The New Hampshire Bar Foundation is ‘Powering Justice-Propelling Change’

Annual Fundraising Event to be held Wednesday, May 26

By Scott Merrill

The past year has proved to be a turning point for New Hampshire’s legal services community and the New Hampshire Bar Foundation is helping to lead the charge.

On May 26, 2021, the Bar Foundation will launch its annual fundraising efforts with the theme Powering Justice - Propelling Change.

As the charitable arm of the New Hampshire Bar Association and the philanthropic choice for many New Hampshire lawyers, the Bar Foundation’s work this year will focus on three major initiatives — a state-wide Diversity and Inclusion Project, the Moose on the Loose Teachers Guide on Civics Education, and supporting the newly formed 603 Legal Aid Call center and website.

“Each of these efforts highlight the important role lawyers fill in our community as a force for good and as advocates for justice,” said Chair of the NH Bar Foundation, James J. Tenn, Jr.

Consistent with the Foundation’s mission of identifying emerging justice-related issues, the Foundation has partnered with Parker Analytics, a nationally recognized leader in survey and performance analysis. Parker will conduct a state-wide survey of Bar Members to assess the status of diversity and inclusion for the benefit of the legal profession, the justice system, and clients.

“This is an exciting and timely project for the Foundation, and positions New Hampshire lawyers to be at the forefront of thought and action based on data – on this critical issue for the legal profession and the people we serve,” Tenn said. “The survey will benefit New Hampshire statewide. While focused on legal community it will have a broad impact for private law firms, the court system, as well as purchasers of legal services community and the justice system, and clients.”

For questions, please call 603-715-3279.

Francis G. Murphy: An Attorney With a Thing for the Past

By Kathie Ragsdale

Francis “Fran” G. Murphy has questioned many people in his 30-plus years as a civil litigator, but the person he would most like to call to the stand died some 400 years ago. That person is “the true author” of much of what is commonly attributed to William Shakespeare, Murphy says, and he is far from the only jurist and resiliency for judges was undertaken — a state-wide Diversity and Inclusion Project, the Moose on the Loose Teachers Guide on Civics Education, and supporting the newly formed 603 Legal Aid Call center and website.

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Murphy is far from the only jurist with a thing for Shakespeare. The pursuit is a natural one for Murphy, a Rhode Island native who majored in English and theater at Rhode Island College, and while playing baseball for the college’s baseball team, as well as purchasers of legal services community and the justice system, and clients.

Bar News

May 19, 2021

Supporting members of the legal profession and their service to the public and the justice system.

Vol. 31, No. 12

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Real Property Law

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Covid and the Courts. Are doctors immune to liability in the courts when it comes to patients with Covid-19? Cory Greelatt’s article explains. PAGE 40
The End of an Era

By George Moore
NHBA Executive Director

Bar Association elections always bring change, but this year brought to a conclusion two long and notable Bar careers. Combined, they gave 53 years of service to the Association.

Rob Howard started serving on the Board of Governors in 1989, as a County Governor, then as a Governor at Large. He served for 6 years as Secretary of the Association, but his longest term was 22 years as Treasurer. Along the way, he became my friend and colleague. As a small firm or solo practitioner in Henniker, Rob religiously found time to attend meetings and be prepared on the issues.

Rob volunteered for extra duties whenever the need arose. He even stepped up to design the Bar’s first website, when the technology was first emerging. When the need arose. He even stepped up to design the Bar’s first website, when the technology was first emerging. When the need arose. He even stepped up to design the Bar’s first website, when the technology was first emerging. When the need arose. He even stepped up to design the Bar’s first website, when the technology was first emerging. When the need arose. He even stepped up to design the Bar’s first website, when the technology was first emerging.

When I was Bar President in 1999 – 2000, the tumultuous Supreme Court impeachment was ongoing, and in his soft-spoken way, Rob was a voice of calm and deliberation.

Howard
Hutchins

Peter Hutchins came to the Board of Governors in 1995 as a partner at Wiggin & Nourie. Peter was a Governor at Large as well as Secretary and Treasurer. In between, Peter went through the chairs to be elected President in 2002.

I knew Peter from cases we litigated when he was usually representing the plaintiff and I was usually defending. He was always enjoyable to have on a case when you combine his sense of humor and not taking himself too seriously. We would get through cases in a way we could talk about years later. He brought those qualities to the Association in abundance, and could always be counted on to take a provocative position that would stir discussion and sometimes lead the Association into taking a different position on an issue. I always considered him a dedicated contrarian.

One thing is for certain no one could question Peter’s devotion to making the Bar work and bring value to all of its membership. Having been in a larger firm and then for years as a solo practitioner, Peter was always dedicated to the idea that the Bar could play a huge role in making practices easier and more enjoyable for New Hampshire lawyers. After 20 years of service, Peter is stepping down and his voice at the table will be missed.

Bar President Dan Will summed up Rob and Peter’s dedication to the Bar Association as “virtually unparalleled.”

“They have been tireless in their efforts and I can only applaud them for all they have done,” he said.

These 2 individuals richly deserve a virtual round of applause for their dedicated service.

Stress and Resiliency in the New Hampshire Judiciary

By Scott Merrill

One in five judges surveyed in the United States meet at least one of the criteria for depressive disorder, according to a 2020 report titled Stress and Resiliency in the U.S. Judiciary.

The National Judicial Stress and Resiliency Survey, the largest of its type ever conducted, was designed by the ABA Commission on Lawyer Assistance Programs. Out of 18,000 judges nationwide, more than 1000 judges participated in the survey which took place amidst the covid-19 pandemic.

Some of the top sources of stress for judges, according to the report that appeared in the Journal of the Professional Lawyer last year, include: the importance and impact of decisions, a heavy docket of cases, unprepared attorneys, and public ignorance of the courts.

In New Hampshire there are five courts that have jurisdiction over a wide variety of cases: The New Hampshire Supreme Court, the Superior Court, the Circuit Court Probate Division, the Circuit Court District Division and the Circuit Court Family Division.

A New Hampshire Judicial Administrator’s Perspective on Stress

Administrative Judge for the Circuit Court of New Hampshire, David King, said the stress and resiliency report reflects issues that are very similar to the ones the circuit court deals with every day.

“When I look on page 10 of the study where it speaks about sources of stress, they’re describing the circuit court to a T,” he said.

Judge King manages the largest section of the New Hampshire court system overseeing 31 judges and 375 non-judicial employees. As an administrator he has had to work on the fly over the past year, monitoring exposures to coronavirus, making decisions...
2021 NHBA Board of Governors Election Results

President-Elect
Nomination by BOG in November
Sandra Cabrera

Vice President
Nomination by Petition for 1-year term
Jonathan Eck

Treasurer
Nomination by Petition for 3-year term
Chris Regan

Secretary
Nomination by Petition for 3-year term
Susan Aileen Lowry

Governor-at-Large
Nomination by Petition for 3-year term
(2 open positions)
Cathy Shanelaris
Chrissy Hanisco

Public Sector Governor
Nomination by Petition for a 3-year term
Lindsey Courtney

Out-of-State Governor
Nomination by Petition for a 3-year term
Jason Dennis

County Governors
Nomination by Petition for 2-year term

Cheshire County Governor
Monique Schmidt

Coos County Governor
Scott Whitaker

Grafton County Governor
Viktoriya Kovalenko

Merrimack County Governor
Heather Cherniske

Rockingham County Governor
Paul Kleinman

ABA Association Young Lawyer Delegate
This position will be filled by the Board of Governors at an upcoming meeting. We have received a letter of interest from an attorney interested in this appointment.

ABA Association Delegate
Michael Iacopino

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NEW HAMPSHIRE BAR NEWS
www.nhbar.org
MAY 19, 2021

3
Our Shared Pandemic Experience

Beth L. Ignatius
New Hampshire Superior Court

Licensing renewal season begins on June 1 and notifications will be sent out in the coming weeks.

It was not long ago that the June 1 outgoing mail from the New Hampshire Bar Association would take up an entire loading dock at the bulk mail facility in Concord, delivered by a caravan of Bar staffers’ cars loaded with hundreds of mail buckets.

That massive movement of paper has now been replaced by online tools available to all members from the “My NH- BAR” portal found on the NHBA’s website at www.nhbar.org. The all-online process, governed by a single deadline, and a personalized web page that enables attorneys to access forms and monitor their compliance with a few clicks.

DEADLINE: The deadline for all licensure obligations is July 1. Delinquency Fees for any licensure obligations not met will be accrued after August 1 and are as follows:

Nonpayment of NHBA dues/NH Supreme Court fees: $100
Not filing the Trust Account Compliance Form: $300

Ten Steps to an Easy License Renewal Process

1. ART Appreciation

The Attorney Reporting Tool (ART) at www.nhbar.org/art enables members to keep track of their legal education credits. Credits from NH Bar programs automatically appear in ART; external program credits must be entered by the attorney attending the class. All credits must be taken prior to the affidavit filing deadline to assure all NH Bar program credits are available.

Tip: Post all videos at www.nhcmcle.org to assist members in using ART.

2. Make Way for Email

On Tuesday, June 1, watch for an email from billing@nhbar.org. Designate that email address as a safe sender so you are sure to receive important updates from your Bar association.

3. Payment Made Easy

The June 1 email will contain a link directly to an online invoice with a payment function. Pay with a credit card online. No credit card? You may still pay by check and send via U.S. Mail.

4. Check the Box

The 603 Legal Aid Pro Bono Program needs your contribution—now more than ever.

Tip: Don’t forget to mark your Pro Bono donation tax-deductible!

5. Assume the Trust Account Compliance (TAC) Form Is Required

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

Tip: Laws firms with a single trust account can have the managing partner complete a single TAC form for all lawyers at the firm.

6. Be Prepared

Make sure to have IOLTA bank account information handy before starting to fill out the online trust account compliance form. If you do not have a checking or savings account, you may use another source to avoid keying errors.

Tip: Attorney information such as IOLTA account numbers can be cut and pasted from other sources to avoid keying errors.

7. Help Is Available

If you have questions on how much you owe, whether you filled out the forms correctly, or about NHCMCLE reporting, there are resources to help. Look first to the Bar’s website at www.nhbar.org to see if there are resources there that can answer your question.

Tip: For questions, you may also contact the member hotline at (603) 715-3279 or email billing@nhbar.org. Thank you for your patience as all 8,000 + NH Bar members renew their license during this time.

8. Go for Green by July 1

Log-in to the compliance portion of the member portal. Members will see colored bars in the middle of the page. Green bars indicate compliance — for NHCMCLE, Trust Account Compliance, and Annual NHBA Dues and NH Supreme Court fees. Each of these boxes will be RED until payments or forms are processed. Three GREEN boxes mean a member has completed all necessary licensure renewal steps.

Tip: Submissions will be acknowledged on-screen or via email. The Member Portal may take up to 48 hours to display updates.

9. Track It

Official correspondence from billing@nhbar.org will be retrievable from the “Messages” tab in the Member Portal, in case you have a question about what you have been asked to provide. The Licensure Renewal Dashboard will be available for renewing your license beginning June 1.

Tip: Not every email received directly from NHBA staff will appear in the Member Portal.

10. Update Member Info

Members are encouraged to check the accuracy of their contact information on the NHBA Member Directory or Member Profile page in the My NHBar Portal paying particular attention to email addresses as that is the medium by which renewal notices are forwarded to NHBA members.

Tip: Getting it all done before the July 1 due date saves time, energy, and stress!
At the beginning of the third week of March in 2020, law practice as we had known it was forever altered. Hearings and trials became telephonic; client meetings, depositions and mediations were suddenly conducted by Zoom; many began working remotely from home; and the practice as a whole began to take on a different shape. We offer three experiences, as well as thoughts on how the future of the practice should change in the light of what we’ve learned in the past year.

Heather Burns, Upton & Hatfield, Concord.

March 13, 2020. Mostly my last day working in the office for more than a year. Thankfully, our office administrator had the foresight in the late fall and early winter of 2019 to move toward switching all attorneys to laptops and docking stations. I tried out my laptop for the first time in late February 2020, just weeks before COVID hit. My laptop and my Zoom subscription have turned out to be my best tools for working as a litigator through COVID.

COVID hit. My laptop and my Zoom platform — another time — became my main office. I’ve come to enjoy the Zoom and Teams calls much more than phone calls. I anticipate, and hope, that many of these changes in litigation practice continue post-COVID.

Kelleigh Murphy, Murphy Legal, Manchester

In 2011, I left the practice for a time in order to start a family. At the time, I had asked about remote work, but it wasn’t a notion that was widely accepted. Faced with the struggle between family and career, I chose family, returning to practice years later in the wake of a divorce. In 2020 alone, I faced COVID; an office relocation; the retirement of the Senior Partner; subsequent closure of the firm; remote learning with a kindergarten, second and fourth grader; the temporary closure of another business; and even and the stress of making sure my employees remained paid; and my personal divorce trial. Ten minutes after my divorce trial ended, the partner I had practiced with for years called me to announce that he was selling our office building, and contemplating retirement.

Here are the positives that I hope last:

1. Gone are the days where I was traveling an hour to a Seacoast office — when COVID hit, I moved my main office to Manchester. All of a sudden, people seemed more “real.” We all juggle things in our lives, and it’s refreshing to be able to see everyone as they are.
2. The efficiencies of depositions, mediations and short hearings by video conference or telephone turned out to be a game changer for both litigants and attorneys. The series of dominos kicked-off by a pandemic resulted in independent handling of my cases, and ultimately my having the courage to go out on my own and open a firm. I’m a cautious person, and I’m not sure I would have achieved what I did had it not been for the pandemic. It is my hope that video and telephonic hearings continue well into the future.

Natalie Laflamme, Laflamme Law, Concord

I had no experience parenting pre-COVID. (Yes, being pregnant and giving birth during a worldwide pandemic was, as fun as it sounds.) Of course, there are challenges to being a parent right now — including limited help with childcare and an increase in general existential dread — but there are some aspects of practicing law while parenting that I hope stay long-term. First, with more to juggle, everyone seems more flexible. As a solo practitioner I already had flexibility in my work, but it is refreshing that others have it now too. It is less strange that I do my best work after midnight or that I have a habit of sending emails around 3:00 a.m. People are open to talking on weekends or in the evening, which is easier for me to coordinate with my husband’s schedule. I cannot imagine the two of us working and watching our daughter full-time without this kind of freedom. Second, people are more understanding of COVID. I would have been mortified if someone could detect any sign of life in the room with me while I was on the phone or video-chatting. Now, if someone catches a glimpse of my dog or hears an ominous toy go off in the background, it barely registers. Multiple clients have actually been disappointed that I called while my daughter was sleeping, because they wanted to say “Hello” to her. I doubt this amount of grace and intimacy was common, or even possible, before I hope it sticks.

The ConVal Education Funding Litigation—An Opportunity for Real Education Funding Reform

By John M. Lewis

In Contoocook Valley School District et al v. State of New Hampshire et al, ___N.H. (March 23, 2021), the New Hampshire Supreme Court recognized that the plaintiffs’ challenge to RSA 198: 40-a, II, the state’s core education funding statute to finance “adequate” education, presents cognizable claims for substantial relief—and these claims merit major review and consideration.

The case now goes back to the Superior Court for the development of the record and further decisions—but if the plaintiffs proceed properly, using persuasive evidence from school superintendents, principals, teachers, students, parents, and statistical experts, the result will be a deeply disturbing showing that the rather small yearly amount the state presently contributes to fund “adequate” education—about $3,600 per student as a base amount—does not constitute the funding required under our Claremont precedents.

I can see, for example, school superintendents graphically showing, through testimony and evidence drawn from the schools they oversee, that the state “adequacy” monies do not come near meeting the funding necessary to pay teachers, maintain buildings, provide transportation, pay for education tools and resources, and otherwise allow for the running of schools ready and able to provide our children with the education they need to be good and productive citizens.

The case can also see established, through statistical experts such as those used by the recent Legislative Commission to study School Funding, that the actual cost to allow for the provision of “adequate” education well exceeds the monies the state presently provides, with local property tax revenues being very much relied upon. As it is, the average cost to educate each student per year in our state is about $20,000—an amount that far exceeds the state monies that actually flow from application of RSA 198: 40-b.

It is hard for me to see how the state will be able to come up with a persasive defense of an education funding regimen that is so divorced from the realities of what education really costs.

Yes, it is true that the New Hampshire Supreme Court’s recent decision declined to affirm Superior Court Judge David Ruoff’s summary judgment in favor of the plaintiffs, but instead reversed him and remanded the case for further proceedings. But, in so doing, the Court did not at all dismiss the seriousness of the issues presented, or the potential importance of the case to the future of public education in our state.

I believe that the plaintiffs are well positioned to achieve a major victory. The case will play out for perhaps another year, maybe more. Cognizable claims will be heard, and there is no reason why the Justices of the Supreme Court will not take cognizance of the evidence provided and grant final relief for the plaintiffs.

OPINIONS continued on page 6
A Conviction is Not Justice

By Cynthia Mousseau

The world watched a white police officer kneel on the neck of George Floyd for 9 minutes and 29 seconds on May 25, 2020. We all watched a murder. “Murder” is a word indicating a crime, it has a specific meaning, it is term of art, something attorneys are fond of and use with precision and care. All criminal defense attorneys tout the importance of accountability, justice, the prime goal of the officer who perpetrated the slaughter of the officer who killed George Floyd. I am a lifelong defense lawyer but I have never shied from using relief or inspires a belief in an appearance of accountability, justice, the prime goal of the officer who killed George Floyd. “Murder” is a word indicating accountability, justice, the prime goal of the officer who perpetrated the slaughter of the officer who killed George Floyd.

The technicalities of the law cannot cover what the videotape shows: this was a murder.

While a conviction makes many feel relieved, it has a specific meaning, something attorneys are fond of and use with precision and care. All criminal defense attorneys tout the importance of accountability, justice, the prime goal of the officer who perpetrated the slaughter of the officer who killed George Floyd. “Murder” is a word indicating accountability, justice, the prime goal of the officer who perpetrated the slaughter of the officer who killed George Floyd.

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By Misty Griffith

The New Hampshire Bar Association is pleased to announce that Tracers has been added as a new member benefit discount provider. Tracers provides law firms access to an online database of over 43 billion records, from over 6,000 sources of data for comprehensive people searches, asset searches, social media reports, better due diligence, and more. Tracers uses a cloud-based search platform designed to help discover key pieces of information available in thousands of public and private records. NHBA members will receive a 10% discount on all Tracers plans including, one-time searches, monthly subscriptions, volume discount plans, and customized plans. Members may access this discount via a link on the Member Benefits and Services page of our website. Go to nhbar.org/resources/member-services-benefits/

Tracers was one of five products selected as a “2020 Product of the Year” by TechnoLawyer. According to a 7/5/2019 TechnoLawyer review, “with only a handful of options for public records data available to attorneys, Tracers stands above the rest offering exemplary service, seamless search tools, and transparent pricing.” Tracers has an A+ rating with the Better Business Bureau and a 4.5 out of 5 star rating on Capterra (a software review specialist).

Tracers is partners with Casemaker and may be accessed through the Casemaker landing page. Be sure to mention that you are an NHBA member to receive your 10% discount. Additionally, Tracers is partners with Clio and several other LPM software companies.

Tracers offers cost effective access to public and private records, asset records, as well as basic people searches including contact info, aliases, and related family members. Their databases are continuously updated to provide the most current information. Tracers provides expansive social media search capability. One seamless report will include all current active and inactive social media profiles which can be extremely helpful in documenting a person’s activities and whereabouts. Tracers provides advanced security and user management controls to help prevent the misuse of the service for personal reasons.

