directives must be in substantially the same form as what is provided at RSA 137-J:20, and a disclosure statement must accompany the written directives which itself must be in substantially the same form as what is provided at RSA 137-J:19.

SB 74 seeks to make significant revisions to the existing law, and is the result of efforts by the NH Health Care Decisions Coalition, a committee of the Foundation for Healthy Communities, in Concord, NH.

Pursuant to the bill, proposed changes to current law seek to “simplify and clarify the process by which a person may execute health care advance directives by combining in one form the Durable Power of Attorney for Health Care document and the Living Will, either of which (or both) may be executed by the person.” If enacted, the bill would make the Living Will guidance for the attorney, rather than a document that must be signed separately, and the Durable Power of Attorney for Health Care gives the named agent all powers under the statute unless the written directive states otherwise. It would also give surrogate decision-makers under RSA 137-J:35 the same authority as a named agent for up to 180 days, rather than 90 days under current law. A revised statutory form is included in the act, and if passed, all estate planning attorneys should familiarize themselves with the changes and new form.

New Hampshire Trust Code
SB 49 proposes to make revisions and additions to the New Hampshire Trust Code to expand the representation of beneficiaries of a trust to include someone expressly authorized to do so by the terms of the trust, or by someone appointed by a person so authorized by the trust to appoint. It also clarifies the meaning of a “second trust” in the context of decanting, and allows trustees, trust advisors, or trust protectors to “engage in investing strategies that align with the interested persons’ social, environmental, or governance objectives or other values or beliefs of the interested persons, regardless of investment performance.” The bill passed the Senate on February 4, 2021 and will advance to the House.

Remote Notarization
Two bills were introduced to allow for remote notarization, HB 287 and SB 134. HB 287 seeks to enact a new chapter, Chapter 456-C “Remote Notarization” whereas SB 134, an omnibus bill, includes revisions and additions to RSA 455 and 456-B to allow for remote notarization and also to enact new Chapter 478-A “Uniform Real Property Electronic Recording Act.” This uniform act has been enacted in over 30 states thus far. The House Judiciary Committee voted to retain HB 287 on March 2, 2021, citing SB 134 and a desire to see what happens with that first. A public hearing was held on SB 134, but the Senate Judiciary Committee had not yet held an executive session on it as of March 3, 2021.

Waiver of Probate Administration
SB 134 also contains proposed changes to RSA 553:32 to allow for streamlined probate administration in certain common situations, some of which are when, (i) an individual is named in the will as the sole beneficiary of the decedent’s estate and is also appointed to serve as the administrator of the estate, (ii) a trust is named in the will as the sole beneficiary and any appropriate person, including one or more trustees of such trust, is appointed to serve as administrator with the consent of all such trustees, and (iii) the court determines it is appropriate under the circumstances. If one of the specifically stated situations exists, or the court allows it, then there will be no requirement for an inventory of the estate, no requirement for a bond, and no requirement for an accounting for assets. The administration of the estate will be completed upon the administrator’s filing, and the probate court’s approval, of an affidavit of administration, which must be filed not less than six months and not more than one year after the date of appointment of the administrator.

Uniform Power of Attorney Act
The proposed revisions to the RSA 564-E, Uniform Power of Attorney Act, contained in SB 134 include a statutory form designed to provide greater clarity and specificity of powers that can be given to the agent.

Uniform Disclaimer of Property Interests Act
Also included in SB 134 is proposed legislation to repeal and reenact RSA 563-B “Uniform Disclaimer of Property Interests Act.” The uniform act has been significantly revised by the Uniform Law Commissioners since current RSA 563-B went into effect in 1997, and the proposed changes are designed to allow for every sort of disclaimer, including those that are useful for tax planning purposes.

Supported Decision-Making
If passed, HB 540 would add new Chapter 464-D “Supported Decision-Making” to the RSA. Pursuant to the bill, as introduced, the purpose of this new law is “to establish and recognize a less restrictive alternative to guardianship for adults with disabilities. It fulfills this purpose by authorizing a legal option for adults with disabilities who seek assistance in making life decisions but choose to retain all of their legal rights. The chapter gives legal status to supporters of such adults and to decisions made pursuant to supported decision-making.” The bill includes a form “supported decision-making agreement” which, while not required to be used, is presumed to meet the statutory provisions.

The bill further states that Supported Decision-Making has been “promoted as an alternative to guardianship by the National Guardianship Association and the American Bar Association” and that “[n]ine states have recently adopted statues which formally establish supported decision-making agreements.” On March 2, 2021, the House Judiciary Committee voted to retain the bill and revisit it at a later date to allow committee members to review an amendment to the bill that was introduced on that day.

Uniform Real Property Transfer on Death Act
HB 124 proposed to enact the Uniform Real Property Transfer on Death Act, which would allow real property owners to execute and record a transfer on death (TOD) deed. More than half the states have either adopted this uniform act or otherwise allowed TOD deeds. Concerns raised by estate planning attorneys, including the impact it would have on the registry of deeds, the House Judiciary Committee voted to retain the bill on March 2, 2021.

Michael P. Pancebianco is an attorney at Sheehan Phinney in Manchester. He advises and represents individuals and families on their estate planning, probate, and trust administration needs, and can be reached at (603) 627-5239 and mpanebianco@sheehan.com.
Trust and Estate Law

The SECURE Act One Year Later

By Christina L. Krakoff

The Setting Every Community Up for Retirement Enhancement Act (the “SECURE Act”), effective January 1, 2020, has significantly changed the way estate planning attorneys and advisors guide their clients through retirement asset planning. Looking back one year later, little guidance has been issued and questions still remain as to exactly how the SECURE Act will affect existing estate plans.

A. The SECURE Act – the Basics

Among other changes, The SECURE Act implements new rules governing the distribution of retirement account assets to designated beneficiaries. Prior to the SECURE Act, when an IRA was left to a “designated beneficiary,” the required minimum distributions (“RMDs”) could be spread out, or “stretched,” over the designated beneficiary’s lifetime. If the intended beneficiary did not qualify as a “designated beneficiary,” then the account was required to be withdrawn within 5 years of the account owner’s death. “Designated Beneficiary” is either an individual or what is commonly referred to as a “see-through trust” – either a conduit trust or an accumulation trust (discussed below).

For most beneficiaries, the SECURE Act eliminates the stretch option, requires no RMDs and mandates full withdrawal within 10 years of the participant’s death. However, five classes of Eligible Designated Beneficiaries (or “EDBs”) may still utilize the stretch payout rules – the participant’s spouse, the participant’s minor children, disabled beneficiaries, chronically ill beneficiaries, and beneficiaries who are less than 10 years younger than the plan participant.

These classes of EDBs also have their own special stretch rules. For minor children, payments are stretched for the child’s lifetime until they reach the age of majority, at which point the 10 year rule starts. For disabled beneficiaries, beneficiaries with a chronic illness, and beneficiaries who are less than 10 years younger than the participant, the payouts are stretched until the beneficiary’s death at which point the 10 year rule starts for the successor beneficiary.

B. Applying the SECURE Act to trusts

The new rules apply to trusts as well as individuals. A careful review of existing trusts and the beneficiaries of those trusts is crucial to understanding how the SECURE Act rules will be applied after the participant’s death.

Trust planning with IRAs involves two types of trusts. The first is a “conduit” trust which is designed to receive the payouts and channel them directly to a single beneficiary. For non-EDBs, the conduit trust will no longer work to minimize taxes or spread distributions over the beneficiary’s lifetime. As there are no longer any RMDs for non-EDBs, the trustee can control the frequency of payouts but must distribute the entire account within the 10 year period. Even so, IRA participants may prefer that the Trustee have the discretion to keep those distributions in Trust.

An “accumulation” trust permits the Trustee to receive payouts from the IRA and hold them with no requirement to immediately distribute them to the beneficiary. Unlike a conduit trust, an accumulation trust previously permitted multiple beneficiaries with the oldest beneficiary’s life expectancy determining the applicable distribution period.

To qualify as a “Designated Beneficiary” and get the benefit of the stretch, only individuals (not charities or another estate) could be beneficiaries of an accumulation trust. The SECURE Act did not change the fact that if an accumulation trust does not qualify as a Designated Beneficiary the 5 year rule applies. With the complete elimination of the stretch rules for Non-EDBs,

SECURE ACT continued on page 39
In the case of In re Marie G. Dow, the New Hampshire Supreme Court reversed the 10th Circuit Court-Brentwood Probate Division’s finding that a child of the decedent was not a pretermitted heir under RSA 551:10 when a foreign Last Will failed to mention the names of her children and left her estate to the Testator’s son’s ex-wife, Leslie Dow. Marie G. Dow moved to New Hampshire from Massachusetts approximately one year before her death and did not update her will before her death. The will was executed in Massachusetts and prepared pursuant to Massachusetts law, where the Testator had previously resided before becoming a New Hampshire resident. The will contained a choice of law provision which provided it was to be enforced according to the laws of the Commonwealth of Massachusetts. It also had a separate provision that the testatrix intentionally omitted to mention, devise, or bequeath her estate to any “person” or “persons” other than those mentioned in her will. There was no specific reference to her two sons within the four corners of the will. The will was accepted for probate in New Hampshire and found that the decedent was a New Hampshire resident. The probate court then denied a motion to determine Christopher Dow as a pretermitted heir of his mother’s estate and denied his motion for reconsideration, erroneously upholding its decision that he was not a pretermitted heir under NH RSA 551:10. Instead, the probate court applied the provisions of Mass. Gen. Laws Ann. ch. 190B, §2-302 in its determination that Christopher Dow was not a pretermitted heir and relied on the choice of law provision in the will. An appeal to the New Hampshire Supreme Court followed. The New Hampshire Supreme Court reversed the lower court’s decision and held that Christopher Dow was in fact a pretermitted heir under Massachusetts law and RSA 551:10.

