



May 19, 2021

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

Vol. 31, No. 12



## NH Pro Bono To Merge with LARC June 1

By Scott Merrill

On June 1, the NH Pro Bono Referral Program and the Legal Advice and Referral Center (LARC) will merge to become 603 Legal Aid.

The merger was formally announced to the public on Thursday, May 6, at the NH Campaign for Legal Services Virtual 2021 Campaign Kickoff Breakfast.

The product of over two years of planning, the merger will help to meet a growing need of low-income people in New Hampshire seeking free legal services.

"This is the single most significant change in the delivery of legal services for needy citizens in decades," said George Moore, Executive Director of the New Hampshire Bar Association and one of the original committee planning members. "While we started talking about the possibilities before the pandemic, the ensuing shutdown of the economy made the need all that more urgent."

Newly hired Executive Director Sonya

Bellafant, said the merger will provide full representation for some clients.

"We are committed to expanding the scope of the services previously offered by LARC and Pro Bono," Bellafant told the *Bar News*. "603 Legal Aid will provide statewide, centralized holistic in-take to readily identify pressing legal issues efficiently. Our objective is also to expand civil legal aid capacity by providing direct representation via staff attorneys, pro bono counsel and other referrals. These changes will ideally expand access and capacity to free civil representation to those who are struggling to preserve the basic necessities of life."

Bellafant was most recently director of the Tennessee Senior Law Alliance, and was selected to lead the new program after a national executive search conducted by a collaborative committee of leaders from the staff and boards of LARC, Pro Bono and NH Legal Assistance.

MERGER continued on page 8

## Bar Center to Reopen Doors Effective June 1, 2021

In light of the recent decision by the NH Supreme Court to reopen the court system, effective May 17, the Bar Center will reopen its doors to members on June 1, 2021.

For questions, please call 603-715-3279.

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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 Greeleaf's article explains. **PAGE 40**

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 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. There is no better service on the Board of Governors than to take a meaningful role

## The End of an Era



Howard



Hutchins

in steering the organization in the right direction. His advice and counsel will be greatly missed.

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 that they have done," he said.

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

## Wellness Corner

## 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

STRESS continued on page 28

### Top Sources of Stress for Judges

1. 79.7% Importance/impact of decisions
2. 73.2% Heavy docket of cases
3. 67.6% Unprepared attorneys
4. 62.5% Self-represented litigants
5. 58.1% Dealing repeatedly with same parties without addressing underlying issues
6. 55.5% Public ignorance of the courts
7. 53.5% Long hours of work without a break
8. 50.3% Hearing contentious family law issues
9. 50.3% Isolation in judicial service
10. 49.5% Insufficient staff support

From the ABA's National Judicial Stress and Resiliency Survey, 2020.

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# 2021 NHBA Board of Governors Election Results



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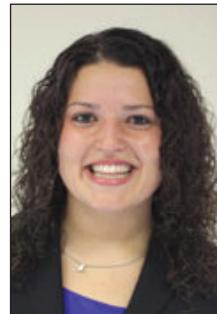
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Whitaker



Kovalenko



Cherniske



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Iacopino

## President-Elect

Nomination by BOG in  
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Nomination by Petition  
for 1-year term  
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Nomination by Petition  
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Nomination by Petition for  
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## 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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# Our Shared Pandemic Experience

This has been a very strange time. Disturbing news began to surface in late January and early February; by March 2020 our lives were upended. Travel stopped. Businesses closed. Parents now monitored school sessions, teachers revamped lessons to be effective over Zoom. Families with no computer or poor internet access were particularly hard hit. Those lucky enough to have a good computer and a strong signal found new complications – each child needed their own computer time, and for all the worry that children “spend too much time in front of a screen” few kids were able to sit for hours in front of a laptop. As parents juggled school assistance with their own work obligations, those fortunate to have jobs that could be done from home that is, they found baffling assignments and no way to provide meaningful help.

We scrubbed our produce, disinfected our mail, and pretended we weren’t the ones hoarding toilet paper. Some shoppers looked like they were heading to the slopes, covered with homemade masks, gloves, some even in goggles. Others defiantly refused to wear masks and mocked those who did. Summer vacation consisted of hanging out in the back yard.

And then, even stranger, the unfamiliar began to feel familiar. We picked up groceries curbside at WalMart or had them delivered by Amazon. We made so much bread you couldn’t find yeast to save your soul. Jigsaw puzzles and bicycles were on months-long back order, as families tried to find something to do with their children that was safe and fun.

Family events that had been tenta-



## Bench Notes

By Judge Amy L.  
Ignatius  
New Hampshire  
Superior Court

tively rescheduled were cancelled outright. My nephew’s college graduation came and went, with no chance to mark his tremendous accomplishment. My daughter’s wedding was first put on hold and then replaced with a small backyard ceremony, party to follow, someday. The one thing we would not allow to pass unnoticed was my father’s 100th birthday, which we celebrated in style with the immediate family gathered, after our COVID tests came back negative, and 50 guests on Zoom.

For some the passages were heart-breaking – the unattended death of a parent, with little chance to grieve. An infant reaching one milestone after another, without grandparents and all the aunties and uncles bearing witness. The ever present fear that this unknown disease would come to our doors and devastate our lives. That fear led to cruel mistreatment of people of Asian descent. Even here in New Hampshire, my daughters, born in China, experienced ignorant and racist hostility from strangers, although were fortunate not to

be assaulted for their ethnicity.

Despite the strangeness, loss, and fear, there were also moments of joy and creative celebration. We tied giant stuffed animals to our car and joined a drive-by Easter Parade. Neighbors held a violin recital on the front yard, to honor the hard work their kids had put in for months. There was an outdoor jazz concert down the street, every evening at 7. We threw a block party with chairs at 6 foot intervals, set with drinks and snacks that would not be touched by others.

Throughout, the courts remained open, with skeletal crews in the building and at least one judge present every day. The spirit within the courthouse was especially nurturing, as we turned to one another for the personal connection we’d lost in other parts of our lives. Although we were not open to the public the dockets were fully packed, and we kept cases moving. We learned to maneuver through telephonic and video hearings and conducted full bench trials on WebEx. The Administrative Office of the Courts oversaw changes to our courthouses and courtrooms and one by one we have been cleared to proceed with jury trials. We are returning to normal.

And yet, even as businesses reopen

For some the passages were heart-breaking – the unattended death of a parent, with little chance to grieve. An infant reaching one milestone after another, without grandparents and all the aunties and uncles bearing witness. The ever present fear that this unknown disease would come to our doors and devastate our lives.

and schools are back in session, there is an emotional dislocation that will not easily be undone. In my courtroom domestic violence is up, substance use disorder rages, and the number of children and adults waiting in hospital emergency rooms for admission to psychiatric beds is as high as it has ever been. Each week we see another devastating mass shooting somewhere in the country. Mental health counselors can offer little more than a crisis intervention hotline and placement on a waiting list.

Still, we are recovering. Vaccinations are available and being deployed faster than I had hoped to dream. The economy is rebuilding, although for particular sectors the economic damage runs deep. The emotional damage, however, will take longer to heal. I can only hope that we treat each other – family and strangers alike – with an extra degree of patience, empathetic to the strain and uncertainty we feel as we emerge from this very strange time.

## 10 Steps for Successful Attorney License Renewal

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](http://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 assessed after August 1 and are as follows:

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

### Ten Steps to an Easy License Renewal Process

#### 1. ART Appreciation

The Attorney Reporting Tool (ART) at [www.nhba.org/art](http://www.nhba.org/art) enables Bar members to keep track of their legal education cred-

its. 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:** Videos posted at [www.nhmcle.org](http://www.nhmcle.org) will assist members in using ART.

#### 2. Make Way for Email

On Tuesday, June 1, watch for an email from [billing@nhbar.org](mailto: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 that your Pro Bono donation is 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:** Law 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. The online filing system does not save information if you stop without completing it.

**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 NHMCLE reporting, there are resources to help. Look first to the Bar’s website at [www.nhbar.org](http://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](mailto: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 – for NHMCLE, Trust Account Compliance, and An-

nual 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](mailto: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!

## COVID-19 and Practice Takeaways: Three Viewpoints

At the beginning of the third week of March in 2020, law practice as we have 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. Having spent almost 30 years driving across the state for depositions, we learned that it really was possible to depose a witness using Zoom on the laptop. It is actually more economical to videotape depositions over



Zoom, which previously had been cost prohibitive. Having done about 30 depositions by Zoom over the past year, it is now clear that it can be done effectively. It is a timesaver and a cost saver for clients (no travel costs; cheaper to videotape). We have had clients tell us that it is less intimidating being deposed from home over Zoom than being face-to-face with opposing counsel. We've used Zoom (and comparable platforms) for many other purposes in the past year as well. The court system has adapted quickly to conducting status conferences and hearings over Zoom-type platforms as well. Again, this has resulted in a timesaver and a cost saver for counsel on both sides. We've done many mediations over Zoom as well – not exactly the same as an in-person mediation, but certainly workable. Teams allows us to facetime with colleagues from our law firm. I've come to enjoy the Zoom and Team 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 kindergartner, second and fourth grader; the temporary

closure of another business I own 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: 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. 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. Before 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 obnoxious 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.

I 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-a, II.

It is hard for me to see how the state will

be able to come up with a persuasive 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

**OPINIONS** continued on page 6



Lauren S. Irwin, Heather M. Burns, Michael S. McGrath, and Brooke L. Shilo

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## 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 the presumption of innocence until proven guilty, and so many were loath to use the term "murder" before the trial of Mr. Floyd's killer ended. I am a lifelong defense attorney but I have never shied from using



the word "murder" when talking about Mr. Floyd's death. The technicalities of the law cannot cover what the videotape shows: this was a murder.

While a conviction makes many feel relief or inspires a belief in an appearance of accountability, justice, the prime goal of our legal system, is still elusive. Conviction of the officer who perpetrated the slaughter

does not end the oppressive policing and white supremacy inherent in the criminal legal system. In fact, during the pendency of this trial, several other people of color, including Daunte Wright, were killed in encounters with police. As Katie Wright, Daunte Wright's mother, highlighted, "There's never going to be justice for us. Justice would bring our son home to us, knocking on the door with his big smile. Coming in the house. Sitting down. Eating dinner with us. Going out to lunch. Playing with his 1, now almost 2-year-old son. Giving him a kiss before he walks out the door. So 'justice' isn't even a word to me."

Mariame Kaba, an organizer, educator, and curator, has said, "Indictments won't and can't end oppressive policing, which is rooted in anti-Blackness, social control, and containment." As a trial court clerk, public defender, and now post-conviction criminal defense attorney, I have had a front row seat to the violence and injustice perpetuated against Black, Indigenous, and other people of color (BIPOC) on a daily basis but many of the white people in this country do not have this perspective. It is incumbent upon us, as witnesses, to support the people who we know are being harmed and to lift the voices of those who are marginalized. As evidenced by recent comments made in the legislature and by the governor, many in New Hampshire believe that racism does not exist here. Those people are wrong. New Hampshire, as our local Black Lives Matter organizations have highlighted repeatedly, is not innocent. We must listen to the people who have called upon us to reimagine a New

Hampshire free from policing, a place where Black, Indigenous and other people of color do not live in fear of any encounter with the arm of the state. One conviction will not accomplish this aim.

We must understand that a conviction is not justice. We must not believe that this conviction means that racism has been eradicated from the criminal legal system. We know that is not true. We must demand something else, something better, something that will provide accountability and safety. We must think about what it means to say Black Lives Matter and we must live out those principles. I hope that Mr. Floyd's family finds some comfort in the verdict but I also know that this verdict will never return their family to them and can never be enough. Rest in Power, Mr. Floyd.

*Cynthia Mousseau is a staff attorney at the New England Innocence Project. Prior to her work at NEIP, Cynthia was a public defender in Manchester and in Lowell, Mass.*

### Opinions from page 5

may well result in real education funding reform.

I am sure I will not be alone in watching the development of this case, as it either goes to trial, or at least goes through summary judgment proceedings based on more substantial discovery. Perhaps the case will ultimately lead to the enactment by our legislature of a constitutional funding scheme that will fairly and equitably enable our schools to provide all our students the opportunity for an "adequate" education.

*John M. Lewis served as an associate justice of the New Hampshire Superior Court and as Chair of the NH State Board of Education. He presently performs ADR services, teaches, and works to promote civic engagement and understanding.*

### Opinions in Bar News

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

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## New Member Benefit: Introducing Tracers

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/](http://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 Lex Tech 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 pric-



# Tracers

ing.” 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 is a particularly useful tool for litigation, providing comprehensive asset searches of potential defendants, and background and social media search-

es of potential witnesses. Whether seeking information about an individual’s past or searching for facts to verify pieces of testimony, Tracers can help locate the data to do just that.