Tracers is a cloud-based application that works with all major web browsers and is compatible with mobile devices. Search reports can be exported to PDF, Word, or Excel.

Because the search process can be daunting for new users, Tracers offers one-on-one demos to ease the learning curve. The Tracers customer support team promises white glove service to users who need help whether getting started or refining a search to get results. Other state bar associations which offer Tracers as a member benefit attest to the responsiveness of the Tracers support team.

To learn more about Tracers or other great NHBA member benefits visit nhbar.org/resources/member-services-benefits/ or contact Member services Coordinator Misty Griffith for more details. Email mgriffith@nhbar.org or call (603) 715-3279.

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Probate attorneys may find Tracers valuable in locating witnesses needed to validate a will or to finding missing heirs. An asset search on the Tracers database can help discover and account for all of a decedent’s assets.

When performing due diligence, Tracers offers asset searches and can uncover liens and judgments. Additionally, Tracers links registered business principals to corresponding personal records.

Every search gets a reference tag making it easy to resume in the future. The reference tag also makes it easier to track individual matters for billing to clients. Users can produce a statement of report costs specific to a client or matter by using Tracers’ search history log.

Tracers provides advanced security and user management controls to help prevent the misuse of the service for personal reasons. When a law firm becomes a client, each user in the firm must be validated and created within the account. An IP address is matched to each member’s account restricting access to that IP address and a firm may set up usage hours and locations to prevent searches from outside the office. Individuals may also be restricted to certain types of data searches.

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“603 Legal Aid and New Hampshire Legal Assistance exist to bring the possibility of justice to people who face housing and food insecurity, who face violence at home, and who fight for dignity against power every single day of their lives,” said LARC Board Chairman Deborah Kane Rein at the NH Campaign for Legal Services Kickoff Breakfast on May 6.

Rein received the Campaign’s John E. Tobin, Jr., Justice Award in recognition of her tireless leadership of the merger, and her career as a staff attorney, mediator and educator.

She thanked the committee who worked on the merger for nearly three years, and praised the selfless work of LARC Executive Director Breckie Haynes Snow and Pro Bono Director Ginny Martin, who have participated fully in the work to expand legal aid through this merger.

“This transformative change, which will make legal aid in New Hampshire stronger than ever, would not have been possible without Deborah’s determination, her leadership, and above all her commitment to putting legal aid clients first. She has devoted countless hours of volunteer work to make this transformative change a reality,” said Campaign Co-Chairman Michael A. Delaney.

One of the changes the merger will bring for NHLA and 603 Legal Aid is the creation of a statewide in-take process for people seeking civil legal aid. The consolidation is supported by findings in the latest statewide civil legal needs assessment, completed in 2020 by the NH Access to Justice Commission. The report, based on interviews with nearly 1,000 stakeholders, revealed on-going confusion with the in-take system for civil legal aid.

“This is an opportunity for us to establish a system that minimizes the frustration, and optimizes the community resources and the access to our services. That will give our clients peace of mind that will ultimately change the trajectory not only for that client but for the other individuals in that household, specifically the children,” Bellafant said.

The civil legal needs assessment also found a need for more attorneys in New Hampshire as well as a desire for attorneys to do legal review work, whether as a staff attorney or as a pro bono volunteer.

“One thing we want to have more lawyers, we want them to have longer hours,” said NH Legal Assistance Executive Director Sarah Mattson Dustin. “Those are great goals that we will strive toward together, but in the reality of limited resources, having a system that is as efficient and easy to access as possible, will help us reach more people.”

603 Legal Aid and NH Legal Assistance will fundraise jointly through the NH Campaign for Legal Services.

The Campaign’s 2021 Breakfast raised more than $93,000 to support civil legal aid, including sponsors Bernstein Shur, Nixon Peabody, Northeast Delta Dental, and Sheepman Thayer Baus + Green.

“The reputation of the community in New Hampshire, particularly the private bar, has already reached my ears long before I had reached the state border,” Bellafant said. “People cannot speak well enough of the entities who have come together to ensure the success of NH Legal Assistance and going forward, 603 Legal Aid. I am eagerly looking forward to meeting everyone who has worked tirelessly for the last two and a half years to make 603 Legal Aid a reality.”
NEW HAMPSHIRE BAR ASSOCIATION

2021 Midyear Business Meeting
February 18, 2021 – 3:00 p.m.
DRAFT MINUTES
REMOTE

President Daniel Will - Presiding

1. Call to Order
   President Daniel Will called the meeting to order at 3:05 P.M.

2. Secretary’s Report
   • Draft Minutes of the 2020 Annual Membership Business Meeting for approval

ACTION
On motion to approve the minutes of the 2020 Annual Membership Business Meeting as presented. Passed.

3. Old Business
   There was no old business brought before the membership.

4. New Business - Vote on Proposed Constitution Change
   Proposed Revision to the NHBA Constitution
   Article II - Membership - Section 7
   (This change is regarding the existing dues waiver process. It modifies the existing
   procedure to allow for a more efficient decision-making process. It also creates a
   process by which members can appeal a waiver request denial.)

Section 7
The Board of Governors may in any case in which to do otherwise would result in hardship or injustice, abate dues in whole or in part, and waive penalties for delinquency fees assessed for non-payment of membership dues, provided the request is made within sixty (60) days of the membership dues billing, before delinquent payors’ names have been forwarded to the NH Supreme Court as mandated by NH Supreme Court Rule 42A. The NHBA Waiver Committee, a subcommittee of the NHBA Board of Governors, will decide on the waiver requests. Such decisions by the Committee are deemed representative of the Board of Governors as a whole. The NHBA Board of Governors will receive a list of waiver decisions made in the months of June, July, August, and September at the October Board of Governors meeting. Any member who has a waiver request denied by the Committee may submit a written request for review of the denied request to the Board of Governors Executive Committee. Such requests must be made in writing and sent to the attention of the NHBA Member Records Coordinator within 30 days from the date of the waiver committee decision.

In the decision of the waiver committee can be appealed. The requirement that the waiver be submitted within 60 days was eliminated, as this was not being followed in practice.

There was a discussion about a potential timing problem involving appeals. Under the revised procedure, if the waiver request comes towards the end of the window, the appeal to the Executive Committee could be after the names are sent to the Court. There is an assumption that once the delinquent attorney names are sent to the Court, they have jurisdiction, but this appeal would be at the bar level. After some discussion, the board agreed with Associate Executive Director for Business Operations, Paula Lewis, that the Association could work with the Court if this happens. Court Liaison Justice Bassett agreed that the Court would work with the Association in this instance.

ACTION
On motion: To accept the change as presented. Passed, 14-0 with one abstention, Strafford

President Dan Will introduced this item and spoke about the proposed change. He then asked Vice President Sandra Cabrera, who worked on this change to summarize the change proposed, and the reasons for it. The reasons are to enable a timelier response to those requesting a waiver, to align current practice with the written procedure, and to create a process by which the decision of the waiver committee can be appealed. The requirement that the waiver be submitted within 60 days was eliminated, as this was not being followed in practice.

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IN 2019

$150M+ RECOVERED

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

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

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Attorneys licensed in MA, NH and RI
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services. It’s going to be of interest in terms of what we shape moving forward.”

The Foundation will also continue work to enhance civics education for all ages.

This year’s effort will focus on support for the ‘Moose on the Loose’ project in partnership with the NH Historical Society. A uniquely New Hampshire approach to Civics, Tenn says, “‘Moose on the Loose’ provides important content standards for the study of history, civics, economics and geography that will prepare the State’s students to function as fully participating citizens who will enhance the State’s economy and quality of life.”

Another targeted goal for the Foundation this year is to raise funds that will assist in the buildout of 603 Legal Aid’s call center and website capabilities.

“With emergency orders ending, and the economy increasingly becoming post-pandemic, all signs point toward the imperative for charitable giving,” Moore said. “The new call center is designed to provide all the intake for New Hampshire Legal Assistance as well as 603 Legal Aid, and the Bar Foundation is committed to raising the money necessary to make this goal a reality.”

The 603 Call center “brings together the talent and dedication of the New Hampshire Bar’s Pro Bono program and the Legal Advice and Referral Center,” Tenn added. “The Foundation is proud to support the call center in what promises to be a state-of-the-art single point of access for those in need.”

A History of Funding Legal Services and More

Since 1982, The Bar Foundation has been a steward of the Interest on Lawyers Trust Accounts (IOLTA) program. IOLTA is a method of raising money for charitable purposes, primarily the provision of civil legal services to indigent persons.

The establishment of IOLTA in the United States followed changes to federal banking laws passed by Congress in 1980, which allowed some checking accounts to earn interest. Prior to 1981 lawyers were required to place money from their clients in a non-interest-bearing account.

IOLTA programs currently operate in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

In fiscal year 2019-2020, the Bar Foundation awarded grants totaling $950,000 to civil legal services programs raised from an IOLTA program.

Jack Middleton, senior member of McLane Middleton’s Litigation Department, played a pivotal role in bringing the IOLTA program to New Hampshire in the early 80s.

It was at a conference for the association of Bar delegates over forty years ago where Middleton says he first heard about IOLTA accounts from the Chief Justice of Florida. “Frankly it sounded very good to me and I thought New Hampshire could benefit from a program like that,” Middleton says. “That IOLTA program has been enormously helpful for New Hampshire citizens. It has raised well over $30 million for those in need of legal services.”

As part of the Foundation’s tradition of resource development and management, the Foundation supports the IOLTA grants program, and also contributes to the Bar Foundation’s endowed Justice Funds in support of Justice Grants, provides planned giving opportunities for donors, encourages organizational development and coordination among legal aid agencies, and communicates funding needs to donors and others committed to ensuring meaningful access to the justice for New Hampshire residents.

Supporting a Dynamic Agenda

“For our attorney donors, we have a simple ask — give one billable hour,” Moore said. “Of course, we would welcome donations in excess of one billable hour, but if more and more attorneys pledged that one hour of their billable time to the betterment of the New Hampshire legal system the goals will be met.”

The Foundation’s dynamic agenda this year, Tenn says, “highlights the many ways New Hampshire lawyers contribute their time, talent and treasure to the justice system through research, education and philanthropic support of varied but important causes.”

The Foundation’s kick-off event Powering Justice-Propelling Change will be held virtually on May 26. For more information about how to contribute time or money please contact Associate Executive Director of the Bar Foundation, Anna Gleason, at agleason@nhbar.org.

IOLTA

Dollars Make a Difference

INTEREST ON LAWYERS TRUST ACCOUNTS

Join a Leadership Bank Today

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| FSB "Your Financial Solution" |
| INSTITUTION FOR SAVINGS |
| Mascoma Bank |
| NET Bank |
| Northway Bank |
| People’s United Bank |
| Triangle Credit Union |

Y ou have a choice at where you open an IOLTA account.

Leadership banks provide 1% interest or more.

The money earned from the IOLTA program helps tens of thousands of our most vulnerable NH citizens receive free or low cost civil legal services.
JOIN US WEDNESDAY, MAY 26 @ 4PM FOR OUR 2021 KICKOFF!

POWERING

JUSTICE

PROPELLING

CHANGE

As we emerge together from a year unlike any other, the New Hampshire Bar Foundation needs your support more than ever.

Our annual fundraising initiative may have a new name “POWERING JUSTICE, PROPELLING CHANGE” but our commitment to justice remains unchanged.

We look forward to coming together online and telling you more about our exciting initiatives for the year ahead:

- **DIVERSITY AND INCLUSION** - NH Supreme Court Chief Justice Gordon MacDonald discusses the upcoming statewide survey and data analysis project to support diversity and inclusion efforts within the NH legal community

- **CIVICS EDUCATION** - William Dunlap from the NH Historical Society talks about the statewide “Moose on the Loose” program

- **CIVIL LEGAL SERVICES** - Meet Sonya Bellafant, Executive Director of the brand new unified 603 Legal Aid organization

We look forward to your joining us Wednesday, May 26 @ 4PM.

Let us know you’ll attend by e-mailing us at registrar@nhbar.org
The NH Bar Association would like to thank attorneys Robert Deroster, Douglas Mansfield, Eric Maher, Chris Hawkins, Eliana Hoeppner, and William Warren from the law firm of Donahue, Tucker & Ciandella, as well as attorneys Richard Samdperil, Joe Welsh, Keri Welch, Catherine Baumann, and Pamela Kozlowski, for taking part in Lawline on Wednesday, April 14. They fielded more than 50 calls from the public on a variety of legal issues, including family law, landlord/tenant, and criminal law.

When asked about why she participates in Lawline, Hoeppner said, “I’ve had the pleasure of participating in Lawline six times over the years and each time I walk away feeling like we’ve collectively delivered a 10-20 minute call you can hear the caller’s voice transforming from anxious to grounded. And the appreciation they express is not only rewarding it is reminder that this service is desperately needed. As a lawyer I am also grateful to Lawline for providing the means to be able to give back in such a meaningful way.”

We are currently seeking individuals to answer Lawline calls on Dec. 8, 2021, from 6 p.m. to 8 p.m. The Bar forwards phone calls from people who are looking for general legal advice and information. We can forward calls to up to 20 different phone numbers, as long as they are land lines. The Bar forwards phone calls to up to 20 different phone numbers, as long as they are land lines. The Bar forwards phone calls to up to 20 different phone numbers, as long as they are land lines. The Bar forwards phone calls to up to 20 different phone numbers, as long as they are land lines. The Bar forwards phone calls to up to 20 different phone numbers, as long as they are land lines. The Bar forwards phone calls to up to 20 different phone numbers, as long as they are land lines.

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New Admittees to NH Bar Association

The following members were admit- ted to the New Hampshire Bar Association on April 1, 2021.

Andrew R. Burger, Andover, Mass.
Julia N. Butner, North Haverhill, NH
Mark A. Cashman, Boston, Mass.
Nicole J. Cocozza, Boston, Mass.
Anne G. Depew, Brookline, Mass.
Jennifer L. DiTrapano, Derry, NH
Sarah A. Doucett, Boston, Mass.
Bethany J. Durant, Baldwinville, Md.
Lauren N. Fountain, Beverly, Mass.
Caitlein E. Hicks, Boston, Mass.
Michael C. Houlihan, Boston, Mass.
Laura M. Kahle, Woburn, Mass.
Corey S. Kajko, Lexington, Mass.
Nicholas A. Krakoff, Concord, NH
Adam R. LaGrassa, Framingham, MA.
Sullivan, Kelsey, Exeter, NH
(March 15, 2021)
Lavallee, Gena, Hollis, NH
(March 22, 2021)

Active to INACTIVE RETIRED:
Farrell, Jennifer, Framingham, Mass.

Presented to the Board of Governors April 15, 2021
Active to INACTIVE:
Sullivan-Stacey, Leslie, Rye, NH
(Feb. 24, 2021)
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In the News

Community Notes

The New Hampshire Women’s Bar Association is accepting nominations for the 2021 Marilla M. Ricker Achievement Award. Since 2000, recipients have been women lawyers who have achieved professional excellence and paved the way to success for other women lawyers. Nominations for this year’s Ricker Award will be accepted through June 12. Learn more about how to nominate someone by visiting https://nhwba.org/Ricker.


Professional Announcements

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Additional $50 charge for color

If you would like to place an announcement, email advertise@nhbar.org

We are pleased to announce that

Alexandra M. Brill, Esquire

has joined the firm as an Associate Attorney.

Attorney Alexandra M. Brill began working with the firm as a law clerk and was admitted to practice law in New Hampshire in 2020. She is a caring and compassionate member of our team dedicated to helping our clients to obtain the best possible results in what are very emotional and difficult situations. She is focused on assisting clients with all of their family law needs, including any and all issues relating to divorce, parenting rights, child support, alimony, prenuptial agreements, negotiated resolutions, mediation, and domestic violence.

She is a graduate of George Washington University Law School and received a Bachelor of Science Degree in Sociology from the University of Michigan in Ann Arbor.

“When family matters you need to call the Law Office of Shaunna L. Browne”

The Law Office of Shaunna L. Browne, PLLC
102 Bay Street, Suite 2
Manchester, NH 03104
(603) 626-8080
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 months of March and April 2021. Gold stars indicate attorneys who accepted more than one Pro Bono case during the course of the month.

BELKNAP
Chloe Golden
W. Scott O’Connell

CARROLL
Casey Hewitt

CHESHIRE
James Davis
Tedoreore Parent
Kenneth Walton

COOS
Quentin Blaine

GRAFTON
Roderick MacLeish
James Shepard
Dennis Thivierge

HILLSBOROUGH (N)
James Allmendinger
Bryan Clickner

HILLSBOROUGH (S)
Michael Croteau
Denis Dillon
Cynthia Gilman
Anne Jenness
Donald Reape
Kimberly Shaughnessy
Timothy Sorenson

HILLSBOROUGH (S)
Lyndsay Robinson
Judith Roman
Rosangeliz Torres

HILLSBOROUGH (S)
MERRIMACK
Cindy Bodendorf
Randi Bouchard
Cassandra Brown
Jack Crisp
Sara Crisp
Sarah Landres
Thomas Neal
Donald Reape
Tony Soltani

HILLSBOROUGH (S)
DOUGLASS
Leif Becker
Justin Caramagno
Michael DeGiure
Abbygale Martineau
Anthony Muir
Kenneth Murphy
Rory Parnell
L. Jonathan Ross
Mark Rouvalis
James Shepard
Joanne Stella

HILLSBOROUGH (S)
GRAFTON
Leif Becker
H. Jon Meyer
Robert Moore

HILLSBOROUGH (S)
STRAFFORD
Gary Apfel
Lisa Wellman-Ally

HILLSBOROUGH (S)
SULLIVAN

BELKNAP
Michael Bernazzani
Barry & Honorow

CARROLL
Sheehan Phinney Bass & Green PA

CHESHIRE
Backus Meyer Branch LLP
McLane Middleton PA

COOS
The Young Law Firm

GRAFTON
Sheldon Davis Wells Hockensmith PC

HILLSBOROUGH (N)
Wescott Law PA

HILLSBOROUGH (S)
The NHBA’s committee appointment process begins soon and we are looking for people like you to get involved. Together we can help the Bar remain valuable, practical, and responsive to the diverse needs of our membership and constituencies. This opportunity will also connect you to your colleagues from around the state.

Interested? Watch for an email on May 24 that will have a link to an online survey where you can express your interest in joining a committee.

NHBA Committee Members Sought

The NHBA’s committee appointment process begins soon and we are looking for people like you to get involved. Together we can help the Bar remain valuable, practical, and responsive to the diverse needs of our membership and constituencies. This opportunity will also connect you with your colleagues from around the state.

Interested? Watch for an email on May 24 that will have a link to an online survey where you can express your interest in joining a committee.

First Quarter 2021 Law Firm Honor Roll

Our thanks to the following law firms who made it possible for their attorneys to participate in Pro Bono. This list includes firms whose attorneys accepted cases from January through March 2021. This list does not include the hundreds of firms whose attorneys have ongoing cases.