In its decision, the New Hampshire Supreme Court first explained that the probate court erred when it applied the Massachusetts pretermitted heir statute rather than New Hampshire’s RSA 551:10. Instead, the probate court applied the provisions of Mass. Gen. Laws Ann. ch. 190B, §2-302 in its determination that Christopher Dow was not a pretermitted heir and relied on the choice of law provision in the will. An appeal to the New Hampshire Supreme Court reversed the lower court’s decision and held that Christopher Dow was in fact a pretermitted heir under New Hampshire law and RSA 551:10.

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Trust and Estate Law

When in Doubt: A Trial Lawyer’s Call for Caution When it Comes to Remote Signings

By Andrea J. Schweitzer

Like the New Hampshire Legislature’s enacting House Bill 1249 in July 2020, states across the country are taking steps to permit remote execution of estate planning documents. In some instances, remote notarization and witness attestation are temporary conveniences, but as more drafters utilize these accommodations, the question becomes one of longevity: are these changes here to stay? And if so, the question for this attorney becomes one of risk as, surely, one size does not fit all.

No doubt, it has been interesting to observe how recent efforts to modernize estate planning have been welcomed with open arms, especially as virtual signings and remote notarization catapult trusts and estates attorneys into the 21st century. Those “tried and true” procedures that estate planners have developed over decades of practice may become relics of a pre-COVID era. This is especially so as some attorneys tout the convenience of remote execution. But, pragmatism dictates that with this new flexibility comes new traps for the unwary.

Despite some accommodations, like remote notarization and witness attestation, permitted by recent (and, in many instances, temporary) executive orders and legislation, the underlying elements of due execution and testamentary capacity must be satisfied to create a valid estate plan. In the coming years, there will undoubtedly be litigation challenging the validity of estate planning documents signed during the pandemic and under extended state of emergency orders on the grounds of execution irregularities, lack of testamentary capacity, and undue influence. Therefore, it is important that drafters are cognizant of statutory execution requirements. See RSA 551:1 (testator must be married or at least 18 years old; testator must be of “sane mind”); RSA 551:2 (will must be in writing; will must be signed by testator or some person at his express direction and in his presence; and will must be signed by two or more “credible” witnesses, at the request of and in the presence of the testator, who can attest to the testator’s signature).

While remote or virtual signings as a convenience are generally fine, when “red flags” are present there needs to be heightened sensitivity. All things being equal, if there are “red flags,” proceed with extra caution. In probate litigation, family dynamics are not only important after the fact, but they are also a key predictor of the possibility of post-death disputes. Our cases repeatedly involve the same scenarios: children of the first marriage contesting the plan favoring the testator’s later spouse (in one case, she was wife #8) or the plan wholly or mostly disinherits a child. In these cases, estate planning counsel, having in mind that she will be an important witness when the plan is challenged, needs to be extra vigilant if considering a remote signing or some other abbreviated execution conference.

For all signing events, it is important that counsel document testamentary capacity. Such practice is even more vital when “red flags” are present. The same is also true when it comes to attorneys who elect to take advantage of these new “options” (i.e., virtual signings): be prepared to “paper the file,” possibly more than usual. In other words, document that you have confirmed capacity, such as the questions (preferably, non-leading) posed to and answers provided by the testator/settlor. On the day of signing, did mom have all of the elements of capacity: did she know who her family was? That her spouse predeceased her? The nature and scope of her wealth? The dispositional scheme of the plan?

Because of the novelty of remote and virtual execution, one response may be...
New to New Hampshire? May want to look at that Estate Plan

By Joyce Hillis

The past year has seen an unprecedented influx of people deciding to call the Granite State home. COVID has changed our world in many ways, not the least of which is the introduction of remote work and schooling. Many people have taken this opportunity to purchase a home in New Hampshire or make their vacation home their primary residence to take refuge in the additional space and freedom New Hampshire provides during these challenging times.

With a full year having passed since the start of the pandemic, you and your clients need to determine if their escape north may have caused a change in their residency status. If so, their estate plan may be valid as-is; however, I recommend the client review their existing plan to determine if there are any necessary or suggested changes due to crossing state lines.

The first thing I advise clients when moving to a new state is to update their advance directives. Each state has different statutory forms and requirements for advance directives. The following are a few other factors I look at to determine if it is necessary to update a client’s other out-of-state planning documents such as wills and trusts.

Many states have different execution requirements with respect to the number of witnesses required, whether a notary is required, and the steps to make a will self-proving. For a will to be valid in New Hampshire, the requirements under RSA 551:2 include the need for two disinterested witnesses. Additionally, for a will to be self-proving, RSA 551:2 requires a third independent party, namely, a notary public or justice of the peace to attest to additional requirements. While an out-of-state will is still valid if it meets the signing requirements of the state in which it was signed, you will want to ensure that it is self-proving to avoid the need to prove a will in common form upon the client’s death.

New Hampshire enacted a version of the Uniform Power of Attorney Act in 2018, but the provisions are not truly uniform among all states. For example, under the New Hampshire Act, the principal is required to sign a disclosure statement under RSA 564-E:113 before signing the power of attorney and agents are required to sign an acknowledgment under RSA 564-E:113 before they have authority to act. Additionally, although without legal support or rationale, some larger national banks will not accept a power of attorney that is over five years old as they consider it a stale document. Even without a cross border move, I almost always recommend clients sign new financial powers of attorney when they come in for an estate planning review.

The following are a few other factors I look at to determine if it is necessary to update a client’s other out-of-state planning documents such as wills and trusts.

Wills

Many states have different execution requirements with respect to the number of witnesses required, whether a notary is required, and the steps to make a will self-proving. For a will to be valid in New Hampshire, the requirements under RSA 551:2 include the need for two disinterested witnesses. Additionally, for a will to be self-proving, RSA 551:2 requires a third independent party, namely, a notary public or justice of the peace to attest to additional requirements. While an out-of-state will is still valid if it meets the signing requirements of the state in which it was signed, you will want to ensure that it is self-proving to avoid the need to prove a will in common form upon the client’s death.

Community Property States

If married clients move to New Hampshire from a community property law state, their plans likely reflect the presumption that all property acquired during the marriage by either spouse is considered akin to joint property. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin are the current community property states. Additionally, several jurisdictions, such as Alaska, allow you to “opt in” to community property status. You will want to carefully review plans of clients who previously lived in one of these community property states to ensure their wishes are still accomplished as New Hampshire is a common law property state, especially if the clients intend to leave assets to people other than their surviving spouse.

Estate Tax

As we know from seeing the license plates on Friday afternoons, many visitors from the surrounding New England states and New York own second homes in New Hampshire. Unlike New Hampshire, all other New England states and New York have a state level estate tax. These surrounding states are just a few of the seventeen states with a state level estate or inheritance tax. Some of these folks have decided to treat that second home as their primary residence. These clients likely have estate plans which incorporate credit shelter tax planning which may no longer be valid.
Remote Document Signings: Where There’s a Will, There’s a Way

By Susan R. Abert

Estate planning attorneys, like everyone else, are trying to minimize face to face contact with other persons due to the COVID-19 pandemic. Attorneys are meeting with clients virtually, by phone, Zoom, or other platforms. Virtual meetings with clients have become routine, and for the most part are working well. Remote signings of estate planning documents historically have not been permissible in New Hampshire; however, remote signings can now be offered to clients for at least the duration of the State of Emergency. This article will outline the development of the availability of remote notarization and document signings in New Hampshire.

Remote document signings are presently authorized under either (1) Emergency Order 11 (effective March 23, 2020), or (2) NH RSA 456-B:2 and NH RSA 551:2, III (effective July 17, 2020), both described below. Both options remain effective during the Governor’s State of Emergency pursuant to Executive Order 2020-04, which began March 13, 2020 and is still ongoing via numerous extensions (the Sixteenth Extension, as of this writing).

On March 23, 2020, Governor Sununu signed Emergency Order 11, “Temporary authority to perform secure remote notarization” (the “Order”), permitting online remote notarization of documents by any New Hampshire notarial officer. Remote notarization can be performed for an individual with whom the notary can “communicate simultaneously by sight and sound through an electronic device or process at the time of notarization.” The notary must reasonably identify the individual, and is required to create and retain an audio and visual recording of the notarization process, which recording must be retained for the remainder of the notary’s term of office (including renewals).

Surprisingly, the Order permits remote notarization for individuals located outside of New Hampshire, if the document being notarized pertains to certain New Hampshire matters and the notary “has no actual knowledge” that the remote notarization is prohibited by the laws of the jurisdiction in which the individual is located. The Order does not require that the individual even be located in the United States. It should also be noted that the Order does not contemplate the use of electronic notary seals; once the (paper) document is signed, it is to be mailed to the notarial officer for certification and execution using the notary’s official seal.