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.

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.

Be on the look out this summer for an NHBA CLE from Tracers on the subject of public and private records and compliance.

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



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## Merger from page 1

"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 Hayes 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.

"People want us to have more lawyers, they want us 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 Sheehan Phinney Bass + 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

Equal Justice Under Law



### 2021 Annual Business Meeting

June 17th – 3:00 PM

REMOTE

Please contact Debbie Hawkins for more information

dhawkins@nhbar.org

715-3269

#### AGENDA

1. Call to Order
2. Secretary's Report – Draft Minutes of the 2021 Midyear Membership Business Meeting for approval
3. Old Business
4. New Business – Vote on Proposed NHBA Constitution Change Vote on proposed Amendment to NHBA Constitution – Article II Section (This amendment is being proposed to make this constitutional language consistent with an bylaws change from a few years ago.)

Section 5. Each member other than an Honorary Active Member or an Honorary Inactive Member shall pay membership dues for each year from June 1st to May 31st following, payable by July 1st of each year in advance, in such amount as may be fixed determined by the Board of Governors following the procedure set forth in the By Laws. A newly admitted member shall pay membership dues for the fiscal year of original admission on or before the last day of the first full calendar month after the date of admission. All dues shall be paid to the Association. An Honorary Active Member or an Honorary Inactive Member shall be exempt from any payment of membership dues.

5. Adjournment



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Offer before Nick and/or Ben Involvement	Case Information	Result*
OFFER \$0	<b>Medical Malpractice (MA)</b> Mother suffered stroke after giving birth	VERDICT \$35.4 MILLION
OFFER \$1.35 MILLION	<b>Medical Malpractice (IA)</b> Failure to administer Epinephrine after anaphylactic reaction to contrast dye	VERDICT \$29.5 MILLION
OFFER \$350,000	<b>Medical Malpractice (IA)</b> Unnecessary prostate surgery	VERDICT \$12.25 MILLION
OFFER \$1.75 MILLION	<b>Medical Malpractice (IA)</b> Overdose of Pitocin leads to neonatal seizures	SETTLEMENT \$9 MILLION
OFFER \$2 MILLION	<b>Medical Malpractice (IA)</b> Delay in treatment of cauda equina syndrome	SETTLEMENT \$6.5 MILLION
OFFER \$15,000	<b>Medical Malpractice (IA)</b> Vasectomy performed instead of circumcision	VERDICT \$2 MILLION

\*View additional verdicts and settlements at [tl4j.com](http://tl4j.com)

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## 2021 Midyear Business Meeting

February 18, 2021 – 3:00 p.m.

DRAFT MINUTES

REMOTE

President Daniel Will - Presiding

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

- 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.

- Old Business

There was no old business brought before the membership.

- 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 delinquency fees assessed for non- in the 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 permandated by NH Supreme Court Rule 42A. The NHBA Waiver Committee (Committee), a subcommittee of the NHBA Board of Governors, will decide on consider 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 whowhoose waiver request is 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. receives a denial of waiver request from the Committee shall have the right to make a written request for review, by the executive committee of the Board of Governors. This request must be made within 30 days from the waiver committee decision. Those members contacting the NHBA after delinquent payor's names have been forwarded to the NH Supreme Court will be directed to contact the Clerk of Court.

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.

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 County Governor Chris Regan.

- Adjournment

The 2021 Midyear Business meeting was adjourned at 3:27 p.m.

Respectfully submitted,  
Deborah J. Hawkins, for Robert R. Howard, III, Secretary



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### Notable Highlights of 2019

Wrongful death settlement	\$12,000,000.00
Radiology error verdict	\$11,500,000.00
Post-surgical infection verdict	\$10,700,000.00
Product liability settlement	\$8,900,000.00
Birth injury settlement	\$7,500,000.00
Surgical error settlement	\$5,100,000.00
Surgical error settlement	\$5,000,000.00
Post-surgical infection settlement	\$4,000,000.00
Wrongful death verdict	\$3,750,000.00
Neurological birth injury settlement	\$3,500,000.00

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# NEW HAMPSHIRE BAR FOUNDATION NEWS

## Foundation from page 1

vices. 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 buildup 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 increased legal needs of citizens without the ability to pay for a lawyer," New Hampshire Bar Association Executive Director, George 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 bear 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 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 Bar 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](mailto:agleason@nhbar.org).

# IOLTA

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helps *tens of thousands*  
of our most vulnerable  
NH citizens receive free  
or low cost civil legal  
services.

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JOIN US WEDNESDAY, MAY 26 @ 4PM FOR OUR 2021 KICKOFF!

# POWERING JUSTICE

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# 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](mailto:registrar@nhbar.org)

NEW HAMPSHIRE  
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## Lawline Thank You



Pictured above from left to right are: Attorneys Elaine Hoeppner and Eric Maher of Donahue, Tucker & Ciandella.



The NH Bar Association would like to thank attorneys Robert Derosier, Douglas Mansfield, Eric Maher, Chris Hawkins, Elaina Hoeppner, and William Warren from the law firm of Donahue, Tucker & Ciandella, as well as attorneys Richard Samperil, 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, probate, landlord/tenant, and criminal law.

When asked about why she participates in Lawline, Kozlowski 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 valuable service to self-represented stakeholders in New Hampshire and beyond. In 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 provides a light dinner for all volunteers. For more information or to volunteer for a Lawline event in 2021, please contact NHBA Lawline coordinator Linda Sutton at [lsutton@nhbar.org](mailto:lsutton@nhbar.org).

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## New Admittees to NH Bar Association

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

Timothy J. Brown, Milton, Mass.  
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.  
Michael P. Downing, North Andover, Mass.  
Bethany J. Durand, Baltimore, Md.  
Lauren N. Fountain, Beverly, Mass.  
Caitlin E. Hicks, Boston, Mass.  
Erika J. Hoover, Lowell, Mass.  
Michael C. Houlihan, Boston, Mass.  
Laura M. Kahl, Woburn, Mass.  
Korey S. Kajko, Lexington, Mass.  
Nicholas A. Krakoff, Concord, NH  
Adam R. LaGrassa, Tyngsboro, Mass.  
Michael J. Leard, Boston, Mass.  
Joshua D. Leckey, Burlington, Vt.  
Robert P. Luber, Andover, Mass.

Zoe A. Martin, Nashua, NH  
James V. McFaul, Saint Johnsbury, Vt.  
Brittany H. Michaud, Portland, Maine  
Hilary J. Miller, Lebanon, NH  
Jane E. Minasian, Arlington, Mass.  
Michael Monteforte Jr., Woburn, Mass.  
Pamela A. Moreau, Williston, Vt.  
Marissa L. Morte, Boston, Mass.  
Maureen T. Patrigani, Pawleys Island, SC  
Darcy C. Peyser, Portsmouth, NH  
Matthew S. Prunk, Newton, Mass.  
Sharon E. Ray, Portsmouth, NH  
Kathryn B. Reddy, Atlanta, Ga.  
Noelle A. Rossini, Andover, Mass.  
Andrea C. Rutherford, Andover, Mass.  
Nicholas J. Sarwick, Manchester, NH  
Amie J. Senghore, Andover, Mass.  
Kaitlin K. Smith, Boston, Mass.  
Sonja Starins, Haverhill, Mass.  
Nour E. Sulaiman, New London, NH  
Jason M. Sullivan, Cleveland, Ohio  
Brandon M. Tanguay, Boston, Mass.  
Jonathan S. Teller-Elsberg, Norwich, Vt.  
Peter D. Utz, Dillingham, AK  
Christopher J. Yagoobian, Boston, Mass.

## Membership Status Changes

*Presented to the Board of Governors April 15, 2021*

**Active to INACTIVE:**  
Sullivan-Stacey, Leslie, Rye, NH  
(Feb. 24, 2021)  
Sullivan, Kelsey, Exeter, NH  
(March 15, 2021)  
Lavallee, Gena, Hollis, NH  
(March 22, 2021)

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

(March 9, 2021)  
McGrath, Patricia, Bedford, NH  
(March 8, 2021)

**Active to FULL-TIME JUDICIAL:**  
MacDonald, Gordon, Deering, NH  
(March 4, 2021)

**Active to SUSPENDED:**  
Baker, Paul, Boxford, Mass.  
(March 31, 2021)

**Inactive to ACTIVE:**  
McCann, Ellen, Salem, NH  
(March 11, 2021)  
de Lyon Stralka, Jennifer, Post Mills, Vt.  
(March 15, 2021)

**Inactive Retired to RESIGNED:**  
Davis, Arthur, Bethlehem, NH  
(March 20, 2021)

**Honorary Active to HONORARY INACTIVE:**  
Bradley, David, Hanover, NH  
(March 15, 2021)

**Judicial to SUSPENDED:**  
Introcaso, Julie, Manchester, NH  
(March 24, 2021)

**Suspended to ACTIVE:**  
Cengher, Carly, Chicago, IL  
(March 24, 2021)  
Huffmann, Ragnar, Stratham, NH  
(March 26, 2021)

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## 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>.

Maj. Gen. Mark Palzer, commanding general of the U.S. Army Reserve's 99th Readiness Division, has confirmed the



Steiner

appointment by Lt. Gen. Jody J. Daniels, Chief of Army Reserve and Commanding General, U.S. Army Reserve Command, of R. James Steiner as a United States Army Reserve Ambassador for New Hampshire. Steiner is a partner in the Steiner Law Office, PLLC.

## Professional Announcements

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## Rates & Sizes

JANUARY - DECEMBER 2021



Peg O'Brien has joined McLane Middleton as a Director in the Litigation Department and Employment Law Practice Group. Peg assists employers with legal compliance and risk management in all phases of the employment relationship, as well as defense of employers in matters pending before government agencies and courts. She also performs workplace trainings and investigations.

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WOBURN, MA / BOSTON, MA



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.

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# New Hampshire Bar Association

# PRO BONO HONOR ROLL

## 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.

<b>BELKNAP</b>	Michael Croteau	<b>ROCKINGHAM</b>
Chloe Golden	Denis Dillon	Leif Becker ★
W. Scott O'Connell	Cynthia Gilman	Justin Caramagno
	Anne Jenness ★	Michael Degieux
<b>CARROLL</b>	Donald Reape ★	Abbygale Martinen
Casey Hewitt	Kimberly Shaughnessy	Anthony Muir
	Timothy Sorenson	Kenneth Murphy
<b>CHESHIRE</b>		Rory Parnell
James Davis	<b>HILLSBOROUGH (S)</b>	L. Jonathan Ross
Theodore Parent	Lyndsay Robinson	Mark Rouvalis
Kenneth Walton ★	Judith Roman ★	James Shepard ★
	Rosangeliz Torres	Joanne Stella ★
<b>COOS</b>		<b>STRAFFORD</b>
Quentin Blaine		Leif Becker ★
<b>GRAFTON</b>	Cindy Bodendorf	H. Jon Meyer
Roderick MacLeish	Randi Bouchard	Robert Moore
James Shepard ★	Cassandra Brown	
Dennis Thivierge	Jack Crisp	<b>SULLIVAN</b>
	Sara Crisp	Gary Apfel
<b>HILLSBOROUGH (N)</b>	Sarah Landres	Lisa Wellman-Ally
James Allmendinger	Thomas Neal	
Bryan Clickner	Donald Reape ★	
	Tony Soltani	



## 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 to 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.

### NHBA Committees

- \* Committee on the Cooperation with the Courts
- \* Continuing Legal Education (CLE)
- \* Dispute Resolution
- \* Ethics
- \* Finance
- \* Gender Equality
- \* Lawyer Referral Service
- \* Law Related Education
- \* Legislation
- \* New Lawyers

For more information on each of the NHBA committees,

Go to [nhbar.org/nhba-committees](http://nhbar.org/nhba-committees)

Questions? Contact **Debbie Hawkins** at [dhawkins@nhbar.org](mailto:dhawkins@nhbar.org) or (603) 715-3269



## 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.

<b>Belknap</b>	Morneau Law Shanelaris & Schirch PLLC
<b>Carroll</b>	Brown & Bouchard PLLC Gallagher Callahan & Gartrell PC Law Offices of Martin & Hippel Myskowski & Matthews PLLC Orr & Reno PA Rath Young & Pignatelli PC Seufert Law Offices PA The Crisp Law Firm PLLC
<b>Cheshire</b>	Coughlin Rainboth Murphy & Lown PA Parnell Michels & McKay PLLC Soule, Leslie, Kidder, Sayward & Loughman PLLC
<b>Grafton</b>	Elliott Jasper Auten & Shklar LLP
<b>Hillsborough (N)</b>	Hillier & Associates Sheehan Phinney Bass & Green PA
<b>Hillsborough (S)</b>	Barry & Honorow Bernazzani Law
<b>Rockingham</b>	Gregg Hunt Ahern & Embry
<b>Sullivan</b>	
<b>Out-of-State</b>	

## 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.

- Nicholas Abramson
- Cassandra Brown
- Martha Davidson
- Michael Fisher
- Katherine Hedges
- Courtney Herz
- Robert Howard
- Marta Hurgin
- David McGrath
- Rory Parnell
- Pamela Peterson
- Israel Piedra
- Joel Rosen
- L Jonathan Ross
- L Phillips Runyon III
- Jane Schirch
- Brian Shaughnessy
- James Shepard
- Tony Soltani
- Chris Tremblay
- Jennifer Warburton
- Laurie Young



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**NEW HAMPSHIRE  
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# "I Knew I was Ready to Lead:" Why Your Peers Join Leadership Academy

By Lynne Sabean

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 they frequently refer cases to one another.