Belknap
Chisolm Persson & Ball P.C.
Wescott Law PA

Carroll
The Young Law Firm

Cheshire
Sheldon Davis Wells Hockensmith PC

Grafton
Janson & Donahue PLLC
Simpson & Mulligan PLLC

Hillsborough (N)
Backus Meyer Branch LLP
McLane Middleton PA
Moore Ames Law PLLC
Morrison Mahoney LLP

Hillsborough (S)
Barry & Honorow
Bernazzani Law

COSSA
Mornneau Law
Shanelaris & Schirch PLLC

Merrimack
Brown & Bouchard PLLC
Gallagher Callahan & Gartrell PC
Law Offices of Martin & Hipple
Myuskowski & Matthews PLLC
Orr & Reno PA
Rath Young & Pignatelli PC
Seufert Law Offices PA
The Crisp Law Firm PLLC

Rockingham
Coughlin Rainboth Murphy & Lown PA
Parnell Michels & McKay PLLC
Soule, Leslie, Kiddder, Sayward & Loughman PLLC

Sullivan
Elliott Jasper Auten & Shklar LLP

Out-of-State
Gregg Hunt Alahren & Embry

Free Legal Answers Honor Roll

This list represents attorneys who have answered questions on Free Legal Answers in the months of January, February and March 2021.

Belknap
Rory Parnell
Pamela Peterson
Israel Piedra

Carroll
Joel Rosen
L. Jonathan Ross
E. Phillips Runyon III

Cheshire
Jane Schirch
Brian Shaughnessy
James Shepard

Grafton
Tony Soltani
Chris Tremblay

Hillsborough (N)
Rory Parnell
Jennifer Warburton

Hillsborough (S)
Laurie Young

For more information on each of the NHBA committees, Go to nhbar.org/nhba-committees

Questions? Contact Debbie Hawkins at dhawkins@nhbar.org or (603) 715-3269

Make the Switch.
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Tel: (877) 273-1119 • concordsearch.net
Now is the time.
The ABA Retirement Program has made it easy for your firm to sponsor an employee 401(k) plan.

The ABA Retirement Funds Program (“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.

We have leveraged our size to bring together some of the most respected financial services providers in the retirement industry. Through the unique culture created between the ABA Retirement Funds Program and our Program partners we aspire to help every law firm, lawyer, and legal professional secure their financial future.

The ABA Retirement Funds Program is available through the New Hampshire Bar Association as a member benefit. Please read the Program Annual Disclosure Document (April 2021) carefully before investing. This Disclosure Document contains important information about the Program and investment options. For email inquiries, contact us at: joinus@abaretirement.com.

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ABA Retirement Funds
By Lynne Sabeau

With applications for NHBA Leadership Academy’s Class of 2022 due next month on June 25, 2021, we wanted to introduce prospective candidates to alumni of some earlier classes. While their careers may have taken different paths, their Leadership Academy experience gave them additional tools to be the kind of attorney who inspires others and makes a difference.

Amy Connolly

Amy Connolly, an alumna of the Class of 2015, applied to the NHBA Leadership Academy because she wanted to gain exposure to other areas of the law as well as network with other attorneys. Through the program, she met several attorneys who she might not have met otherwise, and frequently refers cases to one another.

Connolly would recommend Leadership Academy to others in part because the individual seminars offered diverse topics including shadowing a judge, attending a NHBA Board of Governors meeting, and presenting at a symposium.

Connolly has also taken on numerous leadership roles since graduating from the Leadership Academy. She is a Board Member on the New Hampshire Association for Justice (NHAJ). She chairs the NHAJ’s Family Law Practice Group and annual Family Law Forum. She is a sustaining member of the NHWBA and sits on the Gender Equality Committee.

JASON DENNIS

JASON DENNIS, an alumna of the Class of 2017, originally came from outside of New England and attended law school in Indiana. He applied for Leadership Academy because he “felt that it was an excellent opportunity for both networking and becoming more familiar with the practical way things worked in New Hampshire.”

Dennis believes his Leadership Academy experience “enhanced [his] awareness and confidence, and it provided leadership skills that [he] can apply in a variety of circumstances.” He feels that the program gave him a better appreciation for the work done by judges, which he believes also helps him to be a better advocate for his clients. He would recommend the Leadership Academy program to others because “it is the best way to expand your network, develop a better understanding of how Courts work, and of how the NH Bar works, and to learn some practical information/skills that you could not readily learn anywhere else.”

Dennis has assumed numerous leadership positions since graduating from Leadership Academy. He is on the NHBA Board of Governors, the NHBA Ad Hoc Committee on Diversity, Equality and Inclusion, and the Board of Directors of the Tin Mountain Conservation Center (Albany, NH).

MAYA DOMINGUEZ

MAYA DOMINGUEZ is an attorney with the NH Public Defenders Office who says she “liked to do anything else” for a profession. An alumna of the Class of 2017, she applied for the NHBA Leadership Academy because she was interested in getting more involved with the Bar and felt that the Academy was a good place to do so.

Dominguez says that her participation in the Leadership Academy has impacted both the way she practices law and her relationships outside of the criminal justice system.

She has “little desire to make a significant difference. With applications for NHBA Leader of Marketing, Communications, and Outreach and a 2015 graduate of the Leadership Academy. Leaders in the private sector to become involved in the program, noting that “it is a wonderful opportunity to branch out from your practice area and learn more about the general bar. I think the criminal defense bar can be a very insular community, but there is a lot we can learn and share with the greater bar community.”

We’re thrilled that so many people have heard about the NHBA Leadership Academy program from friends and colleagues who are alumni of the program. Odds are, you’ll recognize a few names on the list below. We welcome you to reach out to them to find out more about their Leadership Academy experiences.

Lynne Guimond Sabeau is NHBA’s Director of Marketing, Communications, and Outreach and a 2015 graduate of the Leadership Academy.
Ron began the practice of law with New Hampshire Legal Assistance and the Rhode Island Public Defender’s Office. He then went into private practice in Concord in 1978 as a solo practitioner. In 1985, he established Cook & Molan, P.A., where he acted as managing director. Ron joined Hamsmeier & Spellman in 2008, where he was a director and shareholder. A fierce advocate, loyal friend, and devoted mentor, as well as a loving husband, father, and grandfather, he will be sorely missed.

Richard Cornelius

Richard Cornelius, 81, of Keene, died April 4, 2021, at Catholic Medical Center after a heart attack followed by surgery. Dick, who worked as a state-appointed attorney in family and mental health cases in New Hampshire, was born May 26, 1939, in Philadelphia to Margaret Thomas and William Raymond Cornelius. After graduating from Olney High School in 1957, he earned a B.S. in music, vocal and piano, from Temple University. He played piano, trombone and other brass instruments, and later took up violin and viola. He also volunteered with the Alternatives to Violence Project, a Quaker program providing weekend workshops in nonviolent conflict resolution for prison inmates.

Dick met his wife, Judith Reed, in 1986, and they were married in 1988 under the care of Concord Friends (Quaker) Meeting. They have lived in Claremont, where they have raised their daughter, Emily. Dick was a devoted husband, father, and grandfather.

In memory of our colleague, the NHBA Board of Governors has made a contribution to the NH Bar Foundation. To submit an obituary for publication, email news@nhbar.org. Obituaries may be edited for length and clarity.

New Hampshire courts are working to restore normal operations. As those efforts continue, the Supreme Court Justices, Chief Justice Tina Nadeau, Chief Administrative Judge David King and Deputy Administrative Judge Susan Ashley will hold a Virtual Town Hall with stakeholders in the legal and civic communities on Thursday, June 10, 2021 from 9:00 to 10:30 am. You are invited to watch or listen remotely by linking to the Judicial Branch’s COVID-19 website at www.courts.state.nh.us/videos/supreme/
OUR ANNUAL MEETING HAS GONE VIRTUAL!

2021 (Virtual) Annual Member Meeting

Friday, 6/25

TOGETHER TOWARD TOMORROW

**AGENDA**

8:15 AM - 3:15 PM

JOIN US FOR A FULL DAY OF ACTIVITIES, INCLUDING

• Networking Coffee Break
• President’s Welcome
• Recognition of 50-Year Members
• Recognition of Retired and Newly Appointed Judges
• CLE: “The Accidental Lawyer”
• Historic Annual Meeting Video
• Lunchtime Exercise Stretch
• President’s Awards
• Passing of the Gavel
• Virtual Edible Garden Tour / Cooking Demo

WOULDN’T IT BE NICE TO COMPLETE ALL YOUR ETHICS CREDITS EARLY?

**AWARDS**

PRESIDENT’S AWARDS RECIPIENTS

E. Donald Dufresne Award for Outstanding Professionalism
Hon. Richard E. Galway (ret.)

E. Donald Dufresne Award for Outstanding Professionalism
Bill Glahn

Distinguished Service to the Legal Profession Award
David H. Bradley

Justice William Grimes Award for Judicial Professionalism
Master Thomas G. Cooper

Lifetime Achievement in Legal Services
Virginia A. Martin

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How many times has a conversation that’s started out with the seemingly innocuous “You’re a lawyer, right?” turned into trouble (like the possible inadvertent formation of an attorney-client relationship)? This CLE helps lawyers deal with the dreaded sentence “Let me just ask you a quick legal question.” Learn how to navigate these types of scenarios with less risk and greater peace of mind.

In addition to the national presenters, NH-specific experience and insight will be provided by the following attorneys: Russell F. Hilliard, Katherine E. Hedges, Lindsay E. Robinson, and Talesha L. Saint-Marc.

TOPICS
- Pitfall #1 – Public Places – Where there’s No Escape
  Vignette: “Flakes on a Plane”
- Pitfall #2 – Friends and Relations
  Vignette: “Guess Who Shouldn’t Have Come to (Thanksgiving) Dinner”
- Pitfall #3 – The On-Site Client Visit
  Vignette: “Dude, Where’s MY Lawyer?”

STAY FOR THE VIDEOS, NETWORKING, & MORE!
Rule 1.18 “Significantly Harmful” Guidance

Dear Ethics Committee:

I am a rural practitioner with two partners. I handle mostly estate planning matters; one of my partners focuses on civil litigation, and the other on marital and bankruptcy work.

A few months ago, I received a phone call from a prospective client asking for help with administration of an estate. We spoke by phone for about 15 minutes, and I obtained the names and other relevant information about the interested parties to check for conflicts. Also, due to recent health issues, I was trying to take only cases that appear unlikely to have contentious and lengthy litigation.

In order to make this determination, I asked a few targeted questions about the family dynamics. The caller described a very dysfunctional family and suggested one of her brothers might very well contest the will.

Last week, after recovering significantly from my illness, another of the caller’s family members called for about 15 minutes, and I obtained more information about the interested parties to check for conflicts. Also, due to recent health issues, I was trying to take only cases that appear unlikely to have contentious and lengthy litigation.

The caller told me about the interested parties to check for conflicts. Also, due to recent health issues, I was trying to take only cases that appear unlikely to have contentious and lengthy litigation.

The caller, a prospective client, asked if I could accept the case. Despite the potential for further client work, neither of my partners feels able to accept the matter, even if I am screened, as is suggested in your opinion.

Thanks for any help on this.

Representation of a party with adverse interests to a prospective client is governed by NHRPC 1.18. That rule provides that:

(a) A person who provides information to a lawyer regarding the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has received and reviewed information from a prospective client shall not use or reveal that information except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received and reviewed information from the prospective client.

(d) If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(e) When the lawyer has received and reviewed disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) the lawyer who received and reviewed the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

a. the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

b. written notice is promptly given to the prospective client.

It appears that there is no question relating to whether this is the same matter about which you were consulted or that the positions of the prospective clients are adverse. Also, since your partners are not interested in taking the case even if, pursuant to Rule 1.18(d) above, you could properly be screened in an office of your size, it appears your concern turns on whether the information you obtained from the first call is “significantly harmful” within the meaning of the rule.

Our prior opinion provides a complete analysis of the rule, including a number of case cites giving guidance on what types of information would be significantly harmful in the matter.

Significant harm is obviously a fact-specific inquiry, turning on the length of the consultation and the nature of the information discussed. See e.g., O Builders & Assoc. v. Tuna Corp., 19 A.3d 966, 978 (N.J. 2011), finding “significantly harmful” information under Rule 1.18(“cannot be simply detrimental in general to the former prospective client, but the harm suffered must be prejudicial in fact to the former prospective client within the confines of the specific matter in which disqualification is sought, a determination that is exquisitely fact-sensitive and specific.”

Fortunately, the ABA’s Ethics Committee recently provided additional information on the meaning of significant harm in this rule, which is useful in this inquiry. In Formal Opinion 492, June 9, 2020, the committee made clear that information disclosed by the person invoking the protection of Model Rule 1.18 need not demonstrate that the harm is certain to occur in order to demonstrate a conflict. Instead, the Model Rule addresses information that “could be significantly harmful,” a standard that “focuses on the potential use of the information.” In addition, a lawyer’s post hoc promise not to use the information does not change the standard from one of potential use or harm to a standard that requires actual use or harm.

The Committee provided the following examples as typically viewed as significantly harmful:

• views on various settlement issues, including price and timing;

• personal accounts of each relevant event [and the prospective client’s] strategic thinking concerning how to manage the situation;

• an 18-minute phone call with a prospective client-plaintiff during which a firm had outlined potential claims against defendant and discussed specifics as to amount of money needed to settle the case;

• presentation by a corporation seeking to bring an action of the underlying facts and legal theories about its proposed lawsuit;

• sensitive personal information in a divorce case;

• premature possession of the prospective client’s financial information;

• knowledge of settlement position;

• prospective client’s personal thoughts and impressions regarding the facts of the case and possible litigation strategies; and

• the possible terms and structure of a proposed bid by one corporation to acquire another.

Id. at p. 6 (footnotes omitted).

Based on this description, the information provided to you by the first caller on her settlement considerations would certainly qualify as information that is “significantly harmful” within the meaning of the rule. In light of this, you would not be able to accept the case.

This Ethics Corner Article was submitted for publication to the NHBA Board of Governors at its January 21, 2021, meeting. The Ethics Committee provides general guidance on the New Hampshire Rules of Professional Conduct and publishes brief commentaries in the Bar News and other NHBA media outlets. New Hampshire lawyers may contact the Committee for confidential and informal guidance on their own prospective conduct or to suggest topics for Ethics Corner commentaries by e-mailing Robin E. Knippers at reknippers@nhbar.org.

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Defining Nominal Amount & Time Frame for Separate IOLTA Accounts

I. Ethics Question

In New Hampshire, an IOLTA account is an “account for clients” funds which are nominal in amount or to be held for a short period of time,” which must comply with the provisions of New Hampshire Supreme Court Rule 50. SC Rule 50(1)(A). The Supreme Court Rules become an ethical obligation under the New Hampshire Rules of Professional Responsibility.

The lawyer shall maintain the minimum financial records with respect to the client and third-party funds as may be required by the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules.

RPC Rule 1.15(a) (emphasis added). Accordingly, your question is one that falls within our purview.

II. Why are the phrases part of the rule?

These limitations were important to the New Hampshire Supreme Court to avoid IOLTA constituting a “taking” of client property “in violation of the fifth and fourteenth amendments to the United States Constitution and part one, article twelve of the New Hampshire Constitution.” Petition of New Hampshire Bar Ass’n, 122 N.H. 971, 975, 453 A.2d 1258, 1260 (1982).

The United States Supreme Court has also spoken on the takings issue. In 1998, the United State Supreme Court held that the interest income generated by funds held in IOLTA accounts is the “private property” of the owner of the principal. Phillips v. Washington Legal Foundation, 524 U.S. 156, 172, 118 S.Ct. 1925, 141 L.Ed.2d 174 (1998).

In Brown v. Legal Foundation of Washington, “petitioner Brown made a payment of $90,521.29 that remained in escrow for two days, . . . he estimated that the interest on that deposit amounted to $4.96. The Court concluded that there was a taking.

We therefore assume that Brown and Hayes retained the beneficial ownership of at least a portion of their escrow deposits until the funds were disbursed at the closings, that those funds generated some interest in the IOLTA accounts, and that their interest was taken for a public use when it was ultimately turned over to the Foundation.


The Court then discussed whether there was any “just compensation” due. The Court held that, if the state’s rules were obeyed, lawyers would “deposit client funds in non-IOLTA accounts whenever those funds could generate net earnings for the client.” Id. at 239. Accordingly, funds properly deposited in an IOLTA account would not result in a pecuniary loss to the client and consequently “no violation of the Just Compensation Clause of the Fifth Amendment in this case.” Id. at 240.

III. What does it mean?

SC Rule 50(1)(A) does not explicitly define what constitutes “funds which are nominal in amount or to be held for a short period of time.” A strict construction of the language of SC Rule 50 suggests that there is an upper bound on the amount of money which would be considered “nominal” and an upper bound on the length of time which would be considered “short.” If the funds fall within one OR the other bound, then, and only then, are the funds appropriate for IOLTA.

One can, perhaps, infer from Brown that two days is “a short period of time.” One can infer from a 2008 case that $500 is a “nominal amount” of money. In re Coffey’s Case, 157 N.H. 156, 163, 184, 949 A.2d 102 (2008) (dicta). This piecemeal approach, however, is unlikely to yield satisfactory results. Indeed, time and money may mean different things to different people, depending on the circumstances.

The New Hampshire Supreme Court did, however, explain the rationale for the limitation on what funds could be placed in an IOLTA account.

The present program concerns only those accounts involving clients’ funds where the administrative cost and resulting liability make it impractical to place the clients’ funds in an interest-bearing account.

Petition of New Hampshire Bar Ass’n, supra at 974. This suggests a third way of looking at the problem, which considers the balancing of costs and benefits. The calculation would depend on, among other things, the interest rate offered by an interest bearing account, the bank fees and the law firm fees to set it up, maintain it, and close it, the length of time the money is held, and the amount of money.

By way of example, suppose a law firm charged $100 to set up an interest-bearing account and $20 per month to maintain it, and the account earned 0.02 percent interest (with no minimum balance and no additional bank fees). Client funds of $1 million, deposited into such an account, would earn $16.67 per month, which is less than the cost of upkeep. Accordingly, the account would never “generate net earnings for the client.”

Few would consider $1 million “nominal” and forever “a short period of time.” Accordingly, depositing those funds into an IOLTA account might well violate the letter of the Rule, but perhaps not its spirit. Whenever funds arguably exceed a nominal amount and will arguably be held for longer than a short period of time, a prudent lawyer would consult with the client and seek the client’s direction on where to deposit the funds. If the client instructs the lawyer to place the funds in an interest-bearing account that would not generate net earnings for the client, then the lawyer should remind the client that the client will nevertheless be responsible for all costs and fees.

IV. Failure to comply.

The New Hampshire lawyer is in a bit of bind. Client funds have to go somewhere.

The language of Rule 50 is mandatory; in addition to any individual client trust accounts, a member of the New Hampshire Bar who is not exempt from this requirement pursuant to Rule 50(1)(F) shall create or maintain a pooled, interest-bearing trust account known as “Interest on Lawyers Trust Accounts program” or “IOLTA” account for clients’ funds which are nominal in amount or to be held for a short period of time.

SC Rule 50(1) (emphasis added). One interpretation of that language would require all funds that met IOLTA criteria to be deposited into an IOLTA account. See Pauken v. State Bar of Texas, 55 S.W.3d 39 (2001) (attorney’s ethical concerns did not entitle him to a good-cause exemption from mandatory IOLTA compliance.)