For the estate planning attorney, the Order had two major issues. First and foremost, it did not change the requirement, for the execution of a Will that the testator and the witnesses all sign in the physical presence of each other. Second, the audio-visual recording retention requirement is a logistical challenge for most small legal offices. Retaining an audio and visual record of the signing indefinitely is simply not practical for most small firms.

Fortunately, the New Hampshire State Legislature acted quickly to address these issues for attorneys. On July 17, 2020, NH RSA 456-B:2 was amended to add subparagraph (VII), which permits the drafting attorney (or another attorney or paralegal under her supervision) to remotely notarize estate planning documents when the attorney and client can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarial act. The drafting attorney (or another attorney or paralegal under her supervision), in this scenario, is not required to retain an audio and visual record of the recording. This law also validates and confirms any notarial act performed in compliance with Emergency Order 11.

The statutory requirements for execution of a Will were likewise amended, in NH RSA 551:2, III, to provide that the physical presence requirement is satisfied if the drafting attorney (or another attorney or paralegal under her supervision) is the notarial officer, and the attorney, witnesses and testator can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarial act. The Will can be signed in counterparts, with the client viewing the witnesses signing a counterpart page of the Will electronically.

With these revised statutes, the full array of estate planning documents can...
Potential Acceleration of Federal Estate Tax Exemption Decrease, Is It Time to Act?

By Timothy Connors

Now that the 2020 election is behind us and our government has transitioned to a new administration, significant estate tax changes may be on the horizon. During the 2020 Presidential campaign, President Biden announced a tax plan that could potentially decrease the federal estate tax exemption from the current amount of $11.7 million for individuals to the exemption amount existing in 2009 of $3.5 million.

In view of the current political climate nothing is certain, but if implemented, these changes could give rise to the need for short-notice estate plan modifications or aggressive gifting strategies to take advantage of the higher exemption levels currently in place. Complicating matters further, if the legislation executing this change does not address the timing of implementation, any reduction in the exemption level made effective during calendar year 2021 would apply retroactively to the beginning of the calendar year. To avoid negative tax outcomes, estate planning attorneys who have clients who are considering use of aggressive gifting strategies must do so with a careful eye towards the possibility of retroactive application.

Proposed Changes

In 2018, the Tax Cuts and Jobs Act (TCJA) doubled the estate, gift and generation-skipping transfer tax exemptions to $10 million for each individual, but only for 2018 through 2025. The exemption level is indexed for inflation and is $11.7 million in 2021. Transfers in excess of the exemption amounts are subject to gift or estate tax at a flat rate of 40 percent. Additionally, the TCJA retained federal estate tax exemption “portability,” meaning a surviving spouse can inherit a deceased spouse’s unused federal exemption provided the appropriate election is made on the deceased spouse’s estate tax return. Under the TCJA these exemptions will be reduced to $5 million, indexed for inflation, effective January 1, 2026.

President Biden’s campaign tax proposal could accelerate the estate tax exemption reduction to as early as the current tax year and lower the amount further to $3.5 million in 2021. Transfers in excess of the current exemption amounts are subject to gift or estate tax at a flat rate of 40 percent. Another benefit of lifetime gift planning opportunities.

Estate Planning Opportunities

In the absence of clarity regarding the timing of implementation, any reduction in the exemption is reduced to $5 million, indexed for inflation, effective January 1, 2026. While most experts do not believe that the legislation will be silent on the subject or specifically drafted to apply retroactively, the possibility and accompanying negative tax implications cannot be ignored.

The Issue of Timing

Just as individuals and investment professionals struggle to “time” the stock market with investing decisions, estate planners and clients looking to make large gifts in the current year in anticipation of a potential reduction to take advantage of the current higher exemption levels could be risking a large tax bill should the legislation not address the timing of implementation. This is because the Internal Revenue Code Section addressing computation of the gift or estate tax (IRC Section 2505(a) (1)) effectively makes any change made during a calendar year apply retroactively to any gift made during that year. In short, if the proposed legislation is silent as to date of effectiveness, it is retroactive.

Exemption “portability” associated with the TCJA will no longer exist. The estate tax exemption amounts are subject to gift or estate tax (IRC Section 2505(a) (1)) effectively makes any change made during a calendar year apply retroactively to any gift made during that year. In short, if the proposed legislation is silent as to date of effectiveness, it is retroactive.

To avoid negative tax outcomes, estate planning attorneys who have clients who are considering use of aggressive gifting strategies must do so with a careful eye towards the possibility of retroactive application. The changes, some of which are outlined below. For clients who are willing to take a “wait and see” approach, if there is a time lag between signing of the new legislation and implementation, it may allow a window to employ strategies to minimize the impact of the changes. In order to capture the benefit of the current large federal exemption, there may be a planning opportunity for some individuals to use the exemption in an amount that exceeds the amount of the lower exemption of the future. Of course, we do not know what the new exemption amount will be, but if we assume the exemption will be reduced to $5 million, an individual with an estate significantly in excess of that amount may wish to consider using more than $5 million of the exemption before the reduction takes effect. For example, if the exemption is reduced to $5 million, and you use only $5 million of the exemption prior to the implementation of the legislation, no portion of the current excess exemption over $5 million or “bonus” exemption was used, and you have no exemption remaining post-reduction. Again, assuming the exemption is reduced to $5 million, if you use $6 million of the exemption prior to the reduction taking effect, while you will have no exemption remaining, you will have captured $1 million of the bonus exemption. Another benefit of lifetime gifting is that the post-gift appreciation of any amount gifted is transferred free of gift and estate tax. EXEMPTION continued on page 40.
Proposed Legislation on Advance Directive Statute

By Sarah Paris

Senate Bill 74 is proposed legislation that, as drafted, would require substantial changes to NH RSA 137-J, Written Directives for Medical Decision Making for Adults Without Capacity to Make Health Care Decisions. While this article is meant to highlight some of the more substantive changes outlined in the proposed legislation, it is not meant to address all changes detailed therein. If the proposed legislation is passed as currently drafted, estate planners will likely need to make significant changes when drafting their Advance Directive. Given the suggested changes, it is recommend that estate planners familiarize themselves with potential issues that may arise as a result. As it stands, the proposed legislation is currently in review by the Office of Legislative Services and may be subject to further edits after special interest groups have had a chance to weigh in. The proposed legislation was drafted with input from various stakeholders including medical professionals and estate planning and elder law attorneys. The legislation appears to have garnered fairly broad support for many of the proposed changes.

“If the proposed legislation is passed as currently drafted, estate planners will likely need to make significant changes when drafting their Advance Directive.”

Before detailing some of the more substantive changes proposed under SB74, reviewing some of the issues the legislation intends to address seems a pertinent first step. One of the precipitating factors for the suggested changes is the medical and legal community’s awareness that people often sign their Advance Directive without the assistance of a professional (either medical or legal). Both lawyers and medical practitioners have found that, upon review of Durable Powers of Attorney for Health Care and Living Wills prepared without advice, the elections made in these documents do not necessarily align with the Principal’s intentions. This is due, in part, to the average person’s general inability to decipher the language incorporated in the documents and the implications thereof. Another issue drafters of the proposed legislation wish to address is the ability to execute the Advance Directive remotely. At present, Emergency Order #11 under Executive Order 2020-4 that currently allows remote notarizations and executions during the pandemic will inevitably sunset, but SB74 seeks to allow for continuation of this ability. SB74 also seeks to change the format of the current Durable Power of Attorney for Health Care and Living Will documents so that New Hampshire’s current “opt in” format would become an “opt out” format, similar to that of Massachusetts. In this instance, rather than the Principal granting the Agent certain specific authorities within the Advance Directive (as is currently the practice), the Agent would automatically have broad authority to make the Principal’s health care decisions, subject only to certain specific limitations the Principal places on the Agent. The proposed new format includes a list of limitations the Principal can choose from to reduce the broad authority the Agent is otherwise granted under the document. This list of potential limitations includes the familiar authorities of the current statutory format (i.e., authority for an Agent to terminate life-sustaining treatment; to request or agree to a DNR; to authorize treatment over objection; and an ‘Other’ section allowing the Principal to add miscellaneous limitations not otherwise detailed. I do appreciate the drafters’ intent to clarify certain provisions, specifically with regard to the ‘treatment over objection’ provision as my clients have had difficulties understanding this issue, even with guidance and advice.

Another important topic addressed by SB74 is the agent’s authority to consent to clinical trials under specific conditions, any such trial must be authorized by an institutional review board and be consistent with the relevant state and federal regulations. SB47 requires that an Agent’s consent on behalf of a Principal be consistent with the specific authority granted under the Durable Power of Attorney for Health Care and that it outline the criteria to which clinical trials can be consented absent a specific grant of authority for Health Care and that it outline the criteria to which clinical trials can be consented absent a specific grant of authority. The proposed legislation would clarify this issue, stating that the Living Will’s purpose is to provide guidance to the Agent, surrogate, or attending practitioner in making health care decisions on behalf of the Principal. Further, while SB47 proposes to allow Agents the authority to consent to clinical trials under specific conditions, any such trial must be authorized by an institutional review board and be consistent with the relevant state and federal regulations. SB47 requires that an Agent’s consent on behalf of a Principal be consistent with the specific authority granted under the Durable Power of Attorney for Health Care and that it outline the criteria to which clinical trials can be consented absent a specific grant of authority.
necessary. The move to New Hampshire may allow the clients to simplify their plan.