Connolly would recommend Leadership Academy to others in part because the individual seminars offered diverse topic matters where distinguished members of the judiciary, bar and media would join in instruction. She adds that the program is designed to allow participants to experience different things such as shadowing a judge, attending a NHBA Board of Governors meeting, and presenting at a symposium.

Connolly's biggest take away from her

time at Leadership Academy was that she learned how to work better in a group and improved her communication skills. She notes that since graduating from the program, she opened her own firm, Connolly Law, PLLC. Her practice focuses on litigation; she also serves as a mediator in Family Law and civil matters. Additionally, Connolly is an adjunct faculty member at UNH Franklin Pierce School of Law.

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 alumnus 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 has "little desire 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 start.



Dominguez says that her participation in the Leadership Academy has impacted both the way she practices law and her relationships outside of the criminal defense bar. She adds that during the nine-month program, she was able to forge friendships

and connections to use in her practice. She reports that she keeps in touch with several of her Leadership Academy colleagues, who have since become friends.

Dominguez believes that her biggest take away from her Leadership Academy training was the judicial module, where she shadowed Judge Temple. She recalls that there was a big, contested sentencing hearing and Judge Temple told her that he was eager to see if the defendant in the case would allocute or speak on their own behalf. As a result of that experience, Dominguez now makes it a general practice to have her clients speak on their own behalf at contested sentencing hearings. She learned that it didn't matter if she and her client were saying nearly the same things: allowing the judge to hear it directly from her client could make a significant difference.

She especially encourages her colleagues in the public interest 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 Sabean is NHBA's Director of Marketing, Communications, and Member Outreach and a 2015 graduate of the Leadership Academy.

## LOTHSTEIN GUERRERO, PLLC

### APPELLATE DECISION SPOTLIGHT

In *In re Blaisdell*, decided on April 1, the NHSCt addressed what we will call a "question of second impression." Does a same-sex extramarital affair constitute adultery? It's a question that most spouses likely would agree answers itself: "Umm, yes." But that is not how the Court answered the question 18 years ago. In 2003, a divided Court narrowly held in the *Blancheflower* case that same-sex affairs do *not* give rise to a fault-based ground for divorce.

*Blancheflower* reminds us that law, like science, does not always produce intuitive or easily predictable outcomes. How could *Blancheflower*, a 3-2 decision, have been that difficult to decide as recently as 2003? But back when the relevant statutes were enacted, ordinary dictionary definitions of "adultery" ("sexual intercourse" outside of marriage) limited the concepts to heterosexual couplings. Specifically, the *Blancheflower* majority explained, the original 1961 edition of Webster's Third New International Dictionary endorsed that narrow view. But that dictionary is well-known (or notorious, depending on your perspective) for being a "descriptive" dictionary rather than a "prescriptive" dictionary. As it turned out, by 2003, revisions to that dictionary had *already* expanded the concept of "sexual intercourse" to non-heterosexual couples.

Nevertheless, changing dictionary definitions couldn't help us with the crux of the problem presented by the Blaisdell appeal: Statutes are not constitutional provisions. Even if the meaning of words and the contours of our civilization change over time, can the meaning of a statute change over time, without legislative intervention? But the Legislature had, of course, intervened. Applying the doctrine of *stare decisis*, the Court recognized that the Legislature fundamentally transformed the marital laws when it adopted civil unions, and then gay marriage, just six years after *Blancheflower*. How could the Legislature have granted gay people the privileges, but not the responsibilities, of marriage? And thus, the Court unanimously overruled *Blancheflower*, and made its ruling retroactive.

And we hastily ordered the newest edition of Webster's.

Read about our appellate work and appellate victories at [www.NHDefender.com](http://www.NHDefender.com).

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## Leadership Academy 2010-2019

### 2010-2011

Christopher G. Aslin  
Anthony S. Augeri  
Deanne Chrystal  
Rachel A. Goldwasser  
Adam B. Hescock  
Abigail Sykas Karoutas  
Celia K. Leonard  
Sarah Mattson Dustin  
Patrick T. O'Day  
Matthew R. Serge  
Donald H. Sienkiewicz  
Christine M. Smith  
Patrick H. Taylor  
David C. Tencza  
Cathryn E. Vaughn  
Lisa L. Wolford

### 2011-2012

Mark E. Beaudoin  
Brooksley C. Belanger  
Christopher C. Buck  
Kysa M. Crusco  
Joel T. Emlen  
Francesca Hennessy  
Suzanne S. McKenna  
Meagan T. Munsey  
Lyndsee D. Paskalis  
Jamie L. Pond  
Thomas E. Walker Jr.

### 2012-2013

Joseph D. Becher  
Jonathan M. Boutin  
Darrell J. Chichester Jr  
Courtney H. Eschbach  
Lisa A. Fearon  
Seth J. Hippie  
Melissa L.B. Lyons  
Deborah Mulcrone  
Michael J. Ortlieb  
Anthony F. Sculimbrene  
Kirk C. Simoneau

### 2014-2015

Nicholas F. Casolaro  
Amy C. Connolly  
James P. Cowles  
Joseph H. Driscoll IV  
Kristina Finley  
Susan A. Lowry  
Kathleen M. Mahan  
Jacob J.B. Marvelley  
Kristin A. Ross  
Lynne Guimond Sabean  
Talesha L. Saint-Marc  
James C. Shaw  
Daniel J. Swegart  
Steven J. Venezia

### 2016-2017

Robert Berry Jr.  
Mary C. Bleier  
Jason B. Dennis  
Laura D. Devine  
Mariana Dominguez  
Christine F. Donlan  
Kristin G. Fields  
Rebekah M. Fortess  
Michelle C. Heaton  
Henry R. Klementowicz  
Molly M. Lynch  
Alexander E. Najjar  
Nathan P. Warecki

### 2018-2019

Alexandra S. Cote  
Nicole A. Forbes  
Joshua P. Lanzetta  
Brooke L. Lovett Shilo  
Evan M. Lowry  
R.J. Meurin  
Kaitlin M. O'Neil  
Hilary A. Holmes Rheaume  
Justin S. St. James  
Corinne A. Taylor-Davis  
Stephanie L. Tymula  
Carole L. Waters

## In Memoriam

### Ronald E. Cook

It is with deep sadness that we share the news that our friend and colleague Ron Cook has passed away. A 1972 graduate of the Catholic University of America, Columbus School of Law, Ron was an accomplished lawyer with a primary emphasis on litigation, business and environmental project development, and international trade.



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 Ransmeier & 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 education and a J.D. 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 built an energy-efficient home in Canterbury. A lover of language and languages, Dick had learned Russian as a young man, and in 1994 he and Judy, who had also studied Russian, traveled to Russia to adopt Roman and Galina, ages 5 and 4.

In 2005, the family moved to Keene, where Judy had accepted an academic position at Keene State College. During his retirement in Keene Dick devoted himself to music, co-creating two small ensembles (brass and strings) with whom he played weekly until the pandemic began, and renewed his avid interest in genealogy.

Dick is survived by his wife, Judy; his sons, Gordon and Roman; his daughter, Galina; nieces Elaine and Jean, and nephews Bill, Steve and Dave; and by his brothers-in-law, Mark and Scott Reed; and his sister-in-law, Gail Reed Prager. He was predeceased by his two older brothers, William and Robert Cornelius.

A memorial gathering will be scheduled once public health conditions allow. In lieu of flowers, donations in his memory can be made to the Humane Society or to another animal welfare non-profit.

### Judge Albert Dennis Leahy Jr.

Judge Albert Dennis Leahy Jr., the longtime presiding justice of the Claremont District Court, died on April 19 at the age of 87.



Judge Leahy, known to most as Al or Albie, was a lifelong resident of Claremont before moving in 2019 with his wife, Patricia Henry Leahy, to Exeter. After graduating from Stevens High School in 1951 and Yale University in 1955, Al served as a United States Marine Corps lieutenant. Upon completing his tour of duty, Al decided to follow in his family footsteps and attend Harvard Law School to become an attorney. His father, Albert D. Leahy Sr., was both an attorney and district court judge, and his uncle, John Leahy, was chief justice of the New Hampshire Superior Court. Both Al and his brother Charles returned to New Hampshire to establish lifelong careers as practicing attorneys. After graduating from law school, Al returned to Claremont, where he joined his father's law firm, Leahy & Denault. In 1972, Gov. Walter Peterson appointed Al to succeed his father as the presiding justice of the Claremont District Court. During his time on the bench, his particular joy came with his work in the juvenile court system, where he felt he could potentially play a part in changing a young person's life for the better. He retired in 2001.

Always wanting to support the local community, Al volunteered to serve on many boards including the Claremont National Bank and the Claremont Savings Bank, and he also served as a trustee of the Valley Regional Hospital. Al later stated that one of his proudest moments was being one of the founders of what has since become known as West Central Behavioral Health, which ensures access to support services for those in need.

Al is survived by Patricia, his wife of 60 years; his daughter Alison Angle and son-in-law Jeffrey Angle; his son William Leahy and daughter-in-law Bethany Leahy; five grandchildren; family members Mary Susan Leahy and Barbara Leahy; and his nieces, nephews and cousins. He was predeceased by his parents, Judge Albert Leahy Sr. and his wife Helen Leahy; his brother Charles Leahy; and his two infant children, Robert and Caroline Leahy.

In lieu of flowers and to pay tribute to Al's love of Claremont, donations may be made in his memory to the New Hampshire Charitable Foundation's "Fund for Greater Claremont." To donate, please visit [www.nhcf.org](http://www.nhcf.org) or mail a check directly to the foundation.

A committal service will be held on Saturday, May 22 at 2 p.m. at the West Claremont Burial Ground. Further details may be found on the Stringer Funeral Home website ([www.stringerfh.com](http://www.stringerfh.com)).

*In memory of our colleagues, the NHBA Board of Governors has made a contribution to the NH Bar Foundation.*

*To submit an obituary for publication, email [news@nhbar.org](mailto:news@nhbar.org). Obituaries may be edited for length and clarity.*

# Stakeholders

## Virtual

## Town Hall 2021



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/](http://www.courts.state.nh.us/videos/supreme/)



We welcome your comments. Please submit them in a letter format to [comments@courts.state.nh.us](mailto:comments@courts.state.nh.us) by **June 1, 2021**. As we move toward full operations, be assured that the Judicial Branch's dedicated employees and judges are doing our best to comply with public health guidelines to keep every court visitor safe. We look forward to hearing from you.



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- 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

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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  
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## "THE ACCIDENTAL ATTORNEY": TERMS OF ENGAGEMENT

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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?"



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## 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. She then quickly and without any questioning from me added that she would actually be happy if she received only the small lakefront property, which is much less valuable than that to which she would be entitled under the will. I decided that this was not a case I should take at this time and politely declined.

Last week, after recovering significantly from my illness, another of the caller's family sought to retain me in the same estate dispute. This person owns a large company in our area and suggested that if we took the case, she would bring her other business to us. I would like to accept the case. I have reviewed your prior opinion on prospective clients (EC #2019-20/02, June 23, 2020) and still am not sure if I can 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 that could be significantly harmful to that person in the matter, except as provided in paragraph (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).

(d) 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 can 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 topics discussed. See e.g., *O Builders & Assoc. v. Yuna 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 in-

formation 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.