If the amount of money and the length of time were nominal and short, respectively, and the funds were neither nominal in amount nor to be held for a short period of time, the lawyer would need to establish a case to avoid the requirement to maintain an IOLTA account.
Petition of New Hampshire Bar Ass’n, su

As the example above showed, there may appear to be a gap between “nominal in amount or to be held for a short period of time” and sufficient to “generate net earnings for the client.” While it might be sensible to interpret the requirements of IOLTA as meaning simply funds insufficient to generate net income, such an interpretation stretches the plain language of the rule. It seems unlikely, however, that a lawyer would be disciplined for following the spirit of the rule, if not the letter, especially with client consent.*

V. Conclusion.

If it is not obvious that client funds are nominal in amount, or that they will be held for a short period of time, get the client’s informed consent before depositing the funds into the IOLTA account. As can be seen from the example, when interest rates are extremely low, it may be beneficial to the client to simply deposit funds into the IOLTA account.

This Ethics Corner Article was submitted for publication to the NHBA Board of Governors at its January 21, 2021, meeting. The Ethics Committee provides general guidance on the New Hampshire Rules of Professional Conduct and publishes brief commentaries in the Bar News and other NHBA media outlets. New Hampshire lawyers may contact the Committee for confidential and informal guidance concerning their own prospective conduct or to suggest topics for Ethics Corner commentaries by emailing: Robin E. Knippers at rknippers@nhba.org.

Endnotes

1. “Philadelphia, wonderful town, spent a week there two months ago.” Often attributed to W.C. Fields.
2. “A billion here, a billion there, and pretty soon you’re talking real money.” Senator Everett McKinley Dirkson.
3. See Mississippi RPC 1.15(g). In the exercise of a lawyer’s good faith judgment in determining whether funds can earn income in excess of costs, a lawyer may take into consideration all reasonable factors including, without limitation:
   (a) the amount of the funds to be deposited;
   (b) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
   (c) the rates of interest or yield at the financial institutions where the funds are to be deposited;
   (d) the cost of establishing and administering the account, including the cost of the lawyer’s services, accounting fees, and tax reporting costs and procedures;
   (e) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients; and
   (f) any other circumstances that affect the ability of the funds to earn a net return for the client.

4. Several jurisdictions leave the determination of whether funds are nominal to the discretion of the judge.

5. The determination of whether funds are nominal or short-term so that they cannot earn income in excess of costs shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.

The Ethics Committee provides several services for members of the New Hampshire Bar Association. New Hampshire lawyers may contact the Committee for confidential and informal guidance concerning their own prospective conduct or to suggest topics for Ethics Corner articles.

Members are encouraged to ask the NHBA Ethics Committee questions pertaining to New Hampshire practice. Inquiries and requests for opinions should be directed to the Committee for confidential and informal guidance concerning their own prospective conduct or to suggest topics for Ethics Corner articles. The Ethics Committee for confidential and informal guidance concerning their own prospective conduct or to suggest topics for Ethics Corner articles.

As approved by local members of the national plaintiff (AAJ) and defense (DRI) bar associations*.

* The National Academy of Distinguished Neutrals (www.NADN.org) is an invitation-only professional association of over 900 litigator-rated mediators & arbitrators throughout the US and a proud partner of the AAJ and DRI. For more info, please visit www.NADN.org/about.
Transforming the Legal Experience for All

By Jack Newton, CEO of Clio

It’s easy to say that the world has changed—and that the legal industry has changed—as a result of COVID-19. What is harder to say, at the moment, is which changes are temporary, which are here to stay, and which haven’t yet arrived.

Now, the industry stands at a crossroads—and whatever path we take could have repercussions for decades to come. All of us working in legal share a collective responsibility to improve the future of legal service delivery; we must push for the changes that will move this industry forward.

For over a decade, I have spoken about how technology would disrupt the legal industry. What I couldn’t have predicted was how much of that change would be compressed into one year. We are seeing profound changes in terms of both how law firms operate and, even more importantly, how consumers approach technology. For example, we learned in the 2020 Legal Trends Report that more than half of legal consumers say that cloud technology is a necessity for them, and even clients who are 90 years old are comfortable signing documents on iPads.

Even more amazing to me is that last year, over 4,500 legal professionals from 46 countries joined us, virtually, for the Clio Cloud Conference—a four-day event about technology and innovation in legal. Attendance of this scale at a virtual legal conference is something I wouldn’t have thought possible just a few years ago.

But, this is where we’ve been: a world of Zoom meetings and court appearances made from our living rooms. While it’s tempting to ask, “Which changes brought on by COVID will return to the way they were before?” the more important question is, “Which changes represent positive shifts that we should embrace permanently?”

We have an unprecedented opportunity to reshape how law firms, courts, and legal institutions operate—and it’s in the best interests of our clients and our organizations not to squander this chance.

What’s at stake? For starters: the ability to increase access to legal services for our fellow citizens. Fairer protections and advocacy for underrepresented groups in our society. The freedom for legal professionals to make a good living without sacrificing work-life balance. A legal system that truly serves the public good.

There is so much work to do, and such an incredible chance to make a difference by doing it.

Among the many possibilities, some of the systemic changes we’re focused on are centralizing and simplifying business operations for law firms, making it easier for legal clients to collaborate with their lawyers and understand the legal system, and breaking down barriers to legal services for consumers in need of assistance.

At Clio, we believe—on a foundational level—that part of our duty as the market leader is to work to create a world in which our legal and judicial systems promote justice, in the truest sense of the term. This means a world in which every stakeholder in the legal process benefits from better, more equitable models for shaping and administering the law.

In pursuit of these goals, we recently expanded our company’s mission to reflect how we want to show up for our customers and their clients—as well as how we want to help shape the way our society engages with, delivers, and experiences legal services.

Clio’s new mission is to transform the legal experience for all.

This mission is at the heart of everything we do. It invites everyone within our legal and judicial systems—from legal professionals to legal organizations, clients, and consumers—to explore the larger impact we can all have on the legal experience, on a global scale.

As we emerge from COVID-19, let’s not return to normal. Let’s instead focus on creating a better normal. I invite you to help us reimagine the future of legal service delivery, and I leave you with this question:

What does a better future for legal look like to you?

Jack Newton is the CEO and Co-founder of Clio and a pioneer of cloud-based legal technology. Jack has spearheaded efforts to educate the legal community on the security, ethics, and privacy issues surrounding cloud computing, and is a nationally recognized writer and speaker on the state of the legal industry. Jack is the author of The Client-Centered Law Firm, the essential book for law firms looking to succeed in the experience-driven age, now available at clientcenteredlawfirm.com.

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NEW HAMPSHIRE BAR NEWS  www.nhbar.org  MAY 19, 2021  23
Calender Overview

**MAY**

20  Thursday • Noon - 1:00 p.m.  Petitions to Partition: Real Estate Separation in the Age of Cohabitation  
   • Webcast  
   • 60 min.

25  Tuesday • Noon - 1:00 p.m.  Tech Tuesday! How to Protect Yourself and Preserve Confidentiality When Negotiating Instruments with Barron Henley  
   • Webcast  
   • 60 min.

28  Friday • 8:30 - 10:30 a.m.  15th Annual Ethics CLE  
   • Webcast • 120 min. ethics/prof. credit

**JUNE**

2  Wednesday • Noon - 1:00 p.m.  Traps for the Unwary: Automobile Accidents  
   • Webcast  
   • 60 min.

8  Tuesday • Noon - 1:00 p.m.  Tech Tuesday! Avoiding Malpractice  
   • Webcast  
   • 60 min. ethics/prof.

Tuesday, May 20, 2021  
Noon - 1:00 p.m.  
Webcast Only • 60 min.

Petitions to partition are an increasingly common way to divide real estate jointly owned by multiple people. When the relationship between co-owners of a piece of property falls apart and the separation of assets is necessary, the ability to draft a petition to partition is a helpful tool for an attorney to have.

**Who should attend?**

This program will be particularly relevant for attorneys who practice in the areas of real estate law, family law, probate litigation, and civil litigation, and anyone else interested in learning the basics of petitions to partition.

**Faculty**

Meaghan A. Jepsen, CLE Committee Member, Ransmeier & Spellman, PC, Concord  
Biron L. Bedard, Ransmeier & Spellman, PC, Concord

**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.

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**CLE HIGHLIGHT**

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**

Stephanie K. Burnham  
Chair, NHBA’s Ethics Committee, Hage Hodes PA, Manchester

Mark P. Cornell  
NH Supreme Court Attorney Discipline Office, Concord

Christopher D. Hawkins  
NHBA’s Ethics Committee Member, Donahue Tucker Ciandella, PLLC, Exeter

Russell F. Hilliard  
NHBA’s CLE Committee Member, Upton & Hatfield, LLP

Peter C. Scott  
NHBA’s Ethics Committee, Sabbow and Co., Inc., Concord

Mitchell M. Simon  
NHBA’s Ethics Committee Member, Devine Millimet & Branch PA, Manchester

Richard Guerriero  
Program Chair/NHBA’s President-Elect, Board of Governors, Lothstein Guerriero, PLLC, Keene

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**Petitions to Partition: Real Estate Separation in the Age of Cohabitation**

**Thursday, May 20, 2021**

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

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**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.

- **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

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Professional Licensing & Recent Changes at the Office of Professional Licensure & Certification

**Wed. & Thurs., June 9 & 10, 2021**
8:30 a.m. - 12:15 p.m. each day
Webcast Only • 420 min. incl. 30 ethics/prof. total for both days

The Office of Professional Licensure and Certification (OPLC), which oversees all of the various boards and agencies licensing and certifying professionals and tradespeople, has been evolving since its formation. It is under new leadership, increasing its staff, and taking over the prosecution of all cases from the APU. This program will discuss the ongoing changes and transitions letting practitioners know what to expect when representing a client with a license or certification problem.

**Who Should Attend?**
Anyone who represents professionals such as all healthcare providers, those working in other professions or trades that require a license or certification.

**Faculty**
Jack P. Crisp, Jr., Program Co-Chair/CLE Committee Member, The Crisp Law Firm, Concord
Sara B. Crisp, Program Co-Chair/CLE Committee Member, The Crisp Law Firm, Concord
Lindsey B. Courtney, NH Office of Professional Licensure & Certification, Concord
Todd H. Prevett, NH Office of Professional Licensure & Certification, Concord
Michael W. Porter, NH Office of Professional Licensure & Certification, Concord
Molly Rossignol, DO FAAFP FASAM, NH Professionals Health Program, Concord

From Soup to Nuts
Approaches to Post-Conviction Issues

**Friday, June 18, 2021**
9:00 a.m. - 4:00 p.m.
Webcast Only • 360 min. incl. 60 ethics/prof.

This day long CLE will address the myriad of issues that arise following a defendant’s conviction in a criminal case, whether by plea or trial. Presenters will discuss their approach to sentencing arguments from a defense and state perspective. Clerk of the Sentence Review Division Aquizap and Hon. Charles Temple will discuss the sentence review process. Panelists will provide a prosecutor and defense approach to issues related to ineffective assistance of counsel. There will be a short presentation on some of the post-conviction writs and motions including Habeus Corpus, Coram Nobis, Coram Vobis, among others. Additionally, a panelist will present on the process for annulments and pardons. Lastly, there will be 1 hour of ethics credit on post-conviction ethical issues.

**Faculty**
Geoffrey M. Gallagher, Program Co-Chair, Sullivan County Attorney’s Office, Newport
Anthony F. Sculimbren, Program Co-Chair/CLE Committee Member, Gill & Sculimbren, PLLC, Nashua
Seth R. Aframe, US Attorney’s Office, Concord
Holly Aquizap, NH Judicial Branch Administrative Offices, Sentence Review Division, Concord
Richard Guerriero, Lothstein Guerriero PLLC, Keene, NH
Katelyn E. Henmueller, Strafford County Attorney’s Office, Dover
Mark L. Sisti, Sisti Law Offices, Chichester
Hon. Charles S. Temple, Hillsborough County Superior Court-South, Nashua

The Supreme Court 2020-21 Term in Review

**Wednesday, June 30, 2021**
Noon - 1:00 p.m.
Webcast Only • 60 min.

This program will provide a review of the U.S. Supreme Court’s 2020-21 term. It will examine major decisions of the term and analyze underlying court trends and dynamics. Ample time will be left for audience comments and Q and A.

**Faculty**
Justin S. St. James, Program Chair/CLE Committee, Attorney at Law, Andover, MA
John M. Greabe, UNH Franklin Pierce School of Law, Concord

Traps for the Unwary
Brought to you by the NHBA’s New Lawyers Committee

**Wednesday, June 2, 2021**
Noon - 1:00 p.m.
Webcast Only • 60 min.

- 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 Shared-In Programs in the NHBA•CLE Online Catalog!

- **Before, During and After Surveillance: Navigating the Legal Options** Original Program Date: March 26, 2021. Provided courtesy of our online partnership with CLE Alabama. 60 Min.
- **An Overview of Bankruptcy Appeals** Original Program Date: March 16, 2021. Provided courtesy of our online partnership with The Florida Bar. 60 Min.
- **Biometric Privacy: Regulatory Compliance and the State of Litigation in 2021** Original Program Date: February 24, 2021. Provided courtesy of our online partnership with the Bar Association of San Francisco. 60 Min.
- **Belonging in 2020: How Organizations & Law Firms Can Dismantle Toxic Cultures and Build Inclusive Environments (elimination of bias program)** Original Program Date: December 10, 2020. Provided courtesy of our online partnership with the Bar Association of San Francisco. 90 Min.
- **A Fair Appraisal: Determining Value of a Workers’ Comp Claim** Original Program Date: December 2, 2020. Provided courtesy of our online partnership with the Louisiana State Bar Association. 60 Min.
Let the Lord Sort Them: The Rise and Fall of the Death Penalty

By Maurice Chammah
Crown Publishing (2021), Hardcover, 368 pages

Reviewed by Patrick Arnold

While making my way through this book, I was continually reminded of a scene from Martin Scorsese’s film Gangs of New York (2002). Tammany Hall’s “Boss” Tweed discusses growing citizen unrest in the Five Points neighborhood of lower Manhattan with businessman-turned-community organizer Bill Cutting. Residents were even starting to blame elected officials for unchecked rising crime. To mitigate public outrage, Tweed proposes they hang someone… may be even three or four someones. Cutting asks, “Tweed proposes they hang someone… may be even three or four someones. Cutting asks.”

A scaffold scene depicting executions in the crowded public square follows. More will do. Back-alley amusers with no affiliations. Average men will do. Back-alley amusers with no affiliations. Average men will do.” Though a cinematic dramatization, the representation of executions in the context of growing citizen unrest and public outrage is a significant aspect of the book.

As a result of Furman, more than 600 death row inmates in more than 30 states had their death sentences commuted to life imprisonment. Another consequence, however, was the swift move by many state Legislatures to enact capital punishment systems which could pass constitutional muster. Chammah recounts the debate in Texas through legislative testimony, news reports, and first-person accounts. This brings us to our first allusion to the Gangs of New York scene. Though the political expediency sought by Tammany plays a role in the institution’s existence, reality is far more complex. Chammah guides readers through the rationales advanced by state lawmakers, sociological observations, cultural elements, and a history of the Texas frontier spirit to explain the institution’s continued popularity. Chammah scrutinizes the scope and justifications for policy tweaks made throughout the history of American executions. In contrast to Scorsese’s depiction of 19th century Manhattan, for example, modern America disfavors public executions.

The degree to which Chammah explores the legal community’s role in capital punishment will be of special interest to attorneys. Though lawyers, judges, and law enforcement officers play a meaningful role in the institution, personal views are typically supplanted for professional responsibilities. Chammah incorporates both personal and professional perspectives.

Chammah gives appropriate attention to the institution’s legal history, including Furman v. Georgia (1972), in which the U.S. Supreme Court held the death penalty (as then administered) was cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Chammah scrutinizes the scope and justifications for policy tweaks made throughout the history of American executions. Why?

The book contains source material from the biographical narratives of key players (not merely defendants and victims) providing noteworthy insight and context. As a result of Furman, more than 600 death row inmates in more than 30 states had their death sentences commuted to life imprisonment. Another consequence, however, was the swift move by many state Legislatures to enact capital punishment systems which could pass constitutional muster. Chammah recounts the debate in Texas through legislative testimony, news reports, and first-person accounts. This brings us to our first allusion to the Gangs of New York scene. Though the political expediency sought by Tammany plays a role in the institution’s existence, reality is far more complex. Chammah guides readers through the rationales advanced by state lawmakers, sociological observations, cultural elements, and a history of the Texas frontier spirit to explain the institution’s continued popularity. Chammah scrutinizes the scope and justifications for policy tweaks made throughout the history of American executions. Why?

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If you missed our May 5 informational event, you can still view comments by Judge Delker, Richard Guirriero, & Talesha Saint-Marc about the benefits of Leadership Academy participation: vimeo.com/548381330
about which courthouses need to be closed and what cases to reschedule.

For me it’s not the search warrants or DV’s, it’s ‘we just found out that the husband of so and so in one of the courts just tested positive and do we need to clean the courthouse in the morning?’ Or a judge called and someone in their family has tested positive,” Judge King said.

Still, he said he considers himself lucky compared with judges conducting hearings during the pandemic.

“I have more of an ability to close my eyes for a second between issues than those judges who are on the phone all day long. I can tell you from my regular communications with our bench, the amount of stress on the circuit court over the past 13 months is unprecedented. We’ve never seen anything like this before.”

The nature of cases that pass through the circuit court and the decisions judges make can be inherently stressful, Judge King said. This is because many cases involve domestic violence, child abuse and neglect, as well as guardianship and custody issues.

“These types of cases need attention whether we’re in the midst of a pandemic or not. They all need to be handled in a timely manner, but many judges have been working in isolation, oftentimes in the courtroom, doing telephonic hearings all day long.”

While the importance of decision making for judges (79.2%) was the number one source of stress in the 2020 Stress and Resiliency report, the number two source was heavy dockets (73.2%).

The circuit court in New Hampshire is authorized to have 45 full time judges but they currently have only 31.

“When you add that to the influx of cases, which hasn’t slowed down, it’s a recipe for burnout, it’s grueling,” King said. “We’ve got about 14,000 cases right now that need to be scheduled for trial in the circuit court and 3500 criminal cases scheduled around the state. That sounds like a huge number but we had 55,000 criminal cases filed in 2020.”

Isolation for judges can be part of the job

For Judge Susan Carbon, who serves on judicial conduct committee and the 9th circuit Family Division, in Manchester, life as a judge has been busy over the past year.

“There has been no let up. This myth that things were quiet during Covid is one of the biggest myths I’ve heard,” Judge Carbon said, citing in-person and Weberx hearings that have continued to take place. And this, she added, is coupled with the momentous decisions and responsibilities, as well as the persona that judges must maintain for the public.

“As a judge you’re taking an oath to give every single case 110 percent. You can’t give every single case 110 percent. You can’t.”

And there are awkward encounters with former clients in public places at a supermarket or at a restaurant that she referred to as “very inappropriate.”

These things haven’t happened in a long time, but it’s always a possibility.”

Judge Yazinski said he and his wife haven’t accepted an invitation to a holiday party or get together for years because of the conflicts such gatherings may create.

“I’ve had litigants come to me in the produce section thanking me about cases, whatever it may be, involving their children, saying ‘you really helped me with my decision’ or I’ve gone to restaurants where I’ve had unhappy litigants in marital cases give me the daggers, and I still need to be mindful that this is the place to discuss these things.”

Judge Carbon mentioned a stalking encounter that led her to install an alarm at her home some years ago and another experience at a restaurant that she referred to as “the worst.”

Judge Jennifer Lemire, who has a case docket of intricate divorce and parenting cases, said isolation was an issue for her early in her career.