**Trusts**

New Hampshire continues to have beneficial trust and tax laws especially compared to its surrounding states. For example, under New Hampshire law, income generated and accumulated within an irrevocable trust is not subject to New Hampshire’s Inheritance & Dividends tax. The change in residency of a grantor, trustee, or beneficiary of an irrevocable trust to New Hampshire warrants the review of the trust instrument to determine if there is a way to take advantage of New Hampshire’s favorable trust and tax laws, whether through a “decanting,” a trust “modification,” or a change of situs pursuant to the existing terms of the trust.

When looking at the above factors, it is also important to keep in mind whether the move to New Hampshire is expected to be permanent. If the client is not expecting to stay in New Hampshire when life (hopefully) returns to the pre-COVID world, it may be best to leave a more complex plan in place; that is, until the client inevitably realizes New Hampshire is the best place to call home

Joyce M. Hills is a member of the Trusts and Estates team at Devine, Millimet & Branch. She provides trust and estate planning and administration services to both individual and corporate clients.

**Claim** from page 32

Re Farnsworth Estate, 109 NH 15 (1968) and Royce v. Estate of Denby, but the court explained Farnsworth dealt with a testamentary trust within a will in which the testator fixed the administration of the trust in another state. The court explained that in Dow, there was no testamentary trust differentiating it since the case did not involve a trust. This was a key distinction in the case. The court explained that New Hampshire pretermitted statute applies to “wills” not to “trusts” citing In Re Estate of Rubert, 139 NH 276; Restatement (Second) Conflict of Laws, supra; and Robbins v. Johnson, 147 NH 44 (2001). Further, in Royce, the facts were in opposite as the testator in Royce became incapacitated before moving to New Hampshire, never regained capacity, and had no opportunity to change her estate plan. In Dow, the testatrix sold her real property located in Massachusetts two weeks prior to her death and had capacity, but did not update her Massachusetts will after becoming a New Hampshire resident.

This was a case of first impression before the New Hampshire Supreme Court. The court explained that it has not previously contemplated the applicability of the pretermitted heir statute where the facts implicated more than one jurisdiction and a choice of law provision in a will. The court held that New Hampshire law does not support the application of another state’s pretermitted heir statute independent of the testator’s domicile at death with respect to personal property, citing Rubert, supra.

The court further explained that RSA 551:10 is not a rule of construction, but a conclusive rule of law provision referencing another jurisdiction. The court was mention of the Article Eighth in RSA 551:10 when a testator is domiciled in another state. The court explained that in the case. The court further explained that RSA 551:10 applied to the will, the terms within the four corners of her will and regardless of the choice of law provision. Thus, petitioner Christopher Dow was a pretermitted heir.

The remainder of the court’s decision applied RSA 551:10 to the will based on the facts in the case, while considering the terms only within the four corners of the will citing In Re Estate of Treslar, 151 NH 460 (2004), explaining extrinsic evidence is inadmissible to show the testator’s intent in omitting their children from their will, citing In the Matter of Jackson, 117 NH 902. The court further looked at the terms in the will of Marie G. Dow and determined that a reference to “daughter in law” or “granddaughter” was not a sufficient reference to a child without actually specifically naming a child of the decedent citing Boucher, 85 NH 514 (1932), and further explained an indirect reference is not sufficient under RSA 551:10, see also In Re Estate of Osgood, 122 NH 961 (1982), adding to the court’s line of case law on the subject of what is a sufficient reference for purposes of RSA 551:10.

Also, a noteworthy conclusion of the court was mention of the Article Eighth in the testator’s will that stated the testator had “intentionally omitted to mention, or to devise or bequeath or give any thing ... to any person or persons other than those mentioned in this my last will and testament,” which was determined not a sufficient indirect reference to the petitioner to demonstrate he was intentionally omitted by his mother, citing In Re Estate of Laura, 141 NH at 634.

Overall, the New Hampshire Supreme Court opted not to carve out an exception to RSA 551:10 when a testator is domiciled in the State of New Hampshire, when the will applies to tangible personal property and when the testator’s will contains a choice of law provision referencing another jurisdiction. Estate planners should be careful to reference excluded children in a testator’s will by specific mention of the child and avoid broad references. Further, anyone who moves to New Hampshire from other jurisdictions should update their current will to be certain it complies with New Hampshire law and their intentions.

Nadine Catalifmo, focuses her practice on trust and estate administrations and estate planning in NH and MA. She can be reached at nadine@nhprobateattorney.com or by visiting MA-NHestatelaw.com

Lisa Bellanti in an attorney with the Cassava Law Office, and focuses her practice in trust and estate administration and litigation.

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**SECURE Act** from page 31

...however, accumulation trusts that qualify as a designated beneficiary are limited to the 10 year rule. In addition to ensuring accumulation trusts qualify as Designated Beneficiaries, attorneys and advisors must carefully consider client goals and income tax burdens inherent to an accumulation trust. Is the intended beneficiary a spendthrift, have creditor issues, or battling substance abuse issues?

While the accumulation trust option does offer asset protection, the benefit comes at a significantly higher tax cost due to the compressed income tax brackets for trusts. Trusts reach the highest federal income tax bracket after exceeding $12,950 per year. Where a client is less concerned about asset protection, naming an ultra-wealthy beneficiary directly may make more sense if the intended beneficiary is in a lower tax bracket. Where a client hopes to benefit multiple non-EDBs, an accumulation trust may make more sense since the tax liability is properly managed. For example, IRA owners wishing to benefit grandchildren typically choose an accumulation trust route.

C.  Issues and Open Questions

1 year later

What questions remain? 1 year later? While the IRS has issued some guidance in a few issues and providing clarity, what if a trust has multiple beneficiaries who are not all EDBs and some who are not? As written, it appears that if any beneficiary is non-EDB, then no stretch is available. Commentators are hopeful that the IRS will adopt family friendly regulations addressing these issues.

What if an intended beneficiary qualifies as an EDB in more than one category? For example, a minor child of the participant is also disabled. Which special stretch rule applies? Again, this is not contemplated by the statute and will require IRS regulations for clarity.

The SECURE Act provisions do not define “age of majority.” State laws vary regarding age of majority. Hopefully the IRS will issue guidance so practitioners can advise their clients regarding the time a minor child’s stretch payout will end. These are just a few of the open questions we are left with one year following the enactment of the SECURE Act. Hopefully the IRS will issue guidelines to assist attorneys, tax advisors and their clients in planning with retirement assets for a diversity of beneficiaries.

Christina is an associate in McLane Middleton’s Trusts & Estates Department. She can be reached at (603) 628-1458 or christina.krakoff@mclane.com.

**Signings** from page 33

...an increased reliance on video-recorded signings. Be mindful that such recordings are saved for posterity—good, bad, or indifferent. Your client may seem “totally with it,” but years later, the video may not “look as good” as you thought it did at the time it was taken. For example, maybe you did not realize that you asked leading questions or that during your interview the testator mixed up the names of her children. Also, remember that, not only must recorded signings satisfy the requirements of due execution, but they may also comply with recording consent laws. New Hampshire, for example, is a “two-party” or “all-party” state, meaning that everyone who is party to a conversation must agree to the recording.

In a similar vein, is a named beneficiary in the room with the testator during the remote signing? While virtual conferences are convenient, you need to be sure that someone out of view of the camera is not “running the show” or otherwise unduly influencing the execution of these documents.

There are other practical concerns with remote signings. New Hampshire’s recent legislation provides that an attesting witness will be treated as if they were in the physical presence of the testator if the witness can communicate simultaneously with the testator, the other witness(es) and notary by sight and sound through an electronic device or process (e.g., Zoom, Skype, Microsoft Teams). What if there is an issue with internet connection (yours, the testator’s, the witnesses)? Let’s say you are in the process of explaining the dispositional scheme when you “freeze”; you do not realize it and the testator is not paying enough attention to notice, so even though you thought you had explained the documents sufficiently, the testator missed a key part of your discussion. As with pre-COVID signings, how do you make sure everyone has the same version of the document when it comes time to sign or attest? Of course, additional complications crop up when more than one estate planning instrument is being executed during the same conference.

Yes, this is all new ground, and no one has all the answers; but, it is important to take a step back and ask whether this should be the “new normal.” Regardless, it is imperative that drafters take extra precautions when it comes to virtual signings. Similarly, remain vigilant and be mindful of “red flags.” You will be doing your client and your future self a great service.

AJ Schweitzer is an associate in McLane Middleton’s Litigation Department and is a member of the firm’s Probate Litigation Practice Group. She can be reached at andreaschweitzer@mclane.com or (603) 628-1333.

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Moving forward, as of this writing, the Uniform Law on Notarial Acts is pending in the State legislature (SB134). This bill would not only permit remote notarizations, but also authorize the use of an electronic notary stamp. In its present form, the bill would not change the existing statutory exceptions for drafting attorneys, which would continue to be limited to the duration of the State of Emergency. Attorneys wishing to remotely notarize documents after the State of Emergency ends, would be subject to the extensive recordkeeping and identity proofing requirements applicable to all remote notarizations, including the retention of audiovisual recordings.