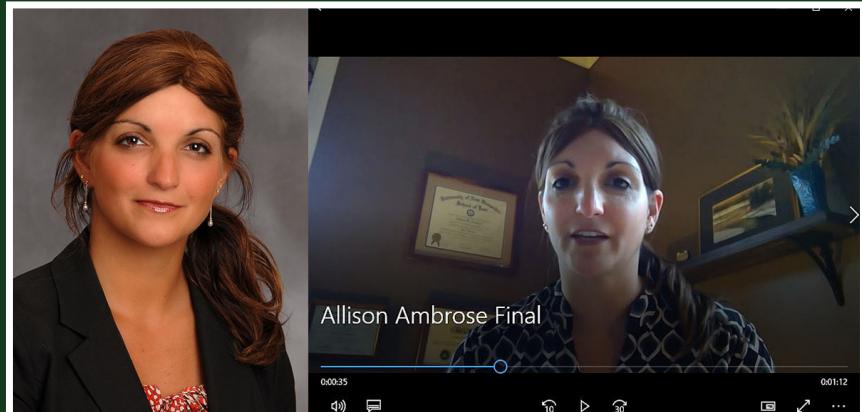
*Id.* at p. 6 (footnotes omitted).

Based on this description, the information provided to you by the first caller on her settlement considerations would certainly qualify as information that could be “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@nhba.org.*

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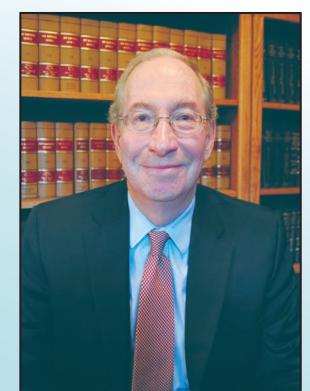
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## Defining Nominal Amount & Time Frame for Separate IOLTA Accounts

Dear Ethics Committee:

I generally keep my clients' funds in an IOLTA account. In reviewing the Supreme Court Rules, I noticed that the account is limited to funds which are "nominal in amount" or to be held "for a short period of time." This may not be a question for the Ethics Committee, but what do those phrases mean exactly and why are they part of the rule?

### 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 States 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 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.

*Brown v. Legal Foundation of Washington*, 538 U.S. 216, 235, 123 S.Ct. 1406, 155 L.Ed.2d 376 (2003).

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<sup>1</sup> and money<sup>2</sup> 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 tax 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.<sup>3</sup>

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 *Paulsen 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

ETHICS continued on page 22

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of time do not meet IOLTA requirements, and would generate net income for the client, then the lawyer must set up an income-bearing account. If the lawyer fails to do so (without consultation or consent), the lawyer would appear to violate SC Rule 50, and thereby RPC Rule 1.15(a). The lawyer may also be in breach of his or her fiduciary duty to the party with the ownership interest.

Basic principles of the law of agency and trusts seem to compel the conclusion that **at some point** it would be irresponsible for an attorney not to deposit a client's funds in an interest-bearing trust account, and pay such interest to the client. An attorney who fails to do so may be found to have violated the fiduciary duty owed to his client. *See* 2 A. Scott, *The Law of Trusts* §§ 180.3, 181, at 1457, 1463 (3d ed. 1967 & Supp. 1981).

*Petition of New Hampshire Bar Ass'n, supra* at 976.

This breach may open an attorney up to liability.

[I]f the [attorney] who deposited petitioners' money in IOLTA accounts could have generated net income, the [attorney] violated the court's [IOLTA] Rules. Any conceivable net loss to petitioners was the consequence of the [attorney's] incorrect private decisions rather than any state action. Such mistakes may well give petitioners a valid claim against the [at-

torney].  
*Brown, supra* at 239.

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.<sup>4</sup>

#### 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 on their own prospective conduct or to suggest topics for Ethics Corner commentaries by emailing: Robin E. Knippers at reknippers@nhba.org.*

#### Endnotes

1. "Philadelphia, wonderful town, spent a week there one night." Often attributed to W.C. Fields
2. "A billion here, a billion there, and pretty soon you're talking real money." Senator Everett McKinley Dirksen.
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:

- (1) the amount of the funds to be deposited;
- (2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- (3) the rates of interest or yield at the financial institutions where the funds are to be deposited;
- (4) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;
- (5) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients; and
- (6) any other circumstances that affect the ability of the funds to earn a net return for the client.

*Accord* Florida Bar Rule 5-1.1(g)(3); Illinois RPC Rule 1.15(g); Indiana RPC Rule 1.15(h); North Carolina Bar Rule 1.15-4, comment [3]; South Carolina App. Ct. Rule 412(d)(1). See also California Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons Rule 1.4.

4. Several jurisdictions leave the determination to the sound judgment of the lawyer, without any apparent client consultation.

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.

Mississippi RPC 1.15(i). *Accord* Florida Bar Rule 5-1.1(g); Illinois RPC Rule 1.15, comment [6]; Indiana RPC Rule 1.15(h); Kentucky Sup. Ct. Rule 3.830(15); North Carolina Bar Rule 1.15-4, comment [3]; South Carolina App. Ct. Rule 412(d)(2); Texas State Bar Rules Article XI, section 7. *See also* IRS PLR 8941047, 1989 WL 596501 (1989).

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 staff liaison for the Ethics Committee Robin E. Knippers, [reknippers@nhbar.org](mailto:reknippers@nhbar.org) or 603-715-3259.

All Ethics Committee Opinions and Corner Articles are available on the New Hampshire Bar Association's Website, including new Opinions and Articles as they are completed. Please see the website for the latest in Ethics Committee materials: [www.nhbar.org](http://www.nhbar.org).

And stay tuned for the Annual Ethics Committee Supplement, coming in September!"



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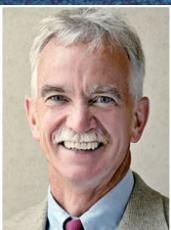
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## ADVERTORIAL MESSAGE FROM OUR MEMBER BENEFIT DISCOUNT PARTNER

### 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 repre-



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sent 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](http://clientcenteredlawfirm.com).*

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# Continuing Legal Education GUIDE

May  
2021

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## Calendar 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.

15<sup>th</sup> 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.

**9** Wednesday • 8:30 a.m. - 12:15 p.m.

Professional Licensing & Recent Changes at the Office of Professional Licensure & Certification-Pt 1

- Webcast
- 210 min. incl. 30 min. ethics/prof.

**10** Thursday • 8:30 a.m. - 12:15 p.m.

Professional Licensing & Recent Changes at the Office of Professional Licensure & Certification-Pt 2

- Webcast
- 210 min.

**16** Wednesday • Noon - 1:00 p.m.

Traps for the Unwary: Workers' Compensation

- Webcast
- 60 min.

**18** Friday • 9:00 a.m. - 4:00 p.m.

From Soup to Nuts: Approaches to Post-Conviction Issues

- Webcast
- 360 min. incl. 60 min. ethics/prof.

**22** Tuesday • Noon - 1:00 p.m.

Tech Tuesday! What Every Lawyer Should Know About Developing a Cybersecurity Plan

- Webcast
- 60 min. ethics/prof.

## 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



## Petitions to Partition:

*Real Estate Separation in the Age of Cohabitation*

**Thursday, 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



## CLE HIGHLIGHT

### 15<sup>th</sup> 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

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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 FAFAP 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. Sculimbrene**, Program Co-Chair/CLE Committee Member, Gill & Sculimbrene, 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

Noon - 1:00 p.m.

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- 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!



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- ◆ **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.
- ◆ **Back to Basics – Federal Criminal Law 2020** Original Program Date: September 29, 2020. Provided courtesy of our online partnership with Suffolk Academy of Law of The Suffolk County Bar Association. 75 Min.

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## 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

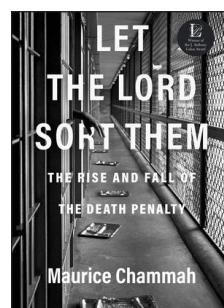
While making my way through this book, I was continually reminded of a scene from Martin Scorsese's film *Gangs of New York* (2002). Tammany Hall's "Boss" Tweed discusses growing citizen unrest in the Five Points neighborhood of lower Manhattan with businessman-turned-community organizer Bill Cutting. Residents were even starting to blame elected officials for unchecked rising crime. To mitigate public outrage, Tweed proposes they hang someone... maybe even three or four someones. Cutting asks who should be hanged. Tweed replies, "No one important, necessarily. Average men will do. Back-alley amusers with no affiliations." A scaffold scene depicting executions in the crowded public square follows. More on this momentarily.

In "Let the Lord Sort Them," journalist Maurice Chammah chronicles the history of the capital punishment institution in the United States through its development in the State of Texas. More than one-third of the nation's executions since 1976 have been carried out in the Lone Star State. Chammah investigates why. The first eight chapters explore the institution's rise; the next five discuss its evolution and decline.

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. He considers not just the cases and holdings, but also the evolution of legal arguments relied upon over the years. "Evolving standards of decency" plays a prominent role. With particular emphasis on *Jurek v. Texas* (1976), Chammah takes readers through the death penalty cases in which the Supreme Court later clarified the constitutionality of capital punishment. The book confronts human elements untold by the appellate briefs and judicial opinions. Chammah's research on the biographical narratives of key players (not merely defendants and victims) provides 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 lawmak-



ers, 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. Why?

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. Not all prosecutors support capital punishment. Not all defense attorneys oppose it. Judges, too, have struggled to reconcile the system's stated goals with its real-world application. The book contains source material from the usual characters such as prosecutors, public defenders, and inmates, as well as less usual characters including death row chaplains, prison guards, and others on the "execution team."

Scorsese's silver-screen Tweed displayed detached ambivalence towards the identities of those to be executed. "Average men will do." Though a cinematic dramatization, the scene parallels observations made

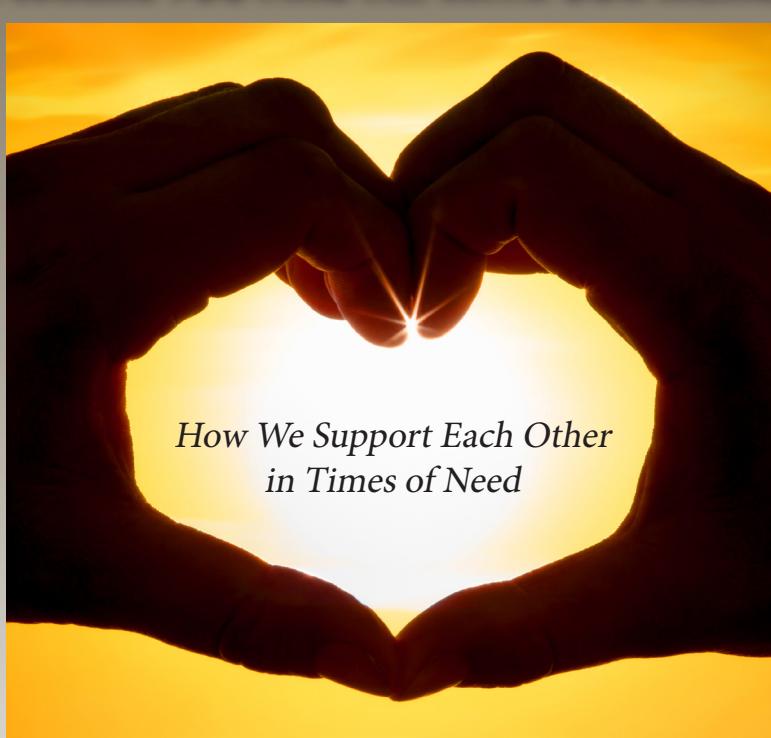
by Chammah. The gap between political policymakers and those executed is considerable. Those most likely to be executed are those least likely to access robust advocates in the legislative or judicial arenas. Proponents of the institution routinely frame them as criminals; opponents frame them as human beings. Chammah provides fair treatment of each camp's arguments. Moreover, though Chammah rightly observes racial disparities and systemic barriers to effective advocacy, the book's engaging prose is not eclipsed with statistics and quantitative data.

Capital punishment has received widespread attention over the last two decades as many states have issued moratoriums on executions or abolished the death penalty altogether. New Hampshire, for example, became the last state in New England to abolish the death penalty in 2019. Brilliantly researched, Chammah's book provides a fascinating and disturbing account of where we have been, where we are likely going, and why. Written for a general audience of readers, this cultural history offers plenty for attorneys and legal professionals regardless of one's views on capital punishment.

*Patrick Arnold focuses his practice on litigation, criminal defense, and business matters.*



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If you missed our May 5 informational event, you can still view comments by Judge Delker, Richard Guiriero, & Talesha Saint-Marc about the benefits of Leadership Academy participation:  
[vimeo.com/548381330](https://vimeo.com/548381330)



## I Stress from page 2

about which courtrooms need to be closed and what cases to reschedule.

"For me it's not the search warrants or DVs, 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.



Judge King

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 fashion, 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 Webex 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 come into court and say, 'geez I'm tired.' You may be tired but the people you're serving don't deserve that and if that's your delivery you shouldn't be on the bench."

Carbon said she doesn't experience the isolation spoken about by some judges in the stress



Judge Carbon

and resiliency report because she has been in court houses with multiple judges. But she acknowledged this can be a real problem for those on the bench in courthouses with only one judge.