“You find in those smaller courts that when you don’t have colleagues to run things by or just chat with or grab lunch with when you have time, it can really affect your psyche.”

The number one source of stress: making decisions, getting it right

The number one source of stress that judges reported in the survey (79.3 percent) was the importance of the decisions they make in court.

Family court, Judge Carbon said, is “probably the most stressful docket in the state.”

This is due to the high stakes that come with the decisions judges make regarding parental rights.

“There’s nothing more important than your kids, and when you’re making those decisions that are going to impact children in a profound way… I labor over those decisions because I know the consequences are so enormous.”

New Hampshire Supreme Court Justice, Gary Hicks, said getting decisions right presents a substantial pressure for judges.

“You’ve got to get it right, that’s the pressure,” he said. “It’s a cultural thing for us. We took an oath to be right all the time. It’s hard to think we could be right all the time, but that’s still the goal.”

Judge Yazinski described the decision-making process in court as the most stressful part of his job.

“It’s easy to divide property because people can replace property, but it’s difficult to make a decision that will have a lifelong impact on the people in front of you, as the article points out,” he said.

Echoing Judge Carbon, the hardest decisions, he said, involve children, particularly abused and neglected children.

“These decisions weigh on you because if you get it wrong a child can be injured. Any judge who has done a lot of abuse and neglect cases will have made a mistake and will get the call in the middle of the night to find out the child you returned is in the hospital because a parent has injured them. Those are the ones that can haunt.”

One of the stressors Lemire hears about often, she says, are overcrowded dockets, as well as neglect cases that require judges to see graphic evidence of substantial physical abuse and neglect.

“I’ve been trapped in a room, and I just couldn’t make it. And terminating the parental rights is a decision that is never made lightly, I liken it to a criminal case where the standard is beyond reasonable doubt.”

Respecting difference, recognizing bias

One part of the article made Judge Yazinski reflect, he says, was a section that described judges at the end of the day making harsher, more biased decisions, than at the beginning of the day.

“If you’re required, as we are, to hear 10 or 12 half hour cases, and to have to act on all the emergencies that come in, and get orders out from three weeks before, by the end of the day you’re absolutely exhausted. I reflected when I read that and I thought to myself, ‘am I conscious that this might happen, and do I make an effort to make sure it doesn’t happen?’”

One of things that Yazinsky became involved in during a time of particularly high stress was mindfulness and meditation.

“If you learn mindfulness, as the article suggests, and which many judges have adopted, you do take a step back. For me, when I feel the urge to get angry there’s the immediate reaction to simply concentrate on the breath.”

Yazinski keeps a saying on his bench from Victor Frankl, the Austrian psychiatrist, philosopher, and Holocaust survivor, that stares him in the face each day during hearings.

The saying reads:

“Between every stimulus and response there is a space and in that space is our power to choose our response and, in our response, lies our growth and our freedom.”

“I really try to live in that space and I’m not perfect,” Judge Yazinski says. “The struggle is that judges aren’t expected to have or show emotions, but we’re human beings affected by things just like anyone else. We have good days and bad days, but on the bench it’s a struggle on a bad day not to show it’s a bad day and I certainly haven’t perfect-ed the art of it, but at least I can recognize it.”

Judge Lemire said she keeps her ego in check by recognizing she is there to help those who come before her, and to not simply
“wield authority and power.”

“A lot of those who come through our doors don’t have attorneys. It’s important that we recognize that we’re here to help them with whatever the issue is and to not simply wield authority and power,” she said. “Your patience can be tried by some difficult litigants or attorneys, or lack of evidence, or a busy docket. We have to be careful to remind ourselves that we’re here to help people. Sometimes you feel like a counselor.”

Judge Carbon teaches about implicit bias through trainings she does for the New Hampshire chapter of Court Appointed Special Advocates (CASA), a national association in the United States that supports and promotes court-appointed advocates for abused or neglected children.

While rare, she says she has known of judges who are disrespectful to people by holding expectations that exceed what is reasonable, demanding that people do something because it pleases their fancy, or those who even flaunt their position by wearing their robes in public.

“I am very, very privileged, and I’m in a position that holds high public status. It would be very easy to abuse this position and I’ve seen judges do it all too often,” she said. “The law is always your framework but you need to listen and learn and realize that no two cases are the same. When working with people whose backgrounds are different from your own you have to be very mindful that you aren’t superimposing your values on other people. I train classes to be mindful of this.”

Hillsborough County Superior Court Judge William Delker said he enjoys the decision-making process but noted that some decisions are very challenging.

“I enjoy that part of it because it’s like a hunt for the right answer. One can look at the law and feel confident that the decision is based on principles of law,” he said. “Decisions about bail and sentencing, however, are incredibly challenging because there’s no obvious right or wrong answer and we’re often operating on incomplete information. In some cases it can be a case of life and death, or a person’s liberty, and those are monumental decisions.”

Sentencing considerations are another area that Judge Delker finds difficult.

“Here in New Hampshire the guidelines are so amorphous that you don’t have many guideposts to tell you what’s right and wrong, and each case has to be decided on its own merits,” he said.

Fighting the temptation to send people to jail because it’s the easy thing to do has been something Judge Delker says he is always aware of. Even when he has a defendant with a bad record there may be “some glimmer of hope.”

One case that stands out to him involves a woman he has worked with for three years trying to come up with creative solutions to her situation.

“This person who has been in front of me for two years is just a different person since I first sentenced her,” he said. “And it was not an easy decision to make based on her background at the time.”

**Staying busy and finding balance with exercise, friends, and family**

All of the New Hampshire judges interviewed for the stress and resiliency report cited keeping busy, spending time with family and friends, as well as exercise, as the most important sources of well-being in their lives.

Judge Lemire said she took up cycling with her husband and is looking forward to resuming a yearly trip with her family.

For Judge Delker, who says he doesn’t typically stress out, staying busy is, itself, a source of wellbeing.

“...like working,” Judge Delker said, joking that he’s probably not a good person to talk about work-life balance because, “I don’t really have one.”

“Unless I’m doing one of my hobbies, I feel I’m working, it’s fulfilling to me and I work best when I’m busy. I have periods when things are less busy, particularly over the past year we haven’t been doing jury trials. But I thrive in that environment.”

Judge Delker, who also teaches law school students, described the sedentary nature of being a judge as one of the aspects of his job that requires him to exercise. He goes to the gym three or four times a week and has a host of projects around his house that help him maintain balance.

“This job is so sedentary. I literally sit, get up, sit, and walk across the hall, and sit again. And that’s my job. I need to exercise,” he said.

Justice Hicks says the one thing he has learned over the years regarding how to stay mentally healthy is the need to take time off.

“I’m not very good at it, but all judges need to take time off. It’s contrary to our nature when there are cases to be decided and work to be done but we need to do it. I find that after three or four days when I’m away I can breathe normally and it’s refreshing.”

Justice Hicks has trips to Vermont planned for the summer where he will be able to spend time with his grandchildren, who, he says, learns a great deal from.

“If I’m with my grandchildren I shut everything off because they demand everything. I have learned a lot from them,” he says. “It’s a week enough, no. But that’s the most that most of us ever take. I would say the key is to be aware and not let the pressure sneak up on you. Don’t take a vacation too late.”

While Judge King says some judges are “getting burnt out” due to heavy caseloads and other concerns relating to the pandemic, there is hope in the air.

“People can see the light at the end of the tunnel. We can see that by late May or June we’ll be able to go back to some semblance of normal.”

As for the importance of reports like the stress and resiliency survey?

Judge Carbon says it has taken her years to understand she can only do her best and that she is not in control over every aspect of the lives of people in front her.

“Surveys like the Stress and Resiliency report express what judges feel but don’t take the time to put into words. If you’re not addressing the stress you risk not being on your game with every single case.”
Murphy from page 1

on the school team – and who went on to earn a master’s degree in Anglo-Irish studies at University College Dublin in Ireland.

In college, he developed a lifelong interest in literature, especially Yeats and Joyce, and upon graduation had hopes of finding a high school teaching job and coaching baseball on the side. But the recession of the 1970s offered few teaching opportunities, and when his then-wife, the late attorney Ruth Ansell, said she was going to law school, he decided he would follow her lead. Murphy

longed to return to New England – especially with a child now in the picture – and he began to apply for judicial clerkships in New Hampshire. That led to clerkships at the New Hampshire Superior Court and with Justice William Batchelder at the New Hampshire Supreme Court.

“Based on my English literature background, I was comfortable doing research and writing,” Murphy says, so when the then-firm of Brown & Nixon was looking to hire someone for research and writing, he took the job. As the firm handled many personal injury cases, Murphy became more involved with that aspect of the law – “and gradually graduated from spending days in the stacks to being a trial attorney.”

The firm changed names over the years, and Murphy worked at Stewart & Murphy and its corporate predecessors for 25 years before being absorbed by Shaheen & Gordon.

His work has focused on civil litigation, including workplace injuries, traffic accidents and employment discrimination, and he has appeared in all the state’s Superior Courts and Federal District Court, and before the New Hampshire Human Rights Commission and the New Hampshire Department of Labor.

A favorite case – and one that went to the state Supreme Court – was that of Sondra Murray, who was a passenger in the car when her boyfriend was pulled over and arrested for driving on a revoked license. Murray started arguing with a second officer, who “pushed her against the back of the car and rammed her arm up so her wrist hit the back of her head and broke her arm,” Murphy recounts.

She was arrested for disorderly conduct, resisting arrest and possession of marijuana, though Murphy successfully argued the marijuana charge should be thrown out because police did not have a search warrant to look into her purse. He likewise argued to the Supreme Court that she should not have been arrested for disorderly conduct because that requires a breach of peace and no one other than the arresting officer was disturbed.

He prevailed, and helped establish some law both on the need for a search warrant and for what constitutes disorderly conduct. A civil rights suit was also brought in federal court, leading to a pre-trial settlement of $175,000.

A graduate of the Keenan Trial Institute, Murphy has also presented frequently at legal seminars and has been a faculty member for the National Institute of Trial Attorneys and the New Hampshire Trial Lawyers Academy.

His skills have won the admiration of fellow lawyers like Maureen Manning, of Manning & Zimmerman, who has known Murphy since the 1980s and says he “wants justice for his client and is willing to put forth his best effort every time.”

“Over the past few years, Fran has rolled up his sleeves to learn more about what a jury may think about the issues in his client’s case by doing focus groups,” she adds. “We have done a number of focus groups together and the information that we gather has been invaluable in representing our clients.”

A Nashua resident, Murphy brings similar passion to his civic engagements, and is president of the Friends of Greeley Park, which successfully fought an effort to replace the iconic playground in the park with a more modern one.

He is also secretary of the Lower Merrimack River Local Advisory Committee, which reviews plans for any development on the lower Merrimack River “so the purity of the river is preserved,” Murphy says.

Gene Porter chairs that group and has been a friend of Murphy’s for more than a dozen years.

“I continue to be impressed with the breadth of his community interests beyond his law practice,” Porter says of his friend. “As a longstanding owner of an electric car, Fran has been a valued participant in many discussions of the merits of increasing electrification, including of the prospective commuter rail line into New Hampshire along the shore of the Merrimack River.”

When his children were younger, Murphy used the athletic abilities he demonstrated as a college student when he managed a local baseball team and won...
the Nashua Youth Baseball Teams Parents Award for taking the team from last to first place. He also coached Biddy League basketball and was tournament director for the Nashua Columbus Day Youth Soccer Tournament.

He still bicycles and hikes in his spare time and enjoys spending time with his grandchildren, but also devotes many hours to the Shakespeare Authorship Question and is involved with the Shakespeare Oxford Society, dedicated “to researching and honoring the true bard.”

“We are convinced that the true author was Edward De Vere, the seventh Earl of Oxford,” Murphy says. “He was very close to the inner circle of the queen, he grew up in Elizabeth’s court, he was very widely educated and he had an intimate acquaintance with the law.”

He sees parallels between exploring the authorship issue and the practice of law. “There are a lot of lawyers who are interested in the Shakespeare question because weighing evidence is important to us,” Murphy says.

And if he could reach back in history and ask the true bard to appear in court? “I think the person who’s going to appear on the stand is Edward de Vere,” Murphy says.

Francis ‘Fran’ Murphy hiking in the White Mountains with grandchildren, left to right, Carolyn, James and William Murphy. Courtesy Photo

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Common Title Defects and How to Cure Part 2 Mortage Execution and Acknowledgement Errors

By Kenneth D. Murphy

This article is the second in a series addressing some common title defects arising from title insurance claims and how to cure those defects through litigation or agreement.

One common mistake involves a mortgage where one of the owners signs the mortgage, but his/her name is not listed on the first page of the instrument as a “Borrower” under the definitions section. A second common error occurs where the person’s name is listed as a “Borrower,” but that person did not sign the mortgage. A third common, and probably the most common mistake is an improper acknowledgment of the Borrower’s signature on the mortgage.

Prior to filing any litigation regarding execution errors, it is advisable to request that the Borrower voluntarily execute a confirmatory mortgage to correct such errors. At the closing, most borrowers sign an Errors and Omissions document or Compliance Agreement in which they agree to cooperate in correcting mistakes in the closing documents. A letter can be sent to the Borrower requesting cooperation in correcting errors.

In the situation where a borrower signs the mortgage on the Borrower line on the signature page, but their name is not typed in the definition section as a “Borrower,” a court complaint should be filed alleging mutual mistake and alleging that the clear intent of the parties was for the person to be a “Borrower,” but due to mutual mistake, the name was not typed in the definition section. The technical reason the name must be listed as “Borrower” is that in many sections of the mortgage reference is made to the “Borrower” or “Mortgage” granting covenants and making specific agreements. Therefore, the lender cannot foreclose on a party unless the Borrower has granted mortgage covenants and is in fact a “Borrower” as that word is used in the mortgage. “Borrower” is defined in the mortgage as the Mortgagor. The use of the word Borrower in the mortgage is not necessarily a person who is indebted under the Promissory Note.

New Hampshire and Massachusetts Condominium Practice: What’s Different? What’s the Same?

By David K. Moynihan

It is hard to think of two other bordering states with more contrasts than New Hampshire and Massachusetts, although Utah and Nevada come to mind. We regard Massachusetts as more likely to regulate commerce, but it is New Hampshire that regulates residential condominium development containing more than 10 units. Massachusetts has no such requirement.

New Hampshire Condominium Act

The New Hampshire Condominium Act is RSA 356-B (the “NH Act”). Significantly different from the Massachusetts condominium act (GL., Ch. 183A) is the requirement that a developer (“declarant”) proposing more than 10 residential units (including phasing rights) obtain a certificate of registration from the consumer protection and antitrust bureau of the Office of the New Hampshire Attorney General (“the Bureau”). No registration is required where only nonresidential units are proposed.

The Bureau’s primary purpose is to ensure: (1) that all municipal/governmental approvals are in place; (2) the declarant provides adequate consumer protection disclosures; (3) the declarant has the financial capability to complete the project; and (4) that violations of the NH Act are prevented. The Bureau has enacted Condominium Rules at Chapter 1400 of the New Hampshire Administrative Code (the “Rules”) that more fully describe the documents to be filed with any application where registration is required.

How Does One Obtain a Certificate of Registration for More than 10 Residential Units?

An application for registration must be filed with the Bureau for any residential condominium containing more than 10 units. There are several form applications, so one should have a thorough understanding of the NH Act and the Rules before filing an application. For example, there are applications depending on the number of units. The applications are on the Bureau’s website.
Thousands of New Hampshire people who have non-real estate full-time jobs, including, perhaps, New Hampshire lawyers reading this article, also own parcels of residential or commercial real estate that they rent to tenants as a side business. If you or your clients are among these part-time landlords, you need to know the federal income tax rules that you and your clients must follow in order to obtain federal income tax deductions under Internal Revenue Code section 199A on your net rental income.

As you may know, section 199A, which became effective on January 1, 2018, provides individuals and certain types of trusts that own interests in “pass-through businesses” with remarkable and unprecedented annual federal income tax deductions, which I’ll refer to here as “section 199A pass-through deductions.” Subject to certain limitations, these deductions can amount to 20 percent of the relevant business owners’ shares of the net income of their business. Pass-through businesses include state-law sole proprietorships, S corporations, and entities taxable as partnerships, including LLCs taxable as partnerships.

By its terms, section 199A will expire at the end of 2025. However, bills are currently pending in both the U.S. Senate and the U.S. House of Representatives that would extend the duration of section 199A indefinitely. Since at least 17 million business owners qualify for section 199A pass-through deductions and claim them on their Form 1040, it is highly probable that both bills will pass.

On September 24, 2019, in an administrative ruling entitled Rev. Proc. 2019-38, the IRS published guidelines that provide a “safe harbor” for meeting the section 199A pass-through deduction requirement, under which business owners may qualify for the deduction only if their real estate rental business is a “trade or business” within the meaning of Internal Revenue Code section 162, rather than a mere hobby or investment. These guidelines provide that your real estate rental business will be a section 199A trade or business if, among other things:

- You do not use triple net leases with your tenants;
- You or your agents provide real estate rental services to your tenants for at least 250 hours during the relevant taxable year;
- You keep extensive records concerning these services; and
- You provide detailed statements about your rental real estate business in your federal tax return for that year.

The IRS definition of the term “triple net lease” is somewhat unclear. However, it seems to mean, in essence, real estate rental leases that require tenants to pay not only for rent and for utilities used in their properties but also real estate taxes and real estate insurance. Obviously, most people who have full-time jobs but rent real estate to tenants as a side business can’t readily comply with the above guidelines; in particular, they can’t comply with the above “250-hour” guideline. Fortunately, however, the above IRS ruling also provides that the guidelines in it are not exclusive. In other words, you may be able to obtain a section 199A pass-through deduction on your net real estate rental income even if you fail to...
Recent Case Concerning the Interplay of a Municipal Sign Ordinance and Federal Law Protecting Religious Assemblies from Discriminatory Land Use Rules and Decisions

By Christopher Cole and Megan C. Carrier

In 2000, Congress unanimously passed a law known as the Religious Land Use and Institutionalized Persons Act to prevent cities and towns from using land-use regulations and zoning to discriminate against religious assemblies. The fundamental provision creating this rough accommodation between municipal interests in their planning and zoning matters and religious assemblies trying to find a home or change the manner in which they will use a property is the “Equal Terms” provision of the statute.

RLUIPA’s “Equal Terms” section provides that “[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” Thirty-one words that, at least upon a first reading, seem relatively noncontroversial. Lawyers, of course, are skilled in the art of analyzing seemingly simple phrases until they become confusing jumbles subject to multiple differing interpretations. Such is the predicament in which the Equal Terms provision finds itself, having been interpreted differently by at least two (and, if you really want to get into the weeds, more) Federal Courts of Appeal. By its October 7, 2020, decision in Signs for Jesus v. Town of Pembroke, NH, the First Circuit has joined the fray.

While the Third, Sixth, Seventh, Ninth, and Eleventh Circuits have all adopted their own slightly different tests to analyze Equal Terms challenges, the real dispute comes down to one basic distinction: should the Equal Terms provision be applied literally, or should municipalities only be required to treat religious entities equally with similarly situated nonreligious entities?