Many estate planning clients are elderly and have a much higher risk of serious complications should they contract COVID-19. The ability to work with these clients in a manner that does not compromise their health and safety cannot be understated. Virtual conferences to all remote notarizations, including the identity proofing requirements applicable to provisions within them; in the event that the client initials a provision of the document incorrectly, or desires to make a last minute change, the document cannot be easily corrected; coordination of video so that witnesses and testator can all see one another sign a will can be a challenge; and the documents themselves must be sent to the client and back again after signing. The process is simply easier, more streamlined and best conducted in person.

Susan R. Abert is an attorney with a practice limited to the areas of estate planning, probate and trust administration, Medicaid and special needs planning, guardianships and other general elder law matters, at Norton & Abert, P.C. in Keene, New Hampshire. She can be reached at sr@nortonabertlaw.com or at (603) 355-8858.

Conclusion
In today’s volatile and rapidly changing political environment, there is no guarantee that the exemption decrease will be accelerated. While we cannot predict the timing and scope of any potential changes, estate planners and clients concerned with the possibility of acceleration should plan now and be ready to implement the chosen strategy quickly.

Tim Connors is an estate planning attorney, with Dowes Rachlin Martin PLLC (DRM), Trust and Estates Group in Lebanon, NH. Tim advises individuals, businesses and entrepreneurs on all aspects of trust and estate planning.

If a married couple is concerned that they cannot make a gift at such a high level without compromising their continued financial security, one possible solution may be for one or both of the spouses to create an exemption trust before the exemption is reduced for the benefit of the other spouse. The exemption trust for the benefit of a spouse can provide a safety valve, or at least a “delayed” gift, to the next generation. This technique enables the gifting spouse to potentially continue to benefit from the gifted assets indirectly, through their spouse. This strategy works well as long as the couple remains happily married and the beneficiary spouse outlives the donor spouse. The indirect benefit of the gifted assets expires when the donee spouse dies.

Exemption
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Legislation
The substantive changes outlined above (i.e., changing New Hampshire from an “opt in” to an “opt out” state; clarification to the authority and purpose of the Living Will; allowing the Advance Directive to be executed remotely and granting Agents the authority to consent to clinical trials) are only some of the changes included in the proposed legislation. Other proposed changes to the statute include removing the definition of “near death,” adding a definition for “actively dying,” modifying the disclosure statement and changing the duration of a surrogate’s authority from 90 to 180 days.

It still remains to be seen if SB47 will be signed and approved by the legislature but, given the support the current bill has with many stakeholders, it seems likely that some version of this proposed legislation will become law. There is a lot to unpack and the changes will definitely have an impact on estate planners should all or a portion of these proposed changes be passed. As such, all those who could potentially be impacted should keep a watchful eye as the progression of SB47 continues to unfold.

Sarah Paris is an attorney practicing at Mornneau Law in Nashua, NH where she focuses on estate planning and estate and trust administration.

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The Circuit Court in a Pandemic—and Beyond

By David D. King, Administrative Judge

It was a year ago that I cut a vacation short to hastenly return to New Hampshire to deal with my first pandemic—it seemed strange driving over the Green Mountains with very few other cars, while on one of several conference calls that day to plan our strategy and draft the first of what would be many emergency orders. It was March 15, 2020. The next day we began the process of cancelling nearly 20,000 scheduled hearings.

The past year has been challenging for the Circuit Court, for those of you in law practices, governmental positions, and other businesses, and for the public who need the services of our courts. With little warning, all of us had to quickly adapt.

The largest change in the Circuit Court was the vast and immediate reduction in in-person hearings. We knew on March 16th that it would be too risky to have inside-congregate gatherings for most activities, including court hearings. Still, the judges and staff in the circuit courts around the state have had one of our busiest years ever. After a brief slowdown in late March when we handled emergency matters only, we quickly devised a plan to reduce cases and ensure that anyone who needed access to the courts had a way to get the relief they sought, whether in-person, telephonically, or by video conference. Most of our judges are physically in our 34 courthouses around the state every day, with a few working remotely due to personal risk factors or quarantine requirements. We have five funded full time judicial vacancies. Because of schooling/childcare/childcare leave necessitated by COVID, we have operated with an average of 75% of our staff on any given day to support the judges, stakeholders and members of the public needing access to the courts.

Despite these hard times, I want to highlights a few accomplishments of the past 12 months:

- Circuit court judges have been on the bench the vast majority of each workday conducting hearings, often without support staff in the courtrooms. Between March 16th and December 31st, our case management system shows we conducted 97,765 hearings, primarily telephonically or by video.
- Our Information Technology team took 369,324 calls from March 1, 2020 to March 1, 2021, an average of 100 calls per day. During that time most agents have been working from remote locations to reduce staff density and to improve the air quality in the Information Center. Wait times are often longer than they were pre-pandemic due to reduced staffing and high call volume, but this critical lifeline to the courts has remained available without interruption—no calls have gone unanswered or unreturned.
- Although courthouses remained open for domestic violence protection order filings following the Governor’s State of Emergency issued March 13, 2020, we saw a 21% drop in domestic violence petitions filed in March-April 2020 compared to March-April 2019, and a 90% drop in stalking petitions filed. Recognizing a significant public safety concern these reductions were represented, working collaboratively with key stakeholders, we developed a process for receiving domestic violence and stalking petitions by email. Although the number of domestic violence and stalking petitions per month remains below pre-COVID levels, the email filing pilot helps to narrow the gap and ensures access to the circuit court’s vital public safety function.
- At the request of stakeholders, including hospitals and the New Hampshire Hospital Association, during the early stages of the pandemic, the circuit court issued new emergency expedited protocols for adult guardianships. These protocols were developed to allow the court and stakeholders to respond to any surge in critical care patients and to the potentially urgent guardianship needs of those patients.
- Variations on existing programming have been developed to provide access to justice for tens of thousands of litigants, the reality is that we cannot keep up with the volume of cases to be heard and, as a result, many cases are backlogged. Specifically, pre-pandemic, criminal trials were scheduled and resolved in conference courtrooms, in multiple groups of 10 to 20 per day, as the vast majority of cases resolved by plea, dismissal, necessary continuance, or other resolution short of a lengthy trial. Now however, we must individually schedule such defendants for in-person trials because we cannot safely summons 50 people (defendants, defense attorneys, prosecutors, witnesses) to the courthouse at the same time slot on the docket. This necessary change in scheduling practice has resulted in a backlog of over 1,000 criminal cases awaiting a trial date.
- Similarly, civil and small claims matters used to be scheduled for multi-case in-person hearings. Since October, we have conducted remote civil pleadings and remote telephonically-mediated, to advance 2400 small claims cases. Of the 650 mediated cases thus far, over half resulted in the case settling without further court involvement. Despite these remote hearing/mediation accomplishments, pandemic restrictions on in-person hearings, prioritization of other case types, and an increase in these types of cases being filed have resulted in a significant backlog.

Lastly, while many family cases have been resolved through remote hearings, a number of day-long or multiday divorce/parenting cases are awaiting docket time for their final hearings.

We know what we have to do and are working on several plans to attack the backlogs as soon as we are further along with vaccinations, as we on-board additional judicial resources, and when we can begin to open the courts back up to some degree.

Here’s where I ask for your assistance:

We credit the judges and staff of the circuit court for the flexibility, dedication and stamina they have demonstrated. And we credit you. This pandemic has forced us all to amend many of our longstanding business practices to continue to provide access to justice. We have learned many things over the past year. We are now evaluating some of the changes that have been made to our processes to determine how best to conduct business going forward, as we hopefully move to a more normalized life later this year. We expect that the new normal will be somewhat different than how we operated a year ago, and the circuit court will continue to evolve as necessary to resolve the legal disputes that come before us. Forced to change our practices quickly, we know that some of the changes we instituted were less than ideal at times while others are ones we might want to keep long term. In the coming days, we will post a survey on the NHJB website to gather your input and suggestions for pandemic-induced changes to keep as we move forward. We hope to hear from you.

Jaffrey’s Citizen of the Year Award Goes to Bernard Hampsey

By Scott Merrill

Judge Bernard Hampsey, who served the New Hampshire court system for 39 years as a superior court justice and member of the New Hampshire Board of Probation, was the 2021 recipient of the Citizen of the Year Award in Jaffrey, N.H.

The award was presented by attorney Jeffrey Crocker, last year’s recipient, on behalf of the Jaffrey Chamber of Commerce.

“This year’s citizen of the year award [recipient] needs absolutely no introduction,” Crocker said. “He is a fixture. And in the language of legalese, a fixture is something that is securely and permanently attached to a structure. For the past 60 years our citizen of the year, Bernie Hampsey, has been a fixture, securely and permanently attached to the structure of the courts. The legal definition of the term ‘fixture’ perfectly describes the contributions of virtually everyone in Jaffrey.”

Judge Hampsey, who practiced as an attorney from 1961-90, says he felt most comfortable on the bench.

“Being a judge, every day is different. You get a variety of cases and this is a big contrast to being an attorney, where you’re always following your clients,” he says. Jacki Smith, deputy clerk of the Hillsborough County Courthouse South, said as Hampsey’s law clerk from 2000-02.