"Being in these courthouses I'm in is enormously helpful. You have peers who can relate, or if there's a conflict we can swap cases," Judge Carbon said. "One judge court houses can be difficult though in terms of isolation."

Judge John Yazinski, a Circuit Court Judge in Sullivan County since 2001, said every judge experiences isolation in various ways.

"Sometimes it's self-imposed, and sometimes it's one of the practical aspects of the job," he said. "It's particularly difficult in a small county like Sullivan where there's almost nowhere you can go that you don't bump into someone you know or who has been in court in front of you. It requires a self-imposition of stepping back."

This constant awareness of one's public persona is part of being a judge, Carbon explained.

"You have to still remember you're representing the court wherever you go. If I go for a run and I'm hot and sweaty I'm not going to run in to the grocery store like others might."

And there are awkward encounters with former litigants in public places.

"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 adoption' or I've gone to restaurants where I've had unhappy litigants in marital cases give me the dagger, and I still need to be mindful that this isn't 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 "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.

"Particularly with hearing family cases there's always someone who knows someone, and people don't always realize that judges can't talk about cases that are in front of them."

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 the one 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.



Judge Yazinski

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

"Those 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 Judge Lemire hears about often, she says, are overburdened dockets, as well as neglect cases that require judges to see graphic evidence of substantial physical abuse and neglect.

"That can be difficult. 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 study that 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 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 Yazinski 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 perfected 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

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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 Delker 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 matter of life and death, or a person's liberty, and those are monumental decisions."

Sentencing considerations are another area that Judge Delker finds difficult.

"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 merit," 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 three 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 about 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



Judge Lemire on a 2019 bike trip in Poland with her husband Lee Whitney.

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.

"I...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 like work is 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 best 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 Hicks 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, he learns a great deal from.

"If I'm with my grandkids I shut everything off because they demand everything. I have learned a lot from them," he says. "Is 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."

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## **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 do the same. They ended up at Fordham University School of Law in Manhattan, where he earned his juris doctor.

Though he loved Manhattan, Murphy longed to return to New England – espe-

cially 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 Shaeen & 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 case 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

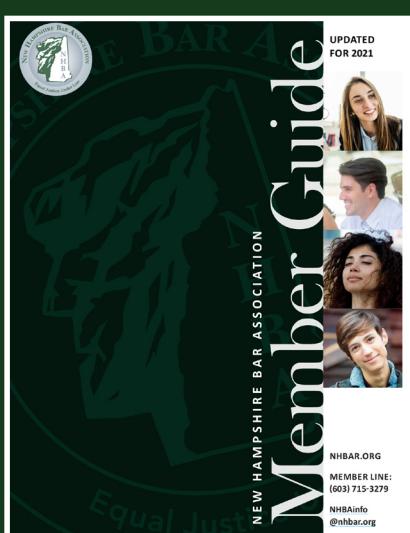
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Francis 'Fran' Murphy hiking in the White Mountains with grandchildren, left to right, Carolyn, James and William Murphy.  
Courtesy Photo

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.

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## Common Title Defects and How to Cure Part 2 Mortgage 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 acknowledgement 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 "Mortgagor" 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 use of the word Borrower in the mortgage is not necessarily a person who is indebted under the Promissory Note."**

the Promissory Note. Paragraph 12 of the standard mortgage addresses this situation and provides that any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): "is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument."

The best argument for reformation where a person executes the mortgage on the signature line but the name does not appear in the definition portion for "Borrower" is that the signor's intent must have been to be a Borrower and be bound by the mortgage. The signature page contains the word "Borrower" below the signature line. There is no other logical reason for the person to execute the mortgage other than an intent to be bound by its terms.

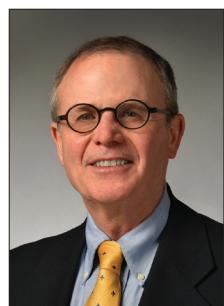
The scenario where a Borrower signs the mortgage but his or her name is not listed in the definition section as a Borrower, would appear to meet the test for reformation in New Hampshire. Reformation of an instrument for mutual mistake requires that the party seeking reformation demonstrate by clear and convincing evidence that: (1) there was an agreement between the parties; (2) there was an agreement to put the agreement in writing; and (3) there is a variance between the prior agreement and the writing. *A.J. Cameron Sod Farms v. Continental Insurance Co.*, 142 N.H. 275, 283 (1997).

DEFECTS continued on page 37

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

By David K. Moynihan

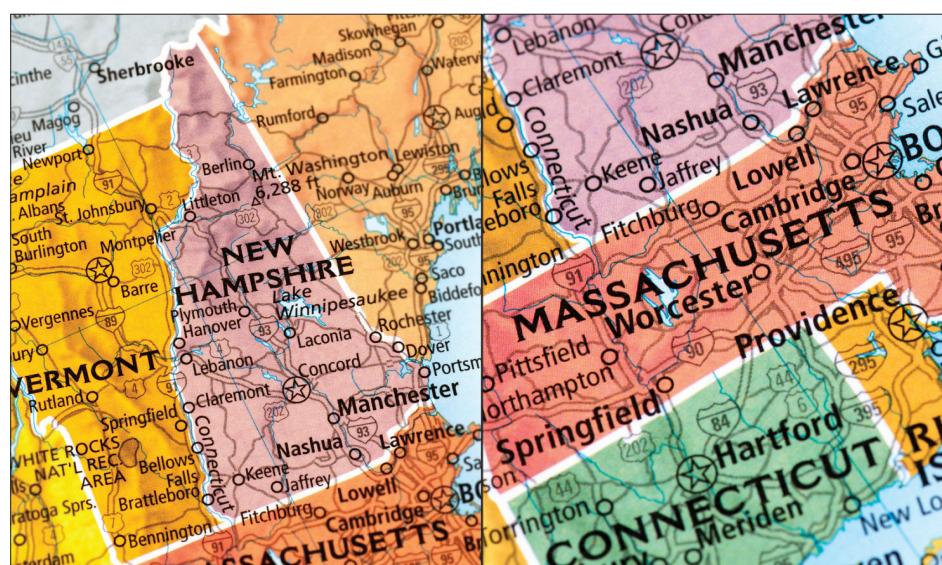
It is hard to think of two other bordering states with more contrasts than New Hampshire and Massachusetts, although Utah and Nevada come to mind. We regard Massachusetts as more likely to regulate commerce, but it is New Hampshire that regulates residential condominium development containing more than 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 declar-



ant 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 residen-

**"An application for registration must be filed with the Bureau for any residential condominium containing more than 10 units."**

tial 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.

### What Must be Filed with an Application for Registration?

Along with a completed application and payment of the filing fee (currently \$30.00 per unit with a minimum \$300.00 and maximum of \$2,000.00), the Rules require at least the following other documents: (1) the irrevocable appointment of the attorney general to receive service of process; (2) Principal's background statement requiring disclosure of past condominium projects; other projects in any state where the declarant filed for registration or where registration was rejected; list of lawsuits involving the declarant or a principal; the names of every shareholder, partner, member of any closely held entity; and the principal's tax returns; (3) draft condominium documents; (4) draft Public Offering Statement; (5) draft Purchase and Sale Agreement with identification of Escrow Agent; (6) draft proposed deed; (7) draft marketing or promotional materials; (8) draft management agreement; (9) financing commitment or other evidence of financial ability to complete the project; and (10) statement of the title to the property and encumbrances.

### How Long is the Registration Process?

Registration may take upwards of 70 days. Statutorily, the Bureau has 10 days from the date an application is filed

PRACTICE continued on page 37

## Maximizing Section 199A 20% Pass-Through Deductions on Real Estate Rental Income

By John Cunningham

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

**INCOME** continued on page 38

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## 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



Cole



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



*“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.”*

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 *Sigas 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

CASE continued on page 38

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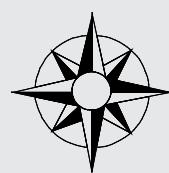
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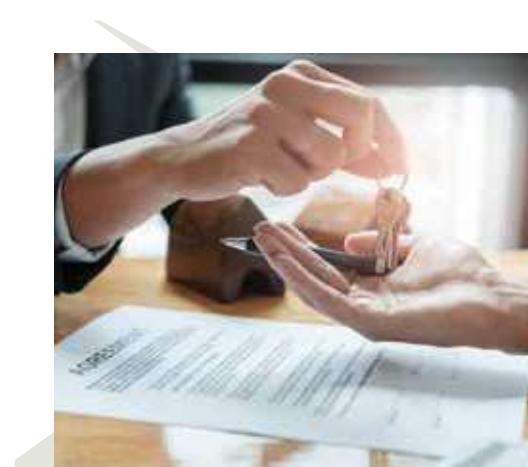
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## New Housing Appeals Board Provides Expedited Reviews of Municipal Housing Decisions to Help Address Housing Shortage



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*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 halt

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 ad-*

*dress 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

**HOUSING** continued on page 39

*Why are developers not jumping on the*

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## Take it Reasonably When it Comes to Easements

By Jason Dennis

Inspired by a cart path easement case (and to an appreciably lesser extent the Eagles' first single), a recent search of the term "easement" on Westlaw produced 14 opinions (including 4 unreported opinions) issued by the NH Supreme Court between the start of the COVID-19 state of emergency (March 13, 2020) and May 7, 2021. This article takes a quick look at three of those reported opinions.



In *Loeffler v. Bernier*, 173 N.H. 180 (2020), the Supreme Court upheld a trial court decision that the plaintiff/grantee has an implied easement pursuant to estoppel by deed. In arriving at its decision, the Court clarified that a prior case (*Avenue Realty Co. v. Dolleman*, 121 N.H. 619 (1981)) did not support the defendant's position that a grantee must have the reasonable expectation of receiving an easement in order to apply the doctrine of estoppel by deed. The Supreme Court specifically rejected the defendant's arguments that (i) plaintiff/grantee had an alternate means of access to his combined lots and (ii) a neighboring lot had an express easement, whereas plaintiff did not.

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 in Fitzwilliam, NH. The original parcel was subdivided at least twice, with one of the subdivisions creating parcels without any frontage 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 Sip Pond via Lot 8, including the right 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, rejecting 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 extent 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 subservient estate) 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 easement at issue in *Arell v. Palmer* 173 N.H. 641 (2020) was a "temporary easement" to access a well "until such time as [easement holders] shall have another water source available."

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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### | Defects from page 32

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 closing 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. *SFJV 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 against a person in the notice of defect." 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 reformation 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 mortgage or deed shall be signed by the party granting the same and properly acknowledged. Therefore, if the instrument is not properly acknowledged it is not properly recorded. There is an exception for defective acknowledgments that have been on record more than ten (10) years. RSA 447:16 provides that a defectively acknowledged mortgage on record for a period 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. Unlike Massachusetts, New Hampshire does not have a statute that allows an attorney to file an affidavit to correct acknowledgement errors. (Mass G.L.c. 183, Sect 5B)

*Kenneth D. Murphy has been a member of the NH Bar since 1986. He is Managing Partner at Coughlin Rainboth Murphy and Lown where he handles real estate litigation.*

### | Practice from page 32

to determine if the application is deemed complete. Thereafter, the Bureau has an additional 60 days to act on the application. During the 60-day period, the Bureau may issue a notice of deficiency requesting 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 Bureau may be used. Additionally, all promotional 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 application.

Upon favorable action by the Bureau, a certificate of registration is issued confirming 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 basic overview of the registration of a residential 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 condominium offering documents. Often a purchaser'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, clearly an unintended result. In the end, consumer protection disclosures should never replace the old adage, "Buyer beware!"

*Admitted to practice in both New Hampshire and Massachusetts, David Moynihan is an active member of the Real Estate Bar Association for Massachusetts' condominium law and practice committee. He is of counsel to the Woburn office of the regional law firm of McLane Middleton Professional Association, and has participated in programs for REBA and Massachusetts Continuing Legal Education Inc. David can be contacted at david.moynihan@mclane.com.*



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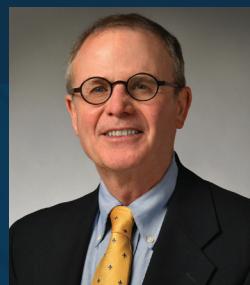
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### **| Income** from page 33

comply with any of the Rev. Proc. 2019-38 guidelines.

What 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.

- 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.
- 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 on these services. The services may include, as noted, property maintenance and repairs; they may also include advertising of available rental properties, interviewing and approving potential new tenants, ne-

gotiating 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.

- 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 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.
- Fourth, a U.S. Supreme Court case suggests that you should engage in your real estate rental services "regularly and continuously."
- 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 you must 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.