According to the Eleventh Circuit, the Equal Terms provision should be applied literally and broadly in favor of religious exercise. Under the Eleventh Circuit’s test, if a municipality allows any nonreligious entity to take an action under its zoning regulations (e.g. put up a sign, or locate in a specific zone), it must also allow a religious entity to take that action unless the differential treatment of the religious entity can satisfy strict scrutiny. The Third Circuit, by contrast, has held that a religious entity is not entitled to be treated on equal terms with every nonreligious entity. Rather, under the Third Circuit test, a regulation will violate the Equal Terms provision only if it treats religious assemblies or institutions less favorably than secular

"Under the Eleventh Circuit’s test, if a municipality allows any nonreligious entity to take an action under its zoning regulations (e.g. put up a sign, or locate in a specific zone), it must also allow a religious entity to take that action unless the differential treatment of the religious entity can satisfy strict scrutiny."
Why are developers not jumping on the opportunity to meet this housing demand?

One reason is local government restrictions on the construction of new housing, and the significant costs associated with bringing appeals of municipal decisions that otherwise halted housing development. The Legislature, in recognition of the “several factors that inhibit builders’ ability to meet the demand for new housing,” sought to reduce such costs to provide landowners with “an efficient and inexpensive legal appeals process.” S. Journal, 166th Session, at 225 (N.H. 2019). During the 2019 legislative session, this led to a proposed administrative body whose mission would be to review local housing development decisions in a cost-effective and timely manner.

While the original bill creating an alternative housing appeal process via an administrative board, S.B. 306, died on the table during the 2019 session, the substance of that bill was later moved into the biennium budget and was approved by the Legislature and Gov. Chris Sununu in September 2019. As a result, as of Jan. 1, 2021, the Housing Appeals Board enacted at RSA 679 offers an alternative forum to appeal local municipal board, committee, and commission decisions regarding “questions of housing and housing development.” RSA 679:5, I. The traditional appellate review for such decisions—the Superior Court—has concurrent jurisdiction with the HAB, as such, prospective petitioners, once exhausting all remedies at the local level, must determine whether to bring their appeals before the HAB or in Superior Court.

What does this alternative forum do to address the housing shortage?

Landowners now have the option to appeal local municipal decisions regarding “questions of housing or housing development” through an expedited review process conducted by the HAB. Unlike bringing an appeal in Superior Court, which can be in excess of a year-long endeavor—particularly in light of the backlog of cases due to COVID-19 restrictions—the HAB hearing process provides for a hearing within one year. As of January 2021, New Hampshire has a new wrench in its tool belt to ratchet up its response to the shortage of housing in this state. Before March 2020 and the start of the COVID-19 pandemic, the New Hampshire Housing Finance Authority estimated the housing shortage was between 15,000 and 20,000 units. In a recent statement, Dean Christon, executive director and CEO of the NHHFA, indicated there was no reason to believe that the shortage has improved since that estimate. Much of the historic shortage of housing in New Hampshire stems from a mismatch between the supply and demand of specific types of housing and a slowing pace of new construction around the state.

By Robert L. Best, Trevor J. Brown and Allyson L. Moore

As of January 2021, New Hampshire has a new wrench in its tool belt to ratchet up its response to the shortage of housing in this state. Before March 2020 and the start of the COVID-19 pandemic, the New Hampshire Housing Finance Authority estimated the housing shortage was between 15,000 and 20,000 units. In a recent statement, Dean Christon, executive director and CEO of the NHHFA, indicated there was no reason to believe that the shortage has improved since that estimate. Much of the historic shortage of housing in New Hampshire stems from a mismatch between the supply and demand of specific types of housing and a slowing pace of new construction around the state.
Take it Reasonably When it Comes to Easements

By Jason Dennis

Ultimately, because the defendant was in privity with the original grantor (who owned the right-of-way at the time of conveyance), and because a 1968 deed description used the right-of-way as a boundary line, an implied easement was created regardless of necessity or plaintiff/grantees’ expectations.

Favart v. Ouellette, 173 N.H. 304 (2020) provides a nice summary of easements by implication (and the scope of easements). The case involved two lots that were originally part of a single parcel located on Sip Pond. Over 50 years after the original subdivision, and after a number of conveyances, the owner of Lot 8 brought suit seeking an order that the owners of Lot 7 remove their dock from his property and not interfere with his use of his property.

The owners of Lot 7 argued that they had easement rights allowing them to access their property and to install a dock on Lot 8. In analyzing whether an implied easement existed for the benefit of Lot 7, the Supreme Court keyed in on whether it was created when the lots were first subdivided in 1961 (when unity of title existed between the lots).

The Supreme Court upheld the trial court’s finding of an implied easement, regrading the argument that use after the 1961 conveyance/severance of title should not be considered. The Supreme Court rejected this argument because the doctrine of implied easements protects severing parties’ reasonable expectations relative to such post-severance use.

The Supreme Court also rejected the argument that prior use was permissive because adversity is not a requirement for finding an implied easement. Additionally, the Supreme Court rejected the argument that prior deeds in the chain of title do not contain any reference to the easement rights at issue. The Supreme Court stated that the deeds arguably made reference to implied easement rights and concluded that the expectation to which the deeds were evidence of the intent to create easement rights was a determination for the trial court.

As to the issue of the easement being reasonably necessary, the Supreme Court agreed with the trial court that the location of the lots in a rural, undeveloped area made an easement to access the beach reasonably necessary for the enjoyment of the original lot. As such, the severing parties could reasonably expect the easement right was included in the conveyance.

The Supreme Court also rejected the argument that RSA 477:26 did not apply to create vested easement rights because there was no recorded document evidencing the easement. The Court confirmed that RSA 477:26 applies to implied easements, meaning that, unless the deed specifically states otherwise, an implied easement transfers with the land.

Although the Supreme Court affirmed the trial court’s decision on the implied easement, it reversed the decision that use of a dock is a reasonable use within the scope of the implied easement. The Supreme Court agreed with the owner of Lot 8 (the subdivider) that there was no evidence that a dock had ever been installed on the beach area of Lot 8.

As an aside, the trial court’s view in the case appears to have been of relatively significant importance, both at the trial court level and on appeal.

The Supreme Court ruled that the “until such time as” language signaled a determinable easement, but that the easement could potentially exist forever if the expressed event or condition does not occur. That said, because the word “temporary” referred to the conditional nature/duration of the easement, the Supreme Court ruled that the trial court erred by ruling that the word “temporary” rendered the easement ambiguous. The Supreme Court also indicated that because there was no express obligation, there was no affirmative duty for the easement holders to develop their own water source/terminate the easement.

The Supreme Court also analyzed ap EASEMENTS continued on page 39
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The situation where the person’s name does appear as a “Borrower” in the definition section, but that person does not sign the mortgage is a more difficult burden of proof. This burden can be met by other records from the closing file reflecting an intent of the Borrower to be a Borrower including the loan application, title commitment, other documents that the person may have executed at the clos- ing that list that person as Borrower.

Courts have ruled that if a person signs the mortgage, but that person’s name is not listed in the granting clause as a Borrower, such mortgage was nevertheless valid. SFV 2005, LLC v. Ream, 187 Ohio App. 3d 715, 2010-Ohio-1615, 933 N.E. 2d 819.

Some courts have also allowed a mortgage to be reformed to supply a missing signature. Smith v. Royal Auto Group Inc, 675 So. 2d 144 (Florida District Court App. 1996). 66 Am. Jur. 2d 580. Reformation of Instruments Section 56 states, “Where parties to a deed or mortgage fail to sign it…reformation may be decreed to supply a missing signature.” Courts look to the intent of the parties.

Other Courts have ruled that if the name is missing from the definition section, the mortgage is not valid regardless of the signature. Hardesty v. Huntington National Bank, 450 B.R. 711 (Bankr. S.D. Ohio 2011); Riley v. InstaMortgage.com, (Bankr. D. Mass.) These cases deny re- formation on the basis that a person can only be a “Borrower” if his or her name is listed as a Borrower in the definition section. The mere signing of the mortgage does not make that person a “Borrower” since the document has a specific definition of Borrower.

RSA 477:3 requires that every mort- gage or deed shall be signed by the party granting the same and properly acknowled- ged. Therefore, if the instrument is not properly acknowledged it is not properly recorded. There is an exception for de- fective acknowledgments that have been on record more than ten (10) years. RSA 447:16 provides that a defectively acknowledged mortgage on record for a pe- riod of 10 years shall be valid as though it had been properly acknowledged in the first instance.

Acknowledgments can be defective for failure to list the state or county or date. If the mortgage contains a notary name, information can be obtained from the NH Secretary of State as to whether that person is still an official notary and often an address can be obtained for the notary. An Affidavit can be requested from the notary to correct certain errors such as the date or State or County. Un- like Massachusetts, New Hampshire does not have a statute that allows an attorney to file an affidavit to correct acknowledgment errors. (Mass G.L.c. 183, Sect 5B)

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to determine if the application is deemed complete. Thereafter, the Bureau has an additional 60 days to act on the applica- tion. During the 60-day period, the Bureau may issue a notice of deficiency request- ing additional information or an expanded disclosure. A notice of deficiency may further delay the issuance of a certificate of registration beyond the 60-day period. More importantly, the declarant’s failure to address the notice of deficiency within 15 days of receipt may result in rejection of the application.

May I Sell Units Before Registration?

Prior to registration, only non-binding reservations on forms provided to the Bu- reau may be used. Additionally, all pro- motional materials disseminated prior to registration must contain a form disclosure stating that the condominium has not been registered by the Bureau. Violations may result in fines or rejection of the applica- tion.

Upon favorable action by the Bureau, a certificate of registration is issued con- firming the number of residential units registered. The certificate is then recorded with the condominium documents and a copy as recorded must be submitted to the Bureau.

The Bureau maintains jurisdiction over the declarant until all improvements have been completed and units are sold. The declarant must file annual reports with the Bureau stating any material change in information from the original application and any change in ownership. Change in ownership also triggers a new registration obligation.

The foregoing provides only a ba- sic overview of the registration of a resi- dential condominium in New Hampshire containing more than 10 residential units. As stated above, Massachusetts currently has no registration process and units may be conveyed as soon as the condominium documents are recorded, provided it is not a conversion condominium.

While the extensive and costly New Hampshire registration process provides consumer protections, it appears that few clients take the time to read the condo- minium offering documents. Often a pur- chaser’s motive to buy is driven by the unit’s location, price and curb appeal, not the adequacy of the condominium offering documents. Some purchasers mistakenly assume that a certificate of registration means the unit is a good investment, clear- ly an unintended result. In the end, con- sumer protection disclosures should never replace the old adage, “Buyer beware!”

Admitted to practice in both New Hamp- shire and Massachusetts, David Moyihan is an active member of the Real Estate Bar Association for Massachusetts condo- minium law and practice committee. He is of counsel to the Woburn office of the re- gional law firm of McLane Middleton Pro- fessional Association, and has participated in programs for REBA and Massachusetts Continuing Legal Education Inc. David can be contacted at david.moyihan@mclane.com.

The above guidelines, then, should you follow in order to claim a section 199A deduction on your net real estate rental income without a significant risk of an IRS audit? I suggest the five guidelines below. As a former trial attorney for the IRS, I think the IRS will respect these guidelines. Obviously, however, I can’t guarantee this result.

1. First, as noted, you shouldn’t use a triple-net lease agreement with your tenants, since, if you do, the IRS may claim that your rental business is, as noted, a mere passive investment or a hobby rather than a section 199A trade or business. Instead, your lease agreement should provide, among other things, that if your tenants need real estate maintenance or repairs, they themselves may not arrange for them. Instead, they must contact you, and you or your agents will provide them with these services promptly and for fair market charges.

2. Second, you must keep reasonably accurate records concerning the types of real estate rental services that you and your agents perform for your tenants and the number of hours you and they devote to these services. The services may include, as noted, property maintenance and repairs; they may also include advertising of available rental properties, interview prospective renters, and approving potential new tenants, negating real estate rental leases with them, and periodic inspections of the properties they rent from you. But an IRS General Counsel’s Memorandum suggests that to be safe under section 199A, you should engage in relatively varied types of rental services in each relevant taxable year—say, three or more types.

3. Third, you must spend enough time on your rental real estate business to make it reasonably likely that this business will be profitable. However, if you have good tenants who require very little of your time, one Tax Court case suggests that you must engage in your rental real estate business must nevertheless be treated by the IRS as a section 199A trade or business and thus can qualify for a section 199A pass-through deduction under that section even if you spend as little as two hours a month on it.

4. Fourth, a U.S. Supreme Court case suggests that you should engage in your real estate rental services “regularly and continuously.”

5. Fifth, you must not use any of your rental properties even occasionally as vacation properties for yourself and your family.

In short, to maximize the likelihood that the IRS will not challenge section 199A deductions you claim from your net real estate rental income on the grounds that your real estate rental business is not a section 199A trade or business, you need to do some careful planning and, as noted, provide your tenants, by yourself or through your employees, agents, or independent contractors, with a variety of real estate rental services. But in my view, if you follow the above five guidelines, you stand a very good chance of maximizing your section 199A pass-through deduction.

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entities that are similarly situated as to the regulatory purpose.

The Eleventh Circuit test for a section 199A deduction, for example, is quite stringent. In Pierce v. Florida, the Eleventh Circuit test seems to make some sense. After all, the Equal Terms provision does not contain the words “similarly situated” or require a comparator. From a practical standpoint, however, the Eleventh Circuit’s test raises some interesting issues (if you’re a lawyer), several of which are illustrated by the Supreme for your case.

Signs for Jesus involved a church’s request to replace its traditional wooden sign, on which it displayed scheduling and religious messages, with an “electronic changing sign,” which could be updated from afar to project different religious messages and curricula to passersby. The Town of Pembroke’s sign ordinance, however, bans electronic signs in the part of town where the church is located, the Limited Office District. Undeterred, the church applied for a permit to install an electronic sign. The town’s code enforcement officer denied the permit, citing the ordinance. The church sought reconsideration of that decision and, alternatively, requested a variance from the zoning ordinance under the RLEUPA. The ZBA denied both requests, the church initiated an action in federal court claiming that the denial of the variance was a violation of the Equal Terms provision. In support of its claim, the church argued that the town allowed three secular institutions to place electronic signs in the Limited Office District: a gas station (whose electronic sign was in existence prior to the adoption of the electronic sign provision and therefore constituted lawful preexisting nonconforming use), the local School Administrative Unit (a subdivision of the state which, pursuant to RSA 674:54, is exempt from local zoning regulations), and the New Hampshire Department of Transportation (also exempt from local zoning regulations).

Rigid application of the Eleventh Circuit’s test to the facts of the Signs for Jesus case leads to a potentially interesting result. Specifically, if government actors—religious entities are actually treated more favorably than secular entities. Rather, when compared with non-governmental secular entities, or secular entities that do not enjoy rights associated with a nonconforming use, religious entities are actually treated more favorably.

Perhaps recognizing this concern, the First Circuit threw its lot in with the Third Circuit, finding that none of the secular institutions identified by the church (the gas station, the school, or the DOT) constituted appropriate “comparators” for purposes of an Equal Terms claim. The Court quoted and affirmed U.S. District Court Judge Paul J. Barbadoro’s opinion, in which he noted that the governmental actors—Pembroke Academy and NH DOT—were not viable comparators “because the State has deprived the Town of any power to regulate governmental land uses.” As a result, the sign ordinance’s exemption for these “legally required” signs merely reflects Pembroke’s lack of authority to regulate governmental land use.” Nor was the gas station a proper comparator: the town was still disabled from regulating the gas station sign, but by a different legal regime, one that allows lawful preexisting nonconformities to continue indefinitely.

For the time being, we now have certainty as to how the First Circuit—and Federal District Courts for New Hampshire, Maine, Massachusetts, and Puerto Rico—will interpret the Equal Terms provision. That said, it may only be a matter of time before the Supreme Court will settle this issue once and for all.

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appeals before the HAB are already underway. The HAB’s offices are located in Governor Hugh Gallen State Office Park in Concord, though all hearings are presently being held by remote means. Currently the HAB is operating at two-thirds force, with a chair (Gregory E. Michael, Esq.) and member (Elizabeth R. Fischer) who are “learned and experienced in questions of land use.” The third member, who must be a “professional engineer or land surveyor,” has not yet been appointed by the Supreme Court and commissioned by the governor. See RSA 679:1–2. At two-thirds force, the HAB has a quorum and can transact its business, including holding hearings and rendering decisions. RSA 679:8, 1. Therefore, prospective petitioners can now proceed with appeals of municipal decisions regarding questions of “housing or housing development” before the HAB.

Prospective petitioners have only 30 days following a final municipal decision to bring their appeal before the HAB and notify the municipal body that rendered the decision. RSA 679:6. The municipal body will similarly have 30 days to prepare a certified record of its proceedings and respond to the petition for appeal. Id. Following that submission, the HAB will issue a notice containing deadlines for pre-hearing motions or submissions, including requests for findings and rulings, along with the dates of a hearing management conference and the hearing. Within 60 days of the hearing, the HAB will issue its final decision. Similar to Superior Court, the HAB’s decision is appealable to the Supreme Court. Id.; RSA 679:7, 1.

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conclude that the bearing of the well was unreasonable burdensome—withstanding deed language.

The Supreme Court noted that the property owners did not sufficiently allege facts that demonstrated the easement holders continued use of the well was unreasonably burdensome. As to the allegation that the easement holders added a second property in the easement, indicating that the rule can give reasonable meaning to general or ambiguous language.

The take away, for me, from these three cases is that litigants need to be prepared to allege, argue, and/or produce competent evidence related to (i) the language of the instrument(s), (ii) the historical use (including conveyances) of the properties, (iii) the necessity for the easement at issue, and (iv) the grantees’ and grantors’ (including predecessors) reasonable expectations regarding the existence of easements.

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Liability to COVID-19 Patients: Are Doctors Untouchable in Court?

By Cory Greenleaf

I. The Coronavirus’s Impact on Healthcare

Along with the Spanish flu, cholera, the bubonic plague and smallpox, the novel coronavirus (“COVID-19”) has caused one of the worst global pandemics in history. While businesses closed and the public quarantined, many healthcare providers were pushed to the front line to confront the virus, often facing shortages in staffing, hospital space, beds, personal protective equipment, and medical equipment such as ventilators.

II. The Response to Protect Healthcare Providers

A majority of states have passed legislation and signed executive orders offering extensive protections to healthcare providers in light of the pandemic. While the language of the actions varies from state to state, there is one common theme: healthcare providers who engage in gross negligence or intentional misconduct will not be protected.\(^1\) Because most states do not define what medical conduct rises to the level of “gross negligence,” that answer will likely be derived by courts. Notably, state courts have constructed their own definitions for what constitutes gross negligent conduct, but frankly none of this language was intended to apply during a pandemic.

At the federal level, Congress has considered a handful of legislative responses since the coronavirus began to take its toll in the U.S. On March 17, 2020, then Secretary of Health and Human Services Alex Azar authorized the Public Readiness and Emergency Preparedness Act “to provide immunity for activities related to countermeasures against COVID-19.”\(^2\) Simply put, absent current protection under federal law, the PREP Act grants medical providers and entities protection against claims of loss resulting from the use of drugs or medical devices when caring for COVID-19 patients, unless those measures taken involved “willful misconduct.”\(^3\) To date, there is no case law defining what medical negligence constitutes “willful misconduct” pursuant to the PREP Act.