“Judge Hampsey is always part jurist, part jester. He’s an incredibly smart judge,” Smith said, adding that she didn’t get to know him personally until after he retired in 2014. “We all get to see Judge Hampsey’s hand about him and more. He has done so much for his community and can never seem to do enough for the people around him.”

Judge Hampsey retired when he reached the age limit of 70, and said he doesn’t have any problem with New Hampshire’s age restriction for judicial service.

“I know my friend Carol Ann Conboy wasn’t ready to leave and I see the issue,” he says. “But for me, I was fortunate to get appointed by the Bar’s Board of Governors and there’s really no perfect system.”

Upon receiving the award Judge Hampsey spoke of his two close friends, Joe Manning and Bill Driscoll, both past recipients of the award.

“These two fine persons, along with myself, are known as the three amigos,” Hampsey said. “A curious thing recently happened following a sad thing. My good friend Bill Driscoll, who I miss, and he loved me, passed away unexpectedly in late November last year. Well, time passes and along comes the Chamber’s duty to get things together for this year. Why did Bern Hampsey get this award? It’s because I was a particular person the year following the untimely death of my friend Bill Driscoll.”

We believe he had something to do with this selection from on high. Thank Bill Driscoll for any influence he had on the selection.”

The person in Judge Hampsey’s life “who has influenced him the most, he said, is his wife, Jean Letourneau. The couple married in 1960 and moved to Jaffrey in 1961.

“What I’ve done in life and what I’ve given back has occurred because of the woman I’m married to,” Judge Hampsey said. “Sixty years have gone by and that’s 60 years of devotion.”

Hampsey’s wife, who suffers from Alzheimer’s disease, has been in a long-term care facility since 2014, where Hampsey said he had been visiting her four or five times a week before the pandemic.

“I miss seeing her. What I’ve done to help others I’ve done from my heart. But I want to tell you this … I’ve been motivated, inspired and encouraged and supported by the love of my wife. I couldn’t have done things without that inspiration and I can feel it in my body when I’m alone. I can feel her love and I think she can feel mine.”

“My one regret is that as I receive this great honor from the Chamber, my beautiful wife Jean is unable to stand at my side and hold my hand.”

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MARCH 17, 2021 41
**Administrative Law**

Appeal of Conservation Law Foundation (New Hampshire Waste Management Council), No. 2020-0049  
February 2, 2021  
**Affirmed.**

- Whether the New Hampshire Waste Management Council (Council) erred in determining that the Department of Environmental Services acted reasonably in granting a permit to Waste Management of New Hampshire, Inc. notwithstanding findings that a condition of the permit was ambiguous.
- Whether the New Hampshire Waste Management Council erred in permitting its decision on the occurrence of future negotiations to resolve said ambiguity.

In 2017, Waste Management of New Hampshire, Inc. (WMNH) applied to the Department of Environmental Services (DES) for a permit authorizing an expansion of Turnkey Landfill in Rochester (TLR), allowing it to increase TLR’s footprint by approximately fifty-eight acres. The permit was approved because it was determined that the TRL expansion would provide a substantial public health benefit if WMNH complies with certain conditions. Permit Condition 21 requires that each year the facility is in operation, WMNH must demonstrate that the sources from which it accepted municipal solid waste and/or construction debris for disposal achieved a minimum thirty percent waste diversion rate to more preferred methods than landfilling. If WMNH cannot make such demonstration, then it must submit a report to DES evaluating the rate achieved, primary factors affecting the diversion rate, and the practicable measures that WMNH will implement to improve the diversion rate. Condition 21 also requires that WMNH assist 15 or more solid waste generators per year in implementing programs that further solid waste goals and hierarchy set forth in the relevant State statutes. The Conservation Law Foundation (CLF) appealed the order denying CLF’s appeal of the permit issued by the DES.

The Court agreed with the Council’s conclusion that the DES did not act unreasonably in determining that Condition 21, as written, would assist the State in achieving the implementation of the hierarchy goals under the statute because, in part, provides the DES with a data-gathering mechanism. The Court further found that the permit will assist the State in achieving its waste diversion goal and disposal hierarchy by supplying DES with crucial information and will cause WMNH to work with its customers to increase diversion rates. The Court found that the permit, therefore, will assist the State’s efforts to achieve its waste management reduction goals and hierarchy. Based on evidence in the record, the Court agreed with the Council that the CLF failed to meet its burden of showing that the DES active unreasonably when it concluded that the permit satisfied the substantial public benefit requirement. Lastly, the Court pointed out that the lack of a worldwide definition of how diversion rates should be calculated does make it problematic to determine where the State stands with regard to the diversion goals set forth in the relevant statutes, and the Court encourages either the legislature or DES to establish a calculation method.

**Constitutional Law**

February 17, 2021  
Reversed and remanded.

- Whether the trial court correctly dismissed the plaintiff’s claim that the defendants’ regulations violate the contract clauses of the State and Federal Constitutions.
- Whether the trial court erred in entering summary judgment to the defendant regarding the plaintiff’s claims that the defendant’s regulations are ultra vires and violate the takings clauses of the State and Federal Constitutions.

The Long-Term Care Insurance Act (LTCI) governs policies which cover costs associated with long-term care and requires the Insurance Commissioner to issue reasonable rules promoting premium adequacy and to protect the policyholder in the event of significant rate increases, as well as promote the availability of LTCI policies, and facilitate flexibility and innovation while developing LTCI coverage. In 2014, the Commissioner proposed amended regulations which, among other things, would allow insurers to increase rate every three years, subject to the Commissioner’s approval, and would cap the maximum percentage rate increases for LTCI policies based upon the attained age of policyholders. The amended regulations also applied retroactively to rate increases on all LTCI policies. The Court found that the Commissioner’s statutory authority requires the Commissioner to issue reasonable rules that support or encourage insurers in their efforts to maintain premiums at sufficient levels to cover anticipated costs of claims over the life of an LTCI policy. The Court also found that the rate-increase caps in the amended regulations did not promote premium adequacy which, in turn, restricted insurers in raising premiums to a premium adequacy, especially given the unique difficulties in predicting long-term costs for LTCI policies. The Court, therefore, held that, because the amended regulations deprived the Commissioner of discretion to evaluate, on a case-by-case basis, whether increases exceeding the rate-increase caps are necessary to ensure that insurers can maintain premium adequacy, the rate-increase caps in the amended regulations do not promote premium adequacy. Since the Commissioner lacks discretion in the amended regulations to increase rates that exceed the caps and the amended regulations do not promote premium adequacy, the amended regulations are ultra vires and invalid.

Cook, Little, Rosenblatt & Manson, of Manchester (Arnold Rosenblatt and Kathleen M. Mahan on the brief), and Saul Eisen, of Philadelphia, Pennsylvania (Paul M. Hummer and Sean T. O’Neill on the brief, and Mr. Hummer orally), for the plaintiff. Gordon J. MacDonald, attorney general (Samuel R.V. Garland, assistant attorney general, and Anthony J. Galdieri, senior assistant attorney general, and Anthony J. Galdeiri, senior assistant attorney general, on the brief, and Mr. Garland orally), for the defendant.

**Business Law**

The New London Hospital Association, Inc. v. Town of Newport, No. 2019-0616  
February 9, 2021  
**Affirmed.**

- Whether the trial court erred in granting summary judgment to the defendant in the plaintiff’s motion to amend its complaint.

Accordingly, the Court affirmed the trial court’s decision to the defendant. The Hospital argued on appeal that, despite having filed the Form A-9 late, the Town still received the Hospital’s application fulfilling the statutory rule, because the Town physically received the form before it and did not alert the Hospital to any potential filing defects and because the Town ruled on the merits of the Form. The Court held that, because the statute placed the onus on the taxpayer to convince the Town that the filing was late due to accident, mistake or misfortune and the Hospital provided no such evidence, the trial court correctly granted summary judgment in favor of the Town. There was no evidence in the record to suggest that the Town made any implied findings that the Form lacked merit and, therefore, the Court found that the Hospital did not satisfy the statutory deadline or the statutory exception.

The Court went on to find that the Hospital’s claim that the Town’s administrative policy unlawfully treats entities of Lebanon (Adele M. Fulton and Matthew R. Johnson on the brief, and Mr. Fulton orally), for the plaintiff. Hage Hodes, of Manchester (Jamie N. Hage and Katherine M. Lynch of Hampton, on the brief, for the respondent. Gordon J. MacDonald, attorney general (Joshua C. Harrison, assistant attorney general, on the memorandum of law, for the New Hampshire Department of Environmental Services.

The New London Hospital Association, Inc. v. Town of Newport, No. 2019-0616  
February 9, 2021  
**Affirmed.**

- Whether the trial court erred in entering summary judgment to the defendant in the plaintiff’s motion to amend its complaint.