*John Cunningham is a New Hampshire lawyer licensed to practice in New Hampshire and Massachusetts. He is the principal of his own law firm, the Law Offices of John M. Cunningham, PLLC, and he is of counsel to the firm of McLane Middleton, P.A. His practice is focused on LLC law and tax, Internal Revenue Code section 199A and estate planning. His telephone number is (603) 856-7172. His e-mail is lawjmc@comcast.net. The link to his website is www.llc199A.com.*

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### **| Case** from page 34

entities that are similarly situated as to the regulatory purpose.

At first blush, 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 *Signs for Jesus* 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 manipulated 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 Board of Adjustment. After the ZBA denied both requests, the church initiated an action in federal court claiming that the denials violated, among other laws, the RLUIPA 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 a 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—nonreligious entities—are exempt from local zoning regulations, and religious entities cannot be treated on "less than equal terms" with *any* nonreligious entities, a case might be made that all religious entities are therefore also exempt from zoning. Does the existence of a secular nonconforming use in a particular district mean that every religious institution must be

permitted to install an equivalent nonconforming use? The result, in the end, is that religious entities are not treated equally with 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 sign 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 nonconforming uses 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.

*Christopher Cole is a partner and senior litigator resident in Sheehan Phinney's Portsmouth, NH office. His practice is primarily in business litigation, intellectual property and trade secret litigation, and land use planning and zoning matters. He can be reached at ccole@sheehan.com and 603-627-8223.*

*Megan C. Carrier is a partner and litigator resident in Sheehan Phinney's Manchester office. She is the co-Chair of the Sheehan Phinney Land Use and Planning Group, with a practice that includes commercial litigation. She can be reached at mcarrier@sheehan.com and 603-627-8103.*

*Mr. Cole and Ms. Carrier represented the Town of Pembroke in the zoning board and the ensuing litigation described in this article.*

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## Housing from page 35

90 days of filing the notice of appeal, and a decision on the merits within five months from the date of filing. RSA 679:6, III–IV.

Also, landowners before the HAB do not need attorney representation; rather, professional engineers, architect, land surveyors, or other non-attorneys can represent any party before the HAB. RSA 679:10. While it is likely that many parties would elect to retain attorneys for such appeals, allowing representation by a non-attorney can drastically reduce costs for aggrieved landowners. Moreover, the filing fee for an appeal to the HAB (\$250) is lower than Superior Court (\$280, before service of process).

By reducing expenses and facilitating a timely review of local decisions, the HAB offers a reprieve from the traditional appellate process, which otherwise stagnates and exhausts resources for businesses, developers, and individual landowners. Where decisions are reversed or modified, projects that otherwise would have been abandoned or deemed cost-ineffective can proceed. Similarly, where decisions are upheld, projects that might have otherwise expended significant resources and time bringing a traditional appeal may be able to redirect those saved resources to develop their project in another manner or location.

*When can I file an appeal before the HAB? What does its process look like?*

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, I. 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, I.

*Robert L. Best is a Member at Sulloway & Hollis. His practice focuses on healthcare, non-profit, real estate and business clients. Bob assists clients with a wide variety of administrative and regulatory matters important to healthcare and business organizations. Bob can be reached at 603-223-2800 or Email: rbrown@sulloway.com*

*Trevor J. Brown is an Attorney at Sulloway & Hollis. Trevor serves clients on a variety of matters in the Litigation Department, including insurance defense, medi-*

*cal malpractice defense, state taxation and general commercial litigation. Trevor can be reached at 603-223-2800 or Email: amoore@sulloway.com*

*Allyson L. Moore is an Attorney at Sulloway & Hollis. She represents litigation clients, insurance carriers, health care providers, and business clients in a diverse array of matters. Allyson is located in our Concord, New Hampshire office and can be reached at 603-223-2800 or Email: amoore@sulloway.com*

## Easements from page 36

plication of the rule of reason relative to the well easement, indicating that the rule can be applied in two ways: (i) to interpret and give reasonable meaning to general or unclear terms, and (ii) to determine whether a use of an easement would be unreasonably burdensome—notwithstanding 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 using the well, this too was not sufficient because there was no allegation (or finding) of any facts that the second residence burdened the property. As such—and also because the Supreme Court found the deed in

question to be clear and unambiguous—the rule of reason was not applied.

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 grantors’ and grantees’ (including predecessors) reasonable expectations regarding the existence of easements.

*Attorney Jason B. Dennis is a general practitioner with Hastings Malia P.A., just across the NH border in Fryeburg, ME. His general practice includes municipal law and civil litigation. Jason is also the Out of State Governor on the NHBA Board of Governors. He can be reached at (207) 935-2061 or jdennis@hastingsmalia.com.*

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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; others were shuttered from work entirely. As the spread of the virus worsened, healthcare providers found themselves struggling to provide adequate care due to shortages in staff, hospital space, beds, personal protective equipment, and medical equipment such as ventilators. Consequently, many providers have been stretched to their limit, unable to deal with the surging number of COVID-19 patients.

Aside from the systematic challenges faced by healthcare institutions in light of the COVID-19 pandemic, the virus has also had a major effect on how providers care for their patients, and the quality of such care. For instance, oncologists are adjusting how they administer treatment to their cancer patients, home care and hospice facilities are modifying how they attend to the medically disabled, the homebound, and those in need of end-of-life care, and nurses are pushed into situations with lack of support, education, and psychological and social support.

Separately, in response to the pandemic, healthcare providers have been asked to render care outside of their specialty, use equipment that they are not accustomed to, and adjust protocols based on shortages due to need for COVID-19 patients. Many hospitals have created and implemented crisis resource management protocols, limiting the use of scarce resources to priority groups of patients. Some of these

COVID-19 regimens of care have been implemented based on limited or no peer-reviewed data. Ultimately, one could assume that, due to these struggles, healthcare providers may be more apt to provide unsatisfactory care to their COVID-19- and non-COVID-19-patients. Thus, the liability for providing care below the recognized standard of care is a clear concern.

## 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.<sup>1</sup> Because most states do not define what medical conduct rises to 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."<sup>2</sup> 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." To date, there is no case law defining what medical neg-

ligence 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.<sup>3</sup> 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.<sup>4</sup>

## 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, 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 Su-

preme Court would adopt its language.<sup>5</sup> 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?<sup>6</sup> These are questions that the courts very well may have to answer.

## Endnotes

1. See, e.g., An Act relating to the state of emergency in response to COVID-19 and declaring an emergency, S.B. 150, 2020 Reg. Sess. (Ky. 2020).

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-6e (2006) (as modified by the PREP Act, 85 C.F.R. § 15198 (2020)).

3. S. 4317, 116 Cong., § 2 (2019-2020) (introduced by Sen. John Cornyn on July 27, 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 CV004043 (June 22, 2020) (filed in the Franklin County Court of Common Pleas)

*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.*

## Supreme Court At-a-Glance

### CRIMINAL

*State of New Hampshire v. Eduardo Lopez, Jr.*  
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 United States Constitution.

In 1991, when defendant was 17, he committed first degree murder. He received a statutorily-mandated 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* life 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 defen-

dant 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 actuarially-projected death. Rather, defendant argued that lifetime imprisonment is when imprisonment is for so long it forecloses out an 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 tied 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 types 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 actuarially-projected death." The Supreme Court dis-

### At-a-Glance Contributor



Jennifer Codding

Practices Florida real estate law with the law firm of Massey Law Group, P.A. in St. Petersburg, FL.

*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-petition for divorce on fault 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

*In the Matter of Molly Blaisdell and Robert*

### DIVORCE

AT-A-GLANCE continued on page 41

## At-A-Glance from page 40

in 2015 that denial of same-sex marriage violated the Federal Constitution, the view of the institution of marriage underpinning 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 reinterpreted "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. Lothstein Guerriero, PLLC, of Concord (Theodore M. Lothstein on the brief), for the respondent.*

### DIVORCE

*In the Matter of Jonathan Merrill and Lea Merrill*  
No. 2020-0009  
April 20, 2021  
*Affirmed in part, reversed in part, vacated in part, remanded.*

- Issue: Whether the trial court erred in including assets of a spendthrift trust in the marital estate; whether the trial court erred in excluding wife's mother's condominium, owned by wife and her mother jointly, from the marital estate; whether the trial court erred when it incorporated parts of the temporary order in 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 parts 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 Bradford, Massachusetts (Thomas K. MacMillan on the brief), for the respondent.*

### NH Right-to-Know Law

*Hampstead School Board & a. v. School Administrative Unit No. 55*

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 ruling 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 Superior 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 investigative 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 a lawyer 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 exempt under RSA 91-A:5, IV because it pertained to internal personnel practices, among other things. Hampstead filed the instant action and SAU moved to dismiss. The trial court granted Hampstead's petition, denied SAU's motion to dismiss and denied Hampstead's request for attorney's fees. The parties unsuccessfully moved for reconsideration, and an appeal and a 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 decision whether to disclose the report was 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 incumbent on the SAU to decide whether any specific information in the report should be redacted.

On 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 the 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.

*Wadleigh, Starr & Peters, P.L.L.C., of Manchester (Michael G. Eaton on the brief and orally), for the plaintiffs. Jackson Lewis P.C., of Portsmouth (Debra Weiss Ford, Martha Van Oot, and Samuel H. Martin on the brief, and Mr. Martin orally), for the defendant.*

## Superior Court Judicial Evaluation Notice

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Hon. Amy L. Ignatius	Carroll and Rockingham County Superior Courts
Hon. John C. Kissinger, Jr.	Merrimack County Superior Court
Hon. James D. O'Neill, III	Belknap County Superior Court
Hon. Andrew R. Schulman	Merrimack and Rockingham County Superior Courts

To complete a questionnaire go to <https://www.courts.state.nh.us/pereval/superior.htm> until JUNE 30, 2021. There you can choose the Justice that you would like to evaluate and it will bring you directly to that Justice's survey. While responses will be shared with the Justice being evaluated, the identity of the respondent will remain anonymous and will otherwise be treated as confidential.

If you do not have access to the Internet or would prefer to have a hard copy of the evaluation mailed to you, please contact my office by calling (603) 271-2030 and request that one be mailed to you. As stated above, while responses will be shared with the Justices being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous. In fact, if you request a hard copy of the evaluation form, we ask that you do not sign the completed evaluation.

Your help with this evaluation process is invaluable and we greatly appreciate your taking the time to help us with this endeavor.

## 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, the vacant position must be occupied by a professional engineer or land surveyor. The term of the position shall be for the unexpired portion of a four-year term ending on June 30, 2024. Members of the Housing Appeals Board are appointed by the Supreme Court and commissioned by the Governor. RSA 679:1 states that members "shall be full-time employees and shall not engage in any other employment, 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).

Candidates should submit a current resume and a separate statement of interest to Timothy A. Gudas, Clerk, New Hampshire Supreme Court, One Charles Doe Drive, Concord, NH 03301. The statement of 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://jobsp.nhfirrst.nh.gov/lawtaprd/CandidateSelfService/controller.servlet?dataarea=lawtaprd&context.session.key.HROrganization=10&context.session.key.JobBoard=EXTERNAL&context.session.key.noheader=true#>

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

Housing Appeals Board By:  
Gregory E. Michael, Chair  
Elizabeth R. Fischer, Member

## Supreme Court Orders

### ADMINISTRATIVE ORDER 2021-05

#### HOLIDAY SCHEDULE FOR CALENDAR YEAR 2022

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
6. Labor Day	Monday	September 5, 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

Courts shall be open for the purpose of conducting arraignments, pursuant to RSA 594:20-a, and for the purpose of conducting Gerstein hearings, pursuant to District Court Administrative Order 91-01, on Friday, November 25, 2022, and Friday, December 23, 2022.

Date: April 14, 2021

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

Date: April 21, 2021  
ATTEST: Timothy A. Gudas, Clerk  
Supreme Court of New Hampshire

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

#### I. Code of Judicial Conduct

(These amendments update references in Rule 3.9 to repealed court rules and correct typographical errors in both Rule 3.9 and Rule 4.1.)

1. Amend Supreme Court Rule 38, Rule 3.9 as set forth in Appendix A.
2. Amend Supreme Court Rule 38, Rule 4.1(A)(3) as set forth in Appendix B.

#### II. Admission to the Bar on Motion

(This amendment repeals the prohibition preventing attorneys who are not eligible to retake the New Hampshire bar examination from seeking admission to the bar on motion pursuant to Rule 42(XI).)

1. Amend Supreme Court Rule 42(XI)(f) as set forth in Appendix C.

#### Effective Date

These amendments shall take effect immediately.

#### Technical Amendments

(These amendments simplify the process and timing for the assessment of delinquency fees on those attorneys who fail to comply with annual registration requirements, including the payment of bar dues, compliance with trust accounting certification and compliance with NHMCLE. The amendments provide for a single date for the assessment of delinquency fees, rather than two dates.)