It is also worth noting another piece of federal legislation that drew significant attention when introduced but appears to lack any fighting chance. That proposed law, the Safeguarding America’s Frontline Employees To Offer Work Opportunities Required to Kickstart the Economy Act, was introduced by Senate Republicans on July 27, 2020, citing the “risk of a tidal wave of lawsuits” in response to the pandemic which could impact businesses, educational institutions, religious organizations, nonprofit organizations, government entities, and healthcare workers.\(^4\) If enacted, the federal law would impose strict limitations on tort liability regarding COVID-19-related actions. Additionally, the federal law would also permit such lawsuits to be removed to federal court by any defendant. Importantly, the law defines both gross negligence and willful misconduct.\(^5\)

III. New Hampshire

To date, no legislation has been passed to extend liability protections to New Hampshire healthcare workers. However, in response to Gov. Chris Sununu’s March 13, 2020, executive order declaring a state of emergency, then Attorney General Gordon J. MacDonald issued General Opinion No. 2020-01-01, concluding that healthcare facilities and their employees and volunteers are immune from civil action as “emergency management workers” pursuant to N.H. RSA 21-P:35. V. According to the opinion, so long as healthcare workers “take reasonable steps” to comply with the governor’s order, they will be civilly immune from liability. Of course, the attorney general’s opinion is not legally binding, and it remains unclear whether the New Hampshire Supreme Court would adopt its language.\(^6\) It is uncertain, moreover, what remedies, if any, a plaintiff would have had they been injured due to the negligence of a healthcare provider during the COVID-19 state of emergency. For instance, it seems evident that a patient who inadvertently contracts the virus in an emergency room may not subsequently recover from the hospital in a civil lawsuit. But what about a patient who dies because the hospital failed to intubate and initiate mechanical ventilation to a patient?\(^7\) These are questions that the courts very well may have to answer.

Endnotes


2. In invoking the immunity protections of the Public Readiness and Emergency Preparedness Act (“PREP Act”), 42 U.S.C. 243 et seq., the Secretary of Health and Human Services shielded manufacturers, distributors, and healthcare providers from claims arising from the use of drugs and devices (e.g., ventilators) used during the pandemic to treat patients. See 42 U.S.C. §§ 247d-6d, 247d-te (2006) (as modified by the PREP Act, 85 C.F.R. § 15919 (2020)).


4. Id. § 3(10), (19).

5. Now Chief Justice of the New Hampshire Supreme Court, McDonald’s opinion would appear to have a stronger chance of becoming binding.

6. This example was taken from a real case. See Reardon v. OhioHealth Corp. et al., 20 CVN04054 (June 22, 2020) (filed in the Franklin County Court of Common Pleas)

7. Cory D. N. Greenleaf, 22 At UNH Law, is a Daniel Webster Honors Scholar and Warren B. Rudman Fellow. Before law school, he received his master’s degree in public health from the University of New England.

Criminal

No. 2018-0104
April 20, 2021
Affirmed.

Issue: Whether the trial court erred in determining that the 45-year-to-life sentence it imposed is not a de facto life sentence under the Eighth Amendment to the Federal Constitution.

Defendant appealed an order of the Superior Court ruling that Defendant’s sentence of 45 years to life does not constitute the de facto equivalent of lifetime imprisonment in violation of the Eighth Amendment to the Federal Constitution.

In 1991, when defendant was 17, he committed first degree murder. He received a statute mandating sentence of life without parole. At a later resentencing hearing, the Court imposed a sentence of 45 years to life and issued a narrative order defining a de facto sentence as one that exceeds a defendant’s life expectancy. Further, the court held that, based on the evidence presented, the 45 years to life sentence imposed against defendant was not a de facto life sentence because it did not exceed defendant’s life expectancy. Defendant appealed arguing that the trial court erred in holding lifetime imprisonment as being calculated based on a defendant’s actuarily-projected death. Rather, defendant argued that lifetime imprisonment when imprisonment is for so long it forecloses opportunity for a person to have a meaningful life outside of prison.

Alternatively, he argued that if the Supreme Court found that lifetime imprisonment is to an actuarially-projected death, then life expectancy should be based on life expectancy of long-term prisoners, not the general public.

Upon review, the Supreme Court affirmed the trial court’s holding. Particularly, the Supreme Court agreed that the trial court’s reliance on CDC life expectancy estimates rather than prisoner-based studies was proper because the trial court has broad discretion in choosing the type of evidence on which it may rely and because the trial court’s decision was not untenable or unreasonable.

Finally, defendant argued that the trial court erred in imposing a sentence of 45 years to life because it offers “the hope of release only a few years before his actuarily-projected death.” The Supreme Court disagreed and held that the trial court did not err, as based on the actuarially-projected death, from the date defendant would be eligible for parole he would have at least an additional 20 years to live.

Gordon J. MacDonald, attorney general (Elizabeth C. Woodcock, assistant attorney general, on the brief and orally), for the State. Christopher M. Johnson, chief appellate defender, of Concord, by brief and orally, for the defendant.

DIVORCE

In the Matter of Molly Blaisdell and Robert Blaisdell
No. 2020-0211
April 1, 2021
Reversed and remanded.

Issue: Whether the term “adultery,” as that term is used in RSA 458:7, II (2018), is limited to sexual intercourse between persons of the opposite sex; whether “sexual intercourse” is limited to penetration of the vagina by a penis.

Husband challenged a decision of the Circuit Court granting a motion to dismiss his cross-pleaded grounds of adultery alleging sexual intercourse between wife and another woman. Specifically, husband moved the Supreme Court to overrule In the Matter of Blanchflower & Blanchflower, 150 N.H. 226, 227-28 (2003) and reinterpret the term “adultery,” as used in RSA 458:7, II to include sexual intercourse between a married person and someone other than that person’s spouse, regardless of either person’s sex or gender.

The Supreme Court agreed with husband that, with NH’s adoption of same-sex marriage in 2009 and SCOTUS’s decision at AT-A-GLANCE continued on page 41

Supreme Court At-a-Glance

Cory D. N. Greenleaf 22 At UNH Law, is a Daniel Webster Honors Scholar and Warren B. Rudman Fellow. Before law school, he received his master’s degree in public health from the University of New England.
in 2015 that denial of same-sex marriage violated the Federal Constitution, the view of the institution of marriage undermining the holding in Blanchflower had changed in the eyes of law and society. As such, it overruled Blanchflower to the extent that it limits the definition of “adultery” to sexual intercourse between persons of the opposite sex, and re-interpreted “adultery” to mean voluntary sexual intercourse between a married person and someone other than that person’s spouse, regardless of the sex or gender of either person. The Supreme Court further clarified that “sexual intercourse” includes heterosexual intercourse involving penetration of the vagina by the penis, and intercourse involving genital contact other than penetration of the vagina by a penis.

Finally, the Supreme Court ordered that the application of the decision apply retroactively.

Joshua Gordon, of Concord, for the petitioner, filed no brief. Lohstein Guerriero, PLLC, of Concord (Theodore M. Lohstein on the brief), for the respondent.

DIVORCE

In the Matter of Jonathan Merrill and Lea Merrill
No. 2020-0009
April 20, 2021

A certified copy of the evaluation form, we ask that you do not sign the completed evaluation. A copy of the evaluation form, we ask that you do not sign the completed evaluation. A copy of the evaluation form, we ask that you do not sign the completed evaluation. A copy of the evaluation form, we ask that you do not sign the completed evaluation.

- Issue: Whether the trial court erred in including the assets of a spendthrift trust in the marital estate; (2) excluded mother-in-law’s condo-

minium, which was owned jointly with wife, from the marital estate assets; and (3) incorporated part of the temporary order into the final decree.

Husband appealed divorce decree arguing the trial court erred when it (1) included assets of a spendthrift trust in the marital estate; (2) excluded mother-in-law’s condominium, which was owned jointly with wife, from the marital estate assets; and (3) incorporated part of the temporary order into the final decree.

Husband’s salary was $190,000 per year, which he earned through ownership in his family’s business. Particularly, his ownership consisted in part of ownership in his individual capacity and in part of ownership in his capacity as a beneficiary of a trust. Wife and her mother jointly owned the condominium in which mother lived.

At trial, the court included husband’s beneficial interest the trust as part of the marital estate, but excluded wife’s interest in her mother’s condominium from the marital estate.

On appeal, husband argued that the trial court erred in including his interest in the family’s business as beneficiary of a trust as a part of the marital estate because the trust contained a spendthrift provision. He further argued that the trial court erred when it failed to include wife’s joint interest in her mother’s condominium as part of the marital estate.

Upon review of the language of the trust, the Supreme Court agreed that the spendthrift provision in the trust did prevent the trust assets from being marital property. Further, the Supreme Court agreed with the trial court that the condominium was not part of the marital estate because wife was unaware that her name was on the deed, took no part in the purchase, did not live in or take possession of the property, and did not spend marital funds to purchase the property.

Finally, because the trial court erred in including the trust assets in the marital estate, the Supreme Court vacated the trial court’s property and alimony awards.

John A. Macoul, of Salem, by brief, for the petitioner. MacMillan Law Offices, of Manchester, by brief, for the respondent.

No. 2020-0268
April 20, 2021

Modified in part, and affirmed as modified.

- Issue: Whether the trial court erred in applying a balancing test to determine whether a report prepared by an attorney on behalf of a school administrative unit should be disclosed; whether the trial court erred when it ruled that the report was not per se exempt under NH’s Right-to-Know exemption; whether the trial court erred by failing to conduct an in camera review of the report; whether the trial court erred when ruling to award attorney’s fees.

School Administrative Unit No. 55 appealed an order of the Supreme Court denying its motion to dismiss the complaint filed by Hampstead School District and Hampstead School Board (collectively “Hampstead”), and granting Hampstead’s request for an order compelling the SAU to produce immediately an attorney-prepared investigatory report. Hampstead cross-appealed the trial court’s denial of its request for attorney’s fees.

In 2018, Hampstead School Board adopted a resolution rejecting and disapproving inappropriate and unprofessional conduct by Timberlane Regional School Board, which was part of the SAU. The SAU hired an attorney to investigate the allegations. The lawyer found no merit in the allegations. Hampstead’s counsel requested a copy of the report. The SAU declined asserting the entire report was exempt under RSA 91-A.5,4 because it contained personnel information, medical information, and other things. Hampstead filed the instant action and SAU moved to dismiss. The trial court granted Hampstead’s petition, relied SAU’s motion to dismiss and denied Hampstead’s request for attorney’s fees. The parties unsuccessfully moved for reconsideration, and an appeal and cross-appeal followed.

On appeal, the SAU argued first that the trial court erred in applying a balancing test to determine whether the report should be disclosed instead of applying a per se rule of nondisclosure. The Supreme Court declined to follow SAU’s reasoning and held that the Supreme Court’s long-standing precedent requiring a two-party analysis had not been explicitly overruled and therefore the trial court had not erred.

The SAU argued second that it was proper for the Supreme Court to vacate the trial court’s order and remand to consider whether the report pertained to internal personnel practices or constituted a personnel file. The Supreme Court declined the SAU’s request to vacate and remand because the second party test had not been governed by the invasion of privacy three-step test that the trial court had already applied and on which the SAU failed to prevail.

Finally, in its third argument, the SAU contended that the trial court erred by failing to conduct an in camera review to decide whether there should be total or partial disclosure of the report. The Supreme Court affirmed the trial court’s disclosure order and held that the SAU’s argument regarding in camera review was moot because Hampstead acknowledged at oral argument that it was inexcusable on the SAU to decide whether any specific information in the report should be redacted.

In cross-appeal, Hampstead argued the trial court erred in denying Hampstead’s request for attorney’s fees. The Supreme Court held that the trial court properly denied an award of attorney’s fees because SAU neither knew nor should have known its conduct violated NH statutes. Further argument that the trial court should have awarded a proportionate share of attorney’s fees also failed because the Supreme Court found that Hampstead had failed to provide a record demonstrating it made this argument in the trial court.


Housing Appeals Board Seeking 3rd Board Member

The Supreme Court will be accepting applications for a currently vacant position as a member of the Housing Appeals Board established by RSA chapter 679. In accordance with RSA 679:1, states that members “shall be full-time employees and shall not engage in any other employment, appointments, 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).

Candiates should submit a current resume and a separate statement of interest to Timothy A. Gudas, Clerk, New Hampshire Supreme Court, One Charles Doe Building, Concord, NH 03301. The statement of interest 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 reference 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 significant cases, transactions, administrative hearings, or development projects in which the candidate has been involved during their professional career.

Link to Job Listings on State of New Hampshire Job Opportunities Website: https://nhrecruit.nh.gov/lawtaprd/CandidateServicenlogin?language=en&controller=ExternalJobBoardController&websitelocation=岗. con- textSessionJobBoard=EXTERNAL&contextSession.key.noheader=true/

Job ID: 19763 | Category: Other | Post Date: 04/08/2021 | Position: Housing Ap- peals Board Member

Housing Appeals Board By: Gregory E. Michael, Chair

Elizabeth R. Fischer, Member
Pursuant to its rule making authority and RSA 490:4, the Supreme Court promulgates the following holidays during calendar year 2022:

1. New Year’s Day (observed) Monday January 3, 2022
2. Martin Luther King, Jr. Civil Rights Day Monday January 17, 2022
3. Washington’s Birthday Monday February 21, 2022
4. Memorial Day Monday May 30, 2022
5. Independence Day Monday July 4, 2022
7. Columbus Day Monday October 10, 2022
8. Veterans Day Friday November 11, 2022
9. Thanksgiving Day Thursday November 24, 2022
10. Day after Thanksgiving Friday November 25, 2022
11. Day before Christmas (observed) Friday December 23, 2022
12. Christmas Day (observed) Monday December 26, 2022


Supreme Court Orders

HOLIDAY SCHEDULE FOR CALENDAR YEAR 2022

Effective Dates

These amendments shall take effect immediately.

CRIMINAL LAW; POST-CONVICTION DISCOVERY
04/16/2021 United States v. Imam Alrai Case No. 18-cr-192-01-JL, Opinion No. DNH 075

The defendant moved for discovery related to his post-conviction, pre-sentencing Motion to Dismiss based on alleged violations of Brady v. Maryland, 373 U.S. 83 (1963). The court granted the motion as to 19 documents listed on a pre-trial privilege log created by the victim’s attorney. The prosecution’s witness reviewed or accessed and potentially relied upon these 19 documents in developing his opinion, but the prosecution had not viewed the documents and did not know their contents. Instead, the victim’s attorney independently identified the documents as privileged and withheld them. Given these circumstances, the court ordered in camera review of the documents in order to determine whether they are privileged and, if not, whether they are Brady material. The court denied the other discovery requests in the motion because the defendant failed to articulate why the requested material could contain favorable, material evidence, as is required to justify discovery under Brady. 10 pages. Judge Joseph N. Laplante.

ADM-2020-0014, In the Matter of Christopher R. Burns, Esquire
On January 5, 2021, Attorney Christopher R. Burns was suspended from the practice of law in New Hampshire for failing to pay his 2020/2021 bar dues and court fees, plus $100 in associated delinquency fees, and for failing to appear at a show cause hearing, via Webex video conferencing, on December 3, 2020. Attorney Burns filed a motion for reinstatement on April 6, 2021, and subsequently refiled his motion on April 7, 2021. The New Hampshire Bar Association confirmed the motion’s representation that Attorney Burns has now satisfied his New Hampshire bar licensure renewal obligations.

Upon review of the motion for reinstatement, the court orders that Attorney Christopher R. Burns be reinstated to the practice of law in New Hampshire, effective immediately.

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

ISSUED: April 28, 2021

ADM-2018-0020, In the Matter of Christina Mott Hesse, Esquire, Et Al. Christina Mott Hesse, Esquire
On November 27, 2018, Attorney Christina P. Mott, now known as Attorney Christina Mott Hesse (Attorney Hesse), was suspended from the practice of law in New Hampshire for failing to comply with the following New Hampshire bar licensure renewal obligations, and for failing to appear for a show-cause hearing scheduled for November 2, 2018.

1. Bar Dues and Court Fees - Attorney Hesse had not paid her 2018/2019 bar dues and court fees, and the $300 in assessed delinquency fees. See Supreme Court Rule 42A.
2. Trust Accounting Certification - Attorney Hesse had not completed an annual trust accounting certification, as required by Supreme Court Rule 50-A.
3. NHMCLE Certification - Attorney Hesse had not fulfilled NHMCLE requirements of Supreme Court Rule 53 for the reporting year ending June 30, 2018, and had not paid the $300 in assessed delinquency fees.

Attorney Hesse filed a petition for reinstatement on April 12, 2021, providing evidence of her current compliance with all New Hampshire bar licensure renewal obligations, her continuing competence and learning in the law, and her continuing moral character and fitness.

Upon review of the petition for reinstatement, the court orders that Attorney Christina Mott Hesse be reinstated to the practice of law in New Hampshire, effective immediately.

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

ISSUED: May 11, 2021

ADM-2021-0605, In the Matter of Peter Piartangelo
James Pietrangelo sued New Hampshire Governor Christopher Sununu and other State of New Hampshire (“State”) officials arising out of the State’s plan for the distribution of COVID-19 vaccines. Before the court was Pietrangelo’s request for a preliminary injunction, wherein he sought to enjoin the defendants from using “race, ethnicity, or minority-group status” as a factor in vaccine distribution. At issue was the State’s “equity” allocation plan for distributing up to 10% of the vaccine supply to “critical populations” living in census tracts deemed most vulnerable to COVID-19. The court denied the motion because Pietrangelo failed to demonstrate that he had standing to seek the requested relief. The court reasoned that there was no evidence that Pietrangelo would be able to apply for a vaccine through the plan but for the allegedly discriminatory criteria. Absent such evidence, he could not demonstrate that he would suffer in the future a particularized injury that is redressable by a favorable court order. 24 pages. Judge Paul Barbadoro.

ISSUED: May 11, 2021

PNHMCLE Certification - Attorney Hesse had not fulfilled NHMCLE requirements of Supreme Court Rule 53 for the reporting year ending June 30, 2018, and had not paid the $300 in assessed delinquency fees. See Supreme Court Rule 42A.

Attorney Hesse filed a motion for reinstatement on April 12, 2021, providing evidence of her current compliance with all New Hampshire bar licensure renewal obligations, her continuing competence and learning in the law, and her continuing moral character and fitness.

Upon review of the petition for reinstatement, the court orders that Attorney Christina Mott Hesse be reinstated to the practice of law in New Hampshire, effective immediately.

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

ISSUED: May 11, 2021

ADM-2021-0605

PRELIMINARY INJUNCTION; STANDING

Need to schedule a Mediation?

Fast-track scheduling at www.NHMediators.org

April 2021

US District Court Decision Listing

Preliminary Injunction; Standing

James Pietrangelo sued New Hampshire Governor Christopher Sununu and other State of New Hampshire (“State”) officials arising out of the State’s plan for the distribution of COVID-19 vaccines. Before the court was Pietrangelo’s request for a preliminary injunction, wherein he sought to enjoin the defendants from using “race, ethnicity, or minority-group status” as a factor in vaccine distribution. At issue was the State’s “equity” allocation plan for distributing up to 10% of the vaccine supply to “critical populations” living in census tracts deemed most vulnerable to COVID-19. The court denied the motion because Pietrangelo failed to demonstrate that he had standing to seek the requested relief. The court reasoned that there was no evidence that Pietrangelo would be able to apply for a vaccine through the plan but for the allegedly discriminatory criteria. Absent such evidence, he could not demonstrate that he would suffer in the future a particularized injury that is redressable by a favorable court order. 24 pages. Judge Paul Barbadoro.

ISSUED: May 11, 2021

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ISSUED: May 11, 2021

ADM-2021-0605

PRELIMINARY INJUNCTION; STANDING

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ATTORNEY – Small, well established Lakes Region law practice looking for an attorney or firm to take it over in the near future. All terms negotiable. Interested persons should contact Brad Heffer at heffelaw@gmail.com.