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The Court found that the Commissioner’s statutory authority requires the Commissioner to issue reasonable rules promoting premium adequacy and to protect the policyholder in the event of significant rate increases, as well as promote the availability of LTCI policies, and facilitate flexibility and innovation while developing LTCI coverage. In 2014, the Commissioner proposed amended regulations which, among other things, would allow insurers to increase rate every three years, subject to the Commissioner’s approval, and would cap the maximum percentage rate increases for LTCI policies based upon the attained age of policyholders. The amended regulations also applied retroactively to rate increases on all LTCI policies. The Court found that the Commissioner’s statutory authority requires the Commissioner to issue reasonable rules that support or encourage insurers in their efforts to maintain premiums at sufficient levels to cover anticipated costs of claims over the life of an LTCI policy. The Court also found that the rate-increase caps in the amended regulations did not promote premium adequacy which, in turn, restricted insurers in raising premiums to promote premium adequacy, especially given the unique difficulties in predicting long-term costs for LTCI policies. The Court, therefore, held that, because the amended regulations deprived the Commissioner of discretion to evaluate, on a case-by-case basis, whether increases exceeding the rate-increase caps are necessary to ensure that insurers can maintain premium adequacy, the rate-increase caps in the amended regulations do not promote premium adequacy. Since the Commissioner lacks discretion in the amended regulations to increase rates that exceed the caps and the amended regulations do not promote premium adequacy, the amended regulations are ultra vires and invalid.

Cook, Little, Rosenblatt & Manson, of Manchester (Arnold Rosenblatt and Kathleen M. Mahan on the brief), and Saul Eisen, of Philadelphia, Pennsylvania (Paul M. Hummer and Sean T. O’Neill on the brief, and Mr. Hummer orally), for the plaintiff. Gordon J. MacDonald, attorney general (Samuel R.V. Garland, assistant attorney general, and Anthony J. Galdeiri, senior assistant attorney general, and Anthony J. Galdeiri, senior assistant attorney general, on the brief, and Mr. Garland orally), for the defendant.

- Whether the trial court erred in entering summary judgment to the defendant in the plaintiff’s motion to amend its complaint.

The Court found that the Commissioner’s statutory authority requires the Commissioner to issue reasonable rules promoting premium adequacy and to protect the policyholder in the event of significant rate increases, as well as promote the availability of LTCI policies, and facilitate flexibility and innovation while developing LTCI coverage. In 2014, the Commissioner proposed amended regulations which, among other things, would allow insurers to increase rate every three years, subject to the Commissioner’s approval, and would cap the maximum percentage rate increases for LTCI policies based upon the attained age of policyholders. The amended regulations also applied retroactively to rate increases on all LTCI policies. The Court found that the Commissioner’s statutory authority requires the Commissioner to issue reasonable rules promoting premium adequacy and to protect the policyholder in the event of significant rate increases, as well as promote the availability of LTCI policies, and facilitate flexibility and innovation while developing LTCI coverage. In 2014, the Commissioner proposed amended regulations which, among other things, would allow insurers to increase rate every three years, subject to the Commissioner’s approval, and would cap the maximum percentage rate increases for LTCI policies based upon the attained age of policyholders. The amended regulations also applied retroactively to rate increases on all LTCI policies. The Court found that the Commissioner’s statutory authority requires the Commissioner to issue reasonable rules that support or encourage insurers in their efforts to maintain premiums at sufficient levels to cover anticipated costs of claims over the life of an LTCI policy. The Court also found that the rate-increase caps in the amended regulations did not promote premium adequacy which, in turn, restricted insurers in raising premiums to promote premium adequacy, especially given the unique difficulties in predicting long-term costs for LTCI policies. The Court, therefore, held that, because the amended regulations deprived the Commissioner of discretion to evaluate, on a case-by-case basis, whether increases exceeding the rate-increase caps are necessary to ensure that insurers can maintain premium adequacy, the rate-increase caps in the amended regulations do not promote premium adequacy. Since the Commissioner lacks discretion in the amended regulations to increase rates that exceed the caps and the amended regulations do not promote premium adequacy, the amended regulations are ultra vires and invalid.

Cook, Little, Rosenblatt & Manson, of Manchester (Arnold Rosenblatt and Kathleen M. Mahan on the brief), and Saul Eisen, of Philadelphia, Pennsylvania (Paul M. Hummer and Sean T. O’Neill on the brief, and Mr. Hummer orally), for the plaintiff. Gordon J. MacDonald, attorney general (Samuel R.V. Garland, assistant attorney general, and Anthony J. Galdeiri, senior assistant attorney general, and Anthony J. Galdeiri, senior assistant attorney general, on the brief, and Mr. Garland orally), for the defendant.
In accordance with Rule 58.2(A) and (C), the Supreme Court reappoints retired Circuit Court Judge James H. Leary as a member and chair of the Lawyers Assistance Program (LAP) Commission. Judge Leary’s second term begins on March 2, 2021, and expires on March 1, 2024.

In accordance with Rule 58.2(A) and (C), the Supreme Court also appoints the following members to the LAP Commission:

Attorney Charla Bizios Stevens is appointed to replace Attorney Andrea Daly, whose term expires on March 1, 2021.

Attorney Christopher T. Regan is appointed to replace Attorney David Tencza, whose term expires on March 1, 2021.

Superior Court Judge N. William Derk- er is appointed to replace Superior Court Judge Jacalyn A. Colburn, whose term expires on March 1, 2021.

The terms of Attorney Stevens, At- torney Regan, and Judge Delker begin on March 2, 2021, and expire on March 1, 2024.

Attorney Sean R. List, a current mem- ber, is appointed to replace Superior Court Judge Jonathan N. Leary whose term expired on March 1, 2021.

The terms of Attorney Stevens, At- torney Regan, and Judge Delker begin on March 2, 2021, and expire on March 1, 2024.

Attorney Sean R. List, a current mem- ber, is appointed to replace Superior Court Judge Jonathan N. Leary, whose term expired on March 1, 2021.

The State of New Hampshire
Housing Appeals Board

Seeking 3rd Board Member – Exp. 03/24/2021

The Supreme Court will be accepting applications until March 24, 2021, for a currently vacant position as a member of the Housing Appeals Board established by RSA chapter 679. In accordance with RSA 679:1, the vacant position must be occupied by a professional engineer or land surveyor. The term of the position shall be for the unexpired portion of a four-year term ending on June 30, 2024. Members of the Housing Appeals Board are appointed by the Supreme Court and commissioned by the Governor. RSA 679:1 states that members “shall be full-time employees and shall not engage in any other employment, ap- pointments, or duties during their terms that [are] in conflict with their duties as members of the board.” Annual compensation for the position is between $63,494.08 (step 1) and $88,387.00 (step 7).

Candidates should submit a cur- rent resume and a separate statement of interest to Timothy A. Gudas, Clerk, New Hampshire Supreme Court, One Charles Doe Drive, Concord, NH 03301. The statement of inter- est should: (1) explain the candidate’s reasons for seeking appointment to the Housing Appeals Board; (2) list two professional colleagues and two lay people who could act as a refer- ence concerning the candidate’s fitness to serve as a member of the Housing Appeals Board; and (3) identify and discuss the two or three most signifi- cant cases, transactions, administrative hearings, or development projects in which the candidate has been involved during their professional career.

Direct Link to Job Posting on State of New Hampshire Job Op- portunities Website: https://jobs.nh.gov/position/Candidate- SelService/controller/servlet/dataa rea=lawtaprd&context.session.key= HROrganization=10&context.session.key=JobBoard=EXTERNAL&context. session.key=noheader=true#

Job ID: 19763 | Category: Other | Post Date: 02/23/2021 | Position: Housing Appeals Board Member

Housing Appeals Board By: Gregory E. Michael, Chair
Elizabeth R. Fischer, Member
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**US District Court Decision Listing**

- **ARBITRATION**

  2/5/21 Rosen v. Genesis Healthcare
  Case No. 20-cv-1059-PB, Opinion No. 2021 DNH 032

  The defendant in this employment discrimination action moved to compel arbitration pursuant to the Federal Arbitration Act. The plaintiff objected on the grounds that the arbitration agreement lacks consideration, is unconscionable, and was induced by fraud. Although the arbitration agreement delegated these types of challenges to the arbitrator, the court agreed with the plaintiff that they should be addressed by the court because the challenges applied in the same way to both the agreement as a whole and its delegation provision. The court then determined that the plaintiff’s challenges were meritless. Specifically, the parties’ mutual promises to arbitrate any claims against each other provided consideration for the arbitration agreement, and the record did not support the plaintiff’s arguments that the agreement was either unconscionable or induced by fraud. Accordingly, the court granted the motion to compel arbitration and stayed the complaint. 24 pages. Judge Paul Barbadoro.

- **BREACH OF WARRANTY**

  2/5/21 Cohen v. Boston Scientific
  Case No. 20-cv-943-PB, Opinion No. 2021 DNH 033

  The defendant moved to dismiss the plaintiff’s breach of warranty claim on the ground that he failed to give it timely notice of his claim in violation of section 382-A:2-607(3) of the New Hampshire Revised Statutes. The court denied the motion, reasoning that the notice provision, by its plain terms, applies only to someone who is a “buyer” of the good in question, and that it was undisputed that the plaintiff was not a buyer. The court noted that the official comments to this section can be read to suggest that any litigant who may wish to assert a breach of warranty claim must give notice of his claim under this section, but that such comments are not part of the statute and cannot be relied on to change the plain terms, applies only to someone who is a “buyer” of the good in question, and that it was undisputed that the plaintiff was not a buyer. The court noted that the official comments to this section can be read to suggest that any litigant who may wish to assert a breach of warranty claim must give notice of his claim under this section, but that such comments are not part of the statute and cannot be relied on to change the meaning of unambiguous statutory text. 2 pages. Judge Paul Barbadoro.