1. Amend Supreme Court Rule 50-A(2), as set forth in Appendix A.
2. Amend Supreme Court Rule 53.4(A), as set forth in Appendix B.

#### Effective Dates

These amendments shall take effect on

## US District Court Decision Listing

### April 2021

\* Published

#### CRIMINAL LAW; POST-CONVICTION DISCOVERY

04/16/2021 *United States v. Imran 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.

June 1, 2021.

Date: April 26, 2021  
ATTEST: Timothy A. Gudas, Clerk  
Supreme Court of New Hampshire

#### PRELIMINARY INJUNCTION; STANDING

04/5/2021 *Pietrangelo v. Sununu, et al.*  
Case No. 21-cv-124-PB, Opinion No. 21 DNH 067

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.

#### ADM-2018-0020, In the Matter of Christina Mott Hesse, Esquire, f/k/a Christina P. Mott, 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 \$100 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, and had not paid the \$300 in assessed delinquency fees.

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.

Upon review of the petition 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  
ATTEST: Timothy A. Gudas, Clerk

In accordance with Rule 58.2(A) and (C), the Supreme Court reappoints Dr. Leonard Korn to the Lawyers Assistance Program (LAP) Commission, to serve a three-year term effective March 2, 2021, and expiring on March 1, 2024.

Issued: May 11, 2021  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

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 12, 2021  
ATTEST: Timothy A. Gudas, Clerk



## Classifieds

### POSITIONS AVAILABLE

**REAL ESTATE & BUSINESS ATTORNEY WANTED** - Live, play, and work in the Lakes Region. Three or more years' experience desired. Position focuses on Residential and Commercial Real Estate, Planning and Zoning, Corporate Representation and Probate. The firm culture promotes a healthy work/life blend. Please send your cover letter and resume to [aambrose@wescottlawnh.com](mailto:aambrose@wescottlawnh.com).

**FAMILY LAW ATTORNEY** - Growing Concord law firm is looking to add a family law attorney to its staff. Excellent opportunity for an attorney with one to two years' experience or even newly admitted to the N.H. Bar. Candidates must have excellent writing and communication skills and a strong interest in practicing family law. This is a unique opportunity to work closely with seasoned attorneys and gain valuable experience. Please forward a cover letter, resume, and writing sample to [dmayo@tarbellbrodich.com](mailto:dmayo@tarbellbrodich.com). We will be interviewing candidates as resumes are received.

**ATTORNEY CAREER OPPORTUNITY** - The Curtin Law Office is seeking a full time, experienced attorney, who is interested in building and making a significant impact to the management and marketing of an established boutique law firm. This person will be involved with all aspects of estate planning, elder law, trusts and probate. We are highly client driven and strive to provide legal services that are compassionate, practical and customized for each client that we serve. Excellent interpersonal, problem-solving and communication skills are essential. Curtin Law Office provides a collegial and flexible work environment, and for the right candidate offers a direct path to partnership. Inquiries can be directed to Phillip F. Curtin, (603) 669-7700, [PCurtin@CurtinLawOffice.com](mailto:PCurtin@CurtinLawOffice.com).

**ASSOCIATE** - Manchester, N.H. mid-sized law firm seeks full-time associate with 2-5 years of experience and NH license to assist with its law practice, including criminal defense, family law, personal injury, and general litigation. Strong writing skills, interpersonal skills and an ability to work in a fast-paced environment required. Must be comfortable working in a team setting and providing pre-trial litigation support and second chair trial support to start. Competitive wages, health insurance, retirement and payment of Bar dues and CLE credits. Please email resume to [khickey@brennanlenehan.com](mailto:khickey@brennanlenehan.com).

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

**REAL ESTATE ASSOCIATE ATTORNEY** - Concord 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 Alfano at [paul@alfanolawoffice.com](mailto:paul@alfanolawoffice.com), 4 Park Street, Concord, NH 03301 or 226-1188.

**STAFF ATTORNEY:** New Hampshire Public Defender is 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 (unofficial acceptable) to our Recruiting Coordinator through the Employment section on our website, [www.nhpd.org](http://www.nhpd.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, who possesses a minimum of 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 criminally 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.icims.com](http://careers-publiccounsel.icims.com).

**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 Helfer at [helpertlaw@myfairpoint.net](mailto:helpertlaw@myfairpoint.net).

**ASSOCIATE** - Small Bedford NH law firm seeks Associate with no less than 3 years' experience. Firm currently focuses 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 [cownen@owenlegal.com](mailto:cownen@owenlegal.com).

**ASSOCIATE ATTORNEY WANTED.** Hayes, Windish & Badewick 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 has 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 Webster, Office Manager, HAYES, WINDISH & BADGEWICK, [pwebster@woodstockvtlaw.com](mailto:pwebster@woodstockvtlaw.com).

**FULL OR PART-TIME PARA-PROFESSIONALS NEEDED,** Manchester, NH Law Firm. All positions require strong communication skills for client, opposing counsel, court, and insurance adjuster communications, strong word processing skills, attention to detail, and strong work ethic for active and varied law practice. For Attorney Higham, probate administration, guardianships, estate drafting required. Bookkeeping skills helpful. For Attorney Normand, client screening, insurance adjuster contact, document drafting, coordination of medical records and bills for personal injury practice. Knowledge of Excel helpful. One or more strong candidates sought with flexible hours. Full or part time. Min starting salary \$20-26 per hour with room to grow. Current long time paralegal is heading off to law school. Contact [mhigham@nhattorney.com](mailto:mhigham@nhattorney.com).

**TRUSTS AND ESTATES PARALEGAL** - Wadleigh, Starr & Peters, P.L.L.C. has an excellent opportunity for a full time Trusts and Estates Paralegal. We are seeking an individual with a broad base of Trusts and Estates experience. The ideal candidate will be a self-starter and able to work with multiple attorneys and manage workflow, with experience corresponding and interacting directly with clients. Must be able to manage multiple estates and trusts, prepare and file probate documents and handle probate administration from start to finish. Tax preparation a plus. Must be proficient in Microsoft Office, particularly Word, Excel and Outlook and have at least 3-5 years of experience. We offer a competitive benefits and salary package. Please submit resume with a cover letter to [aconnor@wadleighlaw.com](mailto:aconnor@wadleighlaw.com).

**COMMERCIAL REAL ESTATE PARALEGAL** - Wadleigh, Starr & Peters, P.L.L.C. has an excellent opportunity for a full-time Commercial Real Estate Paralegal. Must possess a minimum of 5+ years experience in all facets of commercial real estate, including title prep. The ideal candidate will possess strong initiative and effective organizational skills; must have the ability to establish and maintain rapport and interact with various levels of professionals; must have a keen eye for detail, a high level of accuracy and ability to multitask and prioritize workload. Corporate experience and condo registration experience a plus. Must be proficient in Microsoft Office, particularly Word, Excel and Outlook. We offer a competitive compensation and benefits package. Please submit resume with a cover letter to [aconnor@wadleighlaw.com](mailto:aconnor@wadleighlaw.com).

**ESTATE PLANNING PARALEGAL** - McDonald & Kanyuk, PLLC has an excellent opportunity for a full time Estate Planning Paralegal. We are seeking an individual with a broad base of estate planning experience. The ideal candidate will be motivated, able to work with multiple attorneys, manage workflow, and has experience working directly with clients. The position requires an understanding of estate planning concepts and experience drafting estate planning documents. Knowledge of trust and estate administration is a plus. Tax preparation experience is a plus. Must be well-versed in Microsoft Office, particularly Word, Excel and Outlook. Please submit resume with cover letter to Molly McDonald, Office Manager at [mmcdonald@mckan.com](mailto:mmcdonald@mckan.com).

CLASSIFIEDS continued on page 45



## Schwartzberg Law

is offering a  
Unique Opportunity for an  
Experienced Attorney  
to join a very busy  
Family Law Practice

Contact Ora at [oralaw@gmail.com](mailto:oralaw@gmail.com) for details.

### Request for Proposals

New Hampshire Employment Security seeks qualified law firms to provide Administrative Hearing services.

The Department seeks to engage one or more law firms to provide attorneys to conduct administrative hearings and issue decisions related to eligibility for unemployment compensation benefits. Full RFP available at [nhes.nh.gov/media/requests-for-bids.htm](http://nhes.nh.gov/media/requests-for-bids.htm).

### ATTORNEY

Seeking Attorney to Represent NH's Children with Disabilities: Disability Rights Center – New Hampshire (DRC-NH) seeks an enthusiastic, self-motivated attorney to join us to protect the special education rights of children with disabilities for a project expected to end in December 2022. For a complete job description, visit <https://drcnh.org/employment/staff-attorney-special-education/>. Applications to be considered beginning on May 10. To apply, please send cover letter; resume; and a writing sample/brief (not to exceed 30 pages) to [hr@drcnh.org](mailto:hr@drcnh.org).



**Upton & Hatfield LLP**  
ATTORNEYS AT LAW

Since 1908, Upton & Hatfield has provided legal services to New Hampshire people, businesses, and municipalities. Our firm serves the state from offices in Concord, Portsmouth, Hillsborough, and Peterborough. We are growing and seeking candidates for the following positions:

**ATTORNEY** with 3+ years' experience for its Peterborough office to focus on estate planning, probate and trust administration, business transactions, and real estate, and to become involved in the communities in the Monadnock Region.

**ATTORNEY** with 3+ years' experience for its Concord office to focus on business and real estate transactions and to become part of the Concord business community.

**PROBATE PARALEGALS** with 5+ years' experience to assist with trust/probate administration, probate filings, and trust and estate account administration, including statement reconciliations, financial reporting, and preparation of tax information for outside tax preparers. Bookkeeping experience is a plus.

Upton & Hatfield offers a competitive compensation and benefit package. Please forward a cover letter and resume to Pamela Woodworth, Administrator, Upton & Hatfield, PO Box 1090, Concord, NH 03302-1090, or via email to [hr@uptonhatfield.com](mailto:hr@uptonhatfield.com). All inquiries will be held in strict confidence.

## Marital Paralegal

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.

### Responsibilities

- Management of Marital Files
- Drafts legal documents including routine correspondence, pleadings and motions, affidavits, interrogatories, request for production of documents, mandatory disclosures and the like
- Prepares and organizes discovery, exhibits, and depositions
- Assists attorneys with trial preparation
- Daily communications with clients and opposing counsel via phone and email
- Have solid knowledge of Court Rules and all discovery deadlines
- Performs other clerical duties such as scheduling appointments, providing information to callers, reading and routing incoming mail
- Accurate filing and copying
- Conflict checks
- Perform other related duties as assigned

### Required Skills/Abilities

- Excellent verbal and written communication skills
- Excellent understanding of legal language, court pleadings and processes
- Excellent organizational skills, attention to detail and be able to multi-task
- Strong analytical and problem-solving



- skills
- Ability to work in a high-paced and at times stressful environment, as well as the ability to work independently
  - Maintain confidentiality
  - Must be proficient in Microsoft Word/Outlook, Excel with the ability to adapt to new software programs, specifically NetDocuments and Centerbase

We look forward to welcoming someone who takes pride in their work, is enthusiastic and flexible and who will thrive in a fast-paced environment. Experience is required.

Shaheen & 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.

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

No phone calls or agencies please.

## 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
- Assist billing with monthly invoicing, collection calls and monitoring AR along with reports as needed
- Other accounting functions/projects as assigned

### Qualifications:

- Associates Degree with 3 years' experience, or 5 years relevant experience



- Competency in Microsoft applications including Word, Excel and Outlook.
- Organizational, verbal and written communication skills a must.
- Knowledge of Centerbase experience would be helpful, but not necessary to fill the position
- High attention to detail and ability to multi-task is a must

Prior experience in a law firm is highly desirable; however, we are willing to train a candidate with the experience and qualifications needed for this position.

Shaheen & 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.

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

No phone calls or agencies please.

EOE.

## Associate Attorney – Litigation (Manchester, NH)

Bernstein Shur is seeking 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 critical 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@bernsteinsur.com](mailto:attorneyrecruiting@bernsteinsur.com).

All inquiries held in strictest confidence.

## Litigation Attorney – New Hampshire

Orr & Reno PA is seeking an experienced (3-5 years) litigation attorney to join our growing law firm. Qualified candidates will be energetic and self-motivated, possess superior academic credentials, have stellar communication and writing skills and a demonstrated commitment to living and practicing in Northern New England.

Orr & Reno offers a collegial and team-oriented working environment along with a competitive salary and benefits package, which includes medical, dental, life, 401(k), paid vacation, holidays, and sick leave.