ASSOCIATE – Small Bedford NH law firm seeks Associate with 1-3 years’ experience. Firm is currently focused on commercial closings, real estate, as well as corporate and contract work. Individual should have experience with real estate and corporate work with the hope of building his/her own practice. Ideal candidate would be licensed in both NH and MA. Please send resume and cover letter to cowenlegal.com.

ATTORNEY WANTED. Hayes, Windish & Badgewick is seeking an associate attorney to join our team.Preference is given to those with 3-5 years’ experience in civil litigation, but those just starting with strong work ethic and motivation will be considered too. We are a small general practice firm with an emphasis on civil litigation, insurance defense, and workers’ compensation matters. We seek a candidate who is interested in high ethical standards, strong skills in research and writing, along with the patience and desire to learn the profession. Competitive pay and benefits offered. Position to remain open until filled. Please send your resume and cover letter electronically to: Penny Webber, Office Manager. (unofficial acceptable) to our Recruiting Coordinator through the Employment section on our website, nhgdp.org.

REQUIREMENT – Manchester, N.H. mid-sized law firm seeks full-time associate with 2-5 years’ experience and NH license to assist with its law practice, including criminal defense, family law, personal injury, and general litigation. Excellent written and oral communication skills are essential. Curtin Law Office provides a collegial and flexible work environment, and the right candidate offers a direct path to partnership. Inquiries can be directed to Phil F. Curtin. (603) 669-7700. P.Curtin@CurtinLawOffice.com

ATTORNEY – Small established southern NH law firm looking for a full time estate planning, probate attorney. Must be self-motivated, dependable, and able to work with many clients at once. Please send resume to bus.estatelaw@alnalfanolawoffice.com.

REAL ESTATE ASSOCIATE – Concord law firm seeking lawyer with 5+ years’ experience handling closings, purchase and sale agreements, leases, financings, and title matters. Flexible arrangement available (of counsel, associate, remote work). Health insurance and 401(k) available for full-time employees. Please contact Paul Allen at paul@alnalfanolawoffice.com, 4 Park Street, Concord, NH 03301 or 206-1182.

STAFF ATTORNEY – New Hampshire Public Defender selenium seeking an experienced criminal defense attorney. Applicants must have a demonstrated commitment to indigent criminal defense and extensive practical experience. Applicants must be admitted to the New Hampshire Bar or be eligible for immediate admission by waiver. Interested attorneys should submit a resume, cover letter, and a law school transcript (official or acceptable) to our Recruiting Coordinator through the Employment section on our website, nhgdp.org

SUPERVISING STAFF ATTORNEY – The Committee for Public-Counsel Services, Public Defender Division, Lawrence Trial Office, is seeking a highly motivated and experienced Supervising Staff Attorney. The position is expected to last for five years of experience providing high quality criminal defense representation. The ideal candidate should have sufficient trial experience in both the District and Superior Courts, which will enable the candidate to supervise Trial Attorney staff. The candidate should be able to demonstrate a dedicated willingness to provide excellent representation, and zealously advocate on behalf of the criminal and indigent accused, while serving in a supervisory capacity for Trial Attorneys, who practice in both the District and Superior Courts. Competitive salary, benefits, and retirement plan. For more information and to apply: careers-publiccounsel.org.

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ACCOUNTING SPECIALIST (FULL-TIME)

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a full-time experienced Accounting Specialist to add to their team in the Dover, NH office. The Accounting Specialist performs accounts payable functions, working closely with the Sr. Accountant and Accounting Manager, as well as working closely with the Billing Specialist on accounts receivable functions along with a variety of general accounting support tasks in an accounting department. To be successful in this role the candidate must demonstrate the ability to multi-task, in a fast paced environment and work as a member of a team, in addition to working independently.

Responsibilities:
- Verifying the accuracy of vendor invoices, check requests, petty cash receipts and other accounting documents or records
- Update and maintain accounting journals, ledgers and other records detailing financial business transactions (e.g., disbursements, expense vouchers, receipts, accounts payable) into computer system using defined computer programs on a daily basis
- Compile data and prepare a variety of reports as needed
- Reconciles records with internal company employees and management, or external vendors or clients
- Bill assist with monthly invoicing, collection calls and monitoring AR along with other reports as needed
- Other accounting functions/projects as assigned

Qualifications:
- Associates Degree with 3 years’ experience, or 5 years relevant experience

 Shaheen & Gordon, P.A., Attorneys at Law, is seeking a full-time Marital Paralegal with 5 to 10 years’ experience to work in the firm’s Family Law Department in their Dover, NH office. Must have NH experience specifically in Family Law. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently.

Required Skills/Abilities:
- Conflict checks
- Accurate filing and copying
- Performs other clerical duties such as preparing and organizing court papers, reading and routing incoming mail
- Accurate filing and copying
- Conflict checks
- Perform other related duties as assigned

Shaeheen & Gordon is an Equal Opportunity employer and does not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in all aspects of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff.

Shaeheen & Gordon presents a pleasant, supportive, challenging, non-smoking work environment. Salary commensurate with experience, with excellent benefits including health insurance, flexible spending account, 401(k) plan employer match. Please submit your cover letter and resume to recruiting@shaheengordon.com.

No phone calls or agencies please.

ACCOUNTING SPECIALIST (FULL-TIME)

MEDICAL/LITIGATION PARALEGAL

Sulloway & Hollis, PLLC seeks a full-time litigation paralegal with extensive experience and a medical background to support our Medical Malpractice Defense Group and active trial teams. A medical background and prior law firm experience is required. Essential aspects of the job include compiling, reviewing and analyzing medical records and literature, assisting in written discovery, working with medical experts, and keeping case information current. The ideal candidate will have excellent communication skills, be well organized and able to work independently, and will contribute to the continued growth of a very active practice group. Preferred applicants will have a degree from an accredited college or university and/or nursing experience.

We offer competitive salaries commensurate with experience, an excellent benefits package, and a cohesive team atmosphere. Qualified applicants should submit resume and cover letter to Jennifer L. Jaconino Human Resources Manager jiacopino@sulloway.com.

MEDICAL MALPRACTICE DEFENSE ATTORNEY

Sulloway & Hollis, PLLC, has been a leader in medical malpractice defense, hospital and physician advocacy and health law litigation. Our legal team draws on a wealth of experience, knowledge and resources to help clients navigate this ever-evolving area where law and medicine converge.

To complement the Firm’s existing strengths, we are seeking a medical malpractice defense attorney with five or more years of relevant experience. Excellent academic qualifications and strong research, writing and communication skills are required. Compensation is commensurate with the candidate’s experience. In addition, the Firm provides an excellent benefits package. Qualified applicants should submit resume and cover letter to:

Jennifer L. Jaconino Human Resources Manager jiacopino@sulloway.com

Sulloway & Hollis, PLLC
35 Maine St., Concord, NH 03302-3550
Fax: (603) 223-9060

Sulloway@Sulloway.com | Info@Sulloway.com | 603-223-2800

Sulloway.com

MEDICAL ATTORNEY

Bernstein Shur is an associate attorney to join our litigation team in the Manchester, NH office. The ideal candidate will have one to three years of experience in state and federal litigation, superior research and writing skills, and an ability to work independently and simultaneously on multiple projects. New Hampshire Bar membership will be required.

Bernstein Shur has offices in Maine and New Hampshire and advises clients from across the U.S. and around the world. Our 115+ attorneys practice in more than 20 areas and a variety of industries. As an entrepreneurial firm that believes sophisticated doesn’t have to mean stuffy, Bernstein Shur has been named as one of the Best Places to Work in Maine for the past 9 years and is ranked by Vault as a Top 150 Under 150 law firm. Bernstein Shur offers competitive compensation and excellent benefits, while making quality of life a priority.

Please e-mail cover letter and resume to Lindsay Leone, Esq., Hiring Partner attorneyrecruiting@bernsteinshur.com.

All inquiries held in strictest confidence.

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EOE
OUTDOOR ADVOCACY ADVOCATE: North Conway-based professional outdoor recreation advocacy firm seeks full-time position to support representation of outdoor industry business law clients, management of two statewide non-profit organizations, and events. Job duties include aspects of legal assistance, office management, network/office organization, events coordinator and organization administration. Highly organized, communication skills, law firm experience preferred. $38-$44k DOE. Apply at backyardconcept.org/employment.

PART-TIME CONTRACT PROSECUTOR - The Town of Londonderry Seeks Part-Time Contract Prosecutor, 20-25 hours/week, $30.00/hour to prepare and prosecute criminal and juvenile cases for the Police Department. Please visit londonderry nh.org for more information, including how to apply. Application deadline: June 4, 2021. Please reply to: Lisa Dreik, ldrkbk@londonderrynh.org

FULL-TIME LEGAL ASSISTANT – Getman, Schulthess, Stoere & Poulin, P.A. a Manchester, NH law firm seeks a full time legal assistant with 3-5 years' litigation experience. Must have the ability to work independently. We offer a competitive salary and benefits which include medical, dental, disability, annual leave, and paid time off. Send resume to lhouvet@getmanlawfirm.com.

REAL ESTATE PARALEGAL – Concord firm seeking an experienced real estate paralegal. The job involves research at the registry of deeds, municipal offices, state archives and other places concerning the status of deeds, along with conventional real estate work such as titles, document preparation and closings. Full or Part-Time. Submit cover letter and resume to amguertin@alfanolawoffice.com.

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DOWNTOWN MANCHESTER: Stark Street office for lease, 1,120 SQFT, 4 offices, parking, private bath and kitchenette. Lease includes heat and electricity; walk to courthouse and city hall. $1,500/M Contact: 603-785-0306.

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Shaheen & Gordon

Associate Attorney

Shaheen & Gordon, P.A. has an immediate opening for an associate attorney in our Dover, New Hampshire office with 0-3 years of experience. We welcome lawyers with diverse backgrounds looking to launch and build their careers in an entrepreneurial environment. We are looking for exceptional candidates with energy, curiosity, humor, integrity and the motivation to succeed. As a firm, we place a high value on teamwork, collaboration, intellectual openness and the robust exchange of views.

Associates will work with lawyers and clients in all of our practice areas and have the opportunity to develop contacts of particular area of interest and focus. In addition to research and writing, new lawyers are immediately encouraged to work directly with clients and develop practical skills under the tutelage of experienced and expert lawyers in the firm.

Business Law Attorney

Shaheen & Gordon, P.A. has an immediate opening for an attorney with 7-12 years of experience to join our Business Practice Group. We are looking for a person with experience, motivation, sense of humor and a willingness to take on a leadership role. As a firm, we place a high value on teamwork, collaboration, intellectual openness, and the robust exchange of views.

We seek an energetic person with broad experience and a cooperative spirit. Ideal candidates will have experience in transactional law including general corporate representation, mergers and acquisitions, employment, securities law, real estate, municipal representation and health care law. In addition to research and writing, our new lawyers are encouraged to work directly with clients, develop practical skills under the tutelage of experienced and expert lawyers in the firm, and cultivate their own particular areas of interest and focus.

Family Law Associate Attorney

Shaheen & Gordon, P.A. has an immediate opening for an associate attorney with 0-3 years of experience in the Family Law Department in our Concord, New Hampshire office. We welcome lawyers with diverse backgrounds looking to launch and build their careers in an entrepreneurial environment. We are looking for exceptional candidates with energy, curiosity, humor, integrity and the motivation to succeed. As a firm, we place a high value on teamwork, collaboration, intellectual openness and the robust exchange of views.

Associates will have the opportunity to work on a variety of cases and issues in a sophisticated business law practice, including business litigation, general corporate representation, mergers and acquisitions, real estate, municipal representation and health care law.

In addition to research and writing, new lawyers are encouraged to work directly with clients, develop practical skills under the tutelage of experienced and expert lawyers in the firm, and cultivate their own particular areas of interest and focus.

Business Law Associate Attorney

Shaheen & Gordon, P.A. has an immediate opening for an associate attorney with 0-3 years of experience in the Family Law Department in our Concord, New Hampshire office. We welcome lawyers with diverse backgrounds looking to launch and build their careers in an entrepreneurial environment. We are looking for exceptional candidates with energy, curiosity, humor, integrity and the motivation to succeed. As a firm, we place a high value on teamwork, collaboration, intellectual openness and the robust exchange of views.

Associates will have the opportunity to work on a variety of cases and issues in a sophisticated family law practice, including divorce cases for high-net-worth clients, Collaborative Divorce cases, the identification and distribution of trust interests in divorce, valuation and distribution of business interests, interstate and international jurisdictional issues, child support and alimony, unwed parenting cases, and guardianships.

Our clients include women, men, fathers, and mothers; cisgender, transgender, and non-binary individuals; and individuals in same-sex and opposite-sex marriages.

In addition to research and writing, new lawyers are encouraged to work directly with clients, develop practical skills under the tutelage of experienced and expert lawyers in the firm, and cultivate their own particular areas of interest and focus.

Shaheen & Gordon is committed to creating a diverse environment and is proud to be an equal opportunity employer. We do not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in any aspect of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff. Shaheen & Gordon is also a non-smoking workplace.

We offer a competitive salary and a generous benefits package including health insurance, flexible spending account, health reimbursement, long term disability, paid time off, paid parental leave, life insurance and 401(k) with employer match. Although we value the opportunities for collaboration and learning that come with in-person contact, we are open to discussing flexible work arrangements.

Interested applicants please forward your resume, a cover letter, and a writing sample to recruiting@shaheengordon.com.

Doreen Connor
dconnor@primmern.com

Member of American Academy of Appellate Lawyers

603.626.3304

PRIMMER PIPER EGGLICHT & CRAMER PC
Lateral Patent Attorney | Burlington, VT or Lebanon, NH

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

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

Junior Business Law Associate | Burlington, VT

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 is engaged in 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 of 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 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 Attorney | Lebanon, NH

Downs Rachlin Martin — one of Northern New Hampshire’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 sophisticated litigation.

Corporate/Commercial Attorney | Lebanon, NH

Downs Rachlin Martin PLLC seeks an experienced corporate/commercial attorney to join its Lebanon office. The ideal candidate will be licensed to practice in New Hampshire, have a portable book of business with compatible clients and have a minimum of ten years of experience in corporate/commercial law. The ideal candidate will also be active in the New Hampshire business and civic community and be committed to growing DRM’s regional presence. Relevant experience would include the formation of corporations, limited liability companies and other business organizations, commercial loan transactions, equity financings (including private equity and venture capital) and mergers and acquisitions (including sales of stock and assets, management buyouts, recapitalizations and reorganizations). Experience with ESOPs, B-corps or other focused practices would be highly valued.

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

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


Government Finance Advisor

The New Hampshire Municipal Association (NHMA), a nonprofit, nonpartisan, membership organization, is looking for a highly motivated individual to fill the position of Government Finance Advisor. The Government Finance Advisor provides legislative advocacy (lobbying) and serves as a resource to cities and towns on a wide range of matters related to government finance and taxation. The primary objective of this role is to achieve the best financial and governmental outcome for NHMAs’ members through advocacy to the state legislature, particularly through the biennial budget process, as well as through cooperation and collaboration with state agencies, including the NH Department of Revenue (NHDRA), NH Department of Transportation (NHDOT), and NH Department of Environmental Services (NHDES).

This position presents a unique opportunity to engage with local government, the state legislature, and other policymakers on issues critical to local government in New Hampshire. The ideal candidate will have both the necessary skills to handle a variety of government finance-related issues and also the motivation to learn on the job.

The Government Finance Advisor is a member of the Government Affairs (Advocacy) “team,” but collaborates regularly with NHMAs’ legal services attorneys and NHMAs Business Administrator.

The position reports directly to the Executive Director. This is a salaried, exempt position.

For a full job description and information on how to apply, visit https://www.nhmunicipal.org/classified/government-finance-advisor-

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Estate Planning Attorney

PRIMMER PIPER EGGLESTON & CRAMER PC, a regional service firm with offices in New Hampshire, Vermont, and Washington, DC, currently has a position open in its New Hampshire office.

We are seeking an estate planning attorney with 4 or more years of active estate planning experience. Applicants must be interested in pursuing a career as an estate planning attorney handling wills, trusts, business succession, and probate matters.

We offer a competitive salary, comprehensive benefits and a great work environment. Qualified candidates may submit letter of interest and resume by e-mail to careers@primmer.com.

All inquiries are held in the strictest confidence.

HEARINGS OFFICER

The N.H. Department of Labor, Workers Compensation Division seeks a part time Hearings Officer. This position conducts adjudicatory hearings and render decisions in accordance with State laws and regulations for Labor Department located Hugh Gallon Office Park.

Duties include: Representation of the Department will conduct formal hearings and collect evidence and testimony, analyze and write a decision based on claim, facts and the law.

Requirements: Bachelor’s Degree from a recognized college with major in pre-law, economics, business administration or public administration, a driver’s license and five years’ experience in the conducting hearings, preferably in the area Workers’ Compensation, Wage and Hour, Managed care, and Self-Insurance.

How to apply: Please go to the following website to submit your application electronically through NH 1st: Human Resources | NH Dept of Administrative Services Please reference the position number that you are applying for: #TMPPT5961 . In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

For questions about these positions please contact Sarah Fuller, Hearings Administrator at (603) 410-9092.

TRUSTS AND ESTATES PARALEGAL

DOWNS RACHLIN MARTIN PLLC, a New England law firm, is seeking a detail-oriented, highly organized paralegal to work in our dynamic and busy Lebanon, NH Trusts & Estates Practice. Our expanding T&E Team currently consists of five attorneys and three paralegals in our NH and VT offices, and is supported by the expertise of DRM’s other practice groups. Qualified candidates will have a college degree or paralegal certificate (or an equivalent combination of education and experience) and possess a minimum of three years’ experience as a Trusts and Estates paralegal. While we are primarily seeking candidates that possess these strong estate planning qualifications, we are committed to providing the training necessary for the right candidate with professional services experience to be a successful addition to our Team. Substantive knowledge of all aspects of the estate and trust administration procedure, preferably in Vermont and New Hampshire, is essential. This includes the ability to independently work with clients to obtain the information to complete all required forms, effectively manage and complete all probate and other court filings, prepare federal and/or state gift and estate tax returns. Experience with drafting estate planning documents, real estate closing documents and property transfer tax returns, and other practice related documents is a plus. A working knowledge of Word, Excel and Outlook is required, and experience with Vermont and New Hampshire’s online court filing system is preferred. The ideal candidate will be skillful in connecting with clients during difficult times, work collaboratively with legal professionals, and possess strong communication, problem-solving and analytical skills.

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Full Charge Bookkeeper for busy Law Firm/Office in Concord NH. This Full-time position requires the operation of all financial functions including accounts payable/receivable, payroll processing and customer billing.

Monthly Bank Reconciliations of multiple accounts is required, along with the generation of monthly, quarterly and annual financial reports. Preparation of year-end financial documents and collaborative work with the Firm’s Tax Accountant is required.

Experience with PC Law is preferred; knowledge of QuickBooks, Microsoft and Excel is required.

Successful candidate will be able to work under pressure and prioritize among multiple job requirements. The ability to work independently is paramount. Attention to detail and the ability to resolve discrepancies is crucial. Email resumes to denise@nhlawoffice.com.

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How to apply: Please go to the following website to submit your application electronically through NH 1st: Human Resources | NH Dept of Administrative Services Please reference the position number that you are applying for: #TMPPT5961 . In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

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