- **ERISA**

  2/10/21 Donna Stahl v. Extenet Systems, Inc., et al
  Case No. 20-cv-357-JL, Opinion No. 2021 DNH 034*

  This case concerns the recovery of supplemental life insurance benefits under a policy regulated by ERISA. The plaintiff is a beneficiary of a life insurance policy purchased by her late husband, and the defendants are the policy issuer and the husband’s employer. The issuer denied the plaintiff’s claim for the life insurance benefits, asserting that the insurance policy was not effective because her husband did not provide proof of insurability, as required under the terms of the policy. The plaintiff filed suit under three subsections of ERISA § 502(a)(1), the statute’s civil remedial scheme. She asserted breach of fiduciary duty claims under § 502(a)(2), wrongful denial of benefits claims under § 502(a)(1) (B), and claims for equitable relief under § 502(a)(3) against both defendants. The insurance issuer and employer moved to dismiss the breach of fiduciary duty claims against them under Rule 12(b)(6), and only the issuer moved to dismiss the wrongful denial of benefits claim against it under Rule 12(b)(6). The court granted the defendants’ motion to dismiss the fiduciary duty claims because the plaintiff did not file suit on behalf of or seek a remedy that would accrue to the plan, as required under § 502(a)(2) of ERISA. The court denied the issuer’s motion to dismiss the wrongful denial of benefits claim without prejudice, for the reasons stated on the record at oral argument. 11 pages. Judge Joseph N. Laplante.

- **RECONSIDERATION: ANTI-INJUNCTION ACT**

  Rubygold Main Holdings, LLC v. Brian Gardner Carpentry, LLC
  Civil No. 20-cv-10062-JL, Opinion No. 2021 DNH 038

  The court granted reconsideration in part and amended its prior ruling that the plaintiff’s motion for a preliminary injunction to clarify that the prior order did not contain any findings that plaintiff was bound by or under the terms of the agreement was either unconscionable or induced by fraud. Accordingly, the court granted the motion to compel arbitration and stayed the complaint. 24 pages. Judge Paul Barbadoro.

- **SOCIAL SECURITY**

  02/01/21 Discordia v. Social Security
  Case No. 19-cv-1261-PB, Opinion No. 2021 DNH 028

  Discordia challenged the denial of her application for disability insurance benefits, contending that the ALJ’s failure to consider the convincing and opinions of the examining physicians, failing to give appropriate weight to her own testimony, and failing to review the entire medical record. The ALJ in his opinion found the opinions of two of Discordia’s providers “unpersuasive” because they arrived at conclusory opinions that were contradicted by the objective medical record or predated their treatment of Discordia by several years. The ALJ offered specific reasons supported by the record for discounting Discordia’s testimony about the effects of her pain. Last, the ALJ reviewed and considered the entire record and chose, in his discretion, to disregard the ALJ’s finding of section 382-A:2-607(3) of the New Hampshire Revised Statutes. The court denied the plaintiff’s motion for a preliminary injunction to clarify that the prior order did not contain any findings that plaintiff was bound by or under the terms of the agreement was either unconscionable or induced by fraud. Accordingly, the court granted the motion to compel arbitration and stayed the complaint. 24 pages. Judge Paul Barbadoro.

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* Published

** US District Court Decision Listing

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CLASSIFIEDS continued on page 47

Notice of Request for Proposals

The State of New Hampshire, through the Judicial Council, is seeking bids for statewide public defense services to represent low-income defendants in District and Superior Courts across the state. This is a non-exclusive contract for one year, with the option to renew for up to 3 additional years. Bidders are encouraged to demonstrate evidence of their experience and capacity in providing high-quality legal representation to indigent clients. The deadline for receipt of proposals is April 18, 2021, at 4:00 PM.

Notice of Request for Proposals

The State of New Hampshire, through the Judicial Council, is soliciting bids for Guardian ad Litem services pursuant to RSA 169-C:10; RSA 169-C:24-a; RSA 170-C; appeals under RSA 169-C:28 and Supreme Court appeals from cases arising under these statutes. The deadline for receipt of proposals is April 8, 2021, at 4:00 PM.

New Hampshire Title Insurance Underwriting Counsel

First American Title Insurance Company’s Agency Division is seeking a New Hampshire Underwriting Counsel to join our team. The position provides an exciting opportunity for those interested in a career in the insurance industry, working with a dynamic and growing company. The ideal candidate will be detail-oriented and have excellent communication skills. This is a full-time position in the Concord, NH office.

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Business Sense—Legal Ingenuity

We are looking for a junior associate to join our dynamic corporate/commercial practice. The ideal candidate would have a strong interest and aptitude in business transactions. DRM’s business law group handles a wide variety of transactions locally, nationally and internationally, including debt and equity financing transactions, sales of businesses, acquisitions, intellectual property transactions and joint ventures. The ideal candidate has 1 to 3 years experience in a corporate or commercial law practice, and wants to be part of a team of attorneys committed to delivering top-quality service to growing and successful businesses. We are committed to investing in our attorneys’ professional growth and development. We offer 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.

Ligation Attorney | 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, cyber and data privacy 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 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 arts 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.

Ligation 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 would have experience litigating in New Hampshire courts and an interest in doing so.

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. Experience with 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) is preferred. Experience with EOSs, B corps or other focused practices would be highly valued.

First American 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.

Litigation Associate Attorney Shaheen & Gordon

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a full-time litigation associate attorney. The candidate must be licensed to practice law in NH and have 5 – 10 years of experience in the practice of civil litigation with Federal and State Court experience. The ideal candidate will have experience with complex litigation cases and strong analytical, writing, and communication skills. We look forward to welcoming an attorney who is hardworking, committed to excellence and dedicated to client service. This is an outstanding opportunity for an experienced lawyer to grow their career and practice in a collaborative, supportive, fail-fast-paced environment.

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Attorney

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We expect that the attorney hired for this position will be immediately brought into ongoing cases to work with senior trial counsel. That work will include client contact, research, writing, written discovery, depositions, and preparation for and participation in hearings and trials. This attorney will also be given the opportunity to handle their own cases with the long-term goal of becoming a skilled trial attorney with a successful practice.

Berman & Simmons is a sixteen-attorney firm with offices in Portland, Lewiston, and Bangor, Maine. We have represented the people of Maine in all types of plaintiff’s cases for 106 years. We have a tradition of leadership in Maine’s legal community that includes spearheading efforts to change the law for the benefit of the people we represent. Our firm has been listed under all litigation headings in Best Lawyers in America since its first publication and has been cited in Chambers USA as “the Best Plaintiff’s Personal Injury and Medical Malpractice firm in Maine.”

Berman & Simmons is an equal opportunity employer. We are committed to creating an inclusive environment for all employees. We encourage applications from people with diverse backgrounds. All qualified applicants will receive consideration for employment without regard to race, color, religion, gender, gender identity or expression, sexual orientation, national origin, genetics, disability, age, or veteran status. We offer a competitive salary and benefits package.

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Berman & Simmons, P.A.
P.O. Box 961
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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.c. is a highly-regarded boutique business law firm with an opening in its corporate practice group. Our ideal candidate has strong academic credentials and 2-4 years of sophisticated corporate experience. We offer competitive compensation, as well as a platform for you to develop client relationships, become involved with local organizations, work with high-growth businesses, and build your practice in a supportive and collegial environment.

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

Business Litigation Associate

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

To learn more about our firm, visit our website at www.crm.com. To apply, please send your resume to Lisa Roy, Hiring Coordinator, Cook, Little, Rosenblatt & Manson, p.l.c., 1000 Elm Street, Manchester, NH 03101 or e-mail at lroy@crm.com.

Assistant County Attorney

Hillsborough County Attorney’s Office – Manchester

Position Overview: We are seeking an attorney with high ethical standards and reliable judgment to represent Hillsborough County as a full time prosecutor. Although most hearings are currently conducted by video, experienced courtroom presence is necessary as in person hearings and jury trials will soon resume. Our office is a dedicated team that welcomes those who apply the same professionalism, hard work, and commitment to justice consistent with the core of our team. We seek to develop our attorneys toward their goals through mentorship, training, and flexibility to move toward the areas that capture their interest.

General Responsibilities: An Assistant County Attorney prosecutes a wide range of felonies taking the case from early investigation through jury trial and sentencing. Critical skills include the ability to negotiate, analyze legal issues, and advocate, all in a fast paced environment. Communications is the foundation of success in the Assistant County Attorney role including communication with law enforcement, victims of crime, opposing counsel, and the rest of the prosecution team within the office.

Qualifications: Membership in good standing of the NH Bar Association or eligibility for admission by motion. A minimum of 3 years criminal law experience required – Jury trial experience preferred.

HOW TO APPLY: Please send a resume and cover letter to Hillsborough County Human Resources Department, 329 Mast Road – Suite 112 Goffstown, NH 03045. Careers@hcnh.org. EOE

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Jeffrey Garrett Tynes Class of 2020 – Newly admitted attorney seeking position to utilize focus in intellectual property, privacy, and corporate law. Primary interest in trademark prosecution, transactional litigation, and corporate law. Looking for junior position that can grow with the firm. Please reply to jeffrey.tynes@gmail.com.

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