Please submit a cover letter, resume, transcript and writing sample to:

Orr & Reno, PA  
Attention: HR Coordinator  
PO Box 3550  
Concord, NH 03302-3550  
Fax: (603) 223-9060  
Email: [resumes@orr-reno.com](mailto:resumes@orr-reno.com) (Word format)  
EOE

## MEDICAL/LITIGATION PARALEGAL

Sullivan & 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. Iacopino Human Resources Manager  
[jiacopino@sullivanandhollis.com](mailto:jiacopino@sullivanandhollis.com)



New Hampshire | Maine | Massachusetts | Rhode Island | Vermont

[Sullivan.com](http://Sullivan.com) | [Info@sullivanandhollis.com](mailto:Info@sullivanandhollis.com) | 603-223-2800

An Equal Opportunity Employer.

## MEDICAL MALPRACTICE DEFENSE ATTORNEY

For more than a half-century, Sullivan & 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. Iacopino Human Resources Manager  
[jiacopino@sullivanandhollis.com](mailto:jiacopino@sullivanandhollis.com)



New Hampshire | Maine | Massachusetts | Rhode Island | Vermont

[Sullivan.com](http://Sullivan.com) | [Info@sullivanandhollis.com](mailto:Info@sullivanandhollis.com) | 603-223-2800

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## Classifieds

### Classifieds from page 43

**OUTDOOR ADVOCACY ASSISTANT:** 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/file organizer, events coordinator and organization administration. Highly organized, communication skills, law firm experience preferred. \$38-\$44k DOE. Apply at [backyardconcept.org/employment](http://backyardconcept.org/employment).

**PART-TIME CONTRACT PROSECUTOR** - The Town of Londonderry Seeks Part-Time Contract Prosecutor, 20-25 hours/week, \$30-35/hour to prepare and prosecute criminal and juvenile cases for the Police Department. Please visit [londonderrynh.org](http://londonderrynh.org) for more information, including how to apply. Application deadline: June 4, 2021. Please reply to: Lisa Drabik, [Idrabik@londonderrynh.org](mailto:Idrabik@londonderrynh.org).

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

**PART-TIME LEGAL ASSISTANT** – Cornerstone, a New Hampshire Christian advocacy group, is seeking to hire a full-time legal assistant who shares Cornerstone's mission of protecting religious liberty. Candidates must have experience as a legal assistant or legal secretary for a litigation attorney. The ideal candidate will have a general familiarity with filing procedures, court deadlines, service of process rules, etc. Qualification as a notary public is also a bonus but is not required. Please email your resume with cover letter to [ihuyett@nhcornerstone.org](mailto:ihuyett@nhcornerstone.org).

**REAL ESTATE PARALEGAL** – Concord firm seeing 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 roads, 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](mailto:amguertin@alfanolawoffice.com).

#### OFFICE SPACE

**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 particular areas 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. Our goal is to find someone who is willing to support our varied business client needs while building a practice in the areas that excite them.

### Business Law Associate Attorney

Shaheen & Gordon, P.A. has an immediate opening for an associate attorney with 0-3 years of experience in the Business Practice Group. 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.

### 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, hard work, intellectual openness, and respectful communication.

Associates will have the opportunity to work on a variety of cases and issues in a sophisticated family law practice, including divorce cases for middle income to high-net-worth clients, Collaborative Divorce cases, the identification and distribution of trust interests in divorce, valuation and division 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 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](mailto:recruiting@shaheengordon.com).

No phone calls or agencies please.

#### Lateral Patent Attorney | Burlington, VT or Lebanon, NH

Northern New England'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 England's largest law firms — has an exciting opportunity for a litigation attorney in its Lebanon office. The ideal candidate would have experience litigating in New Hampshire courts and an interest in doing 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.

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

## ESTATE PLANNING ATTORNEY

Seeking experienced Estate Planning Attorney to join thriving practice with a mid-sized, 100-year-old, firm located in the heart of the Lakes Region in New Hampshire. Ideal candidate will have a minimum of 3-5 years experience and an interest in a long-term career. Real Estate experience a plus.

Candidate must be extremely organized, able to work independently and have strong written and oral communication skills. We look forward to welcoming an attorney who is committed to excellence in his or her practice and dedicated to client service. This is an outstanding opportunity for an experienced lawyer to grow his or her career and practice in a friendly, supportive environment with experienced attorneys and an established client base.

Please forward resume and letter of interest to:

Normandin, Cheney & O'Neil, PLLC  
P.O. Box 575, Laconia, NH 03247-0575  
or email to Atty. Donna Depoian, at [ddepoian@nco-law.com](mailto:ddepoian@nco-law.com)

## ATTORNEY POSITIONS AVAILABLE

Kajko, Weisman & Colasanti, LLP is seeking attorneys in three areas of law to staff its Nashua office. Kajko, Weisman & Colasanti, LLP is a dynamic mid-size, general practice firm with an emphasis on domestic relations, civil litigation, estate planning, and real estate law. We have offices in Nashua, NH and Lexington, MA. Candidates must be self-sufficient and be able to work in a team-oriented, fast-paced environment.

We are seeking a **FAMILY LAW ATTORNEY** with 3-6 years of experience. The ideal candidate will have experience with complex litigation in the area of matrimonial law, including divorce, custody, and support, and will have experience with discovery and motion practice.

We are seeking a **TRUST AND ESTATES**

**ATTORNEY** with 3-6 years of experience. The ideal candidate will have experience in the planning and drafting of all estate planning documents, administering and probating estates, and have the ability to work with the litigation department when needed.

We are seeking a **CIVIL LITIGATION ATTORNEY** with 4-8 years of experience. The ideal candidate will have general experience in civil litigation including court room experience, taking and defending depositions, and handling discovery and motion practice.

We offer a competitive compensation package with excellent benefits. Please submit a resume and cover letter in confidence to Julie R. Hess, Esquire at [jhess@massfirm.com](mailto:jhess@massfirm.com).

## 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 operational outcome for NHMA's 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 NHMA's legal services attorneys and NHMA's 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-0>

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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](mailto:denise@nhlawoffice.com).

## Attorney - Corporate Practice Group

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

To learn more about the firm, visit our website at [www.clrm.com](http://www.clrm.com). To apply, please send your resume to Lisa Roy, Hiring Coordinator, at [l.roy@clrm.com](mailto:l.roy@clrm.com).



## New Hampshire Title Insurance Underwriting Counsel

First American Title Insurance Company's Agency Division is seeking a New Hampshire Underwriting Counsel to join our team. The position provides underwriting support, counsel, and authorization to company personnel, agents, and customer(s), related to the issuance of real estate title insurance commitments and policies. Collaborates with underwriting colleagues for communicating underwriting and real estate settlement information to agents and team members. Supports the development and maintenance of effective business relationships, including participation in educational programs, industry organizations and events.

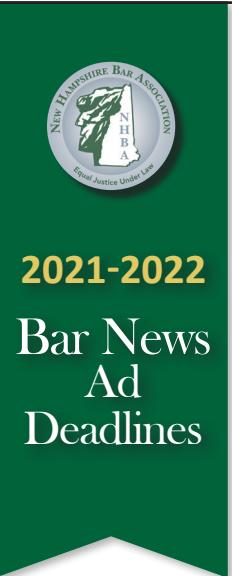
Must be a New Hampshire licensed attorney in good standing with a working knowledge of real estate law. 5-7 years title underwriting or related experience.

First American invests in its employees' development and well-being, empowers them to provide superior customer service and encourages them to serve the communities where they live and work. First American is committed to diversity and inclusion. We are an equal opportunity employer.

Based on eligibility, First American offers a comprehensive benefits package including medical, dental, vision, 401K and other great benefits like an employee stock purchase plan. For more information about our Company and our dedication to putting People First, check out [firstram.com/careers](http://firstram.com/careers).

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Issue Date	Ad Reservation Deadline	Final Ad Copy Due
June 16, 2021	June 1, 2021	June 7, 2021
July 21, 2021	July 5, 2021	July 12, 2021
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Sept. 15, 2021	August 30, 2021	Sept. 6, 2021
Oct. 20, 2021	Oct. 4, 2021	Oct. 11, 2021
Nov. 17, 2021	Nov. 1, 2021	Nov. 8, 2021
Dec. 15, 2021	Nov. 29, 2021	Dec. 6, 2021
Jan. 19, 2022	Jan. 3, 2022	Jan. 10, 2022
Feb. 16, 2022	Jan. 31, 2022	Feb. 7, 2022



## 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](mailto: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 is conduct adjudicatory hearings and render decisions in accordance with State laws and regulations for Labor Department located Hugh Gallon Office Park.

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**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) 419-9092.



## 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, and 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.

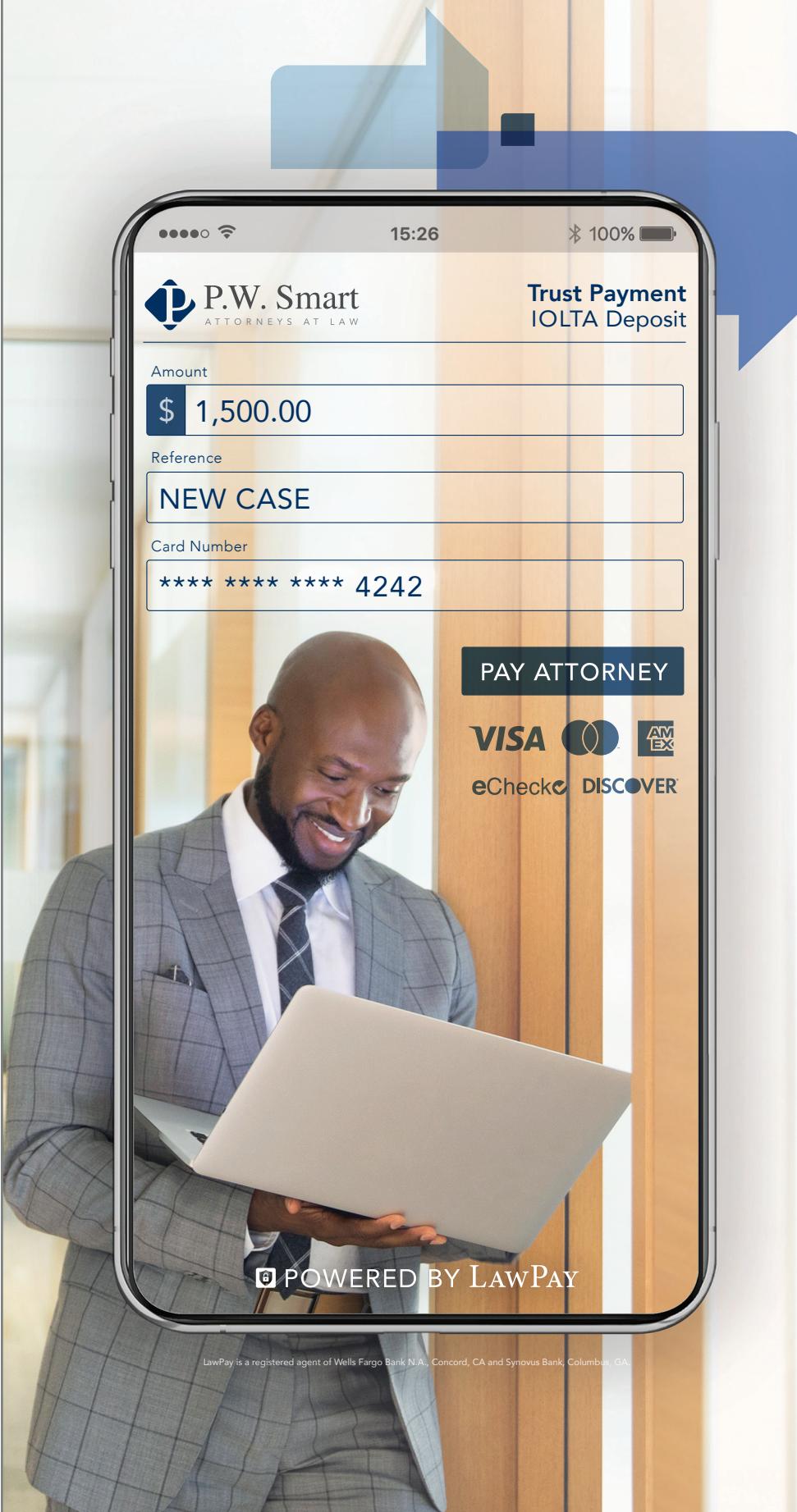
Downs Rachlin Martin PLLC - DRM serves a wide range of local, regional, national, and international clients. Our lawyers have worked at some of the largest firms, boutiques, and corporations in the U.S., and are now at DRM because they have found they can continue to have sophisticated practices while enjoying the many benefits of living in the New Hampshire-Vermont region. DRM is committed to investing in the professional growth and development of our attorneys and legal professionals. 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.

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